

July 5, 2006

CASE MANAGEMENT MEMORANDUM

**HEIKE ENTICKNAP, as Representative Plaintiff v. HMS Financial Inc. et al
Action No. 0501-08152**

I. PRINCIPAL COUNSEL/ADDRESSES

Plaintiff:	Counsel: Mr. Graham McLennan Firm: McLennan Ross LLP Phone: (780) 482-9200 Fax: (780) 482-9100	
	Counsel: Bill McNally and Craig Gillespie Firm: McNally Cuming Raymaker Phone: (403) 571-0555 Fax: (403) 232-8818	
Defendants:	Chair of the Defence Committee	
	Counsel: TBD Firm: Phone: Fax:	
	Defence Committee TBD	
	Counsel: Sid Kobewka Hu Young Web MacDonald, Q.C. Mark Morrison and Gavin Matthews Virginia May Gordon Desautels Edward W. Halt John L. Ircandia and Ross McGowan	Numerous Garth Bailey and Professional Corporation Canadian Imperial Bank of Commerce Dana I. Carlson Community Credit Union Ltd. Richard E. Fowlks HSBC Bank Canada

Donald J. Chernichen and McCarthy Tetrault LLP
David Haigh

Anne L. Kirker Alberta Lawyers Insurance
 Corporation

For further Defendants and Counsel see the Schedule of Counsel issued
from time to time - the last June 21, 2006

II. PLEADINGS

A. Amended Statement of Claim (amended and filed August 19, 2005)

1. The Plaintiff, as Representative Plaintiff, of Calgary, Alberta, brings the action on her own behalf and on behalf of all persons, other than the Defendants [some Defendants allegedly suffered losses] who have invested money with the Defendants and suffered losses.
2. It is alleged that the Plaintiff and approximately 1,000 other investors, primarily from Alberta, were victims of a "Ponzi scheme" or a "High Yield investment scheme" ("HMS Scheme") consisting of systemic misrepresentative and fraudulent conduct as set out in paragraphs 73 to 79 of the Amended Statement of Claim, it being alleged that the Defendants have no legitimate business and the object in the HMS Scheme was to take the Plaintiff Investor funds and convert them to the Defendants' use.
3. The role of each of the alleged Defendants is set out.
 - Corporate Defendants in paragraph 3 being Defendants carrying on business in Alberta
 - Some Defendants carrying on business out of the United States, including ABBA, Cedar Pointe, Numa, Transmax, Bogner, Carpenter's Shop, Cameron Campbell, Bailey & Dawes LLC, Fowlks and Snyder LLP (paragraph 4)
 - Some corporations out of New Zealand - Global Trustees and Chase Forbes Trust Ltd. (paragraph 4.1 and 5)
 - Some corporations out of Australia - Lindenhall (paragraph 4.2)
 - All Defendants in paragraphs 3-5, collectively called "The HMS Corporate Defendants"
 - It is alleged that Robert Fyn and Murray Stark, who reside in Linden, Alberta, are directors and the controlling minds of HMS (paragraph 7)
 - Various individual Defendants are described (paragraph 7-47) and called the "HMS Director Defendants"
 - Garth Bailey associated with McCarthy Tetrault LLP (paragraphs 49 and 50) is alleged to be the sole director and controlling mind

of Bailey Corporation and acted as legal counsel of HMS Corporate Defendants and HMS Director Defendants

- Certain parties were alleged to have negligently or knowingly facilitated the operation of the HMS Scheme, including Carlson (paragraph 51), Peter Manousos and the Merchant Law Group LLP, Michael Grosh and the various other Defendants - all called the "Lawyers"
 - Various parties who are identified as accountants, including Desmond Defreitas and Stanley Defreitas and called the "Accountants"
 - Various Defendants under paragraphs 61-64 are referred to as the "HMS Scheme"
 - Mountainview Credit Union Ltd. and Community Credit Union Ltd. of Alberta, Horizon Bank International Ltd. of the Virgin Islands, HSBC and CIBC Bank of Alberta and First National Bank of San Diego of California are referred to (paragraphs 68-71) as "Financial Institutions"
4. "HMS Scheme". It is alleged that the HMS Defendants, other than the lawyers and accountants, were engaged in a co-ordinated illegal or unlawful "Ponzi scheme" to obtain funds from the Plaintiff Investors, contrary to the *Criminal Code* and the *Competition Act* (paragraph 73) - details provided in paragraphs 74 through 79.
 5. As to the "Lawyers", it is alleged, in paragraphs 80-84.1, that they provided legal services to the various defendant companies and individuals and it is alleged the Lawyers knew the Plaintiff Investors would rely upon the Lawyers to advise them if the representations of the HMS Scheme were untrue, particularly if the Lawyers were not holding security in trust for repayment of their investment. It is alleged that McCarthy Tetrault and Merchant Group negligently supervised the Lawyers.
 6. As to the "Accountants", in paragraphs 85 and 86, it is alleged they knew or should have known that the funds were being used and transferred in a highly unusual manner, completely out of character with any legitimate investment structure.
 7. As to "Financial Institutions", in paragraphs 87 through 93, it is alleged that they knew or ought to have known funds were transferred in a highly unusual manner which is completely out of character for the HMS Defendants.
 8. In paragraphs 94 through 95, it is claimed that the HMS Defendants, Lawyers, Accountants and Financial Institutions owe the Plaintiffs contractual obligations of duty of care and fiduciary duties, which they breached, and the Plaintiffs seek a declaration that the funds are held in an express trust.

