

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

-and-

IN THE MATTER OF SALLY DAUB

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated January 16, 2003 (the “Notice of Hearing”), the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 and s. 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it is in the public interest to make an Order that:
 - (a) an order pursuant to subsection 127(1) clause 3 of the Act that the exemptions contained in Ontario securities law, particularly Rule 45-503, Part 3, Section 3.1, that exempts trades by a listed issuer of its own issues to executives, not apply to ATI for such period as is specified in the order;
 - (b) an order pursuant to subsection 127(1) clause 4 that ATI submit to a review of its practices and procedures and institute such changes as may be ordered by the Commission;
 - (c) an order pursuant to subsection 127(1) clause 6 that the Respondents be reprimanded;

- (d) an order pursuant to subsection 127(1) clause 2 that trading in securities by K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae, or Sally Daub cease permanently or for such period as specified in the order;
- (e) an order pursuant to subsection 127(1) clause 3 that any exemptions contained in Ontario securities law not apply to K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae, or Sally Daub permanently or for such period as specified in the order;
- (f) an order pursuant to subsection 127(1) clause 7 that K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae, or Sally Daub resign one or more positions that they hold or may hold as officer or directors of any issuers;
- (g) an order pursuant to subsection 127(1) clause 8 that K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae, or Sally Daub be prohibited from becoming or acting as a director or officer of any issuer;
- (h) an order pursuant to subsection 127.1 of the Act that the Respondents pay the costs of Staff's investigation and the costs of and related to this proceeding incurred by or on behalf of the Commission; and
- (i) to make such other orders as the Commission deems appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

- 2. Staff recommend settlement of the proceeding initiated in respect of the respondent, Sally Daub ("Daub"), by the Notice of Hearing in accordance with the terms and conditions set out below. Daub agrees to the settlement on the basis of the facts agreed to as provided in Part III and consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

III. FACTS

Acknowledgement

3. Solely for the purposes of this agreement and as a basis for the undertakings contained herein, Staff and Daub agree with the facts and conclusions set out in Part III of the Settlement Agreement.
4. Staff acknowledge that Daub was cooperative during the investigation of this matter and during the process of reaching settlement.

Introduction

5. Daub was hired by ATI Technologies Inc. in late 1996 and initially assumed the position of General Patent Counsel. Her legal expertise was in patents and intellectual property. She had no prior securities law expertise. On or about May 5, 2000, she was promoted to the position of VP and General Counsel of ATI.
6. Daub did not attend ATI board meetings unless specifically invited and did not attend any in April or May 2000. She did not attend Audit Committee Meetings.
7. Daub did not attend weekly sales meetings and did not receive weekly sales forecast email reports summarizing sales for the week and for the quarter at any time prior to May 24, 2000. She also did not receive weekly sales summaries prepared for ATI directors.
8. Daub did not participate in a meeting on May 12, 2000, referred to in an email from Joanne Chang to Daub and others dated May 11, 2000.
9. On May 24, 2000, ATI issued a press release announcing that it would report “lower than expected revenues and a loss for the third quarter ending May 31, 2000” (“preannouncement”).
10. Daub did not participate in making the decision to preannounce. In particular:
 - (a) Daub did not attend the meeting May 16, 2000 attended by members of senior management and a board member concerning the third quarter results;

- (b) Daub did not provide advice to senior management or the board of directors concerning the obligation to preannounce or the date upon which any such announcement should be made; and
 - (c) Daub did not obtain or review financial information related to the third quarter concerning sales and revenues, inventory, margins, or earnings per share at any time prior to May 19, 2000.
11. On August 1, 2000, Ontario Securities Commission Senior Market Analyst, Tom Petroff, wrote to the CEO of ATI and requested “a detailed chronology of the events which resulted in the announcement on May 24, 2000” including “the earliest date when ATI Technologies Inc. was aware of a loss for the third quarter” and “a list of any subsequent conversations or meetings concerning the financial report for the third quarter.” A response was requested by August 31, 2000.
 12. On August 9, 2000, the NASD made a similar request in a letter addressed to ATI’s Chief Financial Officer, Jim Chwartacky.
 13. On August 22, 2000, Daub received a draft response to the NASD prepared by a member of the board of ATI who had been involved in the decision to preannounce, which included a chronology of material events starting with the May 16 meeting. Thereafter, Daub made revisions to draft letter to be used for both purposes of the NASD and OSC requests, and coordinated the preparation of the appendices to be attached to the letters.
 14. In preparing the response to OSC Staff dated August 30, 2000, Daub received and relied on in good faith upon assistance from other individuals who were involved in the decision to preannounce. In particular, Daub understood that early in August Chwartacky had been interviewed and his file reviewed for purposes of preparing the chronology of material events including in the draft response to Commission Staff.
 15. No one suggested to Daub that the chronology of material events starting on May 16, 2000 was inaccurate or that the letter was misleading.

