

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE MR.)
JUSTICE WINKLER) WEDNESDAY, THIS 23rd
DAY OF APRIL, 2003**

BETWEEN:

RICHARD PRENDIVILLE

Plaintiff

- and -

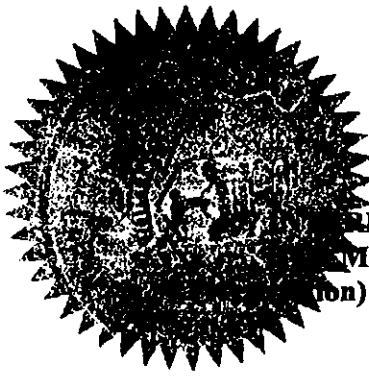
**INTERNATIONAL INC., 407 ETR CONCESSION COMPANY LIMITED,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (Minister for
Environment and Conservation) and ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO**

Defendants

ORDER

THIS MOTION made by the proposed representative Plaintiff, Richard Prendiville, for an Order that the within proceeding be certified as a Class Proceeding, and that the settlement of this action as against the Defendants be approved, was heard this day.

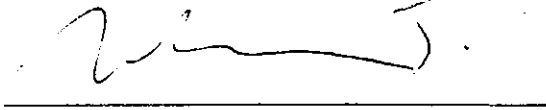
ON READING the Affidavit of Ian Roland, filed, and on hearing submissions of counsel for the proposed representative Plaintiff and counsel for the Defendants:



1. **THIS COURT ORDERS** that the within proceeding be certified as a Class Proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, ss. 2 and 5;
2. **THIS COURT ORDERS** that the Class be defined as all persons who between June 7, 1997 and April 20, 2003:
 - (a) used Highway 407 or who were the registered owner of a vehicle that travelled on Highway 407; and
 - (b) were charged a collection fee, plate denial fee, or late payment fee (collectively the "Late Payment Fee");
3. **THIS COURT ORDERS** that Richard Prendiville be appointed as the representative Plaintiff of the Class.
4. **THIS COURT ORDERS** that, on consent, Her Majesty the Queen in Right of Ontario (Minister for Privatization) shall be added as a party defendant to this proceeding.
5. **THIS COURT ORDERS** that the within proceeding be certified on the basis of the following common issues:
 - (a) Is the Late Payment Fee unenforceable as a penalty?
 - (b) Does the Late Payment fee violate S. 347 of the *Criminal Code of Canada*?
 - (c) Are the Defendants unjustly enriched by the Late Payment Fee or are the Class Members entitled to restitution in respect of the Late Payment Fee?
 - (d) Are Sections 13 to 26 of the *Highway 407 Act, 1998*, *ultra vires*?
 - (e) What damages, if any, are payable if the Late Payment Fee is a penalty?

6. **THIS COURT ORDERS** that the claim that the Late Payment Fee violates Section 347 of the *Criminal Code of Canada*, be and the same is hereby dismissed.
7. **THIS COURT ORDERS** that the claim that Sections 13 to 26 of the *Highway 407 Act, 1998* are *ultra vires*, be and the same is hereby dismissed.
8. **THIS COURT DECLARES** that the Settlement Agreement together with the attached Schedules appended hereto as Schedule A to this Order is fair, reasonable, and in the best interests of the members of the Class.
9. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to Section 29 of the *Class Proceedings Act, 1992*.
10. **THIS COURT DECLARES** that the Settlement Agreement in its entirety, including its preamble and Schedules, forms part of this Order and is binding upon the Defendants, the representative Plaintiff, and upon all members of the Class who do not opt out of the Class in accordance with the notice within 45 days following the date on which this Order is made.
11. **THIS COURT ORDERS** that the representative Plaintiff, all members of the Class and the Defendants shall comply with the terms of the Settlement Agreement.
12. **THIS COURT ORDERS** that notice of certification and of this settlement approval shall be published in accordance with the protocol set out in paragraph 19.1 and Schedule C of the Settlement Agreement.
13. **THIS COURT ORDERS** that Class Counsel shall report back in writing to this Court within one year of the date of this Order, such report to include information provided by 407 ETR Concession Company Limited about the number of Class Members who participated in the settlement and the total value of the credits paid to Class Members under Articles 4 and 5 of the Settlement Agreement.

14. **THIS COURT ORDERS** that 407 ETR Concession Company Limited shall pay to Class Counsel the fees, disbursements and GST set out in paragraph 20 of the Settlement Agreement, which fees, disbursements and GST are hereby approved.



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

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

Court File No. 01-CV-221919CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RICHARD PRENDIVILLE

Plaintiff

- and -

**407 INTERNATIONAL INC., 407 ETR CONCESSION COMPANY LIMITED,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (Minister for
Privatization) and ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO**

Defendants

SETTLEMENT AGREEMENT

Richard Prendiville, in his capacity as the Proposed Representative Plaintiff (the "Plaintiff") and the Defendants, 407 International Inc. and 407 ETR Concession Company Limited ("407 ETR") (collectively the "407 Defendants") and the Defendants, Her Majesty the Queen in Right of Ontario (Minister for Privatization) and Attorney-General for the Province of Ontario (collectively "the Crown") (the Plaintiff and the Defendants collectively "the Parties") hereby enter into this Settlement Agreement providing for the settlement of the Class Members action described above, subject to the terms set out below and the approval of the Ontario Superior Court of Justice ("the Court").

