

IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

JASON MACHIELA,)	
individually and on behalf of all)	
others similarly situated,)	
)	
Plaintiff,)	Case No. 05 C 3562
)	
v.)	Judge St. Eve
)	Magistrate Judge Nolan
TRIZEC HOLDINGS, INC. d/b/a)	
TWO NORTH LASALLE STREET,)	
)	CLASS ACTION
Defendant.)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

The Parties enter into the following Class Action Settlement Agreement and Release ("Agreement" or "Settlement Agreement"). This Settlement Agreement is entered into by and among Jason Machiela, the named Plaintiff in this class action, in his individual capacity and on behalf of the class described in this Agreement, and ATM Services, Inc. ("ATMS"), the owner/operator of the automated teller machine located at 2 North LaSalle Street, Chicago, Illinois 60602, who has agreed to indemnify and hold harmless Trizec Holdings, Inc., the named Defendant in this action, who collectively shall be the "Settling Parties," as more fully defined below. This Settlement Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle on behalf of the entire class the Released Claims, as defined herein, upon and subject to the terms and conditions herein.

RECITALS

WHEREAS, the Complaint alleges that the Defendant violated the automatic teller machine ("ATM") fee notice requirements of the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.*; and

WHEREAS, the Complaint seeks statutory damages, attorneys' fees and other relief; and

WHEREAS, the Defendant has denied and continues to deny each and all of the claims and contentions alleged in the Complaint; and

WHEREAS, the Settling Parties have concluded that it is desirable for the Class Action to be settled to avoid further inconvenience, delay, and expense and to dispose of potentially burdensome and protracted litigation and to put to rest all claims that have been or might be asserted by the Class Members arising out of or related to the subject matter of the Complaint; and

WHEREAS, the Settling Parties have engaged in extensive arms-length settlement negotiations, and have determined that the terms of this Settlement Agreement constitute a fair and reasonable compromise of the claims and defenses of all Settling Parties; and

WHEREAS, Class Counsel believe that the claims asserted by the Complaint are meritorious, Class Counsel also recognize, however, that these suits have an uncertain outcome and that pursuing this litigation through trial would involve substantial cost, risk and inevitable delay. Based on their evaluation of the facts and law, and a weighing of the risks and benefits, which include, among other things, whether the facts support the Electronic Funds Transfer Act claims raised in Complaint, the expense and length of continued proceedings necessary to prosecute the Action against the Defendant through trial and any appeals, and the substantial benefits the Settlement confers upon the Class, Class Counsel have determined that the

settlement set forth in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class; and

WHEREAS, the Class Representative, through Class Counsel, which has conducted an investigation into the relevant facts and circumstances, engaged in arms-length negotiations with Defendant's Counsel, has concluded that it is in the best interests of the Class to settle the Class Members' Claims on the terms set forth herein, which are deemed to be fair, reasonable, and adequate; and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by and between Class Counsel and Defendant's Counsel that the claims of the Class be and are hereby compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

DEFINITIONS

1. **Action.** "Action" means the above-captioned action currently pending in the United States District Court for the Northern District of Illinois.
2. **Parties.** The Parties to this Class Action Settlement Agreement and Release are Jason Machiela ("Machiela"), on behalf of himself and a class of persons similarly situated (collectively, "Plaintiffs" or "Class Members") and ATMS, the owner/operator of the ATM located at 2 North LaSalle Street, Chicago, Illinois 60602, who has agreed to indemnify and hold harmless Defendant Trizec Holdings, Inc. ("Trizec" or "Defendant").
3. **Attorneys' Fees.** "Attorneys' Fees" means reasonable attorneys' fees, costs of litigation, and expenses, as awarded by the Court at Plaintiff's counsel's current hourly rate. The Defendant shall pay Plaintiff's attorneys' fees in the amount of \$14,000.00. This amount is inclusive of the fees and expenses incurred by Class Counsel to: (1) answer any questions from

members of the class that contact Class Counsel; and (2) publish Notice on the web. "Attorneys' Fees" does not include the Class Representative's payment or settlement administration costs and expenses to be borne by Defendant. Attorneys' Fees are not taken from any award paid to the Class.

