

IN SENATE
SUPERIOR COURT OF THE STATE OF NEW YORK

BETWEEN

TIM COOPER and ARNOLD LEACH

Plaintiffs

- and -

**ERMONESTO BURNS INC., BLACKMOUNT CAPITAL INC., CANAC
CORPORATION, NATIONAL SECURITY INVESTMENTS INC.,
FD SECURITIES INC., DO SHYMAN LLP, FMF CAPITAL GROUP LTD,
FMF CAPITAL LLC, FORTRESS INVESTMENT MANAGEMENT
CORPORATION, PATRY, LLP, THOMAS M. STIE, ATTH SHAI, MICHAEL POLANSKY,
EDAN KING, HOWARD MOROFF, ROBERT FLORENTZ, ERIC AYERS,
and LONE WASSBERG**

Defendants

Proceeding under the *Class Proceedings Act, 1997*

AFFIDAVIT OF ADMISSION AND OATH

I, **A. Dimitri Iancaris**, of the City of London, in the Province of Ontario, **MAKES OATH...**

AND SAYS:

1. I am a partner with the law firm of **Siskinds LLP** ("Siskinds"). Siskinds was consulted by the Plaintiffs, **Arnold Leach** and **Tim Cooper**, in their capacity as co-defendants in the "Original Action". **Arnold Leach** and **Tim Cooper** are the Siskinds lawyers with principal care and management of the "Original Action". As such, I have the knowledge to which I depose below, where that knowledge is based on information obtained from these two individuals and others in their possession to be true.
2. Capitalized terms herein have the meaning attributed to them in the Settlement Agreement among the parties hereto, dated November 22, 2006.
3. I was called to the New York State Bar and the United States District Court for the Southern District of New York, and have been a member in good standing both since that time. Additionally, I have been a member in good standing with the Law Society of Upper Canada since 2006. I have been involved in litigating class actions

since 2004, he has acquired extensive experience in civil litigation during his employment with the New York-based law firm, Sullivan & Cromwell.

4. The background, litigation, services, and representation of the individuals who are involved in this litigation, are outlined in the Affidavit of Mr. Siskinds, Exhibit C, including your cooperation in support of the appropriate disclosure. A true copy of the Affidavit of Mr. Siskinds, Ritchie, Q.C., sworn to on July 2, 2007, is also being provided to you as Exhibit D to this market as Exhibit C.

COUNSEL TEAM COMPOSITION - DIVISION OF WORK

5. Several different law firms, expended time in this matter. The time expended by six of those law firms is detailed in the following table. The seven law firms, Siskinds, Deslauriers, with respect to their fees, and the four law firms, with respect to their disbursements, which the law firms played a distinct role and, in my opinion, that counsel identified as minimal and not duplicative.

6. Siskinds is a London based firm with extensive experience in class action litigation. Siskinds retained the services of other firms. The primary counsel involved at Siskinds include myself, James McWhorter, law officer J.E. Pagan and Matthew J. Teitel.

7. Juroviesky, Ritchie LLP is a Toronto based firm with a long history of providing legal services primarily specializing in providing legal advice to Canadian companies and their subsidiaries. Juroviesky has extensive experience in respect of accounting practices, financial statements, the investment industry and other related matters. Henry Juroviesky is a retired public accountant, an attorney licensed in 1996 by the State Bar of Michigan and in 2004 by the District of Columbia, and is certified as a Chartered Accountant in Canada and a Chartered Financial Analyst. Juroviesky is a founding partner of Juroviesky, Ritchie LLP and former partner of KPMG. Arthur A. Juroviesky is a Chartered Accountant. Juroviesky expects to be called to the Ontario Bar on January 23, 2007. Juroviesky is a current member of the Michigan Bar as well as a current member of the US Tax Court and is licensed by the Law Society of Upper Canada as a foreign legal consultant annually since 2002. I am advised by Mr. Ritchie, in addition to having his law degree in law at Michigan State University, he also attended Georgetown University in Washington, D.C.

in Washington D.C. in a Masters of Laws (LL.M.) in Taxation. (With an emphasis on International taxation) I am further advised that Mr. Price was a founding partner of R

8. I commenced the first class action arising from the initial public offering ("IPO") of the securities of the Defendant PM Capital Group Ltd ("PM Group"). That action was filed in Michigan on December 3, 2003. The case immediately attracted considerable attention from the media and subsequent to that media exposure a substantial amount of time responding to inquiries and concerns from various distribution information to, Class Members.

