

**In the matter
of the *Securities Act***

- and -

**In the matter of
JONATHAN CARLEY**

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated November 14, 2003, the Ontario Securities Commission announced that it would hold a hearing to consider whether to approve the proposed settlement agreement reached by Staff and Jonathan Carley.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend settlement of the proceeding initiated in respect of Jonathan Carley by the Notice of Hearing in accordance with the terms and conditions set out below. Carley consents to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out below.

III. STATEMENT OF FACTS

ACKNOWLEDGEMENT

3. Staff and Carley agree with the facts set out in Part III for the purpose of this settlement proceeding only and further agree that this agreement of facts is without prejudice to Carley in any other proceedings of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the Commission under the *Securities Act* or any civil or other proceedings which may be brought by any other person or agency.

FACTS

4. On June 21, 1999, Carley became the Director of Corporate Development for Finline Technologies Ltd. Carley had recently graduated from university. He had no prior experience working for a public company. Carley's responsibilities included to raise equity financing and to act as a liaison between Finline and its capital markets.
5. As an employee of Finline, Carley was a "person in a special relationship" as defined by ss. 76(5) of the *Securities Act*. Carley was not an officer or director of Finline.
6. Finline was incorporated under the *Business Corporations Act* on February 24, 1989 and is located in Waterloo, Ontario. At the material time, Finline traded on the Canadian Venture Exchange (the Vancouver Stock Exchange) under the symbol FIN. As such, Finline is a "reporting issuer"

as defined by ss.1 (1) of the *Securities Act*.

7. Finline designs and manufactures broadband wireless systems focusing on MMDS “wireless cable” solutions for the broadcast of video, voice and high speed internet systems. It is a small company with about 11 employees.
8. In 1999, Finline’s business strategy was twofold: to capitalize on emerging digital technology by manufacturing digital systems and to raise equity through a second public offering. As part of that strategy, Finline wanted to merge with or purchase Impress Image Compression Inc. (“IIC”), the company that developed and patented Wavelet image compression technology.
9. After Carley joined Finline in June 1999, he was involved in discussions with Finline and IIC about the “synergy and potential merging of technologies.”
10. At the same time, Finline approached several groups of investors to obtain equity financing to build its business. Carley was involved in some of the presentations Finline made to potential investors.
11. On July 5, 1999, Finline discussed a possible merger with or acquisition of IIC. On July 20, 1999, Finline signed a letter of intent to purchase IIC. That deal was abandoned because Finline was unable to obtain the financing.
12. On Friday, January 28, 2000, Finline signed a second letter of intent to purchase IIC. Although the letter gave Finline sixty days to conduct due

- diligence, the deal was contingent only on securing \$1.5 million from investors for working capital and development of the technology.
13. On Friday, January 28, 2000, Carley was aware of the letter of intent.
 14. On Tuesday, February 1, 2000, Finline advised IIC that it was exercising its right to acquire IIC. On February 1, 2000, Carley was aware that Finline was going to exercise its option to purchase IIC. On February 1, 2000, Carley worked on the press release announcing the pending acquisition.
 15. On February 2, 2000, Carley, with knowledge of the pending acquisition of IIC, purchased 30,500 shares of Finline at a price of \$1.76 per share in his personal trading account held by Yorkton Securities in Calgary, Alberta.
 16. On the morning of Thursday, February 3, 2000, Carley faxed the press release regarding the pending acquisition of IIC to the Canadian Venture Exchange. Trading was suspended until Finline made a public announcement about the acquisition and then resumed at 10.00 a.m. the same day.
 17. On February 3, 2000, Carley sold 5,000 shares of Finline at a price of \$2.95 per share and sold an additional 5,000 shares of Finline at a price of \$2.90 per share. On February 4, 2000, Carley sold 5,000 shares of Finline at a price of \$4.20 per share and sold an additional 15,500 shares of Finline at a price of \$4.11 per share.
 18. By purchasing these shares prior to the public announcement and subsequently selling them, Carley made \$59,600.

CONDUCT CONTRARY TO THE PUBLIC INTEREST

19. By engaging in the conduct described above, Carley breached Ontario securities law and acted contrary to the public interest.

IV. TERMS OF SETTLEMENT

20. Carley agrees to the following terms of settlement:
- (a) Carley will be reprimanded by the Commission;
 - (b) Carley will be prohibited from trading in any securities for a period of eighteen months;
 - (c) Carley will pay \$89,400 to the Commission to be allocated to such third parties as the Commission may determine for purposes that benefit Ontario investors;
 - (d) Carley will pay \$20,000 costs to the Commission upon the approval of this settlement agreement by the Commission.

V. STAFF COMMITMENT

21. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the *Securities Act*, against Carley respecting the facts set out in Part III of this Settlement Agreement.

VI. APPROVAL OF SETTLEMENT

22. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for December 10, 2003.
23. Counsel for Staff or for Jonathan Carley may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Carley agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
24. If this settlement is approved by the Commission, Carley agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
25. Staff and Carley agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.
26. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission;
 - (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Carley leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Carley;
 - (b) Staff and Carley shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of

Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations;

- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person except with the written consent of Staff and Carley, or as may be required by law; and
- (d) Carley agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF AGREEMENT

- 27. Except as permitted under paragraph 23 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Carley until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of Staff and Carley, or as may be required by law.
- 28. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

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

DATED this 14th day of November, 2003

“Jonathan Carley”
JONATHAN CARLEY

DATED this 14th day of November, 2003

**STAFF OF THE
ONTARIO SECURITIES COMMISSION**

“Michael Watson”
(Per) _____
Michael Watson
Director, Enforcement Branch