

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN:**

**UDAYAN PANDYA**

Plaintiff

-and-

**COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES,  
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP  
and as CAMCO DEVELOPMENTS and as YORK GROUP**

Defendants

*In the Matter of the Class Proceedings Act, 1992*

**MOTION RECORD  
(Motion returnable July 31, 2009)**

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Court File No. 07-CL-67122

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Lawyers for Henry Huisman

**AND TO: RECEIVERSHIP WEBSITE**  
Website: <http://secreceiver.com>  
To be posted on July 13, 2009

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Court File No. 05-CL-6159

B E T W E E N:

UDAYAN PANDYA

Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES,  
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP  
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

*In the Matter of the Class Proceedings Act, 1992*

**INDEX**

**Tab Document**

1. Notice of Motion
2. Eleventh and Final Receiver's Report dated July 13, 2009
  - A. Exhibit "A" – Tenth Report of the Receiver (dated November 18, 2008)
  - B. Exhibit "B" – Reasons for Judgment of Justice Lederman, dated October 8, 2008
  - C. Exhibit "C" – Appeal Book Endorsement and Order of Feldman, Blair and Epstein J.J.A. dated April 20, 2009
  - D. Exhibit "D" – Letter to Miller Thomson LLP from Bennett Jones LLP dated May 20, 2009
  - E. Exhibit "E" – Endorsement of Justice Hoy dated April 21, 2008
  - F. Exhibit "F" – Letter to Miller Thomson LLP from Bennett Jones LLP dated February 24, 2009
  - G. Exhibit "G" – Letter to Miller Thomson LLP from Bennett Jones LLP dated April 27, 2009

- H. Exhibit "H" – Letter to Miller Thomson LLP from Bennett Jones LLP dated June 15, 2009
- I. Exhibit "I" – Letter to Bennett Jones LLP from Miller Thomson LLP dated June 16, 2009
- J. Exhibit "J" – Letter to Miller Thomson LLP from Bennett Jones LLP dated June 17, 2009
- K. Exhibit "K" – Supplemental Report to the Tenth Report of the Receiver (Dated December 3, 2008)
- L. Exhibit "L" – Order of Justice Ground dated November 17, 2005
- M. Exhibit "M" – Letter to Beard Winter LLP from Bennett Jones LLP dated May 15, 2009
- N. Exhibit "N" – Letter to Bennett Jones LLP from Beard Winter LLP dated May 15, 2009
- O. Exhibit "O" – Order of Justice Farley dated December 23, 2007
- P. Exhibit "P" – Decision on Motion of Justice Spies dated June 8, 2006
- Q. Exhibit "Q" – Endorsement and Order of Justice Pepall dated November 15, 2008
- R. Exhibit "R" – Order of Justice Campbell dated March 5, 2007
- S. Exhibit "S" – Endorsement and Order of Justice Campbell dated April 9, 2008
- T. Exhibit "T" – Endorsement and Order of Justice Campbell dated October 3, 2008
- U. Exhibit "U" – Endorsement and Order of Justice Campbell dated October 3, 2008
- V. Exhibit "V" – Endorsement and Order of Justice Campbell dated October 3, 2008
- W. Exhibit "W" – Receiver's Accounts and Billing Summary
- X. Exhibit "X" – Summary of Time and Fees and Disbursements
- 3. Affidavit of Lincoln Caylor sworn July 13, 2009
- 4. Summary of Counsel Fees (November 1, 2009 to June 18, 2009)
- 5. Summary of Disbursements of Bennett Jones LLP (November 1, 2009 to June 18, 2009)
- 6. Accounts of Bennett Jones LLP

**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

UDAYAN PANDYA

Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES,  
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP  
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

In the Matter of the *Class Proceedings Act, 1992*

**NOTICE OF MOTION  
(Motion returnable July 31, 2009)**

The court appointed receiver will make a motion to a judge presiding over the Commercial List at 330 University Avenue in Toronto, Ontario on July 31, 2009, at 10:00 a.m., or as soon after as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. Presentation of the Receiver's Eleventh and Final Report dated June 25, 2009.
2. An order that the interim fees, disbursements and GST from November 1, 2008 to June 18, 2009, are approved in the amount of \$180,444.49 and are to be paid to the counsel to the



receiver, Bennett Jones LLP, by the receiver, Michael J. Quilling, as a first charge on the receivership estate.

3. An order that the interim fees, disbursements and GST from November 1, 2008 to June 18, 2009, are approved in the amount of \$7,525.36 and are to be paid to the receiver, Michael J. Quilling, as a first charge on the receivership estate.

4. An order discharging the receiver (draft order attached as Schedule "A" hereto).

5. Leave of the court to bring this motion, if necessary.

6. Such further and other Order as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Discharging the Receiver**

1. All aspects of the receivership have now been resolved. Most recently, the Ontario Court of Appeal upheld the decision of the Honourable Justice Lederman, which entitles a large number of Courtney Wallis Simpson's claimants to payment of insurance claims totaling more than \$2,000,000. Many of the claimants of Simpson's fraudulent conduct will recover 100% of their respective loses.

2. Excluding the insurance monies, all assets of the receivership estate have been exhausted.

There will be no distribution of monies by the receiver from the estate.

**The Receiver's Fees and Counsel Fees**

3. Subject to paragraph 27 of the Order of the Honourable Justice Farley dated December 23, 2005, the Receiver's fees and the fees of Bennett Jones LLP, counsel to the Receiver, form a first charge from the assets recovered in the receivership.

**Further Grounds**

4. Rule 2 of the *Rules of Civil Procedure*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Receiver's Report dated June 25, 2009;
2. The Receiver's accounts;
3. The Affidavit of Lincoln Caylor sworn June 24, 2009;
4. The accounts of Bennett Jones LLP; and
5. Such other material as counsel may advise and this Honourable Court may permit.

DATE: July 13, 2009

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Court File No. 07-CL-67122

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Lawyers for Henry Huisman

**AND TO: RECEIVERSHIP WEBSITE**

Website: <http://secreceiver.com>

To be posted on July 13, 2009

**SCHEDULE "A"**

Court File No. 05-CL-6159

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE )  
 ) DAY, THIS DAY  
JUSTICE )  
 ) OF , 2009  
 )

**B E T W E E N:**

UDAYYAN PANDYA  
Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES,  
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP  
and as CAMCO DEVELOPMENTS and as YORK GROUP  
Defendants

In the Matter of the *Class Proceedings Act, 1992*

**DISCHARGE ORDER**

**THIS MOTION**, made by Michael J. Quilling, in his capacity as the court-appointed receiver (the "Receiver") of the property and assets of Courtney Wallis Simpson ("Simpson") and York Region Realty Inc. ("York Realty"), for an order:

1. approving the fees, disbursements and GST of the Receiver and counsel to the Receiver;
2. discharging Michael J. Quilling as Receiver of the property and assets of Simpson and York Realty; and

3. releasing Michael J. Quilling from any and all liability, as set out in paragraph 5 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the eleventh and final report of the Receiver, the affidavit of Lincoln Caylor as to fees, disbursements and GST sworn June 24, 2009, and on hearing the submissions of counsel for the Receiver;

1. **THIS COURT ORDERS** that the fees, disbursements and GST in the amount of \$186,521.37 are to be paid to the counsel to the Receiver, Bennett Jones LLP, by the Receiver as a first charge on the receivership estate.

2. **THIS COURT ORDERS** that the fees in the amount of \$7,101.50, disbursements in the amount of \$68.78 and GST in the amount of \$355.08 are to be paid to the Receiver as a first charge on the receivership estate.

3. **THIS COURT ORDERS** that the Receiver shall be discharged as Receiver of the undertaking, property and assets of Simpson and York Realty, provided however that notwithstanding its discharge herein:

- (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and
- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Michael J. Quilling in his capacity as Receiver.

4. **THIS COURT ORDERS** that the Receiver may release to Simpson any and all banking records or other materials obtained by the Receiver in the course of the Receivership and that all claims held by the receivership are assigned to Simpson.

5. **THIS COURT ORDERS AND DECLARES** that Michael J. Quilling and his firm Quilling Selander Cummiskey Lownds, P.C. ("Quilling") are hereby released and discharged from any and all liability that Quilling now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Quilling while acting in his capacity as Receiver herein. Without limiting the generality of the foregoing, Quilling is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings and any and all tax liability.

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**Udayan Pandya**  
Plaintiff

v.

**Courtney Wallis Simpson *et al.***  
Defendants

Court File No.: 05-CL-6159

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

In the matter of the *Class Proceedings*  
*Act, 1992*

Proceeding commenced at Toronto

**DISCHARGE ORDER**

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Solicitors for the receiver

Udayan Pandya  
Plaintiff

v.

Courtney Wallis Simpson *et al.*  
Defendants

Court File No.: 05-CL-6159

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

In the matter of the *Class Proceedings*  
*Act*, 1992

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
(Motion returnable July 31, 2009)

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Lawyers for the receiver

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N:**

UDAYAN PANDYA

Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES,  
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP  
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

*In the Matter of the Class Proceedings Act, 1992*

**ELEVENTH AND FINAL REPORT OF THE RECEIVER  
(Dated July 13, 2009)**

**Overview**

1. All aspects of the receivership have now been resolved. Most recently, the Ontario Court of Appeal upheld the decision of the Honourable Justice Lederman, which entitles a large number of Courtney Wallis Simpson's claimants to payment of insurance claims totaling more than \$2,000,000. Many of the claimants of Simpson's fraudulent conduct will recover 100% of their respective loses.
2. Excluding the insurance monies, all assets of the receivership estate have been exhausted. There will be no distribution of monies by the receiver from the estate.

3. The purpose of this eleventh and final report of the receiver is to:
  - (a) relate the payment process established by the insurer in respect of the insurance proceeds;
  - (b) obtain approval with respect to the fees and disbursements (and GST) of the receiver and counsel to the receiver; and
  - (c) obtain an order discharging the receiver (draft order attached as schedule "A" to the notice of motion).

#### **All Aspects of Receivership Resolved**

4. At the time of the receiver's most recent report (**Exhibit "A"**, without exhibits), the only remaining issue in the receivership estate concerned an appeal from the decision of the Honourable Justice Lederman, dated October 8, 2008 (**Exhibit "B"**). The factual background for Justice Lederman's decision as well as a description of the narrow point of contention between the receiver and the insurer appears at paragraphs 6 to 13 of Exhibit A. The receiver was successful at first instance.
5. On appeal, heard April 20, 2009, the decision of Justice Lederman was upheld. Attached as **Exhibit "C"** is a copy of the decision of the Ontario Court of Appeal.
6. Shortly after the appeal, the receiver sent a letter to the insurer's counsel setting out the amounts owing to the claimants under the insurance policy (**Exhibit "D"**). As at May, 30, 2009,

the insurer was liable to the insurance claimants in the cumulative amount of \$2,479,896.29. Interest continues to accrue on this amount at a per diem rate of \$176.72.

7. The insurance proceeds represent the largest recovery in the receivership to date. Many of the claimants of the so-called deposit scheme orchestrated by Simpson will recover 100% of their respective losses (plus interest).

8. On June 16, 2009 (letter attached below as Exhibit I) the insurer confirmed that it has no intention of seeking leave to appeal. All insurance proceeds are to be paid by the insurer directly to the claimants of the deposit scheme pursuant to the endorsement of the Honourable Justice Hoy dated April 21, 2008, attached and marked as **Exhibit "E"**.

#### **Distribution of Insurance Proceeds**

9. The insurance claimants originally submitted their respective claims to the Real Estate Council of Ontario in November, 2005. These claims totaled more than \$2 million. The insurer took the position that its liability was capped at \$500,000 – an amount which was to be shared, *pro rata*, among the 22 different claimants. Justice Lederman held that the insurer's position was incorrect, requiring instead that each claimant be paid the full amount of their respective losses up to \$100,000 (per claim). Since the time of the original claims in 2005, no money has been paid by the insurer to the claimants.

10. For ease of reference, a comprehensive list of the insurance claimants was sent to insurer's counsel on May 20, 2009 (Exhibit D). This list includes two individuals, namely Henry

Huisman and Barry Snaper, who apparently submitted claims to the RECO, although their claims were not processed by the insurer's adjusters in the same way as the other claimants, or at all.

11. On February 24, 2009 and April 27, 2009, the receiver wrote to insurer's counsel to inquire into the status of the two individuals for whom there was no prior record of a claim. These letters are attached as **Exhibits "F"** and **"G"**, respectively. Insurer's counsel advises the receiver that these claims are being processed by the insurer's adjusters. The receiver has no reason to question the veracity of these two claimants or the validity of their claims.

12. On June 15, 2009 (letter attached as **Exhibit "H"**), the receiver communicated his willingness to assist the insurer in locating the various insurance claimants. On June 16, 2009, insurer's counsel wrote to the receiver to outline the proposed distribution plan for all insurance proceeds (letter attached as **Exhibit "I"**). In response, the receiver sent insurer's counsel the most up to date address and other contact information (available to him) for each of the claimants. Attached as **Exhibit "J"** is the letter to insurer's counsel, enclosing the specified contact information.

13. The receiver has no further role to play as it concerns the distribution of the insurance monies. Contact information for the insurer's adjusters, along with this report and the discharge order will be posted to the receiver's website.

**No Distribution In Addition to Insurance Proceeds**

14. A supplementary report to the tenth report of the receiver (**Exhibit "K"**) was filed with the court on December 5, 2008. At the time of the supplementary report, approximately \$40,000 remained in the receivership estate after deducting the liabilities from the recoveries.
15. The fees and disbursements (and GST) of the receiver and counsel to the receiver incurred since the time of the supplementary report far exceed the amount remaining in the receivership estate. Excluding the insurance funds, there will be no money remaining to distribute.

