

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

OMERS ADMINISTRATION CORPORATION and PETER McCANN

Plaintiffs

– and –

CP SHIPS LIMITED, RAYMOND MILES,
FRANK HALLIWELL and IAN WEBBER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC

(Class Action)
SUPERIOR COURT

NO.: 200-06-000042-047

ANH D. NGUYEN and CHARLINE DUGUAY
Petitioners

v.

CP SHIPS LIMITED, RAYMOND MILES, FRANK
HALLIWELL and IAN WEBBER
Respondents

No. S0458855
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

EARL DOWNEY

Plaintiff

– and –

CP SHIPS LIMITED, RAYMOND MILES, FRANK HALLIWELL, and IAN WEBBER

Defendants

Brought under the *Class Proceedings Act*

SETTLEMENT AGREEMENT
(October 19th, 2009)

INDEX

RECITAL.....	5
SECTION 1 - DEFINITIONS.....	5
1.1 Defined Terms	5
SECTION 2 - SETTLEMENT CONSIDERATION.....	11
2.1 Payment of the Settlement Amount.....	11
SECTION 3 - RELEASES AND DISMISSALS	12
3.1 Release of Defendants.....	12
3.2 No Further Claims	13
3.3 Reciprocal Releases	13
3.4 Dismissal of the Actions	13
SECTION 4 - MANAGEMENT OF THE SETTLEMENT AMOUNT	14
4.1 Interim Investment of the Settlement Amount	14
4.2 Taxes on Interest.....	14
SECTION 5 - COURT APPROVALS	15
5.1 Best Efforts.....	15
5.2 Pre-Approval Motions.....	15
5.3 Dissemination of Pre-Approval Notice.....	15
5.4 Costs of Pre-Approval Notice	16
5.5 Approval Motions.....	16
5.6 Approval Notices	16
5.7 Information and Assistance from the Defendants	16
5.8 Dismissal of the B.C. Action.....	17
5.9 Notice of Termination.....	17
SECTION 6 - ADMINISTRATION AND IMPLEMENTATION.....	17
6.1 Appointment of the Administrator.....	17

6.2	Duties of the Administrator.....	17
6.3	Investment of the Settlement Amount	18
6.4	Payments from the Settlement Amount	18
6.5	Claims Submission Process.....	18
6.6	Conclusion of Administration	19
6.7	Disputes Concerning the Decisions of the Administrator.....	19
SECTION 7 - OPTING OUT.....		20
7.1	Opt Out Procedure	20
7.2	Notification of the Number of Opt Outs	21
SECTION 8 - TERMINATION OR FAILURE TO OBTAIN APPROVALS		21
8.1	The Defendants' Right to Terminate.....	21
8.2	Class Counsel's Right to Review	22
8.3	Effect of Termination Generally.....	23
8.4	Disputes Relating to Termination.....	23
8.5	Report on Accounts Following Termination.....	23
SECTION 9 - CLASS COUNSEL FEES		24
9.1	Motion for Approval of Class Counsel Fees	24
9.2	Payment of Class Counsel Fees.....	24
SECTION 10 - NO ADMISSION OF WRONGDOING		25
10.1	No Admission of Liability.....	25
10.2	Agreement Not Evidence	25
SECTION 11 - MISCELLANEOUS.....		25
11.1	Entire Agreement.....	25
11.2	Translation of Settlement Documents.....	26
11.3	Ongoing Jurisdiction.....	26
11.4	Motions for Directions	26

11.5 Interpretation, etc.....	27
11.6 Binding Effect	27
11.7 Survival.....	27
11.8 Negotiated Agreement	28
11.9 Notice.....	28
11.10 Authorized Signatures.....	29
11.11 Acknowledgements.....	29
11.12 Counterparts	29
SCHEDULE “A” – DISTRIBUTION PROTOCOL.....	31
SCHEDULE “B” – PLAN OF NOTICE	36
SCHEDULE “C” – PRE-APPROVAL NOTICE	38
SCHEDULE “D” – ONTARIO APPROVAL ORDER	42
SCHEDULE “E” – QUÉBEC APPROVAL ORDER.....	45
SCHEDULE “F” – PUBLICATION NOTICE.....	48
SCHEDULE “G” – LONG-FORM NOTICE	50

RECITAL

- I. The Parties intend to and hereby do finally resolve the Actions, and the claims that are or could have been asserted in them, subject to the approval of the Approving Courts, without prejudice or admission of liability.

FOR VALUE RECEIVED, the Parties agree as follows:

SECTION 1 - DEFINITIONS

1.1 Defined Terms

- (A) In this Settlement Agreement, including the Recitals and Schedules hereto:

- (1) *Actions* means the Ontario Action, the Québec Action and the B.C. Action.
- (2) *Administration Expense* and *Administration Expenses* means, individually or collectively, all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement Agreement including the Notice Expenses, and the cost of publishing and delivering the Approval Notices, including the expenses reasonably and actually incurred by Broadridge in connection with the distribution of the Long-Form Approval Notice, the fees, disbursements and taxes paid to the Administrator, and any other expenses ordered by the Courts which shall all be paid from the Settlement Amount.
- (3) *Administrator* means the third-party firm selected at arm's length by Class Counsel and appointed by the Approving Courts to administer the Settlement Amount, and any employees of such firm.
- (4) *Administrator's Account* means an Escrow Account overseen by the Administrator.
- (5) *Approval Motion* and *Approval Motions* means, individually or collectively, as the case may be, a motion brought by the Plaintiffs before each of the Approving Courts for orders:
 - (i) approving the Settlement Agreement and the Claims Deadline; and
 - (ii) appointing the Administrator.

which shall generally be in accordance with the Approval Orders set out in Schedules "D" and "E",.

- (6) *Approval Notices* means the Publication Notice and the Long-Form Notice, attached hereto as Schedules "F" and "G", respectively, as may be amended and approved by the Approving Courts.

- (7) **Approval Order** and **Approval Orders** means, individually or collectively, as the case may be, the order(s) sought to be issued by the Approving Courts as a result of the Approval Motions, substantially in the forms attached hereto as Schedules “D” and “E”, respectively.
- (8) **Approving Courts** means the Ontario Court and the Québec Court.
- (9) **Authorized Claimant** means any Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator postmarked on or before the Claims Deadline, and who the Administrator has determined is eligible to receive compensation from the Net Settlement Amount.
- (10) **Broadridge** means Broadridge Financial Solutions Inc., a technology-based outsourcing provider to the global financial industry, retained by Class Counsel to liaise with brokerage firms and identify their Class Member clients and facilitate distribution of the Long-Form Approval Notice to the Class Members who are identified.
- (11) **B.C. Action** means the action titled *Downey v. CP Ships Limited, et al.* commenced in the B.C. Court under Vancouver Registry No. S0458855.
- (12) **B.C. Court** means the Supreme Court of British Columbia.
- (13) **Claim Form** means the form approved by the Courts and which, when completed and submitted in a timely manner to the Administrator, enables a Class Member to apply for compensation pursuant to the Settlement Agreement.
- (14) **Claims Deadline** means the last date by which a Class Member may mail or submit a Claim Form and all required supporting documentation to the Administrator in order to be eligible for compensation from the Net Settlement Amount, which shall be the date falling ninety (90) days after the date on which the Publication Notice is first published.
- (15) **Class** and **Class Member(s)** means the Ontario Class and the Québec Class.
- (16) **Class Counsel** means Siskinds ^{LLP} and Siskinds Desmeules s.e.n.c.r.l.
- (17) **Class Counsel Fees** means the fees, disbursements, GST, QST and other applicable taxes or charges of Class Counsel, as approved by the Courts and paid from the Settlement Amount.
- (18) **Class Period** means the period from and including January 29, 2003 to and including August 9, 2004.
- (19) **Courts** means the Ontario Court, the Québec Court and the B.C. Court.

- (20) ***CP Ships*** means the defendant/respondent CP Ships Limited, a corporation incorporated under the laws of the province of New Brunswick and having a registered office in the city of Saint John, New Brunswick.
- (21) ***Defendants*** means the defendants/respondents in the Actions, namely, CP Ships and the Individual Defendants.
- (22) ***Distribution Protocol*** means the plan for distribution of the Net Settlement Amount to Authorized Claimants, generally in accordance with the plan set out in Schedule "A", or such other plan of distribution as may be approved by the Courts.
- (23) ***Effective Date*** means the date upon which the Approval Orders become Final.
- (24) ***Eligible Notes*** means the 4% Convertible Senior Subordinated Notes due 2024, which were issued and sold by CP Ships on February 24, 2004, on a private placement basis, at an issue price of \$1,000 per Eligible Note. The date of purchase or acquisition shall be the trade date not the settlement date.
- (25) ***Eligible Securities*** means the Eligible Shares and the Eligible Notes, reflected in units of common shares after conversion of any Eligible Notes to 39.6542 common shares per \$1,000 principal amount of Eligible Notes.
- (26) ***Eligible Shares*** means common shares of CP Ships purchased or acquired during the Class Period. The date of purchase or acquisition shall be the trade date not the settlement date.
- (27) ***Escrow Account*** means a liquid money market account or equivalent security with a rating equivalent to, or better than that of an interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario.
- (28) ***Excluded Person*** and ***Excluded Persons*** means (1) the Released Parties; (2) all members of the families of the Individual Defendants; (3) all entities over which any of the foregoing persons or entities has or had during the Class Period any legal or de facto control; and (4) any person or entity who is included in the settlement class in the U.S. Action, and who has filed a claim and received compensation in respect of the settlement of the U.S. Action.
- (29) ***Exempt Québec Members*** means entities resident in the province of Québec who are precluded from being a member of a group in a class action under Article 999 of the *Code de Procédure Civile du Québec*, L.R.Q., c. C-25, as amended, namely: legal persons established for a private interest, partnership or association, who employed more than 50 persons at any time during the period from August 31, 2003 to August 31, 2004, and who otherwise fit within the Québec Class.
- (30) ***Final*** when used in relation to:
 - (i) the Settlement Agreement, means that the Effective Date has passed, that the B.C. Court has issued an order dismissing the B.C. Action, and that

any right of termination has either become inoperative and of no force and effect or been waived; or

- (ii) a court order or judgment, means that all rights of appeal from such order or judgment, if any right of appeal lies therein, have expired, or have been exhausted and the ultimate court of appeal to which an appeal (if any) was taken has upheld such order or judgment.

