

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CAMIS INCORPORATED

Plaintiff

and

FUJITSU CANADA INC. and FUJITSU LIMITED

Defendants

**QUEBEC SUPERIOR COURT
(CLASS ACTION)**

Court File No.: 200-06-000037-039

MARC MÉTHOT

-Petitioner-

and

FUJITSU CANADA INC.

and

FUJITSU LIMITED

-Respondents-

SETTLEMENT AGREEMENT

WHEREAS Actions have been commenced by the Plaintiffs in Ontario and in Quebec that allege that, *inter alia*, the Defendants negligently designed and/or manufactured certain magnetic hard disk drives for sale in Canada;

WHEREAS the Defendants deny the allegations in the Actions;

WHEREAS based on the analyses of the facts and law applicable to the claims of the Plaintiff, and having regard to the burdens and expense in conducting this litigation, including the risks and uncertainties associated with protracted trials and appeals, the Plaintiff and its legal counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

WHEREAS the Defendants, despite their denial of liability and the existence of good and valid defences to the Actions, have similarly concluded that this Settlement Agreement is desirable in order to avoid the time and expense of defending against repetitive and protracted litigation, and to resolve completely the pending and potential claims of the Class Members;

WHEREAS the Plaintiffs and the Defendants intend that this Settlement Agreement be binding on all those in Canada who purchased for their use and not for resale Fujitsu MPG-3xxx (sometimes known as the PB-16) and MPF-3xxx-AH (sometimes known as the PB-15H) desktop magnetic hard disk drive models (the "Drives") or computer or other systems containing Drives, and that, save and except for the Quebec Class, certification of a national class shall be sought in the Ontario Superior Court of Justice based on the substantial connections of Ontario with the facts giving rise to the actions referred to herein;

WHEREAS the Defendants enter into this Settlement Agreement on the basis that there will be a valid and binding national class for all those who have purchased and used Drives or computer or other systems containing Drives in Canada, and that all claims by all such persons or entities are included and will be satisfied by this Settlement Agreement subject only to those who opt out in a timely manner in compliance with the procedures set forth herein for so doing or pursuant hereto, and, further, it is acknowledged that the Defendants would not have entered into this Settlement Agreement if not for the truth and accuracy of the foregoing;

WHEREAS while for the purpose only of this Settlement Agreement the Defendants consent to the certification of the Actions as provided below, the Defendants expressly reserve their right to contest certification of other related or unrelated proceedings

WHEREAS neither this Settlement Agreement nor any step taken to carry out this Settlement Agreement, nor any document relating to it is or may be construed or used as an admission by or against either Defendant: of the truth of any allegations of liability; of jurisdiction of the Canadian courts over the Defendant Fujitsu Limited; of the certifiability of the actions herein as class actions; or as a waiver of any

applicable legal right or benefit other than as expressly stated herein. This Settlement Agreement may not be construed or used as an admission by or against the Plaintiff or the Class Members or as a waiver of any applicable legal right or benefit of the Plaintiff or the Class Members other than as expressly stated herein. Further, neither this Settlement Agreement nor any document relating to, or action taken to carry out, this Settlement Agreement shall be offered, tendered or received in evidence in any action or proceeding against the Defendants, the Plaintiff or the Class Members, or any of them, in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement Agreement or to seek court approval of the Settlement Agreement in the manner as described below.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS AND RELEASES HEREIN CONTAINED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree that this Settlement Agreement constitutes the full and final resolution of any and all claims of any kind or potential claims of any kind against the Defendants arising from or relating in any way to the sale of Drives in Canada.

DEFINITIONS

1. The following words and phrases shall have the following meanings in this Settlement Agreement, including all of the appendices hereto:
 - (a) "Actions" means any of Action No. 41049 commenced in the Ontario Superior Court of Justice ("Ontario Action") and Action No. 200-06-000037-039 commenced in the Quebec Superior Court ("Quebec Action").
 - (b) "Approval Orders" means the orders of the Ontario Superior Court of Justice and the judgment of the Quebec Court certifying the Actions as class actions and approving this Settlement Agreement.
 - (c) "Claim Deadline" shall be Friday, December 3, 2004.
 - (d) "Claims Administrator" means Crawford Class Action Services, subject to court approval, and any employees of such person or entity.
 - (e) "Claims Form" means that form reproduced at Appendix D.
 - (f) "Class" means collectively the Ontario National Class and Quebec Class.
 - (g) "Class Counsel" means Siskind, Cromarty, Ivey & Dowler LLP, in Ontario and Siskinds, Desmeules in Quebec.
 - (h) "Class Members" means either members of the Ontario National Class or Quebec Class including the Plaintiffs therein, or such members of those Classes collectively as the context requires.
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- (i) "Court" means any one or more of the Ontario Court or Quebec Court, or collectively as the context requires.
 - (j) "Drives" means Fujitsu MPF3xxx-AH hard disk drives and MPG3xxx hard disk drives which were originally sold in Canada or were contained in computer or other systems originally sold in Canada, and shall specifically include all Fujitsu hard disk drive models bearing a model number composed of or starting with the sequence MPF3102AH, MPF3153AH, MPF3204AH, MPG3102, MPG3153, MPG3204, MPG3307, AND MPG3409 (any one of which may also be followed by alphabetical characters).
 - (k) "Effective Date" means the date upon which the Ontario and Quebec Approval Orders have given final approval to the Settlement Agreement.
 - (l) "Escrow Account" means an escrow account, governed by terms to be agreed to between Class Counsel and Defendants, into which Fujitsu Canada, Inc. will deposit the funds to be used for settlement in accordance herewith, and which the Claims Administrator shall utilize to satisfy the monetary requirements of the Settlement. The Escrow Account shall be interest bearing.
 - (m) "Ontario Court" means the Superior Court of Justice and the Honourable Mr. Justice Jenkins or his successor.
 - (n) "Ontario National Class" means all persons and legal entities located in Canada who purchased Drives from a vendor located in Canada for their own use and not for resale and who thereafter installed and used such Drives in Canada and all persons and legal entities located in Canada who purchased computer or other systems containing Drives from a vendor located in Canada for their own use and not for resale and who thereafter used such computer or other systems in Canada excluding the Defendants in the Actions and members of the Quebec Class.
 - (o) "Opt Out Deadline" means Friday, October 8, 2004.
 - (p) "Parties" mean collectively the Plaintiffs and the Defendants.
 - (q) "Plaintiffs" mean the plaintiff in the Ontario Action, Camis Incorporated, and the plaintiff in the Quebec Action, Marc Méthot.
 - (r) "Quebec Class" means all individuals located in Quebec and such other legal entities established in Quebec for the purpose of carrying on business therein who, during the 12 month period immediately preceding the issuance of the Quebec Action (i.e. December 11, 2003), had no more than 50 employees under their direction or control, and who purchased Drives from a vendor located in Quebec and who thereafter installed and used such Drives in Quebec and all natural persons and such legal entities located in Quebec who purchased computer or other systems containing Drives from a vendor located in Quebec and who thereafter used such computer or other systems in Quebec (excluding any person or entity
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that purchased such Drives or computer or other systems containing Drives for marketing, distribution or resale and the Defendants in the Actions).

