



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF COLBY COOPER CAPITAL INC.
COLBY COOPER INC., PAC WEST MINERALS LIMITED
JOHN DOUGLAS LEE MASON**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the "Commission") make the following allegations:

I. OVERVIEW

1. This proceeding relates to, among other things, the fraudulent activities of Colby Cooper Capital Inc. ("CCCI"), Colby Cooper Inc. ("CCI"), Pac West Minerals Limited ("Pac West"), and John Douglas Lee Mason ("Mason") in relation to the sale of shares of CCI (the "Colby Securities") and the shares of Pac West (the "Pac West Securities"). Shares were sold to approximately 350 CCI investors and to 130 Pac West investors, in a number of provinces across Canada, from whom the Respondents raised approximately \$4,800,000. Between November 7, 2006 until March 1, 2012, (the "Relevant Period"), the Respondents breached sections 19, 25, 38, 53, 126.1, 126.2(1) and 129.2 of the Securities Act, R.S.O. 1990, c. S.5 (the "Act"), engaged in conduct contrary to sections 13.2 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103") and therefore acted in a manner that was contrary to Ontario securities law.

II. THE RESPONDENTS

2. CCI is a corporation incorporated in the province of Alberta on July 21, 2006. It has a registered head office at an address in Calgary which is, in fact, a virtual office with a post office box (the “Post Office Box”). CCI operated out of an office in Toronto, Ontario that it shared with the other respondent companies.

3. CCCI is a corporation incorporated in the province of Alberta on October 4, 2006 under another name, undergoing a name change to CCCI on October 18, 2007. Its registered head office is the Post Office Box in Calgary shared with CCI. CCCI operated from a principal office in Toronto, Ontario, which office it shared with the other respondent companies. In Ontario, CCCI was registered in the category of limited market dealer from January 31, 2008 to September 27, 2009. With the implementation of NI 31-103 on September 28, 2009, CCCI’s category of registration was changed to exempt market dealer (“EMD”). CCCI was registered as an EMD from September 28, 2009 to January 31, 2012 when its registration was suspended.

4. Pac West is a corporation incorporated in the province of Alberta on March 10, 2009. It has a registered head office at the Post Office Box in Calgary. Pac West also operated out of an office in Toronto, Ontario that it shared with the other respondent companies.

5. Mason is a resident of Ontario. He is the President and CEO of CCI and Pac West and their major shareholder. He is CCCI’s President and CEO, and he was registered initially as CCCI’s designated compliance officer, officer and director (trading) until September 27, 2009. Subsequently, Mason was registered as CCCI’s chief compliance officer, ultimate designated person and dealing representative. Mason’s registrations as chief compliance officer and dealing representative were suspended on January 20, 2011, and his registration as ultimate designated person was suspended on January 31, 2012 with the suspension of CCCI’s registration.

III. FRAUDULENT AND PROHIBITED CONDUCT

6. The Respondents engaged in a course of conduct relating to securities that they knew or

reasonably ought to have known would result in a fraud on potential investors, and made prohibited representations and provided information to potential investors that was false, inaccurate and misleading, as follows:

A) MISREPRESENTATIONS TO INVESTORS

7. Between December 2006 to January 30, 2008, Mason and CCI sold the Colby Securities directly to the public. From January 31, 2008 until April 2010, Mason and CCCI sold the Colby Securities, together raising at least \$3.6 million from approximately 350 investors.

8. Between August 2009 and November 2010, Mason and CCCI sold the Pac West Securities, raising at least \$1.2 million from approximately 130 investors.

9. In the course of selling the Colby and PacWest Securities, the Respondents adopted a high pressure sales approach that included making representations and providing information to potential investors orally, in marketing materials and on their websites that was false, inaccurate and misleading, in an attempt to induce potential investors to purchase the Colby and Pac West Securities.

