

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LA CIE MCCORMICK CANADA CO.

Plaintiff

- and -

STONE CONTAINER CORP., JEFFERSON SMURFIT CORP., SMURFIT-STONE CONTAINER CORP., SMURFIT-MBI, formerly known as MACMILLAN BATHURST, ROGER STONE, UNION CAMP CORP., INTERNATIONAL PAPER CO., INTERNATIONAL PAPER CANADA, INC., also known as INTERNATIONAL PAPER LTD – CANADA, GEORGIA PACIFIC CORP., GEORGIA-PACIFIC CANADA, INC., WEYERHAEUSER PAPER CO., WEYERHAEUSER COMPANY, WEYERHAEUSER COMPANY LIMITED, formerly known as WEYERHAEUSER CANADA LTD., TEMPLE-INLAND INC., INLAND PAPERBOARD AND PACKAGING, INC, GAYLORD CONTAINER CORP., TENNECO, INC., TENNECO PACKAGING, and PACKAGING CORPORATION OF AMERICA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FACTUM

**Approval of Ontario Class Counsel Fees and Disbursements
(Motion Returnable August 15, 2006)**

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Proceeding under the *Class Proceedings Act, 1992*

**FACTUM
APPROVAL OF ONTARIO CLASS COUNSEL FEES AND DISBURSEMENTS**

PART I - NATURE OF MOTION

1. This is a motion brought by Ontario Class Counsel for an Order approving the retainer agreement entered into with the representative plaintiff, La Cie McCormick Canada Co., and approving Ontario Class Counsel legal fees, plus applicable disbursements and taxes.
2. The total net value of the Settlement Amounts in this proceeding is \$1,845,988.00 plus accrued interest, inclusive of all costs, expenses, notice and administration. By agreement amongst counsel, the portion of the Settlement Amounts which is allocated to the Ontario Class for the purposes of this fee application is \$1,713,076.86 plus accrued interest. The portion of the Settlement Amounts allocated to counsel in Quebec for the purposes of their fee applications is \$132,911.14 plus accrued interest. Ontario Class

Counsel is seeking a legal fee of \$425,000.00, plus disbursements of \$175,218.16 and G.S.T. in the amount of \$37,153.21 for a total of \$637,371.37. Quebec Class Counsel requested and received a legal fee of \$32,783.25 plus disbursements of \$3,264.59 and applicable taxes. Counsel have each agreed not to request legal fees in excess of 25% of the portion of the Settlement Amount allocated to them.

PART II – BACKGROUND

COMMENCEMENT OF PROCEEDINGS

3. A claim was filed on February 20, 2004 alleging a conspiracy to fix, increase, and/or maintain prices in the market for linerboard, corrugated sheets, and corrugated boxes in North America by artificially restricting supply. La Cie McCormick Canada Co. executed a retainer providing that Class Counsel would pay all expenses associated with the litigation, and would only be paid in the event of success. The contract provides for a legal fee of 25% of any settlement, plus disbursements and applicable taxes.

Affidavit of Michael G. Robb sworn August 4, 2006, paras. 3, 4.

Affidavit of Keith Gibbons sworn August 4, 2006, para. 11.

4. Class Counsel retained the law firm of Cuneo Waldman & Gilbert ^{LLP} to bring a motion to intervene in similar U.S. proceedings for the limited purpose of seeking modification to a protective order issued by the U.S. court which prohibited the disclosure of evidence produced in the course of the U.S. proceedings. Class counsel drafted and filed certification materials in anticipation of a contested certification motion, retained the same expert economist who testified in the U.S. Linerboard proceedings and brought a motion to seal the portions of the certification materials which relied on documents subject to the U.S. protective order. In order to facilitate settlement, Siskinds worked with the law firms of Alexander, Holburn, Beaudin & Lang in British Columbia and Siskinds Desmeules s.e.n.c.r.l. in Quebec.

Affidavit of Michael G. Robb sworn August 4, 2006, paras. 5-7.

RESULTS ACHIEVED

Total Quantum of Settlement Benefits

5. Class Counsel reached three separate settlements with the defendants. Pursuant to the terms of the Main Settlement Agreement, the Settling Defendants agreed to pay a combined CDN\$935,528.00 plus accrued interest, inclusive of all costs, expenses, notice and administration. The Settling Defendants in the Temple-Inland Settlement Agreement and the Stone Settlement Agreement agreed to pay US\$20,000.00 and US\$830,000.00 respectively, plus accrued interest, inclusive of all costs, expenses, notice and administration. As of July 19, 2006, at an exchange rate of 1.1315, US\$20,000.00 converts to CDN\$22,630.00 and US\$830,000.00 converts to CDN\$939,145.00.

