



Court File No.: 1850/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.)
JUSTICE RAIKES) Friday, THE 4th DAY
OF February, 2022

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
(Distribution Protocol Approval)**

THIS MOTION made by the Plaintiff for an Order for distribution protocol approval, was heard on September 23, 2021 by videoconference, at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed and the proposed Distribution Protocol attached to this Order as Schedule "A" (the "Distribution Protocol"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendants;

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 Distribution Protocol apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Distribution Protocol is hereby approved, and that the Net Settlement Fund shall be distributed to the Class according to the Distribution Protocol.

3. **THIS COURT ORDERS** that Foreman & Company Professional Corporation are permitted to be reimbursed from the Settlement Amount for reasonable settlement administration related disbursements up to a maximum of \$10,000. If greater settlement administration related disbursements are incurred, Class Counsel shall be permitted to bring a motion for approval of their additional disbursements.
4. **THIS COURT ORDERS** that, forthwith after it is granted, the Order and Distribution Protocol shall be posted on Class Counsel's website, and Class Counsel may immediately communicate the fact of Distribution Protocol approval to class members who have requested to be kept informed of developments in the proceeding. The Distribution Protocol shall also be posted on the dedicated claims website, when available.
5. **THIS COURT ORDERS** that for purposes of implementation, administration, and interpretation of the Distribution Protocol and this Order, this Court will retain an ongoing supervisory role.

Date: February 4, 2022



The Honourable Justice Raikes

ONTARIO ENERGY GROUP CLASS ACTION SETTLEMENT

Distribution and Administration Protocol

A. INTRODUCTION & BACKGROUND

1. 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.
2. The class action alleged, 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 sought damages and other remedies for the Class.
3. A Settlement Agreement was reached on behalf of Settlement Class Members to resolve the HVAC equipment lease class action lawsuit against OEG and Home Trust Company. The defendants have agreed to pay CAD \$14,950,000.00 for the benefit of Settlement Class Members, and OEG has agreed to implement various improvements to the Lease Agreement on a go-forward basis. The defendants also agree that two-hundred and twenty-five (225) Lease Agreements may be terminated, arrears forgiven, security registration(s) discharged and equipment gifted to the Settlement Class Members who receive them.
4. The purpose of this Court-approved Distribution and Administration Protocol (the "Protocol") is to set out how settlement money and benefits are to be distributed amongst Settlement Class Members.

B. SUMMARY OF SETTLEMENT BENEFITS

5. Subject to the more specific provisions of the Settlement Agreement and this Protocol, the following provides a summary of the settlement benefits:

Settlement Class Member	Benefits
<p>If you continue to rent equipment from OEG under an <u>Active Lease Agreement</u></p>	<ul style="list-style-type: none"> • Eligibility for a single cash payment representing a refund of a portion of monthly rental payments, pursuant to paragraph 10 of this Protocol; • Potential eligibility for an increase to the single cash payment, where certain demonstrated individual circumstances apply, pursuant to paragraph 10 of this Protocol; • 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 Schedule, with fixed and transparent prices that decrease every year (a copy of the Buyout Schedule is appended to the Settlement Agreement and is reproduced at Schedule “A” to this Protocol); and ○ Other clarifications, enhancements, and improvements to your rights under the Lease Agreement, all of which is outlined in more detail at sections 2.2(3)-(10) of the Settlement Agreement. • In the event that a Settlement Class Member has unpaid arrears, the settlement agreement prescribes processes for managing those arrears in certain circumstances. • Potential eligibility to have your contract cancelled, equipment gifted, and arrears forgiven in exceptional circumstances, pursuant to paragraphs 11-13 of this Protocol. Such benefits will, except in limited cases as set out in paragraph 9(a)(ii) of this Protocol, be provided <i>in lieu of the single cash payment described above</i>.
<p>If you have an <u>Exited Lease Agreement</u> (ie. you terminated or bought out 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, pursuant to paragraph 10 of this Protocol.

C. PRINCIPLES UNDERLYING THIS DISTRIBUTION

6. The goal of this Protocol is to fairly distribute the Net Settlement Fund and other settlement benefits among Settlement Class Members, in a manner that is consistent with the claims made and remedies sought in the class action, namely:
 - a. The class action alleged that every Settlement Class Member (whether they remain in a Lease Agreement or not) paid money to the defendants under a Lease Agreement that was allegedly non-compliant with the *Consumer Protection Act, 2002*. As such, the Protocol allocates money to Settlement Class Members in a way that correlates formulaically to the amount of money they have paid to the defendants (either through monthly rental payments and/or terminations and buyouts).¹
 - b. The class action also alleges that aspects of the Lease Agreement (including, for example, the security registration or “lien” process) were unfair to consumers on an ongoing basis. The Protocol recognizes the reality that many Settlement Class Members currently have rented OEG equipment in their home and will remain in ongoing relationships with the defendants. The Settlement Agreement and Protocol therefore provide for improvements to the Lease Agreement on a “go-forward” basis. These benefits to Settlement Class Members flow from the Settlement Agreement itself and are given to Settlement Class Members “automatically”, independent of any claim requirements under this Protocol. The ongoing benefits are an important part of the settlement allocation and are part of the context in which other benefits are distributed through the claims process.
 - c. This Protocol provides for the recognition of certain exceptional circumstances that are not strictly reflected in the amount of money a Settlement Class Member paid to the defendants. The Protocol will thus recognize circumstances where an enhanced remedy may be awarded, in two ways:

¹ Class Counsel is aware of limited circumstances where consumers avoided suffering the types of damages sought through this Proceeding by extricating themselves from their Lease Agreement, through negotiation or otherwise, at low or no cost. The benefits under this Protocol are largely distributed proportionally to the amount of money paid by Settlement Class Members to the defendants. As such, if you have paid little to no money to the defendants, your compensation, if any, through this Protocol will reflect that.

