

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

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Plaintiff

- and -

BUCKINGHAM SECURITIES CORPORATION

Defendant

**TWENTY-FIRST 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

- (a) This Report of BDO Dunwoody Limited (“BDO”) in its capacity 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 proceeds thereof (the “Property”), is filed in support of a motion by the Receiver for an Order approving a settlement agreement between the Receiver and Bear Stearns Corporation Inc. (“Bear Stearns”) with respect to the proceeds of certain disputed securities being held in trust by the Receiver (the “Disputed Funds”) and directing the Receiver to pay to Bear Stearns its share of the Disputed Funds.

B. BACKGROUND

2. 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. After a distribution by the Receiver, Buckingham's approximately 800 clients are currently owed in excess of \$8.2 million.
3. In June 2001, the Ontario Securities Commission (the "OSC") conducted a compliance audit of Buckingham. Based on the OSC's audit and prior to the appointment of the Receiver, Buckingham's registration was suspended and its activities frozen pursuant to an Order of the OSC dated July 6, 2001.
4. By Order of the Honourable Madame Justice Swinton dated July 26, 2001 (the "Appointment Order"), a copy of which is attached as **Exhibit "A"**, BDO was appointed Receiver of all of the Property.

C. BEAR STEARNS SETTLEMENT

5. As described in greater detail in the Receiver's Nineteenth Report dated June 9, 2006 (the "Nineteenth Report"), a copy of which is attached as **Exhibit "B"**, on or about June 7, 2000, Buckingham opened up brokerage accounts at Bear Stearns on its own behalf and in respect of client securities. Bear Stearns claimed a lien and security interest over all of the securities held in Buckingham's account at Bear Stearns. The Receiver disputed Bear Stearns' security interest in "fully paid" and "excess margin" securities held by Buckingham in accounts at Bear Stearns on behalf of its clients which Buckingham was required to segregate.
6. Pursuant to the Order of the Honourable Mr. Justice Cumming dated July 16, 2004 (the "Liquidation Order"), a copy of which is attached as **Exhibit "C"**, Buckingham's portfolio at Bear Stearns was liquidated and the Receiver was authorized to retain the Disputed Funds in the amount of US\$97,893.00 pending resolution of the dispute. As of

- 3 -

October 31, 2006, the Disputed Funds being held by the Receiver amount to US\$101,786.85.

7. The Nineteenth Report was served and filed in support of a motion by the Receiver seeking, *inter alia*, a declaration that the Receiver was entitled to the Disputed Funds. Prior to the return of the motion, the Receiver and Bear Stearns agreed to settle all issues with respect to the Disputed Funds on the basis that the Receiver retain 50 per cent of the Disputed Funds and pay the balance to Bear Stearns. The Receiver and Bear Stearns have now executed a settlement agreement and mutual release (the "Settlement Agreement"), copies of which are attached as **Exhibit "D"**.
8. Accordingly, the Receiver seeks an order approving the Settlement Agreement and directing and authorizing it to pay the amount of US\$50,893.43 to Bear Stearns, representing 50 per cent of the Disputed Funds as described in the Settlement Agreement.

D. RECOMMENDATION

- (a) For the reasons described in this Report, the Receiver requests an Order of this Honourable Court approving the Settlement Agreement between the Receiver and Bear Stearns with respect to the Disputed Funds and directing the Receiver to pay to Bear Stearns its share of the Disputed Funds.

ALL OF WHICH is respectfully submitted this ^{2nd} day of May, 2007.

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

EXHIBIT "A"
TO THE TWENTY-FIRST REPORT

Court File No. 01-CL-4192

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) THURSDAY, THE 26TH DAY
JUSTICE SWINTON) OF JULY, 2001
)

BETWEEN:

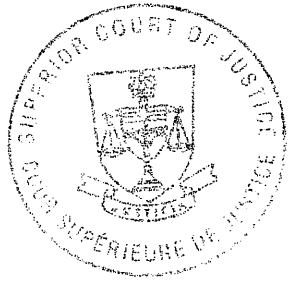
ONTARIO SECURITIES COMMISSION

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 26th 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 26th 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;

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- (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

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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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PER/PA-P

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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
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EXHIBIT "B"
TO THE TWENTY-FIRST REPORT

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

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Plaintiffs

- and -

BUCKINGHAM SECURITIES CORPORATION

Defendants

**NINETEENTH 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

- (a) This report of BDO Dunwoody Limited (“BDO”) in its capacity as Court-Appointed Receiver and Manager (the “Receiver”) of the estate of Buckingham Securities Corporation (“Buckingham”) is filed in support of a motion by the Receiver for an Order declaring that the Receiver is entitled to funds in the amount of U.S.\$97,893.00 (the “Disputed Funds”), representing the proceeds of securities which the Receiver is holding in trust pending resolution of a dispute with Bear Stearns Corporation Inc. (“Bear Stearns”).

B. BACKGROUND

2. Buckingham was a securities dealer registered under Ontario securities law from March 17, 1997 to July 6, 2001, and provided investment services to its clients. Prior to

its receivership in July, 2001, Buckingham had approximately 1,000 active client accounts. After a distribution by the Receiver, Buckingham's approximately 800 clients are currently owed in excess of \$8.2 million.

3. 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 of Buckingham's account statements 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, including Bear Stearns, in an aggregate amount in excess of \$3 million.
4. Based on the OSC's audit and prior to the appointment of the Receiver, Buckingham's registration was suspended and its activities frozen pursuant to an Order of the OSC dated July 6, 2001 (the "Cease Trade Order").
5. By Order of the Honourable Madame Justice Swinton dated July 26, 2001 (the "Appointment Order"), BDO was appointed Receiver of all of the property, assets and undertaking of Buckingham, including assets held in the name of Buckingham, as principal or agent, beneficially or otherwise and all proceeds thereof (the "Property"). A true copy of the Appointment Order is attached hereto as **Exhibit "A"**.

C. DISPUTE RELATING TO BEAR STEARNS' SECURITY

6. Pursuant to an agreement between Buckingham and Bear Stearns dated June 7, 2000 (the "Bear Stearns Agreement"), a copy of which is attached hereto as **Exhibit "B"**, Buckingham opened up brokerage accounts at Bear Stearns on its own behalf and in respect of client securities.
7. After its Appointment, the Receiver obtained reports using Buckingham's accounting system provided by ISM, which identified the "fully paid" and "excess margin" securities

which should have been segregated by Buckingham as at July 6, 2001, the date of the Cease Trade Order.

8. As described in greater detail in the Receiver's Sixteenth Report to the Court dated July 9, 2004 (the "Sixteenth Report"), a copy of which is attached hereto as **Exhibit "C"**, Bear Stearns claims a lien and security interest over all of the securities held in Buckingham's account at Bear Stearns including Buckingham's clients' "fully paid" and "excess margin" securities pledged as collateral for loans made by Bear Stearns to Buckingham. The Receiver does not dispute the validity of Bear Stearns' security interest over securities in its account at Bear Stearns in which Buckingham had a beneficial interest or those of Buckingham's clients' securities which Buckingham was not otherwise required to segregate (the "Undisputed Securities").
9. However, the Receiver disputes Bear Stearns' security interest in "fully paid" and "excess margin" securities held by Buckingham in accounts at Bear Stearns on behalf of its clients which Buckingham was required to segregate (the "Disputed Securities"), on the basis that:
 - (i) paragraph 3 of the Bear Stearns Agreement grants a security interest and lien to Bear Stearns only in property or securities in which Buckingham has a beneficial interest, and Buckingham has no beneficial interest in its clients' "fully paid" and "excess-margin" securities which Buckingham was required by law to hold in trust for its customers, namely, the Disputed Securities; and
 - (ii) in the alternative, even if Bear Stearns' security extends to the Disputed Securities, Bear Stearns knew or ought to have known of Buckingham's failure to segregate.
10. A similar but distinguishable dispute with respect to the validity of a security interest in "fully paid" and "excess margin" securities held and claimed by another broker, W.D. Latimer & Co. Ltd. ("Latimer"), pursuant to an agreement between Latimer and

Buckingham (the “Latimer Agreement”) was the subject of a trial before the Honourable Mr. Justice Ground. As described in greater detail in his Reasons dated October 17, 2002, a copy of which are attached hereto as **Exhibit “D”**, Justice Ground found that Buckingham breached its trust obligations to its clients by pledging their “fully paid” and “excess-margin” securities which should have been segregated to secure Buckingham’s indebtedness to Latimer. However, Justice Ground held that the security interest of Latimer in the Disputed Securities was valid and enforceable because Latimer did not have actual or constructive knowledge of Buckingham’s breach of trust.

11. Further, unlike the Bear Stearns Agreement, the Latimer Agreement provided that all securities held by Latimer for Buckingham were subject to a general lien in favour of Latimer for any and all indebtedness owing by Buckingham to Latimer. The Receiver appealed this Judgment, and ultimately, with the approval of this Court, entered into liquidation and settlement agreements with Latimer pursuant to which the Receiver abandoned its appeal. Unlike the Latimer Agreement, and as described in paragraph 9(i) above, Bear Stearns encumbered only Buckingham’s interest in the client securities.
12. As at April 30, 2004, the total amount outstanding on account of the indebtedness of Buckingham to Bear Stearns was U.S. \$260,302.00.
13. Pursuant to the Order of the Honourable Mr. Justice Cumming dated July 16, 2004 (the “Liquidation Order”), a copy of which is attached hereto as **Exhibit “E”**, which was granted on a motion brought by the Receiver supported by the Sixteenth Report, the Receiver entered into a Liquidation Agreement with Bear Stearns (the “Liquidation Agreement”). The purpose of the Liquidation Agreement was to liquidate the securities held in Buckingham’s account at Bear Stearns into cash in order to facilitate the resolution of the outstanding dispute concerning the validity of Bear Stearns’ security interest without the additional costs and delay associated with litigation. The Liquidation Agreement also allowed the proceeds of the Undisputed Securities to be applied to reduce the indebtedness of Buckingham to Bear Stearns, thereby reducing interest costs accruing

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pursuant to the Liquidation Agreement, of the total amount of U.S.\$471,782.41 realized upon the liquidation of the securities, Bear Stearns received U.S.\$166,339.54 in respect of the Undisputed Securities and its commission on Disputed Securities. The balance of the proceeds, U.S.\$302,073.06, was paid to the Receiver, U.S.\$97,893.00 of which represents the Disputed Funds which the Receiver continues to hold in trust pending resolution of this dispute.

15. Despite ongoing discussions and negotiations between counsel for the Receiver and Bear Stearns, the parties have been unable to arrive at an agreement as to entitlement to the Disputed Funds.
16. Accordingly, the Receiver brings this motion seeking an Order of the Court declaring that the Receiver is entitled to the Disputed Funds, plus its costs of this motion.
17. **ALL OF WHICH** is respectfully submitted this 9th day of June, 2006.

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

EXHIBIT "A"
TO THE NINETEENTH REPORT

Court File No. 01-CL-4192

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**THE HONOURABLE MADAM
JUSTICE SWINTON**

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**THURSDAY, THE 26TH DAY
OF JULY, 2001**

BETWEEN:

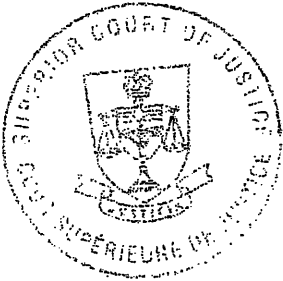
ONTARIO SECURITIES COMMISSION

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 26th 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 26th 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.

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.

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

JUL 26 2001

PER/PAR

NB

D. Rusti

D. RUSTI
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

EXHIBIT "B"
TO THE NINETEENTH REPORT

MAY 3 2000

1:58PM

BEAR STEARNS

NO. 730

P. 2/7

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DOC CODE 076

Account No. 920 07626 16

**CERTIFICATE OF CORPORATE SECRETARY
Brokerage Account and Trading Resolutions**

I, David Bromberg, being the Secretary of Burkington Securities Corporation (the "Corporation"), hereby certify that, at a meeting of the Board of Directors of the Corporation duly held on the 3 day of May, 2000, the following Resolutions were duly adopted and are now in full force and effect:

Opening of Brokerage Account(s)

RESOLVED, that the Corporation is hereby authorized and directed to establish and maintain one or more accounts (including margin accounts) (each, an "Account") with Bear, Stearns Securities Corp., ("Bear Stearns Securities").

Trading Authority

RESOLVED, that, in any Account, the Corporation is hereby authorized and empowered to buy (including forward purchases), hold, finance, pledge, exercise, convert, tender, redeem, exchange, transfer, assign, sell (including short and forward sales) and otherwise deal and trade in the following items*

- **Securities:** any and all forms of securities, including, without limitation, stocks, rights, warrants, listed and OTC options (and standby contracts) on individual securities or groups/indexes of securities (and any other financial instruments), scrip, bonds, debentures, notes, commercial paper, certificates of deposit, trust certificates and evidences of interest, participation of indebtedness of any kind whatsoever;
- **Mortgages:** whole mortgage loans, interests/participations in mortgage loans, interest-only and principal-only mortgage strips, mortgage residuals, collateralized mortgage obligations, privately-issued mortgage pass-through certificates and any other mortgage-backed, mortgage-derived or mortgage-related interests or instruments of any kind whatsoever, instruments or certificates backed by or otherwise issued in connection with any of the foregoing, interests in debt instruments issued by entities whose principal assets are any of the foregoing and FHA multi-family project loans;
- **Repurchase and Reverse Repurchase Securities Lending:** repurchase and reverse repurchase transactions and borrowing and lending transactions involving cash or any kind of security (domestic or international), mortgage interest or other financial instrument;
- **Foreign Exchange:** spot and forward foreign exchange transactions; listed and OTC options on foreign currencies; and any other foreign currency-denominated financial instruments; and
- **Commodities:** commodities, commodity futures contracts (traded on both domestic and foreign exchanges) and listed and OTC options on commodities and commodity futures.

*Inapplicable items are deleted.



