

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

HEIKE EATON, HARLAN LIGHT, DOUGLAS ALEXANDER
and WILLIAM BARRETT, as Representative Plaintiffs

Plaintiffs

- and -

H M S FINANCIAL INC., et al.

Defendants

I hereby certify this to be a true copy of
the original Order
Dated this 3 day of April, 2009
for Clerk of the Court

BEFORE THE HONOURABLE
MR. JUSTICE JOHN D. ROOKE
COURT HOUSE, CALGARY, ALBERTA

) ON THURSDAY, THE 9th DAY OF
) OCTOBER, 2008; AND MONDAY, THE
) 15TH DAY OF DECEMBER, 2008.

ORDER

UPON THE APPLICATION of the Plaintiffs for certification of the within action as a class proceeding under s. 2(2) of the *Class Proceedings Act*, S.A. 2003, c. C-16.5 (the "Act"); AND UPON THE APPLICATION of certain of the Defendants (the "**Financial Institutions**") to strike the action against them for failing to establish a cause of action under Rule 129 of the *Alberta Rules of Court*; AND UPON hearing counsel for the Plaintiffs, and counsel for some of the Defendants on April 23 and 24, 2007; AND UPON the Court reserving decision until the release of Reasons for Decision on October 9, 2008 (as amended by a corrigendum on November 20, 2008); AND UPON further directions by the Court on December 15, 2008; AND UPON the terms of this Order being the same as in the Reasons for Decision; IT IS HEREBY ORDERED THAT:

1. As the Plaintiffs have met all of the requirements of section 5(1) of the Act, the within action should be certified as a class proceeding as against each of the Defendants, subject to the following:

- a. The Class definition as contained in the Amended Amended Statement of Claim is hereby amended to read as follows: "all individuals, other than the Defendants, who have invested money with the HMS Scheme, directly or indirectly, and suffered a loss of all or a part of that investment;"

- b. The Representative Plaintiffs must forthwith surrender any commissions which any of them have received from HMS to the Plaintiff Class, such monies to be held in the trust accounts of Plaintiff Class Counsel pending final disposition of this matter;
 - c. The amount of any such commissions earned by any Class member will be subtracted from any recovery by that Class member on any final distribution in the within action.
- 2. Subject to paragraph 1(b), Douglas Alexander is confirmed as Representative Plaintiff for the Plaintiff Class and William Barrett is confirmed as Representative Plaintiff for the non-resident subclass.
- 3. The Notice set out in the form attached as Schedule "A" to this Order is approved.
- 4. Subject to the determination of liability in the common issues trial, or beyond, the Plaintiffs will, in the first instance, bear the cost of the Notice attached as Schedule "A" to this Order.
- 5. The following issues are the common issues to be determined at the trial of this matter:
 - a. What were the essential common terms of the agreements between members of the Plaintiff Class ("**Class Members**") and HMS?
 - b. Was the HMS Scheme a fraudulent high-yield or Ponzi scheme?
 - c. Was there a systematic fraudulent or negligent misrepresentation by the HMS Defendants, and/or Lawyers, or any of them, to Class Members as part of the HMS Scheme?
 - d. Did the HMS Defendants, and/or the Lawyers, or any of them, convert investment funds to their personal benefit?
 - e. Did the Defendants (except HSBC, CIBC, Community Credit Union Ltd., and Mountain View Credit Union Limited), or any of them, engage in conspiracy to defraud Class Members?
 - f. Did an express or constructive trust exist between the HMS Defendants, or Lawyers, or any of them, and Class Members?
 - g. Are Class Members entitled to a constructive trust in relation to the HMS Defendants, or the Lawyers, or any of them? Specifically:
 - i. Were Class Members in a trust relationship with the HMS Defendants, or the Lawyers, or any of them?

- ii. If yes, did the HMS Defendants or the Lawyers, or any of them, perpetrate a dishonest or fraudulent breach of trust?
 - h. Did any of the Lawyers act as counsel or trustee for Class Members?
 - i. Did any of the Lawyers owe fiduciary duties or trust obligations to Class Members?
 - j. Did the Financial Institutions knowingly assist or participate in a fraudulent breach of trust or fiduciary duty by one or more of the Defendants?
 - k. Were HMS Principals, CCS Defendants, and/or the Lawyers, or any of them, involved in transactions with the Financial Institutions which constituted suspicious transactions?
 - l. Did the Financial Institutions report suspicious transactions in connection with the HMS Scheme?
 - m. Did the Financial Institutions violate any of the provisions of the *Proceeds of Crime Act*, S.C. 2000, c. C-17?
 - n. Did the Financial Institutions owe a duty to Class Members in their capacity as beneficiaries of a trust?
 - o. Have any of the HMS Defendants, or Lawyers, been unjustly enriched at the expense of Class Members?
 - p. Further to issue (o) above, are Class Members entitled to restitution or repayment of monies or entitled to a constructive trust?
 - q. Did the HMS Defendants, and/or the Lawyers, or any of them, violate any of the provisions of the *Competition Act*, R.S.C. 1985, c. C-34, the *Securities Act*, R.S.A. 2000, c. S-4, or the *Criminal Code*, R.S.C. 1985, c. C-46?
 - r. Are Class Members entitled to an accounting and/or tracing of the monies received by any of the Defendants pursuant to the HMS Scheme?
 - s. Are Class Members entitled to punitive and/or aggravated damages?
 - t. Should interest be assessed on amounts owing under the *Judgment Interest Act*, R.S.A. 2000, c. J-1?
6. The Amended Litigation Plan attached to this Order as Schedule "B" is approved.
7. The motions brought by the Financial Institutions under Rule 129 to strike the claims as against them, are dismissed except with respect to the following claims:
- a. breach of contract; and
 - b. breach of fiduciary duty.

8. The Plaintiffs have authority to further amend the Amended Amended Statement of Claim in the form attached as Schedule "C" hereto.

9. All parties will have their Affidavit of Records filed and served by April 30, 2009.

10. Costs in the amount of \$46,100.00 are payable forthwith by the Lawyers, the CCS Defendants, and the Financial Institutions. Further costs in the amount of \$15,000.00 are payable jointly and severally forthwith by the Defendants, HSBC, CIBC, and Mountainview Credit Union/Community Credit Union. Finally, costs in the amount of \$2,000.00 are payable by the parties represented by Sid Kobewka.

ENTERED THIS 3 DAY
OF MARCH, 2009.

Apr 1
V.A. BRANDT



CLERK OF THE COURT OF
QUEEN'S BENCH OF ALBERTA

[Signature]
JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

Apr 2/09

APPROVED AS TO FORM:

BORDEN LADNER GERVAIS LLP

Per: *[Signature]*

For: John L. Ircandia
Defence Counsel Committee

APPROVED AS TO FORM:

HU ELIOT YOUNG

Per: _____

Hu Young
Counsel for Garth S. Bailey and
Garth S. Bailey Professional Corporation

APPROVED AS TO FORM:

KOBEWKA STADNYK

Per: _____

Sid J. Kobewka
Defence Counsel Committee

APPROVED AS TO FORM:

MACLEOD DIXON LLP

Per: _____

Anne L. Kirker
Defence Counsel Committee

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JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

ENTERED THIS _____ DAY
OF MARCH, 2009.

CLERK OF THE COURT OF
QUEEN'S BENCH OF ALBERTA

APPROVED AS TO FORM:

BORDEN LADNER GERVAIS LLP

Per: _____
John L. Ircandia
Defence Counsel Committee


APPROVED AS TO FORM:

HU ELIOT YOUNG

Per: _____
Hu Young
Counsel for Garth S. Bailey and
Garth S. Bailey Professional Corporation

APPROVED AS TO FORM:

KOBOWKA STADNYK

Per: 

Sid J. Kobewka
Defence Counsel Committee

APPROVED AS TO FORM:

MACLEOD DIXON LLP

Per: _____
Anne L. Kirker
Defence Counsel Committee

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JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

ENTERED THIS _____ DAY
OF MARCH, 2009.

CLERK OF THE COURT OF
QUEEN'S BENCH OF ALBERTA

APPROVED AS TO FORM:

BORDEN LADNER GERVAIS LLP

Per: _____

John L. Ircandia
Defence Counsel Committee

APPROVED AS TO FORM:

HU ELIOT YOUNG

Per: _____

Hu Young
Counsel for Garth S. Bailey and
Garth S. Bailey Professional Corporation

APPROVED AS TO FORM:

KOBOWKA STADNYK

Per: _____

Sid J. Kobewka
Defence Counsel Committee

APPROVED AS TO FORM:

MACLEOD DIXON LLP

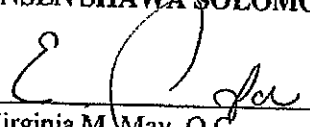
Per: _____

Anne L. Kirker
Defence Counsel Committee

APPROVED AS TO FORM:

MAY JENSEN SHAWA SOLOMON LLP

Per:


Virginia M. May, Q.C.
Counsel for Dana I. Carlson

SCHEDULE "A"

Action No. 0501 08152

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**HEIKE EATON, HARLAN LIGHT, DOUGLAS ALEXANDER
and WILLIAM BARRETT, as Representative Plaintiffs**

Plaintiffs

- and -

H M S FINANCIAL INC., et al.

Defendants

NOTICE OF CLASS PROCEEDING

TO: Persons, other than the Defendants, who have invested money with the HMS Scheme, directly or indirectly, and suffered a loss of all or part of that investment.

The Defendants named in this action are: H M S Financial Inc., Skyward Management Inc., Garth S. Bailey, Garth S. Bailey Professional Corporation, 990137 Alberta Ltd., 1037149 Alberta Ltd., Operating As Cedar Management, 1053382 Alberta Inc., 1070199 Alberta Ltd., 1079373 Alberta Ltd., 993638 Alberta Ltd., A-Z Investment Group, Abba Resources Unlimited, Academy Financial Inc., Academy Financial Planners & Consultants Inc., Ailanthus International Inc., Altruistic Holdings Ltd., Bailey & Dawes LLC, Bogner Industries Ltd. a.k.a. Bogner Industries Inc., B.P. Fritz Consulting Inc., Canadian Imperial Bank of Commerce, The Carpenter's Shop Corporation, Casselman MCS Financial Inc., Cedar Pointe Consulting Group Inc., Chase Forbes Trust Ltd., CLJ Consulting LLC, Commonwealth Marketing Group Ltd., Community Credit Union Ltd., Companions Inc., The Dakota Corporation, Dana I. Carlson, Datas Consulting, Defreitas & Associates, Ethan Equities Inc., Five Continents Consulting, Five Continents Consulting Corporation, Warren Goss, Graceful Beneficence, Guessworks, Guessworks Foundation, The Hillpro Group Inc., Horizon Bank International Limited, Horizon Fiduciary Inc., HSBC Bank Canada, In House Counsel Cameron Campbell, International Investments Inc., Kamikey Services Inc., Kelso Enterprises Inc., Kingdom Advisors, Klass "A" Strategies Inc., Labalta Ltd., Legal Structures Inc., Linden Village Inn, Lindenhall Limited, Lindenhall Pty Ltd., M & M Computer Consulting, M & M Investments 101 Ltd., Maritime LLC, McCullough Financial Corporation, Michael Grosh Professional Corporation, Mountain Star Capital Corp., Mountain View Credit Union