WHEREAS a Statement of Claim was issued on December 12, 2001 and amended on August 19, 2002 (the "Action") proposing the certification of various claims relating to late payment fees and other collection fees ("LPF") charged by 407 ETR and its predecessor the Ontario Transportation Capital Corporation ("OTCC") to Class Members;

AND WHEREAS the Action proposes a Class described as all persons who (a) used Highway 407 or will use Highway 407; and (b) paid, or have been charged, or will pay, or will be charged Late Payment Penalties (correctly identified as the late payment fee ("the LPF")) at any time between June 7, 1997 and the date of the Approval Order in this matter (the "Class Members");

AND WHEREAS counsel for the Class Members, Paliare Roland Rosenberg Rothstein LLP and Koskie Minsky and counsel for the 407 Defendants, Lenczner Slaght Royce Smith Griffin and McCarthy Tétrault LLP and counsel for the Crown, have conducted extensive settlement negotiations;

AND WHEREAS the Parties have exchanged affidavits and materials for a certification hearing including:

- (1) Affidavit of Richard Prendiville sworn April 1, 2002;

- (2) Affidavit of Ian Roland sworn April 1, 2002;
- (3) Supplementary Affidavit of Ian Roland sworn August 14, 2002;
- (4) Affidavit of Cameron J. Turner sworn August 12, 2002;
- (5) Affidavit of Christopher Secord sworn August 12, 2002;
- (6) Affidavit of Lawrence Sydney Rosen sworn August 12, 2002;
- (7) Affidavit of John Douglas Todd sworn August 13, 2002;
- (8) Affidavit of Stephen Markson sworn August 13, 2002;
- (9) Affidavit of Randy Luyk sworn June 28, 2002
- (10) Supplementary Affidavit of Randy Luyk sworn September 17, 2002;
- (11) Affidavit of Peter Steger sworn September 25, 2002.

AND WHEREAS the Action has not been certified to date;

AND WHEREAS the Defendants have denied and continue to deny the Plaintiff's claims in the Action, have denied and continue to deny any allegations of wrongdoing or liability to the Plaintiff or Class Members and have raised numerous defences;

AND WHEREAS based upon an analysis of the claims of the Class Members, and taking into account the extensive burdens and expense of

litigation, the risks and uncertainty associated with the proposed certification of this Action as a Class proceeding, the possibility of a protracted trial and appeal, and the proposed resolution of the claims of the Class Members set out in this Settlement Agreement, including the fair and cost effective method of resolving the claims of Class Members provided for in this Settlement Agreement, the Plaintiff and Plaintiff's counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interest of the Class Members:

AND WHEREAS the 407 Defendants and the Crown have concluded that this Settlement Agreement is desirable in order to avoid the time and expense of defending this Action and to resolve finally the pending and potential claims relating to the LPFs charged to the Class Members;

AND WHEREAS while for the purpose only of this Settlement Agreement the Defendants consent to the certification of this Action as provided below, the Defendants expressly reserve their right to contest certification of any other related or unrelated proceedings and assert that this Action would not be appropriate for certification in the absence of this Settlement Agreement;

AND WHEREAS the Parties agree that, for the purposes of this settlement, and with no admission of liability by the Defendants, the claims of the Plaintiff and Class Members are best resolved by this Settlement Agreement and that the terms of the Settlement Agreement provide the preferable procedure for resolving Class Members claims, subject to Court approval of this Settlement Agreement;

AND WHEREAS the Parties intend by this Settlement Agreement to resolve fully and finally, by a binding settlement, all of the claims of the Class Members relating to any and all aspects of the LPF and the previous collection fee charged by 407 ETR or its predecessor OTCC, including claims that:

- (a) the LPF was, in substance, interest and exceeded the interest rate permitted by Section 347(1)(a) and (b) of the *Criminal Code of Canada*;
- (b) the LPF was a penalty and unenforceable;
- (c) ss. 13 to 26 of the *Highway 407 Act, 1998 S.O. 1998, c. 28*, as amended, are *ultra vires*;
- (d) the Class Members are entitled to restitution of the amount paid in LPFs; and
- (e) 407 ETR and its predecessor OTCC, were unjustly enriched by the LPF.

AND WHEREAS the Parties agree that neither this Settlement Agreement and certification of this Action by the Court for settlement purposes, nor any steps taken to carry out this Settlement Agreement, nor any document relating to it, will constitute any admission of liability by the Defendants or be used as evidence of liability or damages against the Defendants or for any other purpose or in any other proceeding, matter or cause, including any claims or proceedings between or among the Defendants. Further, neither this Settlement Agreement, nor any document relating to it, nor any action taken to carry out this Settlement Agreement, shall be offered or received in evidence in any action or proceeding against or between the Defendants, the Plaintiff, the Class Members, or any of them, in any Court, administrative agency or tribunal, for any purpose other than to enforce the provisions of this Settlement Agreement or to seek Court approval of this Settlement Agreement in the manner described below;

AND WHEREAS the Parties acknowledge that:

- (a) the LPF has not been charged by 407 ETR since August 2002 and 407 ETR has foregone substantial cost recovery fees accordingly;
- (b) the LPF as it existed will not be reinstated;
- (c) since August 2002, 407 ETR has expended substantial sums in pursuing collections from its customers;

- (d) 407 ETR has added hundreds of new customer service representatives and made significant improvements in its customer service operations;
- (e) 407 ETR has announced that a new collection fee and enforcement fee will be implemented, which it has designed with the assistance of external advisors to ensure that its new fees are fair and reasonable and do not represent either interest or penalties at law;

NOW THEREFORE subject to the approval of the Court, the Parties agree that this Settlement Agreement sets out the resolution of the claims of the Class Members action in their entirety.

1. INTERPRETATION

1.1 Definitions

In this Settlement Agreement, some words are defined and have the meanings set out below:

"Approval Hearing": Shall mean the date on which the Ontario Superior Court of Justice holds a hearing to consider this Settlement Agreement and certifying this action as a Class proceeding.