4. Claim Form. "Claim Form" means a letter addressed to Plaintiff's Attorneys stating words to the effect of: "I AFFIRM UNDER PENALTIES OF PERJURY THAT I USED THE ATM AT 2 NORTH LASALLE STREET, CHICAGO, ILLINOIS AND AM A MEMBER OF THE *MACHIELA* CLASS DESCRIBED IN THE CLASS NOTICE AND WANT TO RECEIVE MY SHARE OF THE SETTLEMENT FUND." The form must include identifying information from the consumer, including their name, address, telephone number, and the last four digits of their ATM card.

5. Class Counsel. "Class Counsel" means counsel for the Class Representative and the Class Members: Lance A. Raphael, Stacy M. Bardo, and Allison A. Krumhorn of The Consumer Advocacy Center, P.C., 180 West Washington, Suite 700, Chicago, Illinois 60602.

6. Class Members. "Class Members" shall mean all Persons who, from June 16, 2004 to June 17, 2005, were charged a "transaction fee" for the use of the ATM machine located at 2 North LaSalle Street, Chicago, Illinois 60602, when no "transaction fee" amount was posted on the outside of that ATM machine.

7. Class Representative. "Class Representative" means Jason Machiela.

8. Complaint. Complaint means the Complaint filed in the United States District Court for the Northern District of Illinois, assigned Case No. 05 C 3562.

9. Court. The "Court" means the United States District Court for the Northern District of Illinois.

10. Defendant. "Defendant" means Trizec Holdings, Inc., d/b/a Two North LaSalle Street.

11. Defendant's Counsel. "Defendant's Counsel" means:

Christopher Murdoch
Holland & Knight
131 South Dearborn, 30th Floor
Chicago, IL 60603

12. Effective Date. "Effective Date" means the date on which the last Settling Party signs this Agreement.

13. Final. "Final" means that date on which the Final Judgment Order is entered, a proposed form of which is attached to the Joint Motion for Preliminary Approval as Exhibit D.

14. Final Judgment. "Final Judgment" means the Final Judgment provided for in paragraph 40, a form of which is attached to the Joint Motion for Preliminary Approval as Exhibit D.

15. Notice. "Notice" means the Notice of Proposed Class Action Settlement in the forms attached to the Joint Motion for Preliminary Approval as Exhibits B and B1. Notice on the web will be in substantially the same form as Exhibit B1.

16. Notice Dates. "Notice Dates" means the dates that Notice is published in the Chicago Tribune and on the web, and posted on the ATM located at 2 North LaSalle Street, Chicago, Illinois 60602.

17. Opt-Out Date. "Opt-Out Date" means the deadline for Class Members to postmark requests for exclusion from the Settlement. The Opt-Out Date will be at least 30 days after the last day Notice is published in the Chicago Tribune, and requests for exclusion postmarked after that date will have no legal effect.

18. Person. "Person" (when used in the singular or in the plural form) means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity and any other recognizable legal entity.

19. Preliminary Approval Order. "Preliminary Approval Order" means the order preliminarily approving this Settlement Agreement, approving the Notice to the Class Members, and setting the Settlement Hearing, as provided in paragraph 37 of this Settlement Agreement, a form of which is attached to the Joint Motion for Preliminary Approval as Exhibit C.

20. Related Parties. "Related Parties" shall mean each of a Person's past or present officers, directors, trustees, members, employers, employees, partners, member firms, affiliates, principals, agents, shareholders, attorneys, accountants, auditors, advisors, personal and legal representatives, heirs, beneficiaries, assigns, predecessors, successors, parents, subsidiaries, divisions, associates, related or affiliated entities, any members of their immediate families, and all Related Parties' and Settling Parties' insurers and their reinsurers.

21. Released Claims. "Released Claims" means the claims and liabilities released and discharged under paragraph 34.

22. Settlement. "Settlement" means the terms and conditions set forth in this Agreement, including all Exhibits to the Joint Motion for Preliminary Approval.

