



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 GARTH H. DRABINSKY,
MYRON I. GOTTLIEB AND GORDON ECKSTEIN**

-AND-

**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND GORDON ECKSTEIN**

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. By Notices of Hearing dated July 3, 2001 and February 20, 2013, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it was in the public interest to make certain orders against Gordon Eckstein (“Eckstein”) and other respondents, as set forth below.
2. These Notices of Hearing were issued in connection with the Statement of Allegations filed by Staff of the Commission (“Staff”) against Eckstein, Garth H. Drabinsky (“Drabinsky”), Myron I. Gottlieb (“Gottlieb”), Robert Topol (“Topol”) and Livent Inc. (“Livent”) on July 3, 2001 (the “Initial Statement of Allegations”) and continued pursuant to an Amended Statement of Allegations against Drabinsky, Gottlieb and Eckstein (together, the “Respondents”) on February 20, 2013.

3. The Commission will issue a new Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement (the “Settlement Agreement”) between Staff and Eckstein and to make certain orders in respect of Eckstein.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff agree to recommend settlement to the Commission of the proceeding commenced by the Original Statement of Allegations and continued pursuant to the Amended Statement of Allegations against Eckstein according to the terms and conditions set out below. Eckstein agrees to the making of an order by the Commission in the form attached as Schedule “A” to the Settlement Agreement, based on the facts set out below.
5. For purposes of this Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Eckstein agrees with the facts as set out in Part III and the conclusion in Part V of the Settlement Agreement.

PART III – AGREED FACTS

A. Livent’s Predecessor Entities and IPO

6. In March 1990, Drabinsky and Gottlieb operated and controlled several privately-held entities involved in the live entertainment business, including Live Entertainment of Canada Inc. (“LECI”), MyGar Partnership, and MyGar Realty Inc. (together, “MyGar”).
7. In March 1990, Eckstein was hired to work as the Vice President of Finance and Administration at the MyGar Partnership. The position also involved oversight of the finances of LECI and MyGar Realty Inc.

8. In May 1993, LECI conducted an initial public offering (the “IPO”) and acquired all the assets of MyGar Partnership and all the outstanding shares of MyGar Realty Inc. in the course of the offering. LECI’s shares were subsequently listed for trading on the Toronto Stock Exchange and the company became a reporting issuer in Ontario. On May 23, 1995, LECI changed its name to Livent.
9. Eckstein held the position of Vice-President, Finance and Administration from May 17, 1993 through November 13, 1996, at which time he assumed the position of Senior Vice-President, Finance and Administration. Mr. Eckstein served as the Senior Vice-President until July 29, 1998.

B. Fraud Allegations and Bankruptcy

10. In the summer of 1998, new management took control of Livent pursuant to an equity purchase in the company, and learned of allegations that Livent’s prior financial statements contained misrepresentations.
11. On August 10, 1998, Livent issued a news release and filed a material change report pursuant to the Act, publicly announcing that an internal investigation had revealed serious irregularities in the company’s financial records.
12. On November 18, 1998, Livent released restated financial statements for the years ended December 31, 1996 and 1997, and the first quarter ended March 31, 1998 (the “Restated Financial Statements”), reducing cumulative net income for these periods by approximately \$85 million.
13. Livent also announced that it had filed a voluntary petition for bankruptcy in New York. The stated purpose of the petition was to pursue a comprehensive financial restructuring which had become necessary as a result of serious accounting irregularities uncovered at the company. Livent subsequently filed for protection under the Companies’ Creditors Arrangement Act in Canada, and courts in Toronto

and New York approved the sale of substantially all of Livent's assets, property, and undertakings to a third party.

C. Criminal Proceedings, Commission Proceedings, and Adjournment

14. On July 3, 2001, Staff issued the Initial Statement of Allegations against Eckstein and other former directors and officers of Livent in relation to their conduct at the company.
15. On October 22, 2002, the Royal Canadian Mounted Police charged Eckstein and others with multiple counts of criminal fraud, and Commission proceedings were adjourned *sine die* on November 15, 2002 pending resolution of the criminal proceeding.
16. On February 26, 2007, pursuant to a guilty plea, Eckstein was convicted in the Ontario Superior Court of Justice of one count of criminal fraud over \$5000 in connection with misrepresentations made in the financial statements of MyGar and Livent while he was an officer of these companies.
17. In connection with his guilty plea, Eckstein admitted his knowledge and participation in a fraudulent "kickback" scheme at MyGar. Eckstein specifically admitted the following facts:
 - (a) Drabinsky and Gottlieb used funds from MyGar to pay two contractors for fictitious services. The contractors then funneled a portion of the diverted funds back to Drabinsky and Gottlieb.
 - (b) Eckstein improperly recorded these payments as production and real estate expenses, and thus artificially inflated the asset amounts on MyGar's balance sheets.
 - (c) As a result, overstated asset amounts were incorporated into the financial statements presented to the public during the IPO.