16. The current value of the receivership estate is as follows:

Total funds recovered (excluding the value of the RECO insurance policy)	\$1,331,672.67
Total interest earned on the receivership estate	\$40,738.80
Fees of the receiver approved to date	\$140,781.43
Fees of counsel to the receiver approved to date	\$819,558.94
Total Disbursements paid from the receivership estate*	\$294,387.10
Total currently in receivership estate	\$114,340.72
Costs awarded pursuant to the Order of Justice Lederman dated December 12, 2008	\$20,000.00
Costs awarded pursuant to the Order of Feldman, Blair and Epstein, J.J.A. dated April 20, 2009	\$7,500.00
Total in receivership estate after costs awards are paid	\$141,840.72
Fees, disbursements and GST of the receiver from July 1 to	\$2,526.00



October 31, 2008	
Fees, disbursements and GST of counsel to the receiver from June 16 to October 31, 2008	\$74,711.84
Total after payment of the fees, disbursements and GST of the receiver and counsel to the receiver up to October 31, 2008	\$64,602.88
Fees, disbursements and GST of the receiver from November 1, 2008 to June 16, 2009	\$7,525.36
Fees, disbursements and GST of counsel to the receiver from November 1, 2008 to June 16, 2009	\$186,521.37
Total after payment of the fees, disbursements and GST of the receiver and counsel to the receiver up to June 16, 2009	-\$129,443.85
Total value of insurance claims payable directly to the claimants as awarded in the decision of Justice Lederman dated October 8, 2008 (affirmed on appeal)	\$2,479,897.29

\*Disbursements include payment of insurance, utilities, maintenance expenses and tax arrears on properties, payment of real estate commissions to sell the properties and discharging mortgages registered on properties.

#### Taxes

17. The receiver has maintained interest-bearing trust accounts relating to the receivership estate. As a consequence, the receiver's bank has issued T5 forms noting the investment income.
18. As set out in paragraph 22 of the initial order (**Exhibit "L"**), the receiver shall incur no liability or obligation as a result of its appointment or the fulfillment of its duties in carrying out the provisions of the order. As part of the draft discharge order appearing as schedule A to the notice of motion, the receiver is expressly relieved of any obligation to remit tax to Canada Revenue Agency.

### Assignment of Contingent Claims

19. Simpson has recently alleged that certain persons are indebted to her or were otherwise overpaid in the course of her business dealings as a real estate agent. For example, on May 15, 2009, the receiver wrote to counsel for Ajay Pahwa to inquire into an alleged overpayment (letter attached as **Exhibit "M"**). Mr. Pahwa's counsel denied the allegations of Simpson (**Exhibit "N"**).

20. The receiver does not recommend pursuing these contingent claims. However, the receiver is prepared to assign these claims to Simpson, who may or may not opt to pursue them in her personal capacity. The proposed discharge order includes provision for the release of banking and other records to Simpson so that she may pursue such alleged overpayments.

### Discharge of Receiver

21. As stated above, the draft discharge order is attached as schedule A to the notice of motion. Among other things, the proposed order relieves the receiver of any and all further obligations with respect to the receivership estate.

### Receiver's Fees Motions

22. Subject to paragraph 27 of the Order of Justice Farley dated December 23, 2005, the receiver's fees and the fees of Bennett Jones LLP, counsel for the receiver, form a first charge

from the assets recovered in the receivership herein. A copy of the Order of Justice Farley dated December 23, 2005 is attached and marked **Exhibit "O"**.

23. The receiver and the receiver's counsel first sought approval of their interim accounts (dated October 11, 2005 to April 12, 2006) on a motion before Justice Spies heard on April 26, 2006. Justice Spies, in her decision on the motion dated June 8, 2006, approved the receiver's fees. Attached and marked as **Exhibit "P"** is a copy of Justice Spies' Decision on Motion dated June 8, 2006.

24. The receiver and the receiver's counsel next sought approval of their interim accounts (dated April 1 to July 31, 2006) on a motion before Justice Pepall heard on October 10 and November 15, 2006. Justice Pepall's endorsement is attached hereto as **Exhibit "Q"**. Justice Pepall requested a billing summary setting out the receiver's hours, fees and disbursements which was filed with the court and the motion was subsequently brought back as a motion in writing to deal with the remaining issues.

25. Justice Campbell heard the motion in writing and granted the requested relief. The Order of Justice Campbell dated March 5, 2007 is attached hereto as **Exhibit "R"**.

26. The receiver next sought approval of his interim accounts (dated August 1, 2006 to June 30, 2007) on a motion in writing (Notice of Motion dated April 4, 2008). Justice Campbell heard the motion in writing and his Endorsement is attached hereto as **Exhibit "S"**.

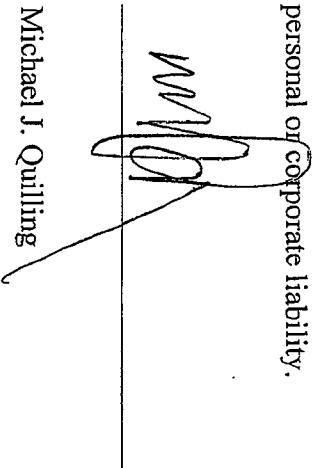
27. As requested by Justice Campbell in his endorsement (Exhibit "S"), the receiver's counsel submitted a supplementary motion record containing back up documents regarding disbursements. Justice Campbell's Endorsement and Order are collectively attached as **Exhibit "T"**.
28. The receiver and receiver's counsel next sought approval of their interim accounts (dated July 1, 2007 to March 31, 2008) on a motion in writing (Notice of Motion dated May 2, 2008). Justice Campbell heard the motion in writing and his Endorsement and Order are collectively attached as **Exhibit "U"**.
29. The receiver and receiver's counsel next sought approval of their interim accounts (receiver's accounts dated April 1 to June 30, 2008, receiver's counsel's accounts dated April 1 to June 15, 2008) on a motion in writing (Notice of Motion dated July 23, 2008). Justice Campbell heard the motion in writing and his Endorsement and Order are collectively attached as **Exhibit "V"**.
30. The receiver and receiver's counsel next sought approval of their interim accounts (receiver's accounts dated July 1, 2008 through to October 31, 2008, receiver's counsel's accounts dated June 16, 2008 to October 31, 2008) on a motion in writing (Notice of Motion dated November 20, 2008). Justice Campbell has not yet heard this motion.
31. In the period commencing November 1, 2008 to June 16, 2009, the receiver incurred fee accounts in the amount of \$7,101.50, disbursements in the amount of \$68.78 and GST in the amount of \$355.08.

32. The receiver has reviewed the accounts related to this receivership and the summary of fees and disbursements (Exhibits "W" and "X") and verily believes that they accurately reflect the time spent, fees incurred and disbursements made in conjunction with this matter.

33. The receiver has reviewed the material appearing at Tabs 3, 4, 5 and 6 of this Motion Record, including the Affidavit of Lincoln Caylor, and verily believes that these documents accurately reflect the time spent, fees incurred and disbursements made by counsel to the receiver (in the total amount of \$180,444.49) in conjunction with this matter.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:**

Michael J. Quilling in his capacity as  
Court Appointed Receiver with no  
personal or corporate liability.



A handwritten signature in black ink, appearing to read 'M. Quilling', is written over a horizontal line. The signature is stylized and cursive.

Michael J. Quilling

WSL:egal\056444\5100001\5384691 v1

**TAB A**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

UDAYYAN PANDYA

Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES,  
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP  
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

In the Matter of the *Class Proceedings Act, 1992*

**TENTH REPORT OF THE RECEIVER  
(Dated November 18, 2008)**

**Background**

1. This proceeding has been commenced as a class action against the defendants for fraud, unjust enrichment, breach of fiduciary duty and/or misrepresentation with respect to a large number of victims or class members. The defendants have not defended this action and have been noted in default. Courtney Wallis Simpson ("Simpson") pleaded guilty to several criminal and regulatory charges and was recently released from prison.
2. By order of the Honourable Mr. Justice Ground dated November 17, 2005 (the "Initial Order"), Michael J. Quilling (the "Receiver") was appointed receiver, pursuant to section 101 of

the *Courts of Justice Act* and rule 41.02 of the *Rules of Civil Procedure*, over the assets of Simpson and York Region Realty Inc. ("York Realty"). A copy of the Initial Order is attached and marked as **Exhibit "A"**.

3. At paragraph 35 of the order of the Honourable Mr. Justice Farley dated December 15, 2005 ("First Amended and Restated Initial Order"), it was ordered that the Receiver deal directly with the Real Estate Council of Ontario ("RECO") on behalf of the class members who have submitted claims to RECO seeking to recover consumer deposit insurance for their lost deposits. As described in greater detail below, these deposits were stolen by Simpson. A copy of the First Amended and Restated Initial Order is attached and marked as **Exhibit "B"**.

4. By order of the Honourable Justice Pepall, dated June 27, 2007, attached and marked as **Exhibit "C"**, it was ordered that the Receiver has the authority to commence proceedings against Lloyd's of London (a.k.a. Nicholas Smith Attorney in Fact in Canada for Lloyd's of London) ("Lloyd's"), insurer for RECO, seeking a judicial determination of the issue of claimants' entitlement to consumer deposit insurance proceeds for deposits lost due to Simpson's conduct. Pursuant to this Order, the Receiver issued an application on August 1, 2007, which is attached and marked as **Exhibit "D"**.

5. In accordance with the Endorsement of the Honourable Justice Campbell dated October 3, 2008 (attached as **Exhibit "Q"**), the purpose of this tenth report of the Receiver is to:

- (a) update the court as to the status of the application against Lloyd's;



- (b) update the court as to the status of the action against Michael Sourlis and Zapfe Holdings Inc. with respect to the disputed transfer of certain Dianor Resources Inc. shares (the "Dianor Action");
- (c) describe the only remaining issue to be resolved in the receivership estate prior to distribution; and
- (d) obtain approval with respect to the fees and disbursements (and GST) of the Receiver.

**Application Against Lloyd's**

- 6. Simpson was a real estate agent who orchestrated numerous fraudulent transactions -- cumulatively, more than 50 people were victimized.
- 7. A group of these transactions involved the purported purchase and sale of real property (the "Deposit Thefts"). There were 25 separate fraudulent transactions. The victims' deposits, which ranged in amount from \$5,000 to \$400,000, were misappropriated by Simpson. In total, approximately, \$3 million was misappropriated by Simpson through the Deposit Thefts.
- 8. RECO maintained an insurance policy to cover the losses incurred by the victims of the Deposit Thefts. At all material times, Lloyd's was the insurer of RECO. Simpson and York Realty, were "Registrants" under the insurance policy.

9. The narrow point of contention between the Receiver and Lloyd's concerns the limits of liability under the insurance policy. These limits are \$100,000 for each claim and \$500,000, aggregate, for each occurrence (or series of related occurrences).

10. Lloyd's maintains that the Deposit Thefts are one occurrence or a series of related occurrences such that the \$500,000 aggregate insurance policy limit applies. The Receiver argues that Lloyd's should pay each claim (as separate and unrelated occurrences) made by the victims of the Deposit Thefts up to \$100,000.

11. The difference in monetary terms between the Receiver's position with respect to the interpretation of the insurance policy and that of Lloyd's is more than \$1,500,000. The outcome of the proceeding against Lloyd's will have a significant impact on the victims' recovery in the receivership.

12. The Honourable Justice Lederman heard the Receiver's application on August 25, 2008. His Honour's reasons for judgment were released on October 8, 2008. The Receiver was entirely successful, securing more than \$2,000,000 for the victims of the Deposit Thefts and ensuring that many of these victims will recover 100% of their loss. Attached and marked as Exhibit "E" is a copy of the reasons for judgment. Attached and marked as Exhibit "F" is a sample copy of the letter sent on October 17, 2008 by the Receiver to the victims of the Deposit Thefts notifying them of the reasons for judgment. All insurance proceeds are to be paid directly to the victims of the Deposit Thefts pursuant to the Endorsement of the Honourable Justice Hoy dated April 21, 2008, attached and marked as Exhibit "G".

13. Lloyd's recently delivered a notice of appeal, which is attached and marked as Exhibit "H". The Receiver has notified the victims of the Deposit Thefts of Lloyd's intention to appeal the decision of the Honourable Justice Lederman.

#### **Dianor Action**

14. In accordance with the terms of the Initial Order, the Receiver has undertaken an extensive investigation of Simpson's assets.

15. On January 10, 2006, less than two months after the date of the Initial Order, this investigation into Simpson's assets led to suspicion that share certificate no. 0-01476 representing 301,923 common shares of Dianor Resources Inc. and share certificate no. 0-01630 representing 217,391 common shares of Dianor Resources Inc. (the "Dianor Shares") had been transferred into two individual accounts at Royal Bank of Canada ("RBC") in contravention of the Initial Order. At that time and in the few months that followed, the Dianor Shares were worth hundreds of thousands of dollars. For example, on April 5, 2006, the Dianor Shares were worth \$862,061.24.

16. On March 9, 2006, the Receiver obtained an order from the court requiring RBC to freeze the Dianor Shares until the propriety of the apparent transfer could be better assessed. On January 22, 2007 the Receiver commenced the Dianor Action. The Dianor Action involved competing ownership claims over the Dianor Shares.