"Approval Order": Shall mean the Order or Judgment of the Ontario Superior Court of Justice which certifies this action as a class proceeding for settlement purposes and approves this Settlement Agreement.

"Class Counsel": Shall mean Paliare Roland Rosenberg Rothstein LLP and Koskie Minsky and their

respective partners, associates and employees.

- "Class Members"**: Shall mean persons whose accounts were charged the LPF or who otherwise paid the LPF in the class period and shall include minors.
- "Class Period"**: Shall mean the period from June 7, 1997 to the date of the Approval Order.
- "Counsel for the Crown"**: Shall mean the Attorney General for Ontario and includes Thomas Bell.
- "Counsel for 407"**: Shall mean Lenczner Slaght Royce Smith Griffin and McCarthy Tétrault LLP.
- "Coupon"**: Shall mean a coupon similar to that attached as Schedule D.
- "Delinquent"**: Shall mean that the account of the Class Member has a balance of outstanding charges of any type for greater than 90 days.
- "Effective date"**: Shall mean the date on which the Ontario Superior Court of Justice has granted its Judgment or Order approving this Settlement Agreement and the time for an appeal of the Judgment or Order, if an appeal lies, has expired, and all appeals from such Approval Order have been exhausted or abandoned.
- "Eligibility Date"**: Shall mean the date that falls 45 days after the Effective Date.
- "LPF"**: Shall mean the late payment fee charged by 407 ETR during the class period and includes the collection fees and plate denial fees charged by OTCC during the class period.

"Opt Out Deadline": Shall mean the date that falls 45 days after the Approval Order has been made.

"Opt Out Form": Shall mean a form similar to that attached as Schedule E.

"Redemption date": Shall mean the date that falls 60 days after the "Eligibility Date".

"Termination Date": Shall mean the date that falls 10 days after the Opt Out Deadline.

1.2 Gender and Number

In this Settlement Agreement, words importing the singular include the plural and vice versa and words importing gender include both genders.

2. APPROVAL ORDERS

2.1 The Parties shall take all steps necessary to ensure that Court approval of this Settlement Agreement is sought in an expedited manner. The Parties shall seek an Approval Order from the Court in the form attached as Schedule A hereto. The Approval Order will be conditional until the Court has approved the settlement herein and only after the Court has approved the settlement, and any and all appeals have been exhausted or abandoned shall this Settlement Agreement be binding and effective and the Approval Order shall then become binding and effective (the "Effective Date").

3. NOTICE OF HEARING FOR CERTIFICATION AND COURT APPROVAL OF SETTLEMENT

3.1 A Notice of Hearing for Certification and Court Approval of the Settlement Agreement shall be disseminated no later than 30 days prior to the "Approval Hearing" in the form and pursuant to the protocol outlined in Schedules B and C hereto.

4. **BENEFITS FOR CLASS MEMBERS**

4.1 LPF Credit

All Class Members whose accounts were charged the LPF during the "Class Period", and who paid the LPF prior to the Eligibility Date, will receive a one-time credit, applied to the account of the Class Member, of \$6.00 per LPF paid where:

- (a) the Class Member has an account with the 407 ETR as at the "Eligibility date";
- (b) the account of the Class Member is not "Delinquent" as at the Eligibility date;
- (c) 407 ETR Receives a "Coupon" completed by the Class Member, and containing an original signature of the Class Member prior to the "Redemption date";
- (d) the LPF has not otherwise been reversed; and
- (e) the LPF charged was \$30.00.

4.1.1

Where the criteria in Article 4.1 (a) to (d) are met but the LPF charged was less than \$30.00, the LPF credit applied shall be reduced pro rata.

4.2 Use of LPF Credit

4.2.1

407 ETR will, upon receipt of a Coupon completed by an eligible Class Member, within 90 days of the Redemption Date, post the \$6.00 or lesser LPF credit to the account of the Class Member maintained at 407 ETR.

4.2.2

The LPF credit may be applied to any outstanding balance in the sole discretion of 407 ETR, acting reasonably.

4.2.3

Where no outstanding balance exists, the LPF credit posted to the account of a Class Member must be used within 12 months of the Redemption Date. All or any part of an LPF credit not so used, will be reversed from the account of the Class Member 12 months after the Redemption Date.

4.2.4

Any credit or credits posted to the accounts of eligible Class Members are not transferable and have no cash value.

4.2.5

Where a Class Member's account was charged with an LPF more than once, the Class Member will be eligible to receive a credit for each LPF that was charged to the account, on the same basis as set out in this Article or Article 5.

5. LPF REVIEW

5.1 A Class Member, whose account has been charged the LPF, may apply, before the Redemption Date, to 407 ETR in writing to have the LPF charge reversed and a credit equal to \$30.00 applied to the account of the Class Member where the Class Member has an account with 407 ETR and:

- (i) the Class Member establishes that a sufficient payment was made before the 90th day after the date of an invoice, and before an LPF related to that invoice was charged; or
- (ii) the LPF was a second or subsequent charge to an LPF erroneously charged for the same underlying invoice, or where partial payments have been made.

5.2 Where a Class Member satisfies the criteria set out in Article 5.1, above, 407 ETR shall credit the Class Member's account accordingly. Where a Class Member's account is credited with a \$30.00 credit, such credit will be applied to any outstanding balance in the sole discretion of 407 ETR, acting reasonably. Where the LPF

charged was less than \$30.00, the Class Member's account shall be credited by that amount actually charged and not \$30.00. The balance of the provisions of Article 5 apply to a lesser amount credited under this Article.

5.3 Where no outstanding balance exists, a \$30.00 credit posted to the account of a Class Member upon completion of a LPF review, must be used within 12 months of the Redemption Date. All or any part of a \$30.00 credit not so used, will be reversed from the account of the Class Member 12 months after the Redemption Date.

