

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE TRUSTEES OF THE DRYWALL ACOUSTIC LATHING
AND INSULATION LOCAL 675 PENSION FUND and 0793094 B.C. LTD.**
Plaintiffs

- and -

**SNC-LAVALIN GROUP INC., IAN A. BOURNE, DAVID GOLDMAN, PATRICIA A.
HAMMICK, PIERRE H. LESSARD, EDYTHE A. MARCOUX, LORNA R. MARSDEN,
CLAUDE MONGEAU, GWYN MORGAN, MICHAEL D. PARKER, HUGH D. SEGAL,
LAWRENCE N. STEVENSON, GILLES LARAMÉE, MICHAEL NOVAK, PIERRE
DUHAIME, RIADH BEN AÏSSA and STÉPHANE ROY**
Defendants

Proceeding under the Class Proceedings Act, 1992

AFFIDAVIT OF BRENT GRAY

I, Brent Gray, of the City of Surrey, in the Province of British Columbia, MAKE OATH
AND SAY:

1. I am the President and a director of 0793094 BC Ltd. (the "Numbered Company"), a family holding company and a representative plaintiff in this Action. I have signing authority for the Numbered Company and I have authority to instruct counsel on its behalf. I have personal knowledge of the facts to which I hereinafter depose. Where that knowledge is based on information I have obtained from others, I have so indicated and believe that information to be true.
2. Nothing in this affidavit is intended to waive, nor should it be understood or interpreted to be a waiver of solicitor-client privilege, litigation privilege, settlement privilege or any other privilege related or potentially attaching to any of the information conveyed herein.

3. I have reviewed the settlement agreement dated August 13, 2018 between the parties to this action, ("**Settlement Agreement**"). Unless otherwise noted, capitalized terms that I have used in this affidavit, which are not specifically defined herein, have the meanings attributed to them in the Settlement Agreement.

4. I swear this affidavit for two related purposes:

(a) In support of the Plaintiffs' motion for Court approval of the Settlement reached between the Parties (which I understand includes a request for Court approval of ancillary documents necessary to give effect to the Settlement); and

(b) In support of a separate motion for:

(i) approval of a retainer agreement between me and Class Counsel; and

(ii) approval of Class Counsel Fees to be paid from the Settlement Funds.

A. THE NUMBERED COMPANY'S PURCHASE OF SNC SHARES

5. On January 30, 2012, I caused the Numbered Company to purchase 600 common shares of SNC-Lavalin at an average purchase price of \$52.20 per share, exclusive of brokerage commissions. The Numbered Company continued to hold those shares through the end of the Class Period.

B. ONGOING INVOLVEMENT OF THE REPRESENTATIVE PLAINTIFF

6. On August 14, 2012 I entered a formal retainer agreement with Rochon Genova LLP ("**Rochon Genova**") to prosecute this Action. When entering the Agreement, it was understood by me and the Numbered Company that the Trustees and I would both be proposed representative

plaintiffs in this Action. Later I was replaced by the Numbered Company as a proposed representative plaintiff because the SNC shares referred to above were purchased and held by the Numbered Company on my direction. Now shown to me and marked as Exhibit "A" to this, my affidavit, is the retainer agreement between me and Rochon Genova dated August 14, 2012 ("**Gray Retainer Agreement**").

7. I understand that the other representative plaintiff (the "**Trustees**") entered into a similar retainer agreement with Siskinds LLP ("**Siskinds**"), to prosecute the Action as co-counsel with Rochon Genova ("**Trustees' Retainer Agreement**").

8. On behalf of the Numbered Company, I have committed myself to the prosecution of this Action.

9. In furtherance of that commitment, I have been in regular contact with Rochon Genova by telephone, by email. I have also met with Rochon Genova from time to time at various stages in the proceeding. On behalf of the Numbered Company as representative plaintiff, I received advice from, and gave instructions to Rochon Genova when called upon to do so.

10. In this Action:

- (a) I swore affidavits in support of the motion for leave and certification including an affidavit sworn June 28, 2012 and an affidavit sworn September 12, 2012;
- (b) I oversaw the assembly of the Numbered Company's relevant documents for the purposes of production;

- (c) On June 19, 2013, I swore the affidavit of documents on behalf of the Numbered Company; and
- (d) On September 19, 2017, I appeared as the representative of the Numbered Company for the purposes of examination for discovery.

