

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

**NOTICE OF APPLICATION
RE: SETTLEMENT APPROVAL**

Name of Applicants: Plaintiffs, James Weldon and Leonard Bleier

TO: the Defendants, Teck Metals Ltd. and Towers Perrin Inc.

TAKE NOTICE that an application will be made by the applicants to the Honourable Mr. Justice N. Smith at the courthouse at 800 Smithe Street, Vancouver, B.C. V6Z 2E1 on 24/Jul/2015 at 10:00 a.m. for the order set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. Orders relating to approval of a settlement agreement, substantially in the form attached as **Schedule "1"** to this notice of application.

PART 2: FACTUAL BASIS

2. This proceeding is brought on behalf of current and former employees of Teck Metals Ltd. ("Teck Metals") and related entities regarding the 1993 conversion of their pension benefits from defined benefit (the "DB Plan") to defined contribution (the "DC Plan"). Towers Perrin Inc. ("Towers") was the actuarial and pension consultant on the conversion.

Affidavit #1 of Jennifer Winstanley made July 15, 2015 [Winstanley #1] at para 7.

3. On the eve of trial, after extensive litigation and arms length settlement negotiations, the parties agreed to settle this case for \$4 million, plus up to \$300,000 for disbursements incurred prior to the agreement in principle, in exchange for a release from class members. The parties executed the Settlement Agreement effective October 31, 2014.

Winstanley #1 at para 4.

4. Prior to accepting the offer, the representative plaintiffs met separately with retired Court of Appeal Justice Kenneth Smith. Mr. Smith independently reviewed the Settlement Agreement with the representative plaintiffs and strongly endorsed the decision to settle.

Winstanley #1 at para. 5.

5. Class Counsel and the representative plaintiffs recommend approval of the Settlement Agreement.

Winstanley #1 at paras 54 and 55.

Affidavit #4 of James Weldon made July 10, 2015 [Weldon #4] at para. 59

Affidavit #3 of Leonard Bleier made July 13, 2015 [Bleier #3] at para. 34.

6. This application is brought for approval of the Settlement Agreement, and is brought in conjunction with applications for approval of:
 - (a) the Settlement Administration and Distribution Plan (the "Distribution Plan"), appointment of Camp Fiorante Matthews Mogerman ("CFM") as

claims administrator under the Distribution Plan, and payment of a fee to CFM as claims administrator (the "Distribution Approval Application");

- (b) Class Counsel's fees and disbursements (the "Fees Application"); and
- (c) honoraria for the two representative plaintiffs (the "Honoraria Application"; collectively, the "Applications").

Winstanley #1 at para. 2.

Background

7. This case was started in 2009. The plaintiffs alleged that Teck Metals, with the assistance of Towers, structured and implemented the DC Plan in a way that favoured Teck Metals' interest over those of its employees, transferring risks from Teck Metals to the pension plan members. Specifically, at the time of the election, the defendants allegedly provided the employees with incomplete, inaccurate or misleading information, and were therefore liable for damages and other relief for breach of statutory and fiduciary duties, deceit and negligent misrepresentation.

Winstanley #1 at para. 8.

8. The defendants vigorously contested all aspects of liability and damages. They pointed out that while unexpectedly low interest rates had seriously impacted the value of the DC Plan, the interest rates were just that – unexpected. The defendants' basic position was that hindsight should not be the standard. They said that, based on information that existed in 1993, the material provided to the class members was fair, reasonable, and unbiased.

Winstanley #1 at para. 9.

Litigation History

9. This action has been vigorously contested at every step. The defendants raised defences and challenged the representative plaintiffs based on limitation periods, duty of care, standard of care, causation and damages. In the six years since it

was commenced, this action has been to the BC Court of Appeal three times. It has also required extensive case management.

Winstanley #1 at para. 10.

10. This action was filed as a proposed class proceeding on July 14, 2009, by one of the current representative plaintiffs, James Weldon. The writ was renewed on June 29, 2010, and served on the defendants in December 2010.

Winstanley #1 at para. 11.

11. On October 17, 2011, a parallel action was filed by Leonard Bleier, *Bleier v. Teck Metals Ltd. et al*, SCBC Action No. VLC-S-S-116968. On June 21, 2012 the Court granted an order consolidating the two actions.

Winstanley #1 at para. 12.

12. On June 21, 2012 the Plaintiff discontinued against the Agrium defendant.

Winstanley #1 at para. 13.

