

# Tracing funds into and out of Canada in insolvency proceedings: Tools employed

by Kyla Mahar and Ron Podolny,<sup>1</sup> ThorntonGroutFinnigan LLP



**Globalisation of commerce and the increasingly transnational nature of white collar crime have contributed to the internationalisation of insolvency proceedings. The sophistication of fraudulent investment schemes has, likewise, increased the complexity involved in tracing funds across the globe. As a result of the multi-jurisdictional nature of insolvency proceedings, Canadian insolvency counsel are frequently called upon to have both Canadian orders enforced outside of Canada and foreign-issued orders enforced by Canadian courts. The goal of such efforts is to trace and repatriate funds, thereby increasing recovery in the relevant insolvency proceeding.**

The general principle is that tracing is possible where identification is possible.<sup>2</sup> This paper explores tools available to Canadian counsel for tracing and recovering funds across multiple jurisdictions and canvasses recent insolvency proceedings where funds were misappropriated or mishandled by the debtors resulting in the need for tracing. The paper proceeds in two parts. The first part outlines certain evidence-gathering investigative tools that may be utilised to obtain the factual matrix necessary to trace and recover funds.

In particular, this part discusses the powers of examination under the *Bankruptcy and Insolvency Act* (the "BIA")<sup>3</sup> and similar examination powers that may be granted to Canadian court-appointed receivers by the Canadian courts and by courts in foreign jurisdictions. This part also reviews the availability of Norwich orders<sup>4</sup> in Canada and discusses current litigation in Canada where such an order is being sought to determine if tracing is an available remedy for investors in the alleged ponzi scheme relating to the Stanford International Bank, Ltd. ("SIB").<sup>5</sup>

The second part examines certain investigative and recovery tools available to effect tracing and repatriation of funds by the enforcement of foreign-issued orders in Canada and the enforcement of Canadian orders in other jurisdictions. It discusses recent litigation relating to Caribbean Commodities Ltd. ("Caribbean")<sup>6</sup> where the recognition of a Cayman Islands order in Canada enabled a foreign receiver to seize bank accounts in Canada. It also reviews the legal proceedings relating to the Canadian insolvencies of the Norshield Group<sup>7</sup> and the Portus Group<sup>8</sup> and certain litigation tools employed by counsel to recover funds located in foreign jurisdictions.

## Evidence-gathering investigative tools

### Statutory tools available if a debtor is in bankruptcy in Canada

Canadian bankruptcy legislation provides statutory tools that assist trustees in tracing and preserving funds domestically and across jurisdictional boundaries. These tools are available if the debtor is in bankruptcy in Canada and are applicable to persons within Canada.

Section 163(1) of the BIA enables a trustee to examine under oath the bankrupt, a person reasonably thought to have knowledge of the affairs of the bankrupt, or any person who is, or has been, an agent, clerk, servant, officer, director or employee of the bankrupt. The investigatory powers granted by section 163(1) are very wide<sup>9</sup> and the trustee's right is not limited to a single examination.<sup>10</sup> Section 163(2) of the BIA extends the ability to examine under oath to a creditor; upon an application to a court and showing sufficient cause. If the creditor is able to show sufficient cause, it will be granted an order of the court allowing it to examine the bankrupt or any other person for the purpose of investigating the administration of the bankrupt estate. What will constitute sufficient cause will vary from case to case, however; it has been held that "[t]here must be some demonstrated connection between the evidence, if any, of something being amiss and the ability of the named person to shed some light on it as it relates to the administration of the Estate."<sup>11</sup>

Pursuant to section 164 of the BIA, trustees also have the power to require any person believed to have in his or her possession books, property or documents of the bankrupt, to deliver such books, documents or property to the trustee.<sup>12</sup> Where the person fails to produce such items, the trustee may,

without a court order, examine the person concerning such failure.<sup>13</sup> On such examination, the person being examined may be compelled to produce the items.<sup>14</sup> The section is broad enough to encompass documents that are property of a third party, so long as they relate to the affairs of the bankrupt.<sup>15</sup>