11. Since being retained, Rochon Genova as co-Class Counsel with Siskinds, has kept me informed of the progress of the investigation and once commenced, the Action. More particularly, they have provided detailed updates regarding the status of the Action, steps taken and to be taken and the reasons therefor. In addition, they have provided key documents, made recommendations and sought my input and instructions in relation to all material matters.

12. I knew throughout this period that the case had been extremely hard fought at virtually every stage by counsel for both the Plaintiffs and Defendants. In particular:

- (a) I was aware that Class Counsel filed a record of evidence, for a contested leave motion under the Ontario *Securities Act* ("OSA") and for certification of this action as a class proceeding. I was aware that eventually, the motion was unopposed and the Court granted leave and certification after this material was delivered. I was also aware that there were numerous motions brought before the Court to amend the claim to broaden certain allegations after further details about the alleged bribery scandal at SNC became public. I also know that the Class Counsel obtained many thousands of documents from SNC and the Defendants and many documents from the police in Québec.

(b) In 2016, I was advised that there were competing summary judgement motions that had been brought by the defendant SNC and by the Plaintiffs. SNC wanted the action dismissed and the Plaintiffs wanted judgment that there had been misrepresentations that caused loss to the shareholders. I was advised by Class Counsel that both motions were stayed and that the Court ordered that the case proceed through examinations for discovery and go to trial. The case went through many weeks of examinations for discovery in the period from April to September 2017. After this, I was advised that the case had been set down for trial and that it was intended to proceed to trial.

(c) I was advised in 2018 that there was a prospect for a second mediation. The first mediation over two days in late 2016 had been unsuccessful. I was briefed about the second two day mediation in May 2018 and gave instructions to counsel about both the negotiations and the settlement.

13. My knowledge has been informed by my interactions with Rochon Genova and the documents that I have received, reviewed and considered. Those documents have been numerous and, sometimes complex; but I have dedicated myself to understanding them, questioning them and hearing from Rochon Genova about them.

14. As such, I believe that I have a very good understanding of the issues in the Action and the issues relevant to the Settlement.

SETTLEMENT APPROVAL

Two step process

15. I am aware from Rochon Genova that the process to have the Settlement approved is taking place in two separate but related stages.

16. I have received and reviewed the Order of this Honourable Court dated August 17, 2018. As such, I am aware that the first stage has occurred. That is, this Honourable Court authorized a notice program to bring to the attention of other Class Members the fact of the Settlement and their right as Class Members to appear and object to the Settlement or the proposed Class Counsel Fees.

Instructions and Understanding of the Key Terms of the Agreement

17. This Settlement was the product of two formal mediation sessions with the Honourable Warren Winkler QC, former Chief Justice of Ontario.

18. In early December 2016, after having considered, among other things, the positions of the SNC Defendants expressed in their Mediation Statement dated December 6, 2016, the Plaintiffs' Mediation Brief dated December 6, 2016, and as explained to me by Joel Rochon verbally and via a detailed e-mail, I authorized and instructed Class Counsel to negotiate with counsel for the Defendants to resolve the Action on the best terms possible but subject to a minimum monetary amount being paid for the benefit of the Class.

19. That initial mediation took place on December 13 and 14, 2016. In spite of counsel's best efforts and that of Mr. Winkler, the initial mediation session ended without settlement having been achieved.

20. Following the December 2016 mediation, the representative plaintiffs instructed Class Counsel to continue with the prosecution of the Action. Examinations for Discovery took place over approximately 36 days from April through September 2017. I was examined for discovery on September 19, 2017 as the representative of the Numbered Company.

21. I understand that on April 19, 2018, the Plaintiffs served a Trial Record on the Defendants. I understand that by taking this step, the Plaintiffs set this matter down for trial and counsel were awaiting the scheduling of a trial date.

22. On May 10 and 11, 2018, the parties, by their counsel, again convened for a further mediation session before Mr. Winkler.

23. After two days of negotiation, the parties agreed to settle this action for C\$110 million, subject to Court approval. Class Counsel were authorized by the representative plaintiffs, including by me as the President of the Numbered Company, to agree to settlement on these terms. This settlement amount was considerably higher than that offered by the Defendants and rejected by the representative plaintiffs at the mediation session on December 13 and 14, 2016.