10. Significantly, the Respondents advised investors orally and/or in marketing materials that the funds raised by the distribution of the Colby and Pac West Securities had been invested in, and would be used to develop oil and gas properties in Texas and Alberta. In fact, up until the time that the Respondents ceased selling securities, only approximately \$50,000 of the \$4,800,000 raised had been invested in acquiring two very minor working interests in Texas that resulted in no returns on investment. Further, no investment was made in Alberta until mid 2011 when CCCI was the subject of a compliance review by Commission staff.

11. In addition, the Respondents' web sites and other marketing materials displayed maps and technical details of and about the oil and gas regions in Alberta and Texas, along with images of drilling machinery, creating the illusion that the Respondents had actual and

significant investment in these areas, when they did not.

12. In particular, the Respondents:

- (a) misrepresented that Mason had considerable experience in the investment and oil and gas industries;
- (b) created and distributed a false magazine article and cover page on Pac West;
- (c) falsely indicated that a reputable mining consulting firm was associated with Pac West;
- (d) represented that CCI and Pac West would be traded on a public stock exchange in the future; and
- (e) represented that the future value of the Colby and Pac West Securities would appreciate significantly.

13. The Respondents made statements to investors that they knew or reasonably ought to have known were misleading or untrue in a material respect, and which would reasonably be expected to have a significant effect on the value of these securities. In so doing, the Respondents breached section 126.2(1) of the Act.

14. Additionally, in order to induce investors to invest in CCI and Pac West and with the intention of effecting trades in the Colby and Pac West Securities, Mason, CCI and CCCI made representations to potential investors regarding these shares being listed on a stock exchange, contrary to s. 38(3) of the Act. Mason has not taken any steps to take CCI or Pac West public.

B) MISAPPROPRIATION OF INVESTOR FUNDS

15. The Respondents' only source of funds were funds obtained from investors. Once in possession of funds from investors, a significant portion of the funds raised were utilized for purposes other than as intended and disclosed to the investors, including to fund the Respondents' business operations and Mason's lifestyle.

16. Once in possession of funds from investors, the Respondents misappropriated those funds, in that:

- (a) CCI and Pac West made payments to CCCI who used the funds in a manner that was not disclosed to investors;
- (b) Mason commingled Pac West and CCI investor funds;
- (c) Mason used the funds to pay for personal expenses including trips to Las Vegas and Bahamas and to pay for his personal credit cards;
- (d) Mason made sizable cash withdrawals from Pac West, CCI and CCCI corporate bank accounts; and
- (e) The Respondents used bank drafts in an attempt to avoid detection by Staff and to avoid the application of freeze orders that had been obtained over bank and investment accounts held by CCI, CCCI, and Pac West.

17. In particular, of the approximately \$4,800,000 raised from investors,

- (a) less than 10% (approximately \$400,000) was used to purchase oil and gas working interest investments;
- (b) at least \$1,000,000 went to Mason to pay for personal expenses including personal taxes, personal credit card payments, cash withdrawals, payments to family members, groceries and condo rent; and
- (c) the balance was spent on purported business expenses including commissions to qualifiers, sales persons, administration staff, payments to oil and gas consultants who sat on the boards of CCI and Pac West, office rent, advertising, and marketing.

Requests from investors to return their investment have been ignored. As of March 15, 2012, all but \$615,000.00 of funds raised from investors had been expended, and this remaining amount is subject to freeze orders obtained over the Respondents' bank and investment

accounts. The only asset held by any of the Respondents is a small investment by CCI in Alberta, purchased for \$360,000 in May 2011, which investment has not generated any meaningful return.

18. The Respondents therefore made misleading or fraudulent misrepresentations to investors and misappropriated investors' funds knowing or having reasonably ought to have known that these acts or course of conduct would result in a fraud on a person contrary to s.126.1 of the Act.

IV. ILLEGAL DISTRIBUTION OF SHARES TO THE PUBLIC

19. In order to sell the Colby and Pac West securities, Mason and several unregistered and commissioned sales persons hired by him contacted potential investors by telephone. All the investors were "cold called", most from lists purchased by CCI and/or CCCI.