These allegations are buttressed as to the Lawyers by paragraph 97, the HMS Defendants by paragraph 98, the Accountants by paragraph 99 and the Financial Institutions by paragraph 100.

9. Damages are sought in the sum of \$100,000,000.00; loss of investment opportunity; declaration of assets held by the Defendants are subject to a trust; a declaration that the Director of Defendants, Lawyers and Defreitas were unjustly enriched in the sum of \$100,000,000.00; an order tracing the funds; a declaration that the HMS Scheme constituted a fraud; a declaration for a "Norwich"-type relief, including but not limited to pre-discovery relief such as attachment and preservation orders, injunctions, orders requiring tracing of funds, and other relief; equitable relief; interest; punitive and aggravated damages of \$10,000,000.00.

B. Statements of Defence (none filed yet).

III. ORDERS GRANTED AND DIRECTIONS GIVEN AT CASE MANAGEMENT MEETINGS (CMM) OR OTHERWISE²

A. JUNE 23, 2006 CASE MANAGEMENT MEETING (Following Agenda Circulated)

1. Case Management Conditions and Rules (not discussed at the CMM) attached.

The following directions were provided:

2. A Defence Committee to be formed by a small number of the Defendants who are representative of all of the other Defendants and who will act as a committee on behalf of all Defendants and one of those persons or firms on their behalf should be named as the Chair of that Committee for all correspondence.

While not stated at the CMM, it would be permissible to have a sub Defence Committee (3) and sub Chair(s) for any distinct sub class(es) of Defendants.

3. Counsel should give consideration to electronic document management in the case - to be discussed at subsequent CMMs.
4. On the application by the Plaintiff to add other representative plaintiffs (Item #4 of Agenda), and upon proof of service to be provided, absent

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After June 23, 2006 in accordance with the Conditions and Rules for Case Management before Rooke, J. all, or any part of these that constitute orders and directions may be converted into a formal order by any party, but the orders and directions herein shall be considered to be an Order of the Court to be followed, or an application for amendment to be made to Rooke, J. before any deadline set.
See "Orders and Minutes - pre June 23, 2006"

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notice of intention by any party to oppose the application by July 14, 2006 to Plaintiff Counsel and the Court, the application will be granted on July 21, 2006, upon the presentation of the necessary documentation. Mr. Young can approve the Order as to form on behalf of all Defendants.

5. Order for service ex juris of Notice of Motion for Horizon granted and signed.
6. With respect to the application of the Plaintiffs to enjoin communications from David Miller FL Group (Item #5(I) of Agenda), examinations are ordered to take place by August 31, 2006 and the parties to advise of their position and/or provide an Affidavit(s) in response by September 15, 2006. Other deadlines not inconsistent with those directed may be added by consent of Counsel. Mr. Kobeweka is responsible for approving the form of the order on behalf of all Defendants.
7. The requirement of an Affidavit of Records under the Rules is suspended pending further direction of the Court on motion of any aggrieved party or in the context of Case Management. Mr. Young to approve the order on behalf of all Defendants.
8. With respect to the objections to the service ex juris (Item #5(iii) of Agenda):
 - (a) those parties who have objected or wish to object to the Order for service ex juris shall file their motions to strike by July 14, 2006;
 - (b) the Plaintiffs will file any motion for a new order for service ex juris by July 14, 2006;
 - (c) examinations will be conducted by August 11, 2006;
 - (d) any affidavit responses are due by September 1, 2006;
 - (e) cross-examinations on those affidavits will be conducted by September 15, 2006;
 - (f) the hearing date will be around October 2, 2006 - (after CMC - suggested for week of October 16, 2006) - Counsel to arrange with Justice Rooke's assistant to set a precise date and time.
9. The following Agenda items were adjourned *sine die*:
 - (a) Date or timeline for certification hearing (Agenda Item 5(iv)).
 - (b) Case Management by Justice Rooke of the Dave Miller et al action - although Justice Rooke said it was logical (Agenda Item 5(v)).

