

**SETTLEMENT AGREEMENT**

Made as of the 23<sup>rd</sup> day of April, 2014

Between

R. CHARLES ALLEN  
(the "Plaintiff")

- and -

WEIRFOULDS LLP  
(“WeirFoulds” or the “Settling Defendant”)

## RECITALS

- A. **WHEREAS** R. Charles Allen (the "Plaintiff") commenced an action on behalf of class members for, *inter alia*, damages for negligence and for breach of s. 131 of the *Securities Act*, R.S.O. 1990, c. N1, as amended (the "*Act*"), in Court File No. 02-CV-241587CP (the "Action");
- B. **AND WHEREAS** the action alleges liability against WeirFoulds LLP ("WeirFoulds") for negligence in its capacity as a legal services provider to Aspen, primarily for but not limited to legal services provided by Wayne Egan ("Egan") as a lawyer of WeirFoulds, and for breach of s. 131 of the *Act* by Egan;
- C. **AND WHEREAS** the parties agree that reference to WeirFoulds in this Settlement Agreement shall include Egan in his capacity as a lawyer at WeirFoulds but does not include Egan in his capacity as a director of Aspen;
- D. **AND WHEREAS** the Action was certified as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, Chapter 6;
- E. **AND WHEREAS** documentary production has been made by all parties, and the examinations for discovery have been completed, subject to potential further requests by the Plaintiff;
- F. **AND WHEREAS** the Plaintiff has previously entered into settlement agreements with Lane Gorman Trubitt L.L.P. ("LGT") and Lenard Briscoe ("Briscoe");
- G. **AND WHEREAS** the liability of WeirFoulds and Egan (in his capacity as a lawyer) for the provision of legal advice and services is covered by a primary policy of insurance provided by the Lawyers' Professional Indemnity Company ("LawPro") and by excess insurance policies provided by the Canadian Lawyers Liability Assurance Society ("CLLAS");
- H. **AND WHEREAS** counsel for WeirFoulds and Egan (in his capacity as a lawyer), and counsel for the Plaintiff, have engaged in extensive arm's length settlement discussions and negotiations, resulting in this Settlement Agreement which fully and finally resolves the liability of WeirFoulds and the liability of Egan in his capacity as a lawyer of WeirFoulds, and, for greater clarity, any and all liability for which LawPro and CLLAS provides insurance coverage;

I. **AND WHEREAS** WeirFoulds and Egan do not admit, through the execution of this Settlement Agreement or otherwise, liability for or in respect of any of the allegations made in the Action and any further liability is expressly denied;

J. **AND WHEREAS** the parties agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against WeirFoulds or Egan or evidence of the truth of any of the Plaintiff's allegations against WeirFoulds and Egan, which allegations are expressly denied by WeirFoulds and Egan;

K. **AND WHEREAS** the Settling Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against them in the Action, and for greater clarity, any and all claims for which there may be insurance coverage by LawPro and CLLAS, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

L. **AND WHEREAS** the Non-Settling Defendants have disclosed the following insurance policies which are in full force and effect in accordance with their terms:

- a. Liberty Surplus Insurance Corporation, Policy Number 192778-013 (Aspen Group Resources Corporation);
- b. Arch Speciality Insurance Company, Memorandum of Insurance Number 2228AS (Excess Directors, Officers and Reimbursement Insurance for Aspen Group Resources Corporation); and,
- c. Lloyd's Outside Directorship Liability Insurance through Dion, Durrell + Associates Inc., Policy Number ODLA102002-10006 (WeirFoulds LLP);

M. **AND WHEREAS** the action continues as against Aspen Group Resources Corporation, Jack E. Wheeler, James E. Hogue, Egan (in his capacity as a director of Aspen), Anne Holland, Randall B. Kahn and Peter Lucas (the "Non-Settling Defendants") and the Plaintiff on behalf of the class members reserves all rights against the Non-Settling Defendants and their policies of insurance, other than as may be provided for in the bar order described at Section 2 herein;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is

hereby acknowledged, it is agreed by the parties to this Settlement Agreement that the Action be settled and dismissed on the merits with prejudice as to WeirFoulds and Egan in his capacity as a lawyer without costs as to the Plaintiff (other than contingency fees which may be awarded out of the settlement amount to Class Counsel), the class he represents, subject to the approval of the Courts, on the following terms and conditions.

## **SECTION 1 – SETTLEMENT BENEFITS**

### **1. Payment of Settlement Amount**

- a. Within five (5) business days of receipt of the final settlement approval order after all appeals, WeirFoulds shall pay the all-inclusive sum of three hundred and twenty-five thousand dollars (\$325,000.00) CDN in full and final settlement of the claims against WeirFoulds in the Action.

### **2. Dismissal**

- a. As soon as practicable after the payment of the funds referred to in paragraph 1, the Action shall be dismissed on the merits against WeirFoulds.

