

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

GORDON NICKEL, BARBARA SIRETT and DAVID BIGGS suing on their own behalf and in a representative capacity on behalf of all salaried, non-unionized Canadian retired employees of Weyerhaeuser Company Limited and its predecessors and subsidiaries (including any eligible spouses of those retired employees, and the estates of any of those retired employees who are deceased), who: (a) suffered loss as a consequence of the defendant's unilateral reduction of its contribution to the cost of retirement health benefits effective June 1, 2010; and (b) were not part of a previous class action against the defendant and Court-approved settlement with the defendant

PLAINTIFFS

AND

WEYERHAEUSER COMPANY LIMITED

DEFENDANT

**SETTLEMENT AGREEMENT**  
**Dated for reference the 3<sup>rd</sup> day of October, 2018**

**RECITALS**

The capitalized terms in these Recitals have the meanings set out in section 1 unless otherwise defined.

- A. WHEREAS, the Plaintiffs, Barbara Sirett and David Biggs, as the representative plaintiffs in the Proceeding, and the Defendant hereby enter into this Settlement Agreement to document and formalize the October 3, 2018, mediated settlement of claims arising out of or relating to post-retirement medical benefits and life insurance of the Settlement Class Members, including, without limitation, claims relating to the Defendant's introduction of co-payments of premiums for extended health care, Provincial medical plans and life insurance, and any and all claims that were asserted or could have been asserted in the Proceeding (all of which, collectively, are referred to as the "**Settled Claims**") pursuant to the terms and conditions of this Settlement Agreement, and subject to approval of the Court.

- B. WHEREAS, by order of Mr. Justice Affleck made on January 24, 2018 in this Proceeding, the claim of Gordon Nickel against the Defendant was dismissed;
- C. WHEREAS, by order of Mr. Justice Affleck made on January 24, 2018 in this Proceeding, this action was certified as a class proceeding under the Class Proceedings Act, R.S.B.C. 1996, c. 50, and Barbara Sirett and David Biggs were appointed as the representative plaintiffs for the class;
- D. WHEREAS, following the expiration of the opt-in/opt-out period on June 7, 2018, there are 337 Settlement Class Members;
- E. WHEREAS, the Parties intend by this Settlement Agreement to resolve the Settled Claims;
- F. WHEREAS, the Defendant denies the facts and allegations made in the Proceeding, denies that any damages are payable, has not conceded or admitted and strictly denies liability, and has advanced defences to all of the claims in the Proceeding;
- G. WHEREAS, the Parties have engaged in arms-length negotiations, each assisted by counsel and with the assistance of an experienced mediator, and these arms-length negotiations resulted in a mediated settlement on October 3, 2018, the terms of which have been fully documented and formalized in this Settlement Agreement;
- H. WHEREAS, the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement, and based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burden, time and expense associated with prosecuting the Proceeding, including the risks, time and uncertainties associated with trials and appeals, have concluded that the Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the Settlement Class Members whom the Plaintiffs represent;
- I. WHEREAS, the Defendant is entering into this Settlement Agreement in order to achieve a full and final resolution of every and all Settled Claims and every and all other past, present and future claims that could have been asserted against it by the Plaintiffs and Settlement Class Members, and to avoid the further expense and inconvenience of protracted litigation, the Plaintiffs acknowledge that the Defendant would not have entered into this Settlement Agreement were it not for the foregoing full and final resolution;

- J. WHEREAS, the Parties therefore wish to, and hereby do, fully and finally resolve the Proceeding against the Defendant without any admission of liability or wrongdoing;
- K. WHEREAS, the Defendant has advised that the benefits provided under the Settlement Agreement are taxable under the laws of Canada and that the Defendant will be complying with its legal obligations arising as a result of that fact.

