

Court File No. 01-CL-4192

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

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

**ONTARIO SECURITIES COMMISSION**

**Plaintiffs**

**- and -**

**BUCKINGHAM SECURITIES CORPORATION**

**Defendants**

**TWELFTH 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 response to the motion by W. D. Latimer Co. Limited ("Latimer") for an Order varying the Order of the Honourable Madam Justice Swinton dated July 26, 2001 (the "Appointment Order") to declare that Latimer's security interest ranks in priority to the Receiver's Charge and that Latimer is not subject to the Receiver's Charge on the Property (as such terms are defined in the Appointment Order).

## B. BACKGROUND

2. Buckingham is incorporated pursuant to the laws of Ontario, and provided investment services to its clients, which numbered approximately 1,000 on an active basis.
3.
  - (a) The Receiver was appointed Receiver and Manager of the assets and undertaking of Buckingham by Order of the Honourable Madame Justice Swinton. A copy of the Appointment Order is attached to this report as Appendix "A".
  - (b) The activities of Buckingham had been frozen by the Ontario Securities Commission ("OSC") on 6 July 2001, a step which preceded the appointment of the Receiver and Manager. As a result, Buckingham has not traded any securities since that date.

## C. ACTIVITIES OF THE RECEIVER

4.
  - a) *Taking Possession*
    - (i) Immediately on appointment, the Receiver took possession of the premises and assets of the company and secured the records of the company, making arrangements for continuation of data processing services essential to the Receiver's requirements. The Receiver then realized on the non-investment assets of the company expeditiously. For reasons set out hereunder, the Receiver was unable to secure all of the customer securities at that time.
    - (ii) The Receiver conducted an analysis of the securities held by Buckingham on behalf of its clients and on its own account. The Receiver also analyzed client accounts to determine individual client indebtedness to Buckingham.

- (iii) The Receiver contacted, by mail, all of the clients of Buckingham to advise of the Receivership and its implications. On a day-to-day basis, the Receiver responded to many inquiries regarding securities held by Buckingham on behalf of clients and regarding account balances. The Receiver also contacted clients with indebtedness to Buckingham via mail, and directly via telephone wherever possible, in the case of larger accounts.
- (iv) A more detailed description of the Receiver's activities on taking possession is found in Section "D" of the First Report of the Receiver dated 28 August 2001.

b) *Strategy for Realization*

- 5. At the outset of the Receivership, the Receiver was approached by the individual who claimed to be the largest unsecured creditor of Buckingham, Mr. Gerald Feldman, CA, who emphasized the illiquid nature of a large portion of the securities held by Buckingham on behalf of its clients. Many securities represented "penny stocks" and, considering that large quantities were held, it was unlikely that quoted values could be obtained unless shares were sold gradually, in small lots, over a lengthy period of time. It was suggested that to liquidate the portfolio would probably result in a dramatic reduction from quoted values in the proceeds achieved from such realization. A potential liquidation of the stock portfolio was also frustrated by the alleged secured claims of Latimer and Bear Stearns & Co Inc., which are discussed later in this report.
- 6. Accordingly, the Receiver sought to identify a procedure by which all creditors could be dealt with in a fair and equitable way given the financial circumstances of Buckingham. The Receiver explored the concept of filing a proposal pursuant to the *Bankruptcy and Insolvency Act*, ("BIA") to compromise the claims of both secured and unsecured creditors. This strategy was the subject of several meetings between the Receiver,

representatives of the OSC, representatives of the Ontario Contingency Trust Fund, Latimer, Bear Stearns & Co Inc. and Mr. Feldman. The success of the proposal strategy was contingent upon the secured creditors accepting a certain reduction in their secured claims. In negotiations between the Receiver and Latimer, both in the presence of respective counsel and independently, Latimer offered to reduce its alleged secured claim by the amount of \$200,000. As the Receiver did not agree that Latimer's secured claim should include the fully paid for customer securities improperly pledged to Latimer by Buckingham, the reduction in its claim of only \$200,000 was unacceptable to the Receiver and also was insufficient to encourage participation in the proposal funding by either the Ontario Contingency Trust Fund or the OSC.

#### Accounts Receivable

7. Based on the analysis carried out by the Receiver of client indebtedness to Buckingham, the Receiver determined that in total, clients owed Buckingham \$3,899,659. Of this amount, \$734,117 appeared to be secured by pledged securities in Buckingham's name while the balance of \$3,165,542 was shown as being unsecured.
8. The Receiver sought to collect monies owed by clients and succeeded in the following realization.
9. With the approval of the court, the Receiver accepted a partial payment of \$279,199 from South Florida, which reportedly owed Buckingham \$881,054. It should be noted that South Florida is a Bahamian corporation, the ownership of which could not be determined. The Receiver released the Third Party managers of South Florida from personal obligation regarding this debt, but specifically retained all rights against South Florida for the remaining indebtedness.
10. The Receiver collected \$88,796 in full payment of indebtedness from Mr. Norman Frydrych, a principal of the company.

11. The Receiver sought to collect the amount of US \$235,854.78 and CDN \$47,046.82 owing as at July 31, 2001 from Mr. Harold Seidel, a principal of Buckingham. The Receiver obtained a judgement on 23 April 2003, for the amounts of US \$261,053 and CDN \$53,195.12. Mr. Seidel filed a personal bankruptcy on 6 September 2002 and no amount has been recovered from his estate. The Receiver acts as estate Inspector in Mr. Seidel's bankruptcy and has objected to Mr. Seidel's discharge.
12. The Receiver sought to recover the amount of CDN \$141,355.99 and US \$3,043.44 owing by Mr. Krishnakanth Philips, a salesman employed at Buckingham. Mr. Philips then filed a personal bankruptcy on 16 July 2002. The Receiver has not recovered any amounts from this estate. The Receiver acts as estate Inspector in Mr. Phillip's bankruptcy and has objected to Mr. Phillip's discharge.
13. The Receiver also sought to collect the amount of CDN \$209,869.82 and US \$127,159.01 from Mr. Philips' mother, Mrs. Gwen Philips. Although having obtained judgement against Mrs. Philips on 16 January 2002, for CDN \$227,464.39 and US \$137,819.46, plus \$600 in costs, the Receiver has been unable to locate Mrs. Philips or any of her assets and is led to believe that she is not a resident in Canada.
14. The Receiver has sought to collect \$204,106.76 from Ernetz Getz and initiated legal action to collect that sum. The amount has now been settled for \$50,000.00.
15. The Receiver has attempted to collect \$85,426.86 from Robert Koff and has obtained judgement on 3 August 2002, in the amount of \$103,398.59 including costs and interest. However, the Receiver is unable to locate Mr. Koff or any of his assets.
16. The Receiver has attempted to collect US \$7,443.56 and CDN \$140,351.03 from Mr. David Bromberg, a director of the company, and initiated legal action to collect this sum. Mr. Bromberg then filed bankruptcy, on 14 November 2002. The Receiver has obtained an Order under Section 38 of the BIA and an assignment from Mr. Bromberg's trustee in bankruptcy of all claims and causes of action relating to the transfer by Mr. Bromberg of

his matrimonial home to his wife. The Receiver is pursuing the possibility of commencing an action against Mr. Bromberg's wife, as a result of the transfer of the matrimonial house following the date of bankruptcy. This matter is currently pending.

17. The Receiver has attempted to collect the amount of \$252,645.77 from Mr. John Peat, and has obtained default judgement against him, through an Order for substituted service. The Receiver has, however been unable to locate this individual or any assets related thereto.
18. Buckingham's books and records indicate that the amount of \$186,864.60 was owing to Buckingham as at July 31, 2001 by Mr. Konstantinos Papadakos and that the amount of \$158,582.37 was owing to Buckingham by Canada Auto Parks as at July 31, 2001. The Receiver attempted to collect those amounts and initiated litigation against Mr. Papadakos and Canada Auto Parks, which has been defended on the basis of alleged unauthorized trading and breach of fiduciary duty by Buckingham. The Receiver is in the process of moving for the approval of this Honourable Court to accept an offer to settle the indebtedness of both Konstantinos Papadakos and the Canada Auto Parks corporate defendants, upon payment to the Receiver in the amount of \$35,000.00
19. The Receiver collected a further \$24,468.75 from clients indebted to Buckingham. At this time, however, the Receiver has not realized upon any securities which were pledged by clients of Buckingham against their indebtedness. However, such securities in many cases are claimed to be encumbered in favour of two brokerage houses, Latimer and Bear Stearns who are asserting a lien over these securities, to secure their loans to Buckingham.
20. The remainder of the receivables are all for amounts under \$40,000 and have been passed to a collection agency. Little success has been achieved, due to consistent claims by many clients of Buckingham that there was unauthorized trading of their accounts by the principals or salesmen of Buckingham. Nonetheless, collection procedures are ongoing.

Securities Portfolio

21. The statements obtained by the Receiver show the portfolio of investments held by the Receiver on behalf of Buckingham and/or its clients as follows:

	<u>Broker</u>	<u>Valuation Date</u>	<u>Balance Owing</u>	<u>Cash &amp; Securities</u>	<u>Net Equity</u>
*2	Bear Stearns in CDN\$	August 29 2003	(353,004)	\$701,459	\$348,455
*2	RBC – USD Gen	July 31 2003		5,230	5,230
	RBC – CDN Gen	August 31 2003		995,729	995,729
*1	RBC - W.D. Latimer	August 31 2003	(2,000,000)	4,495,431	2,495,431
	HSBC - CDN Cash	August 31 2003			-
	Canaccord Capital in				
*2	US\$	March 31, 2003		13,158	13,158
*3	<b>Totals</b>		<b>(2,353,004)</b>	<b>\$6,211,007</b>	<b>3,858,003</b>

\*1 The Balance Owing is estimated

\*2 Exchange Rate of \$1.3851 used in conversion obtained from RBC Global Services

\*3 It should be noted that quoted values for "penny stocks" may greatly exceed liquidation values, especially where large blocks of shares are held. Accordingly, the net equity of \$3,858,003 may be greatly overstated to the point where realizable liquidation values could well be insufficient to discharge the costs of the receivership.

W. D. Latimer Co. Limited

22. In accordance with the Appointment Order, the Receiver sought to obtain possession and control of all of the securities held by Buckingham on behalf of its clients and on its own account, from the various brokerage houses who had acted for Buckingham and who had securities in their possession. Two of these brokerage houses asserted a security interest over the securities in their possession. These are Latimer and Bear Stearns & Co. Inc. ("Bear Stearns") (in the US). Latimer subsequently filed a motion with the Court for an Order:

- a) declaring that the security interest held by Latimer is valid and in priority to the Receiver; and
  - b) permitting Latimer to sell sufficient of its collateral to recover its indebtedness.
23. The Receiver in its Second and Third reports to Court dated 2 October 2001 and 17 October 2001 respectively sought to dispute Latimer's claim, asserted its own right to possession of these securities, and moved for a trial of the issues relating to the validity of the security interest claimed by Latimer.
24. The Receiver on 23 November 2001 attended before the Honourable Mr. Justice Campbell, in chambers, regarding the issues raised by Latimer's motion and was requested by the Court to provide information regarding a breakdown of Buckingham clients as follows:
- a) those clients of Buckingham who are indebted to Buckingham and who signed written Margin Account Agreements authorizing Buckingham to pledge securities held in such clients' account as security for Buckingham's own indebtedness (the "Margin Clients with Agreements");
  - b) those clients of Buckingham who are indebted to Buckingham in respect of which no written agreement is contained among Buckingham's records authorizing Buckingham to pledge securities in the client's accounts to secure Buckingham's indebtedness (the "Margin Clients without Agreements");
  - c) those clients of Buckingham who executed written Margin Account Agreements and who are not indebted to Buckingham (the "Non-Margin Position Client"); and



- d) those clients of Buckingham who are not indebted to Buckingham and who may or may not have executed Client Account Agreements authorizing Buckingham to pledge securities in the clients' account whenever the client is indebted to Buckingham (the "Custodial Account Client). This information requested by the court in connection with the issues raised by Latimer was then provided in the Receiver's Fifth and Sixth reports to Court dated 12 December 2001 and 8 March 2002, respectively.
25. In addition, at the request of the Court, the Receiver prepared an analysis which indicated how securities held at Latimer were categorized relative to the above agreements and further categorized by whether the clients were indebted to Buckingham or not indebted to Buckingham. A more detailed commentary on the above can be found in the Receiver's Fourth Report to the Court dated 25 October 2001.
26. Justice Campbell also directed the Receiver to serve notice of Latimer's claim to all Buckingham clients and to request that any clients who intended to appear and participate in a Court proceeding advise the Receiver thereof. The Receiver prepared a letter to the clients of Buckingham, which was approved by the Court and subsequently sent out to all known clients of Buckingham on 29 November 2001.
27. The Receiver reported to the Court on the many responses received from these clients in its Fifth Report to the Court dated 12 December 2001 and further in the Receiver's Sixth Report dated 8 March 2002.
28. Despite numerous demands by the Receiver and its counsel that Latimer deliver possession of the securities and cash held by Latimer in the account of Buckingham, in accordance with paragraph 4 of the Appointment Order, Latimer persistently refused to deliver over to the Receiver the securities and cash held by Latimer in the account maintained by Buckingham. Therefore, on December 19, 2001, the Receiver was

required to bring a motion to the court for an Order declaring Latimer in contempt of the Appointment Order. A true copy of the Affidavit of Martin Clarkson sworn in support of that motion is attached hereto as Appendix "B". On the same day, Latimer served a cross-motion for an Order varying the Appointment Order to permit Latimer to retain possession of the securities and cash in the account of Buckingham at Latimer, pending the determination of the validity of the security interest claimed by Latimer, and declaring that Latimer is not subject to the first charge of the Receiver for its costs and expenses as provided for in paragraph 19 of the Appointment Order. A true copy of Latimer's Further Amended Notice of Cross-Motion returnable December 19, 2001, is attached hereto as Appendix "C".

