

**IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
ALLAN EIZENGA, RICHARD JULES FANGEAT, MICHAEL HERSEY,
LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND MICHAEL HERSEY**

I. INTRODUCTION

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

- (a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent Michael Hersey ("Hersey") permanently or for such time as the Commission may direct; and
- (b) such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that the exemptions contained in subsections 35(1)21 and 35(2)10 of the Act do not apply to Hersey (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding respecting Hersey initiated by the Notice of Hearing in accordance with the terms and conditions

set out below. Hersey consents to the making of an order against him in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

Acknowledgement

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Hersey agree with the facts set out in paragraphs 5 through 39 of this Settlement Agreement.

Facts

(i) The Saxton Securities

5. Saxton Investments Ltd. ("Saxton") was incorporated on January 13, 1995. Allan Eizenga ("Eizenga") was an officer and a director of Saxton. Saxton and Eizenga established numerous other corporations. Eizenga was the president and a director of each of these companies.

6. Between January 1995 and September 1998, Ontario investors were sold securities of one or more of the following companies (the "Offering Corporations"):

The Saxton Trading Corp.
The Saxton Export Corp.
The Saxton Export (II) Corp.
The Saxton Export (III) Corp.
The Saxton Export (IV) Corp.
The Saxton Export (V) Corp.
The Saxton Export (VI) Corp.
The Saxton Export (VII) Corp.
The Saxton Export (VIII) Corp.
The Saxton Export (IX) Corp.
The Saxton Export (X) Corp.
The Saxton Export (XI) Corp.
The Saxton Export (XII) Corp.
The Saxton Export (XIII) Corp.
The Saxton Export (XIV) Corp.
The Saxton Export (XV) Corp.
The Saxton Export (XVI) Corp.
The Saxton Export (XVII) Corp.
The Saxton Export (XVIII) Corp.
The Saxton Export (XIX) Corp.
The Saxton Export (XX) Corp.
The Saxton Export (XXI) Corp.
The Saxton Export (XXII) Corp.
The Saxton Export (XXIII) Corp.
The Saxton Export (XXIV) Corp.

The Saxton Export (XXV) Corp.
The Saxton Export (XXVI) Corp.
The Saxton Export (XXVII) Corp.
The Saxton Export (XXVIII) Corp.
The Saxton Export (XXIX) Corp.
The Saxton Export (XXX) Corp.
The Saxton Export (XXXI) Corp.
The Saxton Export (XXXII) Corp.
The Saxton Export (XXXIII) Corp.
The Saxton Export (XXXIV) Corp.
The Saxton Export (XXXV) Corp.
The Saxton Export (XXXVI) Corp.
The Saxton Export (XXXVII) Corp.
The Saxton Export (XXXVIII) Corp.

7. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. The sales of shares of the Offering Corporations (the “Saxton Securities”) constituted trades in securities of an issuer that had not been previously issued.

8. The distribution of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or a prospectus with the Commission. No Offering Corporation was issued a receipt for a prospectus by the Commission. None of the Offering Corporations filed an Offering Memorandum or a Form 20 with the Commission.

9. The Offering Corporations purported to rely on the “seed capital” prospectus exemption contained in subparagraph 72(1)(p) of the Act. Neither this exemption, nor any other prospectus exemption, was available to them.

10. None of the exemptions from the registration requirements in Ontario securities law was available for the sale of the Saxton Securities.

11. On or about October 7, 1998, the Court appointed KPMG Inc. (“KPMG”) as the custodian of Saxton’s assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest [as reported by a related company, Sussex Group Ltd. (“Sussex”)], was approximately \$5.5 million. Sussex currently is being wound down by a court-appointed manager.

12. The Saxton Group was a trade name that encompassed a complex network of related companies including Saxton, the Offering Corporations and Sussex Admiral Group Limited (Barbados), later renamed Sussex.

13. The Saxton Group’s core business was the development and manufacturing of beverage and food products for the hospitality and tourist industries in Cuba and elsewhere in the Caribbean. Sussex was the Saxton Group’s operating company.

14. The primary function of every Offering Corporation was to raise investment capital for the Saxton Group's operations in Cuba and elsewhere. The Offering Corporations financed Sussex's activities. Funds raised through the Offering Corporations were pooled and transferred to Saxton. Saxton, in turn, invested in the Saxton Group's operations. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies. Investors associated their investment with the Saxton Group, not the Offering Corporations.

15. The Saxton products were marketed and sold as a no, or low, risk investment notwithstanding that the Saxton Securities were described in the Offering Memoranda as "speculative".

