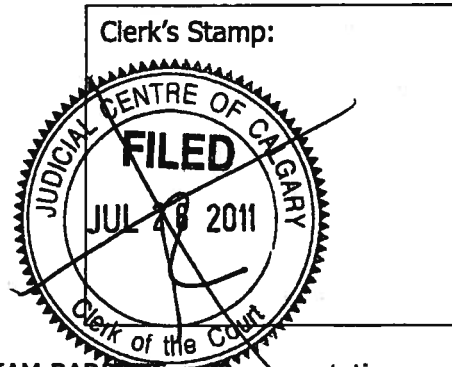
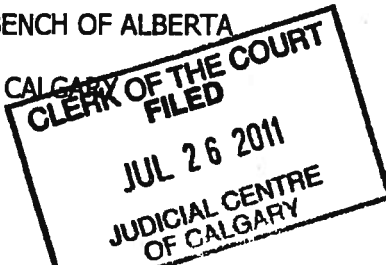


COURT FILE NUMBER: 0501 08152

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF CALGARY



PLAINTIFF(S): DOUGLAS ALEXANDER and WILLIAM BARRETT, as Representative Plaintiffs

DEFENDANT(S): HMS FINANCIAL INC., et al

DOCUMENT: **ORDER**

I hereby certify this to be a true copy of the original Order

Dated this 26 day of July 2011

  
for Clerk of the Court

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:

McLENNAN ROSS LLP  
1600 Stock Exchange Tower  
300 – 5<sup>th</sup> Avenue SW  
Calgary, AB T2P 3C4  
Lawyer: Graham McLennan, Q.C. / Stuart Chambers  
Telephone: (780) 482-9200  
Fax: (780) 782-9101  
Email: gmclennan@mross.com / schambers@mross.com  
File No. 251207

**DATE ON WHICH ORDER WAS PRONOUNCED:** July 26, 2011

**NAME OF JUDGE WHO MADE THIS ORDER:** Associate Chief Justice John D. Rooke

**ORDER FOR APPROVAL OF SETTLEMENT AGREEMENT WITH DEFENDANT, CANADIAN IMPERIAL BANK OF COMMERCE**

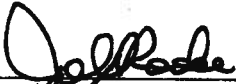
UPON THE APPLICATION of the Plaintiffs; AND UPON NOTING the consent of counsel for the Defendant, Canadian Imperial Bank of Commerce ("CIBC"), IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement entered into between the Representative Plaintiffs and CIBC, attached as Schedule "A" hereto, is approved ;
2. Action No. 0501-08152 is dismissed as against CIBC, pursuant to the terms of the Settlement Agreement and on a without costs basis;

3. All claims for contribution and/or indemnity by way of Notices to Co-Defendant against CIBC, advanced by Defendants as more particularly listed at Schedule "B" to this Order, are hereby struck;

4. Except with respect to those parties referred to in clause 3 above, no Third Party Notices or Notices to Co-Defendant have been filed against CIBC by any other Defendants, and as the time for the filing of such notices has now expired, all claims for contribution, indemnity, subrogation or other claims by the other Defendants against CIBC are forever barred; and

5. All parties will bear their own costs with respect to this Action.

  
\_\_\_\_\_  
ASSOCIATE CHIEF JUSTICE OF THE COURT OF  
QUEEN'S BENCH OF ALBERTA

APPROVED AS TO FORM AND CONTENTS BY:  
**BLAKE, CASSELS AND GRAYDON LLP**

  
\_\_\_\_\_  
Per: A. Webster Macdonald, Q.C.  
Counsel for CIBC

## **CLASS ACTION SETTLEMENT AGREEMENT**

**This Settlement Agreement made effective this 2 day of June, 2011.**

Between:

**DOUGLAS ALEXANDER and WILLIAM BARRETT as Representative Plaintiffs  
(the "Plaintiffs")**

**and**

**CANADIAN IMPERIAL BANK OF COMMERCE ("CIBC")**

### **WHEREAS:**

- A. a class action, Court of Queen's Bench of Alberta (the "Court") Action No. 0501-08152 (the "Action") has been commenced by the Plaintiffs and certified as a class proceeding, and CIBC is one of the named defendants in the Action (CIBC and the Plaintiffs are collectively referred to as "Parties" herein);
- B. the Parties intend that the execution of this Agreement shall not in any way prejudice or limit the Plaintiffs' ability to continue to pursue their claims against all Remaining Defendants (as defined herein), subject to the provisions of this Agreement, and acknowledge that the Plaintiffs' total claim exceeds the consideration paid by CIBC;
- C. some of the Defendants have claimed contribution or indemnity from other Defendants, including contribution or indemnity from CIBC;
- D. the Parties wish to resolve and settle all matters at issue between them in the Action or related in any way to the allegations and subject matter referred to in the Action,
- E. CIBC would not do so if it continued to be exposed to further claims by the Plaintiffs and claims for contribution and/or indemnity by the balance of the Defendants; and
- F. the Parties understand and acknowledge that this Agreement must be approved by the Court, and have agreed upon a form of Order attached hereto as Schedule "A".

**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, the Parties agree as follows:

## I. DEFINITIONS

1.1 The following terms used in this Agreement have the meanings specified below:

**"Settlement Approval Order"** means the order of the Court granting approval of the settlement reflected in this Agreement, substantially in the form attached hereto as Schedule "A".

**"Final"** with respect to any order or judgment of the Court, including but not limited to, the Settlement Approval Order, means the first business day twenty-one (21) days following the day on which such order has been granted and entered, so long as the order or judgment has not been appealed, been made subject of a leave to appeal application, withdrawn, rescinded, modified, vacated or reversed by the Court. If an appeal from the order or judgment is taken, Final means upon such appeal being finally disposed of.

**"CIBC"** means, jointly and severally, Canadian Imperial Bank of Commerce and its parents, affiliates, subsidiaries and related entities, bodies corporate, and its past, present and future officers, directors, employees, agents, predecessors, successors and assigns.

**"Plaintiff Class"** means the plaintiff class defined by Orders of Justice Rooke of the Court dated the 9th day of October, 2008 and the 15th day of December, 2008, or otherwise in the Action, and specifically including: "all individuals other than the Defendants, who have invested money with the HMS Scheme, directly or indirectly, and suffered a loss of all or part of that investment."

**"Plaintiff Counsel"** means McLennan Ross LLP and Cuming & Gillespie LLP.

**"Representative Plaintiffs"** means Douglas Alexander and William Barrett, or such other person made a representative plaintiff in the Action from time to time.

**"Remaining Defendants"** means the Defendants as defined in the Action, excluding CIBC and any other Defendants against whom the Action has been discontinued or dismissed.

**"Subject Claims"** means all claims or other proceedings at law, in equity or under a statute including declaratory or subrogated claims, all causes of action for damages (actual, compensatory, punitive or exemplary), losses, injuries, contribution, indemnity and other relief over, and all claims for interest, costs, disbursements, expenses, taxes including GST, penalties and lawyers' fees, known or unknown, that the Plaintiff Class or any member of the Plaintiff Class, ever had, now has, or hereafter can, shall or may have to the date hereof and into the future, relating to or arising from:

- (i) Knowing assistance in a breach of trust or breach of fiduciary duty;
- (ii) Knowing participation and or knowing receipt in breach of a trust or fiduciary duty; and
- (iii) Without limiting the generality of the foregoing, all other claims and allegations related in any manner whatsoever to an investment in HMS Financial or any related or affiliated company or entity or made or advanced in the Statement of Claim, as amended from time to time, or claims or allegations that could have been made or advanced against CIBC in the Action.

## **II. PAYMENT**

- 2.1 In consideration of the terms and covenants herein, including any claims for costs, CIBC shall pay to the Plaintiff Class the all-inclusive sum of three hundred and fifty thousand dollars (\$350,000.00) (the "Settlement Funds"), to be paid to Plaintiff Counsel.
- 2.2 Payment of the Settlement Funds will occur within fourteen (14) days of the date the Settlement Approval Order becomes Final provided however that the Settlement Funds shall be held in trust by Plaintiff Counsel and shall not be disbursed to the Plaintiff Class until all conditions of settlement have been satisfied.
- 2.3 CIBC shall have no liability or responsibility with respect to any conduct of the Plaintiff Class members or Plaintiff Counsel, in connection with the use of or administration of the Settlement Funds.

