Court File No. CV-17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ONTARIO SECURITIES COMMISSION

Applicant

and

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, CLAYTON SMITH, CLJ EVEREST LTD., 1150752 ONTARIO LIMITED, CRYSTAL WEALTH MEDIA STRATEGY, CRYSTAL WEALTH MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METALS FUND, CRYSTAL WEALTH MEDICAL STRATEGY, CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY, ACM GROWTH FUND, ACM INCOME FUND, CRYSTAL WEALTH HIGH YIELD MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED BULLION FUND, ABSOLUTE SUSTAINABLE DIVIDEND FUND, ABSOLUTE SUSTAINABLE PROPERTY FUND, CRYSTAL WEALTH ENLIGHTENED HEDGE FUND, CRYSTAL WEALTH INFRASTRUCTURE STRATEGY, CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY, CRYSTAL WEALTH RETIREMENT ONE FUND, and CHRYSALIS YOGA INC.

Respondents

FACTUM OF CRAIG CLYDESDALE

FOR MOTION RETURNABLE AUGUST 20, 2018

Overview

1. In this application by the Ontario Securities Commission the Receiver was appointed by Order on April 26, 2017. [i] Since then the Receiver and Mr.Clydesdale have worked co-operatively but sporadically to maximize the success of the five companies that received loans from Crystal Wealth ('The CW-OOM Loan Group'). The loans were to finance special purpose co-generation projects and related ventures.

2. One project was fully funded and is flourishing and the Receiver is being paid. However the other four are paralyzed ever since the Receiver was appointed because crucial funding was cut off. These four companies remain moribund and the opportunity still exists to revive them.

3. The four companies need information from the Receiver and then more co-operative meetings will see progress being made. This has already worked with the first project and is better than the present litigation process. Everyone involved is encouraged to think positive and work together and avoid any more negativity .

4. Mr.Clydesdale has just received the list of undertakings etc. and, except for a few refusals will have them answered within a month. (The Receiver and/or Applicant already have much of the information they are after.)

5. To date Mr. Clydesdale's cooperation has been exemplary such that he met with the Receiver privately and ensured that payments from the one successful project were directed to the Receiver. It would be helpful to the overall resolution of this matter and possible reviving of the moribund four projects if the Receiver were to begin publicly acknowledging the goodwill and cooperation extended by Mr.Clydesdale. This would go a long way to further co-operative attempts to realize value for the remaining four companies in the CS-OOM Loan Group. Otherwise the difficult circumstances caused by the sudden insertion of the Receiver, which caused the four business projects which were not fully funded to stop dead, will prevail and continue to deteriorate.

Facts

6. Funds were advanced by Crystal Wealth to finance viable profitable ventures whereby special purpose corporations were contracted to install and operate co-generation type facilities which would have reduced energy costs for their customers over a fifteen year contractual period. A side benefit was the ability to deal with emissions via technology paralleled with Pond Biofuels. One project at Leaside Ontario was successfully completed and it continues to generate income which is presently being shared by the Receiver. However the intervention of the Receivership without notice or prior consultation with the other four projects cut off crucial funding and support at an inopportune time. The complications created have left these projects in a moribund state. The Receiver continues to retain information and control which the four projects requires otherwise it can be predicted that these projects may not be able to be revived. However that process may be reversed with a renewed and collegial attempt to exert best efforts on all fronts.

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p.61 [testimony of Clayton Smith of Crystal Wealth]: No, because I
think if
12 you hadn't seized Crystal Wealth, then we
13 would have realized on those loans.
14 MR. GRAFF: You would have recovered
15 your $10 million from thin air, right?
16 THE DEPONENT: It is not thin air. You
17 can go to Leaside and see the first plant
18 operating.
19 MR. GRAFF: What about the next ones?
20 THE DEPONENT: They were in the business
21 of being built.
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7. [1]The first project the 2441472 Ontario Inc. –St. Marys Leaside project was fully funded and the project was completed and began generating income:

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A. So, they had a contract with...I
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[1] Receiver's Fourth Report p* par *

can't remember which company...MCS Energy with Craig Clydesdale, to try and get him financing for the Leaside...St. Marys Cement Leaside project. That is how we got involved. Part of the contract was that they were to be paid a monthly amount by MCS Energy. If they are successful in finding him money, and so that is all part of an original contract that was signed between the fund and MCS Energy. So, every month we would collect from MCS Energy, the monthly amount on our loan,

8. The nature of the projects involved may not be fully understood by the Receiver: the companies which were the recipient of loans were standalone companies each dedicated to one project which encompassed the front end loaded functions of negotiating Energy Service Agreements and/or related agreements with a customer. Once signed, soft services such as inspection, planning, preliminary engineering, insuring and preparations were required followed by purchasing equipment, installing and commissioning. One project was completed, Leaside, and the others were not when the Receivership stopped the flow of funds and froze the projects. At this late stage- 18 months after the appointment of the Receiver- the only hope for extracting value from these four projects would be a public positive statement by the Receiver as well as full cooperation. These two features remain inseparable and must be understood for a successful going forward basis.

