



Court File No.: 1850/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) Friday, THE 28th DAY
JUSTICE RAIKES) OF May, 2021

BETWEEN:

THE ESTATE OF HUGH CULLATON, deceased,
by his Executrix, KAREN CULLATON

Plaintiff

- and -

MDG NEWMARKET INC. holding itself out as ONTARIO ENERGY GROUP and
ONTARIO ENERGY SOLUTIONS and HOME TRUST COMPANY

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, c.6

ORDER

(Certification, Notice, and Opt Out)

THIS MOTION made by the Plaintiff for an Order: (a) certifying this proceeding as a class proceeding, (b) approving the notice of certification and settlement approval hearing, and (c) approving the opt out process, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the Motion Records filed by the Plaintiff, which includes the settlement agreement between the Plaintiff and the Defendants (the "Settling Defendants") dated March 29, 2021 attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions from counsel for the Plaintiff and the Settling Defendants;

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, 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 this action is certified as a class proceeding.

3. **THIS COURT ORDERS** that the class (the “Class”) is certified as follows:

“Class Members” means all persons in Ontario who are or were at any time party to a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016, except Excluded Persons.

“Equipment” means furnaces, air conditioners, water heaters, water softeners, water purification systems, boilers, air cleaners, humidifiers, chimney liners, filters, and other equipment or services offered under the Consumer Agreements.

4. **THIS COURT ORDERS** that the following issues are common to the Class:

Consumer Protection Act, 2002:

- a. Do the Lease Agreements fail to comply with the requirements of the Ontario *Consumer Protection Act, 2002*, including:
 - i. The Unfair Practices provisions contained in ss. 14 and 15 of that *Act*;
 - ii. The Leasing Requirements contained in Part VIII of that *Act* and any leasing requirements contained in the regulations under the *Act*; and/or
 - iii. The obligations respecting Direct Agreements and/or Future Performance Agreements under Part IV of that *Act*?
- b. If the Lease Agreements fail to comply with the requirements of the *Consumer Protection Act, 2002*, what are the appropriate remedies under the *Act* and its regulations and/or at common law?
- c. Do the written sales and marketing representations of the defendant Ontario Energy Group (“OEG”) on its website and elsewhere constitute Unfair Practices contrary to the requirements of the Ontario *Consumer Protection Act, 2002*?
- d. If so, what is the appropriate remedy under s. 18 of the *Act*?
- e. Is Home Trust a “supplier” within the meaning of and for the purposes of the *Consumer Protection Act, 2002*?

- f. If the Lease Agreements and/or the written sales and marketing representations fail to comply with the requirements of the Ontario *Consumer Protection Act, 2002* are both defendants liable for same?
- g. If the Class Members are entitled to remedies what should the protocol for the implementation of remedies be?
- h. Should an equitable accounting be ordered in order to facilitate the construction of a remedial protocol for Class Members?
- i. Can all or part of that remedies protocol be determined on an aggregate or automated basis, pursuant to sections 12, 24, 25, and/or 26 of the *Class Proceedings Act*?

Competition Act:

- j. Do the Lease Agreements and/or the written sales and marketing representations of the defendant OEG constitute false and misleading representations contrary to s. 52 of the *Competition Act*?
- k. If so, can causation of the Class Members' losses be proven by the fact of any payments made by them pursuant to the requirements of the Lease Agreements?
- l. If so, are the Class Members entitled to remedies pursuant to s. 36 of the *Competition Act*? Can any such remedies be determined on an aggregate basis?
- m. If the Lease Agreements and/or written sales and marketing representations are false and misleading misrepresentations contrary to s. 52 of the *Competition Act*, are both defendants liable for same?

Civil Conspiracy:

- n. Did the defendants conspire together to undertake unlawful acts which were directed towards the Class Members?
- o. Did the defendants know that the conspiracy would likely cause injury to the Class Members?

- p. Did the Class Members suffer economic loss as a result of the defendants' conduct?
- q. If the defendants are liable to the Class Members in conspiracy, what damages and other remedies are owed to the Class Members?
- r. Can any monetary remedies that are awarded be assessed and paid on an aggregate basis?

Equity – Unjust Enrichment

- s. Have the defendants been unjustly enriched to the deprivation of the Class Members without juristic reason?
 - t. If a restitutionary award is made, can it be calculated and paid on an aggregate basis?
 - u. If a restitutionary award is made are both defendants liable for same?
5. **THIS COURT ORDERS** that the Estate of Hugh Cullaton, deceased, by his Executrix Karen Cullaton is appointed as the representative plaintiff for the Class.
 6. **THIS COURT ORDERS** that the nature of the claim concerns allegations that the defendants and the lease agreements breached the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, the *Competition Act*, RSC 1985, c C-34, the common law and the law of equity.
 7. **THIS COURT ORDERS** that the claim seeks remedies in the form of damages and declaratory relief under the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, the *Competition Act*, RSC 1985, c C-34, the common law; restitution and other relief under the law of equity; punitive and exemplary damages; an equitable rate of interest on all sums found due and owing; and notice, distribution and other costs.
 8. **THIS COURT ORDERS** that, to the extent that it has not already been provided, the Defendants shall:
 - (a) deliver to Class Counsel a complete and accurate list of every Class Member's name and mailing address within 14 days of this order;

- (b) where reasonably available, provide e-mail, phone and/or mobile phone numbers for Class Members within 14 days of this order;
 - (c) where reasonably available, provide other transaction data and information in their possession concerning the Defendants' commerce with Class Members for the purpose of developing and carrying out the Distribution and Administration Protocol and notice dissemination ("Class Member Information").
9. **THIS COURT ORDERS** that Class Counsel will utilize the Class Member Information provided by the Defendants for notice purposes in accordance with the Privacy and Information Management Protocol, attached hereto as Schedule "B".
 10. **THIS COURT ORDERS** that the proposed Notice, Press Release, and Banner Ad (the "Notices") are hereby approved substantially in the form attached hereto as Schedules "C" - "E".
 11. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "F" and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
 12. **THIS COURT ORDERS** that Persons who wish to opt out of the Proceeding must do so by providing a signed written election to opt out to Class Counsel by (mail, fax, or email) in the form attached hereto as Schedule "G", received on or before ninety (90) days after the day the Notices are first published pursuant to the Plan of Dissemination.
 13. **THIS COURT ORDERS** that a written election to opt out must contain the following information in order to be effective:
 - a. the Person's full name and current address; and
 - b. a statement to the effect that the Person understands that a settlement agreement has been reached with the Defendants and that the Person wishes to be excluded from the Proceeding.
 14. **THIS COURT ORDERS** that any Person with an outstanding Other Action as at the Execution Date must opt out of the Proceeding in the same manner as any other Class Member.

15. **THIS COURT ORDERS** that any questions or disagreements concerning Opt-Outs, Other Actions and their inclusion or exclusion from the Class may be managed and resolved by the case management judge for this Proceeding.
16. **THIS COURT ORDERS** that the written elections described in paragraphs 13, 14, and 15 must be signed by either a) the Class Member personally, b) the Class Member's duly appointed attorney under a power of attorney for property or c) the Class Member's Court-appointed Litigation Guardian. For greater certainty, elections signed only by a legal representative or agent of a Class Member are not valid.
17. **THIS COURT ORDERS** that any Person who has validly opted-out of this Proceeding shall no longer participate or have the opportunity in the future to participate in the Proceeding.
18. **THIS COURT ORDERS** that any Person who has not validly opted-out of this Proceeding will be bound by the Settlement Agreement, if approved by this Court, and may not opt out of this Proceeding in the future.
19. **THIS COURT ORDERS** that within thirty (30) days of the Opt Out Deadline, Class Counsel shall provide to the Settling Defendants a report containing the names of each Person who has validly and timely opted out of the Proceeding.
20. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, a case management conference shall be convened to seek directions, including in respect of the form and content of additional notice to Class Members and to any Person who delivered an election to opt out or was deemed to have opted-out pursuant to this Order. If the Settlement Agreement is not approved, settlement opt-outs will be set aside and Class Members will have another opportunity to decide whether or not they want to remain in the class, subject to further direction of this Court.

Date: May 28, 2021



The Honourable Justice Raikes

Schedule "A"

SETTLEMENT AGREEMENT

Between:

**THE ESTATE OF HUGH CULLATON deceased,
by his Executrix, KAREN CULLATON**

(the "**Plaintiff**")

and

MDG NEWMARKET INC. and HOME TRUST COMPANY
(together, the "**Settling Defendants**")

Executed March 29, 2021
(the "**Execution Date**")

RECITALS

- A. WHEREAS the Proceeding was commenced in London, Ontario;
- B. WHEREAS the Proceeding was certified as a class proceeding pursuant to a November 9, 2019 decision of the Honourable Justice Russell Raikes;
- C. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, including two formal mediation sessions with the Honourable Warren K. Winkler, and months of direct negotiations;
- D. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement as between the Settling Defendants and the Plaintiff, both individually and on behalf of the Class she represents or seeks to represent, subject to approval of the Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed with prejudice as against the Releasees, without costs as to the Plaintiff, the class she represents or seeks to represent or the Releasees, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

- (1) ***Class*** means all persons in Ontario who are or were at any time party to a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016, except Excluded Persons.
- (2) ***Class Counsel*** means Foreman & Company Professional Corporation.
- (3) ***Class Counsel Fees*** means the fees and disbursements of Class Counsel, costs, interest, HST and other applicable taxes or charges thereon.
- (4) ***Class Member*** means a member of the Class.
- (5) ***Consumer Agreement*** means a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016.
- (6) ***Court*** means the Ontario Superior Court of Justice.
- (7) ***Distribution and Administration Protocol*** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved notice expenses, administration expenses and Class Counsel Fees, to Class Members, and for administering other settlement benefits (more specifically, the termination of Plaintiff-managed Consumer Agreements provided for at section 2.2(1) hereof), all as approved by the Court.
- (8) ***Effective Date*** means the date on which the Final Order has been received from the Court approving this Settlement Agreement and the Settlement Amount has been received by Class Counsel.

