

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARC CHARETTE and ANDREW CUMMING

Plaintiffs

and

TRINITY CAPITAL CORPORATION,
TRINITY WOOD CAPITAL CORPORATION,
CAPITAL STRUCTURES LTD.,
CAPITAL STRUCTURES 2002 LTD.,
TC CAPITAL LIMITED, JAMES DOUGLAS BEATTY,
JAMES GORDON ARNOLD,
THE JOHN McKELLAR CHARITABLE FOUNDATION,
FRASER MILNER CASGRAIN LLP, GRAHAM TURNER,
BDO DUNWOODY LLP and RALPH THOMAS NEVILLE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

Made as of the 13th day of February, 2019

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SETTLEMENT AGREEMENT

SECTION 1 – RECITALS

1.1 WHEREAS:

- A. The Plaintiffs commenced this Action and have alleged that some of the Defendants were negligent in designing the Program and that the Settling Defendants were negligent in preparing professional opinions that were used to market the Program;
- B. The Action was dismissed against the Foundation by order dated July 4, 2012;
- C. The Action was certified as a class proceeding by Order dated May 30, 2013;
- D. Trinity Capital Corporation, TC Capital Limited, Capital Structures 2002 Ltd., Capital Structures Ltd. and James Douglas Beatty were noted in default on January 29, 2016;
- E. Trinity Wood Capital Corporation was noted in default on March 14, 2016;
- F. James Gordon Arnold was noted in default on January 22, 2019;
- G. The Plaintiffs and the Settling Defendants have negotiated a Settlement of the Action that is subject to and conditional upon approval of the Court;
- H. The Settling Defendants deny liability in respect of the claims alleged in this Action and vigorously deny any wrongdoing or liability of any kind whatsoever;
- I. The Settling Defendants state that they would have actively and deliberately pursued affirmative defences at trial had this Action not been settled;
- J. The Plaintiffs and the Settling Defendants, through counsel, have engaged in hard-fought and extensive arm's-length settlement discussions and negotiations in respect of this Settlement through a mediation with Joel Wiesenfeld, mediator;
- K. As a result of these settlement discussions and negotiations, the Plaintiffs and the Settling Defendants have entered into this Agreement, which embodies all of the terms and conditions of the Settlement among the Settling Defendants and the Plaintiffs, both individually and on behalf of the Class and subject to approval of the Court;

L. The Settling Defendants and the Plaintiffs have negotiated and entered into this Agreement to fully, definitively and permanently resolve, settle and release and discharge all claims asserted, or which could have been asserted against the Settling Defendants and/or the Released Third Parties by the Plaintiffs on their own behalf and/or on behalf of the Class or by a third party for contribution and indemnity in respect of a claim asserted against them by the Plaintiffs, and to avoid the further expense, inconvenience, and burden of this litigation and avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;

M. The Plaintiffs have agreed to accept this Settlement, in part, because of the Settlement Amount to be provided by the Contributing Parties under this Agreement, as well as the attendant risks of litigation in light of the potential defences that may have been asserted at trial by the Settling Defendants;

N. The Settling Defendants do not admit, through the execution of the Agreement, any of the conduct alleged in this Action and expressly deny any and all allegations of wrongdoing;

O. The Plaintiffs and Class Counsel confirm that neither the Agreement, nor any statement made in the negotiation thereof, shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants;

P. The Plaintiffs and Class Counsel have reviewed and fully understand the terms of the Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs, and having regard to the burdens and expense in prosecuting this Action, including the risks and uncertainties associated with trials and appeals, have concluded that this Settlement is fair, reasonable and in the best interests of the Plaintiffs and the Class. The Plaintiffs and the Settling Defendants therefore wish to, and hereby do, finally resolve, without admission of liability, this Action; and

Q. For the purposes of settlement only and contingent on the conditions described herein, the Plaintiffs have consented to a dismissal of this Action without costs and with prejudice.

NOW THEREFORE, in consideration of the covenants, agreements, promises and releases set forth herein and for other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, it is agreed by the Plaintiffs and the Settling Defendants that this Action be settled on the merits, subject to the approval of the Settlement by the Court, and that all Released Claims against the Settling Defendants and the Released Third Parties which any Releasor shall or may have or assert against any of the Settling Defendants or the Released Third Parties be forever extinguished and released on the following terms and conditions:

SECTION 2 – DEFINITIONS

2.1 Definitions

For the purposes of the Agreement, including the Recitals and Schedules hereto:

- (1) **Action** means *Charette et al v Trinity Capital Corporation, et al*, brought in the Ontario Superior Court of Justice under Court File No. CV-11-422085.
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of disseminating notices and the fees, disbursements and taxes paid to the Administrator, the person appointed to receive and report on objections to the Settlement to the Court, the Referee, and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses include the Non-Refundable Expenses but do not include Class Counsel Fees.
- (3) **Administrator** means the third-party firm appointed by the Court to administer the Agreement, and any employees of such firm.
- (4) **Agreement** means this settlement agreement, including the Recitals and Schedules.
- (5) **Authorized Claimant** means any Class Member who has been approved for compensation by the Administrator.
- (6) **Claim Form** means the form or forms which, when completed and submitted in a timely manner to the Administrator, enables a Class Member to apply for compensation pursuant to the Agreement.

- (7) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Administrator which date shall be set out in the Second Notice and which shall be at least one hundred twenty days (120) days after the date on which the Second Notice is last disseminated.
- (8) **Class or Class Members** means all persons, other than Excluded Persons, who participated in the Program in at least one of the taxation years of 2001, 2002 or 2003.
- (9) **Class Counsel** means Strosberg Sasso Sutts LLP and Groia & Company Professional Corporation.
- (10) **Class Counsel Fees** means the fees, disbursements, and any applicable taxes and a *pro rata* share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.
- (11) **Contributing Parties** means Fraser Milner Casgrain LLP, BDO Canada LLP and their insurers who have or will fund the Settlement.
- (12) **Court** means the Ontario Superior Court of Justice.
- (13) **CPA** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended.
- (14) **Defendants** means Trinity Capital Corporation, Trinity Wood Capital Corporation, Capital Structures Ltd., Capital Structures 2002 Ltd., TC Capital Limited, The John McKellar Charitable Foundation, Fraser Milner Casgrain LLP, BDO Canada LLP, James Gordon Arnold, James Douglas Beatty, Ralph Thomas Neville and Graham Turner.
- (15) **Effective Date** means either: (i) the date on which the Second Order has become a final order and the time for any appeals has expired; or (ii) if an appeal is taken from the Second Order, relating only to Class Counsel Fees, then thirty (30) days after the issuance of the Second Order.
- (16) **Escrow Account** means the interest bearing Canadian currency trust account with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest bearing account in a Canadian Schedule 1 bank in Ontario, initially under the control of Strosberg Sasso Sutts LLP and then transferred to the control of the Administrator once the Settlement is final.

