Court File No.: CV-14-509885-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CLAIRE BALDWIN

Plaintiff

- and -

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL, LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS, EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF BETHANIE PASCUTTO
(affirmed April 28, 2023)

I, BETHANIE PASCUTTO, of the City of Burlington, in the Province of Ontario,

MAKE OATH AND SAY:

INTRODUCTION

1. I am a lawyer at the law firm of Groia & Company Professional Corporation ("**Groia & Company**"), co-counsel with Siskinds LLP ("**Siskinds**", together, "**Class Counsel**") for the Plaintiff in this action, and as such have personal knowledge of the facts and matters deposed to in this affidavit. Where facts are not within my personal knowledge, I have stated the source of the information, and I believe the information to be true.

2. A settlement has been reached between the Plaintiff and the Defendants (the "**Settlement Agreement**"). A copy of the Settlement Agreement is attached as **Exhibit "A"**. Unless

otherwise stated or the context otherwise indicates, capitalized terms used in this affidavit have the meanings assigned to them in the Settlement Agreement.

3. Class Counsel has extensive experience litigating and resolving complex class action cases similar to this one. Siskinds has acted as lead or co-lead counsel to plaintiffs in excess of 100 class proceedings and has successfully resolved over 60 class proceedings in areas such as securities, competition (price-fixing), product liability (particularly with respect to pharmaceuticals and medical products), the environment and consumer protection. Groia & Company has acted as lead or co-lead counsel to both plaintiffs and defendants in dozens of securities class actions and has successfully resolved most of these proceedings.

4. Where in this affidavit I use pronouns such as "our", "we", and "us", I am referring to the Siskinds and Groia & Company lawyers with primary carriage of the Action.

5. I swear this affidavit in support of the Plaintiff's motion for:

(a) approval of the Settlement Agreement;

(b) approval of the proposed Second Notice;

(c) approval of the Plan of Allocation and distribution of the Settlement Amount, in accordance with the Plan of Allocation;

(d) approval of the Claim Form;

(e) the appointment of RicePoint Administration Inc. ("**RicePoint**") as Administrator and to manage the Escrow Account;

(f) approval of Class Counsel Fees;

(g) approval of the honorarium to the Plaintiff; and

(h) dismissing this Action without costs and with prejudice.

OVERVIEW

6. This Action has been vigorously litigated for over nine years, including a hotly contested motion for leave to assert the cause of action provided by Part XXIII.1 of Ontario's *Securities Act* ("***OSA***") and an appeal of the leave decision to the Ontario Court of Appeal. This Action has been certified as a class proceeding for the purposes of settlement. Although the formal discovery process has not yet begun, the Plaintiff had access to an extensive body of evidence for and has a firm grasp on the strength and weaknesses of her case.

7. On August 22, 2022, the Plaintiff and Imperial Metals Corporation ("**Imperial**"), J. Brian Kynoch, Andre Deepwell, Larry G. Moeller and Laurie Pare (the "**Imperial Defendants**") conducted a mediation with the assistance of Joel Wiesenfeld as mediator.

8. At the mediation, the Plaintiff and the Imperial Defendants engaged in arms-length negotiations and ultimately agreed to settle the action. On November 16, 2022, the Plaintiff and the Imperial Defendants executed a term sheet confirming the settlement of the action on specific terms. The Settlement Agreement was executed on January 31, 2023.

9. The Settlement Agreement provides that the Imperial Defendants and their insurers will pay $6,000,000.00 to resolve the claims asserted in the Action.

10. In preparation for the mediation, Class Counsel had lengthy discussions in which we reviewed and debated the risks and obstacles the Action faced proceeding through a second leave motion and a trial of the common issues, the likelihood of those risks materializing and how those risks would impact on the possibility of recovery for the Class. These discussions were conducted with the benefit of the materials filed by the parties for the leave motions and appeal, including expert opinions, and the decisions of this Court and other courts.

11. The claims certified for the purposes of settlement are predicated on the statutory cause of action under Part XXIII.1 of the *OSA* for misrepresentations in Imperial's secondary market disclosure documents and under the parallel provisions of the securities legislation of other provinces (if necessary), and section 132.1 of British Columbia's *Securities Act* ("***BCSA***") for misrepresentations in an offering memorandum. The resolution of these claims is complex and the outcome of the action is highly uncertain.

12. In addition to the general risks present in all high stakes securities litigation, the critical risks specific to this Action are those laid out in paragraphs 43 to 66 below, being broadly:

(a) the risk that the Court would not certify the Action as a class proceeding;

(b) the risk that the Court would not grant the Plaintiff leave to assert the cause of action provided by Part XXIII.1 of the *OSA*;

(c) the risk that the Court would find that there had been no misrepresentations;

(d) the risk that the Court would find that there had been no public correction; and

(e) the risk that the Court would find that the Defendants could rely on the reasonable investigation defence.

13. After considering all the foregoing, Class Counsel advised the Plaintiff and took instructions before entering mediation.

14. In this affidavit, on behalf of Class Counsel, I describe the following:

(a) the background facts from which the Action arose;

(b) the procedural history of the Action;

(c) the negotiation of the Settlement Agreement and its key terms;

(d) the dissemination of the First Notice;

(e) the proposed Second Notice;

(f) the factors supporting the fairness and reasonableness of the Settlement, including the evidence and information available to us when the Settlement was reached, and the key issues and risks to advancing the Action to the second leave motion and, if successful, to trial;

(g) the rationale for the proposed Plan of Allocation; and

(h) the facts relating to our request for the approval of Class Counsel Fees.

BACKGROUND TO THE ACTION

15. This action arises out of a breach of the tailings storage facility (the "**TSF**") at Mount Polley in the early morning hours of August 4, 2014.

16. Imperial issued a press release on August 4, 2014 announcing the breach (the "**August 4 Press Release**") which states:

> Imperial Metals Corporation (III-TSX) reports the tailings storage facility at its Mount Polley mine was breached, releasing an undetermined amount of water and tailings in the early morning of August 4. The cause of the breach is unknown at this time.
>
> Senior company management are at the mine site and are working with mine operating personnel, local agencies, provincial ministry officials and the engineers of record to assess the extent of the breach and the impact of the released water and tailings on the surrounding area.
>
> The Company will provide further information when confirmed and available.

17. On August 7, 2014, this Action was initiated by Notice of Action against the Defendants, including Imperial which is a publicly traded company listed on the TSX. The Second Fresh as Amended Statement of Claim alleges that the Defendants made misrepresentations in Imperial's public disclosures pertaining to the TSF of Imperial's principal operating asset, the Mount Polley

open-pit copper and gold mine. Specifically, the Second Fresh as Amended Statement of Claim alleges that that the Defendants failed to disclose specific and identifiable material facts that would have revealed a materially increased likelihood of TSF failure compared to the generic risks the Defendants actually disclosed, including:

(a) Omissions related to the facts alleged to cause the breach of Imperial's TSF at the Mounty Polley mine, including (a) the weak conditions of the TSF's foundation's soil; (b) the improperly over-steepened slope of the dam enclosing the TSF; and (c) the lack of a sustainable water management program and the accumulation of unprecedented excess water in the TSF resulting in geotechnically undesirable conditions;

(b) Affirmative statements that "rendered misrepresentations due to the Defendants' omission to disclose material information" related to Imperial's operations, production and financial results, financial statements, and the 2004 NI 43-101 Technical Report; and

(c) Affirmative misrepresentations related to Imperial's commitment to safety, its environmental compliance, and the completeness of its disclosure.

A copy of the Second Fresh as Amended Statement of Claim is attached to this affidavit as **Exhibit "B"**.

18. It is further alleged that the Plaintiff and the Class suffered significant investment losses when the misrepresentations were publicly corrected when, on August 4, 2014, Imperial issued a news release disclosing that the Mount Polley tailings storage facility had breached, resulting in wastewater and tailings being released into the environment.

19. The Defendants denied and continue to deny these allegations.

20. The proceeding is advanced on behalf of all persons and entities, wherever they may reside or be domiciled, who acquired Imperial's Securities during the Class Period and continued to hold some or all of those Securities as of August 5, 2014, other than the Excluded Persons.

21. On September 17, 2014, the Plaintiff delivered her notice of motion for leave to assert the cause of action for misrepresentation in secondary market disclosure documents under section 138.3 of the *OSA* and, if necessary, under the parallel provisions of the securities legislation of other Canadian provinces.

22. The parties filed extensive evidence on the leave motion, including: competing expert opinions from engineers on the cause of the TSF's collapse; affidavits attaching, among other things, Imperial's public disclosures, the results of independent governmental investigations into the cause of TSF's collapse; documents obtained by the Plaintiff through freedom of information requests to the Government of British Columbia; and the Imperial Defendants filed several responding fact affidavits, including from the Imperial Defendants themselves (Brian Kynoch, Andre Deepwell, Laurie Pare and Larry Moeller) and from Imperial's Chief Operating Officer Donald Parson. Several cross-examinations were held in advance of the leave motion, including of the engineering experts.

23. The parties filed lengthy factums in support of their respective positions on the leave motion. In their submission, the Imperial Defendants raised numerous grounds to resist the Plaintiff's leave motion, including that the Imperial Defendants had made no misrepresentations, that the Imperial Defendants would be able to establish a due diligence defence at trial, that the Plaintiff had failed to plead misrepresentations with specificity, that the Plaintiff had failed to identify a public correction, and that the Plaintiff had failed to lead evidence to establish the materiality of any alleged misrepresentations.

24. The leave motion was originally scheduled for early Spring of 2020 but was delayed due to global COVID-19 pandemic. The motion was subsequently rescheduled and heard on September 17, 2020. On September 23, 2020, Justice Belobaba issued his order dismissing the

leave motion on the grounds that there was no public correction of the alleged misrepresentations. The Plaintiff appealed and on November 25, 2021 the Court of Appeal allowed the appeal.

25. The leave motion was set to be re-heard on June 27 and 28, 2022. However, in advance of the re-hearing of the leave motion, the Plaintiff and the Imperial Defendants agreed to hold a mediation. As a consequence, the leave motion was adjourned by Justice Glustein to allow the parties to mediate.

26. The Plaintiff and the Imperial Defendants exchanged lengthy mediation briefs and held a mediation on August 22, 2022. Joel Wiesenfeld was the mediator. Mr. Wiesenfeld practiced as securities regulatory counsel for 31 years, concluding his career as a partner at Torys LLP in 2012. During that time, he was repeatedly recognized as one of the top securities litigation practitioners in Canada, including among others as a leading practitioner in securities litigation by Lexpert/American Lawyer's Guide to the Leading 500 lawyers in Canada 2007, 2009, 2010, 2011 and 2012. Mr. Wiesenfeld was the co-founder and co-chair of The Advocates Society's Securities Litigation Practice Group and is an editorial board member of The Canadian Securities Law Reporter. Since leaving private practice, Mr. Wiesenfeld has successfully provided mediation services on securities related matters, including helping successfully mediate the resolution of securities class actions.

27. At the mediation, the Plaintiff and the Imperial Defendants engaged in arms-length negotiations and ultimately agreed to settle the action. On November 16, 2022, the Plaintiff and the Imperial Defendants executed a term sheet confirming the settlement of the action on specific terms. The Plaintiff and the Imperial Defendants finalized the Settlement Agreement on January 31, 2023.

THE SETTLEMENT

28. Pursuant to the terms of the Settlement Agreement, the Imperial Defendants and their insurers agree to pay $6,000,000 to resolve the litigation, without admission of liability. A compensation fund will be established and administered by a professional administrator to pay claims from Class Members pursuant to a formula. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses.

29. The Settlement Agreement is subject to approval by this Court. If the Settlement Agreement is approved, the claims of all Class Members asserted or that could have been asserted in the action, will be fully and finally released and the action will be dismissed. The settlement is not an admission of liability, wrongdoing or fault on the part of the Defendants.

30. The key terms of the Settlement Agreement are as follows:

(a) the Settlement is conditional upon the approval of this Honourable Court;

(b) the Settlement does not constitute an admission of liability by the Defendants;

(c) the Imperial Defendants will pay $6,000,000 all-inclusive for the benefit of the Class Members in full and final settlement;

(d) the Imperial Defendants and their insurers shall pay the Settlement Amount to Siskinds, in trust, within 30 days of the Court order approving the Settlement Agreement;

(e) if the Settlement Agreement is approved by the Court, the claims of all Class Members asserted, or which could have been asserted in, the Action will be fully and finally released, and the Action will be dismissed without costs and with prejudice. This includes releases for, and the dismissal of the action without costs and with

prejudice in relation to, N. Murray Edwards, Edco Financial Holdings and Edco Capital Corporation (the "**Edwards Defendants**") who are defendants but not parties to the Settlement Agreement. The releases granted to the Edwards Defendants are an integral part of the Settlement Agreement without which the Settlement Agreement would not have been reached. Lawrence Thacker, counsel to the Imperial Defendants, confirmed during submissions on the First Motion that the Edward Defendants are aware of the settlement and that the Action will be dismissed in its entirety without costs and with prejudice;

(f) there is no provision for any reversion of the Settlement Amount to the Imperial Defendants or their insurers unless the Settlement is not approved and does not, therefore, become effective;

(g) the Settlement Amount will be distributed to Class Members who file claims in accordance with the Plan of Allocation; and

(h) the approval of the request for Class Counsel Fees, Plan of Allocation and honorarium for the Plaintiff are not a condition of the approval of the Settlement Agreement.

FIRST NOTICE

31. Pursuant to this Court's Order dated February 10, 2023, the following steps were taken to disseminate the First Notice.

(a) on February 17, 2023, the First Notice was published, in English and French, over *Canada Newswire*;

(b) on February 24, 2023, RicePoint sent the First Notice to the 195 brokerage firms in its proprietary database, requesting that the brokerage firms either send a copy of the

First Notice to all individuals and entities identified by the brokerage firms as being Class Members, or to send the names and addresses of all known Class Members to RicePoint (who would subsequently mail or email the First Notice to the individuals and entities so identified);

(c) on February 17, 2023, RicePoint's website related to this Action, including all items relevant to First Notice, went live,

(d) on February 17, 2023, the First Notice, the Settlement Agreement, and Frequently Asked Questions were published on Siskinds' website in English. On February 21, 2023, the Settlement Agreement was posted on Siskinds's French website;

(e) by February 21, 2023, the First Notice was mailed, electronically and/or physically, to those persons and entities who had previously contacted Class Counsel for the purposes of receiving notice of developments in the Action;

(f) RicePoint has made a toll free number and an email address available to the public that will enable Class Members to contact RicePoint in order that they may, amongst other things, obtain more information about the Settlement, how to object to the Settlement, the claims process and the opt out process, and/or request that a copy of the Settlement Agreement, the First Notice and the Claim Form be electronically or physically mailed to them;

(g) contact information for Class Counsel was included in the First Notice; and

(h) on or before May 1, 2023, Siskinds will publish on its website:

i. this affidavit;

ii. an affidavit sworn by the representative plaintiff, Claire Baldwin;

iii. an affidavit sworn by Ivan Bobanovic of RicePoint; and

iv. the Plaintiff's factum in support of the within motion.

SECOND NOTICE

32. The Settlement Agreement requires that the distribution of the Second Notice occur in accordance with the Plan of Notice. Copies of the proposed Second Notice is attached as Schedule "E" to the Settlement Agreement. The Plan of Notice is attached as Schedule "C" to the Settlement Agreement.

33. The Plan of Notice provides that:

(a) the Administrator shall issue a press release containing the content of the Second Notice over Canada Newswire;

(b) the Administrator shall provide the Second Notice to the brokerage firms in its proprietary database;

(c) Class Counsel shall post the Second Notice in English and French on their websites;

(d) Class Counsel shall e-mail the Second Notice to Class Members for whom they have current e-mail addresses; and

(e) Class Counsel shall mail the Second Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.

34. The Administrator has also made a toll free number and an email address available to the public that will enable Class Members to obtain more information about the Settlement and to request that a copy of the Second Notice be sent electronically or physically to them directly.

35. The content and manner of dissemination of the Second Notice are consistent with First Notice in this action, and the programs approved and implemented in other similar cases in which Class Counsel is counsel.

PROPOSED ADMINISTRATOR

36. After soliciting bids from competing experienced Canadian class action administrators and considering their experience and respective bids, I believe it is in the best interests of the Class to appoint RicePoint as Administrator to:

(a) receive and review claims from Class Members; and

(b) administer the Settlement Amount in accordance with the Plan of Allocation and Settlement Agreement, subject to the Court's approval of both.

37. I am confident in RicePoint's ability to effectively and efficiently undertake the notice program and claims administration in this matter, having regard to RicePoint's expertise and experience in executing notice programs and undertaking complex claims administrations.

38. I, along with my colleagues at Groia & Company and co-counsel at Siskinds LLP, recommend the appointment of RicePoint as administrator.

FACTORS SUPPORTING THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

Information Available to Counsel

39. In assessing the reasonableness of the Settlement, we had access to and considered the following sources of information and evidence:

(a) all of Imperial's relevant disclosure documents and other publicly available information concerning the Defendants;

(b) the Independent Expert Engineering Investigation and Review Panel Report on the Mount Polley Tailings Storage Facility Breach dated January 30, 2015, which reported on the causes of the TSF's failure (the "**Independent Expert Panel Report**"). The Independent Expert Panel Report was prepared at the request of British Columbia's Ministry of Energy and Mines and several indigenous bands. In

reaching its conclusion, the Panel drew on numerous internal contemporaneous documents, including from, among others, the Mount Polley Mining Corporation (Imperial's subsidiary that operated the Mount Polley Mine) and Knight Piesold Consulting (one of the engineers of record for the Mount Polley Mine). The Panel also retained professionals to assist in their analysis, including Thurber Engineering Limited;

(c) the investigation report of the Chief Inspector of Mines entitled "Mount Polley Mine Tailings Storage Facility Breach" dated November 30, 2015, which also conducted an investigation into the failure of the Mount Polley mine's TSF (the "**Chief Inspector of Mines Report**"). The investigation was conducted by the Chief Inspector of Mines of the Province of British Columbia pursuant to the authority granted by the *Mines Act*. The investigation team reviewed numerous internal documents (including from the Mount Polley Mining Corporation), conducted interviews and engaged an engineering firm to assist it with its analysis;

(d) approximately 1,157 documents about the Mount Polley Mine obtained through freedom of information requests to the Government of British Columbia;

(e) monthly reports from the Mount Polley mine during the Class Period and relevant portions of all Board minutes during the Class Period produced by the Imperial Defendants as answers to undertakings from the cross-examination of Andre Deepwell;

(f) documents made public from freedom of information requests made by other members of the public and posted online by the British Columbian Government;

(g) trading data;

(h) the submissions of the Defendants on the leave motion, the reasons of this Honourable Court on that motion and those of the Court of Appeal on the subsequent appeal;

(i) an expert report and reply report prepared by Dr. Lawrence A. Hansen, a consulting geotechnical engineer, for the Plaintiff on the failure of the Mount Polley mine's TSF;

(j) an expert responding report and sur-reply report prepared by Dr. Ian Hutchinson, a geotechnical engineer, for the Imperial Defendants on the failure of the Mount Polley mine's TSF;

(k) an expert report from Terry Elrdige of Golder Associates, a geotechnical engineering firm, for the Imperial Defendants on the technical reasons for the failure of the Mount Polley mine's TSF;

(l) the input of Mr. Wiesenfeld in his capacity as mediator; and

(m) the positions taken by the Defendants and their insurers during the course of the mediations.

40. In our view, we possessed more than adequate information to make an informed recommendation concerning resolution of the Action as against the Defendants on the basis upon which it was resolved.

41. In our view, the terms of the Settlement Agreement are fair, reasonable and in the best interests of the Class. The Settlement Agreement delivers an immediate benefit to Class Members in exchange for the release of their claims which, while we believed them to be meritorious, faced significant risks.

42. I explain below aspects of our rationale for recommending the Settlement to the Plaintiff, the Class, and to the Court.

Litigation Risks

43. In discussing litigation risks, we refer to both the various generic risks inherent in all litigation that influence the range of outcomes, as well as case specific risks.

44. In speaking of the generic risks inherent in litigation, we are referring to the risks arising from the passage of time, and the procedural risks that inhere in litigation of this complexity, such as the risk that witnesses will not appear or will not give the evidence expected of them, and the risk of adverse procedural or evidentiary rulings.

45. With the passage of time, documentary evidence may no longer be available, and witnesses may die or their memories of the material events may fade, all of which would impact the Plaintiff's ability to prove her case.

46. The passage of time also applies to Class Members. By the time the leave motion was heard and a decision rendered and the discovery and trial process concluded, including appeals, more than 10 years would have passed from the Class Period. With the passage of that amount of time, some Class Members may no longer be alive, corporate Class Members may no longer exist, some Class Members may not have retained the required transaction records to support their claims and some Class Members may not be inclined to file a claim.

47. The more specific risks are those related to the issues arising in this particular case. The critical risks that we identified are explained in detail below.

(i) Leave not granted

48. Before a hearing on the merits of the Plaintiff's claim, the Plaintiff was required to get leave from this Honourable Court to commence a statutory action against the Defendants for secondary market misrepresentation, pursuant to Part XXIII.1 of the *OSA*.

49. At the leave stage, the Plaintiff's burden is to establish a reasonable possibility that her action will succeed at trial.

50. The first leave motion was dismissed in a decision rendered in September 2020 on the basis that the required public correction had not been established. The decision was overturned on appeal and the leave motion sent back to be considered by this Honourable Court for a second time. If the appeal had been unsuccessful, the Plaintiff's Action would have effectively been at an end.

51. There was a significant a risk that the second leave motion would also have been dismissed. The Defendants took the position in their written submissions that the Plaintiff had not proven, identified or credibly alleged any misrepresentation, omission or public correction, that the Defendants had not made any misrepresentations, that the Plaintiff had not demonstrated materiality of any alleged misrepresentations, and that the Defendant's reasonable investigation provides a complete defence. There was a significant risk that the Court would have agreed with the Defendants on one, some or all of those positions.

(ii) No misrepresentation; no public correction; no materiality; reasonable investigation defence

52. The core of the Plaintiff's claim is that the Defendants failed to disclose the specific and identifiable material risk of a catastrophic failure of the TSF at Mount Polley. Specifically, that they omitted to disclose the risks posed by (a) the weak conditions of the TSF's foundation's

soil; (b) the improperly over-steepened slope of the dam enclosing the TSF; and (c) the lack of a sustainable water management program and the accumulation of unprecedented excess water in the TSF resulting in geotechnically undesirable conditions. In light of these omissions, statements made in Imperial's disclosure issued between August 2011 and August 2014 (the "**Impugned Documents**") were materially false or misleading, and investors continued to purchase the shares at prices which were inflated due to these misrepresentations.

53. The Plaintiff advanced misrepresentation claims under the *OSA* and *BCSA* in respect of the Impugned Documents, which requires proof of "misrepresentation". A "misrepresentation" is defined in the *OSA* as "(a) an untrue statement of material fact, or (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made". A "material fact" is "a fact that would reasonably be expected to have a significant effect on the market price or value of the securities". A similar definition applies under the *BCSA*.

54. The Plaintiff argued that Imperial's knowledge of the material risk of a catastrophic failure of the TSF at Mount Polley is evidenced in their internal documents from 2007 to early 2014 which refer to (i) several red flags raised by consultants and others with respect to the design, construction, operation and structural integrity of the TSF at Mount Polley, and which gave rise to a specific identifiable risk of failure, and (ii) Mount Polley's operations suffering from a historic lack of water management and tailings management strategies and a lack of adequate disclosure controls and procedures.

55. Following disclosure of the breach, the market price of Imperial's shares declined by as much as 40% and Imperial lost $500 million of its market capitalization.

56. The Defendants took the position that Imperial had no knowledge, and could not reasonably have had any knowledge, about the weak soil conditions that they claimed were the cause of the breach. The Defendants asked for the leave motion to be dismissed on the basis that (i) the Plaintiff had failed to plead with specificity or offer credible evidence of the misrepresentations she alleges, (ii) the Plaintiff had failed to plead a public correction with specificity and that the August 4 Press Release is not a public correction, (iii) the Plaintiff had failed to lead evidence to establish the materiality of any alleged misrepresentations; and (iv) the Defendants will be able to establish a due diligence defence at trial. These arguments would have presented significant obstacles for the Plaintiff if the action had proceeded to trial.

57. While we believed that the Plaintiff had a strong argument that the Impugned Documents included misrepresentations by omission, there were a number of significant challenges with these allegations:

(a) the Impugned Documents included disclosure about the general risk of the TSF's failure. While the Impugned Documents did not disclose that there were conditions present at the TSF (such as the accumulation of excess water, inadequate site investigation and the over-steepened dam slope) that created geotechnically undesirable conditions that negatively impacted its safety, there is a risk that a Court would find that these disclosures were sufficient to discharge the Defendants' disclosure obligations;

(b) although the breach of the TSF and Imperial's disclosure about the breach demonstrated that there were conditions present at the TSF that created specific risks of failure, there is a risk that a Court would find that the alleged public correction was

not reasonably capable of being understood in the secondary market as correcting what was misleading in the Impugned Documents;

(c) the Plaintiff asserted that there were a number of conditions that contributed to the TSF failure, which ought to have been disclosed. There is a risk that a Court would find that the primary cause of the failure was the unusual and unexpected geological formation in the form of the weakened UGLU layer (upper glaciolacustrine layer) under the perimeter embankment of the TSF that could not have been reasonably discovered and disclosed, as the Imperial Defendants argued. On the leave motion, the Imperial Defendants argued that there was substantial evidence supporting their position, including their expert opinions, the Independent Expert Panel Report and Chief Inspector of Mines Report. For instance, the Imperial Defendants emphasized that the Independent Expert Panel Report pointed to the incorrect interpretation of the strength of the UGLU layer as the "overarching problem". As a result, there was a serious risk that a Court could find that there was no misrepresentation or that the Defendants were entitled to a reasonable investigation defence on the core misrepresentation advanced by the Plaintiff—the omission of the specific and identifiable material risk of the TSF's failure from Imperial's disclosure documents during the Class Period; and

(d) the Imperial Defendants relied on assurances from its engineers of record and the British Columbia Ministry of Energy and Mines on the integrity of the Mount Polley mine's TSF. There is a risk that a Court would find that the Imperial Defendants were entitled to a reasonable investigation defence as a result.

