

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

R. CHARLES ALLEN

Plaintiff

-and-

ASPEN GROUP RESOURCES CORPORATION, JACK E. WHEELER, JAMES E. HOGUE,  
WAYNE T. EGAN, ANNE HOLLAND, RANDALL B. KAHN, LENARD BRISCOE, PETER  
LUCAS, LANE GORMAN TRUBITT L.L.P. and WEIRFOULDS LLP

Defendants

***Proceeding under the Class Proceedings Act 1992, S.O. 1992, c.6***

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**DISTRIBUTION PROTOCOL**

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**BACKGROUND**

1. An action was brought by former security holders of Endeavour Resources Inc. (“Endeavour”) who tendered securities to Aspen Group Resources Corporation (“Aspen”) pursuant to a November 23, 2001 Take-Over bid (the “Take-Over”). The action was brought against Aspen, certain of its directors, its legal representatives, and its auditors, for alleged breaches of the *Ontario Securities Act* (the “Action”) and negligence.
2. The Action has been resolved in its entirety pursuant to settlement agreements with the following Defendants:
  - a. Lane Gorman Trubitt <sup>LLP</sup> on May 14, 2012;
  - b. Lenard Briscoe on August 9, 2012;
  - c. Weirfoulds <sup>LLP</sup> on April 23, 2014; and

a. Wayne T. Egan, Anne Holland, and Randall B. Kahn on August 8, 2019.

- i. The August 8, 2019 settlement also resolves the allegations and litigation as against Aspen Group Resources Corporation, Peter Lucas, James E. Hogue and Jack E. Wheeler;

(collectively, the “Settlement Agreements”).

3. The goal of this Distribution Protocol is to fairly distribute the Net Settlement Fund among Class Members, in a manner that is consistent with the claims made in the Action.
4. The Claims Administrator, in concert with Class Counsel, shall have the discretion to interpret this Distribution Protocol in such a fashion as to ensure the facilitation of the goals of the Settlement Agreements for the benefit of Class Members.

## DEFINITIONS

5. The definitions in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in the Distribution Protocol, the definition in the Distribution Protocol shall govern:

“**Action**” has the meaning attributed to it in paragraph 1;

“**Claims Administrator**” means RicePoint Administration Inc.;

“**Claims Deadline**” means July 31<sup>st</sup>, 2020;

“**Claimant**” means a person who submits a properly completed claim form and all required supporting documentation to the Claims Administrator, on or before the Claims Deadline including a person whose timely but deficient claim form is subsequently remedied and accepted by the Claims Administrator;

“**Class Member**” means all holders of common shares, Series I special warrants and Series II special warrants of Endeavour Resources Inc. (“Endeavour” and “Endeavour Securities”) that were tendered or otherwise acquired by Aspen Resources Corporation (“Aspen”) pursuant to Aspen’s Take-Over bid dated November 23, 2001, other than Excluded Persons and Opt-Out Parties.

“**Compensation**” means the share of the Net Settlement Fund payable to an Eligible Claimant pursuant to this Distribution Protocol;

**“Eligible Claimant”** means a Claimant who is a Class Member (or who has lawful authority to claim on behalf of a Class Member or the estate of a Class Member), who has satisfied the requirements of the herein claims process, and where said Class Member is entitled to a number of Net Settlement Fund Interests greater than zero under this Distribution Protocol;

**“Endeavour Security Holder List”** means Class Counsel’s best information as to the identity of Endeavour security holders who tendered Endeavour securities into the Transaction, and the associated number of Endeavour Securities tendered by each such security holder, as compiled from information provided by certain of the settling defendants pursuant to the Settlement Agreements;

**“Excluded Person”** means all former and current defendants and any of their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors or assigns, and includes any person provided with a release by any Settlement Agreement;

**“FIFO”** means the principle of first-in first-out, wherein common shares are deemed to be sold in the same order that they were acquired (i.e. the first common shares acquired are deemed to be the first sold);

**“Minimum Amount Payable”** means CAD \$20.00;

**“Net Settlement Fund”** means the Settlement Amount plus accrued interest, less Administration Expenses, Class Counsel Fees, and any other costs or expenses related to the administration of the Settlement Agreements;

**“Net Settlement Fund Interest”** means an interest in the Net Settlement Fund as determined by this Distribution Protocol, which forms the basis of how each Eligible Claimant’s Compensation is calculated;

**“Opt-Out Parties”** means any person who would otherwise be a Class Member but who has validly opted out of the action;

**“Settlement Agreements”** has the meaning attributed to it in paragraph 2;

**“Settlement Amount”** means CDN \$3,285,000.00, representing the gross amount paid for the benefit of Class Members pursuant to the Settlement Agreements;

“Take-Over” has the meaning attributed to it in paragraph 1.

