

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DANIEL BOIVIN and JAMES PUNCH

Plaintiffs

- and -

**HURON-SUPERIOR CATHOLIC DISTRICT SCHOOL BOARD and
LE CONSEIL SCOLAIRE CATHOLIQUE DU NOUVEL-ONTARIO**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

The plaintiffs, Daniel Boivin and James Punch, in their capacity as class representatives, and the defendants, Huron Superior Catholic District School Board and Le Conseil Scolaire Catholique Du Nouvel-Ontario (the "Huron Superior Board", "Le Conseil Scolaire" respectively, and the "Boards" collectively), hereby enter into this Settlement Agreement providing for settlement of the proposed class proceeding, described below, pursuant to the terms set out below and subject to the approval of the Court.

BACKGROUND

1. The plaintiffs, on their own behalf and on behalf of the proposed Class Members (defined in paragraph 17 below), commenced this legal action on March 23, 2001. In this action, the plaintiffs have alleged that the Boards failed to distribute to them monies which were paid to the Huron Superior Board, as the named policyholder of a

participating insurance policy (the "Policy"), as part of the demutualization of Clarica Life Insurance Company ("Clarica", formerly Mutual Life of Canada). As set out in greater detail in paragraph 4 below, a portion of these monies were subsequently paid to Le Conseil Scolaire.

2. In or about January, 1998, the Huron Superior Board was created by Regulation 185/97 S. 4(3) to the *Fewer School Boards Act* which amalgamated a number of existing School Boards. At or about the same time Le Conseil Scolaire was created. Some employees of the Huron Superior Board's predecessors continued employment with the Huron Superior Board, others became employees of Le Conseil Scolaire.
3. On July 30, 1999 the Huron Superior Board received the sum of \$677,279.00 as the proceeds of the disposition of 33,038 shares of Clarica arising from the demutualization of Clarica.
4. In accordance with the applicable regulations adopted under the *Fewer School Boards Act*, the Huron Superior Board paid to Le Conseil Scolaire the sum of \$273,620.72, representing 40.40% of the monies received from the proceeds of the disposition of the shares on the demutualization of Clarica Life Insurance Company.
5. The Boards deny the allegations and claims which the plaintiffs have made in this action and deny that they acted wrongly in any way or that they are liable to the plaintiffs or any of the Class Members. In this regard, the Huron Superior Board has

raised affirmative defences, including its position that because it was the successor to the named policyholder of the group insurance policy (the "Policy") it was entitled to retain the said demutualization payment. As a recipient of a portion of the funds, Le Conseil Scolaire has adopted the position of the Huron Superior Board.

6. The plaintiffs' counsel and the Boards' counsel have conducted separate investigations and analyses of the issues raised in this action. This has included, among other things, factual analyses of various documents, an analysis of the proportion of the insurance premiums paid by the respective parties, and interviews of witnesses and analyses of the legal principles which may be applicable to the claims made by the plaintiffs in this action and defences raised by the Board.
7. Following their respective investigations and analyses, the plaintiffs' counsel and the Boards' counsel conducted settlement negotiations, which resulted in this Settlement Agreement.
8. Based on an analysis of the facts and law applicable to the claims of the plaintiffs, and having regard to the extensive burdens and expense in conducting litigation of this type, including the risks and uncertainties associated with protracted trials and appeals, the plaintiffs and the plaintiffs' counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and that it is fair, reasonable and in the best interests of the Class Members.

9. Similarly, the Boards have concluded that this Settlement Agreement is desirable in order to avoid the time, risk and expense of defending against expensive and protracted litigation, and to resolve completely the pending and potential claims of the Class Members.
10. Despite its consent to this Settlement Agreement, the Boards continue to deny any wrongdoing or legal liability arising out of any claims alleged against it in this action.
11. Neither this Settlement Agreement nor any step taken to carry out the Settlement Agreement nor any document relating to it, is, may be construed as, or may be used as, an admission by or against the Boards, the plaintiffs or the Class Members, or as a waiver of any applicable legal right or benefit other than as expressly stated in this Settlement Agreement. Further, neither this Settlement Agreement nor any document relating to, or action taken to carry out, pursuant to this Settlement Agreement shall be offered or received in evidence in any action or proceeding against the Boards, the plaintiffs or the Class Members, or any of them, in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement Agreement, to seek Court approval of the Settlement Agreement in the manner as described below or to respond to any subsequent legal action or grievance commenced by or on behalf of any Class Member.
12. The Boards intend that this Settlement Agreement will resolve all claims and potential claims for, or relating in any way to entitlement to the demutualization payment by

members of the plaintiff class, in accordance with the terms of this Settlement Agreement.