18. In connection with his plea, Eckstein also admitted his participation in a fraudulent scheme at Livent after it became a public company. Specifically, Eckstein admitted that:
- (a) During regular reporting cycles, Eckstein and his accounting staff prepared detailed statements summarizing Livent's actual financial results. Drabinsky and Gottlieb repeatedly directed Eckstein to alter these statements so that they would match Livent's financial projections.
 - (b) Following Drabinsky's and Gottlieb's instructions, Eckstein directed members of his accounting staff to adjust the financial statements. Changes were made through various improper means, including deferring operating costs from current reporting periods to future reporting periods, transferring expenses associated with one project to another project, and transferring operating and preproduction costs to fixed asset accounts relating to theatre construction.
 - (c) Eckstein maintained two sets of records distinguishing between the false and true accounts of Livent. Eckstein also supervised the creation of false supporting accounting records. Some of these records were created by modifying the computer software used to run the company's general ledger and helped to conceal the improper manipulations from auditors.
 - (d) New financial statements were created to incorporate the adjusted results, and executive meetings were held to discuss the revised statements.
 - (e) Once the executive meetings took place and the final financial statements were signed by Drabinsky and Gottlieb, they were distributed to the Audit Committee and subsequently to the Board of Directors.
 - (f) The results of these manipulations overstated Livent's income in its financial statements, and Eckstein knew that members of the public would rely upon these financial statements to their detriment.

(g) Livent's false financial statements allowed the company to raise funds from capital markets repeatedly during the post-IPO period, including in the following offerings:

Date of Offering	Offering	Approximate Funds Raised (\$ million)
September 20, 1993	Private Placement of Special Warrants	\$20
February 3, 1995	Subordinated Convertible Notes Offering	\$15
April 2, 1996	U.S. Public Offering	\$43
July 29, 1996	Subordinated Convertible Debentures	\$12
December 4, 1996	CIBC Credit Facility	\$50
December 10, 1996	Senior Secured Debentures	\$73
May 8, 1997	Secondary Public Offering	\$28
October 16, 1997	Senior Notes Offering	\$173
June 12, 1998	Private Placement: Lynx Ventures	\$29
June 12, 1998	Private Placement: Roy Furman	\$3
June 23, 1998	Private Placement : Southam	\$18
June 23, 1998	Private Placement: Great Pacific	\$1

19. Pursuant to his plea, the Superior Court found Eckstein guilty of one count of fraud in relation to his conduct at Livent and its predecessor entities, and sentenced him to a conditional sentence of two years less a day, including one year of house arrest and conditions requiring him to complete 200 hours of community service work, among other things.

PART IV – RESPONDENT'S POSITION

20. Eckstein represents to Staff and to the Commission that the following circumstances are true and correct, and requests that the settlement hearing panel consider these circumstances in respect of his position:

- a. Eckstein attorned to the jurisdiction of United States courts and pled guilty to criminal charges relating to Livent, holding himself accountable to the charges. Specifically, on December 30, 1998, the U.S. Attorney for the Southern District for New York filed a criminal indictment against Eckstein for fraud in relation to certain securities offerings made in the United States by Livent, and Eckstein entered a guilty plea on the same day.
- b. Eckstein entered into a settlement with the U.S. Securities and Exchange Commission (the "SEC"). Specifically, on January 13, 1999, Staff of the SEC instituted a proceeding against Eckstein in relation to his conduct as an officer of Livent, and Eckstein settled the matter on the same day, agreeing to an order that denied him the privilege of appearing or practicing before the SEC as an accountant. Pursuant to a subsequent consent judgment, Eckstein was permanently banned from serving as an officer or director of a reporting issuer in the United States. Eckstein provided assistance to the SEC by offering a statement to SEC staff, and he agreed to continue providing assistance to the SEC as needed.
- c. Eckstein pled guilty to criminal charges relating to Livent in Canada, holding himself accountable to the charges. Specifically, he pled guilty to one count of fraud, as set out in paragraph 16 above, and received a conditional sentence of two years less a day. He also testified extensively as a key witness for the prosecution against Drabinsky and Gottlieb in a criminal trial relating to Livent in the Ontario Superior Court of Justice.
- d. Eckstein pled guilty to charges relating to Livent initiated by the Institute of Chartered Accountants of Ontario, holding himself accountable to the charges. As a result, he was fined a sum of \$25,000 and expelled from membership in the Institute.