- (s) "Quebec Court" means the Quebec (Cour Supérieure) Superior Court and the Honourable Rita Bedard or her successor.
- (t) "Released Claims" means all claims of any kind by any Class Member and its or their heirs, successors and assigns, and any other person claiming through such persons, arising from or relating to the Drives.
- (u) "Released Parties" shall mean all those entities or individuals referred to in paragraph 30 of this Settlement Agreement.
- (v) "Settlement" means the resolution of the issues in these proceedings in accordance with the terms and conditions of this Settlement Agreement.
- (w) "Settlement Agreement" means this Agreement, which shall apply to and resolve both Actions.

SETTLEMENT BENEFITS

2. The Defendants shall compensate eligible Class Members for all timely filed claims that are verified and accepted by the Claims Administrator, in its discretion, in accordance with this Settlement Agreement.
3. With respect to compensation for Drives that are returned by Class Members, the Settlement Benefits shall be comprised of:
 - (a) For those with a Drive bearing Model No. MPF3102AH, MPG3153xx, MPF3153AH and/or MPG3102xx: the lesser of \$27.50 or the actual amount paid for a replacement drive, which shall be available to any Class Member who submits a completed Claims Form and all requisite material, information and proof, including their physical Drive and satisfactory

proof of purchase of a replacement hard disk drive, subject to verification by the Claims Administrator; and

(b) For those with a Drive bearing Model No. MPF3204AH, MPG3204xx, MPG3307xx and/or MPG3409xx: the lesser of \$32.50 or the actual amount paid for a replacement drive, which shall be available to any Class Member who submits a completed Claims Form and all requisite material, information and proof, including their physical Drive and satisfactory proof of purchase of a replacement hard disk drive, subject to verification by the Claims Administrator.

4. Beginning on November 1, 2004 and continuing until all Claims under paragraph 3 have been processed by the Claims Administrator, the Claims Administrator shall notify the Defendants of the value of all claims thereunder accepted during the preceding calendar month and, following receipt of such notification, the Defendants shall have 30 additional days to deliver sufficient funds to the Claims Administrator via deposit into the Escrow Account to satisfy all such claims. In the event of any overpayment or residual remaining with respect only to claims made under paragraph 3, such funds will be for the credit of the Defendants.
5. With respect to compensation for data recovery costs paid to a third party or verified internal data recovery expenses incurred as a result of a failed Drive ("Data Recovery Claims"), the Settlement Benefits shall be comprised of a finite pool of \$137,500, plus interest accrued thereon, from which all eligible, verified claims will be paid (the "Data Recovery Pool"). Subject to review and verification of the evidence submitted in support of these claims, Class members who have Data Recovery Claims shall be entitled to seek the lesser of \$500 per failed Drive or the actual amount paid or incurred for data recovery, provided that they submit a completed Claims Form and all requisite information and proof, including their Drive (if available) and satisfactory proof that the claimed data recovery costs were incurred or suffered, all of which will be subject to verification by the Claims Administrator.
6. Class Members must submit all claims to Settlement Benefits arising from or relating to a single Drive at the same time, and the Claims Administrator shall have the right to reject any claims that do not comply herewith.

7. On or before December 1, 2004, the Defendants shall pay to Claims Administrator the sum of \$137,500 (i.e. the Data Recovery Pool), which shall be held in the Escrow Account. The Data Recovery Pool shall be available to the Claims Administrator for the sole purpose of satisfying eligible, verified claims for data recovery, in accordance with the provisions of this Settlement Agreement.
8. The Data Recovery Pool shall be held in trust for the Class Members, with any balance remaining after the satisfaction of all eligible, accepted claims to be dealt with pursuant to the terms hereof. The Claims Administrator shall not pay any Data Recovery Claims until after the Claims Deadline has passed and all claims submitted prior thereto have been processed, and the related appeals period provided herein (the "Appeals Period") has expired.
9. In the event that there are insufficient funds available in the Data Recovery Pool to satisfy all eligible, verified Data Recovery Claims, the available funds will be distributed to those with eligible, verified and accepted Data Recovery Claims after the Claims Deadline has passed and the Appeals Period has expired, on a pro rata basis, according to the amounts allowed by the Claims Administrator, and without further obligation on the part of the Defendants.
10. In the event that there are funds remaining in the Data Recovery Pool after the payment of all eligible, verified and accepted Data Recovery Claims in accordance herewith, the remaining funds (the "Residual") will be available to satisfy any eligible but unsatisfied warranty or data recovery claims submitted by Class Members arising from or relating to the Drives, subject to further verification, review and approval by the Court. In the event that there still remains a Residual after the satisfaction of these unsatisfied claims, it shall be disposed of as directed by the Ontario Court, except that 12.5% of that Residual if any shall be payable to the Fonds d'aide aux recours collectifs in Quebec.
11. To be eligible for the compensation hereunder, a Class Member must file a Claim Form together with all required supporting documentation as set out in the Claim Form, by the Claim Deadline.
12. The Claims Administrator shall file in a timely manner all information and tax returns necessary with respect to the Data Recovery Pool. Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on any income earned shall be paid out of the Data Recovery Pool. The Defendants shall not have any additional liability or responsibility whatsoever for the