Affidavit of Michael G. Robb sworn August 4, 2006, para. 8.

6. Paragraph 4.3(2) of the Main Settlement Agreement provides for a clause often referred to as a "Most Favoured Nations" clause. The total value of the settlements, less payments to be made in respect of Most Favoured Nations clauses is approximately CDN\$1,845,988.00 plus interest which continues to accumulate.

Affidavit of Michael G. Robb sworn August 4, 2006, paras. 9, 10.

Risks Undertaken by Class Counsel

7. In undertaking this litigation, Class Counsel were cognizant of the following specific litigation risks:
 - (a) The risk that the court would not certify the action;
 - (b) The risk that the court would not certify a national class;
 - (c) Procedural risks associated with multi party litigation;
 - (d) The risk that the court would not agree that an aggregate damage assessment was possible, thus making the proof for individual class members onerous;
 - (e) The risk that individual class members would encounter difficulties proving that damages were not passed on by them, or were passed on to them;

- (f) The risk that the court would find that there was no conspiracy, that the conspiracy entered into was ineffective, or that any illegal activity had little or no effect on prices in Canada;
- (g) The risk that the court would find that the defendants could only be held responsible for their sales;
- (h) The risk that the applicable limitation period had expired. Specifically, Class Counsel were contacted by a Class Member shortly before the six year anniversary of Stone announcing that it would cease and desist from requesting, suggesting, urging, or advocating that any manufacturer or seller of linerboard raise, fix, or stabilize prices or price levels. Limitation periods therefore may have expired for all Class Members outside of Ontario, Saskatchewan, Manitoba, Prince Edward Island, New Brunswick, Nova Scotia, Yukon and Northwest Territories, the only provinces with the six year limitation periods for tort claims (at that time). Significantly, the Defendants' only Canadian linerboard production facility was a Stone Container Corp. plant in Quebec where the limitation period was 3 years. Quite aside from the substantive defence, the differing limitation periods could have been a procedural issue in certifying a national class, and a barrier to quantifying damages in the aggregate; and
- (i) Even in the event that the plaintiff was successful in all phases of the litigation, the plaintiff was aware that the defendants would likely file appeals in respect of multiple issues, thus resulting in a considerable delay in compensation for class members.

Affidavit of Michael G. Robb sworn August 4, 2006, para. 11.

8. In undertaking a class action, counsel automatically assume the risk of the time and expense which would be required to litigate the matter to conclusion, including appeals. When negotiations are entered into, Class Counsel assume the risk that negotiations will not be concluded, and the time spent and expense incurred in that process will be wasted and will be in addition to the time and expense required to prosecute the action. This risk is exacerbated where it is necessary to negotiate separately with each defendant.

Affidavit of Michael G. Robb sworn August 4, 2006, para. 12.

Costs Incurred by Class Counsel

9. Significant time and money have been expended by Class Counsel in pursuing this litigation. Our firm has docketed time of \$287,616.00 plus G.S.T. as of August 1, 2006. Disbursements of approximately \$167,786.75 plus applicable G.S.T. have been incurred

to that date. Cuneo Waldman & Gilbert^{LLP} has docketed time of US\$31,093.75 plus disbursements of approximately US\$5,509.00. As of August 1, 2006, at an exchange rate of 1.1315, US\$31,093.75 converts to CDN\$35,182.58 and US\$5,509.00 converts to CDN\$6,233.43. Alexander, Holburn, Beauding & Lang has docketed time of \$17,871.00 plus disbursements of approximately \$1,197.98.

Affidavit of Michael G. Robb sworn August 4, 2006, paras. 13-16.

10. Class Counsel funded all of the disbursements associated with advancing this file and did not apply to the Class Proceedings Fund for assistance. If the class had received disbursement funding from the Class Proceedings Fund, it would now be obligated to reimburse the Fund from the proceeds of the settlement. This obligation would require not only full repayment of any financial support provided by the Fund but also payment of an additional 10% of the settlement funds received by the Class.

Affidavit of Michael G. Robb sworn August 4, 2006, para. 17.

