

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.
JUSTICE G. R. STRATHY

TUESDAY, THE 17TH
DAY OF JANUARY, 2012

B E T W E E N

KATHRYN ROBINSON and RICK ROBINSON

Plaintiffs

and

ROCHESTER FINANCIAL LIMITED, PROMITTERE CAPITAL GROUP
INC., PROMITTERE ASSET MANAGEMENT LTD., BANYAN TREE
FOUNDATION and FRASER MILNER CASGRAIN LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs, for an Order approving a proposed settlement and approving Class Counsel fees and disbursements, and other relief, was heard on January 17, 2012, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the materials filed, including the following:

- (a) notice of motion and motion record, returnable January 17, 2012;
- (b) affidavit of Michael B. Stanton and exhibits, sworn January 12, 2012;

- (c) affidavit of John Loukidelis and exhibits, sworn January 11, 2012;
- (d) affidavit of Rick Robinson and exhibit, sworn January 10, 2012;
- (e) affidavit of Kathryn Robinson, sworn January 10, 2012;
- (f) affidavit of Greg Madden, sworn December 28, 2011;
- (g) the Objections Brief;
- (h) Factum of the Plaintiffs, and selected Case Brief;
- (i) the Motion Record of Grant Thornton including the Grant Thornton report dated January 12, 2012;
- (j) affidavit of Donald Harrington and exhibits, sworn January 11, 2012;
- (k) affidavit of Timothy Millard and exhibits, sworn January 12, 2012;

And on hearing the submissions of counsel for the Plaintiffs, counsel for FMC and counsel for Grant Thornton, and on hearing submissions and argument put forward by various objectors to the settlement;

DEFINED TERMS

1. **THIS COURT ORDERS AND DECLARES** that for purposes of this Order, the defined terms in Appendix "A" shall apply;

SETTLEMENT APPROVAL

2. **THIS COURT ORDERS AND DECLARES** that the terms of settlement contained in the Settlement Agreement dated January 11, 2012, including the Distribution Plan,

attached as Appendix "B" and incorporated into this Order by reference, are fair, reasonable and in the best interests of the Class, and the Settlement Agreement and Distribution Plan are hereby approved pursuant to section 29 of the *CPA*;

NOTICE

3. **THIS COURT ORDERS AND DECLARES** that the Class will be given notice of the approval of settlement in the form substantially as set-out in Appendices "B" and "E" to the Distribution Plan, in the manner and in accordance with the terms of the Distribution Plan;

4. **THIS COURT ORDERS AND DECLARES** that the notice provided for in paragraph 3 above satisfies the requirements of section 17 of the *CPA*;

OPTING BACK-IN

5. **THIS COURT ORDERS AND DECLARES** that the individuals listed on the Opt-Out List may opt back in to this Proceeding, in accordance with the terms of the Distribution Plan;

OPTING-OUT

6. **THIS COURT ORDERS AND DECLARES** that only those individuals listed on the Opt-Outs Declared Invalid and No Notice List, may opt-out of this Proceeding, as set-out in the Distribution Plan, and no other individual may opt-out;

7. **THIS COURT ORDERS AND DECLARES** that the individuals listed on the Opt-Out List and who do not opt back into the Proceeding in accordance with paragraph 5 above and the Distribution Plan; and the individuals listed on the Opt-Outs Declared Invalid and No Notice List who opt-out in accordance with paragraph 6 above and the Distribution Plan, are not entitled to receive any benefits under the Settlement Agreement or Distribution Plan, and are not bound by this Order;

APPOINTMENTS

8. **THIS COURT ORDERS** that Scarfone Hawkins ^{LLP} is hereby appointed as Administrator to perform the functions of the Administrator as set-out in the Distribution Plan;

9. **THIS COURT ORDERS** that Pettinelli, Mastroluisi ^{LLP} will continue as Opt-Out Administrator to perform the functions of the Opt-Out Administrator as set-out in the Distribution Plan;

DECLARATION OF INVALIDITY OF PROMISSORY NOTES

10. **THIS COURT ORDERS AND DECLARES** that all promissory notes executed by Class Members in favour of 1106999 Ontario Limited, Rochester and any other lender in connection with the Gift Program, are void and unenforceable;

BINDING EFFECT AND RELEASE

11. **THIS COURT ORDERS AND DECLARES** that this Order, the Settlement Agreement, and the Distribution Plan, are binding upon all Class Members and their respective heirs, executors, administrators and assigns, including any persons under a disability, and the requirements of Rule 17.08(4) of the *Rules of Civil Procedure* with respect to this Order, the Settlement Agreement and Distribution Plan, are hereby dispensed with;

12. **THIS COURT ORDERS AND DECLARES** that each Class Member and his or her heirs, executors, administrators, successors and assigns hereby releases FMC and its partners, employees, agents, attorneys, servants, representatives, and their successors, heirs, executors, administrators, trustees, and assigns, for Released Claims, in the manner as set-out in paragraph 5.1 of the Settlement Agreement;

13. **THIS COURT ORDERS AND DECLARES** that in the event that litigation is commenced or continued by any Class Member against another person, or by another person against a Class Member, arising out of or in any way relating to the Released

Claims (as defined in the Settlement Agreement), which results in a claim over or a judgment against the Releasees (as defined in the Settlement Agreement), the Class Member shall fully hold harmless, reimburse and indemnify FMC and/or such other Releasees for such amount.

MONITOR

14. **THIS COURT ORDERS** that the unbilled professional fees and disbursements Grant Thornton for the period ending January 17, 2012 in an amount not to exceed \$7,500 plus HST shall be paid by FMC upon receipt of the Grant Thornton's account.

15. **THIS COURT ORDERS** that the account of Grant Thornton's counsel, Thornton Grout Finnigan LLP ("TGF"), dated September 13, 2011 in the amount of \$2,983.20 and the unbilled professional fees and disbursements of TGF for the period ending January 17, 2012 in an amount not to exceed \$3,500 plus HST shall be paid by FMC upon receipt of TGF's account.

16. **THIS COURT ORDERS** that Grant Thornton be and it is hereby discharged as the monitor of the Gift Program Defendants.

17. **THIS COURT ORDERS AND DECLARES** that Grant Thornton Limited be and it is hereby released and discharged from any and all liability that Grant Thornton now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Grant Thornton while acting in its capacity as monitor herein, save and except for

gross negligence or wilful misconduct on its part. Without limiting the generality of the foregoing, Grant Thornton is hereby forever released and discharged from any and all liability relating to matters that were raised or which could have been raised in the within proceeding.

18. **THIS COURT ORDERS** that Grant Thornton shall deliver up to the Administrator, at no cost to Grant Thornton, all documentation that it has in its possession relating to the Gift Program as received from the Gift Program Defendants. The Administrator shall become custodian of that documentation for purposes of carrying-out its duties under the Distribution Plan, and for no other purpose;

REPRESENTATIVE PLAINTIFF COMPENSATION

19. **THIS COURT ORDERS** that the Plaintiffs are each entitled to compensation for acting as representative plaintiffs in the amount of \$5,000.00, and same is hereby approved. The Administrator is directed to make those payments from the Settlement Fund;

CLASS COUNSEL FEES AND DISBURSEMENTS

20. **THIS COURT ORDERS** that Class Counsel will be paid the sum of \$2,750,000.00 for fees, \$199,358.15 for disbursements and \$303,324.50 for applicable taxes on the fees and disbursements (total \$3,252,682.65), for acting as counsel to the Class and that payment is hereby approved;

21. **THIS COURT FURTHER ORDERS** that the Administrator is hereby directed to make immediate payment to Class Counsel of the amount of \$2,857,182.65, being \$2,400,000.00 in fees, applicable GST/HST of \$254,726.40, disbursements of \$199,358.15, and \$3,098.10 in applicable taxes on the disbursements. The balance of fees and applicable taxes approved in favour of Class Counsel being \$395,500.00, (\$350,000.00 in fees and applicable HST of \$45,500.00), shall be held by the Administrator and not paid until further Order of the Court;

22. **THIS COURT FURTHER ORDERS** that Class Counsel and the Administrator shall report to the Court as to the proposed distribution of the Settlement Fund to obtain Court approval for such proposed distribution;

DISMISSAL OF PROCEEDING

23. **THIS COURT ORDERS** that subject to the completion of the obligations of the Parties, the Opt-Out Administrator, the Administrator and Class Counsel pursuant to this Order, the Settlement Agreement and Distribution Plan, this Proceeding is hereby dismissed as against FMC, with prejudice and without further costs.

