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**Amended Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

CCJ Trust  
Mittersill Investment Partners

Case Number: 01-00303

Names of the Respondents

CIBC World Markets Corp.  
Emanuel A. Scarso  
Joseph C. Quattrochi  
LCP Capital Corp.

Hearing Site: Boca Raton, FL

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For CCJ Trust ("CCJ") and Mittersill Investment Partners ("Mittersill"), hereinafter collectively referred to as "Claimants": Andrew E. Herron, Esq., Homer, Bonner & Delgado, P.A., Miami, Florida.

For Respondent CIBC World Markets Corp. ("CIBC"): Joseph J. Sullivan, Sheindlin & Sullivan, New York, New York.

For Respondents Joseph C. Quattrochi ("Quattrochi") and LCP Capital Corp. ("LCP"): Marc J. Ross, Sichenzia, Ross, Friedman & Ference LLP until his withdrawal as counsel on December 4, 2001. Thereafter, Respondents Quattrochi and LCP did not appear.

Respondent Scarso did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: January 16, 2001.

Claimant CCJ signed the Uniform Submission Agreement: February 7, 2001.

Claimant Mittersill signed the Uniform Submission Agreement: February 7, 2001.

Statement of Answer filed by Respondent CIBC on or about: May 17, 2001.

Respondent CIBC signed the Uniform Submission Agreement: May 17, 2001.

Statement of Answer filed by Respondents LCP and Quattrochi on or about: April 9, 2001.

First Amended Statement of Claim filed on or about: December 3, 2001.

Respondent Scarso did not file a Statement of Answer or an executed Uniform Submission Agreement.

Respondents LCP and Quattrochi did not file executed Uniform Submission Agreements.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) fraud; 2) breach of fiduciary duty; 3) negligence and gross negligence; 4) unjust enrichment/constructive trust; 5) violations of Florida Statutes Chapter 517; 6) breach of contract; 7) aiding and abetting; 8) third party beneficiary liability; 9) civil conspiracy; and 10) tortious interference with a contractual relationship. The causes of action relate to the purchase and sale of shares of stock in SkyNet, CellNet, Nanophase Corp., Direct Marketing, and GlobalNet, including trades made on margin.

Unless specifically admitted in its Answer, Respondent CIBC denied the allegations made in the Statement of Claim and asserted various defenses.

Unless specifically admitted in their Answer, Respondents LCP and Quattrochi denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of at least \$1,000,000.00, plus incidental damages, the establishment of a constructive trust whereby Respondents hold for Claimants' use and benefit all monies received and earned by Respondents in connection with Claimants' accounts, interest, punitive damages, attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper.

Respondent CIBC requested that all claims against it be dismissed.

Respondents LCP and Quattrochi requested that Claimants' claims be denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents LCP, Quattrochi and Scarso did not appear at the evidentiary hearing. Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondents LCP, Quattrochi and Scarso have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents LCP, Quattrochi and Scarso did not file with NASD Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, LCP and Quattrochi having answered the claim, Respondents LCP, Quattrochi and Scarso are bound by the determination of the Panel on all issues submitted.

During the Initial Pre-hearing Conference that was held on October 3, 2001, the Panel ordered that amended papers were to be served within fifteen (15) days. The parties thereafter agreed to extend the deadline for amended papers until December 3, 2001.

On or about April 27, 2005, Claimants' advised NASD Dispute Resolution that they had settled

their claims with Respondent CIBC and that the arbitration would proceed against Respondents LCP, Quattrochi and Scarso.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, (and the post-hearing submissions) the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents LCP, Quattrochi and Scarso are liable, jointly and severally, and shall pay to Claimants the sum of \$1,000,000.00 in compensatory damages, inclusive of prejudgment interest. Damages are awarded based on the claims of fraud, breach of fiduciary duty, negligence and gross negligence, unjust enrichment/ constructive trust, breach of contract and civil conspiracy.
2. Respondents LCP, Quattrochi and Scarso are liable, jointly and severally, and shall pay to Claimants the sum of \$500.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.
3. All claims against Respondent CIBC are hereby dismissed with prejudice pursuant to the notification that Claimants had settled the matter with Respondent CIBC.
4. The Panel recommends that all security licenses for Respondents LCP, Quattrochi and Scarso be revoked.
5. Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages, attorney's fees and claims for relief pursuant to Florida Statutes Chapter 517, are denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent CIBC is a member firm and a party.

Member surcharge = \$2,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$4,500.00

Total Member Fees = \$7,600.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. *Accordingly, Respondent LCP is a party and was a member firm until the*

*cancellation of their NASD membership on May 11, 2001. Respondent LCP filed an Answer and was represented by counsel in this arbitration proceeding until December 4, 2001. All member fees accrued prior to their cancellation of membership or while they were represented by counsel and therefore remain due and owing.*

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$4,500.00</u>
Total Member Fees	= \$7,600.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred during these proceedings.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were incurred during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with the Panel @ \$1,200.00	= \$6,000.00
Pre-hearing conferences:	
August 30, 2001	1 session
September 6, 2001	1 session
October 3, 2001	1 session
April 8, 2002	1 session
July 8, 2003	1 session
One (1) Hearing session @ \$1,200.00	= \$1,200.00
<u>Hearing Date:</u>	<u>May 2, 2005</u>
	1 session
Total Forum Fees	= \$7,200.00

The Panel has assessed the total forum fees of \$7,200.00 jointly and severally to Respondents LCP, Quattrochi and Scarso.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$500.00
<u>Total Fees</u>	= \$500.00
<u>Less payments</u>	= \$500.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent CIBC is solely liable for:

<u>Member Fees</u>	= \$7,600.00
<u>Total Fees</u>	= \$7,600.00
<u>Less payments</u>	= \$6,300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,300.00

Respondent LCP is solely liable for:

<u>Member Fees</u>	= \$7,600.00
<u>Total Fees</u>	= \$7,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$7,600.00

Respondents LCP, Quattrochi and Scarso are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,200.00
<u>Total Fees</u>	= \$7,200.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$7,200.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Robert J. Saex	-	Public Arbitrator, Presiding Chairperson
James Barry Wright	-	Public Arbitrator
Donald R. McGahan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Robert J. Saex  
Public Arbitrator, Presiding Chairperson

May 16, 2005  
Signature Date

/s/  
James Barry Wright  
Public Arbitrator

May 11, 2005  
Signature Date

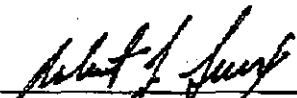
/s/  
Donald R. McGahan  
Non-Public Arbitrator

May 16, 2005  
Signature Date

May 19, 2005

Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures



Robert J. Saex  
Public Arbitrator, Presiding Chairperson

5/16/05  
Signature Date

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James Barry Wright  
Public Arbitrator

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Signature Date

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Donald R. McGahan  
Non-Public Arbitrator

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James Barry Wright  
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Donald R. McGahan  
Non-Public Arbitrator

5-16-05  
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Signature Date

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Date of Service (For NASD Dispute Resolution office use only)