

**ONTARIO
SUPERIOR COURT OF JUSTICE**

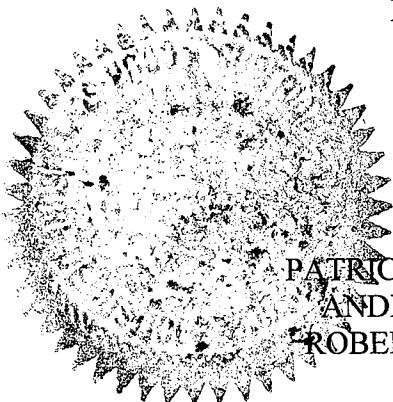
THE HONOURABLE) WEDNESDAY, THE 9th DAY
)
JUSTICE JOAN LAX) OF JULY, 2008

B E T W E E N

PAUL LAWRENCE, ANNE EAGLES and CHARLES SIMON, EVELYN SIMON and
ERICA PRUSSKY, in their capacity as Trustees of the Charles Trust

Plaintiffs

and



ATLAS COLD STORAGE HOLDINGS INC.,
PATRICK GOUVEIA, SUSAN ELIZABETH PETERS, as Executrix of the Estate of
ANDREW W. PETERS, deceased, RONALD PERRYMAN, JOSEPH WILEY,
ROBERT W. MARTIN, ALBRECHT W.A. BELLSTEDT, J. NICHOLAS ROSS,
MICHAEL H. WILSON,
ERNST & YOUNG LLP and BMO NESBITT BURNS INC.

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION, made by the Plaintiffs for certification of this Action as a class proceeding and for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992* in accordance with the terms of the Settlement Agreement and Plan and for the fixing of Class Counsel fees, was heard on July 9, 2008 at Toronto, Ontario.

ON READING the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the Motion Records of the Moving Parties and Responding Parties on the motion for certification;
- (d) the affidavits of:
 - (i) Jay Strosberg sworn on September 17, 2004, January 23, 2007, August 16, 2007, June 26, 2008 and July 3, 2008 and the transcript of his cross examination;
 - (ii) Paul Lawrence sworn on September 24, 2004, August 16, 2007 and June 26, 2008 and the transcript of his cross examination;
 - (iii) Anne Eagles sworn on September 23, 2004, August 15, 2007 and June 26, 2008 and the transcript of her cross examination;
 - (iv) Charles Simon sworn on January 21, 2007, August 16, 2007 and June 26, 2008 and the transcript of his cross examination;
 - (v) Lawrence Kryzanowski sworn April 4, 2007 and August 16, 2007 and the transcript of his cross examination;
 - (vi) Robert Comment sworn August 15, 2007 and the transcript of his cross examination;
 - (vii) C. Douglas Fox sworn August 16, 2007 and the transcript of his cross examination;
 - (viii) Naomi Strasser sworn June 22, 2008;
 - (ix) Ronald Graham sworn July 4, 2008;

- (x) David J. Adams sworn July 7, 2008;
- (xi) Derek Ronde sworn July 7, 2008;
- (e) the Public Guardian and Trustee's letter dated July 2, 2008, filed;
- (f) the Children's Lawyer's letter dated July 8, 2008; and
- (g) the Opt-Out Threshold Agreement.

AND ON HEARING the submissions of counsel for the Parties, no objectors having appeared,

AND ON BEING ADVISED that:

- (a) the Plaintiffs in the Action consent to this judgment;
- (b) the Defendants in the Action consent to this judgment;
- (c) Deloitte & Touche LLP consents to being appointed Administrator;
- (d) Reva E. Devins consents to being appointed Referee;
- (e) Harvey T. Strosberg, Q.C. consents to being appointed Class Counsel Representative;
- (f) Sutts, Strosberg LLP consents to hold and disburse the Non-Refundable Expense Fund; and
- (g) there have been no written objections to the proposed Settlement received by Deloitte & Touche LLP,

AND without any admission of liability on the part of any of the Defendants, all Defendants having denied liability,

1. THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the following definitions apply:

- (a) **Action** means the action *Lawrence et al. v. Atlas Cold Storage Holdings Inc. et al.* brought in the Ontario Superior Court of Justice under court file number 04-CV-263289CP (Toronto);
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of publishing and delivering notices, the fees, disbursements and taxes paid to the Interim Administrator, Administrator, Class Counsel Representative and the Referee. For greater certainty, Administration Expenses include the Non-Refundable Expenses for the purposes of the Settlement Agreement;
- (c) **Administrator** means Deloitte & Touche LLP or such other person appointed by the Court to serve in that capacity;
- (d) **Affiliated Defendants** means an affiliate of any of the Defendants under the definition of “affiliated body corporate” under subsection 1(4) of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B-16, as at the date of the Settlement Agreement, and includes, without limitation, Atlas, Eimskip Atlas Canada Inc., 6822037 Canada Inc., Hf-E and Avion;
- (e) **Atlas** means Atlas Cold Storage Income Trust;
- (f) **Atlas Holdings** means Eimskip Atlas Canada, Inc., the successor corporation by amalgamation of Atlas Cold Storage Holdings Inc.;
- (g) **Avion** means Avion Group;
- (h) **BMO** means BMO Nesbitt Burns Inc.;
- (i) **Broadridge** mean Broadridge Financial Solutions Inc.;
- (j) **Claim Form** means the paper claim form or the electronic equivalent form generally in the form attached to this judgment as schedule 5;
- (k) **Claims Bar Deadline** means March 2, 2009 at 5:00 p.m. Toronto time or such other date as the Court may establish;
- (l) **Class or Class Members** means all persons, other than Excluded Persons, who purchased or acquired Trust Units during the Class Period under the terms of a prospectus offering, on the TSX, or in any other fashion and

held some or all of those Trust Units at the close of trading on the TSX on August 29, 2003;

- (m) ***Class Counsel*** means Sutts, Strosberg LLP, Koskie Minsky LLP and Groia & Company Professional Corporation;
- (n) ***Class Counsel Fees*** means the fees, disbursements, costs, GST and other applicable taxes or charges of Class Counsel and a pro rata share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court;
- (o) ***Class Counsel Representative*** means Harvey T. Strosberg, Q.C. or such other person appointed by the Court to serve in that capacity;
- (p) ***Class Period*** means the period March 1, 2002 to and including August 29, 2003;
- (q) ***Contributing Party*** means Atlas Holdings, as indemnified by certain of its Insurers;
- (r) ***Court*** means the Ontario Superior Court of Justice;
- (s) ***Declaration*** means the Court declaration that the Settlement Agreement is final and binding, and that the Action, except as provided in the judgment, is dismissed without costs and with prejudice;
- (t) ***Defendants*** means the defendants in the Action and includes both Atlas Cold Storage Holdings Inc. and Atlas Holdings as the successor corporation of Atlas Cold Storage Holdings Inc.;
- (u) ***Eligible Trust Units*** means the number of Trust Units held by each Class Member who opted out that would have been recognized by the Administrator for calculating damages in accordance with the Plan;
- (v) ***Escrow Account*** means the interest bearing trust account with one of the Canadian schedule 1 banks in Ontario under the control of the Interim Administrator and/or the Administrator;
- (w) ***Escrow Settlement Amount*** means the \$39,500,000 portion of the Settlement Amount plus any accrued interest plus any balance remaining in the Non-Refundable Expense Fund after payment of all Non-Refundable Expenses;
- (x) ***Excluded Person*** means each Defendant other than BMO, the directors or officers of each corporate Defendant other than BMO, the subsidiaries and Affiliated Defendants of each corporate Defendant other than BMO,

the entities in which each Defendant other than BMO or any subsidiaries or Affiliated Defendants of a corporate Defendant other than BMO have an interest and the legal representatives, trustees, heirs, predecessors, successors and assigns of any Excluded Person and Hf-E and Avion, their directors and officers and subsidiaries and affiliates;

