

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

ETHEL SCHWEYER, Executrix of the
Estate of KENNETH R. SCHWEYER

Plaintiff

- and -

LIDLAW CARRIERS INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

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Plaintiff

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LIDLAW CARRIERS INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

RECITALS

A. **WHEREAS** this Action has been commenced by the Plaintiff alleging breach of contract, negligent misrepresentation and misstatement against the Defendant, (as defined below) with respect to early retirement packages offered in 1988 to employees who, at that time, had more than ten years of service;

B. **WHEREAS** through the execution of this Settlement Agreement the Defendant does not admit and, in fact, specifically denies the claims and allegations made in the Action;

C. **WHEREAS** the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analysis of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the class they represent;

D. **WHEREAS** the Defendant is entering into this Settlement Agreement in order to achieve a full and final resolution of all claims asserted or which could have been asserted by the Plaintiff and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

E. **WHEREAS** the Parties, therefore, wish to and hereby do finally resolve, without admission of liability, the Action;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed on the merits with prejudice, subject to the approval of the Court, on the following terms and conditions:

DEFINITIONS

For the purpose of this Settlement Agreement, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (2) **Approval Notice** means the form of notice, attached hereto as Schedule "C", or such other form of notice as is approved by the Court, for the purpose of providing information to the Class in regard to the Court's approval of (i) the settlement as provided for herein, and (ii) Class Counsel Fees.
- (3) **Class** means "all of the employees of Laidlaw Carriers Inc., who, in 1988, accepted Laidlaw's early retirement offer, except for the 13 employees whose claims have already been resolved." For greater clarity, excluded from the Class are the 12 individuals whose claims have already been resolved by the *Ford v. Laidlaw* action, Court File No. 3163/88, or any individual whose dispute has already been settled independently. The *Ford v. Laidlaw* action resolved the claims of:
 - (a) Frederick Ford;

- (b) Peter Grilly
- (c) Dale Pickard
- (d) Stanley Nephin
- (e) Jim Moffit
- (f) James McCormick
- (g) Frank McLellan
- (h) Ron Scott
- (i) Lyle Quackenbush
- (j) Donald Porter
- (k) Brendan Hayes
- (l) John Pavlic

Also excluded from the Class is Howard Cooper, whose claim was resolved in a separate action.

- (4) **Class Counsel** means the law firm Siskinds^{LLP}.
- (5) **Class Member** means any individual member of the Class, or estate representative, who is entitled to compensation pursuant to the Settlement Agreement as described in the Plan.
- (6) **Class Counsel Fees** includes the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.
- (7) **Court** means the Ontario Superior Court of Justice.
- (8) **Defendant** means Contrans Corp., formerly known as Laidlaw Carriers Inc. ("Laidlaw").
- (9) **Effective Date** means the date when a Final Order has been received from the Court approving this Settlement Agreement.
- (10) **Final Order** means a final judgment entered by the Court in respect of the approval of this Settlement Agreement once the time to appeal such judgment has expired without

any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

- (11) **Parties** means the Plaintiff, Class Members, and the Defendant.
- (12) **Plaintiff** means Ethel Schweyer, Executrix of the Estate of Kenneth R. Schweyer.
- (13) **Plan** means the plan of distribution to be approved by the Court, attached to the within Settlement Agreement as Schedule "A" and which stipulates the implementation and administration of the Settlement Agreement.
- (14) **Pre-Approval Notice** means the form of notice attached hereto as Schedule "B" or such other form of notice as may be approved by the Court, for purpose of providing notice to the Class of the hearings of the Plaintiff's motion for (i) approval of the settlement provided for in this Settlement Agreement; and (ii) approval of Class Counsel Fees.
- (15) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the claims, assertions, or allegations made or that could have been made in the Action, or relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere, in connection with the early retirement packages offered in 1988 to employees with more than ten years of service.
- (16) **Releasees** means, jointly and severally, individually and collectively, the Defendant, Contrans Group Inc., Contrans Income Fund, Contrans Operating Trust, Contrans Holding Limited Partnership, and all of their present and former employees, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective

past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

- (17) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective predecessors, successors, heirs, executors, administrators, insurers, and assigns.
- (18) **Settlement Agreement** means this Agreement, including the Recitals and Schedules.
- (19) **Settlement Amount** means CDN \$750,000.

