

07-CV-330807 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE MAURICE C. CULLITY) Wednesday, the 11th day
of APRIL, 2007

BETWEEN:

TIM GOULD and ARCHIE LEACH

Plaintiffs

- and -

BMO NESBITT BURNS INC.; BLACKMONT CAPITAL INC.; CANACCORD CAPITAL CORPORATION; NATIONAL BANK FINANCIAL INC.; SPROTT SECURITIES INC.; TD SECURITIES INC.; BDO SEIDMAN, LLP; FMF CAPITAL GROUP LTD.; FMF CAPITAL LLC; FMF HOLDINGS, LLC; MICHIGAN FIDELITY ACCEPTANCE CORPORATION; PKF, LLC; THOMAS LITTLE; ATUL SHAH; MICHAEL HOFFMAN; EDAN KING; HOWARD MOROF; ROBERT PILCOWITZ; ERIC SLAVENS; and LORIE WAISBERG

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the proposed Representative Plaintiffs for an Order that the within proceeding be certified as a class proceeding for settlement purposes only, that the Settlement Agreement be approved, and that Deloitte and Touche ^{LLP} be appointed as Claims Administrator, was heard on January 25, February 23, and March 14, 2007, in Toronto, Ontario, Canada.

ON READING the materials filed, including the objection of class member Richard Byers, and on hearing submissions of counsel for the Plaintiffs and counsel for the Defendants:

1. **THIS COURT ORDERS** that the within proceeding be, and is, certified as a class proceeding, for purposes of settlement only, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, ss.2 and 5 (“CPA”);

2. **THIS COURT ORDERS** that “Class I” be, and is, defined and certified subject hereto as:

All Persons (excluding Persons who reside in the Province of Québec, but including Persons who reside in the Province of Québec and who are precluded from being a member of a group in a class action under Article 999 of the Québec *Code of Civil Procedure*) who purchased income participating securities of FMF Capital Group Ltd. during the initial public offering.

Excluded from Class I are the Defendants, the Transferee Defendants, members of the immediate families of the individual Defendants and Transferee Defendants, the directors, officers, subsidiaries, and affiliates of BDO, the corporate FMF Defendants, and the Transferee Defendants, the directors, senior officers above the office of vice president, subsidiaries, and affiliates of the Underwriter Defendants, any person, firm, trust, corporation, or entity in which any Defendant or Transferee Defendant has a controlling interest or which is related to, or affiliated with, any Defendant or Transferee Defendant, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded Person.

3. **THIS COURT ORDERS** that “Class II” be, and is, defined and certified subject hereto as:

All Persons (excluding Persons who reside in the Province of Québec, but including Persons who reside in the Province of Québec and who are precluded from being a member of a group in a class action under Article 999 of the Québec *Code of Civil Procedure*) who purchased income participating securities (“IPSS”) of FMF Capital Group Ltd., or any of the securities represented by such IPSS, over the Toronto Stock Exchange during the period extending from, and including, March 24, 2005 to, and including, November 15, 2005.

Excluded from Class II are the Defendants, the Transferee Defendants, members of the immediate families of the individual Defendants and Transferee Defendants, the directors, officers, subsidiaries, and affiliates of BDO, the corporate FMF Defendants, and the Transferee Defendants, the directors, senior officers above the office of vice president, subsidiaries, and affiliates of the Underwriter Defendants, any person, firm, trust, corporation, or entity in which any Defendant or Transferee Defendant has a controlling interest or which is related to, or affiliated with, any Defendant or Transferee Defendant, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded Person.

4. **THIS COURT ORDERS** that Tim Gould and Archie Leach be, and are, appointed as the Representative Plaintiffs for the within class proceeding;

5. **THIS COURT ORDERS** that the causes of action asserted on behalf of the Classes are breach of s. 130 of the *Securities Act*, R.S.O. 1990, c. S.5, negligence and negligent misrepresentation, and breach of ss. 36 and 52 of the *Competition Act*, R.S. 1985, c. C-34;
6. **THIS COURT ORDERS** that the within proceeding be, and is, certified on the basis of the following common issues:

Did the Defendants, or any of them, breach duties of care owed to the Class I Members, or the Class II Members, by reason of the alleged acts, omissions, disclosures or non-disclosures relating to the IPO, or subsequent alleged acts, omissions, disclosures or non-disclosures relating to the securities;
7. **THIS COURT DECLARES** that (i) the Settlement Agreement, in its entirety (including the Recitals, the definitions set out in paragraph 1 and its Schedules) (the “Agreement”), forms part of this Order and is binding upon the Representative Plaintiffs, upon all Class Members who do not opt out of the Class in accordance with the Notice, and upon the Defendants; and that (ii) the terms defined in the Settlement Agreement shall have the same definitions in this Order as in the Settlement Agreement;
8. **THIS COURT DECLARES** that the Agreement is fair, reasonable and in the best interests of the Class I Members and the Class II Members;
9. **THIS COURT ORDERS** that Deloitte and Touche ^{LLP} be appointed Claims Administrator;
10. **THIS COURT ORDERS** that The Honourable Fred Kaufman be appointed as Referee, and that the fees and expenses of the Referee be approved by the Court before payment;
11. **THIS COURT ORDERS** that in the event the appointed Referee is unable or unwilling to continue in that capacity, Class Counsel shall seek an Order replacing the Referee;

12. **THIS COURT ORDERS** that a Class Member may, within thirty days of the receipt of the Referee's decision, appeal that decision to the Ontario Superior Court of Justice on the basis of palpable and overriding error only;
13. **THIS COURT ORDERS** that a notice of certification and approval of settlement be distributed and/or published in accordance with the Plan of Notice, which is attached hereto as Schedule "A", and as Schedule C to the Settlement Agreement, and additionally in the manner described at paragraphs 11 and 12 of this Order; and that the notice shall be substantially in the form of Schedules "B" and "C" attached hereto, and attached to the Settlement Agreement as Schedules J and K;
14. **THIS COURT ORDERS** that, the Canadian Depository for Securities Limited ("CDS") shall, as soon as practicable following the Effective Date, issue a bulletin to all brokerages participating in the CDS system containing both the English and French version of the Short Form Approval Notice, attached hereto as Schedule "B", and also containing a request from the Courts that each participating brokerage forward the Short Form Approval Notice to any investors or non-Canadian brokerages who purchased securities of FMF Capital Group Ltd. through the participating brokerage;
15. **THIS COURT ORDERS** that Class Counsel shall, as soon as practicable following the Effective Date, send both the English and French version of the Short Form Approval Notice, attached hereto as Schedule "B", to the following brokerage firms, with a request from the Courts that they provide the Short Form Approval Notice to their brokers and affected clients:
 - (a) Edward Jones;
 - (b) Dundee Wealth Management Inc.;
 - (c) Raymond James Ltd.;
 - (d) Investors Group Inc.;
 - (e) RBC Dominion Securities Inc.;
 - (f) Desjardins Securities;

- (g) Canaccord Capital;
 - (h) Scotia McLeod;
 - (i) BMO Nesbitt Burns;
 - (j) National Bank Financial;
 - (k) TD Waterhouse Private Investment Advice;
 - (l) CIBC Wood Gundy;
 - (m) HSBC Securities Merrill Lynch; and
 - (n) Assante Corp;
16. **THIS COURT ORDERS** that Class Members may opt out of the Classes by completing a Claim Form, indicating on the form that they wish to opt out and submitting it to the Claims Administrator by the date **sixty (60) days** after the Short Form Approval Notice, Schedule “B” attached hereto, is published (the “Opt Out Period”);
17. **THIS COURT ORDERS** that no Class Members may opt out of the Classes after the date established by paragraph 13 hereof;
18. **THIS COURT ORDERS** that the Agreement is approved pursuant to s.29 of the *CPA*;
19. **THIS COURT ORDERS** that the Parties and the Settling Class Members, and their successors, heirs, executors, administrators, and assigns are hereby permanently barred and enjoined from instituting, commencing, or prosecuting against Defendants and the Related Parties any claims, including Unknown Claims, demands, rights, liabilities, actions and causes of action, damages, losses, obligations, judgments, suits, matters, and issues of every nature and description whatsoever, known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or un-matured, whether or not concealed or hidden, that had been, have been, could have been, or may in the future be, asserted in the Litigation or in any court, tribunal, or proceeding in Canada, the United States, or anywhere else (including but not limited to any claims arising under Federal, provincial, or state law in Canada, the

