COURT FILE NUMBER	1101-16110
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED AND IN THE MATTER OF OILSANDS QUEST INC., OILSANDS QUEST SASK INC., OILSANDS QUEST TECHNOLOGY INC., 1291329 ALBERTA LIMITED, STRIPPER ENERGY SERVICES INC., TOWNSHIP PETROLEUM CORPORATION, WESTERN PETROCHEMICALS CORP. and 1259882 ALBERTA LTD.
DOCUMENT	**FIFTHEENTH REPORT OF THE MONITOR** **JULY 15, 2013**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MONITOR** 1000, 440 - 2nd Avenue SW Calgary, Alberta T2P 5E9 Attention: Neil Narfason / Cassie Riglin Telephone: 403-206-5067 / 403-206-5139 Fax: 403-206-5075 Email: Neil.Narfason@ca.ey.com Cassie.Riglin@ca.ey.com **COUNSEL** Borden Ladner Gervais LLP Centennial Place, East Tower 1900, 520 – 3rd Avenue SW Calgary, Alberta T2P 0R3 Attention: Josef G. A. Krüger, Q.C. Phone: 403-232-9500 Fax: 403-266-1395 Email: jkruger@blg.com

Clerk's Stamp

CLERK OF THE COURT
FILED
JUL 15 2013
JUDICIAL CENTRE
OF CALGARY

TABLE OF CONTENTS OF THE FIFTHEENTH REPORT

APPENDICIES TO THE FIFTEENTH REPORT

INTRODUCTION

1. On November 29, 2011, Oilsands Quest Inc. ("OQI"), Oilsands Quest Sask Inc. ("Sask"), Oilsands Quest Technology Inc., 1291329 Alberta Limited ("129"), Stripper Energy Services Inc., and Township Petroleum Corporation ("TPC") (collectively the "Initial Applicants") sought and obtained protection from their creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended, (the "CCAA") pursuant to an order of this Honourable Court (the "Initial Order").

2. On December 20, 2011 two largely inactive wholly owned subsidiaries of Oilsands Quest Inc., Western Petrochemicals Corp. and 1259882 Alberta Ltd. were added to these CCAA proceedings. These two corporations together with the Initial Applicants above are collectively referred to herein as "Oilsands Quest" or the "Company".

3. Ernst & Young Inc. was appointed monitor of the Company (the "Monitor").

4. The purpose of this fifteenth report (the "Fifteenth Report") of the Monitor is to provide the Honourable Court with the Monitor's comments in respect of the following:

   a) An update on the Plan of Arrangement (the "Plan") and claims resolution status; and

   b) The Monitor's recommendations regarding the application (the "Application") by the Monitor regarding certain legal proceedings in the State of Colorado.

5. Capitalized terms not defined in this Fifteenth Report are as defined in the Initial Order, the Plan and the Creditors' Meeting Order.

6. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

7. Further background for the Company and its operations, together with other information regarding these CCAA proceedings, have been posted by the Monitor on its website at: www.ey.com/ca/oilsandsquest.

TERMS OF REFERENCE

8. In preparing this Fifteenth Report, the Monitor has relied upon unaudited financial information, company records and discussions with former management of the Company. The Monitor has not performed an audit, review or other verification of such information.

CCAA PLAN & CLAIMS RESOLUTION

9. The Plan was implemented on May 3, 2013.

10. Payments to Affected Creditors with Proven Claims totalling $4,429,463.77 have been made by the Monitor. The Monitor estimates that after the remaining Disputed Claims have been resolved, there will be approximately $9,400,000 available for distribution to the OQI Shareholders.

11. There are presently 19 Disputed Claims which have not yet been resolved by the Monitor. All but two of the Disputed Claims are indemnity claims by ex-directors and ex-officers of OQI. It is anticipated that the two claims which are not indemnity claims will be resolved either by way of settlement or by the Court within the next six weeks depending on Court availability. Four of the indemnity claims are for indemnification of legal fees incurred by two of the ex-directors, and such claims are disputed by OQI. It is expected that these claims will be resolved by the Court within the next six weeks depending on Court availability.

The New York Action

12. The remaining indemnity claims are contingent claims by ex-directors and ex-officers against potential claims by shareholders of OQI which opted out of a settlement of a class action commenced by Marshall W. Collins et al against OQI and others in the

United States District Court, Southern District of New York ("the "New York Court") under Case No. 11 CV 1288 (JSR) (the "New York Action"). A fairness hearing regarding the settlement of the New York Action was held on June 14, 2013, and it is believed that an Order approving the settlement will issue shortly.

13. The Monitor intends bringing proceedings in this Court and in the New York Court for the purpose of bringing to finality any potential claims by the shareholders who have opted out of the class action settlement, and thereby also bringing to finality the disputed indemnity claims of the ex-directors and ex-officers which are linked to the potential claims by the shareholders who have opted out of the settlement. It is estimated that such proceedings will be finalized within two months.

14. Upon finalization of the above matters, the Monitor will be in a position to make distributions to the OQI Shareholders provided the Colorado Action (defined below) has also been finalized.

The Colorado Action

15. Around September 2011 in the District Court, Denver County, Colorado under Case No. 2011 CV 2769, Division 280 an action (the "Colorado Action") against certain directors and officers of OQI (the "Defendants") was commenced. According to the Verified Shareholder Derivative Amended Complaint and Jury Demand (the "Complaint"), the plaintiff Peggy Proctor (the "Plaintiff") submitted the Complaint for the purported benefit of OQI against the Defendants seeking to remedy alleged breaches of fiduciary duties and misconduct by the Defendants. The allegations advanced in the Complaint were derived from, and nearly identical to, the allegations set forth in the New York Action. A copy of the Complaint is attached as Appendix A hereto.

16. The Colorado Action purports to be a derivative action for the benefit of OQI. The Plaintiff seeks unquantified damages from the Defendants in favour of OQI and certain related relief.

17. Prior to commencing the Colorado Action the Plaintiff failed to make demand on OQI's Board of Directors to commence action against the Defendants.

18. During October 2011, the Defendants and OQI, as a nominal defendant, filed a Motion to Dismiss Plaintiff's Verified Shareholder Derivative Amended Complaint and Jury Demand (the "Motion"). The Defendants claimed dismissal of the Colorado Action on various grounds. A copy of the Motion is attached as Appendix B hereto.

19. On November 29, 2011, this Court granted the Initial Order proving creditor protection to OQI under the CCAA, and as a result the Colorado Action was stayed on December 2, 2011 by an order of the Colorado Court, and it remains stayed.

The Chapter 15 Proceedings

20. On March 29, 2012, the New York Court granted an Order under Chapter 15 of the United States Bankruptcy Code recognizing the proceedings in Canada pursuant to the CCAA as foreign main proceedings and gave full force and effect to the Initial Order and two subsequent orders (the "Chapter 15 Proceedings").

21. On April 12, 2013 the New York Court granted an Order enforcing the Plan Sanction Order granted by this Court.

22. Because of the insolvency of OQI, the CCAA proceedings commenced in this Court, and the Chapter 15 Proceedings, attempts were made by OQI, the Monitor and the Defendants to settle the Colorado Action. OQI's insurer which provided directors and officers insurance to OQI was also involved in those attempts to resolve the Colorado Action.

23. The Monitor informed itself of the nature of the Colorado Action, and formed the view that because of OQI's insolvent status and the ongoing insolvency proceedings in Canada and the United States of America, the Colorado Action holds no benefit for OQI. The reasons for such conclusion are stated in paragraphs 32-37 of the Application.

24. OQI has requested the Plaintiff to discontinue the Colorado Action, but the Plaintiff's counsel has indicated that the Plaintiff is not prepared to do so and intends to take no further steps. Plaintiff's counsel has however indicated that they will not oppose the dismissal of the Colorado Action provided that appropriate approvals from the Bankruptcy Courts in Canada and the United States of America are obtained, and each side bears its own legal fees and costs. OQI and the Monitor have agreed to the above arrangement.

25. The only way in which the Monitor can overcome the distribution impediment created by the continued existence of the Colorado Action, is to bring proceedings in the New York Court and in the Colorado Court to obtain a final dismissal of the Colorado Action.

MONITOR'S RECOMMENDATIONS

26. The Monitor recommends that this Honourable Court approve:

a) An order declaring that the claims being sought in the Colorado Action are not to the benefit of OQI, its creditors and the OQI Shareholders;

b) An order authorizing the Monitor to forthwith bring the necessary proceedings in the United States of America to terminate the Colorado Action;

c) An order, if required, lifting the stay of proceedings imposed by the Court such that the proceedings in paragraph 26(b) above may be taken in the United States of America; and

d) An order by the Court requesting the aid and recognition of any court or any judicial, regulatory or administrative body in the United States of America to act in aid of and to be complimentary to this Honourable Court in carrying out the terms of this order, and in particular the United States District Court, Southern District of New York and the District Court, Denver County, Colorado.

Dated at Calgary, this 15th day of July, 2013.

ERNST & YOUNG INC.
in its capacity as
Monitor of Oilsands Quest

Neil Narfason, CA•CIRP, CBV
Senior Vice-President

Cassie Riglin
Cassie Riglin, CA
Manager

APPENDIX A

DISTRICT COURT, DENVER COUNTY COLORADO Court Address: 1437 Bannock Street, Room 265 Denver, CO 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: Sep 8 2011 11:42AM MDT Filing ID: 39712903 Review Clerk: Charmaine Bright DATE FILED: September 8, 2011
Plaintiff: PEGGY PROCTOR, derivatively on behalf of Nominal Defendant, OILSANDS QUEST, INC., v. **Defendants:** T. MURRAY WILSON, RONALD BLAKELY, PAUL CHING, CHRISTOPHER H. HOPKINS, BRIAN F. MACNEILL, RONALD PHILLIPS, JOHN READ, GORDON TALLMAN, PAMELA WALLIN O.C., and **Nominal Defendant:** OILSANDS QUEST, INC.	
Attorney for Plaintiffs: Kip B. Shuman (#23593) Rusty E. Glenn (#39183) THE SHUMAN LAW FIRM 885 Arapahoe Avenue Boulder, CO 80302 (303) 861-3003 (303) 484-4886 (Fax)	Case No.: 2011CV2769 Division: 280

VERIFIED SHAREHOLDER DERIVATIVE AMENDED COMPLAINT AND JURY DEMAND

1. Plaintiff Peggy Proctor ("Plaintiff"), by and through her undersigned attorneys, hereby submits this Verified Shareholder Amended Derivative Complaint (the "Complaint") for the benefit of nominal defendant Oilsands Quest, Inc. ("Oilsands" or the "Company"), against certain current and former members of its Board of Directors (the "Board") and executive officers seeking to remedy defendants' breaches of fiduciary duties and other misconduct from March 20, 2006 to the present (the "Relevant Period") that have caused substantial losses and other damages to the Company.

2. Because of the Board's knowledge of the misstatements, or bad faith failure to investigate the accuracy of public filings they signed, they are substantially likely to be liable for securities fraud and demand is futile. Defendants (as defined *infra*) ignored numerous red flags such as correspondence from the United States Securities and Exchange Commission (the "SEC"), regarding the Company's accounting

irregularities, and maintained a scheme that has resulted in massive exposure to Oilsands at the expense of Oilsands and its shareholders.

NATURE OF THE ACTION

3. Oilsands is a development stage company that engages in the acquisition, exploration and development of natural resources properties in Saskatchewan and Alberta, Canada. It holds interest in the oil sands deposits in the provinces of Saskatchewan and Alberta. The Company was formerly known as CanWest Petroleum Corporation ("CanWest") and changed to its current name in October 2006. The Company was founded in 1998 and is based in Calgary, Canada.

4. According to the Company's most recent Form 10-Q for the quarterly period ended January 31, 2011 filed with the United States Securities and Exchange Commission ("SEC"), the Company, to date, has not earned revenue from any of its natural resource properties and none of its estimated resources have been classified as proved resources. The Company expects that significant additional exploration and development activities will be necessary to establish proved reserves, and to develop the infrastructure necessary to facilitate production, if any, from its estimated resources. As of January 31, 2011, the Company had working capital of $17.2 million, including cash and cash equivalents of $21 million and a deficit accumulated during the development phase of $431 million. The Company's financial statements have been prepared on a going concern basis in accordance with GAAP. The going concern basis assumes that the Company will continue its operations for the foreseeable future and realize its assets and discharge its liabilities in the normal course of business for the foreseeable future. As stated by the Company, "significant uncertainty remains regarding the Company's ability to continue as a going concern for the next twelve months."

5. Throughout the Relevant Period, and thereafter, in order to successfully conduct a seemingly endless parade of private placements and public offerings, Defendants insisted that the Company was the largest owner of contiguous oilsands mining rights in Canada, and that these rights were immensely valuable. In virtually every analyst report positively commenting on the Company's prospects, the analyst would point to the extraordinary size of the Company's acreage under permit and the potential for additional bitumen discoveries. To support the illusion that the Company was progressing on its plan to commercialize these rights, Defendants manipulated their accounting, issued misleading bitumen resource reports and engaged in wasteful exploration and testing activities.

6. During the Relevant Period, Defendants failed to properly account for Oilsands' acquisition of a minority interest in its subsidiary Oilsands Quest Sask Inc. ("OQI Sask") in August 2006 (the "August 2006 Acquisition"), materially overstating the value of OQI Sask throughout the Relevant Period. The July 2009 restatement of the Company's FYE April 30, 2007 and April 30, 2008 Forms 10-K adjusted the accounting for the August 2006 Acquisition. Among other things, the August 2006 Acquisition had been used to step up the values of mining rights reported on Oilsands' balance sheet --

from a cost at their original acquisition from the Saskatchewan government of a few million dollars to more than $350 million. As a result, the value of the Company's mining rights was grossly inflated in the FYE April 30, 2007 Form 10-K, and in interim quarterly accounting reports, and should have been written off as impaired in later filings -- but was not. As a result, Oilsands' financial statements overstated the value of the Company's interest in OQI Sask and were presented in violation of generally accepted accounting principles ("GAAP") throughout the Relevant Period. Clearly, the Company's internal controls were inadequate to prevent it from improperly inflating the value of its assets throughout the Relevant Period.

7. Defendants' conduct here is the very definition of extremely reckless conduct, which has resulted in massive damages for Oilsands and its stockholders.

THE PARTIES

8. Plaintiff Peggy Proctor ("Plaintiff") is a current shareholder of Oilsands and has continuously held Oilsands stock at relevant times.

9. Nominal Defendant Oilsands is a Colorado corporation headquartered in Alberta, Canada.

10. Defendant Ronald Blakely ("Blakely") has served as a director of the Company since April 7, 2009 and serves on the Company's Audit Committee. He is currently Chairman of the Board.

11. Defendant Brian F. MacNeill ("MacNeill") has served as a director of the Company since August 25, 2009 and is the Chair of the Company's Audit Committee. While serving as a director, MacNeill was appointed acting CEO from September 3, 2010 through February 2011.

12. Defendant Pamela Wallin O.C. ("Wallin") has served as a director of the Company since June 28, 2007 and is a member of the Company's Governance and Nominating and Reserves and Resources Committees.

13. Defendant John Read ("Read") has served as a director of the Company since October 11, 2007 and serves as a member of the Company's Compensation and Reserves and Resources Committees.

14. Defendant Ronald Phillips ("Phillips") has served as a director of the Company since February 2006 and is the Chair of the Company's Compensation Committee and a member of the Governance and Nominating and Audit Committees. Phillips signed the Form 10-K statement for fiscal year ended April 30, 2008. During the Relevant Period, Defendant Phillips sold 1,423,00 shares of Oilsands common stock for proceeds of $6,092,157 while in possession of material information unavailable to investors or the general public.

15. Defendant Gordon Tallman ("Tallman") has served as a director of the Company since August 14, 2006 and is the Chair of the Company's Governance and

Nominating Committee. Tallman also serves on the Audit and Reserves and Resources Committees.

16. Defendant Christopher H. Hopkins ("Hopkins") has served as a director since August 14, 2006 and as a director of OQI Sask since November 10, 2004. Hopkins served as the Company's President from August 14, 2006 to September 16, 2008 and the Company's CEO and President again from July 7, 2009 to January 15, 2010.

17. Defendant T. Murray Wilson ("Wilson") has served as a director since May 1, 2006. Wilson also served as the Company's Executive Chairman, President and CEO from January 15, 2010 through September 2010. Wilson also served as the Executive Deputy Chairman but left this position as of March 31, 2011. Wilson serves on the Reserves and Resources Committee.

18. Defendant Paul Ching ("Ching") has served as a director since January 7, 2010 and is a member of the Company's Compensation Committee and Chairman of the Company's Reserves and Resources Committee.

19. Collectively, defendants Blakely, MacNeill, Wallin, Read, Phillips, Tallman, Hopkins, Wilson and Ching shall be referred to herein as "Defendants."

DEFENDANTS' DUTIES

20. By reason of their positions as officers, directors, and/or fiduciaries of Oilsands and because of their ability to control the business and corporate affairs of Oilsands, Defendants owed Oilsands and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage Oilsands in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of Oilsands and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interests or benefit. Each director and officer of the Company owes to Oilsands and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

21. Defendants, because of their positions of control and authority as directors and/or officers of Oilsands, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with Oilsands, each of the Defendants had knowledge of material non-public information regarding the Company.

22. To discharge their duties, the officers and directors of Oilsands were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of Oilsands were required to, among other things:

1. Exercise good faith to ensure that the affairs of the Company were

conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

2. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and

3. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

Oilsands' Code of Ethics

23. The Company's Code of Ethics (the "Code of Ethics") that governs the Company's Board states, *inter alia*, that the directors and officers "are charged with the responsibility of providing management with accurate and complete information" to assure the Company is complying with its public disclosure requirements.

24. According to the Company's Mandate of the Board of Directors (the "Board Mandate"), the Board is responsible for: (1) overseeing management through an ongoing review process; (2) ensuring that management identifies the principal risks of the Company's business and ensuring that management implements the appropriate systems to manage these risks; (3) monitoring, through the Audit Committee, the Company's internal control and management information systems; and (4) reviewing and approving the Company's annual audited consolidated financial statements, quarterly consolidated financial statements and management's discussion and analysis on recommendation of the Audit Committee. The Board is also responsible for considering and approving "all matters that would be expected to have a major impact on shareholders."

Audit Committee Duties

25. Pursuant to the Audit Committee's Charter, the purpose of the Audit Committee is to assist the Board in fulfilling their responsibility relating to corporate accounting, reporting practices of Oilsands and the quality and integrity of the financial reports of OQI. Specifically, the members of the Audit Committee are required, *inter alia*, to:

a. Review and approve any financial earnings and public release of other financial information prior to the release of such information to the public;

b. Review any use by [Oilsands] of financial disclosure that is not strictly in accordance with generally accepted accounting principles and review such disclosures for compliance with SEC regulations;

c. with management the Company's annual audited financial statements, the Company's Annual Report on Form 10-K and the Company's quarterly financial statements;

d. Discuss with management earnings press releases as well as financial information and earnings guidance provided to analysts and rating agencies;

e. Discuss with the outside auditors the adequacy of the company's system of internal controls;

f. Ascertain from management, legal counsel, the outside auditors and/or the senior internal audit executive whether the Company and its controlled affiliates are in compliance with governmental laws, rules and regulations; and

g. Ascertain whether there are any legal or regulatory compliance matters that could have a material impact on the Company's financial statements.

Reserves and Resources Committee

26. Pursuant to the Reserves and Resources Committee charter, the purpose of the Reserves and Resources Committee is to assist the Board in reviewing the Company's oil and gas reserves data which is externally disclosed to investors and the general public. The Reserves and Resources Committee also reviews the reserves data of independent engineers who evaluate the Company's resources and reserves. Specifically, the members of the Reserves and Resources Committee are required, *inter alia*, to:

a. Review the Company's procedures relating to the disclosure of information with respect to resource and reserves data, including:

   i. consideration of the adequacy of the Company's procedures;

   ii. review procedures for providing information to the qualified independent evaluators or auditors;

   iii. review compliance with applicable regulations and policies; and

   iv. make appropriate reports and recommendations to the Board concerning disclosure of the Company's resources and reserves data.

b. Review the Company's annual resource and reserve estimates prior to public disclosure, including:

   i. review the resource and reserves estimates of the qualified reserves evaluators or auditor;

   ii. review any material change to the Company's resource or reserve estimates; and

   iii. make recommendations to the Board with respect to the content, filing and release of such disclosure.

BACKGROUND

27. Canada is the world's fifth largest producer of energy. It is the world's third largest natural gas producer and the seventh largest crude oil producer. Between 1980 and 2008, energy production in Canada almost doubled, with oil and gas accounting for 90 percent of the increase. In terms of global energy sources, Canada's oil reserves are second only to those of Saudi Arabia, which has an estimated 264 billion barrels of oil reserves.

28. Oil sands deposits are composed primarily of sand, silt and clay, water and bitumen, along with minor amounts of other minerals. Bitumen, also known as asphalt or tar, is a black, oily, viscous material that is a naturally occurring organic byproduct of decomposed organic materials. Canada's oil sands deposits contain a vast quantity of crude bitumen. The bitumen reserves occur in three (3) major Alberta areas: Athabasca, Cold Lake and Peace River.

29. Unlike conventional crude oil, bitumen does not flow freely so the first issue in exploiting bitumen is bringing it to the surface. There are two main techniques for production of bitumen: i) open pit mining, essentially strip-mining where the layers of earth lying above the bitumen are removed; and ii) in-situ recovery, which is used on bitumen deposits buried too deep for mining to be economically recovered and involves steam-assisted gravity drainage (SAGD). The SAGD method is similar to conventional oil and gas production in that the oil and gas is extracted from wells. With the SAGD method, the underground oil sands reservoir is heated with steam which melts the semi-solid bitumen and separates it from the accompanying sand. The bitumen is then pumped to the surface and diluted with condensate (liquids obtained from natural gas production) for shipping by pipeline. Ordinarily, for the SAGD method to be successful there must be a layer of shale or other non-permeable covering overlying the bitumen to prevent the heat from dissipating and permit the removal of the bitumen from the well.

30. Oilsands was founded by Timothy Brock ("Brock"), a Vancouver investor. Oilsands was previously known as Uranium Power Corporation in 1998, changing its name to CanWest in 2004 when it began to acquire permits to explore for bitumen.

31. In 2003, Brock admitted to conducting 37 "wash trades," where he was at the same time a buyer and seller of shares in companies in which he was a director. As part of his settlement of an enforcement action in Canada, Brock was banned by the British Columbia Securities Commission from being a director or officer of any public company until 2008. Thus, in 2002, Brock operated CanWest, before the company was known as Oilsands, as its "consultant," acquiring 4 million of its stock options and shares and engaging in acquisitions of permits and other property in the form of his various private companies, including West Peak Ventures.

32. Relying upon test holes drilled in the 1970's by Shell Oil that had identified bitumen in Saskatchewan, the province adjacent to Alberta on the east, in 2004 Brock set out to acquire exploratory permits from the government of Saskatchewan, accumulating permits for the largest contiguous land area in that province. For approximately $3 million, he acquired permits over 1.4 million acres for a project dubbed "Firebag East," after a successful oil sands project to the West in Alberta, known as "Firebag." These rights were obtained by CanWest, subject to a 2.5% royalty payable to one of Brock's other companies. To retain the permits, the Company had to continue to engage in exploratory activities, and pay annual fees, per acre, to Saskatchewan. Brock also obtained a limited number of permits to explore property in Alberta. Permits over hundreds of thousands of acres in Saskatchewan expired or were otherwise returned to Saskatchewan during the Relevant Period. By the time that the Company filed its fiscal year ended ("FYE") April 30, 2006 annual "Statement of Oil and Gas Reserves Data" on SEDAR in Canada, the permitted acreage had been reduced to 846,000 acres. Later in the Relevant Period, the Company retained mining rights to about 500,000 acres.

33. In October 2004, in an effort to legitimize the Firebag East project, Brock recruited Defendant Hopkins to explore and develop the oilsands properties. Both had been involved at the exploratory stages of Syneco Energy, a well-known and successful oilsands project in Alberta. CanWest created OQI as an operating subsidiary, with CanWest retaining about 70% of its stock. (After the August 2006 Acquisition, CanWest took the name of its subsidiary, Oilsands.) Hopkins was installed as CEO and Hirji as CFO of OQI Sask, with the remaining OQI Sask equity spread among them, various consultants supporting the Company's efforts and other persons and companies associated with Brock. By August 2006, CanWest's ownership in it subsidiary OQI Sask had been reduced to approximately 64%.