11. Considerable work remains to be done by Class Counsel. It is anticipated that our firm will have significantly in excess of \$300,000.00 in time invested in this matter upon conclusion. The future involvement of Class Counsel includes:
 - (a) The approval of the Stone Settlement Agreement, Distribution Protocol, and Class Counsel fees;
 - (b) Responding to questions from class members and their lawyers regarding the Settlement Agreements;
 - (c) Interacting with the Claims Administrator to ensure the fair and efficient administration of the Settlement Agreements; and
 - (d) Involvement in any appeals or other matters which may arise as the Settlement Agreements are implemented.

Affidavit of Michael G. Robb sworn August 4, 2006, para. 18.

Appropriateness of Class Counsel Fee Sought

12. Given the risks involved in pursuing this matter, the time expended in pursuing the matter thus far, and the benefit obtained for the class, a legal fee of \$425,000.00 plus disbursements and applicable taxes for Ontario Class Counsel is both appropriate and consistent with the retainer agreement.

Affidavit of Michael G. Robb sworn August 4, 2006, para. 26.

13. Siskinds is counsel of record along with Alexander, Holburn, Beaudin & Lang in the British Columbia proceeding. Siskinds has agreed to compensate Alexander, Holburn, Beaudin & Lang for their efforts, and to do so from the legal fee awarded to Ontario Class Counsel. No additional fee request will be made before the British Columbia Court. Siskinds has also agreed to compensate Cuneo Waldman & Gilbert^{LLP} for their time and efforts, and as with the payment to Alexander, Holburn, Beaudin & Lang, that payment will come from the legal fee awarded to Ontario Class Counsel.

Affidavit of Michael G. Robb, sworn August 4, 2006, paras. 21, 22.

14. A legal fee of \$425,000.00 would represent just less than 25% of the portion of the Settlement Amount allocated to the Ontario Class, not including interest which is being earned on the Settlement Amount. A legal fee of \$425,000.00 is therefore consistent with the retainer agreement entered into with McCormick.

Affidavit of Michael G. Robb, sworn August 4, 2006, para. 23.

15. Class Counsel are not seeking fees on interest accrued on the Settlement Amount, interest calculated on disbursements incurred, monies paid to British Columbia or U.S. counsel, or payment or right to future reimbursement for future expenses incurred.

Affidavit of Michael G. Robb, sworn August 4, 2006, paras. 24, 25.

16. The representative plaintiff supports the fees sought by Ontario Class Counsel. In his affidavit, the representative plaintiff states his understanding that the litigation was

undertaken on a contingency basis, that Siskinds would not be paid for fees or disbursements unless successful, and state his support for Class Counsel seeking a fee at or near the maximum permitted by the retainer agreement.

Affidavit of Keith Gibbons, sworn August 4, 2006, paras. 11, 12.

PART III - LAW

APPROVAL OF RETAINER AGREEMENT

17. The right of representative plaintiffs to enter into contingent fee arrangements with Class Counsel is recognized in the *Class Proceedings Act, 1992*.

Class Proceedings Act, 1992, S.O. 1992, c.6, s.33.

18. An agreement respecting fees and disbursements shall be in writing and shall:

- (a) State the terms under which fees and disbursements shall be paid;
- (b) Give an estimate of the expected fee, whether contingent on success in the class proceeding or not; and
- (c) State the method by which payment is to be made, whether by lump sum, salary or otherwise.

Class Proceedings Act, 1992, S.O. 1992, c.6, s.32(1).

19. The retainer agreement entered into with La Cie McCormick Canada Co. complies with the *Act* and ought to be approved.

APPROVAL OF FEES

Fees in Class Proceedings Generally

20. One of the primary goals of the *Class Proceedings Act, 1992* is to provide enhanced access to justice. In order to realize this objective, courts have recognized that there must be an economic incentive for lawyers to take on an appropriate case and pursue it diligently:

Another fundamental objective [of the *Class Proceedings Act, 1992*] is to provide enhanced access to justice to those with claims that would not otherwise be brought because to do so as individual proceedings would be prohibitively uneconomic or inefficient. The provision of contingency fees where a multiplier is applied to the base fee is an important means

to achieve this objective. The opportunity to achieve a multiple of the base fee if the action succeeds gives the lawyer the necessary economic incentive to take the case in the first place and do it well. However, if the *Act* is to fulfill its promise, that opportunity must not be a false hope.

Gagne v. Silcorp Ltd. (1998), 41 O.R. (3d) 417 at 422 (C.A.).