payment of taxes or expenses associated with the filing of any tax returns or other documents with any provincial or federal taxing authority. All such costs shall be paid in a timely manner by the Claims Administrator without prior order of the Court from the Data Recovery Pool, and the Claims Administrator shall be obliged to withhold from distribution to the Class Members any funds necessary to pay such amount.

13. The Defendants shall be solely responsible for the following costs: (a) the Notices required pursuant to this Settlement Agreement, (b) the cost of Claims Administration, and (c) the cost of translating the Settlement Agreement including Appendices into the French language.

CLAIMS ADMINISTRATOR

14. Crawford Class Action Services shall act as Claims Administrator, subject to Court approval, and shall be required to facilitate the Dissemination of Notice of Certification and Settlement Approval and to process all eligible claims.
15. The Claims Administrator shall have sufficient discretion to assess all submitted claims in good faith and shall be the final arbiter as to whether or not submitted claims qualify for compensation pursuant to the terms of this Settlement Agreement.
16. The Claims Administrator shall have personnel that speak both English and French.
17. The Claims Administrator shall report to, be subject to, and operate under the direction of the Ontario Court and the Quebec Court. The Claims Administrator shall submit a weekly report to the Parties advising of claims received and expenses incurred.
18. The Claims Administrator shall be paid by the Defendants.

General Claims Processing Guidelines

19. The Claims Administrator shall process all claims received in a cost-effective, timely manner. If during claims processing the Claims Administrator finds that technical deficiencies exist in a Claim Form or supporting documentation, it shall notify the Class Member of the deficiencies via first class mail and shall allow the Class Member 30-days from the date of mailing of such notice to correct the deficiencies. If the deficiencies are not corrected within the 30-day period, the Claims Administrator shall reject the claim, without prejudice to the Class Members ability to resubmit the

claim for further consideration prior to the Claims Deadline and in accordance herewith. Technical deficiencies shall not include missing the deadline for filing the Claim Form. In no event shall the Claims Administrator accept Claim Forms postmarked after the Claim Deadline.

20. In the event that a claim is rejected, the Claims Administrator shall, if requested by the Class Member, return the Drive to the Class Member after the expiration of the Appeals Period, with the costs payable by the Class Member.

Notification and Payment of Claims

21. Commencing on November 1, 2004, the Claims Administrator shall notify via first class mail all claiming Class Members as to the approval or rejection of their claims hereunder, and shall make arrangements to pay approved claims in accordance herewith. For accepted claims, the notification shall accompany payment, where practicable.
22. Quebec Class Members other than Marc Méthot who commence proceedings and fail to discontinue such proceedings by the Opt Out Deadline shall be deemed to have opted out.

Appeal of Claims

23. A Class Member shall have 30 days from the date it receives notice pursuant hereto to appeal the rejection of a claim, on the basis of written submissions to the Claims Administrator, supported only by the documentation originally provided to the Claims Administrator. In the event of an appeal, the Claims Administrator shall advise Class Counsel and counsel for the Defendants who shall meet and try to resolve the issue. However, if they cannot resolve the issue within 30 days of receiving notice pursuant hereto, the appeal will be determined by the Ontario Court or Quebec Court, as appropriate, whose judgment will be final and binding and shall not be subject to any further appeal or revision whatsoever.

OPTING OUT

24. Class Members shall have the right to exclude themselves from this Settlement Agreement ("Opt Out"). Class Members who elect to Opt Out shall file an Opt Out Form with the Claims Administrator or, for Quebec Class Members, with the Clerk of the Quebec Superior Court for the District of Quebec City by registered or certified mail, by the Opt Out Deadline. Class Members who Opt Out shall be excluded from the terms of the Settlement and from any and all rights and

obligations under this Settlement Agreement. Class Members who do not Opt Out in the manner prescribed shall be deemed to have elected to participate in this Settlement Agreement and shall be bound by this Settlement Agreement and all related court orders, regardless of whether they participate in the dispute resolution process or receive any consideration.

25. By October 15, 2004, the Claims Administrator shall provide the Parties through their counsel with a full list of Class Members who have opted out of the Settlement Agreement. On or before October 22, 2004, the Defendants shall have the right, at their sole discretion, to terminate this Settlement Agreement if the number of Class Members who have opted out of the Settlement Agreement represents the ownership of more than 5% of the total number of Canadian Drive sales. In this event, the Defendants may rescind the Settlement Agreement and, in that event:
- (a) The Settlement Agreement shall be null and void and shall have no force or effect, and no party to the Settlement Agreement shall be bound by any of its terms except the terms of this paragraph and paragraph 1;
 - (b) The Settlement Agreement and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Defendants, the Ontario National Class, the Quebec Class and Class Counsel, all of whom shall be restored to their respective positions, existing immediately before the Settlement Agreement; and
 - (c) The Settlement Agreement, the fact of its negotiation and execution, and all documents and information exchanged in furtherance of settlement, the certification of the Ontario National Class and/or Quebec Class and any approval of the Settlement Agreement by any court shall not constitute any admission by the Defendants or be used against them for any purpose in this or in any other proceeding and without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution and certification by a court shall not constitute any admission or be used by anyone (whether or not a party to these proceedings) in an effort to establish any of the alleged facts, the jurisdiction of the Canadian courts over any foreign party or the certification of these or any other proceedings in any province and the Parties will enter a consent order of the courts in Ontario and Quebec to that effect.
 - (d) If this Settlement Agreement is terminated following the first publication of Notice of the Certification and Settlement Approval, a Notice of Termination shall be published in a form and manner agreed to by the Defendants and Class Counsel, and approved by the Court. The Defendants shall pay the cost of Notice of Termination.
 - (e) The Claims Administrator shall return to all Class Members any Drives and all materials submitted in contemplation of the Settlement, along with a written notice advising that the Settlement was rescinded in accordance with its terms.

