

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

KENNETH SMITH, as Estate Trustee of the Last Will and Testament of
Margaret Smith, deceased, and RONALD ORIET

Plaintiffs

and

SUTTS, STROSBERG LLP, HEENAN BLAIKIE LLP, PALIARE ROLAND
ROTHSTEIN ROSENBERG LLP and KOSKIE MINSKY LLP

Appellants

and

NATIONAL MONEY MART COMPANY and
DOLLAR FINANCIAL GROUP, INC.

Defendants
(Respondents)

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF APPEAL

CLASS COUNSEL FOR THE PLAINTIFFS APPEAL to the Court of Appeal from the
Order of Justice Paul Perell dated March 3, 2010, made at Toronto.

THE APPELLANTS ASK that the Order be varied as follows:

- (i) the fees of Professor Krishna totalling \$9,750 and Fraser Milner Casgrain LLP (“FMC”) totalling \$25,131.67 be categorized as part of Class Counsel’s base fee and increased

by the multiplier/premium that this court may award or by the multiplier/premium awarded to Class Counsel by the motion judge;

(ii) the fees of PricewaterhouseCoopers (“PWC”) totalling \$774,873 and Mr. Anand totalling \$16,000 be increased by the multiplier/premium that this court may award or by the multiplier/premium awarded to Class Counsel by the motion judge;

(iii) Class Counsel be awarded fees in the amount of \$20 million, inclusive of disbursements, GST and the fees sought on behalf of PWC, Mr. Anand, Professor Krishna and FMC; and

(iv) the \$3,000 awarded to the representative plaintiff Ronald Oriet be paid by the Class and not by Class Counsel;

THE GROUNDS OF APPEAL are as follows:

(i) the motion judge erred in concluding that Class Counsel required court approval before adding Professor Krishna and Ms. Miller from FMC to the Class Counsel team;

(ii) the motion judge erred by categorizing the legal fees, disbursements and taxes of FMC and Professor Krishna as disbursements, rather than including their legal fees as part of Class Counsel’s base fee and awarding them the same multiplier as Class Counsel;

(iii) alternatively, the motions judge erred in fixing the amount of the legal fees, calculated at usual hourly rates, of FMC and Professor Krishna as a disbursement without increasing the amount of their fees to reflect the contingent nature of their contract/arrangement

with Class Counsel and in failing to award them the same multiplier/premium awarded to Class Counsel or such other multiplier/premium as this Court may award to Class Counsel;

(iv) the motion judge erred in fixing the amount of the professional fees of PWC and Mr. Jay Anand, calculated at their usual hourly rates, as a disbursement without increasing the amount of their fees to reflect the contingent nature of their contract/arrangement with Class Counsel and in failing to award them the same multiplier/premium awarded to Class Counsel or such other multiplier/premium as this Court may award to Class Counsel;

(v) the motion judge erred by failing to consider or apply the proper factors to determine the appropriate multiplier to be applied to Class Counsel's base fee;

(vi) the motion judge erred by conflating the test for approval of Class Counsel's base fee with the test for approval of a multiplier of that base fee;

(vii) the motion judge erred in fact and in law by failing to award Class Counsel fees that are fair and reasonable in the circumstances; and

(viii) the motion judge erred in ordering Class Counsel to pay the \$3,000 in compensation that was properly awarded to the representative plaintiff Ronald Oriet.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (i) s. 6(1)(b) of the Courts of Justice Act, R.S.O. 1990, c. C.43
- (ii) the Order appealed from is final.
- (iii) leave to appeal is not required.

March 30, 2010

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Plaintiffs (Appellants)

-and- SUTTS, STROSBURG LLP, et al.

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-and- NATIONAL MONEY MART COMPANY, et al.

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Court File No.

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PROCEEDING COMMENCED AT
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