

1
2 IN THE MATTER OF THE SECURITIES ACT
3 R.S.O. 1990, c. S.5, as amended (the "Act")
4

5 - and -

6 IN THE MATTER OF
7 ROBERT THOMISLAV ADZIJA, LARRY ALLEN AYRES, DAVID ARTHUR
8 BENDING, MARLENE BERRY, DOUGLAS CROSS, ALLAN JOSEPH
9 DORSEY, ALLAN EIZENGA, GUY FANGEAT, RICHARD JULES FANEAT,
10 MICHAEL HERSEY, GEORGE EDWARD HOLMES, TODD MICHAEL
11 JOHNSTON, MICHAEL THOMAS PETER KENNELLY, JOHN DOUGLAS
12 KIRBY, ERNEST KISS, ARTHUR KRICK, FRANK ALAN LATAM,
13 BRIAN LAWRENCE, LUKE JOHN MCGEE, RON MASSCHAELE,
14 JOHN NEWMAN, RANDALL NOVAK, NORMAND RIOPELLE,
15 ROBERT LOUIS RIZZUTO, AND MICHAEL VAUGHAN
16

17 IN CAMERA

18 SETTLEMENT HEARING VIA TELECONFERENCE

19
20 HELD ON: Monday, March 4, 2002
21
22 HELD AT: Ontario Securities Commission
23 20 Queen Street West
24 17th Floor
25 Toronto, Ontario
26
27 HELD BEFORE: Paul M. Moore, Q.C. - Chair
28 R. Stephen Paddon, Q.C.
29 Kerry D. Adams
30

31 APPEARANCES:

32 Tracy Pratt For the Commission
33 Larry Ayres Self-represented
34 Ernest Kiss Self-represented
35 Arthur Krick Self-represented
36 Ron Masschaele Self-represented
37 Michael Vaughan Jerome Collins

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1 --- Upon commencing at 10:00 a.m.

2 CHAIR: This proceeding is a settlement
3 hearing at the Ontario Securities Commission in the matter
4 of Robert Thomislav Adzija, Larry Allen Ayres, David
5 Arthur Bending, Marlene Berry, Douglas Cross, Allan Joseph
6 Dorsey, Allan Eizenga, Guy Fangeat, Richard Jules Fangeat,
7 Michael Hersey, George Edward Holmes, Todd Michael
8 Johnston, Michael Thomas Peter Kennelly, John Douglas
9 Kirby, Ernest Kiss, Arthur Krick, Frank Alan Latam, Brian
10 Lawrence, Luke John McGee, Ron Masschaele, John Newman,
11 Randall Novak, Normand Riopelle, Robert Louis Rizzuto and
12 Michael Vaughan.

13 We have before us settlement agreements
14 from the staff on the one part and one for Mr. Krick, one
15 for Mr. Kiss, one for Mr. Ayres, one for Mr. Vaughan and
16 one for Mr. Massachaele, and those are the matters that we
17 will be dealing with this morning.

18 My name is Paul Moore. I'm a vice-chair of
19 the Ontario Securities Commission. I will be acting as
20 chair of this panel. To my left is Commissioner Adams and
21 to my right is Commissioner Paddon. Counsel, would you
22 introduce yourself, please?

23 MS. PRATT: Yes. It's Tracy Pratt here for
24 staff, and with me is Paul De Souza, who is an
25 investigator in the enforcement branch.

26 I understand that we've got all the
27 respondents on the line and perhaps we can just go through
28 this to make sure they're there. Ernest Kiss?

29 MR. KISS: Yes.

30 MS. PRATT: Larry Ayres?

31 MR. AYRES: Yes.

32 MS. PRATT: Arthur Krick?

33 MR. KRICK: Yes.

34 MS. PRATT: Ron Masschaele?

35 MR. MASSCHAELE: Yes.

36 MS. PRATT: And Jerry Collins is
37 representing Mr. Vaughan.

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1 MR. COLLINS: That's correct, and
2 Mr. Vaughan is with me here.

3 MS. PRATT: Thank you.

4 I understand that three of the respondents
5 at the outset would like to request for an in camera
6 hearing and I will let them to speak to that. I
7 understand that Mr. Ayres, Kiss and Masschaele would like
8 to make that request.