- i. As explained below, certain categories of demonstrated circumstances are recognized within the formulaic distribution as entitling a Settlement Class Member to a specified increase to their share of the Net Settlement Fund; and
 - ii. The availability of contract cancellations for active Lease Agreements provides a remedy to recognize acute problems for Settlement Class Members not otherwise fully addressed by other elements of the Protocol. The cancelled agreements are designed to be an impactful form of settlement currency. The cancelled agreements deliver significant value and will be applied to solve some of the most difficult scenarios within the Class. The value of the cancellations themselves (up to CAD \$1.75M) is provided in *addition to* the monetary Net Settlement Fund. The value gained for the Class from the cancellations will assist in optimizing and extending the value of the monetary recoveries across the entire Class.
7. This Protocol is intended to provide a proper balance between an allocation that is fair, transparent, and reasonably ascertainable in advance, while at the same time recognizing acute scenarios. As such, the Claims Administrator shall have sufficient discretion to interpret this Protocol in such a fashion as to ensure compliance with the Settlement Agreement for the benefit of Settlement Class Members.

D. Definitions

8. The definitions in the Settlement Agreement apply to and are incorporated herein. Where a term is defined in both the Settlement Agreement and in this Protocol, the definition in this Protocol shall govern:
 - a. **Active Lease Agreement** means a Lease Agreement that is ongoing at the time a claim is filed and includes Lease Agreements that are in distress due to non-payment, outstanding arrears or other payment related issues.
 - b. **Assigned Lease Agreement** means an Active or Exited Lease Agreement that was acquired by a Settlement Class Member through assignment, during the purchase of a home, inheritance, or otherwise. Settlement Class Members with Assigned Lease Agreements are eligible for settlement benefits under this Protocol except as otherwise indicated.

- c. **Buyout Schedule** means the Buyout Tables located at Schedule “B” of the Settlement Agreement and attached to this Protocol as Schedule “A”.
- d. **Claimant** means a Settlement Class Member who submits a claim pursuant to this Protocol.
- e. **Claimant Input Value (or “CIV”)** means an interest in the Net Settlement Fund as determined by this Protocol, which forms the basis of how each Eligible Claimant’s Compensation from the Net Settlement Fund is calculated.
- f. **Claims Administrator** means Epiq Global or such other claims administrator as is retained by Class Counsel and approved by the Court.
- g. **Claims Filing Deadline** means the date by which claims (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Protocol, subject to the discretion of Class Counsel, the Claims Administrator, or by further order of the Court.
- h. **Class Counsel** means Foreman & Company Professional Corporation.
- i. **Compensation** means the share of the Net Settlement Fund payable to Eligible Claimants pursuant to this Protocol.
- j. **Court** means the Ontario Superior Court of Justice who shall have ongoing authority and supervision with respect to this Protocol.
- k. **Distribution and Administration Protocol (or “Protocol”)** means this plan for distributing the Net Settlement Fund to Settlement Class Members, and for administering other settlement benefits (more specifically, the cancellation of Lease Agreements provided for at section 2.2(1) of the Settlement Agreement).
- l. **Eligible Claimant** means a Claimant who is a Settlement Class Member (or who has lawful authority to claim on behalf of a Settlement Class Member or the estate of a Settlement Class Member), who has satisfied the requirements of the herein claims process.

- m. **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 Lease Agreements.
- n. **Excluded Person** means 1) any putative class member who elects to opt out of this Proceeding pursuant to an order of the Court, 2) each defendant, the directors and officers of each defendant, the subsidiaries or affiliates of each defendant, the entities in which each defendant or any of that defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and 3) any person who has duly executed a release covering substantially the same claims alleged in this Proceeding or has benefited from an individual court judgment arising from substantially the same claims alleged in this Proceeding.
- o. **Exited Lease Agreement** means a Lease Agreement which has ended either through a termination of the Lease Agreement or a buyout of the Lease Agreement.
- p. **Home Trust Company or "HT"** means the defendant, Home Trust Company.
- q. **Lease 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.
- r. **MDG Newmarket Inc. or "OEG"** means the defendant, MDG Newmarket Inc.
- s. **Net Settlement Fund** means the Settlement Amount plus accrued interest after payment of Court-approved Class Counsel fees, disbursements, and applicable taxes, including all costs associated with claims administration, all taxes (including interest and penalties) accruable with respect to income earned by the Settlement Agreements and all costs associated with providing notice to Settlement Class Members.
- t. **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.

- u. **Settlement Agreement** means the settlement agreement reached in the Proceeding dated March 29, 2021.
- v. **Settlement Amount** means CDN \$14,950,000.00 representing the gross amount of cash benefits paid for the benefit of Settlement Class Members pursuant to the Settlement Agreement.
- w. **Settlement 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.

