

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

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 and Alan Lawson, Fisher Inc., the Trustee of the Estate of Roderick Alton, a Bankrupt

Defendants

Proceeding Under the Class Proceedings Act, 1992

SETTLEMENT AGREEMENT WITH KENNETH GILL AND ANNE GILMOUR

WHEREAS a proceeding has been filed by the Plaintiffs against the Defendants in the Action, which has been certified as a class proceeding pursuant to the Act;

AND WHEREAS the Plaintiffs have conducted settlement negotiations with Kenneth Gill and Anne Gilmour (now known as Anne Gill) with a view to settling the claims of the Lionaird Class Members against them pursuant to the Action;

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

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

AND WHEREAS Gill and Gilmour, notwithstanding their consent to this Agreement, have denied and continue to deny the claims of the Plaintiffs and the Lionaird 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, based upon an analysis of the facts and the law applicable to the Claims of the Lionaird Class Members against Gill and Gilmour, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials, appeals and enforcement of judgment proceedings, as well as the fair, cost-effective and assured method of resolving claims of the Lionaird Class Members provided in this Agreement, the Representative Plaintiff and Plaintiffs' Counsel have concluded that this Agreement provides

substantial benefits to the Lionaird Class Members and is fair, reasonable, and in the best interests of the Lionaird Class Members;

AND WHEREAS Gill and Gilmour 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 Lionaird Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them;

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 Grisé 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 4.1 of this Agreement.
- 1.4 "Claims" means all claims which the Lionaird 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 "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.
- 1.6 "Defendants" means the parties now or hereafter named as defendants in the Action and their affiliated companies, officers, directors, partners, employees, and agents.
- 1.7 "Lionaird Class Members" shall have the meaning ascribed to that term in the order of Mr. Justice Farley dated April 27, 2000 certifying the Action as a class proceeding pursuant to the Act.
- 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 "Plaintiffs" means the parties named as plaintiffs in the Action.
- 1.10 "Plaintiffs' Counsel" means Gowlings, Barristers and Solicitors and Jeffrey D. Glatt, Barrister and Solicitor or their successors in the prosecution of the Action on behalf of the Plaintiffs.
- 1.11 "Release Date" means the first business day after the expiry of a period of 30 days following the filing of the Approval Order with the Court, unless extended as a result of an appeal pursuant to Section 7.3.
- 1.12 "Representative Plaintiff" means Claude Millard, the representative plaintiff of the Lionaird Class Members or his successor in the prosecution of the Action.
- 1.13 "Settlement Funds – First Payment" shall have the meaning ascribed in Section 2.1 of this Agreement and "Settlement Funds – Second Payment" shall have the meaning ascribed in Section 2.5 of this Agreement.

- 1.14 "Settling Defendants" shall mean Gill, Gilmour, McColl Turner, Robert McGillen, Stewart and Associates and M.R.S. Trust Company and their affiliated companies, officers, directors, partners, employees, and agents.
- 1.15 "Statement of Claim" means the amended statement of claim filed on behalf of the Plaintiffs in the Action on or about November 16, 1998.

2. Settlement Funds

- 2.1 On or before December 21, 2001, Gill and Gilmour shall pay or cause to be paid to or to the order of "Rogers Campbell Mickleborough in Trust" the sum of \$250,000 in Canadian funds (the "Settlement Funds – First Payment").
- 2.2 Provided this Agreement has not been terminated pursuant to Section 7, the Settlement Funds – First Payment, together with all accrued interest thereon, shall be paid to Plaintiffs' Counsel on the Release Date.
- 2.3 Upon the termination of this Agreement pursuant to Section 7, the Settlement Funds – First Payment shall be refunded to Gill and Gilmour with accrued interest.
- 2.4 Upon the payment of the Settlement Funds – First Payment to Plaintiffs' Counsel pursuant to Section 2.2, the Settlement Funds – First Payment 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.
- 2.5 On or before December 21, 2002, Gill and Gilmour shall pay or cause to be paid to or to the order of "Gowlings in Trust" the sum of \$75,000 in Canadian funds (the "Settlement Funds – Second Payment").
- 2.6 In the event that Gill and Gilmour shall default in making the Settlement Funds – Second Payment when due, Plaintiff's Counsel may enter judgment against Gill and Gilmour, jointly and severally, for the sum of \$300,000 in Canadian Funds in the form and on the terms of the

consent to judgment signed by Gill and Gilmour, a copy of which is annexed hereto as Schedule "C".

- 2.7 The payment by Gill, Gilmour and The Black Dog Company Ltd. ("Black Dog") of the Settlement Funds – First Payment and the Settlement Funds – Second Payment as and when due shall constitute full and final settlement of all Claims of the Lionaird Class Members, inclusive of all interest, GST, legal fees and costs, as against Gill, Gilmour and Black Dog only. Upon the making of the last of such payments as and when due, Gowlings shall deliver to Rogers Campbell Mickleborough the original copies of the consents to judgment referred to in section 2.6, without filing the same.

