

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

No.500-06-

Association For the Protection of Investors of Securities, a legal person duly constituted under the Quebec Companies Act Part III, having its head office at 1255 University, Suite # 1500, in the City and District of Montreal, Province of Quebec, H3B-3X2;

Petitioner

Bayfield Holdings Ltd., a legal person, duly constituted according to law, having its head office and place of business at Bahamas Financial Centre, 3rd Floor, Shirley and Charlotte Streets, Nassau, Bahamas, N-4584;

Designated Member

Vs.

Jitney Trade Inc., a legal person, duly constituted according to law, having its head office and place of business at 360 St-Jacques Street, 16th Floor, in the City of Montreal, Province of Quebec, H2Y 1P5;

Penson Financial Services Canada Inc., a legal person, duly constituted according to law, having its head office and place of business at 360 St-Jacques Street, Suite 1100, in the City of Montreal, Province of Quebec, H2Y 1P5;

Autorité Des Marchés Financiers, a legal person, duly constituted according to law, having its head office at 800, Victoria Square, 22nd Floor, in the City

of Montreal, Province of Quebec, H4Z
1G3

Respondents

and

Mr. Anthony Kikivarakis, of the firm
Deloitte and Touche, practicing at 2nd
Terrace West, Centreville, in the City of
Nassau, and the Commonwealth of The
Bahamas, N-7526

Mise-en--cause

**MOTION FOR PERMISSION TO INSTITUTE A CLASS ACTION RECOURSE AND
TO NAME A REPRESENTATIVE
(Art. 1002 C.C.P. & following & Art. 1048 C.C.P.)**

**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT SITTING
IN PRACTICE DIVISION IN AND FOR THE CITY AND DISTRICT OF MONTREAL,
YOUR PETITIONER AND DESIGNATED MEMBER STATE RESPECTFULLY AS
FOLLOWS:**

**A. THE PETITIONER, THE DESIGNATED MEMBER OF THE GROUP AND
DESCRIPTION OF THE GROUP**

1. The Petitioner Association is an Association which at all times during the twelve-month period preceding the present Motion for Authorization to Institute a Class action had not more than fifty (50) persons bound to it by contract of employment, under its direction or control, the whole as appears from the Petitioner Association's constituting documents attached hereto "en liasse" as **Exhibit P-1**, to avail as if herein recited at length;
2. Bayfield Holdings Ltd. (hereafter "Bayfield") is incorporated according to the laws of the Commonwealth of the Bahamas and is a member of the Petitioner and the interests of Bayfield are linked to the objects for which the Petitioner Association

has been constituted, as will be more fully explained below, the whole as appears from a Certificate of Incorporation and constituting documents of Bayfield attached hereto as **Exhibit P-2**, to avail as if herein recited at length;

3. The objects of Petitioner Association are as follows, namely:

"To recover any and all financial losses and damages from those responsible including but not limited to Jitney Trade Inc. and Penson Financial Services Canada Inc. for those investors who held portfolios at Jitney Trade Inc. through Caledonia Corporate Management Group Ltd."

the whole appears from the constituting documents of the Petitioner Association, attached hereto "en liasse" as Exhibit P-1, to avail as if herein recited at length;

4. Bayfield. forms part of the groups on behalf of which the Petitioner Association intends to bring a class action;
5. Bayfield has as its duly authorized officer and director a Mr. Leonard Davies a Chartered Accountant with a an impressive list of credentials having actively followed and participated in the Liquidation of Caledonia Corporate Management Group Ltd.(hereafter referred to as "Caledonia")(the liquidation of Caledonia will be explained later in this Petition) as a member of the Committee of Monitors, the whole as appears from a curriculum vitae and permit to exercise the practice of Chartered Accountancy of Mr. Leonard Davies attached hereto "en liasse" as **Exhibit P-3** and page 6 of an Order of the Courts of the Commonwealth of the Bahamas dated October 21, 2008, attached hereto as **Exhibit P-4**, both exhibits to avail as if herein recited at length;
6. Bayfield's objects are linked to the objects for which the Petitioner Association has been constituted;