Limited, NDX Development LLC, Numa Ltd., Oxyoke Farms Ltd., Paget Capital Ltd., Paradise Bay Holdings Inc., Phoenix Global Resources Ltd., Pine Grove Management Inc., William H. Randall, RLM Consulting LLC, Sellars Financial Inc., Talisman Financial Investments Inc., Tamika Enterprises Inc., Thor Empire Trust, Titania Consulting Inc., TJ Kelly Inc., Tools of the Carpenter, Trans Max Technologies Inc., Triple-SSS Holdings Inc., Tyrolia Foundation, Vitron Consulting Inc., Zurich Ventures Inc., A. Gary Young, Guy Bailey, Jr., Alfred Barnfield, Connie Bartel, Robert Bartel, Victor Bauman, Mylo Berstad, Nancy Buford, Cameron Campbell, Rick Childers, Blaine A. Cisna, Kevin Coombes, Ellen Kate Covey, Douglas A. Cowan, Margaret Dart, Stanley Defreitas, Don Dickerson, Eugene Leroy Duce, Arnold Dyck, Juan Exposito, Alfredo Farpon, Ray Fisher, Jack Folsom, Jim Folsom, Barie Fritz, Crystal Anne Fyn, Phyllis Fyn, Robert E. Fyn a.k.a. Colonel Fyn, Allan A. Gray, Michael Grosh, David Guess, Neil Guess, Kendra Haskett, Arnold Henry, David Henry, Gord Hiebert, Samuel Higgins, Wayne Johnson, Terry Kelly, Barbara L. King, Arthur Klassen, Edwin Knott, Ruby Leachman, George Lennox, William Lenz, Daniel Lescamela, Willie Lichtner, Lucia Ling, Barbara Lockhart, Ron Lowrie, Don MacGillivray, Danny R. MacNaughton, Norma A. MacNaughton, Michael McCullough, William McGrath, Dave Miller, Rosendo Mendez, Peter Mergenthaler, Peter Mol, Brad Mooney, Peter Morrisseau, Tom Oldridge, Roy Overton, Gertrude M. Prete, Donald Rabby, Amin Ramji, Bilkish Ramji, Stan W. Remin, Jeffrey Robinson, Daniel Romero, John Romero, Orest Rusnak, Arie Schalk, Randall Seabrook, Claude Seguin, Robert J. Sellars, William Serediuk, Peter L. Sheridan, Janet Stark, Murray Stark a.k.a. Harold Murray Stark a.k.a. Murray H. Stark, Delmer Strobel, Verna Strobel, Cheryl Taylor, Milton Teibe, Robert F. Terborg, Enrique Toscano a.k.a. Chico Toscano, Lee-Anna Toscano, Henk Ujiterlinde, Wilma Ujiterlinde, Heather Vance, Christine Williams, William A. Williamson a.k.a. Bill Williamson, John W. Willock, ohn Doe, Richard Doe, XYZ Corp., Alberta Lawyers' Insurance Association and Canadian Lawyers' Insurance Association

Please read this notice carefully in its entirety. This notice relates to the certification of a Class Action. If you are a Class Member, this notice contains important information about your rights described below.

If you are a Member of the Class, an Alberta resident and you do not opt-out (as defined below), you will be bound by the determination of the common issues as decided by the Court.

If you opt-out, you will not be able to participate in any monetary recovery whether by way of judgment or settlement.

If you are a Member of the Class and not an Alberta resident, then you must opt-in (as defined below) to the Class Action to participate in the Class Action, be bound by its determination, and participate in any monetary recovery.

This Notice has been sent to you in accordance with the Order of the Alberta Court of Queen's Bench.

Forms

Forms which need to be completed by Alberta residents who wish to opt-out, or non-Alberta residents who wish to opt-in to the Class proceedings, may be found at the following website, www.cuminggillespie.com.

Purpose of this Notice

This Notice is being provided to you because certain records indicated you may be a person who invested monies with the Defendants, and suffered a loss. The purpose of this Notice is to inform you that the Alberta Court of Queen's Bench has ordered that this lawsuit may proceed as a Class Proceeding on behalf of all persons who invested money with the Defendants and suffered losses.

Class Definition

Class Members are all persons, other than the Defendants, who have invested money with the HMS Scheme, directly or indirectly, and suffered a loss of all or a part of that investment (**Class Members**).

Class Counsel estimates that there are approximately one thousand people who are Class Members.

Description of the Proceedings

On June 2, 2005, an action was commenced against the Defendants surrounding the operation of an investment scheme commonly known as "HMS". It is alleged that the HMS investment scheme was not a legitimate investment activity and in fact constituted an illegal fraudulent investment scheme.

The Plaintiffs allege that the illegal Ponzi scheme operated by HMS and the other Defendants caused losses to the Class Members of approximately \$100,000,000.00.

The Plaintiffs claim damages against the Defendants in the amount of \$100,000,000.00 alleging the Defendants were involved in the operation of this illegal Ponzi scheme.

Common Issues

The Court of Queen's Bench of Alberta has determined that there will be a common issue trial to determine the following issues:

- a. What were the essential common terms of the agreements between members of the Plaintiff Class (**Class Members**) and HMS?
- b. Was the HMS Scheme a fraudulent high-yield or Ponzi scheme?
- c. Was there a systematic fraudulent or negligent misrepresentation by the HMS Defendants, and/or Lawyers, or any of them, to Class Members as part of the HMS Scheme?

- d. Did the HMS Defendants, and/or the Lawyers, or any of them, convert investment funds to their personal benefit?
- e. Did the Defendants (except HSBC, CIBC, Community Credit Union Ltd., and Mountain View Credit Union Limited), or any of them, engage in conspiracy to defraud Class Members?
- f. Did an express or constructive trust exist between the HMS Defendants, or Lawyers, or any of them, and Class Members?
- g. Are Class Members entitled to a constructive trust in relation to the HMS Defendants, or the Lawyers, or any of them? Specifically:
 - i. Were Class Members in a trust relationship with HMS Defendants, or the Lawyers, or any of them?
 - ii. If yes, did HMS Defendants, or the Lawyers, or any of them, perpetrate a dishonest or fraudulent breach of trust?
- h. Did any of the Lawyers act as counsel or trustee for Class Members?
- i. Did any of the Lawyers owe fiduciary duties or trust obligations to Class Members?
- j. Did the Financial Institutions knowingly assist or participate in a fraudulent breach of trust or fiduciary duty by one or more of the Defendants?
- k. Were HMS Principals, CCS Defendants, and/or the Lawyers, or any of them, involved in transactions with the Financial Institutions which constituted suspicious transactions?
- l. Did the Financial Institutions report suspicious transactions in connection with the HMS Scheme?
- m. Did the Financial Institutions violate any of the provisions of the *Proceeds of Crime Act*, S.C. 2000, c. C-17?
- n. Did the Financial Institutions owe a duty to Class Members in their capacity as beneficiaries of a trust?
- o. Have any of the HMS Defendants, or Lawyers, been unjustly enriched at the expense of Class Members?
- p. Further to issue (n) above, are Class Members entitled to restitution or repayment of monies or entitled to a constructive trust?
- q. Did the HMS Defendants, and/or the Lawyers, or any of them, violate any of the provisions of the *Competition Act*, R.S.C. 1985, c. C-34, the *Securities Act*, R.S.A. 2000, c. S-4, or the *Criminal Code*, R.S.C. 1985, c. C-46?
- r. Are Class Members entitled to an accounting and/or tracing of the monies received by any of the Defendants pursuant to the HMS Scheme?
- s. Are Class Members entitled to punitive and/or aggravated damages?
- t. Should interest be assessed on amounts owing under the *Judgment Interest Act*, R.S.A. 2000, c. J-1?

Rights of the Class Members

If you are a Class Member, you may receive the benefit of and will be bound by the terms of any judgment the Court issues in the Class Proceedings.

If you are a Class Member, and a **resident of Alberta**, you have the following **options**:

1. You may await the outcome of the proceedings, following which you may be entitled to the benefit of any settlement or judgment. If you choose this option, you will remain a Class Member and, subject to proving your loss, you will share in the proceeds of any settlement or judgment.
2. You may elect to opt-out of the Class; that is, you may advise that you do not want to participate in the Class Proceedings. **If you opt-out of the Class, you will not participate in any settlement or judgment and you will not receive the benefits of any settlement or judgment.** However, you will also not be bound by any settlement with or judgment against the Defendants and your claim, if any, will remain unaffected. If you wish to opt-out of the Class, you must mail or deliver a written request for exclusion in the appropriate Opt-Out Form by no later than _____. Opt-Out Forms may be downloaded from the website www.cuminggillespie.com or may be obtained by phoning 1-800-682-2480.

If you are a Class Member, and a **non-resident of the Province of Alberta**, you have the following **options**:

1. You may do nothing, in which case you will not receive any benefit of the Class Proceedings and will not participate in the benefit of any settlement or judgment in the proceedings. However, you will also not be bound by any settlement with or judgment against the Defendants and your claim, if any, will remain unaffected.
2. Class Members will have until no later than _____ to opt-in to the Class Proceeding by completing an Opt-In Form and provide it to Class Counsel either by e-mail at cgillespie@cuminggillespie.com, or by faxing to fax number 1-800-682-2480, or by ordinary mail or delivery to: Craig Gillespie at Cuming, Gillespie & Raymaker, Barristers & Solicitors, 1130, 396 - 11th Avenue SW, Calgary, Alberta, T2R 0C5.

Financial Consequences of the Class Proceeding

Alberta resident Class Members will be entitled to the benefit of a successful judgment of the Court or settlement on the common issues. Class Members who opt-out of the Class will not benefit from any successful judgment or settlement.

Non-Alberta resident Class Members need to opt-in to participate in the benefit of a successful judgment of the Court or settlement on the common issues.

No Class Member will be responsible for Plaintiff Class Counsel's legal fees or disbursements unless money is recovered in a settlement or judgment.

If the claims of the Class are dismissed against some or all of the Defendants, then those Defendants may seek to recover their legal costs of defending the claims against the Representative Plaintiff but not against Class Members.

Legal Fees and Disbursements

The Representative Plaintiffs have entered into a contingency fee agreement with Class Counsel. Subject to Court approval, Class Counsel will seek a fee of 33.33% of any amount recovered or, alternatively, a multiplier of 4x the hourly rate of Class Counsel accumulated over the course of the Class Proceedings, whichever is the greater, plus disbursements, plus applicable GST.

Disclosure Consequences of the Class Proceeding

Class Members will be deemed to have consented to the disclosure by Plaintiff Class Counsel to Defendants' Counsel of all information relating to their respective claim. The information will go to the Defendants' Counsel for use in the litigation or settlement, but cannot by law be used outside the litigation.

Further Information

Class Counsel in this matter is:

Cuming, Gillespie & Raymaker
Barristers & Solicitors
1130, 396 - 11th Ave SW
Calgary, Alberta T2R 0C5

Phone: (403) 571-0555
Toll Free: 1-800-682-2480
Fax: (403) 232-8818
Website: www.cuminggillespie.com
E-mail: cgillespie@cuminggillespie.com

Class Members who wish to obtain more information about the representative action should contact Niki Funk nfunk@cuminggillespie.com at Cuming, Gillespie & Raymaker.