United States, or anywhere else), including, without limitation, all claims alleged or which could have been alleged in the Litigation and all claims for breach of contract, indemnity and/or contribution, negligence, gross negligence, breach of duty of care and/or breach of any other duty (including any fiduciary duty), fraud, securities fraud, misrepresentation, fraudulent misrepresentation, negligent misrepresentation, unjust enrichment, restitution, disgorgement, rescission, breach of trust, false advertising, concert of action, civil conspiracy, willful or wanton misconduct or any other violation of any Federal, provincial, or state statutes, rules, regulations or common law in Canada, the United States, or anywhere else, by any Party or Related Party against any other Party or Related Party, which have arisen, could have arisen, arise now or hereafter arise out of, or relate in any manner to, the allegations, facts, events, transactions, acts, conduct, occurrences, statements, representations, misrepresentations, omissions, obligations, disclosures, nondisclosures, or any other matter, thing, or cause whatsoever, or any series thereof, embraced, involved, alleged, set forth in or otherwise related, directly or indirectly, to the IPO, the IPSs, the Litigation, or the prosecution, settlement, or resolution of the Litigation, all of which are hereby compromised, settled, released, discharged and dismissed with prejudice against the Defendants and the Related Parties.

20. **THIS COURT ORDERS** that the within proceeding be dismissed against the Defendants without costs and with prejudice.

Date: April 11, 2007


THE HONOURABLE
JUSTICE MAURICE C. CULLITY

REGISTRY OF COURTS - MONTREAL
COURT OF QUEBEC
LEAD DOCUMENT NO.:

APR 11 2007

ADJUDICATED NO.:
ALTERNATIVE DOCUMENT NO.:

PER/ PAR:



THIS IS **SCHEDULE "A"** MENTIONED
AND REFERRED TO IN THE ORDER
OF THE HONOURABLE JUSTICE MAURICE C. CULLITY
THIS _____ DAY OF April, 2007

PLAN OF NOTICE

PART 1 – NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

The Pre-Approval Notice will be posted on www.classaction.ca and www.jruslaw.com in the English and French languages. The Pre-Approval Notice will also be disseminated as follows:

National Notice

Publication of the Pre-Approval Notice, which notice will be at least a 1/8 page in size, will occur at least thirty (30) days prior to the Ontario and Québec certification and settlement approval hearings. Such publication will be made in the English language in the *National Post* and *Globe and Mail* (National Editions) and in the French language in *La Presse*, *Le Soleil*, and *L'Acadie Nouvelle* (New Brunswick).

Individual Notice

The Underwriter Defendants, by and at their own expense, shall provide the Pre-Approval Notice to all Class I Members by direct mailing to the last known address of each Class I Member.

Class Counsel will make available to the public a toll free number and email address that will enable Class Members to obtain more information about the proposed settlement, or to request that a copy of the Settlement Agreement be sent to them directly. Additionally, the public may obtain copies of the Settlement Agreement and view the Pre-Approval Notice posted on Class Counsel's website: www.classaction.ca. and www.jruslaw.com.

PART 2 – NOTICE OF CERTIFICATION AND APPROVAL OF SETTLEMENT

The Long Form Approval Notice will be posted, in both the English and French languages, on (i) www.classaction.ca and www.jruslaw.com, and (ii) the website of the Claims Administrator. The Long Form Approval Notice and the Short Form Approval Notice will also be disseminated as follows:

National Notice

Publication of the Short Form Approval Notice, which notice will be approximately a 1/16 page in size, will occur as soon as practicable following the Effective Date, and, in any event, no later than thirty (30) days following such date. Such publication will be made in the English language in the *National Post* and the *Globe and Mail* (National Edition) and in the French language in *La Presse*, *Le Soleil*, and *L'Acadie Nouvelle* (New Brunswick).

Individual Notice

Within thirty (30) days of the Effective Date, and in any event prior to, or on the same date as, the publication of the Short Form Approval Notice, a copy of the Long Form Approval Notice, together with the Claim Form, shall be mailed postage pre-paid, by and at the expense of the Underwriter Defendants to all known IPS-purchasers in the IPO or thereafter during the Class Periods at the last known address of the Class I Members.

Class Counsel will mail, within thirty (30) days of the Effective Date, and in any event prior to, or on the same date as, the publication of the Short Form Approval Notice, a copy of the Long

Form Approval Notice, together with the Claim Form, postage pre-paid, to the address of all putative Class II Members known to Class Counsel at such time.