NOTICE OF APPROVAL HEARING

26. Notice of the approval hearing in Ontario shall be disseminated 20 days prior to the scheduled approval hearing and shall be in a form agreed to by the Defendants and Ontario Counsel and approved by the Ontario Court. Notice of the approval hearing in Quebec shall be disseminated at least 20 days prior to that hearing and shall be in a form agreed to by the Defendants and Quebec Counsel and approved by the Quebec Court. Notice of the approval hearings shall be disseminated in accordance with Appendix C, which notice shall be paid for by the Defendants.

APPROVAL ORDERS

27. The Parties shall take all steps necessary to ensure that all approvals of this Settlement and the Approval Orders are sought in an expedited manner from the Ontario Court and the Quebec Court. The Parties shall seek Approval Orders from the Courts in the form attached as Appendix "B" to this Settlement Agreement, provided, however, that for the purpose of obtaining the appropriate approvals of the Quebec Court, the form attached as Appendix "B" remains subject to the requirements of that jurisdiction.

NOTICE OF CERTIFICATION AND SETTLEMENT AGREEMENT APPROVAL

28. The Notice of Certification and Settlement Agreement Approval shall be disseminated in the form and pursuant to the protocol outlined herein, with the costs paid for by the Defendants.

EFFECT OF NON-APPROVAL BY THE COURTS

29. If the Settlement Agreement is not approved by both the Ontario Court and the Quebec Court, then, at the option of the Defendants:
- (a) The Settlement Agreement shall be null and void and shall have no force or effect, and no Party to the Settlement Agreement shall be bound by any of its terms except the terms of this paragraph and paragraph 1;
 - (b) The Settlement Agreement and all of its provisions and all negotiations, all documents and information exchanged in furtherance of settlement, and all statements and proceedings relating to it shall be without prejudice to the rights of the Defendants, the Ontario National Class, the Quebec Class and Class Counsel, all of whom shall be restored to their respective positions' existing immediately before the Agreement;
 - (c) The Settlement Agreement, the fact of its negotiation and execution, the certification of the Ontario National Class and/or Quebec Class and any approval of the Settlement Agreement

by any court shall not constitute any admission by the Defendants or be used against them for any purpose in this or in any other proceeding and without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution and certification by a court shall not constitute any admission or be used by anyone (whether or not a party to these proceedings) in an effort to establish any of the alleged facts, the jurisdiction of the Canadian courts over any foreign party or the certification of these or any other proceedings in any province and the Parties will enter a consent order of the courts in Ontario and Quebec to that effect.

- (d) If this Settlement Agreement is terminated following the first publication of Notice of the Certification and Settlement Approval, a Notice of Termination shall be published in a form and manner agreed to by the Defendants and Class Counsel, and approved by the Court. The cost of Notice of Termination shall be paid by the Defendants.

RELEASE

30. At the Effective Date, the Class Members, other than those who have opted out in accordance herewith, personally and on behalf of their heirs, successors and assigns, and their affiliated, predecessor, successor and related companies, and their past, present and future shareholders, directors, officers, employees and agents, shall be deemed to have released and will hereby release and forever discharge the Defendants, and each of their affiliated, predecessor, successor and related companies, and their respective past, present and future shareholders, directors, officers, employees and agents, including legal counsel, financial advisers, sales agents, sellers, manufacturers, contractors, subcontractors, distributors, resellers, integrators, customers and any other party (and the affiliates, predecessors, successors and companies related to any other party) from whom or through whom they obtained their Drive(s) or their system containing their Drive(s), from all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and all other liabilities of any kind arising from or relating to the Drives.
31. The Plaintiffs and the Class Members further agree not to make any claims, or to commence or continue any proceedings against any other person, partnership, corporation or other entity of any kind who or that might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from the Defendants in connection with the claims released in this Settlement Agreement. In the event that such a claim now or hereafter exists, the Class Member that is a party thereto will indemnify the Defendants against any such claims or liabilities.

32. The Approval Orders shall finally and forever bar the claims of the Plaintiffs and of all Class Members that were asserted or could have been asserted in any court proceedings referred to in the preamble herein.
33. Nothing herein will limit or bar the Defendants' ability to seek compensation for any amounts paid to any Class Member pursuant hereto from third parties including, without limitation, from suppliers of materials and components used in the Drives.