29. On 19 December 2001, the Honourable Mr. Justice Farley found that in accordance with the Appointment Order, the Receiver was entitled to take possession of all securities belonging to Buckingham or the clients of Buckingham and ordered Latimer to turn over such securities to the Receiver forthwith. A true copy of the handwritten Endorsement of Mr. Justice Farley dated December 19, 2001, together with a typed transcription thereof are attached hereto and marked collectively as Appendix "D". The Receiver therefore took possession of all of the securities and cash in the possession of Latimer and other brokerage houses with the exception of Bear Stearns in the U.S.
30. In preparation for the trial of the claim by Latimer to a security interest over all of the securities belonging to Buckingham and/or the clients of Buckingham in its possession, the Receiver prepared Reports Numbers Seven, Eight and Nine to Court outlining the obligation of Buckingham to segregate securities held on behalf of its clients and sought to explain the segregation process with supporting schedules. All of the details are contained in these Reports dated 22 March 2002, 27 March 2002, and 3 April 2002 respectively.

31. The Receiver attended at the Court for the Latimer trial in the first week of June 2002 and testified in support of its position regarding the Latimer claim. The Honourable Justice Ground released his findings on 17 October 2002, which were as follows:

“(38) Accordingly, on the issues to be tried in this proceeding, I find as follows:

1. A trust relationship did exist between Buckingham and its customers who held fully paid or excess margin securities.
2. Buckingham was in breach of such trust relationship in pledging its customers' fully paid and excess margin securities to Latimer.
3. Latimer did not have actual or constructive knowledge of such breach of trust.”

32. Following discussions with its counsel, the Receiver filed an appeal from that decision, which appeal is pending.

33. Although Latimer first served a Notice of Motion for an Order varying the Appointment Order to set aside the priority of the Receiver's Charge on or about December 19, 2001, Latimer did not proceed with any steps to have that portion of its motion determined at the hearing on December 19<sup>th</sup>, 2001 or thereafter, until September 11, 2003 when Latimer requested a hearing date for that motion in the course of a case conference held to settle the formal Order of the Honourable Mr. Justice Ground on the issues tried by him relating to the validity of Latimer's security interest.

34. In discharging its duties and fulfilling its obligations pursuant to the Appointment Order, the Receiver has relied upon the Receiver's Charge created in the Appointment Order, and the priority thereof to secure its fees and disbursements. The Receiver has incurred significant fees and expenses in the course of fulfilling its obligations under the

Appointment Order and will be prejudiced in the event that the first priority charge upon which the Receiver has relied in carrying out its duties is altered at this stage of the proceeding. Further, the Receiver would not have undertaken this engagement in the absence of a first priority charge to secure its fees and disbursements.

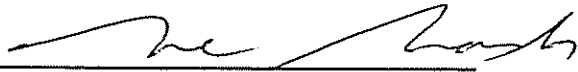
Action Against the Auditors of Buckingham

35. In order to continue its licence under the provisions of the Ontario Securities Act, Buckingham was required to submit a Form 9 to the Ontario Securities Commission on an annual basis. The Form 9 reports, among other things, a securities firm's capital position and requirements and confirms the segregation of fully paid and excess margin securities. The Receiver has examined the Form 9 report submitted to the Ontario Securities Commission for the year ended 31 March 2000, which form Buckingham's auditors certified under date of 8 June 2000. The form states that Buckingham had properly segregated client securities in segregated accounts with financial institutions, whereas the account records of Buckingham clearly indicate that none of the securities were segregated.
36. The Receiver is advised that Buckingham, through its Receiver, may have an action against the auditors, the firm of Miller, Bernstein & Partners LLP for breach of contract, negligence, and breach of fiduciary duty in the conduct of its audits which caused damage to Buckingham and its creditors. In addition, the Receiver is aware that a potential class action may be initiated against the auditors by certain of the clients of Buckingham in an attempt to recover some or all of the losses incurred by the clients of Buckingham as a result of the auditors' negligence. The Receiver and the class representatives have retained the firm of Stikeman Elliott, on a contingency basis, to pursue the potential

actions against the auditors of Buckingham. The potential actions are in the process of being reviewed.

ALL OF WHICH is respectfully submitted this                      day of October, 2003.

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



Uwe Manski, FCA, FCIRP

Court File No. 01-CL-4192

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM            )  
JUSTICE SWINTON                    )  
  )  
  )

THURSDAY, THE 26<sup>TH</sup> DAY  
OF JULY, 2001

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- AND -

BUCKINGHAM SECURITIES CORPORATION

Respondent



ORDER

**THIS APPLICATION** made by the Ontario Securities Commission (the "Commission"), the Applicant herein, for an Order appointing BDO Dunwoody Limited as Receiver and Manager of all the present and future property, undertaking and assets of the Respondent held in the name of the Respondent, Buckingham Securities Corporation (referred to herein as "Buckingham" or the "Respondent"), whether in whole or in part, directly or indirectly, as principal or as agent, beneficially or otherwise, and all proceeds therefrom, and any other property, undertaking and assets of the Respondent which may be identified by the proposed Receiver (referred to herein as the "Property"), and for such other relief, was heard on Thursday, the 26<sup>th</sup> day of July, 2001 at 393 University Avenue, Toronto, Ontario.

2.

ON READING the amended Notice of Application, the Application Record, the Supplementary Application Records, the Consent of BDO Dunwoody Limited, the proposed Receiver, and on hearing the submissions of counsel for the Commission, and submissions of counsel for the Respondent, the Respondent not opposing.

1. **THIS COURT ORDERS** that effective on Thursday, the 26<sup>th</sup> day of July, 2001 BDO Dunwoody Limited (the "Receiver") be and is hereby appointed Receiver and Manager, without security, of the Property with power to receive, protect, dispose of and sell any of the Property and to act at once until further Order of this Court.
2. **THIS COURT ORDERS** The Bank of Nova Scotia (the "Bank") to immediately deliver to the Receiver all funds, securities or property held by the Bank in the name of the Respondent.
3. **THIS COURT ORDERS** that the Order made on July 12, 2001 by the Honourable Mr. Justice Lamek is varied to the extent necessary to carry out the provisions of this Order.
4. **THIS COURT ORDERS** that the Respondent, including its present and former officers, directors, shareholders, employees, servants, agents, solicitors, contractors and anyone acting on their instructions or on their behalf, or anyone having knowledge of this Order, do forthwith deliver over to the Receiver or to its agents, all of the Property of every kind, including all the property, chattels and assets which comprise the business and undertaking of the Respondent, any cash on hand, monies or funds in any bank accounts and any other deposit instruments and securities, and all books, documents, contracts, records, deeds and papers of every nature and kind relating thereto, including all financial books and records and Property information; all electronic and computer records, where relevant, account numbers or names under which such Property might be held by third parties; and all such persons and anyone having knowledge of this Order are hereby restrained and enjoined from dealing with the Property, altering or changing any financial book or records, or interfering with the Receiver in the exercise by the Receiver of its powers and the performance of its duties hereunder.

3.

5. **THIS COURT ORDERS** that BDO Dunwoody Limited in its capacity as Receiver of the Property be and is hereby empowered, but not obligated, from time to time to further do all or any of the following acts and things until further order of this Court:

- (a) to negotiate and do all things necessary and desirable to complete a sale of any and all securities comprising the Property and pay all commissions necessary for the sale of such Property;
- (b) to receive and collect all monies, dividends or other amounts now or hereafter owing and payable to the Respondent relative to the Property;
- (c) to pay all debts and commissions which the Receiver deems necessary or advisable in order to sell the Property and all such payments shall be allowed in passing its accounts and shall form a charge on the Property in priority to the security held by any party;
- (d) to execute, assign, issue or endorse such deeds, bills of sale, transfers, powers of attorney, share certificates, bonds, debentures, securities, cheques, bills of lading or exchange, or other documents necessary or convenient for any purpose pursuant to this Order in the name of or on behalf of the Respondent;
- (e) to take all steps necessary to market and, if necessary, tender for sale the Property;
- (f) to enter into an agreement or agreements for the sale of the Property in whole or in part and to instruct any persons deemed appropriate by the Receiver to sell any of the Property through any dealers in securities on any securities exchange the Receiver deems appropriate;
- (g) to invest any of the Property or proceeds of sale of any of the Property with such persons and on such terms as the Receiver deems appropriate;



4.

- (h) to take such other steps as the Receiver deems necessary or desirable to preserve and protect and realize upon the Property; and
- (i) to file an assignment in bankruptcy on behalf of the Respondent or to consent to a receiving order against the Respondent and to act as trustee of the Respondent's estate.

6. **THIS COURT ORDERS** that if any information is stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, the Respondent and its present and former directors, officers, employees and/or agents shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain access to, recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient. Further, for the purposes of this paragraph, the Respondent, its present and former directors, officers, employees and/or agents and all persons having notice of this provision of this Order shall provide the Receiver with all such assistance in gaining immediate access to the information as the Receiver may in its discretion require including, without limiting the generality of the foregoing, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that Internet service providers or persons, corporations or individuals who provide e-mail, World Wide Web, file transfer protocol or other Internet connection services to the Respondent and/or its present and former directors, officers, employees and agents to access the Internet or World Wide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, e-mails or other information sent or received by the respondent and/or its present and former directors, officers, employees and agents in the course of their association and in conducting their duties related to the operations and affairs of the Respondent.

5.

8. **THIS COURT ORDERS** that no person shall, without the leave of this Honourable Court, discontinue, fail to renew, alter, interfere with or terminate any right, contract, arrangement, agreement, license or permit in favour of or held by the Respondent (a) as a result of any default or non-performance by the Respondent prior to the making of this Order, or (b) as a result of the making of this Order.

9. **THIS COURT ORDERS** that no legal actions, administrative proceedings, self help remedies or any other acts or proceedings shall be asserted, taken or continued against the Respondent or the Receiver, or with respect to the Property or any part thereof, without leave of the Court first being obtained and upon motion made in this application after seven clear days' notice to the Receiver, with the exception of the proceeding commenced against the Respondent and other respondents by Notice of Hearing issued by Staff of the Commission on July 6, 2001 under sections 127 and 127.1 of the *Securities Act* (the "Act") and any other proceeding which may be initiated or continued by Staff of the Commission or the Commission under the Act.

10. **THIS COURT ORDERS** that the Receiver be and is hereby fully authorized and empowered to institute, prosecute and defend all suits, proceedings, administrative hearings, cases and action at law as may in its judgment be necessary for the proper protection of the Property, and to appear in and conduct the prosecution or defence of any suits, proceedings, administrative hearings, cases and action in any court, tribunal or administrative body, in Canada or abroad, the prosecution or defence of which, in the judgment of the Receiver, will be necessary or desirable for the proper protection of the Property and the authority hereby conveyed shall extend to such appeals or judicial review as the Receiver shall deem proper and advisable in respect of any order, ruling or judgment pronounced in any such suit or proceeding, administrative hearing, case or action and the authority hereby converted shall also extend to any settlement by the Receiver of any proceedings or any actions.

6.

11. **THIS COURT ORDERS** that the Receiver as agent on behalf of the Respondent shall be at liberty to appoint, employ and retain agents, employees, counsel, auditors, accountants, consultants, dealers and other such assistance from time to time as it may consider necessary for the purpose of dealing with the Property or realizing upon the Property and that any commissions and other expenditures which shall be properly made or incurred by the Receiver in so doing shall be allowed in passing its accounts and shall form a charge on the Property.

12. **THIS COURT ORDERS** that the employment of all employees of the Respondent including employees on maternity leave, disability leave and all other forms of approved absence is hereby terminated effective immediately prior to the appointment of the Receiver. Notwithstanding the appointment of the Receiver or the exercise of any of its powers or the performance of any of its duties hereunder, or the use or employment by the Receiver of any person in connection with its appointment and the performance of its powers and duties hereunder, the Receiver is not and shall not be deemed or considered to be a successor employer, related employer, sponsor or payer with respect to any of the employees of the Respondent or any former employees within the meaning of the *Labour Relations Act* (Ontario), the *Employment Standards Act* (Ontario), the *Pension Benefits Act* (Ontario), *Canada Labour Code*, *Pension Benefits Standards Act* (Canada) or any other provincial, federal or municipal legislation or common law governing employment or labour standards (the "Labour Laws") or any other statute, regulation or rule of law or equity for any purpose whatsoever, or any collective agreement or other contract between the Respondent and any of its present or former employees. In particular, the Receiver shall not be liable to any of the employees of the Respondent for any wages (as "wages" are defined in the *Employment Standards Act*), including severance pay, termination pay and vacation pay, except for such wages as the Receiver may specifically agree to pay. The Receiver shall not be liable for any contribution or other payment to any pension or benefit fund. Further, by the granting of this Order, the business of the Respondent has not been and shall not be deemed to have been, nor treated as having been sold, but rather, such business will continue to be the business of the Respondent until sold, in whole or in part, to a purchaser other than the Receiver.

