



Affidavit #1 of Reidar Mogerman  
made on 21 November 2014  
No. S-095159  
Vancouver Registry

***In the Supreme Court of British Columbia***

Between

JAMES WELDON and LEONARD BLEIER, suing on their own behalf and in a representative capacity on behalf of all former members of defined benefit pension plans sponsored, directed, administered or advised by the Defendants and their predecessors who were caused by the Defendants and their predecessors to cease to participate in those defined benefit pension plans and to participate only in defined contribution pension plans commencing on or about January 1, 1993, wherever they reside

Plaintiffs

and

TECK METALS LTD. and TOWERS PERRIN INC.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

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**AFFIDAVIT**


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I, Reidar Mogerman, of 400-856 Homer Street, Vancouver, BC, lawyer, AFFIRM THAT:

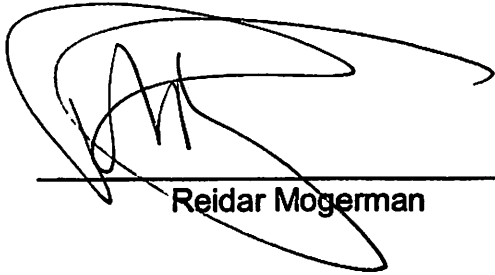
1. I am a partner with the law firm Camp Fiorante Matthews Mogerman, counsel for the plaintiffs in this action, and as such I have personal knowledge of the facts deposed to in this affidavit except where I state them to be on information and belief, and where so stated I believe them to be true.
2. A settlement has been reached in this class proceeding. Attached as Exhibit A is a copy of the executed settlement agreement dated October 31, 2014.

3. I make this Affidavit in support of the application for notice approval to the class members and for no other purpose.

AFFIRMED BEFORE ME at Vancouver, )  
British Columbia, on 21/Nov/2014. )

  
\_\_\_\_\_  
A Commissioner for taking )  
Affidavits for British Columbia )

**Natalie M. Beaupré-Fulton**  
Commissioner for Taking Affidavits  
in and for the Province of British Columbia  
856 Homer Street, 4th Floor  
Vancouver, BC V6B 2W5  
Tel: 604-889-7555 Fax: 604-889-7554

  
\_\_\_\_\_  
Reidar Mogerman

This is Exhibit A referred to in the affidavit of Leidar Merman sworn before me [Signature] this 21 day of October 2014  
A Commissioner for taking Affidavits for British Columbia

**SETTLEMENT AGREEMENT**

Made as of October, 31, 2014

Between

**JAMES WELDON and LEONARD BLEIER, suing on their own behalf and in a representative capacity on behalf of all former members of defined benefit pension plans sponsored, directed, administered or advised by the Defendants and their predecessors who were caused by the Defendants and their predecessors to cease to participate in those defined benefit pension plans and to participate only in defined contribution pension plans commencing on or about January 1, 1993, wherever they reside**

(the "Plaintiffs")

and

**TECK METALS LTD. and TOWERS WATSON CANADA INC.**

(the "Settling Defendants")

**RECITALS**

- A. WHEREAS on July 14, 2009, the Plaintiffs commenced a proposed class proceeding in the Supreme Court of British Columbia under Action No VLC-S-S-095159, Vancouver Registry (the "Proceeding");
- B. WHEREAS on January 22, 2013 the Proceeding was certified by consent as a class proceeding on behalf of the Class;
- C. WHEREAS, following court approved notice to the Class, \_\_\_\_\_ opted out of the Proceeding and \_\_\_\_\_ opted into the Proceeding.
- D. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of wrongful conduct alleged in the Proceeding;

E. 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 burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class;

F. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants 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 the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations the Settling Defendants expressly deny; and

G. WHEREAS the Parties wish to, and hereby do, finally resolve, without admission of liability, the Proceeding as against the Settling Defendants;

**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 that the Proceedings be settled and dismissed on the merits and with prejudice, without costs as to the Plaintiffs, the Settlement Class Members or the Settling Defendants, 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 hereto:

- (1). *Account* means an interest bearing trust account at a Canadian Schedule 1 bank in British Columbia under the control of Class Counsel for the benefit of the Settlement Class Members.
- (2). *Administrator* means Camp Fiorante Matthews Mogergerman.