5.4 A LPF credit posted to the account of a Class Member is not redeemable for cash and is not transferable. In the event that the account of a Class Member is granted a credit of \$30.00, no \$6.00 or other LPF credit shall be granted to that Class Member's account for the same LPF charged.

5.5 The application of a Class Member for a LPF review credit shall be determined overall in accordance with the policies of 407 ETR, including the customer service policies.

5.6 Where a Class Member's account was charged with n LPF more than once, the Class Member will be eligible to receive a credit for each LPF that was charged to the account, on the same basis as set out in this Article or Article 4.

6. **NO OTHER BENEFITS**

6.1 Apart from the credits described above, no other credit or payment whether on account of the LPF, interest, or any other loss related to the LPF, shall be paid or credited to a Class Member.

6.2 Class Members are individually responsible for the cost of completion of any application or Coupon required to obtain any credit including the preparation and mailing of any submission or application for an LPF review. 407 ETR is responsible for the costs of administering the review of Coupons and applications of credits.

7. **APPLYING FOR THE CREDIT**

7.1 This provision applies to the \$6.00 LPF credit described in Article 4 above and LPF review credit described in Article 5, above.

7.2 A Class Member may make a claim for a benefit under this Settlement Agreement only by completing and returning by ordinary post to Malton C.S.C., P.O. Box 2130, Mississauga, Ontario, L4T 4L8: Attention "407 LPF Credit", a Coupon that shall be printed in newspaper notices or printed from the website of 407 ETR, appearing after the date of the Approved Order and up to the Eligibility Date and similar to that illustrated in Schedule D attached. The Coupon must be post-marked prior to the Redemption Date to be valid. Where a Class Member has not completed the Coupon completely or accurately, 407 ETR agrees that it will make its best efforts to interpret the application for a benefit and to grant a benefit accordingly, in its sole discretion. No other method of application for a credit will be accepted.

7.3 The completed Coupon must identify the name of the Class Member, together with the account number of the Class Member, and must bear an original signature.

7.4 Where a Class Member had an account with 407 ETR or with OTCC but no longer has an account, 407 ETR will create an account for the Class Member as at the Eligibility Date if the Class Member is to be awarded a credit. 407 ETR will create such accounts at no cost to the Class Member.

8. **OPTING OUT**

8.1 Class Members shall have the right to exclude themselves and opt out from this Settlement Agreement. A Class Member who elects to opt out of the Settlement Agreement shall file with counsel for the Plaintiff an "Opt Out Form" similar to that attached as Schedule E, by the "Opt Out Deadline". Class Members who opt out shall be excluded from the Class Action and from any and all rights and obligations under this Settlement Agreement and may not refer to it in any subsequent proceeding relating to the LPF.

8.2 Subject to the right of termination contained in Article 12, below, Class Members who have not opted out in the manner and time prescribed above shall be deemed to have elected to participate in this Settlement Agreement and thus shall be bound by this Settlement Agreement and all related Court Orders, regardless of whether they participate in the benefits described above or receive any consideration whatsoever.

8.3 No person may opt out on behalf of a minor or person under a disability without leave of the Court after notice to the Public Guardian and Trustee and the Children's Lawyer as the case may be.

8.4 The Defendants and their counsel shall be provided, by counsel for the Plaintiff, with a list of the names of those Class Members who have opted out of this Settlement Agreement immediately upon the expiry of the "Opt Out Deadline".

9. **ADMINISTRATION OF SETTLEMENT**

9.1 407 ETR shall administer this settlement diligently and in good faith according to the terms of this Settlement Agreement.

9.2 407 ETR shall establish a dedicated staff with responsibility for administering all claims made under this Settlement Agreement. 407 ETR shall use its best efforts to post LPF credits to the accounts of Class Members within 90 days of the Redemption Date.

9.3 The processes for the administration of this Settlement Agreement and the operation of the claims review process under this Settlement Agreement will be subject to reasonable audit and review by Class Counsel, as specified below, for the purpose of determining that 407 ETR is complying with the terms of this Settlement Agreement. Such audit and review shall be coordinated with counsel for 407 ETR and may consist of individual claim auditing, review of statistical claim data and physical auditing of the administrative processes of 407 ETR, as may be reasonably required to determine that 407 ETR is complying with the terms of this Settlement Agreement.

9.4 If, in the opinion of Class Counsel, the terms of this Settlement Agreement are not being performed in a manner consistent with this Settlement Agreement, and if 407 ETR has not remedied the alleged problems after having been given reasonable notice of them, Class Counsel may bring a motion by telephone conference to The Honourable Mr. Justice Winkler, or his designate, for directions, who shall have all the powers set out in the *Class Proceedings Act, 1992* including the power to deal with costs of any such motion.

9.5 The right of Class Counsel to audit and review the administration of this Settlement Agreement shall terminate 120 days after the Redemption Date.

10. **FRAUD**

10.1 In addition to any other remedy available to 407 ETR at law, should any Class Member knowingly submit false evidence in support of any claim made pursuant to this Settlement Agreement, upon notice to Class Counsel and the Class Member in writing, the Class Member shall be disentitled to any benefit under this Settlement Agreement and shall be deemed to forfeit the right to opt out of this Settlement Agreement.

11. **COURT APPROVAL/OTHER LEGAL PROCEEDINGS**

11.1 The terms of this Settlement Agreement are subject to and conditional upon a final judgment of Court approval. Unless so approved by the Court, this Settlement Agreement is of no force and effect.

12. **RIGHT OF TERMINATION**

12.1 Within 10 days of the Opt Out Deadline as that term is defined in Article 1.1 of this Settlement Agreement, 407 ETR may unilaterally terminate this Settlement Agreement by giving written notice to Class

Counsel if more than 5,000 Class Members have opted out of this Settlement Agreement by that time (the "Termination Date").