In addition, Class Counsel will make available to the public a toll free number and email address that will enable Class Members to obtain more information about the settlement and the claims process, or to request that a copy of the Long Form Approval Notice be sent to them. Class Counsel or the Claims Administrator will directly mail the Long Form Approval Notice and the Claim Form to any Class Member who contacts Class Counsel's or the Claims Administrator's offices and requests same.

THIS IS **SCHEDULE "B"** MENTIONED
AND REFERRED TO IN THE ORDER
OF THE HONOURABLE JUSTICE MAURICE C. CULLITY
THIS _____ DAY OF April, 2007

SHORT FORM APPROVAL NOTICE

FMF CAPITAL GROUP LTD. SECURITIES LITIGATION NOTICE OF CERTIFICATION AND APPROVAL OF SETTLEMENT AGREEMENT

Notice published under the Ontario *Class Proceedings Act, 1992* and the *Code de Procédure Civile du Québec*

TO: ALL PERSONS WHO:

(1) PURCHASED INCOME PARTICIPATING SECURITIES ("IPSs") OF FMF CAPITAL GROUP LTD. (THE "COMPANY") IN THE COMPANY'S MARCH 2005 INITIAL PUBLIC OFFERING ("CLASS I MEMBERS"); AND/OR

(2) PURCHASED THE COMPANY'S IPSs, OR ANY OF THE SECURITIES REPRESENTED BY SUCH IPSs, OVER THE TORONTO STOCK EXCHANGE ("TSX") DURING THE PERIOD FROM AND INCLUDING MARCH 24, 2005 TO AND INCLUDING NOVEMBER 15, 2005 ("CLASS II MEMBERS", AND TOGETHER WITH THE CLASS I MEMBERS, THE "CLASS MEMBERS").

IF YOU ARE A CLASS MEMBER, THIS NOTICE WILL BE IMPORTANT TO YOU.

This Short Form Approval Notice is published by orders of the Ontario Superior Court of Justice and the Québec Superior Court (the "Courts").

By orders dated _____, 2007 and **March 29, 2007**, respectively, the Ontario and Québec Courts certified and approved the settlement of class actions filed in Ontario and Québec against the Company and its subsidiaries and related entities, certain of the Company's officers and directors, the Company's auditors, and the underwriters of the initial public offering ("IPO") and arising out of alleged misrepresentations made in the Company's IPO prospectus and in certain pre and post-IPO disclosures relating to the Company.

A Long Form Approval Notice, with full details of the settlement, is available at the websites of Ontario Class Counsel and Michigan Class Counsel at www.classaction.ca and at www.jruslaw.com.

The Settlement Agreement between the parties provides for the settlement of the claims of all Class Members, wherever they may reside, for the sums of US\$21 million and CAN\$4.55 million in cash. The amount of each Class Member's compensation will depend upon: (1) the number of IPSs purchased by the Class Member during the Class Period, and the prices at which the Settling Class Member purchased and sold such IPSs; (2) whether or not the Settling Class Member sustained a net loss on purchases and sales of IPSs and, if so, the amount of that loss; (3) whether the Class Member purchased IPSs in the Company's initial public offering ("IPO") and/or over the TSX; (4) whether or not the Class Member sold IPSs prior to November 15, 2005; (5) whether the Class Member continued to hold the IPSs acquired during the Class Period beyond November 16, 2005; (6) whether the Class Member is a member of both Class I and Class II and, if so, whether the IPSs purchased by the Class Member in the IPO were

commingled with IPSs purchased over the TSX; and (7) the number of IPSs purchased by Class Members who timely register valid Claim Forms with the Claims Administrator.

The Courts have appointed **Deloitte & Touche** ^{LLP} (“Deloitte”) as the Claims Administrator of this Settlement Agreement. Deloitte will administer the agreement through an online claims submission process. Those Class Members who wish to take part in the Settlement must register a claim with the Claims Administrator no later than _____, 2007.

In order to register a claim with the Claims Administrator please go to www._____.ca, and sign in as a New Claimant to obtain a login ID and create a password for your secure access to your Claim Form. On subsequent visits to the website you will be able to login using this information. Once logged in you will be required to complete, print and sign the online Claim Form before faxing it, along with the appropriate supporting documentation, to the Claims Administrator. The information will be directly uploaded to your online Claim where you may review the completeness and status of your claim.

