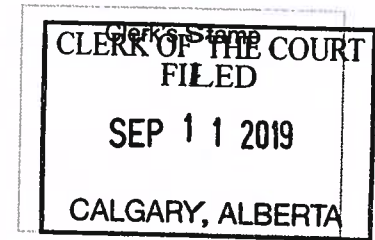


COURT FILE NUMBER 1901-09160
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS STEPHEN FLESCH, MARSHAL
THOMPSON, TYLER MAKSYMCHUK, AND
REID CHAMBERLAIN



DEFENDANTS APACHE CORPORATION; PARAMOUNT
RESOURCES LTD., WILLIAM C.
MONTGOMERY, ANNELL R. BAY, DANIEL
W. RABUN, RENE R. JOYCE, AND
CHARLES J. PITMAN

AMENDED this 11th day of
September, 2019 Pursuant to
Rule 3.62
dated the 11 day of Sept, 2019

Brought under the Class Proceedings Act

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Koskie Minsky LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

OVERVIEW

1. The Plaintiffs bring this class action on behalf of a class of approximately 400 people who were employed by Apache Canada Ltd. ("**Apache Canada**") as of July 6, 2017 when sale of Apache Canada by the Defendant, Apache Corporation ("**Apache**"), to the Defendant, Paramount Resources Ltd. ("**Paramount**") was announced and who, at the time, were participating in Apache's omnibus compensation plan ("**AOCP**").

2. Employees of Apache Canada received deferred compensation (in the form of restricted share units rights, stock options rights and other awards) from Apache through the AOCPP which formed part of their compensation package and terms of employment with Apache Canada.

3. Following the announcement of the sale of Apache Canada by Apache to Paramount, the deferred compensation rights held by the employees of Apache Canada were cancelled or not honored by the Defendants in breach of the AOCPP and terms of the class members' employment. Those employees suffered loss and damages as a result.

PARTIES

4. The Plaintiff, Stephen Flesch, resides in the city of Calgary, Alberta and at all material times was employed by Apache Canada.

5. The Plaintiff, Marshal Thompson, resides in Canmore, Alberta and at all material times was employed by Apache Canada.

6. The Plaintiff, Tyler Maksymchuk, resides in the city of Calgary, Alberta and at all material times was employed by Apache Canada.

7. The Plaintiff, Reid Chamberlain, resides in the city of Calgary, Alberta and at all material times was employed by Apache Canada.

8. Apache is a publicly traded corporation in the United States of America, incorporated in Delaware and headquartered in Houston, Texas, and is engaged in petroleum and natural gas exploration and production worldwide.

9. Apache Canada was a privately held subsidiary of Apache, incorporated in the Province of Alberta, and was engaged in petroleum and natural gas exploration and production in Canada.

10. Apache Canada was amalgamated on August 16, 2017 into Apache Canada Ltd. (Corp. #202622722), which then changed its name to Paramount Resources (ACL) Ltd. on August 16, 2017. Paramount Resources (ACL) Ltd. then amalgamated with 1636020 Alberta Ltd. into Paramount Resources (ACL) Ltd. (Corp. #2020633265) on August 18, 2017. Paramount

Resources (ACL) Ltd. (Corp. #2020633265) then amalgamated into Paramount on January 1, 2018. Therefore, Paramount is the continuation of Apache Canada.

11. Paramount is a publicly traded Canadian corporation, incorporated in the Province of Alberta and headquartered in Calgary, and is engaged in oil and natural gas exploration and production in Canada.

12. William C. Montgomery is an individual residing in Houston, Texas and was, as of July 6, 2017, a director of Apache and member of Apache's Management Development and Compensation Committee.

13. Annell R. Bay, is an individual residing in Austin, Texas and was, as of July 6, 2017, a director of Apache and member of Apache's Management Development and Compensation Committee.

14. Daniel W. Rabun, is an individual residing in Flower Mound, Texas and was, as of July 6, 2017, a director of Apache and member of Apache's Management Development and Compensation Committee.

15. Rene R. Joyce is an individual residing in Houston, Texas and was, as of July 6, 2017, a director of Apache and member of Apache's Management Development and Compensation Committee.

