

# 2004 BCSECCOM 661

## Schedule "A"

### Settlement Agreement

#### Christopher Fung

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director has settled the following issues with Christopher Fung (Fung).

#### **Agreed Statement of Facts**

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Fung acknowledges the following facts as correct:

1. GHG Resources Limited (GHG), formerly Consolidated Golden Thunder Resources Ltd., was incorporated in British Columbia on June 7, 1983, and has been a reporting issuer in British Columbia since February 1, 1984.
2. Since May 10, 2001, Fung has been the president and a director of GHG.
3. Fung became a control person of GHG on June 27, 2002, beneficially holding 1,068,500, or 26.78%, of the issued and outstanding common shares of GHG.

#### **Sales of 121,500 GHG Shares (the Initial Sales)**

4. Between December 31, 2002 and June 12, 2003, Fung made 11 sales in the common shares of GHG through the facilities of the TSX Venture Exchange (the TSX-V), disposing of 121,500 common shares of GHG from his beneficial holdings. His beneficial holdings never fell to below 20% of the issued and outstanding common shares of GHG.

#### **Sale of 600,000 GHG Shares (the Later Sale)**

5. On September 15, 2003, Fung attempted to sell 600,000 common shares of GHG from his beneficial holdings, by instructing his investment dealer (the Dealer) to sell those securities through the facilities of the TSX-V. The Dealer received the instructions and entered a sell order (the Sell Order).
6. The Sell Order, if filled, would have represented a disposition of 10.55% of the issued and outstanding common shares of GHG.

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7. The Sell Order, however, was cancelled by the TSX-V because the Dealer was unable to determine whether the sale would be in compliance with the Act.
8. Subsequent to the cancellation of the Sell Order, Fung filed the advance notice required by section 2.8 of Multilateral Instrument 45-102, *Resale of Securities* (MI 45-102), on September 16, 2003, and sold the 600,000 common shares of GHG on September 22, 2003.
9. Fung filed an insider report in respect of the Later Sale with the Commission nine days after the trade.

### **Failure to File a Prospectus**

10. Section 2.8 of MI 45-102 provides a prospectus exemption for sales of securities by a control person. To rely on that exemption, among other things, a control person must:
  - (a) file an advance notice with the Commission within a specified time; and
  - (b) file an insider report with the Commission within three days of the trade.

If those conditions are not met, a control person must file a prospectus and obtain a receipt for it, for the sale of securities.

11. For the Initial Sales, Fung did not rely on any exemption to sell his securities.
12. For the Later Sale, Fung did not meet the requirements of the exemption to sell his securities.
13. In both instances, Fung breached section 61 of the Act, by failing to file a prospectus and obtain a receipt for it.

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

14. Between June 20, 2003 and July 31, 2004, while Fung was an insider of GHG, he failed to file insider reports, respecting 13 trades relating to the acquisition and disposition of common shares of GHG, and the exercise of warrants, within ten days after each trade, contrary to section 87 of the Act.

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### **Mitigating Factors**

- ¶ 3 The Executive Director accepts that Fung is a key employee of GHG and that prohibiting him from acting as a director and officer of GHG could negatively impact GHG. This fact mitigates the sanctions that would otherwise apply in the public interest.

### **Undertaking**

- ¶ 4 Fung undertakes to:
1. comply with the Act, the *Securities Rules* and any applicable regulations, policies and guidelines;
  2. pay the Commission the sum of \$9,000, \$3,000 of which represents the cost of the investigation; and
  3. not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

### **Order**

- ¶ 5 Fung consents to an order by the Executive Director (the Order) that, under section 161(1)(d) of the Act, Fung resign any position he holds as a director or officer of any reporting issuer, and be prohibited from becoming or acting as a director or officer of any reporting issuer, until the later of
1. one year from the date of the Order, and
  2. the date Fung successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers,
- except that he may remain a director and officer of GHG.

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### Waiver

¶ 6 Fung waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

¶ 7 November 19, 2004

“Christopher Fung” )  
Christopher Fung )  
 )  
“Jeffrey B. Lightfoot” )  
Witness Signature )  
Jeffrey B. Lightfoot )  
Witness Name (please print) )  
Maitland & Company )  
700 – 625 Howe Street )  
Vancouver, BC V6C 2T6 )  
Address )  
Barrister & Solicitor )  
Occupation )

¶ 8 November 22, 2004

“Brenda M. Leong”

¶ 9 Brenda M. Leong  
Executive Director