



NO. S105835
VANCOUVER REGISTRY

BETWEEN:

RESCAN ENVIRONMENTAL SERVICES LTD.

PLAINTIFF

AND:

PACIFIC BOOKER MINERALS INC.

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: Pacific Booker Minerals Inc. ("PBM")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. Unless otherwise indicated, PBM adopts the defined terms in the Notice of Civil Claim.
2. The facts alleged in the following paragraphs or parts of paragraphs of Part 1 of the Notice of Civil Claim are admitted:
 - (a) paragraph 1;
 - (b) paragraph 2, except that the address for service for PBM in this action is 15th Floor, 1040 West Georgia Street, Vancouver, B.C., V6E 4H8, Attention: Karen Martin; and
 - (c) paragraphs 4 and 6.
3. The fact alleged in paragraph 3 of Part 1 of the Notice of Civil Claim is outside the knowledge of PBM.
4. Except to the extent they are specifically admitted herein, the facts alleged in paragraphs 5, and 7 to 14 of Part 1 of the Notice of Civil Claim are denied.

Division 2 – Defendant’s Version of Facts

BACKGROUND

1. At all material times, Rescan held itself out to be:
 - (a) a multi-disciplinary environmental and engineering consulting firm specializing in the mining industry;
 - (b) a recognized world leader in the environmental assessment and permitting process; and
 - (c) experienced with regard to the environmental assessment and permitting process in the British Columbia mining industry.

2. In specific answer to paragraph 5 of Part 1 of the Notice of Civil Claim, under the *Environmental Assessment Act*, S.B.C. 2002, c.43 (the “Act”), the Morrison Project was required to undergo an environmental assessment and obtain an Environmental Assessment Certificate from the Environmental Assessment Officer of the Government of the Province of British Columbia (the “EAO”) before PBM could proceed with its development.

THE PLAINTIFF’S OBLIGATIONS

3. It was an express or implied term of the Agreement that:
 - (a) Rescan would perform environmental studies and field investigations and prepare and submit reports to PBM with respect to assessment of environmental conditions to fulfill the requirements of the Act and secondary permits required for construction and operation of the Morrison Project (the “Services”);
 - (b) the Services included, but were not limited to:
 - (i) completion of environmental, socio-cultural and socio-economic baseline studies, analysis and reports (the “Baseline Studies”),
 - (ii) community consultations and meetings with regulatory officials,
 - (iii) preparation of an Environmental Assessment Certificate application (the “Application”), and
 - (iv) such other professional related services as may reasonably be required in connection with the Morrison Project and as may be within the general scope of the Services and within the Plaintiff’s experience and qualifications;

- (c) Rescan had the qualifications, experience and capabilities necessary to and would in fact carry out the Services in a timely and efficient manner;
- (d) Rescan, and specifically, Clem Pelletier, Chief Executive Officer and President of Rescan, and Rolf Schmitt, British Columbia Project Director of Rescan, would supervise, manage and provide the Services in a manner so as to ensure that the schedule for the Morrison Project ("**Project Schedule**") was adhered to and that the Morrison Project would be completed on time and on budget, and so as to ensure that any cost overruns or schedule slips would be communicated immediately to PBM;
- (e) Rescan would exercise all reasonable professional skill, care and diligence in the performance of the Services to the same extent as would a reasonable and prudent professional having the qualifications and experience of Rescan, and with regard to the magnitude of the Morrison Project and the extent and type of the Services (the "**Standard of Care**");
- (f) the estimated cost of the Services including professional fees and disbursements was \$1,071,479.00 before applicable taxes (the "**Cost Estimate**");
- (g) the Cost Estimate was a reasonable estimate prepared in accordance with the Standard of Care;
- (h) the Cost Estimate was subject to revision pending a full assessment of the status of certain elements of the past baseline evaluations and as a result of further directions from the EAO working groups, but in such an event, Rescan would advise PBM in writing of any proposed change to the scope of the Services so that PBM could decide whether to add to the scope of the Services;
- (i) if the amount of the Cost Estimate was not sufficient to complete the Morrison Project in a satisfactory manner, Rescan would advise PBM promptly;
- (j) PBM would pay Rescan only for services that were performed and expenses that were incurred in connection with the services that were reasonably necessary to perform the Services in a reasonably efficient manner and were in accordance with the Standard of Care;
- (k) Rescan would complete the Services expeditiously and by a mutually agreed delivery date ("**Delivery Date**"), subject to delay for reasons outside the control of Rescan;
- (l) if Rescan was unable to complete the Services or any phase thereof by the Delivery Date for any reason whatsoever, Rescan would promptly give advance written notice to PBM specifying the anticipated delay and reasons for the delay; and

- (m) all drawings, specifications, calculations, files, records and other documents prepared by or acquired by Rescan in connection with the Services (the "Project Documents") belonged to PBM at all times and Rescan would provide copies of those documents to PBM on request.