7. Bayfield, the Designated Member, can adequately represent the interests of the group for the following reasons, namely:
- i) Mr. Leonard Davies, a duly authorized representative of Bayfield, has acted as a member of the Committee of Monitors in the course of the liquidation of Caledonia and is directly and indirectly fully aware of all matters relating to the losses of the members of the group;
 - ii) Mr. Leonard Davies, a duly authorized representative of Bayfield, has attempted personally and through the undersigned attorneys to obtain the names, number, characteristics of and geographical location of the members of the group from the Liquidator, responsible for the liquidation of Caledonia;
 - iii) Is prepared to invest his time for and on behalf of Bayfield, the Association Petitioner and the members of the groups under the supervision of the Court and with the financial assistance of the members of the Association Petitioner;
 - iv) The members of the Association have the financial resources necessary to pursue this matter to its completion and are prepared to support the Association Petitioner and the Bayfield in this regard;
 - v) Bayfield and the members of the Association Petitioner represent a small minority of the members of the group(s) on behalf of whom the Association Petitioner intends to bring a class action whose interests are one and the same as the members of the group, that is; to be compensated for the

financial losses and damages suffered due to the fault of the Respondents herein;

- vi) Bayfield and the Association Petitioner are disposed to collaborate with the undersigned attorneys;

as appears from emails and correspondence dated October 07, 2010, December 16, 2010, and January 14, 2011 attached hereto "en liasse" as **Exhibit P-5**, to avail as if herein recited at length;

8. The Association Petitioner has as its officers and directors, duly authorized representatives of the corporate Members of the Association Petitioner, save and except Mr. Richard Perdue a retired lawyer previously of the bar of Ontario who is providing benevolent services to the Association Petitioner;
9. The Petitioner Association and its designated member desire to institute a Class Action recourse against the Respondents for the motives hereinafter detailed and for and on behalf of the groups, defined as follows, namely:

Group "A"

- a) "Without the knowledge and consent of any legal person established for a private interest, partnership or association (provided that at all times during the twelve-month period preceding the present Motion for Authorization not more than fifty persons bound to it by contract of employment were under its direction or control and provided that it is dealing at arms length with the representative of the group) and without the knowledge and consent of any physical person (collectively hereafter "persons"), Penson Financial Services Canada Inc. (hereafter "Penson") with the participation and knowledge of Jitney Trade Inc. sold the aforesaid persons' securities and bonds, took cash and the proceeds from the sale of said securities and bonds from their portfolios,' thereby causing losses in the portfolios of those persons holding,

through Caledonia Corporate Management Group Ltd., accounts at Jitney Trade Inc. from on or about February 05, 2008 to on or about February 12, 2008";

Group "B"

- b) "Any legal person established for a private interest, partnership or association (provided that at all times during the twelve-month period preceding the present Motion for Authorization not more than fifty persons bound to it by contract of employment were under its direction or control and provided that it is dealing at arms length with the representative of the group) and any physical person (collectively hereafter "persons") who, as a result of Person selling with the participation and knowledge of Jitney Trade Inc., the aforesaid persons' securities and bonds and taking cash and the proceeds from the sale of said securities and bonds from the aforesaid persons without their knowledge and consent, said persons holding portfolios at Jitney Trade Inc. through Caledonia Corporate Management Group Ltd. incurred fees of the Liquidator Anthony Kikivarakis of the accounting firm of Deloitte and Touche during his Liquidation of Caledonia Corporate Management Group Ltd.;"

10. The facts that give rise to an individual recourse on the part of the Association Petitioner and of Bayfield as the designated member of the Association Petitioner who has a direct and personal interest against the Respondents are as follows and are detailed herein below;

11. The Petitioner designates herein Bayfield. as its designated member, in the present matter, as is more fully explained herein below;

B. THE FACTS GIVING RISE TO THE INDIVIDUAL CLAIM OF BAYFIELD AND OTHER MEMBERS OF THE GROUPS:

**I) THE RESPONDENTS, CALEDONIA AND THE OMNIBUS ACCOUNT -
FAULT**

12. Caledonia was licensed under the Financial and Corporate Services Provider Act of the Commonwealth of the Bahamas to engage in and carry on business providing financial services, brokerage services and corporate management services to its clients, one of which was Bayfield;
13. Jitney was acting as the introducing broker herein, is constituted under the Canadian Business Corporations Act and registered with Respondent the Autorité des Marchés Financiers as a "courtier en placement et en dérivés, the whole as appears from the "État des Informations sur une personne morale " and the Public Register of the Autorité des Marchés Financiers attached hereto "en liasse" as **Exhibit P-6**, to avail as if herein recited at length;
14. Penson was acting as the carrying broker and custodian, and generated all custody reports under Jitney's name; is constituted under the Canadian Business Corporations Act and registered with the Autorité des Marchés Financiers as a "courtier en placement et en dérivés, the whole as appears from the "État des Informations sur une personne morale " and the Public Register of the Autorité des Marchés Financiers attached hereto "en liasse" as **Exhibit P-7**, to avail as if herein recited at length;
15. The Autorité des marchés financiers (hereafter "AMF") is a legal person, mandatary of the Province of Quebec and constituted by the Act Respecting the Authority des Marchés Financiers (R.S.Q., c. A-33.2);
16. Bayfield, as the rest of Caledonia's clients, invested monies and securities and had cash in its portfolios, and its securities trading was conducted through the

