

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

BETWEEN:

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 and M.R.S. Trust Company

Defendants

Proceeding Under the Class Proceedings Act, 1992

SETTLEMENT AGREEMENT

WHEREAS a proposed class proceeding has been filed by the Plaintiffs against the Defendants
in the Action;

AND WHEREAS the Plaintiffs have conducted settlement negotiations with the Defendants with a view to settling the claims of the Class Members pursuant to the Action;

AND WHEREAS the Plaintiffs and the Defendants engaged in mediation to attempt to reach a mutually acceptable settlement;

AND WHEREAS, as a result of such settlement and mediation efforts, the Plaintiffs and the Settling Defendants have entered into this Agreement to finally and conclusively settle all Claims of the Settlement Class Members against the Settling Defendants;

AND WHEREAS the Settling Defendants, notwithstanding their consent to this Agreement, have denied and continue to deny the claims of the Plaintiffs and the Settlement Class Members and have raised or intend to continue to raise numerous defenses to the Action if this Agreement is not approved and implemented;

AND WHEREAS the Action has not been certified as a class proceeding to date and the Settling Defendants have agreed, subject to the terms and conditions of this Agreement, not to oppose a motion by the Plaintiffs for certification of the Action as against them for the purposes of settlement only;

AND WHEREAS, based upon an analysis of the facts and the law applicable to the Claims of the Settlement Class Members, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class Members provided in this Agreement, Plaintiffs and Plaintiffs' Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class Members and is fair, reasonable, and in the best interests of the Settlement Class Members;

AND WHEREAS the Settling Defendants have similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them;

AND WHEREAS the Class Members have the right to exclude themselves ("opt out") from this Agreement under Section 9 of the Act, and as provided in this Agreement, if they do not wish to be governed by the terms hereof;

NOW THEREFORE, subject to the Court's approval, this Agreement witnesses as follows:

1. Definitions

1.1 "Act" means the Class Proceedings Act, 1992.

- 1.2 "Action" means the action filed in the Ontario Superior Court of Justice (Commercial List) under the name and style of *Claude Millard and Roger Gris  v. North George Capital Management Limited, et al.* and bearing court file No. 98-CL-3048.
- 1.3 "Approval Order" means the order of the Court contemplated by Clause 6.1 of this Agreement.
- 1.4 "Claims" means all claims which the Class Members now or in the future can, shall or may have against the Defendants for losses, damages, costs, expenses, fees, interest, taxes or otherwise, pursuant to the Action or otherwise resulting from the subject matter of the Action.
- 1.5 "Class Members" and all components of that term including "Lionaird Class Members", "North George Class Members" and "RRSP Subclass Members" shall have the meanings respectively ascribed to these terms in the Statement of Claim.
- 1.6 "Court" shall mean the Ontario Court which has jurisdiction over the Action, namely the Ontario Superior Court of Justice (Commercial List) and the Honourable Mr. Justice Farley, or his successor.
- 1.7 "Defendants" means the parties now or hereafter named as defendants in the Action and their affiliated companies, officers, directors, partners, employees, and agents.
- 1.8 "Non-Settling Defendants" shall mean all of the Defendants and their affiliated companies, officers, directors, partners, employees, and agents other than the Settling Defendants.
- 1.9 "Opt Out Deadline" means 5:00 p.m. Toronto time on May 19, 2000 or such other date as may be prescribed by the Court in the Approval Order.
- 1.10 "Opt Out Notice" shall have the meaning ascribed thereto in Clause 4.1 of this Agreement.
- 1.11 "Opt Out Report" shall have the meaning ascribed thereto in Clause 4.3 of this Agreement.

- 1.12 "Plaintiffs" means the parties named as plaintiffs in the Action.
- 1.13 "Plaintiffs' Counsel" means Smith Lyons, Barristers and Solicitors and Jeffrey D. Glatt, Barrister and Solicitor or their successors in the prosecution of the Action on behalf of the Plaintiffs.
- 1.14 "Satisfaction Date" means:
- (a) if no Class Member elects to opt out pursuant to and in accordance with the provisions of this Agreement and the Approval Order, the date of the filing and delivery of the Opt Out Report pursuant to Clause 4.3 of this Agreement; or
 - (b) in any other event, the Termination Deadline Date;
- 1.15 "Settlement Class Members" means all Class Members who have not elected to opt out pursuant to and in accordance with the provisions of this Agreement and the Approval Order.
- 1.16 "Settlement Funds" shall mean all moneys payable by the Settling Defendants pursuant to Section 2 of this Agreement.
- 1.17 "Settling Defendants" shall mean Robert McGillen, Stewart and Associates and M.R.S. Trust Company and their affiliated companies, officers, directors, partners, employees, and agents.
- 1.18 "Statement of Claim" means the amended statement of claim filed on behalf of the Plaintiffs in the Action on or about November 16, 1998.
- 1.19 "Termination Deadline Date" means the date which is the tenth (10th) business day following the filing and delivery of the Opt Out Report pursuant to Clause 4.3 of this Agreement.