(ii) Hersey's Sales of the Saxton Securities

16. During the material time, Hersey was licensed to sell insurance products. Hersey has never been registered with the Commission to trade securities.

17. Hersey participated in the illegal distributions, and engaged in unregistered trading, of the Saxton Securities. Between April 1995 and April 1996, Hersey sold in excess of \$2 million worth of the Saxton Securities to over 30 Ontario investors. Most of Hersey's clients purchased the Saxton Securities for their RRSP accounts. Many of the clients to whom Hersey sold such Securities had purchased insurance products from him and trusted him implicitly.

18. Hersey misrepresented to his clients the nature and quality of the Saxton Securities. Hersey sold such Securities as a guaranteed equity product. Although investors purchased shares, they were promised an annual rate of return in excess of 15%. Hersey told his clients that the principal invested, plus any accumulated compounded interest, could be liquidated at any time.

19. Hersey failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Hersey never provided an Offering Memorandum to his clients. The only documentation clients received prior to a purchase of the Securities was vague promotional material prepared by the Saxton Group. Although Hersey represents to Staff that Eizenga told him that an Offering Memorandum ultimately would be sent to each investor, Hersey did not determine whether or not this occurred.

20. Hersey failed to make the appropriate independent inquiries and conduct the necessary due diligence before he sold the Saxton Securities to his clients. Hersey spoke only to Saxton insiders namely Eizenga, Luke McGee (Saxton's vice-president until December 1997 and a lawyer by training) and Rick Fangeat (a salesperson and the liaison between the other salespeople and Saxton management) respecting the nature of the Cuban operations and their profitability. He never received, or reviewed, financial statements. Hersey gave certain clients the option to speak directly with Eizenga or Luke McGee ("McGee") in connection with their purchase of the Saxton Securities.

21. Hersey earned approximately \$43,000 commission on his sales of the Saxton Securities.

22. In or about the spring of 1996, and upon learning of James Sylvester's role in the Saxton Group, Hersey stopped selling the Saxton Securities and focused on establishing his own investment products.

(iii) Hersey's Sales of the SecurCorp Financial Inc. Securities

23. In or about December 1992, Hersey incorporated Professional Insurance Management Inc. ("Professional Insurance") as a vehicle through which he could offer clients insurance products. SecurCorp Financial Inc. ("SecurCorp") was incorporated in September 1996, with Hersey as the company's sole officer and director.

24. SecurCorp purported to be a Canadian company that owned or invested in other, largely off-shore, companies. SecurCorp offered investors high yield guaranteed investment products (the "SecurCorp Securities"). Clients could purchase: (a) a one to five year term "guaranteed investment account" that offered a 19% to 25% compounding rate of return; or (b) a two, three or five term interest in SecurCorp's developing beverage or hotel/beer businesses. This promised investors a 25% return on maturity.

25. The distribution of the SecurCorp Securities contravened Ontario securities law. SecurCorp did not file a preliminary prospectus or a prospectus with the Commission. It did not file an Offering Memorandum or Form 20 with the Commission. None of the prospectus or registration exemptions were available to SecurCorp or Hersey.

26. Between 1996 and 1999, Hersey participated in the illegal distribution, and engaged in unregistered trading, of the SecurCorp Securities. Hersey sold in excess of \$700,000.00 worth of such Securities to Ontario investors. He recommended to many clients that purchased the Saxton Securities that they transfer their money to SecurCorp.

27. SecurCorp's beverage and hotel/brewery projects were located in Cuba and were in the initial development stages. Investors' funds were being raised for capital expenditures and other expenses. There were no operating businesses generating revenue. The return promised to investors by Hersey was premised only on Hersey's expectation that by the time the investment matured, the businesses would be sufficiently profitable to pay.

28. Hersey misrepresented the nature and quality of the SecurCorp Securities. He marketed the SecurCorp products as RRSP eligible and fully insured (deposit plus annual returns).

29. Hersey failed to provide his clients with access to substantially the same information concerning the SecurCorp Securities that a prospectus filed under the Act would provide. None of Hersey's clients received an Offering Memorandum in connection with their purchase of such Securities. SecurCorp never produced an Offering Memorandum or any type of financial statements.

30. Certain Hersey clients say that Hersey told them that they had purchased SecurCorp Securities when in fact their money was invested in Sussex International Ltd (see paragraphs 32 to 37 below).

31. By the spring of 1998, Hersey was aware that the SecurCorp Cuban projects were unlikely to succeed. Rick Fangeat (“Fangeat”) approached Hersey with another investment vehicle, Sussex International Ltd. (“Sussex International”).

