

**IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
ALLAN EIZENGA, RICHARD JULES FANGEAT, MICHAEL HERSEY,
LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO**

- and -

IN THE MATTER OF MICHAEL TIBOLLO

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND LUKE JOHN MCGEE**

I. INTRODUCTION

1. On September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Luke John McGee ("McGee") and others and issued Amended Notices of Hearing against McGee and others on February 7, 2003 and May 21, 2004 (collectively, the "Notice of Hearing").

2. By Temporary Order dated September 24, 1998, the Commission ordered that the exemptions contained in subsections 35(1)21 and 35(2)10 of the Act do not apply to McGee (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding respecting McGee initiated by the Notice of Hearing in accordance with the terms and conditions set out below. McGee consents to the making of an order against him in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

Acknowledgement

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and McGee agree with the facts set out in paragraphs 5 through 42 of this Settlement Agreement.

The Saxton Securities

5. Saxton Investments Ltd. (“Saxton”) was incorporated on January 13, 1995. Allan Eizenga (“Eizenga”) was an officer and a director of Saxton. Saxton and Eizenga established numerous other corporations. Eizenga was the president and a director of each of these companies.

6. McGee is a lawyer by training. He was called to the Ontario bar in March 1993. McGee practised civil litigation until approximately August 1995 when he became licensed as an insurance agent with the Financial Services Commission of Ontario. McGee has never been registered with the Commission.

7. McGee became actively involved in Saxton’s business in the summer of 1996. By early 1997, McGee became Saxton’s vice-president. He reported to Eizenga, the president of Saxton. Eizenga terminated McGee in December 1997.

8. Between January 1995 and September 1998, Ontario investors were sold securities of one or more of the following companies (the “Offering Corporations”):

The Saxton Trading Corp.
The Saxton Export Corp.
The Saxton Export (II) Corp.
The Saxton Export (III) Corp.
The Saxton Export (IV) Corp.
The Saxton Export (V) Corp.
The Saxton Export (VI) Corp.
The Saxton Export (VII) Corp.
The Saxton Export (VIII) Corp.
The Saxton Export (IX) Corp.
The Saxton Export (X) Corp.
The Saxton Export (XI) Corp.
The Saxton Export (XII) Corp.
The Saxton Export (XIII) Corp.
The Saxton Export (XIV) Corp.
The Saxton Export (XV) Corp.
The Saxton Export (XVI) Corp.
The Saxton Export (XVII) Corp.
The Saxton Export (XVIII) Corp.
The Saxton Export (XIX) Corp.
The Saxton Export (XX) Corp.

The Saxton Export (XXI) Corp.
The Saxton Export (XXII) Corp.
The Saxton Export (XXIII) Corp.
The Saxton Export (XXIV) Corp.
The Saxton Export (XXV) Corp.
The Saxton Export (XXVI) Corp.
The Saxton Export (XXVII) Corp.
The Saxton Export (XXVIII) Corp.
The Saxton Export (XXIX) Corp.
The Saxton Export (XXX) Corp.
The Saxton Export (XXXI) Corp.
The Saxton Export (XXXII) Corp.
The Saxton Export (XXXIII) Corp.
The Saxton Export (XXXIV) Corp.
The Saxton Export (XXXV) Corp.
The Saxton Export (XXXVI) Corp.
The Saxton Export (XXXVII) Corp.
The Saxton Export (XXXVIII) Corp.

9. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. The sales of shares of the Offering Corporations (the “Saxton Securities”) constituted trades in securities of an issuer that had not been previously issued.

10. The distribution of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or a prospectus with the Commission. None of the Offering Corporations received a receipt for a prospectus from the Commission. None of the Offering Corporations filed an Offering Memorandum or a Form 20 with the Commission.

11. The Offering Corporations purported to rely on the “seed capital” prospectus exemption contained in subparagraph 72(1)(p) of the Act. Neither this exemption, nor any other prospectus exemption, was available to them.

12. None of the exemptions from the registration requirements in Ontario securities law was available for the sale of the Saxton Securities.

13. On or about October 7, 1998, the Court appointed KPMG Inc. (“KPMG”) as the custodian of Saxton’s assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest [as reported by a related company, Sussex Group Ltd. (“Sussex”)], was approximately \$5.5 million. Sussex currently is being wound down by a court-appointed manager.

The Saxton Products and Business

14. The Saxton Group was a trade name that encompassed a complex network of related companies including Saxton, the Offering Corporations and Sussex Admiral Group Limited (Barbados), later renamed Sussex.

