

2006 BCSECCOM 185

L.O.M Medical International, Inc. and John Klippenstein

Section 171 of the *Securities Act*, RSBC 1996, c. 418

Application

Panel	Brent W. Aitken	Vice Chair
	Marc A. Foreman	Commissioner
	Robert J. Milbourne	Commissioner

Date of Application March 3, 2006

Date of Decision March 31, 2006

Submissions received from

Winton Derby, QC For Le Monde Holdings Ltd.

Dana Goodfellow For the Executive Director

Andrew Davis For dissident shareholders, Group 1

Kenneth MacEwan For dissident shareholders, Group 2

Decision

¶ 1 This is an application by Le Monde Holdings Ltd. under section 171 of the *Securities Act*, RSBC 1996, c. 418, to vary orders made by this panel of the Commission on May 28, 2004 (see 2004 BCSECCOM 289). Le Monde wants us to vary the orders so that John Klippenstein can sell his LOM shares to Le Monde in order to facilitate a reorganization of LOM's affairs. Le Monde also wants us to defer until January 31, 2007 Klippenstein's obligation to pay monetary orders imposed by the Commission.

The existing orders

¶ 2 The May 2004 orders were based on two agreed statements of facts, one between the Executive Director and LOM, and one between the Executive Director and Klippenstein. These agreed statements of facts established that:

1. LOM and Klippenstein distributed securities to 352 British Columbia investors for total proceeds of US\$1.4 million and Cdn \$279,000, in contravention of sections 34(1) [*Persons who must be registered*] and 61(1) [*Prospectus required*].

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2. Klippenstein was the president, a director, controlling shareholder and controlling mind of LOM during the relevant period. He made misrepresentations in contravention of section 50(1)(d).

¶ 3 In making the orders, we referred to Klippenstein's regulatory history, noting that Klippenstein

was sanctioned by the Saskatchewan Securities Commission for exactly the same conduct – selling shares in companies he was promoting without being registered, and without filing a prospectus. Furthermore, the Saskatchewan Commission orders were still in force when he began his illegal distribution in British Columbia

¶ 4 The orders we made included the following:

1. under section 161(1)(c) of the Act, that the exemptions described in sections 45 to 47, 74, 75, 98 and 99 of the Act do not apply to Klippenstein for a period of 10 years expiring on May 28, 2014, except that Klippenstein may rely on the exemption in section 45(2)(7) of the Act to trade securities for his own account through a registrant, if he gives the registrant a copy of this decision;
...
4. under section 162, that Klippenstein pay an administrative penalty of \$100,000;
5. under section 174, that Klippenstein pay costs of or related to the hearing in the amount of \$20,000;
...

¶ 5 Section 171 reads as follows:

171 If the commission . . . considers that to do so would not be prejudicial to the public interest, the commission . . . may make an order revoking in whole or in part or varying a decision the commission . . . has made under this Act

¶ 6 We must therefore determine whether it would be prejudicial to the public interest for us to vary our May 2004 orders by

- (a) allowing Klippenstein to sell his LOM shares to Le Monde, and
- (b) deferring his payment obligations under the administrative penalty and costs orders.

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Sale of Klippenstein's LOM shares to Le Monde

