

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

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

**ONTARIO SECURITIES COMMISSION**

Applicant

**- AND -**

**BUCKINGHAM SECURITIES CORPORATION**

Respondent

**TWENTY-THIRD REPORT OF  
BDO CANADA LIMITED (formerly BDO Dunwoody Limited), IN ITS  
CAPACITY AS RECEIVER AND MANAGER OF  
BUCKINGHAM SECURITIES CORPORATION**

**September 8, 2020**

## I - PURPOSE OF THE REPORT

1. BDO Canada Limited, formerly known as BDO Dunwoody Limited (“**BDO**”) acts as Court-appointed Receiver and Manager (the “**Receiver**”) of the property, undertaking and assets of Buckingham Securities Corporation (“**Buckingham**”), including all property held in the name of Buckingham, directly or indirectly, as principal or agent, beneficially or otherwise, and all the proceeds thereof (the “**Property**”).
2. These proceedings were initiated in 2001. Distributions to investors were made in 2005. The Receiver now seeks its discharge as it is apparent that no further recoveries are available to investors from the lengthy litigation proceedings initiated and pursued by the investors over the past many years with the assistance of the Receiver as described herein.
3. This Report is filed to provide the Court with information related to the Receiver’s activities since the last taxation of its fees and costs on October 31, 2004, and to seek an order:
  - a. dismissing the Receiver’s Action (as defined below), on a without costs basis;
  - b. approving the activities of the Receiver for the period October 31, 2004 through to the date of the Twenty-Third Report, as such activities are described in the Eighteenth Report of the Receiver, dated November 26, 2004 (the “**Eighteenth Report**”), through and including this Twenty-Third Report of the Receiver (the “**Twenty-Third Report**”);
  - c. approving the R&D Statement (defined below);
  - d. approving the fees and disbursements of the Receiver and its counsel;
  - e. releasing the Receiver and its counsel from claims arising prior to the date of the order sought on this motion; and
  - f. discharging the Receiver and releasing the Receiver and its counsel from claims arising after the date of the order sought on this motion, effective upon the filing of the Completion Certificate (defined below).
4. Previously, by orders of Mr. Justice MacDonald dated February 27, 2004 and Mr. Justice Cameron dated November 22, 2004, the activities of the Receiver as reported to the Court and the fees and disbursements of the Receiver and its counsel to October 31, 2004 have been approved.

## II – BACKGROUND

5. Buckingham was a securities dealer registered under Ontario securities law which provided investment services to its clients. Prior to its receivership in July 2001, Buckingham had approximately 1,000 active client accounts.
6. In June 2001, the Ontario Securities Commission (the “**OSC**”) conducted a compliance audit of Buckingham’s records and account statements obtained from Buckingham’s ISM accounting system. This review as of May 31, 2001 revealed that Buckingham’s clients’ “fully-paid” and “excess-margin” securities had not been segregated as required by

*Securities Act* Regulations and that clients' securities had been pledged as security in respect of loans made to Buckingham by two brokerage firms. Buckingham was indebted to these brokerage firms in an aggregate amount in excess of \$2 million.

7. Based on the OSC's audit, Buckingham's registration was suspended and its activities frozen pursuant to an Order of the OSC dated July 6, 2001 (the "**Cease Trade Order**").
8. Subsequently, by Order of the Honourable Madam Justice Swinton dated July 26, 2001 (the "**Appointment Order**"), a copy of which is attached to this Report as **Appendix "I"**, BDO was appointed Receiver of all of the Property. Pursuant to the Appointment Order, the Receiver was granted a charge on the Property as security for its fees and disbursements, including the fees and disbursements of its legal counsel.
9. By Order dated March 30, 2004, the Cease Trade Order was varied by the OSC to permit liquidation by the Receiver of the securities included in the Property and held in accounts in the name of Buckingham.
10. During the course of its operations prior to the issuance of the Cease Trade Order, Buckingham had borrowed funds from two stockbrokers, W.D. Latimer Co. Limited ("**Latimer**"), and Bear Stearns & Co. ("**Bear Stearns**"). As indicated in paragraph 6 above, Buckingham had pledged clients' securities that it was obliged to hold in trust as security for these loans.
11. The Receiver disputed Latimer's security interest in "fully paid" and "excess margin" securities on the basis of the Receiver's allegation that Latimer was bound by the trust obligations of Buckingham for the benefit of Buckingham's clients. At a trial of the issues before the Honourable Mr. Justice Ground from June 3 to June 7, 2002, the Court ruled in its decision released October 17, 2002 that:
  - "1. A trust relationship did exist between Buckingham and its customers who held fully paid and 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."*
12. The Receiver appealed this decision and requested the Court's authorization to enter into settlement discussions, as set out in the Receiver's Fourteenth Report, dated February 23, 2004. This request was approved by Order of the Honourable Madam Justice MacDonald, dated February 27, 2004. Specifics of a settlement were then negotiated with Latimer, and reported to the Court in the Receiver's Fifteenth Report, dated April 30, 2004. The settlement terms were approved by Order of the Honourable Mr. Justice Ground, dated May 10, 2004. Pursuant to the settlement, the various securities pledged to Latimer were sold by Latimer and the proceeds allocated between the Receiver and Latimer on an agreed basis. The Receiver received net proceeds of \$3,057,422.22 from this settlement in March and June 2004.
13. The Receiver had also disputed Bear Stearns' security interest in the securities pledged to it by Buckingham on the same basis as its dispute of the Latimer security interest, but

had not litigated its dispute with Bear Stearns pending the outcome of the Latimer litigation. The claim of Bear Stearns was approximately US \$260,000 as at April 30, 2004.

14. In view of the Court's findings in the Latimer matter, the Receiver settled its claims against Bear Stearns on terms similar to those entered into with Latimer. It reported the terms of its proposed settlement with Bear Stearns to the Court in its Sixteenth Report, dated July 9, 2004, which was then approved by Order of the Honourable Mr. Justice Cumming, dated July 16, 2004. The Receiver received US\$302,073.06 subject to a disputed claim by Bear Stearns in the amount of US\$97,893, in November and December 2004.
15. As reported to the Court in the Receiver's Twenty-First Report, dated May 2, 2007, the Receiver entered into further negotiations with Bear Stearns, which resulted in the parties agreeing to split the disputed funds on a 50/50 basis. By the time of this final settlement, the disputed funds had grown to US\$103,675.51, and Bear Stearn's portion thereof was agreed to be US\$51,837.76.
16. By Order of the Honourable Madam Justice Pepall, dated May 15, 2007, the Court approved the settlement with Bear Stearns, as set out in the preceding paragraph of this Report. Accordingly, the Receiver's net recovery from the portfolio held by Bear Stearns, was reduced to CDN\$299,921.08, as reported in the R&D Statement.
17. The amounts received from these settlements facilitated the payment of an interim dividend to the clients of Buckingham, and led the Receiver to implement a Claims Bar Process, and a valuation of the securities portfolio of the Buckingham customers.

