



THE HONOURABLE  
JUSTICE H. A. RADY

Court File No. 48172 CP

) Thursday, the 17<sup>th</sup> day  
) of April, 2008  
)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN :

CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN

Plaintiff

- and -

BIOVAIL CORPORATION, EUGENE N. MELNYK, BRIAN H. CROMBIE,  
JOHN R. MISZUK, AND KENNETH G. HOWLING

Defendants

Proceeding under the *Class Proceedings Act, 1992*

### ORDER

**THIS MOTION** made by the Plaintiff for an Order certifying the within action as a class proceeding for settlement purposes only, setting a date for the settlement approval hearing, and approving the long-form and summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed with the Court, including the final form of the settlement agreement between the parties, attached hereto as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants:

1. **THIS COURT ORDERS** that, the time for service and filing of the motion record herein be abridged;
2. **THIS COURT ORDERS** that, for the purposes of the Order, except as otherwise stated, the definitions set out in the Settlement Agreement apply and are incorporated into this Order.
3. **THIS COURT ORDERS** that this action be certified as a class proceeding for settlement purposes only, pursuant to the *Class Proceeding Act, 1992*, S.O. 1992, c.6, sections 2 and 5.
4. **THIS COURT ORDERS** that the "Canadian Class" be defined as:

All Persons who purchased the common stock of Biovail on the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004. Excluded from the Class are Biovail, its subsidiaries, affiliates, predecessor and successor entities; Ernst & Young <sup>LLP</sup> [U.S. and Canada] and any of their affiliates, subsidiaries, and predecessor and successor entities; Ernst & Young <sup>LLP</sup> [U.S. and Canada] partners and partners of any of their affiliates, subsidiaries, and predecessor and successor entities; Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus (collectively, the "Individual Defendants"); members of the immediate families of the Individual Defendants; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class are any putative Class Members

who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Publication Notice.

5. **THIS COURT ORDERS** that the Canadian Commercial Workers Industry Pension Plan is appointed as Representative Plaintiff for the Canadian Class.

6. **THIS COURT ORDERS** that the within action be certified as a class proceeding for settlement purposes only on the basis of the following common issue:

What claims do the Class Members have against the Defendants arising from the Defendants' false and/or materially misleading statements with respect to the business, operations and financial position of Biovail Corporation?

7. **THIS COURT ORDERS** that the hearing of the Representative Plaintiff's motion for settlement approval in the within proceeding shall take place on \_\_\_\_\_, 2008 at \_\_:00 \_\_.m.

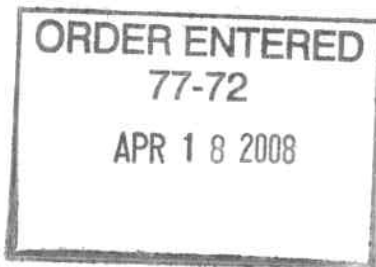
8. **THIS COURT ORDERS** that the form and content of the Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing (the "Notice") substantially in the form attached hereto as Schedule "B" is hereby approved.

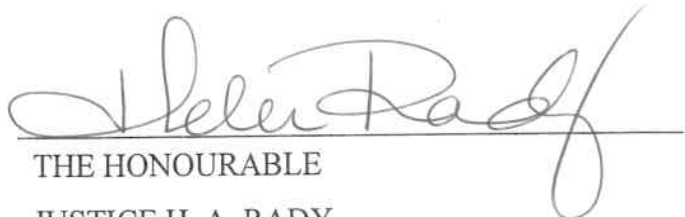
9. **THIS COURT ORDERS** that the form and content of the summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing (the "Publication Notice") substantially in the form attached hereto as Schedule "C" is hereby approved.

10. **THIS COURT ORDERS** that the method of disseminating the Notice and Publication Notice, as set out in the U.S. Order for Notice and Hearing, attached hereto as Schedule "D", is fair and reasonable, and will adequately notify Canadian Class Members of the proceeding and the Settlement Agreement.

11. **THIS COURT ORDERS** that in order to be entitled to participate in the Net Settlement Fund, as defined in the Stipulation, each member of the Canadian Class shall file a properly completed Proof of Claim in accordance with the Stipulation.
12. **THIS COURT ORDERS** that Canadian Class Members who wish to opt out of the Settlement Agreement shall mail a request for exclusion in written form by first class mail postmarked not later than sixty (60) calendar days after the date set for the mailing of the Notice to the address designated in the Notice.
13. **THIS COURT ORDERS** that all requests for exclusion must include the following information:
  - (a) the name, address, telephone number and signature of the person seeking exclusion;
  - (b) the date(s), price(s) and number(s) of shares of all purchases and sales of Biovail stock made by the person during the Class Period; and
  - (c) a statement that the person "requests exclusion from the Class in *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917(RO)".
14. **THIS COURT ORDERS** that the request for exclusion shall not be effective unless it provides the required information and is made within the time stated above.
15. **THIS COURT ORDERS** that a request for exclusion from the U.S. Class shall be deemed to be a request for exclusion from the Canadian Class.
16. **THIS COURT ORDERS** that Canadian Class Members who request to be excluded from the Canadian Class shall be excluded from any and all rights and obligations under the Settlement Agreement and the Stipulation.

17. **THIS COURT ORDERS** that any Class Member who does not validly opt out in the manner and time prescribed above shall be deemed to have elected to participate in the Settlement Agreement, the Stipulation and all related Court orders, regardless of whether the Class Member has filed a Proof of Claim in a timely manner.
18. **THIS COURT ORDERS** that Canadian Class Members who wish to file with the Court an objection to, or comment on, the Settlement or the approval of Canadian Class Counsel fees shall deliver a written submission to Canadian Class Counsel at the address indicated in the Notice, on or before sixty (60) calendar days after the date set for mailing of the Notice, and Canadian Class Counsel shall file all such submissions with the Court prior to the hearing of the Settlement Approval Motion.
19. **THIS COURT ORDERS** that this Order is contingent on the execution of the Settlement Agreement by the Defendants.



  
THE HONOURABLE  
JUSTICE H. A. RADY

CANADIAN COMMERCIAL WORKERS v. BIOVAIL CORPORATION *et al.*  
INDUSTRY PENSION PLAN

Court File No: 48172 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at LONDON

**ORDER**

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