13. **EFFECT OF NON-APPROVAL OR TERMINATION**

13.1 If the condition to which this Settlement Agreement is subject, as set out in Article 11, is not satisfied as provided therein, or if written notice of termination is delivered by 407 ETR under Article 12:

13.1.1

This Settlement Agreement shall be null and void and shall have no force and effect, and no party to this Settlement Agreement shall be bound by any of its terms, except for the terms of this Article;

13.1.2

This Settlement Agreement, and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement; and

13.1.3

This Settlement Agreement, the fact of its negotiation and execution, the certification of the Class and any approval of this Settlement Agreement by any Court shall not constitute any admission by the Defendants or be used as evidence against the Defendants for any other purpose or in any other proceeding or matter. For greater certainty, this Settlement Agreement shall not constitute an admission by the Defendants that the Action or any other legal proceeding should be certified as class actions and the fact or terms of this Settlement Agreement or anything connected with it shall not be used in any way in support of certification of the Action or any other legal proceeding as a class action.

14. **FINAL JUDGMENT**

14.1 The Parties will jointly submit a proposed judgment approving this Settlement Agreement to the Court. The proposed judgment shall provide that, subject to the terms of this Settlement Agreement, the judgment constitutes:

14.1.1

The full and final resolution and release of all claims and causes of action that have or could have been raised against the Defendants by any Class Member or the Class Member's personal representative in the Action arising directly or indirectly from or in connection with the LPF, collection fee or interest;

14.1.2

A full and final release by all Class Members of the Defendants from any and all liability or damages as described in Article 15, below;

14.1.3

A covenant by all Class Members not to make any claim or commence or maintain any action or proceeding against any third party including any person or corporation or the Crown arising from or in connection with the LPF, collection fee, or interest arising against the Releasees, as that term is defined in Article 15, in which any claim could arise against the Releasees, or any of them, for contribution or indemnity.

14.2 The Parties shall propose that the judgment provide that the final judgment of the Court shall not be effective until a list of those Class Members who have opted out and an affidavit reporting on whether the Settlement Agreement has been terminated by 407 ETR under Article 12 have been filed with the Court.

15. **RELEASES**

15.1 In consideration of the settlement benefits set out in this Settlement Agreement, the Class Members, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, trustees and assigns, hereby release the 407 Defendants and the Crown, their parent corporations, predecessors, partners, divisions, licensees, successors, subsidiaries, assigns, affiliates, and past, present and future directors, officers, attorneys, employees, agents, consultants, accountants, insurers, advisors and other representatives ("the Releasees") of any type from any and all claims, lawsuits, demands, violation of any Provincial, Federal or municipal statute, and causes of action of any type arising from the beginning of time to the date of this Settlement Agreement that were asserted or could have been asserted in this Action related in any way to the charging or payment of any LPF or collection fee, or interest or damages related thereto by or on behalf or through the representative Plaintiff or any Class Member individually, collectively, or otherwise based upon the conduct of any or all of the Defendants.

15.2 The Approval Order shall forever bar the claims of the Class Representative Plaintiff and of all Class Members which were asserted or could have been asserted in the proceedings referred to in the preambles herein.

15.3 Any Class Member who does not opt out shall not commence or maintain any proceedings against anyone who may, or does, claim over or seek contribution or indemnity from any of the Releasees.

16. **ENTIRE SETTLEMENT AGREEMENT**

16.1 This Settlement Agreement, together with the preambles and the attached Schedules, constitutes the entire agreement between the Parties pertaining to the LPF and this action, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written; which may have occurred previously. There are no warranties or representations between the Parties in connection with the subject matter of this Settlement Agreement and this Action, except as specifically set out here and the

Plaintiff acknowledges that none have been relied upon by the parties in entering into this Settlement Agreement.

17. **NOTICE TO THE PARTIES**

17.1 All communication written pursuant to this Settlement Agreement shall be sent to the persons identified at the following addresses:

Class Counsel: Ken Rosenberg
Paliare Roland Rosenberg Rothstein LLP
250 University Avenue, Suite 501
Toronto, Ontario, M5H 3E5

Kirk Baert
Koskie Minsky
20 Queen Street West, Suite 900
Toronto, Ontario, M5H 3R3

407 Counsel: J. Thomas Curry
Lenczner Slaght Royce Smith Griffin
130 Adelaide Street West
Toronto, Ontario, M5H 3P5

Darryl Ferguson or Caroline Zayid
McCarthy Tétrault
Suite 4700, TD Bank Tower
Toronto-Dominion Centre
Toronto, Ontario, M5K 1E6

Crown Counsel: Thomas Bell
Crown Law Office, Ministry of the Attorney
General
720 Bay Street, 8th Floor
Toronto, Ontario, M5G 2K1

18. **JURISDICTION OF COURTS**

18.1 The Court shall retain exclusive and continuing jurisdiction over the class action claims and the Class Members.

19. **NOTICES**

19.1 If approval of the settlement is granted by the Court pursuant to Article 11, above, and if this Settlement Agreement is not otherwise terminated pursuant to Article 12, above, then within 7 days after the Termination Date, 407 ETR shall publish a Notice to Class Members one time in each of the Canadian daily newspapers set out in Schedule C on dates and in a form to be approved by the Court.

19.2 All expenses relating to the publication of notice to Class Members pursuant to this Settlement Agreement shall be borne by 407 ETR.