24. **THIS COURT ORDERS** that subject to the completion of the obligations of the Parties, the Opt-Out Administrator, the Administrator and Class Counsel pursuant to this

Order, the Settlement Agreement and Distribution Plan, this Proceeding is hereby dismissed as against the Gift Program Defendants, with prejudice and without further costs.

(Signature of judge, officer or registrar)

APPENDIX "A" OF DEFINED TERMS

1. "Administrator" means Scarfone Hawkins LLP;
2. "Banyan Tree" means the Banyan Tree Foundation registered December 18, 1987;
3. "Class Counsel" means Scarfone Hawkins LLP;
4. "Class" or "Class Members" means all individuals who participated in the Banyan Tree Foundation Gift Program for the taxation years 2003, 2004, 2005, 2006 and 2007, except the individuals listed on the Opt-Out List, who do not opt back in; and the individuals on the Opt-Outs Declared Invalid and No Notice List who opt-out;
5. "CPA" means *Class Proceeding Act*, 1992, S.O. 1992, c.6;
6. "Court" means the Ontario Superior Court of Justice;
7. "Distribution Plan" means the Distribution Plan attached to the Settlement Agreement;
8. "FMC" means Fraser Milner Casgrain LLP;
9. "Gift Program Defendants" means collectively Banyan Tree, Promittere Asset Management Ltd., Promittere Capital Group Inc. and Rochester;
10. "Gift Program" means the Banyan Tree Foundation leveraged charitable donation gift program developed, promoted and administered by the Gift Program Defendants for the taxation years 2003, 2004, 2005, 2006 and 2007;
11. "Grant Thornton" means Grant Thornton Limited, interim monitor of the Gift Program Defendants;
12. "Opt-Out List" means Appendix "A" to the Distribution Plan;
13. "Opt-Outs Declared Invalid and No Notice List" means Appendix "F" to the Distribution Plan;
14. "Parties" means the Plaintiffs, the Gift Program Defendants and FMC;
15. "Plaintiffs" means Kathryn and Rick Robinson;
16. "Proceeding" means this action, given court file no. 08-CV-349792, commenced in the Ontario Superior Court of Justice in Toronto;
17. "Rochester" means Rochester Financial Limited;
18. "Settlement Agreement" or "Settlement" means this agreement, including the Recitals and Schedules;
19. "Settlement Fund" means \$11,000,000.00 paid by FMC and the Gift Program Defendants into the Pre-Approval Account and Account plus any accrued interest;

20. "Thiessen" means Robert Thiessen, principal/representative of the Gift Program Defendants.

APPENDIX “B”

BANYAN TREE FOUNDATION GIFT PROGRAM CLASS PROCEEDING SETTLEMENT AGREEMENT

RECITALS

- A. WHEREAS, a Proceeding has been commenced by the Plaintiffs under the *Class Proceedings Act, 1992* which alleges that Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Ltd and Banyan Tree Foundation (the “Gift Program Defendants”), in conjunction with Thiessen, developed, promoted, sold and administered a Gift Program under which participants borrowed money to make a charitable donation in order to receive a charitable donation tax credit;
- B. WHEREAS, Canada Revenue Agency has disallowed or intends to disallow the tax credits;
- C. WHEREAS, the Plaintiffs allege that Fraser Milner Casgrain LLP (“FMC”) was negligent in its conduct in preparing opinion letters regarding the Banyan Tree Foundation Gift Program and in other conduct, causing damage to Claim Members;
- D. WHEREAS, FMC denies the allegations in the Proceeding, denies any damages are payable, has not conceded or admitted any liability, and has defences to all of the claims made, including the fact that FMC had no role in promoting selling the Gift Program;

E. WHEREAS, the Parties have engaged in extensive, arms-length negotiations, including two mediation sessions, through counsel with substantial experience in complex class proceedings, that have resulted in this Settlement Agreement;

F. WHEREAS, the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burden and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the Class they represent;

G. WHEREAS, despite its belief that it is not liable in respect of the allegations as alleged in the Proceeding and that it has good defences, FMC is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted against it by the Plaintiffs, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and it is acknowledged that FMC would not have entered into this Settlement Agreement were it not for the foregoing;

H. WHEREAS, the Parties therefore wish to, and hereby do, fully and finally resolve, without admission of liability, the Proceeding against FMC;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and that the

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement, including the Recitals and Schedules, the following definitions apply:

- (a) **“Account”** means an interest-bearing trust account under the control of the Administrator at a Canadian Schedule 1 bank in Ontario.
- (b) **“Administrator”** means Scarfone Hawkins ^{LLP};
- (c) **“Banyan Tree”** means the Banyan Tree Foundation registered December 18, 1987;
- (d) **“Class Counsel”** means Scarfone Hawkins ^{LLP};
- (e) **“Class”** or **“Class Members”** means all individuals who participated in the Banyan Tree Foundation Gift Program for the taxation years 2003, 2004, 2005, 2006 and 2007, except the individuals listed on the Opt-Out List, who do not opt back in; and the individuals on the Opt-Outs Declared Invalid and No Notice List who opt-out;
- (f) **“Court”** means the Ontario Superior Court of Justice;
- (g) **“Distribution Plan”** means the plan for distribution of the Settlement Amount to be agreed-upon and attached as Schedule “A”, which will also be subject to approval of the Court;
- (h) **“Effective Date”** means the date the Order becomes final, provided that FMC has complied with article 4.1(1) below;

- (i) **“Gift Program Defendants”** means together Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Ltd and Banyan Tree Foundation;
- (j) **“FMC”** means Fraser Milner Casgrain ^{LLP}
- (k) **“Order”** means a judgment or approval order entered by the Court in respect of the approval of this Settlement Agreement;
- (l) **“Notice”** means a notice substantially in the form to be attached as Appendix “A” to the Distribution Plan;
- (m) **“Parties”** means the Plaintiffs and FMC;
- (n) **“Plaintiffs”** mean Kathryn and Rick Robinson;
- (o) **“Pre-approval Account”** means an interest-bearing trust account under the control of Lenczner Slaght Royce Smith Griffin LLP;
- (p) **“Proceeding”** means this action given Court File No. 08-CV-349792, commenced in the Ontario Superior Court of Justice in Toronto;
- (q) **“Released Claims”** means any and all manner of claims, demands, actions, suits, debts, duties, accounts, contracts, losses, injuries, undertaking’s covenants and causes of action whether alleged in the Statement of Claim in the Proceeding or not, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and lawyers’ fees that Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, shall, or may hereafter have against the Releasees, whether known or unknown, by reason of any cause,

matter or thing whatsoever existing up to the present or future by the Releasees prior to or after the execution of this Settlement Agreement;

- (r) **“Releasees”** means, jointly and severally, FMC and its partners, employees, agents, attorneys, servants, representatives, and their successors, heirs, executors, administrators, trustees, and assigns;
- (s) **“Releasers”** means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and their respective successors, heirs, executors, administrators, trustees, and assigns;
- (t) **“Settlement Agreement”** or **“Settlement”** means this agreement, including the Recitals and Schedules;
- (u) **“Settlement Amount”** means \$11,000,000.00 paid by FMC and the Gift Program Defendants into the Pre-Approval Account and Account plus any accrued interest.
- (v) **“Settlement Approval Hearing”** means the court hearing scheduled for approval of this settlement on January 17, 2012; and,
- (w) **“Thiessen”** means Robert Thiessen, principal/representative of the Gift Program Defendants.

SECTION 2 - CONDITION PRECEDENT: COURT APPROVAL

2.1 This Settlement Agreement shall be null and void and of no force or effect unless the Court approves this Settlement Agreement, notwithstanding that some provisions of this Settlement Agreement must be complied with in advance of the Settlement Approval Hearing.

SECTION 3 - SETTLEMENT APPROVAL

3.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this Settlement, including, without limitation, making best efforts to maximize the number of Class Members opting in to this settlement;

(2) Class counsel shall not perform any act or omission which may cause Class Members to opt-out of this settlement, or act for or assist Class Members in opting out of this Settlement.

3.2 Motion for Approval

(1) The Plaintiffs shall file a motion before the Court seeking an order approving this Settlement Agreement. The motion is returnable January 17, 2012.

(2) The order referred to in section 2 shall be in a form substantially similar to the one to be attached as Appendix "G" to the Distribution Plan, as agreed upon by Class Counsel and counsel for FMC and as approved by the Court.

SECTION 4 - SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) FMC and/or the Gift Program Defendants agree to pay the Settlement Amount in accordance with this Settlement Agreement, on or before December 9, 2011, in full satisfaction of all of the Released Claims against FMC. The Settlement Amount will be held in the Pre-Approval Account pending court approval of this Settlement Agreement. If approval is granted, the Settlement Amount will be immediately transferred to the Account including any earned interest.