### Examination powers granted by the courts

In court-appointed receiverships in Canada, the courts will grant examination powers to the receivers similar to those granted to a bankruptcy trustee under the BIA to aid in the investigations undertaken. As an example, the Ontario Superior Court of Justice ("Ontario Court") authorised the Portus Receiver (as defined below) to examine, under oath, certain principals of the Portus Group, including Boaz Manor ("Manor"). It also authorised the Portus Receiver to demand production from third parties of documents relating to Portus' financial affairs, the movement of Portus' investors' funds and other third party transactions.<sup>16</sup> The court derived its authority from section 129 of the Securities Act (Ontario),<sup>17</sup> which permits the Ontario Securities Commission to move before a court for the appointment of a receiver and empowers the court to grant the receiver "all powers necessary or incidental" to the receiver's authority to wind-up or manage the business or affairs of the company in question.<sup>18</sup>

It is also possible to have the examination powers granted to Canadian receivers granted in foreign jurisdictions using comity and the factual findings of the Canadian court as the basis for obtaining such relief in the foreign jurisdiction. This is illustrated in this paper under the heading: "Portus" below.

### Norwich orders

A Norwich order enables courts to compel a third party to disclose information it possesses concerning a wrongdoer to the party who obtained the order. Norwich orders have been granted to compel a bank to disclose a wrongdoer customer's confidential financial information to the victim.<sup>19</sup> As such, it represents a useful investigative tool that may enable fraud victims to trace and preserve their assets.

In discussing Norwich orders, Lord Denning, in *Bankers Trust*, stated that where the bank "[gets] mixed up, through no fault of [its] own, in the tortuous or wrongful acts" of its clients, the victim "has a right in equity to follow the money. He is entitled ... to lift the latch of the banker's door: ... If the plaintiff's equity is to be of any avail, he must be given access to the banks' books and documents - for that is the only way of tracing the money or of knowing what has happened to it."<sup>20</sup>

The test applied in Canada for granting a Norwich order is five-fold. The court must ascertain:

i) whether the applicant has provided evidence

sufficient to raise a valid, bona fide or reasonable claim;

- ii) whether the applicant has established a relationship with the third party from whom the information is sought, so as to demonstrate that the third party is somehow involved in the acts complained of;
- iii) whether the third party is the only practicable source of the information available;
- iv) whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure; and
- v) whether the interests of justice favour the grant of disclosure.<sup>21</sup>

In addition to the five-part test, the Canadian courts have confirmed that such relief will not be granted if necessity is not established.<sup>22</sup>

Although not yet granted in Canada in an insolvency context, Norwich orders may be of assistance to counsel seeking to recover clients' funds deposited in financial institutions. Two separate groups of victims of the alleged fraudulent investment scheme perpetrated by SIB have recently brought applications in Canada for Norwich orders against SIB's Canadian correspondent bank.<sup>23</sup> The victims in both cases had monies on deposit at SIB. In *Clapham*, the investors' funds were wired through the correspondent bank in Canada to the investors' accounts at SIB in Antigua but never arrived. The investors engaged Canadian counsel to seek to obtain a Norwich order against SIB's correspondent bank in Canada as a means of obtaining the correspondent bank's records relating to the SIB account through which their funds passed. The applications have not yet been heard. If a Norwich order is granted in this circumstance, the victims will be able to review the relevant bank records of SIB's correspondent bank to determine whether the tracing remedy would be available in respect of their funds.