SETTLEMENT APPROVAL

Best Efforts

1. The Parties shall use their best efforts to effectuate this Settlement Agreement and to secure the prompt, complete and final dismissal of the Action with prejudice.

Motion for Approval

2. As soon as practicable after the Settlement Agreement is executed, the Plaintiff shall bring motions before the Court for orders:
 - (a) approving the Pre-Approval Notice, described herein;
 - (b) approving this Settlement Agreement;
 - (c) approving the Notice of Approval, described herein;
 - (d) approving Class Counsel Fees, disbursements and applicable taxes, and Administration Expenses;
 - (e) dismissing this Action.
3. The Order approving the Pre-Approval Notice shall be substantially in the form attached as Schedule "D". The Judgment approving the Settlement Agreement and dismissing this Action shall be substantially in the form attached as Schedule "E" (the "Draft Judgment").

Final Resolution

4. The parties agree that this Settlement Agreement is intended to resolve and, upon Court approval, does resolve all matters asserted in this Action or which could have been asserted in this Action.

No Admission of Liability

5. It is understood and agreed that nothing in this Settlement Agreement constitutes an admission of liability or obligation on the part of the Defendant and any liability or obligation is, in fact, specifically denied. It is further understood and agreed that notwithstanding the Defendant's belief that it is not liable for the claims asserted in the Action, the Defendant is entering into this Settlement Agreement to avoid the expense, inconvenience, and burden of protracted litigation and the related distraction and diversion of its personnel and resources, to put to rest this controversy and to avoid the risks inherent in uncertain litigation.

SETTLEMENT BENEFITS

Settlement Amount

6. Subject to the approval of the Court, the Defendant agrees to pay the Settlement Amount inclusive of Counsel Fees and Administration Expenses. The Settlement Amount is to be paid by the Defendant in full satisfaction of the Released Claims against the Releasees.

7. The Defendant shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of the Settlement Agreement.

8. The Parties agree that payment of the Settlement Amount will be made by the Defendant to Class Counsel, in trust for the Class, no later than January 8, 2010 or within seven days after the Effective Date, whichever is later.

Taxes and Interest

9. Any interest earned on the Settlement Amount after the payment outlined in sections 7 and 8 herein shall accrue to the benefit of the Class and shall become and remain part of the Settlement Amount.

10. All taxes payable on any interest which accrues on the Settlement Amount shall be the responsibility of the Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment obligations arising from the Settlement Amount. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Settlement Amount or otherwise, but shall not be paid by the Defendant.

DISTRIBUTION OF THE SETTLEMENT AMOUNT

Claims Administration Procedures

11. Subject to approval of the Court, Administration of the Settlement Agreement shall be the sole responsibility of Class Counsel. The Defendant will make all reasonable efforts to provide Class Counsel with any information that may assist in locating Class Members for the purposes of facilitating the administration process.

12. Class Counsel shall, as part of the motion for approval of the Settlement Agreement, submit a plan of distribution for approval by the Court. The Settlement Amount shall be held by Class Counsel in trust for the benefit of Class Members, and, after the Effective Date, shall be paid in accordance with the Plan as approved by the Court.

13. The Settlement Amount shall be applied and distributed in accordance with the following priorities:

- (a) To pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, and locating Class Members for the purpose of providing notice to them;

- (b) To pay all of the costs and expenses reasonably and actually incurred by Class Counsel in administering the Settlement;
- (c) To pay Class Counsel Fees;
- (d) To pay any taxes required by law to be paid to any governmental authority;
- (e) To pay a *pro-rata* share of the balance of the Settlement Amount to each Class Member in proportion to his/her/its claim as recognized and provided for in accordance with the Plan.

