

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE
JUSTICE CUMMING

)
)

WEDNESDAY, THE 29th DAY
OF OCTOBER, 2008

B E T W E E N :

Claude Millard and Roger Grisé

Plaintiffs

– and –

**North George Capital Management Limited, Triple A
Financial Services Inc., North George Capital Limited
Partnership, North George Capital II Limited Partnership,
North George Capital III Limited Partnership, North George
Capital IV Limited Partnership, North George Capital V
Limited Partnership, Lionaird Capital Corp., Roderick Alton,
Michael Magee, Robert McGillen, Kenneth Gill, Anne
Gilmour, Michael Goselin, Goselin & Associates, Stewart and
Associates, McColl Turner, Irv Dyck, M.R.S. Trust Company,
Alan Lawson, Fisher Inc., the Trustee of the Estate of Roderick
Alton, a Bankrupt, Richard Killen & Associates Ltd, the
Trustee of the Estate of Michael Goselin, and KPMG Inc., the
Trustee of the Estate of Michael Magee, a Bankrupt**

Defendants

ORDER

THIS MOTION, made by the plaintiffs without notice for an order approving the form and content of a notice to Class Members regarding a motion to approve the distribution of moneys to Class Members and to Class Counsel, was read this day at Toronto.

ON READING the notice of motion, the affidavit of Steven Sofer dated October 7, 2008, and the proposed notice, it appearing that this order will not affect the rights of any party under a disability,

1. **THIS COURT** approves the form and content of the notice attached hereto as Schedule "A" and orders that it be sent by regular mail to all Class Members.
2. **THIS COURT** orders that there be no costs payable for this motion.

October 29, 2008 Peter C. Cumming J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 29 2008

PER/PAR: 

Schedule "A"

NOTICE

TO: ALL PURCHASERS OF NOTES OF LIONAIRD CAPITAL CORP.
AND TO: ALL PURCHASERS OF UNITS OF NORTH GEORGE CAPITAL LIMITED PARTNERSHIP, NORTH GEORGE CAPITAL II LIMITED PARTNERSHIP, NORTH GEORGE CAPITAL III LIMITED PARTNERSHIP, NORTH GEORGE CAPITAL IV LIMITED PARTNERSHIP, NORTH GEORGE CAPITAL V LIMITED PARTNERSHIP

Please read this notice carefully. It affects your legal rights.

On March 28, 2007, the Court of Appeal dismissed the appeal filed by Roderick Alton. A copy of the order can be found at: www.gowlings.com/restructuring/northgeorge/. As a result, the class action has now been concluded, save for the procedural steps described in this Notice.

In summary, the action was commenced on September 15, 1998 and was certified as a class action on April 11, 2000. Settlements were reached with numerous defendants which resulted in the distribution of \$1,447,638.52 to the Lionaird class members and \$384,447.02 to the North George class members between 2000 and 2002.

Following the implementation of the settlements, the action was pursued against all non-settling defendants, namely Messrs. Alton, Magee, Dyck and Goselin. Judgments in excess of \$5,000,000 were obtained against each of Messrs. Alton and Magee. These judgments were declared to be founded in fraud and, as a result, survive their bankruptcies and can be enforced at any time against either individual if assets are discovered against which the judgments can be enforced. Judgment in excess of \$3,500,000 was obtained against Mr. Dyck, but he has filed for bankruptcy and the judgment against him will not survive his discharge from bankruptcy. As a result, we do not expect to collect anything from Mr. Dyck. However, any distributions from Mr. Dyck's bankruptcy will be shared by members of the Dyck subclass on a pro rata basis. Judgment was obtained against Mr. Goselin, on consent, but the judgment did not survive his discharge from bankruptcy.

Contemporaneously with the distribution of certain funds to class members, class counsel obtained Court approval to hold back funds in order to resolve certain disputed claims and pay certain third party expenses of the action. All of the disputed claims have now been resolved. As of this date, approximately \$70,000 is held on account for the class members, approximately two-thirds of which is held on account for the North George class members and one-third of which is held on account for the Lionaird class members. For this reason, it is proposed that any available funds be distributed as follows: two-thirds to the North George class members and one-third to the Lionaird class members.

Class Counsel have not received any fees or disbursements for their work on this file since the distribution made in December, 2002. Pursuant to the Fee Agreement between Class Counsel and the representative plaintiffs which was approved by the Court in July 26, 2000, Class Counsel are entitled to a contingency fee in the amount of 20% of funds available for distribution to the class members, plus disbursements and GST.

In order to conclude the class action, a motion has been scheduled for November 21, 2008 at which Class Counsel will request an order approving the payment of fees and disbursements to Class Counsel in accordance with the fee agreement and the distribution of the balance of the

moneys to the class members. In particular, Class Counsel will request that the court approve the distribution of approximately \$69,478.79 as follows: (1) approximately \$26,148.62 to Class Counsel for the reimbursement of disbursements incurred on behalf of class members; (2) approximately \$8,583.19 to Class Counsel representing a 20% contingency fee on the remaining funds, plus GST thereon; and (3) approximately \$32,289.19 to North George and Lionaird Class members, with two-thirds of that amount allocated to the North George class members and one-third allocated to the Lionaird class members (all subject to any Court approved changes).

A copy of the proposed distribution list is attached so that you may check the approximate amount that you will be entitled to receive (subject to any Court approved changes) if the Motion is granted as requested by Class Counsel. If the Motion is approved on the scheduled date and no appeal is filed within 30 days, cheques should be mailed in or about January, 2009. Cheques for RRSP subclass members will be sent directly to MRS and will be deposited directly into those class members' RRSP/RRIF accounts.

Class Counsel will also be requesting that the Court declare that Class Counsel have fulfilled all of their obligations to class members under the Fee Agreement and shall have no further obligations thereunder but will remain entitled to any fees payable under the Fee Agreement in the event of any further recovery of moneys as a result of the action.

You are not required to take any action in connection with this Notice. If you take no action and the Motion is approved, you will in due course receive your cheque as noted on the proposed distribution list. You are entitled to attend at the motion on November 21, 2008. If you plan on attending, please call Class Counsel a day before the hearing to ensure the date has not been changed. **If you intend to oppose the motion, you are required to notify Class Counsel in writing, stating the reasons for your objection. Your written objection must be received by Class Counsel no later than November 17, 2008.**

If you wish to obtain any further information about this matter, please contact Class Counsel:

Steven Sofer
Gowling Lafleur Henderson LLP
Tel: 416-369-7240
Email: steven.sofer@gowlings.com

Jeffrey D. Glatt
Barrister and Solicitor
Tel: 416-484-7498
Email: jglatt@rogers.com

A copy of the proposed Notice of Motion has been posted on the internet at:
www.gowlings.com/restructuring/northgeorge/.

Class Counsel are also seeking your assistance to locate the following class members: Mr. Edward L. Cooney, Mr. William L. Pearson, and Mr. David Prior. If you are aware of their whereabouts, please notify Class Counsel as soon as possible.

You have been sent this Notice because you are or may be a member of the Lionaird Class and/or the North George Class and your rights may be affected hereby. Publication of this Notice has been approved by the Court.

October , 2008

Claude Millard and Roger Grisé
– Plaintiffs –

v.

North George Capital Management Limited et al
– Defendants –

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

(PROCEEDING COMMENCED AT TORONTO)

ORDER

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SOLICITORS FOR THE PLAINTIFFS