

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000314-050

DATE: April 9, 2009

IN THE PRESENCE OF: THE HONOURABLE LOUIS-PAUL CULLEN, J.S.C.

BOYS AND GIRLS CLUB OF LONDON FOUNDATION
and
EDELTRAUD T. LEISSER
Petitioners

v.
MOLSON COORS BREWING COMPANY
and
PETER H. COORS
and
W. LEO KIELY III
and
CHARLES M. HERINGTON
and
FRANKLIN W. HOBBS
and
RANDAL OLIPHANT
and
PAMELA PATSLEY
and
WAYNE SANDERS
and
ALBERT C. YATES
and
DAVID D.G. BARNES
and

PETER M.R. KENDALL
and
TIMOTHY V. WOLF
Respondents

JUDGMENT

- [1] The Petitioners submit two motions for approval:
- (a) a "Motion for final approval of class action settlement (Articles 1025, 1027 and following, C.C.P.)" (the "Settlement Motion"), and
 - (b) a "Motion for approval of the class counsel fees and disbursements (Article 1025 C.C.P.)" (the "Fees Motion").

Background

[2] Following a merger in February 2005 between Adolph Coors Company and Molson Inc. to form Molson Coors Brewing Company, litigation commenced in Ontario, Quebec and various jurisdictions in the United States alleging, among other things, that Molson shareholders had been misled about the merger's benefits.

[3] On November 6, 2008, a Stipulation and Settlement Agreement (the "Settlement") was executed on behalf of all parties, whereby a global settlement was reached.

[4] The Settlement was conditional, however, upon its approval by Canadian and American courts as well as upon judicial leave in Ontario and Quebec to discontinue and dismiss the Additional Canadian Actions¹.

[5] On December 12, 2008, the present class action was authorized for the sole purpose of submitting the Settlement for approval. In addition, several orders and declarations were also issued, including the following:

ORDERS that the "Canadian Class" be defined as:

All persons and entities resident or domiciled in Canada: (i) that, as former shareholders of Molson, received shares of Molson Coors as a result of the February 9, 2005 merger of Molson and Coors; (ii) that were

¹ This capitalized expression is defined in paragraph 1 (a) of the Settlement as meaning "the *Ayotte-Englot* Ontario Action, Court File No. 05/31136, the *Fenn* Action, Court File No. 48443 CP, and the *Ayotte-Englot* Quebec Action, Court File No. 550-06-000022-054".

open market purchasers of the common stock of Coors from July 22, 2004 through February 9, 2005, inclusive; or (iii) that were open market purchasers of the common stock of Molson Coors, from the completion of the merger of Molson and Coors through April 27, 2005, inclusive, and who were allegedly damaged thereby, and including the plaintiffs in the Additional Canadian Actions and all persons and entities resident or domiciled in Canada included within the putative classes on whose behalf the Additional Canadian Actions were brought. Legal persons established for a private interest, partnership or association, who employed more than 50 persons at any time during the period from October 25, 2004 to October 25, 2005, and who otherwise fit the above description, are not included in the Canadian Class. Such persons are however, included in the U.S. Class. Excluded from the Canadian Class are the Excluded Persons.

ASCRIBES to Boys and Girls Club of London Foundation and to Edeltraud T. Leisser the status of representatives of the "Canadian Class", solely for the purpose of settlement;

AUTHORIZES and ORDERS notification in accordance with the Plan of Notice appended to the present judgment;

ORDERS that both an English and French version of the Notice and of the Proof of Claim forms shall be mailed by first class mail, postage prepaid, on or before the Notice Date to those individuals and entities with a Canadian address;

ORDERS that the deadline for filing an objection to the Settlement is March 19, 2009;

ORDERS that the deadline for filing a Proof of Claim is March 19, 2009;

DECLARES that Class Members may file an objection whether or not they file a Proof of Claim;

ORDERS that the deadline for opting-out of the Canadian Class is March 19, 2009;

DECLARES that any Canadian Class Member who has not validly opted out of the Canadian Class described in the Settlement will be bound by both the Settlement and any and all judgments authorizing the class action for settlement purposes only and approving the Settlement;