(iii) Damages limitations and risks

58. The Plaintiff had a preliminary damages estimate of losses in the range of $80 million based on the statutory formula for damages under Part XXIII.1 of the *OSA*. However, there was a risk that actual damages recoverable from the Defendants damages would be less.

59. *First*, under Part XXIII.1 of the *OSA,* damages calculated pursuant to the damages formula are limited by statutory caps on damages (called "liability limits") that apply unless the plaintiff can prove that the particular defendant authorized, permitted, or acquiesced in making a misrepresentation while knowing that it was a misrepresentation. The liability limit cannot be lifted as against the issuer (*i.e.* Imperial) even where the issuer has knowledge of the misrepresentation.

60. For Imperial, the liability limit is 5% of its pre-misrepresentation market capitalization, which is calculated according to a formula provided in the regulations to the *OSA*. That liability limit could vary depending on findings at leave or trial regarding when the misrepresentations were first made. If the Court determined that the misrepresentations started on August 15, 2011 (the start of the Class Period certified on consent for Settlement approval purposes), the liability limit would be approximately $19.9 million.

61. For the individual defendants, the limit is the greater of 50% of the aggregate of their compensation or $25,000. Class Counsel's calculation of the likely maximum liability limits are: (1) Brian Kynoch - $611,135; (2) Andre Deepwell – $418,428; (3) Larry Moeller - $71,289; and (4) Laurie Pare - $25,000.

62. There is insufficient publicly available information to calculate the liability caps for the Edwards Defendants.

63. *Second*, under Part XXIII.1 of the *OSA* defendants can rebut the damages calculated pursuant to the statutory damages formula by proving that the change in the market price of the securities is "unrelated" to the misrepresentations. There was a risk that the Defendants would be able to establish that all or part of the decline following the alleged public correction was unrelated to the misrepresentations. Based on the arguments advanced by the Defendants on leave, the Plaintiff anticipated that at trial the Defendants would argue that a substantial portion of the decline in share price following the public correction was unrelated to the misrepresentation because the post-public correction share price decline concerned the breach of the TSF itself, not any misrepresentations related to an undisclosed risk. Put another way, the argument would be made that the decline in Imperial's share price reflected the crystallization of a disclosed risk, rather than the revelation of an undisclosed risk.

(iv) Additional risks facing claims on behalf of Note holders

64. In addition to the risks identified above, there were additional risks for the claims advanced on behalf of Class Member's who acquired Imperial Metal's 7% unsecured Notes due March 2019 during the Class Period.

65. *First*, there was a risk that any documents provided to Class Members in the initial offering of the Notes in March of 2014 would not be considered a prescribed document for the purposes of the statutory cause of action for misrepresentations in an offering memorandum provided by section 132.1(1) of the *BCSA*[1] and, as a result, there would be no statutory cause of

[1] *Securities Rules*, BC Reg 194/97 section 184.1 provides that "For the purpose of section 132.1 of the *Act*, the prescribed disclosure document is the offering memorandum required to be delivered to a purchaser of a security under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*." Section 2.9 of National Instruments sets out the requirements for the offering memorandum prospectus exemption. The evidence available suggests that the bulk of the offering utilized the accredited investor exemption, not the offering memorandum prospectus exemption.

action available for the initial offering of the Notes. Common law causes of action premised on a misrepresentation can pose difficulties in pursuing on a class wide basis.

66. *Second*, there was limited trading data available that could be used to determine the value of the Notes that traded during the Class Period or to calculate the losses of Note holders.

67. It is also noteworthy that that Plaintiff's counsel has not been contacted by any Note holder who claims to have suffered a loss recoverable in this Action.

Immediate Benefit

68. The Settlement eliminates these identified risks to recovery and instead provides an immediate and substantial benefit to Class Members in exchange for the release of their claims.

PROPOSED PLAN OF ALLOCATION

69. The proposed Plan of Allocation is attached as Schedule "F" to the Settlement Agreement.

70. Class Counsel believes that the proposed Plan of Allocation is fair, reasonable, and in the best interests of the Class. In coming to this assessment of the Plan of Allocation we considered the contents of the Settlement Agreement, the Plan of Allocation itself, the economics of distributing a Settlement of this quantum, how similar securities class action settlements have been distributed in the past, and input from RicePoint, which has substantial experience calculating class member entitlement to benefits in the securities class action context.

71. The key elements of the Plan of Allocation are as follows (definitions in the Plan of Allocation apply in this section):

(a) the objective of the Plan of Allocation is to equitably distribute the Compensation Fund among Authorized Claimants having regard to the issues in the Action;

(b) the Administrator will administer all claims pursuant to the terms of the Plan of Allocation;

(c) the Administrator, in the absence of reasonable grounds to the contrary, will assume Claimants to be acting honestly and in good faith;

(d) Claimants have until October 13, 2023 to submit a claim to the Administrator;

(e) the Administrator will have discretion to correct minor omissions or errors in the Claim Form;

(f) in the event of a denial of a claim by the Administrator, there is a process whereby a Claimant can request reconsideration of the claim. Any decision of the Administrator after a reconsideration of the claim is final and binding and not subject to further review or appeal;

(g) this is a non-reversionary settlement and, as such, the Compensation Fund will be distributed on a *pro rata* basis. Each Authorized Claimant's *pro rata* interest in the Compensation Fund will depend on their Notional Entitlement. Each Authorized Claimant's Notional Entitlement will be calculated in a manner that mirrors the damages formula under section 138.5 of the *OSA* as closely as possible. To reflect this the Plan of Allocation provides:

Eligibility Criteria	**Notional Entitlement**
Imperial common shares and 7% Unsecured Notes due March 2019 disposed of before the close of trading on the Toronto Stock Exchange on August 1, 2014	None
Each Imperial common share disposed of on or before August 18, 2014	the Acquisition Expense less the Disposition Proceeds
Each Imperial common share disposed of after August 18, 2014	the lesser of: i. the difference between the Acquisition Expense and the Disposition Proceeds; and

	ii. the difference between the Acquisition Expense and $9.971[2]
Each Imperial common share not yet disposed of	the difference between the Acquisition Expense and $9.971[3]
Each 7% Unsecured Notes due March 2019 disposed of after August 4, 2014 and prior to March 15, 2019	the Acquisition Expense less the Disposition Proceeds and any interest payments received on the Note
Each 7% Unsecured Notes due March 2019 redeemed, paid in full or extended on or before March 15, 2019	None

(h) the amount paid from the compensation Fund on account of the Notes shall not exceed 10% of the Compensation Fund, reflecting our assessment of the relative strength of the claims made on behalf of Class Members who acquired common shares during the Class Period versus the Notes and their relative contribution to the value of the Settlement Agreement; and

(i) Claimants must provide documentary support for their claims, with the requirement to be interpreted equitably by the Administrator in keeping with the purpose of the Plan of Allocation.

72. Based on our knowledge of the facts of this Action and our experience in other securities class action settlements, we believe that the Plan of Allocation will achieve its stated objective of equitably distributing the Compensation Fund among Authorized Claimants.

[2] An estimate of the volume weighted average trading price in the 10 days following the public correction.
[3] An estimate of the volume weighted average trading price in the 10 days following the public correction.

APPROVAL OF CLASS COUNSEL FEES

Class Counsel Fees Requested

73. Class Counsel seeks the approval of Class Counsel Fees in the amount of $1,500,000 plus taxes and reimbursement for disbursements.

74. The legal fee and disbursement request may be summarized as follows:

ITEM	TOTAL
Fee Request	$1,500,000
Taxes on Fee Request	$195,000
Disbursements	$62,758.76
Taxes on Disbursements	$8,158.64
Total Fee and Disbursement Request (including taxes)	$1,765,917.40

Retainer Agreements

75. Class Counsels' fee request is consistent with the retainer agreement entered into with the Plaintiff, which is attached to her affidavit.

76. The retainer provides that Class Counsel will be entitled to a contingency fee of 25% of the "Amount Recovered" plus applicable taxes. The fee request of $1,500,000 plus applicable taxes is 25% of $6,000,000, which is the "Net Amount Recovered". The amount requested is less than the actual fees incurred by Class Counsel prosecuting this Action on behalf of the Plaintiff and Class.

Risks Assumed by Class Counsel Supporting the Fee Request

77. As elaborated below, prior to the commencement of the Action, Class Counsel assessed and assumed the following risks of prosecuting this complex securities class action with an uncertain outcome, including exposure to our own fees and disbursements.

78. In our experience, the complications and resulting cost of prosecuting a complex securities class action like this one can be very significant.

79. Securities class actions in Ontario are generally complex, hard fought, expensive and can be protracted. It has been our experience to date that, because securities class actions are relatively new to Canada, often interlocutory motions and certification motions will raise issues of first impression and result in appeals.

80. This Action is case in point. It was commenced more than nine years ago and has been the subject of an appeal. On September 23, 2020, the leave motion was dismissed on the basis that there was no public correction. The Plaintiff appealed and, on November 25, 2021, the Court of Appeal overturned the decision. After the parties had served and filed their written submissions but before the appeal was heard, the Court of Appeal released a decision dealing directly with the issue on appeal in this Action. The Plaintiff brought a motion for leave to make supplementary submissions. Leave was granted and the parties served and filed supplementary submissions on the novel issue newly considered by the Court of Appeal.

81. The Court of Appeal returned the leave motion to the Superior Court for a re-hearing of the leave motion. That leave motion was pending when the Imperial Defendants and Plaintiff agreed to a mediation.

82. At the commencement of the Action, Class Counsel was faced with the risks inherent to the prosecution of securities class actions in Ontario. It was anticipated that:

(a) this case would be hard fought by a defence firm that is an expert in the defence of securities cases;

(b) there would be significant resistance to the motion for leave to assert the cause of action under Part XXIII.1 of the *OSA*;

(c) there would be resistance to the certification motion;

(d) if successful on the leave and certification motion, following appeals, there would be production of tens of thousands of documents and weeks of examinations for discovery;

(e) if the case did not settle, there would be a very lengthy trial with an uncertain outcome; and

(f) the exposure to adverse costs awards, including the fees and disbursements of defence counsel and their various experts, would be considerable, most certainly in the millions of dollars. This cost exposure existed at trial and also on the leave and certification motions where substantial adverse cost awards are common.

Efforts of Class Counsel to Date

83. Class Counsel has performed significant work on behalf of Class Members. We:

(a) undertook an investigation of the allegations against the Defendants;

(b) prepared a Notice of Action, Statement of Claim and made amendments to the Statement of Claim;

(c) undertook further investigations and prepared voluminous evidentiary materials for the application for leave under Part XXIII.1 of the *OSA*, including an expert report, Imperial's public documents, the results of public inquiries into the collapse of the TSF and documents obtained through freedom of information requests;

(d) prepared lengthy written submissions and argued the Part XXIII.1 leave motion;

(e) successfully appealed the Part XXIII.1 leave decision of this Honourable Court to the Ontario Court of Appeal;

(f) prepared supplementary written submissions and prepared to re-argue the Part XXIII.1 leave motion;

(g) undertook extensive negotiations, including a mediation, that resulted in the Settlement Agreement; and

(h) responded to Class Member inquiries.

Fees and Disbursements Financed to Date

84. Since the commencement of the Action up to and including April 20, 2023, Class Counsel has docketed fees of $1,852,704 (Siskinds LLP: $1,029,987; Groia and Co.: $760,737; KND Complex Litigation: $61,980) plus applicable taxes.

85. Since the commencement of the Action up to and including April 20, 2023, Class Counsel has financed disbursements of $129,319.81 (Siskinds: $81,656.03; Groia and Co.: $47,663.78) plus applicable taxes. However, Class Counsel will only be requesting $70,917.40 inclusive of taxes in disbursements as $75,000 in costs awarded by the Court of Appeal was previously used to pay for disbursements incurred by Class Counsel in the prosecution of the litigation.

86. The hourly rates and hours expended since the commencement of the Action up to and including April 20, 2023 by the primary lawyers on the file are as follows:

Siskinds LLP

LAWYER/CLERK	HOURS	HOURLY RATE	TOTAL
Michael Robb – Year of Call 2002 (ON)	56.2	$550.00	$30,910.00
	55.3	$575.00	$31,797.50
	34.5	$660.00	$22,770.00
	57.3	$700.00	$40,110.00
	11.3	$750.00	$8,475.00
	101.7	$800.00	$81,360.00
	138.6	$850.00	$117,810.00
	91.4	$900.00	$82,260.00
	22.6	$900.00	$20,340.00
	8.5	$925.00	$7,862.50
Daniel E.H. Bach – Year of Call 2006 (ON); 2008 (NY); 2021 (BC)	1.8	$675.00	$1,215.00
	0.6	$775.00	$465.00
	3.5	$825.00	$2,887.50
Alex Dimson – Year of Call 2009 (ON); 2022 (BC)	9.8	$600.00	$5,880.00
Sage Nematollahi – Year of Call 2011 (NY); 2012 (ON)	132.3	$290.00	$38,367.00
	197.9	$325.00	$64,317.50
	68.3	$325.00	$22,197.50
	128.8	$350.00	$45,080.00
	68.4	$375.00	$25,650.00
	291.7	$500.00	$145,850.00
Nicholas Baker – Year of Call 2011 (ON)	1.4	$240.00	$336.00
	27.5	$650.00	$17,875.00
Sana Ebrahimi – Year of Call 2015 (ON)	17.7	$350.00	$6,195.00
Garett M. Hunter – Year of Call 2017 (ON)	152.2	$325.00	$49,465.00
	82.8	$375.00	$31,050.00
	85.1	$425.00	$36,127.50
	83.6	$450.00	$31,350.00
Katherine Shapiro (Student-at-law)	12.5	$110.00	$1,375.00
S.J. VanDamme (Student-at-law)	14.9	$165.00	$2,458.50
Aylin Manduric (Student-at-law)	14.6	$110.00	$1,606.00
Laura-Marie Paynter (Law Clerk)	23.3	$145.00	$3,378.50
	3	$155.00	$465.00
	1.1	$200.00	$220.00
	6.5	$215.00	$1,397.50

	10.2	$225.00	$2,295.00
Donna McEvoy (Law Clerk)	2.4	$170.00	$408.00
	40.5	$200.00	$8,100.00
	13.8	$210.00	$2,898.00
	44.7	$220.00	$9,834.00
	11.9	$245.00	$2,915.50
Stacey O'Neill (Law Clerk)	58.8	$200.00	$11,760.00
	61.3	$210.00	$12,873.00
Total	**2,2250.3**		**$1,029,987.00**

Groia and Company

LAWYER	**HOURS**	**HOURLY RATE**	**TOTAL**
Joseph Groia (1981 ON Call)	15	$850	$12,750
	17.5	$875	$15,313
	3.7	$900	$3,330
	5.5	$975	$5,363
	24.5	$1,050	$25,725
Bonnie Roberts Jones (1997 BC Call; 1998 ON Call)	3.7	$600	$2,220
	55.3	$625	$34,563
	61.4	$700	$42,980
	42.7	$750	$32,025
	21.8	$800	$17,440
	207.8	$850	$176,630
	108.9	$900	$98,010
	9.1	$950	$8,645
Kevin Richard (2000 ON Call)	36.8	$900	$33,120
	61.1	$950	$58,045
	35.5	$1,000	$35,500
Martin Mendelzon (2012 ON Call)	15.1	$400	$6,040
	14.2	$450	$6,390
	14.7	$500	$7,350
	63.9	$550	$35,145
Bethanie Pascutto (2019 ON Call)	30.8	$400	$12,320
	41	$450	$18,450
	33.7	$500	$16,850

Yona Gal (2019 ON Call)	20.4	$450	$9,180
Dawit Debssou (2019 ON Call)	40.2	$300	$12,060
	7.4	$350	$2,590
Articling Students	148	$175	$25,900
Total	**1139.7**		**$753,933**

Sajjad Nematollahi Professional Corporation

LAWYER/CLERK	**HOURS**	**HOURLY RATE**	**TOTAL**
Sage Nematollahi – Year of Call 2011 (NY); 2012 (ON)	103.3	$600.00	$61,980.00

87. The following chart sets out the disbursements that have been financed by Class Counsel (before applicable taxes) in pursuing this Action, up to and including April 20, 2023:

Disbursements	**Amount**
Courier	$190.60
Copies	$7,111.33
Long Distance Charges	$427.78
Postage	$18.58
Research/Resource Material	$1,923.76
Binding Supplies/Wire Fees/Misc.	$79.85
Agent's Fees and Disbursements	$10,411.41
Corporate Profile Search	$270.36
Expert Reports	$73,575.07
Mileage/Travel/Meals	$15,976.00
Media/Public Relations	$695.00
Mediation/Arbitration Costs	$1,525.00
Court Filing Fees/Charges to perfect Appeal	$1,646.05
Transcript Costs	$15,469.02
TOTAL	**$129,319.81**

Anticipated Fees and Disbursements to be Incurred

88. We estimate that we will spend time an additional 60 hours to complete the administration of the Settlement, if the Settlement Agreement is approved by this Honourable Court. I understand that this additional time will be spent to:

(a) prepare for and attend the Settlement approval hearing on May 11, 2023;

(b) assist in implementation of Part 2 in the Plan of Notice, related to the notice of the approval of the Settlement;

(c) liaise with the Administrator to ensure the fair and efficient administration of the Settlement Agreement and Plan of Allocation; and

(d) respond to inquiries from Class Members and their lawyers, if applicable, regarding the Settlement Agreement and the Plan of Allocation.

REQUEST FOR HONORARIUM

89. From the beginning of this litigation, Ms. Baldwin has had had responsibility for instructing Class Counsel. She was briefed on various issues on an ongoing basis as the litigation progressed and expended significant efforts bringing this Action to a successful resolution.

90. Absent Ms. Baldwin—a retail investor who acquired a relatively small number of shares during the Class Period (3,068 shares)—stepping up and acting as the proposed representative plaintiff on behalf of the Class there may have been no Action and, therefore, no recovery for Class Members.

91. In light of these steps and her overall contribution, Class Counsel requests an honorarium of $2,500 for Mrs. Baldwin to be paid from the Settlement Amount, if approved.

Affirmed remotely by Bethanie Pascutto of the City of Burlington, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on April 28, 2023

Commissioner for Taking Affidavits
(or as may be)

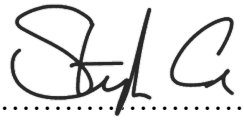
Stephanie Cheryn Emily Cox, a Commissioner, etc., Province of Ontario, for Groia & Company Professional Corporation, Barristers and Solicitors.
Expires February 15, 2026

BETHANIE PASCUTTO

This is Exhibit “A” in the

Affidavit of Bethanie Pascutto, affirmed remotely

on this 28th day of April, 2023



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Commissioner for taking Affidavits

Stephanie Cheryn Emily Cox, a
Commissioner, etc., Province of
Ontario, for Groia & Company
Professional Corporation, Barristers
and Solicitors.
Expires February 15, 2026

Court File No.: CV-14-5059885-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL, LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS, EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

Made as of the 31st day of January, 2023

TABLE OF CONTENTS

SETTLEMENT AGREEMENT

SECTION 1 – RECITALS

1.1 WHEREAS:

A. The Plaintiff commenced this Action and alleged that Imperial Metals Corporation ("**Imperial**")'s continuous disclosure documents contained misrepresentations at law and within the meaning of Part XXIIII.1 of the *OSA* and, if necessary, the other Securities Legislation during the Class Period by failing to disclose the adverse conditions at Imperial's tailings storage facility at the Mount Polley mine;

B. The Ontario Superior Court of Justice dismissed the Plaintiff's motion for leave under section 138.3(1) of the *OSA* by Order of Justice Belobaba dated September 23, 2020;

C. The Ontario Court of Appeal reversed the Order of Justice Belobaba dated September 23, 2020, and returned the leave motion to the Superior Court of Justice for consideration, in a Decision dated November 25, 2021;

D. The Plaintiff and the defendants Imperial Metals Corporation, J. Bryan Kynoch, Andree Deepwell, Larry G. Moller, and Laurie Pare (the "**Imperial Defendants**") have negotiated a Settlement of the Action that is subject to and conditional upon approval of the Court;

E. The Defendants deny liability in respect of the claims alleged in this Action and vigorously deny any wrongdoing or liability of any kind whatsoever;

F. The Imperial Defendants state that they would have actively and deliberately pursued affirmative defences at the leave/certification motions and trial had this Action not been settled;

G. The Plaintiff and the Imperial Defendants, through counsel, have engaged in hard-fought and extensive arm's-length settlement discussions and negotiations in respect of this Settlement through a mediation with Joel Wiesenfeld, mediator;

H. As a result of these settlement discussions and negotiations, the Plaintiff and the Imperial Defendants have entered into this Agreement, which embodies all of the terms and conditions of the Settlement among the Imperial Defendants and the Plaintiff, both individually and on behalf of the Class and subject to approval of the Court;

I. The Imperial Defendants and the Plaintiff have negotiated and entered into this Agreement to fully, definitively and permanently resolve, settle and release and discharge all claims asserted, or which could have been asserted against the Defendants and related entities and individuals by the Plaintiff on her own behalf and/or on behalf of the Class or by a third party for contribution and indemnity in respect of a claim asserted against them by the Plaintiff, and to avoid the further expense, inconvenience, and burden of this litigation and avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;

J. The Plaintiff has agreed to accept this Settlement, in part, because of the Settlement Amount to be provided by the Contributing Parties under this Agreement, as well as the attendant risks of litigation in light of the potential defences that may have been asserted at trial by the Defendants;

K. The Defendants do not admit, through the execution of the Agreement, any of the conduct alleged in this Action and expressly deny any and all allegations of wrongdoing;

L. The Plaintiff and Class Counsel confirm that neither the Agreement, nor any statement made in the negotiation thereof, shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiff's allegations against the Defendants;

M. The Plaintiff and Class Counsel have reviewed and fully understand the terms of the Agreement and, based on their analyses of the facts and law applicable to the Plaintiff, and having regard to the burdens and expense in prosecuting this Action, including the risks and uncertainties associated with trials and appeals, have concluded that this Settlement is fair, reasonable and in the best interests of the Plaintiff and the Class. The Plaintiff and the Imperial Defendants therefore wish to, and hereby do, finally resolve, without admission of liability, this Action; and

N. For the purposes of settlement only and contingent on the conditions described herein, the Plaintiff has consented to a dismissal of this Action without costs and with prejudice.

NOW THEREFORE, in consideration of the covenants, agreements, promises and releases set forth herein and for other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, it is agreed by the Plaintiff and the Imperial Defendants that this Action be settled on the merits, subject to the approval of the Settlement by the Court, and that all Released Claims against the Defendants which any Releasor shall or may have or assert against any of the Defendants and related entities and individuals be forever extinguished and released on the following terms and conditions:

SECTION 2 – DEFINITIONS

2.1 Definitions

For the purposes of the Agreement, including the Recitals and Schedules hereto:

(1) ***Action*** means *Claire Baldwin v Imperial Metals Corporation*, *et al*, brought in the Ontario Superior Court of Justice under Court File No. CV-14-509885-00CP.

(2) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of disseminating notices and the fees, disbursements and taxes paid to the Administrator, the person appointed to receive and report on objections to the Settlement to the Court, and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses do not include Class Counsel Fees.

(3) ***Administrator*** means the third-party firm appointed by the Court to administer the Agreement, and any employees of such firm.

(4) ***Agreement*** means this settlement agreement, including the Recitals and Schedules.

(5) ***Authorized Claimant*** means any Class Member who has been approved for compensation by the Administrator.

(6) ***Claim Form*** means the form or forms which, when completed and submitted in a timely manner to the Administrator, enables a Class Member to apply for compensation pursuant to the Agreement.

(7) ***Claims Bar Deadline*** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Administrator which date shall be set

out in the Second Notice and which shall be at least one hundred twenty days (120) days after the date on which the Second Notice is last disseminated.

(8) ***Class or Class Members*** means all persons and entities, wherever they may reside or be domiciled, who acquired Imperial's Securities during the Class Period and continued to hold some or all of those Securities as of August 5, 2014, other than the Excluded Persons.

(9) ***Class Counsel*** means Siskinds LLP and Groia & Company Professional Corporation.

(10) ***Class Counsel Fees*** means the fees, disbursements, and any applicable taxes and a *pro rata* share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.

(11) ***Class Period*** means the period from August 15, 2011 through to August 4, 2014, inclusive.

(12) ***Contributing Parties*** means Imperial Metals Corporation, J. Bryan Kynoch, Andre Deepwell, Larry G. Moller, and Laurie Pare and their insurers who have or will fund the Settlement.

(13) ***Court*** means the Ontario Superior Court of Justice.

(14) ***CPA*** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended.

(15) ***Defendants*** means Imperial Metals Corporation, J. Brian Kynoch, Andre Deepwell, Larry G. Moeller, Laurie Pare, N. Murray Edwards, Edco Financial Holdings Ltd. and Edco Capital Corporation.

(16) ***Effective Date*** means either: (i) the date on which the Second Order has become a final order and the time for any appeals has expired; or (ii) if an appeal is taken from the Second Order, relating only to Class Counsel Fees, then thirty (30) days after the issuance of the Second Order.

(17) ***Escrow Account*** means the interest-bearing Canadian currency 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 Ontario, initially under the control of Siskinds LLP and then transferred to the control of the Administrator once the Settlement is final.

(18) ***Escrow Settlement Amount*** means the Settlement Amount plus any interest accruing thereon as a result of investment thereof after payment of Class Counsel Fees and any Administration Expenses.

(19) ***Excluded Persons*** means

(a) J. Brian Kynoch, Andre Deepwell, Larry G. Moeller, Laurie Pare and N. Murray Edwards;

(b) Imperial Metals Corporation, Edco Financial Holdings Ltd and Edco Capital Corporation and their past or present subsidiaries, affiliates, legal representatives, General Counsel, predecessors, successors and assigns;

(c) any person who was an officer or director of Imperial Metals Corporation, Edco Financial Holdings Ltd and Edco Capital Corporation during the Class Period;

(d) any immediate member of the Individual Defendants' families; and

(e) all persons who opted out of the Action.

