

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

LBP HOLDINGS LTD.

Plaintiff

and

**HYCROFT MINING CORP., SCOTT A. CALDWELL, ROBERT M. BUCHAN,
CORMARK SECURITIES INC., and DUNDEE SECURITIES LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

THE PLAINTIFF'S SUPPLEMENTAL SUBMISSIONS
(Motion for Settlement Approval, Notice Approval, and Fee Approval)

Question No.1. I need more detail than what is provided in your factum re why the \$5.5 Can falls within the zone of reasonableness - please forward a one-page email with your key submissions.

Answer No.1. There are several material facts that support the proposition that the settlement of C\$5.5 million falls well within the zone of reasonableness. The key submissions are the following:

First, the Plaintiff's original expert economist, PWC, determined that approximately 11% of Hycroft's securities float was traded on the TSX while the remaining 89% was traded within the U.S. market (and subject to the U.S. Proceeding). PWC also determined that damages were C\$1.10 per share, which was based upon a single public corrective disclosure statement. See, Morganti Affidavit, at paragraph 24.

Second, had the Plaintiff continued with the original claim, e.g., being the parallel claim to the U.S. Proceeding, it is Class Counsel's opinion that the settlement

would have likely resulted in a USD\$1.5 million (C\$1.88 million) as a reflection of the float allocation between the Canadian and US stock exchanges. See, *Morganti Aff.*, at paras. 32-33.

Third, the Plaintiff's second expert economist, Dr. Craig McCann, determined that if the Court accepted the Plaintiff's claim that Hycroft released multiple corrective disclosure statements, damages could range between C\$0.51 to C\$2.54 per share, and that between 5.27 to 5.4 million shares were damaged. Concurrently, Hycroft's expert economist, NERA, determined that only approximately 1.28 million shares were damaged. Furthermore, I learned that approximately 28% of damaged shares were purchased by "Excluded Parties," thereby further reducing the Class-wide damages by the same percentage. See, *Morganti Aff.*, at para. 29.

Following PWC's damages analysis of \$1.10 per share, the range of the Class' damages could be C\$1.4 million (NERA's number of 1.28 million shares) to C\$5.8 million (McCann's number of 5.27 million shares).

C\$5.5 million of C\$1.4 million equals a 100% plus recovery.

C\$5.5 million of C\$5.8 million equals a 94% recovery.

Following McCann's damages analysis of \$2.54 per share (maximum), the range of the Class' damages could be C\$3.2 million (NERA's number of 1.28 million shares) to C\$13.4 million (McCann's number of 5.27 million shares). See, *Morganti Aff.*, fn. 13-14.

C\$5.5 million of C\$3.2 million equals a 100% plus recovery.

C\$5.5 million of C\$13.4 million equals a 41% recovery.

These figures of C\$1.4 million to C\$13.4 million must be further reduced by 28% to account for the Excluded Parties, i.e., C\$1 million to C\$9,648,000.

Based upon these reasons, the Plaintiff submits that a settlement of C\$5.5 million is well within the zone of reasonableness.

Question No.2. Legal fees are fine except for your claim for costs of Staff Lawyers - why is this a disbursement and not within legal fees contingency?

Answer No.2. Class Counsel was seeking a total of C\$132,818 plus C\$17,266.34 (HST) for Administrative type disbursements, which included the eDiscovery vendor and Staff Lawyers' fees. See, Morganti Aff., at para. 54:

C\$30,363 was paid to the eDiscovery vendor.

C\$59,898 was paid to Staff Lawyers

The reason that Morganti & Co., allocated the cost of the Staff Lawyers as a disbursement because its eDiscovery Vendor, TrustPoint (f/k/a, Precision Discovery) was offering the same services, as most eDiscovery vendors now offer, to conduct the review of the Corporate Defendants' discovery and organized this discovery into various types of reports but at a premium cost to Class Counsel and, ultimately, the Class. The hiring of Staff Lawyers was less expensive than retaining the eDiscovery Vendor's document coders.

Correspondingly, none of the Staff Lawyers' lodestar (dockets) were included within the total amount of lodestar (dockets) referred within the Plt.'s Factum, at para. 65, and Morganti Aff., at para. 53.

Class Counsel is prepared to reallocate the Staff Lawyers' charges into Class Counsels' total lodestar (dockets), which Class Counsel submit should further support the requested legal fee. See, Morganti Aff., at paras. 51-53.

In conclusion, the Plaintiff will not seek reimbursement of any of the amounts paid to Staff Lawyers (i.e., C\$67,691, inclusive of HST) reduce the requested total amount of C\$613,994 by C\$59,898, for a total of C\$554,096, plus HST where applicable. See, Morganti Aff., at para 54.

Question No.3.

Where does Mr. Parker live (re having to travel to Toronto)? - some honorarium is probably justified but why \$10K - see *Aps v Flight Centres* 2020 ONSC 6779 at para. 43.

Answer No.3.

The short answer is that Lloyd Parker resides in the City of Fall River, Nova Scotia. See, Affidavit of Parker, at Introduction (dated June 1, 2021).

The following note responds to *Aps v Flight Centres Travel Centres*, 2020 ONSC 6779, at para 43. *Aps* appears to have been issued and settled within less than 2 years, the Class was not certified, it is likely that the Mr. Aps was not cross examined, and the value of the settlement appears to be approximately 7% - 10% of the alleged damages. The *LBP Ltd. v. Hycroft Gold Corp.*, CV-14-50851300-00CP, is a materially different situation and settlement value proposition for the following main reasons.

First, Mr. Parker is an older gentleman that owns and operates a large and successful engineering and construction firm that focuses primarily on renovations and new construction of buildings for the Canadian federal government in Nova Scotia. He also has a heightened knowledge of investing. Mr. Aps was a travel consultant.

Second, Mr. Parker issued his and the Class' claim in 2014, i.e., 7 years ago, and litigated his certification motion for 3 years to success. Indeed, Mr. Parker continued this litigation journey through the highs (e.g., the January 2020, the Divisional Court granted the Plaintiff's October 2017 appeal the denial of class certification, as reflected at *LBP Ltd. v. Hycroft Gold Corp.*, 2020 ONSC 59) and lows (e.g., Hycroft's 2 bankruptcy proceedings, the loss of PWC as an expert, multiple failed mediations, the Ontario Class Proceedings Fund only agreeing to finance up to C\$40,500 while Class Counsel already invested hundreds of thousands of dollars, etc.), as reflected in published court decisions and Morganti Aff., at paras. 14 and 24-32 (dated July 21, 2021), see also, Factum at para. 59.

Third, Mr. Parker was sophisticated enough to discuss the pro/cons of discontinuing the Secondary Market Claims, resulting in enjoying any benefits of being the parallel claim to the U.S. Proceeding. On March 15, 2017, this Honourable Court granted the Plaintiff's motion. Had he rejected this strategy, it is my opinion that this Action would have likely settled around the USD\$1.5 million range, i.e., 10% of the U.S. Proceeding. See, Morganti Aff., at paras. 32-33. In comparison, it does not appear that Mr. Aps was integrally involved in the strategies of the litigation against Flight Centres Travel Centres.

Respectfully, Class Counsel submits that Mr. Parker has earned the suggested honorarium of \$10,000.

July 26, 2021

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