- (y) **Fee Agreement** means the Contingency Fee Retainer Agreement made as at February 1, 2004 and signed by the Plaintiffs on March 3, 2008 and March 12, 2008;
- (z) **Hf-E** means Hf-Eimskipafelag Islands;
- (aa) **Insurers** means the insurers who were notified of the Action by any Defendant;
- (bb) **Newspapers** means the following newspaper publications in Canada and the United States of America: Calgary Herald, Charlottetown Guardian, Edmonton Journal, Globe and Mail (National Edition), Halifax Mail-Star, La Presse, Moncton Times & Transcript, Montreal Gazette, National Post (National Edition), Regina Leader-Post, Saskatoon Star Phoenix, St. John's Telegram, Saint John Telegraph Journal, Vancouver Sun, Victoria Times Colonist, Wall Street Journal, and Winnipeg Free Press;
- (cc) **Non-Refundable Expenses** means certain Administration Expenses stipulated in section 3.1(1) of the Settlement Agreement to be paid from the Settlement Amount;
- (dd) **Non-Refundable Expense Fund** means a \$500,000 portion of the Settlement Amount paid to Sutts, Strosberg LLP, in trust, by the Contributing Party, to pay only for Non-Refundable Expenses in accordance with section 3.1(1) of the Settlement Agreement and any interest that accrues thereon;
- (ee) **Opt-Out Deadline** means September 30, 2008 at 5:00 p.m., Toronto time, or such other date and time as may be fixed by the Court;
- (ff) **Opt-Out Form** means the paper form generally in the form attached to this judgment as schedule 4;
- (gg) **Opt-Out Threshold** means the number of Eligible Trust Units particularized in the Collateral Agreement;
- (hh) **Opt-Out Threshold Agreement** means the signed agreement that sets the Opt-Out Threshold effective as of the 9th day of June, 2008, in the form of the agreement attached as Schedule 6.

- (ii) **Parties** means the Plaintiffs and the Defendants. In the singular, Party means any Plaintiff or Defendant;
- (jj) **Plaintiffs** means the plaintiffs in the Action;
- (kk) **Plan** means the Distribution Plan attached as schedule 2;
- (ll) **Referee** means Reva E. Devins or such other person appointed by the Court to serve in that capacity;
- (mm) **Released Claims** (or **Released Claim** in the singular) 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, and liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, Class Counsel Fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees, relating in any way to the purchase, sale, pricing, marketing or distributing of Trust Units, or relating to any conduct alleged (or which could have been alleged) in the Action, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Trust Units or the leveraged buyout of Atlas Cold Storage Holdings Inc. by Hf-E and Avion and the financing of that buyout;
- (nn) **Releasees** means the Defendants and their Affiliated Defendants, Insurers and respective past and present directors, officers, employees, trustees, servants, representatives, successors, and assigns and the heirs, executors, administrators, successors, and assigns of each of the individual Defendants;
- (oo) **Releasors** means, jointly and severally, the Plaintiffs, the Class Members who have not opted out of the Action, including any person having a legal and/or beneficial interest in the Trust Units purchased or acquired by those Class Members, and their respective heirs, executors, administrators, successors and assigns;
- (pp) **Settlement** means the settlement reflected in the Settlement Agreement attached as Schedule 1;
- (qq) **Settlement Agreement** means the settlement agreement, attached as Schedule 1, signed by the Parties in the Action, including the recitals but excluding Schedules A, B, C and D;

- (rr) **Settlement Amount** means \$40,000,000, inclusive of the Non-Refundable Expense Fund;
- (ss) **Trust Units** means trust units of Atlas; and
- (tt) **TSX** means the Toronto Stock Exchange.

2. THIS COURT ORDERS that:

- (a) this Action be and is hereby certified as a class proceeding;
- (b) the Class is defined as:

all persons, other than Excluded Persons, who purchased or acquired Trust Units during the Class Period under the terms of a prospectus offering, on the TSX, or in any other fashion and held some or all of the Trust Units at the close of trading on the TSX on August 29, 2003;
- (c) Paul Lawrence, Anne Eagles and Charles Simon as a trustee of the Charles Trust be and are hereby appointed as representative plaintiffs;
- (d) the common issue is:

Before August 29, 2003, did the Defendants, or any of them, misrepresent the net earnings of Atlas and Atlas Cold Storage Holdings Inc. in the consolidated financial statements for the fiscal years 2001 and 2002?
- (e) the causes of action pleaded are negligence, misrepresentation, conspiracy, breach of fiduciary duty, breach of s. 130 of the *Securities Act* and declarations; and
- (f) the Plan is incorporated by reference into this judgment and is hereby approved.

3. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of this Action for \$40,000,000 is fair and reasonable and in the best interests of the Class Members and is hereby approved.
4. THIS COURT ORDERS that the Settlement Agreement is incorporated by reference into this judgment and is hereby approved.
5. THIS COURT DECLARES that the Settlement Amount has been paid in accordance with the Settlement Agreement.
6. THIS COURT ORDERS that Deloitte & Touche LLP be and is hereby appointed, until further order of the Court:
 - (a) as the Administrator on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and the Plan; and
 - (b) to maintain the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the Settlement Agreement and Plan.
7. THIS COURT ORDERS that Reva E. Devins be and is hereby appointed as Referee, until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Plan.

8. THIS COURT ORDERS that Harvey T. Strosberg, Q.C. be and is hereby appointed as Class Counsel Representative, until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Plan.

9. THIS COURT ORDERS that the Class Members shall be given notice of the certification of the Action as a class proceeding, the approval of the Settlement Agreement and the Plan, the Opt-Out Deadline and the Claims Bar Deadline substantially in the form of the notice attached as schedule 3 to this judgment and substantially in the following manner:

- (a) by Class Counsel publishing the notice on at least $\frac{1}{4}$ of a page, once, in the Newspapers;
- (b) by the Administrator posting the notice on the website www.atlasclassaction.com;
- (c) by Class Counsel releasing the notice on the electronic distribution service Marketwire in such form as is acceptable to that service;
- (d) by Class Counsel directing Broadridge to send the notice to all brokerage firms in Canada requesting that the brokerage firms send to Broadridge the names and addresses of all persons identified by the brokerage firms as having a beneficial interest in the Trust Units as of August 29, 2003 and, then, by Broadridge sending the notice to the persons so identified;
- (e) by Class Counsel mailing or emailing the notice to those persons who Computershare Limited identified as being registered holders of Trust Units as of August 29, 2003; and

- (f) by Class Counsel mailing or emailing the notice to those persons who Class Counsel are able to identify as having contacted them before the date of this order.

10. THIS COURT ORDERS that the Class Members may also be given notice of the certification of the Action as a class proceeding, the approval of the Settlement Agreement and the Plan, the Opt-Out Deadline and the Claims Bar Deadline in such other manners as the Court may direct by further order.

11. THIS COURT ORDERS AND DECLARES that the notice to the Class Members provided for in this judgment satisfies the requirements of section 17(6) of the *Class Proceedings Act, 1992* and is the best notice practicable under the circumstances.

12. THIS COURT ORDERS that after publication and distribution of the notice to the Class Members as directed in paragraph 9 of this judgment, Class Counsel shall file with the Court an affidavit confirming the publication and distribution of the notice in accordance with this judgment.

13. THIS COURT ORDERS that the Opt-Out Form is hereby approved.

14. THIS COURT ORDERS that:

- (a) each Class Member who wishes to opt-out must submit, by mail, courier or fax, a properly completed Opt-Out Form and all required supporting

documents to the Administrator by the Opt-Out Deadline which is September 30, 2008 at 5:00 p.m. Toronto time; and

- (b) if a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to the Administrator by the Opt-Out Deadline, the Class Member shall be deemed not to have opted out of the Action.

15. THIS COURT ORDERS AND DECLARES that this judgment, including the Plan and the Settlement Agreement, are binding upon each Class Member who does not opt out of the Action in accordance with the terms of this judgment, including those persons who are minors or are mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with. For greater certainty, each Class Member who does not opt out in accordance with the terms of this judgment and the Plan is bound by the judgment, whether or not such person submits a claim to the Administrator in accordance with the terms of this judgment, whether or not such person is determined to be eligible to receive a distribution, and whether the claim is accepted by the Administrator in whole or in part.

