

Court File No. 07-CL-6843

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

BETWEEN:

MICHAEL J. QUILLING, RECEIVER FOR
COURTNEY WALLIS SIMPSON

Plaintiff

- and -

ZAPFE HOLDINGS INC. AND MICHAEL SOURLIS

Defendants

Court File No. 05-CL-6159

AND BETWEEN

UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
And as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

MOTION RECORD

DRUDI, ALEXIOU, KUCHAR LLP
Barristers-At-Law
Suite 307
7050 Weston Road,
Woodbridge, ON L4L 8G7

CONSTANTINE ALEXIOU
LSUC # 29362Q

MICHAEL G. TWEEDIE
LSUC # 23411U

Tel: 905-850-6116
Fax 905-850-9146

calexiou@on.aibn.com
tweedie@bellnet.ca

Solicitors for the Defendants
Zapfe Holdings Inc. and Michael Sourlis

TO: BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

LINCOLN CAYLOR / M. JOANNE MacMILLAN
Tel (416) 777-6121 / 4629
Fax (416) 863-1716

Solicitors for the Plaintiff

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**ONTARIO
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Tab 1

Court File No. 07-CL-6843

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MICHAEL J. QUILLING, RECEIVER FOR
COURTNEY WALLIS SIMPSON

Plaintiff

- and -

ZAPFE HOLDINGS INC. AND MICHAEL SOURLIS

Defendants

Court File No. 05-CL-6159

AND BETWEEN

UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
And as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

NOTICE OF MOTION

THE DEFENDANTS in action no. 07-CL-6843 will make a Motion to a
Judge presiding over the Commercial List on FRIDAY, the 28TH day of DECEMBER,

2007, at the hour of 10:00 o'clock in the forenoon or as soon after that time as the Motion can be heard at the Court House at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

1. An Order granting leave for the Defendants in Action no. 07-CL-6843, Zapfe Holdings Inc. and Michael Sourlis, to intervene as parties Defendant in action no. 05-CL-6159 for the purposes of the within motion and to assert the relief sought herein;
2. An Order setting aside the order of Mesbur J. of March 9, 2006 in action no. 05-CL-6159 in so far as the said Order affects the Defendants, Zapfe Holdings Inc. and Michael Sourlis;
3. In the alternative, an Order varying the order of Mesbur J. of March 9, 2006 in action no. 05-CL-6159 and adding thereto that Michael J. Quilling, Receiver for Courtney Wallis Simpson, do grant to the Defendants, Zapfe Holdings Inc. and Michael Sourlis, a personal undertaking to indemnify them in respect of damages caused to them through the restraint of any dealing with their stock in Dianor Resources Inc;

4. An Order that the Plaintiff in action no. 05-CL-6159 post security for the costs of these proceedings (actions no. 07-CL-6843 and no. 05-CL-6159), stipulating the amount and form of such security and the time for paying the same into court;
5. In the alternative to the aforementioned personal undertaking, an Order granting leave of this Court to the Defendants Zapfe Holdings Inc. and Michael Sourlis to commence a separate proceeding against the Receiver in respect of damages in the form annexed hereto as Schedule "A";
6. An Order that a Case Timetable in action no. 07-CL-6843 be approved and set by this Honourable Court;
7. Costs of this motion on a substantial indemnity basis; and
8. Such further and other relief as to this Honourable Court may seem fit and just.

THE GROUNDS FOR THE MOTION ARE:

1. The Defendants have been impleaded in action no. 07-CL-6843 on the basis of their beneficial ownership of certain shares of Dianor Resources Inc. (hereinafter referred to as the "Shares") which are claimed by the Receiver to be the property of the estate of a certain Courtney Wallis Simpson;
2. a) The original receivership order of Ground J. in action no. 05-CL-6159 did not include the Shares as assets of the aforementioned estate; the Plaintiff

moved subsequently before Mesbur J. in that action to have all commercial activity with respect to the Shares enjoined by an Order of this Honourable Court;

b) The aforementioned Order of Mesbur J. in action no. 05-CL-6159 constitutes execution before judgement;

3. The Fourth Amended and Restated Initial Order of Mesbur J. made on March 9, 2006 (hereinafter referred to as the "Order") in action no. 05-CL-6159, which is a receivership proceeding, froze the Shares while the Defendants were not parties to that proceeding;

4. The Order constitutes execution before judgment in so far as it affects the Defendants;

5. There is no evidence that there is a real risk that the Defendants will dissipate the Shares or the proceeds thereof to defeat satisfaction of any judgment which might be obtained by the Plaintiff in action no. 07-CL-6843;

6. There is no evidence that the said Defendants have resorted to the movement of funds or shares from the jurisdiction of this Honourable Court or have failed to identify the location and quantum of the Shares;

7. The Plaintiff in action no. 05-CL-6159 did not offer an undertaking in damages in respect of the restraining order against the Shares;
8. The value of the shares fluctuates substantially over time as Dianor Resources Inc. is a resource stock and the Defendants have already seen a significant decline in the value of their equity in the Shares, to the prejudice of the Defendants;
9. The Defendants have counterclaimed in action no. 07-CL-6843 in respect of the losses caused by the Plaintiff's freezing of the Shares;
10. The Plaintiff in both proceedings is not a resident of Ontario nor of Canada but resides in Texas, one of the United States of America, and there is no indication that the Plaintiff has any assets within Ontario which might be made available to satisfy a judgment or an award of costs;
11. The Defendants in action no. 07-CL-6843 have been and continue to be directly and prejudicially affected by the order of Mesbur J., as the value of the Shares has declined substantially;
12. An undertaking as to damages is appropriate for any Freezing Order which is in the nature of injunctive relief;

13. The Defendants will rely on section 101(2) of the *Courts of Justice Act* and Rules 13, 31.10(1), 30.1.01(8), 37, 45, 56.01 and 59.06 of the *Rules of Civil Procedure*.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT
THE HEARING OF THE MOTION:**

1. Affidavit of Werner Zapfe, sworn September 11, 2007 with exhibits attached thereto;
2. Affidavit of Michael Sourlis, sworn September 11, 2007 with exhibits attached thereto; and
3. Such further and other documents as counsel may advise and this Honourable Court may permit.

DRUDI, ALEXIOU, KUCHAR LLP
Barristers-At-Law
Suite 307, 7050 Weston Road,
Woodbridge, ON L4L 8G7

CONSTANTINE ALEXIOU
LSUC # 29362Q

MICHAEL G. TWEEDIE
LSUC # 23411U

Tel: 905-850-6116
Fax 905-850-9146

calexiou@on.aibn.com
tweedie@bellnet.ca
Solicitors for the Defendants
Zapfe Holdings Inc. and Michael Sourlis

000007

TO: BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

LINCOLN CAYLOR / M. JOANNE MacMILLAN
Tel (416) 777-6121 / 4629
Fax (416) 863-1716

Solicitors for the Plaintiff

SCHEDULE "A"

Court File No. :

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ZAPFE HOLDINGS INC. AND MICHAEL SOURLIS

Plaintiffs

- and -

MICHAEL J. QUILLING

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT AS NOTED ABOVE

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is **FORTY DAYS**. If you are served outside Canada and the United States of America, the period is **SIXTY DAYS**.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2,500.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

DATE: September , 2007

Issued by: Per: _____
Registrar
393 University Avenue, 10th Floor
Toronto, Ontario M5G 1E6

**TO: Michael J. Quilling
Quilling, Selander, Cummiskey & Lownds, P.C.
Bryan Tower
2001 Bryan Street
Suite 1800
Dallas, Texas
75201**

CLAIM

1. The Plaintiffs Zapfe Holdings Inc. and Michael Sourlis (hereinafter collectively referred to as the "Plaintiffs") claim as against the Defendant Michael J. Quilling (hereinafter referred to as the "Defendant"):
 - (a) damages in the amount of \$250,000.00 for negligence, abuse of the process of this Honourable Court and, in the alternative, wrongful interference with the economic interests and opportunities of the Plaintiffs in respect of certain shares, more particularly described in paragraph 2 below;
 - (b) pre- and postjudgment interest on the aforesaid sum pursuant to the Courts of Justice Act, R.S.O. 1990, Ch. C.43 as amended;
 - (c) their costs of this action plus all applicable taxes; and
 - (d) such further and other relief as this Honourable Court deems just.
2. The Plaintiff Michael Sourlis is an individual who is a resident of the Province of Ontario who was, at all material times, an owner of certain corporate shares in Dianor Resources Inc., also known as Ressources Dianor Inc. (hereinafter referred to as "Dianor").
3. The Plaintiff Zapfe Holdings Inc. is a corporation duly incorporated under the laws of the Province of Ontario who was, at all material times, an owner of certain corporate shares in Dianor.
4. The Defendant is a resident of Texas, one of the United States of America and is the Receiver of the estate of Courtney Wallis Simpson, York Region Realty Inc., Wallis Simpson & Associates,

Courtney Wallis Simpson carrying on business under the name and style of York Management Group and as Camco Developments and as York Group (hereinafter collectively referred to as "Simpson") pursuant to certain orders of this Honourable Court.

5. The Plaintiffs state, and the fact is, that the Defendant made certain representations to this Honourable Court on a motion made 'without notice' to the Plaintiffs herein which represented that the Plaintiffs were improperly in receipt of certain Dianor shares which had been registered in the name of Simpson, or one of them. As a result of this representation, this Honourable Court made an interlocutory mandatory injunctive order prohibiting trades with the said Dianor shares.
6. The Defendant, in making such a representation, well knew that it would result in an interlocutory order which made disposing of the Dianor shares an act of contempt and disobedience of a court order.
7. The Defendant proceeded to make the representation willfully and deliberately, with disregard to the interests of the Plaintiffs or concern for the value of their investments, and without having ascertained the true facts relating to the said Dianor shares.
8. The representation was not true and it was within the power of the Defendant to have discovered this, especially given the duties of a moving party on a 'without notice' motion for an injunction.
9. Further, the Defendant neglected, failed or refused to offer a personal undertaking as to damages in respect of this injunction, well knowing that Rule 40.03 of the Rules of Civil Procedure of Ontario required that such an undertaking be given.

10. In seeking the interlocutory injunction without proffering and granting the necessary undertaking, the Defendant knowingly and willfully circumvented an essential requirement for the aforementioned interlocutory injunction and thereby abused the process of this Honourable Court by shifting the risk of decline in the value of the Dianor shares to the Plaintiffs, which conduct is unconscionable and unreasonable and a misuse of ordinary civil process by unlawful means, as there was and is no legitimate interest in the Dianor shares for the Simpson estate nor any reason to dispense with the necessary undertaking.
11. In truth and in fact, the Dianor shares registered in Courtney Wallis Simpson's name, were at all material times, the property of the Plaintiffs and Courtney Wallis Simpson had effected the transfer of these Dianor shares into the Plaintiffs' names in writing well before the motion for the injunction.
12. The Plaintiffs state that by causing the injunction to issue and as a result of forcing the Plaintiffs to comply with it, the Defendant is obliged to indemnify and save harmless the Plaintiffs as a result of the loss in value of the 'frozen' Dianor shares.
13. The Plaintiffs state, and the fact is, that the Defendant was at all material times knowledgeable concerning the beneficial ownership of the Dianor shares, given its control over the Simpson estate and access to the necessary information or, alternatively, that the Defendant had the means of knowledge and chose not to investigate, preferring to remain willfully blind and that the Defendant had constructive knowledge of the pertinent facts and chose contrived ignorance recklessly, since he had no exposure or liability arising out of the interlocutory injunction. The Defendant chose to

exploit and capitalise upon the situation which he orchestrated to attempt to procure for the estate of Simpson further assets.

14. The Plaintiffs state, and the fact is, that the Defendant, in suppressing facts within his knowledge, information or belief in securing the injunction misused the process of this Honourable Court and attempted to and did secure a benefit for the Simpson estate without exposing himself to the burden of the necessary undertaking and, as such, has purported to profit from his own wrong.
15. The Plaintiffs plead that the value of the 'frozen' Dianor shares has decreased dramatically and that the inability to trade them has resulted in loss and damage to the Plaintiffs for which the Defendant is responsible. The Plaintiffs state that the Defendant could foresee likely damage to the Plaintiffs' economic interests through the improper interlocutory injunction.
16. The Plaintiffs propose that this action be tried at the City of Toronto.

DRUDI, ALEXIOU, KUCHAR LLP
Barristers-At-Law
Suite 307
7050 Weston Road,
Woodbridge, Ontario
L41 8G7

CONSTANTINE ALEXIOU
LSUC # 29362Q

Tel: 905-850-6116
Fax 905-850-9146

Solicitors for the Plaintiffs

Tab 2

Court File No. 07-CL-6843

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

BETWEEN:

MICHAEL J. QUILLING, RECEIVER FOR
COURTNEY WALLIS SIMPSON

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- and -

ZAPFE HOLDINGS INC. and MICHAEL SOURLIS

Defendants

Court File No. 05-CL-6159

AND BETWEEN

UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
And as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

AFFIDAVIT OF WERNER ZAPFE

I, WERNER ZAPFE, of the Village of Cedar Valley, in East Gwillimbury,
businessman, MAKE OATH AND SAY:

1. I am the President of Zapfe Holdings Inc. ("Zapfe Holdings"), a Defendant in action 07-CL-6843, together with Michael Sourlis (hereinafter referred to as "Sourlis") and as such have good knowledge of the matters hereinafter deposed.

THE DIANOR SHARES

2. Zapfe Holdings is also a claimant in the receivership of a certain Courtney Wallis Simpson (hereinafter referred to as "Simpson"), a Defendant in proceeding 05-CL-6159 and the registered owner of certain shares more particularly described below, which were held in trust for me.
3. I am and was at all material times a private investor. I was induced by Simpson to invest certain of my funds in an investment vehicle promoted by her which financed interim closings on residential condominiums. Very high rates of return were promised by Simpson and I believed her.
4. It turned out that the investment promoted by Simpson was not legitimate and I have learned from the newspapers that she has been convicted of fraud in relation to the condominium investment and that she was sentenced to a jail term.

5. As a result of my dealings with Simpson, well prior to her arrest and conviction, Sourlis and I introduced her to the investment opportunity represented by Dianor Resources Inc., also known as Ressources Dianor Inc., (hereinafter referred to "Dianor") in which she wished to acquire shares.
6. Now shown to me and annexed hereto and marked as **Exhibit "A"** to this my affidavit is a true copy of the undated Subscription Agreement whereby 217,391 shares of Dianor (hereinafter referred to as the "shares") were purchased by Simpson.
7. Now shown to me and annexed hereto and marked as **Exhibit "B"** to this my affidavit is a copy of the share certificate dated January 28, 2005 confirming Simpson's registered ownership of the shares.
8. Now shown to me and annexed hereto and marked as **Exhibit "C"** to this my affidavit is a copy of the warrant dated January 27, 2005 for the acquisition of the shares by Simpson.
9. I was advised by Simpson, and verily believe, that she paid nothing for these shares and that, as a result, she owed Dianor the purchase price.
10. On April 11, 2005 Simpson pledged her Dianor shares to me by a certain document entitled "Promissory Note", a true copy of which is annexed hereto

and marked as **Exhibit "D"** to this my affidavit. This document was intended as a transfer of the ownership of the shares to myself.

11. On November 23, 2005 Simpson caused her broker, Computershare Investor Services, to formally transfer title to her pledged Dianor shares to me. Annexed hereto and marked as **Exhibit "E"** to this my affidavit is a true copy of the correspondence by which this transfer was affected.
12. I, through Zapfe Holdings, paid for Simpson's acquisition of the shares. Annexed hereto and marked as **Exhibit "F"** to this my affidavit is a true copy of the cheque drawn on the account of Zapfe Holdings on November 17, 2005. The payee is Dianor. The memorandum on the cheque confirms that it was in support of the payment for 217,391 share certificates for Sourlis.
13. In order to pay me back for the aforementioned payment Sourlis shortly afterward transferred the sum of \$25,000.00 to the bank account of Zapfe Holdings. Annexed hereto to this my affidavit and marked as **Exhibit "G"** is a true copy of a page from the Deposit Book for the account of Zapfe Holdings on December 6, 2005 showing the deposit of monies in the amount of \$25,000.00 with the annotation "SOURLIS DIANOR SHARES C.W.S.". I deposited this \$25,000.00 into the Zapfe Holdings account on December 6, 2005 to reimburse the monies which were paid to Dianor as set out above.

14. Now shown to me and annexed hereto and marked as **Exhibit "H"** to this my affidavit is a true copy of the letter dated April 3, 2006 signed by Chantal Gagnon at Dianor which confirms that it was my money which paid for the shares.
15. Now shown to me and annexed hereto and marked as **Exhibit "I"** to this my affidavit is a true copy of an internal memorandum from Dianor dated December 9, 2006 confirming that the cheque which is marked as Exhibit "F" above was received as payment for the shares.
16. Now shown to me and annexed hereto and marked as **Exhibit "J"** to this my affidavit is a true copy of the Treasury Order from Dianor dated January 23rd, 2006 which confirms the attribution of the shares to Sourlis and deposit of the same with Zapfe Holdings.

THE WITHIN PROCEEDINGS

17. A certain freezing order in the nature of a Mareva injunction (hereinafter referred to as the "Freezing Order") was granted by the Honourable Madam Justice Mesbur in action no. 05-CL-6159, which is a receivership proceeding. The injunction was obtained on an *ex parte* basis.

18. The aforementioned injunction was added in handwriting to the Fourth Amended and Restated Initial Order made by Mesbur J. on March 9, 2006 (hereinafter referred to as the "Order"). The Order, by restraining dealings with the shares effectively froze the shares indefinitely at a time when the Defendants were not parties to that proceeding. Annexed hereto and marked as **Exhibit "K"** to this my affidavit is a true copy of the Order.
19. The freezing of the shares has caused the Defendants considerable loss. The shares hit a high of about \$1.80 in early 2006 (at about the time of the Freezing Order) and by September 10th of 2007 had declined to sixty (60) cents. This is a loss of over 66% of the share price during a time when the shares could not be traded because of the Freezing Order. Now shown to me and annexed as **Exhibit "L"** to this my affidavit is a true copy of Globeinvestor.com (a subsidiary of the parent company of Toronto's *Globe and Mail*) stock quote for Dianor as at September 10, 2007.
20. Dianor does business in the natural resources sector and, more specifically, mineral exploration and associated matters. As a result, it is a somewhat volatile stock; it is traded on the TSE Venture Exchange. Freezing the trading with respect to any shares of this nature is inherently prejudicial to the owner as opportunities to dispose of the stock before a loss of value are thereby prohibited.

21. Because of the decline in the value of the shares, I have lost considerable money.
22. When the Freezing Order was granted, I retained the firm of Drudi Alexiou Kuchar LLP to represent me. I am advised by Constantine Alexiou (hereinafter referred to as "solicitor Alexiou"), and verily believe, that he demanded of the solicitors for the Receiver that an action be commenced in which I had party status and standing to participate. Annexed hereto and marked collectively as **Exhibit "M"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated April 20, 2006, together with fax transmission particulars.
23. I am further advised by solicitor Alexiou, and verily believe, that he requested of the solicitors for the Receiver a copy of the examination transcript of Simpson in action 05-CL-2159. Annexed hereto and marked collectively as **Exhibit "N"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated April 20, 2006, together with fax transmission particulars.
24. I am further advised by solicitor Alexiou, and verily believe, that he requested of the solicitors for the Receiver the reason why no security for costs had been volunteered by the foreign Receiver in action 05-CL-2159. Annexed hereto and marked collectively as **Exhibit "O"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated April 24, 2006.

25. I am advised by solicitor Alexiou, and verily believe, that there has been no reply to his enquiries concerning any alleged exemption for the foreign Receiver with respect to security for costs.
26. I am further advised by solicitor Alexiou, and verily believe, that he once again requested of the solicitors for the Receiver that a separate action be commenced in respect of myself for the reasons given above. Annexed hereto and marked collectively as **Exhibit "P"** to this my affidavit, is a true copy of the letter of solicitor Alexiou dated June 30, 2006, together with fax transmission particulars.
27. I am further advised by solicitor Alexiou, and verily believe, that he again requested of the solicitors for the Receiver a copy of the transcript of examination of Simpson Annexed hereto and marked collectively as **Exhibit "Q"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated October 13, 2006, together with fax transmission particulars.
28. I am further advised by solicitor Alexiou, and verily believe, that he again requested of the solicitors for the Receiver any reason for exempting the foreign Receiver from the normal requirement for security for costs. Annexed hereto and marked collectively as **Exhibit "R"** to this my affidavit is a true copy of the

letter of solicitor Alexiou dated October 13, 2006, together with fax transmission particulars.

29. I am further advised by solicitor Alexiou, and verily believe, that as there had been no response to his aforementioned correspondence, he again wrote to the solicitors for the Receiver requesting a response and enclosing copies of his earlier correspondence. Annexed hereto and marked collectively as **Exhibit "S"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated October 18, 2006, together with fax transmission particulars.
30. I am further advised by solicitor Alexiou, and verily believe, that he wrote once again to the solicitors for the Receiver on the issue of the Simpson transcript and the required separate action. Annexed hereto and marked collectively as **Exhibit "T"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated October 25, 2006, together with fax transmission particulars.
31. I am further advised by solicitor Alexiou, and verily believe, that a reply was received from the solicitors for the Receiver denying his request for the Simpson examination transcript on the basis that Simpson had been consulted and the consent refused. Annexed hereto and marked collectively as **Exhibit "U"** to this my affidavit is a true copy of the letter of Bennett Jones LLP dated November 1, 2006, together with fax transmission report.

32. I am further advised by solicitor Alexiou, and verily believe, that the position being adopted by Simpson is not at all averse to assisting my situation. Annexed hereto and marked as **Exhibit "V"** to this my affidavit is a true copy of the letter of Simpson's letter to solicitor Alexiou dated June 11, 2007.
33. I am advised by solicitor Alexiou, and verily believe, that the aforementioned letter from Simpson was neither prompted nor solicited by his office; it appears to be the completely spontaneous and unforced act of Simpson.
34. In March of 2006, the Receiver sought approval of \$404,665.09 in legal fees and disbursements on behalf of his law firm Bennet Jones for the 6 month period from October 11, 2005 to April 11, 2006.
35. Following a detailed review of the matter, Spies J. commented that the assets of the estate are modest relative to the quantum of the claims. Annexed hereto and marked as **Exhibit "W"** to this my affidavit is a true copy of the June 8, 2006 Decision of Spies J.
36. In the Fourth Report, the Receiver estimated that the net recovery for the estate would be at \$1,808,191.00.

- 37. Spies J. reduced the Bennet Jones claim to \$295,687.30. The Bennet Jones fees were reduced by \$102,000.00 before G.S.T.

- 38. Spies J. also approved interim fees and disbursements of the Receiver of \$35,253.39 covering the period November 17, 2005 to February 28, 2006.

- 39. Under the November 7, 2005 receiving order of Ground J. any court-approved costs are to be a first charge over the assets recovered in the receivership. Annexed hereto and marked as **Exhibit "X"** to this my affidavit is a true copy of the November ^{7, 2005} order of Ground J.

- 40. I swear this affidavit in support of the within Motion and for no other or improper purpose or delay.

SWORN TO BEFORE me at the City
of Vaughan, in the Province of Ontario,
this 11th day of September, 2007



Commissioner for taking Affidavits

C. Alexion

)
)
)
)
)



WERNER ZAPFE

Tab A

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

Courtney Wallis Simpson
Inspector

000026

SUBSCRIPTION AGREEMENT
(for use by Ontario investors only - accredited investors)
See page 5 for registration and delivery instructions

DIANDR RESOURCES INC.
730 - 4^e Avenue
Val d'Or, Quebec
J9P 1J2

Dear Sirs:

1. PURCHASE

The undersigned hereby agrees to purchase from you Two hundred thirty-three thousand three hundred thirty-one (217,371) common shares (individually, a "Share" and collectively, the "Shares") of Dianor Resources Inc. (the "Company") at a price of twenty-three cents (\$0.23) per Share, for total proceeds of Five thousand dollars (\$50,000).

Each Share shall be accompanied by one common share purchase warrant (individually, a "Warrant" and collectively, the "Warrants") of the Company. Each Warrant shall entitle the holder thereof to acquire one additional common share (individually, an "Additional Share" and collectively, the "Additional Shares") of the Company at an exercise price of thirty-five cents (\$0.35) for a period of twelve (12) months from the date of the issuance of the Warrants.

2. DELIVERY AND PAYMENT

(i) Subject to acceptance by you of this agreement, delivery of the Shares and Warrants shall be completed at the offices of Heenan Blaikie LLP, counsel to the Company, 1250 René-Lévesque Blvd. West, Suite 2500, Montreal, Quebec, on a date to be selected by the Company, which date shall be no later than January 14, 2005 or such earlier date as may be set by the regulatory authorities (the "Closing"). At Closing, the Company shall deliver to you, against payment of the purchase price of the Shares and Warrants by certified cheque or bank draft in Canadian funds payable to the Company, certificates representing the Shares and Warrants. The form of certificate representing the Warrants is annexed hereto as Schedule A.

(ii) The obligation of the undersigned to complete the purchase of the Shares and Warrants contemplated hereby shall be conditional upon the fulfilment at or before the Closing of the following conditions, which conditions the Company covenants to exercise its best efforts to have fulfilled at or prior to the Closing:

- (a) the TSX Venture Exchange shall have conditionally accepted notice of the issuance of the Shares and Warrants; and
- (b) the Company shall have obtained all necessary prospectus and registration exemptions from provincial securities commissions with respect to the issuance of the Shares and Warrants or the issuance of the Shares and Warrants shall be otherwise exempt from such prospectus and registration requirements.



Registered Domestic / Recommandé Régime intérieur



Destinataire: COURTNEY WALLIS SIMPSON
 Nom: COURTNEY WALLIS SIMPSON
 Adresse: _____
 Ville: _____ Province: _____ Postal Code: _____ Code postal: _____
 Valeur: \$ 5000

FOR DELIVERY CONFIRMATION / POUR CONFIRMER LA LIVRAISON
1 888 550-6333
www.canadapost.ca
www.postescanada.ca

33-086-504 (99-10)

3. COVENANTS, REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS OF THE PURCHASER

The undersigned covenants, represents, warrants and acknowledges to the Company (which covenants, representations, warranties and acknowledgements shall survive Closing) that:

- (i) the undersigned is resident in Ontario and is an "accredited investor" as such term is defined in *Ontario Securities Commission Rule 45-501* and has properly completed and duly executed the Accredited Investor Certificate annexed to this subscription agreement as Schedule B indicating the means by which the Subscriber is an "accredited investor" and confirms the truth and accuracy of all statements made therein by the undersigned;
- (ii) the undersigned is purchasing the Shares and Warrants as principal;
- (iii) the undersigned is capable of assessing the proposed investment because of his financial experience or of advice received from a registered person other than the promoter of the Company, if any;
- (iv) the undersigned is familiar with the aims and objectives of the Company and has been informed of the nature of its activities;
- (v) the undersigned has been informed of the proposed use of the proceeds of the distribution of the Shares and Warrants;
- (vi) the undersigned is aware of the characteristics of the Shares, Warrants and Additional Shares and of their speculative nature, and of the fact that they may not be resold or otherwise disposed of except in accordance with applicable securities legislation;
- (vii) the Shares and Warrants will be legated with a four (4) month hold period, as required by the TSX Venture Exchange and *Multilateral Instrument 45-102 Resale of Securities*;
- (viii) the undersigned will execute and deliver all documentation as may be required by applicable Canadian securities legislation or the regulations of the TSX Venture Exchange, including, if the undersigned is not an individual, a Corporate Placee Registration Form of the TSX Venture Exchange annexed hereto as Schedule C, if not already filed with the TSX Venture Exchange;
- (ix) the Shares and Warrants will be held by the undersigned for investment only and not with a view to resale or distribution;
- (x) the address set forth below is the true and correct address of the undersigned;
- (xi) the number of shares set forth below is the true and correct number of shares, if any, of the Company owned by the undersigned prior to this subscription, as required by the TSX Venture Exchange; and
- (xii) the undersigned acknowledges and consents:
 - (a) to the fact that the Company is collecting his personal information (as that term is defined under applicable privacy legislation, including, without limitation, the *Personal Information Protection and Electronic Documents Act (Canada)* and any other applicable

similar, replacement or supplemental provincial or federal legislation or laws in effect from time to time) for the purposes of completing this agreement;

- (b) to the Company retaining such personal information for as long as permitted or required by law or business practices;
- (c) to the fact that the Company may be required by applicable securities laws, the rules and policies of the TSX Venture Exchange or the rules of the Investment Dealers Association, as the case may be, to provide such regulatory authorities with any personal information provided by him in this agreement; and
- (d) to the fact that the Company may use and disclose his personal information as follows:
 - (1) for internal use with respect to managing the relationships between and contractual obligations of the Company and the undersigned;
 - (2) for use and disclosure for income tax related purposes, including without limitation, where required by law, disclosure to the Canada Revenue Agency;
 - (3) disclosure to securities regulatory authorities and other regulatory bodies with jurisdiction with respect to reports of trade and similar regulatory filings;
 - (4) disclosure to governmental or other authority to which the disclosure is required by court order or subpoena compelling such disclosure and where there is no reasonable alternative to such disclosure;
 - (5) disclosure to professional advisors of the Company in connection with performance of their professional services;
 - (6) disclosure to any person where such disclosure is necessary for legitimate business reasons and is made with your prior written consent;
 - (7) disclosure to a court determining the rights of the parties under this agreement; or
 - (8) for use and disclosure as otherwise required or permitted by law.

(xiii) the undersigned further acknowledges that:

- (a) the distribution of the Shares and Warrants is not being accompanied by advertisement; and
- (b) in executing this agreement, the Company is relying upon the representations and warranties and acknowledgments of the undersigned set out herein and, in accepting the Shares and Warrants at the Closing, the undersigned will be representing and warranting that such are true as at the Closing with the same force and effect as if they had been made at such time.

4. REGULATORY APPROVAL

This agreement is subject to regulatory approval.

5. TIME OF THE ESSENCE

Time shall, in all respects, be of the essence hereof.

6. CANADIAN DOLLARS

All references herein to money amounts are to lawful money of Canada.

7. HEADINGS AND SCHEDULES

The headings contained herein are for convenience only and shall not affect the meaning or interpretation hereof.

8. ENTIRE DOCUMENT

This agreement constitutes the only agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior negotiations and understandings. This agreement may be amended or modified in any respect by written instrument only.

9. SUCCESSORS AND ASSIGNS

The terms and provisions of this agreement shall be binding upon and enure to the benefit of the undersigned and the Company and their respective successors and assigns; provided that, except as herein provided, this agreement shall not be assignable by either party without the written consent of the other.

10. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

11. SIGNATURE

This agreement may be executed by any one or more of the parties hereto in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. This agreement may be executed by telecopier and any such signature shall be valid and binding.

12. LANGUAGE

The parties hereto declare that each of them has required this agreement to be in the English language and each of them does hereby consent to any documentation, notices or legal proceedings provided for herein, issued hereunder, or relating directly or indirectly hereto, being in the English language. Chaque partie déclare par les présentes avoir demandé que la présente convention soit rédigée en anglais et chaque partie consent par les présentes à ce que tout document, procédure légale ou avis prévus en découlant des présentes ou s'y rapportant directement ou indirectement soit rédigé en anglais seulement.

000030

DATED at STONEYVILLE, Ontario, the 12 day of JANUARY, 2005.

<u>COURTNEY MARIE SIMPSON</u>
Name of Subscriber
<u>[Signature]</u>
Signature
<u>587 CAMPELLE RD</u>
Address of Subscriber
<u>STONEYVILLE ONTARIO</u>
<u>L4A 7E9</u>
Number of common shares of the Company owned prior to this subscription

Register the Common Shares and Warrants as set out above, or as follows:
Name
Account reference, if applicable
Address

Deliver the Common Shares and Warrants to the address set out above, or as follows:
Name
Account reference, if applicable
Address
Telephone Number

ACCEPTANCE

DIANOR RESOURCES INC. hereby accepts the foregoing subscription.

DATED: _____, 2005

DIANOR RESOURCES INC.

Per: _____

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SUBSCRIPTION FORM

TO: DIANOR RESOURCES INC.

- (a) The undersigned holder of the within Warrant Certificate hereby subscribes for _____ common shares of DIANOR RESOURCES INC. pursuant to the terms of the within Warrant Certificate.
- (b) The said common shares shall be registered in the name of the undersigned holder.

Dated this _____ day of _____ 200_____

SIGNATURE

WITNESS

DRAFT ONLY

- 9 -

000036

SCHEDULE B

ACCREDITED INVESTOR CERTIFICATE (ONTARIO)

TO: **DIANOR RESOURCES INC.**
Val-d'Or, Quebec

In connection with the subscription for common shares and warrants (the "Securities") of Dianor Resources Inc. (the "Company"), the undersigned represents and warrants that the undersigned has read the following definition of an "accredited investor" from *Ontario Securities Commission Rule 45-501* and certifies that the undersigned is an accredited investor as indicated below (check one):

"accredited investor" means:

- (a) an individual whose net income before taxes exceeded \$100,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year
- (b) an individual who beneficially owns, or who together with a spouse beneficially owns, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000
- (c) a company, limited liability company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least \$5,000,000 as reflected in its most recently prepared financial statements
- (d) a bank listed in Schedule I or II of the *Bank Act* (Canada), or an authorized foreign bank listed in Schedule III of that Act
- (e) the Business Development Bank incorporated under the *Business Development Bank Act* (Canada)
- (f) a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or under the *Trust and Loan Companies Act* (Canada), or under comparable legislation in any other jurisdiction
- (g) a co-operative credit society, credit union central, federation of caisses populaires, credit union or league, or regional caisses populaires, or an association under the *Cooperative Credit Associations Act* (Canada), in each case, located in Canada
- (h) a company licensed to do business as an insurance company in any jurisdiction

- 10 -

000034

- (i) a subsidiary entity of any person or company referred to in paragraph (d), (e), (f), (g) or (h), where the person or company owns all of the voting shares of the subsidiary entity
- (j) a person or company registered under the *Ontario Securities Act* or securities legislation in another jurisdiction as an adviser or dealer, other than a limited market dealer
- (k) the government of Canada or of any jurisdiction, or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government
- (l) any Canadian municipality or any Canadian provincial or territorial capital city
- (m) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof
- (n) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or similar regulatory authority
- (o) a registered charity under the *Income Tax Act* (Canada)
- (p) an individual who has been granted registration under the *Ontario Securities Act* or securities legislation in another jurisdiction as a representative of a person or company referred to in paragraph (i), whether or not the individual's registration is still in effect
- (q) a promoter of the issuer or an affiliated entity of a promoter of the issuer
- (r) a spouse, parent, brother, sister, grandparent or child of an officer, director or promoter of the issuer
- (s) a person or company that, in relation to the issuer, is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the *Ontario Securities Act*
- (t) an issuer that is acquiring securities of its own issue
- (u) a person or company that is recognized by the Ontario Securities Commission as an accredited investor
- (v) a mutual fund or non-redemtable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors

000035

- (w) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities under a prospectus for which a receipt has been granted by the Director or, if it has ceased distribution of its securities, has previously distributed its securities in this manner
- (x) a fully managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund
- (y) an account that is fully managed by a trust corporation registered under the *Loan and Trust Corporations Act* (Ontario) or under comparable legislation in any other jurisdiction
- (z) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (d) through (j) and paragraph (u) in form and function
- (aa) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors

The foregoing representation is true and accurate as of the date of this certificate and will be true and accurate as of the Closing. If any such representation shall not be true and accurate prior to Closing, the undersigned shall give immediate written notice of such fact to the President of the Company.

Date: STUFFVILLE, 2005

COURTNEY WALKER SIMPSON
Name of Subscriber

JENNIFER A. FULLER
Name of witness (if the Subscriber is an individual)

[Signature]
Signature

[Signature]
Signature of witness

If the Subscriber is a corporation, print name and title of Authorized Signing Officer

SCHEDULE C
FORM 4C

TSX VENTURE
EXCHANGE



000030

CORPORATE PLACEE REGISTRATION FORM

Where subscribers to a Private Placement are not individuals, the following information about the placee must be provided. This Form will remain on file with the Exchange. The corporation, trust, portfolio manager or other entity (the "Placee") need only file it on one time basis, and it will be referenced for all subsequent Private Placements in which it participates. If any of the information provided in this Form changes, the Placee must notify the Exchange prior to participating in further placements with Exchange listed companies. If as a result of the Private Placement, the Placee becomes an Insider of the Issuer, Insiders of the Placee are reminded that they must file a Personal Information Form (2A) or, if applicable, Declarations, with the Exchange.

1. Placee Information:

- (a) Name: _____
- (b) Complete Address: _____

- (c) Jurisdiction of Incorporation or Creation: _____

- 2. (a) Is the Placee purchasing securities as a portfolio manager (Yes/No)? _____
- (b) Is the Placee carrying on business as a portfolio manager outside of Canada (Yes/No)? _____

3. If the answer to 2(b) above was "Yes", the undersigned certifies that:

- (a) It is purchasing securities of an Issuer on behalf of managed accounts for which it is making the investment decision to purchase the securities and has full discretion to purchase or sell securities for such accounts without requiring the client's express consent to a transaction;
- (b) it carries on the business of managing the investment portfolios of clients through discretionary authority granted by those clients (a "portfolio manager" business) in _____ [jurisdiction], and it is permitted by law to carry on a portfolio manager business in that jurisdiction;
- (c) it was not created solely or primarily for the purpose of purchasing securities of the Issuer;
- (d) the total asset value of the investment portfolios it manages on behalf of clients is not less than \$20,000,000; and
- (e) it has no reasonable grounds to believe, that any of the directors, senior officers and other insiders of the Issuer, and the persons that carry on investor relations activities for the Issuer has a beneficial interest in any of the managed accounts for which it is purchasing.

4. If the answer to 2(a) above was "No", please provide the names and addresses of control persons of the Places:

Name	City	Province or State	Country

The undersigned acknowledges that it is bound by the provisions of applicable Securities Law, including provisions concerning the filing of insider reports and reports of acquisitions (Sec for example, sections 87 and 111 of the Securities Act (British Columbia) and sections 176 and 182 of the Securities Act (Alberta).

Acknowledgement - Personal Information

"Personal Information" means any information about an identifiable individual, and includes information contained in sections 1, 2 and 4, as applicable, of this Form.

The undersigned hereby acknowledges and agrees that it has obtained the express written consent of each individual to:

- (a) the disclosure of Personal Information by the undersigned to the Exchange (as defined in Appendix 6B) pursuant to this Form; and
- (b) the collection, use and disclosure of Personal Information by the Exchange for the purposes described in Appendix 6B or as otherwise identified by the Exchange, from time to time.

Dated at _____ on _____, 2005.

(Name of Purchaser - please print)

(Authorized Signature)

(Official Capacity - please print)

(please print name of individual whose signature appears above)

THIS IS NOT A PUBLIC DOCUMENT

Tab B

THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

NUMERO - NUMBER
001630
000016300

RESSOURCES
DIANOR

CONSTITUÉE SOUS L'AUTORITÉ DE LA PARTIE 1A DE LA LOI SUR LES COMPAGNIES DU QUÉBEC
INCORPORATED UNDER PART 1A OF THE QUEBEC COMPANIES ACT

CAPITAL AUTORISÉ
UN NOMBRE ILLIMITÉ D'ACTIONNAIRES
SANS VALEUR NOMINALE

AUTHORIZED CAPITAL
AN UNLIMITED AMOUNT OF COMMON SHARES
WITHOUT NOMINAL VALUE

CUSIP 76124T 10 7

76124T107

*****217391**
*****217391**
*****217391**
*****217391**
*****217391**

LE PRÉSENT CERTIFICAT ATTESTE QUE
THIS IS TO CERTIFY THAT

COURTNEY WALLIS SIMPSON
587 CAM PELLIA BLVD
STOUFFVILLE ON L4A 7G9

est le détenteur inscrit de
is the registered holder of

FULLY PAID AND NON-ASSESSABLE COMMON SHARES WITHOUT
NOMINAL OR PAR VALUE OF

RESSOURCES DIANOR INC.

Les actions peuvent être transférées sur un registre
des valeurs mobilières de la Société par le détenteur inscrit
ou son mandataire sur remise du présent certificat dûment
endossé. Le présent certificat ne lie la Société que s'il est
contresigné et immatriculé par l'agent des transferts et
agent chargé de la tenue des registres.

The shares are transferable on a securities register of
the Corporation by the registered holder or his attorney
upon the surrender of this certificate properly endorsed.
This certificate is not valid until countersigned and
registered by the Transfer Agent and Registrar.

EN FOI DE QUOI les représentants dûment autorisés
de la Société ont signé

WITNESS the signatures of the duly authorized
officers of the Corporation.

Date 28-JAN-2005
Dated

LE PRÉSIDENT

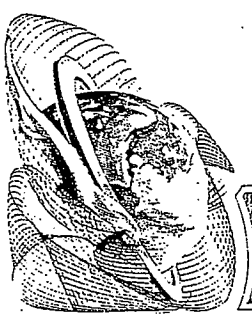
CONTRESIGNÉ ET IMMATRICULÉ - COUNTERSIGNED AND REGISTERED:
MONTREAL TRUST COMPANY
MONTREAL
AGENT DES TRANSFERTS ET AGENT CHARGÉ DE LA TENUE DES REGISTRES
TRANSFER AGENT AND REGISTRAR

LE SECRETAIRE

PARBY
SIGNATURE AUTORISÉE - AUTHORIZED SIGNATURE

LES ACTIONS REPRÉSENTÉES PAR LE PRÉSENT CERTIFICAT PEUVENT ÊTRE TRANSFÉRÉES AU BUREAU DE L'AGENT DES TRANSFERTS ET AGENT CHARGÉ DE LA TENUE DES REGISTRES À MONTREAL
THE SHARES REPRESENTED BY THIS CERTIFICATE ARE TRANSFERABLE AT THE OFFICE OF THE TRANSFER AGENT AND REGISTRAR IN MONTREAL

Chelstus PRESIDENT
D. J. De SECRETARY



THIS CERTIFICATE HAS BEEN COUNTERSIGNED AND REGISTERED BY COMPUTERSHARE TRUST COMPANY OF CANADA, SUCCESSOR AGENT

Tab C

THIS IS **EXHIBIT "C"** TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

THE WARRANTS REPRESENTED BY THIS CERTIFICATE ARE EXERCISABLE ONLY PRIOR TO THE CLOSE OF BUSINESS IN THE CITY OF MONTREAL, QUEBEC ON JANUARY 27, 2006 AFTER WHICH TIME THEY SHALL BE NULL AND VOID.