13. The Association des Enseignantes et des Enseignants Franco-Ontariens ("AEFO"), which is the bargaining agent for teachers at the French language Catholic school board, Le Conseil Scolaire, have been advised of and consent to this Settlement Agreement and have agreed to withdraw the grievance which has been filed on behalf of its members. This withdrawal will be effective immediately after an Approval Order has been obtained.
14. The Ontario English Catholic Teachers Association ("OECTA"), which is the bargaining agent for teachers at the Huron Superior Board has been advised of and consent to this Settlement Agreement and have agreed not to commence a grievance on behalf of its members.
15. Until in or about 1998 the Ontario Secondary School Teacher's Federation Bargaining Union ("OSSTF") was the bargaining agent for occasional or casual employees at the Huron Superior Board's predecessor some of whom were insured under the Policy. In or about 1998 the Canadian Union of Public Employees ("CUPE") took over representation of this group. CUPE on its own behalf and on behalf of its members previously represented by OSSTF has been advised of and consent to this Settlement Agreement and have agreed not to commence a grievance on behalf of its members.

16. Each of AEFO, OECTA and CUPE, on their own behalf and on behalf of their respective members have signified their consent to this settlement agreement by executing the Consent attached hereto as Appendix "A ".

DEFINITIONS

17. The following words and phrases shall have the following meanings in this Settlement Agreement, including all of the appendices hereto.
 - a. **"Approval Order"** - the order of the Court which certifies this action as a class proceeding and approves this Settlement Agreement.
 - b. **"Approval Motion"** - the motion to the Court for an order certifying this action as a class proceeding and approving this Settlement Agreement.
 - c. **"Class Counsel"** - the law firm of Cavalluzzo, Hayes, Shilton, McIntyre & Cornish, and the law firm Siskind, Cromarty, Ivey & Dowler LLP.
 - d. **"Class Members"** - all persons who were employed by the North Shore Catholic School Board, during all or part of the period between January 1, 1988 and December 31, 1997 and who were insured under the Policy.
 - e. **"Court"** - the Ontario Superior Court of Justice.

f. **“Individual Settlement Benefit”** – the amount payable to each individual Class Member who does not opt out of the Plaintiff Class and who has been located in accordance with the terms of this Settlement Agreement. The Individual Settlement Benefit shall be calculated on the basis of the number of years of employment which the individual Class Member had between January 1, 1988 and December 31, 1997 and during which he or she was insured under the Policy multiplied by the annual salary of the individual Class Member during 1997 or their final year of employment during this period, multiplied by the sum derived from dividing the Settlement Fund by the total number of employment years of all Class Members which has been multiplied by the cumulative annual salaries of the Class Members during 1997 or their final year of employment.

g. **“Opt Out Deadline”** - the date 60 days following the date that the notice of the Approval Order is deemed to have been received by the Class Members in accordance with paragraph 23.

h. **“Settlement Fund”** – an amount equal to 45% of \$677,279.00, less an amount equal to the total of the Individual Settlement Benefits which would have been payable to individual Class Members save for their decision to opt out of the Plaintiff Class in accordance with the terms of this Settlement Agreement and the total of the Individual Settlement Benefits which would have been payable to individual Class Members who were not located, together with interest on the resulting sum calculated at the rate of 5.5% from July 30, 1999 to the date of

payment to Plaintiffs' counsel, less such further amount as is ordered by the Court to be paid to Class Counsel pursuant to paragraph 21 of this Settlement Agreement.

