

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF**

**TITAN INVESTMENTS LIMITED PARTNERSHIP, and TITAN GENPAR INC, and  
EVOLUTION CAPITAL MANAGEMENT LTD, and THE ESTATE OF DAVID  
COMTE, DECEASED, and THE COMTE FAMILY TRUST and  
PREDATOR HOLDINGS LTD.**

**IN THE MATTER OF THE *JUDICATURE ACT*, R.S.A. 2000, c. J-2,  
and RULES 467 and 468 OF THE ALBERTA RULES OF COURT**

**STATEMENT OF FACTS**

The hearing of this Joint Application of the Receiver and Manager of Titan Investments Limited Partnership ("Titan Partnership"), Alger & Associates Inc. (the "Receiver") and the Investors Committee is scheduled for June 30, 2005. The Receiver and the Investors Committee admit and rely on the following facts:

1. All funds, unless specifically denoted to be otherwise, are in U.S. dollars.
2. The Receiver and the Investors Committee admit and rely on the facts contained in the Receiver's First Report dated January 19, 2005, and filed with the Court on that date. A copy of the Receiver's First Report is attached.
3. The Receiver and the Investors Committee admit and rely on the facts contained in the Receiver's Second Report dated April 14, 2005, and filed with the Court on April 20, 2005. A copy of the Receiver's Second Report is attached.
4. David Comte was the President and director of the general partner of the Titan Partnership, Titan GenPar Inc.

5. The Titan Partnership was represented as an investment vehicle wherein David Comte raised and purported to use funds from investors for purposes of trading in the futures markets. Profits earned were to be returned to the investors.
6. The Partnership Agreement dated April 30, 2003 with respect to the Titan Partnership, attached as Exhibit "A" to the Affidavit of Croft Axsen, is the partnership agreement that was in force and in effect in relation to the Titan Partnership, at all material times.
7. At the time they made initial investments in the Titan Partnership, investors were fully aware that their investments were not loans, but were in the nature of an investment in equity. Accordingly, each investor was aware, assuming that the Titan Partnership was legitimate, that the net asset value of their units in the Titan Partnership could go up or down, depending on David Comte's success in trading in the futures market.
8. David Comte, through the Titan Partnership, was operating a classic Ponzi fraud scheme where individuals were fraudulently enticed to make investments based on reported high rates of return. Subsequent investors were enticed to invest partly through these reported gains and partly through high payouts to other investors.
9. The Receiver has determined that David Comte, Evolution and/or the Titan Partnership:
  - (a) issued Account Statements to investors containing an overall asset net value of the Titan Partnership and each limited partner's proportionate share thereof. The net asset values contained in these Account Statements were fictional and did not reflect the underlying asset value of the Partnership;
  - (b) reported to the investors that they had continually traded futures, however, the Receiver has determined that very limited futures trading occurred after February, 2001;

- (c) enclosed broker statements with the reporting package to limited partners were forged and fraudulent;
- (d) paid fees to Evolution and salaries and bonuses to David Comte and his wife, Janet Comte, which were not earned and were not, in fact, payable as a result of the financial performance of the Partnership;
- (e) never generated any profits or income after 2000.

10. David Comte maintained sufficient funds in the Titan Partnership to honour redemptions which would occur in the ordinary course from time to time. He would pay out those redemption amounts based upon the most recent fictional unit value ascribed to the Titan Partnership fund.

11. Investors received distributions from time to time over the life of the Titan Partnership. These distributions did not bear any relationship to the value of the underlying assets in the Titan Partnership at the time a distribution was made.

12. A notice dated November 30, 2004 was sent to all investors in the Titan Partnership advising that the Titan Partnership would be closed permanently.

13. During the fourth quarter of 2004, 87 partners received either full or partial redemption of their units based upon the fictitious valuation figure of \$29.25 per unit. These redemptions aggregated approximately \$3.9 million. This left approximately 40 investors who received no payment of any funds whatsoever. The amounts received by the 87 investors did not have any bearing whatsoever to the underlying value of the assets in the Titan Partnership. Significant payments, as set out in the Affidavit of Michael Costello sworn and filed on June 7, 2005, were made to certain investors in the Titan Partnership on October 31, 2004 and thereafter.