If you wish to Opt Out of the settlement, and reside outside the Province of Québec, you must register with the Claims Administrator, and indicate, where prompted, that you are opting out (an “Opt Out Claim”). The deadline for opting out is _____, 2007.

If you wish to Opt Out of the settlement, and are a resident of Québec, you must, register with the Claims Administrator, print and send a complete copy of the Opt Out Claim to the Clerk of the Québec Court, at the address indicated at (2), below, not later than _____, 2007.

If you have trouble accessing the online system, do not have internet access, or prefer to not to register your claim online, please contact the Claims Administrator directly by emailing fmfclassaction@deloitte.ca, telephoning **1-866-669-6615**, or writing to Claims Administrator - FMF Class Action Settlement, Deloitte & Touche LLP, Suite 1700, 5140 Yonge Street, Toronto, ON, M2N 6L7, and they will assist you in obtaining a hard copy Claim Form.

The court documents concerning these class proceedings are available for inspection at the offices of:

- (1) the Ontario Superior Court of Justice, Court House, 393 University Ave., Toronto, Ontario, M5G 1E6 (Court File No.: _____); and
- (2) the Québec Superior Court, Québec City Court House, 300, boul. Jean-Lesage, Québec City, Québec, G1K 8K6 (Court File No.: 200-06-000064-066).

_____, 2007

THIS IS **SCHEDULE "C"** MENTIONED
AND REFERRED TO IN THE ORDER
OF THE HONOURABLE JUSTICE MAURICE C. CULLITY
THIS _____ DAY OF April, 2007

LONG FORM APPROVAL NOTICE

FMF CAPITAL GROUP LTD. SECURITIES LITIGATION

NOTICE OF COURT APPROVAL OF THE SETTLEMENT OF THESE ACTIONS

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

CLASS MEMBERS: All persons who:

(1) purchased Income Participating Securities (“IPs”) of FMF Capital Group Ltd. (the “Company”) in the Company’s March 2005 initial public offering (“IPO”) (“Class I Members”); and/or

(2) purchased the Company’s IPs, or any of the securities represented by such IPs, over the Toronto Stock Exchange (“TSX”) during the period from and including March 24, 2005 to and including November 15, 2005 (“Class II Members”, and together with the Class I Members, the “Global Class Members”).

1. PURPOSE OF THIS NOTICE:

Please be advised that the Ontario Superior Court of Justice (the “Ontario Court”) and the Québec Superior Court of Justice (the “Québec Court”, and collectively with the Ontario Court, the “Canadian Courts”) have approved the Settlement Agreement concerning the class actions initiated in the Canadian Courts against BMO Nesbitt Burns Inc., Blackmont Capital Inc., Canaccord Capital Corporation, National Bank Financial Inc., Sprott Securities Inc., TD Securities Inc., BDO Seidman LLP, the Company, FMF Capital LLC, FMF Holdings LLC, Michigan Fidelity Acceptance Corporation, PKF LLC, Robert Pilcowitz, Edan King, Howard Morof, Michael Hoffman, Eric Slavens, Lorie Waisberg, Thomas Little, and Atul Shah (collectively, the “Defendants”), and in the Sixth Judicial Circuit Court for the State of Michigan (the “Michigan Court”, and together with the Canadian Courts, the “Courts”) against the Defendants, against Harris Nesbitt Corp. (“Harris”), and against Phyllis Cane Pilcowitz, the Phyllis Cane Pilcowitz Revocable Trust, the Phyllis Cane Pilcowitz Qualified Annuity Trust, Hilary King, the Hilary King Revocable Trust, and the Hilary King Qualified Annuity Trust (collectively, the “Transferee Defendants”).

The Plaintiffs allege in the Courts that the Defendants or some of them disseminated a prospectus and other information containing various misrepresentations to persons who purchased the Company’s IPs and, in the Michigan Court, that the Transferee Defendants were unjustly enriched by the actions of some or all of the Defendants.

The Defendants expressly deny any wrongdoing or liability but have agreed to pay, collectively, the sums of US\$21 million and

CAN\$4.55 million (the "Settlement Fund") to settle the claims of all Class Members. Additionally, the Company has agreed to adopt certain technical, clarifying changes to the Company's (i) Mandate of the Board of Directors, and (ii) Audit Committee Charter.