E. OVERVIEW: HOW THE DISTRIBUTION PROTOCOL WORKS

9. Mechanically, this Protocol operates as follows:

- a. The Net Settlement Fund shall be distributed on a pro-rated basis to Eligible Claimants, based on the number of CIVs associated with each Eligible Claim:
 - i. As provided for in paragraph 10 of this Protocol, CIVs are awarded according to formulas that correlate to both: 1) money paid to the defendants (through rental payments, terminations and/or buyouts), and 2) demonstrated exceptional circumstances that provide for specific increases in CIVs.
 - ii. Claimants who are offered and accept a complete cancellation pursuant to paragraphs 11-13 of this Protocol will as a default receive no CIVs. In the event of a “split” cancellation, CIVs will as a default be reduced on a pro-rata basis.² CIVs, however, may be awarded to recipients of complete or “split” cancelled agreements up to the full amount calculated pursuant to Schedule “B” in extreme scenarios of disproportionate loss, at the discretion of the Claims Administrator in consultation with Class Counsel.³

² For example, if a Settlement Class Member would otherwise be entitled to 10,000 CIVs, per the chart in Schedule “B” and also is offered and accepts *half* (50%) a cancellation (ie. a half-cost buyout and half of arrears cancelled as discussed in paragraph 13(a)(i)(1), below) their CIV entitlement would also be reduced by *half* (50%), to 5,000 CIVs. More CIV calculation examples are included at Schedule “C”.

³ For greater certainty, notwithstanding the language at Footnote 9, there shall in no case be a CIV entitlement established for arrears forgiven pursuant to the cancelled agreement benefit.

- b. The Lease Agreement cancellations available under the Settlement Agreement, valued up to CAD \$1.75 million, are available *in addition to* the Net Settlement Funds, pursuant to paragraphs 11-13 of this Protocol.
- c. Notwithstanding any other provision in this Protocol, no distribution is intended to result in Eligible Claimants receiving an amount that is beyond any reasonable estimate of expected damages. If such a situation arises, or if any element of this Protocol (including the CIV categories, ratios, and multipliers established in Schedule “B”) would otherwise result in an unjust distribution, Class Counsel in concert with the Claims Administrator will seek further directions from the Court. Claimants will be asked to declare compensation already received from any source⁴ in respect of their Lease Agreement(s) and the Claims Administrator shall have the discretion to fairly and equitably adjust Compensation under this Protocol accordingly.

F. FORMULAS TO CALCULATE CLAIMANT INPUT VALUES

- 10. CIVs will be calculated according to the formulas at Schedule “B” of this Protocol. Examples of CIV calculations are included at Schedule “C”.

G. CANCELLED AGREEMENTS

- 11. As part of the Settlement Agreement, the defendants agree that two-hundred and twenty-five (225) Lease Agreements may be terminated, arrears forgiven, security registration(s) discharged and equipment gifted to the Settlement Class Members who receive them (“Cancelled Agreements”).
- 12. Through the claims process, Settlement Class Members with Active Lease Agreements will be asked to answer questions and provide information pertaining to the criteria listed in paragraph 13(b) below. The Claims Administrator shall, based on the answers to those questions and information provided, identify Lease Agreements potentially eligible for a cancellation to Class Counsel.

⁴ This would include, for example, if a Claimant received a refund of some payments from the defendants through an independent resolution, or where a buyout paid in respect of destroyed equipment was compensated through the Claimant’s insurance policy, but where in both examples no release was executed precluding a claim in this Proceeding.

13. After the Claims Filing Deadline, and before compensation amounts under the Net Settlement Fund are calculated, Cancelled Agreements will be selected according to the following process:

- a. The Plaintiff and OEG will cooperate to implement these cancellations for the benefit of the Class.⁵ That cooperation could result in the joint identification of all recipients. Otherwise, as a default, OEG will select ninety (90) Lease Agreements for termination, and one-hundred and thirty-five (135) will be administered by the Plaintiff.
- b. The following factors are to serve as an objective guideline for the Plaintiff's allocation of Lease Agreements under the Settlement Agreement to be considered for the cancellation benefit:

	Criteria	Proof Requirement
A	<p>Prescribed circumstances at the time the Lease Agreement was signed which are sufficiently severe to create a reasonable presumption that the agreement would not have been signed <i>but for</i> their presence, including:</p> <ul style="list-style-type: none"> • Settlement Class Member had mental incapacity or significant vulnerability (including inability to understand English where no translator was present) at time Lease Agreement was signed; • Documented material misrepresentation from a salesperson or other OEG representative made contemporaneously with signing the Lease Agreement, or within the 10-day statutory "cooling off period"; and/or • Existing brand-new functioning owned equipment (less than three years old at the time the Lease Agreement was signed), 	<p>For mental incapacity: Medical documentation and/or other similar proof acceptable at the discretion of the Claims Administrator;</p> <p>For misrepresentation: documentation including text messages, contemporaneous notes, emails, and/or other similar proof acceptable at the discretion of the Claims Administrator;</p> <p>For brand-new equipment: documentation including invoices, receipts, photographs, inspection records, contemporaneous notes and/or other similar proof acceptable at the</p>

⁵ Section 2.2(2) of the Settlement Agreement provides that "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."

	<p>where there was no conceivable improvement offered by the OEG equipment.</p>	<p>discretion of the Claims Administrator.</p>
B	<p>There has been a total failure to receive the equipment and services paid for under the Lease Agreement, including:</p> <ul style="list-style-type: none"> • The Lease Agreement at issue is in respect of equipment that was never hooked up or never worked; • Leased equipment failed totally and was not reasonably replaced or repaired by OEG, causing Settlement Class Member to have to remove OEG equipment altogether and purchase new equipment; and/or • Other examples where Settlement Class Member is paying for equipment that is totally unusable and provides no benefit, through no fault of their own. 	<p>Documentation including invoices, receipts, photographs, inspection records, contemporaneous notes and/or other similar proof acceptable at the discretion of the Claims Administrator.</p>
C	<p>OEG restricted or obfuscated properly requested exit from the Lease Agreement, including where:</p> <ul style="list-style-type: none"> • OEG did not honour a cancellation requested during 10-day statutory cooling off period; • OEG did not honour a properly requested contractual termination, including; <ul style="list-style-type: none"> ○ Adding fees and charges to a termination quote not authorized by the agreement with a refusal to remove them when disputed; and/or ○ Refusing to provide a termination quote at all, 	<p>Documentation including letters, texts, emails, complaints, contemporaneous notes and/or other similar proof acceptable at the discretion of the Claims Administrator.</p>

