

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) THURSDAY, THE 21ST DAY
JUSTICE RAIKES) OF OCTOBER, 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
(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 on September 23, 2021 by videoconference at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement dated March 29, 2021 between the Plaintiff and the Defendants (the “Settling Defendants”) attached to this Order as Schedule “A” (the “Settlement Agreement”) and the Fee Proposal of Epiq Class Action Services Canada, Inc., a redacted version of which is attached to this Order as Schedule “B” (the “Fee Proposal”), 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 zero objections to the Settlement Agreement;



AND ON BEING ADVISED that the deadline for opting-out of the Proceeding has passed, and that 127 opt-outs have been received;

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, subject to this Court's orders for payment of fees and expenses and the ultimate distribution of the net settlement fund to class members pursuant to the distribution protocol.
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.

9. **THIS COURT ORDERS** that Epiq Class Action Services Canada, Inc. (“Epiq”) is hereby appointed as the claims administrator (the “Claims Administrator”).
10. **THIS COURT ORDERS** that the Fee Proposal of the Claims Administrator is hereby approved, and the costs of administering the claims process in accordance with the Fee Proposal shall be paid from the Settlement Amount.
11. **THIS COURT ORDERS** that, forthwith after it is granted, the Order and the Settlement Approval Endorsement cited as *Estate of Hugh Cullaton v. MDG Newmarket Inc.*, 2021 ONSC 6996 shall be posted on Class Counsel’s website, and Class Counsel may immediately communicate the fact of settlement approval to class members who have requested to be kept informed of developments in the proceeding.
12. **THIS COURT ORDERS** that a revised draft distribution protocol as discussed in the Settlement Approval Endorsement and a more detailed notice of settlement and distribution approval, which shall include specific details of the claims process, along with a plan for dissemination of that notice, shall be proposed on subsequent motion to this Court. The plaintiff shall either bring that motion, or report to this Court on the status and anticipated timing of the items contemplated by this paragraph, no later than thirty (30) days after this Order is granted or as otherwise directed by the Court.

Date: November 4, 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@hhllp.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

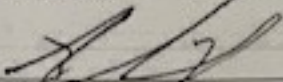
Signature of Authorized Signatory: 
Foreman & Company Professional Corporation

MDG Newmarket Inc., by its counsel

Name of Authorized Signatory:

Alex Smith

Signature of Authorized Signatory:


Henein Hutchison LLP

Home Trust Company, by its counsel

Name of Authorized Signatory

Nicholas Kluge

Signature of Authorized Signatory:


Gowling 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" - BUYOUT TABLES

**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	N/A	N/A	N/A	N/A	N/A
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 Softener/ 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	N/A	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 Softener/ 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



OEG/HomeTrust Class Action

Project Requirements and Estimated Volumes

Total Notice Population	9,000
Mail Notice of Settlement Hearing Former and Current Cust	9,000
Percentage of Undeliverable mail	10%
Mail Notice of Settlement Former and Current Customers	9,000
Percentage of Undeliverable mail	5%
Bilingual Toll-Free Phone with IVR	Yes
Bilingual Contact Center Agent Support	Yes
Bilingual Informational Website	Yes
Claim Response Percentage	66%
Estimated Claims Received	5,940
Case Duration (Months)	12
Mailing Packet Content	4-image Notice of Settlement Hearing
Mailing Packet Content	5-image Notice of Settlement with PIN

Summary Estimate

Data Standardization and Class Notice	\$	18,884
Project Management	\$	24,102
Bilingual Website and Reporting	\$	39,384
Bilingual Toll-Free Contact Center	\$	44,609
Claims Processing and Claimant Support	\$	51,273
Distribution and Fund Management	\$	12,796
Postage and Expenses	\$	24,612
Total Estimate	\$	<u>215,660</u>



Detailed Estimate

OEG/HomeTrust Class Action

Activity	Unit	Rate	Volume	Amount
Data Standardization and Class Notice				
Import and Standardize Data*	Per File			\$ 1,320
Data Analyst	Per Hour			\$ 2,376
Forms Set-up and Mailing Coordination	Per Language			\$ 5,280
Canada Post Address Update (\$850 minimum)	Per File (up to 150K records)			\$ 850
Print/Fold Notice of Settlement Hearing - English/French	4-Images Total; Printed as Lot			\$ 3,330
Record Undeliverable Mail	Per Piece			\$ 675
Print/Fold Notice of Settlement with PIN - English/French	5-Images Total; Printed as Lot			\$ 3,780
Record Undeliverable Mail	Per Piece			\$ 338
Mail Copy Paper Claim Form (2-images) and Defendant Documentation for Review (5-images) on request	7-Images Total; Printed on Request			\$ 936
*Data provided must meet Epiq data standards. Epiq can standardize data at additional cost of \$185/hr.				\$ 18,884

