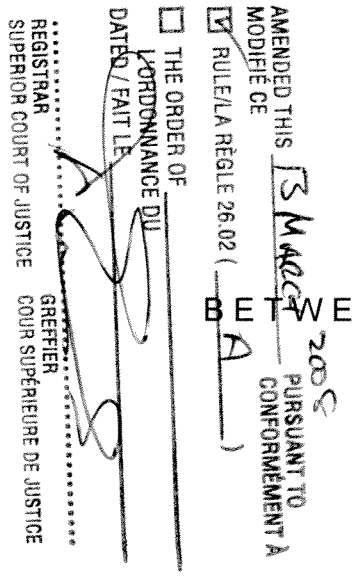

Court File No. 02-CV-241587CP

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

FRESH AS AMENDED STATEMENT OF CLAIM

(Notice of Action issued December 30, 2002)

1) The Plaintiff claims on behalf of the proposed class:

   i) An Order Certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff on behalf of the class;

   ii) Rescission of a take-over bid by the Defendant, Aspen Group Resources Corporation, of Endeavor Resources Inc.

   iii) Damages for misrepresentation and breach of Section 131 of the *Securities Act*, R.S.O. 1990 c.N.1 as amended ("OSA");

   iv) Punitive, aggravated or exemplary damages in the amount of $10,000,000.00;

v) Pre and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended;

vi) Costs of notice to class members and administration pertaining to a plan of distribution;

vii) Costs of this action on a substantial indemnity basis;

viii) Such further and other relief as this Honourable Court may deem just.

The Plaintiff and the Class Members

2) The Plaintiff, Charles Allen ("Allen"), is an individual resident in the City of Toronto, in the Province of Ontario. Allen was a security holder in Endeavour Resources Inc. ("Endeavour") at the time of its acquisition by the Defendant, Aspen Resources Corporation ("Aspen"), pursuant to a take-over bid dated November 23, 2001. Allen held common shares in Endeavour as at the date of the take-over and received common shares in Aspen following the take-over.

3) The proposed class members are all holders of common shares, Series I and Series II special warrants of Endeavour ("Endeavour Securities") which were tendered and accepted by Aspen pursuant to its November 23, 2001 take-over bid. There were 39,718,942 common shares, 5,000,000 Series I special warrants and 3,750,000 Series II special warrants of Endeavour which were acquired by Aspen and converted to common shares in Aspen pursuant to the take-over.

The Defendants

4) The Defendant, Aspen, is a corporation incorporated in Canada under the laws of the Yukon Territory. Its registered office is located in Whitehorse, Yukon Territory, Canada. Its head office is located in Oklahoma City, Oklahoma, United States of America. Aspen is a publicly traded company with its shares listed on the Toronto Stock Exchange ("TSE") and on the NASD over-the-counter bulletin board ("OTCBB").

5) The Defendant, Jack E. Wheeler ("Wheeler"), was, at all material times until his resignation in October, 2002, the Chairman of the Board and Chief Executive Officer of Aspen.

6) The Defendant, Peter Lucas ("Lucas"), was at all material times a Senior Vice-President and the Chief Financial Officer of Aspen.

7) Each of the Defendants, Anne Holland ("Holland"), Lenard Briscoe ("Briscoe") and James E. Hogue ("Hogue") were at all material times members of the Board of Directors of Aspen and members of the Compensation Committee of Aspen.

8) The Defendant, Wayne T. Egan ("Egan") was at all material times:

   a) legal counsel to Aspen on securities matters as a partner in the Defendant, WeirFoulds LLP;

b) the Secretary of the Compensation Committee of Aspen; and

c) a member of the Board of Directors of Aspen.

9) The Defendant, Randall B. Kahn ("Kahn"), was at all material times a member of the Board of Directors of Aspen.

10) The Defendants, Lane Gorman Trubitt L.L.P. ("Lane Gorman"), certified public accountants located in Dallas, Texas, were, at all material times, the auditors of Aspen.