- (9) **Equipment** means furnaces, air conditioners, water heaters, water softeners, water purification systems, boilers, air cleaners, humidifiers, chimney liners, filters, and other equipment or services offered under the Consumer Agreements.
- (10) **Excluded Person** means any putative Class Member who elects to opt out of this Proceeding pursuant to an order of the Court, and each Settling Defendant, the directors and officers of each Settling Defendant, the subsidiaries or affiliates of each Settling Defendant, the entities in which each Settling Defendant or any of that Settling Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (11) **Final Order** means the later of a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (12) **Opt Out** means an election by a putative Class Member to opt out of this Proceeding, with the effect that such a putative Class Member shall not be a Releasor and shall instead be an Excluded Person.
- (13) **Opt Out Deadline** means the date by which putative Class Members who wish to do so must have communicated their election to Opt Out, which date is to be established pursuant to the order to be sought in accordance with section 3.2 of this Settlement Agreement.
- (14) **Other Actions** means any other actions or proceedings, excluding the Proceeding, asserting Released Claims commenced by a putative Class Member before the Effective Date or by Excluded Persons after the Effective Date.
- (15) **Party and Parties** means the Settling Defendants, the Plaintiff, and, where necessary, the Class Members.
- (16) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision

or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

- (17) **Proceeding** means *The Estate of Hugh Cullaton v MDG Newmarket Inc. holding itself out as Ontario Energy Group and Ontario Energy Solutions and Home Trust Company*, bearing Court File No: 1850/16 CP.
- (18) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "**Claims**" or, individually, a "**Claim**"), that the Releasors have, relating in any way to any conduct that is alleged in the Proceedings, from the beginning of time until the Effective Date. For greater certainty, Released Claims shall not include claims by Releasors against MDG Newmarket Inc. for a billing administration error by MDG Newmarket Inc. that results in a charge to a Releasor that is contrary to the terms of the Consumer Agreement.
- (19) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants, and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (20) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind,

agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.

- (21) ***Settlement Agreement*** means this agreement, including the recitals and schedules.
- (22) ***Settlement Amount*** means the sum of fourteen-million nine-hundred and fifty thousand Canadian dollars (CAD \$14,950,000.00).
- (23) ***Settlement Approval Order*** means the order approving this Settlement Agreement to be sought in accordance with section 3.3.
- (24) ***Trust Account*** means a guaranteed investment vehicle, liquid money market account or equivalent security offered by a Canadian Schedule I bank (a bank listed in Schedule I of the Bank Act, SC 1991, c 46) or a Provincially Registered Credit Union (listed under the Credit Unions and Caisses Populaires Act, 1994, S.O. 1994, c. 11) held at a Canadian financial institution under the control of Class Counsel for the benefit of the Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

SECTION 2 - SETTLEMENT BENEFITS

2.1 Payment of Settlement Amount

- (1) Within seven (7) business days of the Final Order, the Settling Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account. Class Counsel shall provide the necessary wire transfer information to counsel for the Settling Defendants with reasonable advance notice.
- (2) The Settlement Amount shall be distributed pursuant to the Distribution and Administration Protocol after it is approved by the Court.

2.2 Settlement Benefits in addition to the Settlement Amount

- (1) The Settling Defendants agree that two-hundred and twenty-five (225) Consumer Agreements may be terminated, arrears forgiven, security registration(s) discharged and equipment gifted to the Class Members who receive them. MDG Newmarket Inc. will select ninety (90) Consumer Agreements for termination from the Class and/or complainants to the Ministry of Consumer Protection Ontario. Those ninety (90) Consumer Agreements will not be

selected from any Class Member who has validly Opted Out of this Proceeding. The Plaintiff shall administer and manage the balance of one-hundred and thirty-five (135) Consumer Agreements to be cancelled, under the Distribution and Administration Protocol. The value of the cancelled Consumer Agreements shall be subject to an aggregate cap of one-million seven-hundred and fifty thousand dollars (CDN \$1,750,000.00). The forgiven Consumer Agreements may be allocated across Class Members in fractions where appropriate. Valuation of Consumer Agreements for the purposes of this section shall be determined by reference to the applicable buyout charge and any reasonable arrears assessed generally in accordance with MDG Newmarket Inc.'s usual business practices and will be subject, where applicable, to an NSF fee of not more than \$35 and interest calculated so as to not exceed the *Courts of Justice Act* rate. Any disputes about the reasonableness of the arrears are to be determined summarily in writing to Warren Winkler or his designate.

(2) Notwithstanding the described allocation of agreements as between the Plaintiff and MDG Newmarket Inc, in 2.2(1) above, the Plaintiff and MDG Newmarket Inc. agree to work cooperatively to implement this benefit for the benefit of Class Members. In doing so, they may allocate cancelled agreements and value under the aggregate cap in any mutually agreed manner. Unless otherwise agreed however, neither the Plaintiff or MDG Newmarket Inc. will be allocated less than a prorated share of the aggregate cap against the cancelled Consumer Agreements, namely MDG Newmarket Inc. shall have \$700,000.00 to allocate to the ninety (90) Consumer Agreements it selects and the Plaintiff shall have \$1,050,000.00 to allocate to the remaining one-hundred and thirty-five (135) Consumer Agreements. Any disputes between the Plaintiff and MDG Newmarket Inc. in respect of this benefit shall be submitted to Warren Winkler for final resolution.

(3) The following contractual changes to the Consumer Agreements shall be implemented on a going forward basis:

- (a) Annual increase to the rental payment amount capped at 2.5%; and
- (b) Rental term ends with: (i) the failure of the equipment if the Class Member chooses to end it, (ii) on termination, or (iii) on buyout.

(4) MDG Newmarket Inc. will confirm to the Class Members its service commitments under the Consumer Agreements as follows:

- (a) Prompt provision of all lifetime service and repairs including parts and labour for the duration of the rental term; and
 - (b) Annual preventative maintenance and servicing appointment at the request of the Class Member for the duration of the rental term.
- (5) The security registration process shall be revised as follows:
- (a) Security registrations shall be revised for every Class Member as follows:
 - (i) On the renewal date of a security registration, all security registration renewals will be in the form of a Notice of Security Interest (NOSI). The statement in the security registration will be expressly limited to an ownership right in the equipment affixed to the property, and “Consideration” on all registrations will be valued at the amount owing as at the date of the security renewal under the revised buyout program under this agreement. Security registrations that have already been renewed as of the date of this Settlement Agreement will not be varied;
 - (b) The Settling Defendants or either of them, as applicable, shall provide a letter to any Class Member substantially in the form attached hereto as **Schedule “A”**, on demand of that Class Member, indicating the amount owing pursuant as at the date of the letter, per the buyout schedule as agreed herein and confirming that any Lodgement of Title Documents or NOSI on title serves only as a security registration in respect of the equipment only rather than a mortgage; and,
 - (c) Any security interests shall be postponed, without demand for payment of any amount (other than reasonable outstanding arrears, NSF fees and interest as may be agreed between MDG Newmarket Inc. and the Class Member), at the request of the Class Member for any commercially reasonable circumstance on 5 day’s notice by the Class Member (i.e. Class Member’s need to finance or refinance their home). The postponement of the security interests may be delayed by a further 5 days, for a total of 10 days, at the request of either of the Settling Defendant(s). OEG may not require the Class Member to complete a buyout in conjunction with a postponement unless the Class Member otherwise wishes to do so. There is no

recourse to summary resolution to Warren Winkler under subsection (7) of this Settlement Agreement and any dispute in respect of arrears must be resolved as between MDG Newmarket Inc. and the Class Member.

- (6) The termination provisions of the Consumer Agreement will operate as follows:
 - (a) There shall be no other charges made on a termination other than any correctly calculated arrears, installation charges (if within the first 5 or 7 years of the rental term – whichever is lesser as indicated on the Consumer Agreement), the expressly stated and applicable removal charges listed in the Consumer Agreement for the Equipment, and reasonable travel costs permitted by the Consumer Agreement; and
 - (b) There shall be full co-operation by MDG Newmarket Inc. with collection of any unpaid IESO rebates and failing recovery of them, Class Members may be credited the unpaid IESO rebate amounts against arrears, buyout or termination expenses;
- (7) Any disputes about the reasonableness or correctness of outstanding arrears are to be determined summarily in writing to Warren Winkler or his designate.
- (8) The Settling Defendants' ordinary course complaints resolution process will continue.
- (9) Buyout costing schedule will be reduced by 20% across all Equipment buyout tables as they decline over time, and:
 - (a) The security registration discharge fee shall be reduced to \$150;
 - (b) No other charges whatsoever shall be charged in connection with any buyout, other than correctly calculated arrears, if any, NSF fees and interest at rates mandated by the Court;
 - (c) The buyout tables shall be made available to all current customers; and
 - (d) Buyout tables are attached to this Settlement Agreement as **Schedule "B"**.
- (10) The Settling Defendants agree to fully implement and deliver the settlement benefits provided for under this section following the Effective Date.

SECTION 3 - IMPLEMENTATION AND ADMINISTRATION

3.1 Certification Order

(1) The Parties agree that the Proceeding shall be certified by a certification order substantially in the form attached hereto as **Schedule “C”**.

3.2 Motion Seeking Approval of Notice and Opt Out Process

(1) The Plaintiff shall bring a motion before the Court, as soon as practicable after the Execution Date, for an order approving a notice program to the class respecting the certification of the Proceeding, the settlement and the opt out process.

(2) The form of the notices, and how and where they are published and distributed, shall be as approved and ordered by the Court. Nothing in this Settlement Agreement shall limit the nature, content, sequence, and/or number of notice(s) to be provided to the Class, all of which is to be in the best interests of the Class and subject to the approval and direction of the Court. Class Counsel shall be solely responsible to pay the costs of any notices to be provided to the Class under Section 3.2 as they become due. Class Counsel may seek the Court’s approval to pay and/or be reimbursed the disbursement costs associated with the notices under this Section 3.2 as part of the Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement.