SETTLEMENT BENEFITS

18. The Boards shall pay to Plaintiffs Counsel the Settlement Fund, it being understood and agreed that the maximum payment required is \$304,775.55, together with interest on the Settlement Fund calculated at the rate of 5.5 percent from July 30, 1999 to the date of payment to Plaintiffs' Counsel. The Settlement Fund shall be distributed by Class Counsel to Class Members in accordance with each individual Class Member's entitlement to receive his or her Individual Settlement Benefit.
19. Class Counsel shall deliver to Class Members by first-class registered mail all amounts owing under the settlement within 30 days of the Opt Out Deadline. A report detailing the payments made shall be provided to the Court and defence counsel.
20. Within 7 days of the Approval Order becoming final, the Board shall pay to Class Counsel \$5,000.00, inclusive of disbursements and taxes, for party and party costs.

CLASS COUNSEL LEGAL FEES AND DISBURSEMENTS

21. Class Counsel shall apply to the Court for payment of their legal fees and disbursements and any other costs associated with implementing this Settlement

Agreement and distributing the Individual Settlement Benefits. Class Counsel legal fees and disbursements shall be a first charge on each Class Member's Individual Settlement Benefit and will be deducted by Class Counsel before payment unless previously paid by the Class Member's union.

NOTIFICATION AND APPROVAL PROCESS

22. Following the signing of this Settlement Agreement, Class Counsel shall bring a motion to a judge of the Ontario Superior Court of Justice for the Approval Order, in the form attached hereto as Appendix "B", and in accordance with the process described below.

23. The Boards shall provide Class Counsel with a list (including last known mailing address) of those Class Members who were employed by one or other of the two Boards following their being established. Class Counsel shall provide notice of the Approval Order to Class Members by sending to those Class Members, listed in the lists provided by the Boards and attached as Appendix "C" hereto, the form of notice which is attached hereto as Appendix "D", or such other form as may be ordered by the Court. This notice shall be sent to all Class Members by first-class mail, or as may otherwise be ordered by the Court, within 10 days following the date of the Approval Order. Class Counsel will post the notice on the web site of Cavalluzzo Hayes Shilton McIntyre & Cornish. In addition, Class Counsel will make all reasonable efforts to locate any Class Members that do not respond to the notice mailed by Class Counsel. These efforts will be detailed in a report to the Court.

24. The Notice shall be sent to all Class Members and published in both English and French.
25. Notice to all Class Members shall be deemed to have been provided to and received by the Class Members 15 days following the date of the Approval Order.

PROCEDURE FOR PARTICIPATION IN THE SETTLEMENT AGREEMENT

26. Class Members shall have the right to elect to exclude themselves from this Settlement Agreement ("opt out"). Class Members who elect to opt out of this Settlement Agreement must complete and return to counsel for the Board the "opt out" form, a sample of which is attached hereto as Appendix "E", by the Opt Out Deadline. Class Members who opt out in accordance with the foregoing shall be excluded from this proceeding and from any and all rights and obligations under this Settlement Agreement. Class Members who do not return a completed opt out form to the counsel for the Board in the manner and within the time described above shall be deemed to have elected to participate in this Settlement Agreement and, thus, shall be bound by this Settlement Agreement and all related court orders.
27. Class Counsel and the Board agree that they will neither solicit nor encourage Class Members to opt out of the Settlement Agreement. Class Counsel and the Board agree that this Settlement Agreement is intended to resolve the claims of all Class Members.

RELEASE AND INDEMNITY

29. In consideration for the Settlement Benefits set out in this Settlement Agreement, the Class Members who do not opt out of the class proceeding hereby release Huron Superior Catholic District School Board, Le Conseil Scolaire Catholique Du Nouvel, and any of their predecessors, successors, subsidiaries, assigns, affiliates, and past, present and future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type from any and all claims, lawsuits, grievances, demands and causes of action that were asserted or could have been asserted by or on behalf of or through the plaintiffs or any Class Member individually, collectively or otherwise, based upon the conduct of the Board or any of its successors, subsidiaries, assigns, affiliates, or past, present or future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type whatsoever in relation to the matters which were asserted or could have been asserted in the Statement of Claim in this action.
30. The Approval Order shall forever bar the claims of the plaintiffs and of all Class Members who do not opt out of the class proceeding which were asserted or could have been asserted in this action and this Settlement Agreement and Approval Order shall constitute a full and complete defence at law and equity to any such claims.

ENTIRE AGREEMENT

31. This Settlement Agreement, together with the attached appendices, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto. There are no other warranties or representations between the parties in connection with the subject matter of this Settlement Agreement except as specifically set forth herein and none have been relied upon by the parties in entering into this Settlement Agreement.