16. Charles J. Pitman is an individual residing in Chapel Hill, North Carolina and was, as of July 6, 2017, a director of Apache and member of Apache's Management Development and Compensation Committee.

17. Mr. Montgomery, Ms. Ray, Mr. Rabun, Mr. Joyce and Mr. Pitman collectively referred to herein as the "Committee".

THE CLASS

18. The proposed class is composed of all employees of Apache Canada as of July 6, 2017, and who were then participating in the AOCIP (the "Class" or "Class Members").

EMPLOYMENT AGREEMENTS AND DEFERRED COMPENSATION AWARDS

19. The Class were employed by Apache Canada, which was later amalgamated into Paramount. The employment contracts between the Class and Apache Canada were formed and performed in Alberta.
20. Members of the Class worked exclusively or almost exclusively in Alberta.
21. It was a term of employment for the Plaintiffs and the Class that they would participate in Apache's long term compensation plan(s), as otherwise termed by Apache from time to time and which ultimately culminated in the AOCF.
22. The stated purpose of the AOCF was to provide eligible employees with equity-based incentives to encourage long-term service with Apache and its affiliates, of which Apache Canada was one.
23. The AOCF provided for various forms of deferred compensation, including the awarding of Restricted Stock Units ("RSUs"), Stock Options ("Options") and Performance Awards ("PAs") to employees.
24. RSUs were awarded through grant notices and a RSU award agreement, or as otherwise named by Apache from time to time ("RSU Agreement").
25. Options were awarded through grant notices and an Option award agreement, or as otherwise named by Apache from time to time ("Option Agreement").
26. PAs were awarded through an award notice and a performance award agreement, or as otherwise named by Apache from time to time ("PA Agreement")(the RSU Agreement, Option Agreement and PA Agreement are collectively referred to herein as the "Grant Agreements").
27. The Grant Agreements incorporated by reference the AOCF. The Grant Agreements were contractual agreements between Apache and the Class Members and formed part of the terms of employment with Apache Canada, which was later amalgamated into Paramount.

RESTRICTED SHARE UNITS, STOCK OPTIONS AND PERFORMANCE AWARDS

28. RSUs were rights to receive Apache common stock, cash or a combination thereof which were regularly awarded to employees subject to a vesting period, after which the RSUs were no longer restricted and vested to the employee to whom they were awarded. Typically RSUs vested over a period of three years: a third of which would vest after the first year; the second third after the second year; and the final third after the third year.

29. The RSUs were credited to an investment account ~~in the recipient's name with Fidelity Canada, which could be accessed online~~ into their online Fidelity Canada account. This indicated the number of Apache RSUs granted, pending the expiry of the restricted period, during which time they could not be sold or traded. Once that period had expired, the shares vested and could be sold or traded.

30. The award and vesting of RSUs was not contingent on employees achieving any performance target, and were not otherwise discretionary. Rather, employees were awarded RSUs as part of their remuneration package, which would vest in accordance with the schedule indicated in the RSU Agreement. The RSUs thus acted as a form of retention bonus.

31. Options were rights to purchase Apache common stock at a specified price for a period of time, typically ten (10) years. The Options were regularly awarded to employees subject to a vesting period, after which the Options were no longer restricted and vested to the employee to whom they were awarded. Once vested, the employee could exercise the Option to purchase Apache common stock at the specified price prior to their expiry.

32. The award and vesting of Options was not contingent on employees achieving any performance target, and were not otherwise discretionary. Rather, employees were awarded Options as part of their remuneration package, which would vest in accordance with the schedule indicated in the Option Agreement. The Options thus acted as a form of retention bonus.

33. PAs were awards of cash or Apache common stock that were subject to meeting certain performance goals over a certain period of time. The PAs vested with the employee upon

meeting the performance goals – fifty percent (50%) upon achieving the goal and fifty percent (50%) a year later. The performance goals were set out in the PA Agreement.

34. The awarding of PAs and the setting of performance goals tied the Plaintiffs and Class Members financial success to the success of Apache.

35. The Plaintiff and other employees of Apache Canada (which was later amalgamated into Paramount) were regularly awarded RSUs, Options and PAs.

36. For many of the Class the RSUs, Options and PAs comprised a significant component of their total employment compensation (in some cases 50%) and were a strong incentive for them to continue their employment until the RSUs, Options and PAs had vested.