SCHEDULE "B"

PLAINTIFFS' LITIGATION PLAN NOVEMBER 26, 2008

CLASS PROCEEDING AGAINST THE HMS FINANCIAL INC. ET AL DEFENDANTS

This plan is filed pursuant to s. 5(1)(e)(ii) of the *Class Proceedings Act*

A. Communication with Members of the Class

Communication

Upon publication of the Notice of Class Proceeding, Cuming, Gillespie & Raymaker LLP and McLennan Ross LLP ("**Class Counsel**"), or their agents, will respond to all requests for Opt-Out Forms and Opt-In Forms for non-Alberta residents and maintain a link on the website of Cuming, Gillespie & Raymaker, found at <http://www.cuminggillespie.com/>, showing any public filings and Court Orders, as well as a brief description of the proceeding. The web page will also direct any class member inquiries to appropriate lawyers or paralegals within Class Counsel's firms for a response, and provide a toll-free telephone number and e-mail contact for such inquiries. If and when settlement or judgment is obtained, Class Counsel will propose a Claims Administration Process pursuant to section B below for the benefit of Class Members so that claims can be dealt with in an efficient manner.

Database

The Defendants shall make available to Class Counsel all their relevant, material and non-privileged electronic database(s) and will work with Class Counsel to ensure that any information stored on such database(s) can be accessed by Class Counsel, or their agents.

Notification of Certification and the Right to Opt-In/Opt-Out

Notice of Certification and the right to Opt-In for non-residents or the right for residents to Opt-Out shall be given to the Class in a manner directed by the Court, initially at the Plaintiffs' expense. The Plaintiffs propose that such notices be provided by e-mail wherever e-mail addresses are available for members of the Class and otherwise by ordinary mail to the last known address of the Class Member. Non-residents will have sixty (60) days from the date of sending the Notice to Opt-In to the Class Action. The Opt-In Form will be on the website maintained by Class Counsel at <http://www.cuminggillespie.com/>.

Post-Certification Status Reports

Class Counsel will continue to update the web page dedicated to this Class action. The toll-free phone number and e-mail contact provided on the web page will remain in effect until the Class action is finally resolved.

Identification of Class Members

Class Counsel will rely on the records obtained via Court Order from the RCMP's ongoing investigation (the "RCMP Records"), the database(s) of the Defendants, and any other records which become available, in identifying Class members.

B. Conduct of Proceedings

Witness Identification and Evidence

At present, it is not anticipated that any witnesses will be called who are not either Defendant parties to the action who have already been served, or the Representative Plaintiffs. Accordingly, all currently contemplated witnesses have been identified and their evidence will be secured as provided for under the *Rules of Court* and this section.

Records Production and Preservation

The records of the Defendants will be produced as required under the *Rules of Court*, as will the records of the Representative Plaintiffs, by April 30, 2009. The RCMP Records obtained by Court Order have already been made available to those Defendants prepared to pay the cost of their reproduction. There will be no production of individual, non-representative Plaintiff Class members without leave of the Court. Records of individual Class members will be produced only as necessary, relevant and material to any remaining individual issues, by April 30, 2009. If Defendants require any other individual Class members' documents then they may apply for an Order for the same.

Records Management and Exchange

The records production of the Representative Plaintiffs, including the RCMP Records, shall be maintained, and exchanged as necessary, in electronic format. The Representative Plaintiffs propose that the records production of the Defendants also be in electronic format and that an agreement be reached between the parties, or directed through case management, as to technical and formatting consistency issues for exchange of electronic records.

Examination for Discovery of Representative Plaintiffs and Defendants

The representatives for the Defendant groups shall be entitled to examine only the Representative Plaintiffs as of right. Class Counsel will examine Defendants as required, in accordance with the Alberta *Rules of Court*. No examination of individual Class members with the exception of the representative Plaintiffs shall occur without leave of the Court.

Trial Witnesses and Experts

At present, it is anticipated that Class Counsel will call one or more Representative Plaintiffs, and/or experts as witnesses at the trial of the common issues, if necessary. At present,

Class Counsel anticipate that experts may be required in relation to the standards of care applicable to bankers and to lawyers. The process for tendering of expert reports and trial evidence will otherwise follow the procedures set forth in the *Rules of Court*.

Class Counsel anticipates that most of the evidence will relate to the conduct of the Defendants in relation to the HMS Scheme, including the timing and extent of the Defendants' involvement in the HMS Scheme and the quantity of HMS investor funds that were obtained in connection with the HMS Scheme.

Class Counsel will propose a process, if required, whereby information concerning Class members' investments in the HMS Scheme can be confirmed, although Class Counsel anticipates that this information will be available from the Defendants' records. This could include information such as the date of the investment, the amount of the investment, any interest or other payments received, and such other information as the Plaintiffs and the Defendants agree, or the Court orders, may be necessary.

Individual Issues

If, contrary to Class Counsel's expectation, a need arises to hear evidence from individual members of the Plaintiff Class with respect to the liability of the Defendants, then a process can be established, at that time, to receive the requisite information from Class members.

Distribution of any Amounts Recovered

It is anticipated that, at the conclusion of the common issues trial, if the Plaintiffs are successful, there will be judgment against various Defendants.

Any amounts recovered under settlement, execution on judgments, or simply as recovery of HMS investor funds (such as the Indiana funds or the San Diego Bank funds), will be the subject of applications before the case management judge with respect to distribution of those amounts to members of the Plaintiff Class. Class Counsel anticipates that the proposal will be a return of each investor's capital investment on a *pro rata* basis.

Further details of a Claims Administration process will be the subject of discussion with Defendants' counsel, and the subject of further application and direction of the Court in due course.

Settlement

As has occurred already in this action, Class Counsel will continue to discuss resolution of the claim against Defendants, with the intention of attempting to resolve the claim as against Defendants in a manner that is in the best interests of the Plaintiff Class. Any such settlements, which are substantive, will be the subject of an application for Court approval before the case management judge.

SCHEDULE "C"

No. 0501 08152

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

^^ DOUGLAS ALEXANDER and WILLIAM BARRETT, as Representative Plaintiffs

Plaintiffs

- and -

H M S FINANCIAL INC., SKYWARD MANAGEMENT INC., GARTH S. BAILEY, GARTH S. BAILEY PROFESSIONAL CORPORATION, 990137 ALBERTA LTD., 1037149 ALBERTA LTD., operating as CEDAR MANAGEMENT, 1053382 ALBERTA INC., 1070199 ALBERTA LTD., 1079373 ALBERTA LTD., 993638 ALBERTA LTD., A-Z INVESTMENT GROUP, ABBA RESOURCES UNLIMITED, ACADEMY FINANCIAL INC., ACADEMY FINANCIAL PLANNERS & CONSULTANTS INC., AILANTHUS INTERNATIONAL INC., ALTRUISTIC HOLDINGS LTD., ^ BAILEY & DAWES LLC, ^ BOGNER INDUSTRIES LTD. a.k.a. BOGNER INDUSTRIES INC., B.P. FRITZ CONSULTING INC., CANADIAN IMPERIAL BANK OF COMMERCE, THE CARPENTER'S SHOP CORPORATION, CASSELMAN MCS FINANCIAL INC., CEDAR POINTE CONSULTING GROUP INC., CHASE FORBES TRUST LTD., CLJ CONSULTING LLC, COMMONWEALTH MARKETING GROUP LTD., COMMUNITY CREDIT UNION LTD., COMPANIONS INC., ^ THE DAKOTA CORPORATION, DANA I. CARLSON, DATAS CONSULTING, DEFREITAS & ASSOCIATES, ^ ^ ETHAN EQUITIES INC., ^ FIVE CONTINENTS CONSULTING, FIVE CONTINENTS CONSULTING CORPORATION, ^ ^ WARREN GOSS, GRACEFUL BENEFICENCE, GUESSWORKS, GUESSWORKS FOUNDATION, THE HILLPRO GROUP INC., HORIZON BANK INTERNATIONAL LIMITED, HORIZON FIDUCIARY INC., HSBC BANK CANADA, IN HOUSE COUNSEL CAMERON CAMPBELL, INTERNATIONAL INVESTMENTS INC., ^ ^ ^ ^ KAMIKEY SERVICES INC., KELSO ENTERPRISES INC., ^ KINGDOM ADVISORS, KLASS "A" STRATEGIES INC., LABALTA LTD., ^ LEGAL STRUCTURES INC., LINDEN VILLAGE INN, LINDENHALL LIMITED, LINDENHALL PTY LTD., M & M COMPUTER CONSULTING, M & M INVESTMENTS 101 LTD., ^ ^ MARITIME LLC, ^ MCCULLOUGH FINANCIAL CORPORATION, ^ MICHAEL GROSH PROFESSIONAL CORPORATION, MOUNTAIN STAR CAPITAL CORP., MOUNTAIN VIEW CREDIT UNION LIMITED, NDX DEVELOPMENT LLC, NUMA LTD., OXYOKE FARMS LTD., PAGET CAPITAL LTD., PARADISE BAY HOLDINGS INC., PHOENIX GLOBAL RESOURCES LTD., PINE GROVE MANAGEMENT INC., WILLIAM H. RANDALL, RLM CONSULTING LLC, SELLARS FINANCIAL INC., TALISMAN FINANCIAL INVESTMENTS INC., TAMIKA ENTERPRISES INC., THOR EMPIRE TRUST, TITANIA CONSULTING INC., TJ KELLY INC., ^ TOOLS OF THE CARPENTER, ^ TRANS MAX TECHNOLOGIES INC., TRIPLE-

SSS HOLDINGS INC., TYROLIA FOUNDATION, VITRON CONSULTING INC.,[^] ZURICH VENTURES INC., A. GARY YOUNG, GUY BAILEY, ALFRED BARNFIELD, CONNIE BARTEL, ROBERT BARTEL, VICTOR BAUMAN, MYLO BERSTAD, NANCY BUFORD, CAMERON CAMPBELL, RICK CHILDERS, BLAINE A. CISNA, KEVIN COOMBS, ELLEN KATE COVEY, DOUGLAS A. COWAN, MARGARET DART, STANLEY DEFREITAS, DON DICKERSON, EUGENE LEROY DUCE, ARNOLD DYCK, JUAN EXPOSITO, ALFREDO FARPON, RAY FISHER, JACK FOLSOM, JIM FOLSOM,[^] BARIE FRITZ, CRYSTAL ANNE FYN, PHYLLIS FYN, ROBERT E. FYN a.k.a. COLONEL FYN, ALLAN A. GRAY, MICHAEL GROSH, DAVID GUESS, NEIL GUESS, KENDRA HASKETT, ARNOLD HENRY, DAVID HENRY, GORD HIEBERT, SAMUEL HIGGINS,[^] [^] [^] [^] [^] WAYNE JOHNSON, TERRY KELLY, BARBARA L. KING, ARTHUR KLASSEN, EDWIN KNOTT, RUBY LEACHMAN, GEORGE LENNOX, WILLIAM LENZ, DANIEL LESCAMELA, WILLIE LICHTNER, LUCIA LING, BARBARA LOCKHART, RON LOWRIE, DON MACGILLIVRAY, DANNY R. MACNAUGHTON, NORMA A. MACNAUGHTON,[^] [^] MICHAEL MCCULLOUGH, WILLIAM MCGRATH, DAVE MILLER,[^] ROSENDO MENDEZ, PETER MERGENTHALER, PETER MOL, BRAD MOONEY, PETER MORRISSEAU, TOM OLDRIDGE, ROY OVERTON, GERTRUDE M. PRETE, DONALD RABBY, AMIN RAMJI, BILKISH RAMJI, STAN W. REMIN,[^] JEFFREY ROBINSON,[^] DANIEL ROMERO, JOHN ROMERO, OREST RUSNAK, ARIE SCHALK, RANDALL SEABROOK, CLAUDE SEGUIN, ROBERT J. SELLARS, WILLIAM SEREDIUK, PETER L. SHERIDAN, JANET STARK, MURRAY STARK a.k.a. HAROLD MURRAY STARK a.k.a. MURRAY H. STARK, DELMER STROBEL, VERNA STROBEL, CHERYL TAYLOR, MILTON TEIBE, ROBERT F. TERBORG, ENRIQUE TOSCANO a.k.a. CHICO TOSCANO, LEE-ANNA TOSCANO, HENK UJITERLINDE, WILMA UJITERLINDE, HEATHER VANCE, CHRISTINE WILLIAMS, WILLIAM A. WILLIAMSON a.k.a. BILL WILLIAMSON, JOHN W. WILLOCK,[^] [^] [^] JOHN DOE, RICHARD DOE, XYZ CORP., ALBERTA LAWYERS' INSURANCE ASSOCIATION and CANADIAN LAWYERS' INSURANCE ASSOCIATION

Defendants

AMENDED AMENDED AMENDED STATEMENT OF CLAIM

The Parties

1. The representative Plaintiffs HEIKE ENTICKNAP ("Enticknap"), Harlan Light ("Light") and Douglas Alexander ("Alexander") are residents of[^] Alberta and bring[^] this action on[^] their own behalf and on behalf of all persons, other than the Defendants, who have invested money with the Defendants and suffered losses.
- 1.1 The representative Plaintiff WILLIAM BARRETT ("Barrett"), is a resident of the United States of America and brings this action on his own behalf and on behalf of of all persons other than the Defendants who reside outside the Province of Alberta and who have invested money with the Defendants and suffered losses.