9. My prior professional experience in class actions and my previous experience in class actions of particular note concerning and handling information were of direct relevance in this litigation.

10. Siskind commenced the above proceedings and I acted as co-counsel. Siskind's role with IR was a visible role in determining proceedings and making strategic decisions in a cooperative manner to ensure the best possible result for the Class Members.

11. An agreement between the parties was directly reached from that time and Siskind's role was taken on lead in respect of the litigation, with IR taking a supportive role to which it was best suited. These tasks included research on Michigan law, communications with the clients and the provision of U.S. tax advice in connection with the negotiation of the Settlement Agreement.

12. As part of the agreement between IR and Siskind's it was determined that Michigan counsel, experienced in complex matters, was to be provided by the law firm of Frank, Harvey, Weiner and Varco ("FHVVP") and was to be provided by the firm's partner, David Harman and Monica Herrera provided advice on U.S. law and argued before the Michigan court.

13. I was also able to assist extensively with the U.S. litigation previously by such employees at Siskind, Cremieux, Harman, Varco and Herrera ("Siskind Varco") in 1997.

14. U.S. law firm performed work on the Canadian proceeding except to the extent that U.S. and Canadian proceedings were being jointly handled, including, but not limited to, settlement drafting and communications with clients.
15. The New York law firm of Bernstein Litowitz Berger & Grossman ("BLB&G") assisted Siskinds in its initial factual investigation and initial analysis of misstated DWP values, one of the prominent securities class actions in the United States, having been lead counsel in numerous cases, including, but not limited to, Woodhouse securities litigation. One of BLB&G's internal investigators had previously been employed in a senior management position at a company which was a similar unit of JPMorgan Chase & Co., a subsidiary of JPMF Group. BLB&G consulted with Siskinds on the facts, legal issues and litigation strategy in late November 2010 and December 8, 2010.
16. After an agreement in principle had been reached between Plaintiff's Counsel and the Defendants, the law firms of Susan Brodberg Esq. and Rochon, Senécal & Blais were retained for the purpose of representing the members of Class 2 and 3, respectively, in the development of the Distribution Protocol. Most of the work required to be done was done over a limited period of time.
17. By agreement between all counsel, fifteen percent (15%) of the settlement fund is nominally allocated to the Québec Class. A separate 10% application will be made to Québec for a separate 5% of the settlement fund, for a total of 25% of the Settlement Fund.
18. As a result of the Entente d'entente (paragraph 1.1), Class Counsel agreed to restrict their legal fee request to 75% of the Settlement Fund plus disbursements and GST. Class Counsel was defined to specifically include all counsel retained or consulted by Class Counsel in its preparation of the Distribution Protocol.

PROGRESS OF THE CANADIAN INVESTMENT SUIT

19. Notwithstanding the complexity of this litigation including the involvement of numerous parties and jurisdictions, strategic decisions were made quickly and the litigation was advanced at a rapid pace.

20. The litigation steps taken were outlined in the Ritenie Affidavit at paragraphs 34 through 50. In addition to the litigation in 2007, negotiations, those involving the opposing counsel, including settlement discussions and information sharing. Even as the litigation continued, the settlement discussions proceeded on three different fronts: (i) the RITMF Defendants, the RITMF Group's creditors, and lastly, the US Trustee. The result of August 21, 2006 is the outcome of the negotiations which were completed in work. In that single week, the following were attended to:

- (a) minutes of settlement with RITMF were attended,
- (b) settlement agreement was entered into and a settlement in principle with RITMF was entered into,
- (c) responding materials to various requests for disclosure were prepared and filed,
- (d) a factum and motion materials were prepared in anticipation of the motion to stay the Ontario proceeding, and
- (e) a confidential case management conference was conducted in the Ontario litigation regarding to the timing of the Plaintiff's motion to stay the proceedings.

Quite aside from the time commitment related to the litigation and the work which had to be placed on the fire given the multiple timelines which always seemed to be running. Similarly, and a very significant financial investment in the case in a such a period of time.

INVESTIGATION

21. The best of my knowledge, neither the Ontario Securities Commission, the Ontario Securities Commission, nor any other regulatory body conducting an investigation into the events, complained by the investors in this litigation were. Was therefore no prior evidentiary jurisdiction of investigation. It was the investors' own pursuit of a recovery of their investment losses.