24. After discussions with Class Counsel, I understand that Class Counsel was confident that the Class has a strong case; however, there was substantial risk to this litigation which had to be considered. I understand and consider the following factors to have weighed heavily in the negotiation of the Settlement:

- (a) The Defendants contested that there was a misrepresentation made, and asserted that the value of the alleged misstatements, totaling a maximum of \$56 million

dollars of misallocated payments were not of sufficient size to impact the value of SNC's securities.

- (b) The discovery and documentary evidence pointed to certain individual defendants who were part of SNC's senior executive management at the material time – the then CEO, CFO and at least one Executive Vice President – as having the most direct involvement in the pleaded misrepresentations (“**Senior Executive Management Defendants**”). SNC argued that these individual members of SNC's “Office of the President” intentionally kept the Board in the dark about some of the illicit conduct which underlay the pleaded misrepresentations.
- (c) SNC had taken the position that the Senior Executive Management Defendants had acted improperly and that this conduct was the primary cause of any alleged misrepresentation. SNC also relied on the fact that some of these individuals had been charged criminally and were awaiting trial.
- (d) SNC relied on a statutory provision which is untested by the Courts (*OSA* section 138.6(1) Proportionate Liability) that defendants who contribute to an actionable misrepresentation are not jointly and severally liable to a plaintiff (unlike under the *Negligence Act*), rather, such contributing defendants are only proportionately liable to the plaintiff. SNC argued throughout this litigation that, if there was any liability on the part of SNC, it would be proportionately small relative to the greater liability of the Senior Executive Management Defendants who had the most direct involvement in the pleaded misrepresentations. SNC argued that this statutory provision enabled it and the Outside Directors to lay most of any civil liability at

the feet of these Senior Executive Management Defendants who would not, on their own, have the financial means to satisfy a substantial damages award.

- (e) The ability of the Plaintiffs to hold SNC responsible for the actions of those Senior Executive Management Defendants, as a matter of law notwithstanding the proportionate liability provisions of the *OSA*, was in Class Counsel's view, strongly arguable, but nevertheless uncertain.
- (f) There was a "tower" of directors' and officers' liability insurance policies with total liability limits of C\$70 million, of which a lesser amount would appear to be responsive to the claims against all of the Individual Defendants. However, the amount of coverage potentially available was far less than the Settlement Amount. Furthermore, the insurers had reserved their rights to deny coverage for some of the Senior Executive Management Defendants and there was an unresolved dispute before the Court in Québec regarding certain other aspects of coverage under those policies – namely, whether the policies were "wasting" (meaning that the liability limits were diminishing to cover the very considerable defense costs), or not wasting, in which case the full liability limits could potentially be called upon to satisfy a judgment. Therefore, there was considerable uncertainty as to whether the Class could meaningfully recover on a damages award against any or all of the Senior Executive Management Defendants. This was significant given that SNC was arguing that these individuals bore the largest proportionate share of liability for the pleaded misrepresentations.
- (g) SNC and the Outside Directors also relied on a "reasonable investigation" or "due diligence" defence provided by *OSA* sections 138.4(6). While Class Counsel was

confident that the record of this case did not support a finding that SNC and the Director Defendants were duly diligent in spite of the misrepresentations having been made, the SNC Defendants have taken the position that some pre-Class Period evidence which would assist the Plaintiffs in answering this defense should not be admissible at trial because it did not pertain directly to the transactions alleged to have been the subject matter of the misrepresentations. In any event, the evidence supporting and rebutting this defense would be complex and expert intensive, meaning that its outcome was uncertain.

- (h) There are criminal proceedings against SNC and certain of the Senior Executive Management Defendants in respect of conduct which was related to the misrepresentations pleaded in this case. There was a risk that the trial of these criminal prosecutions in Québec could complicate and, or delay the trial of this Action. Furthermore, criminal findings against certain of the Senior Executive Management Defendants could also complicate the availability of insurance coverage which might otherwise respond to satisfy part of a judgment in this Action, and could also have significant implications for any proportionate liability findings under section 138.6 of the *OSA*.

25. I also relied on the recommendation of Class Counsel, whom I understand and have observed to be experienced in the litigation and resolution of securities class actions.