(17) ***Escrow Settlement Amount*** means the Settlement Amount plus any interest accruing thereon as a result of investment thereof after payment of all Non-Refundable Expenses, Class Counsel Fees and any Administration Expenses.

(18) ***Excluded Persons*** means

- (a) James Gordon Arnold, James Douglas Beatty, Ralph Thomas Neville and Graham Turner;
- (b) Trinity Capital Corporation, Trinity Wood Capital Corporation, Capital Structures Ltd., Capital Structures 2002 Ltd., TC Capital Limited, The John McKellar Charitable Foundation, Fraser Milner Casgrain LLP, BDO Canada LLP and their past or present subsidiaries, affiliates, legal representatives, General Counsel, predecessors, successors and assigns;
- (c) any person who was an officer or director of the corporate defendants during the Class Period;
- (d) any immediate member of the Individual Defendants' families;
- (e) any entity in which any of the above persons has or had during the Class Period any legal or de facto controlling interest; and
- (f) all persons who validly opted out of the Action in accordance with section 9 of the Order of Justice Belobaba dated May 30, 2013.

(19) ***First Motion*** means the motion brought before the Court, for an order:

- (a) setting the date for the hearing of the Second Motion;
- (b) approving the form of the First Notice;
- (c) approving and authorizing publication and dissemination of the First Notice pursuant to the Plan of Notice;
- (d) appointing Strosberg Sasso Sutts LLP to control the Escrow Account; and
- (e) appointing Gregory D. Wrigglesworth of Kirwin Partners LLP to receive and report on objections to the Settlement, if any.

- (20) **First Notice** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule “B”.
- (21) **First Order** means the order made by the Court granting the relief sought on the First Motion, substantially in the form of the order at Schedule “A”.
- (22) **Foundation** means The John McKellar Charitable Foundation.
- (23) **Individual Defendants** means James Gordon Arnold, James Douglas Beatty, Ralph Thomas Neville and Graham Turner.
- (24) **Non-Refundable Expenses** means certain administration expenses stipulated in section 4.1(1) of the Agreement to be paid from the Settlement Amount.
- (25) **Plaintiffs** means Marc Charette and Andrew Cumming.
- (26) **Plan of Allocation** means the plan for the distribution of compensation to Class Members, as approved by the Court.
- (27) **Plan of Notice** means the plan for disseminating the First Notice and the Second Notice to the Class, as approved by the Court, which shall substantially be in accordance with the plan attached as Schedule “C”.
- (28) **Program** means the Donation Program for Medical Science and Technology.
- (29) **Referee** means Gregory D. Wrigglesworth of Kirwin Partners LLP or such other person or persons appointed by the Court to serve in that capacity.
- (30) **Released Claims** (or **Released Claim** in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever and wherever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity or at common law, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees relating or connected in any way to the sales and marketing of the Program, or in relation to any professional opinions prepared by the Settling Defendants, or any of them, concerning the Program, or to any conduct alleged, or that could

have been alleged, in the Action, including, without limitation, any such claims that have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere.

(31) **Released Third Parties** means Peter Browning, Peter Filion, G.W. Culverson, GQ Financial Corporation, Parallel Management Inc., , Moore Stephens Cooper Molyneux LLP, Triple Win Incorporated, Wildman & Associates Wealth Management Inc., Meyers Norris Penney LLP, Creative Wealth Management Group Inc., Global Tax Group Inc., and 4042603 Canada Inc. For greater certainty, Released Third Parties does not include Pepper Weberg Trading & Investment Corporation, IPC Securities Corporation, or IPC Investment Corporation.

(32) **Releasees** means the Settling Defendants and the Released Third Parties, and their respective past and present affiliates, and subsidiaries, and each of their respective insurers, reinsurers, directors, officers, partners, employees, agents, trustees, servants, parents, successors, predecessors, assigns and each of their respective heirs, executors, administrators, guardians, estates, trustees, successors and assigns.

(33) **Releasors** means, jointly and severally, the Plaintiffs, the Class Members and their respective past and present predecessors, affiliates, subsidiaries, directors, officers, employees, partners, parents, agents, trustees, servants, shareholders, heirs, executors, administrators, guardians, estate trustees, successors and assigns, as the case may be.

(34) **Second Motion** means the motion brought in the Court for an order:

- (a) approving the Settlement;
- (b) appointing the Administrator and the Referee;
- (c) approving the Second Notice;
- (d) approving the Plan of Allocation;
- (e) dismissing this Action without costs and with prejudice; and
- (f) approving Class Counsel Fees.

(35) **Second Notice** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule “E”.

(36) **Second Order** means the order made by the Court granting the relief sought on the Second Motion, substantially in the form of the order at Schedule “D”.

(37) **Settlement** means the settlement provided for in the Agreement.

(38) **Settlement Amount** means \$37,000,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement.

(39) **Settling Defendants** means Fraser Milner Casgrain LLP, Graham Turner, BDO Canada LLP (Formerly BDO Dunwoody LLP) and Ralph Thomas Neville.

SECTION 3 – THE MOTIONS

3.1 Nature of Motions

(1) The Plaintiffs and the Settling Defendants shall use their best efforts to implement the Agreement and to secure the prompt, complete and final resolution of the Action, including a final dismissal of this Action, without costs and with prejudice.

(2) The First Motion shall be brought as soon as is reasonably possible following the execution of the Agreement. The Settling Defendants shall consent to the First Order.

(3) Following the determination of the First Motion, the First Notice shall be disseminated in accordance with section 9.1 of the Agreement.

(4) Following the determination of the First Motion, the Second Motion will be brought and the Settling Defendants shall consent to the Second Order.

(5) Following the determination of the Second Motion, provided that the Settlement is approved by the Court, the Second Notice shall be disseminated in accordance with section 9.2 of the Agreement.