7.

13. **THIS COURT ORDERS** that with the approval of this Court on service of a Notice of Motion and supporting material on the proposed examinee, the Receiver be authorized to conduct such examinations under oath as it deems necessary of persons having knowledge of any or all of the affairs of the Respondent on matters related to or concerning the Property.

14. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for direction and guidance in the discharge of its duties hereunder.

15. **THIS COURT ORDERS** that the Receiver do from time to time pass its accounts and pay the balance in its hands as this Court may direct, and for this purpose the accounts of the Receiver are hereby referred to the Superior Court of Ontario.

16. **THIS COURT ORDERS** that the Receiver shall be at liberty to pay itself out of the existing or future monies coming into its hands or as a result of the performance of its duties hereunder in respect of its services as Receiver a reasonable amount either monthly or at such longer intervals as it deems appropriate which amount shall constitute an advance against remuneration when determined by this Court and shall also be at liberty to pay its solicitors such monies at a reasonable amount on a solicitor and his own client basis either monthly or at such longer intervals as it deems appropriate which amount shall constitute an advance against remuneration when determined by this Court.

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on its part.

18. **THIS COURT ORDERS** that the liability of the Receiver which it may incur as a result of its appointment or as a result of the performance of its duties hereunder, including in respect of gross negligence or wilful misconduct, shall be limited in the aggregate to the net realized value of the Property and furthermore the Receiver shall cease to have any liability whatsoever upon

8.

distribution of the Property or any proceeds thereof under its administration in accordance with this Order and any other Order of this Court. The net realized value of the Property shall be the cash proceeds realized by the Receiver from the disposition of the Property or part thereof after deducting the reasonable remuneration and expenses of the Receiver.

19. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver in so doing, including the fees of the Receiver and the fees and disbursements of its legal counsel, on a solicitor and his own client basis, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to any charge, mortgage, lien, security interest or encumbrance on or in the Property (the "Receiver's Charge").

20. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any Court or administrative tribunal in any other jurisdiction, whether in Canada or elsewhere, for an Order recognizing the appointment of the Receiver by this Court and confirming the powers of the Receiver in such other jurisdictions or to take such steps, actions or proceedings as may be necessary or desirable for the receipt, preservation, protection and maintenance of the Property, including acting as foreign representative of the Respondent. All Courts and tribunals of all other jurisdictions are hereby respectfully requested to make such Orders and provide such other aid and assistance to the Receiver, as an officer of this Court, as they may deem necessary or appropriate in furtherance of this Order.

21. **THIS COURT ORDERS** that liberty be reserved to all or any persons or parties, including the Receiver, interested in applying for such further or other Order, including an order to vary this Order, as may be advised.

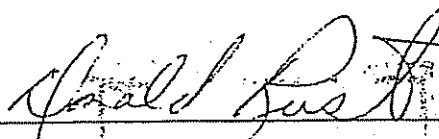
22. **THIS COURT ORDERS** that nothing herein authorizes the disclosure or obtaining of information subject to solicitor and client privilege to the Receiver or any other party or person.

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 BOOK NO:  
 FILE NO/REGISTRE NO

JUL 26 2001

DECLARED

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D. RUSTI  
 LOCAL REGISTRAR

Court File No. 01-CL-4192

ONTARIO SECURITIES COMMISSION

- AND -

BUCKINGHAM SECURITIES CORPORATION

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

ORDER

Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, ON M5H 3A58

Johanna Superina  
Counsel, Enforcement Branch  
L.S.U.C. #31313H  
Tel: (416) 593-8210  
Fax: (416) 593-2319

Court File No. 01-CL-4192

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, C. s.5, As Amended

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BUCKINGHAM SECURITIES CORPORATION

Respondent

AFFIDAVIT OF MARTIN CLARKSON  
Sworn December 18 2001

I, **Martin Clarkson**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Senior Vice-President of BDO Dunwoody Limited, the Receiver and Manager (the "Receiver") of Buckingham Securities Corporation ("Buckingham"), appointed pursuant to the Order of Madam Justice Swinton dated July 26, 2001 (the "Order"). Annexed hereto and marked as **Exhibit "A"** is a true copy of the Order of Madam Justice Swinton dated July 26, 2001. Accordingly, I have knowledge of the matters to which I hereinafter depose, except those matters expressly stated to be on information provided to me by others, in which case I verily believe such information to be true.

- 2 -

2. The Order appointing the Receiver was made on the application of the Ontario Securities Commission (the "Commission"). I am informed by Johanna Superina, counsel to the Commission that on or about July 24, 2001, in response to a request by Mr. Heath Whiteley of Gowling Lafleur Henderson LLP, counsel for W.D. Latimer Co. Limited ("Latimer"), she forwarded to Mr. Whiteley copies of the Application materials filed by the Commission with the Court, with the exception of the Motion Record filed to amend the Notice of Application. In particular, the Commission provided Mr. Whiteley with a copy of the Application Record, the Supplementary Application Record, the Supplementary Application Record (returnable July 19, 2001) and the Commission's Book of Authorities. Annexed hereto and marked as **Exhibit "B"** is a true copy of the letter dated July 24, 2001 to Mr. Whiteley from Johanna Superina, Sr. Litigation Counsel, Ontario Securities Commission.

3. In her letter of July 24, 2001, Ms. Superina asked Mr. Whiteley to advise her in advance of the court hearing whether he intended to make submissions. I am informed by Ms. Superina that Mr. Whiteley did not advise her that he intended to make any submissions on behalf of his client or otherwise.

4. Ms. Superina has further advised that Mr. Whiteley attended at the hearing of the Application to appoint the receiver on July 26, 2001, although he did not sign the counsel slip or make any submissions at the hearing of such Application.

5. The material provided to Mr. Whiteley by Ms. Superina on July 24, 2001 included a copy of the draft order sought by the Commission, a true copy of which is attached hereto and marked as **Exhibit "C"**. The Order obtained does not vary in any material or substantive way from the draft order provided to Mr. Whiteley.

over



6. Although Latimer had notice of the Application to appoint the Receiver and the form of the order being sought, and had the opportunity to make submissions to the Court with respect to the terms of the Order, Latimer chose not to do so.

7. Paragraph 4 of the Order provides as follows:

“4. ... anyone having knowledge of this Order, do forthwith deliver over to the Receiver or to its agents, all of the Property of every kind, including all the property, chattels and assets which comprise the business and undertaking of the Respondent, any cash on hand, monies or funds in any bank accounts and any other deposit instruments and securities, and all books, documents, contracts, records, deeds and papers of every nature and kind relating thereto, including all financial books and records and Property information; all electronic and computer records, where relevant, account numbers or names under which such Property might be held by third parties; and all such persons and anyone having knowledge of this Order are hereby restrained and enjoined from dealing with the Property, altering or changing any financial book or records, or interfering with the Receiver in the exercise by the Receiver of its powers and the performance of its duties hereunder. ...”

8. The term “Property” as defined in the Order is very broad and includes:

“all the present and future property, undertaking and assets of the Respondent held in the name of the Respondent, Buckingham Securities Corporation (referred to herein as “Buckingham” or the “Respondent”), whether in whole or in part, directly or indirectly, as principal or as agent, beneficially or otherwise, and all proceeds therefrom, and any other property, undertaking and assets of the Respondent which may be identified by the proposed Receiver (referred to herein as the “Property”)...”

9. By letter dated July 27, 2001, the Receiver provided a copy of the Order to Latimer and drew particular attention to certain portions thereof, including paragraphs 4 and 9

- 4 -

thereof. A true copy of the letter dated July 27, 2001 from the Receiver to Latimer is attached hereto and marked as **Exhibit "D"**.

10. Latimer claims a lien and security interest in the assets held by it for the account of Buckingham as security for the indebtedness of Buckingham to Latimer in an amount of approximately \$1.9 million. Further, Latimer has refused to deliver up possession to the Receiver of the securities held by Latimer for the account of Buckingham.

11. By letter dated August 30, 2001, the Receiver served Latimer with the Receiver's First Report to the Court dated August 28, 2001, in support of a motion by the Receiver originally returnable on September 14, 2001 for, among other relief, an Order directing the transfer of possession of all securities held by third parties for the account of Buckingham to a brokerage house designated by the Receiver. Further, in its First Report, the Receiver noted that the validity of the security interest claimed by Latimer was in issue.

12. On or about September 13, 2001, in response to the Receiver's motion, Latimer delivered a cross-motion for an Order declaring that it held a valid lien and security interest in all assets held by Latimer for the account of Buckingham. The Receiver subsequently moved for an Order directing a trial of the issues raised in connection with the validity of Latimer's security, and counsel for the Receiver and Latimer have subsequently attended on numerous occasions before Mr. Justice Campbell, and with his assistance, the procedure to be followed to determine those issues is currently in the process of being developed.

13. The monthly account statements received by the Receiver for the accounts of Buckingham maintained at Latimer for the period from July 26, 2001 through October 31, 2001 reveal that Latimer has received proceeds of approximately \$387,000 in relation to securities held for the account of Latimer. Accordingly, I instructed Blake, Cassels & Graydon LLP ("Blakes"), solicitors for the Receiver to demand payment by Latimer of those proceeds in the

amount of \$387,000 to the Receiver. Attached hereto and marked as **Exhibit "E"** is a true copy of a letter dated November 13, 2001 sent by Blakes to Gowlings, together with a letter from Gowlings to Blakes dated November 19, 2001 in response thereto. In his letter of November 19, 2001, Mr. Whiteley of Gowlings alleges that the Receiver had acknowledged Latimer's entitlement to \$248,000 of the proceeds received in relation to the securities held in Buckingham's account. That allegation is not true. At no time has the Receiver acknowledged Latimer's entitlement to such proceeds.

14. Latimer currently holds securities and cash for the account of Buckingham, and despite demands by both the Receiver and its counsel, Latimer has failed to deliver over to the Receiver all such securities, and the cash proceeds thereof, as required by paragraph 4 of the Order, and continues to willfully and intentionally disobey the terms of the Order.


15. On December 13, 2001, I attended a scheduling conference held before Mr. Justice Campbell with respect to the procedure to be followed in determining the validity of the security interest claimed by Latimer. In the course of that conference, the Receiver's counsel raised concerns with respect to Latimer's continued refusal to deliver to the Receiver the cash and securities held by Latimer for the account of Buckingham, and in particular, the risks of prejudice to Buckingham's estate which such refusal may cause. In response to those concerns, Latimer's counsel stated that delivery by Latimer to the Receiver of the cash and securities in issue would result in Latimer failing to comply with the capital requirements imposed by the Investment Dealer's Association of Canada ("IDA"), Latimer's governing body.

16. I am informed by Blakes that in the course of a cross-examination of Mr. Sesto DeLuca, the president of Latimer held on October 3, 2001, Mr. DeLuca was asked to produce the documents and financial information filed by Latimer with the IDA. That question was taken under advisement by counsel for Latimer and to date, Latimer has refused to provide the information sought by the Receiver. Attached hereto and marked as **Exhibit "F"** to my affidavit is the relevant excerpt from the transcript of Mr. DeLuca's cross-examination held on October 3, 2001.

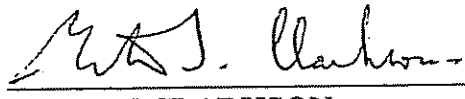
17. In view of Latimer's refusal to produce the financial information requested, the Receiver has serious concerns with respect to Latimer's solvency, the adequacy of its capital, and the associated risks to the estate of Buckingham which would result from Latimer's insolvency or failure to meet the capital requirements of the IDA.

18. This affidavit is sworn in support of a motion for an Order for contempt, and directing Latimer to comply with the Order, and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 19<sup>th</sup> day of December, 2001



A Commissioner for Taking Affidavits



MARTIN CLARKSON

IN THE MATTER OF THE *SECURITIES ACT*, R.S.O. 1990, C. s.5, as amended

ONTARIO SECURITIES COMMISSION      - and -  
Applicants

BUCKINGHAM SECURITIES CORPORATION  
Respondent

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding Commenced at Toronto

AFFIDAVIT OF MARTIN CLARKSON  
Sworn December 19, 2001

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

Lisa S. Corne  
Tel: (416) 863-3896  
Fax: (416) 863-2653

Solicitors for the Receiver and Manager,  
BDO Dunwoody Limited

Court File No. 01-CL-4192

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM )  
JUSTICE SWINTON )  
)

THURSDAY, THE 26<sup>TH</sup> DAY  
OF JULY, 2001

BETWEEN:

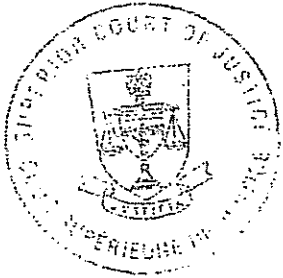
ONTARIO SECURITIES COMMISSION

Applicant

- AND -

BUCKINGHAM SECURITIES CORPORATION

Respondent



ORDER

THIS APPLICATION made by the Ontario Securities Commission (the "Commission"), the Applicant herein, for an Order appointing BDO Dunwoody Limited as Receiver and Manager of all the present and future property, undertaking and assets of the Respondent held in the name of the Respondent, Buckingham Securities Corporation (referred to herein as "Buckingham" or the "Respondent"), whether in whole or in part, directly or indirectly, as principal or as agent, beneficially or otherwise, and all proceeds therefrom, and any other property, undertaking and assets of the Respondent which may be identified by the proposed Receiver (referred to herein as the "Property"), and for such other relief, was heard on Thursday, the 26<sup>th</sup> day of July, 2001 at 393 University Avenue, Toronto, Ontario.

