

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

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Plaintiffs

- and -

BUCKINGHAM SECURITIES CORPORATION

Defendants

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

A. PURPOSE OF THE REPORT

1. This report of BDO Dunwoody Limited in its capacity as Court-Appointed Receiver and Manager (the “Receiver”) of the estate of Buckingham Securities Corporation (“Buckingham”) is filed in response to the motion by W.D. Latimer Co. Limited (“Latimer”) for an order:

- (a) declaring that Latimer holds a valid security interest in all securities held by Latimer for the account of Buckingham, ranking in priority to the Receiver’s charge created pursuant to paragraph 19 of the Order of this Honourable Court dated July 26, 2001; and

- (b) permitting Latimer to sell such securities and apply the proceeds in satisfaction of the indebtedness owing by Buckingham to Latimer.

2. As previously stated in the Receiver's First Report to the Court, certain of Buckingham's clients have expressed concerns to the Receiver in connection with the security interests claimed by Latimer. In particular, certain clients of Buckingham have alleged that Latimer knew or ought to have known that certain securities held by Latimer in the Buckingham account were not owned by Buckingham but rather held by Buckingham for the account of its clients, and that Buckingham had no authority to pledge client securities as collateral for Buckingham's own indebtedness to Latimer.

3. On the basis of the information currently available to the Receiver, the Receiver believes that there are serious grounds for disputing the validity of the security interest claimed by Latimer.

4. It appears from correspondence between Buckingham and Latimer exchanged in July, 2000, that Latimer was aware that the securities which it held for the account of Buckingham included not only securities owned by Buckingham for its own account, but securities held by Buckingham for its clients. True copies of the correspondence between Latimer and Buckingham dated July 24 and July 26, 2000 are attached hereto and marked collectively as Exhibit "A".

5. The Receiver has been advised by its counsel that under applicable securities law and in particular, the Regulations under the Ontario *Securities Act* and Rules of The Ontario Securities Commission, Buckingham's ability to use client securities as collateral to secure its own

indebtedness is restricted, as a result of which there are serious issues raised with respect to the legality and validity of the security interest which Latimer claims.

6. Further, a significant portion of the securities held by Buckingham on behalf of its clients consist of securities which are thinly traded. In the course of the discussions between the Receiver and representatives of various Buckingham clients, Buckingham's clients have expressed a concern that a liquidation of their securities may precipitate increased losses for Buckingham's clients by negatively impacting the market price of such securities. In addition, certain clients of Buckingham have informed the Receiver that a liquidation of their securities at this time would trigger adverse tax consequences for Buckingham's clients as a result of losses which would be incurred upon a liquidation at this time. Accordingly, many of Buckingham's clients have expressed a preference for the distribution of securities in kind, as opposed to a liquidation of securities and a distribution of the proceeds.

7. Until such time as the dispute regarding the validity of the security interest claimed by Latimer and other brokers asserting secured claims has been resolved, there can be no distribution of securities *in specie* to the clients of Buckingham. In an effort to resolve the dispute concerning the validity of the security interests claimed by Latimer and other brokers, and with a view to accommodating the preference of Buckingham's clients for a distribution of securities *in specie*, as opposed to a liquidation, the Receiver has suggested to various stakeholders that a proposal by the Receiver under the *Bankruptcy and Insolvency Act* ("BIA") be pursued with a view to maximizing recoveries for all stakeholders. The Receiver has discussed the proposal in general terms with various stakeholders including representatives of Buckingham's clients, Latimer, the Ontario Securities Commission, and CIBC Mellon Trust

Company, the trustee of The Contingency Trust Fund established for the protection of clients of securities dealers registered with the Ontario Securities Commission, with a view to obtaining their preliminary comments with respect to this initiative. Although initial reactions to the Receiver's suggestion of pursuing a proposal under the *BIA* have been positive, the Receiver has not yet had an opportunity to ascertain whether there will be sufficient funding available and sufficient support among the stakeholders to proceed with a proposal process. As the Receiver believes that there is a possibility for maximizing recoveries through a proposal process, the Receiver would prefer to defer incurring additional legal and professional costs in connection with the resolution of the dispute concerning the validity of Latimer's security, until such time as the parties have had a further opportunity to pursue a resolution of that issue through the proposal process.

Receiver's Recommendation

8. The Receiver therefore recommends that in order to encourage a resolution which will minimize the losses and the hardship that Buckingham's insolvency has caused, Latimer's motion be deferred for a period of approximately two months, during which time the Receiver will proceed to ascertain whether the necessary funding and support among the stakeholder groups exists so as to render a *BIA* proposal viable.

9. In the interim, the Receiver continues to recommend that the relief requested in the Receiver's First Report be granted for the reasons set out therein.

ALL OF WHICH is respectfully submitted this 2nd day of October, 2001.

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

Per: Martin Clarkson