

Court File No.: 01-CV-210000 CM

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ELHAM BADALI

Plaintiff

-and-

686234 ONTARIO LIMITED and
PIPELINE MECHANICAL SERVICES LTD

Defendants

~~Proceeding~~ **Proceeding under the *Class Proceedings Act, 1992***

SETTLEMENT AGREEMENT

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EXHIBIT LIST

- A: Notice of Approval Hearing
- B: Notice Plan for Approval Hearing
- C: Notice of Court Approval
- D: Notice Plan for Court Approval
- E: Opt-Out Form
- F: General Damages Grid
- G: Claim Package
- H: Draft Order

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

1. RECITALS:

The plaintiff, Elham Badali ("the Plaintiff"), and the defendants, 686234 Ontario Limited and Pipeline Mechanical Services Ltd. (collectively "the Defendants"), hereby enter into this Settlement Agreement providing for the Settlement of all Settled Claims against the Defendants.

WHEREAS the Plaintiff has commenced an action in the Ontario Superior Court of Justice as Action No. 01-CV-210000CM under the *Class Proceedings Act, 1992* (the "Act") against the Defendants, arising from a carbon monoxide leak on or about December 11 and/or 12, 1998 at 125 Parkway Forest Drive in the City of Toronto;

WHEREAS the Plaintiff will bring a motion to have the action certified as a class proceeding under the Act and to be appointed as representative plaintiff for classes of claimants defined as:

Class 1: All persons who were residents or who were on the premises of 125 Parkway Forest Drive, Toronto, Ontario, on or about December 11 and/or 12, 1998, when there was a leak of carbon monoxide and subsequent evacuation of all those on the said premises; and

Class 2: All living parents, grandparents, children, grandchildren, siblings and spouses (within the meaning of section 61 of the *Family Law Act*) of persons who were on the said premises on or about December 11 and/or 12, 1998.

WHEREAS the Defendants oppose certification of the within action as a class proceeding, save and except for the purpose of giving effect to the terms of settlement provided for herein;

WHEREAS the Plaintiff and the Defendants, by their counsel, have conducted negotiations and have agreed to enter into a settlement in accordance with the terms of this Settlement Agreement, subject to Court approval;

WHEREAS the Defendants, notwithstanding their consent to this Settlement Agreement, continue to deny wrongful or unlawful conduct or any legal liability arising out of any claims alleged against them in the within action;

WHEREAS based upon an analysis of the facts and law applicable to the claims of the Class Members, taking into account the extensive burden and expense of litigation, as well as the fair, cost-effective and assured method of resolving the claims of Class Members provided for in this Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial and appropriate benefits to Class Members and is fair, reasonable and in the best interests of Class Members;

WHEREAS the Defendants have concluded that this Settlement Agreement is desirable in order to avoid the time and expense of defending multiple and protracted litigation, and to resolve finally and completely all pending and potential claims of Class Members;

NOW THEREFORE, subject to Court approval, this Settlement Agreement embodies the terms of the resolution, including present and future claims of Class Members who do not Opt-Out.

IN CONSIDERATION of the covenants, agreements and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff and the Defendants **AGREE AS FOLLOWS:**

2. DEFINITIONS

2.1 The following words and phrases shall have the following meanings in this Settlement Agreement, including all of the Exhibits hereto:

- (a) **“Act”** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
- (b) **“Approval Order”** means the order of the Ontario Superior Court of Justice which certifies the within action as a class action and approves this Settlement Agreement. A draft Approval Order is attached hereto at Exhibit H.

