

# 2003 BCSECCOM 447

## Notice of Hearing

**Donald Wayne Busby**

### **Section 161 of the *Securities Act*, RSBC 1996, c. 418**

¶ 1 A Hearing will be held (the Hearing) to give Donald Wayne Busby an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make the following orders:

1. under section 161(1)(b) of the Act that Busby cease trading in and be prohibited from purchasing any securities;
2. under section 161(1)(c) of the Act that the exemptions in sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to Busby;
3. under section 161(1)(d)(i) of the Act that Busby resign any position that he holds as a director or officer of an issuer;
4. under section 161(1)(d)(ii) of the Act that Busby is prohibited from becoming or acting as a director or officer of any issuer;
5. under section 161(1)(d)(iii) of the Act that Busby is prohibited from engaging in investor relations activities;
6. under section 162 of the Act, that Busby pay an administrative penalty;
7. under section 174 of the Act that Busby pay prescribed fees and charges for the costs of or related to the Hearing; and
8. any other order that may be appropriate in the circumstances.

¶ 2 The Commission will be asked to consider the following facts and allegations in making its determinations:

1. Hilton Petroleum Ltd. was incorporated under the laws of British Columbia and continued under the laws of the Yukon, has been a reporting issuer under the Act since 1996 and at all material times its shares were listed on the Canadian Venture Exchange.
2. Busby is a businessman residing in Bakersfield, California. At the material times, Busby was a director as well as the chairman and chief executive officer of Hilton.

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3. In March 2001 Hilton owned a 12.125% joint venture (JV) interest in a series of natural gas drillholes known as the “East Lost Hills project” (the Project), located in the San Joaquin basin in California. Although Hilton had exploration programs and production in other regions of the United States, Hilton’s focus was on exploration at the Project and in the Sacramento basin. The majority of Hilton’s exploration and development costs were being incurred in those areas.
4. Busby lived near the Project and had ultimate responsibility for a branch office of Hilton that was set up for the purpose of monitoring the Project.
5. Berkley Petroleum Corp. was the operator of the Project. It was responsible for drilling holes and providing reports on the progress of the drilling to the JV partners.
6. In March 2001 there was one drillhole (Berkley #1) on the Project that was producing gas at a rate of about 10 million cubic feet per day. Berkley was also drilling a second drillhole (Berkley #2). Analysts and persons following Hilton’s stock regarded the results of Berkley #2 as highly relevant to determining the viability of the Project.

### **Insider Trading**

7. During the period from March 13, 2001 to March 21, 2001 (the Relevant Period), a material fact (the Material Fact) in relation to the securities of Hilton existed or a material change (the Material Change) in the affairs of Hilton occurred, namely the following:

By March 13, Berkley #2 was producing gas flows at levels far below what the media, analysts and investors had targeted, and was producing a significant amount of water.
8. On or before March 14 and during the Relevant Period, Busby knew about the Material Fact or the Material Change.
9. The Material Fact or Material Change was not generally disclosed until March 21, 2001.
10. Busby was in a special relationship with Hilton within the meaning of sections 3 and 86(1)(a) of the Act during the Relevant Period because he was a director and senior officer of Hilton.

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11. Throughout the Relevant Period, Busby traded 375,000 or more securities of Hilton through an account held in the name of a family member, with knowledge of the undisclosed Material Fact or Material Change before it was generally disclosed, contrary to section 86(1) of the Act.

### **Failure to File Insider Reports**

12. Busby failed to file insider reports as required by s. 87(4) of the Act in relation to trades made during the Relevant Period in an account over which he had control or direction.

### **Public Interest**

13. Busby acted contrary to the public interest by trading on the basis of material non-public information regarding Hilton, and by failing to file insider reports in relation to those trades.

### **Hearing**

¶ 3 Busby or his counsel is required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, BC, on Wednesday, July 23, 2003 at 10:00 am if he wishes to be heard before the Commission sets a date for the Hearing.

¶ 4 Busby may be represented by counsel at the Hearing and may make representations and lead evidence. He is requested to advise the Commission of his intention to attend by contacting the Commission Secretary at PO Box 10142, 5th Floor, 701 West Georgia Street, Vancouver, BC, telephone: 604 899-6500; or by e-mail at commsec@bcsc.bc.ca.

¶ 5 The Commission may make determinations in this matter if Busby or his counsel do not appear at the Hearing.

¶ 6 June 23, 2003

“Stephen J. Wilson”

¶ 7 Stephen J. Wilson  
Executive Director