15. The Saxton Group's core business was the development and manufacturing of beverage and food products for the hospitality and tourist industries in Cuba and elsewhere in the Caribbean. Sussex was the Saxton Group's operating company. Among other things, Sussex held the Saxton Group's economic associations, operating contracts and supply agreements.

16. The primary function of every Offering Corporation was to raise investment capital for the Saxton Group's operations in Cuba and elsewhere by the sale of the Saxton Securities. The Offering Corporations funded Sussex's activities. Funds raised through the Offering Corporations were pooled and transferred to Saxton. Saxton, in turn, invested directly and indirectly (through 1125956 Ontario Inc.), in the Saxton Group's operations. Investors associated their investment with the Saxton Group, not the Offering Corporations.

17. The Offering Corporations prepared Offering Memoranda. These Memoranda were virtually identical and provided little information about the Saxton Group's operations (into which funds invested in the Offering Corporations would flow) other than their geographic location.

18. The Offering Memoranda described the Saxton Securities as "speculative". They stated that: (i) there was no market for the shares; and (ii) dividends would be paid when profits were earned (but since the corporation had no operating history, there can be no assurance that it will be able to achieve any level of profitability).

19. Although, in fact, investors purchased shares, Saxton advertised and marketed the Saxton Securities as a "GIC", a "Fixed Dividend Account" product and an "Equity Dividend Account" product. The Saxton products were marketed and sold as RRSP-eligible and a no, or low, risk investment (notwithstanding that the Saxton Securities were described in the Offering Memoranda as "speculative").

20. The "GIC" promised investors an annual return of 10.25%. The Fixed Dividend Account product promised investors either a 10.25% annual return for a three year term compounded or a 12% annual return for a five year term compounded. Investors in the Equity Dividend Account product were told to expect 25% to 30% annual growth of their investment.

Management of Saxton

21. Between 1996 and December 1997, McGee actively participated in the illegal distributions of the Saxton Securities.

22. Between March and May 1996, McGee sold the Saxton Securities directly to 4 Ontario investors for a total amount sold of approximately \$80,000. McGee earned commissions of 5% on such sales. Thereafter, McGee was involved with, among other things, the general promotion, solicitation and sale of the Saxton Securities and management of the operations.

23. McGee failed to conduct the appropriate due diligence to ensure that the Saxton Securities' distributions complied with Ontario securities law. The incorporation, and use, of the thirty-seven Offering Corporations was designed to circumvent the "seed capital" prospectus exemption requirement in subparagraph 72(1)(p) of the Act that sales be made to no more than twenty-five purchasers. McGee was aware of the corporate structure used by Saxton to

distribute the Securities. McGee knew that the Corporations purported to rely on the “seed capital” prospectus exemption. To McGee’s knowledge, once one Offering Corporation received funds from the maximum allowed twenty-five investors, investors were allocated to a different Offering Corporation.

24. McGee also was aware that several Saxton salespeople were not registered with the Commission to trade securities.

25. The Offering Memoranda did not provide investors with substantially the same information that a prospectus filed under the Act would provide. Further, many investors did not receive an Offering Memorandum prior to their investment. McGee failed to scrutinize adequately the accuracy and sufficiency of such Memoranda. He also failed to ensure that they were distributed to all salespeople and prospective investors.

26. The Saxton Group produced promotional and investor relations material, including business summaries. This material focused on the Group’s beverage, beer, coffee and printing operations in Cuba. McGee participated in the drafting and review of this material. Among other things, the Saxton Group represented in its business summaries that it had established a strong foothold in the Cuban market, it was positioned to capture the resort and cruise line travel sector and it was experiencing high levels of successful growth.

27. In 1996, the Saxton Group produced a template letter that was sent to prospective and current investors. McGee signed many of these letters. These letters extolled the success and growth of the Group’s Cuban operations at minimal risk exposure to investors. Among other things, they stated that: “Since Saxton began its operations over three years ago, straight equity investors have earned returns in excess of 30% in each of the last three years. The Group’s fixed dividend investors are currently receiving an impressive 10¼% return locked in over a three year period. Both investments qualify for, and are ideal for aggressive growth within or outside an investors’ RRSP.” McGee never reviewed any Saxton financial statements.

28. The Group actively promoted what it called the “20/20 Rule”. According to the 1996 template letters, investors would deal only with a principal of the corporation such that, “from the moment you participate in this exciting investment alternative, you will know that the people you are dealing with will not earn a penny unless a return of more than 20% is generated”. To McGee’s knowledge, independent salespeople earned 5% commissions on their sales of the Saxton Securities. In addition, Rick Fangeat (“Fangeat”) and McGee earned trailer fees.