(2) The Administrator shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement and Distribution Plan, without an order of the Court made on notice to or on consent of the Parties.

4.2 Taxes and Interest

(1) All interest earned on the Settlement Amount shall become and remain part of the Account and, as set-out in the Distribution Plan.

(2) All funds held by the Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and Distribution Plan, and/or further order of the Court.

SECTION 5- RELEASES AND DISMISSALS

5.1 Release of Releasees

(1) Upon the Effective Date, the Releasers forever and absolutely release, acquit, and discharge the Releasees from the Released Claims. And for the consideration provided herein, the Releasers agree not to make any claim or take or continue any proceedings, whether in Ontario, Quebec, Alberta or elsewhere arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity which might claim contribution and indemnity under the provisions of the *Negligence Act* and any amendments thereto or any other relief of a monetary, declaratory or injunctive nature from one or more of the Releasees.

5.2 Dismissal of Proceeding

The Parties shall, on consent, as part of the motion for approval of the Settlement Agreement, request that the Court dismiss the Proceeding with prejudice as against FMC, without further costs.

SECTION 6 – DISTRIBUTION OF THE SETTLEMENT AMOUNT

Class Counsel shall, as part of the motion for approval of the Settlement, submit the Distribution Plan, for approval by the Court. The Settlement Amount shall be held by the Administrator in trust for the benefit of Class Members, and shall be paid out in accordance with the Distribution Plan.

SECTION 7- CLASS COUNSEL FEES/DISBURSEMENTS

7.1 Class Counsel may seek Court-approval to pay Class Counsel fees and disbursements from monies in the Account.

7.2 The Parties acknowledge and agree that FMC shall take no position with respect to the request of Class Counsel for approval of Class Counsel fees and disbursements.

7.3 Class Counsel fees and disbursements may be paid out of the Account after Class Counsel obtain Court-approval sought in accordance with section 7.1.

SECTION 8 - ADMINISTRATION AND IMPLEMENTATION

8.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motions brought by Class Counsel.

8.2 Notices Required

The Class shall be given notice of Settlement, in the event that Court-approval is granted.

8.3 Form and Distribution of Notices

The form of the notice referred to in section 8.2 and its manner of distribution shall be agreed by the Parties, acting reasonably, and approved by the Court. The Notices attached as Appendices “B” and “E” to the Distribution Plan shall be used, subject to Court approval.

8.4 Media Statement

The Parties, the Plaintiffs’ and their counsel, agree not to make any media statements with respect to this settlement unless such a media statement is jointly agreed by the parties.

SECTION 9 – NO ADMISSION OF LIABILITY

9.1 The Parties agree that, whether or not this Settlement Agreement is finally approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any

wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Proceeding;

SECTION 10– MISCELLANEOUS

10.1 Motions for Directions

(1) The Plaintiffs, Class Counsel, the Administrator, or FMC may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement, including applications to the Court for directions, shall be on notice to the Parties.

10.2 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

10.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "the Settlement Agreement", "hereof", "hereunder", "herein", "hereto", and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

10.4 **Ongoing Jurisdiction**

The Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement as it relates to the Proceeding.

10.5 **Governing Law**

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

10.6 **Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

10.7 **Binding Effect**

This Settlement Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs, Class Members, the Releasers, FMC, the Releasees, Class Counsel, and the Administrator.

10.8 **Survival**

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

10.9 **Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

10.10 **Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

10.11 **Recitals**

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

10.12 **Schedule**

The Schedule and Appendices annexed hereto form part of this Settlement Agreement.

10.13 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel;
- (c) he, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

10.14 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

10.15 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Plaintiffs and Class Counsel:

SCARFONE HAWKINS LLP
 Barristers & Solicitors
 One James Street South, 14th Floor
 Hamilton, Ontario
 L8P 4R5

DAVID THOMPSON (LSUC # 28271N)
thompson@shlaw.ca

MATTHEW G. MOLOCI
 (LSUC # 40579P)
moloci@shlaw.ca

Tel: 905-523-1333
 Fax: 905-523-5878

For FMC:

**LENCZNER SLAGHT ROYCE SMITH
 GRIFFIN^{LLP}**
 Barristers and Solicitors
 130 Adelaide Street West, Suite 2600
 Toronto, Ontario
 M5H 3P5

PETER GRIFFIN (LSUC #19527Q)
 416-865-2921
pgriffin@litigate.com

GLENN SMITH (LSUC #15777O)
 416-865-2927
gsmith@litigate.com

Tel: 1-416-865-9500
 Fax: 1-416-865-9010

The Parties have executed this Settlement Agreement on January 11, 2012

PlaintiffsBy: 

Name: David Thompson
 Firm: Scarfone Hawkins^{LLP}
 Title: Counsel for the Plaintiffs/Class

FMCBy: 

Name: Glenn Smith
 Firm: Lenczner Slaght Royce Smith Griffin^{LLP}
 Title: Counsel for FMC

DISTRIBUTION PLAN

INTERPRETATION

1. In this Distribution Plan:
 - (a) **“Account”** means an interest-bearing trust account under the control of the Administrator at a Canadian Schedule 1 bank in Ontario.
 - (b) **“Administrator”** means Scarfone Hawkins ^{LLP};
 - (c) **“Banyan Tree Gift Program”** means the Banyan Tree Foundation leveraged charitable donation gift program developed, promoted and administered by the Gift Program Defendants for the taxation years 2003, 2004, 2005, 2006 and 2007;
 - (d) **“Banyan Tree”** means the Banyan Tree Foundation registered December 18, 1987;
 - (e) **“Clarifying Notice”** means Appendix “E” to this Distribution Plan;
 - (f) **“Class Counsel”** means Scarfone Hawkins ^{LLP};
 - (g) **“Class”** or **“Class Members”** means all individuals who participated in the Banyan Tree Foundation Gift Program for the taxation years 2003, 2004, 2005, 2006 and 2007, except the individuals listed on the Opt-Out List, who do not opt back in; and the individuals on the Opt-Outs Declared Invalid and No Notice List who opt-out;
 - (h) **“Court”** means the Ontario Superior Court of Justice;
 - (i) **“Distribution Plan”** means this document along with attached appendices;
 - (j) **“FMC”** means Fraser Milner Casgrain ^{LLP};

- (k) **“Gift Program Defendants”** means collectively Banyan Tree, Promittere Asset Management Ltd., Promittere Capital Group Inc. and Rochester Financial Limited;
- (l) **“Opt-In Form”** means Appendix “C” to this Distribution Plan;
- (m) **“Opt-Out Administrator”** means Nicholas Mastroluisi, C.A., of Pettinelli Mastroluisi LLP, 1 James Street South, 6th Floor, Hamilton, Ontario, L8P 4R5;
- (n) **“Opt-Out Form”** means Appendix “D” to this Distribution Plan;
- (o) **“Opt-Outs Declared Invalid and No Notice List”** means Appendix “F” to this Distribution Plan (123 individuals who previously opted-out of the Proceeding, but whose opt-outs were declared invalid by order of Justice Strathy dated September 17, 2010, and who did not receive the new notice and opt-out form referenced in that order);
- (p) **“Opt-Out List”** means Appendix “A” to this Distribution Plan;
- (q) **“Order”** means a judgment or approval order entered by the Court in respect of approval of the Settlement Agreement and Distribution Plan;
- (r) **“Notice”** means Appendix “B” to this Distribution Plan;
- (s) **“Parties”** means the Plaintiffs, the Gift Program Defendants and FMC;
- (t) **“Plaintiffs”** means Kathryn and Rick Robinson;
- (u) **“Proceeding”** means this action, given court file no. 08-CV-349792, commenced in the Ontario Superior Court of Justice in Toronto;
- (v) **“Settlement Agreement”** or **“Settlement”** means the Settlement Agreement, dated January 11, 2012, including the recitals and Schedules;

- (w) **“Settlement Amount”** means \$11,000,000.00 paid by FMC and/or the Gift Program Defendants into the Account plus any interest accrued;
- (x) **“Thiessen”** means Robert Thiessen, principal/representative of the Gift Program Defendants.