17. The Receiver engaged in several without prejudice settlement discussions in an effort to resolve the Dianor Action without further court intervention. The value of the Dianor Shares plummeted. As of November 10, 2008, the Dianor Shares were worth approximately, \$49,334.83.

18. The Receiver has settled the Dianor Action on the basis of payment to the receivership estate in the amount of \$80,493.67. The other terms of settlement are contained in the order of the Honourable Justice Campbell attached and marked as Exhibit "I". All terms of settlement in the Dianor Action have been met.

#### **Remaining Issue in Receivership**

19. With the exception of the appeal of the Honourable Justice Lederman's reasons for judgment in the Lloyd's matter (at Exhibit "E"), there are no remaining issues to be resolved in the receivership. Specifically, all real estate forming part of the receivership estate has now been sold. The matter involving certain mortgages obtained by Ajay Pahwa against three properties owned by Simpson and more particularly described as part of the Receiver's 8<sup>th</sup> report, has been settled and, as stated above, all terms of settlement in the Dianor Action have been completed.

20. All claims in the receivership estate have been thoroughly vetted by the Receiver. However, the Receiver does intend to meet with Simpson to review the claims prior to final approval and distribution. In addition, no distributions can be made until all avenues of appeal from the reasons for judgment of the Honourable Justice Lederman have been exhausted. Excluding the RECO/Lloyd's insurance funds, it is anticipated that there will be little, if any,

money to distribute. Again, the extent and the number of claims in the receivership estate will vary significantly based on the outcome of the Lloyd's appeal(s).

#### **Receiver's Fees Motions**

21. Subject to paragraph 27 of the Order of Justice Farley dated December 23, 2005, the Receiver's fees and the fees of Bennett Jones LLP, counsel for the Receiver, form a first charge from the assets recovered in the receivership herein. A copy of the Order of Justice Farley dated December 23, 2005 is attached and marked **Exhibit "J"**.

22. The Receiver and the Receiver's counsel first sought approval of their interim accounts (dated October 11, 2005 to April 12, 2006) on a motion before Justice Spies heard on April 26, 2006. Justice Spies, in her decision on the motion dated June 8, 2006, approved the Receiver's fees. Attached and marked as **Exhibit "K"** is a copy of Justice Spies' Decision on Motion dated June 8, 2006.

23. The Receiver and the Receiver's counsel next sought approval of their interim accounts (dated April 1 to July 31, 2006) on a motion before Justice Pepall heard on October 10 and November 15, 2006. Justice Pepall's endorsement is attached hereto as **Exhibit "L"**. Justice Pepall requested a billing summary setting out the Receiver's hours, fees and disbursements which was filed with the court and the motion was subsequently brought back as a motion in writing to deal with the remaining issues.

24. Justice Campbell heard the motion in writing and granted the requested relief. The Order of Justice Campbell dated March 5, 2007 is attached hereto as **Exhibit "M"**.
25. The Receiver next sought approval of his interim accounts (dated August 1, 2006 to June 30, 2007) on a motion in writing (Notice of Motion dated April 4, 2008). Justice Campbell heard the motion in writing and his Endorsement is attached hereto as **Exhibit "N"**.
26. As requested by Justice Campbell in his endorsement (**Exhibit "N"**), the receiver's counsel submitted a supplementary motion record containing back up documents regarding disbursements. Justice Campbell's Endorsement and Order are collectively attached as **Exhibit "O"**.
27. The Receiver and Receiver's counsel next sought approval of their interim accounts (dated July 1, 2007 to March 31, 2008) on a motion in writing (Notice of Motion dated May 2, 2008). Justice Campbell heard the motion in writing and his Endorsement and Order are collectively attached as **Exhibit "P"**.
28. The Receiver and Receiver's counsel next sought approval of their interim accounts (Receiver's accounts dated April 1 to June 30, 2008, Receiver's counsel's accounts dated April 1 to June 15, 2008) on a motion in writing (Notice of Motion dated July 23, 2008). Justice Campbell heard the motion in writing and his Endorsement and Order are collectively attached as **Exhibit "Q"**.

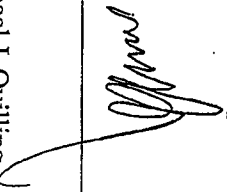
29. In the period commencing July 1, 2008 through to October 31, 2008 the Receiver incurred fee accounts in the amount of \$1,960.00, disbursements in the amount of \$468.00 and GST in the amount of \$98.00.

30. The Receiver has reviewed the accounts related to this receivership and the summary of fees and disbursements (Exhibits "R" and "S") and verily believes that they accurately reflect the time spent, fees incurred and disbursements made in conjunction with this matter.

31. The Receiver has reviewed the material appearing at Tabs 3, 4, 5 and 6 of this Motion Record, including the Affidavit of Lincoln Caylor, and verily believes that these documents accurately reflect the time spent, fees incurred and disbursements made by counsel to the Receiver (in the total amount of \$74,711.84) in conjunction with this matter.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:**

Michael J. Quilling in his capacity as  
Court Appointed Receiver with no  
personal or corporate liability.

  
\_\_\_\_\_  
Michael J. Quilling

WSLegal\056445\00001\4959424v1

**TAB B**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

MICHAEL J. QUILLING, IN HIS CAPACITY AS ) *Lincoln Caylor & David Rainsberry,*  
COURT APPOINTED RECEIVER FOR COURTNEY ) for the Applicant  
WALLIS SIMPSON ) )  
) )  
) )

Applicant )

- and - )  
) )  
) )  
) )  
) )  
) )  
) )

NICHOLAS SMITH ATTORNEY IN FACT IN ) *Robert L. Falby, O.C.,*  
CANADA FOR LLOYD'S UNDERWRITERS ) for the Respondent  
) )  
) )

Respondent )  
) )  
) )  
) )  
) )  
) )  
) )

) Heard: August 25, 2008  
) )

**LEDERMAN, J.**

**Nature of Application**

[1] This application seeks the interpretation of the limits of liability of an insurance policy held by the Real Estate Council of Ontario to cover losses of consumer deposits. The policy provides that each claim has a limit of liability of \$100,000, but that the aggregate liability for each "occurrence" or "series of related occurrences" is \$500,000. The question is whether the claims at issue constitute separate occurrences, and if so, are any of these occurrences part of a series of related occurrences.

**Facts**

[2] Michael J. Quilling ("Applicant") is the court-appointed receiver of Courtney Wallis Simpson ("Simpson"). He acts on behalf of victims of a real estate deposit scheme, which is one of two different fraudulent schemes put in place by Simpson and her company, York Region

Realty Inc. The deposit scheme involved the purported purchase and sale of real property. Simpson stole 25 deposits, ranging in size from \$5,000 to \$400,000 from 22 different victims (3 of the victims are claiming twice).

[3] In addition to the deposit thefts, Simpson created a 'Ponzi' scheme, soliciting money from individuals to "invest" in "interim occupancy mortgages". She used the misappropriated deposits to fund her mortgage scheme. Simpson was convicted and sentenced to five years in jail and a restitution order for \$4.5 million was issued. The trial judge described the victims of both schemes as individual investors, not institutions, many of whom lost their life savings.

[4] Victims of the deposit thefts are covered by consumer real estate deposit insurance, held by the Real Estate Council of Ontario ("RECO"). RECO administers the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30. ("*Act*") on behalf of the Ontario government. Its mandate is to regulate the activity of trade in real estate in the public interest. The insurance policy is provided by Lloyd's Underwriters ("Respondent").

[5] The policy stipulates in the "Consumer Deposit Insurance Extension" section that the insurer agrees:

To pay on behalf of the Insured the amount of any Claim for Loss sustained by a Claimant in a trade in real estate in the Province of Ontario arising out of an Occurrence discovered during the Policy Period.

[6] However, there are coverage limits built into the policy. Each claim is limited to a \$100,000 recovery, where a "claim" is a demand of money arising out of an "Occurrence". An Occurrence is defined as:

"Occurrence" means the insolvency of a Registrant or the theft, fraud, misappropriation or wrongful conversion directly or indirectly by a Registrant or present or former employee, director, officer or manager of a Registrant of moneys or other property entrusted to or received by the Registrant in the Registrant's Professional Capacity.

[7] In addition, there is a \$500,000 aggregate limit for any one Occurrence or series of related Occurrences. The policy states:

The Limit of Liability – aggregate each Occurrence stated in the DECLARATIONS shall be the maximum liability of the Insurer and the Named Insured in any one Occurrence or series of related Occurrences. If the total amount of all Claims in any one Occurrence exceeds the aggregate Limit of Liability, then all Claims will be settled on a pro-rata basis in the same proportion that the aggregate Limit of Liability bears to the total amount of all Claims.

[8] The Applicant argues that each deposit theft was a separate, unrelated Occurrence. The Respondent argues that they constitute a single Occurrence, and in the alternative, that they are a “series of related Occurrences” such that the \$500,000 limit applies.

#### Issues

1. Do the 25 deposit thefts constitute a single Occurrence within the meaning of the policy?
2. If not, do they, or a subset of them, constitute a series of related Occurrences, triggering the aggregate limit of liability?

#### 1. Single Occurrence or Separate Occurrences?

##### *Positions of the Parties*

[9] Both the Applicant and the Respondent argue that the policy definitions are sufficiently clear on their face, but each holds they mean a different thing.

[10] The Applicant submits that Occurrence under the policy is defined in the singular. It is “...the theft” not “thefts”. To consider all 25 separate acts of theft as one would stretch the singular “theft” to mean “thefts” which is beyond what the word can bear. The Applicant points out that there are no words *within* the definition of Occurrence to the effect of “an act or series of acts”, nor indeed “the theft or series of thefts”.

[11] The acts by Ms Simpson were separate, perpetrated on different days in relation to different transactions, with many different victims. The Applicant relies upon Hilliker’s *Liability Insurance Law in Canada*, in which it states that all injuries flowing from one cause are one occurrence, but “[w]here, however, separate injuries result from separate acts, even though the acts may be of the same nature, each act constitutes a separate occurrence.”<sup>1</sup>

[12] The Respondent also relies upon the definition of Occurrence but points to the use of the plural word “moneys”. The plural, it is claimed, indicates that Occurrence includes a scheme involving multiple instances of theft of money, or a single theft encompassing several transactions. It was agreed between the parties that the thefts by Ms Simpson were a fraudulent scheme. Therefore, the Respondent argues that they are a single “Occurrence”.

##### *The thefts are not a single Occurrence*

[13] That the deposit thefts were part of a scheme does not make them a single Occurrence. The wording of the policy is plain: an “occurrence” means “...the theft, fraud, misappropriation or wrongful conversion” of deposits. To find that the 25 thefts perpetrated by Ms Simpson are a single Occurrence stretches the singular into plural and may also render the aggregate limit of liability meaningless.

<sup>1</sup> Gordon Hilliker, *Liability Insurance in Canada*, 3d ed. (Butterworths, 2001) pp. 63-4.

[14] The use of the word “moneys” does not change this. “Moneys” is also used in the definition of “Loss”, which states: “‘Loss’ means loss of deposit in the form of moneys or other property...” It would seem that the policy is merely defining Occurrence with reference to its definition of Loss. In protecting consumer real estate deposits, the policy does not wish to limit coverage to deposits in the form of a single amount of money. So too, the definition of Occurrence is not limited to deposits in the form of a single amount of money, but extends to “...the theft...of moneys or other property...”, mirroring the definition of Loss.

[15] Therefore, each of the 25 deposit thefts is a separate Occurrence.

2. *Do the 25 thefts constitute a series of related Occurrences, triggering the aggregate limit of liability?*

[16] Having found each theft to be a separate Occurrence, it is necessary to determine whether they constitute a series of related thefts. This policy contains a coverage limit of \$500,000 in any one Occurrence or “series of related” Occurrences. If this limit applies, all 22 victims will share *pro rata* in the \$500,000.

*Positions of the Parties*

[17] The Applicant argues that the deposit thefts are separate, unrelated occurrences, relying on *Pacific Rim Nutrition Ltd. v. Guardian Insurance Co. of Canada*<sup>2</sup>. In that case, a bookkeeper stole cash portions of daily deposits, and on one occasion, stole money from the vault. The employer’s employee theft insurance policy read:

“Occurrence” means any act or series of related acts involving one or more persons (or one or more “employees”...) which results in a loss insured by this Section.

[18] The trial judge found the deposit thefts to be a series of related acts, but held the vault theft was not part of the series, as the crime was dissimilar.

[19] To arrive at this conclusion, the trial judge reviewed a U.S. case which found that “...the common understanding of the word ‘related’ covers a very broad range of connections, both causal and logical”.<sup>3</sup> He then turned to the dictionary definition of “related” as “any connection, correspondence, or association” and held that “related” was not ambiguous. Since the deposit thefts were all by the same person, against the same employer, using the same method, they were all related because there was “no doubt a connection or association between each”. However, he

<sup>2</sup> *Pacific Rim Nutrition Ltd. v. Guardian Insurance Co. of Canada*, [1995] 8 W.W.R. 74, [Pacific Rim], aff’d [1998] B.C.J. No. 1852 (C.A.) [Pacific Rim Appeal].

<sup>3</sup> See *Gregory v. The Home Insurance Co.*, 876 F.2d 602 (7th Cir. 1989).

found that the vault theft “was not in any way related” to the deposit thefts, because of the change in method of operation.<sup>4</sup>

[20] On appeal, the British Columbia Court of Appeal upheld the decision, noting that the decision in *American Commerce Insurance Brokers Inc. v. Minnesota Mutual Fire and Casualty Co.*<sup>5</sup> supported the trial judge’s approach. That case dealt with an employee of American Commerce who stole premiums paid in cash to the company, and who forged payroll cheques to herself. The policy had a limitation deeming all loss resulting from an act or series of related acts to be one occurrence. The court rejected a strict causal interpretation of “related” and said:

that a court may consider several factors in concluding whether dishonest acts are part of a “series of related acts,” including whether the acts are connected by time, place, opportunity, pattern, and, most importantly, method or *modus operandi*.