2. Enticknap, Light, Alexander and Barrett and approximately 1,000 other investors [^] are victims of a Ponzi scheme or High Yield investment scheme ("HMS Scheme"). The HMS Scheme was characterized by systemic misrepresentations and, or in the alternative, fraudulent conduct. Further particulars of the HMS Scheme are detailed at paragraphs 73 to 79. Enticknap, Light, Alexander and Barrett and the other investors are collectively referred to as the "Plaintiff Investors". The Defendants had no legitimate business and the object of the HMS Scheme was to take the Plaintiff Investor funds and convert them to the Defendants' own use, benefit and enrichment.

3. The Defendants, H M S FINANCIAL INC. ("HMS"), SKYWARD MANAGEMENT INC. ("Skyward"), 1079373 ALBERTA LTD. ("1079373"), TAMIKA ENTERPRISES INC. ("Tamika"), THE DAKOTA CORPORATION ("Dakota"), [^], TITANIA CONSULTING INC. ("Titania"), PAGET CAPITAL LTD. ("Paget"), PINE GROVE MANAGEMENT INC. ("Pine Grove"), 1053382 ALBERTA INC. ("1053382"), 1070199 ALBERTA LTD. ("1070199"), A-Z INVESTMENT GROUP ("A-Z Investments"), ACADEMY FINANCIAL INC. ("Academy"), ACADEMY FINANCIAL PLANNERS & CONSULTANTS INC. ("Academy Consultants"), COMPANIONS INC. ("Companions"), TALISMAN FINANCIAL INVESTMENTS INC. ("TFI"), ZURICH VENTURES INC. ("Zurich"), GARTH S. BAILEY PROFESSIONAL CORPORATION ("Bailey Corporation"), MICHAEL GROSH PROFESSIONAL CORPORATION ("Grosh Corp."), ALTRUISTIC HOLDINGS LTD. ("Altruistic"), [^] 1037149 ALBERTA LTD., operating as CEDAR MANAGEMENT ("1037149"), COMMONWEALTH MARKETING GROUP LTD. ("Commonwealth"), DATAS CONSULTING ("Datas"), [^] ETHAN EQUITIES INC. ("Ethan"), FIVE CONTINENTS CONSULTING CORPORATION ("Five Continents Consulting Corporation"), THE HILLPRO GROUP INC. ("Hillpro"), [^], KELSO ENTERPRISES INC. ("Kelso"), [^] KLAS "A" STRATEGIES INC. ("Klass A"), LEGAL STRUCTURES INC., LABALTA LTD. ("Labalta"), M&M Computer Consulting, M & M INVESTMENTS 101 LTD. ("M & M"), [^], MCCULLOUGH FINANCIAL CORPORATION ("McCullough Financial"), MOUNTAIN STAR CAPITAL CORP. ("Mountain Star"), PARADISE BAY HOLDINGS INC. ("Paradise Bay"), PHOENIX GLOBAL RESOURCES LTD. ("Phoenix Global"), THOR EMPIRE TRUST, TRIPLE-SSS HOLDINGS INC. ("Triple S"), VITRON CONSULTING INC. ("Vitron"), ZINGER BROTHERS HOLDINGS ("Zinger Holdings"), 990137 ALBERTA LTD. ("990137"), 993638 ALBERTA LTD., SELLARS FINANCIAL INC. ("Sellars") [^] and OXYOKE FARMS LTD [^] are corporations registered and authorized to carry on business, and did in fact carry on business, in the Province of Alberta.

4. The Defendants, ABBA RESOURCES UNLIMITED ("ABBA"), CEDAR POINTE CONSULTING GROUP INC. ("Cedar Pointe"), NUMA LTD., TRANSMAX TECHNOLOGIES LTD. ("Transmax"), TRANSMAX INDUSTRIES INC., BOGNER INDUSTRIES LTD. a.k.a. BOGNER INDUSTRIES INC., THE CARPENTER'S SHOP

CORPORATION ("Carpenter's Shop"), IN HOUSE COUNSEL CAMERON CAMPBELL, BAILEY & DAWES L.C., FOWLKS & SNYDER LLP and LAW OFFICE OF RICHARD E. FOWLKS, ^, are corporations, non-profit corporations, and limited liability partnerships registered pursuant to the laws of the United States of America and were carrying on business in the United States, Canada and elsewhere.

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4.2 The Defendant LINDENHALL PTY LTD. ("Lindenhall Pty Ltd.") is a corporation incorporated pursuant to the laws of Australia. Lindenhall Pty Ltd. is controlled by the defendants HAROLD MURRAY STARK, RICK LYNN CHILDERS and CHERYL TAYLOR who acted as Directors. Lindenhall Pty Ltd. carried on business in Australia, Canada and elsewhere and was involved in the HMS Scheme.

4.3 The Defendant OXYOKE FARMS LTD. ("Oxyoke") is a corporation incorporated pursuant to the laws of Alberta. The Defendant LINDEN VILLAGE INN is a trade name used by Oxyoke. Oxyoke is controlled by the Defendants Fyn and Phyllis Fyn who acted as Directors. Oxyoke carries on business in Alberta, Canada and elsewhere and directly benefited from the HMS Scheme by receiving money.

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4.4 The Defendant LINDENHALL LIMITED is a corporation incorporated pursuant to the laws of Ireland. The Defendant LINDENHALL LIMITED is controlled by the Defendants RICK LYNN CHILDERS and MURRAY STARK who acted as Directors. LINDENHALL LIMITED carries on business in Ireland, Canada, and elsewhere and was involved in the HMS Scheme.

4.5 The Defendant HORIZON FIDUCIARY INC. is a corporation, non-profit corporation, limited partnership or trade name operating as a business in St. Vincent, The Grenadines, Calgary and elsewhere. The Defendant HOIRZON FIDUCIARY INC. was established by the Defendant William Lenz and was involved in the HMS Scheme.

5. The Defendant, CHASE FORBES TRUST LTD. ("Chase Forbes Trust"), is a corporation incorporated pursuant to the laws of New Zealand. Chase Forbes Trust was controlled by the defendant MURRAY STARK who acted as its President. Chase Forbes Trust carried on business in Canada, New Zealand and elsewhere and was involved in the HMS Scheme.

5.1 The Defendant TRANSMAX TECHNOLOGIES INC. acquired the Defendant BOGNER INDUSTRIES INC. The Defendant TRANSMAX TECHNOLOGIES INC. was controlled by the Defendants Peter Mergenthaler and Samuel Higgins. TRANSMAX TECHNOLOGIES INC. was directly involved in the HMS Scheme.

6. The Defendants set forth in paragraphs 3 to 5.1 are at times hereinafter referred to as the **"HMS Corporate Defendants"**. The HMS Corporate Defendants were incorporated for the primary purpose of committing the negligent, or alternatively, the fraudulent acts involved in the HMS Scheme described below. The HMS Corporate Defendants were expressly incorporated and directed to participate in such wrongful acts by their respective directors and officers.
7. The Defendants, ROBERT E. FYN a.k.a. COLONEL FYN ("Fyn") and MURRAY STARK a.k.a. HAROLD MURRAY STARK a.k.a. MURRAY H. STARK ("Stark"), are individuals and reside in Linden, Alberta. Fyn and Stark were directors and the controlling mind of HMS and, in their own right and on behalf of HMS were knowingly involved in the HMS Scheme.
- 7.1 The Defendants HAROLD MURRAY STARK ("Stark"), CHERYL TAYLOR ("Taylor"), and RICK CHILDERS ("Childers") reside in Linden, Alberta, Macedon, Australia, and Corona, California, USA, respectively. Stark, Taylor, and Childers were directors of Lindenhall Pty Ltd. and, in their own right or on behalf of Lindenhall Pty Ltd., were knowingly involved in the HMS Scheme.
- 7.2 The Defendant JUAN EXPOSITO (Exposito) resides in Boca Raton, Florida, USA. At all material times Exposito was a director and controlling mind of CLJ CONSULTING LLC and in his own right and on behalf of CLJ CONSULTING LLC, was knowingly involved in the HMS Scheme.
- 7.3 The Defendant NEIL GUESS resides in Seattle, Washington, USA. At all material times Neil Guess was knowingly involved in the HMS Scheme, and participated in the HMS Scheme by operating under and through the name GUESSWORKS FOUNDATION.
- 7.4 The Defendant David Guess, resides in Poulsbo, Washington, USA. At all material times David Guess was knowingly involved in the HMS Scheme, and participated in the HMS Scheme by operating under and through the name GUESSWORKS.
- 7.5 The Defendant NANCY BUFORD resides in Las Vegas, Nevada, USA. At all material times NANCY BUFORD was a director and controlling mind of NDX DEVELOPMENT LLC and in her own right and on behalf of NDX DEVELOPMENT LLC, was knowingly involved in the HMS Scheme.
- 7.8 The Defendants HAROLD MURRAY STARK ("Stark") and RICK CHILDERS ("Childers") reside in Linden, Alberta and Corona, California, USA, respectively. Stark

and Childers were directors of Lindenhall Limited and, in their own right or on behalf of Lindenhall Limited, were knowingly involved in the HMS Scheme.