Class Counsel Fees

14. Contemporaneously with, or promptly following, the hearing of the motion for Settlement Approval, Class Counsel will submit a Fee Application for consideration by the Court. The determination of the amount of Class Counsel Fees will be made by the Court.

15. The Defendant will neither consent to nor oppose approval of Class Counsel Fees nor make any submissions relating to Class Counsel Fees.

16. The allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Settlement Amount are not part of the Settlement Agreement, except as expressly provided, and are to be considered by the Court separately from its consideration of the fairness, reasonableness and adequacy of the within Settlement. Any Order or proceeding relating to Class Counsel Fees, or any appeal from any Order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the finality of the Approval Orders and the Settlement of the Action as provided herein.

Administration Expenses

17. The total of Class Counsel Fees together with Administration Expenses shall not exceed 25% of the total Settlement Amount, plus applicable taxes.

Notices

18. Subject to the Court's approval of the Pre-Approval Notice and the Approval Notice, attached hereto as Schedules "B" and "C" respectively, Class Counsel shall directly mail the Pre-Approval Notice and, if and when the Settlement is approved by the Court, the Approval Notice, to all Class Members or, where appropriate, a Class Member's Estate Trustee, together with a copy of the Plan.

Power of Court Regarding Claims Administration

19. The Parties agree that, if the Court is not satisfied with the provisions regarding Claims Administration, such provisions may be amended without altering the release or payment issues in the Settlement Agreement.

20. The Parties further agree that if the Court makes amendments as outlined above, the parties consent to the Court making any necessary consequential amendments to the notice provisions in the Draft Judgment.

Release

21. Following final approval of the Settlement, the Defendant, upon payment by the Defendant of the Settlement Amount, will be released of or from all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, claims and demands whatsoever by the Plaintiff, all Class Members who did not timely opt out of the Action and Class Counsel, as more particularly described in the Draft Judgment.


Settlement Void if not Approved by Court

22. This Settlement Agreement is subject to Court approval as provided by the *Class Proceedings Act, 1992*. In the event the Court does not approve this Settlement Agreement, the Settlement Agreement shall have no further force and effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in the litigation of this Action.

Execution in Counterpart

23. This Settlement Agreement may be executed in counterpart.

Date: Nov 26/09

Per: 

Name:
Laidlaw Carriers Inc. (Defendant)
I have authority to bind the Corporation

Date: Nov 24/09

Per: 

Siskinds^{LLP}
Class Counsel

SCHEDULE A - PLAN OF DISTRIBUTION

DEFINED TERMS

2. For the purposes of this Plan of Distribution, the definitions set out in the Settlement Agreement, except as modified herein, apply to and are incorporated into this Plan of Distribution and, in addition, the following definitions apply:

- (a) **Category I Class Member:** shall be those Class Members who did not return to work with Laidlaw Carriers following their acceptance of the early retirement package offered by Laidlaw in May 1988.
- (b) **Category II Class Member:** shall be those Class Members who rescinded their Notice of Resignation following their acceptance of the early retirement package offered by Laidlaw in May, 1988, and who continued to work at Laidlaw Carriers.
- (c) **Class Member** shall be defined in accordance with the Settlement Agreement, but for greater certainty shall include the following individuals:

| | |
|-------------------------------------|------------------------------------|
| Brian Aitchison | Carl Anstey |
| Thomas Belore | Harry Bethel |
| Estate of Bruce Biggar (Shirley) | Jack Breen |
| David Clark | Estate of Gomer Cumper (Valerie) |
| Arthur Davies | Nelson Dickert |
| Estate of Hector Dignard (Rita) | Clarence Dilts |
| John Erb | Estate of Robert Fleischmann |
| Estate of James Gasparatto (Isobel) | Dan Greico |
| Harold Hamilton | Estate of Harold Haskett (Elaine) |
| John Mattie | Joseph Mattie |
| Donald Ross | William Sandham |
| David Schmidt | Estate of Kenneth Schweyer (Ethel) |
| Ross Shearer | Fred Shepherd |
| Charles Smith | Roy Smith |
| Estate of Steven Starchuk | Cecil Tofflemire |

CALCULATION OF LOSS

3. A Class Member's "Loss" shall be calculated as an aggregate of the difference between:

- (i) The valuation of the Class Member's entitlement to compensation under the deferred profit sharing Plan 3 as valued at April 30, 1988, and

- (ii) The actual payout received by the Class Member on acceptance of the early retirement package offered by Laidlaw in May, 1988.