Co-Respondent brokerage firm Jitney Trade Inc.(hereafter "Jitney") and said assets were held by Caledonia entirely in a fiduciary capacity and as a trustee in so far as Caledonia did not have the authority to invest Bayfield's assets' (or the other clients' assets members of the groups) at its discretion and had to follow the instructions of Bayfield (and the other client members of the groups) as the latter's advisors directed, the whole as appears from a sample account opening form which shows the terms by which the assets were held by Caledonia, attached hereto as **Exhibit P-8**, to avail as if herein recited at length;

17. Bayfield and the other clients held an account (hereafter "omnibus account") at Jitney through Caledonia, the latter having been placed into voluntary liquidation as a direct result of the facts and circumstances hereafter explained, by way of a meeting of the members of that corporation held on or about February 12, 2008, and by way of a Court Order from the Supreme Court of the Commonwealth of the Bahamas on or about February 20, 2008, the whole as appears from the whole as appears from Statements of Account of Caledonia for the months of January and February 2008 attached hereto "en liasse" as **Exhibit P-9**, to avail as if herein recited length, a Resolution dated February 12, 2008, and the Court Order from the Supreme Court of the Commonwealth of the Bahamas dated February 20, 2008 attached hereto "en liasse" as **Exhibit P-10**, to avail as if herein recited at length;
18. Prior to the creation of the omnibus account in or about December 2005, Jitney opened individual segregated accounts under Caledonia's (or its predecessor Atlantic Asset Management's) name as and when each new individual client of Caledonia or Atlantic Asset Management would open a new account and this Jitney and Penson knew or ought to have known, the whole as appears from Account Opening Forms for both Atlantic Asset Management and Caledonia attached hereto "en liasse" as **Exhibit P-11**, to avail as if herein recited at length;

19. Moreover, on or about April 27, 2004 a Margin Account Agreement, Options Trading and Margin Agreement, and Guarantee of Account Agreement were entered into between Jitney and Caledonia and in all probability Penson, the whole as appears from an Account Application dated on or about April 27, 2004, a letter from Jitney dated May 17, 2004, Standard Notice to Client dated April 27, 2004, Margin Account Agreement dated April 27th 2004 and Options Trading and Margin Agreement dated April 27th 2004, attached hereto "en liasse" as **Exhibit P-12**, each document to avail as if herein recited at length;

20. The aforementioned Margin Account Agreement, Options Trading and Margin Agreement and the Guarantee of Account Agreement unlawfully and without colour of right permitted the pledge of securities and other property held in Caledonia's account(s) at Jitney and permitted unlawfully and without colour of right Jitney and Penson in their sole discretion to transfer securities and take the cash held in the account to satisfy part or all of the debts and liabilities of Caledonia defined as "the Client" and this without the knowledge and consent of the actual client proprietors of said securities and other property, including Bayfield, holding accounts through Caledonia at Jitney, the whole as appears from an Account Application dated on or about April 27, 2004, a letter from Jitney dated May 17, 2004, Standard Notice to Client dated April 27, 2004, Margin Account Agreement dated April 27th 2004 and Options Trading and Margin Agreement dated April 27th 2004, attached hereto "en liasse" as Exhibit P-12, each document to avail as if herein recited at length;

21. Effectively and as can be seen from the foregoing, without the knowledge, consent and authorization of Bayfield and other clients holding portfolios in the omnibus account and individual accounts, Caledonia pledged to Jitney securities of Bayfield and the other clients of Caledonia to secure the above-mentioned margin, the whole as appears from an Account Application dated on or about April 27, 2004, a letter from Jitney dated May 17, 2004, Standard Notice to Client

dated April 27, 2004, Margin Account Agreement dated April 27th 2004 and Options Trading and Margin Agreement dated April 27th 2004, attached hereto "en liasse" as Exhibit P-12, each document to avail as if herein recited at length;

22. In or about the month of August 2005, Mr. Francesco Pasin president and a duly authorized representative of Jitney informed Caledonia and its representatives that it could no longer operate Caledonia's multiple numbered accounts unless Caledonia provided "know-your-client" information for each of its individual client accounts or unless Caledonia operated an omnibus or single bulk account at Jitney and handled internally its own accounting for each individual client who had an account with Caledonia at Jitney;