11) The Defendant, WeirFoulds LLP ("WeirFoulds"), Barristers & Solicitors, are a law firm located in Toronto, Ontario and were at all material times, Canadian legal counsel to Aspen.

Synopsis of Class Proceeding

12) The Plaintiff, on behalf of the class of Endeavour security holders, alleges that the Defendant, Aspen, its Defendant directors, officers and advisors are liable for material misrepresentations and omissions made in the take-over bid circular dated November 23, 2001 and for the failure to provide notice of material changes prior to the expiry of the take-over bid. These class members are deemed to have relied on the misrepresentations and omissions alleged pursuant to Section 131 of the OSA.

Factual Background

13) On February 26, 2001, the Defendant, Aspen, became a publicly traded company listed on the TSX.. Aspen's primary credit facility in the amount of $25,000,000 line of credit was granted by the Local Oklahoma Bank in Oklahoma City, Oklahoma.

14) On May of 2001, Aspen engaged in exploratory negotiations with Endeavour, which was also a publicly traded company, for the purpose of making a take-over bid for all, or substantially all, of the shares of Endeavour.

15) On October 23, 2001, a Pre-Acquisition Agreement was reached between Aspen and Endeavour which required and/or established, among other things, the following:

a) Aspen would not declare or pay any dividend or make any distribution of its properties or assets to its shareholders or, other than as provided for in the Pre-Acquisition Agreement, purchase, redeem or retire any shares of its capital stock or other securities of Aspen.

b) Aspen would not allot, issue, or enter into any agreement for the allotment or issuance of, or grant any other rights to acquire shares of its capital stock or the capital stock of any of its subsidiaries or securities convertible into, exchangeable for or which carry a right to acquire, directly or

indirectly shares of its capital stock or the capital stock of any of its subsidiaries, provided that nothing in the agreement shall prohibit Aspen from issuing shares pursuant to the exercise of warrants or options granted by Aspen before the date of the Pre-Acquisition Agreement.

c) Aspen would not permit any subsidiary to merge, amalgamate or consolidate into or with any person or enter into any other corporate reorganization, or, sell all or any substantial part of its assets to any person, or, perform any act or enter into any transaction or negotiation which can reasonably be expected to interfere or be inconsistent with the consummation of the transactions contemplated in the Pre-Acquisition Agreement.

d) There were 20,555,657 issued and outstanding common shares of Aspen.

e) There were no unauthorized or outstanding warrants, options or rights of any kind to acquire from Aspen any equity or debt securities of Aspen or securities convertible into or exchangeable for debt securities of Aspen other than as disclosed in Aspen's financial statements or in the Pre-Acquisition Agreement.

16) Between October 2001 and November 23, 2001, Aspen made a take-over bid circular and offer to purchase Endeavour Securities to be transmitted to the Endeavour Security holders.

17) On November 23, 2001, Aspen distributed to the entire class of Endeavour Security holders, the take-over bid circular and offer to purchase securities purportedly prepared in accordance with the *Securities Act* (Ontario).

18) The offer to purchase offered shares and warrants in Aspen as consideration for all tendered shares and warrants of Endeavour Securities.

19) The offer originally expired on December 31, 2001. A notice of change to the take-over bid was distributed on December 21, 2001, which extended the expiry date of the offer to January 31, 2002.

20) On January 31, 2002, the Endeavour Take-Over offer expired.

21) On March 6, 2002, Aspen invoked the compulsory acquisition provisions of the Alberta *Securities Act* in order to acquire a small number of Endeavour Securities not tendered pursuant to the take-over bid.

22) Following the take-over, in or about June, 2002, a new Board of Directors of Aspen was elected.

23) The new board members developed concerns pertaining to the conduct of Aspen's management and the financial reporting of the company.

24) A special committee was appointed to research and report on the affairs of Aspen.

25) In September and October 2002, the President of Aspen, Ron L. Mercer, and the Defendant, Wheeler resigned.