2. Settlement Funds to be Paid by Settling Defendants

- 2.1 Provided this Agreement has not been terminated pursuant to Section 7, within two business days of the Satisfaction Date, there shall be paid on behalf of Robert McGillen and Stewart and Associates to or to the order of Plaintiffs' Counsel the sum of \$100,000 (in Canadian funds) in full and final settlement of all Claims of the North George Class Members, inclusive of all interest, GST, legal fees and costs, as against these Defendants and their partners, employees, and agents only.
- 2.2 Provided this Agreement has not been terminated pursuant to Section 7, within two business days of the Satisfaction Date, Stewart and Associates shall pay to or to the order of Plaintiffs' Counsel the sum of \$100,000 (in Canadian funds) in full and final settlement of all Claims of the Lionaird Class Members, inclusive of all interest, GST, legal fees and costs, as against this Defendant and their partners, employees, and agents only.
- 2.3 Provided this Agreement has not been terminated pursuant to Section 7, within two business days of the Satisfaction Date, M.R.S. Trust Company shall pay to or to the order of Plaintiffs' Counsel the sum of \$400,000 (in Canadian funds) in full and final settlement of all Claims of the RRSP Subclass Members, inclusive of all interest, GST, legal fees and costs, as against this Defendant and its affiliated companies, officers, directors, employees, and agents only.

3. Use of the Settlement Funds

- 3.1 The Settlement Funds shall be distributed or otherwise used and applied by Plaintiffs' Counsel pursuant to and in accordance with the terms of any order obtained from the Court in the Action.

4. Opt Out Provisions

- 4.1 Class Members shall have the right to exclude themselves ("opt out") from the terms of this Agreement by submitting to Plaintiffs' Counsel a written notice (an "Opt Out Notice") in the form of the notice located at the conclusion of Schedule B annexed to this Agreement on or before the

Opt Out Deadline and otherwise in the manner prescribed by the Court. Class Members who elect to opt out, and do not withdraw such election prior to the Opt Out Deadline, shall be excluded from the terms of this Agreement and from the Settlement Class but are bound not to use this Agreement for any purpose proscribed by paragraph 8.6 hereof. Any Class Member who does not submit a properly completed Opt Out Notice in the manner and within the prescribed period of time shall be and be deemed for all purposes to be a Settlement Class Member and shall be bound by the terms of this Agreement.

4.2 By entering into this Agreement, the Plaintiffs agree that they will not opt out of the terms of this Agreement.

4.3 Within three (3) business days of the Opt Out Deadline, Plaintiffs' Counsel shall file with the Court and deliver to each of the Settling Defendants a report in writing (the "Opt Out Report") setting out that no Class Member has elected to opt out or, if any have so elected, setting out the names of all Class Members who have elected to opt out.

5. Dismissal of Action, Release and Bar Order

5.1 Upon the payment of the Settlement Funds:

(a) the parties to the agreement will file a consent to the dismissal of the Action with prejudice as against the Settling Defendants on a "without costs" basis; such consent to dismissal of the proceedings shall be prepared by and at the cost and expense of the Settling Defendants and shall be subject to the approval of Plaintiffs' Counsel prior to filing, and the Settling Defendants may then obtain an order effecting such dismissal pursuant to the Consent;

(b) all Claims of the Settlement Class Members shall be finally and conclusively compromised, settled, released and discharged as against the Settling Defendants; and