3.3 Motion Seeking Approval of the Settlement and the Distribution and Administration Protocol

(1) After the order referred to in Section 3.2(1) has been granted and after the publication of necessary notice(s) to the Class (which should not be read to preclude any additional notice to the Class following the settlement approval motion, if necessary), the Plaintiff shall bring a motion before the Court for an order approving this Settlement Agreement which shall be substantially in the form attached as **Schedule “D”**.

(2) Coincident with the Plaintiff’s motion for approval of this Settlement Agreement or at a later time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel may bring a motion for an order from the Court approving the Distribution and Administration Protocol.

(3) The expenses of the Plaintiff's Distribution and Administration Protocol shall be paid from the Settlement Amount. Subject to the direction and approval of this Court, additional notice(s), if necessary, may be provided to the Class before, during, or after the implementation of the Distribution and Administration Protocol or the motion seeking its approval.

3.4 Information to be Provided

(1) The Settling Defendants agree to cooperate with the Plaintiff and to provide all reasonably available transaction data and information in their possession concerning the Class Members for the purpose of facilitating notice to the Class and in the implementation of this Settlement Agreement.

3.5 Administration of the Trust Account

(1) Class Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, and in accordance with an order of the Court.

(2) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(3) All taxes (including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account. Subject to Section 3.5(4), Class Counsel or its duly appointed agent or trustee shall be responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments.

(4) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or its duly appointed agent.

SECTION 4 - RELEASES AND DISMISSALS

4.1 Release of Releasees

(1) Upon the Effective Date, in consideration of payment of the Settlement Amount in the manner prescribed in section 2.1 hereof, the Plaintiff shall, on behalf of the Releasers, forever and absolutely release and forever discharge the Releasees from the Released Claims.

4.2 Dismissal of the Proceedings

(1) Upon the Effective Date, the Proceeding shall be dismissed, with prejudice and without costs, as against the Settling Defendants.

4.3 Related Actions

(1) The Parties recognize and acknowledge that as of the Execution Date, persons who are presumptively Class Members have commenced certain actions in the Small Claims Court or otherwise against either or both of the Settling Defendants in respect of issues certified in the Certification Order as issues common to Class Members (the “**Other Actions**”). Unless the plaintiff in any Other Action opts out of this proceeding in accordance with the Certification Order attached hereto as Schedule “C”, such persons shall be deemed to be Class Members and their Other Action and any counterclaim in their Other Action shall be deemed to be dismissed, without costs, in accordance with the Settlement Approval Order attached hereto as Schedule “D”.

(2) The Parties recognize and acknowledge that as of the Execution Date, MDG Newmarket Inc. has commenced certain actions (the “**MDG Actions**”) against persons who are presumptively Class Members in respect of matters related to Consumer Agreements (the “**MDG Defendants**”). Unless an MDG Defendant opts out of this proceeding in accordance with the Certification Order attached hereto as Schedule “C”, the Class Member shall be entitled to participate in the Settlement Agreement. MDG Newmarket Inc. shall, within 15 days of the Effective Date, offer to settle the MDG Action against MDG Defendants on terms that afford MDG Defendants all of the rights, benefits and responsibilities of a Class Members under this Settlement Agreement.

(3) The MDG Action(s) may, on agreement of MDG Newmarket Inc. and any of the MDG Defendants, be referred to Warren Winkler or his designate for a summary determination, in writing, of any outstanding claims as against the MDG Defendant(s).

(4) The Parties agree that any questions or disagreements concerning Opt-Outs, Other Actions and their inclusion or exclusion from the Class may be managed and resolved by the case management judge for this Proceeding.

SECTION 5 - EFFECT OF SETTLEMENT

5.1 No Admission of Liability

(1) The Plaintiff and Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiff and the Releasees further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding, or any other pleading filed by the Plaintiff or any other Class Member.

5.2 Agreement Not Evidence

(1) The Plaintiff and the Releasees agree whether or not it is not approved, is terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

SECTION 6 - CLASS COUNSEL FEES

(1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel, the Plaintiff, or their experts, advisors, agents, or representatives. Class Counsel may seek the Court's approval to pay Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement.

SECTION 7 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

7.1 Right of Termination

- (1) In the event that:
 - (a) the Court declines to approve this Settlement Agreement or any material term;
 - (b) the Court approves this Settlement Agreement in a materially modified form;
 - (c) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed by the Parties is approved by a Court in a materially modified form; or
 - (d) any order approving this Settlement Agreement made by the Court does not become a Final Order;

the Settling Defendant, Class Counsel, and the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice to the Parties, within thirty (30) days following the event described above.

- (2) In addition, if the Settlement Amount is not paid in accordance with Section 2.1(1), the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice to counsel for the Settling Defendants or to move before the Court to enforce the terms of this Settlement Agreement. In the event that the Additional Settlement Benefits pursuant to Section 2.2 are not provided, the Plaintiff shall have the right to move before the Court to enforce the terms of the Settlement Agreement.
- (3) Any order, ruling or determination made by any Court with respect to
 - (a) Class Counsel Fees; or
 - (b) the proposed Distribution and Administration Protocol,

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

7.2 Effect of Non-Approval or Termination of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) The Parties will cooperate to have any orders contemplated in Sections 3.1, 3.2 and 3.3 (specifically including any opt out process and any opt outs made thereunder) set aside and declared null and void and of no force or effect; and,
 - (b) the Parties shall convene with the Court to determine next steps, including any notice required to be given to Class Members.

7.3 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.5(4), 5.1, 5.2, 7.1, 7.2 and 7.3, and the definitions and schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.5(4), 5.1, 5.2, 7.1, 7.2 and 7.3, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 8 - MISCELLANEOUS

8.1 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

8.2 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

8.3 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

8.4 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

8.5 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

8.6 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

8.7 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel; and
 - (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect.

8.8 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

8.9 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by e-mail, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff

Foreman & Company Professional Corporation

c/o Jonathan Foreman
4 Covent Market Place London, ON N6A 1E2
Tel: (519) 914-1175
Fax: (226) 884-5340
E-mail: jforeman@foremancompany.com

For MDG Newmarket Inc.

Henein Hutchison LLP

c/o Alex Smith
235 King Street East, First Floor
Toronto, ON M5A 1I9

Tel: (416) 368-5000
Fax: (416) 368-6640
E-mail: asmith@hllp.com

For Home Trust Company

Gowling WLG (Canada) LLP
c/o Nicholas Kluge
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5
Tel: (416) 862-7525
Fax: (416) 862-7661
Email: Nicholas.kluge@gowlingwlg.com

and:


Mark Hemingway
General Counsel and Corporate Secretary
Home Trust Company
145 King St W, Suite 2300
Toronto, ON M5H 1J8
Tel: 416.775.5030
Email: Mark.Hemingway@hometrust.ca

8.10 Execution Date

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

The Estate of Hugh Cullaton, by its counsel

Name of Authorized Signatory: Jonathan Foreman

Signature of Authorized Signatory: 
Foreman & Company Professional Corporation

MDG Newmarket Inc., by its counsel

Name of Authorized Signatory:

Alan Smith

Signature of Authorized Signatory:

[Signature]
Herzli Hutchison LLP

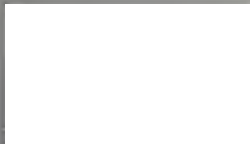
Home Trust Company, by its counsel

Name of Authorized Signatory

Nicholas Kusiel

Signature of Authorized Signatory:

[Signature]
Cowling WLG (Canada) LLP



SCHEDULE "A" – SECURITY REGISTRATION LETTER

[DATE]

Dear [name],

Home Trust Company and Ontario Energy Group ("OEG") or either of them, as applicable are providing this letter to you in respect of the security registration [insert registration #] on title to the property (the "Property") located at [insert address] (the "Security Registration").

This letter will confirm that the Security Registration is made pursuant to your equipment lease agreement(s) with OEG dated [insert date(s)] (the "Agreement(s)") in respect of the following equipment (the "Equipment"):

- 1) [list equipment]

The Security Registration is limited to the identification of OEG's ownership right in the Equipment itself. The Security Registration does not reflect the existence of a real or equitable mortgage against title to the Property.

The value associated with the Security Registration is the value of the buyout cost to you in order to acquire ownership of the Equipment. The buyout cost reduces each year on the anniversary of your Agreement(s). The details of the buyout cost at present and at future intervals can be accessed at [insert website address].

The security interest shall be postponed or suspended at your request, without demand for payment of any amount (other than reasonable outstanding arrears, NSF fees and interest as may be agreed between OEG and you) for any commercially reasonable circumstance (i.e. the need to finance or refinance the home) on 5 day's notice to us by you. The postponement of the security interest may be delayed by a further 5 days, for a total of 10 days at the request of OEG or Home Trust. OEG may not require you to complete a buyout in conjunction with a postponement unless you otherwise wish to do so.

Further questions about the Security Registration may be directed to [insert Home Trust and or OEG representative].

