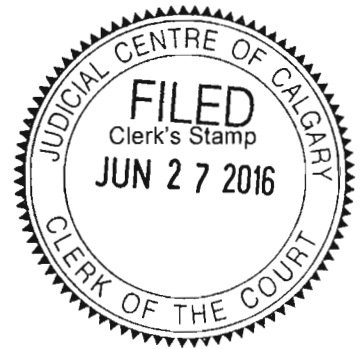


COURT FILE NUMBER 1401-08454
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 PLAINTIFF(S) DENNIS ALLEN, as REPRESENTATIVE PLAINTIFF
 DEFENDANT(S) PENN WEST PETROLEUM LTD., DAVID E. ROBERTS, MURRAY R. NUNNS, TODD H. TAKEYASU, FRANK POTTER, and JAMES C. SMITH
 DOCUMENT ORDER



I hereby certify this to be a true copy of the original Order

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

D'ARCY & DEACON LLP
 310, 525 11th Avenue SW
 Calgary AB T2R 0C9

Dated this 27 day of Jun / 16.

 for Clerk of the Court

ATTN: CLINT G. DOCKEN, QC
 TEL: 403-245-0111
 FAX: 403-245-0115

OUR FILE: 124892-0001

Brought under the *Class Proceedings Act*,
 SA 2003, c C-16.5

*Brought before Justice Campbell.
 ON: June 27, 2016
 in Calgary.*

THESE APPLICATIONS, MADE BY:

1. Dennis Allen for certification of the Alberta Action as a class proceeding for the purposes of settlement, leave to commence a claim under Part 17.01 of the *Securities Act*, RSA 2000, c. S-4; and equivalent provisions of Securities Acts of other Provinces, and for an order pursuant to subsection 35(4) of the *Class Proceedings Act*, SA 2003, c C-16.5 in accordance with the terms of the

Settlement Agreement, approval of the Second Notice, the Plan of Notice, the Plan of Allocation, the Claim Form and Opt-Out Form; and

2. D'Arcy & Deacon LLP for the approval of the agreement respecting fees and disbursements between D'Arcy & Deacon LLP and Dennis Allen pursuant to Part 4 of the *Class Proceedings Act*, SA 2003, c C-16.5 and for the fixing of Class Counsel's fees and taxes at \$ 9,881,850.00 were heard on June 27, 2016 at the Court of Queen's Bench, Calgary Court Centre.

ON READING THE FOLLOWING:

- (a) the Application for Certification and Settlement Approval;
- (b) the Settlement Agreement;
- (c) the affidavits of:
 - (i) affidavit of Dennis Allen, sworn September 23, 2015;
 - (ii) affidavit of Mark D. J. Schulz, sworn September 22, 2015;
 - (iii) affidavit of Lawrence Kryzanowski, sworn August 20, 2015;
 - (iv) affidavit of Cyrus Khory, sworn June 26, 2015;
 - (v) affidavit of Joseph Wilkinson, sworn August 7, 2015;
 - (vi) affidavit of Natasha M. Veer, sworn May 3, 2016;
 - (vii) affidavit of Dennis Allen, sworn June 16, 2016;
 - (viii) affidavit of Joseph Wilkinson, sworn June 1, 2016;
 - (ix) affidavit of David Rosenfeld, sworn June 2, 2016;
 - (x) affidavit of Adam Werner, sworn June 2, 2016;
 - (xi) affidavit of James Sayce, sworn June 2, 2016;
 - (xii) affidavit of Stephanie Thurin, sworn June 2, 2016;
 - (xiii) affidavit of Kevin Wiener, sworn June 3, 2016;
 - (xiv) affidavit of Gregory D. Wigglesworth, sworn June 23, 2016.

AND ON HEARING the submissions of counsel for the parties in the action, **AND ON BEING ADVISED** that:

- (a) only the Insurers of the Defendants have contributed the Settlement Amount;
- (b) Epiq Systems Inc. ("Epiq") consents to being appointed Administrator;
- (c) Gregory Wrigglesworth of Kirwin Partners LLP consents to receiving Opt-Out forms, to reporting to the Alberta Court regarding opt-outs, and to being appointed Referee;
- (d) there have been no objections to the proposed settlement received by Gregory D. Wrigglesworth;
- (e) on May 31, 2016, the Honourable Justice E. Belobaba of the Ontario Court issued an Order certifying the Ontario Action as a Class Proceeding, approving the settlement, granting leave to commence an Action pursuant to Part XXIII.1 of the *Securities Act*, RSO 1990 c S 5 and approving Class Counsel's fee of 33 percent of the settlement amount, plus taxes; and
- (f) on June 13, 2016, the Honourable Justice Michel A. Pinsonnault, J.S.C. of the Québec Court issued an Order authorizing the Québec Action as a Class Proceeding, approving the settlement, granting leave to commence an Action pursuant to Title VIII of the *Securities Act*, CQLR c V-1.1 and Title III of the *Code of Civil Procedure*, CQLR c C-25.01 and approving Class Counsel's fee of 33 percent of the settlement amount, plus taxes.