APPOINTMENT OF ADMINISTRATOR

2. The Administrator is appointed to determine all matters arising under this Distribution Plan in a summary manner as set-out below:
 - (a) the Administrator has the jurisdiction to deal with all matters requiring determination under this Distribution Plan including determination and calculation of the amount of compensation due and owing to each Class Member as set-out below; and,
 - (b) all decisions of the Administrator shall be in writing, and shall be final and conclusive and there shall be no appeal therefrom whatsoever.
3. The Administrator shall determine and calculate the amount of compensation due and owing to each Class Member in accordance with this Distribution Plan. Its function shall include the jurisdiction to determine and calculate claims and to establish the procedure for such assessment and determination.
4. The Administrator is appointed to hold the Settlement Amount and all accrued/accruing interest, maintain all necessary records, provide such

calculations as are required and perform necessary accounting functions, make payments as directed by the order, this Distribution Plan and further Court order and perform such other duties as implementation of the Order and Distribution Plan may require.

PAYMENT AND ALLOCATION OF THE SETTLEMENT AMOUNT

5. FMC and/or the Gift Program Defendants paid \$11,000,000.00 to counsel for FMC on December 9, 2011. The money is being held in an interest-bearing trust account. In the event that the Settlement is approved by the Order, counsel for FMC shall immediately transfer the settlement amount to the Administrator for deposit into the Account. The Administrator shall hold the Settlement Amount in the Account.

6. The Administrator shall notionally allocate the Settlement Amount into three (3) funds as follows:
 - (a) the "Class Fund" in the approximate amount of \$7,411,000.00;
 - (b) the "Administrative Costs Fund" in the amount of \$389,000.00;
 - (c) the "Class Counsel Fund" in the amount of approximately \$3,200,000.00 (being fees of \$2,750,000.00, plus disbursements, plus applicable taxes), in a total amount as approved by the Court.

7. The notional allocation set-out in article 6 above will be adjusted to account for the award of costs to Class Counsel in the Order, with such costs taken first from the Class Counsel Fund and then from the Class Fund, if required.
8. The Administrator shall allocate any interest accrued on the Settlement Amount to the Class Fund.
9. The Administrator shall pay such amounts as the Court shall direct to Class Counsel first from the Class Counsel Fund, and then from the Class Fund, on account of Class Counsel costs upon receipt of the order. It is contemplated that the order will provide for a substantial payment to Class Counsel immediately upon approval of settlement, and a further payment to Class Counsel upon further order of the Court following substantial work relating to claim administration.
10. The Administrator shall pay such amounts as the Court shall direct to the Administrator from the Administrative Costs Fund on account of the Administrator's costs upon receipt of the Order. It is contemplated that the Order will provide for a payment to the Administrator of \$150,000.00 plus applicable taxes of \$19,500.00, immediately upon approval of settlement, with a further payment to the Administrator of \$150,000.00 plus applicable taxes of \$19,500.00 upon further order of the Court following substantial work relating to claim administration.

11. The Administrator shall not pay out any monies from the Account except in accordance with the Order and this Distribution Plan.

NOTICE

(A) To the Class

12. Within 30 days of the Order, the Administrator will send the Notice by regular mail to all Class Members. In addition, the Administrator will send the Notice by email where it has email addresses for Class Members.
13. The Administrator will pay the costs of mailing of the Notice from the Administrative Costs Fund. To the extent that the Notice is undelivered, the Administrator will carry-out reasonable due diligence to attempt to locate Class Members and to ensure delivery of the Notice to them. This includes incurring reasonable disbursements for purposes of attempting to locate Class Members, which disbursements will be paid by the Administrator from the Administrative Costs Fund.
14. A copy of the Notice will be published once in the Globe and Mail (National Edition) newspaper with the costs of such publication being paid by the Administrator from the Administrative Costs Fund.
15. The Notice will be posted on the website of Class Counsel at www.classactionlaw.ca.

(B) To Those Who Previously Opted-Out

16. Within 30 days of the Order, the Administrator will send the Notice and Opt-In Form by regular mail to those individuals on the Opt-Out List. In addition, the Administrator will send the Notice and Opt-In Form by email where it has email addresses for those on the Opt-Out List.
17. The Administrator will pay the costs of mailing the Notice and Opt-In Form from the Administrative Costs Fund. To the extent that the Notice and Opt-In Form are undelivered, the Administrator will carry-out reasonable due diligence to attempt to locate the individuals on the Opt-Out List and to ensure delivery of the Notice and Opt-In Form to them. This includes incurring reasonable disbursements for purposes of attempting to locate individuals on the Opt-Out List, which disbursements will be paid by the Administrator from the Administrative Costs Fund.
18. The Notice and Opt-In Form will be posted on the website of Class Counsel at www.classactionlaw.ca.

(C) To Opt-Outs Declared Invalid

19. Within 30 days of the Order, the Administrator will send the Notice, Clarifying Notice and Opt-Out Form by regular mail to those individuals on the Opt-Outs Declared Invalid and No Notice List. In addition, the Administrator will send the

Notice, Clarifying Notice and Opt-Out Form by email where it has email addresses for those on the Opt-Outs Declared Invalid and No Notice List.

20. The Administrator will pay the costs of mailing the Notice, Clarifying Notice and Opt-Out Form from the Administrative Costs Fund. To the extent that the Notice, Clarifying Notice and the Opt-Out Form are undelivered, the Administrator will carry-out reasonable due diligence to attempt to locate the individuals on the Opt-Outs Declared Invalid and No Notice List and to ensure delivery of the Notice, Clarifying Notice and Opt-Out Form to them. This includes incurring reasonable disbursements for purposes of attempting to locate individuals on the Opt-Outs Declared Invalid and No Notice List, which disbursements will be paid by the Administrator from the Administrative Costs Fund.
21. The Notice, Clarifying Notice and Opt-Out Form will be posted on the website of Class Counsel at www.classactionlaw.ca.

OPTING-IN/OPTING-OUT

(A) Opting-In

22. All individuals on the Opt-Out List shall be entitled to opt back into the Proceeding and participate in this settlement.

23. In order to do so, each such individual must complete the Opt-In Form and forward it to the Opt-Out Administrator, by mail or delivery, by fax to: 905-522-6574 or by e-mail to: nickm@petmas.ca, on or before March 30, 2012.
24. All Opt-In Forms must be received by the Opt-Out Administrator no later than March 30, 2012. Any Opt-In Form received after March 30, 2012, shall not be valid and those individuals shall not be entitled to participate in this settlement.
25. The costs of the Opt-Out Administrator in receiving Opt-In Forms and reporting in that regard, will be paid by the Administrator from the Administrative Costs Fund.

(B) Opting-Out

26. All individuals on the Opt-Outs Declared Invalid and No Notice List shall be entitled to opt-out of the Proceeding as set-out below. If they do so, they will not receive any benefits under this settlement.
27. In order to do so, each such individual must complete the Opt-Out Form and forward it to the Opt-Out Administrator, by mail or delivery, by fax to: 905-522-6574 or by e-mail to: nickm@petmas.ca, on or before March 30, 2012.
28. Any Opt-Out Forms received after March 30, 2012 shall not be valid and those individuals shall be part of the Class, participate in this settlement, and be bound by it.

29. The costs of the Opt-Out Administrator in receiving Opt-Out Forms and reporting in that regard, will be paid by the Administrator from the Administrative Costs Fund.

APPORTIONMENT OF THE SETTLEMENT AMOUNT

30. Each Class Member shall be entitled to receive a payment from the Class Fund. The payment from the Class Fund to be received by each Class Member shall be calculated by the Administrator *pro-rata* based on the total amount of the charitable donation tax receipt in favour of each Class Member in connection with participation in the Banyan Tree Gift Program.
31. The Administrator shall carry-out the following in determining and calculating the *pro-rata* share of the Class Fund to be received by each Class Member:
- (a) consideration of all information and documentation in its possession as to the number of Class Members and the charitable donation tax receipts issued to Class Members in connection with participation in the Banyan Tree Gift Program, including all information and documentation received from the Gift Program Defendants and FMC, including their respective counsel, experts and consultants;
 - (b) follow-up with Thiessen on behalf of the Gift Program Defendants as deemed necessary and appropriate;

- (c) review and consider all information and documentation in the possession of Grant Thornton, as received from the Gift Program Defendants (any costs due to Grant Thornton in connection with this review shall be paid by the Administrator from the Administrative Costs Fund).
32. If the Administrator requires further information from Class Members in order to determine and calculate entitlement, the Administrator may communicate with Class Members to request and obtain such further information.
33. The Administrator shall determine and calculate the amounts to be received by each Class Member from the Class Fund.
34. To the extent the Administrator is unable to determine and calculate the *pro-rata* share of the Class Fund to be received by each Class Member, the Administrator shall seek the advice and direction of the Court, by case conference.
35. The Administrator shall complete its determination and calculation of all claims to be paid from the Class Fund on or before May 16, 2012.