23. Settlement Administration Costs and Expenses. "Settlement Administration Costs and Expenses" means the costs and expenses connected with publishing Notice in the Chicago Tribune, posting notice on the ATM at 2 North LaSalle Street, Chicago, Illinois 60602, and obtaining the services of a Settlement Administrator to facilitate the Settlement by processing Claim Forms and mailing Settlement Checks to eligible Class Members. All Notice

and Settlement Administration Fees, Costs, and Expenses, with the exception of publishing notice on the web, shall be paid by Defendant.

24. Settlement Administrator. "Settlement Administrator" means First Class, Inc., an independent settlement administrator selected by Class Counsel and approved by Defendant.

25. Settlement Amount. "Settlement Amount" means the amounts paid to each Class Member who timely sends in a claim form, the compensation paid to Jason Machiela for his services as class representative, plus the compensation paid to Class Counsel.

26. Settlement Checks. "Settlement Checks" are the checks used to pay Class Members. Settlement Checks that are returned, undeliverable, or remain uncashed for 90 days from the date upon which they were mailed to Class Members shall have no legal or monetary effect; however, within 120 days from mailing, any returned, undeliverable or uncashed funds from such checks must be delivered to Class Counsel by check made payable to the Legal Assistance Foundation of Metropolitan Chicago as a *cypres* award.

27. Settlement Hearing. "Settlement Hearing" means the hearing to determine whether the settlement of the Class Action should be given final approval, whether the proposed Plan of Allocation should be approved, and whether the unopposed applications of Class Counsel for attorneys' fees, costs, and expenses should be approved.

28. Settling Parties. "Settling Parties," means Jason Machiela, on behalf of himself and the Class Members, and Defendant.

PLAN OF ALLOCATION

29. Relief to Class and Class Representative. The Defendant will establish a fund totaling \$15,000.00. This \$15,000.00 fund represents approximately 1% of the Defendant's net worth, as contemplated by 15 U.S.C. § 1693m(a)(2)(B). Settlement Administration Costs and

Expenses will be deducted from the fund first and are not likely to exceed \$5,000.00, as represented by counsel for Defendant. The remaining balance of the \$15,000.00 shall then be divided on a *pro rata* basis among those Class Members who return a fully-executed, complete, timely, and truthful Claim Form, postmarked no later than 45 days after the Notice Date, indicating a desire to receive a share of the fund, but capped at a maximum of \$1000.00 per class member. Any person who timely and effectively requests exclusion from the Settlement shall not be entitled to submit a Claim Form or receive any portion of the Settlement Class Consideration. Under no circumstances will any Class Member receive more than a single Settlement Check for more than \$1000.00. Any fund remaining after settlement shall be delivered to Class Counsel by check made payable to the Legal Assistance Foundation of Metropolitan Chicago as a *cypres* award. Separate and in addition to the settlement fund, the Class Representative shall receive \$1000.00, payable by the Defendant.

30. Attorneys' Fees, Notice Costs and Related Matters. In addition to the benefits described above, Defendant shall pay, subject to Court approval, to Class Counsel the sum of \$14,000.00 in full satisfaction of all reasonable attorneys' fees and costs. This payment is based upon arms-length negotiations between the parties based upon Class Counsel's fees at their current hourly rates and for time expended through final approval and is not taken from any award to the class or class representative.

31. Class Notice. Defendant shall cause Notice to be published in the Chicago Tribune, as agreed to by the parties, and cause Notice to be posted on the ATM located at 2 North LaSalle Street, Chicago, Illinois 60602 from the date of Preliminary Approval to the last date for class members to opt-out. Plaintiff shall cause Notice to be published on the web from

the date this Settlement is preliminarily approved to the last date for class members to opt-out. Settlement Checks shall be distributed within 14 days after entry of the Final Judgment Order.

32. Class Members' Right of Exclusion. Any Class Member may seek to be excluded from this Settlement Agreement and from the Class within the time and in the manner provided in paragraph 39 of this Agreement, as approved by the Court. Any Class Member so excluded shall not be bound by the terms of this Settlement Agreement nor entitled to any of its benefits.

33. The Settling Parties agree that the Settlement Amount is sufficient to satisfy each Settling Party's obligation to every other Settling Party with regard to all Released Claims.