13. In the early stages, the action was subject to extensive challenge by the defendants on procedural and limitations grounds. These challenges included an application to set aside the *ex parte* order renewing the writ of summons, which was pursued through to the Court of Appeal over a period of 11 months and ultimately dismissed in February 2012.

Weldon v Agrium Inc., 2012 BCCA 53

14. Following the Court of Appeal decision, the defendants brought separate applications for summary judgment dismissing most of the plaintiffs' claims. The defendants alleged that all of the plaintiffs' claims, except those based on deceit, were barred by the *Limitation Act*. The Court dismissed the defendants' applications in reasons dated September 26, 2012.

Weldon v Teck Metals Ltd., 2012 BCSC 1386.

15. In December 2012, the parties consented to certification of the action as a class proceeding, and agreed on 23 common issues to be decided. The first two of

those common issues were submitted for judgment on a special case pursuant to Supreme Court Civil Rule 9-3. Those issues were:

- (a) When did the right to bring this action arise pursuant to the *Limitation Act*?
- (b) If the basic limitation period has expired, to what extent, if at all, can the plaintiffs rely on the postponement provisions in the *Act*?

Winstanley #1 at para. 16.

- 16. The Court's reasons were released on March 4, 2013. The decision was appealed by both parties, and Court of Appeal reasons were issued on August 6, 2013.

Winstanley #1 at para 17.

Weldon v. Teck Metals Ltd., 2013 BCCA 358.

- 17. On the first common issue, the defendants argued that the limitation period had expired long before the action was started because the right to bring the action arose and the time began to run at the time that the DC Plan came into effect on January 1, 1993. The plaintiffs argued that a cause of action does not arise and no limitation period begins to run until the plaintiff suffers a loss – and no class member suffered a loss until a “payment” event, the date he or she retired or otherwise became eligible to receive money from the pension plan. Both this Court and the Court of Appeal accepted the defendants’ arguments and held that the right to bring an action arose on January 1, 1993.

Winstanley #1 at para. 18.

- 18. The effect of the ruling on the first issue was that the six year limitation period in s.3(5) of the *Limitation Act* expired on January 1, 1999. Therefore, the action would be statute-barred unless and to the extent that the plaintiffs could rely on the postponement provisions of s.6 of the *Act*.

Winstanley #1 at para. 19.

- 19. On the second common issue, the plaintiffs argued that postponement was available under ss. 6(3)(b) “for damage to property”, (c) “for professional

negligence", (d) "based on fraud or deceit", (e) "in which material facts relating to the cause of action have been wilfully concealed", and (h) "for breach of trust not within subsection (1)". Teck Metals conceded that postponement is available for the claim of deceit, under s.6(3)(d), and the claims for breach of certain statutory duties, under s.6(3)(h), but argued that none of the plaintiffs' other claims were subject to postponement. Towers supported Teck's arguments and focussed on the argument that the conduct at issue could not constitute professional negligence for the purpose of the *Limitation Act*.

Winstanley #1 at para. 20.

20. This Court held that the plaintiffs' claims were subject to postponement under ss. 6(3)(b) and (c), finding that s.6(3)(b) was applicable and broad enough to make postponement arguable on all common issues. The Court therefore did not address ss. 6(3)(e), or 6(3)(h).

Winstanley #1 at para. 21.

21. As noted above, the Court of Appeal upheld this Court's decision on common issue number one. However, on common issue number two, the Court concluded that s.6(3)(b) was not applicable to the plaintiffs' claims. The Court of Appeal further held that the plaintiffs' claims were not subject to postponement under s.6(3)(e). Regarding s.6(3)(h), the Court of Appeal held that absent a proper factual foundation, the plaintiffs should not be denied the opportunity to endeavor to establish that the alleged breach of fiduciary duty was also a breach of trust that would entitle them to the benefit of s.6(3)(h) of the Act.

Winstanley #1 at para. 22.

22. With respect to the professional negligence claim, the Court of Appeal also upheld this Court's decision. That is, professional negligence claims are subject to discoverability under the *Limitation Act*.

Winstanley #1 at para. 23.

23. On November 23, 2013 the action was set down for trial for 20 court days on September 22, 2014 to October 10, 2014 and October 20, 2014 to October 24, 2014.

Winstanley #1 at para. 24.