16. THIS COURT ORDERS that, on or before October 10, 2008, the Administrator shall report to the Court, the Defendants and Class Counsel:

- (a) the names of those Class Members, if any, who have opted out of the Action, the number of Eligible Trust Units held by each Class Member

- who opted out, and a summary of the information delivered by each Class Member who opted out; and
- (b) the number of Class Members who have submitted a Claim Form by the date of the report and the number of their Eligible Trust Units.

17. THIS COURT DECLARES that the Opt-Out Threshold Agreement has been inspected by the Court and delivered to Sutts, Strosberg LLP, AND ORDERS that the Opt-Out Threshold contained therein is hereby approved.

18. THIS COURT ORDERS that, if the Opt-Out Threshold is exceeded, Atlas Holdings, in its sole discretion, unfettered by any of the other Parties, may elect to terminate the Settlement Agreement and Plan and set aside this judgment, provided that it gives written notice of its election to terminate to the other Parties within 10 days after it receives the report required by paragraph 16 of this judgment.

19. THIS COURT ORDERS AND DECLARES that, unless Atlas Holdings exercises its right to terminate the Settlement Agreement and Plan and set aside this judgment in accordance with paragraph 18 of this judgment, this Court will issue the Declaration.

20. THIS COURT ORDERS AND DECLARES that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from 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, and liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, Class Counsel Fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees, relating in any way to the purchase, sale, pricing, marketing or distributing of Trust Units, or relating to any conduct alleged (or which could have been alleged) in the Action, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Trust Units or the leveraged buyout of Atlas Cold Storage Holdings Inc. by Hf-E and Avion and the financing of that buyout.


21. THIS COURT ORDERS that the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

22. THIS COURT ORDERS that the Claim Form is hereby approved.

23. THIS COURT ORDERS that to participate in this Settlement, a Class Member must file a Claim Form with the Administrator on or before March 2, 2009 at 5:00 p.m. Toronto time unless this Court orders otherwise or unless this Court extends the March 2, 2009 deadline by further order.
24. THIS COURT ORDERS that any one or more of the representative plaintiffs, Class Counsel, Class Counsel Representative, the Referee or the Administrator may apply to Justice Lax for directions in respect of the implementation and/or the administration of the Plan or relating to any other matter.
25. THIS COURT ORDERS that any one of the Parties may apply to Justice Lax for directions in respect of the termination of the settlement or any matter relating thereto.
26. THIS COURT ORDERS that no person may bring any action or take any proceedings against the Administrator, the Referee, the Class Counsel Representative, or Sutts, Strosberg LLP or their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the administration of the Plan or the implementation of this judgment except with leave of this Court.
27. THIS COURT ORDERS that the fees of the Interim Administrator and the Administrator are hereby approved and all other Administration Expenses shall be approved by the Court.

28. THIS COURT ORDERS that the amount to be paid to the Class Proceedings Fund shall be fixed by further order of the Court.

29. THIS COURT ORDERS that the motion by Class Counsel to have the Court fix the amount of Class Counsel Fees is adjourned to Tuesday, August 12, 2008 at 10:00 a.m..



JUSTICE

590327-v17 - revised August 11, 2008

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 10 2008

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:

PER / PAR:



SETTLEMENT AGREEMENT

Effective as of the 9th day of June, 2008

Between

**Charles Simon, Evelyn Simon and Erica Prussky
in their capacity as Trustees of the Charles Trust
Paul Lawrence
Anne Eagles**

and

**Eimskip Atlas Canada, Inc.
Patrick Gouveia
Susan Elizabeth Peters, as Executrix of the Estate of Andrew W. Peters, deceased
Ronald Perryman
Joseph Wiley
Robert W. Martin
Albrecht W.A. Bellstedt
J. Nicholas Ross
Michael H. Wilson
Ernst & Young LLP
BMO Nesbitt Burns Inc.**

