

COURT FILE NUMBER	1901-09160
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	STEPHEN FLESCH, MARSHAL THOMPSON, TYLER MAKSYMCHUK, AND REID CHAMBERLAIN
DEFENDANTS	APACHE CORPORATION, PARAMOUNT RESOURCES LTD., WILLIAM C. MONTGOMERY, ANNELL R. BAY, DANIEL W. RABUN, RENE R. JOYCE, AND CHARLES J. PITMAN

Brought under the Class Proceedings Act

SETTLEMENT AGREEMENT

WHEREAS the Plaintiffs initiated this action under the *Class Proceedings Act*, SA 2003, c C-16.5, for breach of contract, breach of contractual duty of good faith, breach of fiduciary duty and unjust enrichment in relation to the cancellation of certain long-term compensation awards provided to the Plaintiffs and the Class (defined below);

AND WHEREAS the Defendants have denied the allegations in the proceeding;

AND WHEREAS this proceeding was certified as a class action by order of the Honourable Mr. Justice Poelman on June 25, 2021, which Order was upheld and varied on appeal to the Court of Appeal of Alberta on November 17, 2022;

AND WHEREAS the Parties to this Settlement Agreement have conducted a thorough analysis of the claims, extensive burdens and expense of litigation, and the risks of proceeding to trial;

AND WHEREAS in consideration of all the circumstances and after extensive arm's length negotiations, both directly and with the assistance of a mediator, the Parties to this Settlement Agreement wish to settle any and all issues among themselves in any way relating to this action;

AND WHEREAS the Parties executed an agreement in principle on May 12, 2023, setting out the main terms of agreement between the Parties subject to the execution of this Agreement;

NOW THEREFORE the Parties to this Agreement agree to settle all matters related to the Action (as herein defined) on the following terms and conditions:

1. For the purposes of this Settlement Agreement, the following definitions apply:
 - (a) **“Action”** means the class proceeding, including all amendments thereto, commenced by Stephen Flesch, Marshal Thompson, Tyler Maksymchuk and Reid Chamberlain in the Court of King's Bench of Alberta, having Court File No. 1901-09160, and certified as a class proceeding by Order of the Court on June 25, 2021;
 - (b) **“Administration Costs”** means all reasonable and necessary costs to administer the Distribution Process and distribute the Settlement Fund, including the costs of the Claims Administrator and the costs of implementing the Notice Plan;
 - (c) **“Apache Defendants”** means the defendants Apache Corporation, William C. Montgomery, Annell R. Bay, Daniel W. Rabun, Rene R. Joyce, and Charles J. Pitman;
 - (d) **“Approval Hearing”** means the Court hearing to approve the Settlement of the Action;
 - (e) **“Approval Order” or “Court Approval”** means the Order of the Court approving the Settlement;
 - (f) **“Approved Claims”** means Claims assessed by the Claims Administrator pursuant to the Distribution Process and, approved by the Claims Administrator for payment from the Settlement Fund;
 - (g) **“Awards”** means the unvested Restricted Share Units and Performance Awards (as those terms are defined in the Amended Statement of Claim) granted to Class Members and outstanding as of August 18, 2017;
 - (h) **“Awards List”** means the list of outstanding Awards granted to each Class Member as provided by the Apache Defendants by way of affidavit of Rana Ranjbar dated August 15, 2023;
 - (i) **“Certification Order”** means the Order of Justice Poelman dated June 25, 2021, certifying this proceeding as a class proceeding;
 - (j) **“Claim”** means a claim made by a Claimant to the Claims Administrator in accordance with the Distribution Process;