	or otherwise misrepresenting the Settlement Class Members' right to termination under the Lease Agreement.	
D	Unreasonable current litigation or other collection action taken against Settlement Class Member when factors A, B or C are present.	Documentation including letters, demands, emails, court documents and/or other similar proof acceptable at the discretion of the Claims Administrator.
E	Demonstrated loss suffered by the Settlement Class Member, caused by the Lease Agreement and/or the conduct of the defendants, that was severely disproportionate to losses incurred by other similarly situated Settlement Class Members.	Documentation including letters, rental contracts, bank/income statements, emails, and/or other similar proof acceptable at the discretion of the Claims Administrator.

- c. Cancellations under the Plaintiff's allocation shall be allocated in a manner that is fair and reasonable to deserving cases, having regard to the criteria above and to the other settlement benefits available.
- d. As provided for the in the Settlement Agreement, and with a view to seeking efficient distribution of settlement benefits, cancellations may be:
 - i. Assigned fractionally or in "split" cancellations, especially where it is not obvious how one Settlement Class Member ranks relative to another (ie. fund half a buyout and cancel half of the arrears for two contracts, which would use only one cancellation); and/or
 - ii. Where it is possible and justifiable, ranked and prioritized according to the relative number and/or severity of the factors present.
- e. Notwithstanding this guidance, however, there shall be discretion to consider other factors or to award cancellations (whole, or fractionally) to Settlement Class Members with analogous circumstances but who do not strictly meet this guidance,

if doing so is required for a fair and equitable distribution of settlement benefits. There shall also be the discretion to consider the effect of the monetary “cap” on cancellations and the limited number of cancellations, so that cancellations are awarded in such a way that the aggregate value of the benefits to the Class may be fairly and reasonably maximized.

- f. Where a Settlement Class Members’ Lease Agreement has been selected for cancellation, the Settlement Class Member will be informed of the selection before the conclusion of the claims adjudication process, and will be fully informed of the effect of the cancellation (including an explanation and disclosure of the amount of CIVs they would receive, with and without the cancellation, pursuant to paragraph 9(a)(ii)). The Settlement Class Member will have the option of accepting the cancellation or not.
- g. No Lease Agreements will be selected from any Settlement Class Member who has validly opted out of the Proceeding.
- h. The value of the Cancelled Agreements shall be subject to an aggregate cap of one-million seven-hundred and fifty thousand dollars (CDN \$1,750,000.00).
- i. As stated above, the forgiven Lease Agreements may be allocated across Eligible Claimants in fractions where appropriate (for example, instead of one cancellation having *all* of *one* Claimant’s reasonable arrears forgiven, one cancellation could be used to have *half* of *two* Claimants’ reasonable arrears forgiven).
- j. Valuation of the Lease Agreements for the purposes of this section shall be determined by reference to the reduced buyout charge as set out at Schedule “B” of the Settlement Agreement and any reasonable arrears assessed generally in accordance with OEG’s usual business practice 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.
- k. The Plaintiff and OEG will work cooperatively to implement this benefit for the benefit of Settlement Class Members. In doing so, they may allocate Cancelled Agreements and value under the aggregate cap in any mutually agreed manner.

- I. Unless otherwise agreed however, neither the Plaintiff or OEG will be allocated less than a prorated share of the aggregate cap against the Cancelled Agreements, namely OEG shall have \$700,000.00 to allocate to the ninety (90) Lease Agreements it selects and the Plaintiff shall have \$1,050,000.00 to allocate to the remaining one-hundred and thirty-five (135) Lease Agreements.

- m. Any disputes between the Plaintiff and OEG in respect of this benefit, including the reasonableness of the arrears, may be submitted in writing to Warren Winkler for final resolution. \$25,000 will be held back from the Settlement Amount for up to a year after the close of the claims period (and treated as a disbursement, where paid) for the Plaintiff's share of expenses incurred in respect of any resolution process through Warren Winkler.

- n. Prior to the implementation of the Cancelled Agreements benefit and after the conclusion of the Claims Period, Class Counsel shall prepare a report to the satisfaction of the Court that will briefly describe the Lease Agreements identified for cancellation and the rationale for their selection. The report will also outline CIVs (if any) proposed to be awarded to Cancelled Agreement recipients pursuant to paragraph 9(a)(ii). The report will be prepared and presented in an efficient and summary fashion, with a timely and efficient distribution remaining a paramount priority.

H. THE CLAIMS PROCESS

- 14. The claims process will be designed in order to establish Claimant Input Value for every eligible Settlement Class Member who files a claim, and to identify Settlement Class Members to be considered for Cancelled Agreements.

- 15. The claims process will rely upon the data provided to Class Counsel and the Claims Administrator by OEG and HT and/or any information that can be provided by the Settlement Class Member. All claims made by a Settlement Class Member may, at the discretion of the Claims Administrator, be cross-referenced against the data provided by OEG and HT.

- 16. Proof requirements shall be reasonably streamlined and flexible for the ease of the Settlement Class Members with a view to facilitating meritorious claims with reasonable protection against fraudulent or improper claims.