## Tracing and recovery tools

### Recognition of foreign proceedings in Canada

**General principles.** Canadian courts routinely enforce orders of foreign courts; however, such recognition is not automatic. The traditional rule in Canada allowed Canadian courts to recognise only foreign judgments that were: (i) for a debt, or definite sum of money (other than a sum payable in respect of taxes or other similar charges or in respect of a fine or other penalty) and (ii) final and conclusive.<sup>24</sup> However, the Supreme Court of Canada in *Pro Swing* concluded that it may be appropriate to recognise non-monetary foreign judgments in certain circumstances. In considering whether to do so, the Canadian court is given the judicial discretion to consider relevant factors in order to ensure that the foreign orders to be recognised are consistent with the values espoused by the Canadian

legal system.<sup>25</sup> In particular, such review ensures that the Canadian justice system does not provide a foreign applicant relief that would be unavailable in a purely domestic proceeding.<sup>26</sup>

The Supreme Court of Canada determined that the following conditions must be established for recognition of foreign non-monetary orders: “[T]he judgment must have been rendered by a court of competent jurisdiction and must be final, and it must be of a nature that the principle of comity requires the domestic court to enforce.”<sup>27</sup> In enforcing foreign orders, Canadian courts are entitled to exercise the discretion they would normally exercise in the award of equitable orders.<sup>28</sup>

**Caribbean Commodities.** The principles established by the Supreme Court of Canada in *Pro Swing* were recently applied in Canada in *Caribbean Commodities*. Caribbean was the investment manager of a number of investment funds in the Cayman Islands (the “Funds”) where accounting irregularities were discovered which were intended to conceal significant trading losses.

As a result, voluntary liquidators were appointed over the Funds in the Cayman Islands on June 17, 2008. Based on forensic accounting, it was determined that a significant amount of money relating to the Funds was in accounts in the names of Caribbean, RCTG Investments Ltd. (“RCTG”) and R. Christopher Girvan (“Girvan”), a former employee of Caribbean who was the portfolio manager for the Funds. These accounts were located at ScotiaMcLeod and Scotia Capital Inc. (collectively, “Scotia”) in Canada.<sup>29</sup> On July 8, 2008, the joint voluntary liquidators of the Funds obtained an order of the Grand Court of the Cayman Islands appointing PwC Corporate Finance & Recovery (Cayman) Limited (the “Caribbean Receiver”) as the receiver of all accounts held in the name of Caribbean, RCTG and Girvan located at Scotia (the “Scotia Accounts”).<sup>30</sup> On September 16, 2008, the Caribbean Receiver then brought an application in Canada to have the order appointing it recognised to allow it to take control over the Scotia Accounts.

Based on the principles in *Pro Swing*, the Ontario Court recognised the order of the Grand Court of the Cayman Islands.<sup>31</sup> As a result of the recognition of this foreign receivership order in Canada, in excess of US\$22m of investors' funds was recovered by the Caribbean Receiver.

### **Recognition of Canadian proceedings in foreign jurisdictions**

Two recent high profile collapses of Canadian investment funds, *Norshield* and *Portus*, demonstrate recognition of Canadian orders and proceedings in foreign jurisdictions as necessary tools for tracing and

repatriating funds to Canada.

**Norshield.** Pursuant to orders of the Ontario Court, RSM Richter Inc. was appointed as receiver of the Norshield Group (the “Norshield Receiver”).<sup>32</sup> Approximately 1,900 Canadian retail investors (“Retail Investors”) invested approximately C\$159m with Olympus United Funds Corporation (“Olympus”), the fund raiser for the Norshield Group in Canada.<sup>33</sup> The Norshield Group employed an intricate and complex corporate and investment structure involving numerous corporations in multiple jurisdictions outside of Canada including Barbados and the Commonwealth of The Bahamas (“Bahamas”).

Under the investment structure which included the Norshield Group, Olympus United Bank and Trust SCC (“Olympus Bank”) in Barbados and each of Olympus Uninvest Ltd. (“Uninvest”) and Mosaic Composite Limited (US) Inc. (“Mosaic”) in Bahamas, as well as certain other related and/or closely connected entities (collectively, the “Norshield Investment Structure”), Olympus made significant investments in its wholly owned subsidiary, Olympus Bank in Barbados. Olympus Bank, in turn, held investments in Uninvest in Bahamas. These investments were then co-mingled in Uninvest with investments received from Canadian pension funds, financial institutions, individuals and entities whose investments were in cash, cash equivalents and contributions “in kind.” Uninvest held substantial investments in Mosaic. Mosaic, in turn, held investments in both hedged and non-hedged assets. The non-hedged assets consisted mainly of investments in a number of private entities. This complex cross-border structure made the tracking and recovery of assets difficult.<sup>34</sup>

The Norshield Receiver took steps to have the Canadian appointment of the Norshield Receiver recognised or to have one of the Receiver's personal representatives appointed by the courts in each of the jurisdictions involved in the Norshield Investment Structure.