## **III. SETTLEMENT CONDITIONS**

- 3.1 The Court shall approve the Settlement Approval Order and this Settlement Agreement.
- 3.2 The Action shall be dismissed by the Court as against CIBC without costs, on the understanding that the Action will continue against the Remaining Defendants.
- 3.3 All claims for contribution and indemnity advanced by the Remaining Defendants as against CIBC will be struck or dismissed by the Court.

## **IV. FURTHER AGREEMENTS**

- 4.1 Upon execution of this Settlement Agreement, the Plaintiff Class will apply to the Honourable Associate Chief Justice Rooke, as case management Justice, for approval of this Settlement Agreement in accordance with the *Class Proceedings Act*, which application CIBC will support.
- 4.2 Upon execution of this Settlement Agreement, CIBC will apply to the Honourable Associate Chief Justice Rooke, as case management Justice, to strike the Notices to Co-Defendant against CIBC filed by the Remaining Defendants.
- 4.3 The Parties agree to execute such other documents or take reasonable steps as may be necessary to accomplish the objectives of this Settlement Agreement, including, without limitation, the objective of having the claims for contribution and/or indemnity as against CIBC struck or dismissed.

## **V. COVENANTS NOT TO SUE AND SATISFACTION OF CLAIMS AGAINST CIBC**

- 5.1 The Plaintiff Class shall not sue or continue to sue CIBC for any action, causes of action, claims, interest, costs or demands of any or every kind whatsoever, which the Plaintiff Class has against CIBC, arising from or in any way related to the facts and issues pled in the Action.
- 5.2 The Plaintiff Class will not claim as against or seek to recover from the Remaining Defendants any damages which may be attributable to the fault of CIBC, including without limitation, any amounts for which CIBC is or may subsequently be found by a Court to be liable for and for which the Remaining Defendants may be entitled to contribution or indemnity from CIBC.

- 5.3 The Plaintiff Class will not seek to collect any damages, judgment, legal costs, fees, or disbursements, taxable or otherwise, directly or indirectly from CIBC. Without limiting the generality of the foregoing, if the Court orders that the Remaining Defendants have the right to pass through any damages, judgment, legal costs, fees or disbursements, taxable or otherwise, payable to the Plaintiff Class, to CIBC the Plaintiff Class will forego and does hereby waive that part of its damages, judgment, legal costs, fees and disbursements which the Remaining Defendants may pass through to CIBC.
- 5.4 Notwithstanding any other terms in this Agreement, it is the intent of the Parties hereto that CIBC shall not be liable, either at the present or in the future, to make any payment whatsoever to the Plaintiff Class, the Remaining Defendants, or any other person in respect of the Action, including costs, other than the amount referred to in paragraph 2.1 hereof.

## **VI. TERMINATION**

- 6.1 In the event any of the following occurs, this Agreement is terminated:
- (i) The Court refuses to approve the Settlement Approval Order substantially in the form attached hereto as Schedule "A" or the form of Settlement Approval Order as may be revised by agreement between the Parties;
  - (ii) The Settlement Conditions are not met; or
  - (iii) The Settlement Approval Order is reversed, vacated, overturned, set aside or modified, by the Court or on appeal.
- 6.2 In the event the Agreement terminates after the Settlement Funds have been paid to Plaintiff Counsel but not yet disbursed to the Plaintiff Class, the Settlement Funds shall be repaid to CIBC in care of its legal counsel, within seven (7) days.
- 6.3 In the event that this Agreement does not become Final or is terminated in accordance with the terms hereof, then the orders entered pursuant thereto shall be of no force or effect, and the terms of this Agreement shall not be offered or received in any proceeding for any purpose.

## **VII. DENIAL OF LIABILITY**

- 7.1 CIBC denies all claims made by the Plaintiff Class against CIBC in the Action and makes no admission of any liability or wrongdoing with respect to any of the claims made by the Plaintiff Class.
- 7.2 This Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by CIBC, or of the truth of any of the claims or allegations alleged in the Action or otherwise, and such is specifically denied by CIBC.
- 7.3 This Agreement, whether or not it becomes Final, and any and all negotiations, documents and discussions associated with it, shall be without prejudice to the rights of any of the Parties, and shall not be discoverable or used directly or indirectly, in any way, by any person, whether in the Action or in any other action or proceeding.
- 7.4 The Parties expressly reserve all of their rights if this Agreement does not become Final in accordance with the terms of this Agreement.