### **OSC PROCEEDINGS**

18. By Notice of Hearing dated April 15, 2004, the OSC commenced proceedings against Buckingham, David Bromberg, Norman Frydrych, Lloyd Bruce, and Miller Bernstein LLP, the auditor of Buckingham ("MB") (the "**OSC Proceedings**").
19. A Statement of Allegations, dated April 15, 2004, and prepared by OSC staff, detailed the various alleged abuses of Buckingham and of its principals/senior staff in failing to segregate clients' securities, failing to maintain adequate capital, failing to maintain necessary records required under Ontario securities law, and submitting misleading or untrue statements in Buckingham's 1999 and 2000 Form 9 Reports.
20. The allegations further set out the alleged negligence of MB in issuing misleading or untrue statements in audit reports, and set out that the conduct of the parties which was deemed contrary to the public interest.
21. On May 17, 2005, the OSC entered into a Settlement Agreement with MB, the terms of which were deemed confidential. Nonetheless, the full Settlement Agreement is available on the website of the OSC, and the OSC on May 24, 2005 issued a press release summarizing the key findings of negligence by MB, and the penalties imposed on MB. A copy of the press release is attached as **Appendix "II"**.
22. The Receiver was kept informed by the OSC of these proceedings, and was required to attend at the OSC hearing of May 25, 2005, as the representative of Buckingham. As such, Uwe Manski, the then President of BDO Dunwoody Limited, was asked to sign the Settlement Agreement on Buckingham's behalf.



## **ICAO PROCEEDINGS**

23. Pursuant to the Settlement Agreement between the OSC and MB of May 17, 2005, MB was required to forthwith copy the Institute of Chartered Accountants of Ontario (“**ICAO**”) with the Settlement Agreement.
24. The Receiver was subsequently contacted by an investigator appointed by the Professional Conduct Committee of the ICAO, and was required to provide information relevant to the matter, and to meet with the investigator on November 22, 2006, to review such material.
25. Eventually, the Receiver was made aware of a Settlement Agreement entered into between ICAO and Howard E. Kornblum, the partner of MB who had carriage of the Buckingham audit. As with the OSC settlement with MB, the terms of the Settlement Agreement were deemed confidential. Nonetheless, the full Settlement Agreement is available on the website of CPA Ontario (as it now is). Further, a summary of the Settlement Agreement and of its key findings and the penalties imposed on Howard F. Kornblum, were published in the August 2008 edition of Check Mark, the professional newsletter of the ICAO.

## **III - RECEIVER’S ACTIVITIES AFTER OCTOBER 31, 2004**

### **VALUATION OF CUSTOMER ACCOUNTS, AND PAYMENT OF DIVIDENDS**

26. During the period from November 2004 to February 2005, the Receiver was primarily occupied with finalizing the Claims Bar Process, and valuing the accounts of the customers of Buckingham. As reported in the Receiver’s Twenty-Second Report, dated October 13, 2017, the Honourable Mr. Justice Cameron granted a Claims Bar Order, dated November 22, 2004, which mandated a process that would enable the Receiver to identify, quantify, resolve and bar all claims which may be made against Buckingham and the Property under the Receiver’s control. The Claims Bar Order was subsequently amended by Order of the Honourable Mr. Justice Farley, dated November 26, 2004, to extend the deadlines set out therein.
27. As reported in paragraph 25 of the Receiver’s Twenty-Second Report, dated October 13, 2017, the customer cash balances and holdings of specific securities were never in doubt, as Buckingham’s records were accurate in that respect. The difficult issue in valuing the clients’ claims was the determination of the fair value of client securities. Much of the portfolio consisted of thinly traded or “penny” stocks which were illiquid and volatile in value even over short periods of time. Accordingly, the Receiver carefully considered the realistic value of such securities to permit a fair distribution of the cash realized by the Receiver among Buckingham’s clients and other creditors.
28. The Receiver and its advisors used their best efforts to value the portfolio, and on February 23, 2005, paid a dividend of \$2,203,425.93 to 550 clients of Buckingham. The payment excluded dividends which were under \$25 each, which the Receiver considered too small to warrant the effort and cost of issuing cheques. The Receiver was unable to pay dividends to about 150 customers because (i) addresses were not

available in Buckingham's records, (ii) the cheques mailed by the Receiver were returned as undeliverable, or (iii) the cheques were not cashed and became stale dated.

29. The Receiver provided an "**Amended Financial Summary**" as Appendix VI to its Twenty-Second Report, which details the remaining account balances of over 800 customers of Buckingham, and indicates a remaining indebtedness to the customers, as at July 6, 2001, and net of dividends paid, of \$8,352,893.35. This amount represents the Receiver's best estimate of the losses suffered by clients as a result of Buckingham's business failure and liquidation.

#### **LITIGATION AGAINST MILLER BERNSTEIN LLP**

30. MB was appointed by Buckingham as its auditor in 1996 and was continuously retained as auditor of Buckingham at all material times thereafter.
31. In order to continue its licence under the provisions of the *Securities Act*, Buckingham was required to submit a Form 9 to the OSC on an annual basis. The Form 9 reports, among other things, a securities firm's capital position and requires confirmation that the licensee has fully segregated and held in trust for clients their fully paid and excess margin securities. The Receiver examined the Form 9 report submitted by Buckingham to the OSC for the year ended March 31, 2000, which form Buckingham's auditors certified under date of June 8, 2000. Buckingham's Form 9, among other things, states that Buckingham had properly segregated fully paid and excess margin client securities and held them in trust. This was a false certification as the accounting records of Buckingham clearly indicated that none of the securities were segregated or held in trust.
32. Based on its review of the 2000 Form 9, the Receiver pursuant to the authority granted to it by paragraph 10 of the Appointment Order, commenced an action against MB in December 2003 (the "**Receiver's Action**") for, *inter alia*, a declaration that MB (a) breached its duties of care and contractual duties owed to Buckingham, (b) was negligent in the performance of the professional services provided to Buckingham, and (c) is liable to pay damages in the amount of \$10,000,000, or such other amount as the Court may find appropriate, plus punitive damages, interest and costs.
33. In parallel but separate proceedings, in December 2003 a class action was commenced by two Buckingham clients, Barry Lavender and Howard Ferguson (the "**Representative Plaintiffs**") against MB (the "**Class Action**"). In the Class Action, the Representative Plaintiffs alleged that MB had been negligent in its certification of the Form 9, that the filing of the inaccurate Form 9 had permitted Buckingham to continue breaching its duties as trustee of client securities and therefore, MB had caused the loss of the securities Buckingham pledged as security for its loans, in breach of trust.
34. On July 6, 2004, MB defended the Receiver's Action, and served a Statement of Defence.
35. As the result of an allegation on behalf of MB that Blake, Cassels and Graydon LLP ("**Blakes**") had a conflict of interest, Blakes resigned as counsel for the Receiver in the Receiver's Action (continuing as Receiver's counsel otherwise) and Lax, O'Sullivan & Scott LLP ("**Lax O'Sullivan**") was retained as counsel in the Receiver's Action.