23. In this regard, according to representatives of Caledonia, Jitney recommended a software package developed by Unibanx-Exactsoft Technologies Inc. from Longueuil, that would accommodate the client accounting Caledonia would need to maintain segregated accounts in the omnibus account, the whole as appears from the webpage of Exactsoft Technologies Inc. attached hereto as **Exhibit P-13**, to avail as if herein recited at length;

24. Consequently, from in or about the month of August 2005 until in or about the month of December 2005, with the participation of representatives of Caledonia, Jitney and/or Penson, representatives of Exactsoft Technologies Inc. travelled to and from Nassau and Montreal to set up these systems which included computer servers at Penson and/or Jitney and at Caledonia according to representatives of Caledonia;

25. The clients including Bayfield had access to their accounts via the internet;

26. Accordingly, in or about the month of December 2005, the omnibus account or single bulk account was created at Jitney in the name of Caledonia containing segregated accounts' of clients including Bayfield, which Jitney and Penson knew or ought to have known;
27. In addition to the foregoing, the omnibus account contained both fully paid securities and securities purchased on margin and were not segregated as required, and moreover the securities in the omnibus account were being held by Penson and/or Jitney in trust for the clients and were delivered without colour of right against payment of the indebtedness described herein below;
28. In view of the foregoing, Jitney and Penson secured the assets of clients' who had absolutely nothing to do with an indebtedness amounting to approximately \$ 25,000,000.00 US, took said client assets to clear said indebtedness without their knowledge, consent and authorization, the whole as appears from an Account Application dated on or about April 27, 2004, a letter from Jitney dated May 17, 2004, Standard Notice to Client dated April 27, 2004, Margin Account Agreement dated April 27th 2004 and Options Trading and Margin Agreement dated April 27th 2004, attached hereto "en liasse" as Exhibit P-12, each document to avail as if herein recited at length;
29. In the event that this Honourable Court comes to the conclusion that Penson and/or Jitney did not know that the omnibus account contained segregated accounts of individual investors, then this Honourable Court must respectfully conclude that Jitney and Penson did not use due diligence to learn and remain informed of the essential facts related to Caledonia and its clients and to every order placed for its clients and failed and/or omitted in all probability to implement and maintain appropriate compliance measures to ensure that it knew who the clients actually were;

30. As a result of the foregoing, the AMF failed and/or omitted to protect the public, namely the investors who held portfolios through Caledonia at Jitney, in so far as it failed and/or omitted to properly exercise its powers of surveillance upon Jitney and Penson and ensure *inter alia* that Jitney and Penson properly observe the the Securities Act (R.S.Q. c. V-1.1) and its regulations in order to prevent the clients holding portfolios, who had absolutely nothing to do with the creation of the indebtedness of approximately \$ 25,000,000.00 U.S., from suffering the plight of the losses in their accounts due as a result of the acts and/or omissions of the Co-Respondents herein;

II) DAMAGES TO BAYFIELD AND OTHER MEMBERS OF THE GROUPS AND CAUSAL LINK:

31. Between on or about February 05, 2008 and on or about February 12, 2008, directly and immediately due to all of the foregoing, Penson and /or Jitney without any justification whatsoever and unlawfully took from Bayfield out of the omnibus account the total amount of \$ 166,801.35 US as it had done to approximately 42 to 92 other clients (members of the Group "A") holding accounts within the omnibus account amounting to a total loss for all clients in the omnibus account of the approximate amount of \$ 25,000,000.00 US, the whole as appears from Affidavit of the Liquidator dated March 06, 2008 page 2, the Liquidators submissions dated October 21, 2008 page 2, and an Affidavit of the Liquidator dated September 09, 2008 page 05 respectively attached hereto "en liasse" as **Exhibit P-14**, Portfolio Statements of Bayfield prepared by the Liquidator dated February 05, 2008 and February 12, 2008, a reconciliation of said Portfolio Statements based on the Canadian to Us Dollar Exchange rate table as at February 05 2008 attached hereto as "en liasse" as **Exhibit P-15**, to avail as if herein recited at length;