- ¶ 7 Le Monde proposes a reorganization of LOM's affairs that it says will put LOM in a position to commercialize its technology, a gas retractable safety syringe. In order to complete the reorganization, Klippenstein must be able to sell his LOM shares to Le Monde. This he is unable to do because of paragraph 1 of the May 2004 orders.
- ¶ 8 The proposed reorganization is controversial among the shareholders of LOM. (LOM is not a public company – it is not a reporting issuer and its shares are not listed.) There are competing views among the shareholders as to the best way reorganize LOM's affairs. There has been litigation over the issue and there is perhaps more litigation to come.
- ¶ 9 Several parties to this litigation have asked that we hold an oral hearing and that they be given standing to appear and make submissions at that hearing. It appears that they want us to deny the variation, or impose conditions on it. However, in our opinion, it is not necessary to hold an oral hearing on the issue of whether Klippenstein should be allowed to sell his shares.
- ¶ 10 Under the May 2004 orders, Klippenstein could sell his LOM shares if he chose to do so through a registrant. That he has chosen to do so directly to Le Monde is not a reason to deny him the right to sell.
- ¶ 11 In any event, it is not for us to determine whether the proposed reorganization, or any competing transaction, is in the best interests of LOM and its shareholders. That is for LOM's board and shareholders to decide (with the help of the courts, if necessary). Nor is it our role to, in effect, enjoin the completion of any reorganization of LOM. If persons opposed to the proposed sale wish to stop it, their remedy is to seek an injunction from the court.
- ¶ 12 We therefore conclude that it would not be prejudicial to the public interest to permit Klippenstein to sell his shares to Le Monde.

Deferment of payment of monetary orders

- ¶ 13 It is not clear to us, without hearing more, that a variation of the orders deferring payment of the monetary orders would meet the test in section 171 (not prejudicial to the public interest), and so we make no order on that part of the application. If the applicant wishes to pursue that aspect of the application, it should make further submissions.

Order

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¶ 14 Considering it not prejudicial to the public interest, we vary the May 2004 orders by adding the following paragraph and by renumbering the subsequent paragraphs accordingly:

2. despite paragraph 1, Klippenstein may sell the shares he owns in LOM to Le Monde Holdings Ltd. under the purchase and sale agreement dated October 6, 2005 between him and Le Monde (with Robert Piroz and Ross Beaty as guarantors), provided that:

(a) Le Monde pays to the Commission, on or before the closing of the purchase and sale of Klippenstein's LOM shares, the amounts contemplated by section 2.2 (b) of the agreement, being the amounts owed by Klippenstein to the Commission under the May 2004 orders, and

(b) Le Monde notifies the Executive Director of the intended date of the closing not less than five business days before the intended date;

¶ 15 The orders as varied that relate to Klippenstein are attached as Appendix A.

¶ 16 March 31, 2006

For the Commission

Brent W. Aitken
Vice Chair

Marc A. Foreman
Commissioner

Robert J. Milbourne
Commissioner

APPENDIX A

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1. under section 161(1)(c) of the Act, that the exemptions described in sections 45 to 47, 74, 75, 98 and 99 of the Act do not apply to Klippenstein for a period of 10 years expiring on May 28, 2014, except that Klippenstein may rely on the exemption in section 45(2)(7) of the Act to trade securities for his own account through a registrant, if he gives the registrant a copy of this decision;
2. despite paragraph 1, Klippenstein may sell the shares he owns in LOM to Le Monde Holdings Ltd. under the purchase and sale agreement dated October 6, 2005 between him and Le Monde (with Robert Piroz and Ross Beaty as guarantors), provided that:
 - (a) Le Monde pays to the Commission, on or before the closing of the purchase and sale of Klippenstein's LOM shares, the amounts contemplated by section 2.2 (b) of the agreement, being the amounts owed by Klippenstein to the Commission under the May 2004 orders, and
 - (b) Le Monde notifies the Executive Director of the intended date of the closing not less than five business days before the intended date;
3. under section 161(1)(d)(i), that Klippenstein resign any position he holds as a director or officer of any issuer, except an issuer owned solely by himself or his family;
4. under section 161(1)(d)(ii), that Klippenstein be prohibited from becoming or acting as a director or officer of any issuer for a period of 10 years expiring on May 28, 2014, except an issuer owned solely by himself or his family;
5. under section 161(1)(d)(iii), that Klippenstein be prohibited from engaging in investor relations activities for a period of 10 years expiring on May 28, 2014;
6. under section 162, that Klippenstein pay an administrative penalty of \$100,000;
7. under section 174, that Klippenstein pay costs of or related to the hearing in the amount of \$20,000;