- (31) ***Individual Defendants*** means Raymond Miles, Frank Halliwell and Ian Webber.
- (32) ***Long-Form Notice*** means the form of notice attached as Schedule “G” hereto, or such other form of notice as may be approved by the Approving Courts for the purpose of providing Class Members with detailed information regarding: (i) the certification of the Ontario Action and the granting of authorization of the Québec Action; (ii) the Approving Courts’ approval of the settlement provided for in this Settlement Agreement; (iii) the manner in which Class Members may submit a claim; and (iv) the Approving Courts’ approval of the Class Counsel Fees.
- (33) ***Net Settlement Amount*** means the Settlement Amount plus any interest accruing thereon and less: (i) any Administrative Expenses actually expended; and (ii) Class Counsel Fees.
- (34) ***Newspapers*** means the Globe and Mail (National Edition), La Presse and Le Journal de Québec.
- (35) ***Notice Expense Cap*** means CAD \$125,000, which is the maximum amount that may be paid from the Settlement Amount, prior to the date falling ten (10) business days after issuance of the latter of the Approval Orders, on account of the Notice Expenses. The Court may increase the Notice Expense Cap if, despite the good faith efforts of the Parties to minimize expenses, it appears that reasonable costs and expenses will be greater than CAD \$125,000.
- (36) ***Notice Expense*** and ***Notice Expenses*** means, individually or collectively, all of the reasonable costs and expenses of providing the Pre-Approval Notice to Class Members, including the expenses reasonably and actually incurred by Broadridge, or the Administrator, as the case may be, locating and identifying Class Members and translating the Settlement Agreement.
- (37) ***Ontario Action*** means the action titled *OMERS Administration Corporation, et al. v. CP Ships Limited, et al.* commenced in the Ontario Court under Court File No. 46098 CP.
- (38) ***Ontario Class and Ontario Class Members*** means (i) all individuals who were Canadians citizens or who were resident or domiciled in Canada and (ii) all entities who were headquartered in Canada or were organized under the laws of Canada or a Canadian province, at any time during the Class Period, and who acquired securities of CP Ships during the Class Period, whether over the Toronto Stock Exchange or the New York Stock Exchange, or under a prospectus or an offering memorandum and who held some or all of those securities on August 9,

2004, except the Excluded Persons and members of the Québec Class, but specifically including the Exempt Québec Members.

- (39) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (40) ***Opt-Out Class Members*** means those Class Members who opt out from the Class in the manner provided in subsection 7.1(B), herein.
- (41) ***Opt-Out Deadline*** means the last date by which Class Members may mail or submit an Opt-Out Form and all required supporting documentation to the Administrator in order to exclude themselves from the Class, which shall be the date falling sixty (60) days after the date on which the Pre-Approval Notice is first published.
- (42) ***Opt-Out Form*** means the form to be approved by the Approving Courts which, when completed and submitted in a timely manner to the Administrator, and where applicable to the clerk of the Québec Court, excludes a Class Member from the Class.
- (43) ***Opt-Out Review Period*** means the fifteen (15) calendar day period following Class Counsel's receipt of the Termination Notice.
- (44) ***Opt-Out Threshold*** means the requisite number of Eligible Securities held by Opt-Out Class Members, which, if exceeded, gives rise to CP Ships' option to terminate the Settlement Agreement pursuant to subsection 8.1(A), herein, as particularized in the Opt-Out Threshold Agreement.
- (45) ***Opt-Out Threshold Agreement*** means the agreement which sets the Opt-Out Threshold which shall be kept confidential by the Parties and their counsel and shall be shown to the Approving Courts, but shall not otherwise be disclosed, unless disclosure is ordered by one of the Courts.
- (46) ***Party*** and ***Parties*** means, individually or collectively, the Plaintiffs and the Defendants.
- (47) ***Plaintiffs*** means, collectively, the plaintiffs in the Ontario Action, OMERS Administration Corporation and Peter McCann, the petitioners in the Québec Action, Anh D. Nguyen and Charline Duguay, and the plaintiff in the B.C. Action, Earl Downey.
- (48) ***Plan of Notice*** means the plan for dissemination of the Pre-Approval Notice and Approval Notices, generally in accordance with the plan set out in Schedule "B", or such other plan of dissemination as approved by the Courts.
- (49) ***Pre-Approval Motion*** and ***Pre-Approval Motions*** means, individually or collectively, as the case may be, a motion brought by the Plaintiffs before each of the Approving Courts for orders:
 - (i) certifying the Ontario Action and the Québec Action, as the case may be;

- (ii) setting dates for the hearing of the Approval Motions;
 - (iii) approving the Opt-Out Deadline; and
 - (iv) authorizing the publication of the Pre-Approval Notice.
- (50) ***Pre-Approval Notice*** means the notice to the Class of the Approval Motions substantially in the form set out in Schedule “C”, as may be amended and approved by the Courts.
- (51) ***Pre-Approval Order*** and ***Pre-Approval Orders*** means, individually or collectively, as the case may be, the order(s) sought to be issued by the Approving Courts at the Pre-Approval Motions.
- (52) ***Publication Notice*** means the form of notice attached as Schedule “F” hereto, or such other form of notice as may be approved by the Approving Courts for the purpose of providing Class Members with summary information regarding: (i) the certification of the Ontario Action and the granting of authorization of the Québec Action; (ii) the Courts’ approval of the settlement provided for in this Settlement Agreement; (iii) the manner in which Class Members may submit a claim; and (iv) the Courts’ approval of Class Counsel Fees.
- (53) ***Québec Class and Québec Class Members*** means all natural persons, corporations, partnerships or associations, normally residing or domiciled in Canada at all times relevant to the Québec Action, who purchased or otherwise acquired, directly or indirectly, or through mutual funds, during the Class Period, shares, certificates or other securities of CP Ships and have not disposed of same on or before August 9, 2004, except: (1) the Excluded Persons; and (2) Exempt Québec Class Members.
- (54) ***Québec Court*** means the Québec Superior Court.
- (55) ***Québec Action*** means the motion for authorization to institute a class action titled *Nguyen, et al. v. CP Ships Limited, et al.* commenced in the Québec Court under Court File No. 200-06-000042-047.
- (56) ***Released Parties*** means the Defendants and the current, former and future officers, directors, partners, members, parents, subsidiaries, administrators, affiliates, employees, agents, attorneys, underwriters, insurers, representatives, heirs, successors in interest and assigns of any Defendant.
- (57) ***Settled Claim*** and ***Settled Claims*** means any and all claims, debts, demands, rights or causes of action or law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and unknown claims, that (i) have been asserted in the Actions by the Plaintiffs and/or the Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Plaintiffs and/or the Class Members or any of them against any of the Released Parties which arise out of or

are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the pleadings in the Actions, and relate to the purchase, acquisition, retention, or sale of the securities of CP Ships during the Class Period.

- (58) *Settlement Agreement* means this agreement, including the Recitals and Schedules hereto.
- (59) *Settlement Amount* means CAD \$12.8 million, plus interest accrued thereon from the date it is deposited into the Escrow Account.
- (60) *Termination Notice* means the written notice through which the Defendants indicate their intention to exercise their discretion to terminate the Settlement Agreement pursuant to subsection 8.1(A), herein.
- (61) *Unknown Claims* means existing claims for damages and losses that are presently unknown or unanticipated, including any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or equity, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favour at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”
- (62) *U.S. Action* means the action titled *In Re CP Ships Ltd. Securities Litigation* commenced in the United States District Court for the Middle District of Florida under Court File No. 8:05-MD-1656-T-27TBM.

SECTION 2 - SETTLEMENT CONSIDERATION

2.1 Payment of the Settlement Amount

- (A) CP Ships shall cause the Settlement Amount to be paid into the Escrow Account described in subsection 4.1 below within ten (10) business days of the issuance of the latter Pre-Approval Order.
- (B) CP Ships shall pay the Settlement Amount in full and final settlement of the Settled Claims. No further sum shall be sought from or paid by or on behalf of the Released Parties.
- (C) Provided that the Settlement Agreement is approved by the Approving Courts none of the Settlement Amount shall be returned to the Defendants and/or such other persons or entities funding the settlement.

SECTION 3 - RELEASES AND DISMISSALS

3.1 Release of Defendants

- (A) Upon the date the Settlement Agreement becomes Final, the Plaintiffs and all Class Members who do not opt out from the Class, fully, finally and forever settle and release the Released Parties from the Settled Claims.
- (B) With respect to any and all Settled Claims, the Parties stipulate and agree that upon the date the Settlement Agreement becomes Final, the Plaintiffs and those Class Members who do not opt out from the Class shall be deemed to have waived, and by operation of the Approval Orders shall have expressly waived the Unknown Claims.
- (C) Upon the date of this Settlement Agreement is executed, Allen Germain shall relinquish all rights to seek further review from the decision of the United States Court of Appeals for the Eleventh Circuit, dated August 13, 2009, including the right to seek a rehearing and rehearing *en banc* by the Eleventh Circuit and review on a writ of certiorari by the United States Supreme Court. By relinquishing such rights, Allen Germain and the Plaintiffs understand and recognize that the order of the Honourable James D. Whittemore approving the settlement of *In Re CP Ships Ltd. Securities Litigation* (Court File No. 8:05-MD-1656-T-27TBM), dated October 21, 2008, will become final.
- (D) The Parties are aware that they may, after the date of this Settlement Agreement, discover claims or facts in addition to or different from those they now know or believe to be true with respect to the Settled Claims. Nevertheless, it is the intention of the Parties as of the date hereof to fully, finally and forever settle and release all Settled Claims as to all Released Parties, including the Unknown Claims. In furtherance of this intention, the releases given herein are and will remain in effect as full and complete mutual releases of Settled Claims as to all Released Parties, notwithstanding the discovery or existence of any additional or different facts relative to them. Each Party assumes the risk of any mistake in executing this Settlement Agreement and furnishing the releases set forth herein. Without limiting the generality of the preceding sentences in this section, the Parties waive and relinquish any right or benefit that such Party has or might have under any provision of statute or common law or equity that might provide that a release does

not extend to claims that a party does not know or suspect to exist at the time of execution of the release that, if known, would or might have materially affected the decision to give the releases outlined herein.

3.2 No Further Claims

- (A) Upon the date the Settlement Agreement becomes Final, the Plaintiffs and all Class Members who do not opt out from the Class, shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada, or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Defendant or any other person who may claim contribution or indemnity from any Defendant in respect of any Settled Claim or any matter related thereto, and the party bringing such action, suit, cause of action, claim or demand hereby agrees to indemnify and save the Released Parties harmless with respect to any such claim.

3.3 Reciprocal Releases

- (A) The Defendants, on behalf of themselves and the Released Parties, shall release the Plaintiffs and those Class Members who do not opt out from the Class and Class Counsel from any claims or costs relating to the institution, prosecution or settlement of the Actions (except for claims to enforce this Settlement Agreement).
- (B) The Plaintiffs and the Class Members who do not opt out from the Class shall also release the Released Parties from any claims relating to the institution, prosecution or settlement of the Actions (except for claims to enforce the settlement).

