

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: Wigmore, Re, 2009 ABASC 642

Date: 20091231
Docket: E/03135

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

ARTHUR WIGMORE

Introduction

- 1 The staff of the Alberta Securities Commission (respectively, **Staff** and **Commission**) conducted an investigation into allegations that Arthur Wigmore (**Wigmore**) breached Alberta securities laws and acted contrary to the public interest.
- 2 The investigation confirmed and Wigmore admits that he breached those sections of the *Act* and Rules referred to in this Settlement Agreement and Undertaking (**Agreement**), and that he acted contrary to the public interest.
- 3 Wigmore's admissions, agreement to facts, and provision of undertakings in this Agreement are made solely for securities regulatory purposes in Alberta, and elsewhere. Wigmore does not admit any criminal, quasi-criminal, or civil liability, and does not intend that this Agreement be used in any such proceeding.
- 4 Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Circumstances

- 5 Wigmore is a 69 year old resident of British Columbia. He has never been registered in any capacity with the Executive Director of the Commission (**Executive Director**).
- 6 Arbour Energy Inc. (**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. Wigmore became a director of Arbour in approximately September 2004. He was not an officer of Arbour, nor was he involved in Arbour's day-to-day operations.
- 7 Neither Arbour nor Wigmore has ever filed with and received a receipt from the Executive Director for a preliminary prospectus or prospectus with respect to the distribution of preferred shares of Arbour as described herein.

Sale of Arbour Preferred Shares

8 From approximately July 2004 to November 16, 2005, the date Arbour was denied access to exemptions under Alberta securities laws by order of the Commission, Arbour preferred shares (**Shares**) were sold to investors in Canada, and elsewhere, for proceeds of at least \$46,000,000.

9 Wigmore knew sales of the Shares were occurring following his appointment to the board of directors of Arbour in September 2004, although he had no direct or active role in the sales themselves. Wigmore states he suffered a heart attack on February 14, 2005, and that for the next several months during his recovery he had little involvement in Arbour.

10 Wigmore understood that the majority of the purchasers of the Shares were members of The Institute For Financial Learning, Group of Companies Inc. (**IFFL**), and that more than half of the sales – in excess of \$25,000,000 – were made to members in Alberta.

11 Arbour did not advertise or otherwise promote the sale of the Shares to investors and did not solicit IFFL members as purchasers. Wigmore understood that IFFL members learned about Arbour via the recommendation of structurists or other representatives of IFFL. Members interested in purchasing Shares contacted Arbour directly to obtain offering documents.

12 Arbour used at least three offering memoranda to effect the sale of the Shares to investors, with the first offering memorandum dated July 14, 2004 (**OM1**), the second dated January 19, 2005 (**OM2**), and the third dated September 26, 2005 (**OM3**).

13 Wigmore was not involved with Arbour when OM1 was prepared. He understood it had been prepared by Arbour management with the assistance of legal counsel. Wigmore did not provide any of the information contained in OM2 or OM3, also prepared by management and legal counsel, but he acknowledges he did review both for accuracy and that he signed OM3, certifying it did not contain a misrepresentation.

14 Wigmore admits that:

14.1 the Shares sold by Arbour to Albertans were securities;

14.2 those sales were trades as defined in the *Act*;

14.3 as trades in securities of an issuer that were not previously issued, those sales were distributions under the *Act*; and

14.4 he authorized, permitted or acquiesced in those sales by Arbour after he joined the company as a director in September 2004.

15 Wigmore further admits that OM2 and OM3 were not in compliance with Alberta securities laws for the reasons that follow, and that there was no exemption available for some or all of the sales of the Shares to Alberta investors based on those OMs.

Misleading or Deficient OMs

16 Wigmore admits OM2 and OM3 contained misleading statements, or failed to contain information necessary to make a statement not misleading, particulars of which include:

OM2

- 16.1 omitted any reference to Merendon in the description of the intended use of available funds;
- 16.2 incorporated by reference Arbour's Annual Information Form (AIF), when no such document had been filed on the System for Electronic Document Analysis and Retrieval (SEDAR);
- 16.3 disclosed 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
- 16.4 made inconsistent statements with respect to the amount to be paid for the share purchase of Canadian Oilsands Recovery Ltd.

OM3

- 16.5 omitted any reference to Merendon in the description of the intended use of available funds;
- 16.6 failed to identify in the business summary that Merendon was the party Arbour had agreed to loan \$10,000,000;
- 16.7 failed to disclose a participation agreement in Sedalia, Alberta dated January 25, 2005;
- 16.8 failed to disclose the existence of the company's U.S. subsidiary;
- 16.9 failed to provided sufficient disclosure about Arbour's offshore oil and gas acquisitions;
- 16.10 provided contradictory information about the use of net proceeds of the offering;
- 16.11 failed to incorporate by reference the most up-to-date MD&A for the year ending December 31, 2004;
- 16.12 incorporated by reference the AIF dated September 9, 2005, which did not accurately list all of the directors and officers of Arbour;
- 16.13 failed to accurately list all of the directors and officers of Arbour;

- 16.14 failed to disclose that Merendon was subject to a 2-year denial of exemptions order by the Commission, which was in place while Wigmore was a director of Merendon; and
- 16.15 provided insufficient disclosure of the risks associated with the oil and gas acquisitions outside of North America.

17 Wigmore further admits that the misleading statements and omissions in OM2 and OM3 would reasonably have been expected to have a significant effect on the market price or value of the Shares.