WARRANT TO PURCHASE COMMON SHARES OF

DIANOR RESOURCES INC.

INCORPORATED UNDER THE *QUEBEC COMPANIES ACT*

RIGHT TO ACQUIRE <u>217,391</u> common shares

THIS CERTIFIES THAT COURTNEY WALLIS SIMPSON is entitled to have issued to her not more than two hundred seventeen thousand three hundred ninety-nine (217,391) common shares (the "Shares") of DIANOR RESOURCES INC. (the "Company") upon notice thereof being given to the Secretary of the Company and the surrender at the registered office of the Company of this certificate duly completed and endorsed by such holder in person or his or her attorney duly authorized in writing (or where the holder is a corporation, accompanied by a certified true copy of a resolution of its Board of Directors authorizing such representative to execute and deliver this certificate) together with payment of the aggregate subscription price of the Shares subscribed for calculated on the basis of a subscription price of thirty-five cents (Cdn) (\$0.35 Cdn) per Share, at any time prior to the close of business in the City of Montreal, Province of Quebec, on January 27, 2006, after which time the warrants represented by this certificate shall be null and void. Where applicable, a replacement certificate shall be issued to the holder of this certificate by the Company following the exercise, in part, of the rights hereby granted to such holder.

the event of any subdivision or any consolidation, reclassification or other change to the common shares of the Company, the Warrant hereby granted shall be deemed to apply to the common shares resulting from such subdivision, consolidation, reclassification or other change, *mutatis mutandis*, and appropriate adjustments shall be made in respect of the purchase price and number of the Shares.

Without prior written approval of the TSX Venture Exchange and compliance with all applicable securities legislation, the securities represented by this certificate may not be sold, transferred, hypothecated or otherwise traded on or through the facilities of the TSX Venture Exchange or otherwise in Canada or to or for the benefit of a Canadian resident until May 29, 2005. Unless permitted under securities legislation, the holder of the securities shall not trade the securities before May 29, 2005.

The holding of this certificate does not entitle the holder hereof to any right or interest except as herein provided.

IN WITNESS WHEREOF the Company has caused this certificate to be signed in its name by its duly authorized officer as of January 27, 2005.



John Ryder, President

240000

SUBSCRIPTION FORM

TO: DIANOR RESOURCES INC.

(a) The undersigned holder of the within Warrant Certificate hereby subscribes for 217,391 common shares of DIANOR RESOURCES INC. pursuant to the terms of the within Warrant Certificate.

(b) The said common shares shall be registered in the name of the undersigned holder.

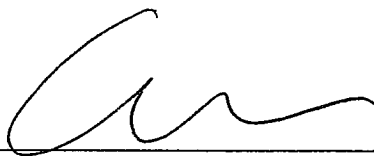
Dated this _____ day of _____, 200__.

[Signature]
SIGNATURE

[Signature]
WITNESS

Tab D

THIS IS **EXHIBIT "D"** TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

PROMISSORY NOTE

PAYABLE TO MICHAEL SOURLIS


IT IS HEREBY ACKNOWLEDGED AND AGREED THAT I, COURTNEY WALLIS SIMPSON, DO HEREBY PLEDGE MY SHARES IN DIANOR RESOURCES IN THE AMOUNT OF 217,391 SHARES, AND ACCOMPANYING RIGHTS TO ACQUIRE WARRANTS IN SAME AMOUNT, TO MICHAEL SOURLIS.. THIS PROMISSORY NOTE SHALL PROVIDE FULL AND ABSOLUTE OWNERSHIP OF THE SAID SHARES TO MICHAEL SOURLIS



COURTNEY WALLIS SIMPSON

04/11/05

DATE



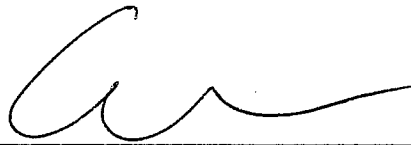
WITNESS

04/11/05

DATE

Tab E

THIS IS **EXHIBIT "E"** TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

November 23, 2005

Computershare Investor Services
The Transfer Agency
9th Floor
100 University Avenue
Toronto, Ontario
M5Y 2Y1

Dear Sir/Madam

This letter is to confirm my instructions to re-register the 217,391 shares of Dianor Resources Inc. currently held in my name under certificate number 0-01630 in the name of:

Michael Sourlis
12 Sims Crescent
Richmond Hill, Ontario

Sincerely

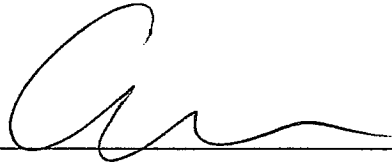
Wallis
Courtney Wallace Simpson
587 Cam Fella Blvd
Stouffville, Ontario
L4A 7G9

416-~~361-3714~~

416-3714

Tab F

THIS IS **EXHIBIT "F"** TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

000046

ZAPFE HOLDINGS INC.
72 DYNAMIC DR., UNIT 6
SCARBOROUGH, ONTARIO M1V 3Z5
Tel: (416) 298-9960

0069

NOV 17 / 05
DATE

PAY to DIANOR RESOURCES
the order of

\$ 50,000⁰⁰

F.FTY

DOLLARS



THE BANK OF NOVA SCOTIA
www.scotiabank.com 1-800-4-SCOTIA
3585 MCNICOLL AVENUE AT MARKHAM ROAD
SCARBOROUGH, ONTARIO M1V 2N3

16402

100

ZAPFE HOLDINGS INC.

RE MIKE SCORLAS

217 391 CERT

PER

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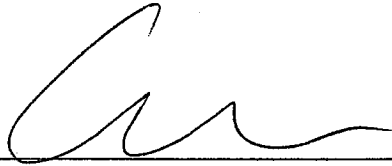
Tab G

THIS IS **EXHIBIT "G"** TO THE AFFIDAVIT OF

WERNER ZAPFE

SWORN TO BEFORE ME

THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

ZAPPE HARDWARE INC

164020054518

STOLE FISH 57373
SERRINIS
DIVISION SHARS
C.W.S. 25000 -

ZAPPE HARDWARE INC

DEC 5/05

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SCOTIABANK
MARKHAM & MCNICOLL
SCARBOROUGH, ONTARIO
DEC 06 2005 25,573 73
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Tab H

THIS IS EXHIBIT "H" TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

RESSOURCES

dianor
INC.



000052

649, 3^e avenue, 2^e étage
Val d'Or (Québec)
J9P 1S7

TSX_V: DOR

Tél. : (819) 825-7090
Télec. : (819) 825-7545

info@dianor.com
www.dianor.com

April 3, 2006

Mr. Gregory Govedaris
GOVEDARIS PROFESSIONAL CORPORATION
Barrister(s) & Solicitor(s)
6383 Main Street
Stouffville, ON CANADA L4A 1G4

Subject : Courtney Wallis Simpson's shares certificate

Mr. Govedary,

Dear Sir,

In reply of your telephone call on April 3, 2006, please be advised that Dianor Resources Inc. received from Zapfe Holdings Inc. a cheque drawn on The Bank of Nova Scotia for the sum of fifty-thousand dollars (cheque # 0069, copy attached). These funds on the instructions of Mr. Zapfe were to pay for Mrs. Courtney Wallis Simpson's shares (217391 shares); certificate #0-01630.

Sincerely yours,

Chantal Chagnon
Chantal Chagnon, B.A.
Administrative Assistant

Tab I

THIS IS **EXHIBIT "I"** TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

000954

9 décembre 2005

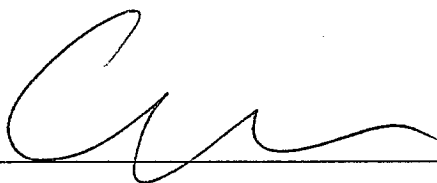
Chèque no. 0069 provenant de Zapfe Holdings Inc. ,
référence Mike Sourlis (prêt de Zapfe à Sourlis) pour
217 391 actions (financement de janvier 2005) paie
les actions de MME COURTNEY WALLIS
SIMPSON.

Tab J

THIS IS EXHIBIT "J" TO THE AFFIDAVIT OF
WERNER ZAPFE

SWORN TO BEFORE ME

THIS 11TH DAY OF SEPTEMBER, 2007

A handwritten signature in black ink, appearing to be 'C. Alexiou', written over a horizontal line.

Commissioner for taking affidavits

Constantine Alexiou

TREASURY ORDER

TO: COMPUTERSHARE TRUST COMPANY OF CANADA
1500 University Street
Suite 700
Montréal, Québec
H3A 3S8

000056

RE: Issue of Common Shares of Dianor Resources Inc.,

Dianor Resources Inc. has received payment in full for the exercise of common share purchase warrants issued by Dianor in December 2004. Accordingly, this delivery order will constitute your authority and direction on behalf of Dianor to issue, sign, countersign and register, as transfer agent and registrar, as of January 23, 2006, one (1) certificate representing ~~four hundred forty-two~~ (442,391) ~~thousand three hundred ninety-one~~ common shares (the "Shares") registered in the name of the person set out in the schedule annexed hereto.

Pursuant to section 5.2 of Policy 3.2 of the TSX Venture Exchange:

- (a) You are hereby instructed to provide to the TSX Venture Exchange within five (5) days following January 23, 2006, a copy of this treasury order, which should be sent to the attention of "Treasury Order Specialist, Market Information Services" at the following fax number: (604) 688-6051;
- (b) The issues price per Share is thirty-five cents (\$0.35);
- (c) The balance of issued securities of Dianor following the issuance will be 113,518,290;
- (d) The issuance of the Shares was approved by the TSX Venture Exchange on January 4, 2005 under submission number 99595; and
- (e) Dianor confirms that it has received full payment for the Shares and that the Shares shall be validly issued as fully paid and non-assessable.

SIGNED the 23th day of January, 2006.

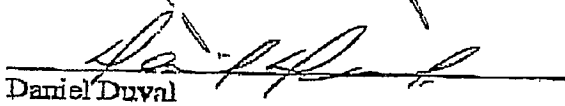
DIANOR RESOURCES INC.

per:



John Ryder
President

per:



Daniel Duval
Chairman of the Board

SCHEDULERegistrationNumber of Common Shares

Michael Sourlis	217,391
181 Oxford St.	
Richmond Hill, On L4C 4L6	

Send back to:

Zapfe Holdings Inc.
72 Dynamic Dr., Unit 6
Scarborough, On M1V 3Z5

RegistrationNumber of Common Shares

Blackmont Capital Inc	25,000
ITF Roger Brian Ashton, A/C 5AP040S	
Bay Wellington Tower	
BCE Place, Suite 900	
181 Bay Street, P.O. Box 779	
Toronto, Ontario M5J 2T3	

Send back to:

Via FedEx (account # 267221766)

Blackmont Capital Inc
Bay Wellington Tower
BCE Place, Suite 900
181 Bay Street, P.O. Box 779
Toronto, Ontario M5J 2T3

RegistrationNumber of Common Shares

Joseph D. Kozina	200,000
C/O Nesbitt Burns	
1 First Canadian Place 35 th Floor	
P.O. Box 150	
Toronto, On M5X 1H3	

Send back to:

Via UPS (account # WX2676)

Nesbitt Burns
Attn: Ranji Sankar
1 First Canadian Place 35th Floor
P.O. Box 150
Toronto, On M5X 1H3

TOTAL

 442,391

Tab K

THIS IS EXHIBIT "K" TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

COPY

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

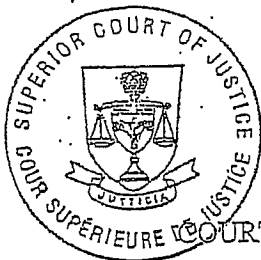
THE HONOURABLE) THURSDAY, THE 9TH DAY OF
JUSTICE) MARCH, 2006

BETWEEN:

UDAYAN PANDYA

Plaintiff

-and-



COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

In the Matter of the *Class Proceedings Act, 1992*

FOURTH AMENDED AND RESTATED INITIAL ORDER

THIS MOTION made by the plaintiff for an order appointing a receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Reality") pursuant to s. 101 of the *Courts of Justice Act* with investigatory and preservation powers was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the Fourth Report of the Receiver dated March 3, 2006. and on hearing the submissions of counsel for the Receiver, *for Mr Pahuva, for Atlas Holdings, for the plaintiffs in 05-CL-6178, Ms. Simpson appearing in person; Rem*

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and dispenses with further service thereof.
2. THIS COURT ORDERS that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson, York Realty, and Courtney Wallis Simpson c.o.b. as York Management Group, York Group and Camco Developments (the "Defendants") pursuant to s. 101 of the *Courts of Justice Act* with the powers and duties hereinafter set out.
3. THIS COURT ORDERS that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.
4. THIS COURT ORDERS that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.
5. THIS COURT ORDERS that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.
6. THIS COURT ORDERS that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

Preservation of Assets

7. THIS COURT ORDERS that the Receiver is hereby empowered and authorized for and on behalf of and in the name of any of the Defendants to take possession and control of all of the present and future assets, undertaking and property of the Defendants and any funds, proceeds or other assets directly or indirectly related to the funds allegedly raised by the Defendants as alleged in the statement of claim (the "Property") and any and all proceeds, receipts and

disbursements arising out of or from the Property, until further order of this Court, and to act at once in respect of the Property. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Receiver is hereby expressly empowered and authorized on the Receiver's behalf, but not obligated:

- (a) to take such steps as in the opinion of the Receiver are necessary or appropriate to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable, provided that the Receiver shall not evict or dispossess any occupant of any residential dwelling without further order of this Court made on notice to such occupant;
- (b) to take such steps as in the opinion of the Receiver are necessary or appropriate to maintain control over all receipts and disbursements arising out of or from the Property;
- (c) to receive and collect all monies, debts, claims, choses in action and accounts now owed or hereafter owing to any of the Defendants in respect of the Property and to exercise all remedies of any of the Defendants in collecting all such monies, including, without limitation, to enforce any security held by any of the defendants and to receive and recover all funds, monies, cash, cash equivalents, negotiable securities, accounts and any other assets on deposits to banks, brokerages and other financial or other institutions;
- (d) to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange, or other documents of whatever nature in respect of any of the Property, in the name and on behalf of any of the Defendants, which are necessary, desirable or convenient in, the opinion of the Receiver for any purpose pursuant to this Order;

- (e) to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property and to defend all proceedings now pending or hereafter instituted against any of the Defendants or the Receiver, the prosecution of or defence of which will, in the judgment of the Receiver, be necessary to properly protect or realize on the Property or to protect the administration by the Receiver of the affairs of any of the defendants and the Property, and to settle or compromise any such proceedings which in the judgment of the Receiver should be settled;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that any such sale or disposition of Property shall, if the Defendants do not consent to the same, be subject to the Court's approval;
- (g) to report to, meet with and discuss with such creditors of the Defendants and their advisors, including the Mortgage Fraud Scheme victims who are class members in court file no. 05-CL-6178, as the Receiver deems appropriate including holding town hall or other meetings on all matters relating to the Property and receivership; and
- (h) to register this order in any public registry against title to any of the Property. Without limiting the generality of the foregoing this court orders that this order be registered against the real property and other assets described at Schedules "B" and "C" hereto.

8. THIS COURT ORDERS that no person having notice of this order shall interfere with, obstruct or in any way hinder the Receiver in the fulfillment or pursuit of its duties hereunder and that all such persons are under an obligation to deliver up to the Receiver any Property or other thing to which the Receiver is entitled to under this order. In the event that any person contests that any asset, document or thing is Property under this order or is document or record properly producible to the Receiver then that person shall first deliver up the asset in question to the Receiver or to such third party as the Receiver in its discretion may agree for safekeeping and

the person contesting the Receiver's right may thereafter, if so advised, bring an application to this Court for directions.

9. THIS COURT ORDERS that the Receiver may receive information from persons as to the details of their deposit of trust funds investments with Simpson and the other Defendant but that the Receiver shall not be under any obligation to call for claims, validate claims or make recommendations with respect the disbursement of funds to investors without further order of this Court.

10. THIS COURT ORDERS that no demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any contract, including any contract of insurance, the exercise of any right of set-off or combination of accounts, the exercise of any construction, mechanics' repair, storage or other lien, or the commencement or continuation of any proceedings under any Environmental Laws (as hereinafter defined) in any jurisdiction in which the Property may be located, shall be taken against the Receiver, with respect to the Property or any part thereof, without the prior written consent of the Receiver or leave of this Court first being obtained upon not less than seven days' notice to the Receiver.

11. THIS COURT ORDERS that the Defendants and anyone having knowledge of this order be and they are hereby restrained, pending consent of all parties or further order of this Court:

- (i) from removing from Ontario or in any way disposing, dealing with or diminishing the value of any of the Defendants' property, whether real or personal, present or future, held in Ontario or elsewhere, whether held in the Defendants' names or not, pending the final determination of this action or further order of this Court;
- (j) from withdrawing or causing or permitting the withdrawal of or transferring of funds or issuing of cheques or other instruments from any of the defendants' bank

accounts or investment accounts of any nature whatsoever, whether held individually or jointly with any other person, pending the final determination of this action or further order of this Honourable Court, provided that the defendants shall have leave to seek variation of this order in order to permit the withdrawal of a reasonable amount as ordinary living expenses provided that if any such order is sought the Defendants must have fully complied with this order in all respects including the provision to the Receiver of the information required to be provided to the Receiver.

Documents and Investigations

12. THIS COURT ORDERS that the Receiver shall forthwith be entitled to take possession of and examine the Defendants' books and records and make such inquiries as it deems prudent and necessary of the Defendants' bankers, accountants, auditors, advisors, managers, experts, solicitors, agents, officers, employees and others in order to determine the financial status of the Defendants, and shall conduct a review and, if necessary, a detailed examination of the financial records of the Defendants.

13. THIS COURT ORDERS that the Receiver shall report to this Court at such times and in such fashion as this Court may direct.

14. THIS COURT ORDERS that the Defendants and their accountants, auditors, advisors, agents, managers, experts, solicitors, agents, officers and employees, including, without limitation, any accountants, bankers or financial, legal, advisors and the persons set out in Schedule "A", (the "Affected Persons") shall forthwith provide to the Receiver all of the books and records relating to the Defendants' financial history and dealings, including, without limitation, all ledgers, bank statements and records, cheques, financial statements, receipts, vouchers, deposit slips, contracts, agreements, accounting records, computer records (including but not limited to tapes and/or discs) or other documents or records of any kind or nature, howsoever stored or maintained, relating to the Defendants (the "Documents"). Provision of the Documents to the Receiver shall not breach any confidentiality or other non-disclosure obligations the Affected Persons might otherwise have to the Defendants and it shall be deemed that the Defendants shall have consented to the release of the Documents. The Receiver shall

allow the Defendants and their advisors reasonable access to and the ability to make copies of any and all such books and records in the possession of the Receiver. The defendants shall allow the Receiver to make, retain and take away copies of any or all of the Documents and shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver.

15. THIS COURT ORDERS that if any of the Documents is stored or otherwise contained on a computer or other electronic system of information storage, the Defendants and all Affected Persons shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Documents, whether by way of printing same onto paper or making copies of computer discs or such other manner of retrieving and copying same as the Receiver in its discretion deems expedient. For the purposes of this paragraph, the defendants and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Documents as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, forthwith providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, passwords or other codes as may be required to gain access to the Documents.

16. 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 defendants 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, emails or other information sent or received by the Defendants 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 defendants.

17. THIS COURT ORDERS that the Receiver shall have ongoing access to the Defendants' current and future bank account statements and other financial records, copies of which shall be provided to the Receiver as and when demanded by the Receiver. The Defendants and the third parties shall co-operate and consent to the distribution of such records to the Receiver.

18. THIS COURT ORDERS that the Receiver is empowered to demand production from third parties (including but not limited to the Defendants' advisors, banks, financial institutions and the persons set out in Schedule "A") of documents relating to:

- (a) the Defendants' financial affairs;
- (b) the deposit of funds received in connection with the sale of commercial real estate;
- (c) the identities of the persons who have provided deposit funds to Simpson and the other defendants;
- (d) the bank accounts or other financial records referable to the accounts into which such funds were deposited including documents referable to any withdrawal, transfer or dissipation of funds in such accounts; and
- (e) commissions, fees, expenses or other amounts paid to any persons in connection with the sale of such securities and any agreements, arrangements or any other communication with respect to the payment of such amounts;
- (f) and further directs that all such third parties (including all Affected Persons) shall co-operate fully with the Receiver, subject to claims of legal privilege.

19. THIS COURT ORDERS that the Receiver is empowered to compel the attendance, on two clear days written notice by letter from the Receiver or its counsel, of persons believed by the Receiver to have knowledge of the Defendants' affairs for the purpose of being examined under oath by the Receiver or by such person as to whom the Receiver has or may delegate this power. In particular, and without limiting the general nature of the power conveyed by this paragraph, the Receiver is empowered for the purposes of performing its duties hereunder to examine under oath the persons named in Schedule "A" to this order and any persons who may have received transfers of assets or funds from the defendants, provided that nothing herein shall apply, without further order of this Court, to compel any person who has been actually charged with a criminal offence to so testify and that any persons who so testify shall have the right to invoke the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and*

Freedoms. If the persons to be examined have a personal residence or regular place of business within 60 kilometres of an office of Bennett Jones LLP (Toronto, Edmonton or Calgary) such examination shall take place at such office failing which it shall take place at any place where an examination of discovery may take place under the *Rules of Civil Procedure* in the province where the examination is conducted.

20. THIS COURT ORDERS that Simpson shall provide to the Receiver within 7 days of service of this order an affidavit under oath specifying her knowledge on the following matters:

- (a) specifics of all corporations, partnerships, or other entities in which she has a direct or indirect interest with particulars of the nature of such interest;
- (b) specifics of all bank, brokerage or other accounts, wherever situate, in her name, the name of York Region Realty Inc., the name of any of the entities in (a) hereof or over which she has any signing authority or any other direct or indirect control;
- (c) specifics of all bank, brokerage or other accounts, where funds were deposited, all accounts to which such funds may have been transferred and the present whereabouts of such funds;
- (d) whether any assets were purchased or acquired in whole or in part with such funds and, if so, the particulars of such assets and their present location with particulars of the assets involved name of the person or entity who holds title to such assets, the date of acquisition, acquisition cost and a current estimate of value; and
- (e) specifics of any disposition of assets (including transfer of funds) in excess of \$10,000 in the last 2 years and that this affidavit shall be deemed to have been provided by compulsion of law and its further use in any other court proceeding be subject to the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedom*.

21. THIS COURT ORDERS that the Receiver is authorised to enter upon the business premises of the persons set out in Schedule "A" (collectively the "Premises") and to examine

anything and take away any documents or record found at the premises that the Receiver is authorised hereunder to require to be produced to it.

22. THIS COURT ORDERS that the Receiver shall have full power to investigate any gift, transfer, conveyance, settlement or any other disposition (a "Conveyance") of any interest in any assets, funds or any other property by the defendants to third parties (the "Conveyed Property") and to compel the production of information from any person with respect to such Conveyed Property and the circumstances surrounding the Conveyance as if such Conveyed Property was Property under this order and that the Receiver shall be at liberty to apply to the Court for any appropriate order relating to the preservation of any such Conveyed Property.

Other

23. THIS COURT ORDERS that no proceedings shall be brought against the Receiver in any Court or other tribunal unless leave of this Honourable Court is first obtained on motion on at least seven days notice to the Receiver and the parties.

No Proceedings Against the Debtor or the Property

24. THIS COURT ORDERS that no proceeding against or in respect of the Defendants or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all proceedings currently under way against or in respect of the Defendants or the Property are hereby stayed and suspended pending further Order of this Court, save and except action filed as Court File No. 05-CL-6178.

No Exercise of Rights or Remedies

25. THIS COURT ORDERS that all rights and remedies against the Defendants, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Defendants to carry on any business which the Defendants are not lawfully entitled to carry on, (ii) exempt the Receiver or the Defendants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent

the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

26. 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.

27. THIS COURT ORDERS that all the costs of this receivership including without limitation the Receiver's fees and disbursements (including the amounts which the Receiver is obliged to pay others) and the fees and disbursements incurred by Bennett Jones LLP in carrying out its duties herein shall be a first charge on any assets recovered in the receivership herein, subject to approval of the quantum of costs by the Court. The Receiver shall have the right to apply to the Court for approval and payment of its fees and disbursements on an interim basis provided that 15 days notice shall be given to the defendants of any such application. The Receiver shall also have the power, if so advised, to move to have the receivership terminated and to be discharged as Receiver.

28. THIS COURT ORDERS that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

29. THIS COURT ORDERS that the Receiver be granted leave to apply to the Court for approval to borrow and to provide whatever security as may be appropriate, if so advised.

30. THIS COURT ORDERS that, except as otherwise specified herein, the Receiver is at liberty to serve any notice, form or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to the defendants or other appropriate parties at their respective addresses or other contact particulars as last indicated in the records of the defendants and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

31. THIS COURT ORDERS that the Receiver may serve any court materials in these proceedings (including, without limitation, application records, motion records, facta and orders) on all represented parties electronically, by e-mailing a PDF or other electronic copy of such materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list, and posting a copy of the materials to an internet website to be hosted by Quilling Selander Cummiskey Lownds (the "Website") as soon as practicable thereafter, provided that the Receiver shall deliver hard copies of such materials to any party requesting same as soon as practicable thereafter.

32. THIS COURT ORDERS that any party in these proceedings may serve any court materials (including, without limitation, application records, motion records, facta and orders) electronically, by emailing a PDF or other electronic copy of all materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list; provided that such party shall deliver both PDF or other electronic copies and hard copies of full materials to counsel to the Receiver and to any other party requesting same and the Receiver shall cause a copy to be posted on the Website, all as soon as practicable thereafter.

33. THIS COURT ORDERS that the Receiver be permitted to (i) enter into a new listing agreement with John Walley of Sutton Group in Stouffville, (ii) sell Simpson and York Realty's real property assets and contents, and (iii) make it a condition of the new listing agreement that all sales are subject to court approval and to hold all proceeds from the sales in an interest bearing account;

34. THIS COURT ORDERS that the Receiver, if so advised, be permitted to bring a lawsuit as against Lia Hurst and seek a certificate of pending litigation in order to regain possession of the properties alleged to be rightfully owned by Simpson and if successful, to sell those properties, the proceeds of which will be deposited into an interest bearing account;

35. THIS COURT ORDERS that the Receiver may take all steps necessary to transfer title of the Hurst properties to the Receiver, that these properties be listed for sale by Sutton Group Realty and sold, subject to court approval, with the proceeds of sale being held in the Receiver's interest bearing bank account;

36. THIS COURT ORDERS that the Receiver deal directly with the Real Estate Council of Ontario on behalf of all of the victims for the benefit of the estate who have submitted claims;
37. THIS COURT ORDERS that the Receiver or Receiver's counsel may examine Adam Cox and compel production of documents relevant to the real estate deposit scheme;
38. THIS COURT ORDERS that leave is granted to the Receiver to assert challenges to the validity, quantum and priority of the mortgages held by Ajay Pahwa as described in Schedule "D" to this Order (the "Pahwa Mortgages"). The exercise of power of sale under Part III of the Mortgages Act or other enforcement upon the Pahwa Mortgages is hereby restrained, pending further order of the Court. The Receiver shall proceed forthwith by commercially reasonable steps to market the properties that are the subject of the Pahwa Mortgages and the Receiver shall seek court approval of any Agreement of Purchase and Sale upon five days' prior written notice to Ajay Pahwa, at which time directions may be given for discharge of the applicable Pahwa Mortgage on closing and vesting in the court approved purchaser, subject to payment of applicable real property taxes, utilities and prior encumbrances, with the amounts that are claimed by Ajay Pahwa pursuant to the Pahwa Mortgages or such amount as directed by the court to be held in a separate interest-bearing Receiver's bank account pending further order of the court. Pending sale of the properties that are the subject of the Pahwa Mortgages, the Receiver shall be responsible for ensuring that real estate taxes and fire insurance coverage are maintained in good standing. The Receiver's charge as described in paragraph 27 hereof upon the Simpson assets shall not rank in priority to the Pahwa Mortgages, but shall be subordinate to the amounts claimed by Ajay Pahwa pursuant to the Pahwa Mortgages or such amounts as directed by the court, pending final determination of the validity, quantum and priority of the Pahwa Mortgages;
39. THIS COURT ORDERS that 6072 Main Street, Stouffville may be sold pursuant to the terms of the Agreement of Purchase and Sale dated January 10, 2006 and that the amount of \$336,080 less the amount paid pursuant to paragraph 41 herein is to be held in a separate interest bearing bank account pending further order of the Court further to paragraph 37 of the Second Amended and Restated Order of Justice Farley dated December 23, 2005.

40. THIS COURT ORDERS that the terms of the Agreement of Purchase and Sale originally dated January 10, 2006 for the 6072 Main Street Property may be amended to show the purchasers as Maria Januszewski and Michael Januszewski, to reflect a new purchase price of \$695,000 and to reflect a new closing date of May 31, 2006;

41. THIS COURT ORDERS that Lot 14 Stouffer Street may be sold for \$176,000 pursuant to the terms of the Agreement of Purchase and Sale dated January 31, 2006 and the net proceeds from such sale, after real estate commission, closing adjustments and legal fees of sale shall be held in a separate interest bearing bank account, pending further order of the Court further to paragraphs 38, 39 and 40 hereof, so that the aggregate of money so held in respect of the Pahwa Mortgages shall be \$336,080 pending further order of the Court;

42. THIS COURT ORDERS that RBC Dominion Securities be ordered to freeze the Dianor A Resources share certificates that were transferred from Simpson to Vern Zapfi and Michael Sourlis and to produce to the Receiver immediately all documents and particulars relating to the transfer of shares;

OK *The Receiver will immediately produce all these documents to Zapfi + Sourlis. A motion is scheduled for April 6/06 (90 min) to determine if the freeze order should continue. The order of Show*

43. THIS COURT ORDERS that a bank account be opened in Toronto at a bank selected by the Receiver in Courtney Wallis Simpson's name, which account may accept deposits from Simpson but from which funds can be accessed only by the Receiver through Bennett Jones LLP;

44. THIS COURT ORDERS that all proceedings as against Simpson, York Realty, Wallis Simpson & Associates and York Management Group be stayed and that any and all consents to judgment endorsed by Simpson in her personal capacity or as director of York Realty or York Management Group, be deemed ineffective;

45. THIS COURT ORDERS that the bankruptcy proceedings commenced in the Ontario Superior Court of Justice as Bankruptcy Court File No. 31-OR-207325-T by Four Seasons Drywall Systems & Acoustics Limited and the bankruptcy proceeding commenced as Bankruptcy Court File No. 31-OR-207326-T, be stayed and that the related Receiving Orders naming Courtney Wallis Simpson and York Management Group dated December 30, 2005 be stayed;

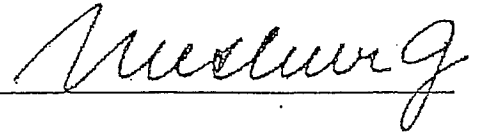
46. THIS COURT ORDERS that the posting of information on the Receiver's website be approved;
47. THIS COURT ORDERS that the claim form as filed with the court be approved;
48. THIS COURT ORDERS that the Statutory Declaration form may be posted on website and distributed to potential claimants;
49. THIS COURT ORDERS that, unless otherwise provided herein or by this Court, no document, order or other material need be served on any person in respect of these proceedings unless such person has served a Notice of Appearance on the solicitors for the Receiver and has filed such notice with this Court.
50. THIS COURT ORDERS that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act (Canada)*, the *Environmental Protection Act (Ontario)*, the *Emergency Plans Act 1963 (Ontario)*; the *Ontario Water Resources Act*, the *Occupational Health and Safety Act (Ontario)* or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

51. THIS COURT SEEKS AND REQUESTS the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada and any court or any judicial, regulatory or administrative body of any other nations and states and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this order.

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

MAR 10 2006

PER/PAR:



Schedule "A"

1. Wayne Simpson
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3
2. York Management Group
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7G9
3. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
4. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
5. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
6. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
7. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
8. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
9. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
10. HSBC
Richmond Hill
11. Laurentian Bank
Newmarket, Ontario

Schedule "B"

1. 587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3

Legal Description:

PCL 19-1 SEC 65 M2296; LT 19 PL 65R2296; Whitchurch-Stouffville

2. PIN 03715-0004
Whitechurch, Ontario

Legal Description:

PT LT 30 PL 54 Stouffville; PT LT 31 PL 54 Stouffville; PT LT 40 PL 54 Stouffville; PT
LT 41 PL 54 Stouffville PTS 1, 7 65R2555; S/T R221467, R221469

3. 1038 Kawagama Lake Road
Dorset, Ontario

Legal Description:

Con 13 PT LOT 1 RP19R3154, Parts 1, 6, 7
Dorset, Algonquin Highlands Township

4. PIN 03710-0193/0194
Stouffville, Ontario

Legal Description:

PT LTS 49 & 50
PL 70 Stouffville PT 2 65R256J4 Whitchurch-Stouffville

Schedule "C"

1. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
2. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
3. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
4. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
5. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
6. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
7. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
8. HSBC
Richmond Hill
9. Laurentian Bank
Newmarket, Ontario

Schedule "D"

Mortgages Held By Mr. Ajay Pahwa

1. \$210,000 mortgage registered on February 10, 2005 on:

PIN 03710-0193/0194, PT LTS 49 & 50, PL 70 Stouffville PT 2
65R256J4 (the Stouffer Street Property);

2. \$220,000 mortgage registered on March 9, 2005 on:

1038 Kawagama Lake Road, Dorset, ON, Con 13, PT LT 1
RP19R3154, Parts 1, 6, 7 (the Kawagama Property); and

3. \$220,000 mortgage registered on March 8, 2005 and a Notice of Agreement Amending the Charge registered on June 28, 2005 increasing the principal amount to \$440,000:

PIN 03715-0004, PT LT 30 PL 54 Stouffville; PT LT 31 PL 54
Stouffville; PT LT 40 PL 54 Stouffville; PT LT 41 PL 54
Stouffville PTS 1, 7 65R2555; S/T/ R221467, R221469 (the
6072 Main Street Property).

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson *et al.*
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

In the matter of the *Class Proceedings
Act, 1992*

Proceeding commenced at Toronto

FOURTH AMENDED AND
RESTATED INITIAL ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

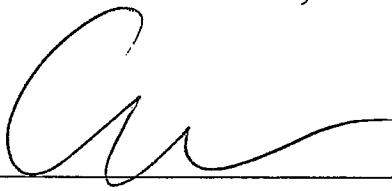
Lincoln Caylor / Emily Atkinson
Tel: (416) 777-6121 / 5740
Fax: (416) 863-1716
LSUC Reg. No. 37030L/50682L

Solicitors for the plaintiff

000079

Tab L

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Commissioner for taking affidavits

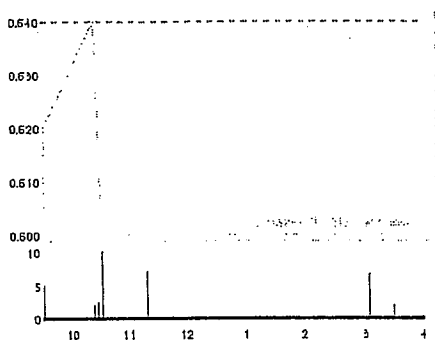
Constantine Alexiou

globeinvestor.com

000081

Dianor Resources DOR-X

Intraday chart Hide Volume vs. Index



Intraday 1 Mo 3 Mo 6 Mo 1 Yr 3 Yr 5 Yr

Last Trade: Sep 10, 2007 15:31:43 EDT

C\$ 0.600 ▼

Net Change C\$ -0.040

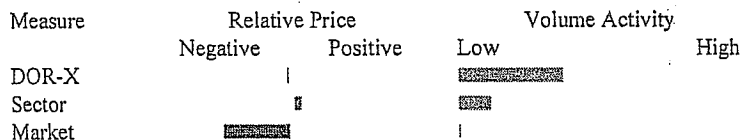
% Change -6.25%

Quotes delayed 15 minutes except NYSE and Amex which are 20 minutes.

Open	0.620	Mkt Cap (\$Mil)	83
High	0.640	EPS (ttm)	-0.03
Low	0.600	P/E (ttm)	-
Bid x700	▼ 0.580	Forward P/E	-
Ask x600	▼ 0.630	PEG (est. 5 yrs)	-
Volume	34,800	Annual Div.	-
52-wk High 04/23	1.58	Yield	-
52-wk Low 03/14	0.46	5-star Rating	★★

Intraday Stock Activity Measures (DOR-X)

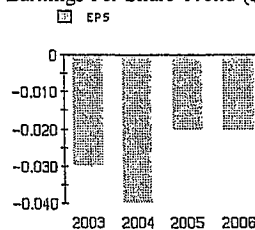
Today's price and volume strength relative to the last 9 trading days, as of 15:31 EST



Annual Financials (DOR-X)

	3-Yr. Growth %	Dec 2006	Dec 2005	Dec 2004
		12 Mo C\$	12 Mo C\$	12 Mo C\$
Total Revenue (\$Mil)	93.21	0.31	0.07	0.01
Sales/Share	-	-	-	-
Profit (\$Mil)	-	-0.92	-1.41	-2.18
EPS	-	-0.02	-0.02	-0.04
Cash Flow/Share	-	-0.01	-0.02	-0.01
Book Value/Share	-	0.25	0.15	0.07
Ret on Common Equity	-	-3.78	-13.32	-40.43
Debt to Equity	-	0.00	0.00	0.00

Earnings Per Share Trend (\$)



Sales Per Share Trend (C\$)

[View Company Snapshot](#) [View Full Financials](#)

Competitors (DOR-X)

Key Competitors based on Market Cap in Precious Metals Industry

Stock	Symbol	Currency	Price	Net Chg.	Quote Time	Consen. Rec.	P/E	Mkt Cap		52-Wk		Intraday Performance %	
								\$Mil	52-Wk High	52-Wk Low			
Mansfield Minerals	MDR-X	C\$	2.70	0.06	14:05	-	-53	89	3.94	2.11	2.27	██████████	
Queenston Mining	QMI-T	C\$	2.13	-0.02	14:48	-	30.71	88	2.64	0.95	-0.93	██████████	
Brilliant Mining Corp.	BMC-X	C\$	1.40	-0.12	15:24	Strong Buy	-15.2	84	2.90	0.58	-7.89	██████████	
Linear Gold Corp.	LRR-T	C\$	3.00	-0.10	15:17	-	-	34.44	84	7.20	2.00	-3.23	██████████

000082

Yukon-Nevada Gold	YNG-T C\$	1.36	-0.06	15:24	-	47.33	84	3.00	1.05	-4.23
Dianor Resources	DOR-X C\$	0.60	-0.04	15:07	-	21.33	83	1.58	0.46	-6.25
Andina Minerals	ADM-X C\$	3.17	-0.02	15:26	-	160	82	4.25	1.64	-0.63
Tahera Diamond	TAH-T C\$	0.41	0.02	15:15	Hold	-1.13	81	2.04	0.30	6.49
Capital Gold	CGC-T C\$	0.46	-0.02	13:26	-	0	80	0.60	0.30	-3.12
Frontier Pacific Mining	FRP-X C\$	0.60	0.00	13:36	-	-15	79	0.94	0.32	0

Earnings Estimates (DOR-X)
Earnings report is not available.

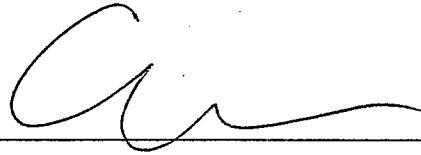
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Tab M

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WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



BARRISTERS - AT - LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have been retained by Michael Sourlis and Zapfe Holdings Inc. to represent them in connection with the above-noted matter.

As you can appreciate I need to get myself up to speed as quickly as possible.

In that light, I would ask that you produce copies of all court documents in this proceeding so that I may review them.

I understand that there is a further attendance scheduled for April 26, 2006.

I am told that Justice Spies ordered on April 6, 2006 that you serve your Proposed Plan with respect to how you intend to deal with the issues involving, *inter alia*, the Dianor Resources Inc. shares. If you have in fact circulated such a Proposed Plan, then I would ask that you immediately send me a copy.

In the meantime, I share my concern of the forum and procedures under which the claims are being advanced as against my clients. In my opinion, there ought to be a separate action or motion brought so as to bring my clients in as proper parties and an order made for a separate trial of an issue.

Obviously, the issue will need to be defined and a procedure set out including, *inter alia*, the delivery of responding materials and reply materials along with cross-examinations. The freeze order would have to continue in the interim.

I will be away from my office tomorrow observing my Easter.

May I hear from you at your earliest opportunity on Monday of next week.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:



CONSTANTINE ALEXIOU
CGA/cn

c. Client



DRUDI • ALEXIOU • KUCHAR LLP



00008

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Mr. Lincoln Caylor
FAX NO.: 416-863-1716
DATE: April 20, 2006
SENT BY: Constantine Alexiou

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Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000089

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

Would you please let me know whether or not Courtney Wallis Simpson has been cross-examined in any proceeding in which you are currently involved in. If so, then I wish to have copies of the transcripts from the cross-examination so that I can see what she has to say, if anything, regarding the Dianor Resources Inc. shares.