3.4 Dismissal of the Actions

- (A) Except as otherwise provided in this Settlement Agreement, the Ontario Action shall be dismissed without costs and with prejudice and on the merits upon the date the Settlement Agreement becomes Final, and in Québec, this event shall put an end to the Québec Action by way of a transaction in accordance with Article 2631 of the *Civil Code of Québec*, S.Q. 1991, c.64, as amended. The B.C. Action shall be dismissed as provided in section 5.8.

SECTION 4 - MANAGEMENT OF THE SETTLEMENT AMOUNT

4.1 Interim Investment of the Settlement Amount

- (A) Except in accordance with subsection 4.1(B), Siskinds^{LLP} and ThorntonGroutFinnigan^{LLP} shall hold the Settlement Amount in an Escrow Account and shall not pay out any amount from the Escrow Account without an order from either or both of the Approving Courts, as the case may be, made by motion on notice to the Parties.
- (B) Siskinds^{LLP} and ThorntonGroutFinnigan^{LLP} shall hold the Settlement Amount in the Escrow Account until:
- (i) such time as Notice Expenses become payable, at which time Siskinds^{LLP} may settle such Notice Expenses from the Settlement Amount up to the Notice Expense Cap;
 - (ii) such time as CP Ships elects to terminate the Settlement Agreement in accordance with subsection 8.1(A) herein, in which case the Settlement Amount, including any interest thereon, that remains after the payment of any Notice Expenses incurred to date, shall be returned to the Defendants by the Administrator within seven (7) days of such election;
 - (iii) ten (10) days following the issuance of the latter of the Approval Orders, and upon such date Siskinds^{LLP} may settle any outstanding Administration Expenses;
 - (iv) the Effective Date, and within ten (10) business days of the Effective Date, Siskinds^{LLP} shall pay any portion of the Settlement Amount, including any interest accrued thereon, that remains after payment of Class Counsel Fees and any Administration Expenses incurred to date, to the Administrator for deposit into the Administrator's Account; or
 - (v) such time as the Approving Court(s) order(s) dismissing the Approval Motion(s), as a result of the Settlement Agreement not being approved, become(s) Final, and within seven (7) days of such date, the Settlement Amount, including any interest accrued thereon, that remains after payment of any Notice Expenses incurred to date, shall be returned to the Defendants by Siskinds^{LLP}.

4.2 Taxes on Interest

- (A) Except as provided in subsection 4.2(B), below, all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be the Class' responsibility and shall

be paid by Siskinds ^{LLP} or the Administrator, as appropriate, from the Settlement Amount, or by the Class Members as the Administrator considers appropriate.

- (B) If Siskinds ^{LLP}, or the Administrator, as the case may be, returns any portion of the Settlement Amount plus accrued interest to the Defendants, pursuant to the terms of this Settlement Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Defendants.

SECTION 5 - COURT APPROVALS

5.1 Best Efforts

- (A) The Parties shall use their best efforts to implement the terms of the Settlement Agreement and to secure the Approving Courts' prompt approval of the Settlement Agreement and dismissal with prejudice of the Actions.
- (B) The Parties agree to hold in abeyance all proceedings in the Actions, other than the motions provided for in the Settlement Agreement, until the date the Settlement Agreement becomes Final, or the termination of the Settlement Agreement, whichever occurs first.

5.2 Pre-Approval Motions

- (A) Promptly following the execution of the Settlement Agreement, Class Counsel shall file the Pre-Approval Motions with the Approving Courts, and shall seek to obtain the Pre-Approval Orders. For the purpose of this Settlement Agreement only, the Defendants will consent to the issuance of the Pre-Approval Orders.

5.3 Dissemination of Pre-Approval Notice

- (A) Following the hearing and determination of the last Pre-Approval Motions, Class Counsel shall cause the Pre-Approval Notice to be published in the Newspapers in accordance with the Plan of Notice, subject to any amendment or additional direction of the Approving Courts.

5.4 Costs of Pre-Approval Notice

- (A) The costs associated with Notice Expenses up to the Notice Expense Cap shall be paid from the Settlement Amount without further approval of the Courts.

5.5 Approval Motions

- (A) Class Counsel shall file the Approval Motions with the Approving Courts within sixty (60) days of the publication of the Pre-Approval Notice, and in any event no later than ninety (90) days from the issuance of the latter of the Pre-Approval Orders, and shall seek to obtain the Approval Orders. For the purpose of this Settlement Agreement only, the Defendants will consent to the issuance of the Approval Orders.

5.6 Approval Notices

- (A) The Plaintiffs shall request approval from the Approving Courts of the form and content of the Approval Notices at the Approval Motion(s).
- (B) Class Counsel shall cause the Approval Notices to be published and distributed to Class Members in accordance with the Plan of Notice, subject to any amendment or additional direction of the Courts.

5.7 Information and Assistance from the Defendants

- (A) Within seven (7) business days of the execution of this Settlement Agreement, the Defendants shall:
 - (i) provide Class Counsel with any computerized list still in existence of the names and addresses of CP Ships' last known registered shareholders on the record of CP Ships' transfer agent prior to the acquisition of CP Ships by TUI Beteiligungsgesellschaft mbH in 2005; and
 - (ii) authorize Broadridge, or the Administrator, as the case may be, to solicit information from brokerage firms concerning the names and addresses of all individuals and entities identified by the brokerage firms as having a beneficial interest in the Eligible Securities, for the sole purposes of identifying putative Class Members, providing notice to the Class Members so identified and allowing the most cost effective bidding for the claims administration retainer.

- (B) CP Ships agrees to make reasonable efforts to answer any reasonable inquiry from Class Counsel and/or the Administrator required for the administration and implementation of the Settlement Agreement and the Distribution Protocol, and will designate a person to whom Class Counsel, or the Administrator, may address such inquiries.
- (C) Class Counsel and/or the Administrator may use the information obtained in accordance with Subsections 5.7(A) and (B), above, for the purpose of delivering the Approval Notices, or otherwise for the purpose of administering and implementing the Settlement Agreement and the Distribution Protocol, but for no other purpose whatsoever.

5.8 Dismissal of the B.C. Action

- (A) Within fifteen (15) days of the issuance of the latter of the Approval Orders Class Counsel shall file a motion in the B.C. Court to dismiss the B.C. Action, without costs and with prejudice.

5.9 Notice of Termination

- (A) If the Settlement Agreement is terminated, as provided in subsection 8.1(A), or is not approved by the Courts, a notice of the termination of the Settlement Agreement shall be published and distributed to the Class Members if the Approving Courts so direct. Any such notice shall be published and distributed to the Class Members in a form and manner approved by the Approving Courts and the cost of so doing shall be paid as directed by the Approving Courts.

SECTION 6 - ADMINISTRATION AND IMPLEMENTATION

6.1 Appointment of the Administrator

- (A) Subject to approval of the Approving Courts, Class Counsel shall select a firm to perform, the administration of the Settlement Agreement.

6.2 Duties of the Administrator

- (A) The Administrator shall administer and distribute the Settlement Amount in accordance with the powers, rights, duties and responsibilities set out in the Settlement Agreement

and in the Distribution Protocol and, with respect to individuals and entities who are residents of Quebec, in accordance with the regulation respecting the percentage withheld for the *Fonds d'aide aux recours collectifs*.

6.3 Investment of the Settlement Amount

- (A) The Administrator shall hold the Settlement Amount, or any part thereof, in the Administrator's Account.
- (B) The Administrator's Account shall be established and maintained in a manner that minimizes transactional costs and risks and maximizes the amount available for distribution.

6.4 Payments from the Settlement Amount

- (A) The Administrator shall not pay out any amount from the Administrator's Account until after the Settlement Agreement becomes Final, namely, after the Settlement Agreement has been approved by both Approving Courts and the B.C. Action has been dismissed, and upon the issuance of an order approving such payment by the appropriate Approving Court, made by motion on notice to the Parties.
- (B) The Administrator shall hold the Net Settlement Amount in the Administrator's Account until the Settlement Agreement becomes Final and the appropriate court order is issued, as provided in subsection 6.4(A), above, after which time the Administrator shall distribute the Net Settlement Amount, *pro rata*, to each Authorized Claimant in proportion to his/her/its claim as recognized in accordance with the Distribution Protocol.

6.5 Claims Submission Process

- (A) In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Distribution Protocol, on or before the Claims Deadline, and any Class Member who fails to do so shall not share in any distribution made in accordance with the Distribution Protocol unless the Approving Court orders otherwise.

- (B) In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the communication or the Claims Deadline to rectify the deficiency. Any person who does not respond to such a request for information within the timeframe noted above shall be forever barred from receiving any payments pursuant to the Settlement Agreement, subject to any order of the Approving Courts to the contrary, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement and the releases contained herein.

6.6 Conclusion of Administration

- (A) Following the Claims Deadline, and in accordance with the terms of the Settlement Agreement, the Distribution Protocol, and such further approval(s) or order(s) of the Approving Courts as may be necessary, or as circumstances may require, the Administrator shall distribute the Net Settlement Amount to Authorized Claimants.
- (B) If the Administrator's Account retains a positive balance after one hundred eighty (180) days from the date of distribution of the Net Settlement Amount (whether by reason of tax refunds, un-cashed cheques or otherwise), the Administrator shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. Any balance below CAN\$40,000.00 which still remains thereafter shall be donated as follows: 75% to the Small Investor Protection Association and 25% to the *Fonds d'Aide aux Recours Collectifs*.
- (C) Upon the conclusion of the administration, or at such other time as the Ontario Court directs, the Administrator shall report to the Ontario Court on the administration and shall account for all monies it has received, administered and disbursed and may obtain an order from the Ontario Court discharging it as Administrator.

6.7 Disputes Concerning the Decisions of the Administrator

- (A) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision, in writing in accordance with the Distribution Protocol, to either:

- (i) the Ontario Court, if they are an Ontario Class Member; or
- (ii) the Québec Court if they are a Québec Class Member.

A decision of either court shall be binding and no further appeal shall lie therefrom.

- (B) No action shall lie against Class Counsel, the Administrator or the Defendants for any decision made in the administration of the Settlement Agreement and Distribution Protocol or with any other order(s) or judgments(s) of the Courts, without an order from the Approving Courts authorizing such an action.