CLASS COUNSEL & REPRESENTATIVE PLAINTIFFS

34. The Defendants shall pay the sum of \$1,000 paid to the representative Plaintiff Camis Incorporated and the sum of \$500 paid to the representative Plaintiff Marc Méthot, on or before November 1, 2004.
35. The Defendants shall pay the reasonable legal fees, disbursements, and taxes of Class Counsel. Legal fees shall be calculated as the reasonable hours expended by Class Counsel on this matter, multiplied by Class Counsel's reasonable, customary hourly rates, multiplied by a factor of 2.1 to reflect the risk incurred and success achieved in this matter.
36. The Defendants shall pay Class Counsel's interim fees, disbursements, and taxes up to the Opt Out Deadline within 30 days of the Opt Out deadline or within 30 days of Class Counsel furnishing their interim account, whichever is later, subject to any objection to the amount sought, which shall be dealt with in accordance with the procedure set forth in paragraph 37 below.
37. After all matters relating to the administration of the settlement are complete, and all claims have been submitted and resolved, and all related appeal periods have expired, Class Counsel shall submit a final account to the Defendants, which the Defendants shall pay within 30 days, absent a dispute. If the Defendants dispute any portion of Class Counsel's account(s), payment of the disputed amount may be withheld until a final resolution is reached by mediation or arbitration, conducted by the Honourable J. O'Brien of the ADR Chambers, Toronto, Ontario, Canada, who shall have all of the powers given by the *Arbitration Act*, 1991, S.O. 191, Chap. 17 (the "Arbitration Act"), including *inter alia*, the power to award costs to a successful party.
38. No Class Counsel, or anyone employed with Class Counsel, may directly or indirectly participate in or be involved in or in any way assist with respect to any action commenced by a Class Member who

has opted out or with respect to any other action related to the claims asserted in the proceedings referred to in the preambles herein. Moreover, no Class Counsel or anyone employed with Class Counsel may divulge any information obtained in the course of the proceedings referred to in the preamble herein or in the preparation thereof or related to the proceedings referred to in the preambles, to anyone for any purpose.

39. Except as required by law or by order of a court of competent jurisdiction or the terms of this Settlement Agreement, no Class Counsel or anyone employed by Class Counsel shall disclose any information regarding the negotiation and settlement of the Actions or this Settlement Agreement.

ENTIRE AGREEMENT

40. This Settlement Agreement, together with the preambles and the attached appendices, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto pertaining to the subject matter hereof. There are no other warranties or representations between the Parties in connection with the subject matter hereof except as specifically set forth herein and none have been relied upon by the Parties in entering into this Settlement Agreement.

REPRESENTATIONS, WARRANTIES & COVENANTS

41. All counsel of record represent that they are unaware of any other pending Canadian litigation involving the subject of this settlement and that they have the authority, on behalf of their respective clients, to execute, deliver and perform their obligations under this Settlement Agreement and confirm that this Settlement Agreement constitutes a legal and binding obligation.

ONGOING AUTHORITY

42. The Ontario Court and the Quebec Court will retain exclusive jurisdiction over the Actions and over all Parties named or described therein, including but not limited to all Class Members and the Defendants. Further, the Ontario Court and the Quebec Court will retain exclusive jurisdiction over this Settlement Agreement, to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement except as provided for herein

43. The Parties want this process to be efficient, rapid and cost effective and have therefore agreed that these claims will be administered on a national basis through a single Claims Administrator and a single protocol. It is the intention of the Parties that the Ontario Court, with the concurrence of the Quebec Court, shall adjudicate any matters arising from the implementation of the Settlement Agreement, including but not limited to supervision of the Claims Administrator.

APPLICABLE LAW

44. Except for the Quebec Class to which the laws of the Province of Quebec shall apply, the laws of the Province of Ontario shall apply to this Settlement Agreement. This Settlement Agreement constitutes a “transaction” within the meaning of Article 2631 of the *Quebec Civil Code*.

NOTICES

45. All communications to be provided pursuant to or in connection with this Settlement shall be in writing and shall be delivered personally or sent by registered mail or overnight delivery service, costs prepaid, to the Parties at the addresses set forth below, or to such other individuals and addresses as the Plaintiffs or the Settling Defendant may designate in writing from time to time.

Siskind, Cromarty, Ivey & Dowler^{LLP}
Barristers & Solicitors
680 Waterloo Street
London, Ontario N6A 3V8
Counsel for the Ontario National Class Members

Siskinds, Desmeules
43 Rue Buade
Bureau 320
Quebec City, Quebec G1R 4A2
Counsel for the Quebec Class Members

Baker & McKenzie
Barristers and Solicitors
Suite 2100, 181 Bay Street, PO Box 874
Toronto, Ontario M5J 2T3
Solicitors for the Defendants

Paquette Gadler
300 Place d'Youville
Suite B-10
Montréal, Québec

H2Y 2B6
Counsel for the Defendants

EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT

46. The Parties and their counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.
47. The Parties agree that this Settlement Agreement may be executed by their respective counsel.

FRENCH TRANSLATION

48. A French translation of this Settlement Agreement and all Appendices attached hereto shall be prepared and the costs of translating this Settlement Agreement and all Appendices attached hereto shall be paid by the Defendants..

LANGUAGE CLAUSE

49. The Parties hereto confirm that they have required that this Settlement Agreement and all documents ancillary thereto be drafted in the English language. Les Parties aux présentes confirment qu'elles ont exigé que les présentes et tout document y afférent soient rédigés en langue anglaise.

COUNTERPARTS

50. The Parties further agree that this Settlement Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original for all purposes and all executed counterparts taken together shall constitute the complete Settlement Agreement.

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Dated this day of June 2004

May 28/04
Date

SISKIND, CROMARTY, IVEY & DOWLER^{LLP}
Per: André Déry
Name
Solicitors for the Ontario National Class Members

May 28/04
Date

SISKINDS DESMEULES
Per: André Déry for Claude Desmeules
Name
Solicitors for the Quebec Class Members

May 27/04
Date

BAKER & MCKENZIE
Per: Baker & McKenzie
Name
Solicitors for the Defendants

May 27/04
Date

PAQUETTE GADLER
Per: Paquette Gadler
Name
Solicitors for the Defendants

APPENDIX "A"

Notice of Certification and Settlement Agreement Approval

**IN THE MATTER OF FUJITSU HARD DRIVE
CLASS ACTION LITIGATION**

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.

TO: All persons or entities located in Canada who purchased and used in Canada Fujitsu MPF3xxx-AH hard disk drives or MPG3xxx hard disk drives (hereinafter "Drive" or "Drives") or computer or other systems containing these noted drives, including all drive models bearing a model number composed of or starting with the sequence MPF3102AH, MPF3153AH, MPF3204AH, MPG3102, MPG3153, MPG3204, MPG3307, AND MPG3409 (any one of which may also be followed by alphabetical characters).

