

SETTLEMENT AGREEMENT

Made as of the 9th day of August, 2012

Between

R. CHARLES ALLEN

(the "Class Representative" or "Plaintiff")

- and -

LENARD BRISCOE

("Briscoe")

RECITALS

A. **WHEREAS** R. Charles Allen (the "Plaintiff") commenced an action on behalf of class members for, *inter alia*, damages for misrepresentation and breach of s. 131 of the *Securities Act*, R.S.O. 1990, c. N1, as amended in Court File No. 02-CV-241587CP (the "Action");

B. **AND WHEREAS** Lenard Briscoe ("Briscoe" or the "Settling Defendant"), Aspen Group Resources Corporation, Jack E. Wheeler, James E. Hogue, Wayne T. Egan, Anne Holland, Randall B. Kahn, Lenard Briscoe, Peter Lucas, WeirFoulds LLP, and Lane Gorman Trubitt L.L.P. (the "Non-Settling Defendants) deny any such breach and resulting damages;

C. **AND WHEREAS** the Action was certified as a class proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, Chapter 6;

D. **AND WHEREAS** counsel for Briscoe and counsel for the Plaintiff have engaged in extensive arm's length settlement discussions and negotiations, resulting in this Settlement Agreement;

E. **AND WHEREAS** counsel for Briscoe has advised that he is of an advanced age and in ill health;

F. **AND WHEREAS** Briscoe is the first director to settle with the Plaintiff and the Plaintiff has accepted the settlement amount with consideration for that fact;

G. **AND WHEREAS** documentary production has been made by all parties, subject to potential further requests by the plaintiff and the examinations for discovery which are to be scheduled;

NOW THEREFORE, in consideration of the covenants, agreements 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 parties to this Settlement Agreement that the action shall be settled and dismissed on the merits against Briscoe, such settlement being without costs as between Briscoe and the Plaintiff and the class he represents, subject to the approval of the Courts, on the following terms and conditions.

SECTION 1 – SETTLEMENT BENEFITS

1. Payment of Settlement Amount

- a. Within five (5) business days of receipt of the settlement approval order, Briscoe shall pay the all-inclusive sum of two hundred and thirty-five thousand dollars (\$235,000.00) CDN in full and final settlement of the claims against Briscoe in the Action.

2. Cooperation – Scope of Cooperation

- a. Briscoe shall provide answers to written interrogatories in accordance with Rule 35 of the *Rules of Civil Procedure* and consents to the answers being read into the record at the common issues trial of the Action.

3. Dismissal

- a. As soon as practicable after the payment of the funds referred to in paragraph 1, the Action shall be dismissed on the merits against Briscoe.

SECTION 2 – BAR ORDER

4. The Plaintiff and Briscoe agree that the order approving this Settlement Agreement shall include a bar order. The bar order shall include the following provisions:

- a. all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the allegations, which are, were or could have been brought in the Action, by any Non-Settling Defendant or any other person or party, against Briscoe, or by Briscoe against any Non-Settling Defendant, are barred, prohibited and enjoined;
- b. if, in the absence of (a) hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against Briscoe:
 - i. the Plaintiff and the class members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages,

costs or interest awarded in respect of any claim(s) on which judgment is entered that corresponds to the proportionate liability of Briscoe proven at trial or otherwise;

- ii. for greater certainty, the Plaintiff and the class members shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interests attributable to the Non-Settling Defendants' liability to the Plaintiff and the class members, if any;
 - iii. this Court shall have full authority to determine the proportionate liability at the trial or other disposition of this Action, whether or not Briscoe remains in this Action or appears at the trial or other disposition, and the proportionate liability shall be determined as if Briscoe is a party to this Action for that purpose and any such finding by this Court in respect of the proportionate liability shall only apply in this Action and shall not be binding upon Briscoe in any other proceedings.
- c. if, in the absence of (a) hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against Briscoe, then nothing in the order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Action.
- d. If, as a condition of the Bar Order, the Non-Settling Defendants request that provisions be inserted in the Bar Order with respect to obtaining evidence from Briscoe, Briscoe shall have the right to oppose the insertion of such provisions, but if the Court determines that such provisions should be inserted, the Settlement Agreement shall remain binding on Briscoe.