## VIII. MISCELLANEOUS PROVISIONS

8.1 It is the intention of the Parties that this Settlement Agreement be the final settlement and resolution in all respects of all claims against CIBC regarding the Subject Claims in all jurisdictions, including any third party claims for contribution or indemnity. However, in the event that:

- (a) proceedings are commenced in another jurisdiction in relation to the Subject Claims, by an individual who was not a member of the Plaintiff Class; or
- (b) third parties advance claims for contribution and indemnity from CIBC in the Action;

the Plaintiffs agree to provide reasonable assistance to CIBC, including but not limited to providing relevant documents and making themselves available for witness interviews or examinations, with a view to having the matter or claim discontinued or dismissed.

8.2 The Parties acknowledge that it is their intent to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Agreement, including without limitation, the objective of having the claims for contribution and/or indemnity as against CIBC struck or summarily dismissed.

8.3 The Parties agree to keep the terms of this Agreement private and confidential, except that the text of the Agreement may be shown to the Court of Queen's Bench of Alberta in conjunction with the Settlement Approval motion, until the Settlement Approval Order is approved by the Court except that the Parties may disclose such terms to their respective employees, insurers, auditors, regulators, and legal advisors, or as otherwise required to do so by order of the Court of Queen's Bench of Alberta or otherwise by law.

8.4 This Agreement is binding upon, and shall enure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.

8.5 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.

8.6 This Agreement constitutes the entire agreement between the Parties and supersedes all previous documents, negotiations, arrangements, undertakings and understandings related to its subject matter.

8.7 This Agreement may not be amended or modified except by a written instrument signed by or on behalf of all Parties or their successors or by their counsel.

8.8 The Representative Plaintiffs, and/or Plaintiffs' Counsel on behalf of the Plaintiff Class, are expressly authorized by the Plaintiff Class to execute this Agreement, to take all appropriate actions required or permitted to be taken by them pursuant to the Agreement to effectuate its terms, and to enter into any modifications or amendments to the Agreement on behalf of the Plaintiff Class which they deem appropriate.

8.9 All notices hereunder shall be delivered to the Parties' respective counsel or such other addressee as any Party may designate in accordance with this Agreement.

8.10 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the date written below.

Executed this \_\_\_\_\_ day of \_\_\_\_\_  
2011

\_\_\_\_\_  
Douglas Alexander

\_\_\_\_\_  
Witness

: \_\_\_\_\_  
William Barrett

\_\_\_\_\_  
Witness

**CANADIAN IMPERIAL BANK OF COMMERCE**

Per: \_\_\_\_\_  
Name:  
Authorized Signatory



**Schedule "B"**

John W. Willock Paradise Bay Holdings Inc.  
Stan W. Remin  
1037149 Alberta Ltd. operating as Cedar Management  
Victor Bauman  
Pine Grove management Inc.  
Tom Oldridge  
Arnold Henry  
David Henry  
Datas Consulting  
Michael McCullough  
McCullough Financial Corporation  
Douglas A. Cowan  
Labalta Ltd.  
993638 Alberta Ltd.  
Arie Schalk  
Peter Mol  
Vitron Consulting Inc.  
Robert Bartel  
Connie Bartel  
Mountain Star capital Corp.  
George Lennox  
Peter Morrisseau  
990137 Alberta Ltd.  
Robert J. Sellars  
Sellars Financial Inc.  
Dave Miller  
Gertrude M. Prete  
Delmer W. Strobel  
Verna A. Strobel  
Triple-SSS Holdings Inc.  
Heather Vance  
Wayne Johnson  
Ethan Equities Inc.  
Ruby Leachman  
Tamika Enterprises Inc.  
The Dakota Corporation  
The Hillpro Group Inc.  
Jim Folsom  
Jack Folsom  
Eugene Leroy Duce  
Allan A. Gray  
Phoenix Global Resources Ltd.  
Alfred Barnfield  
Barbara L. King  
1070199 Alberta Ltd.  
Brad Mooney

M&M Investments 101 Ltd.  
M&M Computer Consulting  
Enrique Toscano a.k.a. Chico Toscano  
Lee-Anna Toscano  
Five Continents Consulting Corporation  
Randy Seabrook