

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE                     )  
  )  
TERRENCE PATTERSON                     )    FRIDAY THE 10<sup>TH</sup> DAY  
  )  
  )    OF APRIL, 2015

B E T W E E N

NUNZIO CARDILLO and JOHN WITILUK

Plaintiffs

and

AURCANA CORPORATION,  
LENIC RODRIGUEZ and SADEK EL-ALFY

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**ORDER**

THIS MOTION, made by:

- (a) the Plaintiffs for certification of the action as a class proceeding and leave pursuant to Part XXIII.1 of the *Ontario Securities Act, R.S.O. 1990, c. S.5*, for the purposes of settlement and for an order pursuant to subsection 29(2) of the *CPA* in accordance with the terms of the Settlement Agreement; and

- (b) Class Counsel for the approval of the agreement respecting fees and disbursements between Class Counsel and the Plaintiffs pursuant to subsection 32(2) of the *CPA*.

was heard on April 10, 2015 at Windsor, Ontario.

ON READING the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the affidavits of:
  - (i) Nunzio Cardillo sworn March 24, 2015;
  - (ii) John Witoluk sworn March 26, 2015;
  - (iii) Bonnie Roberts Jones sworn March 27, 2015;
  - (iv) Joel Wiesenfeld sworn March 27, 2015;
  - (v) Shelley Woodrich sworn March 9, 2015;
  - (vi) Gregory Wrigglesworth sworn April 9, 2015; and
  - (vii) Shelley Woodrich sworn April 9, 2015.

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

AND ON BEING ADVISED that:

- (a) the Parties consent to this order;
- (b) Marsh Risk Consulting Canada consents to being appointed Administrator;

- (c) Gregory Wrigglesworth of Kirwin Partners LLP consents to receive Opt-Out Forms, to report to the Court regarding Opt-Out Parties, and to being appointed Referee; and
- (d) there have been no objections to the proposed settlement received by Gregory Wrigglesworth.

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

1. THIS COURT ORDERS AND DECLARES that for the purposes of this order, the definitions in the Settlement Agreement apply to and are incorporated into this order and that the following definitions also apply:

- (a) "Claims Bar Deadline" means 5:00 p.m. eastern time on the date one hundred and twenty (120) days after the date on which the Second Notice is first published;
- (b) "Class Counsel" means Sutts, Strosberg LLP and Groia & Company Professional Corporation; and
- (c) "Settlement Agreement" means the settlement agreement made as at February 5, 2015 (without schedules) attached hereto as Schedule 1.

2. THIS COURT ORDERS that:

- (a) this action is certified as a class proceeding;
- (b) the class is defined as:

all persons, other than Excluded Persons and Opt-Out Parties, who acquired Eligible Securities.

- (c) the common issue is:

Did the Defendants make a misrepresentation about the resource levels and production capacity of the Shafter Mine within the meaning of the *Securities Act*, R.S.O. 1990, c.S.5, as amended, or at common law?

- (d) Nunzio Cardillo and John Wituluk are appointed as the representative plaintiffs;
- (e) leave is granted to assert the rights of action in Part XXIII.I of the *OSA*; and
- (f) the causes of action certified are negligent misrepresentation and secondary market misrepresentation pursuant to Part XXIII.I of the *OSA*.

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

4. THIS COURT ORDERS that:

- (a) the Settlement Agreement, without schedules, attached as Schedule 1 to this order, is approved and shall be implemented in accordance with its terms;
- (b) the Second Notice, generally in the form attached as Schedule 2 to this order, is approved;
- (c) the Plan of Notice, generally in the form attached as Schedule 3 to this order, is approved;
- (d) the Plan of Allocation, generally in the form attached as Schedule 4 to this order, is approved;

- (e) the Claim Form For Shares, generally in the form attached as Schedule 5A to this order, is approved;
- (f) the Claim Form For Warrants, generally in the form attached as Schedule 5B to this order, is approved; and
- (g) the Opt-Out Form, generally in the form attached as Schedule 6 to this order, is approved.

5. THIS COURT ORDERS that Marsh Risk Consulting Canada is appointed:

- (a) as the Administrator on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
- (b) to manage the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, the Plan of Allocation and this order.

6. THIS COURT ORDERS that if the Defendants do not elect to terminate the Settlement Agreement in accordance with this order, the Administrator shall be paid from the Escrow Account an all-inclusive fee of \$300,000.