34. In mid-2005, CanWest's stock traded at 37 cents per share. In late 2005 and early 2006 (the drilling season for Canada's Oilsands properties), OQI Sask drilled 24 exploratory holes, largely in the same spots that Shell had earlier drilled and had discovered bitumen. OQI Sask's first "discovery" of bitumen was at Axe Lake, an area constituting approximately 5% of the Saskatchewan lands that were covered by OQI Sask's permits.

35. Using these results and extrapolating them over the remainder of the Company's hundreds of thousands of acres in Saskatchewan, Hopkins developed a "geological model" arriving at an estimate of 50 to 60 billion barrels of bitumen in place in northern Saskatchewan. This model was contrived and misleading because the areas

in which the exploratory wells had been drilled were selected because they were known to contain bitumen, not because they were a representative sample of the entirety of the acreage. Hopkins touted this false estimate to investors beginning in March 2006, and repeatedly cited the extraordinary size of the Company's acreage under permit to convince them of the enormous potential of the Company, and to drive up the stock price.

36. For example Confidential Witness #1 ("CW1")[1], as referenced in the Securities Complaint, who was the Company's former manager of regulatory affairs, explained that the Defendants were well aware that only a small percentage of the Company's permitted lands contained deposits of bitumen, and thus the potential for oil and gas extraction, because much of the acreage in Saskatchewan was in what was known as the "Canadian Shield," a large igneous rock formation that could not contain bitumen. As CW1 explained, suggesting that the entirety of the Saskatchewan permitted properties contained bitumen -- which Defendants did throughout the Relevant Period, by proclaiming the Company to be the owner of mining rights to the largest track of contiguous oilsands -- created "a delusion that there was a lot of potential."

37. On March 20, 2006, Defendants caused the Company to issue a release entitled, "Firebag East Oil Sands Project Updated Information." The press release stated that Hopkins had been "interviewed by a leading Saskatchewan newspaper, the Leader-Post which published the interview Monday, March 20[, 2006]" and that "CanWest Petroleum Corporation is supportive of his preliminary views as to the project's ultimate potential." The Company's March 20, 2006 release also stated that "Dr. Michael Berry, a paid consultant of CanWest's, reported on the Company's progress at Firebag East in his 'Morning Notes' which includes a speech from the Saskatchewan Government Legislature as well as a picture of bitumen core recently recovered from the Phase One drilling program," and that "[b]oth articles have been posted on the Company's web site under 'what's new'." The *Saskatchewan Leader Post* article ran that day and cited very positive guidance concerning the development of Firebag East and the billions of barrels of bitumen the Company would extract from the region:

> How big could Saskatchewan's Oilsands development get?
>
> "If our geological model proves out, after an extensive, exhaustive drilling program, our current thinking is there could be 50 (billion) to 60 billion barrels of bitumen (in place in northwestern Saskatchewan)," said Terry Lauder, who handles corporate communications for Oilsands Quest.

---

[1] While Plaintiff and Plaintiff's counsel conducted their own independent investigation of Defendants' wrongdoing during the Relevant Period, the complaint filed in the related securities fraud class action, *St. Lucie County Fire District Firefighter's Pension Fund, et al., v. Oilsands Quest Inc., et al.*, Case No. 11-CV-1288, United States District Court, Southern District of New York (the "Securities Complaint") included the accounts of a number of confidential witnesses, which upon information and belief are incorporated herein.

While potential oil-in-place is not the same as recoverable barrels of oil, the northwestern Saskatchewan oilsands area is roughly one-fifth to one-third the size of the northern Alberta oilsands region around Fort McMurray.

"The potential, geologically, that we've identified is equivalent to 20 to 30 per cent of the Athabasca oilsands region. They say they've got roughly 300 billion barrels, so I'm saying (northwestern Saskatchewan) has roughly 60 billion barrels of potential oil in place," Hopkins said.

38. The positive media coverage had its intended effect and the Company's stock price increased $1.18 per share that day, or 23%, on unusually high trading volume.

39. On March 24, 2006 Defendants caused the Company to issue a press release entitled, "Engagement of TD Securities As Its Financial Advisor" announcing the Company had "retained TD Securities Inc. to act as its exclusive financial advisor and assist in the analysis and consideration of corporate and financial structures that [would] best allow CanWest to execute its oil sands exploration and development program," that TD Securities was "the recognized leader in providing financial advisory services to development stage oil sands companies," and that "CanWest Petroleum has made application to be listed on a Senior American Stock Exchange."

40. On May 2, 2006, that the Company announced that Defendant Wilson, the former Global Head of Oil & Gas for TD Securities Inc. in Calgary, Canada and Vice Chairman of TD Securities International in London, U.K., was hired to serve as CanWest's Chairman of the Board and CEO. According to the Company's June 12, 2006 press release, Wilson had joined CanWest to lead a reorganization to, *inter alia*, "be able to start capitalizing more effectively on its assets...."

41. Also in the June 12, 2006 press release, it was announced that CanWest and Oilsands entered into an agreement to combine companies. The press release stated in relevant part:

CanWest Petroleum Corporation and Oilsands Quest Inc. announced today that the companies have entered into an agreement (the "Agreement") that provides for the combination of CanWest Petroleum and Oilsands Quest (the "Combination"). Under the terms of the Agreement and subject to the approval of Oilsands Quest's shareholders, each common share of Oilsands Quest not already owned by CanWest Petroleum will be exchanged for 7.95 exchangeable shares of Oilsands Quest (the "Exchangeable Shares"), subject to adjustments. The rights, privileges and restrictions governing the Exchangeable Shares will provide that each whole Exchangeable Share may be exchanged for a CanWest Petroleum share. Based on the closing price of CanWest Petroleum's common shares on Friday, June 9, 2006 (US $6.21), the exchange ratio implies a price of US $49.37 per Oilsands Quest share. The Combination would result in the creation of a company with a fully diluted market capitalization of approximately US $1.3 billion, based on the current trading value of CanWest Petroleum shares.

CanWest Petroleum owns a 59.5% interest, on a fully diluted basis, in Oilsands Quest, a private Alberta operating company that owns 100% of exploration permits covering 508,000 net acres in northwest Saskatchewan.

T. Murray Wilson, who joined CanWest Petroleum's board of directors as Chairman in May 2006 to lead a reorganization of such company, said, "This is an important step for CanWest Petroleum to be able to start capitalizing more effectively on its assets and building significant long-term value for its shareholders."

Christopher H. Hopkins, President and Chief Executive Officer of Oilsands Quest, said, "The Combination will allow shareholders of both companies to participate in a larger, stronger and more efficient company, with a greater ability to finance and accelerate the exploration program on Oilsands Quest's oil sands permits."

Full details of the Combination will be included in a proxy circular and related documents which will be mailed to Oilsands Quest shareholders for their consideration and approval. The Combination is expected to be completed on August 14, 2006 and is subject to regulatory approvals, the approval of Oilsands Quest's shareholders and other customary conditions contained in the Agreement.

42. On June 19, 2006, Forbes published a cover story entitled "Gold Rush" describing in part Brock's involvement in CanWest, the regulatory action taken against him, and the 4 million stock options and shares issued to him for "consulting services." According to the article, "[p]romoters have used CanWest, incorporated in Colorado, to issue millions of shares to cronies and to seize on the dramatic activity next door, in Alberta's Athabasca tar sands, where the oil industry is investing $50 billion over the next five years." The article also stated that although the Company has attracted big investors, "its brief history doesn't inspire much confidence."

43. As damage control to the negative issues raised by the *Forbes* article, on July 6, 2006 CanWest presented at a TD oilsands investor conference. As the notes of Michael A. Berry, Ph.D., which he published on the Company's electronic "Message Board," reported, Defendants succeeded in neutralizing the impact of the *Forbes* article. Berry, a consultant who had himself received 400,000 options in CanWest exercisable at $2 per share, however, went further to promote the Company's stock, suggesting a 1-2.3 billion barrel estimate of bitumen in place for the Saskatchewan properties based upon the information provided by Hopkins:

CANWEST PETROLEUM: GOOD THINGS

Yesterday CanWest Petroleum presented at the TD oil sands conference in Calgary. I am told that their presentation was well received. As you may know forces from the other side have tried desperately to knock down CanWest's share price and debunk this story. ***The Forbes article was largely disregarded.***

* * *

Yesterday the company, about to merge with Oil Sands Quest, made two major announcements. It announced that it has completed a "flow through" placement of CDN $37.4 million, 5.66 million shares at about CDN $6.00 per share. This offering was oversubscribed by a factor of 3. Take that Forbes magazine. The placement was originally intended to raise CDN$25 million.

Considering the fact that the company has only drilled 24 holes, this financing means that a 300 hole or more drill program could be in the works, in my opinion. That should tell a very revealing oil sands story for Saskatchewan.

Second the company announced a preliminary resource estimate on 1/2 of 1 % of its 508,000 acres. It concluded there is of [sic] 250 million barrels of bitumen, in place. . . . The preliminary OBIP estimate is 250 million barrels and is based on the west block, a four-section area of Permit PS00210 surrounding 13 drill holes. The east block will require further drilling before management can provide an estimate.

MORNING NOTES 5 of 8 7/7/2006

Based upon my naïve analysis (for I am an economist and mathematician and not an oil sands geologist) I believe that the township in which the first 24 widely spaced holes were drilled, could contain 1 billion barrels of bitumen. This is solely my estimate and an extrapolation of the initial estimate. ***Seldom, in my career have I seen the first 24 holes of any exploration project yield 19 successful intersections. Statistically, there is almost surely more to be found in proximity to the original drilling.***

The estimate of 250 million original barrels in place is from four sections (2,516 acres) and 13 holes. One township contains 23,040 acres. ***Assuming linear extrapolation (probably a poor assumption, for much more drilling is required) this single township could contain 2.3 billion barrels of bitumen, in place.*** So my 1 billion guestimate is not terribly aggressive. CanWest controls 508,000 acres of prospective land in Saskatchewan, on 23 townships. This represents one of the largest contiguous land positions in the oil sands world, today.

44. The July 6, 2006 press release referenced above, included management's 250 million barrel estimate for bitumen in place, quoting Hopkins' "delight" with the results of the Company's drilling program. The press release also noted that the estimate "represents less than one-half of one percent of Oilsands' total permit lands."

45. On July 21, 2006, Defendants caused the Company to mail a proxy circular to shareholders seeking approval of Oilsands' acquisition of the minority interest in OQI Sask and filed the Company's Form 10-KSB for the fiscal year ending April 30, 2006. The Consolidated Balance Sheets stated the Company had $17,831,417 in "properties," including its interest in OQI Sask. The FY 2006 Form 10-KSB also stated as to "Evaluation of Disclosure Controls and Procedures," that the Company's disclosure controls and procedures were effective. The FY 2006 Form 10-KSB was signed by Wilson as CEO and was certified by Wilson, both as CEO and CFO.

46. On August 14, 2006, the Company held a Special Meeting of Shareholders to consider Oilsands' acquisition of the minority interest in OQI Sask pursuant to proxy materials mailed to shareholders on July 21, 2006 with the Company's false and misleading FY 2006 Form 10-K. Oilsands' shareholders approved the acquisition of the minority interest in OQI Sask.

47. On August 15, 2006, Defendants announced that CanWest had "completed its combination transaction (the "Combination") with its subsidiary, Oilsands. As a result of the Combination, which was approved by the Oilsands minority shareholders earlier today, CanWest Petroleum now owns 100 percent of the common voting equity shares of Oilsands Quest." The release also stated that "[e]ach common share of Oilsands Quest held by other shareholders was exchanged for 8.23 exchangeable shares of Oilsands Quest (the "Exchangeable Shares"), resulting in the issuance of 76,504,302 Exchangeable Shares on a fully diluted basis," that "TD Securities Inc. acted as financial advisor to CanWest Petroleum, and CIBC World Markets Inc. acted as financial advisor to Oilsands Quest," and that "Genuity Capital Markets provided the independent committee of the board of directors of Oilsands Quest with its opinion that the consideration to be received by the shareholders of Oilsands Quest upon completion of the Combination was fair from a financial point of view to the shareholders of Oilsands Quest."

48. On August 15, 2006, the Defendants caused the Company to announce it had completed a private placement of 3.9 million shares at $3.80 per share for gross proceeds of $14,820,000. These proceeds, along with an earlier payment, were used to purchase the 2.5% gross over-riding royalty held by Brock's company, West Peak Ventures of Canada. (This is shown by a May 31, 2006 "Share Purchase Agreement" filed with the SEC reflecting the transfer of the 2.5% royalty from "The Shareholders of Stripper Energy Services Inc.," to West Peak Ventures.)

49. On the same day, August 15, 2006, and based upon a price of $4.17 per share for the Company's stock that had been inflated by Defendants' false and misleading statements, CanWest purchased the remaining shares of its subsidiary OQI Sask, at an exchange rate of 8.23 shares to one.

50. Three days later on August 18, 2006, CanWest announced that "[t]he American Stock Exchange ('Amex') ha[d] approved the application by CanWest Petroleum Corporation (the 'Company') (OTCBB: CWPC) for the listing of the Company's common stock on Amex under the trading symbol 'BQI'." The release also expressly stated that "[t]he Amex listing approval [was] contingent upon the Company being in compliance with all applicable listing standards on the date it beg[an] trading on Amex, and [might] be rescinded if the Company [was] not in compliance with such standards," and that "[t]he Company expect[ed] to begin trading on Amex on Thursday, August 24, 2006."

51. On August 24, 2006, CanWest was added to the Amex and on August 29, 2006, Hopkins celebrated by participating in Amex's opening bell ringing.

52. On September 14, 2006, Defendants filed the Company's 1Q 07 Form 10-QSB with the SEC for the interim financial period ending July 31, 2006. The effects of the August 2006 Acquisition on the values reported for the Company's mining rights were reported on a "pro forma" basis in the Company's quarter ended July 31, 2006 Form 10-QSB. Purporting to use the purchase method of accounting -- which uses a business' stock price to set the values of its underlying assets -- and a $4.17 price for CanWest's stock at the time of the August 15, 2006 Acquisition (as well as the 8.23 to one stock exchange ratio) the Company arrived at a stepped up "fair value" for the mining rights reported within the line item "properties" on the Company's balance sheet. As a result of the August 2006 Acquisition, the approximate $35 million of "properties", which included the OQI Sands Exploration Permits, reported as of July 31, 2006 on the Company's balance sheet was increased ***by $319 million***. By this sleight of hand by Defendants, a Company begun with permits which Brock had acquired from the Government of Saskatchewan for about $3 million, and with eight employees, suddenly had lucrative mining rights purportedly worth hundreds of millions of dollars. As to management's "Evaluation of Disclosure Controls and Procedures," the 1Q 07 Form 10-QSB stated that the Company's disclosure controls and procedures were effective. The 1Q 07 Form 10-QSB was signed by Hopkins and certified by both CEO Hopkins and the Company's CFO.

53. These inflated values for the Company's mining rights were then used by Defendants in later SEC filings to convince investors of the Company's high value and prospects -- even though it had yet to earn any revenues from its mining rights. Thus, *e.g.*, the stepped up values were included in the prospectus for the sales of stock by CanWest's shareholders, including its consultants and directors, pursuant to a shelf registration filed with the SEC in October 2006.

54. Using the purchase accounting method for the August 2006 Acquisition required the Company to allocate the purported purchase price of the OQI Sask equity to stock options granted and swapped to the officers and employees of OQI Sask (including to Hopkins), as well as to its mining rights and other property. As reflected in a restatement included in the Company's amended Form 10-K for FYE April 30, 2008, that was filed on July 30, 2009 (the "Restatement"), Defendants performed this allocation incorrectly.

55. By letter dated January 30, 3007, the SEC commented on the Company's FYE April 30, 2006 Form 10-Q and the Form 10-QSB for the quarter ended October 31, 2006, and directed Defendants to disclose the method to be used by the Company to extract the bitumen, and the method to account for its oil and gas properties under GAAP as applied in the United States, particularly as to whether the Company would be using the "successful efforts" method in accordance with SFAS 19 or the "full cost" method in accordance with Rule 4-10 of Regulation S-X. Each of these methods had different criteria for determining when the capitalized "carrying" costs associated with the acquisition of oil and gas properties had to be written off from the Company's balance sheet and expensed on the Company's earnings statement as "impaired" -- e.g., for the "successful efforts" method, appropriate property groupings based upon the similarity of their geologic characteristics had to be determined and cost centers set up, so that the properties could be tested for impairment by reference to their development plans and the net present values of their estimated cash flows, based upon their expected projected revenues and development costs.

56. In response, by letter dated February 10, 2007, Defendants caused the Company to advise that since it was only in the very early stages of the exploration process, and had yet to identify a likely method of extraction, it was not yet in a position to determine whether its bitumen operations would constitute an oil and gas operation or a mining activity -- according to the response, "in- situ production is only one alternative" for the extraction. In fact, as the Confidential Witnesses describe in the Securities Complaint and the Company and McDaniel later admitted, the Company has not, ***to this day***, established whether "in-situ production" is possible for the extraction of bitumen on the Company's properties. *See, e.g.*, the January 2011 presentation made at a TD Securities conference in London. There, on page 30, entitled "McDaniel Resource Estimates" for Axe Lake, the Defendants admitted, "Uncertainty still exists regarding the presence and thickness of this layer across the region and the impact on thermal performance of the stratigraphic location of this layer relative to the bitumen -- there exists good potential for the SAGD process."

57. In its Form 10-QSB for the quarter ended January 31, 2007 filed on March 15, 2007, Defendants caused the Company to report that Oilsands "recently approved a plan to initiate pre- commercialization studies of the Axe Lake Discovery area which includes testing bitumen and reservoir characteristics and simulation testing of production recovery mechanisms over the next 12 months," and that "[A]lthough the Axe Lake Discovery has not yet been determined to be a commercial project, management believes its oil sands resources in the Axe Lake area could be suitable for in-situ recovery."

58. In a press release dated March 26, 2007 Defendants caused the Company to reiterate that management concluded that the bitumen at ***Axe Lake "will likely be suitable for in -situ recovery"*** and that the Company had initiated "pre-commercialization studies," including "to investigate alternative in situ recovery mechanisms including an onsite pilot plant." At a conference call held that date, Defendants caused the Company to advise that from its two winters of drilling that it had identified 600 to 750 million barrels of bitumen in place with a high-case estimate of 1.5

billion barrels at Axe Lake, and that it estimated a "50% recovery from the best preliminary estimate." Wilson further stated that the Company's immediate plans included drilling another 110 exploration wells in the summer to firm up the Company's resource estimate and to start a thermal pilot project using lower pressure steam assisted gravity drainage methods to extract the bitumen.

59. On April 30, 2007, Defendants caused the Company to issue a release announcing "that, for the fiscal year beginning on May 1, 2007, the company [would] no longer be considered a small business issuer as defined by the Securities and Exchange Commission (SEC)" and that "[f]or periods ending ***after May 1, 2007, the company [would] be required to file annual and quarterly reports on Forms 10-K and 10-Q in accordance with Regulation S-K of the SEC rules."***

60. On May 4, 2007, Defendants caused the Company to announce that it had completed the "two previously announced private placements of flow-through common stock and common stock," including issuing 13.9 million common shares on May 3, 2007 for gross proceeds of $38.2 million, the proceeds of which would be used "to repay debt incurred in conjunction with recently announced property acquisitions, and for pre-commercial recovery testing and analysis relating to its Axe Lake Discovery, working capital and general corporate purposes"; and a private placement of flow-through shares with a syndicate of underwriters on a bought deal basis, issuing 2,164,166 flow-through common shares for gross proceeds of $12.2 million CDN ($10.4 million US) on May 3, 2007. The release also explained that "[t]ogether with previous closings on March 6, 2007 and March 9, 2007, the Company issued a total of 5,320,000 flow- through common shares in the underwritten flow-through share financing, for total gross proceeds of $30 million Cdn ($25.6 million US)," explaining that the "proceeds will be used to incur Canadian Exploration Expenses on resource delineation and other exploration work relating to Oilsands Quest Sask Inc.'s permit lands following the 2006-2007 winter exploration program. Oilsands Quest Sask Inc. is a subsidiary of Oilsands Quest."

61. In a press release dated July 12, 2007 Hopkins, declared, "***Axe Lake is proving to be suitable for in -situ recovery."*** Hopkins is further quoted as saying that, ***"According to results of studies of the bitumen characteristics to date, we expect . . . high recovery factors," and that "hot water (wet steam) recovery processes are proving to be efficient*** at relatively low pressure and temperatures (from 80 degrees Celsius), ***with yields of 54 to 83 percent under lab conditions.***" The press release also increased the Company's estimate of total "resource potential" to 10 billion barrels, including to approximately 2.5 billion barrels for Axe Lake. These conclusions were further presented in a PowerPoint presentation elaborated upon by Hopkins at a TD Newcrest Oil Sands Forum held the same day. The PowerPoint presentation was also posted on the Company's website.[2]

[2] These statements were false and misleading. As noted in the related Securities Complaint, a confidential witness, the Company's head of project development for Axe Lake and a Company executive vice-president at the time, advised the Company did not

62. This news sent the Company's stock soaring with 10 million shares trading hands in a single day at a 26% one-day increase in the Company's stock price. As one investor blog by Seymour Prophet reported, "***The fact that management believes that its Axe Lake project is suitable for in-situ recovery was a monumental statement.*** Moreover, BQI's studies showed recoverability rates of 54% to 835 (for an average of 69%), much higher than the industry average of about 40%. Those two pieces of information sent BQI shares soaring by about 25% to end the day at the highest level the stock has been since around March 2007."

63. On July 30, 2007, Defendants filed the Company's Form 10-K for the fiscal year ending April 30, 2007. The Consolidated Balance Sheets stated the Company had $520,301,141 in "properties and equipment" including the OQI Sask Oil Sands Exploration Permits. The FY 2007 Form 10-K also stated as to "Evaluation of Disclosure Controls and Procedures," that the Company's disclosure controls and procedures were effective. The FY 2007 Form 10-K was signed and certified by Defendant Wilson as CEO and the Company's CFO.

64. In a November 5, 2007 press release Defendants caused the Company to announce that management continued to believe that the Company held permits to land containing 10 billion barrels of resources. It also announced the receipt of an independent estimate of "discovered resources" at Axe Lake performed by McDaniel & Associates. According to the press release, McDaniel & Associates had reported the following "Discovered Resources of Original Bitumen in Place":

Low Estimate: 1.117 billion barrels
Best Estimate: 1.344 billion barrels
High Estimate: 1.547 billion barrels

65. The terminology used by McDaniel was purportedly consistent with that described in the definitions contained in the COGE Handbook, an industry guide used in Canada. The release announced that ***McDaniel & Associates, conducted its review, "based on data obtained from the results of drilling*** up to March 31, 2007 (the end of the winter 2006/07 drilling program)," as well as other sources. The release further announced that ***McDaniel had considered the "technical application of in-situ exploitation," and that the Company was "continuing to move toward***

---

then know the geological makeup of the site, did not know the amount of steam pressure that the reservoir could withstand and did not know whether the reservoir had a shale cap. As the confidential witness explained, the most critical issue for determining the method of drilling was whether a shale cap existed above the bitumen deposit, *i.e.*, "you can't heat a house without a roof," and throughout the Relevant Period the Company had not performed the necessary testing to determine its existence. These statements are corroborated by other confidential witnesses quoted in the Securities Complaint, as noted *infra*.

commercialization of Axe Lake," with a pilot in-situ production program planned for start up in 2009.[3]

66. No sooner did Defendants cause the Company to release its new resource estimates than its independent auditor resigned. On November 14, 2007 the Company reported that it had appointed KPMG LLP to replace Pannell Kerr Forster as its independent auditor. Within a week, on November 20, 2007, the Company announced a shelf offering of 25,000,000 units and 4,000,000 shares to be led by TD Securities.