SECTION 4 – NON-REFUNDABLE EXPENSES

4.1 Payments

(1) Expenses reasonably incurred for the following purposes shall be the Non-Refundable Expenses, and shall be payable from the Escrow Account, when incurred:

- (a) the costs incurred in connection with establishing and operating the Escrow Account;
 - (b) the costs incurred for disseminating the First Notice and the Second Notice;
 - (c) the costs of Gregory D. Wigglesworth in connection with receiving objections and reporting to the Court to a maximum of \$5,000 for fees, plus disbursements and HST;
 - (d) if necessary, the costs incurred in disseminating notice to the Class that the Agreement has been terminated;
 - (e) the costs incurred by the third parties in Court File Numbers CV-11-422085-00A2 and CV-11-422085-00A3 in disseminating the Second Notice to certain Class Members; and
 - (f) the costs incurred by Guy Du Pont and/or Davies Ward Phillips & Vineberg LLP in Montreal in disseminating the Second Notice to certain Class Members.
- (2) Strosberg Sasso Sutts LLP shall account to the Court and the Settling Defendants for all payments it makes from the Escrow Account. In the event that the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

4.2 Disputes Concerning Non-Refundable Expenses

Any dispute concerning the entitlement to or quantum of Non-Refundable Expenses shall be dealt with by a motion to the Court on notice to the Plaintiffs and the Settling Defendants. All Settling Defendants shall have standing in respect such a motion, should they deem it appropriate to intervene or otherwise make representations.

SECTION 5 – THE SETTLEMENT AMOUNT

5.1 Payment of Escrow Settlement Amount

The Contributing Parties, or some of them, on behalf of the Settling Defendants, shall pay the Settlement Amount to Strosberg Sasso Sutts LLP, in trust, within ninety (90) calendar days of November 27, 2018. Strosberg Sasso Sutts LLP shall deposit the Settlement Amount in an

interest-bearing trust account which shall be held to the order of the Contributing Parties and shall be paid out to Strosberg Sasso Sutts LLP upon the Settlement becoming final.

5.2 Interim Investment of Escrow Account

Strosberg Sasso Sutts LLP, and then the Administrator after the Settlement becomes final, shall hold the Settlement Amount in the Escrow Account and shall invest the Settlement Amount in a liquid money market account or equivalent security with a rating equivalent to, or better than that of an interest bearing account in a Canadian Schedule 1 bank and shall not pay out any amount from the Escrow Account, except in accordance with the terms of the Agreement.

5.3 Taxes on Interest

(1) Except as provided in section 5.3(2), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be solely the Class' responsibility and shall be paid by Class Counsel or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate, and the Contributing Parties shall have no liability for any taxes payable on the interest.

(2) If the Administrator or Class Counsel returns any portion of the Settlement Amount plus accrued interest to the Contributing Parties pursuant to the provisions of the Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Contributing Parties to be allocated by agreement among themselves.

SECTION 6 – NO REVERSION

Unless the Agreement is terminated as provided herein or otherwise by the Court, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

SECTION 7 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT

If the Settlement becomes final as contemplated by section 11, the Administrator shall distribute the monies in the Escrow Account in accordance with the following priorities:

- (a) to pay all of the costs and expenses incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, soliciting Class Members to submit a Claim Form. For greater certainty, the Settling Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (b) to pay all of the costs and expenses reasonably and actually incurred by the Administrator and the Referee, relating to determining eligibility, the filing and processing of Claim Forms, resolving disputes arising from the processing of Claim Forms and administering and distributing the Settlement Amount;
- (c) to pay any taxes required by law to be paid to any governmental authority; and
- (d) to pay a *pro rata* share of the balance of in the Escrow Account to each Authorized Claimant in proportion to his/her/its claim as recognized in accordance with the Plan of Allocation.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Neither the Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Settling Defendants, or as a concession or admission by the Settling Defendants of the truthfulness or merit of any claim or allegation asserted in this Action. Neither the Agreement, nor anything contained herein, shall be used or construed as an admission by the Settling Defendants of any fault, omission, liability or wrongdoing in connection with any oral or written statement, release or written document or financial report.

8.2 Agreement Not Evidence

(1) Whether or not the Agreement is terminated, the Plaintiffs and Settling Defendants agree that neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any current or

future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding in any jurisdiction as any presumption, concession or admission:

- (a) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiffs against the Settling Defendants, or the deficiency of any defence that has been or could have been asserted in this Action;
 - (b) of wrongdoing, fault, neglect or liability by the Settling Defendants; and
 - (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in this Action after trial.
- (2) Notwithstanding section 8.2(1), the Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

SECTION 9 – NOTICE TO THE CLASS

9.1 First Notice

Class Counsel shall cause the First Notice to be disseminated in accordance with the Plan of Notice and the costs of doing so shall be paid as a Non-Refundable Expense as provided in 4.1(1)(b).

9.2 Second Notice

Class Counsel shall cause the Second Notice to be disseminated in accordance with the Plan of Notice and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(b).

9.3 Report to the Court

Forthwith after the dissemination of each notice required by this section, Class Counsel shall file with the Court an affidavit confirming that the notice has been disseminated in accordance with the Agreement and the Plan of Notice.

9.4 Notice of Termination

If the Agreement is terminated, Class Counsel will cause the notice of termination, in a form approved by the Court, to be disseminated as directed by the Court and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(d).

SECTION 10 – TERMINATION OF THE AGREEMENT

10.1 General

- (1) The Plaintiffs or Fraser Milner Casgrain LLP or BDO Canada LLP (formerly BDO Dunwoody LLP) may terminate this Agreement if, and only if:
 - (a) the Second Order (excluding approval of Class Counsel Fees) is not granted by the Court, substantially in accordance with the form at Schedule “D”;
 - (b) the Second Order (excluding approval of Class Counsel Fees) is granted by the Court but the form of the order issued by the Court is different from the form at Schedule “D” in a material respect; or
 - (c) the Second Order is reversed on appeal and the reversal becomes final.
- (2) The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate the Agreement.
- (3) Notice of termination of this Agreement by the Plaintiffs or Fraser Milner Casgrain LLP or BDO Canada LLP (formerly BDO Dunwoody LLP) must be provided in writing to their respective undersigned counsel.
- (4) In the event the Agreement is terminated in accordance with its terms, or is not approved by the Court, or the Second Order is reversed, vacated or terminated by any appellate court and/or the Second Order does not become final:
 - (a) the Plaintiffs and the Settling Defendants will be restored to their respective positions prior to the execution of the Agreement;
 - (b) the Agreement will have no further force and effect;

- (c) any expenses contemplated in section 4.1(1) and paid are non-recoverable from the Plaintiffs, and the Class Members;
 - (d) the Settlement Amount will be returned to the Contributing Parties less any Non-Recoverable Expenses that have already been properly incurred; and
 - (e) the Agreement will not be introduced into evidence or otherwise referred to in any litigation or proceeding against the Settling Defendants.
- (5) Notwithstanding the provisions of section 10.1(3), if the Agreement is terminated, the provisions of this section and sections 2, 4, 5.2, 5.3, 8.1, 8.2, 8.3, 9.4, 10.1(3), 10.1(4), 10.2, 10.3, 16.1(1), 16.1(2), 16.3, 16.4, 16.5, 16.7, 16.10, 16.11, 16.12, 16.13, 16.14 and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect.

