

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE
ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35
OF THE *PARTNERSHIPS ACT*, R.S.O. 1990, c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

**SUPPLEMENT TO SECOND REPORT OF
KPMG INC., RECEIVER AND MANAGER OF
BELMONT DYNAMIC GROWTH FUND**

May 14, 2010

Introduction

1. The Receiver files this Supplement to Second Report in response to the Affidavit of Paul J. Martin sworn May 11, 2010 (the "Martin Affidavit") and the issues raised therein by Harcourt Investment Consulting AG and Peter Fanconi ("Harcourt"). All capitalized terms not defined herein are as defined in the Receiver's Second Report, dated April 30, 2010 (the "Second Report").
2. As outlined in the Second Report, there are essentially four remaining Disputed Claims that may require determination, (i) the Omniscopes Claim; (ii) the GP Claim; (iii) the BLG Claim; and (iv) the Counterparty Claim. The Receiver is seeking a Claims Determination process to be implemented which will assist in reaching a final resolution of each of these claims, if the parties and Receiver are unable to otherwise resolve the claims. The Receiver has circulated to Omniscopes and the Counterparty, a proposed process and timeline for determination of their respective Disputed Claims, which involves exchange of reports, affidavits, factums and a hearing before the Court. The procedures and timelines have not yet been finalized.
3. If the Disputed Claims (in particular the Omniscopes Claim and Counterparty Claim) are resolved prior to a hearing, it is the Receiver's intention to seek approval of any resolution.
4. The Receiver has proposed a form of Order which it believes will provide flexibility to the Court, the Receiver and Claimant to have the Disputed Claims determined, and which provides for an interested party to seek to have standing in a hearing, should they not otherwise be invited to participate in the hearing by either the Receiver and/or the Claimant.
5. In the context of this particular receivership proceeding, the Receiver acknowledges that there have been a relatively small number of persons who have been actively involved with these proceedings, specifically Harcourt, Nead/Omniscopes, the Counterparty, and RBC on behalf of the Limited Partners of the Belmont Fund (collectively the "Parties"). It has become clear to the Receiver that the history between some of the Parties was difficult and adversarial, and that there remain ongoing difficulties between some of the Parties.

Information to be provided to Receiver

6. Throughout these proceedings the Receiver has been in contact with the Parties. The Parties have taken on an active role in the proceedings, some more than others. During the course of its mandate, the Receiver has asked the Parties for background information in respect of the Belmont Fund and Segregated Portfolio to determine the history of the Belmont Fund and the potential value and recovery to the Limited Partners. Pursuant to paragraph 5 and 6 of the Appointment Order, there is an ongoing duty to provide access to information and cooperate with the Receiver, and the Receiver expects that the Parties have and will continue to satisfy these obligations.
7. In respect of the claims filed pursuant to the Claims Procedure Order, throughout these proceedings certain of the Parties have expressed interest in the claims filed by other Parties, in addition to their own filed claims. In reviewing claims, the Receiver looked first to the available books and records of the Belmont Fund and other publicly filed information (for example the Application Materials filed by Omniscopes and Harcourt) to obtain background information. In certain circumstances, the Receiver has found it necessary to consult with certain of the Parties in the course of investigating a claim, for example as outlined in

paragraphs 41 and 42 of the Martin Affidavit. Throughout the Proceedings, the Receiver has also gratuitously received information from certain of the Parties in respect of various claims filed. For example, without prompting by the Receiver, Harcourt provided the Receiver with the letters attached as Exhibits K and Q to the Martin Affidavit, wherein Harcourt outlines its view of certain filed claims.

8. Should any party believe that it has relevant information to provide to the Receiver in respect of the receivership proceedings it has and remains available to the individual or party to provide this information. The Receiver expects such cooperation from the Parties, particularly in respect of paragraphs 5 and 6 of the Appointment Order. There is no need for the parties to delay providing such information, or to do so only in formal Court filings.

GP Claim

9. At the time the claim was filed by General Partner, the Receiver sought to ensure that both shareholders of the General Partner were aware of the claim. As noted in the cover note accompanying the disclosure of the GP Claim to Harcourt (Exhibit P to the Martin Affidavit), "...as a shareholder of the Belmont GP, the Receiver will keep Harcourt updated as and when there are developments on the Belmont GP Claim." Going forward, as an equal shareholder and a director of General Partner, the Receiver believes that Harcourt should be adequately informed in respect of the GP Claim and the Receiver intends to consult and confer with Omniscope and Harcourt equally in respect of this claim. The Receiver does not believe there is a need for a specific Order in this respect.

