

Citation : *Ronald J. Goguen, Re*, 2014 NBFCST 5

Date: 2014-07-22
Docket: SE-002-2014

IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c S-5.5

AND IN THE MATTER OF RONALD J. GOGUEN (Respondent)

SETTLEMENT APPROVAL ORDER

WHEREAS the Respondent Ronald J. Goguen entered into a Settlement Agreement dated 16 June 2014 (“Agreement”) in which he agreed to a proposed settlement of an enforcement proceeding, subject to the approval of the Financial and Consumer Services Tribunal (“Tribunal”); and

AND WHEREAS upon reviewing the said Agreement and the Agreed Statement of Facts therein and upon hearing the joint submissions of the parties at the 22 July 2014 settlement hearing; and

AND WHEREAS the Respondent has provided confirmation to staff of the Financial and Consumer Services Commission that he attended the Timely Disclosure Fundamentals workshop offered by the TMX Group in Halifax, Nova Scotia, in May 2014;

AND WHEREAS the Tribunal is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

- (a) Pursuant to paragraph 191(1)(a) of the *Securities Act*, the Agreement concluded between Enforcement Staff of the Financial and Consumer Services Commission and Ronald J. Goguen dated June 16, 2014 is hereby approved; and
- (b) There will be no order as to costs.

DATED at Saint John, New Brunswick, this 22nd day of July 2014.

“original signed by”
John M. Hanson, Q.C., Panel Chair

“original signed by”
Don Moors, FCMC, Panel Member

Financial and Consumer Services Tribunal
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IN THE MATTER OF THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

AND IN THE MATTER OF

RONALD J. GOGUEN

(Respondent)

SETTLEMENT AGREEMENT

Part I

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the New Brunswick Financial and Consumer Services Commission (“Staff”) agree to recommend approval of settlement of this matter with respect to the Respondent Ronald J. Goguen (the “Respondent”) to a panel of the New Brunswick Financial and Consumer Services Tribunal (the “Tribunal”) pursuant to section 191(1)(a) of the *Securities Act*, 2004 S.N.B., c. s-5.5 (the “*Securities Act*”) in accordance with the following terms and conditions:

- a. The Respondent agrees to the Statement of Facts set out in Part II hereof, and consents to the making of an order, on the basis of those facts, substantially similar to that set out in Schedule “A”; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Tribunal.

2. RESPONDENT’S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Respondent undertakes and/or agrees as follows:

- a. The Respondent shall not make any statement, either directly or indirectly, which is inconsistent with the Agreed Statement of Facts herein. Any such statement shall constitute a breach of this Settlement Agreement;
- b. The Respondent shall provide confirmation of his attendance at the Timely Disclosure Fundamentals workshop offered by the TMX Group in Halifax, Nova Scotia, in May 2014; and
- c. In accordance with an order substantially similar to that set out in Schedule “A”, that:
 - i. Pursuant to section 184(1)(j) of the *Securities Act*, Ronald J. Goguen is

prohibited from disseminating to the public, or from authorizing the dissemination to the public, continuous disclosure on behalf of a reporting issuer until such time as he has provided to Staff confirmation of his attendance at the Timely Disclosure Fundamentals workshop offered by the TMX Group in Halifax, Nova Scotia, in May 2014.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the Respondent, Staff will apply to the Tribunal for an order approving the Settlement Agreement.
- b. If the Settlement Agreement is approved by the Tribunal, the Respondent agrees to waive any right to a hearing and/or appeal with respect to this matter.
- c. If, for any reason whatsoever, this settlement is not approved by the Tribunal and the order contemplated by this Settlement Agreement is not made by the Tribunal:
 - i. Staff and the Respondent will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or any of the settlement negotiations;
 - ii. The terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both Staff and the Respondent or as may be required by law; and
 - iii. The Respondent further agrees that he will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Tribunal.

4. DISCLOSURE OF SETTLEMENT AGREEMENT

- a. The terms of the Settlement Agreement will be treated as confidential by the parties hereto until approved by the Tribunal and forever if, for any reason, the Settlement Agreement is not approved by the Tribunal; and
- b. Upon the approval of the Settlement Agreement by the Tribunal, any obligation as to confidentiality shall terminate and the Settlement Agreement will become public information.