- (c) **“Arbitrator”** means the person appointed to hear and decide claims requiring individual assessment in accordance with Sections 10 and 11 herein.
- (d) **“Claimant”** means a Class Member who has submitted a Claim Package, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been a Class Member.
- (e) **“Claims Deadline”** means one year following the Final Approval Date.
- (f) **“Claim Package”** means the document attached hereto as Exhibit G.
- (g) **“Class Counsel”** means *Rochon Genova LLP*, 121 Richmond Street West, Suite 903, Toronto, Ontario, M5H 2K1.
- (h) **“Class Members”** means Class 1 Members and Class 2 Members, collectively.
- (i) **“Class 1 Member”** means all persons who were residents of, or who were on the premises of 125 Parkway Forest Drive, Toronto, Ontario, on or about December 11 and/or 12, 1998, when there was a leak of carbon monoxide and subsequent evacuation of all those on the said premises.
- (j) **“Class 2 Member”** means all living parents, grandparents, children, grandchildren, siblings and spouses (within the meaning of section 61 of the *Family Law Act*) of persons who were on the said premises on or about December 11 and/or 12, 1998.
- (k) **“Court”** means the Ontario Superior Court of Justice.
- (l) **“Final Approval Date”** means the day following the day that the time to appeal the Approval Order, if appeals lie, has expired and any and all appeals from the Approval Order have been exhausted.
- (m) **“General Damages”** means the amounts the Defendants have agreed to pay to eligible Claimants on account of general damages, derivative claims associated therewith, along with interest, legal costs, and disbursements as set out in Exhibit F and in accordance with Section 9.1 hereto.
- (n) **“Notice of Approval Hearing”** means the notice to be published in advance of the hearing to certify the within proceeding and to approve the Settlement Agreement in order to advise Class Members of the hearing. A draft Notice of Approval Hearing is attached hereto at Exhibit A.
- (o) **“Notice of Court Approval”** means the notice to be published following the Final Approval Date, which shall advise Class Members of Court

approval of the Settlement Agreement. A draft Notice of Court Approval is attached hereto at Exhibit C.

- (p) **“Opt-Out”** means for a Class 1 Member, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been a Class 1 Member, to exclude himself or herself from the application of the terms of this Settlement Agreement, in accordance with Section 7 hereto.
- (q) **“Opt-Out Deadline”** means the date 90 days following the Final Approval Date and is the deadline for a Class 1 Member, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been a Class 1 Member, to submit to Class Counsel an Opt-Out Form which is attached hereto as Exhibit E.
- (r) **“Parties”** means collectively the Plaintiff and the Defendants.
- (s) **“Premises”** means 125 Parkway Forest Drive, Toronto, Ontario.
- (t) **“Public Health Insurer”** means the Ontario Ministry of Health and Long Term Care.
- (u) **“Settled Claims”** means any and all claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal basis for the claim alleged, existing now or arising in the future by any or all Class Members, or by any entity or Party which may make or continue any related claim of any kind against any released Party, arising out of or related in any way to the leak of carbon monoxide which occurred on the Premises on December 11 and/or 12, 1998. Such Settled Claims include, without limitation and by way of example, all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for personal injury and/or bodily harm, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life; damages including, but not limited to punitive, aggravated, statutory and other multiple damages or penalties of any kind; loss of wages, income, earnings, and earning capacity, medical expenses, doctor, hospital, nursing and drug bills, loss of support, services, consortium, companionship, society or affection, or damage to familial relations, consumer fraud, refunds, unfair business practices, deceptive trade practices, and other similar claims whether arising under statute, regulation, or judicial decision; wrongful death or wrongful birth and survival actions; medical screening and monitoring, injunctive and declaratory relief; economic or business losses or disgorgement of profits arising out of personal injury; costs of legal fees; prejudgment and post-

judgment interest; and any and all subrogated or related claims by the Public Health Insurer.

- (v) “Special Damages” means the amounts of out-of-pocket expenses and income losses claimed by Class Members in the Claim Package.

3. ORDER CERTIFYING THE PROCEEDING AND APPROVING THE SETTLEMENT AGREEMENT

3.1 The Settlement Agreement is subject to and conditional upon approval by the Court. The Parties shall jointly move for an Order from the Court which will, among other things:

- (a) certify the within action as a class proceeding, pursuant to the provisions of the Act;

- (b) define the Classes as follows:

Class 1: All persons who were residents or who were on the premises of 125 Parkway Forest Drive, Toronto, Ontario, on or about December 11 and/or 12, 1998, when there was a leak of carbon monoxide and subsequent evacuation of all those on the said premises; and

Class 2: All living parents, grandparent, children, grandchildren, siblings and spouses (within the meaning of section 61 of the *Family Law Act*) of persons who were on the said premises on or about December 11 and/or 12, 1998.