17. Reasonable declarations may be accepted and estimations including the application of averages derived from the data provided by OEG and HT may be employed by the Claims Administrator in order to reasonably adjudicate a Settlement Class Member's claim in the absence of other information.
18. It is recognized that there may be limitations in the data provided by OEG, HT and/or the Settlement Class Members. As a result, the Claims Administrator will apply a standard of reasonableness, not perfection, in its assessment and decision making.
19. Submission requirements may include asking Settlement Class Members to provide their name, date of birth, current address and any address that was submitted to OEG in the course of entering a Lease Agreement, and as much supporting documentation as possible. Submitted documents and information will be utilized by the Claims Administrator in accordance with the table at paragraph 10 above to establish a Claimant's CIVs, and to otherwise adjudicate any selection of Cancelled Agreements. Examples of supporting documentation include but are not limited to the following:
 - a. Lease Agreement including assumption documents (if the agreement has been taken over from someone else);
 - b. Letters, emails, or other documents including demand letters, past due invoices, etc. received from OEG and/or HT, a collection agency, or other party attempting to collect amounts in respect of the Lease Agreements;
 - c. Banking or other financial records evidencing the amount paid to OEG and/or HT including but not limited to Enbridge Bills/Utilebill/Enercare, bank statements, copies of cheques, trust ledger from house sale;
 - d. Documents relating to Equipment received in association with the Lease Agreement including but not limited to installation checklists, services orders, etc.;
 - e. Termination letters;
 - f. Buyout letters;
 - g. Notice of security interest, title searches, PIN;
 - h. Ministry Complaint;

- i. Small Claims Court or other legal proceedings;
- j. Handwritten savings sheets, emails or texts from salespersons;
- k. Contemporaneous notes made by the Settlement Class Member; or correspondence from the Settlement Class Member to OEG and/or HT;
- l. IESO rebate documents;
- m. Pictures of equipment including model and serial numbers; and
- n. Comparable verification that is acceptable to the Claims Administrator.

I. CONFLICTING OR OVERLAPPING CLAIMS

20. Conflicting or overlapping claims occur where two or more Claimants seek compensation or other benefits in respect of the same Lease Agreement. Such situations may arise for example where there has been a spousal separation or divorce (where, for example, separated spouses both make a claim in respect of the same Lease Agreement), or where there has been the sale of a home and the Lease Agreement was assigned from the seller to the buyer.

21. In the event of conflicting or overlapping claims, the following process shall apply:

- a. Where the conflicting or overlapping claim is in respect of an Assignor and Assignee of the same Lease Agreement, the compensation will be split on a pro-rated basis pursuant to formulas provided in the table outlined in paragraph 10 above, based on the amount each Settlement Class Member paid pursuant to the Lease Agreement.
- b. For any other type of conflicting or overlapping claim, the Claims Administrator will have no responsibility for, and shall not attempt to resolve any disputes, overlaps, or conflicts between claims or Claimants. Where such conflicting or overlapping claims are advanced or submitted and identified by the Claims Administrator, the claims will be treated as deficient. The Claimants will be notified of the deficiency and will have thirty (30) days to resolve the conflict or overlap by together agreeing upon and directing how the completing claims are to be split or resolved, including by way of making the payment to a neutral third party on the mutual direction of

the conflicting Claimants at their responsibility and expense, if any. Where such overlap or conflict between claims or Claimants cannot be so resolved, the Claims Administrator shall have the discretion to reject the overlapping or conflicting claims.

- c. It is essential that overlapping or conflicting claims be managed in accordance with this Protocol. Under no circumstances shall the claims administration process be delayed or otherwise impaired by conflicting or overlapping claims.

J. DURATION OF THE CLAIMS PERIOD

22. The claims period will last for a duration of four (4) months, subject to the potential to extend the duration of the claims window, subject to further order of the Court.

K. THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

23. The Claims Administrator shall administer the Settlement Agreement and this Protocol under the ongoing authority and supervision of the Court.
24. The Settlement Amount shall be held in an interest-bearing trust account at a Canadian Schedule 1 bank, trust company, or credit union and all payments from the Settlement Amount shall be made from that account (which for greater certainty may include payments from the trust account to the Claims Administrator for the purpose of making payments to Approved Claimants).
25. The Claims Administrator's duties and responsibilities shall include the following:
 - a. Providing notices to the Settlement Class Members as required pursuant to this Protocol and/or as ordered by the Court;
 - b. Receiving, organizing and cleansing the defendants' data where possible, including names, addresses and Lease Agreement information for incorporation into the claims administration process;
 - c. Developing, implementing and operating electronic web-based systems and procedures for receiving and adjudicating claims. The Claims Administrator shall encourage Settlement Class Members to claim via the online claim portal where possible and shall facilitate this process;

- d. Developing and implementing processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address, and using the same Lease Agreement information;
- e. Making timely decisions in respect of claims in consultation with Class Counsel if necessary, and notifying the Settlement Class Members of the decision promptly thereafter;
- f. Arranging payment to Settlement Class Members in a timely fashion after the Claims Filing Deadline;
- g. Dedicating sufficient personnel to respond to Settlement Class Members inquiries in English or French, as the Settlement Class Member elects;
- h. Arranging payments of administration-related expenses;
- i. Maintaining, in an easy to understand format, the claims administration information and information regarding the proposed distribution, so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;
- j. Reporting to Class Counsel respecting claims received and administered, and administration-related expenses;
- k. Cash management and audit control;
- l. Preparing and submitting such financial statements, reports and records as directed by Class Counsel and/or the Court; and
- m. Fulfilling any tax reporting and arranging payments required arising from the Settlement Amount, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the settlement amounts shall be paid from the settlement amounts.

L. CLAIMS ADMINISTRATOR'S DECISION

26. In respect of each Settlement Class Member who has filed a claim in accordance with this Protocol, the Claims Administrator shall:

- a. Establish processes for the determination of eligibility and to decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Fund in accordance with the Settlement Agreement, orders of the Court and this Protocol;
- b. Verify that the Settlement Class Member entered into a Lease Agreement during the class period;
- c. Make a determination of the CIVs to be awarded to each Claimant; and
- d. Make a determination of the appropriate pro-rata share of the Net Settlement Fund for each Settlement Class Member.

27. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the claim. Where the Claims Administrator has rejected all or part of the claim of the Settlement Class Member, the Claims Administrator shall include its grounds for rejecting all or part of the claim.

28. Except with respect to the selection of Cancelled Agreements (including paragraphs 9(a)(ii)), and subject to paragraphs 31 and 32 (Claims Reviews), the Claims Administrator shall have the independent decision making authority in respect of the approval or rejection of any claim, including determinations as to the eligibility for CIV categories. Class Counsel may assist Settlement Class Members in properly describing, identifying, and supporting their claims to the Claims Administrator. Any Settlement Class Member identified as requiring such assistance may be referred by the Claims Administrator to Class Counsel for that purpose.

M. DEFICIENCIES

29. If, during claims processing, the Claims Administrator finds that deficiencies exist in a claim or other required information, the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date that such notice is sent

electronically or postmarked to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the claim without prejudice to the right of the Settlement Class Member to cure the deficiencies, provided the Settlement Class Member is able to meet the Claims Filing Deadline and other requirements set forth herein. The online claims portal shall be designed so as to minimize the possibility of deficient claims.

30. A deficiency shall not include missing the Claims Filing Deadline. Subject to further order of the Court, the Claims Administrator shall not accept claims postmarked or electronically submitted after the Claims Filing Deadline.

N. REVIEW OF CLAIMS DECISIONS

31. If a Settlement Class Member believes that a rejection of a claim in whole or in part is incorrect, they may request a review of the determination within 15 days of receipt of their decision letter by sending a statement in writing asking for a "Claims Review", and setting forth the reason(s) that they believe the result is incorrect. The review will be undertaken by the Claims Administrator. A Claims Review decision shall be communicated to the Settlement Class Member. In the event the Settlement Class Member maintains an objection or disagreement with the decision, the Claims Administrator shall have the discretion to assess the objection or disagreement. Class Counsel may be asked to assist in collecting additional information and to provide the Claims Administrator with any known background or context to assist the Claims Administrator in fully and fairly resolving the objection or dispute in a manner which complies with this Protocol. The ultimate Claims Review decision shall be final and binding upon the Settlement Class Member, subject to paragraph 32.

32. Class Counsel and/or the Claims Administrator may forward the requests for a Claims Review to the Court where there is a concern regarding possible fraudulent claims. Where there is otherwise a substantial disagreement as between a Settlement Class Member and the Claims Administrator in respect of a Claims Review decision and/or the interpretation of this Protocol, such matters may be forwarded by Class Counsel to Warren Winkler or his designate for expeditious determination. However, as a matter of interpretation of this Protocol, it is paramount that this Protocol be managed in a way that is efficient and economical in order to ensure that benefits can be delivered as quickly as possible and that administration and related costs maintain proportionality. Recourse to

Warren Winker must therefore be the very rare and efficient exception rather than a rule. In no circumstance shall any individual Settlement Class Member's Claims Review disrupt the timing of the claims process or distribution for other Settlement Class Members. The Claims Administrator, in consultation with Class Counsel, shall have the discretion to make appropriate holdbacks as necessary for any claims related disputes or objections so that distribution is not delayed or interrupted.

33. Where any claims-related reporting is required or requested by the Court, Class Counsel and/or the Claims Administrator shall provide it.

O. DISCRETION AND AUDIT

34. The Claims Administrator shall have discretion in the interpretation of this Protocol and in the management of the claims administration to give effect to this Protocol in the interest of Settlement Class Members, having regard to principles of procedural and substantive reasonableness, and respecting the need for efficiency in the delivery of benefits to eligible Settlement Class Members.

35. If the discretion granted by this Protocol is insufficient to manage or resolve any issue that may arise in the course of this administration, the Claims Administrator and Class Counsel may seek directions from the Court at any time in order to address or resolve any matter requiring such direction.

36. At its discretion, the Claims Administrator may elect to audit any claim and may reject any claim in whole or in part where, in the view of the Claims Administrator, the Claimant has submitted insufficient, false, or inaccurate information in support of a claim, or has otherwise engaged in dishonest or fraudulent conduct.

P. PAYMENT OF SETTLEMENT AWARDS TO SETTLEMENT CLASS MEMBERS

37. As soon as practicable after the claims evaluations, the Claims Administrator shall make arrangements to pay Approved Claims as expeditiously as possible.

38. The Claims Administrator in consultation with Class Counsel will endeavor to utilize methods of delivering payment of the Net Settlements Funds to Settlement Class Members in a secure, accessible, efficient and cost-effective manner. Prior to the commencement of the claims process under this Protocol, Class Counsel and the Claims

Administrator shall establish the method of payment for delivery of settlement benefits to Settlement Class Members.

39. If, one hundred and eighty (180) days from the date on which the Claims Administrator distributes the Net Settlement Fund, the trust account remains in a positive balance (whether due to tax refunds, interest, unused holdbacks, uncashed cheques or otherwise) (the "Residual"), the Claims Administrator shall, if feasible and sensible (at the Claims Administrator's discretion, having regard to the economics of the case and equity to Settlement Class Members), reallocate the Residual among the Eligible Claimants *pro-rata* in an equitable and economic fashion. If it is not economically feasible or sensible for the Residual to be redistributed to Eligible Claimants *pro-rata*, Class Counsel and the Claims Administrator shall propose an alternative method for distributing the Residual and seek approval of that method from the Court.

