

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**UNITARIU**

THE COULD and ARCHIE LEACH

Plaintiffs

- and -

EMO ROBERT BOGANS INC.; BLACKMONT CAPITAL INC.; CANACCORD CAPITAL  
SECURITIES INC.; BDO SEIDMAN, LLP; FMF CAPITAL GROUP LTD.;  
EMF CAPITAL LLC; FIVE HOLDINGS, LLC; MICHIGAN FIDELITY CORPORATION  
CORPORATION; PKF, LLC; THOMAS LITTLE; ATUL SHAH; MICHAEL HOFFMAN;  
EDAN KING; HOWARD MOROF; ROBERT PILGOWITZ; ERIC SLAVENS;  
and LORIE WAISBERG.

Defendants

**AFFIDAVIT OF STANLEY SAGAN**  
(sworn January 7<sup>th</sup>, 2007)

I, STANLEY SAGAN, of the City of North York in the Province of Ontario, MAKE

1. I am a Plaintiff in the Michigan Action (as defined in the Settlement Agreement). Except as otherwise noted, I have the knowledge denoted below. Where that knowledge is based on information obtained from others, I have so indicated below, and I believe that information to be true. I make this affidavit in support of: (i) the Plaintiffs' motion for approval of the Settlement Agreement; and (ii) the fee application of Class Counsel (as defined in paragraph 16 below). I make this affidavit for no other or improper purpose.

("IPSS") in the Company's March 2005 initial public offering ("IPO"). Pursuant to the Settlement Agreement, I should qualify as a Class I Member (as it is defined in the Settlement Agreement).

The litigation

... I retained Juroviesky & Ricci ("Juroviesky & Ricci") to commence an action against the Defendants with respect to information disseminated by the Defendants (or some of them) during the IPO and subsequently during the Class II Period (as defined in the Settlement Agreement). That information concerned the Company's business and affairs. Attached as Exhibit "A" is a copy of my retainer agreement with Juroviesky & Ricci (the "Retainer").

4. Prior to the commencement of this action, I discussed the nature of the claim against the Defendants with Henry Juroviesky and Jonathan Ricci, both partners at Juroviesky &

(100). Having discussed the issues with them at length, I can affirm that I believe in the

misrepresentations, and that, subsequent to the IPO, certain of the Defendants issued statements to the investing public that contained further misrepresentations.

... Juroviesky and Ricci have kept me

involving only the EMT Defendants (as defined in the Settlement Agreement), including BDO Seidman LLP ("BDO"), and lastly including the remaining Underwriter Defendants (as defined in the Settlement Agreement). My instructions were sought, given, and implemented by Juroviesky & Ricci throughout this process.

... the information of the terms of the Settlement

Agreement. Class Counsel (as defined in paragraph 6 below) retained separate legal

counsel for the Class I Members and for the Class II Members. I was advised, by Mr. Ricci, and I believe in the truth of the information, that the law firms of Suttis, Strosberg LLP and Rochon Genova LLP were retained to represent the interests of the members of Class I and Class II, respectively, in connection with the allocation of the Settlement Fund between these Classes. In aid of that information,

Class I Member, by receiving advice from and giving instruction to Jay Strosberg, a

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damages of 26% was appropriate.

Strosberg and I am satisfied that this result is fair and reasonable to Class I Members.

**THE TERMS OF SETTLEMENT**

**CONTAINED HEREIN**

11. I, in particular, I am aware and approve of the total quantum of consideration being paid to

12. the Defendant's relative contributions. I understand these contributions to have followed:

(i) C\$21,000,000 from the FMR Defendants; (ii) C\$5,750,000 from the Underwriter

C\$28,651,700 after conversion to Canadian dollars, plus the interest accrued to the date the Settlement Fund is disbursed (the "Settlement Fund").

13. I believe that the Defendant's contributions to the Settlement Fund, including changes to the (i) mandate of the Board of Directors, and (ii) the Company's Audit Committee Charter, are fair and reasonable consideration for the dismissal of this action.

14. I understand that the costs of the litigation and the costs of the Settlement Fund are payable from the Settlement Fund. I further understand that the fees and disbursements of Class I counsel (as defined at paragraph 10) are payable from the Settlement Fund.

15. I understand that the plan of dissemination for the Settlement Fund outlined therein. Members may apply for compensation and the plan of dissemination for the Settlement Fund outlined therein.

Class Counsel Fees

12. This litigation was undertaken on a contingency basis such that I would not be paid for fees or disbursements unless successful.

13. I have been advised by Mr. Ricci, and believe in the truth of the information, that this

Juroviesky & Ricci, namely, Siskinds <sup>LLP</sup>, Siskinds-Desmeules, S.E.N.C.R.L., and Frank,

Ontario law firms of Suite, Stockars <sup>LLP</sup> and Baskin <sup>LLP</sup>

members of Class I and Class II in connection with the allocation of the Settlement Fund between those Classes (All of the foregoing law firms are referred to collectively herein as "Class Counsel")

that disbursements in excess of C\$190,000 have also been expended. I further understand

approval and implementation of this Settlement Agreement for approximately one additional year. I am informed by Mr. Ricci, that Juroviesky & Ricci estimates that by the time the Settlement Agreement has been approved in Ontario and Québec, the action commenced in Michigan has been dismissed, and the administration of the Settlement Fund has been completed the fees accrued will be in excess of C\$2,200,000.