Regards,

[SIGNATURE]

[NAME]

[TITLE]

Schedule "B"

Updated Buyout Tables (All Buyouts have been reduced by 20% pursuant to the Settlement Agreement)

Age	CV 40	CV 50	PV 40	PV 50	Tankless	Goodman Furnace	Amana Furnace	Oil to Gas Conversion	Low Boy Conversion	Humidifier	Chimney Liner
0-1 yrs. old	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1-2 yrs. old	N/A	N/A	N/A	N/A	N/A	N/A	\$ 6,100	\$ 320	\$ 320	\$ 560	\$ 192
2-3 yrs. old	\$ 1,320	\$ 1,560	\$ 1,840	\$ 2,080	\$ 3,980	\$ 5,144	\$ 6,100	\$ 320	\$ 320	\$ 560	\$ 192
3-4 yrs. old	\$ 1,320	\$ 1,560	\$ 1,840	\$ 2,080	\$ 3,980	\$ 5,144	\$ 6,100	\$ 320	\$ 320	\$ 560	\$ 192
4-5 yrs. old	\$ 1,088	\$ 1,264	\$ 1,488	\$ 1,660	\$ 3,128	\$ 4,368	\$ 5,795	\$ 304	\$ 304	\$ 532	\$ 182
5-6 yrs. old	\$ 976	\$ 1,148	\$ 1,368	\$ 1,580	\$ 2,896	\$ 3,660	\$ 5,505	\$ 289	\$ 289	\$ 505	\$ 173
6-7 yrs. old	\$ 927	\$ 1,091	\$ 1,300	\$ 1,501	\$ 2,751	\$ 3,477	\$ 5,230	\$ 274	\$ 274	\$ 480	\$ 165
7-8 yrs. old	\$ 881	\$ 1,036	\$ 1,235	\$ 1,426	\$ 2,614	\$ 3,303	\$ 4,968	\$ 261	\$ 261	\$ 456	\$ 156
8-9 yrs. old	\$ 837	\$ 984	\$ 1,173	\$ 1,355	\$ 2,483	\$ 3,138	\$ 4,720	\$ 248	\$ 248	\$ 433	\$ 149
9-10 yrs. old	\$ 753	\$ 886	\$ 1,056	\$ 1,219	\$ 2,235	\$ 2,824	\$ 4,248	\$ 223	\$ 223	\$ 390	\$ 134
10-11 yrs. old	\$ 678	\$ 797	\$ 950	\$ 1,097	\$ 2,011	\$ 2,542	\$ 3,823	\$ 201	\$ 201	\$ 351	\$ 120
11-12 yrs. old	\$ 610	\$ 718	\$ 855	\$ 988	\$ 1,810	\$ 2,288	\$ 3,441	\$ 181	\$ 181	\$ 316	\$ 108
12-13 yrs. old	\$ 519	\$ 610	\$ 727	\$ 839	\$ 1,539	\$ 1,944	\$ 2,925	\$ 153	\$ 153	\$ 269	\$ 92
13-14 yrs. old	\$ 311	\$ 366	\$ 436	\$ 504	\$ 923	\$ 1,167	\$ 1,755	\$ 92	\$ 92	\$ 161	\$ 55
14-15 yrs. old	\$ 156	\$ 183	\$ 218	\$ 252	\$ 462	\$ 583	\$ 877	\$ 46	\$ 46	\$ 81	\$ 28
15+ yrs. old	\$ 80	\$ 80	\$ 80	\$ 80	\$ 120	\$ 160	\$ 160	\$ -	\$ -	\$ -	\$ -

Age	Panel Upgrade	Goodman AC	Goodman AC - new install	Amana AC	Amana AC - new install	Boiler	EAC	HEPA	Reverse Osmosis	Water Softner/ Carbon Filter	Water System
0-1 yrs. old	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1-2 yrs. old	\$ 1,800	\$ 5,060	\$ 5,860	\$ 6,100	\$ 6,828	\$ 8,752	\$ 3,296	\$ 3,984	\$ 2,896	\$ 3,776	\$ 4,528
2-3 yrs. old	\$ 1,800	\$ 5,060	\$ 5,860	\$ 6,100	\$ 6,828	\$ 8,752	\$ 3,296	\$ 3,984	\$ 2,896	\$ 3,776	\$ 4,528
3-4 yrs. old	\$ 1,800	\$ 5,060	\$ 5,860	\$ 6,100	\$ 6,828	\$ 8,752	\$ 3,296	\$ 3,984	\$ 2,896	\$ 3,776	\$ 4,528
4-5 yrs. old	\$ 1,710	\$ 4,424	\$ 5,224	\$ 5,795	\$ 6,487	\$ 7,280	\$ 3,131	\$ 3,785	\$ 2,751	\$ 3,587	\$ 4,302
5-6 yrs. old	\$ 1,625	\$ 3,696	\$ 4,496	\$ 5,505	\$ 6,162	\$ 7,080	\$ 2,975	\$ 3,596	\$ 2,614	\$ 3,408	\$ 4,087
6-7 yrs. old	\$ 1,543	\$ 3,511	\$ 4,271	\$ 5,230	\$ 5,854	\$ 6,726	\$ 2,826	\$ 3,416	\$ 2,483	\$ 3,237	\$ 3,882
7-8 yrs. old	\$ 1,466	\$ 3,336	\$ 4,058	\$ 4,968	\$ 5,561	\$ 6,390	\$ 2,685	\$ 3,245	\$ 2,359	\$ 3,076	\$ 3,688
8-9 yrs. old	\$ 1,393	\$ 3,169	\$ 3,855	\$ 4,720	\$ 5,283	\$ 6,070	\$ 2,550	\$ 3,083	\$ 2,241	\$ 2,922	\$ 3,504
9-10 yrs. old	\$ 1,254	\$ 2,852	\$ 3,469	\$ 4,248	\$ 4,755	\$ 5,463	\$ 2,295	\$ 2,774	\$ 2,017	\$ 2,630	\$ 3,153
10-11 yrs. old	\$ 1,128	\$ 2,567	\$ 3,122	\$ 3,823	\$ 4,280	\$ 4,917	\$ 2,066	\$ 2,497	\$ 1,815	\$ 2,367	\$ 2,838
11-12 yrs. old	\$ 1,015	\$ 2,310	\$ 2,810	\$ 3,441	\$ 3,852	\$ 4,425	\$ 1,859	\$ 2,247	\$ 1,634	\$ 2,130	\$ 2,554
12-13 yrs. old	\$ 863	\$ 1,964	\$ 2,389	\$ 2,925	\$ 3,274	\$ 3,761	\$ 1,580	\$ 1,910	\$ 1,389	\$ 1,810	\$ 2,171
13-14 yrs. old	\$ 518	\$ 1,178	\$ 1,433	\$ 1,755	\$ 1,964	\$ 2,257	\$ 948	\$ 1,146	\$ 833	\$ 1,086	\$ 1,303
14-15 yrs. old	\$ 259	\$ 589	\$ 717	\$ 877	\$ 982	\$ 1,128	\$ 474	\$ 573	\$ 417	\$ 543	\$ 651
15+ yrs. old	\$ -	\$ 160	\$ 160	\$ 160	\$ 160	\$ 240	\$ 80	\$ 80	\$ 80	\$ 80	\$ 80

**Original Buyout Tables
(Without Any Reductions Applied)**

Age	CV 40	CV 50	PV 40	PV 50	Tankless	Goodman Furnace	Amana Furnace	Oil to Gas Conversion	Low Boy Conversion	Humidifier	Chimney Liner
0-1 yrs. old	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1-2 yrs. old	N/A	N/A	N/A	N/A	N/A	N/A	\$ 7,625	\$ 400	\$ 400	\$ 700	\$ 240
2-3 yrs. old	\$ 1,650	\$ 1,950	\$ 2,300	\$ 2,600	\$ 4,975	\$ 6,430	\$ 7,625	\$ 400	\$ 400	\$ 700	\$ 240
3-4 yrs. old	\$ 1,650	\$ 1,950	\$ 2,300	\$ 2,600	\$ 4,975	\$ 6,430	\$ 7,625	\$ 400	\$ 400	\$ 700	\$ 240
4-5 yrs. old	\$ 1,360	\$ 1,580	\$ 1,860	\$ 2,075	\$ 3,910	\$ 5,460	\$ 7,244	\$ 380	\$ 380	\$ 665	\$ 228
5-6 yrs. old	\$ 1,220	\$ 1,435	\$ 1,710	\$ 1,975	\$ 3,620	\$ 4,575	\$ 6,882	\$ 361	\$ 361	\$ 632	\$ 217
6-7 yrs. old	\$ 1,159	\$ 1,363	\$ 1,625	\$ 1,876	\$ 3,439	\$ 4,346	\$ 6,537	\$ 343	\$ 343	\$ 600	\$ 206
7-8 yrs. old	\$ 1,101	\$ 1,295	\$ 1,543	\$ 1,782	\$ 3,267	\$ 4,129	\$ 6,211	\$ 326	\$ 326	\$ 570	\$ 195
8-9 yrs. old	\$ 1,046	\$ 1,230	\$ 1,466	\$ 1,693	\$ 3,104	\$ 3,922	\$ 5,900	\$ 310	\$ 310	\$ 542	\$ 186
9-10 yrs. old	\$ 941	\$ 1,107	\$ 1,320	\$ 1,524	\$ 2,793	\$ 3,530	\$ 5,310	\$ 279	\$ 279	\$ 487	\$ 167
10-11 yrs. old	\$ 847	\$ 997	\$ 1,188	\$ 1,372	\$ 2,514	\$ 3,177	\$ 4,779	\$ 251	\$ 251	\$ 439	\$ 150
11-12 yrs. old	\$ 763	\$ 897	\$ 1,069	\$ 1,234	\$ 2,263	\$ 2,859	\$ 4,301	\$ 226	\$ 226	\$ 395	\$ 135
12-13 yrs. old	\$ 648	\$ 762	\$ 908	\$ 1,049	\$ 1,923	\$ 2,431	\$ 3,656	\$ 192	\$ 192	\$ 336	\$ 115
13-14 yrs. old	\$ 389	\$ 457	\$ 545	\$ 630	\$ 1,154	\$ 1,458	\$ 2,194	\$ 115	\$ 115	\$ 201	\$ 69
14-15 yrs. old	\$ 194	\$ 229	\$ 273	\$ 315	\$ 577	\$ 729	\$ 1,097	\$ 58	\$ 58	\$ 101	\$ 35
15+ yrs. old	\$ 100	\$ 100	\$ 100	\$ 100	\$ 150	\$ 200	\$ 200	\$ -	\$ -	\$ -	\$ -

