

ALBERTA SECURITIES COMMISSION

AMENDED AMENDED AMENDED NOTICE OF HEARING

Citation: **Arbour Energy Inc., Re, 2009 ABASC 253**

Date: **20090527**

Docket: **E/03135**

Securities Act, R.S.A. 2000, c. S-4, as amended (Act)

To: **Arbour Energy Inc., Dennis Morice, Heinz Weis, Arthur Wigmore, Milowe Brost, The Institute For Financial Learning, Group of Companies Inc., Merendon Mining Corporation Ltd., and Gary Sorenson**

Notice: The Alberta Securities Commission (Commission) will convene at 9:00 a.m. on Monday, the 1st day of September, 2009, for a hearing in Calgary, Alberta, of the allegations in this Notice and to deal with any preliminary matters. At the hearing, the Commission will consider whether it is in the public interest to order:

- (i) Under subsections 198(1)(a) and (b) of the *Act*, that you cease trading in or purchasing any securities or specified securities;
- (ii) Under section 198(1)(c) of the *Act*, that any or all of the exemptions contained in the Alberta securities laws do not apply to you;
- (iii) Under sections 198(1)(d) and (e) of the *Act*, that you resign one or more positions that you hold as a director or officer of any issuer, and that you be prohibited from becoming or acting as such;
- (iv) Under section 198(1)(i) of the *Act*, that you pay to the Commission any amounts obtained or payments or losses avoided as a result of your non-compliance with the Alberta securities laws;
- (v) Under section 199 of the *Act*, that you pay an administrative penalty to the Commission;
- (vi) Under sections 202(1) and (2) of the *Act*, that you pay the costs of

the investigation and hearing to the Commission; and

Such other order as may be appropriate under sections 198, 199 and 202 of the *Act*.

Location: Alberta Securities Commission, 6th Floor, 300 – 5th Avenue SW, Calgary, Alberta.

Procedure: 1. You may obtain disclosure and particulars of the allegations in this Notice from Deanna Steblyk, c/o Alberta Securities Commission, 4th Floor, 300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4, telephone 403.297.4417.

2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence at the hearing.

3. If you or your counsel fail to attend on October 26, 2007, or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See also section 29 of the Act.

Allegations

Summary of Breaches

- 1 Staff of the Commission (Staff) alleges that Arbour Energy Inc. (Arbour), Dennis Morice (Morice), Heinz Weis (Weis), Arthur Wigmore (Wigmore), Milowe Brost (Brost), The Institute For Financial Learning, Group of Companies Inc. (IFFL), Merendon Mining Corporation Ltd. (Merendon), and Gary Sorenson (Sorenson) (collectively, the Respondents), engaged in a course of conduct relating to the securities of Arbour that perpetrated a fraud on Alberta investors.
- 2 Staff alleges that IFFL and Brost acted as advisors with respect to investment in securities without registration.
- 3 Staff alleges that Arbour, Morice, Weis, Wigmore, Brost, and IFFL engaged in an illegal distribution of Arbour securities.
- 4 Staff alleges that IFFL and Brost breached an undertaking to the Commission.
- 5 Staff alleges that Arbour, Morice, Weis, and Wigmore made false or misleading statements to investors in offering documents.
- 6 Staff alleges that Arbour, Morice, Weis, and Wigmore failed to file continuous disclosure documents as required by the Alberta securities laws, and failed to provide timely and reliable continuous disclosure to existing and prospective investors.
- 7 Staff alleges that the Respondents acted contrary to the public interest.

Parties

- 8 Arbour was incorporated in Alberta on April 9, 2001. It has its head office in Calgary, and at all material times was a reporting issuer in Alberta. It has never been registered with the Executive Director of the Commission (Executive Director) to trade in securities.
- 9 In 2005, Arbour's securities were cease traded by the Commission on two separate occasions for approximately 15 days each for failure to file financial statements when due.
- 10 On November 16, 2005, the Commission issued an interim order denying Arbour, and others, access to all exemptions contained in the Alberta securities laws. That interim order was extended by the Commission on December 1, 2005, until a hearing was concluded and a decision rendered, or until otherwise ordered. No such order has been made.

11 On May 19, 2006, the Commission ordered that trading cease in respect of the securities of Arbour for failure to file with the Commission when due annual audited financial statements for the year ended December 31, 2005. Arbour has not filed those financial statements and has not resumed trading.

12 Morice is a resident of Alberta. At all material times he was a director of Arbour and its President. He has never been registered with the Executive Director to trade in securities.