- (c) all claims for contribution, indemnity, subrogation or other claims over by any Non-Settling Defendant against any Settling Defendant for or in respect of the Claims of the Settlement Class Members which are the subject matter of the Action, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, shall be forever barred by order of the Court in accordance with the following terms:
- (i) it is the expressed intention of the parties that this Agreement shall not benefit any Non-Settling Defendant except as specifically provided herein and shall not prejudice any Non-Settling Defendant;
 - (ii) all claims for contribution, indemnity, subrogation or other claims over by the Settling Defendants against any Non-Settling Defendant for or in respect of the subject matter of the Action, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity shall be forever barred by order of the Court;
 - (iii) all claims for contribution, indemnity, subrogation or other claims over by any Non-Settling Defendant against any Settling Defendant for or in respect of the subject matter of the Action, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity shall be forever barred by order of the Court;
 - (iv) if any Settlement Class Member shall be entitled to judgment in the Action (a "Primary Judgment") against any Non-Settling Defendant for any amount in respect of which such Non-Settling Defendant would have been entitled, but for the bar order contemplated hereby, to a judgment (a "Claims Over Judgment") against one or more of the Settling Defendants in respect of any claim for contribution, indemnity, subrogation or other claims over by such Non-Settling Defendant against any Settling Defendant for or in respect of the subject matter of the Action, whether direct, subrogated, asserted or unasserted or asserted in a representative

capacity, the amount of such Primary Judgment shall be reduced by the full amount of such Claims Over Judgment;

- (v) for the purposes of establishing or refuting the amount of any Claims Over Judgment to which a Non-Settling Defendant would have been entitled, but for the provisions of the bar order contemplated hereby, the Plaintiff and any Non-Settling Defendant may, with leave of the Court upon notice to the Settling Defendants, obtain:
 - (A) documentary discovery and an Affidavit of Documents in accordance with the Rules of Civil Procedure from any Settling Defendant;
 - (B) oral discovery of a representative of any Settling Defendant, the transcript of which may be read in at trial; and
 - (C) an undertaking to produce a representative to testify at trial;
- (vi) unless the Court orders otherwise, the costs incurred by the Settling Defendants in relation to any such motion and in the participation in the Action required pursuant to any order granted on such motion are to be paid by the party bringing the motion forthwith;
- (vii) except as otherwise provided herein, this Agreement and the Approval Order shall not prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their rights and remedies against all Non-Settling Defendants; no waiver, release or discharge of any Non-Settling Defendant shall arise as a result hereof or thereof and the joint and several liability of all Non-Settling Defendants shall not be affected hereby or thereby.

6. Court Order and Notice to Class Members

6.1 The Plaintiffs shall seek the approval of the Court to this Agreement pursuant to an order (the "Approval Order") on the terms set out in the draft order annexed as Schedule A to this Agreement and initialled by counsel for the parties. The Settling Defendants shall consent to the granting of the Approval Order.

6.2 Subject to the approval of the Court, the form and content of the notice of certification and of the approval of this Agreement shall be in the forms set out in Schedules B and C to this Agreement.

6.3 Subject to the approval of the Court, the method and manner of distribution of the aforesaid notice shall be as follows:

(a) a copy of the notice in the form of Schedule B shall be sent by registered mail to each Class Member at the last known address of such Class Member; and

(b) a copy of the notice in the form of Schedule C shall be published once in each of the following newspapers:

(i) The Peterborough Examiner; and

(ii) The North Bay Nugget.

6.4 The costs of sending and publishing the notice shall not be borne by the Settling Defendants.

7. Termination of this Agreement

Termination due to Class Members Opting Out

7.1 If any Class Member elects to opt out of this Agreement, each of the Settling Defendants shall have the unilateral right to terminate this Agreement.

- 7.2 Such right to termination shall be exercisable by the terminating party by providing notice in writing to the other parties hereto not later than 5:00 p.m. Toronto time on the Termination Deadline Date.

Termination due to Failure to Obtain Court Approval

- 7.3 If the Court fails to approve this Agreement substantially on the terms and subject to the conditions contained in the draft Order annexed hereto as Schedule "A", the Plaintiffs and each of the Settling Defendants shall have the right to terminate this Agreement.
- 7.4 The terminating party may exercise its right to terminate this Agreement by providing notice in writing to all counsel listed in Clause 8.4 not later than 5:00 p.m. Toronto time on the fifth (5th) business day following the receipt of the Court's decision on the motion for approval of this Agreement.
- 7.5 In the event that the Court approves this Agreement and an appeal is taken from such decision, the provisions of this Section shall apply *mutatis mutandis* upon the receipt of the appeal court's decision. In such event, the Termination Deadline Date and the Satisfaction Date shall be the later of the date otherwise so defined herein and the date on which all appeals have been exhausted and all time periods for the filing of any appeals or motions for leave to appeal have expired without any appeals or motions for leave to appeal being filed.
- 7.6 In the event that the Court fails to approve this Agreement and an appeal is taken from such decision, the provisions of this Section shall be stayed pending the outcome of the appeal court's decision, whereupon they shall apply *mutatis mutandis*.