- (c) appoint Elham Badali as the Representative Plaintiff for the Classes
- (d) declare that this Settlement Agreement is fair, reasonable and in the best interests of Class Members;
- (e) order that Class 1 Members, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been a Class 1 Member, may Opt-Out of this class proceeding in accordance with the procedures set forth in Section 7 of the Settlement Agreement;
- (f) order that Class Counsel be appointed to receive and process Claims;
- (g) order that Stan Raphael be appointed as Arbitrator for the settlement;
- (h) provide that any Party may bring a motion to the Honourable Mr. Justice Cullity of the Ontario Superior Court of Justice at any time for directions with respect to the implementation or interpretation of this Settlement Agreement, such motion to be on notice to the other Parties and the Arbitrator, if appropriate;

- (i) order that the Defendants shall pay all costs associated with the notice plans pursuant to which the Notice of Approval Hearing and Notice of Court Approval are to be made;
- (j) order that the within action is hereby dismissed in its entirety.

3.2 The Parties shall take all steps necessary to ensure that consent certification of the within proceeding and Court approval of this Settlement Agreement are sought in an expeditious manner. The Parties shall seek an Approval Order from the Court in the form attached hereto as Exhibit H, or as otherwise agreed to.

4. NOTICE OF APPROVAL HEARING AND COURT APPROVAL

4.1 Public notice directed to Class Members and interested parties of the motion for certification and for the approval of this Settlement Agreement shall be in the form and pursuant to the protocols outlined in Exhibits A (Notice of Approval Hearing) and B ("Approval Hearing Notice Plan") hereto.

4.2 The costs of the Approval Hearing Notice Plan referred to in paragraph 4.1 shall be paid by the Defendants.

4.3 Public notice directed to Class Members and interested parties of Court approval of this Settlement Agreement, should same be granted, shall be in the form and pursuant to the protocols outlined in Exhibits C (Notice of Court Approval) and D ("Court Approval Notice Plan").

4.4 The costs of the Court Approval Notice Plan referred to in paragraph 4.3 shall be paid by the Defendants.

5. EFFECT OF NON-APPROVAL BY THE COURT

5.1 If this Settlement Agreement is not approved by the Court:

- (a) This Settlement Agreement shall be null and void and shall have no force or effect and no Party to this Settlement Agreement shall be bound by any of its terms except the terms of this paragraph.
- (b) This Settlement Agreement, and all negotiations, statements and proceedings relating to this Settlement Agreement shall be without prejudice to the rights of all Parties, all of whom shall be restored to their respective positions existing immediately before this Settlement Agreement.
- (c) This Settlement Agreement and the fact of its negotiation and execution shall not constitute any admission by the Defendants or be used against

them for any purpose in this or any other proceeding and without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution shall not constitute an admission or be used by anyone (whether or not a Party to these proceedings) in an effort to establish any of the alleged facts, or the certification of this proceeding.

6. SETTLEMENT AGREEMENT EFFECTIVE

- 6.1 This Settlement Agreement shall become effective only on the Final Approval Date.

7. OPTING-OUT OF THE SETTLEMENT

- 7.1 Class 1 Members who wish to Opt-Out of this Settlement shall file an Opt-Out Form with Class Counsel by the Opt-Out Deadline using the form attached as Exhibit E hereto. Class 2 Members shall have no independent right to Opt-Out of the Settlement. The Opt-Out Form shall be sent by ordinary mail or fax to Class Counsel at 121 Richmond Street West, Suite 903, Toronto, Ontario, M5H 2K1, fax number (416) 363-0263 before the Opt-Out Deadline.
- 7.2 If any Class 1 Member, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been a Class 1 Member, elects to Opt-Out of this class proceeding, each and every Class 2 Member related to the Class 1 Member who has Opted-Out is deemed to also have Opted-Out of the Settlement Agreement.
- 7.3 Class Members who Opt-Out shall be excluded from the terms of this Settlement Agreement and from any and all rights and obligations under this Settlement Agreement and shall, as provided by law, retain the right to commence or continue proceedings against the Defendants.
- 7.4 Class Members who do not Opt-Out in the manner prescribed shall be deemed to have elected to participate in this Settlement Agreement and shall be bound by this Settlement Agreement and all related court orders and shall be forever barred from commencing any new proceeding and/or maintaining any existing proceeding against the Defendants or any other Parties who may claim contribution or indemnification from any one or more of the Defendants in relation to the claims settled by this Agreement.