[21] On that basis, the *Minnesota Mutual* court found that the premium thefts and payroll frauds were separate, unrelated occurrences.

[22] The Applicant submits that, similar to *Pacific Rim* and *Minnesota Mutual*, the deposit thefts are not related because Simpson’s *modus operandi* was different in each case: different purchase and sale agreements, different warranties and representations, different properties, were used to secure a deposit from each victim.

[23] The Applicant also argues that the identity of the victim is germane. Counsel referred to professional liability cases as examples of this analysis. These cases have policies which limit recovery per occurrence, deeming “more than one act, error or omission...in relation to the same professional service” to be one occurrence. In *Yang v. Canadian Lawyers’ Insurance Assn*<sup>6</sup>, the trial judge held that a lawyer who had negligently invested the money of individuals unknown to each other in a shopping centre development had committed errors in separate professional services provided to each investor. In coming to this conclusion, the judge reviewed a Canadian case, *Royal Trust Corp of Canada v. American Home Assurance Co.*,<sup>7</sup> and several U.S. cases. All the cases cited focused on who the client was, and if there were more than one, whether a distinct duty or service could be discerned.<sup>8</sup> Similarly, here, the Applicant argues, the thefts were perpetrated against different victims, and must therefore be unrelated.

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<sup>4</sup> *Pacific Rim*, *supra* note 2, at paras. 53-56.

<sup>5</sup> 551 N.W. 2d 224 (Minn. 1996) [*Minnesota Mutual*].

<sup>6</sup> (1996) 133 D.L.R. (4th) 228, [1996] A.J. No. 172 (Q.B.), *aff’d* (1996) 147 D.L.R. (4th) 31, (C.A.), leave to appeal to S.C.C. refused, [1997] SCCA No. 318.

<sup>7</sup> (1992) 90 D.L.R. (4th) 582, [*Royal Trust*], *aff’d* (1993) 100 D.L.R. (4th) 447 (N.S.C.A.).

<sup>8</sup> *Royal Trust* was decided on the basis that the same service was provided to the same client, using the same instructions, between the same borrower and lender, albeit involving five properties. The properties were all subject to the same prior mortgage interest, the lawyer was supposed to have sought postponement agreements on them. The court found it “highly unlikely” that the lawyer would have been negligent with respect to one set of mortgages and not for the others (See p.604).

[24] The Respondent counters that the plain, dictionary, meaning of “related” includes “associated or connected”, and “of the same type”, which would include the deposit thefts at issue. In addition, prior case law has centered upon whether the perpetrator was the same in each theft, or in the case of multiple thieves, whether there was a conspiracy. According to the Respondent, Simpson was the sole thief, and so the thefts must be related. In *482467 Ontario Ltd. v. Wellington Insurance Co.*<sup>9</sup> there were multiple thieves. Five or six employees of a Mr. Submarine shop had stolen cash deposit money; one employee had committed deposit thefts on three occasions. In holding the thefts were not related, the court noted there were “nine discrete transactions involving at least five different (and maybe a sixth) employees.” The court went on to say at para. 11:

It has not been argued, nor do the circumstances reasonably invite the inference, that the employees were involved in any form of conspiracy such as to constitute the prima facie discrete acts into a “series of related acts”. The most cogent argument that could be made on behalf of the responding party is to urge that the transactions associated with “A.M.P.” be treated as “a series of related acts”.

[25] *Pacific Rim*, in the Respondent’s view, also supports the conclusion that the deposit thefts are related occurrences. In that case, the deposit thefts were “part of a systemic or continuing ongoing plan to steal cash from the insured”; here, too, the thefts were part of such a scheme.

#### *Meaning of the word “related”*

[26] The facts of the case clearly provide a series of Occurrences, so the meaning of “related” must be determined in the context of this policy. The dictionary definitions of the word “related” are as follows:

**Canadian Oxford Dictionary** lists “associated or connected with” and “of the same type; in the same group, category”.<sup>10</sup>

**Shorter Oxford English Dictionary**: “having relation; having mutual relation; connected”, where “relation” is defined as “the existence or effect of a connection, correspondence, or contrast between things; the particular way in which one things stands in connection with another; any connection or association conceivable as naturally existing between things.”<sup>11</sup>

[27] If we take the definition to be “of the same type; in the same group, category, etc.”, any two acts of theft are related, merely in their being thefts, without need for any other connection in time, place, or person. By this definition, the aggregate limit would apply to all thefts of all deposits by any Registrant for the duration of the policy. This would be an unreasonable

<sup>9</sup> [1991] O.J. No. 1206 (Gen. Div.) [Wellington].

<sup>10</sup> *Canadian Oxford Dictionary*, 2d ed., s.v. “related”.

<sup>11</sup> *Shorter Oxford English Dictionary*, 5<sup>th</sup> ed., s.v. “related” and “relation”.

interpretation of the policy. Clearly, then, not just any relation is necessary, but a particular kind of relation.

[28] As the word is broad in meaning, we must determine what its scope is in the context of this policy. The term “related” implies degree: things can be closely or tangentially related. The goal, then, is to determine what degree of relatedness fits with the intention of the parties to this insurance contract, given the objective of the contract and the facts surrounding it.

[29] As a reminder, the word appears under Coverage Limits, section 3(b):

The Limit of Liability – aggregate each Occurrence stated in the DECLARATIONS shall be the maximum liability of the Insurer and the Named Insured in any one Occurrence or series of related Occurrences.

[30] The provision is contained in a section entitled “Coverage Limits” within a “Consumer Deposit Insurance Extension” to RECO’s Errors & Omissions Insurance policy. The thrust of the policy is that the insurer agrees

To pay on behalf of the Insured the amount of any Claim for Loss sustained by a Claimant in a trade in real estate in the Province of Ontario arising out of an Occurrence discovered during the Policy Period.

[31] In the definitions, the following terms are germane:

“**Claim**” means a demand for money arising out of an **Occurrence**.

“**Claimant**” means a customer or client of a **Registrant** and includes an individual or any proprietorship, partnership, co-operative, society, business, association, joint venture, syndicate, company, corporation, firm, or other legal or commercial activity.

“**Loss**” means loss of deposit in the form of moneys or other property which has been entrusted to or received by a **Registrant** in his/her **Professional Capacity** from a customer or client arising out of a trade in real estate but does not include **Commission**.

“**Occurrence**” means the insolvency of a **Registrant** or the theft, fraud, misappropriation or wrongful conversion directly or indirectly by a **Registrant** or present or former employee, director, officer or manager of a **Registrant** of moneys or other property entrusted to or received by the **Registrant** in the **Registrant’s Professional Capacity**.

[32] These definitions paint a clear picture of the intention of the parties to create protection for consumers who provide deposits to a registered real estate agent or broker. This impression is reinforced by the circumstances surrounding the contract. The Statement of Agreed Facts

explains that RECO, who maintains the policy, administers the *Real Estate and Business Brokers Act, 2002*<sup>12</sup> on behalf of the province. RECO's mandate is to "regulate the activity of trade in real estate in the public interest".<sup>13</sup> The *Act* requires deposit insurance for consumers.<sup>14</sup>

[33] These facts, and the wording of the above definitions, point to the conclusion that the identity of the consumer claimant would be an important factor in interpreting the wording of the policy.

[34] *Pacific Rim* and *Minnesota Manual* identified other factors to be considered, including time, place, opportunity, pattern, and most importantly, method. The Applicant provided affidavits of two victims outlining the various documents, conditions, and representations used by Simpson in perpetrating the various thefts, in an effort to show that each transaction was varied from the others. This was likely in light of the emphasis placed in both those cases on *modus operandi* as a controlling factor. That factor might have more importance in employee theft cases, but in the case at bar, involving consumer deposit insurance, the identity of the victim is the key determinant, because this accords with the intentions of the parties to protect consumers, as discerned from the wording and origin of the policy. In this regard, the professional liability cases such as *Yang* and *Royal Trust* are analogous. They turn upon the duty and service rendered separately to each client, just as here the definition of relatedness should turn upon the identity of the client.

[35] The Respondent argued that *Wellington* and *Pacific Rim* demonstrate that where the identity of the perpetrator is the same, or the perpetrators were acting in a conspiracy, the resulting thefts are related. However, as noted above, the relatedness must be determined in light of the policy and its purpose. Both of those cases involved a policy designed to manage the risk of one party, the employer. In so far as the identity of the party suffering the loss is part of the matrix of factors to be considered, the identity was fixed. The policy at issue manages the risks faced by consumers of real estate, so the fact that all thefts were perpetrated by one person must be weighed against the fact that there were many different and unrelated victims, all of whom were clients of Simpson.

[36] From the material provided, it would appear that 22 of the 25 transactions would be unrelated from the next, involving different victims and different properties. The cases of multiple fraud against a single victim would, however, be captured by the aggregate limit, given the information available. In those cases, the thief is the same, the victim is the same, and the type of occurrence causing the loss is the same.

[37] It should be noted that in other circumstances, much like in *Pacific Rim*, multiple losses of one victim might not be related.

<sup>12</sup> S. O. 2002, c. 30, Schedule C [the *Act*].

<sup>13</sup> Statement of Agreed Facts, Application Record, Tab B, paras. 11, 12.

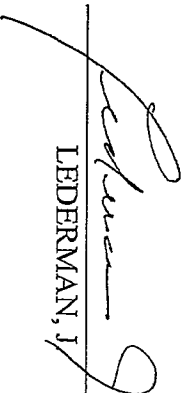
<sup>14</sup> See O. Reg. 579/05, s. 11, enacted under the *Act*. Other provinces have created statutory assurance funds to achieve a similar purpose.



**Conclusion**

[38] Therefore, an order will go declaring that each of the deposit thefts in respect of the 22 victims made by Simpson are separate occurrences of “theft, fraud, misappropriation or wrongful conversion” of funds and, except for the additional deposit thefts of 3 of the victims, they do not constitute a “series of related occurrences” within the meaning of the policy.

[39] If the parties cannot otherwise agree as to costs of the application, they may make written submissions within 30 days.

  
LEDERMAN, J

**DATE:** October 8, 2008

COURT FILE NO: 07-CL-7122

DATE: 20081008

**SUPERIOR COURT OF JUSTICE  
ONTARIO  
Commercial List**

MICHAEL J. QUILLING, IN HIS CAPACITY AS COURT  
APPOINTED RECEIVER FOR COURTNEY WALLIS  
SIMPSON

- AND -

NICHOLAS SMITH ATTORNEY IN FACT IN CANADA  
FOR LLOYD'S UNDERWRITERS

**BEFORE:** THE HONOURABLE MR. JUSTICE  
SIDNEY N. LEDERMAN

---

**REASONS FOR JUDGMENT**

---

LEDERMAN, J.

**DATE:** October 8, 2008

**TAB C**

CITATION: Simpson v. Lloyd's Underwriters, 2009 ONCA 327  
DATE: 20090421  
DOCKET: C49585

COURT OF APPEAL FOR ONTARIO

Feldman, Blair and Epstein JJ.A.

BETWEEN:

Michael J. Quilling, in his capacity as court appointed receiver for Courtney Wallis  
Simpson

Applicant (Respondent in Appeal)

and

Nicholas Smith Attorney In Fact In Canada for Lloyd's Underwriters

Respondent (Appellant in Appeal)

Robert L. Falby, Q.C. for the appellant

Lincoln Caylor and David Rainsberry, for the respondent

Heard and endorsed: April 20, 2009

On appeal from the order of Justice Lederman of the Superior Court of Justice dated  
October 8,, 2008.

APPEAL BOOK ENDORSEMENT

[1] We see no error in the analysis and conclusion reached by Lederman J. on the interpretation of the insurance policy. Accordingly, the appeal is dismissed with costs fixed at \$7,500, inclusive of G.S.T. and disbursements.



**COURT OF APPEAL FOR ONTARIO**

THE HONOURABLE JUSTICE FELDMAN	)	MONDAY, THIS 20 <sup>TH</sup>
THE HONOURABLE JUSTICE BLAIR	)	
THE HONOURABLE JUSTICE EPSTEIN	)	DAY OF APRIL, 2009

BETWEEN:

MICHAEL J. QUILTING, in his capacity as court appointed  
receiver for COURTNEY WALLIS SIMPSON

Applicant  
(Respondent in Appeal)

- and -

NICHOLAS SMITH ATTORNEY IN FACT IN  
CANADA FOR LLOYD'S UNDERWRITERS

Respondent  
(Appellant in Appeal)

**ORDER**

**THIS APPEAL** by Nicholas Smith Attorney in Fact in Canada for Lloyd's Underwriters for an order to set aside the Order of Justice Lederman dated October 10, 2008 and an order declaring that the provisions of the insurance policy in issue limit the sums payable to claimants under the Consumer Deposit Insurance Extension of the policy is limited to \$500,000 on a pro rated basis was heard this day, at 130 Queen Street West, Toronto, Ontario.

**ON READING** the Appeal Book and Compendium, Exhibit Book, Factum and Brief of Authorities of the Appellant and the Factum and Brief of Authorities of the Respondent in

Appeal, and on hearing the submissions of the lawyers for the Appellant and the Respondent in Appeal,

1. **THIS COURT ORDERS** THAT the appeal is dismissed with costs fixed at \$7,500, inclusive of G.S.T. and disbursements.