32. As a direct result of all of the foregoing, and more specifically the payment of the approximate amount of \$ 25,000,000.00 US to Penson or Jitney, Caledonia was placed into voluntary liquidation and then subsequently Court supervised liquidation, which it otherwise would not have been had it not been for the acts and/or omissions of Jitney and Penson herein, and consequently 220 of the clients of Caledonia were forced to pay or owe the liquidator *mise-en-cause*, Mr. Anthony Kikivarakis, to perform the services related to the liquidation of Caledonia, the estimated total amount of \$ 2,600,000.00 US representing approximately 4% of the remaining assets in the client portfolios as at September 30, 2008, including that of Bayfield who has had to pay \$9977.04 US, the whole as appears from Court Order from the Commonwealth of the Bahamas dated November 08, 2010 and October 21, 2008 respectively attached hereto "en liasse" as **Exhibit P-16**, and the fourth Report of the Liquidator attached hereto "en liasse" as **Exhibit P-17**, to avail as if herein recited at length;;
33. As appears from the Court Order from the Supreme Court of the Commonwealth of the Bahamas dated February 20, 2008, Exhibit P-6, Mr. Anthony Kikivarakis Chartered Accountant of the firm Deloitte and Touche was named as Liquidator of Caledonia, and in said capacity inspected all documents in his custody and possession, and in the context of his liquidation performed an audit of all the accounts of the investors (members of the groups) held at Caledonia, including that of Bayfield, the whole as appears from said Court Order dated February 20, 2008 attached hereto and communicated as Exhibit P-2, and the Reports of the Liquidator attached hereto "en liasse" as **Exhibit P-17**, avail as if herein recited at length;

III) ORIGIN OF INDEBEDTNESS

34. The above-mentioned liquidation of Caledonia was caused directly and immediately by a certain indebtedness created by an independent client (Mr. Ron Wyles) to cover an overdrawn balance which amounted to an approximate amount of \$ 25,000,000.00 US paid to Penson, out of an omnibus account of Caledonia held at Jitney without any colour of right whatsoever, the whole as appears from Statements of Account of Caledonia for the months of January and February 2008 attached hereto "en liasse" as Exhibit P-9, to avail as if herein recited length;
35. Effectively, in or about January 2007, Caledonia opened an account held in the name of a retired broker who resided at that time in The Bahamas, a Mr. Ron Wyles. The account was set up to trade in margin eligible securities, and Mr. Wyles requested and Caledonia agreed to provide a margin facility of US\$3 million. Security for the margin facility of said \$3 million was a pledge signed by a Mrs. Karen Georgiou for an account created at Jitney. The trading in Mr. Wyles' account, as with all other accounts of Caledonia, was done through Co-Respondent Jitney out of the above-mentioned omnibus account, the whole as appears from a Statement of Claim and documents related thereto such as a Securities Pledge, Limitations on account Agreement and Guarantee and Collateral Agreements dated December 24, 2006, account Opening forms dated December 24, 2006, Margin Account Agreement dated December 07, 2006 and other related documents, Letter to Fransesco Pasin of Jitney dated July 11, 2007 and email exchanges dated July 10, 2007 and December 27, 2006 attached hereto "en liasse" as **Exhibit P-18**, to avail as if herein recited at length;;
36. The above-mentioned indebtedness in the approximate amount of \$ 25,000,000.00 US is completely unrelated to Bayfield and all the other clients members of the groups, save and except Mr. Ron Wyles;

37. Unbeknownst to Bayfield and the other members of the groups, Penson paid down the abovementioned indebtedness in the approximate amount of \$ 25,000,000.00 US in part from Bayfield's portfolio and the balance from other clients' portfolios, namely the other members of Group "A", which were held in the omnibus account at Jitney through Caledonia and this without the prior authorization and consent of Bayfield and the other clients, members of Group "A", who held portfolios in the omnibus account of Caledonia;

38. Accordingly, it can be seen that the recourses of the members of each group identified herein above raise identical, similar or related questions of fact and law and justify the conclusions sought herein namely:

- a) Did Penson have knowledge and/or ought to have the knowledge of the existence of segregated accounts held within the omnibus account at Jitney?
- b) Did Jitney have knowledge and/or ought to have the knowledge of the existence of segregated accounts held within the omnibus account at Jitney?
- c) Did Jitney and Penson take the appropriate measures to ensure that they knew their clients, namely those clients holding portfolios in the omnibus account at Jitney, in conformity with the law?
- d) Did Jitney and Penson properly structure the omnibus account and execute trades therein in conformity with the law?
- e) Did the AMF properly protect the members who held portfolios at Jitney in the omnibus account?
- f) What is the nature of the claim that the members of the groups have against the Respondents?
- g) Are the Respondents responsible for the damages suffered by the members of the groups?

- h) What is the value of the damages suffered by the members collectively belonging to Group "A"?
- i) What is the value of the damages suffered by the members collectively belonging to Group "B"?