## **OVERVIEW: HOW THE DISTRIBUTION PROTOCOL WORKS**

6. This Distribution Protocol has been designed for consistency with the allegations made in the Action. The Action alleges that every Class Member suffered a loss through the tendering of their Endeavour Securities into the Take-Over, which would not have occurred but-for the alleged misrepresentations.
7. As such, the Distribution Protocol stipulates that any Claimant who establishes that they are a Class Member will receive a share of the Net Settlement Funds based on the number of Endeavour Securities they tendered into the Take-Over.
8. The Distribution Protocol also provides an additional share of the Net Settlement Funds to Class Members who can establish they sold Aspen common shares received in the Take-Over at a loss or held those Aspen common shares at the time Aspen common shares were delisted from the TSX in or around September 14, 2009.
9. The Distribution Protocol is designed so that Eligible Claimants accumulate credits (called Net Settlement Fund Interests) which will equate to an ultimate pro-rated share of the Net Settlement Funds.
10. As described in greater detail below, the Distribution Protocol applies the principles above to calculate Compensation to each Eligible Claimant as follows:

**STEP 1** - The two factors identified above are used to assign a number of Net Settlement Fund Interests per share to each Eligible Claimant.

- For example, a Class Member who tendered 1,000 Endeavour Securities into the Take-Over would be assigned 1,000 Net Settlement Fund Interests (pursuant to “Determination of Interest in the Net Settlement Fund” below).
- If that same Class Member was also able to demonstrate they sold 200 Aspen common shares received in the Take-Over at a loss, they would receive additional Net Settlement Fund Interests per Aspen common share, in proportion to the amount of the loss (pursuant to the formula in “Determination of Interest in the Net Settlement Fund” below).

**STEP 2** - The Net Settlement Fund Interests of all Eligible Claimants will be added together, to create a total sum of the Net Settlement Fund Interests of all Eligible Claimants.

**STEP 3** - For each Eligible Claimant, their individual Net Settlement Fund Interests will be calculated as a percentage of the total Net Settlement Fund Interests of all Eligible Claimants.

**STEP 4** - Each Eligible Claimant's share of the total Net Settlement Fund Interests will be multiplied by the value of the Net Settlement Fund, to determine their Compensation (subject to adjustments as described below).

**STEP 5** – If necessary, there will be a *pro rata* adjustment to the amount of Compensation, in order to ensure that every Eligible Claimant receives a minimum Compensation of \$20.00, and to ensure that no Compensation is paid in respect for amounts already received as private out-of-class settlements. These adjustments are described in greater detail below.

## **STEP 1: DETERMINATION OF INTEREST IN THE NET SETTLEMENT FUND**

11. The number of Net Settlement Fund Interests to which a Class Member is entitled will be calculated as follows:
  - a. **Base Interest for Endeavour Securities Tendered:** For each Endeavour Security tendered into the Take-Over, a Class Member is entitled to one (1) Net Settlement Fund Interest.
  - b. **Additional Interest for Aspen Common Shares Received and Sold at a Loss:** In respect of subsequent disposition(s) of Aspen common shares received pursuant to the Take-Over, a Class Member is additionally entitled to:
    - i. Zero (0) Net Settlement Fund Interests for each such Aspen Common Share that was disposed of at a price equal to or greater than \$0.60; and
    - ii. A Net Settlement Fund Interest Ranging from Zero (0) to One (1) for each such Aspen Common Share that was disposed of at a price lesser than

\$0.60, calculated using the following formula, where P equals the price at which each such Aspen Common Share was disposed of:<sup>1</sup>

1. Net Settlement Fund Interest for each such Aspen common share  
=  $(\$0.60 - P)/\$0.60$

**For example:** assume an Eligible Claimant received 150,000 Aspen common shares in the Take-Over. If that Eligible Claimant can demonstrate they sold 20,000 of those Aspen common shares at \$0.70 per share, 90,000 at \$0.30 per share, and another 40,000 at \$0.10 per share, the calculation of their additional Net Settlement Fund Interests would proceed as follows:

- a. In respect of the 20,000 Aspen common shares, they will receive zero additional Net Settlement Fund Interests because these securities were sold at a price greater than \$0.60.
- b. In respect of the 90,000 Aspen common shares, they will receive  $(\$0.60 - \$0.30)/\$0.60 = 0.5$  additional Net Settlement Fund Interests per Aspen common share, or 45,000  $(0.5*90,000)$  additional Net Settlement Fund Interests.
- c. In respect of the 40,000 Aspen common shares, they will receive  $(\$0.60 - \$0.10)/\$0.60 = 0.8333$  additional Net Settlement Fund Interests per Aspen common share, or 33,333.33  $(0.8333*40,000)$  Net Settlement Fund Interests.
- d. The total additional Net Settlement Fund Interests this Class Member would be assigned in respect of Aspen common shares sold at a loss would be 78,333.33  $(0 + 45,000 + 33,333.33)$

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<sup>1</sup> For the purpose of this formula, Aspen common shares that continued to be held as at September 14, 2009 (the date Aspen's common shares were delisted from the TSX) are deemed to have been sold at a price of \$0.

## **STEPS 2-4: CALCULATION OF SHARE OF THE NET SETTLEMENT FUND**

12. Subject to the Adjustments below, each Eligible Claimant's Compensation will be the portion of the Net Settlement Fund equivalent to the share of its number of Net Settlement Amount Interests of the total number of Net Settlement Amount Interests of all Eligible Claimants, multiplied by the Net Settlement Fund, as calculated by the Claims Administrator.

## **STEP 5: ADJUSTMENT FOR MINIMUM AMOUNTS PAYABLE AND OUT-OF CLASS SETTLEMENTS**

13. Eligible Claimants whose Compensation is calculated to be less than the Minimum Amount Payable ("Low Value Eligible Claimants") shall each have their Compensation increased to the Minimum Amount Payable (the "Adjustment for Minimum Amount Payable"), subject to potential pro-ration such that the aggregate Adjustment for Minimum Amount Payable shall in no circumstances exceed \$20,000 across all Class Members. The Adjustment for Minimum Amount Payable to the Low Value Eligible Claimants shall be funded *pro-rata* from the other Eligible Claimants.
14. Deducted from Compensation payable to Eligible Claimants under this Distribution Protocol is any compensation already received by the Class Member through other proceedings or private out-of-class settlements in relation to the Take-Over,<sup>2</sup> unless by such proceedings or private out-of-class settlements, the Class Member's claim was released in its entirety, in which case the Eligible Claimant shall be deemed ineligible for Compensation. Where any such reduction is made to the Compensation payable to any Eligible Claimant, the amount shall be allocated *pro-rata* to the other Eligible Claimants.

## **CLAIMS PROCESS**

### **Submitting a Claim for Review**

15. Claimants will complete and submit a claim (together with the supporting documentation) before the Claims Deadline. The Claims Administrator, in consultation with Class Counsel, shall have the discretion to determine the medium through which claims must be submitted.

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<sup>2</sup> A private out-of-class settlement means you received money pursuant to the resolution of an individual legal dispute with any of the defendants.

16. By agreement between the Claims Administrator and Class Counsel, any deadline contained in this Distribution Protocol, including the Claims Deadline, may be extended.
17. The Claims Administrator shall review each claim as follows:
  - a. For a Claimant claiming as a Class Member, the Claims Administrator shall be satisfied that the Claimant is a Class Member. Sufficient evidence for this purpose includes:
    - i. the presence of the Claimant, and/or an entity or entities associated with the Claimant, on the Endeavour Security Holder List;
    - ii. transaction records, broker confirmations, trading slips, receipts, and/or copies of share certificates provided by the Claimant; and/or
    - iii. comparable proof that is acceptable to the Claims Administrator at their discretion.
  - b. For a Claimant claiming on behalf of a Class Member or a Class Member's estate, the Claims Administrator shall be satisfied that:
    - i. the Claimant has lawful authority to act on behalf of the Class Member or the Class Member's estate in respect of that Class Member's claim; and/or
    - ii. the person or estate on whose behalf the claim was submitted is a Class Member.
  - c. For the purposes of establishing entitlement to **Base Interest for Endeavour Securities Tendered**, the Claims Administrator shall be satisfied of the number of Endeavour Securities tendered into the Transaction by the Class Member. Sufficient evidence for this purpose includes:
    - i. the presence of the Class Member, and/or an entity or entities associated with the Class Member, along with the associated number of Endeavour Securities, on the Endeavour Security Holder List;
    - ii. transaction records, broker confirmations, trading slips, receipts, and/or copies of share certificates provided by the Claimant; and/or
    - iii. comparable proof that is acceptable to the Claims Administrator at their discretion.

