

## Schedule "A"

### NOTICE OF HEARING TO APPROVE SETTLEMENT OF OMERS/BOREALIS LAWSUIT

**TO:** All persons who at any time were active members, inactive members, deferred members and retired members of the OMERS Pension Plan (the "Members"), including their beneficiaries.

*Please read this notice carefully, as it may affect your legal rights.*

#### **Purpose of this Notice**

The purpose of this notice is to advise you of a proposed settlement reached in the action titled *MacKinnon v. Ontario Municipal Employees Retirement Board, Borealis Capital Corporation, Borealis Real Estate Management Inc., Ian Collier, R. Michael Latimer and Michael Nobrega* (the "Defendants") and the hearing to approve this settlement, scheduled for June 28, 2012.

#### **Background and Proposed Settlement**

In 2005, an action was commenced against the defendants alleging breaches in the transactions whereby OMERS transferred management of its real estate assets to Borealis Real Estate Management Inc. in 2002 and subsequently reassumed management in 2004.

On February 16, 2006, Wyman MacKinnon was appointed to act on behalf of "all persons who have a present, future, contingent or unascertained interest in the Ontario Municipal Employees Retirement System Fund or may be affected by this proceeding" ("Represented Persons"). If you fall under this description, you are a "Represented Person" and this action was brought on your behalf.

Following an extensive mediation process, a settlement agreement has been signed resolving the litigation. The mediation process was chaired by Stanley Beck, Q.C., a former Chair of the Ontario Securities Commission and former Dean of the Osgoode Hall Law School. The defendants made extensive documentary production during this mediation, which was reviewed by experts, counsel, and Mr. Beck.

Mr. Beck recommends the overall terms of settlement as being fair and in the best interests of all members and stakeholders of the OMERS pension plan. In his Report and letter of recommendations to the Court (his "Report and Recommendations"), Mr. Beck found no wrongdoing by any defendant. He further concluded that more detailed disclosure by OMERS fully explaining transactions and events at the time, which had not been previously supplied, may have avoided this litigation. Finally, he observed that the processes in place today will help to ensure better communication and strong governance practices in the future. The parties accept the findings and conclusions expressed in the Report and Recommendations.

While no payment is made by the defendants under the settlement agreement (except for reimbursement of the plaintiff's costs of the litigation), there has been extensive change in the governance structure at OMERS and these new strong governance practices will help to avoid these types of issues in the future.

OMERS and CUPE Ontario acknowledge that since the events giving rise to the litigation they have established improved working relationships and, further, the plaintiff and CUPE Ontario have confidence in, and fully support, the current leadership team at OMERS.

If it is approved by the Court, the settlement agreement requires that the Court action shall be dismissed and OMERS shall pay the plaintiff's costs of the litigation as the sole monetary payment made by any defendant.

The settlement agreement does not contain any admission of liability, and each of the defendants deny any wrongdoing or acts resulting in any liability.

If there is a conflict between the provisions of the Notice and the settlement agreement, the terms of the settlement agreement shall prevail.

### **The Court Hearing**

The court hearing with respect to the proposed settlement is scheduled to be held on June 28, 2012 at 10:00 a.m., at the courthouse located at 330 University Avenue, Toronto, Ontario, 8<sup>th</sup> floor.

At the hearing, the court will be asked to approve the proposed settlement.

If the settlement is approved, it will be binding on all "Represented Persons" (as defined above) unless a Represented Person can later establish that an exception is appropriate. It would be your responsibility to establish an exception is appropriate, **at your own expense, using your own lawyer.**

***Represented Persons who do not object to the proposed settlement do not need to appear at the hearing or take any other action.***

### **Objections to the Proposed Settlement**

Plan members or others interested in the outcome may attend the hearing and ask to make submissions on the proposed settlement. If you wish to object to the settlement, please provide written notice of your objection by June 8, 2012 and send it to:

Koskie Minsky LLP  
Communications Department  
c/o OMERS/Borealis action  
20 Queen St. West, Suite 900, Box 52,  
Toronto, ON M5H 3R3

Email: [omersborealispendaction@kmlaw.ca](mailto:omersborealispendaction@kmlaw.ca)

Written objections must be received at the above address by no later than June 8, 2012, and should include the following information:

- 1) The objecting person's name, address, telephone number, fax number and e-mail address (if applicable);
- 2) A statement of whether the person is an active member, inactive member, deferred member, retired member or beneficiary of OMERS;
- 3) A brief statement setting out the reasons for the objection; and
- 4) A statement as to whether the person intends to appear at the proposed settlement hearing and, if so, whether such attendance will be in person or by counsel. If the attendance will be by counsel, the person shall provide the relevant contact information for the designated counsel.

**Further Information**

A copy of the Mediator's Report and Recommendations, the settlement agreement and other information about this representative action is available on the website for plaintiff's counsel, Koskie Minsky LLP at <http://www.kmlaw.ca/Case-Central/Overview/?rid=41>.

This information can also be found on the OMERS website at [http://www.omers.com/corporate/corporate\\_news\\_and\\_events\\_news.aspx](http://www.omers.com/corporate/corporate_news_and_events_news.aspx). For further information, you may also contact Koskie Minsky LLP by phone at 1-866-545-9917.

People who seek the advice or guidance of their own personal lawyers do so at their own expense.

***This Notice has been approved by the Ontario Superior Court of Justice. Questions about this Notice should not be directed to the court.***