B. THE COMPOSITION OF THE GROUP MAKES THE APPLICATION OF ARTICLE 59 OR 67 OF THE CODE OF CIVIL PROCEDURE DIFFICULT OR IMPRACTICABLE:

- 39. The Petitioner and Bayfield the designated member, have not been able to obtain the identity, contact information nor the coordinates of members of Group "A" and consequently said information for any member of the groups, despite repeated efforts and this due to confidentiality and this notwithstanding the information in the possession of the Liquidator, as appears from emails and correspondence dated October 07, 2010, December 16, 2010 and January 14, 2011 attached hereto "en liasse" as Exhibit P-5, to avail as if herein recited at length;
- 40. The number of members of Group "A" varies between 42 and 92 , as appears from emails and correspondence dated October 07, 2010, December 16, 2010, and January 14, 2011 attached hereto "en liasse" as Exhibit P-5 and as appears from Affidavit of the Liquidator dated March 06, 2008 page 2, the Liquidators submissions dated October 21, 2008 page 2, and an Affidavit of the Liquidator dated September 09, 2008 page 05 respectively attached hereto "en liasse" as Exhibit P-14;
- 41. The number of members of the Group "B" is approximately 220, as appears from the fourth Report of the Liquidator attached hereto "en liasse" as Exhibit P-17, to avail as if herein recited at length;

42. The members of the groups reside in different countries of the world rendering it seriously impractical to obtain their names and contact information if it was available, which is not the case, prior to the institution of these proceedings and certainly prior to the extinctive prescription date namely on or about February 13, 2011 as appears from emails and correspondence dated October 07, 2010, December 16, 2010 and January 14, 2011 attached hereto "en liasse" as Exhibit P-5;
43. Moreover, the members of the group will be deprived of having access to justice and this as a result of the extremely short date of extinctive prescription on or about February 13, 2011 and the lack of knowledge of the identity of the members of the group in event that authorization to institute a class action is rejected;
44. Effectively, the Petitioner and its designated representative Bayfield had no reasonable chance whatsoever to obtain mandates from the members of the group;
45. Accordingly, the class action is the only remedy available to members of the group to avoid an irreparable prejudice;
46. Moreover, the questions of law and fact to be treated collectively raise identical, similar or related questions of fact and law for both groups requiring for the most part the same evidence in relation to liability and causal link and the testimony of the Liquidator, Anthony Kikivarakis as regards the material damages, which demonstrates clearly the intrinsic relationship between both Group "A" and Group "B";
47. The Petitioner and the Designated Member intend upon exercising a class action in damages, interest and exemplary damages due to the gross negligence and extra-contractual fault of the Respondents herein;

48. The whole cause of action arose in the City and District of Montreal at the head offices of Jitney and Penson and the present recourse was conferred to the undersigned attorneys who practice their profession in the City and District of Montreal;
49. The conclusions that the Petitioner and the Designated member seek are the following:

MAINTAIN the class action of the Petitioner and the Designated Member;

ORDER the collective recovery of all amounts;

RESERVE the right of the Petitioner and the Designated Member and the Members of the Group to perfect the amount claimed at the date of the hearing;

CONDEMN the Respondents solidarily to deposit within thirty (30) days of a judgment to intervene herein with the clerk of the Court or a financial institution designated by the Court for the benefit of all the members of Group "A" represented by the Association for the Protection of Investors of Securities and its designated member Bayfield Holdings Ltd. the sum of \$ 25,000,000.00, "sauf à parfaire", with interest and the additional indemnity foreseen in the Civil Code of Quebec from February 14, 2008 or any other date this Honourable Court deems appropriate;

CONDEMN the Respondents solidarily to deposit within thirty (30) days of a judgment to intervene herein with the clerk of the Court or a financial institution designated by the Court for the benefit of all the members of Group "B" represented by the Association for the Protection of Investors of Securities and its designated member Bayfield Holdings Ltd. the sum of \$ 2,600,000.00, "sauf à parfaire", with interest and the additional indemnity foreseen in the Civil Code of Quebec from February 14, 2008 or any other date this Honourable Court deems appropriate;

CONDEMN the Respondents solidarily to deposit within thirty (30) days of a judgment to intervene herein with the clerk of the Court or a financial institution designated by the Court for the benefit of all the members Group "A" and Group "B" represented by the Association for the Protection of Investors of Securities and its designated member Bayfield Holdings Ltd. the sum of \$ 1,000,000.00, as exemplary damages "sauf à parfaire", with interest and the additional indemnity foreseen in the Civil Code of Quebec from February 14, 2008 or any other date this Honourable Court deems appropriate;

RENDER any other order that this Honourable Court determines is in the interests of justice;

THE WHOLE with costs, including the costs of notices, rogatory commission, travel by air and lodging of witnesses, testimony from experts and the preparation of expert reports, if such be the case;