9 CHAIR: Before they speak to it, what is
10 staff's position on that request?

11 MS. PRATT: Staff is taking no position on
12 those requests.

13 CHAIR: No position on that request. Just
14 one minute.

15 We do not need to hear from counsel. We
16 will grant the motion and we will go in camera.

17 --- IN CAMERA COMMENCES.

18 MS. PRATT: Thank you. And I would just
19 like to point out rule 6 of the practice guidelines that
20 talks that the reasons would also be delivered in camera
21 in the event that the settlements are rejected.

22 CHAIR: That is understood.

23 MS. PRATT: Thank you.

24 Briefly then, in terms of background, the
25 Notice of Hearing in this matter was issued on September
26 24th, 1998, and that's found at tab 2 of the submissions
27 of staff filed with the Commission.

28 As you have noted, there are 25 respondents
29 in this matter. In staff's view, there is a continuum of
30 misconduct among these respondents. The respondents that
31 are before you today fall, in staff's view, on the low end
32 of the continuum.

33 The statement of allegations is at tab 3 of
34 the brief. On September 24th, 1998 there was also a
35 temporary order issued by this commission. That is found
36 at tab 4 of the submissions.

37 With respect to the respondents before the

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1 panel today, the Commission ordered that certain
2 registration exemptions under the Act did not apply. This
3 order has been extended from time to time. It is in place
4 today and is in place to the conclusion of a hearing or
5 until further order of the Commission.

6 Staff has entered into settlement
7 agreements with each of the five respondents before the
8 Commission. The facts are fairly straightforward. They
9 are set out in each of the settlement agreements.

10 All of the respondents sold Saxton
11 securities to Ontario investors. None of these
12 respondents were registered with the Commission to sell
13 securities. Further, prospectuses were not filed and no
14 prospectus exemptions were available to the Saxton group
15 of companies. Therefore, these respondents all
16 participated in an illegal distribution of the Saxton
17 securities.

18 All of these respondents cooperated with
19 staff's investigation of this matter from the outset. All
20 have recognized their misconduct, agreed to sanctions, as
21 set out in the settlement agreements, and in so doing,
22 staff has avoided the necessity of a full hearing. There
23 are some mitigating factors that relate to each of the
24 respondents, and that's set out in the submissions.

25 What I was going to propose to do, unless
26 there were some general questions that related to the
27 facts that relate to every respondent, I was going to deal
28 with each respondent separately, make a couple of
29 submissions. Then if the respondent would like to say
30 something, they could do so and then answer any questions.

31 CHAIR: That would be fine. Please proceed
32 on the cases.

33 MS. PRATT: And perhaps what would be
34 useful is to turn to page 3 of the written submissions.
35 That's at tab 1 of the brief, page 3, under the heading
36 Circumstances Relevant to Settlements. And I'll begin
37 with Mr. Kiss.

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1 Mr. Kiss sold to three Ontario investors
2 Saxton securities in the total amount of approximately a
3 hundred thousand dollars. That's the only additional
4 information beyond what I have already set out that
5 applies to all respondents.

6 Mr. Kiss, would you like to make any
7 submissions?

8 MR. KISS: Well, the only thing I could say
9 is that, as you know, I was told that I was the
10 shareholder of Saxton and just that I didn't need to be
11 registered since I was selling company-owned securities,
12 as it wouldn't be mentioned that they were securities, and
13 I guess that's probably the only thing I have to say at
14 this point that is relevant.

15 MS. PRATT: Does the panel have any
16 questions relating to Mr. Kiss?

17 CHAIR: I'm not sure I heard completely.
18 Could you repeat what you said, please?

19 MR. KISS: Yes. I was under the
20 understanding that as a shareholder of even one share of
21 Saxton, the investment that was being sold would -- since
22 I was a shareholder of the company, I was basically
23 selling my own investments and I didn't need to register
24 for that reason. So I had no idea that this was the
25 requirement.

26 CHAIR: Okay. So you weren't aware of the
27 requirement?

28 MR. KISS: No.

29 CHAIR: Okay. Thank you.

30 MS. PRATT: I might add that what Mr. Kiss
31 has just said does not form part of the statement of
32 facts, but staff is satisfied that that information go to
33 the panel.