Age	Panel Upgrade	Goodman AC	Goodman AC - new install	Amana AC	Amana AC - new install	Boiler	EAC	HEPA	Reverse Osmosis	Water Softner/ Carbon Filter	Water System
0-1 yrs. old	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1-2 yrs. old	\$ 2,250	\$ 6,325	\$ 7,325	\$ 7,625	\$ 8,535	\$ 10,940	\$ 4,120	\$ 4,980	\$ 3,620	\$ 4,720	\$ 5,660
2-3 yrs. old	\$ 2,250	\$ 6,325	\$ 7,325	\$ 7,625	\$ 8,535	\$ 10,940	\$ 4,120	\$ 4,980	\$ 3,620	\$ 4,720	\$ 5,660
3-4 yrs. old	\$ 2,250	\$ 6,325	\$ 7,325	\$ 7,625	\$ 8,535	\$ 10,940	\$ 4,120	\$ 4,980	\$ 3,620	\$ 4,720	\$ 5,660
4-5 yrs. old	\$ 2,138	\$ 5,530	\$ 6,530	\$ 7,244	\$ 8,108	\$ 9,100	\$ 3,914	\$ 4,731	\$ 3,439	\$ 4,484	\$ 5,377
5-6 yrs. old	\$ 2,031	\$ 4,620	\$ 5,620	\$ 6,882	\$ 7,703	\$ 8,850	\$ 3,718	\$ 4,494	\$ 3,267	\$ 4,260	\$ 5,108
6-7 yrs. old	\$ 1,929	\$ 4,389	\$ 5,339	\$ 6,537	\$ 7,318	\$ 8,408	\$ 3,532	\$ 4,270	\$ 3,104	\$ 4,047	\$ 4,853
7-8 yrs. old	\$ 1,833	\$ 4,170	\$ 5,072	\$ 6,211	\$ 6,952	\$ 7,987	\$ 3,356	\$ 4,056	\$ 2,949	\$ 3,844	\$ 4,610
8-9 yrs. old	\$ 1,741	\$ 3,961	\$ 4,818	\$ 5,900	\$ 6,604	\$ 7,588	\$ 3,188	\$ 3,853	\$ 2,801	\$ 3,652	\$ 4,380
9-10 yrs. old	\$ 1,567	\$ 3,565	\$ 4,337	\$ 5,310	\$ 5,944	\$ 6,829	\$ 2,869	\$ 3,468	\$ 2,521	\$ 3,287	\$ 3,942
10-11 yrs. old	\$ 1,410	\$ 3,208	\$ 3,903	\$ 4,779	\$ 5,349	\$ 6,146	\$ 2,582	\$ 3,121	\$ 2,269	\$ 2,958	\$ 3,547
11-12 yrs. old	\$ 1,269	\$ 2,888	\$ 3,513	\$ 4,301	\$ 4,814	\$ 5,531	\$ 2,324	\$ 2,809	\$ 2,042	\$ 2,662	\$ 3,193
12-13 yrs. old	\$ 1,079	\$ 2,454	\$ 2,986	\$ 3,656	\$ 4,092	\$ 4,702	\$ 1,975	\$ 2,388	\$ 1,736	\$ 2,263	\$ 2,714
13-14 yrs. old	\$ 647	\$ 1,473	\$ 1,791	\$ 2,194	\$ 2,455	\$ 2,821	\$ 1,185	\$ 1,433	\$ 1,041	\$ 1,358	\$ 1,628
14-15 yrs. old	\$ 324	\$ 736	\$ 896	\$ 1,097	\$ 1,228	\$ 1,411	\$ 593	\$ 716	\$ 521	\$ 679	\$ 814
15+ yrs. old	\$ -	\$ 200	\$ 200	\$ 200	\$ 200	\$ 300	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100

SCHEDULE "C"

Court File No.: 1850/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) _____, THE ____ DAY
JUSTICE RAIKES) OF _____, _____

BETWEEN:

THE ESTATE OF HUGH CULLATON, deceased,
by his Executrix, KAREN CULLATON

Plaintiff

- and -

MDG NEWMARKET INC. holding itself out as ONTARIO ENERGY GROUP and
ONTARIO ENERGY SOLUTIONS and HOME TRUST COMPANY

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, c.6

ORDER

(Certification, Notice, and Opt Out)

THIS MOTION made by the Plaintiff for an Order: (a) certifying this proceeding as a class proceeding, (b) approving the notice of certification and settlement approval hearing, and (c) approving the opt out process, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the Motion Records filed by the Plaintiff, which includes the settlement agreement between the Plaintiff and the Defendants (the "Settling Defendants") dated * attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions from counsel for the Plaintiff and the Settling Defendants;

AND ON BEING ADVISED that * has consented to being appointed as notice provider in accordance with the terms of this Order;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order;

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, 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 this action is certified as a class proceeding.
3. **THIS COURT ORDERS** that the class (the “Class”) is certified as follows:

“Class Members” means all persons in Ontario who are or were at any time party to a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016, except Excluded Persons.

“Equipment” means furnaces, air conditioners, water heaters, water softeners, water purification systems, boilers, air cleaners, humidifiers, chimney liners, filters, and other equipment or services offered under the Consumer Agreements.

4. **THIS COURT ORDERS** that the following issues are common to the Class:

Consumer Protection Act, 2002:

- a. Do the Lease Agreements fail to comply with the requirements of the Ontario *Consumer Protection Act, 2002*, including:
 - i. The Unfair Practices provisions contained in ss. 14 and 15 of that *Act*;
 - ii. The Leasing Requirements contained in Part VIII of that *Act* and any leasing requirements contained in the regulations under the *Act*; and/or
 - iii. The obligations respecting Direct Agreements and/or Future Performance Agreements under Part IV of that *Act*?
- b. If the Lease Agreements fail to comply with the requirements of the *Consumer Protection Act, 2002*, what are the appropriate remedies under the *Act* and its regulations and/or at common law?
- c. Do the written sales and marketing representations of the defendant Ontario Energy Group (“OEG”) on its website and elsewhere constitute Unfair Practices contrary to the requirements of the Ontario *Consumer Protection Act, 2002*?

- d. If so, what is the appropriate remedy under s. 18 of the *Act*?
- e. Is Home Trust a “supplier” within the meaning of and for the purposes of the *Consumer Protection Act, 2002*?
- f. If the Lease Agreements and/or the written sales and marketing representations fail to comply with the requirements of the Ontario *Consumer Protection Act, 2002* are both defendants liable for same?
- g. If the Class Members are entitled to remedies what should the protocol for the implementation of remedies be?
- h. Should an equitable accounting be ordered in order to facilitate the construction of a remedial protocol for Class Members?
- i. Can all or part of that remedies protocol be determined on an aggregate or automated basis, pursuant to sections 12, 24, 25, and/or 26 of the *Class Proceedings Act*?

Competition Act:

- j. Do the Lease Agreements and/or the written sales and marketing representations of the defendant OEG constitute false and misleading representations contrary to s. 52 of the *Competition Act*?
- k. If so, can causation of the Class Members’ losses be proven by the fact of any payments made by them pursuant to the requirements of the Lease Agreements?
- l. If so, are the Class Members entitled to remedies pursuant to s. 36 of the *Competition Act*? Can any such remedies be determined on an aggregate basis?
- m. If the Lease Agreements and/or written sales and marketing representations are false and misleading misrepresentations contrary to s. 52 of the *Competition Act*, are both defendants liable for same?

Civil Conspiracy:

- n. Did the defendants conspire together to undertake unlawful acts which were directed towards the Class Members?

- o. Did the defendants know that the conspiracy would likely cause injury to the Class Members?
- p. Did the Class Members suffer economic loss as a result of the defendants' conduct?
- q. If the defendants are liable to the Class Members in conspiracy, what damages and other remedies are owed to the Class Members?
- r. Can any monetary remedies that are awarded be assessed and paid on an aggregate basis?

Equity – Unjust Enrichment

- s. Have the defendants been unjustly enriched to the deprivation of the Class Members without juristic reason?
 - t. If a restitutionary award is made, can it be calculated and paid on an aggregate basis?
 - u. If a restitutionary award is made are both defendants liable for same?
5. **THIS COURT ORDERS** that the Estate of Hugh Cullaton, deceased, by his Executrix Karen Cullaton is appointed as the representative plaintiff for the Class.
 6. **THIS COURT ORDERS** that the nature of the claim concerns allegations that the defendants and the lease agreements breached the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, the *Competition Act*, RSC 1985, c C-34, the common law and the law of equity.
 7. **THIS COURT ORDERS** that the claim seeks remedies in the form of damages and declaratory relief under the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, the *Competition Act*, RSC 1985, c C-34, the common law; restitution and other relief under the law of equity; punitive and exemplary damages; an equitable rate of interest on all sums found due and owing; and notice, distribution and other costs.
 8. **THIS COURT ORDERS** that, to the extent that it has not already been provided, the Defendants shall:

- (a) deliver to Class Counsel a complete and accurate list of every Class Member's name and mailing address within 14 days of this order;
 - (b) where reasonably available, provide e-mail, phone and/or mobile phone numbers for Class Members within 14 days of this order;
 - (c) where reasonably available, provide other transaction data and information in their possession concerning the Defendants' commerce with Class Members for the purpose of developing and carrying out the Distribution and Administration Protocol and notice dissemination ("Class Member Information").
9. **THIS COURT ORDERS** that Class Counsel will utilize the Class Member Information provided by the Defendants for notice purposes in accordance with the Privacy and Information Management Protocol, attached hereto as Schedule "**".
10. **THIS COURT ORDERS** that the proposed * (the "Notices") are hereby approved substantially in the form attached hereto as Schedules "*" - "*".
11. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "*" and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
12. **THIS COURT ORDERS** that * is appointed to assist with the dissemination of the Notices in accordance with this Order.
13. **THIS COURT ORDERS** that Persons who wish to opt out of the Proceeding must do so by providing a signed written election to opt out to Class Counsel by (mail, fax, or email) in the form attached hereto as Schedule "*", received on or before *.
14. **THIS COURT ORDERS** that a written election to opt out must contain the following information in order to be effective:
 - a. the Person's full name and current address; and
 - b. a statement to the effect that the Person understands that a settlement agreement has been reached with the Defendants and that the Person wishes to be excluded from the Proceeding.