Breach of Section 93 of the Act

18 Wigmore admits that by not exercising sufficient diligence in reviewing the content and disclosure in OM2 and OM3, in wrongly certifying the accuracy of OM3, and in failing to ensure that the use to be made by Arbour of the funds raised by the sale of the Shares was properly disclosed in those documents, he participated in an act relating to the Shares that he ought to have known placed the pecuniary interests of the Arbour investors at risk.

19 Particulars of the circumstances that Wigmore knew or ought to have known were insufficiently disclosed to the investors in OM2 and OM3 include the above items and the following:

- 19.1 Merendon was the recipient of the purported loans by Arbour;
- 19.2 Wigmore was a former officer and director of Merendon, and was until May 2005 a shareholder of Merendon;
- 19.3 The first loan to Merendon, in the amount of \$10,000,000, was made by Arbour on a handshake deal with Merendon's Chairman and CEO, Gary Sorenson (**Sorenson**), without any or any commercially reasonable security taken for the loan;
- 19.4 Arbour did little or no due diligence regarding Merendon's ability to repay the loan;
- 19.5 A written loan agreement with Merendon for the \$10,000,000 was only finalized months after the funds had already been advanced by Arbour, following a request by Arbour's auditors;
- 19.6 \$28,000,000 of a further \$45,000,000 loan commitment was advanced to Merendon by Arbour, again on a handshake arrangement with Sorenson;
- 19.7 The \$45,000,000 loan commitment was not documented until late 2005, after the majority of the \$28,000,000 was advanced, with security for the debt to be provided in the form of alleged interests in mining concessions owned by an offshore subsidiary of Merendon. The security was never taken and Wigmore

acknowledges that the value of the concessions contained in the security did not support the loan; and

- 19.8 Wigmore knew at the time of Arbour's loans to Merendon that Merendon's assets were encumbered by a prior charge relating to an alleged \$20M loan made to Merendon in 2002 by Syndicated Gold Depository.

Breaches

20 As a result of the above, Wigmore admits that he breached:

- 20.1 Subsection 75(1)(a) of the *Act*, by authorizing, permitting, or acquiescing in the trading of Shares of Arbour to Alberta investors without being registered with the Executive Director;
- 20.2 Section 110 of the *Act*, by authorizing, permitting, or acquiescing in the distribution of Shares of Arbour to Alberta investors without filing with and receiving a receipt for a preliminary or final prospectus from the Executive Director, and without an appropriate exemption;
- 20.3 Subsection 92(4.1) of the *Act*, by permitting Arbour to make statements that he knew or ought reasonably to have known were misleading or which failed to state a fact necessary to be stated in OM 2 and OM 3, and which would reasonably be expected to have a significant effect on the market price or value of the Arbour Shares; and
- 20.4 Subsection 93(b) of the *Act*, by indirectly participating in an act relating to the sale of Shares of Arbour, and the use of proceeds, which he ought to have known perpetrated a fraud on investors.

21 Wigmore further admits that authorizing, permitting or acquiescing in Arbour's failure to comply with the registration and prospectus requirements in the *Act*, authorizing, permitting or acquiescing in Arbour's distribution of OMs with misleading statements, and indirectly participating in a course of conduct which he ought to have known perpetrated a fraud on investors, all amounted to conduct that was contrary to the public interest.

Other Circumstances Relevant to Sanction

22 The sale of Shares by Arbour commenced several months before Wigmore became involved with Arbour, and following his arrival he did not have any direct role in sales to investors.

23 Wigmore states:

- 23.1 in his review of OM2 and OM3, he relied on a representation by Arbour's management that the two OMs had been drafted and vetted by an experienced securities lawyer;

- 23.2 he inquired of Arbour management about the completeness of OM2 and OM3 and was informed they were complete;
- 23.3 he did not have actual knowledge a fraud was being perpetrated on Arbour investors through the sale of Shares and use of proceeds, but he acknowledges he did not exercise sufficient diligence to determine all the circumstances of the investment;
- 23.4 he did not benefit financially from the funds raised through the admitted misconduct; and
- 23.5 he is retired, living primarily on pension income.

24 Wigmore has never been sanctioned by the Commission, and this Agreement has saved the Commission the time and expense associated with a contested hearing of the allegations against him.

Settlement Payments and Undertakings

25 Based on these facts and admissions, Wigmore undertakes to the Executive Director upon execution of this Agreement:

- 25.1 to pay to the Commission the amount of \$60,000 in settlement;
- 25.2 to pay to the Commission the amount of \$15,000 towards investigation costs;
- 25.3 to permanently cease trading in or purchasing securities and to permanently refrain from using any exemptions in the Alberta securities laws, except that Wigmore may trade in or purchase securities through a registrant (who has first been given a copy of this Agreement); and
- 25.4 to resign all positions as a director or officer of any issuer and to permanently refrain from becoming or acting as a director or officer, or both, of any issuer.

Administration

26 Wigmore acknowledges that he has sought independent legal advice and that he has voluntarily made the admissions herein.

27 Wigmore waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

28 The Agreement resolves all issues involving Wigmore as described above and in the Amended Amended Amended Notice of Hearing issued May 27, 2009, and Staff will take no further steps against him arising from these facts or any other matters investigated by Staff as of the date of this Agreement.

29 The Agreement may be executed in counterpart.

Signed by ARTHUR WIGMORE at)
Vancouver, British Columbia, this 15th)
day of December 2009, in the presence)
of:)

Patrick Sullivan)

WITNESS NAME)

"original signed by")
SIGNATURE)

) "original signed by"
ARTHUR WIGMORE

) ALBERTA SECURITIES COMMISSION

Calgary, Alberta, December 31, 2009)

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) "original signed by"
) _____
) John P. Petch
) Director, Enforcement