

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

DAVID BENADIVA, [REDACTED]
[REDACTED]

Petitioner

vs.

PENN WEST PETROLEUM LTD., a legal
person duly constituted, with its principal
establishment located at [REDACTED]
[REDACTED];

and

DAVID E. ROBERTS, [REDACTED]
[REDACTED]

and

MURRAY R. NUNNS, residing at [REDACTED]
[REDACTED]

and

TODD H. TAKEYASU, residing at [REDACTED]
[REDACTED]

and

FRANK POTTER, residing at [REDACTED]
[REDACTED]

and

JAMES C. SMITH, [REDACTED]
[REDACTED]

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE
THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following and s.225.4 and following of the Quebec
Securities Act ("QSA"))**

**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUÉBEC, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONER
STATES THE FOLLOWING:**

GENERAL PRESENTATION:

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

"All persons and entities resident in Quebec who purchased Penn West securities between March 17th 2011 and July 29th, 2014 (the "Class Period") and continued to hold some or all securities at the close of trading on July 29th, 2014";

(hereinafter referred to as the "Class", "Group Members" or the "Group");

THE PARTIES

2. Petitioner David Benadiva is an individual residing in Montreal. He acquired shares of Penn West during the class period and continued to some or all securities at the close of trading on July 29th, 2014;
3. Respondent Penn West Petroleum Ltd ("Penn West"), one of the largest oil and

natural gas producers in Canada, is a corporation incorporated under the laws of Alberta and headquartered in Calgary Alberta;

4. Penn West, a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland, has shares trading on the Toronto Stock Exchange ("TSX"), under the ticker symbol "PWT" and on the New York Stock Exchange ("NYSE") under the ticker symbol "PWE";
5. Respondent David E. Roberts has been the President and Chief Executive Officer of Penn West and a member of its Board of Directors since June 19th, 2013;
6. Respondent Murray R. Nunns was the President of Penn West from February 8, 2008 until June 19th, 2013, the Chief Executive Officer of Penn West from August 9, 2011 to June 19th, 2013, and the Chief Operating Officer of Penn West from February 8, 2008 to August 9th, 2011;
7. Respondent Todd H. Takeyasu was the Executive Vice President and Chief Financial Officer of Penn West from February 8, 2008 to March 24, 2014;
8. Respondent James C. Smith was a member of Penn West's Board of Directors and the Chairman of Penn West's Audit Committee at all material times;
9. Respondent Frank Potter was a member of Penn West's Board of Directors and a member of Penn West's Audit Committee until June 4, 2014;

OVERVIEW

10. Penn West is one of Canada's largest oil and gas companies with a market capitalization of approximately \$4.2 billion as at July 2014;

11. Over the past number of years, Penn West has underperformed in relation to its competitors. In mid-2013, Penn West undertook a campaign to restructure the company in order to boost share prices. It replaced its Chief Executive Officer, cut staff and sold off properties with the view to cutting expenses and increasing revenues. However, Penn West's problems were more serious than it had disclosed;
12. On July 29th, 2014, after trading on the TSX and the NYSE closed, Penn West issued a press release titled "*Penn West Announces Management-Initiated Review of Accounting Practices and Decision to Restate Certain Historical Financial Statements*", the whole as more fully appears in a copy of the press release, communicated herewith as **exhibit P-1**;
13. The press release informed the public for the first time that Penn West was conducting an internal review of its accounting practices and that historical financial statements, from 2012 to 2014, and possibly earlier, would need to be restated;
14. Penn West has been improperly recording operating expenses as capital expenditures and royalty expenses;
15. The press release had a dramatic and immediate impact on the value of Penn West securities;
16. The price of Penn West's shares trading on the TSX dropped from a closing price of \$9.94 on July 29th, 2014, to a closing price of \$8.57 on July 30th, 2014. The price of Penn West's shares continued to drop over the 10 next trading days, falling to \$8.09 on August 13th, 2014;
17. The price of Penn West shares trading on the NYSE dropped from a closing price of US\$9.15 on July 29th, 2014, to a closing price of US\$7.85 on July 30th, 2014. The price of Penn West's shares continued to drop over the 10 next

trading days, falling to US\$7.37 on August 12th, 2014;