22. Although we were aware of the cases involved in considering a further ongoing fact and investigation prior to formal discovery, was convinced that such an investigation was necessary, and ought to be undertaken, while evidence was still available and recollections still fresh.

23. Thus, commencing in 1998, Siskinds retained only a limited number of employees of identifying, locating and interviewing former employees of the FHW. Given the downturn in the defendant's businesses, this became a significant task (there were well over one hundred former employees to reach out to). Evidence in the form of documents and videotaped interviews, was obtained and preserved from persons located in Michigan and elsewhere in the United States. The total amount of the investigation firm came to \$36,463.35. Siskinds and FHWN also incurred significant time and expense in the investigation phase.

24. When FHWN was retained, the extent of their retainer and the nature of the litigation was unclear. Some of FHWN's initial tasks were the provision of advice relating to whether the Michigan court would likely retain jurisdiction, the types of claims that could be pursued in the Michigan court as well as the prospect for certification of the class claim under Michigan state law. It was agreed that FHWN would be paid at their regular hourly rates, regardless of the outcome in the case. Through the end of 2006, FHWN have been paid C\$22,242.44¹ in fees and disbursements.

25. Class Counsel had no authority in Class Proceedings and to fund the disbursements. Siskinds instead bore the costs of this litigation until a settlement was now payable to the Fund. The unwillingness of Siskinds to incur the cost of the expenses and to assume the risk of a loss of the litigation.

NOVEL ISSUES AND UNUSUAL RISKS

26. In a relatively short period of time, Class Counsel have dealt with a number of novel issues, some of which are: (a) whether the Michigan court would retain jurisdiction over the class members; (b) whether a Canadian court of the Michigan state court was the preferable forum;

(a) whether the analysis of outcome uses the same criteria for all Class members or should maintain the subject class.

(b) whether a Canadian court of the Michigan state court was the preferable forum.

¹ All Canadian dollar amounts herein have been calculated using the exchange rate as at January 16, 2007: 1.174794.

- (c) whether the lead underwriter, Defendant, BMO Nesbitt Burns, Inc., could have liability to secondary market purchasers;
- (d) such interpretation of New York's 1932(2) of the rules of Civil Procedure, and whether Ontario or Toronto was the more appropriate venue for the case management of this proceeding;
- (e) the appropriateness of establishing a vicarious liability claim under applicable law;
- (f) whether a standard underwriting agreement which provides underwriters with an indemnification from the issuer is a discharge of liability or an exonerating agreement, and under what circumstances a plaintiff could establish vicarious liability of underwriters where a sentence is rendered with an issuer;
- (g) the appropriateness of establishing a vicarious liability claim under applicable law;
- (h) the availability of a claim for damages between a primary and secondary market purchaser in a class action which encompasses both groups.

27. The litigation also presented substantial and foreseeable litigation issues, including:

- (a) the risk that FMEG Corp. would become insolvent;
- (b) the risk that a court would curtail the action or a part of it;
- (c) the risk that the court would not certify the class or that the court would not certify the class or that the court would not certify the class or that the court would not certify the class;
- (d) the risk that the Plaintiffs would not be able to establish a causal connection between those misrepresentations and the loss of their investments;
- (e) the risk that the Plaintiffs would not be able to prove individual reliance; and
- (f) even if the event that a Plaintiff was aware of the misrepresentations at the time of the litigation, the Plaintiffs were aware that the Defendants could be liable for the misrepresentations, thereby considerably delaying the completion of the class members.

EFFICIENT USE OF RESOURCES

28. The purpose of this work of all parties, but particularly the parties who are not party to the Settlement Agreement, is to ensure that the work is done by those persons and in those circumstances which will ensure that the Settlement Agreement is made quickly. The Settlement Agreement, as a document, is twenty-nine pages in length (not including exhibits) and which had different priorities and interests, was drafted over a period of business days.

29. The Settlement Agreement was drafted in accordance with the above principles as soon as possible. The Settlement Agreement and Distribution Protocol was negotiated and drafted between October 2006 and November 2006.

