

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING OF
DOUGLAS BRIAN WENZEL

Securities Act, R.S.A. 2000, c. S-4 (Act)

Citation: Wenzel, Re, 2005 ABASC 38

Date: 20050107

Docket: E/00273

**Douglas Brian Wenzel, Cathy Lynn Botting, Duane Steve Wolanuk
and Christopher Wesley Stewart**

Agreed Facts

Introduction

1 The staff (Staff) of the Alberta Securities Commission (Commission) conducted an investigation into allegations that Douglas Brian Wenzel (Wenzel) breached the requirements of the *Act* and the rules made pursuant to the *Act* (Rules). The investigation also examined whether Wenzel acted contrary to the public interest.

2 The investigation confirmed and Wenzel acknowledges that he breached the *Act* and that he acted contrary to the public interest.

3 The agreement to these facts and acknowledgment of the consequences by Wenzel is done so only for the purpose of settling and resolving these proceedings with the Commission, and, subject to paragraph 40, any admissions made are not intended by Wenzel to be used as admissions in proceedings by other parties.

4 Terms used in this Agreement have the same meaning as provided in the Alberta securities laws.

Parties

5 Wenzel is a 57 year old businessman and resident of Edmonton, Alberta. He is married with 3 children and is a machinist by trade.

6 Cathy Lynn Botting (Botting) is the sister-in-law of Wenzel's wife and a resident of Heinsburg, Alberta. At all material times, Botting was an unsophisticated investor of modest means.

7 Duane Steve Wolanuk (Wolanuk) is Wenzel's son-in-law and a resident of Edmonton, Alberta. At all material times, Wolanuk was an unsophisticated investor of modest means.

8 Christopher Wesley Stewart (Stewart) is a resident of Calgary, Alberta. He was employed with Wolverton Securities Inc. (Wolverton) and was registered under the *Act* with the Executive Director of the Commission (Executive Director) as a securities salesperson.

Circumstances

Background

9 On December 9, 1987 Wenzel incorporated 376348 Alberta Ltd. (376348). Wenzel was a director and the majority shareholder of 376348. For a time, 376348 was known as Wenzel Downhole Tools Inc.

10 376384's business was inventing, developing, manufacturing and marketing down hole drilling tools, primarily for the oil and gas industry.

11 On June 9, 1994 a business associate of Wenzel, Donald Barber (Barber), incorporated 614281 Alberta Ltd. The company changed its name to Master Downhole Canada Inc. on August 25, 1994.

12 Master Downhole Canada Inc. became a reporting issuer in Alberta on September 26, 1996 pursuant to the issuance of a receipt for a prospectus under the *Act*. It began trading on what was then the Alberta Stock Exchange on December 9, 1996. That company changed its name to Wenzel Downhole Tools Ltd. (WZL) on February 25, 1998.

13 On July 29, 1997, 376348, formerly Wenzel Downhole Tools Inc., and Master Downhole Canada Inc. (now WZL) entered into a letter agreement (Letter Agreement), respecting the purchase by WZL from 376348 of certain proprietary technology relating to oilfield tools (Patents).

14 On December 30, 1997, 376348, formerly Wenzel Downhole Tools Inc., and Master Downhole Canada Inc. (WZL) entered into a formal agreement respecting the sale of the Patents, the right to use the name Wenzel Downhole Tools and the proprietary technology and goodwill of the company. In partial consideration for these rights, WZL issued 2.9 million common and 6.1 million preferred shares to 376348.

15 WZL became listed on the Toronto Stock Exchange (TSX) on January 10, 2000. It remains a reporting issuer in Alberta, and became a reporting issuer in Ontario upon becoming listed on the TSX.

16 An unexecuted eight party Declaration and Agreement, circa October 2000, exists which purports to provide, *inter alia*, that Wenzel could become beneficial owner of a

significant number of WZL common shares held by any other party to the Declaration and Agreement, or by that party's estate.

