

**THE QUEEN'S BENCH**  
Winnipeg Centre

BETWEEN:

BERNARD W. BELLAN,

Plaintiff

- and -

CHARLES E. CURTIS, PETER OLFERT, WALDRON (WALLY) FOX-DECENT, LEA  
BATURIN, ALBERT R. BEAL, RON WAUGH, DIANE BERESFORD, SYLVIA FARLEY,  
ROBERT HILLIARD, ROBERT ZIEGLER, JOHN CLARKSON, DAVID G. FRIESEN, HUGH  
ELIASSON, SHERMAN KREINER, JAMES UMLAH, JANE HAWKINS, JANICE  
LEDERMAN, PRICEWATERHOUSE COOPERS LLP, NESBITT BURNS INC.,  
WELLINGTON WEST CAPITAL INC., CROCUS CAPITAL INC., THE MANITOBA  
SECURITIES COMMISSION and THE CROCUS INVESTMENT FUND

Defendants

Proceedings under *The Class Proceedings Act*, C.C.S.M. c. C130

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**ORDER**

(RE: Settlement with Officers and Directors)

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Counsel for the Plaintiffs

**THE QUEEN'S BENCH**  
Winnipeg Centre

THE HONOURABLE )  
 ) Wednesday, April 22, 2009  
MR. JUSTICE HANSEN )

BETWEEN:

BERNARD W. BELLAN,

Plaintiff

- and -

CHARLES E. CURTIS, PETER OLFERT, WALDRON (WALLY) FOX-DECENT, LEA BATURIN, ALBERT R. BEAL, RON WAUGH, DIANE BERESFORD, SYLVIA FARLEY, ROBERT HILLIARD, ROBERT ZIEGLER, JOHN CLARKSON, DAVID G. FRIESEN, HUGH ELIASSON, SHERMAN KREINER, JAMES UMLAH, JANE HAWKINS, JANICE LEDERMAN, PRICEWATERHOUSE COOPERS LLP, NESBITT BURNS INC., WELLINGTON WEST CAPITAL INC., CROCUS CAPITAL INC., THE MANITOBA SECURITIES COMMISSION and THE CROCUS INVESTMENT FUND

Defendants

Proceedings under *The Class Proceedings Act*, C.C.S.M. c. C130

**ORDER**

THIS MOTION, made by the Plaintiff, Bernard Bellan, for an order approving a settlement with the Defendants, Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lee Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, John Clarkson, David G. Friesen, Hugh Eliasson, Sherman Kreiner, James Umlah, Jane Hawkins, Crocus Investment Fund and Crocus Capital Inc. (the "Settling Defendants"), was heard this day at Winnipeg.

THIS MOTION is a continuance of the motion brought by the Plaintiff on June 23, 2008, in which the Plaintiff sought approval of a proposed settlement agreement, dated May 29, 2008 (the "Settlement Agreement"). This Honourable Court was prepared to approve that Settlement Agreement subject to certain amendments being made. The

Plaintiff now renews his request for approval of settlement in light of an amending agreement, dated April 21, 2009 (the "Amending Agreement").

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties,

THIS COURT ORDERS AS FOLLOWS:

1. The Settlement Agreement and the Amending Agreement, attached to this Order as Schedule A, are approved as fair and reasonable and in the best interests of the Settlement Class. The Settlement Agreement and the Amending Agreement (collectively "the Agreement") are incorporated into, and form part of this Order, including the definitions contained therein. In the event of a conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. The Class Actions are certified as against the Settling Defendants for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Actions.
4. The common issue is defined as whether the Settling Defendants owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel, Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.

Plaintiff now renews his request for approval of settlement in light of an amending agreement, dated April , 2009 (the "Amending Agreement").

ON READING the affidavits of Mark Lyons and Bernard Bellan and on hearing the submissions of counsel for the parties,

THIS COURT ORDERS AS FOLLOWS:

1. The Settlement Agreement and the Amending Agreement, attached to this Order as Schedule A, are approved as fair and reasonable and in the best interests of the Settlement Class. The Settlement Agreement and the Amending Agreement (collectively "the Agreement") are incorporated into, and form part of this Order, including the definitions contained therein. In the event of a conflict between the terms of the Settlement Agreement and the terms of the Amending Agreement, the terms of the Amending Agreement shall govern.
2. The Class Actions are certified as against the Settling Defendants for settlement purposes only.
3. The Settlement Class is defined as the class of persons who own Class A common shares in the Crocus Investment Fund including their legal representatives, heirs, successors and assigns, and who have not opted out of the Agreement but excludes each of the Defendants named or ever named in the Class Actions.
4. The common issue is defined as whether the Settling Defendants owed a duty to the Settlement Class.
5. Bernard Bellan is appointed as the Representative Plaintiff for the Settlement Class. His counsel, Klein Lyons, Booth Dennehy LLP and Prober Law Offices, are appointed as counsel to the Settlement Class.

6. The Settling Parties and all Settlement Class members are ordered to comply with the Agreement.

7. The deadline for exclusion ("opting out") from the Settlement Class is 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline").

8. Any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in the Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement.

9. The Receiver, Deloitte & Touche, Inc., is appointed as the Administrator of the settlement.

10. The form of Notice of Certification and Settlement Approval is approved as attached as Schedule B. Within 14 days after the Approval Date, the Administrator shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A shares. The Notice of Certification and Settlement Approval will also be posted on the Klein Lyons web site, and on the Receiver's web site. The Administrator will further cause the Notice of Certification and Settlement Approval to be published in one weekday edition of the Winnipeg Free Press.

11. There shall be a bar to any and all claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against the Settling Defendants in respect of or relating to the subject matter of the Class Actions, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted in a representative capacity, inclusive of interest, GST and costs.

12. It is declared that any and all claims the Settling Director and Officer Defendants may have, in law or in equity, whether such claims could be made by or on behalf of the

Settling Director and Officer Defendants, for contribution or indemnity from any of the Non-Settling Defendants or against any other party in respect of the claims asserted in the Class Actions are assigned to the Plaintiff on behalf of the Settlement Class.

13. Except as provided in paragraph 11.3.2 of the Agreement, if any action is instituted by a Settlement Class Member seeking damages against persons who are not released by the Agreement ("non-parties") in respect of claims that are or could have been asserted in the Class Actions, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of the Settling Director and Officer Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against the non-parties.

14. The Plaintiff, on his own behalf and as a representative of the Settlement Class, is precluded and restricted from pursuing an action for an Assigned Claim or Claims against either a Non-Settling Defendant or a non-party to the extent of the liability by way of claim for contribution, indemnity, subrogation or otherwise attributable to such action to any Settling Director and Officer Defendants. For greater certainty, in any such action, the Plaintiff and Settlement Class will not seek to recover from any Non-Settling Defendant or any non-party any amounts that are attributable to any claim over or back to any Settling Director and Officer Defendants.

15. Without in any way limiting or altering the meaning of the 2<sup>nd</sup> sentence of paragraph 1 of this Order, the provisions of 11.3.2 and 11.3.4 of the Agreement are specifically referred to and made part of this order.

16. It is declared that the Policy is exhausted to the extent of payment by Chubb of the Settlement Amount and any Defence Costs (as defined in the Policy) paid by Chubb on behalf of the Settling Director and Officer Defendants.

17. The Non-Settling Defendants shall have discovery rights against the Settling Director and Officer Defendants and Crocus Capital Inc. in the Class Actions as if the Non-Settling Defendants had issued third party claims against each Settling Director and Officer Defendant and Crocus Capital Inc., and the Plaintiff shall have the right to participate as a party to such discoveries.

18. It is approved that 25% of the Settlement Amount be directed to Class Counsel, to be held in trust, as provided by paragraphs 3.2.2 and 11.2.4 of the Agreement.

19. With respect to the collective several liability of the Non-Settling Defendants at paragraphs 11.2.2 and 11.2.3 of the Agreement, the Non-Settling Defendants shall not be made to pay a greater amount to the Settlement Class, as a result of this settlement, than would have occurred in the absence of a settlement.

20. It is declared that, in the event of termination of the Agreement pursuant to Section 13 of the Agreement, this Order is null and void and of no force and effect.