2. CLASS MEMBERS' ENTITLEMENT UNDER THE AGREEMENT:

Class Members will be eligible for compensation from the Settlement Fund if they sustained a net loss on their purchases and sales of the Company's IPSs and if they timely register a valid claim with the Claims Administrator. Class Members will have until _____, 2007 to register a claim.

The amount of each Class Member's compensation will depend upon: (1) the number of IPSs purchased by the Class Member during the Class Period, and the prices at which the Settling Class Member purchased and sold such IPSs; (2) whether or not the Settling Class Member sustained a net loss on purchases and sales of IPSs and, if so, the amount of that loss; (3) whether the Class Member purchased IPSs in the Company's initial public offering ("IPO") and/or over the TSX; (4) whether or not the Class Member sold IPSs prior to November 15, 2005; (5) whether the Class Member continued to hold the IPSs acquired during the Class Period beyond November 16, 2005; (6) whether the Class Member is a member of both Class I and Class II and, if so, whether the IPSs purchased by the Class Member in the IPO were commingled with IPSs purchased over the TSX; and (7) the number of IPSs purchased by Class Members who timely file valid Claim Forms with the Claims Administrator. The formulae according to which each Class Member's compensation (if any) will be calculated are set forth in greater detail in the Distribution Protocol attached as Schedule "B" to the Settlement Agreement.

The Distribution Protocol includes a procedure for Class Members to dispute decisions of the Claims Administrator (a "Dispute"). Class Members may bring the Dispute before a bilingual Referee appointed by the Canadian Courts for that purpose. The Honourable Fred Kaufman has been appointed by the Courts to serve in that capacity. Class Members may initiate Disputes by submitting written correspondence to the Claims Administrator within twenty (20) days of the date of the Class Member's notice from the Claims administrator of the partial or complete rejection of the Class Member's claim (the "Rejection Notice"). The correspondence must state the Class Member's reasons for the Dispute, and must be accompanied by a certified cheque or money order, payable to the Claims Administrator, in the amount of CAN\$250, which will be applied to the cost of the reference. Upon receiving notice from a Class Member of a Dispute, the Claims Administrator must advise Ontario Class Counsel (if the Class Member resides outside of Québec) or Québec Class Counsel (if the Class Member resides in

Québec), as well as the Referee, in writing of the initiation of the Dispute and of the Claims Administrator's reasons for having rendered the decision to which the Dispute relates (with a copy to the Class Member), and will provide to Ontario or Québec Class Counsel (as the case may be) and the Referee a copy of the Class Member's correspondence stating the reasons for the Dispute. Within twenty (20) days of their receipt of the Class Member's and the Claims Administrator's written submissions with respect to the Dispute, Ontario Class Counsel or Québec Class Counsel (as the case may be) shall deliver to the Referee (with copies to the Claims Administrator and to the Class Member initiating the Dispute) a written statement of their position (if any) with respect to the Dispute.

All Disputes shall be resolved on the basis of written submissions, and in no case on the basis of an in-person or other oral hearing. The Referee will render his, her or its decision with respect to all Disputes within thirty (30) days of the date by which Class Counsel is required to state their position with respect to the Dispute.

The Referee shall distribute a copy of the decision to the objecting Class Member, the Claims Administrator and Class Counsel. If the Settling Class Member is in any way successful on the reference, the CAN\$250 deposit shall be returned to the Settling Class Member, but if totally unsuccessful, the CAN\$250 deposit shall be applied to the cost of the Referee. A Class Member may appeal the decision of the Referee to the applicable Canadian Court. Any such appeal shall be limited to review for palpable and overriding error and shall otherwise be subject to the Rules of the Court in that jurisdiction.

Final Distribution

No later than sixty (60) days following the adjudication of all Disputes, the Claims Administrator will make final distributions of compensation to the Class Members. In so doing, the Claims Administrator will deduct from any payments otherwise due to the Québec Class Members any amounts owing to the Québec *Fonds d'Aide*.

3. CLAIMS ADMINISTRATOR:

Deloitte and Touche ^{LLP} has been appointed by the Courts to be the Claims Administrator who will administer the Settlement Fund. Please contact the Claims Administrator as follows:

Email: fmfclassaction@deloitte.ca

Telephone: 1-866-669-6615

Mailing Address:

Claims Administrator – FMF Class Action Settlement

Deloitte & Touche LLP
Suite 1700
5140 Yonge Street
Toronto, ON M2N 6L7

A complete copy of the Settlement Agreement is available on the websites of Ontario Class Counsel and Michigan Class Counsel at www.classaction.ca and www.jruslaw.com.