29. The Saxton Group produced quarterly account statements. These statements were delivered directly to investors from the Saxton head office and were accompanied by a covering letter. These covering letters gave a brief update on the Cuban and other businesses and were signed by Eizenga, and in at least one instance by McGee. McGee did not participate in the generation of the quarterly account statements but was aware that the Group was distributing such statements to investors.

30. Shareholders who invested in the “GIC/Fixed Dividend Account” product received quarterly account statements that reflected a “market value” increase of between 10.25% or 12% (and thus, showed the rate of return promised to investors). The quarterly account statements

provided to shareholders who invested in the "Equity Dividend Account" product reflected a "market value" increase of between 25% and 30% (and thus, showed the rate of return which investors had been told to expect).

31. The quarterly account statements could not be substantiated by any accounting or financial data in Saxton's possession. There was no sound way of establishing the net results of the Saxton operations. Saxton never prepared financial statements or any record of revenue generation by the Saxton operations.

32. The quarterly account statements purported to disclose an increase in the market value for the quarter for the Saxton Securities. McGee knew that there was no market for the Saxton Securities and thus, no market value could be, or should have been, attributed to such Securities. The Offering Memoranda stated that there was no market for the shares.

33. The quarterly account statements provided to investors and salespeople provided misplaced comfort and confidence in the legitimacy of the Saxton Group business and the stability, quality and risk of their investment.

34. Although many of the Saxton salespeople operated out of Fangeat's office and Fangeat liaised with head office on such salespeople's behalf, McGee had some direct dealings with salespeople by way of telephone conversations, individual and group meetings, group presentations and written operations updates. Through this contact, McGee made various inaccurate or misleading representations to the Saxton salespeople including the following:

- (a) that they did not need to be registered with the Commission to sell the Saxton Securities;
- (b) that the sales of the Saxton Securities complied with Ontario securities law; and
- (c) information relating to the sales, financial state and profitability of the Saxton operations.

35. The Saxton salespeople knew that McGee was part of the Saxton management team and had a law degree (McGee told salespeople he was a lawyer and he listed his L.L.B. degree on his Saxton business card and when he signed letters as the Saxton vice-president). Because of McGee's position and professional training, salespeople may have relied on McGee's representations. Salespeople, in turn, may have relayed the information provided by McGee to their clients.

36. McGee also dealt with individuals that had invested in Saxton by way of letters, telephone conversations, individual and group meetings and trips to Cuba. Through this contact, McGee made various inaccurate or misleading representations to investors. Investors may have relied on McGee's representations given that he was part of the Saxton management team.

37. In or about 1997, the Saxton Group embarked on a plan to take the companies public and listed on a recognized stock exchange by way of a reverse takeover. It was contemplated that

Sussex's assets would be vended in to F.S.P.I. Technologies Corp., a company listed on the Alberta Stock Exchange.

38. In or about mid-1997, in the course of the going public process, McGee began to have some concerns that Saxton could not account for all the funds raised from Ontario investors through the sale of the Saxton Securities. Accordingly, McGee sought outside legal advice.

39. In August 1997, the Saxton Group, Eizenga, McGee and others received legal advice that the distribution of the Saxton Securities had not complied with Ontario securities law and that no further funds should be raised. Further, the company needed to compile the appropriate books and records to account for the monies raised from the Saxton Securities distributions.

40. McGee attempted to compile the corporate and financial information necessary to prepare an accounting of investor funds. To his knowledge, however, the Saxton Group continued to distribute the Saxton Securities. He failed to take the appropriate steps to stop the sale of the Saxton Securities. He did not inform the salespeople directly of the legal advice received, although Fangeat was aware of such advice. He did not contact the Commission or any other law enforcement agency.

McGee's Remuneration

41. In addition to commissions paid on his own direct sales, between the summer of 1996 and early 1997, McGee was paid 2.5% of all monies raised through the purchase of the Saxton Securities. Commencing in February 1997, McGee received a salary for his work with Saxton. In connection with his involvement in Saxton, McGee earned, in approximately one year, in excess of \$500,000.

42. By virtue of the conduct described in Part III above, McGee participated in the illegal distributions of the Saxton Securities and engaged in unregistered trading contrary to section 25 of the Act. No registration exemption was available to him. McGee's conduct was contrary to Ontario securities law and the public interest.