DECLARES that any Canadian Class Member who does not discontinue any suit he or she has brought concerning claims which judgment in the within action would decide, prior to the expiry of the date for exclusion from the Canadian Class, shall be deemed to have opted out, except for the plaintiffs or petitioners, as the case may be, in the Additional Canadian Actions;

SETS the hearing for the motion for approval of the class action Settlement and approval of attorney fees as between the Petitioners and their counsel at 9:30 a.m. on April 2, 2009 at the Montreal Courthouse, 1 Notre Dame Street East, Montreal, in a room to be determined by the court;

AUTHORIZES AND ORDERS that Notices materially identical to those appended to the present judgment be published pursuant to the Plan of Notice filed into the Court record;

[6] According to the affidavit sworn on March 26, 2009 by Paul Mulholland, President of Strategic Claims Services, a claims administration firm, Canadian Class members were notified in the manner ordered by the December 12, 2008 judgment, and were informed, among other things, of:

- the time and place of the hearing by the Superior Court of the Settlement Motion and of the Fees Motion;
- the nature of the transaction and the method of execution;
- the procedure to be followed by the members to prove their claims or to opt out, and of
- the possibility of filing an objection to the Settlement or to any of its terms or to the applications by Plaintiffs' counsel for attorneys' fees and expenses, whether or not a proof of claim was filed.

[7] Canadian Class members were also notified of the reasons for the Settlement, of the maximum percentage of the settlement funds that could be allocated to legal fees as well as of the dollar limit that could be allocated to disbursements, i.e. taxes and out-of-court expenses.

[8] According to Mr. Mulholland, as of March 26, 2009:

- 7,568 claims had been received in total, including 2,180 (29%) by Canadian Class members;
- Only one Canadian Class member, the holder of two shares of the corporation resulting from the merger, had delivered a request to opt out, and
- No objection had been filed to the Settlement or to the applications by Plaintiffs' counsel for legal fees and expenses.

[9] At the hearing on April 2, 2009, no objection was raised to either the Settlement Motion or the Fees Motion.

The Settlement Motion

[10] Pursuant to Art. 1025 C.C.P., settlement of a class action is valid only if approved by the court.

[11] Quebec law does not specify the criteria on the basis of which the court exercises its discretion in this respect.

[12] Quebec precedents² refer to the criteria enumerated by Justice Sharpe in the Ontario case of *Dabbs v. Sun Life*³:

1. Likelihood of recovery, or likelihood of success;
2. Amount and nature of discovery evidence;
3. Settlement terms and conditions;
4. Recommendation and experience of counsel;
5. Future expense and likely duration of litigation;
6. Recommendation of neutral party, if any;
7. Number of objections and nature of objections;
8. The presence of good faith and the absence of collusion.

[13] The aim is to ensure that the settlement is fair, reasonable and in the interest of the members.

[14] Canadian Class Counsel⁴ submit that the Settlement is the product of negotiations conducted in good faith and at arm's length between experienced and knowledgeable attorneys and that it is reasonable and fair.

[15] In an affidavit of March 26, 2009 filed in support of the Settlement Motion, A. Dimitri Lascaris, a partner with the law firm of Siskinds LLP, provides an overview of the litigation leading to the settlement negotiations, including a history of the actions instituted in Canada and the United States.

[16] Attached to Mr. Lascaris' affidavit is a copy of the order dated December 18, 2008 by which the Honourable Gregory M. Sleet amended his earlier order of

² For instance: *Guilbert v. Sony BMG Musique (Canada) Inc.*, 2007 QCCS 432, par. 42 and *Association de protection des épargnants et investisseurs du Québec (APEIQ) v. Corporation Nortel Networks*, 2007 QCCS 266, par. 66.

³ 96-CT-022862, 1998-02-05 (Ontario Court, General Division).

⁴ This capitalized expression is defined in paragraph 1 (e) of the Settlement as meaning "Siskinds LLP, Paquette Gadler Inc., and Merchant Law Group LLP".

November 18, 2008, preliminarily approved the settlement of the U.S. Action⁵ and set the U.S. approval hearing on May 18, 2009.