*This order bears interest at the rate of 3 per cent per year commencing on April 20, 2009.*

*Rpicasso*  
\_\_\_\_\_  
*Registrar*  
*Court of Appeal for Ontario*

ENTERED AT/INSERIT A TORONTO  
ON/BOOK NO:  
LE/DANS LE REGISTRE NO:

MAY 04 2009

~~REPRAS.~~ *Rpicasso*

**Michael J. Quilling, in his capacity as court appointed  
receiver for Courtney Wallis Simpson**  
Applicant  
(Respondent in Appeal)

v.

**Nicholas Smith Attorney in Fact in  
Canada for Lloyd's Underwriters**  
Respondent  
(Appellant in Appeal)

Court of Appeal File No.: C49585  
Court File No.: 07-CL-7122

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, ON M5X 1A4

**Lincoln Caylor / David Rainsberry**  
LSUC No. 37030L / 49890Q  
Tel: 416-777-6121 / 6236  
Fax: 416-863-1716

Solicitors for the Applicant  
(Respondent in Appeal)



**TAB D**

# **Bennett Jones** LLP

3400 One First Canadian Place, P.O. Box 130  
Toronto, Ontario, Canada M5X 1A4  
Tel: 416.863.1200 Fax: 416.863.1716  
[www.bennettjones.com](http://www.bennettjones.com)

**David J.N. Rainsberry**

Associate

Direct Line: 416.777.6236

e-mail: [rainsberryd@bennettjones.com](mailto:rainsberryd@bennettjones.com)

Our File No.: 56445.1

May 20, 2009

**Via Facsimile**

Robert L. Falby Q.C.  
Miller Thomson LLP  
Scotia Plaza  
40 King West  
Suite 5800, P.O. Box 1011  
Toronto, ON M5H 3S1

Dear Mr. Falby:

**Re: Michael J. Quilling in his capacity as court appointed receiver for Courtney Wallis  
Simpson v. Nicholas Smith Attorney in Fact in Canada for Lloyd's Underwriters  
Court File No. 07-CL-7122**


Further to our recent telephone discussion, we enclose a chart detailing the amounts payable to each claimant, which cumulatively total \$2,479,897.29. To the extent he is able, the receiver is prepared to help facilitate the delivery of the cheques to the claimants.

Separately, the costs payable to the receiver awarded by Lederman J. in his decision dated December 12, 2009 bear interest at the rate of 5% per annum (totaling \$20,463.06 calculated to May 30, 2009, \$2.74 per diem thereafter) and the costs awarded by Feldman, Blair and Epstein JJ.A. bear interest at the rate of 3% per annum (totaling \$7,524.80 calculated to May 30, 2009, \$.062 per diem thereafter). This is your direction to pay the costs awards to Bennett Jones LLP, in trust.

We look forward to hearing from you.

Yours truly,

**BENNETT JONES LLP**

  
David J.N. Rainsberry

DJNR/eg

Enclosure

WSLEgan056445\00001\5304062.v1

Insurance and Interest Payable

Name	Deposit Amount	Claim Coverage	Date Insurance Proceeds are Payable to Claimant (30 days from receipt of claim)	Pre-judgment Interest (date insurance proceeds are payable to claimant to April 20, 2009)	Post Judgment Interest (April 21, 2009 to May 30, 2009)	Total due to Claimant on May 30, 2009	Per Diem rate after May 30, 2009
Atlas Holdings and Investments Inc.	\$ 200,000.00	\$ 100,000.00	December 3, 2005	\$ 15,226.03	\$ 328.77	\$ 115,554.80	\$ 8.22
Trevor and Laurelle Augustyn	\$ 15,000.00	\$ 15,000.00	December 14, 2005	\$ 2,263.56	\$ 49.32	\$ 17,312.88	\$ 1.23
Naresh Bahir	\$ 100,000.00	\$ 100,000.00	December 16, 2005	\$ 15,065.75	\$ 328.77	\$ 115,394.52	\$ 8.22
Gaetano Baldessarra	\$ 100,000.00	\$ 100,000.00	December 14, 2005	\$ 15,090.41	\$ 328.77	\$ 115,419.18	\$ 8.22
Chitwan Brar	\$ 50,000.00	\$ 50,000.00	December 8, 2005	\$ 7,582.19	\$ 164.38	\$ 57,746.57	\$ 4.11
Robert DiMatteo & Angelo Grossi	\$ 100,000.00	\$ 100,000.00	December 4, 2005	\$ 15,213.70	\$ 328.77	\$ 115,542.47	\$ 8.22
Arturo Fantinato	\$ 100,000.00	\$ 100,000.00	December 14, 2005	\$ 15,090.41	\$ 328.77	\$ 115,419.18	\$ 8.22
Henry Huisman	\$ 20,000.00	\$ 20,000.00	May 12, 2007	\$ 1,750.68	\$ 65.75	\$ 21,816.43	\$ 1.64
Richard Kwasniewicz	\$ 250,000.00	\$ 100,000.00	December 2, 2005	\$ 15,238.36	\$ 328.77	\$ 115,567.13	\$ 8.22
Barry Ladkin	\$ 5,000.00	\$ 5,000.00	December 22, 2005	\$ 749.59	\$ 16.44	\$ 5,766.03	\$ 0.41
Mike Letsos (Two Mikes Corporation)	\$ 400,000.00	\$ 100,000.00	December 4, 2005	\$ 15,213.70	\$ 328.77	\$ 115,542.47	\$ 8.22
George P. Nicholson	\$ 150,000.00	\$ 100,000.00	December 21, 2005	\$ 15,004.11	\$ 328.77	\$ 115,332.88	\$ 8.22
Augustine Ojo (Claim #1)	\$ 50,000.00	\$ 50,000.00	December 4, 2005	\$ 7,606.85	\$ 164.38	\$ 57,771.23	\$ 4.11
Augustine Ojo (Claim #2)	\$ 150,000.00	\$ 100,000.00	December 4, 2005	\$ 15,213.70	\$ 328.77	\$ 115,542.47	\$ 8.22
Omnivore Inc.	\$ 100,000.00	\$ 100,000.00	December 9, 2005	\$ 15,152.05	\$ 328.77	\$ 115,480.82	\$ 8.22
Paul and Nancy Ovcacik	\$ 15,000.00	\$ 15,000.00	December 14, 2005	\$ 2,263.56	\$ 49.32	\$ 17,312.88	\$ 1.23
Udayan Pandya	\$ 200,000.00	\$ 100,000.00	December 7, 2005	\$ 15,176.71	\$ 328.77	\$ 115,505.48	\$ 8.22
Bush Prakash (Global Quality Institute)	\$ 200,000.00	\$ 100,000.00	December 4, 2005	\$ 15,213.70	\$ 328.77	\$ 115,542.47	\$ 8.22
REO Global Ventures	\$ 100,000.00	\$ 100,000.00	December 4, 2005	\$ 15,213.70	\$ 328.77	\$ 115,542.47	\$ 8.22
Mark Rolbin	\$ 5,000.00	\$ 5,000.00	December 30, 2005	\$ 744.66	\$ 16.44	\$ 5,761.10	\$ 0.41
Barry Snaper	\$ 90,000.00	\$ 90,000.00	April 23, 2006	\$ 12,138.90	\$ 295.89	\$ 102,434.79	\$ 7.40
Michael Sourlis (Claim #1)	\$ 200,000.00	\$ 100,000.00	December 17, 2005	\$ 15,053.42	\$ 328.77	\$ 115,382.19	\$ 8.22
Michael Sourlis (Claim #2)	\$ 200,000.00	\$ 100,000.00	December 17, 2005	\$ 15,053.42	\$ 328.77	\$ 115,382.19	\$ 8.22
Neelam Tohan	\$ 100,000.00	\$ 100,000.00	December 11, 2005	\$ 15,127.40	\$ 328.77	\$ 115,456.17	\$ 8.22
Robert Walmsley (Claim #1)	\$ 100,000.00	\$ 100,000.00	December 8, 2005	\$ 15,164.38	\$ 328.77	\$ 115,493.15	\$ 8.22
Robert Walmsley (Claim #2)	\$ 200,000.00	\$ 100,000.00	December 8, 2005	\$ 15,164.38	\$ 328.77	\$ 115,493.15	\$ 8.22
Zapfe Holdings	\$ 200,000.00	\$ 100,000.00	December 17, 2005	\$ 15,053.42	\$ 328.77	\$ 115,382.19	\$ 8.22
<b>TOTAL</b>	<b>\$ 3,400,000.00</b>	<b>\$ 2,150,000.00</b>		<b>\$ 322,828.74</b>	<b>\$ 7,068.55</b>	<b>\$ 2,479,897.29</b>	<b>\$ 176.72</b>

# **TAB E**

0

Endorsement / disposition

January 31 2008.

Ms MacWilliam for 7  
Mr Falley for 2.

Full day settlement conference scheduled.  
for April 21, 2008.

Settlement conference briefs to be served/  
filed by March 31, 2008.

Arrangements  
(HOY).

April 21/08.

Mr Carter, Mr Ramsberry for Receiver,  
& Mr Moleyan Pandey, proposed  
rep'n for class.

Mr Falley for the ~~Receiver~~ Receiver,  
Settlement not reached. Matter to proceed to  
determination on the merits. 3 day should be  
sufficient. Counsel to prepare an agreed statement  
of facts. Counsel for Receiver points out, a counsel  
for the Receiver agrees that if the Receiver is  
successful, proceeds are paid to the individuals  
who were defrauded (members of the ~~proposed~~  
'deposit' class in the proposed class proceeding),  
& not the Receiver. ~~That~~ The receiver  
concedes that the Receiver has standing, and  
Receiver of a "Request", to seek the declaratory  
relief in issue. The individuals have all  
filed direct claims w/ the Receiver. Hence,

D:\STOR1\FBI\05645\00001\602094V1

if the Receiver succeeds, then the Receiver  
can (or will) make payments described by to

each of the individuals, & there will  
be no need for the proposed class  
proceeding & Parties to proceed. to  
Stewart no. 9                      Schedule  
(100)                                      hearing.

**TAB F**

David J.N. Rainsberry  
Associate  
Direct Line: 416.777.6236  
e-mail: [rainsberryd@bennettjones.com](mailto:rainsberryd@bennettjones.com)  
Our File No.: 56445.1

February 24, 2009

**Via Facsimile**

Robert L. Falby Q.C.  
Miller Thomson LLP  
Scotia Plaza  
40 King West  
Suite 5800, P.O. Box 1011  
Toronto, ON M5H 3S1

Dear Mr. Falby:

**Re: Michael J. Quilling in his capacity as court appointed receiver for Courtney Wallis  
Simpson v. Nicholas Smith Attorney in Fact in Canada for Lloyd's Underwriters  
Court File No. 07-CL-7122**

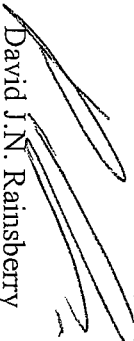
Enclosed is a copy of a letter from Craig Losell dated January 28, 2009 with respect to a RECO claim submitted by Henry Huisman (Notice of Claim attached to letter).

Kindly advise as to whether this claim was processed by Leonard French & Co. (or its' successor entity) and what determination was reached with respect to the validity of the claim. If this claim was, in fact, processed, we request a copy of Leonard French & Co.'s file and an explanation as to why it was not included with the other RECO claims delivered to us with respect to the above-noted matter.

We look forward to hearing from you.

Yours truly,

**BENNETT JONES LLP**

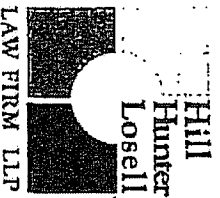


David J.N. Rainsberry

DJR/eg  
Enclosure

cc: Craig Losell





P.O. Box 324, 17360 Yonge Street (at Millard), Suite 200

Newmarket, ON, L3Y 4X7

Tel: (905) 895-1007 Fax: (905) 895-4064

Email: [clsel@hillhunter](mailto:clsel@hillhunter) Website: [www.hillhunterlosell.com](http://www.hillhunterlosell.com)

Gordon H. Hunter, J.D., Kenneth C. Hill, J.D.

Craig S. Losell, B.A., LL.B., Catherine M. Callaghan, B.A., LL.B.

George van Hoogenhoute, B.A., LL.B., J. David McLennan, B.A., LL.B.

Colin A. Brown, B.A., LL.B., M.E.S.

January 28, 2009

Michael J. Quilling, Receiver for  
Courtney Wallis Simpson,  
York Region Realty Inc. and  
York Management Group  
c/o Bennett Jones LLP  
Barristers & Solicitors  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario  
M5X 1A4

COPY

Attention: Lincoln Caylor

Dear Sir:

**Re: Notice of Claim re Huisman v. Courtney Wallis Simpson**  
**Deposit re sale of 23 Lakeview Avenue, Gormley, Ontario**  
**Our File No. 64811**

We are the solicitors for Henry Huisman.

On or about April 5<sup>th</sup>, 2007, our client filed a Notice of Claim against Courtney Wallis Simpson and York Region Realty Inc. under the Consumer Deposit Insurance with the Real Estate Council of Ontario who then forwarded a copy of same to their insurer, Leonard French & Co., for investigation. A copy of the Notice of Claim is attached.