21. The Court shall retain continuing jurisdiction over the Agreement to ensure that all payments are properly made, and over the interpretation and enforcement of the Agreement's terms, conditions and obligations.

22. Any Non-Settling Defendant or other person or party who intends to commence an action or third party claim against the Settling Defendants relating to the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, including any actions, claims and demands based upon, arising out of, or in any way relating to any alleged acts and/or omissions of the Settling Director and Officer Defendants in their capacity as former directors and/or officers of the Crocus Investment Fund, shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Actions.

APR 22 2009

K. R. HANSEN

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J.

**Schedule A to Order**

Schedule "A"

**COURT OF QUEEN'S BENCH OF MANITOBA**

File No. CI 05-01-42765

**BETWEEN:**

**BERNARD W. BELLAN**

Plaintiff

- and -

**CHARLES E. CURTIS, PETER OLFERT, WALDRON (WALLY) FOX-DECENT,  
LEA BATURIN, ALBERT R. BEAL, RON WAUGH, DIANE BERESFORD,  
SYLVIA FARLEY, ROBERT HILLIARD, ROBERT ZIEGLER, JOHN CLARKSON,  
DAVID G. FRIESEN, HUGH ELIASSON, SHERMAN KREINER, JAMES UMLAH,  
JANE HAWKINS, JANICE LEDERMAN, PRICEWATERHOUSE COOPERS LLP,  
NESBITT BURNS INC., WELLINGTON WEST CAPITAL INC.,  
CROCUS CAPITAL INC., THE MANITOBA SECURITIES COMMISSION  
and THE CROCUS INVESTMENT FUND**

Defendants

Proceedings under *The Class Proceedings Act*, C.C.S.M. c. C130

**SETTLEMENT AGREEMENT**

**WHEREAS:**

A. Bernard W. Bellan (the "Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, and Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lee Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, John Clarkson, David G. Friesen, Hugh Eliasson, Sherman Kreiner, James Umlah, Jane Hawkins, Crocus Investment Fund and Crocus Capital Inc. (the "Settling Defendants"), (collectively, the "Settling Parties"), hereby enter into this Agreement providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court.

- B.** An action has been filed by the Plaintiff against the Settling Defendants pursuant to the *Class Proceedings Act*, C.C.S.M. c. D130 in the Manitoba Court of Queen's Bench;
- C.** Plaintiff's counsel have conducted settlement negotiations with counsel for the Settling Defendants;
- D.** The Settling Parties engaged in mediation to attempt to resolve this dispute;
- E.** The Settling Defendants, notwithstanding their consent to this Agreement, have denied and continue to deny the claims of the Plaintiff and the Settlement Class Members they seek to represent in the Class Actions, have denied and continue to deny any wrongdoing and have raised numerous defences, including defences relating to the certification of the claims in the Class Actions and, except to the extent of their obligations under this Agreement, deny liability of any kind and anywhere to the Plaintiff or the Settlement Class Members he seeks to represent;
- F.** The Class Actions have not been certified to date and the Settling Defendants are not opposing the Plaintiff's motion for certification for settlement purposes only;
- G.** The Settlement Class Members have the right to exclude themselves ("opt out") from this Agreement under Section 16 of *The Class Proceedings Act*, C.C.S.M. c.C130, and as provided in this Agreement;
- H.** Based upon an analysis of the facts and the law applicable to the claims of the Settlement Class, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided in this Agreement, the Plaintiff and Plaintiff's Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable, and in the best interests of the Settlement Class;
- I.** The Settling Defendants have similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to

resolve finally and completely the pending and potential claims of the Settlement Class Members and all pending and potential claims, proceedings, crossclaims and third party actions against them;

J. The Settling Director and Officer Defendants may have claims for indemnity against Crocus Investment Fund with respect to costs, charges and expenses, including any amount paid to settle any action or satisfy a judgment, reasonably incurred by them by reason of being or having been a director or officer of Crocus Investment Fund;

K. Crocus Investment Fund may have claims for indemnity or otherwise against the Settling Director and Officer Defendants with respect to their conduct while acting as directors or officers of Crocus Investment Fund;

L. Crocus Investment Fund has commenced an action in the Manitoba Court of Queen's Bench against Chubb Insurance Company of Canada seeking coverage under Chubb Venture Capital Asset Protection Policy No. 7043-00-36 (the "Policy") for, inter alia, the payment of defence costs incurred by former directors and officers of Crocus Investment Fund;

M. The Settling Director and Officer Defendants may have claims, in law or in equity, for contribution or indemnity against the Non-Settling Defendants and other third parties in respect of the claims asserted by the Plaintiff and the Settlement Class Members in the Class Actions;

N. Crocus Investment Fund was placed into receivership on June 28, 2005 with Deloitte and Touche Inc. appointed as the Receiver;

**NOW THEREFORE**, subject to the Court's approval, this Agreement embodies the terms of resolution of the claims contemplated, asserted and/or unasserted against the Settling Defendants in the Class Actions.

1. Definitions

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms, as used in this Agreement, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*. Masculine pronouns and male references shall be deemed to include the female and *vice versa*, where appropriate. The terms "person" or "party" includes individuals, partnerships and corporations.

**"Administrator"** means the person appointed by the Court as provided in Section 7 of this Agreement.

**"Agreement"** means this Settlement Agreement.

**"Approval Date"** means the date on which the Approval Order becomes a final order meaning that the time to appeal has expired and there has been no appeal or, if there have been any appeals from the Approval Order, all rights of appeal have been exhausted and there has been no change to the Approval Order.

**"Approval Order"** means the Order referred to in section 3.2.1 of this Agreement.

**"Class Actions"** means the proceedings filed under the *Class Proceedings Act*, C.C.S.M. c.C130 in the Manitoba Court of the Queens Bench bearing File Nos. CI 05-01-42765 and CI 06-01-46955.

**"Class Counsel"** means the law firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, which firms act on behalf of the Plaintiff and the Settlement Class herein and which shall continue acting on behalf of the Plaintiff and Settlement Class with respect to all acts or consents pursuant to this Agreement.

**"Court"** means the Manitoba Court of the Queen's Bench which has jurisdiction over the Class Actions, and the Honourable Mr. Justice Hanssen, or his successor.

**"Defendants"** means any of the defendants ever named in either of the Class Actions.

**"Effective Date"** means the date that Settling Director and Officer Defendants pay the Settlement Amount as provided in section 6.1 of this Agreement.

**"Non-Settling Defendants"** means any of the Defendants, excluding the Settling Defendants, ever named in either of the Class Actions.

**"Notice of Certification and Settlement Approval"** means the Notice advising Settlement Class Members of the Court's approval of this Agreement.

**"Opt Out Deadline"** means the date 30 days after the date of mailing of the Notice of Certification and Settlement Approval pursuant to Section 3 of this Agreement.

**"Receiver"** means Deloitte & Touche, Inc. as Receiver of Crocus Investment Fund.

**"Settlement Amount"** means the sum of \$3,150,000.00 payable by the Settling Director and Officer Defendants under this Agreement.

**"Settlement Class"** means the class of persons who own Class A common shares in Crocus Investment Fund including their legal representatives, heirs, successors and assigns and who have not opted out of this Agreement but excludes each of the Defendants named or ever named in the Class Actions.

**"Settlement Class Member"** means a person who falls within the definition of the Settlement Class.

**"Settlement Fund"** means the Settlement Amount less the amount approved by the Court for payment to Class Counsel pursuant to Section 3 of this Agreement.

**"Settling Director Defendants"** means Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lee Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, John Clarkson, David G. Friesen, and Hugh Eliasson, and their

respective representatives, agents, successors, assigns, all of whom are released by the Plaintiff and Settlement Class Members pursuant to this Agreement.

"Settling Officer Defendants" means Sherman Kreiner, James Umlah, Jane Hawkins and Janice Lederman and their respective representatives, agents, successors, assigns, all of whom are released by the Plaintiff and Settlement Class Members pursuant to this Agreement.

"Settling Director and Officer Defendants" means collectively the Settling Director Defendants and the Settling Officer Defendants.