18. The Retainer I entered into provided that I would pay 33%

33% of the total value of the settlement, plus disbursements and G.S.T. I am informed by Mr. Ricci, and believe in the truth of the information, that an arrangement has been made between the various lawyers representing the Class Members in the Michigan, Ontario and Québec proceedings by which all counsel have agreed to limit the legal fee

discussed in detail below. I support Juroviesky & Ricci's arrangement for the percentage or their recovery of legal fees from the percentage agreed upon in the Retainer.

19. I am further advised by Mr. Ricci that

Class Members other than those resident in Québec will be nominally allocated 85% of

the Settlement Fund, being C\$24,353,945 plus accrued interest, for the purposes of the

fee application of counsel in the Ontario and Michigan proceedings. Which application

members resident in Quebec will be nominally allocated 15% of the Settlement Fund

being C\$4,297,755 plus accrued interest, for the purposes of the fee application of

counsel in the Québec proceedings. As a result, the fee application before the Ontario

court will amount to a fee request for fees up to, but not in excess of, 25% of the portion of

the Settlement Fund and nominally allocated to the class members outside of Quebec, being

C\$6,088,486.20. Likewise, Québec Class Counsel will make a fee request up to but not

in excess of 25% of the portion of the Settlement Fund and nominally allocated to the Class

Settlement Agreement, that no other legal fees will be sought by any Class Counsel from  
any other source, in any other proceeding, on account of the fees accrued in connection  
with this litigation.

SWORN BY AFFIRMED BELIEVE ME

at the City of Toronto, in the  
Province of Ontario, on January 25,

Commissioner of the Superior Court of Justice

STANLEY SAGAN

THIS IS EXHIBIT "A" MENTIONED  
AND REFERRED TO IN THE AFFIDAVIT OF  
STANLEY SAGAN

SWORN BEFORE ME IN THE CITY OF Toronto

THIS SUNDAY OF JANUARY, 2007.

  
\_\_\_\_\_  
A Commissioner for Taking Affidavits



**PRIVILEGED & CONFIDENTIAL**

Dear Client(s):

**RMR Capital LLC, et al. Retention Agreement**

Attorneys) by those institutions or individuals (the "Plaintiff" or "Client") who have  
retained the Attorneys to represent them in the litigation.  
The Attorneys are not participating Attorneys ("PS").

Attorneys of RMR Capital Group Ltd. (the "Litigation");

considerable risk;

WHEREAS the Litigation requires the expenditure of substantial resources by the  
Attorneys retained to prosecute the Litigation

their own resources;

**I. SCOPE OF SERVICES/CASE HANDLING**

B. The Attorneys shall provide sufficient resources, including attorney time  
and capital for the purpose of the Litigation.

<sup>1</sup> Please note that for purposes of this Retention Agreement, the Attorneys are not participating Attorneys ("PS").  
person executing this agreement under the Chief Executive section.

C. Any recovery will be divided among Clients based on the recognized loss by each Client as calculated by a damage allocation account for such factors as size of stock ownership, date of sale, and

D. The Attorneys are given the authority to conduct the Litigation proceedings relating to the claims authorized herein, if the Attorneys are not appointed Class Counsel.

## II. CONTINGENT FEE AGREEMENT

not liable to pay any of the expenses of the Litigation, whether attorneys' fees or costs. Recovery of costs and other expenses is contingent upon a

B. The sole contingency upon which Attorneys shall be compensated is a recovery in the Litigation, whether by settlement or judgment. Compensation shall be 33% of the total recovery, plus reasonable

limited to costs of travel expenses, telephone, copying, fax transmission, depositions, investigators,

UNLESS OTHERWISE

C. In the event that the Litigation is resolved by settlement under terms involving any "in-kind" payment such as stock, the contingent fee agreement shall apply to such "in-kind" payment.

## III. GENERAL REQUIREMENTS

A. This Agreement may not be assigned by the Attorneys.

C. Client recognizes that the Attorneys are representing other FMF Capital Group investors in the Litigation. The Client agrees that any conflicts caused by such representation are waived.

IV. TERMINATION

A. Client may terminate this Agreement as to any Attorneys, with or without

V. NOTICE

The Client's address on file with the Attorneys.

B. Any actions arising out of this Agreement shall be governed by the laws of Michigan, and shall be brought and maintained in a Michigan Court, which shall have exclusive jurisdiction thereof.

C. This agreement, along with the signed Authorization to FME Capital LLC, et al. Certification form, sets forth the entire

1. The Plaintiff did not acquire the security that is the subject of this action at the

2. The Plaintiff, his or her authorized representative party or behalf of the class, including providing testimony at deposition and trial.

3. The Plaintiff represents and warrants that he/she/it is fully authorized to enter into and execute this certification.

7. The Plaintiff will not accept any payment for serving as a representative party on

reasonable costs and expenses (including lost wages) directly relating to the

5. The Plaintiff has made no transaction(s) during the Class Period in the debt or equity securities that are the subject of this action.

6. During the three years prior to the date of this Retention Agreement, Plaintiff has not sought to serve or acted as a representative party in any federal or state securities laws.

We look forward to working with you.

Henry Juroviesky  
Managing Partner  
416.481.0718 ext. 324  
HJ:

Enclosure

ACCEPTED:

STANLEY DAGAN  
Full Name (PRINT CLEARLY)

[Signature]  
Client Authorized Signature

Feb. 3rd 2006  
Date (MM/DD/YYYY)

[Signature]

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