And, the difference between:

- (iii) The valuation of the Class Member's entitlement to compensation under the Group Retirement Savings Plan as valued at April 30, 1988, and
- (iv) The actual payout received by the Class Member on acceptance of the early retirement package offered by Laidlaw in May, 1988.

CALCULATION OF COMPENSATION

4. A Class Member shall be compensated for his or her Loss, as calculated in accordance with paragraph 2, and based on the following formula:
 - (a) Each Category I class member shall be compensated based on 100% of his Loss (Category I Loss);
 - (b) Each Category II class member shall be compensated based on 75% of his Loss ("Category II Loss");
 - (c) The aggregate of Category I Losses and Category II Losses shall be added to determine the total class member losses ("Total Losses");
 - (d) Each class member's Loss shall be expressed as a percentage of Total Losses;
 - (e) Each class member's compensation shall be calculated by multiplying the Settlement Amount by the percentage determined in accordance with paragraph (d) above;
 - (f) Class member compensation will be subject to reduction by Class Counsel Fees, and Administrative Expenses as approved by the Court.

FINAL DISTRIBUTION

5. Class Counsel shall endeavour to locate each Class Member or, where the Class Member is deceased, the Estate Trustee for the deceased Class Member.
6. Compensation shall be distributed to Class Members directly in accordance with a Class Member's entitlement as described in paragraph 3, above, or where a Class Member is deceased, to the Class Member's estate Trustee as identified by Class Counsel.

Schedule B - Pre-Approval Notice
LIDLAW EARLY RETIREMENT CLASS ACTION

**NOTICE OF HEARING FOR APPROVAL
OF CLASS ACTION SETTLEMENT AGREEMENT**

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

TO CLASS MEMBERS:

This notice is to all persons, who were employees of Laidlaw Carriers Inc. ("Laidlaw") who, in 1988, accepted Laidlaw's early retirement offer or, where such person is deceased, to the executor of such person's estate.

If you are one of the 12 individuals whose claims against Laidlaw have already been resolved through the *Ford v. Laidlaw Carriers Inc.* action, or if you have already settled your dispute independently, you are automatically excluded from the Settlement and not eligible to participate.

1 PURPOSE OF THIS NOTICE

A class action was commenced in Ontario in 2001 claiming damages arising out of alleged misrepresentations by Laidlaw Carriers Inc. in respect of early retirement offers that were extended to employees with more than 10 years of service with the company in May 1988.

Laidlaw denies any wrongdoing or liability on its part; however, the parties have reached a proposed Settlement of the action, subject to obtaining the necessary Court approval. The Settlement is a compromise of disputed claims, and Laidlaw has agreed to pay the sum of \$750,000.00 to settle the claims of all Class Members, in full and final settlement of all claims, including, but not limited to, class counsel fees, disbursements, taxes, interest and administration costs in return for a release of claims and the dismissal of the action.

From the Settlement amount, Class Counsel will ask the Court to award Class Counsel fees and disbursements not to exceed 25% of the Settlement Amount, in order to compensate Class Counsel for work done on behalf of the Class.

A motion to approve the proposed Settlement will be heard by the Ontario Superior Court of Justice, on December 16, 2009, at 10:00 a.m. at the Court House at 361 University Ave, Toronto, Ontario, M5G 1T3.

Class Members who are in favour of the proposed Settlement do not need to appear at the hearing or take any other action at this time to indicate their intention to participate in the proposed Settlement.

Class Members who oppose the proposed Settlement are requested

to, not later than 2 p.m. on December 13, 2009, deliver a written objection to Class Counsel for delivery to the Court.