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

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

- (a) "Alberta Court" means the Court of Queen's Bench of Alberta;
- (b) "Claims Bar Deadline" means 5:00 p.m. eastern time on a date that is no less than one hundred twenty (120) days after the date of the last newspaper publication of the Second Notice;
- (c) "Class Counsel" means Sutts, Strosberg LLP, Koskie Minsky LLP, Rochon Genova LLP, D'Arcy & Deacon LLP and Merchant Law Group LLP;
- (d) "Courts" means collectively the Alberta Court, the Ontario Court and the Québec Court;
- (e) "Escrow Account" means the interest bearing trust account with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest bearing account in a Canadian Schedule 1 bank in Alberta, initially under the control of Sutts, Strosberg LLP and then transferred to the control of the Administrator once the Settlement is final;
- (f) "Fee Agreement" means the agreement between Allen and D'Arcy & Deacon LLP signed by Dennis Allen;
- (g) "Ontario Court" means the Ontario Superior Court of Justice;
- (h) "Québec Court" means the Québec Superior Court; and
- (i) "Settlement Agreement" means the settlement agreement dated February 12, 2016 (without schedules) attached hereto as Schedule A.

2. **THIS COURT HEREBY ORDERS THAT:**

- (a) leave to commence a claim under Part 17.01 of the *Securities Act*, RSA 2000, c S-4; and equivalent provisions in the Securities Acts of other Provinces is granted;
- (b) this action is certified as a class proceeding for settlement purposes only;
- (c) the Alberta Class is defined as:

all persons wherever resident, other than Québec Class Members and Ontario Class Members, who acquired Shares of Penn West on the TSX or on an alternative trading market in Canada during the First Class Period and/or the Second Class Period and held some or all of those Shares at the close of trading on July 29, 2014 or September 18, 2014 respectively, except for Excluded Persons;

(d) the common issue is:

Did any of Penn West's financial statements contain a misrepresentation for the purposes of s. 211.03 (6) of the *Securities Act*, RSA 2000, c S-4 and equivalent provisions in the *Securities Acts* of other Provinces?;

(e) Dennis Allen is appointed as the representative plaintiff; and

(f) the cause of action certified is the right of action in section s. 211.03 (6) of the *Securities Act*, RSA 2000, c S-4 and equivalent provisions in the *Securities Acts* of other Provinces.

3. **THIS COURT ORDERS AND ADJUDGES** that the Settlement is fair and reasonable and in the best interests of the Alberta Class Members and is approved.

4. **THIS COURT ORDERS** that:

(a) the Settlement Agreement, without schedules, attached as Schedule 1 to this order, is approved and shall be implemented in accordance with its terms;

(b) the Second Notice, generally in the form attached as Schedule 2 to this order, is approved;

(c) the Plan of Notice, generally in the form attached as Schedule 3 to this order, is approved;

(d) the Plan of Allocation, generally in the form attached as Schedule 4 to this order, is approved;

- (e) the Claim Form, generally in the form attached as Schedule 5 to this order, is approved; and
 - (f) the Opt-Out Form, generally in the form attached as Schedule 6 to this order, is approved.
5. **THIS COURT ORDERS** that Epiq is appointed, until further order of the Courts:
- (a) as the Administrator on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
 - (b) to manage the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, Plan of Allocation and this order.
6. **THIS COURT ORDERS** that if Penn West does not elect to terminate the Settlement Agreement, the Administrator shall be paid, from the Escrow Account, a fee in an amount to be approved by the Court.
7. **THIS COURT ORDERS** that the Administrator may implement a procedure permitting brokers to make claims on behalf of their clients if they are authorized to do so.
8. **THIS COURT ORDERS** that Gregory Wrigglesworth is appointed as Referee, until further order of the Courts, on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation.
9. **THIS COURT ORDERS** that the Alberta Class Members shall be given notice of the certification of the action as a class proceeding, the approval of the

Settlement Agreement, the Plan of Allocation, the Opt-Out Deadline and the Claims Bar Deadline substantially in the form of the Second Notice published and disseminated in accordance with the Plan of Notice.

10. **THIS COURT ORDERS AND DECLARES** that the notice to the Alberta Class Members described in paragraph 9 satisfies the requirements of Division 3 of the *CPA*.
11. **THIS COURT ORDERS** that after publication and distribution of the Second Notice in accordance with the Plan of Notice, Class Counsel shall file with the Alberta Court an affidavit confirming the publication and distribution of the notices in accordance with and as required by the Plan of Notice.
12. **THIS COURT ORDERS** that:
 - (a) each Alberta Class Member who wishes to opt out must submit, by mail, email or courier, a properly completed Opt-Out Form and all required supporting documents to Gregory Wrigglesworth by the Opt-Out Deadline;
 - (b) if a Alberta Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to the Administrator by the Opt-Out Deadline, the Alberta Class Member shall be deemed not to have opted out of the action, subject to any further order of the Alberta Court;
and
 - (c) the Opt-Out Deadline shall not be extended unless ordered by the Alberta Court.
13. **THIS COURT ORDERS** that, within five (5) days after the Opt-Out Deadline, Gregory Wrigglesworth shall report to the Alberta Court, to the Defendants and to

Class Counsel the names of those Class Members, if any, who have opted out of the Actions, the number of Eligible Shares held by each Class Member who opted out, and a summary of the information delivered by each Class Member who opted out.