21. Class Counsel fees may be determined through a multiplier, percentage based, or lump sum calculation. A percentage fee arrangement represents a melding of a base fee and multiplier.

Class Proceedings Act, 1992, S.O. 1992, c.6, s.33.

Crown Bay Hotel Ltd. Partnership v. Zurich Indemnity Co. of Canada (1998), 40 O.R. (3d) 83 (Gen. Div.).

Factors to Consider in Assessing Class Counsel Fees

22. As outlined in section 33 of the *Act*, the fee awarded must be fair and reasonable in light of the risk undertaken by Class Counsel, and the manner in which Class Counsel conducted the proceeding.

Class Proceedings Act, 1992 S.O. 1992, C.6, ss. 33(7), 33(9).

23. A reasonable percentage fee should be determined having regard to the degree of risk undertaken by counsel, the degree of success in the proceeding, and the other criteria enunciated in *Serwaczek v. Medical Engineering Corp.*

Crown Bay Ltd. Partnership v. Zurich Indemnity Co. of Canada (1998), 40 O.R. (3d) 83 at 88 (Gen. Div.).

24. In *Serwaczek v. Medical Engineering Corp.*, the following factors were identified as relevant in assessing the reasonableness of the fee:

- (a) The time expended by the solicitor;
- (b) The legal complexity of the matters to be dealt with;
- (c) The degree of responsibility assumed by the solicitor;
- (d) The monetary value of the matters in issue;

- (e) The importance of the matter to the client;
- (f) The degree of skill and competence demonstrated by the solicitor;
- (g) The results achieved;
- (h) The ability of the client to pay; and
- (i) The client's expectations as to the amount of the fee.

Serwaczek v. Medical Engineering Corp. (1996), 3 C.P.C. (4t) 386 at 393 (Gen. Div.).

Litigation Risk Assumed by Counsel

25. The litigation risk assumed by counsel is materially related to the complexity of the proceedings. A more complex proceeding requires that Class Counsel invest more time and resources in pursuing the litigation:

Complex class actions subsume the productive time of counsel. The risk undertaken by counsel is not merely a function of the probability of winning or losing. Some consideration must also be given to the commitment of resources made by the Class Counsel and the impact that this will have in the event the litigation is unsuccessful.

Parsons v. Canadian Red Cross Society (2000), 49 O.R. (3d) 281 at 293 (S.C.J.).

26. The risks involved in pursuing the class litigation must be assessed as they existed when the litigation commenced, and as it continued. Risk cannot be assessed with the benefit of hindsight.

Gagne v. Silcorp Ltd. (1998), 41 O.R. (3d) 417 at 423 (C.A.).

27. As outlined in paragraph 7 above, Class Counsel assumed considerable risk in undertaking the within action. Both now and at the time this action was started, other price fixing cases in Ontario were and are being vigorously contested. The Ontario Superior Court of Justice refused to certify an action brought on behalf of consumers that alleged the defendant sought to maintain prices of various audio-visual products in breach of Canadian competition laws. The Ontario Court of Appeal declined to certify an action brought on behalf of a group of consumers who alleged that manufacturers

conspired to fix the price of iron oxide. Leave to appeal to the Supreme Court of Canada was denied.

Price v. Panasonic Canada, [2002] O.J. No. 2362

Chadha v. Bayer (1999), 45 O.R. (3d) 29 (Gen. Div.) (Certification granted), (2001), 54 O.R. (3d) 520 at 549 (Div. Ct.) (Certification denied), appeal dismissed [2003] O.J. No. 27 (C.A.).

Degree of Success Achieved

28. Despite the risks involved, settlements were achieved with each of the Defendants. Without the within action, it is unlikely that many class members would receive any compensation. The degree of success achieved is a relevant consideration in assessing whether the fees sought by counsel are fair and reasonable.

Parsons v. Canadian Red Cross Society (2000), 49 O.R. (3d) 281 at 289 (S.C.J.).

Fee Calculation Considerations

29. In the context of the *Class Proceedings Act, 1992*, a premium on fees is the reward for taking on meritorious but difficult matters. In *Parsons*, the court recognized the importance of the goal of enhanced access to justice and held that:

If the CPA is to achieve the legislative objective of providing enhanced access to justice then in large part it will be dependent upon the willingness of counsel to undertake litigation on the understanding that there is a risk that the expenses incurred in time and disbursements may never be recovered. It is in this context that a court, in approving a fee arrangement or in the exercise of fixing fees, must determine the fairness and reasonableness of the counsel fee.

