

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE PERELL

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MONDAY, THE 14<sup>TH</sup> DAY  
OF JUNE, 2010

BETWEEN:

ROBERT ZOPF

Plaintiff

- and -

WARREN BURGER, JOANNE CURRIE, BRUCE WALLIS  
ROSS LINCOLN, GORDON TAYLOR, BOB ELLIOTT,  
MORRIS WILLOWS, MARK HENRY, JIM DUFFY,  
AURELIO (LEO) RENZELLA, PAUL COWIE and DON HOWIE

Defendants

**Proceeding under the *Class Proceedings Act, 1992***

**CERTIFICATION AND SETTLEMENT APPROVAL ORDER**

**THIS MOTION**, made by the Plaintiff for an order that this action be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, for approval of the settlement of the action in accordance with the terms of the Settlement Agreement, pursuant to subsection 29(2) of the *Class*

*Proceedings Act, 1992*, and for the fixing of Class Counsel Fees, was heard this day at 361 University Avenue, Toronto, Ontario.

**ON READING** the following:

- (a) Notice of Motion;
- (b) Settlement Agreement; and
- (c) Affidavits of:
  - (i) Robert Zopf sworn on the 4<sup>th</sup> day of June, 2010; and,
  - (ii) Adam Halioua sworn on the 7<sup>th</sup> day of June, 2010;

**AND ON HEARING** the submissions of counsel for the Parties,

**AND ON BEING ADVISED** that:

- (a) the Plaintiff consents to this Order;
- (b) the Defendants consent to this Order;
- (c) Cooperating Counsel consent to this Order on behalf of the Claimants they represent;
- (d) KPMG Inc. consents to being appointed as Class Action Administrator;

**AND WITHOUT** any admission of liability on the part of the Defendants, the Defendants having denied liability,

## DEFINITIONS

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this order, the following definitions apply:

- (a) **Action** means the *Zopf v. Burger et al* proceeding, bearing Ontario Court File # CV-08-366189CP, issued by Class Counsel against the various alleged directors of FMFS.
- (b) **Administrator** means KPMG Inc.
- (c) **Administrator Fees** means all fees payable to the Administrator including but not limited to all costs associated with any notices to be sent to Potential Claimants, the Administrator's legal fees and all costs associated with any Notice of the Motion for Certification and Settlement Approval, but not to exceed \$150,000.00 (unless otherwise agreed between the Administrator and McCague Borlack LLP).
- (d) **Amount of the Settling Defendants' Reserve Fund** means the Recovery Percentage multiplied by the Total of Claims by Opt Outs, payable out of the Settlement Amount, plus any amounts pursuant to paragraph B(d)(i) of the Settlement Agreement.
- (e) **Balance for Settlement Distribution** means the Settlement Amount, plus interest earned by the Class Action Administrator and/or McCague Borlack LLP, less all of the following:
  - (i) Class Claimants' Counsel Fees; and,
  - (ii) Total Individual Claimants' Counsel of Record Fees.
- (f) **Certification and Settlement Approval Order** means this Order.
- (g) **Class** means Ontario investor clients of FMFS, who purchased debentures in FactorCorp from agents of FMFS and continue to own the Debentures. For clarity, the Class includes both accredited investor purchasers and unaccredited investor purchasers but does not include Excluded Class Members.
- (h) **Class Action Administrator** means the Administrator.

- (i) **Class Counsel** means Thomson, Rogers.
- (j) **Class Claimants' Counsel Fees** means an all-inclusive class action counsel fee of \$1,837,500.00, inclusive of all disbursements and all taxes, paid to Class Counsel out of the Settlement Amount.
- (k) **Class Members** means all persons falling within the definition of the Class.
- (l) **Cooperating Counsel** means Lerner LLP, Advocates LLP, Doucet McBride LLP and Szemenyei Kirwin MacKenzie LLP.
- (m) **Court** means the Ontario Superior Court of Justice.
- (n) **Compensation** means the Recovery Percentage multiplied by the Settling Claimant's Investment.
- (o) **Excluded Class Members** means:
  - (i) The corporate Shareholders of FMFS, including Trillium Mutual Insurance Company as set out in Schedule "A" of the Settlement Agreement;
  - (ii) Directors and officers of FMFS named in ongoing litigation as set out in Schedule "A" of the Settlement Agreement;
  - (iii) Corporate Sales Agents for FMFS as set out in Schedule "A" of the Settlement Agreement;
  - (iv) Agents employed by the Corporate Sales Agents for FMFS as set out in Schedule "A" of the Settlement Agreement; and,
  - (v) Persons other than those named on the FactorCorp Debentures at the time of the FactorCorp bankruptcy that obtained the FactorCorp Debentures after FactorCorp's bankruptcy from any of the above (to prevent successful transfers by Excluded Class Members after FactorCorp's bankruptcy).
- (p) **FactorCorp** means FactorCorp Financial Inc. and/or its affiliate FactorCorp Inc.
- (q) **FactorCorp Debenture(s)** means debenture(s) issued by FactorCorp.