17 In approximately September 1999, WZL made an application for listing on the TSX. As part of that application, Wenzel submitted an undertaking to the TSX on November 18, 1999. Among other commitments, Wenzel undertook not to:

17.1 directly own over 10% of the issued and outstanding WZL common shares; and

17.2 directly or indirectly control over 10% of the issued and outstanding WZL common shares.

18 Wenzel was an insider of WZL as defined in subsection 1(aa) of the *Act* when he purchased the approximately 1.6 million WZL common shares in the Wolverton Accounts, as described below, which when combined with his 84% ownership of 376348's 2.9 million WZL common shares, gave him ownership of over 10% of WZL common shares, thereby breaching the aforesaid undertaking in the process.

19 Wenzel was also a control person of WZL as defined in subsection 1 (l) of the *Act* because at all material times, Wenzel and Barber owned a sufficient number of WZL common shares to materially affect the control of WZL, thereby breaching the aforesaid undertaking in the process.

Purchases and Trades in the Wolverton Accounts while Wenzel was an insider and control person

20 In 1997, Wolanuk and Botting opened trading accounts at Wolverton with Stewart acting as their registered representative (Wolverton Accounts). Wolanuk and Botting had done minimal investing before opening those accounts.

21 Between approximately February 1998 and June 2000, Wenzel gave cheques and wire transfers totalling approximately \$1,600,000 (the Funds) to Wolanuk and Botting, both personally and on behalf of 376348. Wolanuk and Botting deposited virtually all of the Funds into the Wolverton Accounts.

22 Stewart used the Funds to purchase and sell WZL Shares held in the Wolverton Accounts. By June 2000, approximately 499,500 WZL shares were accumulated in Botting's account and 668,000 WZL shares were accumulated in Wolanuk's account (collectively referred to as the Wolverton WZL Shares).

23 Stewart was responsible for making the actual purchases and sales through the Wolverton Accounts. He exercised discretion over such trading after being given a general direction from Botting and Wolanuk to purchase WZL shares. Wenzel had advised Botting and Wolanuk to buy WZL shares.

Trades in the Dominick Accounts while Wenzel was an insider and control person

24 In June and July 2000, at the direction of Barber, Stewart transferred the Wolverton WZL Shares to newly opened Ontario trading accounts in the names of Botting and Wolanuk at Dominick & Dominick Securities Inc. (Dominick Accounts).

25 During the same period, and also at the direction of Barber, three more WZL shareholders, Jim Empson, 513442 Alberta Ltd., and Wolanuk, transferred a total of 450,000 WZL Shares into the Dominick Accounts. At the time, Jim Empson was president of Wenzel International (Barbados), which was owned by WZL. 513442 Alberta Ltd. was owned by a friend of Wenzel and Barber.

26 By August 2000, the total number of WZL Shares accumulated in the Dominick Accounts, from the sources referred to above, was approximately 1,617,000.

27 During August 2000, all 1,617,000 free-trading WZL Shares in the Dominick Accounts were sold by Dominick at a price of \$1.60 per share to mostly Ontario-based institutional investors (Ontario Investors), for gross proceeds of approximately \$2,587,200.

28 In February 2001, an additional 230,000 WZL Shares in the Dominick Accounts that had been transferred in August 2000 from 376348 to the Dominick Accounts, were sold to the Ontario Investors at the same price of \$1.60. Gross proceeds received from this sale in the Dominick Accounts amounted to \$368,000, bringing total proceeds from the sale of WZL Shares to approximately \$3,000,000.

29 Cheques totalling approximately \$3,000,000, representing the proceeds from the sale of the WZL Shares in the Dominick Accounts, were received by Botting and Wolanuk. Botting and Wolanuk endorsed the cheques and deposited them to the bank accounts of either Wenzel or 376348.