[17] Don Donner, Executive Director of the Boys and Girls Club of London Foundation, states in an affidavit sworn on March 4, 2009 that in the absence of the class proceeding, the Foundation would likely not have commenced an individual action against the Respondents due to the expense involved and that he does not believe that the interests of the Foundation are in conflict with those of the other members of the Canadian Class.

[18] Mr. Donner adds that:

- He authorized the firm of Paquette Gadler Inc. ("Paquette") to commence proceedings against the Respondents as well as their association with other law firms in Canada and the United States for the prosecution of the class action.
- He understands the liability risks inherent to this litigation, was kept apprised throughout of its progression and gave instructions, as necessary, including with respect to settlement negotiations and approval of the Settlement.
- He specifically approves of the quantum of the Settlement, takes the position that it is appropriate and that the Gross Settlement Fund⁶ is fair and reasonable consideration for the dismissal of the action.
- He also approves of the procedures governing the manner in which Canadian Class members may apply for compensation, the manner in which the nominal entitlement of each is calculated and the plan of dissemination for the Net Settlement Fund⁷.

[19] Mr. Donner confirms that the litigation was undertaken on a contingency basis such that Paquette would not be paid any fees or disbursements unless successful. A copy of the retainer agreement filed with Mr. Donner's affidavit confirms this. It also confirms that Paquette had indicated its intent to request a legal fee of 25%, plus

⁵ *In re Molson Coors Brewing Company Securities Litigation*, C.A. No. 05-cv-294-GMS (Consolidated).

⁶ This capitalized expression is defined in paragraph 1 (x) of the Settlement as meaning "the cash amounts to be paid to the Escrow Agent by or on behalf of Molson Coors pursuant to ¶ 7 hereof, and any interest on or other income or gains in respect of said sum earned while such amounts are held by the Escrow Agent".

⁷ This capitalized expression is defined in paragraph 1 (aa) of the Settlement as having "the meaning set forth in ¶ 10(a) hereof". Paragraph 10(a) of the Settlement reads: The Gross Settlement Fund shall be used to pay (i) for all costs incurred and associated with any and all notices to Class Members and administration costs referred to in ¶ 14 hereof, (ii) the attorneys' fee and expense award referred to in ¶ 17 hereof, and (iii) the remaining administration expenses referred to in ¶ 14 hereof. The balance of the Gross Settlement Fund after the above payments and payment of any Taxes shall be the "Net Settlement Fund" (...).

disbursements, plus GST and QST from the court and that it might associate with other law firms in Canada and the United States, subject to the same conditions.

[20] The affidavit sworn by Edeltraud T. Leisser on March 26, 2009 also approves of the Settlement and of the application for fees and disbursements.

[21] The Settlement will allow for prompt and certain recovery for Canadian Class members.

[22] Particulars regarding the appropriateness of the Settlement including the plan of allocation from the perspective of the Petitioners are found in the affidavit of Mr. Lascaris filed in support of the Settlement Motion⁸.

[23] Under the circumstances, the Settlement achieved is fair, reasonable and in the interest of the Canadian Class members, considering, in particular:

- The possibility that authorization of the class action might be denied, which risk this Court is in a unique position to appreciate as it has already devoted to this issue four days of hearing.
- The inevitable delays and the inherent complexities of class action litigation and the added complexities arising in the present case from the coordination of multi-jurisdictional and multi-national claims.
- The numerous and complex legal issues raised by the Petitioners and the existence of serious grounds of defence.
- The significant difficulties of proof facing the Petitioners, particularly following the decision by the U.S. Securities and Exchange Commission to abandon its investigation of the merger, the efficiencies realized by Molson Coors after the merger, which met or exceeded public statements made prior to the merger, and the good performance of the share price.
- That the plan of allocation was the outcome of prolonged discussion and negotiation between Canadian Class Counsel and U.S. Lead Plaintiffs' Counsel⁹ and took into account the strengths and weaknesses of the various claims associated with three categories of transactions and apportioned recovery accordingly.

⁸ Paragraphs 44 to 50.

⁹ This capitalized expression is defined in paragraph 1 (vv) of the Settlement as meaning "the law firms of Lebaton Sucharow LLP and Motley Rice LLC, together with liaison counsel Rigrodsky & Long, P.A".