Any written objection should include the following information:

(a) the objector's name, address, telephone number, fax number and/or email address;

(b) a brief statement of the nature and reason for the objection;

(c) a representation that the objector is a Class Member, or the legal representative of such;

(d) whether the objector intends to appear at the hearing in person or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.

Should the Settlement receive final approval, further notices will be sent by direct mail, and published on the website of Class Counsel at www.classaction.ca.

2 DISTRIBUTION PROTOCOL

If the Settlement is approved by the Court, the Settlement payments will be paid out in accordance with the Claims Administration portion of the Settlement Agreement. Claims will be administered by Class Counsel.

A copy of the Settlement Agreement is available on Class Counsel's website at www.classaction.ca or by contacting Class Counsel directly as provided below.

3 RELEASE OF CLAIMS AND THE EFFECT ON OTHER PROCEEDINGS

If you are a Class Member, then you will automatically be included in the class and will be bound by the terms of the Settlement Agreement if approved by the Court. This means that you will not be able to bring or maintain any other claim or legal proceeding against Laidlaw in connection with the May 1988 early retirement offers.

4 LEGAL FEES

The Plaintiff retained the law firm of Siskinds^{LLP} to represent her and the class in the lawsuit, on the basis that Class Counsel were only to be paid if they were successful in the litigation. Class Counsel were responsible for funding all time and disbursements incurred in pursuing this litigation. The fees, expenses and taxes approved by the Court will be deducted from the total Settlement and will not exceed 25% of the Settlement Amount, or \$187,500.

5 CLASS COUNSEL

Questions about this Notice should NOT be directed to the Court.

For all inquiries relating to the Settlement Agreement, please contact Class Counsel at:

Siskinds LLP
680 Waterloo Street
London, ON
N6A 3V8

Attention: James D. Virtue
Tel: (519) 672-2121
Fax: (519) 672-6065
jim.virtue@siskinds.com

6 INTERPRETATION

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO
SUPERIOR COURT OF JUSTICE

SCHEDULE C - NOTICE OF SETTLEMENT APPROVAL

LIDLAW EARLY RETIREMENT CLASS ACTION

**NOTICE OF COURT APPROVAL
OF CLASS ACTION SETTLEMENT AGREEMENT**

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

**TO CLASS
MEMBERS:**

This notice is to all persons, who were employees of Laidlaw Carriers Inc. who, in 1988, accepted Laidlaw's early retirement offer or, where such person is deceased, to the executor of such person's estate.

If you are one of the 12 individuals whose claims against Laidlaw have already been resolved through the *Ford v. Laidlaw Carriers Inc.* action, or if you have already settled your dispute independently, you are automatically excluded from the Settlement and not eligible to participate.

**1 SUMMARY OF THE
SETTLEMENT
AGREEMENT**

The Ontario Superior Court of Justice has approved a settlement in a class proceeding lawsuit initiated in Ontario in which damages were claimed.

Without admitting liability, a sum of \$750,000.00 will be paid by Laidlaw Carriers Inc. to settle the claims of all Class Members. After the deduction of Class Counsel's Fees, and Administration Expenses, the Settlement will be distributed for the benefit of Class Members in accordance with the Distribution Plan.

**2 DISTRIBUTION
PROTOCOL**

Settlement payments will be paid out in accordance with the Claims Administration portion of the Settlement Agreement and the Distribution Plan. Claims will be administered by Class Counsel.

A copy of the Settlement Agreement is available on Class Counsel's website at www.classaction.ca.

3 OPTING OUT

All persons who come within the class definition are automatically included in the class unless they have timely opted out.

4 LEGAL FEES

The Ontario Superior Court of Justice has awarded legal fees, expenses and applicable taxes to Class Counsel in the total amount of \$X. Class Counsel were retained on a contingent basis such that they were only to be paid if they were successful in the litigation. Class Counsel was responsible for funding all disbursements incurred in pursuing this litigation. The fees, expenses, and taxes approved by the Court will be deducted from the Settlement fund.

