

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE) FRIDAY THE 6TH DAY
)
TERRENCE PATTERSON) OF DECEMBER, 2013

B E T W E E N

ERIK POOLE and WILLIAM RHODY

Plaintiffs

and

PETROMAGDALENA ENERGY CORP., LUIS E. GIUSTI
and HORACIO SANTOS

Defendants

Proceedings under the *Class Proceedings Act, 1992*

ORDER

THESE MOTIONS, made by:

- (a) the plaintiffs for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 in accordance with the terms of the Settlement Agreement; and
- (b) Class Counsel for the approval of the agreement respecting fees and disbursements between Sutts, Strosberg LLP and the plaintiffs pursuant to subsection 32(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

were heard on November 28, 2013 at Windsor, Ontario.

ON READING the following:

- (c) the notice of motion;
- (d) the Settlement Agreement;
- (e) the affidavits of:
 - (i) Erik Poole sworn November 13, 2013;
 - (ii) William Rhody sworn November 8, 2013;
 - (iii) Patricia Speight sworn November 20, 2013;
 - (iv) Donna Fournier sworn October 22, 2013;
 - (v) Jessbinder Dhanoa sworn November 5, 2013;
 - (vi) Joel Wiesenfeld sworn November 14, 2013;
 - (vii) Gregory Wrigglesworth sworn November 27, 2013; and
 - (viii) S. Alex Constantin sworn May 1, 2012.

AND ON HEARING the submissions of counsel for the Parties in the action,

AND ON BEING ADVISED that:

- (a) the Parties consent to this order with respect to approval of the settlement;
- (b) the defendants take no position with respect to Class Counsel Fees;
- (c) Marsh consents to being appointed Administrator;
- (d) Gregory Wrigglesworth of Kirwin Partners LLP consents to being appointed Referee; and
- (e) there were no objections to the proposed settlement.

AND without any admission of liability on the part of any of the defendants, all defendants having denied liability.

1. THIS COURT ORDERS AND DECLARES that for the purposes of this order, the definitions in the Settlement Agreement apply to and are incorporated into this order, provided however that the following definitions also apply:
 - (a) “Claims Bar Deadline” means at 5:00 p.m. eastern time on the date that falls ninety (90) days after the first publication of the Second Short Form Notice;
 - (b) “Escrow Account” means the interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario initially under the control of Class Counsel and then transferred to the control of the Administrator;
 - (c) “Marsh” means Marsh Risk Consulting Canada; and
 - (d) “Settlement Agreement” means the settlement agreement signed by the Parties and dated October 18, 2013.

2. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of this action is fair and reasonable and in the best interests of the Class Members and is approved.

3. THIS COURT ORDERS that:
 - (a) the Settlement Agreement, without schedules, attached as schedule 1 to this order, is incorporated into this order and is approved and shall be implemented in accordance with its terms;
 - (b) the Second Short Form Notice, generally in the form attached as schedule 2 to this order, is approved;

- (c) the Second Long Form Notice, generally in the form attached as schedule 3 to this order, is approved;
 - (d) the Plan of Notice, generally in the form attached as schedule 4 to this order, is approved;
 - (e) the Plan of Allocation, generally in the form attached as schedule 5 to this order, is approved; and
 - (f) the Claim Form, generally in the form attached as schedule 6 to this order, is approved.
4. THIS COURT ORDERS that Marsh is appointed as the Administrator, until further order of the Court:
- (a) on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
 - (b) to maintain the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, the Plan of Allocation and this order.
5. THIS COURT ORDERS that if the Settlement Agreement is not terminated in accordance with this order, the Administrator shall be paid from the Escrow Account an all inclusive fee of \$350,000 plus HST, to be paid in five installments of \$70,000 plus HST, with the first installment payable upon entry of this order, and the remaining installments to be paid upon further Court orders.

6. THIS COURT ORDERS that if the Settlement Agreement is terminated in accordance with this order, the Administrator may apply to the Court pursuant to sections 4.1(1)(c) and 16.1(1) of the Settlement Agreement for directions relating to the amount it is to be paid for the services it rendered to the date of termination.
7. THIS COURT ORDERS that the Administrator may implement a procedure permitting brokers to make claims on behalf of their clients if they are authorized to do so.
8. THIS COURT ORDERS that Gregory Wrigglesworth of Kirwin Partners LLP is appointed as Referee, until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation.
9. THIS COURT ORDERS that the Class Members shall be given notice of the approval of the Settlement Agreement, the Plan of Allocation and the Claims Bar Deadline substantially in the form of the Second Short Form Notice and the Second Long Form Notice, both disseminated in accordance with the Plan of Notice.
10. THIS COURT ORDERS AND DECLARES that the notice to the Class Members provided for in this order satisfies the requirements of section 17(6) of the *CPA*.

11. THIS COURT ORDERS that after publication and distribution of the Second Short Form Notice and the Second Long Form Notice as directed by the Plan of Notice, Class Counsel and the defendants shall file with the Court affidavits confirming the publication and distribution of the notices in accordance with and as required by the Plan of Notice.

12. THIS COURT ORDERS AND DECLARES that this order is binding upon each Class Member in accordance with the terms of this order, including those persons who are minors or are mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.

13. THIS COURT ORDERS AND DECLARES that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from 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, and liabilities of any nature whatsoever, including, without limitation, interest, costs, expenses, Administration Expenses, penalties, lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees, relating in any way to the purchase, sale, pricing, marketing or distributing of Shares, or to any representations made by the Releasees during the Class Period to anyone concerning Alange, its operations or the Shares, 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 as a result of the purchase or sale of Shares in the Class Period.

14. THIS COURT ORDERS that the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.
15. THIS COURT ORDERS that to participate in this Settlement, a Class Member must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Court orders otherwise.
16. THIS COURT ORDERS that the plaintiffs, Class Counsel, the Referee or the Administrator may apply to the Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or any other matter thereto.
17. THIS COURT ORDERS that any one of the plaintiffs or the defendants may apply to the Court for directions in respect of the termination of the Settlement Agreement in accordance with its terms or any matter relating thereto.

18. THIS COURT ORDERS that no person may bring any action or take any proceedings against the plaintiffs, defendants, Administrator, the Referee, or their directors, officers, employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this order except with leave of the Court.

19. THIS COURT ORDERS that:

- (a) the agreements dated April 4, 2012 among Sutts, Strosberg LLP and the plaintiffs are approved; and
- (b) Class Counsel's fees, disbursements and taxes are fixed at \$2,603,182.68 and shall be paid from the Escrow Account forthwith after the Settlement becomes final.

20. THIS COURT ORDERS that Class Counsel may apply to the Court for reimbursement of any additional disbursements incurred in the implementation and administration of the Settlement Agreement.

21. THIS COURT ORDERS that the action, except as provided in this order, is dismissed against the defendants without costs and with prejudice.

[Redacted signature]

JUSTICE

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