**2. Preliminary Matters**

- 2.1 The Settling Parties hereby affirm the accuracy of the recitals set out above.
- 2.2 Promptly after execution of this Agreement, the Plaintiff shall serve a true copy of this Agreement on the Non-Settling Defendants.
- 2.3 Where the time on or by which any action to be taken under this Agreement falls on a day that is not a business day, such action may be done on the next day that is a business day.
- 2.4 All references to money in this Agreement are to Canadian currency.

**3. Matters Relating to Certification and Settlement Approval**

- 3.1 Within 14 days of the execution of this Agreement by all Parties, the Plaintiff will bring an application for Court approval of this Agreement on behalf of the Settlement Class Members and the Settling Defendants shall not oppose class certification for the purpose of Court approval of this Agreement only, subject to the terms and conditions below.
- 3.2 Certification and Settlement Approval Order
  - 3.2.1 Subject to the Court's approval, and as provided in a form of Order to be agreed by the Parties, the order approving this Agreement shall:

- (a) certify the action as a Class Action as against the Settling Defendants for the purposes of settlement only;
- (b) appoint Bernard Bellan as the Representative Plaintiff for the Settlement Class;
- (c) approve this Agreement and order the Settling Parties and all Settlement Class Members to comply with it;
- (d) order that the deadline for exclusion ("opting out") from the Settlement Class be 30 days following the mailing of the Notice of Certification and Settlement Approval ("Opt Out Deadline");
- (e) declare that any Settlement Class Member who has not opted out from the Settlement Class in accordance with the procedures set out in this Agreement by the Opt Out Deadline shall be bound by the terms of this Agreement;
- (f) declare that this Agreement is fair, reasonable, and in the best interests of the Settlement Class;
- (g) order mailing of the Notice of Certification and Settlement Approval;
- (h) appoint the Receiver as the Administrator;
- (i) bar any and all claims for contribution, indemnification, subrogation or otherwise against the Settling Defendants by any Non-Settling Defendants or by any other person or party, against the Settling Defendants and every other person who has served as a director or officer of Crocus Investment Fund at any time, in respect of the subject matter of the Class Actions or any other matter arising out of the business, operations and affairs of the Crocus Investment Fund;
- (j) declare that any and all claims the Settling Defendants may have, in law or in equity, for contribution or indemnity from any of the Non-Settling Defendants or

against any other party in respect of the claims asserted in the Class Actions are assigned to the Plaintiff on behalf of the Settlement Class;

- (k) subject to the Court's ongoing jurisdiction over this Agreement, dismiss the Plaintiff's action as against the Settling Defendants (being Manitoba Court of Queen's Bench action bearing file number CI 05-01-42765) pursuant to Section 11.1 of this Agreement;
- (l) declare that the Policy is exhausted to the extent of payment by Chubb of the Settlement Amount and any Defense Costs (as defined in the Policy) paid by Chubb on behalf of the Settling Director and Officer Defendants;
- (m) order that the Non-Settling Defendants shall have discovery rights against the Settling Director and Officer Defendants in the Class Actions as if the Non-Settling Defendants had issued third party notices against each Settling Director and Officer Defendant, and the Plaintiff shall have the right to participate as a party to such discoveries; and
- (n) declare that, in the event of termination of this Agreement pursuant to Section 13 below, the said Order is null and void and of no force and effect.

3.2.2 Concurrently with the application for Court approval of this Agreement, Class Counsel will apply to the Court for approval of a payment of 25% of the Settlement Amount to Class Counsel. This amount, or such other amount as is approved by the Court, will be held by Class Counsel in trust and will be used to fund past and future disbursements incurred by Class Counsel in the prosecution of the Class Actions. Any amount remaining at the conclusion of the Class Actions will be applied toward any Class Counsel fees that are approved by the Court. The approval of this Agreement is not conditional on approval of Class Counsel's requested payment. The Settling Defendants take no position as to the amount that should be paid to Class Counsel.

3.2.3 Following Court approval of this Agreement, Class Counsel will apply to the Court for approval of Class Counsel fees and disbursements. On the Effective Date, the amount approved by the Court will be paid to Class Counsel out of the Settlement Amount that was paid to Klein Lyons in trust pursuant to section 6.1 of this Agreement. The approval of this Agreement is not conditional on approval of Class Counsel's fees or disbursements. The Settling Defendants take no position as to the amount that should be paid to Class Counsel for fees and disbursements.

3.3 Notice of Certification and Settlement Approval

3.3.1 The content of the Notice of Certification and Settlement Approval shall be as agreed by the Settling Parties and approved by the Court.

3.3.2 Within 14 days after the Approval Date, the Receiver shall mail by ordinary mail a copy of the Notice of Certification and Settlement Approval to the last known address it has in its records for each holder of Crocus Investment Fund Class A common shares. The Notice of Certification and Settlement Approval will also be posted on the Receiver's web site and on the Klein Lyons web site.

4. Waiver of Limitation Defences

4.1 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by the Settling Defendants of defences based upon statutes of limitations or repose, prescription periods or any other limitation or prescription defence with respect to any person who opts out of this Agreement, is deemed to opt out of this Agreement, or, if this Agreement is terminated, brings or continues an action against the Settling Defendants.

5. Entitlement to Compensation

5.1 Only Settlement Class Members who have not opted out shall be entitled to receive payments out of the Settlement Fund pursuant to this Agreement.

**6. Payments and Related Issues**

- 6.1 Within 14 business days after the expiration of the time period in paragraph 13.2.2 , the Settling Director and Officer Defendants shall pay the Settlement Amount (\$3,150,000.00) to Klein Lyons in trust in full and final settlement of all claims by the Plaintiff, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity in the Class Actions, inclusive of all interest, GST and costs.
- 6.2 Klein Lyons will forthwith upon receipt of the Settlement Amount transfer the Settlement Fund to the Administrator to be held in trust by the Administrator for the benefit of the Settlement Class.
- 6.3 Any payments contemplated by this Section 6 are automatically cancelled and rendered null and void if this Agreement is terminated.

**7. Administrator**

- 7.1 The Settling Parties will propose that the Receiver be appointed by the Court as the Administrator for the purpose of administering this Agreement. All expenses of the Receiver related to the administration of this Agreement will be borne by Crocus Investment Fund.

**8. Procedures and Deadlines for Exclusion**

- 8.1 Any person who is a holder of Crocus Investment Fund Class A common shares, other than Bernard W. Bellan, will have the right to exclude herself or himself ("opt out") from this Agreement and from the Settlement Class by delivering a letter to the Administrator on or before the Opt Out Deadline signed by the person opting out and setting out that person's name, address, number of shares held and reason for opting out. Persons who elect to opt out shall be excluded from this Agreement and from the Settlement Class. It is the responsibility of the person opting out to ensure that the requisite signed letter is received by the Administrator on or before the Opt Out Deadline. Any member of the

Settlement Class who does not deliver to the Administrator a complete and signed opt out letter by the Opt Out Deadline shall be considered a Settlement Class Member and shall be bound by the terms of this Agreement and by the Court Order approving this Agreement.

8.2 By entering into this Agreement, Bernard W. Bellan agrees that he will not opt out of this Agreement.

9. **Distribution of Settlement Fund**

9.1 The Settlement Fund will be held in trust by the Administrator for the benefit of the Settlement Class. All Settlement Class Members who have not opted out will be eligible for payment from the Settlement Fund. The Settlement Fund will be distributed to the Settlement Class Members by the Administrator at the same time that the Receiver makes its first distribution of funds from the Crocus Investment Fund to the holders of Crocus Investment Fund Class A common shares. The Settlement Fund will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership.

10. **Exclusive Remedy/Dismissal of Action**

10.1 **Exclusive Remedy**

10.1.1 This Agreement shall be the exclusive remedy for any and all Settlement Class Members with respect to the Class Actions *vis-à-vis* the Settling Defendants. The Settling Defendants shall not be subject to liability or any other expense of any kind to any Settlement Class Member with respect to the Class Actions, except as provided in this Agreement. Settlement Class Members who have not opted out of this Agreement on or before the Opt Out Deadline shall be forever barred from continuing, initiating, asserting or prosecuting any and all claims related to Crocus Investment Fund against the Settling

Defendants and every person who has served as a director or officer of Crocus Investment Fund at any time.