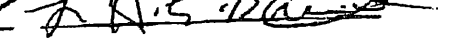
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BEAR STEARNS

NO.730 P.3/7

Authorized Officers/Agents

RESOLVED, that each of the following officers or agents of the Corporation is hereby individually authorized for and on behalf of the Corporation (1) to give to and receive from Bear Stearns Securities oral or written instructions, confirmations, notices or demands with respect to any Account; (2) to have complete authority at all times to bind the Corporation to the performance of any agreement or transaction entered into by the Corporation; (3) to lend or borrow money or securities and to secure the repayment thereof with the property of the Corporation; (4) to pay in cash or by check or draft drawn upon the funds of the Corporation any sums required to be paid in connection with any Account; (5) to order the transfer or delivery of any securities, funds or other property to such officer or agent or to any other person; (6) to order the transfer of record of any securities, funds or other property to any name and to accept delivery of any securities, funds or other property; (7) to direct the sale or exercise of any rights with respect to any securities or other property; (8) to sign for and on behalf of the Corporation all releases, assignments, powers of attorney or other documents in connection with any Account; (9) to agree to any terms or conditions affecting any Account; (10) to endorse any securities or other property in order to pass title thereto (or to any interest herein); (11) to direct Bear Stearns Securities to surrender any securities or other property for the purpose of effecting any exchange or conversion thereof or otherwise; (12) to appoint any other person or persons to do any and all things which such officer or agent is hereby empowered to do; and (13) generally, to take all such action as such officer or agent may deem necessary or desirable to implement or facilitate the trading activities authorized in the preceding Resolution:

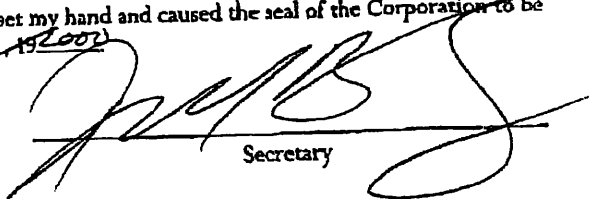
Name of Officer/Agent	Title/Firm Name	Specimen Signature
David Bramberg	Director	
David Bramberg	Secretary	
Lloyd W. Bruce	Compliance	

RESOLVED, that because an Account(s) is carried by Bear Stearns Securities as clearing agent for the Corporation's broker, all of the Resolutions contained herein shall be deemed to refer and apply to the Corporation's broker as well as Bear Stearns Securities and Bear Stearns Securities may act upon any oral or written instructions from the Corporation's broker with respect to such Account without further inquiry;

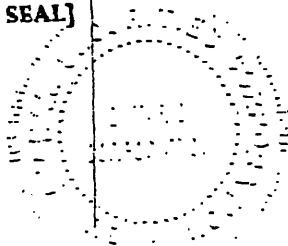
Effectiveness of Resolutions

RESOLVED, that the foregoing Resolutions shall apply to all transactions and agreements between the Corporation and Bear Stearns Securities even if entered into by the Corporation prior to the adoption of such Resolutions (which prior transactions and agreements with Bear Stearns Securities are hereby ratified in all respects), and shall remain in full force and effect in all respects until the close of business on the day after Bear Stearns Securities receives written notice of the modification or revocation thereof at its offices located at 245 Park Avenue, New York, New York 10167, Attn: Chief Legal Officer and shall enure to the benefit of Bear Stearns Securities, its controlling persons, and their respective successors and assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Corporation to be affixed on this 3 day of May 2000


Secretary

[CORPORATE SEAL]



Form **W-8**
(Rev. February 1997)
Department of the Treasury
Internal Revenue Service

Certificate of Foreign Status

Name of beneficial owner (if joint account, also give joint owner's name)		U.S. taxpayer identification number (if any)
Buckingham Securities Corporation		
Permanent Address (See Specific Instructions.) (Include apt. or suite no.)		
130 King St W Ste 130 PO Box 377 MSX-1E2.		
City, province or state, postal code and country		
Toronto Ontario Canada		
Current Mailing Address, if different (Include apt. or suite no., or P.O. box if mail is not delivered to street address.)		
Toronto Ontario Canada P.O. Box 377 MSX1E2.		
List account identification here (Optional, see Specific Instructions.)		Account type
920 07626 16		

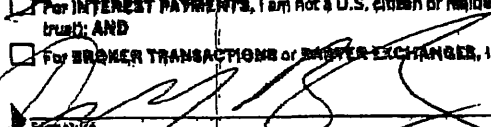
Notice of Change in Status.—To notify the payer, mortgage interest recipient, broker or barter exchange that you no longer qualify for exemption, check here

If you check this box, reporting will begin on the account(s) listed.

Certification.—(Check applicable box(es)). (Under penalties of perjury, I certify that:

For **INTEREST PAYMENTS**, I am not a U.S. citizen or resident (or I am filing for a foreign corporation, partnership, estate, or trust); **AND**

For **BROKER TRANSACTIONS or BARTER EXCHANGES**, I am an exempt foreign person as defined in the instructions below.

Please Sign Here  Date 05/03/2000

General Instructions
(Section references are to the Internal Revenue Code unless otherwise noted.)

Purpose of Form.—Use Form W-8 or a substitute form containing a substantially similar statement to tell the payer, mortgage interest recipient, middleman, broker, or barter exchange that you are a nonresident alien individual, foreign entity, or exempt foreign person not subject to certain U.S. information return reporting or backup withholding rules.

Caution: Form W-8 does not exempt the payee from the 30% (or lower treaty) withholding rates.

Nonresident Alien Individual.—For income tax purposes, the term nonresident alien individual means an individual who is neither a U.S. citizen nor resident. Generally, an alien is considered to be a U.S. resident if:

- The individual was a lawful permanent resident of the United States at any time during the calendar year, that is, the alien held an immigrant visa (a "green card") or
- The individual was physically present in the United States on:
 - (1) at least 31 days during the calendar year, and
 - (2) 183 days or more during the current year and the 2 preceding calendar years (counting all the days of physical presence in the current year, 1/3 the number of days of presence in the first preceding year, and only 1/6 of the number of days in the second preceding year).

See Pub. 519, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.

Exempt Foreign Person.—For purposes of this form, you are an exempt foreign person for a calendar year in which:

- You are a nonresident alien individual or a foreign corporation, partnership, estate or trust, and
- You are not engaged, or plan to be engaged during the year, in a U.S. trade or business that has effectively connected gains from the broker or barter exchange, or your country has a tax treaty with the U.S. that exempts your transactions from U.S. taxes.

Who May Not File.—If you are a nonresident alien individual married to a U.S. citizen or resident and have made an election under section 6013(g) or (h), you are treated as a U.S. resident and may not use Form W-8.

When To File.—Form W-8 or substitute form should be filed before a payment is made. Otherwise, the payer may have to withhold and send 20% of the payment to the Internal Revenue Service (see **Backup Withholding** below). This certificate generally remains in effect for three calendar years. However, the payer may require you to file a new certificate each time a payment is made to you.

Where To File.—File this form with the payer of the qualifying income who is the withholding agent (see **Withholding Agent** on page 2). You may wish to keep a copy for your own records.

Backup Withholding.—A U.S. taxpayer identification number or Form W-8 or substitute form must be given to the payers of certain income. If a taxpayer identification number or Form W-8 or substitute form is not provided or the wrong taxpayer identification number is provided, these payers may have to withhold 20% of each payment or transaction. This is called "backup withholding."

Reportable payments subject to backup withholding rules are:

- Interest payments under section 6049(a).
- Dividend payments under sections 6042(a) and 6044.
- Other payments (i.e., royalties and payments from broker and barter exchanges) under sections 6041, 6041A(a), 6045, 6050A and 6050N.

If backup withholding occurs, an exempt foreign person who is a nonresident alien individual may get a refund by filing Form 1040NR, U.S. Nonresident Alien Income Tax Return, with the Internal Revenue Service Center, Philadelphia, PA 19255, even if filing the return is not otherwise required.

U.S. Taxpayer Identification Number.—The Internal Revenue law requires that certain income be reported to the Internal Revenue Service using a U.S. taxpayer identification number (TIN). This number can be a social security number assigned to individuals by the Social Security Administration or an employer identification number assigned to businesses and other entities by the Internal Revenue Service.

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its protection, whether with or without prior demand, call or notice, Bear Stearns shall be entitled to exercise all rights and remedies provided in paragraphs 3.5 and 27 hereof. No demands, calls, tenders or notices that Bear Stearns may have made or given in the past in any one or more instances shall constitute your waiver of the requirement to make or give the same in the future. You further acknowledge and agree that any positions in your margin accounts shall be deemed "securities contracts" within the meaning of Sections 555 and 741(7) of the U.S. Bankruptcy Code and any successors thereto. Unless you advise Bear Stearns in writing to the contrary, you represent that you are not an affiliate (as defined in Rule 144(d)(1) under The Securities Act) of 1933 of the issuer of any security held in any of your accounts.

14. CONSENT TO LOAN OR PLEDGE OF SECURITIES IN MARGIN ACCOUNTS. Within the limits of applicable law and regulations, you hereby authorize Bear Stearns to lend either to itself or to others any securities held by Bear Stearns in any of your margin accounts, to convey therein all attendant rights of ownership (including voting rights) and to use all such property as collateral for its general loans. Any such property, together with all attendant rights of ownership, may be pledged, repledged, hypothecated or rehypothecated either separately or in common with other property for any amount due to Bear Stearns thereon or for a greater sum, and Bear Stearns shall have no obligation to retain a like amount of similar property in its possession and control. You hereby acknowledge that, as a result of such activities, Bear Stearns may receive and retain certain benefits to which you will not be entitled. In certain circumstances, such loans may limit, in whole or in part, your ability to exercise voting and other attendant rights of ownership with respect to the loaned or pledged securities.

15. LEGALLY BINDING. You hereby agree that this Agreement and all of the terms hereof shall be binding upon you and your estate, heirs, executors, administrators, personal representatives, successors and assigns. You further agree that all purchases and sales shall be for your account(s) in accordance with any oral or written instructions. You hereby waive any and all defenses that any such oral instruction was not in writing as may be required by any applicable law, rule or regulation.

16. AMENDMENT. You agree that Bear Stearns may modify the terms of this Agreement at any time upon prior written notice to you. By continuing to accept services from Bear Stearns thereafter you will have indicated your acceptance of any such modification. If you do not accept such modification, you must notify Bear Stearns in writing; your account may then be terminated by Bear Stearns, after which you will remain liable to Bear Stearns for all outstanding liabilities and obligations. Otherwise, this Agreement may not be modified absent a written instrument signed by an authorized representative of Bear Stearns.

17. GOVERNING LAW. THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF NEW YORK AND SHALL BE CONSTRUED, AND THE CONTRACTUAL AND ALL OTHER RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED, IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAW PRINCIPLES THEREOF.

18. ARBITRATION. YOU AGREE THAT CONTROVERSIES ARISING BETWEEN YOU AND YOUR INTRODUCING BROKER AND / OR BEAR STEARNS, AND ANY OF YOUR OR THEIR CONTROL PERSONS, PREDECESSORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS AND EMPLOYEES, SHALL BE DETERMINED BY ARBITRATION. WITH RESPECT TO THE RESOLUTION OF ANY SUCH CONTROVERSY, YOU FURTHER ACKNOWLEDGE THAT:

- ARBITRATION IS FINAL AND BINDING ON THE PARTIES.
- EXCEPT AS OTHERWISE PROVIDED HEREIN, THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL.
- PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.
- THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.
- THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MAJORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECEPTED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORFEITURE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

ANY ARBITRATION UNDER THIS AGREEMENT SHALL BE HELD AT THE FACILITIES AND BEFORE AN ARBITRATION PANEL APPOINTED BY THE NEW YORK STOCK EXCHANGE, INC., THE AMERICAN STOCK EXCHANGE, INC. OR THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. OR, IF THE TRANSACTION WHICH GIVES RISE TO SUCH CONTROVERSY IS EFFECTED IN ANOTHER UNITED STATES MARKET WHICH PROVIDES ARBITRATION FACILITIES, BEFORE SUCH OTHER FACILITIES. YOU MAY ELECT ONE OF THE FOREGOING FORUMS FOR ARBITRATION, BUT IF YOU FAIL TO MAKE SUCH ELECTION BY REGISTERED MAIL OR TELEGRAM ADDRESSED TO BEAR STEARNS SECURITIES CORP., 345 PARK AVENUE, NEW YORK, NEW YORK 10167, ATTENTION: CHIEF LEGAL OFFICER (OR ANY OTHER ADDRESS OF WHICH YOU ARE ADVISED IN WRITING), BEFORE THE EXPIRATION OF TEN DAYS AFTER RECEIPT OF A WRITTEN REQUEST FROM BEAR STEARNS TO MAKE SUCH ELECTION, THEN BEAR STEARNS MAY MAKE SUCH ELECTION FOR ANY ARBITRATION SOLELY BETWEEN YOU AND A BROKER FOR WHICH

BEAR STEARNS ACTS AS CLEARING AGENT, SUCH ELECTION SHALL BE MADE BY REGISTERED MAIL TO SUCH BROKER AT ITS PRINCIPAL PLACE OF BUSINESS. THE AWARD OF THE ARBITRATORS, OR OF A MAJORITY OF THEM, SHALL BE FINAL AND JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION.

23. SEVERABILITY. If and to the extent any term or provision herein is or should become invalid or unenforceable under any present or future law, rule or regulation of any sovereign government or regulatory body having jurisdiction over the subject matter of this Agreement, then (i) the remaining terms and provisions hereof shall be unimpaired and remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

24. EXTRAORDINARY EVENTS. Bear Stearns shall not be liable for losses caused directly or indirectly by government restrictions, exchange or market rulings, suspension of trading, war, strikes or other conditions beyond its control.

25. HEADINGS. The headings of the provisions hereof are for ease of reference only and shall not affect the interpretation or application of this Agreement or in any way modify or qualify any of the rights provided for hereunder.

26. TELEPHONE CONVERSATIONS. For the protection of both you and Bear Stearns, and as a tool to correct misunderstandings, you hereby authorize Bear Stearns, at Bear Stearns' discretion and without prior notice to you, to monitor and/or record any of all telephone conversations or electronic communications between you and Bear Stearns or any of Bear Stearns' employees or agents. You acknowledge that Bear Stearns may determine not to make or keep any of such recordings and that such determination shall not in any way affect any party's rights.