10.2 Allocation of Monies in the Escrow Account Following Termination

The Administrator and Strosberg Sasso Sutts LLP shall account to the Court and to the Settling Defendants for the amounts maintained in the Escrow Account. If the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination. If the Agreement is terminated, within thirty (30) days after termination, all funds in the Escrow Account, including accrued interest, shall be paid to the Contributing Parties, apportioned *pro rata* based on their respective contributions, directly or indirectly, to the Escrow Account, as the case may be, minus any amounts paid out of the Escrow Account as Non-Refundable Expenses in accordance with the terms of the Agreement.

10.3 Disputes Relating to Termination

If there are any disputes about the termination of the Agreement, including about the accounting delivered subsequent to the termination pursuant to section 10.2, the Court shall determine any dispute by motion on notice to the Plaintiffs and the Settling Defendants. The Contributing Parties shall be granted standing in respect of any such motion, should they deem it appropriate to intervene or otherwise make representations.

SECTION 11 – DETERMINATION THAT THE SETTLEMENT IS FINAL

- (1) The Settlement shall be considered final on the Effective Date.
- (2) Within ten (10) days after the Effective Date, Strosberg Sasso Sutts LLP shall transfer the Escrow Account to the Administrator.

SECTION 12 – RELEASES AND JURISDICTION OF THE COURT

12.1 Release of Releasees

As of the Effective Date, provided that the Settlement Amount has been deposited into the Escrow Account, the Releasors in exchange for and in consideration of the foregoing, and inasmuch as the terms and conditions of the Settlement are approved by the Court, forever and absolutely release the Releasees from the Released Claims.

12.2 No Further Claims

- (1) As of the Effective Date and provided that the Settlement Amount has been deposited into the Escrow Account, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto; and
- (2) For greater certainty, the Releasors acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that on the Effective Date, they shall have fully, definitively and permanently settled, waived and released and discharged all claims, no matter if they were unknown, unsuspected, not disclosed, and regardless of the subsequent discovery of facts different from those they are aware of on the Effective Date. By means of the Settlement, the Releasors waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the release and discharge of the unknown claims and bar against the commencement of new claims for any reason whatsoever and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Releasors agree to this waiver of their own volition,

with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

12.3 Dismissal of the Action

(1) Except as otherwise provided in the Agreement and the Second Order, and as a condition of Settlement, this Action shall be dismissed without costs and with prejudice.

SECTION 13 – ADMINISTRATION

13.1 Appointment of the Administrator

(1) The Court will appoint the Administrator to serve until further order of the Court, to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.

(2) The Court will fix the Administrator's compensation and payment schedule.

13.2 Appointment of the Referee

(1) The Court will appoint the Referee with the powers, duties and responsibilities set out in the Agreement and the Plan of Allocation.

(2) The fees, disbursements and taxes of the Referee will be fixed by the Court and shall not exceed \$25,000, exclusive of disbursements and HST.

13.3 Claims Process

(1) In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline and any Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Allocation unless the Court orders otherwise as provided in section 13.4.

(2) In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. The Class Member shall have until the later of thirty (30) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency.

Any Class Member who does not respond to such a request for information within the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary as provided in section 13.4, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

13.4 Disputes Concerning the Decisions of the Administrator

(1) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision to the Referee in accordance with the provisions in the Plan of Allocation. The decision of the Referee will be final with no right of appeal.

(2) No action shall lie against the Releasees, the Settling Defendants, the Defendants' counsel, Class Counsel, the Administrator, the Referee, Gregory Wrigglesworth or Kirwin Partners LLP for any decision made in the administration of the Agreement and Plan of Allocation without an order from the Court authorizing such an action.

13.5 Conclusion of the Administration

(1) Following the Claims Bar Deadline, and in accordance with the terms of the Agreement, the Plan of Allocation, and such further order of the Court, as may be necessary, or as circumstances may require, the Administrator shall distribute the amount that remains in the Escrow Account to Authorized Claimants.

(2) No claims or appeals shall lie against the Releasees, the Settling Defendants, the Defendants' counsel, Class Counsel, the Administrator, the Referee, Gregory Wrigglesworth or Kirwin Partners LLP based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.

(3) If the Escrow Account is in a positive balance after one hundred eighty (180) days from the date of distribution to the Authorized Claimants, the Administrator shall, if economically feasible, allocate and distribute such balance among Authorized Claimants in an equitable fashion up to the limit of each authorized claimant's actual loss. If there is a balance in the Escrow Settlement Account after each Authorized Claimant is paid up to his/her/its actual loss,

the remaining funds shall be paid *cy près* to a recipient selected by the Plaintiffs and approved by the Court.

(4) Upon the conclusion of the administration, or at such other time(s) as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as Administrator.

SECTION 14 – THE PLAN OF ALLOCATION

(1) The Settling Defendants shall have no obligation to consent to but shall not oppose the approval of the Plan of Allocation.

(2) Section 14(1) is not an acknowledgement that the Settling Defendants have standing to make any submissions regarding the Plan of Allocation.

SECTION 15 – CLASS COUNSEL FEES

15.1 Motion for Approval of Class Counsel Fees

(1) At the Second Motion, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for fees and expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

(2) The Settling Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and they will not make any submissions to the Court concerning Class Counsel Fees.

(3) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the finality of the Second Order and the Settlement of the Action as provided herein.

15.2 Payment of Class Counsel Fees

(1) Forthwith after the Settlement becomes final, Strosberg Sasso Sutts LLP shall pay to Class Counsel the Class Counsel Fees approved by the Court from the Escrow Account.

SECTION 16 – MISCELLANEOUS

16.1 Motions for Directions

(1) Any one or more of the Plaintiffs, the Settling Defendants, Class Counsel, the Administrator or the Referee may apply to the Court for directions in respect of any matter in relation to the Agreement and Plan of Allocation.

(2) All motions contemplated by the Agreement shall be on notice to the Plaintiffs and the Settling Defendants.

16.2 Defendants Have No Responsibility or Liability for Administration

Except for the obligation to pay the Settlement Amount, none of the Releasees, the Settling Defendants, or the Settling Defendants' counsel shall have any responsibility for or any liability whatsoever with respect to the administration or implementation of the Agreement and Plan of Allocation, including, without limitation, the processing and payment of claims by the Administrator.