The Canadian court authorised the Norshield Receiver to commence proceedings in Barbados, Bahamas and any other Caribbean jurisdiction including, without limitation, bankruptcy, restructuring, liquidation, winding-up and civil proceedings.<sup>35</sup> On September 22, 2005, the High Court of Justice of Barbados appointed RSM Richter Inc. and Brian F. Griffith & Company as joint custodians of Olympus Bank.<sup>36</sup> Raymond Massi, a partner of RSM Richter (“Massi”), and G. Clifford Culmer (“Culmer”), a partner of BDO Mann Judd, an accounting firm located in Bahamas, were appointed joint official liquidators of Uninvest by order dated February 6, 2006 of the Supreme Court of the Commonwealth of The Bahamas (the “Bahamas Court”). Massi and

Culmer were appointed joint receivers of Mosaic by order of the Bahamas Court dated January 20, 2006. Massi and Culmer were appointed joint provisional liquidators of Mosaic by order of the Bahamas Court dated March 22, 2006. On January 23, 2007, Mosaic was placed under court supervised liquidation by order of the Bahamas Court and Massi and Culmer were appointed joint official liquidators of Mosaic.<sup>37</sup>

While the receivership is still ongoing, the court proceedings taken in Barbados and Bahamas have assisted the Norshield Receiver in tracing and preserving the funds invested by the Retail Investors and other investors in the Norshield Investment Structure. As of the date of the latest Receiver's Report, assets in the amount of US\$34.4m have been realised or identified to be realised upon.<sup>38</sup>

**Portus.** Another complex fraudulent investment scheme was unveiled by the collapse of the Portus Group. Between January 2003 and March 2005, the Portus Group managed the funds of approximately 26,000 investors.<sup>39</sup> In total, investors placed approximately US\$792m in Portus and related companies.<sup>40</sup> On March 4, 2005, KPMG Inc. was appointed as receiver of the Portus Group (the "Portus Receiver") pursuant to an order of the Ontario Court.<sup>41</sup> The Portus Receiver obtained an order to examine, among others, Boaz Manor ("Manor"), one of the Portus Group's principals.<sup>42</sup> Shortly thereafter, Manor fled to Israel.

The Portus Receiver's investigations determined that the Portus Group carried out banking activities in several jurisdictions including: Cayman Islands, Turks and Caicos Islands, Bahamas, Barbados and Jersey.<sup>43</sup> The Portus Receiver also became aware that Manor was attempting to transfer misappropriated funds that were under his control. As a result, the Portus Receiver took steps to obtain the necessary information to trace the flow of funds and ultimately repatriate a significant portion of the misappropriated funds. The process to do so involved obtaining a Canadian order appointing the Portus Receiver over the Portus Group-related offshore entities as they were identified, followed by obtaining a recognition order in the local court having jurisdiction over such offshore entities. These steps were taken on an ex parte basis and both the Canadian court orders and the orders of the local court having jurisdiction of the offshore contained sealing and confidentiality provisions.<sup>44</sup>

The Portus Receiver then served the relevant financial institutions and others with the recognition order of the local court to obtain the banking and other records it required. This process was repeated as offshore entities were identified.<sup>45</sup>