26. I understand that, under the Settlement Agreement and subject to the particular wording in it, unless a potential Class Member had excluded him, her or itself from the Action, the claims brought and any other claims that could have been brought in the Action will be released forever on the Effective Date.

27. I understand this to mean that, if the Settlement is approved, no Released Claims can be brought or continued against Releasees at any time after the Agreement becomes effective.

28. Class Counsel reviewed the key monetary and non-monetary terms of the Settlement Agreement with me, and have explained their rationale. I understand that:

- (a) the Settlement resolves both this Class Action, but also a related and parallel Class Action brought by Class Counsel in the Québec Superior Court ("**Québec Class Action**");
- (b) the total amount of C\$110 million will be the sole monetary contribution by the Defendants, either directly or by their insurers in the settlement of both this Class Action and the Québec Class Action;
- (c) the effect and binding nature of the Settlement Agreement;
- (d) the Settlement is coincident with and conditional on the approval by the Québec Superior Court of the settlement of the Québec Class Action;
- (e) in order for the Settlement to take effect, not only must this Court approve the settlement of this Action but the Québec Superior Court must approve the settlement of the Québec Class Action. In turn, in order for the settlement of the Québec Class Action to take effect, not only must the Québec Superior Court approve that settlement, but this Court must approve the Settlement of this Action;
- (f) if the Settlement becomes effective, the case against the Defendants will be dismissed with prejudice (meaning it cannot be brought again);

- (g) if we later discover new facts related to the claims, that discovery will not change the binding effect of the Settlement Agreement and the releases given; and
- (h) the Settlement is a compromise having regard to the various risk factors described above, and Class Members are unlikely to be completely restored to the position they were in before they acquired SNC-Lavalin shares.

29. I had been advised by Class Counsel that the maximum liability of SNC under the *Securities Act* for damages could be as low as \$334 million. But I also understood that on the record of this case there was a very real risk of a finding that SNC would have proportionate liability of only a portion of this amount that could be 50% or lower. And I understood that there were other risks that I outline in this affidavit. Given my understanding and consideration of these risks, I accept that the Settlement of \$110 million is fair and adequate consideration to be paid in exchange for the Released Claims.

30. Accordingly, on behalf of the Numbered Company, I have instructed Class Counsel to seek this Honourable Court's approval of the Settlement.

Proposed Distribution Protocol

31. I have discussed with Rochon Genova the terms of the proposed Distribution Protocol set out in Schedule "J" to the Settlement Agreement and the basis for those terms.

32. I do not object to the approval of the Distribution Protocol in the form it is proposed.

33. Accordingly, I have instructed Class Counsel to seek this Honourable Court's approval of the Distribution Protocol.

FEE APPROVAL

34. Rochon Genova and Siskinds, as co-Class Counsel undertook to prosecute this Action on a contingency basis such that they would not receive payment of their fees or disbursements unless and until a recovery was obtained for the benefit of the Class Members.

35. Class Counsel did not seek third party funding in this case and thus bore entirely the risk of loss including the value of their own docketed time over some 6 years of litigation, the disbursements incurred including expert fees, any adverse cost award, and applicable taxes on all of the foregoing.

36. It was explained to me that, had Class Counsel sought third party funding in relation to a potential adverse cost award, the third party funder would have been compensated for that risk of up to 10% of the gross settlement. Because Class Counsel did not seek such third party funding, and because the risk of an adverse costs indemnity was entirely borne by Class Counsel, and it was anticipated that this would be complex and expensive litigation for all parties, the Gray Retainer Agreement (and the Trustees' Retainer Agreement) provided that the base contingency fee amounts would be increased by 5%. I agreed with this provision and the reasons therefore.

37. Class Counsel has informed me that the value of Class Counsel's docketed time on this file, as at the date of this affidavit, is in excess of C\$9 million, exclusive of the disbursements that have been funded by Class Counsel and applicable taxes.

38. I have been further informed that Class Counsel estimates that they will spend time valued at approximately an additional C\$150,000 to complete administration of the Settlement. I understand that this additional time will be spent to:

- (a) prepare for and attend at the Settlement Approval Hearing;
- (b) assist in implementing Part 2 of the Plan of Notice as it relates to the Approval Notice;
- (c) liaise with the Administrator to ensure the fair and efficient administration of the Settlement Agreement and the Distribution Protocol; and
- (d) respond to inquiries from Class Members and their lawyers, if applicable, regarding the Settlement Agreement and the Distribution Protocol.