The Fees Motion

[24] Canadian Class Counsel also seek approval of legal fees in the amount of US\$615,000 plus taxes and disbursements in the amount of C\$120,000.

[25] In an affidavit dated March 26, 2009, which is filed in support of the Fees Motion, Mr. Lascaris states, among other things, that:

- As a result of the Settlement, US\$6,000,000 was deposited into escrow on December 31, 2008 and has been earning interest for the benefit of the members.
- Canadian Class Counsel and U.S. Lead Plaintiffs' Counsel have agreed to request legal fees totalling no more than 25% of the Gross Settlement Fund, plus interest on such fees at the same rate earned by the Gross Settlement Fund.
- They have also agreed to nominally allocate 41% of the Gross Settlement Fund (US\$2,460,000) to the Canadian Class and 59% to the U.S. Class for the purpose of the legal fee requests, taking into account several factors including the relative strength of the actions, the damages likely incurred by the members in either jurisdiction, the respective roles of counsel as well as the time they incurred.
- Canadian Class Counsel request legal fees of US\$615,000 which represents 25% of the Canadian Class' portion of the Gross Settlement Fund, i.e. 25% of US\$2,460,000, or 10.25% of the Gross Settlement Fund, whereas U.S. Lead Plaintiffs' Counsel shall seek legal fees not to exceed US\$885,000, which represents 25% of the U.S. Class' portion of the Gross Settlement Fund, or 14.75% of the Gross Settlement Fund, plus interest at the same rate earned by the Gross Settlement Fund.
- In addition, Canadian Class Counsel and U.S. Lead Plaintiffs' Counsel have agreed to request reimbursement of disbursements and taxes such that their cumulative requests for legal fees, disbursements and applicable taxes do not exceed 30% of the Gross Settlement Fund.
- In pursuing the present action and the Additional Canadian Actions, Canadian Class Counsel and a related firm have incurred total legal fees of C\$1,245,171.50 and total disbursements of C\$71,124.41, as follows:
 - i. Siskinds has spent 981.5 hours and incurred C\$300,350.92 in legal fees plus C\$47,015.80 in disbursements as of March 26, 2009;
 - ii. Paquette has spent 1,541.41 hours and incurred C\$669,104.14 in legal fees, including QST and GST, plus C\$18,496.88 in disbursements as of February 28, 2009;

- iii. Merchant has spent 543.66 hours and incurred C\$234,929.47 in legal fees, including taxes, plus C\$5,611.73 in disbursements as of March 11, 2009;
 - iv. Siskinds Desmeules, a firm that assisted on the motion for authorization in the present action, has incurred C\$40,787 in legal fees, including GST and QST.
- Taxes eligible to be claimed by Canadian Class Counsel total C\$55,444.59. Given the limit of C\$120,000 indicated in the Notice to the members, however, Canadian Class Counsel request approval of taxes and disbursements in the amount of C\$120,000.
 - In sum, Canadian Class Counsel fees and disbursement request totals US\$713,004 (fees of US\$615,000 and disbursements of US\$98,004¹⁰), whereas U.S. Lead Plaintiffs' Counsel fee and disbursement request totals US\$1,015,000 (fees of US\$885,000 and maximum disbursements of US\$130,000), for a maximum grand total of US\$1,728,004, less than 30% (28.8%) of the Gross Settlement Fund.

[26] At the Court's request, Canadian Class Counsel submitted their relevant time dockets.

[27] The Court is satisfied that duplication of efforts between Canadian Class Counsel, particularly in the period from May 2005 to May 2006 until the latter agreed to join forces, did not result in charges exceeding C\$490,320.50, or the difference between total fees incurred (C\$1,245,171.50) and fees requested based on the Bank of Canada exchange rates at noon, on April 9, 2009 (C\$754,851)¹¹.

[28] Canadian Class Counsel undertook immediate and substantial risks with respect to complex and multi-jurisdictional litigation, bearing in mind that they agreed to bear all expenses themselves and renounced all fees whatsoever in the absence of a settlement or of a favourable judgement.

[29] Their remuneration request is justly proportioned to such risks and consistent with their retainer.