50. The Petitioner hereby requests that it be attributed the status of representative;

51. Bayfield hereby requests that it be attributed the status of Designated member;

52. The present Motion is well founded both in fact and in law.

FOR THESE MOTIVES, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Motion for Permission;

AUTHORIZE the Institution of a Class Action namely:

A class action in damages, interest and exemplary damages due to the gross negligence and extra-contractual fault of the Respondents herein;

ATTRIBUTE the status of representative to the Association for the Protection of Investors of Securities, in order to institute a class action on behalf of the following groups:

Group "A"

"Without the knowledge and consent of any legal person established for a private interest, partnership or association (provided that at all times during the twelve-month period preceding the present Motion for Permission not more than fifty persons bound to it by contract of employment were under its direction or control and provided that it is dealing at arms length with the representative of the group) and without the knowledge and consent of any physical person (collectively hereafter "persons"), Penson Financial Services Canada Inc. with the participation and knowledge of Jitney Trade Inc. sold the aforesaid persons' securities and bonds, took cash and the proceeds from the sale of said securities and bonds from their portfolios,' thereby causing losses in the portfolios of those persons holding, through Caledonia Corporate Management Group Ltd., accounts at Jitney Trade Inc. from on or about February 05, 2008 to on or about February 12, 2008";

Group "B"

"Any legal person established for a private interest, partnership or association (provided that at all times during the twelve-month period preceding the present Motion for Authorization not more than fifty persons bound to it by contract of employment were under its direction or control group) and any physical person (collectively hereafter "persons") who, as a result of Penson Financial Services Canada Inc. selling with the participation and knowledge of Jitney Trade Inc., the aforesaid persons' securities and bonds and taking cash and the proceeds from the sale of said securities and bonds from the aforesaid persons without their

knowledge and consent, said persons holding portfolios at Jitney Trade Inc. through Caledonia Corporate Management Group Ltd. incurred fees of the Liquidator Anthony Kikivarakis of the accounting firm of Deloitte and Touche during his Liquidation of Caledonia Corporate Management Group Ltd.;"

ATTRIBUTE the status of Designated Member to Bayfield Holdings Ltd.;

IDENTIFY as follows the questions of law and fact to be treated collectively by the members of each group identified herein above and justify the conclusions sought herein

:

- a) Did Penson have knowledge and/or ought to have the knowledge of the existence of segregated accounts held within the omnibus account at Jitney?
- b) Did Jitney have knowledge and/or ought to have the knowledge of the existence of segregated accounts held within the omnibus account at Jitney?
- c) Did Jitney and Penson take the appropriate measures to ensure that they knew their clients, namely those clients holding portfolios in the omnibus account at Jitney, in conformity with the law?
- d) Did Jitney and Penson properly structure the omnibus account and execute trades therein in conformity with the law?
- e) Did the AMF properly protect the members who held portfolios at Jitney in the omnibus account?
- f) What is the nature of the claim that the members of the groups have against the Respondents?

- g) Are the Respondents responsible for the damages suffered by the members of the groups?
- h) What is the value of the damages suffered by the members collectively belonging to Group "A"?
- i) What is the value of the damages suffered by the members collectively belonging to Group "B"?

IDENTIFY as conclusions sought as follows:

MAINTAIN the class action of the Petitioner and the Designated Member;

ORDER the collective recovery of all amounts;

RESERVE the right of the Petitioner and the Designated Member and the Members of the Groups to perfect the amount claimed at the date of the hearing;

CONDEMN the Respondents solidarily to deposit within thirty (30) days of a judgment to intervene herein with the clerk of the Court or a financial institution designated by the Court for the benefit of all the members of Group "A" represented by the Association for the Protection of Investors of Securities and its designated member Bayfield Holdings Ltd. the sum of \$ 25,000,000.00, "sauf à parfaire", with interest and the additional indemnity foreseen in the Civil Code of Quebec from February 14, 2008 or any other date this Honourable Court deems appropriate;

CONDEMN the Respondents solidarily to deposit within thirty (30) days of a judgment to intervene herein with the clerk of the Court or a financial institution designated by the Court for the benefit of all the members of Group "B" represented by the Association for the Protection of Investors of Securities and its designated member Bayfield Holdings Ltd. the sum of \$ 2,600,000.00, "sauf à parfaire", with interest and the additional indemnity foreseen in the Civil Code of Quebec from February 14, 2008 or any other date this Honourable Court deems appropriate;

CONDEMN the Respondents solidarily to deposit within thirty (30) days of a judgment to intervene herein with the clerk of the Court or a financial institution designated by the Court for the benefit of all the members Group "A" and Group "B" represented by the Association for the Protection of Investors of Securities and its designated member Bayfield Holdings Ltd. the sum of \$ 2,000,000.00, as exemplary damages "sauf à parfaire", with interest and the additional indemnity foreseen in the Civil Code of Quebec from February 14, 2008 or any other date this Honourable Court deems appropriate;