5. BREACH OF SETTLEMENT AGREEMENT

The Respondent acknowledges and understands that in the event of a breach or failure to comply with this Settlement Agreement, Staff may commence proceedings under section 179(2) of the *Securities Act* against the Respondent and seek any remedy available under that section.

6. STAFF COMMITMENT

If this settlement is approved by the Tribunal, Staff will not initiate any other proceeding under the *Securities Act* against the Respondent in relation to the continuous disclosure obligations of Landdrill International Inc., including, without limiting the generality of the forgoing, the facts set out in Part II of this Settlement Agreement, and Staff will not make any public statement that is inconsistent with this Settlement Agreement.

7. EXECUTION OF SETTLEMENT AGREEMENT

The Settlement Agreement shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original.

DATED at the City of Saint John this 16th day of June 2014.

"Mark McElman"

Mark McElman
for and on behalf of Staff of the Commission

DATED at the municipality of Moncton, NB this 30 day of May 2014.

"Ronald J. Goguen"

Ronald J. Goguen

"Witness"

Witness:

Part II

STATEMENT OF FACTS

Background

1. The Respondent Ronald J. Goguen ("**Goguen**") is a resident of Moncton, New Brunswick. Goguen was the Chief Executive Officer and a member of the Board of Directors of Landdrill International Inc. ("**Landdrill**") at all material times, until he tendered his resignation on or about May 30, 2013.
2. Landdrill is a New Brunswick company with a corporate office located in Moncton, New Brunswick. Landdrill is a reporting issuer in New Brunswick and was listed on the TSX Venture Exchange ("**TSXV**") until the TSXV suspended trading in Landdrill's securities effective October 12, 2012.
3. On August 31, 2012, the Court of Queen's Bench of New Brunswick issued an order (the "Initial Order") regarding Landdrill, imposing a stay of proceedings, among other provisions, issued pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**"). The Initial Order was extended on numerous occasions, and was then eventually terminated as of May 30, 2013 when Landdrill declared bankruptcy pursuant to the *Bankruptcy and Insolvency Act*. Landdrill is presently defunct.
4. As an active reporting issuer in New Brunswick, Landdrill had an obligation to make continuous disclosure as required by National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**"). Such continuous disclosure included the requirement to file financial statements and Material Change Reports, and to immediately issue news releases authorized by an executive officer disclosing the nature and substance of material changes affecting the company.
5. Under New Brunswick securities law, and in particular NI 51-102, the obligation to make continuous disclosure is an obligation of the corporate issuer. In this regard the corporate issuer must by necessity rely on the corporate officers and directors to fulfill the obligation. In the case of Landdrill it was Goguen, as CEO, who was ordinarily identified as the authorized executive officer in news releases issued on behalf of the corporate issuer.

The Crisis at Landdrill beginning in April of 2012

6. Beginning in the latter part of April 2012, Landdrill experienced a number of challenging circumstances, which eventually led to its bankruptcy and becoming defunct. These circumstances included the discontinuation of certain operations in Mexico and Mongolia, the termination of the CFO, and certain defaults under various lending arrangements. Landdrill was in default of certain of its continuous disclosure obligations in respect of these events.
7. The discontinuation of the Mexican operations was particularly significant for Landdrill, from the point-of-view of its viability.

8. Landdrill's first quarter 2012 news release represented that drilling operations in Mexico had significantly improved performance in 2012 and that the Mexico branch expected to continue to make performance improvements for the rest of the year:

During 2011, the Mexican branch more than tripled its revenues and this large increase to its operations and labour pool resulted in poor gross margins for the short term. However I am very pleased to report that during 2012, the Mexican branch has significantly improved performance and their gross margins have increased from 2011's 17% to 27% for the first quarter of 2012. Furthermore [,] we expect this branch to continue to make improvements for the rest of the year.