39. Class Counsel have informed me that they have incurred disbursements approaching C\$2.5 million to date, excluding taxes. I understand that this amount includes expert fees for consultation and expert evidence, fees of the mediation, the costs of investigating this matter, travel, accommodation, communication costs and court filing fees.

40. Class Counsel have advised me that they wish to request Class Counsel Fees in the global amount of \$25.25 million plus taxes and reimbursement for disbursements, with \$2 million of that global amount (exclusive of taxes) allocated to the parallel Québec Class Action. It has been explained to me that this amount (\$25.25 million) is consistent with the Gray Retainer Agreement and the Trustees Retainer Agreement. This amount is determined on the basis of a sliding scale provided for by these retainer agreements as follows:

32.5% on first \$20 million	= 6.5 million
27.5% on next \$20 million	= 5.5 million
22.5% on next 20 million	= 4.5 million
<u>17.5% on amount above \$60 million</u>	<u>= 8.75 million</u>
Total requested fees	\$25.25 million

41. The requested Class Counsel Fee (on this and the Québec Action) amounts to approximately 22.95% of total Settlement.

42. I am advised that HST on Ontario legal fees is 13% and GST and QST on Québec legal fees is 14.975%. Therefore, provincial taxes on the requested Settlement amount will be \$3.322 million calculated as follows:

HST on Ontario Legal Fees:	23.25 million x 13%	= 3,022,500
Québec legal fees + GST+QST:	2.0 million x 14.975%	= \$299,500
Total applicable taxes		<u>\$3,322,000</u>
Total requested fees and applicable taxes		28,572,000

43. Therefore, I understand that, if Class Counsel's requested fee plus applicable taxes in Ontario and Québec are approved, the Settlement Funds would be reduced by \$28,572,000 before reimbursement for disbursements (approximately C\$2.5 million plus taxes) and before Administration Expenses to distribute the balance to Class Members.

44. I support the requested Class Counsel fee of \$25.25 million plus applicable taxes on fees plus reimbursement for disbursements plus applicable taxes on disbursements.

CONCLUSION

45. I appreciate that the Action raises complex factual and legal matters and that it would not be feasible to pursue the Numbered Company's claim on an individual basis. Absent the class action mechanism, and Class Counsel willing to pursue this litigation on a contingency fee basis, the Numbered Company would not have sought any remedy against the Defendants.

46. Given these circumstances and for the reasons set out herein, I believe the Settlement to be fair, reasonable, and in the best interests of the Class. Accordingly, I hereby request that the Settlement and Class Counsel Fees be approved by this Honourable Court.

SWORN OR AFFIRMED before me)
 at the City of White Rock, in the)
 Province of British Columbia, this 27th)
 day of September 2018.)



A Commissioner, etc.

MICHAEL D. CARTER
 Barrister & Solicitor
 1321 Johnston Road
 White Rock, B.C. V4B 3Z3
 (604) 536-5002



BRENT GRAY

This is Exhibit "A" referred to in the Affidavit
of Brent Gray sworn before me this 27th day of
September, 2018.