67. On June 26, 2008, Defendants caused Oilsands to issue a false and misleading press release that asserted:

> "Oilsands Quest Inc. (AMEX:BQI) announces its independent resource estimates for its Axe Lake Discovery and its Raven Ridge Discovery. Raven Ridge has been reclassified to a Discovery from an "area of interest". ***Oilsands Quest announces the initialization of engineering plans for the first 30,000 barrels per day commercial project planned to develop a portion of the Axe Lake Discovery*** and provides an update on its reservoir test program."
>
> "McDaniel & Associates is of the opinion that significant portions of the discovered and undiscovered bitumen resources at Axe Lake and Raven Ridge are potentially recoverable using existing demonstrated technologies. However, insufficient reservoir data exists at this time to allow McDaniel & Associates to estimate the quantities of recoverable and unrecoverable volumes underlying the current estimates of discovered resources and undiscovered resources at Axe Lake and Raven Ridge. Oilsands Quest and McDaniel & Associates expect that additional data will be derived from the reservoir test program Oilsands Quest intends to conduct during 2008/2009."
>
> "Oilsands Quest and its engineering consultants have embarked upon preliminary engineering of the first 30,000 barrels per day commercial project planned for the development of Axe Lake in the specific area where the first series of reservoir tests are being conducted. Management

[3] This was misleading, however, because, as CW2 described, McDaniel lacked the data to conduct such a review, and that, similarly the Company was in no position to move towards commercialization for the same reason. Further, the release was misleading for what it omitted -- that all or virtually all of the above recounted resources were unrecoverable using existing technology. Under Canada's disclosure scheme, and particularly National Instrument 51-101, when classifying oil and gas as "resources," the resources must be further classified in the most specific category they can be classified -- *i.e.*, here, as "contingent," meaning potentially recoverable using established technology or technology under development, with the remainder being classified as "unrecoverable."

also continues to conduct advanced economic feasibility and risk assessment studies for full commercial project development, including assessment of "fast-track" approach to a first prospective project, which could result in completion during 2012 or 2013. Oilsands Quest has also commissioned a study of infrastructure and markets by Purvin & Gertz Inc. to assist in its planning process. Development of a commercial project remains subject to regulatory and other contingencies such as successful reservoir tests, board sanctioning and financing."

"Site preparation and construction of facilities for Oilsands Quest's reservoir test program at Axe Lake commenced in January 2008 and were halted through April and May for spring break-up. Activity recommenced in June 2008 and is ongoing at present. The large steam generator Final Acceptance Test was successfully concluded and the steam generator is being transported to site. Other major equipment will also arrive on site during facilities installation which commences the first week of July. Steam and hot water injection into the reservoir on Test Site 1 is planned for late summer 2008."

"Phase One of the Axe Lake Discovery reservoir test program will consider up to three test sites (with varying overburden and pay thicknesses) with one vertical injection well and five vertical observation wells per test site. The purpose of Phase One of the Axe Lake test program is to measure resource-specific heat and fluid movement under specific operating conditions on a field scale to complement the company's ongoing simulation and laboratory analysis studies. Phase One has received regulatory approval. Current plans call for placement of horizontal wells in late summer 2008, with steam and hot water injection to begin following initial results from the Phase One program at Test Site 1 subject to the requisite approvals."

68. This disclosure, in combination with the filing of the Company's Form 10-K for the year ended April 30, 2008 (the "FY 2008 Form 10-K") on June 27, 2008, substantially misled investors and analysts. For example, a Blackmont Capital analyst report published on June 27, 2008 increased its estimate of the net asset value of the Company's oil sands rights from $7.18 per share to $7.73 per share and increased the target price for the Company's share on the assumption that the Axe Lake Discovery was being placed on a "fast track" for development with "steam and hot water injection slated for late summer," reservoir tests in late 2008 and early 2009, the availability of methods for commercial extraction of bitumen, and a "2012/2013 timeframe" for "completion of the project." The FY 2008 Form 10-K also stated as to "Evaluation of Disclosure Controls and Procedures," that the Company's disclosure controls and procedures were effective. The FY 2008 Form 10-K was signed and certified by the Company's CFO, Hopkins as CEO, and Wilson as Chairman.

69. Where, as here, Defendants knew that substantial portions of their acreage had no bitumen, or that the bitumen was unrecoverable, they should have

written off the property as impaired -- *i.e.*, they should have reduced the reported values of the mining rights included on the Company's balance sheet and recorded a corresponding expense on its income statement. The failure to do so meant that the financial statements were materially misstated and issued in violation of GAAP. More importantly, they were also clearly misleading in representing that the mining rights were worth hundreds of millions of dollars when there was no basis for believing that any bitumen could be successfully extracted with the existing technology.

70. Defendants avoided taking these impairment charges by changing the Company's method of accounting after KPMG came on board as the Company's auditor. As reported in FY 2008 Form 10-K, the Company changed to the "successful efforts" method and treated the entirety of the Saskatchewan properties as a single cost center. The effect of these choices meant that so long as the expected discounted earnings stream (*i.e.*, the net present value) for ***any*** parcel in the Saskatchewan province exceeded the carrying costs on the Company's books for the total Saskatchewan mineral rights, none of the Saskatchewan permits had to be written off as impaired, regardless of whether they contained bitumen, or indeed were returned to the government of Saskatchewan without being exploited.

71. Under FASB Statement No. 19, for the successful efforts method, costs are required to be accumulated, separately, property by property, or on the basis of some reasonable aggregation of properties with a common geological structural feature or condition such as a field or reservoir.[4]

72. Even under the strained approach taken by Defendants to accumulating project costs, however, the aggregate amount of the permits should have been written down under FASB No. 19 because the timetables for commercial production that Defendants were espousing were unrealistic (as the engineering head for Axe Lake had told them), and because there was no information to support the 30,000 barrel-per-day production and revenue numbers used to calculate the future net cash flows for the properties. Thus, Defendants could not demonstrate in an impairment review that the net present values of the Saskatchewan mineral rights exceeded their carrying costs on the Company's balance sheet.

73. According to the Company's Form 10-K filed on June 27, 2008 for FYE ended April 30, 2008, "McDaniel is of the opinion that significant ***portions of the Discovery and Undiscovered Bitumen Resources at Axe Lake and Raven Ridge are potentially recoverable using existing demonstrated technologies. However, insufficient reservoir data exists at this time to allow McDaniel to estimate the quantities of recoverable and unrecoverable volumes*** underlying the current estimates of Discover and Undiscovered Resources at Axe Lake and Raven Ridge." (Emphasis added). In presenting McDaniel's estimates, the Company purported to be

[4] As CW 1 described, there were vast differences in the geology for different areas contained within the hundreds of thousands of acres under permit in Saskatchewan -- so that multiple cost centers should have been established and impairment charges taken.

using the terms as defined in the COGEH and to be making disclosures in accordance with Canada's National Instrument ("NI") 51-101. As the confidential witnesses describe in the Securities Complaint and as McDaniel's later reports admit, little, if any, of the resources at Axe Lake or Raven Ridge met the requirement of even "potentially recoverable" or "contingent" resources as that term was used in the COGEH.

74. The June 2008 estimates were purported to be based on "data obtained from the results of drilling up to March 26, 2008 (the end of the winter 2007/08 drilling program)." The Form 10-K contained a misleading material omission because it did not reveal that all, or virtually all, of these resources were currently "unrecoverable" -- as the Company and McDaniel would later reveal, based upon the same March 26, 2008 drilling data.

75. Also included in the FY 2008 Form 10-K was a Consent dated June 26, 2008 of McDaniel & Associates, signed by its then vice president, Greg M. Heath. According to the Consent, these estimates were effective as of April 30, 2008, and were prepared June 23, 2008.

76. After the close of trading on September 9, 2008, Defendants caused Oilsands to issue a press release and file its Form 10-Q for the quarter ended July 31, 2008. While still largely confirming the prior representations of the Defendants, this disclosure revealed that the plans for the asserted steam testing and pilot project for development of the Axe Lake Discovery were delayed due to complications and other issues (that related primarily to the problems and issues described by the confidential witnesses). This delay from expected drilling completion and steam tests in September 2008 to later in 2008 raised a number of concerns with investors regarding the risks and ability of the Company to prove up its claimed recoverable resources. As a result, the share price of the Company fell from $3.19 per share at the close of trading on September 9, 2008 to $2.70 at the close of trading on September 10, 2008, whereas the share prices of other oil and gas companies engaged in oil shale exploration and development activities in Western Canada generally increased on September 10, 2008.

77. In response to the declines in Oilsands' share price prior to and on September 10, 2008, Defendants caused the Company to issue an additional clarifying press release on September 12, 2008 entitled "Oilsands Quest clarifies 2008/2009 spending plan and funding alternatives" that only marginally assuaged investor concerns, but the share price of the Company remained depressed relative to other oil sands companies as information regarding issues with the plans for the development of the Axe Lake Discovery were revealed and leaked into the market.

78. On November 14, 2008, Defendants caused Oilsands to issue a press release entitled "Oilsands Quest Provides Operational Update and Announces Presentation at Canaccord Global Energy Conference." This press release revealed that, contrary to prior representations, construction had not been completed for the purported "pilot" test at Test Site 1 at the Axe Lake Discovery and indirectly revealed the problems the Company was facing in developing and proving the commercial viability of its resources. On November 18, 2008, Chrisopher Hopkins then presented information

on the Company at the Canaccord Global Energy Conference and the Company posted the slide presentation on its web site. Nowithstanding the positive tone in these disclosures, they further revealed the problems the Company was facing due to the relevant truths and increased investor concerns. As a result, the share price of Oilsands declined from $1.36 on November 13, 2008 to $1.22 on November 14 and $1.10 on November 18, 2008.

79. On December 9, 2008, Defendants caused Oilsands to file its Form 10-Q for the quarter ended October 31, 2008 and issued a press release summarizing the financial information and providing an update on the Company's operating activities. In the press release, Defendants asserted:

> "For the remainder of the current fiscal year, we have determined that, in light of current capital markets and commodity market conditions, it is prudent to delay the start-up of the vertical well test program at Test Site 1 until later in 2009 and delay our exploration programs in the Eagles Nest and Wallace Creek areas. In addition, we will not begin any field activities related to Test Site 2, where tests on the use of recovery processes based on mobilization agents other than steam such as hot propane were planned and we have deferred the Design Basis Memorandum (DBM) engineering for a 30,000 BOPD facility, initiated in the prior quarter. We will also only conduct those baseline environmental studies necessary to support current activities. These delays represent a change to the timing of Company's previously disclosed planned programs. Our decision to delay these programs is based on the need to preserve liquidity in light of recent volatility and uncertainty in the capital markets and commodity markets.

80. By letter dated December 29, 2008, the SEC directed the Company to remove the above-described resource estimates disclosures from the April 30, 2008 Form 10-K on the grounds that they violated SEC Regulation S-K. Under U.S. law, issuers were prohibited from disclosing in SEC reports oil and gas deposits that are less reliable than "reserves" -- *i.e.*, mineral deposits that can be shown to be economically and legally extracted and produced. On March 18, 2009 the Company filed its first amended Form 10-K for FYE April 30, 2008, which removed the resource estimates attributed to McDaniel & Associates.

81. In early January 2009, the share price of Oilsands increased substantially with expectations for increased oil prices and as a result of the announced resumption of development work and presentations at two conferences. On January 7, 2009, Defendants caused the Company to issue a press release entitled "Oilsands Quest Provides Update and Announces Presentation at Insight Canadian Oil Sands Summit and TD Securities Oil Sands Forum" summarizing its resumption of operating activities and announcing the forthcoming investor presentations. By the close of trading on January 12, 2009, Oilsands' share price had increased to $1.30 (from $0.73 as of December 31, 2008).

82. Greg Heath ("Heath"), after leaving McDaniel & Associates in the fall of 2008, began working in the research department of TD Securities. One of the companies he reported on was Oilsands. On January 13, 2009, Heath issued a report on Oilsands reducing TD Securities' recommendation and target price for the Company -- because the Company had not shown that it could recover the bitumen using existing technology. The report was entitled, "Tough Times in the Sandbox." This article demonstrated that Heath, and McDaniel & Associates, well knew that the bitumen resources that they had estimated were currently "unrecoverable," as that term is used in the COGEH, and that the Axe Lake resource estimate and related representations included in the Company's 2008 Form 10-K had been misleading, and omitted material information:

> The lack of a continuous cap rock or seal for the reservoir within the company's primary oil sands properties is a significant technical hurdle to address.
>
> * * *
>
> We believe that significant additional testing requirements and R&D are going to be required before the company can demonstrate a technically feasible, economic method of extracting the barrels . . .

83. On February 4, 2009, the Company announced that its CFO informed the Company that he was resigning effective February 23, 2009 and that Garth Wong would become his replacement.

84. On March 12, 2009, Defendants caused the Company to issue a press release which disclosed the sub-classified McDaniel & Associates' resource estimates. This sub-classification had purportedly been prepared by McDaniel in December of 2008, but used April 2008 data (as McDaniel later revealed in a report filed on SEDAR) -- even though the April 30, 2008 Form 10K had stated that "insufficient reservoir data exist[s] at [this] time" to estimate the recoverable versus unrecoverable reserves. That sub-classification showed that of McDaniel's earlier reported "best estimate" of 2.289 billion barrels at Axe Lake, only 130 million barrels were "potentially" recoverable, *i.e.* were contingent resources, and that the remainder was currently "unrecoverable at this time." And, as the press release disclosed, even the possibility of recovering 130 million barrels was predicated upon an unwarranted assumption -- that the SAGD method ***could*** be used, which had not been shown to be technologically possible ("Axe Lake ... lack[s] a distinct overlying shale formation. The absence of this may preclude the use of certain high pressure in situ recovery methods").

85. The above referenced March 12, 2009 press release disclosed the operational and development problems that the Company faced and revealed that the contingent resources from the reservoirs amounted to only 130 million barrels of oil in the Best estimate and no barrels in the Low estimate. In response, TD Newcrest issued an analyst report entitled "Oilsands Quest Provides Resource Estimates - Lower than Expected" dated March 13, 2009 stating: "Independent third-party best estimates of contingent resource volumes were lower than we expected."

Defendants Issued and Used Baseless Production Schedules and Commercial <u>Production Estimates and Failed to Write Down the Value of Their Permits</u>

86. As described above, the 30,000 barrels a day production figure was first announced in a press release dated June 26, 2008. The next day, Defendants caused the Company to file its FY 2008 Form 10-K, which similarly reported that it was "initiating engineering plans for the first 30,000 barrels per day commercial project at the Axe Lake Discovery" -- *i.e.*, that this was the assumed production data the Company was using to avoid reporting an impairment of the mineral rights.

87. The Company's Consolidated Balance Sheet in the Form 10-K reported Property and Equipment of more than $595 million. Of this, $319 MM was reported for the stepped up value of the permits from the August 2006 Acquisition. The Form 10-K asserted that the Company had tested those amounts for impairment using the newly installed successful efforts accounting method. No impairment charge was reported to be taken against these carrying values.

88. As the 30,000 per day production plan was fictitious, and the timetable for reaching it had no basis (so that the time discount applied to the revenues in the test for impairment was also wrong), there were no revenues to plug into a projected cash flow model under the successful efforts method to validate the hundreds of millions of dollars of carrying value attributed to the Saskatchewan permits. Moreover, the problems identified by the confidential witnesses as set forth in the Securities Complaint show that these rights had negligible value at best.

89. On July 14, 2009, Defendants caused the Company to issue a release entitled, "Oilsands Quest announces delay in annual report filing and intent to restate financial statements," disclosing that the Company's FY 2007, FY 2008 and 1Q 2008 through 3Q 2009 financial reports could not be relied upon, that those periods would be restated, and that its internal controls were deficient throughout this time period:

> Oilsands Quest Inc. announced today that it is extending until July 29, 2009 the date by which it must file its Form 10-K for the year ended April 30, 2009 by filing a Form 12b-25 with the United States Securities and Exchange Commission. ***The reason for the delay is that, during the preparation of its financial statements for the year ended April 30, 2009, the Company determined that it will revise the calculation of the consideration exchanged in the acquisition of the non-controlling interest of Oilsands Quest Sask Inc. ("OQI Sask") for the year ended April 30, 2007. The revision is due to a modification in the Company's interpretation of the generally accepted accounting principles related to the accounting for the purchase of a non-controlling interest when the consideration includes stock options and warrants of a subsidiary.***
>
> On August 14, 2006, the Company, pursuant to the terms of a reorganization agreement, acquired the non-controlling interest (35.92%)

> of OQI Sask which together with its 64.08% interest, resulted in a 100% interest in OQI Sask. In the accounting treatment of this transaction, the fair value of the stock options of OQI Sask at the time of the acquisition was included in the consideration exchanged for the non-controlling interest. ***Management has concluded that in accordance with a technical interpretation of the terms of FAS 123 (R), Share Based Payment, and FAS 141, Business Combinations, options of a subsidiary that are granted while the parent is in control of the subsidiary should be excluded from the consideration paid in the acquisition of the non-controlling interest.***
>
> Genuity Capital Markets is not withdrawing the Fairness Opinion it gave at the time of the transaction.
>
> Management, together with its independent auditors for the respective periods, is analyzing the impact of this revision on its previously reported financial statements. ***The Audit Committee of the Board of Directors has concluded that the Company's financial statements for the years ended April 30, 2007 and April 30, 2008 and the quarterly periods ended July 31, 2007 to January 31, 2009 will be restated and should no longer be relied upon. In addition, Pannell Kerr Forster's audit report on the financial statements for the year ended April 30, 2007 and KPMG LLP's report on the financial statements and effectiveness of internal controls over financial reporting for the year ended April 30, 2008 should no longer be relied upon.***
>
> ****
>
> ***Management is also assessing the effect of this revision on the internal control over financial reporting and disclosure controls and procedures. Management does not expect to reach a conclusion on the controls until completion of the restatement process.***

[Emphasis added.]

90. On July 29-30, 2009, Defendants caused the Company to file its restated FY 2008, 1Q 2009, 2Q 2009 and 3Q 2009 financial statements, and issued its FY 2009 financial report. As to its internal controls, the Company's amended FY 2008 Form 10-K stated:

> In connection with the audit of our consolidated financial statements for the year ended April 30, 2009, ***we and our independent registered public accounting firm identified deficiencies in our internal control over financial reporting that were "material weaknesses" as defined by standards established by the Public Company Accounting Oversight Board. The deficiencies related to our accounting for the August 2006 acquisition of a non-controlling interest of [O]QI Sask which together with our 64.08% interest resulted in a 100% interest in***

OQI Sask. We have restated our financial statements for the period ended April 30, 2008 and the interim periods from July 31, 2008 through January 31, 2009 to correct the accounting treatment for this acquisition. However, we cannot assure you that our remediation of our internal control over financial reporting relating to the identified material weakness will re-establish the effectiveness of our internal control over financial reporting or that we will not be subject to material weaknesses in the future.

[Emphasis added.]

91. The Company's amended FY 2008 Form 10-K reduced the Company's previously-reported properties and equipment by almost 23% for the FY ended April 30, 2008, ***or more than $136 million*** – reducing the previously reported "properties" from $595,611,114 to $459,492,571.

92. Indeed, recent disclosures by Defendants, particularly at an August 18, 2010 conference call with analysts, and in the Company's most recently filed amended Form 10-K, show that because the Company used improper methods to seal and abandon the exploratory holes, it had about $35 million of unexpected additional asset retirement costs, and that the Company had committed to the Saskatchewan government that it "would get this remedial work done before proceeding to commercial development."

93. As a result of the Restatement, Defendants admitted that the mining rights reported on the Company's FYE April 30, 2007 balance sheet were overstated by $118 million, and that the mining rights reported on the FYE April 30, 2008 balance sheet were overstated by $136 million. This admitted over-reporting of the value of the mining rights is in addition to that which is attributable to the fact that the Company's stock price had been inflated through Defendants' false and misleading statements about the bitumen resources.

94. The Restatement also reported that the stock option compensation attributable to the 2006 Acquisition had been under-reported and materially misstated on the Company's earnings reports. Thus, the Restatement increased the reported compensation expense for the share of the company allocated to its officers and employees, including to Defendant Hopkins, in the following amounts:

Hopkins	2007	9,693,493
	2008	3,433,983

95. The Restatement further disclosed that the inaccuracies in the Company's accounting were the result of serious internal control violations:

> The Board of Directors, in consultation with the Audit Committee concluded on July 14, 2009 that the Company's previously issued financial statements for fiscal 2008 and fiscal 2007 (including the interim periods within those years), should no longer be relied upon because of certain accounting errors and ***irregularities*** in those financial statements.

(Emphasis Added).

96. As a result of Defendants' conduct, the Company was forced to admit in its Restatement that, contrary to the representations earlier made in its original Form 10-Ks for 2007 and 2008, the Company had a "material weakness" in its internal controls over its financial reporting.

97. Under standards used in the United States, particularly as provided by Industry Guide 7 as incorporated into SEC regulations, only deposits objectively proven to be commercially viable are "reserves" and may be publically disclosed to investors in SEC reports. In addition, under Generally Accepted Accounting Principles ("GAAP"), and particularly FASB No. 144, reported property costs including mineral rights needed to be regularly tested for "impairment" -- *i.e.*, to determine whether the reported values had to be written off and expensed. According to the Company's Form 10-QSB filed for the quarter immediately after the 2006 Acquisition, the quarter ended October 31, 2006, the Company then had properties with a reported value of $354,060,449, up from $17,123,098 reported as of April 30, 2006 -- an amount that did not approximate the value of the mining rights by any measure. Footnote 2 to the financial statements in this report stated that, "Property costs are reviewed for impairment at least annually to consider whether there are conditions that may indicate impairment. The carrying value of each property is compared to its net recoverable amount as estimated by quantifiable evidence of the market value of similar land or geological resources. If the carrying value is found to exceed the estimated net recoverable amount, a write down will be recorded."

Truth is Revealed

98. The relevant truth regarding the false and misleading statements and omissions of the Defendants has emerged over time beginning on September 9, 2008 with the filing of a Form 10-Q for the period ended July 31, 2008 and the issuance of a press release entitled "Oilsands Quest files 10-Q Quarterly Report, updates reservoir test program and independent resource evaluation program." From that point to the current date, the Company has suffered harm and investors have experienced substantial losses as the relevant truths were progressively revealed by Defendants or through third parties and as the Company has consistently failed to demonstrate the feasibility of commercial production for its oil sands and oil shale interests and failed to attract a significant independent partner to invest in or acquire an interest in some or all of its various exploration and development prospects.

99. As a result of Defendants' failures and disclosures as reported by the Company, third party disclosures, and the inability of the Company to date to attract

substantial investment capital from an established oil and gas company or to sell significant interests for the amounts promised, the share price of Oilsands fell generally over time from $3.19 and fell relative to the share prices of other oil and gas companies similarly engaged in oil sands exploration and production activities in Western Canada during that same period of time. Oilsands' share price continued to generally decline in 2010 even though there was a significant increase in oil prices and even though the share prices of other companies engaged in oil sands exploration and production activities in Western Canada have generally increased.

DAMAGES TO THE COMPANY

100. Defendants breached their fiduciary duties to Oilsands in connection with Oilsands' restatement and have exposed the Company to a wide variety of financial harm including:

a. Restatement of Oilsands' financial statements;

b. A loss of financial goodwill;

c. Damages and legal defense costs;

d. Costs related to compensation, severance and benefits paid to the defendants who have breached their fiduciary duties to Oilsands; and

e. Substantial additional future costs to remediate its failed corporate governance processes and institutional operations.

101. In addition, the Defendants' breach of their fiduciary duties have exposed the Company to other harm resulting from injury to Oilsands' corporate image and reputation.

THE RELATED SECURITIES CLASS COMPLAINT CORROBORATES THE ALLEGATIONS AGAINST DEFENDANTS

102. As noted *supra*, the related Securities Complaint contains information provided by confidential witnesses ("CW") that further support that Defendants made material false and misleading statements during the Relevant Period. The accounts of the confidential witnesses as set out in the related Securities Complaint are as follows:

1) CW 1 began working for the Company in 2006 as a consultant, and in early 2008 became a senior manager, all with respect to the environment and regulatory areas of the Company. In that capacity, he frequently attended executive meetings. The witness explained that it was during these meetings and the day-to-day operations of the Company that he learned the reported information. The witness left the Company in 2010. While working

at the Company, the witness reported directly to five different bosses, a group which included [Defendant] Hopkins and Wilson.

2) The witness provided a significant amount of background information about the Company's Saskatchewan oil site. He explained that the Company's main Saskatchewan exploration site, to the east of what is known as Firebag in Alberta, is on the edge of what is known as the Clearwater Shale. He noted that Firebag in Alberta is actually on the Clearwater Shale, while the Company's exploration site is not. Unlike the Clearwater Shale, which has a consolidated limestone layer that forms a solid cap that keeps steam pressure in and allows developers to successfully use existing technology to extract bitumen, the Company's exploration site is covered by an unconsolidated layer. The Company's management believed from the time it was founded until at least late 2009, that the unconsolidated layer covering its site prevented it from keeping steam pressure in, which in turn prevented it from using existing technologies to extract bitumen.