13 Weis is a resident of Alberta, and at all material times was a director of Arbour. He has never been registered with the Executive Director to trade in securities.

14 Wigmore is a resident of British Columbia, and at all material times was a director of Arbour. Wigmore is a shareholder of Merendon, and was previously a director and the President of Merendon. He has never been registered with the Executive Director to trade in securities.

15 IFFL was incorporated in Alberta on April 23, 2003. It has its head office in Calgary, but is not a reporting issuer in Alberta. It has never been registered with the Executive Director to trade in securities or to act as an advisor.

16 Brost is a resident of Alberta. He is a director of IFFL and its controlling mind. He has never been registered with the Executive Director to trade in securities or to act as an advisor.

17 Merendon was incorporated as a numbered company in Alberta on February 22, 1996. It has its head office in Calgary, but is not a reporting issuer in Alberta. It has never been registered with the Executive Director to trade in securities.

18 Sorenson has a residence in Calgary, Alberta, but resides predominantly in Honduras. He was, at all material times, the beneficial owner of the majority of the shares of Merendon and was Merendon's Chairman and Chief Executive Officer. Sorenson has never been registered with the Executive Director to trade in securities.

19 None of Respondents has ever filed a preliminary or final prospectus with and received a receipt from the Executive Director for the distribution, as described herein, of preferred shares of Arbour.

Circumstances

Creation of Arbour and Sale of Preferred Shares

20 Brost, Sorenson, and Weis were responsible for developing Arbour. Brost and Sorenson had identified Arbour as a possible investment for IFFL members. At the time, Arbour had effectively no business or operations.

21 Brost and Weis hired Morice to be President of Arbour in or about June 2004, informing him that offering memoranda would be used to raise funds through the sale of preferred shares of Arbour to IFFL members.

22 Morice prepared the offering memoranda used for such purpose, with assistance from legal counsel. Morice was responsible for filing the offering memoranda with the Commission as well as any reports of exempt distribution. Weis reviewed the offering memoranda for accuracy before they were distributed to investors. Morice, Wigmore and Weis signed one or more of the offering memoranda used to effect the sales, certifying that the document(s) did not contain a misrepresentation.

23 During the period July 2004 to and including November 16, 2005, the date Arbour was denied access to exemptions by the Commission, Arbour preferred shares were sold by the Respondents, or some of them, for proceeds totalling approximately \$46,000,000. The majority of the purchasers were IFFL members, and more than half of the sales - \$25,144,689 - occurred in Alberta.

24 Staff alleges the Arbour preferred shares were securities and the sales of the securities were trades as defined in the *Act*. Further, as trades in securities of an issuer that were not previously issued, Staff alleges the sales were distributions under the *Act*. Staff further alleges the offering memoranda purportedly used to effect the sales were not in compliance with Alberta securities laws or were otherwise false, misleading or deficient, or both, all as particularized herein, and as such there was no exemption available for some or all of the sales of Arbour preferred shares to Alberta investors.

IFFL and Brost - Providing Advice Without Registration

25 Arbour did not advertise or otherwise promote the sale of the preferred shares to investors. Rather, IFFL members, at the recommendation of Structurists or other representatives of IFFL and without any solicitation from Arbour, contacted Arbour directly and requested the offering memoranda.

26 IFFL is represented as an educational institute, soliciting membership from meetings and seminars given to the public, for the stated purpose of promoting international investment.

27 Staff alleges IFFL and Brost were in fact engaged in the business of providing unregistered advice to IFFL members in Alberta, and elsewhere, with respect to the purchase by the members of a very select group of securities, one of which was Arbour.

False and Misleading Offering Memoranda

28 Staff alleges that the offering memoranda used to facilitate the sales of the Arbour securities to investors, the first being dated July 14, 2004 (OM1), the second January 19, 2005 (OM2), and the third September 26, 2005 (OM3), all contained false or misleading

statements or failed to contain information necessary to make a statement not misleading. Particulars of the false or misleading statements and omissions include the following:

OM1

- 28.1 omitting any reference to Merendon in the description of the intended use of available funds;
- 28.2 failing to accurately disclose Arbour's listing status as at July 14, 2004; and
- 28.3 incorporating by reference Arbour's Annual Information Form (AIF) when no such document had been filed with the system for Electronic Document Analysis and Retrieval (SEDAR).