PAYMENT OF THE SETTLEMENT AMOUNT

36. Once the Administrator has completed its determination and calculation of the *pro-rata* share of the Class Fund to be received by each Class Member, it shall provide a brief standard-form written explanation to each Class Member as to the amount proposed to be paid to him/her. Absent written objection delivered to the

Administrator within 30 days of mailing of the written explanation, Class Members shall be deemed to accept the proposed payment by the Administrator in full and final satisfaction of all claims without further recourse or remedy.

37. Where a Class Member objects in writing within 30 days, to the calculation of his/her *pro-rata* share of the Class Fund to be received, the Administrator shall attempt to resolve any such dispute through communication with the Class Member.
38. When the Administrator has completed its determination and calculation of the *pro-rata* share of the Class Fund to be received by each Class Member as set-out above, and where the Administrator has resolved any disputes or attempted to resolve any disputes and is ready to distribute monies to Class Members, it and Class Counsel shall report to the Court as to the proposed distribution of funds, to obtain further court-approval for such proposed distribution.
39. In the event that the Administrator is unable to resolve any such dispute in summary fashion, the Administrator shall seek the advice and direction of the Court, by case conference.
40. The Administrator shall pay-out the Class Fund on or before July 16, 2012, subject to further order of the Court.

JURISDICTION OF THE COURT

41. The Court shall retain exclusive and continuing jurisdiction over the Proceeding and the Class Members for purposes of carrying-out the provisions of the Order and Distribution Plan.

Appendix "A"

Opt-Out List

	Last Name	First Name
1	Adam	Robert
2	Adjetey-Nelson	Yusuf
3	Alani	Nawaz
4	Alani	Salima
5	Alani	Shafik
6	Aliani	Nailin
7	Anderson	William
8	Ansty	Michael
9	Arbuckle	Fred
10	Armour	Linda
11	Augstman	Edith
12	Barnes	Barbrara
13	Barnes	Clive
14	Bartczak	Andre
15	Bartczak	Katarzyna
16	Belanger	Pierre
17	Bentley	A
18	Berardi	Marco
19	Berndsen	Jo-Anne
20	Berndsen	Chris
21	Berndsen	Sean
22	Berndsen	Corry
23	Bernhardt	Mark
24	Bethune	Leo
25	Blunte	Ivan
26	Boily	Mario
27	Bolt	Ralph W.
28	Booth	James A,
29	Booth	Lynda J.
30	Borowiec	Bronislaw (Estate)
31	Bowdeer	Chris
32	Breckman	Jerilynne
33	Breckman	L. Cameron
34	Breckman	Eric
35	Breckman	Jason
36	Breckman	Trevor
37	Brewinski	Piotr
38	Brown	Benedetta
39	Brown	Richard
40	Browning	Nancy
41	ButterField	Joan
42	Butterfield	Sheridan
43	Castillio	Ryan
44	Chan	Veron
45	Chan	Helen
46	Chan	Philip

	Last Name	First Name
47	Chevrier	Marie
48	Chevrier	Normand
49	Chrapko	Marina J.
50	Collins	Hazel
51	Curtis	Norman
52	Daley	Barbra
53	Daley	Hermine
54	Demeule	David
55	Demeule	Marcia
56	Deveau	Raymond
57	Devet	Rob
58	Dipaolo	Domenic
59	Dittberner	Klaus and Corinne
60	Doell	Virginia
61	Doell	Gerald
62	Doner	Dianne
63	Dowhy	Darlene
64	Dowhy	Derryl
65	Drzadzewski	Adam
66	Drzadzewski	Gabriela
67	Dudley	James C.
68	Dudley	Judith
69	Duffy	Christine
70	Duteau	Real
71	Dyck	Jake W.
72	Dyck	Tina
73	Edwards	Dennis
74	Edwards	Robert A.
75	Edwards	Tyrone
76	Ehgoetz	Luke
77	Emmett	Christopher
78	Escoffery	Claudette
79	Escoffery	Timothy
80	Fast	Gary
81	Fast	MacKinley
82	Feres	Elizabeth
83	Feres	Myrine
84	Feres	Wendell (Jr.)
85	Feres	Wendell (Sr.)
86	Feres-Cortina	Lorian
87	Foster	Wayne D.
88	Foster	Jeffery
89	Francey	Peter J.
90	Frey	Dennis
91	Frey	Durrell
92	Fuller	Brain E.
93	Fung Fook	Alexis
94	Fung Fook	Joan Theresa
95	Fung Fook	Francis
96	Gadomski	Helen
97	Garnett	Robert

	Last Name	First Name
98	Gauer	Katrin
99	Gerritsen	Ingo
100	Ghezzi	Paul
101	Giesbrecht	Edward B.
102	Gittens	Deanna D.
103	Glzik	Jerzy
104	Goldsworthy	Judy
105	Grant	William J.
106	Grant	Daisy (Estate)
107	Grant	Clayton
108	Griffin	Shane
109	Griffin	Priscilla
110	Grogan	Dallas R.
111	Haffner	Faith L.
112	Haffner	Randall J.
113	Halstead	Norma
114	Halstead	Joseph
115	Hannah	Francis
116	Hanson	Glenroy
117	Harder	Gerald
118	Harris	Debbie
119	Harris	Ward
120	Hawkins	David W.
121	Hawt	Barry
122	Haynes	Robert
123	Henry	Herman H.
124	Hercules	Rawle
125	Herrod	Andrew and Heidi
126	Hildebrand	Dennis
127	Hildebrand	Peter
128	Hillborg	Monica
129	Hollingsworth	Denise
130	Hollingsworth	Jeffery J.
131	Hone	Ed
132	Hone	Tanja
133	Hope	Grenville R.
134	Huges	Jayne
135	Hughes	James (Estate)
136	Ireytag	Kathy
137	Ives	Don
138	Jacklin	Jan
139	James	Mark
140	James	Steve
141	Jansen	Gregory
142	Jansen	Valerie M.
143	Janz	Tim
144	Jean	Teresa
145	Johnson	Kelvin
146	Kelly	Robert
147	Kelman	Daphne
148	Kelman	Randolph N.

	Last Name	First Name
149	Kidon	Jozef
150	Kord	Anna
151	Kord	Czeslaw (Estate
152	Kornelsen	Carol
153	Kornelsen	Kendall
154	Kosman	Jeremy
155	Kosman	Jodi
156	Kotchon	Peggy
157	Kozak	Jacek
158	Krasniwski	Krzysztof
159	Krol-Wodka	Renata
160	Kulig	Stephen
161	Kwapis	Bob
162	Langer	Paul
163	Langer	Diane
164	Langer	Carol
165	Langner	Reinhold
166	Larsen	Frederick
167	Latornell	Frederick
168	Latornell	Mary
169	Latuszak	Stanley
170	Lawson	Dave
171	Lawton	Richard
172	Leatherdale	Kim
173	Lecuyer	Denise N. M. E.
174	Lemire	Yvon
175	Lewis	Cyril
176	Lewis	Headley
177	Libbey	Ross
178	Liebrock	Richard
179	Logue	Doug
180	Lovegrove	Douglas Ray
181	Lynch	Rupert
182	Lynch	Wayne
183	Macaskill	David
184	MacGregor	Jean
185	Maclean	Graeme
186	Maier	Peter
187	Malinowska	Iwona
188	Malinowski	Lech
189	Manderson	Ken
190	Marks	James
191	McCowan	Robert P.
192	McCraken	Allison
193	McEachren	Bob
194	Mcewan Macintyre	James
195	Mcgregor-Devet	Lynne
196	McMaster	Kimberley
197	McMaster	Rick D.
198	McMillan	B.
199	Medeiros	Elaine

	Last Name	First Name
200	Medeiros	Manuel
201	Melanson	Marc
202	Middleton	Tom
203	Middleton	David
204	Middleton	Joyce
205	Miklas	Paul
206	Millard	Timothy
207	Miller	Deborah
208	Miller	Lindsay
209	Miller	Brian
210	Miller	Clint
211	Miller	Jennifer
212	Millington	Graham
213	Mitchell	Arthur
214	Mitchell	Heather
215	Mondor	Robert
216	Monocrieffe	Sybil
217	Monocrieffe	Noel
218	Mooney	Kyle
219	Morgan	Vincent
220	Morley	Ralph
221	Morris	Hilliard A.
222	Moss	Bob
223	Mounce	David Brian
224	Naumowich	Donald and Catherine
225	Nerdahl	Brian
226	Nerdahl	Norma
227	Neufeld	John
228	Neufeld	Kathy
229	Normandeau	Janice
230	Normandeau	Louise
231	Normandeau	Mike
232	Novak	Joel
233	O'Brien	Eileen
234	Ofosu	Cotilda
235	Ofosu	Frederick
236	Ofosu	Helen
237	O'Neill-Renouf	Siobhan
238	Ottenbreit	Garnet
239	Ottenbreit	Glenda
240	Pakulnicka	Maria
241	Pakulnicki	Anna
242	Pakulnicki	Miroslaw
243	Palma	Darnell
244	Patel	Vinodrai
245	Paul	Joan
246	Paul	Reynold
247	Piotr	Czvpryna
248	Pipe (Deceased)	Murray
249	Poels	Timothy
250	Poole	Alex