3) The witness explained that throughout most of his tenure and throughout the entire Class Period[5], the Company's management did not believe that bitumen existing under the unconsolidated layer of earth on the Company's site could be successfully extracted using current technologies: Cyclic Steam or Steam Assisted Gravity Drainage ("SAGD"). According to the witness, a consolidated layer of earth is required for either technology to be effective. He said that to this point, no one has confirmed that either an existing technology or a new technology could be effective with respect to "developing" the Company's Saskatchewan site.

4) The witness explained that the Company knew from the beginning that it was likely that only a small percentage of its exploration site in Saskatchewan had the potential for oil extraction. He explained that much of the Company's land was made up of what is known as the Canadian Shield, a large igneous rock formation. The Canadian Shield cuts from the north through the middle of the Company's property and continues angling southeastward. The Company knew that the area covered by the Canadian Shield could not contain reserves, he said.

5) The witness explained that from the beginning, the Company focused its efforts on exploring the areas of its site that were west of the Canadian Shield. In these areas, known as oil sands, a layer

[5] The Class Period in the Securities Complaint is from March 20, 2006 to January 13, 2011.

of sand remained from when Alberta and parts of Saskatchewan were previously covered by water. It was in these sand layers where oil had formed over history.

6) The witness said that the Company was certain that there was oil in the area of the site called Axe Lake. He said that throughout the exploration process, the Company focused on exploring this area. Additionally, he said the Company's management believed that there was potential development to the south of Axe Lake in areas that contained some river beds. For the most part, however, he said everyone at the Company was aware that not much else on the site would contain oil.

7) CW 1 stated that the size of the entire Saskatchewan site created "a delusion that there was a lot of potential." After the Company confirmed that bitumen reserves existed in Axe Lake, the Company touted to the investment community that it had identified significant bitumen reserve after exploring only five percent of the entire site. However, he said that, internally, the decision had already been made that the Company would not spend the money to drill in most other areas of the site because there wasn't "oil potential."

8) The witness explained that, because of the large size of the site, he had long debates with both Hopkins and Wilson about how to manage the land base. He explained that in order to maintain the exploration permits for the site, a significant amount of testing had to be conducted and results had to be presented to the government. The witness explained that in his mind it did not make sense to spend the resources required to maintain the permits when internally the Company knew that most of the land was not valuable in terms of bitumen reserves. However, he said that Hopkins and Wilson were concerned that if the Company relinquished the land, it would affect the share price. As the witness stated, "Land position was part of our share value." The witness explained that, as the Company's stock value was dropping, he continued to lobby Hopkins and Wilson to be more transparent about the land holdings. However, he said the two continued to hold on to the permits.

9) The witness further explained that, in terms of the exploration activity, the Company had to demonstrate to the government that exploration activity was underway throughout the holding. The witness himself put together the reports that were submitted to the government. The reports, which included information from the Company's accounting people and its consultants, showed the amount of drilling that was being

conducted and the subsequent data. "We were doing what was required for good standing," he said. The witness pointed out that data from drilling activities showed that there was little potential for the land east of Axe Lake. "It was water and not oil," he said.

10) The witness stated that the Company had reviewed documentation of Shell's previous exploration in the area. He explained that Shell's findings were part of the reason why the Company and its predecessor entities made the decision to obtain permits to explore the site.

11) With respect to the Company's business model, the witness said that the initial plan, spearheaded by Hopkins, was to demonstrate that there were viable bitumen reserves in the properties in Saskatchewan for which CanWest had originally obtained exploration rights, obtain permits to develop the site, and "parcel up" the properties and sell them to a company that could "develop" the site. The witness said that this was the business model that Hopkins had used at other companies and it had been very successful. According to the witness, Hopkins was "an exploration guy," and neither he nor Wilson had the expertise to develop on their own.

12) The witness explained, however, that the original strategy changed throughout and after the Class Period at what he believed to be the behest of Wilson, who held several leadership positions at the Company. The witness explained that although Wilson had a degree in reservoir engineering, he had spent his career working as an investment banker and had little experience with oil exploration and extraction. The shift in strategy led by Wilson was to develop the property.

13) The witness stated that Wilson was being pressured by the Company's consultants, McDaniel & Associates, and the investment community in general to demonstrate that the bitumen was recoverable. "The question was can you recover the resources using current technologies?" the witness said, and "the original answer was no because there is no consolidated cap rock."

14) The witness explained that the shift to developing the property began in about March 2008. The Company hired a reservoir team, a geophysicist and a "director-level" design engineer with the intent of developing a new technology to extract bitumen from Axe Lake. The design engineer, Mark Doig, was brought on to manage a pilot project that was being developed by the Company's reservoir team to test a new extraction technology.

Additionally, Doig was responsible for overseeing work done by consultants on the project from a company called WorleyParsons.

15) The new technology revolved around heating the bitumen from below, similar to heating it like a "frying pan," and using a solvent to enhance the recovery of bitumen, the witness said. According to the witness, the development of the alternative technique was premature and expensive. Wilson had promised investors that tests of the new equipment would be conducted by spring 2009, yet the Company had not exhausted tests of currently viable technologies and did not have the know-how to evaluate the technologies, which the witness said was irresponsible.

16) The witness stated that after the Class Period, the Company hired a reservoir engineer named Allison Aherne, who the witness said had previously managed the Firebag project in Alberta. Upon her hiring, Aherne conducted tests and found that the unconsolidated layer of earth over the site was more consolidated than previously thought. She reported that she was 90 percent confident that bitumen could be extracted from the sit by using SAG-D, an existing technology that the Company had previously ruled out. At this point, the witness said that the Company began implementing SAG-D but the plug was pulled because "there was no money."

17) CW2 was hired by the Company in late 2006 and continued there throughout the Class Period. CW2 was an executive vice president and headed the development of its projects until early 2008. Before his employment by the Company, he served as a consultant. Until early 2008, the witness served as the chief engineer responsible for managing and implementing all phases of the Company's exploratory activities. This included devising effective exploratory strategies/plans; conducting, reviewing and analyzing a wide variety of field tests and designing and installing vertical observation wells. The witness was also responsible for the procurement of all machinery and materials needed for the Company's exploration efforts at Axe Lake.

18) According to the witness, the Company's operations at Axe Lake were not only unsound, but were very irresponsible, if not outright reckless. The overarching problem was that the Company had not carried out the necessary on-site field testing during the earlier phases of the operation before moving forward with Axe Lake's development for commercial production.

19) As the witness explained, in the exploratory phase of an oil project, the oil company conducts a vast series of tests (*e.g.*,

seismic tests, exploratory drilling, simulations, etc.) in order to determine first and foremost whether any bitumen can be extracted at all, and if so, whether it can be extracted in a cost-effective manner. As the witness said, "First we had to prove a concept." This meant that the Company had to first establish whether, by employing a particular extraction method, which involved sophisticated engineering efforts, and oftentimes was a trial and error process, it could actually extract "one liter" of bitumen. According to the witness, only upon verifying that extraction of a nominal amount of the resource was feasible, should the Company have then proceeded to the next phase. However, despite the fact that the Company had not extracted any bitumen, which the witness noted had not even been accomplished at present date, and despite the fact that existing field tests had been inconclusive, Wilson directed the CW2 to move forward with an extraction operation, which, as the witness explained, involved drilling horizontal wells to be utilized for commercial extraction purposes, rather than continuing to drill vertical wells for testing purposes.

20) According to the witness, the Company hired a consulting firm, McDaniel & Associates, to review existing geological studies of the Axe Lake site, and to provide economic evaluations of the reserves located there. In 2006 and 2007, the witness monitored the work of McDaniel & Associates, and strongly disagreed with the McDaniel & Associates' conclusions. As the witness stated, by far the most problematic issue in connection with McDaniel & Associates was that the consultancy had wrongly projected a positive outlook and professional opinion about the extractability of bitumen at Axe Lake. This projection, in turn, dictated the overall valuation of the Axe Lake property. As the witness explained, McDaniel & Associates had not conducted any field tests whatsoever. Instead McDaniel relied on geological surveys and other data from prior site testing, despite the fact that such tests and results were, according to the witness, faulty and inconclusive.

21) The witness was highly critical of the work of McDaniel & Associates. In the witness' view, McDaniel & Associates had overstepped their professional boundaries by rendering an opinion on the extractability of the bitumen, again emphasizing that the Company, through its own efforts and through other consulting firms, had not yet conducted sufficient field tests, and as such, McDaniel & Associates did not have enough information to make such an assessment.

22) The witness stated that he had strongly objected to the Company moving forward with horizontal drilling, but Wilson and other executives and Board members disregarded his objections. In

the witness' view, Wilson's position was based on his desire to persuade prospective investors to purchase the Company's stock. As the witness put it, "everything Murray [Wilson] wanted to do was just to please the market."

23) With respect to the specific engineering challenges the Company faced, the witness recalled that the SAG-D method of extraction could not be utilized at Axe Lake. He explained that, with SAG-D, two parallel wells are drilled close together. One well is used to pump high pressure steam into the reserve (thereby making the bitumen more viscous), while the other is used to extract the bitumen. However, because the Company had not conducted the necessary testing, the Company did not know the geological makeup of the site. As the witness emphasized, the Company did not know the amount of steam pressure that the reservoir could withstand, and did not know whether the reservoir had a shale cap.

24) According to the witness, the most critical issue that dictated which method of drilling to utilize was whether a shale cap existed above the bitumen deposit and the related issue of steam pressure limits of the reservoir, with or without the presence of a shale cap. Since bitumen was extracted through the use of a heat source, if the reservoir, specifically, the top portion of the reservoir, could not withstand specific pressures of steam, the steam would dissipate, and the bitumen could not be extracted. As the witness stated, "You can't heat a house without a roof."

25) The witness stated that the Company conducted a wide variety of tests primarily through the use of independent consulting firms including Worley Parsons and Schlumberger to determine whether such a shale cap existed. However, throughout his tenure, the Company had not proven whether a shale cap existed. The witness strongly believed that it did not.

26) As a result, the Company made the decision that it had to employ a different method to extract bitumen. The witness designed a new extraction method that incorporated elements of SAG-D and "Huff and Puff," or cyclic Steam Simulation. This new method involved a U-shaped configuration of wells (both vertical and horizontal), and featured three individual heat sources (as opposed to the single heat source used with SAG-D). The design also incorporated what the witness described as a specific and novel slope or grade to the vertical wells, which in theory would assist in the bitumen extraction. However, as he mentioned, this method had not yet been proven. The witness reiterated that steam

pressure was still involved with this novel approach, and as such, steam pressure limits remained a vital concern to him.

27) The witness explained that one major problem which the Company encountered when attempting to analyze the steam pressure limits of the Axe Lake reserve occurred at what was known as Test Site Three. In Test Site Three, which was one of three test sites at Axe Lake, the Company had drilled two exploratory vertical wells within three meters of each other. Each of these wells had been drilled specifically to test steam pressure thresholds. The witness explained that in such tests, steam is injected into both wells, and "if the 'internal communication' between the wells is good" then the outcome of the test is favorable. However, he explained that, in order to be effective, such test wells had to be at least fifteen meters, and preferably twenty or more meters, apart from each other, and not three meters apart, as was the case here. To do otherwise meant that the test results would be skewed, due to the close proximity of the test wells.

28) For the reasons stated above, the witness informed Wilson that the test results from Test Site Three were wholly inaccurate and that the Company could not and should not rely on those results. The witness explained that, as was the case with virtually every engineering problem that he brought to Wilson's attention, and he emphasized that there were many, Wilson paid no heed whatsoever. Rather, Wilson disregarded the witness' warnings and directed him and other operations personnel, to move forward with more drilling, and to conduct these drilling efforts, i.e., designing and positioning additional wells, based on the flawed results.

29) CW2 stated that he participated in weekly meetings, typically on Mondays, with senior management at the Company's headquarters in Calgary. The witness said that during these meetings he regularly raised the various concerns he identified here about the Company's operations at Axe Lake. Further, the witness noted that the three consultants described above agreed with his positions and observations -- for example, that the previous test results were conducted incorrectly and/or were otherwise inconclusive, as well as his recommendations, e.g., that further testing was required before proceeding to the commercial drilling and extraction phase.

30) The witness stated he attended the Company Board meetings which usually took place on a quarterly basis. These meetings generally took place in Calgary, at the Ranchman's Club. In addition to the Board members, TD Securities Managing Director

Robert Mason ("Mason") was almost always present, either physically, or via conference call on speaker phone.

31) The witness explained that through his attendance at the Board meetings, he came to understand the significant role that Mason played at the Company. The witness recalled that during executive meetings, as well as in the Board meetings, Wilson regularly pressed the Company's financial analysis personnel to utilize and rely on financial models developed by TD Securities.

32) The witness stated that he attended a Board Meeting on September 26, 2007. During the meeting, the Board recognized that bitumen indeed existed at Axe Lake. However, the critical issue was whether the resource could be extracted. Over the course of the meeting, Mason vigorously emphasized that the Company needed to devise some method to extract the bitumen in an economically viable manner, because a resource in the ground— without a workable means to extract it— was worthless.

33) The witness further explained that, approximately two hours after the Board meeting, back at the Company's headquarters, Wilson called a meeting with his senior staff including the witness. At this meeting, Wilson referenced what Mason had stressed during the Board meeting. According to the witness, as Wilson put it, "we know we're sitting on the resource, now we have to do something about it." Wilson then began inquiring of the witness as to the best method(s) the Company could undertake to promptly begin extracting bitumen at Axe Lake. The witness replied that, due to inconclusive field test results, some of which were derived from inaccurate test methods, the Company was not in a position to begin drilling at Axe Lake for purposes of extraction. According to the witness, Wilson became increasingly agitated and continued to press the witness for some type, any type, of solution that would enable the Company to swiftly begin excavating the bitumen. Then, Wilson demanded to know why the Company could not begin drilling horizontal wells, the types of wells needed to extract bitumen using the SAG-D method.

34) The witness further explained that, at the meeting, he insisted that drilling horizontal wells at that juncture was not only untenable, due to prior inconclusive testing, but could be even more costly for the Company down the line, if it were determined, through ongoing testing, that SAG-D was not a viable option for extraction. As the witness explained in the interview, the testing phases in such operations can sometimes take up to several years. By contrast, Wilson's expectations as to how quickly the Company might extract bitumen were much shorter and completely

unrealistic. The witness explained that at the meeting Wilson refused to take no for an answer. As the witness put it, "eventually I yielded" by telling Wilson he would begin conducting a series of vertical drill tests to assess the steam pressure limits at Axe Lake. However, the witness stated his view in the interview that conducting such vertical drill tests was premature at that time, because earlier testing methods (e.g., seismic tests) had produced varied results, suggesting more of these tests needed to be conducted. According to the witness, the events of September 26, 2007 were one of a handful of similar incidents.

35) The witness explained that in approximately December 2007, he had been scheduled to make a presentation to the Board. The presentation was to involve his displaying and discussing a Gantt chart that he had prepared. The Gantt chart laid out the schedule for all phases of work at Axe Lake going forward, with the Y-axis representing time, and the X-axis showing the project's various phases, i.e., continued testing, expansion of drill zones, site preparation for commercial exploitation, and eventually bitumen extraction. The chart estimated that bitumen could be commercially produced by 2010.

36) As the witness explained, the Gantt chart took into consideration the fact that the Company needed to conduct additional testing to ascertain geological makeup of the site, and the technology needed to extract bitumen. Notably, the timeline on the chart, and specifically the estimated time it would take for the Company to commercially extract bitumen, was significantly longer than what Wilson desired. The witness was aware of Wilson's wishes through his ongoing conversations, and disagreements, with Wilson on this topic.

37) According to the witness, just prior to the Board meeting, he was informed that his presentation had been cancelled. He found this to be very puzzling and suspicious. According to the witness, the "official" reason given was that the Board's Resource and Reserve Committee had decided against it.

38) The witness further recalled that Wilson and Hopkins relied on data provided by Mason to prepare their own Axe Lake project schedules, which they presented to potential Company financiers. The witness stated his belief that the schedules used by Wilson and Hopkins during such presentations included much shorter and unrealistic timelines.

39) The witness stated that, in February 2008, the Company held a Board meeting at Axe Lake. During the meeting, the witness

presented a project schedule to the Board. The schedule estimated that it would take the Company approximately four-to-six months from September 2008 (*i.e.* 1Q09) to produce a nominal (as opposed to commercial) amount of bitumen. As the witness explained, oil companies in Canada had to contend with muskeg, which rendered operations impossible during certain seasons. When temperatures became colder (*i.e.*, in September), the land would become workable again, and the Company could thereafter resume operations at Axe Lake. In turn, estimating that the Company would extract its first nominal bitumen in 1Q09 necessarily meant that commercial levels of extraction would not take place until many more months thereafter.

40) During this meeting, various Board members pressed the witness to design and implement the types of drilling operations needed to extract bitumen in a shorter time span than what he had proposed and estimated. The discussion became heated. The witness "spoke passionately" and emphasized his point that it was not feasible to extract this nominal amount of bitumen or the ensuing commercial production level desired in a time period shorter than what he had originally estimated. For example, Wallin specifically asked him, "isn't there some type of shortcut to production?" To which he replied, No, that the production schedule (which had already been somewhat condensed to appease Wilson) was the shortest cut.

41) The witness further stated that, in early 2008, while at Axe Lake, he participated in a conference call with certain Board members. During this conference call, Read directed him to start implementing the SAG-D method. However, the witness explained to Read that the absence of a shale cap made SAG-D impossible. Indeed, similar conversations had taken place between the witness and Wilson prior to Read getting involved, where he had made the same point to Wilson. The discussion became heated.

42) The witness was aware of the Company's publicly disclosed target to extract 30,000 barrels of oil per day. He was emphatic that the Company had "pulled that number from the sky," as the Company had no scientific basis for making such a claim.

43) The witness further stated that throughout his tenure, the Company engaged in exorbitant and unjustified spending practices. The most troubling expenditures related to high- dollar payments to consulting firms, where such firms did not provide services remotely justifying such high payments. The witness explained that he knew that the payments were unjustified because he observed the day-

to-day work of the consultants (which were based at Axe Lake) and reviewed the results of such consulting services.

44) According to the witness, the exorbitant and unmonitored expenditures became such a significant concern that he eventually took it upon himself to speak directly with several Directors. Initially, he voiced his concerns, *inter alia*, to Defendant Read.

45) Based on the various problems the Company had in tracking its expenditures, the witness said that the Company seriously lacked internal controls.

46) CW3 worked at the Company from late 2008 until mid 2010 as a manager involved in the Company's Drilling Operations. He is currently employed with one of the many consultants that the Company utilized at Axe Lake. The witness stated that he oversaw all drilling operations at the Axe Lake site.

47) The witness stated that his primary duty was to ensure that the Company implemented proper and effective drilling operations by employing operations that best suited the specific technical/engineering needs of Axe Lake. He was also charged with ensuring that the Company complied with all applicable provincial regulations (including environmental regulations), with respect to its drilling activities. The witness stated that, over the course of his tenure, he discovered that as early as winter 2006 -- at the outset of the exploratory drilling phase -- the Company had been utilizing improper and "primitive" drilling methodologies, the results of which had various negative implications for the company, as detailed below.

48) The witness recalled that during his tenure, the Company had publicly touted its goal of eventually producing 30,000 barrels of oil per day. However, based on the myriad technical problems with BQI's drilling operations (as detailed below), the witness believed such a goal was unrealistic and unfounded. Indeed, he recalled that the problems the Company encountered were "fairly immense."

49) CW3 said that upon being hired, he took it upon himself to conduct a comprehensive internal review of the Company's drilling practices. Additionally, he set out to create a file system for all oil well activities including core testing (explained below), observation drilling and test drilling. Prior to his arrival, the Company did not have any such file system, which the witness thought was very problematic.

50) The witness said that, in December 2009, as part of his efforts to assess the efficacy of the Company's prior drilling operations, he reviewed a series of reports and documents that had been prepared in 2006 by the geological consultancy, Norwest Corporation of Calgary. The reports provided detailed information about the specific location and estimated amount of bitumen sited throughout Axe Lake, as well as the exploratory drilling that had been conducted there to date. The witness explained that, as part of his duties, he also acquired a variety of additional information relating to the Company's initial exploratory drilling operations in 2006.

51) The Norwest reports, together with the additional information, led the witness to conclude that the Company -- at the very outset of its exploratory drilling operations -- had committed a "major league screw up" with respect to the drilling methods that had been employed. Specifically, the Company had utilized so-called "surface mining" drilling techniques at Axe Lake, which according to the witness, were totally inappropriate and ineffective for the oil sands deposits at the Axe Lake site (as detailed below).

52) According to the witness, prior to Hopkins' tenure at the Company, Hopkins had no experience in underground (*i.e.*, deep) mining. As a result, Hopkins had mistakenly and recklessly directed the Company to apply various surface mining techniques to the Axe Lake project.

53) One major problem the witness identified related to the drilling of wells for "core" testing. Cores are long cylindrical samples of rock that are obtained through specialized drilling efforts. Cores are used for testing purposes, to assess the geological makeup of a proposed drilling/excavation site.

54) By the time he was hired, the Company had drilled over 210 wells for core testing. Typically, once a well has been drilled, it must be properly fortified with cement casings, to ensure that the well does not collapse in on itself. However, drawing from surface mining techniques/practices, the Company instead utilized retrievable casings, which is evidently acceptable in surface mining. These casings were withdrawn from the wells soon after the cores had been extracted, so that the Company could utilize the casings over and over, when drilling additional wells. As mentioned, removing such casings ran the risk that wells would collapse, and as the witness explained, "that's exactly what happened" with the majority of the exploratory wells.

55) According to the witness, the above techniques had been implemented for cost- saving purposes (*i.e.*, to reuse casings), but were short-sighted, because the larger cost implications and liabilities that arose from having so many wells collapse greatly outweighed the short-term gain of using reusable casings. Additionally, provincial regulations required that the Company properly abandon all these wells, once the testing had been completed. To do so, the Company was required to fill the wells with thermal resistant cement.

56) Sealing the wells with thermal resistant cement was needed because, if and when the Company later conducted bona fide excavation activities in that site— which required it to inject very hot, high pressure steam into the oil sands reserve through a process called Steam Assisted Gravity Drainage (SAG-D) — there would be no risk that the steam would "melt" the cement casings of the core wells. If the casings melted there could be serious environmental implications.

57) The witness explained that, based on his research, including the Norwest reports, he determined that the Company had not properly abandoned the core wells. In some instances, the wells had not been sealed off at all. In other instances, the Company had filled the wells with cement that was not thermal resistant, which meant that the sealing of these wells effectively served no purpose. Based on his conversations with several Company personnel, the witness was of the strong opinion that the Company improperly abandoned the wells as a cost-saving strategy (thermal resistant cement is more expensive than traditional cement).

58) As to the environmental impact, the witness explained that the bitumen reserve at Axe Lake contained a large aquifer of fresh water above the reserve, but still underground, closer to the surface. As such, if the Company pumped steam into the reserve through the SAG-D process (with SAG-D, two parallel wells are drilled close together, where one is used to pump steam into the reserve thereby making the bitumen more viscous, and the other is used to extract the bitumen), any wells that had not been properly fortified with thermal-resistant cement would melt and then burst, thereby allowing bitumen and overburden to seep into the aquifer, contaminating the water. The contamination of aquifers was a major violation of Saskatchewan environmental regulations.

59) The witness stated that when he discovered these problems, he immediately reported them. The Company was required to report these issues to all applicable regulatory agencies, including the Ministry of Energy and Resources. Due to the witness's efforts,

the Company disclosed these problems to the agencies in approximately February 2010, and entered into large-scale remediation efforts, under the supervision of the agencies.

60) Another ongoing and significant issue that the Company wrestled with during his tenure was assessing whether the Axe Lake site contained a "competent" shale cap above the bitumen reserve that would be dense enough to withstand steam. The shale was located between the reserve (underneath) and the aquifer (above). As the witness explained, similar to the environmental concerns arising from the improper sealing of wells, if the shale cap was not dense enough to withstand steam, it would be destroyed, and bitumen and overburden would seep into the aquifer, contaminating the water. As such, determining if a shale cap existed, and/or whether a shale cap was dense enough to withstand SAG-D extraction, dictated the type of technologies BQI could utilize to conduct its mining operations.