Q. COMMUNICATION WITH SETTLEMENT CLASS MEMBERS

40. Notice programs will be formulated to provide effective notice to Settlement Class Members of their rights to make claims. The claims administration shall be managed in order to maintain current Settlement Class Member contact information, until the completion of the claims process. Emphasis shall be made by the administration to prompt Settlement Class Members to provide notice of changes in contact particulars such as email or residential addresses.

R. CONFIDENTIALITY

41. All information received from the defendants or Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreements, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreement. The Claims Administrator will administer this Protocol in a manner that is cognizant of the possibly sensitive nature of the circumstances in which Settlement Class Members may have taken their Lease Agreement(s). The information provided by the Settlement Class Member is strictly private and confidential and will not be disclosed without the express written consent of the Settlement Class Member, except in accordance with the Settlement Agreement, orders of the Court and/or this Protocol.

42. Under no circumstances will any data received or assembled for or in connection with any Settlement Class Member in connection with this Protocol, be made available directly or indirectly to any person who might attempt to use the data to enforce collection or any debt or liability against a Settlement Class Member.

S. AMENDMENT

43. The terms of this Protocol may be amended on a motion by Class Counsel with approval of the Court.

Schedule "A"

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

Schedule "B"

Category of CIV	Eligible Lease Agreements ⁶	Formula	Proof Requirement ⁷
Base Amount - Payment to Defendant Categories			
Monthly Rental Payment Amount	Active and/or Exited Lease Agreement (including Assignors and Assignees of Assigned Lease Agreements) ⁸	One (1) CIV for every dollar paid ⁹ as a regular monthly rental payment from the date the Lease Agreement was signed until: 1) the date the Lease Agreement ended (for Exited Lease Agreements) or 2) the date the claims period opens (for Active Lease Agreements)	1) Bank statements, 2) monthly bills, 3) proof of starting monthly rental rate (either from Settlement Class Member or from defendant records, where available) with attestation from Settlement Class Member that the regular monthly rental amount was paid for the duration of the Lease Agreement, and/or 4) other similar proof acceptable at the discretion of the Claims Administrator
Termination and/or Buyout Amount	Exited Lease Agreement (including Assignees but <u>not</u> Assignors of Assigned Lease Agreements)	One (1) CIV for every dollar paid for a termination and/or buyout (including any arrears, Interest, NSF Fees, discharge fees or other analogous fees paid to the defendants on termination or buyout) ¹⁰	1) Copy of cheque or other receipt, 2) bank statements, 3) termination/buyout quote letter with attestation from the Settlement Class Member that the quoted amount was paid 3) defendant records, where available, and/or 4) other similar proof acceptable at the discretion of the Claims Administrator
OEG equipment failure, service issue or non-operational equipment not reasonably rectified by OEG	Active and/or Exited Lease Agreement (including Assignors and Assignees of	One (1) CIV for every dollar paid to an HVAC contractor to address service issue or OEG equipment failure (if a service request was made to OEG and they did not attend to the issue within three (3) days), subject to a maximum of 1500 CIVs; and	Documentation including invoices, receipts, photographs, inspection records, contemporaneous notes and/or other similar proof acceptable at the discretion of the Claims Administrator

⁶ Settlement Class Members who receive a Cancelled Agreement benefit pursuant to the Settlement Agreement are eligible for CIVs only in the limited circumstances provided for in paragraph 9(a)(ii).

⁷ To facilitate the goals of the Settlement Agreement, the Claims Administrator shall have broad discretion to allow alternative but credible forms of proof, including but not limited to sworn declarations from Claimants.

⁸ For greater certainty, Settlement Class Members who have assigned a Lease Agreement, or received an assignment of a Lease Agreement, are entitled only to CIVs in respect of their share of payments made pursuant to the Lease Agreement. There shall be in no circumstances a double recovery of CIVs between assignor and assignee of the same Lease Agreement.

⁹ Where, as a result of a Defendant Conduct Multiplier Categories (explained below) or analogous circumstance, the Settlement Class Member incurred expenses and or reasonably stopped payments and accumulated arrears that remain unpaid and collectible by OEG as at the date of the claim, the Claims Administrator shall have the discretion to include those expenses and treat all or a portion of said arrears notionally as Monthly Rental Payments and may award corresponding CIVs (ie. One (1) CIV per dollar of arrears) under the "Base Amount – Payment to Defendants Categories".

¹⁰ For greater clarity, legal, professional, agency or other fees paid to any third party to seek or a termination or buyout (or for any other reason) are not included in this or any other category.

	Assigned Lease Agreements)	One (1) CIVs for every dollar of rental payment paid in respect of each full week in which OEG equipment was not operational (where a notional weekly rental rate is $12/52 * \text{the monthly payment amount}$) ¹¹	
Defendant Conduct Multiplier Categories¹²			
Mental incapacity or significant vulnerability (including inability to understand English where no translator was present) at time Lease Agreement was signed	Active and/or Exited Lease Agreement (including Assignors but <u>not</u> Assignees of Assigned Lease Agreements)	A two times (2x) multiplier of the CIV Base Amount calculated above ¹³	Medical documentation and/or other similar proof acceptable at the discretion of the Claims Administrator
Documented material misrepresentation from a salesperson or other OEG representative made contemporaneously with signing the Lease Agreement, or within the 10-day statutory “cooling off period”			Documentation including text messages, contemporaneous notes, emails, and/or other similar proof acceptable at the discretion of the Claims Administrator
Removal by OEG of brand-new functioning owned equipment (less than three years old at the time the Lease Agreement was signed)			Documentation including invoices, receipts, photographs, inspection records, contemporaneous notes and/or other similar proof acceptable at the discretion of the Claims Administrator
Documented unhonoured cancellation request to the defendants by the Settlement Class Member during the 10-day statutory “cooling off period,” or documented unreasonable withholding of contractual termination option by OEG			Documentation including letters, texts, emails, complaints, contemporaneous notes and/or other similar proof acceptable at the discretion of the Claims Administrator

¹¹ Available in addition to Monthly Rental Payment Amount CIVs above. The Claims Administrator shall have the ability to pro-rate non-operational equipment CIVs on a *daily* basis if requested and with adequate proof.