34 CHAIR: Thank you.

35 MS. PRATT: Moving on then to Mr. Ayres, in
36 addition to the comments I have already made, Mr. Ayres
37 sold to approximately 18 or 19 investors, for a total

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1 amount of a hundred thousand dollars excluding securities
2 sold to his own immediate family. Mr. Ayres and his
3 family invested significantly themselves in the Saxton
4 securities, and at this point presumably there will be a
5 significant loss given what we know about the value of the
6 Saxton assets as set out in the settlement agreement.

7 Mr. Ayres, would you like to make any
8 submissions?

9 MR. AYRES: I would like to say that I
10 didn't think that I was doing anything wrong at that time.
11 We had a meeting with Luke McGee and Michael Tibolla at
12 Ron Masschaele's house at one time, and we asked them
13 point blank if we sold this, that we would need a licence,
14 and they explained to us that we wouldn't, and I guess had
15 I known that this was not, you know, the thing to do, I
16 certainly wouldn't have done it. I guess that's about all
17 I have to say.

18 MS. PRATT: Again, these are facts outside
19 of the settlement agreement, but staff is satisfied that
20 they go before the panel.

21 I may just add, for the panel's
22 information, Mr. McGee, whom Mr. Ayres just referenced, is
23 Luke John McGee, one of the other respondents in this
24 matter. Mr. McGee was the vice-president of Saxton and a
25 lawyer.

26 Does the panel have any questions?

27 CHAIR: Just to clarify, there is no
28 settlement agreement with Mr. McGee today?

29 MS. PRATT: There is not, correct.

30 CHAIR: Thanks. No questions.

31 MS. PRATT: On that point, there are no
32 other settlement agreements with any of the other named
33 respondents at this point.

34 Moving on then to Mr. Krick, Mr. Krick sold
35 to 17 Ontario investors Saxton securities in the total
36 amount of approximately \$292,000. Mr. Krick did inform
37 each purchaser of the Saxton securities that that

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1 investment was speculative.
2 Mr. Krick, do you wish to make any
3 submissions?
4 MR. KRICK: Yes. When I got involved in
5 this in 1997 --
6 MS. PRATT: Sorry, we can't hear you,
7 Mr. Krick. Can you please speak up a bit louder?
8 MR. KRICK: Can you hear me now?
9 MS. PRATT: That's better. Thank you.
10 MR. KRICK: When I got involved in 1997
11 through the Dorsey Insurance Group, I understood that it
12 was a speculative business and it will pay dividends out
13 at ten-and-a-half, ten-and-a-quarter percent --
14 MS. PRATT: Sorry, we're having some
15 difficulties catching your words, Mr. Krick.
16 MR. KRICK: So I started doing all of this
17 back in '97 through the Dorsey Insurance Group in
18 Brantford, and I understood then it was a speculative -- a
19 risk involved, but nobody mentioned to me -- I asked Luke
20 McGee and Al Eizenga if I needed a security licence.
21 They said no. It was like a GIC, five year, money paid
22 out, and so, therefore, I went ahead, and I knew there was
23 some risk involved in Cuba and there could be, well, no
24 problem like this down the road, but that there was to be
25 a risk and there might, and that's why I never took
26 people -- too much money at one time, and it turned out a
27 big problem.
28 MS. PRATT: Okay. Again, Mr. Krick's
29 comments speak to facts outside of the settlement
30 agreement. Staff is satisfied that they be considered.
31 Mr. Krick mentioned a Mr. Eizenga. That is
32 Allan Eizenga, one of the named respondents in this
33 matter. Mr. Eizenga was the president of Saxton. I also
34 believe Mr. Krick mentioned the Dorsey Group out of
35 Brantford. He's referencing another of the respondent's,
36 Allan Joseph Dorsey, and I believe that Randall Novak was
37 also part of the Dorsey Group out of Brantford, again,

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1 other respondents in this matter.

2 Finally, Mr. Krick mentioned Cuba, and you
3 will see in the facts of the settlement agreement a
4 reference to Saxton had held out to the public that it was
5 investing in entities in Cuba and other Caribbean
6 countries, and that is what Mr. Krick is referencing.

7 MR. PADDON: Did anybody, any of the
8 investors get any money back?

9 MS. PRATT: At this point I don't believe
10 they have. There is an underlying business in Cuba and
11 again, staff is not aware of all of the details, but it's
12 referenced in the statement of facts that there was some
13 business going on in Cuba and as I understand it, that
14 business or a part of that business is still operating. I
15 know that there is an ongoing effort by certain investors
16 to seek restitution of their monies but as I understand
17 it, that has not proved fruitful to this point.