36. In January 2009, Siskinds LLP (“**Siskinds**”) took over as Counsel in the Class Action, replacing Blakes. Siskinds agreed with the Representative Plaintiffs that it would litigate the case on a contingency fee basis.
37. In a Case Management call of March 10, 2009, the Honourable Mr. Justice Cullity allowed the Class Action to proceed, and to stay the Receiver’s Action pending the outcome of the Class Action. This was done to avoid duplication of effort and to limit further depletion of the resources available in the receivership.
38. On July 20, 2010, the Honourable Mr. Justice Cullity issued a Certification Order, certifying the Class Action of the Representative Plaintiffs, with Siskinds as counsel.
39. In the years following the payment of the dividend in February 2005, the primary activities of the Receiver have been directed to (i) supporting the efforts of the Representative Plaintiffs in pursuing the Class Action (ii) preserving the Receiver’s claims against MB in the Receiver’s Action, and (iii) assisting Buckingham’s clients in making claims against the Ontario Contingency Fund as will be described later in this report.
40. The Receiver assisted counsel by providing requested information and documentation pertaining to the alleged negligence of MB, the identity and contact information of customers, and the valuation of customer accounts and the payment of the dividend.
41. On July 12, 2017 the Honourable Mr. Justice Belobaba issued a Judgment on Common Issues in the Class Action in favour of the Representative Plaintiffs on behalf of Buckingham clients. A copy of the decision is attached to this report as **Appendix “III”**.
42. In his decision, Mr. Justice Belobaba determined “five common issues” as follows:
  1. Was Buckingham required to segregate the cash and securities of the class member investors from its own cash and securities? **YES**
  2. Did Buckingham fail to do so? **YES**
  3. Did MB owe a duty of care to class members when it audited and filed the Form 9s? **YES**
  4. Did MB breach this duty of care? **YES**
  5. Was this breach of duty a cause of damages to the class members? If so, can such damages be determined on a class basis? How should the damages be calculated? **UNRESOLVED**
43. The Order of the Honourable Mr. Justice Belobaba, by holding MB liable for the losses suffered by the Buckingham clients, was a victory for Buckingham’s clients but left the last issue of the amount of the losses that they suffered unresolved.
44. To assist the Court with the open questions related to the losses of the customers of Buckingham, the Receiver provided the Court with its Twenty-Second Report containing its valuation of the securities that it has used in the determination of the clients’ claims for distribution purposes in the estate. However, this valuation information has not been used in the Class Action as a result of MB’s appeal from the Belobaba decision.

45. MB appealed from the decision of the Honourable Mr. Justice Belobaba to the Court of Appeal of Ontario. On August 5, 2018, the Court of Appeal allowed MB's appeal on the basis that MB did not owe a duty of care to Buckingham's clients and that, despite MB's negligence, the Class Action should be dismissed. The Representative Plaintiffs sought leave to appeal the dismissal of the Class Action to the Supreme Court of Canada but such application was dismissed on May 2, 2019, ending the Class Action.
46. With the Class Action terminated, the Receiver could revive and prosecute the Receiver's Action against MB, in the interests of the stakeholders of the Buckingham Estate. However, this would be lengthy and complex litigation, and as disclosed in the R&D Statement (defined and discussed below), the Receiver has insufficient funds to pay its outstanding professional fees, let alone fund ongoing litigation. Lax O'Sullivan has confirmed that no steps have been taken in respect of the Receiver's Action for several years, as the parties were awaiting the outcome of the Class Action.
47. Accordingly, the Receiver sees no alternative but to discontinue the Receiver's Action. As an administrative matter, the Receiver is asking this Court to formally dismiss the Receiver's Action, on a without costs basis.

#### **THE ONTARIO CONTINGENCY FUND**

48. The Receiver reported to the Court, in its Thirteenth Report, filed January 21, 2004, on its meetings and interactions up to that time with CIBC Mellon Trust Company, the Trustees of the Ontario Contingency Fund ("**OCF**"), to seek compensation for customers of Buckingham. The OCF had originally been set up to provide compensation, up to a maximum of \$5,000 each, to individuals who had incurred losses in dealing with certain security and mutual fund dealers in Ontario. OCF was in the process of being wound down, and in 2003, the Receiver had advised OCF of its potential obligations to the customers of Buckingham, and had indicated to OCF that claims against the Fund could potentially total over \$1.5 million. OCF initially took the position that they would not entertain customer claims until the administration of the Buckingham receivership was fully finalized, and final losses of customers were finally determined.
49. After the completion of the 2005 Claims Bar Process, the Receiver in August 2005 advised OCF that the Receiver had determined customer claims to total \$10,566,319.27, and that an interim distribution of \$2,347,096.42 had meanwhile been paid to the customers by the Receiver. Accordingly, the customers' deficiency stood at \$8,209,222.85.
50. At the request of OCF, the Receiver calculated a potential per person claim that could be asserted against OCF by the customers, and estimated the total claims to be up to \$1,503,440.60. A list of the calculation, and of the per person allocation, was provided to OCF.
51. In March of 2006, after complaints by customers to the media that OCF continued to fail to respond to their requests for compensation, the OCF, after a media interview, advised that it would henceforth entertain customer claims.
52. There were extensive negotiations between the Receiver and OCF, and with respective counsel, in the following months. The Receiver sought to assist OCF in reaching out to all of the customers, in preparing suitable assignments of the customers' claims to OCF for the amounts compensated, and in assisting customers in asserting their claims. OCF

requested customer contact lists from the Receiver, and were provided with same. However, OCF decided to itself administer all aspects of the customer claims process, without any involvement by the Receiver.

53. So as to advise all customers of their ability to claim from OCF, the Receiver in December 2006 provided an explanatory letter to the customers. A copy of the letter, dated December 11, 2006, is attached hereto, as **Appendix "IV"**.
54. The Receiver has no further information as to which customers submitted claims to OCF, what documentation was executed in support of claims, or what amounts were paid by OCF to customers, as compensation for their Buckingham losses.