(20) ***First Motion*** means the motion brought before the Court, for an order:

(a) setting the date for the hearing of the Second Motion;

(b) certifying the Action as a class proceeding;

(c) approving the form of the First Notice;

(d) approving and authorizing publication and dissemination of the First Notice pursuant to the Plan of Notice;

(e) approving the Opt-Out Deadline and process for opting out of the Action; and

(f) appointing the Administrator to receive and report on objections to the Settlement, if any, to receive and report on person opting out of the class action, if any, and assist in the dissemination of First Notice.

(21) ***First Notice*** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule "B".

(22) ***First Order*** means the order made by the Court granting the relief sought on the First Motion, substantially in the form of the order at Schedule "A".

(23) ***Imperial Defendants*** means Imperial Metals Corporation, J. Brian Kynoch, Andre Deepwell, Larry G. Moeller and Laurie Pare.

(24) ***Individual Defendants*** means J. Brian Kynoch, Andre Deepwell, Larry G. Moeller, Laurie Pare and N. Murray Edwards.

(25) ***Notes*** means Imperial Metals Corporation's 7% Senior Unsecured Notes due March 2019.

(26) ***OSA*** means *Securities Act*, R.S.O. 1990, c. S.5.

(27) ***Plaintiff*** means Claire Baldwin.

(28) ***Plan of Allocation*** means the plan, as approved by the Court, which shall substantially be in accordance with the plan at Schedule "F".

(29) ***Plan of Notice*** means the plan for disseminating the First Notice and the Second Notice to the Class, as approved by the Court, which shall substantially be in accordance with the plan attached as Schedule "C".

(30) ***Released Claims*** (or ***Released Claim*** in the singular) means 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 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 relating or connected in any way to trading in Securities during the Class Period.

(31) ***Releasees*** means the Defendants and their respective past and present affiliates, and subsidiaries, and each of their respective insurers, reinsurers, directors, officers, partners, employees, agents, trustees, servants, parents, consultants, underwriters, lenders, advisors,

lawyers, representatives, successors, predecessors, assigns and each of their respective heirs, executors, attorneys, administrators, guardians, estates, trustees, successors and assigns.

(32) ***Releasors*** means, jointly and severally, the Plaintiff, the Class Members and their respective past and present predecessors, affiliates, subsidiaries, directors, officers, employees, partners, parents, agents, trustees, servants, consultants, underwriters, lenders, shareholders, advisors, representatives, lawyers, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be.

(33) ***Second Motion*** means the motion brought in the Court for an order:

(a) approving the Settlement;

(b) appointing the Administrator;

(c) approving the Second Notice;

(d) approving the Plan of Allocation;

(e) dismissing this Action without costs and with prejudice; and

(f) approving Class Counsel Fees.

(34) ***Second Notice*** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule "E".

(35) ***Second Order*** means the order made by the Court granting the relief sought on the Second Motion, substantially in the form of the order at Schedule "D".

(36) ***Securities*** means Imperial Metals Corporation's common shares, Notes, or such other securities as defined in the Securities Legislation.

(37) ***Securities Legislation*** means, collectively, the *OSA*, the *Securities Act*, RSBC 1996, c 418, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, CQLR c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

(38) ***Settlement*** means the settlement provided for in the Agreement.

(39) ***Settlement Amount*** means $6,000,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement.

SECTION 3 – THE MOTIONS

3.1 Nature of Motions

(1) The Plaintiff and the Imperial Defendants shall use their best efforts to implement the Agreement and to secure the prompt, complete and final resolution of the Action, including a final dismissal of this Action, without costs and with prejudice.

(2) The First Motion shall be brought as soon as is reasonably possible following the execution of the Agreement. The Imperial Defendants shall have an opportunity to review and comment on the First Motion materials prior to filing. The Imperial Defendants shall consent to the First Order.

(3) Following the determination of the First Motion, the First Notice shall be disseminated in accordance with section 8.1 of the Agreement.

(4) Following the determination of the First Motion, the Second Motion will be brought and the Imperial Defendants shall consent to the Second Order except for the parts of that Order dealing with Class Counsel Fees and the Plan of Allocation. The Imperial Defendants shall have an opportunity to review and comment on the Second Motion materials prior to filing.

(5) Following the determination of the Second Motion, provided that the Settlement is approved by the Court, the Second Notice shall be disseminated in accordance with section 8.2 of the Agreement.

SECTION 4 – THE SETTLEMENT AMOUNT

4.1 Payment of Escrow Settlement Amount

(1) The Contributing Parties, or some of them, on behalf of the Imperial Defendants, shall pay an amount required to reimburse the reasonable expenses incurred for the fees,

disbursements, and taxes of the administrator, in seeking Court approval of the proposed settlement, up to a maximum amount of $200,000 (the "**Advanced Payment**"). In the event that the proposed settlement is not approved by the Court, the full amount of the Advanced Payment shall be repaid in full by the representative Plaintiff, and counsel for the representative Plaintiff shall guarantee the obligation of the representative Plaintiff to repay the full amount of the Advanced Payment.

(2) The Contributing Parties, or some of them, on behalf of the Imperial Defendants, shall pay the Settlement Amount to Siskinds LLP, in trust, within 30 days of the Court order approving the Settlement Agreement. Siskinds LLP shall deposit the Settlement Amount in an interest-bearing trust account which shall be held to the order of the Contributing Parties and shall be paid out to Siskinds LLP upon the Settlement becoming final.

4.2 Interim Investment of Escrow Account

Siskinds LLP, and then the Administrator after the Settlement becomes final, shall hold the Settlement Amount in the Escrow Account and shall invest the Settlement Amount in 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 and shall not pay out any amount from the Escrow Account, except in accordance with the terms of the Agreement.

4.3 Taxes on Interest

(1) Except as provided in section 4.3(2), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be solely the Class' responsibility and shall be paid by Class Counsel or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate, and the Contributing Parties shall have no liability for any taxes payable on the interest.

(2) If the Administrator or Class Counsel returns any portion of the Settlement Amount plus accrued interest to the Contributing Parties pursuant to the provisions of the Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Contributing Parties to be allocated by agreement among themselves.

SECTION 5 – NO REVERSION

Unless the Agreement is terminated as provided herein or otherwise by the Court, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

SECTION 6 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT

If the Settlement becomes final as contemplated by section 10, the Administrator shall distribute the monies in the Escrow Account in accordance with the following priorities:

(a) to pay Class Counsel Fees;

(b) to pay all of the costs and expenses, not otherwise covered by the Advanced Payment, incurred in connection with the provision of notices, not locating Class Members for the sole purpose of providing notice to them, and soliciting Class Members to submit a Claim Form. For greater certainty, the Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;

(c) to pay all of the costs and expenses reasonably and actually incurred by the Administrator, relating to determining eligibility, the filing and processing of Claim Forms, resolving disputes arising from the processing of Claim Forms and administering and distributing the Settlement Amount;

(d) to pay any taxes required by law to be paid to any governmental authority; and

(e) to pay a *pro rata* share of the balance of in the Escrow Account to each Authorized Claimant in accordance with the Plan of Allocation.

SECTION 7 – EFFECT OF SETTLEMENT

7.1 No Admission of Liability

Neither the Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Defendants, or as a concession or

admission by the Defendants of the truthfulness or merit of any claim or allegation asserted in this Action. Neither the Agreement, nor anything contained herein, shall be used or construed as an admission by the Defendants of any fault, omission, liability or wrongdoing in connection with any oral or written statement, release or written document or financial report.

7.2 Agreement Not Evidence

(1) Whether or not the Agreement is terminated, the Plaintiff and the Imperial Defendants agree that neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any current or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding in any jurisdiction as any presumption, concession or admission:

(a) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiff against the Defendants, or the deficiency of any defence that has been or could have been asserted in this Action;

(b) of wrongdoing, fault, neglect or liability by the Defendants; and

(c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in this Action after trial.

(2) Notwithstanding section 7.2(1), the Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

7.3 Best Efforts

The Plaintiff and the Imperial Defendants shall use their best efforts to implement the terms of the Agreement. The Plaintiff and the Imperial Defendants agree to hold in abeyance all steps in this Action, other than proceedings provided for in the Agreement, the First Motion, the Second Motion and such other proceedings required to implement the terms of the Agreement, until the date the Settlement becomes final or the termination of the Agreement.

SECTION 8 – NOTICE TO THE CLASS

8.1 First Notice

Class Counsel shall cause the First Notice to be disseminated in accordance with the Plan of Notice and the costs of doing so shall be paid from the Advance Payment as provided in section 4.1(1).

8.2 Second Notice

Class Counsel shall cause the Second Notice to be disseminated in accordance with the Plan of Notice and the costs of so doing shall be paid from the Advance Payment as provided in section 4.1(1).

8.3 Notice of Termination

If the Agreement is terminated, Class Counsel will cause the notice of termination, in a form approved by the Court, to be disseminated as directed by the Court.

SECTION 9 – TERMINATION OF THE AGREEMENT

9.1 General

(1) The Plaintiff or the Contributing Parties may terminate this Agreement if, and only if:

(a) the Second Order (excluding paragraphs 1, 3(b)-(d), 4-5, 10-14 thereof) is not granted by the Court, substantially in accordance with the form at Schedule "D"; or

(b) the Second Order is reversed on appeal and the reversal becomes final.

(2) The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate the Agreement.

(3) Notice of termination of this Agreement by the Plaintiffs or the Defendants must be provided in writing to their respective undersigned counsel.

(4) In the event the Agreement is terminated in accordance with its terms, or is not approved by the Court, or the Second Order is reversed, vacated or terminated by any appellate court and/or the Second Order does not become final:

(a) the Plaintiff and the Defendants will be restored to their respective positions prior to the execution of the Agreement;

(b) the Agreement will have no further force and effect;

(c) the Settlement Amount will be returned to the Contributing Parties, and

(d) the Agreement will not be introduced into evidence or otherwise referred to in any litigation or proceeding against the Defendants.

(5) Notwithstanding the provisions of section 9.1(4), if the Agreement is terminated, the provisions of this section and sections 2, 4.1(1), 4.2, 4.3, 7, 9.1(3), 9.2, 9.3, 15.1(1), 15.1(2), 15.2, 15.3, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11, 15.12, 15.13, 15.14 and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect.

9.2 Allocation of Monies in the Escrow Account Following Termination

(1) If the Agreement is terminated, the Plaintiff shall, within thirty (30) days after termination, apply to the Court for an order:

(a) declaring the Agreement null and void and of no force or effect except for the provisions of those sections listed in section 9.1(5);

(b) requiring the notice of termination to be sent out to the Class Members and, if so, the form and method of disseminating such a notice;

(c) setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Agreement; and

(d) authorizing the payment of all funds in the Escrow Account, including accrued interest, to the Contributing Parties, apportioned *pro rata* based on their respective contributions, directly or indirectly, to the Escrow Account, as the case may be.

(3) Subject to section 9.3, the Imperial Defendants shall consent to the orders sought in any motion made by the Plaintiff pursuant to section 9.2(2).

9.3 Disputes Relating to Termination

If there are any disputes about the termination of the Agreement, the Court shall determine any dispute by motion on notice to the Plaintiff and the Defendants. The Contributing Parties shall be granted standing in respect of any such motion, should they deem it appropriate to intervene or otherwise make representations.

SECTION 10 – DETERMINATION THAT THE SETTLEMENT IS FINAL

(1) The Settlement shall be considered final on the Effective Date.

(2) Within ten (10) days after the Effective Date, Siskinds LLP shall transfer the Escrow Account to the Administrator.

SECTION 11 – RELEASES AND JURISDICTION OF THE COURT

11.1 Release of Releasees

As of the Effective Date, provided that the Settlement Amount has been deposited into the Escrow Account, the Releasors in exchange for and in consideration of the foregoing, and inasmuch as the terms and conditions of the Settlement are approved by the Court, forever and absolutely release the Releasees from the Released Claims.

11.2 No Further Claims

(1) As of the Effective Date and provided that the Settlement Amount has been deposited into the Escrow Account, the Releasors 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, 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; and

(2) For greater certainty, the Releasors acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that on the Effective Date, they shall have fully, definitively and permanently settled, waived and released and discharged all claims, no matter if they were unknown, unsuspected, not disclosed, and regardless of the subsequent

discovery of facts different from those they are aware of on the Effective Date. By means of the Settlement, the Releasors waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the release and discharge of the unknown claims and bar against the commencement of new claims for any reason whatsoever and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Releasors agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

11.3 Dismissal of the Action

Except as otherwise provided in the Agreement and the Second Order, and as a condition of Settlement, this Action shall be dismissed without costs and with prejudice.

SECTION 12 – ADMINISTRATION

12.1 Appointment of the Administrator

(1) The Court will appoint the Administrator to serve until further order of the Court, to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.

12.2 Conclusion of the Administration

(1) Following the Claims Bar Deadline, and in accordance with the terms of the Agreement, the Plan of Allocation, and such further order of the Court, as may be necessary, or as circumstances may require, the Administrator shall distribute the amount that remains in the Escrow Account to Authorized Claimants.

(2) No claims or appeals shall lie against the Releasees, the Defendants, the Defendants' counsel, Class Counsel, the Administrator, based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.

(3) If the Escrow Account is in a positive balance after one hundred eighty (180) days from the date of distribution to the Authorized Claimants, the Administrator shall, if economically feasible, allocate and distribute such balance among Authorized Claimants in an equitable

fashion. If there is a balance in the Escrow Account after an initial distribution and it is uneconomical to allocate and distribute the remaining balance in the Escrow Account to Authorized Claimants, the remaining funds shall be paid *cy près* to a recipient selected by the Plaintiff. The Administrator shall advise the Imperial Defendants of the intention to make a *cy près* payment and the Imperial Defendants shall have an opportunity to comment.

SECTION 13 – THE PLAN OF ALLOCATION

(1) Class Counsel shall propose for approval by the Court a Plan of Allocation in the form attached as Schedule "F" or such other form as Class Counsel may advise. The approval of the Plan of Allocation may be considered separately from the approval of the Agreement and is not a condition of the approval of the Agreement itself.

(2) The Defendants shall have no obligation to consent to but shall not oppose the approval of the Plan of Allocation.

(3) Section 13(2) is not an acknowledgement that the Defendants have standing to make any submissions regarding the Plan of Allocation.

SECTION 14 – CLASS COUNSEL FEES

14.1 Motion for Approval of Class Counsel Fees

(1) At the Second Motion, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

(2) The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they shall not oppose the approval and they will not make any submissions to the Court concerning Class Counsel Fees.

(3) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the

Agreement or affect or delay the finality of the Second Order and the Settlement of the Action as provided herein.

14.2 Payment of Class Counsel Fees

(1) Forthwith after the Settlement becomes final, Siskinds LLP or the Administrator shall pay to Class Counsel the Class Counsel Fees approved by the Court from the Escrow Account.

SECTION 15 – MISCELLANEOUS

15.1 Motions for Directions

(1) Any one or more of the Plaintiff, the Defendants, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to the Agreement and Plan of Allocation.

(2) All motions contemplated by the Agreement shall be on notice to the Plaintiff and the Defendants.

15.2 Defendants Have No Responsibility or Liability for Administration

Except for the obligation to pay the Settlement Amount, none of the Releasees, the Defendants, or the Defendants' counsel shall have any responsibility for or any liability whatsoever with respect to the administration or implementation of the Agreement and Plan of Allocation, including, without limitation, the processing and payment of claims by the Administrator.

15.3 Headings, etc.

(1) In the Agreement:

(a) the division of the Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;

(b) the terms "the Agreement", "herein", "hereto" and similar expressions refer to the Agreement and not to any particular section or other portion of the Agreement;

(c) unless otherwise indicated, all amounts referred to are in lawful money of Canada; and

(d) "person" means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

(2) In the computation of time in the Agreement, except where a contrary intention appears:

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

(b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

15.4 Governing Law

(1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of the Agreement. Issues related to the administration of the Agreement, and the Escrow Account shall be determined by the Court.

15.5 Entire Agreement

The Agreement constitutes the entire agreement among the Plaintiff and the Imperial Defendants and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Plaintiff and the Imperial Defendants will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Agreement, unless expressly incorporated herein. The Agreement may not be modified or amended except in writing and on consent of all Plaintiff and the Imperial Defendants and any such modification or amendment must be approved by the Court.

15.6 Binding Effect

(1) If the Settlement is approved by the Court and becomes final, the Agreement shall be binding upon, and enure to the benefit of the Plaintiff, the Class Members, the Defendants, the Individual Defendants, the Releasees, the Releasors, the Contributing Parties and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

(2) The person signing the Agreement represents and warrants (as applicable) that:

(a) he/she has all requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transaction contemplated hereby on his/her own behalf;

(b) the execution, delivery, and performance of the Agreement and the consummation of the Actions contemplated herein have been duly authorized by all necessary corporate action;

(c) the Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations;

(d) he/she agrees to use his/her best efforts to satisfy all conditions precedent to the Effective Date.

15.7 Survival

The representations and warranties contained in the Agreement shall survive its execution and implementation.

15.8 Negotiated Agreement

The Agreement and the Settlement have been the subject of negotiations and many discussions among the Plaintiff and the Imperial Defendants. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the Agreement shall have no force and effect. The Plaintiff and the Imperial

Defendants further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Agreement.

15.9 Confidentiality

(1) The Plaintiff and the Imperial Defendants agree that prior to the filing of the First Motion:

(a) this Settlement Agreement, its terms, and the Settlement Amount are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other person, entity, publication or member of the media, except as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement Agreement, or as otherwise agreed by the Plaintiff and Imperial Defendants; and

(b) any one of the Plaintiff or Imperial Defendants intending to disclose such information as may be required by law, judicial process or order of a court, will notify the other of its intention and give the non-disclosing party a reasonable opportunity to object.

(2) The Plaintiff and the Imperial Defendants agree not to disclose the substance of the negotiations that led to this Settlement Agreement including the merits of any positions taken by the Plaintiff and the Imperial Defendants except as necessary to provide the Court with information necessary to consider approval of the Settlement. Notwithstanding the foregoing, any Defendants may disclose such information to a regulatory authority if he/she/it determines that disclosure is warranted.

15.10 Recitals and Schedules

(1) The recitals and schedules to the Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.

(2) The schedules to the Agreement are:

(a) Schedule “A” – First Order

(b) Schedule “B” – First Notice

(c) Schedule “C” – Plan of Notice

(d) Schedule “D” – Second Order

(e) Schedule “E” – Second Notice

(f) Schedule “F” – Plan of Allocation

15.11 Acknowledgements

Each of the Plaintiff and Imperial Defendants hereby represents, affirms and acknowledges that:

(a) he, she or its representative has the authority to bind the person or entity with respect to the matters set forth herein and has read and understood the Agreement;

(b) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and

(c) he, she or its representative fully understands each term of the Agreement and its effect.

15.12 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the person or entity for whom he or she is signing.

15.13 Counterparts

The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Agreement.

15.14 Notice

Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with the Agreement or any other report or document to be given by any of the Plaintiff or the Defendants to the Plaintiff or any of the other Imperial Defendants shall be in

writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

Counsel for the Plaintiff:

Siskinds LLP
Barristers and Solicitors
275 Dundas Street, Unit
London, ON N6B 3L1
Tel: 519-672-7409

Michael G. Robb (LSO#: 45787G)
michael.robb@siskinds.com

Garrett Hunter (LSO#: 71800D)
garret.hunter@siskinds.com

GROIA & COMPANY PROFESSIONAL CORPORATION
365 Bay Street, Suite 1100
Toronto, ON M5H 2V1
Tel: 416-203-2115

Joseph Groia (LSO#: 20612J)
jgroia@groiaco.com

Kevin Richard (LSO#: 43160P)
krichard@groiaco.com

Bethanie Pascutto (LSO#: 78098F)
bpascutto@groiaco.com

Counsel for the Defendants:

Lenczner Slaght Royce Smith Griffin LLP
Barristers
130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5

Lawrence E. Thacker (LSO#: 36939M)
lthacker@litigate.com

Brian Kolenda (LSO#: 60153N)
bkolenda@litigate.com

Aoife Quinn (LSO#: 71033H)
aquinn@litigate.com

Kathleen Glowach (LSO#: 79967R)
kglowach@litigate.com

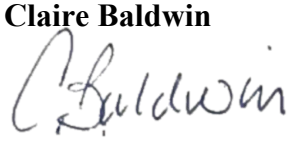
N. Murray Edwards
Suite 3220-255 5 Ave SW
Calgary, AB T2P 3G6

Edco Financial Holdings Ltd.
Suite 3220-255 5 Ave SW
Calgary, AB T2P 3G6

Edco Capital Corporation
Suite 3220-255 5 Ave SW
Calgary, AB T2P 3G6

The Plaintiff and the Imperial Defendants have executed the Agreement as of the date on the cover page.

Claire Baldwin



_____

Imperial Metals Corporation

By:_____
Name
Title

J. Brian Kynoch

_____

Andre Deepwell

_____

Larry G. Moeller

_____

Laurie Pare

_____

Siskinds LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms set out in the Agreement and to be bound by the terms of the Agreement.

Siskinds LLP

By: _____
Name:
Title:

Claire Baldwin

_____

Imperial Metals Corporation

By: _____
Name DAVID DHILLON
Title CFO

J. Brian Kynoch

_____

Andre Deepwell

_____

Larry G. Moeller

_____

Laurie Pare

_____

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Siskinds LLP

By: _____
Name:
Title:

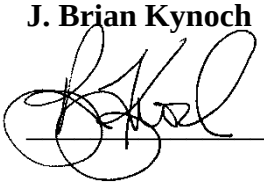
Claire Baldwin

_____

Imperial Metals Corporation

By:_____
Name
Title

J. Brian Kynoch



_____

Andre Deepwell

_____

Larry G. Moeller

_____

Laurie Pare

_____

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Siskinds LLP

By: _____
Name:
Title:

Claire Baldwin

_____

Imperial Metals Corporation

By:_____
Name
Title

J. Brian Kynoch

_____

Andre Deepwell

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Larry G. Moeller

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Laurie Pare

_____

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Siskinds LLP

By: _____
Name:
Title:

Claire Baldwin

_____

Imperial Metals Corporation

By:_____
Name
Title

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Siskinds LLP

By: _____
Name:
Title:

Claire Baldwin

_____

Imperial Metals Corporation

By:_____
Name
Title

J. Brian Kynoch

_____

Andre Deepwell

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Larry G. Moeller

_____

Laurie Pare

_____

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Siskinds LLP

By: _____
Name: Garett Hunter
Title: Lawyer

Schedule A

Court File No.: CV-14-5059885-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	_____, THE ____
	)	
	)	
JUSTICE GLUSTEIN	)	DAY OF _____, 20__

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL, LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS, EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Certification and Notice Approval)

THIS MOTION, made by the Plaintiff, for an Order certifying this action as a class proceeding for settlement purposes only and approving the form and content of the notices of settlement approval hearing and the method of dissemination of such notices was heard this day at the courthouse, 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the settlement agreement entered into between the Plaintiff and Imperial Defendants dated ● (the "**Settlement Agreement**"), a copy of which is attached as Schedule "A", and on hearing the submissions of the lawyers for the parties;

ON BEING ADVISED that the Plaintiff and the Imperial Defendants consent to this Order;

AND ON BEING ADVISED that RicePoint Administration Inc. consents to being appointed as Settlement Notice, Opt-Out and Claims Administrator for the purposes of the Settlement Agreement;

1. **THIS COURT ORDERS** that, except to the extent they are modified by this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that it will decide whether to:

   (a) approve the Settlement Agreement;

   (b) approve the Plan of Allocation;

   (c) approve the fees and disbursements of Class Counsel; and

   (d) deal with any related matters

at a hearing to be held on ●, 2023, beginning at 10:00 a.m. at the courthouse, 330 University Avenue, Toronto, Ontario (the "**Settlement Approval Hearing**").

3. **THIS COURT ORDERS** that the date and time of the Settlement Approval Hearing shall be set forth in the Notice but may be subject to adjournment by the Court without further publication of notice to Class Members, other than notice of such adjournment which shall be posted on the settlement website, ●.

4. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, this Order, including certification for settlement purposes and all opt outs delivered pursuant to this Order, shall be set aside and declared null and void and of no force or effect, without the need for any further order of this Court.

5. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Imperial Defendants pursuant to section 5 of the *Class Proceedings Act, 1992*, solely for settlement purposes and subject to the terms of the Settlement Agreement.

6. **THIS COURT ORDERS** that Claire Baldwin is appointed as the representative plaintiff for the Class Members.

7. **THIS COURT ORDERS** that the class certified for purpose of the settlement with the Imperial Defendants is defined as:

> all persons and entities, wherever they may reside or be domiciled, who acquired Imperial's Securities during the Class Period and continued to hold some or all of those Securities as of August 5, 2014, other than the Excluded Persons.

8. **THIS COURT ORDERS** that Siskinds LLP and Groia & Company Professional Corporation are appointed Class Counsel.

9. **THIS COURT ORDERS** this action is certified as a class proceeding on the basis of the following common issue:

> Did one or more of the Impugned Documents, as defined in the Second Fresh as Amended Statement of Claim, contain a misrepresentation within the meaning of the Securities Legislation?

10. **THIS COURT ORDERS** that the notice advising the Class Members of consent certification, the Approval Hearing, the right to opt-out of the action and the procedure to object to the settlement, generally in the form attached as Schedule "B" to this Order, is approved.

11. **THIS COURT ORDERS** that on or before ●, 2023, the Class Members shall be given notice of this Order, the right to opt out and the Approval Hearing in accordance with the Plan of Notice, in the form as attached as Schedule "C" to this Order, is approved.

12. **THIS COURT ORDERS AND DECLARES** that the notice to the Class Members described in paragraph 11 satisfies the requirements of section 17(6) of the *Class Proceedings Act, 2002*.

13. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed as Administrator for (i) the coordination and administration of Notice of the Certification Order and Settlement Approval Hearings pursuant to the Plan of Notice and related tasks; (ii) coordination and administration of the opt-out process, as described below; and (iii) coordination and administration of objections to the settlement, distribution protocol and fee request, as described below.

14. **THIS COURT ORDERS** that Class Members may exclude themselves from this proceeding by, no later than April 21, 2023 (the "**Opt Out Deadline**"), sending a written request to Opt Out to the Settlement Notice and Claims Administrator ("**Opt Out Election**"):

RicePoint Administration Inc.
1480 Richmond Street
Suite 204
London, ON N6G 0J4
Email: imperialmetals@ricepoint.com

15. **THIS COURT ORDERS** that the Opt Out Election must include the following:

(a) a statement of intention to opt out of the action by the Class Member or a person authorized to bind the Class Member;

(b) a listing of all transactions in Imperial securities during the Class Period showing, for each transaction, the type of transaction (purchase or sale), the number of Imperial securities purchased or sold and the date of the transaction, and state the number of securities held at the close of trading on the TSX on August 4, 2014;

(c) the transactions must be supported by documents to evidence such transactions, in the form of trade confirmations, brokerage statements or other transaction records allowing the Administrator to verify the transactions

(d) the Class Member's full name, current mailing address, telephone number, fax number and email address (as may be available); and

(e) may, at the option of the Class Member, contain a statement of the Class Member's reason for opting out.

16. **THIS COURT ORDERS** that all Class Members who do not validly Opt Out of this proceeding by the Opt Out Deadline shall be bound by the terms of the Settlement Agreement, if it is approved by this Court, and may not Opt Out of the action in the future.

17. **THIS COURT ORDERS** that any Class Member who elects to Opt Out of this class action in accordance with the provisions of this Order may not also object to or comment on the Settlement Agreement and any such objection or comments received therefrom shall be deemed withdrawn.

18. **THIS COURT ORDERS** that any Class Member who Opts Out of this class action in accordance with the provisions of this Order shall not be bound by the Settlement Agreement, shall not be entitled to receive any benefits or compensation in connection with the Settlement Agreement, shall cease to be a putative class member in this action and any limitation periods otherwise applicable to said class member shall be deemed to re-commence running as of the Opt Out Deadline.

19. **THIS COURT ORDERS** that at the Approval Hearing, the Court will consider objections to the Settlement Agreement by Class Members if their objections are sent in written form by no later than April 21, 2023 to:

RicePoint Administration Inc.
1480 Richmond Street
Suite 204
London, ON N6G 0J4
Email: imperialmetals@ricepoint.com

20. **THIS COURT ORDERS** that the written objections must include the following:

(f) the objector's full name, current mailing address, telephone number, fax number and email address (as may be available);

(g) a statement that the Class Member acquired Imperial's Securities during the Class Period and continued to hold some or all of those Securities as of August 5, 2014;

(h) a brief statement of the nature of and reasons for the objection; and

(i) the objector intends to appear at the Approval Hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

21. **THIS COURT ORDERS** that RicePoint Administration Inc. shall, on or before ●, report to the Court, by affidavit, with a copy to counsel for the Plaintiff and counsel for the Defendants, the names of the persons who objected and copies of any materials filed in connection with the objections.

22. **THIS COURT ORDERS** that any party affected by this Order may apply to the Court for further directions.

23. **THIS COURT ORDERS** that in the event of a conflict between this Order and the terms of the Settlement Agreement, this Order shall prevail.

JUSTICE GLUSTEIN

Schedule B

NOTICE OF THE PROPOSED SETTLEMENT OF THE IMPERIAL METALS CORPORATION CLASS ACTION

Read this notice carefully as it may affect your rights.

This notice is directed to all persons and entities, excluding certain persons associated with the Defendants who acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014.

On August 7, 2014, a proposed class action was commenced in the Ontario Superior Court of Justice (the "**Action**"). The Plaintiff alleges that Imperial Metals Corporation's continuous disclosure documents contained misrepresentations at law and within the meaning of Part XXIIII.1 of the *Securities Act*, R.S.O. 1990, c. S.5 and, if necessary, the other provincial and territorial securities legislation from August 15, 2011 through to August 4, 2014, inclusive, by failing to disclose the adverse conditions at Imperial Metals Corporation's tailings storage facility at the Mount Polley mine.

The parties have reached a proposed settlement of the Action, without an admission of liability by the Defendants, subject to the approval by the Court. This notice provides a summary of the proposed settlement.

On •, 2023, the action was certified on consent for settlement purposes. The certified class includes persons, other than Excluded Persons, who acquired Imperial Metals Corporation's securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014.

The persons included in the class are entitled to participate in the settlement.

THE TERMS OF THE PROPOSED SETTLEMENT

The Imperial Defendants will pay $6 million, in full and final settlement of all claims against the Defendants. The $6 million, less the lawyers' fees, disbursements and taxes, and the costs of administration of the settlement will be distributed to the Class in accordance with a plan of allocation. The Settlement Agreement may be viewed at •.

THE APPROVAL HEARING

The Court will be asked to approve the proposed settlement and the lawyers' fees, disbursements, expenses and taxes at a hearing to be held on •, 2023 at • a.m. at the courthouse located at 330 University Avenue, Toronto. The lawyers for the Class will ask the Court to approve legal fees of ● (●) percent of $6 million which is $●, plus disbursements and taxes.

OBJECTIONS

Class Members who do not oppose the proposed settlement are not required to appear at the hearing or take any other action at this time to indicate their desire to participate in the proposed settlement. Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

At the approval hearing, the Court will consider an objection to the proposed settlement by a Class Member if the objection is submitted in writing, by prepaid mail or e-mail to the Administrator: RicePoint Administration Inc.. 1480 Richmond Street, Suite 204, London, ON N6G 0J4, Email: imperialmetals@ricepoint.com. Class Members who wish to object must do so before April 21, 2023.

A written objection can be submitted in English or French and must include the following information:

(a) the objector's full name, current mailing address, telephone number, fax number and email address (as may be available);

(b) a statement that the Class Member acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014;

(c) a brief statement of the nature of and reasons for the objection; and

(d) the objector intends to appear at the Approval Hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

OPTING OUT FROM THE CLASS ACTION

If you are a Class Member, you will be bound by the outcome of the Action, including the terms of the proposed settlement, if approved, unless you opt out of the Action. Class Members who do not opt out will (i) be entitled to participate in the settlement; (ii) be bound by the terms of the settlement; and (iii) not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendants, or any person released by the approved settlement. Conversely, if you are a Class Member who opts out of the Action (an "**Opt Out Party**"), you will not be able to make a claim to receive compensation from the proposed settlement but will maintain the right to pursue your own claim against the Defendants relating to the matters alleged in the Action.

If you are a Class Member and wish to opt out, you must submit a written election (**"Opt Out Election**"), to the Administrator are the mail or email address set out in the preceding section. Your Opt Out Election must be postmarked or be sent via email by no later than **11:59pm Toronto (Eastern) time on April 21, 2023** ("**Opt Out Deadline**") to be valid.

To be valid, the Opt Out Election: (a) must contain a statement of intention to opt out of the action by the Class Member or person authorized to bind the Class Member; (b) a listing of all transactions in Imperial Securities from and including August 15, 2011 to and including August 4, 2014 (the Class Period) showing, for each transaction, the type of transaction (purchase or sale), the number of Imperial securities purchased or sold and the date of the transaction, and state the number of securities held at the close of trading on the TSX on August 4, 2014; (c) the transactions must be supported by documents to evidence such transactions, in the form of trade confirmations, brokerage statements or other transaction records allowing the Administrator to verify the transactions; (d) must contain the name, address, telephone number and email address of the Class Member; and (e) may, at the option of the Class Member, contain a statement of the Class Member's reason for opting out.

An Opt Out Election that does not contain all of the required information or is postmarked or emailed after the Opt Out Deadline will not be valid, which means that you will be bound by the outcome of the Action, including the proposed settlement, if it is approved.

You may revoke an Opt Out Election by delivering to the Administrator by mail or courier a written statement that you wish to revoke the Opt Out Election, which must be postmarked on or before 11:59pm Toronto (Eastern) time on ● .

QUESTIONS

Questions for the lawyers for the Class may be directed to:

Garett Hunter
Siskinds LLP
275 Dundas Street, Unit
London, ON N6B 3L1
Tel: 519-660-7802
garett.hunter@siskinds.com

Kevin Richard
Groia & Company Professional Corporation
Wildeboer Dellelce Place
1100 - 365 Bay Street
Toronto, ON M5H 2V1
Tel: 416.203.2115
Fax: 416.203.9231
krichard@groiaco.com

This notice has been approved by the Court. Questions regarding this notice should NOT be directed to the Court.

Schedule C

Court File No.: CV-14-5059885-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL, LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS, EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

PLAN OF NOTICE

1. The First Notice shall be disseminated as follows:

   (a) The Administrator shall issue a press release containing the content of the First Notice over *Canada Newswire*;

   (b) The Administrator shall provide the First Notice to the brokerage firms in its proprietary database;

   (c) Class Counsel shall post the First Notice in English and French on their website;

   (d) Class Counsel shall e-mail the First Notice to Class Members for whom they have current e-mail addresses; and

   (e) Class Counsel shall mail the First Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.

2. The Second Notice shall be disseminated as follows:

   (a) The Administrator shall issue a press release containing the content of the First Notice over *Canada Newswire*;

   (b) The Administrator shall provide the Second Notice to all brokerage firms in its proprietary database;

   (c) Class Counsel shall post the Second Notice in English and French on their website;

   (d) Class Counsel shall e-mail the First Notice to Class Members for whom they have current e-mail addresses; and

   (e) Class Counsel shall mail the First Notice to Class Members for whom they have current mailing addresses but no e-mail addresses.

Schedule D

Court File No.: CV-14-5059885-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	, THE	DAY
	)		
JUSTICE GLUSTEIN	)	OF , 2022	

BETWEEN:

CLAIRE BALDWIN

Plaintiff

and

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL, LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS, EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Settlement, Notice, Plan of Allocation and Counsel Fees Approval)

THIS MOTION made by:

(a) Claire Baldwin for an Order approving the settlement of the Action; and

(b) Siskinds LLP and Groia & Company Professional Corporation for the approval of the agreement respecting fees and disbursements between Siskinds LLP, Groia & Company Professional Corporation and Claire Baldwin pursuant to subsection 32(2) of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "***CPA***").

was heard this ● day of ●, 2023 at Toronto, Ontario.

ON READING the following:

(a) the notice of motion;

(b) the Settlement Agreement;

(c) the affidavits of:

(i) Bethanie Pascutto affirmed January 26, 2023;

(ii) Ivan Bobanovic affirmed January 26, 2023.

AND ON HEARING the submissions of the Plaintiff and the Imperial Defendants;

AND ON BEING ADVISED that:

(a) the Plaintiff and the Imperial Defendants consent to paragraphs 1, 2, 3(a), 3(b), 4, 5, 7, 8, 9, 10, 11, 12, 13, and 16 of this Order and the Imperial Defendants take no position on paragraphs 3(c), 3(d), 6, 14 and 15 of this Order;

(b) RicePoint Administration Inc. consents to being appointed Administrator;

(c) as of ●, there have been ● objections to the proposed settlement received by RicePoint Administration Inc.;

AND without any admissions of liability on the part of any of the Defendants, who have denied liability;

1. **THIS COURT ORDERS AND DECLARES** that, except as otherwise stated, 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) "Claims Bar Deadline" means 5:00 p.m. Eastern Standard Time on ●, 2022;

(b) "Class Counsel" means Siskinds LLP and Groia & Company Professional Corporation;

(c) "Fee Agreement" means the agreement between Claire Baldwin, Siskinds LLP and Groia & Company Professional Corporation signed by Claire Baldwin on ●, 2014;

(d) "Released Claims" means 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 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 relating or connected in any way to trading in Securities during the Class Period;

(e) "Releasees" means the Defendants and their respective past and present affiliates, and subsidiaries, and each of their respective insurers, reinsurers, directors, officers, partners, employees, agents, trustees, servants, parents, consultants, underwriters, lenders, advisors, lawyers, representatives, successors, predecessors, assigns and each of their respective heirs, executors, attorneys, administrators, guardians, estates, trustees, successors and assigns;

(f) "Releasors" means, jointly and severally, the Plaintiff, the Class Members and their respective past and present predecessors, affiliates, subsidiaries, directors, officers, employees, partners, parents, agents, trustees, servants, consultants, underwriters, lenders, shareholders, advisors, representatives, lawyers, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be; and

(g) "Settlement Agreement" means the settlement agreement dated ●, 2023 (without schedules) attached hereto as Schedule 1.

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

3. **THIS COURT ORDERS** that:

(a) the Settlement Agreement attached as Schedule 1 to this Order, is approved and shall be implemented in accordance with its terms;

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

(c) the Plan of Allocation in the form attached as Schedule 3 to this Order, is approved; and

(d) the Claim Form in the form attached as Schedule 4 to this Order, is approved.

4. **THIS COURT ORDERS** that the Class Members shall be given notice of this Order substantially in the form of the Second Notice disseminated in accordance with the Plan of Notice.

5. **THIS COURT ORDERS** that RicePoint Administration Inc. 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 AND DECLARES** that all provisions of the Settlement Agreement (including the Recitals and Definitions) form part of this Order and are binding upon the Defendants in accordance with the terms thereof, and upon the Plaintiff and all Class Members in accordance with the terms of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.

7. **THIS COURT ORDERS AND DECLARES** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

8. **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 the Released Claims.

9. **THIS COURT ORDERS** that the Releasors 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, 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.

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

11. **THIS COURT ORDERS** that the Plaintiff and the Defendants, Class Counsel 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.

12. **THIS COURT ORDERS** that no person may bring any action or take any proceedings against the Plaintiff, the Defendants, Administrator, or their employees, directors, officers, partners, agents, trustees, parents, predecessors, or assigns for any matter in any way relating to the administration of the Plan of Allocation of the implementation of this Order except with leave of the Court.

13. **THIS COURT ORDERS** that:

(a) the Fee Agreement between Claire Baldwin, Siskinds LLP and Groia & Company Professional Corporation is approved; and

(b) Siskinds LLP and Groia & Company Professional Corporation's fees, disbursements and taxes are fixed at $● and shall be paid from the Escrow Account forthwith after the Settlement becomes final.

14. **THIS COURT ORDERS** that Claire Baldwin shall be awarded an honorarium of $● and such amounts shall be paid from the Escrow Account by Siskinds LLP forthwith after the Settlement becomes final.

15. **THIS COURT ORDERS** that this Action, except as provided for in this Order, is dismissed without costs and with prejudice.

_____

JUSTICE GLUSTEIN

Schedule E

NOTICE OF SETTLEMENT OF THE IMPERIAL METALS CORPORATION CLASS ACTION

Read this notice carefully as it may affect your rights.

This notice is directed to all persons and entities, excluding certain persons associated with the Defendants, who acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014.

On August 7, 2014, a proposed class action was commenced in Toronto (the "**Action**"). The Plaintiff alleges that Imperial Metals Corporation's continuous disclosure documents contained misrepresentations at law and within the meaning under Part XXIIII.1 of the *Securities Act*, R.S.O. 1990, c. S.5 and, if necessary, the other provincial and territorial securities legislation from August 15, 2011 through to August 4, 2014, inclusive, by failing to disclose the adverse conditions at Imperial Metals Corporation's tailings storage facility at the Mount Polley mine.

The proposed settlement of the Action was approved by Justice Glustein on •. This notice provides a summary of the terms of the settlement.

Persons eligible to participate in the settlement are persons, other than Excluded Persons, who acquired Imperial Metals Corporation's common shares, notes or other such securities from August 15, 2011 through to August 4, 2014, inclusive, and continued to hold some or all of those securities as of August 5, 2014 who did not opt out of the Action.

SUMMARY OF THE TERMS OF THE SETTLEMENT

The Defendants will pay $6 million, in full and final settlement of all claims, to be distributed in accordance with the following priorities:

(a) $• to the lawyers for the Class for fees, disbursements and taxes;
(b) all costs and expenses incurred in the administration of the settlement, including the costs of RicePoint Administration Inc. the Court-appointed Administrator; and
(c) a pro rata share of the balance to each Class Member in accordance with the Court-approved claims process and Plan of Allocation.

The Settlement Agreement, the Plan of Allocation and a description of the claims process may be viewed at •.

A CLAIM FOR COMPENSATION MUST BE MADE BY •, 2023.

Each Class Member must submit a completed Claim Form on or before •, 2023 in order to participate in the Settlement. The Claim Form can be accessed or downloaded at • or obtained by calling the Administrator at •. If you do not submit a completed Claim Form by •, 2023, you will not receive any compensation.

The Claim Form should be submitted to the Administrator by using the secure Online Claims System at • or by e-mail to imperialmetals@ricepoint.com. You may submit a paper Claim Form only if you do not have internet access. The paper Claim Form may be sent to mail or courier to:

RicePoint Administration Inc., Administrator, Imperial Metals Corporation Class Action Administration

1480 Richmond Street
Suite 204
London, ON N6G 0J4

QUESTIONS

Questions for the lawyers for the Class may be directed to:

Garett Hunter
Siskinds LLP
275 Dundas Street, Unit
London, ON N6B 3L1
Tel: 519-660 7802
garett.hunter@siskinds.com

Kevin Richard
Groia & Company Professional Corporation
Wildeboer Dellelce Place
1100 - 365 Bay Street
Toronto, ON M5H 2V1
Tel: 416.203.2115
Fax: 416.203.9231
krichard@groiaco.com

This notice has been approved by the Court. Questions regarding this notice should NOT be directed to the Court

Schedule F

PLAN OF ALLOCATION

THE DEFINED TERMS

1. The definitions set out in the settlement agreement reached between the Plaintiffs and Imperial Defendants dated • ("**Agreement**"), except as modified or defined herein, apply to and are incorporated into this Plan of Allocation:

   (a) ***Acquisition Expense*** means the price paid by the Claimant (including brokerage commissions) to acquire a Qualified Security;

   (b) ***Administrator*** means RicePoint Administration Inc.;

   (c) ***Authorized Claimant*** means a Class Member who: (i) submitted a properly completed Claim Form and all required supporting documentation to the Administrator prior to the Claims Bar Deadline; and (ii) is eligible to receive a Distribution from the Compensation Fund;

   (d) ***Claimant*** means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator, on or before the Claims Bar Deadline;

   (e) ***Class Period*** means the period from August 15, 2011 through to August 4, 2014, inclusive;

   (f) ***Compensation Fund*** means the Settlement Amount less Class Counsel Fees, Administration Expenses and other expenses authorized by the Court, if any. The Compensation Fund is the same as the Escrow Settlement Amount;

   (g) ***Court*** means the Ontario Superior Court of Justice;

(h) ***Database*** means the database in which the Administrator stores information received from the Claimants and/or acquired through the claims process;

(i) ***Disposition Proceeds*** means the price received by the Claimant (without deducting any brokerage commissions) on the disposition of a Qualified Security;

(j) ***Distribution*** means payment to Authorized Claimants in accordance with this Plan of Allocation, the Agreement and any order of the Court;

(k) ***Distribution List*** means a list containing the name and address of each Authorized Claimant, the calculation of their net loss and the calculation of the Authorized Claimant's *pro rata* share of the Compensation Fund;

(l) ***Notional Entitlement*** means the Authorized Claimant's notional damages as calculated pursuant to the formulae set forth in this Plan of Allocation, which forms the basis upon which each Authorized Claimant's *pro rata* share of the Compensation Fund is determined for purposes of the Distribution.

(m) ***Qualified Securities*** means Securities purchased or acquired during the Class Period and held until after August 4, 2014;

(n) ***Securities*** means Imperial Metals Corporation's common shares, 7% Unsecured Notes due March 2019, or such other securities as defined in the Securities Legislation;

(o) ***Settlement Amount*** means $6,000,000 less the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement; and

(p) ***Website*** means the website at www.•.com.

THE OVERVIEW

2. This Plan of Allocation contemplates a determination of eligibility and an allocation and Distribution to each Authorized Claimant of a share of the Compensation Fund determined on the basis of the calculations set forth herein.

CALCULATION OF THE DISTRIBUTION

3. The Administrator shall apply first in first out principles (whereby securities are deemed to be sold in the same order that they were purchased) to determine the purchase transactions that correspond to the sale of Qualified Securities, including in the calculation of a Claimant's Notional Entitlement.

4. The Administrator shall first determine a Claimant's Notional Entitlement. If the Claimant has a Notional Entitlement greater than zero, they become an Authorized Claimant, and the Administrator will go on to calculate the Authorized Claimant's monetary compensation. A Claimant must have a Notional Entitlement greater than zero in order to be eligible to receive a payment from the Compensation Fund.

5. Transfers of Imperial Metals Corporation's securities between accounts belonging to the same Claimant will not be taken into account in determining a Claimant's Notional Entitlement.

6. The date of an acquisition or disposition shall be the trade date of the transaction, as opposed to the settlement of the transaction or the payment date,

7. **The Notional Entitlement for Qualified Securities will be calculated as follows:**

    a. No Notional Entitlement shall be recognized for any Qualified Securities disposed of before the close of trading on the Toronto Stock Exchange on August 1, 2014;

Common Shares

b. For each common share disposed on or before August 18, 2014 (10 trading days post-correction), the Notional Entitlement is the difference between the Acquisition Expense and the Disposition Proceeds;

c. For each common share disposed of after August 18, 2014 (10 trading days post-correction), the Notional Entitlement shall be the lesser of:

   i. the difference between the Acquisition Expense and the Disposition Proceeds; and;

   ii. the difference between the Acquisition Expense and $9.97[1];

d. For each common share not yet disposed of, the Notional Entitlement is the difference between the Acquisition Expense and $9.97[2].

7% Unsecured Notes due March 2019 ("Notes")

e. For each Note disposed of after August 4, 2014 and prior to March 15, 2019, the Notional Entitlement is the Acquisition Expense less the Disposition Proceeds and any interest payments received on the Note; and

f. For each Note redeemed, paid in full or extended on or before March 15, 2019, the Notional Entitlement is nil.

8. Each Authorized Claimant's actual compensation shall be the portion of the Compensation Fund equivalent to the ratio of their Notional Entitlement to the total Notional Entitlement of all Authorized Claimants multiplied by the Compensation Fund, as calculated by the

[1] The post-correction 10-day volume weighted average share price.
[2] *Ibid.*

Administrator (defined herein as the "*Pro Rata Distribution*"). However, the amount payable on account of the Notes shall not exceed 10% of the Compensation Fund.

9. Compensation shall be paid to Authorized Claimants in Canadian currency.

GENERAL PRINCIPLES OF THE ADMINISTRATION OF THE SETTLEMENT

10. The administration process to be established shall:

    (a) implement and conform to the Plan of the Allocation;

    (b) employ secure, paperless, web-based systems with electronic registration and record keeping, wherever practical; and

    (c) be bilingual (English, French) in all respects and include a bilingual website and a bilingual toll-free telephone helpline.

THE ADMINISTRATOR

11. The Administrator shall have such powers and rights reasonably necessary to discharge its duties and obligations to implement and administer the Escrow Account and the Plan of Allocation in accordance with their terms, subject to the direction of the Court.

THE ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

12. The Administrator shall administer the Plan of Allocation under the oversight and direction of the Courts and act as trustee in respect of the monies held within the Escrow Account upon receipt from Class Counsel.

13. The Administrator shall, wherever practical, develop, implement and operate an administration system utilizing web-based technology and other electronic systems for the following:

(a) receipt of information from Computershare and/or TMX Equity Transfer Services or Broadridge Financial Solutions Inc. concerning the identity and contact information of registered holders or beneficial owners of Securities, respectively;

(b) Class notification, as required;

(c) claim filing and document collection;

(d) claim evaluation, and analysis;

(e) distribution analysis and Distribution;

(f) cy près award distribution, if any, and reporting thereon;

(g) Administration Expense payments; and

(h) cash management, audit control and reporting thereon.

14. The Administrator's duties and responsibilities shall include the following:

(a) receiving the monies in the Escrow Account from Siskinds LLP and investing them in trust in accordance with the Agreement;

(b) preparing any protocols required for submissions to and approval of the Court;

(c) providing notice of (i) the Second Motion, namely the Settlement was approved, and (ii) details of how, where, and by when to submit completed Claim Forms;

(d) providing the hardware, software solutions and other resources necessary for an electronic web-based bilingual claims processing centre to function in a commercially-reasonable manner;

(e) providing, training and instructing personnel in such reasonable numbers as are required for the performance of its duties in the most expedient, commercially reasonable manner;

(f) developing, implementing and operating electronic web-based systems and procedures for receiving, processing, evaluating and decision-making respecting the claims of Class Members, including making all necessary inquiries to determine the validity of such claims;

(g) if practicable, providing any Claimant whose Claim Form is not properly completed or does not include some of the required supporting documentation, an opportunity to remedy the deficiency as stipulated in the Agreement;

(h) making timely assessments of eligibility for compensation and providing prompt notice thereof;

(i) paying all taxes accruing on the interest earned in the Escrow Account and adding that interest (net of taxes) to the Compensation Fund;

(j) making Distributions from the Compensation Fund in a timely fashion;

(k) dedicating sufficient personnel to communicate with a Claimant in English or French as the Claimant elects;

(l) using its best efforts to ensure that its personnel provide timely, helpful and supportive assistance to Claimants in completing the claims application process and in responding to inquiries respecting claims;

(m) distributing and reporting on any cy près awards;

(n) making payments of Administration Expenses;

(o) maintaining a Database with all information necessary to permit the Courts to evaluate the progress of the administration, as may, from time to time, be required;

(p) reporting to the Court respecting claims received and administered, and Administration Expenses; and

(q) preparing such financial statements, reports and records as directed by the Court.