8. WAIVER OF LIMITATION DEFENCE

- 8.1 For the purposes of making a claim under this Settlement Agreement, no Claimant shall be considered ineligible to receive any compensation set forth in this Settlement Agreement on the basis of any statute of limitation or repose,

prescription period or any other limitation or prescription defence, except as otherwise provided herein.

- 8.2 Nothing in this Settlement Agreement shall constitute or be deemed to constitute a waiver by the Defendants of defences based on statutes of limitation or repose, prescription periods or any other limitation or prescription defence with respect to Class Members who Opt-Out.

9. PAYMENTS FOR GENERAL AND SPECIAL DAMAGES AND PAYMENTS TO THE PUBLIC HEALTH INSURER

- 9.1 The Defendants have agreed to make payments to eligible Class Members for General Damages in accordance with the schedule for classification of such payments attached hereto as Exhibit F. The amounts set forth in Exhibit F are intended to provide for fair and reasonable compensation to Class Members and are inclusive of general damages, any derivative claims associated therewith, along with interest, all legal costs, and disbursements claimed by Class Members. The value of the claims of Class 2 Members is included in the compensation payable to the associated Class 1 Member; no separate payments shall be made to Class 2 Members. In order to qualify for such payments, Claimants will be required to fully complete and submit a Claim Package, failing which, no compensation will be payable until such time as a complete Claim Package is received.

- 9.2 In addition to payments for General Damages, the Defendants have agreed to make payments to eligible Class Members for Special Damages. These payments will be available to Class Members who are able to substantiate out-of-pocket expenses as well as income losses which arose from the leak of carbon monoxide on the Premises. In order to qualify for such payments, Class Members will be required to complete the appropriate portion of the Claim Package, and to submit all required supporting documentation.

- 9.3 In addition to payments for General Damages and Special Damages, the Defendants shall also pay to the Public Health Insurer amounts in respect of the Public Health Insurer's subrogated interest for health services provided to Class 1 Members. Specifically, the amounts payable to the Public Health Insurer shall vary according to the classification of the Claimant's General Damages as follows:

Level I:	no payment will be required
Level II:	no payment will be required
Level III:	\$28.50 set fee or such additional amounts per payment summary to be submitted with Claim Package
Level IV:	per payment summary to be submitted with Claim Package
Level V:	per payment summary to be submitted with Claim Package
Level VI:	per payment summary to be submitted with Claim Package

Level VII: per payment summary to be submitted with Claim Package

10. PROCESSING OF CLAIM PACKAGES

- 10.1 Each Class Member who seeks compensation under this Settlement Agreement shall submit a completed Claim Package to Class Counsel in the form attached hereto as Exhibit G on or before 4:00 p.m. Eastern Standard Time on the Claims Deadline.
- 10.2 Upon receipt of a completed Claim Package, Class Counsel shall assign a unique number to the Claim Package. Class Counsel shall, within thirty (30) days of receiving the Claim Package, review it to ensure that it is complete.
- 10.3 Where the Claim Package is not complete, a letter shall be sent to the Claimant indicating what deficiencies exist and requiring that any such deficiencies be cured within ninety (90) days.
- 10.4 Where the Claim Package is complete, Class Counsel shall assess whether and how much compensation should be payable and shall forward the Claim Package, along with a letter indicating their assessment of the compensation payable to counsel for the Defendants.
- 10.5 Where the Claim Package is not complete and the Claimant has not cured the deficiency within ninety (90) days but where the Claim Package contains sufficient information to support a claim for compensation, Class Counsel shall assess whether and how much compensation should be payable and shall forward the Claim Package, along with a letter indicating their assessment of the compensation payable to counsel for the Defendants.
- 10.6 Where the Claim Package is not complete and the Claimant has not cured the deficiency within ninety (90) days such that there is insufficient information in the Claim Package to support any compensation, the Claim Package shall be rejected and Class Counsel shall send a letter to the Claimant and to counsel for the Defendants advising of the rejection.
- 10.7 Within thirty (30) days of receipt of the Claim Package and Class Counsel's assessment, counsel for the Defendants shall advise Class Counsel in writing whether they agree or disagree with the assessment.
- 10.8 Where Class Counsel and counsel for the Defendants agree on the amount of compensation payable (the "Approved Assessment"), and where the Approved Assessment differs from the Claimant's assessment as reflected in the Claim Package, Class Counsel shall communicate the Approved Assessment to the Claimant within seven (7) days of receiving the assessment of counsel for the

Defendants. Class Counsel shall also advise the Claimant of the Claimant's right to dispute the Approved Assessment through arbitration. Claimants who wish to dispute the Approved Assessment will be required to notify Class Counsel in writing about their intention to proceed with arbitration within thirty (30) days of receiving Class Counsel's written notification, failing which the Approved Assessment shall be deemed to be approved by the Claimant.