9. On repeated occasions the Receiver has apparently been unable to provide information requested by the four companies that will assist in planning and optimizing the projects, if that is still viable. More negative comments and behind the scene conduct by the Receiver will only lead to a further deterioration of opportunities that otherwise might be available for the four stalled projects.

10. On August 20th, 2018 the Court is being asked to urge that the Receiver change its public statements such that it will now take a positive and proactive approach to work with the four companies to find solutions. Perhaps a case management or mediation judge can be appointed to reconcile the parties involved on a road to a positive resolution.

Co-operation

11. Co-operation is a two way street. The Receiver requested a great deal of information and documents on January 19, 2018 and these were answered promptly and in detail however the Receiver's fourth report does not seem to mention this: On February 14th, 2018 at 10:59 the following email to the lawyer for the Receiver was sent:
"Hi Steve here are the documents your firm requested. I must say that this job is all the more difficult because your side never sends the documents I have requested.

We are confirmed to be at Victory Verbatim on March 12th and 13th, 2018

Regards, Bill McKenzie "

12. The attachment is annexed to this factum and shows a complete disclosure of information even more than had been requested by the Receiver. (see-document which was an attachment to an email to A&B '180214DOCUMENTS'…) .

13. While it is understandable that the Receiver does not have the skill sets nor the mandate to complete, maintain or operate any of the four company's installations there is no reason why it cannot provide full information that it has in order to assist. To date the Receiver has not produced the requested documents including those documents that it must have retrieved from the lawyer for Crystal Wealth, Miller Thomson. These would help clarify Crystal Wealth's actions when the limited documents that have been produced from its files seem to show that monies earmarked for certain projects were moved about internally in circumstances where the borrower was not kept up to date.

14. At the examination of Mr. Clydesdale he stated:

> "...I met Mr. Smith through 2G. The first transaction was to finance the ESA between 244 and St. Marys, and I went to Crystal Wealth's lawyer's office and signed documents. Then I left it to the lawyers to get the deal closed, and they did. And I understand they did not use all the documents that I had signed, but did some other things. So, I went and signed some more documents. In summary, I am not sure what I signed, and some of the documents that I did sign were never used, and I presume were discarded or destroyed..."
>
> Okay?
>
> "...For the rest of the deals, i.e.,

MCSAB10 Inc., Magnitude CS Energy Inc., and
22 MCSnoxrecovery Inc., it was the same idea, but mostly I just met directly with Mr. Smith and signed some things, and he was going to take me to his lawyer so they could close those deals.

So, for the monies for the first deal, I can't remember if I got a cheque from the lawyers, but that bogged down because the bank held the cheque for a while before releasing it. So, later, Mr. Smith would do it directly. So the money got deposited to the company bank. Payments were made by the companies, which I presume Crystal Wealth kept track of. So, in summary, all you need to do is go through the Crystal Wealth records and track down all of the transactions where money was paid to any of the four companies, and then deduct when monies were paid as directed by Mr. Smith, and you will find the balance that is owing.

The important question now is, how much can be recovered from the projects that are unfinished, because they were not completely funded? So far, we have managed to work together with the Receiver well, and sort out the Leaside transaction. I continue to be happy to work with you and your ultimate client, the OSC, to resolve these issues for all of the projects and loans. There are some confidentiality issues, so we want to make all communications off the record, or at least until that is sorted out. So, we continue to encourage the Receiver to meet on a without prejudice off the record basis, and iron out any difficulties as best we can, and get on with the business of maximizing the returns for the Crystal Wealth investors. there is no money or

worthwhile like, actually getting an accountant to do this stuff, because it muddled at the moment. I mean, we are all sharing that problem, by the way, not...you know, I share it with you, and I am saying part of the problem is I have asked you to send me the financial records from Crystal Wealth just to see if we can assimilate and make sure everything matches, and we haven't got those….

15. Mr. Clydesdale made this statement under oath when being examined by the lawyers for the Receiver almost a year after the Receivership was initiated. He was questioned thoroughly at that time. He had already met with the Receiver on an off the record basis and achieved success in negotiating a deal with the Receiver that is reflected in the Receiver's Fourth Report.

16. In other words he had been cooperative with the lender, Crystal Wealth, by complying with Mr. Smith's request to deal with documents that were ultimately intended to be provided to the lawyers for the purpose of formal closings . This had already occurred in the case of 244 and MCSAB10 Inc. It is not clear why all of the drafts of such documents that had been prepared by

Miller Thomson were not provided to Mr.Clydesdale along with a complete accounting of funds alleged to have been advanced well in advance of this examination so that a review and reconciliation could be completed. Instead the Receiver elected to attend at Mr. Clydesdale's examination and, without any notice, show a binder of documents which, understandably, it could not reconcile or explain. Similarly it did not provide any backup, bank documents, or accounting entries for amounts alleged to have been advanced, repaid or credited. This situation has now been characterized unfairly in the Receiver's reports as a failure to co-operate. To the contrary there is a need for more disclosure by the Receiver of documents and information it has gleaned from its work so that there can be a meeting of the minds that will be likely to produce a reasonable result.