SECTION 7 - OPTING OUT

7.1 Opt Out Procedure

- (A) In addition to filing a claim to receive compensation from the settlement, Class Members will be entitled to opt out from the Class and/or object to the terms of the Settlement Agreement.
- (B) Each Class Member who wishes to opt out must submit a properly completed Opt-Out Form along with all required supporting documents:
 - (i) in the case of Ontario Class Members, to the Administrator on or before the Opt-Out Deadline; and
 - (ii) in the case of Québec Class Members, to the Clerk of the Québec Court by registered or certified mail, and to the Administrator, in both cases, on or before the Opt-Out Deadline.
- (C) In order to remedy any deficiency in the completion of the Opt-Out Form, the Administrator may require that additional information be submitted by a Class Member who submits an Opt-Out Form. Class Members shall have until the Opt-Out Deadline to remedy the deficiency.
- (D) If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to the Administrator or fails to remedy any deficiency by the Opt-Out Deadline, the Class Member shall be deemed to not have opted out of the Actions, subject to any order of the Approving Courts to the contrary, but will in all other respects

be subject to, and bound by, the provisions of the Settlement Agreement and the releases contained herein.

- (E) Class Members who opt out shall be excluded from any and all rights and obligations arising from this Settlement Agreement.
- (F) Except as provided in subsection 7.1(G) below, Class Members who do not opt out in the manner and time provided above shall be deemed to have elected to participate in this Settlement Agreement regardless of whether such Class Members timely submit Claim Forms or receive payments pursuant to the Settlement Agreement.
- (G) Québec Class Members who have commenced proceedings against any Defendant regarding the Settled Claims and who fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out.
- (H) The Plaintiffs undertake and agree that, despite anything contained in this section, they will not opt out, and the Parties agree that Class Counsel will not solicit, entice or encourage any member of the Class for the purpose of causing that person to opt out.

7.2 Notification of the Number of Opt Outs

- (A) Within five (5) business days following the Opt-Out Deadline, the Administrator shall report to the Parties:
 - (i) the names of those Class Members, if any, who have opted out of the Class;
 - (ii) the number of Eligible Securities held by each Class Member who opted out; and
 - (iii) a summary of the information delivered by each Class Member who opted out.

Information reported pursuant to this subsection shall be kept confidential and only disclosed upon further order of the Approving Courts.

SECTION 8 - TERMINATION OR FAILURE TO OBTAIN APPROVALS

8.1 The Defendants' Right to Terminate

- (A) Notwithstanding any other provision in the Settlement Agreement, the Defendants, in their sole discretion, may elect to terminate the Settlement Agreement if the Opt-Out

Threshold is exceeded. In order to terminate the Settlement Agreement the Defendants must deliver a Termination Notice to Class Counsel within ten (10) days of the Administrator notifying the Defendants of the number of Class Members who have opted out pursuant to subsection 7.1(B), or, in any event, not later than fifteen (15) days of the Opt-Out Deadline, after which date the right to terminate the Settlement Agreement will have expired.

- (B) If the Opt-Out Threshold is not exceeded, the right to terminate the Settlement Agreement is inoperative and of no force and effect.
- (C) The Opt-Out Threshold shall be stated in the Opt-Out Threshold Agreement signed prior to, or contemporaneously with, the execution of the Settlement Agreement.
- (D) If the Settlement Agreement is terminated as a result of the Defendants election pursuant to subsection 8.1(A), the Parties agree to cooperate in bringing a consent motion before the Courts, as soon as possible following termination of the Settlement Agreement, to obtain orders:
 - (i) vacating the Approval Orders;
 - (ii) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in subsection 8.3(A); and
 - (iii) determining whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice.

8.2 Class Counsel's Right to Review

- (A) Class Counsel may review the validity of any request to opt out of the Class and/or attempt to cause the retraction, revocation, withdrawal or disqualification of any opt-out request during the Opt-Out Review Period.
- (B) If, within the Opt-Out Review Period, Class Counsel succeeds in causing the filing of retractions, revocations, withdrawals or disqualifications of opt-out requests such that the number of shares represented by the remaining Opt-Out Class Members does not constitute grounds for termination of the settlement, then the Termination Notice shall be

deemed a nullity, and the settlement shall proceed in accordance with the terms of the Settlement Agreement.

- (C) If the grounds for termination remain following Opt-Out Review Period, the Settlement Agreement will be deemed terminated, unless the Defendants withdraw their Termination Notice.

8.3 Effect of Termination Generally

- (A) If the Settlement Agreement is not approved by the Approving Courts and is therefore terminated, or if it is terminated as contemplated by subsection 8.1(A), the Parties shall revert to their litigation positions immediately prior to the execution of this Settlement Agreement and the Settlement Agreement shall have no further force and effect, shall not be binding on the Parties and shall not be admissible as evidence or otherwise in the Actions, provided however that sections 1, 4.1(B)(v), 4.2(B), 5.1(B), 5.7, 8.3-8.5, 9.2, 10, 11.1-11.5, 11.7, and 11.9-11.12 of the Settlement Agreement shall survive and shall continue in full force and effect.
- (B) Class Counsel shall, within ten (10) business days of (i) such time as all rights of appeal from the order(s) dismissing the Approval Motions have expired or have been exhausted; or (ii) the Defendants have delivered their Termination Notice, as the case may be, return the Settlement Amount, plus interest, less the Notice Expenses including any taxes thereon, up to the amount of the Notice Expense Cap, to the Defendants.

8.4 Disputes Relating to Termination

- (A) If there is any dispute about the termination of this Settlement Agreement, the Ontario Court shall determine any dispute by motion on notice to the Parties and the Administrator.

8.5 Report on Accounts Following Termination

- (A) If the Settlement Agreement is not approved and is therefore terminated, or if it is terminated pursuant to subsection 8.1(A), Siskinds ^{LLP}, shall account to the Approving

Courts and the Parties for the amounts maintained in the Escrow Account. This accounting shall be delivered no later than ten (10) days after such termination.

- (B) Any dispute concerning Administrative Expenses shall be dealt with by a motion to the Ontario Court on notice to the Parties.

SECTION 9 - CLASS COUNSEL FEES

9.1 Motion for Approval of Class Counsel Fees

- (A) Class Counsel will submit fee applications for consideration by the Approving Courts. The Defendants shall take no position on Class Counsel's request for an award of legal fees and reimbursement of disbursements.
- (B) Class Counsel's motions for approval of Class Counsel Fees shall be returnable together with the Approval Motions, or promptly following the hearing of such motions. Determination as to the amount of Class Counsel Fees awarded will be made by the Approving Courts.
- (C) Class Counsel are not precluded from making additional applications for expenses incurred in accordance with further implementing the terms of this Settlement Agreement, provided that payment of such expenses is sought from the Settlement Amount and not from the Defendants.
- (D) Any decision by the Courts concerning the amount of Class Counsel Fees shall not affect the validity of the proposed settlement.

9.2 Payment of Class Counsel Fees

- (A) Siskinds ^{LLP} may not withdraw Class Counsel Fees from the Escrow Account in the amount(s) stipulated by the pertinent court orders until after the Approval Orders become Final.

SECTION 10 - NO ADMISSION OF WRONGDOING**10.1 No Admission of Liability**

- (A) The Defendants are entering into this settlement to eliminate the burden and expense of further litigation. The Defendants have denied and continue to deny (i) each and all of the claims and contentions alleged in the Actions; (ii) all charges of wrongdoing, liability and/or violation of law against them arising out of any of the conduct, statements, acts, or omissions alleged against them, or that could have been alleged against them in the Actions; and (iii) the allegations that anyone suffered damage or was otherwise harmed by the conduct alleged in the Actions.

10.2 Agreement Not Evidence

- (A) Neither the Settlement Agreement nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Defendants, or as an admission or a concession on the part of the Defendants, of any fault or liability whatsoever, or shall be offered in evidence in the Actions except as may be necessary to enforce the terms of this Settlement Agreement.

SECTION 11 - MISCELLANEOUS**11.1 Entire Agreement**

- (A) The Settlement Agreement, together with the Opt-Out Threshold Agreement, constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Settlement Agreement, unless expressly incorporated herein. The Settlement Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Courts.
- (B) The Recitals and Schedules to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

11.2 Translation of Settlement Documents

- (A) To the extent required by law, this Settlement Agreement, the Distribution Protocol, the Plan of Notice, the Pre-Approval Notice and the Approval Notices shall be translated into the French language for submission to the Québec Court and for the issuance of orders from the Québec Court. Class Counsel shall cause such translations to be performed, and the cost of obtaining such translations shall constitute an Administration Expense that is payable out of the Settlement Amount.
- (B) In the event that a dispute arises concerning the interpretation or effect of a provision of the Settlement Agreement or a translation thereof, the English version of the Settlement Agreement shall be paramount and its terms shall supersede those of any translation.

11.3 Ongoing Jurisdiction

- (A) The Settlement Agreement shall be governed by, construed and interpreted in accordance with the laws of the province of Ontario. To the extent that the laws of Québec and British Columbia are applicable to the proceedings arising from this Settlement Agreement which occur in those provinces, the law of the applicable province shall apply.
- (B) The Ontario Court and the Québec Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties submit to the jurisdiction of the Courts for purposes of implementing and enforcing the settlement provided herein.

11.4 Motions for Directions

- (A) Any one or more of the Parties or the Administrator may apply to the Ontario Court for directions in respect of any matter in relation to the Settlement Agreement and Distribution Protocol.
- (B) All motions contemplated by the Settlement Agreement shall be on notice to the Parties, provided however that, once the Settlement Agreement becomes Final, the Defendants shall have no standing relating to any issue.

11.5 Interpretation, etc.**(A) In the Settlement Agreement:**

- (i) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Settlement Agreement;
- (ii) the terms “the Settlement Agreement”, “herein”, “hereto” and similar expressions refer to the Settlement Agreement as a whole and not to any particular section or other portion of the Settlement Agreement; and
- (iii) all amounts referred to are in Canadian Currency.

(B) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (i) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including, unless otherwise provided, all calendar days; and
- (ii) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

11.6 Binding Effect

- (A)** If approved by the Courts and if the Settlement Agreement becomes Final, the Settlement Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs, the Class Members, the Defendants and all of their respective successors in interest. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Class Members who do not opt out from the Class and each and every covenant and agreement made herein by the Defendants shall be binding upon all of their respective heirs, executors, successors and assigns.

11.7 Survival

- (A)** The representations and warranties contained in the Settlement Agreement shall survive its execution and implementation.

11.8 Negotiated Agreement

- (A) The Settlement Agreement has been the subject of negotiations and many discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Settlement Agreement.