61) The witness explained that initially the Company had believed there was no shale cap whatsoever (or at least that the shale cap was not dense enough to employ SAG-D extraction). Early on in his tenure, the Company had attempted what is known as "bottom's up" extraction (for test/viability purposes). This type of extraction assumes there is no shale cap, and thus requires substantially less steam, which in turn ensures that the aquifer will not be damaged. However, bottom's up extraction is substantially more costly than SAG-D, and production levels are significantly less than what they would be if SAG-D extraction was used. Due to various problems with the "bottom's up" approach, and because of cost considerations, this method was rejected.

62) In fall 2009, the Company also tried conducting SAG-D extraction at what was known as "Site 1" of Axe Lake. The wells at Site One had been drilled prior to the witness' working at the Company, and were "completed" (*i.e.*, fortified with cement casings) soon after his arrival. The Company did not conduct the SAG-D test extractions until approximately one year after the wells had been drilled.

63) As the witness explained, the Company incorrectly believed that Site One had a competent shale cap. However, when steam was injected into two wells at Site One, both wells (within days of each other) became filled with soft sand, evidencing the fact that no shale cap existed. As a result of sand filling these two wells, the well pumps for both wells seized, causing significant damage to the respective drilling rigs. As a result, all exploratory drilling at Site One was halted.

64) Yet another option the Company considered vis-à-vis its efforts to extract bitumen was the use of a solvent called naphtha, which was a highly flammable hydrocarbon. This solvent was to be used in the same manner that high pressure steam was used with SAG-D; essentially to soften/dilute the bitumen so that it could be transported through the well. However, this approach also imposed significant operational costs on the Company's drilling efforts. As the witness explained, using solvent would have required the Company to substantially alter, upgrade, and/or replace parts of the rig apparatus in order to accommodate the use of solvent. Facilities Engineer Mark Doig voiced ongoing objections to the executive team, based on the high costs involved in this approach.

65) In fall 2009, the witness recalled that the Company was experiencing significant difficulties getting additional funding. Moreover, there were major cost implications relating to the severe lack of infrastructure (including sufficient roads to transport equipment in and haul bitumen out) at the Axe Lake site. As the witness put it, Axe Lake was essentially surrounded by an "ocean of muskeg," which seriously impaired the ingress and egress of the site, and had substantial related cost implications.

66) CW4 worked at the Company from the fall of 2007 to the summer of 2010 as a manager, and was involved in reviewing exploratory test results of the Axe Lake site. Additionally, he conducted viability tests on various exploratory vertical wells and procured machinery and materials needed for the Company's exploration efforts at Axe Lake.

67) According to the witness, he believed that the Company's operations at Axe Lake were severely flawed for various reasons. He said that leading up to February 2008, the Company was working on plans to drill horizontal wells (as opposed to vertical wells). These plans were in the works despite the fact that the Company had not conducted sufficient testing to know whether horizontal wells were the most efficient, cost-effective, and environmentally sound, approach to extracting bitumen from the site. As the witness explained, oil companies drill vertical "observation" wells to obtain information on the geological makeup of a given site, to determine the best method of bitumen extraction. Vertical wells are typically drilled after an exploratory phase of an oil project that would include conducting a series of preliminary tests (*e.g.*, seismic testing). By contrast, both horizontal and non-observation vertical wells are typically drilled after the initial exploratory phases for the purpose of high-volume extraction/production.

68) The witness explained that the goal of producing such a high volume of bitumen extraction (*i.e.*, 30,000 barrels/day) meant that the Company would enjoy larger revenues through its excavation activities. Further, according to the witness, it stood to reason that shareholders and prospective investors would naturally have been impressed with the Company for touting larger projected revenues, and the Company's share price would rise as a result of such positive remarks. The witness explained, however, that, because the Company had not conducted enough exploratory drilling (*i.e.*, vertical observation drilling) and additional testing, and because of the related issue regarding the best method to extract the bitumen, along with other technical issues, the Company did not have a plausible basis to make such a lofty claim.

69) The witness stated that a proposed method to increase barrel production was through the use of Steam Assisted Gravity Drainage (aka SAG-D) extraction technology. As he explained, with SAG-D, two parallel wells are drilled close together. One well is used to pump high pressure steam into the reserve, while the other is used to extract the bitumen. The witness stated, however, that at the Axe Lake site, the bitumen reserve was located underneath a fresh water aquifer. As such, to employ SAG-D, the Company had to ensure that a shale cap, i.e. a dense rock formation, was situated between the reserve and the aquifer. This was because the absence of a shale cap, or the presence of a shale cap without the requisite density, substantially increased the likelihood that the high pressure steam used in SAG-D would cause the bitumen to pierce the shale and contaminate the aquifer.

70) As part of his job duties, in February 2008 the witness procured various industrial-size steam generators, which were to be utilized for SAG-D extraction. The generators arrived almost a year later, but were never utilized by the Company in the site for which they were intended, at least for the duration of his tenure, because the Company continued to struggle in assessing whether Axe Lake had a proper shale cap.

71) The witness said there were a great many purchase orders – such as those for consultancy services and materials procurement – of substantial dollar value that did not have the corresponding signed contracts in place, to justify the expenditures. Similarly, the Company had many outstanding invoices that did not have corresponding documentation. He created spreadsheets to monitor the transactions, and produced an example. The witness stated he was of the strong opinion that the Company had been spending excessively and did not have the proper means to track such expenditures.

72) CW5 worked at the Company as a safety field advisor from Novermber 2008 until mid-spring of 2010.

73) According to the witness, during his tenure the Company was still in the exploratory phase at Axe Lake, and as such, had not yet devised a financially viable method to extract bitumen.

74) All employees at Axe Lake were informed that the project was on hold, and that they were not to report to work until the problems could be resolved.

75) CW6 worked at the Company during 2007 as a junior financial analyst. He stated that it was his strong opinion that the Company lacked proper internal financial controls. He explained that the Company did not seem to have any regular policies or procedures in place -- at least in the Finance and Accounting departments -- to ensure that proper maintenance of records that would accurately reflect the Company's business transactions and operations.

76) The witness explained that, in addition to other duties, he was in charge of developing a financial analysis model for a prospective bitumen extraction project the Company was considering undertaking. As he explained, Wilson provided him with a financial model that had been created by TD Securities, and which had been utilized for one of the Company's prior projects. The model was "very sophisticated" and included two key metrics, Net Present Value and Internal Rate of Return. This type of model could be used to assess whether it would be worthwhile (*i.e.*, financially viable) for the Company to implement a particular bitumen extraction project. Wilson instructed the witness to use the existing TD Securities model as a basis to create a new model for the potential project in question.

Derivative and Demand Futility Allegations for the Board of Oilsands

103. Plaintiff brings this action derivatively in the right and for the benefit of Oilsands to redress injuries suffered and to be suffered by Oilsands as a result of the breaches of fiduciary duty by the Individual Defendants.

104. Plaintiff will adequately and fairly represent the interests of Oilsands and its shareholders in enforcing and prosecuting its rights.

105. As a result of the facts set forth herein, Plaintiff has not made a demand on the Oilsands' Board of Directors to institute this action against the Defendants. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

106. The Defendant Directors face a substantial likelihood of liability in this action because they caused Oilsands to issue false and misleading statements concerning Oilsands' business practices, related transactions, internal controls, and omitted material information regarding Oilsands' falsified financial results. These directors either knew or should have known that violations of law were occurring and took no steps in a good faith effort to prevent or remedy that situation, proximately causing millions of dollars of losses for Oilsands as Oilsands' common stock traded at artificially inflated levels.

107. Defendants who are currently the members of the Oilsands' Board are Defendants Blakely (Chairman), MacNeill, Wallin, Read, Phillips, Tallman, Hopkins, Wilson, and Ching.

Likelihood of Substantial Liability of the Audit Committee Defendants

108. MacNeill (Chair), Blakely, Phillips, and Tallman each serve on the Audit Committee of Oilsands' Board of Directors. MacNeill, Blakely, Phillips, and Tallman served on the Audit Committee during the Relevant Period. MacNeill, Blakely, Phillips, and Tallman sat on the Audit Committee during each of the acts and omissions alleged herein. As such, they will take no action against one another or the other members of the Board of Directors or the other Individual Defendants because each member of this Committee breached important specific duties as Audit Committee members. The Audit Committee is responsible, by its Charter, to:

a. Review and approve any financial earnings releases and public release of other financial information prior to the release of such information to the public;

b. Review any use by [Oilsands] of financial disclosure that is not strictly in accordance with generally accepted accounting principles, and review such disclosures for compliance with the requirements of SEC Regulation G;

c. Inquire of management and the independent auditor about significant risks or exposures and assess the steps management has taken to minimize such risk to [Oilsands].

d. Inquire of management and the independent auditor about significant risks or exposures and assess the steps management has taken to minimize such risk to [Oilsands].

e. Investigate any matter brought to its attention within the scope of its duties, and the audit committee specifically has the power to retain counsel and other advisors for this purpose if, in its judgment, that is appropriate and to ensure (without further action of the board of directors) payment of the expenses that may be incurred in retaining counsel and other advisors. Such counsel and other advisors may be the counsel or advisors regularly retained by [Oilsands].

f. Consider, as appropriate establish, and thereafter from time-to-time amend a Code of Conduct for as or before required by the Commission's and the marketplace rules.

g. Establish and from time-to-time amend procedures for the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters; and for the confidential, anonymous submission by employees of [Oilsands] and its subsidiaries of concerns regarding questionable accounting or auditing matters. These procedures shall be set forth in [Oilsands'] employee manual or other appropriate document.

109. Thus, the Audit Committee was directly responsible for overseeing and directly participating in Oilsands' financial reporting process. Defendants MacNeill, Blakely, Phillips, and Tallman breached their fiduciary duties of due care, loyalty, and good faith because the Audit Committee failed to provide accurate financial disclosures to investors during the Relevant Period. Specifically, these Defendants reviewed and approved Oilsands' improper press releases and SEC filings that misrepresented the Company's financial earnings. The Audit Committee members either knew or should have known of these financial misrepresentations given their size, scope, and blatancy, yet they failed to prevent or correct the false and misleading issuances. Such conduct is not protected by the business judgment rule.

110. Further, the Company's inadequate financial controls directly contributed to the improper accounting for the purchase of non-controlling interests in Oilsands when the consideration included stock options and warrants of an Oilsands subsidiary. Oilsands and the Audit Committee cannot provide any defense as to why the Individual Defendants caused the Company to improperly account for non-controlling interests despite clearly defined GAAP principles.

111. As a result of the Audit Committee's failures, Defendants MacNeill, Blakely, Phillips, and Tallman face a substantial likelihood of liability for breaches of fiduciary duties, making any demand upon them futile.

112. Defendant MacNeill has also been classified by the Board as an Audit Committee "financial expert" as the term is defined in the SEC's rules and regulations. In light of this, Defendant MacNeill faces an even greater likelihood of substantial liability as the manipulations and misrepresentations took place under his expert eyes. As a result, Defendant MacNeill faces a substantial likelihood of liability for his breaches of fiduciary duties and any demand upon him would have been futile.

<u>**Likelihood of Substantial Liability of the Reserves and Resources Committee**</u>

113. Ching (Chair), Read, Wallin, and Wilson each serve on the Reserves and Resources Committee of Oilsands' Board of Directors. Ching, Read, Wallin, and WIlson served on the Reserves and Resources Committee during the Relevant Period. Ching, Read, Wallin, and Wilson sat on the Reserves and Resources Committee during each of the acts and omissions alleged herein. As such, they will take no action against one another or the other members of the Board of Directors or the other Individual Defendants because each member of this Committee breached important specific duties as Reserves and Resources Committee members. By its charter, the Reserves and Resources Committee is required to:

a. Review the Company's procedures relating to the disclosure of information with respect to resource and reserves data, including:

   i. consideration of the adequacy of the Company's procedures;

   ii. review procedures for providing information to the qualified independent evaluators or auditors;

   iii. review compliance with applicable regulations and policies; and

   iv. make appropriate reports and recommendations to the Board concerning disclosure of the Company's resources and reserves data.

b. Review the Company's annual resource and reserve estimates prior to public disclosure, including:

   i. review the resource and reserves estimates of the qualified reserves evaluators or auditor;

   ii. review any material change to the Company's resource or reserve estimates; and

   iii. make recommendations to the Board with respect to the content, filing and release of such disclosure.

114. Thus, the Reserves and Resources Committee was directly responsible for reviewing data issued to the public through press releases and SEC filings regarding the Company's resources and reserves. The Reserves and Resources Committee met five (5) times per year, ostensibly for the purpose of ensuring that the Company was not deceiving or misleading investors or the general public in regard to the resources and reserves that the Company possessed.

115. Instead, the Reserves and Resources Committee stood by, or actively participated in, the systematic deception of the Company's shareholders and the general public by allowing or causing the Company to issue press releases and SEC filings that continuously overstated the Company's oil reserves, the potential for extraction, the expediency at which resources would be commercially viable, and the overall value of the Company's mineral and land resources.

116. Every misrepresentation made by the Company regarding its oil reserves, their values, and commercial viability, were reviewed by the Reserves and Resources Committee, yet the Committee allowed, or intentionally participate in, the deception of the Company's investors and the general public.

117. As a result of the Reserves and Resource Committee's failures, Defendants Ching, Read, Wallin, and Wilson face a substantial likelihood of liability for their breaches of fiduciary duties, and demand is futile as to each of them.

Likelihood of Substantial Liability of the Compensation Committee Defendants

118. Director Defendants Phillips and Read are further exposed to liability because of their participation on the Compensation Committee. In these positions they approved compensation and finance plans for senior executives, including MacNeill, Hopkins, and Wilson.

119. As the members of the Compensation Committee singularly control approval of MacNeill, Hopkins, and Wilson's compensation, they will not institute this action against Defendants Phillips and Read.

120. According to the Compensation Committee charter, the Compensation Committee had the responsibility to:

a. determine, review and approve on an annual basis the corporate goals and objectives with respect to compensation for the senior executives of [Oilsands].

b. evaluate at least once a year the performance of the senior executives in light of the established goals and objectives and, based upon these evaluations, shall determine the annual compensation for each of the Executive Chairman, Chief Executive Officer, Executive Vice President Project Development and Chief Financial Officer, including salary, bonus, incentive and equity compensation.

c. review and provide oversight for the evaluation process and compensation structure for [Oilsands'] other officers.

d. review [Oilsands'] incentive compensation and other stock-based plans and recommend changes in such plans to the

> Board as needed. The committee shall have and shall exercise all the authority of the Board of Directors with respect to the administration of such plans.

121. Because each Director Defendant approves each other's cash compensation, each Director Defendant would not institute an action against the other Director Defendants, as it would jeopardize their personal compensation.

122. The Compensation Committee members either knew or should have known of the financial misrepresentations described above, given their size, scope, and blatancy. As a result, the members of the Compensation Committee face a sufficiently substantial likelihood of liability for their breaches of fiduciary duties and any demand upon them would have been futile.

Likelihood of Substantial Liability of the Nominating and Governance Members

123. Pursuant to the Company's Nominating and Governance Committee charter, this committee is responsible for developing and recommending a set of corporate governance guidelines and reviewing and recommending changes. As members of the Company's Nominating and Corporate Governance Committee, Defendants Wallin, Tallman and Phillips failed in their duties to develop appropriate governance measures to prevent the wrongdoing that occurred as alleged herein.

Additional Likelihood of Substantial Liability of the Board of Directors

124. Defendant Directors are also exposed to substantial potential liability in this action because of their complete failure to put or enforce appropriate financial and legal compliance controls in place to assure the accuracy of financial information disclosed by Oilsands to the public. Members of the Board of Directors have had knowledge of the wrongdoing and did nothing to prevent it, to stop it, or to prosecute this action. They have ratified the wrongdoing alleged herein.

125. Oilsands' Code of Ethics clearly defines the duties of the Director Defendants. The Code of Ethics states in relevant part:

> a. As a respected public company, it is critical that Oilsands Quest's filings with the Securities and Exchange Commission be complete, timely and accurate in all material respects.
>
> b. At Oilsands Quest, all our employees, consultants, officers and directors are charged with the responsibility of providing management with accurate and complete information to assure we are complying with our public disclosure requirements and our commitment to our shareholders.
>
> c. Commensurate with these special duties, all members of Senior Financial Management and other employees each agree that he or she will:

d. Provide information that is accurate, complete, objective, relevant, timely and understandable to ensure full, fair, accurate, timely, and understandable disclosure in reports and documents filed with or submitted to the SEC or used in other public communications by the Company.

e. Comply with rules and regulations of federal, state, provincial, local and overseas governments, as well as those of other appropriate private and public regulatory agencies that affect the conduct of the Company's business and the Company's financial reporting.

f. Act in good faith, responsibly, with due care, competence and diligence, without misrepresenting material facts or allowing one's independent judgment to be subordinated.

g. Promptly bring to the attention of the Chief Executive Officer, any information concerning (a) any conduct believed to be a violation of law or business ethics, or this Code, including any transaction or relationship that reasonably could be expected to give rise to such a conflict, (b) significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data or (c) any fraud, whether or not material, that involves management or other employees who have a significant role in Oilsands Quest's financial reporting, disclosures, or internal controls.

126. Each and every Director Defendants executed a copy of the Code of Ethics acknowledging that they had received and reviewed them. Each and every Director Defendant breached the Code of Ethics, and in doing so, breached their fiduciary duties to the Company, by causing the Company to issue false financial statements which were not in compliance with GAAP and were materially misleading.

127. Director Defendants reviewed, prepared and/or signed the materially false and misleading press releases and financial statements during the Relevant Period. Consequently, the Director Defendants are exposed to a high likelihood of substantial liability in this action, and are therefore, incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action.

128. The Board of Oilsands approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise these wrongs from Oilsands shareholders or recklessly disregarded the wrongs complained herein, and is therefore not disinterested parties. Each of the Individual Defendants exhibited a systematic failure to fulfill their fiduciary duties, which could not have been an exercise of good faith business judgment and amounted to gross negligence and extreme recklessness.

<u>The Members of the Board of Directors Lack Independence</u>

129. While serving as a director of Oilsands, Defendant MacNeill was appointed acting CEO from September 3, 2010 through February 2011. MacNeill's principal profession was his position with Oilsands and his livelihood depended on the substantial monetary and other compensation he received from Oilsands. Since MacNeill has served as a senior executive officer of the Company within the past three (3) years, Oilsands must concede that MacNeill is not independent under either Amex's listing standards or Oilsands' own standards for director independence.

130. Defendant Hopkins served as the Company's President from August 14, 2006 to September 16, 2008 and the Company's CEO and President from July 7, 2009 to January 15, 2010. Hopkins' principal profession during these times was his position with Oilsands and his livelihood depended on the substantial monetary and other compensation he received from Oilsands. Since Hopkins has served as a senior executive officer of the Company within the past three (3) years, Oilsands has conceded that Hopkins is not an independent director under Amex's listing standards or Oilsands' own standards for director independence.

131. Defendant Wilson served as the Company's Executive Chairman, President and CEO from January 15, 2010 through September 2010. Wilson's principal profession during these times was his position with Oilsands and his livelihood depended on the substantial monetary and other compensation he received from Oilsands. Since Wilson has served as a senior executive officer of the Company within the past three (3) years, Oilsands has conceded that Wilson is not an independent director under Amex's listing standards or Oilsands' own standards for director independence.

132. Defendants Read and Tallman also lack independence based upon their intertwining personal and business relationships. Both Read and Tallman have served as board members PFB Corporation ("PFB"). PFB is a Canada-based company engaged in the manufacturing of insulating building products based on expanded polystyrene technology. Defendant Tallman became a board member of PFB in 2002 and Read became a board member of PFB in 2005. At a minimum, these facts demonstrate nearly a decade's worth of collaboration between Defendants Read and Tallman. Even further, the years of simultaneous participation in multiple companies suggests that Read and Tallman have a developed relationship with aligned interests. This long term relationship between Read and Tallman would preclude them from independently considering Plaintiff's demand and would certainly obstruct his willingness to authorize suit against each other. Consequently, demand on Read and Tallman would have been futile.

133. Phillips, Read, Tallman and Wallin have each received substantial financial compensation from their positions on the Board which creates a financial incentive for these directors to retain their positions as directors and preventing them from acting independently.

134. This compensation is highly material to Defendants and provides a strong financial incentive for the non-executive directors to retain their position on the Board, thus rendering them beholden to the Compensation Committee. As a result of the substantial compensation received by the Board, they will not bring suit against each other in order to preserve their lucrative positions.

135. In order to bring this suit, the Board of Oilsands would be forced to sue themselves and persons with whom they have extensive business and personal entanglements, which they will not do, thereby excusing demand;

136. The acts complained of constitute violations of the fiduciary duties owed by Oilsands' officers and directors and these acts are incapable of ratification;

137. Oilsands has been, and will continue to be subjected to lawsuits for the actions described herein, yet the Individual Defendants and current Board have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for Oilsands any part of the damages the Company has suffered and will continue to suffer;

138. The actions of the Directors and the relationships between and among the Individual Defendants as described above has impaired the Board's ability to validly exercise its business judgment and has rendered it incapable of reaching an independent decision as to whether to accept Plaintiff's demands; and

139. Any suit by the directors of Oilsands to remedy these wrongs would likely expose the Individual Defendants and Oilsands to further violations of securities laws which could result in additional civil actions being filed against one or more of the Board. In light of this, they are hopelessly conflicted in making any supposedly independent determination as to whether to sue themselves.

140. Indeed, Oilsands has already expended and will continue to expend significant sums of money as a result of the illegal and improper actions described above. Such expenditures will include, but are not limited to:

a. Costs incurred to carry out internal investigations, including legal fees paid to outside counsel and experts; and

b. Costs and legal fees for defending Oilsands and certain of the Individual Defendants against private securities class action litigation arising from illegal and improper conduct alleged herein.

141. Plaintiff has not made any demand on the shareholders of Oilsands to institute this action since demand on the shareholders would be a futile endeavor for the following reasons:

a. Oilsands is a publicly held company with approximately 348.15 million shares outstanding, and thousands of shareholders;

b. Making demand on such a number of shareholders would be impossible for Plaintiff, who has no way of finding out the names, addresses or phone numbers of all the shareholders; and

c. Making demand on all shareholders would force Plaintiff to incur huge expenses, assuming all shareholders could be individually identified.

COUNT I
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY FOR DISSEMINATING FALSE AND MISLEADING INFORMATION

142. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

143. As alleged in detail herein, each of the Defendants (and particularly Defendants who were members of the Audit Committee) had a duty to ensure that Oilsands disseminated accurate, truthful and complete information to its shareholders.

144. Defendants violated their fiduciary duties of care, loyalty, and good faith by causing or allowing the Company to disseminate to Oilsands shareholders materially misleading and inaccurate information through, *inter alia*, SEC filings and other public statements and disclosures as detailed herein. These actions could not have been a good faith exercise of prudent business judgment.

145. As a direct and proximate result of Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

COUNT II
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES FOR FAILING TO MAINTAIN INTERNAL CONTROLS

146. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

147. As alleged herein, each of the Defendants had a fiduciary duty to, among other things, exercise good faith to ensure that the Company's financial statements were prepared in accordance with GAAP, and, when put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

148. Defendants willfully ignored the obvious and pervasive problems with Oilsands' internal controls practices and procedures and failed to make a good faith effort to correct the problems or prevent their recurrence.

149. As a direct and proximate result of the Defendants' foregoing breaches of fiduciary duties, the Company has sustained damages.

COUNT III
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES FOR FAILING TO PROPERLY OVERSEE AND MANAGE THE COMPANY

150. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

151. Defendants owed and owe Oilsands fiduciary obligations. By reason of their fiduciary relationships, Defendants specifically owed and owe Oilsands the highest obligation of good faith, fair dealing, loyalty and due care.

152. Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

153. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, Oilsands has sustained significant damages, not only monetarily, but also to its corporate image and goodwill.

154. As a result of the misconduct alleged herein, Defendants are liable to the Company.

155. Plaintiff, on behalf of Oilsands, has no adequate remedy at law.

COUNT IV
AGAINST ALL DEFENDANTS FOR UNJUST ENRICHMENT

156. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

157. By their wrongful acts and omissions, the Defendants were unjustly enriched at the expense of and to the detriment of Oilsands.

158. Plaintiff, as a shareholder and representative of Oilsands, seek restitution from these Defendants, and each of them, and seek an order of this Court disgorging all profits, benefits and other compensation obtained by these Defendants, and each of them, from their wrongful conduct and fiduciary breaches.