### **ACCOUNTS RECEIVABLE**

55. The Receiver reported to the Court, in its Thirteenth Report, dated January 21, 2004, on its activities in attempting to collect on the accounts receivable of Buckingham, some of which were owed by insiders trading on "margin", without ever having funded any of their margin deficiencies. Indeed, a number of insiders filed for personal bankruptcy when collection activities were commenced against them by the Receiver. The Receiver's Thirteenth Report, and the activities reported therein, were approved by Order of the Honourable Madam Justice MacDonald, dated February 27, 2004.
56. As reported by the Receiver in its Seventeenth Report, dated November 10, 2004, and on the Statement of Receipts and Disbursements to November 3, 2004, attached thereto as Exhibit "J", a total of \$479,102.93 had been collected from accounts receivable.
57. After 2004, the only account receivable still being pursued by the Receiver was that of David Bromberg, the President of Buckingham, who owed \$152,073.15 to Buckingham as at the date of receivership, due to margin deficiencies in his personal trading account.
58. As reported to the Court in the Receiver's Twentieth Report, dated April 12, 2007, on commencement of collection activities by the Receiver, Mr. Bromberg on November 14, 2002 filed for personal bankruptcy. Four days later, on November 18, 2002, the bankrupt purported to transfer his 50% interest in his matrimonial home to his wife, for no consideration.
59. The Receiver contested the validity of this transfer, but the bankrupt's trustee refused to commence proceedings, on the basis that there were no funds in the estate.
60. On February 2, 2003, the Receiver obtained approval from the Bankruptcy Court for an assignment of the trustee's rights, so as to allow the Receiver to commence and prosecute proceedings to set aside the bankrupt's transfer of his interest in the home, to his wife.
61. The Receiver commenced a Fraudulent Conveyance Action, and by Order of the Honourable Mr. Justice Cumming, dated October 13, 2006, was granted a Judgment in its favour.
62. In response to the Receiver's filing of its Twentieth Report, the bankrupt commenced negotiations to settle the Receiver's claim, for \$50,000. Once the Receiver had satisfied itself that the amount offered was reasonable, in light of the Brombergs' equity in their home, the Receiver accepted the offer of settlement, which was concluded by the end of

August 2007. Also, in May and August 2009 the Receiver recovered additional amounts totaling \$5,736.92 from the bankruptcy of Bromberg, bringing the total recovery, from this last account receivable being pursued, to \$55,736.92, as reported on the R&D Statement discussed in the following section.

#### IV – RECEIPTS AND DISBURSEMENTS

63. The Receiver's Statement of Receipts and Disbursements for the period from November 4, 2004 to July 31, 2020 (the "**R&D Statement**"), is attached hereto, as **Appendix "V"**.
64. On November 4, 2004, the Receiver had on hand \$3,101,428.11, and thereafter realized a further sum of \$403,937.16, for total receipts of \$3,505,365.27.
65. From these funds, in February 2005 an interim dividend of \$2,203,552.86 was paid to the customers of Buckingham, net of a number of payments which could not be made because addresses could not be found for certain customers, and a number of cheques to customers, which were returned in the mail as undeliverable, or otherwise were not cashed by the payees.
66. Subsequently, over the next fifteen years or so, the Receiver paid legal fees of \$828,080.64, much of which pertained to the litigation against MB, drew \$341,740.80 on account of its own professional fees and costs, and incurred miscellaneous other costs totaling \$116,825.78, for an overall total of \$1,286,647.22, leaving a balance of \$15,165.19 on hand, as at July 31, 2020.

#### V – PROFESSIONAL FEES AND COSTS

67. The Receiver has incurred time charges of \$341,740.80 for the period from November 4, 2004 to July 31, 2020, which sum has been drawn in full, plus applicable GST/HST, as authorized by the Appointment Order. The Receiver has estimated costs to complete of \$6,000, and has ascertained the costs of a legal notice, as referred to in para. 83(d) hereunder, at \$3,719.31, both plus HST.
68. The Receiver has also incurred fees and expenses to various counsel since the last fee approval on October 31, 2004, as follows:
  - a. Blakes, in the amount of \$708,412.51, plus HST, for the period from October 1, 2004 to July 31, 2020;
  - b. McCarthy Tetrault, in the amount of \$16,182.78, plus HST, for the period from July 2007 to January 2011; and
  - c. Lax O'Sullivan, in the amount of \$103,485.35, plus HST, for the period from August 2006 to January 2013.
69. The total fees and disbursements of the Receiver are set out in detail in the affidavit of Uwe Manski sworn September 1, 2020 (the "**BDO Affidavit**"), a copy of which is attached as **Appendix "A"** to the Compendium of Fee Affidavits of the Receiver, dated September 1, 2020 (the "**Fee Compendium**"). The BDO Affidavit sets out a summary which identifies the accounting professionals who worked on these receivership proceedings, including

rank, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$275.18 and 1,241.9 total hours worked.

70. The total fees and disbursements of Blakes are set out in detail in the affidavit of Pamela Huff, sworn September 8, 2020 (the "**Blakes Affidavit**"), a copy of which is attached as **Appendix "B"** to the Fee Compendium. The Blakes Affidavit sets out a summary which identifies the legal professionals who worked on these receivership proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$445.81 and 1,348 total hours worked.
71. The total fees and disbursements of McCarthy Tetrault are set out in detail in the affidavit of Kevin McElcheran, sworn September 8, 2020 (the "**MT Affidavit**"), a copy of which is attached as **Appendix "C"** to the Fee Compendium. The MT Affidavit sets out a summary which identifies the legal professionals who worked on these receivership proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$844.92 and 19.1 total hours worked.
72. The total fees and disbursements of Lax O'Sullivan are set out in detail in the affidavit of Terrence O'Sullivan, sworn September 3, 2020 (the "**Lax Affidavit**"), a copy of which is attached as **Appendix "D"** to the Fee Compendium. The Lax Affidavit sets out a summary which identifies the legal professionals who worked on the receivership proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$356.50 and 280.9 total hours worked.
73. The work done by Blakes, McCarthy Tetrault, and Lax O'Sullivan was done in connection with different aspects of the receivership proceedings, and in the Receiver's view there is no overlap or duplication.
74. The Receiver is of the view that the fees and disbursements incurred by it and its counsel are fair and reasonable. Accordingly, the Receiver respectfully requests this Court's approval of such fees and disbursements, as more particularly set out in the materials in the Fee Compendium.
75. The Receiver and Blakes estimate that they will incur a further amount of fees and expenses in the aggregate of \$12,000 plus HST to fully conclude these receivership proceedings (the "**Remaining Fees**"). As set out in the R&D Statement, the Remaining Fees exceed the remaining cash on hand, and accordingly there will be no residual for distribution after the payment of such Remaining Fees.

## VI – Remaining Matters

76. Aside from the potential prosecution of the Receiver's Action, which the Receiver has no funds to pursue, there are no remaining assets to realize and no additional assistance to be provided by the Receiver to the investors in respect of their claims. The only remaining tasks to be completed before the Receiver is discharged are the "**Remaining Activities**":
  - a. Discontinue the Receiver's Action;
  - b. Seek the approval of the Receivers fees and disbursements and those of its counsel;

- c. Administrative matters incidental to BDO's appointment as Receiver;
  - d. Preparing the final report of the Receiver pursuant to section 246(3) of the BIA; and
  - e. filing the certificate of completion, in form and substance the same as is attached as a schedule to the draft discharge order sought by the Receiver (the "**Completion Certificate**").
77. The Receiver is of the view that it is appropriate at this time to seek an order discharging the Receiver, subject to the Receiver filing the Completion Certificate confirming that the Remaining Activities have been completed.
78. The Receiver is furthermore of the view that the releases sought for the Receiver and its counsel are reasonable and appropriate in the circumstances.