[30] Mr. Lascaris recites specific litigation risks of which Canadian Class Counsel were aware when they undertook their mandates, including:

- that the commencement of the present class action would not be authorized in Quebec;

¹⁰ Based on the Bank of Canada exchange rates on March 25, 2009.

¹¹ <http://www.bankofcanada.ca/en/rates/exchform.html>

- that a class encompassing persons outside of Quebec would not be authorized by the Quebec Superior Court;
- that actionable misrepresentations could not be proven;
- that a causal connection could not be proven between the alleged wrongful conduct and some or all of the alleged losses;
- that there did not exist a statutory cause of action under the securities acts of the common law Provinces;
- that common law based claims would require proof of reliance upon alleged misrepresentations;
- that any favourable judgement could be appealed and any benefit delayed, and
- that settlement might not be reached or fall through as a result of the number of opt-outs or failure to obtain judicial approval.

[31] Mr. Lascaris further states that Canadian Class Counsel will devote additional time to the approval of the Settlement in Canada and the United States, to the discontinuance of the Additional Canadian Actions, to interacting with the Settlement administrator to ensure the fair and efficient administration of the Settlement, to the resolution of any issues which may arise in the implementation of the settlement and to the winding-up of the Settlement, including a final report to the courts.

[32] At the hearing, Canadian Class Counsel renounced all interest on the fees and disbursements requested.

Fonds d'aide aux recours collectifs

[33] The *Fonds d'aide aux recours collectifs* (the "*Fonds*") was established in the Province of Quebec to ensure the financing of class actions and to disseminate information respecting the exercise of such actions.

[34] Pursuant to s. 32 of *An Act Respecting the Class Action* (the "Act"), when the *Fonds* grants financial assistance, it files at the office of the Superior Court of the district in which the class action is brought, the conclusions of the decision granting assistance¹². In such case, the court must hear the *Fonds* before deciding the payment of costs, determining the fees of the representative's attorney, or approving a transaction on costs or fees.

[35] The *Fonds* did not file any decision confirming financial assistance either in the present action or in the *Ayotte-Englot* Quebec action, no. 550-06-000022-054.

¹² R.S.Q., c. R-2.1.

[36] Rule 69 of the *Rules of practice of the Superior Court of Québec in civil matters*¹³ provides, however, that "Any motion for fixing costs or the fees of the representative's attorney or for approval of a transaction respecting such costs or fees shall be served upon the *Fonds*, together with a notice of its presentation."

[37] The *Fonds* was not served with the Settlement Motion or the Fees Motion prior to the April 2, 2009 hearing.

[38] On April 8, 2009, Me Louise Ducharme confirmed on behalf of the *Fonds* that it had received service of the Settlement Motion and the Fees Motion, and that the *Fonds* takes note of paragraph 10 d) of the Settlement, which reads as follows:

10. (d) To the extent (without prejudice or admission of any kind) that the Fonds d'aide aux recours collectifs (Class Action Assistance Fund (the "Fund")) of Quebec is entitled under Quebec law to any portion of the Net Settlement Fund regarding claims by Quebec residents, any relevant portions will be set aside by the Claims Administrator on behalf of and paid over to the Fund from the amounts otherwise allocable to such Quebec residents under the Plan of Allocation, it being agreed and understood that none of the Defendants or the Released Parties shall bear any responsibility for any such payments to the Fund.

[39] Where recovery of the claims is not collective, section 42 of the Act allows the *Fonds* to withhold a percentage fixed by regulation of the Government on every liquidated claim:

42. In the case of a collective recovery of the claims, the Fonds shall withhold a percentage fixed by regulation of the Government on the balance established under article 1033 or 1034 of the Code of Civil Procedure; in other cases, the Fonds shall withhold a percentage fixed by regulation of the Government on every liquidated claim.

[40] Subparagraphs 1(3)(a) to (c) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs*¹⁴ prescribe the applicable percentages:

1. For the application of section 42 of the Act respecting the class action (R.S.Q., c. R-2.1), the percentage withheld by the Fonds d'aide aux recours collectifs from the balance or from a liquidated claim shall be as follows:

(3) on any other liquidated claim under article 1028 of the Code of Civil Procedure:

(a) 2 % from any liquidated claim less than 2 000 \$;

¹³ (1998) 130 G.O. II, 5894, s. 2.