3. Dismissal of Action, Release and Bar Order

- 3.1 Upon the payment of the Settlement Funds – Second Payment pursuant to Section 2.5:

- (a) the parties to this Agreement will file a consent to the dismissal of the Action with prejudice as against Gill and Gilmour on a "without costs" basis; such consent to dismissal of the proceedings shall be prepared by and at the cost and expense of Gill and Gilmour;
- (b) all Claims of the Lionaird Class Members shall be finally and conclusively compromised, settled, released and discharged as against Gill, Gilmour and Black Dog; and
- (c) all claims for contribution, indemnity, subrogation or other claims over by any Non-Settling Defendant against Gill, Gilmour and Black Dog for or in respect of the Claims of the Lionaird 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 Gill or Gilmour against McColl Turner, Robert McGillen, Stewart and Associates, M.R.S. Trust Company or their affiliated companies, officers, directors, partners, employees and agents (collectively the "Prior Settling Defendants") or against any other party or parties now or hereafter named as a defendant in this action or their affiliated companies, officers, directors, partners, employees, and agents other than the Settling Defendant (collectively, the "Non-Settling Defendants") 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 or any Prior Settling Defendant against Gill, Gilmour or Black Dog 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 Lionaird 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 Gill, Gilmour or Black Dog in respect of any claim for contribution, indemnity, subrogation or other claims over by such Non-Settling Defendant against Gill, Gilmour or Black Dog 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 Gill and Gilmour, obtain:
 - (A) documentary discovery and an Affidavit of Documents in accordance with the Rules of Civil Procedure from Gill and Gilmour;
 - (B) oral discovery of Gill and Gilmour, the transcript of which may be read in at trial; and
 - (C) an undertaking by Gill and Gilmour to testify at trial;
- (vi) unless the Court orders otherwise, the costs incurred by Gill and Gilmour in relation to any such motion and in the participation in the Action required pursuant to any order granted on such motion, above the costs they incur complying with their obligations set out in section 6 of this Agreement, 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 Lionaird 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.

4. Court Order and Notice to Class Members

- 4.1 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. The Representative Plaintiff, Gill and Gilmour shall consent to the granting of the Approval Order.
- 4.2 Subject to the approval of the Court, the form and content of the notice of the hearing to consider the approval of this Agreement and related matters (including the use, application and distribution of the Settlement Funds) shall be in the form set out in Schedule B to this Agreement.
- 4.3 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 ordinary mail to each Lionaird Class Member at the last known address of such person.
- 4.4 The costs of sending the notice shall be borne by the Plaintiffs.

5. Representation and Warranty by Gill and Gilmour

- 5.1 Gill and Gilmour represent and warrant that the list of cheques paid to Gill, Gilmour or a company controlled by them, a copy of which is annexed as Schedule "D" hereto, accurately and completely discloses all funds, inclusive of G.S.T., received by Gill, Gilmour, or any company or other entity owned, controlled or directed by them or either of them, in fact or in law, from Lionaird or any direct or indirect transferee of the funds raised by Lionaird, directly or indirectly. Gill and Gilmour acknowledge that this representation and warranty has been relied upon by the Plaintiff and the Lionaird Class Members in entering into this agreement with Gill and Gilmour. Immaterial errors and omissions shall not constitute a breach of this representation and warranty.

6. Gill and Gilmour to Submit to Oral and Written Discovery

- 6.1 Each of Gill and Gilmour shall make documentary discovery in the Action in accordance with the Rules of Civil Procedure no later than January 21, 2002.
- 6.2 Each of Gill and Gilmour shall submit to oral discovery in the Action under oath in accordance with the Rules of Civil Procedure at a mutually convenient time no later than March 21, 2002.
- 6.3 For the purposes of sections 6.1 and 6.2 and subject to approval of the Court:
- (a) all documents and information relating to the Action or to the tracing or recovery of any funds of any defendant in the Action shall be deemed to be relevant; and
 - (b) neither Gill nor Gilmour shall claim privilege or make any claim of confidentiality with respect to any relevant documents or information to be discovered.
- 6.4 Neither Gill nor Gilmour will be entitled to any costs of their compliance with this section.

7. Termination of this Agreement

- 7.1 If the Court fails to approve this Agreement substantially on the terms and subject to the conditions contained in the draft Approval Order annexed hereto as Schedule "A", the Plaintiffs, Gill and Gilmour shall have the right to terminate this Agreement.
- 7.2 The terminating party may exercise its right to terminate this Agreement by providing notice to the other 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.
- 7.3 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 Release 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.

- 7.4 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*.
- 7.5 In the event of termination of this Agreement, notice of termination shall be given to all Lionaird Class Members. The content and method of notice shall be determined by the Court.
- 7.6 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.