OM2

- 28.4 omitting any reference to Merendon in the description of the intended use of available funds;
- 28.5 incorporating by reference Arbour's AIF, when no such document had been filed on SEDAR;
- 28.6 disclosing the intended use of \$10,000,000 of available funds for a "loan/option re. tarsands technology" when, approximately two weeks before the date of OM2, Arbour had publicly disclosed that the full amount of the loan had been advanced as at December 31, 2004; and
- 28.7 making inconsistent statements with respect to the amount to be paid for the share purchase of Canadian Oilsands Recovery Ltd.

OM3

- 28.8 omitting any reference to Merendon in the description of the intended use of available funds;
- 28.9 not identifying in the business summary that Merendon was the party that Arbour had agreed to loan \$10,000,000;
- 28.10 not disclosing a participation agreement in Sedalia, Alberta dated January 25, 2005;
- 28.11 not disclosing the existence of the company's US subsidiary;
- 28.12 not providing sufficient disclosure about Arbour's offshore oil & gas acquisitions;

- 28.13 providing contradictory information about the use of net proceeds of the offering;
- 28.14 failing to incorporate by reference the most up to date MD&A for the year ending December 31, 2004;
- 28.15 incorporating by reference the AIF dated September 9, 2005, which did not accurately list all of the directors and officers of Arbour;
- 28.16 failing to accurately list all of the directors and officers of Arbour;
- 28.17 failing to disclose that Merendon was subject to a 2-year denial of exemptions order by the Commission, which was extant while Wigmore was a director of Merendon;
- 28.18 stating that 28,165,638 preferred shares of Arbour had been distributed as at August 31, 2005, when Arbour had only reported distributions of 25,610,317 preferred shares up to and including the same date; and
- 28.19 providing insufficient disclosure of the risks associated with the oil & gas acquisitions outside of North America.

29 Staff alleges that Arbour, Morice, Weis, and Wigmore knew or ought to have known that OM1, OM2, and OM3 contained false or misleading statements, or omitted to make necessary statements, and that such statements and omissions would reasonably be expected to have a significant effect on the market price or value of the Arbour securities.

30 Neither OM1 nor OM2 were updated between, respectively, July 14, 2004 to January 19, 2005 and January 19, 2005 to September 26, 2005, despite the occurrence in both periods of intervening events that pursuant to Alberta securities laws triggered an obligation to update, and despite the ongoing sales of preferred shares to investors during those periods. Particulars include the following:

OM1

- 30.1 failing to disclose changes in September 2004 in the directors of Arbour.

OM2

- 30.2 failing to disclose a participation agreement in Sedalia, Alberta dated January 25, 2005;
- 30.3 failing to disclose the existence of the company's US subsidiary; and
- 30.4 failing to provide sufficient disclosure about Arbour's offshore oil & gas acquisitions.

Fraudulent Course of Conduct

31 Staff alleges that the Respondents directly or indirectly participated in a course of conduct relating to the securities of Arbour that they knew or ought reasonably to have known perpetrated a fraud on the Arbour investors. The Respondents conduct placed the pecuniary interests of the Arbour investors at risk and caused them to invest in Arbour without any or any sufficient disclosure of the use to be made of their invested funds.

32 Staff further alleges that it was the intention of the IFFL, Brost, and Sorenson, with the input and assistance of some or all of the remaining Respondents, to raise funds through the sale of Arbour securities to IFFL members, and then to move those funds offshore to Merendon, or to other entities owned, controlled or directed, beneficially or otherwise, by some or all of the Respondents.

33 Particulars of the fraudulent conduct includes the allegations elsewhere in this Notice and the following:

- 33.1 Arbour raised in excess of \$46,000,000 in approximately 16 months, despite doing no advertising or promotion of the Arbour preferred share offerings;
- 33.2 No one at Arbour, Morice included, solicited investors for Arbour's preferred share offering. Instead, investors contacted Arbour expressing interest in the shares;
- 33.3 Expedia Logistics, a company whose sole shareholder and director is Brost's stepson, James Verbeem, received a \$257,000 "fee" for performing office administration services and ensuring that Arbour met the terms of the offering memorandum exemption;
- 33.4 Arbour made a purported short term "loan" of \$10,000,000 to Merendon, on a "handshake" deal with Sorenson, without any or any commercially reasonable security;
- 33.5 A written loan agreement with Merendon was only prepared by Arbour, months later, following a request by Arbour's auditors;
- 33.6 Throughout 2005, Arbour advanced to Merendon \$28,000,000 of a \$45,000,000 loan commitment, again on a "handshake" arrangement with Sorenson;
- 33.7 Late 2005, after the majority of the \$28,000,000 was advanced, the \$45,000,000 loan commitment was documented, with security for the debt in the form of alleged interests in mining concessions owned by an offshore subsidiary of Merendon. Arbour did little or no due diligence to assess the

security, and was aware, in any event, that the value of the security did not support the loan;