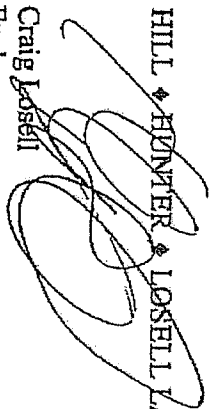
Our client's claim is for the return of deposit monies in the amount of \$20,000.00 which were held by Courtney Wallis Simpson and York Region Realty Inc. on a sale of a residence that did not close. To our knowledge, there was never any release or refund of the deposit back to the purchaser or his solicitor.

Can you advise us if our client can file a claim with you for the return of the deposit monies.

We look forward to hearing from you.

Yours very truly,

HILL ♦ HUNTER ♦ LOSSELL LAW FIRM LLP



Craig Lossell

Encl.

cc: client

CL\*yh

X:\docs\lossell\64811 2009 01 29 Ltr. to Receiver and Insurers Co.doc



5. Location of Broker's Satisfactory Trust Account, if known:

UNKNOWN

Account No:

Address:

6. Describe the reasons for the Broker's failure to return claimant's deposit, if known.

PROPOSED SALE TRANSACTION ABORTED WHEN BUYER, THROUGH NO FAULT ON THE PART OF THE SELLER, FAILED TO CLOSE AND ABANDONED THE TRANSACTION. DEPOSIT OF \$20,000.00 TO BE RELENTED TO SELLER AS COMPENSATION FOR DAMAGES SUFFERED.

7. Date of Discovery of Loss

ON OR ABOUT JULY 15, 2005.

8. Describe circumstances surrounding discovery of loss:

SALE TRANSACTION ABORTED ON JULY 15, 2005. SELLER REQUESTED RELEASE OF DEPOSIT TO HIM. ADVISED BY SELBAG'S LISTING AGENT THAT HER BROKER (COURTNEY WALLIS SIMPSON) UNABLE TO COME UP WITH FUNDS

9. Was loss reported to police?

If so, date that loss was reported to police

NOT REPORTED TO POLICE

Name and Telephone Number of Investigating Police Officer

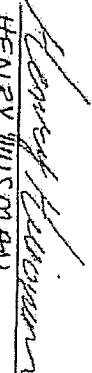
10. Describe all efforts made by the claimant to recover deposit (e.g. any court proceedings which have been instituted, demand letters, face-to-face discussions) between the claimant and the Broker relating to the Broker's failure to return the claimant's deposit. (use back of this page is necessary). (Attach all documents or correspondence exchanged between the claimant and the Broker with respect to this claim)

SEVERAL DISCUSSION WITH LISTING AGENT REQUESTING THAT SHE LOCATE LISTING BROKER TO OBTAIN RELEASE OF DEPOSIT, LISTING AGENT UNABLE TO LOCATE LISTING BROKER.

11. The claimant hereby states that he/she is not aware if any claim or counterclaim by the broker or any other party which set off against the commission claimed herein.

NOT AWARE OF ANY OTHER CLAIMS REGARDING SUBJECT DEPOSIT

12. The claimant(s) hereby authorizes the Real Estate Council of Ontario and the Insurer, their agents, employees and representatives to investigate this claim on his/her/their behalf and to solicit from any party including but not limited to Broker(s), Receiver(s), Financial Institution(s) or other party(ies) who may have in their possession, care or control records, materials, documents or other property relevant to this claim. The claimant(s) hereby directs any party to whom this document is presented to disclose any records, materials, documents or other property relevant to this claim that may be in their possession, care or control of the Real Estate Council of Ontario and its Insurer, their agents, employees and representatives and to cooperate with their investigation.

  
HENRY HUSSMAN  
Claimant's Signature

APRIL 5, 2007

Date

**TAB G**

# Bennett Jones LLP

3400 One First Canadian Place, PO Box 130  
Toronto, Ontario, Canada M5X 1A4  
Tel: 416.863.1200 Fax: 416.863.1716  
[www.bennettjones.com](http://www.bennettjones.com)

David J.N. Rainsberry  
Associate  
Direct Line: 416.777.6236  
e-mail: [rainsberryd@bennettjones.com](mailto:rainsberryd@bennettjones.com)  
Our File No.: S6445.1

April 27, 2009

## Via Facsimile

Robert L. Falby Q.C.  
Miller Thomson LLP  
Scotia Plaza  
40 King West  
Suite 5800, P.O. Box 1011  
Toronto, ON M5H 3S1

Dear Mr. Falby:

Re: **Michael J. Quilling in his capacity as court appointed receiver for Courtney Wallis  
Simpson v. Nicholas Smith Attorney in Fact in Canada for Lloyd's Underwriters  
Court File No. 07-CL-7122**


We received a telephone call from Barry Snaper with respect to the above-noted matter and more specifically, a claim he believes was submitted to RECO/ Leonard French & Co. in or about March, 2006. Attached are photographs of the documentation presently available to Mr. Snaper as it concerns his claim to RECO/ Leonard French & Co.

Kindly advise as to whether Mr. Snaper's claim was processed. Please also advise us of any determination reached with respect to the validity of the claim.

We look forward to hearing from you.

Yours truly,

**BENNETT JONES LLP**



David J.N. Rainsberry

DJN/R/eg  
Enclosure



# Notice of Claim Consumer Deposit Insurance

Completed for submission of claim pursuant to the Consumer Deposit Insurance Act of 1990.

Consumer Deposit Insurance Fund of Ontario  
1250 Bloor Street West  
Toronto, Ontario M5G 1B8  
Telephone: (416) 207-4100  
Fax: (416) 207-4100

This form should be completed by the claimant and submitted to the Real Estate Council of Ontario (RECO).  
Applicable to the address noted above.

## 1. Identity of claimant(s)

NAME: BARRY SWAPER SIN: \_\_\_\_\_  
 ADDRESS: 28 SANDHURST CR. CITY: RICHMOND HILL, ONTARIO  
148 WY (Telephone Number) 905-709-2999  
 (Telephone Number) 647-629-4438  
 The claimant(s) hereby applies for payment of claim in the amount of \$ \_\_\_\_\_  
 if the bank/branch is being administered or more than one claimant, please list the name and address of each claimant on the back of this form.

## 2. Identity of Brokerage and Broker Holding Claimant's Deposit

NAME OF BROKER: CONRITNEY JAYNE SIMPSON  
 NAME OF BROKERAGE: YORK REGION REALTY INC.  
 ADDRESS OF BROKERAGE: 37 SANDHURST DRIVE SUITE 302  
 CITY: WVA TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

## 3. Details of Agreement of Purchase and Sale

DATE OF AGREEMENT: 3, 1990 ODD OR \_\_\_\_\_  
 FULL/REAL ADDRESS OF PROPERTY BEING PURCHASED/SOLD: 28 SANDHURST DR. STONEYHILL ONT  
 NAME OF VENDOR(S): VAD PROPERTIES LTD  
 NAME OF SOLICITOR (IF KNOWN): \_\_\_\_\_  
 NAME OF PURCHASER(S): DAVID POMER  
 PURCHASER'S SOLICITOR (IF KNOWN): DAVID POMER  
 ATTACH PHOTOGRAPHY OF AGREEMENT OF PURCHASE AND SALE AND ANY AMENDMENTS

## 4. Date and amount of each deposit made by claimant pursuant to Agreement of Purchase and Sale

Deposit Type	Date	Amount
First Deposit:	<u>150,000.00</u>	
Second Deposit:		
Third Deposit:		
Other Deposits:		
TOTAL (All Deposits):		<u>150,000.00</u>

Attach photocopies of each receipt and/or dividend(s) from and back (if available) of bank/other depositing institution and any other documents of title or loss from

5. Location of Broker's Statutory Trust Account, if known.  
Address: \_\_\_\_\_  
City: \_\_\_\_\_

Account No. \_\_\_\_\_

6. Describe the reasons for the Broker's failure to return Claimant's Deposit, if known.  
**FRAUD**

7. Date of Discovery of Loss  
**NOV 15 / 05**

8. Describe circumstances surrounding Discovery of Loss:  
**FROM COURTNEY WALLIS SIMPSON**

9. Was Loss reported to police?

If Yes, Case # and Loss was reported to police \_\_\_\_\_  
Name and Telephone Number of Investigating Police Officer: \_\_\_\_\_

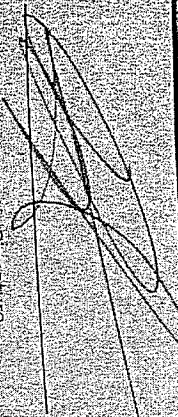
**YES**  
**GEORGE F. RORKE**

10. Describe all efforts made by the Claimant to recover Deposit (e.g. any court proceedings which have been instituted, demand letters, face-to-face discussions) between the Claimant and the Broker relating to the Broker's failure to return the Claimant's deposit (use back of this page is necessary).  
*(Attach all documents or correspondence exchanged between the Claimant and the Broker with respect to this claim)*

11. The Claimant Hereby States that he/she is not aware if any claim or counterclaim by the broker or any other party which set off against the commission claimed herein.

12. The Claimant(s) hereby authorizes the Real Estate Council of Ontario and the Insurer, their agents, employees and representatives to investigate this claim on his/her/their behalf and to solicit from any party including but not limited to Broker(s), Receiver(s), Financial Institution(s) or other party(ies) who may have in their possession, care or control records, materials, documents or other property relevant to this claim. The Claimant(s) hereby directs any part to whom this document is presented to disclose any records, materials, documents or other property relevant to this claim that may be in their possession, care or control of the Real Estate Council of Ontario and its Insurer, their agents, employees and representatives and to cooperate with their investigation.

Claimant's Signature



**Nov 22 / 06**

Date



**TAB H**

David J.N. Rainsberry  
Associate  
Direct Line: 416.777.6236  
e-mail: rainsberryd@bennettjones.com  
Our File No.: 56445.1

June 15, 2009

**Via Facsimile and Email**

Robert L. Falby Q.C.  
Miller Thomson LLP  
Scotia Plaza  
40 King West  
Suite 5800, P.O. Box 1011  
Toronto, ON M5H 3S1

Dear Mr. Falby:

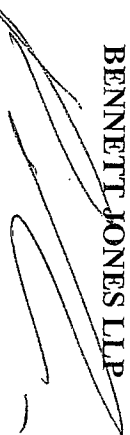
**Re: Michael J. Quilling in his capacity as court appointed receiver for Courtney Wallis  
Simpson v. Nicholas Smith Attorney in Fact in Canada for Lloyd's Underwriters  
Court File No. 07-CL-7122**

The distribution of insurance proceeds to the various claimants is the only outstanding matter in the receivership estate. As set out in earlier correspondence the receiver is prepared, to the extent he is able, to assist in locating the various victims.

In view of the fact that your client has given us no indication that it intends to seek leave to appeal, the receiver will submit his final report. In addition to requesting an order discharging the receiver, a recommendation will be made and directions sought with respect to the specific procedures for distribution of the insurance monies. If your client has any further advice in this regard, kindly provide it to us on or before June 19, 2009 so that we may include same with the final report.

Yours truly,

**BENNETT JONES LLP**



David J.N. Rainsberry

DJNR/eg

WSL\eg\1\056445\00001\5356200v1

# TABI

# MILLER THOMSON LLP

Barristers & Solicitors  
Patent & Trade-Mark Agents

Scolia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1  
T: 416.595.8500  
F: 416.595.8695  
www.millerthomson.com

June 16, 2009

Robert L. Falby, Q.C.  
Direct Line: 416.595.8173  
Direct Fax: 416.595.8695  
falby@millerthomson.com

File: 76961-33

## *DELIVERED BY E-MAIL*

Mr. David J. N. Rainsberry  
Bennett Jones LLP  
3400 One First Canadian Place  
P. O. Box 130  
Toronto, ON M5X 1A4

Dear Mr. Rainsberry:

**Re: Michael J. Quilling v. Nicholas Smith**  
**Court File No. 07-CL-7122**

Thank you for your letter of June 15, 2009.

I thought that I had advised you that our client Underwriters do not intend to seek leave to appeal. In the event that message was not clearly delivered, you may take it that no such leave will be sought.

Underwriters have decided to undertake distribution of the proceeds of the insurance policy directly to the claimants, through its adjuster. I am advised that Proof of Loss Forms are in the process of being sent to the claimants at the addresses on the files of the adjuster. Funds will be distributed to the claimants directly, pursuant to those Proofs of Loss as determined appropriate under the terms of the Policy.

As you are aware, since neither the Receiver nor Ms. Simpson has any interest in the proceeds of insurance, the Receiver has no status on which to seek directions in respect of their distribution.

..1..2

MILLER  
THOMSON LLP

Page 2

I can also advise you that funds have been requisitioned from Underwriters by the adjuster in respect of payment of the costs of the motion and appeal, and will be paid to you on receipt.  
Please let me know if you have any further questions.

Yours very truly,

MILLER THOMSON LLP



Robert L. Falby  
RLF/ma

**TAB J**

# **Bennett Jones LLP**

3400 One First Canadian Place, PO Box 130  
Toronto, Ontario, Canada M5X 1A4  
Tel: 416.863.1200 Fax: 416.863.1716  
[www.bennettjones.com](http://www.bennettjones.com)

**David J.N. Rainsberry**  
Associate  
Direct Line: 416.777.6236  
e-mail: [rainsberryd@bennettjones.com](mailto:rainsberryd@bennettjones.com)  
Our File No.: 56445.1

June 17, 2009

## **Via Facsimile and Email**

Robert L. Falby Q.C.  
Miller Thomson LLP  
Scotia Plaza  
40 King West  
Suite 5800, P.O. Box 1011  
Toronto, ON M5H 3S1

Dear Mr. Falby:

**Re: Michael J. Quilling in his capacity as court appointed receiver for Courtney Wallis  
Simpson v. Nicholas Smith Attorney in Fact in Canada for Lloyd's Underwriters  
Court File No. 07-CL-7122**

Thank you for your letter dated June 16, 2009. To the extent it is of any use, we enclose a chart containing the most up to date contact information (available to the receiver) for each of the claimants.