SECTION 3 – MOTIONS TO BE BROUGHT

5. Best Efforts

- a. The Plaintiff and Briscoe shall take all reasonable steps to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice

of the Action as against Briscoe, including cooperating in the Plaintiff's efforts to obtain any approval or orders required from the Court regarding the approval or implementation of the Settlement Agreement, including orders approving the form and distribution of the Notices contemplated by this Settlement Agreement.

6. Motion to Approve Notice

- a. At a time mutually agreed to by the parties after the Settlement Agreement is executed, the Plaintiff shall bring a motion before the Court for an order approving the Notice of Settlement Approval Hearing.

7. Motion for Approval of the Settlement

- a. As soon as practicable after the approval of the Notice of Settlement Approval Hearing and after the Notice of Settlement Approval Hearing has been published, the Plaintiff shall bring a motion before the Court for an order approving this Settlement Agreement.

SECTION 4 – RELEASE

8. Upon the receipt of the Order approving this Settlement Agreement, and in consideration of payment of the settlement amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.
9. **Releasees** mean, jointly and severally, individually and collectively, Briscoe and all of his present and former, direct and indirect, affiliates, partners, insurers (of Briscoe), and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, beneficiaries, executors, administrators, trustees, servants, agents and assigns of each of the foregoing, all as applicable to Briscoe only and specifically excluding always the Non-Settling Defendants.
10. **Releasors** mean, jointly and severally, individually and collectively, the Plaintiff and the class members on behalf of themselves and any person claiming by or through them as

a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, beneficiary, executor, administrator, trustee, servants, insurer, devisee, assignee or representative of any kind.

11. **Released Claims** mean 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 incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that 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 against the Releasees, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, or relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with alleged misrepresentations in breach of s. 131 of the *Securities Act*, R.S.O. 1990, c. N1, as amended against the Releasees and specifically excluding always the claims advanced against the Non-Settling Defendants for that portion of any damages, costs or interest not based on the proportionate fault of Briscoe.
12. The Releasors agree and undertake:
 - a. that if they, including anyone on behalf of whom they act, make any claim, demand or complaint or take any action or proceeding against the Releasees arising out of the Released Claims, this Release shall be deemed to be a complete defence and bar to any such claim, demand, complaint, action or proceeding;
 - b. not to make any claim or take any proceeding against any person or entity which might result in a claim for contribution or indemnity being made against the Releasees excluding always the claims made against the Non-Settling

Defendants for that portion of any damages, costs or interest not based on the proportionate fault of Briscoe.

- c. to indemnify and save harmless the Releasees against and from any and all other actions, causes of action, suits, claims and demands whatsoever which have been, are being or may be made or asserted by or on behalf of the Releasers in breach of this Release and Bard Order;
- d. to bind any parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, beneficiary, executor, administrator, trustee, servants, insurer, devisee, assignee or representative of any kind of the Releasers to the terms of this Release;
- e. that this Release is deemed to be no admission of liability by the Releasees in anyway whatsoever and that liability is in fact denied;

For greater certainty, nothing in this Settlement Agreement and Release shall prohibit the Releasers from the full prosecution of their claims against the Non-Settling Defendants against whom all rights of the plaintiff and the class are specifically reserved for that portion of any damages, costs or interest not based on the proportionate fault of Briscoe.

SECTION 5 – COUNTERPARTS

- 13. This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a fax signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

The Parties have executed this Settlement Agreement as of the date on the cover page.

R. Charles Allen
By His Counsel

Lenard Briscoe
By His Counsel

Harrison Pensa ^{LLP}

McCarthy Tétrault LLP

By:


Jonathan Foreman

By:


Thomas G. Heintzman