A commissioner for taking Affidavits

MICHAEL D. CARTER

Barrister & Solicitor
1321 Johnston Road
White Rock, B.C. V4B 3Z3
(604) 536-5002

CONTINGENCY FEE RETAINER AGREEMENT

1. I, Brent Gray, hereby retain and employ the law firm of Rochon Genova LLP ("Rochon Genova") as my lawyers in relation to a class proceeding pursuant to the *Ontario Class Proceedings Act, 1992* naming me as proposed representative plaintiff on behalf of all persons, wherever they may reside or be domiciled, who acquired the securities of SNC-Lavalin Group Inc. ("SNC") from and including March 13, 2009 through and including February 27, 2012, or such other class as may be proposed by Rochon Genova or certified by the Court (the "Class").
2. I have authorized Rochon Genova to commence proceedings in Ontario, on my behalf, against SNC, Pierre Duhaime, Gilles Laramée, Ian A. Bourne, David Goldman, Patricia A. Hammick, Pierre H. Lessard, Edythe A. Marcoux, Lorna R. Marsden, Claude Mongeau, Gwyn Morgan, Michael D. Parker, Hugh D. Segal, Eric Siegel, Lawrence N. Stevenson, Riadh Ben Aïssa and Stéphane Roy, and such other defendants as Rochon Genova may consider appropriate.
3. I understand that this litigation is to be pursued on a contingency basis such that legal fees and disbursements with respect to the common issues will be payable only in the event of success in the class proceeding.
4. I understand that, according to the *Ontario Class Proceedings Act, 1992*, "success" in a class proceeding includes:
 - (a) judgment on the common issues in favour of some or all members of the Class; and
 - (b) a settlement that benefits one or more members of the Class.
5. I understand that legal fees will be charged on a percentage basis. I understand that, pursuant to this agreement, Rochon Genova may request approval from the Court of a legal fee at the applicable percentage rate(s) determined in accordance with the paragraphs below, plus disbursements, plus applicable taxes on the fees and disbursements, to be paid in a lump sum from any settlement, judgment or award obtained for the benefit of some or all members of the Class.
6. I understand that the percentage legal fee will be calculated based on all benefits obtained for the Class by settlement, judgment or award, including, without limitation, partial indemnity or substantial indemnity costs, and the costs of notice and administration (the "Net Amount Recovered").
7. Subject to paragraph 8 hereof, the applicable percentage rate shall be:
 - (a) twenty-five percent (25%) of the Net Amount Recovered if such recovery occurs before a decision is rendered by the Court on a contested certification motion;
 - (b) twenty-seven and one-half percent (27.5%) of the Net Amount Recovered if such recovery occurs after a decision is rendered by the Court on a contested

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certification motion, but before the commencement of the common issues trial;
and

- (c) thirty percent (30%) of the Net Amount Recovered if such recovery occurs after the commencement of the common issues trial.

8. Notwithstanding paragraph 7 hereof:

- (a) if the Net Amount Recovered is \$20 million or less, the percentage rate that applies to the Net Amount Recovered shall be the applicable percentage rate under paragraph 7 hereof;
- (b) if the Net Amount Recovered is between \$20 million and \$40 million, the percentage rate that applies to the first \$20 million of the Net Amount Recovered shall be the applicable percentage rate under paragraph 7 hereof, and the percentage rate that applies to the Net Amount Recovered in excess of \$20 million shall be the applicable percentage rate under paragraph 7 hereof less five percent (5.0%);
- (c) if the Net Amount Recovered is between \$40 million and \$60 million, the percentage rate that applies to the first \$20 million of the Net Amount Recovered shall be the applicable percentage rate under paragraph 7 hereof, and the percentage rate that applies to the Net Amount Recovered between \$20 million and \$40 million shall be the applicable percentage rate under paragraph 7 hereof less five percent (5.0%), and the percentage rate that applies to the Net Amount Recovered in excess of \$40 million shall be the applicable percentage rate under paragraph 7 hereof less ten percent (10.0%); and
- (d) if the Net Amount Recovered exceeds \$60 million, the percentage rate that applies to the first \$20 million of the Net Amount Recovered shall be the applicable percentage rate under paragraph 7 hereof, and the percentage rate that applies to the Net Amount Recovered between \$20 million and \$40 million shall be the applicable percentage rate under paragraph 7 hereof less five percent (5.0%), and the percentage rate that applies to the Net Amount Recovered between \$40 million and \$60 million shall be the applicable percentage rate under paragraph 7 hereof less ten percent (10.0%), and the percentage rate that applies to the Net Amount Recovered in excess of \$60 million shall be the applicable percentage rate under paragraph 7 hereof less fifteen percent (15.0%).

9. By way of example, if the defendants pay by way of settlement \$24,000,000, plus \$750,000 in costs and \$250,000 towards the cost of notice and administration, for a total Net Amount Recovered of \$25,000,000, and settlement is achieved before a decision is rendered by the Court on a contested certification motion, the contingency fee requested will be no more than \$6,000,000 (25% of \$20,000,000 plus 20% of \$5,000,000), plus disbursements, plus applicable taxes, plus any additional fees that may be applicable pursuant to paragraph 12 hereof.