- e. Eckstein has worked for a privately-held company since December 2003 that is not a registrant, and his present employer is aware of his criminal conviction.

**PART V – CONTRAVENTIONS OF ONTARIO SECURITIES LAW AND
CONDUCT CONTRARY TO THE PUBLIC INTEREST**

- 21. Pursuant to section 127(10) of the Act, the Commission is entitled to consider convictions related to securities when deciding whether to make protective and preventative orders in the public interest.
- 22. Eckstein admits and acknowledges that he was convicted of criminal fraud relating to securities, as set out in paragraph 16, and that he engaged in the conduct underlying his conviction, as set out in paragraphs 17 and 18. He acknowledges that these facts constitute a basis pursuant to s. 127(10) of the Act for an order in the public interest under s. 127(1) of the Act.

PART VI – TERMS OF SETTLEMENT

- 23. Eckstein agrees to the terms of settlement listed below and to the Order attached hereto, made pursuant to subsection 127(1) of the Act that:
 - (a) the Settlement Agreement is approved;
 - (b) any exemptions contained in Ontario securities law will not apply to Eckstein permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;
 - (c) Eckstein must resign any positions that he holds as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act, except that he may continue to serve as an officer at his present employer;
 - (d) Eckstein is permanently prohibited from becoming or acting as a director or officer of an issuer, pursuant to paragraph 8 of subsection 127(1) of the Act, except that he may continue to serve as an officer at his present employer;

- (e) Eckstein must resign any positions that he holds as a director or officer of a registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;
 - (f) Eckstein is permanently prohibited from becoming or acting as a director or officer of a registrant, pursuant to paragraph 8.2 of subsection 127(1) of the Act;
 - (g) Eckstein must resign any positions that he holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of subsection 127(1) of the Act;
 - (h) Eckstein is permanently prohibited from becoming or acting as a director or officer of an investment fund manager, pursuant to paragraph 8.4 of subsection 127(1) of the Act; and
 - (i) Eckstein is permanently prohibited from becoming or acting as a registrant, an investment fund manager, or as a promoter of any issuer, pursuant to paragraph 8.5 of subsection 127(1) of the Act.
24. Eckstein agrees to attend in person at the hearing before the Commission to consider the proposed settlement.
25. Eckstein agrees to provide documents to Staff prior to May 22, 2015 evidencing the fact that he has worked for his present employer since 2003, and that his present employer is aware of his criminal conviction.

PART VII – STAFF COMMITMENT

26. Staff will tender documents to the Commission evidencing the convictions entered against Eckstein, as summarized in Part III above.
27. If the Commission approves the Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against Eckstein in relation to the facts set out in Part III of the Settlement Agreement, subject to the provisions of paragraph 28 below.

28. If the Commission approves the Settlement Agreement and Eckstein fails to comply with any of the terms of the Settlement Agreement without obtaining prior approval of the Commission to do so, Staff may bring a proceeding under Ontario securities law against Eckstein. This proceeding may be based on, but is not limited to, the facts set out in Part III of the Settlement Agreement as well as the breach of the Settlement Agreement.
29. Staff agrees that if Eckstein initiates an application to the Commission under section 144 of the Act to vary the terms of subsection (d) of the Order regarding his employment circumstances, and provides five business days' notice of such application to Staff, Staff will not object to the hearing of the application on an expedited basis, subject to the Commission's discretion regarding the scheduling of any hearing.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

30. The parties will seek approval of the Settlement Agreement at a hearing before the Commission to be conducted according to the procedures set out in the Settlement Agreement and the Commission's Rules of Procedure.
31. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Eckstein's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
32. If the Commission approves the Settlement Agreement, Eckstein agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
33. If the Commission approves the Settlement Agreement, neither party will make any public statement that is inconsistent with the Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

34. Whether or not the Commission approves the Settlement Agreement, Eckstein will not use, in any proceeding, the Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

35. If the Commission does not approve the Settlement Agreement or does not make the order attached as Schedule "A" to the Settlement Agreement:
- (a) the Settlement Agreement and all discussions and negotiations between Staff and Eckstein before the settlement hearing takes place will be without prejudice to Staff and Eckstein; and
 - (b) Staff and Eckstein will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by the Settlement Agreement, or by any discussions or negotiations relating to this agreement.
36. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement remain confidential indefinitely, unless Staff and Eckstein otherwise agree or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

37. The Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

38. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 20th day of April, 2015

"Gordon Eckstein"