15. The Administrator shall pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, soliciting Class Members to submit a Claim Form, including the notice expenses reasonably and actually incurred by the Administrator and brokerage firms in connection with the provision of notice of this Settlement to Class Members (provided, however, that the Administrator shall not pay in excess CAD$30,000.00 in the aggregate to all brokerage firms and, if the aggregate amount claimed by such brokerage firms exceeds CAD$30,000.00, then the Administrator shall distribute the sum of CAD$30,000.00 to such brokerage firms on a *pro rata* basis).

16. The Administrator shall keep up to date information on the Website on the status of the administration.

17. Once a Claim Form and required supporting documentation is received by the Administrator, the Administrator shall:

(a) decide whether the Claimant is eligible to participate in the Distribution; and

(b) calculate the *Pro Rata* Distribution.

DISTRIBUTION TO AUTHORIZED CLAIMANTS

18. No Distribution shall be made by the Administrator in respect of any amount under $5, and the name(s) of the Authorized Claimant(s) with claims under this amount shall be excluded from the Distribution List in respect of such claims.

19. Each Authorized Claimant whose name appears on the Distribution List shall comply with any condition precedent to Distribution that the Court may impose.

20. The Administrator shall make Distributions from the Compensation Fund to the Authorized Claimants whose names are on the Distribution List.

21. If the Escrow Account is in a positive balance (whether by reason of tax refunds, uncashed cheques or otherwise) in an amount greater than 10% of the net Settlement Amount after one hundred eighty (180) days from the date of Distribution of the Compensation Fund to the Authorized Claimants, the Administrator shall allocate such balance among Authorized Claimants whose names are on the Distribution List in an equitable fashion up to the limit of each person's actual loss. The Administrator may wait until a CRA T-5 tax slip for investment income is issued by the Schedule 1 bank in respect of the Escrow Account before making this second distribution. If there is a balance in the Escrow Account after each Authorized Claimant is paid up to his/her/its actual loss, the remaining funds shall be paid cy près to a recipient selected by Class Counsel.

IRREGULAR CLAIMS AND RESTRICTION ON CLAIMS

22. Where a Claim Form contains minor omissions or errors or there are minor errors or omissions in supporting documentation, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator and it is a proportionate and efficient use of resources for them to do so.

23. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted. This information must be submitted sixty (60) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request

for information within this period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary, but will in all other respects be subject to and bound by the provisions of the Agreement and the releases contained therein.

24. Any Class Member who does not submit a Claim Form and required supporting documentation with the Administrator on or before the Claims Bar Deadline will have their claim disallowed unless the Claims Administrator, in their absolute discretion, determines that allowing the claim would not delay the administration or otherwise impact the efficiency of the administration.

25. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Administrator believes that the claim contains unintentional errors which would materially exaggerate the Notional Entitlement of the Claimant, then the Administrator may disallow the claim in its entirety or make such adjustments so that an appropriate Notional Entitlement is allocated to the Claimant. If the Administrator believes that the claim is fraudulent or contains intentional errors which would materially exaggerate the Notional Entitlement of the Claimant, then the Administrator shall disallow the claim in its entirety.

26. Where the Administrator disallows a claim in its entirety, the Administrator shall send to the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice advising that the claim has been disallowed and that the Claimant may request the Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the

Claimant disputes the amount of his, her or its Notional Entitlement or his, her or its individual compensation.

27. Any request for reconsideration must be received by the Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.

28. Where a Claimant files a request for reconsideration with the Administrator, the Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.

29. Following its determination in an administrative review, the Administrator shall advise the Claimant of its determination. In the event the Administrator reverses a disallowance, the Administrator shall send the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice specifying the revision to the Administrator's disallowance.

30. The determination of the Administrator in an administrative review is final and is not subject to further review by any court or other tribunal.

31. Any matter not referred to above shall be determined by analogy by the Administrator in consultation with Class Counsel.

32. No action shall lie against Class Counsel or the Administrator for any decision made in the administration of the Agreement and the Distribution Protocol without an order from a Court authorizing such an action.

ADMINISTRATION EXPENSES

33. The Administrator shall pay the fees, disbursements, taxes, levies, and other costs of:

    (a) the Administrator; and

    (b) such other persons at the direction of the Court,

    out of the Settlement Amount in accordance with the provisions of the Agreement, the Second Order and any other orders of the Court.

34. The costs of giving the notices required pursuant to the Second Order and the Plan of Allocation are not to be paid by the Administrator from its fee.

NO ASSIGNMENT

35. No amount payable under this Plan of Allocation may be assigned without the written consent of the Administrator.

This is Exhibit “B” in the

Affidavit of Bethanie Pascutto, affirmed remotely

on this 28th day of April, 2023

……

Commissioner for taking Affidavits

Stephanie Cheryn Emily Cox, a
Commissioner, etc., Province of
Ontario, for Groia & Company
Professional Corporation, Barristers
and Solicitors.
Expires February 15, 2026

Court File No.: CV-14-509885-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

CLAIRE BALDWIN

Plaintiff

- and -

IMPERIAL METALS CORPORATION, J. BRIAN KYNOCH, ANDRE DEEPWELL, LARRY G. MOELLER, LAURIE PARE, N. MURRAY EDWARDS, EDCO FINANCIAL HOLDINGS LTD. and EDCO CAPITAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

(Notice of Action issued August 7, 2014)

AMENDED THIS March 8, 2016 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 (a)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
(M Brenton)
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

TO: Imperial Metals Corporation
580 Hornby Street, Suite 200
Vancouver, British Columbia V6C 3B6

AND TO: J. Brian Kynoch
c/o Imperial Metals Corporation
580 Hornby Street, Suite 200
Vancouver, British Columbia V6C 3B6

AND TO: Andre Deepwell
c/o Imperial Metals Corporation
580 Hornby Street, Suite 200
Vancouver, British Columbia V6C 3B6

AND TO: Larry G. Moeller
c/o Imperial Metals Corporation
580 Hornby Street, Suite 200
Vancouver, British Columbia V6C 3B6

AND TO: Laurie Pare
c/o Imperial Metals Corporation
580 Hornby Street, Suite 200
Vancouver, British Columbia V6C 3B6

AND TO: N. Murray Edwards
Suite 3220-255 5 Ave SW
Calgary, Alberta T2P 3G6

AND TO: Edco Financial Holdings Ltd.
Suite 3220-255 5 Ave SW
Calgary, Alberta T2P 3G6

AND TO: Edco Capital Corporation
Suite 3220-255 5 Ave SW
Calgary, Alberta T2P 3G6

DEFINED TERMS

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) "**2004 Technical Report**" means **Imperial**'s National Instrument 43-101 Technical Report titled "Mount Polley Mine 2004 Feasibility Study," dated August 1, 2004, filed on SEDAR on August 5, 2004, the most recent publicly available National Instrument 43-101 technical report on **Mount Polley**;

(b) "**2006 DSR Report**" means the Final Report on Dam Safety Review with respect to **Mount Polley**, dated December 2006, prepared by **AMEC**;

(c) "**2009 Technical Assessment Report**" means the report dated July 2009, titled "Mount Polley Mine Technical Assessment Report for a Proposed Discharge of Mine Effluent," prepared by **MPMC** in support of an application for the discharge of mine effluent under the waste discharge regulation of the British Columbia Environmental Management Act;

(d) "**2011 Olding Report**" means the Final Report dated June 2011, titled "Independent Review of the Mount Polley Mine Technical Assessment Report for a Proposed Discharge of Mine Effluent (2009)," prepared by Brian Olding & Associates Ltd in association with LGL Limited;

(e) "**A Guide to the Management of Tailings Facilities**" and "**Guide**" mean the document titled "A Guide to the management of Tailings Facilities," Second Edition, 2011, published by the Mining Association of Canada, which summarizes industry-accepted sound tailings management practices that were applicable to the **Imperial Defendants** with respect to the management of **Mount Polley**'s **TSF** at all material times during the **Class Period**;

(f) "**AIF**" means Annual Information Form;

(g) "**AMEC**" means the consulting engineers firm of AMEC Earth and Environmental, a division of AMEC Americas, who were retained as the engineers of record for the **TSF** as of January 28, 2011 and held that position at all material times during the **Class Period**;

(h) "**Arrangement**" means a reorganization transaction pursuant to the British Columbia *Company Act* implemented in April 2002, pursuant to which **Old Imperial**'s mining business and assets were transferred to **Imperial**;

(i) "***BCA***" means the British Columbia *Business Corporations Act*, SBC 2002, c 57, as amended;

(j) "***BCSA***" means the British Columbia *Securities Act*, RSBC 1996, c 418, as amended;

(k) "**BGC**" means the consulting engineers firm of BGC Engineering Inc, who were engaged by **MPMC** in 2013 to undertake a design for raising of the **TSF** embankment, and were intended to assume the position of the **TSF**'s engineers of record as of late-2014;

(l) "**CEO**" means Chief Executive Officer;

(m) "**CFO**" means Chief Financial Officer;

(n) "***CJA***" means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;

(o) "**Class**" and "**Class Members**" mean all persons and entities, wherever they may reside or be domiciled, who acquired **Imperial**'s **Securities** during the **Class Period** and continued to hold some or all of those **Securities** as of August 5, 2014, other than the **Excluded Persons**;

(p) "**Class Period**" means the period from August 15, 2011 through to August 4, 2014, inclusive;

(q) "***CPA***" means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

(r) "**Deepwell**" means the defendant, Andre Deepwell;

(s) "**Defendants**" means, collectively and separately, **Imperial**, **Edco Financial**, **Edco Capital** and the **Individual Defendants**;

(t) "**Edco Capital**" means the defendant, Edco Capital Corporation;

(u) "**Edco Financial**" means the defendant, Edco Financial Holdings Ltd.;

(v) "**Edwards**" means the defendant, N. Murray Edwards;

(w) "**Excluded Persons**" means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an **Individual Defendant;**

(x) "**Failure**" means malfunction of a tailings facility system's component or processes up to and including the failure of the whole tailings facility;

(y) "**IFRS**" means International Financial Reporting Standards;

(z) "**Imperial**" means the defendant, Imperial Metals Corporation and, as the context may require, includes its wholly-owned subsidiary, **MPMC**;

(aa) "**Imperial Defendants**" means **Imperial**, **Kynoch**, **Deepwell**, **Moeller**, **Pare** and **Edwards**, collectively and separately;

(bb) "**Impugned Documents**" (each being an "**Impugned Document**") means, collectively:

(i) the interim financial statements for the period ended June 30, 2011, filed on SEDAR on August 15, 2011;

(ii) the MD&A for the period ended June 30, 2011, filed on SEDAR on August 15, 2011;

(iii) the interim financial statements (amended) for the period ended June 30, 2011, filed on SEDAR on August 15, 2011;

(iv) the interim financial statements for the period ended September 30, 2011, filed on SEDAR on November 14, 2011;

(v) the MD&A for the period ended September 30, 2011, filed on SEDAR on November 14, 2011;

(vi) the audited annual financial statements for the year ended December 31, 2011, filed on SEDAR on March 30, 2012;

(vii) the MD&A for the year ended December 31, 2011, filed on SEDAR on March 30, 2012;

(viii) the AIF for the year ended December 31, 2011, filed on SEDAR on March 30, 2012;

(ix) the Annual Report for the year ended December 31, 2011, filed on SEDAR on March 30, 2012;

(x) the interim financial statements for the period ended March 31, 2012, filed on SEDAR on May 11, 2012;

(xi) the MD&A for the period ended March 31, 2012, filed on SEDAR on May 11, 2012;

(xii) the interim financial statements for the period ended June 30, 2012, filed on SEDAR on August 7, 2012;

(xiii) the MD&A for the period ended June 30, 2012, filed on SEDAR on August 7, 2012;

(xiv) the interim financial statements for the period ended September 30, 2012, filed on SEDAR on November 8, 2012;

(xv) the MD&A for the period ended September 30, 2012, filed on SEDAR on November 8, 2012;

(xvi) the audited annual financial statements for the year ended December 31, 2012, filed on SEDAR on March 28, 2013;

(xvii) the MD&A for the year ended December 31, 2012, filed on SEDAR on March 28, 2013;

(xviii) the AIF for the year ended December 31, 2012, filed on SEDAR on March 28, 2013;

(xix) the Annual Report for the year ended December 31, 2012, filed on SEDAR on March 28, 2013;

(xx) the MD&A (amended) for the period ended December 31, 2012, filed on SEDAR on April 10, 2013;

(xxi) the revised AIF for the year ended December 31, 2012, filed on SEDAR on April 10, 2013;

(xxii) the Annual Report (amended) for the year ended December 31, 2012, filed on SEDAR on April 10, 2013;

(xxiii) the interim financial statements for the period ended March 31, 2013, filed on SEDAR on May 14, 2013;

(xxiv) the MD&A for the period ended March 31, 2013, filed on SEDAR on May 14, 2013;

(xxv) the interim financial statements for the period ended June 30, 2013, filed on SEDAR on August 14, 2013;

(xxvi) the MD&A for the period ended June 30, 2013, filed on SEDAR on August 14, 2013;

(xxvii) the interim financial statements (amended) for the period ended June 30, 2013, filed on SEDAR on August 15, 2013;

(xxviii) the MD&A (amended) for the period ended June 30, 2013, filed on SEDAR on August 15, 2013;

(xxix) the interim financial statements for the period ended September 30, 2013, filed on SEDAR on November 13, 2013;

(xxx) the MD&A for the period ended September 30, 2013, filed on SEDAR on November 13, 2013;

(xxxi) the audited annual financial statements for the year ended December 31, 2013, filed on SEDAR on March 31, 2014;

(xxxii) the MD&A for the year ended December 31, 2013, filed on SEDAR on March 31, 2014;

(xxxiii) the AIF for the year ended December 31, 2013, filed on SEDAR on March 31, 2014;

(xxxiv) the Annual Report for the year ended December 31, 2013, filed on SEDAR on March 31, 2014;

(xxxv) the interim financial statements for the period ended March 31, 2014, filed on SEDAR on May 13, 2014;

(xxxvi) the MD&A for the period ended March 31, 2014, filed on SEDAR on May 13, 2014; and

(xxxvii) the **Offering Memorandum**;

in each case, where applicable, including all documents incorporated by reference therein, whether explicitly or implicitly;

(cc) "**Individual Defendants**" (each being an "**Individual Defendant**") means **Kynoch**, **Deepwell**, **Moeller**, **Pare** and **Edwards**, collectively;

(dd) "**Knight Piésold**" means the consulting engineers firm of Knight Piésold Ltd., formerly the engineers of record for the **TSF**, who resigned from that position on or about January 28, 2011;

(ee) "**Kynoch**" means the defendant, J. Brian Kynoch;

(ff) "**MD&A**" means Management's Discussion and Analysis;

(gg) "**Moeller**" means the defendant, Larry Moeller;

(hh) "**Mount Polley**" means the Mount Polley Mine, an open pit copper-gold mine located in south-central British Columbia, owned and operated by, **MPMC**, a wholly-owned subsidiary of **Imperial**;

(ii) "**MPMC**" means Mount Polley Mining Corporation, a wholly-owned subsidiary of **Imperial**, through which **Imperial** owns and operates **Mount Polley**;

(jj) "**Notes**" means **Imperial**'s 7% Senior Unsecured Notes due March 2019;

(kk) "**Offering**" means the offering by way of the **Offering Memorandum** of US$325 million of **Imperial**'s **Notes**, which closed on March 12, 2014;

(ll) "**Offering Memorandum**" means the offering document dated March 6, 2014 issued in connection with the **Offering**, by way of which the **Notes** were offered;

(mm) "**Old Imperial**" means the original Imperial Metals Corporation, the predecessor of **Imperial**;

(nn) "***OSA***" means the Ontario *Securities Act*, RSO 1990 c S 5, as amended;

(oo) "**Panel**" means the Independent Expert Investigation and Review Panel appointed by the Government of British Columbia in August 2014 to investigate into and report on the cause of the **Mount Polley** breach;

(pp) "**Panel Report**" means the **Panel**'s report dated January 30, 2015, titled "Report on Mount Polley Tailings Storage Facility Breach";

(qq) "**Pare**" means the defendant, Laurie Pare;

(rr) "**Plaintiff**" means the plaintiff, Claire Baldwin;

(ss) "**Representation**" means the statement, express or implied, that the **Impugned Documents** did not contain any untrue statement of a material fact relating to **Mount Polley** or omit to state a material fact relating to **Mount Polley** that needed to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made;

(tt) "**Risk**" means a potential negative impact that is detrimental to operations, the environment, public health or safety, that may arise from some present process or future event;

(uu) "**Securities**" means **Imperial**'s common shares, **Notes**, or such other securities as defined in the **Securities Legislation**;

(vv) "**Securities Legislation**" means, collectively, the ***OSA***, the ***BCSA***, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, CQLR c V-1.1, as amended; the *Securities Act, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

(ww) "**SEDAR**" means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;

(xx) "**TSF**" means **Mount Polley**'s tailings storage facility; and

(yy) "**TSX**" means the Toronto Stock Exchange.

CLAIM

2. The Plaintiff claims:

(a) An order granting the Plaintiff leave to pursue the statutory right of action as against the Defendants under Part XXIII.1 of the *OSA* and, if necessary, the other Securities Legislation;

(b) An order certifying this action as a class proceeding under subsection 5(1) of the *CPA* and appointing the Plaintiff as the representative plaintiff for the Class;

(c) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;

(d) A declaration that the Impugned Documents contained one or more other misrepresentations at law and within the meaning of the Securities Legislation;

(e) A declaration that Imperial is vicariously liable for the acts and/or omissions of its partners, officers, directors and employees;

(f) A declaration that Edco Financial is vicariously liable for the acts and/or omissions of its partners, officers, directors and employees;

(g) A declaration that Edco Capital is vicariously liable for the acts and/or omissions of its partners, officers, directors and employees;

(h) A declaration that Kynoch and Deepwell, or any of them, were officers of Imperial within the meaning of the Securities Legislation and that they authorized, permitted or acquiesced in the release of the Impugned Documents, or any of them;

(i) A declaration that Kynoch, Moeller and Pare, or any of them, were directors of Imperial within the meaning of the Securities Legislation at the time of the release of the Impugned Documents, or any of them;

(j) A declaration that Edwards was a director of Imperial within the meaning of the Securities Legislation at the time of the release of the Impugned Documents, or any of them, and/or that Edwards was an officer of Imperial within the meaning of the Securities Legislation and authorized, permitted or acquiesced in the release of the Impugned Documents, or any of them;

(k) A declaration, in the alternative, that Edwards was an influential person of Imperial within the meaning of the Securities Legislation, and that he knowingly influenced Imperial or any person acting on behalf of Imperial to release the Impugned Documents, or any of them, or knowingly influenced a director or officer of Imperial to authorize, permit or acquiesce in the release of the Impugned Documents, or any of them;

(l) A declaration that Edco Financial and Edco Capital, or any of them, were influential persons of Imperial and that they knowingly influenced Imperial or any person acting on behalf of Imperial to release the Impugned Documents, or any of them, or knowingly influenced a director or officer of Imperial to authorize, permit or acquiesce in the release of the Impugned Documents, or any of them;

(m) A declaration that Imperial, Kynoch, Deepwell, Moeller, Pare and Edwards, or any of them, owed a duty of care to the Class Members, or any of them, that they breached that duty of care, and that as a result the Class Members suffered damages or losses;

(n) On behalf of those Class Members who acquired Imperial's common shares, and as against all Defendants, general damages in the amount of $100 million;

(o) On behalf those Class Members who acquired Imperial's Notes in the secondary market, and as against all Defendants, general damages in the amount of $10 million;

(p) On behalf of those Class Members who acquired Imperial's Notes in the Offering, and as against Imperial and all Individual Defendants, general damages in the amount of $40 million;

(q) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;

(r) Prejudgment and post judgment interest;

(s) Costs of this action plus, pursuant to s 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and

(t) Such further and other relief as this Honourable Court may deem just.

OVERVIEW

3. On August 4, 2014, Imperial disclosed a major breach at the tailings storage facility of its principal operating asset, Mount Polley. The breach resulted in the release of millions of cubic meters of water, mining waste and contaminants into the nearby lakes and water resources.

4. The breach has been catastrophic to Imperial and its stakeholders, including local residents and First Nations residing in the area. The full impact of the breach on the surrounding areas, natural resources, wildlife and the local and other stakeholders is yet to be determined.

5. Imperial's securityholders were among those who suffered significant damages and losses as a result of the incident. Following the breach of Mount Polley's tailings store facility and the disclosure of the breach by Imperial, the market price or value of Imperial's Securities declined by as much as 40%, and Imperial lost $500 million of its market capitalization.

6. As particularized herein, it has since been revealed to the public that the Imperial Defendants failed to comply with the standards applicable to them in designing,

constructing and/or operating Mount Polley's tailings storage facility. Among other deficiencies, the Imperial Defendants failed to locate and design the tailings storage facility's embankments to ensure their stability, failed to investigate the dams' foundations as required by the applicable standards and failed to construct the dams in accordance with the design criteria and construction approvals. These deficiencies compromised the dam's stability and, ultimately, caused its breach in August 2014 and/or contributed to the severity of the breach's consequences.

7. Notably, due to the deficiencies in the design, construction and/or operation of the tailings storage facility, concerns had been raised by consultants and others with respect to the dam's stability and its structural integrity over the course of, and in the years preceding, the Class Period.

8. Additionally, it has been revealed that Mount Polley's operations suffered from a historic lack of sustainable water management and tailings management strategies resulting in the accumulation of surplus water in the tailings storage facility's impoundment over the course of and in the years preceding the Class Period. The chronic water management issues at Mount Polley's tailings storage facility directly and/or indirectly impacted design, construction and/or operation of the tailings storage facility's embankments and, ultimately, their stability.

9. As particularized herein, the circumstances of Mount Polley's tailings storage facility included material facts regarding Mount Polley's and its tailings storage facility's operations that were known or ought to have been known to the Defendants upon reasonable investigation required from them in the circumstances. The Defendants had

an obligation at law to disclose those material facts, as further particularized below, but failed to do so during the Class Period in the Impugned Documents or elsewhere.

10. In light of the Defendants' omissions to disclose those material facts, certain positive statements made in Imperial's disclosure documents issued during the Class Period regarding Mount Polley's operations and/or Imperial's operational results derived therefrom were also rendered false and/or misleading.

11. Imperial's disclosure documents issued during the Class Period included affirmative statements regarding Imperial's compliance with the applicable laws and regulations as well as positive statements regarding Imperial's commitment to responsible and sustainable mining. However, it was revealed after the Class Period that those statements were untrue.

12. Furthermore, as particularized herein, the facts surrounding Mount Polley and its tailings storage facility's operations created significant, identifiable risks to Mount Polley's and, thus, Imperial's operations. The Defendants had an obligation at law to disclose those specific, identifiable risks, but failed to do so adequately or at all during the Class Period. In particular, none of the Impugned Documents disclosed the specific, identifiable risks relating to or arising from the circumstances of Mount Polley's tailings storage facility's operations, its lack of sustainable water and waste management programs, inadequacies in the design and construction of the tailings storage facilities' embankments and the concerns arising thereof respecting the embankments' design, construction, operation and stability.

13. The Defendants had an obligation at law to disclose material information concerning Imperial and its business and operations, as well as risks and uncertainties that could

reasonably affect Imperial's future performance as outlined in paragraph 12. However, they failed to do so in the Impugned Documents or elsewhere.

14. This action arises out of the Defendants' misrepresentations in Imperial's disclosure documents with respect to Mount Polley's operations and Imperial's business and future prospects relating thereto. Due to the Defendants' misrepresentations, the Class Members acquired Imperial's Securities at artificially inflated prices during the Class Period.

15. The misrepresentations alleged herein began to be publicly corrected on August 4, 2014 when Mount Polley's tailings storage facility failed and Imperial disclosed the same. As a result, the market value or price of Imperial's Securities declined, and the Class Members suffered damages and losses. In this action, the Plaintiff seeks to recover the damages that she and the other Class Members have suffered as a result of the Defendants' negligence and breaches of securities law.

THE PARTIES

The Plaintiff

16. The Plaintiff is an individual resident in the Province of Alberta. She acquired Securities of Imperial during the Class Period, and held some or all of those Securities as of the end of the Class Period.

The Defendants

17. Imperial was incorporated in December 2001 under the British Columbia *Company Act*, which was superseded by the *BCA*, and is a successor to Old Imperial pursuant to the implementation of the Arrangement in April 2002. Imperial was transitioned under the

BCA in June 2005. At all material times, Imperial's principal business and registered offices were located in Vancouver, British Columbia.

18. Pursuant to the Arrangement, Old Imperial's operations were divided into two public corporations: one focused on oil and natural gas and the other focused on mining. Old Imperial's mining business and assets were transferred to Imperial, which was listed for trading on the TSX as of April 2002. Old Imperial's oil and gas business and assets were retained in Old Imperial, which changed its name to IEI Energy Inc.

19. At all material times, Imperial was a reporting issuer in Ontario, British Columbia, Saskatchewan and Quebec, and its shares traded under ticker symbol "III" on the TSX and other Canadian trading venues. Imperial's shares also traded on Over-the-Counter markets in the United States and Europe. During the Class Period, approximately 92% of Imperial's total trading volume occurred on the TSX and other Canadian trading venues. Imperial's other Securities also traded in the secondary market.

20. As a reporting issuer in Ontario, Imperial was required to issue and file with SEDAR:

    (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with IFRS that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;

    (b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;

    (c) contemporaneously with each of the above, an MD&A of each of the above financial statements; and

(d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

21. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.

22. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF must describe the company, its operations and prospects, risks and other external factors that impact the company specifically.

23. At all material times since the Arrangement, and during the Class Period, Kynoch was CEO, President and a director of Imperial. Prior to the Arrangement, Kynoch was a director, Chief Operating Officer and Senior Vice President of Old Imperial. Kynoch was a director and an officer of Imperial within the meaning of the Securities Legislation.

24. Kynoch certified all quarterly and annual disclosures of Imperial issued during the Class Period and, among other things, stated that they did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made.

25. At all material times since the Arrangement, and during the Class Period, Deepwell was CFO of Imperial. Prior to the Arrangement, Deepwell was CFO, Vice President, Finance

and Corporate Secretary of Old Imperial. Deepwell was an officer of Imperial within the meaning of the Securities Legislation.

