

7 March 2007

**STATEMENT OF MR CHRISTIAN WEYER  
EXPERT IN INTERNATIONAL BANKING  
ACTIVITIES AND SENIOR MANAGEMENT**

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**Introduction**

1. I, Christian Weyer, am resident at 122, Promenade de l'Aire, 1233 Lully Bernex, in the Canton of Geneva, Switzerland. I am a French citizen, born in 1924. I remain active professionally in various areas of international banking and am currently President of ENERFIN S.A., a Swiss company providing Investment Banking Services, principally in the area of Oil and Gas Exploration and Production.
2. My professional career as an international banker is summarized in the curriculum vitae annexed to this Statement. From 1988 to 1992, I was a Senior Advisor on international banking matters and structured trade finance transactions at Banque INDOSUEZ in Paris and Geneva. From 1971 to 1985, I held a number of Senior Executive Positions, including towards the end of that period the position of President of Banque PARIBAS (Suisse) SA in Geneva. Before 1971, I was employed by CHASE MANHATTAN BANK in New York, in Paris and finally in Geneva in a number of Executive and Senior Executive positions both within the Bank and in some of its affiliate offices. In all, I have over 35 years of experience as a banking executive working in international matters. I remain active at the present time in the banking sector and deal regularly with trade finance and investment banks in Europe and elsewhere and give advice on international banking matters.

3. My professional experience has included assuming the responsibility for the operations and financial condition of a large international banking operation and for the conduct from the banking side of large financial transactions. During my term as President of Banque Paribas (Suisse) SA, the bank had a capitalization equivalent to US Dollars 10 Billion, which did not reflect the much larger off Balance Sheet amounts which had been confided in the Bank by clients for management, or the very large and ongoing commercial value of the letters of credit issued by the Bank in its trade financing activities. That activity involved responsibility on the average for the equivalent of some US Dollars 50 Billion.

#### **Factual Basis for this Expert Statement**

4. I have been shown and have reviewed the factual background, including a draft Generic Statement of Claims dated 25 January 2007, and the supporting documents referred to therein, in respect of a dispute which exists between Beverly Securities Limited / Beverly Securities Incorporated (“BSL/BSI”) and the Luxembourg registered bank, Kredietbank SA Luxembourgeoise (“KBL”) and other parties, including several of the present and former Senior Management of that Bank and its holding company, the KBC Group in Belgium. These documents set forth the basis on which BSL/BSI assert a substantial claim for damages against KBL and its former Senior Management arising from the loss of a commission payment which was to have been paid into the account of BSL at KBL. I have assumed these allegations and the supporting documents are true for the purpose of making the present Expert Statement.
5. I have also been shown the Expert Report of Mr Edmond Brochon in this matter from which I have taken note that during the period from 1980 to 2000 the capitalization and the annual revenues of KBL increased substantially. It is thus clear that during this time period KBL was a comparatively smaller bank than was Banque Paribas (Suisse) SA in which I held Senior Executive positions. I conclude also from the Expert Report of Mr Brochon that KBL was growing

substantially during this period, as were many other smaller or mid-size banks during that period.

### **Conduct of International Banks**

6. In my professional experience, small and mid-sized banks would often attempt to grow by engaging in sensitive or marginal business areas, where the possibility of gain for the bank was greater. Such smaller banks did not have the opportunity or capacity to undertake substantial wealth management activities nor important trade financing work -- such as did the larger banks, including the major Swiss banks in general and Banque Paribas (Suisse) SA in particular -- from which serious profits could be earned. Smaller banks, such as KBL, would often thus concentrate their efforts on more mundane business which was available, including the setting up of companies and corporate or payment structures for clients and moving funds between such companies or structures for tax or other corporate purposes. This was not the type of serious international banking business which the larger banks sought to do.
  
7. Such small and mid-sized bank could also grow by accepting more sensitive types of business. It was recognized that assisting clients to achieve certain corporate endeavours, including for example tax reduction or avoidance of currency exchange restrictions could carry risks for the bank and its officers as well as for the clients. Such "sensitive" banking business thus had potential risks as well as financial rewards for the participating bank.
  
8. In respect of the file of documents I have been shown relating to the claims of BSL/BSI, I have been asked to respond to certain questions relating to the conduct of the bank KBL and its Senior Management during the period in question, particularly the relationship of KBL with its client the Armaments Corporation of South Africa ("ARMSCOR") during the 1980's and 1990's and that with its client BSL which started in 1990. My views, as set forth in this Expert Statement, constitute my best professional opinion on correct banking practices in Europe during this period when I was actively engaged as a Senior Executive and later a Senior Advisor in two major European banks.