27. CUMULATIVE RIGHTS; ENTIRE AGREEMENT. The rights of each Bear Stearns entity set forth in this Agreement and in each other agreement you may have with any Bear Stearns entity, whether heretofore or hereafter entered into, are cumulative and in addition to any other rights and remedies that any Bear Stearns entity may have and shall supersede any limitation on or any requirement for the exercise of such rights and remedies that is inconsistent with the terms of this or any other such agreement (including, without limitation, any requirement that time or notice or demand be given prior to the exercise of remedies). The provisions or notice or demand of any other terms of this Agreement shall supersede any inconsistent provisions of any other agreement heretofore or hereafter entered into by you and any Bear Stearns entity to the extent that the subject matter thereof is dealt with in this Agreement and the provisions of such other agreement would deny any Bear Stearns entity any benefit or protection afforded to it under this Agreement. You hereby appoint Bear Stearns as your agent and attorney-in-fact to take any action (including, but not limited to, the filing of financing statements) necessary or desirable to perfect and protect the security interest granted in paragraph 3 hereof or to otherwise accomplish the purposes of this Agreement. Except as set forth above, this Agreement represents the entire agreement and understanding between you and Bear Stearns concerning the subject matter hereof.

28. CAPACITY TO CONTRACT; AFFILIATIONS. You represent that you are of legal age and that, unless you have notified Bear Stearns to the contrary, neither you nor any member of your immediate family is: (i) an employee or member of any exchange, (ii) an employee or member of the National Association of Securities Dealers, Inc., (iii) an individual or an employee of any corporation or firm engaged in the business of dealing, as broker or principal, in securities, options or futures or (iv) an employee of any bank, trust company or insurance company. If the undersigned is signing on behalf of others, the undersigned hereby represents that the person(s) or entity(ies) on whose behalf it is signing is/are authorized to enter into this Agreement and that the undersigned is duly authorized to sign this Agreement and make the representations herein in the name and on behalf of such other person(s) or entity(ies).

If this is a Joint Account, both parties must sign. Persons signing on behalf of others should indicate the title or capacities in which they are signing.

BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE THAT:

1. THE SECURITIES IN YOUR MARGIN ACCOUNT(S) AND ANY SECURITIES FOR WHICH YOU HAVE NOT FULLY PAID, TOGETHER WITH ALL ATTENDANT OWNERSHIP RIGHTS, MAY BE LOANED TO BEAR STEARNS OR TO OTHERS; AND
2. YOU HAVE RECEIVED A COPY OF THIS AGREEMENT.

THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE AT PARAGRAPH 22.

THIS AGREEMENT IS DATED AS OF May 3 2000 920 07626 16

(Account Number)

Duckworth Securities Corporation (Typed or Printed Name)

(Signature)

David Bromberg (Typed or Printed Name)

X (Signature)

ACCEPTED AND AGREED TO:

THE BEAR STEARNS COMPANIES INC. AND ITS SUBSIDIARIES

Professional Account Agreement

BEAR STEARNS

The Bear Stearns Companies Inc.
245 Park Avenue
New York, NY 10017
(212) 878-8000

Title: <u>BUCKINGHAM SECURITIES</u>	Account or Family No.: <u>920 07626 16</u>
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PLEASE READ CAREFULLY, SIGN AND RETURN

This agreement ("Agreement") sets forth the terms and conditions on which subsidiaries of The Bear Stearns Companies Inc. will open and maintain account(s) in your name and otherwise transact business with you. If these accounts are cash accounts and you have fully paid for all securities therein, the provisions of paragraphs 17 and 18 shall not bind you unless you enter into a margin transaction.

1. PARTIES. You hereby agree that the parties to this Agreement shall consist of you and each and every subsidiary of The Bear Stearns Companies Inc., whether now existing or hereafter created (each such subsidiary being referred to hereinafter as a "Bear Stearns entity" and all such subsidiaries being collectively referred to hereinafter as "Bear Stearns").

2. APPLICABLE LAWS, RULES AND REGULATIONS. All transactions shall be subject to the applicable laws, rules and regulations of all federal, state and self-regulatory authorities, including, but not limited to, the rules and regulations of the Board of Governors of the Federal Reserve System and the constitution, rules and customs of the exchange or market (and clearing house) where such transactions are executed.

3. SECURITY INTEREST AND LIEN; REGISTRATION OF SECURITIES. As security for the payment and performance of all of your obligations and liabilities from time to time outstanding to any Bear Stearns entity, whether under this Agreement or otherwise, each Bear Stearns entity shall have a continuing first lien and security interest in (i) all property in which you now have or hereafter acquire an interest which is now or hereafter held by or through any Bear Stearns entity, including, but not limited to, any and all accounts, instruments, documents, contract rights, commodities and commodity futures contracts, commercial paper and other securities, monies, deposits, accounts and general intangibles, and (ii) any and all rights, claims or causes of action you may now or hereafter have against any Bear Stearns entity. You hereby acknowledge and agree that all such property of yours held by or through any Bear Stearns entity is held as collateral by such Bear Stearns entity as agent and bailee for itself and all other Bear Stearns entities and, as such, each Bear Stearns entity shall comply with any orders or instructions originated by any other Bear Stearns entity with respect to such security without your further consent. You represent that all of the above-described collateral shall at all times be free and clear of all liens, claims and encumbrances of any nature other than the security interest created hereby. In addition, in order to satisfy any of your outstanding liabilities or obligations to any Bear Stearns entity, Bear Stearns may, to the fullest extent permitted by law, at any time in its discretion and without prior notice to you, use, apply or transfer any and all securities or other property (including, without limitation, fully-paid securities and cash). You hereby agree that, except as otherwise specifically agreed in writing, Bear Stearns may register and hold the securities and other property in your accounts in its name or the name of its designee.

4. DEPOSITS ON TRANSACTIONS. Whenever Bear Stearns, in its sole discretion, considers it necessary in order to assure the due performance of your open contractual commitments, it may require you, and you hereby agree, to deposit cash or collateral immediately in your account(s) prior to any applicable settlement date.

5. BREACH, BANKRUPTCY OR DEFAULT. Any breach of or default under this Agreement or any other agreement you may have with any Bear Stearns entity, whether heretofore or hereafter entered into, or the filing of a petition or other commencement of a proceeding in bankruptcy or insolvency, or the appointment of a receiver, by or against you or any guarantor, co-guarantor or other party liable on or providing security for your obligations to any Bear Stearns entity, or the levy of an attachment against you or any such other party's account(s) with any Bear Stearns entity, or your death, mental incompetence or dissolution, or any other grounds for insecurity, as determined by Bear Stearns in its sole discretion (including, without limitation, any indication of your refusal or inability to satisfy promptly any margin call or other deposit requirement

hereunder), shall constitute, at Bear Stearns' election, a default by you under any or all agreements you may then have with any Bear Stearns entity, whether heretofore or hereafter entered into. In the event of any such default, each Bear Stearns entity shall have all of the rights of a secured party upon default under the New York Uniform Commercial Code and other applicable laws, rules and regulations, including, without limitation, the right, without prior notice to you, to sell any and all property in which you have an interest held by or through any Bear Stearns entity, to buy any or all property which may have been sold short, to exercise any and all options and other rights, to accelerate, cancel, terminate, liquidate, close out and net the settlement payments and/or delivery obligations under any or all outstanding transactions and/or to purchase or sell any other securities or property to offset market risk, and to offset any indebtedness you may have (either individually or jointly with others), after which you shall be liable to Bear Stearns for any remaining deficiency, loss, costs or expenses incurred or sustained by Bear Stearns in connection therewith. Such purchases and/or sales may be effected publicly or privately without notice or advertisement in such manner as Bear Stearns may in its sole discretion determine. At any such sale or purchase, any Bear Stearns entity may purchase or sell the property to or from itself or third parties free of any right of redemption. In addition, each Bear Stearns entity shall have the right at any time and from time to time, to set off and otherwise apply any and all amounts owing by such Bear Stearns entity to you or for your account or credit against any and all amounts now or hereafter owing by you to any Bear Stearns entity (including, without limitation, any indebtedness in your accounts), whether matured or unmatured, fixed, contingent or otherwise and irrespective of whether any Bear Stearns entity shall have made any demand therefor. Bear Stearns agrees to notify you of any such set-off and application; provided, however, that the failure to give such notice shall not affect the validity of any such set-off and application.

6. EXECUTION FEES AND SERVICE CHARGES. You understand that your account(s) will be charged brokerage commissions or mark-ups/mark-downs in connection with the execution of transactions ("Execution Fees") and may be charged certain other fees for custody and other services furnished to you ("Service Fees"). All such fees shall be determined by Bear Stearns unless your account(s) is (are) introduced to Bear Stearns by another broker, in which case all introduced to Bear Stearns by another broker, in which case all Execution Fees and certain Service Fees shall be determined by such other broker. You further understand that Execution Fees and Service Fees may be charged from time to time upon thirty days' prior written notice to you, and, in each case, you agree to be bound thereby.

7. TRANSACTION REPORTS AND ACCOUNT STATEMENTS. Reports of the execution of orders and other activity in your account(s) which have been provided or made available to you by 10:00 a.m. shall be conclusive if not objected to by 12:00 noon (eastern time) on that day or, if such reports are provided or made available to you after 10:00 a.m., then no later than two hours after such reports have been provided or made available to you; provided, however, that if you are a registered options trader, then by the market opening on the day following trade date. Information contained in monthly statements of account, to the extent not included in an activity report, shall be conclusive if not objected to within fifteen days after such statements have been provided or made available to you.

8. DEBIT BALANCES; TRUTH-IN-LENDING. You hereby acknowledge receipt of Bear Stearns Truth-in-Lending disclosure statement. You understand that interest will be charged on any debit balances in your account(s) in accordance with the methods described in such statement, or in any amendment or revision thereto which may be provided to you. Any debit balance which is not paid at the close of an interest period will be added to the opening balance for the next interest period.

9. CLEARANCE ACCOUNTS. If any of your accounts is carried by any Bear Stearns entity as clearing agent for your broker, unless such Bear Stearns entity receives from you prior written notice to the contrary, it may accept from such introducing broker, without any inquiry or investigation: (a) orders for the purchase or sale of securities and other property in your account(s), on margin or otherwise, and (b) any other instructions concerning your account(s) or the property therein. You understand and agree that Bear Stearns shall have no responsibility or liability to you for any acts or omissions of your broker, its officers, employees or agents. You agree that your broker and its employees are third-party beneficiaries of this Agreement, and that the terms and conditions hereof, including the arbitration provisions, shall be applicable to all matters between or among any of you, your broker and its employees and Bear Stearns and its employees.

10. COLLECTION AND OTHER ACCOUNT-RELATED COSTS. You hereby agree to pay, on demand, all reasonable direct and indirect costs, liabilities and damages incurred by Bear Stearns (including, without limitation, costs of collection, attorneys' fees, court costs and other expenses) in connection with: (i) enforcing its rights hereunder, (ii) any investigation, litigation or proceeding involving your account or any property therein (including, without limitation, claims to such property by third parties), (iii) your use of or access to any Bear Stearns or third-party system, or (iv) Bear Stearns acting in reliance upon your instructions, including, but not limited to instructions transmitted via facsimile from the undersigned or its authorized agents or, if your account is introduced to Bear Stearns by another broker, the instructions of such other broker. In each case and whether or not demand has been made therefor, you hereby authorize Bear Stearns to charge your account(s) for any and all such costs, including, without limitation, costs incurred in connection with the liquidation of any property held in your account(s).

11. IMPARTIAL LOTTERY ALLOCATION. You agree that, in the event Bear Stearns holds on your behalf securities in its name, in the name of its designee or in bearer form which are called in part, you will participate in the impartial lottery allocation system for such called securities in accordance with the rules of the New York Stock Exchange, Inc. or any other appropriate self-regulatory organization. When any such call is favorable, no allocation will be made to any account in which, to the knowledge of Bear Stearns, any officer, director or employee of Bear Stearns has any financial interest until all other customers have been satisfied on an impartial lottery basis.

12. WAIVER, ASSIGNMENT AND NOTICES. Neither Bear Stearns nor you intend to insist at any time upon strict compliance with this Agreement or with any of the terms hereof nor any continued course of such conduct on its part shall constitute or be considered a waiver by Bear Stearns of any of its rights or obligations hereunder. Any assignment of your rights and obligations hereunder or your interest in any property held by or through Bear Stearns without obtaining the prior written consent of an authorized representative of Bear Stearns shall be null and void. Each Bear Stearns entity reserves the right to assign any of its rights or obligations hereunder to any other Bear Stearns entity without prior notice to you. Notices and other communications (including, without limitation, margin calls) delivered, faxed, sent by express delivery service or mailed to the address provided by you shall, until Bear Stearns has received notice in writing of a different address be deemed to have been personally delivered to you. Margin calls may also be communicated orally, without subsequent written confirmation.

13. FREE CREDIT BALANCES. You hereby authorize Bear Stearns to use any free credit balance awaiting investment or reinvestment in your account(s) in accordance with all applicable rules and regulations and to pay interest thereon at such rate or rates and under such conditions as are established from time to time by Bear Stearns for such account(s) and for the amounts of cash so used.

14. RESTRICTIONS ON ACCOUNT. You understand that Bear Stearns, in its sole discretion, may restrict or prohibit trading of securities or other property in your account(s) and may terminate your account(s), and you shall nevertheless remain liable for all of your obligations to Bear Stearns under this Agreement or otherwise.

15. CREDIT INFORMATION AND INVESTIGATION. You authorize Bear Stearns and, if applicable, your introducing broker, in its or their discretion, at any time and from time to time, to make or obtain reports concerning your credit standing and business conduct. You may make a written request for a description of the nature and scope of the reports made or obtained by Bear Stearns and the same will be provided to you within a reasonable period of time.

16. SHORT AND LONG SALES. In placing any sell order for a short account, you will designate the order as such and hereby authorize Bear Stearns to mark the order as being

'short.' In placing any sell order for a long account, you will designate the order as such and hereby authorize Bear Stearns to mark the order as being 'long.' The designation of a sell order as being for a long account shall constitute a representation that you own the security with respect to which the order has been placed, that such security is not restricted under Rules 144 and 145 under The Securities Act of 1933 or any other applicable law, rule or regulation and, as such, may be sold without restriction in the open market and that, if Bear Stearns does not have the security in its possession at the time you place the order, you shall deliver the security by settlement date in good deliverable form or pay to Bear Stearns any losses and expenses it may incur or sustain as a result of your failure to make delivery on a timely basis.