Conclusions and Admissions

30 Wenzel acknowledges that he was the beneficial owner of the Wolverton Accounts, notwithstanding they were in the names of Botting and Wolanuk. Wenzel did not file Insider Trading Reports in respect of any of the purchases or sales in the Wolverton Accounts and admits that he breached sections 181 and 182 of the *Act* and that, as a result, he acted contrary to the public interest.

31 Wenzel acknowledges that he engaged in a distribution of WZL securities by a control person, as defined in subsection 1(p)(iii) of the *Act*. Wenzel also acknowledges that none of the distributions of WZL Shares through the Wolverton or Dominick Accounts occurred pursuant to a prospectus or an exemption and that, as a result, he breached section 110 of the *Act* and acted contrary to the public interest.

32 Wenzel acknowledges that he did not at any time issue news releases or file reports with the Executive Director when he attained the power to exercise control or direction over voting securities that constituted 10% or more of the voting securities of WZL nor when he acquired additional 2% increments of such securities. As a result Wenzel admits that he breached section 176 of the *Act* and acted contrary to the public interest.

Other Agreed Facts Relevant to Settlement

33 Wenzel has not previously been sanctioned by the Commission.

34 No member of the public has complained about any of the matters referred to above.

35 Wenzel relied heavily upon Barber to carry out the regulatory and financial affairs of WZL.

36 Wenzel has cooperated fully with Staff's investigation.

Agreement and Undertaking of Wenzel

37 Wenzel agrees and undertakes to the Executive Director as follows:

37.1 except for 376348, and only so long as Wenzel may own more than 50% of its voting shares, Wenzel will cease acting as and resign from any position as a director or officer of any issuer including WZL, and will, for 5 years from the date hereof, refrain from acting or serving as such;

37.2 to cease trading in securities for a period of 5 years from the date of this Agreement, except through his personal Registered Retirement Savings Plan, and as provided below in paragraph 38;

37.3 no exemptions under the *Act* shall be available to Wenzel for a period of 5 years from the date of this Agreement.

37.4 to pay to the Commission an amount of \$10,000.00 to settle the allegations in this Notice of Hearing only; and

37.5 to pay to the Commission the amount of \$25,000.00 towards investigation costs.

38 Wenzel and 376348 further undertake to the Executive Director that if Wenzel or 376348 wish to trade or dispose of his or 376348's common and preferred WZL shares, the party proposing to sell shall first apply for and obtain the Executive Director's written approval to make such trades in addition to otherwise complying with Alberta securities laws applicable to such transactions. In addition, Wenzel undertakes to ensure that

376348's and his share certificates for WZL shares are immediately legended as being subject to this undertaking.

Administration

39 Wenzel waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of the matters referred to herein.

40 Wenzel acknowledges that the Agreement may be referred to in any future proceedings under the *Act*.

41 The Agreement resolves only those allegations against Wenzel made in this Notice of Hearing (including the allegation that he breached his undertaking to the TSX not to directly own over 10% of the issued and outstanding WZL common shares and not to directly or indirectly control over 10% of the issued and outstanding WZL common shares but excluding the allegation that Wenzel acted as an officer or director of WZL) and Staff will take no further steps, including the initiation of any proceedings before the Commission, against Wenzel arising from such allegations.

42 This Agreement can be executed in counterpart by each of the parties hereto.

Signed by Douglas Brian Wenzel at)	
Edmonton, Alberta this <u>1</u> day of)	
January 2005, in the presence of:)	
)	<u>“Original Signed By”</u>
<u>“WITNESS NAME”</u>)	Douglas Brian Wenzel
PRINT NAME)	
)	
<u>“Original Signed By”</u>)	
SIGNATURE)	

)	376348 ALBERTA LTD.
DATED at Edmonton, Alberta)	
)	
)	Per: <u>“Original Signed By”</u>
this <u>1</u> day of January 2005)	
)	
)	ALBERTA SECURITIES COMMISSION
DATED at Calgary, Alberta)	
)	
)	<u>“Original Signed By”</u>
this <u>7th</u> day of January 2005)	John P. Petch
)	Director, Enforcement