16.3 Headings, etc.

(1) In the Agreement:

- (a) the division of the Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;
- (b) the terms “the Agreement”, “herein”, “hereto” and similar expressions refer to the Agreement and not to any particular section or other portion of the Agreement;
- (c) unless otherwise indicated, all amounts referred to are in lawful money of Canada; and

- (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.
- (2) In the computation of time in the Agreement, except where a contrary intention appears:
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

16.4 Governing Law

- (1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (2) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of the Agreement. Issues related to the administration of the Agreement, and the Escrow Account shall be determined by the Court.

16.5 Entire Agreement

The Agreement constitutes the entire agreement among the Plaintiffs and the Settling Defendants and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Plaintiffs and the Settling Defendants will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Agreement, unless expressly incorporated herein. The Agreement may not be modified or amended except in writing and on consent of all Plaintiffs and the Settling Defendants and any such modification or amendment must be approved by the Court.

16.6 Binding Effect

- (1) If the Settlement is approved by the Court and becomes final, the Agreement shall be binding upon, and enure to the benefit of the Plaintiffs, the Class Members, the Defendants, the Individual Defendants, the Releasees, the Releasors, the Contributing Parties and all of their

respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

- (2) The person signing the Agreement represents and warrants (as applicable) that:
- (a) he/she has all requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transaction contemplated hereby on his/her own behalf;
 - (b) the execution, delivery, and performance of the Agreement and the consummation of the Actions contemplated herein have been duly authorized by all necessary corporate action;
 - (c) the Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations;
 - (d) he/she agrees to use his/her best efforts to satisfy all conditions precedent to the Effective Date.

16.7 Survival

The representations and warranties contained in the Agreement shall survive its execution and implementation.

16.8 Negotiated Agreement

The Agreement and the Settlement have been the subject of negotiations and many discussions among the Plaintiffs and the Settling Defendants. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the Agreement shall have no force and effect. The Plaintiffs and the Settling Defendants further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Agreement.

16.9 Confidentiality

(1) The Plaintiffs and the Settling Defendants agree that prior to the filing of the First Motion:

- (a) this Settlement Agreement, its terms, and the Settlement Amount are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other person, entity, publication or member of the media, except as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement Agreement, or as otherwise agreed by the Plaintiffs and Settling Defendants; and
- (b) any one of the Plaintiffs or Settling Defendants intending to disclose such information as may be required by law, judicial process or order of a court, will notify the other of its intention and give the non-disclosing party a reasonable opportunity to object.

(2) The Plaintiffs and the Settling Defendants agree not to disclose the substance of the negotiations that led to this Settlement Agreement including the merits of any positions taken by the Plaintiffs and the Settling Defendants except as necessary to provide the Court with information necessary to consider approval of the Settlement. Notwithstanding the foregoing, any Settling Defendants may disclose such information to a regulatory authority if he/she/it determines that disclosure is warranted.

16.10 Recitals and Schedules

(1) The recitals and schedules to the Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.

(2) The schedules to the Agreement are:

- (a) Schedule “A” – First Order
- (b) Schedule “B” – First Notice
- (c) Schedule “C” – Plan of Notice
- (d) Schedule “D” – Second Order

- (e) Schedule “E” – Second Notice

16.11 Acknowledgements

Each of the Plaintiffs and Settling Defendants hereby represents, affirms and acknowledges that:

- (a) he, she or its representative has the authority to bind the person or entity with respect to the matters set forth herein and has read and understood the Agreement;
- (b) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and
- (c) he, she or its representative fully understands each term of the Agreement and its effect.

16.12 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the person or entity for whom he or she is signing.

16.13 Counterparts

The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Agreement.

16.14 Notice

Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with the Agreement or any other report or document to be given by any of the Plaintiffs or Settling Defendants to any of the other Plaintiffs or Settling Defendants shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

Counsel for the Plaintiffs:

STROSBERG SASSO SUTTS LLP

Lawyers
1561 Ouellette Avenue
Windsor, ON N8X 1K5

Jay Strosberg

LSO#: 47288F

E-mail: jay@strosbergco.com

Tel: 519-561-6285

Fax: 866-316-5308

GROIA & COMPANY PROFESSIONAL CORPORATION

365 Bay Street, Suite 1100
Toronto, ON M5H 2V1

Bonnie Roberts Jones

LSO# : 41256L

E-mail: brjones@groiaco.com

Tel : 416-203-4476

Fax : 416-203-9231

Counsel for the Defendants:

STIKEMAN ELLIOT LLP

Barristers and Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Alan L. W. D'Silva

LSO # 29225P

Tel: 416-869-5204

E-mail: adsilva@stikeman.com

Daniel S. Murdoch

LSO # 53123L

Tel: 416-869-5529

E-mail: dmurdoch@stikeman.com

Mark Walli

LSO # 53266L

Tel: 416-869-5277

E-mail: mwalli@stikeman.com

Lawyers for the Defendants, BDO Canada LLP and Ralph Thomas
Neville

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

Barristers

2600-130 Adelaide Street W.

Toronto, ON M5H 3P5

Glenn A. Smith

LSO # 157770

Tel: 416-865-2927

E-mail: gsmith@litigate.com

Andrew Porter

LSO # 62336P

Tel: 416-865-3554

E-mail: aporter@litigate.com

Lawyers for the Defendants,
Fraser Milner Casgrain LLP and Graham Turner

The Plaintiffs and the Settling Defendants have executed the Agreement as of the date on
the cover page.

Marc Charette



Andrew Cumming



BDO Canada LLP

By: _____
Name
Title

Ralph Thomas Neville

Fraser Milner Casgrain LLP

By: _____
Name
Title

Graham Turner

Strosberg Sasso Sutts LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms set out in the Agreement and to be bound by the terms of the Agreement.

Strosberg Sasso Sutts LLP



By: _____
Name: Jay Strosberg
Title: Partner

Marc Charette

Andrew Cumming

BDO Canada LLP

By: _____

Name
Title

Ralph Thomas Neville

Fraser Milner Casgrain LLP

By: _____

Name
Title

Graham Turner

Strosberg Sasso Sutts LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms set out in the Agreement and to be bound by the terms of the Agreement.

Strosberg Sasso Sutts LLP

By: _____

Name: Jay Strosberg
Title: Partner

Marc Charette

Andrew Cumming

BDO Canada LLP

Ralph Thomas Neville

By: _____
Name
Title

Fraser Milner Casgrain LLP

Graham Turner

By: 

Name **DAVID GOULT**
Title **GENERAL COUNSEL**

Strosberg Sasso Sutts LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms set out in the Agreement and to be bound by the terms of the Agreement.