9. Landdrill's May 2012 Management Discussion and Analysis ("May 2012 MD&A") represented that the company was operating an average of 15 drilling rigs in Mexico with a total of ten contracts and the company expected to operate at a similar level for the June to July 2012 period:

During the April - May period, the Branch averaged 15 rigs turning on a total of ten contracts. The Company expects to operate at similar activity levels for the June to July period.

10. On or about the last week of May 2012, mineral exploration companies reduced exploration activities in Mexico and, as a result, Landdrill ceased operating 13 of its 16 drilling rigs in Mexico. As a direct result of the reduction of active rigs in Mexico, Landdrill sustained a loss of approximately \$1.5 million USD in June and July of 2012, representing a substantial detrimental effect on its cash flow.
11. The developments in the Mexican operations were a marked departure from the expectations set out in the first quarter 2012 news release and the May 2012 MD&A for the June to July 2012 period.
12. During the period following the May 2012 MD&A until Landdrill filed for protection under the CCAA on August 31, 2012, Landdrill did not issue a news release or file a Material Change Report with the Commission disclosing the changes to the Mexican operations.
13. The changes to the Mexican operations constituted a material change in the business and operations of Landdrill from the expectations disclosed in the first quarter news release and May 2012 MD&A. This material change would have been apparent at the time drill operations ceased in Mexico, and in any event no later than upon realizing the sustained loss of approximately \$1.5 million USD in cash flow at the end of July 2012.

Goguen's Involvement in Landdrill's Disclosure

14. Goguen was responsible, along with other corporate officers and directors, for the continuous disclosure obligations of Landdrill under New Brunswick securities law. Goguen admits that he failed to cause Landdrill to satisfy its continuous disclosure obligations, and in doing so, he failed to discharge his corporate obligation in a manner consistent with New Brunswick securities law,

and that this constitutes conduct contrary to the public interest.

15. In particular, as CEO of Landdrill and executive officer authorizing news releases pursuant to NI 51-102, Goguen acknowledges that he was deficient in his corporate responsibility to ensure proper continuous disclosure in respect of the discontinuation of the Mexican operations. He was personally aware of all the relevant circumstances and their materiality to Landdrill prospects as an investment, but failed to ensure that Landdrill made the required disclosures.

Mitigating Factors

16. Staff accepts that Goguen's failure to ensure proper continuous disclosure was not motivated by bad faith or any improper motive.
17. There is no evidence of personal gain to Goguen as a result of the events described in this statement of facts.
18. This is the only instance where Goguen has been subject to an investigation or proceedings under the *Securities Act*.
19. Goguen has accepted responsibility for his actions contrary to the public interest.
20. Goguen has cooperated with Staff in the resolution of this matter.

Schedule "A"

IN THE MATTER OF THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

AND

IN THE MATTER OF

Ronald J. Goguen

(Respondent)

ORDER

WHEREAS the Respondent Ronald J. Goguen entered into a Settlement Agreement dated • May 2014 ("Agreement") in which he agreed to a proposed settlement of an enforcement proceeding, subject to the approval of the Financial and Consumer Services Tribunal ("Tribunal"); and

WHEREAS upon reviewing the said Agreement and the Agreed Statement of Facts therein and upon hearing the joint submissions of the parties at the • ••• 2014 settlement hearing; and

WHEREAS the Tribunal is of the opinion that it is in the public interest to make this Order.

NOW THEREFORE IT IS HEREBY ORDERED that:

- ii. Pursuant to section 191(1)(a) of the *Securities Act*, the Agreement dated • May 2014 with respect to Ronald J. Goguen is hereby approved; and
- iii. Pursuant to section 184(1)(j) of the *Securities Act*, Ronald J. Goguen is prohibited from disseminating to the public, or from authorizing the dissemination to the public, continuous disclosure on behalf of a reporting issuer until such time as he has provided to Staff confirmation of his attendance at the Timely Disclosure Fundamentals workshop offered by the TMX Group in Halifax, Nova Scotia, in May 2014.

DATED at the City of Saint John this _____ day of _____, 2014.

~, Panel Chair

~, Panel Member

~, Panel Member

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