5 CLASS COUNSEL

Questions about this Notice should NOT be directed to the Court.

For all inquiries relating to this Notice or the Settlement Agreement, please contact Class Counsel at:

Siskinds LLP
680 Waterloo Street
London, ON
N6A 3V8

Attention: James D. Virtue
Tel: (519) 672-2121
Fax: (519) 672-6065
jim.virtue@siskinds.com

6 INTERPRETATION

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO
SUPERIOR COURT OF JUSTICE

SCHEDULE D - ORDER (PRE-APPROVAL NOTICE)

Court File No. 37014/01 CP

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE MADAM) DAY, THE
)
JUSTICE LAX) DAY OF , 2009

B E T W E E N :

ETHEL SCHWEYER, Executrix of the
Estate of KENNETH R. SCHWEYER

Plaintiffs

- and -

LIDLAW CARRIERS INC. and INCOME TRUST COMPANY

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff, for an Order approving the Notice of Hearing for Approval of Class Action Settlement Agreement (the "Pre-Approval Notice") and approving the method of distribution of the Pre-Approval Notice, was heard this day at the Court House, 361 University Avenue, Toronto, Ontario.

ON BEING ADVISED that the parties have entered into a Settlement Agreement (the "Settlement Agreement"), which is subject to Court approval;

AND ON READING the materials filed, and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant:

1. **THIS COURT ORDERS** that it will consider whether to:

- (a) approve the Settlement Agreement;
- (b) approve the fees, disbursements and applicable taxes for class counsel; and
- (c) dismiss the Action,

at a hearing on a date to be fixed by the Court (the “Settlement Approval Hearing”).

2. **THIS COURT ORDERS** that as soon as possible the proposed Class Members shall be given notice of the Settlement Approval Hearing, substantially in the form of the Pre-Approval Notice attached hereto as Schedule “A” and substantially in the following manner:

- (a) by directly mailing the Pre-Approval Notice to each class member as identified or where appropriate a Class Member's Estate Trustee.
- (b) by Class Counsel posting the Pre-Approval Notice on its website at:
www.classaction.ca.

3. **THIS COURT ORDERS** that, at the Settlement Approval Hearing, the Court will consider any objections by class members to the proposed Settlement Agreement. Class members may, but are not required to, attend at the Settlement Approval Hearing. Written objections must be served and filed at least three days in advance of the Settlement Approval Hearing as described in the Pre-Approval Notice.

4. **THIS COURT ORDERS** that any written objections delivered in accordance with paragraph 3 shall include the following:
- (a) the objector's name, address, telephone number, fax number and/or email address;
 - (b) a brief statement of the nature of and reason for the objection;
 - (c) a representation that the objector was a member of the Class or represents a member of the Class, and the authority by which such representation is made;
 - (d) a statement as to whether the objector intends to attend at the Settlement Approval Hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.
5. **THIS COURT ORDERS** that the time for service and filing of the motion record concerning approval of the Pre-Approval Notice is hereby abridged.

The Honourable Madam Justice Lax

SCHEDULE E - JUDGMENT (SETTLEMENT APPROVAL)

Court File No. 37014/01 CP

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE MADAM) DAY, THE
)
JUSTICE LAX) DAY OF DECEMBER, 2009

B E T W E E N :

ETHEL SCHWEYER, Executrix of the Estate of Kenneth R. Schweyer,
on behalf of themselves, and on behalf of all others similarly situated

Plaintiffs

- and -

LIDLAW CARRIERS INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

J U D G M E N T

THIS MOTION, made by the Plaintiff for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992* in accordance with the terms of the Settlement Agreement dated November 2009 (the "Settlement Agreement"), and made by Class Counsel for approval of their fees, was heard this day, at the Court House, 361 University Avenue, Toronto, Ontario.