¹² The Claims Administrator shall have the discretion to include additional analogous Defendant Conduct Categories in this section if necessary for fair distribution.

¹³ To be clear, there is a *maximum* two times (2x) multiplier for demonstrating one or more of the multiplier categories under the “Defendant Conduct Categories” heading above, i.e. a Claimant does not receive *more* than a two times (2x) multiplier under the Defendant Conduct Multiplier Categories, even where more than one of these categories is established. See example below.

Disproportionate Loss Multiplier Category			
<p>Demonstrated loss suffered by the Settlement Class Member, caused by the Lease Agreement and/or the conduct of the Defendants, that was severely disproportionate to losses incurred by other similarly situated Settlement Class Members. Without limiting the generality or the specificity of the foregoing, such circumstances could include:</p> <ul style="list-style-type: none"> • Settlement Class Member incurred enormous costs necessary to rectify or repair damage caused by negligent or faulty installation of OEG equipment; • Equipment or installation failure so total that the Settlement Class Member never received any value from the Lease Agreement whatsoever, and had to incur substantial additional costs to rectify the situation; • Settlement Class Member has previously paid a buyout amount (excluding reasonably incurred arrears) that was so significantly and disproportionately higher than OEG's past ordinary course buyout pricing that it must be considered punitive, and where that buyout was paid in the context of a pending real estate closing or other analogous urgent circumstance; and/or • The presence of the security registration or lien interfered with a refinancing, home sale, or similar transaction to the significant financial 	<p>Active and/or Exited Lease Agreement (including Assignors and Assignees of Assigned Lease Agreements)</p>	<p>A two times (2x) multiplier of the CIV Base Amount <u>and</u> the Defendant Conduct multiplier (if applicable)¹⁴</p> <p>However, additional CIVs attributable to the Disproportionate Loss Multiplier shall account for no greater than 15% of the Net Settlement Fund¹⁵</p>	<p>Documentation including letters, statements, legal documentation, invoices, emails, and/or other similar proof acceptable at the discretion of the Claims Administrator</p>

¹⁴ To be clear, the Disproportionate Loss Multiplier Category “stacks” with a demonstrated Defendant Conduct Multiplier. The means that a Settlement Class Member who demonstrates eligibility for *both* a Defendant Conduct Multiplier *and* a Disproportionate Loss Multiplier shall receive a two times two (2 x 2) multiplier, ie. a four times (4x) multiplier. See example below.

¹⁵ Additional CIVs awarded by operation of the Disproportionate Loss Multiplier (ie. all CIVs beyond the amounts calculated on Base Amount and Defendant Conduct Multiplier) shall in no circumstance account for greater than 15% of the Net Settlement Fund. In the event that a two times (2x) multiplier results in such an outcome, the Claims Administrator shall reduce the Disproportionate Loss Multiplier *pro-rata* accordingly, such that a maximum ratio of 15% of the Net Settlement Fund is achieved.

detriment to the Settlement Class Member and where reasonable accommodation (ie. a postponement) was sought by the Settlement Class Member but was unreasonably denied by OEG or Home Trust			
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Schedule "C"

Claims Example #1

Settlement Class Member made \$5000 in monthly payments, paid a buyout of \$5000, and has demonstrated paying \$500 to a service technician for an essential repair that was not responded to by OEG within three days. No other circumstances apply.

Subject to the comprehensive terms of the complete Protocol, this Settlement Class Member would be expected to receive 10,500 CIVs $(5000+5000+500)$.

Claims Example #2

Settlement Class Member made \$5000 in monthly payments, paid a buyout of \$5000, and has demonstrated paying \$500 to a service technician for an essential repair that was not responded to by OEG within three days. Settlement Class Member proves a disproportionate loss, pursuant to the Disproportionate Loss Category above. No other circumstances apply.

Subject to the comprehensive terms of the complete Protocol, this Settlement Class Member would be expected to receive 21,000 CIVs $[(5000+5000+500)*2]$.

This Settlement Class Member qualifies for the two times (2x) Disproportionate Loss Category multiplier, but has not demonstrated eligibility for the Defendant Conduct Category multiplier.

Claims Example #3

Settlement Class Member made \$5000 in monthly payments, paid a buyout of \$5000, and has demonstrated paying \$500 to a service technician for an essential repair that was not responded to by OEG within three days. Settlement Class Member proves they had brand new equipment removed and mental incapacity at the time the Lease Agreement was signed, pursuant to the Defendant Conduct Categories above. Settlement Class Member also proves a disproportionate loss, pursuant to the Disproportionate Loss Category above.

Subject to the comprehensive terms of the complete Protocol, this Settlement Class Member would be expected receive 42,000 CIVs $[(5000+5000+500)*2*2]$.

This Settlement Class Member qualifies for both the two times (2x) Disproportionate Loss Category multiplier, and the two times (2x) Defendant Conduct Category multiplier.

THE ESTATE OF HUGH CULLATON
Plaintiff

v.

MDG NEWMARKET INC., et al.
Defendants

Court File No. 1850/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Distribution Protocol Approval)**

**FOREMAN & COMPANY
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