18 CHAIR: And, counsel, I believe that agreed
19 fact number 6 is that in early 1999 KPMG reported that the
20 offering corporations had raised approximately 37 million
21 from investors. All funds invested in the offering
22 corporations had been transferred to Saxton. At that
23 time, KPMG held the view that the value of the Saxton
24 assets at its highest as reported by related companies was
25 approximately \$5.5 million.

26 MS. PRATT: That's correct, but we don't
27 have anymore recent information than what's in the
28 settlement agreement.

29 CHAIR: Thank you.

30 MS. PRATT: Moving on then to Mr. Vaughan,
31 Mr. Vaughan sold the Saxton securities to two Ontario
32 investors for an approximate total of \$35,000.

33 Mr. Collins, did you wish to make any
34 submissions on behalf of your client?

35 MR. COLLINS: Just a minor one. This is
36 Jerry Collins speaking from St. Thomas. Mr. Vaughan is
37 with me. I would reiterate some of the things that you

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1 have already heard.

2 Mr. Vaughan waited about three years before
3 getting involved in this. He watched it from the
4 sidelines and saw some very major investors in this city
5 get involved. When he was convinced that the investment
6 was on the up-and-up and only then did he get involved and
7 he addressed Robert Adzija, one of the respondents, as
8 well as Richard Fangeat, another respondent, with pointed
9 questions about whether these were securities, whether a
10 licence was required, and was advised that, no, because
11 they were shares in a company that he held shares in, he
12 wouldn't need to be registered.

13 He is a licensed insurance broker under
14 RIBO and certainly would have had no intention selling
15 these securities against the law and had he any idea that
16 it would have been. I think that that is pretty well all
17 that we would have to put forth.

18 MS. PRATT: Thank you.

19 I think that Mr. Collins pointed out quite
20 rightly that both Mr. Adzija and Mr. Fangeat, those are
21 both named respondents in this matter, and again, the
22 facts recounted to you by Mr. Collins are not within the
23 body of the settlement agreement, but staff is satisfied
24 that they be considered by the panel.

25 I might just mention Mr. Fangeat at some
26 point held a position at Saxton. He effectively was the
27 leader of the salespeople, if I can put it that way.

28 CHAIR: Thank you.

29 MS. PRATT: So maybe we can move on to
30 Mr. Masschaele?

31 CHAIR: Yes.

32 MS. PRATT: Mr. Masschaele then sold the
33 Saxton securities to thirty-odd Ontario investors for an
34 approximate total value of \$550,000, when you exclude the
35 securities sold to Mr. Masschaele's direct family. Like
36 Mr. Ayres, Mr. Masschaele and his family made a
37 significant investment in the Saxton securities, which at

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1 this point appears to be a loss for Mr. Masschaele.
2 Mr. Masschaele, do you wish to make any
3 submissions to the panel?
4 MR. MASSCHAELE: I'd like to turn the clock
5 back about three years. I believe again, like Larry said,
6 that we had Mr. McGee visit my house and Mr. Tibolla --
7 MS. PRATT: Sorry to interrupt,
8 Mr. Masschaele, but we're having problems hearing you, so
9 perhaps if you could talk a little bit more slowly and a
10 little louder. Thank you.
11 MR. MASSCHAELE: I'll talk louder.
12 Like I said, the things that Larry Ayres
13 said, that we had Mr. McGee at my house and Mr. Tibolla
14 and at that time then we asked them, you know, could we
15 sell this, and they were asking us to sell the product and
16 they said it was no problem. It was under the seed cap
17 corporation. They did it in 1993. So we were assuming
18 that everything was up above board, otherwise, believe me,
19 there would be no way we would put our family's money,
20 including our friends' money, into this thing at all.
21 Just like everybody else has said, we just didn't know at
22 the time.
23 MS. PRATT: Was the panel able to
24 understand Mr. Masschaele?
25 CHAIR: Yes. Yes, we were. Thank you.
26 MS. PRATT: Okay. And the only name, I
27 believe, that Mr. Masschaele raised that we haven't heard
28 before is Mr. Tibolla. Mr. Tibolla is not a named
29 respondent. At one point he was the president of Saxton.
30 MR. MASSCHAELE: Also a lawyer.
31 MS. PRATT: Pardon me?
32 MR. MASSCHAELE: Also a lawyer.
33 MS. PRATT: Yes.
34 MR. MASSCHAELE: So we were trusting all
35 these lawyers.
36 MS. PRATT: Does the panel have any
37 questions as it relates to Mr. Masschaele?