Your prompt attention to this matter would be appreciated.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCCHAR LLP



000090

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Mr. Lincoln Caylor
FAX NO.: 416-863-1716
DATE: April 20, 2006
SENT BY: Constantine Alexiou

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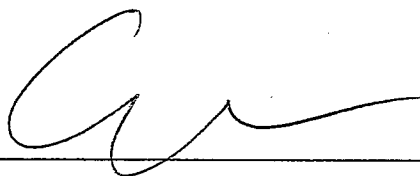
2

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Tab O

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WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000092

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 24, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have had an opportunity to consider some of the materials in this case. I note that the receiver is a Texan. It seems to me that the appointment of a receiver from outside of our jurisdiction is somewhat unusual, to say the least. Would you kindly provide the basis under which your client would not be required to prove that he may be exempt from providing for security for costs.

I thank you for your prompt attention to this matter.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

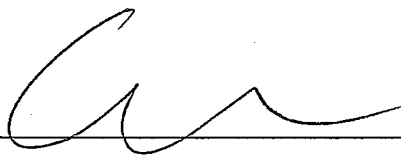
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Tab P

THIS IS **EXHIBIT "P"** TO THE AFFIDAVIT OF
WERNER ZAPFE

SWORN TO BEFORE ME

THIS 11TH DAY OF SEPTEMBER, 2007

A handwritten signature in black ink, appearing to be 'C. Alexiou', written over a horizontal line.

Commissioner for taking affidavits

Constantine Alexiou



BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
June 30, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

As you know, I represent Michael Sourlis and Zapfe Holdings Inc. I have not heard from you for quite some time in connection with this matter. When we last communicated, we were trying to decide on the best way to move this matter along. We need to agree on the form and procedures under which the claim relating to the Dianor Resources Inc. shares will be advanced as against my clients. I continue to be of the view that there ought to be a separate action or motion brought so as to bring my clients into the litigation as proper parties and that an order be made for a separate trial of an issue.

We need to agree on what the issue will be exactly and the procedure to be followed which would include an opportunity to respond to you claim and cross-examinations.

I will be away from my office between July 3 and August 13, 2006. Perhaps you could put your mind to my concerns and contact me upon my return from my summer break so that we may get this matter moving along.

On a separate note, I wrote to you on April 24, 2006 concerning my concern that the Receiver was out of jurisdiction and that security for costs may be in order. May I hear from you in this regard as well.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

A handwritten signature consisting of a large, stylized capital letter 'C' followed by a horizontal line extending to the right.

CONSTANTINE ALEXIOU

CGA/cn

c. Clients

DRUDI·ALEXIOU·KUCHAR LLP

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MODE	STANDARD ECM



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BARRISTERS-AT-LAW

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TO: Mr. Lincoln Caylor

FAX NO.: 416-863-1716

DATE: June 30, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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DRUDI • ALEXIOU • KUCHAR LLP



000097

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Mr. Lincoln Caylor

FAX NO.: 416-863-1716

DATE: June 30, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Total Number of Pages

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DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146

Tab Q

000098

THIS IS EXHIBIT "Q" TO THE AFFIDAVIT OF

WERNER ZAPFE

SWORN TO BEFORE ME

THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000099

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
October 13, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

On April 20, 2006, I wrote to Lincoln Caylor of your office inquiring as to whether or not Courtney Wallis Simpson had been cross-examined. If she was, then I would ask for a copy of the transcript. I have not received any reply to that letter. Would you please get back to me at your earliest opportunity.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCHAR LLP



000100

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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TRANSMISSION VERIFICATION REPORT

000101

TIME : 10/13/2006 13:41
NAME : WESTLAW MNGMT CO
FAX : 905-850-9146
TEL :
SER.# : 000000001306

DATE, TIME	10/13 13:40
FAX NO./NAME	4168631716
DURATION	00:00:30
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM



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BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

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Tab R

THIS IS EXHIBIT "R" TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
October 13, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

On April 24, 2006, I wrote to Mr. Caylor of your office concerning security for costs. I did not hear from Mr. Caylor. I then raised this matter a second time in my correspondence of June 30, 2006. Once again, I heard nothing from Mr. Caylor regarding security for costs. Would you let me know why security for costs would not be appropriate in the circumstances of this case?

Yours very truly,

DRUDI, ALEXIOU, KUCCHAR LLP

PER:



CONSTANTINE ALEXIOU
CGA/cn

c. Client



BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Total Number of Pages

2

TRANSMISSION VERIFICATION REPORT

000105

TIME : 10/13/2006 12:31
NAME : WESTLAW MNGMT CO
FAX : 905-850-9146
TEL :
SER. # : 000000001306

DATE, TIME	10/13 12:30
FAX NO./NAME	4168631716
DURATION	00:00:30
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

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BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

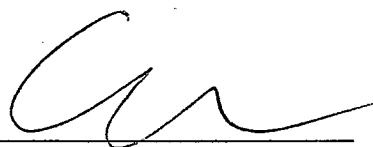
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Tab S

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WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000107

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
October 18, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

We enclose our April 20 and 24, 2006 letters, for your information.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

Encls.

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCHAR LLP



000108

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 24, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have had an opportunity to consider some of the materials in this case. I note that the receiver is a Texan. It seems to me that the appointment of a receiver from outside of our jurisdiction is somewhat unusual, to say the least. Would you kindly provide the basis under which your client would not be required to prove that he may be exempt from providing for security for costs.

I thank you for your prompt attention to this matter.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCHAR LLP



000109

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

Would you please let me know whether or not Courtney Wallis Simpson has been cross-examined in any proceeding in which you are currently involved in. If so, then I wish to have copies of the transcripts from the cross-examination so that I can see what she has to say, if anything, regarding the Dianor Resources Inc. shares.

Your prompt attention to this matter would be appreciated.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER: 

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8C7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCHAR LLP



000110

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have been retained by Michael Sourlis and Zapfe Holdings Inc. to represent them in connection with the above-noted matter.

As you can appreciate I need to get myself up to speed as quickly as possible.

In that light, I would ask that you produce copies of all court documents in this proceeding so that I may review them.

I understand that there is a further attendance scheduled for April 26, 2006.

I am told that Justice Spies ordered on April 6, 2006 that you serve your Proposed Plan with respect to how you intend to deal with the issues involving, *inter alia*, the Dianor Resources Inc. shares. If you have in fact circulated such a Proposed Plan, then I would ask that you immediately send me a copy.

In the meantime, I share my concern of the forum and procedures under which the claims are being advanced as against my clients. In my opinion, there ought to be a separate action or motion brought so as to bring my clients in as proper parties and an order made for a separate trial of an issue.

DRUDI • ALEXIOU • KUCHAR LLP

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Obviously, the issue will need to be defined and a procedure set out including, *inter alia*, the delivery of responding materials and reply materials along with cross-examinations. The freeze order would have to continue in the interim.

I will be away from my office tomorrow observing my Easter.

May I hear from you at your earliest opportunity on Monday of next week.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:



CONSTANTINE ALEXIOU

CGA/cn

c. Client



DRUDI • ALEXIOU • KUCHAR LLP



000112

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 18, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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TRANSMISSION VERIFICATION REPORT

000113

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FAX : 905-850-9146
TEL :
SER.# : 000000001306

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FAX NO./NAME	4168631716
DURATION	00:01:14
PAGE(S)	06
RESULT	OK
MODE	STANDARD ECM



DRUDI • ALEXIOU • KUCHAR LLP



BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 18, 2006

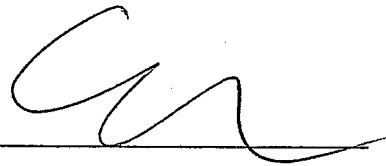
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Tab T

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WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
October 25, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

Thank you for your October 20th message.

Based on your availability, I can proceed with the 9:30 am scheduling hearing on November 3, 2006.

Please send in the appropriate confirmation to the Commercial Court in this regard.

In the meantime, we need to agree on how we are going to proceed. You mentioned that you were going to reduce your thoughts to writing. I have yet to hear from you.

I am against having a reference in this matter. I would much prefer that you bring an action in the Commercial Court in which my clients are properly named as party defendants. The ownership of the shares would be the issue to be determined by the Court. There would be a timetable for the exchange of pleadings, a motion for security for costs (unless you can convince me otherwise), the completion of examinations for discovery, the delivery of undertakings and an expedited trial date.

On a separate note, please arrange to forward the transcript from the examination of Courtney Wallis Simpson. You mentioned that you believed that you required her consent before

releasing same. If there is a problem with receiving the consent that you seek then please let me know.

May I hear from you.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:



CONSTANTINE ALEXIOU

c. clients

DRUDI•ALEXIOU•KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146

**DRUDI • ALEXIOU • KUCHAR LLP**

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 25, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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TRANSMISSION VERIFICATION REPORT

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FAX : 905-850-9146
TEL :
SER.# : 000000001306

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PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

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BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 25, 2006

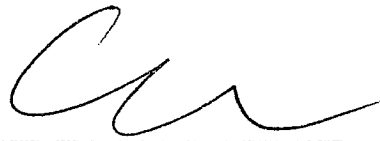
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Tab U

THIS IS **EXHIBIT "U"** TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

000120

BENNETT JONES | LLP

3400 One First Canadian Place
PO Box 130
Toronto Ontario
Canada M5X 1A4
Tel 416.863.1200
Fax 416.863.1716
www.bennettjones.ca

M. Joanne MacMillan
Direct Line: 416.777.4629
e-mail: macmillanj@bennettjones.ca
Our File No.: 56445.1

November 1, 2006

Via Facsimile

Mr. Constantine Alexiou
Drudi, Alexiou, Kuchar LLP
Barristers-at-Law
7050 Weston Road
Suite 307
Woodbridge, ON L4L 8G7

Dear Mr. Alexiou:

Re: **Pandya v. Simpson et al.**
Court File No. 05-CL-6159

We acknowledge receipt of your request for a copy of Ms. Simpson's cross-examination transcript dated November 29, 2006. In light of the deemed undertaking rule, we sought Ms. Simpson's consent to provide you with a copy of the transcript, however she has refused to do so. We are unable to provide you with a copy of the transcript at this time.

Yours truly,



BENNETT JONES LLP
MJM/eg

DMSTORLegal\056445\00001\460249v1



000121

BENNETT JONES

FAX MESSAGE

Constantine Alexiou
Drudi, Alexiou, Kuchar LLP
Barristers-at-Law
7050 Weston Road
Suite 307
Woodbridge, ON L4L 8G7

Bennett Jones LLP
Suite 3400 One First Canadian Place
P.O. Box 130
Toronto Ontario
M5X 1A4

Tel 416.777.4629
Fax 416.863.1716

FAX NO. (905) 850-9146

PHONE NO. (905) 850-6116 Ext:226

DATE November 1, 2006

FROM M. Joanne MacMillan

LAWYER NO 1045 FILE NO 56445.1

Original Status - Retained on File

This is the first page of 2

If all pages not received, call 416.777.4877 or email Toroffsrv@bennettjones.ca for assistance.

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MESSAGE
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Tab V

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WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

June 11, 2007

000123

Attention: Mr. Gus Alexiou

Re: Sourlis/Zapfe v. Bennett Jones

Dear Mr. Alexiou;

My name is Courtney Wallis Simpson and I am the defendant in the Class Action initiated by Bennett Jones of Toronto, Ontario in November 2005. Though the Class Action matter has yet to be resolved, my criminal proceedings, although currently in Appeal, have been completed and I am currently serving my sentence at the Grand Valley Institute in Kitchener, Ontario.

I have continued to work closely with Michael J. Quilling, the Receiver appointed by Bennett Jones, with respect to validating claims and recovering funds for the benefit of the legitimate claimants.

It is my understanding that you have been retained by my two largest legitimate claimants, Mr. Vern Zapfe and Mr. Michael Sourlis. During a discussion with Mr. Quilling last week, he informed me that it is his understanding that the hearing date in this matter is forthcoming.

I have discussed this matter at length with both the Receiver and with my appointed Primary Worker here at Grand Valley, and I have been informed that I am at liberty to attend Court, if required. It is my wish to act as a "friendly witness" on behalf of Michael and Vern for two specific reasons. Firstly, the certificates I signed over to them were in fact signed and delivered to Michael in April, 2005 in repayment for a debt outstanding to the two of them. Second, even if Bennett Jones were successful in their defense and the Dianor shares were to be liquidated and handily transferred over to their swollen coffers for the "benefit" of the legitimate claimants, you and I both know that their infamous "billable hours", currently tallied at Seven Hundred and Twenty Thousand Dollars simply for overseeing the sale of the properties I voluntarily handed over my deeds to, would substantially erode any restitution Michael and Vern were to enjoy. In addition to which, though the eventual value of the liquidated shares would eventually be distributed to Michael and Vern as class action claimants, the total recovered sum from the shares would have to be shared proportionally with the remaining twenty one legitimate claimants.

If you are successful in your matter, the total value of the shares would be distributed for the benefit of Michael and Vern without Bennett Jones extracting their "share", and none of the amount would have to be distributed to other claimants. The Dianor shares were not, in fact, assets involved in any way in the alleged "fraudulent activity", they were disposed of long before there was any alleged "fraudulent activity" occurring within my companies, and further, they should not, in any way, be subject to the generous tea party Bennett Jones appears to be enjoying with my money. They belong to Michael and Vern,

a fact that should be judicially mandated by any reasonable Judge interpreting the facts in this matter.

Michael and Vern are entitled to the full amount of the sale of the Dianor shares, in fact, of my initial purchase of eighty thousand dollars worth of shares, Vern actually paid for fifty thousand dollars of them. All that the Receivership estate is rightly entitled to, if anything, would be my initial thirty thousand dollar purchase. That having been said, my initial purchase of the shares occurred in late 2004, and my transfer of certificates to Michael and Vern occurred in April 2005, seven full months before Justice Spear's all-encompassing Receivership Order was issued.

I would like to qualify that I am working closely and in full cooperation with both Michael Quilling and Bennett Jones towards the liquidation and recovery of assets for the benefit of the claimants, though I recognize that I am in fact the defendant. I have not, since November 2005, retained council of my own as I have never in any way opposed the activities of the Receiver in liquidating and maximizing my estate for the benefit of the claimants. However, I do not feel comfortable agreeing to cooperate with their efforts to secure the Dianor shares as they were disposed of, in favour of Michael and Vern, long before the initiation of their Order.

I would willingly and enthusiastically act as a friendly witness in your efforts to secure the shares that are in fact rightly the property of Michael and Vern, and I am at liberty, if required, to leave the institution, under the provisions of an escorted temporary pass. I will be released on day parole effective January 31, 2008, and at that time will make myself fully available to you if you feel I could in any way better your chances in Court. Prior to that time, provided I am given suitable notice to make the arrangements for a temporary pass, I am most willing to attend Court, if necessary, and/or to assist you in any way you deem necessary in your efforts to secure Michael and Vern's shares.

I thank you for your attention in this matter, and I remain at your disposal if you feel I am able to assist in any way.

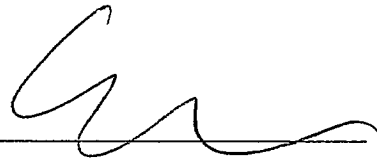
Sincerely;



Courtney Wallis Simpson
Grand Valley Institute
1575 Homer Watson Blvd.,
Kitchener, Ontario
N2P 2C5

Tab W

THIS IS EXHIBIT "W" TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

000126

COURT FILE NO.: 05-CL-6159

DATE: 2006-06-08

SUPERIOR COURT OF JUSTICE - ONTARIO**RE:** UDAYAN PANDYA, Plaintiff**A N D:**COURTNEY WALLIS SIMPSON, YORK REGION REALTY INC., WALLIS,
SIMPSON & ASSOCIATES, COURTNEY WALLIS SIMPSON c.o.b. as YORK
MANAGEMENT GROUP and as CAMCO DEVELOPMENTS and as YORK
GROUP, Defendants**BEFORE:** SPIES J.**COUNSEL:** *Lincoln Caylor* for the Plaintiff/Receiver*Gregory Govedaris*, for the Plaintiffs in Action # 05-CL-6178, Glenn E.
Cohen for Atlas Holdings, D.R. Rothwell for Ajay Pahwa and Courtney
Wallis Simpson in person**HEARD:** April 26, 2006**DECISION ON MOTION****OVERVIEW**

[1] This is a motion by the court appointed Receiver for an order that the Interim fees, disbursements and GST of counsel for the Receiver, for the period October 11, 2005 to April 12, 2006, be approved and be paid to counsel by the Receiver as the first charge on the receivership estate.

[2] By order of Ground J. dated November 17, 2005, Michael J. Quilling was appointed Receiver, pursuant to s. 101 of the Courts of Justice Act and Rule 41.02 of the Rules of Civil Procedure, over the assets of Courtney Wallis Simpson and York Region Realty Inc. (the "Initial Order").

[3] The Receiver subsequently provided four reports to the court, on four separate attendances. As explained further below, those reports set out in summary fashion the

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activities of the Receiver and its counsel Bennett Jones LLP. It was not until the motion returnable March 9, 2006, that the Receiver sought court approval of the fees and disbursements of the Receiver and its counsel.

[4] At the attendance before Mesbur J. on March 9, 2006, the Receiver sought approval for its own fees in the amount of \$35,253.39 and for the fees and disbursement of Bennett Jones in the amount of \$234,434.79 (\$207,537.50 for fees and \$11,674.31 for disbursements plus GST).

[5] The material filed in support of the approval of the fees of Bennett Jones was only an invoice, which simply stated that the fees and disbursements were for "professional services rendered" for the period in question. Counsel also filed a one page "Summary of Time and Fees" which listed the lawyers/students who worked on the matter, their position within the firm, year of call, the total hours spent and hourly rate.

[6] Objection was taken to the fees of the Receiver and its counsel, by counsel for some of the claimants to the assets of the estate. Mesbur J. adjourned the Receiver's motion so that its counsel could particularize the fees and deliver particulars of the fees to the other parties.

[7] Further to the order of Mesbur J., the matter came on before me on April 6, 2006. At that time, after hearing the submissions of counsel appearing, I approved the interim fees and disbursements and GST of the Receiver for the period November 17, 2005 to February 28, 2006 in the amount of \$35,253.39.

[8] The motion with respect to the approval of the fees and disbursements of Bennett Jones was adjourned to April 26, 2006. The difficulty was that the Receiver had prepared a summary of counsel fees, which summarized the work done by each lawyer, but it did not set out the date on which the work was done and more importantly did not break down the work done into various categories of services rendered. Furthermore, no dockets were provided.

[9] Because of the way that the summary was prepared, it was impossible for counsel and for the court to assess the reasonableness of the fees and so unfortunately the motion to approve the fees and disbursements of Bennett Jones had to be adjourned again. Counsel for the Receiver was directed to provide to counsel appearing that day copies of dockets of Bennett Jones, redacted if necessary if there were concerns about solicitor/client privilege, along with a summary of the fees, grouping the time by lawyer in accordance with the main areas of work undertaken, so that an assessment of the fees could be made. The dockets and summary of fees were to be served by April 13, 2006. For any dockets that were redacted, counsel for the Receiver was directed to file unredacted copies in a sealed envelope with the court.

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[10] The motion returned before me on April 26th. Counsel for the Receiver had prepared a new motion record with a summary of counsel fees broken down into some categories of services rendered, along with copies of the dockets. No dockets were redacted.

ISSUES

[11] Pursuant to the Initial Order, the fees of Bennett Jones LLP, counsel for the Receiver, form a first charge from the assets recovered in the receivership, subject to approval of the quantum of costs by the court.

[12] On the return of the motion before me, the Receiver sought approval of the fees of its counsel in the amount of \$207,537.50 and disbursements in the amount of \$11,674.31 for a total with GST of \$234,434.79 for the period October 11, 2005 to February 21, 2006 and \$153,985 for fees and \$5,146.46 for disbursements for a total of \$170,230.30 with GST for the period from February 21, 2006 to April 12, 2006. The grand total that is submitted for approval is \$404,665.09 of which \$361,522.50 is fees.

[13] Counsel opposing the motion objected to the approval of the fees, asserting that the fees are excessive, particularly given the recovery and size of the receivership estate and that the hourly rates charged are too high in all of the circumstances. There was no real issue with the disbursements, nor was it asserted that the Receiver or his counsel had exceeded their jurisdiction.

[14] The issues before me are what principles should I apply in considering the fees of counsel to the Receiver and what quantum of fees should I approve?

THE FACTS

[15] There are currently at least two proceedings against the defendants and both are class proceedings. They each relate to alleged fraudulent activity on the part of Simpson and her companies. The plaintiff in the class action herein, (the "Deposit Fraud Class Action"), first approached Bennett Jones in the fall of 2005 alleging that Simpson, who is a real estate agent, and her companies, defrauded him by retaining his deposit for the purported purchase of a commercial property. It is alleged that Simpson purported to "sell" the same two commercial properties in excess of a hundred times each and as a result there are many claimants in this class who claim for deposits paid on purchases that were a sham.

[16] Mr. Govedaris is counsel for plaintiffs in class action #05-CL-6178 (the "Mortgage Fraud Class Action"). In that action, it is alleged that Simpson and others defrauded the victims through the operation of a "Ponzi Scheme", convincing people to "invest" in interim occupancy mortgages that never existed.

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Initial Order

[17] The Initial Order of Ground J. approved the appointment of Bennett Jones LLP as counsel to the Receiver but hourly rates were not approved. The order gives the Receiver the usual powers to preserve property of the defendants including investigatory powers and the Receiver is of course permitted to apply to this Court for advice and directions related to the proper exercise of its powers or for any variations to the order.

The First Report

[18] Counsel for the Receiver attended before Farley J. on December 13, 2005 and filed the First Report of the Receiver of the same date. That report summarized the nature of the two alleged frauds. At that time the Receiver estimated that there were eighteen victims of the deposit scheme fraud owed approximately \$3.6 million and at least 54 victims of the Ponzi Scheme/mortgage fraud with a total loss of approximately \$11 million.

[19] At that stage, counsel for the Receiver had issued the statement of claim in the Deposit Fraud Class Action. In the First Report, the Receiver recommended that the Mortgage Fraud Class Action be tried together with the Deposit Fraud Class Action and that the Initial Order be amended to add the mortgage fraud victims as a class of creditors to be considered by the Receiver.

[20] The Receiver reported on the various activities undertaken by the Receiver and its counsel since the date of the Initial Order, which included serving the Initial Order on all banks to which Simpson and York Realty had a relationship, asking that the bank accounts be frozen, registering the Initial Order on title to all properties owned by Simpson, attending at all properties owned by Simpson, (with the exception of the cottage property), speaking to the agent who had listed the real properties for sale (at the request of Simpson), reviewing Simpson's business records, examining Simpson under oath, communicating with the York Regional Police and dealing with claimants.

[21] The Receiver was in attendance with counsel for the examination of Simpson on November 29, 2005. On the same date the Receiver, accompanied by counsel, met with a detective from York Regional Police and conducted a cursory review of documents in the possession of the police as a result of the criminal charges pending against Simpson. Simpson consented to the Receiver reviewing this material.

[22] Simpson also co-operated with the Receiver in identifying the real property that she owned and in fact advised the Receiver of two properties that were registered in the name of Lia Hurst that Simpson claimed ownership to. The report stated that it appeared that the equity in the real property owned by Simpson might be

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anywhere from approximately \$654,000 to approximately \$1.3 million depending on whether the Receiver was successful in setting aside certain charges.

[23] At that time, the Receiver recommended listing the real property with the agent that Simpson had already listed the properties with and that the proceeds from sale be deposited and held in an interest bearing account, that the Receiver, in consultation with counsel, determine whether a law suit was warranted against Hurst, including certificates of pending litigation, in order to regain those two properties, reviewing documents in the possession of York Regional Police (17 boxes), selling the contents of Simpson's business premises and conducting an examination of a third party, Adam Cox, who had been identified by Simpson as someone who likely had relevant information.

[24] At the time of this First Report, the Receiver was aware that the members of the Deposit Fraud Class Action had made claims to the Real Estate Council of Ontario ("RECO") with respect to their deposits, and had been informed by RECO that it was its position that Simpson's actions constituted one "occurrence" and that therefore there was a \$500,000 limit to the amount to be paid by RECO for all class members. The Receiver recommended that he deal directly with RECO and assist individuals who had yet to make a claim to do so and then report to the court. He reported that any payments from RECO be used for the benefit of the deposit fraud class only. I am advised by Mr. Govedaris however, that the claimants in the Mortgage Fraud Class Action may also have claims against RECO and so the Receiver and counsel for the Receiver will need to be concerned about this conflict, as Bennett Jones also represents the Deposit Fraud Class.

[25] The First Report also disclosed an issue concerning Ajay Pahwa who has asserted a claim in the receivership estate as a secured creditor. The Receiver takes the position that the three mortgages Pahwa has on properties belonging to Simpson have been paid off, or, in the alternative, are not valid because of illegal rates of interest.

[26] The Receiver also advised the court at this time that it had established a website to post information regarding the case.

[27] Farley J. by order dated December 15, 2005, authorized the Receiver to amend the statement of claim to add Simpson carrying on business as York Management Group as a defendant and to try the Mortgage Fraud Class Action together or immediately after the Deposit Fraud Class Action (subject to confirmation by the appointed judge in the class proceedings).

[28] A second order of Farley J. of the same date headed "First Amended and Restated Initial Order" restated all of the relief granted by Ground J. in the Initial Order and added other terms, which authorized the Receiver to enter into new listing agreements to sell the real property owned by Simpson, deal directly with RECO on

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behalf of all victims of the Deposit Fraud scheme, examine Cox, and open a bank account to accept deposits from Simpson. That order also stayed all proceedings in respect of the defendants and their properties and approved a claim form and its distribution¹.

The Second Report

[29] The matter returned again before Farley J. on December 22, 2005 with the Second Report of the Receiver of the same date. In that report, the Receiver reported that the Receiver's counsel had continued to follow up with banks to ensure that accounts were frozen, met with Simpson for further investigation, that a separate interest bearing bank account had been opened to receive the proceeds from the sale of Simpson's assets and any funds that Simpson might be receiving, as Simpson was still working (subject to a living allowance for Simpson), that counsel had communicated with the agent that Simpson had already arranged, regarding the sale of various Simpson properties pursuant to a new listing agreement, and that a real estate agent had been retained to undertake a fair market assessment of the cottage property. Furthermore contact with Cox in order to compel his attendance at an examination had been made, the Statutory Declaration to be utilized as a claim form had been prepared and information had been posted to the website.

[30] With respect to the Hurst action, the Receiver reported that the properties were valued at between \$250,000 and \$275,000 each, but that there were mortgages registered on each of the properties in the amount of approximately \$221,000 and \$225,000. The Receiver advised it would continue to investigate to determine if there was sufficient equity to merit a lawsuit and, if in consultation with counsel, a lawsuit was warranted, that Hurst would be sued.

[31] With respect to RECO, the Receiver advised the court that the Receiver and its counsel had met with the manager of investigations of RECO. It appears the purpose of that meeting was simply to inform the manager of the activities of the Receiver to date and the orders that had been made.

[32] With respect to the Pahwa mortgages, counsel for Pahwa had served a notice of sale under mortgage with respect to one property. Based on the Receiver's investigation, which included a review of all documents registered on title, the Receiver recommended that the validity of the mortgages be challenged, that in the mean time no proceeds from any sale be paid to Pahwa and that funds claimed by Pahwa be held in the Receiver's bank account pending further order of the court.

¹ As I advised counsel for the Receiver, particularly as the amended Initial Order is not black lined, in order to determine the relief granted by Farley J. as compared to the relief previously granted by Ground J., it is necessary to do a paragraph by paragraph review of the two orders. Preferably the new order should have simply stated the additional relief and any amendments without restating the Initial Order.

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[33] The Second Amended and Restated Initial Order of Farley J. dated December 23, 2005, authorized the Receiver to assert challenges to the validity, quantum and priority of the Pahwa, restrained Pahwa's power of sale proceedings and provided that upon approval of the sale of properties, that the amount claimed by Pahwa be held in a separate bank account pending further order.

Third Report

[34] The Receiver attended in court again on January 20, 2006 before Cumming J. with the Receiver's Third Report dated January 13, 2006. In that report, the Receiver reported that bankruptcy proceedings had been commenced against Simpson and York Realty and two receiving orders dated December 30, 2005 had been obtained. The Receiver recommended and obtained an order from Cumming J. that the bankruptcy proceedings be stayed, as were the related receiving orders.

[35] The Receiver also reported on its on-going review of Simpson's bank accounts, but there was still no statement that any of those accounts had contained funds.

[36] A new issue arose in this report concerning certain shares of Dianor Resources Inc. that had been owned by Simpson and had been transferred into two individual accounts held at RBC Dominion Securities, allegedly in breach of the Initial Order. This information came to the Receiver from a detective of the York Regional Police squad. Counsel for the Receiver requested that the share transfers be reversed and currently that is a further issue for the Receiver to pursue. RBC is holding approximately 500,000 shares which fluctuate in value and could be worth anywhere from \$.255 (the rolling 52 week low price) to \$2.18 (the rolling 52 week high) per share.

[37] The Third Report to the court also updated the court with respect to the progress on the sale of the various properties owned by Simpson which had all been listed for sale, with the exception of the cottage property, and the fact that an action had been commenced against Hurst and that certificates of pending litigation on title had been obtained. The Receiver recommended acceptance of an offer concerning one property.

[38] With respect RECO, the report disclosed that counsel for the Receiver had sent a letter requesting disclosure of information and that there had been no response. By that point it was estimated that eighteen victims of the Deposit Fraud had made claims to RECO.

[39] With respect to Cox, after several attempts, he finally attended at an examination but then refused to answer questions once he realized he was there to give evidence about the Simpson fraud. The Receiver had continued its review of

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Simpson documents and discovered the existence of two other corporations for which it sought amendment, to have them added to the receivership.

[40] The Receiver also reported that counsel had written to the Crown assigned to the Simpson case requesting that a Restitution Order be sought against Simpson in the amount of approximately \$14.6 million representing the estimated loss occasioned by both the fraudulent deposit and mortgage schemes.

[41] Based on the report, the Third Amended and Restated Initial Order of Cumming J. dated January 20, 2006 directed that one property be sold with the amount of \$336,080, which is the amount of Pahwa's claim, to be held in a separate bank account to await the outcome of the Pahwa claim. A separate order of the same date added Simpson carrying on business as York Group and as Camco Developments as defendants.

Fourth Report

[42] When the matter proceeded before Mesbur J. on March 9th, she had the Fourth Report of the Receiver dated March 3, 2006. In that report the Receiver advised that it was using documents recovered from the police to verify and validate the claims of potential class members, particularly the alleged Mortgage Fraud class, in order to determine whether each individual investor had received less or more than their principal investment back. This was described as a complicated task for various reasons.

[43] By that date the actual claims made by members of both classes totaled approximately \$3.7 million. The Receiver stated that he had been in touch with the majority of the victims known to that date and had distributed the claim form to those individuals.

[44] The Receiver's estimate of the value of the assets in the estate at that time was set out in a chart outlining assets and potential recovery through the receivership. This chart listed total assets at \$3,225,000 with total liabilities at \$1,416,809 with a net estate total of \$1,808,191. The only assets listed were the real properties owned by Simpson, including the Hurst properties, the RECO claim at \$500,000 and the Dianor Resources shares at \$400,000, which appears to be a conservative number. The Pahwa claim was taken into account in the amount of \$336,080. As set out below, the interest of Simpson's husband in the matrimonial home was not considered.

[45] With respect to the Dianor Resources shares, the Receiver had communicated further with counsel for RBC Dominion. They were advised that the shares were frozen and that RBC would require a court order before complying with the

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Receiver's request to reverse the transfer. RBC had not produced the requested documents to the Receiver by that date.

[46] The Receiver provided further reports with respect to the real property and the court approved the sale of a second property. He recommended that the sale price of the sale approved by Cumming J. be reduced because of substantial issues disclosed in the property inspection. The Receiver recommended listing the cottage property in the spring. With respect to the Hurst properties, the Receiver reported that Hurst was willing to sign an acknowledgement and direction transferring title and the properties back to Simpson. The Receiver recommended that once that was done, that the properties be sold.

[47] With respect to RECO, the Receiver reported that twenty victims of the Deposit Fraud class had made claims to RECO totalling \$3,215,000. RECO agreed to provide disclosure of certain documents but continued to maintain its position that Simpson's actions constituted "one" occurrence and that therefore no more than \$500,000 would be available to all claimants under RECO's Consumer Deposit Insurance coverage. The Receiver stated that after reviewing the documentation, it would seek directions from the court regarding commencing an action against RECO's insurer.

[48] The Receiver reported on the examination of Cox and advised that based on that examination, it was not recommended that Cox be added as a defendant. The Receiver also reported on obtaining bank records from the ten bank branches, which the defendants were known to have used, which had been served with the Initial Order. By this point the Receiver had a complete compilation of the bank records for the past 6 years and stated that he was confident that he would be able to discern some patterns from the movement of funds.

[49] Pursuant to the order of Mesbur J., RBC Dominion Securities was ordered to produce documents related to the Dianor Resources shares to the Receiver, and the shares were frozen until April 6, 2006. In addition, the sale of one property was approved, as was a listing of the Hurst properties after they had been reconveyed to Simpson.

Affidavit of M. Joanne MacMillan sworn March 31, 2006

[50] When the matter proceeded on April 6, 2006 before me, no further report was filed but I did have the Affidavit of M. Joanne MacMillan sworn March 31, 2006. Further information was provided on the Dianor Resources shares issue and the fact that RBC had provided the Receiver's counsel with documents related to the transfer of the shares. Copies of these documents had been provided to the transferees of the shares and Mr. Govedaris in accordance with Justice Mesbur's order.

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Receiver's Action Plan

[51] In accordance with my endorsement of April 6, 2006, the Receiver served and filed a proposed Action Plan. A review of this plan assists in considering the work the Receiver and its counsel has done and what is yet to be done in order to realize all of the assets of the receivership estate and determine and pay out the claims.

[52] The proposal with respect to the various issues is as follows:

- (a) **Dianor Resources Inc. Shares**-the Receiver recommends challenging the share transfer and ask that it be reversed and that the shares be returned to the receivership estate on the basis that the transfer took place after the freezing order had taken effect. The method of determining this issue is to be resolved at a 9:30 appointment to be scheduled on notice to all interested parties.
- (b) **The Pahwa Mortgages**- the Receiver proposes examining the lawyer who assisted placing the mortgages on title to Simpson's properties and then challenging the validity of the Pahwa mortgages and proceeding via an application seeking to discharge the Pahwa mortgages on various grounds. Various alternative relief is also proposed. A draft application was included with the Plan. This is another matter that is to be timetabled at a 9:30 appointment on notice to all interested parties.
- (c) **RECO Claim**- RECO's has an insurance policy with Lloyds that has limits of \$100,00 per claim and \$500,000 for each "occurrence". Twenty-six claims have been made to RECO. If they are characterized as individual claims, the maximum possible insurance coverage would be \$1,965 million. The Receiver is considering proceeding against RECO and Lloyds by adding them as defendants to the Deposit Fraud Class Action and a draft Fresh as Amended Statement of Claim was provided to the court. Research that considered the merits of such a claim was summarized in the affidavit of Ms. MacMillan. A decision on this claim was deferred. Recovery from RECO will raise other issues in that the Receiver is only proposing to distribute any recoveries to the Deposit Fraud Class. These issues were also deferred.
- (d) Finally a proposal for claims administration was set out. A statutory declaration that was approved by Farley J. has been provided to each claimant requiring claimants to indicate whether they are part of the Deposit or Mortgage Fraud classes. The Receiver will review each claim along with supporting documents and decide whether to reject, approve or amend the claim. Only the principal amount of the deposit or mortgage

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investment will be validated. No procedure has yet been determined for claimants to contest the Receiver's determination.

THE LAW

[53] Counsel did not provide any law to me with respect to the principles that I should consider in deciding this matter. It is my understanding that the leading case, at least in terms of the approval of the fees of a receiver, is *Re Bakemates Int'l Inc.*², a decision of the Ontario Court of Appeal.

[54] In the *Bakemates* case Borins J.A., speaking for the court, stated that when a receiver asks the court to approve its compensation, there is an onus on the receiver to prove that the compensation for which it seeks the court's approval is fair and reasonable (at para. 31). That is the test that I intend to apply, along with the other principles set out in *Bakemates*, in determining the approval of the Receiver's counsel's fees.

[55] Borins J.A. stated that the court could adjust the fees and charges of the receiver, just as it can in the passing of an estate trustee's accounts, and that the applicable standard of review is whether those fees and charges are "fair and reasonable" (at para. 35). He went on to refer to Bennett on Receiverships³ with approval and accepted as correct Bennett's discussion of the purpose of the passing of a receiver's accounts:

to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities and conduct to date. On the passing of accounts, the court has the inherent jurisdiction to review and approve or disapprove of the receiver's present and past activities even though the order appointing the receiver is silent as to the court's authority (at para. 36 quoting Bennett at pp. 459-60)

[56] In determining what is fair and reasonable remuneration, Borins J.A. observed that there is no guideline controlling the quantum of fees as there is in respect to a trustee's fees. He referred to what he described as the "leading case" in the area of receiver's compensation, *Belyea & Fowler v. Federal Business Development Bank*⁴, a decision of the New Brunswick Court of Appeal, and adopted with approval the observations of Stratton J.A. in *Belyea* that compensation is

usually allowed either as a percentage of receipts or a lump sum based upon time, trouble and degree of responsibility involved. The governing

² [2002], O.J. 3569

³ F. Bennett, 2nd Ed. (Scarborough Cohen Carswell, 1999)

⁴ (1983) 46 C.B.R. (N.S.) 244

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principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his service and while sufficient fees should be paid to induce competent persons to service receivers, receiverships should be administered as economically as reasonably possible (at para. 44).

[57] Where a percentage of receipts is used, a court may look to the rate afforded to a trustee in bankruptcy as a guideline, which is seven and one-half percent of receipts after payment to secured creditors, subject to variation by the court.⁵ As I explain below however, this is not a receivership where in my view a fixed percentage would be fair to counsel for the Receiver. In my view the fees in this case must be assessed on a *quantum meruit* basis.

[58] The court in *Bakemates* approved of the *Baylea* factors to be applied when using a *quantum meruit* basis to assess a receiver's compensation, which include:

the nature, extent and value of the assets handled, the complications and difficulties encountered, the degree of assistance provided by the company, its officers or its employees, the time spent, the receiver's knowledge, experience and skill, the diligence and thoroughness displayed, the responsibilities assumed, the results of the receiver's efforts, and the cost of comparable services when performed in a prudent and economical manner (at para. 45).

[59] Although Borins J.A. stated that the factors in *Baylea* are a "useful guideline", he was careful to point out that they should not be considered as exhaustive of the factors to be taken into account, as other factors may be material depending on the circumstances of the receivership (at para. 51).

[60] - With these principles in mind, I turn to the positions of counsel in this case and the fees I have been asked to approve.

ANALYSIS

[61] Opposing counsel complained that the additional billing summaries prepared by counsel for the Receiver were not provided within the time that I specified, which left counsel with inadequate time to prepare for this motion. It appears from the Affidavits of Service, that the Summaries of Counsel Fees were not served until April 18th. The Motion Record was served on April 20th by email but part of the transmission was unsuccessful and so it was sent by same day courier on April 21st. No explanation was given for why the timeline in my order was not complied with. This is unfortunate

⁵ Bennett, *supra* at p. 472

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as the court relies on parties with an interest in the receivership estate to act as a check on the activities of the Receiver and its counsel. However opposing counsel did not request an adjournment and so I have considered the matter based on the evidence before me.

[62] Opposing counsel did not suggest that the hours claimed by counsel for the Receiver had not been spent, but challenged the hourly rates and whether or not the work was done efficiently and whether all the time spent was warranted, particularly as it was argued that counsel for the Receiver should have known the nature of Simpson's assets and the value of the estate early on. As counsel observed, if the fees sought are approved as claimed, a very significant portion of the proceeds from the real estate assets will be committed to the legal fees incurred to date and recoveries for the claimants in the two class actions will largely depend upon the outcome of litigation concerning the Dianor Resource share issue, the Pahwa mortgage issue and the proposed action against RECO.

[63] Opposing counsel noted that up to the time of the Initial Order granted by Ground J. on November 17, 2005, counsel for the Receiver had incurred approximately \$40,000 in fees and there is not much dispute about that amount. The fees quickly escalated however and opposing counsel had no idea of how expensive the receivership had become until served with the motion record returnable March 9, 2006, which was served on March 4th. This meant that they did not have an opportunity to complain about the escalating costs before they were incurred. Counsel also complained that the Receiver's counsel has still left too much time unallocated to a particular category of work, leaving it difficult to assess the reasonableness of the time spent.

[64] Having considered the submissions of all counsel, and having reviewed the evidence filed in support of the fees claimed, including a line by line review of the actual dockets, and having considered the activities of the Receiver and its counsel as reflected in the Receiver's reports to the court, I have concluded that the Receiver's fees should be reduced by \$102,000 before GST. Counsel for the Receiver has not satisfied me that the hourly rates charged and all of the time spent is "fair and reasonable", given the factors I have considered that are relevant to the approval of the fees in this matter. My reasons are as follows.

[65] In coming to my decision, a significant consideration has been the amount of the fees to date, considering where we are in the receivership and the prospect of recovery for the claimants. In a passage from the *Balyea* case, not referred to by the Court of Appeal in *Bakermates*, Stratton J.A. stated:

Even though a professional is entitled to a fair, just and reasonable compensation measured by the reasonable value of the services rendered, the fees charged must bear some reasonable proportion to the amount of

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money or the value affected by the controversy or involved in the employment. Thus, **in cases where a professional is aware of the amount at issue**, courts will impose an underlying or implied limit or maximum on the professional fees it will allow based on what is reasonable **in relation to the dollar amount involved in the particular case** (at para 11, emphasis mine).

