

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY THE 27<sup>TH</sup> DAY  
 )  
JUSTICE PATTERSON ) OF MAY, 2014

**B E T W E E N**

**BRUCE SIMMONDS, ROBERT GRANT  
and GORDON MOORE**

Plaintiffs

and

**ARMTEC INFRASTRUCTURE INC., CHARLES M. PHILLIPS,  
JAMES R. NEWELL, MICHAEL S. SKEA, DONALD W. CAMERON,  
SCOTIA CAPITAL INC., TD SECURITIES INC. and  
BMO NESBITT BURNS INC.**

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**ORDER**

THESE MOTIONS, made by:

- (a) the plaintiffs in the Simmonds Action for certification of the Simmonds Action as a class proceeding for the purposes of settlement and for an order pursuant to subsection 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 in accordance with the terms of the Settlement Agreement; and
- (b) Sutts, Strosberg LLP for the approval of the agreement respecting fees and disbursements between Sutts, Strosberg LLP and the plaintiffs pursuant to subsection 32(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

were heard on May 27, 2014 at Windsor, Ontario.

ON READING the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the affidavits of:
  - (i) Bruce Simmonds sworn May 9, 2014;
  - (ii) Robert Grant sworn May 9, 2014;
  - (iii) Gordon Moore sworn May 12, 2014;
  - (iv) Patricia A. Speight sworn May 7, 2014;
  - (v) Donna Fournier sworn April 16, 2014;
  - (vi) Joel Wiesenfeld sworn April 17, 2014;
  - (vii) Donna Fournier sworn May 22, 2104;
  - (viii) Gregory D. Wrigglesworth sworn May 26, 2014; and
  - (ix) Donna Fournier sworn May 26, 2014.

AND ON HEARING the submissions of counsel for the parties in the action,

AND ON BEING ADVISED that:

- (a) the parties consent to these orders;
- (b) Marsh Risk Consulting consents to being appointed Administrator;
- (c) Gregory Wrigglesworth of Kirwin Partners LLP consents to receive opt out forms, to report to the Court regarding opt-outs, and to being appointed Referee; and

- (d) there has been one objections to the proposed settlement received by Gregory Wrigglesworth.

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 order, the definitions in the Settlement Agreement apply to and are incorporated into this order and that the following definitions also apply:

- (a) “Claims Bar Deadline” means 5:00 p.m. eastern time on the date that is ninety (90) days after the first publication of the Second Short Form Notice;
- (b) “Class Counsel” means Sutts, Strosberg LLP;
- (c) “Escrow Account” means the interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario initially under the control of Class Counsel and then transferred to the control of the Administrator;
- (d) “Quebec Class Members” means every person who is a member of the class authorized by the Québec Court in the Québec Action; and
- (e) “Settlement Agreement” means the settlement agreement dated February 19, 2014 (without schedules) attached hereto as Schedule 1.

2. THIS COURT ORDERS that:

- (a) this action is certified as a class proceeding;
- (b) the class is defined as:  
the Prospectus Class and the Secondary Market Class;
- (c) the Prospectus Class is defined as:

all persons, other than Excluded Persons and Quebec Class Members, who acquired securities of Armtec pursuant to the Prospectuses and held some or all of those securities at the close of trading on the TSX on June 8, 2011;

(d) the Secondary Market Class is defined as:

all persons, other than Excluded Persons and Quebec Class Members, who acquired securities of Armtec during the Class Period on secondary markets and held some or all of those securities at the close of trading on the TSX on June 8, 2011;

(e) the common issues are:

(i) Did the defendants, or any of them, represent that Armtec had achieved or would achieve the level of earnings required in order to declare and pay dividends. If so, who made the representation, when, where and to whom?

(ii) Did Armtec or the individual defendants, or any of them, fail to disclose that because of margin compression and bad weather, Armtec had not achieved or would not achieve the level of earnings required in order to declare and pay dividends? If so, who failed to disclose that information, when, where, how and to whom?

(iii) Did Armtec's Preliminary Prospectus and/or Armtec's Short Form Prospectus contain a misrepresentation:

(a) as defined in the *Securities Act*, R.S.O. 1990 c. S.5, as amended;  
and

(b) the analogous provisions in the *Securities Act*, RSA 2000, c S-4, s. 211.03; *Securities Act*, SNB 2004, c S-5, s. 161.2; *Securities Act*, *Securities Act*, CCSM c S50, s. 176; *Securities Act*, RSBC 1996, c 418, s. 140.3; *Securities Act*, 1988, SS 1988-89, c S-42.2, s. 136.11; *Securities Act*, RSNS 1989, c 418, s. 146C; *Securities Act*, RSNL 1990, c S-13, s. 38.3; *Securities Act*, RSPEI 1988, c S-3.1, s. 124; *Securities Act*, RSQ c V-1.1, ss. 225.8, 225.9, 225.10, and 225.11; *Securities Act*, SNWT 2008, c 10, s. 124; *Consolidation of Securities Act*, SNU 2008, c 12, s. 124 and *Securities Act*, SY 2007, c 16, s. 124;

(f) Bruce Simmonds is appointed as the representative plaintiff of the Prospectus Class;

(g) Robert Grant and Gordon Moore are appointed as the representative plaintiffs of the Secondary Market Class; and

(h) the causes of action certified are breach of s. 130 of the OSA and negligent misrepresentation.

3. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of this action is fair and reasonable and in the best interests of the Class Members and is approved.
  
