

2005 BCSECCOM 304

Settlement Agreement

**Timothy Fernback, Wolverton Securities Ltd.,
Brent Wolverton, and William Massey**

Securities Act, RSBC 1996, c. 418

- ¶ 1 Timothy Fernback (Fernback), Wolverton Securities Ltd. (Wolverton Securities), Brent Wolverton (Wolverton), William Massey (Massey) and the Executive Director have settled the following issues.

Agreed Statement of Facts

- ¶ 2 As the basis for the orders and undertakings referred to in this settlement, Fernback, Wolverton Securities, Wolverton and Massey acknowledge the following facts as correct:
1. During all relevant times:
 - (a) Wolverton Securities was an investment dealer registered in British Columbia and a member of the Canadian Venture Exchange (the Exchange).
 - (b) Fernback was the Manager of Corporate Finance for Wolverton Securities.
 - (c) Wolverton was the president of Wolverton Securities and he had main responsibility at Wolverton Securities for compliance with securities legislation and policies, and with Exchange requirements.
 - (d) Cinema Internet Networks (Cinema) was listed for trading on the Exchange.
 - (e) Massey was the president and a director of Cinema.
 2. Between 1997 and 2000 Cinema generally traded between \$0.20 and \$0.40 per share and trading was illiquid.
 3. In December 1999 Cinema began planning a public offering, by way of a short form offering (the SFO) of 1.5 million shares at \$0.25 per share. Wolverton Securities was to be the agent for the SFO. There was considerable delay in finalizing the SFO.

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4. On February 1, 2000, 22,400 shares of Cinema were traded at an average price of \$0.491 per share for a total value of \$10,998. The last three transactions that occurred on that day, amounting to approximately 5,000 shares, increased the share price from \$0.45 to \$0.75 per share. The Exchange halted trading in Cinema shares on February 1, 2000, due to the price movement.
5. Between February 1, 2000, and February 10, 2000, Wolverton Securities, primarily through Fernback and Cinema, wrote letters to and had a number of discussions with the Corporate Finance Department of the Exchange about pricing the SFO at a price lower than the \$0.75 closing share price of February 1, 2000.
6. Before the trading halt in Cinema shares would be lifted, the Surveillance Department of the Exchange required that Cinema issue a news release, which it did on February 10, 2000.
7. On February 11, 2000, the Surveillance Department of the Exchange lifted the halt in trading in Cinema shares.
8. When Cinema began trading after the halt was lifted, 9,160 shares of Cinema traded by 11:21 a.m. resulting in a rise in its share price to \$1.25 per share.
9. On February 11, 2000, after the halt of the trading in Cinema shares was lifted, Fernback on behalf of Wolverton Securities, had further conversations with the Corporate Finance Department of the Exchange about how to establish the value of the shares of Cinema. Following those discussions, Fernback asked Massey if there was a shareholder of Cinema who would sell their shares. Massey asked an employee of Cinema who had a block of shares whether she would sell her shares (the Seller).
10. Shortly after, the Seller contacted Wolverton Securities, opened an account and gave instructions to sell her shares of Cinema (the Seller's Shares). Wolverton Securities sold 87,400 of the Seller's Shares from the Seller's account. At the close of trading on February 11, 2000, the price of Cinema's shares was \$0.32.
11. During the selling of the Seller's Shares, Wolverton's trader called the Trading Operations Department of the Exchange several times.
12. On February 14, 2000, Cinema issued a news release prior to the opening of the market announcing an SFO of 1,350,000 shares at \$0.30 per share. The \$0.30 per share price was based on the previous trading day's closing price of \$0.32, plus applicable discounts pursuant to Exchange Policy 4.6. The Exchange did not approve that price.

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13. Ultimately, the Exchange approved the SFO price at \$0.675 per unit, each unit consisting of one common share of Cinema and one-half of one share purchase warrant. The \$0.675 per unit price was not based on either the closing price of February 1 or February 11, 2000.