17. MARGIN AND OTHER COLLATERAL REQUIREMENTS. You hereby agree to deposit and maintain such margin in your margin accounts, if any, as Bear Stearns may in its sole discretion require, and you agree to pay forthwith on demand any debit balance owing with respect to any of your margin accounts. In addition, you further agree to deposit promptly and maintain such other collateral with Bear Stearns as is required by any other agreement or open transaction you may have with any Bear Stearns entity. Upon your failure to make any such payment or deposit or if at any time Bear Stearns, in its sole discretion, deems it necessary for its protection, whether with or without prior demand, call or notice, Bear Stearns shall be entitled to exercise all rights and remedies provided in paragraphs 3.5 and 29 hereof. No demands, calls, tenders or notices that Bear Stearns may have made or given in the past in any one or more instances shall invalidate your waiver of the requirement to make or give the same in the future. You further acknowledge and agree that any positions in your margin account(s) shall be deemed "securities contracts" within the meaning of Sections 555 and 741(7) of the U.S. Bankruptcy Code and any successors thereto. Unless you advise Bear Stearns in writing to the contrary, you represent that you are not an affiliate (as defined in Rule 144(a)(1) under The Securities Act of 1933) of the issuer of any security held in any of your accounts.

18. CONSENT TO LOAN OR PLEDGE OF SECURITIES IN MARGIN ACCOUNTS. Within the limits of applicable law and regulations, you hereby authorize Bear Stearns to lend either to itself or to others any securities held by Bear Stearns in any of your margin accounts, to convey therewith all attendant rights of ownership (including voting rights) and to use all such property as collateral for its general loans. Any such property, together with all attendant rights of ownership, may be pledged, repledged, hypothecated or rehypothecated either separately or in common with other property for any amounts due to Bear Stearns thereon or for a greater sum, and Bear Stearns shall have no obligation to retain a like amount of similar property in its possession and control. You hereby acknowledge that, as a result of such activities, Bear Stearns may receive and retain certain benefits to which you will not be entitled. In certain circumstances, such loans may limit, in whole or in part, your ability to exercise voting and other attendant rights of ownership with respect to the loaned or pledged securities.

19. GIVE-UPS; FREE DELIVERIES. In the event: (i) your orders are not executed by Bear Stearns and you give-up Bear Stearns' name for clearance and/or settlement, or (ii) you require Bear Stearns to make a free delivery of cash or securities in connection with the settlement of such orders, the following terms and conditions shall apply:

(a) You agree that you will only execute bona-fide orders, and if required for settlement, you will request a free delivery of cash or securities only when you have reasonable grounds to believe that the contra-party and the broker who executed your order have the financial capability to complete any contemplated transaction;

(b) Bear Stearns reserves the right at any time to place a limit (of either dollars or number of securities) on the size of transactions that Bear Stearns will accept for clearance. If after you have received notice of such limitation you execute an order in excess of the limit established by Bear Stearns, Bear Stearns shall have the right, exercisable in its sole discretion, to decline to accept the transaction for clearance and settlement. In the event any claim is asserted against Bear Stearns by the broker who executed your order because of such action by Bear Stearns, you agree to indemnify and hold Bear Stearns harmless from any loss, liability, damage, claim, cost or expense (including, but not limited to fees and expenses of legal counsel) arising directly or indirectly therefrom; and

(c) Bear Stearns will on a best efforts basis attempt to clear such transactions within a reasonable period of time and utilize the same procedures it utilizes when clearing transactions executed by it. Notwithstanding Paragraph #7 of any other provision herein to the contrary, Bear Stearns shall have the right but not the obligation to take action at any time

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in its sole discretion to correct errors in such transactions. You hereby agree to release, indemnify and hold harmless Bear Stearns from all loss, liability, damage, claim, cost or expense (including, but not limited to, loss and expenses of legal counsel) arising out of or incurred in connection with your failure or the failure of the broker who executes your order to settle the transaction, to return any live delivery upon demand, or to object to any information provided or made available to you under paragraph #7 hereof, and Bear Stearns shall have no liability whatsoever to you in any such circumstance.

20. PRIME BROKERAGE SERVICES.

(a) Prior to the commencement of any prime brokerage activity, Bear Stearns will enter into an agreement with your executing broker(s) that will set forth the terms and conditions under which your executing broker(s) will be authorized to accept orders from you for settlement by Bear Stearns (the "Prime Brokerage Agreement"). Bear Stearns will accept for clearance and settlement trades executed on your behalf by such executing broker(s) as you may designate from time to time. On the day following each such transaction, Bear Stearns will send you a notification of each trade placed with your executing broker for settlement by us based upon the information provided by you or your agent.

(b) Bear Stearns shall be responsible for settling trades executed on your behalf by your executing broker(s) and reported to Bear Stearns by you and your executing broker(s) provided that you have reported to Bear Stearns on trade date, by the time designated to you by Bear Stearns, all the details of such trades including, but not limited to, the contract amount, the security involved, the number of shares or the number of units and whether the transaction was a long or short sale or a purchase, and further provided that Bear Stearns has either affirmed or not "DK'd" (indicated it does not know) and has not subsequently disaffirmed such trades. In the event that Bear Stearns determines not to settle a trade, Bear Stearns shall not have settlement responsibility for such trade and shall, instead, send you a cancellation notification (if the notification sent to you under sub-paragraph (a) of this paragraph, you shall be solely responsible and liable to your executing broker(s) for settling such trade. In addition, Bear Stearns may be required to cease providing prime brokerage services to you in accordance with the Prime Brokerage Agreement.

(c) In the event of: (i) the filing of a petition or other proceeding in bankruptcy, insolvency or for the appointment of a receiver by or against your executing broker, (ii) the termination of your executing broker's registration and the cessation of business by it as a broker-dealer, or (iii) your executing broker's failure, inability or refusal, for any reason whatsoever or for no reason at all, to settle a trade, if Bear Stearns agrees to settle any trades executed on your behalf by such executing broker, regardless whether Bear Stearns either affirmed or did not DK and did not disaffirm such trades, you shall be solely responsible, and liable to Bear Stearns, for any losses arising out of or incurred in connection with Bear Stearns' agreement to settle such trades.

(d) You shall maintain in your account with Bear Stearns such minimum net equity in cash or securities as Bear Stearns, in its sole discretion may require, from time to time (the "Bear Stearns Net Equity Requirements"), which shall in no event be less than the minimum net equity required by the SEC Letter, as defined in sub-paragraph (g) of this paragraph (the "SEC Net Equity Requirements"). In the event your account falls below the SEC Net Equity Requirements, you hereby authorize Bear Stearns to notify promptly all executing brokers with whom it has a Prime Brokerage Agreement on your behalf of such event. Moreover, if you fail to restore your account to compliance with the SEC Net Equity Requirements within the time specified in the SEC Letter, Bear Stearns shall: (i) notify all such executing brokers that Bear Stearns is no longer acting as your prime broker and (ii) either not affirm or "DK" (indicate that it does not know) all prime brokerage transactions on your behalf with trade date after the business day on which such notification was sent. In the event either: (i) your account falls below the Bear Stearns Net Equity Requirements, (ii) Bear Stearns determines that there would not be enough cash in your account to settle such transactions or that a maintenance margin call may be required as a result of settling such transactions, or (iii) Bear Stearns determines that the continuation of prime brokerage services to you presents an unacceptable risk to Bear Stearns taking into consideration all the facts and circumstances, Bear Stearns may disaffirm all your prime brokerage transactions and/or cease to act as your prime broker.

(e) If you have instructed your executing broker(s) to send confirmations to you in care of Bear Stearns, as your prime broker, the confirmation sent by such executing broker is available to you promptly from Bear Stearns, at no additional charge.

(f) If your account is managed on a discretionary basis, you hereby acknowledge that your prime brokerage transactions may be aggregated with those of other accounts of your advisor, according to your advisor's instructions, for execution by your executing broker(s) in a single bulk trade and for settlement in bulk by Bear Stearns. You hereby authorize Bear Stearns to disclose your name, address and tax I.D. number to your executing broker(s). In the event any trade is disaffirmed, as soon as practicable thereafter, Bear Stearns shall supply your executing broker(s) with the allocation of the bulk trade, based upon information provided by your advisor.

(g) The prime brokerage services hereunder shall be provided in a manner not inconsistent with the no-action letter dated January 25, 1994 issued by the Division of Market Regulation of the Securities and Exchange Commission (the "SEC Letter"), and any supplements or amendments thereto.

21. LEGALLY BINDING. You hereby agree that this Agreement and all of the terms hereof shall be binding upon you and your estate, heirs, executors, administrators, personal representatives, successors and assigns. You further agree that all purchases and sales shall be for your account(s) in accordance with your oral or written instructions. You hereby waive any and all defenses that any such oral instruction was not in writing as may be required by any applicable law, rule or regulation.

22. AMENDMENT. You agree that Bear Stearns may modify the terms of this Agreement at any time upon prior written notice to you. By continuing to accept services from Bear Stearns thereafter, you will have indicated your acceptance of any such modification. If you do not accept such modification, you must notify Bear Stearns in writing; your account may then be terminated by Bear Stearns, after which you will remain liable to Bear Stearns for all outstanding liabilities and obligations. Otherwise, this Agreement may not be modified absent a written instrument signed by an authorized representative of Bear Stearns.

23. GOVERNING LAW. THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF NEW YORK AND SHALL BE CONSTRUED AND THE CONTRACTUAL AND ALL OTHER RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAW PRINCIPLES THEREOF.

24. ARBITRATION. YOU AGREE THAT CONTROVERSIES ARISING BETWEEN YOU AND YOUR INTRODUCING BROKER AND / OR BEAR STEARNS, AND ANY OF YOUR OR THEIR CONTROL PERSONS, PREDECESSORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS AND EMPLOYEES, SHALL BE DETERMINED BY ARBITRATION.

WITH RESPECT TO THE RESOLUTION OF ANY SUCH CONTROVERSY, YOU FURTHER ACKNOWLEDGE THAT:

- ARBITRATION IS FINAL AND BINDING ON THE PARTIES.
- EXCEPT AS OTHERWISE PROVIDED HEREIN, THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL.
- PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.
- THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.
- THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECERTIFIED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT

CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN. ANY ARBITRATION UNDER THIS AGREEMENT SHALL BE HELD AT THE FACILITIES AND BEFORE AN ARBITRATION PANEL APPOINTED BY THE NEW YORK STOCK EXCHANGE, INC., THE AMERICAN STOCK EXCHANGE, INC. OR THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. OR, IF THE TRANSACTION WHICH GIVES RISE TO SUCH CONTROVERSY IS EFFECTED IN ANOTHER UNITED STATES MARKET WHICH PROVIDES ARBITRATION FACILITIES BEFORE SUCH OTHER FACILITIES, YOU MAY ELECT ONE OF THE FOREGOING FORUMS FOR ARBITRATION, BUT IF YOU FAIL TO MAKE SUCH ELECTION BY REGISTERED MAIL OR TELEGRAM ADDRESSED TO BEAR STEARNS SECURITIES CORP., 245 PARK AVENUE, NEW YORK, NEW YORK 10167, ATTENTION: CHIEF LEGAL OFFICER (OR ANY OTHER ADDRESS OF WHICH YOU ARE ADVISED IN WRITING), BEFORE THE EXPIRATION OF TEN DAYS AFTER RECEIPT OF A WRITTEN REQUEST FROM BEAR STEARNS TO MAKE SUCH ELECTION, THEN BEAR STEARNS MAY MAKE SUCH ELECTION. FOR ANY ARBITRATION SOLELY BETWEEN YOU AND A BROKER FOR WHICH BEAR STEARNS ACTS AS CLEARING AGENT, SUCH ELECTION SHALL BE MADE BY REGISTERED MAIL TO SUCH BROKER AT ITS PRINCIPAL PLACE OF BUSINESS. THE AWARD OF THE ARBITRATORS, OR OF A MAJORITY OF THEM, SHALL BE FINAL AND JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION.

25. SEVERABILITY. If and to the extent any term or provision herein is or should become invalid or unenforceable under any present or future law, rule or regulation of any sovereign government or regulatory body having jurisdiction over the subject matter of this Agreement, then (i) the remaining terms and provisions hereof shall be unimpaired and remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

26. EXTRAORDINARY EVENTS. Bear Stearns shall not be liable for losses caused directly or indirectly by government restrictions, exchange or market rulings, suspension of trading, war, strikes or other conditions beyond its control.

27. HEADINGS. The headings of the provisions hereof are

for ease of reference only and shall not affect the interpretation or application of this Agreement or in any way modify or qualify any of the rights provided for hereunder.

28. TELEPHONE CONVERSATIONS. For the protection of both you and Bear Stearns, and as a tool to correct misunderstandings, you hereby authorize Bear Stearns, at Bear Stearns' discretion and without prior notice to you, to monitor and/or record any or all telephone conversations or electronic communications between you and Bear Stearns or any of Bear Stearns' employees or agents. You acknowledge that Bear Stearns may determine not to make or keep any of such recordings and that such determination shall not in any way affect any party's rights.

29. CUMULATIVE RIGHTS; ENTIRE AGREEMENT. The rights of each Bear Stearns entity set forth in this Agreement and in each other agreement you may have with any Bear Stearns entity, whether heretofore or hereafter entered into, are cumulative and in addition to any other rights and remedies that any Bear Stearns entity may have and shall supersede any limitation on or any requirement for the exercise of such rights and remedies that is inconsistent with the terms of this or any other such agreement (including without limitation, any requirement that time elapse or notice or demand be given prior to the exercise of remedies). The provisions of this Agreement shall supersede any inconsistent provisions of any other agreement heretofore or hereafter entered into by you and any Bear Stearns entity to the extent that the subject matter thereof is dealt with in this Agreement and the provisions of such other agreement would deny any Bear Stearns entity any benefit or protection afforded to it under this Agreement. You hereby appoint Bear Stearns as your agent and attorney-in-fact to take any action (including, but not limited to, the filing of financing statements) necessary or desirable to perfect and protect the security interest granted in paragraph 3 heretofore or to otherwise accomplish the purposes of this Agreement. Except as set forth above, this Agreement represents the entire agreement and understanding between you and Bear Stearns concerning the subject matter hereof.