2.

ON READING the amended Notice of Application, the Application Record, the Supplementary Application Records, the Consent of BDO Dunwoody Limited, the proposed Receiver, and on hearing the submissions of counsel for the Commission, and submissions of counsel for the Respondent, the Respondent not opposing.

1. **THIS COURT ORDERS** that effective on Thursday, the 26<sup>th</sup> day of July, 2001 BDO Dunwoody Limited (the "Receiver") be and is hereby appointed Receiver and Manager, without security, of the Property with power to receive, protect, dispose of and sell any of the Property and to act at once until further Order of this Court.
2. **THIS COURT ORDERS** The Bank of Nova Scotia (the "Bank") to immediately deliver to the Receiver all funds, securities or property held by the Bank in the name of the Respondent.
3. **THIS COURT ORDERS** that the Order made on July 12, 2001 by the Honourable Mr. Justice Lamek is varied to the extent necessary to carry out the provisions of this Order.
4. **THIS COURT ORDERS** that the Respondent, including its present and former officers, directors, shareholders, employees, servants, agents, solicitors, contractors and anyone acting on their instructions or on their behalf, or anyone having knowledge of this Order, do forthwith deliver over to the Receiver or to its agents, all of the Property of every kind, including all the property, chattels and assets which comprise the business and undertaking of the Respondent, any cash on hand, monies or funds in any bank accounts and any other deposit instruments and securities, and all books, documents, contracts, records, deeds and papers of every nature and kind relating thereto, including all financial books and records and Property information; all electronic and computer records, where relevant, account numbers or names under which such Property might be held by third parties; and all such persons and anyone having knowledge of this Order are hereby restrained and enjoined from dealing with the Property, altering or changing any financial book or records, or interfering with the Receiver in the exercise by the Receiver of its powers and the performance of its duties hereunder.

5. **THIS COURT ORDERS** that BDO Dunwoody Limited in its capacity as Receiver of the Property be and is hereby empowered, but not obligated, from time to time to further do all or any of the following acts and things until further order of this Court:

- (a) to negotiate and do all things necessary and desirable to complete a sale of any and all securities comprising the Property and pay all commissions necessary for the sale of such Property;
- (b) to receive and collect all monies, dividends or other amounts now or hereafter owing and payable to the Respondent relative to the Property;
- (c) to pay all debts and commissions which the Receiver deems necessary or advisable in order to sell the Property and all such payments shall be allowed in passing its accounts and shall form a charge on the Property in priority to the security held by any party;
- (d) to execute, assign, issue or endorse such deeds, bills of sale, transfers, powers of attorney, share certificates, bonds, debentures, securities, cheques, bills of lading or exchange, or other documents necessary or convenient for any purpose pursuant to this Order in the name of or on behalf of the Respondent;
- (e) to take all steps necessary to market and, if necessary, tender for sale the Property;
- (f) to enter into an agreement or agreements for the sale of the Property in whole or in part and to instruct any persons deemed appropriate by the Receiver to sell any of the Property through any dealers in securities on any securities exchange the Receiver deems appropriate;
- (g) to invest any of the Property or proceeds of sale of any of the Property with such persons and on such terms as the Receiver deems appropriate;



4.

- (h) to take such other steps as the Receiver deems necessary or desirable to preserve and protect and realize upon the Property; and
- (i) to file an assignment in bankruptcy on behalf of the Respondent or to consent to a receiving order against the Respondent and to act as trustee of the Respondent's estate.

6. **THIS COURT ORDERS** that if any information is stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, the Respondent and its present and former directors, officers, employees and/or agents shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain access to, recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient. Further, for the purposes of this paragraph, the Respondent, its present and former directors, officers, employees and/or agents and all persons having notice of this provision of this Order shall provide the Receiver with all such assistance in gaining immediate access to the information as the Receiver may in its discretion require including, without limiting the generality of the foregoing, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that Internet service providers or persons, corporations or individuals who provide e-mail, World Wide Web, file transfer protocol or other Internet connection services to the Respondent and/or its present and former directors, officers, employees and agents to access the Internet or World Wide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, e-mails or other information sent or received by the respondent and/or its present and former directors, officers, employees and agents in the course of their association and in conducting their duties related to the operations and affairs of the Respondent.

5.

8. **THIS COURT ORDERS** that no person shall, without the leave of this Honourable Court, discontinue, fail to renew, alter, interfere with or terminate any right, contract, arrangement, agreement, license or permit in favour of or held by the Respondent (a) as a result of any default or non-performance by the Respondent prior to the making of this Order, or (b) as a result of the making of this Order.

9. **THIS COURT ORDERS** that no legal actions, administrative proceedings, self help remedies or any other acts or proceedings shall be asserted, taken or continued against the Respondent or the Receiver, or with respect to the Property or any part thereof, without leave of the Court first being obtained and upon motion made in this application after seven clear days' notice to the Receiver, with the exception of the proceeding commenced against the Respondent and other respondents by Notice of Hearing issued by Staff of the Commission on July 6, 2001 under sections 127 and 127.1 of the *Securities Act* (the "Act") and any other proceeding which may be initiated or continued by Staff of the Commission or the Commission under the Act.

10. **THIS COURT ORDERS** that the Receiver be and is hereby fully authorized and empowered to institute, prosecute and defend all suits, proceedings, administrative hearings, cases and action at law as may in its judgment be necessary for the proper protection of the Property, and to appear in and conduct the prosecution or defence of any suits, proceedings, administrative hearings, cases and action in any court, tribunal or administrative body, in Canada or abroad, the prosecution or defence of which, in the judgment of the Receiver, will be necessary or desirable for the proper protection of the Property and the authority hereby conveyed shall extend to such appeals or judicial review as the Receiver shall deem proper and advisable in respect of any order, ruling or judgment pronounced in any such suit or proceeding, administrative hearing, case or action and the authority hereby converted shall also extend to any settlement by the Receiver of any proceedings or any actions.

11. **THIS COURT ORDERS** that the Receiver as agent on behalf of the Respondent shall be at liberty to appoint, employ and retain agents, employees, counsel, auditors, accountants, consultants, dealers and other such assistance from time to time as it may consider necessary for the purpose of dealing with the Property or realizing upon the Property and that any commissions and other expenditures which shall be properly made or incurred by the Receiver in so doing shall be allowed in passing its accounts and shall form a charge on the Property.

12. **THIS COURT ORDERS** that the employment of all employees of the Respondent including employees on maternity leave, disability leave and all other forms of approved absence is hereby terminated effective immediately prior to the appointment of the Receiver. Notwithstanding the appointment of the Receiver or the exercise of any of its powers or the performance of any of its duties hereunder, or the use or employment by the Receiver of any person in connection with its appointment and the performance of its powers and duties hereunder, the Receiver is not and shall not be deemed or considered to be a successor employer, related employer, sponsor or payer with respect to any of the employees of the Respondent or any former employees within the meaning of the *Labour Relations Act* (Ontario), the *Employment Standards Act* (Ontario), the *Pension Benefits Act* (Ontario), *Canada Labour Code*, *Pension Benefits Standards Act* (Canada) or any other provincial, federal or municipal legislation or common law governing employment or labour standards (the "Labour Laws") or any other statute, regulation or rule of law or equity for any purpose whatsoever, or any collective agreement or other contract between the Respondent and any of its present or former employees. In particular, the Receiver shall not be liable to any of the employees of the Respondent for any wages (as "wages" are defined in the *Employment Standards Act*), including severance pay, termination pay and vacation pay, except for such wages as the Receiver may specifically agree to pay. The Receiver shall not be liable for any contribution or other payment to any pension or benefit fund. Further, by the granting of this Order, the business of the Respondent has not been and shall not be deemed to have been, nor treated as having been sold, but rather, such business will continue to be the business of the Respondent until sold, in whole or in part, to a purchaser other than the Receiver.

7.

13. **THIS COURT ORDERS** that with the approval of this Court on service of a Notice of Motion and supporting material on the proposed examinee, the Receiver be authorized to conduct such examinations under oath as it deems necessary of persons having knowledge of any or all of the affairs of the Respondent on matters related to or concerning the Property.

14. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for direction and guidance in the discharge of its duties hereunder.

15. **THIS COURT ORDERS** that the Receiver do from time to time pass its accounts and pay the balance in its hands as this Court may direct, and for this purpose the accounts of the Receiver are hereby referred to the Superior Court of Ontario.

16. **THIS COURT ORDERS** that the Receiver shall be at liberty to pay itself out of the existing or future monies coming into its hands or as a result of the performance of its duties hereunder in respect of its services as Receiver a reasonable amount either monthly or at such longer intervals as it deems appropriate which amount shall constitute an advance against remuneration when determined by this Court and shall also be at liberty to pay its solicitors such monies at a reasonable amount on a solicitor and his own client basis either monthly or at such longer intervals as it deems appropriate which amount shall constitute an advance against remuneration when determined by this Court.

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on its part.

18. **THIS COURT ORDERS** that the liability of the Receiver which it may incur as a result of its appointment or as a result of the performance of its duties hereunder, including in respect of gross negligence or wilful misconduct, shall be limited in the aggregate to the net realized value of the Property and furthermore the Receiver shall cease to have any liability whatsoever upon

distribution of the Property or any proceeds thereof under its administration in accordance with this Order and any other Order of this Court. The net realized value of the Property shall be the cash proceeds realized by the Receiver from the disposition of the Property or part thereof after deducting the reasonable remuneration and expenses of the Receiver.

19. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver in so doing, including the fees of the Receiver and the fees and disbursements of its legal counsel, on a solicitor and his own client basis, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to any charge, mortgage, lien, security interest or encumbrance on or in the Property (the "Receiver's Charge").

20. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any Court or administrative tribunal in any other jurisdiction, whether in Canada or elsewhere, for an Order recognizing the appointment of the Receiver by this Court and confirming the powers of the Receiver in such other jurisdictions or to take such steps, actions or proceedings as may be necessary or desirable for the receipt, preservation, protection and maintenance of the Property, including acting as foreign representative of the Respondent. All Courts and tribunals of all other jurisdictions are hereby respectfully requested to make such Orders and provide such other aid and assistance to the Receiver, as an officer of this Court, as they may deem necessary or appropriate in furtherance of this Order.

21. **THIS COURT ORDERS** that liberty be reserved to all or any persons or parties, including the Receiver, interested in applying for such further or other Order, including an order to vary this Order, as may be advised.

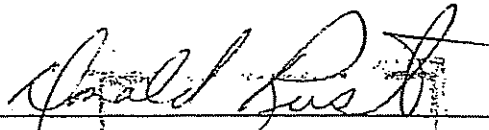
22. **THIS COURT ORDERS** that nothing herein authorizes the disclosure or obtaining of information subject to solicitor and client privilege to the Receiver or any other party or person.

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D. RUST  
 LOCAL REGISTRAR

ONTARIO SECURITIES COMMISSION

- AND -

BUCKINGHAM SECURITIES CORPORATION

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

ORDER

Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, ON M5H 3A58

Johanna Superina  
Counsel, Enforcement Branch  
L.S.U.C. #31313H

Tel: (416) 593-8210  
Fax: (416) 593-2319



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

P.O. Box 55, 19th Floor  
20 Queen Street West  
Toronto ON M5H 3S8

CP 55, 19e étage  
20, rue Queen ouest  
Toronto ON M5H 3S8

Web site: [www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
TDX 76  
CDS-OSC

**COPY**

Direct: 416-593-8210  
Fax: 416-593-2319  
E: [jsuperina@osc.gov.on.ca](mailto:jsuperina@osc.gov.on.ca)

VIA COURIER

July 24, 2001

Mr. Heath Whiteley  
Gowling Lafleur Henderson LLP  
Commerce Court West  
Suite 4900  
Toronto ON M5L 1J3

Dear Mr. Whiteley:

**Re: Buckingham Securities Corporation (Court File No. 01-CL-4192)**

In your capacity as counsel for W.D. Latimer Co. Ltd., you have requested the application material filed by the Ontario Securities Commission (the "Commission") in respect of the application by the Commission for the appointment of a Receiver and Manager of Buckingham Securities Corporation. In response to your request, we have enclosed materials filed, with the exception of the motion record filed to amend the Notice of Application. Please find enclosed the Application Record, the Supplementary Application Record, the Supplementary Application Record (Returnable July 19, 2001) and the Commission's Book of Authorities.

I understand that you may be attending the hearing scheduled for Thursday, July 26, 2001. In the event that you intend to make submissions, could you please advise me in advance.