GOVERNING LAW AND JURISDICTION

32. This Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. The parties hereto, including the Class Members who do not opt out of the class proceeding, hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. The courts of the Province of Ontario shall have exclusive jurisdiction over any and all disputes or issues which may arise from or with respect to this Settlement Agreement.

EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT

33. The parties and their respective counsel shall do all things as may be reasonably required expeditiously to give effect to this Settlement Agreement.

34. The parties agree that this Settlement Agreement may be executed by their respective counsel or by the parties. In the event that this Settlement Agreement is executed by counsel, such counsel expressly represent that they have the necessary authority to execute this Settlement Agreement.

35. The parties further agree that this Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original for all purposes and all executed counterparts taken together shall constitute the complete Settlement Agreement.

36. Any notice, request, information or other document which is to be given under this Settlement Agreement to any of the parties by any other party shall be in writing and shall be delivered by registered mail, certified mail, postage prepaid mail, courier or facsimile transmission to the following persons and addresses, or to such other individuals and addresses as the plaintiffs or the Board may designate in writing from time to time:

If to the plaintiffs or Class Members:

Cavalluzzo, Hayes, Shilton, McIntyre & Cornish
Barristers & Solicitors
43 Madison Avenue
Toronto, ON M5R 2S2

Michael D. Wright
Fax No. (416) 964-5895

If to the Boards:

Heenan Blaikie LLP
Barristers and Solicitors
P.O. Box 185
200 Bay Street
Suite 2600
South Tower, Royal Bank Plaza
Toronto, Ontario M5J 2J4

Angus T. McKinnon
Fax: (416) 360-8425

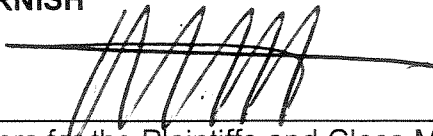
[SIGNATURE PAGE FOLLOWS]

Dated this 10th day of April, 2002.

Date:

April 10, 2002

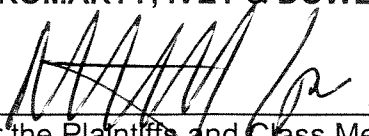
CAVALLUZZO, HAYES, SHILTON, MCINTYRE & CORNISH

Per: 
Solicitors for the Plaintiffs and Class Members

Date:

April 10, 2002

SISKIND, CROMARTY, IVEY & DOWLER LLP

Per: 
Solicitors for the Plaintiffs and Class Members

Date:

Per: _____
Huron Superior Catholic District School Board

Date:

Per: _____
Le Conseil Scolaire Catholique Du Nouvel-
Ontario

Dated this 10th day of April, 2002.

Date:

April 10, 2002

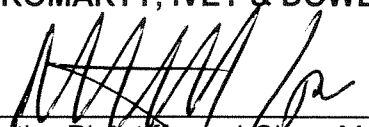
CAVALLUZZO, HAYES, SHILTON, MCINTYRE & CORNISH

Per: 
Solicitors for the Plaintiffs and Class Members

Date:


April 10, 2002

SISKIND, CROMARTY, IVEY & DOWLER LLP

Per: 
Solicitors for the Plaintiffs and Class Members

Date:

May 7, 2002

Per: 
Huron Superior Catholic District School Board

Date:


Per: _____
Le Conseil Scolaire Catholique Du Nouvel-
Ontario

Dated this 10th day of April, 2002.

Date:

April 10, 2002

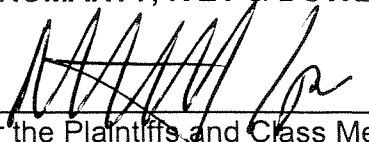
CAVALLUZZO, HAYES, SHILTON, MCINTYRE & CORNISH

Per: 
Solicitors for the Plaintiffs and Class Members

Date:

April 10, 2002

SISKIND, CROMARTY, IVEY & DOWLER LLP

Per: 
Solicitors for the Plaintiffs and Class Members

Date:

Per: _____
Huron Superior Catholic District School Board

Date:

2002.04.18

Per: 
Le Conseil Scolaire Catholique Du Nouvel-
Ontario