

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR. JUSTICE
FARLEY

)
)

WEDNESDAY, THE 26TH DAY OF
JULY, 2000

B E T W E E N:

CLAUDE MILLARD AND ROGER GRISE

Plaintiffs

- and -

**NORTH GEORGE CAPITAL MANAGEMENT LIMITED, TRIPLE A
FINANCIALSERVICES 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, STEWEART AND ASSOCIATES, MCCOLL
TURNER, IRV DYCK AND M.R.S. TRUST COMPANY**

Defendants

Proceeding Under the Class Proceedings Act, 1992

ORDER

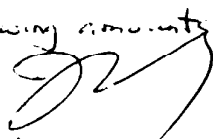
(APPROVAL OF FEE AGREEMENT)

THIS MOTION made by the counsel for the plaintiffs for an Order approving the Fee Agreement (the "Fee Agreement") made as of August 12, 1998 between the representative plaintiffs and plaintiffs' counsel ("Class Counsel") (a copy of which is attached hereto as

Schedule "A"), originally scheduled to be heard June 28, 2000, was heard, July 26, 2000 at 393 University Avenue, Toronto.

ON READING the Fee Agreement, the affidavit of Jeffrey D. Glatt sworn June 20, 2000, the Report of Class Counsel dated July 5, 2000, a letter from Fraser Milner, counsel to McColl Turner dated June 27, 2000 and upon being advised by Class Counsel that no class member or other interested party appeared on June 28, 2000 for the purposes of opposing approval of the Fee Agreement, and upon hearing the submissions of Class Counsel.

1. **THIS COURT ORDERS** that the Fee Agreement is approved;

2. **THIS COURT ORDERS** that pursuant to the Fee Agreement, on the initial distribution of funds to the Lionaird Class Members pursuant to the Order dated April 11, 2000 (the "Order") Class Counsel shall be paid:
 - (a) fees in the amount of twenty percent of *any of the following amounts which form part of such initial distribution:* 
 - (i) all funds received by Class Counsel from the Interim Receiver pursuant to paragraph 18 of the Order;

 - (ii) the settlement payment of \$400,000.00 from M.R.S. Trust Company; and

 - (iii) the settlement payment of \$100,000.00 on behalf of Stewart & Associates;

 - and

 - (b) disbursements in the amount of \$7,250.00; and

(c) GST payable on the foregoing fees and disbursements.

3. **THIS COURT ORDERS** that it remain seized of this matter for the purpose of any further approvals that may be required, including payment of any further interim or final fees to Class Counsel.

Justice Farley, Ontario Superior Court of Justice
(Commercial List)

July 26/2000
order to issue
in this form
Justice Farley

SCHEDULE "A"

AGREEMENT RESPECTING FEES AND DISBURSEMENTS
(Made pursuant to the *Class Proceedings Act, 1992* (Ontario))

THIS AGREEMENT made as of the 12th day of August, 1998 between:

CLAUDE MILLARD
and
ROGER GRISE
(the "Clients")

OF THE FIRST PART.

- AND -

JEFFREY D. GLATT
and
SMITH LYONS
(the "Solicitors")

OF THE SECOND PART.

WHEREAS the Clients are the plaintiffs in action 98-CL-3048 in the Ontario Court of Justice (General Division), Commercial List, commenced in the City of Toronto in the Province of Ontario (the "Action");

AND WHEREAS the parties hereto intend to seek an order of the Court certifying the Action as a class proceeding pursuant to the *Class Proceedings Act, 1992* (Ontario) (the "Act") and appointing the Clients as representative plaintiffs;

AND WHEREAS subsection 32(1) of the Act provides that an agreement respecting fees and disbursements between a solicitor and a representative party 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;

AND WHEREAS subsection 32(2) of the Act provides that an agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the Court, on the motion of the solicitor;

AND WHEREAS subsection 32(3) of the Act provides that amounts owing under an enforceable agreement respecting fees and disbursements between a solicitor and a representative party are a first charge on any settlement funds or monetary award;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration for the mutual covenants and agreements herein contained and for other valuable consideration, the receipt and



Solicitors hereunder at an aggregate cost in excess of \$25,000 shall be subject to the prior written approval of the Clients.

2. Fees and Disbursements

The Legal Fund

- 2.1 The Clients, together with other members of the Class, have contributed funds (the "Legal Fund") to defray some of the Solicitors fees and disbursements at the initial stages of the Class Proceedings. As at the date of signing of this agreement, contributions by the Class members to the Legal Fund total \$58,000. This amount may be increased from time to time by additional contributions from members of the Class. Except as provided in Section 2.7, the funds comprising the Legal Fund shall be non-refundable to the Clients (or the other contributors) and may be applied by the Solicitors, together with all interest accrued thereon, at any time and from time to time, to pay legal fees and disbursements incurred by them in connection with the Class Proceedings.