## **SECTION 2 – BAR ORDER**

### **3. The Plaintiff and WeirFoulds agree that the order approving this Settlement Agreement must include a bar order. The bar order shall be in a form agreed to by the Plaintiff and WeirFoulds and shall include:**

- a. all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the allegations, which were or could have been brought in the Action by the Plaintiff, by any Non-Settling Defendant or any other person or party, against WeirFoulds, or by WeirFoulds against any Non-Settling Defendant, are barred, prohibited and enjoined;
- b. all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the allegations, which were or could have been brought in the Action, by any Non-Settling Defendant or any other person or party, against Egan, in his capacity as a lawyer insured by LawPro and CLLAS,

or by Egan, in his capacity as a lawyer insured by LawPro and CLLAS, against any Non-Settling Defendant, are barred, prohibited and enjoined

- c. if, in the absence of (a) and (b) hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against WeirFoulds or Egan, in his capacity as a lawyer insured by LawPro and CLLAS:
  - i. the Plaintiff and the class members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) on which judgment is entered that corresponds to the proportionate liability of WeirFoulds or Egan, in his capacity as a lawyer insured by LawPro and CLLAS, proven at trial or otherwise;
  - ii. for greater certainty, the Plaintiff and the class members shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interest attributable to the Non-Settling Defendants' liability to the Plaintiff and the class members, if any;
  - iii. this Court shall have full authority to determine the proportionate liability at the trial or other disposition of this Action, whether or not WeirFoulds appears at the trial or other disposition, and the proportionate liability shall be determined as if WeirFoulds is a party to this Action for that purpose and any such finding by this Court in respect of the proportionate liability shall only apply in this Action and shall not be binding upon WeirFoulds in any other proceedings.
- d. if, in the absence of (a) or (b) hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against WeirFoulds, or Egan, in his capacity as a lawyer insured by LawPro and CLLAS, then nothing in the order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Action.

- e. a Non-Settling Defendant may, on a motion to the Courts and on at least ten days' notice to counsel for WeirFoulds, seek Orders for the following:
  - i. leave to serve a request to admit on WeirFoulds in respect of factual matters; and/or
  - ii. the production of a representative of WeirFoulds to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.

WeirFoulds retains all rights to oppose such motion or seek the costs of compliance, including any such motion brought at trial seeking an order requiring WeirFoulds to produce a representative to testify at trial.

### **SECTION 3 – MOTIONS TO BE BROUGHT**

#### **4. Best Efforts**

- a. The Plaintiff and WeirFoulds shall take all reasonable steps to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Action as against WeirFoulds, including cooperating in the Plaintiff's efforts to obtain any approval or orders required from the Court regarding the approval or implementation of the Settlement Agreement, including orders approving the form and distribution of the Notices contemplated by this Settlement Agreement.

#### **5. Motion to Approve Notice**

- a. The Plaintiff shall promptly bring a motion before the Court for an order approving the Notice of Settlement Approval Hearing.

#### **6. Motion for Approval of the Settlement etc.**

- a. As soon as practicable after the approval of the Notice of Settlement Approval Hearing and after the Notice of Settlement Approval Hearing has been published, the Plaintiff shall bring a motion before the Court for an order approving this Settlement Agreement, and for approval for Class Counsel fees, disbursements and applicable taxes.

#### SECTION 4 – RELEASE

7. Upon the receipt of the Order approving this Settlement Agreement, and in consideration of payment of the settlement amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims.
8. **Releasees** mean, jointly and severally, individually and collectively, WeirFoulds and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, associates, employees, agents, shareholders, attorneys, trustees, servants, representatives and insurers, including LawPro and CLLAS (but not including any of the insurers identified in clause M of the Recitals); and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding Wayne Egan in his capacity as a director of Aspen.
9. **Releasers** mean, jointly and severally, individually and collectively, the Plaintiff and the class members on behalf of themselves and any person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.
10. **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, or relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been

asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with negligence or the alleged misrepresentations in breach of s. 131 of the *Securities Act*, R.S.O. 1990, c. N1, as amended, and specifically excluding always the claims advanced against, Wayne Egan in his capacity as a director of Aspen, for that portion of any damages, costs or interest not based on the proportionate fault of WeirFoulds.

11. The Releasors agree and undertake:
  - a. that if they, including anyone on behalf of whom they act, make any claim, demand or complaint or take any action or proceeding against the Releasees or Egan, in his capacity as a lawyer insured by LawPro and CLLAS arising out of the Released Claims, this Release shall be deemed to be a complete defence and bar to any such claim, demand, complaint, action or proceeding;
  - b. not to make any claim or take any proceeding against any person or entity which might result in a claim for contribution or indemnity being made against the Releasees.
  - c. to bind any parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, beneficiary, executor, administrator, trustee, servants, insurer, devisee, assignee or representative of any kind of the Releasors to the terms of this Release; and
  - d. that this Release is deemed to be no admission of liability by the Releasees in anyway whatsoever and that liability is in fact denied.
  
12. For greater certainty, nothing in the Settlement Agreement and Release shall prohibit the Releasors from the full prosecution of their claims against the Non-Settling Defendants, which includes without limitation, Wayne Egan in his capacity as a director, against whom all rights of the Plaintiff and the class are specifically reserved for that portion of any damages, costs or interest not based on the proportionate fault of WeirFoulds.



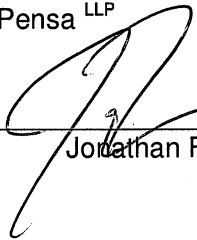
**SECTION 5 – COUNTERPARTS**

13. This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a fax signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

**The Parties have executed this Settlement Agreement as of the date on the cover page.**

R. Charles Allen  
*By His Counsel*  
Harrison Pensa<sup>LLP</sup>

By:



Jonathan Foreman

WeirFoulds LLP  
*By Its Counsel*  
Lerners LLP

By:

William Pepall

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