Yours very truly,

ONTARIO SECURITIES COMMISSION

Johanna Superina  
Sr. Litigation Counsel, Enforcement Branch

c: Ellen Bessner, Gowling Lafleur Henderson LLP  
Jonathan Lancaster, Fasken Martineau DuMoulin LLP



BDO Dunwoody Limited

Royal Bank Plaza  
P.O. Box 33  
Toronto Ontario M5J 2J9  
Telephone: (416) 865-0210  
Telefax: (416) 865-0904

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27 July 2001

*Sent via fax (416-363-8022)**And via courier*

COPY

W.D. Latimer Co. Ltd.  
P.O. Box 96  
Suite 2508  
Toronto Dominion Centre  
Toronto, ON  
M5K 2G8*Attention: Larry Miller and/or Stan Richardson*

Dear Sirs,

*Re: Buckingham Securities Corporation ("BSC"), in Receivership  
Account Numbers: 34124E-9  
34124F-7*

As you are aware, BDO Dunwoody Limited was appointed as Receiver and Manager of BSC (the "Receiver") by an Order of the Ontario Superior Court of Justice made on July 26, 2001 (the "Appointment Order"). A copy of the Appointment Order is attached for your direct reference. We draw your particular attention to paragraphs 4, 6, 8 and 9 thereof.

BSC's records reflect outstanding and historic accounts with your firm that include both cash and security positions. The accounts enumerated above may not be all inclusive and the Appointment Order, the original cease-trading order initiated by the Ontario Securities Commission ("OSC"), and this letter and notice by the Receiver relate to all possible BSC accounts with your firm. Without further notice or instructions from the Receiver, you are required to continue to freeze these accounts whereby no dealing, trading, alterations, adjustments, payments, setoffs, or any other transactions of any nature may take place with respect to these accounts and the assets contained and/or reflected therein. You should also be aware that these accounts remain subject to the cease trading or freeze Order initiated by the OSC at the beginning of this month and that the effect of that Order is not altered by the recent Appointment Order.



**BDO**

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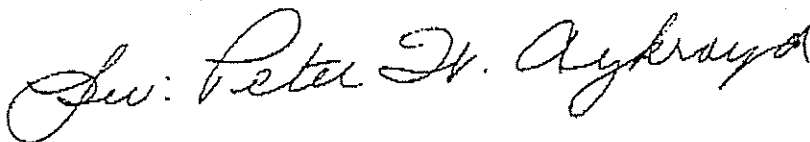
At this time and to assist the Receiver, we ask that you provide us with the following:

- 1) Statements of account for all BSC accounts with your firm including full details of cash and security positions as at both July 26, 2001 and at July 6, 2001;
- 2) Copies of all agreements and contracts between your firm and BSC including, without limitation, any margin agreements;
- 3) Details of any segregated accounts and corresponding customer name securities. [Please note that the latter does not include securities registered in the name of BSC or one of its customers where by endorsement or otherwise, that security is in negotiable form].

We look forward to hearing from you. An expedited response by you would be greatly appreciated since we plan to report to the Ontario Court within the next few weeks.

Yours very truly,

BDO DUNWOODY LIMITED  
Receiver and Manager  
Per:



Peter W. Aykroyd, FCA, CIP, CFE  
Senior Vice-President

:pb  
Encl.

cc: K. McElcheran and L. Corne, Blake Cassels  
(sent via fax - 416-863-2653)

Johanna Superina and/or Michael Watson, OSC  
(sent via fax - 416-593-8321)

SCHEDULE "1"

Court File No. 01-CL-4192

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
JUSTICE

)  
)  
)

THURSDAY, THE 19<sup>TH</sup> DAY  
OF JULY, 2001

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- AND -

BUCKINGHAM SECURITIES CORPORATION

Respondent/  
Moving Party

ORDER

**THIS ^ MOTION** made by the Ontario Securities Commission (the "Commission"), the Applicant herein, for an Order appointing BDO Dunwoody Limited as Receiver ^ and Manager of all the present and future property, undertaking and assets of the Respondent ^ held in the name of the Respondent, Buckingham Securities Corporation (referred to herein as "Buckingham" or the "Respondent"), whether in whole or in part, directly or indirectly, as principal or as agent, beneficially or otherwise, and all proceeds therefrom, and any other property, undertaking and assets of the Respondent which may be identified by the proposed Receiver (referred to herein as the "Property"), and for such other relief, was heard on Thursday, the 19<sup>th</sup> day of July, 2001 at 393 University Avenue, Toronto, Ontario.

2.

ON READING the amended Notice of Application, the Application Record, the Supplementary Application Record, the Applicant's Motion Record, the Consent of BDO Dunwoody Limited, the proposed Receiver, and on hearing the submissions of counsel for the Commission, and submissions of counsel for the Respondent.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Supplementary Application Record is hereby abridged so that this motion is properly returnable today, and further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that effective on Thursday, the 19<sup>th</sup> day of July, 2001 BDO Dunwoody Limited (the "Receiver") be and is hereby appointed Receiver ^ and Manager, without security, of the Property with power to receive, protect, dispose of and sell any of the Property ^ and to act at once until further Order of this Court.

3. **THIS COURT ORDERS** The Bank of Nova Scotia (the "Bank") to immediately deliver to the Receiver all funds, securities or property held by the Bank in the name of the Respondent.

4. **THIS COURT ORDERS** that the Order made on July 12, 2001 by the Honourable Mr. Justice Lamek is varied to the extent necessary to carry out the provisions of this Order.

5. **THIS COURT ORDERS** that the Respondent, including its present and former officers, directors, shareholders, employees, servants, agents, solicitors, contractors and anyone acting on their instructions or on their behalf or anyone having knowledge of this Order, do forthwith deliver over to the Receiver or to its agents, all of the Property of every kind, including all the property, chattels and assets which comprise the business and undertaking of the Respondent, any cash on hand, monies or funds in any bank accounts and any other deposit instruments and securities, and all books, documents, contracts, records, deeds and papers of every nature and kind relating thereto, including all financial books and records and Property information; all electronic and computer records, where relevant, account numbers or names under which such Property might be held by third parties; and all such persons and anyone having knowledge of this Order are hereby restrained

3.

and enjoined from dealing with the Property, altering or changing any financial book or records, or interfering with the Receiver in the exercise by the Receiver of its powers and the performance of its duties hereunder.

6. **THIS COURT ORDERS** that BDO Dunwoody Limited in its capacity as Receiver of the Property be and is hereby empowered, but not obligated, from time to time to further do all or any of the following acts and things until further order of this Court:

- (a) to negotiate and do all things necessary and desirable to complete a sale of any and all securities comprising the Property and pay all commissions necessary for the sale of such Property;
- (b) to receive and collect all monies, dividends or other amounts now or hereafter owing and payable to the Respondent relative to the Property;
- (c) to pay all debts and commissions which the Receiver deems necessary or advisable in order to sell the Property and all such payments shall be allowed in passing its accounts and shall form a charge on the Property in priority to the security held by any party;
- (d) to execute, assign, issue or endorse such deeds, bills of sale, transfers, powers of attorney, share certificates, bonds, debentures, securities, cheques, bills of lading or exchange, or other documents necessary or convenient for any purpose pursuant to this Order in the name of or on behalf of the Respondent;
- (e) to take all steps necessary to market and, if necessary, tender for sale the Property;
- (f) to enter into an agreement or agreements for the sale of the Property in whole or in part and to instruct any persons deemed appropriate by the Receiver to sell any of the Property through any dealers in securities on any securities exchange the Receiver deems appropriate;

4.

- (g) to invest any of the Property or proceeds of sale of any of the Property with such persons and on such terms as the Receiver deems appropriate; ^
- (h) to take such other steps as the Receiver deems necessary or desirable to preserve and protect and realize upon the Property; and
- (i) to file an assignment in bankruptcy on behalf of the Respondent or to consent to a receiving order against the Respondent and to act as trustee of the Respondent's estate.

7. **THIS COURT ORDERS** that if any information is stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, the Respondent and its present and former directors, officers, employees and/or agents shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain access to, recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient. Further, for the purposes of this paragraph, the Respondent, its present and former directors, officers, employee and/or agents and all persons having notice of this provision of this Order shall provide the Receiver with all such assistance in gaining immediate access to the information as the Receiver may in its discretion require including, without limiting the generality of the foregoing, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that Internet service providers or persons, corporations or individuals who provide e-mail, World Wide Web, file transfer protocol or other Internet connection services to the Respondent and/or its present and former directors, officers, employees and agents to access the Internet or World Wide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, e-mails or other information sent or received by the respondent and/or its present and

5.

former directors, officers, employees and agents in the course of their association and in conducting their duties related to the operations and affairs of the Respondent.

9. **THIS COURT ORDERS** that no person shall, without the leave of this Honourable Court, discontinue, fail to renew, alter, interfere with or terminate any right, contract, arrangement, agreement, license or permit in favour of or held by the Respondent (a) as a result of any default or non-performance by the Respondent prior to the making of this Order, or (b) as a result of the making of this Order.

10. **THIS COURT ORDERS** that no legal actions, administrative proceedings, self help remedies or any other acts or proceedings shall be asserted, taken or continued against the Respondent or the Receiver, or with respect to the Property or any part thereof, without leave of the Court first being obtained and upon motion made in this application after seven clear days' notice to the Receiver, with the exception of the proceeding commenced against the Respondent and other respondents by Notice of Hearing issued by Staff of the Commission on July 6, 2001 under sections 127 and 127.1 of the *Securities Act* (the "Act") and any other proceeding which may be initiated or continued by Staff of the Commission or the Commission under the Act.

11. **THIS COURT ORDERS** that the Receiver be and is hereby fully authorized and empowered to institute, prosecute and defend all suits, proceedings, administrative hearings, cases and action at law as may in its judgment be necessary for the proper protection of the Property, and to appear in and conduct the prosecution or defence of any suits, proceedings, administrative hearings, cases and action in any court, tribunal or administrative body, in Canada or abroad, the prosecution or defence of which, in the judgment of the Receiver, will be necessary or desirable for the proper protection of the Property and the authority hereby conveyed shall extend to such appeals or juridical review as the Receiver shall deem proper and advisable in respect of any order, ruling or judgment pronounced in any such suit or proceeding, administrative hearing, case or action and the authority hereby converted shall also extend to any settlement by the Receiver of any proceedings or any actions.

12. **THIS COURT ORDERS** that the Receiver as agent on behalf of the Respondent shall be at liberty to appoint, employ and retain agents, employees, counsel, auditors, accountants, consultants, dealers and other such assistance from time to time as it may consider necessary for the purpose of dealing with the Property or realizing upon the Property and that any commissions and other expenditures which shall be properly made or incurred by the Receiver in so doing shall be allowed in passing its accounts and shall form a charge on the Property.

13. **THIS COURT ORDERS** that the employment of all employees of the Respondent including employees on maternity leave, disability leave and all other forms of approved absence is hereby terminated effective immediately prior to the appointment of the Receiver. Notwithstanding the appointment of the Receiver or the exercise of any of its powers or the performance of any of its duties hereunder, or the use or employment by the Receiver of any person in connection with its appointment and the performance of its powers and duties hereunder, the Receiver is not and shall not be deemed or considered to be a successor employer, related employer, sponsor or payer with respect to any of the employees of the Respondent or any former employees within the meaning of the Labour Relations Act (Ontario), the Employment Standards Act (Ontario), the Pension Benefits Act (Ontario), Canada Labour Code, Pension Benefits Standards Act (Canada) or any other provincial, federal or municipal legislation or common law governing employment or labour standards, (the "Labour Laws") or any other statute, regulation or rule of law or equity for any purpose whatsoever, or any collective agreement or other contract between the Respondent and any of its present or former employees. In particular, the Receiver shall not be liable to any of the employees of the Respondent for any wages (as "wages" are defined in the Employment Standards Act), including severance pay, termination pay and vacation pay, except for such wages as the Receiver may specifically agree to pay. The Receiver shall not be liable for any contribution or other payment to any pension or benefit fund. Further, by the granting of this Order, the business of the Respondent has not been and shall not be deemed to have been, nor treated as having been sold, but rather, such business will continue to be the business of the Respondent until sold, in whole or in part, to a purchaser other than the Receiver.

14. **THIS COURT ORDERS** that with the approval of this Court on service of a Notice of Motion and supporting material on the proposed examinee, the Receiver be authorized to conduct such examinations under oath as it deems necessary of persons having knowledge of any or all of the affairs of the Respondent on matters related to or concerning the Property.

15. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for direction and guidance in the discharge of its duties hereunder.

16. **THIS COURT ORDERS** that the Receiver do from time to time pass its accounts and pay the balance in its hands as this Court may direct, and for this purpose the accounts of the Receiver are hereby referred to the Superior Court of Ontario.

17. **THIS COURT ORDERS** that the Receiver shall be at liberty to pay itself out of the existing or future monies coming into its hands or as a result of the performance of its duties hereunder in respect of its services as Receiver a reasonable amount either monthly or at such longer intervals as it deems appropriate which amount shall constitute an advance against remuneration when determined by this Court and shall also be at liberty to pay its solicitors such monies at a reasonable amount on a solicitor and his own client basis either monthly or at such longer intervals as it deems appropriate which amount shall constitute an advance against remuneration when determined by this Court.