Strosberg Sasso Sutts LLP

By: _____
Name: Jay Strosberg
Title: Partner

Marc Charette

Andrew Cumming

BDO Canada LLP

Ralph Thomas Neville

By: _____
Name
Title

Fraser Milner Casgrain LLP

Graham Turner



By: _____
Name
Title

Strosberg Sasso Sutts LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms set out in the Agreement and to be bound by the terms of the Agreement.

Strosberg Sasso Sutts LLP

By: _____
Name: Jay Strosberg
Title: Partner

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE GLUSTEIN) OF , 2019

BETWEEN:

MARC CHARETTE and ANDREW CUMMING

Plaintiffs

and

TRINITY CAPITAL CORPORATION,
TRINITY WOOD CAPITAL CORPORATION,
CAPITAL STRUCTURES LTD.,
CAPITAL STRUCTURES 2002 LTD.,
TC CAPITAL LIMITED, JAMES DOUGLAS BEATTY,
JAMES GORDON ARNOLD,
THE JOHN McKELLAR CHARITABLE FOUNDATION,
FRASER MILNER CASGRAIN LLP, GRAHAM TURNER,
BDO DUNWOODY LLP and RALPH THOMAS NEVILLE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Scheduling)**

THIS MOTION, made by the plaintiffs, was heard this day in writing at
the courthouse, 330 University Avenue, Toronto, Ontario.

AND ON BEING ADVISED that the Plaintiffs and the Settling
Defendants parties consent to this order,

AND ON BEING ADVISED that:

- (a) the Plaintiffs and Settling Defendants have entered into a settlement agreement, subject to Court approval;
- (b) Gregory D. Wrigglesworth of Kirwin Partners LLP consents to being appointed to receive objections, if any, to the proposed settlement and to report to the parties and the Court;
- (c) the action against Capital Structures Ltd., Capital Structures 2002 Ltd., TC Capital Limited and The John McKellar Charitable Foundation was dismissed on July 4, 2012;
- (d) Trinity Capital Corporation, Capital Structures Ltd., Capital Structures 2002 Ltd., TC Capital and James Douglas Beatty were noted in default on January 29, 2016;
- (e) Trinity Wood Capital Corporation was noted in default on March 14, 2016; and
- (f) James Gordon Arnold was noted in default on January 22, 2019.

1. THIS COURT ORDERS AND DECLARES that, except as otherwise stated, for the purposes of this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order.

2. THIS COURT ORDERS that it will decide whether to:

- (a) approve the settlement agreement;
- (b) approved the fees and disbursements of the lawyers for the Class; and
- (c) deal with any related matters:

at a hearing to be held on ●, 2019, beginning at 10:00 a.m. at the courthouse, 330 University Avenue, Toronto, Ontario (the “Approval Hearing”).

3. THIS COURT ORDERS that the notice advising the Class Members of the Approval Hearing and the procedure to object to the settlement, generally in the form attached as Schedule 1 to this Order, is approved.

4. THIS COURT ORDERS that on or before ●, 2019, the Class Members shall be given notice of this order and the Approval Hearing in accordance with the Plan of Notice, in the form attached as Schedule 2 to this order, is approved.

5. THIS COURT ORDERS that Gregory D. Wrigglesworth is appointed to receive any written objections to the proposed settlement from putative class members.

6. THIS COURT ORDERS that at the Approval Hearing the Court will consider objections to the settlement agreement by class members if their objections are sent in written form by no later than ●, 2019 to:

Gregory D. Wrigglesworth
Kirwin Partners LLP
423 Pelissier Street
Windsor, ON N9A 4L2
Attention: Trinity Capital Class Action
Fax: 519-259-1568
Email: trinity@kirwinpartners.com

7. THIS COURT ORDERS that the written objections must include the following:

- (a) the objector's full name, current mailing address, telephone number, fax number and email address (as may be available);
- (b) a statement that the Class Member's income tax return for 2001, 2002 or 2003, as appropriate, was reassessed by the Canadian Revenue Agency;

- (c) a brief statement of the nature of and reasons for the objection; and
- (d) the objector intends to appear at the approval hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

8. THIS COURT ORDERS that Gregory D. Wrigglesworth shall, on or before ●, 2019, report to the Court, by affidavit, with a copy to plaintiffs' counsel and counsel for the Settling Defendants, the names of the persons who objected and copies of any materials filed in connection with the objections.

9. THIS COURT ORDERS that notice of the Approval Hearing can be provided to the third parties in the actions in Court File Numbers CV-11-422085-00A2 and CV-11-422085-00A3 by email to their counsel or by email to the third parties directly if they are self-represented.

10. THIS COURT ORDERS that plaintiffs' counsel shall file an affidavit with the Court confirming compliance with the provisions of paragraph 4 of this order.

JUSTICE GLUSTEIN

NOTICE OF THE PROPOSED SETTLEMENT OF THE DONATION PROGRAM FOR MEDICAL SCIENCE AND TECHNOLOGY CLASS ACTION

Read this notice carefully as it may affect your rights.

This notice is directed to all persons and entities, excluding certain persons associated with the Defendants who participated in the Donation Program for Medical Science and Technology (“Program”) in at least one of the taxation years 2001, 2002 or 2003.

On March 11, 2011, a proposed class action was commenced in Toronto (the "Action"). The Plaintiffs allege that Fraser Milner Casgrain LLP, BDO Dunwoody LLP and others (collectively, the “Defendants”) provided tax opinions used to promote leveraged charitable donations to the John McKellar Charitable Foundation.

The Action was certified as a class action on May 30, 2013. The period for a person to opt out of the Action expired on October 1, 2013. Those persons entitled to participate in the settlement are persons, other than Excluded Persons, who participated in the Program in at least one of the taxation years of 2001, 2002 or 2003 who did not opt out of the Action.

The parties have reached a proposed settlement of the Action, without an admission of liability by the Defendants, subject to the approval by the Court. This notice provides a summary of the proposed settlement.

THE TERMS OF THE PROPOSED SETTLEMENT

The Defendants will pay \$37 million, in full and final settlement of all claims against the Defendants. The \$37 million, less the lawyers’ fees, disbursements and taxes, the costs of administration of the settlement and the amount owed to the Class Proceedings Fund will be distributed to the Class in accordance with a plan of allocation. The Settlement Agreement may be viewed at www.strosbergco.com/class-actions/trinity.