IV. MCGEE'S POSITION

43. McGee takes the position and represents to Staff that:

- (a) He relied extensively on the representations and direction of Eizenga and others on the management team;
- (b) With respect to paragraphs 17 and 18 above, he did not participate in the preparation of the Offering Memoranda. Eizenga assured McGee that the Offering Memoranda were backed by a legal opinion from the London, Ontario office of a national law firm. McGee never saw this purported opinion;
- (c) With respect to subparagraphs 34(a) and (b) above, McGee understood from Eizenga that salepeople did not have to be registered and believed that the structure was legal based upon the purported legal opinion from the London, Ontario office of a national law firm;

- (d) In preparing promotional materials and investor updates, McGee received information from Michael Tibollo respecting the status, growth and success of the Cuban operations and from Eizenga respecting the corporate structure and returns on the Saxton Securities. All such documentation was approved by Eizenga before it was disseminated; and
- (e) McGee supported and assisted in the retainer of counsel that led to the opinion described in paragraph 39 above. Once he received such legal opinion, McGee supported and participated in a process designed to trace investor funds and salvage value in the business for investors. He was terminated by Eizenga before that task was completed. During this process, Eizenga failed to co-operate and consistently attempted to frustrate McGee's efforts.

V. TERMS OF SETTLEMENT

44. McGee agrees to the following terms of settlement:

- (a) the making of an order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by McGee cease for fifteen years with the exception that, after three years from the date of the approval of this settlement, McGee is permitted to trade securities for his own account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:
 - (a) referred to in clause 1 of subsection 35(2) of the Act; or
 - (b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or
 - (c) issued by mutual funds that are reporting issuers in Ontario;
 - (iii) that McGee is prohibited from becoming or acting as a director or officer of any issuer for fifteen years;
 - (iv) that the exemption in subsection 34(b) of the *Securities Act* does not apply to McGee for fifteen years;
 - (v) reprimanding McGee; and
 - (vi) that the Temporary Order no longer has any force or effect; and
- (b) McGee will co-operate fully with Staff with respect to its outstanding proceeding in the Saxton matter including testifying as a witness for Staff.

VI. STAFF COMMITMENT

45. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against McGee in relation to the facts set out in Part III of this Settlement Agreement.

VII. APPROVAL OF SETTLEMENT

46. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for November 17, 2004 at 2:00 p.m. or such other date as may be agreed to by Staff and McGee (the "Settlement Hearing"). McGee will attend in person at the Settlement Hearing.

47. Counsel for Staff or McGee may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and McGee agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

48. If this settlement is approved by the Commission, McGee agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

49. Staff and McGee agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

50. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and McGee leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and McGee;
- (b) Staff and McGee shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Amended Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations;
- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and McGee or as may be required by law; and
- (d) McGee agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

51. Except as permitted under paragraph 47 above, this Settlement Agreement and its terms will be treated as confidential by Staff and McGee until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and McGee, or as may be required by law.

52. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

53. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement.

54. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 11 day of November, 2004

“David Roebuck”

WITNESS

“Luke McGee”

LUKE JOHN MCGEE

DATED this 12 day of November, 2004

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

“Michael Watson”

MICHAEL WATSON
Director, Enforcement Branch

Schedule "A"

**IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
ALLAN EIZENGA, RICHARD JULES FANGEAT, MICHAEL HERSEY,
LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO**

- and -

IN THE MATTER OF MICHAEL TIBOLLO

**ORDER
(Subsection 127(1))**

WHEREAS on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Luke John McGee ("McGee") and others and issued Amended Notices of Hearing against McGee and others on February 7, 2003 and May 21, 2004;

AND WHEREAS on September 24, 1998, the Commission made a Temporary Order as against McGee and others, such Temporary Order that was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

AND WHEREAS McGee and Staff of the Commission entered into a Settlement Agreement executed on November <*>, 2004 (the "Settlement Agreement") in which they agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission and upon hearing submissions from the agent for McGee and from Staff of the Commission, the Commission is of the opinion that it is in the public interest to make the following Order pursuant to subsection 127(1) of the Act;

IT IS ORDERED THAT:

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 2, trading in any securities by McGee cease for fifteen years commencing on the date of this Order except that, after three years, McGee is permitted to trade securities for his

own account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:

- (a) referred to in clause 1 of subsection 35(2) of the Act; or
 - (b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or
 - (c) issued by mutual funds that are reporting issuers in Ontario;
3. pursuant to subsection 127(1), paragraph 8, McGee is prohibited from becoming or acting as a director or officer of any issuer for fifteen years commencing on the date of this Order;
 4. pursuant to subsection 127(1), paragraph 3, the exemption in subsection 34(b) of the Act does not apply to McGee for fifteen years commencing on the date of this Order;
 5. pursuant to subsection 127(1), paragraph 6, McGee is reprimanded; and
 6. the Temporary Order as against McGee no longer has any force or effect.

DATED at Toronto this 17th day of November 2004