Further, on June 23, 2005, the Portus Receiver

obtained an order of the Ontario Court pursuant to which Manor was directed to return to the Portus Receiver US\$3.1m he misappropriated and account for a further US\$17.6m of known investor funds.<sup>46</sup> The Portus Receiver commenced proceedings in Israel to compel Manor to attend an examination and to recover the property misappropriated by him. On October 21, 2005, the Portus Receiver obtained an order of the Tel Aviv Court of Peace and an order of the Tel Aviv District Court prohibiting Manor from leaving Israel pending further order.<sup>47</sup> The Portus Receiver also obtained an order of the Tel Aviv District Court making Manor's property in the amount of US\$20.7m subject to attachment and appointing the Portus Receiver's Israeli counsel as temporary receiver of the precious metals and gems acquired by Manor.<sup>48</sup>

The Portus Receiver relied upon, among other evidence, the Examination Order and the Recovery Order to obtain the orders in Israel. This illustrates how the Portus Receiver used findings and orders made in Canada and the principles of comity to obtain relief in foreign jurisdictions to aid in its tracing and repatriation of funds.

It is clear that recognition of Canadian judgments in foreign jurisdictions enabled the Portus Receiver to enhance recoveries to investors.<sup>49</sup> Due to the efforts of the Portus Receiver and the court's recognition of this Canadian proceeding, the Portus Receiver has repatriated funds in excess of US\$140m from financial institutions in several jurisdictions.<sup>50</sup>

#### Notes:

- <sup>1</sup> Kyla Mahar and Ron Podolny both practice at ThorntonGroutFinnigan LLP, a Restructuring and Litigation Boutique in Toronto, Canada.
- <sup>2</sup> *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 CarswellBC 809 at para. 79 (S.C.C.).
- <sup>3</sup> R.S.C. 1985, c. B-3.
- <sup>4</sup> This order takes its name from *Norwich Pharmacal Co. v. Customs & Excise Commissioners*, [1974] A.C. 133 (U.K.H.L.), the first case that granted this form of relief.
- <sup>5</sup> Proceedings relating to the alleged ponzi scheme relating to SIB were commenced in the US, see: *Securities and Exchange Commission v. Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, R. Allen Stanford, James M. Davis, and Laura Pendergest-Holt*, Dallas 3:09-CV-0298-N (United States District Court for the Northern District of Texas, Dallas Division) and in Antigua and Barbuda see *In the Matter of Stanford International Bank Ltd. (in Receivership) et al.*, Antigua ANUHCV2009/0110 (The Eastern Caribbean Supreme Court, In the High Court of

