

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Dou, et al. v. Carillon Tower/Chicago LP, et al.

No. 1:18-cv-7865

NOTICE OF CLASS ACTION SETTLEMENT

The above captioned Court, Hon. Judge Charles P. Kocoras, has certified the following class of plaintiffs in the above captioned lawsuit: “The 89 Chinese nationals who are limited partners in the Carillon Tower/Chicago LP and who have each paid \$550,000.00 into that partnership.” Please read this Notice carefully. The Parties have reached a settlement of the above action. You are entitled to receive money, in the form of a wire transfer to an account of your designation, under the terms of a settlement. Your receipt of the wire transfer settlement funds means you agree to receive this money as settlement of your claims as described in the enclosed Release of Claims, and that you release those claims, pursuant to the terms of settlement.

This is an important notice authorized by the Court. This is not a solicitation from a lawyer.

- As you were previously advised, ten investors in the Carillon Tower development limited partnership sued CARILLON TOWER/CHICAGO LP; FOREFRONT EB5 FUND (ICT) LLC; JEFFREY LAYTIN; and SYMMETRY PROPERTY DEVELOPMENT II, LLC as Defendants for allegedly engaging in unlawful and fraudulent conduct in connection with the development of the Carillon Tower project under federal and other law. The Defendants have denied, and deny, any and all liability and wrongdoing in this lawsuit.
- To avoid the costs and burdens of further litigation, the parties have agreed to a settlement in this case, without any admission by either side. The Court has now approved this settlement of the lawsuit against the Defendants in favor of the members of the certified class identified above. You are a member of the certified class.
- Your legal rights are affected. If you do nothing, you will participate in the settlement, and you will release the defendants and redeem your limited partnership interest in the Carillon Tower project in order to receive the refund of your investment funds pursuant to the terms of the settlement agreement. If you sign the opt-out form, you will not receive any refund, and you will remain an investor and limited partner in the Carillon Tower project. If you choose to opt-out of the settlement and do not want your settlement refund payment, you must ensure that your signed opt-out form is delivered upon Plaintiffs’ counsel no later than **January 22, 2021** (the “Deadline”).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING AND RECEIVE YOUR SETTLEMENT PAYMENT; - OR -	To participate in the Settlement of this lawsuit, you do not need to take any further action. By doing so, you agree to release Defendants from any liability for the claims set forth in the Release of Claims, including the claims in this lawsuit, and redeem your limited partnership interest in the Carillon Tower project, in exchange for the full refund settlement payment to you, pursuant to the terms of the settlement agreement, which will be provided via wire transfer to an account of your choosing.
SIGN THE OPT-OUT FORM.	If you sign the opt-out form, you will remain an investor and limited partner in the Carillon Tower project, you will not participate in the settlement, you will not receive any payment for the Settlement of the lawsuit, and <u>you will not be able to recover anything in this case.</u>

- Your rights and options are explained in this Class Action Settlement Notice.

QUESTIONS? CALL CLASS COUNSEL AT: (WeChat) Vickiichen506 OR (US) 312-880-1010.

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1. Why did I get this notice?

You received this Notice because the Court has certified a class of investors to participate in this lawsuit; the Defendants' records show that you invested \$550,000.00 in the EB-5 fund associated with the Carillon Tower/Chicago LLC development project at the corner of Wabash and Superior in the City of Chicago, Illinois. The Court has approved the settlement of the lawsuit, and you are scheduled to receive a Settlement Payment as a member of the Class in this lawsuit, pursuant to the terms of the Settlement Agreement.

2. What is the purpose of this notice?

The purpose of this Class Settlement Notice is to inform you that a Settlement has been reached in the class action lawsuit entitled "Lina Dou, et al., v. Carillon Tower/Chicago LP, et al, Case No. 18-cv-7865 in the United States District Court for the Northern District of Illinois (the "Lawsuit"). You will receive a settlement payment, via wire transfer to an account of your choosing. After the Court grants final approval, and before you receive your settlement payment, you will need to sign a Release of Claim form that will be provided to you by your Counsel at that time. Your receipt of those funds will constitute your agreement to release any and all claims against the parties identified in the Release of Claims, and will redeem your limited partnership interest in the Carillon Tower project. Because your rights will be affected by this Settlement, **it is extremely important that you read this Class Notice carefully.** This Class Notice summarizes the Settlement and your rights under it.

3. What is the Lawsuit about?

This lawsuit is a class action filed on behalf of 89 Chinese nationals who each made a \$500,000 Capital Contribution and paid a \$50,000 Administrative Fee to become limited partners in a development project managed by Defendants known as Carillon Tower. Plaintiffs' Amended Complaint alleges claims against the Defendants for violations of the Securities Exchange Act of 1934 (15 U.S.C. 78(j)), violations of the Illinois Securities Act (815 ILCS 5/8 et seq.), Breach of Contract, Fraud, Breach of Fiduciary Duty, and Appointment of Third-Party Administrator.

The Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, and specifically, the Defendants deny that their actual or alleged actions and practices failed to comply with the Securities Exchange Act of 1934, the Illinois Securities Act, did not constitute a breach of any alleged contract, fiduciary duty, was not fraudulent and did not violate any other federal or state law.

4. Who is covered by the Settlement of the Lawsuit?

On November 5, 2020, the Parties entered into a comprehensive Settlement Agreement to resolve this matter. It provides that each Plaintiff who does not opt out of the class shall receive a full refund of their Capital Contribution and Administrative Fee (\$550,000 per Plaintiff), pursuant to the terms of the Settlement Agreement. After conclusion of a 45-day class notice period, when Defendants know how many Plaintiffs are participating in the class, Defendants shall obtain a credit facility sufficient to fund the settlement. The parties shall then schedule a final approval hearing. Forty-five days after the Court's order granting final approval, Defendants shall deposit 100% of the settlement funds into escrow with a title insurance company, to be held and disbursed in tandem with the Release Document.

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The Settlement will cover all class members who do not opt-out of the settlement by the above Deadline.

5. What are the terms of the settlement?

1. Any failure, with the exception of the failure to fund described herein, will result in the return of the parties to their respective positions in the litigation. Any failure to fund the escrow trust account after the entry of an order granting final approval will result in the enforcement of the Liquidated damages clause enumerated in paragraph 2 below *and* returning the parties to their respective positions in the litigation as of the entry of the stay of proceedings by Judge Kocoras on October 29, 2020.

2. Liquidated Damages: If the settlement trust escrow is not funded on the agreed upon date, as will be reflected in the Court's Order granting final approval ("The Closing Date"), the Defendants jointly and severally, including the personal guarantees, are liable for liquidated damages for non-performance subject to a 45-day grace and cure period. The amount of liquidated damages is fixed at \$25,000 for each class member who has not timely opted out of the class and \$250,000 to class counsel.

Grace and Cure Period: The schedule of liquidated damages during the grace and cure period is as follows: (i) If the escrow trust has not been funded within 15 days following the date established by the order granting final approval, each class member will be owed and paid \$5,000 and class counsel will be owed and paid \$50,000; (ii) If the escrow trust has not been funded within 30 days following the date established by the order granting final approval, each class member will be owed and paid an additional \$10,000 and class counsel will be owed and paid an additional \$100,000; (iii) If the escrow trust has not been funded within 45 days following the date established by the order granting final approval, each class member will be owed and paid a further additional \$10,000 and class counsel will be owed and paid a further additional \$100,000. After the 45-day grace and cure period has ended without funding of the escrow trust, and once the liquidated damages have been paid, the parties will have the choice to renegotiate a new settlement or return to their respective positions in the litigation as of the stay of proceedings entered on October 29, 2020.

Limited Set-off: The parties agree that the liquidated damages can never constitute a set-off from any judgment and/or Order of the Court and/or collection effort in satisfaction from a judgment and/or order, however, the parties agree that the payment of any liquidated damages pursuant to this paragraph 2 to a class member can be used to off-set any future settlement with that class member in this litigation. The parties further agree that any payment of liquidated damages to class counsel cannot be used as a credit or offset for any monies due to class counsel or class members under any future settlement, order of the Court and/or judgment. The liquidated damages due under this paragraph 3 will be owed and paid by Defendants and the personal guarantees in accordance with schedule of liquidated damages during the 45-day grace and cure period described above.

3. Establishment of Settlement Monies: Defendants agree to pay a total sum of \$550,000.00 per class member who does not opt-out of the class to fund their settlement obligations in the Action and \$150,000 of additional attorney's fees ("Settlement Monies") in accordance with this Settlement Agreement. The aggregate amount of settlement monies to be funded will be established in the order granting final approval, once the report of opt-outs has been filed with the Court. Payments by Defendants pursuant to this Settlement Agreement shall settle all pending issues between the Parties, including, but not limited to, all payments of class claims, administration costs through the Effective Date, and attorneys' fees and costs, and enhancement awards. The payments made to members of the Settlement Class shall not be construed as compensation for purposes of determining eligibility for unemployment compensation, including health and welfare benefits.

4. Class Notice Period: The Settlement Class Notice period shall be 45 days from the date of first mailing of the Settlement Class Notice.