Project Management

Project Manager	Per Hour			\$ 5,100
Sr. Project Manager	Per Hour			\$ 1,980
Project Coordinator	Per Hour			\$ 12,000
Data Analyst and Reporting	Per Hour			\$ 4,752
Translation Review	Per Hour			\$ 270
				\$ 24,102

Bilingual Website and Reporting

Static Website Deployment and Testing	Per Language			\$ 6,000
Secure On-Line Claim Filing Module	Per Hour			\$ 21,084
Website Hosting	Per Month			\$ 3,000
Internal Dashboard Setup	Fixed Fee			\$ 4,500
Dashboard Monthly Support and Data Storage	Per Month			\$ 4,800
				\$ 39,384



OEG/HomeTrust Class Action

Activity	Unit	Rate	Volume	Amount
Bilingual Toll-Free Contact Center				
IVR Configuration and Recording	Per Language			\$ 5,400
IVR Maintenance Fee	Per Month			\$ 3,564
IVR Minutes of Use	Per Minute			\$ 2,349
Activation Fee for Dedicated Email Address & Inbox	Fixed Fee			\$ 250
Dedicated Monthly Email Infrastructure & Retention Fee	Per Month			\$ 360
Outgoing Email Response	Per Hour			\$ 4,366
Contact Center Agent - Training	Per Hour			\$ 1,500
Bilingual Email & Phone Agents - Shared	Per Minute			\$ 6,705
Bilingual Phone Agents Claim Form Completion by Phone	Per Minute			\$ 20,115
				\$ 44,609
Claims Processing and Claimant Support				
Basic Claim - Intake and OCR	Per Claim			\$ 2,290
On-Line Claim Receipt	Per Claim			\$ 4,999
Data Entry & Clerical	Per Hour			\$ 6,000
Scanning and Image Storage	Per Image			\$ 1,069
Quality Assurance Spot-check Online Claims (252 Claims)	Per Hour			\$ 1,875
Claims Review Former Customers (748 Claims)	Per Hour			\$ 14,711
Quality Assurance	Per Hour			\$ 3,000
Claims Review Current Customers (500 Claims)	Per Hour			\$ 9,833
Quality Assurance	Per Hour			\$ 1,875
Paper Claim Defect/Reject Notifications	Per Notification			\$ 891
Defect Notification Response Review	Per Hour			\$ 1,856
Correspondence Review and Response	Per Hour			\$ 2,832
Opt Out and Objection Reporting	Per Document			\$ 42
				\$ 51,273
Distribution and Fund Management				
Escrow Management	Per Year			As incurred
Programming Distribution Calculation	Per Hour			\$ 3,700
Check Run Coordination (w/1 Reissue Runs)	Per Hour			\$ 2,250
Account Management and Reconciliation	Per Hour			\$ 1,500
Print 1-image Check with Stub/DD	Per Check/DD			\$ 5,346
				\$ 12,796

Total Estimated Administration Fee \$ 191,048



OEG/HomeTrust Class Action

Activity	Unit	Rate	Volume	Amount
Postage and Expenses				
Post Office Box - Dedicated	Per Year			WAIVED
Postage* - Notice of Settlement Hearing (En/Fr) - under 30 g	Per Piece			\$ 8,312
Postage* - Notice of Settlement with PIN (En/Fr) - under 30 g	Per Piece			\$ 8,312
Postage* - Notification Paper Claim Defect/Rejection	Per Piece			\$ 953
Postage* - Claim Form and Defendant Documentation (En/Fr) - under 30g	Per Piece			\$ 953
Postage* - Letters	Per Piece			\$ 26
Postage* - Distribution	Per Piece			\$ 5,227
Photocopies, Delivery and Box Storage	As Used			\$ 349
Translation	Per Word			TBD
Bank Fees - Account	Per Month			\$ 480
Settlement Fund Income Tax Filing	Per Year			As incurred
*Discounted rates as applicable				\$ 24,612

Total Estimated Costs \$ 24,612

Estimate does not include sales tax where applicable.

Total Estimate \$ 215,660

Standard Rates

Clerical and Data Entry	
Contact Center (Dedicated)	
Contact Center (Shared Per Minute)	
Claims Analyst	
Claims Specialist and Account Reconciliation/Check Run	
Call Center Supervisor	
Project Coordinator	
Data Analyst and Reporting	
Project Manager	
Sr. Project Manager	
Software Engineer	
Project Director	
Client Services Managers	
Executive Management and Testimony	
Photocopy or Image	
Box Storage (Per Box/Per Month)	
Long Distance, Per Minute	



OEG/HomeTrust Class Action

Activity	Unit	Rate	Volume	Amount
Estimate Valid Until:		12/12/2021		

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
(Settlement Approval)**

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