Court File No.: xxxxxxxx-CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

|  |  |  |
| --- | --- | --- |
| THE HONOURABLE  JUSTICE [*name*] | ) ) ) ) | [*day*], THE  [date] DAY OF [*month*], 20xx |

BETWEEN**:**

[*names of Plaintiffs]*

Plaintiffs

- and -

[*names of Defendants*]

Defendants

Proceeding under the *Class Proceedings Act*, *1992*

ORDER[[1]](#footnote-1)

**(SETTLEMENT APPROVAL)[[2]](#footnote-2)**

**THIS MOTION** made by the Plaintiffs for an Order approving the settlement agreement entered into with [*insert Defendant(s) intending to be bound by the settlement agreement*] (the “Settling Defendant(s)”) and dismissing this action as against the Settling Defendant(s) was heard this day at the [by judicial videoconference at (*City*)] [at *address of courthouse*], Ontario.[[3]](#footnote-3)

**AND ON READING** the materials filed, including the settlement agreement dated [*insert date*] attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and the Settling Defendant(s);

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there were ◼ objections to the Settlement Agreement;[[4]](#footnote-4)

**AND ON BEING ADVISED** that the deadline for opting out of the Action has passed, and ◼ persons validly and timely exercised the right to opt out;[[5]](#footnote-5)

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendant(s) consent to this Order [andthe Non-Settling Defendant(s) take no position]:

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendant(s) in accordance with the terms thereof, and upon each member of the Settlement Class that did not validly opt out of this Action, 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*, RRO 1990, Reg 194 are dispensed with in respect of the Action.[[6]](#footnote-6)
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions they have commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in 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 proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except [for the continuation of the Action against any Non-Settling Defendant or named or unnamed alleged co-conspirators that are not Releasees or,] if the Action is not certified [or authorized,][[7]](#footnote-7) the continuation of the claims asserted in the Action on an individual basis [or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.][[8]](#footnote-8)
10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.[[9]](#footnote-9)
12. [**THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Action or any Other Actions, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Action).][[10]](#footnote-10)[[11]](#footnote-11)
13. [**THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
    1. the Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from any Non-Settling Defendant and/or any named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;
    2. the Plaintiffs and Settlement Class Members shall limit their claims against any Non-Settling Defendant [and/or any named or unnamed co-conspirators and/or any other Person or party that is not a Releasee] to include only, and shall only seek to recover from any Non-Settling Defendant [and/or any named or unnamed co-conspirators and/or any other Person or party that is not a Releasee], such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-Settling Defendant and/or any other Person or party that is not a Releasee to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Defendant(s) and/or any other Person or party that is not a Releasee, if any, if permitted by law; and
    3. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees remain in the Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Action and shall not be binding on the Releasees in any other proceeding.]
14. [**THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which any Non-Settling Defendant may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs or judgment against them in favour of members of the Settlement Class Members in the Action or the rights of the Plaintiffs and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.]
15. [**THIS COURT ORDERS** that any Non-Settling Defendant may, on motion to this Court brought on at least ◼ days’ notice and to be determined as if the Settling Defendant(s) remained parties to the Action, and not to be brought until the Action against the Non-Settling Defendant(s) has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
    1. documentary discovery and affidavit(s) of documents from the Settling Defendant in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 194;
    2. oral discovery of representative(s) of a Settling Defendant, the transcript(s) of which may be read in at trial;
    3. leave to serve request(s) to admit on the Settling Defendant(s) in respect of factual matters; and/or
    4. the production of representative(s) of Settling Defendant(s) to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendant(s).][[12]](#footnote-12)
16. [**THIS COURT ORDERS** that the Settling Defendant(s) retains all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendant(s) from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.]
17. [**THIS COURT ORDERS** that a Non-Settling Defendant, if any, may effect service of the motion(s) referred to in paragraph 15 above on by service on Counsel for the Settling Defendant(s).]
18. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendant(s) acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **[THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.][[13]](#footnote-13)
20. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class have or may have in the Action against any Non-Settling Defendant(s) [or named or unnamed co-conspirators] who are not Releasees.[[14]](#footnote-14)
21. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.
22. **[THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon certain events arising in respect of the Releasees who are named as defendants in proceedings in [*insert relevant jurisdiction(s)*], and the terms of this of this Order shall not be effective unless and until [the Settlement Agreement is approved and] the applicable proceeding(s) are [*dismissed/discontinued/other agreed form of disposition] as against the Releasees who are named as defendants in the relevant proceedings by the courts, if required, in such jurisdiction(s)*]. If such orders or dispositions are not secured in [*insert relevant jurisdiction(s)*], this Order shall be null and void without prejudice to the rights of the Parties to proceed with the Ontario action and any agreement between the Parties incorporated into this Order shall be deemed in any subsequent proceedings to have been made without prejudice.][[15]](#footnote-15)
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.[[16]](#footnote-16)
24. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed as against all Settling Defendants without costs and with prejudice.
25. [**THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except any reasons given in connection with paragraphs 12–17 of this Order, if applicable,are without prejudice to the rights and defences of any Non-Settling Defendant(s) in connection with the ongoing Action and, without restricting the generality of the foregoing, may not be relied on by any person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action as against any Non-Settling Defendant.][[17]](#footnote-17)