30. CAPACITY TO CONTRACT; AFFILIATIONS. You represent that you are of legal age and that, unless you have notified Bear Stearns to the contrary, neither you nor any member of your immediate family is: (i) an employee or member of any exchange, (ii) an employee or member of the National Association of Securities Dealers, Inc., (iii) an individual or an employee of any corporation or firm engaged in the business of dealing as broker or principal, in securities, options or futures or (iv) an employee of any bank, trust company or insurance company. If the undersigned is signing on behalf of others, the undersigned hereby represents that the person(s) or entity(ies) on whose behalf it is signing is/are authorized to enter into this Agreement and that the undersigned is duly authorized to sign this Agreement and make the representations contained herein in the name and on behalf of such other person(s) or entity(ies). You hereby authorize Bear Stearns to accept (and copies of this or any other document or instruction as if it were the original and further to accept signatures on said taxes as if they were original.

ALL ACCOUNTS PLEASE COMPLETE THIS INFORMATION AND SIGN ON THE FOLLOWING PAGE WHERE APPROPRIATE:

THIS AGREEMENT IS DATED AS OF June 7, 2000

Buckingham Securities Corporation
Name of Account Owner

130 King St. W. Suite 1310 CANADA
Street Address Country

Toronto Ontario M5X-1E2
City, State Zip Code+4

BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE THAT:

1. THE SECURITIES IN YOUR MARGIN ACCOUNT(S) AND ANY SECURITIES FOR WHICH YOU HAVE NOT FULLY PAID, TOGETHER WITH ALL ATTENDANT OWNERSHIP RIGHTS, MAY BE LOANED TO BEAR STEARNS OR TO OTHERS; AND

2. YOU HAVE RECEIVED A COPY OF THIS AGREEMENT.

THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE AT PARAGRAPH 24.

IF ACCOUNT IS OWNED BY A PARTNERSHIP:

SIGNATURE OF PARTNERSHIP:

Signed or Printed Name of Partnership; Must Be Same as "Account Owner" on Previous Page

BY:

Authorized Signatory of General Partner

PRINT NAME:

Printed Name and Title of Signatory or Name of GP if General Partner is itself a Partnership

BY:

Authorized Signatory and Title of GP if General Partner is itself a Partnership; otherwise blank

IF ACCOUNT IS OWNED BY A CORPORATION OR LLC:

ACCOUNT NAME:

Buckingham Securities Corporation

Signed or Printed Name of Company; Must Be Same as "Account Owner" on Previous Page

SIGNATURE:

[Handwritten Signature]

Authorized Signatory

PRINT NAME:

David Bromberg President

Printed Name and Title of Signatory or Name of GP if signer is itself a Partnership

BY:

Authorized Signatory and Title of GP if above signer is itself a Partnership; otherwise blank

ACCEPTED AND AGREED TO:

FOR THE BEAR STEARNS COMPANIES INC. AND ITS SUBSIDIARIES

PROF AGENT AGMT W/P

477-3-AGP, 5a

EXHIBIT "C"
TO THE NINETEENTH REPORT

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

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Plaintiffs

- and -

BUCKINGHAM SECURITIES CORPORATION

Defendants

**SIXTEENTH 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

- (a) This report of BDO Dunwoody Limited in its capacity as Court-Appointed Receiver and Manager (the "Receiver") of the estate of Buckingham Securities Corporation ("Buckingham") is filed in support of a motion by the Receiver for an Order authorizing and directing the Receiver to enter into a proposed agreement with Bear Stearns Corporation Inc. ("Bear Stearns") for the purpose of liquidating the securities held in the account of Buckingham at Bear Stearns.

B. BACKGROUND

2. Buckingham was a securities dealer registered under Ontario securities law from March 17, 1997 to July 6, 2001, and provided investment services to its clients. Prior to its receivership in July, 2001, Buckingham had approximately 1,000 active client accounts.
3. By Order of the Honourable Madame Justice Swinton dated July 26, 2001 (the "Appointment Order"), the Receiver was appointed Receiver and Manager of all of the property, assets and undertaking of Buckingham, including assets held in the name of Buckingham, as principal or agent, beneficially or otherwise and all proceeds thereof (the "Property"). A true copy of the Appointment Order is attached hereto as **Exhibit "A"**.
4. Prior to the appointment of the Receiver, Buckingham's registration had been suspended and its activities had been frozen pursuant to an Order of the Ontario Securities Commission ("OSC") dated July 6, 2001 (the "Cease Trade Order").

C. DISPUTE RELATING TO BEAR STEARNS' SECURITY

5. As previously reported in various of the Receiver's previous reports to the Court, Bear Stearns has claimed a lien and security interest over all of the securities held in Buckingham's account at Bear Stearns, to secure Buckingham's indebtedness to Bear Stearns. The Receiver has disputed Bear Stearns' security interest in "fully paid" and "excess margin" securities held by Buckingham on behalf of its clients, on the basis that such securities were required to be segregated and held in trust by Buckingham for its clients under Ontario securities law, and that Bear Stearns ought to have known of Buckingham's failure to segregate. Further, the written agreement in favour of Bear Stearns grants a security interest and lien only in property or securities in which Buckingham has an interest. Therefore, the Receiver has taken the position that Buckingham had no beneficial interest in its clients' "fully paid" and "excess-margin" securities which Buckingham was required by law to hold in trust for its customers.

6. The Receiver obtained reports using an accounting system provided by ISM, which identify the “fully paid” and “excess margin” securities which ought to have been segregated by Buckingham as at July 6, 2001, the date of the Cease Trade Order (the “Disputed Securities”). Apart from the Disputed Shares, the Receiver does not dispute the validity of Bear Stearns’ security interest in the balance of the securities held in Buckingham’s account at Bear Stearns (the “Undisputed Securities”).
7. A similar, although distinguishable, dispute by the Receiver with respect to the validity of the security interest in “fully paid” and “excess margin” securities claimed by W.D Latimer & Co. Ltd. (“Latimer”) was the subject of a trial before the Honourable Mr. Justice Ground. Following the trial of the issues, the Honourable Mr. Justice Ground held that Buckingham breached its trust obligations to its clients by pledging their fully paid and excess-margin securities to secure Buckingham’s indebtedness . However, Justice Ground also held that the security interest of Latimer in the Disputed Securities was valid and enforceable, because Latimer did not have actual or constructive knowledge of the breach of trust, and awarded costs of the trial payable by the Receiver to Latimer on a partial indemnity scale. The Receiver appealed from that Judgment, and ultimately, with the approval of this Court, entered into a liquidation agreement with Latimer, which facilitated a settlement with Latimer, and the Receiver therefore abandoned its appeal.
8. Bear Stearns has informed the Receiver that as at April 30, 2004, the total amount outstanding on account of the indebtedness of Buckingham to Bear Stearns was U.S. \$260,302. As at April 30, 2004, the market value of the securities held in Buckingham’s account at Bear Stearns and the percentage of the portfolio comprised of Disputed Securities, liquid and illiquid securities, was as follows:

**BUCKINGHAM SECURITIES CORPORATION
 BEAR STEARNS PORTFOLIO MIX
 As at April 30, 2004
 (U.S. Dollars)**

Total Holdings		
Undisputed Securities	Disputed Securities	Total
\$133,016	\$436,953	\$569,969
23%	77%	100%

Undisputed Securities		
Liquid	Illiquid	Sub Total
\$115,564	\$17,452	\$133,016
87%	13%	100%
20%	3%	23%

Disputed Securities		
Liquid	Illiquid	Sub Total
\$276,498	\$160,455	\$436,953
63%	37%	100%
49%	28%	77%

9. Subject to the approval of this Honourable Court, the Receiver proposes to enter into an Agreement with Bear Stearns (the "Liquidation Agreement") with respect to the liquidation of the securities held in Buckingham's account at Bear Stearns, in the hope that the liquidation of the securities into cash will facilitate the Receiver's efforts to resolve the outstanding dispute concerning the validity of Bear Stearns' security interest and avoid the additional costs and delay associated with litigation in respect thereof.

10. In addition, the Receiver has been advised that Bear Stearns, as a securities broker in the United States with experience and expertise in dealing with securities of the kind held in Buckingham's account at Bear Stearns, is in the best position to maximize realization upon that portfolio.
11. Pursuant to the Liquidation Agreement, the securities to be sold by Bear Stearns will be divided into three categories, and the proceeds of realization upon the securities in each category are to be applied as follows:
 - (a) The Undisputed Securities consist of those shares which the Receiver acknowledges to be subject to the security interest claimed by Bear Stearns. The proceeds realized upon the sale of these securities are to be applied to reduce the indebtedness owing by Buckingham to Bear Stearns.
 - (b) The Disputed Liquid Securities comprise those shares having a market value of over U.S. \$1.50, which the Receiver disputes are subject to the security interest claimed by Bear Stearns. The proceeds, net of a sales commission of 1.5% of the proceeds to be paid to Bear Stearns, are to be paid to the Receiver, to be held in trust by the Receiver pending a determination or settlement of the dispute regarding the validity of Bear Stearns' security.
 - (c) The Disputed Illiquid Securities consist of those shares having a market price of under U.S. \$1.50, which the Receiver disputes are subject to the security interest claimed by Bear Stearns. Forty percent (40%) of the proceeds realized on the sale of the securities are to be paid to Bear Stearns in lieu of a commission, and applied to reduce the indebtedness owing to Bear Stearns by Buckingham. The balance of the proceeds, i.e. sixty percent (60%) are to be paid to the Receiver to be held in trust by the Receiver pending a determination or settlement of the dispute regarding the validity of Bear Stearns' security.
12. The Receiver is of the view that the proposed agreement with Bear Stearns as outlined above, is in the best interest of the estate as it will allow the portfolio to be liquidated at

this time, the non-disputed proceeds to be applied to reduce the indebtedness of Buckingham to Bear Stearns, and thereby reduce interest costs accruing on the outstanding balance. In addition, the Receiver believes that Bear Stearns is the securities broker in the best position to maximize realizations on the securities in this particular portfolio and that the proposed commission arrangement is reasonable for all parties. The Receiver therefore seeks approval of this Honourable Court to proceed with the realization of the securities on the terms outlined above.

ALL OF WHICH is respectfully submitted this ^{9th} day of July, 2004.

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

EXHIBIT "D"
TO THE NINETEENTH REPORT

COURT FILE NO.: 01-CL-4192

DATE: 20021017

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Ontario Securities Commission -
Applicant

- and -

Buckingham Securities Corporation -
Respondent

)
)
) Kevin McElcheran
) Ruth Promislow
) For BDO Dunwoody Limited,
) Receiver and Manager of Buckingham
) Securities Corporation
)
)
) Heath Whiteley
) For W.D. Latimer Co. Limited
)
) HEARD: June 3 to 9, 2002

GROUND J.

REASONS

[1] This is a trial of issues, within the above Application, directed by Colin Campbell, J. with respect to a priority dispute as between former customers of Buckingham Securities Corporation ("Buckingham") and W.D. Latimer Co. Limited ("Latimer"). Latimer claims a security interest in the securities of customers of Buckingham pledged by Buckingham to Latimer pursuant to a Customer Account Agreement entered into between Buckingham and Latimer dated May 7, 1997, (the "Latimer Agreement") when Buckingham initially opened an account with Latimer. The Latimer Agreement provided for both cash and margin accounts although Buckingham initially opened only a cash account with Latimer.

The Latimer Agreement provides in part as follows:

"That all securities and credit balances held by Latimer for the Customer's account shall be subject to a general lien for any and all indebtedness to Latimer howsoever arising and in whatever account appearing including any liability arising by reason of any guarantee by the Customer of the account of any other person, that Latimer is authorized hereby to sell, purchase, pledge, or re-pledge any or all such securities without notice or advertisement to satisfy this lien, that Latimer may at any time without notice whenever Latimer carries more than one account for the customer, enter credit or debit balances, whether in respect of securities or money, to any of such accounts and make such

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adjustments between such accounts as Latimer may in its sole discretion deem fit, that any reference to the Customer's account in this clause shall include any account in which the Customer has an interest whether jointly or otherwise".

Background

[2] From its inception in May, 1997, to July, 2000, Buckingham was registered as a securities dealer with the Ontario Securities Commission (the "OSC") under the *Ontario Securities Act* R.S.O. 1990, c. S-5 (the "OSA"). Buckingham provided investment services to its customers, which numbered approximately 1,000 on an active basis. The OSC renewed Buckingham's registrant status each year.

[3] Buckingham, not being a member of the Investment Dealers Association ("IDA"), was required to trade through member firms of the Investment Dealers Association (the "IDA"). From May, 1997, to July, 2000, Buckingham conducted the majority of its trading using a margin account (the "Canaccord Account") at Canaccord Capital Corporation ("Canaccord"). On July 28, 2000, Buckingham transferred the securities it held at Canaccord to a margin account at Latimer (the "Latimer Account") established pursuant to the Latimer Agreement. No further Agreement was entered into between Buckingham and Latimer when the margin account was opened. Latimer is registered as a securities dealer in Ontario, Quebec, Alberta and British Columbia; a member of the Toronto Stock Exchange, the Montreal Exchange and the Canadian Venture Exchange; and a member of the IDA.

[4] In mid June, 2001, the OSC attended at the offices of Buckingham and inspected its records. There was no evidence as to what prompted this attendance by the OSC. On July 6, 2001, (the "Cease Trade Date"), the OSC issued a Temporary Cease Trade Order prohibiting the trading of securities in Buckingham's account with Latimer.

[5] BDO Dunwoody Limited was appointed Receiver and Manager (the "Receiver") of the assets and undertaking of Buckingham by order dated July 26, 2001.

[6] As at August 16, 2001, Buckingham owed Latimer \$1,902,641.76 in respect of the Latimer Account, with interest accruing at prime plus 4%.