Effect of Termination

- 7.7 In the event of termination of this Agreement, notice of termination shall be given to all Settlement Class Members. The content and method of notice shall be determined by the Court.

7.8 In the event of the termination of this Agreement, the Approval Order shall be null and void and this Agreement shall be of no further force and effect, save and except for the provisions of this Section 7 and Section 8.6.

Severability of Termination Provisions

7.9 In the event that some, but not all, of the Settling Defendants exercise their right to terminate this Agreement on or before the Termination Deadline Date (such Settling Defendants are referred to in this Clause as the "Terminating Defendants"), the Plaintiffs and the remaining Settling Defendants may, subject to Court approval, elect to maintain in full force and effect all provisions of this Agreement and the Approval Order binding upon them, except sections 16 to 18 inclusive of the Approval Order which shall not be maintained if this Agreement is terminated. In such event, all references to the Terminating Defendants shall be and be deemed for all purposes to be severed and deleted from this Agreement and the Approval Order and an order so amending the Approval Order shall be sought and obtained. Subject to such changes, this Agreement and the Approval Order shall remain in full force and effect and binding upon the Plaintiffs, the Settlement Class Members and the Settling Defendants (other than the Terminating Defendants who may nonetheless rely on section 8.6 hereof). No further or other notice to the Settlement Class Members shall be required in such event unless the Court orders otherwise.

8. Miscellaneous

Ongoing Authority

8.1 The Court shall retain exclusive and continuing jurisdiction over the Action; over all parties named or described herein including, but not limited to: all Settlement Class Members and Settling Defendants; over this Agreement, to ensure that all payments and disbursements are properly made; and over the interpretation and enforcement of this Agreement's terms, conditions and obligations.

Entire Agreement

8.2 This Agreement, including all Schedules hereto, constitutes the entire agreement by and among the Parties with regard to the subject of this Agreement and shall supersede any previous agreements and understandings between the parties with respect to the subject matter of this Agreement.

Modification or Amendment

8.3 This Agreement may not be modified or amended except in writing signed by all parties hereto and subject to the Court's approval. No further or other notice to or consent by or on behalf of the Settling Class Members shall be required to give effect to any such modification or amendment except to the extent ordered by the Court.

Other Originals

8.4 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

Notification

8.5 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement (other than notification to Class Members) shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, to the attention of their counsel, as follows:

With respect to the **Plaintiffs and Settlement Class Members**:

Attention: Steven Sofer
SMITH LYONS
Barristers and Solicitors
Suite 5800, Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Z7

Telephone: (416) 369-7240
Facsimile: (416) 369-7250

With respect to **Robert McGillen**:
Attention: Benjamin Zarnett
GOODMAN PHILLIPS & VINEBERG
Barristers and Solicitors
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6

Telephone: (416) 979-2211
Facsimile: (416) 979-1234

With respect to **Stewart and Associates**:
Attention: Robert J. Potts
BLANEY McMURTRY
Barristers and Solicitors
20 Queen Street West
Suite 1400
Toronto, Ontario
M5H 2V3

Telephone: (416) 593-1221
Facsimile: (416) 593-5437

With respect to **M.R.S. Trust Company**:
Attention: Christopher D. Bredt
BORDERN & ELLIOT
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

Telephone: (416) 367-6000
Facsimile: (416) 367-6749

Use of Agreement

8.6 Neither the existence nor the terms of this Agreement may be used by any person as evidence of any admission by either the Plaintiffs or the Settling Defendants regarding fault, liability, causation, level of damages, or whether this Action should be certified as a class action against the Settling Defendants for any purpose other than settlement, and/or any other issue.

8.7 This Agreement may be executed by fax.

IN WITNESS WHEREOF the Plaintiffs and the Settling Defendants have executed and delivered this Agreement this 24 day of February, 2000.

Dated this ____ day of _____, 2000

The Plaintiffs

by their solicitors,
SMITH LYONS
Per: S. I. Sofer

Dated this ____ day of _____, 2000

Robert McGillen

by his solicitors,
GOODMAN, PHILLIPS & VINEBERG
Per: B. Zarnett

Dated this ____ day of _____, 2000

Stewart & Associates

by their solicitors,
BLANEY McMURTRY

Per: Robert Potts

Dated this _____ day of _____, 2000

M.R.S. Trust Company

by their solicitors,
BORDEN & ELLIOT
Per: Ben Glustein