NOW, THEREFORE, in consideration of the covenants, agreements and releases in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the Parties that the Proceeding be settled, and that the Parties consent to a Court Order in the form attached as Schedule "A" (or substantially similar terms as agreed by the Parties) finally approving the Settlement Agreement and dismissing the Proceeding with prejudice, without costs to the Plaintiffs, the Settlement Class, or the Defendant, subject to the approval of the Court, on the following terms and conditions:

## SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules:

- (1) **Certification Order** means the order of Mr. Justice Affleck made in this Proceeding on January 24, 2018, certifying this action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, and appointing Barbara Sirett and David Biggs as the representative plaintiffs for the class.
- (2) **Claims Administrator** means Class Counsel or such other entity appointed by the Court to serve as Claims Administrator.
- (3) **Class Counsel** means Victory Square Law Office LLP.
- (4) **Co-payment Amounts** means, in relation to each Settlement Class Member and during the relevant time period specified under section 4.1, the increased premium costs paid by the Settlement Class Member for retirement health benefits under a plan of the Defendant as a consequence of the Defendant's reduction of its contributions to the cost of retirement health benefits effective June 1, 2010.
- (5) **Court** means the British Columbia Supreme Court and includes any judge of that Court.

- (6) **Defendant** means Weyerhaeuser Company Limited.
- (7) **Effective Date** means the date on which the final judgment or final order issued by the Court approving this Settlement Agreement has become a Final Order.
- (8) **Final Order/Orders** means the final approval order made by the Court in respect of this Settlement Agreement, and the expiration of the time to appeal or to seek leave to appeal such final judgment or final approval order without any appeal being taken, or if an appeal from the final judgment or final approval order is taken, the affirmation of such final judgment or final approval order in its entirety by the court of last resort to which an appeal of such final judgment or final approval order may be taken.
- (9) **Parties** means the Plaintiffs and the Defendant.
- (10) **Plaintiffs** means the representative plaintiffs Barbara Sirett and David Biggs.
- (11) **Proceeding** means *Gordon Nickel v. Weyerhaeuser Company Limited*, British Columbia Supreme Court, Vancouver Registry file No. S-159897.
- (12) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, allegations, assertions, liabilities, statutory liabilities, trusts or deemed trusts, causes of action, equitable claims, debts, dues, duties, accounts, bonds, covenants, and contracts, alleged or that could have been asserted in the Proceeding, whether currently known or unknown, whether direct or indirect, class, individual, or otherwise in nature, for any order, equitable relief, declaration or damages of any nature or kind whatsoever, including without limitation claims for interest, costs, expenses, penalties, and lawyer and expert fees and costs that the Releasers, or any one of them ever had, now have, or may hereafter have against the Releasees, or any one or more of them, arising from or in connection with or in consequence of any conduct, cause, matter or thing existing up to the date of execution of this Settlement Agreement including, without limiting the generality of the foregoing, every and all of the Settled Claims.
- (13) **Releasees** means, jointly and severally, the Defendant and each of its present and former parent companies, subsidiaries, affiliates, officers, directors, employees, contractors, insurers, agents, attorneys, servants, estates, representatives, trustees in bankruptcy, and the successors, heirs, executors, administrators, trustees, and assigns of each of them.

- (14) **Releasors** means, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective successors, heirs, executors, administrators, trustees, and assigns.
- (15) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (16) **Settlement Class or Settlement Class Members** means:

(a) the 337 retired employees on the list attached to this Settlement Agreement as Schedule "B", being:

(i) all British Columbia residents who are former salaried, non-union Canadian employees of Weyerhaeuser and its predecessors and subsidiaries, who:

(A) retired before June 1, 2010;

(B) were required to pay increased premium costs of retiree health benefits, including extended health care, provincial medical plans and life insurance [the "Retiree Health Benefits"] as a consequence of the defendant's unilateral reduction of its contributions to the cost of the Retirement Health Benefits effective June 1, 2010;

(C) were not members within the defined class certified in a previous class action brought against the defendant in Vancouver File Registry No. S-122788 and not part of the Court-approved settlement with the defendant in that action;

(D) did not enroll in the Advantages Retirees Benefits Plan;

and who did not opt out of the Proceeding on or before June 7, 2018, in accordance with the Certification Order; and

(ii) all persons who are not a resident of British Columbia and who would otherwise be a Settlement Class Member as defined in Section 16(a)(i) of this Settlement Agreement and who opted into this Proceeding on or before June 7, 2018, in accordance with the Certification Order; and

(b) any spouses of those above-noted retired employees and the estates of any of those above-noted retired employees who are deceased.