10.2 Dismissal of Action

10.2.1 Forthwith after the Effective Date, the Settling Parties will file a consent to a dismissal of the Plaintiff's action against the Settling Defendants (being Manitoba Court of Queen's Bench action bearing file number CI 05-01-42765) with prejudice and any or all crossclaims and third party claims as against the Settling Defendants, on a "without costs" basis, along with any other documents that may be necessary.

11. Releases/Bar Order/Third Party Claims

11.1 Release of Class Action Claims Against Settling Defendants

11.1.1 The claims of the Plaintiff and every Settlement Class Member who has not opted out of this Agreement on or before the Opt Out Deadline, whether their claims are direct, subrogated, asserted or unasserted or asserted in a representative capacity in the Class Actions, inclusive of all interest, GST and costs, shall be conclusively compromised, settled, released and discharged as against the Settling Defendants, and Settlement Class Members shall be deemed to have forever released and discharged the Settling Defendants and every other person who has served as a director or officer of Crocus Investment Fund at any time, and their insurer, Chubb Insurance Company of Canada and any of its subsidiaries, parents, affiliates, directors, officers, shareholders, representatives and agents from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to all claims asserted or which could have been asserted in, or relating to the Class Actions or the conduct of any person who has served as a director or officer of Crocus Investment Fund at any time or based upon or seeking any amount or form of coverage under the Policy.

11.2 Bar Order

- 11.2.1 All claims for contribution, indemnity, subrogation or other claims over, by any Non-Settling Defendant or any other person or party, against the Settling Defendants and every other person who has served as a director or officer of Crocus Investment Fund at any time in respect of the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, whether direct, subrogated, asserted or unasserted or asserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the Court.
- 11.2.2 Forthwith after the Effective Date, the Plaintiff will amend the Statements of Claim in the Class Actions so as to restrict the claims of the Settlement Class against the Non-Settling Defendants to the collective several liability of the Non-Settling Defendants. In other words, the Plaintiff agree to exclude the proportionate share of liability of the Settling Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against, the Non-Settling Defendants.
- 11.2.3 Except as provided in Section 11.3 of this Agreement, if any action is instituted by a Settlement Class Member seeking damages against persons who are not currently parties to the Class Actions ("non-parties") in respect of claims that are or could have been asserted in the Class Actions, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class Member's claim shall exclude the proportionate share of liability of the Settling Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against the non-parties.
- 11.2.4 The Settlement Class shall, as a disbursement in the Class Actions, indemnify the Settling Director and Officer Defendants for their reasonable costs associated with retaining counsel in connection with providing discovery and evidence in the Class Actions or in any action commenced pursuant to paragraph 11.3.2.
- 11.2.5 Notwithstanding its release from the Class Actions, Crocus Investment Fund agrees to participate in the Class Actions in such manner as is ordered by the Court.

**11.3 Reservation of Rights/Third Party Claims**

**11.3.1** Except as otherwise provided herein, nothing in this Agreement shall prejudice or in any way interfere with the rights of the Settlement Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Settling Defendants.

**11.3.2** The Settling Director and Officer Defendants shall assign to the Plaintiff on behalf of the Settlement Class any and all claims they may have, in law or in equity, for contribution or indemnity from any of the Non-Settling Defendants or against any other person or party in respect of the claims asserted in the Class Actions.

**11.3.3** Within 14 days of the Effective Date, the Receiver, on its own behalf and on behalf of Crocus Investment Fund will consent to a with prejudice dismissal of Manitoba Queen's Bench Action No C1 06-01-46191 commenced by Crocus Investment Fund against Chubb Insurance Company of Canada and will provide a release of all claims under or in respect of the Policy against Chubb Insurance Company of Canada.

**11.3.4** Within 14 days of the Effective Date:

(1) the Settling Director and Officer Defendants agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against each other and each others' heirs, successors and assigns for all matters arising out of the business, operation, and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund, to the date of this Agreement;

(2) the Settling Director Defendants agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against Crocus Investment Fund, the Receiver and Crocus Capital Inc. for all matters arising out of the business, operation, and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund, to the date of this Agreement; except that a) nothing in the said releases will take away the rights of the Settling Director Defendants to receive distributions as shareholders from funds collected by the Receiver other than

from the Class Actions and b) nothing in the said releases will foreclose the Settling Director Defendants to claim to be indemnified by Crocus Investment Fund for any judgments, fines or monetary penalties that may be imposed by the Manitoba Securities Commission, except that nothing herein is to be taken as an admission by Crocus Investment Fund or the Receiver of Crocus Investment Fund that they are responsible for payment of such judgments, fines or monetary penalties and c) the said release will not apply to the Settling Director Defendants' entitlement to the \$250,000 indemnity advance provided for in paragraph 11.3.4 (3)(a) below.

(3) Crocus Investment Fund and the Receiver agree to:

a. pay the sum of \$250,000 to D'Arcy & Deacon LLP to be used by that law firm and such other law firms representing any one or more of the Settling Director Defendants for paying any amounts, including legal expenses, incurred for matters other than the Class Action litigation, save and except that the said \$250,000 will not be used for judgments, fines or monetary penalties which one or more of the Settling Director Defendants successfully recovers under the indemnity claims referred to in paragraph 11.3.4(2)(b) above, including any legal expenses incurred to pursue such recovery. The payment of the \$250,000 will be subject to the proviso that any amount of the said \$250,000 which remains unexpended at a date to be agreed between the Settling Director Defendants and the Receiver shall be returned to the Receiver for distribution amongst the shareholders of Crocus Investment Fund; and

b. provide an incontrovertible undertaking not to pursue reimbursement of any legal expenses previously paid for and on behalf of the Settling Director Defendants and including the \$250,000 advance as aforesaid; and

c. provide full and final releases of any and all claims they may have had or, now or in the future, may have against the Settling Director Defendants and their heirs, successors and assigns for all matters arising out of the business, operation and affairs of

the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund to the date of this Agreement, including the \$250,000 payment as aforesaid and the reimbursement of any legal expenses previously paid for and on behalf of the Settling Director Defendants. Crocus Capital Inc. will provide a similar release.

(4) The Settling Officer Defendants agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against Crocus Investment Fund, the Receiver and Crocus Capital Inc. for all matters arising out of the business, operation and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund to the date of this Agreement, save and except that nothing in the said release will take away the right of the Settling Officer Defendants to claim payment of their indemnity for legal fees incurred for matters other than the Class Action litigation, except that nothing herein is to be taken as an admission by Crocus Investment Fund or the Receiver of Crocus Investment Fund that they are responsible for payment of same and nothing in the said releases will take away the rights of the Settling Officer Defendants to receive distributions as shareholders from funds collected by the Receiver other than from the Class Actions;

(5) Crocus Investment Fund, the Receiver and Crocus Capital Inc. agree to provide full and final releases of any and all claims they may have had or, now or in the future, may have against the Settling Officer Defendants and their heirs, successors and assigns for all matters arising out of the business, operation and affairs of the Crocus Investment Fund, both before and after the receivership of the Crocus Investment Fund to the date of this Agreement, save and except that nothing in the said release will take away the right of the Crocus Investment Fund or the Receiver to claim reimbursement for legal fees paid by Crocus Investment Fund or the Receiver to or for the benefit of the Settling Officer Defendants.

12. **Submissions to the Court by the Administrator**

12.1 The Administrator may apply to the Court for directions, as required, upon notice served on Class Counsel and Settling Defendants' Counsel no later than fourteen (14) days prior to the date of any hearing.

13. **Termination of this Agreement**

13.1 **Defendants' Right of Termination**

13.1.1 If persons holding a total of more than .5 percent (one half of one percent) of the Crocus Investment Fund Class A common shares elect to opt out of this Agreement on or before the Opt Out Deadline, the Settling Defendants shall have the unilateral right to terminate this Agreement as set forth in Section 13.2.