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on its part.

19. **THIS COURT ORDERS** that the liability of the Receiver which it may incur as a result of its appointment or as a result of the performance of its duties hereunder, including in respect of gross negligence or wilful misconduct, shall be limited in the aggregate to the net realized value of the Property and furthermore the Receiver shall cease to have any liability whatsoever upon



8.

distribution of the Property or any proceeds thereof under its administration in accordance with this Order and any other Order of this Court. The net realized value of the Property shall be the cash proceeds realized by the Receiver from the disposition of the Property or part thereof after deducting the reasonable remuneration and expenses of the Receiver.

20. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver in so doing, including the fees of the Receiver and the fees and disbursements of its legal counsel, on a solicitor and his own client basis, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to any charge, mortgage, lien, security interest or encumbrance on or in the Property (the "Receiver's Charge").

21. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any Court or administrative tribunal in any other jurisdiction, whether in Canada or elsewhere, for an Order recognizing the appointment of the Receiver by this Court and confirming the powers of the Receiver in such other jurisdictions or to take such steps, actions or proceedings as may be necessary or desirable for the receipt, preservation, protection and maintenance of the Property, including acting as foreign representative of the Respondent. All Courts and tribunals of all other jurisdictions are hereby respectfully requested to make such Orders and provide such other aid and assistance to the Receiver, as an officer of this Court, as they may deem necessary or appropriate in furtherance of this Order.

22. **THIS COURT ORDERS** that liberty be reserved to all or any parties, including the Receiver, interested in applying for such further or other Order, including an order to vary this Order, as may be advised.

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ONTARIO SECURITIES COMMISSION

- AND -

BUCKINGHAM SECURITIES CORPORATION

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

ORDER

Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, ON M5H 3A8

Johanna Superina  
Counsel, Enforcement Branch  
L.S.U.C. #31313H

Tel: (416) 593-8210  
Fax: (416) 593-2319

**EXHIBIT "D"**

27 July 2001

*Sent via fax (416-363-8022)  
And via courier*

**COPY**

W.D. Latimer Co. Ltd.  
P.O. Box 96  
Suite 2508  
Toronto Dominion Centre  
Toronto, ON  
M5K 2G8

*Attention: Larry Miller and/or Stan Richardson*

Dear Sirs,

*Re: Buckingham Securities Corporation ("BSC"), in Receivership  
Account Numbers: 34124E-9  
34124F-7*

As you are aware, BDO Dunwoody Limited was appointed as Receiver and Manager of BSC (the "Receiver") by an Order of the Ontario Superior Court of Justice made on July 26, 2001 (the "Appointment Order"). A copy of the Appointment Order is attached for your direct reference. We draw your particular attention to paragraphs 4, 6, 8 and 9 thereof.

BSC's records reflect outstanding and historic accounts with your firm that include both cash and security positions. The accounts enumerated above may not be all inclusive and the Appointment Order, the original cease-trading order initiated by the Ontario Securities Commission ("OSC"), and this letter and notice by the Receiver relate to all possible BSC accounts with your firm. Without further notice or instructions from the Receiver, you are required to continue to freeze these accounts whereby no dealing, trading, alterations, adjustments, payments, setoffs, or any other transactions of any nature may take place with respect to these accounts and the assets contained and/or reflected therein. You should also be aware that these accounts remain subject to the cease trading or freeze Order initiated by the OSC at the beginning of this month and that the effect of that Order is not altered by the recent Appointment Order.

The logo for BDO, consisting of the letters 'BDO' in a bold, sans-serif font, enclosed within a rectangular border.


At this time and to assist the Receiver, we ask that you provide us with the following:

- 1) Statements of account for all BSC accounts with your firm including full details of cash and security positions as at both July 26, 2001 and at July 6, 2001;
- 2) Copies of all agreements and contracts between your firm and BSC including, without limitation, any margin agreements;
- 3) Details of any segregated accounts and corresponding customer name securities. [Please note that the latter does not include securities registered in the name of BSC or one of its customers where by endorsement or otherwise, that security is in negotiable form].

We look forward to hearing from you. An expedited response by you would be greatly appreciated since we plan to report to the Ontario Court within the next few weeks.

Yours very truly,

BDO DUNWOODY LIMITED  
Receiver and Manager  
Per:

A handwritten signature in cursive script that reads 'Peter W. Aykroyd'.

Peter W. Aykroyd, FCA, CIP, CFE  
Senior Vice-President

:pb  
Encl.

cc: K. McElcheran and L. Corne, Blake Cassels  
(sent via fax - 416-863-2653)

Johanna Superina and/or Michael Watson, OSC  
(sent via fax - 416-593-8321)


**BLAKE, CASSELLS & GRAYDON LLP**

BARRISTERS &amp; SOLICITORS | PATENT &amp; TRADE-MARK AGENTS

Box 25, Commerce Court West  
199 Bay Street  
Toronto, Ontario, Canada  
M5L 1A9

November 13, 2001

Deliveries: 28<sup>th</sup> Floor  
Telephone: 416.863.2400  
Facsimile: 416.863.2653  
www.blakes.com

VIA FACSIMILE

**Lisa S. Corne**  
Direct Dial: 416.863.3896  
E-mail: lisa.corne@blakes.com

Mr. Heath Whiteley  
Gowling LaFleur Henderson LLP  
Barristers & Solicitors  
Suite 4900, Commerce Court West  
Toronto, Ontario M5L 1J3

Reference: 19299/00029

Dear Mr. Whiteley:

**Re: Buckingham Securities Corp. ("Buckingham")**

I am writing to clarify the Receiver's position in connection with proceeds of \$387,700 which Latimer has apparently received in relation to securities held by Latimer for the account of or in the name of Buckingham. A listing of the securities and related proceeds in issue is attached.

As you know, pursuant to the Order dated July 26, 2001 appointing the Receiver, there is a stay of proceedings in effect which prohibits the assertion of any remedies against Buckingham or any property or assets held in the name of Buckingham, directly or indirectly, as principal or agent, beneficially or otherwise, and all proceeds thereof, without leave of the court first being obtained.

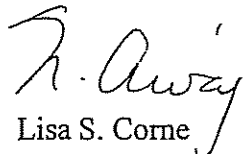
As Latimer has not obtained leave of the court on notice to the Receiver to exercise any remedy against the proceeds described above, Latimer is precluded from exercising any remedy as against those proceeds at this time. Further, the validity of Latimer's security interest in the assets held by Latimer for the account of Buckingham is in issue and is now pending before the court.

Accordingly, in accordance with the order appointing the Receiver, Latimer is required to pay these proceeds in the amount of \$387,700 forthwith to the Receiver, pending the resolution of the motions currently before the court.

11314862.1

Please arrange for payment to be made to the Receiver to the attention of Martin Clarkson.

Yours truly,



*for* Lisa S. Come

LSC:na

c: M. Clarkson  
K. McElcheran

Buckingham Securities Corporation, in Receivership  
W.D. Latimer (Prime Broker)

Transactions from July-October (after date of cease trading)

DATE	Number of Shares	Name of Security or Bond cashed	Amount \$	Notes
30-Jul-01	25,000	CTM SU-08 6.15% 30JL01	\$25,000.00	*bond expired
18-Aug-01	8,000	INT-ONTARIO HYD 18AG01	\$8,000.00	*bond expired
21-Aug-01	20,000	Gulf Canada Res. Ltd ord	\$248,000.00	*takeover
04-Sep-01	10,000	ASSOC CAP 5.4% 4SP01	\$10,000.00	*bond expired
10-Oct-01	450	CDN PAC 5.65%1st PFD S-A*	\$11,700.00	*
15-Oct-01	85,000	INT-ONTARIO HYD 16OC01	\$85,000.00	*bond expired
			<b>TOTAL: \$387,700.00</b>	



Incorporating the practice of **SMITH LYONS**

November 19, 2001

**Via Facsimile (416) 863-2653**

Blake Cassels & Graydon LLP  
Barristers & Solicitors  
Commerce Court West  
2800 – 199 Bay Street  
P.O. Box 25, Stn. Commerce Court West  
Toronto, Ontario M5L 1A9

**Attention: Lisa S. Corne**

Dear Ms. Corne:

**Re: Receivership of Buckingham Securities Corporation ("Buckingham")  
Court File No. 01-CL-4912 (the "Receivership Proceedings")**

I write further to your letter dated November 13, 2001.

Latimer acknowledges that it has received payment in respect of certain bonds which have matured since the date of the cease trade order. Please be advised that Latimer has not done anything to trigger these payments. They have been automatically credited to Latimer's account by CDS on maturity.

Regarding the proceeds of the shares of Gulf Canada Resources, we understood that the Receiver had acknowledged Latimer's entitlement to those monies at a meeting held at your offices which was attended by Messrs. Clarkson, McElcheran, DeLuca and Whyte and Ms. Bessner. This acknowledgment has been reflected in the draft proposals put forward by the Receiver to Latimer, among others, in that the indebtedness of Buckingham to Latimer is net of the proceeds of the shares of Gulf Canada Resources. It now appears that the Receiver is resiling from this acknowledgment.

Suite 4900  
Commerce Court West  
Toronto, Ontario  
Canada M5L 1J3  
Telephone (416) 862-7525  
Facsimile (416) 862-7661  
www.gowlings.com

Heath P.L. Whiteley  
Direct (416) 862-4400  
Direct Fax (416) 863-3403  
Assistant (416) 862-3594  
heath.whiteley@gowlings.com

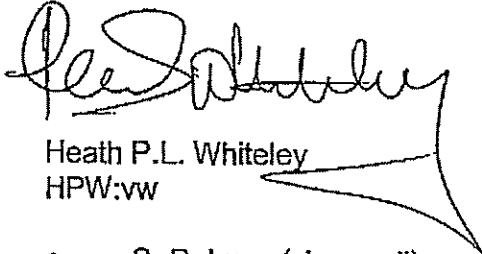
File T778776



In any event, Latimer will not pay \$387,700.00 now requested by the Receiver as Latimer asserts a security interest in these monies and that issue is presently before the court as you are aware.

Yours very truly,

**GOWLING LAFLEUR HENDERSON LLP**



Heath P.L. Whiteley  
HPW:vw

c. S. DeLuca (via email)

::ODMA\PCDOCSIADVOCACY\497702\1

S. DeLuca - 27

--- EXHIBIT NO. 3: Letter to Sesto DeLuca from David  
Bromberg dated July 26, 2000

BY MS. CORNE:

132. Q. In paragraph 11 of your affidavit of  
September the 12th, you say that:

"...Latimer will be prejudiced should the  
securities in the Buckingham account be  
transferred to a third party, as such  
transfer will result in a loss of capital  
to Latimer in the amount of the  
indebtedness owing by Buckingham..."

Can you explain that to me?

A. The IDA, who I report to, who  
examines my records, has allowed me over the term of  
the loan to use the securities in the account as  
margin for the debit balance. If the securities are  
sent out of my office and the debit balance is left  
there, then I would have to put up \$1,950,000 in the  
firm's capital to meet my regulatory requirements.

133. Q. Do you have copies of the documents  
that Latimer files with the IDA on a regular basis?

A. With respect to?

134. Q. Setting out its capital. In your  
second affidavit in paragraph 4, you make a

S. DeLuca - 28

1 statement that:

2 "...Latimer is being required to put up its  
3 own capital to cover a margin deficiency in  
4 the Buckingham account..."

5 A. Yes.

6 135. Q. "...and that is prejudicing Latimer  
7 because it is unable to employ the capital  
8 to support other business activities..."

9 I wanted to examine the financial information that  
10 Latimer files with the IDA on a regular basis so  
11 that I could ascertain the extent to which you have  
12 surplus capital in your business.

13 MR. WHITELEY: Well, isn't the first  
14 question when and how regularly does  
15 Latimer report to the IDA?

16 136. MS. CORNE: I am happy to have that  
17 information.

18 THE DEPONENT: We report monthly to the  
19 IDA.

20 137. MS. CORNE: I would like to have copies  
21 of your...

22 MR. WHITELEY: We will take it under  
23 advisement. Copies of those documents to  
24 the IDA.

25 138. MS. CORNE: The monthly reporting

S. DeLuca - 29

1 statements to the IDA.

2 MR. WHITELEY: We will take that request  
3 under advisement.

4 139. MS. CORNE: I would like them for the  
5 period, why don't we start from July 2000  
6 forward?

7  
8 BY MS. CORNE:

9 140. Q. How does Latimer deal with this  
10 whole obligation to segregate client securities  
11 between those which are fully paid and those which  
12 are not?

13 A. How do we deal with it?

14 141. Q. Yes, in your own business?

15 A. We segregate securities on a daily  
16 basis, based on reports we get from ISM.

17 142. Q. Again, it is an accounting  
18 segregation that is done and not a physical  
19 segregation of the certificates?

20 A. There are no physical certificates  
21 anymore.

22 143. Q. They do exist somewhere, right?