24. Class Counsel actively prepared for trial until the Settlement Agreement was reached in September 2014. Class Counsel spent a great deal of time reviewing and digesting documents, conducting and defending numerous discoveries, retaining and instructing experts, and otherwise engaging in extensive legal and factual trial preparation.

Winstanley #1 at para. 25.

Previous Notice to the Class

25. After certification, Teck Metals provided Class Counsel with a list of 449 class members and their last known addresses. On April 26, 2013, Class Counsel mailed out a letter providing notice of the certification and the deadline to opt in or out (the "Certification Letter"). The deadline to opt in or out was July 23, 2013 (the "Opt In/Out Deadline"). 42 class members resident in BC opted out of the action. 176 class members resident outside of BC opted into the action. Some of the opt ins and opt outs were received after the Opt In/Out Deadline, and were permitted by order made January 23, 2014.

Winstanley #1 at para: 26.

26. In February 2014 Class Counsel sent a second notice letter to class members after the Court determined certain common issues (the "Common Issues Letter").

Winstanley #1 at para. 27

27. On November 26, 2014, the Court approved a letter notice (the "Settlement Letter") to all class members informing them of the Settlement Agreement. The Settlement Letter enclosed a form which class members were required to complete and return to Class Counsel by January 31, 2015 in order to share in the settlement funds (the "Claim Form"). In addition, on December 22, 2014

Class Counsel sent a depersonalized version of the Settlement Letter by email to the 266 class members with known email addresses.

Winstanley #1 at paras. 28 and 29.

28. Further, the Settlement Letter and Claims Form were posted on the websites of both Class Counsel firms.

Winstanley #1 at para. 30.

Current Notice

29. On June 15, 2015, the Court approved the notice of this settlement approval hearing which was disseminated in accordance with the plan of dissemination as follows:

- (a) a personalized letter was sent by regular mail to 426 Settlement Class Members on June 16, 2015; and
- (b) a depersonalized version was sent by e-mail to approximately 396 Settlement Class Members (all of whom were also sent a personalized version by regular mail) with known email addresses on June 16, 2015.

Winstanley #1 at para. 31.

30. In addition, the notice was posted on the websites of both Class Counsel firms on June 16, 2015.

Winstanley #1 at para. 32.

31. Class Counsel also took additional two steps to provide full information to class members.

Winstanley #1 at para. 33.

32. First, Class Counsel developed an extensive frequently asked questions ("FAQ") page which is posted on both firms' websites.

Winstanley #1 at para. 34.

33. Second, on June 24, 2015, Class Counsel held a "town hall" meeting by webinar. Approximately 68 Claimants attended at least part of the webinar. During the

webinar, which lasted nearly two hours, Class Counsel explained the central terms of the Settlement Agreement and the Distribution Plan and answered Claimants' questions.

Winstanley #1 at para. 35.

Factors Considered

34. The Settlement Agreement was concluded on the eve of trial. Significant information was available to Class Counsel to evaluate the merits of the settlements, including expert evidence on the value of benefits under the DB and DC Plans.

Winstanley #1 at para. 36.

35. Has this action proceeded to trial, the plaintiffs would have faced a number of significant legal and factual hurdles at both the common and individual issues stages of this litigation, including the risks that:

- (a) the defendants could prove that they did not owe the alleged duties and, in any event, did not do anything wrong ("liability risk");
- (b) people would have joined the DC Plan regardless of the information that the defendants disclosed in 1993 at the time of the election ("reliance risk");
- (c) even if the defendants had breached the standard of care, essential causes of action had expired by operation of the *Limitation Act* ("limitation period risk"); and
- (d) even if the class won at trial, the defendants would appeal and it would take many more years to resolve this lawsuit ("appeal risk").

Winstanley #1 at para. 37.

36. Class Counsel have received 4 objection letters up to July 15, 2015, none of which object to the Settlement Agreement. The deadline for objections is July 17, 2015. Class Counsel will prepare a separate report dealing with the objections.

Winstanley #1 at para. 38.

Common Issues Risks

37. In order to win, the plaintiffs needed to establish liability against one of both of the defendants for a cause of action that had not yet expired under the *Limitation Act*. They then had to win the common issues trial on liability and win complex and uncertain arguments relating to reliance, causation, damages, and postponement.

Winstanley #1 at para. 40.

38. As against Teck Metals, there was very little evidence of fraud. Given that negligent misrepresentation had been taken away by the Court of Appeal, the case centred on breach of fiduciary duty. One major risk at the common issues stage was that the plaintiffs would not succeed in establishing that postponement was available for the breach of fiduciary duty claim. The question was left open by the Court of Appeal.