(iv) Hersey’s Sales of the Sussex International Securities

32. Sussex International was an Ontario corporation. In 1998, Fangeat was Sussex International’s sole officer and director.

33. Sussex International offered investors the opportunity to purchase shares in the company (the “Sussex International Securities”). Sussex International was another vehicle through which the Saxton operations in Cuba were financed.

34. The distribution of the Sussex International Securities contravened Ontario securities law. Sussex International did not file a preliminary prospectus or a prospectus with the Commission. It did not prepare or file an Offering Memorandum with the Commission. None of the prospectus exemptions were available to Sussex International. None of the registration exemptions were available to Hersey.

35. Between May and September 1998, Hersey participated in the illegal distribution, and engaged in unregistered trading, of the Sussex International Securities. Hersey failed to provide his clients with access to substantially the same information concerning the Sussex International Securities that a prospectus filed under the Act would provide. None of Hersey’s clients received an Offering Memorandum in connection with their purchase of the Sussex International Securities. Sussex International never prepared an Offering Memorandum or any financial statements.

36. Hersey misrepresented to his clients the nature and quality of the Sussex International Securities. Hersey told clients that their investments in Sussex International were guaranteed and RRSP-eligible.

37. Certain Hersey clients say that he moved their money from SecurCorp to the Sussex International Securities without their knowledge.

(v) Hersey’s Sale of Securities Post-September 1998

38. In February 1999, Hersey sold Securcorp Securities (investment certificate in the amount of \$16,483.84 at a rate of 10.5% compounding annually maturing February 6, 2001) to one of his clients. Hersey engaged in such unregistered trading notwithstanding the commencement of a Commission proceeding against him and in face of the Temporary Order.

39. The conduct of Hersey was contrary to Ontario securities law and the public interest.

IV. HERSEY'S POSITION

40. Hersey takes the position and represents to Staff that:
- (a) With respect to paragraph 16 above, when Eizenga approached him in 1995 to sell the Saxton Securities, Eizenga told him that he did not need a special license to sell such Securities to his insurance clients. Eizenga told Hersey that he had a legal opinion to that effect;
 - (b) With respect to paragraphs 27 and 28 above, there was insurance in place in Cuba respecting the hotel/brewery site;
 - (c) With reference to paragraphs 32 through 34 above, he believed that Sussex International was not involved with Saxton but was financing similar (but different) Cuban operations in the same industries; and
 - (d) With reference to paragraph 38 above, pursuant to the client's prior instructions, he "rolled over" the investment. He did not believe that such conduct constituted a trade or sale of a security.

V. TERMS OF SETTLEMENT

41. Hersey agrees to the following terms of settlement:
- (a) the making of an order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by Hersey cease for twenty years with the exception that, after five years from the date of the approval of this settlement, Hersey is permitted to trade securities for his own account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:
 - (a) referred to in clause 1 of subsection 35(2) of the Act; or
 - (b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or
 - (c) issued by mutual funds that are reporting issuers in Ontario;
 - (iii) that Hersey is prohibited from becoming or acting as a director or officer of any issuer for twenty years;
 - (iv) reprimanding Hersey; and
 - (v) that the Temporary Order no longer has any force or effect; and

- (b) Hersey will carry out the permitted trading in paragraph 41(a)(ii) through accounts opened in his name only. Any existing accounts not in Hersey's name but in which he has a beneficial ownership or interest will be closed within 10 days of the approval of this settlement.

VI. STAFF COMMITMENT

42. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Hersey in relation to the facts set out in Part III of this Settlement Agreement.

VII. APPROVAL OF SETTLEMENT

43. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for May 26, 2004 at 11:30 a.m. or such other date as may be agreed to by Staff and Hersey (the "Settlement Hearing"). Hersey will attend in person at the Settlement Hearing.

44. Counsel for Staff or Hersey may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Hersey agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

45. If this settlement is approved by the Commission, Hersey agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

46. Staff and Hersey agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

47. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Hersey leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Hersey;
- (b) Staff and Hersey shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;
- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Hersey or as may be required by law; and
- (d) Hersey agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the

Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

48. Except as permitted under paragraph 44 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Hersey until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Hersey, or as may be required by law.

49. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

50. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement.

51. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 19th day of May, 2004

"Gary Longwarth"
WITNESS

"Michael Hersey"
MICHAEL HERSEY

DATED this 25th day of May, 2004

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

"Michael Watson"
MICHAEL WATSON
Director, Enforcement Branch