17. The Receiver is in complete control of this process and can elect to continue in its present course however some people might view this as being evasive, unfair, and incomplete. The reality is far from being a substantiation that Mr. Clydesdale or his lawyer , Mr. McKenzie have been obstructing the Receiver. Surely 18 months after the Receiver was appointed it can 'lay all the cards on the table' and allow a full review of a confusing set of circumstances and partial information being provided to Mr. Clydesdale. This would be far better than continuing to publicize statements that Mr. Clydesdale is not cooperating. Better yet the Receiver ought to agree to more off the record and without prejudice meetings where the true picture of the present status of the four companies can be reviewed.

2441472 Ontario Inc- St. Marys Leaside

18. 244 had contracted with St. Marys Cement to install and operate a co-generation device in consideration of being paid for the energy it produced. Crystal Wealth had advanced $1.8million dollars by way of loan. This transaction was closed by its lawyers Miller Thomson and the loan was secured by a GSA. A cheque was written which it is believed was from the Miller Thomson bank account but curiously the Receiver has not yet produced a copy for verification.

19. The installation had been completed and St. Marys was making monthly payments out of which 244 was servicing the debt and continuing to maintain and oversee the operation of the co-gen unit.

20. Mr. Smith testified that the Receiver should look at the Leaside deal and that was operating successfully. There is no evidence that shows that 244 was not servicing the debt up to the date the Receiver was appointed. To date the Receiver has not produced the Crystal Wealth records to 244 to show the status however it has acknowledged making a deal – which is off the record and without prejudice- and is being paid now until further notice[2]

[2] Fourth report page ** par **

THE DEPONENT [Clayton Smith CEO of Crystal Wealth]
11 No, because I think if
12 you hadn't seized Crystal Wealth, then we
would have realized on those loans.
MR. GRAFF: You would have recovered
your $10 million from thin air, right?
THE DEPONENT: It is not thin air. You
can go to Leaside and see the first plant
operating.
MR. GRAFF: What about the next ones?
THE DEPONENT: They were in the business
of being built.

21. There is no evidence that shows that 244 was not servicing the debt up to the date the Receiver was appointed. To date the Receiver has not produced the Crystal Wealth accounting records to 244 to show the status however it has acknowledged making a deal – which is off the record and without prejudice- and is being paid now .

Receiver information requested

22. There are various examples of requests to the Receiver for information which will assist the four companies: (It is noticeable that this information is generally omitted from the four official receiver's reports to the Court.)

Email From: Bill McKenzie [mailto:lawyerbill@rogers.com]
Sent: June-13-17 6:03 PM
To: mspence@airdberlis.com
Subject: FW: Crystal Wealth Management System Limited (the "Company") - OOM Energy Group
Hi Miranda I just wanted to get back to you after we talked. You are counsel for the receiver for various Crystal Wealth Funds and I act for OOM Energy group.

Among the things we discussed in an informal manner i.e. we did not come to any resolution, is that my client is hurting right now because I sent the shares of MCSAB10 Inc to Miller Thomson (Jon Fine) among other documents which they are holding in escrow pending the finalization of the closing of the financing which is now overdue. There is also a GSA which was registered in the Alberta Personal Property Registration System which secures the entire amount of the loan. If the rest of the money is not forthcoming then this is going to create problems. So I am asking you to advise whether we can finish closing this deal immediately

On another subject I understand that CW is holding shares of Pond Biofuels and I have had inquiries from clients as to whether they can be purchased so please look into that and let me know.

Regards, Bill

23. There has been no response to this reasonable and important request made at a crucial time when it was clear that these issues were important to Mr.Clydesdale. Neither can this request

be considered obstructionist or improper. At that time the projects had been deprived of crucial funding for several months and operational exigencies meant that they had been stalled and were eventually shut down i.e. there was no money to pay for further work for the four companies notably to address requests for accountants to provide financial statements.

24. The Receiver did not provide any comfort that such further necessary work, which had not yet been done, would be compensated for. At that time the Receiver had possession of knowledge, documents, and other records for the four companies that had been prepared by Miller Thomson and should have sent them to discover where any of the projects were salvageable. This would have required a co-operative effort which was not forthcoming for the receiver. Mr. Clydesdale's position is that these projects became moribund and the Receiver provided no assistance in resolving that fundamental issue.

25. At that time the OSC had in hand the raw financial records of the four companies that existed at the time. Six months later the following exchange took place when the Receiver served some documents on Imaginea (which by now had morphed into Cor4Oil)

From: *Timothy Jones [mailto:tjones@airdberlis.com]*
Sent: *December-12-17 3:23 PM*
To: *'info@cor4oil.com'*
Cc: *Steve Graff; Miranda Spence; bruce.bando@ca.gt.com; Knight, Jason; 'lawyerbill@rogers.com'*
Subject: *Energy Services Agreement between Imaginea Energy and MCSAB10 Inc. / Receivership of Crystal Wealth Group*

ATTN: Colin Davies, President & CEO

Please see the attached letter from our office, together with its enclosures. The letter and enclosures are also being sent to your office via courier.