## VII – Service and Notice

79. The last hearing in these receivership proceedings was in May of 2007, over 13 years ago.
80. Given the significant amount of time that has passed since the commencement of these receivership proceedings, and since the last time this matter has been before the Court, the Receiver's service list contains parties and counsel that are no longer reachable at the email or physical address on record. In some cases, counsel listed on the service list are no longer working at the firms on record for the party, or indeed practicing law at all. In other cases, the institutions on the service list no longer exist.
81. Similar issues apply to customer contact information. While Buckingham's former customers were not included on the service list unless they requested to be added, the Receiver did periodically send correspondence to them. The last such notice was sent in December, 2006. The Receiver accordingly has no way of knowing whether the contact information for former customers that it has on file is current, and indeed suspects in many cases that such contact information is not.
82. The Receiver will take the following steps to give notice of its motion:
- a. Ordinary Service: Contacts on the service list that still appear to be current and/or functioning email addresses, fax numbers or current physical addresses will be served by email, facsimile or by mail, in the ordinary course.
  - b. Counsel of Record: The Receiver's counsel has identified the individuals on the service list that are no longer with the firm that is counsel of record. In those cases the Receiver (i) will serve this motion by email on other restructuring and insolvency counsel at the firm that is counsel of record, with an explanation of why they are being served, and (ii) where the individual counsel can be located at another firm, they will be given notice by email at that firm.



- c. Defunct Institutions: Where the Receiver can identify successor organizations for defunct institutions on the service list, those successor organizations will be given notice of this motion by email with an explanation for why they are being notified.
- d. Customers: The Receiver will be posting an advertisement in the Globe & Mail (National Edition) in form and substance as shown on **Appendix "VI"** (the "**Globe Notice**"). The Globe Notice will be posted on September 8, 2020.

### VIII - Conclusion

83. For the reasons set out in this Twenty-Third Report, the Receiver requests that this Honourable Court grant the order, in the form enclosed in the Motion Record of the Receiver:

- a. dismissing the Receiver's Action, on a without costs basis;
- b. approving the activities of the Receiver for the period October 31, 2004 through to the date of the Twenty-Third Report, as such activities are described in the Eighteenth Report through this Twenty-Third Report;
- c. approving the R&D Statement;
- d. approving the fees and disbursements of the Receiver and its counsel;
- e. releasing the Receiver and its counsel for claims arising prior to the date of the order; sought on this motion, and
- f. discharging the Receiver and releasing the Receiver and its counsel from claims arising after the date of the order sought on this motion, effective upon the filing of the Completion Certificate.

All of which is respectfully submitted, this 8th day of September, 2020.

**BDO CANADA LIMITED (formerly BDO Dunwoody Limited), IN ITS  
CAPACITY AS RECEIVER AND MANAGER OF  
BUCKINGHAM SECURITIES CORPORATION**



Per: \_\_\_\_\_

# APPENDIX "I"

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.

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

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.

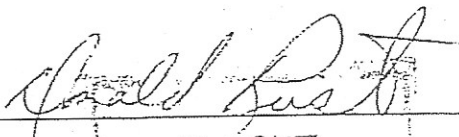
22. **THIS COURT ORDERS** that nothing herein authorizes the disclosure or obtaining of information subject to solicitor and client privilege to the Receiver or any other party or person.

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 LE/DANS LE REGISTRE NO

JUL 26 2001

RECEIVED

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 D. RUST  
 LOCAL REGISTRAR

Court File No. 01-CL-4192

ONTARIO SECURITIES COMMISSION

- AND - BUCKINGHAM SECURITIES CORPORATION

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

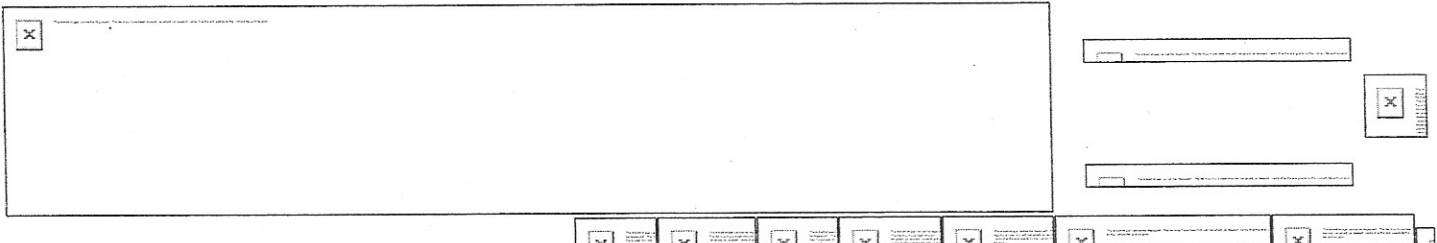
ORDER

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

## APPENDIX "II"



[About the OSC](#)

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[Speeches](#)

[Dialogue with the OSC](#)

[On-Line Publications](#)

[Governance & Accountability](#)

[Annual Report](#)

[Organizational Chart](#)

[Complaint Data](#)

[Career Opportunities](#)

[Joint Forum of Financial Market Regulators](#)

[Canadian Securities Administrators](#)

News Release  
Communiqué

**Ontario Securities  
Commission**

Commission des  
valeurs mobilières  
de l'Ontario

**FOR IMMEDIATE RELEASE**

**May 24, 2005**

**20 Queen St. W.  
Box 55, Suite 1900  
Toronto, ON M5H 3S8**

**OSC Approves Settlement Concerning Miller Bernstein & Partners LLP**

**Toronto** - On May 20, 2005, the Ontario Securities Commission approved a settlement agreement between Staff of the Commission and Miller Bernstein & Partners LLP.

The OSC Staff had alleged, in a Notice of Hearing issued in April 2004, that Buckingham Securities Corporation, a securities dealer, made statements in financial reports for fiscal years ending March 31, 1999 and March 31, 2000 (described as "Form 9 Reports"), required to be filed with the OSC, that in a material respect were misleading or untrue. OSC Staff further alleged that Miller Bernstein & Partners LLP, the auditors of Buckingham, had engaged in conduct contrary to the public interest in relation to the audit opinions of Miller Bernstein contained in the Form 9 Reports.