Winstanley #1 at para. 41.

39. At the Court of Appeal, the plaintiffs argued that breach of fiduciary duty is a form of breach of trust and that s.6(3)(h) of the *Limitation Act* applied because this action alleged claims for breach of trust not within s. 6(1). The Court of Appeal did not accept this approach, but left the issue open to be addressed on the facts of this case.

Winstanley #1 at para. 42

40. At trial, the plaintiffs intended to argue that Teck Metals owes fiduciary duties in its capacity of administrator of the pension plan, which is a trust. The Supreme Court of Canada has recognized that there are circumstances in which a pension plan administrator has fiduciary obligations to plan members both at common law and under statute. Further, section 8(3) of the *Pension Benefits Standards Act*, R.S.B.C. 1996, c. 352 [PBSA], required Teck Metals to administer the pension plan and pension fund "as a trustee" for the employer, the members of the

pension plan, former members, and any other persons entitled to pension benefits under the plan.

Burke v. Hudson's Bay Co., 2010 SCC 34 at para. 41; *PBSA*, s. 8(3).

41. On the other hand, the defendants argued, and a number of cases have held, that much of what an employer does in relation to a pension plan is not covered by its "administrator" hat (to which the fiduciary duty attaches), but rather its "plan sponsor" hat (which does not give rise to a fiduciary duty).

Compare *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6; *Pryden v. Swiss Reinsurance Company*, 2010 ONSC 6679; *Kerry (Canada) Inc. v. DCA Employees Pension Committee*, 2007 ONCA 416; and *Sutherland v. Hudson's Bay Company*, 2007 CanLII 30293 (ON SC).

42. In summary, it was not at all clear that Teck Metals' conduct fell into a cause of action that was not already barred by the passage of time.

Winstanley #1 at para. 45.

43. As against Towers, the plaintiffs alleged professional negligence, which the Court of Appeal accepted could be postponed on the right facts. The problem with the professional negligence argument was that Teck Metals, and not Towers, prepared the majority of the information that went to the class members. Towers argued that it had only prepared the computer model and that Teck Metals, and not Towers, had supplied the assumptions and information that had gone into the creation of that model.

Winstanley #1 at para. 46.

44. A second major risk at the common issues trial arose from the fact that success was highly dependent on whether the Court accepted the evidence of the plaintiffs' expert. The issue addressed by the plaintiffs' expert, Mr. Allan Brown, was whether the information material, including the booklet and an interactive decision model computer program (the "IDM"), were complete, accurate, reasonable, appropriate, and even-handed. Mr. Brown concluded that the IDM in particular contained a number of biases in the calculations and in the assumptions used that resulted in a comparison of the DB Plan and the DC Plan

that favoured the DC Plan. He also identified other areas where the IDM and the booklet were biased in favour of the DC Plan, for example, the assertion that the default assumptions were approved by OSFI.

Winstanley #1 at para. 47.

45. The defendants' experts disagreed with Mr. Brown's analysis and argued that the assumptions were reasonable at the time that they were chosen.

Winstanley #1 at para. 48.

46. Whatever the result of the common issues trial, the decision would undoubtedly be appealed by one or both parties, resulting in the plaintiffs and the class members waiting another year or more for a final resolution of the common issues. The likely leave application to the Supreme Court of Canada would consume another six to twelve months.

Winstanley #1 at para. 49.

Individual Issues Risks

47. Assuming the plaintiffs succeeded at the common issues trial and its appeals, the next stage of the litigation would involve individual trials to assess causation and damages. The major risk for each class member at this stage would be in establishing that they relied on the information material, and particularly on its flawed portions, in making their decision to convert to the DC Plan. For a large number of class members, this would be difficult or impossible to establish.

Winstanley #1 at para. 50.

48. In addition, each class member would have to establish that their cause of action was postponed until July 2003 or later.

Winstanley #1 at para. 51.

PART 3: LEGAL BASIS

General Principles

49. A settlement of a class proceeding is not binding unless approved by the court. In order to approve a settlement, the court must find that it is fair, reasonable, and in the best interests of the class.

Class Proceedings Act, RSBC 1996, c 50, s 35 [CPA].