- 7.9 The Defendant BARIE FRITZ ("Fritz") resides in Albuquerque, New Mexico in the United States of America and was a director of the Defendant B.P. FRITZ CONSULTING INC. At all material times, Fritz in his own right or on behalf of B.P. FRITZ CONSULTING INC., was knowingly involved in the HMS Scheme.
8. The Defendants, BLAINE A. CISNA ("Cisna") and PETER L. SHERIDAN ("Sheridan"), are individuals and reside in Balzac, Alberta and Beiseker, Alberta respectively. At all material times, Cisna and Sheridan were directors of Skyward, 1079373 and Titania, and in their own right and on behalf of Skyward, 1079373 and Titania, were knowingly involved in the HMS Scheme.
- 8.1 The Defendant PETER MERGENTHALER ("Mergenthaler") resides in Ronkonkoma, New York in the United States of America and was a director of the Defendant TRANSMAX TECHNOLOGIES INC. At all material times, Mergenthaler in his own right or on behalf of TRANSMAX TECHNOLOGIES INC. was knowingly involved in the HMS Scheme.
9. The Defendant, RUBY LEACHMAN ("Leachman"), is an individual and resides in Didsbury, Alberta. At all material times, Leachman was the sole director and controlling mind of Tamika and Dakota and in her own right and on behalf of Tamika and Dakota, was knowingly involved in the HMS Scheme.
- 9.1 The Defendant DANIEL ROMERO resides in Chula Vista, California, USA. At all material times Daniel Romero was knowingly involved in the HMS Scheme, and participated in the HMS Scheme by operating under and through the name KINGDOM ADVISERS.
- 9.2 The Defendant PETER MORRISSEAU resides in Tsuu Tina, Alberta. At all material times, PETER MORRISSEAU was the sole director and controlling mind of 990137 Alberta Ltd. and was knowingly involved in the HMS Scheme.
10. The Defendant, VICTOR BAUMAN ("Bauman"), is an individual and resides in St. Albert, Alberta. At all material times, Bauman was the sole director and controlling mind of Pine Grove and was knowingly involved in the HMS Scheme.
11. The Defendants, DANNY R. MACNAUGHTON and NORMA A. MACNAUGHTON ("MacNaughtons"), are individuals and reside in Calgary, Alberta. At all material times, the MacNaughtons were the directors and controlling mind of 1053382 and were knowingly involved in the HMS Scheme.

12. The Defendants, ALFRED BARNFIELD and BARBARA L. KING ("Barnfields") are individuals and reside in Crossfield, Alberta. At all material times, the Barnfields were the directors and controlling mind of 1070199 and were knowingly involved in the HMS Scheme.
13. The Defendant, ROBERT J. SELLARS ("Bob Sellars") is an individual and resides in Calgary, Alberta. At all material times, Bob Sellars was the director and controlling mind of Sellars and was knowingly involved in the HMS Scheme.
14. The Defendant, OREST RUSNAK ("Rusnak") is an individual and resides in Edmonton, Alberta. At all material times, Rusnak was the sole director and controlling mind of A-Z Investments, Academy, Academy Consultants, TFI, Zurich, LEGAL STRUCTURES INC., and Companions and was knowingly involved in the HMS Scheme.
15. The Defendants AMIN RAMJI and BILKISH RAMJI ("Ramji"), are individuals and reside in Red Deer, Alberta. At all material times, Ramji were the directors and controlling mind of Altruistic and were knowingly involved in the HMS Scheme.
16. ^
17. The Defendant, STAN W. REMIN ("Remin"), is an individual and resides in Edmonton, Alberta. At all material times, Remin was the sole director and controlling mind of 1037149 and was knowingly involved in the HMS Scheme.
18. The Defendant, WILLIAM SEREDIUK ("Serediuk"), is an individual and resides in Beiseker, Alberta. At all material times, Serediuk was the sole director and controlling mind of Commonwealth and was knowingly involved in the HMS Scheme.
19. The Defendants, DAVID HENRY ("Henry"), ARNOLD HENRY ("A. Henry") and TOM OLDRIDGE ("Oldridge"), are individuals and reside in Didsbury, Alberta. At all material times, Henry, A. Henry and Oldridge were partners in Datas and were knowingly involved in the HMS Scheme.
20. ^
21. The Defendant, WAYNE JOHNSON ("Johnson"), is an individual and resides in Calgary, Alberta. At all material times, Johnson was the sole director and controlling mind of Ethan and was knowingly involved in the HMS Scheme.

22. The Defendants, ENRIQUE TOSCANO a.k.a. CHICO TOSCANO and LEE-ANNA TOSCANO ("Toscanos"), are individuals and reside in Calgary, Alberta. At all material times, the Toscanos were the directors and controlling mind of Five Continents Consulting Corporation and FIVE CONTINENTS CONSULTING and were knowingly involved in the HMS Scheme.
23. The Defendants, EUGENE LEROY DUCE ("Duce"), JACK FOLSOM and JIM FOLSOM, are individuals and reside in Hill Spring, Alberta. At all material times, Duce, Jack Folsom and Jim Folsom were the directors and controlling mind of Hillpro and were knowingly involved in the HMS Scheme.
24. The Defendant, DONALD RABBY ("Rabby"), is an individual and resides in Edmonton, Alberta. At all material times, Rabby was the sole director and controlling mind of Kelso and was knowingly involved in the HMS Scheme.
25. ^
26. The Defendant, ARTHUR KLASSEN ("Klassen"), is an individual and resides in North Battleford, Saskatchewan. At all material times, Klassen was the sole director and controlling mind of Klass A and was knowingly involved in the HMS Scheme.
27. The Defendant, DOUGLAS A. COWAN ("Cowan"), is an individual and resides in Stony Plain, Alberta. At all material times, Cowan was the sole director and controlling mind of Labalta and 993638 ALBERTA LTD. and was knowingly involved in the HMS Scheme.
28. The Defendant, BRAD MOONEY ("Mooney"), is an individual and resides in Calgary, Alberta. At all material times, Mooney was a director, or alternatively was affiliated with, M & M and M&M COMPUTER CONSULTING and was knowingly involved in the HMS Scheme.
29. The Defendant, DAVE MILLER ("Miller"), is an individual and resides in Calgary, Alberta. At all material times, Miller ^ was knowingly involved in the HMS Scheme.
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30. The Defendant, MICHAEL MCCULLOUGH ("McCullough"), is an individual and resides in Calgary, Alberta. At all material times, McCullough was the sole director and controlling mind of McCullough Financial and was knowingly involved in the HMS Scheme.
31. The Defendants, CONNIE BARTEL ("C. Bartel"), ROBERT BARTEL ("R. Bartel") and RANDALL SEABROOK ("Seabrook"), are individuals and reside in Calgary, Alberta. At all material times, C. Bartel, R. Bartel and Seabrook were the directors and controlling mind of Mountain Star and were knowingly involved in the HMS Scheme.
32. The Defendant, JOHN W. WILLOCK ("Willock"), is an individual and resides in St. Albert, Alberta. At all material times, Willock was the sole director and controlling mind of Paradise Bay and was knowingly involved in the HMS Scheme.
33. The Defendant, ALLAN A. GRAY ("Gray"), is an individual and resides in Chestermere, Alberta. At all material times, Gray was the sole director and controlling mind of Phoenix Global and was knowingly involved in the HMS Scheme.
34. The Defendant, DANIEL LESCAMELA ("Lescamela"), is an individual and resides in Calgary, Alberta. At all material times, Lescamela was a director, or alternatively was affiliated with, Thor Empire Trust and was knowingly involved in the HMS Scheme.
35. The Defendants, DELMER STROBEL and VERNA STROBEL ("Strobels"), are individuals and reside in Calgary, Alberta and/or Rosthern, Saskatchewan. At all material times, the Strobels were the directors and controlling mind of Triple S and were knowingly involved in the HMS Scheme.
36. The Defendants, PETER MOL ("Mol") and ARIE SCHALK ("Schalk"), are individuals and reside in Calgary, Alberta. At all material times, Mol and Schalk were the directors and controlling mind of Vitron and were knowingly involved in the HMS Scheme.
37. The Defendant, CLAUDE ZINGER ("Zinger"), is an individual and resides in Coronation, Alberta. At all material times, Zinger was a director, or alternatively was affiliated with, Zinger Holdings and was knowingly involved in the HMS Scheme.
38. The Defendant, WILLIAM LENZ ("Lenz"), is an individual and resides in Calgary, Alberta. At all material times, Lenz was a director, or alternatively was affiliated with, Horizon Fiduciary Inc. and was knowingly involved in the HMS Scheme.

39. The Defendant, GEORGE LENNOX ("Lennox"), is an individual and resides in the City of Calgary in the Province of Alberta. At all material times, Lennox was director, or alternatively was affiliated with, 991037 and was knowingly involved in the HMS Scheme.
40. The Defendant, JOHN ROMERO ("Romero"), is an individual and resides in the City of Imperial Beach, California, U.S.A. At all material times, Romero was a director, or alternatively was affiliated with, ABBA and was knowingly involved in the HMS Scheme.
41. The Defendant, RICK CHILDERS ("Childers"), is an individual and resides in the City of Corona, California, U.S.A. At all material times, Childers was a director, or alternatively was affiliated with, Cedar Pointe and was knowingly involved in the HMS Scheme. At all material times, Childers also was a director, or alternatively was affiliated with, LINDENHALL PTY and was knowingly involved in the HMS Scheme. Childers at all material times was a director or alternatively was affiliated with LINDENHALL LIMITED.
- 41.1 The Defendant, WILLIAM A. WILLIAMSON a.k.a. BILL WILLIAMSON ("Williamson") resides in the City of Corona, California, U.S.A. at all material times, Williamson was a director or alternatively was affiliated with Cedar Pointe and was knowingly involved in the HMS Scheme.
42. The Defendant, RAY FISHER ("Fisher"), is an individual and resides in the City of Arden, North Carolina, U.S.A. At all material times, Fisher was a director, or alternatively was affiliated with, or operated under the names Carpenter's Shop and TOOLS OF THE CARPENTER and was knowingly involved in the HMS Scheme.
43. The Defendant, ALFREDO FARPON ("Farpon"), is an individual and resides in the City of Houston, Texas, U.S.A. At all material times, Farpon was a director, or alternatively was affiliated with, NUMA Ltd. and was knowingly involved in the HMS Scheme.
44. The Defendant, SAMUEL HIGGINS ("Higgins"), is an individual and resides in the City of Tijuana, Mexico. At all material times, Higgins was a director, or alternatively was affiliated with, Transmax and TRANSMAX TECHNOLOGIES INC. and was knowingly involved in the HMS Scheme. He was a director, operated under the name, or alternatively was affiliated with IEP International Equity Partners S.A. and was knowingly involved in the HMS Scheme.

45. The Defendants, MILTON TEIBE ("Teibe") and JOHN WILLOCK ("Willock"), are directors of companies currently unknown to the Plaintiff Investors and are residents of Alberta. Teibe and Willock were involved personally, or on behalf of unknown corporations, in the HMS Scheme.
- 45.1 The Defendants, ELLEN KATE COVEY ("Covey") and CRYSTAL ANNE FYN ("Crystal Fyn") are individuals who both reside in Linden, Alberta. At all material times Covey and Crystal Fyn were ^involved personally, ^ or alternatively, knowingly involved in the HMS Scheme.
- 45.2 The Defendant WILLIAM MCGRATH (McGrath) resides in Fayetteville, New York, USA. At all material times, McGrath was a director, or alternatively was affiliated with, KAMIKEY SERVICES INC. and was knowingly involved in the HMS Scheme.
- 45.3 The Defendant EDWIN KNOTT (Knott) resides in Lake Tahoe, Nevada, USA. At all material times, Knott was a director or alternatively was affiliated with MARITIME, LLC, and was knowingly involved in the HMS Scheme.
- 45.4 The Defendant RON LOWRIE (Lowrie) resides in Belize City, Belize. At all material times, Lowrie was a director, or alternatively was affiliated with, AILANTHUS INTERNATIONAL INC. and was knowingly involved in the HMS Scheme.
- 45.5 The Defendant ROSENDO MENDEZ (Mendez) resides in Davie, Florida, USA. At all material times Menendez was a director, or alternatively was affiliated with, RLM CONSULTING LLC and was knowingly involved in the HMS Scheme.
- 45.6 The Defendant TERRY KELLY resides in Woodinville, Washington, USA. At all material times TERRY KELLY was a director, or alternatively was affiliated with TJ KELLY INC. and INTERNATIONAL INVESTMENTS INC. and or operated under the name TYROLIA FOUNDATION and was knowingly involved in the HMS Scheme.
- 45.7 The Defendant, CLAUDE SEGUIN ("Seguin") resides in the City of Orleans, Ontario. At all material times, Seguin was a director or alternatively was affiliated with CASSELMAN MCS FINANCIAL INC. and was knowingly involved in the HMS Scheme.
- 45.8 The Defendant CHRISTINE WILLIAMS resides in Ashville, North Carolina, USA. At all material times, CHRISTINE WILLIAMS participated in the HMS Scheme by operating under the name GRACEFUL BENEFICENCE.