20. **LEGAL FEES AND EXPENSES**

20.1 407 ETR will pay the all-inclusive sum of \$1.3 million in respect of Class Counsel fees in this matter, for, without limitation, investigation, research, commencement and conduct of the Action, negotiation, finalization, and all proceedings in connection with Court approval of this Settlement Agreement, including all work performed in relation to the audit described in Article 9, all work contemplated by or arising pursuant to this Settlement Agreement, including in relation to implementation of this Settlement Agreement, and representation, assistance and advice of Class Counsel to the Plaintiff or other Class Members in relation to any of the foregoing, in all respects whether occurring prior to, on or at any time after, the date of this Settlement Agreement. In addition to the fees described here, 407 ETR will pay Class Counsel's reasonable disbursements, including expert witness fees, together with applicable GST.

20.2 Subject to Article 20.3, payment of the above sum shall be made as follows:

20.2.1

Within 20 days after the Effective Date, 407 ETR shall pay the sum of \$750,000 to Class Counsel and deposit the remaining amount into an interest-bearing trust account;

20.2.2

Within 10 days after the period provided for in Article 12 has expired and the Settlement Agreement has not been terminated, 407 ETR shall give written notice thereof, and the remaining amount including accrued interest shall be paid to Class Counsel from the funds in the trust account;

20.2.3

Each payment shall be made to Class Counsel in accordance with one irrevocable payment direction to 407 ETR, signed by Class Counsel.

20.3 If 407 ETR terminates this Settlement Agreement as provided for in Article 12, the monies described above in s. 20.1 and the monies in the trust account including accrued interest will be repaid to 407 ETR within 10 days of 407 ETR having provided notice to Class Counsel under Article 12, above.

MISCELLANEOUS**21. TAX LIABILITIES**

21.1 407 ETR shall not be responsible for any tax liabilities accruing to any Class Members, including any tax arising from the implementation of any remedy, as a result of this Settlement Agreement.

22. **CHANGE OF TIME PERIODS**

22.1 The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by Court Order or by the written agreement of Class Counsel and counsel for the Defendants without notice to members of the Class.

23. **TIME FOR COMPLIANCE**

If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or Court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

24. **NO ORAL MODIFICATIONS OR WAIVERS**

No amendment or termination of any provision of this Settlement Agreement shall be effective unless it is in writing and is executed by or on behalf of each of the Parties. No Party will be deemed to have waived the exercise of any right or obligation under this Settlement Agreement unless such waiver is in writing and signed by or on behalf of the Party.

25. **ENUREMENT**

This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and each Class Member and each of their respective successors and personal representatives.

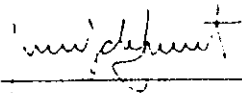
26. **GOVERNING LAW**

.. This Settlement Agreement shall be interpreted in accordance with the laws of the Province of Ontario.

27. **COUNTERPARTS**

This Settlement Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

Dated: MARCH 7, 2003 407 ETR CONCESSION COMPANY LIMITED

By: 

Dated: _____, 2003
Paliare Roland Rosenberg Rothstein LLP
On their own behalf and as counsel to Richard Prendiville

Dated: _____, 2003
Koskie Minsky
On their own behalf and as counsel to Richard Prendiville

Dated: _____, 2003
Lerner Slaght Royce Smith Gr...
On their own behalf and as counsel to 407 International Inc. and 407 ETR Concession Company Limited

27. **COUNTERPARTS**

This Settlement Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

Dated: _____, 2003

407 ETR CONCESSION COMPANY LIMITED

By: _____

Dated: March 7, 2003

RRR per HR
Paliare Roland Rosenberg Rothstein
LLP

On their own behalf and as counsel to
Richard Prendiville

Dated: March 7, 2003

Koskie Minsky
Koskie Minsky

On their own behalf and as counsel to
Richard Prendiville

Dated: March 7, 2003

Lenczner Slaght Royce Smith Griffin per J.T. CURRY
Lenczner Slaght Royce Smith Griffin
On their own behalf and as counsel to
407 International Inc. and 407 ETR
Concession Company Limited

Dated: March 7, 2003

McCarthy Tétrauld
McCarthy Tétrauld LLP
On their own behalf and as counsel to
407 International Inc. and 407 ETR
Concession Company Limited

Dated: March 7, 2003

Attorney General for Ontario
Attorney-General For the Province of
Ontario

SCHEDULE A

Court File No. 01-CV-221919CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.) **WEDNESDAY, THIS 23rd**
)
JUSTICE WINKLER) **DAY OF APRIL, 2003**

BETWEEN:

RICHARD PRENDIVILLE

Plaintiff

- and -

**407 INTERNATIONAL INC., 407 ETR CONCESSION COMPANY LIMITED,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (Minister for
Privatization) and ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO**

Defendants

ORDER

THIS MOTION made by the proposed representative Plaintiff, Richard Prendiville, for an Order that the within proceeding be certified as a Class Proceeding, and that the settlement of this action as against the Defendants be approved, was heard this day.

ON READING the Affidavit of Ian Roland, filed, and on hearing submissions of counsel for the proposed representative Plaintiff and counsel for the Defendants:

1. **THIS COURT ORDERS** that the within proceeding be certified as a Class Proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, ss. 2 and 5;
2. **THIS COURT ORDERS** that the Class be defined as all persons who between June 7, 1997 and the date of this Order:
 - (a) used Highway 407 or who were the registered owner of a vehicle that travelled on Highway 407; and
 - (b) were charged a collection fee, plate denial fee, or late payment fee (collectively the "Late Payment Fee");
3. **THIS COURT ORDERS** that Richard Prendiville be appointed as the representative Plaintiff of the Class.
4. **THIS COURT ORDERS** that, on consent, Her Majesty the Queen in Right of Ontario (Minister for Privatization) shall be added as a party defendant to this proceeding.
5. **THIS COURT ORDERS** that the within proceeding be certified on the basis of the following common issues:
 - (a) Is the Late Payment Fee unenforceable as a penalty?
 - (b) Does the Late Payment fee violate S. 347 of the *Criminal Code of Canada*?
 - (c) Are the Defendants unjustly enriched by the Late Payment Fee or are the Class Members entitled to restitution in respect of the Late Payment Fee?
 - (d) Are Sections 13 to 26 of the *Highway 407 Act, 1998*, *ultra vires*?
 - (e) What damages, if any, are payable if the Late Payment Fee is a penalty?