23 A. No, in many cases, they don't, as a  
24 matter of fact. It is all book-based now, 99  
25 percent of it, anyway.

U/A

Court File No. 01-CL-4192

ONTARIO  
SUPERIOR COURT OF JUSTICE

## COMMERCIAL LIST

IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c.S.-5, as amended

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BUCKINGHAM SECURITIES CORPORATION

Respondent

FURTHER AMENDED NOTICE OF CROSS-MOTION

W.D. LATIMER Co. Limited ("Latimer"), who has a security interest of certain of the property of Buckingham Securities Corporation ("Buckingham"), will make a motion to the presiding Judge of the Commercial List on Wednesday, the 19th day of December, 2001 at 10:00 a.m., or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

## PROPOSED METHOD OF HEARING:

The motion is to heard:

- in writing under subrule 37.12.1 (1);
- in writing as an opposed motion under subrule 37.12.1(1); or

[x] orally.

THE MOTION IS FOR an Order:

1. If necessary, varying the order of the Honourable Madam Justice Swinton dated July 26, 2001 (the "Appointment Order") to permit Latimer to retain possession of the securities and their proceeds in the account of Buckingham at Latimer pending the determination of the balance of the relief sought herein and to declare that Latimer is not subject to the first charge of the receiver of Buckingham for its costs and expenses as provided for in paragraph 19 of the Appointment Order;
2. Declaring that the security interest held by Latimer is valid and in priority to the receiver of Buckingham;
3. Lifting the cease trade order;
4. Relieving Latimer from complying with the requirements of Part VI of the *Personal Property Security Act*, R.S.O. 1990, c. P.10;
5. Permitting Latimer to sell sufficient of its collateral to recover its indebtedness, including interest thereon and legal fees on a solicitor and client basis;
6. If necessary, abridging the time for service of this further amended notice of motion and cross-motion record herein, validating the form, manner and time of service and dispensing with service where service not effected;
7. Such further and other relief as to this Honourable Court seems just.

**THE GROUNDS FOR THE MOTION ARE:**

8. Latimer is a securities dealer;
9. Latimer and Buckingham entered into a written agreement (the "Agreement") for the operation of a margin account (the "Account") by Buckingham at Latimer;
10. Buckingham pledged the securities held in the Account as security for its indebtedness to Latimer;
11. In or around July, 2000, Buckingham transferred (the "Transfer") securities it held at Canaccord Capital Corporation ("Canaccord") to the Account, in respect of which Latimer paid approximately \$1,900,000 to Canaccord;
12. Since the Transfer, Latimer has continuously been in possession of the securities (the "Securities") relating to the Account while completing trades as instructed by Buckingham from time to time;
13. On July 6, 2001, the Ontario Securities Commission issued a Temporary Cease Trading Order prohibiting trading in securities held in accounts of Buckingham, at which time the Securities had a market value of approximately \$5,800,000;
14. On July 17, 2001, Latimer registered a Financing Statement under the *Personal Property Security Act* of Ontario in respect of the securities held in the Account;

15. On July 26, 2001, BDO Dunwoody Limited was appointed receiver of Buckingham, at which time the Securities had a market value of approximately \$5,100,000;
16. As at August 16, 2001, Buckingham owed Latimer \$1,902,641.76 in respect of the Account;
17. As at the close of business on September 18, 2001, the Securities had a market value of \$4,100,000, resulting in a margin deficiency which Latimer has had to cover using its own capital to its detriment;
18. As at the close of business on November 30, 2001, the Securities had a market value of \$4,115,682.64 and Latimer held cash proceeds totaling approximately \$390,000;
19. Latimer will be prejudiced should the Securities and their cash proceeds be transferred to the Receiver, or another securities dealer as designated by it, as Latimer will have to reallocate its capital to cover the margin deficiency of approximately \$1,900,000 and thereby be precluded from employing such capital to support other business activities;
20. ss. 19, 22, 23, 67 of the *Personal Property Security Act*, R.S.O 1990, c. P.10;  
and
21. such further and other grounds as counsel may advise and this Honourable Court permit.



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

22. The Affidavit of Sesto DeLuca, sworn September 12, 2001 and the exhibits thereto;
23. The Supplementary Affidavit of Sesto DeLuca, sworn September 19, 2001;
24. The Further Supplementary Affidavit of Sesto DeLuca to be sworn;
25. The First Report of the Receiver dated August 28, 2001; and
26. Such further and other material as counsel may advise and this Honourable Court permit.

DATE: December 18, 2001

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
Suite 4900, Commerce Court West  
Toronto, Ontario M5L 1J3

**Heath Whiteley (LSUC# 38528P)**  
Tel: (416) 862-4400  
Fax: (416) 862-7661

Counsel for W.D. Latimer Co. Limited

TO: **BLAKE CASSELLS GRAYDON LLP**  
Barristers and Solicitors  
Suite 4900, Commerce Court West  
Toronto, Ontario M5L 1J3

**Kevin McElcheran**  
**Lisa Corne**  
Tel: (416) 863-2400  
Fax: (416) 863-2653

Counsel for the Receiver

AND TO: **HEENAN BLAIKIE**  
Lawyers  
P.O. Box 185, Suite 2600  
South Tower, Royal Bank Plaza  
Toronto, Ontario M5J 2J4

**Kenneth Kraft / Cynthia Amsterdam**  
**Tel: (416) 643-6822 / (416) 360-2880**  
**Fax (416) 360-8425**  
**Solicitors for Gerald Feldman**

Court File No. 01-CL-4192

ONTARIO SECURITIES COMMISSION

- and -

BUCKINGHAM SECURITIES CORPORATION

Plaintiffs

Defendants

SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FURTHER AMENDED NOTICE OF  
CROSS-MOTION

GOWLING LAFLEUR HENDERSON LLP  
Barristers & Solicitors  
Suite 4900, Commerce Court West  
Toronto, Ontario M5L 1J3

Heath P.L. Whiteley  
(416) 862-4400 (DD)  
L.S.U.C. Registration No. 38528P  
Tel: (416) 862-7525  
Fax:(416) 862-7661

Solicitors for W. D. Latimer & Co. Limited

#771831

BE TWEEN:

ONTARIO SECURITIES COMMISSION

- and -

BUCKINGHAM SECURITIES CORPORATION

Applicant

Respondent

Dec 14/2001

Oct 19/01

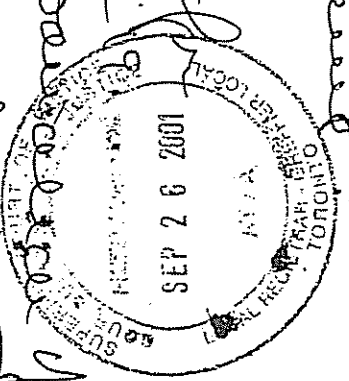
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

RESPONDING & CROSS-MOTION  
RECORD

On Dec 14/2001 after the Dec 13/2001 order grant that "if further search for letters are not obtained no answer to say what to be ordered at 9:30 on Dec 14." (Campbell's) The Campbell's success the following order grant:

"Dec 14/01



with out for I have Dec 9 re issue of search of order of Justice S. Tress to who been searched & if found originally as Buckingham appeal to Justice in the letters to be found out to who been. (Campbell's)"


GOWLING LAFLEUR HENDERSON LLP  
Barristers & Solicitors  
Suite 4900, Commerce Court West  
Toronto, Ontario M5L 1J3

Heath P.L. Whiteley  
(416) 862-4400 (DD)  
L.S.U.C. Registration No. 38528P  
Tel: (416) 862-7525  
Fax: (416) 862-7661

Solicitors for W.D. Latimer Co. Limited

#771831

After heavy deliberation, I have determined that the securities and funds presently held in Buckingham accounts with Latimer are to be immediately\* turned over to the Receiver and be held by the Receiver in trust for Buckingham without prejudice to Latimer's claim of a security interest therein - and that if as a result of trial of issue scheduled for Feb 1902, it is then determined that Latimer has a valid security interest therein, that Latimer be deemed to have continued in possession throughout for the purpose of priority (but Latimer should register such security interest under the PPSA at forthwith).  
 Receivers will follow.

  
 Fuller

\* Postscript "unofficially"

means today will no other steps to intervene

and Latimer is satisfied Fuller with its official PPSA registration.

PS

IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, C. S.5, as amended

ONTARIO SECURITIES COMMISSION - and - BUCKINGHAM SECURITIES CORPORATION

Applicants

Respondent

*See 19/2001 Courtfiled copies  
attached to a date to be  
observed from the Greenfield  
Office, if necessary.*



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)  
Proceeding Commenced at Toronto

MOTION RECORD OF  
BDO DUNWOODY LIMITED,  
the Receiver and Manager of  
Buckingham Securities Corporation

BLAKE, CASSELS & GRAYDON LLP  
Barristers and Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

Lisa S. Corne  
Tel: (416) 863-3896  
Fax: (416) 863-2653  
Solicitors for the Receiver and Manager,  
BDO Dunwoody Limited

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

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, C. s.5, As Amended**

BETWEEN:

**ONTARIO SECURITIES COMMISSION**

Applicant

- and -

**BUCKINGHAM SECURITIES CORPORATION**

Respondent

**ENDORSEMENT OF FARLEY, J.  
Heard: December 19, 2001**

On Dec 14/2001 after the Dec 13/2001 endorsement that "if funds & securities from Latimer are not delivered to Receiver today matter to be addressed at 9:30 am Dec 14." (C. Campbell, J.), Hon. C. Campbell, J. made the following endorsement.

"Dec 14/01 Motion set for one hour Dec 19 re issue of variance of Order of Swinton, J. Issue is whether securities and/or funds originally on Buckingham account to remain with Latimer or to be turned over to the Receiver. C. Campbell, J."

After hearing submissions, I have determined that the securities and funds presently held in Buckingham Accounts with Latimer are to be immediately\* turned over to the Receiver and be held by the Receiver in trust for Buckingham without prejudice to Latimer's claim of a security interest therein – and that if as a result of trial of issue Scheduled for Feb/2002, it is then determined that Latimer has a valid security interest therein, that Latimer be deemed to have continued in possession throughout for the purpose of priority (but Latimer should register such security interest under the PPSA forthwith).

Reasons will follow.

James Farley

\*Postscript "immediately" means today with no other steps to intervene.

James Farley

PPS – I understand Latimer is satisfied with its original PPSA Act registration.

Dec 19/2001

Contempt aspect adjourned to a date to be obtained from the Commercial List Office, if necessary.

James Farley



SUPERIOR COURT OF JUSTICE  
BANKRUPTCY/COMMERCIAL COURTS  
393 UNIVERSITY AVENUE  
10TH FLOOR  
TORONTO ONTARIO  
M5G 1S6

FAX

TO: Ms. LISA S. CORNE FROM: NEVILLE BHAGAT  
FAX: 416-863-2653 PAGES: NINE including covers  
PHONE: 416-863-2502 DATE: DECEMBER 20, 2001  
RE: OSC and BUCKINGHAM SECURITIES CORPORATION 01-CL-004192

Urgent  For Review  Please Comment  Please Reply  Please Recycle

Court File No. 01-CL-4192

ONTARIO SUPERIOR COURT OF JUSTICE  
(Commercial List)

IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, C. s.5, As Amended

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

and -

BUCKINGHAM SECURITIES CORPORATION

Respondent

**MOTION RECORD OF  
BDO DUNWOODY LIMITED**

October 16, 2001.

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
P.O. Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

**Kevin P. McElcheran**, LSUC No. 22119H  
Phone: (416) 863-2566  
**Lisa S. Corne**: LSUC No. 27974M  
Phone: (416) 863-3896  
Fax: (416) 863-2653

Solicitors for BDO Dunwoody Limited

Court File No. 01-CL-4192

ONTARIO SECURITIES COMMISSION / COMMISSION DES SECURITES FINANCIERES

ONTARIO SUPERIOR COURT OF JUSTICE  
(Commercial List)

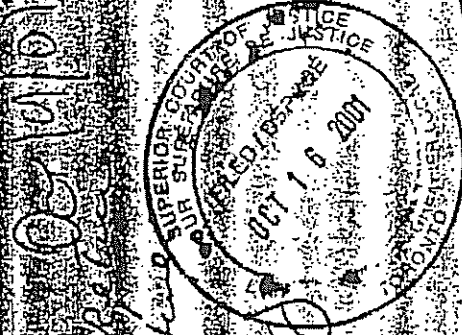
Proceeding Commenced at Toronto

MOTION RECORD OF  
BDO DUNWOODY LIMITED

BLAKE, CASSELS & GRAYDON LLP  
Barristers and Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

Kevin P. McElcheran  
LSUC#: 22119H  
Phone No.: (416) 863-2566  
Lisa S. Corne  
LSUC#: 27974M  
Phone No.: (416) 863-3896  
Fax No. (416) 863-2653

Solicitors for the BDO Dunwoody Limited



*Administrative case 01-CL-4192  
The two copies have been filed  
with the motion of BDO Dunwoody*

*Accepted*

*Oct-26*

*4th page of Recession filed & motion  
adjudicated in comments to Nov. 9/01.*

*Accepted  
1 of 7 pages*

*Due 19/2001*

*L. Come for BDO Dunwoody Ltd, Receiver  
of Breckinham Securities Corporation  
416-863-3896*

*C. Amsterdam for G. Feldman 416-360-2880*

*H. Whately for W.D. Hamilton Co limited 416-862-4400*

*After hearing submissions of counsel  
Receivers advised and directed that the*

② This does not appear to be a final law claim by the Receiver but rather one with an air of delay and reluctance to it.