15. **THIS COURT ORDERS** that any Person with an extant Other Action as at the Execution Date must opt out of the Proceeding in the same manner as any other Class Member.
16. **THIS COURT ORDERS** that any questions or disagreements concerning Opt-Outs, Other Actions and their inclusion or exclusion from the Class may be managed and resolved by the case management judge for this Proceeding.
17. **THIS COURT ORDERS** that the written elections described in paragraphs 13, 14, and 15 must be signed by either a) the Class Member personally, b) the Class Member's duly appointed attorney under a power of attorney for property or c) the Class Member's Court-appointed Litigation Guardian. For greater certainty, elections signed only by a legal representative or agent of a Class Member are not valid.
18. **THIS COURT ORDERS** that any Person who has validly opted-out of this Proceeding shall no longer participate or have the opportunity in the future to participate in the Proceeding.
19. **THIS COURT ORDERS** that any Person who has not validly opted-out of this Proceeding will be bound by the Settlement Agreement, if approved by this Court, and may not opt out of this Proceeding in the future.
20. **THIS COURT ORDERS** that within thirty (30) days of the Opt Out Deadline, Class Counsel shall provide to the Settling Defendants a report containing the names of each Person who has validly and timely opted out of the Proceeding.
21. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, a case management conference shall be convened to seek directions, including in respect of the need for and form and content of additional notice to Class Members and to any Person who delivered an election to opt out or was deemed to have opted-out pursuant to this Order.

Date:

The Honourable Justice Raikes

SCHEDULE “D”

Court File No.: 1850/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) _____, THE ____ DAY
JUSTICE RAIKES) OF _____, _____

BETWEEN:

THE ESTATE OF HUGH CULLATON, deceased,
by his Executrix, KAREN CULLATON

Plaintiff

- and -

MDG NEWMARKET INC. holding itself out as ONTARIO ENERGY GROUP and
ONTARIO ENERGY SOLUTIONS and HOME TRUST COMPANY

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, c.6

**ORDER
(Settlement Approval)**

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with MDG Newmarket Inc. and Home Trust Company (the “Settling Defendants”) and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement dated *, 2021 between the Plaintiff and the Defendants (the “Settling Defendants”) attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendants;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been * objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting-out of the Proceeding has passed, and there were * opt outs;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
4. **THIS COURT ORDERS** that the Settlement Amount shall be paid within 7 business days of the Final Order and shall be held in the Trust Account by Class Counsel or its duly appointed agent for the benefit of Settlement Class Members, pending further order of this Court.
5. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action, including any counterclaims made by the Settling Defendants and/or the Releasees commenced in Ontario by any Person who has commenced an Other Action and who has not opted out of this Proceeding shall be and is hereby dismissed in respect of Released Claims against the Settling Defendants and the Releasees, without costs.
6. **THIS COURT ORDERS** that, upon the Effective Date, this Action is dismissed as against the Settling Defendants, without costs and with prejudice.
7. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role.
8. **THIS COURT ORDERS** that if the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be set aside and declared null and void and of no force or effect, without the need for further Order of this

Court. In those circumstances, a case management conference shall be convened to seek directions, including in respect of the need for and form and content of additional notice to Class Members.

Date:

The Honourable Justice Raikes

Schedule "B"

Privacy and Information Management Protocol *The Estate of Hugh Cullaton v MDG Newmarket Inc. et al*

Information to be Provided

1. The plaintiff will be provided with certain specific information respecting the class members in the within action: *The Estate of Hugh Cullaton v. MDG Newmarket Inc. et al* (the "Action") and in respect of the lease agreements undertaken by the defendants with class members during the relevant time period. This information will include but will not be limited to:
 - a. A full record of the names, addresses and most recent contact information of all class members that is within the defendants' possession.
2. The information shall be provided to Class Counsel and any notice and/or claims administrator or service provider they retain.
3. Collectively, the information to be provided to counsel in the Action respecting the class members in the Action shall be referred to within this Protocol as the "Information."
4. This Protocol shall be approved by the Court.

Purpose

5. This Protocol shall govern the exchange and management of the Information in the within Action. The purpose for the exchange of the Information would be to facilitate the delivery of direct notice and communication to class members respecting their rights in the within Action and in order to facilitate the administration of the settlement agreement through the court-approved Distribution and Administration Protocol.

Uses to be made of the Information

6. Class Counsel and any administrators or service providers they retain shall, subject to the terms of this Protocol, be entitled to use all of the Information in order to develop and implement any notice plan and Distribution and Administration Protocol approved by the Court. Specifically, and without limitation, Class Counsel and any administrators or service providers they retain, will be expressly permitted to make the following uses of the Information:
 - a. to make direct communication with class members and potential class members using the Information, including communication of Information personally applicable to a given class member electronically, telephonically, or by hard copy mailings for

the purpose of notice and claims administration in relation to this Action only and for no other purpose; and

- b. to otherwise use the Information in any other manner permitted by law including with the implied or express consent of a class member as is reasonably necessary to facilitate the objectives of any notice program and the Distribution and Administration Protocol

7. The purposes described herein shall be the sole purposes for which the Information may be used. Class Counsel and any administrators or service providers retained on behalf of the class may not utilize the Information for any other purpose whatsoever.

Implementation of Protection and Safeguards Respecting the Information

8. Class Counsel and any administrators or service providers they retain are to implement and maintain physical, technical and administrative safeguards to appropriately protect the Information from loss, theft, and unauthorized access, use or disclosure. In particular, Class Counsel and any administrators or service providers they retain will implement the following protections and safeguards in respect of the Information:
 - a. the Information is to be stored at all times by Class Counsel and any administrators or service providers they retain, as the case may be, within a computer network that is firewalled and password protected;
 - b. only a limited number of designated members of Class Counsel and any administrators or service providers they retain, including their respective information technology support teams, are to have access to the Information; and,
 - c. the Information or any part of it will only be transmitted between Class Counsel and any administrators or service providers they retain, on an encrypted and password protected medium such as Mimecast, Titanfile or a password protected USB key.
9. Class Counsel and any administrators or service providers they retain will destroy all records of and copies of the Information upon the full and final completion and execution of any notice and claims administration requirements within this Action. The Information will be destroyed by the purging of all electronic files and the destruction of any paper copies of the Information by a secure document shredding service.

Review of the Privacy and Information Management Protocol

10. The plaintiff proposes that this Privacy and Information Management Protocol be reconsidered or revised as necessary under the continuing case management authority of the Court pursuant to the *Class Proceedings Act, 1992*.

ONTARIO ENERGY GROUP HVAC EQUIPMENT LEASE CLASS ACTION

Notice of Certification and Settlement Approval Hearing

Une version française de ce document est disponible sur :
<https://www.foremancompany.com/ontario-energy-group>

A Settlement Has Been Reached

On July 25, 2016, a class action was commenced against Ontario Energy Group ("OEG") and Home Trust Company.

OEG is a company that entered into lease agreements for the installation, rental, and servicing of HVAC equipment (like furnaces, air conditioners, and water heaters) with Ontario consumers. Home Trust Company is alleged to have purchased an interest in the lease agreements, collected money from Class Members under the lease agreements, and to have registered "liens" against Class Members' homes.

The class action alleges, among other things, that OEG's lease agreements failed to comply with legal requirements under Ontario's *Consumer Protection Act, 2002* and other applicable laws. The class action seeks damages and other remedies for the Class.

A Settlement Agreement has been reached on behalf of Class Members to resolve the HVAC equipment lease class action lawsuit against OEG and Home Trust.

Who Can Participate in the Settlement?

The court has defined the class of consumers who can benefit from the settlement (known as "Class Members") as:

All persons in Ontario who are or were at any time party to a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016, except Excluded Persons.

"Equipment" means furnaces, air conditioners, water heaters, water softeners, water purification systems, boilers, air cleaners, humidifiers, chimney liners, filters, and other equipment or services offered under the Consumer Agreements.

"Excluded Person" means any putative class member who elects to opt out of this class action pursuant to an order of the Court, and each settling defendant, as further defined in the Settlement Agreement.

Anyone who has reached a personal settlement or obtained a judgment in a personal lawsuit or other complaint against OEG may have signed a document called a release. Depending on the language of the release, your eligibility to participate in the class action settlement may be affected. If you have a question about the impact of a release you signed, please contact Class Counsel at the contact information set out below.

This Legal Notice has been authorized by the Ontario Superior Court of Justice

How Was the Settlement Agreement Reached?

The Settlement Agreement has been reached after several rounds of negotiations carried out over more than two years. The negotiations were performed with the help of a retired Chief Justice from the Ontario Court of Appeal who acted as a neutral mediator. The negotiations initially took place over a formal 5 day long bargaining session. A second set of formal multi-day sessions followed. Those sessions stretched into ongoing mediation by phone and by correspondence over several months and finally into direct bargaining sessions between the parties.

Why is there a Settlement Agreement?

In this case, the plaintiff has alleged that the defendants breached certain consumer protection laws in the construction of the OEG lease agreements and related disclosure to Class Members. The defendants deny the plaintiff's claims and maintain that OEG's lease agreements comply with consumer protection laws. The defendants state that they provide an HVAC leasing and servicing program that is comparable in format and pricing to many other similar companies operating in the Ontario marketplace. Without the Settlement Agreement, the case would require a trial, which could be subject to appeals in higher courts in order to determine whether any laws were broken and whether any money or other remedies are owed to Class Members.

The Settlement Agreement allows the case to be resolved for the benefit of Class Members now without further delay. Without the Settlement Agreement, the case would continue. It may take several more years to have a trial and to complete any appeals in this case. In addition to the time it would take for a trial and any possible appeals, the results or outcomes from those processes cannot be predicted with any certainty. The case could be completely successful, completely unsuccessful or somewhere in between.

Even if the case was ultimately successful at a trial, the remedies or benefits that might be ordered by the court for Class Members are also uncertain. In short, if the case continues, there are no guarantees for Class Members in terms of timing or results.