26. Deepwell certified all quarterly and annual disclosures of Imperial issued during the Class Period and, among other things, stated that they did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made.

27. At all material times since the Arrangement, Moeller was a director of Imperial. Prior to the Arrangement, Moeller was a director of Old Imperial since 1994. During the Class Period, Moeller was the Lead Director of Imperial, Chair of Imperial's Board's Audit Committee, Chair of Imperial's Board's Compensation Committee and a member of Imperial's Board's Corporate Governance and Nominating Committee. As Imperial's Lead Director, Moeller purported to facilitate the functioning of the Board independently from management and was generally charged with the responsibility of maintaining and enhancing the quality of Imperial's corporate governance practices. Moeller was a director of Imperial within the meaning of the Securities Legislation.

28. Concurrently with his directorship positions with Old Imperial and Imperial, Moeller was Vice-President, Finance of the defendant, Edco Financial and also had connections with the defendant, Edco Capital. Moeller was a representative of the defendants Edwards, Edco Financial and/or Edco Capital on Imperial's board of directors.

29. Pare was appointed a director of Imperial as of May 29, 2013, and held that position through the end of the Class Period. Pare was a member of Imperial Board's Audit

Committee as well is its Compensation Committee. Pare was a director of Imperial within the meaning of the Securities Legislation.

30. Concurrently with his directorship position with Imperial, Pare was Treasurer of the defendant, Edco Financial and an officer of the defendant, Edco Capital. Pare was a representative of the defendants Edwards, Edco Financial and/or Edco Capital on Imperial's board of directors.

31. Since 1994 and until the implementation of the Arrangement, Edwards was a director and Chairman of Old Imperial, and continued to have relationships with Imperial, its management and its directors thereafter.

32. According to Imperial, "Since 1994, Murray Edwards has been the Company's largest shareholder and an important component of our growth and development." Since 1994, Edwards and his affiliates, including the defendants Edco Financial and Edco Capital, were at the heart of founding, organizing or reorganizing Imperial and its business, including in such material corporate transactions as the Arrangement and the Offering.

33. Edwards controls the defendants, Edco Financial and Edco Capital. At all material times during the Class Period, Edwards had directly and indirectly through the defendants, Edco Financial and Edco Capital, beneficial ownership of, or control or direction over, in excess of 35% of Imperial's outstanding shares.

34. At all material times, Edwards was a *de facto* director and/or a *de facto* officer of Imperial. Edwards was a director and/or an officer of Imperial within the meaning of the Securities Legislation. In the alternative, Edwards was an insider and an influential person of Imperial within the meaning of the Securities Legislation.

35. Edwards had and exercised, directly and/or indirectly, supervision and/or control over Imperial's business, operations and affairs personally and through his affiliates, the defendants Edco Financial and Edco Capital, who at all material times had representatives on Imperial's board of directors.

36. Edco Financial is a private investment company based in Calgary, Alberta, controlled by the defendant, Edwards. At all material times, Edco Financial had directly and indirectly through its affiliates, the defendants Edwards and Edco Capital, beneficial ownership of, or control or direction over, in excess of 35% of Imperial's outstanding shares. Edco Financial was an insider and an influential person of Imperial within the meaning of the Securities Legislation.

37. Edco Financial had and exercised, directly and/or indirectly, supervision and/or control over Imperial's business, operations and affairs through its affiliates including its representatives on Imperial's board of directors, the defendants Moeller and Pare.

38. Edco Capital is a private investment company based in Calgary, Alberta, controlled by the defendant, Edwards. At all material times, Edco Capital had directly and indirectly through its affiliates, the defendants Edwards and Edco Financial, beneficial ownership of, or control or direction over, in excess of 35% of Imperial's outstanding shares. Edco Capital was an insider and an influential person of Imperial within the meaning of the Securities Legislation.

39. Edco Capital had and exercised, directly and/or indirectly, supervision and/or control over Imperial's business, operations and affairs through its affiliates including its representatives on Imperial's board of directors, the defendants Moeller and Pare.

40. In addition to their significant shareholding positions with Imperial and their direct and/or indirect supervision and control over Imperial's business, operations and affairs, the defendants Edwards, Edco Financial and Edco Capital and their affiliates have had other direct or indirect interests in Imperial including by virtue of their involvement with various of Imperial's credit facilities and financing arrangements.

41. Edwards' and his affiliates' longstanding involvement with Imperial's financing arrangements date back to prior to the Arrangement and continued through the relevant period. More recently,

(a) in September 2012, Imperial's credit facility with its bankers was increased from $75 million to $150 million in order to provide Imperial with additional working capital. The additional $75 million was guaranteed by the defendant, Edwards;

(b) in June 2013, Imperial entered into a $75 million line of credit facility with Edco Capital;

(c) in August 2013, Imperial's line of credit with Edco Capital was increased from $75 million to $130 million;

(d) in November 2013, the line of credit with Edco Capital was increased from $130 million to $200 million;

(e) in January 2014, the line of credit with Edco was increased from $200 million to $225 million; and

(f) in February 2014, the line of credit with Edco was increased from $225 million to $250 million.

42. As of March 2014, Imperial had borrowed approximately $250 million under its line of credit with Edco Capital, representing the entire borrowing capacity that was available to it under those credit arrangements.

43. In March 2014, Imperial undertook the Offering for gross proceeds of approximately US$325 million. The proceeds of the Offering were used to refinance debt, including to repay the $250 million debt outstanding under the line of credit with Edco Capital.

44. Subsequent to the Offering, Imperial entered into a new $75 million credit facility with Edco Capital. The defendant, Edwards, guaranteed Edco Capital's obligations to Imperial under this credit facility.

45. On August 15, 2014, Imperial announced that it intended to issue, on a non-brokered private placement basis, an aggregate of $100 million convertible debentures, and that the defendants Edco Capital, Edwards and their affiliates had committed to purchase $40 million, and up to $60 million, of those securities.

46. On September 3, 2014, Imperial announced the closing of the private placement of $115 million face value of 6% 6-year senior unsecured convertible debentures. The defendant, Edco Capital purchased $40 million of these convertible debentures.

THE FACTS

Imperial's Business

47. Imperial is a mining company, and a developer and producer of base and precious metals with assets principally located in British Columbia. At the relevant times, Imperial's key properties included the following:

(a) Mount Polley: an open pit copper and gold mine located in British Columbia, in which Imperial has a 100% interest through its wholly-owned subsidiary, MPMC;

(b) Huckleberry Mine: an open pit copper and molybdenum mine located in British Columbia, in which Imperial has a 50% interest through its wholly-owned subsidiary, HML Mining Inc.;

(c) Red Chris Mine: a development-stage copper and gold project located in British Columbia, in which Imperial has a 100% interest through its wholly-owned subsidiary, CAT-Gold Corporation;

(d) Sterling Mine: an underground, heap leach gold mine located in Nevada, the Unites States, in which Imperial has a 100% interest through its wholly-owned subsidiary, Sterling Gold Mining Corporation. Sterling began commercial production in March 2013; and

(e) Ruddock Creek: a predevelopment-stage underground zinc and lead mine located in British Columbia, in which Imperial currently has a 50% interest through its wholly-owned subsidiary, Selkirk Metals Corp.

48. At all relevant times, Mount Polley represented the principal operating asset of Imperial, generating the greater portion of Imperial's revenue and net income. As of 2013, 2012 and 2011, Mount Polley generated, respectively, 96%, 99% and 64% of Imperial's reported consolidated revenue and 69%, 79% and 58% of its net income. Cash flow from Mount Polley was vital to Imperial's ability to fund its capital expenditure, day-to-day operations and its purportedly future growth.

49. Furthermore, at all relevant times, Mount Polley assets and related equipment were the subject of various of Imperial's finance contracts, which were used to fund Imperial's expenditures including those related to its development-stage assets.

50. As such, Mount Polley was critical to Imperial. Its integrity and continuing operation, including all information relating to those matters, were material to the company and its stakeholders, including the Class Members.

TSF and Its Operations

General Description of Mount Polley's TSF

51. At the relevant times, Mount Polley produced copper and gold.

52. According to Imperial, the milling and metallurgical processes at Mount Polley operations involve various stages. Ore is extracted from the mine and processed into fine particles, which are then processed to separate valuable minerals from waste minerals. Waste minerals are then discharged into tailings with wastewater, which flows into the tailings impoundment area.

53. The tailings storage facility is an integral component of Mount Polley and critical to its operations. Without a working tailings storage facility Mount Polley cannot continue mining operations.

54. Imperial's 2004 Technical Report, which was incorporated by reference into all of Imperial's AIFs issued during the Class Period, includes the following descriptions of Mount Polley's "Tailings Storage Facility and Ancillary Works":

> **19.1.1 System Configuration**
>
> The system is comprised of the following:
>
> - A pipeline system conveys the tailings slurry via gravity from the Mill Site to the Tailings Storage Facility. This system includes movable discharge sections with one end dump discharge to distribute the tailings along the embankment crest.
> - A make-up water supply system provides extra water to the Tailings Storage Facility. This system comprises an intake and pump at Polley Lake and a pipeline to convey water to the Tailings Storage Facility. The water is discharged into the Tailings Storage Facility near the west abutment of the Perimeter Embankment. It is not anticipated that this system will be required in the future. Any make-up water required will come from pit water.
> - A reclaim water system comprised of a barge mounted pump station in an excavated channel, a booster pump station and a pipeline for recycling process

water to the Mill, is used to remove water from the Tailings Storage Facility for use in the milling process.

- Graded earthfill and rockfill embankments with internal drains retain the tailings solids in the Tailings Storage Facility. The embankments have been raised in stages by a combination of centerline and modified centerline approaches.
- A foundation drain and pressure relief well system located downstream of the Main Embankment prevents the build up of pore pressure in the foundation and collects seepage from the base of the Tailings Storage Facility. The flows are directed to a decant manhole near the Main Embankment Collection Pond.
- Seepage collection ponds are located downstream of the Main and Perimeter Embankments to store water collected from the embankment drains and from local runoff. Water from the ponds is pumped back to the Tailings Storage Facility during operations, but was discharged during the shutdown period.
- Instrumentation in the tailings, embankments and foundations, including vibrating wire piezometers, survey monuments, slope inclinometers and the measurement of drain flows is used to monitor the performance of the Tailings Storage Facility.
- A system of groundwater wells installed around the Tailings Storage Facility is used for groundwater quality monitoring.

[…]

The Tailings Storage Facility starter dam and ancillary works construction was completed in March 1997. The system went into operation with storage of the 1997 spring freshet. Milling operations directed tailings slurry to the Tailings Storage Facility, from June 1997 to suspension of operations in the fall of 2001. The Tailings Storage Facility currently stores supernatant and 27 million dry tonnes of tailings. The Tailings Storage Facility is designed to store the water required for mill processing water.

19.1.2 System Care and Maintenance

Long term stability and surface runoff controls were enhanced before suspension of operations of the Tailings Storage Facility.

Mount Polley tailings are non-acid generating. The water management plan reduces volumes of water that must be stored in the impoundment by limiting surface runoff to the facility. The Tailings Storage Facility does not have a spillway or permit to release water to the environment; water is stored for use in milling operations. After closure a spillway will have to be constructed.

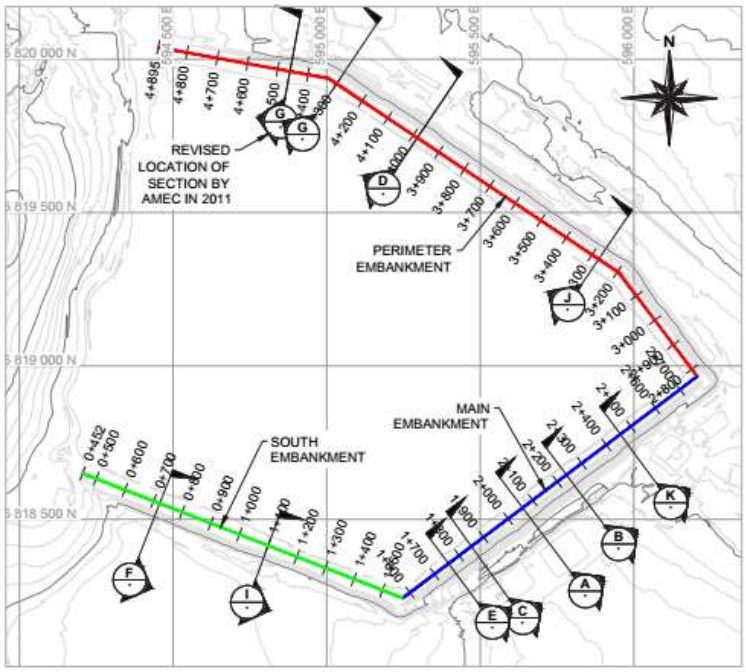
[…]

19.1.4 Tailings Storage Facility

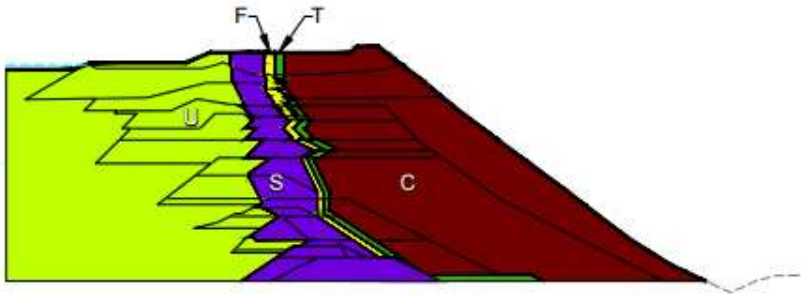
The Stage 3A/B construction in Years 2000 & 2001 included raising the Main, Perimeter and South Embankments to elevation 942.5.

> A five metre high downstream buttress has been constructed at the Main Embankment to enhance embankment stability. This buttress is located from the valley bottom to elevation 920 metres. The Perimeter Embankment stability was enhanced by rockfill placed during construction of the Stage 3B raise. The downstream filter and transition zones were fully lifted to elevation 942.5 to stabilize the glacial till core before construction operations were suspended in August 2001.
>
> The present configuration provides storage for one metre of freeboard, 24 hour PMP, 1.0 million cubic metres of supernatant and room to store 1.3 million dry tonnes of tailings. These determinations were based on a survey of the tailings surface after suspension of milling operations.
>
> Stage 3C (elevation 945.0m) raise will be constructed during August/September 2004 and will provide containment for an additional 7.5 million dry tonnes. This will provide ample tailings storage for the first year of operations. Remaining stages up to the 960.5 elevation will occur on an annual basis ensuring there is surplus containment for dry tailings, freeboard and storm events for the following year of mining activities. Tailings Storage Facility construction to the Embankment Cap (elevation 961.0m) provides containment for a total of approximately 70 million dry tonnes of tailings.
>
> […]
>
> **19.1.5 Make-Up Water System**
>
> The Tailings Storage Facility has operated under a negative water balance during mill operations. Water was diverted from upper catchment areas and water was annually pumped from Polley Lake during spring freshet to make-up the difference. In the future water required for make-up will come from the partially flooded Cariboo Pit. The water balance estimates show that during operation the water balance will be in balance with possible periods of surplus or deficit depending on annual precipitation.

55. At all relevant times, Mount Polley's tailings storage facility was comprised of three embankments: (a) the Main Embankment; (b) the Perimeter Embankment; and (3) the South Embankment. The failure occurred at a section of the Perimeter Embankment that extends approximately from survey stations 4+200 to 4+300, as seen in the below figure (reproduced from the Panel Report):



56. The tailings storage facility's embankments were classified as zoned earth and rock fill dams. The below figure (reproduced from the Panel Report) illustrates a simplified cross-section of the dam, including the Perimeter Embankment.



57. In the above figure:

(a) Zone S is the dam's till core, the impervious element of the dam, which is composed of glacial deposits (till) excavated from selected borrow areas;

(b) Zone C is composed of rockfill, and its duty is to support the core. Without Zone C the core would not be stable; and

(c) Zone U is known as an upstream fill, and is composed either of tailings that would be deposited at the embankment over time, or rockfill if tailings beach material cannot be delivered in time. Zone U purported to provide support on the upstream side of the core. It also purported to have other functions such as keeping clear water away from the core.

58. As particularized below, Mount Polley's TSF failed due, in part, to over-steepness of Zone C and inadequate Zone U tailings beach, contrary to the dam's design and construction approvals.

59. Mount Polley's tailings storage facility had a certain capacity to store tailings and supernatants. In order to purportedly increase its capacity to store the buildup of mining waste and water, the tailings storage facility's dams were raised on an annual or bi-annual basis.

60. Mount Polley's dam raising activities were carried out through various construction stages. Stage 1 construction was carried out on the Main Embankment and the Perimeter Embankment in 1997-1998 to El. 934 m. At the time of the breach, Mount Polley was undertaking Stage 9 construction to raise the tailings storage facility's dams from El. 967.5 m to El. 970.0 m. Just a few days before the breach, Imperial submitted an application for Stage 10 construction to further elevate the dams to El. 972.5 m.

Regulatory Environment

61. Mount Polley's operations were undertaken pursuant to a number of permits issued by the British Columbia ministries, which included: (a) Permit M-200; and (b) Permit PE 11678.

62. Permit M-200 – Work Systems Approval was originally issued in 1995 by the British Columbia Ministry of Energy and Mines. This permit allows for open pit mining, disposal of waste in designated rock disposal sites, construction of Mount Polley's tailings storage facility, characterization of waste rock, soil and tailings, monitoring of drainage from various mine components and all aspects of reclamation of the mine.

63. Permit M-200 is subject to specific conditions, including compliance with the British Columbia *Mines Act* and the Health, Safety and Reclamation Code for Mines in British Columbia. This permit also provided for specific conditions relating to Mount Polley's operations (including the tailings storage facility and its impoundment), and provided that any substantial departure from the mine plan and approvals required notice in writing to, and written authorization from, the Chief Inspector of Mines.

64. Permit M-200 has been amended from time to time, including in connection with each stage of MPMC's construction work to raise the tailings storage facility's embankments. The amendments to Permit M-200 were approved by the Chief Inspector of Mines based on reports and representations submitted by the MPMC and, among other things, required that: (a) construction be carried out in accordance with the design and specifications provided by the design consultant; and that (b) an as-built report be submitted together with a certification that "the facility was constructed in general conformance with the design."

65. Permit PE 11678 – Effluent Permit was originally issued in 1996 by the British Columbia Ministry of Environment (formerly known as the Ministry of Water, Land and Air Protection). This permit covers all aspects of surface water, groundwater, biological and hydrological monitoring and also includes any climatology collected onsite as well as the

discharge of tailings to the tailings storage facility. Permit PE 11678 provides for specific conditions and requirements relating to water and tailings management within the tailings storage facility. This permit has been amended from time to time.

66. As further particularized below, the Imperial Defendants substantially departed from design and construction requirements and also failed to ensure that mining effluents were retained and managed within the tailings storage facility's impoundment. As a result, the Imperial Defendants failed to comply with the applicable mining laws and regulations, permits and construction approvals.

The Standards Applicable to the Imperial Defendants in Managing Mount Polley's TSF

67. At all material times, the Imperial Defendants were the owners and operators of Mount Polley and its tailings storage facility. In that capacity, the Imperial Defendants had an immediate role in, and a significant influence on, designing, constructing and/or operating the tailings storage facility.

68. The standards applicable to the Imperial Defendants in managing Mount Polley's tailings storage facility are informed by the industry's generally accepted sound tailings management practices. These standards are summarized in A Guide to the Management of Tailings Facilities (the "Guide"). At all material times during the Class Period, the Guide and the standards summarized therein were applicable to the Imperial Defendants with respect to the management of the tailings storage facility by virtue, among other things, of MPMC's participation in the Mining Association of Canada's ("MAC") Towards Sustainable Mining initiative—this initiative requires the participating mine and

tailings storage facility operators to adopt and implement the Guide, among other documents.

69. Tailings management has been an area of significant focus by the MAC. This focus has led to the preparation and publication of the Guide. The Guide was developed through a collaborative effort by representatives of the Canadian mining industry, through MAC, to provide guidance on good practices for the safe and environmentally responsible management of tailings facilities. According to the Guide, tailings storage facilities are site-specific complex systems that have unique environmental and physical characteristics. They pose a significant business risk that must be effectively managed for the long term. The MAC's efforts reflect recognition of the risk posed by tailings facilities, and the importance of ensuring their environmentally responsible management.

70. The Guide reflects sound management practices already in place in the industry. It presents the key elements of a framework to manage tailings facilities in a safe and environmentally responsible manner.

71. The framework presented in the Guide provides for a policy and commitment to locate, design, construct, operate, decommission and close tailings facilities in a manner such that: (a) all structures are stable; (b) all solids and water are managed within designated areas; and (c) all aspects of tailings management comply with regulatory requirements and conform with sound engineering practice, company standards, the MAC's Towards Sustainable Mining Guiding Principles, the Guide and commitments to communities of interest. The Imperial Defendants failed to meet these standards.

72. It was the responsibility of the Imperial Defendants to maintain a safe and stable structure for the TSF. Delegation of engineering tasks to a contractor with the skills, knowledge

and abilities to perform a required task did not release the Imperial Defendants from their responsibility, which could not be delegated. The Imperial Defendants failed to meet their responsibility to maintain a safe structure for the TSF.

73. Additionally, despite the engagement of consultant engineers, the Imperial Defendants continued to play an integral role in the construction and operation of the TSF. At all material times, the Imperial Defendants were directly responsible for certain aspects of the TSF's management which affected design, construction and/or operations of the TSF, including: (a) quality assurance work in relation to dam construction; (b) construction planning; and (c) water balance management.

74. Furthermore, the Imperial Defendants had direct involvement in setting production priorities, providing required logistics for dam construction activities and managing the demand for TSF capacity, which contributed to the failure of Mount Polley's TSF on August 4, 2014. The Imperial Defendants' consulting engineers had little or no control over the dam raising schedule, equipment availability, budgets, water management, hiring of MPMC inspectors and other operational aspects of the TSF that directly impacted the dam's design, construction and operations and, ultimately, its stability.

75. The Imperial Defendants failed to comply with the standards applicable to them in managing Mount Polley's tailings storage facility. The Imperial Defendants' failure to comply with the applicable standards constituted a material fact that the Defendants ought to have but failed to disclose during the Class Period in the Impugned Documents or elsewhere.

76. Additionally, as a result of the Imperial Defendants' failure to comply with the standards applicable to them in managing the TSF, there was a specific and identifiable Risk of a

Failure at Mount Polley's tailings storage facility. This specific, identifiable Risk was material to Mount Polley and, thus, Imperial's operations. The Defendants ought to have disclosed it, but they failed to do so during the Class Period in the Impugned Documents or elsewhere.

The Defendants Failed to Disclose Material Facts and Risks Regarding Dam's Stability During the Class Period

77. On August 4, 2014, Imperial disclosed a major breach at Mount Polley's tailings storage facility. In the aftermath of the Mount Polley breach, the Government of British Columbia established the Panel to investigate the breach.

78. The Panel was established pursuant to the Mount Polley Investigation and Inquiry Regulation, BC Reg 158/2014, issued pursuant to section 8(2) of the British Columbia *Ministry of Energy and Mines Act*, RSBC 1996, c 298.

79. The Panel was mandated to identify any mechanism(s) of the failure, and to identify any technical, management or other practices that may have enabled or contributed to the mechanism(s) of failure. Within and in connection with the Panel's investigations, significant information has become publicly available regarding the circumstances of Mount Polley's tailings storage facility's design, construction and operation over the course of the past decade.

80. Upon its investigations, the Panel found that the dam failed as a result of foundation failure due to two main causes, one related to the dam's foundation and the other related to construction of the supporting embankment section.

81. As elaborated below, each of the two main causes of the failure involved material facts implicating the dam's stability that were known to the Defendants or would have been

known to them upon investigation reasonably required from them in the circumstances. Furthermore, in light of those facts, there were specific and identifiable risks to Mount Polley and, thus, Imperial's operations. The Defendants ought to have disclosed those materials facts and risks, but they failed to do so during the Class Period.

The Defendants Failed to Disclose Material Facts Relating to Dam's Foundation's Stability

82. The first cause of the TSF's breach was foundation failure. This failure happened as a result of the Imperial Defendants and their engineers having failed to comply with their responsibilities in investigating and understanding the characteristics of the foundation's soil.

83. As a result of their failure to comply with the standards applicable to them in locating, designing and constructing the dams, the Imperial Defendants failed to take into account the complexity of the sub-glacial and pre-glacial environment associated with the Perimeter Embankment foundation.

84. The Imperial Defendants' and their engineers' investigations, both prior to construction and for subsequent lifts, failed to identify a continuous glaciolacustrine unit layer in the vicinity of the breach, also known as the Upper GLU, and to recognize that it was susceptible to failure when subject to the stresses associated with the embankment. As a result of the weight applied to it by construction of the Perimeter Embankment, the Upper GLU beneath the foundation weakened and eventually failed. The weak conditions would first develop beneath the Perimeter Embankment's crest during Stage 5 construction (years 2006-2007) and continue to spread thereafter.

85. The Imperial Defendants knew or ought to have reasonably known at all material times of the existence of the glaciolacustrine units within the dam's foundation. The existence of glaciolacustrine and glaciofluvial units within the foundation of each of the Main Embankment and the Perimeter Embankment had been noted in the 2006 DSR Report. A report prepared by AMEC dated February 14, 2012, noted that "glaciolacustrine and glaciofluvial sediments within the glacial till units predominate[d] within the dam foundations." "[G]laciolacustrine soils within the foundations of the dams […] had been postulated from very early in the mine life as being a potential stability concern," according to a report prepared by AMEC dated March 28, 2012.

86. Having noted the dams' glaciolacustrine foundations, the 2006 DSR Report recommended further characterization of glaciolacustrine soils within the foundations. A further report of AMEC prepared in 2011 made similar recommendations. However, unbeknownst to the Class Members, those recommendations were "not effectively addressed" until at least late-2011, according to a report prepared by AMEC dated March 28, 2012.