13.2 **Procedures and Time for Termination**

13.2.1 Within thirty (30) days following the Opt Out Deadline the Administrator shall notify counsel for the Settling Defendants and Class Counsel of the total number of persons who have opted out of this Agreement, including all particulars of their Crocus Investment Fund shareholdings and copies of their opt out letters.

13.2.2 The Settling Defendants or any of them may exercise their right to terminate this Agreement pursuant to Section 13.1 above by providing written notice to Class Counsel and to the Court within thirty (30) days from the date on which the Administrator provides counsel for the Settling Defendants with the information and documentation pursuant to Section 13.2.1 above.

13.3 **Notice of Settlement Class Members**

13.3.1 If the Settling Defendants exercise their right of termination pursuant to Section 13 of this Agreement, Notice of Termination shall be given to all Settlement Class Members. The

content and method of dissemination of the Notice of Termination shall be determined by the Court. If any of the Settling Defendants exercises the right to terminate this Agreement, any costs associated with disseminating the Notice of Termination shall be paid by the Settling Defendants who chose to terminate this Agreement.

13.4 Automatic Termination of the Agreement

13.4.1 This Agreement shall, without notice, be automatically terminated if the Court declines to approve this Agreement in any respect or, in the event of an appeal, if the Court's approval order is not affirmed in all respects.

13.5 Effect of Termination

13.5.1 If this Agreement is terminated pursuant to Section 13, the certification of the Class Actions for settlement purposes pursuant to this Agreement shall be null and void and this Agreement shall have no further force or effect and shall not be used or referred to in any litigation involving any of the Settling Parties and/or the Non-Settling Defendants.

14. Miscellaneous Provisions

14.1 Ongoing Authority

14.1.1 The Court shall retain exclusive and continuing jurisdiction over the Class Actions; over all parties named or described herein, including, but not limited to, all Settlement Class Members and Settling Defendants; over this Agreement, to ensure that all payments and disbursements are properly made; and over the interpretation and enforcement of this Agreement's terms, conditions and obligations.

14.2 Entire Agreement

14.2.1 This Agreement constitutes the entire agreement by and among the Settling Parties with regard to the subject of this Agreement and shall supersede any previous agreements and

understandings between the Settling Parties with respect to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by all Settling Parties hereto and subject to the Court's approval.

14.3 Other Originals

14.3.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

14.4 Notification

14.4.1 Any notification, request, instruction or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, sent by facsimile, or sent by registered mail, postage prepaid, if to the Plaintiff, to the attention of Class Counsel and, if to the Settling Defendants, to the attention of their counsel:

**For the Plaintiff Bellan and the Settlement Class:**

David A. Klein, Douglas Lennox, Jay Prober and J. R. Norman Boudreau

**For the Defendants Curtis, Olfert, Fox-Decent, Baturin, Beal, Waugh, Beresford, Farley, Hilliard, Ziegler, Clarkson and Eliasson:**

Kenneth A. Filkow, Q.C. and Diane M. Stasiuk

**For Defendants Kreiner and Hawkins:**

G. Patrick S. Riley

**For Defendant Umlah:**

Robert L. Tapper, Q.C. and Jason D. Kendall

**For Defendant David Friesen:**

J. Kenneth McEwan, Q.C.

**For Crocus Investment Fund, Crocus Capital Inc and the Receiver:**

Dave Hill, Robert A. Dewar, Q.C. and Karen R. Wittman

**For Chubb Insurance Company of Canada:**

Mary Margaret Fox

14.5 Dates

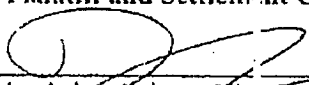
14.5.1 Dates referred to in this Agreement may be altered only with the consent of the Settling Parties and with the approval of the Court.

14.6 Use of Agreement

14.6.1 Neither the existence nor the terms of this Agreement may be used as evidence of any admission by the Settling Defendants regarding fault, liability, causation, damages, and/or any other issue. This Agreement may, however, be relied upon by any Settling Party for purposes of enforcing any right possessed by such Settling Party or for purposes of any motion or application made to the Court for interpretation or enforcement of its terms pursuant to Section 14 of this Agreement.

Dated this 28<sup>th</sup> day of May, 2008.

**Plaintiff and Settlement Class**

  
by their solicitors, Kitchell Lyons  
Per: Douglas Lennox

Dated this 29 day of May, 2008.

**Settling Director and Officer Defendants**

by their solicitors, Kenneth A. Filkow, Q.C.

by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Crocus Investment Fund, Crocus Capital Inc.  
and the Receiver**

by their solicitors, Hill, Dewar, Vincent  
Per: Robert Dewar, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Chubb Insurance Company of Canada**

by their solicitors, Nicholl Paskell-Mede  
Per: Mary Margaret Fox

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Settling Director and Officer Defendants**

\_\_\_\_\_  
by their solicitors, Kenneth A. Filkow, Q.C.

\_\_\_\_\_  
by their solicitors, G. Patrick S. Riley

\_\_\_\_\_  
by their solicitors, Robert L. Tapper, Q.C.

\_\_\_\_\_  
by their solicitors, J. Kenneth McEwan, Q.C.

Dated this 29<sup>th</sup> day of May, 2008.

**Crocus Investment Fund, Crocus Capital Inc.  
and the Receiver**

  
\_\_\_\_\_

by their solicitors, Hill, Dewar, Vincent  
Per: Robert Dewar, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Chubb Insurance Company of Canada**

\_\_\_\_\_  
by their solicitors, Nicholl Paskell-Mede  
Per: Mary Margaret Fox

Dated this 20<sup>th</sup> day of MAY, 2008.

**Settling Director and Officer Defendants**

by their solicitors, Kenneth A. Filkow, Q.C.

  
by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Crocus Investment Fund, Crocus Capital Inc.  
and the Receiver**

by their solicitors, Hill, Dewar, Vincent  
Per: Robert Dewar, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Chubb Insurance Company of Canada**

by their solicitors, Nicholl Paskell-Mede  
Per: Mary Margaret Fox

Dated this 29<sup>th</sup> day of May, 2008.

**Settling Director and Officer Defendants**

  
by their solicitors, Kenneth A. Filkow, Q.C.

by their solicitors, G. Patrick S. Riley

by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Crocus Investment Fund, Crocus Capital Inc.  
and the Receiver**

by their solicitors, Hill, Dewar, Vincent  
Per: Robert Dewar, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Chubb Insurance Company of Canada**

by their solicitors, Nichol Paskell-Mede  
Per: Mary Margaret Fox

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Settling Director and Officer Defendants**

\_\_\_\_\_  
by their solicitors, Kenneth A. Filkow, Q.C.

\_\_\_\_\_  
by their solicitors, G. Patrick S. Riley

\_\_\_\_\_  
by their solicitors, Robert L. Tapper, Q.C.

\_\_\_\_\_  
by their solicitors, J. Kenneth McEwan, Q.C.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Crocus Investment Fund, Crocus Capital Inc.  
and the Receiver**

\_\_\_\_\_  
by their solicitors, Hill, Dewar, Vincent  
Per: Dave Hill

Dated this 29<sup>th</sup> day of May, 2008.