What does the Settlement Agreement Provide?

The Settlement Agreement requires OEG and Home Trust to do the following things for Class Members following approval of the Settlement Agreement by the court:

- Pay CAD \$14.95 million
- Cancellation and arrears forgiveness of up to 225 ongoing lease agreements and gifting of the equipment without further payment or obligation in exceptional circumstances
- A new lower cost equipment buyout program, with fixed and transparent prices that decrease every year, where the lease agreement can be ended and the equipment may be purchased at a reduced cost and in accordance with a formal schedule where the cost of the buyout goes down each year
- Changes to the defendants' lien and security registration practices:

This Legal Notice has been authorized by the Ontario Superior Court of Justice

- On the renewal date, all security registration renewals will be in the form of a Notice of Security Interest and will be limited to an ownership right in the equipment affixed to the property valued at the amount owing at the date of the renewal under the revised buyout schedule
 - Permit security interest to be postponed for any commercially reasonable circumstances
 - Letter, available upon request, to confirm that the registration pertains only to the equipment and is not a mortgage on title to the home. The form of this letter is attached as a schedule to the Settlement Agreement.
- A clarified termination option under the lease agreement for those who wish to terminate the lease agreement and have the OEG equipment removed
 - Any unpaid energy rebates may be used as a credit towards a buyout or termination
 - A debt management program for Class Members who have unpaid arrears
 - Other changes to all OEG lease agreements on a go-forward basis:
 - Annual increases to monthly payments are reduced
 - Servicing commitments of OEG clarified
 - The Settlement Agreement does not impact ordinary course complaints by Class Members about OEG’s performance of its role under the lease agreements

The Distribution and Administration Protocol

If approved, the settlement benefits will be provided to Class Members under a set of rules called a “Distribution and Administration Protocol”. [Name] will serve as the administrator of the settlement (the “Claims Administrator”).

A copy of the draft Distribution and Administration Protocol can be viewed at <https://www.foremancompany.com/ontario-energy-group>.

The draft Distribution and Administration Protocol has been written following interviews with hundreds of Class Members and a detailed review of other economic data and information obtained from Class Members, the defendants and other sources in the course of the litigation.

The draft Distribution and Administration Protocol provides that all Class Members will be eligible to apply for settlement benefits, whether they are currently in an active lease agreement (and still rent equipment from OEG), or whether they previously bought out or terminated their lease agreement (and no longer rent equipment from OEG). The settlement benefits are summarized as follows:

Class Member	Benefits
You continue to rent equipment from OEG under one or more <u>active lease agreement(s)</u>	<ul style="list-style-type: none"> • Eligibility for a single cash payment representing a refund of a portion of monthly rental payments paid before the date of your claim;

	<ul style="list-style-type: none"> • Potential eligibility for an increase to the single cash payment, where certain demonstrated individual circumstances apply; • Improvements to the lease agreement on a “go-forward” basis, including: <ul style="list-style-type: none"> ○ A reduction of the allowable increase of the monthly rental payment each year; ○ Access to a new lower cost buyout program, with fixed and transparent prices that decrease every year; ○ Other clarifications, enhancements, and improvements to your rights under the lease agreement, all of which is outlined in more detail in the Settlement Agreement; • A commitment from the defendants to a reasonable management of debts and arrears; and, • Potential eligibility to have your lease agreement cancelled, equipment gifted, and arrears forgiven in exceptional circumstances. Such benefits will, except in limited cases as set out in the protocol, be provided <i>in lieu of the single cash payment described above</i>.
<p>You have <u>exited a lease agreement</u> (i.e. you bought out or terminated your lease agreement and no longer rent equipment from OEG)</p>	<ul style="list-style-type: none"> • Eligibility for a single cash payment representing a portion of the amount you paid for: <ul style="list-style-type: none"> ○ monthly rental payments before the date of your termination or buyout; and ○ your termination, buyout, and/or associated arrears, interest, and NSF fees; and, • Potential eligibility for an increase to the single cash payment, where certain demonstrated individual circumstances apply.

The draft Distribution and Administration Protocol proposes to distribute the vast majority of the Net Settlement Fund (which means the settlement money, less court-approved legal fees, disbursements, taxes and administration expenses) according to a set of formulas aimed to reflect the amount of harm alleged to have been suffered by each Class Member.

The formulas in the draft Distribution and Administration Protocol account for factors such as the amount of time in a lease agreement, the monthly payments made, the amount paid to buyout or terminate, if applicable, as well as interest and NSF charges on arrears, along with specified individual circumstances such as mental incapacity at the time the lease agreement was signed, documented misrepresentations from a salesperson, or non-functional equipment (among other circumstances).

The draft Distribution and Administration Protocol further provides that up to a specified percentage of the Net Settlement Fund (plus the 225 active lease agreements eligible for cancellation in exceptional circumstances) may be available to Class Members for specified acute problems that cannot adequately be rectified through an allocation based on the formulas.

A complete list of factors and formulas which may qualify you for compensation can be found in the draft Distribution and Administration Protocol.

The Distribution and Administration Protocol will include the use of an online claims website and hard copy claims submissions. The defendants have provided certain information about Class Members to the Claims Administrator. That information is expected to be utilized by the Claims Administrator to simplify the claims process for Class Members.

The Claims Process – Next Steps:

If the Settlement Agreement is approved by the court, Class Members will be provided with a further notice of the schedule for filing a claims form. The dates for filing claims will be published as soon as possible after the court approves the settlement agreement and the Distribution and Administration Protocol. Updates and information about how to make a claim will be posted as soon as they are available at <https://www.foremancompany.com/ontario-energy-group>.

Register Your Email Address with Class Counsel:

Class Counsel have arranged for a simple process for Class Members to provide updated contact information including a current email address. For Class Members **who have not done so already**, an email address allows for faster electronic communication throughout the process.

In order to do so, please visit <https://www.foremancompany.com/ontario-energy-group> where you will find an automated form that will allow you to provide contact data and other details about your contract with OEG.

The Settlement Approval Hearing:

The Settlement Agreement must be approved by the court before the settlement benefits can be provided to Class Members. There will be a hearing on September 23, 2021 at 10am where the court will decide whether or not to approve the Settlement Agreement. Given the COVID19 protocols that are currently in place, details of the hearing (in-person or by videoconference) are not known at this time. Please contact Class Counsel (contact particulars below) or visit <https://www.foremancompany.com/ontario-energy-group> for the most up to date information.

Your Right to Provide Comments or Objections:

Class Members are invited to review the Distribution and Administration Protocol and to share any comments on it with Class Counsel. Your comments may be used to make changes or improvements to the Distribution and Administration Protocol.

Class Members also have the right to comment upon or object to the settlement terms.

All comments or objections are to be sent to Class Counsel at classactions@foremancompany.com or in writing to the address below before [date]. Class

This Legal Notice has been authorized by the Ontario Superior Court of Justice

Counsel will provide all comments and objections received to the court. Please do not contact the court directly. No one at the court will be able to answer your questions.

Your Right to Opt-Out of the Class Action and Settlement:

Class Members also have the right to opt-out of the class action:

- Class Members who opt-out will not be able to collect any of the settlement benefits or otherwise participate in the class action lawsuit.
- If you do not opt-out, you will be bound by and eligible to participate in this settlement (if approved) and you will not be able to start or continue your own case against OEG or Home Trust regarding the claims at issue in this case.

This means that if you have already started your own lawsuit against OEG and/or Home Trust about the same issues raised by the class action, you will be bound by the Settlement Agreement (and your individual lawsuit will be *dismissed*), unless you opt-out.

If you want to opt-out, your opt-out form must be received by **[date]** at the latest. For complete instructions on how to opt-out, please view the opt-out form found at www.foremancompany.com/ontario-energy-group or contact Class Counsel at: classactions@foremancompany.com or 1-855-814-4575 ext. ●.

If the Settlement Agreement is approved, you will not have another opportunity to opt-out in the future. If the Settlement Agreement is not approved or if it otherwise fails to take effect, a case management conference will be held to seek the court's direction with respect to next steps, including the form and content of an additional notice to Class Members and to any person who opted-out. If the Settlement Agreement is not approved, settlement opt-outs will be set aside and Class Members will have another opportunity to decide whether or not they want to remain in the class, subject to the direction of the Court.

Payment of the Legal Fees and Expenses of the Lawyers for the Class:

At the same time as the settlement approval hearing, Class Counsel will make a request to be paid for their legal work and the expenses they have carried on this matter. Class Counsel started the class action in 2016. Their work has been performed on a contingent fee basis since that time. That means that they have not been paid for their work to date nor have they been reimbursed for over \$175,000 plus applicable taxes in out of pocket expenses they have paid for expert witnesses and other requirements for the case. Subject to Court approval, the costs associated with: (i) providing notices to the class and (ii) claims administration will also be paid out of the amounts recovered.

Class Counsel agreed at the outset that they would only be paid if and when they recovered money for Class Members. The fee request will be **up to 25%** of the amounts recovered, plus applicable taxes and repayment of the out of pocket amounts they have paid for the benefit of the case.

This Legal Notice has been authorized by the Ontario Superior Court of Justice

If you wish to comment on or make an objection to Class Counsel's' fees, a written submission must be delivered to Class Counsel (contact particulars below) **by [date]**. Class Counsel will forward all such submissions to the court.

Class Counsel:

Foreman & Company represents the court-appointed representative plaintiff and Class Members. You can contact Class Counsel by mail, telephone, fax or email at the following contact particulars:

Mail: 4 Covent Market Place
Attention: Kassandra Hallett
London, Ontario N6A 1E2

Tel: 1-855-814-4575 ext. ●
Fax: 1-226-884-5340
Email: classactions@foremancompany.com

This Notice provides only a summary of the class action and the proposed Settlement Agreement. A copy of the Settlement Agreement, the proposed Distribution and Administration Protocol and other important documents can be viewed at <https://www.foremancompany.com/ontario-energy-group>.