- 10.9 Where Class Counsel and counsel for the Defendants agree on the amount of compensation payable (and where applicable, where a Claimant has failed to notify Class Counsel in accordance with Section 10.8 of the intention to dispute the Approved Assessment), counsel for the Defendants shall issue payment to the Claimant. The distribution of funds by the Defendants shall be made on a monthly basis by the end of each month to Class Counsel for all claims approved the preceding month. Class Counsel will thereafter issue payment directly to the Claimant by the fifteenth day of each month.
- 10.10 Where Class Counsel and counsel for the Defendants cannot agree on the amount of compensation payable, or where a Claimant has, pursuant to Section 10.8, notified Class Counsel of the intention to dispute the Approved Assessment, the Claim Package shall be forwarded to the Arbitrator, who shall schedule an arbitration within ninety (90) days of receipt of the Claim Package.
- 10.11 Where a claim requires an individual assessment of General Damages in accordance with Exhibit F (i.e. Level VII claims), Class Counsel shall forward the Claim Package to counsel for the Defendants and to the Arbitrator who shall schedule an arbitration within ninety (90) days of receipt of the Claim Package. However, the Parties are encouraged to attempt to resolve these claims between themselves before referring the matter to arbitration.
- 10.12 Where counsel for the Defendants reject payment of a claim on the basis that a Claimant was not a resident and/or a visitor of the Premises on December 11 and/or 12, 1998, the Claim Package shall be forwarded to the Arbitrator, who shall schedule an arbitration within ninety (90) days of receipt of the Claim Package to determine whether the Claimant qualifies as a Class 1 Member.

11. ROLE OF THE ARBITRATOR

- 11.1 Class Counsel and counsel for Defendants agree to seek the appointment by the Court of Stan Raphael to act as Arbitrator under this Settlement Agreement. In the event that the Arbitrator is no longer able or willing to act, Class Counsel and counsel for the Defendants shall agree on a replacement Arbitrator and seek the approval of the Court for such replacement.

- 11.2 The Arbitrator shall have the power to establish the procedures to be followed in any arbitration to be heard by the Arbitrator as described herein, and to order production of documents where necessary. The Arbitrator shall have the discretion to award costs on any arbitration against the Claimant or the Defendants, including the fees of the Arbitrator. The Arbitrator shall deliver written reasons for his or her decision on each arbitration.
- 11.3 The Arbitrator shall sign and adhere to a confidentiality statement, in a form satisfactory to the Parties, by which he or she agrees to keep confidential any information concerning Class Members.
- 11.4 Subject to section 11.2, the Defendants will pay the reasonable fees and disbursements of the Arbitrator for the services described herein. If the Defendants dispute the nature or amount of any such fees or disbursements, a motion must be made to the Court on notice to Class Counsel, and the Court shall fix the amounts properly due and payable to the Arbitrator hereunder.

12. JUDICIAL REVIEW

- 12.1 There will be no right of Judicial Review from the decision of the Arbitrator, which shall be final and binding.

13. RELEASE AND BAR ORDER

- 13.1 In consideration of the payments for General Damages and Special Damages set out in this Settlement Agreement, the Class Members who have not Opted-Out hereby release and forever discharge the Defendants and each of their parents, successors, subsidiaries, assigns, affiliates and past, present and future directors, officers, employees, agents, consultants, advisors and other representatives of any kind (the "Released Parties") from any and all actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts claims and demands whatsoever existing up to the date of execution of this Settlement Agreement that were asserted or could have been asserted by or on behalf of any Class Member, individually, collectively or otherwise relating to the leak of carbon monoxide at the Premises on December 11 and/or 12, 1998. The Class Members further agree not to hereafter make any claims, or take or continue any proceedings against any person, partnership, corporation or other entity who might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from the Defendants in connection with the claims released in this Settlement Agreement.
- 13.3 Subject to any rights of appeal from the Approval Order, the Approval Order shall forever bar the claims of the Plaintiff and of all Class Members, executors, administrators or personal representatives of deceased Class Members who have

not Opted-Out prior to the Opt-Out Deadline which were asserted or could have been asserted in the proceedings referred to in the preamble herein.