- d. For the purposes of establishing entitlement to **Additional Interest for Aspen Securities Received and Sold at a Loss**, the Claims Administrator shall be satisfied a) of the number of Aspen Common Shares sold by the Class Member; b) of the price for which each Aspen Common Share was sold by the Class Member; and c) that the Aspen Common Shares sold by the Class Member were received pursuant to the Take-Over, in accordance with FIFO. Sufficient evidence for this purpose includes:
- i. transaction records, broker confirmations, trading slips, receipts, and/or copies of share certifications provided by the Claimant;
  - ii. a sworn declaration<sup>3</sup> by the Claimant affirming:
    - 1. the number of Aspen Common Shares sold;
    - 2. the price for which each Aspen Common Share was sold; and
    - 3. that the Aspen Common Shares sold were received pursuant to the transaction; and/or
  - iii. comparable proof that is acceptable to the Claims Administrator at their discretion.
- e. Claimants shall also provide the following to the Claims Administrator:
- i. disclosure of whether the Class Member or any entity related to the Class Member has received compensation through other proceedings or private out-of-class settlements and/or provided a release in respect of any of the Take-Over, and provide details of the compensation received and the claims released, if any;
  - ii. authorization to the Claims Administrator to contact the Claimant or its representative as the Claims Administrator deems appropriate for more information and/or to audit the claim;

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<sup>3</sup> The Claims Administrator shall have complete discretion to approve or reject such declaratory proof, based on reasonable cross-referencing to other sources of information (including, for example, whether or not the declaratory proof is consistent with the number of Aspen common shares that would have been received by the claimant based on the Endeavour Securities tendered by the Claimant and the Take-Over's transfer ratio).

- iii. a declaration that the information submitted in the claim is true and correct;  
and
  - iv. such further and other information as the Claims Administrator may require to process claims.
18. Should a Class Member's claim reflect an exceptional consideration such that the Claims Administrator may conclude that the process set out in paragraph 11 does not adequately capture the circumstances of that Class Member, the Class Member shall be permitted to submit proof to support their position and explain their circumstances. The Claims Administrator shall have the necessary discretion to evaluate and adjudicate compensation with respect to such potential claims.

#### **Claims Administrator's Decision**

19. In respect of each claim filed in accordance with this Distribution Protocol, the Claims Administrator shall decide whether the Claimant is an Eligible Claimant as defined in this Distribution Protocol, and if yes, make a determination as to the number of Net Settlement Amount Interests to which the Class Member is entitled, and the amount of the Eligible Claimant's Compensation, in accordance with this Distribution Protocol.
20. The Claims Administrator shall send to each Claimant, by e-mail or regular mail, a decision as to the approval or rejection of the claim. Where the Claims Administrator has rejected all or part of the claim, the Claims Administrator shall include its grounds for rejecting all or part of the claim.
21. The Claims Administrator's decision shall be final and binding upon the Claimant.

#### **Conflicting or Overlapping Claims**

22. Conflicting or overlapping claims occur where two or more Claimants advance an interest in respect of the same securities.<sup>4</sup>
23. In the event of conflicting or overlapping claims, the following process shall apply:

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<sup>4</sup> A conflicting or overlapping claim would include, for example, where a corporation that owned Endeavour Securities tendered 1000 Endeavour Securities into the Take-Over, and two separate Claimants make a claim for, or seek an interest in, Compensation in respect of the 1000 Endeavour Securities on behalf of the that corporation.