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1 CHAIR: No questions.
2 MS. PRATT: In conclusion then, with a view
3 to the Commission's mandate and the principles relevant to
4 sanctions, staff is of the view that these settlements are
5 in the public interest and that the sanctions are
6 commensurate with the misconduct in these circumstances.
7 CHAIR: Thank you, counsel. Any questions?
8 MR. PADDON: No questions.
9 CHAIR: Any questions? We will take a
10 five-minute adjournment and then we will come back with
11 our decision.
12 MS. PRATT: Thank you.
13 --- Adjournment commencing at 10:24 a.m.
14 --- Upon resuming at 10:28 a.m.
15 CHAIR: The panel has decided that we will
16 approve these settlement agreements as being in the public
17 interest. Part of the sanction is a reprimand of the
18 respondents.
19 Normally we would insist that the
20 respondents be physically present; however, they are
21 present by telephone. In this case we think it's
22 appropriate, for convenience, to have a telephone hearing,
23 but I would normally ask the respondents to stand;
24 however, please remain seated.
25 We're satisfied that each of the
26 respondents has learned their lesson and there's no reason
27 to believe that there's going to be a repeat. We believe
28 that the sanctions are appropriate. We feel that in some
29 respects each of the respondents has been a victim, but
30 ignorance of the law is no excuse.
31 This situation has shown the absolute
32 necessity for independent verification. It's not enough
33 to get persons involved in a transaction, even if they are
34 professionals, to give opinions as to whether things are
35 right or not. People who have a conflict of interest,
36 because they are investors themselves or promoters, are
37 not really a good source of due diligence. So that it's

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1 unfortunate that the right questions were asked but they
2 were not asked of the right people; and had independent
3 counsel been asked the questions, the answers wouldn't
4 have been without conflict of interest; and if competent
5 counsel were asked, different answers would have been
6 given.

7 The second thing is once each of you
8 brought in others, families, friends, then not only were
9 you victims but you also became maybe willing or
10 unknowingly, but you became perpetrators. You
11 participated in unregistered activity, and the law is
12 clear that this is not to be permitted, and we have to
13 make sure that appropriate sanctions are in place so that
14 this will not happen again and the proper message will be
15 sent to others.

16 So we believe, partly in view of the time
17 that you have been struggling with this matter, we think
18 the sanctions are appropriate in the circumstances. We
19 think you have learned your lesson, and we don't chastise
20 you but we do reprimand you.

21 Anything further to be added, Commissioner
22 Adams?

23 MS. ADAMS: No.

24 CHAIR: Commissioner Paddon?

25 MR. PADDON: No.

26 CHAIR: Do counsel wish to make any further
27 statements?

28 MS. PRATT: No, that's fine. Thank you.

29 CHAIR: Then this matter is terminated and
30 we will sign the order. Thank you.

31 MS. PRATT: Thank you. So it's now over.
32 But just so that the people on the telephone understand
33 what's happening, the orders are being signed as we speak.
34 I will send to each of you a copy of the signed order.
35 The order takes effect as of today and so the sanctions
36 will commence as of today.

37 Does anyone have any questions about that?

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1 Mr. Kiss?
2 MR. KISS: No, that's fine.
3 MS. PRATT: Mr. Krick?
4 MR. KRICK: That's fine.
5 MS. PRATT: Mr. Ayres?
6 MR. AYRES: That's fine.
7 MS. PRATT: Mr. Masschaele?
8 MR. MASSCHAELE: No problem.
9 MS. PRATT: Mr. Collins?
10 MR. COLLINS: Yes, that's fine.
11 MS. PRATT: Okay. Thank you very much
12 then. You can now hang up.
13 --- Whereupon hearing is concluded at 10:32 a.m.
14 I HEREBY CERTIFY THE FOREGOING
15 to be a true and accurate
16 transcription of my shorthand notes
17 to the best of my skill and ability.
18
19
20
21 Susanna P. Mascherin, CSR
22 Computer-Aided Transcription

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