4. REGISTERING A CLAIM

All claims will be administered through an online claims submission process. Those Class Members who wish to take part in the Settlement must register a claim with the Claims Administrator no later than _____, 2007.

In order to register a claim with the Claims Administrator please go to www._____.ca, and sign in as a New Claimant, to obtain a login ID and create a password for your secure access to your Claim Form. On subsequent visits to the website you will be able to login using this information. Once logged in you will be required to complete, print and sign the online Claim Form before faxing it, along with the appropriate supporting documentation, to the Claims Administrator. The information will be uploaded to your online Claim where you may review the completeness and status of your claim.

If you have trouble accessing the online system, do not have internet access, or prefer to not to register your claim online, please contact the Claims Administrator directly by emailing fmfclassaction@deloitte.ca, telephoning 1-866-669-6615, or writing to Claims Administrator - FMF Class Action Settlement, Deloitte & Touche LLP, Suite 1700, 5140 Yonge Street, Toronto, ON, M2N 6L7, and they will assist you in obtaining a hard copy Claim Form.

5. OPTING OUT:

All persons who come within the definition of the Class will automatically be included in the Class unless they exclude themselves from the Class ("Opt Out").

If you Opt Out, you will not be bound by the Settlement Agreement, but you will not be eligible for any of the benefits of the Settlement Agreement. This means that you will be barred from making a claim and receiving payment pursuant to the Settlement Agreement.

If you wish to Opt Out of the settlement, you must complete an online Claim Form by going to www._____.ca, and signing in as a New Claimant. You will be asked whether you would like to Opt Out of the settlement and you must indicate "Yes" in order to validly Opt Out (an "Opt Out Claim").

If you reside outside of the Province of Québec and wish to Opt Out,



you will have to register your claim with the Claims Administrator by the Opt Out Deadline, _____, 2007. Residents of Québec however, must, in addition to registering with the Claims Administrator, print and send a complete copy of their Opt Out Claim to the Clerk of the Québec Court, at the address indicated at below, all not later than _____, 2007.

The address for the clerk of the Québec Court is, Québec Superior Court, Québec City Court House, 300, boul. Jean-Lesage, Québec City, Québec, G1K 8K6.

6. IMPORTANT DEADLINES:

_____, 2007 – Opt Out Deadline

_____, 2007 – Claims Deadline

Because of the deadlines, you must act without delay.

7. CLASS COUNSEL:

A. Dimitri Lascaris and Charles M. Wright of the law firm of *Siskinds^{LLP}* are counsel to the Plaintiffs in the Ontario class proceeding (“Ontario Class Counsel”). Ontario Class Counsel can be reached by telephone, toll free, at **1-800-461-6166, Ext. 2380**.

Simon Hébert of the law firm of *Siskinds, Desmeules^{S.E.N.C.R.L.}* is counsel to the Petitioners in the Québec class proceeding (“Québec Class Counsel”). Québec Class Counsel can be reached by telephone at **(418) 694-2009**.

Henry Juroviesky of the Ontario-based law firm of *Juroviesky and Ricci^{LLP}* and the Michigan-based law firm of *Frank, Haron, Weiner and Navarro^{PLC}* are counsel to the Plaintiffs in the Michigan Action (“Michigan Class Counsel”, and together with Ontario and Québec Class Counsel, “Class Counsel”). Michigan Class Counsel can be reached at 4950 Yonge Street, Suite 904, Toronto, Ontario, M2N 6K1, Attention: **Henry Juroviesky**.

8. LEGAL FEES:

The Courts collectively have awarded legal fees, expenses and applicable taxes to Ontario, Québec and Michigan Class Counsel (as defined below) in the total amount of **CAN\$6,318,138.22** (the “Fee”). 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 were responsible for funding all disbursements incurred in pursuing this litigation. The Fee will be deducted from the Settlement Fund.

9. INTERPRETATION: If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its Schedules, the terms of the Settlement Agreement will prevail.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at LONDON

ORDER

Siskinds ^{LLP}
Barristers & Solicitors
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P.O. Box 2520
London, ON N6A 3V8

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Tel.: (519) 660-7753
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A. Dimitri Lascaris LSUC#: 50074A
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Solicitors for the Plaintiffs