30. The risk that there would not be a positive result and a payable concluded until the day the Settlement Agreement was executed, to the extent it remains impossible, for example:

- (a) the settlement with the FME Defendants, which was the first settlement negotiated, was complicated in obtaining a release of the FME Defendants from future claims by the Underwriters of FME, and the Underwriters anticipated that the approval of the FME Defendants by the Underwriters, given the contractual relationship;
- (b) the FME Defendants were, for a considerable time, not satisfied with the settlement terms and were not prepared to find the settlement in any meaningful way, and FME Group only obtained agreement from its insurers of a settlement in principle was obtained with the Underwriters, immediately prior to the October 2006 case conference;
- (c) the FME Defendants advised that a final settlement agreement could not be reached by November 2006, this could jeopardize the relationship with the lenders and therefore the Settlement;
- (d) the various commitments issued to the FME Defendants, such as the Settlement Agreement, various commitments issued to the FME Defendants, which were not finalized;
- (e) in addition to all of the above, the Settlement Agreement remains subject to court approval and contains a right of termination in the event of a change of control or -- In addition, the Settlement Agreement will include a final offer and the conclusion of the opt-out period or such period as the FME Defendants elect not to exercise a right of termination (if one arises).

VALUE OF SETTLEMENT

31. The total value of the settlement at the time of deposit accrued as of January 5, 2007, for the benefit of the class is \$95,200,000. At the current rate, the Settlement Fund will have over \$100,000,000 in assets by March 15, 2007. The approximate value of the Settlement Fund (including interest) will be approximately \$1 billion in assets will have been received.
32. Additionally, in the negotiation of the Settlement Agreement, Class Counsel were conscious of matters which, although not resolved in the Settlement Agreement, were valuable to some or all Class Members including:
- (a) payment of settlement funds without any business costs of execution;
 - (b) the FMF Defendants' agreement to indemnify and hold the issuer of the securities to be bought (Class Members who invest in the issuer);
 - (c) the settlement in principle reached with the FMF Defendants in 2006 included a provision for extensive and complete relief for Class Members who have benefited from the class action litigation, including a provision for attorneys' fees;
 - (d) the Underwriters agreed to bear the cost of providing the two notices to their clients and of the negotiation of the main body of the Settlement Agreement, such that those costs are not borne from the Settlement Fund; and
 - (e) corporate governance provisions were negotiated.

TIME SPENT AND DISBURSEMENTS INCURRED

33. I have reviewed the details of time and disbursements incurred by each law firm included in this fee application and am satisfied that the time indicated below was actually and reasonably spent. In one instance a firm is not fully detailed and its costs were unclear with respect to the work performed.

34. The hourly rates of the primary lawyers involved, are summarized in the table below:

Fees:

LAWYER	EXPERIENCE	HOURLY RATE (PER HOUR)	DATE
Glenn M. Wright	Admitted to the Ontario Bar in 1995	\$175.00	2006
A. Dimitri Dascaris	Admitted to the Ontario Bar in 1999, the Ontario Bar in 2002	\$175.00	2006
Raymond F. Treabie	Admitted to the Ontario Bar in 1978	\$175.00	2006
Monique E. Radford	Admitted to the Ontario Bar in 2002	\$175.00	2006
Laurel E.H. Bach	Admitted to the Ontario Bar in 2006	\$175.00	2006
Nicola Young	Admitted to the Ontario Bar in 2006	\$175.00	2006
TOTAL AEL'S BILLS BY PROFILE			
		\$54,750.00	
NOTED (taxes incl.) \$51,400.00			
Henry J. S. Agency	Admitted to the Maryland State Bar in 1979 and the District of Columbia State Bar in 2003. Certified in Foreign Law. Consultant to USOC 2002-2006.	\$400.00	2006
Monique E. Radford	Admitted to the Michigan Bar in 2006. Legal Consultant to USOC 2002-2006.	\$400.00	2006
Monique E. Radford	Admitted to the Ontario Bar in 2002.	\$175.00	2006