Parsons v. Canadian Red Cross Society (2000), 49 O.R. (3d) 281 at 287 (S.C.J.).

30. Contingent fees promote the policy objectives of judicial economy in that they encourage efficiency in the litigation and discourage unnecessary work that might otherwise be done simply to increase the lawyer's base fee. In *Crown Bay Ltd. Partnership v. Zurich Indemnity Co. of Canada*, the court addressed the benefits of a percentage-based fee arrangement:

A contingency fee arrangement limited to the notion of a multiple of the time spent may, depending on the circumstances, have the effect of

encouraging counsel to prolong the proceeding unnecessarily and of hindering settlement, especially in those cases where the chance of some recovery at trial seems fairly certain. On the other hand, where a percentage fee, or some other arrangement such as that in *Nantais*, is in place, such a fee arrangement encourages rather than discourages settlement. In the case before this court the settlement averted a seven to ten day trial. Fee arrangements that reward efficiency and results should not be discouraged.

***Crown Bay Ltd. Partnership v. Zurich Indemnity Co. of Canada* (1998), 40 O.R. (3d) 83 at 88 (Gen. Div.).**

31. In the within action, the retainer provides that fees shall be calculated on a percentage basis, at a rate of 25% of any settlement, plus disbursements and applicable taxes. In accordance with the retainer agreement, Ontario Class Counsel is seeking legal fees equivalent to just less than 25% of the Settlement Amount allocated to the Ontario Class plus applicable disbursements and taxes. Fees of this magnitude have been regularly awarded by the courts in similar price-fixing cases:

Case	Subject Matter of Case	Settlement Amount	Legal Fee Awarded	Multiplier	Percent of Settlement
<i>Alfresh Beverages Canada Corp. v. Archer Daniels Midland Company et al.</i> Winkler J.: Oct. 23, 2001 [2001] O.J. No. 6028	price fixing of Citric Acid	\$7,718,208 (nationally)	\$900,000 +disbursements (for Ontario counsel)	3.0	n/a
<i>Bona Foods Ltd. v. Pfizer Inc. et al.</i> Winkler J.: Aug. 6, 2002 [unreported]	price fixing of sodium erythorbate	\$1,385,963 (nationally)	\$322,834.93 inclusive of disbursements (for Ontario counsel)	n/a	25% (inclusive of disb)
<i>Alfresh Beverages Canada Corp. v. Hoechst AG et al.</i> Cumming J.: Jan 14, 2001 [2002] O.J. No. 79	price fixing of Sorbates	\$3,055,743 (nationally)	\$585,000 +disbursements (for Ontario counsel)	3.0	n/a
<i>Minnema et al. v. Archer Daniels Midland Company et al.</i> Mackinnon J.: Feb. 28, 2003 [unreported]	price fixing of Lysine	\$5,250,000 (nationally)	\$1,152,375 +disbursements (for Ontario counsel)	n/a	25% (plus disb)

Case	Subject Matter of Case	Settlement Amount	Legal Fee Awarded	Multiplier	Percent of Settlement
<i>Bona Foods Ltd. et al. v. Ajinomoto U.S.A., Inc et al.</i> Cullity J.: March 9, 2004 [2004] O.J. No. 908	price fixing of MSG and nucleotides	\$6,900,000 (nationally)	\$1,000,000 +disbursements (for Ontario counsel)	n/a	25% (plus disb)
<i>Vitapharm Canada Ltd. v. F. Hoffman La-Roche Ltd.</i> Cumming J.: March 23, 2005 [2005] O.J. No. 1117	price fixing of Vitamins	\$100,000,000 (nationally after settlement credits)	\$14,732,906	n/a	14.73%
<i>Randall Klein Inc. v. Nan Ya Plastics Corp. et al.</i> Leitch J.: June 29, 2005 [unreported]	price fixing of Polyester Staple	\$974,929.25	\$187,500 +disbursements (for Ontario counsel)	n/a	25% (plus disb)
<i>Stone Paradise Inc. v. Bayer Inc. et al.</i> Rady J.: April 19, 2006 [unreported]	price fixing of EPDM	\$4,500,000.00	\$834,000.00 (for Ontario counsel)	n/a	25% (plus disb)

32. In analysing the fairness and reasonableness of Class Counsel's fees, the Court may employ the corroborating tests set out by Goudge J.A. in *Gagne*. These tests involve:

...testing the fee as a percentage against recovery, as a multiple of base fees, as against the retainer agreement, and whether, in the circumstances, the fee will provide sufficient incentive for counsel to take on difficult cases in the future.