87. Even then, the characteristics of glaciolacustrine soils within the Perimeter Embankment were not adequately addressed as was reasonably required from the Imperial Defendants in the circumstances. Notably, stability concerns had arisen with respect to the embankments, including movements observed within the dam foundations, a long tension crack noted in 2011 along the crest of the eastern portion of the Perimeter Embankment, and the observation that softer conditions existed in a monitoring well adjacent to the Perimeter Embankment. Furthermore, a Knight Piésold letter to MPMC dated October

13, 2005 noted a stability issue at a section of the Perimeter Embankment adjacent to the section that eventually hosted the breach:

> During Stage 4 program I noted an area on the Perimeter Embankment between 43+00 and 44+00 that experienced a noticeable deflection while standing 20 meters away from a D7 cat. The Perimeter Embankment should be a priority for Zone C placement in order to increase the stability of the Embankment. It is uncertain as to the cause of the "bouncy corner", it may be a result of the use of cyclone sands as a substitute for Zone C downstream of the core in this area.

88. Notwithstanding these concerns, the Imperial Defendants failed to investigate the characteristics of the foundation soil within the Perimeter Embankment in accordance with the applicable standards, as reasonably required from them in the circumstances. The pre-failure site investigations in the breach area were largely comprised of condemnation holes or shallow test pits, and were of limited usefulness for embankment design purposes, as the Panel stated. There were only four locations where the holes were deeper than 8 meters and where in situ or laboratory testing was done, none of which were in the area where the breach occurred.

89. The Defendants knew or ought to have reasonably known the following material facts, but failed to disclose them in the Impugned Documents or elsewhere:

(a) due to the characteristics of the soils within the dams' foundations, stability concerns had arisen from very early in the mine life;

(b) the Imperial Defendants, their engineering consultants and others had made observations within the embankments, including the Perimeter Embankment, concerning the dams' stability as far back as in 2005;

(c) notwithstanding the stability concerns arising from the characteristics of the soils within the dams' foundations and observations regarding stability at the embankments, the Imperial Defendants failed to investigate in accordance with

the applicable standards, as reasonably required from them, the characteristics of the glaciolacustrine soils within the Perimeter Embankment's foundations; and/or

(d) the Imperial Defendants failed to comply with the standards applicable to them to locate, design, construct or operate the dams in a manner to ensure that all structures were stable, all mining effluents were managed within designated areas and that all aspects of tailings management complied with regulatory requirements and with sound engineering practices.

90. Furthermore, as a result of these conditions, there was a specific and identifiable Risk of a Failure at Mount Polley's tailings storage facility. This specific, identifiable Risk was material to Mount Polley and, thus, Imperial's operations, but the Defendants failed to disclose it during the Class Period in the Impugned Documents or elsewhere.

The Defendants Failed to Disclose Material Facts Relating to Dam's Support

91. The second cause of the TSF's breach was the failure of the Imperial Defendants to provide adequate support to the dam.

92. The Imperial Defendants failed to construct Zone C of the dam in accordance with the dam's design. The purpose of Zone C was to provide support for the dam's core, and its role in preventing a failure of the type that occurred was critical. As such, it was imperative that Zone C be built to the specifications of the original design in order to meet that purpose. Zone C was not, however, built to those specifications.

93. For example, Zone C was not built in Stage 2 (years 1998-2000) or Stage 4 (years 2005-2006) of dam raise constructions. In Stage 3 (years 2000-2001), a variety of configurations and options were considered and a number of different construction applications were submitted to the British Columbia Ministry of Energy and Mines ("MEM"), resulting in, in the Panel's words, a "convoluted … design process." The

construction of the Zone C rockfill zone was effectively deferred until Stage 5 (years 2006-2007) dam raise construction, as the Panel stated.

94. Beginning in Stage 5 construction, the Zone C rockfill zone was to be built using materials sourced from the mine waste. However, mine production and delivery could not provide sufficient material to expand Zone C to meet the original design parameter requiring a Zone C slope of 2.0 horizontal to 1.0 vertical. As a result, according to the Panel,

> it was planned to place the Zone C outslope to an "interim" 1.4H [horizontal]:1V [vertical] inclination—rather than the design basis 2.0H:1V—as a temporary expedient until mine waste could catch up with construction. The steeper slope would be expanded and flattened to 2.0H:1V "once the embankments have reached the Stage 5 design elevation." […]

95. However, the "interim" oversteepened slope was not flattened to 2H:1V at the end of Stage 5 construction as had been intended, or indeed at any time prior to the collapse of the dam. Rather, flattening was continually deferred to future stages of embankment raising construction. As a result, as the Panel stated, "the Perimeter Embankment at the breach section was allowed to reach a height of almost 40 m with an unbuttressed downstream slope of 1.3H:1V."

96. At the time of the failure, the downstream slope of Zone C was very steep (1.3 horizontal to 1.0 vertical). The project's design, however, called for a much flatter slope of 2.0 horizontal to 1.0 vertical, which would have provided significantly more support and stability to the dam. According to the Panel, the construction of the Zone C fill "as an angle of repose slope of 1.3H:1V … ultimately resulted in failure of the Perimeter Embankment on August 4, 2014."

97. It was improper and contrary to generally accepted engineering practices for the Imperial Defendants to construct Zone C at the angle of repose slope of 1.3H:1V.

98. The deficiencies in Zone C construction, which were attributable to the Imperial Defendants, materially increased the risk that the dam would fail and in fact were a material contributor to the failure of the dam on August 4, 2014. The tailings storage facility's failure would not have occurred, or would have been substantially less severe, had Zone C of the dam (the role of which was to buttress the dam's core) been constructed in the manner and to the specifications contemplated by the original design. Had the downstream slope been flattened to 2.0 horizontal to 1.0 vertical, as proposed in the original design, failure would have been avoided.

99. On several occasions, MEM communicated concerns regarding the oversteepened outslope of the embankments to MPMC, noting that the steepness of Zone C created stability concerns, and that it fell short of the appropriate dam safety standards.

100. To the extent that the relevant regulatory authorities permitted a departure from the facility's design in the over-steepened Zone C, they did so on the basis that the dam was being carefully monitored for signs of instability by means accepted in the industry for doing so (the "Observational Method"). Imperial had been advised by AMEC, in a report dated March 28, 2012, that "[g]iven the nature of the TSF, monitoring embankment response to raise and ongoing tailings placement is an essential component of sound tailings management."

101. However, the Imperial Defendants failed to implement the Observational Method in the manner accepted by the industry standards during the Class Period. The Panel stated:

> The Observational Method relies on measuring the right things in the right places. While this was comparatively easy over the 1,000 m length of the Stage 1 dam, it became increasingly difficult as the length grew to 5 kilometres (km) by Stage 9. Nor could foundation instrumentation be installed beneath the dam crest and slopes where piezometric data mattered most. The slopes were too steep to be accessible, and few instruments installed on the crest could survive the near-constant construction there for very long. As a result, the few piezometers and inclinometers at the Perimeter Embankment were too far beyond the dam toe to produce critical data, and too far between to cover the area where the breach occurred.

102. Furthermore, in addition to Zone C, the embankments' original design provided that support be provided to the dam's core by a tailings beach ("Zone U")—according to a BGC memorandum dated June 9, 2014, Zone U represented "a fundamental component of the dam design."

103. However, the Zone U support was never built as required by the design due to a number of operational and other issues, including Mount Polley's water and tailings management issues, as further particularized below. The 2006 DSR Report noted the lack of the Zone U beach as a "deficiency." Other reports and inspections noted that the absence of the beach within the embankments constituted a "departure from approval," and required that a beach be "re-established as soon as possible." These issues were never effectively addressed during the Class Period, and the Zone U tailings beach was never established as per the design requirements.

104. The Defendants knew or ought to have reasonably known the following material facts, but failed to disclose them in the Impugned Documents or elsewhere:

(a) the Imperial Defendants failed to provide adequate support to the dams as required by the dams' design requirements and criteria and regulatory approvals;

(b) the lack of adequate support created stability concerns with respect to the tailings storage facility's embankments;

(c) the Imperial Defendants failed to effectively address the stability concerns and to provide support for the dams as per the design and approval requirements, as reasonably required from them in the circumstances;

(d) the Imperial Defendants failed to implement the Observational Method, and/or the Observational Method could not be implemented in a meaningful manner; and/or

(e) the Imperial Defendants failed to comply with the standards applicable to them to locate, design, construct or operate the dams in a manner to ensure that all structures were stable, all mining effluents were managed within designated areas and that all aspects of tailings management complied with regulatory requirements and with sound engineering practices.

105. Furthermore, as a result of these conditions, there was a specific and identifiable Risk of a Failure at Mount Polley's tailings storage facility. This specific, identifiable Risk was material to Mount Polley and, thus, Imperial's operations, but the Defendants failed to disclose it during the Class Period in the Impugned Documents or elsewhere.

The Defendants Failed to Disclose Material Facts and Risks Regarding Mount Polley's Unsustainable and Deficient Water Management Practices

106. Unbeknownst to the Class Members, at all material times, Mount Polley lacked sustainable water management and tailings management strategies. This deficiency created issues that directly and/or indirectly compromised the dam's stability, and/or contributed to the magnitude of the damage when the failure occurred in August 2014. The Defendants knew or ought to have reasonably known of these material facts, but failed to disclose them or the risks they created.

107. Mount Polley's tailings storage facility embankments were designed as tailings dams, not water-retention dams, which was critical to the dams' design, construction and operation. However, at all material times during the Class Period, the tailing storage facility's

embankments had effectively become water-retention dams, "with the water pond effectively in direct contact with the till core, separated by only a narrow zone of tailings or waste rock," as noted in a BGC report dated July 25, 2013.

108. The 2004 Technical Report, which was incorporated by reference in all of Imperial's AIFs issued during the Class Period, stated that "[t]he Tailings Storage Facility has operated under a negative water balance during mill operations." However, at all material times during the Class Period and in the years preceding the Class Period, the tailings storage facility experienced a trend of accumulating surplus water, and became a net positive water balance site. This meant that a vast amount of water was accumulating behind the tailings dam which was not designed to contain it. This material fact compromised the dam's anticipated performance with regard to stability.

109. The circumstances are summarized in a BGC memorandum dated June 9, 2014:

> Given the current TSF condition and the trend of accumulating surplus water stored within the TSF, it is recommended that a more conservative set of TSF water management design criteria be applied than has been prior in practice …
>
> The Mount Polley Mine has been operating since 1996, with operations suspended from 2001 to 2005 owing to low copper prices. The mine has typically operated with a pond volume sufficiently small as to allow development and maintenance of above-water tailings beaches along significant portions of the dam perimeter. However, expansion of the mine footprint has increased the amount of mine-impacted water which must be stored in the TSF. In recent years the TSF has been operating with a significant annual water surplus, with the result that the volume of water stored within the TSF has increased on a year over year basis.

110. Similar observations had been made in prior years by engineers and consultants, including the 2011 Olding Report, as further particularized in paragraph 119.

111. The accumulation of excessive water in the tailings storage facility's impoundment had also been noted in a letter dated February, 2011, where Knight Piésold stated:

> The embankments and the overall tailings impoundment are getting large and it is extremely important that they be monitored, constructed and operated properly to prevent problems in the future.

112. In the same letter, Knight Piésold noted that they had ceased to act as the engineers of record and that they would no longer assume "any responsibility for the performance of the tailings storage facility."

113. The accumulation of water created immediate issues with respect to the dam's design, construction and/or operation and, ultimately, its stability. Among other things, due to excessive water in the impoundment, the Zone U tailings beach (a fundamental component of the dam design) could not be established as required by the design and approvals.

114. This issue was noted in a BGC memorandum dated October 22, 2013 titled "Mount Polley Tailings Storage Facility Stability Modeling" (which is currently not publicly available), and summarized in a further BGC memorandum dated November 27, 2013 as follows:

> Earlier in 2013, MPMC retained BGC to undertake a design for raising of the TSF embankment (made up of the Perimeter, Main and South dams) to a crest elevation of about 1,000 m, which would accommodate a planned extension of the mine life. The currently permitted TSF embankment crest elevation is El. 970 m. The embankment is planned to be raised above this permitted elevation in 2014 to accommodate ongoing tailings and water storage requirements.
>
> BGC personnel visited the site June 10 and 11, 2013, to initiate the design assignment for the dam crest raise to El. 1,000 m. Subsequent to that site visit, and the on-site discussions with MPMC personnel, BGC issued the following memorandum […]
>
> A key conclusion provided within that memorandum was that there is currently a surplus of water in the TSF and the water balance is such that surplus water will continue to accumulate, as the TSF is in effect the site water management pond. […] If not dealt with, this ongoing accumulation will preclude raising the embankment as planned to accommodate the mine life extension, as the accumulating surplus will:

- Displace tailings storage capacity

- Prevent the formation and development of wide, above-water, beaches, a necessary element of the dam design, to separate the dam from the reclaim water pond

> BGC recommended, in the above-referenced memorandum, that priority be placed on developing a working water balance, understanding the sources contributing to the surplus, and devising strategies and timelines to eliminate that surplus. […]
>
> The establishment and maintenance of wide, above-water, tailings beaches represents a fundamental design component of the dam. Given the current water balance circumstances, BGC recommended that an interim raise design be evaluated which would provide sufficient tailings, water (including the accumulating surplus), and flood storage/freeboard capacity in the short-term until the water surplus is eliminated, the volume of water in the TSF decreased, and above-water beaches are established and maintained.

Excessive Water in the TSF's Impoundment Impacted Both the Failure and Its Effects

115. At all material times, Mount Polley experienced accumulation of excessive water in the tailings storage facility's impoundment due, at least in part, to its lack of a sustainable water management strategy. The accumulation of excessive water in the impoundment was inconsistent with design assumptions and, directly and/or indirectly, affected the embankments' construction and/or operations, compromising their stability. Excessive water in the impoundment was a factor that influenced the tailings storage facility's breach in August 2014 and the severity of its consequences. As the Panel stated, "the high level of water acted in […] ways that influenced both the failure and its effects":

> High impoundment water levels were a major cause of chronic problems in maintaining a tailings beach around the perimeter of the dam. At the breach section, water was in direct contact with the upstream zone of tailings fill when failure occurred. This increased the piezometric level in the upstream zone above what it would have been had a wide tailings beach been present. The Panel's analyses show that this had some influence on dam stability, although it was not the dominant factor.

> The high water level was the final link in the chain of failure events. Immediately before the failure, the water was about 2.3 m below the dam core. The Panel's excavation of the failure surface showed that the crest dropped at least 3.3 m, which allowed overflow to begin and breaching to initiate. Had the water level been even a metre lower and the tailings beach commensurately wider, this last link might have held until dawn the next morning, allowing timely intervention and potentially turning a fatal condition into something survivable.
>
> Finally, the quantity of water had a great deal to do with the quantity of tailings released after the breach developed. It was water erosion that transported the bulk of the tailings, and these fluvial processes ended when the supply of water was exhausted. Had there been less water to sustain them, the proportion of the tailings released from the TSF would have been less than the one-third that was actually lost.

Continued Dam Raising Activities Did Not Constitute Sustainable Water and Tailings Management Strategies

116. Regular raises to the embankments at Mount Polley were carried out in order to deal with the accumulation of excessive water in the tailings storage facility's impoundment, rather than the additional mining waste. According to the Panel:

> MPMC was aware of the water surplus conditions at the start of Phase 2 operations. […] [T]he last number of embankment raises were necessary to store water and not necessarily much higher tailings production.

117. The excessive water within the tailings storage facility's impoundment had to be dealt with. The Imperial Defendants chose to deal with that issue by regularly raising the embankments. However, continuous dam raising did not constitute a sustainable water and tailings management strategy. According to the 2011 Olding Report:

> Currently, the mine operates within a closed-loop system and does not have a discharge permit. To store excess water, the capacity of the TSF has been expanded annually. To address this water management situation in the near- , long- and post closure term, MPMC has identified the need to discharge excess water off-site.
>
> […] Traditionally, MPMC has raised the TSF dam annually to retain all water on site. Dam-raising activities are presently underway in anticipation of conditions in 2012 and beyond. In looking ahead to a post-closure scenario, a sustainable means

of discharging excess water is required because dam building cannot continue indefinitely.

118. The unsustainability of dam raising activities had been noted in prior studies, including the 2009 Technical Assessment Report and the 2011 Olding Report. The 2009 Technical Assessment Report, prepared by MPMC, noted that "continued dam raising" had been evaluated as an option to deal with excessive water but that fatal flaws had been identified with respect to this option.

119. Furthermore, the 2011 Olding Report identified the following issues and concerns, among others, with respect to the tailings storage facility and the manner in which Imperial had chosen to manage excessive water and waste from Mount Polley operations:

(a) The Mount Polley site had been characterized as "a net precipitation site"; "This means that the amount of water (precipitation) falling onto the site is greater than the amount that is (i) consumed by mining operations (i.e., production of mining concentrate, dust suppression), (ii) lost to groundwater seepage, (iii) retained in the voids of the tailings storage facility (TSF), and (iv) lost via evaporation and transpiration."

(b) Imperial had traditionally raised the tailings storage facility's dam. But, instead of dam-raising activities, which 'could not continue indefinitely,' it needed a sustainable water management program involving the discharge of excess effluent, which it lacked;

(c) Mount Polley required, but lacked, a detailed monitoring plan;

(d) Mount Polley required, but lacked, a detailed emergency contingency plan; and

(e) An integral part of Mount Polley's required contingency plan would be a sediment/polishing pond. The sediment/polishing pond would reduce suspended sediment discharged from the tailings storage facility. Additionally, through regular monitoring, if effluent at the inflow level were found to exceed permitted

values, Imperial would have a two-way buffer to shut down discharge and could instead pump effluent back into the tailings storage facility.

120. Imperial did not address the issues found and recommendations made in the 2011 Olding Report, or did not do so effectively. Also, Imperial disregarded the concerns that had arisen during this study with respect to the tailings storage facility's dam integrity, and experts' recommendation that a review of the dam's structural integrity was necessary.

121. Considering the circumstances at Mount Polley, a viable option to deal with excessive water was to discharge water off site. At all material times during the Class Period, Mount Polley had a permit to discharge 1.4 million cubic meters of water per year to Hazeltine Creek. However, unbeknownst to the Class Members, MPMC "ha[d] generally been unable to discharge more than 10% of this amount owing to water quality issues," according to a BGC memorandum dated June 9, 2014. It was not until 2014 that MPMC advanced the permitting and design for the construction of a water treatment plant capable of treating and discharging up to 3 million cubic meters of water on a year-round basis, according to the same BGC memorandum. As the Panel noted, "[i]t is not clear […] why it took so long to design and implement a water treatment strategy that would provide for a significant reduction in the amount of surplus water stored on the TSF."

Continued Dam Raising Activities Created Stability Concerns and Compliance Issues

122. The Defendants knew, or ought to have reasonably known, but failed to disclose during the Class Period that the continued dam raising activities also created stability risks due to the increasing weight of the embankments, similar to the mechanism that eventually caused the dam's failure on August 4, 2014. This risk had been noted in the 2006 DSR

Report as being a potential failure mode applicable to Mount Polley Embankment Dams, as follows:

> **Slope Instability of Containment Structure**
>
> **Mode**: Shear failure of the slope, including failure through the foundation due to self-weight of structure and elevated water levels in the containment structure
>
> **Description**: Excessive loading at or near the crest or a weakness in the foundation or within the embankment can lead to a failure of the slope or failure through the foundation. Excessive loading can develop during construction or when raising the structure. The rising reservoir water level may lead to an excessive load and/or increased pore pressures, and consequently a dam failure.
>
> Weakness of the foundation soil or embankment dam material can develop through softening of the soil over time or an increase in water pressures.
>
> Rapid drawdown of a pond on the upstream side of the containment structure can result in slumping of the upstream slope, which, if large enough, might lead to an embankment failure.

123. Furthermore, excessive water, which had come in direct contact with the embankments in several areas, posed further immediate and identifiable risks upon the dams' operation and their stability in a number of other ways, including: (a) "the risk of running afoul of flood and freeboard compliance which could, in the extreme, necessitate a shut-down of the mine," according to a BGC memorandum dated June 9, 2014; (b) the risk of the dam's failure due to overtopping, which occurred in May 2014; and (c) the risk of the dam's failure due to internal erosion, for which the Panel found some evidence.

124. Notably, between August 2012 and May 2014, the British Columbia Ministry of Environment issued several warnings to Imperial as wastewater had either overflowed or exceeded its authorized level within the impoundment, including the following:

(a) on May 24, 2014, the Ministry issued an advisory to MPMC for exceedance of the height of effluent within the tailings impoundment;

(b) on April 18, 2014, the Ministry issued an advisory to MPMC for bypass of authorized treatment work. The site experienced high flows due to spring freshet which caused the pump system to become blocked and resulted in an overflow of effluent to the long ditch;

(c) In January and April 2012, the Ministry issued an advisory to MPMC for not submitting monitoring data for one of the groundwater monitoring wells; and

(d) on August 30, 2012, the Ministry issued a warning to MPMC for failure to report exceedance of the height of effluent for the perimeter pond. This perimeter pond overflowed, releasing approximately 150 cubic meters of effluent over 13 hours.

125. The regulators' warnings issued in respect of Mount Polley and the risks to which they related constituted material facts that the Defendants ought to have disclosed, but they failed to do so.

The Defendants Failed to Disclose Material Facts and Risks Relating to Mount Polley's Water Management and Waste Management Issues

126. The Defendants knew or ought to have reasonably known the following material facts, but failed to disclose them in the Impugned Documents or elsewhere:

(a) at all material times, Mount Polley lacked sustainable programs to deal with excessive water and mining waste, resulting in a trend of accumulation of surplus water in the tailings storage facility's impoundment;

(b) the tailings storage facility no longer operated at a negative water balance; the tailings storage facility's embankments had effectively become water-retention dams contrary to the fundamental premises underlying their design, construction and/or operation criteria as tailings dams;

(c) the Imperial Defendants regularly raised the TSF's dams in order to deal with excessive water in the TSF's impoundment. However, from a water and tailings management perspective, dam raising activities and dam construction in order to

deal with excessive water were unsustainable practices and involved excessive risks and fatal flaws. Nonetheless, the Imperial Defendants chose to continue to carry on routine dam raising activities;

(d) the design, construction and/or operation of Mount Polley's tailings storage facility was negatively affected as a result of the accumulation of excessive water in the tailings storage facility's impoundment. Excessive water in the impoundment resulted in departures from dam design and approval requirements, and created immediate risks to tailings storage facility's stability. The Imperial Defendants failed to address these issues effectively or at all during the Class Period;

(e) several studies, including the 2009 Technical Assessment Report, the 2011 Olding Report and memoranda issued by BGC, identified significant issues and risks associated with Mount Polley's water management and waste management strategies;

(f) due to excessive water in the TSF's impoundment, the regulators issued several warnings to MPMC;

(g) in May 2014, an overtopping breach occurred at Mount Polley's TSF; and/or

(h) the Imperial Defendants failed to comply with the standards applicable to them to locate, design, construct or operate the dams in a manner to ensure that all structures were stable, all mining effluents were managed within designated areas and that all aspects of tailings management complied with regulatory requirements and with sound engineering practices.

127. Furthermore, as a result of these conditions, there was a specific and identifiable Risk of a Failure at Mount Polley's tailings storage facility. This specific, identifiable Risk was material to Mount Polley and, thus, Imperial's operations, but the Defendants failed to disclose it during the Class Period in the Impugned Documents or elsewhere.

The Truth Was Revealed

128. On August 4, 2014, Imperial disclosed a major breach at Mount Polley's tailings storage facility, resulting in the release of wastewater and tailings into the surrounding areas. As a result of the breach, it is estimated that approximately 10.6 million cubic meters of supernatant water, 7.3 million cubic meters of tailings solids and 6.5 million cubic meters of interstitial water were released.

129. Both the breach and Imperial's disclosure regarding the breach were corrective of the Defendants' misrepresentations particularized herein.

130. Upon this event, Imperial's share price plummeted from $16.80 as of the close of trading on August 1, 2014, to $9.98 as of the close of trading on August 5, 2014, representing a 40% decline. Imperial's market capitalization declined by $500 million. The market price or value of Imperial's Notes also declined.

131. As a result of the breach, several investigations were commenced by public authorities, revealing material information regarding the Imperial Defendants' management of Mount Polley's TSF and the facts and circumstances underlying the misrepresentations pleaded herein.

132. On January 30, 2015, the Panel released its Report, revealing to the public material information regarding Mount Polley's operations and the Imperial Defendants' failures in complying with applicable standards in managing the TSF.

133. On December 17, 2015, the British Columbia Chief Inspector of Mines released the results of his office's investigation into the breach. The Chief Inspector found two root causes of the breach: (a) first, structural failure of the dam due to: (i) weaknesses in the

foundation soil, (ii) an open sub-excavation at the embankment toe, and (iii) geometry of the embankment (too steep/too high); and (b) second, the condition of insufficient beaches and surplus water in the TSF. The Chief Inspector found that both causes, namely the structural failure and the lack of beaches and existence of surplus water, were necessary to cause the breach event. Additionally, the Chief Inspector found that a number of defences that would have prevented the breach or mitigated it were either defeated or non-existent.

134. Further investigations, including an investigation by the Conservation Officer Service of the Ministry of Environment pursuant to the Environmental Management Act and an investigation by Federal Fisheries Officers pursuant to the Federal Fisheries Act are currently being undertaken. The results of these investigations have not been released to the public.

Consequences of the Breach of Mount Polley's TSF

135. The breach of Mount Polley's tailing storage facility resulted in the loss of production from Mount Polley, the primary source of revenue and cash flow for Imperial at the relevant times. Additionally, as a result of the breach, Imperial has and continues to incur significant expenses in response and recovery costs, as well as initial rehabilitation and restoration costs.

136. These adverse events are the consequences of the Imperial Defendants' failures in relation to managing Mount Polley's TSF, and are related to the misrepresentations pleaded herein.

137. The Defendants knew or ought to have reasonably known that a breach of Mount Polley's tailings storage facility would have significant negative consequences for Imperial and its business, including loss of income and significant costs associated with remediation work.