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 Lionaird Class Members, Gill and Gilmour; 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 Lionaird 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 Lionaird 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 Lionaird Class Members**:

Attention: Steven Sofer

GOWLING LAFLEUR HENDERSON LLP
Barristers and Solicitors
Suite 4900, Commerce Court West
Toronto, Ontario
M5L 1J3

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

With respect to **Gill and Gilmour**:

Attention: Eric Fournie

ROGERS CAMPBELL MICKLEBOROUGH
Lawyers
350 Bay Street, 11th floor

Toronto, Ontario
M5H 2S6

Telephone: (416) 366-3999
Facsimile: (416) 366-2860

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 any of the Plaintiffs, Gill, Gilmour or Black Dog regarding fault, liability, causation, level of damages, and/or any other issue.

Mediator's Costs

8.7 Plaintiffs agrees to pay the fees and expenses of the Mediator.

IN WITNESS WHEREOF the Plaintiffs, Gill and Gilmour have executed and delivered this Agreement this 2nd day of January, 2002.

Dated: January 2, 2002

The Plaintiffs

by their solicitors,
Gowling Lafleur Henderson LLP
Per: Steven Sofer

Dated: January 2, 2002

Kenneth Gill and Anne Gilmour

by their solicitors,
Rogers Campbell Mickleborough
Per: Eric Fournie

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Schedule D

Settlement Agreement With Kenneth Gill and Anne Gilmour

No.	Date	Payee	Amount US	Amount Cdn
3	12-Aug-97	Anne Gilmour	2,000.00	
4	13-Aug-97	Anne Gilmour	500.00	
11	27-Aug-97	Anne Gilmour	2,850.00	
16	30-Sep-97	Anne Gilmour	2,500.00	
19	30-Sep-97	Anne Gilmour	175.00	
66	26-Oct-97	Anne Gilmour		2,880.00
23	03-Nov-97	Anne Gilmour	1,675.00	
68	03-Nov-97	Anne Gilmour		2,175.00
83	28-Nov-97	Anne Gilmour		2,900.00
29	01-Dec-97	Anne Gilmour	1,070.00	
87	10-Dec-97	Anne Gilmour		930.90
92	29-Dec-97	Anne Gilmour		2,795.58
155	28-Jan-98	Anne Gilmour		3,800.00
156	28-Jan-98	Anne Gilmour		2,000.00
173	27-Feb-98	Anne Gilmour		4,350.00
			10,770.00	21,831.48
				15,078.00
				36,909.48
1	01-Aug-97	Black Dog		3,745.00
2	01-Aug-97	Black Dog		1,835.37
3	11-Aug-97	Black Dog		4,260.00
4	11-Aug-97	Black Dog		4,260.00
9	27-Aug-97	Black Dog	26,118.70	
10	27-Aug-97	Black Dog	1,828.30	
11	27-Aug-97	Black Dog		40,574.50
17	30-Sep-97	Black Dog	19,795.00	
22	30-Sep-97	Black Dog		13,820.00
25	30-Sep-97	Black Dog		3,169.45
81	01-Nov-97	Black Dog		2,949.06
22	03-Nov-97	Black Dog	21,175.30	
67	03-Nov-97	Black Dog		12,133.08
82	28-Nov-97	Black Dog		2,526.99
27	01-Dec-97	Black Dog	19,260.00	
30	01-Dec-97	Black Dog	12,305.00	
84	01-Dec-97	Black Dog		17,077.20
94	29-Dec-97	Black Dog		13,512.00
32	30-Dec-97	Black Dog	13,507.00	
97	30-Dec-97	Black Dog		4,037.79
157	05-Feb-98	Black Dog		4,188.97
166	17-Feb-98	Black Dog		214.12
170	19-Feb-98	Black Dog		38,033.00
			113,989.30	166,336.53
				159,585.02
				325,921.55

Schedule D

Settlement Agreement With Kenneth Gill and Anne Gilmour

No.	Date	Payee	Amount US	Amount Cdn
2	11-Aug-97	Ken Gill, In Trust	2,600.00	
6	20-Aug-97	Ken Gill, In Trust	5,350.00	
8	20-Aug-97	Ken Gill, In Trust		1,500.00
8	27-Aug-97	Ken Gill, In Trust	19,850.00	
14	30-Sep-97	Ken Gill, In Trust	12,600.00	
18	30-Sep-97	Ken Gill, In Trust	700.00	
26	30-Sep-97	Ken Gill, In Trust		1,500.00
30	30-Sep-97	Ken Gill, In Trust		105.00
24	03-Nov-97	Ken Gill, In Trust	24,000.00	
28	01-Dec-97	Ken Gill, In Trust	13,480.00	
93	29-Dec-97	Ken Gill, In Trust		5,000.00
31	30-Dec-97	Ken Gill, In Trust	10,000.00	
			88,580.00	8,105.00
				124,012.00
				132,117.00
		Total US (@1.4)	213,339.30	298,675.02
		Total Cdn		196,273.01
				494,948.03