

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE) MONDAY THE 6TH DAY
) OF OCTOBER, 2014
RICHARD GATES)

B E T W E E N

ELIZABETH FRICKE and MARYANNE MALLINOS

Plaintiffs

and

NEVSUN RESOURCES LTD., CLIFFORD T. DAVIS,
PETER J. HARDIE and SCOTT TREBILCOCK

Defendants

Proceedings under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiffs for the purposes of settlement and for an order pursuant to subsection 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 in accordance with the terms of the Settlement Agreement was heard on October 6, 2014 at Windsor, Ontario.

ON READING the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the affidavits of:
 - (i) Elizabeth Fricke sworn September 19, 2014;
 - (ii) Maryanne Mallinos sworn September 15, 2014;
 - (iii) Jay Strosberg sworn September 19, 2014;
 - (iv) Shelley Woodrich sworn September 8 and October 2, 2014; and
 - (v) Gregory Wrigglesworth sworn October 3, 2014.

AND ON HEARING the submissions of counsel for the parties in the action,

AND ON BEING ADVISED that:

- (a) the parties consent to this order;
- (b) Marsh Risk Consulting consents to being appointed Administrator;
- (c) Gregory Wrigglesworth of Kirwin Partners LLP consents to receive opt-out forms, to report to the Court regarding opt-outs, and to being appointed Referee; and
- (d) there have been no objections to the proposed settlement received by Gregory Wrigglesworth.

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, except as amended herein, apply to and are incorporated into this order and the following definitions also apply:

- (a) “Claims Bar Deadline” means 5:00 p.m. eastern time on the date one hundred and twenty (120) days after the date on which the Second Notice is first published;
- (b) “Class Counsel” means Sutts, Strosberg LLP, Groia & Company Professional Corporation and the Law Office of Andrew J. Morganti, JD, LL.M.;
- (c) “Excluded Persons” means
 - (i) the Individual Defendants;
 - (ii) Nevsun’s past or present subsidiaries, affiliates, legal representatives, predecessors, successors and assigns;
 - (iii) any person who was an officer or director of Nevsun during the Class Period;
 - (iv) any immediate member of the Individual Defendants’ families; and
 - (v) any entity in which any of the above persons has or had during the Class Period any legal or de facto controlling interest.
- (d) “NYSE” means the New York Stock Exchange;
- (e) “Released Claims” (or “Released Claim” in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, derivative or otherwise in nature, whether personal or subrogated, damages whenever 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, that the Releasers, 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 or any one or more of the Releasees relating in any way to the purchase, acquisition, sale, pricing, marketing or distributing of Shares, or to any conduct alleged, or that could have been alleged, in the Action, 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, except for purchases over the NYSE or other U.S. trading platforms;

- (f) "Settlement Agreement" means the settlement agreement made as at August 21, 2014 (without schedules) attached hereto as Schedule 1; and
- (g) "Shares" means any common shares of Nevsun, except for common shares purchased or otherwise acquired on the NYSE or other U.S. trading platforms.

2. THIS COURT ORDERS that:

- (a) this action is certified as a class proceeding;
- (b) the class is defined as:

all persons, other than an Excluded Person and an Opt-Out Party, who acquired Shares during the Class Period and held some or all of those Shares at the close of trading on the TSX on February 6, 2012.

- (c) the common issue is:

Did any of Nevsun's public disclosure documents released during the Class Period contain one or more misrepresentations within the meaning of the *Securities Act*, R.S.O. 1990, c.s.5, as amended, or at common law?

- (d) Elizabeth Fricke and Maryanne Mallinos are appointed as the representative plaintiffs; and
- (e) the cause of action certified is negligent misrepresentation.

3. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of this action is fair and reasonable and in the best interests of the 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 Marsh Risk Consulting is appointed:
- (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, the Plan of Allocation and this order.
6. THIS COURT ORDERS that if the Defendants do not elect to terminate the Settlement Agreement in accordance with this order, the Administrator shall be paid from the Escrow Account an all-inclusive fee of \$300,000.

7. THIS COURT ORDERS that if the Settlement Agreement is terminated in accordance with this order, the Administrator may apply to the Court pursuant to section 18.1 of the Settlement Agreement for directions relating to the amount it is to be paid for the services it rendered to the date of termination.

8. 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.

9. THIS COURT ORDERS that Gregory Wrigglesworth is appointed as Referee, until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation.

10. THIS COURT ORDERS that the 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.

11. THIS COURT ORDERS AND DECLARES that the notice to the Class Members described in paragraph 10 satisfies the requirements of section 17(6) of the *CPA*.

12. 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 Court an affidavit confirming the publication and distribution of the Second Notice in accordance with and as required by the Plan of Notice.

13. THIS COURT ORDERS that:

- (i) each 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 Wigglesworth by the Opt-Out Deadline;
- (ii) if a 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 Class Member shall be deemed not to have opted out of the action, subject to any further order of the Court; and
- (iii) the Opt-Out Deadline shall not be extended unless ordered by the Court.

14. THIS COURT ORDERS that, within ten (10) days after the Opt-Out Deadline, Gregory Wigglesworth shall report to the Court, to the Defendants and to Class Counsel the names of those Class Members, if any, who have opted out of the Action, 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.

15. THIS COURT ORDERS that, if the Opt-Out Threshold is exceeded, the Defendants 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 thirty (30) days after they receive the last of the reports required by paragraph 14 of this order.

16. THIS COURT ORDERS AND DECLARES that this order is binding upon each Class Member who does not opt out in accordance with the terms of this order, including those persons who are minors or are mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.

17. 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, derivative or otherwise in nature, whether personal or subrogated, damages whenever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees, lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasors, 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 or any one or more of the Releasees relating in any way to the purchase, acquisition, sale, pricing, marketing or distributing of Shares, or to any conduct alleged, or that could have been alleged, in the Action, 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, except for purchases over the NYSE or other U.S. trading platforms.

18. THIS COURT ORDERS that the Releasers 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 any Opt-Out), any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

19. THIS COURT ORDERS that to participate in this Settlement, a Class Member must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Court orders otherwise.

20. THIS COURT ORDERS that the plaintiffs, Class Counsel, the Referee or the Administrator may apply to the Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or relating to any other matter.

21. THIS COURT ORDERS that the plaintiffs and the defendants may apply to the Court for directions in respect of the termination of the Settlement Agreement in accordance with its terms or any matter relating thereto.

22. THIS COURT ORDERS that no person may bring any action or take any proceedings against the plaintiffs, defendants, Administrator, the Referee, or their employees, agents, partners, 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 Court.

23. THIS COURT ORDERS that upon the Effective Date, the Action be dismissed, with prejudice and without costs.

[Redacted Signature]

JUSTICE

1219942

ENTERED AT WINDSOR	
In Book No.	25
or Document No.	1493
on	Nov 7 2014
by	JK