50. In *Jeffrey v. Nortel Networks Corp.*, Groberman J. (as he then was) reviewed the law regarding settlement approvals in class actions and synthesized the factors considered in approving a class proceeding settlement as follows:

- (i) likelihood of recovery or likelihood of success;
- (ii) amount and nature of discovery, evidence or investigation;
- (iii) settlement terms and conditions;
- (iv) recommendations and experience of counsel;
- (v) future expense and likely duration of litigation;
- (vi) recommendations of neutral parties, if any;
- (vii) number of objectors and nature of objections; and
- (viii) the presence of arms-length bargaining and the absence of collusion

Jeffery v. Nortel Networks Corp., 2007 BCSC 69 at para 18 [Jeffrey].

51. Groberman J. distilled the above factors into four broad questions for consideration as reviewed below.

1. Has Counsel of Sufficient Experience and Ability Undertaken Sufficient Investigations?

52. The Settlement Agreement was reached by experienced counsel on both sides including counsel who have been involved in many class actions litigated in Canada to date.

2. Have Collusion or Extraneous Considerations Tainted the Negotiations?

53. There is a strong initial presumption of fairness when a proposed class settlement, which was negotiated at arms-length by counsel for the class, is presented for court approval.

Ford et al v. F. Hoffmann-La Roche Ltd. et al (2005), 74 O.R. (3d) 758 (S.C.J.) at paras 113 & 114.

54. In the case of this Settlement Agreement, negotiations were hard-fought and at arms-length between experienced counsel.

Winstanley #1 at para 10.

55. In addition Class Counsel offered the plaintiffs the benefit of an independent second opinion about the fairness and monetary compensation of the offer which was provided by Mr. Smith.

Winstanley #1 at paras. 5 and 55.

3. Cost/Benefit Analysis

56. The court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of litigation rights against the defendants. However, the court must balance the need to scrutinize the settlement against the recognition that there may be a number of possible outcomes within the zone or range of reasonableness.

Bodnar v. The Cash Store Inc., 2010 BCSC 145 at para 17;

Sun-Rype Products Ltd. v. Archer Daniels Midland Company, 2010 BCSC 472 at para 44 [*Sun-Rype*].

57. As indicated above, the Settlement Agreement will result in significant benefits for the Settlement Class Members. The Settling Defendants will pay \$4 million,

plus up to \$300,000 for disbursements for the benefit of the Settlement Class Members. The Settlement Agreement resolves this action in its entirety.

Winstanley #1 at para 53.

58. James Weldon and Leonard Bleier, the representative plaintiffs in this action, have reviewed the Settlement Agreement, understand the core terms, and support approval of the Settlement Agreement.

Affidavit of James Weldon #4 made on July 10, 2015 [Weldon #4] at paras 54 and 58-59.

Affidavit of Leonard Bleier # 3 made on July 13, 2015 [Bleier #3] at paras 29 and 33-34.

59. Class Counsel recommends approval of the Settlement Agreement. As held by Mr. Justice Butler, this recommendation is important:

...because Class Counsel has a duty to the class as a whole, as well as a duty to the court. In addition, Class Counsel is uniquely situated to assess the risks of the litigation and the benefits of the settlement. Class Counsel in this case have extensive experience in class proceedings....

Main v. Cadbury Schweppes plc, 2010 BCSC 816 at para 10, paraphrasing *Osmun v. Cadbury Adams Canada Inc.*, 2010 ONSC 2643 at para 45.

60. The plaintiffs and Class Counsel submit that the settlement is well within the zone of reasonableness, especially in light of the risks inherent in this litigation.

Winstanley #1 at para. 53.

4. Are the Class Members Adequately Informed and Do they Object?

61. Notice of this approval hearing was sent by regular mail and email on June 16, 2015. The notice is also posted on the Class Counsels' respective websites along with an FAQ page.

62. In addition, on June 24, 2015, Class Counsel held a webcast "town hall" meeting. Approximately 68 class members attended the "town hall" meeting which ran for nearly two hours. Class Counsel explained the core terms of the Settlement Agreement and answered class members' questions about it.

63. The deadline for objecting to the Settlement Agreement is July 17, 2015. As of July 15, 2015, 4 objection letters have been received by Class Counsel, none of which object to the Settlement Agreement. Class Counsel will advise the Courts of any further objections received and prepare a separate report dealing with the objections

Winstanley #1 at para 38.