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SETTLEMENT AGREEMENT

RECITALS

- A. In March 2004, the Plaintiffs commenced the Action against the Defendants and sought to have the Action certified as a class proceeding.
- B. In 2007, the Plaintiffs made allegations of oppressive conduct and fraudulent conveyance against Atlas Cold Storage Holdings Inc. and its owners and successor companies in relation to the purchase of Atlas Cold Storage Holdings Inc. by Hf-E and Avion by way of a leveraged buyout, and threatened to bring an action in respect of that transaction.
- C. In early 2008, prior to the hearing of the certification motion in the Action, the Parties entered into a mediation which resulted in the Settlement Agreement.
- D. The Plaintiffs have reviewed the terms of the Settlement Agreement. Class Counsel have fully explained to the Plaintiffs the terms of the Settlement Agreement. Based on an analysis of the facts and law applicable to the claims of the Plaintiffs, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals and, significantly, the risk and uncertainty that the Plaintiffs, even if successful in the Action, might fail in collecting upon a judgment having regard to the leveraged buyout, the Plaintiffs and Class Counsel have concluded that the Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class they seek to represent.
- E. Despite their belief that they are not liable for the claims asserted in the Action and have defences thereto, the Defendants are entering into the Settlement Agreement in order to achieve a final resolution of all claims asserted in the Action, or which could have been asserted in the Action against them or their Affiliated Defendants, by the Plaintiffs, including any claims as a result of the leveraged buyout and the Defendants' defences thereto, to avoid the expense, inconvenience and burden of litigation and the related distraction and diversion of their personnel and resources, to put to rest this controversy and to avoid the risks inherent in uncertain litigation.
- F. The Parties therefore intend to and hereby do finally resolve the Action, subject to Court approval, without prejudice or admission of liability.

G. For the purposes of Settlement only and contingent on approval by the Court, as provided for in the Settlement Agreement, the Defendants consent to certification of the Action as a class proceeding.

H. The Plaintiffs assert that they are suitable representatives for the Class and will seek to be appointed representative plaintiffs.

FOR VALUE RECEIVED, the Parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Settlement Agreement, including the recitals and schedules hereto:

- (1) **Action** means the action *Lawrence et al. v. Atlas Cold Storage Holdings Inc. et al.* brought in the Ontario Superior Court of Justice under court file number 04-CV-263289CP (Toronto).
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of publishing and delivering notices, the fees, disbursements and taxes paid to the Interim Administrator, Administrator, Class Counsel Representative, Referee, and any other expenses approved by the Court. For greater certainty, Administration Expenses include the Non-Refundable Expenses for the purposes of the Settlement Agreement.
- (3) **Administrator** means Deloitte & Touche LLP or such other person appointed by the Court to serve in that capacity.
- (4) **Affiliated Defendants** means an affiliate of any of the Defendants under the definition of “affiliated body corporate” under subsection 1(4) of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B-16, as at the date of the Settlement Agreement, and includes, without limitation, Atlas, 6822037 Canada Inc., Hf-E and Avion.
- (5) **Atlas** means Atlas Cold Storage Income Trust.
- (6) **Atlas Holdings** means Eimskip Atlas Canada, Inc., the successor corporation by amalgamation of Atlas Cold Storage Holdings Inc.
- (7) **Avion** means Avion Group.
- (8) **BMO** means BMO Nesbitt Burns Inc.

- (9) **Claims Bar Deadline** means March 2, 2009 at 5:00 p.m. Toronto time.
- (10) **Class or Class Members** means all persons, other than Excluded Persons, who purchased or acquired Trust Units during the Class Period under the terms of a prospectus offering, on the TSX, or in any other fashion and held some or all of those Trust Units at the close of trading on the TSX on August 29, 2003.
- (11) **Class Counsel** means Sutts, Strosberg LLP, Koskie Minsky LLP and Groia & Company Professional Corporation.
- (12) **Class Counsel Fees** means the fees, disbursements, costs, GST and other applicable taxes or charges of Class Counsel and a pro rata share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.
- (13) **Class Counsel Representative** means Harvey T. Strosberg, Q.C. or such other person appointed by the Court to serve in that capacity.
- (14) **Class Period** means the period March 1, 2002 to and including August 29, 2003.
- (15) **Contributing Party** means Atlas Holdings, as indemnified by certain of the Insurers of Atlas Cold Storage Holdings Inc.
- (16) **Court** means the Ontario Superior Court of Justice.
- (17) **Declaration** means an order of the Court declaring that the Settlement Agreement is final and binding, and that the Action, except as provided in the Judgment, is dismissed without costs and with prejudice.
- (18) **Defendants** means the defendants in the Action, and includes both Atlas Cold Storage Holdings Inc. and Atlas Holdings as the successor corporation of Atlas Cold Storage Holdings Inc.
- (19) **E&Y** means Ernst & Young LLP.
- (20) **Eligible Trust Units** means the number of Trust Units held by each Class Member who opted out that would have been recognized by the Administrator for calculating damages in accordance with the Plan.
- (21) **Escrow Account** means the interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario under the control of the Interim Administrator and/or the Administrator.