- (3). **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Administrator, the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration, but excluding Class Counsel Fees.
- (4). **Affiliate** means an “affiliated body corporate” as defined in the Canada Business Corporations Act in effect on the date hereof.
- (5). **Class** means the class of persons represented by the Plaintiffs pursuant to the certification order made 21 December 2012 in the Proceeding.
- (6). **Class Counsel** means Camp Fiorante Matthews Mogerman.
- (7). **Class Counsel Fees** include the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.
- (8). **Costs Amount** means the reasonable disbursements of the Plaintiffs necessarily and properly incurred for the purpose of the Proceeding prior to September 22, 2014, to a maximum amount of \$300,000.
- (9). **Court** means the Supreme Court of British Columbia.
- (10). **Distribution Plan** means the plan for distributing the Settlement Amount and accrued interest, in whole or part, as approved by Court.
- (11). **Effective Date** means the date on which the order of the Court approving this Settlement Agreement becomes final and unappealable.
- (12). **Final Order** means the final judgment entered by the Court approving this Settlement Agreement once the time to appeal such judgment has expired without any appeal being taken or, if an appeal is taken, once it has been dismissed.
- (13). **Other Actions** means any and all actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

- (14). ***Parties*** means the Plaintiffs, the Settlement Class Members and the Settling Defendants.
- (15). ***Plaintiffs*** means the representative plaintiffs, James Weldon and Leonard Bleier.
- (16). ***Proceeding*** means *James Weldon and Leonard Bleier v. Teck Metals Ltd., and Towers Perrin Inc.*, Vancouver Registry No. VLC-S-S-095159.
- (17). ***Released Claims*** means the claims that are the subject of the release contained in s. 5.1 of this Settlement Agreement and include all the Settlement Class Members' claims against the Settling Defendants set out or which could have been raised in the Proceeding.
- (18). ***Settlement Agreement*** means this agreement, including the recitals and schedules.
- (19). ***Settlement Amount*** means \$4,000,000.
- (20). ***Settlement Class Members*** means all B.C. resident Class members who did not opt-out of the Proceeding and all non-B.C. resident Class members who opted into the Proceeding, and ***Settlement Class Member*** means any one of them.
- (21). ***Settling Defendants*** means Teck Metals Ltd. and Towers Watson Canada Inc., named in the style of cause of the Proceeding as Towers Perrin Inc.
- (22). ***Teck Defendant*** means Teck Metals Ltd.
- (23). ***Towers Defendant*** means Towers Watson Canada Inc., named in the style of cause of the Proceeding as Towers Perrin Inc.

## SECTION 2 – NOTICE TO THE SETTLEMENT CLASS

### 2.1 Motion for Approval of Notice

- (1). As soon as practicable after the Settlement Agreement is executed, the Plaintiffs shall bring a motion before the Court for an order approving a notice of the hearing to approve the following:
- (a) Settlement Agreement;
  - (b) Distribution Plan;
  - (c) appointment of the Administrator;

- (d) Class Counsel Fees; and
  - (e) payment to the Plaintiffs of a fee to compensate them for their service to the Class.
- (2). The order and notice shall be in a form to be agreed by the Parties and approved by the Court, or failing agreement by the Parties, in a form ordered by the Court.

**SECTION 3 – SETTLEMENT APPROVAL, ADMINISTRATION, DISTRIBUTION,  
AND FEES**

**3.1 Final Court Approval Required**

- (1). The Plaintiffs shall apply for the Final Order within 60 days of the date of execution of this Settlement Agreement or such other date as the Parties agree.
- (2). This Settlement Agreement shall only become final on the Effective Date.

**3.2 Distribution Plan**

- (1). Subject to any amendments ordered by the Court, the Settlement Class Members shall be compensated pursuant to the Distribution Plan to be approved by the Court.
- (2). The Plaintiffs shall apply for approval of the Distribution Plan contemporaneously with seeking approval of the Settlement Agreement.

**3.3 Appointment of Administrator**

The Plaintiffs shall apply for the appointment of the Administrator contemporaneously with seeking approval of the Settlement Agreement.

**3.4 Payments to Plaintiffs**

The Plaintiffs shall seek the Court's approval to pay the Plaintiffs a fee to compensate them for their service to the Class contemporaneously with seeking approval of the Settlement Agreement.

**3.5 Class Counsel Fees**

Class Counsel may seek the Court's approval to pay Class Counsel Fees and their own Administration Expenses out of the Settlement Amount in the Account contemporaneously with seeking approval of the Settlement Agreement or at any time thereafter.