14. CLASS COUNSEL OBLIGATIONS AND COSTS

- 14.1 Class Counsel shall bring a motion to the Court for approval of Class Counsel fees, pursuant to the Act. The Defendants have agreed to pay to Class Counsel the sum of \$225,000.00 plus G.S.T. for costs inclusive of disbursements which amount shall be payable within seven days of the Final Approval Date.
- 14.2 Claimants shall not be required to retain counsel or agents in making their claims under this Settlement Agreement, but those who choose to do so shall be responsible for the fees and expenses of such counsel or agents, except as may be otherwise provided herein.

15. AMENDMENTS TO SETTLEMENT AGREEMENT

- 15.1 Where Class Counsel or counsel for the Defendants have reason to believe that an amendment is necessary to the Settlement Agreement, a motion may be brought to the Court for the purposes of amending the terms of the Settlement Agreement. Any such amendments must be agreed to by the Parties, and approved by the Court, and all such amendments shall be in writing.

16. ENTIRE AGREEMENT

16. This Settlement Agreement together with the attached Exhibits, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, discussions and agreements, either oral or written, which may have occurred prior to the execution of this Settlement Agreement. There are no other representations between the Parties in connection with the subject matter of this Settlement Agreement except as specifically set forth herein and none have been relied upon by the Parties in entering into this Settlement Agreement.

17. ONGOING AUTHORITY

- 17.1 The Court will retain exclusive jurisdiction over the within action and over all Parties named or described herein, including but not limited to, all Class Members and the executors, administrators or personal representatives of deceased Class Members and the Defendants. Further, the Court will retain exclusive jurisdiction over this Settlement Agreement to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

18. COMMUNICATION WITH THE CLASS

- 18.1 All communications from Class Counsel to Class Members may be made by regular first class mail to such Class Member's last known mailing address provided by the Class Member to Class Counsel or to the Defendants. Class Members shall keep Class Counsel apprised of their current mailing address.

19. ACCESS TO CLASS MEMBER INFORMATION

- 19.1 Counsel for the Defendants shall have access to all information maintained by Class Counsel regarding Class Members and the processing and payment of claims. Any individual who is granted access to such records shall sign a confidentiality statement relating to the contents of such records and information.

20. NOTICES

- 20.1 All communications to be provided pursuant to or in connection with this Settlement Agreement shall be in writing and shall be delivered personally or sent by overnight delivery service, costs prepaid to the Parties at the addresses set forth below, or to such other individuals and addresses as Class Counsel and counsel for the Defendants may designate in writing from time to time.

Rochon Genova LLP
Barristers & Solicitors
121 Richmond St. West
Suite 903
Toronto, Ontario
M5H 2K1
Attention: Joel Rochon
and Vincent Genova

Blaney McMurtry LLP
Barristers & Solicitors
2 Queen St. East
Suite 1500
Toronto, Ontario
M5C 3G5
Attention: Dominic Clarke

Stieber Berlach
Barristers & Solicitors
130 Adelaide St. West
Suite 900
Toronto, Ontario
M5H 3P5
Attention: Steven Stieber

21. INTERPRETATION OF AGREEMENT

- 21.1 All disputes relating to the proper interpretation of this Settlement Agreement shall be resolved by application to Mr. Justice Maurice Cullity of the Ontario Superior Court of Justice.

22. CANADIAN DOLLARS

- 22.1 All dollar amounts set forth in this Settlement Agreement are expressed in Canadian dollars.

23. EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT

- 23.1 The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.
- 23.2 The Parties agree that this Settlement Agreement may be executed by their respective counsel.
- 23.3 The Parties agree that this Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original for all purposes and executed counterparts taken together shall constitute the complete Settlement Agreement.

Date:

2 March '06

ROCHON GENOVA LLP

Per: 

Date:

March 2, 2006

BLANEY MCMURTRY LLP

Per: 

Date:

March 2, 2006

STIEBER BERLACH

Per: 