Party/Party Costs

- 2.2 All party/party costs recovered or recoverable by the Solicitors in connection with the Class Proceedings, by court order, settlement or otherwise, irrespective of the scale upon which the party/party costs are awarded, shall be paid to the Solicitors and may be applied by the Solicitors, together with all interest accrued thereon, at any time and from time to time, to pay legal fees and disbursements incurred by them in connection with the Class Proceedings.

Responsibility for Solicitors Fees and Disbursements Contingent Upon Success

- 2.3 Save and except for the provisions of sections 2.1 and 2.2 of this agreement, the Clients and all other members of the Class shall be liable for payment of fees and disbursements incurred by the Solicitors in connection with the Class Proceedings only in the event of success in the Class Proceedings.
- 2.4 For the purposes of section 2.3 of this agreement, success includes:
- (a) a judgment in the Action on common issues in favour of some or all of the members of the Class; and
 - (b) a settlement of any of the Class Proceedings that benefits one or more of the members of the Class.

Success shall also include any other form of monetary recovery, in whole or in part, by any one or more of the members of the Class resulting from any of the Class Proceedings including, without limitation, funds distributed or distributable by any receiver or interim receiver for North George, the Partnerships or Lionaird appointed as a result of any interlocutory proceedings prosecuted by the Solicitors.


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- 2.5 The Solicitors' fees and disbursements shall be payable at the rate provided in Section 2.6 of this agreement as a lump sum at any time and from time to time contemporaneous with and out of the gross funds (the "Class Proceeds") which may be paid or payable from time to time to any one or more of the members of the Class resulting from any of the Class Proceedings.

Calculation of Fees and Disbursements in the Event of Success

- 2.6 In the event of success in the Class Proceedings, the Solicitors shall be paid:
- (a) legal fees in an amount equal to TWENTY PER CENT (20%) of the Class Proceeds; provided, however, that the legal fees payable to the Solicitors hereunder shall in no event exceed a multiple of three times the fees docketed by the Solicitors in respect of the Class Proceedings at their normal hourly rates, as the same may be amended from time to time during the course of the Class Proceedings;
 - (b) disbursements in an amount equal to all of the unrecovered disbursements disbursed by them in connection with the Class Proceedings prior to the date of payment of such Class Proceeds; and
 - (c) GST (and any other applicable taxes) payable in respect of such legal fees and disbursements.
- 2.7 In calculating the amounts payable to the Solicitors by each member of the Class, there shall be credited to the account of such person the full principal amount contributed by such person to the Legal Fund. By way of example, assume a class member becomes entitled to recover \$10,000. If no legal disbursements had been incurred, the person would be obligated to pay legal fees in the amount of \$2,000 plus GST in the amount of \$140 hereunder. The balance of \$7,860 would be payable to the class member. If such class member had previously contributed \$1,000 to the Legal Fund, he would receive a credit of \$1,000 and, accordingly, such class member would receive a payment of \$8,860.

First Charge on Class Proceeds

- 2.8 Any and all amounts payable to the Solicitors pursuant to section 2.6 of this agreement shall constitute a FIRST CHARGE on any and all of the Class Proceeds and all proceeds thereof.

Estimate of Solicitors' Fees and Disbursements

- 2.9 Except as limited by the provisions of clause 2.6(a) of this agreement, the Solicitors fees will not be calculated based on the number of hours of work performed by the Solicitors in connection with the Class Proceedings. To the date of the signing of this agreement, the Solicitors have incurred billable time (at their normal hourly rates) in excess of \$500,000 and disbursements in excess of \$18,000 on the Class Proceedings. Substantial additional time will have to be expended to prosecute the Action to completion. The

Handwritten signature
/s/

Clients acknowledge and agree that they are not ready, willing and able, alone or together with other class members, to make payment to the Solicitors of their fees based on their normal hourly billing rates and would not be prepared to retain the Solicitors to assist them if they were required to do so.

2.10 Accordingly, the Clients and the Solicitors have agreed that the Solicitors will be remunerated on a contingency fee basis at the rate set out in section 2.6 of this agreement, namely 20% of the Class Proceeds, contingent upon achieving success in the Class Proceedings.

2.11 On an individual class member basis, the Solicitors' fees may be estimated as follows:

If the Gross Proceeds payable to a Class Member total:	Then the Solicitors' fees payable by such Class Member will be:
\$ 5,000	\$ 1,000
\$ 10,000	\$ 2,000
\$ 25,000	\$ 5,000
\$ 50,000	\$ 10,000
\$ 100,000	\$ 20,000

2.12 On a total class basis, the Solicitors' fees may be estimated as follows:

If the Gross Proceeds payable to all Class Members combined total:	Then the Solicitors' fees payable by all Class Members combined will be:
\$ 1,000,000	\$ 200,000
\$ 3,000,000	\$ 600,000
\$ 5,000,000	\$ 1,000,000
\$ 7,000,000	\$ 1,400,000
\$ 9,000,000	\$ 1,800,000

2.13 The allocation of the Solicitors' fees between the Solicitors shall not require notice to, or the consent or approval of, the Clients.