Schedule "D"

Proposed Settlement Reached in HVAC Equipment Lease Class Action against Ontario Energy Group and Home Trust Company

LONDON, ON, June, X, 2021 – A proposed settlement has been reached in a class action lawsuit against Ontario Energy Group and Home Trust Company (collectively the “Defendants”). The class action relates to lease/rental and maintenance agreements for household equipment (like furnaces, air conditioners, water heaters, and filters), entered into in Ontario between May 1, 2012 and December 31, 2016, which are alleged to have failed to comply with legal requirements under Ontario’s *Consumer Protection Act, 2002*. The action sought damages and other remedies for class members.

Ontario Energy Group is a company that entered into lease agreements with Ontario consumers for the installation, rental, and servicing of HVAC equipment. Home Trust Company is alleged to have purchased an interest in the lease agreements, collected money from class members under the lease agreements, and to have registered “liens” against consumers’ homes.

Pursuant to the proposed settlement, the Defendants have agreed to pay CAD \$14,950,000 (the “Settlement Funds”) for the benefit of class members in addition to other specified relief including debt management and the cancellation and forgiveness of certain agreements entirely in exceptional circumstances. Ontario Energy Group has also agreed to implement various contractual changes to its consumer agreements on a go-forward basis. The settlement, which was negotiated over more than two years with the assistance of the retired Chief Justice of Ontario acting as a neutral mediator, is not an admission by the Defendants of liability, fault, or wrongdoing, but is a compromise of disputed claims. The settlement must be approved by the Court before it becomes effective.

The plan for distributing the Settlement Funds to class members must also be approved by the Court before payments can be made.

Full copies of the Settlement Agreement and the proposed plan for distributing Settlement Funds are posted for review at <https://www.foremancompany.com/ontario-energy-group>. Class members have the right to submit comments or objections for consideration by the Court. The deadline for providing those comments to Class Counsel is [DATE].

If you are a class member who wants to be included in the class action, you do not need to do anything.

If you do not want to be included in this class action, you must “opt-out” by [date].

For more detailed information, class members are encouraged to visit <https://www.foremancompany.com/ontario-energy-group>.

Media contact: Foreman & Company, Jonathan Foreman - jforeman@foremancompany.com

Foreman & Company represents class members in this case. Based in London, Ontario, Foreman & Company has more than 20 years' experience in class action litigation and expertise in a full range of class action matter

Schedule "E"

Did you enter into a lease contract for HVAC equipment (such as a furnace, air conditioner or water heater) from **Ontario Energy Group** between **May 1, 2012 and December 31, 2016**?

A proposed class action settlement may impact you.

LEARN MORE

Schedule "F"

Plan of Dissemination

The Notices of certification and settlement approval hearing will be distributed to Class Members as follows:

DIRECT MAIL, FAX, AND/OR EMAIL

- 1) Within ten (10) business days of the first publication of the Notice, the Notice (attached as Schedule "•" to the Certification Order) will be sent, in English and/or French, as appropriate for each recipient, by direct mail, fax, and/or email:
 - a. To all persons disclosed by the Defendants pursuant to paragraph • of the Certification Order. The Notice Administrator will utilize Canada Post's address update service to make reasonable efforts to verify and update mailing addresses in advance of the direct mailings being sent;
 - b. To all Class Members disclosed by the Defendants to have extant individual litigation involving either of the Defendants in respect of the subject lease agreements, by delivery to the Class Member and/or their legal representative as appropriate; and
 - c. If not otherwise contacted under 1(a), to the list maintained by Class Counsel of persons who have requested information about the action.
- 2) The Notice shall provide information with respect to the certification of the proceeding, the proposed settlement terms, the settlement approval process and the rights of Class Members, including their ability to participate in the settlement and the process for opting-out.

- 3) In the event of returned Notice packages, reasonable efforts will be made to identify updated contact particulars.
- 4) In addition to the above, the approved Notice may be communicated directly to Class Members and other persons by other means, as may be deemed advisable by Class Counsel and/or the Notice Administrator.

TRADITIONAL MEDIA

- 5) The Press Release (attached as Schedule “•” to the Certification Order) will be circulated to news outlets throughout Canada by publication on Canada Newswire, in English and French, with promotion through Canada Newswire’s social media feed to facilitate recirculation.

BANNER ADS

- 6) There will be a digital distribution of the banner ad on the Google Display Network, with a national distribution but greater focus on Ontario, for a period of ninety (90) days, with a target of a minimum 200,000 unique impressions. The banner ad will be provided in English and/or French as applicable, and may be modified as necessary to fit the dimensions and specifications as required by particular website providers. The banner ad will redirect Class Members to the settlement website where they will be able to view a copy of the Notice among other case documents.

CLASS COUNSEL WEBSITE AND RELATED SOCIAL/DIGITAL MEDIA

- 7) By posting all versions of the Notice (including a French version of the Notice), and the Opt-Out Form, on a dedicated page of Class Counsel’s website.

8) By publication of a link to the Notice through Class Counsel's social media accounts on the following social media platforms:

- a. Facebook;
- b. LinkedIn; and
- c. Twitter.

Schedule "G"

OPT-OUT FORM

Class Action against Ontario Energy Group and Home Trust Company ("OEG Class Action")

This is not a claim form. This form EXCLUDES you from participating in the OEG Class Action. DO NOT fill out this form if you wish to participate in the OEG Class Action.

About the OEG Class Action

On July 25, 2016, a class action was commenced against Ontario Energy Group ("OEG") and Home Trust Company in respect of lease agreements for household equipment like furnaces, air conditioners, filters etc.

The Ontario Superior Court of Justice has certified the OEG Class Action for the following class:

All persons in Ontario who are or were at any time party to a lease agreement of Equipment with MDG Newmarket Inc. operating as Ontario Energy Group entered into between May 1, 2012 and December 31, 2016 except Excluded Persons (the "Class").

"Equipment" means furnaces, air conditioners, water heaters, water softeners, water purification systems, boilers, air cleaners, humidifiers, chimney liners, filters, and other equipment or services offered under the Consumer Agreements.

The OEG Class Action alleged, among other things, that OEG's agreements failed to comply with legal requirements under Ontario's *Consumer Protection Act, 2002* and other applicable laws. The OEG Class Action seeks damages and other remedies for the Class.

The case has reached a proposed conclusion pursuant to a settlement agreement reached between the parties dated March 29, 2021. The settlement agreement remains subject to approval by the court. Further information about the proposed settlement agreement can be found at <https://www.foremancompany.com/ontario-energy-group>.

If you have questions about the OEG class action, please review the court-approved notice at <https://www.foremancompany.com/ontario-energy-group> or contact Foreman & Company, the lawyers appointed to represent the Class ("Class Counsel") at classactions@foremancompany.com or 1-855-814-4575 ext. ●

Opting Out

IF YOU OPT-OUT, YOU ARE REMOVING YOURSELF FROM THE CERTIFIED OEG CLASS ACTION. BY DOING SO, YOU WILL NOT RECEIVE ANY MONEY OR OTHER BENEFITS FROM THE PROPOSED SETTLEMENT AGREEMENT IF IT IS APPROVED BY THE COURT.

If you opt out, you may be able to continue an existing individual lawsuit or start one at your own expense. If you have already commenced an individual lawsuit in respect of the same claims alleged in the OEG Class Action and you wish to carry it forward outside of the class action, you must opt out. Class members who do not opt out will remain in the OEG Class Action and will be bound by the terms of the settlement.

There is no expense to you by remaining in the OEG Class Action, and you will not be responsible for paying for the lawyers for the Class out of your pocket. As part of the settlement approval process, the lawyers for the Class will ask the court to approve the payment of their legal fees, disbursements (expenses incurred in the litigation of the case) and applicable taxes out of the amounts recovered in the lawsuit. Any amounts approved by the court will be paid from the settlement amount. In an individual lawsuit, you will have to pay your advisor (a lawyer or paralegal for example) to conduct your own case.

If you do not want to be included in the OEG Class Action, you must complete and sign this Opt-Out Form, and send it by regular mail, email, or fax to the particulars listed below, received by September 1, 2021 at the latest. Opt-Out Forms received after that date will not be accepted. This is your only chance to opt-out of the OEG Class Action.

This Opt-Out form must be signed by either a) you, the Class Member, b) your duly appointed attorney under a power of attorney for property, or c) your Court-appointed Litigation Guardian.

Opt-Out Forms signed only by a legal representative or agent (such as a lawyer or paralegal professional) of a Class Member are not valid.

For more information on the OEG Class Action, please visit <https://www.foremancompany.com/ontario-energy-group> or contact Class Counsel.

Your Name (required) : _____

Your Address (required): _____

Your telephone number (required): _____

Your email address: _____

DECLARATION

I declare that I wish to opt out of the OEG Class Action.

I understand that by submitting this Opt-Out Form, I will be excluded from the OEG Class Action and will not be bound by its outcome.

I understand that a settlement agreement has been reached with the Defendants and that as a result of opting out, I will be excluded from the benefits afforded to class members under the settlement agreement of the OEG Class Action.

Signature: _____

Name (please print): _____

Date: _____

Return your completed Opt-Out Form to:

FOREMAN & COMPANY
Attn: Cassandra Hallett
4 Covent Market Place
London, ON N6A 1E2
classactions@foremancompany.com
Fax: (226) 884-534

THE ESTATE OF HUGH CULLATON

v.

MDG NEWMARKET INC., et al.

Court File No. 1850/16 CP

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

**FOREMAN & COMPANY
PROFESSIONAL CORPORATION**

4 Covent Market Place
London, ON N6A 1E2

Jonathan J. Foreman (LSO# 45087H)

Jean-Marc Metrailler (LSO# 69848F)

Sarah Bowden (LSO# 56385D)

Tel: 519.914.1175

Fax: 226.884.5340

E-mail: jforeman@foremancompany.com

jmetrailler@foremancompany.com

sbowden@foremancompany.com

Lawyers for the Plaintiff