## **SECTION 2 - CONDITIONS PRECEDENT**

### **2.1 Court Approval**

(1) Subject to Section 6 below, this Settlement Agreement shall be null and void and of no force or effect unless the Court approves this Settlement Agreement and the orders so given have become Final Orders and the Effective Date has expired.

## **SECTION 3 - SETTLEMENT APPROVAL**

### **3.1 Best Efforts**

(1) The Parties shall use their best efforts to fully effectuate this Settlement.

### **3.2 Settlement Approval**

(1) The Plaintiffs shall file a Notice of Application for a hearing before the Court on a date to be agreed for an order:

(a) approving this Settlement Agreement; and

(b) appointing the Claims Administrator.

(2) The order referred to in Section 3.2(1) shall be in a form substantially similar to that attached as Schedule "A", subject to approval by the Court.

## **SECTION 4 - SETTLEMENT BENEFITS**

### **4.1 Settlement Payments**

(1) For the eighteen (18) Settlement Class Members on the list attached to this Settlement Agreement as Schedule "C", being the Settlement Class Members in the Saskfor Plan and the Settlement Class Members in the MB Salary Plan who retired before January 1, 2002, the Defendant will pay to the Claims Administrator a sum of money equivalent to those Settlement Class Members' Co-payment Amounts for extended health, MSP and life insurance, from June 1, 2010 to October 3, 2018.

(2) For the one-hundred twenty-one (121) Settlement Class Members on the list attached to this Settlement Agreement as Schedule “D”, being the Settlement Class Members in the MB Salary Plan who retired on or after January 1, 2002 and the Settlement Class Members in the Old WY Plan and the Old WY Sask Plan who retired before May 1, 1998, the Defendant will pay to the Claims Administrator a sum of money equivalent to those Settlement Class Members’ Co-payment Amounts for extended health, MSP and life insurance, from June 1, 2013 to October 3, 2018.

(3) For the one-hundred ninety-eight (198) Settlement Class Members on the list attached to this Settlement Agreement as Schedule “E”, being the Settlement Class Members in the Old WY Plan and the Old WY Sask Plan who retired on or after May 1, 1998, the Defendant will pay to the Claims Administrator a sum of money equivalent to those Settlement Class Members’ Co-Payment amounts for extended health, MSP and life insurance, from October 1, 2016 to October 3, 2018

#### **4.2 Continuing Coverage**

(1) Settlement Class Members who remain on their present plan will be entitled to continuing coverage under their present plan under the existing terms and conditions of participation, as modified by the Defendant from time to time. Subject to subsection (2) below, the Defendant does not guarantee to maintain current or future benefits, financial contributions or subsidies associated with the present plan and all current terms and conditions of the present plan, including the internal appeal mechanism, continue to apply. Any changes made to the present plan will not reduce the benefits provided under the present plan to a level inconsistent with industry standards for retiree health benefits. This will not restrict the Defendant from benefiting from efficiencies, and from plan changes general in nature and common in the industry.

(2) The Defendant agrees that for at least a 48-month period following the date of Court approval of this Settlement Agreement, it will not reduce its contribution to the cost of premiums below the current 50% of 2010 premium rates, consistent with contributions since June 1, 2010.