- 33.8 The money was loaned to Merendon on the understanding that Sorenson would use his “influence” and “clout” to arrange for and close international oil and gas transactions;
- 33.9 Merendon used a portion of the funds for operations, despite allegedly having, according to Sorenson, cash to repay the funds loaned plus gold on deposit in excess of that amount;
- 33.10 One or both of True North Productions L.L.C. (**True North**), a company managed by Brost, and Brost, directed Merendon to transfer, and it so did, some of the funds raised from Arbour investors to True North;
- 33.11 In 2004, Merendon had revenue of \$0, and in 2005 Merendon had revenue of \$9,286 and an accumulated deficit of \$23,072,103;
- 33.12 In total, \$38,000,000 was loaned by Arbour to Merendon on a handshake basis with little or no due diligence by Arbour or its directors, Morice, Wigmore, and Weis, and despite the knowledge of Wigmore, a shareholder and former director and President of Merendon, that all of Merendon’s assets were secured at the time of the Arbour loans by a charge relating to a \$20M loan made to Merendon in 2002 by Syndicated Gold Depository;
- 33.13 In approximately January 2005, Arbour agreed to purchase Canadian Oilsands Recovery Enterprises Ltd. (COREL) from four parties, two of whom were Merendon and Monkman Consulting Medicine Hat Ltd., for approximately \$10,300,000, of which \$4,800,000 was paid in cash;
- 33.14 Jack Monkman, the beneficial owner of Monkman Consulting Medicine Hat Ltd., is a former director of Merendon;
- 33.15 Merendon paid \$52 when it acquired its approximate 40% interest in COREL in November 2003;
- 33.16 Arbour intentionally did not disclose the arrangements with Merendon in the OM’s, purportedly due to Morice’s belief that Merendon was a very private company and would not want to be named in the documents;
- 33.17 Merendon, Sorenson, and Jack Monkman were sanctioned by the Commission on October 24, 2000, for making misrepresentations to investors with the intention of effecting trades in the securities of Merendon, for trading in securities without registration, and for trading in securities without a prospectus or appropriate exemption;

- 33.18 Arbour distributed approximately \$1,900,000 to Arbour Energy USA, a wholly owned subsidiary of Arbour that was never disclosed to investors in any of the OM's;
- 33.19 Arbour distributed approximately \$70,000 to Arbour Energy Caribbean Ltd., a wholly owned subsidiary of Arbour that was never disclosed to investors in any of the OM's; and
- 33.20 Approximately \$43,000,000 of the \$46,000,000 was either loaned or paid to Merendon by Arbour, with little or no security and no or wholly inadequate disclosure to investors.

IFFL and Brost Breach of Commission Order

34 On September 22, 2004, Brost and the IFFL each gave an Undertaking to the Commission not to engage in certain activities. Brost's undertaking, given in his capacity as President and CEO of IFFL, was that he would not directly or indirectly cause, encourage, instruct, allow, condone or participate in any trading in securities or act as an advisor on his own behalf or on behalf of IFFL or any of IFFL's facilitators, structurists or agents. IFFL gave an undertaking not to trade in securities or act as an advisor.

35 On September 30, 2004, the Commission by order accepted the undertakings of Brost and IFFL.

36 Staff alleges, based on the participation of Brost and IFFL in the illegal sale and distribution of Arbour preferred shares and the provision without registration of advice with respect to the purchase of those shares by IFFL members, all as particularized herein, that Brost and IFFL breached their respective undertakings to the Commission and breached the Commission's order of September 30, 2004.

Misuse of Exemptions

37 Arbour filed with the Commission Reports of Exempt Distribution (Form 45-103F4s) for its distributions between September 20, 2004 and September 30, 2005. Included in the Form 45-103F4s were 51 Ontario investors and 2 Quebec investors, for whom Arbour relied on the OM Exemption for the distributions. The OM Exemption did not exist at any time in those jurisdictions and was not available to Arbour.

38 Arbour filed with the Commission a Form 45-103F4 for distributions on August 31, 2005. Included in the Form 45-103F4 were Manitoba investors for whom Arbour relied on section 90 of the *Securities Act*, C.C.S.M. c. S50, a legislative provision that does not grant an exemption from prospectus and registration requirements.

39 In addition, Arbour failed to file OM 1 and OM 2 with the Commission, and filed its Form 45-103F4s late, contrary to Part 4 of the OM Exemption.