6. **THIS COURT ORDERS** that the claim that the Late Payment Fee violates Section 347 of the *Criminal Code of Canada*, be and the same is hereby dismissed.
 7. **THIS COURT ORDERS** that the claim that Sections 13 to 26 of the *Highway 407 Act, 1998* are *ultra vires*, be and the same is hereby dismissed.
 8. **THIS COURT DECLARES** that the Settlement Agreement together with the attached Schedules appended hereto as Schedule A to this Order is fair, reasonable, and in the best interests of the members of the Class.
 9. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to Section 29 of the *Class Proceedings Act, 1992*.
 10. **THIS COURT DECLARES** that the Settlement Agreement in its entirety, including its preamble and Schedules, forms part of this Order and is binding upon the Defendants, the representative Plaintiff, and upon all members of the Class who do not opt out of the Class in accordance with the notice within 45 days following the date on which this Order is made.
 11. **THIS COURT ORDERS** that the representative Plaintiff, all members of the Class and the Defendants shall comply with the terms of the Settlement Agreement.
 12. **THIS COURT ORDERS** that notice of certification and of this settlement approval shall be published in accordance with the protocol set out in paragraph 19.1 and Schedule C of the Settlement Agreement.
 13. **THIS COURT ORDERS** that 407 ETR Concession Company Limited shall pay to Class Counsel the fees, disbursements and GST set out in paragraph 20 of the Settlement Agreement, which fees, disbursements and GST are hereby approved.
-

SCHEDULE "B"

NOTICE OF THE CERTIFICATION AND COURT APPROVAL OF SETTLEMENT OF THE HIGHWAY 407 CLASS ACTION **This notice may affect your rights.** **Please read carefully.**

CERTIFICATION ORDER

On April 23, 2003, the Ontario Superior Court of Justice shall conduct a hearing, the purpose of which shall be to certify the Highway 407 Class Action, Court File No. 01-CU-221919CP, and to approve the settlement of the Class Proceeding.

THE CERTIFIED CLASS

1. Subject to the Court's approval, the certified Class shall be defined as:

"All persons who (a) used Highway 407 or will use Highway 407; and (b) paid, or have been charged, or will pay or will be charged late payment penalties (correctly identified as the late payment fee ("the LPF")) at any time between June 7, 1997 and the date of the approval of the Order in this matter (the "Class Members")."

2. This Class Proceeding is brought against 407 International Inc., 407 ETR Concession Company Limited, Her Majesty The Queen In Right Of Ontario (Minister for Privatization) and Attorney-General For The Province Of Ontario ("the Defendants")

THE CERTIFIED ISSUES

3. Subject to the Court's approval, the certified common issues shall be:

- (a) Is the Late Payment Fee unenforceable as a penalty?
- (b) Does the Late Payment Fee violate s. 347 of the *Criminal Code of Canada*?
- (c) Are the Defendants unjustly enriched by the Late Payment Fee or are the Class Members entitled to restitution in respect of the Late Payment Fee?

- (d) Are Sections 13 to 26 of the *Highway 407 Act, 1998, ultra vires*?
- (e) What damages, if any, are payable to the Class?

TERMS OF PROPOSED SETTLEMENT

Subject to the Court's approval, the Class Proceeding will be settled on the basis set out in the Settlement Agreement dated March 7, 2003, summarized below. Class Members are encouraged to review the entire Settlement Agreement, complete copies of which may be obtained from the sources described at the end of this Notice.

- (a) All Class Members whose accounts were charged the LPF and who paid the LPF prior to the Eligibility Date will receive a one-time credit to the account of the Class Member of \$6.00 where the Class Member's account is not delinquent as at the Eligibility Date;
- (b) To receive the \$6.00 LPF credit, the Class Member must complete and mail a Coupon to Highway 407;
- (c) A Class Member whose account was charged the LPF may apply to have the LPF reversed where the Class Member establishes
 - (i) that a sufficient payment was made before the 90th day after the date of an invoice, and before the LPF relating to that invoice was charged; or
 - (ii) the LPF was a second or subsequent charge to an LPF, erroneously charged for the same underlying invoice;
- (d) 407 ETR shall administer the settlement of this action;
- (e) The Court may issue orders as necessary to uphold and enforce the provisions of the Settlement Agreement;
- (f) Each Class Member and his or her heirs, administrators, executors, personal representatives, and successors shall be deemed to have released the defendants, their parent corporations, predecessors, partners, divisions, licensees, successors, subsidiaries, assigns, affiliates, and past, present and future directors, officers, attorneys, employees, agents, consultants, accountants, insurers, advisors and other representatives from all claims of every nature or kind that were asserted or could have been asserted in this action related to the LPF or otherwise based upon the conduct of any or all of the Defendants;

- (g) The claims by the Class Members that the LPF violates Section 347 of the *Criminal Code of Canada* and the claim that Sections 13 to 26 of the *Highway 407 Act, 1998* are ultra vires shall be dismissed;
- (h) The 407 Defendants will pay the fees of Class Counsel to be fixed by the Court in accordance with Section 32(2) of the *Class Proceedings Act, 1992*, in the amount of \$1,300,000.00 plus disbursements and taxes;
- (i) The Class Members will have until a date to be fixed by the Court to opt out of this class action by sending a written election by mail, as the Court will direct, and no Class Member will be permitted to opt out of this class action after the date fixed by the Court;
- (j) No person may opt out a minor or a person who is under a disability without leave of the Court after notice to the Public Guardian and Trustee and/or to the Children's Lawyer, as the case may be;
- (k) All Class Members except those who opt out of this class action will be bound by the settlement if the Court approves it.