9. I have been asked, where possible, to distinguish where conduct of a bank or its Senior Management which may not be acceptable under today's standards might have been acceptable during the time in question, and to distinguish where possible any special elements in terms of a bank operating out of Luxembourg as opposed to other locations in Europe or elsewhere. In this regard, I make a general comment that while banking practices, particularly in the areas of (i) compliance with governing laws and regulations, including laws and regulations of countries other than the home country of the bank, and (ii) money laundering are generally becoming more restricted at present than they traditionally were during the 1980's and 1990's, nonetheless the core values and responsibilities of bankers today is not different from that which existed during this period and indeed during the development of international trading and investment banking during the Twentieth Century. These include the important obligations of loyalty (fidelity to the client), of prompt and full disclosure to the client – except where the law does not permit it, as in the case of certain provisional court measures – of information relating to the client's account and assets held at the bank, and of responding to legitimate client requests and following the legal instructions of the client with respect to the account. In addition, international banks in Europe were, already in the early 1980's, aware of serious concerns relating to laundering of criminal proceeds, especially those from drug related crimes, arms trades, and were establishing internal controls to avoid any participation in such matters.

#### **Regulation of International Banking - Best Practices**

10. In Luxembourg as in all countries of Western Europe, banks such as KBL must hold a licence issued by the banking supervisory authority of the national government to operate in the territory of the country. The structure and operation of all licenced banks is dictated by and subject to a series of governing local and regional laws and regulations, as well as directives issued by the national supervisory board or commission. This plethora of legal standards must be kept in mind in the planning and execution of all banking operations, international as well as local. Whenever a bank fails to comply in

any material manner with one or more of these legal standards, a number of possible consequences can emerge. If the breach is one that affects the standing of the bank or the reputation of the local banking sector, the bank can expect prompt and sometimes severe intervention from the national supervisory board, which generally has the power in extreme cases to revoke the banking licence of the establishment or to impose other sanctions on the bank or its Senior Management.

11. Thus, relying on the Basle Declaration, the Luxembourg banking association ("ABBL") recommends to its clients as from 1988 to *"preserve the good reputation of Luxembourg, both nationally and internationally and more particularly with a view to avoid that the financial place is being associated with banking activities linked to monies of criminal origins"*.
12. Apart and separate from the legal framework noted above, all major banks in Western Europe, as elsewhere in the world, operate under various forms of "best practice" guidelines and standards, which are often established and updated by banking associations or other such groups. These include issues which may not be covered by the mandatory legislation or regulation affecting the bank's relationship with its clients and other persons, and are intended to assure the integrity and high reputation of the banking industry generally and of the members banks in particular.
13. The first European Union Money Laundering Directive of 1991 required the imposition of an obligation on financial institutions to establish customers' identity and report any suspicion of money laundering. It was based on the 40 recommendations of the Financial Action Task Force on money-laundering (FATF), of which the E.U. is a member. This is an inter-governmental body established by the G7, promoting anti-money laundering policy at national and international level.
14. The 40 formal recommendations of FATF/GAFI adopted in 1990, and revised in 1996 and 2003, (known as the "GAFI Recommendations") constitute for the international banking sector the recognized international standards as to

measures to take to effectively combat money laundering and defining the minimal requirements for the identification of clients, the conserving of documentation and the accrued duty of diligence in case of a finding and of communication of suspected transactions. These recommendations were not drawn out of thin air, but reflected the already long-established principles of best practice for international banks. In other words, in 1990, GAFI summarized certain of the fundamental obligations which banks should be forced to respect. Among these fundamental obligations are the following which appear to be relevant in the present context :

- the incrimination of laundering of the proceeds of serious infractions (recommendation 4) and the adoption of laws permitting the seizure and the confiscation of the proceeds of criminal acts (recommendation 7);
- the obligation upon financial institutions to identify all of their clients, including the beneficial owners, and to maintain the appropriate documents (recommendations 10 to 12);
- the obligation upon financial institutions to declare suspect transactions to the competent national authorities (recommendation 15) and to put into place a complete package of internal control measures (recommendation 19);
- the putting into place of adequate mechanisms for control and supervision of financial institutions (recommendations 26 to 29);
- the necessity to sign conventions or agreements and to adopt a national legislation which permits countries to cooperate rapidly and efficiently at all stages on the international level (recommendations 32 to 40).