7. THIS COURT ORDERS that if the Settlement Agreement is terminated in accordance with this order, the Administrator may apply to the Court pursuant to section 18.1 of the Settlement Agreement for directions relating to the amount it is to be paid for the services it rendered to the date of termination.

8. THIS COURT ORDERS that the Administrator may implement a procedure permitting brokers to make claims on behalf of their clients if the brokers are authorized by their clients to do so.

9. THIS COURT ORDERS that Gregory Wrigglesworth is appointed as Referee, until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation.

10. THIS COURT ORDERS that the Class Members shall be given notice of the certification of the action as a class proceeding, the approval of the Settlement Agreement, the Plan of Allocation, the Opt-Out Deadline and the Claims Bar Deadline substantially in the form of the Second Notice published and disseminated in accordance with the Plan of Notice.

11. THIS COURT ORDERS AND DECLARES that the notice to the Class Members described in paragraph 10 satisfies the requirements of section 17(6) of the *CPA*.

12. THIS COURT ORDERS that after publication and distribution of the Second Notice in accordance with the Plan of Notice, Class Counsel shall file with the Court an affidavit confirming the publication and distribution of the Second Notice in accordance with and as required by the Plan of Notice.

13. THIS COURT ORDERS that:

- (a) each Class Member who wishes to opt out must submit, by mail, email or courier, a properly completed Opt-Out Form and all required supporting documents to Gregory Wrigglesworth by the Opt-Out Deadline;
- (b) if a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to the Administrator by the Opt-Out Deadline, the Class Member shall be deemed not to have opted out of the action, subject to any further order of the Court; and
- (c) the Opt-Out Deadline shall not be extended unless ordered by the Court.

14. THIS COURT ORDERS that, within ten (10) days after the Opt-Out Deadline, Gregory Wrigglesworth shall report to the Court, to the Defendants and to Class Counsel the names of those Class Members, if any, who have opted out of the Action, the number of Eligible Securities held by each Class Member who opted out, and a summary of the information delivered by each Class Member who opted out.

15. THIS COURT ORDERS that, if the Opt-Out Threshold is exceeded, the Defendants may elect to terminate the Settlement Agreement and set aside this order, provided that written notice of the election to terminate is provided to Class Counsel within thirty (30) days after they receive the last of the reports required by paragraph 14 of this order.

16. THIS COURT ORDERS AND DECLARES that this order is binding upon each Class Member who does not opt out in accordance with the terms of this order, including

those persons who are minors or are mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.

17. THIS COURT ORDERS AND DECLARES that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, derivative or otherwise in nature, whether personal or subrogated, damages whenever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees, lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees or any one or more of the Releasees relating in any way to the purchase, acquisition, sale, pricing, marketing or distributing of Securities, or to any conduct alleged, or that could have been alleged, in the Action, without limitation, any such claims that have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Securities in the Class Period.

18. THIS COURT ORDERS that the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person (including any Opt-Out), any action, suit, cause of action, claim or demand against any



Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

19. THIS COURT ORDERS that to participate in this Settlement, a Class Member must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Court orders otherwise.

20. THIS COURT ORDERS that the Plaintiffs, Class Counsel, the Referee or the Administrator may apply to the Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or relating to any other matter.

21. THIS COURT ORDERS that the Plaintiffs and the Defendants may apply to the Court for directions in respect of the termination of the Settlement Agreement in accordance with its terms or any matter relating thereto.

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

23. THIS COURT ORDERS that, except as provided herein, upon the Effective Date, the Action be dismissed, with prejudice and without costs.

24. THIS COURT ORDERS that Nunzio Cardillo and John Witoluk shall be paid an honourarium in the amount of \$5,000 each, from the Settlement Amount, within five days after the Opt-Out Deadline provided that the Opt-Out Threshold is not exceeded.

25. THIS COURT ORDERS that:

- (a) the fee agreements entered into with members of Class Counsel and the plaintiffs are hereby approved;
- (b) Class Counsel's fees are fixed at \$1,310,800, inclusive of HST, and shall be paid from the Escrow Account forthwith after the Opt-Out Deadline, provided that the Opt-Out Threshold is not exceeded; and
- (c) Class Counsel's disbursements in the amount of \$84,079.03, inclusive of HST, shall be paid from the Escrow Account forthwith after the Opt-Out Deadline, provided that the Opt-Out Threshold is not exceeded.

  
 JUSTICE

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ENTERED AT WINDSOR	
In Book No.	26
re Document No.	443
on	April 10 2015
by	JK