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5. Final Approval: The parties will seek final approval of the class settlement within 14 days of the last day of the 45-day Settlement Class Notice period. Class counsel shall be responsible for preparing the motion for Final Approval and all supporting documentation, including the report on all class members who are opting-out of the settlement.
6. Escrow: No later than 3 business days from the entry of an order granting Preliminary approval of this settlement, an escrow trust account will be established in the name of Class counsel and the joint names of all class members who have not opted-out of the class settlement. The purpose of this account is to receive the earmarked funding directly from the credit facility that Defendants direct to fund the Settlement. The escrow trust account will be locked and only joint signatures from both Defendants and Class Counsel can authorize the dispersal of the monies and items contained in the escrow trust account. Class counsel will also deposit the release documentation into the Escrow trust account before the closing date.
7. Closing Date and Simultaneous Exchange: Within 45 days of the entry of an order granting final approval of this settlement, the escrow trust account established will be funded with 100% of the amounts owed by way of wire transfer confirmed by electronic receipt (and will be referred to in the Order granting final approval as the “Closing Date”). On that same day, the amounts due to each Class Member who has not opted-out and the amounts due Class Counsel will be transferred, by way of wire transfer confirmed by electronic receipt, will be transmitted. Once the electronic receipts proving the transfers to the class members and class counsel are received, the fully executed release documentation will be distributed to the Defendants from the escrow trust account.
8. Class Counsel Fees and Costs: Class Counsel will seek payment of attorneys’ fees not to exceed 25% of the gross recovery of each class member. Defendants agree they will not contest Class Counsel seeking preliminary and final approval of up to 25% of the gross recovery of each class member as costs, expenses, fees, incentive and multiplier under this settlement agreement. Nothing in this paragraph shall preclude Class Counsel from seeking more than 25% of the gross recovery of each class member as costs, expenses, fees, incentive and multiplier under this settlement agreement.

Only in the event that the Court does not allow for the recovery of costs, expenses, attorneys’ fees, incentive and/or multiplier from the gross recovery of each class member, the parties agree that they will confer in good faith to reach a resolution to payment of Class Counsel’s fees and costs, or, alternatively seek the Court’s assistance.
9. Bad Faith Clause: Prior to seeking final approval of this settlement, Defendants will provide to Class Counsel, *for attorneys eyes only*, and to the Court, *for in camera inspection*, all contracts and agreements that establish the credit facility that will fund the escrow trust account pursuant to this settlement. Those contracts and agreements provided pursuant to this paragraph 14 shall clearly establish that the fixed amount of funds due under paragraph 4 of this settlement agreement are earmarked, pursuant to the earmark doctrine under U.S. bankruptcy jurisprudence, for direct payment to Class counsel and all class members who do not opt-out, such funds to never be distributed or deposited into any accounts under the possession, custody and/or control of any corporate or individual defendants in this litigation, the officers and directors of the corporate defendants in this litigation and Jason Ding. Failure to comply with this clause shall subject the personal guarantees to the amounts enumerated in paragraph 3, liquidated damages, in addition to the amounts due under the settlement in the event any defendant and/or Jason Ding seek protection under the U.S. Bankruptcy Code within 90 days of the Closing Date.
10. Report on Opt-Outs: No less than 24 hours before the Closing date, Class Counsel shall provide Defendants with a sworn statement that all fully executed release documentation has been received from all Class members who have not opted out and that Class Counsel deposited all fully executed release documentation within the escrow trust account, in preparation for the simultaneously exchange on the Closing date when the funds are received and distributed to all parties owed under this agreement.

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6. Who represents the Class, and me, and how are they compensated?

The Court has previously designated Plaintiffs Lina Dou, Tingyang Shao, Yixuan Tao, Xiuqin Xing, Emmy Go, Yanming Wang, Shiyang Xiao, Lihong Zhan, Geli Shi as Class representatives; and has designated and approved Glen J. Dunn & Associates, Ltd., 221 N. LaSalle Street, Suite 1414, Chicago, Illinois 60601, gdunn@gjdlaw.com, (312) 880-1010 and Douglas Eliot Litowitz, 413 Locust Place, Deerfield, IL 60015, (312) 622-2848 litowitz@gmail.com to act as Class Counsel. These attorneys represent the interests of the Plaintiffs and the other Class Members.

The lawyers identified above have worked on this Lawsuit for over two years without receiving any payments for their time or out-of-pocket expenses. Under the Settlement, the Class Counsel lawyers will be paid in an amount equivalent to approximately 25% of the total aggregate Settlement funds. Please do not hesitate to contact Class Counsel should you have any questions or concerns. **DO NOT CALL THE COURT.**

7. Can I exclude myself from the Lawsuit and this Settlement?

If you do **not** wish to participate in the Settlement or be bound by its terms, you must sign and deliver upon Class Counsel an executed opt-out form by the deadline identified on the first page. If you wish to remain an investor in the Carillon Tower project and remain eligible to pursue immigration status pursuant to your I-526 application with USCIS associated with the Carillon Tower project, you must sign the opt-out form.