15. Under the mandatory legislations and regulations and the "best practice" guidelines, the members of the Senior Management of any bank, including particularly larger banks, accept many important responsibilities which must be faithfully fulfilled in the execution of their professional activities for the bank. Amongst these obligations is the obligation of the concerned members of Senior Management to "know the client" and to assure that the bank is not intentionally or unintentionally assisting in the commission of unlawful activities by the client. This requires a continuing due diligence effort on the part of the person or persons within the bank who are responsible for the client's account(s), and can include for the most important clients of the bank, the very Top

Management position, including the CEO or President of the bank. In this regard, most banks, including banks of the size and importance of KBL, will have written internal guidelines about the level of Management, up to and including the Board of Directors of the bank, which must be informed of and/or must approve certain intended or requested banking transactions with or by clients depending on the size and type of operation, and the perceived potential risks to the bank from carrying it out.

16. All licenced banks in Western Europe of the size of KBL will have both internal and external auditors who monitor and report on the operations of the bank to assure their compliance with the governing banking legislation and regulations, and the “best practices” as they concern the audit function and reporting function. In addition, during the period in question the 1980’s and 1990’s, it became normal for such banks also to engage specialist “compliance officers” whose primary responsibility was to review all client relationships and banking operations to assure full compliance with the governing legal and other standards. Such auditors and compliance officers normally reported to the highest level of Senior Management, normally directly to the President or CEO of the bank.

#### **KBL and its South African client Armscor**

17. I have reviewed the allegations in the draft Generic Statement of Claims relating to the banking relationship between KBL and Armscor, which started in 1977, the same year as the U.N. mandatory embargo against doing arms business with South Africa (U.N. Resolution No. 418) was put into effect. These allegations, and the expert evidence of Mr Philippe Mortgé and Mr Edmond Brochon in support of them, indicate that during the period of the 1980’s and 1990’s KBL grew very substantially in size and importance in undertaking the major banking operations for Armscor’s foreign military procurement programs. During this period KBL and its related trust company KT provided material and ongoing assistance as Armscor’s main European banker to establish and operate various payment channels through numerous offshore “front companies” and through the operation of various “jump accounts” intended to hide the origin of

payments made to various suppliers of military and other equipment to Armscor in South Africa.

18. Having reviewed the file documents, it is my opinion that in light of the continuing nature, the size and the sensitivity of these Armscor payments, they would certainly have been known to the Senior Management of KBL, including the President or Chief Executive Officer.
  
19. I am informed and accept for the purposes of this Expert Statement that these supplies, when they involved military goods, were often purchased by Armscor and delivered to South Africa in violation of the mandatory U.N. sanctions, which would in my view have made the bank's participation in their financing and payments manifestly contrary if not to specific national legislation or regulations, certainly to the "best practice" guidelines which were universally applicable at the time. The consequences of such a violation would depend on the location of the bank. In Luxembourg, for instance, the sale of arms was subject to authorization in accordance to the letter dated 9 January 1978 from the Permanent Representative of Luxembourg to the United Nations addressed to the Secretary General confirming that Luxembourg would strictly comply with its obligations under Security Council resolution 418 (1977) on the mandatory arms embargo against South Africa.

#### **KBL and its English client BSL**

20. I have reviewed the documents and witness statements relating to the opening and operations and eventual closing of the BSL account (Account No. 210370) at KBL during the period 1990 to 1992 or 1993. I find this situation completely unacceptable from a banking point of view and cannot understand how any competent bank or its Senior Management, or its internal or external auditors, or its compliance officer, would have let such a situation occur. The conduct of KBL towards its client BSL violated a number of important general rules of banking and "best practice" standards, and I am confident without being an expert in Luxembourg law or banking regulations, that it violated local law as well.

21. In particular, the opening of the BSL account by Mr Ménager, as the named account manager, in the form indicated by the Account Opening Documents, is at the least very unusual and would require an explanation to the client, which I am informed by the relevant witness statements of those present did not take place. In effect, these documents effectively gave the control over the BSL account and any assets which would be placed into it to various employees of Armscor. The Director of BSL who was present at the bank for the account opening, Mr Pinhol, was informed the account was being opened for a particular purpose (to receive substantial commission payments from Armscor), but was not informed either that Armscor did not in fact pay the commission – which it appears clear that some persons at KBL knew – or that the account would be operated under the given Powers of Attorney solely for the purpose of Armscor and not at all in the best interests of BSL. Such conduct by KBL is in absolute violation of the bank's duty of fidelity to its client BSL and constitutes neither "good practice" nor the fidelity to a client required under most national banking laws and regulations. I am informed that this conclusion has been confirmed by Me Nicolas Decker, former President of the Luxembourg Bar Association, on analysis of this situation under Luxembourg law.