### **SECTION 5 - RELEASES AND DISMISSALS**

#### **5.1 Release of Releasees**

(1) Upon the Effective Date, the Releasers forever fully and absolutely release, acquit, and discharge the Releasees from the Released Claims. For the consideration provided, the

Releasors agree and covenant not to make any claim or take or continue any proceedings arising out of or relating in any way to the subject matter of the Released Claims against any other person, corporation or entity including, without limitation, any insurer, health benefits provider, consultant, lawyer, law firm, contractor, advisor, governmental body or agency, (including the British Columbia Ministry of Health, BC PharmaCare or the Medical Services Plan of British Columbia), or any trustee in bankruptcy which might claim damages and/or contribution and indemnity and/or any other relief whatsoever, including, without limitation, relief of a monetary, declaratory or injunctive nature, from any one or more of the Releasees.

(2) The Parties intend that this Settlement Agreement will be approved by the Court and will result in the dismissal of all Settled Claims and Released Claims on the terms set out in this Settlement Agreement.

(3) Without limiting any other provisions of this Settlement Agreement, each Settlement Class Member will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Settled Claims and Released Claims.

(4) The Parties agree that each Settlement Class Member will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, complaint, 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 any of the Releasees, or anyone who could claim over against any of the Releasees, any claims that relate to or constitute any Released Claims covered by the final Settlement Agreement.

## **5.2 Dismissal**

(1) The Parties shall, as part of the application for approval of the Settlement, ask the Court to dismiss the Proceeding by consent on a “with prejudice” and without costs basis, as of the Effective Date.

## **SECTION 6 - NON-APPROVAL OF SETTLEMENT**

### **6.1 Not Approved by the Court**

(1) If this Settlement Agreement is not approved by the Court:

- (a) it shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms, with the sole exception of the agreements and commitments contained in Sections 9 and 10, which shall survive; and
- (b) all negotiations, statements and proceedings relating to the settlement and the Settlement Agreement are and shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.

(2) The Parties expressly reserve all of their respective rights to the extent that the Court does not approve this Settlement Agreement.

## **SECTION 7 - DISTRIBUTION OF PAYMENTS TO CLASS MEMBERS**

### **7.1 Settlement Distribution**

(1) Within 30 days of the Effective Date, counsel for the Defendant will pay to the Claims Administrator, in trust, an amount equivalent to the total amounts payable to the Settlement Class Members. The Defendant will also provide the calculations of the amounts payable for each Settlement Class Member.

(2) The Parties acknowledge and agree that the Defendant is obligated by tax law to withhold on behalf of the Settlement Class Members and remit to the Canada Revenue Agency (the “**CRA**”) a sum representing taxes payable by the Settlement Class Members on the settlement payments. The parties agree that the Defendant will gross up the settlement payment by 25% in light of such withholding obligation. This means that the Defendant will pay cash to or for the benefit of the applicable Settlement Class Members in a larger amount, with the goal that, after the remittance of a 20% withholding tax, the Settlement Class Members will receive cash that approximates the sum that would have been received by them if a 20% withholding were not required to be paid by law. This grossed up amount will be reported by the Defendant to the CRA as the remuneration paid to or for the benefit of the Settlement Class Members. The Settlement Class Members are required to report to the CRA the grossed up amount for income tax purposes in their T1 Income Tax Return for the taxation year in which the settlement amount is received. The Parties agree that the Defendant shall not be required to pay or remit more than is provided in this section.

(3) The Claims Administrator will have the responsibility to, and will, distribute the amounts due to the Settlement Class Members.

(4) In no event shall the Defendant have any responsibility, financial obligations, or liability whatsoever with respect to the distribution of funds to the Settlement Class Members, except to make the payments and provide the calculations expressly required by Section 7.1(1).

## **SECTION 8 - CLASS COUNSEL FEES AND DISBURSEMENTS**

(1) The Defendant will pay Class Counsel \$250,000 on account of reasonable fees and disbursements in this Proceeding.

(2) The Defendant will pay the Claims Administrator \$60,000 for the administration of this Settlement Agreement.

(3) The Defendant will pay the account of the mediator, Donald R. Munroe, Q.C., in relation to the mediation conducted on October 3, 2018.