- (k) **“Claimant”** means any Class Member who submits a Claim in accordance with the Distribution Process;
- (l) **“Claims Administrator”** means the persons or entities agreed upon by the Parties or appointed by the Court to administer the Distribution Process;
- (m) **“Class”, “Class Member” or “Class Members”** is defined as per the Certification Order, being "all employees of Apache Canada Ltd. as of August 18, 2017, who were then participating in Apache Corporation's Omnibus Compensation Plan and had outstanding Awards as defined in that Plan", and excluding any person who validly opted out of the Action pursuant to this Settlement Agreement and as ordered and approved by the Court;
- (n) **“Class List”** means, combined, the lists of Class Members, including their last known contact information, as provided by the Defendants by way of the affidavits of Rowdy Lege dated August 15, 2023 and Greg Byrgesen dated August 16, 2023;
- (o) **“Class Counsel”** means Koskie Minsky LLP, Koskie Glavin Gordon and Scott Venturo Rudakoff LLP;
- (p) **“Counsel Fees”** means the fees, disbursements and all applicable taxes and interest awarded to Class Counsel as determined and approved by the Court pursuant to s. 39 of *CPA*;
- (q) **“Court”** means the Court of King's Bench of Alberta;
- (r) **“Court Approval Date”** means the later of:
- (i) One month plus one day after the date on which the Court issues the Approval Order; and
 - (ii) The date of the final disposition of any appeals from the Approval Order;
- (s) **“CPA”** means the *Class Proceedings Act*, SA 2003, c C-16.5
- (t) **“Distribution Process”** means the procedure for the submission, review, determination and payment of Claims as prepared by Class Counsel and approved by the Court;
- (u) **“Gross Settlement Fund”** means the sum of USD \$7,000,000.00 which the Defendants have agreed to pay to fully and finally settle the Action, inclusive of any and all costs, expenses, or fees, including compensation for Approved Claims, Honorarium, interest, legal costs and disbursements, Counsel Fees, and Administration Costs.

- (v) **“Honorarium”** means an honorarium, if any, to be paid to the Plaintiffs in an amount proposed by Class Counsel and determined by the Court at the Approval Hearing or thereafter;
- (w) **“Net Settlement Fund”** means the Gross Settlement Fund less: (a) Counsel Fees awarded by the Court; (b) any Honorarium awarded by the Court; (c) and any other costs and expenses that the Court orders to be deducted from the Gross Settlement Fund prior to its transfer to the Claims Administrator. The Administration Costs shall be payable to the Claims Administrator out of the Net Settlement Fund.
- (x) **“Notice of Certification and Proposed Settlement”** means the Court-approved notice to the Class Members of the certification of the Action, the Opt-Out Deadline, this Settlement and the Approval Hearing;
- (y) **“Notice of Settlement Approval”** means the Court-approved notice to the Class Members advising that the Court has approved the Settlement and advising of the Distribution Process;
- (z) **“Notice Plan”** means the plan to disseminate the Notice of Settlement Approval and Notice of Certification and Proposed Settlement to the Class, which plan is subject to approval by the Court;
- (aa) **“Opt-Outs”** means those individuals who met the definition of the Class but who validly opted out of the Action by the Opt-Out Deadline;
- (bb) **“Opt-Out Deadline”** means a date determined by the Court by which all persons who meet the class definition in the Certification Order may opt out of the Action;
- (cc) **“Opt-Out List”** means a list of all persons who meet the class definition in the Certification Order who validly opted out of the Action by the Opt-Out Deadline;
- (dd) **“Paramount”** means the defendant Paramount Resources Ltd.;
- (ee) **“Parties”** means the Plaintiffs, Apache Defendants and Paramount;
- (ff) **“Releasees”** means individually and collectively the Defendants, as well as their parents, subsidiaries, affiliated entities, and any past or present directors, officers, representatives, insurers, and employees;
- (gg) **“Settlement”, “Agreement” or “Settlement Agreement”** means this Agreement, as executed by the Parties or their representatives;

Settlement Fund and Distribution Process

2. Within fourteen (14) days of the Court Approval Date, the Defendants shall pay the Gross Settlement Fund to Class Counsel. Class Counsel shall transfer the Net Settlement Fund, to the Claims Administrator within fourteen (14) days of the receipt thereof.
3. The Claims Administrator shall hold the Net Settlement Fund received pursuant to paragraph 2 herein in trust from the date of receipt until such time as all payments required by this Settlement Agreement (including the Distribution Process) have been made. The Claims Administrator shall hold the Net Settlement Fund in an interest-bearing trust account, or instrument, and the interest earned thereon shall form part of the Net Settlement Fund.
4. The Gross Settlement Fund will be used to pay the Approved Claims, Counsel Fees, Honorarium, and Administration Costs in accordance with this Settlement Agreement and the Distribution Process in full and final settlement of the Action.
5. The Gross Settlement Fund shall be paid out as follows:
 - (a) First, to satisfy Counsel Fees and any Honorarium ordered by the Court;
 - (b) Second, to satisfy any other costs and expenses that the Court orders to be deducted from the Gross Settlement Fund prior to its transfer to the Claims Administrator; and
 - (c) Third, the remainder, being the Net Settlement Fund, shall be paid to the Claims Administrator in accordance with paragraph 2 above and which shall be paid out in accordance with paragraph 4 above:
6. Prior to the Claims Administrator paying out Administration Costs from the Net Settlement Fund, such Administration Costs and payment must be approved by Class Counsel.
7. The Claims Administrator will be mutually agreed upon by the Parties and approved by the Court.