#### **SECTION 4 – SETTLEMENT BENEFITS**

##### **4.1 Payment of Settlement Amount**

- (1). On the Effective Date the Settling Defendants shall pay the Settlement Amount to Class Counsel in trust for deposit into the Account.
- (2). Forthwith upon the later of the determination of the Costs Amount by agreement or taxation before the Registrar and the Effective Date, the Settling Defendants will pay the Costs Amount to Class Counsel in trust for deposit into the Account.
- (3). The Settlement Amount and Costs Amount will be paid in full satisfaction of the Released Claims of the Settlement Class Members against the Settling Defendants.
- (4). The monies in the Account shall be held by Class Counsel for the benefit of the Settlement Class Members and shall be paid in accordance with the Distribution Plan.
- (5). Class Counsel shall maintain the Account as provided in this Settlement Agreement and shall not pay out all or part of the monies in the Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Settling Defendants.

##### **4.2 Taxes and Interest**

- (1). Except as hereinafter provided, all interest earned on the funds in the Account shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Account.
- (2). All taxes payable on any interest which accrues on the funds in the Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class Members. The Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the funds in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the funds in the Account shall be paid from the Account.



(3). The Settling Defendants shall have no responsibility to make any filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account.

#### **4.3 Information for Distribution**

(1). The Teck Defendant will make reasonable efforts to provide the Plaintiffs with accurate information as set out in Schedule A required for the preparation and implementation of the Distribution Plan, provided that it shall not be liable for negligent errors or omissions and/or any use of such information in connection with the Distribution Plan, and this limit on its liability will be a term of the Final Order.

(2). The Towers Defendant will make reasonable efforts to provide the Plaintiffs with accurate information required for the preparation and implementation of the Distribution Plan, provided that:

- (a) the Towers Defendant will not be liable for any role that it plays in fulfilling those obligations and this limit on its liability will be a term of the Final Order;
- (b) the Towers Defendant will have no responsibility for the Distribution Plan; and
- (c) after the first 8 hours of work, the Towers Defendant will be paid for any additional assistance that the Plaintiffs request at the normal hourly rates of its staff.

#### **4.4 Future Discussions**

The Teck Defendant will provide to the Plaintiffs the assurance contained in Schedule B.

### **SECTION 5 – RELEASES AND DISMISSALS**

#### **5.1 Release and Dismissal**

In consideration of payment by the Settling Defendants of the Settlement Amount to the Account and the other valuable consideration set forth in this Settlement Agreement, the Plaintiffs on their own behalf and on behalf of the Settlement Class Members:

- (a) do hereby remise, release and forever discharge the Settling Defendants and their Affiliates and their respective predecessors, successors, assigns, servants, agents, officers, directors and employees (herein referred to as the "Releasees"), of and from

any and all actions, causes of action, claims and demands whatsoever or wheresoever, whether at law or in equity, and whether known or unknown, suspected or unsuspected, which the Settlement Class Members, their successors and assigns or any of them, can, shall, or may have by reason of the events and actions giving rise to the claims advanced in the Proceeding; and

- (b) covenant not to make any claim or take any proceeding against any other legal or natural person who might claim contribution from the Releasees in respect of allegations that are or could have been advanced in the Proceeding.

### **5.2 Dismissal of the Proceeding**

The Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendants.

### **5.3 Dismissal of Other Actions**

All Other Actions commenced by any Settlement Class Member shall be dismissed against the Settling Defendants, without costs and with prejudice.

## **SECTION 6 – OTHER CLAIMS**

### **6.1 Claims for Contribution or Indemnity**

If notwithstanding section 5.1(b), a Settlement Class Member makes any claim or takes any proceedings against any other legal or natural person who might claim contribution or indemnity from any Releasee which a court or other tribunal may attribute to the fault of such Releasee and that person or corporation claims contribution or indemnity from such Releasee, then, at the first opportunity, the Settlement Class Member will advise the court or other tribunal in which proceedings are brought, and so amend his or her pleadings to make clear, that he or she expressly waives any right to recover from any such person, any portion of the losses claimed that the court or other tribunal may attribute to the fault of such Releasee.

**6.2 No Admission of Liability**

Whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, 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 any Settling Defendant, or of the truth of any of the claims or allegations contained in the Proceeding or any other pleading filed by any Settlement Class Member.

**6.3 Agreement Not Evidence**

The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, 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 referred to, offered as evidence or received in evidence in any pending or future proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or as otherwise required by law.

**SECTION 7 – ADMINISTRATION AND IMPLEMENTATION**

**7.1 Mechanics of Administration**

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Plan shall be subject to the supervisory jurisdiction of the Court, which may be exercised on the Court's own motion or on motions brought by the Administrator, by a Settling Defendant, or by Class Counsel.

**7.2 Notice of Motions**

All motions contemplated by this Settlement Agreement shall be on notice to the Parties in accordance with the Supreme Court Civil Rules.