RENDER any other order that this Honourable Court determines is in the interests of justice;

THE WHOLE with costs, including the costs of notices, rogatory commission, travel by air and lodging of witnesses, testimony from experts and the preparation of expert reports, if such be the case;

DECLARE unless excluded, the members of the groups bound by any judgement to be rendered upon the class action in the manner foreseen by law;

FIX the delay of exclusion from the groups at (30) thirty days from the Notice to the members of the groups after which the members who have not utilized the means of exclusion available bound by any judgement to intervene herein;

ORDER that the Notice to the members drafted according to the terms hereafter specified, be rendered public to the members in the following manner and within the following delays, namely:

- a) **ORDER AND ENJOIN** Mr. Anthony Kikivarakis of Deloitte & Touche, (located at 2nd Terrace West, Centreville, P.O. Box N-7526, Nassau, The Bahamas) to send by regular mail to each of the members of the groups, a Notice, within (30) thirty days of the judgment to intervene herein upon the present Motion for Permission;

- b) **ORDER AND ENJOIN** Mr. Anthony Kikivarakis of Deloitte & Touche, (located at 2nd Terrace West, Centreville, P.O. Box N-7526, Nassau, The Bahamas) to send a confirmation by way of a solemn affidavit signed by Mr. Anthony Kikivarkis of the above-mentioned sending by regular mail to the members of the groups within (15) days of the expiry of the delay mentioned in subparagraph "A" above, sent to the Petitioner through the undersigned attorneys which thereafter will be deposited into the office of the Court by the Petitioner within (15) days of the receipt of the aforesaid solemn affidavit signed by Mr. Anthony Kikivarkis, the whole at the cost of the Respondents solidarily, said costs to include all out of pocket expenses of Mr. Anthony Kivarakis of Deloitte and Touche and the salaries paid to employees who worked on the mailing in said accounting firm;

IN THE EVENT THAT THE PETITIONER THROUGH THE UNDERSIGNED ATTORNEYS DOES NOT RECEIVE THE SOLEMN AFFIDAVIT OF MR. ANTHONY KIKIVARKIS, WITHIN THE ABOVE-MENTIONED DELAY OF (15) DAYS OF THE END OF THE PRESCRIBED PERIOD FOR THE SENDING OF THE NOTICE TO THE PETITIONER THROUGH THE UNDERSIGNED ATTORNEYS, THEN SUBSIDIARILY:

- c) **ORDER AND ENJOIN** Mr. Anthony Kikvarakis of Deloitte and Touche to provide in writing the names, addresses and telephone numbers of the members of Group “A” and Group “B” to the Petitioner through the undersigned the undersigned attorneys within a delay of (30) days of the expiry of the above-mentioned deadline to send a confirmation by way of a solemn affidavit signed by Mr. Anthony Kikivarkis of the above-mentioned sending by regular mail to the members of the groups;
- d) **PERMIT** the Petitioner through the undersigned attorneys or any agent engaged for said purpose to send a Notice by regular mail to the members of the groups within (45) days after receipt in writing of the names, addresses and telephone numbers of the members of Group “A” and Group “B” from Mr. Anthony Kikvarakis of Deloitte and Touche, the whole at the cost of the Respondents solidarily, said costs to include all out of pocket expenses of the Petitioner, the undersigned attorneys or any agent engaged to send the Notice and the salaries paid to employees who worked on the mailing;
- e) **PERMIT** the Petitioner or any agent engaged for the purpose of the mailing to the members to produce through a duly authorized representative a solemn affidavit into the office of the Court confirming

the above-mentioned sending by regular mail to the members of the groups within a delay of 15 days of the expiry of the delay mentioned in subparagraph d) above;

RENDER any other order this Honourable Court deems appropriate:

REFER the dossier to the Chief Justice to determine the district where the class action will be instituted and to designate a judge to hear the matter;

ORDER the clerk, in the event the recourse is to be instituted in another district pursuant to the decision of the Chief Justice, to transmit the dossier to the clerk in this other district;

THE WHOLE WITH COSTS, including those costs relating to the Notices mentioned in the conclusions hereof;

Montreal, January 24th 2011

(s) BELL RUDICK FRIEDMAN

BELL RUDICK FRIEDMAN

Attorneys for the Petitioner
and the Designated Member

TRUE COPY

BELL RUDICK FRIEDMAN

Attorneys for the Petitioner and the
Designated Member