WHAT IS THE PURPOSE OF THIS NOTICE?

An Agreement has been reached and approved by the Courts in class proceeding lawsuits initiated in Ontario and Quebec against Fujitsu Canada, Inc. and Fujitsu Limited in which it is alleged that the Defendants designed, manufactured and sold certain computer hard drives that were defective.

This Notice is to advise you of the Agreement and to inform you of your rights as a Class Member under the Agreement. You will be bound by the terms of the Agreement unless you decide to exclude yourself by opting out of the Agreement, as explained in this Notice.

The proceeding was certified and the Settlement Agreement approved by the Courts in Ontario and Quebec, on _____ and _____ respectively. The Ontario Court certified and approved the settlement on behalf of all those in Canada who purchased and used Drives or computer or other systems containing Drives in Canada for their own use and not for distribution or resale.

WHO IS IN THE SETTLEMENT CLASS?

You are a Class Member if you purchased and used in Canada either a Fujitsu Drive or Drives or a computer or other system containing a Drives or Drives.

DO I HAVE ONE OF THESE FUJITSU DRIVES?

There are a number of ways that you may be able to determine if you have or had one of the Drives in issue and may be entitled to compensation (see below). If you have any questions regarding any of these methods, please

DO I HAVE ONE OF THESE FUJITSU DRIVES?

call the Settlement Administrator at (800) XXX-XXXX or send an email to [address].

Downloadable Utility. You can download a free utility that may assist you in determining if the hard disk drive in your computer is one of the models at issue at the following website: www.hddsettlement.ca. The utility requires that your computer or other system use a Microsoft Windows operating system. You should follow the instructions described in the "read me" file of the utility.

Physical Inspection. You may be able to physically check to see if you have an effected Drive. However, before doing so, you should back-up and save any important data on the hard disk, exit from any programs you are operating on your computer, shut down your computer and unplug the power source. **Please ensure that you understand how to conduct this check without causing any harm to yourself, the hard disk drive, or any computer or other device containing the hard disk drive.**

Review Documents. The documents that accompanied your computer or other system or hard disk drive may disclose if you have a Drive.

Contact Seller or Computer Professional. The seller from whom you purchased the hard disk drive (as a separate item or as a component in a computer or other system) or another a computer professional may be able to assist you in determining whether you have one of the Drives in issue.

WHAT ARE THE SETTLEMENT BENEFITS?

Class Members may be entitled to receive the compensation below subject to verification of their claim(s). However, if Class Members have already received monetary compensation from Fujitsu Canada, Inc. or anyone else for a failed Drive, they may not be entitled to receive compensation under this Agreement, unless they have incurred eligible data recovery costs associated with a Drive failure. The Defendants will pay the costs associated with the return of those Drives accepted by the Claims Administrator as eligible for settlement benefits.

For those with a Drive bearing Model No. MPF3102AH, MPG3153xx, MPF3153AH and/or MPG3102xx:

Up to \$27.50 per Drive, upon returning their Drive(s) and submitting acceptable proof of payment of a replacement drive(s).

For those with a Drive bearing Model No. MPF3204AH, MPG3204xx, MPG3307xx and/or MPG3409xx:

Up to \$32.50 per Drive, upon returning their Drive(s) and submitting acceptable proof of payment of a replacement drive(s).

For those who incurred data recovery costs associated with a Drive failure:

Up to \$500 per Drive, upon returning their Drive(s) (if available) and submitting acceptable proof that data recovery costs have been incurred (e.g., an invoice from a data recovery service or satisfactory evidence establishing the basis of the amount claimed for internal data recovery costs).

Warranty Protection

Class Members should note that Fujitsu hard drives sold by Fujitsu Canada may still be covered by a warranty under which alternative relief may be available for Drives that have failed. The period for filing warranty claims is limited. Class Members should see the Fujitsu Canada web site at www.fujitsu.ca/warranty/hdd/ for the specific terms of the warranty.

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WHAT ARE MY OPTIONS?	
<p>If you are a Class Member, you have the following options:</p>	
Submit a Claim Form	To receive Settlement Benefits, Class Members must submit a Claim Form together with all supporting documentation to the Claims Administrator by December 3, 2004. Please note that all claims relating to a Drive must be submitted at the same time.
Opt Out	This is the only option that allows you to preserve your claims against the Defendants and others. However, if you opt out you will not be entitled to any settlement benefits. To opt out, you must obtain an Opt Out form from the Claims Administrator and return it to the Claims Administrator by October 8, 2004.
Do Nothing	If you do not fill out a Claims Form or Opt Out, you will receive no compensation and your claims against the Defendants and others relating to these matters will be barred.

FURTHER INFORMATION	
<p>If you would like a copy of the Settlement Agreement or have any questions, you may call the Claims Administrators Information Line at 1-800-XXX-XXXX. A copy of the Settlement Agreement can be sent to you at a cost of \$20.00 per copy, which represents the cost of photocopying and mailing the Agreement. A copy of the Settlement Agreement can also be viewed on Class Counsel's web site at www.classaction.ca.</p>	
Class Counsel	The law firm of <i>Siskind, Cromarty, Ivey & Dowler LLP</i> represents the Class Members other than consumers in Quebec, and can be reached toll-free at 1-800-461-6166. The law firm of Siskinds Desmeules represents the Class Members in Quebec, and can be reached at 418-694-2009
Legal Fees	The entitlement of plaintiffs' counsel to legal fees and costs of class counsel will not be deducted from the Settlement Benefits

MAILING OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE AND THE QUEBEC (COUR SUPERIEURE) SUPERIOR COURT.