Harcourt Motion

10. In respect of the balance of the Disputed Claims, in its materials and draft Order, Harcourt raises three requests:
 - (i) disclosure;
 - (ii) involvement in setting of the Claims Determination Process; and
 - (iii) standing at the hearing of the Disputed Claims.
11. These issues were first raised with the Receiver in the letter dated April 7, 2010 (Exhibit L to the Martin Affidavit). The Receiver disagreed with the contents of the letter in respect of the historical recounting of conversations between counsel. The Receiver also disagreed with the request for disclosure and standing as posed by Harcourt and as such the Receiver asked Harcourt to withdraw and reconsider the letter. The Receiver then received a second letter on April 20, 2010 (Exhibit M to the Martin Affidavit) wherein Harcourt continued to seek disclosure and standing.

Disclosure Request

12. Harcourt's disclosure request is as follows:

"all relevant, non-privileged documents you have (including Notices of Disallowance and Notices of Dispute and all communications with other parties on these issues, including email communications and non-privileged

communications between your offices and the Receiver on these subjects) so that we can be in a position to advise our client”. (Exhibit M to the Martin Affidavit)

13. The Receiver has recommended in its draft form of Order that copies of the Notice of Motion in respect of the Disputed Claim, Proofs of Claim, Notices of Revision or Disallowance and Notices of Dispute (the “Claims Documents”) would be forwarded to the service list. The service list includes each of the Parties, and any party who has filed a Proof of Claim. This level of disclosure is broader than is often provided in claims processes involving insolvency or bankruptcy proceedings, but given the limited number of claimants involved and the limited number of potentially interested Parties, the Receiver thinks this is appropriate given the circumstances.
14. As part of the Claims Determination Process, the Receiver envisions that it may require affidavits from certain related parties (including, for example, Harcourt). As outlined in the draft Claims Determination Order, should a Party become involved as a potential witness, further disclosure may be provided to the party “as may be required to assist with their participation in the hearing of the Disputed Claims”.
15. The Receiver does not believe it is necessary or appropriate to provide the level of disclosure requested by Harcourt. By reviewing the Claims Documents, any third party will have adequate information to determine the remaining issues and whether the third party has relevant information it wishes to disclose, to the Receiver and/or the Court relating to these issues.
16. The Receiver is concerned that providing the level of disclosure sought by Harcourt may interfere with the Receiver’s role as the party responsible for determining, adjudicating and potentially resolving claims into the estate.
17. The Receiver is also concerned that providing such disclosure will harm future discussions and negotiations between the Receiver and Claimants. (*Ravelston Corp. Re 2007 Carswell Ont 661 at para 49, 50, 52 (SCJ) (Comm List)*), (Tab 2))
18. While the Receiver seeks to maintain a fair and transparent process throughout these proceedings, it is the Receiver’s view that such disclosure may potentially be prejudicial to other stakeholders, especially given the litigious history between certain parties. On this basis, the Receiver believes that all claimants should be treated the same and the additional disclosure requested of the Court is not appropriate in the circumstances.

Involvement in setting Claims Determination Process

19. It has been the Receiver’s experience in this proceeding that simple scheduling of motions has proven to be overly complicated. The Receiver’s preference is therefore to provide that the Receiver and each Claimant shall determine the timeline and process for determining each Claimant’s Disputed Claim.

Standing

20. On the issue of standing, the Receiver proposed in the draft Order that this issue would be left to the Judge hearing the Disputed Claim. This will permit the Parties to await

“invitation” by any of the Receiver or Claimant to the hearing (as a witness), before determining if a request for formal standing is required.

21. On the issue of standing, the Courts have offered some guidance in the context of Receivership proceedings: In the Afton Foods Justice Spies notes that although claimants may be indirectly impacted by the Court’s decision, they may not have standing to intervene on interpretation issues before the Court. (*Afton Food Group Ltd. Re* 2006 Carswell Ont 3002 (SCJ) at para 16, (Tab 3))
22. Finally, while the potential number of interested parties in this case is small, the Receiver is concerned of the precedential affect that an Order such as that sought by Harcourt, will have (for example, on larger claims procedures or ones heard before a Claims Officer in an arbitration type setting).

Draft Form of Order

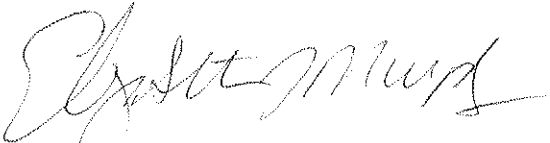
23. The Receiver has received comments from the Counterparty in respect of proposed changes to the draft Form of Order (attached as Appendix A). The Receiver is agreeable to the requested changes sought by the Counterparty

RESPECTFULLY SUBMITTED,

Dated the 14th day of May, 2010.

KPMG INC.

In its capacity as Court-appointed
receiver and manager of
Belmont Dynamic Growth Fund



Per: *Elizabeth Murphy*
Vice-President

JAMES HAGGERTY HARRIS

and

BELMONT DYNAMIC GROWTH

FUND, an Ontario limited partnership

Applicant

Respondent

Court File No: 09-8302-00CL

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SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

SECOND REPORT OF KPMG INC.,
RECEIVER AND MANAGER OF BELMONT
DYNAMIC GROWTH FUND

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