[66] Clearly then, assessing the fees of counsel to the Receiver should not just be a matter of calculating the number of hours spent times a reasonable hourly rate. There should be some correlation of the costs to the benefits derived from the receivership. This cost-benefit analysis need not be precise or based upon the advice of expert analysis⁶

[67] I recognize however, that as observed by Bennett, referring to the trial decision in *Belyea*, that the court "should not necessarily penalize a receiver [and by extension the receiver's counsel] who expends considerable time in administering the estate, although recovery may be small"⁷. This point was not dealt with on appeal. Bennett goes on to state that when the receiver is appointed, the receiver may find the debtor's business affairs somewhat chaotic and the receiver may have to spend considerable time, which may not be productive from a financial point of view, organizing the affairs in order to be in a position to administer the receivership properly.⁸ Accordingly the time spent must be viewed in the context of the Receiver's duty to preserve the assets of the debtor and realize on those assets and administer the estate and the Receiver's ability to retain the services of legal counsel to assist in those duties as required.

[68] The first question then is when counsel for the Receiver was aware of the amount involved in this case, namely the estimated size of the receivership estate. In the First Report to Farley J. dated December 13, 2005 the Receiver estimated that the victims of the alleged frauds were owed in total, approximately \$14.6 million. As for assets, that First Report estimated the equity in real estate to be anywhere from \$654,000 to \$1.3 million. The claim by Pahwa had been asserted and the position of RECO was known. Although further information on the assets and claims became known to the Receiver and its counsel as the receivership progressed, it was certainly clear from the outset that subject to litigation with RECO, the assets of the estate were modest, particularly relative to the quantum of the claims.

[69] The numbers have not changed that much. Based on the statement of assets and liabilities filed before Mesbur J., the estimate of the net assets to be realized from the defendants is approximately \$1.8 million. This estimate assumes a \$500,000

⁶ Re Hoskinson (1976), 22 C.B.R. (N.S.) 127 at para. 26 (Ont. S.C.)

⁷ Bennett, supra at p. 474

⁸ Bennett, supra at pp. 474-475

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recovery from the RECO insurance policy, which is the minimum recovery from RECO and the Dianor Resources shares claim at a value of the shares at \$400,000. This estimate of the share value may be conservative because the shares have recently been worth in excess of \$900,000, but the strength of this claim is unknown. With respect to the real estate, the estimate takes into account a liability with respect to Pahwa in the amount of \$336,080, which could be reduced if the Receiver is successful challenging the Pahwa mortgages. Simpson advised at the time of the argument of this motion that her husband was asserting his half interest in the matrimonial home, which is one of the properties to be sold by the receiver. The Receiver had not taken this into account before and this claim is not reflected in this estimate.

[70] Although precise amounts cannot be known at this time, it seems clear that the quantum of claims will by far outstrip the available assets. Furthermore, as I have already stated, the available assets are modest, particularly considering the quantum of fees sought by the receiver. Apart from the sale of Simpson's real estate, which represents approximately \$900,000 of the approximate amount of the estimated \$1.8 million recovery, which is subject to reduction by the claim of Simpson's husband, the disputes concerning RECO, the Dianor Resources shares and Pahwa are still to be litigated. Although this court can control the efficiency of the manner in which the Pahwa and Dianor Resources disputes are determined, it is likely that pursuit of the RECO insurance will require a full-blown lawsuit. Furthermore the quantification of the claims is ongoing but not completed, nor have any disputes resulting from that process been determined. In other words, there is still considerable cost to be incurred before all of the possible assets of the estate have been realized and the claims paid.

[71] It is also important to note that the Receiver and its counsel have been assisted by the fact that Simpson has cooperated. She identified all of her assets for the Receiver and has consented to the police sharing the information they have obtained in their investigation of the criminal charges. Furthermore she is not defending the class actions. Her co-operation was somewhat of a problem however, when she decided to consent to individual judgments early on. The Receiver's counsel has dealt with that.

[72] Finally it is important to observe that the complaints of opposing counsel, that the quantum of the fees of counsel for the Receiver has caught them by surprise, are legitimate. There is no obligation on counsel for the Receiver to come to the court more often in order to seek approval of fees, but when counsel wait for several months to do so, particularly in a case like this where significant costs are running up relative to the size of the estate, counsel for the Receiver is at risk that when they do come to court, the way in which they have done the work and the fees incurred may legitimately be criticized. It is not enough in these circumstances to rely on the fact that the work done was approved in a general way by the various orders of the court already referred to. When counsel wait to bring their accounts to the court for approval, they do so at their own risk.

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[73] With this background in mind, I considered both the hourly rates charged by the Receiver's counsel, the time spent and the work done, in assessing the reasonableness and fairness of the accounts.

[74] I was advised by counsel for the Receiver, that the rates charged, are the usual rates charged by the various members of the firm in these matters. He acknowledged that they are at the "high end of the scale". Counsel advised however, that notwithstanding the Deposit Fraud Class Action was commenced by way of class action; counsel would not be seeking a multiplier or premium.

[75] The rates charged range from \$150.00 per hour for students at law to \$725.00 per hour for a tax partner (although I am told that that time has been written off). The bulk of the work was done by Lincoln Caylor, a 1995 call, at the rate of \$575.00 per hour (98 hours-\$78,000), M. Joanne MacMillan, a 2000 call, at the rate of \$450.00 per hour (160 hours-\$132,000), and Emily Atkinson, a 2005 call, at the rate of \$275.00 per hour (208 hours-\$114,000). All three lawyers are litigation counsel. There is some supervisory time by James Patterson, a 1988 call, at \$625.00 per hour. As well a real estate partner, who is a 1992 call, has time on the file at the rate of \$550.00 per hour. Other lawyers with specialty in bankruptcy and insolvency (\$650.00 per hour), class actions (\$525.00 per hour), as well as real estate law clerks at \$150.00 per hour, a litigation law clerk at \$175.00 and students at law ranging from \$150.00 to \$175.00 per hour have all worked on the file.

[76] Mr. Cohen, counsel for a deposit fraud claimant, argued that the hourly rates claimed should be reduced by as much as a third, and referred to the old cost grid. Counsel for the Receiver responded that this was not relevant to the task before me. I agree, in the sense that the cost grid reflects, in terms of substantial indemnity costs, costs that the opposing party is ordered to pay, and those rates are not necessarily reflective of the costs as between the lawyer and his or her own client. Normally, with competition in the marketplace and informed clients, rates will be established as between a lawyer and a client that are reasonable in all of the circumstances, although some clients I am sure will disagree with that proposition. Here, however the client is a member of a class and he is not paying the fees personally. The plaintiff in this action and a few others had retained Bennett Jones individually at the outset and as submitted by opposing counsel, it is extremely unlikely that they could have afforded or would have agreed to pay the hourly rates now charged by counsel for the Receiver.

[77] There are many "clients" who will be impacted by the fees charged. They did not negotiate the hourly rates, nor did the court ever approve them. The assumption that the court will automatically approve a "usual" hourly rate for Receiver's counsel is a faulty one in my view. In a case like this, the court, with the assistance of opposing counsel, has to play the role of what a client would ordinarily do, namely

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consider whether the hourly rate is fair and reasonable in light of the nature of the work involved and the amount in issue.

[78] Although I accept the submissions of counsel for the Receiver, that this case is not a typical receivership, neither is the case complex. Setting aside whether or not two separate class actions or for that matter any class actions are needed, this case is primarily involved in the investigation and preservation of assets, dealing with victims and considering how best to pursue the litigation concerning the issues in dispute. This however, is a case where the amount of work involved may be somewhat disproportionate to the size of the receivership estate and so a percentage of the recovery would not be fair to counsel.

[79] The size of the receivership estate however should have some bearing on the hourly rates of counsel. I am of the view that an adjustment ought to be made to reflect the fact that, particularly after the size of the estate became known, the "usual" rates of counsel were too high relative to the size of the estate. Although the first statement of assets and liabilities was not put before the court until March 9, 2006, it is clear from the reports of the Receiver, that the Receiver and his counsel, had a general sense of the of the assets and liabilities of the defendants well before that. Certainly in early December, when preparation of the First Report dated December 13, 2005 was well underway, although the precise value of the estate would not have been known, the fact that the estate was a relatively modest one and that the potential claims were significant and would by far outstrip the amount of the estate, ought to have been known to the Receiver's counsel. Certainly at that point counsel should have considered whether or not the firm's usual hourly rates were suitable for this receivership. In fact in my opinion the usual rates, which Mr. Caylor acknowledged are at the "high end" of the scale, were not warranted from the outset.

[80] Although I would not reduce the hourly rates as significantly as suggested by opposing counsel, in my view they ought to be reduced by approximately 15%. Based on these considerations I find that there should be a reduction of the fees before GST in the amount of \$46,000 to reflect the fact that the hourly rates claimed are too high for this matter. In arriving at this amount, I have not applied a 15% reduction to the time docketed before early December 2005 of approximately \$80,000, by which point the information in the First Report was clearly known to counsel. I have however made an adjustment of 5% to that \$80,000 as well, as the rates were too high from the outset.

[81] I come then to the amount of time that is claimed.

[82] Counsel for the Receiver has not filed an affidavit that deals with any of the factors in the *Bakemates* case. The affidavits of Ms. Atkinson and Ms. MacMillan filed in support of this motion only identify the accounts, the summaries and the

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dockets and depose that they accurately reflect the time spent, fees incurred and disbursements made in conjunction with this matter. The onus however is on counsel for the Receiver to satisfy me that the amount claimed for fees is fair and reasonable.

[83] Counsel for the Receiver has filed a Summary of Counsel Fees for the period of November 4, 2005⁹ to February 21, 2006 and a similar summary for the period February 21, 2006 to April 12, 2006. These summaries break the time spent by counsel for the Receiver into the following categories and amounts:

- (a) The total fees claimed with respect to real property is \$46,750.
- (b) The total fees claimed with respect to RECO is \$25,295.
- (c) The total fees claimed with respect to the Dianor shares is \$5,642.50.
- (d) The total fees claimed with respect to the Pahwa mortgages is \$17,585.
- (e) The total fees claimed with respect to "general receivership activities" comprises the balance claimed of \$227,745.¹⁰

[84] With respect to the fees claimed with respect to real property, according to the summary this reflects the time spent maintaining properties, communicating with insurance companies, utilities companies, real estate agents, land registry office, counsel for purchasers, dealing with power of sale issue and inquiries (i.e. Pahwa), dealing with mortgages, registering orders on title, obtaining and registering certificates of pending litigation on title, transferring properties into receivership, obtaining vesting orders and getting the title of the properties cleared.

[85] As I have already stated, Simpson identified the properties and a decision was made to use her agent as she had already listed some of the properties. Time was spent finalizing the sale of two of those properties, although only one sale had closed in the time frame of the accounts submitted. In addition it appears that the time spent on the Hurst action, which included obtaining certificates of pending litigation, and some of the time spent on Pahwa is included in this category.

[86] Many of the matters listed such as maintaining the properties, communicating with insurance and utilities companies and matters of that sort is work which I would have expected the Receiver's staff to take care of at a lower cost¹¹. The fact that the Receiver is from Texas likely explains this, which is consistent with the fact that the Receiver's account was a small fraction of the fees of counsel for the Receiver. Counsel for the Receiver however, chose the Receiver and clearly counsel for the

⁹ I note that this is after the date when the fees claimed began to be incurred of October 11, 2005.

¹⁰ These amounts total \$323,017.50, which is almost \$40,000 less than the total fees claimed of \$361,522.50. The difference was explained on the basis that the summaries were estimates of the break down of fees. I expect that most of the explanation is that these summaries commence November 4, 2005 whereas the fees claimed commence October 11, 2005.

¹¹ The Receiver's hourly rate is \$400 US/hour so presumably staff would be at lower rates.

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Receiver chose to do much of the Receiver's work. This however exacerbates the problem of high rates, as the rates claimed for the lawyers involved in these activities are as high as \$575 and \$450. In my view others should have done much of this work at significantly lower rates. I have considered this in my reduction for inefficiency discussed further below.

[87] The real estate partner who presumably was mostly responsible for the work done on the sale of the properties is Scott Martyn and his rate is \$550. He was assisted by two real estate law clerks at the rate of \$150 per hour. This time however only reflects \$10,595 of the fees. It is impossible to determine how much of the time claimed relates to the Hurst action but clearly the total fee claimed for this category of work done seems excessive.

[88] With respect to the fees claimed with respect to RECO, again the amount claimed seems high. RECO's position was known by the time of the First Report and essentially what has happened since then is a meeting and correspondence with RECO, demanding and receiving documents in response to a request for disclosure of documents, a consideration of the legal issue including research (over \$8,000 for research done by two students is part of this category) and assisting victims with making claims. It is not clear how much of the time claimed includes the time spent preparing the opinion that was filed with the court concerning the RECO action, but I expect that some of that time is not part of the time claimed now, as the cut off for fees was April 12, 2006. I note that the costs of this aspect of the matter will have to be carefully considered before any further work is undertaken given that it is unclear whether or not the RECO claim benefits both class actions or not.

[89] I do not have any difficulty with the quantum of time claimed with respect to the Dianor Resource shares issue and the Pahwa mortgages issue, which, if successful, will benefit all victims.

[90] The most difficult issue arises with respect to the heading "general receivership activities". Although some effort has been made to break out some of the motion time and the dealings with the banks in that category, it essentially is a category reserved for all of the other time spent that is not included in the other categories set out. Opposing counsel complain that this is in breach of my direction and does not give them a real opportunity to assess the value of the work done. I agree. We do not know for example, how much time was spent preparing the statement of claim or the Hurst action or a particular Report for the court. This means, for example, that we can not assess the value of the work done in connection with the Hurst action relative to the limited equity in the two properties at issue in that action.

[91] The court in the *Bakemates* case stated that although there is no prescribed process, the accounts must be detailed including the total charges "for each

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of the categories of services rendered" and in a form that can be easily understood by those affected by the receivership so that such persons can determine the amount of time spent by the receiver's employees and others that the receiver may have hired in respect to the "various discrete aspects of the receivership" (at para. 37). This was not done with respect to this general category and as a result the task of opposing counsel and the court is that much more difficult. It was not an option however to ask counsel for the Receiver to particularize this category further, as that would have necessitated yet another adjournment.

[92] The general receivership activities category includes, but is not limited to, commencing the proceedings, obtaining the receivership order, contacting victims, disseminating, collecting, processing and validating claim forms, obtaining bank records, reviewing bank records, tracing funds, reviewing records in the possession of York Regional Police, examining parties (Simpson and Cox), preparing reports for the court (4), reporting to the court and obtaining approval for steps taken (6 court attendances up to and including the attendance before me on April 6th), communicating with various parties including clients and class members and "developing and carrying out strategy for recovery". Again the Receiver's staff should have done some of this work if distance had not been an issue, such as the work done contacting victims and disseminating and processing claim forms. Again the fact this was done by lawyers at higher hourly rates means a deduction is required.

[93] The assessment of the fees in this category is a difficult task given the information that I have to consider. However, no one suggested that an assessment before an assessment officer or a line-by-line review was warranted, as the cost of that would be astronomical. Furthermore, opposing counsel did not go to the expense of cross-examining Ms. Atkinson on her affidavit or otherwise questioning counsel for the Receiver with respect to the accounts. That however, is understandable, as opposing counsel represent various claimants and do not have any certain access to the estate to cover their costs. Furthermore, the material in question was delivered too late to permit cross-examination without a further adjournment.

[94] Notwithstanding these concerns, fixing costs is not an unusual task for the court. Judges are expected now to fix costs following not only routine motions but also lengthy trials. Although the factors for assessing party and party costs may be different, the type of analysis required is similar and in fact the overriding direction now from the Court of Appeal is to assess what in our view is fair and reasonable in all of the circumstances.¹²

[95] In considering the number of hours and the nature of the work done on this matter, I am of the view that the sheer number of hours put in, given where we

¹² See *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291

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are in this receivership, reflects a significant degree of inefficiency when I consider what work has been done based on the material filed. They are excessive and greatly exceed what I view as fair and reasonable.

[96] Part of this concern about efficiency and whether all of the work done was warranted, can be explained by the fact that eighteen different professionals charged time to the file. Although some of that can be justified on the basis that different expertise was needed (particularly litigation versus real estate), this always raises a concern about duplication of effort. In that regard I considered particularly the dockets of Mr. Caylor, Ms. MacMillan and Ms. Atkinson, as they have by far, the most time on the file and they all worked on the very same matters. In other words it cannot be said that either Ms. MacMillan or Ms. Atkinson handled discreet issues under the supervision of Mr. Caylor. Based on my review of the dockets, it appears that there was, as a result, unnecessary duplication. Mr. Caylor delegated many tasks to Ms. MacMillan who in turn delegated them to Ms. Atkinson.

[97] For example, with respect to materials for court including the Receiver's Reports, although Ms. Atkinson would usually bear the main responsibility for drafting the materials, both Ms. MacMillan and Mr. Caylor would review and often revise these materials, (see for example pp. 134-135, 138, 149-150, 153, 154, 219-220 of the Motion Record returnable April 26, 2006). In addition, although Ms. Atkinson was the one who typically accompanied Mr. Caylor on court attendances or on examinations, this necessitated bringing Ms. MacMillan (or in some cases Ms. Atkinson, where it was Ms. MacMillan who went to court or Mr. Caylor when Ms. MacMillan conducted the examination of Cox) up to speed after those attendances and this is reflected in the dockets, (see for example pp. 132, 140, 149, 224 of the Motion Record). In some cases all three attended court, (see page 142 of the Record) and naturally there were many occasions when all three met together to review the matter. These are intended only as examples. Clearly with all three lawyers working on the very same issues, coupled with the extraordinary number of other lawyers and students who worked on this file, duplication was inevitable.

[98] Furthermore there does not appear to have been a very clear demarcation if at all, between the various tasks undertaken by Ms. MacMillan and Ms. Atkinson. There are many references to Ms. MacMillan doing research, notwithstanding that she is more senior than Ms. Atkinson and of course the students at law who worked on the file, (see for example pp.124, 129, 140, 145, 150, 222, 223, 230 of the Motion Record).

[99] Although I accept that it may have been necessary for all three lawyers to work on the file at the early stages, when it was important to move quickly to freeze assets, once that phase was over, in my view much of the litigation work should have been delegated to Ms. Atkinson under the supervision of Mr. Caylor. This would have resulted in less unnecessary duplication and much of the work done by Ms. MacMillan

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would have been done at a lower rate. Alternatively Ms. MacMillan should have been given more responsibility so that Mr. Caylor's time could be significantly reduced. Although three levels of counsel of varying experience may be warranted in a complex and large (in monetary terms) receivership, it is not warranted here. I have already commented on the particular need to conduct this receivership efficiently given the quantum of claims and the size of the estate. Furthermore, the matter is not complex. Accordingly, a deduction for this unnecessary duplication must be made.

[100] In considering the amount of this deduction, I have considered the fact that the duplication of effort reflects primarily on the time spent by Mr. Caylor, Ms. MacMillan and Ms. Atkinson and that accordingly the time they have spent should be reduced to eliminate this duplication, and as well a deduction should be made to reflect the fact that some of the work done by Mr. Caylor could have been done by Ms. MacMillan or alternatively a great deal of her work could have been done by Ms. Atkinson, under the direct supervision of Mr. Caylor, at a significantly lower hourly rate. Either way, unnecessary duplication would have been reduced and work would have been done at a lower hourly rate.

[101] In addition, consideration must be given to the number of hours docketed to accomplish particular tasks. As I have already noted, the time for the real property category seems high. Furthermore the time in the general category is excessive given the nature of the work done. For example a great deal of time was spent preparing the various reports of the Receiver to the court and the time seems high particularly given that each report repeated a great deal of the early report(s). I note that Ms. Atkinson docketed time to reviewing precedents for these reports (see Record at page 129). That is to be expected for inexperienced counsel, but all of that time should not have been billed to the file.

[102] It is apparent from reviewing the dockets that there was no consideration given to whether or not some docketed time should have been written off. I was advised that in the final analysis, approximately \$3,000 has been written off which in part reflects the time of the tax partner and presumably other time, although that has not been specified. Nevertheless, in my view there ought to have been a more substantial write-off of time. There are numerous examples of dockets where lawyers have recorded time spent to research and ascertain what type of procedure was necessary in order to accomplish a particular step in the proceeding.

[103] For example, Ms. Atkinson docketed time determining how to bring a motion in the Commercial List to appoint a receiver (page 125 of the Motion Record) and researching between the role of a trustee in bankruptcy and a court appointed receiver (page 144 of the Motion Record. Ms. Atkinson also docketed time to reviewing the protocol to obtain fee approval and determining the requirements of vesting orders (pp. 208, 235 of the Record). There was also repeated research done on class actions

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by Ms. MacMillan notwithstanding that I am advised that Mr. Hoaken has expertise in that area and worked on the file.

[104] This type of basic information may not be known to inexperienced counsel but is fundamental knowledge that a client can reasonably expect his or her lawyer to know. It is not time that can be billed to the file. In commenting on this, I do not wish to be critical of the lawyers in question, as they need to take time to consider what to do when the process is unfamiliar to them. That is how one gains experience in the practice of law. That, however, cannot be at the expense of the client when it involves the fundamentals. I would have expected that the supervising lawyer would have written off these types of dockets and not include them in the accounts when rendered. That clearly was not done in this case and so again an adjustment to the fees claimed on this basis is warranted.

[105] In summary counsel for the Receiver has not satisfied me that the fees submitted are fair and reasonable. Simply put, in my opinion, counsel for the Receiver has not properly staffed or administered the work and resulting billing on this file. Considering all of these various deductions that in my view are necessary, I find that a deduction in the amount of \$50,000 of fees before GST for duplication and overall inefficiency is warranted. In arriving at this amount, I have taken into account the fact that I have already made a reduction to the hourly rates so that I do not "double count".

[106] I am also of the view that there must be a further reduction for the time spent by counsel for the Receiver in seeking court approval of its fees. The information provided to opposing counsel and the court before Mesbur J. was woefully inadequate and there is no explanation for why proper materials were not prepared at that time. Accordingly part of the time spent for that attendance was wasted in terms of this issue. Similarly, the problems opposing counsel raised with the further material provided in the first attendance before me on April 6, 2006 were predictable as well and so much of the time spent in court on that occasion was wasted. In addition, as already stated the third draft of the materials in support of this motion is still problematic and was served late. Had counsel for the Receiver prepared the necessary information for consideration by Mesbur J., a great deal of cost for all concerned would have been spared. Certainly the time spent by counsel for the Receiver for these wasted efforts should not be compensated.

[107] Accordingly there will be a further reduction of the fees (before GST) to take this consideration into account in the amount of \$6,000. The time spent with respect to the approval of fees was not separately categorized. I have calculated this amount by including some of the time spent by K. McPhie, who prepared the summaries, and part of the time spent by litigation counsel preparing for and attending

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before Mesbur J. and again before me on April 6, 2006 and some of the time spent by counsel preparing the information that I directed.

[108] For these reasons, the fees claimed by Bennett Jones will be reduced by these various deductions in the total amount of \$102,000 before GST, in order to arrive at an amount for fees that in my opinion is fair and reasonable in all of the circumstances.

DISPOSITION

[109] Accordingly, the fees and disbursement of Bennett Jones LLP for the period from October 11, 2005 to April 12, 2006 are approved in the amount of \$259,522.50 for fees plus GST in the amount of \$18,166.58 and disbursements, inclusive of GST, in the amount of \$17,998.22 for a total of \$295,687.30.

[110] I do not intend to impose hourly rates on counsel for the Receiver with respect to future accounts submitted to the court but I trust that the conclusions that I have come to in reaching this decision will be taken into account. I expect that the number of lawyers working on this matter will be pared down significantly and that my concern about duplication will be dealt with.

[111] As for the approval of future accounts, I expect counsel for the Receiver to follow the procedure in the *Bakemates* decision. That decision makes it clear what information is required to support such a motion and I expect that counsel will include all of that information in the material filed with the court on the next motion for approval and that that motion record will be served well in advance and posted on the website so that all interested parties may make an informed assessment of the reasonableness of the fees claimed and if necessary, prepare to defend the motion. The categories for all services rendered must be more refined so that in addition to assessing the reasonableness of the future accounts, consideration can be given to what a client would normally want to know, namely, is the cost to pursue a particular course of action warranted given the likely outcome and the amount in issue. This will be necessary to determine how the remaining issues should be dealt with.

[112] Mr. Cohen, counsel for Atlas Holdings and Investments Inc., one of the claimants in the Deposit Fraud Class Action who has made a claim for a deposit of \$200,000, requested costs of his attendance on the motion in the amount of \$2,000 on a substantial indemnity basis, to be paid from the estate when Receiver's counsel is paid. He submits that this is fair if his efforts reduced the quantum of costs payable to Receiver's counsel. Atlas has been on the service list since the Initial Order and counsel has appeared on certain motions brought by the Receiver, including the attendances

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before me on April 6th and 26th. He submits that his client has a direct and substantial interest in the outcome of the motion and that I have the discretion to award costs pursuant to both section 131 of the *Courts of Justice Act* and Rule 57 of the Rules of Civil Procedure.

[113] Counsel for Atlas submits that these proceeding may be compared to pension surplus distribution litigation and estate litigation where it is not unusual for the court to allow cost to all persons interested in the fund and who made submissions of assistance to the court, to be paid out of the fund.

[114] Counsel for the Receiver submits that it is unusual for a creditor to seek legal costs for court attendances in the context of a receivership unless the receiver has acted beyond his authority or inconsistent with his appointment. Typically, if a creditor has to attend or bring a motion, the creditor bears his own costs. This prevents multiple creditors' counsel from attending on the receiver's motions and seeking fees. It is submitted that the court ought not to encourage creditors by a cost award to unnecessarily attend at future hearings. No issue is taken as to the quantum claimed.

[115] Mr. Govedaris submits that there is no authority that he is aware of to support costs paid to third parties who retain counsel after a receiver has been appointed unless there has been impropriety *inter alia* by the receiver, which has been identified, by that third party. He agrees with the submission of counsel for the Receiver that even if I have the discretion to award costs I ought not to as it would encourage other parties to seek costs and that would increase costs for all potential claimants.

[116] In my view I have the discretion to make a costs award pursuant to section 131 of the Courts of Justice Act. Atlas is clearly a party affected by the relief sought. Although it is not usual for counsel for creditors to ask for costs, in these circumstances, the submissions from opposing counsel were of some assistance, although since they did not have adequate time to prepare, unfortunately most of the detailed review of the accounts was left to me.

[117] I see no reason why Mr. Cohen's client, who chose to have counsel attend to contest the accounts, should bear all of the expense for the benefit of all claimants to the estate. In my view however, costs on a partial indemnity basis for this attendance is warranted, particularly as Mr. Cohen had not previously asserted an intention to ask for costs.

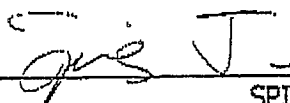
[118] For these reasons, I award costs to Atlas Holdings and Investments Inc. in the amount of \$1,500 on a partial indemnity basis, to be paid from the estate when Receiver's counsel is paid.

[119] I must add that this order as to costs is not an invitation for counsel who did not participate on the assessment of the costs on this motion to appear on future

motions and seek such an award. If more claimants wish to be represented on future motions to approve the fees, they will need to choose and rely on one counsel to represent all of their interests on the issue of costs.

[120] That brings me to Mr. Govedaris who has not asked for costs and in fact opposed the request by Mr. Cohen for costs. Had Mr. Govedaris sought costs, I would have awarded costs to him on the same basis. Going forward, I expect Mr. Cohen to cooperate with Mr. Govedaris on the issue of the fees and I will only be prepared to consider awarding one set of costs on future motions to approve fees. Mr. Cohen represents a member of the class represented by counsel for the Receiver. As Mr. Govedaris represents the Mortgage Fraud Class Action, I would prefer to hear from him given the potential for conflict with the Deposit Fraud Class Action that I have already referred to.

[121] Finally, I ask that counsel for the Receiver ensure that this decision is posted on the Receiver's website as soon as possible.



SPIESS J.

RELEASED: JUNE 8, 2006

COURT FILE NO.: 05-CL-6159

DATE: 2006-06-08

**SUPERIOR COURT OF JUSTICE -
ONTARIO**

RE: UDAYAN PANDYA, Plaintiff

A N D:

COURTNEY WALLIS SIMPSON,
YORK REGION REALTY INC.,
WALLIS, SIMPSON &
ASSOCIATES, COURTNEY
WALLIS SIMPSON c.o.b. as
YORK MANAGEMENT GROUP
and as CAMCO DEVELOPMENTS
and as YORK GROUP, Defendants

COUNSEL: *Lincoln Caylor* for the
Plaintiff/Receiver

Gregory Govedaris, for the
Plaintiffs in Action # 05-CL-6178,
Glenn E. Cohen for Atlas
Holdings, D.R. Rothwell for Ajay
Pahwa and Courtney Wallis
Simpson in person

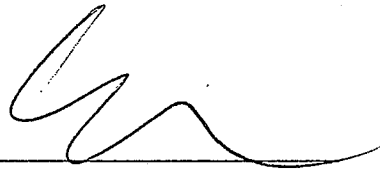
DECISION ON MOTION

SPIES J.

JUN - 8 2006

Tab X

THIS IS EXHIBIT "X" TO THE AFFIDAVIT OF
WERNER ZAPFE
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

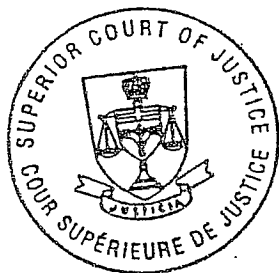
Constantine Alexiou

Court File No. 05-CL-6159

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

THE HONOURABLE)	THURSDAY, THE 17 TH DAY OF
)	
MR. JUSTICE GROUND)	NOVEMBER, 2005

BETWEEN:



UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES
AND CAMEO INVESTMENTS

Defendants

In the Matter of the *Class Proceedings Act, 1992*

ORDER FOR AN APPOINTMENT OF AN INTERIM RECEIVER

THIS MOTION made by the plaintiff for an order appointing a receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Reality") pursuant to s. 101 of the *Courts of Justice Act* with investigatory and preservation powers was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the affidavits of Udayan Pandya and Richard Kwasniewicz and on hearing the submissions of counsel for the plaintiff, no one appearing for the defendants

despite short notice of this matter, and upon being advised that Ms. Simpson is aware of this proceeding and that the relief sought would likely be granted if she did not attend,

1. **THIS COURT ORDERS** that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson and York Realty pursuant to s. 101 of the *Courts of Justice Act* with the powers and duties hereinafter set out.

2. **THIS COURT ORDERS** that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.

3. **THIS COURT ORDERS** that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.

4. **THIS COURT ORDERS** that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.

5. **THIS COURT ORDERS** that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

Preservation of Assets

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized for and on behalf of and in the name of any of the defendants to take possession and control of all of the present and future assets, undertaking and property of the defendants and any funds, proceeds or

other assets directly or indirectly related to the funds allegedly raised by the defendants as alleged in the statement of claim (the "Property") and any and all proceeds, receipts and disbursements arising out of or from the Property, until further order of this Court, and to act at once in respect of the Property. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Receiver is hereby expressly empowered and authorized on the Receiver's behalf, but not obligated:

- (a) to take such steps as in the opinion of the Receiver are necessary or appropriate to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable, provided that the Receiver shall not evict or dispossess any occupant of any residential dwelling without further order of this Court made on notice to such occupant;
- (b) to take such steps as in the opinion of the Receiver are necessary or appropriate to maintain control over all receipts and disbursements arising out of or from the Property;
- (c) to receive and collect all monies, debts, claims, choses in action and accounts now owed or hereafter owing to any of the defendants in respect of the Property and to exercise all remedies of any of the defendants in collecting all such monies, including, without limitation, to enforce any security held by any of the defendants and to receive and recover all funds, monies, cash, cash equivalents, negotiable securities, accounts and any other assets on deposits to banks, brokerages and other financial or other institutions;
- (d) to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange, or other documents of whatever nature in respect of any of the Property, in the name and on behalf of any of the defendants, which are necessary, desirable or convenient in, the opinion of the Receiver for any purpose pursuant to this Order;

- (e) to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property and to defend all proceedings now pending or hereafter instituted against any of the defendants or the Receiver, the prosecution of or defence of which will, in the judgment of the Receiver, be necessary to properly protect or realize on the Property or to protect the administration by the Receiver of the affairs of any of the defendants and the Property, and to settle or compromise any such proceedings which in the judgment of the Receiver should be settled;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that any such sale or disposition of Property shall, if the defendants do not consent to the same, be subject to the Court's approval;
- (g) to report to, meet with and discuss with such creditors of the defendants and their advisors as the Receiver deems appropriate including holding town hall or other meetings on all matters relating to the Property and receivership; and
- (h) to register this order in any public registry against title to any of the Property. Without limiting the generality of the foregoing this court orders that this order be registered against the real property and other assets described at Schedules "B" and "C" hereto.

7. **THIS COURT ORDERS** that no person having notice of this order shall interfere with, obstruct or in any way hinder the Receiver in the fulfillment or pursuit of its duties hereunder and that all such persons are under an obligation to deliver up to the Receiver any Property or other thing to which the Receiver is entitled to under this order. In the event that any person contests that any asset, document or thing is Property under this order or is document or record properly producible to the Receiver then that person shall first deliver up the asset in question to the Receiver or to such third party as the Receiver in its discretion may agree for safekeeping and

the person contesting the Receiver's right may thereafter, if so advised, bring an application to this Court for directions.

8. **THIS COURT ORDERS** that the Receiver may receive information from persons as to the details of their deposit of trust funds investments with Simpson and the other defendant but that the Receiver shall not be under any obligation to call for claims, validate claims or make recommendations with respect the disbursement of funds to investors without further order of this Court.

9. **THIS COURT ORDERS** that no demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any contract, including any contract of insurance, the exercise of any right of set-off or combination of accounts, the exercise of any construction, mechanics' repair, storage or other lien, or the commencement or continuation of any proceedings under any Environmental Laws (as hereinafter defined) in any jurisdiction in which the Property may be located, shall be taken against the Receiver, with respect to the Property or any part thereof, without the prior written consent of the Receiver or leave of this Court first being obtained upon not less than seven days' notice to the Receiver.

10. **THIS COURT ORDERS** that the defendants and anyone having knowledge of this order be and they are hereby restrained, pending consent of all parties or further order of this Court:

- (a) from removing from Ontario or in any way disposing, dealing with or diminishing the value of any of the defendants' property, whether real or personal, present or future, held in Ontario or elsewhere, whether held in the defendants' names or not, pending the final determination of this action or further order of this Court;

- (b) from withdrawing or causing or permitting the withdrawal of or transferring of funds or issuing of cheques or other instruments from any of the defendants' bank accounts or investment accounts of any nature whatsoever, whether held individually or jointly with any other person, pending the final determination of this action or further order of this Honourable Court, provided that the defendants shall have leave to seek variation of this order in order to permit the withdrawal of a reasonable amount as ordinary living expenses provided that if any such order is sought the defendants must have fully complied with this order in all respects including the provision to the Receiver of the information required to be provided to the Receiver.

Documents and Investigations

11. **THIS COURT ORDERS** that the Receiver shall forthwith be entitled to take possession of and examine the defendants' books and records and make such inquiries as it deems prudent and necessary of the defendants' bankers, accountants, auditors, advisors, managers, experts, solicitors, agents, officers, employees and others in order to determine the financial status of the defendants, and shall conduct a review and, if necessary, a detailed examination of the financial records of the defendants.

12. **THIS COURT ORDERS** that the Receiver shall report to this Court at such times and in such fashion as this Court may direct.

13. **THIS COURT ORDERS** that the defendants and their accountants, auditors, advisors, agents, managers, experts, solicitors, agents, officers and employees, including, without limitation, any accountants, bankers or financial, legal, advisors and the persons set out in Schedule "A", (the "Affected Persons") shall forthwith provide to the Receiver all of the books and records relating to the defendants' financial history and dealings, including, without limitation, all ledgers, bank statements and records, cheques, financial statements, receipts, vouchers, deposit slips, contracts, agreements, accounting records, computer records (including but not limited to tapes and/or discs) or other documents or records of any kind or nature,

howsoever stored or maintained, relating to the defendants (the "Documents"). Provision of the Documents to the Receiver shall not breach any confidentiality or other non-disclosure obligations the Affected Persons might otherwise have to the defendants and it shall be deemed that the defendants shall have consented to the release of the Documents. The Receiver shall allow the defendants and their advisors reasonable access to and the ability to make copies of any and all such books and records in the possession of the Receiver. The defendants shall allow the Receiver to make, retain and take away copies of any or all of the Documents and shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver.

14. **THIS COURT ORDERS** that if any of the Documents is stored or otherwise contained on a computer or other electronic system of information storage, the defendants and all Affected Persons shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Documents, whether by way of printing same onto paper or making copies of computer discs or such other manner of retrieving and copying same as the Receiver in its discretion deems expedient. For the purposes of this paragraph, the defendants and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Documents as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, forthwith providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, passwords or other codes as may be required to gain access to the Documents.

15. **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 defendants 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, emails or other information sent or received by the defendants 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 defendants.

16. **THIS COURT ORDERS** that the Receiver shall have ongoing access to the defendants' current and future bank account statements and other financial records, copies of which shall be provided to the Receiver as and when demanded by the Receiver. The defendants and the third parties shall co-operate and consent to the distribution of such records to the Receiver.

17. **THIS COURT ORDERS** that the Receiver is empowered to demand production from third parties (including but not limited to the defendants' advisors, banks, financial institutions and the persons set out in Schedule "A") of documents relating to:

- (a) the defendants' financial affairs;
- (b) the deposit of funds received in connection with the sale of commercial real estate;
- (c) the identities of the persons who have provided deposit funds to Simpson and the other defendants;
- (d) the bank accounts or other financial records referable to the accounts into which such funds were deposited including documents referable to any withdrawal, transfer or dissipation of funds in such accounts; and
- (e) commissions, fees, expenses or other amounts paid to any persons in connection with the sale of such securities and any agreements, arrangements or any other communication with respect to the payment of such amounts;
- (f) and further directs that all such third parties (including all Affected Persons) shall co-operate fully with the Receiver, subject to claims of legal privilege.

18. **THIS COURT ORDERS** that the Receiver is empowered to compel the attendance, on two clear days written notice by letter from the Receiver or its counsel, of persons believed by the Receiver to have knowledge of the defendants' affairs for the purpose of being examined under oath by the Receiver or by such person as to whom the Receiver has or may delegate this power. In particular, and without limiting the general nature of the power conveyed by this

paragraph, the Receiver is empowered for the purposes of performing its duties hereunder to examine under oath the persons named in Schedule "A" to this order and any persons who may have received transfers of assets or funds from the defendants, provided that nothing herein shall apply, without further order of this Court, to compel any person who has been actually charged with a criminal offence to so testify and that any persons who so testify shall have the right to invoke the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedoms*. If the persons to be examined have a personal residence or regular place of business within 60 kilometres of an office of Bennett Jones LLP (Toronto, Edmonton or Calgary) such examination shall take place at such office failing which it shall take place at any place where an examination of discovery may take place under the *Rules of Civil Procedure* in the province where the examination is conducted.

19. **THIS COURT ORDERS** that Simpson shall provide to the Receiver within 7 days of service of this order an affidavit under oath specifying her knowledge on the following matters:

- (a) specifics of all corporations, partnerships, or other entities in which she has a direct or indirect interest with particulars of the nature of such interest;
- (b) specifics of all bank, brokerage or other accounts, wherever situate, in her name, the name of York Region Realty Inc., the name of any of the entities in (a) hereof or over which she has any signing authority or any other direct or indirect control;
- (c) specifics of all bank, brokerage or other accounts, where funds were deposited, all accounts to which such funds may have been transferred and the present whereabouts of such funds;
- (d) whether any assets were purchased or acquired in whole or in part with such funds and, if so, the particulars of such assets and their present location with particulars of the assets involved name of the person or entity who holds title to such assets, the date of acquisition, acquisition cost and a current estimate of value; and
- (e) specifics of any disposition of assets (including transfer of funds) in excess of \$10,000 in the last 2 years and that this affidavit shall be deemed to have been

provided by compulsion of law and its further use in any other court proceeding be subject to the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedom*.

20. **THIS COURT ORDERS** that the Receiver is authorised to enter upon the business premises of the persons set out in Schedule "A" (collectively the "Premises") and to examine anything and take away any documents or record found at the premises that the Receiver is authorised hereunder to require to be produced to it.

21. **THIS COURT ORDERS** that the Receiver shall have full power to investigate any gift, transfer, conveyance, settlement or any other disposition (a "Conveyance") of any interest in any assets, funds or any other property by the defendants to third parties (the "Conveyed Property") and to compel the production of information from any person with respect to such Conveyed Property and the circumstances surrounding the Conveyance as if such Conveyed Property was Property under this order and that the Receiver shall be at liberty to apply to the Court for any appropriate order relating to the preservation of any such Conveyed Property.

Other

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

23. **THIS COURT ORDERS** that no proceedings shall be brought against the Receiver in any Court or other tribunal unless leave of this Honourable Court is first obtained on motion on at least seven days notice to the Receiver and the parties.

24. **THIS COURT ORDERS** that all the costs of this receivership including without limitation the Receiver's fees and disbursements (including the amounts which the Receiver is obliged to pay others) and the fees and disbursements incurred by Bennett Jones LLP in carrying

out its duties herein shall be a first charge on any assets recovered in the receivership herein, subject to approval of the quantum of costs by the Court. The Receiver shall have the right to apply to the Court for approval and payment of its fees and disbursements on an interim basis provided that 15 days notice shall be given to the defendants of any such application. The Receiver shall also have the power, if so advised, to move to have the receivership terminated and to be discharged as Receiver.

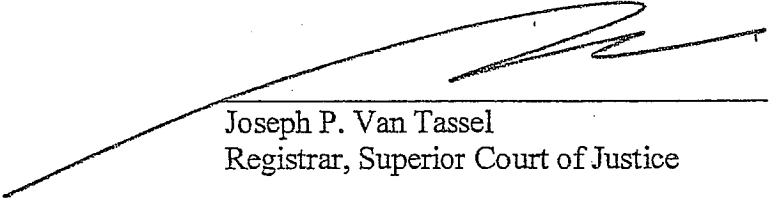
25. **THIS COURT ORDERS** that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

26. **THIS COURT ORDERS** that the Receiver be granted leave to apply to the Court for approval to borrow and to provide whatever security as may be appropriate, if so advised.