## **SECTION 8 – TERMINATION OF SETTLEMENT AGREEMENT**

### **8.1 Right of Termination**

(1). Subject to section 8.2, in the event that:

- (a) the Court declines to approve this Settlement Agreement or any material part hereof;  
or
- (b) the order approving this Settlement Agreement by the Court does not become a Final Order following the conclusion of all relevant proceedings;

this Settlement Agreement shall be terminated.

(2). In the event that the Settling Defendants do not pay the Settlement Amount or the Costs Amount, the Plaintiffs may elect to terminate the Settlement Agreement or to seek enforcement of the Settlement Agreement.

(3). Any order, ruling or determination made by the Court with respect to Class Counsel or Plaintiffs' fees and disbursements or with respect to the Administrator or Distribution Plan shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

### **8.2 Survival of Provisions After Termination**

(1). If this Settlement Agreement is terminated, the provisions of sections 4.2, 6.2, 6.3, 8, 9, and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of sections 4.2, 6.2, 6.3, 8 and 9 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

(2). The Parties expressly reserve all of their respective rights if this Settlement Agreement does not become effective or if this Settlement Agreement is terminated.

## **SECTION 9 – MISCELLANEOUS**

### **9.1 Best Efforts**

The Parties shall use their best efforts to effect this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendants.

### **9.2 Motion**

Class Counsel or the Settling Defendants may apply to the Court for directions in respect of the interpretation and implementation of this Settlement Agreement.

### **9.3 Headings, etc.**

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### **9.4 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **9.5 Governing Law**

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

**9.6 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

**9.7 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Court.

**9.8 Binding Effect**

Unless and until it is terminated, this Settlement Agreement shall be binding upon, and enure to the benefit of the Plaintiffs, Settlement Class Members, the Settling Defendants, any and all of their respective insurers, employees, agents, successors and assigns. Without limiting the generality of the foregoing, unless and until this Settlement Agreement is terminated, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon them and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon them.

**9.9 Counterparts**

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 facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

**9.10 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which 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 in 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.

#### **9.11 Arbitration**

The Parties agree that any and all disputes arising out of or in connection with this Agreement or the settlement contemplated herein will be referred to and fully and finally resolved by binding arbitration conducted by a panel of three arbitrators pursuant to the Domestic Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre, and that no party will contest such jurisdiction. The place of arbitration will be Vancouver, British Columbia.

#### **9.12 Recitals**

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

#### **9.13 Acknowledgements**

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 set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's 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.

#### **9.14 Authorized Signatures**

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.

**9.15 Notice**

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 facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**For Plaintiffs, for B.C. Class Counsel, and for Administrator**

JJ Camp QC, Reidar Mogerman  
Camp Florante Matthews Mogerman  
400 – 856 Homer Street  
Vancouver, BC V6B 2W5

Telephone: 604-689-7555  
Facsimile: 604-689-7554

**For Teck Defendant:**

Geoffrey B. Gomery, Q.C.  
Nathanson, Schachter & Thompson LLP  
750-900 Howe Street  
Vancouver, BC V6Z 2M4

Telephone : 778-945-1471  
Facsimile : 604-684-1598

**For Towers Defendant:**

Hein Poulus, Q.C.  
Stikeman Elliott LLP  
1700 – 666 Burrard Street  
Vancouver BC V6C 2X8

Telephone: 604-631-1378  
Facsimile: 604-681-1825

**9.16 Date of Execution**

The Parties have executed this Settlement Agreement effective as of the date on the cover





**Schedule A**

**Teck Defendant's Agreement to Provide Information**

The Teck Defendant will make reasonable efforts to provide to the Plaintiffs from records in the Teck Defendant's possession or control the following information in respect of Settlement Class Members to be identified by the Plaintiffs who did not become employees of Agrium Inc. in 1993:

- year of birth;
- years of service as of December 31, 1992;
- year of employment termination, if not still employed;
- cause of employment termination;
- annual salary in 1992, to be inferred from a 1992 pension adjustment file; and
- initial account value at December 31, 1992.

The Teck Defendant will make reasonable efforts to provide to the Plaintiffs from records in the Teck Defendants' possession or control the initial account values of Class Members to be identified by the Plaintiffs who became employees of Agrium Inc. in 1993.

**Schedule B**

**Future Discussions**

**Representatives of the Teck Defendant will meet with the Plaintiffs at a mutually convenient date after the Effective Date to hear their suggestions with respect to future discussions regarding Teck's defined contribution pension plan. Such a meeting does not constitute any commitment on the part of Teck to an ongoing process of consultation regarding the defined contribution pension plan.**