RELEASED CLAIMS

34. It is the agreement and intent of the Settling Parties that this Settlement Agreement be construed and enforced as a mutual and global release subject to the limitations and exclusions provided in paragraph 35 of this Agreement. Accordingly, it is hereby agreed that upon the Effective Date of this Settlement Agreement, each Settling Party, Class Member and his, her, or its respective Related Parties, shall hereby be deemed to have, and by operation of this Settlement Agreement have fully, finally, and forever released, relinquished, discharged, and waived, against each and every other Settling Party, including their respective Related Parties, any and all claims of whatever kind or nature, from the beginning of time to the Effective Date hereof, on account of any and all loss or damages of any kind whatsoever, known or unknown, arising out of, resulting from or relating to all allegations, claims or defenses which have been raised in the Complaint, assigned No. 05 C 3562, pertaining to Defendant's posting of the ATM fee notice at 2 North LaSalle Street, Chicago, Illinois 60602.

35. The Settling Parties understand and agree that the provisions of paragraph 34 shall be construed to exclude, and shall not impair, any right or cause of action arising from a breach

of this Settlement Agreement, including but not limited to, any future claims that may arise with regard to the operation of the Plan of Allocation, or the implementation of the Settlement Agreement. The Settling Parties also understand and agree that the provisions of paragraph 34 shall be construed to exclude, and shall not impair, any right or cause of action currently pending against Defendant in any court of competent jurisdiction, or any claim unrelated to the claims in the instant action.

PRELIMINARY APPROVAL ORDER AND SETTLEMENT HEARING

36. Preliminary Approval Motion. In accordance with the procedures and time schedules below, Class Counsel shall take such actions, and prepare and file, subject to the prior approval by all other Settling Parties, all appropriate notices, motions, and proposed order forms, as reasonably necessary to obtain both preliminary and final approval of this Settlement Agreement from the Court. All Settling Parties shall cooperate, and as appropriate, shall join with Class Counsel in seeking to accomplish the following:

a. Within 10 days of the Effective Date of this Agreement, Class Counsel shall move for preliminary approval of this Agreement, including a request that the Court approve the dissemination of Notice within 14 days of the entry of an order granting preliminary approval of this Agreement. All Settling Parties shall join in that motion, and shall support any order approving this Agreement through any appeal, if necessary.

Without prior approval of any other Settling Party, Class Counsel may file memoranda in support of the preliminary (and final) approval of this Settlement Agreement; and

b. The Preliminary Approval Order shall require, and the Notice shall set out, that any objections to this Settlement Agreement must be made in writing, filed with the Court, and served upon Counsel for Plaintiff and Defendant as more fully described in

paragraph 37 below. The Notice shall provide that any objection not received within the time set by the Court is deemed waived. Class Counsel shall maintain a telephone number that may be called by Class Members who have questions regarding this Settlement Agreement; and

c. The Settling Parties shall jointly request a Settlement Hearing date, which is no more than 120 days after the date of entry of the Preliminary Approval Order.

37. Preliminary Approval Order. The Preliminary Approval Order entered by the Court shall be substantially in the same form as Exhibit C to the Joint Motion, but as a condition subsequent of this Settlement Agreement shall at a minimum contain the following provisions:

a. Preliminary approval of the Settlement Agreement set forth herein, and subject to any objections that may be presented to the Court prior to the Settlement Hearing, a finding that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Class; and

b. Approval of a Notice of Settlement that includes the general terms of the settlement set forth in the Settlement Agreement (substantially in the forms attached as Exhibit B to the Joint Motion) and the procedures for objections and opt-outs described below, and directing that Notice be published and posted in accordance with the terms of this Agreement; and

c. A finding that the dissemination of the Notice constitutes valid, due and sufficient notice to the Class Members and their Related Parties, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law and that no further notice to the Class is required.

38. Objections. Any Class Member who objects to the Settlement contemplated by this Agreement shall have a right to appear and be heard at the Settlement Hearing provided that such Class Member files with the Court and delivers to Class Counsel and Defendant's Counsel a written notice of objection together with a statement of reasons for the objection no later than 14 days before the Settlement Hearing date. Class Counsel and Defendant's Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law of no more than 15 pages filed and served no later than 5 days prior to the Settlement Hearing. The manner in which a notice of objection should be prepared, filed, and delivered shall be stated in detail in the Notice. Only Class Members who have filed and delivered valid and timely written notices of objection will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise. Any Class Member who does not make his or his objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of Attorneys' Fees to Class Counsel, unless otherwise ordered by the Court.