CHANGE OF CONTROL AND VESTING OF RSUs AND PAs

37. The AOCIP and Grant Agreements addressed what would occur to the long-term incentive compensation provided in the form of RSUs, Options and PAs in the event of a change in control of the "Company". The Grant Agreements incorporate by reference the AOCIP, including the provisions relating to a change in control.

38. The AOCIP defines "Company" to mean Apache *together with its "Affiliates"*, which would include Apache Canada at the time.

39. Section 13.1 of the AOCIP provides:

"In the event of the occurrence of a Change of Control of the Company and unless otherwise provided in an applicable Award Agreement:

(a) Without further action by the Committee or the Board, all outstanding Options shall fully vest upon the Participant's Involuntary Termination or Voluntary Termination with Cause occurring on or after a Change of Control.

...

(b) Without further action by the Committee or the Board, all unvested Restricted Stock Awards and Restricted Stock Units shall fully vest upon the Participant's Involuntary Termination or Voluntary Termination with Cause occurring on or after a Change of Control.

...

(c) *Assuming the achievement of a Performance Goal, the entitlement to receive cash and Stock under any outstanding Performance Award grants shall vest automatically, without further action by the Committee or the Board..."*

40. Section 14 of the 2016 AOCPP provides:

"In the event that the Company is merged or consolidated with another corporation and the Company is not the surviving corporation, or if all or substantially all of the assets or more than 20 percent of the outstanding voting stock of the Company is acquired by any other corporation, business entity or person, or in the case of reorganization (other than a reorganization under the United States Bankruptcy Code) or liquidation of the Company, then the Committee, or the board of directors of any corporation assuming the obligations of the Company, shall, as to the Plan and any outstanding Awards make appropriate provision for the adoption and continuation of the Plan by the acquiring or successor corporation and for the protection of any holders of such outstanding Awards by the substitution on an equitable basis of appropriate stock of the Company or of the merged, consolidated, or otherwise reorganized corporation which will be issuable with respect to the Stock."

THE SALE OF APACHE CANADA

41. On July 6, 2017 the sale of Apache Canada by Apache to Paramount was announced. The sale was completed through a Sale and Purchase Agreement (the "SPA"). The sale of Apache Canada closed on August 18, 2017 in accordance with the SPA.

42. On the closing date the possession and beneficial ownership of all issued and outstanding voting shares and preferred shares in Apache Canada was transferred to 1636020 Alberta Ltd., which was later amalgamated into Paramount.

43. Employees of Apache Canada learned of its sale to Paramount at a town hall meeting held on or about July 6, 2017 at which representatives of Apache advised that it was withdrawing from its Canadian operations and that all shares of Apache Canada had been sold to Paramount. In addition, the Class was advised that any unvested RSUs, Options and PAs would not be honoured. At the time, Apache Canada had approximately 400 employees.

44. While some Class Members' employment was terminated and some retired after the announcement, the vast majority of Class Members continued in their existing positions. No new employment agreements were entered into with the Class after the sale of Apache Canada.

The Class maintained their same job duties and responsibilities and the same salaries that they had while Apache Canada was owned by Apache.

45. However, following July 6, 2017, all of the unvested RSUs, Options and PAs held by the Class were not honored by Apache, Apache Canada or Paramount and were "cancelled".

46. The RSUs, Options and PAs formed part of the remuneration package of the Class. As the terms of their employment did not change following the sale of Apache Canada, their employment agreements, including the remuneration package, continued. The Class relied on the RSUs, Options and PAs to continue working for Apache Canada for as long as they had.

47. At the close of trading on July 6, 2017 Apache shares trading at \$45.77 USD.

48. Mr. Flesch held 2,452 RSUs as of July 6, 2017, with a market value of approximately \$112,000 USD based on the market price on July 6, 2017. Mr. Flesch retired from Paramount on January 13, 2018. Mr. Flesch also held Options and PAs as of July 6, 2017.

49. Mr. Thompson held 11,903 RSUs as of July 6, 2017, with a market value of approximately \$544,800.31 USD based on the market price on July 6, 2017. Mr. Thompson retired from Paramount in June 2018. Mr. Thompson also held Options and PAs as of July 6, 2017.