We look forward to discussing this matter with you at your earliest convenience.

Kind regards,

Timothy Jones

T 416.865.3086
F 416.863.1515
E tjones@airdberlis.com

Aird & Berlis LLP | *Lawyers*
Brookfield Place, 181 Bay Street,
Suite 1800
Toronto, Canada M5J 2T9 |
airdberlis.com

From: *Bill McKenzie [mailto:lawyerbill@rogers.com]*
Sent: *December-13-17 8:57 AM*
To: *'Timothy Jones'; info@cor4oil.com*
Cc: *'Steve Graff'; 'Miranda Spence'; bruce.bando@ca.gt.com; 'Knight, Jason'*

Subject: RE: Energy Services Agreement between Imaginea Energy and MCSAB10 Inc. / Receivership of Crystal Wealth Group

Hmmm! I have been asking for a meeting about this since June not to mention information which I have not received.

I am off for the holidays now until January when I would be happy to discuss.

Have a happy holiday.

Regards, Bill McKenzie

26. Alleged documents produced by Receiver show that they should have records which have not yet been forthcoming. In the examination of Mr.Smith the Receiver does advise that it has records

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THE DEPONENT: I can't remember now.
You would have all those records, though.
MR. GRAFF: We are going to go through
them and put them to you now.
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Smith Transcript p 54 line 22

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MR. GRAFF: What happened to the $8
million you borrowed?
THE DEPONENT: Crystal Wealth...
MR. GRAFF: No, that you borrowed
personally.
THE DEPONENT: A lot of it went back
into Crystal Wealth.
Smith transcript p. 55 l 10ff
168. Q. And Bodanis and Pinto, they also
introduced you to Clydesdale?
A. Through...Craig Clydesdale was
through two gentlemen that Mr. Bodanis introduced me
to that were representing Mr. Clydesdale and trying
to find financing.
R. GRAFF: Is there paper surrounding
the loans from Clydesdale?

p. 56
172. Q. Even though the contract reads that
you are going to receive money for your services,
you weren't, because it was just clawing back the
loan amounts already provided.
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Catherine Weiler –Catch 22- Refusal #1,17

Catherine Weiler is a lawyer who works for the OSC. At the time that Mr.Clydesdale's lawyer initiated the process of meeting with the Receiver off the record he asked that Ms.Weiler attend those meetings because Ms. Weiler's department had imposed strict confidentiality obligations on Mr. Clydesdale and Mr. McKenzie that continue to this day. Those restrictions are so overwhelming and compelling that they cannot be further discussed here in this public document but the Applicant in this matter knows full well what they are. If they can be waived or removed by the Applicant OSC or the Court the more clarity can be achieved.

Imaginea Project

27. The ESA with MCSAB 10 Inc. was signed and a partial closing was achieved wherein the Miller Thomson law firm acted for Crystal Wealth. As part of this closing Crystal Wealth registered a General Security Agreement over all of the assets of the company for the full amount of the intended loan however the full amount was never advanced. The Receiver has not produced a detailed accounting of this transaction including funds that were actually advanced or funds that were allegedly notionally advanced but used for other purposes. The shares of MCSAB10 Inc., were pledged as security for the loan and the shares were placed with the Miller Thomson law firm. A request to the Receiver to locate and confirm information about those shares was made in June 2017 but to date there has been no helpful response.

28. In the period after the Receiver was installed Suzanne West of Imaginea passed away and a change of control took place wherein that company morphed into COR4 Oil. Mr. McKenzie has contacted them and there has, to date, been no confirmation that this company wishes to complete the project where the co-gen was to be installed. Presumably the Receiver has contacted Cor4 Oil and that information should be shared. To the contrary it seems that the delay has caused Cor4 Oil to reject the contract. The Receiver wrote to them on December 12th, 2017 and no updated information has been given to Mr. Clydesdale about the fate of this project.

29. Mr.Smith states that the Crystal Wealth loans were directed at projects being undertaken by the CW Group of Companies. He points to the success of the 244 loan and that the other projects were in various stages of development but not to the point of being completed or operational.[3]

30. He states that had it not been for the actions of the Receiver and takeover of the affairs of Crystal Wealth the necessary funds would have been advanced and the projects would have been completed. However the failure to provide all the necessary funds left all the projects in a moribund state and they have not proceeded at all since the date of the Receivership. It may be that now that they have little or no value and the Receiver has been invited to liquidate them or put their assets up for auction.

[3] Smith transcript p. 61

183. Q. With respect to Imaginea, we have been told that no generation was installed. Can you explain that, why that was not done?
A. I don't know whether he had all the money yet to buy the equipment to do the installation.
184. Q. Well, why would you have advanced $2 million of the 2.6 when you didn't even have all of the relevant information and transactional documents?
A. I had the transactional documents. I had the contract between Imaginea and him or his company.