- Justice, Antigua and Barbuda).
- <sup>6</sup> *PWC Corporate Finance & Recovery (Cayman) Limited, in its capacity as Receiver of all Accounts in the name of Caribbean Commodities Ltd., RCTG Investments Ltd. and R. Christopher Girvan held at ScotiaMcLeod and Scotia Capital Inc. v. Caribbean Commodities Ltd., RCTG Investments Ltd. and R. Christopher Girvan* (16 September 2008), Toronto CV-08-7699-00CL (Ont. S.C.J.) (“*Caribbean Commodities*”).
- <sup>7</sup> *Ontario Securities Commission. v. Gestion de Placements Norshield (Canada) Ltée / Norshield Asset Management (Canada) Ltd., Norshield Investment Partners Holdings Ltd./Gestion des Partenaires d’Investissement Norshield Ltée, Olympus United Funds Holdings Corporation, Olympus United Funds Corporation/Corporation de Fonds Unis Olympus, Olympus United Bank and Trust SCC, Groupe Olympus United Inc./Olympus United Group Inc.* (June 29, 2005), Toronto 05-CL-5965 (Ont. S.C.J.) (“*Norshield*”). The receivership was extended to Norshield Capital Management Corporation/Corporation Gestion de l’Actif Norshield (“*Norshield Capital Management*”) and Honeybee Software Technologies Inc./Technologies de Logiciels Honeybee Inc. (“*Honeybee Software*”) pursuant to Orders dated September 9, and October 14, 2005. The Respondents, Norshield Capital Management and Honeybee Software, collectively are referred to herein as the “*Norshield Group*”.
- <sup>8</sup> *Ontario Securities Commission. v. Portus Alternative Asset Management Inc., Portus Asset Management Inc and Bancnote Corp.* (March 5, 2005), Toronto 05-CL-5792 (Ont. S.C.J.) (“*Portus*”).
- <sup>9</sup> *D.W. McIntosh Ltd, Re.* (1939), 21 C.B.R. 206 (Ont. S.C.J.).
- <sup>10</sup> *Chiang (Trustee of) v. Chiang* (2002), 44 C.B.R. (5th) 145 (Ont. S.C.J.).
- <sup>11</sup> *NsC Diesel Power Inc.* (1997), 49 C.B.R. (3d) 213, 1997 CarswellNS 406 at para. 32 (N.S. S.C.).
- <sup>12</sup> This includes auditors of the bankrupt, see: *Network Forest Products Ltd. (Trustee of) v. Kraft, Berger, Grill, Schwartz, Cohen & March LLP*, [2002] O.J. No. 5731 (S.C.J.).
- <sup>13</sup> BIA, section 164(2).
- <sup>14</sup> BIA, section 164(3).
- <sup>15</sup> *MacDonald, Re* (2001), 31 C.B.R. (4th) 54 (Ont. S.C.J.).
- <sup>16</sup> *Portus*, supra note 8, Oder (29 March 2005) at paras. 3-4 (the “*Examination Order*”).
- <sup>17</sup> R.S.O. 1990, c. S.5.
- <sup>18</sup> *Ibid.*, section 129.
- <sup>19</sup> See *Bankers Trust Co. v. Shapira*, [1980] 1 W.L.R. 1274 (C.A.) (“*Bankers Trust*”); also *Isofoton S.A. v. Toronto Dominion Bank* (2007), 282 D.L.R. (4th) 325 (Ont. S.C.J.).
- <sup>20</sup> *Bankers Trust*, supra note 19 at 1282.
- <sup>21</sup> *Alberta Treasury Branches v. Leahy* (2000), 270 A.R. 1, 2000 CarswellAlta 1648 at para. 106 (Alta. Q.B.), aff’d (2002), 303 A.R. 63 (Alta. C.A.); *Isofoton S.A. v. Toronto Dominion Bank* (2007), 282 D.L.R. (4th) 325, 2000 CarswellOnt 2741 at para. 40 (Ont. S.C.J.); *GEA Group A.G. v. Ventra Group Co.* (2009), 96 O.R. (3d) 481, 2009 CarswellOnt 4854 at para. 50 (C.A.) (“*GEA*”).
- <sup>22</sup> *GEA*, supra note 21 at para. 91.
- <sup>23</sup> See *Dynasty Furniture Manufacturing Ltd. et al. v. Toronto Dominion Bank*, Toronto CV-09-8300-00CL (Ont. S.C.J.) and *Clapham Luxembourg Holding S.A.R.L et al. v. Toronto Dominion Bank*, Toronto 09-8351-00CL (Ont. S.C.J.) (“*Clapham*”).
- <sup>24</sup> *Pro Swing Inc. v. Elta Golf Inc.*, [2006] 2 S.C.R. 612 at para. 10 (S.C.C.) (“*Pro Swing*”).
- <sup>25</sup> *Ibid.* at para. 15.
- <sup>26</sup> *Ibid.* at para. 30.
- <sup>27</sup> *Ibid.* at para. 31.
- <sup>28</sup> *Ibid.*
- <sup>29</sup> *Caribbean Commodities*, supra note 6, Affidavit of David A.K. Walker sworn August 22, 2008 at Exhibit A, filed in support of the application for recognition of the Cayman order in Canada.
- <sup>30</sup> *Nicholas Freeland and David A.K. Walker (as joint voluntary liquidators of Grand Master Fund Limited, Grand Island Income Fund, Grand Island Commodity Trading Fund and Grand Island Commodity Trading Fund II) v. Caribbean Commodities Ltd., RCTG Investments Ltd. and R. Christopher Girvan* (July 8, 2008), Cayman Islands 311 of 2008 (Grand Court of the Cayman Islands).
- <sup>31</sup> *Caribbean Commodities*, supra note 6, Order (September 16, 2008).
- <sup>32</sup> *Norshield*, supra note 7, Order (June 29, 2005), Order (September 9, 2005) and Order (October 14, 2005).
- <sup>33</sup> *Norshield*, supra note 7, Second Report of the Receiver (November 15, 2005) at para. 12.
- <sup>34</sup> *Ibid.* at para. 11.
- <sup>35</sup> *Norshield* supra note 7, Order (July 14, 2005) at para. 3.
- <sup>36</sup> *Olympus United Bank and Trust SCC, Re* (September 22, 2005), Barbados 1548 of 2005 (High Court of Justice).
- <sup>37</sup> *Norshield* supra note 7, Thirteenth Report of the Receiver (December 17, 2009) at paras. 7 – 9.
- <sup>38</sup> *Norshield* supra note 7, Thirteenth Report of the Receiver (December 17, 2009) at para. 73.
- <sup>39</sup> *Portus* supra note 8, Twenty Ninth Report of the Receiver (January 19, 2009) at para. 8.
- <sup>40</sup> *Ibid.*