64. The case law is clear that even legitimate objections that demonstrate that a settlement is "less than perfect" will not prevent the approval of a settlement that is fair, reasonable and in the best interests of class members as a whole. After all:

...this settlement, like all settlements, is the product of compromise. While the court might prefer a more inclusive compromise, I am not prepared to say that the compromise was not a reasonable one.

Griffin v. Dell Canada Inc., 2011 ONSC 3292 at para. 39

PART 4: MATERIAL TO BE RELIED ON

65. Affidavit of Jennifer Winstanley #1, made on July 15, 2015.
66. Affidavit of James Weldon #4 made on July 10, 2015.
67. Affidavit of Leonard Bleier #3 made on July 13, 2015.
68. Such further and other material as counsel may advise and this Honourable Court may permit.

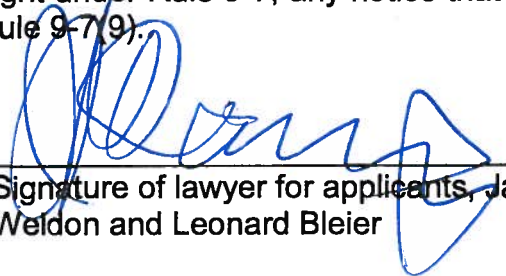
The applicant estimates that the application will take one hour.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 16/July/2015



Signature of lawyer for applicants, James
Weldon and Leonard Bleier

for:
Julie R. Facchin

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

.....

.....

.....

Date:

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE 1

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

ORDER MADE AFTER APPLICATION APPROVAL OF SETTLEMENT

BEFORE THE HONOURABLE MR. JUSTICE N. SMITH)) 24/Jul/2015)

ON THE APPLICATION of the plaintiffs, James Weldon and Leonard Bleier, coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 24/Jul/2015, and on hearing JJ Camp, Q.C., Reidar Mogerman and Julie Facchin, counsel for the plaintiffs; Irwin Nathanson, Q.C., counsel for the defendant, Teck Metals Ltd.; and Hein Poulus, Q.C. and Michael Bromm, counsel for the defendant, Towers Perrin Inc and on reading the materials filed;

THIS COURT ORDERS that:

1. The definitions set out in the Settlement Agreement attached as **Schedule "A"** apply to and are incorporated into this order.
2. The Settlement Agreement is fair, reasonable and in the best interests of the Class.
3. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.
4. The Settlement Agreement is incorporated by reference to and forms part of this order and is binding upon the representative plaintiff and all Settlement Class Members.
5. Upon the Effective Date, each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
6. Upon the Effective Date, any Other Action commenced by a Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
7. This order, including the Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable.
8. Upon the Effective Date, in accordance with s. 5.1(a) of the Settlement Agreement, the Plaintiffs on their own behalf and on behalf of the Settlement Class Members, remise, release and forever discharge the Releasees of and from the Released Claims.
9. Upon the Effective Date, in accordance with s. 5.1(b) of the Settlement Agreement, the Plaintiffs on their own behalf and on behalf of the Settlement Class Members, each Releasor covenant not to sue and undertake not to make any claim in

any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

10. For purposes of administration of this order, this Court will retain an ongoing supervisory role.

11. The Settling Defendants shall pay the Settlement Amount to Class Counsel as provided in section 4.1 of the Settlement Agreement.

12. Class Counsel shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class and on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Settlement Agreement.

13. This order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

14. This action is hereby dismissed against the Settling Defendants without costs and with prejudice, in accordance with the Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiffs

J.J. Camp, Q.C.

Signature of lawyer for defendant, Teck Metals Ltd.

Irwin Nathanson, Q.C.

Signature of lawyer for the defendant, Towers Perrin Inc.

Hein C. Poulus, Q.C.

By the Court

Registrar

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

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

SCHEDULE A

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 Mogerman.

- (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

page.

SIGNED, SEALED AND DELIVERED
by class counsel on behalf of the Settlement
Class Members in the
presence of:

C. Bolder
Witness

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)

Camp Fiorante Matthews Mogerman

SIGNED, SEALED AND DELIVERED
by counsel for the Teck Defendant
in the presence of:

[Signature]
Witness

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)
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)

Geoffrey Gormley, A.C.

SIGNED, SEALED AND DELIVERED
by counsel for the Towers Defendant
in the presence of:

Milena
Witness

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Kirkland L. Hicks, Vice President,
General Counsel & Secretary

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 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.

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

ORDER MADE AFTER APPLICATION

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