2.14 The Solicitors estimate that the total disbursements to prosecute the Class Proceedings will not exceed \$100,000. Each class member entitled to receive Class Proceeds shall be responsible for a *pro rata* share of the disbursements incurred. The Solicitors and the Clients have no current intention to apply to the Class Proceedings Fund of the Law Foundation of Ontario to aid in the payment of disbursements of the Solicitors.

2.15 The following disbursements shall be charged at the prevailing rates of the Solicitors from time to time, the current rates for which are set forth below:

(a) faxes (sent and received):	25 cents per page;
(b) photocopies:	25 cents per page;
(c) computer-based research:	\$85 per hour; and

- (d) in-house messengers: \$5 per delivery.

3. Liability of the Clients for Costs

- 3.1 Although the Clients will only be liable to the Solicitors for fees and disbursements in the event of success in the Action, the Clients acknowledge and understand that they may be liable to pay the legal fees and disbursements incurred by any of the defendants against whom the Action (or any of the Class Proceedings) is not successful. The amount of such costs would be as assessed by the Court.

4. Independent Legal Advice

- 4.1 The Clients acknowledge and confirm that they have obtained independent legal advice before signing this agreement and have provided the Solicitors a certificate to such effect. Based on such advice, the Clients represent to the Solicitors that they understand their rights and obligations under this agreement and have agreed to sign this agreement voluntarily.

5. Court Approval

- 5.1 In accordance with the provisions of subsection 32(2) of the Act, this agreement shall not be enforceable unless approved by the Court on the motion of the Solicitors. The Solicitors hereby undertake to make a motion to the Court for such approval.

6. Miscellaneous

- 6.1 All terms defined in the Statement of Claim issued to commence the Action shall have the same meanings in this agreement as are ascribed to them in such Statement of Claim.
- 6.2 This agreement may be executed in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same agreement.
- 6.3 This agreement shall be governed by the laws of Ontario and the federal laws of Canada applicable therein.

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6.4 Subject to receipt of Court approval in accordance with the provisions of Section 5.1, this agreement shall be binding upon and enure to the benefit of the Clients, all members of the Class who do not opt out of the Action, the Solicitors, and their respective heirs, executors, administrators, legal personal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed and delivered this agreement this 13th day of October, 1999.

Signed in the presence of:

Thomas E. Cole
Witness for Claude Millard:

Witness for Roger Grise:

Witness for Jeffrey Glatt:

Witness for Steven Sofer:

Claude Millard
Claude Millard

Roger Grise

Jeffrey Glatt

SMITH LYONS

per: _____
Steven Sofer, partner

6.4 Subject to receipt of Court approval in accordance with the provisions of Section 5.1, this agreement shall be binding upon and enure to the benefit of the Clients, all members of the Class who do not opt out of the Action, the Solicitors, and their respective heirs, executors, administrators, legal personal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed and delivered this agreement this 24th day of October, 1999.

Signed in the presence of: PB

Witness for Claude Millard:

[Signature]
Witness for Roger Grise:

Witness for Jeffrey Glatt:

Witness for Steven Sofer:

[Signature]
Claude Millard
[Signature]
Roger Grise

Jeffrey Glatt

SMITH LYONS

per: [Signature]
Steven Sofer, partner

6.4 Subject to receipt of Court approval in accordance with the provisions of Section 5.1, this agreement shall be binding upon and enure to the benefit of the Clients, all members of the Class who do not opt out of the Action, the Solicitors, and their respective heirs, executors, administrators, legal personal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed and delivered this agreement this 12th day of October, 1999.

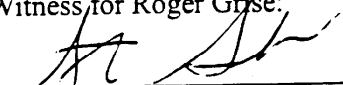
Signed in the presence of:)

Witness for Claude Millard:)


Claude Millard)

Witness for Roger Grise:)


Roger Grise)



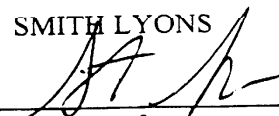
Witness for Jeffrey Glatt:)



Jeffrey Glatt)



Witness for Steven Sofer:)

SMITH LYONS
per: 

Steven Sofer, partner)

Claude Millard, et al
-- Plaintiffs --

v. **North George Capital Management Limited, et al**
- Defendants -

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING COMMENCED AT TORONTO)

ORDER
APPROVAL FOR FEES

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