

Court File No.: CV-13-00491800-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DAVID WONG

Plaintiff

- and -

PRETIUM RESOURCES, INC. AND ROBERT QUARTERMAIN

Defendants

Proceeding under the *Class Proceedings Act, 1992*

REPLY FACTUM OF THE PLAINTIFF

(Motion for Production of Information from Non-Parties pursuant to Rule 30.10 of the
Rules of Civil Procedure R.R.O. 1990, Reg. 194)

Motion in Writing - Returnable: March 16, 2020

March 16, 2020

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PREAMBLE¹

1. In this Motion, now seemingly unopposed by Strathcona and unopposed by Pretium, the Plaintiff is seeking an Order requiring Henrick Thalenhorst, on behalf of the non-party Strathcona Mineral Services Ltd. (“**Strathcona**”), to be examined if required and to produce certain documents identified herein regarding Strathcona’s engagement by the Defendant Pretium Resources Inc. (“**Pretium**” or the “**Company**”), and its views on its work relating to Pretium’s Brucejack Mine (collectively, the “**Strathcona Materials**”), including:
 - i. The retainer agreement between Strathcona and Pretium;
 - ii. Any communications between Strathcona and Snowden Mining Consultants Ltd. (“**Snowden**”) pertaining to Pretium, the Brucejack Mine or the Programs (as defined below);
 - iii. Any communications between Strathcona and Agnico Eagle Mines Limited (“**Agnico**”) and other third-party companies with regards to Pretium, the Brucejack Mine or the Programs (as defined below);
 - iv. Any internal communications concerning the Pretium project and its senior executives; and now;
 - v. Rejecting Strathcona’s request for costs leading up to this Motion.

2. The Plaintiff is submitting this Reply Factum to assure the Court that: (a) the Strathcona Materials are relevant to the material issues in the Defendants’ motion for summary judgment, and (b) it would be unfair to require the Plaintiff to defend against

¹ The capitalized terms have the meanings ascribed to them in the Statement of Claim, issued January 22, 2018 [Plaintiff’s Supplementary Motion Record (“PSMR”), Tab 1].

the Defendants' motion for summary judgement without possessing the Strathcona Materials.

THE MATERIAL FACTS

3. The Plaintiff is currently defending against the Defendants' summary judgment motion on the topics of: (a) whether a reasonable investor would have considered it material that Pretium's respected mining consultant, Strathcona, fundamentally disagreed as to the accuracy of Pretium's 2012 Mineral Resource estimate for the VOK zone of the Brucejack Mine; and (b) whether the Defendants can shield themselves from liability by proving that: (i) they conducted a reasonable investigation before the document containing the misrepresentation was released, and (ii) at the time of the document's release, it had no reasonable ground to believe that the document contained a misrepresentation.²

4. The Plaintiff believes that the Strathcona Materials are relevant because they will prove, beyond a balance of probabilities, that: (a) the Defendants conducted no reasonable investigation as to whether Strathcona's concerns would not be considered material to the reasonable investor, because the Defendants already knew these concerns were material (e.g., to Pretium's senior executives, Strathcona, and third-party Canadian mining company Agnico Eagle Mines Ltd. ("Agnico")) prior to the release of each Impugned Document;³ and (b) during the Class Period and prior to the release of the Impugned

² *Wong v. Pretium Resources, Inc., et al.*, 2017 ONSC 3361, at paras 37 and 42. With the benefit of discovery the Plaintiff now knows that Snowden took the position that it was premature to conclude the 2012 Resource Estimate was accurate or partially accurate. The basis of this view is found at PRET0002713 (August 16, 2013) and PRET0003636 (September 8, 2013).

³ Agnico conveyed this opinion to Pretium after Strathcona had resigned. The pending Rule 30.10 Motion and corresponding Strathcona Materials would capture the correspondences between Strathcona and Agnico. The basis of this view is found, for example, at PRET0001598_0002 and PRET0003781_0001, and PRET0006038_0002.

Document, Snowden advised Pretium and Strathcona that it believed it was premature to make a judgment call about the Resource Estimate and only after the release of the first Public Correction could it form any opinion.⁴

A. The Plaintiff's Rule 30.10 Motion: Chronology

5. On or about June 17, 2019, the Plaintiff contacted Strathcona's lawyer to open a dialogue about the contents of the pending Motion.

6. On June 19, 2019, the Plaintiff advised Strathcona that the scope of the summons, "concerns evidence that would never be captured by the discovery from Pretium Resources, i.e., the internal communications at Strathcona as well as any communications between Strathcona and Snowden and other third-parties."⁵

7. On July 16, 2019, Strathcona responded advising that, "I understand from Mr. Steep [the Defendants' lawyer] that the Motion Record [for Summary Judgment] has not yet been served... I have copied Mr. Steep on this email... It is not clear to me what relevance these [Strathcona Materials] would have."⁶

8. Following Strathcona's response, on July 16, 2019, the Plaintiff advised Strathcona and Mr. Steep that the Plaintiff would wait until Pretium served its summary judgment motion (i.e., which was not fully served until February 3, 2020) to advance the within Rule 30.10 Motion. Importantly, the Plaintiff wrote that he would provide for reasonable costs-financing.⁷

9. On August 29, 2019, Strathcona wrote to the Plaintiff, "we are respectfully having trouble understanding the basis for your request," "we do not understand how any

⁴ PRET0002713 (August 16, 2013) and PRET0003636 (September 8, 2013).