**Chubb Insurance Company of Canada**

  
\_\_\_\_\_  
by their solicitors, Nicholl Paskell-Mede  
Per: Mary Margaret Fox

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**BERNARD W. BELLAN,**

**Plaintiff**

- and -

**CHARLES E. CURTIS, PETER OLFERT, WALDRON (WALLY) FOX-DECENT,  
LEA BATURIN, ALBERT R. BEAL, RON WAUGH, DIANE BERESFORD,  
SYLVIA FARLEY, ROBERT HILLIARD, ROBERT ZIEGLER, JOHN  
CLARKSON, DAVID G. FRIESEN, HUGH ELIASSON, SHERMAN KREINER,  
JAMES UMLAH, JANE HAWKINS, JANICE LEDERMAN,  
PRICewaterhouseCOOPERS LLP, NESBITT BURNS INC., WELLINGTON  
WEST CAPITAL INC., CROCUS CAPITAL INC., THE MANITOBA  
SECURITIES COMMISSION and THE CROCUS INVESTMENT FUND**

**Defendants**

**Proceedings under *The Class Proceedings Act*, C.C.S.M. c. C130**

**AGREEMENT TO AMEND THE SETTLEMENT AGREEMENT DATED  
MAY 29<sup>TH</sup>, 2008 ("THE AMENDING AGREEMENT")**

**WHEREAS:**

- A. Bernard W. Bellan ("the Plaintiff"), in his own capacity and in his capacity as representative plaintiff for the Settlement Class, Charles E. Curtis, Peter Olfert, Waldron (Wally) Fox-Decent, Lea Baturin, Albert R. Beal, Ron Waugh, Diane Beresford, Sylvia Farley, Robert Hilliard, Robert Ziegler, John Clarkson, David G. Friesen, Hugh Eliasson (the "Directors"), Sherman Kreiner, James Umlah and Jane Hawkins (the "Officers"), Crocus Capital Inc., Crocus Investment Fund by its Receiver, Deloitte & Touche Inc., Deloitte & Touche Inc., as Receiver of Crocus Investment Fund ("the Receiver"), and Chubb Insurance Company of Canada (collectively "the Parties") entered into a Settlement Agreement

dated May 29<sup>th</sup>, 2008 ("the Settlement Agreement").

- B. The Settlement Agreement was subject to automatic termination if the Court declined to approve the Settlement Agreement in any respect.
- C. On June 23, 2008, the Court declined to approve certain terms in the Settlement Agreement.
- D. The Parties wish to affirm the Settlement Agreement and amend the same, as necessary, in order to obtain the approval of the Court.

**NOW THEREFORE**, subject to the approval of the Court, this Amending Agreement sets out the revised and additional terms of the Settlement Agreement as follows:

1. The Parties hereby confirm and ratify the terms of the Settlement Agreement except as clarified or modified by the terms of this Amending Agreement. In the event of a conflict between the terms of the Settlement Agreement and the terms of this Amending Agreement, the terms of the Amending Agreement shall govern.
2. Page 2, Section B. of the preamble to the Settlement Agreement shall be amended to add a new sentence after the first sentence which shall read:

A related Class Action, being file No. CI 06-01-46955 has been filed by the Plaintiff against the Government of Manitoba in the Manitoba Court of Queen's Bench (collectively the "Class Actions").

3. Page 4, Section 1 of the Settlement Agreement shall be amended to state:

“Agreement” means this Settlement Agreement as amended  
by the Amending Agreement.

4. Page 4; Section 1 of the Settlement Agreement shall be amended to add a new definition which shall read:

“Assigned Claims” means those claims assigned by the  
Settling Director and Officer Defendants to the Plaintiff on  
behalf of the Settlement Class referred to in paragraph  
11.3.2 of this Agreement.

5. Page 5, Section 1 of the Settlement Agreement shall be amended to state:

“Defendants” means any of the defendants ever named or  
to be named in the Class Actions or in the Assigned  
Claims (including affiliates and each Defendant and its  
affiliates’ present and former directors, officers, agents,  
partners, servants and employees and each individual’s  
successors, heirs, executors, estate trustees, administrators and  
assigns). For greater certainty, “Defendants” includes  
Deloitte & Touche Inc. in its capacity as receiver of the  
Crocus Investment Fund.

6. Page 5, Section 1 of the Settlement Agreement shall be amended to state:

“Non-Settling Defendants” means any of the Defendants,  
excluding the Settling Defendants, ever named or to be

named in the Class Actions or the Assigned Claims. For the purpose of this Agreement, The Government of Manitoba and any other party who has entered into a settlement agreement with the Plaintiff shall be deemed to be a Non-Settling Defendant.

7. Page 13, paragraph 11.2.1 of the Settlement Agreement shall be deleted and replaced by the following:

11.2.1 All claims for contribution, indemnity, subrogation or any other claims by any Non-Settling Defendant or any other person against the Settling Defendants in respect of or relating to the subject matter of the Class Actions, or any other claim on behalf of the Settlement Class, whether direct, subrogated, derivative, asserted or unasserted in a representative capacity, inclusive of interest, GST and costs, will be barred by order of the court.

8. Page 13, paragraph 11.2.3 of the Settlement Agreement shall be amended to state:

11.2.3 Except as provided in paragraph 11.3.2 of this Agreement, if any action is instituted by a Settlement Class Member seeking damages against persons who are not released by this Agreement ("non-parties") in respect of claims that are or could have been asserted in the Class Actions, such action will be limited to the non-parties' collective several liability. In other words, the Settlement Class

Member's claim shall exclude the proportionate share of liability of the Settling Director and Officer Defendants and of every person who has served as a director or officer of Crocus Investment Fund at any time from their claims against, and from any judgment which may be granted against the non-parties.

9. Page 13, paragraph 11.2.4 of the Settlement Agreement shall be amended to state:

11.2.4 The Settlement Class shall, as a disbursement in the Class Actions, indemnify the Settling Director and Officer Defendants for their reasonable costs associated with retaining counsel in connection with providing discovery and evidence in the Class Actions or in any action commenced pursuant to paragraphs 11.2.3 and 11.3.2.

10. Page 14, paragraph 11.3.2 of the Settlement Agreement shall be amended to add the following paragraph to the existing paragraph which shall state:

The Plaintiff, on his own behalf and as a representative of the Settlement Class, is precluded and restricted from pursuing an action for an Assigned Claim or Claims against either a Non-Settling Defendant or a non-party to the extent of the liability by way of claim for contribution, indemnity subrogation or otherwise attributable in such action to any Settling Director and Officer Defendants. For greater certainty, in any such action, the Plaintiff and Settlement Class will not seek to recover from any Non-

Settling Defendant or any non-party any amounts that are attributable to any claim over or back to any Settling Director and Officer Defendants.

11. Page 14, paragraph 11.3.4 of the Settlement Agreement shall be deleted in its entirety and replaced with the following:

11.3.4 For the purposes of this paragraph 11.3.4, Independent Claims are those claims, demands or actions which have not been brought within the context or subject matter of the Class Actions but which may hereafter be brought by a Non-Settling Defendant (as that term is defined in this Agreement) or a non-party against Crocus, the Receiver, a Settling Director Defendant or a Settling Officer Defendant for any matter arising out of or relating to the business, operations and affairs of Crocus including in regard to the Receiver's administration of the receivership of Crocus or in regard to any actions, claims or demands based upon, arising out of or in any manner relating to, any alleged conduct of a Settling Director Defendant or a Settling Officer Defendant in his or her capacity as a former director or officer of Crocus. Provided that claims or allegations made by the Manitoba Securities Commission against any one or more of the Settling Director Defendants in the pending proceedings to be scheduled shall not be deemed an Independent Claim. Independent Claims include any claims over or any cross claims among Crocus, the Receiver, a Settling Director Defendant or Settling Officer Defendant resulting from any such Independent Claim or Claims being

brought against one or more of these potential litigants directly. Further, in the case of a legal cost indemnity claim brought by a Settling Director Defendant or Settling Officer Defendant against Crocus which arises from an Independent Claim, it is understood that the Settling Director and Officer Defendants shall be at liberty to seek a Court order requiring current ongoing funding of legal costs to defend an Independent Claim and nothing prohibits Crocus or the Receiver from opposing the granting of such order.