22. The matter is even more serious when one learns that KBL agreed to close BSL's Account No. 210370 upon the instruction of someone from Armscor, presumably one or more persons holding a power of attorney, without informing BSL of that fact. The Bank also refused to discuss either the account or its closing with BSL's representative, Mr Pinhol, whom the bank knew was fully authorized, as he was the one who opened the account for BSL. Mr Pinhol, as President of BSL, was the beneficial owner of the account and had single power of signature over the account. Nothing should have been done without his prior written approval.

23. Such conduct by KBL would in my professional view also be in absolute violation of the bank's duty of fidelity to its client BSL and constitutes neither "good practice" nor the fidelity to a client required under most national banking laws and regulations. I am informed that this conclusion has also been

confirmed by Me Nicolas Decker on analysis of this situation under Luxembourg law.

#### **KBL's favoritism of its important client, Arm Scor**

24. The above discussion, involving KBL's banking clients Arm Scor and BSL, appears to me to demonstrate a classic situation of Senior Bank Management choosing to serve the interests of a large bank client over those of the bank itself or the bank's smaller client. While not consistent with good banking practice -- and as noted above, often in violation of legal or regulatory obligations of the bank -- such a situation can arise when the members of Senior Management of a bank conclude it could be in their own personal best interests to show such favouritism and provide such assistance to the more important client.
25. In such cases, the judgment of Senior Management is in fact blurred when conclusions are drawn that they or the bank will benefit in the long term by conduct which does not rise to the relevant legal or best practice standards. One cannot discount the pressures which a large client can put on a bank, particularly one whose business is important to the bank. The benefits to the Senior Management can be far more than simply financial benefits, as their social position and standing can be greatly enhanced by the appreciation shown by the important client which has received important, if not totally correct, assistance from its bank through the behaviour of its Senior Management, whose egos are often played upon by powerful clients.

#### **Conclusion**

26. In conclusion, it is not difficult for me to conclude based on my years of international banking experience, that the conduct of KBL in respect of its clients Arm Scor and BSL does not come even close to meeting the minimum legal and good practice standards of a major international European bank. In my view the bank and its Senior Management, past and present, as well as its holding company and its auditors, should have serious concerns about the many adverse legal and other consequences of such conduct on the bank and its reputation and good standing.

Signed in Geneva Switzerland, this 7th day of March 2007

A handwritten signature in cursive script, appearing to read "Christian Weyer". The signature is written in dark ink and is positioned above the printed name.

Christian WEYER

Christian WEYER  
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Reçu le 21 FEV. 2007

Lundi 19 février 2007

Maître  
David Lawson  
Bonnard Lawson  
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1204 Genève

Mon Cher Maître,

L'ouverture du compte de Beverly Securities Ltd (ci-après "BSL") auprès de Kredietbank Luxembourg SA (ci-après "KBL") en février 1990 et la clôture de ce même compte à une date inconnue, représentent pour moi des opérations extraordinaires sur le plan de la pratique bancaire.

Le compte a été ouvert en faveur d'un ayant droit économique, BSL, représenté par son Président, Monsieur Jorge Pinhol, cheville ouvrière dans la réalisation du projet Adenia. Ce dernier avait, comme c'est l'usage, la signature individuelle sur le compte.

Comment interpréter les "Powers of Attorney" (procurations) données à plusieurs représentants autorisés de Armscor? Pour moi, ces procurations (dont la portée était limitée à des actes de simple gestion) signifiaient le souhait de Armscor d'officialiser vis-à-vis de la banque sa présence, c'est-à-dire sa protection, au bénéfice de BSL / Jorge Pinhol. Ce dernier pouvait donc s'attendre légitimement à ce que son compte soit alimenté par Armscor par les commissions qui lui étaient reconnues et dues, et ceci avec la bénédiction de Armscor, avec les représentants de la Banque comme témoins.

Sans aucun doute, ces derniers se sont enquis de l'objet de cette ouverture de compte pour s'entendre répondre qu'il s'agissait pour Armscor d'alimenter ce compte au profit de son agent, l'ayant droit du compte. Il ne peut y avoir d'autre justification à cette ouverture et, après cette formalité dans les locaux de la Banque, Monsieur Pinhol a pu repartir tranquille.

Clôturer un compte, c'est mettre fin à la relation juridique, créée par un acte solennel auquel participaient de nombreuses personnes.