## **SECTION 9 - NO ADMISSION OF LIABILITY**

(1) The Parties agree that, whether or not this Settlement Agreement is finally approved, this Settlement Agreement and anything contained in it, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the facts, claims or allegations made in the Proceeding or in any other pleading filed by the Plaintiff.

(2) The Parties agree that, whether or not this Settlement Agreement is finally approved, neither this Settlement Agreement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

## **SECTION 10 – MISCELLANEOUS**

### **10.1 Motions for Directions**

(1) The Plaintiffs, Class Counsel, the Claims Administrator, or the Defendant may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement.

(2) All applications contemplated by this Settlement Agreement, including applications to the Court for directions, shall be on notice to the Parties.

### **10.2 Timing**

(1) The Parties will make their best efforts to bring the application to approve the Settlement Agreement within 60 days of the execution of the Settlement Agreement.

### **10.3 Releasees Have No Liability for Administration**

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

### **10.4 Governing Law**

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

### **10.5 Entire Agreement**

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, and agreements in principle in connection herewith, including the handwritten terms of settlement executed at the mediation on October 3, 2018. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any material modification or amendment must be approved by the Court.

### **10.6 Binding Effect**

(1) Once this Settlement Agreement is approved by the Court, this Settlement Agreement shall be binding upon, and shall enure to the benefit of the Plaintiffs, Settlement Class

Members, the Releasers, the Defendant, the Releasees, Class Counsel, and the Claims Administrator, subject to the provisions in this Settlement Agreement.

### **10.7 Survival**

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

### **10.8 Counterparts**

(1) 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 signature by facsimile or other electronic means shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in original, faxed or other electronic form provided that it is duly executed.

### **10.9 Negotiated Agreement**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of whom has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

### **10.10 Dates**

(1) The Dates referred to in this Settlement Agreement may be altered only with the written consent of the Parties.

(2) Any dates that are extended on consent of the Parties must be approved by the Court if the change is material.

### **10.11 Confidentiality**

(1) No press release or written description of this Settlement Agreement will be issued, disseminated, or published by Class Counsel unless the form and content is approved by the Defendant.

(2) The Parties on their own behalf and on behalf of all Settlement Class Members agree that no public statements shall be made regarding this Proceeding or its settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements (including website postings) regarding this Proceeding will be limited and will indicate clearly that the settlement has been negotiated, agreed and approved by the Court without any admissions or findings of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the facts alleged in the Proceeding, all of which are specifically denied by the Defendant.

(3) Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Proceeding or the manner in which the Proceeding was conducted or settled. The Parties agree that any public statements that are inconsistent with the terms of this Settlement Agreement could cause irreparable harm, including harm to the reputation or businesses of the Defendant.

#### **10.12 Recitals**

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

#### **10.13 Schedules**

(1) The Schedules annexed hereto form part of this Settlement Agreement.

#### **10.14 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she, or a representative of the Party with the authority to bind the Party with respect to the matters in this Settlement Agreement has read and understood it;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's authorized representative by his, her, or its legal counsel;
- (c) he, she, or the Party's authorized representative fully understands each term of the Settlement Agreement and its effect; and

(d) no Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

**10.15 Authorized Signatures**

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

**10.16 Notice**

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**Steven Rogers & Zosia Hortsing  
Counsel for the Plaintiffs**

Victory Square Law Office LLP  
Barristers & Solicitors  
710 – 777 Hornby Street  
Vancouver BC V6Z 1S4

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**John R. Shewfelt & Chantelle Rajotte  
Counsel for the Defendants**

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Vancouver BC V7Y 1G5

Telephone: 604.687.2242  
Facsimile: 604.643.1200

The Parties have executed this Settlement Agreement as of October 3, 2018.

**For the Plaintiffs and for Class Counsel:**



Per: Steven Rogers

**For the Defendant:**



Per: Chantelle Rajotte