¹⁴ (1985) 117 G.O. II, 6058.

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

[41] In her letter of April 8, 2009, Me Ducharme further confirmed that the *Fonds* accepts that the Claims Administrator¹⁵ be ordered to withhold the following percentages from the claims of Canadian Class members residing in Quebec:

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

Currency

[42] While the amount of US\$615,000 for fees is appropriate, it must be expressed in Canadian currency, pursuant to s. 12 of the *Currency Act*¹⁶:

12. All public accounts established or maintained in Canada shall be in the currency of Canada, and any reference to money or monetary value in any indictment or other legal proceedings shall be stated in the currency of Canada.

[43] Paragraph 37 of the Settlement suspends the "Effective Date" of Settlement until completion of all of conditions, including the expiry of the time given to various interested parties to terminate the Settlement.

[44] The currency exchange date shall therefore be the date of the present judgement.

[45] The Bank of Canada currency exchange rate of the U.S. dollar to the Canadian dollar was 1.2274 at noon, on April 9, 2009. The sum of US\$615,000 then equalled C\$754,851, as mentioned above.

Claims Administrator

[46] Paul Mulholland, President of Strategic Claims Services, will be ordered to ensure the proper execution by the latter of the Plan of Allocation, including the mandatory withholding of sums for the *Fonds*.

[47] The Fees Motion will therefore be approved, subject to withholdings for the *Fonds*, to the expression in Canadian currency of the fee amount claimed and to the order concerning Mr. Mulholland.

¹⁵ This capitalized expression is defined in paragraph 1 (h) of the Settlement as meaning "such entity as is approved by the Courts to administer the Settlement".

¹⁶ R.S.C. 1985, c. C-52; see: *Carsley Silk Co. v. Koechlin Baumgartner & Cie*, [1972] C.A. 267.

FOR THESE REASONS, THE COURT:

APPROVES the Settlement entered into on November 6, 2008, exhibit RA-1 in support of the Petitioners' "Amended motion for leave to publish a notice to class members concerning a motion for authorization and approval of a class action settlement (Articles 1025, 1027 and following, C.C.P.)" dated December 1, 2008, provided that exhibits RA-2, RA-4, RA-3 and RA-5, which are appended to the latter motion, be respectively substituted to Schedules C-1 to C-4 of exhibit RA-1;

APPROVES, solely for the purpose of settlement, the request for fees in the amount of C\$754,851 and disbursements in the amount of C\$120,000;

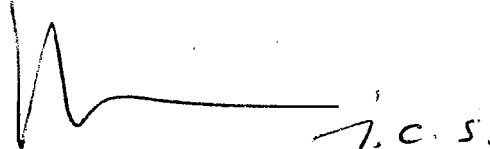
AUTHORIZES, solely for the purpose of settlement, Siskinds LLP, Paquette Gadler Inc., and Merchant Law Group LLP to deduct from the Gross Settlement Fund C\$754,851 in payment of their fees and C\$120,000 in payment of their disbursements and applicable taxes;

ORDERS Paul Mulholland, President of Strategic Claims Services, to ensure the proper execution by Strategic Claims Services of the distribution of the Net Settlement Funds to Authorized Claimants as these terms are defined in exhibit RA-1, in the manner described in exhibits RA-2, RA-4, RA-3 and RA-5;

ORDERS Paul Mulholland to ensure the withholding by Strategic Claims Services from the claims of Canadian Class members residing in Quebec of the following percentages for the sole benefit of the *Fonds d'aide aux recours collectifs*:

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

WITHOUT COSTS.



LOUIS-PAUL CULLEN, J.S.C.

Me Philippe Charest-Beaudry
PAQUETTE GADLER INC.

Me Charles Wright
SISKINDS LLP

500-06-000314-050

PAGE: 14

Me Owen Falquero
MERCHANT LAW GROUP LLP
Attorneys for the Petitioners

Me François Giroux
Me Shaun Finn
McCARTHY TÉTRAULT
Attorneys for the Respondents

Date of hearing: April 2, 2009