26) As the new Board Members and new management undertook their research into the affairs and financial reporting of Aspen, disclosures pertaining to material matters not disclosed through the take-over bid circular and offer to purchase began to be made. Specifically:

a) A grant of 3 1/2 % personal overriding royalties to the CEO and President of Aspen granted November 14, 2001 was not disclosed until December 16, 2002;

b) An obligation created in July 2000 requiring Aspen to issue 2,800,000.00 unregistered Aspen shares in association with the direct or indirect purchase of a ranch property from the Defendant Board Member, Holland, was not disclosed until June 7, 2002.

c) The December 31, 2001 acquisition of oil and gas assets from the insider Defendant, Wheeler, was not disclosed until December 16, 2002.

d) A write-down adjustment for $4,550,000.00 which arose as a result of the negligent misapplication of a ceiling test was not disclosed until December 16, 2002.

e) A September 2000 legal proceeding against Aspen, Wheeler and others pertaining to a breach of settlement and release agreement was not disclosed until December 16, 2002. A verdict was reached in August of 2002 resulting in obligation to Aspen of $385,000.00 plus interest and legal fees.

f) The provision of a guarantee to a company specializing in the trading of gas contracts and a subsequent lawsuit filed against Aspen on January 18, 2002 pertaining to the failure of that company to cover a margin in the amount of $2,300,000.00 was not disclosed until December 16, 2002.

27) Beginning December 16, 2002, Aspen began to make public disclosure of the matters, contemporaneous with the public announcement of its third quarter financial results for the year 2002, which results were delayed until a

satisfactory investigation could be completed by Aspen's new board members and new management.

The Defendants' Misrepresentations and Breaches of Section 131 of the OSA

28) The Plaintiff pleads and relies on Section 131 (1) of the *Securities Act* which states as follows:

> ***131.*** *(1) Where a take-over bid circular sent to the security holders of an offeree issuer as required by Part XX, or any notice of change or variation in respect of the circular, contains a misrepresentation, a security holder may, without regard to whether the security holder relied on the misrepresentation, elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,*
>
> *(a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror;*
>
> *(b) every person or company whose consent in respect of the circular or notice, as the case may be, has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by the person or company; and*
>
> *(c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in clause (a). R.S.O. 1990, c. S.5, s. 131 (1); 2004, c. 31, Sched. 34, s. 8 (1).*

Grant of Personal Overriding Royalties to the CEO and President of Aspen

29) On November 14, 2001, nine days in advance of the publication of the Take-over bid circular, the Compensation Committee of the Board of Directors of Aspen met and passed a resolution which granted the Defendant, Jack E. Wheeler, Chief Executive Officer of Aspen a 2.5% overriding royalty on the current and future production of Aspen. During the same meeting, a resolution was passed to grant Ron Mercer, President of Aspen Resources a 1% overriding royalty on Aspen's current production.

30) The Compensation Committee consisted of the following individuals, each of whom are Defendants to this action:

i) Anne Holland

ii) Lenard Briscoe

iii) Wayne Egan; and

iv) Jim Hogue

Holland acted as Chairman of the November 14, 2001 Compensation Committee meeting and Egan acted as Secretary.

31) There was no time limitation prescribed in the resolution nor was there a definition of "production" or "current production" which would restrict the royalties to production on properties currently owned. The import of the overriding royalties was to reduce by 3.5% the value of the Aspen shares to be accepted by the class members under the transaction and the value of the total future production of the assets of Endeavour assuming its shares were acquired in the pending take-over bid.

32) The Defendants failed to make any disclosure whatsoever of the overriding royalty grants to Wheeler and Mercer in:

a) the take-over bid circular of November 23, 2001;

b) the offer to purchase shares of November 23, 2001;

c) a notice of change to the take-over bid circular dated December 21, 2001 which extended the time in which the offer to purchase could be accepted from December 31, 2001 to January 31, 2002;

d) a transition report for the period July 1 to December 1, 2001;

e) the first quarterly report of 2002; and

f) the second quarterly report of 2002.