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(c) Outstanding Demands for Particulars (Agenda Item 5(vi)).

(d) All other matters.

IV. Next CMM ~~September 18, 2006 at 8:30 a.m.~~ (since CMC, changed to **September 14, 2006 at 8:30 a.m.**)

John D. Rooke
for Justice John D. Rooke
(Dictated, not read)

JDR/vh

July 5, 2006

HEIKE ENTICKNAP, as Representative Plaintiff v. HMS FINANCIAL et al

Action No. 0501-08152

CONDITIONS AND RULES OF CASE MANAGEMENT

1. Subject hereto, and to any Class Proceeding Protocol/Guidelines issued hereafter, the *Alberta Rules of Court*, and the Practice Notes (especially Practice Note #1) of the Court of Queen's Bench apply.

Unless reduced to a formal order, all communication of a case management (CM) nature will be kept separate from the formal Court file. Any direction at a Case Management Conference (CMC) will have the force of a formal order, and may be reduced to a formal order if any party so wishes, but except therefor, or upon the specific direction of Justice Rooke, no direction need be otherwise be reduced to a formal order - however, the Case Management Justice, Justice Rooke (CMJ) will issue a Case Management Memorandum (CMM) after each CMC.

Once a deadline has been set at a CMC (most often by consensus), it shall be scrupulously followed, unless amended by consent of the relevant counsel and notice to the Case Management Justice (CMJ), Justice Rooke, or on motion.

2. All interlocutory applications in this action must, except on the direction of CMJ or the Associate Chief Justice or Chief Justice, be made to the CMJ for decision. This can be accomplished, in the ordinary course after discussions as to process and timing at a CMC. Unless for good reason, Notices of Motion should only be brought by Counsel for the Plaintiff, or Counsel, being Chair of the Defence Committee, for the Defendants, or the Chair's nominee. Subject to the foregoing, once a Notice of Motion and supporting affidavit(s) have been prepared, Counsel is to contact the CMJ's assistant (Val Horne at 297-7017) to request a date for such a hearing, advising of the nature of the application, the *Alberta Rules of Court* being relied upon, the estimated time, and a recommended date(s) (advising as to whether other counsel have been consulted on the date(s)). Once a date is provided by Justice Rooke (in the ordinary case, after consultation with Counsel for the Plaintiff or Counsel, being Chair of the Defence Committee, as applicable), the documents should, before filing, be submitted to the CMJ for a Fiat in the following form on the backer:

FIAT: Leave to hear this application on _____, 200__ in public chambers, at _____ a.m./p.m. for ___ hour(s)/day(s) is hereby approved.

Justice John D. Rooke,

Case Management Justice

The same procedure, *mutatis mutandis*, and absent the need for a fiat, will be used to schedule a further CMC.

3. The CMJ will not, unless otherwise agreed by Counsel, be the trial justice, if the proceedings go to trial.
4. There is to be no communication with the CMJ except: through his assistant and except to seek a date for an interlocutory application (as in #2 above); or through the said assistant to arrange a date for a CMC; or as specifically directed by the CMJ; or for written communication necessarily incidental thereto. To be more explicit: no letters are to be written to CMJ (except as permitted by these Conditions and Rules), nor is the CMJ to be copied with correspondence between the parties or to outside parties; and the CMJ will, in the normal course, communicate directly with the parties only on hearing interlocutory applications or at CMCs.
5. Unless otherwise directed, there shall be no CMC scheduled unless requested by one or more party(ies). All CMC shall be in public chambers.
6. Recognizing the provisions of Rule 607 (effective January 1, 1998), all costs of Case Management Conferences shall be in the cause, unless specifically directed (on application or on the CMJ's own motion) to the contrary on any particular conference, all to be the subject of taxation pursuant to item #9 of Schedule C (effective September 1, 1998), but taxable after the determination of the cause.
7. All briefs of law provided to the Court to also be provided in electronic form, and any other document prepared for this case to be available to be provided to the Court in electronic form, upon request of the CMJ.
8. Counsel may apply to make amendment(s) or addition(s) to these Conditions and Rules.

Justice John D. Rooke
Case Management Justice (CMJ)