46. The Defendants described in paragraphs 7 to 45.8 above are also at times hereinafter referred to as the **"HMS Director Defendants"**.
47. The Defendant, GARTH S. BAILEY ("Bailey"), is a resident of De Winton, Alberta and is a barrister and solicitor licensed to practice law in the Province of Alberta. At all material times, Bailey was the sole director and the controlling mind of Bailey Corporation and acted as legal counsel for the HMS Corporate Defendants and HMS Director Defendants. Bailey negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Bailey owed a duty of care and fiduciary duties to the Plaintiff Investors.
48. ^
49. The Defendant, DANA I. CARLSON ("Carlson"), is a resident of Red Deer, Alberta and is a barrister and solicitor licensed to practice law in the Province of Alberta. Carlson negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Carlson owed a duty of care and fiduciary duties to the Plaintiff Investors.
50. ^
- 50.1 ^
51. The Defendant, MICHAEL GROSH ("Grosh"), is a resident of Calgary, Alberta and is a barrister and solicitor licensed to practice law in the Province of Alberta and was the sole shareholder and directing mind of Grosh Corp. Grosh and Grosh Corp. negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Grosh owed a duty of care and fiduciary duties to the Plaintiff Investors. Further, or alternatively, at all material times Grosh and Grosh Corp. operated as promoters of the HMS Scheme within the meaning of the term "HMS Scheme Promoters" as defined in paragraph 63 herein.
52. The Defendant, GUY B. BAILEY JR. ("Guy Bailey"), is a resident of Florida, U.S.A and is a barrister and solicitor authorized to practice law in the State of Florida and elsewhere. At all material times, Guy Bailey was a partner of the law firm ^ BAILEY & DAWES L.C. Guy Bailey and ^ BAILEY & DAWES L.C. negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Guy Bailey and ^ BAILEY & DAWES L.C. owed a duty of care and fiduciary duties to the Plaintiff Investors.

53.

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54.

The Defendant, CAMERON CAMPBELL ("Campbell"), is a resident of La Jolla, California U.S.A and is a barrister and solicitor authorized to practice law in the State of California and elsewhere. At all material times, Campbell negligently or knowingly facilitated the operation of the HMS Scheme. Campbell was a partner of the law firm IN HOUSE COUNSEL CAMERON CAMPBELL and negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Campbell and IN HOUSE COUNSEL CAMERON CAMPBELL owed a duty of care and fiduciary duties to the Plaintiff Investors.

54.1

WARREN GOSS ("Goss") is a resident of Boulder, Colorado, U.S.A. and is a barrister and solicitor authorized to practice law in the State of Colorado. Goss negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Goss owed a duty of care and fiduciary duties to the Plaintiff Investors.

54.2

WILLIAM H. RANDALL ("Randall") is a resident of Foothill Ranch, California, U.S.A. and is a barrister and solicitor authorized to practice law in the State of California. Randall negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Randall owed a duty of care and fiduciary duties to the Plaintiff Investors.

55.

The Defendants, Bailey, Bailey Corporation, ^ Carlson, ^ Grosh, Grosh Corp., Guy Bailey, Goss, Randall, ^, Bailey & Dawes L.C., ^, ^, IN HOUSE COUNSEL CAMERON CAMPBELL, ^, ^, and Campbell are at times collectively hereinafter referred to as the "Lawyers".

^

57.

The Defendant, STANLEY DEFREITAS ("Stanley Defreitas"), is a resident of Toronto, Ontario and is a chartered accountant authorized to practice in the Province of Ontario and elsewhere. At all material times, Stanley Defreitas was a director, partner or employee of DEFREITAS & ASSOCIATES, an accounting firm authorized to carry on business in the Province of Ontario and elsewhere. At all material times, Stanley Defreitas and Defreitas & Associates negligently or knowingly facilitated the operation of the HMS Scheme. At all material times, Stanley Defreitas and Defreitas & Associates owed a duty of care and fiduciary duties to the Plaintiff Investors.

58. The Defendants, ^ Stanley Defreitas ^ and Defreitas & Associates are at times collectively hereinafter referred to as the "Accountants".
59. The Defendants, ARNOLD DYCK ("Dyck") and GERTRUDE M. PRETE ("Prete"), are individuals and reside in the City of Lethbridge and the Town of Cardston respectively, in the Province of Alberta. At all material times, Dyck and Prete, acted as promoters of the HMS Scheme. Dyck and Prete were paid a commission for monies invested through them by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 59.1 The Defendant JEFFREY ROBINSON resides in Maryland, USA. At all material times, Jeffrey Robinson was paid a commission for money invested through him by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 59.2 The Defendant ROBERT F. TERBORG resides in the City of Calgary, Alberta. At all material times, ROBERT F. TERBORG was paid a commission for money invested through him by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 59.3 The Defendant HENK UJTERLINDE and WILMA UJTERLINDE reside in Calgary, Alberta. At all material times, HENK UJTERLINDE and WILMA UJTERLINDE were paid a commission for money invested through them by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 59.4 The Defendant HEATHER VANCE resides in Balzac, Alberta. At all material times, HEATHER VANCE was paid a commission for money invested through her by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 59.5 The Defendant WILLIE LICHTNER resides in Grande Cache, Alberta. At all material times, WILLIE LICHTNER was paid a commission for money invested through him by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 59.6 The Defendant BARBARA LOCKHART resides in Laguna Niguel, California, USA. At all material times, BARBARA LOCKHART was paid a commission for money invested through her by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
60. The Defendants, NANCY BUFORD ("Buford") and BARIE FRITZ ("Fritz"), are individuals and reside in the Cities of Las Vegas, Nevada and Albuquerque, New

Mexico, respectively, in the United States of America. At all material times, Buford and Fritz acted as promoters of the HMS Scheme. Buford and Fritz were paid commissions by the HMS Corporate Defendants or HMS Director Defendants one or any of them, for monies invested through them in the HMS Scheme.

- 60.1 The Defendant ROY OVERTON ("Overton"), resides in the City of Norfolk, Virginia in the United States of America. At all material times Overton, acted as a promoter of the HMS Scheme. Overton was paid commissions by the HMS Corporate Defendants or HMS Director Defendants one or any of them, for monies invested through them in the HMS Scheme.
- 60.2 The Defendant LUCIA LING (Ling) resides in Vancouver, British Columbia. At all material times Ling, acted as a promoter of the HMS Scheme. Ling was paid commissions by the HMS Corporate Defendants or HMS Director Defendants one or any of them, for monies invested through them in the HMS Scheme.
- 60.3 The Defendant DON MCGILLIVRAY resides in Edmonton, Alberta. At all material times, DON MCGILLIVRAY was paid a commission for money invested through him by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 60.4 The Defendant DONALD DICKERSON resides in Corte Madera, California, USA. DONALD DICKERSON was paid a commission for money invested through him by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 60.5 The Defendant GORD HIEBERT resides in Edmonton, Alberta. At all material times, GORD HIEBERT was paid a commission for money invested through him by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 60.6 The Defendant MYLO BERSTAD resides in Melfort, Saskatchewan. At all material times, MYLO BERSTAD was paid a commission for money invested through him by the HMS Corporate Defendants or HMS Director Defendants one or any of them.
- 61. The Defendant, KENDRA HASKETT ("Haskett"), resides in Linden, Alberta and was at all material times an employee of HMS and the Executive Assistant to Fyn, and was personally or knowingly involved in the HMS Scheme.
- 61.1 The Defendant, MARGARET DART ("Dart"), resides in Three Hills, Alberta and was at all material times an employee and book keeper of HMS, and was knowingly involved in the HMS Scheme.
- 61.2 The Defendant, KEVIN COOMBES ("Coombes"), was at all material times an accessory to the HMS Scheme and employee of Horizon Bank. Coombes was knowingly or personally involved in the HMS Scheme.

- 61.3 The Defendant, A. GARY YOUNG resides in Linden, Alberta and was at all material times an employee of HMS, and was knowingly involved in the HMS Scheme.
- 61.4 The Defendants Covey and Crystal Fyn were at all material times employees of HMS and knowingly involved in the HMS Scheme.
- 61.5 The Defendant PHYLLIS FYN resides in Linden, Alberta and was at all material times an employee of HMS and involved personally or knowingly in the HMS Scheme.
62. The Defendant JOHN DOE is a person, or persons, who also acted as a promoter of the HMS Scheme but whose identity is not currently known to the Plaintiff Investors.
63. The Defendants set out in paragraphs 59 to 62 are at times collectively referred to hereinafter as the "HMS Scheme Promoters" and were knowingly involved in the HMS Scheme.
64. The Defendants, RICHARD DOE and XYZ CORP., are individuals and corporations, whose identity is currently unknown to the Plaintiff Investors, who participated in the HMS Scheme and who directly or indirectly caused injury to the Plaintiff and Investors.
- 64.1 The Defendant JANET STARK resides in Linden, Alberta and was involved personally or knowingly involved in the HMS Scheme.
65. All of the Defendants as set out in paragraph 3 to 64.1 are, with the exception of the Lawyers and Accountants, at times, hereinafter collectively referred to as the "HMS Defendants".
66. The Defendant, MOUNTAIN VIEW CREDIT UNION LIMITED ("Mountain View"), is a credit union, and is authorized to carry on business in the Province of Alberta. At all material times, Mountain View accepted deposits from the HMS Defendants and transferred money for the HMS Defendants.
67. The Defendant, COMMUNITY CREDIT UNION LTD. ("Community Credit"), is a credit union, and is authorized to carry on business in the Province of Alberta. At all material times, Community Credit accepted deposits from the HMS Defendants and transferred money for the HMS Defendants.
68. The Defendant, HORIZON BANK INTERNATIONAL LIMITED ("Horizon Bank"), is a chartered bank registered to carry on business in the Virgin Islands including St.

Vincent and the Grand Cayman. At all material times, Horizon Bank accepted deposits from the HMS Defendants.

68.1 The Defendant, HSBC BANK CANADA ("HSBC Bank"), is a chartered bank registered to carry on business in the Province of Alberta. At all material times, HSBC Bank accepted deposits from the HMS Defendants and transferred money for the HMS Defendants.

68.2 The Defendant, CANADIAN IMPERIAL BANK OF COMMERCE (CIBC), is a chartered bank registered to carry on business in the Province of Alberta. At all material times, CIBC accepted deposits from the HMS Defendants and transferred money for the HMS Defendants.

69. ^

70. The Defendants as set out in paragraphs 66 to 69 are, at times, hereinafter collectively referred to as the "Financial Institutions". At all material times, the Financial Institutions also received deposits from the Lawyers and Accountants.

The HMS Scheme

71. The HMS Defendants, other than the Lawyers and Accountants, were engaged in a coordinated illegal or unlawful Ponzi scheme to obtain funds from the Plaintiff Investors with the sole objective of using those funds for their own benefit and enrichment contrary to s.380 (1) of the *Criminal Code of Canada* and ss.52-60 of the *Competition Act*. These funds were used to unjustly enrich the HMS Defendants and are subject to a constructive trust in favour of the Plaintiff Investors.