31. it is assumed this project has been declared to be worthless by the Receiver. If not then the Receiver should be providing a full report including the closing arrangements, the funds, and the ongoing progress.

32. Mr.Davies responded by email on December 12th, 2017 at 9:54 to the Receiver that he was trying to get caught up and find out the current status. The Receiver has not recorded this in any of its reports nor has it provided any follow up or any of the information that MCSAB10 Inc. needs to evaluate the status of this project. Mr.Clydesdale's effort to contact Mr.Davies met with no response.

33. Mr. McKenzie's email to the Receiver on December 13th, 2017 reminded the Receiver that a meeting was needed and information requested as far back as June had not been received. A request that the motion returnable in December for his client be adjourned pending a meeting was rebuffed.

34. Once the Christmas holidays were over the Receiver, and Mr. Clydesdale met and for a confidential and off the record meeting and accomplished a result that led to monies starting to flow the Receiver from the St. Marys Leaside project. (244) However without full information of the status of the other projects, notably Imaginea, from the files at Crystal Wealth and Miller Thomson the other four projects remain in a moribund state with the likelihood of them being rescuscitated diminishing over time.

MCS NOXRECOVERY INC.

35. This is described as being a project to examine and develop various technology to remove noxious substances from exhaust gases issued in the petroleum industry. It is mostly an R&D type of discovery project and in parallel to some degree with the efforts of Pond Biofuels. Crystal Wealth was an investor in Pond however the extent of the investments and of funds which were earmarked for the CW-OOM Loan projects and then transferred or leveraged to the advantage of Crystal Wealth's s investments, and others, in Pond is not transparent even though

the Receiver knows. If these are fully disclosed and reconciled there may be some value to be realized by MCS NOXRECOVERY and especially to be discussed in off the record meetings.

36. At paragraph 270 of the Fourth Report the Receiver States: *"Aside from the examination described below, the Receiver has not received any additional information regarding the MCSnox and Magnitude Loans since the date of the Second Report.*" However this ignores the February 14th, 2018 email and atttachments which answer the questions posed to that time by the Receiver. The email and main attachment are attached to this factum. These need to be discussed in a co-operative forum.

MCS ENERGY 12, INC

37. This project was being developed by MAGNITUDE CS ENERGY INC. to the extent that it was appearing viable and ready for final funding that would then lead to finalization, installation and commissioning. The cut off of funds shut down the project and it is moribund and although the customer may have tried to cancel it because of the delay it is thought to be one that might be viable. This will require cooperation and good faith from the Receiver even before inquiries might be made of the issues and entities involved. [4]

Outstanding Undertakings

38. The Receiver states at par 272 of its Fourth Report: "*The Clydesdale Examination was largely unhelpful. A&B and the Receiver confirmed that, aside from the MCS PoD installation located at the SMC facility in Leaside, none of the OOM Energy Group's projects have been completed, and they are not generating any funds. Accordingly, the OOM Energy Group does not hold assets which can be readily enforced against*." That is precisely so. The Receiver will have by now confirmed that this situation has not improved and is due to the sudden stop of crucial and timely funding when the Receivership was started. It is clear to the Receiver that these projects continue to be moribund and any chance of reviving them or refinancing them is eroding if not in part by the Receiver's continued negative comments. A further without prejudice meeting is overdue.

39. The Fourth Report states at paragraph 274 "*A&B continues to follow up with McKenzie regarding the answers to undertakings".*

40. On March 29, 2018 Mr. McKenzie emailed Ms. Spence and asked for a list of undertakings so that they could be answered. When no response was forthcoming Mr. McKenzie emailed again on '*a friendly reminder*' asking for a list of undertakings. They were not provided at that time but finally were forwarded as part of a 1127 page Motion Record which was served on Mr. McKenzie on July 20, 2018.

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[4] Clydesdale Transcript Mar 12 Q 146ffP. 38

41. At that time the final list of undertakings was made clear and these are in the process of being answered such that paragraph 8 of the draft Order is satisfactory with respect to requiring Mr. Clydesdale to answer his Undertakings on or before September 20th, 2018. This is a concession to the delay in providing a list of undertakings from the March 12th and 13th examinations (more than four months) and that the list and this motion arrived in the middle of the summer while people are on holiday. There is no prejudice to the Receiver under these circumstances.

Outstanding Refusals

42. Generally the Receiver's argument is that the Clydesdale Under Advisements and Refusals should be answered because "*The Receiver is of the view that such questions are relevant, and probative to the Receiver's mandate, and that an Order ought to issue requiring these individuals to answer the questions, and to produce the associated documentation requested."*[5]

43. Refusal #1 and 2 are requests for personal information that have nothing to do with a loans.There was no undertaking by the Receiver to protect or preserve this personal information nor any indication why it might be needed. Counsel has stated that all requests to contact Mr.Clydesdale should go through him. In any event if the Receiver needed this information for some compelling and legitimate reason it can be provided under proper confidentiality restrictions however the Receiver has never explained why it needs this information.