Performance of the Services

4. In or about May, 2006, Rescan and PBM agreed that the Delivery Date under the Agreement would be in the first quarter of 2007.
5. In specific answer to paragraph 9 of Part 1 of the Notice of Civil Claim, pursuant to the Agreement, the Plaintiff provided the Services from approximately May, 2006 to April, 2010 (the "Services Period").
6. From time to time during the Services Period, Rescan:
 - (a) revised the Cost Estimate, increasing the budget for the Services with each revision; and
 - (b) revised the Project Schedule, extending the Delivery Date with each revision.
7. At all material times, Rescan knew or should have known that the Application was required to be prepared in accordance with the information requirements of the Morrison Project Terms of Reference dated May 21, 2009 approved by the EAO (the "TOR").
8. Rescan prepared the Application and submitted it to the EAO for screening on September 28, 2009.
9. The Application was rejected by the EAO on October 27, 2009, on the basis of a large number of serious deficiencies (the "Deficiencies"), including that the Application was not in accordance with the information requirements of the TOR.
10. The Deficiencies are lengthy and are described in detail in the following documents issued by the EAO:
 - (a) Morrison Project Application, Screening Evaluation Table (short list) dated October 27, 2009; and
 - (b) Morrison Mine Reviewer's Comments on Application Screening and Table of Concordance (long list) dated November 2, 2009.
11. PBM requested, but did not receive a satisfactory proposal from Rescan to rectify the Deficiencies.

12. Commencing in or about February, 2010, at its own cost and with the aid of other consultants, PBM prepared an extensive addendum to the Application to rectify the Deficiencies, which it submitted to the EAO on May 25, 2010.

13. The Application received approval from the EAO to proceed to the Review Stage on or about July 12, 2010.

14. PBM requested Rescan to deliver the Project Documents to PBM on or about July 13, 2010, August 13, 2010, September 9, 2010 and September 12, 2010, but Rescan has refused.

The Plaintiff's Invoices

15. Rescan's total invoiced costs to date for the Services are \$5,512,488.43, inclusive of GST.

16. PBM has paid Rescan \$5,320,490.89 including GST for the Services.

17. PBM denies the amount of the Outstanding Invoices, or any amount, is due and owing to Rescan.

The Plaintiff's Breaches

18. Rescan breached the terms of the Agreement as particularized herein and issued invoices to PBM in respect of the Services for:

- (a) work that was not performed;
- (b) work that was performed that was not reasonably necessary;
- (c) work that was performed inefficiently;
- (d) work that was performed not in accordance with the Standard of Care;
- (e) work performed by persons not adequately qualified to do so;
- (f) work that was performed at rates charged that were not agreed to or appropriate for the experience level of the timekeeper; and
- (g) work that was performed by Rescan to correct errors and deficiencies in the Services, including such work for which Rescan expressly agreed not to charge PBM.

19. The particulars of Rescan's breaches of the Agreement include, but are not limited to:

- (a) failing to report to PBM in a timely and accurate way on progress in respect of the Delivery Date and the Cost Estimate, including in respect of any revised versions thereof;

- (b) failing to prepare the Cost Estimate and revisions thereto in accordance with the Standard of Care;
- (c) failing to prepare the Project Schedule and revisions thereto in accordance with the Standard of Care;
- (d) advising PBM of anticipated Delivery Dates that it knew or should have known were not accurate or achievable;
- (e) failing to carry out the Services expeditiously, in a timely and efficient way and in accordance with the Project Schedule as issued from time to time, resulting in the failure to meet the Delivery Date after adjustments for delay due to reasons outside the control of Rescan;
- (f) failing to use personnel that were adequately qualified to carry out the Services;
- (g) failing to supervise, manage and provide the Services in a manner so as to ensure that the Project Schedule was adhered to and that the Morrison Project was completed on budget and on time;
- (h) failing to consult appropriately with PBM during the performance of the Services resulting in the need to correct errors in Rescan's work;
- (i) failing to prepare the Application in accordance with the Standard of Care, including without limitation, that the Application contained the Deficiencies as described above; and
- (j) failing to deliver the Project Documents or copies thereof to PBM in response to PBM's requests.

20. Further or in the alternative PBM has suffered loss and damage as a consequence of Rescan's breaches of the Agreement and claims set off against any amount found to be owing pursuant to the Outstanding Invoices.

Division 3 – Additional Facts

1. The additional facts are incorporated in Division 2.

Part 2: RESPONSE TO RELIEF SOUGHT

1. PBM opposes the granting of the relief sought in paragraphs 1 to 6 of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. PBM denies it breached the Agreement. PBM has paid the Plaintiff all money owing under any contract.
2. The Plaintiff has breached the Agreement and issued invoices for fees and costs that are not due and owing under the Agreement.
3. In the alternative PBM claims set off against any amount found to be owing pursuant to the Outstanding Invoices.

COUNTERCLAIM

Filed by: Pacific Booker Minerals Inc.

To: Rescan Environmental Services Ltd.

This action has been brought by the plaintiff against the defendant for the relief set out in the notice of civil claim filed in this action.

TAKE NOTICE that the defendant PBM Minerals Inc. claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to counterclaim in Form 4 in the above-named registry of this court within the time for response to counterclaim described below and SERVE a copy of the filed response to counterclaim on the address for service of the defendant(s) bringing this counterclaim.