In the settlement agreement approved by the OSC, Miller Bernstein admitted that having regard to the misleading or untrue statements contained in the Form 9 Reports, Miller Bernstein's conduct was contrary to the public interest. Miller Bernstein acknowledged that it had stated in its audit opinions that its

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examination of Buckingham's financial statements and other financial information was made in accordance with generally accepted auditing standards and that, having regard to the misleading or untrue statements contained in the Form 9 Reports, such statements made by Miller Bernstein were in a material respect and at the time and in the light of the circumstances under which they were made, misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

Miller Bernstein further admitted in the settlement agreement that it did not obtain sufficient audit evidence to determine the segregation of client assets and did not formulate appropriate procedures to review margin accounts held by clients of Buckingham to support the opinions expressed by it in the Miller Bernstein audit opinions contained in the 1999 and 2000 Form 9 reports.

As set out in the terms of the settlement agreement, Miller Bernstein agreed to sanctions which include a settlement payment in the amount of \$75,000 for allocation to or for the benefit of third parties, a \$115,000 payment in respect of a portion of the costs of Commission Staff's investigation of this matter, and a reprimand by the Commission in relation to the firm's conduct.

Miller Bernstein has provided a written undertaking to the Commission that it will not provide auditing or other services to reporting issuers or to registrants under Ontario securities law in their capacity as reporting issuers and registrants, respectively. In the event that Miller Bernstein seeks relief from this undertaking, it is required to comply with certain conditions more particularly set out in the settlement agreement, including an inspection of the design and implementation of the quality controls in place at Miller Bernstein by the Canadian Public Accountability Board or alternatively, a public accounting firm acceptable to Staff and Miller Bernstein. In addition, Miller Bernstein has agreed to provide forthwith a copy of the Order of the Commission and this settlement agreement to the Institute of Chartered Accountants of Ontario and to the Canadian Public Accountability Board.

The panel, comprised of Commissioner Robert Shirriff and Commissioner Suresh Thakrar, approved the settlement as being in the public interest.

Copies of the [Notice of Hearing](#) dated April 15, 2004 and the related [Statement of Allegations](#), the [settlement agreement](#) signed May 17, 2005 and the Commission's [Order](#) of May 20, 2005 are made available on the Commission's website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

- 30 -

**For Media Inquiries:**

**Wendy Day  
Director, Communications  
& Public Affairs  
416-593-8120**

**APPENDIX "III"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE BELOBABA  
BETWEEN:

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)  
)  
)

WEDNESDAY, THE 12<sup>TH</sup>  
DAY OF JULY, 2017

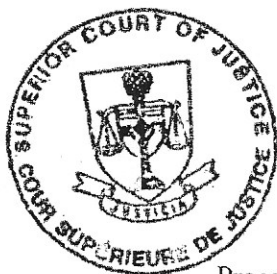
BARRY LAVENDER

Moving Party

- and -

MILLER BERNSTEIN LLP

Responding Party



Proceeding under the *Class Proceedings Act, 1992*

**JUDGMENT ON COMMON ISSUES**

THIS MOTION, made by the representative plaintiff Barry Lavender on behalf of the Class (defined below), for summary judgment on common issues (a) through (e) (the “**Common Issues**”) certified by order of Justice Cullity dated July 20, 2010 (the “**Certification Order**”, attached hereto as **Schedule “A”**), was heard June 27 and 29, 2017, at Osgoode Hall, 130 Queen St W, Toronto, ON M5H 2N5,

ON READING the pleadings, the procedural endorsements and orders in this matter, including the Certification Order, the affidavit evidence including exhibits filed by the parties on the motion, the transcripts of the cross-examinations, the transcripts from the examinations for discovery, the documents marked as exhibits on the cross-examinations and examinations for discovery, the facta filed by the parties, the further written submissions regarding damages requested by Belobaba J. on June 27, 2017 and subsequently delivered by the parties, and the legal authorities delivered by the parties’ in support of their written submissions,



AND ON HEARING the oral submissions of the parties' counsel on June 27, 2017 and June 29, 2017,

AND ON BEING ADVISED that the Class intends to bring a further motion for summary judgment on Common Issue e(1) and e(2) as set out at paragraph 8 of the Certification Order,

AND FOR REASONS RELEASED THIS DAY and by the endorsement dated August 18, 2017 with respect to costs in this matter (the "Costs Endorsement"):

1. **THIS COURT ORDERS** that the following definitions apply to this Judgment:
  - a. "Buckingham" means Buckingham Securities Corporation;
  - b. "Defendant" means Miller Bernstein LLP; and
  - c. "Class" has the meaning ascribed to it in the Certification Order.
2. **THIS COURT ORDERS AND DECLARES** that the nature of the claims asserted on behalf of the Class are in negligence.
3. **THIS COURT ORDERS AND DECLARES** that the Common Issues are answered as follows:
  - a. Did the *Securities Act*, R.S.O. 1990, c. S.5 and the regulations thereunder (the "OSA") require Buckingham to segregate the cash and securities of its clients from its own cash and securities?

**Yes.**
  - b. Did Buckingham fail to segregate its clients' cash and securities in violation of the OSA and, if so, when did Buckingham fail to do so?

**Yes. Buckingham failed to segregate its clients' cash and securities at all times during its operations.**
  - c. Did the Defendant owe a duty of care to the Class and/or one or more of the Subclasses and what is the nature and extent of that duty?

**Yes. The Defendant owed a duty of care to the Class to conduct an audit of Buckingham's Form 9 reports with the skill and care of a competent practitioner.**

- d. If the answer to (c) is yes, did the Defendant breach that duty of care to the Class and/or one or more of the Subclasses, either negligently or recklessly?

**Yes.**

- e. If the answer to (d) is yes, was the Defendant's breach of that duty a cause of damages to all of the Class and/or all of one or more of the Subclasses?

**Yes.**

- (1) If the answer to (e) is yes, can such damages be determined on a class wide basis in respect of the class and/or one or more of the Subclasses?

**No.**

- (2) If the answer to (e)(1) is yes, how should the damages to be payable by the Defendant be calculated?

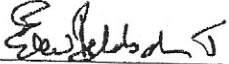
**Given the answer to (e)(1), there is no need to answer (e)(2).**

4. **THIS COURT ORDERS** that the Defendant shall pay the costs of this motion to Siskinds LLP on behalf of the Class within 30 days of the Costs Endorsement in the amount of \$775,000, all inclusive.
5. **THIS COURT ORDERS** that the costs of this motion bear interest at the rate of 2.0 per cent per year commencing on the date of the Costs Endorsement.