Within 14 days of the Effective Date:

(1) the Settling Director and Officer Defendants agree to provide a release from any and all direct proceedings, actions, causes of action, claims and demands, for damages, loss or injury, howsoever arising, which they may have had or, now have or, in the future may have against each other and each others' heirs, successors and assigns arising out of the business, operation and affairs of Crocus, both before and after the receivership of Crocus to the date of this Agreement, save and excepting the right of a Settling Director Defendant and Settling Officer Defendant to bring claims over or cross claims against each other in the context of Independent Claims;

(2) the Settling Director and Officer Defendants agree to provide a release from any and all direct proceedings, actions, causes of action, claims and demands, for damages, loss or injury, howsoever arising, which they may have had or, now or in the future, may have against Crocus, the Receiver and Crocus

Capital Inc. arising out of the business, operation and affairs of Crocus, both before and after the receivership of Crocus to the date of this Agreement, save and excepting that the release will not apply to: (i) any indemnity claims of a Settling Director Defendant as to any judgments, fines, monetary penalties or settlement amounts which may result from the Manitoba Securities Commission proceedings, including any legal costs incurred or to be incurred by a Settling Director Defendant in pursuing such indemnity claims, (ii) the right of a Settling Director Defendant and Settling Officer Defendant to bring claims over or cross claims against Crocus and the Receiver in the context of Independent Claims, (iii) any indemnity claims of a Settling Director Defendant or Settling Officer Defendant as to any amounts, judgments, fines or settlements, including legal costs, arising from any Independent Claims, (iv) the right of the Settling Director and Officer Defendants to receive distributions as shareholders from funds realized by the Receiver other than from the Class Actions and (v) the Settling Directors Defendants' entitlement to the \$250,000.00 indemnity legal fund and to retain same to the extent that such funds are required by one or more of them, except in the case of a declared surplus, if any. It is expressly understood that nothing in said release shall be construed as an admission on the part of Crocus or the Receiver that any claims described in subparagraphs (i), (ii) and (iii) immediately preceding are valid claims.

(3) Crocus and the Receiver agree to deliver:

(a) an indemnity legal fund of \$250,000.00 to D'Arcy & Deacon LLP as to legal fees and expenses ("costs") incurred or to be incurred collectively by the Settling Director Defendants in response to allegations by the Manitoba Securities Commission to be heard in proceedings to be scheduled, it being understood that the indemnity legal fund will not have any application toward any settlement amounts or judgments, fines or monetary penalties which one of more of the Settling Director Defendants successfully recovers under separate indemnity claims referred to in paragraph 11.3.4 (2)(iii) above. The payment of the indemnity legal fund will be subject to certain understandings as to the utilization, if any, of the surplus and return to the Receiver of the surplus or any amounts in excess of the utilized surplus;

(b) an incontrovertible undertaking (Undertaking #1) not to pursue any claims for reimbursement of any legal costs previously paid for and on behalf of the Settling Director Defendants including, without limitation, in regards to the investigation by the Office of the Auditor General, the investigation by the Manitoba Securities Commission and addressing motions related to the receivership;

(c) an incontrovertible undertaking (Undertaking #1) not to pursue any claims for reimbursement of the indemnity legal fund of \$250,000.00 referred to in paragraph (a) above except in the case of a declared surplus, if any;

(d) an incontrovertible undertaking (Undertaking #2) to holdback \$3,000,000.00 from the first distribution to shareholders ("S3M Holdback"). The S3M Holdback is intended to address potential indemnity claims of the nature set out below which may arise after the Receiver effects the said distribution. The S3M Holdback shall be available for release and distribution on or after January 1, 2011 unless, after the first distribution and on or prior to December 31<sup>st</sup>, 2010, a Settling Director Defendant or Settling Officer Defendant notifies the Receiver and Crocus of any Independent Claims known to him or her or other proceedings which are pending against one or more of the Settling Director Defendants which may lead to one or more of the following indemnity claims:

- (A) indemnity claims of a Settling Director Defendant as to any judgments, fines, monetary penalties or settlement amounts which may result from the Manitoba Securities Commission proceedings, including any legal costs incurred in pursuing such indemnity entitlement; and
- (B) indemnity claims of a Settling Director Defendant or Settling Officer Defendant as to any amounts, judgments, fines or settlements, including legal costs, arising from Independent Claims.

It being expressly understood that nothing herein shall be construed as an admission on the part of the Receiver and Crocus that any claims referred to in subparagraphs (A) and (B) immediately preceding are valid and

provided further that if the aggregate of such potential indemnity claims is less than \$3M, then the Receiver may seek to negotiate a reduced holdback or, failing agreement between the parties, the Receiver shall be at liberty to apply to the court supervising the Crocus receivership.

(e) an incontrovertible undertaking (Undertaking #2), in the event any Independent Claims arise which may result in direct claims or claims over against a Settling Director Defendant or a Settling Officer Defendant before the date that the Receiver makes application to Court for approval of the Receiver's first distribution to shareholders, to consent to the standing of the Settling Director Defendant or Settling Officer Defendant to appear at the said distribution hearing and speak to the Court requiring any holdback additional to the \$3M Holdback referred to in paragraph (d) above. If any Independent Claims should arise directly against Crocus or the Receiver prior to the said hearing, Crocus will immediately give written notification to counsel for each of the Settling Director Defendants and Settling Officer Defendants of any such Claims:

(4) Crocus, the Receiver and Crocus Capital Inc. agree to provide a release from any and all direct proceedings, actions, causes of action, claims and demands, for damages, loss or injury, howsoever arising, which they may have had or, now have or, in the future may have, against the Settling Director and Officer Defendants and each of their respective heirs, successors and assigns, arising out of the business, operation and affairs of Crocus, both before and after the receivership of Crocus to the date of this Agreement, and including any

actions, claims or demands based upon, arising out of or in any manner relating to any alleged conduct of the Settling Director and Officer Defendants in their capacity as former directors and officers of Crocus, and also including: (i) with respect to any claims for reimbursement of any indemnification payments previously paid by Crocus or the Receiver for and on behalf of one or more of the Settling Director Defendants by reason of him or her having held office as a director of Crocus and (ii) the \$250,000.00 indemnity legal fund as aforesaid, except in the case of a declared surplus, if any. The release does not disentitle Crocus and the Receiver to bring any cross claims or other claims over against any one or more of the Settling Director and Officer Defendants in the context of Independent Claims.

12. Page 6, paragraph 3.2.1 of the Settlement Agreement shall be amended to:

- (i) incorporate by reference or attachment to the Order the terms of the Settlement Agreement, as amended;
- (ii) amend sub-paragraph (i) to conform with paragraph 11.2.1 of the Settlement Agreement, as amended;
- (iii) add a sub-paragraph (o) to refer specifically to paragraph 11.3.2 of the Settlement Agreement, as amended;
- (iv) add a sub-paragraph (p) to refer specifically to paragraph 11.3.4 of the Settlement Agreement, as amended.

13. Paragraph 14.5 shall be added to the Settlement Agreement to state:

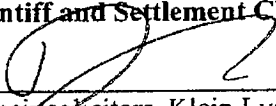
- .. Any Non-Settling Defendant or other person or party who intends to commence an action or third party claim against the Settling

Defendants relating to the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, including any actions, claims and demands based upon, arising out of, or in any way relating to any alleged acts and/or omissions of the Settling Director and Officer Defendants in their capacity as former directors and/or officers of the Crocus Investment Fund, shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Actions.

14. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.

Dated this 21st day of April, 2009.

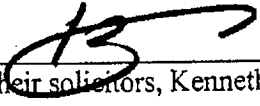
**Plaintiff and Settlement Class**

  
by their solicitors, Klein Lyons

Per: Douglas Lennox

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

**Settling Director and Officer Defendants**

  
by their solicitors, Kenneth A. Filkow, Q.C.

by their solicitors, G. Patrick S. Riley

Defendants relating to the subject matter of the Class Actions or any other matter arising out of the business, operation and affairs of the Crocus Investment Fund, including any actions, claims and demands based upon, arising out of, or in any way relating to any alleged acts and/or omissions of the Settling Director and Officer Defendants in their capacity as former directors and/or officers of the Crocus Investment Fund, shall not proceed without obtaining leave of the Honourable Mr. Justice Hanssen or such other Justice of the Manitoba Court of Queen's Bench responsible for the management of the Class Actions:

14. This Amending Agreement may be executed in one or more counterparts by the parties or their respective counsel.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

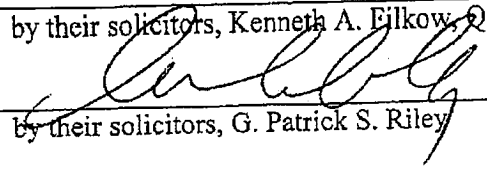
**Plaintiff and Settlement Class**

by their solicitors, Klein Lyons  
Per: Douglas Lennox

Dated this 20<sup>th</sup> day of APRIL, 2009.