11.9 Notice

- (A) Where the Settlement Agreement requires a notice or any other communication or document to be given to the Parties, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representative of the person to whom notice is being provided, as identified below:

For the Plaintiffs and Class Counsel:

A. Dimitri Lascaris
Siskinds ^{LLP}
Barristers & Solicitors
680 Waterloo Street
London, ON N6A 3V8
Telephone: 519.660.7844
Facsimile: 519.672.7845
Email: dimitri.lascaris@siskinds.com

Simon Hebert
Siskinds Desmeules s.e.n.c.r.l.
Les Promenades du Vieux-Québec
43 Rue Buade, Bur 320
Québec City, QC G1R 4A2
Telephone: 418.694.2009
Facsimile: 418.694.0281
Email: simon.hebert@siskindsdesmeules.com

For the Defendants and for Counsel for the Defendants:

Michael E. Barrack
ThorntonGroutFinnigan ^{LLP}
Suite 3200, Canadian Pacific Tower
100 Wellington St. West, P.O. Box 239
Toronto-Dominion Centre
Toronto, ON M5K 1K7
Telephone: 416.304.1109
Facsimile: 416.304.1313
Email: mbarrack@tgf.ca

Christopher M. Hubbard
McCarthy Tétrault ^{LLP}
Suite 5300, TD Bank Tower
Toronto-Dominion Centre
Toronto, ON M5K 1E6
Telephone: 416.601.8273
Facsimile: 416-868-0673
Email: chubbard@mccarthy.ca

11.10 Authorized Signatures

- (A) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Party for whom he or she is signing.

11.11 Acknowledgements

- (A) Each of the Parties hereby affirms and acknowledges that:
- (i) he, she or its representative with the authority to bind the Parties with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (ii) the terms of the Settlement Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel;
 - (iii) he, she or its representative fully understands each term of the Settlement Agreement and its effect.

11.12 Counterparts

- (A) The Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Settlement Agreement.

The Parties have executed this Settlement Agreement as of the date on the cover page.

**OMERS ADMINISTRATION CORPORATION
& PETER MCCANN**

By their counsel,
Siskinds ^{LLP}

By: _____

A. Dimitri Lascaris

EARL DOWNEY
By his counsel,
Siskinds ^{LLP} & Kieran A.G. Bridge, Law Corporation

By: _____

A. Dimitri Lascaris/Kieran A. G. Bridge

ANH D. NGUYEN & CHARLINE DUGUAY

By their counsel,
Siskinds Desmeules s.e.n.c.r.l.

By: _____

Simon Hebert

ALLEN GERMAIN
By his counsel,
Shalov Stone Bonner & Rocco ^{LLP}

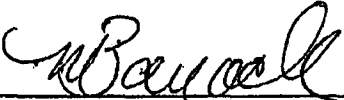
By: _____

Ralph M. Stone

for RALPH STONE

CP SHIPS LIMITED, RAYMOND MILES,
FRANK HALLIWELL & IAN WEBBER
By their counsel,
ThorntonGroutFinningan ^{LLP} & McCarthy Tétrault ^{LLP}

By:



Michael E. Barrack/Christopher M. Hubbard

SCHEDULE “A” – DISTRIBUTION PROTOCOL

DEFINED TERMS

1. For the purposes of this Distribution Protocol, the definitions set out in the Settlement Agreement, except as modified herein, apply to and are incorporated into this Distribution Protocol and, in addition, the following definitions apply:
 - (a) **“Acquisition Expense”** means the total monies paid by the Claimant (including brokerage commissions) to acquire Eligible Securities;
 - (b) **“Authorized Claimant”** means a Claimant who suffered a Net Loss and as such is eligible to receive compensation from the Net Settlement Amount;
 - (c) **“Claimant”** means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Deadline;
 - (d) **“Disposition Proceeds”** means the total proceeds paid to the Claimant (without deducting any commissions paid in respect of the dispositions) in consideration of the sale of all of his/her/its Eligible Securities;
 - (e) **“FIFO”** means the principle of first-in first-out, wherein securities are deemed to be sold in the same order that they were purchased (i.e. the first securities purchased are deemed to be the first sold); and which requires, in the case of a Claimant who held securities of CP Ships at the commencement of the Class Period, that those securities be deemed to have been sold completely before Eligible Securities are sold;
 - (f) **“Net Loss”** means that the Claimant’s Disposition Proceeds are less than the Claimant’s Acquisition Expense; and
 - (g) **“Nominal Entitlement”** means an Authorized Claimant’s nominal damages as calculated pursuant to the formula set forth herein, and which forms the basis upon which each Authorized Claimant’s *pro rata* share of the Net Settlement Amount is calculated.

CALCULATION OF NET LOSS

2. A Claimant must have sustained a Net Loss in order to be eligible to receive compensation, in the form of a payment, from the Net Settlement Amount.

3. The Administrator shall first determine whether a Claimant sustained a Net Loss. If the Claimant has sustained a Net Loss they become an Authorized Claimant, and the Administrator will go on to calculate his/her/its Nominal Entitlement.

CALCULATION OF COMPENSATION

4. The Administrator will apply FIFO to distinguish the sale of CP Ships securities held at the beginning of the Class Period from the sale of Eligible Securities, and will continue to apply FIFO to determine the purchase transactions which correspond to the sale of Eligible Securities. The date of sale or disposition shall be the trade date, as opposed to the settlement date, of the transaction. The Administrator will use this data in the calculation of an Authorized Claimant's Nominal Entitlement according to the formulas listed below.
5. An Authorized Claimant's Nominal Entitlement will be calculated as follows, except that prices in relation to transactions which occurred over the NYSE shall be converted to their equivalent value on the TSX prior to application of the formulas:

Equity Securities:

- I. **No Nominal Entitlement shall be available for any Eligible Shares *disposed of* prior to the first alleged corrective disclosure, that is, *prior to August 9, 2004*.**
- II. **For Eligible Shares *disposed of* following the first alleged corrective disclosure and before the second alleged corrective disclosure, that is, *on or between August 9 and August 15, 2004*, the Nominal Entitlement shall be:**
 - A. an amount equal to the number of Eligible Shares thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Shares (including any commissions paid in respect thereof) and the price received upon the disposition of those Eligible Shares (without deducting any commissions paid in respect of the disposition).

III. For Eligible Shares *disposed of* during the 10 trading day period following the second alleged corrective disclosure, that is, *on or between August 16 and August 27, 2004*, the Nominal Entitlement shall be:

- A. an amount equal to the number of Eligible Shares thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Shares (including any commissions paid in respect thereof) and the price received upon the disposition of those Eligible Shares (without deducting any commissions paid in respect of the disposition).

IV. For Eligible Shares *disposed of* after the 10 trading day period following the second alleged corrective disclosure, that is, *after the close of trading on August 27, 2004*, the Nominal Entitlement shall be the lesser of:

- A. an amount equal to the number of Eligible Shares thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Shares (including any commissions paid in respect thereof) and the price received upon the disposition of those Eligible Shares (without deducting any commissions paid in respect of the disposition); and
- B. an amount equal to the number of Eligible Shares thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Shares (including any commissions paid in respect thereof) and \$15.37 [being the 10 trading day volume weighted average trading price of CP Ships' common shares from August 16 to August 27, 2004].

4% Convertible Senior Subordinated Notes due 2024:

I. No Nominal Entitlement shall be available for any Eligible Notes disposed of prior to the *first alleged corrective disclosure*, that is, prior to August 9, 2004.

II. For Eligible Notes *disposed of* following the first alleged corrective disclosure and before the second alleged corrective disclosure, that is, *on or between August 9 and August 15, 2004*, the Nominal Entitlement shall be:

- A. an amount equal to the number of Eligible Notes thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Notes (including any commissions paid in respect thereof) and the price received upon the disposition of those Eligible Notes (without deducting any commissions paid in respect of the disposition).

III. For Eligible Notes *disposed of* during the 10 trading day period following the second alleged corrective disclosure, that is, *on or between August 16 and August 27, 2004*, the Nominal Entitlement shall be:

- A. an amount equal to the number of Eligible Notes thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Notes (including any commissions paid in respect thereof) and the price received upon the disposition of those Eligible Notes (without deducting any commissions paid in respect of the disposition).

IV. For Eligible Notes *disposed of* after the 10 trading day period following the second alleged corrective disclosure, that is, *after the close of trading on August 27, 2004*, the Nominal Entitlement shall be the lesser of:

- A. an amount equal to the number of Eligible Notes thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Notes (including any commissions paid in respect thereof) and the price received upon the disposition of those Eligible Notes (without deducting any commissions paid in respect of the disposition); and
- B. an amount equal to the number of Eligible Notes thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Notes (including any commissions paid in respect thereof) and \$91.57 per \$1,000 of face value [being the 10 trading day average trading price of the Eligible Notes from August 16 to August 27, 2004].

FINAL DISTRIBUTION

- 6. Each Authorized Claimant's actual compensation will be a portion of the Net Settlement Amount calculated as the ratio of his/her/its Nominal Entitlement to the total Nominal Entitlements of all Authorized Claimants multiplied by the Net Settlement Amount, except that the actual compensation paid to Authorized Claimants as a result transactions in Eligible Notes shall not exceed 8% of the Net Settlement Fund.
- 7. The Administrator will make payments of the actual compensation to Authorized Claimants. In so doing the Administrator will deduct from any payments otherwise due

to residents of the province of Québec any amounts owing to the *Fonds d'aide aux recours collectifs* as follows:

- (a) 2% from any liquidated claim less than \$2,000;
- (b) 5% from any liquidated claim exceeding \$2,000 but less than \$5,000; and
- (c) 10% from any liquidated claim exceeding \$5,000.

The total of such deductions shall be provided to Class Counsel in trust for payment to the *Fonds d'aide aux recours collectifs*.

SCHEDULE “B” – PLAN OF NOTICE

Capitalised terms used in this Plan of Notice have the meanings ascribed to them in the Settlement Agreement.

PART 1 – NOTICE OF CERTIFICATION & SETTLEMENT APPROVAL MOTIONS

The Pre-Approval Notice will be disseminated as follows:

Internet Publication

The Pre-Approval Notice will be posted, in both the English and French languages, on (i) www.classaction.ca.

National Notice

Publication of the Pre-Approval Notice, which notice will be at least a 1/4 page in size, will occur at least thirty (30) days prior to the first of the Approval Motions. Such publication will be made in the English language in the business/legal section of the national edition of the *Globe & Mail* and in the French language in the business sections of *La Presse* and *Journal de Québec*.

The English and French language versions of the Publication Notice will also be issued across *Marketwire*, a major business newswire in Canada.

Additional Notice

Class Counsel shall make a toll free number and email address available to the public that will enable Class Members to contact Class Counsel and obtain more information about the proposed settlement, and/or to request that a copy of the Settlement Agreement be sent to them directly. Additionally, the public may view or obtain copies of the Settlement Agreement from Class Counsel’s website: www.classaction.ca.