14. **THIS COURT ORDERS** that, if the Opt-Out Threshold is exceeded, Penn West may elect to terminate the Settlement Agreement and set aside this order, provided that written notice of the election to terminate is provided to Class Counsel within twenty (20) days after they receive the report from Gregory Wrigglesworth on Opt-Out Parties required by paragraph 13 of this order.
15. **THIS COURT ORDERS AND DECLARES** that this order is binding upon each Alberta Class Member who does not opt-out in accordance with the terms of this order, including those persons who are minors or mentally incapable, and the requirements of Part 2, Division 2 of the *Alberta Rules of Court* are dispensed with.
16. **THIS COURT ORDERS AND DECLARES** that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever and wherever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity or at common law, that the Releasor, or any of them, whether directly, indirectly, derivatively, or in

any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees relating in any way to the purchase, sale, pricing, marketing or distributing of Shares, or to any conduct alleged, or that could have been alleged, in the Actions, including, without limitation, any such claims that have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Shares in the Class Period.

17. **THIS COURT ORDERS** that the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person (including on behalf of any Opt-Out Party), any action, suit, cause of action, claim or demand against any Releasee or any other person (including but not limited to the auditors) who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.
18. **THIS COURT ORDERS** that to participate in this Settlement, an Alberta Class Member must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Alberta Court orders otherwise.
19. **THIS COURT ORDERS** that the plaintiff, Class Counsel, the Referee or the Administrator may apply to the Alberta Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or relating to any other matter.

20. **THIS COURT ORDERS** that the plaintiff and the Defendants may apply to the Alberta Court for directions in respect of the termination of the Settlement Agreement in accordance with its terms or any matter relating thereto.
21. **THIS COURT ORDERS** that no person may bring any action or take any proceedings against the plaintiff, Defendants, Administrator, the Referee, or their employees, agents, partners, lawyers, associates, representatives, successors or assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this order except with leave of the Alberta Court.
22. **THIS COURT ORDERS** that:
 - (a) the Fee Agreement between Dennis Allen and D'Arcy & Deacon LLP is approved;
 - (b) Class Counsel's fees and taxes are fixed at \$9,881,850 and shall be paid by Sutts, Strosberg LLP to Class Counsel from the Escrow Account forthwith on the Effective Date;
 - (c) Class Counsel are entitled to thirty-three percent of the total amount of interest earned on the Settlement Amount to the Effective Date which amount Sutts, Strosberg LLP shall pay Class Counsel on the Effective Date;
 - (d) the disbursements of D'Arcy & Deacon LLP and Sutts, Strosberg LLP in the amount of \$45,775.65 inclusive of taxes, are approved and Sutts, Strosberg LLP shall pay that amount to D'Arcy & Deacon LLP and Sutts, Strosberg from the Escrow Account forthwith on the Effective Date.

23. **THIS COURT ORDERS** that the Alberta Action, except as provided for in this order, is dismissed without costs and with prejudice.
24. **THIS ORDER** expressly contemplates being the last contingent condition of three parallel orders being made and effected by the Ontario Court, the Québec Court and the Alberta Court. With the terms of this Order being approved, this Order is of full force and effect at the time of its pronouncement.
25. **THIS COURT ORDERS AND DECLARES** that the Insurers' contribution to the settlement under the Settlement Agreement and the amounts paid by the Insurers for the defence of the Alberta Action, the Ontario Action, the Québec Action and the U.S. Action, to the extent of those amounts (collectively, the "Contribution"):
 - (a) does not violate the interests of the Plaintiff or the Alberta Class Members, or any other party who might have a claim against any person or entity potentially covered under the Insurance Policies;
 - (b) constitutes covered Loss (as defined in the Insurance Policies);
 - (c) reduces the Limits of Liability (as defined in the Insurance Policies) under the Insurance Policies for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the defendants, or any of them, engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Insurance Policies, or any of them, so as to disentitle them to coverage under the Insurance Policies, or any of them;
 - (d) is without prejudice to any coverage positions or reservations of rights

taken by the Insurers in relation to any other matter advised to the Insurers or any other Claim (as defined in the Insurance Policies) made or yet to be made against the Insureds (as defined in the Insurance Policies), provided that neither coverage nor payment in respect of the settlement of the Actions, nor the settlement of the Actions, will be voided or impacted by any such coverage position or reservation of rights; and

- (e) fully and finally releases the Insurers from any further obligation, and from any and all claims against them under or in relation to the Insurance Policies, in respect of the portion of the Insurers' Limits of Liability that were expended to fund the Contribution.

26. **THIS COURT ORDERS AND DECLARES** that all persons and entities provided with notice of this motion shall be bound by the declarations made in, and the terms of, this Order.



The Honourable Madam Justice G.A. Campbell

J.C.Q.B.A.