The Defendants do not admit any wrongdoing or liability on their part. The proposed settlement is a compromise of disputed claims.

SETTLEMENT APPROVAL HEARING

The Court will decide whether it should approve the proposed settlement, as recommended by class representatives and Class Counsel. The hearing to decide whether to approve the proposed settlement will be held on April 23, 2003 at 10:00 a.m. at the Court House at 361 University Avenue, Toronto, Ontario.

Class Members who do not oppose the proposed settlement need not appear at the hearing or take any other action to indicate their desire to participate in the proposed settlement. At the hearing, the Court will consider objections to the proposed settlement by Class Members, but only if these objections are sent in written form on or before April 16, 2003 to Koskie Minsky, Attention: Highway 407 Class Action. Class Members who object to the proposed settlement shall include in their written objection the following terms:

- (a) his, her or its name, address, telephone number, fax number and e-mail address;
- (b) a brief statement of the nature of and reasons for the objection; and

- (c) whether he, she or a representative of it intends to appear at the Court hearing in person or by counsel, and if by counsel, the name, address, telephone number, fax number and e-mail address of counsel.

ADDITIONAL INFORMATION

Any questions about the matters in this notice should *not* be directed to the Court as its administrative structure is not designed to address this type of inquiry. Complete copies of the Settlement Agreement may be obtained by attending at the 407 ETR Operations Centre, 6300 Steeles Avenue West, Woodbridge, Ontario, by visiting 407 ETR's website at: www.407ETR.com, or by visiting Class Counsel's website at: www.paliareroland.com and www.koskieminsky.com.

Questions may be directed to one of the following Class Counsel:

Ken Rosenberg
Paliare Roland Rosenberg Rothstein LLP
250 University Avenue
Suite 501
Toronto, Ontario M5H 3E5

Telephone: (416) 646-4300

Kirk Baert
Koskie Minsky
20 Queen Street West
Suite 900
Toronto, Ontario M5H 3R3

Telephone: (416) 977-8353

Or to counsel for 407 ETR:

J. Thomas Curry
Lenczner Slaght Royce Smith Griffin
130 Adelaide Street West
Suite 2600
Toronto, Ontario M5H 3P5

Telephone: (416) 865-9500

Darryl Ferguson
McCarthy Tétrault
Suite 4700, TD Bank Tower
Toronto-Dominion Centre
Toronto, Ontario M5K 1E6

Telephone: (416) 362-1812

SCHEDULE C

PROTOCOL FOR DISSEMINATION OF NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL

1. NOTICE OF COURT APPROVAL AND CERTIFICATION

1.1 Publication in Newspapers once on a date to be agreed.

The Toronto Star (Saturday)

The Globe and Mail (Wednesday)

Scarborough Mirror

Hamilton Spectator

Burlington Post

Oakville Beaver

Brampton Guardian

Vaughan Citizen

Richmond Hill Liberal

Markham Economist

Milton Canadian Champion

Mississauga News

North York Mirror

Ajax-Pickering News

1.2 Web-site Access

www.407etr.com

www.paliareroland.com

www.koskieminsky.com

Schedule D - Coupon

**407 ETR LATE PAYMENT FEE
REDEMPTION COUPON**

Print Name

Signature

(Verifying you are the account holder and are claiming in accordance with the terms of the settlement)

407 ETR Account Number

Please include a phone number where you can be reached during normal business hours

Date Late Payment Fee Charged
(Month, Day, Year)

Amount of Late Payment Fee Charged

Check the appropriate box below.

You may be awarded only one of the following:

- A one time credit of \$6.00 to be applied against a previously paid LPF
- A one time credit of up to \$30.00 to be applied against a previously charged LPF in error
(Please provide documentation explaining the basis of your claim)

For multiple claims against the same account please submit additional coupons

Please send by ordinary mail only to:

Malton C.S.C.
P.O. Box 2130
Mississauga, Ontario
L4T 4L8
Attention: 407 LPF Credit

Your claim must be post marked no later than Month Day 2003

SCHEDULE E

OPT OUT FORM

Court File No. 01-CV-22199CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

RICHARD PRENDIVILLE

Page 1

- and -

407 INTERNATIONAL INC., 407 ETR CONCESSION COMPANY LIMITED,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (Minister for Privatization) and
ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO

1 of 1

hereby exercise

Part Name

my right to opt out of this class proceeding

Signature

dated at _____ this _____ day of _____

**This opt out form must be post marked no later
than June 9, 2003 and returned to;**

Koskie Minsky
20 Queen Street West, Suite 900
Toronto, Ontario, M5H 3R3
Attention: Hwy 407 Class Action

Court File No. 01-CV-221919CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

SETTLEMENT AGREEMENT

L'ENCZNER SLAGHT ROYCE
SMITH GRIFFIN
Barristers
Suite 2600
130 Adelaide Street West
Toronto, Ontario
M5H 3P5

J. Thomas Curry (25740V) 865-3096
Tel : (416) 865-9500
Fax: (416) 865-9010

Solicitors for the Defendants
407 International Inc. and 407 ETR
Concession Company Limited

Court File No. 01-CV-221919CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

ORDER

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN
Barristers
Suite 2600
130 Adelaide Street West
Toronto, Ontario
M5H 3P5

J. Thomas Curry (25740V) 865-3096
Tel : (416) 865-9500
Fax: (416) 865-9010

Solicitors for the Defendants
407 International Inc. and 407 ETR
Concession Company Limited