- a. The Claims Administrator will have no responsibility for, and shall not attempt to resolve any disputes, overlaps, or conflicts between claims or Claimants. Where conflicting or overlapping claims are advanced or submitted and identified by the Claims Administrator, the claims will be treated as deficient. The Claimants will be notified of the deficiency and will have thirty (30) days to resolve the conflict or overlap.
- b. In order to resolve the conflict or overlap, the Claimants must:
  - i. jointly agree among all potentially Eligible Claimants to designate a payee (the “Designated Payee”) to receive the Compensation at issue, if any, in respect of the claim (for example, a lawyer who will hold the Compensation in trust) pending resolution of any conflict. In this case, only one claim will be processed, and the claim will name all Claimants and their Designated Payee.
  - ii. All Eligible Claimants with a conflicting or overlapping claim will be required to provide a Letter of Direction which: (i) specifies the Designated Payee, and (ii) releases the Claims Administrator and Class Counsel of any and all liability in respect of the Compensation at issue. The Letter of Direction must be signed by every person or entity with an interest in the claim, and must be accompanied by documentary proof which satisfies the Claims Administrator that all persons or entities who have an interest in the claim have agreed to the letter.<sup>5</sup> The Claims Administrator and/or Class Counsel shall have no further role in respect of the Compensation at issue after delivering the funds to the Designated Payee.
- c. Where overlap or conflict between claims or Claimants cannot be resolved by the Claimants in accordance with paragraphs 23(b)(i) and (ii), the Claims Administrator shall have the discretion to reject the overlapping or conflicting claims.
- d. It is essential that overlapping or conflicting claims be managed in accordance with this Distribution Protocol. Under no circumstances shall the claims administration process be delayed or otherwise impaired by conflicting or overlapping claims.

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<sup>5</sup> The precise nature of this proof is subject to the Claims Administrator’s discretion, but could include, for example, a current list of shareholders and directors of a corporation that tendered Endeavour Securities subject to a conflicting or overlapping claim.

## **Audits**

24. At its sole discretion, the Claims Administrator can elect to audit any claim and can reject a claim, in whole or in part, where, in the Claims Administrator's view, the Claimant has submitted insufficient or false information or has otherwise engaged in fraudulent conduct
25. If a Claimant's claim is audited, the Claimant must respond reasonably to the questions asked by the Claims Administrator and provide reasonable responses to any information requests made within the timeframe requested by the Claims Administrator.
26. The Claims Administrator shall notify the Claimant that the Claimant's claim is the subject of an audit. The Claims Administrator shall state any questions or requests for documentary proof as may be required. The Claims Administrator shall allow a Claimant thirty (30) days from the date of such notice in order to provide a satisfactory response to the audit request. If the Claimant does not answer the questions posed or provide reasonable responses to the documents and information requested, the Claims Administrator shall reject the claim subject to the deficiency process outlined in paragraph 27.

## **Deficiencies**

27. If, during claims processing, the Claims Administrator finds that deficiencies exist in a claim or other required information, the Claims Administrator shall notify the Claimant, by e-mail or regular mail, of the deficiencies. The Claims Administrator shall allow the Claimant thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the claim.

## **D. FINAL DISTRIBUTION**

28. The Claims Administrator shall be authorized to distribute Compensation to Eligible Claimants in accordance with this Plan of Distribution upon having received and reviewed the claim forms submitted by the Claims Deadline in accordance with the Claims Process without further order of the Court.
29. Compensation shall be paid to Eligible Claimants in Canadian currency. In the ordinary course, payment of Compensation will be made to the name of the Class Member who tendered Endeavour Securities into the Take-Over. Only in exceptional circumstances shall payment be made to the name of any person or entity other than the Class Member.

Such exceptional circumstances include: where an individual Class Member is deceased; where a corporate Class Member has been dissolved; where a Designated Payee has been duly appointed in respect of a conflicting or overlapping claim as provided for in Paragraph 23; or otherwise at the discretion of the Claims Administrator.

30. Payment of Compensation to Eligible Claimants will be made by e-transfer, cheque, or any other method deemed appropriate by the Claims Administrator.
31. If, one hundred and eighty (180) days from the date on which the Claims Administrator distributes the Net Settlement Fund, the Account remains in a positive balance (whether due to tax refunds, interest, uncashed cheques or otherwise) (the "Residual"), the Claims Administrator shall, if feasible (at the Claims Administrator's discretion, having regard to the economics of the case and equity to Class Members), reallocate the Residual among the Eligible Claimants in an equitable and economic fashion. If it is not economically feasible for the Residual to be redistributed to Eligible Claimants, such monies shall be paid to The Canadian Foundation for the Advancement of Investor Rights [Fondation pour l'avancement des droits des investisseurs] ("FAIR Canada"), and/or a like investors' rights organization, for the general benefit of Settlement Class Members if the amount is equal to or less than \$10,000. For distribution of any amount above \$10,000, further direction of the Court shall be sought.