|  |  |
| --- | --- |
|  |  |
|  | The Honourable Justice [•] |

1. Prepared by the Ontario Class Action Bench-Bar Liaison Committee as a guide for courts and practitioners. This template should be tailored to suit the particular circumstances of each case. [↑](#footnote-ref-1)
2. If notice approval and certification for settlement purposes are sought at separate hearings, or if the action has already been certified against the Settling Defendants, the provisions of this template related to notice approval can be extracted for use in a standalone notice approval order. The provisions related to certification for settlement purposes can be added to the settlement approval order as necessary. [↑](#footnote-ref-2)
3. Counsel can consider whether to include paragraphs related to the payment of administration expenses in this order to the extent that they are not already dealt with in other orders, such as a distribution order. [↑](#footnote-ref-3)
4. This Model Order assumes that the class has been certified, notice of certification was provided to the class and the time for objecting has passed. [↑](#footnote-ref-4)
5. This Model Order assumes that the opt-out period has passed. In some class proceedings the parties may agree in the Settlement Agreement to a confidential "opt-out threshold", whereby the Settlement Agreement will be terminable if the number of class members validly opting-out exceeds the prescribed threshold. In such circumstances, reference should be made to the “Opt-out Threshold”, if any, contained in the Settlement Agreement. [↑](#footnote-ref-5)
6. This Model Order assumes that there are no parallel proceedings in different provinces. To the extent that parallel proceedings exist in other provinces or jurisdictions outside of Ontario, references to the Settlement Class, the Proceeding and the Action contained herein should be limited to Ontario unless otherwise specified in the Settlement Agreement. In those cases, the Order may, if the Settlement Agreement requires it, include the provision at paragraph 22 of this Order stipulating that the approval of the Settlement Agreement is contingent upon the disposition of the other class proceeding(s) by way of a discontinuance or dismissal by the relevant extra-provincial court(s) and this Order shall have no force and effect if such order(s) is not secured in that other province or jurisdiction. [↑](#footnote-ref-6)
7. The reference to authorization is applicable in cases where there is a parallel Quebec action. [↑](#footnote-ref-7)
8. In some cases, notably in cases involving allegations of conspiracy, care should be taken to ensure this Order does not preclude the continuation of proceedings against Non-Settling Defendants or parties that are not Releasees. [↑](#footnote-ref-8)
9. Paragraphs 10 and 11 are intended to address the so-called "release bar rule" which applies in some Canadian jurisdictions. Pursuant to the release bar rule, in circumstances where a plaintiff agrees to settle with and release from liability one potential joint tortfeasor, all other joint tortfeasors are also released from liability. [↑](#footnote-ref-9)
10. Paragraphs 12-17 of this Model Order are generally employed in class actions involving allegations of conspiracy or other causes of action where there is the potential for claims of contribution, indemnity or other claims over to be made against the Settling Defendant(s). [↑](#footnote-ref-10)
11. In class actions involving multiple defendants, there are frequently partial settlements with some, but not all, defendants. In circumstances where there are potential claims of contribution, indemnity or other claims over, it may be preferable to include what is referred to as "a bar order" (as reflected in this paragraph 13) where such provisions are reflected and agreed to in the Settlement Agreement. The bar order cannot interfere with the substantive rights of the Non-Settling Defendant(s) [*Amoco Canada Petroleum Co v Propak Systems Ltd*, 2001 ABCA 110, leave to appeal to SCC refused, 28708 (25 April 2002); *Osmun v Cadbury Adams Canada Inc*, 2010 ONSC 2643, aff’d 2010 ONCA 841, leave to appeal to SCC refused, 34086 (7 July 2011)]. [↑](#footnote-ref-11)
12. Paragraphs related to discovery and other evidence may be the subject of negotiation in certain settlement contexts. However, the above language was specifically approved by Winkler J. (as he then was) and is often used to protect the procedural rights of any non-settling defendants. See *Ontario New Home Warranty Program v. Chevron Chemical Co*. (1999), 46 O.R. (3d) 130, [1999] OJ No 2245 at para. 77. [↑](#footnote-ref-12)
13. Parties may consider including this provision in the Order to the extent that such circumstances are not addressed in the terms of the Settlement Agreement. [↑](#footnote-ref-13)
14. In cases involving multi-party litigation, it should be made clear that this Order does not preclude members of the Settlement Class from pursuing claims or actions against non-Releasees. [↑](#footnote-ref-14)
15. See footnote 3 above. [↑](#footnote-ref-15)
16. If this Order and any earlier order regarding certification for settlement purposes are set aside, the class may need to be notified, which notice may be the subject of a separate order. [↑](#footnote-ref-16)
17. Parties should consider whether there are any additional, fact and case-specific issues affecting the Non-Settling Defendants which may need to be addressed by the terms of the Order, including for example whether Non-Settling Defendants require ongoing access to evidence filed by the Settling Defendant(s). [↑](#footnote-ref-17)