8. The Distribution Process, as prepared by Class Counsel, shall be subject to approval by the Court. While the Distribution Process shall be prepared by Class Counsel, the Parties agree that it shall provide for the distribution of the Net Settlement Fund to be distributed pro-rata among Approved Claims based on the number of Awards attributable to each Class Member on the Awards List (specifically excluding Opt-Outs). The value of any such Award shall be determined using the closing share price of Apache stock on August 18, 2017. Under no circumstances, however, shall any Class Member be entitled to receive from any and all distributions pursuant to the Distribution Process an amount that would exceed the value of the Awards held by that Class Member. Further, any funds that are not distributed among Approved Claims shall be distributed *cy pres* in accordance with the Distribution Process. For Further clarity, no amount of the Gross Settlement Fund or Net Settlement Fund shall revert to the Defendants. The Defendants otherwise shall take no position on approval of the Distribution Process.
9. The Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the maintenance, investment, distribution or any other action or inaction related to the Gross Settlement Fund or Net Settlement Fund, including the payment or withholding of any taxes, or any other expenses or losses in connection with such matters. For greater certainty, the Releasees shall have no liability under this Agreement to pay any amount in excess of the Gross Settlement Fund, and all costs in any way relating to or arising from this Agreement shall be paid out of the Gross Settlement Fund, and not otherwise payable by the Releasees or any of them. Each Class Member acknowledges that Releasees have no responsibility for or participation in the Distribution Process and therefore releases the Releasees from any claim whatsoever in connection with the Distribution Process, including any mispayments, overpayments, or underpayments of the Net Settlement Fund.

Notice, Confidentiality of Opt-Outs and Communications

10. Notice of Certification and Proposed Settlement and Notice of Settlement Approval shall be disseminated in accordance with the Notice Plan, as approved by the Court. The Parties shall agree on the Notice Plan, which shall be substantially in accordance with the proposed plan to disseminate notice of certification in the Plaintiffs' certification application. Any disputes relating to the design of the Notice Plan, the design and content of any notice materials, or the

implementation of the Notice Plan shall be resolved by the Court. None of the Parties will appeal the Court's decision on such disputes.

11. The Parties agree that the Notice of Certification and Proposed Settlement and Notice of Settlement Approval shall include a statement attributed to Paramount that Paramount supports its employees' participation in the Action and Distribution Process, the specific language of which shall be agreed upon by the Parties, or failing agreement, as directed by the Court.
12. Within fourteen (14) days of the expiry of the Opt-Out Deadline, the Claims Administrator shall provide the Opt-Out List to Class Counsel. Class Counsel shall advise counsel to the Defendants of the cumulative number of Awards on the Awards List attributable to the Opt-Outs and the percentage of Opt-Out Awards relative to the Awards List. The Parties agree that the identity of any person on the Opt-Out List shall only be known to Class Counsel and the Claims Administrator and shall not be shared with the Defendants. In the event that the Opt-Out List, or any part thereof, is required to be filed with the Court, Class Counsel shall seek directions from the Court on how to maintain confidentiality of such information. To the extent the Defendants receive a claim, demand, or lawsuit by any individual seeking damages similar to those sought in this Action, Defendants may provide a copy of such claim, demand, or lawsuit to Class Counsel, who will then confirm whether or not the individual is on the Opt-Out List such that Defendants may verify whether such individual's claim was released by this Settlement.
13. The Defendants, in their sole discretion, shall have the option to terminate the Settlement in the event that the cumulative number of Awards on the Awards List attributed to Opt-Outs exceeds 15% of the total number of Awards on the Awards List (the "**Opt-Out Threshold**"), which option must be exercised no later than fourteen (14) days after the Defendants being advised of the cumulative number of Awards on the Awards List attributable to the Opt-Outs as set out in paragraph 12 above, or at such other time as the Parties agree. The Opt-Out Deadline must be at least fifteen (15) days before the Approval Hearing, or at such other time as the Parties agree. Opt-Outs do not include individuals and entities excluded by virtue of the Class definition.

14. The Defendants hereby stipulate and agree that they will not contact or communicate with any Class Member for the purpose of encouraging, convincing, or incentivizing in any way any Class Member: (i) to opt out of the Action or Settlement, or (ii) maintain or revoke a previously-filed or served request to opt out.

