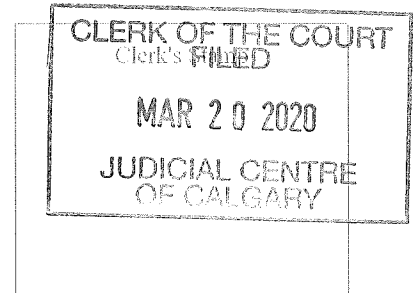


Form 11  
[Rule 3.31]



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

DOCUMENT **STATEMENT OF DEFENCE TO AMENDED STATEMENT OF CLAIM**  
*Brought Under the Class Proceedings Act*

PARTY FILING THIS DOCUMENT DEFENDANTS, WILLIAM C. MONTGOMERY, ANNELL R. BAY, DANIEL W. RABUN, RENE R. JOYCE and CHARLES J. PITMAN

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**Note: State below only facts and not evidence (Rule 13.6)**

1. Except as otherwise expressly admitted herein, the Defendants William C. Montgomery, Annell R. Bay, Daniel W. Rabun, Rene R. Joyce and Charles J. Pitman (collectively, the “**Directors**”) deny each and every allegation in the Amended Statement of Claim and hold the Plaintiffs and the members of the potential Class (hereinafter the “**Plaintiffs**”) to the strict proof thereof.
2. The Directors incorporate and adopt the facts and matters plead in the Statement of Defence filed by the Defendant, Apache Corporation (“**Apache**”).

## Parties and Overview

3. The Directors admit paragraphs 8, 9 and 12 through 16 of the Amended Statement of Claim.
4. All of the Directors, with the exception of Rene R. Joyce (“**Joyce**”), have been directors of Apache since at least 2015. Joyce became a director effective May 11 of 2017. The Directors, a subset of Apache’s board of directors, were members of, among other board committees, the Management Development and Compensation (“**MD&C**”) committee. A principal purpose of the MD&C committee is to assist the board of directors in the discharge of its responsibilities relating to Apache compensation. The Directors’ sole duty was to Apache. At no time have the Directors acted independently of Apache or exhibited a separate identity from Apache.
5. Until August 16, 2017, Apache, directly or through its affiliated companies, owned all of the shares of Apache Canada Ltd. (“**ACL**”).
6. At the material times, Apache had an equity based incentive plan consisting of the Apache Omnibus Compensation Plan and associated grant agreements (the “**AOCP**”). Pursuant to the terms of the AOCP, Eligible Persons (as defined in the AOCP) were provided with the opportunity to acquire equity-based incentives, including stock options in Apache, restricted stock units, performance awards, or some combination thereof (the “**Apache Equity Incentives**”). The period and other terms and conditions of vesting for the Apache Equity Incentives were prescribed by the contractual terms of the AOCP and the specific grant agreements.
7. Article 3.3 of the AOCP expressly states that the Directors shall have no liability “for any action, omission, or determination made in good faith”.
8. In or about May 10, 2017, the Apache entire board of directors, which included the Directors with the exception of Joyce, while acting in good faith and with the reasonable belief they were acting in the best interest of Apache, passed a resolution approving the sale of all of the shares of ACL to Paramount or its affiliates (the “**Divestiture Resolution**”). While the board of directors approved the divestiture of ACL at the highest corporate level, they relied in good faith upon the executive, management and administrative staff of Apache as well as external consultants, to perform the detailed mechanics of the divestiture and to comply with all contractual obligations associated with the divestiture.
9. Effective August 16, 2017, by way of a share sale, Apache divested ACL to Paramount Resources Ltd. (“**Paramount**”) (the “**Divestiture**”).
10. Prior to the Divestiture, ACL was a wholly owned subsidiary of Apache and certain ACL employees agreed to the terms by which they would be entitled, upon certain parameters being met, receiving some of the Apache Equity Incentives. After the Divestiture,
  - (a) ACL employees continued to be employees of ACL;

- (b) ACL ceased to be an affiliate of Apache;
  - (c) the underlying rationale for the Apache Equity Incentives ceased in relation to the ACL employees;
  - (d) the ACL employees ceased to be eligible for the Apache Equity Incentives in accordance with the terms of the AOCF and the Apache Equity Incentives grants; and
  - (e) ACL became a wholly owned affiliate of Paramount.
11. While Apache divested itself of the ACL shares in August of 2017, at no time has there been a reorganization or liquidation of Apache or any other of the events that might have triggered Article 14 of the AOCF as alleged by the Plaintiffs.
12. There is no basis in fact or in law for the Plaintiffs' claim against the Directors since *inter alia*:
- (a) The Directors owed duties only to Apache and its shareholders;
  - (b) The Directors acted in good faith throughout;
  - (c) The Directors neither owed a duty to the Plaintiffs nor breached any duty to the Plaintiffs;
  - (d) There was no contract between the Directors and the Plaintiffs; and
  - (e) The AOCF expressly excludes the Directors from liability associated with the Plaintiff's unfounded allegations.

#### **Apache Omnibus Compensation Plan**

13. The AOCF governed the contractual rights and obligations between Apache and the Eligible Persons, and expressly stated that it was to be construed in accordance with and governed by the laws of Texas.
14. The AOCF created no contract between the Directors and the Plaintiffs. As a result, at no time was there an agreement between the Plaintiffs and the Directors which was breached as alleged or at all.
15. In any event, the Directors deny that there was any breach of the AOCF as alleged or at all.
16. The Directors deny the Plaintiffs' allegation of a breach of section 14 of the AOCF. For the reasons set out above, Apache's sale of ACL never triggered section 14 of the AOCF.
17. In any event, Article 3.3 of the AOCF precludes any liability for the Directors:

**3.3 Indemnification. No member of the Committee shall be liable for any action, omission, or determination made in good faith.**

The Company shall indemnify (to the extent permitted under Delaware law) and hold harmless each member of the Committee and each other director or employee of the Company to whom any duty or power relating to the administration or interpretation of the Plan has been delegated against any cost or expense (including counsel fees) or liability (including any sum paid in settlement of a claim with the approval of the Committee) arising out of any action, omission, or determination relating to the Plan, unless, in either case, such action, omission, or determination was taken or made by such member, director, or employee in bad faith and without reasonable belief that it was in the best interests of the Company. **The determination, interpretations, and other actions of the Committee pursuant to the provisions of the Plan shall be binding and conclusive for all purposes and on all persons.**

[emphasis added]

#### **General and matters that defeat Plaintiffs' claims**

18. The matters pleaded in Apache's Statement of Defense.
19. The Directors did not owe any duty to the Plaintiffs, be it contractual, good faith, fiduciary or otherwise.
20. The Directors did not breach any duty owed to the Plaintiffs, be it contractual, good faith, fiduciary or otherwise.
21. Section 14 of the AOCP was not triggered by the Divestiture of ACL to Paramount.
22. There is no basis for the Plaintiffs' claims against the Directors.
23. The Plaintiffs received the benefits of the Paramount Incentive Program once they ceased to be affiliated with Apache and became affiliated with Paramount.
24. There is no basis for Plaintiffs' claims for punitive damages.

#### **Remedy Sought**

25. The Plaintiffs' claims against the Directors ought to be dismissed.
26. The Plaintiffs ought to pay full indemnity costs to the Directors or such costs as directed by this Honorable Court.