APPENDIX "B"

Order- Certification & Settlement Approval – Ontario

Court File No. 41049

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable Mr.) Thursday, the 24th day
Justice Jenkins) of June, 2004

B E T W E E N:

CAMIS INCORPORATED

Plaintiff

and

FUJITSU CANADA INC. and FUJITSU LIMITED

Defendants

Proceeding under *Class Proceedings Act*, 1992

ORDER

THIS MOTION made by the proposed representative Plaintiff Camis Incorporated for an order that the within proceeding be certified as a class proceeding, and that the settlement be approved, and that Crawford Class Action Services be appointed as Claims Administrator, was heard this day in London, Ontario, Canada.

ON READING the materials filed and on hearing submissions of counsel for the representative Plaintiff and counsel for the Defendants:

1. THIS COURT ORDERS that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6, ss.2 and 5.
2. THIS COURT ORDERS that the class be defined and certified subject hereto as:

All persons and legal entities except Quebec Class Members located in Canada who purchased in Canada a Fujitsu MPF3xxx-AH hard disk drive or a Fujitsu MPG3xxx hard disk drive, including drive models bearing a model number composed of or starting with the sequence MPF3102AH, MPF3153AH, MPF3204AH, MPG3102, MPG3153, MPG3204, MPG3307, AND MPG3409 (any one of which may also be followed by alphabetical characters) (hereinafter "Drive" or "Drives") from a vendor located in Canada for their own use and not for resale and who thereafter installed and used such Drives in Canada and all persons and legal entities except Quebec Class Members located in Canada who purchased computer or other systems containing Drives from a vendor located in Canada for their own use and not for resale and who thereafter used such computer or other systems in Canada.

3. THIS COURT ORDERS that Camis Incorporated be appointed as the representative Plaintiff for the class proceeding.
4. THIS COURT ORDERS that the within proceeding is certified on the basis of the following Common Issues: "what if any liability do the defendants have to class members arising from or relating to all claims that they may now or hereafter have in connection with the Drives, including without limitation all claims for misrepresentation, negligence, breach of contract and breach of any express or implied warranties."
5. THIS COURT DECLARES that the Settlement Agreement with its attached Appendices, annexed hereto and marked as Schedule "A" to this Order (the "Agreement") is fair, reasonable and in the best interest of the members of the Class.
6. THIS COURT ORDERS that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act*, 1992.
7. THIS COURT ORDERS that the definitions set out in paragraph 1 of the Settlement Agreement form part of this Order.

8. THIS COURT DECLARES that the Settlement Agreement, in its entirety (including its preamble and appendices) forms part of this Order and is binding upon the representative Plaintiff, upon all members of the class who do not opt out of the class in accordance with the Notice, and upon the Defendants.
9. THIS COURT ORDERS that the representative plaintiff, all members of the Class, and the Defendants comply with the terms of the Agreement.
10. THIS COURT ORDERS that Crawford Class Action Services be appointed Claims Administrator in accordance with the Settlement Agreement.
11. THIS COURT ORDERS that a Notice of Certification and Settlement Approval be published in accordance with section 28 of the Agreement and Appendices "A" and "C" to the Agreement.
12. THIS COURT ORDERS that this action be dismissed as against the Defendants with prejudice and without costs.
13. THIS COURT ORDERS that approval of this Order and the Settlement Agreement is contingent upon the approval of the Quebec Court of the same Settlement Agreement (and its French version) and that this Order shall be of no force and effect if such approval is not secured in Quebec.

Date:

Mr. Justice Jenkins

APPENDIX "C"
**METHOD OF DISSEMINATION OF
 NOTICE**

1. Publication in Newspapers

The Notice of Certification and Settlement Approval will be published in each of the following newspapers on or before September 15, 2004

Newspaper	Occurrence
Globe & Mail (National Edition)	1
Prince Edward Island Guardian	1
Halifax Chronicle Herald	1
The Cape Breton Post	1
Newfoundland Telegram	1
New Brunswick Telegraph Journal	1
Journal de Montreal	1
Journal de Quebec	1
The Gazette	1
Ottawa Citizen	1
Toronto Star	1
Hamilton Spectator	1
London Free Press	1
Winnipeg Free Press	1
Regina Leader Post	1
Saskatoon Star Phoenix	1
Calgary Sun	1
Edmonton Sun	1
Lethbridge Herald	1
Victoria Times Colonist	1
Vancouver Sun	1
The Province	1

2. Industry Publications

The Notice of Certification and Settlement Approval will be published in the following publications:

Publication	Occurrence
The Hub	1
Computer World	1

3. Other Methods of Dissemination

- a. The Notice of Certification and Settlement Approval will be sent to all persons resident in Canada who, according to the Defendants' records, purchased a Drive or Drive(s) that originated with Fujitsu Canada, Inc.
- b. The Notice of Certification and Settlement Approval shall be posted on Class Counsel's web site at www.classaction.ca.

- c. The Notice of Certification and Settlement Approval shall be posted on Fujitsu Canada, Inc.'s web site at www.fujitsu.ca.



Appendix "D"

CLAIM FORM Fujitsu Settlement

Under the Settlement Agreement, benefits may be available to those persons and legal entities located in Canada who purchased and used in Canada other than for distribution or resale a Fujitsu MPF3xxx-AH hard disk drive or a Fujitsu MPG3xxx hard disk drive, including drive models bearing a model number composed of or starting with the sequence MPF3102AH, MPF3153AH, MPF3204AH, MPG3102, MPG3153, MPG3204, MPG3307, AND MPG3409 (any one of which may also be followed by alphabetical characters) (hereinafter "Drive" or "Drives") or who purchased and used in Canada a computer or other system that contained a Drive other than for distribution or resale.

To be eligible for compensation your complete application together with supporting documents must be sent to the claims administrator NO LATER THAN DECEMBER 3, 2004. All claims relating to a Drive must be submitted at the same time.