50. Mr. Maksymchuk held 3,339 RSUs as of July 6, 2017, with a market value of approximately \$ 153,000 USD based on the market price on July 6, 2017. Mr. Maksymchuk quit his employment with Paramount on May 15, 2018. Mr. Maksymchuk also held Options and PAs as of July 6, 2017.

51. Mr. Chamberlain held 2051 RSUs as of July 6, 2017, with a market value of approximately \$94,000 USD based on the market price on July 6, 2017. Mr. Chamberlain resigned from Paramount on May 17, 2019.

52. All the RSUs, Options and PAs held by the Plaintiffs and the Class were cancelled following July 6, 2017. The Class did not receive compensation or substitution on an equitable basis for their cancelled awards.

53. The Class suffered the loss of the cancelled RSUs, Options and PAs in Alberta.

BREACH OF CONTRACT

Breach of employment contracts by Apache Canada/Paramount

54. At all material times the AOCP formed part of the contract of employment of the Class by Apache Canada. The RSUs, Options and PAs granted to the Plaintiffs and the Class were granted pursuant to the AOCP and Grant Agreements.

55. At all material times the RSUs, Options and PAs awarded to the Plaintiffs and to all Class Members comprised a significant component of their employment remuneration and upon which they relied in accepting and continuing their employment with Apache Canada.

56. After the sale of Apache Canada to Paramount, the employment of the Plaintiffs and the Class did not change and their contracts of employment with Apache Canada were not terminated. The terms of their contracts of employment continued in full force and effect. No new or different contracts of employment were entered into with Apache Canada or Paramount following the sale or the amalgamation of Apache Canada into Paramount.

57. As a result the RSUs, Options and PAs that were awarded to the Class prior to July 6, 2017 ought to have been honoured by Apache Canada. As Apache Canada amalgamated into Paramount, Paramount is liable to the Class for the RSUs, Options and PAs awarded as of July 6, 2017 in accordance with section 186 of the *Business Corporations Act*, RSA 2000, c B9.

Breach of AOCP by Apache

58. Pursuant to the Grant Agreements, which incorporated by reference the AOCP, Apache had a direct contractual relationship with the Class Members. In addition, Apache, which established the AOCP, was fully aware that the AOCP formed part of the contracts of employment between its affiliate, Apache Canada, and the Class and of its obligations to the Class pursuant to the AOCP and Grant Agreements.

59. Upon the transfer of 100% of the issued and outstanding voting shares of Apache Canada to 1636020 Alberta Ltd. (later amalgamated into Paramount), a "Change of Control" occurred and the Class was "Involuntarily Terminat[ed]" from the AOCIP in accordance with the terms of the AOCIP. By operation of section 13 of the 2016 AOCIP, as a result of the "Change in Control" all unvested RSUs, Options and PAs should have fully vested to the Class.

60. In the alternative, those Class Members whose employment with Apache Canada/Paramount was terminated following the change in control of Apache Canada, the RSUs, Options and PAs held by those Class Members should have vested.

61. By refusing to honour the Class' RSUs, Options and PAs, Apache breached the terms of the AOCIP and the Grant Agreements between Apache and the Class. The RSUs, Options and PAs held by the Class at that time are valued in accordance with the closing price of Apache shares on July 6, 2019, which was \$45.77 USD.

Breach of AOCIP by the Committee

62. In the alternative, should section 13 of the AOCIP be found to have not been triggered by the sale of 100% of the issued and outstanding voting shares of Apache Canada, or for the component of the Class that was not terminated following the change in control of Apache Canada, the Plaintiffs and the Class allege that the Committee breached section 14 of the AOCIP.

63. The Committee was designated under the AOCIP as the "Committee".

64. Pursuant to section 14 of the AOCIP, upon the sale of 100% of the voting stock of Apache Canada, the Committee was obligated to make provision for the adoption and continuation of the AOCIP by the purchasing company or the protection of any holders of RSUs or PAs by the substitution on an equitable basis of the appropriate stock of purchasing company. The Committee failed to do so and breached section 14 of the AOCIP. The Committee is therefore liable to the Class for such breach of contract.