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ON / BOOK NO:  
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PER / PAR: *C.D.*

  
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THE HONOURABLE  
MR. JUSTICE BELOBABA

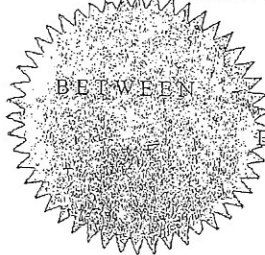
SCHEDULE A

Court File No. 05-cv-300430CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
JUSTICE M. CULLITY

) THURSDAY, THE 20<sup>th</sup> DAY  
) OF JULY, 2010



BARRY LAVENDER and HOWARD FERGUSON

Plaintiffs

- and -

MILLER BERNSTEIN LLP

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs, Barry Lavender and Howard Ferguson, for an Order certifying the within action (the "Action") as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "CPA"), was heard June 10, 2010 at Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

ON READING the materials filed, including the consent Agreement to Settle Certification dated April 29, 2010, and on hearing the submissions of counsel for the parties to this proceeding:

1. THIS COURT ORDERS that, for the purposes of this Order, the following definitions apply:

- (a) "Buckingham" means Buckingham Securities Corporation;
- (b) "Defendant" means Miller Bernstein LLP;

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- (c) "Excluded Persons" means: (i) the Defendant; (ii) any partner or employee of The Defendant, and any member of the immediate family of any such partner or employee; (iii) any person who served as an officer or director of Buckingham at any time, and any member of the immediate family of any such officer or director; (iv) Buckinghamshire Holdings Inc., GS Investments Inc., HSS Investments Inc., Deekay Investments Inc., Scriblerus Holding Corporation, George Seidel, Harold Seidel, Norman Frydrych, Lloyd Bruce, Deborah Krofchick, David Seidel, 1195154 Ontario Ltd., David Lieberman, 7928 Investments Ltd., David Bromberg, AKH Investments Ltd. and Rose Brinder (collectively, the "Insiders"), together with any other beneficial shareholders of Buckingham, and members of their immediate families; (v) any entity in respect of which any of the persons identified in (i) to (iv) above has a direct or indirect controlling interest; (vi) any person who ultimately controls an entity that is an Excluded Person; and (vii) the legal representatives, heirs, successors and assignees of any Excluded Person; and
2. **THIS COURT ORDERS** that, pursuant to section 5 of the *CPA*, this action is certified as a class proceeding.
3. **THIS COURT ORDERS** that the nature of the claims asserted on behalf of the Class are negligence, negligent performance of professional services and knowing assistance of breach of contract. The Class seeks damages in the amount of \$15 million in connection with the claims asserted.
4. **THIS COURT ORDERS** that the class is defined as follows:
- Each and every person, wherever resident, except the Excluded Persons, who created or maintained an investment account with Buckingham at any time after March 17, 1997 through July 26, 2001 (the "Class Period") and who maintained such an investment account on July 6, 2001, including, without limiting the foregoing, those persons who filed claims in the receivership of Buckingham (the "Class").
5. **THIS COURT ORDERS** that there will be two subclasses, defined as follows:
- Each member of the Class who corresponded directly with the Defendant and, as part of such correspondence, communicated discrepancies in their respective investment accounts with Buckingham ("Subclass 1").
- Each member of the Class who corresponded directly with the Defendant and, as part of such correspondence, did not indicate whether their respective investment accounts with Buckingham were correct or incorrect ("Subclass 2").

5. **THIS COURT ORDERS** that the Plaintiffs, Barry Lavender and Howard Ferguson, are appointed as Representative Plaintiffs for the Class.
6. **THIS COURT ORDERS** that the Plaintiffs may bring a motion to propose one or more representative plaintiffs for either or both subclasses and that the Defendant may bring a motion to ~~propose or~~ require one or more representative plaintiffs for either or both subclasses.
7. **THIS COURT ORDERS** that Siskinds LLP ("Class Counsel") is appointed as class counsel.
8. **THIS COURT ORDERS** that the common issues are:
- (a) Did the Securities Act, R.S.O. 1990, c. S.5 and the regulations thereunder (the "OSA") require Buckingham to segregate the cash and securities of its clients from its own cash and securities?
  - (b) Did Buckingham fail to segregate its clients' cash and securities in violation of the OSA and, if so, when did Buckingham fail to do so?
  - (c) Did the Defendant owe a duty of care to the Class and/or one or more of the subclasses and what is the nature and extent of that duty?
  - (d) If the answer to (c) is yes, did the Defendant breach that duty of care to the Class and/or one or more of the sub-classes, either negligently or recklessly?
  - (e) If the answer to (d) is yes, was the Defendant's breach of that duty a cause of damages to all of the Class and/or all of one or more of the sub-classes?
    - (1) If the answer to (e) is yes, can such damages be determined on a class wide basis in respect of the class and/or one or more of the sub-classes?
    - (2) If the answer to (e)(1) is yes, how should the damages to be payable by the Defendant be calculated?
  - (f) Does Ontario law recognize a tort of knowing assistance of breach of contract and, if so, what are the elements of that tort?

(1) If the answer to (f) is yes, have the elements of that tort been met by all of the Class and/or all of one or more of the sub-classes?

*"re Bernkiffe"*

*Met 9.*

**THIS COURT ORDERS** that the Plaintiffs provide notice to the Class, at their expense, in the following manner:  
*Form approved by the Court and in the*

- (a) Notice shall be sent to each class member known to BDO Dunwoody Limited, in its capacity as Court-Appointed Receiver and Manager of Buckingham pursuant to the Order of Madame Justice Swinton dated July 26, 2001;
  - (b) Notice shall be posted by Class Counsel on their website at the address <http://classaction.ca/content/actions/millerbernstein.asp>;
  - (c) Notice shall be provided by Class Counsel to any person who requests it;
  - (d) Notice shall be available orally by recorded message at Class Counsel's toll-free line;
  - (e) Notice shall be posted on the website at <http://www.bdo.ca/buckingham>; and
  - (f) Class Counsel shall issue a press release of the form attached as Schedule "A."
10. **THIS COURT ORDERS** that persons may opt out of the Class in writing to Class Counsel within 90 days of the completion of notice as described in paragraph 9.
11. **THIS COURT ORDERS** that no costs are payable in connection with the certification motion.
12. **THIS COURT ORDERS** that the Defendant shall file and serve a Statement of Defence on or before August 15, 2010.
13. **THIS COURT ORDERS** that the parties shall agree to a discovery plan as contemplated by Rule 29.1 of the *Rules of Civil Procedure* on or before September 6, 2010. If the parties cannot so agree, they shall make a motion to this Court for directions on or before September 10, 2010.

14. **THIS COURT ORDERS** that no other proceeding relating to this action may be commenced without leave of the Court save and except for any third party proceedings commenced by the Defendant.