Settlement Approval, Counsel Fee Approval, and Honorarium Approval

15. The Parties agree to adjourn all steps in the Action pending a determination by the Court on whether to approve the Settlement.
16. It is understood and agreed that approval of this Settlement Agreement and Distribution Process by the Court is required. The Parties will arrange for the Approval Hearing to be heard as soon as possible following the execution of this Settlement Agreement. Prior to the Approval Hearing, the Notice of Certification and Proposed Settlement is to be ordered and directed by the Court. The Parties shall move before the Court with dispatch to have the Settlement and all necessary advance steps approved by the Court at the earliest possible opportunity.
17. The Defendants agree to consent to and support an application by the Plaintiffs to seek approval of the Settlement by the Court. The Parties agree to file application materials, as necessary, with respect to the application to approve the Settlement and counsel shall act reasonably and in good faith to agree on the content of such application materials (including the form and content of a draft Approval Order).
18. Class Counsel intends on seeking approval by the Court of Counsel Fees and Honorarium, if any, at the time of the Approval Hearing, or at another time as directed by the Court. The Defendants shall take no position or make any comment on the requested Counsel Fees and Honorarium sought.

Release and Dismissal

19. On the Court Approval Date, each Class Member, whether or not he or she or they submits a Claim or otherwise receives compensation in accordance with the Distribution Process, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised, and forever discharged the Releasees of and from any and all actions, counterclaims,

causes of action, claims, whether statutory or otherwise, and demands for damages, indemnity, contribution, costs, interest, loss, or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising, which they may heretofore have had, may now have or may hereafter have, whether commenced or not in connection with all claims relating to the matters raised in the Action, except for any Claimant's entitlement to be paid in respect of an Approved Claim pursuant to the terms hereof.

20. On the Court Approval Date, each Class Member will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any claims relating to the matters raised in the Action.
21. On and after the Court Approval Date, in the event that a Class Member commences, institutes or prosecutes any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum or any other forum, directly, representatively, or derivatively, relating to the matters raised in the Action, against any person, firm, corporation, or administrative entity or regulator who may claim contribution or indemnity from the Releasees under the provision of any statute or otherwise, and the Releasees or any of them are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint, or proceeding which might be brought in the future by such Class Member with respect to the matters covered herein. This Agreement may be pleaded in the event that any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by such Class Member in any subsequent action that the parties in the subsequent action were not privy to the formation of this Agreement.
22. The Parties shall agree to the form and content of the Approval Order, which shall, among other things, provide for the dismissal of the Action on a without costs basis.

Termination

23. This Settlement Agreement shall, without notice, be automatically terminated and rendered void if the Court does not approve this Settlement Agreement. In the event of termination, this Settlement Agreement shall be deemed to be a without prejudice settlement discussion and shall have no further force or effect, save and except for this section, which shall survive termination.

General

24. This Settlement Agreement shall be governed, construed, and interpreted in accordance with the laws of the Province of Alberta.
25. This Settlement Agreement constitutes the entire agreement between the Parties and may not be modified or amended except in writing, on consent of the Parties, and with Court approval.
26. This Settlement Agreement may be signed (including by electronic signatures) by the Parties, or the Parties' respective counsel, in counterpart, and delivered electronically, which shall have the same effect and enforceability as a single executed document.

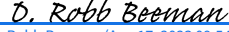
IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of the date that all Parties execute the Agreement.

Koskie Minsky LLP, Scott Venturo Rudakoff LLP, and Koskie Glavin Gordon


17-Aug-2023
Date
McLennan Ross LLP


DAvid Rosenfeld (Aug 17, 2023 11:15 EDT)
Counsel for the Plaintiffs and the Class
DAvid Rosenfeld

17-Aug-2023
Date
Jensen Shawa Solomon Duguid Hawkes LLP


D. Robb Beeman (Aug 17, 2023 09:54 MDT)
Counsel for Paramount Resources Ltd.
D. Robb Beeman

17-Aug-2023
Date


Counsel for Apache Corporation, William C. Montgomery,
Annell R. Bay, Daniel W. Rabun, Rene R. Joyce and Charles J. Pitman
Andrew Wilson












2023 08 17 Final Settlement Agreement


Final Audit Report


2023-08-17


Created:	2023-08-17
By:	Lori Seto (lseto@kmlaw.ca)
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 Signer robb.beeman@mross.com entered name at signing as D. Robb Beeman
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 Agreement completed.
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