**Settling Director and Officer Defendants**

by their solicitors, Kenneth A. Eilkow, Q.C.

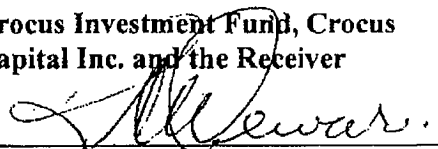
  
by their solicitors, G. Patrick S. Riley

\_\_\_\_\_  
by their solicitors, Robert L. Tapper, Q.C.

\_\_\_\_\_  
by their solicitors, J. Kenneth McEwan, Q.C.

Dated this 22nd day of April, 2009.

**Crocus Investment Fund, Crocus  
Capital Inc. and the Receiver**

  
\_\_\_\_\_  
by their solicitors, Hill, Dewar, Vincent  
Per: Robert Dewar, Q.C.

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

**Chubb Insurance Company of Canada**

\_\_\_\_\_  
by their solicitors, Nicholl Paskell-Mede  
Per: Mary Margaret Fox

by their solicitors, Robert L. Tapper, Q.C.



by their solicitors, J. Kenneth McEwan, Q.C.

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

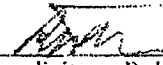
**Crocus Investment Fund, Crocus  
Capital Inc. and the Receiver**

by their solicitors, Hill, Dewar, Vincent  
Per: Robert Dewar, Q.C.

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

**Chubb Insurance Company of Canada**

by their solicitors, Nicholl Paskell-Mede  
Per: Mary Margaret Fox

  
by their solicitors, Robert L. Tapper, Q.C.

by their solicitors, J. Kenneth McEwan, Q.C.

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

**Crocus Investment Fund, Crocus  
Capital Inc. and the Receiver**

by their solicitors, Hill, Dewar, Vincent  
Per: Robert Dewar, Q.C.

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

**Chubb Insurance Company of Canada**

by their solicitors, Nicholl Paskell-Mede  
Per: Mary Margaret Fox

FROM : PackNSend

FAX NO. : 7278673754

Apr. 21 2009 10:51AM P2/2

No. 211 P. 15

Apr. 20. 2009 3:38PM

- 14 -

by their solicitors, Robert L. Tappin, Q.C.

by their solicitors, J. Kenneth McIvor, Q.C.

Dated this 22<sup>nd</sup> day of April, 2009.

Crocus Investment Fund, Crocus Capital Inc. and the Receiver

Robert Dewar  
by their solicitors, Hill, Dewar, & Co. Inc.  
Per: Robert Dewar, Q.C.

Dated this 21<sup>st</sup> day of April, 2009.

Chubb Insurance Company of Canada

Mary Margaret Fox  
by their solicitors, Nicholl Pascoe & Medel  
Per: Mary Margaret Fox

**Schedule B to Order**

**Crocus Investment Fund Class Actions  
Notice of Certification and Settlement Approval**

To all persons who own Class A common shares in the Crocus Investment Fund (the "Fund"), this notice will be important to you.

Settlements have been approved by the Court in lawsuits brought on behalf of shareholders in the Fund. This notice is published by Order of The Honourable Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and explains:

1. the lawsuits and purpose of this notice;
2. the terms of settlement;
3. your right to choose to opt out of the class actions;
4. legal fees; and
5. where to get more information.

**1. The Lawsuits and Purpose of this Notice**

Bernard Bellan commenced class action lawsuits relating to the Fund on behalf of shareholders in the Manitoba Court of Queen's Bench as action nos. CI 05-01-42765 and CI 06-01-46955. By notice issued by Mr. Justice Hanssen of the Manitoba Court of Queen's Bench and published July 11, 2008 (the "First Notice"), it was announced that certain defendants, namely the Manitoba Securities Commission, the Government of Manitoba, and BMO Nesbitt Burns Inc had agreed to settle with shareholders, and that the court had approved these settlements. These first settlements became final on August 18, 2008.

This First Notice further advised that a provisional settlement had also been reached, subject to certain amendments, with certain other defendants, namely the former officers and directors of the Fund, Pricewaterhouse Coopers LLP, Crocus Capital Inc., and the Crocus Investment Fund, and that litigation was continuing against Wellington West Capital Inc., with whom no settlement had been reached. All of these remaining defendants have now agreed to settle the claims of shareholders (the "Settling Defendants").

On April 22, 2009, Mr. Justice Hanssen certified the lawsuit against the Settling Defendants as a class action for the purposes of settlement, and approved the settlement agreements, including amendments, reached with the Settling Defendants. The court defined the class as persons who own Class A common shares in the Fund including their legal representatives, heirs, successors and assigns, and who have not opted out but excludes each of the Defendants named or ever named in the lawsuits. The court appointed Mr. Bellan as representative plaintiff for the class. The court appointed the firms of Klein Lyons, Booth Dennehy LLP and Prober Law Offices, (collectively, "Class Counsel") as counsel to the class.

**2. The Terms of Settlement**

The Settling Defendants have agreed to pay up to a total of \$9.65 million to compensate class members (\$6 million paid by Pricewaterhouse Coopers LLP, \$3.15 million paid by the former

officers and directors of the Fund and \$500,000 paid by Wellington West Capital Inc., now Wellington West Holdings Inc.) The Settling Defendants have also agreed to drop most claims for indemnity against the Fund with respect to claims asserted in the lawsuits, thereby significantly reducing one of the major obstacles to the distribution of money to shareholders held in the Fund's receivership. In exchange, the claims against the Settling Defendants will be dismissed. No admission of liability has been made.

Compensation will be distributed pro rata to the Settlement Class Members based on the monies paid for each Settlement Class Member's Class A common shares of the Crocus Investment Fund which remained unredeemed as of the date of the Receivership. Compensation will be distributed by Deloitte & Touche Inc., the Receiver to the Fund, which the court has appointed as the Administrator for the settlements. It is anticipated that compensation will be distributed to class members at the same time that the Administrator makes a distribution of monies from the Receivership to shareholders. To be eligible to receive compensation, it is not necessary for you to take any steps, other than make sure that the Administrator has your correct mailing address. The Administrator is mailing a copy of this notice to all shareholders in the Fund. If you received a copy of this notice in the mail from the Administrator, and it is addressed to you at your current address, this confirms that it has your mailing address.

The class members' recoveries will be subject to payment of Class Counsel's fee, in an amount to be determined by the Court. Copies of the Settlement Agreements, and amendments, are available online at [www.kleinlyons.com](http://www.kleinlyons.com). Hard copies can be obtained by calling Class Counsel at 1-800-216-1383.

### **3. Your Right to Choose Whether or Not to be Part of the Class Actions**

#### *(a) How to be Included in the Class*

If you are a class member, you will automatically be included in the class actions and eligible to receive compensation unless you opt out.

#### *(b) How to be Excluded from the Lawsuits*

To opt out of the class actions, you must deliver a letter to the Administrator on or before the **[Opt Out Deadline]** signed by the person opting out and setting out that person's name, address, number of shares held, the reason for opting out, and specifying which Settling Defendants you are opting out against. Failure to specify which Settling Defendants you are opting out against will be treated as opting out as against all Settling Defendants.

All class members who do not opt out of the settlements with the Settling Defendants, as described above will be bound by the settlements.

The address for writing to the Administrator to opt out is: Crocus Class Action Settlement Administrator, Deloitte & Touche Inc., 360 Main Street, Suite 2300, Winnipeg MB, R3C 3Z3.

### **4. Legal Fees**

Mr. Bellan retained Class Counsel to represent him and the Class in the lawsuits. Class Counsel are paid legal fees only if the lawsuit is successful, and then only in an amount approved by the Court.

#### **5. More Information**

For further information about the class actions you may contact: Klein Lyons, Barristers & Solicitors, P.O. Box 85, Suite 1220, 65 Queen St. W., Toronto, ON M5H 2M5, 1-800-216-1383. Attn: Doug Lennox [dlennox@kleinlyons.com](mailto:dlennox@kleinlyons.com), [www.kleinlyons.com](http://www.kleinlyons.com).