20. The potential investors were provided with reports on the oil and gas industry copied from large newspapers or magazines, along with misleading information exaggerating the position of CCI and Pac West in those industries. As set out above, the investors were advised that CCI and Pac West were developing oil and gas properties in Texas and Alberta, and that investor funds would be used to generate revenues by extracting oil and gas from those properties.

21. Interested investors were encouraged to purchase securities comprised of one common share of either CCI or Pac West and a common share purchase warrant, exercisable into common shares before a specified closing date. Investors were told that only a limited number of units were available at the current price, and that future investment would be more costly. After agreeing to invest, subscription agreements were sent to investors setting out the quantity, unit price and total amount of investment. Many investors were contacted repeatedly and some made additional investments as a result of these further sales efforts.

22. Not all of the 350 CCI investors or 130 Pac West investors qualified as accredited investors or met the applicable prospectus exemptions. Further, Mason, CCI and CCCI failed to make any appropriate inquiries relating to investors' financial condition. The Respondents

therefore traded in securities in circumstances where there were no prospectus exemptions available to them under the Act. Through these acts, CCCI acted outside the scope of its registration with the Commission as a limited market dealer and exempt market dealer, and CCI and Mason traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to section 25 of the Act.

23. The sales of Colby and Pac West Securities were trades in securities not previously issued and were therefore distributions. Contrary to section 53(1) of the Act, no prospectus or preliminary prospectus was filed with the Commission for these securities, and no prospectus receipt has ever been issued to qualify the sale of those shares. Consequently, Mason, CCI and CCCI traded in these securities without the required prospectus receipt or an exemption to compliance with section 53 that applied in the circumstances.

V. FAILURE TO KEEP PROPER BOOKS AND RECORDS

24. CCCI, CCI, and Mason also failed to keep books, records and other documents as are necessary for the proper recording of market participants' business transactions and financial affairs, contrary to section 19 of the Act. In addition, CCCI, CCI, and Mason violated the Know Your Client obligations as outlined in subsections 13.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103").

VI. MASON'S NON-COMPLIANCE

25. Mason authorized, permitted or acquiesced in the breaches by CCCI, CCI and Pac West of sections 19, 25, 38, 53, 126.1 and 126.2(1) of the Act, along with the breaches of NI 31-103, contrary to section 129.2 of the Act, and in so doing has engaged in conduct contrary to Ontario securities law.

VII. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

26. The foregoing conduct engaged in by the Respondents constituted breaches of Ontario securities law. In particular:

- (a) The Respondents made misleading or fraudulent misrepresentations to investors and misappropriated investors funds knowing or having reasonably ought to have known that they would result in a fraud on a person, contrary to section 126.1 of the Act;
- (b) The Respondents made statements to investors that were misleading or untrue in a material respect, in contravention of s. 126.2(1) of the Act;
- (c) CCCI, CCI, and Mason made prohibited representations concerning the future listing of shares in order to effect sales of the Colby and Pac West Securities, contrary to s.38 of the Act;
- (d) CCCI, CCI, and Mason traded and engaged in, or held themselves out as engaging in, the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to section 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in November 2006, contrary to section 25(1) of the Act, as subsequently amended on September 28, 2009;
- (e) CCCI, CCI, and Mason traded in Colby Securities and Pac West Securities without the required prospectus receipt or appropriate exemption, contrary to section 53 of the Act;
- (f) CCCI, CCI, and Mason failed to keep books, records and other documents as are necessary for the proper recording of market participants' business transactions and financial affairs, contrary to section 19 of the Act, s.13.2 of NI 31-103;

- (g) Mason has authorized, permitted or acquiesced in the breaches by CCCI, CCI and Pac West of sections 19, 25, 38, 53, 126.1 and 126.2(1) of the Act, along with the breaches of NI 31-103, contrary to section 129.2 of the Act.

27. By reason of the foregoing, the Respondents violated the requirements of Ontario securities law and/or engaged in conduct contrary to the public interest.

28. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 27th day of March, 2012.