- (22) **Escrow Settlement Amount** means the \$39,500,000 portion of the Settlement Amount plus any accrued interest plus any balance remaining in the Non-Refundable Expense Fund after payment of all Non-Refundable Expenses.
- (23) **Excluded Person** means each Defendant other than BMO, the directors or officers of each corporate Defendant other than BMO, the subsidiaries and Affiliated Defendants of each corporate Defendant other than BMO, the entities in which each Defendant other than BMO or any subsidiaries or Affiliated Defendants of a corporate Defendant other than BMO have an interest and the legal representatives, trustees, heirs, predecessors, successors and assigns of any Excluded Person and Hf-E and Avion, their directors and officers and subsidiaries and affiliates.
- (24) **Fairness Hearing** means the hearing of the Motion by the Court on July 9, 2008 or on such other date as may be convenient for that purpose.
- (25) **Fee Agreement** means the Contingency Fee Retainer Agreement made as at February 1, 2004 and signed by the Plaintiffs on March 3, 2008 and March 12, 2008.
- (26) **First Notice** means notice to the Class of the Fairness Hearing.
- (27) **Fund** means the Class Proceedings Fund.
- (28) **Hf-E** means Hf-Eimskipafelag Islands.
- (29) **Insurers** means the insurers who were notified of the Action by any Defendant.
- (30) **Interim Administrator** means Deloitte & Touche LLP or such other person appointed by the Court to serve in that capacity.
- (31) **Judgment** means the order certifying the Action and approving the Settlement Agreement and the Plan.
- (32) **Motion** means the motion brought by the Plaintiffs for approval of the Settlement Agreement.
- (33) **Newspapers** means the following newspaper publications in Canada and the United States of America: Calgary Herald, Charlottetown Guardian, Edmonton Journal, Globe and Mail (National Edition), Halifax Mail-Star, La Presse, Moncton Times & Transcript, Montreal Gazette, National Post (National Edition), Regina Leader-Post, Saskatoon Star Phoenix, St. John's Telegram, Saint John Telegraph Journal, Vancouver Sun, Victoria Times Colonist, Wall Street Journal, and Winnipeg Free Press.
- (34) **Non-Refundable Expenses** means certain Administration Expenses stipulated in section 3.1(1) of the Settlement Agreement to be paid from the Settlement Amount.

(35) **Non-Refundable Expense Fund** means a \$500,000 portion of the Settlement Amount paid to Sutts, Strosberg LLP, in trust, by the Contributing Party, to pay only for Non-Refundable Expenses in accordance with section 3.1(1) of the Settlement Agreement and any interest that accrues thereon.

(36) **Opt-Out Deadline** means September 30, 2008 at 5:00 p.m., Toronto time, or such other date and time as may be fixed by the Court.

(37) **Opt-Out Form** means the form to register an opt-out, as approved by the Court.

(38) **Opt-Out Threshold** means the number of Eligible Trust Units particularized in the Sealed Agreement.

(39) **Parties** means the Plaintiffs and the Defendants. In the singular, Party means any Plaintiff or Defendant.

(40) **Plaintiffs** means the plaintiffs in the Action.

(41) **Plan** means the plan stipulating the proposed implementation and administration of the Settlement attached as schedule "C."