	Last Name	First Name
251	Poole	Sandra
252	Poole-Crawley	Patricia E.
253	Posner	Ron
254	Potter	Ronald
255	Puchala	Anna
256	Puchala	Henryk
257	Puhacz	Murray
258	Pullen	Stephen
259	Quinn	Edmund
260	Quinn	Shirley
261	Rabo	Mark C.
262	Rea	Keith
263	Read-Kulig	Michelle
264	Redekop	Jacob
265	Redekop	Karl
266	Regier	Marlene
267	Regier	Herbert P.
268	Reiding	Mark J.
269	Reimer	Larry
270	Remier	Ina
271	Renouf	Robert
272	Richards	Desmond S.
273	Richards	Shirley A.
274	Ritacca	Anna
275	Rizza	Ralph
276	Roach	Jennifer J.
277	Roach	Rupert O.
278	Robic	John
279	Robic	Zdenka
280	Ruban	Jaroslave Yara
281	Ruban	Patricia
282	Rychkrand	Anna
283	Sacchetti	Gabriel
284	Savage	Katharine M.
285	Scherrer-Pangka	Veronica
286	Schori	Nick
287	Schori	Adam
288	Schori	Andrew
289	Schute	Geraldine
290	Seiling	Ruth
291	Seiling	Terry
292	Semple	Philip A.
293	Sewell	David J.
294	Sheppard	L. Wayne
295	Shirton	Kenneth B.
296	Shupeniuk	John and Lyn
297	Sloan	Gary
298	Smith	Ken
299	Smith	Leslie
300	Smith	Robert
301	Socha	Lillian

	Last Name	First Name
302	Souter	Paul
303	Southam	Bradley Gordon (Estate)
304	Spiers	Bob
305	Stec	Andzej
306	Steinberg	Jamie
307	Steinberg	Kim
308	Steiner	Paul
309	Stewart	David
310	Studer	Timothy
311	Studer	Whilma
312	Sween	Mathew D.
313	Thiessen	Doug
314	Tremblay	Reine
315	Trink	Barbara
316	Troughton	Kevin
317	Tsuji	Karen
318	Tyrchiniewicz	Dave
319	Urban	Bettina
320	Van Santen	Johan and Barendina
321	Voll	Don
322	Walker	Gregory
323	Walker	Tracy
324	Walker	Dennis
325	Wall	John
326	Walsh	Michael P,
327	Watson	Balmain
328	Westbrook	Walter
329	Wharton	Gordon
330	White	Sonia
331	Wiens	Christine
332	Wilson	Arthur
333	Windsor	Scott J.
334	Wittchen	Eugen
335	Wodka	Jerzy
336	Wollborn	Jeff
337	Wouters	Anne
338	Wranik	Dominika
339	Wynne	Ronald
340	Yong	Ron
341	Zinn	Emily
342	Zivkovic	Vladimir
343	Zuczek	Anatol

Appendix "B"

NOTICE OF SETTLEMENT OF CLASS ACTION REGARDING BANYAN TREE FOUNDATION LEVERAGED CHARITABLE DONATION PROGRAM

Read this notice carefully as it may affect your legal rights.

PURPOSE OF THIS NOTICE

This notice is to all individuals who participated in the Banyan Tree Gift Program for the taxation years 2003, 2004, 2005, 2006 and 2007.

In 2008, the plaintiffs commenced a proposed class proceeding against Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Inc., Banyan Tree Foundation and Fraser Milner Casgrain LLP, in the Ontario Superior Court of Justice, Court File No. 08-CV-349792.

On January 19, 2010, the Ontario Superior Court of Justice certified this action as a class proceeding.

On January 17, 2012, the Ontario Superior Court of Justice approved settlement of this action as set-out below.

TERMS OF PROPOSED SETTLEMENT

The Court has issued a declaration that all promissory notes signed by Class Members in favour of 1106999 Ontario Limited, Rochester Financial Limited and any other lender who provided loans under the Gift Program, are void and unenforceable.

The defendants have established a Settlement Fund of \$11,000,000.00. Each Class Member will be paid a portion of the Settlement Fund on a *pro-rata* basis in accordance with the amount of the charitable donation tax receipts issued to Class Members in connection with participation in the Banyan Tree Foundation Gift Program.

Class Counsel legal costs as well as costs of the Administrator will be paid from the \$11,000,000.00 Settlement Fund.

Class Members will receive a brief written explanation as to the amount proposed to be paid to him/her and will be deemed to accept such amount in full and final satisfaction of all claims without further recourse or remedy, absent written objection received by the Administrator within 30 days.

OPTING-IN/OPTING-OUT

Individuals who previously opted-out of the proceeding shall be entitled to opt back into the proceeding and participate in the settlement. In order to do so, an Opt-In Form must be completed and forwarded to the Opt-Out Administrator on or before **March 30, 2012**.

A number of individuals had earlier opted-out of the action, but those opt-outs were declared invalid by Court Order dated September 17, 2010. Those individuals were to receive a new notice and opt-out form referenced in the Order. Those individuals who did not receive the new notice or opt-out form, and only those individuals, are entitled to opt-out of the proceeding. In order to do so, an Opt-Out Form must be completed and sent to the Opt-Out Administrator on or before **March 30, 2012**.

ADDITIONAL INFORMATION

Questions for Class Counsel should be directed in writing or telephone to:

SCARFONE HAWKINS LLP

Barristers & Solicitors
One James Street South, 14th Floor
P.O. Box 926, Depot #1
Hamilton, Ontario
L8N 3P9

ATTENTION: DAVID THOMPSON/MATTHEW G. MOLOCI

Tel: 905.526.4394
Fax: 905.523.5878
E-mail: banyanclassaction@shlaw.ca

Full information regarding the settlement and copies of all forms can be found at www.classactionlaw.ca.

THIS NOTICE HAS BEEN APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.
QUESTIONS ABOUT THIS NOTICE SHOULD NOT BE DIRECTED TO THE COURT.

Appendix "C"

**CLASS PROCEEDING REGARDING
BANYAN TREE FOUNDATION LEVERAGED CHARITABLE DONATION PROGRAM**

OPT-IN FORM

I previously opted-out of the class proceeding through completion of an Opt-Out Form and submission of same to the Opt-Out Administrator Nicholas Mastroluisi, CA, Petinelli Mastroluisi ^{LLP}, 1 James Street South, 6th Floor, Hamilton, Ontario, L8P 4R5.

I understand that the class proceeding has been settled and that the settlement includes a court declaration that all promissory notes signed by Class Members in favour of 1106999 Ontario Limited, Rochester Financial Limited and any other lender who provided loans under the Gift Program, are void and unenforceable; as well as a payment of compensation to all Class Members *pro-rata* based on the total amount of the charitable donation tax receipt issued by the Gift Program Defendants in connection with participation in the Banyan Tree Gift Program.

I wish to opt back into the class proceeding and become a Class Member.

NAME

RESIDENTIAL/ HOME ADDRESS

HOME TELEPHONE NUMBER

WORK TELEPHONE NUMBER

MOBILE TELEPHONE NUMBER

EMAIL ADDRESS

I understand that if I opt back into the class proceeding through completion and submission of this form, I will participate in the class proceeding and the settlement and be bound by the result. I understand that this Opt-In Form must be received by the Opt-Out Administrator by no later than **March 30, 2012** or I will not be included in the class proceeding/settlement.

By opting back in and participating in the class proceeding, I understand that I release and discharge the defendants from all legal actions related in any way to the matters raised in the class proceeding.

DATE _____

WITNESS

OPT-IN CLASS MEMBER

TO CONSTITUTE A VALID OPT-IN, THIS FORM MUST BE MAILED, FAXED OR E-MAILED TO NICHOLAS MASTROLUISI, CA, PETINELLI MASTROLUISI ^{LLP}, 1 JAMES STREET SOUTH, 6TH FLOOR, HAMILTON, ONTARIO, L8P 4R5, FAX 905-522-6574; EMAIL: NICKM@PETMAS.CA ON OR BEFORE March 30, 2012.