[7] Each of the forms of the Client Account Agreement entered into between Buckingham and its customers provides as follows:

"As continuing collateral security for the payment of any Indebtedness which is now or which may in the future be owing by the Client to Buckingham Securities Corp., the Client hereby hypothecates and pledges to Buckingham Securities Corp. all his Securities and Cash, including any free credit balances, which may now or hereafter be in any of his accounts with Buckingham Securities Corp. (collectively, the "Collateral"), whether held in the Account or in any other accounting which the Client has an interest and whether or not any amount owing relates to the Collateral hypothecated or pledged. So long as any indebtedness remains unpaid, the Client authorizes Buckingham Securities Corp., without notice, to use at any time and from time to time the Collateral in the conduct of Buckingham Securities business, including the right to, (a)

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combine any of the Collateral with the property of Buckingham Securities Corp. or other clients or both; (b) hypothecate or pledge any of the Collateral which are held in Buckingham Securities Corp. possession as security for its own indebtedness; (c) loan any of the collateral to Buckingham Securities Corp. for its own purposes; or (d) use any of the Collateral for making delivery against a sale, whether a short sale or otherwise and whether such sale is for the Account or for the account of any other client of Buckingham Securities Corp.”

or provides:

“You shall have the right, from time to time and without notice to me, to lend any securities held by you for or on my account with you either to yourselves as brokers or to others and to raise money thereon and carry them in your general loans and pledge and re-pledge them either separately or with your own securities or those of others or otherwise in such a manner and for such an amount and for such purposes as you may deem advisable and to deliver them on sales for others, without retaining in your possession or control securities of like, kind and amount”.

[8] The trades processed by Buckingham through Latimer involved both cash accounts which held fully paid securities for Buckingham's customers and margin accounts which held marginable securities for Buckingham's customers. Securities held in a cash account are fully paid and must be segregated. With a margin account, if there is no borrowing by the customer, the securities in the account are fully paid and must be segregated. If there is borrowing by the customer, the broker must determine the net loan value of the securities and may have to segregate securities if the loan value exceeds the amount of borrowing. Securities that are not marginable because the trading prices are below a minimum amount have to be fully segregated. A software system called the ISM System used by most brokers and investment dealers determines the marginability of the securities held in the account of any particular customer. This determination is based upon the trading price of the various securities and the margin limit for various securities and will vary on a daily basis. The ISM System will also show which securities in a customer's account have to be segregated as fully paid or excess margin securities. Segregation is required by Section 117 of Regulation 1015 pursuant to the OSA and by the by-laws and regulations of the IDA.

[9] The accounts operated by Buckingham with Canaccord and, subsequently with Latimer, were omnibus accounts which included inventory securities of Buckingham, securities owned by employees of Buckingham and predominantly securities owned by customers of Buckingham. Because the Buckingham account with Latimer was an omnibus account, Latimer would treat all of the securities in the account as Buckingham's securities and would segregate the securities in that account using the ISM System in the same way as Latimer would segregate securities in the account of any other customer of Latimer. Latimer viewed it as Buckingham's responsibility to ensure that the securities in its customers' accounts were properly segregated.

[10] In addition to monthly statements for each customer, which would indicate all securities held for such customer, the market value of such securities and whether such securities were segregated, the ISM System produces Segregation Allocation Reports, Segregation Control

Reports and Security Position Reports. Segregation Allocation Reports show how many shares of each security ought to be segregated for each customer. Segregation Control Reports show whether a particular security is over-segregated or under-segregated and Security Position Reports show how many shares of each security are held by each customer and with which broker. It is my understanding that only the Segregation Allocation Reports would clearly indicate which securities of which customer ought to be segregated. Buckingham's monthly statements to its customers and its Segregation Allocation Reports showed that customers' securities were not being segregated as required by Regulation 1015 pursuant to the OSA.

[11] It is the position of the Receiver that Buckingham was in breach of its trust and fiduciary obligations to its customers when it pledged their fully paid and excess margin securities to Latimer pursuant to the terms of the Latimer Agreement and further that Latimer knew or ought to have known or should be found to have had constructive knowledge of the fact that Buckingham was pledging such securities in breach of its trust and fiduciary obligations to its customers. The Receiver therefore submits that the pledge of such securities to Latimer is void and that Latimer is required to return such securities to the Receiver on behalf of Buckingham's customers or to account to the Receiver for such securities.

[12] At the time of the transfer of Buckingham's account from Canaccord to Latimer in July, 2000, Mr. Sesto DeLuca ("DeLuca"), the President of Latimer, attended at Buckingham's office where he was advised as to Buckingham's "back office system" for processing orders from its customers and was advised that Buckingham used the ISM System for purposes of preparation of customers' monthly statements and for Segregation Allocation Reports, Segregation Control Reports and Security Position Reports. DeLuca's evidence is that he did not review any of such statements or Reports. Following such a visit, DeLuca wrote to Mr. David Bromberg ("Bromberg"), the President of Buckingham, to set out the terms of margin trading between Buckingham and Latimer including commissions to be charged by Latimer and the margin account facility to be provided by Latimer to Buckingham. In such letter, DeLuca stated "I would therefore request some assurance from you that your firm has the appropriate systems in place to ensure the proper segregation of your client's (sic) securities". Bromberg's reply of July 25, 2000, to DeLuca stated "securities are segregated into clients accounts as Certificates are received or trade tickets are executed". The reference in this letter from Buckingham to securities being segregated when the trade tickets are executed is not correct. Segregation takes place on the settlement date which is three days after the trade date in the vast majority of cases. At the request of DeLuca, Bromberg wrote a further letter of July 26, 2000, which stated "this is to confirm the following: all our clients accounts are segregated on a regular basis using the ISM Segregation System".

[13] It was Bromberg's evidence that he thought that the references in the correspondence to "segregation" meant having securities segregated by customer so that Buckingham would know which securities are held by which customers. It was also Bromberg's evidence that, for this purpose, he showed DeLuca a Security Position Report which showed which customers of Buckingham held shares of a particular security issuer. DeLuca denies that he saw any such Report. DeLuca did request and obtained a copy of the most recent renewal of registration of Buckingham with the OSC. DeLuca did not ask for or examine the financial statements of Buckingham and did not update the financial information from that given to Latimer by Buckingham when it initially opened an account with Latimer in 1997. The margin facility provided by Latimer to Buckingham was approximately \$2,000,000 and the market value of

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the securities in the Buckingham account transferred from Canaccord to Latimer was approximately \$13,000,000. It was DeLuca's evidence that he assumed that Buckingham was entitled to pledge to Latimer the marginable securities in the Buckingham account and that they would have more than sufficient value to cover the margin facility of \$2,000,000. It was also DeLuca's evidence that he did not know that Buckingham was not in fact segregating securities in its customers' accounts although he acknowledged that he could have determined this from Buckingham's monthly customer statements or from Buckingham's Segregation Allocation Reports, none of which were examined by him. DeLuca did receive a list of the securities being transferred from Canaccord to Latimer, which indicated that many of the securities being transferred were non-marginable.

[14] The opinion evidence of expert, Mr. Brian Sutton, called by the Receiver was that Regulation 1300.1 of the IDA, the "Know Your Client" rule required Latimer to satisfy itself as to the credit-worthiness of Buckingham and to ensure that Buckingham was properly segregating its customers' accounts and was not pledging to it securities which could not be pledged. His evidence was also that Latimer could determine the credit-worthiness of Buckingham by reviewing the Form 9 filed by Buckingham with the OSC. It was Mr. Sutton's opinion that it was not appropriate for Latimer to rely on the three-year old financial information from Buckingham when opening the margin account for Buckingham in July, 2000. Mr. Sutton's evidence was that in a cash account there is always a safekeeping agreement if the registrant is to hold the securities. Mr. Sutton conceded that for Latimer to know which securities of Buckingham's customers had to be segregated, it would have to know with respect to each customer which securities were fully paid, which were excess margin securities, which, if any, were in delinquent cash accounts not subject to a safekeeping agreement and which, if any, were in an under-margined customer margin account, as well as each Buckingham customer's account balance and the loan value of such account. Mr. Sutton also agreed that this information could change daily and would have to be tracked by Latimer.

[15] The opinion evidence of expert witness, Ms. Joni Alexander called by Latimer, was that Latimer did comply with the "Know Your Client" rule with respect to Buckingham. In her opinion, the suitability requirement is not relevant, the credit-worthiness and identity was satisfied because Latimer had dealt with Buckingham before, had reviewed Buckingham's current registration with the OSC and had the Application of Buckingham and a Customer Account Agreement with Buckingham on file. With respect to business conduct, Latimer had reviewed the account to be transferred from Canaccord to ensure that there was adequate collateral for the margin facility that was to be provided to Buckingham. It was also the evidence of Ms. Alexander that Latimer did not need to look through Buckingham to each Buckingham customer account to determine whether the securities pledged by Buckingham to Latimer were eligible to be pledged and that, in any event, this would be impractical in view of the detailed knowledge which Latimer would have to have of each of Buckingham customer account. Ms. Alexander testified that each cash account does not require a safekeeping arrangement. That is a specific type of custody arrangement between a registrant and a customer. She was also of the opinion that the number of "penny stocks" in the Buckingham account should not necessarily have triggered Latimer to enquire as to whether securities were being improperly pledged by Buckingham as these stocks could have been inventory of Buckingham, could have been in delinquent cash accounts or, could have been in under-margined margin accounts. It was Ms. Alexander's evidence that it would not be the normal practice for a "jitney broker" such as Latimer to inquire whether its registrant/client had

authority from its customers, or whether it was entitled to pledge the securities in its account to the jitney broker or to ask for the Segregation Allocation Reports of its registrant/customers.

[16] Where there was a conflict in the evidence between that of Bromberg and that of DeLuca, I preferred the evidence of DeLuca. He has extensive knowledge of the brokerage business and his evidence was straightforward, consistent and logical. He conceded that he could have made further inquiries to determine whether Buckingham was segregating its clients' securities and that an examination of certain of Buckingham's statements and reports would have indicated a failure to segregate. Bromberg's evidence, on the other hand, was confused, inconsistent and unresponsive. He either has an abysmal lack of knowledge about the brokerage business or his evidence is simply not credible. This is particularly true of his evidence that he thought the reference to segregation of accounts in his letters to Latimer referred to accounts being segregated as among Buckingham's customers. Anyone with any familiarity with the regulation of the securities industry would be aware of the requirement to segregate securities for margin purposes based upon securities being fully paid or excess margin securities. Accordingly, in my view, Bromberg's evidence in this regard is not credible and the statements made in the letters from Buckingham to Latimer are either negligent or intentional misrepresentations made by Buckingham to Latimer. It was, in my view, reasonable for Latimer to assume that these statements indicated segregation as required by the Regulation under the OSA and the IDA by-laws. Latimer was aware that Buckingham used the ISM System and clearly had the information available to it to determine what securities must be segregated.

[17] With respect to the expert evidence, I preferred the evidence of Ms. Alexander where there was a conflict. Her evidence with respect to compliance with the "Know Your Client" rule in a situation where a jitney broker is dealing with a registrant/customer appeared to me to be more practical than that of Mr. Sutton as did her evidence that it would not be practical for a jitney broker to look through the account of its registrant/customer to the customers of that registrant to determine whether the securities in the account were properly segregated. Mr. Sutton conceded that in order for Latimer to do that it would have to have very detailed knowledge of the securities of each customer of Buckingham which could change daily and which would have to be tracked by Latimer.

[18] There was some conflict in the expert evidence before the court as to whether Latimer was required in accordance with the "Know Your Client" rule under the IDA rules to inquire as to Buckingham's financial position and to update the information with respect to Buckingham from that provided when Buckingham first opened an account with Latimer in 1997. The evidence is that DeLuca did not ask for an updated financial statement of Buckingham or an update of the financial information provided in 1997 but simply obtained a copy of the latest renewal of Buckingham's registration with the OSC. The "Know Your Client" rule is contained in Regulation 1300 of IDA and provides in part as follows:

"Identity and Creditworthiness

- (a) Each Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

Business Conduct

- (b) Each Member shall use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice.

Suitability Generally

- (c) Subject to Regulation 1300.1(e), each Member shall use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer based on factors including the customer's financial situations, investment knowledge, investment objectives and risk tolerance".

[19] On both these issues, it was the opinion of Ms. Alexander, whose evidence I preferred, that Latimer had complied with industry standards in establishing the margin account for Buckingham. It was her evidence that a jitney broker would not be expected to obtain further information with respect to credit-worthiness when it is satisfied as to its registrant/customers registration status with the OSC and where it already had on file an Application and a Customer Account Agreement with the registrant/customer.

[20] With respect to business conduct, it was her opinion that Latimer had satisfied this requirement by reviewing the securities in the account to be transferred from Canaccord to ensure that there was adequate collateral for the margin facility being provided to Buckingham and that a jitney broker would not be expected to look through Buckingham to the accounts of Buckingham's customers to determine whether securities had been segregated or were qualified to be pledged to the jitney broker to secure the margin account in view of the impracticality of the detailed knowledge which Latimer would have to have of each Buckingham customer account. She conceded that if Latimer had made further inquiries and had reviewed Buckingham's documents such as customer monthly statements or Segregation Allocation Reports, it would have become aware that securities were not being properly segregated by Buckingham.

Issues

[21] The issues in this proceeding are as follows:

- (1) Did a trust relationship exist between Buckingham and its customers pursuant to the Client Account Agreements entered into between Buckingham and its customers or pursuant to the OSA?

- (2) If a trust relationship did exist, was Buckingham in breach of its obligations to its customers in pledging its customers' fully paid and excess margin securities to Latimer?
- (3) If Buckingham was in breach, did Latimer have actual or constructive notice of Buckingham's breach?

I will deal with the issues in the above order.

Reasons

[22] Did a trust relationship exist between Buckingham and its customers pursuant to the Client Account Agreements entered into between Buckingham and its customers or pursuant to the OSA?

Section 117 of Regulation 1015 (R.R.O. 1990) under the OSA provides:

- "(1) Securities held by a registrant for a client that are unencumbered and that are either fully paid for or are excess margin securities but that are not held pursuant to a written safekeeping agreement shall be,
 - a) segregated and identified as being held in trust for the client; and
 - b) described as being held in segregation on the registrant's security position record, client's ledger and statement of account.
- (2) Segregated securities may be used by the registrant, by sale or loan, whenever a client becomes indebted to the registrant but only to the extent reasonably necessary to cover the indebtedness.
- (3) Bulk segregation of securities described in subsection (1) is permissible".

[23] Latimer has submitted, based on the authority of *Cheseborough v. Willson* [2001] O.J. 940 (S.C.J.), that the Regulations under the OSA are administrative and directory only and do not create a trust relationship between a broker and its customers and that, even if a trust relationship is established, the provisions of the Client Account Agreements entered into between Buckingham and its customers specifically permit the pledging of the customer securities in support of loans to Buckingham for its own account. Latimer does concede, however, that there is a duty on Buckingham to protect and safeguard fully paid and excess margin securities and to deliver them in specie when directed. The court in *Cheseborough, supra*, concluded that Regulation 1015, at a minimum, required registrants to protect and safeguard fully paid or excess margin securities and deliver them in specie when required, even if it did not have the effect of establishing a trust relationship and imposing upon the registrant all the duties and obligations of a trustee at law. In the case at bar, Buckingham was clearly in breach of both these obligations to its customers.