  
THE HONOURABLE  
JUSTICE M. CULLITY

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

AUG 13 2010

PER / PAR: 

BARRY LAVENDER and HOWARD FERGUSON  
Plaintiffs and  
MILLER BERNSTEIN LLP  
Defendant

Court File No: 05-cv-300430CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**  
(CERTIFICATION)

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Class Counsel  
1350786.3



LAVENDER  
Plaintiff  
and  
MILLER BERNSTEIN LLP  
Defendant

Court File No.: 05-CV-300430CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act, 1992*

**JUDGMENT ON COMMON ISSUES**

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**Class Counsel**

## APPENDIX "IV"



BDO Dunwoody Limited

123 Front Street West Suite 1200  
Toronto Ontario Canada M5J 2M2  
Telephone: (416) 865-0210  
Fax: (416) 865-0904

[www.bdo.ca](http://www.bdo.ca)

11 December 2006

## CUSTOMERS OF BUCKINGHAM SECURITIES CORPORATION

Dear Sir/Madam:

***Re: Buckingham Securities Corporation ("Buckingham"), in Receivership***  
***Re: Ontario Contingency Trust Plan***

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As you are aware from previous correspondence, Buckingham was a participant in the Ontario Contingency Trust Plan (the "Plan"). The Plan was set up to provide compensation to customers who have suffered losses from dealing with certain security and mutual fund dealers in Ontario. The Plan was originally funded by these dealers and is administered by a trustee, CIBC Mellon Trust Company ("CIBC Mellon"). BDO Dunwoody Limited, in its capacity as Buckingham's receiver (the "Receiver"), has had ongoing discussions with representatives of the Plan since the beginning of Buckingham's receivership in 2001.

In order to facilitate distribution from the Plan to Buckingham customers, the Receiver has on a number of occasions offered its full co-operation and assistance to CIBC Mellon to help Buckingham's customers obtain compensation from the Plan. The Receiver has provided CIBC Mellon with detailed information outlining each customer's actual loss which was obtained from or confirmed by Buckingham customers during the claims bar process.

We are advised that CIBC Mellon is now prepared to receive claims directly from Buckingham's customers to compensate them for losses they have suffered because of Buckingham's insolvency and breach of its trust obligations. Payments are only available to individuals, excluding corporations and principals/employees of Buckingham, and are limited to each customer's actual loss up to a maximum of \$5,000 per customer.

The Receiver has been advised by CIBC Mellon, that each customer must complete an "Assignment and Declaration" form which can be obtained directly from CIBC Mellon. We understand that, by completing and signing this document, you will be assigning to the Plan your rights to recover from Buckingham's estate any amounts which the Plan pays to you. Further, this document also requires you to confirm certain details of your claim against the Plan and provides authorization to the Plan to receive and share your personal information with the Receiver for the purposes of reviewing and processing your claim.

Neither the Receiver nor its legal counsel have been involved in the preparation of the Assignment and Declaration form, and are unable to assist you in the completion of this or any other forms which may be requested by CIBC Mellon. Before signing this document, you should seriously consider obtaining independent legal advice, particularly if your claim is greater than the \$5,000 limit of compensation available from the Plan.


The Receiver continues to attempt to maximize recoveries for Buckingham's customers primarily through its action against Buckingham's auditors, Miller Bernstein LLP, which continues to proceed. A class action has also been commenced against Miller Bernstein LLP on behalf of all of Buckingham's clients. More information on these actions is available on the Receiver's website at [www.bdo.ca/buckingham](http://www.bdo.ca/buckingham).

For more information regarding filing a claim with the Plan, customers should contact the Plan directly. The Plan can be reached at:

CIBC Mellon Trust Company  
320 Bay Street, P.O. Box 1  
Toronto, Ontario,  
M5H 4A6

Attention: Mark Wright, Associate Manager  
Corporate Trust Services.  
Direct Line : 416-643-5587  
General Line: 416-643-5000

Yours very truly,  
BDO DUNWOODY LIMITED  
In its capacity as Court-appointed receiver of  
Buckingham Securities Corporation  
Per:



Uwe Manski, FCA, FCIRP  
President

## APPENDIX "V"



Tel: 416 865 0210  
Fax: 416 865 0904  
www.bdo.ca

BDO Canada Limited  
20 Wellington Street E, Suite 500  
Toronto ON M5E 1C5 Canada

**In the Matter of the Receivership of  
Buckingham Securities Corporation  
Of the City of Toronto, in the Province of Ontario  
Receivers' Statement of Receipts and Disbursements  
From 4 November 2004 to 31 July 2020**

Balance on hand, on 4 November 2004, as approved by Court on 22 November 2004		\$ 3,101,428.11
<b>RECEIPTS</b>		
Bear Stearns settlement (net)	\$ 299,921.08	
Accounts receivable collection	55,736.92	
Interest on funds in bank	46,394.28	
Sale of securities	1,884.88	403,937.16
	<hr/>	<hr/>
		3,505,365.27
<b>DISBURSEMENTS</b>		
Interim dividend to customers	2,203,552.86	
Legal fees paid		
- Blake, Cassels & Graydon LLP	\$ 708,412.51	
- Lax, O'Sullivan Scott LLP	103,485.35	
- McCarthy, Tetrault LLP	16,182.78	828,080.64
	<hr/>	
Receivers fees paid		341,740.80
Consulting fees - stock valuation		8,587.50
Cost award paid- Bennett Jones LLP		6,000.00
Claims officer fees		3,506.00
Newspaper advertisement- claims bar process		2,400.57
Printing costs, mailing, couriers		5,713.70
Bank charges		1,486.90
Appraisal fee		614.00
GST / HST paid	88,517.11	3,490,200.08
	<hr/>	<hr/>
Balance on hand, 31 July 2020		15,165.19
<b>Less: Costs to Complete</b>		
Legal Notice	3,719.31	
Legal Fees- Blake, Cassels & Graydon LLP	6,000.00	
Receivers fees	6,000.00	
HST on cost to complete	2,043.51	17,762.82
	<hr/>	<hr/>
Deficiency absorbed by Receiver		<u>\$ (2,597.63)</u>

## APPENDIX "VI"

**ONTARIO SECURITIES COMMISSION V BUCKINGHAM  
SECURITIES CORPORATION**

BDO Canada Limited, formerly known as BDO Dunwoody limited (“**BDO**”) acts as Court-appointed Receiver and Manager (the “**Receiver**”) of the property of Buckingham Securities Corporation (“**Buckingham**”) including all property held in the name of Buckingham.

**TAKE NOTICE** that a hearing has been scheduled for 9:30 a.m. (Eastern Time) on September 30, 2020 where the Receiver will request an order from the Court, among other things, (i) approving the fees and disbursements of the Receiver and its counsel, (ii) releasing the Receiver and its counsel from claims arising prior to the date of the order sought on this motion, and (iii) discharging the Receiver and releasing the Receiver and its counsel from claims arising after the date of the order, effective upon the filing of the completion certificate confirming that all remaining activities in the Receivership Proceedings have been completed.

Copies of the Motion Record of the Receiver and the other documents related to these Receivership Proceedings are posted on the Receiver’s website at: <https://www.bdo.ca/en-ca/extranets/buckingham/>. The website contains information related to Court motions including information concerning Court hearing dates should they change.

The Receiver’s contact details for additional information relating to these Receivership Proceedings are:

**BDO Canada Limited**  
Receiver for Buckingham Securities Corporation  
20 Wellington Street East  
Suite 500  
Toronto, Ontario, M5E 1C5  
Attention: Uwe Manski  
Tel.: 416-865-0210  
Email: [umanski@bdo.ca](mailto:umanski@bdo.ca)