Appendix "D"

CLASS PROCEEDING REGARDING BANYAN TREE FOUNDATION LEVERAGED CHARITABLE DONATION PROGRAM

OPT-OUT FORM

I previously attempted to opt-out of the class proceeding through completion of an Opt-Out Form, which Opt-Out Form was declared invalid by court order dated September 17, 2010.

I understand that the class proceeding has been settled, however, I do not wish to participate in the settlement and instead wish to confirm my opt-out decision.

In order to opt-out of the Class, you must complete this Opt-Out Form and send it to Nicholas Mastroluisi, C.A., Pettinelli Mastroluisi LLP, 1 James Street South, 6th Floor, Hamilton, Ontario, L8P 4R5 by fax 905-522-6574 or by email nickm@petmas.ca on or before **March 30, 2012**.

I confirm my decision to opt-out of the class proceeding.

NAME

RESIDENTIAL/ HOME ADDRESS

HOME TELEPHONE NUMBER

WORK TELEPHONE NUMBER

MOBILE TELEPHONE NUMBER

EMAIL ADDRESS

I understand that if I opt-out through completion and submission of this form, I will not participate in this class proceeding and agree to be excluded from it.

I understand that I will not be entitled to any settlement benefits under the class proceeding.

I understand that if I intend to proceed with my own legal action, I must commence my lawsuit within a specified limitation period or my claim will be legally barred. I take full responsibility for obtaining legal advice about the limitation period applicable and for taking all necessary steps to protect my individual claim.

DATE: _____

WITNESS

OPT-OUT OR REPRESENTATIVE

TO CONSTITUTE A VALID OPT-OUT, THIS FORM MUST BE MAILED, FAXED OR EMAILED TO NICHOLAS MASTROLUISI, C.A., PETTINELLI MASTROLUISI LLP, 1 JAMES STREET SOUTH, 6TH FLOOR, HAMILTON, ONTARIO, L8P 4R5, FAX 905-522-6574; EMAIL NICKM@PETMAS.CA ON OR BEFORE March 30, 2012.

Appendix "E"

**OPTING-OUT OF THE CLASS PROCEEDING
REGARDING BANYAN TREE FOUNDATION
LEVERAGED CHARITABLE DONATION PROGRAM**

Read this notice carefully as it may affect your legal rights.

PURPOSE OF THIS NOTICE

This notice is to 123 individuals who participated in the Banyan Tree Gift Program for the taxation years 2003 to 2007, and who purported to opt-out of the class proceeding through an opt-out form delivered to the Opt-Out Administrator, and who did not receive earlier notice that the opt-out form submitted was declared invalid.

The court expressed concern that the earlier opt-out form may not have reflected an informed decision regarding your rights.

Your opt-out form delivered to the Opt-Out Administrator was declared invalid and void by the court, which means that you **ARE** included in the Class, are entitled to receive settlement benefits and will be bound by the result of the class proceeding.

As part of settlement of the class proceeding, the court has ordered that you are to be given a further opportunity to opt-out of the class proceeding.

If you opt-out, you will not be entitled to any settlement benefits under the class proceeding.

If you wish to opt-out of the class proceeding, you must follow the procedure listed below.

If you wish to exclude yourself from the class proceeding ("opt-out"), you must deliver the attached written notice ("the Opt-Out Form") to the Opt-Out Administrator on or before **March 30, 2012**. The Opt-out Form must be properly completed with your name, your home address and your personal contact information, signed by you and signed by a witness.

Opt-out administrator contact information:

- (a) by mail to: Nicholas Mastroluisi, C.A.,
Pettinelli, Mastroluisi LLP
6th Floor, 1 James Street South
Hamilton, ON L8P 4R5
- (b) by fax to: 905-522-6574
- (c) by e-mail to: nickm@petmas.ca

ADDITIONAL INFORMATION

Questions for class counsel should be directed by telephone or in writing to:

SCARFONE HAWKINS LLP
Barristers & Solicitors
One James Street South, 14th Floor
P.O. Box 926, Depot #1
Hamilton, Ontario
L8N 3P9

ATTENTION: DAVID THOMPSON/ MATTHEW G. MOLOCI

Tel: 905.526.4394
Fax: 905.523.5878
E-mail: banyanclassaction@shlaw.ca

Full information regarding the settlement and copies of all forms can be found at www.classactionlaw.ca.

**This notice has been approved by the Superior Court of Justice.
Questions about this notice should NOT be directed to the court.**

Appendix "F"

Opt-Outs Declared Invalid and No New Notice List

No.	Last Name	First Name	Address	City	Prov.	Postal Code
1	Aitken	Neil	81 Sonning Bay	Winnipeg	MB	R2N 3M3
2	Aitken	Barbara	81 Sonning Bay	Winnipeg	MB	R2N 3M3
3	Allen	Robert	PO Box 294, Station M	Calgary	AB	T2P 2H9
4	Bednar	Bernice	Box 6, Grp 559, RR 5	Winnipeg	MB	R2C 2Z2
5	Berndsen	Jody	5078 South Ridge Drive	Kelowna	BC	V1W 4W6
6	Berndsen	Mark V.	5078 South Ridge Drive	Kelowna	BC	V1W 4W6
7	Biliski	Karen A.	426 Whytefold Road	Winnipeg	MB	R3J 2W7
8	Booth	Bonnie	23 Stinson Ave	Winnipeg	MB	R3L 2S3
9	Booth	Robert	23 Stinson Ave	Winnipeg	MB	R3L 2S3
10	Bouchard	Gilles	294 River Road	Winnipeg	MB	R2M 2Z8
11	Bredin	Sheila	21 Saturn Bay	Winnipeg	MB	R3T 0Z8
12	Coghlin	Mary	55 Pontiac Bay	Winnipeg	MB	R3K 0S6
13	Coghlin	Laurie	55 Pontiac Bay	Winnipeg	MB	R3K 0S6
14	Cooke	Charles	Box 1677	Stonewall	MB	R0C 2Z0
15	Cooke	Bernadette	Box 1677	Stonewall	MB	R0C 2Z0
16	Crew	Judy	Box 188	Ste. Agathe	MB	R0G 1Y0
17	Crew	Shaun	Box 188	Ste-Agathe	MB	R0G 1Y0
18	Crew	Thomas A.	365 LynBrook Drive	Winnipeg	MB	R3R 0T2
19	Di Curzio	Barbara	372 Chalfont Road	Winnipeg	MB	R3R 0R3
20	Di Curzio	Joe	372 Chalfont Road	Winnipeg	MB	R3R 0R3
21	Doerksen	Greg	7 Masefield Place	Winnipeg	MB	R3K 0C7
22	Doerksen	Leanne	7 Masefield Place	Winnipeg	MB	R3K 0C7
23	Dow	Michael H.	16 Jensen Landing	Airdrie	AB	T2P 2H9
24	Dunseith	Bonnie E.	252 Glenway Avenue	Winnipeg	MB	R2G 1H2
25	Dunseith	Malcolm H	252 Glenway Avenue	Winnipeg	MB	R2G 1H2
26	Eger	Blair	#120, 10569 - 42 St. S.E.	Calgary	AB	T2C 5B9
27	Eger	Raelene	PO Box 29139	Kelowna	BC	V1W 4A7
28	Eger	Robert	PO Box 29139	Kelowna	BC	V1W 4A7
29	Elias	Katrina	91 Whiteshell Ave	Winnipeg	MB	R2C 2R7
30	Elias	Matthew	91 Whiteshell Ave	Winnipeg	MB	R2C 2R7
31	Enns	John W.	Box 946, 55 Riverheights Dr.	La Salle	MB	R0G 0A2
32	Fehr	Hilda	117 St. Moritz	Winnipeg	MB	R2G 2V6
33	Fetterly	Elden B.	10 Bridge Road	Headingley	MB	R4H 1G3
34	Fetterly	Sarah	10 Bridge Road	Headingley	MB	R4H 1G3
35	Flaherty	David	112 Citadel Green N.W.	Calgary	AB	T3G 4G6
36	Flaherty	Shirley S.	112 Citadel Green NW	Calgary	AB	T3G 4G6
37	Foster	Ralston	62 - 53279 RG Rd. 225	Sherwood Park	AB	T8A 4V1
38	Fraser	David	214 - 16th Street	Coldlake	AB	T9M 1A7
39	Fraser	Kim	214 - 16th Street	Coldlake	AB	T9M 1A7
40	Gattinger	Janet Scott	219 Valley Crest Rise Row	Calgary	AB	T3B 5Y4
41	Globa	Edward	18 Dvoras Cove	Winnipeg	MB	R2V 4M6
42	Globa	Rita	18 Dvoras Cove	Winnipeg	MB	R2V 4M6
43	Gurvey	Brenda	1360 Main Street	Winnipeg	MB	R2W 3T8
44	Halford	Bonnie L.	51 Bursill Road	Winnipeg	MB	R2J 3X8
45	Halford	Marc D.	51 Bursill Raod	Winnipeg	MB	R2J 3X8
46	Harrison	Jeff	99 Woodview Bay	Winnipeg	MB	R3R 3C9
47	Harrison	Jennifer	99 Woodview Bay	Winnipeg	MB	R3R 3C9