COUNT V
AGAINST ALL DEFENDANTS FOR ABUSE OF CONTROL

159. Plaintiff incorporates by reference and reallegess each and every allegation contained above, as though fully set forth herein.

160. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Oilsands, for which they are legally responsible. In particular, Defendants abused their positions of authority by causing or allowing Oilsands to misrepresent material facts regarding its financial position and business prospects.

161. As a direct and proximate result of Defendants' abuse of control, Oilsands has sustained significant damages.

162. As a result of the misconduct alleged herein, Defendants are liable to the Company.

163. Plaintiff, on behalf of Oilsands, has no adequate remedy at law.

COUNT VI
AGAINST ALL DEFENDANTS FOR GROSS MISMANAGEMENT

164. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

165. Defendants had a duty to Oilsands and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure controls of Oilsands.

166. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of Oilsands in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence and candor in the management and administration of Oilsands' affairs and in the use and preservation of Oilsands' assets.

167. During the course of the discharge of their duties, Defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet Defendants caused Oilsands to engage in the scheme complained of herein which they knew had an unreasonable risk of damage to Oilsands, thus breaching their duties to the Company. As a result, Defendants grossly mismanaged Oilsands.

COUNT VII
AGAINST ALL DEFENDANTS FOR WASTE OF CORPORATE ASSETS

168. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

169. As a result of the misconduct described above, and by failing to properly consider the interests of the Company and its public shareholders, Defendants have caused Oilsands to incur (and Oilsands may continue to incur) significant legal liability and/or legal costs to defend itself as a result of Defendants' unlawful actions.

170. As a result of this waste of corporate assets, Defendants are liable to the Company.

171. Plaintiff, on behalf of Oilsands, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Against all Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties;

B. Directing Oilsands to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its shareholders from a repeat of the damaging events described herein;

C. Awarding to Oilsands restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Defendants;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: September 8, 2011

Respectfully submitted,

s/ Kip B. Shuman

Kip B. Shuman
Rusty E. Glenn
THE SHUMAN LAW FIRM
885 Arapahoe Avenue
Boulder, CO 80302
Telephone: (303) 861-3003
Facsimile: (303) 484-4886

William B. Federman
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Avenue
Oklahoma City, OK 73120
Telephone: (405) 235-1560
Facsimile: (405) 239-2112

Attorneys for Plaintiff

VERIFICATION

I, Peggy Proctor, declare that I have reviewed the Amended Complaint ("Amended Complaint") prepared on behalf of Oilsands Quest, Inc., and I authorize its filing. I have reviewed the allegations made in the Amended Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true. I further declare that I am a current holder, and have been a holder, of Oilsands Quest, Inc. common stock during the relevant time period in which the wrongful conduct alleged and complained of in the Amended Complaint was occurring.

Aug 30, 2011
Date

Peggy R Proctor
(Signature of Investor)
PEGGY R. PROCTOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 8, 2011, a true and correct copy of the foregoing **VERIFIED SHAREHOLDER AMENDED DERIVATIVE COMPLAINT** was filed and served via the LexisNexis e-file system to the following:

Jonathon D. Bergman
Terry R. Miller
DAVIS, GRAHAM & STUBBS LLP
1550 Seventeenth St., Suite 500
Denver, CO 80202

Attorneys for Defendants

s/ Kip B. Shuman
Kip B. Shuman

APPENDIX B

EFILED Document
CO Denver County District Court 2nd JD
Filing Date: Oct 17 2011 4:10PM MDT
Filing ID: 40400542
Review Clerk: Sean McGowan
DATE FILED: October 17, 2011

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, Colorado 80202 Telephone: (303) 865-8301	
Plaintiff: PEGGY PROCTOR, derivatively on behalf of Nominal Defendant, OILSANDS QUEST, INC. v. **Defendants:** T. MURRAY WILSON, RONALD BLAKELY, PAUL CHING, CHRISTOPHER H. HOPKINS, BRIAN F. MACNEILL, RONALD PHILLIPS, JOHN READ, GORDON TALLMAN, PAMELA WALLIN **and** **Nominal Defendant:** OILSANDS QUEST, INC.	▲ COURT USE ONLY ▲
Jonathon D. Bergman, #26473 David A. Zisser, #11889 Terry R. Miller, #39007 DAVIS GRAHAM & STUBBS LLP 1550 Seventeenth St., Suite 500 Denver, CO 80202 Telephone: (303) 892-9400 Facsimile: (303) 893-1379 E-mail: jon.bergman@dgslaw.com david.zisser@dgslaw.com terry.miller@dgslaw.com Attorneys for Defendants	Case No. 2011CV2769 Division: 280

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S VERIFIED SHAREHOLDER DERIVATIVE AMENDED COMPLAINT AND JURY DEMAND

Pursuant to C.R.C.P. 23.1 and 12(b)(5), Defendants T. Murray Wilson, Ronald Blakely, Paul Ching, Christopher H. Hopkins, Brian F. MacNeill, Ronald Phillips, John Read, Gordon Tallman, and Pamela Wallin ("Director Defendants") and Nominal Defendant Oilsands Quest, Inc. ("OQI") respectfully submit this Motion to Dismiss Plaintiff's Verified Shareholder Derivative Amended Complaint and Jury Demand ("Complaint" or "Compl.").[1]

INTRODUCTION

OQI is a development stage company engaged in the acquisition, exploration and development of oilsands and other properties in the Provinces of Saskatchewan and Alberta, Canada. Plaintiff, a purported shareholder of OQI, seeks to assert derivative claims against OQI, and its current board of directors based upon nearly identical allegations advanced in a federal securities lawsuit pending in New York.

In sum, Plaintiff seeks judicial authorization to circumvent the established corporate decision-making mechanism (*i.e.*, boards of directors) and pursue direct claims against, and recover monies directly from, the Director Defendants for the cost to restate OQI's financial statements, lost goodwill, legal defense costs and other unspecified damages. (Compl. at ¶100.) Plaintiff seeks this extraordinary relief despite her failure follow Colorado law and make any advance demand upon OQI to take action. Under the extremely high pleading standards that apply under these circumstances, Plaintiff's Complaint must be dismissed for the reasons discussed herein.

Plaintiff's claims are based on two general contentions. *First*, Plaintiff alleges that the Director Defendants and advisors participated in a purported scheme to overstate the value of petroleum resources in OQI's lands by overstating the amount of potentially recoverable bitumen and misrepresenting that the OQI had a commercially viable method for extracting that bitumen when it did not. In fact, however, OQI repeatedly made clear in its public disclosures that it was

[1] As used herein, "Defendants" refers to Director Defendants and Oilsands.

unsure how much of the bitumen was potentially recoverable and whether it could be extracted cost-effectively.

For example, in March 2009, OQI expressly disclosed that: (a) potentially recoverable bitumen was only a small portion of the total bitumen in its oilsands; (b) without a proven method for extracting the bitumen, it might not be possible to extract even the potentially recoverable bitumen cost-effectively; and (c) as a result, OQI's projected timeline for beginning to test extraction methods and production was highly contingent, as were expected yields. In sum, there was no additional material information on this subject to disclose. Because all of the information that Plaintiff contends was misrepresented or omitted was fully disclosed more than two years before Plaintiff filed this lawsuit, the Director Defendants cannot be viewed as acting in bad faith or having substantial exposure to individual liability.

Second, Plaintiff alleges that a technical accounting error that occurred in 2006 in connection with OQI's acquisition of the remaining minority interest in a company in which it owned the majority interest, OQI Quest Sask, Inc. ("OQI Sask"), improperly included the fair market value of stock options in the subsidiary as part of the consideration paid for the minority interest.[2] OQI and its auditors discovered the error while preparing its financial statements for year ended April 30, 2009, and made a prompt public announcement on July 14, 2009. (*Id.* at ¶ 89.) Approximately two weeks later, OQI restated its financial statements. (*Id.* at ¶ 90.) Fixing this error resulted in a downward adjustment on OQI's balance sheet of the value of its' subsidiary. The accounting error occurred despite the presence and engagement of an audit committee and an independent public accountant.

[2] *See* Compl. at ¶¶ 89-94.

As set forth below, Plaintiff's derivative claims are not actionable under C.R.C.P. 23.1 and established law. Plaintiff made no demand on OQI's Board of Directors to pursue appropriate actions arising from the accounting error and other alleged misconduct. Accordingly, Plaintiff must advance particularized allegations necessary to excuse that failure. Further, because Plaintiff alleges that misconduct involves the failure to act, Plaintiff must allege with specifics that the Director Defendants face substantial personal liability and acted in bad faith in light of OQI's Articles of Incorporation, which exculpates the Director Defendants from personal liability for violations of fiduciary duty (except those involving bad faith). Plaintiff's Complaint fails to meet the necessary pleading requirements, which serve to prevent opportunistic litigants from hijacking companies and effectively replacing boards of directors with the litigation process.

Plaintiff's claims are deficient in other respects. For example, Plaintiff fails to allege sufficiently her standing to bring this action for the benefit of OQI. In addition, the Complaint fails to state a claim under Rule 12(b)(5) because, at most, Plaintiff seeks to allege claims for a breach of a duty of care. However, OQI has limited the liability of its directors pursuant to Colorado law, and Plaintiff thus fails to state an actionable claim against the Defendants. Accordingly, for the reasons set forth herein, the Complaint should be dismissed.

STATEMENT OF FACTS

A. Background.

OQI is an oil and gas exploration company headquartered in Calgary, Canada and incorporated under the laws of the State of Colorado. OQI acquires, explores, and develops natural resources properties, and holds interests in oil sands deposits in the provinces of Saskatchewan and Alberta. (Compl. at ¶ 3.)

The current OQI company is the product of a combination of two entities. CanWest Petroleum Corporation ("CanWest") was a company incorporated in Colorado that engaged in exploration for and mining of oil shale in Saskatchewan. CanWest was formed as Uranium Power Corporation in 1998. (*Id.* at ¶ 3; *see* Ex. A., Declaration of Terry Miller ("Miller Decl.") at Tab 1, OQI FY 2006 Form 10-KSB, p. 2 (cited and quoted in Compl. at ¶¶ 45-46.))[3] As of June 2006, CanWest owned a controlling interest in Oilsands Quest, Inc., which at the time was a private Alberta operating company that owned exploration permits in northwest Saskatchewan. (Compl. at ¶ 41.) At the time, Oilsands Quest, Inc. was focused solely on oil sands exploration. (Ex. A., Miller Decl. at Tab 2, OQI Press Release dated June 12, 2006 quoted in Compl. at ¶ 41.)

On August 15, 2006, CanWest and Oilsands Quest, Inc. entered into an agreement to combine the two companies and changed its name to Oilsands Quest, Inc. (hereafter, "OQI"). (Compl. at ¶ 47.) On the same day that CanWest and Oilsands Quest, Inc. combined companies, OQI, which owned a controlling interest in OQI Sask, acquired the remaining interest in OQI Sask. (*Id.* at ¶ 49.)

B. OQI's Early Efforts To Explore and Develop Permitted Lands In Saskatchewan For Bitumen.

In 2004, OQI began acquiring permits to explore for bitumen in western Canada, including permits for over 1.4 million acres in Saskatchewan known as "Firebag East," where

[3] A court may consider the contents of "a document that was referred to in, but not attached to, the complaint without converting [a] motion to dismiss into a motion for summary judgment." *Yadon v. Lowery*, 126 P.3d 332, 336 (Colo. App. 2005) (relying on interpretations of Fed. R. Civ. P. 12(b)(6)).

Shell Oil Company had previously identified the presence of bitumen. (Compl. ¶¶ 32-33.) OQI created OQI Sask to manage the project, retaining 70% OQI Sask's equity. (*Id.* at ¶ 33.) In late 2005 and early 2006, OQI Sask drilled exploratory holes in portions of Firebag East, and discovered bitumen at Axe Lake, which made up approximately 5% of the Saskatchewan lands under permit at that time. (*Id.* ¶ 34.) Extrapolating from the results at Axe Lake, OQI speculated that all of northern Saskatchewan contained 50-60 billion barrels of bitumen, but did not provide an estimate of the amount OQI believed would be potentially recoverable from OQI's acreage using commercially viable means. (*Id.* ¶ 35.)

Importantly, more relevant to the value of OQI Sask's mineral rights than the total amount of bitumen in the oilsands is the potentially recoverable amount, and whether the potentially recoverable bitumen can be extracted cost-effectively. Bitumen is most commonly extracted by a technique known as steam-assisted gravity drainage ("SAGD"), which uses heat to liquefy the thick, tar-like bitumen to allow it to flow out of a well. (*Id.* ¶ 29.) Ordinarily, "for the SAGD method to be successful there must be a layer of shale or other non-permeable covering overlying the bitumen to prevent the heat from dissipating." (*Id.*) Because much of OQI's land lacked such a surface, it was not clear whether the bitumen could be extracted using SAGD. (Ex. A, Miller Decl., Tab 3, OQI Apr. 30, 2008 10-K, at 15-16.)

In March 2006, OQI retained the investment bank TD Securities, Inc. ("TD Securities") as its financial advisor in connection with financing development of the Saskatchewan oilsands. (*Id.* ¶ 39.) On August 15, 2006, OQI acquired the outstanding equity in OQI Sask, using OQI stock as consideration. (*Id.* ¶ 49.)

C. OQI Estimates the Total Amount of Bitumen in Its Acreage And It Discloses Uncertainties Surrounding the Recovery Process.

OQI used different formulations to express its expectations about the likelihood of extracting bitumen from the oilsands under permit using commercially viable methods. Importantly, however, OQI always made clear that it could not be sure whether it could economically extract the bitumen, and, if so, in what amounts. (*See, e.g.*, Miller Decl. Tab 4, OQI Mar. 26, 2007 Press Release, at 3 (stating that the bitumen at Axe Lake "will likely be suitable for in-situ recovery," but cautioning that "[t]he commercial viability of the resource potential, or whether currently commercial recovery processes will be applicable, cannot be determined" without further testing). *Id.* at 2.)

D. OQI Releases Estimates of The Bitumen at Axe Lake While Reiterating that The Bitumen Might Not Be Commercially Recoverable.

OQI retained an independent geological consultant, McDaniel & Associates Consultants Ltd. ("McDaniel"), to estimate the total amount of bitumen in OQI's oilsands and the amount that was potentially recoverable, and to opine on whether the potentially recoverable bitumen could be extracted cost-effectively. On November 5, 2007, OQI issued a press release reporting McDaniel's best estimate was that there were 1.3 billion barrels of bitumen at Axe Lake. (Compl. ¶ 64.) The press release did not estimate the volume of potentially recoverable bitumen. The press release reiterated that OQI had not yet determined what recovery process might be "suitable" at this site: while OQI said that it "expect[ed]" that recovery of bitumen would be commercially viable, it could not determine "whether currently available commercial recovery processes will be applicable" without further testing. (Miller Decl. Tab 5, OQI Nov. 5, 2007 Press Release, at 3.)

OQI's Form 10-K for the fiscal year ending April 30, 2008 disclosed that McDaniel had revised its "best estimate" of the amount of bitumen at Axe Lake upward to 1.7 billion barrels; had opined that "significant portions" of the bitumen were potentially recoverable using existing demonstrated technologies; but had also cautioned that since Axe Lake lacked a shale cap, recovery using existing methods might not be possible. (Miller Decl. Tab 3, OQI Apr. 30, 2008 10-K, at 15.)[4]

E. OQI Explicitly Discloses that McDaniel's Estimates Reflected Total Rather than Potentially Recoverable Bitumen and Reiterates that the Bitumen Might Not Be Recoverable Using Commercially Viable Methods.

On March 12, 2009, OQI issued a press release disclosing that, of the prior reported "best estimate" by McDaniel of the total amount of bitumen at Axe Lake, only 130 million barrels were even potentially recoverable and that the remainder was "unrecoverable at this time." (Compl. ¶ 84.) Under McDaniel's "low estimate," there were no potentially recoverable barrels of bitumen. And, as the press release acknowledged, even the best estimate of recovering 130 million barrels was predicated upon an assumption – that the existing SAGD method could be used to extract the bitumen – that had not been shown to be technologically possible. (*Id.*)

F. OQI Restates Its Financial Statements To Correct Its Accounting For the Acquisition of the Outstanding Minority Interest in OQI Sask.

On July 14, 2009, OQI announced that it would delay filing its annual report and would restate its financial reports for fiscal years 2007 and 2008 and the first three quarters of 2009 to revise its accounting for its acquisition of the outstanding minority interest in OQI Sask – and

---

[4] On January 13, 2009, picking up on information in the April 30, 2008 10-K, TD Securities issued a report on OQI, "Tough Times in the Sandbox," stating that the absence of a shale cap at Axe Lake was "a significant technical hurdle" (Compl. ¶ 82), and that OQI might be unable to develop a cost-effective extraction method. (Miller Decl. Tab 6, OQI Jan. 13, 2009 TD Securities Report at 2.)

thus the book value of certain assets – due to a change in OQI's interpretation of relevant GAAP. (*See* Miller Decl. Tab 7, OQI News Release dated July 14, 2009.)[5] The restatement had nothing to do with OQI's ability to extract bitumen using commercially viable methods.

H. Ensuing Litigation.

On February 24, 2011, a securities class action lawsuit captioned *Rubenstein v. Oilsands Quest, Inc., et al.*, Case No. 1:11-cv-01288-JSR was filed in the United States District Court for the Southern District of New York ("*Rubenstein*").[6] The amended complaint in *Rubenstein* premised its claims for violations of federal securities laws on substantially the same allegations that Plaintiff alleges here. For example, *compare* Compl. at ¶¶ 34-37 *with* Miller Decl. Tab 8 at ¶¶ 45-47, Compl. at ¶¶ 44-54, *with* Miller Decl. Tab 8 at ¶¶ 52-57 (nearly verbatim allegations with emphasis added in nearly identical manner).[7]

Plaintiff filed her Complaint on April 13, 2011, advancing claims for breach of fiduciary duty and other claims against the Director Defendants based upon circumstances surrounding the restated accounting of the OQI Sask acquisition. The Complaint is premised on the same factual allegations contained in the initial complaints filed in *Rubenstein.*

---

[5] In accounting for the acquisition and calculating the purchase price, OQI had included the value of stock options of a subsidiary that were granted while OQI controlled the subsidiary. OQI later concluded that relevant GAAP precluded including those options in the purchase price. The restatement affected the book value of certain OQI assets, not their actual value. *See id.* (restatement does not affect the "value of the Company's resource base").

[6] A true and accurate copy of the Amended Complaint filed in *Rubenstein* is attached to the Miller Decl. as Tab 8.

[7] On March 9, 2011, another securities class action lawsuit captioned *Russell v. Oilsands Quest, Inc., et al.*, No. 1:11-cv-0590-REB-MJW was filed in the United States District Court for the District of Colorado ("*Russell*"). Like the *Rubenstein* complaint, the *Russell* complaint alleged the same facts alleged here by Plaintiff in nearly identical language. After lead counsel was appointed in the *Rubenstein* matter, the parties to the *Russell* matter stipulated to a dismissal.

ARGUMENT

I. APPLICABLE LEGAL STANDARDS TO PLAINTIFFS' DERIVATIVE CLAIMS

A. Legal Standards For Derivative Claims Without Advance Demand.

A derivative suit is an extraordinary remedy, available to a shareholder "only when there is no other road to redress." *Bell v. Arnold*, 487 P.2d 545, 547 (Colo. 1971).[8] Pursuant to C.R.C.P. 23.1, courts generally will not interfere with a corporation's management, including the corporation's election to pursue litigation. *Id.*; *see Hirsh v. Jones Intercable, Inc.*, 984 P.2d 629, 636 (Colo. 1999) (describing the general presumption that general partners and directors are disinterested and independent). Rule 23.1 precludes shareholders from usurping the power of a corporation to control litigation unless a shareholder's complaint alleges "with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort." C.R.C.P. 23.1.

The purpose of the demand requirement in Rule 23.1 is to provide "a corporation the opportunity to rectify an alleged wrong without litigation, and to control any litigation which does arise." *Aronson*, 473 A.2d at 809 (cited in *Hirsh*, 984 P.2d at 636). "A demand requirement gives the directors—even interested, non-independent directors—an opportunity to consider or reconsider the issue in dispute...." *Kenney v. Koenig*, 426 F. Supp.2d 1175, 1181 (D. Colo. 2006) (quotation omitted). Accordingly, where, as here, a plaintiff makes no demand on

---

[8] OQI is a Colorado corporation, and therefore, Colorado law controls. However, because Delaware has a highly developed jurisprudence regarding shareholder derivative actions, to which Colorado courts frequently look, citations to Delaware law have been included. *See Hirsh v. Jones Intercable, Inc.*, 984 P.2d 629, 636 (Colo. 1999) (citing seminal shareholder derivative cases *Aronson v. Lewis*, 473 A.2d 805, 815 (Del. 1984) and *Zapata Corp. Maldonado*, 430 A.2d 779, 785 (Del. 1981)).

directors prior to initiating a derivative action, the plaintiff must allege particularized facts showing that demand would have been futile. *Id.* at 1180-81.

Procedurally, the Rule 23.1 demand requirement calls for "substantially more" particularity in the complaint than may be required to plead other claims. *Thomas v. Rahmani-Azar*, 217 P.3d 945, 947 (Colo. App. 2009) ("Because C.R.C.P. 23.1 is substantially identical to Fed. R. Civ. P. 23.1, federal case law is highly instructive" in interpreting C.R.C.P. 23.1); *In re Storage Tech. Corp. Sec. Litig.*, 804 F. Supp. 1368, 1375 (D. Colo. 1992); *Gaubert v. Fed. Home Loan Bank Bd.*, 863 F.2d 59, 68 (D.C. Cir. 1988); *Kaufman v. Kan. Gas & Elec. Co.*, 634 F. Supp. 1573, 1578 (D. Kan. 1986) ("'liberal pleading' requirement of Rule 8" does not apply to Rule 23.1 allegations). Thus, to overcome the powerful presumptions that directors act faithfully in their fiduciary duties, *Rales v. Blasband*, 634 A.2d 927, 933 (Del. 1993); *Hirsh*, 984 P.2d at 636, a plaintiff must provide more than conclusory statements; the plaintiff must plead "particularized factual statements" which excuse the demand requirement. *Brehm v. Eisner*, 746 A.2d 244, 254 (Del. 2000). Conclusory "allegations of facts or law not supported by allegations of specific fact may not be taken as true." *Levine v. Smith*, 591 A.2d 194, 207 (Del. 1991).

B. For Claims of Inaction, Plaintiff Must Plead That the Director Defendants are Not Disinterested and Independent

The Colorado Supreme Court has endorsed the well-established test embraced by the Delaware courts in *Aronson* to determine whether demand is excused under Rule 23.1. *Hirsh*, 984 P.2d at 636 (citing *Aronson*, 473 A.2d at 815); *see also Bach v. Nat'l W. Life Ins. Co.*, 810 F.2d 509, 513-14 (5th Cir. 1987) (predicting that Colorado Supreme Court would follow *Lewis v.*

Graves, 701 F.2d 245, 248-49 (2d Cir. 1983)).[9] Under the *Aronson* test, a demand on the board is excused only if the complaint contains particularized factual allegations raising reasonable doubt that either: (a) the directors are not disinterested and independent; or (b) the challenged action was the product of a valid exercise of business judgment. *Brehm*, 746 A.2d at 256.

However, where plaintiff challenges *inaction* by directors, the second prong of the *Aronson* test is eliminated, and the inquiry is limited to whether the directors were disinterested and independent at the time the plaintiff filed the complaint. *Rales*, 634 A.2d at 930; *Kenney*, 426 F. Supp. 2d at 1181 (explaining difference between *Aronson* test and *Rales* test).

Here, Plaintiff contends that the Director Defendants failed to maintain proper oversight and accounting controls over a period of time, which allowed the company to issue allegedly false statements regarding the value of company assets. (Compl. at ¶¶ 5-6; 142-155, Claims I, II, and III.) That is a claim for inaction, for which demand futility is analyzed under the tests set forth in *Rales* and *In re Caremark Int'l Deriv. Litig.*, 698 A.2d 959 (Del. Ch. 1996) ("*Caremark*"). *See Guttman v. Huang*, 823 A.2d 492, 505 (Del. Ch. 2003) (A claim that the board failed to oversee the process by which the company prepared its financial statements "is premised on what may be called, for short, a *Caremark* claim").