MISREPRESENTATIONS IN THE IMPUGNED DOCUMENTS

The Defendants' Disclosure Obligations

138. The misrepresentations in the Impugned Documents were comprised of untrue statements of material facts; omissions to state material facts that were required to be stated; and omissions to state material facts that were necessary to make a statement not misleading in the light of the circumstances in which it was made.

139. The *OSA* and the other Securities Legislation imposed an obligation on the Defendants to disclose all material information relating to Imperial and its business and operations.

140. The Securities Legislation and their subsidiary instruments required the Defendants to issue and file annual and quarterly financial statements that included, among other things, an income statement, a statement of retained earnings and a cash flow statement, a balance sheet, and notes to financial statements.

141. The Securities Legislation and their subsidiary instruments required the Defendants to accompany the financial statements with MD&As in order to improve Imperial's overall financial disclosure by giving a balanced discussion of its results of operations and financial condition. Among other things, the MD&As were required to:

(a) discuss material information that may not be fully reflected in the financial statements, such as contingent liabilities, defaults under debt, off-balance sheet financing arrangements, or other contractual obligations;

(b) discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future; and

(c) provide information about the quality, and potential variability, of Imperial's earnings and cash flow, to assist investors in determining if past performance is indicative of future performance.

142. The MD&As were required to focus on "material information," namely such information that would influence or change a reasonable investor's decision whether or not to buy, sell or hold Imperial's Securities.

143. The Securities Legislation and their subsidiary instruments required the Defendants to file AIFs. The AIFs were intended to provide information about Imperial and its business in the context of its historical and possible future developments, and they were required to describe Imperial, its operations and prospects, risks and other factors that would impact it specifically.

144. Among other things, the AIFs were required to disclose risk factors relating to Imperial and its business, including any matter that would be most likely to influence an investor's decision to purchase Imperial's Securities.

145. The Impugned Documents fell short of the required standards applicable to Imperial's continuous disclosures.

The Misrepresentations in the Impugned Documents

A. Misrepresentations by Omission

The Omitted Material Facts

146. The Plaintiff repeats and incorporates hereunder the pleadings in paragraphs 47-127 hereof, and particularly the pleadings in paragraphs 75, 89, 104 and 126 (hereinafter, the "Omitted Material Facts").

147. The Impugned Documents failed to disclose the Omitted Material Facts, as pleaded and particularized herein. Separately as well as collectively, the Omitted Material Facts were material to Imperial and its operations, and were reasonably expected to have a significant effect on the market price or value of Imperial's Securities. Accordingly, the Defendants had an obligation at law to disclose them, but they failed to do so during the Class Period.

148. All Impugned Documents contained these misrepresentations.

The Defendants failed to disclose the 2011 Olding Report

149. The facts that: (a) the 2011 Olding Report had been issued; (b) it had identified problems with respect to the tailings storage facility's operations; and that (c) Imperial had failed to take steps to effectively address those issues, separately and collectively, were material to Imperial and were reasonably expected to have a significant effect on the market price or value of Imperial's Securities. The Defendants ought to have disclosed these material facts, but failed to do so during the Class Period in the Impugned Documents or elsewhere.

150. All Impugned Documents contained these misrepresentation.

151. Notably, in Imperial's AIF for the year ended 2010, filed on SEDAR on March 31, 2011 prior to the issuance of the 2011 Olding Report, it was stated with respect to Mount Polley:

> A number of studies by outside consultants were completed during the preparation of the permit amendment application: acid rock drainage, metal leaching study of the rocks and an archaeological review, access and overburden storage areas was performed with nothing of interest noted. A soil survey of these same areas was performed, and a Wildlife and Species at Risk review was accomplished with no issues noted.

152. The above statements were omitted from the AIFs and other disclosure documents of Imperial issued during the Class Period after the issuance of the 2011 Olding Report.

Misrepresentations relating to risks associated with Imperial's business

153. The Securities Legislation and their subsidiary instruments required the Defendants to disclose risk factors relating to Imperial and its business.

154. All Impugned Documents that were AIFs, MD&As or Annual Reports, as well as the Offering Memorandum, included statements regarding the risks associated with Imperial's business.

155. Among other things, each Impugned Document that was an AIF included statements with respect to the following issues that Imperial identified as risks relevant to it and its business:

(a) risks inherent in the mining and metals business;

(b) regulatory and permitting; and

(c) environment.

156. The Defendants' disclosures in those Impugned Documents with respect to risks associated with Imperial and its business were insufficient and fell short of the standards applicable to Imperial by virtue of the Securities Legislation and their subsidiary instruments.

157. The Defendants failed to disclose the Omitted Material Facts in those Impugned Documents, or elsewhere. The Defendants' failure to disclose that information rendered the disclosures of the risk factors false or misleading.

158. Furthermore, the Defendants ought to have disclosed the specific risks relating to the Mount Polley's operations arising from the facts pleaded in paragraphs 47-127 hereof, including: (a) the specific and identifiable Risk of a Failure at Mount Polley's tailings storage facility; and/or (b) the specific and identifiable risk arising from Mount Polley's non-compliance with applicable laws and regulations; each of which was reasonably expected to negatively impact Mount Polley's operations.

159. These risks existed at all material times during the Class Period, were communicated to the Defendants by engineers and others, and/or were reasonably identifiable to the Defendants upon reasonable investigation that was required from them in the circumstances. The Defendants failed to disclose those specific risks in the Impugned Documents.

160. The Defendants' failure to disclose the specific risks relating to the circumstances of Mount Polley's tailings storage facility further rendered the Impugned Documents that were AIFs, MD&As, Annual Reports and the Offering Memorandum false and/or misleading.

B. Positive Statements That Were Rendered False or Misleading Due to the Defendants' Misrepresentations by Omission

Misrepresentations regarding Mount Polley's operations and outlook

161. The Impugned Documents that were MD&As and Annual Reports, as well as the Offering Memorandum, included statements respecting Mount Polley's operations and the results of those operations, including statements regarding such matters as:

(a) mining activities at Mount Polley;

(b) the volume of production at Mount Polley; and

(c) Mount Polley's outlook.

162. Those statements in the Impugned Documents were false and misleading in light of the Defendants' failure to disclose the Omitted Material Facts, as particularized above.

163. For example, Imperial's MD&A for the period ended March 31, 2014, filed on SEDAR on May 13, 2014, included:

(a) a table outlining Mount Polley production as of the three-month periods ended March 31, 2014 and 2013;

(b) the below statements with respect to Mount Polley's outlook:

> Mount Polley mine mill throughput has been excellent since weather conditions improved this spring, with an average daily throughput of 23,930 tonnes per day being achieved in April. In the mine a new hydraulic excavator was commissioned and a fleet management system was installed to increase productivity and reduce costs. The Springer Phase 3 pit is expected to be completed by year end and mill feed will then be provided by the Cariboo pit. Underground production from the Boundary zone is expected to ramp up to approximately 1,000 tonnes per day during the 2014 second quarter.
>
> and

(c) the following statements with respect to production and mining activities at Mount Polley:

> Mount Polley 2014 first quarter production totaled 8.2 million pounds copper and 9,532 ounces gold, compared to 8.2 million pounds copper and 10,311 ounces gold produced in the comparative 2013 quarter. The annual average mill throughput for the 2014 first quarter was 18,791 tonnes per day compared to 21,888 tonnes per day in the comparative 2013 quarter….
>
> […]
>
> In the second quarter of 2014, the Company expects to commence stoping from the Boundary zone. Two stopes containing over 50,000 tonnes have been drilled, and blasting in these stopes is anticipated to begin before the end of May. Production is expected to ramp up to approximately 1,000 tonnes per day during the 2014 second quarter, and milled grades and thus copper production for the remainder of the year should increase with this higher grade ore from the Boundary underground being delivered to the mill.

164. There were similar statements in the other Impugned Documents that were MD&As and Annual Reports, as well as in the Offering Memorandum.

165. All such statements regarding Mount Polley's production, mining activities and outlook were false and/or misleading due to the Defendants' failure to disclose the Omitted Material Facts, as well as the risks to Imperial and its business arising out of those circumstances.

Imperial's financial statements were false and/or misleading

166. The Impugned Documents included financial statements. Those financial statements were rendered false and/or misleading due to the Defendants' omission to disclose the Omitted Material Facts and the risks arising therefrom, which could be reasonably expected to affect the quality, and potential variability, of Imperial's future earnings and cash flow.

Misrepresentations in the 2004 Technical Report

167. Each Impugned Document that was an AIF expressly incorporated by reference the 2004 Technical Report. Each time the Defendants incorporated by reference the 2004 Technical Report into an AIF, the statements in the 2004 Technical Report were made as of the date of that AIF, and purported to be true as of such date.

168. The contents of the 2004 Technical Report generally, and those relating to Mount Polley's tailings storage facility and ancillary works specifically, were rendered false and/or misleading within the context of those AIFs given the Defendants' omission to disclose the Omitted Material Facts.

169. In particular, the following statements contained in the 2004 Technical Report were no longer true as of the Class Period or the Defendants' failure to disclose the Omitted Material Facts rendered them false or misleading:

(a) "Instrumentation in the tailings, embankments and foundations, including vibrating wire piezometers, survey monuments, slope inclinometers and the measurement of drain flows is used to monitor the performance of the Tailings Storage Facility." On the contrary, monitoring instruments and the Observational Method were not and could not be implemented at Mount Polley in the manner accepted by the industry;

(b) "The water management plan reduces volumes of water that must be stored in the impoundment by limiting surface runoff to the facility." On the contrary, Mount Polley's tailings storage facility experienced a trend of accumulation of excessive water due mainly to runoff water; due to its lack of sustainable water and waste management strategies, Imperial failed to address the excessive water in the tailings storage facility's impoundment; and

(c) "The Tailings Storage Facility has operated under a negative water balance during mill operations. … In the future water required for make-up will come from the partially flooded Cariboo Pit. The water balance estimates show that during operation the water balance will be in balance with possible periods of surplus or deficit depending on annual precipitation." On the contrary, at all material times during the Class Period and in the years preceding the Class Period, the tailings storage facility had become a positive water balance site. The accumulation of excessive water directly and/or indirectly affected the dams' design, construction or operation, and ultimately contributed to, and influenced, the tailings storage facility's breach in August 2014.

C. Affirmative Misrepresentations

Misrepresentations regarding Imperial's commitment to responsible and sustainable mining

170. Imperial's Annual Report for the year ended December 31, 2011 contained the following statements:

(a) "Safety is priority for Imperial. It is part of our responsibility to ensure mining remains the safest heavy industry in British Columbia";

(b) "Imperial is committed to applying current research to protect the environment and develop tools and technologies to mitigate our impact on the land"; and

(c) "Through research and site monitoring Imperial is a leader in continuous improvement of both its own practices and the practices of the mining community."

171. Imperial's Annual Report for the year ended December 31, 2012 contained the following statements:

(a) "For over three decades, Imperial has consistently focused on social and environmental responsibility";

(b) "Safety is a priority in our company. Imperial is committed to occupational health and safety management practices which are in the best interests of our employees, business partners and the communities in which we operate";

(c) "Imperial is committed to applying current research to protect the environment and develop tools and technologies to mitigate our impact on the land"; and

(d) "Through research and site monitoring, Imperial strives for improvement of both its own practices and the practices of the mining community."

172. Imperial's Annual Report for the year ended December 31, 2013 contained the following statements:

(a) "At all Imperial operations, a safe workplace for employees is fundamental. We are committed to occupational health and safety management practices which are in the best interest of our employees, business partners and the communities in which we operate";

(b) "Imperial participates and utilizes development of advanced tools and technologies to mitigate our impact on the environment. Imperial is pioneering environmental management by producing a comprehensive Environmental Management System (EMS). The EMS consists of a series of management procedures and monitoring programs that integrate engineering design and environmental planning to maximize the mitigation of potential impacts of the mine on the environment";

(c) "Through research and extensive environmental monitoring, Imperial strives for improvement of both its own practices and the practices of the mining community"; and

(d) "Additionally, supplemental monitoring plans are implemented beyond permit requirements to ensure protection of the environment. Mount Polley is in its second year of implementation of Toward Sustainable Mining (TSM); a program administered by the Mining Association of Canada (MAC) that provides a public

> and transparent commitment to responsible mining. The principles of TSM demonstrate leadership in the areas of community engagement and globally recognized environmental practices, and a commitment to the safety and health of employees and surrounding communities. TSM's tools and indicators drive performance and ensure key mining risks are managed responsibly."

173. All the above statements were false and/or misleading, and were misrepresentations.

Misrepresentations regarding Imperial's environmental compliance

174. Each Impugned Document that was an AIF included the statement that "there are no environmental compliance issues outstanding at the Mount Polley mine." This statement was false and/or misleading. As elaborated herein, issues had arisen with respect to Mount Polley's compliance with the terms of its construction approvals and permits as a result, among other things, of the substantial departures from design criteria as well as excessive water in the TSF's impoundment.

The Representation

175. The Impugned Documents purported to disclose all material information relating to Imperial, its business and operations, including those deriving from or relating to Mount Polley—Imperial's main operating asset at all material times during the Class Period.

176. By, among other things, releasing the Impugned Documents, making the statements included in the Impugned Documents, certifying the Impugned Documents and/or consenting, permitting or acquiescing in the release of the Impugned Documents, the Defendants made the Representation to the Class Members: the statement, express or implied, that the Impugned Documents did not contain any untrue statement of a material fact relating to Mount Polley or omit to state a material fact relating to Mount Polley that

needed to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made.

177. The Representation was false and/or misleading. As pleaded herein, during the Class Period, the Impugned Documents contained untrue statements of material facts relating to the design, construction, operation and/or maintenance of the TSF at Mount Polley, omitted to state material facts relating to the design, construction, operation and/or maintenance of the TSF Mount Polley that needed to be stated and/or omitted to state material facts relating to the design, construction, operation and/or maintenance of the TSF Mount Polley that were necessary to make other statements in the Impugned Documents not misleading in light of the circumstances under which they were made.

Kynoch's and Deepwell's false certifications

178. Each of the Impugned Documents that was a quarterly or annual disclosure of Imperial was accompanied with certificates issued by the defendants, Kynoch and Deepwell stating, among other things, that those Impugned Documents "did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that it necessary to make a statement not misleading in light of the circumstances under which it was made." Those statements, and Kynoch's and Deepwell's certificates, were false and/or misleading.

The Defendants' Misrepresentations were Incorporated Efficiently into the Price of Imperial's Securities

179. The issuance of the Impugned Documents directly affected the price of Imperial's Securities. Imperial's disclosure documents were the primary source of information

concerning Imperial's business, including the current state and future prospects of Mount Polley's operations.

180. The Defendants were aware at all material times of the effect of Imperial's disclosure documents on the price of its Securities. The Impugned Documents were filed, among other places, on Imperial's website, on SEDAR and with regulatory authorities in Canada, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

181. Imperial routinely communicated information about its business, affairs and results of operations to the financial press, financial analysts and prospective and actual holders of its Securities.

182. Imperial regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of its disclosure documents, including press releases on newswire services. Each time Imperial communicated that new material information about its operations and financial results to the public it directly affected the price of its Securities.

183. Imperial held earnings conference calls with financial analysts and members of the investing public, on which it discussed its business, operations and future prospects.

184. Imperial was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Imperial's Securities in such reports during the Class Period were based, in whole or in part, upon that information.

185. Imperial's Securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which Imperial's Securities traded promptly incorporated material information from Imperial's disclosure documents about Imperial's business, operations and future prospects, including the Representation. The Representation was disseminated to the public through the Impugned Documents and the various other means Imperial chose and used to communicate that information to the public.

RIGHTS OF ACTION

Statutory liability for misrepresentations in secondary market disclosures

186. On behalf of herself and all other Class Members who acquired Imperial's Securities (including Imperial's Notes) in the secondary market, the Plaintiff asserts as against all Defendants the right of action found in section 138.3(1) of the *OSA* and, if necessary, the equivalent provisions of the other Securities Legislation with respect to all Impugned Documents other than the Offering Memorandum.

187. Other than the Annual Reports, each of these Impugned Documents is a core document within the meaning of the *OSA* with respect to each of the Defendants.

188. With respect to the misrepresentations contained in the Annual Reports, the Defendants:

(a) knew, at the time that the Annual Reports were released or that these documents contained the misrepresentations;

(b) at or before the time that the Annual Reports were released deliberately avoided acquiring knowledge that these documents contained the misrepresentations; or

(c) were, through action or failure to act, guilty of gross misconduct in connection with the release of the Annual Reports that contained the misrepresentations.

189. At all material times, Imperial was a reporting issuer and a responsible issuer in Ontario. It released the Impugned Documents while they contained one or more misrepresentations. The Class Members acquired Imperial's Securities after the release of the Impugned Documents and before the misrepresentations included in them were publicly corrected.

190. The defendants, Kynoch, Moeller, Pare and Edwards were directors of Imperial within the meaning of the *OSA* when the Impugned Documents were released.

191. The defendants, Kynoch, Deepwell and Edwards were officers of Imperial within the meaning of the Securities Legislation. They authorized, permitted or acquiesced in the release of the Impugned Documents.

192. With respect to the defendant, Edwards, in the alternative, he was an insider and an influential person of Imperial within the meaning of the *OSA*. Edwards knowingly influenced Imperial or a person acting on behalf of Imperial to release the Impugned Documents, or knowingly influenced a director or officer of Imperial to authorize, permit or acquiesce in the release of the Impugned Documents.

193. The defendants, Edco Financial and Edco Capital, were insiders and influential persons of Imperial within the meaning of the *OSA*. They knowingly influenced Imperial or a person acting on behalf of Imperial to release the Impugned Documents, or knowingly influenced a director or officer of Imperial to authorize, permit or acquiesce in the release of the Impugned Documents.

194. The Plaintiff will seek leave of court to pursue the right of action provided under section 138.3(1) of the *OSA* and, if necessary, the equivalent provisions of the other Securities Legislation, on a *nunc pro tunc* basis if necessary.

Statutory liability for misrepresentations in the Offering Memorandum

195. On behalf of all Class Members who acquired Imperial's Notes in the Offering, and as against Imperial, Kynoch, Moeller, Pare and Edwards, the Plaintiff pleads the right of action found in section 132.1(1) of the *BCSA* and, if necessary, the equivalent provisions of the other Securities Legislation.

196. The Offering Memorandum constituted a "prescribed disclosure document" for the purposes of section 132.1(1) of the *BCSA*.

197. By way of the Offering, Imperial offered and issued the Notes. Imperial issued the Offering Memorandum. The Offering Memorandum contained one or more misrepresentations as elaborated herein.

198. The defendants, Kynoch, Moeller, Pare and Edwards were directors of Imperial within the meaning of the *BCSA* as of the date of the Offering Memorandum.

Liability in negligence* simpliciter *and negligent misrepresentation in connection with the Offering

199. On behalf of all Class Members who acquired Imperial's Notes in the Offering, and as against the Imperial Defendants, the Plaintiff pleads negligence *simpliciter* arising out of the Imperial Defendants' breaches of the duties expected and required from them in connection with the Offering.

200. On behalf of all Class Members who acquired Imperial's Notes in the Offering, and as against the Imperial Defendants, the Plaintiff also pleads negligent misrepresentation. In support of the negligent misrepresentation claims, the sole misrepresentation on which the Plaintiff relies is the Representation, which was contained in the Offering Memorandum.

201. Imperial and, by virtue of their specified roles in making continuous disclosure under the Securities Legislation and their authority within or special relationship with Imperial, the Individual Defendants owed a duty to ensure that the Offering Memorandum made full, true and plain disclosure of all material facts relating to the Notes. They failed to do so.

202. The Individual Defendants were privy to material information about Imperial and its business and affairs that was not available to the Class Members.

203. With respect to Edwards, a longstanding insider of Imperial, the Offering was specifically carried out at least in part for the benefit of him and his affiliates, including the two entities he controlled, the defendants Edco Financial and Edco Capital, which were also insiders of Imperial. Further, as of the date of the Offering Memorandum, two principal officers of Edco Financial and Edco Capital sat on Imperial's board: the defendants, Moeller and Pare. Moeller and Pare were representatives of the defendants Edwards, Edco Financial and/or Edco Capital.

204. The reasonable standard of care expected from these defendants in the circumstances was to ensure that the Offering Memorandum contained no misrepresentation when released, or alternatively, to prevent the filing of the Offering Memorandum while it contained any such misrepresentation. They failed to meet this standard, thereby breaching their duties.

205. The Imperial Defendants violated their duties by failing to ensure the Offering would not be carried out on the basis of the Offering Memorandum, which contained misrepresentations until such time that the misrepresentations in the Offering Memorandum were corrected.

206. Furthermore, the Imperial Defendants breached their duties by making the Representation in the Offering Memorandum. Copies of the Offering Memorandum were provided to the Class Members who acquired Imperial's Notes in the Offering. These Class Members were entitled to and did reasonably rely on the contents of the Offering Memorandum, including the Representation, in acquiring Imperial's Notes in the Offering.

207. It was reasonably foreseeable to the Imperial Defendants that the Class Members who acquired Imperial's Notes in the Offering and by way of the Offering Memorandum, the class of whom was known to them, would suffer damages and losses if they breached their duty of care, as they did.

208. Had the Imperial Defendants exercised the reasonable care and diligence required from them in the circumstances, then the Offering would not have taken place at all or until the misrepresentations in the Offering Memorandum were corrected and the Notes' terms would have been accordingly adjusted to reflect their true value.

209. As a result of the Imperial Defendants' negligence, the Offering took place and the Class Members acquired Imperial's Notes at inflated prices, and suffered damages and losses.

Liability in negligent misrepresentation for misrepresentations in secondary market disclosures

210. On behalf of herself and all Class Members who acquired Imperial's Securities (including Imperial's Notes) in the secondary market, and as against the Imperial Defendants, the Plaintiff pleads negligent misrepresentation with respect to all Impugned Documents other than the Offering Memorandum.

211. In support of these claims, the sole misrepresentation that the Plaintiff pleads is the Representation. Due to the misrepresentations included in the Impugned Documents, the Representation was false.

212. The Imperial Defendants made the Representation expressly or implicitly in the Impugned Documents, or adopted the Representation as their own by authorizing, permitting or acquiescing in the release of the Impugned Documents.

213. The Imperial Defendants had a duty to the Class Members to exercise care and diligence to ensure that the Impugned Documents did not include untrue statements of material facts or omissions to state such material facts that were required to be stated so that those disclosure documents would not be false and misleading, and to not falsely make the Representation.

214. That duty was informed by the Securities Legislation, subsidiary instruments including NI 51-102, NI 52-109, NI 45-106 and their related rules and policies, as well as section 142 of the *BCA*.

215. The Imperial Defendants breached their duty of care to the Class Members who acquired Imperial's Securities in the secondary market by making the Representation.

216. At all material times, the Imperial Defendants had exclusive access to information about Imperial's business and operations. As such, they were the primary source of information relevant to the Class Members' decision to acquire Imperial's Securities and the price at which those Securities would be acquired.

217. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the public to purchase Imperial's Securities. the Imperial Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably upon such documents and the Imperial Defendants' Representation included therein in making the decision to purchase Imperial's Securities.

218. The Imperial Defendants further knew and intended that the information contained in the Impugned Documents, including the Representation, would be incorporated into the price of Imperial's publicly-traded Securities such that the trading price of those Securities would at all times reflect the information contained in the Impugned Documents.

219. The Plaintiff and those Class Members directly or indirectly relied on the Representation in making a decision to purchase Imperial's Securities, and suffered damages when the falsity of the Representation was revealed.

220. Alternatively, the Plaintiff and those Class Members relied upon the Representation by the act of purchasing Imperial's Securities in an efficient market that promptly incorporated into the price of those Securities all publicly-available, material information regarding the Securities of Imperial. As a result, the repeated publication of the Representation in those Impugned Documents caused Imperial's Securities to trade at

inflated prices during the Class Period, thus directly resulting in damages to the Plaintiff and the Class Members.

Damages

221. The Plaintiff and the other Class Members suffered damages as a result of the Defendants' conduct and the misrepresentations in the Impugned Documents.

222. As a result of the Defendants' conduct and the misrepresentations in the Impugned Documents, the Class Members acquired Imperial's Securities at artificially inflated prices. Had the Defendants not made those misrepresentations, the Plaintiff and the other Class Members would not have suffered losses.

223. The Plaintiff and the other Class Members suffered losses as a result of the decline in the market price or value of the Securities when the misrepresentations in the Impugned Documents were publicly corrected.

Vicarious Liability

224. In addition to its direct liability, Imperial is vicariously liable for the acts and/or omissions of its officers, directors, partners and employees.

225. In addition to its direct liability, Edco Financial is vicariously liable for the acts and/or omissions of its officers, directors, partners and employees.

226. In addition to its direct liability, Edco Capital is vicariously liable for the acts and/or omissions of its officers, directors, partners and employees.

Real and Substantial Connection with Ontario

227. The Plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things:

(a) Imperial is a reporting issuer in Ontario;

(b) Imperial's Securities trade on the TSX and alternative Canadian trading venues, which are located in Toronto, Ontario;

(c) the Impugned Documents were disseminated in Ontario;

(d) a substantial proportion of the Class Members reside in Ontario; and

(e) a substantial portion of the damages sustained by the Class were sustained in Ontario.

Service Outside of Ontario

228. The Plaintiff may serve the Notice of Action and the Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because it is:

(a) a claim in respect of personal property in Ontario (para 17.02(a));

(b) a claim in respect of damage sustained in Ontario (para 17.02(h));

(c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n));

(d) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)); or

(e) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

Relevant Legislation

229. The Plaintiff pleads and relies on the *CJA*, the *CPA*, the *BCA* and the Securities Legislation, all as amended.

Place of Trial

230. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

231. The Plaintiff intends to serve a jury notice.

September 8, 2014
Amended: August 26, 2015
Amended: March 8, 2016

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Court File No.: CV-14-509885-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM
(NOTICE OF ACTION ISSUED AUGUST 7, 2014)

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