No.	Last Name	First Name	Address	City	Prov.	Postal Code
48	Henkewich	Rick	6 Coralberry Avenue	Winnipeg	MB	R2V 2P3
49	Homik	Lawrence	1297 Barmanovich Road	Howden	MB	R5A 1J9
50	Hryb	Beryl	254 St. Martin Blvd.	Winnipeg	MB	R2C 3X8
51	Hryb	Stella	PO Box 294, Station M	Calgary	AB	T2P 2H9
52	Hryb	Cory	119 Thom Ave E.	Winnipeg	MB	R2C 1A2
53	Hryb	John. J	254 St. Martin Blvd.	Winnipeg	MB	R2C 3X8
54	Hryb	Sherri	119 Thom Avenue E.	Winnipeg	MB	R2C 1A2
55	Hyes	Hushi	PO Box 294, Station M	Calgary	AB	T2P 2H9
56	Inkster	B.J.	1048 Shavington St.	North Vancouver	BC	V7L 1K8
57	Insley	Ronald Doug	153 Southview Court	Kelowna	BC	V1V 1T6
58	Jansen	Helen K.	PO Box 294, Station M	Calgary	AB	T2P 2H9
59	Kelly	Dave	1668 Lancaster Cres.	Saskatoon	SK	S7M 3V9
60	Kelly	Melissa	1668 Lancaster Cres.	Saskatoon	SK	S7M 3V9
61	Kimelman	Allen	130 Chestnut Street	Winnipeg	MB	R3G 1R3
62	Kinch	Katherine L.	106 Tusselwood Heights NW	Calgary	AB	T3L 2M7
63	Klassen	Ingrid	6 Harvest Way	Winnipeg	MB	R2E 0L5
64	Klassen	Neil	6 Harvest Way	Winnipeg	MB	R2E 0L5
65	Klish	Melanie	158 Riverview Park S.E.	Calgary	AB	T2C 4A1
66	Kohut	Edwin N.	48 Pleasant Bay	Winnipeg	MB	R2K 0E3
67	Kohut	Linda	48 Pleasant Bay	Winnipeg	MB	R2K 0E3
68	Lander	Carey	PO Box 294, Station M	Calgary	AB	T2P 2H9
69	Lawrence	Jim	305 Elgin Pt. S.E.	Calgary	AB	T2Z 4Z9
70	Lent	Brian D.	37 Cambrose Bay	Winnipeg	MB	R2C 0N6
71	Limacher	Dan	907 - 25 Ave. N.W.	Calgary	AB	T2M 2B5
72	Limacher	David	158 Riverview Park S.E.	Calgary	AB	T2C 4A1
73	Limacher	Lori	907-25 Avenue N.W.	Calgary	AB	T2M 2B5
74	Lohrenz	J. Bradley	103 - 5991 Spring Garden Roa	Halifax	NS	B3H 1Y6
75	Luke	Bruce	507 Banting Drive	Winnipeg	MB	R3K 1C6
76	Luke	Margaret	507 Banting Drive	Winnipeg	MB	R3K 1C6
77	Lussier	H. Andree	42 Harwick Lane	Winnipeg	MB	R2J 3H1
78	Lussier	Thomas	42 Harwick Lane	Winnipeg	MB	R2J 3H1
79	Malenchak	Gary	67 Conner Hill Drive	Morden	MB	R6M 1J2
80	Malenchak	Nelsia	67 Conner Hill Drive	Morden	MB	R6M 1J2
81	McCaughlin	Bonnie	PO Box 294, Station M	Calgary	AB	T2P 2H9
82	McCaughlin	Kevin	PO Box 294, Station M	Calgary	AB	T2P 2H9
83	McCaughlin	Shawn	PO Box 294, Station M	Calgary	AB	T2P 2H9
84	McCracken	Donald	67 Conner Hill Drive	Morden	MB	R6M 1J2
85	McCracken	Terri Lynn	PO Box 294, Station M	Calgary	AB	T2P 2H9
86	McKenzie	Darlene	700 Headmaster Row	Winnipeg	MB	R2G 2S6
87	McKenzie	Luke	700 Headmaster Row	Winnipeg	MB	R2G 2S6
88	Mota	Tara	599 Smithfield Avenue	Winnipeg	MB	R2V 0E5
89	Mota	Walter	599 Smithfield Avenue	Winnipeg	MB	R2V 0E5
90	Mota	Manuel	30 Dvoras Cove	Winnipeg	MB	R2V 4M6
91	Mota	Maria	30 Dvoras Cove	Winnipeg	MB	R2V 4M6
92	Naus	Gabriela	46 Greengrove Cres.	Toronto	ON	M3A 1H9
93	Offert	John	PO Box 294, Station M	Calgary	AB	T2P 2H9
94	Patterson	Janice	PO Box 294, Station M	Calgary	AB	T2P 2H9
95	Rapchalk	Jason	3007 Truesdale Drive E.	Regina	SK	S4V 2E1
96	Rapchalk	Kimberly	3007 Truesdale Drive E.	Regina	SK	S4V 2E1
97	Remin	Stanley Wm.	401 - 5520 Riverbend Road	Edmonton	AB	T6H 5G9
98	Roath	N. Lesley	464 Benson Street	Winnipeg	MB	R3K 1S1

No.	Last Name	First Name	Address	City	Prov.	Postal Code
99	Roath	Martin	464 Bedson Street	Winnipeg	MB	R3K 1S1
100	Schoonmaker	Dick E.	PO Box 780	Alix	AB	T0C 0B0
101	Sevenko	Fred	6112 Lipsett Ave.	Peachland	BC	V0H 1X7
102	Snyder	Len	58 Serenity Cove	Winnipeg	MB	R2G 2P7
103	Snyder	Linda	58 Serentiy Cove	Winnipeg	MB	R2G 2P7
104	Stefanec	Angela	3737 Rebeck Road	East St. Paul	MB	R2E 1C5
105	Stefanec	Ron	3737 Rebeck Road	East St. Paul	MB	R2E 1C5
106	Tremblay	Cecile	145 - 53049 RR 220	Ardrossan	AB	T8E 2C8
107	Trim	Amany	7 Pine Valley Drive	Winnipeg	MB	R3K 1X7
108	Trim	Donald W.	7 Pine Valley Drive	Winnipeg	MB	R3K 1X7
109	Weirich	Martin	806 - 250 Marina Way	Penticton	BC	V2A 1H4
110	Weirich	Shanet	26 Sedgeley Crt	Winnipeg	MB	R3P 1Y6
111	Weston	Joan	Box 1055	Cardston	AB	T0K 0K0
112	Weston	Pamela	64 Signal Hill Circle S.W.	Calgary	AB	T3H 2G6
113	Weston	James Craig	64 Signal Hill Circle S.W.	Calgary	AB	T3H 2G6
114	Whitta	Barry	83 Langrill Drive	Yorkton	SK	S3N 3L9
115	Whitta	Loretta	83 Langrill Drive	Yorkton	SK	S3N 3L9
116	Whittaker	Martin	145-53049 RG RD 220	Ardrossan	AB	T8E 2C8
117	Wiebe	Ernie	PO Box 294, Station M	Calgary	AB	T2P 2H9
118	Winterhalt	Les	261139 Valley View Road	Calgary	AB	T3P 1A2
119	Wong	Anthony K.	30 Oceanridge Drive	Winnipeg	MB	R3Y 1W7
120	Wong	May	30 Oceanridge Drive	Winnipeg	MB	R3Y 1W7
121	Zarowny	Donald	4230 - 49th Avenue	St. Paul	AB	T0A 3A3
122	Zibell	Doreen	226 Herschfeld Rd., N	Steinbach	MB	R5G 0C5
123	Zibell	Karl	226 Herschfeld Rd., N	Steinbach	MB	R5G 0C5

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding under the *Class Proceedings Act, 1992*

PROCEEDING COMMENCED AT
TORONTO

ORDER

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