27. **THIS COURT ORDERS** that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Emergency Plans Act 1963* (Ontario), the *Ontario Water Resources Act*, the *Occupational Health and Safety Act* (Ontario) or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in

control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

28. **THIS COURT SEEKS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada and any court or any judicial, regulatory or administrative body of any other nations and states and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this order.



Joseph P. Van Tassel
Registrar, Superior Court of Justice

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

NOV 17 2005

PER/PAR:

MB

Schedule "A"

1. Wayne Simpson
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3
2. York Management Group
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7G9
3. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
4. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
5. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
6. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
7. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
8. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
9. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
10. HSBC
Richmond Hill
11. Laurentian Bank
Newmarket, Ontario

Schedule "B"

1. 587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3

Legal Description:

PCL 19-1 SEC 65 M2296: LT 19 PL 65R2296: Whitchurch-Stouffville

2. PIN 03715-0004
Whitechurch, Ontario

Legal DescriptionL

PT LT 30 PL 54 Stouffville; PT LT 31 PL54 Stouffville, PT LT 40 PL 54 Stouffville; PT
LT 41 PL 54 Stouffville PTS 1, 7 65R2555; S/T R221467, R221469

3. 1038 Kawagama Lake Road
Dorset, Ontario

Legal Description:

Con 13 PT LOT 1 RP19R3154, Parts 1, 6, 7
Dorset, Algonquin Highlands Township

4. PIN 03710-0193/0194
Stouffville, Ontario

Legal Description:

PT LTS 49 & 50
PL 70 Stouffville PT 2 65R256J4 Whitchurch-Stouffville

Schedule "C"

1. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
2. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
3. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
4. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
5. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
6. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
7. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
8. HSBC
Richmond Hill
9. Laurentian Bank
Newmarket, Ontario

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson et al.
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

In the matter of the *Class Proceedings*
Act, 1992

Proceeding commenced at Toronto

ORDER

BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L/43529J

Solicitors for the plaintiff

TAB 3

Court File No. 07-CL-6843

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

BETWEEN:

MICHAEL J. QUILLING, RECEIVER FOR
COURTNEY WALLIS SIMPSON

Plaintiff

- and -

ZAPFE HOLDINGS INC. and MICHAEL SOURLIS

Defendants

Court File No. 05-CL-6159

AND BETWEEN

UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
And as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

AFFIDAVIT OF MICHAEL SOURLIS

I, MICHAEL SOURLIS, of the Town of Richmond Hill, in the Regional
Municipality of York, businessman, MAKE OATH AND SAY:

1. I am a Defendant in action 07-CL-6843, together with Zapfe Holdings Inc. (hereinafter referred to as "Zapfe") and have as good knowledge of the matters hereinafter deposed.

THE DIANOR SHARES

2. I am also a claimant in the receivership of a certain Courtney Wallis Simpson (hereinafter referred to as "Simpson"), a Defendant in proceeding 05-CL-6159 and the registered owner of certain shares more particularly described below, which were held in trust for me.
3. I am and was at all material times a private investor. I was induced by Simpson to invest certain of my funds in an investment vehicle promoted by her which financed interim closings on residential condominiums. Very high rates of return were promised by Simpson and I believed her.
4. It turned out that the investment promoted by Simpson was not legitimate and I have learned from the newspapers that she has been convicted of fraud in relation to the condominium investment and that she was sentenced to a jail term.

5. As a result of my dealings with Simpson, well prior to her arrest and conviction, I introduced her to the investment opportunity represented by Dianor Resources Inc., also known as Ressources Dianor Inc., (hereinafter referred to "Dianor") in which she wished to acquire shares.
6. Now shown to me and annexed hereto and marked as **Exhibit "A"** to this my affidavit is a true copy of the undated Subscription Agreement whereby 217,391 shares of Dianor (hereinafter referred to as the "shares") were purchased by Simpson.
7. Now shown to me and annexed hereto and marked as **Exhibit "B"** to this my affidavit is a true copy of the share certificate dated January 28, 2005 confirming Simpson's registered ownership of the shares.
8. Now shown to me and annexed hereto and marked as **Exhibit "C"** to this my affidavit is a copy of the warrant dated January 27, 2005 for the acquisition of the shares by Simpson.
9. I was advised by Simpson, and verily believe, that she paid nothing for these shares and that, as a result, she owed Dianor the purchase price.
10. On April 11, 2005 Simpson pledged her Dianor shares to me by a certain document entitled "Promissory Note", a true copy of which is annexed hereto

and marked as **Exhibit "D"** to this my affidavit. This document was intended as a transfer of the ownership of the shares to myself.

11. On November 23, 2005 Simpson caused her broker, Computershare Investor Services, to formally transfer title to her pledged Dianor shares to me. Annexed hereto and marked as **Exhibit "E"** to this my affidavit is a true copy of the correspondence by which this transfer was affected.
12. I, through Zapfe Holdings Inc., paid for Simpson's acquisition of the shares. Annexed hereto and marked as **Exhibit "F"** to this my affidavit is a true copy of the cheque drawn on the account of Zapfe on November 17, 2005. The payee is Dianor. The memorandum on the cheque confirms that it was in support of the payment for 217,391 share certificates for me.
13. In order to pay back Zapfe for the aforementioned payment on my behalf, I shortly afterward transferred the sum of \$25,000.00 to the bank account of Zapfe. Annexed hereto to this my affidavit and marked as **Exhibit "G"** is a true copy of a page from the Deposit Book for the account of Zapfe on December 6, 2005 showing the deposit of monies in the amount of \$25,000.00 with the annotation "SOURLIS DIANOR SHARES C.W.S.". I deposited this \$25,000.00 into the Zapfe account on December 6, 2005 to reimburse the monies which were paid to Dianor as set out above.

14. Now shown to me and annexed hereto and marked as **Exhibit "H"** to this my affidavit is a true copy of the letter dated April 3, 2006 signed by Chantal Gagnon at Dianor which confirms that it was my money which paid for the shares.
15. Now shown to me and annexed hereto and marked as **Exhibit "I"** to this my affidavit is a true copy of an internal memorandum from Dianor dated December 9, 2006 confirming that the cheque which is marked as Exhibit "F" above was received as payment for the shares.
16. Now shown to me and annexed hereto and marked as **Exhibit "J"** to this my affidavit is a true copy of the Treasury Order from Dianor dated January 23rd, 2006 which confirms the attribution of the shares to me and deposit of the same with Zapfe.

THE WITHIN PROCEEDINGS

17. A certain freezing order in the nature of a Mareva injunction (hereinafter referred to as the "Freezing Order") was granted by the Honourable Madam Justice Mesbur in action no. 05-CL-6159, which is a receivership proceeding. The injunction was obtained on an *ex parte* basis.

18. The aforementioned injunction was added in handwriting to the Fourth Amended and Restated Initial Order made by Mesbur J. on March 9, 2006 (hereinafter referred to as the "Order"). The Order, by restraining dealings with the shares effectively froze the shares indefinitely at a time when the Defendants were not parties to that proceeding. Annexed hereto and marked as **Exhibit "K"** to this my affidavit is a true copy of the Order.

19. The freezing of the shares has caused the Defendants considerable loss. The shares hit a high of about \$1.80 in early 2006 (at about the time of the Freezing Order) and by September 10th of 2007 had declined to sixty (60) cents. This is a loss of over 66% of the share price during a time when the shares could not be traded because of the Freezing Order. Now shown to me and annexed as **Exhibit "L"** to this my affidavit is a true copy of Globeinvestor.com (a subsidiary of the parent company of Toronto's Globe and Mail) stock quote for Dianor as at September 10, 2007.

20. Dianor does business in the natural resources sector and, more specifically, mineral exploration and associated matters. As a result, it is a somewhat volatile stock; it is traded on the TSE Venture Exchange. Freezing the trading with respect to any shares of this nature is inherently prejudicial to the owner as opportunities to dispose of the stock before a loss of value are thereby prohibited.

21. Because of the decline in the value of the shares, I have lost considerable money.
22. When the Freezing Order was granted, I retained the firm of Drudi Alexiou Kuchar LLP to represent me. I am advised by Constantine Alexiou (hereinafter referred to as "solicitor Alexiou"), and verily believe, that he demanded of the solicitors for the Receiver that an action be commenced in which I had party status and standing to participate. Annexed hereto and marked collectively as **Exhibit "M"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated April 20, 2006, together with fax transmission particulars.
23. I am further advised by solicitor Alexiou, and verily believe, that he requested of the solicitors for the Receiver a copy of the examination transcript of Simpson in action 05-CL-2159. Annexed hereto and marked collectively as **Exhibit "N"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated April 20, 2006, together with fax transmission particulars.
24. I am further advised by solicitor Alexiou, and verily believe, that he requested of the solicitors for the Receiver the reason why no security for costs had been volunteered by the foreign Receiver in action 05-CL-2159. Annexed hereto and marked collectively as **Exhibit "O"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated April 24, 2006.

25. I am advised by solicitor Alexiou, and verily believe, that there has been no reply to his enquiries concerning any alleged exemption for the foreign Receiver with respect to security for costs.
26. I am further advised by solicitor Alexiou, and verily believe, that he once again requested of the solicitors for the Receiver that a separate action be commenced in respect of myself for the reasons given above. Annexed hereto and marked collectively as **Exhibit "P"** to this my affidavit, is a true copy of the letter of solicitor Alexiou dated June 30, 2006, together with fax transmission particulars.
27. I am further advised by solicitor Alexiou, and verily believe, that he again requested of the solicitors for the Receiver a copy of the transcript of examination of Simpson Annexed hereto and marked collectively as **Exhibit "Q"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated October 13, 2006, together with fax transmission particulars.
28. I am further advised by solicitor Alexiou, and verily believe, that he again requested of the solicitors for the Receiver any reason for exempting the foreign Receiver from the normal requirement for security for costs. Annexed hereto and marked collectively as **Exhibit "R"** to this my affidavit is a true copy of the

letter of solicitor Alexiou dated October 13, 2006, together with fax transmission particulars.

29. I am further advised by solicitor Alexiou, and verily believe, that as there had been no response to his aforementioned correspondence, he again wrote to the solicitors for the Receiver requesting a response and enclosing copies of his earlier correspondence. Annexed hereto and marked collectively as **Exhibit "S"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated October 18, 2006, together with fax transmission particulars.
30. I am further advised by solicitor Alexiou, and verily believe, that he wrote once again to the solicitors for the Receiver on the issue of the Simpson transcript and the required separate action. Annexed hereto and marked collectively as **Exhibit "T"** to this my affidavit is a true copy of the letter of solicitor Alexiou dated October 25, 2006, together with fax transmission particulars.
31. I am further advised by solicitor Alexiou, and verily believe, that a reply was received from the solicitors for the Receiver denying his request for the Simpson examination transcript on the basis that Simpson had been consulted and the consent refused. Annexed hereto and marked collectively as **Exhibit "U"** to this my affidavit is a true copy of the letter of Bennett Jones LLP dated November 1, 2006, together with fax transmission report.

32. I am further advised by solicitor Alexiou, and verily believe, that the position being adopted by Simpson is not at all averse to assisting my situation. Annexed hereto and marked as **Exhibit "V"** to this my affidavit is a true copy of the letter of Simpson's letter to solicitor Alexiou dated June 11, 2007.
33. I am advised by solicitor Alexiou, and verily believe, that the aforementioned letter from Simpson was neither prompted nor solicited by his office; it appears to be the completely spontaneous and unforced act of Simpson.
34. In March of 2006, the Receiver sought approval of \$404,665.09 in legal fees and disbursements on behalf of his law firm Bennet Jones for the 6 month period from October 11, 2005 to April 11, 2006.
35. Following a detailed review of the matter, Spies J. commented that the assets of the estate are modest relative to the quantum of the claims. Annexed hereto and marked as **Exhibit "W"** to this my affidavit is a true copy of the June 8, 2006 Decision of Spies J.
36. In the Fourth Report, the Receiver estimated that the net recovery for the estate would be at \$1,808,191.00.

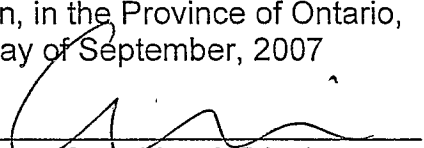
37. Spies J. reduced the Bennet Jones claim to \$295,687.30. The Bennet Jones fees were reduced by \$102,000.00 before G.S.T.

38. Spies J. also approved interim fees and disbursements of the Receiver of \$35,253.39 covering the period November 17, 2005 to February 28, 2006.

39. Under the November 7, 2005 receiving order of Ground J. any court-approved costs are to be a first charge over the assets recovered in the receivership. Annexed hereto and marked as **Exhibit "X"** to this my affidavit is a true copy of the November 7, 2005 order of Ground J.

40. I swear this affidavit in support of the within Motion and for no other or improper purpose or delay.

SWORN TO BEFORE me at the City of Vaughan, in the Province of Ontario, this 11th day of September, 2007)



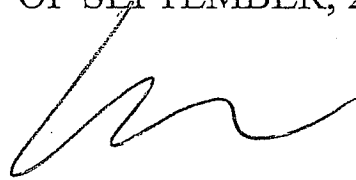
Commissioner for taking Affidavits

C. Alexiou

)
) 
) MIKE SOURLIS
)

Tab A

THIS IS **EXHIBIT "A"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

Courtney Wallis Simpson
Description

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SUBSCRIPTION AGREEMENT
(for use by Ontario investors only - accredited investors)
See page 5 for registration and delivery instructions

DIANOR RESOURCES INC.
730 - 4th Avenue
Val d'Or, Quebec
J9P 1J2

Dear Sirs:

1. PURCHASE

The undersigned hereby agrees to purchase from you Two Hundred Sixty Seven Thousand Three Hundred Ninety Nine (217,399) common shares (individually, a "Share" and collectively, the "Shares") of Dianor Resources Inc. (the "Company") at a price of twenty-three cents (\$0.23) per Share, for total proceeds of Five Thousand Dollars (\$5,000).

Each Share shall be accompanied by one common share purchase warrant (individually, a "Warrant" and collectively, the "Warrants") of the Company. Each Warrant shall entitle the holder thereof to acquire one additional common share (individually, an "Additional Share" and collectively, the "Additional Shares") of the Company at an exercise price of thirty-five cents (\$0.35) for a period of twelve (12) months from the date of the issuance of the Warrants.

2. DELIVERY AND PAYMENT

(i) Subject to acceptance by you of this agreement, delivery of the Shares and Warrants shall be completed at the offices of Heenan Blaikie LLP, counsel to the Company, 1250 René-Lévesque Blvd. West, Suite 2500, Montreal, Quebec, on a date to be selected by the Company, which date shall be no later than January 14, 2005 or such earlier date as may be set by the regulatory authorities (the "Closing"). At Closing, the Company shall deliver to you, against payment of the purchase price of the Shares and Warrants by certified cheque or bank draft in Canadian funds payable to the Company, certificates representing the Shares and Warrants. The form of certificate representing the Warrants is annexed hereto as Schedule A.

(ii) The obligation of the undersigned to complete the purchase of the Shares and Warrants contemplated hereby shall be conditional upon the fulfilment at or before the Closing of the following conditions, which conditions the Company covenants to exercise its best efforts to have fulfilled at or prior to the Closing:

- (a) the TSX Venture Exchange shall have conditionally accepted notice of the issuance of the Shares and Warrants; and
- (b) the Company shall have obtained all necessary prospectus and registration exemptions from provincial securities commissions with respect to the issuance of the Shares and Warrants or the issuance of the Shares and Warrants shall be otherwise exempt from such prospectus and registration requirements.



Registered Domestic / Recommandé Régime intérieur



To: Destinataire
Nom: Courtney Wallis Simpson
Address: _____
City: _____ Ville: _____
Province: _____ Postal Code: _____ Code postal: _____

FOR DELIVERY CONFIRMATION / POUR CONFIRMER LA LIVRAISON
888 550-6333
www.canadapost.ca
www.postescanada.ca

Value: \$ 0

Item No. 95 662 114

33-066-504 (98-10)

SENDER RECEIPT

REÇU DU CLIENT

1. COVENANTS, REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS OF THE PURCHASER

The undersigned covenants, represents, warrants and acknowledges to the Company (which covenants, representations, warranties and acknowledgements shall survive Closing) that:

- (i) the undersigned is resident in Ontario and is an "accredited investor" as such term is defined in *Ontario Securities Commission Rule 45-501* and has properly completed and duly executed the Accredited Investor Certificate annexed to this subscription agreement as Schedule B indicating the means by which the Subscriber is an "accredited investor" and confirms the truth and accuracy of all statements made therein by the undersigned;
- (ii) the undersigned is purchasing the Shares and Warrants as principal;
- (iii) the undersigned is capable of assessing the proposed investment because of his financial experience or of advice received from a registered person other than the promoter of the Company, if any;
- (iv) the undersigned is familiar with the aims and objectives of the Company and has been informed of the nature of its activities;
- (v) the undersigned has been informed of the proposed use of the proceeds of the distribution of the Shares and Warrants;
- (vi) the undersigned is aware of the characteristics of the Shares, Warrants and Additional Shares and of their speculative nature, and of the fact that they may not be resold or otherwise disposed of except in accordance with applicable securities legislation;
- (vii) the Shares and Warrants will be legended with a four (4) month hold period, as required by the TSX Venture Exchange and *Multilateral Instrument 45-102 Resale of Securities*;
- (viii) the undersigned will execute and deliver all documentation as may be required by applicable Canadian securities legislation or the regulations of the TSX Venture Exchange, including, if the undersigned is not an individual, a Corporate Placee Registration Form of the TSX Venture Exchange annexed hereto as Schedule C, if not already filed with the TSX Venture Exchange;
- (ix) the Shares and Warrants will be held by the undersigned for investment only and not with a view to resale or distribution;
- (x) the address set forth below is the true and correct address of the undersigned;
- (xi) the number of shares set forth below is the true and correct number of shares, if any, of the Company owned by the undersigned prior to this subscription, as required by the TSX Venture Exchange; and
- (xii) the undersigned acknowledges and consents:
 - (a) to the fact that the Company is collecting his personal information (as that term is defined under applicable privacy legislation, including, without limitation, the *Personal Information Protection and Electronic Documents Act (Canada)* and any other applicable

similar, replacement or supplemental provincial or federal legislation or laws in effect from time to time) for the purposes of completing this agreement;

- (b) to the Company retaining such personal information for as long as permitted or required by law or business practices;
- (c) to the fact that the Company may be required by applicable securities laws, the rules and policies of the TSX Venture Exchange or the rules of the Investment Dealers Association, as the case may be, to provide such regulatory authorities with any personal information provided by him in this agreement; and
- (d) to the fact that the Company may use and disclose his personal information as follows:
 - (1) for internal use with respect to managing the relationships between and contractual obligations of the Company and the undersigned;
 - (2) for use and disclosure for income tax related purposes, including without limitation, where required by law, disclosure to the Canada Revenue Agency;
 - (3) disclosure to securities regulatory authorities and other regulatory bodies with jurisdiction with respect to reports of trade and similar regulatory filings;
 - (4) disclosure to governmental or other authority to which the disclosure is required by court order or subpoena compelling such disclosure and where there is no reasonable alternative to such disclosure;
 - (5) disclosure to professional advisors of the Company in connection with performance of their professional services;
 - (6) disclosure to any person where such disclosure is necessary for legitimate business reasons and is made with your prior written consent;
 - (7) disclosure to a court determining the rights of the parties under this agreement; or
 - (8) for use and disclosure as otherwise required or permitted by law.

(xiii) the undersigned further acknowledges that:

- (a) the distribution of the Shares and Warrants is not being accompanied by advertisement; and
- (b) in executing this agreement, the Company is relying upon the representations and warranties and acknowledgements of the undersigned set out herein and, in accepting the Shares and Warrants at the Closing, the undersigned will be representing and warranting that such are true as at the Closing with the same force and effect as if they had been made at such time;

4. REGULATORY APPROVAL

This agreement is subject to regulatory approval.

5. TIME OF THE ESSENCE

Time shall, in all respects, be of the essence hereof.

6. CANADIAN DOLLARS

All references herein to money amounts are to lawful money of Canada.

7. HEADINGS AND SCHEDULES

The headings contained herein are for convenience only and shall not affect the meaning or interpretation hereof.

8. ENTIRE DOCUMENT

This agreement constitutes the only agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior negotiations and understandings. This agreement may be amended or modified in any respect by written instrument only.

9. SUCCESSORS AND ASSIGNS

The terms and provisions of this agreement shall be binding upon and enure to the benefit of the undersigned and the Company and their respective successors and assigns; provided that, except as herein provided, this agreement shall not be assignable by either party without the written consent of the other.

10. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

11. SIGNATURE

This agreement may be executed by any one or more of the parties hereto in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. This agreement may be executed by telecopier and any such signature shall be valid and binding.

12. LANGUAGE

The parties hereto declare that each of them has required this agreement to be in the English language and each of them does hereby consent to any documentation, notices or legal proceedings provided for herein, issued hereunder, or relating directly or indirectly hereto, being in the English language. Chaque partie déclare par les présentes avoir demandé que la présente convention soit rédigée en anglais et chaque partie consent par les présentes à ce que tout document, procédure légale ou avis prévu ou découlant des présentes ou s'y rapportant directement ou indirectement soit rédigé en anglais seulement.

DATED at STONEYVILLE, Ontario, the 12 day of JANUARY, 2005.

<u>COURTNEY VALERIE SIMPSON</u>
Name of Subscriber
<u>[Signature]</u>
Signature
<u>587 CAMERON BLVD</u>
Address of Subscriber
<u>STONEYVILLE ONTARIO</u>
<u>L4A 7E9</u>
Number of common shares of the Company owned prior to this subscription

Register the Common Shares and Warrants as set out above, or as follows:
Name
Account reference, if applicable
Address

Deliver the Common Shares and Warrants to the address set out above, or as follows:
Name
Account reference, if applicable
Address
Telephone Number

ACCEPTANCE

DIANOR RESOURCES INC. hereby accepts the foregoing subscription.

DATED: _____, 2005.

DIANOR RESOURCES INC.

Per: _____

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Certificate No. :

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SCHEDULE A

THE WARRANTS REPRESENTED BY THIS CERTIFICATE ARE EXERCISABLE ONLY PRIOR TO THE CLOSE OF BUSINESS IN THE CITY OF MONTREAL, QUÉBEC ON 4, 2005
AFTER WHICH TIME THEY SHALL BE NULL AND VOID.

WARRANT TO PURCHASE COMMON SHARES OF
DIANOR RESSOURCES INC.
INCORPORATED UNDER THE QUEBEC COMPANIES ACT

RIGHT TO ACQUIRE
Common Shares

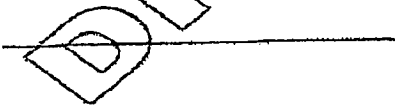
THIS CERTIFIES THAT _____ is entitled to have issued to him not less than (or) common shares (the "Shares") of DIANOR RESSOURCES INC. (the "Company") upon notice thereof being given to the Secretary of the Company and the surrender at the registered office of the Company of this certificate duly completed and endorsed by such holder in person or his or her attorney duly authorized in writing (or where the holder is a corporation, accompanied by a certified true copy of a resolution of its Board of Directors) authorizing such representative to execute and deliver this certificate together with payment of the purchase price of the Shares subscribed for calculated on the basis of a subscription price of thirty-five cents (Cdn) (50.35 Cdn) per Share, at any time prior to the close of business in the City of Montreal, Province of Quebec, on 4, 2005, after which time the warrants represented by this certificate shall be null and void. Where applicable, a replacement certificate shall be issued to the holder of this certificate by the Company following the acquisition, in part, of the rights hereby granted to such holder.

In the event of any subdivision or any consolidation, reclassification or other change to the common shares of the Company, the Warrant hereby granted shall be deemed to apply to the common shares resulting from such subdivision, consolidation, reclassification or other change, *mutatis mutandis*, and appropriate adjustments shall be made in respect of the purchase price and number of the Shares.

Without prior written approval of the TSX Venture Exchange and compliance with all applicable securities legislation, the securities represented by this certificate may not be sold, transferred, hypothecated or otherwise dealt in, or through the facilities of the TSX Venture Exchange or otherwise in Canada or in or for the benefit of a Canadian resident until 4, 2005. Unless permitted under securities legislation, the holder of the securities shall not trade the securities before 4, 2005.

The holding of this certificate does not confer the holder hereof to any right or interest except as herein provided.

IN WITNESS WHEREOF the Company has caused this certificate to be signed in its name by its duly authorized officer as of 4, 2005.



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SUBSCRIPTION FORM

TO: DIANOR RESOURCES INC.

- (a) The undersigned holder of the within Warrant Certificate hereby subscribes for _____ common shares of DIANOR RESOURCES INC. pursuant to the terms of the within Warrant Certificate.
- (b) The said common shares shall be registered in the name of the undersigned holder.

Dated this _____ day of _____ 200_____

SIGNATURE

WITNESS

DRAFT ONLY

SCHEDULE B

ACCREDITED INVESTOR CERTIFICATE (ONTARIO)

TO: DIANOR RESOURCES INC.
Val-d'Or, Quebec

In connection with the subscription for common shares and warrants (the "Securities") of Dianor Resources Inc. (the "Company"), the undersigned represents and warrants that the undersigned has read the following definition of an "accredited investor" from Ontario Securities Commission Rule 45-501 and certifies that the undersigned is an accredited investor as indicated below (check one):

"accredited investor" means:

- (a) an individual whose net income before taxes exceeded \$100,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year
- (b) an individual who beneficially owns, or who together with a spouse beneficially owns, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000
- (c) a company, limited liability company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redemptible investment fund, that had net assets of at least \$5,000,000 as reflected in its most recently prepared financial statements
- (d) a bank listed in Schedule I or II of the Bank Act (Canada), or an authorized foreign bank listed in Schedule III of that Act
- (e) the Business Development Bank incorporated under the Business Development Bank Act (Canada)
- (f) a loan corporation or trust corporation registered under the Loan and Trust Corporations Act or under the Trust and Loan Companies Act (Canada), or under comparable legislation in any other jurisdiction
- (g) a co-operative credit society, credit union central, federation of caisses populaires, credit union or league, or regional caisses populaires, or an association under the Cooperative Credit Associations Act (Canada), in each case, located in Canada
- (h) a company licensed to do business as an insurance company in any jurisdiction

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- (i) a subsidiary entity of any person or company referred to in paragraph (d), (e), (f), (g) or (h), where the person or company owns all of the voting shares of the subsidiary entity
- (j) a person or company registered under the *Ontario Securities Act* or securities legislation in another jurisdiction as an adviser or dealer, other than a limited market dealer
- (k) the government of Canada or of any jurisdiction, or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government
- (l) any Canadian municipality or any Canadian provincial or territorial capital city
- (m) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof
- (n) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or similar regulatory authority
- (o) a registered charity under the *Income Tax Act* (Canada)
- (p) an individual who has been granted registration under the *Ontario Securities Act* or securities legislation in another jurisdiction as a representative of a person or company referred to in paragraph (i), whether or not the individual's registration is still in effect
- (q) a promoter of the issuer or an affiliated entity of a promoter of the issuer
- (r) a spouse, parent, brother, sister, grandparent or child of an officer, director or promoter of the issuer
- (s) a person or company that, in relation to the issuer, is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the *Ontario Securities Act*
- (t) an issuer that is acquiring securities of its own issue
- (u) a person or company that is recognized by the Ontario Securities Commission as an accredited investor
- (v) a mutual fund or non-redemtable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors

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- (w) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities under a prospectus for which a receipt has been granted by the Director or, if it has ceased distribution of its securities, has previously distributed its securities in this manner
- (x) a fully managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund
- (y) an account that is fully managed by a trust corporation registered under the *Loan and Trust Corporations Act* (Ontario) or under comparable legislation in any other jurisdiction
- (z) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (d) through (j) and paragraph (n) in form and function
- (aa) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors

The foregoing representation is true and accurate as of the date of this certificate and will be true and accurate as of the Closing. If any such representation shall not be true and accurate prior to Closing, the undersigned shall give immediate written notice of such fact to the President of the Company.

Dated: STOUFFVILLE, 2005

COURTNEY WALKER SIMPSON
Name of Subscriber

JONAS NEVILL
Name of witness (if the Subscriber is an individual)

[Signature]
Signature

[Signature]
Signature of witness

If the Subscriber is a corporation, print name and title of Authorized Signing Officer

SCHEDULE C
FORM 4C

TSX VENTURE
EXCHANGE



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CORPORATE PLACEE REGISTRATION FORM

Where subscribers to a Private Placement are not individuals, the following information about the placee must be provided. This Form will remain on file with the Exchange. The corporation, trust, portfolio manager or other entity (the "Placee") need only file it on one time basis, and it will be referenced for all subsequent Private Placements in which it participates. If any of the information provided in this Form changes, the Placee must notify the Exchange prior to participating in further placements with Exchange listed companies. If as a result of the Private Placement, the Placee becomes an Insider of the Issuer, Insiders of the Placee are reminded that they must file a Personal Information Form (2A) or, if applicable, Declarations, with the Exchange.

1. Placee Information:

(a) Name: _____

(b) Complete Address: _____

(c) Jurisdiction of Incorporation or Creation: _____

2. (a) Is the Placee purchasing securities as a portfolio manager (Yes/No)? _____

(b) Is the Placee carrying on business as a portfolio manager outside of Canada (Yes/No)? _____

3. If the answer to 2(b) above was "Yes", the undersigned certifies that:

(a) It is purchasing securities of an Issuer on behalf of managed accounts for which it is making the investment decision to purchase the securities and has full discretion to purchase or sell securities for such accounts without requiring the client's express consent to a transaction;

(b) it carries on the business of managing the investment portfolios of clients through discretionary authority granted by those clients (a "portfolio manager" business) in _____ [jurisdiction], and it is permitted by law to carry on a portfolio manager business in that jurisdiction;

(c) it was not created solely or primarily for the purpose of purchasing securities of the Issuer;

(d) the total asset value of the investment portfolios it manages on behalf of clients is not less than \$20,000,000; and

(e) it has no reasonable grounds to believe, that any of the directors, senior officers and other insiders of the Issuer, and the persons that carry on investor relations activities for the Issuer has a beneficial interest in any of the managed accounts for which it is purchasing.

4. If the answer to 2(a) above was "No", please provide the names and addresses of control persons of the Pledge:

Name	City	Province or State	Country

The undersigned acknowledges that it is bound by the provisions of applicable Securities Law, including provisions concerning the filing of insider reports and reports of acquisitions (See for example, sections 87 and 111 of the Securities Act (British Columbia) and sections 176 and 182 of the Securities Act (Alberta)).

Acknowledgement - Personal Information

"Personal Information" means any information about an identifiable individual, and includes information contained in sections 1, 2 and 4, as applicable, of this Form.

The undersigned hereby acknowledges and agrees that it has obtained the express written consent of each individual to:

- (a) the disclosure of Personal Information by the undersigned to the Exchange (as defined in Appendix 6B) pursuant to this Form; and
- (b) the collection, use and disclosure of Personal Information by the Exchange for the purposes described in Appendix 6B or as otherwise identified by the Exchange, from time to time.

Dated at _____ on _____ 2005.

(Name of Purchaser - please print)

(Authorized Signature)

(Official Capacity - please print)

(please print name of individual whose signature appears above)

THIS IS NOT A PUBLIC DOCUMENT

Tab B

THIS IS **EXHIBIT "B"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

NUMÉRO - NUMBER
0-01630
00.0016300

RESSOURCES
DIANOR

RESSOURCES DIANOR INC.
CONSTITUÉE SOUS L'AUTORITÉ DE LA PARTIE 1A DE LA LOI SUR LES COMPAGNIES DU QUÉBEC
INCORPORATED UNDER PART 1A OF THE QUEBEC COMPANIES ACT

CAPITAL AUTORISÉ
UN NOMBRE ILLIMITÉ D'ACTIONNAIRES
SANS VALEUR NOMINALE

AUTHORIZED CAPITAL
AN UNLIMITED AMOUNT OF COMMON SHARES
WITHOUT NOMINAL VALUE

CUSIP 76124T 10 7

76124T107

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LE PRÉSENT CERTIFICAT ATTESTE QUE
THIS IS TO CERTIFY THAT

COURTNEY WALLIS SIMPSON
587 CAM FELLIA BLVD
STOUFFVILLE ON L4A 7G9

est le détenteur inscrit de
is the registered holder of

ACTIONS ORDINAIRES SANS VALEUR NOMINALE, ENTIEREMENT
LIBÉRÉES ET NON SUSCEPTIBLES D'APPELS SUBSÉQUENTS, DE

FULLY PAID AND NON-ASSESSABLE COMMON SHARES WITHOUT
NOMINAL OR PAR VALUE OF

RESSOURCES DIANOR INC.

Les actions peuvent être transférées sur un registre
des valeurs mobilières de la Société par le détenteur inscrit
ou son mandataire sur remise du présent certificat dûment
endossé. Le présent certificat ne lie la Société que s'il est
contresigné et immatriculé par l'agent des transferts et
agent chargé de la tenue des registres.

The shares are transferable on a securities register of
the Corporation by the registered holder or his attorney
upon the surrender of this certificate properly endorsed.
This certificate is not valid until countersigned and
registered by the Transfer Agent and Registrar.

EN FOI DE QUOI les représentants dûment autorisés
de la Société ont signé

WITNESS the signatures of the duly authorized
officers of the Corporation.

Date 28-JAN-2005
Dated

LE PRÉSIDENT,
D. L. Stuy

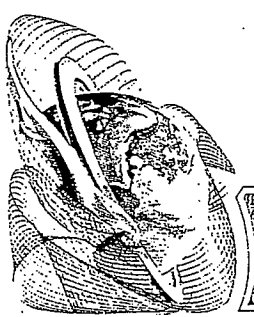
CONTRÉSIGNÉ ET IMMATRICULÉ, COUNTERSIGNED AND REGISTERED:
COMPAGNIE MONTREAL TRUST
MONTREAL TRUST COMPANY
AGENT DES TRANSFERTS ET AGENT CHARGÉ DE LA TENUE DES REGISTRES
TRANSFER AGENT AND REGISTRAR

LE SECRÉTAIRE,
S. J. G. G. G.

PARTY
SIGNATURE AUTORISÉE - AUTHORIZED SIGNATURE
A. G. G. G.

LE SECRÉTAIRE,
S. J. G. G. G.

LES ACTIONS REPRÉSENTÉES PAR LE PRÉSENT CERTIFICAT PEUVENT ÊTRE TRANSFÉRÉES AU BUREAU DE L'AGENT DES TRANSFERTS ET AGENT CHARGÉ DE LA TENUE DES REGISTRES À MONTRÉAL.
THE SHARES REPRESENTED BY THIS CERTIFICATE ARE TRANSFERABLE AT THE OFFICE OF THE TRANSFER AGENT AND REGISTRAR IN MONTREAL.

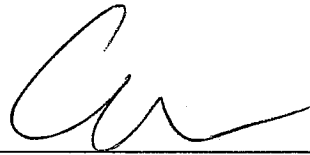


THIS CERTIFICATE HAS BEEN COUNTERSIGNED AND REGISTERED BY COMPUTERSHARE TRUST COMPANY OF CANADA, SUCCESSOR AGENT

217391

Tab C

THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

THE WARRANTS REPRESENTED BY THIS CERTIFICATE ARE EXERCISABLE ONLY PRIOR TO THE CLOSE OF BUSINESS IN THE CITY OF MONTREAL, QUEBEC ON JANUARY 27, 2006
AFTER WHICH TIME THEY SHALL BE NULL AND VOID.

WARRANT TO PURCHASE COMMON SHARES OF
DIANOR RESOURCES INC.
INCORPORATED UNDER THE *QUEBEC COMPANIES ACT*

RIGHT TO ACQUIRE
217,391
common shares

THIS CERTIFICATE THAT COURTNEY WALLIS SIMPSON is entitled to have issued to her not more than two hundred seventeen thousand three hundred ninety-nine (217,391) common shares (the "Shares") of DIANOR RESOURCES INC. (the "Company") upon notice thereof being given to the Secretary of the Company and the surrender at the registered office of the Company of this certificate duly completed and endorsed by such holder in person or his or her attorney duly authorized in writing (or where the holder is a corporation, accompanied by a certified true copy of a resolution of its Board of Directors authorizing such representative to execute and deliver this certificate) together with payment of the aggregate subscription price of the Shares subscribed for calculated on the basis of a subscription price of thirty-five cents (Cdn) (\$0.35 Cdn) per Share, at any time prior to the close of business in the City of Montreal, Province of Quebec, on January 27, 2006, after which time the warrants represented by this certificate shall be null and void. Where applicable, a replacement certificate shall be issued to the holder of this certificate by the Company following the exercise, in part, of the rights hereby granted to such holder.

In the event of any subdivision or any consolidation, reclassification or other change to the common shares of the Company, the Warrant hereby granted shall be deemed to apply to the common shares resulting from such subdivision, consolidation, reclassification or other change, *mutatis mutandis*, and appropriate adjustments shall be made in respect of the purchase price and number of the Shares.

Without prior written approval of the TSX Venture Exchange and compliance with all applicable securities legislation, the securities represented by this certificate may not be sold, transferred, hypothecated or otherwise traded on or through the facilities of the TSX Venture Exchange or otherwise in Canada or to or for the benefit of a Canadian resident until May 29, 2005. Unless permitted under securities legislation, the holder of the securities shall not trade the securities before May 29, 2005.

The holding of this certificate does not entitle the holder hereof to any right or interest except as herein provided.

IN WITNESS WHEREOF the Company has caused this certificate to be signed in its name by its duly authorized officer as of January 27, 2005.

John Ryder, President

SUBSCRIPTION FORM

TO: DIANOR RESOURCES INC.

(a) The undersigned holder of the within Warrant Certificate hereby subscribes for 217,391 common shares of DIANOR RESOURCES INC. pursuant to the terms of the within Warrant Certificate.

(b) The said common shares shall be registered in the name of the undersigned holder.

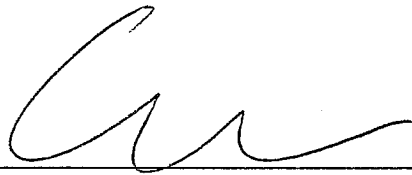
Dated this _____ day of _____, 200__.

[Signature]
SIGNATURE

[Signature]
WITNESS

Tab D

THIS IS EXHIBIT "D" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



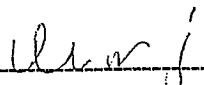
Commissioner for taking affidavits

Constantine Alexiou

PROMISSORY NOTE

PAYABLE TO MICHAEL SOURLIS


IT IS HEREBY ACKNOWLEDGED AND AGREED THAT I, COURTNEY WALLIS SIMPSON, DO HEREBY PLEDGE MY SHARES IN DIANOR RESOURCES IN THE AMOUNT OF 217,391 SHARES, AND ACCOMPANYING RIGHTS TO ACQUIRE WARRANTS IN SAME AMOUNT, TO MICHAEL SOURLIS.. THIS PROMISSORY NOTE SHALL PROVIDE FULL AND ABSOLUTE OWNERSHIP OF THE SAID SHARES TO MICHAEL SOURLIS



COURTNEY WALLIS SIMPSON

04/11/05

DATE



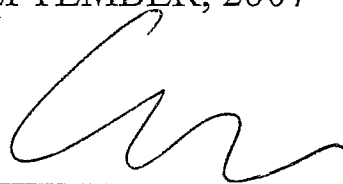
WITNESS

04/11/05

DATE

Tab E

THIS IS **EXHIBIT "E"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

000202

November 23, 2005

Computershare Investor Services
The Transfer Agency
9th Floor
100 University Avenue
Toronto, Ontario
M5Y 2Y1

Dear Sir/Madam

This letter is to confirm my instructions to re-register the 217,391 shares of Dianor Resources Inc. currently held in my name under certificate number 0-01630 in the name of:

Michael Sourlis
12 Sims Crescent
Richmond Hill, Ontario

Sincerely

wallis


Courtney Wallace Simpson
587 Cam Fella Blvd
Stouffville, Ontario
L4A 7G9

416-~~361-3714~~

436-3714

Tab F

THIS IS **EXHIBIT "F"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

000204

ZAPFE HOLDINGS INC.
72 DYNAMIC DR., UNIT 6
SCARBOROUGH, ONTARIO M1V 3Z5
Tel: (416) 298-9960

0069


NOV 17 / 05
DATE

PAY to DIANOR RESOURCES
the order of F.FTY

\$ 50,000.00


THE BANK OF NOVA SCOTIA
www.scotiabank.com 1-800-4-SCOTIA
3585 MCNICOLL AVENUE AT MARKHAM ROAD
SCARBOROUGH, ONTARIO M1V 2N3

16402

100 DOLLARS 

ZAPFE HOLDINGS INC.

RE MIRZ SOLEMAN
217 391 CERT

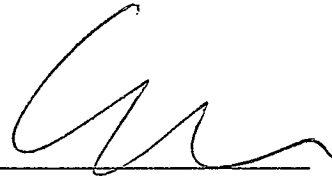
PER 

⑈000069⑈ ⑆16402⑈002⑆ 00545⑈18⑈

THIS DOCUMENT CONTAINS SECURITY FEATURES. SEE REVERSE SIDE.