---

[9] The court in *Lewis* held that "[t]he fact that a Corporation's directors have previously approved transactions subsequently challenged in a derivative suit does not inevitably lead to the conclusion that those directors, bound by their fiduciary obligation to the corporation, will refuse to take up the suit." *Lewis*, 701 F.2d at 248. In curtailing the types of cases where demand may be excused, the *Aronson* court relied upon *Lewis* in formulating the test for demand futility. *Aronson*, 473 A.2d at 817 & n.11; *see also Andropolis v. Snyder*, 2006 WL 2226189, at *8 (D. Colo. 2006) (quoting *Lewis*, 701 F.2d at 248). The deference to directors inherent in the *Lewis* opinion comports with Colorado law, which also hews toward director deference. *See Bach*, 810 F.2d at 513-14 ("Colorado law reflects considerable deference to business judgment").

While there is no shortage of either cases or nuance in the law of shareholder derivative litigation, a recent decision from the Delaware Court of Chancery serves as a useful template for analysis. The court in *Guttman* considered a claim almost identical to the claim raised here: a derivative action alleging the board's failure to prevent accounting irregularities. 823 A.2d at 493-99. In applying the *Rales* test, the *Guttman* court first considered whether any directors were "interested" in a challenged transaction, in the sense that a director stood on two sides of a challenged transaction. *Id.* at 502-03. Next, the court considered whether the complaint set forth "particularized facts that plead a non-exculpated claim of breach of fiduciary duty against a majority of the board...." *Id.* at 502, 503-507. The court dismissed the complaint because a majority of the board did not stand on two sides of a challenged transaction, and because the complaint contained no particularized factual allegations "showing that the directors were conscious of the fact that they were not doing their jobs." *Id.* at 506-07. As set forth below, the Complaint contains no particularized factual allegations showing that the Director Defendants consciously disregarded their obligations.

C. Where the Articles of Incorporation Limit Director Liability, Plaintiff Must Plead That the Director Engaged In Bad Faith by Knowingly Failing to Discharge, or Consciously Disregarding, Their Fiduciary Obligations

In accordance with Colorado law, OQI has limited the scope of potential liability for its board of directors. In this regard, the OQI Articles of Incorporation provide as follows:

> shall not be personally liable to the corporation ... for monetary damages for breach of fiduciary duty as a director, except for (I)[sic] liability for any breach of the director's duty of loyalty to the corporation or to its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for acts [connected to unlawful distributions], or (iv) for any transaction from which the director derived an improper personal benefit.

(Articles of Incorporation of Uranium Power Corporation n/k/a OQI ("OQI Articles"), at Article VIII, Miller Decl., Tab 9.)[10] Accordingly, the Director Defendants are exculpated from liability for violations of fiduciary duty except those involving intentional misconduct or a knowing violation of law (*i.e.*, fraudulent or bad faith misconduct).[11]

The Delaware Supreme Court has recently held that where, as here, a plaintiff seeks to show that demand is excused because directors face a substantial likelihood of liability and the directors are exculpated from liability (except for claims based on fraudulent or bad faith conduct), plaintiff must plead particularized facts that demonstrate that the directors acted with scienter, meaning that the directors acted in bad faith by knowingly failing to discharge or consciously disregarding their fiduciary obligations. *Citibank*, 964 A.2d at 125 (quoting *In re Walt Disney Co. Deriv, Litig.*, 906 A.2d 27, 67 (Del. 2006)).[12]

---

[10] Because it is a public filing, the Court may take judicial notice of the OQI Articles in deciding this Motion. *See* Colo. R. Evid. 201(b); *Walker v. Van Laningham*, 148 P.3d 391, 397-98 (Colo. App. 2006) (relying on interpretation of Fed. R. Civ. P. 12(b)(6), holding that court may take judicial notice of public records without converting Rule 12(b)(5) motion into motion for summary judgment); *see also In re Computer Sciences Corp. Deriv. Litig.* 244 F.R.D. 580, 587 (C.D. Cal. 2007) (taking judicial notice of articles of incorporation under Fed. R. Evid. 201(b)).

[11] In an effort to circumvent the exculpatory clause, Plaintiff attempts to dress what are in essence claims for a breach of the duty of care as claims for breach of the duty of loyalty. However, to make the leap from a negligence claim to a claim of disloyalty, established law requires particularized factual allegations of bad faith and showing that the directors acted with scienter – a conscious disregard of the directors' duties so egregious that the conduct displays a disloyalty to the company. *In re Citibank, Inc. S'holder Deriv. Litig.*, 964 A.2d 106, 125 (Del. Ch. 2009). Plaintiff's Complaint lacks the necessary particularized factual allegations from which disloyalty (*i.e.*, bad faith) can be inferred.

[12] As noted in *Guttman*, where an exculpatory clause in a corporate charter protects directors from liability for breaches of the duty of care, plaintiff must plead a non-exculpated claim involving bad faith; *i.e.*, that the board failed to validly exercise business judgment. *Guttman*, 823 A.2d at 501.

II. PLAINTIFF FAILS TO ALLEGE WITH PARTICULARITY FACTS SHOWING THAT DEMAND IS FUTILE.

Plaintiff's Complaint fails under the first level of analysis, that is, whether Plaintiff's complaint has advanced particularized factual allegations raising reasonable doubt whether the Director Defendants are not disinterested or independent.

A. The Board is Disinterested.

To overcome the powerful presumption that a board of directors should be allowed to decide the course of action that is in the best interest of a corporation, a plaintiff must allege particularized facts to support an inference that the board is "*incapable* of exercising its power and authority to pursue derivate claims directly." *White v. Panic*, 783 A.2d 543, 551 (Del. 2001) (emphasis in original; citations omitted).

1. No Director Defendant Personally Benefited From The Alleged Misconduct.

Plaintiff advances no allegations that the Director Defendants were "interested" in any transaction connected to the wrongful conduct alleged in the Complaint. There is no legitimate suggestion that any Director Defendant would benefit by enabling or acquiescing in the alleged scheme to overstate OQI's potential bitumen resources or the accounting error addressed by the restatement. Accordingly, no Director Defendant is alleged to hold an interest in the product of the alleged wrongdoing, and cannot be "interested" on such grounds. *See Guttman*, 823 A.2d at 503 (rejecting argument that directors were "interested" because they allegedly sold company stock to third parties with inside information).

2. *No Director Defendant Faces A Substantial Likelihood Of Liability.*

Where, as here, the directors are not interested in a challenged transaction, "the key inquiry in the *Rales* analysis is whether [Plaintiff has] pled facts that show that [the Director Defendants] face a substantial liability to compromise their ability to act impartially on a demand." *Guttman*, 823 A.2d at 503. To establish a disqualifying interest by threat of liability, naming a director as a defendant is not enough. *Kenney*, 426 F. Supp. 2d at 1181 ("[A] plaintiff cannot establish a disqualifying interest simply by noting that a director is named as a defendant."); *see also Hirsch*, 984 P.2d at 636 ("We note, however, that in many cases, an unparticularized allegation that the actors from whom demand is sought are the same actors responsible for the alleged wrong might not satisfy the [demand] requirements ...."). Only a "*substantial likelihood* of personal liability prevents a director from impartially considering a demand." *Kenney*, 426 F. Supp. 2d at 1182 (emphasis in original; citation omitted). Thus, while a plaintiff generally need not allege with particularity the facts supporting the merits of its derivative claims, the plaintiff *must do so when relying on the potential of personal liability as the basis for demand futility. See id.* at 1181; *cf. Hirsch*, 984 P.2d at 636.

As explained below, three director Defendants face no liability whatsoever because they joined the board *after* the alleged misconduct occurred. Further, the allegations as to all Director Defendants fail to allege with particularity the type of bad faith required to establish a substantial likelihood of liability against directors protected from negligence by an exculpatory clause in a company's articles of incorporation.

(i) Three Directors Face No Likelihood of Liability Because They Joined the Board After The Alleged Misconduct Occurred.

At the outset, the Court can eliminate three Director Defendants (Blakely, MacNeill, and Ching) from the analysis here because they joined the Board *after* the last alleged misleading statement was issued by OQI.[13] The last allegedly misleading statement related to the potential bitumen resource estimates was issued on June 27, 2008. (Compl. at ¶¶ 67-68.) These Defendant Directors could not have been involved in the 2006 accounting error, which was rectified by the restatement in 2009. (Compl. at ¶ 37.) Defendants Blakely, MacNeill, and Ching should never have been named defendants in this action, and face no threat of liability.[14]

Because Plaintiff has not (and cannot) advance any allegation that these three Director Defendants lacked independence, Plaintiff's burden is to show that a majority of the nine-seat board of directors (five of the remaining six Defendant Directors) were "*incapable* of exercising [their] power and authority to pursue derivate claims directly." *White*, 783 A.2d at 551. Stated differently, the Court need only find that Plaintiff's allegations of demand futility fail as to only two of the remaining six directors in order to dismiss the Complaint because a majority of the OQI Board of Directors is unquestionably disinterested and independent.

(ii) Plaintiff Fails To Allege With Particularity That The Director Defendants Acted In Bad Faith.

Plaintiff's conclusory allegations of substantial liability as to the remaining six Defendant Directors (*see* Compl. at ¶¶ 106-128) fall far short of the required particularized allegations to

[13] Ronald Blakely joined on April 7, 2009 (Compl. at ¶ 10), Brian MacNeill joined on August 25, 2009 (Compl. at ¶ 11), and Paul Ching joined on January 7, 2010 (Compl. at ¶ 18).

[14] Because these Defendants were not on the OQI board during the period in question, all claims asserted against Blakely, MacNeill and Ching must be dismissed for failure to state a claim regardless of the Court's conclusion regarding demand futility.

make them "interested" for purposes of demand futility due to a substantial likelihood of personal liability. *Kenney*, 426 F. Supp. 2d at 1181-82.

Where, as here, the directors are protected from liability for breaches of the duty of care through an exculpatory clause in a corporate charter, and plaintiff advances a claim involving inaction (a *Caremark* claim), "only a sustained or systemic failure of the board to exercise oversight-such as an utter failure to attempt to assure a reasonably information and reporting system exists-will establish the lack of good faith that is a necessary condition to liability." *Guttman*, 823 A.2d at 506.

Plaintiff's burden to show bad faith is even higher than gross negligence, and "is possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *Citigroup*, 964 A.2d at 125 (quotation omitted). Taken together, the protection of an exculpatory provision, and the difficulty with pleading and proving a *Caremark* claim place "an extremely high burden" on Plaintiff. *Id.*

As set forth above, no Director Defendant has any exposure to liability for an alleged breach of the duty of care because the OQI Articles bar claims for breach of the fiduciary duty of care. This exculpatory provision is permitted by Colorado law (*see* C.R.S. § 7-108-402(1)), and precludes a claim that the Defendant Directors breached a duty of care. Therefore, any claim against the Defendant Directors for negligence or even gross negligence in discharging their duties fails as a matter of law. *Emerald Partners v. Berlin*, 787 A.2d 85, 92 (Del. 2001) (to state claim outside the scope of an exculpatory clause, "a shareholder's complaint must allege well-pled facts that, if true, implicate breaches of loyalty or good faith."); *Malpiede v. Townson*, 780 A.2d 1075, 1094-95 (Del. 2001) (holding that "even if the plaintiffs had stated a claim for gross negligence, such a well-pleaded claim is unavailing" in light of an exculpatory provision). Thus, the Director Defendants' potential exposure to liability can exist only if the Plaintiff pleads a non-exculpated claim *supported by* particularized facts. *Guttman*, 823 A.2d at 501. She has not.[15]

Plaintiff alleges, in a conclusory manner, that Oilsands' internal controls were inadequate to prevent it from improperly inflating the value of its natural resource assets. (Compl. ¶ 6.) To prevail on such a theory, Plaintiff must plead and prove "a sustained or systematic failure of the board to exercise oversight—such as an utter failure to attempt to assure a reasonable information and reporting system exists." *Caremark*, 698 A.2d at 971. The claim requires "a showing that the directors were conscious of the fact that they were not doing their jobs." *Guttman*, 823 A.2d at 506.

Examples of allegations that would be sufficient to excuse demand for claims based on inadequate accounting controls under *Caremark* are assertions that a company lacked an audit committee, or that the company had an audit company that met only sporadically and devoted "patently inadequate time to its work, or that the audit committee had clear notice of serious accounting irregularities and simply chose to ignore them or, even worse, to encourage their continuation." *Id.* at 507; *Kanter v. Barella*, 489 F.3d 170, 181 (3d Cir. 2007) (demand not excused where plaintiff fails to allege absence of audit committee, "or the existence of an audit

[15] Plaintiff's remaining claims merely bootstrap the "wrongful acts and omissions" asserted in her claims for breach of fiduciary duty. (Compl. at ¶ 157 (claim for unjust enrichment); ¶ 160 (claim for "abuse of control"); ¶ 166 (claim for "gross mismanagement"); and ¶ 169 (claim for waste).) For the same reasons that the alleged misconduct does not expose the Defendant Directors to a substantial likelihood of liability on Plaintiff's claims for breach of fiduciary duty, the same allegations of misconduct do not expose them to liability on claims IV through VII.

committee whose work was patently inadequate or that function with clear notice of serious accounting irregularities"). Other examples found in case law include directors that met with government regulators at least ten times to discuss the same violation of law, *In re Abbott Labs. Deriv. S'holders Litig.*, 325 F.3d 795, 808-09 (7th Cir. 2001), or directors that ignored specific audit reports showing clear signs of impropriety throughout the company. *In re Countrywide Fin. Corp. Deriv. Litig.*, 554 F. Supp. 2d 1044, 1058-64 (C.D. Cal. 2008). No such allegations have been made here.

With respect to the adequacy of allegations about "red flags" that should have warned the Defendant Directors of the accounting errors involved in potential resource estimates, courts routinely recognize that "allegations that directors 'must have known' about and 'failed to prevent and correct the improper financials' are insufficient." *Jones ex rel. CSK Auto Corp. v. Jenkins*, 503 F. Supp.2d 1325, 1333 (D. Ariz. 2007) (*citing Rattner v. Bidzos,* No. Civ.A 19700, 2003 WL 22284323, at *10 n. 53 (Del. Ch. Sept. 30, 2003)).[16] Plaintiff fails to allege any specific warning that the potential bitumen resource estimates were incorrect, and further fails to allege which of the Defendant Directors received any purported "red flags," what those persons did in response, and what they should have done in response. This failure is fatal as to claims against all Director Defendants. *Citigroup*, 964 A.2d at 126-27. Indeed, a claim that the company experienced an adverse event, even if red flags did exist, still fails to pass muster under

[16] *Caviness v. Evans*, 229 F.R.D. 354, 360 (D. Mass. 2005) (no substantial likelihood of liability on *Caremark* claim arising out of alleged accounting improprieties where corporation's audit committee met thirty-nine times over five year period and plaintiff failed to plead facts showing that audit committee was on "clear notice" of improprieties); *Rattner*, 2003 WL 22284323, at *13 (no substantial likelihood of liability on *Caremark* claim where court was "unable, from the face of the Amended Complaint, to determine what role, if any, the Board or its members played in the internal processes of collecting and disseminating financial information.").

Rule 23.1 unless the claim is coupled with allegations that the directors *consciously* ignored the red flags or *knowingly* failed to monitor the company. *Id.* at 127. Because Plaintiff pleads no "red flags," the Complaint is even more deficient than the complaint in *Citigroup*, which failed to allege which directors knew about warnings, what they knew, or when they knew of the warnings. *Id.*

Moreover, the process that was put in place by the Director Defendants (the details of which Plaintiff fails to identify) still resulted in disclaimers that put OQI's published estimates of potentially recoverable bitumen into perspective with cautionary language. For example, OQI's press release stated that OQI "expect[ed]" that recovery of bitumen would be commercially viable, but it could not determine "whether currently commercial recovery processes will be applicable" without further testing. (Miller Decl. Tab 5, OQI Nov. 5, 2007 Press Release, at 3.)[17]

Further, Plaintiffs' reliance on allegations of scienter from the related securities lawsuits do not help. (Compl. ¶ 102.) For claims alleging a lack of oversight that allowed fraudulent statements to be issued, courts held that the scienter pleading requirement focuses on the state of mind of the directors charged with oversight – not the issuer of the alleged false statements. Accordingly, it is not enough to simply allege that fraudulent statements were made under the Director Defendants' watch. Rather, Plaintiff must show that the Director Defendants *knew* the control systems put in place were deficient and allowed the fraudulent statements to be issued.

[17] Of course, the effectiveness of the disclaimers in this context is not the issue because the Director Defendants are insulated from claims for breach of the duty of care under the OQI Articles. Rather, the point is that the *effort* to place such estimates into a proper context eliminates against any possible inference that the Defendant Directors knew that their reporting systems were inadequate because they attempted to disseminate accurate estimates.

Guttman, 823 A.2d at 506-07; *Rattner*, 2003 WL 22284323, at *13. Plaintiff's Complaint lacks any such allegation.

In an attempt to meet the scienter requirement, Plaintiff refers to the Defendant Directors' service on various OQI committees. There are no allegations about the activities of such committees. At most, these allegations show only that the committees existed. *Rattner*, 2003 WL 22284323, at *13 ("The most I can safely admit knowledge of is that [three directors] were members of the Audit Committee ... and, thus, that the Company had an Audit Committee".). Plaintiff's allegations focused on committee service are inadequate for the following reasons:

Audit Committee: Plaintiff acknowledges that an Audit Committee existed (Compl. at ¶¶ 108-112), but offers no details about the practices of that committee that have any bearing on the sufficiency of controls relevant to Plaintiff's claims. Plaintiff fails to allege facts suggesting that the Audit Committee's activities constituted an "utter failure to attempt to assure a reasonable information and reporting system exists." *See King v. Baldino*, 648 F. Supp. 2d 609, 621-22 (D. Del. 2009).

As with the allegations in *Caviness*, 229 F.R.D. at 360 and *Rahbari v. Oros*, 732 F. Supp. 2d 367 (S.D.N.Y. 2010), the allegations here that, because certain Defendant Directors served on the Audit Committee, they "either knew or should have known" of the accounting improprieties (Compl. at ¶ 109) are not enough to render the Defendant Directors interested. An allegation that a director "either knew or should have known" is the antithesis of particularized pleading required by Rule 23.1, which requires facts suggesting that the directors *did know* of accounting irregularities. *Guttman*, 823 A.2d at 507 & n.36; *In re Xcel Energy, Inc.*, 222 F.R.D. 603, 607 (D. Minn. 2004) ("The amended complaint repeats such phrases as, 'knew or should have known,' 'knew or acquiesced in,' 'authorized, acquiesced and/or failed to . . .' and '[had] actual knowledge of or consciously disregarded.' These broad, generalized and conditional statements, however, do not constitute facts pleaded with particularity."). Similarly, an allegation that all directors "reviewed and approved" false statements (*see* Compl. at ¶ 109) offers no facts supporting an inference of knowledge necessary to establish a *Caremark* claim.[18]

Plaintiff also alleges (without any particularized facts) that Defendant MacNeill faces exposure to a greater likelihood of liability because he is a "financial expert." (Compl. at ¶ 112.) Courts reject such allegations. *Citigroup*, 964 A.2d at 128 n.63 ("Directors with special expertise are not held to a higher standard of care in the oversight context simply because of their status as an expert.").

Reserves and Resources Committee: For similar reasons, the assertions that certain Director Defendants face the substantial likelihood of liability due to their service on OQI's Reserves and Resources Committee ("R&R Committee") also fail. (Compl. at ¶¶ 113-117.) Although Plaintiff alleges that the R&R Committee meets five times each year (Compl. at ¶ 114), no facts alleged in the Complaint show the R&R Committee's process or structure, or how any alleged inadequate procedure translated into allegedly erroneous bitumen estimates. More importantly, Plaintiff makes no allegation that the R&R Committee members *knew* their process was inadequate.[19]

[18] In addition, Plaintiff asserts that Defendants MacNeill and Blakely face exposure to liability based on their service on the Audit Committee. However, by Plaintiff's own allegations, MacNeill and Blakely did not join the board until after the alleged errors had been made and corrected. These allegations, therefore, are insufficient.

[19] This pleading defect particularly impacts Defendant Ching, who joined the board after the alleged mistake and correction occurred. (Compl. at ¶ 18,)

In sum, Plaintiff alleges that (1) OQI issued statements based on incorrect estimates of potential bitumen resources, and (2) a committee exists to ensure the accuracy of such estimates. From these limited assertions, Plaintiff simplistically concludes that the Director Defendants consciously disregarded their jobs to ensure the presence of adequate controls. Established case law requires Plaintiff to allege much more and identify with particularity how the Director Defendants consciously disregarded their obligations. Stated differently, Plaintiff must connect the circumstances surrounding the alleged accounting errors to knowledge that the system (or lack thereof) would allow flawed potential bitumen estimates to be issued. *Citibank*, 964 A.2d at 126-127 ("Such conclusory allegations ... are not sufficient to state a claim for failure of oversight that would give rise to a substantial likelihood of personal liability, which would require particularized factual allegations demonstrating bad faith by the director defendants.").

Plaintiff's assertions of the likelihood of substantial liability due to the Director Defendants' service on other committees can be easily rejected. (*See* Compl. at ¶¶ 118-123.) Plaintiff offers no facts supporting an inference that service on any of the other committees referenced in the Complaint provided any of the Director Defendants with the knowledge necessary to establish a *Caremark* claim.

(iii) Plaintiff Fails To Adequately Allege That The Director Defendants Acted In Bad Faith In Relying On Professionals.

Plaintiff's Complaint fails to allege particularized facts showing that the Director Defendants unreasonably relied on the corporate officers and outside accountants who made and approved the potential bitumen resource estimates and the accounting treatment of OQI Sask. To the contrary, reliance upon such persons cuts against Plaintiff's contention here. *See Kanter*, 489 F.3d at 179 (retaining public accountant and notifying the public of inaccurate financial reports "suggest[s] that the board reacted appropriately"). Further, under Colorado law, the Director Defendants were entitled to rely on the "information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

> (a) One or more officers or employees of the corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;
>
> (b) Legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence; or
>
> (c) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

C.R.S. § 7-108-401(2)(a)-(c). Nothing in the Complaint suggests that these important statutory protections would not apply.

Based on the above, the Complaint contains no specific facts showing that any Defendant Directors (or a majority of them) face a substantial likelihood of liability for failure to supervise. There are no specific allegations concerning how often the OQI Board or its committees met, how information was disseminated within OQI, which Defendant Directors attended what meetings, or the role each Defendant Director played in gathering or disseminating information. Moreover, there are no allegations of any "red flags" that the Defendant Directors ignored, and Plaintiff fails to allege what each Defendant Director did or should have done, and when. Plaintiff thus fails to allege particularized facts supporting an inference that a majority of the Defendant Directors face a likelihood of liability on a *Caremark* claim that would render them incapable of considering a demand.

B. The Board Is Independent.

A board of directors is presumed independent. *Aronson*, 473 A.2d at 812 ("It is a presumption that ... the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."); *Hirsch*, 984 P.2d at 636. To overcome that presumption, a Plaintiff must plead particular facts that show a director is sufficiently subject to the influence of an interested director so as to override his or her independent judgment. *Kenney*, 426 F. Supp. 2d at 1186-87 (allegation of lack of independence found insufficient). Plaintiff's attempt to overcome these presumptions by general references to compensation or personal relationships is inadequate.

A lack of independence does not arise from compensation because "mere allegations of substantial compensation are insufficient to establish futility without an allegation of unreasonableness" or an allegation that continued employment and compensation can be affected by directors who received an improper benefit. *Rahbari v. Oros*, 732 F. Supp. 2d at 387 (quotation omitted); *King v. Baldino*, 648 F. Supp. 2d 609, 618 & nn.42-43. (D. Del. 2009) (in absence of allegation that director benefits are unusual in kind or degree from those received by directors from other corporations, allegations of director benefits "do not support plaintiff's contention that the defendant directors lack independence"); *cf. In re Nat'l Auto Credit, Inc. S'holders Litig.*, No. Civ.A. 19028, 2003 WL 139768, at *9 (Del. Ch. 2003) (compensation adopted at same meeting as challenged transaction deemed a *quid pro quo*).

Here, Plaintiff alleges no facts suggesting that the compensation received by the Defendant Directors is unreasonable or that the compensation was tied to the wrongdoing alleged in the Complaint. (Compl. at ¶¶ 133-134.)[20] It is impossible to conclude from the Complaint that any of the alleged compensation was excessive or unreasonable because Plaintiff provides no amount of compensation earned and no points of comparison. *See Rahbari*, 732 F. Supp. 2d at 387 ("For director compensation to create independence problems, however, it must be shown that the compensation is material to the director.") (quotation omitted).)