33) The Defendant, Wayne Egan, who was a member of the Compensation Committee and Secretary of the November 14, 2001 meeting was and remains a partner of the Defendant, WeirFoulds [LLP], legal counsel to Aspen. The Defendant, Egan, and WeirFoulds [LLP] drafted the November 23, 2001 take-over bid circular which, notwithstanding Egan's attendance at the Compensation Committee meeting, failed to disclose the overriding royalty interests granted to Wheeler and Mercer.

34) The grant of the overriding royalty interests to Wheeler and Mercer were a breach of covenants given to the Defendant,Aspen's primary lender, the Local Oklahoma Bank, N.A., in respect of Aspen's credit facility. Aspen had borrowed in excess of $14,000,000 USD on its line of credit at or about the time of the distribution of the take over bid circular to Endeavour shareholders. On October 4, 2002, Aspen was notified in writing by the Local

Oklahoma Bank that the granting of the overriding royalty interests was a default of its credit agreement.

35) Further, the grant of the overriding royalty interests to Wheeler and Mercer contravened the terms of a pre-acquisition agreement reached between Endeavour and Aspen specifically Section 3.2 (a) and (c) of that agreement.

36) On or about November 1, 2002, the Defendant, Wheeler, wrote a letter to the Defendant, Lane Gorman Trubitt L.L.P. stating, *"The awarding of these O.R.R.I.s was not included in the 2001 10-K. Management's belief, based on the legal and accounting guidance received, was that the proper method of disclosure was that all compensation paid as a result of this O.R.R.I. would be revealed under Management Compensation for each future year in the appropriate 10-K."*

37) The Plaintiff states that Wheeler's letter constitutes an admission of non-disclosure of a material fact.

38) The overriding royalty interests granted to Wheeler and Mercer were not disclosed until December 16, 2002.

39) The failure to disclose the overriding royalties in the context of the take-over bid constituted an omission to state a material fact and a breach of Section 131 of the OSA.

Issuance of 2.8 Million Unregistered Aspen Shares in Association with the Acquisition of Real Property from the Defendant, Holland

40) In or about July of 2000, Aspen committed to directly or indirectly acquire a ranch property from the Defendant, Anne Holland, then a Director of Aspen. The terms of the acquisition required Aspen to assume the existing debt on the ranch and to tender the difference between the purchase price and the debt assumed by the issuance of Aspen stock to Ms. Holland. The terms of the agreement called for approximately 2,800,000 Aspen shares to be issued.

41) In a letter written by the Defendant Wheeler to the Defendant Lane, Gorman, Trubitt LLP dated November 1, 2002, the following was stated in relation to the transaction: "The initial documentation to acquire the ranch was prepared and executed in the summer of 2000".

42) The transaction and obligation to issue the approximately 2,800,000 shares was not disclosed to the class members in the take-over bid circular and offer to purchase. The first public disclosure of such events was made in a material change report under the Ontario *Securities Act* dated June 7, 2002.

43) Aspen's obligation to acquire real property from the insider Defendant, Holland, and to issue approximately 2,800,000 shares constituted material facts. The existence of the undisclosed obligation to issue shares contravened Schedule C of the Pre-Acquisition Agreement.

44) The Defendants committed a misrepresentation and breach of Section 131 of the OSA in failing to disclose the agreement to acquire real property in exchange for unregistered shares in the context of the take-over bid.

Acquisition of Oil & Gas Assets Owned by the Defendant, Wheeler

45) On or about December 31, 2001, one month prior to the expiry of the take-over bid, Aspen acquired through a third party certain oil and gas assets owned by the Defendant, Wheeler. The cost of the acquisition included a $500,000.00 promissory note bearing interest at 8% per annum.

46) The transaction between Aspen and insider Defendant, Wheeler, constituted a material fact and a material change which was not disclosed to the class members in a notice of change to the take-over bid circular.