Gordon Eckstein

"Austin Eckstein"

Witness

Dated this 18th day of April, 2015

"Tom Atkinson"

Tom Atkinson
Director, Enforcement Branch

SCHEDULE A

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**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN STAFF
OF THE ONTARIO SECURITIES COMMISSION AND
GORDON ECKSTEIN**

ORDER

(Subsections 127(1) and 127(10))

WHEREAS on July 3, 2001, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) in relation to a Statement of Allegations filed by Staff of the Commission (“Staff”) with respect to Garth H. Drabinsky (“Drabinsky”), Myron I. Gottlieb (“Gottlieb”), Gordon Eckstein (“Eckstein”), Robert Topol (“Topol”), and Livent Inc. (“Livent”);

AND WHEREAS on February 1, 2002, Eckstein gave an interim undertaking to the Director of Enforcement of the Commission (the “Director”) that pending the conclusion of the Commission proceeding, he would not apply to become a registrant or an employee of a registrant, or a Chief Executive Officer, Chief Financial Officer or Chief Operating Officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission releasing him from the undertaking (the “Interim Undertaking”), as described in the Order of the Commission made on February 22, 2002;

AND WHEREAS on October 22, 2002, the Royal Canadian Mounted Police initiated a criminal proceeding against Drabinsky, Gottlieb, Eckstein and Topol for multiple counts of criminal fraud in relation to their conduct as directors and officers of Livent (the “Criminal Proceeding”);

AND WHEREAS by Order dated November 15, 2002, the Commission adjourned the hearing *sine die* pending the conclusion of the Criminal Proceeding, or until such further order as may be made by the Commission;

AND WHEREAS on February 26, 2007, pursuant to a guilty plea, Eckstein was convicted in the Ontario Superior Court of Justice of one count of criminal fraud over \$5000 in connection with misrepresentations made in the financial statements of Livent and its predecessor companies while he was an officer of these companies;

AND WHEREAS on March 25, 2009, Drabinsky and Gottlieb were found guilty in the Criminal Proceeding of two counts of criminal fraud over \$5000 and one count of forgery, and their convictions were upheld by the Ontario Court of Appeal on September 13, 2011;

AND WHEREAS the Supreme Court of Canada dismissed an application brought by Drabinsky to appeal the ruling of the Ontario Court of Appeal on March 29, 2012;

AND WHEREAS on February 19, 2013, Staff filed an Amended Statement of Allegations against Drabinsky, Gottlieb, and Eckstein;

AND WHEREAS on February 20, 2013, Staff withdrew its allegations against Livent and Topol;

AND WHEREAS on September 9, 2014, the Commission approved a settlement agreement reached between Staff and Gottlieb;

AND WHEREAS on April ___, 2015, Staff entered into a settlement agreement with Eckstein (the “Settlement Agreement”), subject to the approval of the Commission;

AND WHEREAS since December 2003, Eckstein has worked for a privately-held company that is not a registrant;

AND WHEREAS on May ___, 2015, the Commission held a hearing to consider whether to approve the Settlement Agreement, and the Commission heard submissions from counsel for Staff and counsel for Eckstein;

AND WHEREAS pursuant to section 127(10) of the Act and pursuant to the Settlement Agreement, Staff have filed documents with the Commission evidencing the fact the Eckstein was convicted in the Ontario Superior Court of Justice of one count of criminal fraud over \$5000 on February 26, 2007;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) of the Act;

IT IS HEREBY ORDERED THAT:

- (j) the Settlement Agreement is approved;
- (k) Eckstein is released from the Interim Undertaking;
- (l) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law will not apply to Eckstein;
- (m) pursuant to paragraph 7 of subsection 127(1) of the Act, Eckstein resign any positions that he holds as a director or officer of an issuer, except that Eckstein may continue to serve as an officer at his present employer;
- (n) pursuant to paragraph 8 of subsection 127(1) of the Act, Eckstein is permanently prohibited from becoming or acting as a director or officer of an issuer, except that Eckstein may continue to serve as an officer at his present employer;

- (o) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Eckstein resign any positions that he holds as a director or officer of a registrant;
- (p) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Eckstein is permanently prohibited from becoming or acting as a director or officer of a registrant;
- (q) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Eckstein resign any positions that he holds as a director or officer of an investment fund manager;
- (r) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Eckstein is permanently prohibited from becoming or acting as a director or officer of an investment fund manager; and
- (s) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Eckstein is permanently prohibited from becoming or acting as a registrant, an investment fund manager, or as a promoter of any issuer.

DATED at Toronto this __nd day of May, 2015.