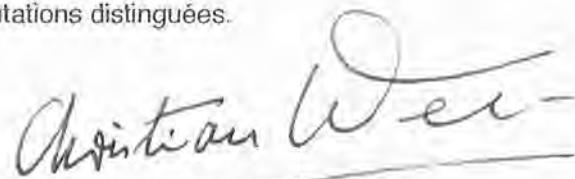
Une clôture de compte ne doit jamais, selon la pratique bancaire usuelle, être le résultat d'une décision arbitraire et unilatérale.

Ici, il est évident que KBL, au mépris du droit et au mépris de toutes les règles bancaires élémentaires, a voulu mettre fin à sa relation avec BSL et Jorge Pinhol. KBL s'est bien gardée d'aviser son client, ce qui tend à prouver que cette clôture a été exigée par Armscor et que KBL, qui a montré par cet acte qu'elle était totalement asservie à son maître Armscor, a commis là une véritable forfaiture.

En d'autres termes, Armscor, ayant décidé de ne plus reconnaître ses obligations financières à l'égard de BSL / Jorge Pinhol, a littéralement instrumentalisé KBL pour que celle-ci accepte de renier ses obligations juridiques à l'égard de BSL/Pinhol, obligations, je le rappelle nées de l'ouverture du compte sous le parrainage de Armscor.

Comme vous le savez, cette complicité entre Armscor et KBL a eu pour conséquence l'annihilation économique de BSL et Jorge Pinhol, personnage devenu « dangereux » en raison précisément de ses activités au service d'Armscor. Hélas, Jorge Pinhol et BSL ne pouvaient imaginer qu'ils signaient leur arrêt de mort en acceptant de travailler pour Armscor. Pourtant, BSL / Jorge Pinhol se croyaient légitimement en sécurité entre les mains de KBL.

Je vous prie de croire, cher Maître, en l'expression de mes salutations distinguées.

A handwritten signature in black ink, reading "Christian Weyer". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Christian Weyer

*English translation*

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Monday, 19 February 2007

David Lawson, Esquire  
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Dear Counsel,

The opening of the account of Beverly Securities Ltd (herein BSL) at Kredietbank Luxembourg (herein KBL) in February 1990 and the closure of this same account at an unknown date, represents for me extraordinary operations from the perspective of banking operations.

The account has been opened in favour of a beneficial owner, BSL, represented by its President, Mr Jorge Pinhol, the keystone of the success of the Adenia Project. The latter held, as is usual custom, the individual signature on the account.

How can one interpret the "Powers of Attorney" given to several authorized representatives of Arm Scor? For me, these powers of attorney (whose scope was limited to actions of simple account management) would signify the wish of Arm Scor to make its presence official vis-a-vis the bank, to the benefit of BSL / Jorge Pinhol. The latter could therefore legitimately anticipate that this account would be fed by Arm Scor with the commissions which were due and recognized, and that with the approval of Arm Scor and, as a witness, the representatives of the Bank.

Without any doubt, the Bank's representatives asked about the purpose of the opening of the account and were informed that it was opened in order for Arm Scor to make deposits for the benefit of its agent, the economic owner of the account. There could have been no other justification for the opening of this account and, after this formality within the premises of the Bank, Mr Pinhol could leave comforted.

To close an account is to terminate the legal relationship created by a solemn act in which many persons participated.

The closing of an account which cannot ever, according to usual banking practice, be the result of an arbitrary or unilateral decision.

Here, it is evident that KBL, in contravention of the law and in contravention of the most elementary banking rules, has ended its relationship with BSL and Jorge Pinhol. KBL was careful not to advise its client, which tends to prove that this account closure has been required by Arm Scor and that KBL, which has demonstrated by this action that it was totally at the disposition of its master, Arm Scor, has committed a true forfeiture.

In other words, Arm Scor, having decided no longer to recognize its financial obligations to BSL/Jorge Pinhol, has literally used KBL as an instrument to disavow its legal obligations to BSL/Pinhol, obligations which I note were confirmed by the opening of the account under the patronage of Arm Scor.

As you are aware, this complicity between Arm Scor and KBL has had as its consequence the economic annihilation of BSL and Jorge Pinhol, who had become "dangerous" precisely because of their activities in the service of Arm Scor. Unhappily, Jorge Pinhol and BSL could not have imagined that they were signing their death certificate by accepting to work for Arm Scor. However, BSL/ Jorge Pinhol legitimately believed they were secure when in the hands of KBL.

Yours faithfully,

Christian Weyer