16. Daub knew that certain members of senior management and a board member had been directly involved in the discussions leading to the decision to preannounce. It was reasonable for Daub to rely upon information from them in preparing and finalizing the letter to OSC Staff dated August 30, 2000.
17. Daub did not intend to mislead Commission Staff in the letter to Commission Staff signed by her on behalf of ATI.
18. However, in hindsight, Daub acknowledges that she should have taken further steps to confirm the information contained in the letter to Staff.
19. Daub was co-operative with Staff in its investigation.
20. Daub no longer works at ATI.

IV. TERMS OF SETTLEMENT

21. The respondent agrees to the following terms of Settlement:

- (a) Pursuant to clause 6 of subsection 127(1) of the *Act*, the respondent shall be reprimanded;
- (b) Pursuant to subsections 127.1(1) and 2 of the *Act*, the respondent agrees to pay the sum of \$5,000 in respect of the cost of the investigation and of the hearing.

V. STAFF COMMITMENT

22. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the *Act* against Daub respecting the facts set out in Part III of this Settlement Agreement.
23. This Settlement Agreement constitutes full answer to the allegations alleged in the Notice of Hearing.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

24. Approval of this Settlement Agreement shall be sought at a public hearing of the Commission (the “Settlement Hearing”) scheduled for December 14, 2004 at 9:30 a.m.
25. Counsel for Staff and counsel for Daub may refer to any part or all of this Settlement Agreement at the Settlement Hearing. Staff and Daub agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
26. If this Settlement Agreement is approved by the Commission, Daub agrees to waive her rights under the *Act* to a full hearing, judicial review or appeal of the matter.
27. Whether or not the Settlement Agreement is approved by the Commission, Daub agrees that she will not, in any proceeding, refer to or rely on this Settlement Agreement, the settlement discussions/negotiations, or the process of approval of this Settlement Agreement as the basis of 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.
28. If, for any reason whatsoever, this Settlement Agreement 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 Daub leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Daub; and
 - (b) except as set out in paragraph 27 above, Staff and Daub 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 Settlement Agreement or the settlement discussions/negotiations.

VII. DISCLOSURE OF AGREEMENT

29. Except as required above, this Settlement Agreement and its terms will be treated as confidential by Staff and Daub until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Daub, or as may be required by law.
30. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.
31. Staff and Daub agree that if this Settlement Agreement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

VII. EXECUTION OF SETTLEMENT AGREEMENT

32. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
33. A facsimile copy of any signature shall be as effective as an original signature.

DATED AT TORONTO this 14th day of December, 2004.

“Sally Daub”
Sally Daub

“Michael Watson”
Michael Watson
Director, Enforcement

”Linda Fuerst”
Witness

SCHEDULE “A”

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, as amended**

- and -

IN THE MATTER OF SALLY DAUB

**ORDER
(Section 127 and 127.1)**

WHEREAS on January 16, 2003, the Ontario Securities Commission issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act* in respect of Sally Daub (“Daub”);

AND WHEREAS Daub entered into a settlement agreement with Staff of the Commission dated • (the “Settlement Agreement”) in which she agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS Staff recommend approval of the Settlement Agreement;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing of Staff of the Commission, and upon hearing submissions of Staff and counsel for Daub;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

1. the Settlement Agreement, attached to this Order as Schedule "A" is hereby approved;
2. pursuant to clause 6 of subsection 127(1) of the *Act*, Daub shall be reprimanded; and
3. pursuant to section 127(1) of the *Act*, Daub shall pay the sum of \$5,000.00 to the Ontario Securities Commission in respect of the portion of the costs of investigation and proceeding in relation to this matter.

DATED at Toronto this 14th day of December, 2004.