Securities and funds held in Bushington accounts at Lakner be handed over today to Ducoody (Receiver of Bushington pursuant to S 12 Securities Act) on notice of the Ontario Securities Commission. On July 26, 2001 Swartz J. made that receiver keep order which provided inter alia:

H. The Court order that... anyone having knowledge of the order do forthwith deliver over to the Receiver... all of the property of every kind, including all... cash on hand, notes or funds in any bank accounts and any other deposit instruments and securities...

Lakner presently holds <sup>in cash and money accounts</sup> securities and funds which are beneficially owned by Bushington and/or the customers of Bushington. Lakner claims a security interest pursuant to contract as to such assets and thereby asserts that it need not turn over such assets to the Receiver. The Receiver disputes that Lakner has a valid security interest in such assets on the basis essentially that Lakner knew or ought to have known that Bushington was not trading for its own account and that the securities purported to be pledged by Bushington in favour of Lakner were not the assets of Bushington or that Bushington were not authorized to so deal with. Lakner had knowledge of the proceedings before Swartz J. in that at its request it received the materials for that

③ proceeded in advance and it would be...  
 Counselor (although it was submitted  
 that the attendance was only as to a  
 possible working brief.)

On December 13, 2001 at 9:30, C. Campbell  
 directed as follows: "... of funds and  
 securities from habuer are not released  
 to Receiver today, matter to be addressed  
 at 9:30am Dec 14". On December 14th, he  
 further directed: "matter set for 1:00pm Dec.  
 19 re issue of variation of order of formula J.  
 Issue is whether securities and/or funds  
 belonging to Buchanan are now  
 to remain with habuer or to be turned  
 over to Receiver." As indicated I  
 determined that habuer was to turn  
 over such assets to the Receiver today  
 - to be held in trust for Buchanan and  
 without prejudice to habuer's security  
 claim (which is being scheduled to be  
 heard in February 2002).

habuer assets that it would be  
 prejudiced if it has to give up possession  
 of the assets since it will have to borrow  
 its capital to cover the major deficiency  
 of approximately \$1,900,000 and thereby  
 be precluded from employing such capital  
 to support other business activities" (para  
 60 of affidavit sworn today by Seth DeLuca,  
 President of habuer). This matter is currently

④

question arises from the capital requirements of the Investment Developers Association, the regulatory body with jurisdiction over hotels.

Halpern relies on two cases:

(a) Household Trust B v Haller - Green Hotels Inc, [1991] 5 WWR 228 (Man CA) and

(b) Royal Bank v Vulcan Mortgage & Equipment Ltd, [1992] 6 WWR 307 (Alta QB). See

Household Trust v Haller JA for the Court observed at p. 230 (para 4):

And a receiver of loans →  
left him in such possession.

That of course presumes that the second party has valid security. Here there is a very live issue as to whether Halpern has valid security; that will be determined in the next several months; in the interim the Receiver is to have possession of the assets in question; if it is determined that Halpern has valid security then it should then have possession of the assets. Halpern's margin and capital requirements vis-à-vis the IDA should not depend on "physical possession" but rather on the validity of the security which is clearly in issue and as to which the IDA should be asked of the challenge to such validity. With respect to Vulcan, Halpern asserts that the Receiver has to call upon the forced execution.

⑤ (Robert F Kowal Developmental v  
Decker Development Ltd (1975), 90 R (2d)  
& 4 (CA). ~~That the court~~

~~It is not the duty of the court to~~  
~~in Kowal however it~~  
stated at p. 83:

There are certain exceptions to the  
general rule. (I do not propose  
to give an exhaustive list of such  
exceptions but to refer only to  
the examples which in my  
opinion have some relevance  
for the facts of this case.

He went on to describe at p. 84 that the  
second exception in his non-exhaustive list  
was:

The second exception is that  
→ properly incurred legal fees.

In order to get a s. 129 Secular's  
advice, the O.C. must satisfy the court  
that ~~the~~:

s. 129(2)...

(a) the appointment of

→

(b) → due administration of

Outward Secular's law,

The power granted such an appointed  
member and set out in s. 129 (5):

80  
3  
⑥ 129(5): a receiver → incidental to  
that authority.

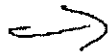
Similarly, would be able to access loan  
convinced of ground (a) or (b) under s. 129(2)  
Clearly s. 129(2)(a) is for the benefit of and  
affects all creditors, secured or unsecured.  
Similarly s. 129(2)(b) provides general  
public policy protection for all interested  
parties. Each of the new (that is) of  
these two grounds are a further exception  
to the Kowal provisions, even if it were  
not challenged that ~~had~~ purported  
Security ~~was~~ <sup>was</sup> voided.

I propose to state that Part III of the  
Bulmington & Lessee (let) would come into  
play if (and I stress if) Latimer were  
to become bankrupt. Under that Part, securities  
held at Latimer would appear to be  
pooled with all other securities to be  
distributed pro rata to creditors/creditors.  
While that scheme is appropriate if the  
subject assets are truly owned by  
Bulmington, it would be inappropriate  
and inappropriate if the subject  
assets were not owned by Bulmington  
but rather by creditors of Bulmington  
in circumstances where Latimer  
has a right to have known that  
situation. It is of course difficult to assess



Q: The financial will have been stable  
 of nature. Despite multiple requests by  
 the Reserve, nature has not provided any  
 detailed meaningful information in their  
 regard. However, we do know that if  
 the alleged assets are not validly held by  
 nature it would have a negative on  
 capital deficiency which would require  
 correction. The attached affidavit at  
 para. 4:

In addition to the securities



as this has not occurred,

revised but does not seem to be  
 answer the question of the "whereabouts"  
 and application or non-application of the  
 self securities proceeds further to the  
 tender to the tobacco bid. This is so  
 particularly in light of para 8 of Sumner  
 J's order which prohibits self help  
 (which would include self help).

These are the reasons I

mentioned earlier today. The parties  
 may speak to me re costs if they cannot  
 agree at some forthwith.

*[Handwritten signature]*

Jim Fairley  
 December 19, 2009

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

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, C. s.5, As Amended**

B E T W E E N:

**ONTARIO SECURITIES COMMISSION**

Applicant

- and -

**BUCKINGHAM SECURITIES CORPORATION**

Respondent

**ENDORSEMENT OF FARLEY, J.**

**Heard: December 19, 2001**

**Counsel:**

L. Come for BDO Dunwoody Limited,  
Receiver of Buckingham Securities Corporation – (416) 863 3896.

C. Amsterdam for G. Feldman – (416) 360 2880.

H. Whitely for W.D. Latimer Co. Limited (416) 862 4400.

After hearing submissions of counsel today, I earlier advised and directed that the securities and funds held in Buckingham accounts at Latimer be handed over today to Dunwoody (Receiver of Buckingham pursuant to s.129 of the *Securities Act* Order on motion of the Ontario Securities Commission). On July 26, 2001 Swinton, J. made that receivership order which provided *inter alia*:

4. This Court orders that ... anyone having knowledge of this Order do forthwith deliver over to the Receiver... all of the property of every kind, including all... cash on hand, monies or funds in any bank accounts and any other deposit instruments and securities...

Latimer presently holds in cash and margin accounts over \$4 million in securities and funds which are beneficially owned by Buckingham and/or the customers of Buckingham. Latimer claims a security interest pursuant to contract as to such assets and today it asserts that it need not turn over such assets to the Receiver. The Receiver disputes that Latimer has a valid security interest in such assets on the basis essentially that Latimer knew or ought to have known that Buckingham was not trading for its own account and that the securities purported to be pledged by Buckingham in favour of Latimer were not the assets of Buckingham or that Buckingham was not authorized to deal with. This does not appear to be a frivolous claim by the Receiver but rather one with an air of reality and substance to it. Latimer had knowledge of the proceedings before Swinton, J. in that at its request, it secured the materials for that proceeding in advance and its legal counsel attended (although it was submitted that that attendance was only as to a possible watching brief.).

On December 13, 2001 at 9:30, C. Campbell, J. directed as follows: "...if funds and securities from Latimer are not delivered to Receiver today, matter to be addressed at 9:30 am Dec. 14." On December 14<sup>th</sup>, he further directed: "Motion set for one hour Dec. 19 re issue of variation of order of Swinton, J. Issue is whether securities and/or funds originally on Buckingham account to remain with Latimer or to be turned over to Receiver." As indicated, I determined that Latimer was to turn over such assets to the Receiver today – to be held in trust for Buckingham but without prejudice to Latimer's security claim (which is being scheduled to be heard in February 2002).

Latimer asserts that it will be prejudiced if it has to give up possession of the assets since it "will have to reallocate its capital to cover the necessary deficiency of approximately \$1,900,000 and thereby be precluded from employing such capital to support other business activities" (para 6 of affidavit sworn today by Sesto DeLuca, President of Latimer). This major deficiency question arises from the capital requirements of the Investment Dealers Association, the regulatory body, with jurisdiction over Latimer.

Latimer relies on two cases:

(a) *Household Trust Co. v. Leslie-Gowers Hotels Inc.* [1991] 5 W.W.R. 228 (Man. C.A.);  
and

(b) *Royal Bank v. Vulcan Machinery & Equipment Ltd.* [1992] 6 WWR 307 (Alta. Q.B.).

In *Household*, Twaddle, J.A. for the Court observed at p.230 (para 7):

But a receiver obtains no right to the possession of property already in the lawful possession of another whose right to possession is paramount. This simple proposition was stated by the Vice-Chancellor (Sir James Wigram) in *Evelyn v. Lewis* (1844), 3 Hare 472 at 375, 67 E.R. 467 at 468,

If a party claiming a right in the same subject-matter (as the receiver) was in possession of the rights which he claimed at the time the receiver was appointed the appointment of the receiver left him in such possession ...

That, of course, presumes that the secured party has valid security. Here that is a very live issue as to whether Latimer has valid security: that will be determined in the next several months; in the interim the Receiver is to have possession of the assets in question; if it is determined that Latimer has valid security then, it should then have possession of the assets. Latimer's margin and capital requirements *vis-à-vis* the IDA should not depend on "physical possession" but rather, on the validity of the security which is clearly in issue and as to which the IDA should be aware of the challenge to such validity. With respect to Vulcan, Latimer asserts that the Receiver has to come within the *Kowal* exceptions. (*Robert F. Kowal Investments Ltd. v Deeder Electric Ltd.* (1975), 9 O.R. (2d) 84 (CA)).

In *Kowal*, Houlden, J.A. stated at p.88:

"There are certain exceptions to the general rule. (I do not propose to give an exclusive list of such exceptions but to refer only to the exceptions which in my opinion have some relevance for the facts of this case.)"

He went on to observe at p.89 that the second exception in his non-exhaustive list was:

"The second exception is this: If a receiver has been appointed to preserve and realize assets for the benefit of all interested parties, including secured creditors, the receiver will be given priority over the secured creditors for charges and expenses properly incurred by him."

In order to get a s.129 *Securities Act* Order, the OSC must satisfy the court that:

"s.129(2)...

(2) **Grounds.** – No order shall be made under subsection 1) unless the court is satisfied that,

- (a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or...
- (b) it is appropriate for the due administration of Ontario securities law, ..."

The powers granted such a court appointed receiver are set out in s.129(5):

“129(5): A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or incidental to that authority.”

Swinton, J. would have to have been convinced of ground (a) or (b) under s.129(2). Clearly, s.129(2)(a) is for the benefit of and affects all creditors, secured or unsecured. Similarly, s.129(2)(b) provides general public policy protection for all interested parties. I am of the view that either of these two grounds are a further exception to the *Kowal* provisions, even if it were not challenged that Latimer’s purported security was invalid.

The Receiver pauses to note that Part XII of the *Bankruptcy and Insolvency Act* would come into play if (and I stress if) Latimer were to become bankrupt. Under that Part, securities held at Latimer would appear to be pooled with all other securities to be distributed *pro rata* to creditors/customers. While that scheme is appropriate if the subject assets are totally owned by Buckingham, it would be inequitable and inappropriate if the subject assets were not owned by Buckingham, but rather by customers of Buckingham in circumstances where it knew or ought to have known that situation. It is, of course, difficult to assess the financial well being and stability of Latimer. Despite multiple requests by the Receiver, Latimer has not provided any detailed meaningful information in that regard. However we do know that if the subject assets are not validly held by Latimer it would have a margin or capital deficiency which would require correction. The de Luca affidavit at para. 4:

In addition to the Securities, Latimer holds proceeds of approximately \$390,000 in the margin account of Buckingham, consisting of the proceeds of the shares of Gulf Canada Resources (as a result of a takeover bid), dividends and bonds which have matured since the date of the cease trade order. The opening and closing balance in the November Statement nets these proceeds against the margin loan. I understand that this occurs as a function of the software program. It should not be taken to indicate that Latimer has applied these proceeds to reduce the amount owed by Buckingham as this has not occurred.

raises, but does not satisfactorily answer the question of the “whereabouts” and application or non-application of the Gulf Securities proceeds further to the tender to the take-over bid. This is so particularly in light of Swinton, J’s Order which prohibits self-help (which would include set-off).

These are the Reasons I promised earlier today. The parties may speak to me re costs if they cannot agree on same forthwith.

James Farley,  
December 19, 2001