44. The Order appointing the Receiver states:

> 20. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a **"Sale").**

45. The Receiver makes a vague claim that it is entitled to ask personal questions that transcend privacy laws. However there is no evidence nor argument that explains why it is of the view that this information is probative and relevant. In the case presented regarding Mr.Clydesdale there is no nexus between the loans which were advanced by Crystal Wealth to the five companies, the GSA's that were registered, the underlying assets that secure the loans, and the questions which were refused. It is acknowledged that there is the need for an accounting and assessment of what assets have value that can be realized by liquidation however this is a two way street in that the Receiver is in possession of all of the records of Crystal Wealth including bank accounts, accounting records, lawyer reports and generally the receipt and application of funds which seem to have been applied between various Crystal Wealth companies and loan units.

[5] Receiver's Fourth Report page 35

46. It is not clear why the Receiver has not obtained and published the files that show what due diligence was done before the loans were advanced and the closing documents which were or should have been prepared by Crystal Wealth's lawyers. The Receiver's lawyer's self admitted sarcasm on this subject is demonstrative of the fact that either such information is not available or has not been retrieved and produced for public review. It should be transparent on this topic.

Pond Biofuels

47. The Receivership is engaged with Pond Biofuels. It appears that some monies that were earmarked by Crystal Wealth to be invested to satisfy its commitments to the four companies was instead placed with Pond. In addition it appears that some of these monies were charged as loans to the one or more of the four companies however neither Crystal Wealth nor the Receiver have provided any information or accounting. The Court's assistance is required here to crystallize an accounting of all funds which were loaned to or invested in Pond Biofuels and also all accounts in which funds were charged as loans to the four companies that were not directly advanced into their bank accounts.

181. Q. ...prep work, yes.
A. And I was also in communication with
the president of St. Marys Canada, because they also
have an interest in Pond. So, I had several lunches
and meetings with them. So, I was aware that Mr.
Clydesdale wasn't just feeding me false information.

Mr. Clydesdale has given full co-operation in very difficult circumstances

48. Mr.Clydesdale has cooperated throughout with the Receiver and increasingly suggested that the status of the loans was better discussed off the record where there might be an accommodation which included the Receiver's cooperation. Examples of requests for cooperation and interchange of information abound. However the Receiver has not reciprocated in a way that is conducive to optimizing the mess that has befallen the 5 companies. They were suddenly and without notice deprived of funds that had been promised and that they were counting on in order to finalize what would have been profitable businesses by now with cash flows well able to service and repay the Crystal Wealth Loans.

49. The prospects that might be available to the five companies to refinance or reignite the projects that were being undertaken at the time of the receiverships, have diminished over time and are most definitely not assisted by all of the negative statements being publicized by the Receiver. The Receiver is sophisticated enough to know that it is likely that when they proclaim to the world that Mr. Clydesdale is not co-operating and his lawyer it trying to protect him that does not assist in the process of looking for new financing and reviving the projects.

50. The Receiver claims that counsel for certain parties was ‘*extremely protective*” of their clients. [6] And further “*This type of conduct was similar to what was observed during the Clydesdale Examination (discussed below) and is a cause of concern for the Receiver in its efforts to identify, quantify, and realize on assets of the Crystal Wealth Group.”*[7]. However a review of transcripts of parties who attended without lawyers saw the Receiver pose a range of questions that were overly intrusive, personal, and irrelevant such that the protection of the rights of a party is exactly what a lawyer is supposed to do. The Receiver postulates that this conduct is a *“cause of concern*” without providing details and especially as to when it was asked to provide important information that has yet to be provided.

51. The Receiver further postulates that Mr. McKenzie’s actions since the commencement of the receivership have obstructed the Receiver’s investigation and enforcement efforts. [8] The documents and exchanges do not support this dramatic statement and fail to acknowledge how the off the record meetings advanced the Receiver’s ability to realize upon the 244 loan and would continue to do likewise with other loans if there was two way co-operation.

52. At paragraph 247 of its fourth Report the Receiver highlights that Crystal Wealth failed to obtain security instruments prior to advancing loan monies and seems to want to blame the lawyers i.e. Mr.Dyck and Mr. McKenzie. However all of the records show that closing details for the two transactions that did close via lawyers i.e. 244 and MCSAB10 Inc. were satisfactorily and properly finalized after being initiated by the lender’s lawyer (Mr.Dyck) and finalized between him and the borrower’s lawyer (Mr. McKenzie). Mr. Dyck did not contact Mr. McKenzie nor any other lawyer to initiate closings of any other transactions so it cannot be said that these lawyers were involved with any resistance, delays or obstruction. This dramatization by the Receiver (presumably written by its lawyers) is incorrect, discourteous, and improper. If nothing else it seems to create a self induced impediment by the Receiver to fail to attempt to co-operate with Mr. Clydesdale to realize value on the outstanding four companies.