Parsons v. Canadian Red Cross Society (2000), 49 O.R. (3d) 281 at 305 (S.C.J.).

33. The Ontario Court of Appeal has held that multipliers will tend to range between slightly greater than one at the low end and three to four in the most deserving cases.

Gagne v. Silcorp Ltd. (1998), 41 O.R. (3d) 417 at 425 (C.A.).

34. In this case, the fee sought will equate to a multiplier of approximately 1.4 by the conclusion of the matter. Given the significant risks involved in pursuing this litigation, the time expended in investigating and settling the matter, and the continuing obligations of Class Counsel, it would be appropriate to apply a multiplier in the range of 3.0 in this

case. As outlined in paragraph 31, multipliers of 3.0 have been awarded by the courts in similar price-fixing cases.

35. In *Stone Paradise*, Rady J. commented that there has recently been a shift in the academic community towards abandoning the lodestar and multiplier approach to class counsel fees altogether in favour of percentage fees and quoted Professor Benjamin Alarie's article, *Rethinking the Approval of Class Counsel's fees in Ontario Class Actions*:

The first recommendation is to deemphasize the use of the lodestar method in determining the compensation of class counsel. In most Ontario class actions, the retainer agreement between class counsel and representative plaintiffs provides for a contingency fee calculated on a percentage of the settlement or judgment. Unless a compelling case can be mounted for regarding this agreement as unsuitable, compensation at the rate agreed to by the representative plaintiff should be the court's starting point in deciding a "fair and reasonable fee." First resort should not be made to the base fee and multiplier method, because of the considerable incentives class counsel and defendants have for tacit collusion in allowing class counsel's base fee to rise to a level conducive to settlement, and the inefficiencies this endangers. If this recommendation is taken up, and the percentage method (if agreed to by the representative plaintiff and class counsel) is specified in the retainer agreement, there are four specific concerns judges should consider. First, the court should examine whether there is any reason to think that the compensation provided for by the retainer agreement does not represent a fair and reasonable return to class counsel given what was known *ex ante* about the strength of the case, the costs of making the case, and the likelihood of success. This may be a difficult determination to make; nevertheless, courts should strive to make accurate determinations in this regard. Second, the court should consider whether the settlement takes the form of coupons or in-kind benefits to class members. If so, the court should discount the judgment appropriately. Third, if there is a reversionary interest to the defendant of the settlement fund, then the court should consider allowing class counsel to recover the stated percentage only of the amount actually distributed to class members. Finally, the court should be attuned to the incentives class counsel have under the percentage method for premature settlement. If it appears that class counsel has settled too quickly for an amount grossly lower than what one might consider to be the value of the claims of the class members, then the lodestar method might be more appropriately used than the percentage method (assuming the percentage method is provided for in the retainer agreement).

***Stone Paradise Inc. v. Bayer Inc. et al.* (April 19, 2006), (Ont. S.C.J.) [unreported], para 21.**

CONCLUSION

36. The legal fee sought by Ontario Class Counsel in the within action takes into account the following factors:

- (a) The action is complex, involving both significant procedural and substantive risks;
- (b) Certification was denied in cases founded on allegations of price fixing with respect to the market for iron oxide;
- (c) Class Counsel funded all of the disbursements and did not seek contribution from the representative plaintiff, or the Class Proceedings Fund;
- (d) In the absence of the class proceeding, it is unlikely that any relief would be available to the vast majority of class members; and
- (e) The fee sought is consistent with the expectations of the representative plaintiffs.

37. Accordingly, having regard to the above, a legal fee of \$425,000.00 plus applicable disbursements and taxes is both appropriate and consistent with the retainer agreement entered into with the representative plaintiff.

PART IV - ORDER SOUGHT

38. The Plaintiff requests that this Court grant an Order approving Ontario Class Counsel's legal fee in the amount of \$425,000.00 plus applicable disbursements and taxes for total of \$637,371.37 payable from the Settlement Amounts.

ALL OF WHICH IS RESPECTFULLY SUBMITTED


per _____
Charles M. Wright (LSUC #36599Q)

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