⁵ *Email from Morganti to Leon, Re: Wong v Pretium Resources, et al., June 19, 2019.*

⁶ *Email from Leon to Morganti, July 16, 2019 (11:26 am).*

⁷ *Ibid.*, Email from Morganti to Leon, July 16, 2019 (12:45 pm).

information in Strathcona's possession that was not conveyed to Pretium is relevant to this litigation," "we likewise cannot see a basis upon which such [the Strathcona Materials], if any, would be relevant to the plaintiff's misrepresentation claim against Pretium."⁸

10. On December 16, 2019, the Plaintiff responded to Strathcona advising that the Plaintiff required the third-party discovery from Strathcona to determine what they conveyed internally as well as externally to third-parties about the credibility of Pretium's executives and business model. Moreover, it is equally relevant to have Strathcona's immediate internal dialogue about their views from calls with Pretium and Snowden's employees. This information would assist in weighing the credibility of certain evidence at the summary judgment motion and subsequent trial, for example how familiar Pretium's executives were with Strathcona's prior work-product and the true nature of interest from companies like Agnico Eagle's in acquiring or making a material investment in Pretium during the Class Period.

11. On January 15, 2020, Strathcona's advised the Plaintiff that it had not altered its position since the August 29, 2019 letter.

12. The Plaintiff was left with no other options but to prepare and serve the pending Rule 30.10 Motion.

13. On February 28, 2020, after the Plaintiff's Motion Record was served, Strathcona's once again disclosed that it had negotiated with Pretium's lawyer prior to offering to produce what was original requested from June 2019, but with several material

⁸ Letter from Jeffrey Leon to Andrew Morganti, Re: Wong v Pretium Resources, Inc, et al, August 29, 2019.

limitations that only assisted Pretium. For example they requested that the Plaintiff forgo any right to obtain testimony or test credibility. The Plaintiff rejected this proposal.

14. On March 11, 2020, Strathcona provided the Plaintiff with a responding factum not consenting to the within motion, which was lacking any evidence or supporting documentation relating to the background facts, i.e., that Strathcona always knew the relevance and importance of the Strathcona Materials to the Plaintiff's claim and opposing the Defendants' motion for summary judgment.

15. On March 13, 2020, at 9:00 pm, counsel for the Defendants advised the Plaintiff that it would not take any position on this Motion.

B. The Relevance of the Strathcona Materials

16. Now, and unlike at the time of Plaintiff's motion for leave to proceed, the Plaintiff is aware of the materiality (and history) of the relationship between Pretium, Strathcona, and Snowden, which is relevant to the pending Rule 30.10 Motion.

17. The Plaintiff submits that the following material facts evidence that Strathcona always knew of the relevance of the internal Strathcona Materials:

- (a) Warwick Board, Pretium's Chief Geologist during the Class Period, was previously employed by Snowden and he assisted in preparing a prior version of the VOK Brucejack Mine, Resource Estimate;
- (b) Snowden prepared a resource estimate for Comaplex Minerals Corp. ("Comaplex"), Meliadine West Gold Property, in Nunavut, Canada ("Meliadine Project");
- (c) For that Meliadine Project, Comaplex retained Strathcona to perform a bulk sample program in order to confirm multiple aspects of Snowden's resource estimate;
- (d) Strathcona confirmed material aspects of Snowden's resource estimate;
- (e) As a result in July 2010, Agnico Eagle acquired Comaplex in a transaction valued at over ½ billion dollars;

- (f) A few years later Warwick Board became employed by Pretium;
- (g) Once at Pretium, Warwick Board recommended that Pretium engage Strathcona likely to put confidence into Snowden's 2012 Resource Estimate and induce Agnico to acquire or make a major investment in Pretium;⁹
- (h) When Pretium retained Strathcona, its three most senior executives were positioned to earn over \$50 million worth of stock options vesting in a change of control situation;
- (i) Just like the Comaplex situation, Agnico was performing its due diligence to acquire or make a major investment in Pretium during the Class Period;
- (j) Unfortunately for Pretium and its senior executives, Agnico Eagle had reached the same conclusion as Strathcona, i.e., that the 2012 Resource Estimate did not seem accurate.¹⁰

18. The preceding paragraph indisputably demonstrates that the Strathcona Materials are relevant to the Plaintiff's claim and to defend against the Defendants' motion for summary judgment.

19. Moreover, these facts indisputably demonstrate that Strathcona has always known of the materiality of the requested discovery despite its lawyers engaging in a charade of chastising the Plaintiff for half a year from August 2019 to January 2020, i.e., "we are respectfully having trouble understanding the basis for your request,"; "we do not understand how any information in Strathcona's possession that was not conveyed to Pretium is relevant to this litigation,"; "we likewise cannot see a basis upon which such communications, if any, would be relevant to the plaintiff's misrepresentation claim against Pretium."¹¹

⁹ PRET0004905_0002-03. "One such program was a lengthy association with the Meliadine gold project in Nunavut, both before and after the acquisition by Agnico. It was during a visit to Meliadine, while working with Snowden, that Warwick became familiar with our bulk sample experience and that subsequently led to the invitation to [Strathcona] to meet with Pretium in Vancouver."

¹⁰ PRET0003781_0001 (September 10, 2013) and PRET0006038 (October 31, 2013).

¹¹ *Letter from Jeffrey Leon to Andrew Morganti*, August 29, 2019.

CONCLUSION

20. For all of the reasons listed herein, the Plaintiff respectfully requests that this Honourable Court issue an Order granting the Plaintiff's motion.
21. For the reasons stated in the Plaintiff's factum and this reply factum, it would be unfair to require the Plaintiff to oppose the Defendants' motion for summary judgment without the Strathcona Materials.

March 16, 2020

ALL OF WHICH IS RESPECTFULLY SUBMITTED

BY:

For: Andrew J. Morganti
Andrew J. Morganti
Morganti & Co., P.C.

DAVID WONG
Plaintiff

v. **PRETIUM RESOURCES INC., et al**
Defendants

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