Tab G

THIS IS EXHIBIT "G" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

2005 164020054518

STAR FISH 57373
SOULS 57373
DIVIDEND SHARES
C.W.S. 25000 -

ZARPE HARDWARE INC

DEC 5/05

[Handwritten signature]

16402-002 2
SCOTIABANK
MARKHAM & MCNICOLL
SCARBOROUGH, ONTARIO
DEC 06 2005 25 573 73
16402-002

25,573 73

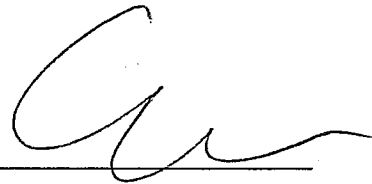
25,573 73

164020054518

25,573 73

Tab H

THIS IS EXHIBIT "H" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

RESSOURCES



000208

649, 3^e avenue, 2^e étage
Val d'Or (Québec)
J9P 1S7

TSX_V: DOR

Tél. : (819) 825-7090
Télééc. : (819) 825-7545

info@dianor.com
www.dianor.com

April 3, 2006

Mr. Gregory Govedaris
GOVEDARIS PROFESSIONAL CORPORATION
Barrister(s) & Solicitor(s)
6383 Main Street
Stouffville, ON CANADA L4A 1G4

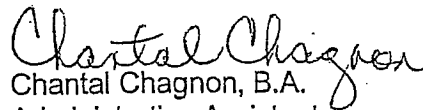
Subject : Courtney Wallis Simpson's shares certificate

Mr. Govedary,

Dear Sir,

In reply of your telephone call on April 3, 2006, please be advised that Dianor Resources Inc. received from Zapfe Holdings Inc. a cheque drawn on The Bank of Nova Scotia for the sum of fifty-thousand dollars (cheque # 0069, copy attached). These funds on the instructions of Mr. Zapfe were to pay for Mrs. Courtney Wallis Simpson's shares (217391 shares); certificate #0-01630.

Sincerely yours,


Chantal Chagnon, B.A.
Administrative Assistant

Tab I

THIS IS **EXHIBIT "I"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

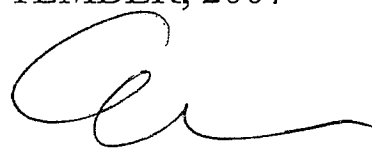
000210

9 décembre 2005

Chèque no. 0069 provenant de Zapfe Holdings Inc. ,
référence Mike Sourlis (prêt de Zapfe à Sourlis) pour
217 391 actions (financement de janvier 2005) paie
les actions de MME COURTNEY WALLIS
SIMPSON.

Tab J

THIS IS EXHIBIT "J" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

TREASURY ORDER

000212

TO: COMPUTERSHARE TRUST COMPANY OF CANADA
1500 University Street
Suite 700
Montréal, Québec
H3A 3S8

RE: Issue of Common Shares of Dianor Resources Inc.

Dianor Resources Inc. has received payment in full for the exercise of common share purchase warrants issued by Dianor in December 2004. Accordingly, this delivery order will constitute your authority and direction on behalf of Dianor to issue, sign, countersign and register, as transfer agent and registrar, as of January 23, 2006, one (1) certificate representing ~~four hundred forty-two (442,391)~~ ~~thousand three hundred ninety-one~~ common shares (the "Shares") registered in the name of the person set out in the schedule annexed hereto.

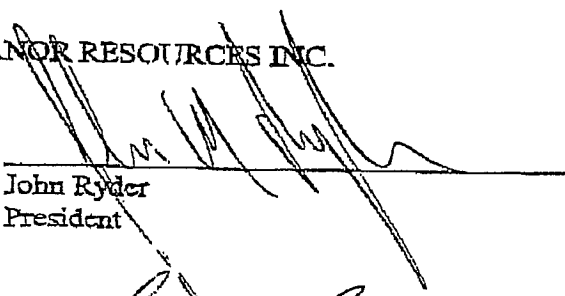
Pursuant to section 5.2 of Policy 3.2 of the TSX Venture Exchange:

- (a) You are hereby instructed to provide to the TSX Venture Exchange within five (5) days following January 23, 2006, a copy of this treasury order, which should be sent to the attention of "Treasury Order Specialist, Market Information Services" at the following fax number: (604) 688-6051;
- (b) The issues price per Share is thirty-five cents (\$0.35);
- (c) The balance of issued securities of Dianor following the issuance will be 113,518,290;
- (d) The issuance of the Shares was approved by the TSX Venture Exchange on January 4, 2005 under submission number 99595; and
- (e) Dianor confirms that it has received full payment for the Shares and that the Shares shall be validly issued as fully paid and non-assessable.

SIGNED the 23th day of January, 2006.


DIANOR RESOURCES INC.

per:



John Ryder
President

per:



Daniel Duval
Chairman of the Board

SCHEDULE

<u>Registration</u>	<u>Number of Common Shares</u>
Michael Sourlis	217,391
181 Oxford St. Richmond Hill, On L4C 4L6	
Send back to:	
Zapfe Holdings Inc. 72 Dynamic Dr., Unit 6 Scarborough, On M1V 3Z5	
<u>Registration</u>	<u>Number of Common Shares</u>
Blackmont Capital Inc	25,000
ITF Roger Brian Ashton, A/C 5AP040S Bay Wellington Tower BCE Place, Suite 900 181 Bay Street, P.O. Box 779 Toronto, Ontario M5J 2T3	
Send back to:	
Via FedEx (account # 267221766)	
Blackmont Capital Inc Bay Wellington Tower BCE Place, Suite 900 181 Bay Street, P.O. Box 779 Toronto, Ontario M5J 2T3	
<u>Registration</u>	<u>Number of Common Shares</u>
Joseph D. Kozina	200,000
C/O Nesbitt Burns 1 First Canadian Place 35 th Floor P.O. Box 150 Toronto, On M5X 1H3	
Send back to:	
Via UPS (account # WX2676)	
Nesbitt Burns Attn: Ranji Sankar 1 First Canadian Place 35 th Floor P.O. Box 150 Toronto, On M5X 1H3	
TOTAL	<hr/> 442,391

Tab K

THIS IS **EXHIBIT "K"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

COPY

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
JUSTICE

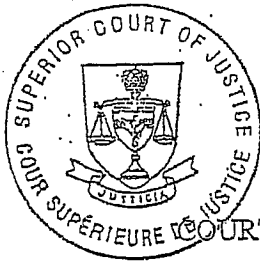
) THURSDAY, THE 9TH DAY OF
)
) MARCH, 2006

BETWEEN:

UDAYAN PANDYA

Plaintiff

-and-



COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES,
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

In the Matter of the *Class Proceedings Act, 1992*

FOURTH AMENDED AND RESTATED INITIAL ORDER

THIS MOTION made by the plaintiff for an order appointing a receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Reality") pursuant to s. 101 of the *Courts of Justice Act* with investigatory and preservation powers was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the Fourth Report of the Receiver dated March 3, 2006 and on hearing the submissions of counsel for the Receiver, *for Mr Pakwa, for Atlas Holdings, for the plaintiffs in 05-CL6178, Ms. Simpson appearing in person; Rem*

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

2. THIS COURT ORDERS that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson, York Realty, and Courtney Wallis Simpson c.o.b. as York Management Group, York Group and Camco Developments (the "Defendants") pursuant to s. 101 of the *Courts of Justice Act* with the powers and duties hereinafter set out.

3. THIS COURT ORDERS that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.

4. THIS COURT ORDERS that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.

5. THIS COURT ORDERS that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.

6. THIS COURT ORDERS that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

Preservation of Assets

7. THIS COURT ORDERS that the Receiver is hereby empowered and authorized for and on behalf of and in the name of any of the Defendants to take possession and control of all of the present and future assets, undertaking and property of the Defendants and any funds, proceeds or other assets directly or indirectly related to the funds allegedly raised by the Defendants as alleged in the statement of claim (the "Property") and any and all proceeds, receipts and

disbursements arising out of or from the Property, until further order of this Court, and to act at once in respect of the Property. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Receiver is hereby expressly empowered and authorized on the Receiver's behalf, but not obligated:

- (a) to take such steps as in the opinion of the Receiver are necessary or appropriate to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable, provided that the Receiver shall not evict or dispossess any occupant of any residential dwelling without further order of this Court made on notice to such occupant;
- (b) to take such steps as in the opinion of the Receiver are necessary or appropriate to maintain control over all receipts and disbursements arising out of or from the Property;
- (c) to receive and collect all monies, debts, claims, choses in action and accounts now owed or hereafter owing to any of the Defendants in respect of the Property and to exercise all remedies of any of the Defendants in collecting all such monies, including, without limitation, to enforce any security held by any of the defendants and to receive and recover all funds, monies, cash, cash equivalents, negotiable securities, accounts and any other assets on deposits to banks, brokerages and other financial or other institutions;
- (d) to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange, or other documents of whatever nature in respect of any of the Property, in the name and on behalf of any of the Defendants, which are necessary, desirable or convenient in, the opinion of the Receiver for any purpose pursuant to this Order;

- (e) to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property and to defend all proceedings now pending or hereafter instituted against any of the Defendants or the Receiver, the prosecution of or defence of which will, in the judgment of the Receiver, be necessary to properly protect or realize on the Property or to protect the administration by the Receiver of the affairs of any of the defendants and the Property, and to settle or compromise any such proceedings which in the judgment of the Receiver should be settled;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that any such sale or disposition of Property shall, if the Defendants do not consent to the same, be subject to the Court's approval;
- (g) to report to, meet with and discuss with such creditors of the Defendants and their advisors, including the Mortgage Fraud Scheme victims who are class members in court file no. 05-CL-6178, as the Receiver deems appropriate including holding town hall or other meetings on all matters relating to the Property and receivership; and
- (h) to register this order in any public registry against title to any of the Property. Without limiting the generality of the foregoing this court orders that this order be registered against the real property and other assets described at Schedules "B" and "C" hereto.

8. THIS COURT ORDERS that no person having notice of this order shall interfere with, obstruct or in any way hinder the Receiver in the fulfillment or pursuit of its duties hereunder and that all such persons are under an obligation to deliver up to the Receiver any Property or other thing to which the Receiver is entitled to under this order. In the event that any person contests that any asset, document or thing is Property under this order or is document or record properly producible to the Receiver then that person shall first deliver up the asset in question to the Receiver or to such third party as the Receiver in its discretion may agree for safekeeping and

the person contesting the Receiver's right may thereafter, if so advised, bring an application to this Court for directions.

9. THIS COURT ORDERS that the Receiver may receive information from persons as to the details of their deposit of trust funds investments with Simpson and the other Defendant but that the Receiver shall not be under any obligation to call for claims, validate claims or make recommendations with respect the disbursement of funds to investors without further order of this Court.

10. THIS COURT ORDERS that no demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any contract, including any contract of insurance, the exercise of any right of set-off or combination of accounts, the exercise of any construction, mechanics' repair, storage or other lien, or the commencement or continuation of any proceedings under any Environmental Laws (as hereinafter defined) in any jurisdiction in which the Property may be located, shall be taken against the Receiver, with respect to the Property or any part thereof, without the prior written consent of the Receiver or leave of this Court first being obtained upon not less than seven days' notice to the Receiver.

11. THIS COURT ORDERS that the Defendants and anyone having knowledge of this order be and they are hereby restrained, pending consent of all parties or further order of this Court:

- (i) from removing from Ontario or in any way disposing, dealing with or diminishing the value of any of the Defendants' property, whether real or personal, present or future, held in Ontario or elsewhere, whether held in the Defendants' names or not, pending the final determination of this action or further order of this Court;
- (j) from withdrawing or causing or permitting the withdrawal of or transferring of funds or issuing of cheques or other instruments from any of the defendants' bank

accounts or investment accounts of any nature whatsoever, whether held individually or jointly with any other person, pending the final determination of this action or further order of this Honourable Court, provided that the defendants shall have leave to seek variation of this order in order to permit the withdrawal of a reasonable amount as ordinary living expenses provided that if any such order is sought the Defendants must have fully complied with this order in all respects including the provision to the Receiver of the information required to be provided to the Receiver.

Documents and Investigations

12. THIS COURT ORDERS that the Receiver shall forthwith be entitled to take possession of and examine the Defendants' books and records and make such inquiries as it deems prudent and necessary of the Defendants' bankers, accountants, auditors, advisors, managers, experts, solicitors, agents, officers, employees and others in order to determine the financial status of the Defendants, and shall conduct a review and, if necessary, a detailed examination of the financial records of the Defendants.

13. THIS COURT ORDERS that the Receiver shall report to this Court at such times and in such fashion as this Court may direct.

14. THIS COURT ORDERS that the Defendants and their accountants, auditors, advisors, agents, managers, experts, solicitors, agents, officers and employees, including, without limitation, any accountants, bankers or financial, legal, advisors and the persons set out in Schedule "A", (the "Affected Persons") shall forthwith provide to the Receiver all of the books and records relating to the Defendants' financial history and dealings, including, without limitation, all ledgers, bank statements and records, cheques, financial statements, receipts, vouchers, deposit slips, contracts, agreements, accounting records, computer records (including but not limited to tapes and/or discs) or other documents or records of any kind or nature, howsoever stored or maintained, relating to the Defendants (the "Documents"). Provision of the Documents to the Receiver shall not breach any confidentiality or other non-disclosure obligations the Affected Persons might otherwise have to the Defendants and it shall be deemed that the Defendants shall have consented to the release of the Documents. The Receiver shall

allow the Defendants and their advisors reasonable access to and the ability to make copies of any and all such books and records in the possession of the Receiver. The defendants shall allow the Receiver to make, retain and take away copies of any or all of the Documents and shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver.

15. THIS COURT ORDERS that if any of the Documents is stored or otherwise contained on a computer or other electronic system of information storage, the Defendants and all Affected Persons shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Documents, whether by way of printing same onto paper or making copies of computer discs or such other manner of retrieving and copying same as the Receiver in its discretion deems expedient. For the purposes of this paragraph, the defendants and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Documents as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, forthwith providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, passwords or other codes as may be required to gain access to the Documents.

16. 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 defendants 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, emails or other information sent or received by the Defendants 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 defendants.

17. THIS COURT ORDERS that the Receiver shall have ongoing access to the Defendants' current and future bank account statements and other financial records, copies of which shall be provided to the Receiver as and when demanded by the Receiver. The Defendants and the third parties shall co-operate and consent to the distribution of such records to the Receiver.

18. THIS COURT ORDERS that the Receiver is empowered to demand production from third parties (including but not limited to the Defendants' advisors, banks, financial institutions and the persons set out in Schedule "A") of documents relating to:

- (a) the Defendants' financial affairs;
- (b) the deposit of funds received in connection with the sale of commercial real estate;
- (c) the identities of the persons who have provided deposit funds to Simpson and the other defendants;
- (d) the bank accounts or other financial records referable to the accounts into which such funds were deposited including documents referable to any withdrawal, transfer or dissipation of funds in such accounts; and
- (e) commissions, fees, expenses or other amounts paid to any persons in connection with the sale of such securities and any agreements, arrangements or any other communication with respect to the payment of such amounts;
- (f) and further directs that all such third parties (including all Affected Persons) shall co-operate fully with the Receiver, subject to claims of legal privilege.

19. THIS COURT ORDERS that the Receiver is empowered to compel the attendance, on two clear days written notice by letter from the Receiver or its counsel, of persons believed by the Receiver to have knowledge of the Defendants' affairs for the purpose of being examined under oath by the Receiver or by such person as to whom the Receiver has or may delegate this power. In particular, and without limiting the general nature of the power conveyed by this paragraph, the Receiver is empowered for the purposes of performing its duties hereunder to examine under oath the persons named in Schedule "A" to this order and any persons who may have received transfers of assets or funds from the defendants, provided that nothing herein shall apply, without further order of this Court, to compel any person who has been actually charged with a criminal offence to so testify and that any persons who so testify shall have the right to invoke the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and*

Freedoms. If the persons to be examined have a personal residence or regular place of business within 60 kilometres of an office of Bennett Jones LLP (Toronto, Edmonton or Calgary) such examination shall take place at such office failing which it shall take place at any place where an examination of discovery may take place under the *Rules of Civil Procedure* in the province where the examination is conducted.

20. THIS COURT ORDERS that Simpson shall provide to the Receiver within 7 days of service of this order an affidavit under oath specifying her knowledge on the following matters:

- (a) specifics of all corporations, partnerships, or other entities in which she has a direct or indirect interest with particulars of the nature of such interest;
- (b) specifics of all bank, brokerage or other accounts, wherever situate, in her name, the name of York Region Realty Inc., the name of any of the entities in (a) hereof or over which she has any signing authority or any other direct or indirect control;
- (c) specifics of all bank, brokerage or other accounts, where funds were deposited, all accounts to which such funds may have been transferred and the present whereabouts of such funds;
- (d) whether any assets were purchased or acquired in whole or in part with such funds and, if so, the particulars of such assets and their present location with particulars of the assets involved name of the person or entity who holds title to such assets, the date of acquisition, acquisition cost and a current estimate of value; and
- (e) specifics of any disposition of assets (including transfer of funds) in excess of \$10,000 in the last 2 years and that this affidavit shall be deemed to have been provided by compulsion of law and its further use in any other court proceeding be subject to the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedom*.

21. THIS COURT ORDERS that the Receiver is authorised to enter upon the business premises of the persons set out in Schedule "A" (collectively the "Premises") and to examine

anything and take away any documents or record found at the premises that the Receiver is authorised hereunder to require to be produced to it.

22. THIS COURT ORDERS that the Receiver shall have full power to investigate any gift, transfer, conveyance, settlement or any other disposition (a "Conveyance") of any interest in any assets, funds or any other property by the defendants to third parties (the "Conveyed Property") and to compel the production of information from any person with respect to such Conveyed Property and the circumstances surrounding the Conveyance as if such Conveyed Property was Property under this order and that the Receiver shall be at liberty to apply to the Court for any appropriate order relating to the preservation of any such Conveyed Property.

Other

23. THIS COURT ORDERS that no proceedings shall be brought against the Receiver in any Court or other tribunal unless leave of this Honourable Court is first obtained on motion on at least seven days notice to the Receiver and the parties.

No Proceedings Against the Debtor or the Property

24. THIS COURT ORDERS that no proceeding against or in respect of the Defendants or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all proceedings currently under way against or in respect of the Defendants or the Property are hereby stayed and suspended pending further Order of this Court, save and except action filed as Court File No. 05-CL-6178.

No Exercise of Rights or Remedies

25. THIS COURT ORDERS that all rights and remedies against the Defendants, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Defendants to carry on any business which the Defendants are not lawfully entitled to carry on, (ii) exempt the Receiver or the Defendants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent

the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

26. 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.

27. THIS COURT ORDERS that all the costs of this receivership including without limitation the Receiver's fees and disbursements (including the amounts which the Receiver is obliged to pay others) and the fees and disbursements incurred by Bennett Jones LLP in carrying out its duties herein shall be a first charge on any assets recovered in the receivership herein, subject to approval of the quantum of costs by the Court. The Receiver shall have the right to apply to the Court for approval and payment of its fees and disbursements on an interim basis provided that 15 days notice shall be given to the defendants of any such application. The Receiver shall also have the power, if so advised, to move to have the receivership terminated and to be discharged as Receiver.

28. THIS COURT ORDERS that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

29. THIS COURT ORDERS that the Receiver be granted leave to apply to the Court for approval to borrow and to provide whatever security as may be appropriate, if so advised.

30. THIS COURT ORDERS that, except as otherwise specified herein, the Receiver is at liberty to serve any notice, form or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to the defendants or other appropriate parties at their respective addresses or other contact particulars as last indicated in the records of the defendants and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

31. THIS COURT ORDERS that the Receiver may serve any court materials in these proceedings (including, without limitation, application records, motion records, facts and orders) on all represented parties electronically, by e-mailing a PDF or other electronic copy of such materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list, and posting a copy of the materials to an internet website to be hosted by Quilling Selander Cummiskey Lownds (the "Website") as soon as practicable thereafter, provided that the Receiver shall deliver hard copies of such materials to any party requesting same as soon as practicable thereafter.

32. THIS COURT ORDERS that any party in these proceedings may serve any court materials (including, without limitation, application records, motion records, facts and orders) electronically, by emailing a PDF or other electronic copy of all materials (other than any book of authorities) to counsels' e-mail addresses as recorded on the service list; provided that such party shall deliver both PDF or other electronic copies and hard copies of full materials to counsel to the Receiver and to any other party requesting same and the Receiver shall cause a copy to be posted on the Website, all as soon as practicable thereafter.

33. THIS COURT ORDERS that the Receiver be permitted to (i) enter into a new listing agreement with John Walley of Sutton Group in Stouffville, (ii) sell Simpson and York Realty's real property assets and contents, and (iii) make it a condition of the new listing agreement that all sales are subject to court approval and to hold all proceeds from the sales in an interest bearing account;

34. THIS COURT ORDERS that the Receiver, if so advised, be permitted to bring a lawsuit as against Lia Hurst and seek a certificate of pending litigation in order to regain possession of the properties alleged to be rightfully owned by Simpson and if successful, to sell those properties, the proceeds of which will be deposited into an interest bearing account;

35. THIS COURT ORDERS that the Receiver may take all steps necessary to transfer title of the Hurst properties to the Receiver, that these properties be listed for sale by Sutton Group Realty and sold, subject to court approval, with the proceeds of sale being held in the Receiver's interest bearing bank account;

36. THIS COURT ORDERS that the Receiver deal directly with the Real Estate Council of Ontario on behalf of all of the victims for the benefit of the estate who have submitted claims;
37. THIS COURT ORDERS that the Receiver or Receiver's counsel may examine Adam Cox and compel production of documents relevant to the real estate deposit scheme;
38. THIS COURT ORDERS that leave is granted to the Receiver to assert challenges to the validity, quantum and priority of the mortgages held by Ajay Pahwa as described in Schedule "D" to this Order (the "Pahwa Mortgages"). The exercise of power of sale under Part III of the Mortgages Act or other enforcement upon the Pahwa Mortgages is hereby restrained, pending further order of the Court. The Receiver shall proceed forthwith by commercially reasonable steps to market the properties that are the subject of the Pahwa Mortgages and the Receiver shall seek court approval of any Agreement of Purchase and Sale upon five days' prior written notice to Ajay Pahwa, at which time directions may be given for discharge of the applicable Pahwa Mortgage on closing and vesting in the court approved purchaser, subject to payment of applicable real property taxes, utilities and prior encumbrances, with the amounts that are claimed by Ajay Pahwa pursuant to the Pahwa Mortgages or such amount as directed by the court to be held in a separate interest-bearing Receiver's bank account pending further order of the court. Pending sale of the properties that are the subject of the Pahwa Mortgages, the Receiver shall be responsible for ensuring that real estate taxes and fire insurance coverage are maintained in good standing. The Receiver's charge as described in paragraph 27 hereof upon the Simpson assets shall not rank in priority to the Pahwa Mortgages, but shall be subordinate to the amounts claimed by Ajay Pahwa pursuant to the Pahwa Mortgages or such amounts as directed by the court, pending final determination of the validity, quantum and priority of the Pahwa Mortgages;
39. THIS COURT ORDERS that 6072 Main Street, Stouffville may be sold pursuant to the terms of the Agreement of Purchase and Sale dated January 10, 2006 and that the amount of \$336,080 less the amount paid pursuant to paragraph 41 herein is to be held in a separate interest bearing bank account pending further order of the Court further to paragraph 37 of the Second Amended and Restated Order of Justice Farley dated December 23, 2005.

40. THIS COURT ORDERS that the terms of the Agreement of Purchase and Sale originally dated January 10, 2006 for the 6072 Main Street Property may be amended to show the purchasers as Maria Januszewski and Michael Januszewski, to reflect a new purchase price of \$695,000 and to reflect a new closing date of May 31, 2006;

41. THIS COURT ORDERS that Lot 14 Stouffer Street may be sold for \$176,000 pursuant to the terms of the Agreement of Purchase and Sale dated January 31, 2006 and the net proceeds from such sale, after real estate commission, closing adjustments and legal fees of sale shall be held in a separate interest bearing bank account, pending further order of the Court further to paragraphs 38, 39 and 40 hereof, so that the aggregate of money so held in respect of the Pahwa Mortgages shall be \$336,080 pending further order of the Court;

42. THIS COURT ORDERS that RBC Dominion Securities be ordered to freeze the Dianor A Resources share certificates that were transferred from Simpson to Vern Zapfi and Michael Sourlis and to produce to the Receiver immediately all documents and particulars relating to the

transfer of shares: *The Receiver will immediately produce all these documents to Zapfi + Sourlis. A motion is scheduled for April 6/06 (90 min) to determine if the freeze order should continue. The onus of showing is on the Receiver.*

43. THIS COURT ORDERS that a bank account be opened in Toronto at a bank selected by the Receiver in Courtney Wallis Simpson's name, which account may accept deposits from Simpson but from which funds can be accessed only by the Receiver through Bennett Jones LLP;

44. THIS COURT ORDERS that all proceedings as against Simpson, York Realty, Wallis Simpson & Associates and York Management Group be stayed and that any and all consents to judgment endorsed by Simpson in her personal capacity or as director of York Realty or York Management Group, be deemed ineffective;

45. THIS COURT ORDERS that the bankruptcy proceedings commenced in the Ontario Superior Court of Justice as Bankruptcy Court File No. 31-OR-207325-T by Four Seasons Drywall Systems & Acoustics Limited and the bankruptcy proceeding commenced as Bankruptcy Court File No. 31-OR-207326-T, be stayed and that the related Receiving Orders naming Courtney Wallis Simpson and York Management Group dated December 30, 2005 be stayed;

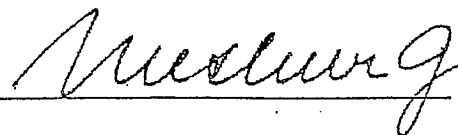
46. THIS COURT ORDERS that the posting of information on the Receiver's website be approved;
47. THIS COURT ORDERS that the claim form as filed with the court be approved;
48. THIS COURT ORDERS that the Statutory Declaration form may be posted on website and distributed to potential claimants;
49. THIS COURT ORDERS that, unless otherwise provided herein or by this Court, no document, order or other material need be served on any person in respect of these proceedings unless such person has served a Notice of Appearance on the solicitors for the Receiver and has filed such notice with this Court.
50. THIS COURT ORDERS that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Emergency Plans Act 1963* (Ontario); the *Ontario Water Resources Act*, the *Occupational Health and Safety Act* (Ontario) or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

51. THIS COURT SEEKS AND REQUESTS the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada and any court or any judicial, regulatory or administrative body of any other nations and states and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this order.

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

MAR 10 2006

PER/PAR:



Schedule "A"

1. Wayne Simpson
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3
2. York Management Group
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7G9
3. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
4. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
5. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
6. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
7. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
8. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
9. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
10. HSBC
Richmond Hill
11. Laurentian Bank
Newmarket, Ontario

Schedule "B"

1. 587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3

Legal Description:

PCL 19-1 SEC 65 M2296: LT 19 PL 65R2296: Whitchurch-Stouffville

2. PIN 03715-0004
Whitechurch, Ontario

Legal Description:

PT LT 30 PL 54 Stouffville; PT LT 31 PL 54 Stouffville; PT LT 40 PL 54 Stouffville; PT
LT 41 PL 54 Stouffville PTS 1, 7 65R2555; S/T R221467, R221469

3. 1038 Kawagama Lake Road
Dorset, Ontario

Legal Description:

Con 13 PT LOT 1 RP19R3154, Parts 1, 6, 7
Dorset, Algouquin Highlands Township

4. PIN 03710-0193/0194
Stouffville, Ontario

Legal Description:

PT LTS 49 & 50
PL 70 Stouffville PT 2 65R256J4 Whitchurch-Stouffville

Schedule "C"

1. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
2. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
3. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
4. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
5. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
6. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
7. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
8. HSBC
Richmond Hill
9. Laurentian Bank
Newmarket, Ontario

Schedule "D"

Mortgages Held By Mr. Ajay Pahwa

1. \$210,000 mortgage registered on February 10, 2005 on:

PIN 03710-0193/0194, PT LTS 49 & 50, PL 70 Stouffville PT 2
65R256J4 (the Stouffer Street Property);

2. \$220,000 mortgage registered on March 9, 2005 on:

1038 Kawagama Lake Road, Dorset, ON, Con 13, PT LT 1
RP19R3154, Parts 1, 6, 7 (the Kawagama Property); and

3. \$220,000 mortgage registered on March 8, 2005 and a Notice of Agreement Amending the Charge registered on June-28, 2005 increasing the principal amount to \$440,000:

PIN 03715-0004, PT LT 30 PL 54 Stouffville; PT LT 31 PL 54
Stouffville; PT LT 40 PL 54 Stouffville; PT LT 41 PL 54
Stouffville PTS 1, 7 65R2555; S/T/ R221467, R221469 (the
6072 Main Street Property).

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson *et al.*
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

In the matter of the *Class Proceedings*
Act, 1992

Proceeding commenced at Toronto

FOURTH AMENDED AND
RESTATED INITIAL ORDER

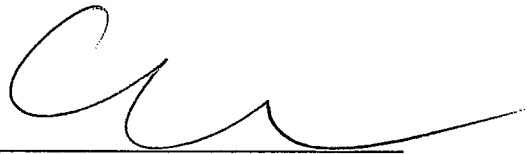
BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / Emily Atkinson
Tel: (416) 777-6121 / 5740
Fax: (416) 863-1716
LSUC Reg. No. 37030L/50682L

Solicitors for the plaintiff

Tab L

THIS IS EXHIBIT "L" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

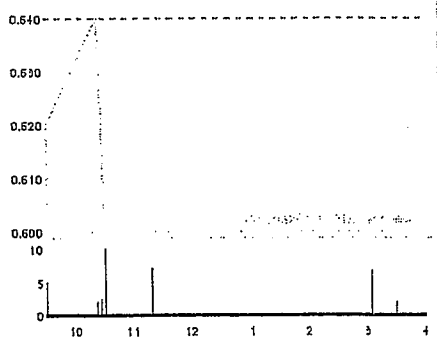
Constantine Alexiou

globeinvestor.com

000237

Dianor Resources DOR-X

Intraday chart Hide Volume vs. Index



Intraday 1 Mo 3 Mo 6 Mo 1 Yr 3 Yr 5 Yr

Last Trade: Sep 10, 2007 15:31:43 EDT

C\$ 0.600 ▼

Net Change C\$ -0.040

% Change -6.25%

Quotes delayed 15 minutes except NYSE and Amex which are 20 minutes.

Open	0.620	Mkt Cap (\$Mil)	83
High	0.640	EPS (ttm)	-0.03
Low	0.600	P/E (ttm)	-
Bid x700	▼ 0.580	Forward P/E	-
Ask x600	▼ 0.630	PEG (est. 5 yrs)	-
Volume	34,800	Annual Div.	-
52-wk High 04/23	1.58	Yield	-
52-wk Low 03/14	0.46	5-star Rating	★★

Intraday Stock Activity Measures (DOR-X)

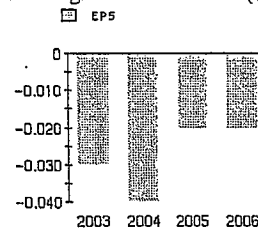
Today's price and volume strength relative to the last 9 trading days, as of 15:31 EST

Measure	Relative Price		Volume Activity	
	Negative	Positive	Low	High
DOR-X			██████████	
Sector			██████████	
Market	██████████			

Annual Financials (DOR-X)

	3-Yr. Dec 2006	Dec 2005	Dec 2004
	Growth % 12 Mo C\$	12 Mo C\$	12 Mo C\$
Total Revenue (\$Mil)	93.21	0.31	0.07
Sales/Share	-	-	-
Profit (\$Mil)	-	-0.92	-1.41
EPS	-	-0.02	-0.02
Cash Flow/Share	-	-0.01	-0.02
Book Value/Share	-	0.25	0.15
Ret on Common Equity	-	-3.78	-13.32
Debt to Equity	-	0.00	0.00

Earnings Per Share Trend (\$)



Sales Per Share Trend (C\$)

[View Company Snapshot](#) [View Full Financials](#)

Competitors (DOR-X)

Key Competitors based on Market Cap in Precious Metals Industry

Stock	Symbol	Currency	Price	Net Chg.	Quote Time	Consen. Rec.	P/E	Mkt Cap		52-Wk		Intraday Performance %
								\$Mil	52-Wk High	52-Wk Low		
Mansfield Minerals	MDR-X	C\$	2.70	0.06	14:05	-	-53	89	3.94	2.11	2.27	██████████
Queenston Mining	QMI-T	C\$	2.13	-0.02	14:48	-	30.71	88	2.64	0.95	-0.93	██████████
Brilliant Mining Corp.	BMC-X	C\$	1.40	-0.12	15:24	Strong Buy	-15.2	84	2.90	0.58	-7.89	██████████
Linear Gold Corp.	LRR-T	C\$	3.00	-0.10	15:17	-	34.44	84	7.20	2.00	-3.23	██████████

00023

Yukon-Nevada Gold	YNG-T C\$	1.36	-0.06	15:24	-	47.33	84	3.00	1.05	-4.23	
Dianor Resources	DOR-X C\$	0.60	-0.04	15:07	-	21.33	83	1.58	0.46	-6.25	
Andina Minerals	ADM-X C\$	3.17	-0.02	15:26	-	160	82	4.25	1.64	-0.63	
Tahera Diamond	TAH-T C\$	0.41	0.02	15:15	Hold	-1.13	81	2.04	0.30	6.49	
Capital Gold	CGC-T C\$	0.46	-0.02	13:26	-	0	80	0.60	0.30	-3.12	
Frontier Pacific Mining	FRP-X C\$	0.60	0.00	13:36	-	-15	79	0.94	0.32	0	

Earnings Estimates (DOR-X)
Earnings report is not available.

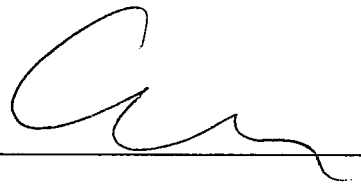
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Phillip Crawley, Publisher

Tab M

THIS IS **EXHIBIT "M"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000240

BARRISTERS - AT - LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have been retained by Michael Sourlis and Zapfe Holdings Inc. to represent them in connection with the above-noted matter.

As you can appreciate I need to get myself up to speed as quickly as possible.

In that light, I would ask that you produce copies of all court documents in this proceeding so that I may review them.

I understand that there is a further attendance scheduled for April 26, 2006.

I am told that Justice Spies ordered on April 6, 2006 that you serve your Proposed Plan with respect to how you intend to deal with the issues involving, *inter alia*, the Dianor Resources Inc. shares. If you have in fact circulated such a Proposed Plan, then I would ask that you immediately send me a copy.

In the meantime, I share my concern of the forum and procedures under which the claims are being advanced as against my clients. In my opinion, there ought to be a separate action or motion brought so as to bring my clients in as proper parties and an order made for a separate trial of an issue.

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8C7 TEL (905) 850-6116 FAX (905) 850-9146

Obviously, the issue will need to be defined and a procedure set out including, *inter alia*, the delivery of responding materials and reply materials along with cross-examinations. The freeze order would have to continue in the interim.

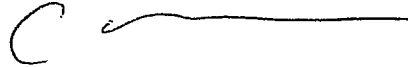
I will be away from my office tomorrow observing my Easter.

May I hear from you at your earliest opportunity on Monday of next week.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:



CONSTANTINE ALEXIOU

CGA/cn

c. Client

DRUDI•ALEXIOU•KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCCHAR LLP



000242

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Mr. Lincoln Caylor
FAX NO.: 416-863-1716
DATE: April 20, 2006
SENT BY: Constantine Alexiou

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Total Number of Pages

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DRUDI • ALEXIOU • KUCCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8C7 TEL (905) 850-6116 FAX (905) 850-9146

TRANSMISSION VERIFICATION REPORT

000243

TIME : 04/20/2006 15:41
NAME :
FAX : 9058509146
TEL :
SER.# : 000000004315

DATE, TIME	04/20 15:40
FAX NO./NAME	4168631716
DURATION	00:00:43
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

DRUDI • ALEXIOU • KUCHAR LLP

BARRISTERS-AT-LAW

FAX COVER SHEET

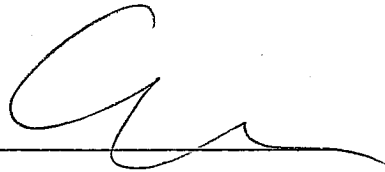
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SENT BY: Constantine Alexiou

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Tab N

THIS IS **EXHIBIT "N"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

Would you please let me know whether or not Courtney Wallis Simpson has been cross-examined in any proceeding in which you are currently involved in. If so, then I wish to have copies of the transcripts from the cross-examination so that I can see what she has to say, if anything, regarding the Dianor Resources Inc. shares.

Your prompt attention to this matter would be appreciated.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146

**DRUDI • ALEXIOU • KUCCHAR LLP**

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Mr. Lincoln Caylor
FAX NO.: 416-863-1716
DATE: April 20, 2006
SENT BY: Constantine Alexiou

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THE USE OF THE RECIPIENT NAMED ABOVE

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Total Number of Pages

2

DRUDI • ALEXIOU • KUCCHAR LLP

Tab O

000247

THIS IS EXHIBIT "O" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCCHAR LLP



100248

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 24, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have had an opportunity to consider some of the materials in this case. I note that the receiver is a Texan. It seems to me that the appointment of a receiver from outside of our jurisdiction is somewhat unusual, to say the least. Would you kindly provide the basis under which your client would not be required to prove that he may be exempt from providing for security for costs.

I thank you for your prompt attention to this matter.

Yours very truly,

DRUDI, ALEXIOU, KUCCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

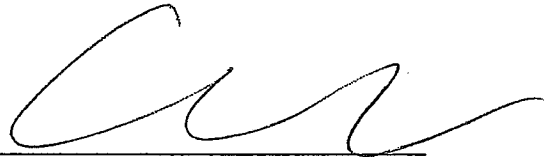
c. Client

DRUDI • ALEXIOU • KUCCHAR LLP

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Tab P

THIS IS EXHIBIT "P" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231Our File No. 060094
June 30, 2006**VIA FACSIMILE**Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

As you know, I represent Michael Sourlis and Zapfe Holdings Inc. I have not heard from you for quite some time in connection with this matter. When we last communicated, we were trying to decide on the best way to move this matter along. We need to agree on the form and procedures under which the claim relating to the Dianor Resources Inc. shares will be advanced as against my clients. I continue to be of the view that there ought to be a separate action or motion brought so as to bring my clients into the litigation as proper parties and that an order be made for a separate trial of an issue.

We need to agree on what the issue will be exactly and the procedure to be followed which would include an opportunity to respond to you claim and cross-examinations.

I will be away from my office between July 3 and August 13, 2006. Perhaps you could put your mind to my concerns and contact me upon my return from my summer break so that we may get this matter moving along.

DRUDI • ALEXIOU • KUCHAR LLP


7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8C7 TEL (905) 850-6116 FAX (905) 850-9146

On a separate note, I wrote to you on April 24, 2006 concerning my concern that the Receiver was out of jurisdiction and that security for costs may be in order. May I hear from you in this regard as well.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:



CONSTANTINE ALEXIOU

CGA/cn

c. Clients

TRANSMISSION VERIFICATION REPORT

000252
TIME : 06/30/2006 17:05
NAME : WESTLAW MNGMT CO
FAX : 905-850-9146
TEL :
SER. # : 000000001306

DATE, TIME	06/30 17:05
FAX NO./NAME	4168631716
DURATION	00:00:41
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

DRUDI • ALEXIOU • KUCCHAR LLP

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Mr. Lincoln Caylor

FAX NO.: 416-863-1716

DATE: June 30, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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**DRUDI • ALEXIOU • KUCHAR LLP**

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Mr. Lincoln Caylor

FAX NO.: 416-863-1716

DATE: June 30, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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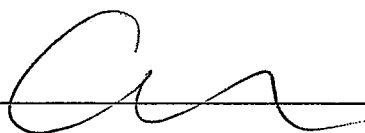
Total Number of Pages

3

DRUDI • ALEXIOU • KUCHAR LLP

Tab Q

THIS IS EXHIBIT "Q" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000255

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
October 13, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

On April 20, 2006, I wrote to Lincoln Caylor of your office inquiring as to whether or not Courtney Wallis Simpson had been cross-examined. If she was, then I would ask for a copy of the transcript. I have not received any reply to that letter. Would you please get back to me at your earliest opportunity.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCHAR LLP



000256

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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TRANSMISSION VERIFICATION REPORT

000257

TIME : 10/13/2006 13:41
NAME : WESTLAW MNGMT CO
FAX : 905-850-9146
TEL :
SER. # : 000000001306

DATE, TIME	10/13 13:40
FAX NO. /NAME	4168631716
DURATION	00:00:30
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM



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BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

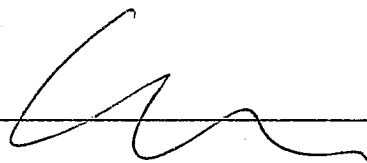
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Tab R

THIS IS EXHIBIT "R" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

**DRUDI • ALEXIOU • KUCHAR LLP**

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231Our File No. 060094
October 13, 2006*VIA FACSIMILE*Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

On April 24, 2006, I wrote to Mr. Caylor of your office concerning security for costs. I did not hear from Mr. Caylor. I then raised this matter a second time in my correspondence of June 30, 2006. Once again, I heard nothing from Mr. Caylor regarding security for costs. Would you let me know why security for costs would not be appropriate in the circumstances of this case?

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8C7 TEL (905) 850-6116 FAX (905) 850-9146

**DRUDI • ALEXIOU • KUCHAR LLP**

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Total Number of Pages

2

DRUDI • ALEXIOU • KUCHAR LLP

000261

TRANSMISSION VERIFICATION REPORT

TIME : 10/13/2006 12:31
NAME : WESTLAW MNGMT CO
FAX : 905-850-9146
TEL :
SER.# : 000000001306

DATE, TIME	10/13 12:30
FAX NO./NAME	4168631716
DURATION	00:00:30
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

DRUDI • ALEXIOU • KUCCHAR LLP

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 13, 2006

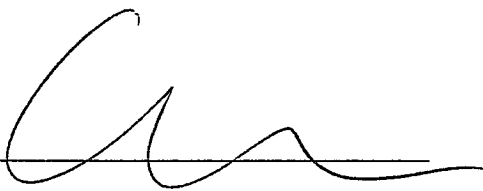
SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Tab S

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MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007

A handwritten signature in black ink, appearing to be 'C. Alexiou', is written over a horizontal line.

Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000263

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
October 18, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

We enclose our April 20 and 24, 2006 letters, for your information.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

Encls.

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8C7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCHAR LLP



000264

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 24, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have had an opportunity to consider some of the materials in this case. I note that the receiver is a Texan. It seems to me that the appointment of a receiver from outside of our jurisdiction is somewhat unusual, to say the least. Would you kindly provide the basis under which your client would not be required to prove that he may be exempt from providing for security for costs.

I thank you for your prompt attention to this matter.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146



DRUDI • ALEXIOU • KUCHAR LLP



BARRISTERS-AT-LAW

000265

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

Would you please let me know whether or not Courtney Wallis Simpson has been cross-examined in any proceeding in which you are currently involved in. If so, then I wish to have copies of the transcripts from the cross-examination so that I can see what she has to say, if anything, regarding the Dianor Resources Inc. shares.

Your prompt attention to this matter would be appreciated.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER: 

CONSTANTINE ALEXIOU
CGA/cn

c. Client

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146

DRUDI • ALEXIOU • KUCHAR LLP

BARRISTERS - AT - LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
April 20, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Lincoln Caylor

Dear Sir:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

I have been retained by Michael Sourlis and Zapfe Holdings Inc. to represent them in connection with the above-noted matter.

As you can appreciate I need to get myself up to speed as quickly as possible.

In that light, I would ask that you produce copies of all court documents in this proceeding so that I may review them.

I understand that there is a further attendance scheduled for April 26, 2006.

I am told that Justice Spies ordered on April 6, 2006 that you serve your Proposed Plan with respect to how you intend to deal with the issues involving, *inter alia*, the Dianor Resources Inc. shares. If you have in fact circulated such a Proposed Plan, then I would ask that you immediately send me a copy.

In the meantime, I share my concern of the forum and procedures under which the claims are being advanced as against my clients. In my opinion, there ought to be a separate action or motion brought so as to bring my clients in as proper parties and an order made for a separate trial of an issue.

DRUDI • ALEXIOU • KUCHAR LLP

Obviously, the issue will need to be defined and a procedure set out including, *inter alia*, the delivery of responding materials and reply materials along with cross-examinations. The freeze order would have to continue in the interim.

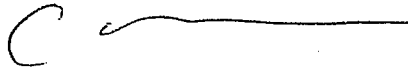
I will be away from my office tomorrow observing my Easter.

May I hear from you at your earliest opportunity on Monday of next week.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:



CONSTANTINE ALEXIOU
CGA/cn

c. Client

**DRUDI • ALEXIOU • KUCCHAR LLP**

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 18, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Total Number of Pages

6

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TRANSMISSION VERIFICATION REPORT

000269

TIME : 10/18/2006 14:31
NAME : WESTLAW MNGMT CO
FAX : 905-850-9146
TEL :
SER. # : 000000001306

DATE, TIME	10/18 14:30
FAX NO. /NAME	4168631716
DURATION	00:01:14
PAGE(S)	06
RESULT	OK
MODE	STANDARD ECM

DRUDI • ALEXIOU • KUCCHAR LLP

BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 18, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Tab T

THIS IS **EXHIBIT "T"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou



DRUDI • ALEXIOU • KUCHAR LLP



000271

BARRISTERS-AT-LAW

Writer's Ext. 226
Secretary's Ext. 231

Our File No. 060094
October 25, 2006

VIA FACSIMILE

Bennett Jones LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Attention: Joanne MacMillan

Dear Madam:

RE: *Pandya v. Simpson, et al.*
Court File No. 05-CL-2159
Our Clients: Michael Sourlis and Zapfe Holdings Inc.

Thank you for your October 20th message.

Based on your availability, I can proceed with the 9:30 am scheduling hearing on November 3, 2006.

Please send in the appropriate confirmation to the Commercial Court in this regard.

In the meantime, we need to agree on how we are going to proceed. You mentioned that you were going to reduce your thoughts to writing. I have yet to hear from you.

I am against having a reference in this matter. I would much prefer that you bring an action in the Commercial Court in which my clients are properly named as party defendants. The ownership of the shares would be the issue to be determined by the Court. There would be a timetable for the exchange of pleadings, a motion for security for costs (unless you can convince me otherwise), the completion of examinations for discovery, the delivery of undertakings and an expedited trial date.

On a separate note, please arrange to forward the transcript from the examination of Courtney Wallis Simpson. You mentioned that you believed that you required her consent before

DRUDI • ALEXIOU • KUCHAR LLP

7050 WESTON ROAD, SUITE 307, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146

releasing same. If there is a problem with receiving the consent that you seek then please let me know.

May I hear from you.

Yours very truly,

DRUDI, ALEXIOU, KUCHAR LLP

PER:



CONSTANTINE ALEXIOU

c. clients

DRUDI • ALEXIOU • KUCHAR LLP

BARRISTERS - AT - LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 25, 2006

SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Total Number of Pages

3

TRANSMISSION VERIFICATION REPORT

000274

TIME : 10/26/2006 08:37
NAME : WESTLAW MNGMT CO
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DRUDI • ALEXIOU • KUCHAR LLP



BARRISTERS-AT-LAW

FAX COVER SHEET

TO: Joanne MacMillan
Bennett Jones LLP

FAX NO.: 416-863-1716

DATE: October 25, 2006


SENT BY: CONSTANTINE ALEXIOU Ext. 226 / Carolyn Ext. 231

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Tab U

THIS IS **EXHIBIT "U"** TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

000276

BENNETT JONES | LLP

3400 One First Canadian Place
PO Box 130
Toronto Ontario
Canada M5X 1A4
Tel 416.863.1200
Fax 416.863.1716
www.bennettjones.ca

M. Joanne MacMillan
Direct Line: 416.777.4629
e-mail: macmillanj@bennettjones.ca
Our File No.: 56445.1

November 1, 2006

Via Facsimile

Mr. Constantine Alexiou
Drudi, Alexiou, Kuchar LLP
Barristers-at-Law
7050 Weston Road
Suite 307
Woodbridge, ON L4L 8G7

Dear Mr. Alexiou:

Re: Pandya v. Simpson et al.
Court File No. 05-CL-6159

We acknowledge receipt of your request for a copy of Ms. Simpson's cross-examination transcript dated November 29, 2006. In light of the deemed undertaking rule, we sought Ms. Simpson's consent to provide you with a copy of the transcript, however she has refused to do so. We are unable to provide you with a copy of the transcript at this time.

Yours truly,



BENNETT JONES LLP
MJM/eg

DM\$TORLegnN056445\00001\460249v1



- 000277

BENNETT JONES

FAX MESSAGE

Constantine Alexiou
Drudi, Alexiou, Kuchar LLP
Barristers-at-Law
7050 Weston Road
Suite 307
Woodbridge, ON L4L 8G7

Bennett Jones LLP
Suite 3400 One First Canadian Place
P.O. Box 130
Toronto Ontario
M5X 1A4

Tel 416.777.4629
Fax 416.863.1716

FAX NO. (905) 850-9146
PHONE NO. (905) 850-6116 Ext:226
DATE November 1, 2006

FROM M. Joanne MacMillan
LAWYER NO 1045 FILE NO 56445.1
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This is the first page of 2

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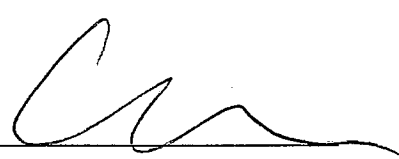
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Tab V

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MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

June 11, 2007

Attention: Mr. Gus Alexiou

Re: Sourlis/Zapfe v. Bennett Jones

Dear Mr. Alexiou;

My name is Courtney Wallis Simpson and I am the defendant in the Class Action initiated by Bennett Jones of Toronto, Ontario in November 2005. Though the Class Action matter has yet to be resolved, my criminal proceedings, although currently in Appeal, have been completed and I am currently serving my sentence at the Grand Valley Institute in Kitchener, Ontario.

I have continued to work closely with Michael J. Quilling, the Receiver appointed by Bennett Jones, with respect to validating claims and recovering funds for the benefit of the legitimate claimants.

It is my understanding that you have been retained by my two largest legitimate claimants, Mr. Vern Zapfe and Mr. Michael Sourlis. During a discussion with Mr. Quilling last week, he informed me that it is his understanding that the hearing date in this matter is forthcoming.

I have discussed this matter at length with both the Receiver and with my appointed Primary Worker here at Grand Valley, and I have been informed that I am at liberty to attend Court, if required. It is my wish to act as a "friendly witness" on behalf of Michael and Vern for two specific reasons. Firstly, the certificates I signed over to them were in fact signed and delivered to Michael in April, 2005 in repayment for a debt outstanding to the two of them. Second, even if Bennett Jones were successful in their defense and the Dianor shares were to be liquidated and handily transferred over to their swollen coffers for the "benefit" of the legitimate claimants, you and I both know that their infamous "billable hours", currently tallied at Seven Hundred and Twenty Thousand Dollars simply for overseeing the sale of the properties I voluntarily handed over my deeds to, would substantially erode any restitution Michael and Vern were to enjoy. In addition to which, though the eventual value of the liquidated shares would eventually be distributed to Michael and Vern as class action claimants, the total recovered sum from the shares would have to be shared proportionally with the remaining twenty one legitimate claimants.

If you are successful in your matter, the total value of the shares would be distributed for the benefit of Michael and Vern without Bennett Jones extracting their "share", and none of the amount would have to be distributed to other claimants. The Dianor shares were not, in fact, assets involved in any way in the alleged "fraudulent activity", they were disposed of long before there was any alleged "fraudulent activity" occurring within my companies, and further, they should not, in any way, be subject to the generous tea party Bennett Jones appears to be enjoying with my money. They belong to Michael and Vern,

a fact that should be judicially mandated by any reasonable Judge interpreting the facts in this matter.

Michael and Vern are entitled to the full amount of the sale of the Dianor shares, in fact, of my initial purchase of eighty thousand dollars worth of shares, Vern actually paid for fifty thousand dollars of them. All that the Receivership estate is rightly entitled to, if anything, would be my initial thirty thousand dollar purchase. That having been said, my initial purchase of the shares occurred in late 2004, and my transfer of certificates to Michael and Vern occurred in April 2005, seven full months before Justice Spear's all-encompassing Receivership Order was issued.

I would like to qualify that I am working closely and in full cooperation with both Michael Quilling and Bennett Jones towards the liquidation and recovery of assets for the benefit of the claimants, though I recognize that I am in fact the defendant. I have not, since November 2005, retained council of my own as I have never in any way opposed the activities of the Receiver in liquidating and maximizing my estate for the benefit of the claimants. However, I do not feel comfortable agreeing to cooperate with their efforts to secure the Dianor shares as they were disposed of, in favour of Michael and Vern, long before the initiation of their Order.

I would willingly and enthusiastically act as a friendly witness in your efforts to secure the shares that are in fact rightly the property of Michael and Vern, and I am at liberty, if required, to leave the institution, under the provisions of an escorted temporary pass. I will be released on day parole effective January 31, 2008, and at that time will make myself fully available to you if you feel I could in any way better your chances in Court. Prior to that time, provided I am given suitable notice to make the arrangements for a temporary pass, I am most willing to attend Court, if necessary, and/or to assist you in any way you deem necessary in your efforts to secure Michael and Vern's shares.

I thank you for your attention in this matter, and I remain at your disposal if you feel I am able to assist in any way.

Sincerely;



Courtney Wallis Simpson
Grand Valley Institute
1575 Homer Watson Blvd.,
Kitchener, Ontario
N2P 2C5

Tab W

THIS IS EXHIBIT "W" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



Commissioner for taking affidavits

Constantine Alexiou

COURT FILE NO.: 05-CL-6159
DATE: 2006-06-08

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: UDAYAN PANDYA, Plaintiff

A N D:

COURTNEY WALLIS SIMPSON, YORK REGION REALTY INC., WALLIS, SIMPSON & ASSOCIATES, COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP and as CAMCO DEVELOPMENTS and as YORK GROUP, Defendants

BEFORE: SPIES J.

COUNSEL: *Lincoln Caylor* for the Plaintiff/Receiver

Gregory Govedaris, for the Plaintiffs in Action # 05-CL-6178, Glenn E. Cohen for Atlas Holdings, D.R. Rothwell for Ajay Pahwa and Courtney Wallis Simpson in person

HEARD: April 26, 2006

DECISION ON MOTION

OVERVIEW

[1] This is a motion by the court appointed Receiver for an order that the interim fees, disbursements and GST of counsel for the Receiver, for the period October 11, 2005 to April 12, 2006, be approved and be paid to counsel by the Receiver as the first charge on the receivership estate.

[2] By order of Ground J. dated November 17, 2005, Michael J. Quilling was appointed Receiver, pursuant to s. 101 of the Courts of Justice Act and Rule 41.02 of the Rules of Civil Procedure, over the assets of Courtney Wallis Simpson and York Region Realty Inc. (the "Initial Order").

[3] The Receiver subsequently provided four reports to the court, on four separate attendances. As explained further below, those reports set out in summary fashion the

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activities of the Receiver and its counsel Bennett Jones LLP. It was not until the motion returnable March 9, 2006, that the Receiver sought court approval of the fees and disbursements of the Receiver and its counsel.

[4] At the attendance before Mesbur J. on March 9, 2006, the Receiver sought approval for its own fees in the amount of \$35,253.39 and for the fees and disbursement of Bennett Jones in the amount of \$234,434.79 (\$207,537.50 for fees and \$11,674.31 for disbursements plus GST).

[5] The material filed in support of the approval of the fees of Bennett Jones was only an invoice, which simply stated that the fees and disbursements were for "professional services rendered" for the period in question. Counsel also filed a one page "Summary of Time and Fees" which listed the lawyers/students who worked on the matter, their position within the firm, year of call, the total hours spent and hourly rate.

[6] Objection was taken to the fees of the Receiver and its counsel, by counsel for some of the claimants to the assets of the estate. Mesbur J. adjourned the Receiver's motion so that its counsel could particularize the fees and deliver particulars of the fees to the other parties.

[7] Further to the order of Mesbur J., the matter came on before me on April 6, 2006. At that time, after hearing the submissions of counsel appearing, I approved the interim fees and disbursements and GST of the Receiver for the period November 17, 2005 to February 28, 2006 in the amount of \$35,253.39.

[8] The motion with respect to the approval of the fees and disbursements of Bennett Jones was adjourned to April 26, 2006. The difficulty was that the Receiver had prepared a summary of counsel fees, which summarized the work done by each lawyer, but it did not set out the date on which the work was done and more importantly did not break down the work done into various categories of services rendered. Furthermore, no dockets were provided.

[9] Because of the way that the summary was prepared, it was impossible for counsel and for the court to assess the reasonableness of the fees and so unfortunately the motion to approve the fees and disbursements of Bennett Jones had to be adjourned again. Counsel for the Receiver was directed to provide to counsel appearing that day copies of dockets of Bennett Jones, redacted if necessary if there were concerns about solicitor/client privilege, along with a summary of the fees, grouping the time by lawyer in accordance with the main areas of work undertaken, so that an assessment of the fees could be made. The dockets and summary of fees were to be served by April 13, 2006. For any dockets that were redacted, counsel for the Receiver was directed to file unredacted copies in a sealed envelope with the court.

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[10] The motion returned before me on April 26th. Counsel for the Receiver had prepared a new motion record with a summary of counsel fees broken down into some categories of services rendered, along with copies of the dockets. No dockets were redacted.

ISSUES

[11] Pursuant to the Initial Order, the fees of Bennett Jones LLP, counsel for the Receiver, form a first charge from the assets recovered in the receivership, subject to approval of the quantum of costs by the court.

[12] On the return of the motion before me, the Receiver sought approval of the fees of its counsel in the amount of \$207,537.50 and disbursements in the amount of \$11,674.31 for a total with GST of \$234,434.79 for the period October 11, 2005 to February 21, 2006 and \$153,985 for fees and \$5,146.46 for disbursements for a total of \$170,230.30 with GST for the period from February 21, 2006 to April 12, 2006. The grand total that is submitted for approval is \$404,665.09 of which \$361,522.50 is fees.

[13] Counsel opposing the motion objected to the approval of the fees, asserting that the fees are excessive, particularly given the recovery and size of the receivership estate and that the hourly rates charged are too high in all of the circumstances. There was no real issue with the disbursements, nor was it asserted that the Receiver or his counsel had exceeded their jurisdiction.

[14] The issues before me are what principles should I apply in considering the fees of counsel to the Receiver and what quantum of fees should I approve?

THE FACTS

[15] There are currently at least two proceedings against the defendants and both are class proceedings. They each relate to alleged fraudulent activity on the part of Simpson and her companies. The plaintiff in the class action herein, (the "Deposit Fraud Class Action"), first approached Bennett Jones in the fall of 2005 alleging that Simpson, who is a real estate agent, and her companies, defrauded him by retaining his deposit for the purported purchase of a commercial property. It is alleged that Simpson purported to "sell" the same two commercial properties in excess of a hundred times each and as a result there are many claimants in this class who claim for deposits paid on purchases that were a sham.

[16] Mr. Govedaris is counsel for plaintiffs in class action #05-CL-6178 (the "Mortgage Fraud Class Action"). In that action, it is alleged that Simpson and others defrauded the victims through the operation of a "Ponzi Scheme", convincing people to "invest" in interim occupancy mortgages that never existed.

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Initial Order

[17] The Initial Order of Ground J. approved the appointment of Bennett Jones LLP as counsel to the Receiver but hourly rates were not approved. The order gives the Receiver the usual powers to preserve property of the defendants including investigatory powers and the Receiver is of course permitted to apply to this Court for advice and directions related to the proper exercise of its powers or for any variations to the order.

The First Report

[18] Counsel for the Receiver attended before Farley J. on December 13, 2005 and filed the First Report of the Receiver of the same date. That report summarized the nature of the two alleged frauds. At that time the Receiver estimated that there were eighteen victims of the deposit scheme fraud owed approximately \$3.6 million and at least 54 victims of the Ponzi Scheme/mortgage fraud with a total loss of approximately \$11 million.

[19] At that stage, counsel for the Receiver had issued the statement of claim in the Deposit Fraud Class Action. In the First Report, the Receiver recommended that the Mortgage Fraud Class Action be tried together with the Deposit Fraud Class Action and that the Initial Order be amended to add the mortgage fraud victims as a class of creditors to be considered by the Receiver.

[20] The Receiver reported on the various activities undertaken by the Receiver and its counsel since the date of the Initial Order, which included serving the Initial Order on all banks to which Simpson and York Realty had a relationship, asking that the bank accounts be frozen, registering the Initial Order on title to all properties owned by Simpson, attending at all properties owned by Simpson, (with the exception of the cottage property), speaking to the agent who had listed the real properties for sale (at the request of Simpson), reviewing Simpson's business records, examining Simpson under oath, communicating with the York Regional Police and dealing with claimants.

[21] The Receiver was in attendance with counsel for the examination of Simpson on November 29, 2005. On the same date the Receiver, accompanied by counsel, met with a detective from York Regional Police and conducted a cursory review of documents in the possession of the police as a result of the criminal charges pending against Simpson. Simpson consented to the Receiver reviewing this material.

[22] Simpson also co-operated with the Receiver in identifying the real property that she owned and in fact advised the Receiver of two properties that were registered in the name of Lia Hurst that Simpson claimed ownership to. The report stated that it appeared that the equity in the real property owned by Simpson might be

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anywhere from approximately \$654,000 to approximately \$1.3 million depending on whether the Receiver was successful in setting aside certain charges.

[23] At that time, the Receiver recommended listing the real property with the agent that Simpson had already listed the properties with and that the proceeds from sale be deposited and held in an interest bearing account, that the Receiver, in consultation with counsel, determine whether a law suit was warranted against Hurst, including certificates of pending litigation, in order to regain those two properties, reviewing documents in the possession of York Regional Police (17 boxes), selling the contents of Simpson's business premises and conducting an examination of a third party, Adam Cox, who had been identified by Simpson as someone who likely had relevant information.

[24] At the time of this First Report, the Receiver was aware that the members of the Deposit Fraud Class Action had made claims to the Real Estate Council of Ontario ("RECO") with respect to their deposits, and had been informed by RECO that it was its position that Simpson's actions constituted one "occurrence" and that therefore there was a \$500,000 limit to the amount to be paid by RECO for all class members. The Receiver recommended that he deal directly with RECO and assist individuals who had yet to make a claim to do so and then report to the court. He reported that any payments from RECO be used for the benefit of the deposit fraud class only. I am advised by Mr. Govedaris however, that the claimants in the Mortgage Fraud Class Action may also have claims against RECO and so the Receiver and counsel for the Receiver will need to be concerned about this conflict, as Bennett Jones also represents the Deposit Fraud Class.

[25] The First Report also disclosed an issue concerning Ajay Pahwa who has asserted a claim in the receivership estate as a secured creditor. The Receiver takes the position that the three mortgages Pahwa has on properties belonging to Simpson have been paid off, or, in the alternative, are not valid because of illegal rates of interest.

[26] The Receiver also advised the court at this time that it had established a website to post information regarding the case.

[27] Farley J. by order dated December 15, 2005, authorized the Receiver to amend the statement of claim to add Simpson carrying on business as York Management Group as a defendant and to try the Mortgage Fraud Class Action together or immediately after the Deposit Fraud Class Action (subject to confirmation by the appointed judge in the class proceedings).

[28] A second order of Farley J. of the same date headed "First Amended and Restated Initial Order" restated all of the relief granted by Ground J. in the Initial Order and added other terms, which authorized the Receiver to enter into new listing agreements to sell the real property owned by Simpson, deal directly with RECO on

- 6 -

behalf of all victims of the Deposit Fraud scheme, examine Cox, and open a bank account to accept deposits from Simpson. That order also stayed all proceedings in respect of the defendants and their properties and approved a claim form and its distribution¹.

The Second Report

[29] The matter returned again before Farley J. on December 22, 2005 with the Second Report of the Receiver of the same date. In that report, the Receiver reported that the Receiver's counsel had continued to follow up with banks to ensure that accounts were frozen, met with Simpson for further investigation, that a separate interest bearing bank account had been opened to receive the proceeds from the sale of Simpson's assets and any funds that Simpson might be receiving, as Simpson was still working (subject to a living allowance for Simpson), that counsel had communicated with the agent that Simpson had already arranged, regarding the sale of various Simpson properties pursuant to a new listing agreement, and that a real estate agent had been retained to undertake a fair market assessment of the cottage property. Furthermore contact with Cox in order to compel his attendance at an examination had been made, the Statutory Declaration to be utilized as a claim form had been prepared and Information had been posted to the website.

[30] With respect to the Hurst action, the Receiver reported that the properties were valued at between \$250,000 and \$275,000 each, but that there were mortgages registered on each of the properties in the amount of approximately \$221,000 and \$225,000. The Receiver advised it would continue to investigate to determine if there was sufficient equity to merit a lawsuit and, if in consultation with counsel, a lawsuit was warranted, that Hurst would be sued.

[31] With respect to RECO, the Receiver advised the court that the Receiver and its counsel had met with the manager of investigations of RECO. It appears the purpose of that meeting was simply to inform the manager of the activities of the Receiver to date and the orders that had been made.

[32] With respect to the Pahwa mortgages, counsel for Pahwa had served a notice of sale under mortgage with respect to one property. Based on the Receiver's investigation, which included a review of all documents registered on title, the Receiver recommended that the validity of the mortgages be challenged, that in the mean time no proceeds from any sale be paid to Pahwa and that funds claimed by Pahwa be held in the Receiver's bank account pending further order of the court.

¹ As I advised counsel for the Receiver, particularly as the amended Initial Order is not black lined, in order to determine the relief granted by Farley J. as compared to the relief previously granted by Ground J., it is necessary to do a paragraph by paragraph review of the two orders. Preferably the new order should have simply stated the additional relief and any amendments without restating the Initial Order.

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[33] The Second Amended and Restated Initial Order of Farley J. dated December 23, 2005, authorized the Receiver to assert challenges to the validity, quantum and priority of the Pahwa, restrained Pahwa's power of sale proceedings and provided that upon approval of the sale of properties, that the amount claimed by Pahwa be held in a separate bank account pending further order.

Third Report

[34] The Receiver attended in court again on January 20, 2006 before Cumming J. with the Receiver's Third Report dated January 13, 2006. In that report, the Receiver reported that bankruptcy proceedings had been commenced against Simpson and York Realty and two receiving orders dated December 30, 2005 had been obtained. The Receiver recommended and obtained an order from Cumming J. that the bankruptcy proceedings be stayed, as were the related receiving orders.

[35] The Receiver also reported on its on-going review of Simpson's bank accounts, but there was still no statement that any of those accounts had contained funds.

[36] A new issue arose in this report concerning certain shares of Dianor Resources Inc. that had been owned by Simpson and had been transferred into two individual accounts held at RBC Dominion Securities, allegedly in breach of the Initial Order. This information came to the Receiver from a detective of the York Regional Police squad. Counsel for the Receiver requested that the share transfers be reversed and currently that is a further issue for the Receiver to pursue. RBC is holding approximately 500,000 shares which fluctuate in value and could be worth anywhere from \$.255 (the rolling 52 week low price) to \$2.18 (the rolling 52 week high) per share.

[37] The Third Report to the court also updated the court with respect to the progress on the sale of the various properties owned by Simpson which had all been listed for sale, with the exception of the cottage property, and the fact that an action had been commenced against Hurst and that certificates of pending litigation on title had been obtained. The Receiver recommended acceptance of an offer concerning one property.

[38] With respect RECO, the report disclosed that counsel for the Receiver had sent a letter requesting disclosure of information and that there had been no response. By that point it was estimated that eighteen victims of the Deposit Fraud had made claims to RECO.

[39] With respect to Cox, after several attempts, he finally attended at an examination but then refused to answer questions once he realized he was there to give evidence about the Simpson fraud. The Receiver had continued its review of

- 8 -

Simpson documents and discovered the existence of two other corporations for which it sought amendment, to have them added to the receivership.

[40] The Receiver also reported that counsel had written to the Crown assigned to the Simpson case requesting that a Restitution Order be sought against Simpson in the amount of approximately \$14.6 million representing the estimated loss occasioned by both the fraudulent deposit and mortgage schemes.

[41] Based on the report, the Third Amended and Restated Initial Order of Cumming J. dated January 20, 2006 directed that one property be sold with the amount of \$336,080, which is the amount of Pahwa's claim, to be held in a separate bank account to await the outcome of the Pahwa claim. A separate order of the same date added Simpson carrying on business as York Group and as Camco Developments as defendants.

Fourth Report

[42] When the matter proceeded before Mesbur J. on March 9th, she had the Fourth Report of the Receiver dated March 3, 2006. In that report the Receiver advised that it was using documents recovered from the police to verify and validate the claims of potential class members, particularly the alleged Mortgage Fraud class, in order to determine whether each individual investor had received less or more than their principal investment back. This was described as a complicated task for various reasons.

[43] By that date the actual claims made by members of both classes totaled approximately \$3.7 million. The Receiver stated that he had been in touch with the majority of the victims known to that date and had distributed the claim form to those individuals.

[44] The Receiver's estimate of the value of the assets in the estate at that time was set out in a chart outlining assets and potential recovery through the receivership. This chart listed total assets at \$3,225,000 with total liabilities at \$1,416,809 with a net estate total of \$1,808,191. The only assets listed were the real properties owned by Simpson, including the Hurst properties, the RECO claim at \$500,000 and the Dianor Resources shares at \$400,000, which appears to be a conservative number. The Pahwa claim was taken into account in the amount of \$336,080. As set out below, the interest of Simpson's husband in the matrimonial home was not considered.

[45] With respect to the Dianor Resources shares, the Receiver had communicated further with counsel for RBC Dominion. They were advised that the shares were frozen and that RBC would require a court order before complying with the

- 9 -

Receiver's request to reverse the transfer. RBC had not produced the requested documents to the Receiver by that date.

[46] The Receiver provided further reports with respect to the real property and the court approved the sale of a second property. He recommended that the sale price of the sale approved by Cumming J. be reduced because of substantial issues disclosed in the property inspection. The Receiver recommended listing the cottage property in the spring. With respect to the Hurst properties, the Receiver reported that Hurst was willing to sign an acknowledgement and direction transferring title and the properties back to Simpson. The Receiver recommended that once that was done, that the properties be sold.

[47] With respect to RECO, the Receiver reported that twenty victims of the Deposit Fraud class had made claims to RECO totalling \$3,215,000. RECO agreed to provide disclosure of certain documents but continued to maintain its position that Simpson's actions constituted "one" occurrence and that therefore no more than \$500,000 would be available to all claimants under RECO's Consumer Deposit Insurance coverage. The Receiver stated that after reviewing the documentation, it would seek directions from the court regarding commencing an action against RECO's insurer.

[48] The Receiver reported on the examination of Cox and advised that based on that examination, it was not recommended that Cox be added as a defendant. The Receiver also reported on obtaining bank records from the ten bank branches, which the defendants were known to have used, which had been served with the Initial Order. By this point the Receiver had a complete compilation of the bank records for the past 6 years and stated that he was confident that he would be able to discern some patterns from the movement of funds.

[49] Pursuant to the order of Mesbur J., RBC Dominion Securities was ordered to produce documents related to the Dianor Resources shares to the Receiver, and the shares were frozen until April 6, 2006. In addition, the sale of one property was approved, as was a listing of the Hurst properties after they had been reconveyed to Simpson.

Affidavit of M. Joanne MacMillan sworn March 31, 2006

[50] When the matter proceeded on April 6, 2006 before me, no further report was filed but I did have the Affidavit of M. Joanne MacMillan sworn March 31, 2006. Further information was provided on the Dianor Resources shares issue and the fact that RBC had provided the Receiver's counsel with documents related to the transfer of the shares. Copies of these documents had been provided to the transferees of the shares and Mr. Govedaris in accordance with Justice Mesbur's order.

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Receiver's Action Plan

[51] In accordance with my endorsement of April 6, 2006, the Receiver served and filed a proposed Action Plan. A review of this plan assists in considering the work the Receiver and its counsel has done and what is yet to be done in order to realize all of the assets of the receivership estate and determine and pay out the claims.

[52] The proposal with respect to the various issues is as follows:

- (a) **Dianor Resources Inc. Shares**-the Receiver recommends challenging the share transfer and ask that it be reversed and that the shares be returned to the receivership estate on the basis that the transfer took place after the freezing order had taken effect. The method of determining this issue is to be resolved at a 9:30 appointment to be scheduled on notice to all interested parties.
- (b) **The Pahwa Mortgages**- the Receiver proposes examining the lawyer who assisted placing the mortgages on title to Simpson's properties and then challenging the validity of the Pahwa mortgages and proceeding via an application seeking to discharge the Pahwa mortgages on various grounds. Various alternative relief is also proposed. A draft application was included with the Plan. This is another matter that is to be timetabled at a 9:30 appointment on notice to all interested parties.
- (c) **RECO Claim**- RECO's has an insurance policy with Lloyds that has limits of \$100,00 per claim and \$500,000 for each "occurrence". Twenty-six claims have been made to RECO. If they are characterized as individual claims, the maximum possible insurance coverage would be \$1,965 million. The Receiver is considering proceeding against RECO and Lloyds by adding them as defendants to the Deposit Fraud Class Action and a draft Fresh as Amended Statement of Claim was provided to the court. Research that considered the merits of such a claim was summarized in the affidavit of Ms. MacMillan. A decision on this claim was deferred. Recovery from RECO will raise other issues in that the Receiver is only proposing to distribute any recoveries to the Deposit Fraud Class. These issues were also deferred.
- (d) Finally a proposal for claims administration was set out. A statutory declaration that was approved by Farley J. has been provided to each claimant requiring claimants to indicate whether they are part of the Deposit or Mortgage Fraud classes. The Receiver will review each claim along with supporting documents and decide whether to reject, approve or amend the claim. Only the principal amount of the deposit or mortgage

- 11 -

investment will be validated. No procedure has yet been determined for claimants to contest the Receiver's determination.

THE LAW

[53] Counsel did not provide any law to me with respect to the principles that I should consider in deciding this matter. It is my understanding that the leading case, at least in terms of the approval of the fees of a receiver, is *Re Bakemates Int'l Inc.*², a decision of the Ontario Court of Appeal.

[54] In the *Bakemates* case Borins J.A., speaking for the court, stated that when a receiver asks the court to approve its compensation, there is an onus on the receiver to prove that the compensation for which it seeks the court's approval is fair and reasonable (at para. 31). That is the test that I intend to apply, along with the other principles set out in *Bakemates*, in determining the approval of the Receiver's counsel's fees.

[55] Borins J.A. stated that the court could adjust the fees and charges of the receiver, just as it can in the passing of an estate trustee's accounts, and that the applicable standard of review is whether those fees and charges are "fair and reasonable" (at para. 35). He went on to refer to Bennett on Receiverships³ with approval and accepted as correct Bennett's discussion of the purpose of the passing of a receiver's accounts:

to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities and conduct to date. On the passing of accounts, the court has the inherent jurisdiction to review and approve or disapprove of the receiver's present and past activities even though the order appointing the receiver is silent as to the court's authority (at para. 36 quoting Bennett at pp. 459-60)

[56] In determining what is fair and reasonable remuneration, Borins J.A. observed that there is no guideline controlling the quantum of fees as there is in respect to a trustee's fees. He referred to what he described as the "leading case" in the area of receiver's compensation, *Belyea & Fowler v. Federal Business Development Bank*⁴, a decision of the New Brunswick Court of Appeal, and adopted with approval the observations of Stratton J.A. in *Belyea* that compensation is

usually allowed either as a percentage of receipts or a lump sum based upon time, trouble and degree of responsibility involved. The governing

² [2002], O.J. 3569

³ F. Bennett, 2nd Ed. (Scarborough Cohen Carswell, 1999)

⁴ (1983) 46 C.B.R. (N.S.) 244

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principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his service and while sufficient fees should be paid to induce competent persons to service receivers, receiverships should be administered as economically as reasonably possible (at para. 44).

[57] Where a percentage of receipts is used, a court may look to the rate afforded to a trustee in bankruptcy as a guideline, which is seven and one-half percent of receipts after payment to secured creditors, subject to variation by the court.⁵ As I explain below however, this is not a receivership where in my view a fixed percentage would be fair to counsel for the Receiver. In my view the fees in this case must be assessed on a *quantum meruit* basis.

[58] The court in *Bakemates* approved of the *Beylea* factors to be applied when using a *quantum meruit* basis to assess a receiver's compensation, which include:

the nature, extent and value of the assets handled, the complications and difficulties encountered, the degree of assistance provided by the company, its officers or its employees, the time spent, the receiver's knowledge, experience and skill, the diligence and thoroughness displayed, the responsibilities assumed, the results of the receiver's efforts, and the cost of comparable services when performed in a prudent and economical manner (at para. 45).

[59] Although Borins J.A. stated that the factors in *Beylea* are a "useful guideline", he was careful to point out that they should not be considered as exhaustive of the factors to be taken into account, as other factors may be material depending on the circumstances of the receivership (at para. 51).

[60] With these principles in mind, I turn to the positions of counsel in this case and the fees I have been asked to approve.

ANALYSIS

[61] Opposing counsel complained that the additional billing summaries prepared by counsel for the Receiver were not provided within the time that I specified, which left counsel with inadequate time to prepare for this motion. It appears from the Affidavits of Service, that the Summaries of Counsel Fees were not served until April 18th. The Motion Record was served on April 20th by email but part of the transmission was unsuccessful and so it was sent by same day courier on April 21st. No explanation was given for why the timeline in my order was not complied with. This is unfortunate

⁵ Bennett, *supra* at p. 472

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as the court relies on parties with an interest in the receivership estate to act as a check on the activities of the Receiver and its counsel. However opposing counsel did not request an adjournment and so I have considered the matter based on the evidence before me.

[62] Opposing counsel did not suggest that the hours claimed by counsel for the Receiver had not been spent, but challenged the hourly rates and whether or not the work was done efficiently and whether all the time spent was warranted, particularly as it was argued that counsel for the Receiver should have known the nature of Simpson's assets and the value of the estate early on. As counsel observed, if the fees sought are approved as claimed, a very significant portion of the proceeds from the real estate assets will be committed to the legal fees incurred to date and recoveries for the claimants in the two class actions will largely depend upon the outcome of litigation concerning the Dianor Resource share issue, the Pahwa mortgage issue and the proposed action against RECO.

[63] Opposing counsel noted that up to the time of the Initial Order granted by Ground J. on November 17, 2005, counsel for the Receiver had incurred approximately \$40,000 in fees and there is not much dispute about that amount. The fees quickly escalated however and opposing counsel had no idea of how expensive the receivership had become until served with the motion record returnable March 9, 2006, which was served on March 4th. This meant that they did not have an opportunity to complain about the escalating costs before they were incurred. Counsel also complained that the Receiver's counsel has still left too much time unallocated to a particular category of work, leaving it difficult to assess the reasonableness of the time spent.

[64] Having considered the submissions of all counsel, and having reviewed the evidence filed in support of the fees claimed, including a line by line review of the actual dockets, and having considered the activities of the Receiver and its counsel as reflected in the Receiver's reports to the court, I have concluded that the Receiver's fees should be reduced by \$102,000 before GST. Counsel for the Receiver has not satisfied me that the hourly rates charged and all of the time spent is "fair and reasonable", given the factors I have considered that are relevant to the approval of the fees in this matter. My reasons are as follows.

[65] In coming to my decision, a significant consideration has been the amount of the fees to date, considering where we are in the receivership and the prospect of recovery for the claimants. In a passage from the *Balyea* case, not referred to by the Court of Appeal in *Bakemates*, Stratton J.A. stated:

Even though a professional is entitled to a fair, just and reasonable compensation measured by the reasonable value of the services rendered, the fees charged must bear some reasonable proportion to the amount of

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money or the value affected by the controversy or involved in the employment. Thus, **in cases where a professional is aware of the amount at issue**, courts will impose an underlying or implied limit or maximum on the professional fees it will allow based on what is reasonable **in relation to the dollar amount involved in the particular case** (at para 11, emphasis mine).

[66] Clearly then, assessing the fees of counsel to the Receiver should not just be a matter of calculating the number of hours spent times a reasonable hourly rate. There should be some correlation of the costs to the benefits derived from the receivership. This cost-benefit analysis need not be precise or based upon the advice of expert analysis⁶

[67] I recognize however, that as observed by Bennett, referring to the trial decision in *Be/yea*, that the court "should not necessarily penalize a receiver [and by extension the receiver's counsel] who expends considerable time in administering the estate, although recovery may be small"⁷. This point was not dealt with on appeal. Bennett goes on to state that when the receiver is appointed, the receiver may find the debtor's business affairs somewhat chaotic and the receiver may have to spend considerable time, which may not be productive from a financial point of view, organizing the affairs in order to be in a position to administer the receivership properly.⁸ Accordingly the time spent must be viewed in the context of the Receiver's duty to preserve the assets of the debtor and realize on those assets and administer the estate and the Receiver's ability to retain the services of legal counsel to assist in those duties as required.

[68] The first question then is when counsel for the Receiver was aware of the amount involved in this case, namely the estimated size of the receivership estate. In the First Report to Farley J. dated December 13, 2005 the Receiver estimated that the victims of the alleged frauds were owed in total, approximately \$14.6 million. As for assets, that First Report estimated the equity in real estate to be anywhere from \$654,000 to \$1.3 million. The claim by Pahwa had been asserted and the position of RECO was known. Although further information on the assets and claims became known to the Receiver and its counsel as the receivership progressed, it was certainly clear from the outset that subject to litigation with RECO, the assets of the estate were modest, particularly relative to the quantum of the claims.

[69] The numbers have not changed that much. Based on the statement of assets and liabilities filed before Mesbur J., the estimate of the net assets to be realized from the defendants is approximately \$1.8 million. This estimate assumes a \$500,000

⁶ Re Hoskinson (1976), 22 C.B.R. (N.S.) 127 at para. 26 (Ont. S.C.)

⁷ Bennett, supra at p. 474

⁸ Bennett, supra at pp. 474-475

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recovery from the RECO insurance policy, which is the minimum recovery from RECO and the Dianor Resources shares claim at a value of the shares at \$400,000. This estimate of the share value may be conservative because the shares have recently been worth in excess of \$900,000, but the strength of this claim is unknown. With respect to the real estate, the estimate takes into account a liability with respect to Pahwa in the amount of \$336,080, which could be reduced if the Receiver is successful challenging the Pahwa mortgages. Simpson advised at the time of the argument of this motion that her husband was asserting his half interest in the matrimonial home, which is one of the properties to be sold by the receiver. The Receiver had not taken this into account before and this claim is not reflected in this estimate.

[70] Although precise amounts cannot be known at this time, it seems clear that the quantum of claims will by far outstrip the available assets. Furthermore, as I have already stated, the available assets are modest, particularly considering the quantum of fees sought by the receiver. Apart from the sale of Simpson's real estate, which represents approximately \$900,000 of the approximate amount of the estimated \$1.8 million recovery, which is subject to reduction by the claim of Simpson's husband, the disputes concerning RECO, the Dianor Resources shares and Pahwa are still to be litigated. Although this court can control the efficiency of the manner in which the Pahwa and Dianor Resources disputes are determined, it is likely that pursuit of the RECO insurance will require a full-blown lawsuit. Furthermore the quantification of the claims is ongoing but not completed, nor have any disputes resulting from that process been determined. In other words, there is still considerable cost to be incurred before all of the possible assets of the estate have been realized and the claims paid.

[71] It is also important to note that the Receiver and its counsel have been assisted by the fact that Simpson has cooperated. She identified all of her assets for the Receiver and has consented to the police sharing the information they have obtained in their investigation of the criminal charges. Furthermore she is not defending the class actions. Her co-operation was somewhat of a problem however, when she decided to consent to individual judgments early on. The Receiver's counsel has dealt with that.