39. Exclusion from the Class. Any Class Member may seek to be excluded from the Settlement. Any Class Member so excluded shall not be bound by the Settlement and shall not be entitled to any of its benefits. To be timely, a request for exclusion must be sent to Class Counsel and Defendant's Counsel and be postmarked no later than the Opt-Out Date. To be effective, the request for exclusion must make clear that exclusion is sought by stating: "I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN *MACHIELA V. TRIZEC HOLDINGS, INC.*" The request for exclusion must also contain the excluded Class Member's name, address, and signature.

FINAL JUDGMENT

40. Final Judgment. The Final Judgment entered upon the Settlement Hearing by the Court shall be substantially in the same form as Exhibit D to the Joint Motion but as a condition subsequent of this Settlement shall, at a minimum, include the following provisions:

a. A finding that the distribution of the Notice fully and accurately informed all Class Members and Related Parties entitled to notice of the material elements of the Settlement, constituted the best notice practicable under the circumstances, constituted valid, due and sufficient notice, and complied fully with Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution and any other applicable law; and

b. A finding that after proper notice to the Class and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or that all timely objections have been considered and denied; and

c. Approval of the settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, under Rule 23 of the Federal Rules of Civil Procedure, finding that the settlement is in good faith, and ordering the Parties to perform the settlement in accordance with the terms of this Settlement Agreement; and

d. A finding that neither the Final Judgment nor the Settlement Agreement shall constitute an admission of liability by the Settling Parties, or any of them, of any liability or wrongdoing; and

e. Subject to reservation of jurisdiction for matters discussed in subparagraph (h), below, dismisses with prejudice the Complaint; and

- f. In accordance with Rule 54(b) of the Federal Rules of Civil Procedure, finds that there is no just reason for delay, and orders the entry of a Final Judgment; and
- g. A finding that all Class Members and their Related Parties shall, as of the entry of the Final Judgment, conclusively be deemed to have released and forever discharged the Defendant and its Related Parties from all Released Claims, and forever enjoining and barring all Class Members and their Related Parties from asserting, instituting or prosecuting in any capacity, before any court or governmental agency, any action or proceedings against the Defendant that asserts any Released Claims; and
- h. A reservation of exclusive and continuing jurisdiction over the Action and the Settling Parties for the purposes of, among other things: (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Class and resolving any disputes that may arise with regard to any of the foregoing.

**CONDITIONS OF SETTLEMENT, EFFECT OF
DISAPPROVAL, RECISSION, OR TERMINATION**

41. This Settlement Agreement, including the releases herein, shall be null and void, and the provisions of paragraphs 42 below shall apply, if each of the following conditions fail to occur or be satisfied prior to the date that the Final Judgment becomes Final:

- a. All non-settlement related activities regarding the Complaint shall be, and shall remain, stayed by the Court pending Final Judgment approving this Settlement Agreement; and

b. All Settling Parties shall approve, execute, and perform all such acts or obligations that are required by this Settlement Agreement to be performed prior to the date that the Final Judgment becomes Final; and

c. A Preliminary Approval Order, in a form as described by paragraph 37 above and attached as Exhibit C to the Joint Motion, shall be entered by the Court; and

d. At or prior to the Settlement Hearing, no objections to this Settlement Agreement have been received, or if any such objections have been received, all such objections have been considered and denied by the Court; and

e. A Final Judgment, in a form as described by paragraph 40 above, shall be entered by the Court; and

g. Subject to the reservation of jurisdiction for matters described in paragraph 40h, the Action must be dismissed with prejudice.