Yours truly,

**BENNETT JONES LLP**



David J.N. Rainsberry

DJNR/eg  
Enclosure

WSLegal\056445\000001\5361336v1

**TAB K**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

UDAYAN PANDYA

Plaintiff

-and-

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES,  
COURTNEY WALLIS SIMPSON c.o.b. as YORK MANAGEMENT GROUP  
and as CAMCO DEVELOPMENTS and as YORK GROUP

Defendants

In the Matter of the *Class Proceedings Act, 1992*

**SUPPLEMENTAL REPORT TO THE  
TENTH REPORT OF THE RECEIVER  
(Dated December 3, 2008)**

1. This Supplemental Report to the Tenth Report of the Receiver is made in response to the Affidavit of Gregory Govedaris sworn November 26, 2008.

2. The value of the receivership estate in the within matter is as follows:

Total funds recovered (excluding the value of the RECO insurance policy)	\$1,331,672.67
Total interest earned on the receivership estate	\$40,973.08
Fees of the Receiver approved to date	\$140,781.43

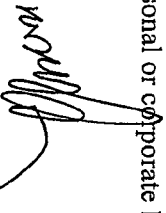
Fees of counsel to the Receiver approved to date	\$819,558.94
Total Disbursements paid from the receivership estate*	\$294,387.10
Total currently in receivership estate	\$117,918.28
Fees, disbursements and GST of the Receiver from July 1 to October 31, 2008	\$2,526.00
Fees, disbursements and GST of counsel to the Receiver from June 16 to October 31, 2008	\$74,711.84
Total after payment of the fees, disbursements and GST of the Receiver and counsel to the Receiver up to October 31, 2008	\$40,680.44
Total value of insurance claims payable by the Real Estate Council of Ontario directly to 22 claimants for a total of 25 claims as awarded in the Reasons for Judgment of Justice Lederman dated October 8, 2008 (currently subject to an appeal)	\$2,040,000.00

\*Disbursements include payment of insurance, utilities, maintenance expenses and tax arrears on properties, payment of real estate commissions to sell the properties and discharging mortgages registered on properties.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:**

Michael J. Quilling in his capacity as

Court Appointed Receiver with no  
personal or corporate liability.



Michael J. Quilling

WSLcgat10564450000114996675v1

**TABL**

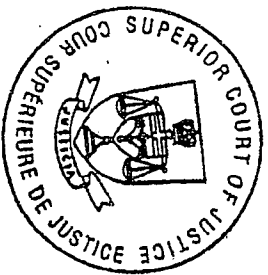
**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE ) THURSDAY, THE 17<sup>TH</sup> DAY OF  
 )  
MR. JUSTICE GROUND ) NOVEMBER, 2005

**BETWEEN:**

UDAYYAN PANDYA

Plaintiff



- and -

COURTNEY WALLIS SIMPSON, YORK REGION  
REALTY INC., WALLIS SIMPSON & ASSOCIATES  
AND CAMEO INVESTMENTS

Defendants

In the Matter of the *Class Proceedings Act, 1992*

**ORDER FOR AN APPOINTMENT OF AN INTERIM RECEIVER**

**THIS MOTION** made by the plaintiff for an order appointing a receiver of Courtney Wallis Simpson ("Simpson") personally and for York Region Realty Inc. ("York Realty") pursuant to s. 101 of the *Courts of Justice Act* with investigatory and preservation powers was heard by the court this day at 393 University Avenue, Toronto.

**UPON READING** the affidavits of Udayan Pandya and Richard Kwasniewicz and on hearing the submissions of counsel for the plaintiff, no one appearing for the defendants

despite short notice of this matter, and upon being advised that Ms. Simpson is aware of this proceeding and that the relief sought would likely be granted if she did not attend,

1. **THIS COURT ORDERS** that Michael J. Quilling be appointed a receiver (the "Receiver") over the assets of Simpson and York Realty pursuant to s. 101 of the *Courts of Justice* Act with the powers and duties hereinafter set out.

2. **THIS COURT ORDERS** that the defendants be given leave on three days notice to the plaintiff and the Receiver to bring any motion they might see fit to vary this order.

3. **THIS COURT ORDERS** that Bennett Jones LLP be appointed as counsel to the Receiver, that the Receiver shall, in its discretion be entitled to share information received by it with the plaintiff but that the information obtained under this order shall not, without further direction and order, of this Court, be used in any criminal proceedings.

4. **THIS COURT ORDERS** that the Receiver shall have the power to engage consultants, agents, employees, experts, auditors, accountants, managers, solicitors and counsel and such other assistants from time to time and on whatever basis, including on a temporary basis, as it may consider an the business of any of the defendants or generally exercising the powers and duties conferred by this Order.

5. **THIS COURT ORDERS** that the Receiver may apply to this Court for advice and directions relating to the proper exercise of its powers hereunder, or for any variations to this Order.

**Preservation of Assets**

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized for and on behalf of and in the name of any of the defendants to take possession and control of all of the present and future assets, undertaking and property of the defendants and any funds, proceeds or

other assets directly or indirectly related to the funds allegedly raised by the defendants as alleged in the statement of claim (the "Property") and any and all proceeds, receipts and disbursements arising out of or from the Property, until further order of this Court, and to act at once in respect of the Property. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Receiver is hereby expressly empowered and authorized on the Receiver's behalf, but not obligated:

- (a) to take such steps as in the opinion of the Receiver are necessary or appropriate to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable, provided that the Receiver shall not evict or dispossess any occupant of any residential dwelling without further order of this Court made on notice to such occupant;
- (b) to take such steps as in the opinion of the Receiver are necessary or appropriate to maintain control over all receipts and disbursements arising out of or from the Property;
- (c) to receive and collect all monies, debts, claims, choses in action and accounts now owed or hereafter owing to any of the defendants in respect of the Property and to exercise all remedies of any of the defendants in collecting all such monies, including, without limitation, to enforce any security held by any of the defendants and to receive and recover all funds, monies, cash, cash equivalents, negotiable securities, accounts and any other assets on deposits to banks, brokerages and other financial or other institutions;
- (d) to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange, or other documents of whatever nature in respect of any of the Property, in the name and on behalf of any of the defendants, which are necessary, desirable or convenient in, the opinion of the Receiver for any purpose pursuant to this Order;

- (e) to initiate, prosecute and continue the prosecution of any and all proceedings as may in its judgment be necessary or desirable to properly protect or realize upon the Property and to defend all proceedings now pending or hereafter instituted against any of the defendants or the Receiver, the prosecution of or defence of which will, in the judgment of the Receiver, be necessary to properly protect or realize on the Property or to protect the administration by the Receiver of the affairs of any of the defendants and the Property, and to settle or compromise any such proceedings which in the judgment of the Receiver should be settled;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that any such sale or disposition of Property shall, if the defendants do not consent to the same, be subject to the Court's approval;
- (g) to report to, meet with and discuss with such creditors of the defendants and their advisors as the Receiver deems appropriate including holding town hall or other meetings on all matters relating to the Property and receivership; and
- (h) to register this order in any public registry against title to any of the Property. Without limiting the generality of the foregoing this court orders that this order be registered against the real property and other assets described at Schedules "B" and "C" hereto.

7. **THIS COURT ORDERS** that no person having notice of this order shall interfere with, obstruct or in any way hinder the Receiver in the fulfillment or pursuit of its duties hereunder and that all such persons are under an obligation to deliver up to the Receiver any Property or other thing to which the Receiver is entitled to under this order. In the event that any person contests that any asset, document or thing is Property under this order or is document or record properly producible to the Receiver then that person shall first deliver up the asset in question to the Receiver or to such third party as the Receiver in its discretion may agree for safekeeping and

the person contesting the Receiver's right may thereafter, if so advised, bring an application to this Court for directions.

8. **THIS COURT ORDERS** that the Receiver may receive information from persons as to the details of their deposit of trust funds investments with Simpson and the other defendant but that the Receiver shall not be under any obligation to call for claims, validate claims or make recommendations with respect to the disbursement of funds to investors without further order of this Court.

9. **THIS COURT ORDERS** that no demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any contract, including any contract of insurance, the exercise of any right of set-off or combination of accounts, the exercise of any construction, mechanics' repair, storage or other lien, or the commencement or continuation of any proceedings under any Environmental Laws (as hereinafter defined) in any jurisdiction in which the Property may be located, shall be taken against the Receiver, with respect to the Property or any part thereof, without the prior written consent of the Receiver or leave of this Court first being obtained upon not less than seven days' notice to the Receiver.

10. **THIS COURT ORDERS** that the defendants and anyone having knowledge of this order be and they are hereby restrained, pending consent of all parties or further order of this Court:

- (a) from removing from Ontario or in any way disposing, dealing with or diminishing the value of any of the defendants' property, whether real or personal, present or future, held in Ontario or elsewhere, whether held in the defendants' names or not, pending the final determination of this action or further order of this Court;



(b) from withdrawing or causing or permitting the withdrawal of or transferring of funds or issuing of cheques or other instruments from any of the defendants' bank accounts or investment accounts of any nature whatsoever, whether held individually or jointly with any other person, pending the final determination of this action or further order of this Honourable Court, provided that the defendants shall have leave to seek variation of this order in order to permit the withdrawal of a reasonable amount as ordinary living expenses provided that if any such order is sought the defendants must have fully complied with this order in all respects including the provision to the Receiver of the information required to be provided to the Receiver.

#### **Documents and Investigations**

11. **THIS COURT ORDERS** that the Receiver shall forthwith be entitled to take possession of and examine the defendants' books and records and make such inquiries as it deems prudent and necessary of the defendants' bankers, accountants, auditors, advisors, managers, experts, solicitors, agents, officers, employees and others in order to determine the financial status of the defendants, and shall conduct a review and, if necessary, a detailed examination of the financial records of the defendants.

12. **THIS COURT ORDERS** that the Receiver shall report to this Court at such times and in such fashion as this Court may direct.

13. **THIS COURT ORDERS** that the defendants and their accountants, auditors, advisors, agents, managers, experts, solicitors, agents, officers and employees, including, without limitation, any accountants, bankers or financial, legal, advisors and the persons set out in Schedule "A", (the "Affected Persons") shall forthwith provide to the Receiver all of the books and records relating to the defendants' financial history and dealings, including, without limitation, all ledgers, bank statements and records, cheques, financial statements, receipts, vouchers, deposit slips, contracts, agreements, accounting records, computer records (including but not limited to tapes and/or discs) or other documents or records of any kind or nature,

howsoever stored or maintained, relating to the defendants (the "Documents"). Provision of the Documents to the Receiver shall not breach any confidentiality or other non-disclosure obligations the Affected Persons might otherwise have to the defendants and it shall be deemed that the defendants shall have consented to the release of the Documents. The Receiver shall allow the defendants and their advisors reasonable access to and the ability to make copies of any and all such books and records in the possession of the Receiver. The defendants shall allow the Receiver to make, retain and take away copies of any or all of the Documents and shall forthwith grant to the Receiver access to and use of accounting, computer, software and physical facilities relating thereto promptly at the request of the Receiver.

14. **THIS COURT ORDERS** that if any of the Documents is stored or otherwise contained on a computer or other electronic system of information storage, the defendants and all Affected Persons shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to obtain a full copy of the Documents, whether by way of printing same onto paper or making copies of computer discs or such other manner of retrieving and copying same as the Receiver in its discretion deems expedient. For the purposes of this paragraph, the defendants and the Affected Persons shall provide the Receiver with all such assistance in gaining access to the Documents as the Receiver may in its discretion require, including, without limiting the generality of the foregoing, forthwith providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, passwords or other codes as may be required to gain access to the Documents.

15. **THIS COURT ORDERS** that Internet service providers or persons, corporations or individuals who provide e-mail, World Wide Web, file transfer protocol or other Internet connection services to the defendants and/or its present and former directors, officers, employees and agents to access the Internet or World Wide Web e-mail or other similar services, deliver to the Receiver, documents, server files, archive files or any other information in any form in any way recording messages, emails or other information sent or received by the defendants and/or its present and former directors, officers, employees and agents in the course of their association and in conducting their duties related to the operations and affairs of the defendants.