YOU OR YOUR LAWYER may file the response to counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to counterclaim within the time for response to counterclaim described below.

Time for response to counterclaim

A response to counterclaim must be filed and served on the defendant(s) bringing this counterclaim,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed counterclaim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed counterclaim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed counterclaim was served on you, or
- (d) if the time for response to counterclaim has been set by order of the court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. PBM repeats the allegations of fact contained in its Response to Civil Claim.
2. Unless otherwise indicated, the defined terms herein are as defined in the Notice of Civil Claim and the Response to Civil Claim.
3. At all material times, PBM relied on Rescan's knowledge, skill, experience, and judgment.
4. At all material times, Rescan owed a duty of care to PBM to exercise the Standard of Care.
5. Further, or in the alternative, Rescan breached the duty of care it owed to PBM, the particulars of which include, but are not limited to:
 - (a) failing to report to PBM in a timely and accurate way on progress in respect of the Delivery Date and the Cost Estimate, including in respect of any revised versions thereof;
 - (b) failing to prepare the Cost Estimate and revisions thereto in accordance with the Standard of Care;
 - (c) failing to prepare the Project Schedule and revisions thereto in accordance with the Standard of Care;
 - (d) advising PBM of anticipated Delivery Dates that it knew or should have known were not accurate or achievable;
 - (e) failing to carry out the Services expeditiously, in a timely and efficient way and in accordance with the Project Schedule as issued from time to time, resulting in the failure to

meet the Delivery Date after adjustments for delay due to reasons outside the control of Rescan;

- (f) failing to use personnel that were adequately qualified to carry out the Services;
- (g) failing to supervise, manage and provide the Services in a manner so as to ensure that the Project Schedule was adhered to and that the Morrison Project was completed on budget and on time;
- (h) failing to consult appropriately with PBM during the performance of the Services resulting in the need to correct errors in Rescan's work;
- (i) failing to prepare the Application in accordance with the Standard of Care, including without limitation, that the Application contained the Deficiencies as described in the Response to Civil Claim; and
- (j) failing to deliver the Project Documents or copies thereof to PBM in response to PBM's requests.

6. From time to time throughout the Services Period, Rescan, in particular Clem Pelletier and Rolf Schmitt, represented orally and in writing, in project meetings, in written progress reports and in correspondence, to PBM that Rescan would complete certain portions of the Services by specified dates and/or within specified budgeted amounts (the "Rescan Representations").

7. The Rescan Representations were false, inaccurate or misleading.

8. At all material times, Rescan knew or should have known that PBM would rely on the Rescan Representations in making decisions with respect to the Morrison Project.

9. Rescan knew or should have known that the Rescan Representations were false, inaccurate or misleading.

10. PBM reasonably relied on the Rescan Representations in making decisions with respect to the Morrison Project.

11. As a result of Rescan's breach of the Agreement and/or in the alternative, breach of its duty of care owed to PBM, and/or in the alternative, PBM's reliance on the Rescan Representations, PBM suffered damage, loss and expense, including but not limited to:

- (a) fees and costs paid by PBM to Rescan in excess of the amount properly due and owing to Rescan in accordance with the terms of the Agreement and the Standard of Care;

- (b) costs incurred by PBM, estimated at approximately \$1.62 million to date, including consultant fees, to prepare an addendum to the Application to rectify the Deficiencies; and
- (c) damages for the delayed submission of the Application, including
 - (i) loss of revenue, and
 - (ii) loss of reputation.

12. The fees and costs paid by PBM to Rescan for the Services to date include payment for the Project Documents.

13. PBM relies on Rule 10-1 and 10-4 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

Part 2: RELIEF SOUGHT

1. PBM claims:

- (a) general damages;
- (b) special damages;
- (c) an order declaring that:
 - (i) the Project Documents belong to PBM, and
 - (ii) Rescan must deliver the Project Documents to PBM forthwith;
- (d) interest;
- (e) costs; and
- (f) such further and other relief as this Honourable Court deems meet and just.

Part 3: LEGAL BASIS

1. Rescan breached the terms of the Agreement.
2. Further, or in the alternative, Rescan breached the duty of care it owed to PBM.
3. Further, or in the alternative, Rescan made negligent representations to PBM.
4. As a result of the breach of contract, breach of the duty of care of Rescan, and PBM's reliance on the Rescan Representations, PBM suffered damages.

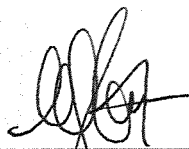
5. PBM is entitled to the Project Documents pursuant to the Agreement.

Defendant's address for service: Fraser Milner Casgrain LLP
15th Floor, 1040 West Georgia Street
Vancouver, BC V6E 1K6
Attn: Karen Martin

Fax number address for service (if any): 604-683-5214

E-mail address for service (if any): karen.martin@fmc-law.com

Date: September 24, 2010


for _____
Karen Martin, Counsel for Pacific
Booker Minerals Inc.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a List of Documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.