53. The Court is being asked to intervene in this barrage of vague innuendo and impose a regime on the various parties to meet and co-operate with a view to attempting to recover what is possible with respect to the four companies.

54. It looms large that the Receiver has been only able, after 18 months, to discern from the books and records of the Respondent Crystal Wealth parties, exactly what the balances and allegations of amounts owing are and what happened to monies that were earmarked for the various projects for the four companies. [9] The four companies have provided their financial records to the Receiver to assist however they can do no more until and unless they are given access to the Crystal Wealth financial records of loans and repayments and especially those that were not disclosed to the four companies. This must be accompanied by access to the various documents and instructions that were provided to and about the transactions which must be in the possession of Miller Thomson lawfirm. (If they did not prepare certain documents then who did?)

[6] Receiver’s Fourth Report page 77 par. 99
[7] Receiver’s Fourth Report page 77 paragraph 99
[8] Receiver’s Fourth Report page 117 par. 246
[999] Receiver’s Fourth Report page 114

55. The likelihood of having the four companies find new sources of financing and business support so that they might rekindle their projects might improve markedly. It is not clear why the Receiver has chosen to support and implement a public barrage of negative rhetoric which has only become more aggressive with the statements in the fourth report, which are not supported by any evidence, that the Receiver is of the opinion that there has been obstruction. To the contrary the cooperation exhibited in and after the January 2018 off the record meetings has not been lauded or publicly appreciated. The statement that four of these companies are moribund is still true and continues as long as the Receiver continues to contribute to an unwillingness to remove them from this state. While it cannot be expected that the Receiver will supply needed funds to resuscitate the projects (and presuming that this is still possible at this late date and all the harm that has been done) surely the Receiver can at least provide blanket public support and comfort so that those that might want to investigate possibilities will not shy away?

56. It should be noticed that, six months after a request was made to locate the shares of one of the projects that should by then have been in the possession of the Receiver they have still not been located or produced. Never mind that it was Mr.Clydesdale and Mr. McKenzie that insisted that there be an off the record meeting in January 2018 even though the Receiver resisted. And, predictably, a good result came out of that meeting that has not been properly acknowledged by the Receiver: lo and behold that meeting which the Receiver did not want to have produced an agreement where it is presently receiving monthly payments.

Constitutional Protections for the victims

57. There seems to be a theme in this Receivership that borrowers are not entitled to their constitutional protections. This is not so. Regarding accusations that Mr.Clydesdale has not acted quickly and in a transparent manner the answer is that it has taken the Receiver a long time to discern and understand the underlying premise and operation of the four businesses that are being reviewed. It appears that the Receiver has either not been diligent or has been unable to understand the nature of the underlying businesses which, as described elsewhere herein were in various stages of start up when the Receivership suddenly pulled the rug out from under them. The stoppage was drastic and inevitably froze any prospects that these companies would be successful. The Receiver has apparently not focused on the fact that these projects were immediately bound to fail at that time and to date have not provided any comfort or guidance as to how they might be revived. To the contrary the negativity has been seen to prevent and forestall any progress from being made.

58. The Receiver fails to appreciate how this is essentially a civil matter looking to collect money from projects where the lender did its due diligence, evaluated the risk, and then pulled out the carpet from under the projects at an inopportune moment.

59. There are ample cases reported which negate the vague and unspecified allegation by the Receiver that there has been a lack of co-operation. When the Receiver has provided requested information that can be contrasted with the curious behaviour by Crystal Wealth in not closing transactions with three of the companies and not providing promised funds it is virtually certain that the interaction between the Receiver and Mr. Clydesdale will ameliorate markedly.

Relief Requested

60. That Mr. Clydesdale shall answer his undertakings and under advisements by September 20th , 2018. While he is prepared to answer some of the refusals the OSC's Catherine Weiler must provide a carte blanche to allow him to do so.

61. Mr.Clydesdale asks for a recantation of the negative comments that have been made about him. This should go as far as saying that due to his cooperation there has been some positive results out of a difficult situation and that they are encouraged in a bona fide way to proceed to a positive resolution that is the best that can be done with the difficult issues and assets that are in play here.

All of which is respectfully submitted by

KWM LAW PROFESSIONAL CORPORATION
K.William McKenzie (LSO#A16891)
Suite 111
3-200 Memorial Ave
Orillia, ON
L3V 5X6
Phone 705-323-5833
Fax 705-482-0648
Lawyer for Craig Clydesdale

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[i] Its powers include:

(c) to manage, operate, and carry on the business of the Crystal Wealth Group, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Crystal Wealth Group;
(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, legal counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Crystal Wealth Group or any part or parts thereof;

15. THIS COURT ORDERS that all rights and remedies against the Crystal Wealth Group, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court

From: Bill McKenzie [mailto:lawyerbill@rogers.com]
Sent: March-29-18 5:09 AM
To: 'Miranda Spence'
Subject: RE: Undertakings from the examination of Craig Clydesdale

Hi Miranda normally I receive a list of the undertakings from examining counsel. It avoids any misunderstandings. Also I think you have a few exhibits and I did not get copies from you after the examination. I have exhibit 2, A, B, and C so please send the others and my client will get started. I would presume they can be answered within two weeks of receipt of your list. We have a four day weekend starting tomorrow so I don't expect you need to rush to get this to me until next week.

