

COURT FILE NO. 0501 08152
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE OF CALGARY

Clerk's Stamp:

CLERK OF THE COURT
MAY 27 2011
CALGARY, ALBERTA

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

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

DOCUMENT: **ORDER**

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

McLENNAN ROSS LLP
1600 Stock Exchange Tower
300 - 5th 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

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

Dated this 27 day of May, 2011

A. Gault
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: May 26, 2011

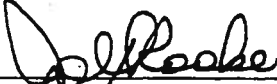
NAME OF JUDGE WHO MADE THIS ORDER: Associate Chief Justice John D. Rooke

ORDER FOR APPROVAL OF SETTLEMENT AGREEMENT WITH DEFENDANT, DANA CARLSON

UPON THE APPLICATION of the Plaintiffs; AND UPON NOTING the consent of counsel for the Defendant, Dana Carlson ("**Carlson**") IT IS HEREBY ORDERED THAT:


1. The Settlement Agreement between the Representative Plaintiffs and Carlson, attached as Exhibit "A" is approved. The Settlement Agreement is incorporated into and forms part of this Order.

2. The Settlement Funds will be held in trust by counsel for the Plaintiffs pending further direction and Order from this Court;
3. Action No. 0501-08152 is dismissed as against Carlson, on a without costs basis;
4. All parties will bear their own costs of with respect to this Action.



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

APPROVED AS TO FORM AND CONTENTS BY:
JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

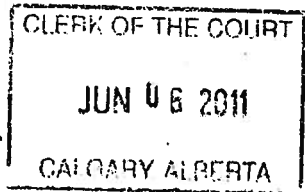

Per: Rob Armstrong

Counsel for Dana Carlson

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CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement made effective this ___ day of April, 2011.



Between:

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

and

DANA CARLSON ("Carlson")

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 Carlson is one of the named defendants in the Action (Carlson 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' claims against all Remaining Defendants (as defined herein); and acknowledge that the Plaintiff's total claim exceeds the consideration paid by Carlson;
- C. 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,
- D. 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", and
- E. Carlson has provided a Statutory Declaration concerning his financial circumstances, which the Plaintiffs have relied upon in entering into this Settlement Agreement.

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.

"Plaintiff Class" means the plaintiff class defined by Order 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 Carlson 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 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 Carlson in the Action.

II. PAYMENT

- 2.1 In consideration of the terms and covenants herein, including any claims for costs, Carlson shall pay to the Plaintiffs the all-inclusive sum of three hundred thousand dollars (\$300,000.00) (the "Settlement Funds"), to be paid to Plaintiff Counsel.
- 2.2 Payment of the Settlement Funds will occur within seven (7) 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 Carlson 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 Carlson without costs, on the understanding that the Action will continue against the Remaining Defendants.

IV. FURTHER AGREEMENTS

- 4.1 Upon execution of this Settlement Agreement by counsel representing the Plaintiff Class and by Carlson, 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 Carlson will support.
- 4.2 The parties agree to execute such other documents or take reasonable steps as may be necessary to accomplish the objectives of this Settlement Agreement.

V. COVENANTS NOT TO SUE AND SATISFACTION OF CLAIMS AGAINST CARLSON

- 5.1 The Plaintiff Class shall not sue or continue to sue Carlson for any action, causes of action, claims, interest, costs or demands of any or every kind whatsoever, which the Plaintiff Class has against Carlson, 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 sum which would require further payment by Carlson to any of the Remaining Defendants or the Plaintiff Class in the Action.
- 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 Carlson. 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, payable to the Plaintiff Class, to Carlson, 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 Carlson.
- 5.4 Notwithstanding any other terms in this Agreement, it is the intent of the Parties hereto that Carlson 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 Carlson in care of his 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 Carlson denies all claims made by the Plaintiff Class against Carlson 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 Carlson, or of the truth of any of the claims or allegations alleged in the Action or otherwise, and such is specifically denied by Carlson.
- 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 the 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 Carlson regarding the Subject Claims in all jurisdictions. 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 Carlson in the Action;

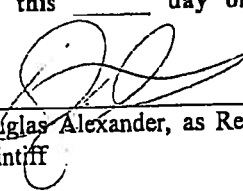
the Plaintiffs agree to provide reasonable assistance to Carlson, including but not limited to providing relevant documents and making themselves available for witness interviews or examinations, with a view to having the matter or claim discontinued or dismissed.

- 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.
- 8.3 The Agreement is binding upon, and shall enure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.
- 8.4 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the Court of Queen's Bench of Alberta has exclusive jurisdiction over any issues arising from this Agreement.

- 8.5 This Agreement constitutes the entire agreement between the Parties and supersedes all previous documents, negotiations, arrangements, undertakings and understandings related to its subject matter.
- 8.6 The 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.
- 8.7 Plaintiff Counsel, on behalf of the Plaintiff Class, is expressly authorized by the Plaintiff Class 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 Plaintiffs which they deem appropriate.
- 8.8 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.
- 8.9 The 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, as Representative
Plaintiff



Witness

William Barrett, as Representative
Plaintiff

Witness



Dana Carlson



Witness

- 8.5 This Agreement constitutes the entire agreement between the Parties and supersedes all previous documents, negotiations, arrangements, undertakings and understandings related to its subject matter.
- 8.6 The 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.
- 8.7 Plaintiff Counsel, on behalf of the Plaintiff Class, is expressly authorized by the Plaintiff Class 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 Plaintiffs which they deem appropriate.
- 8.8 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.
- 8.9 The 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 26th day of April
2011

Douglas Alexander, as Representative
Plaintiff

Witness

William Barrett

William Barrett, as Representative
Plaintiff

William Barrett

Witness

Dana Carlson

Dana Carlson

William Barrett

Witness