42. In the event that this Settlement Agreement is finally rejected upon the Settlement Hearing, or in the event a Final Judgment is not entered, or does not become Final, or in the event that the Settlement Agreement is rejected by the mandate of an appellate court, then the terms of this Agreement shall be null and void and:

a. The terms of this Agreement shall have no further force and effect with respect to the Settling Parties;

b. This Agreement shall not be used in this litigation for any purpose; provided, however, this Agreement may be used for bringing an action for failure of a Settling Party to take steps required by this Agreement or required by such party's position as a fiduciary to secure judicial approval of this Agreement;

c. The Settling Parties shall be restored to their respective positions in the litigation as of the date of the Settlement Agreement; and

d. Any Judgment or orders entered by the Court in accordance with this Settlement Agreement shall be treated as vacated

MISCELLANEOUS PROVISIONS

43. Enforcement. The Settling Parties acknowledge that violation of the Settlement Agreement or any of the releases will cause immediate irreparable injury for which no remedy at law is adequate. If any Party fails to perform his, his or its obligations hereunder, any other Party shall be entitled to specific performance, including through mandatory preliminary and injunctive relief, in addition to such other remedies as provided herein. Nothing contained herein shall be construed to preclude any party from applying for contempt or other remedy or sanction provided by the Federal Rules of Civil Procedure for breach of this Settlement Agreement.

44. Agreement to Cooperate. The Parties: (a) acknowledge that it is their intent to execute the Agreement; and (b) agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

45. Good Faith Settlement and Advice of Counsel. The Parties agree that the terms of the Settlement reflect a good-faith settlement of the Class Representative's and the other Class Members' claims in the Action, reached voluntarily after consultation with experienced legal counsel.

46. Incorporation. All of the Exhibits to the Agreement and Joint Motion for Preliminary Approval are material and integral parts of the Settlement and are fully incorporated herein by this reference.

47. No Waiver. The waiver of one party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement; nor shall such a waiver be deemed a waiver by any other Party of that breach or a waiver by that Party of any other Party's breach.

48. Modification. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their successors-in-interest.

49. Headings. The headings of the paragraphs herein are for convenience only and do not define, limit, or construe the contents of this Agreement.

50. Entire Agreement. Except as provided herein, the Agreement and the Exhibits attached to the Joint Motion constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning the Agreement or its Exhibits other than the representations, warranties and inducements contained and memorialized in the Agreement and Exhibits.

51. Authority to Settle. Class Counsel warrant that they are expressly authorized by the Class Representative to take all appropriate action to effectuate the terms and conditions of the Settlement and also are expressly authorized to enter into any modifications of, or amendments to, the Agreement on behalf of the Class which they deem appropriate.

52. Authority to Execute. Each counsel or other person executing the Agreement or any of its Exhibits on behalf of any Party hereto hereby warrants that he or she has the full authority to do so.

53. Counterparts. The Agreement may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument. Counsel for the Parties shall

exchange among themselves signed counterparts, and a complete set of executed counterparts shall be filed with the Court.

54. Binding Effect. The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto. All Settling Parties waive the right to appeal or collaterally attack the Final Judgment entered under this Settlement Agreement.

55. Exclusive Jurisdiction and Venue for Enforcement. Any dispute relating to this Agreement and/or Final Judgment shall be resolved exclusively in the U.S. District Court for the Northern District of Illinois, which Court shall retain exclusive jurisdiction and venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of the Agreement and/or Judgment. The Parties agree to submit to the exclusive jurisdiction and venue for the purposes described above.

56. Choice of Law. This Agreement and any document executed in furtherance of the Settlement shall be governed by, subject to, and construed in accordance with the laws of the State of Illinois, without regard to conflicts-of-laws principles.

57. Costs and Expenses. Except as otherwise provided herein, each Party shall bear its own costs and expenses.

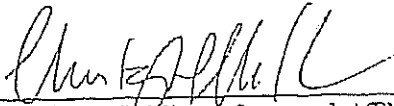
58. Interpretation. All Settling Parties have participated in the drafting of this Settlement Agreement and, accordingly, any claimed ambiguity should not be presumptively construed for or against any of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed.

Dated: Chicago, Illinois
November __, 2005



Jason Machiela, Plaintiff



For Trizec Holdings, Inc. and ATMS, Inc.

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Holland & Knight LLP
30th Floor
131 S. Dearborn Street
Chicago IL 60603

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