4. THIS COURT ORDERS that:
  - (a) the Settlement Agreement, without schedules, attached as Schedule 1 to this order, is approved and shall be implemented in accordance with its terms;
  - (b) the Second Short Form Notice, generally in the form attached as Schedule 2A (English) to this order, is approved;
  - (c) the Second Long Form Notice, generally in the form attached as Schedule 3A (English) to this order, is approved;
  - (d) the Plan of Notice, generally in the form attached as Schedule 4 to this order, is approved;
  - (e) the Plan of Allocation, generally in the form attached as Schedule 5 to this order, is approved;
  - (f) the Claim Form, generally in the form attached as Schedule 6A (English) to this order, is approved; and
  - (g) the Opt-Out Form, generally in the form attached as Schedule 7A (English) to this order, is approved.
  
5. THIS COURT ORDERS that Marsh Risk Consulting is 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 Plan of Allocation; and
  - (b) to manage the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, the Plan of Allocation and this order.
  
- 6. THIS COURT ORDERS that if the Defendants do not elect to terminate the Settlement Agreement in accordance with this order, Marsh Risk Consulting shall be paid from the Escrow Account an all-inclusive fee of \$420,000.
  
- 7. THIS COURT ORDERS that if the Settlement Agreement is terminated in accordance with this order, Marsh Risk Consulting may apply to the Court pursuant to section 18.1 of the Settlement Agreement for directions relating to the amount it is to be paid for the services it rendered to the date of termination.
  
- 8. THIS COURT ORDERS that the Administrator may implement a procedure permitting brokers to make claims on behalf of their clients if they are authorized to do so.
  
- 9. THIS COURT ORDERS that Gregory Wrigglesworth is 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 Settlement Agreement and Plan of Allocation.

10. 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, the Plan of Allocation, the Opt-Out Deadline and the Claims Bar Deadline substantially in the form of the Second Short Form Notice and the Second Long Form Notice, published and disseminated in accordance with the Plan of Notice.
11. THIS COURT ORDERS AND DECLARES that the notice to the Class Members described in paragraph 10 satisfies the requirements of section 17(6) of the *CPA*.
12. THIS COURT ORDERS that after publication and distribution of the Second Short Form Notice and the Second Long Form Notice in accordance with the Plan of Notice, Class Counsel shall file with the Court an affidavit confirming the publication and distribution of the notices in accordance with and as required by the Plan of Notice.
13. THIS COURT ORDERS that:
  - (a) each Class Member who wishes to opt out must submit, by mail, email or courier, a properly completed Opt-Out Form and all required supporting documents to Gregory Wrigglesworth by the Opt-Out Deadline;
  - (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, subject to any further order of the Court; and

(c) the Opt-Out Deadline shall not be extended unless ordered by the Court.

14. THIS COURT ORDERS that, within ten (10) days after the Opt-Out Deadline, Gregory Wrigglesworth shall report to the Courts, to the Defendants and to Class Counsel the names of those Class Members, if any, who have opted out of the Actions, the number of Eligible Shares held by each Class Member who opted out, and a summary of the information delivered by each Class Member who opted out.
15. THIS COURT ORDERS that, if the Opt-Out Threshold is exceeded, Armtec may elect to terminate the Settlement Agreement and set aside this order, provided that written notice of the election to terminate is provided to Class Counsel within thirty (30) days after they receive the last of the reports required by paragraph 14 of this order.
16. THIS COURT ORDERS AND DECLARES that this order is binding upon each Class Member who does not opt out in accordance with the terms of this order, 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.



17. 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 rights and liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, Class Counsel Fees, lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the 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 Shares, or relating to any conduct alleged, or that could have been alleged, in this action, including, without limitation, any such claims that have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Shares in the Class Period.
18. 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 (including any Opt-Out), 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.

19. THIS COURT ORDERS that to participate in this Settlement, a Class Member must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Court orders otherwise.
20. THIS COURT ORDERS that the plaintiffs, Class Counsel, the Referee or the Administrator may apply to the Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or relating to any other matter.
21. THIS COURT ORDERS that the plaintiffs and the defendants may apply to the Court for directions in respect of the termination of the Settlement Agreement in accordance with its terms or any matter relating thereto.
22. THIS COURT ORDERS that no person may bring any action or take any proceedings against the plaintiffs, defendants, Administrator, the Referee, or their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this order except with leave of the Court.
23. THIS COURT ORDERS that:
  - (a) the agreements dated June 19, 2011 among Sutts, Strosberg LLP and the plaintiffs are approved; and
  - (b) Class Counsel's fees are fixed at \$3,228,879, plus HST of \$419,754 to be allocated 94 percent to Sutts, Strosberg LLP and 6 percent to

Siskinds Desmeules, plus 25 percent of the interest earned on the Settlement Amount, plus HST, and shall be paid from the Escrow Account forthwith after the Settlement becomes final and any appeals have been completed or the time for any appeals has expired.

24. THIS COURT ORDERS that Sutts, Strosberg LLP's disbursements in the amount of \$147,986.49 are approved and shall be paid from the Escrow Account forthwith after the Settlement becomes final and any appeals have been completed or the time for any appeals has expired.

25. THIS COURT ORDERS that the disbursements incurred by Siskinds LLP in the amount of \$82,177.12 are approved and shall be paid from the Escrow Account forthwith after the Settlement becomes final and any appeals have been completed or the time for any appeals has expired.

26. THIS COURT ORDERS that upon the Effective Date, the Simmonds Action be dismissed without costs and with prejudice.

27. THIS COURT ORDERS that upon the Effective Date, the Locking Action be dismissed without costs and with prejudice

Signed June 13, 2014

Order effective May 27, 2014



JUSTICE

ENTERED AT WINDSOR	
In Book No.	<u>15</u>
re Document No.	<u>763</u>
on	<u>13 June 2014</u>
by	<u>[Signature]</u>