[72] Finally it is important to observe that the complaints of opposing counsel, that the quantum of the fees of counsel for the Receiver has caught them by surprise, are legitimate. There is no obligation on counsel for the Receiver to come to the court more often in order to seek approval of fees, but when counsel wait for several months to do so, particularly in a case like this where significant costs are running up relative to the size of the estate, counsel for the Receiver is at risk that when they do come to court, the way in which they have done the work and the fees incurred may legitimately be criticized. It is not enough in these circumstances to rely on the fact that the work done was approved in a general way by the various orders of the court already referred to. When counsel wait to bring their accounts to the court for approval, they do so at their own risk.

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[73] With this background in mind, I considered both the hourly rates charged by the Receiver's counsel, the time spent and the work done, in assessing the reasonableness and fairness of the accounts.

[74] I was advised by counsel for the Receiver, that the rates charged, are the usual rates charged by the various members of the firm in these matters. He acknowledged that they are at the "high end of the scale". Counsel advised however, that notwithstanding the Deposit Fraud Class Action was commenced by way of class action; counsel would not be seeking a multiplier or premium.

[75] The rates charged range from \$150.00 per hour for students at law to \$725.00 per hour for a tax partner (although I am told that that time has been written off). The bulk of the work was done by Lincoln Caylor, a 1995 call, at the rate of \$575.00 per hour (98 hours-\$78,000), M. Joanne MacMillan, a 2000 call, at the rate of \$450.00 per hour (160 hours-\$132,000), and Emily Atkinson, a 2005 call, at the rate of \$275.00 per hour (208 hours-\$114,000). All three lawyers are litigation counsel. There is some supervisory time by James Patterson, a 1988 call, at \$625.00 per hour. As well a real estate partner, who is a 1992 call, has time on the file at the rate of \$550.00 per hour. Other lawyers with specialty in bankruptcy and insolvency (\$650.00 per hour), class actions (\$525.00 per hour), as well as real estate law clerks at \$150.00 per hour, a litigation law clerk at \$175.00 and students at law ranging from \$150.00 to \$175.00 per hour have all worked on the file.

[76] Mr. Cohen, counsel for a deposit fraud claimant, argued that the hourly rates claimed should be reduced by as much as a third, and referred to the old cost grid. Counsel for the Receiver responded that this was not relevant to the task before me. I agree, in the sense that the cost grid reflects, in terms of substantial indemnity costs, costs that the opposing party is ordered to pay, and those rates are not necessarily reflective of the costs as between the lawyer and his or her own client. Normally, with competition in the marketplace and informed clients, rates will be established as between a lawyer and a client that are reasonable in all of the circumstances, although some clients I am sure will disagree with that proposition. Here, however the client is a member of a class and he is not paying the fees personally. The plaintiff in this action and a few others had retained Bennett Jones individually at the outset and as submitted by opposing counsel, it is extremely unlikely that they could have afforded or would have agreed to pay the hourly rates now charged by counsel for the Receiver.

[77] There are many "clients" who will be impacted by the fees charged. They did not negotiate the hourly rates, nor did the court ever approve them. The assumption that the court will automatically approve a "usual" hourly rate for Receiver's counsel is a faulty one in my view. In a case like this, the court, with the assistance of opposing counsel, has to play the role of what a client would ordinarily do, namely

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consider whether the hourly rate is fair and reasonable in light of the nature of the work involved and the amount in issue.

[78] Although I accept the submissions of counsel for the Receiver, that this case is not a typical receivership, neither is the case complex. Setting aside whether or not two separate class actions or for that matter any class actions are needed, this case is primarily involved in the investigation and preservation of assets, dealing with victims and considering how best to pursue the litigation concerning the issues in dispute. This however, is a case where the amount of work involved may be somewhat disproportionate to the size of the receivership estate and so a percentage of the recovery would not be fair to counsel.

[79] The size of the receivership estate however should have some bearing on the hourly rates of counsel. I am of the view that an adjustment ought to be made to reflect the fact that, particularly after the size of the estate became known, the "usual" rates of counsel were too high relative to the size of the estate. Although the first statement of assets and liabilities was not put before the court until March 9, 2006, it is clear from the reports of the Receiver, that the Receiver and his counsel, had a general sense of the of the assets and liabilities of the defendants well before that. Certainly in early December, when preparation of the First Report dated December 13, 2005 was well underway, although the precise value of the estate would not have been known, the fact that the estate was a relatively modest one and that the potential claims were significant and would by far outstrip the amount of the estate, ought to have been known to the Receiver's counsel. Certainly at that point counsel should have considered whether or not the firm's usual hourly rates were suitable for this receivership. In fact in my opinion the usual rates, which Mr. Caylor acknowledged are at the "high end" of the scale, were not warranted from the outset.

[80] Although I would not reduce the hourly rates as significantly as suggested by opposing counsel, in my view they ought to be reduced by approximately 15%. Based on these considerations I find that there should be a reduction of the fees before GST in the amount of \$46,000 to reflect the fact that the hourly rates claimed are too high for this matter. In arriving at this amount, I have not applied a 15% reduction to the time docketed before early December 2005 of approximately \$80,000, by which point the information in the First Report was clearly known to counsel. I have however made an adjustment of 5% to that \$80,000 as well, as the rates were too high from the outset.

[81] I come then to the amount of time that is claimed.

[82] Counsel for the Receiver has not filed an affidavit that deals with any of the factors in the *Bakemates* case. The affidavits of Ms. Atkinson and Ms. MacMillan filed in support of this motion only identify the accounts, the summaries and the

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dockets and depose that they accurately reflect the time spent, fees incurred and disbursements made in conjunction with this matter. The onus however is on counsel for the Receiver to satisfy me that the amount claimed for fees is fair and reasonable.

[83] Counsel for the Receiver has filed a Summary of Counsel Fees for the period of November 4, 2005⁹ to February 21, 2006 and a similar summary for the period February 21, 2006 to April 12, 2006. These summaries break the time spent by counsel for the Receiver into the following categories and amounts:

- (a) The total fees claimed with respect to real property is \$46,750.
- (b) The total fees claimed with respect to RECO is \$25,295.
- (c) The total fees claimed with respect to the Dianor shares is \$5,642.50.
- (d) The total fees claimed with respect to the Pahwa mortgages is \$17,585.
- (e) The total fees claimed with respect to "general receivership activities" comprises the balance claimed of \$227,745.¹⁰

[84] With respect to the fees claimed with respect to real property, according to the summary this reflects the time spent maintaining properties, communicating with insurance companies, utilities companies, real estate agents, land registry office, counsel for purchasers, dealing with power of sale issue and inquiries (i.e. Pahwa), dealing with mortgages, registering orders on title, obtaining and registering certificates of pending litigation on title, transferring properties into receivership, obtaining vesting orders and getting the title of the properties cleared.

[85] As I have already stated, Simpson identified the properties and a decision was made to use her agent as she had already listed some of the properties. Time was spent finalizing the sale of two of those properties, although only one sale had closed in the time frame of the accounts submitted. In addition it appears that the time spent on the Hurst action, which included obtaining certificates of pending litigation, and some of the time spent on Pahwa is included in this category.

[86] Many of the matters listed such as maintaining the properties, communicating with insurance and utilities companies and matters of that sort is work which I would have expected the Receiver's staff to take care of at a lower cost¹¹. The fact that the Receiver is from Texas likely explains this, which is consistent with the fact that the Receiver's account was a small fraction of the fees of counsel for the Receiver. Counsel for the Receiver however, chose the Receiver and clearly counsel for the

⁹ I note that this is after the date when the fees claimed began to be incurred of October 11, 2005.

¹⁰ These amounts total \$323,017.50, which is almost \$40,000 less than the total fees claimed of \$361,522.50. The difference was explained on the basis that the summaries were estimates of the break down of fees. I expect that most of the explanation is that these summaries commence November 4, 2005 whereas the fees claimed commence October 11, 2005.

¹¹ The Receiver's hourly rate is \$400 US/hour so presumably its staff would be at lower rates.

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Receiver chose to do much of the Receiver's work. This however exacerbates the problem of high rates, as the rates claimed for the lawyers involved in these activities are as high as \$575 and \$450. In my view others should have done much of this work at significantly lower rates. I have considered this in my reduction for inefficiency discussed further below.

[87] The real estate partner who presumably was mostly responsible for the work done on the sale of the properties is Scott Martyn and his rate is \$550. He was assisted by two real estate law clerks at the rate of \$150 per hour. This time however only reflects \$10,595 of the fees. It is impossible to determine how much of the time claimed relates to the Hurst action but clearly the total fee claimed for this category of work done seems excessive.

[88] With respect to the fees claimed with respect to RECO, again the amount claimed seems high. RECO's position was known by the time of the First Report and essentially what has happened since then is a meeting and correspondence with RECO, demanding and receiving documents in response to a request for disclosure of documents, a consideration of the legal issue including research (over \$8,000 for research done by two students is part of this category) and assisting victims with making claims. It is not clear how much of the time claimed includes the time spent preparing the opinion that was filed with the court concerning the RECO action, but I expect that some of that time is not part of the time claimed now, as the cut off for fees was April 12, 2006. I note that the costs of this aspect of the matter will have to be carefully considered before any further work is undertaken given that it is unclear whether or not the RECO claim benefits both class actions or not.

[89] I do not have any difficulty with the quantum of time claimed with respect to the Dianor Resource shares issue and the Pahwa mortgages issue, which, if successful, will benefit all victims.

[90] The most difficult issue arises with respect to the heading "general receivership activities". Although some effort has been made to break out some of the motion time and the dealings with the banks in that category, it essentially is a category reserved for all of the other time spent that is not included in the other categories set out. Opposing counsel complain that this is in breach of my direction and does not give them a real opportunity to assess the value of the work done. I agree. We do not know for example, how much time was spent preparing the statement of claim or the Hurst action or a particular Report for the court. This means, for example, that we can not assess the value of the work done in connection with the Hurst action relative to the limited equity in the two properties at issue in that action.

[91] The court in the *Bakemates* case stated that although there is no prescribed process, the accounts must be detailed including the total charges "for each

of the categories of services rendered" and in a form that can be easily understood by those affected by the receivership so that such persons can determine the amount of time spent by the receiver's employees and others that the receiver may have hired in respect to the "various discrete aspects of the receivership" (at para. 37). This was not done with respect to this general category and as a result the task of opposing counsel and the court is that much more difficult. It was not an option however to ask counsel for the Receiver to particularize this category further, as that would have necessitated yet another adjournment.

[92] The general receivership activities category includes, but is not limited to, commencing the proceedings, obtaining the receivership order, contacting victims, disseminating, collecting, processing and validating claim forms, obtaining bank records, reviewing bank records, tracing funds, reviewing records in the possession of York Regional Police, examining parties (Simpson and Cox), preparing reports for the court (4), reporting to the court and obtaining approval for steps taken (6 court attendances up to and including the attendance before me on April 6th), communicating with various parties including clients and class members and "developing and carrying out strategy for recovery". Again the Receiver's staff should have done some of this work if distance had not been an issue, such as the work done contacting victims and disseminating and processing claim forms. Again the fact this was done by lawyers at higher hourly rates means a deduction is required.

[93] The assessment of the fees in this category is a difficult task given the information that I have to consider. However, no one suggested that an assessment before an assessment officer or a line-by-line review was warranted, as the cost of that would be astronomical. Furthermore, opposing counsel did not go to the expense of cross-examining Ms. Atkinson on her affidavit or otherwise questioning counsel for the Receiver with respect to the accounts. That however, is understandable, as opposing counsel represent various claimants and do not have any certain access to the estate to cover their costs. Furthermore, the material in question was delivered too late to permit cross-examination without a further adjournment.

[94] Notwithstanding these concerns, fixing costs is not an unusual task for the court. Judges are expected now to fix costs following not only routine motions but also lengthy trials. Although the factors for assessing party and party costs may be different, the type of analysis required is similar and in fact the overriding direction now from the Court of Appeal is to assess what in our view is fair and reasonable in all of the circumstances.¹²

[95] In considering the number of hours and the nature of the work done on this matter, I am of the view that the sheer number of hours put in, given where we

¹² See Boucher v. Public Accountants Council for the Province of Ontario (2004), 71 O.R. (3d) 291

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are in this receivership, reflects a significant degree of inefficiency when I consider what work has been done based on the material filed. They are excessive and greatly exceed what I view as fair and reasonable.

[96] Part of this concern about efficiency and whether all of the work done was warranted, can be explained by the fact that eighteen different professionals charged time to the file. Although some of that can be justified on the basis that different expertise was needed (particularly litigation versus real estate), this always raises a concern about duplication of effort. In that regard I considered particularly the dockets of Mr. Caylor, Ms. MacMillan and Ms. Atkinson, as they have by far, the most time on the file and they all worked on the very same matters. In other words it cannot be said that either Ms. MacMillan or Ms. Atkinson handled discreet issues under the supervision of Mr. Caylor. Based on my review of the dockets, it appears that there was, as a result, unnecessary duplication. Mr. Caylor delegated many tasks to Ms. MacMillan who in turn delegated them to Ms. Atkinson.

[97] For example, with respect to materials for court including the Receiver's Reports, although Ms. Atkinson would usually bear the main responsibility for drafting the materials, both Ms. MacMillan and Mr. Caylor would review and often revise these materials, (see for example pp. 134-135, 138, 149-150, 153, 154, 219-220 of the Motion Record returnable April 26, 2006). In addition, although Ms. Atkinson was the one who typically accompanied Mr. Caylor on court attendances or on examinations, this necessitated bringing Ms. MacMillan (or in some cases Ms. Atkinson, where it was Ms. MacMillan who went to court or Mr. Caylor when Ms. MacMillan conducted the examination of Cox) up to speed after those attendances and this is reflected in the dockets, (see for example pp. 132, 140, 149, 224 of the Motion Record). In some cases all three attended court, (see page 142 of the Record) and naturally there were many occasions when all three met together to review the matter. These are intended only as examples. Clearly with all three lawyers working on the very same issues, coupled with the extraordinary number of other lawyers and students who worked on this file, duplication was inevitable.

[98] Furthermore there does not appear to have been a very clear demarcation if at all, between the various tasks undertaken by Ms. MacMillan and Ms. Atkinson. There are many references to Ms. MacMillan doing research, notwithstanding that she is more senior than Ms. Atkinson and of course the students at law who worked on the file, (see for example pp.124, 129, 140, 145, 150, 222, 223, 230 of the Motion Record).

[99] Although I accept that it may have been necessary for all three lawyers to work on the file at the early stages, when it was important to move quickly to freeze assets, once that phase was over, in my view much of the litigation work should have been delegated to Ms. Atkinson under the supervision of Mr. Caylor. This would have resulted in less unnecessary duplication and much of the work done by Ms. MacMillan

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would have been done at a lower rate. Alternatively Ms. MacMillan should have been given more responsibility so that Mr. Caylor's time could be significantly reduced. Although three levels of counsel of varying experience may be warranted in a complex and large (in monetary terms) receivership, it is not warranted here. I have already commented on the particular need to conduct this receivership efficiently given the quantum of claims and the size of the estate. Furthermore, the matter is not complex. Accordingly, a deduction for this unnecessary duplication must be made.

[100] In considering the amount of this deduction, I have considered the fact that the duplication of effort reflects primarily on the time spent by Mr. Caylor, Ms. MacMillan and Ms. Atkinson and that accordingly the time they have spent should be reduced to eliminate this duplication, and as well a deduction should be made to reflect the fact that some of the work done by Mr. Caylor could have been done by Ms. MacMillan or alternatively a great deal of her work could have been done by Ms. Atkinson, under the direct supervision of Mr. Caylor, at a significantly lower hourly rate. Either way, unnecessary duplication would have been reduced and work would have been done at a lower hourly rate.

[101] In addition, consideration must be given to the number of hours docketed to accomplish particular tasks. As I have already noted, the time for the real property category seems high. Furthermore the time in the general category is excessive given the nature of the work done. For example a great deal of time was spent preparing the various reports of the Receiver to the court and the time seems high particularly given that each report repeated a great deal of the early report(s). I note that Ms. Atkinson docketed time to reviewing precedents for these reports (see Record at page 129). That is to be expected for inexperienced counsel, but all of that time should not have been billed to the file.

[102] It is apparent from reviewing the dockets that there was no consideration given to whether or not some docketed time should have been written off. I was advised that in the final analysis, approximately \$3,000 has been written off which in part reflects the time of the tax partner and presumably other time, although that has not been specified. Nevertheless, in my view there ought to have been a more substantial write-off of time. There are numerous examples of dockets where lawyers have recorded time spent to research and ascertain what type of procedure was necessary in order to accomplish a particular step in the proceeding.

[103] For example, Ms. Atkinson docketed time determining how to bring a motion in the Commercial List to appoint a receiver (page 125 of the Motion Record) and researching between the role of a trustee in bankruptcy and a court appointed receiver (page 144 of the Motion Record. Ms. Atkinson also docketed time to reviewing the protocol to obtain fee approval and determining the requirements of vesting orders (pp. 208, 235 of the Record). There was also repeated research done on class actions

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by Ms. MacMillan notwithstanding that I am advised that Mr. Hoaken has expertise in that area and worked on the file.

[104] This type of basic information may not be known to inexperienced counsel but is fundamental knowledge that a client can reasonably expect his or her lawyer to know. It is not time that can be billed to the file. In commenting on this, I do not wish to be critical of the lawyers in question, as they need to take time to consider what to do when the process is unfamiliar to them. That is how one gains experience in the practice of law. That, however, cannot be at the expense of the client when it involves the fundamentals. I would have expected that the supervising lawyer would have written off these types of dockets and not include them in the accounts when rendered. That clearly was not done in this case and so again an adjustment to the fees claimed on this basis is warranted.

[105] In summary counsel for the Receiver has not satisfied me that the fees submitted are fair and reasonable. Simply put, in my opinion, counsel for the Receiver has not properly staffed or administered the work and resulting billing on this file. Considering all of these various deductions that in my view are necessary, I find that a deduction in the amount of \$50,000 of fees before GST for duplication and overall inefficiency is warranted. In arriving at this amount, I have taken into account the fact that I have already made a reduction to the hourly rates so that I do not "double count".

[106] I am also of the view that there must be a further reduction for the time spent by counsel for the Receiver in seeking court approval of its fees. The information provided to opposing counsel and the court before Mesbur J. was woefully inadequate and there is no explanation for why proper materials were not prepared at that time. Accordingly part of the time spent for that attendance was wasted in terms of this issue. Similarly, the problems opposing counsel raised with the further material provided in the first attendance before me on April 6, 2006 were predictable as well and so much of the time spent in court on that occasion was wasted. In addition, as already stated the third draft of the materials in support of this motion is still problematic and was served late. Had counsel for the Receiver prepared the necessary information for consideration by Mesbur J., a great deal of cost for all concerned would have been spared. Certainly the time spent by counsel for the Receiver for these wasted efforts should not be compensated.

[107] Accordingly there will be a further reduction of the fees (before GST) to take this consideration into account in the amount of \$6,000. The time spent with respect to the approval of fees was not separately categorized. I have calculated this amount by including some of the time spent by K. McPhie, who prepared the summaries, and part of the time spent by litigation counsel preparing for and attending

- 24 -

before Mesbur J. and again before me on April 6, 2006 and some of the time spent by counsel preparing the information that I directed.

[108] For these reasons, the fees claimed by Bennett Jones will be reduced by these various deductions in the total amount of \$102,000 before GST, in order to arrive at an amount for fees that in my opinion is fair and reasonable in all of the circumstances.

DISPOSITION

[109] Accordingly, the fees and disbursement of Bennett Jones LLP for the period from October 11, 2005 to April 12, 2006 are approved in the amount of \$259,522.50 for fees plus GST in the amount of \$18,166.58 and disbursements, inclusive of GST, in the amount of \$17,998.22 for a total of \$295,687.30.

[110] I do not intend to impose hourly rates on counsel for the Receiver with respect to future accounts submitted to the court but I trust that the conclusions that I have come to in reaching this decision will be taken into account. I expect that the number of lawyers working on this matter will be pared down significantly and that my concern about duplication will be dealt with.

[111] As for the approval of future accounts, I expect counsel for the Receiver to follow the procedure in the *Bakemates* decision. That decision makes it clear what information is required to support such a motion and I expect that counsel will include all of that information in the material filed with the court on the next motion for approval and that that motion record will be served well in advance and posted on the website so that all interested parties may make an informed assessment of the reasonableness of the fees claimed and if necessary, prepare to defend the motion. The categories for all services rendered must be more refined so that in addition to assessing the reasonableness of the future accounts, consideration can be given to what a client would normally want to know, namely, is the cost to pursue a particular course of action warranted given the likely outcome and the amount in issue. This will be necessary to determine how the remaining issues should be dealt with.

[112] Mr. Cohen, counsel for Atlas Holdings and Investments Inc., one of the claimants in the Deposit Fraud Class Action who has made a claim for a deposit of \$200,000, requested costs of his attendance on the motion in the amount of \$2,000 on a substantial indemnity basis, to be paid from the estate when Receiver's counsel is paid. He submits that this is fair if his efforts reduced the quantum of costs payable to Receiver's counsel. Atlas has been on the service list since the Initial Order and counsel has appeared on certain motions brought by the Receiver, including the attendances

- 25 -

before me on April 6th and 26th. He submits that his client has a direct and substantial interest in the outcome of the motion and that I have the discretion to award costs pursuant to both section 131 of the *Courts of Justice Act* and Rule 57 of the Rules of Civil Procedure.

[113] Counsel for Atlas submits that these proceeding may be compared to pension surplus distribution litigation and estate litigation where it is not unusual for the court to allow cost to all persons interested in the fund and who made submissions of assistance to the court, to be paid out of the fund.

[114] Counsel for the Receiver submits that it is unusual for a creditor to seek legal costs for court attendances in the context of a receivership unless the receiver has acted beyond his authority or inconsistent with his appointment. Typically, if a creditor has to attend or bring a motion, the creditor bears his own costs. This prevents multiple creditors' counsel from attending on the receiver's motions and seeking fees. It is submitted that the court ought not to encourage creditors by a cost award to unnecessarily attend at future hearings. No issue is taken as to the quantum claimed.

[115] Mr. Govedaris submits that there is no authority that he is aware of to support costs paid to third parties who retain counsel after a receiver has been appointed unless there has been impropriety *inter alia* by the receiver, which has been identified, by that third party. He agrees with the submission of counsel for the Receiver that even if I have the discretion to award costs I ought not to as it would encourage other parties to seek costs and that would increase costs for all potential claimants.

[116] In my view I have the discretion to make a costs award pursuant to section 131 of the Courts of Justice Act. Atlas is clearly a party affected by the relief sought. Although it is not usual for counsel for creditors to ask for costs, in these circumstances, the submissions from opposing counsel were of some assistance, although since they did not have adequate time to prepare, unfortunately most of the detailed review of the accounts was left to me.

[117] I see no reason why Mr. Cohen's client, who chose to have counsel attend to contest the accounts, should bear all of the expense for the benefit of all claimants to the estate. In my view however, costs on a partial indemnity basis for this attendance is warranted, particularly as Mr. Cohen had not previously asserted an intention to ask for costs.

[118] For these reasons, I award costs to Atlas Holdings and Investments Inc. in the amount of \$1,500 on a partial indemnity basis, to be paid from the estate when Receiver's counsel is paid.

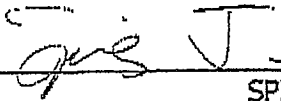
[119] I must add that this order as to costs is not an invitation for counsel who did not participate on the assessment of the costs on this motion to appear on future

- 26 -

motions and seek such an award. If more claimants wish to be represented on future motions to approve the fees, they will need to choose and rely on one counsel to represent all of their interests on the issue of costs.

[120] That brings me to Mr. Govedaris who has not asked for costs and in fact opposed the request by Mr. Cohen for costs. Had Mr. Govedaris sought costs, I would have awarded costs to him on the same basis. Going forward, I expect Mr. Cohen to cooperate with Mr. Govedaris on the issue of the fees and I will only be prepared to consider awarding one set of costs on future motions to approve fees. Mr. Cohen represents a member of the class represented by counsel for the Receiver. As Mr. Govedaris represents the Mortgage Fraud Class Action, I would prefer to hear from him given the potential for conflict with the Deposit Fraud Class Action that I have already referred to.

[121] Finally, I ask that counsel for the Receiver ensure that this decision is posted on the Receiver's website as soon as possible.



SPIERS J.

RELEASED: JUNE 8, 2006

COURT FILE NO.: 05-CL-6159

DATE: 2006-06-08

**SUPERIOR COURT OF JUSTICE -
ONTARIO**

RE: UDAYAN PANDYA, Plaintiff

A N D:

COURTNEY WALLIS SIMPSON,
YORK REGION REALTY INC.,
WALLIS, SIMPSON &
ASSOCIATES, COURTNEY
WALLIS SIMPSON c.o.b. as
YORK MANAGEMENT GROUP
and as CAMCO DEVELOPMENTS
and as YORK GROUP, Defendants

COUNSEL: *Lincoln Caylor* for the
Plaintiff/Receiver

Gregory Govedaris, for the
Plaintiffs in Action # 05-CL-6178,
Glenn E. Cohen for Atlas
Holdings, D.R. Rothwell for Ajay
Pahwa and Courtney Wallis
Simpson in person

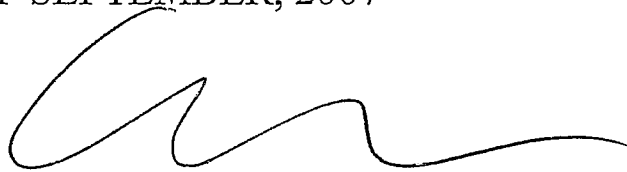
DECISION ON MOTION

SPIES J.

JUN - 8 2006

Tab X

THIS IS EXHIBIT "X" TO THE AFFIDAVIT OF
MICHAEL SOURLIS
SWORN TO BEFORE ME
THIS 11TH DAY OF SEPTEMBER, 2007



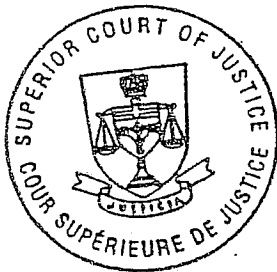
Commissioner for taking affidavits

Constantine Alexiou

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

THE HONOURABLE) THURSDAY, THE 17TH DAY OF
)
MR. JUSTICE GROUND) NOVEMBER, 2005

BETWEEN:



UDAYAN PANDYA

Plaintiff

- and -

COURTNEY WALLIS SIMPSON, YORK REGION
REALTY INC., WALLIS SIMPSON & ASSOCIATES
AND CAMEO INVESTMENTS

Defendants

In the Matter of the *Class Proceedings Act, 1992*

ORDER FOR AN APPOINTMENT OF AN INTERIM RECEIVER

THIS MOTION made by the plaintiff for an order appointing a receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Reality") pursuant to s. 101 of the *Courts of Justice Act* with investigatory and preservation powers was heard by the court this day at 393 University Avenue, Toronto.

UPON READING the affidavits of Udayan Pandya and Richard Kwasniewicz and on hearing the submissions of counsel for the plaintiff, no one appearing for the defendants

despite short notice of this matter, and upon being advised that Ms. Simpson is aware of this proceeding and that the relief sought would likely be granted if she did not attend,

1. **THIS COURT ORDERS** that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson and York Realty pursuant to s. 101 of the *Courts of Justice Act* with the powers and duties hereinafter set out.

2. **THIS COURT ORDERS** that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.

3. **THIS COURT ORDERS** that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.

4. **THIS COURT ORDERS** that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.

5. **THIS COURT ORDERS** that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

Preservation of Assets

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized for and on behalf of and in the name of any of the defendants to take possession and control of all of the present and future assets, undertaking and property of the defendants and any funds, proceeds or

other assets directly or indirectly related to the funds allegedly raised by the defendants as alleged in the statement of claim (the "Property") and any and all proceeds, receipts and disbursements arising out of or from the Property, until further order of this Court, and to act at once in respect of the Property. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Receiver is hereby expressly empowered and authorized on the Receiver's behalf, but not obligated:

- (a) to take such steps as in the opinion of the Receiver are necessary or appropriate to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable, provided that the Receiver shall not evict or dispossess any occupant of any residential dwelling without further order of this Court made on notice to such occupant;
- (b) to take such steps as in the opinion of the Receiver are necessary or appropriate to maintain control over all receipts and disbursements arising out of or from the Property;
- (c) to receive and collect all monies, debts, claims, choses in action and accounts now owed or hereafter owing to any of the defendants in respect of the Property and to exercise all remedies of any of the defendants in collecting all such monies, including, without limitation, to enforce any security held by any of the defendants and to receive and recover all funds, monies, cash, cash equivalents, negotiable securities, accounts and any other assets on deposits to banks, brokerages and other financial or other institutions;
- (d) to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange, or other documents of whatever nature in respect of any of the Property, in the name and on behalf of any of the defendants, which are necessary, desirable or convenient in, the opinion of the Receiver for any purpose pursuant to this Order;

- (e) to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property and to defend all proceedings now pending or hereafter instituted against any of the defendants or the Receiver, the prosecution of or defence of which will, in the judgment of the Receiver, be necessary to properly protect or realize on the Property or to protect the administration by the Receiver of the affairs of any of the defendants and the Property, and to settle or compromise any such proceedings which in the judgment of the Receiver should be settled;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that any such sale or disposition of Property shall, if the defendants do not consent to the same, be subject to the Court's approval;
- (g) to report to, meet with and discuss with such creditors of the defendants and their advisors as the Receiver deems appropriate including holding town hall or other meetings on all matters relating to the Property and receivership; and
- (h) to register this order in any public registry against title to any of the Property. Without limiting the generality of the foregoing this court orders that this order be registered against the real property and other assets described at Schedules "B" and "C" hereto.

7. **THIS COURT ORDERS** that no person having notice of this order shall interfere with, obstruct or in any way hinder the Receiver in the fulfillment or pursuit of its duties hereunder and that all such persons are under an obligation to deliver up to the Receiver any Property or other thing to which the Receiver is entitled to under this order. In the event that any person contests that any asset, document or thing is Property under this order or is document or record properly producible to the Receiver then that person shall first deliver up the asset in question to the Receiver or to such third party as the Receiver in its discretion may agree for safekeeping and

the person contesting the Receiver's right may thereafter, if so advised, bring an application to this Court for directions.

8. **THIS COURT ORDERS** that the Receiver may receive information from persons as to the details of their deposit of trust funds investments with Simpson and the other defendant but that the Receiver shall not be under any obligation to call for claims, validate claims or make recommendations with respect to the disbursement of funds to investors without further order of this Court.

9. **THIS COURT ORDERS** that no demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any contract, including any contract of insurance, the exercise of any right of set-off or combination of accounts, the exercise of any construction, mechanics' repair, storage or other lien, or the commencement or continuation of any proceedings under any Environmental Laws (as hereinafter defined) in any jurisdiction in which the Property may be located, shall be taken against the Receiver, with respect to the Property or any part thereof, without the prior written consent of the Receiver or leave of this Court first being obtained upon not less than seven days' notice to the Receiver.

10. **THIS COURT ORDERS** that the defendants and anyone having knowledge of this order be and they are hereby restrained, pending consent of all parties or further order of this Court:

- (a) from removing from Ontario or in any way disposing, dealing with or diminishing the value of any of the defendants' property, whether real or personal, present or future, held in Ontario or elsewhere, whether held in the defendants' names or not, pending the final determination of this action or further order of this Court;

- (b) from withdrawing or causing or permitting the withdrawal of or transferring of funds or issuing of cheques or other instruments from any of the defendants' bank accounts or investment accounts of any nature whatsoever, whether held individually or jointly with any other person, pending the final determination of this action or further order of this Honourable Court, provided that the defendants shall have leave to seek variation of this order in order to permit the withdrawal of a reasonable amount as ordinary living expenses provided that if any such order is sought the defendants must have fully complied with this order in all respects including the provision to the Receiver of the information required to be provided to the Receiver.

Documents and Investigations

11. **THIS COURT ORDERS** that the Receiver shall forthwith be entitled to take possession of and examine the defendants' books and records and make such inquiries as it deems prudent and necessary of the defendants' bankers, accountants, auditors, advisors, managers, experts, solicitors, agents, officers, employees and others in order to determine the financial status of the defendants, and shall conduct a review and, if necessary, a detailed examination of the financial records of the defendants.

12. **THIS COURT ORDERS** that the Receiver shall report to this Court at such times and in such fashion as this Court may direct.

13. **THIS COURT ORDERS** that the defendants and their accountants, auditors, advisors, agents, managers, experts, solicitors, agents, officers and employees, including, without limitation, any accountants, bankers or financial, legal, advisors and the persons set out in Schedule "A", (the "Affected Persons") shall forthwith provide to the Receiver all of the books and records relating to the defendants' financial history and dealings, including, without limitation, all ledgers, bank statements and records, cheques, financial statements, receipts, vouchers, deposit slips, contracts, agreements, accounting records, computer records (including but not limited to tapes and/or discs) or other documents or records of any kind or nature,

howsoever stored or maintained, relating to the defendants (the "Documents"). Provision of the Documents to the Receiver shall not breach any confidentiality or other non-disclosure obligations the Affected Persons might otherwise have to the defendants and it shall be deemed that the defendants shall have consented to the release of the Documents. The Receiver shall allow the defendants and their advisors reasonable access to and the ability to make copies of any and all such books and records in the possession of the Receiver. The defendants shall allow the Receiver to make, retain and take away copies of any or all of the Documents and shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver.

14. **THIS COURT ORDERS** that if any of the Documents is stored or otherwise contained on a computer or other electronic system of information storage, the defendants and all Affected Persons shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Documents, whether by way of printing same onto paper or making copies of computer discs or such other manner of retrieving and copying same as the Receiver in its discretion deems expedient. For the purposes of this paragraph, the defendants and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Documents as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, forthwith providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, passwords or other codes as may be required to gain access to the Documents.

15. **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 defendants 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, emails or other information sent or received by the defendants 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 defendants.

16. **THIS COURT ORDERS** that the Receiver shall have ongoing access to the defendants' current and future bank account statements and other financial records, copies of which shall be provided to the Receiver as and when demanded by the Receiver. The defendants and the third parties shall co-operate and consent to the distribution of such records to the Receiver.

17. **THIS COURT ORDERS** that the Receiver is empowered to demand production from third parties (including but not limited to the defendants' advisors, banks, financial institutions and the persons set out in Schedule "A") of documents relating to:

- (a) the defendants' financial affairs;
- (b) the deposit of funds received in connection with the sale of commercial real estate;
- (c) the identities of the persons who have provided deposit funds to Simpson and the other defendants;
- (d) the bank accounts or other financial records referable to the accounts into which such funds were deposited including documents referable to any withdrawal, transfer or dissipation of funds in such accounts; and
- (e) commissions, fees, expenses or other amounts paid to any persons in connection with the sale of such securities and any agreements, arrangements or any other communication with respect to the payment of such amounts;
- (f) and further directs that all such third parties (including all Affected Persons) shall co-operate fully with the Receiver, subject to claims of legal privilege.

18. **THIS COURT ORDERS** that the Receiver is empowered to compel the attendance, on two clear days written notice by letter from the Receiver or its counsel, of persons believed by the Receiver to have knowledge of the defendants' affairs for the purpose of being examined under oath by the Receiver or by such person as to whom the Receiver has or may delegate this power. In particular, and without limiting the general nature of the power conveyed by this

paragraph, the Receiver is empowered for the purposes of performing its duties hereunder to examine under oath the persons named in Schedule "A" to this order and any persons who may have received transfers of assets or funds from the defendants, provided that nothing herein shall apply, without further order of this Court, to compel any person who has been actually charged with a criminal offence to so testify and that any persons who so testify shall have the right to invoke the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedoms*. If the persons to be examined have a personal residence or regular place of business within 60 kilometres of an office of Bennett Jones LLP (Toronto, Edmonton or Calgary) such examination shall take place at such office failing which it shall take place at any place where an examination of discovery may take place under the *Rules of Civil Procedure* in the province where the examination is conducted.

19. **THIS COURT ORDERS** that Simpson shall provide to the Receiver within 7 days of service of this order an affidavit under oath specifying her knowledge on the following matters:

- (a) specifics of all corporations, partnerships, or other entities in which she has a direct or indirect interest with particulars of the nature of such interest;
- (b) specifics of all bank, brokerage or other accounts, wherever situate, in her name, the name of York Region Realty Inc., the name of any of the entities in (a) hereof or over which she has any signing authority or any other direct or indirect control;
- (c) specifics of all bank, brokerage or other accounts, where funds were deposited, all accounts to which such funds may have been transferred and the present whereabouts of such funds;
- (d) whether any assets were purchased or acquired in whole or in part with such funds and, if so, the particulars of such assets and their present location with particulars of the assets involved name of the person or entity who holds title to such assets, the date of acquisition, acquisition cost and a current estimate of value; and
- (e) specifics of any disposition of assets (including transfer of funds) in excess of \$10,000 in the last 2 years and that this affidavit shall be deemed to have been

provided by compulsion of law and its further use in any other court proceeding be subject to the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedom*.

20. **THIS COURT ORDERS** that the Receiver is authorised to enter upon the business premises of the persons set out in Schedule "A" (collectively the "Premises") and to examine anything and take away any documents or record found at the premises that the Receiver is authorised hereunder to require to be produced to it.

21. **THIS COURT ORDERS** that the Receiver shall have full power to investigate any gift, transfer, conveyance, settlement or any other disposition (a "Conveyance") of any interest in any assets, funds or any other property by the defendants to third parties (the "Conveyed Property") and to compel the production of information from any person with respect to such Conveyed Property and the circumstances surrounding the Conveyance as if such Conveyed Property was Property under this order and that the Receiver shall be at liberty to apply to the Court for any appropriate order relating to the preservation of any such Conveyed Property.

Other

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

23. **THIS COURT ORDERS** that no proceedings shall be brought against the Receiver in any Court or other tribunal unless leave of this Honourable Court is first obtained on motion on at least seven days notice to the Receiver and the parties.

24. **THIS COURT ORDERS** that all the costs of this receivership including without limitation the Receiver's fees and disbursements (including the amounts which the Receiver is obliged to pay others) and the fees and disbursements incurred by Bennett Jones LLP in carrying

out its duties herein shall be a first charge on any assets recovered in the receivership herein, subject to approval of the quantum of costs by the Court. The Receiver shall have the right to apply to the Court for approval and payment of its fees and disbursements on an interim basis provided that 15 days notice shall be given to the defendants of any such application. The Receiver shall also have the power, if so advised, to move to have the receivership terminated and to be discharged as Receiver.

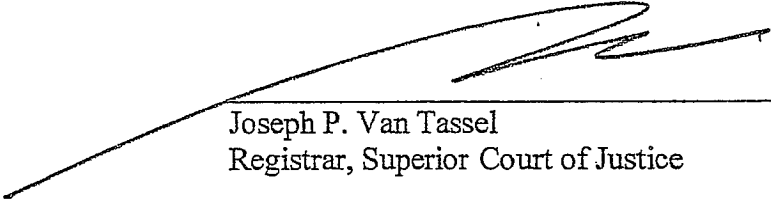
25. **THIS COURT ORDERS** that the plaintiff's costs of this motion shall be allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

26. **THIS COURT ORDERS** that the Receiver be granted leave to apply to the Court for approval to borrow and to provide whatever security as may be appropriate, if so advised.

27. **THIS COURT ORDERS** that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Emergency Plans Act 1963* (Ontario), the *Ontario Water Resources Act*, the *Occupational Health and Safety Act* (Ontario) or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in

control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

28. **THIS COURT SEEKS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada and any court or any judicial, regulatory or administrative body of any other nations and states and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this order.



Joseph P. Van Tassel
Registrar, Superior Court of Justice

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

NOV 17 2005

PER/PAR

MB

Schedule "A"

1. Wayne Simpson
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3
2. York Management Group
587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7G9
3. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
4. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
5. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
6. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
7. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
8. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
9. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
10. HSBC
Richmond Hill
11. Laurentian Bank
Newmarket, Ontario

Schedule "B"

1. 587 Cam Fella Boulevard
Stouffville, Ontario
L4A 7H3

Legal Description:

PCL 19-1 SEC 65 M2296: LT 19 PL 65R2296: Whitchurch-Stouffville

2. PIN 03715-0004
Whitechurch, Ontario

Legal DescriptionL

PT LT 30 PL 54 Stouffville; PT LT 31 PL54 Stouffville, PT LT 40 PL 54 Stouffville; PT
LT 41 PL 54 Stouffville PTS 1, 7 65R2555; S/T R221467, R221469

3. 1038 Kawagama Lake Road
Dorset, Ontario

Legal Description:

Con 13 PT LOT 1 RP19R3154, Parts 1, 6, 7
Dorset, Algonquin Highlands Township

4. PIN 03710-0193/0194
Stouffville, Ontario

Legal Description:

PT LTS 49 & 50
PL 70 Stouffville PT 2 65R256J4 Whitchurch-Stouffville

Schedule "C"

1. Royal Bank of Canada
Transit No. 02982
47 Main Street
Markham, Ontario
2. Royal Bank of Canada
Davis and Highway 404 Branch
Toronto, Ontario
3. Canadian Imperial Bank of Commerce
Transit No. 01642
4360 Highway 7
Unionville, Ontario
4. Bank of Montreal
Town Square Branch
Richmond Hill, Ontario
5. TD Canada Trust
Town Square Branch
Richmond Hill, Ontario
6. TD Canada Trust
Davis and Highway 404 Branch
Toronto, Ontario
7. Bank of Nova Scotia
Davis and Highway 404 Branch
Toronto, Ontario
8. HSBC
Richmond Hill
9. Laurentian Bank
Newmarket, Ontario

Udayan Pandya
Plaintiff

v.

Courtney Wallis Simpson *et al.*
Defendants

Court File No.: 05-CL-6159

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

In the matter of the *Class Proceedings*
Act, 1992

Proceeding commenced at Toronto

ORDER

BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan
Tel: (416) 777-6121 / 4629
Fax: (416) 863-1716
LSUC Reg. No. 37030L/43529J

Solicitors for the plaintiff