With respect to personal relationships, "[t]o create a reasonable doubt about an outside director's independence, a plaintiff must plead facts that would support the inference that because of the nature of a relationship or additional circumstances other than the interested director's stock ownership or voting power, the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director." *Beam v. Stewart*, 845 A.2d 1040, 1052 & n.32 (Del. 2004); *see also Rahbari*, 732 F. Supp. 2d at 388 & n.24 ("Mere personal or business relationships will not raise a reasonable inference that a director cannot consider demand, absent specific factual allegations to support such a conclusion.").

Here, the only relationship alleged in the Complaint to rebut the presumption of independence is the "long term" relationship between two Defendant Directors (Read and Tallman) who served together on the board of a different company. (Compl. at ¶ 132.) Demand will not be excused due to such circumstances. *Halpert Enters., Inc. v. Harrison*, 362 F.Supp.2d 426, 433 (S.D.N.Y. 2005) ("The allegations that several of the Board members sit together, in various configurations, on other boards do not call into question the ability of the board members

---

[20] Plaintiff also asserts that certain Defendant Directors (MacNeill, Hopkins, and Wilson) are not independent because they were members of management within the previous three years. (Compl. at ¶¶ 129-131.) These allegations also do not excuse demand. That directors may be deemed not independent of management has nothing to do with whether a director can exercise judgment on a particular issue on the merits.

to exercise proper business judgment."). Plaintiff alleges no facts supporting an inference that either Defendant Read or Tallman would risk their business reputations in order to preserve their relationships, or even that their relationship would actually be threatened if they accepted a demand to sue all directors.

Plaintiff's particularized allegations fail to remove the Defendant Directors from the presumption that, at the time the Complaint was filed, the Defendant Directors would remain independent notwithstanding their unexceptional compensation and business relationships. Accordingly, Plaintiff fails to allege adequately that the Defendant Directors lacked independence.

III. PLAINTIFF HAS NOT DEMONSTRATED STANDING UNDER RULE 23.1.

Rule 23.1 requires that a derivative complaint be verified, and allege that the plaintiff was a shareholder at the time "of the transaction of which he complains…." C.R.C.P. 23.1. "[T]he complaint must indicate when plaintiffs bought stock in [the company], and must state that they have owned stock continuously since the date of the filing of the lawsuit" to demonstrate a plaintiff's standing under Rule 23.1. *In re Sagent Tech., Inc., Deriv. Litig.*, 278 F. Supp. 2d 1079, 1096 (N.D. Cal. 2003). Plaintiff has failed to clear these modest hurdles.

First, the Complaint is not truly verified because Plaintiff has sworn to nothing given the text of the Verification which states:

> I, Peggy Proctor, declare that I have reviewed the Amended Complaint ("Amended Complaint") prepared on behalf of Oilsands Quest, Inc., and I authorize its filing. I have reviewed the allegations made in the Amended Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true.

Under established law, a verified complaint means that the pleader swears that the facts are true. *Stuart v. Frederick R. Ross Inv. Co.*, 773 P.2d 1107, 1110 (Colo. App. 1989). Plaintiff has not sworn to any facts, and her defective Verification alone warrants dismissal.

Second, Plaintiff fails to allege when she acquired her stock. A conclusory allegation that Plaintiff has held OQI stock at "relevant times" (Compl. at ¶ 8) fails to establish standing for several reasons. The phrase "relevant times" is too vague to satisfy the ownership allegation necessary to establish that Plaintiff has standing to challenge the conduct complained of in the Complaint. *See In re Maxim Integrated Prods., Inc.*, No. C 06-0334JW, 2007 WL 2745805, *3-*4 (N.D. Cal. 2007) (allegation that plaintiffs owned stock "at all relevant times ... does not allege continuous ownership or ownership during the transactions forming the basis of the complaint"). Indeed, the allegation that Plaintiff held stock at "relevant times" is a circular legal conclusion that the courts routinely disregard in considering a motion to dismiss. *Western Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008) ("the court is not required to accept as true legal conclusions couched as factual allegations"). Accordingly, the Complaint should be dismissed for lack of standing.[21]

IV. PLAINTIFF FAILS TO STATE A CLAIM UNDER RULE 12(b)(5).

A. Legal Standard.

A motion to dismiss pursuant to Rule 12(b)(5) should be granted when, accepting all facts (as opposed to conclusions) pleaded in the complaint as true, a plaintiff has failed to state a claim upon which relief can be granted. *See, e.g., Town of Alma v. Azco Const., Inc.*, 10 P.3d

[21] This would not be the first time that a derivative complaint filed by Plaintiff's counsel has been dismissed for a failure to provide sufficient allegations of standing. *See, e.g., Griggs v. Jornayvaz*, 2010 WL 4932674 (D. Colo. 2010); *In re Accuray, Inc. S'holder Deriv. Litig.*, 757 F. Supp. 2d 919 (N.D. Cal. 2010).

1256 (Colo. 2000). A complaint may be dismissed for failure to state a claim if the substantive law does not support the claims alleged, *Denver Parents Ass'n v. Denver Bd. of Educ.*, 10 P.3d 662, 664 (Colo. App. 2000), or where the plaintiff fails to allege an essential element of a claim. *W.O. Brisben Cos. v. Krystkowiak*, 66 P.3d 133, 138 (Colo. 2002). Dismissal is proper when facts appear on the face of a complaint that preclude recovery. *See Harrison v. Pinnacol Assurance*, 107 P.3d 969, 971 (Colo. App. 2004).

B. Plaintiff Fails to State a Claim for Breach of Fiduciary Duty.

The claims for breach of fiduciary duty involve conduct that predated the time when Defendants MacNeill, Blakely, and Ching served on the OQI Board. (Compl. at ¶¶ 144, 147, & 151.) Because facts appear on the face of the Complaint that preclude recovery from these three directors, the claims against them should be summarily dismissed. *Harrison*, 107 P.3d at 971.

As discussed in connection with the Plaintiff's failure to allege demand futility, the OQI Articles exculpate the Director Defendants from damages for a breach of the duty of care as set forth above. Here, Plaintiff fails to allege any specific factual matter showing that the Defendant Directors breached the duties of loyalty and of good faith. The Complaint fails to identify any person or entity whose interests the Defendant Directors could have placed above the interests of OQI in approving the erroneous financial statements and by allegedly failing to implement adequate controls and oversight. Accordingly, there can be no claim for breach of a duty of loyalty. Further, as discussed above, Plaintiff has failed to allege facts that could support a claim for a breach of the duty of good faith. For these reasons, Counts I, II, and III, should be dismissed pursuant to Rule 12(b)(5).[22]

C. Claims IV Through VII Are Premised On Claims I, II, and III.

Because Claims IV through VII are premised on the same theory of wrongdoing as the breach of fiduciary duty claims, these claims also fail as a matter of law. (*See* Compl. at ¶¶ 156-157 (claim for unjust enrichment); ¶¶ 159-160 (claim for "abuse of control"); ¶¶ 164-165 (claim for "gross mismanagement"); and ¶¶ 168-169 (claim for waste).) For the same reasons that the alleged misconduct is insufficient to state a claim for breach of fiduciary duty, the alleged misconduct, even if true, is insufficient for Plaintiff's claims for unjust enrichment, abuse of control, gross mismanagement, and waste. Claims IV through VII should therefore be dismissed pursuant to Rule 12(b)(5).

D. Plaintiff Fails to State A Claim For Waste.

Plaintiff's claim for waste should be dismissed for the additional reason that Plaintiff has failed to allege any action or transaction to which a claim for waste could attach. The test for waste is "extreme." *In re 3Com, Corp.*, No. C.A. 16721, 1999 WL 1009210, at *4 (Del. Ch. Oct. 25, 1999). "To plead a claim of waste, the plaintiff must allege facts showing that no person of ordinary sound business judgment could view the benefits received in the transaction as a fair exchange for the consideration paid by the corporation." *Harbor Fin. Partners v. Huizenga*,

[22] Further, the Defendant Directors cannot be held liable for a breach of their duties where they discharged their duties in reasonable reliance on the professionals listed in C.R.S. § 7-108-401(2). The documents quoted and cited in the Complaint demonstrate that the alleged wrongful conduct was carried out in reliance on information provided by corporate officers and a public accountant. No facts alleged in the Complaint suggest that, at the time of the wrongful conduct, such reliance was unreasonable. Thus, as a matter of law, Plaintiff's claims for breach of fiduciary duty fail.

751 A.2d 879, 892 (Del. Ch. 1999) (citation omitted). "If, under the facts pled in the complaint, any reasonable person might conclude that the deal made sense, then the judicial inquiry ends." *Id.* (citation omitted).

CONCLUSION

WHEREFORE, for the reasons set forth above, Defendants request that this Motion be granted in all respects and that all claims asserted by Plaintiff in Plaintiff's Verified Shareholder Derivative Amended Complaint and Jury Demand be dismissed with prejudice.

Dated: October 17, 2011

/s/ Jonathon D. Bergman

Jonathon D. Bergman, #26473
David A. Zisser, #11889
Terry R. Miller, #39007
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth St., Suite 500
Denver, CO 80202
Telephone: (303) 892-9400
Facsimile: (303) 893-1379

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of October, 2011, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S VERIFIED SHAREHOLDER DERIVATIVE AMENDED COMPLAINT AND JURY DEMAND** was served via the LexisNexis e-file system to the following:

Kip B. Shuman
Rusty E. Glenn
The Shuman Law Firm
885 Arapahoe Avenue
Boulder, CO 80302

/s/ Fern O. Spangler
Fern O. Spangler

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, Colorado 80202 Telephone: (303) 865-8301	
Plaintiff: PEGGY PROCTOR, derivatively on behalf of Nominal Defendant, OILSANDS QUEST, INC. v. **Defendants:** T. MURRAY WILSON, RONALD BLAKELY, PAUL CHING, CHRISTOPHER H. HOPKINS, BRIAN F. MACNEILL, RONALD PHILLIPS, JOHN READ, GORDON TALLMAN, PAMELA WALLIN **and** **Nominal Defendant:** OILSANDS QUEST, INC.	▲ COURT USE ONLY ▲
Jonathon D. Bergman, #26473 David A. Zisser, #11889 Terry R. Miller, #39007 DAVIS GRAHAM & STUBBS LLP 1550 Seventeenth St., Suite 500 Denver, CO 80202 Telephone: (303) 892-9400 Facsimile: (303) 893-1379 E-mail: jon.bergman@dgslaw.com david.zisser@dgslaw.com terry.miller@dgslaw.com Attorneys for Defendants	Case No. 2011CV2769 Division: 280

DECLARATION OF TERRY R. MILLER

I, Terry R. Miller, declare and state under penalty of perjury as follows:

1. I am an associate at Davis Graham & Stubbs LLP, counsel for defendants T. Murray Wilson, Ronald Blakely, Paul Ching, Christopher H. Hopkins, Brian F. MacNeill, Ronald Phillips, John Read, Gordan Tallman, Pamela Wallin ("Defendants") in this action. I have person knowledge of the matters set forth below.

2. This Declaration is Exhibit A to the Defendants' Defendants' Motion To Dismiss Plaintiff's Verified Shareholder Derivative Amended Complaint And Jury Demand ("Motion").

3. A true and correct copy of the documents listed below are attached to this declaration:

a. Tab 1: Oilsands Quest, Inc. ("OQI") Form 10-KSB for fiscal year ended Apr. 30, 2006

b. Tab 2: Press Release dated June 12, 2006

c. Tab 3: OQI form 10-K for fiscal year ended Apr. 30, 2008

d. Tab 4: OQI Mar. 26, 2007 Press Release

e. Tab 5: OQI Nov. 5, 2007 Press Release

f. Tab 6: OQI Jan. 13, 2009 TD Securities Report

g. Tab 7: OQI July 14, 2009 Press Release

h. Tab 8: Amended Complaint filed in *Rubenstein v. Oilsands Quest, Inc., et al.* (the document is captioned *St. Lucie County Fire Dist. Firefighter's Pension Trust Fund, et al. v. Oilsands Quest Inc. et al.*, Case No. 11-cv-1288 (S.D.N.Y))

i. Tab 9: Articles of Incorporation of Uranium Power Corporation n/k/a OQI

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of October, 2011.

____

Terry R. Miller

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: Dec 1 2011 10:22AM MST Filing ID: 41167111 Review Clerk: Charmaine Bright DATE FILED: December 1, 2011
Plaintiff: PEGGY PROCTOR, derivatively on behalf of Nominal Defendant, OILSANDS QUEST, INC, v. **Defendants**: T. MURRAY WILSON, RONALD BLAKELY, PAUL CHING, CHRISTOPHER H. HOPKINS, BRIAN F. MACNEILL, RONALD PHILLIPS, JOHN READ, GORDON TALLMAN, GORDON TALLMAN, PAMELA WILLIN O.C. and **Nominal Defendant:** OILSANDS QUEST, INC.	
Attorney for Plaintiff: Kip B. Shuman (#23593) Rusty E. Glenn (#39183) THE SHUMAN LAW FIRM 885 Arapahoe Avenue Boulder, CO 80302 (303) 861-3003 (303) 484-4886 (fax)	**▲COURT USE ONLY▲** Case No.: 2011CV2769 Division: 280

UNOPPOSED MOTION TO STAY CASE AND/OR HOLD MOTION TO DISMISS BRIEFING IN ABEYANCE

Plaintiff Peggy Proctor ("Plaintiff"), respectfully submits this Unopposed Motion to Stay Case and/or Hold Motion to Dismiss Briefing in Abeyance ("Motion"). In support of this Motion, the Parties state as follows:

1. On November 30, 2011, Plaintiff's Counsel received an email from Defendant's Counsel containing a press release issued by Oilsands Quest, Inc. ("Oilsands" or the "Company") and posted on the Oilsands' website. The release was dated November 29, 2011 and announced that the Company:

> has requested and obtained an Order from the Alberta Court of Queen's Bench [...] providing creditor protection under the Companies' Creditors Arrangement Act (Canada) ("CCAA").[1]

[1] The full press release is attached hereto as Exhibit A.

2. The release also states that parties are legally prohibited from "enforcing rights against the Company". Moreover, "the implications of this process for Oilsands Quest shareholders will not be known until the end of the restructuring process." Indeed, the implications of the creditor protection sought in Canada in this matter are currently unknown. It is certainly possible that the claims asserted in this derivative litigation may be deemed "owned" by a bankruptcy trustee, or Canadian equivalent. The parties need 60 days to sort out these new, intervening issues.

3. Plaintiff is very cognizant of this Court's prior order holding that no more extensions would be granted. However, Plaintiff believes that this extraordinary event was likely not contemplated by the Court when it issued that ruling. Plaintiff further believes that should she continue litigating nominally for the benefit of Oilsands, she is likely to be in violation of Canadian law and an explicit order of the Alberta Court of Queen's Bench.

4. Therefore, in order to allow Plaintiff time to consult and/or retain Canadian bankruptcy counsel and to ensure compliance with the Order issued by the Alberta Court of Queen's Bench, Plaintiff requests an immediate stay of all proceedings in this Action. Plaintiff proposes to file a status report with the Court not later than 60 days from the entrance of an order granting the requested relief to update the Court on the status of the Company and this Action.

5. Therefore, pursuant to C.R.C.P. 121, 1-15(8) the Parties have conferred and Defendants do not oppose Plaintiff's request for an immediate stay of proceedings until more certainty is known regarding Oilsands and its Canadian bankruptcy proceedings.

6. A proposed order has been attached for the Court's convenience.

WHEREFORE, good cause being shown, the Plaintiff requests the entrance of the above requested immediate stay of proceedings.

Dated: December 1, 2011

Respectfully submitted,

s/ Kip B. Shuman
Kip B. Shuman
Rusty E. Glenn
THE SHUMAN LAW FIRM
885 Arapahoe Avenue
Boulder, CO 80302
Telephone: (303) 861-3003
Facsimile: (303) 484-4886
E-mail: kip@shumanlawfirm.com
E-mail: rusty@shumanlawfirm.com

FEDERMAN & SHERWOOD
WILLIAM B. FEDERMAN
10205 N. Pennsylvania Avenue
Oklahoma City, OK 73120

Telephone: (405) 235-1560
Facsimile: (405) 239-2112

Counsel for Plaintiff

Certificate of Service

I hereby certify that the foregoing was filed with this Court on December 1, 2011 through the LexisNexis File & Serve system. Notice will be sent via File & Serve and/or electronic mail and U.S. First Class Mail to the following participants:

Jonathon D. Bergman
Terry Miller
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth St., Suite 500
Denver, CO 80202

Counsel for Defendants and Nominal Defendant Oilsands Quest, Inc.

[Duly Signed Original on File at The Shuman Law Firm Offices]

s/ Rusty E. Glenn
Rusty E. Glenn

GRANTED
WITH
AMENDMENTS

~~Dated: Dec 02, 2011~~

Morris B. Hoffman
District Court Judge
SEE ATTACHMENT FOR ANY ADDITIONAL TERMS

EFILED Document
CO Denver County District Court 2nd JD
DATE FILED: December 2, 2011
Filing Date: Dec 2 2011 8:48AM MST
Filing ID: 41186690
Review Clerk: Susan Noeske

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202	
Plaintiff: PEGGY PROCTOR, derivatively on behalf of Nominal Defendant, OILSANDS QUEST, INC, v. **Defendants**: T. MURRAY WILSON, RONALD BLAKELY, PAUL CHING, CHRISTOPHER H. HOPKINS, BRIAN F. MACNEILL, RONALD PHILLIPS, JOHN READ, GORDON TALLMAN, GORDON TALLMAN, PAMELA WILLIN O.C. and **Nominal Defendant:** OILSANDS QUEST, INC.	**▲COURT USE ONLY▲**
Attorney for Plaintiff: Kip B. Shuman (#23593) Rusty E. Glenn (#39183) THE SHUMAN LAW FIRM 885 Arapahoe Avenue Boulder, CO 80302 (303) 861-3003 (303) 484-4886 (fax)	Case No.: 2011CV2769 Division: 280

ORDER GRANTING UNOPPOSED MOTION TO STAY CASE AND/OR HOLD MOTION TO DISMISS BRIEFING IN ABEYANCE

THIS MATTER having come before the Court on the Unopposed Motion to Stay Case and/or Hold Motion to Dismiss Briefing in Abeyance (the "Motion"), and the Court being apprised of the relevant facts,

ORDERS that the Motion is GRANTED.

1. The above-captioned case is immediately stayed;

2. Plaintiff is directed to file a status report with the Court within 60 days of the entrance of this Order updating the Court as to the status of Oilsands Quest, Inc. and the bankruptcy proceedings pending in Alberta, Canada.

DATED: _______________, 2011

BY THE COURT:

District Court Judge

This document constitutes a ruling of the court and should be treated as such.

Court: C□ Dc□□er Cou□□District Court 2□d JD

Judge: □orris □ □o□□□ □□

File & Serve Transaction ID: □□□□□□□

Current Date: Dec □2□2□□□

Case Number: 2□□□C□2□□□

Case Name: □□□C□□□□□□□□□ □s□□ □□□□□□□ □ □□□□□ et □□

Court Authorizer: □orris □ □o□□□ □□

Court Authorizer Comments:

□□□ □ti□□s □□□□□□ st□us re□orts e□er□ □□-d□□s□

/s/ Judge Morris B Hoffman

DISTRICT COURT, DENVER COUNTY, COLORADO

Court Address: 1437 Bannock Street
Denver, CO 80202

EFILED Document
CO Denver County District Court 2nd JD
DATE FILED: August 6, 2012
Filing Date: Aug 06 2012 04:15PM MDT
Filing ID: 45747802
Review Clerk: LaRhonda Majied

Plaintiff: PEGGY PROCTOR, derivatively on behalf of Nominal Defendant, OILSANDS QUEST, INC,

v.

Defendants: T. MURRAY WILSON, RONALD BLAKELY, PAUL CHING, CHRISTOPHER H. HOPKINS, BRIAN F. MACNEILL, RONALD PHILLIPS, JOHN READ, GORDON TALLMAN, GORDON TALLMAN, PAMELA WILLIN O.C.

and

Nominal Defendant: OILSANDS QUEST, INC.

▲COURT USE ONLY▲

Case No.: 2011CV2769

Division: 280

Attorney for Plaintiff:

Kip B. Shuman (#23593)
Rusty E. Glenn (#39183)
THE SHUMAN LAW FIRM
885 Arapahoe Avenue
Boulder, CO 80302
(303) 861-3003
(303) 484-4886 (fax)

PLAINTIFF'S STATUS REPORT

Plaintiff Peggy Proctor ("Plaintiff"), respectfully submits this status report in response to the Court's Delay Reduction Order in this case, dated July 2, 2012.

1. By order dated December 2, 2011, this court stayed this case due to the bankruptcy status of Oilsands Qwest, Inc. ("OQI") in proceedings pending in Alberta, Canada. The court also directed the Parties to file reports as to the status of the Canadian bankruptcy proceedings.

2. On February 6, 2012, the court-appointed bankruptcy monitor, in the Canadian bankruptcy proceeding, filed a Petition for Recognition of Foreign Proceedings and Related Relief under Chapter 15 of the United States Bankruptcy Code in the United States Bankruptcy Court in the Southern District of New York. ("Chapter 15 Petition.")

3. In sum, the Chapter 15 Petition requests that United States courts enforce orders from the Canadian Bankruptcy Court and, among other things, stay all causes of action brought against OQI officers and directors. (Chapter 15 Petition, at p. 17 & ¶ 31; requesting court to

enforce "the Alberta Orders," which ordered that "no Proceeding may be ... continued against any of the former, current or future directors or officers of [OQI] with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the [OQI] whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.")

4. A hearing on the Chapter 15 Petition was held on March 15, 2012 before Judge Jed S. Rakoff, United States District Court Judge for the Southern District of New York.

5. On March 29, 2012, Judge Rakoff granted "the Monitor's request that this Court recognize the Canadian Proceedings as foreign main proceedings and give full force and effect to the Alberta Orders."

6. Thereafter, on May 1, 2012, the parties participated in mediation before the Honorable John C. Lifland in New York, New York. No settlement was reached at that time.

7. On July 20, 2012, Plaintiff's counsel received an email from Jonathan Cho, an attorney for Allen & Overy LLP, who identified himself as counsel for Ernst & Young and "Monitor and foreign representative of Oilsands Quest Inc. and various of its affiliates in chapter 15 proceedings pending before Judge Rakoff of the United States District Court for the Southern District of New York." Mr. Cho's email stated that "[t]he Alberta Court overseeing Oilsands' Canadian proceedings under the CCAA recently entered the attached orders (i) establishing a claims process in the Canadian proceedings and (ii) extending the claims bar date in the Canadian proceedings to August 31, 2012." The Bar Date Extension order provided by Mr. Cho and is attached hereto as Ex. A. The Claims Procedure Order provided by Mr. Cho is attached hereto as Ex. B.

8. Plaintiff has no additional information regarding the bankruptcy proceedings other than the two attached exhibits demonstrate. Plaintiff believes that the stay currently in place should continue to remain in effect.

9. Pursuant to the Delay Reduction Order dated July 2, 2012, Plaintiff shall continue to provide status reports to the Court at 60 day intervals.

Dated: August 6, 2012

Respectfully submitted,

s/ Kip B. Shuman

Kip B. Shuman
Rusty E. Glenn
THE SHUMAN LAW FIRM
885 Arapahoe Avenue
Boulder, CO 80302
Telephone: (303) 861-3003
Facsimile: (303) 484-4886
E-mail: kip@shumanlawfirm.com
E-mail: rusty@shumanlawfirm.com

FEDERMAN & SHERWOOD
WILLIAM B. FEDERMAN
SARA COLLIER
10205 N. Pennsylvania Avenue
Oklahoma City, OK 73120
Telephone: (405) 235-1560
Facsimile: (405) 239-2112

Counsel for Plaintiff

Certificate of Service

I hereby certify that the foregoing was filed with this Court on August 6, 2012 through the LexisNexis File & Serve system. Notice will be sent via File & Serve and/or electronic mail and U.S. First Class Mail to the following participants:

Jonathon D. Bergman
Terry Miller
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth St., Suite 500
Denver, CO 80202

Counsel for Defendants and Nominal Defendant Oilsands Quest, Inc.

[Duly Signed Original on File at The Shuman Law Firm Offices]

s/ Rusty E. Glenn
Rusty E. Glenn