THE APPROVAL HEARING

The Court will be asked to approve the proposed settlement and the lawyers’ fees, disbursements, expenses and taxes at a hearing to be held on •, 2019 at • a.m. at the courthouse located at 330 University Avenue, Toronto. The lawyers for the Class will ask the Court to approve legal fees of thirty (30) percent of \$37 million which is \$11.1 million, plus disbursements, plus taxes. The Class Proceedings Fund is entitled to 10% of the compensation payable to the Class and the repayment of all funds advanced by it to prosecute the Action.

OBJECTIONS

Class Members who do not oppose the proposed settlement are not required to appear at the hearing or take any other action at this time to indicate their desire to participate in the proposed settlement. Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

At the approval hearing, the Court will consider an objection to the proposed settlement by a Class Member if the objection is submitted in writing, by prepaid mail or e-mail to: Gregory D. Wigglesworth, Kirwin Partners LLP, 423 Pelissier Street, Windsor, Ontario, N9A 4L2, fax: 519-259-1568, email: trinity@kirwinpartners.com, Attention: Trinity Class Action. Class Members who wish to object must do so before •, 2019.

A written objection can be submitted in English or French and must include the following information:

- (a) the objector's full name, current mailing address, telephone number, fax number and email address (as may be available);
- (b) a statement that the Class Member's income tax return for 2001, 2002 or 2003, as appropriate, was reassessed by the Canadian Revenue Agency;
- (c) a brief statement of the nature of and reasons for the objection; and
- (d) the objector intends to appear at the approval hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

QUESTIONS

Questions for the lawyers for the Class may be directed to:

Jay Strosberg

Strosberg Sasso Sutts LLP

1561 Ouellette Avenue

Windsor, ON N8X 1K5

Tel: 519.561.6296

Fax: 866.316.5308

trinityclassaction@strosbergco.com

Bonnie Roberts Jones **Groia & Company LLPC**

Wildeboer Dellelce Place

1100 - 365 Bay Street

Toronto, ON M5H 2V1

Tel: 416.203.2115

Fax: 416.203.9231

brjones@groiaco.com

This notice has been approved by the Court. Questions regarding this notice should NOT be directed to the Court.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARC CHARETTE and ANDREW CUMMING

Plaintiffs

and

TRINITY CAPITAL CORPORATION,
TRINITY WOOD CAPITAL CORPORATION,
CAPITAL STRUCTURES LTD.,
CAPITAL STRUCTURES 2002 LTD.,
TC CAPITAL LIMITED, JAMES DOUGLAS BEATTY,
JAMES GORDON ARNOLD,
THE JOHN McKELLAR CHARITABLE FOUNDATION,
FRASER MILNER CASGRAIN LLP, GRAHAM TURNER,
BDO DUNWOODY LLP and RALPH THOMAS NEVILLE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

PLAN OF NOTICE

1. The First Notice shall be disseminated as follows:
 - (a) Class Counsel shall post the First Notice in English and French on the website at www.strosbergco.com/class-actions/trinity/;
 - (b) Class Counsel shall e-mail the First Notice to Class Members for whom they have current e-mail addresses; and
 - (c) Class Counsel shall mail the First Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.

2. The Second Notice shall be disseminated as follows:
 - (a) Class Counsel shall post the Second Notice in English and French on the website at www.strosbergco.com/class-actions/trinity/;
 - (b) Class Counsel shall e-mail the First Notice to Class Members for whom they have current e-mail addresses;
 - (c) Class Counsel shall mail the First Notice to Class Members for whom they have current mailing addresses but no e-mail addresses; and
 - (d) The Third Parties shall provide a copy of the Second Notice to the Class Members who are or were their clients and for who they have contact information and the reasonable costs incurred in doing so shall be a Non-Refundable Expense.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
)
JUSTICE GLUSTEIN) OF , 2019

BETWEEN:

MARC CHARETTE and ANDREW CUMMING

Plaintiffs

and

TRINITY CAPITAL CORPORATION,
TRINITY WOOD CAPITAL CORPORATION,
CAPITAL STRUCTURES LTD.,
CAPITAL STRUCTURES 2002 LTD.,
TC CAPITAL LIMITED, JAMES DOUGLAS BEATTY,
JAMES GORDON ARNOLD,
THE JOHN McKELLAR CHARITABLE FOUNDATION,
FRASER MILNER CASGRAIN LLP, GRAHAM TURNER,
BDO DUNWOODY LLP and RALPH THOMAS NEVILLE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval)**

THIS MOTION made by:

- (a) Marc Charette and Andrew Cumming for an Order approving the settlement of the Action; and
- (b) Strosberg Sasso Sutts LLP and Groia & Company Professional Corporation for the approval of the agreement respecting fees and disbursements between Strosberg Sasso Sutts LLP, Groia & Company

Professional Corporation, Marc Charette and Andrew Cumming pursuant to subsection 32(2) of the *CPA*;

was heard this ● day of ●, 2019 at Toronto, Ontario.

ON READING the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the affidavits of:
 - (i) Marc Charette sworn ●, 2019;
 - (ii) Andrew Cumming sworn ●, 2019;
 - (iii) ● sworn ●, 2019;
 - (iv) Shelley Woodrich sworn ●, 2019; and
 - (v) Gregory Wrigglesworth sworn ●, 2019.

AND ON HEARING the submissions of the Plaintiffs and the Settling Defendants;

AND ON BEING ADVISED that:

- (a) the Plaintiffs and the Settling Defendants consent to this Order;
- (b) ● consents to being appointed Administrator;
- (c) as of ●, there have been ● objections to the proposed settlement received by Gregory D. Wrigglesworth;

AND without any admission of liability on the part of any of the Settling Defendants, who have denied liability;

1. THIS COURT ORDERS AND DECLARES that, except as otherwise stated, for the purposes of this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order and that the following definitions also apply:

- (a) “Claims Bar Deadline” means 5:00 p.m. eastern standard time on ●, 2019;
- (b) “Class Counsel” means Strosberg Sasso Sutts LLP and Groia & Company Professional Corporation;
- (c) “Fee Agreement” means the agreement between Marc Charette, Andrew Cumming, Strosberg Sasso Sutts LLP (formerly Sutts, Strosberg LLP) and Groia & Company Professional Company signed by Marc Charette on February 5, 2011 and Andrew Cumming on June 5, 2012;
- (d) “Settlement Agreement” means the settlement agreement dated ●, 2019 (without schedules) attached hereto as Schedule 1; and
- (e) “Third Party Actions” means the actions commenced in the Court in Court File Numbers CV-11-422085-00A1, CV-11-422085-00A2 and CV-11-422085-00A3.

2. THIS COURT ORDERS AND ADJUDGES that the Settlement is fair and reasonable and in the best interests of the Class Members and is approved.