PART 2 – NOTICE OF CERTIFICATION AND APPROVAL OF SETTLEMENT

The Publication Notice will be disseminated as follows:

National Notice

Publication of the Publication Notice, which notice will be at least a 1/4 page in size, will occur as soon as possible following the Effective Date, and, in any event, no later than fourteen (14) days following such date. Such publication will be made in the English language in the business/legal section of the national edition of the *Globe & Mail* and in the French language in the business sections of *La Presse* and *Journal de Québec*.

The English and French language versions of the Publication Notice will also be issued across *Marketwire*, a major business newswire in Canada.

The Long-Form Notice will be disseminated as follows:

Internet Publication

The Long-Form Notice will be posted, in both the English and French languages, on (i) www.classaction.ca; and (ii) the website of the Administrator.

Individual Notice

Within ten (10) days of the issuance of the last Approval Order, Class Counsel shall direct Broadridge, or the Administrator, as the case may be, to send the Long-Form Notice to all putative Class Members identified as a result of (i) the Defendants providing Class Counsel with a computerized list of the names and addresses of CP Ships' last known registered shareholders on the record of CP Ships' transfer agent prior to the acquisition of CP Ships by TUI Beteiligungsgesellschaft mbH in 2005; and (ii) Broadridge, or the Administrator's, as the case may be, solicitation of brokerage firms in Canada with the request that the brokerage firms send Broadridge, or the Administrator, the names and addresses of all individuals and entities identified by the brokerage firms as having a beneficial interest in the Eligible Securities pursuant to section 5.7 of the Settlement Agreement.

Class Counsel shall mail or email the Long-Form Notice to those persons who have contacted Class Counsel regarding this litigation and have provided Class Counsel with their contact information.

Class Counsel shall make a toll free number and email address available to the public that will enable Class Members to obtain more information about the settlement, the claims process, and to request that a copy of the Long-Form Notice be sent to them directly. Class Counsel or the Administrator, as appropriate, will directly mail the Long-Form Notice, Claim Form or Opt-Out Form to any Class Member who contacts Class Counsel or the Administrator's offices and requests same. Additionally, the public may view, or obtain copies of, the Settlement Agreement, Long-Form Notice, Claim Form and Opt-Out Form on Class Counsel's website: www.classaction.ca.

SCHEDULE “C” – PRE-APPROVAL NOTICE

CP SHIPS LIMITED SECURITIES LITIGATION NOTICE OF CLASS ACTIONS AND PROPOSED SETTLEMENT

This notice is to all Canadian citizens or individuals or entities resident, domiciled, or headquartered in Canada, or organized under the laws of Canada or a Canadian province (other than Excluded Persons, as defined below), who acquired securities of CP Ships Pacific (“CP Ships”) during the period from January 29, 2003 to and including August 9, 2004 (“Class Period”), and held some or all of those securities on August 9, 2004 (“Class Members”).

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

CLASS ACTIONS COMMENCED IN ONTARIO AND QUÉBEC HAVE BEEN SETTLED

In 2005, class actions were commenced in Ontario, British Columbia and Québec against CP Ships and certain of its current and former officers and directors (the “Defendants”). The Plaintiffs in the actions allege that the Defendants conspired and breached their duty of care to CP Ships shareholders by issuing materially false and/or inaccurate audited consolidated financial statements for the years ended December 31, 2002 and 2003, and interim unaudited consolidated financial statements for the quarter ended March 31, 2004. The Plaintiffs also allege that the individual Defendants engaged in insider trading in contravention of the applicable Ontario, Québec and B.C. securities legislation.

On August 28, 2008, the Québec Superior Court authorized as a class proceeding on behalf of a national class. Subsequently, on June 3, 2009, the Ontario Superior Court of Justice certified a class consisting of Canadian citizens and entities not included within the Québec Class. The progress of the action proceeding in British Columbia has been held in abeyance to the proceedings in Ontario and Québec.

The parties in the class actions have reached a proposed settlement subject to obtaining the approval of the courts in Ontario and Québec. The B.C. action will be discontinued as part of the approval process. The Settlement Agreement provides that the Defendants will pay \$12.8 million (the “Settlement Amount”). The Settlement Amount is being paid in full and final settlement of all claims, including class counsel fees, disbursements, taxes and administration expenses, in return for releases and, where applicable, a dismissal of the class actions.

The settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

SETTLEMENT APPROVAL MOTIONS WILL BE HELD IN ONTARIO AND QUÉBEC

The Settlement Agreement must be approved by the courts in Ontario and Québec before it can be implemented. Class Members may, but are not required to, attend at the settlement approval motions which will be held:

1. **In Québec:** on January 18, 2010 at 9:30 a.m. in room 3.21 at the Québec City Court House, 300 boul. Jean-Lesage, Québec City, Québec; and
2. **In Ontario:** on January 28, 2010 at 10:00 a.m., at the Courthouse, 80 Dundas Street, London, Ontario.

Class Members who do not oppose the proposed settlement do not need to appear at any of the hearings or take any other action at this time to indicate their desire to participate in the proposed settlement.

If the Settlement Agreement is approved, another notice will be published which will provide instructions to Class Members on how to make a claim to receive compensation from the Settlement Amount.

CLASS COUNSEL FEES AND ADMINISTRATIVE EXPENSES

In addition to seeking the courts' approval of the Settlement Agreement, Class Counsel (as identified below) will seek the courts' approval of their legal fees not to exceed 25% of the Settlement Amount, plus disbursements and applicable taxes ("Class Counsel Fees"). Class Counsel will also seek appointment of an Administrator for the Settlement Agreement whose fees, together with any other amounts incurred or payable relating to approval, notification, implementation and administration of the Settlement ("Administration Expenses"), will also be paid from the Settlement Amount. Class Counsel Fees and Administration Expenses will be deducted from the Settlement Amount before it is distributed to Class Members.

TERMS OF THE SETTLEMENT AGREEMENT

The remainder of the Settlement Amount, after deduction of Class Counsel Fees and Administration Expenses (the "Net Settlement Amount") will be distributed to Class Members in accordance with the Distribution Protocol, which is Schedule "A" to the Settlement Agreement.

The amount of each Class Member's actual compensation from the Net Settlement Amount will depend upon: (i) the number and the price of CP Ships securities purchased by the Class Member during the Class Period; (ii) when the Class Member sold the CP Ships securities purchased during the Class Period and the price at which such securities were sold; and (iii) the total number of claims for compensation filed with the Administrator.

"Excluded Persons" are precluded from receiving compensation pursuant to the Settlement Agreement and include:

- (a) the Defendants and the current, former and future officers, directors, partners, members, parents, subsidiaries, administrators, affiliates, employees, agents, attorneys, underwriters, insurers, representatives, heirs, successors in interest and assigns of any Defendant;
- (b) Raymond Miles, Frank Halliwell and Ian Webber and all members of their families;

- (c) all entities over which any of the foregoing persons or entities has or had during the Class Period any legal or de facto control; and
- (d) any person or entity who is included in the settlement class in the U.S. Action, and who has filed a claim and received compensation in respect of the settlement of the U.S. Action.

A copy of the Settlement Agreement, including the Distribution Protocol, may be found online at www.classaction.ca.

OBJECTIONS TO THE PROPOSED SETTLEMENT

If you wish to comment on, or make objection to, the Settlement Agreement, you must do so in writing. All objections must be submitted to Class Counsel (at the addresses listed below) postmarked no later than [date], 2010. Class Counsel will forward all such submissions to the courts.

A written objection should include the following information:

- (a) the objector's name, address, telephone number, fax number (where applicable) and email address;
- (b) a brief statement outlining the nature of, and reason for, the objection;
- (c) documents establishing that the objector purchased securities of CP Ships during the Class Period; and
- (d) a statement as to whether the objector intends to appear at the Approval Motion in person or by legal counsel, and, if by legal counsel, the name, address, telephone number, fax number and email address of such legal counsel.

EXCLUDING YOURSELF FROM THE CLASS

If the courts approve the proposed settlement, all Class Members will be bound by the terms of the Settlement Agreement, unless they exclude themselves from the Class ("opt out"). Persons who do not opt out will not be able to bring or maintain any other claim or legal proceeding against the Defendants or any other person released by the Settlement Agreement in relation to the matters alleged in the class actions.

If you do not want to be bound by the Settlement Agreement you must opt out. Please note however, that by opting out you will also be barred from making a claim and receiving compensation from the Settlement Amount.

The Courts have appointed [Name of Administrator] as the Administrator of this Settlement Agreement. [Name of Administrator] will oversee the opt-out processes. If you wish to opt out you must submit a completed Opt-Out Form, and any supporting documentation, to the Administrator, at the following address, postmarked no later than **[date falling 60 days after the publication of the Pre-Approval Notice]** (the "Opt-Out Deadline"): [insert Administrator's address].

If you are a Québec Class Member and wish to opt out, in addition to submitting your Opt-Out Form to the Administrator, you must also send a complete copy of your completed Opt-Out

Form to the Clerk of the Québec Court, at the following address: The Québec Superior Court, Québec City Court House, 300, boul. Jean-Lesage, Québec City, Québec, G1K 8K6 (Court File No. 200-06-000106-081) postmarked no later than the Opt-Out Deadline.

INTERPRETATION

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

QUESTIONS ABOUT THE PROPOSED SETTLEMENT SHOULD BE DIRECTED TO CLASS COUNSEL

Dimitri Lascaris Siskinds ^{LLP} Barristers and Solicitors 680 Waterloo Street London, ON N6A 3V8 Tel: 1.800.461.6166 Ext. 2380 Fax: 519.672-2251 Email: dimitri.lascaris@siskinds.com	Simon Hebert Siskinds Desmeules s.e.n.c.r.l. Les Promenades du Vieux-Québec 43 Rue Buade, Bur 320 Québec City, QC G1R 4A2 Tel: 418.694.2009 Fax: 418.694.0281 Email: simon.hebert@siskindsdesmeules.com
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PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED
BY THE ONTARIO SUPERIOR COURT OF JUSTICE AND THE QUÉBEC SUPERIOR COURT

SCHEDULE “D” – ONTARIO APPROVAL ORDER

Court File No.: 46098 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, THE ____ DAY
JUSTICE HELEN A. RADY) OF _____, 2010

BETWEEN:

OMERS ADMINISTRATION CORPORATION and PETER McCANN

Plaintiffs

– and –

CP SHIPS LIMITED, RAYMOND MILES,
FRANK HALLIWELL and IAN WEBBER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Representative Plaintiffs for an Order that the Settlement Agreement be approved, was heard on January 28, 2010, in London, Ontario, Canada.