Breaches of the Regulatory Requirements

14. Massey and Fernback acted in a manner contrary to the public interest because they each ought to have known that the trading in the Seller's Shares could create an artificial price for Cinema shares.
15. Wolverton Securities engaged in conduct and business that was unbecoming and inconsistent with just and equitable principals of trade and detrimental to the public interest contrary to Exchange Rule F.201 and in breach of gatekeeper requirements.
16. Wolverton failed to fully and properly supervise his employees to ensure compliance with the Act and related rules and policies, contrary to Exchange Rule F.2.22.

Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following facts as factors in connection with Massey as mitigating the sanctions, which would otherwise have applied in the public interest:
 1. Massey acted upon the professional advice of Wolverton Securities, as agent for the SFO, in recommending the Cinema trades on February 11, 2000.
 2. Massey had never been an officer or director of a public company, other than Cinema and now understands that his conduct was not in the public interest.
- ¶ 4 The Executive Director has taken into account the following facts as factors in connection with Fernback, Wolverton Securities and Wolverton as mitigating the sanctions, which would otherwise have applied in the public interest:
 - Both during and after the period when trading in Cinema shares was halted, Wolverton Securities, Wolverton and Fernback were in regular contact with the Corporate Finance Department of the Exchange.
- ¶ 5 The Executive Director has taken into account the following facts as factors in connection with Fernback as mitigating the sanctions, which would otherwise have applied in the public interest:
 - Fernback did not direct the manner in which the Cinema shares were traded.

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¶ 6 Undertakings

3. Massey undertakes to pay to the British Columbia Securities Commission the amount of \$4,000 and \$1,000 towards the costs of the investigation, for a total of \$5,000.
4. Fernback undertakes to pay to the Commission the sum of \$15,000 and \$5,000 towards the costs of the investigation, for a total of \$20,000.
5. Wolverton Securities undertakes to pay to the Commission the sum of \$40,000 and \$20,000 towards the costs of the investigation, for a total of \$60,000.
6. Wolverton undertakes to pay to the Commission the sum of \$20,000 and \$10,000 towards the costs of the investigation, for a total of \$30,000.

Order

- ¶ 7 Massey, Fernback, Wolverton Securities, Wolverton consent to an order by the Executive Director under section 161(1)(a) that they each comply fully with the Act, the Securities Rules, and any applicable regulations, policies and guidelines.

Waiver

- ¶ 8 Massey, Fernback, Wolverton Securities and Wolverton each waive any right they 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.
- ¶ 9 May 6, 2005

“William Massey”

- ¶ 10 William Massey

“Derrick Berger”)
Witness Signature)
Derrick Berger)
Witness Name (please print))
Lake Tahoe, CA)
Address)
Computer Programmer)
Occupation)

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¶ 11 May , 2005

¶ 12 “Timothy Fernback”
Timothy Fernback

“A. Fernback”)
Witness Signature)
Anne Fernback)
Witness Name (please print))
Vancouver, BC)
Address)
Homemaker)
Occupation)

¶ 13 May 5, 2005

¶ 14 “Brent Wolverton”
Wolverton Securities Ltd.
(signing authority)

“Joseph Saulnier”)
Witness Signature)
Joseph J. Saulnier)
Witness Name (please print))
2500-700 W. Georgia St.)
Vancouver, BC V7Y 1B3)
Address)
Barrister & Solicitor)
Occupation)

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¶ 15 May 5, 2005

“Brent Wolverton”

¶ 16 Brent Wolverton

“Joseph Saulnier”)
Witness Signature)
Joseph J. Saulnier)
Witness Name (please print))
2500-700 W. Georgia St.)
Vancouver, BC V7Y 1B3)
Address)
Barrister & Solicitor)
Occupation)

¶ 17 May 9, 2005

¶ 18 Brenda M. Leong
Executive Director