47) The purchase of oil and gas assets from the insider Defendant, Wheeler, was a spectacular failure. Production dropped dramatically immediately upon assumption of the operation of these assets by Aspen. No disclosure was

made pertaining to the transaction until December 16, 2002 with the delayed publication of the third quarterly financial statement.

48) The failure to disclose the acquisition of oil and gas assets directly or indirectly from the insider Defendant, Wheeler, in a notice of change constituted a breach of Section 131 of the OSA.

Negligent Application of Ceiling Test

49) The take-over bid and offer to purchase securities contained a material misrepresentation. Specifically, the misapplication of a ceiling test led to an understatement of depreciation and depletion costs.

50) A ceiling test is a measure used to create a valuation, for accounting purposes, of the producing oil and gas properties of a company in the oil and gas industry, including Aspen.

51) On or about December 16, 2002, a write-down adjustment in respect of the misapplication of the ceiling test was announced for the quarter ending September 30, 2002, valued at $4,550,000.00.

52) The value of the write-down was material in that its value constituted 73% of Aspen's revenues for the financial year. The write-down exacerbated the losses already suffered by Aspen for the financial year.

53) The Defendants, Lane Gorman Trubitt [LLP], knew or ought to have known that the depreciation and depletion costs of Aspen were understated due to the negligent application of a ceiling test.

54) The failure to disclose the negligent application of the ceiling test and/or the write-down consequent upon discovery of the negligent application of the ceiling test constituted a breach of Section 131 of the OSA.

Legal Proceedings Against Aspen, Wheeler and Others

55) In September of 2000, an action was commenced against Aspen, Wheeler and others in Oklahoma County, Oklahoma pertaining to a breach of a settlement and release agreement.

56) The existence of the legal proceedings against the Defendants, Aspen, Wheeler and others and the potential attendant liability constituted a material fact, both because of the magnitude of the contingent liability, and because the proceedings impugned the personal integrity and judgment of management. The failure to disclose the legal proceedings, their nature and potential liability constituted a breach of Section 131 of the OSA.

57) The proceedings were not disclosed until December 16, 2002 following the review by new management.

Failure to Disclose a $2,300,000.00 Liability

58) On or about October 4, 2000, Wheeler executed on behalf of Aspen a written guarantee on behalf of a corporation with which Aspen was in the midst of merger negotiations to Duke Energy Trading and Marketing LLC guaranteeing a potential liability up to $2,300,000.00.

59) The provision of the guarantee by Aspen to Duke Energy Trading and Marketing LLC on behalf of another corporation for the stated liability constituted a material fact which was not disclosed to the class members in the context of the take-over.

60) A legal proceeding was commenced against Aspen on January 18, 2002 by Duke Energy to enforce the guarantee. The legal proceeding was not disclosed to the class members in a notice of change statement prior to the expiry of the take-over offer.

61) The undisclosed guarantee and subsequent litigation were material facts and/or material changes which were not disclosed until December 16, 2002. The lack of disclosure constituted a breach of s. 131 of the Ontario *Securities Act*.

Compulsory Acquisition Invalid

62) The Defendant, Aspen, invoked the compulsory acquisition provisions of the Alberta *Securities Act* in order to secure a small percentage of shares not tendered pursuant to the take-over bid. The Plaintiff states that as a result of the alleged misrepresentations and omissions, the invocation of a compulsory acquisition was invalid and ought to be set aside.

The Liability of Aspen

63) Aspen had a duty to make disclosure of all material facts and material changes to the class members in the take-over documents in accordance with the Ontario *Securities Act,* and are liable for any misrepresentation in the take-over documents pursuant to s.131(1) of the *Securities Act.* Aspen was, or ought to have been, at all material times, fixed with knowledge of the alleged misrepresentations and failed to ensure their timely disclosure to the class members.

The Liability of the Directors of Aspen

64) The directors of Aspen had a duty to make disclosure of all material facts and material changes to the class members in the take-over documents in accordance with the Ontario *Securities Act,* and are liable for any misrepresentation in the take-over documents pursuant to s.131(1)(a) of the *Securities Act.* The directors were, or ought to have been, at all material

times, fixed with knowledge of the alleged misrepresentations and failed to ensure their timely disclosure to the class members.