NAME	EXPERIENCE	HOURS	RATE	TOTAL
Kevin Casper	2004 New York State Bar 2005	1511.22	@ \$100.00	\$151,122.00
Elie Kapf	Called to the Bar Quebec Bar 2000	2221.8	@ \$100.00	\$222,180.00
Amanda Wang	Called to the Bar Quebec Bar	435.20	@ \$150.00	\$65,280.00
Melissa Lafontaine	Called to the Bar Quebec Bar	294.00	@ \$350.00	\$102,900.00
TOTAL ALL PROFESSIONALS				\$541,482.00
TOTAL (incl.)				\$541,482.00
Ray S. Sirovsky	Called to the Bar Quebec Bar 2002	20.00	@ \$350.00	\$7,000.00
Harvey A. Tsiftoglou	Called to the Bar Quebec Bar 1991	50.60	@ \$350.00	\$17,710.00
TOTAL ALL PROFESSIONALS				\$24,710.00
GST (6%)				\$1,482.60
TOTAL (incl. taxes)				\$26,192.60
Michel Rochon Jr.	Called to the Bar Quebec Bar 1988	21.00	@ \$350.00	\$7,350.00
Patrice DeFebo	Called to the Bar Quebec Bar 1984	29.20	@ \$350.00	\$10,220.00
Sakie Panopoulos	Called to the Bar Quebec Bar	30.00	@ \$350.00	\$10,500.00
TOTAL ALL PROFESSIONALS				\$28,070.00
GST (6%)				\$1,684.20
TOTAL (incl. taxes)				\$29,754.20
Monica Morvan	Called to the Bar Quebec Bar 1975	100.00	@ \$350.00	\$35,000.00
David Hutton	Called to the Bar Michigan State Bar 1969	97.75	@ \$300.00 (US\$)	\$29,325.00
Michelle D. Bayre	Called to the Bar Michigan State Bar 1997	60.00	@ \$150.00 (US\$)	\$9,000.00
Christina	Called to the Bar Michigan State Bar	27.50	@ \$80.00 (US\$)	\$2,200.00

LAWYER	AMOUNT	DATE
Mercedes L. Vassallo Law Clerk	10,750.00	10/1/00
TOTAL ALL FIRMS:		
Converted to	ADS 204,342.38	
GST (6%)		
	12,200.53	
TOTAL (tax incl)		
	210,602.72	
David Kleinbard	10,000.00	10/1/00
TOTAL ALL FIRMS:		
Converted to	CAL 1,576.13	
GST (6%)		
	94.57	
Total (tax incl)		
	1,670.70	
TOTAL FEE ALL FIRMS		
	212,273.42	
TOTAL GST (6%)		
	12,200.53	
TOTAL (tax incl)		
	224,473.95	

35. Approximately forty-nine percent (45%) of Mr. K's time was expended in connection with the commencement of the litigation at the time when they were representing the Plaintiff and interacting heavily with class members.

36. The primary counsel on the Plaintiff's litigation received relatively low hourly rates. I, myself and Charles M. Wright, and the partners at [redacted] have 100% hourly rates of \$375, \$450 and \$400 respectively, as compared to the senior counsel retained by the Defendants. Requests for costs filed in Ontario and Michigan indicate that the most senior counsel for each defendant bill at an average hourly rate of approximately \$600.00 and the Defendants claimed \$88,898.51 in partial indemnity costs relating to the filing of Venue motions.

37. The total disbursements for the six firms that were compensated from this fee application are as follows:

DISBURSEMENTS

Binding supplies	\$207.30
Copies	\$37,110.53
Court filing fees & service of summons	\$1,000.00
Expert Reports	\$103,400.00
Fax transmission charges	\$237.41
Investigation	\$19,370.12
Investment Account Administration & Other Bank Charges	\$2,110.00
Law Society Surcharge	\$0.00
Long distance telephone charges	\$4,250.97
Long-haul telephone charges	\$1,613.95
Printing	\$150.00
Postage and freight	\$675.17
PR Media Exposure	\$1,000.00
Research Resource	\$20,000.00
Travel & Meals	\$27,860.00
Transcripts	\$2,277.44
Travel (imputed) for PD, [redacted]	\$1,000.00
	Sub Total \$28,476.49
	Total Direct Disbursements \$78,576.00
	GST (8%) \$6,286.13
	TOTAL \$84,862.13

FUTURE WORK

38. The work is not included in the preceding time and disbursements summaries. The work spent and disbursements incurred relating to the following:

- (a) the approval motions in Ontario and Québec;
- (b) the dismissal of the Michigan proceeding;
- (c) instruction of the Class Counsel;
- (d) responding to Class Member inquiries;
- (e) reviewing any opt outs and addressing any issues that may arise relating to opt outs;
- (f) responding to concerns of the Claims Administrator or Class Members concerning the administration, including any appeals or motions to the courts; and
- (g) arranging for the winding up of the estate and distribution of the proceeds to the courts.

39. No fee will be payable to Class Counsel under this Settlement Agreement in each of Ontario and Québec and upon admission of the Michigan proceeding. The opt-out period will also have to conclude and the right to participate pursuant to section 4 of the Settlement Agreement will have to expire or not be exercised.