You must complete **ALL** pages of the attached Form, as applicable. Attach additional pages if space is insufficient. Please type or print legibly in **BLACK** ink.

IDENTIFICATION OF PARTY SUBMITTING CLAIM			
1.	Name of Submitter (full legal or corporate name) or contact Person (if Class Member is a corporation) _____		
	Address	City/Municipality	Province/Territory
			Postal Code
	Date of Birth (DD/MM/YYYY)	Telephone Number (Area code / Phone number (extension if applicable))	
	/ /	() - - (ext.)	
2.	Name of Contact Person _____		
	Address	City/Municipality	Province/Territory
			Postal Code
	Date of Birth (DD/MM/YYYY)	Telephone Number (Area code / Phone number (extension if applicable))	
	/ /	() - - (ext.)	
<input type="checkbox"/> I am an individual who purchased a Fujitsu Drive or a computer or other system containing a Fujitsu Drive in Canada for my personal use and I am signing this Form to register for settlement benefits.			
<input type="checkbox"/> I am an authorized employee, officer or director of the above-identified company, which purchased a Fujitsu Drive or a computer or other system containing a Fujitsu Drive in Canada for its use and not for resale, and I am signing this Form to register the company for settlement benefits.			

PART A – IDENTIFICATION OF YOUR FUJITSU DRIVE(S)

The following supporting documentation must be submitted with the Claim Form:

	Date of Purchase	Drive Serial No.	Vendor Identity
1.			
2.			
3.			
4.			
5.			

Please attach additional sheets if required

PART B – PRODUCT PURCHASE VERIFICATION

The following supporting documentation must be submitted with the Claim Form:

- Enclose proof of purchase and payment for your Fujitsu Drive or for a computer or other system containing a Fujitsu Drive (e.g. invoice and receipt, etc.).
- Enclose the Fujitsu Drive you have replaced, unless it is unavailable due to data recovery.
- Enclose proof of purchase of replacement drive (e.g. invoice and receipt, etc.), if you are seeking compensation for the replacement cost.
- I am also submitting a claim for data recovery costs.

PART C – DATA RECOVERY COSTS

- Enclose the Drive that failed and for which data recovery services were required, unless it is unavailable due to data recovery.
- Enclose proof of all data recovery costs and/or internal expenses incurred (e.g. invoice and receipt for payment, or a signed breakdown and explanation of internal data recovery costs and expenses, etc.)

If external data recovery costs were incurred, please provide the following additional information:

1. Name of Data Recovery Service Provider:

2. Contact Person:

3. Address of Data Recovery Service:

VERIFICATION

By signing this form, I am verifying that all of the information contained herein is true and complete, and that neither I nor any entity for whom I am signing this Form has received any monetary compensation from Fujitsu Canada, Inc. or Fujitsu Limited with respect to the Drives for which payment is herein sought.

Date Signed
Representative)

Signature (Class Member or Personal

To preserve eligibility for benefits under the settlement, your completed application, together with the required documentation must be submitted to the Claims Administrator **NO LATER THAN DECEMBER 3, 2004.**

Appendix "E"

OPT OUT FORM
Strictly Private and Confidential

Under the Settlement Agreement, benefits may be available to those persons and legal entities located in Canada who purchased and used in Canada other than for distribution or resale a Fujitsu MPF3xxx-AH hard disk drive or a Fujitsu MPG3xxx hard disk drive, including drive models bearing a model number composed of or starting with the sequence MPF3102AH, MPF3153AH, MPF3204AH, MPG3102, MPG3153, MPG3204, MPG3307, AND MPG3409 (any one of which may also be followed by alphabetical characters) (hereinafter "Drive" or "Drives") or who purchased and used in Canada a computer or other system that contained a Drive other than for distribution or resale.

This is NOT a Claim Form. Since it EXEMPTS you from the Settlement Class, do NOT use this Form if you want to receive benefits under the Settlement Agreement.

SECTION A – CLASS MEMBER or CONTACT PERSON (if Class Member is a Corporation)			
1.	Name of Class Member (full legal name) or contact Person (if Class Member is a corporation)		
	Address	City/Municipality	Province/Territory
	Date of Birth (DD/MM/YYYY)	Telephone Number (Area code / Phone number (Extension if applicable))	
/ /	() - (Ext.)		
SECTION B – FUJITSU DRIVES INFORMATION			
2.	How many Fujitsu Drives do you own? _____		
3.	What are your Fujitsu Drive Serial Numbers?		
	_____	_____	
	_____	_____	
SECTION C – ADDITIONAL INFORMATION			
Identification of person signing this Form (check one only):			
<input type="checkbox"/>	I am a Class Member, or an authorized employee, officer or director of the above-identified Class Member. I am signing this Form to opt-out of the settlement.		
<input type="checkbox"/>	I am the trustee, receiver or other representative of the above-identified Class Member. I am signing this Form to opt-out the Class Member from the Settlement.		
(Attach copy of court order or other official document appointing you as representative and state your name, title, mailing address and telephone number.)			

SECTION D – OPT OUT

I understand that by opting out I will never be eligible to receive any compensation pursuant to the Settlement Agreement.

Date Signed

Signature
(Class Member or Personal Representative)

To be effective as an election to opt-out of this Settlement, this Form must be completed, signed and sent by registered mail, postmarked no later than **October 8, 2004**, to the address listed below.

The consequences of returning this Opt Out Form are explained in the Notice of Certification and Settlement Agreement Approval. If you have questions about using or completing this Form, contact your lawyer or call *(to follow)*.

SECTION E – RETURN ADDRESS

THE INFORMATION PROVIDED IN THIS FORM WILL REMAIN CONFIDENTIAL AS PROVIDED IN THE SETTLEMENT AGREEMENT.

Please mail this Form to the CLAIMS ADMINISTRATOR at:

PO Box Suite 3-505
133 Weber Street N
Waterloo ON N2J 3G9
Canada