The Liability of Lucas

65) Peter Lucas signed a certificate in the circular pertaining to financial disclosures, had therefore had a duty to make disclosure of all material facts and material changes to the class members in the take-over documents in accordance with the Ontario *Securities Act.* As a signatory, Lucas is liable for any misrepresentation in the take-over documents pursuant to s.131(1)(c) of the *Securities Act.* Lucas was, or ought to have been, at all material times, fixed with knowledge of the alleged misrepresentations and failed to ensure their timely disclosure to the class members.

The Liability of the Professional Defendants, WeirFoulds LLP and Lane Gorman Trubitt LLP

66) The law firm Weir Foulds LLP drafted the take-over curricular and offer presented to the class members. The Defendant, Weir Foulds LLP had a duty to make appropriate enquiries and to ensure the disclosure of all material facts and material changes in the take-over documents. WeirFoulds LLP was or ought to have been fixed with knowledge of the alleged misrepresentations and was negligent in the preparation of documents delivered to the class members.

67) The Defendant, Lane Gorman Trubitt [LLP], had a duty to make sufficient enquiries and to make disclosure of all material facts in the take-over documents. Lane Gorman Trubitt [LLP] oversaw the preparation of documentation delivered to the class members and was or ought to have been fixed with knowledge of the alleged misrepresentations and was negligent in failing to ensure that all material facts were disclosed.

68) Lane Gorman Trubitt [LLP] filed a consent with the Ontario Securities Commission for the use of its independent auditor's report in the take-over circular and signed a certificate in the circular pertaining to financial disclosures and is therefore liable to the class members under Section 131(1)(b) and (c) of the *Ontario Securities Act.*

Reliance and Damages

69) The Plaintiffs claim damages plus interest for the full diminution in the Aspen share price between the close of the take-over in January 2002 and approximately December 2002, the point in time at which the market had absorbed the full impact of any disclosures subsequently made. The plaintiff asserts that between January 31, 2002 and December 13, 2002, the Aspen Share price dropped from 60¢ to 10¢, or a net loss of 50¢ per share.

70) Pursuant to s.131(1) of the *OSA* the class members are deemed to have relied upon the content of the takeover bid circular and offer to purchase.

Rescission

71) The Plaintiff claims on behalf of the class that the Endeavour Security holders are entitled to rescind the take-over pursuant to Section 131 of the *Ontario Securities Act*.

Punitive, Aggravated and Exemplary Damages

72) By virtue of the high-handed conduct of the Defendants and their disregard for the rights of the class members to be provided with full and fair disclosure of material facts, the Plaintiffs request this Court to award against the Defendants or any of them aggravated, punitive and exemplary damages in an amount deemed appropriate by this Court.

Governing Statutes, Place of Trial and Service of Process

73) The Plaintiffs rely on the *Class Proceedings Act*, 1992, R.S.O. 1993, c.6 (the *CPA*), *The Negligence Act*, R.S.O. 1990, c.N.1 and the Ontario *Securities Act*, R.S.O. 1990, c.S.5.

74) The Plaintiffs propose that this action be tried in the City of Toronto, Ontario as a proceeding under the *CPA*.

Service Outside of Ontario

75) This originating process may be served without Court Order outside of Ontario in that the claim is:

(a) in respect of a tort committed in Ontario (Rule 17.02 (g));

(b) in respect of damages sustained in Ontario arising from a tort or a breach of contract wherever committed (Rule 17.02 (b));

(c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and

(d) against a person carrying on business in Ontario (Rule 17.02 (p)).

THE PLAINTIFFS propose that the trial of this action be at London, Ontario.

February 19, 2008

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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Under the *Class Proceedings Act,* 1992

Proceeding commenced at Toronto.

FRESH AS AMENDED STATEMENT OF CLAIM

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