10. I understand that Rochon Genova will pay all disbursements with respect to this action and that I will not pay for any disbursements relating to this litigation, other than the

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contingency fee and expense reimbursement referenced above to be paid from a settlement, judgment or award and approved by the Court.

11. Rochon Genova and I understand that if the Court orders that I pay some portion of the costs that are incurred by the defendants in this litigation during the period when Rochon Genova is counsel of record, Rochon Genova will indemnify me against any such award regardless of when such award is actually made insofar as the costs awarded are costs incurred by the defendants while Rochon Genova remains counsel of record, and I will not personally have to satisfy such an award or the portion of it relating to the period when Rochon Genova acts as my counsel. The indemnity described in this paragraph 11 shall remain valid and in force regardless of which party may terminate this retainer agreement.
12. In consideration for the indemnification described in paragraph 11, each of the percentage rates under paragraphs 7(a), (b) and (c) hereof shall be increased by five percent (5.0%). By way of example, if the defendants pay by way of settlement \$24,000,000, plus \$750,000 in costs and \$250,000 towards the cost of notice and administration, for a total Net Amount Recovered of \$25,000,000, and settlement is achieved before a decision is rendered by the Court on a contested certification motion, the contingency fee requested will be no more than \$7,250,000 (30% of \$20,000,000 plus 25% of \$5,000,000), plus disbursements, plus applicable taxes.
13. I understand that Rochon Genova's legal fees shall be subject to approval by the Court.
14. I understand that, based on Rochon Genova's preliminary analysis, a reasonable settlement or judgment in this case could be in the range of \$25 million to \$50 million, depending on several factors, including, but not limited to, the strength of the evidence that is obtained in the course of prosecuting this action, the extent of the available insurance coverage, and the defendants' capacity to pay. I understand that a more precise estimate of a reasonable settlement amount is not possible at this time.
15. I understand that, in the event that a settlement or judgment is obtained that is consistent with the above estimate, Rochon Genova may request a fee of up to \$7.25 million (30% of \$20,000,000 plus 25% of \$5,000,000) to \$13 million (30% of \$20,000,000 plus 25% of \$20,000,000 plus 20% of \$10,000,000), plus disbursements, plus applicable taxes (on the assumption that a settlement or judgment is achieved before a decision is rendered by the Court on a contested certification motion), which amounts will be subject to approval by the Court. I understand that, in considering Rochon Genova's fee request, the court may consider, among other things, this retainer agreement, the amount of any settlement or judgment obtained, the risk undertaken by Rochon Genova in prosecuting the action, and the time and expense incurred by Rochon Genova in prosecuting the action. I also understand that the above estimate of fees is based on the estimated recovery in the preceding paragraph, and that in the event that the settlement or judgment obtained varies from those amounts, the fee sought may vary accordingly. This estimate of fees is therefore in part subject to the same contingencies as are expressed with respect to the estimate of a reasonable settlement or judgment expressed in paragraph 14 hereof.


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16. I have been advised by Rochon Genova that my lawyers in this action will not recover more in fees than the Class recovers as damages or receives by way of settlement.
17. I agree and direct that all funds claimed by Rochon Genova for legal fees, costs, taxes and disbursements shall be paid to Rochon Genova in trust from any judgment or settlement money.
18. I understand that Rochon Genova agrees to ask the court to award me, as representative plaintiff, compensation above my share of any class award or settlement which amount would be commensurate with my measurable contribution to the proceeding including, but not limited to, significant commitment of time and energy to the litigation, active participation in the instructing of counsel and decisions made in the litigation, contribution of special expertise, and/or significant contribution to communication with the class.
19. I understand that, if either I or Rochon Genova wishes to terminate this relationship, I or Rochon Genova will forthwith move before the Court for directions. I acknowledge that Rochon Genova has incurred and will continue to incur significant time and financial risk in the prosecution of this action. Accordingly, if I engage another solicitor to act in the action or if I otherwise terminate this agreement and the action is successful, Rochon Genova will be paid fees and disbursements in accordance with the terms of this agreement.
20. This agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective heirs, executors, successors and permitted assigns.
21. This agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Dated at Vancouver, British Columbia, this 14th day of August, 2012.



Witness



BRENT GRAY

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF BRENT GRAY

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