Each Settlement Notice shall contain an "Opt-out" form. Such written request for withdrawal must contain the full name, current home (or mailing) address of the class member, and it must include the statement "I wish to withdraw from the case entitled "*Lina Dou, et al. v. Carillon Tower/Chicago LP, et al.*, N.D.Ill. Case No. 18-cv-7865", or words to that effect. The written request must be signed by the person requesting to withdraw.

It is the responsibility of the class member, and the class member alone, to deliver any validly executed "Opt-out" form to Class counsel on or before the last day of the Settlement Class Period. The class member must prove timely delivery upon Class counsel, not reasonable mailing, to establish the date of receipt of any request to opt-out. Any request to opt-out received after the 45-day Settlement Class Notice Period will be deemed untimely unless all parties agree, by way of stipulation, to allow any Class member to opt-out of the class late. Unless the parties so stipulate, any Class Member submitting an untimely or late "opt-out" form will still participate in the settlement. Any Class member contesting the timeliness of their own request to Opt-out must bring any dispute relating to the timeliness of their request to Opt-out for resolution before Judge Kocoras in the United States District Court, Northern District of Illinois, Room 2325 for hearing within 7 days of the end of the Class Notice Period. Each member of the Settlement Collective who does not return a valid and timely request to withdraw, and who does not obtain an order from the Court permitting their withdraw from the class, shall be bound by the terms of this Settlement Agreement.

If you want to receive your settlement payment from this Lawsuit and Settlement, DO NOT SIGN THE OPT-OUT FORM.

8. Waiver and Release of Claims

Upon receipt of the settlement refund wire transfer payment, each class member will release claims as provided in the Settlement and Release Agreement. **Please read your Release of Claims carefully.** In consideration of the Partnership's payment of the Settlement Payment, Investor hereby releases, acquits, holds harmless and forever discharges the Partnership, Defendants, Jason Wei Ding, Symmetry Tower/Chicago Project Owner LLC, and all entities and individuals related

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to and part of the Investment, Agreements, Litigation and their heirs, attorneys, assigns, successors and representatives from any and all manner of liability, actions, causes of action, claims, rights, controversies, agreements, damages, and costs, whether in law, equity or arbitration, which Investor has or could assert against any and all of such parties with respect to the Investment, Agreements and actions and agreements related thereto. Each Investor also agrees to redeem their limited partnership interest in the Carillon Tower project.

Every Plaintiff's Release of Claims also obligates him/her to maintain the confidentiality of (i.e., not communicate or otherwise disclose, other than to a spouse, attorney or accountant or as required by law) his or her settlement payment and other Settlement terms.

9. Examination of the Court File and More Information

This Class Notice only summarizes the Lawsuit and other related matters. More information regarding the Lawsuit, this Notice, and your rights and options can be found by contacting the Class Counsel, or by visiting the website, <http://www.gjdlaw.com/CarillonTowerSuitUpdate>. You also may review the Court's files at the United States District Court located at 219 S. Dearborn Street, Chicago, Illinois 60604, from 8:30 a.m. to 4:30 p.m., Central Time, Monday through Friday or by electronic means using the Court's ECF/PACER system. Do not call the Court. You may also review a copy of the Lawsuit at the offices of Class Counsel. If your address, telephone number or WeChat address changes, please promptly notify Class Counsel by email at Admin@gjdlaw.com.

10. What is the Settlement Approval Process?

The Court will hold a Final Approval Hearing on **February 4, 2021** at **11:00 a.m. CST**, to consider the fairness and adequacy of the proposed Settlement, the plan of distribution, Plaintiffs' Counsel's request for attorneys' fees and costs, including the costs of notice and claims administration. The hearing will be held in Courtroom 2325 at the United States District Court located at 219 S. Dearborn Street, Chicago, Illinois 60604. The Final Approval Hearing may be continued without further notice. **You are not required to attend this hearing.**

If you withdraw yourself from the Settlement by submitting a valid and timely Opt-out form, you are not entitled to comment on or object to the Settlement or be heard at the hearing.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

THE FEDERAL DISTRICT COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF PLAINTIFFS' CLAIMS OR OF DEFENDANTS' DEFENSES.

DO NOT CALL OR CONTACT THE COURT WITH QUESTIONS ABOUT THIS NOTICE OR THE LAWSUIT. THE JUDGE CANNOT ANSWER QUESTIONS CONCERNING THIS LAWSUIT OR THIS NOTICE.

DATED: December 1, 2020