

**NOTICE OF CERTIFICATION OF 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 all individuals who participated in the Banyan Tree Gift Program for the taxation years 2003, 2004, 2005, 2006 and 2007 (the "Class Members").

In 2008, Kathryn Robinson and Rick Robinson ("Representative Plaintiffs") commenced a proposed class proceeding against Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Ltd., Banyan Tree Foundation ("Gift Program Defendants") and Fraser Milner Casgrain LLP ("FMC") in the Ontario Superior Court of Justice. The Representative Plaintiffs allege that all Class Members suffered damage and loss as a result of participation in the Banyan Tree Gift Program.

On January 19, 2010, Madam Justice Lax of the Ontario Superior Court of Justice certified this action as a class proceeding. This does not mean that the Court has made a decision as to the likelihood of recovery by the Representative Plaintiffs, other Class Members, or as to the merits of the claim or defences asserted by either side.

This notice is being published to provide notice to Class Members whose rights may be affected by this lawsuit.

**COMMON ISSUES**

The class proceeding will determine the following common issues:

- a) was it a term of the contract of participation in the Gift Program that participants would receive a charitable donation receipt that would be recognized by Canada Revenue Agency for tax credit purposes?
- b) was it a term of the contract of participation in the Gift Program that participants would not be at risk to repay loans obtained from Rochester?
- c) if the answer to (a) and/or (b) is yes, has the contract been breached by the Gift Program Defendants?
- d) did the Gift Program Defendants owe a duty of care to participants?
- e) if the answer to (d) is yes, what was the nature and extent of that duty?
- f) has the duty of care owed by the Gift Program Defendants to participants been breached?
- g) are all promissory notes executed by Class Members in favour of Rochester in connection with participation in the Gift Program void and unenforceable?
- h) did FMC owe a duty of care to participants in the Gift Program?
- i) if the answer to (h) is yes, what was the nature and extent of that duty?
- j) has FMC breached its duty of care to participants in the Gift Program?
- k) should an award of punitive damages be made against the defendants? If so, in what amount?

**PARTICIPATION AND EXCLUSION FROM THE CLASS**

If you wish to remain a Class Member you do not have to do anything at this time. If you wish to obtain more information about your rights as a Class Member, you may contact class counsel as listed at the end of this notice. If you wish to opt-out of the Class, you must follow the procedure set out in this notice.

If you wish to exclude yourself from the class proceeding ("opt-out") you must deliver a written notice (the "Opt-Out Form") to the opt-out administrator at the contact information set-out below. You can request a copy of the Opt-Out Form from the opt-out administrator or from class counsel. The Opt-Out Form must be received by the opt-out administrator on or before **October 1, 2010**.

Any Class Member who does not deliver an Opt-Out Form to the opt-out administrator on or before **October 1, 2010** will be bound by the result in the class proceeding, whether favourable or not. You must deliver an Opt-Out Form if you wish to proceed with individual legal action.

Opt-out administrator contact information:

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

**FINANCIAL CONSEQUENCES**

The class proceeding will deal with the common issues as set out in this notice. No Class Member will be liable for costs with respect to the determination of the common issues, however, once the Court has determined the common issues, it might be necessary for individual Class Members to participate in proceedings to determine issues which are not common to the Class in order to establish their claims. If this is necessary, each Class Member may have to bear the costs of such proceedings and, if unsuccessful, could be liable to pay a portion of the defendants' costs incurred with respect to such individual proceedings. Class Members may be entitled to receive compensation from the defendants if the class proceeding is successful, but this has not yet been determined.

The Representative Plaintiffs have entered into an agreement with class counsel whereby fees related to the trial of the common issues will be payable only in the event of success in the class proceeding. Any fees charged by class counsel must be approved by the Court. The class counsel acting in this case is as follows:

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

DAVID THOMPSON & MATTHEW G. MOLOCI

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

**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

ANA DOBSON  
E-Mail: [adobson@shlaw.ca](mailto:adobson@shlaw.ca)

Tel: 905-523-1374 ext 238  
Fax: 905-523-5878

Additional information regarding the lawsuit can be found at [www.classactionlaw.ca](http://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.