65. Apache is vicariously liable for the actions of the Committee.

BREACH OF CONTRACTUAL DUTY OF GOOD FAITH

66. Apache Canada (now Paramount) owed the Class Members a duty of good faith and fair dealing in their employment relationship with them as a feature of the contractual relationship.

67. In accordance with the terms of the AOCP and the Grant Agreements, Apache and the Committee owed the Class Members a duty of good faith and fair dealing in the AOCP and the Grant Agreements as a feature of the contractual relationship.

68. Apache Canada (now Paramount), Apache and the Committee breached their duties of good faith and fair dealing owed to the Class by cancelling unvested RSUs, Options and PAs held by Class Members and without providing them any equitable substitute, contrary to their contractual obligations.

BREACH OF FIDUCIARY DUTY

69. Pursuant to the terms of the AOCP, in particular Section 14, the Committee owed a fiduciary duty to the Class.

70. Pursuant to the AOCP, in particular section 14, the Committee undertook to act in the best interests of the Class during the course of any negotiation relating to the change in ownership of Apache Canada and the continued application of the AOCP and the outstanding RSUs and PAs. The Class was directly vulnerable and subject to the unilateral control and discretion of the Committee.

71. By failing to ensure continuation of the AOCP or the protection of any holders of RSUs, Options or PAs by the substitution on an equitable basis, the Committee failed to act in the best interests of the Class and thereby breached their fiduciary duties.

UNJUST ENRICHMENT

72. Apache and/or Paramount have been unjustly enriched as a result of gaining the benefit of the dutiful work of the Class and failing to pay or honour remuneration owing to the Class for that work. The Class Members have suffered a corresponding deprivation in not having their RSUs, Options or PAs honoured and paid despite the fact that they had vested under the terms of the AOCIP and Grant Agreements.

73. There is no juristic reason for Apache and/or Paramount's unjust enrichment and the Class Members' corresponding deprivation.

DAMAGES

74. The Class has been denied the value of the RSUs, Options and PAs owing and outstanding on July 6, 2017.

75. The Plaintiffs and Class Members have suffered damages as a result of the Defendants' actions. As a result of the cancellation and failure to honour the RSUs, Options and PAs outstanding after the announcement of the sale of Apache Canada, Class Members have been deprived of value of such RSUs, Options and PAs since that time. The Defendants should compensate the Class for their losses.

PUNITIVE DAMAGES

76. The Plaintiffs pleads that the Defendants had specific and complete knowledge of the contracts of employment of the Class, the terms of the AOCIP and Grant Agreements, and the existence of outstanding RSUs, Options and PAs upon the sale of Apache Canada. Despite this knowledge, the Defendants, or some of them, purposely cancelled and refused to honour the RSUs, Options and PAs despite clear obligations to do so.

77. The Defendants conducted their affairs with wanton and callous disregard for the Class Members' interests, safety and well-being.

78. The high-handed and callous conduct of the Defendants warrants the condemnation of this Honourable Court by an award of punitive damages.

REMEDIES SOUGHT

79. The Plaintiffs claim:

- a. An order certifying this proceeding as a Class Proceeding pursuant to the *Class Proceedings Act* and appointing the Plaintiffs as Representative Plaintiffs for the Class;
- b. A declaration that the Defendants, or some of them, breached the contracts of employment with the Plaintiffs and the Class Members;
- c. A declaration that the Defendants, or some of them, breached their fiduciary duties to the Plaintiffs and the Class Members by reason of the events described in this action;
- d. A declaration that the Defendants, or some of them, were unjustly enriched at the expense of the Plaintiffs and the Class Members by reason of the events described in this action;
- e. A declaration that the Defendants are liable to the Plaintiffs and the Class Members for damages caused by the Defendants' breach of contract, breach of fiduciary duties and unjust enrichment;
- f. Damages for breach of contract, fiduciary duty and unjust enrichment in the amount of \$60 million USD or any such amount that this Honourable Court deems appropriate;
- g. Punitive damages in the amount of \$10 million;
- h. Pre-judgment interest and post-judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;
- i. Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs and the Class Members;
- j. Costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to sections 25 and 33 of the *Class Proceedings Act*; and
- k. Such further and other relief as this Honourable Court deems just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff(s)' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.