<sup>41</sup> *Portus supra* note 8, Order (March 4, 2005).

<sup>42</sup> *Portus supra* note 8, Order (March 29, 2005).

<sup>43</sup> *Portus supra* note 8, Sixth Report of the Receiver (June 17, 2005) at para. 14.

<sup>44</sup> *Ibid.* at para. 20.

<sup>45</sup> <b>Date Canadian order issued</b>	<b>Date recognised in foreign jurisdiction</b>
April 21, 2005	May 19, 2005 (Grand Court of the Cayman Islands)
	June 10, 2005 (Royal Court of the Island of Jersey)
May 26, 2005	May 30, 2005 (Supreme Court of the Turks and Caicos Islands)
May 31, 2005	June 1, 2005 (Supreme Court of the Turks and Caicos Islands)
June 1, 2005	June 2, 2005 (Supreme Court of the Turks and Caicos Islands)

<sup>46</sup> *Portus supra* note 8, Order (June 23, 2005) (the "Recovery Order").

<sup>47</sup> *KPMG Inc. v. Boaz Manor* (October 21, 2005), Tel Aviv 179473/05 (Tel Aviv-Jaffa Court of Peace); *KPMG Inc. v. Boaz Manor* (October 21, 2005), Tel Aviv 23257-10/05 (Tel Aviv-Jaffa District Court). See also *Re KPMG Inc.* (September 16, 2005), Hong Kong HCMP 1924-2005 (High Court of the Hong Kong Special Administrative Region); *KPMG Inc., Re* (September 16, 2005), Hong Kong HCMP 1925-

2005 (High Court of the Hong Kong Special Administrative Region); *KPMG Inc., Re.* (September 16, 2005), Hong Kong HCMP 1923-2005 (High Court of the Hong Kong Special Administrative Region) wherein the Portus Receiver obtained orders in Hong Kong directing parties to attend examinations with the Portus Receiver and directing a bank to provide the Portus Receiver with bank statements, wire transfer authorisations and other relevant documents.

<sup>48</sup> *KPMG Inc. v. Boaz Manor* (October 21, 2005), Tel Aviv 23257-10/05 (Tel Aviv-Jaffa District Court).

<sup>49</sup> Investors have recovered a total of 95.13 cents on the dollar of their proven claims.

<sup>50</sup> *Portus supra* note 8, Twenty Ninth Report of the Receiver (January 21, 2009) at para. 11.

**Authors:**

**Kyla Mahar, Lawyer**

**Ron Podolny, Lawyer**

**ThorntonGroutFinnigan LLP**

**Suite 3200, Canadian Pacific Tower**

**100 Wellington Street West**

**Toronto-Dominion Centre**

**Toronto**

**M5K 1K7**

**Canada**

**Tel: +1 416 304 1616**

**Fax: +1 416 304 1313**

**Website: [www.tgf.ca](http://www.tgf.ca)**