I was particularly interested in obtaining the documents and trace the money transfers that purport to be transfers from one Crystal Wealth fund to another and another one that was supposedly paid to Pond. If you can send them to me it will help with the issues of trying to properly record financial transactions and reconcile the amounts that are actually owing. From what I saw at your end there have not been relevant credits applied and we are trying to arrive at the right numbers for the respective amounts owing.

Have a happy Easter.

Regards, Bill

<u>This is a response to correspondence and list of documents which the Receiver suggests are still outstanding as at January 19, 2018</u>

2441472 Ontario Inc.

- AON insurance policy [Note – the Receiver requires a copy of the policy as well as a certificate showing that it continues to be in effect]

Previously provided and attached again. We are not clear on what type of certificate you are requesting but the policy remains in good standing to the best of Mr.Clydesdale's knowledge.

- Financial Statements

Attached

MSCnoxrecovery Inc.

- General Security Agreement in favour of Crystal Wealth Management System Limited

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

- Intellectual Property Security Agreement in favour of Crystal Wealth Management System Limited

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

- Financial Statements

attached

Magnitude CS Energy Inc.

- Financial Statements

Attached

MCSAB10 Inc.

- Financial Statements

The financial statements of MCSAB10 INC. have not been formally completed.

2404873 Ontario Corp.

- Financial Statements

attached

<u>ADDITIONAL DOCUMENTS/INFORMATION REQUIRED BY THE RECEIVER</u>

We refer you to a memory stick which was delivered.

2441472 Ontario Inc.

- Fully executed copy of blocked account agreement

2441472 Ontario Inc. has no record of a blocked account agreement. It is likely that this type of account was never set up and any obligation of CW to do so was waived or bypassed by CW.

Magnitude CS Energy Inc. (prior name 2445958 Ontario Inc.)

- General Security Agreement in favour of Crystal Wealth Management System Ltd.

Please clarify because it seems that the Receiver already has this..

- Specific assignment of license agreement entered into between MCSnoxrecovery Inc. and Pond Biofuels

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

- Assignment of Magnitude CS Energy Inc.'s rights and entitlements under a key man life insurance policy with respect to the life of Craig Clydesdale, and copy of said policy and certificate

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

- Guarantee given by Craig Clydesdale in favour of Crystal Wealth Management Systems Ltd.
- Pledge of Shares by Craig Clydesdale (and any other shareholders of Magnitude CS Energy Inc.) in favour of Crystal Wealth;

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

- Subordination Agreement by Craig Clydesdale (and any other related parties to whom Magnitude CS Energy Inc. is obligated) in favour of Crystal Wealth

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

- Cross-collateralization Agreement by all Affiliates of Magnitude CS Energy Inc. in favour of Crystal Wealth

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

MCSAB10 Inc.

- Fully executed copy of blocked account agreement

If there was an obligation to enter into such an agreement it cannot be verified that this occurred.

- AON insurance policy

See above

- Information about the status of commissioning of the "MCS PoD", and the extent to which related equipment has been purchased and/or installed and remains in the possession and control of MCSAB10 Inc.

The answer remains the same as previously. This project is moribund and rendered so by the failure to have access to the funds that were promised by CW. Efforts to refinance are remote at this time due to circumstances known to the Receiver i.e. full information has not been provided by CW or the Receiver for reasons known only to them thus everything is on hold. The customer may be rethinking now and is said to be requiring a refund of its deposit. No material equipment has been received from and/or installed by suppliers nor is any in the possession and control of MCSAB 10 Inc. The nature of the business is that the design and planning process, which had not been completed, is expensive and specifically focused on the project and virtually worthless if not implemented. Suppliers characteristically will place orders into a queue and if payments are not forthcoming for any specific equipment, which they have not been due to the stoppage caused by the Receivership and which continues, then the place in the queue is lost and even if MCSAB 10 Inc. now had the money to purchase the equipment, which it does not, the time for delivery would be extended accordingly. It is noted that the Receiver has recently begun a process of working with MCSAB10 Inc. to attempt to resuscitate and refinance this project and future plans may be successful.

If any of the above documents are not available in your records or those of your client, please provide written confirmation of same.

See above

Attachments:

AON INSURANCE POLICY

OSC Applicant **Clydesdale et. al Respondent** Court File No.:CV-17-11779-CCL

ONTARIO SUPERIOR COURT OF JUSTICE at TORONTO
(Commercial List)

FACTUM OF CRAIG CLYDESDALE

KWM LAW PROFESSIONAL CORPORATION
Suite 111 3-200 Memorial Ave

Orillia, ON
L3V 5X6
K.W McKenzie (LSUC No.: 16891A)
Tel: (705) 323-5833
Fax: (705) 483-0648
Lawyers for Craig Clydesdale