

IN THE COURT OF APPEAL

BETWEEN:

THE MANITOBA SECURITIES COMMISSION,
(Applicant) Respondent

- and -

CROCUS INVESTMENT FUND,
(Respondent) Respondent

-and-

BERNARD BELLAN,
(Intervenor) Appellant.

NOTICE OF APPEAL

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COURT OF APPEAL
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NOTICE OF APPEAL

TAKE NOTICE that a motion will be made on behalf of the Appellant, Bernard Bellan, before the Court of Appeal, as soon as the motion can be heard, by way of appeal from the judgment of the Honourable Madam Justice McCawley of the Court of Queen's Bench, Winnipeg Centre, pronounced on the 30th day of January, 2006, and filed on the 31st day of May, 2006, whereby the learned judge did order that:

1. The Receiver of the Crocus Investment Fund (the "Receiver") is authorized and directed to pay all reasonably incurred past and future legal expenses of former officers and directors on an on-going basis, and any resulting unfavourable judgments arising from the investigation of the Office of the Auditor General, proceedings taken by the Manitoba Securities Commission, the proposed class action proceeding in Court of Queen's Bench Suit No. CI 05-01-43765 and issues affecting the former

directors arising from actions or positions taken by the Receiver of Crocus, unless it can be demonstrated that such former officers and directors do not meet the qualifying criteria set out in s.119(1) of the *Corporations Act*, Crocus By-law 1.7, or any individual agreements; and

2. Any former officer or director who receives indemnification will sign an undertaking to repay the said funds if it is ultimately determined that he or she was not entitled to such indemnification.

On appeal, this court will be asked to set aside the said judgment of the Honourable Madam Justice McCawley on the following grounds:

1. The learned chambers judge erred, on a question of fact and law, in finding that there was no evidence of bad faith by the officers and directors.
2. The learned chambers judge erred, on a question of law, in confounding the legal test for whether the officers and directors had been intentionally dishonest, with the legal test for whether the officers and directors had acted in such a grossly or seriously careless or reckless manner as to constitute bad faith.
3. The learned chambers judge erred, on question of law, in determining that an indemnity should be paid to the officers and directors, prior to any determination that the officers and directors had actually satisfied the requirements of section 119 of the *Corporations Act*, C.C.S.M. c. C225.
4. The learned chambers judge erred, on a question of fact and law, in extending the indemnity beyond immediate legal costs to cover "any resulting unfavourable judgments", thereby constraining future judicial discretion when the circumstances and details of such future judgments cannot yet be known.

5. The learned chambers judge erred, on a question of law, in determining that an indemnity should be paid to the officers and directors, notwithstanding the absence of protections available to the corporation and shareholders under s. 113 of the *Corporations Act*, C.C.S.M. c. C225.

6. The learned chambers judge erred, on a question of fact and law, in awarding the indemnity when there was no, or insufficient evidence, that the officers and directors have either the financial need for the indemnity, or the ability to pay it back if the indemnity is subsequently determined to have been improperly awarded.

7. The learned chambers judge erred, on a question of fact and law, in holding that the availability of insurance for officers and directors was not a relevant consideration as to whether an indemnity should be paid to them, prior to any determination that they had satisfied the requirements of section 119 of the *Corporations Act*, C.C.S.M. c. C225.

Has a transcript of the evidence with respect to the judgment appealed from been ordered from transcription services?

Yes: []

No: []

Not Required: [X]

DATED this 30th day of June, 2006.

Per: 

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TO: REGISTRAR OF THE COURT OF APPEAL

AND TO: GANGE GOODMAN & FRENCH

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Solicitors for the Respondent, the Manitoba Securities Commission

AND TO: HILL ABRA DEWAR

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the Crocus Investment Fund

IN THE COURT OF APPEAL
RULE 112

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COUR D'APPEL
RÈGLE 112

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