ON READING the materials filed, including the Settlement Agreement reached between the parties on October __, 2009, attached hereto as Schedule “A” (the “Settlement Agreement”) and on hearing submissions of counsel for the Plaintiffs and counsel for the Defendants;

AND on there being no objectors:

1. **THIS COURT DECLARES** that (i) the Settlement Agreement, in its entirety (including the Recitals, the definitions set out in section 1.1 and its Schedules) forms part of this Order and is binding upon the Representative Plaintiffs, upon all Ontario Class Members

who did not opt out of the Ontario Class in accordance with the Pre-Approval Notice, and upon the Defendants;

2. **THIS COURT ORDERS** that, for the purposes of this Order, except as otherwise stated, the definitions set out in the Settlement Agreement apply and are incorporated into this Order;
3. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interest of the Ontario Class;
4. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *CPA* and shall be implemented in accordance with its terms;
5. **THIS COURT ORDERS** that any potential Class Member who has validly opted out of the Class is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of this action.
6. **THIS COURT ORDERS** that any potential Class Member who has not validly opted out of the Class is bound by the Settlement Agreement and may not opt-out of this action in the future.
7. **THIS COURT ORDERS AND DECLARES** that each Class Member who has not validly opted out of the Class shall consent and shall be deemed to have consented to the dismissal, where applicable, of any other actions he, she or it has commenced against the Released Parties, without costs and with prejudice.
8. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Class Member, who has not validly opted out of the Class, including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* R.S.O. Reg. 194 are dispensed with in respect of this action.
9. **THIS COURT ORDERS** that upon the date the Settlement Agreement becomes Final the Plaintiff and each Class Member who has not validly opted out of the Class shall fully, finally and forever release the Released Parties from the Settled Claims.

10. **THIS COURT ORDERS** that the Plaintiff and each Class Member who has not validly opted out of the Class shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Released Party or any other person who may claim contribution or indemnity from any Released Party in respect of any Settled Claim or any matter related thereto.
11. **THIS COURT ORDERS** that the Plan of Notice as provided for in Schedule "B" of the Settlement Agreement is hereby approved and that notice be given in accordance therewith.
12. **THIS COURT ORDERS** that the form and content of the Long-Form Approval Notice and Publication Notice attached hereto as Schedule "B" and "C" are hereby approved.
13. **THIS COURT ORDERS** that Class Members shall submit a Claim Form to the [Administrator] postmarked on or before the date that is ninety (90) days from the date of the newspaper publication of the Publication Notice and any Class Member who fails to do so shall not be eligible to receive compensation from the Net Settlement Fund, unless the Court orders otherwise.
14. **THIS COURT ORDERS** that the form and content of the Claim Form attached hereto as Schedule "D" is hereby approved.
15. **THIS COURT ORDERS** that, save the aforesaid, the within action is hereby dismissed against the Defendants without costs and with prejudice.

THE HONOURABLE
JUSTICE HELEN A. RADY

SCHEDULE "E" – QUÉBEC APPROVAL ORDER

**COUR SUPÉRIEURE
(Recours collectifs)**

**C A N A D A
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC**

NO : 200-06-000042-047

DATE : QUÉBEC, LE • 2009

EN PRÉSENCE DE : L'HONORABLE •, J.C.S.

ANH D. NGUYEN et CHARLINE DUGUAY
Requérants ;

c.

CP Ships LIMITED. & AL

Intimés;

JUGEMENT

- [1] **ATTENDU** que les parties sont impliquées dans un litige de la nature d'un recours collectif ;
- [2] **VU** la requête sous étude ;
- [3] **VU** que les intimés consentent à la requête ;
- [4] **VU** les pièces versées au dossier;
- [5] **VU** les déclarations des procureurs des parties et les représentations faites de part et d'autres;
- D-• [6] **VU** les articles 1025, 1045 et 1046 du *Code de procédure civile*;
- [7] **APRÈS EXAMEN**, il y a lieu de faire droit à la requête;

PAR CES MOTIFS, LE TRIBUNAL :

- [8] **ACCUEILLE** cette requête;
- [9] **DÉCLARE** que les définitions contenues dans l'Entente de règlement sont utilisées pour ce jugement et par conséquent sont considérées comme étant partie intégrante du jugement;
- [10] **DÉCLARE** que l'Entente de Règlement avec ses annexes, jointe au jugement comme Annexe « A », est valable, équitable, raisonnable, dans le meilleur intérêt des Membres du Groupe et constitue une transaction au sens de l'article 2631 du *Code civil du Québec* mettant fin

définitivement à cette affaire, liant toutes les parties et tous les membres qui y sont décrits à l'exception de ceux qui s'excluront;

- [11] **DÉCLARE** que la version anglaise de l'Entente de Règlement constitue l'entente entre les parties sur laquelle ces dernières se sont entendues, et que la version française n'est qu'une traduction, de sorte qu'en cas de divergence entre la version anglaise et la version française, la première devra primer;
- [12] **APPROUVE** l'Entente de règlement;
- [13] **DÉCLARE** que l'Entente de règlement dans son intégralité (y compris son préambule, ses définitions et ses annexes) fait partie intégrante du présent jugement;
- [14] **PREND ACTE** du paiement de la somme prévue au Règlement (•\$) en conformité avec l'Entente de Règlement;
- [15] **ORDONNE** aux Parties et aux Membres du Groupe, à l'exception de ceux qui s'en seront exclus conformément aux termes et conditions du jugement, de se conformer à l'Entente de Règlement;
- [16] **APPROUVE** le Second Avis et, en langue anglaise et française, conforme au modèle joint au jugement comme Annexe « B » et **ORDONNE** qu'il soit publié selon le mode de diffusion prévu à l'Annexe « C » du jugement;
- [17] **ORDONNE** que toute personne qui se sera exclue du Groupe en produisant le Formulaire d'exclusion dans le délai requis ne sera pas liée par l'Entente de Règlement et ne pourra bénéficier de ce qui est prévu dans cette Entente de Règlement;
- [18] **DÉCLARE** que ce jugement lie tous les Membres du Groupe qui ne se seront pas exclus selon la procédure prescrite, que cette personne soumette ou non un Formulaire de Réclamation, que cette personne soit déclarée ou non éligible pour l'obtention d'une indemnisation et que la réclamation de cette personne soit acceptée en entier ou en partie par l'Administrateur;
- [19] **DÉSIGNE** la firme • pour agir à titre d'administrateur des réclamations avec les pouvoirs, obligations et devoirs énumérés dans l'Entente de Règlement et dans le Protocole et notamment l'obligation de détenir, de distribuer l'argent en fidéicommis en conformité avec l'Entente de Règlement, le Protocole et le Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs (*R.R.Q. c. R-2.1, r.3.1.*);
- [20] **DÉCLARE** que chaque Personne donnant Quittance qui est un Membre du Groupe du Québec a quittancé et est réputé avoir donné une quittance pour toujours et de manière absolue, à chacune des Personnes bénéficiant de la Quittance à l'égard de toute demande de contribution ou d'indemnisation en rapport avec les Réclamations Quittancées;
- [21] **ORDONNE** qu'aucune Personne donnant Quittance, qui est un Membre du Groupe du Québec, ne pourra, directement ou indirectement, présentement ou dans l'avenir, au Canada ou ailleurs, pour son propre compte ou pour le compte de tout groupe ou de toute autre personne, intenter, continuer, maintenir ou faire valoir, toute poursuite, action, cause d'action, réclamation ou demande contre toute Personne bénéficiant de la Quittance ou contre toute autre personne qui pourrait réclamer une contribution ou un dédommagement de l'une ou l'autre des Personnes bénéficiant de la Quittance en rapport avec toute Réclamation Quittancée ou toute autre affaire y étant reliée;
- [22] **DÉCLARE** que le Formulaire de réclamation joint au jugement comme Annexe E est approuvé et **ORDONNE** que les Membres du Groupe désirant formuler une réclamation le fassent en utilisant ce formulaire étant entendu, cependant, que l'Administrateur aura la possibilité de mettre en

œuvre une procédure permettant aux courtiers de formuler une réclamation pour leurs clients s'ils reçoivent l'autorisation d'agir ainsi;

- [23] **ORDONNE** que toute personne qui désire obtenir une indemnité en vertu de l'Entente de Règlement ne devienne éligible à toute distribution que si elle soumet un Formulaire de Réclamation avec toutes les pièces justificatives appropriées, auprès de l'Administrateur, le ou avant le •, heure de l'Est, à moins que ce Tribunal n'en décide autrement, ou à moins que ce Tribunal ne proroge la Date Limite pour formuler une réclamation;
- [24] **DÉCLARE** que le Protocole de Distribution joint au jugement comme Annexe F est approuvé et **ORDONNE** qu'il soit appliqué conformément à ses dispositions;
- [25] **APPROUVE** le paiement aux procureurs du Requérent d'honoraires totalisant •\$ plus taxes et de débours totalisant •\$ plus taxes, le tout totalisant la somme de •\$ et **PERMET** tel paiement à même la Somme prévue au Règlement;
- [26] **LE TOUT** sans frais, sauf en ce qui a trait à ce que prévu à l'Entente de Règlement.

•, J.C.S.

Me Simon Hébert – casier 15
 SISKINDS, DESMEULES, AVOCATS
 43, rue de Buade, bureau 320
 Québec (Québec) G1R 4A2
 Procureurs du requérant

Me Donald Bisson
Me Shaun Finn
 MCCARTHY TÉTRAULT S.E.N.C.R.L., s.r.l.
 Bureau 2500
 1000 de la Gauchetière Ouest
 Montréal (Québec) H3B 0A
 Procureurs des intimés

SCHEDULE “F” – PUBLICATION NOTICE

CP SHIPS LIMITED SECURITIES LITIGATION NOTICE OF SETTLEMENT APPROVAL

This notice is to all Canadian citizens or individuals or entities resident, domiciled, or headquartered in Canada, or organized under the laws of Canada or a Canadian province (other than Excluded Persons, as defined below), who acquired securities of CP Ships Pacific (“CP Ships”) during the period from January 29, 2003 to and including August 9, 2004 (“Class Period”), and held some or all of those securities on August 9, 2004 (“Class Members”).

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

Please note: This is a short form notice, produced for publication purposes, announcing court approval of the settlement reached in this litigation. A Long-Form Notice, with full details of the settlement is available on Class Counsel’s website: www.classaction.ca or the Administrator’s website: [\[www.XXX.com\]](http://www.XXX.com).