16. **THIS COURT ORDERS** that the Receiver shall have ongoing access to the defendants' current and future bank account statements and other financial records, copies of which shall be provided to the Receiver as and when demanded by the Receiver. The defendants and the third parties shall co-operate and consent to the distribution of such records to the Receiver.
17. **THIS COURT ORDERS** that the Receiver is empowered to demand production from third parties (including but not limited to the defendants' advisors, banks, financial institutions and the persons set out in Schedule "A") of documents relating to:
- (a) the defendants' financial affairs;
  - (b) the deposit of funds received in connection with the sale of commercial real estate;
  - (c) the identities of the persons who have provided deposit funds to Simpson and the other defendants;
  - (d) the bank accounts or other financial records referable to the accounts into which such funds were deposited including documents referable to any withdrawal, transfer or dissipation of funds in such accounts; and
  - (e) commissions, fees, expenses or other amounts paid to any persons in connection with the sale of such securities and any agreements, arrangements or any other communication with respect to the payment of such amounts;
  - (f) and further directs that all such third parties (including all Affected Persons) shall co-operate fully with the Receiver, subject to claims of legal privilege.
18. **THIS COURT ORDERS** that the Receiver is empowered to compel the attendance, on two clear days written notice by letter from the Receiver or its counsel, of persons believed by the Receiver to have knowledge of the defendants' affairs for the purpose of being examined under oath by the Receiver or by such person as to whom the Receiver has or may delegate this power. In particular, and without limiting the general nature of the power conveyed by this

paragraph, the Receiver is empowered for the purposes of performing its duties hereunder to examine under oath the persons named in Schedule "A" to this order and any persons who may have received transfers of assets or funds from the defendants, provided that nothing herein shall apply, without further order of this Court, to compel any person who has been actually charged with a criminal offence to so testify and that any persons who so testify shall have the right to invoke the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedoms*. If the persons to be examined have a personal residence or regular place of business within 60 kilometres of an office of Bennett Jones LLP (Toronto, Edmonton or Calgary) such examination shall take place at such office failing which it shall take place at any place where an examination of discovery may take place under the *Rules of Civil Procedure* in the province where the examination is conducted.

19. **THIS COURT ORDERS** that Simpson shall provide to the Receiver within 7 days of service of this order an affidavit under oath specifying her knowledge on the following matters:

- (a) specifics of all corporations, partnerships, or other entities in which she has a direct or indirect interest with particulars of the nature of such interest;
- (b) specifics of all bank, brokerage or other accounts, wherever situate, in her name, the name of York Region Realty Inc., the name of any of the entities in (a) hereof or over which she has any signing authority or any other direct or indirect control;
- (c) specifics of all bank, brokerage or other accounts, where funds were deposited, all accounts to which such funds may have been transferred and the present whereabouts of such funds;
- (d) whether any assets were purchased or acquired in whole or in part with such funds and, if so, the particulars of such assets and their present location with particulars of the assets involved name of the person or entity who holds title to such assets, the date of acquisition, acquisition cost and a current estimate of value; and
- (e) specifics of any disposition of assets (including transfer of funds) in excess of \$10,000 in the last 2 years and that this affidavit shall be deemed to have been

provided by compulsion of law and its further use in any other court proceeding be subject to the protections of the *Canada Evidence Act* and the *Canadian Charter of Rights and Freedom*.

20. **THIS COURT ORDERS** that the Receiver is authorised to enter upon the business premises of the persons set out in Schedule "A" (collectively the "Premises") and to examine anything and take away any documents or record found at the premises that the Receiver is authorised hereunder to require to be produced to it.

21. **THIS COURT ORDERS** that the Receiver shall have full power to investigate any gift, transfer, conveyance, settlement or any other disposition (a "Conveyance") of any interest in any assets, funds or any other property by the defendants to third parties (the "Conveyed Property") and to compel the production of information from any person with respect to such Conveyed Property and the circumstances surrounding the Conveyance as if such Conveyed Property was Property under this order and that the Receiver shall be at liberty to apply to the Court for any appropriate order relating to the preservation of any such Conveyed Property.

**Other**

22. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this order, save and except for any gross negligence or willful misconduct on its part.

23. **THIS COURT ORDERS** that no proceedings shall be brought against the Receiver in any Court or other tribunal unless leave of this Honourable Court is first obtained on motion on at least seven days notice to the Receiver and the parties.

24. **THIS COURT ORDERS** that all the costs of this receivership including without limitation the Receiver's fees and disbursements (including the amounts which the Receiver is obliged to pay others) and the fees and disbursements incurred by Bennett Jones LLP in carrying

out its duties herein shall be a first charge on any assets recovered in the receivership herein, subject to approval of the quantum of costs by the Court. The Receiver shall have the right to apply to the Court for approval and payment of its fees and disbursements on an interim basis provided that 15 days notice shall be given to the defendants of any such application. The Receiver shall also have the power, if so advised, to move to have the receivership terminated and to be discharged as Receiver.


25. **THIS COURT ORDERS** that the plaintiff's costs of this motion shall be a allowed in the same manner as the Receiver's fees and disbursements and shall be paid out by the Receiver as a second charge on any assets recovered in the receivership.

26. **THIS COURT ORDERS** that the Receiver be granted leave to apply to the Court for approval to borrow and to provide whatever security as may be appropriate, if so advised.

27. **THIS COURT ORDERS** that neither the making of this order nor anything in this order shall deem the Receiver to be an owner of any of the Property for any purpose and that neither the making of this order nor anything in this order shall vest in the Receiver the care, ownership, control, charge, occupation, possession or management or require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any to occupy or to take control, care, charge, occupation, possession or management of any of the Property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Emergency Plans Act 1963* (Ontario), the Ontario *Water Resources Act*, the *Occupational Health and Safety Act* (Ontario) or the regulations hereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment, the transportation of goods, or hazardous waste (collectively, "Environmental Laws"). The Receiver shall not be deemed as a result of this order to be in


control, charge, occupation, possession or management of any of the Property within the meaning of any Environmental Laws.

28. **THIS COURT SEEKS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada and any court or any judicial, regulatory or administrative body of any other nations and states and the provinces, states or other subdivisions of such nations and states to act in aid of and to be complementary to this Court in carrying out the terms of this order.

  
\_\_\_\_\_  
Joseph P. Van Tassel  
Registrar, Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

NOV 17 2005

PER/PARI:  


## Schedule "A"

1. Wayne Simpson  
587 Cam Fella Boulevard  
Stouffville, Ontario  
L4A 7H3
2. York Management Group  
587 Cam Fella Boulevard  
Stouffville, Ontario  
L4A 7G9
3. Royal Bank of Canada  
Transit No. 02982  
47 Main Street  
Markham, Ontario
4. Royal Bank of Canada  
Davis and Highway 404 Branch  
Toronto, Ontario
5. Canadian Imperial Bank of Commerce  
Transit No. 01642  
4360 Highway 7  
Unionville, Ontario
6. Bank of Montreal  
Town Square Branch  
Richmond Hill, Ontario
7. TD Canada Trust  
Town Square Branch  
Richmond Hill, Ontario
8. TD Canada Trust  
Davis and Highway 404 Branch  
Toronto, Ontario
9. Bank of Nova Scotia  
Davis and Highway 404 Branch  
Toronto, Ontario
10. HSBC  
Richmond Hill
11. Laurentian Bank  
Newmarket, Ontario



**Schedule "B"**

1. 587 Cam Fella Boulevard  
Stouffville, Ontario  
I4A 7H3

Legal Description:

PCL 19-1 SEC 65 M2296: LT 19 PL 65R2296: Whitechurch-Stouffville

2. PIN 03715-0004  
Whitechurch, Ontario

Legal Description:

PT LT 30 PL 54 Stouffville; PT LT 31 PL54 Stouffville, PT LT 40 PL 54 Stouffville; PT  
LT 41 PL 54 Stouffville PTS 1, 7 65R2555; S/T R221467, R221469

3. 1038 Kawagama Lake Road  
Dorset, Ontario

Legal Description:

Con 13 PT LOT 1 RP19R3154, Parts 1, 6, 7  
Dorset, Algonquin Highlands Township

4. PIN 03710-0193/0194  
Stouffville, Ontario

Legal Description:

PT LTS 49 & 50  
PL 70 Stouffville PT 2 65R256J4 Whitechurch-Stouffville

## Schedule "C"

1. Royal Bank of Canada  
Transit No. 02982  
47 Main Street  
Markham, Ontario
2. Royal Bank of Canada  
Davis and Highway 404 Branch  
Toronto, Ontario
3. Canadian Imperial Bank of Commerce  
Transit No. 01642  
4360 Highway 7  
Unionville, Ontario
4. Bank of Montreal  
Town Square Branch  
Richmond Hill, Ontario
5. TD Canada Trust  
Town Square Branch  
Richmond Hill, Ontario
6. TD Canada Trust  
Davis and Highway 404 Branch  
Toronto, Ontario
7. Bank of Nova Scotia  
Davis and Highway 404 Branch  
Toronto, Ontario
8. HSBC  
Richmond Hill
9. Laurentian Bank  
Newmarket, Ontario

**Udayan Pandya**  
Plaintiff

v.

**Courtney Wallis Simpson *et al.***  
Defendants

Court File No.: 05-CL-6159

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

In the matter of the *Class Proceedings*  
*Act, 1992*

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
Barristers and Solicitors  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Lincoln Caylor / M. Joanne MacMillan  
Tel: (416) 777-6121 / 4629  
Fax: (416) 863-1716  
LSUC Reg. No. 37030L/43529J

Solicitors for the plaintiff

**TAB M**

# **Bennett Jones** LLP

3400 One First Canadian Place, PO Box 130  
Toronto, Ontario, Canada M5X 1A4  
Tel: 416.863.1200 Fax: 416.863.1716  
www.bennettjones.com

Lincoln Caylor  
Direct Line: 416.777.6121  
e-mail: caylorl@bennettjones.com

David J.N. Rainsberry  
Direct Line: 416.777.6236  
e-mail: rainsberryd@bennettjones.com  
Our File No.: 56445.1

May 15, 2009

Via Facsimile

Mr. David R. Rothwell  
Beard Winter LLP  
130 Adelaide Street West  
Suite 701  
Toronto, ON M5H 2K4

Dear Mr. Rothwell:

Re: **Pandya v. Simpson *et al.***  
**Court File No. 05-CL-6159**

We act for the receiver in the above noted matter.

Your client, Ajay Palwa, once held certain mortgages against properties owned by Courtney Wallis Simpson. In the context of the receivership, these mortgages were discharged and the properties were sold. A dispute then arose concerning your client's entitlement to the proceeds of sale. The court approved settlement of this dispute required that your client swear an affidavit setting out all of the funds that he received from Ms. Simpson.

It has recently come to the attention of the receiver that the information set out in Mr. Palwa's affidavit may not be accurate. Specifically, Ms. Simpson claims that your client was, in fact, overpaid by her in the approximate amount of \$1,600,000. If this is true and your client's affidavit is shown to be inaccurate then the release (given to your client by the receiver and predicated on the veracity of your client's affidavit) will not serve to bar a future claim.

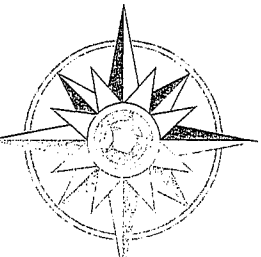
Our client requires a response from your client so that it can consider its position and advice to the court.

Yours truly,

  
**BENNETT JONES LLP**

LC/DJNR/eg  
WSLegal\056445\000001\5297241.v1

**TAB N**



# BEARD WINTER LLP

BARRISTERS & SOLICITORS

130 Adelaide Street West, Suite 701, Toronto, Ontario, Canada M5H 2K4  
Tel: (416) 593-5555 Fax: (416) 593-7760 Website: [www.beardwinter.com](http://www.beardwinter.com)

David R. Rothwell (extension 718)

Direct line: 416-306-1718

Email: [rothwell@beardwinter.com](mailto:rothwell@beardwinter.com)

OUR FILE NO: **94221-001**

Friday, May 15, 2009

**DAVID J. N. RAINSBERRY** and  
**LINCOLN CAYLOR**

BENNETT JONES LLP

Barristers and Solicitors

3400 One First Canadian Place

PO Box 130, Stn. 1st Can. Pl.

Toronto, Ontario M5X 1A4

Dear Sirs:

Pahwa mortgages on three properties

Udayan Pandya v Courtney Wallis Simpson, York Region Realty

Inc., Wallis, Simpson & Associates, Courtney Wallis Simpson

cob as York Management Group and as Carnco Developments

and as York Group

Court file no. **05-CL-6159**

In the matter of the *Class Proceedings Act, 1992*

Bennett Jones LLP file no. 56445.2

Our letter of March 28, 2007 to M. Joanne MacMillan enclosed her letter and a clean copy of the mutual release, as signed by Ajay Pahwa. As our letter requested, we subsequently received the mutual release as signed in counterpart by the Receiver and an issued and entered order.

Your letter by fax on May 15, 2009 is the next communication.

Having furnished your letter to our client for consideration, we reply on behalf of Ajay Pahwa by referring you again to the extensive review of documentation of advances and of amounts paid. The settlement affidavit remains truthful and accurate. It says, in part, "...Counsel for the Receiver has assembled a chronology and brief of

account documents concerning the Pahwa mortgages including my documents and documents from Simpson and various bank and trust company accounts used by Simpson and her entities. Subject to court approval of the settlement and in compliance with the terms of the Mutual Release, I confirm that the total amount advanced to the defendants by me and by my father is **\$1,165,000** and the total amount paid by the defendants to me and to my father is **\$1,379,500**. This later amount does not include amounts for NSF cheques or cheques that could not be certified, as mentioned above.”

We understand that the convicted fraudster, Courtney Wallis Simpson, may be on day parole from her lengthy penitentiary sentence, affirmed on appeal with a restitution order in favour of the Receiver of \$4,500,000. The convicted liar and fraudster, according to your letter, reportedly claims that Ajay Pahwa was overpaid by her in the approximate amount of \$1,600,000.

Just as Courtney Wallis Simpson was not a credible source of information and was repeatedly contradicted by documentation assembled and examined before settlement in March 2007, so does she remain a scurrilous source of false information and claims in May 2009. Ajay Pahwa rejects any future claim being asserted by the Receiver and will vigorously oppose steps predicated on information from the convicted fraudster.

Yours very truly,

**BEARD WINTER LLP**



**David R. Rothwell**

vt: DRR