[24] For a trust to come into existence, there must be three certainties: certainty of intention, certainty of subject matter and certainty of object. In the relationship between Buckingham and its customers with respect to their segregated securities which the Receiver submits

constitutes a trust relationship, there is certainty of subject matter in that it is the fully paid or excess margin securities of Buckingham's customers which must be segregated and "identified as being held in trust". The fact that the components of the subject matter of the trust may fluctuate is not relevant. In any investment trust, the subject matter of the trust fluctuates as investments are purchased and sold. There is also certainty of object in that the beneficiaries of such trust are the customers of Buckingham who hold such securities. With respect to certainty of intention, the trust relationship is imposed upon the parties by virtue of Regulation 1015 pursuant to the OSA.

[25] In Chesebrough, *supra*, Sheppard J. concluded with respect to such Regulation and similar statutory provisions and institutional by-laws as follows at paragraph 41:

"Yet counsel contends that this statutory and regulatory regime requiring a registrant to hold customer's fully-paid securities separate and apart from their own and others created and imposed upon it (the registrant) a trust relationship such that the registrant (Midland Walwyn) stood in a trust relationship to the plaintiff; that Midland Walwyn became a trustee for the plaintiff and in some way was then duty-bound to act as a trustee at law in its dealings with the plaintiff. I have considerable difficulty in accepting that proposition. In my view, all the cited regulations and by-laws do nothing more than to regulate registrants or members and direct them how they shall deal with a customer's securities like the shares owned by the plaintiff. Regulations whether passed under a statute or by an association cannot create and impose a trust relationship between two parties, imposing on the party holding the securities all the duties and responsibilities which the law imposes on a trustee created by deed or by-law. These regulations are administrative and directory only; they do nothing more than direct a registrant or member how prescribed securities are to be handled and recorded.

Again, I repeat one must distinguish between a trust relationship between the trustee and beneficiary with all attendant duties and responsibilities and an administrative trust created for the proper dealing with other people's property, which I suggest creates no further obligation than a duty on the person holding the property to protect and safeguard it and deliver it in specie when required. Certainly, if the securities are misappropriated and cannot be returned, a breach of trust arises entitling the customer to an award of damages

Characterizing the shares as being impressed with a trust for industry regulatory requirements does not a fortiori make the registrant a trustee with all the attendant duties and responsibilities of a trustee except for being obliged to deliver the trust property in specie when directed"....

[26] With great respect, I am unable to adopt this distinction between a trust created by deed or law and a statutory trust. The authorities dealing with or interpreting trust or deemed trust provisions of statutes do not draw any distinction between the duties imposed upon a trustee of a statutory trust as opposed to a trustee of a trust created by deed or law. In *Ward-Price v. Mariners Haven Inc.* (2001) 57 O.R. (3rd) 10 (Ont. C.A.), in considering the statutory trust

created under the *Condominium Act* R.S.O. 1990 ch. c-26 Borins, J.A. made reference to the expressed statutory trust created under that Act and stated at page 419:

“Although it may be argued that this trust lacks, in some respects, the three certainties of intention, object and subject-matter, this does not affect its essential character as a trust”. As McLachlin J. pointed out in *British Columbia v. Henfrey Blair Ltd.*, [1989] 2 S.C.R. 24 at p. 35, 59 D.L.R. (4th) 726, at p. 742: “the provinces may define “trust” as they choose for matters within their own legislative competence....”.

(See also *Commercial Union Life Assurance Co. of Canada v. John Ingel Insurance Group Inc.* (2002) O.J. No. 3200 (Ont. C.A.) with respect to the statutory trust created under Subsection 402(1) of the *Insurance Act* R.S.O. (1990) ch. I-8; D.E. and J.C. *Hutchinson Contracting Co. v. Placer Dome Canada Ltd.* (1998) O.J. No. 4999 (Gen. Div.) with respect to the statutory trust created pursuant to Part 2 of the *Construction Lien Act* R.S.O. (1990) ch. c-30).

[27] In addition, it appears to me to be clear from such authorities that certainty of intention can be established by the intention of the legislature to create a trust relationship being evidenced by the wording of a statute or Regulation.

[28] Accordingly, in my view, the relationship between Buckingham and its customers holding fully paid or excess margin securities was a trust relationship with all the attendant duties and responsibilities of a trustee applicable.

If a trust relationship did exist, was Buckingham in breach of its obligations to its customers in pledging its customers' fully paid and excess margin securities to Latimer?

[29] The pledging by Buckingham of its customers fully paid and excess margin securities to Latimer was, in my view, clearly a breach of Buckingham's obligations as a trustee to its customers. I am not satisfied that the provisions of the Client Account Agreements entered into by the majority of Buckingham's customers permitted Buckingham to breach such obligations. Subsection 1(1) of the OSA defines “Ontario securities law” as the OSA, Regulations made under the OSA and any decision of the Commission or a Director with reference to a particular person or company. Subsection 122(1) of the OSA provides that every person or company that contravenes Ontario securities law is guilty of an offence. It would be clearly contrary to public policy to permit a registrant and its customers to contract out of the obligation of the registrant to comply with Ontario securities law. In any event, the Buckingham Client Account Agreements provide:

“All Transactions in Securities for the Account shall be subject to the constitutions, by-laws, rules, rulings, regulations, customs and usages of the exchanges or markets and their clearing houses, if any, where made and to all laws, regulations and orders of any applicable governmental or regulatory authorities (all collectively referred to as “Applicable Rules and Regulations”)”
or

“All transactions shall be subject to the constitution, by-laws, rule, rulings, regulations, customs and usages of the exchange or market, and its clearing

house, if any, where made, and to all laws and all regulations and orders of any governmental or regulatory authority that may be applicable”.

[30] Accordingly, I am of the view that Buckingham was in breach of the above provisions and of its statutory trust obligations in pledging to Latimer securities of Buckingham's customers which were required to be segregated and that the provisions of the Client Account Agreements permitting pledging of such securities do not negate such contractual and statutory obligations.

If Buckingham was in breach of its obligations to its customers, did Latimer have actual or constructive notice of Buckingham's breach?

[31] It is not alleged by the Receiver that Latimer had actual knowledge of Buckingham's breach of its trust obligations to its customers or of its breach of Ontario securities law. In the case at bar, the only basis upon which Latimer could be found to have constructive knowledge of the breach of trust by Buckingham would be under the line of cases establishing liability on third parties for “knowing receipt” of property transferred to them in breach of trust. The basis for liability of a third party in the “knowing receipt” cases is summarized by La Forest J. in *Citadel General Assurance v. Lloyds Bank of Canada* (1997) 152 D.L.R. (4th) 411 (S.C.C.) at pg. 434 as follows:

“However, in “knowing receipt” cases, which are concerned with the receipt of trust property for one's own benefit, there should be a lower threshold of knowledge required of the stranger to the trust. More is expected of the recipient, who, unlike the accessory, is necessarily enriched at the plaintiff's expense. Because the recipient is held to this higher standard, constructive knowledge (that is, knowledge of facts sufficient to put a reasonable person on notice or inquiry) will suffice as the basis for restitutionary liability. Iacobucci J. reaches the same conclusion in *Gold, supra*, where he finds, at para. 46, that a stranger in receipt of trust property “need not have actual knowledge of the equity [in favour of the plaintiff]; (constructive?) notice will suffice.

[49] This lower threshold of knowledge is sufficient to establish the “unjust” or “unjustified” nature of the recipient's enrichment, thereby entitling the plaintiff to a restitutionary remedy. As I wrote in *Lac Minerals, supra*, at p. 670, “the determination that the enrichment is ‘unjust’ does not refer to abstract notions of morality and justice, but flows directly from the finding that there was a breach of a legally recognized duty for which the courts will grant relief”. In “knowing receipt” cases, relief flows from the breach of a legally recognized duty of inquiry. More specifically, relief will be granted where a stranger to the trust, having received trust property for his or her own benefit and having knowledge of facts which would put a reasonable person on inquiry, actually fails to inquire as to the possible misapplication of trust property. It is this lack of inquiry that renders the recipient's enrichment unjust”.

[32] In the case at bar, Latimer was clearly aware that Buckingham had an obligation to segregate its customers' securities. It would also have been aware that Buckingham's monthly statements to its customers and Segregation Allocation Reports prepared by Buckingham using

- 12 -

the ISM System would have indicated whether the securities of Buckingham's customers were in fact segregated. The evidence is that DeLuca made no effort to review customers' monthly statements or Segregation Allocation Reports of Buckingham and, in order to satisfy Latimer that Buckingham was segregating customers' securities, simply requested the two letters from Buckingham referred to above.

[33] The obligation on the third party recipient in the "knowing receipt" cases is to make inquiries which a reasonable person in the circumstances of the recipient would have made. Once the recipient is put on notice that a breach of trust may have occurred by its acceptance of property transferred to it, as stated in *Citadel General Assurance Co. supra*, "relief will be granted where a stranger to the trust, having received trust property for his or her own benefit and having knowledge of facts which would put a reasonable person on inquiry, actually fails to inquire as to the possible misapplication of trust property".

[34] The Receiver has submitted the receipt by Latimer of the two letters from Buckingham with reference to segregation and should have put Latimer on inquiry with respect to segregation. In particular, the Receiver refers to the statement in the letter of July 25, 2000, that "securities are segregated into client accounts as certificates are received or trade tickets are executed", which statement is not correct, should have alerted Latimer. I am unable to accept this submission. Upon receipt of the July 25, 2000 letter, Latimer requested a further letter clarifying the statement with respect to segregation and was assured in the letter of July 26, 2000, that "all our clients accounts are segregated on a regular basis using the ISM Segregation System". In addition, it appears to me that a reasonable person in the brokerage business in the circumstances would have assumed that the reference to segregation was to segregation in accordance with the requirements of the OSA. Latimer was aware that Buckingham used the ISM System and had the ability to effect segregation in accordance with the requirements of the OSA.

[35] Accordingly, I am not satisfied that, on the facts of the case at bar, Latimer had knowledge of facts which would have put a reasonable person in Latimer circumstances on inquiry. In any event, even if one should conclude that Latimer ought to have put on inquiry, it was not required to conduct an impractical or extensive inquiry nor is it to be held to a standard of perfection. Latimer must only show that it acted reasonably under the circumstances. It is the opinion of Ms. Alexander that Latimer complied with industry standards and did all that was required to satisfy itself as to Buckingham's business conduct and to ensure that Buckingham was segregating its customers' securities. It appears to me that, if Latimer was in compliance with industry standards and practice and conducted itself in a manner consistent with that followed by other brokers in similar circumstances, it has satisfied the requirement of making reasonable inquiries. Although it may appear to this court that the industry practice as to due diligence and documentation in the establishment of customer accounts with brokers may be somewhat casual in the case of a registrant opening an account with a jitney broker and, although it is apparent that by making certain further inquiries, Latimer would have become aware that Buckingham was not complying with the segregation requirements of the Regulation under the OSA, I am unable to conclude that Latimer failed to make reasonable inquiries in all the circumstances of this case.

[36] Although having found that a trust relationship existed between Buckingham and its customers who held fully paid or excess margin securities, the issue may be moot, counsel for the Receiver did submit that, if a trust relationship did not exist between Buckingham and its

customers, there was clearly a fiduciary relationship between them. I do not agree that, in every instance, a fiduciary relationship exists between a broker and its customers. In *Hodgkinson v. Simms et al* (1994) 117 D.L.R. (4th) 161 (S.C.C.), La Forest J. at pg. 183, citing with approval the decision of Keenan J. in *Varcoe v. Sterling* 1992 7 O.R. (3rd) 204 (Gen. Div.), stated as follows:

"Much of this case law was recently canvassed by Keenan J. in *Varcoe v. Sterling* (1992), 7 O.R. (3d) 204, 33 A.C.W.S. (3d) 1184 (Gen. Div.), in an effort to demarcate the boundaries of the fiduciary principle in the broker-client relationship". Keenan J. stated, at pp. 234-6:

"The relationship of broker and client is not per se a fiduciary relationshipWhere the elements of trust and confidence and reliance on skill and knowledge and advice are present, the relationship is fiduciary and the obligations that attach are fiduciary. On the other hand, if those elements are not present, the fiduciary relationship does not exist ... The circumstances can cover the whole spectrum from total reliance to total independence. An example of total reliance is found in the case of *Ryder v. Osler, Wills, Bickle Ltd.* (1985), 49 O.R. (2d) 609, 16 D.L.R. (4th) 80 (H.C.J.). A \$400,000 trust for the benefit of an elderly widow was deposited with the broker. An investment plan was prepared and approved and authority given to operate a discretionary account At the other end of the spectrum is the unreported case of *Merit Investment Corp. v. Mogil*, [1989] O.J. No. 429, Ont. H.C.J., Anderson J., March 23, 1989 [summarized at 14 A.C.W.S. (3d) 378], in which the client used the brokerage firm for processing orders. He referred to the account executive as an "order-taker", whose advice was not sought and whose warnings were ignored.

The relationship of the broker and client is elevated to a fiduciary level when the client reposes trust and confidence in the broker and relies on the broker's advice in making business decisions. When the broker seeks or accepts the client's trust and confidence and undertakes to advise, the broker must do so fully, honestly and in good faith It is the trust and reliance placed by the client which gives to the broker the power and in some cases, discretion, to make a business decision for the client. Because the client has reposed that trust and confidence and has given over that power to the broker, the law imposes a duty on the broker to honour that trust and respond accordingly.

In my view, this passage represents an accurate statement of fiduciary law in the context of independent professional advisory relationships, whether the advisers be accountants, stockbrokers, bankers, or investment counsellors. Moreover, it states a principled and workable doctrinal approach. Thus, where a fiduciary duty is claimed in the context of a financial advisory relationship, it is at all events a question of fact as to whether the parties' relationship was such as to give rise to a fiduciary duty on the part of the advisor".