COURT APPROVAL OF THE SETTLEMENT OF CLASS ACTIONS

In 2005, class actions were commenced in Ontario, British Columbia and Québec against CP Ships and certain of its current and former officers and directors (the “Defendants”). On August 28, 2008, the Québec Superior Court authorized as a class proceeding on behalf of a national class. Subsequently, on June 3, 2009, the Ontario Superior Court of Justice certified a class consisting of Canadian citizens and entities not included within the Québec Class. By Orders issued by the Ontario Superior Court of Justice and the Québec Superior Court (the “Courts”) dated ___, 2009 and ___, 2009, respectively, the courts approved the Settlement Agreement reached between the parties to the class actions. The B.C. action was discontinued as part of the approval process. The settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

The Settlement Agreement provides for the settlement of the claims of all Class Members for the sum of \$12.8 million (the “Settlement Amount”). The Settlement Amount will be held in an interest bearing account by Class Counsel until the monies are distributed to the Class. The amount of each Class Member’s compensation will be calculated by application of the formulae outlined in the Distribution Protocol.

“Excluded Persons” are precluded from receiving compensation pursuant to the Settlement Agreement and include:

- (a) the Defendants and the current, former and future officers, directors, partners, members, parents, subsidiaries, administrators, affiliates, employees, agents, attorneys, underwriters, insurers, representatives, heirs, successors in interest and assigns of any Defendant;
- (b) Raymond Miles, Frank Halliwell and Ian Webber and all members of their families;

- (c) all entities over which any of the foregoing persons or entities has or had during the Class Period any legal or de facto control; and
- (d) any person or entity who is included in the settlement class *In Re CP Ships Ltd. Securities Litigation* (Court File No. 8:05-MD-1656-T-27TBM) (the “U.S. Action”), and who has filed a claim and received compensation in respect of the settlement of the U.S. Action.

ADMINISTRATION OF THE SETTLEMENT AGREEMENT

The Courts have appointed [Name of Administrator] as the Administrator of this Settlement Agreement. [Name of Administrator] will oversee the claims processes (described below) and will distribute the Settlement Amount.

Those Class Members who wish to receive compensation from the Settlement Amount must mail or otherwise submit a completed Claim Form, and any supporting documentation to the Administrator, postmarked no later than **[date falling 90 days after the publication of the Publication Notice]**, at the following address: [Administrator’s Address]

All Class Members will be bound by the terms of the Settlement Agreement unless they “opted out” in accordance with the Pre-Approval Notice. The deadline to opt-out was [date].

For further information regarding the terms of the Settlement Agreement or the Distribution Protocol, the process for filing a claim, or to obtain a Claim Form visit the Administrator’s website: [www.XXX.com] or contact the Administrator by calling [toll free number]. Questions may also be directed to Class Counsel as follows:

The law firm of *Siskinds LLP* is counsel to the plaintiff in the Ontario class proceeding, and can be reached by telephone, toll free, at 1-800-461-6166 ext. 2380.

The law firm of *Siskinds, Desmeules s.e.n.c.r.l.* is counsel to the Plaintiff in the Québec class proceeding, and can be reached by telephone at 1-418-694-2009.

[Date of Publication]

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

SCHEDULE “G” – LONG-FORM NOTICE

CP SHIPS LIMITED SECURITIES LITIGATION NOTICE OF SETTLEMENT APPROVAL

This notice is to all Canadian citizens or individuals or entities resident, domiciled, or headquartered in Canada, or organized under the laws of Canada or a Canadian province (other than Excluded Persons, as defined below), who acquired securities of CP Ships Pacific (“CP Ships”) during the period from January 29, 2003 to and including August 9, 2004 (“Class Period”), and held some or all of those securities on August 9, 2004 (“Class Members”).

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

COURT APPROVAL OF THE SETTLEMENT OF CLASS ACTIONS

In 2005, class actions were commenced in Ontario, British Columbia and Québec against CP Ships and certain of its current and former officers and directors (the “Defendants”). The Plaintiffs in the actions allege that the Defendants conspired and breached their duty of care to CP Ships shareholders by issuing materially false and/or inaccurate audited consolidated financial statements for the years ended December 31, 2002 and 2003, and interim unaudited consolidated financial statements for the quarter ended March 31, 2004. The Plaintiffs also allege that the individual Defendants engaged in insider trading in contravention of the applicable Ontario and Québec securities legislation.

On August 28, 2008, the Québec Superior Court authorized as a class proceeding on behalf of a national class. The Québec Class includes: all natural persons, corporations, partnerships or associations, normally residing or domiciled in Canada at all times relevant to the Québec Action, who purchased or otherwise acquired, directly or indirectly, or through mutual funds, during the Class Period, shares, certificates or other securities of CP Ships and have not disposed of same on or before August 9, 2004, except: (1) the Excluded Persons; and (2) Exempt Québec Class Members.

The Excluded Persons are defined to include:

- (a) the Defendants and the current, former and future officers, directors, partners, members, parents, subsidiaries, administrators, affiliates, employees, agents, attorneys, underwriters, insurers, representatives, heirs, successors in interest and assigns of any Defendant;
- (b) Raymond Miles, Frank Halliwell and Ian Webber and all members of their families;
- (c) all entities over which any of the foregoing persons or entities has or had during the Class Period any legal or de facto control; and
- (d) any person or entity who is included in the settlement class in *In Re CP Ships Ltd. Securities Litigation* (Court File No. 8:05-MD-1656-T-27TBM) (the “U.S.

Action”), and who has filed a claim and received compensation in respect of the settlement of the U.S. Action.

The Exempt Québec Class Members are defined as legal persons established for a private interest, partnership or association, who employed more than 50 persons at any time during the period from August 31, 2003 to August 31, 2004, and who otherwise fit within the Québec Class.

On June 3, 2009, the Ontario action was certified as a class proceeding on behalf of all persons and entities who were Canadian citizens, or who were resident or domiciled in Canada, at any time during the Class Period, and who purchased securities of CP Ships during the Class Period, whether over the Toronto Stock Exchange or the New York Stock Exchange, or under a prospectus or an offering memorandum and who held some or all of those securities on August 9, 2004, except the Excluded Persons and members of the Québec Class, but specifically including the Exempt Québec Members.

On August 28, 2008, the Québec Superior Court authorized as a class proceeding on behalf of a national class. Subsequently, on June 3, 2009, the Ontario Superior Court of Justice certified a class consisting of Canadian citizens and entities not included within the Québec Class.

On October ___, 2009 the parties to the class actions executed a Settlement Agreement which provides that the Defendants will pay \$12.8 million (the "Settlement Amount"). The Settlement Amount is being paid in full and final settlement of all claims, including class counsel fees, disbursements, taxes and administration expenses, in return for releases and a dismissal of the class actions. The settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

By Orders issued by the Ontario Superior Court of Justice and the Québec Superior Court (the "Courts") dated ___, 2010 and ___, 2010, respectively, the Courts approved the Settlement Agreement. The B.C. action was discontinued as part of the approval process.

The Courts also awarded Class Counsel legal fees, expenses and applicable taxes in the amount of \$* or *% of the Settlement Amount. 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 Fees will be deducted from the Settlement Amount before it is distributed to Class Members. Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement Agreement including the fees of the Administrator ("Administration Expenses") will also be paid from the Settlement Amount.

All Class Members will be bound by the terms of the Settlement Agreement unless they "opted out" in accordance with the Notice of Settlement Hearing. The deadline to opt-out was [date].

THE U.S. ACTION

The U.S. Action was litigated in the United States on based on allegations similar to those raised in the class actions commenced in Canada. In October 2008, the United States District Court for the Middle District of Florida approved a settlement reached in the U.S. Action (the "U.S. Settlement"). Some Class Members may have been eligible to file a claim under the U.S. Settlement. Class Members who filed a claim and received payment from the U.S. settlement monies will not be eligible for compensation pursuant to the Settlement Agreement.

ADMINISTRATOR

The Courts have appointed [Name of Administrator] as the Administrator of this Settlement Agreement. The Administrator will, among other things: (i) receive and process Claim Forms; (ii) make determinations of Class Members' eligibility for compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding their eligibility for compensation; and (iv) manage and distribute the Settlement Amount.

The Administrator can be contacted at:

Telephone: [Toll Free Number]

Mailing Address:

E-mail Address:

Website: [www.XXX.com]

A complete copy of the Settlement Agreement is also available on the website of Class Counsel: www.classaction.ca.

CLASS MEMBERS' ENTITLEMENT TO COMPENSATION

Class Members will be eligible for compensation pursuant to the Settlement Agreement if they sustained a net loss on their Class Period transactions and if they timely submit a complete Claim Form, including any supporting documentation, to the Administrator. To be eligible for compensation under the Settlement Agreement, Class Members must submit their Claim Form postmarked no later than **[date falling 90 days after the publication of the Publication Notice]** (the "Claims Deadline").

The remainder of the Settlement Amount, after deduction of Class Counsel Fees and Administration Expenses (the "Net Settlement Amount") will be distributed to Class Members in accordance with the Distribution Protocol attached as Schedule "A" to the Settlement Agreement, which, in general terms, provides that:

- (a) in order to be eligible to receive compensation pursuant to the settlement, a Class Member must submit a Claim Form, including trading information that demonstrates that the Class Member sustained a loss on their Class Period transactions, to the Administrator by the Claims Deadline (an "Authorized Claimant");
- (b) Each Authorized Claimant's *nominal* entitlement to compensation will be determined by application of the formulae outlined in the Distribution Protocol which take into account: (i) the number and the price of CP Ships securities purchased by the Authorized Claimant during the Class Period ("Eligible Securities"); (ii) when the Authorized Claimant sold the Eligible Securities and the price at which such shares were sold; and (iii) the total number of claims for compensation filed with the Administrator.
- (c) Each Authorized Claimant's *actual* compensation from the Net Settlement Amount will be his/her/its *pro rata* share of the Net Settlement Amount calculated as a ratio of his/her/its nominal entitlement to the total nominal entitlements of all Authorized Claimants multiplied by the Net Settlement Amount, provided that the actual compensation paid to Authorized Claimants as a result transactions in 4%

Convertible Senior Subordinated Notes due 2024 shall not exceed 8% of the Net Settlement Fund

- (d) Where applicable, the Administrator will hold back from compensation allocated to residents of Québec, amounts payable to the *Fonds d'aide aux recours collectifs*.

Any disputes arising from decisions of the Administrator may be appealed to the Ontario Superior Court of Justice.

Claim Forms must be postmarked on or before [date]. Claim Forms postmarked after [date] will not be considered. As a result, it is necessary that you act without delay.

CLASS COUNSEL

The law firm of *Siskinds LLP* are counsel to the plaintiff in the Ontario class proceeding, and can be reached by telephone, toll free, at 1-800-461-6166 ext. 2380.

The law firm of *Siskinds, Desmeules s.e.n.c.r.l.* is counsel to the Plaintiff in the Québec class proceeding, and can be reached by telephone at (418)694-2009.

INTERPRETATION

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

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