72. The HMS Defendants represented to the Plaintiff Investors that they were investing funds in a private investment capital corporation that would place funds in major projects worldwide and obtain a high return. The Plaintiff Investors were presented with a written offering setting out the business plan and investment objectives of the HMS Defendants contrary to ss. 203-205 of the *Securities Act*. The Plaintiff Investors are deemed to have relied on the representations contained in the written offering they were provided.

73. Further, systemic representations were made that all of the investments were protected against loss by bonds and cash that were verified and held in trust by Bailey or the other Lawyers, as security. Further, that the security held in trust by Bailey and the other Lawyers would be sufficient to payout all investors in the unlikely event of a default with respect to the investments.

74. On many occasions the Plaintiff Investors paid their investments directly to Bailey and the Lawyers. The Plaintiff Investors reasonably understood that Bailey, and the other Lawyers, were representing them and would look after their interests with respect to the security which they held to guarantee repayment to the Plaintiff Investors.
75. As it turns out, there do not appear to have been any material projects worldwide that were ever funded by the monies of the Plaintiff, and other investors. Rather, the HMS Defendants placed the investment funds in trust accounts of Bailey, Carlson, Cameron and the other Lawyers, or their clients. Thereafter, the funds were simply directed to accounts inside and outside of Canada, never to be seen again by the Plaintiff Investors.
76. Further, and contrary to the offering memorandum presented to all of the Plaintiff Investors, the HMS Defendants, Lawyers and Accountants converted the Plaintiff Investors funds to their own personal use and did not invest the funds for any legitimate investment.
77. The Plaintiff Investors have been provided with ongoing promises of payment but, despite demands for repayment of their funds the Plaintiff Investors have not received repayment of the amounts invested, which total approximately \$100,000,000.00. The Plaintiff Investors have demanded that Bailey and Carlson:
- (a) Realize on the security, which was represented to be held by the lawyers to guarantee repayment of the investment; and
 - (b) Realize on the funds forwarded to the Plaintiff Investors.

Bailey and Carlson have failed to respond.

The Lawyers

78. At all material times (between 2001 and the present date), the Lawyers were providing legal services to the various Defendant companies and individuals involved in the HMS Scheme as well as the Plaintiff Investors. Further, the Lawyers knew or ought to have known that the Plaintiff Investors would reasonably rely on the Lawyers to advise them if the representations of the HMS Scheme were untrue and that, in particular, the Lawyers were not holding security in trust for repayment of their investments.
79. The Lawyers provided advice to the HMS Defendants which enabled the HMS Defendants to operate the HMS Scheme.

80. The Lawyers knew or ought to have known that the HMS Defendants were representing to the Plaintiff Investors that the Lawyers, as part of their services as Barristers & Solicitors, held bonds and cash in trust for the benefit of the Plaintiff Investors, in case there was any default in payment of the invested funds. Accordingly, the Lawyers knew, or ought to have known, that they were providing legal services to the benefit of both the HMS Defendants as well as the Plaintiff Investors.
81. The Lawyers knew or ought to have known that the HMS Defendants directed the Plaintiff Investors to make their investment payable to the Lawyers. By arranging the HMS Scheme to operate in this manner, the Plaintiff Investors reasonably relied on the Lawyers, and duty of care and fiduciary duties arose as between the Lawyers and the Plaintiff Investors.

82. ^

82.1 ^

The Accountants

83. The Accountants provided accounting services to the HMS Defendants and knew or should have known that funds in their care were being used and transferred in a highly unusual manner which was completely out of character with any legitimate investment structure. Accordingly, the Accountants knew, or ought to have known, by virtue of the flow of funds, their clients were engaged in the HMS Scheme or other unlawful operations. The Accountants were obliged to notify authorities of these transactions and were obliged to refrain from participating in these operations.
84. The Accountants' conduct constitutes knowing assistance and/or knowing participation in the operation of the HMS Scheme and is in breach of their fiduciary obligations to the Plaintiff Investors.

The Financial Institutions

85. The Financial Institutions provided banking services to the HMS Defendants, Lawyers and Accountants and knew or ought to have known that funds were being transferred in a highly unusual manner which was completely out of character for HMS Defendants, Lawyers and Accountants. Accordingly, the Financial Institutions knew, or ought to have known, by virtue of the flow of funds, that their clients were engaged in the HMS Scheme or other unlawful operations. The Financial Institutions were obliged to notify

authorities of these transactions and were obliged to refrain from participating in these operations.

86. The HMS Defendants, Lawyers and Accountants made use of the Financial Institutions in providing banking services for the operation of the HMS Scheme.
87. The Financial Institutions had a duty to make reasonable inquiries to understand that the nature of its customers' business and banking services and to refrain from participating in banking transactions that appear wrongful or illegal.
88. The HMS Defendants, Lawyers and Accountants used the Financial Institutions simply as a conduit to deliver Plaintiff Investors' funds inside the Province of Alberta, outside the Province of Alberta and ultimately to the United States, the Caribbean, and other places and individuals not presently known to the Plaintiff Investors and to convert the Plaintiff Investors' funds to their own personal use.
89. The Financial Institutions knew, or ought to have known, by virtue of these banking transactions that their HMS Defendant clients were engaged in the HMS Scheme, or other unlawful or illegal conduct. The Financial Institutions were obliged to not participate in such activity and to notify authorities of these transactions, which they failed to do.
90. The Financial Institutions' conduct constitutes knowing assistance [^] in the operation of the HMS Scheme and is in breach of the HMS Defendants' fiduciary obligations to the Plaintiff Investors.
91. The Financial Institutions [^] negligently assisted or [^] negligently participated in the operation of the HMS Scheme which resulted in the loss of the Plaintiff Investor's funds.

Contractual, Tort and Fiduciary Duties of the Defendants

92. The Plaintiff Investors state that, by virtue of the facts set forth in paragraphs 73 to 93, the HMS Defendants, Lawyers, Accountants and Financial Institutions owe them contractual obligations, a duty of care, and/or fiduciary duties including:
 - (a) To comply with the systematic representations made to the Plaintiff Investors;
 - (b) To cease participating in, or providing assistance with respect to, the HMS Scheme when they knew or ought to have known that the systematic representations made to the Plaintiff Investors were untrue;

- (c) To advise the Plaintiff Investors that the Lawyers and Accountants were not acting on their behalf and were not providing solicitor/client services to or for their benefit, or accounting services to them or for their benefit;
- (d) To avoid placing their personal interests in a position where they would conflict with those of the Plaintiff Investors; and
- (e) To take reasonable care to ensure the Plaintiff Investors' funds were not being handled in a manner that was unlawful or likely to result in a total loss of the Plaintiff Investors' funds.

93. Further, the HMS Director Defendants, Accountants, and Lawyers owed fiduciary duties to the Plaintiff Investors which, by their conduct and negligence, they breached.

94. The Plaintiff Investors state that, in the circumstances described above, the Plaintiff Investors' funds are held on an express trust, or constructive trust, by all Defendants who may have come into possession of these funds. The Plaintiff Investors claim that the funds can be traced and restored to the possession of the Plaintiff Investors.

Breach of Duties

Lawyers

95. The Plaintiff Investors state that the Lawyers breached their duty of care, contractual obligations, and fiduciary duties owed to them, and/or committed a breach of trust particulars of which include:

- (a) Acting on behalf of the Plaintiff Investors without receiving adequate, or any, instructions from the Plaintiff Investors;
- (b) Accepting the Plaintiff Investors' funds and accepting directions from the HMS Defendants to use those funds in a manner which the Lawyers knew or ought to have known would be in breach of contractual obligations, duty of care, and fiduciary duties owed by the HMS Defendants and/or the Lawyers to the Plaintiff Investors;
- (c) Accepting the Plaintiff Investors' funds, with the understanding that those funds would be held in trust, or assets equivalent to the same to be held in trust, as

security for the Plaintiff Investors' funds, and acting in a manner inconsistent with that state of affairs;

- (d) Accepting instructions from the HMS Defendants to divert Plaintiff Investors' funds outside of Canada for no apparent legitimate investment or business purposes;
- (e) Providing legal services that facilitated the operation of the HMS Scheme without adequate or any proper advice or warning to the Plaintiff Investors;
- (f) Permitting the Plaintiff Investors to make funds payable to the Lawyers;
- (g) Failing to make any, or any proper inquiries as to the nature of the business that the HMS Defendants were involved with notwithstanding they were retained by them and were using trust accounts to direct money;
- (h) Were reckless or willfully blind to the actions and activities of the HMS Defendants and in doing so aided and assisted the HMS Defendants in the furtherance of the HMS Scheme contrary to the *Criminal Code*;
- (i) Failing to hold bonds, or other security, in trust for the repayment of the Plaintiff Investors' funds; and
- (j) Such further and other particulars which are not yet known to the Plaintiff Investors.

HMS Defendants

96. Further, and without limiting the foregoing, the Plaintiff Investors state that the remaining HMS Defendants, were in breach of contract, duty of care, fiduciary duties, statutory duties and/or committed a breach of trust owed to the Plaintiff Investors, particulars of which include:

- (a) The establishment and operation of the HMS Scheme;
- (b) Engaging in trading in securities, in violation of the *Securities Act*;
- (c) Conversion of the Plaintiff Investors' funds for the benefit of themselves, or affiliated entities;

- (d) Making systemic representations that they knew, or ought to have known were false, misleading and inaccurate;
- (e) Failing to properly account for any of the funds invested by the Plaintiff Investors;
- (f) Failing to have in place the necessary security, by way of bonds or otherwise, to guarantee the purported investments;
- (g) Organizing and promoting the HMS Scheme in contravention of the *Criminal Code of Canada* and the *Competition Act*; and
- (h) Such further and other particulars which are not yet known to the Plaintiff Investors.

Accountants

97. Further, and without limiting the foregoing, the Accountants were in breach of contract, duty of care, fiduciary duties and/or breach of trust owed to the Plaintiff Investors, particulars of which include:

- (a) failing to properly investigate the activities of the HMS Defendants and Lawyers and report any suspicious activity, or alternatively, decline to participate in the activity;
- (b) facilitating the transfer of money between the HMS Defendants, Lawyers and the unknown John Doe and ABC Corp. defendants when they knew, or should have known that the facilitation was backed by no legitimate business purpose;
- (c) failing to properly advise the Plaintiff Investors about the nature of the HMS Scheme when they knew or should have known of its existence; and
- (d) such further and other particulars which are not yet known to the Plaintiff Investors.

Financial Institutions

98. The Plaintiff Investors state that the Financial Institutions were in breach of their duty of care, and/or committed a breach of trust owed to the Plaintiff Investors, particulars of which include:

- (a) Providing banking services which facilitated the operation of the HMS Scheme;
- (b) Accepting instructions from the HMS Defendants, Lawyers and Accountants to transfer funds of Plaintiff Investors outside of Canada;
- (c) Providing banking services for the HMS Defendants Lawyers and Accountants in a manner where they knew or ought to have known that those banking services were likely to result in the loss of the Plaintiff Investors' funds; and
- (d) Failing to notify authorities of the unusual banking activities of the HMS Defendants Lawyers and Accountants in violation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

99. Further, or in the alternative to the above, the HMS Defendants, Lawyers, and Accountants [^] were knowingly engaged in the HMS Scheme with the intention of defrauding the Plaintiff Investors of their funds with the object of enriching themselves. The HMS Director Defendants, Lawyers and Accountants participated in this fraud and directed their corporate entities to facilitate the fraud. Particulars of the fraud are set out in the description of the HMS Scheme above. The actions of all of these Defendants were in contravention of the *Criminal Code of Canada* and the *Competition Act*.