[37] I would adopt the above statement of Keenan, J. as to the existence of a fiduciary relationship between a broker and its customers. In my view, there is no evidence before this

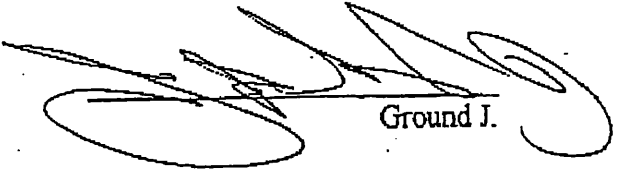
- 14 -

court to establish that the relationship between Buckingham and its customers was such as to give rise to a fiduciary duty on the part of Buckingham, apart from the statutory trust imposed upon Buckingham by Regulation 1015 under the O.S.A.

[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.

[39] Counsel may make brief written submissions to me on the costs of this proceeding on or before November 15, 2002.



Ground J.

Released: October 17, 2002

COURT FILE NO.: 01-CL-4192

DATE: 20021017

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

ONTARIO SECURITIES COMMISSION

- and -

BUCKINGHAM SECURITIES CORPORATION

REASONS

Ground J.

Released: October 17, 2002

EXHIBIT "E"
TO THE NINETEENTH REPORT

Court File No: 01-CL-4192

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *MR. JUSTICE*) FRIDAY, THE 16TH DAY OF
CURMING)
) JULY, 2004

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

BETWEEN:

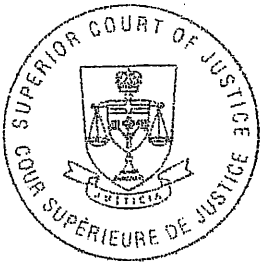
ONTARIO SECURITIES COMMISSION

Applicant

- and -

BUCKINGHAM SECURITIES CORPORATION

Respondent



ORDER

THIS MOTION made by BDO Dunwoody Limited in its capacity as court-appointed Receiver and Manager (the "Receiver") of Buckingham Securities Corporation ("Buckingham"), appointed pursuant to the Order of Madam Justice Swinton dated July 26, 2001, was heard this day at 393 University Avenue, Toronto, Ontario.

- 2 -

UPON READING the Notice of Motion, and the Receiver's Sixteenth Report filed, and upon hearing the submissions of counsel for the Receiver, and counsel for Bear Stearns Corporation Inc. ("Bear Stearns"),

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein be abridged and that the Motion is properly returnable today, and that all parties entitled to notice of the motion have been duly served with notice and service upon any interested party other than the persons served with the Notice of Motion and Motion Record be dispensed with.

2. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to enter into and complete the agreement with Bear Stearns for the purpose of liquidating the securities held in the account of Buckingham at Bear Stearns, on the terms and conditions set out in the Receiver's Sixteenth Report.

July 16, 2004 Peter A. Cumming J.

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

JUL 16 2004

PER/PAR:

Court File No.: 01-CL-4192

ONTARIO SECURITIES COMMISSION

- and -

BUCKINGHAM SECURITIES CORPORATION

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

Proceeding Commenced at Toronto

ORDER

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

Lisa S. Corne
LSUC #27974M
Tel: (416) 863-3896
Fax: (416) 863-2653

Solicitors for BDO Dunwoody Limited

EXHIBIT "C"
TO THE TWENTY-FIRST REPORT

UPON READING the Notice of Motion, and the Receiver's Sixteenth Report filed, and upon hearing the submissions of counsel for the Receiver, and counsel for Bear Stearns Corporation Inc. ("Bear Stearns"),

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record herein be abridged and that the Motion is properly returnable today, and that all parties entitled to notice of the motion have been duly served with notice and service upon any interested party other than the persons served with the Notice of Motion and Motion Record be dispensed with.

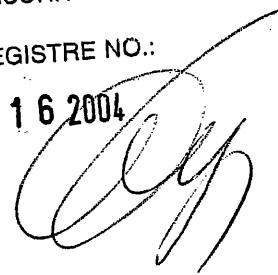
2. THIS COURT ORDERS that the Receiver be and is hereby authorized and directed to enter into and complete the agreement with Bear Stearns for the purpose of liquidating the securities held in the account of Buckingham at Bear Stearns, on the terms and conditions set out in the Receiver's Sixteenth Report.

July 16, 2004 Peter A. Cumming J.

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

JUL 16 2004

PER/PAR:



Court File No.: 01-CL-4192

ONTARIO SECURITIES COMMISSION

- and -

BUCKINGHAM SECURITIES CORPORATION

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

Proceeding Commenced at Toronto

ORDER

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

Lisa S. Corne
LSUC #27974M
Tel: (416) 863-3896
Fax: (416) 863-2653

Solicitors for BDO Dunwoody Limited

EXHIBIT "D"
TO THE TWENTY-FIRST REPORT

SETTLEMENT AGREEMENT

BETWEEN:

**BDO DUNWOODY LIMITED, in its capacity as
Court-Appointed Receiver and Manager of
Buckingham Securities Corporation**

OF THE FIRST PART;

- and -

BEAR STEARNS CORPORATION INC.

OF THE SECOND PART;

RECITALS**WHEREAS,**

1. Buckingham Securities Corporation ("**Buckingham**") was a securities dealer and provided investment services to its clients, which numbered approximately 1,000 on an active basis.
2. Bear Stearns Corporation Inc. ("**Bear Stearns**") is a securities dealer.
3. On or about June 7, 2000, Buckingham and Bear Stearns entered into a written agreement (the "**Agreement**") for the operation of a margin account (the "**Account**") by Buckingham at Bear Stearns.
4. On July 6, 2001, the Ontario Securities Commission issued a Temporary Cease Trade Order prohibiting trading in the securities related to the Account.
5. By Order of the Honourable Madam Justice Swinton dated July 26, 2001, BDO Dunwoody Limited was appointed receiver and manager (the "**Receiver**") of the assets and undertaking of Buckingham.
6. As at April 30, 2004, Buckingham owed Bear Stearns US\$260,302 in respect of the Account, with interest accruing at [**prime plus 4%**].
7. Bear Stearns claimed a security interest in certain securities in the Account (the "**Disputed Securities**"). The Receiver disputed this claim on behalf of the clients of Buckingham.
8. On July 16, 2004, the Court approved an agreement between the Receiver and Bear Stearns with respect to the liquidation of certain of the securities held in the

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Account (the "**Liquidation Agreement**").

9. Pursuant to the Liquidation Agreement, of the total amount of US\$471,783.41 realized upon the liquidation of the securities, Bear Stearns received US\$166,339.54 in respect of securities not disputed by the Receiver and Bear Stearns' commission on the Disputed Securities. The balance of the proceeds, US\$302,073.06, was paid to the Receiver, US\$97,893 of which represents the proceeds of the Disputed Securities which the Receiver has continued to hold in trust pending resolution of the claims by Bear Stearns and the Receiver (the "**Disputed Funds**").
10. As at October 31, 2006, the Disputed Funds held by the Receiver amount to US\$101,786.85.

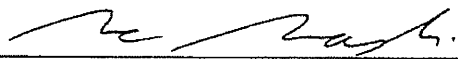
NOW THEREFORE, in consideration of the promises and covenants contained in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the benefit of legal advice, Buckingham and Latimer hereby agree, subject to court approval, that:

1. **The Payment:** The Receiver shall pay US\$50,893.43 to Bear Stearns immediately following court approval of the within settlement.
2. **Mutual Release:** Upon receipt of the payment required under paragraph 1 above, the Receiver and Bear Stearns shall execute a mutual release in the form attached as Schedule "A".
3. **Governing Law.** This Settlement Agreement has been made in the Province of Ontario and shall be construed, interpreted and performed in accordance with the laws of Ontario and the applicable laws of Canada. For greater certainty, the validity and enforceability of this Settlement Agreement and the agreements contemplated hereby shall be determined under the laws of Ontario and the applicable laws of Canada unless such agreement specifically provides to the contrary.
4. **Further Assurances.** Each of the parties hereto shall from time to time and at all times hereafter, upon every reasonable request of the other, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds and assurances and things as may be necessary in the reasonable opinion of such other party or parties for more effectually implementing and carrying out the true intent and meaning of this Settlement Agreement.

- 5. **Amendment.** No amendment, modification or termination of this Settlement Agreement shall be effective unless made in writing and executed by all of the parties hereto.
- 6. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, and/or by facsimile, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. Any party executing this Settlement Agreement by facsimile shall, forthwith following a request by of the other parties hereto, provide such number of originally executed counterparts of this Settlement Agreement as are required to provide each party hereto with two fully executed original copies of this Settlement Agreement.
- 7. **Time of the Essence.** Time is of the essence in this Settlement Agreement.
- 8. **Enurement.** The provisions hereof shall enure to the benefit of and be binding upon each party hereto and their respective heirs, successors and/or assigns.
- 9. The obligations of the parties hereunder are conditional upon the Receiver obtaining an order of the Ontario Superior Court of Justice (Commercial List) approving the terms of this Settlement Agreement.

Dated in Toronto this 2nd day of February 7 mm
~~December~~, 2006

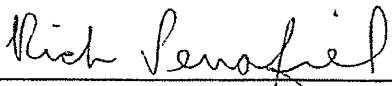
**BDO DUNWOODY LIMITED, in its capacity as
 Court-Appointed Receiver and Manager of
 Buckingham Securities Corporation**



 I have authority to bind the corporation

Dated in Toronto this _____ day of December, 2006

BEAR STEARNS CORPORATION INC.



 I have authority to bind the corporation

FULL AND FINAL MUTUAL RELEASE *February 2*

IN CONSIDERATION of the mutual covenants contained herein, and in the settlement agreement executed between the parties dated ~~December~~, 2006 (the "Settlement Agreement") and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned,

BDO DUNWOODY LIMITED, in its capacity as court-appointed receiver and manager of Buckingham Securities Corporation, for itself, its partners, associates, employees, servants, agents, heirs, administrators, successors and assigns, and on behalf of any party or parties who claim a right or interest through it,

(hereinafter referred to as the "**Releasor**")

and

BEAR STEARNS CORPORATION INC. for itself, its partners, associates, employees, servants, agents, heirs, administrators, successors and assigns, and on behalf of any party or parties who claim a right or interest through it,

(hereinafter referred to as "**Bear Stearns**" or the "**Releasee**")

HEREBY RELEASE, ACQUIT, AND FOREVER DISCHARGE, WITHOUT QUALIFICATION OR LIMITATION, ONE ANOTHER:

from all manner of actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contract, complaints, claims and demands for damages, monies, losses, indemnity, costs, interest in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor or the Releasee related to, without limitation, any and all matters concerning the written agreement between Bear Stearns and Buckingham Securities Corporation ("**Buckingham**") entered into on or about June 7, 2000 for the operation of a margin account (the "**Account**") by Buckingham at Bear Stearns, the administration of the Account by Bear Stearns and any and all claims raised or that could have been raised in Ontario Superior Court of Justice Court File No. 01-CL-4192, with the exception of all claims and rights under the Settlement Agreement and the Liquidation Agreement (as defined in the Settlement Agreement).

AND FOR THE SAID CONSIDERATION it is agreed and understood that neither the Releasor nor the Releasee will make any claims or take any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, against the other discharged by this Full and Final Mutual Release, in connection with the matters

- 2 -

outlined above. This Full and Final Mutual Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by either the Releasor or the Releasee with respect to the matters covered by this Full and Final Mutual Release. This Full and Final Mutual Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by either the Releasor or the Releasee, as the case may be, in any subsequent action that the other parties in the subsequent action were not privy to formation of this Release.

AND FOR THE SAID CONSIDERATION the Releasor and the Releasee hereby represent and warrant to the other that they have not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind which it has released by this Full and Final Mutual Release.

IT IS FURTHER AGREED AND UNDERSTOOD that the Releasor and the Releasee do not admit any liability or obligation of any kind whatsoever to the other and such liability or obligation is specifically denied.

IT IS FURTHER AGREED AND UNDERSTOOD that this Release may be executed in counterparts, and/or by facsimile, each of which shall constitute an original and both of which, taken together, shall constitute one and the same instrument. Any party executing this Release by facsimile shall, forthwith following a request by of the other party hereto, provide such number of originally executed counterparts of this Release as are required to provide both parties hereto with two fully executed original copies of this Release.

AND IT IS HEREBY DECLARED that the terms of this settlement are fully understood, that the consideration stated herein is the sole consideration for this Release.

IN WITNESS WHEREOF the undersigned has executed this Full and Final Mutual Release by his hand and seal this 2nd day of ~~December~~, 2006. *February 27 2006*

**BDO DUNWOODY LIMITED, in its capacity
as Court-Appointed Receiver and Manager
of Buckingham Securities Corporation**



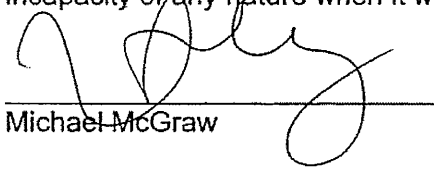
I have the authority to bind the corporation

February 2nd

CERTIFICATE OF SOLICITOR

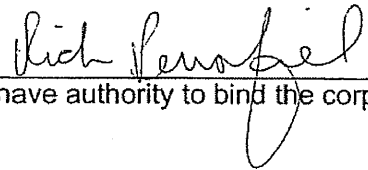
I, Michael McGraw, Barrister and Solicitor, of the City of Toronto, acknowledge that I explained the significance of this Full and Final Release dated December _____, 2006 to Uwe Manski of BDO Dunwoody Limited, and in my judgment, I do verily believe that he understood the significance of the Full and Final Release and was under no incapacity of any nature when it was executed and explained to him.

7/2/06


Michael McGraw

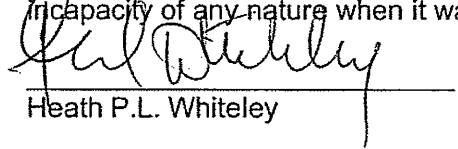
IN WITNESS WHEREOF the undersigned has executed this Full and Final Mutual Release by his hand and seal this _____ day of December, 2006.

BEAR STEARNS CORPORATION INC.


I have authority to bind the corporation

CERTIFICATE OF SOLICITOR

I, Heath P.L. Whiteley, Barrister and Solicitor, of the Town of Richmond Hill, acknowledge that I explained the significance of this Full and Final Release dated December _____, 2006 to Ricardo Penafiel, and in my judgment, I do verily believe that he understood the significance of the Full and Final Release and was under no incapacity of any nature when it was executed and explained to him.


Heath P.L. Whiteley