ON READING the affidavits of Ethel Schweyer and Brian Aitchison, sworn, the affidavit of James D. Virtue, sworn, and on reading the Settlement Agreement, attached hereto as Schedule "A", and on hearing the submissions of counsel for the parties,

AND ON BEING ADVISED that the Plaintiff and Defendant consent to this judgment and there have been no written objections to the proposed settlement,

AND without any admission of liability on the part of the Defendant, having denied liability,

AND ON BEING ADVISED that the Plaintiff and Defendant have entered into the Settlement Agreement to avoid the expense, inconvenience, and burden of litigation, to put to rest this controversy and to avoid the risks and expense inherent in uncertain litigation,

Settlement Approval

1. **THIS COURT ORDERS** that the proposed Settlement of this action set out in the Settlement Agreement, filed, is a fair, reasonable and adequate settlement of claims, is in the best interests of the Class and is hereby approved.
2. **THIS COURT ORDERS** that the Settlement amount of \$750,000.00 is approved.
3. **THIS COURT ORDERS** that nothing in this Judgment, or in the Settlement being implemented by this Judgment, should be taken as constituting an admission of liability on the part of the Defendant.

Claims Administration

4. **THIS COURT ORDERS** that the monies allocated for the payment of claims be administered by Class Counsel as described in the Settlement Agreement.
5. **THIS COURT ORDERS** Class Counsel to administer the settlement funds in accordance with the terms of the Settlement Agreement and the Plan of Distribution attached thereto as Schedule "A".

Schedule for Payment of Settlement Funds

6. **THIS COURT ORDERS** that within 7 days after the date of this Judgment, or January 8, 2010, whichever is later, the Defendant pay the sum of \$750,000.00 to Class Counsel, in trust, to be applied to payment of claims pursuant to the Settlement Agreement, and payment of legal fees, disbursements, and GST.

7. **THIS COURT ORDERS** that:
 - (a) Class Counsel shall hold in trust and invest the amounts received and may commingle the funds with other monies held by it for the purpose of investment provided that separate accounting records shall be maintained of all dealing with the funds;

 - (b) with respect to investment standards, s. 27 of the *Trustee Act* R.S.O. 1990 c. T23 as amended shall apply *mutatis mutandis*;

 - (c) Class Counsel shall distribute Settlement Funds to Class Members in accordance with the Plan of Distribution, attached as Schedule A to the Settlement Agreement;

Notice

8. **THIS COURT ORDERS** that the Class Members shall be given notice of the approval of the Settlement Agreement substantially in the form of the Notice attached as Schedule “B” to this Judgment (the “Notice”) and substantially in the following manner:
 - (a) by directly mailing the Notice to each class member or estate representative at their last known address;

- (b) by Class Counsel placing a copy of the Notice on its website at www.classaction.ca until the Settlement funds are paid out to class members in the event that the settlement is approved, after which time it may be removed from the website.

Opting Out

9. **THIS COURT ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, are binding upon each Class Member who did not timely opt out of the action in accordance with the terms of Certification Order made by the Court on February 22nd 2000.

Release of Claims

10. **THIS COURT ORDERS** that the Defendant and its parent and affiliates, including their present and former officers, directors, agents, servants, employees, successors, heirs, executors, estate trustees, administrators and assigns, are hereby irrevocably, fully and finally released from all claims made in this proceeding. In the event that any of the Plaintiff, Class Members who did not opt out and/or Class Counsel should hereafter make any claim or demand or commence or threaten to commence any action, proceeding or make any claim against the Defendant for or by reason of any cause, matter or thing that was raised or could have been raised in this proceeding, this Judgment may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

Jurisdiction of the Court

11. **THIS COURT ORDERS** that the Honourable Madam Justice Lax, or her successor as case management judge for this action, shall continue to oversee the case and may, if need be, amend this Judgment or make any case management order permitted by the

Class Proceedings Act, 1992 or the rules of court. However, the Court does not have jurisdiction to revive any claims released under paragraph 10 and may not require the Defendant to pay any additional moneys or incur any additional expenses.

Dismissal of the Action

12. **THIS COURT ORDERS** that the action is dismissed.

The Honourable Madam Justice Lax