100. Further, or in the alternative to the above, the HMS Defendants, Lawyers, Accountants, [^] and Horizon Bank participated in a conspiracy designed to implement and carry out the HMS Scheme as described above. The object and purpose of the conspiracy was to cause harm to the Plaintiff Investors to the benefit of these Defendants.

101. As a result of the conduct of the Defendants as hereinbefore set out, the Plaintiff investors have sustained loss and damage including the loss of their initial investment, interest and loss of investment opportunity.

Legislation

102. The Plaintiff Investors plead and rely upon the provisions of the *Securities Act* R.S.A. 2000, c. s-4, *Criminal Code of Canada* R.S.C. 1985 c. C-46, *Competition Act*, R.S.C. 1985 c. C-34, *Legal Professions Act*, R.S.A. 2000, c L-8, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c.17 and the regulations thereto, *Class Proceedings Act*, S.A. 2003 c. C-16.5 and the *Judgment Interest Act*, R.S.A. 2000, c. J-1, all as amended.

Time and Place of Trial

103. The Plaintiff and Class members propose that the trial of the common issues take place at the Courthouse in Calgary, Alberta and further estimate that the trial of the common issues will take no more than 25 days.

WHEREFORE, the Plaintiff Investors claim against the Defendants jointly and severally, or alternatively as against each of them, as follows:

- (e) Damages in the amount of \$100,000,000.00;
- (b) Loss of investment opportunity in an amount to be proven at trial;
- (c) As against the Director Defendants, Lawyers and Accountants, a declaration that assets held by these defendants are subject to a trust and an order directing that the Plaintiff Investors have equitable title to them;
- (d) A declaration that the Director Defendants, Lawyers and Accountants were unjustly enriched by the sum of \$100,000,000.00 and an order tracing said funds;
- (e) A declaration the HMS Scheme constituted a fraud pursuant to the *Criminal Code of Canada* and was carried out in violation of the *Securities Act*.
 - (e)(1) A declaration that the Plaintiff is entitled to "Norwich"-type relief including but not limited to pre-discovery relief such as attachment and preservation orders, injunctions, orders requiring tracing of funds, and other relief the Court may see fit to grant;
 - (e)(2) A declaration that the Plaintiff is entitled to relief pursuant to Alberta's *Civil Enforcement Act*, including, but not limited to attachment orders, orders enjoining Defendants from disposing of assets, and other relief the Court may see fit to grant;
 - (e)(3) A declaration that the Plaintiff is entitled to relief and damages pursuant to the equitable jurisdiction of this Honourable Court and the Court's inherent ability to control its own processes;
 - (e)(4) A declaration that the Plaintiff is entitled to such further and other relief and damages this Honourable Court shall deem fit;
- (f) Interest pursuant to the *Judgment Interest Act*;
- (g) Punitive and Aggravated Damages in the amount of \$10,000,000.00; and

(h) Costs, including costs on a solicitor and client basis.

DATED at the City of Calgary, in the Province of Alberta, this 1st day of August, 2006;
AND DELIVERED by McNally Cuming Raymaker, Barristers and Solicitors, solicitors for the
Plaintiff Investors, whose address for service is in care of said solicitors at #1500,
635 - 8th Avenue S.W., Calgary, Alberta T2P 3M3.

ISSUED OUT of the Office of the Clerk of the Court of Queen's Bench, Judicial District
of Calgary, this ____ day of August, 2006.

CLERK OF THE COURT

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

HEIKE EATON, HARLAN LIGHT, DOUGLAS ALEXANDER and
WILLIAM BARRETT, as Representative Plaintiffs

Plaintiffs

AND

H M S FINANCIAL INC., SKYWARD MANAGEMENT INC., GARTH S. BAILEY, GARTH S. BAILEY PROFESSIONAL CORPORATION, 990137 ALBERTA LTD., 1037149 ALBERTA LTD., operating as CEDAR MANAGEMENT, 1053382 ALBERTA INC., 1070199 ALBERTA LTD., 1079373 ALBERTA LTD., 993638 ALBERTA LTD., A-Z INVESTMENT GROUP, ABBA RESOURCES UNLIMITED, ACADEMY FINANCIAL INC., ACADEMY FINANCIAL PLANNERS & CONSULTANTS INC., AILANTHUS INTERNATIONAL INC., ALTRUISTIC HOLDINGS LTD., * BAILEY & DAWES LLC, ^ BOGNER INDUSTRIES LTD. a.k.a. BOGNER INDUSTRIES INC., B.P. FRITZ CONSULTING INC., CANADIAN IMPERIAL BANK OF COMMERCE, THE CARPENTER'S SHOP CORPORATION, CASSELMAN MCS FINANCIAL INC., CEDAR POINTE CONSULTING GROUP INC., CHASE FORBES TRUST LTD., CLJ CONSULTING LLC, COMMONWEALTH MARKETING GROUP LTD., COMMUNITY CREDIT UNION LTD., COMPANIONS INC., ^ THE DAKOTA CORPORATION, DANA I. CARLSON, DATAS CONSULTING, DEFREITAS & ASSOCIATES, ^ ^ ETHAN EQUITIES INC., ^ FIVE CONTINENTS CONSULTING, FIVE CONTINENTS CONSULTING CORPORATION, ^ ^ WARREN GOSS, GRACEFUL BENEFICENCE, GUESSWORKS, GUESSWORKS FOUNDATION, THE HILLPRO GROUP INC., HORIZON BANK INTERNATIONAL LIMITED, HORIZON FIDUCIARY INC., HSBC BANK CANADA, IN HOUSE COUNSEL CAMERON CAMPBELL, INTERNATIONAL INVESTMENTS INC., ^ ^ ^ ^ KAMIKEY SERVICES INC., KELSO ENTERPRISES INC., ^ KINGDOM ADVISORS, KLASS "A" STRATEGIES INC., LABALTA LTD., ^ LEGAL STRUCTURES INC., LINDEN VILLAGE INN, LINDENHALL LIMITED, LINDENHALL PTY LTD., M & M COMPUTER CONSULTING, M & M INVESTMENTS 101 LTD., ^ MARITIME LLC, ^ MCCULLOUGH FINANCIAL CORPORATION, ^ MICHAEL GROSH PROFESSIONAL CORPORATION, MOUNTAIN STAR CAPITAL CORP., MOUNTAIN VIEW CREDIT UNION LIMITED, NDX DEVELOPMENT LLC, NUMA LTD., OXYOKE FARMS LTD., PAGET CAPITAL LTD., PARADISE BAY HOLDINGS INC., PHOENIX GLOBAL RESOURCES LTD., PINE GROVE MANAGEMENT INC., WILLIAM H. RANDALL, RLM CONSULTING LLC, SELLARS FINANCIAL INC., TALISMAN FINANCIAL INVESTMENTS INC., TAMIKA ENTERPRISES INC., THOR EMPIRE TRUST, TITANIA CONSULTING INC., TIKELLY INC., ^ TOOLS OF THE CARPENTER, ^ TRANS MAX TECHNOLOGIES INC., TRIPLE-SSS HOLDINGS INC., TYROLIA FOUNDATION, VITRON CONSULTING INC., ^ ZURICH VENTURES INC., A. GARY YOUNG, GUY BAILEY, ALFRED BARNFIELD, CONNIE BARTEL, ROBERT BARTEL, VICTOR BAUMAN, MYLO BERSTAD, NANCY BUFORD, CAMERON CAMPBELL, RICK CHILDERS, BLAINE A. CISNA, KEVIN COOMBS, ELLEN KATE COVEY, DOUGLAS A. COWAN, MARGARET DART, STANLEY DEFREITAS, DON DICKERSON, EUGENE LEROY DUCE, ARNOLD DYCK, JUAN EXPOSITO, ALFREDO FARPON, RAY FISHER, JACK FOLSOM, JIM FOLSOM, ^ BARIE FRITZ, CRYSTAL ANNE FYN, PHYLLIS FYN, ROBERT E. FYN a.k.a. COLONEL FYN, ALLAN A. GRAY, MICHAEL GROSH, DAVID GUESS, NEIL GUESS, KENDRA HASKETT, ARNOLD HENRY, DAVID HENRY, GORD HIEBERT, SAMUEL HIGGINS, ^ ^ ^ ^ ^ WAYNE JOHNSON, TERRY KELLY, BARBARA L. KING, ARTHUR KLASSEN, EDWIN KNOTT, RUBY LEACHMAN, GEORGE LENNOX, WILLIAM LENZ, DANIEL LESCAMELA, WILLIE LICHTNER, LUCIA LING, BARBARA LOCKHART, RON LOWRIE, DON MACGILLIVRAY, DANNY R. MACNAUGHTON, NORMA A. MACNAUGHTON, ^ ^ MICHAEL MCCULLOUGH, WILLIAM MCGRATH, DAVE MILLER, ^ ROSENDO MENDEZ, PETER MERGENTHALER, PETER MOL, BRAD MOONEY, PETER MORRISSEAU, TOM OLDRIDGE, ROY OVERTON, GERTRUDE M. PRETE, DONALD RABBY, AMIN RAMJI, BILKISH RAMJI, STAN W. REMIN, ^ JEFFREY ROBINSON, ^ DANIEL ROMERO, JOHN ROMERO, OREST RUSNAK, ARIE SCHALK, RANDALL SEABROOK, CLAUDE SEGUIN, ROBERT J. SELLARS, WILLIAM SEREDIUK, PETER L. SHERIDAN, JANET STARK, MURRAY STARK a.k.a. HAROLD MURRAY STARK a.k.a. MURRAY H. STARK, DELMER STROBEL, VERA STROBEL, CHERYL TAYLOR, MILTON TEIBE, ROBERT F. TERBORG, ENRIQUE TOSCANO a.k.a. CHICO TOSCANO, LEE-ANNA TOSCANO, HENK UJTERLINDE, WILMA UJTERLINDE, HEATHER VANCE, CHRISTINE WILLIAMS, WILLIAM A. WILLIAMSON a.k.a. BILL WILLIAMSON, JOHN W. WILLOCK, ^ ^ ^ JOHN DOE, RICHARD DOE, XYZ CORP., ALBERTA LAWYERS' INSURANCE ASSOCIATION and CANADIAN LAWYERS' INSURANCE ASSOCIATION

Defendants

AMENDED AMENDED AMENDED STATEMENT OF CLAIM

McNALLY CUMING RAYMAKER

Barristers & Solicitors
#1500, 635 - 8th Avenue SW
Calgary, Alberta, T2P 3M3

Lawyers: William E McNally and

James D. Cuming

Telephone: (403) 571-0555

Facsimile: (403) 232-8818

File No. 11516

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

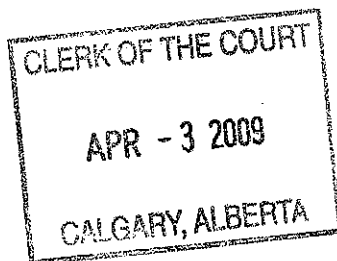
HEIKE EATON, HARLAN LIGHT,
DOUGLAS ALEXANDER and WILLIAM
BARRETT, as Representative Plaintiffs

Plaintiffs

- and -

H M S FINANCIAL INC., et al.

Defendants



CERTIFICATION ORDER

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