14. There is no evidence indicating why David Comte, on behalf of the Titan Partnership, made distributions of funds to certain investors in the Titan Partnership and not to other investors.

15. On December 16, 2004, David Comte committed suicide. The suicide note written by David Comte admits to stealing millions of dollars from the Titan Partnership and not trading in securities since February, 2001.

16. Investors in the Titan Partnership had no knowledge that the Titan Partnership, or David Comte on its behalf, had ceased trading securities in February, 2001.

17. Investors in the Titan Partnership that received distributions from the Titan Partnership had no knowledge of the fraud upon which the distributions were based, nor did they have any intent to participate in the fraud.

18. The position of the Canada Revenue Agency with respect to various parties involved in the Titan Partnership is as set out in the letter marked as Exhibit "B" to the Affidavit of Croft Axsen sworn on May 6, 2005 and filed on May 9, 2005, and is summarized as follows:

(a) Overpaid Investors:

(i) the net tax paid by an investor who received an amount from Titan and returns such amount to Titan will be nil.

(b) Janet Comte:

(i) Janet Comte will be entitled to recover all or substantially all of the tax paid on amounts returned to Evolution (and ultimately to Titan).

(c) Estate of David Comte:

(i) the Estate of David Comte will be entitled to a deduction for amounts returned to Evolution (and ultimately Titan); however the tax paid on such amounts may not be fully recovered.

(d) Titan Partnership, and its predecessors:

(i) Titan Partnership and its predecessors will recalculate their income from prior years to remove all fictitious profits which will result in all partners who previously reported income to recover any tax paid thereon.

(e) Evolution:

(i) Evolution will be entitled to recover all or substantially all of the tax paid on amounts returned to the Titan Partnership.

(f) GST paid by Evolution:

(i) GST paid by Titan to Evolution on Incentive Fees will be recovered on the amounts repaid to Titan which will result in a substantial portion of the GST being recovered.

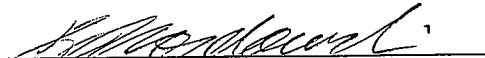
This Statement of Facts states the facts that will be relied on by the Receiver and the Investors Committee at the application on June 30, 2005. The Receiver and the Investors Committee may offer evidence in addition to or consistent with this Statement, based on the filed Reports of the Receiver, or filed Affidavit evidence.

DATED at the City of Calgary, in the Province of Alberta, this 7<sup>th</sup> day of June, 2005.

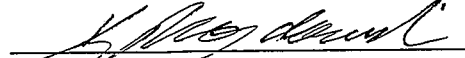
**BENNETT JONES LLP**

**FLEMING LLP**


Per:

  
Frank R. Dearlove

Per:

  
Clive O. Lewellyn  
Solicitors for the Receiver

Per:

  
Kelsey Drozdowski  
Solicitors for the Investors Committee

ACTION NO: 0401-19905

---

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

---

IN THE MATTER OF

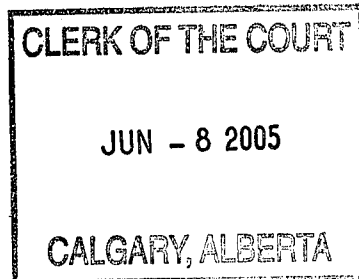
TITAN INVESTMENTS LIMITED  
PARTNERSHIP, and TITAN GENPAR INC, and  
EVOLUTION CAPITAL MANAGEMENT LTD,  
and THE ESTATE OF DAVID COMTE,  
DECEASED, and THE COMTE FAMILY TRUST  
and PREDATOR HOLDINGS LTD.

IN THE MATTER OF THE *JUDICATURE ACT*,  
R.S.A. 2000, c. J-2, and RULES 467 and 468 OF THE  
ALBERTA RULES OF COURT

---

STATEMENT OF FACTS

---



BENNETT JONES LLP  
Barristers and Solicitors  
4500, 855 2<sup>nd</sup> Street S.W  
Calgary, Alberta T2P 4K7

Frank R. Dearlove  
Telephone No.: 298-3202  
Fax No.: 265-7219  
Our File No.: 54784-1