(42) **Referee** means Reva E. Devins or such other person appointed by the Court to serve in that capacity.

(43) **Released Claims** (or **Released Claim** in the singular) 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, and liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, Class Counsel Fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees, relating in any way to the purchase, sale, pricing, marketing or distributing of Trust Units, or relating to any conduct alleged (or which could have been alleged) in the Action, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Trust Units or the leveraged buyout of Atlas Cold Storage Holdings Inc. by Hf-E and Avion and the financing of that buyout.

(44) **Releasees** means the Defendants and their Affiliated Defendants, Insurers and respective past and present directors, officers, employees, trustees, servants, representatives, successors,

and assigns and the heirs, executors, administrators, successors, and assigns of each of the individual Defendants.

(45) *Releasors* means, jointly and severally, the Plaintiffs, the Class Members who have not opted out of the Action, including any person having a legal and/or beneficial interest in the Trust Units purchased or acquired by those Class Members, and their respective heirs, executors, administrators, successors and assigns.

(46) *Sealed Agreement* means the agreement which sets the Opt-Out Threshold, generally in the form of the agreement attached as schedule "D", which will be signed and delivered to the Court under seal and approved by the Court.

(47) *Second Notice* means notice to the Class of the Judgment.

(48) *Settlement* means the settlement reflected in the Settlement Agreement.

(49) *Settlement Agreement* means this agreement, including the recitals and schedules hereto.

(50) *Settlement Amount* means \$40,000,000, inclusive of the Non-Refundable Expense Fund.

(51) *Trust Units* means trust units of Atlas.

(52) *TSX* means the Toronto Stock Exchange.

SECTION 2 – CONDITION PRECEDENT

(1) The Plaintiffs shall bring a motion seeking an order:

(a) setting the date for the Fairness Hearing;

(b) authorizing the publishing of the First Notice; and

(c) appointing the Interim Administrator to operate the Escrow Account and to

receive and report to the Court on Class Member's objections to the Settlement;

which shall generally be in accordance with the order set out in schedule "A". The Defendants shall consent to this order.

(2) Except as hereinafter provided, this Settlement Agreement shall be immediately terminated if the Court does not approve the Settlement Agreement as a result of the Motion at the Fairness Hearing.

SECTION 3 – NON-REFUNDABLE EXPENSES

3.1 Payments

(1) On or before June 12, 2008, the Contributing Party shall fund the Non-Refundable Expense Fund solely to permit Sutts, Strosberg LLP to pay the following Non-Refundable Expenses which shall constitute non-refundable advances against the Settlement Amount:

- (a) the costs of publishing the First Notice to a maximum of \$150,000;
- (b) the costs of the Interim Administrator for operating the Escrow Account, receiving objections, reporting to the Court and for performing all other required services until the Court approves or declines to approve the Settlement Agreement fixed in the amount of \$10,000 for fees, disbursements and taxes;
- (c) the costs of publishing and distributing the Second Notice to a maximum of \$200,000;
- (d) if necessary, the costs of publishing notice to the Class that the Settlement Agreement has been terminated by Atlas Holdings as per section 12.1 to a maximum of \$50,000; and
- (e) if the Court appoints the Administrator and thereafter the Settlement Agreement is terminated by Atlas Holdings as per section 12.1, the costs of the Administrator for performing the services required to prepare to implement the Settlement, which amount will be paid to the Administrator immediately after its appointment, fixed in the amount of \$90,000 for fees, disbursements and taxes.

(2) Within 10 days of the issuance of the Declaration contemplated in section 13, Sutts, Strosberg LLP shall pay to the Administrator for deposit in the Escrow Account any portion of the Non-Refundable Expense Fund that remains after payment of all Non-Refundable Expenses and the amount so paid shall thereafter immediately constitute part of the Escrow Settlement Amount.

(3) Sutts, Strosberg LLP shall account to the Court and the Parties for all payments it makes from the Non-Refundable Expense Fund. In the event that the Settlement Agreement is terminated pursuant to section 2(2) or 12.1, this accounting shall be delivered no later than 10 days after such termination.