3. THIS COURT ORDERS that:

- (a) the Settlement Agreement attached as Schedule 1 to this Order, is approved and shall be implemented in accordance with its terms;
- (b) the Second Notice generally in the form attached as Schedule 2 to this Order, is approved;
- (c) the Plan of Allocation generally in the form attached as Schedule 3 to this Order, is approved; and
- (d) the Claim Form generally in the form attached as Schedule 4 to this Order, is approved.

4. THIS COURT ORDERS that the Class Members shall be given notice of this Order substantially in the form of the Second Notice disseminated in accordance with the Plan of Notice.

5. THIS COURT ORDERS AND DECLARES that the notice to the Class Members described in paragraph 4 satisfies the requirements of section 17(6) of the *CPA*.

6. THIS COURT ORDERS that after the distribution of the Second Notice, Class Counsel shall file with the court an affidavit confirming the distribution of the Second Notice in accordance with and as required by this Order.

7. THIS COURT REQUESTS that Guy Du Pont and/or Davies Ward Phillips & Vineberg LLP in Montreal shall provide a copy of the Second Notice to their clients who are Class Members and their reasonable costs incurred in doing so shall be a Non-Refundable Expense.

8. THIS COURT ORDERS that ● is appointed, until further order of the court:

- (a) as the Administrator on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
- (b) to manage the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, the Plan of Allocation and this Order.

9. THIS COURT ORDERS that Gregory D. Wrigglesworth is appointed as Referee, until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation.

10. THIS COURT ORDERS AND DECLARES that all provisions of the Settlement Agreement (including the Recitals and Definitions) form part of this Order and are binding upon the Settling Defendants in accordance with the terms thereof, and upon the Plaintiffs and all Class Members in accordance with the terms of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.

11. THIS COURT ORDERS AND DECLARES that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

12. THIS COURT ORDERS AND DECLARES that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from the Released Claims.

13. THIS COURT ORDERS that the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person

(including but not limited to the auditors) who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

14. THIS COURT ORDERS that to participate in this Settlement, Class Members must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Court orders otherwise.

15. THIS COURT ORDERS that the Plaintiffs and the Settling Defendants, Class Counsel, the Administrator or the Referee may apply to the Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or relating to any other matter.

16. THIS COURT ORDERS that no person may bring any action or take any proceedings against the Plaintiffs, Settling Defendants, Administrator, Referee, or their employees, directors, officers, partners, agents, trustees, parents, predecessors, or assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this Order except with leave of the Court.

17. THIS COURT ORDERS that:

- (a) the Fee Agreement between Marc Charette, Andrew Cumming, Strosberg Sasso Sutts LLP and Groia & Company Professional Corporation is approved; and
- (b) Strosberg Sasso Sutts LLP and Groia & Company Professional Corporation's fees, disbursements and taxes are fixed at \$● and shall be paid from the Escrow Account forthwith after the Settlement becomes final.

18. THIS COURT ORDERS that the Class Proceedings Fund is entitled to a levy in the amount of 10 percent of the net monetary award or settlement amount if any, to which one or more persons in the Class is entitled plus the amount of \$● for outstanding disbursements that have not yet been repaid to the Class Proceedings Fund in accordance with section 10(3) of O. Reg. 771/92.

19. THIS COURT ORDERS that the levy payable to the Law Foundation of Ontario pursuant to Regulation 331/92 of the *Law Society Act* is \$● and shall be paid from the Escrow Account by Strosberg Sasso Sutts LLP to the Law Foundation of Ontario within 45 days of the entry of this Order.

20. THIS COURT ORDERS that if there is a dispute regarding the calculation of the Class Proceedings Fund levy, the amount shall be determined by Justice Glustein.

21. THIS COURT ORDERS that Marc Charette and Andrew Cumming shall each be awarded an honorarium of \$● and such amounts shall be paid from the Escrow Account by Strosberg Sasso Sutts LLP forthwith after the Settlement becomes final.

22. THIS COURT ORDERS that the Settling Defendants shall take steps to dismiss the Third Party Actions.

23. THIS COURT ORDERS that this Action, except as provided for in this Order, is dismissed without costs and with prejudice.

JUSTICE

1649925

**NOTICE OF SETTLEMENT OF THE
DONATION PROGRAM FOR MEDICAL SCIENCE
AND TECHNOLOGY CLASS ACTION**

Read this notice carefully as it may affect your rights.

This notice is directed to all persons and entities, excluding certain persons associated with the Defendants who participated in the Donation Program for Medical Science and Technology in at least one of the taxation years 2001, 2002 or 2003.

On March 11, 2011, a proposed class action was commenced in Toronto (the "Action"). The Plaintiffs allege that Fraser Milner Casgrain LLP, BDO Dunwoody LLP and others (collectively, the "Defendants") provided tax opinions used to promote leveraged charitable donations to the John McKellar Charitable Foundation.

The proposed settlement of the Action was approved by Justice Glustein on •. This notice provides a summary of the terms of the settlement.

Persons eligible to participate in the settlement are (insert the class definition) who did not opt out of the Action.

SUMMARY OF THE TERMS OF THE SETTLEMENT

The Defendants will pay \$37 million, in full and final settlement of all claims, to be distributed in accordance with the following priorities:

- (a) \$• to the lawyers for the Class for fees, out of pocket expenses and taxes;
- (b) \$• to the Class Proceedings Fund to pay the 10% levy and repay the amount advanced to fund the Action;
- (c) all costs and expenses incurred in the administration of the settlement, including the costs of • and • the Court appointed Administrator and Referee respectively; and
- (d) a pro rata share of the balance to each Class Member in accordance with the Court-approved claims process and Plan of Allocation.

The Settlement Agreement, the Plan of Allocation and a description of the claims process may be viewed at www.strosbergco.com/class-actions/trinity.

A CLAIM FOR COMPENSATION MUST BE MADE BY •, 2019

Each Class Member must submit a completed Claim Form on or before •, 2019 in order to participate in the settlement. The Claim Form can be accessed or downloaded at • or obtained by calling the Administrator at •. If you do not submit a completed Claim Form by •, 2019, you will not receive any compensation.

The Claim Form should be submitted to the Administrator by using the secure Online Claims System at • or by e-mail to •. You may submit a paper Claim Form only if you do not have internet access. The paper Claim Form may be sent by mail or courier to:

•, Administrator, Trinity Class Action Administration

•
•

Or by fax to: •

QUESTIONS

Questions for the lawyers for the Class should be directed to:

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This notice has been approved by the Court. Questions regarding this notice should NOT be directed to the Court