18. On September 18, 2014, Penn West announced the results of the voluntary internal review of certain accounting practise, the whole as more fully appears in a copy of the Material Change Report (Form51-102F3), communicated herewith as **exhibit P-2**;
19. The Audit committee provided the following details of accounting practices that were reviewed:

a) Reclassification of Operating Expenses and Property, Plant, and Equipment:

Certain operating expenses were incorrectly recorded as Property, Plant and Equipment which required reversing the capitalization of operating expenses. As a result of these adjustments, depletion and depreciation expense, impairment charges, gains (losses) on dispositions and deferred income tax expense (recovery) have also been restated in Q1 2014, 2013 and 2012.

The net impact of reversing these reclassifications increase operating expenses and decreases property, plant and equipment by the following amounts:

2012: \$66 Million

2013: \$71 Million

Q1 2014: \$9 Million

b) Reclassification of Operating Expenses to Royalties:

Penn West incorrectly reclassified a portion of operating expenses as royalties in the consolidated statement of income (loss), which reduced reported operating expenses.

The impact of reversing these reclassifications increases operating expenses and decreases royalties by the following amounts:

2012: \$101 Million

2013: \$101 Million

Q1 2014: \$19 Million

c) Capital Expenditure Over-Accruals:

Penn West accrued its capital expenditures in excess of the amounts expended in the relevant years. Unused accruals should have been reversed to zero at year end but were carried over the year-end instead. This occurred from 2012 into 2013 and from 2013 into 2014.

In addition, on December 31, 2013, the accrual of capital expenditures was increased by \$20 million with insufficient support. The effect of these Over-accruals of capital expenditures was the overstatement of property, plant and equipment in 2013 and Q1 2014 by \$56 million.

d) Revenue and Volume Reporting:

The review identified certain oil and natural gas sales and associated volumes related primarily to closing adjustments on asset divestments and equalizations adjustments that were not recorded in the quarter they were realized.

The impact of revenue and volume accrual (no material impact on volumes or dollars):

2013: \$2 million and approximately 190 boe per day on an annual basis

Q1 2014: \$0.1 million and approximately 670 boe per day on a quarterly

basis.

20. The following documents required restatement:
- a) Audited consolidated financial statements for the fiscal year ended December 31, 2103;
 - b) MD&A for fiscal year 2013
 - c) Revised annual information from for fiscal 2013
 - d) Unaudited interim consolidated financial statements for the first quarter of fiscal 2014
 - e) MD&A for the first quarter of fiscal 2014
 - f) Executed certifications of the Chief Executive Officer and Chief Financial Officer
21. The review also identified several material weaknesses and a significant deficiency in Penn West's internal control over financial reporting and control systems;

PENN WEST'S CONTINUOUS DISCLOSURE OBLIGATIONS

22. As a reporting issuer in Quebec, Penn West is required to provide periodic disclosures about its business and internal affairs;
23. Respondents issued documents referenced herein pursuant to their statutory obligation to do so, and also for the specific purpose of attracting investment in Penn West securities, and in order to induce members of the public to purchase those securities;

MISREPRESENTATIONS

24. Petitioner pleads the claim found in Title VIII, Chapter II, Division II of the Securities Act against each of the Respondents;

25. During the Class Period, Respondents filed annual and quarterly MD&As, financial statements, Annual Information Forms, Certification of CEO, and Certification of CFO ("Impugned Documents") which contained representations that the documents fairly presented the financial condition of Penn West, including its adherence to Generally Accepted Accounting Principles ("GAAP") and/or International Financial Reporting Standards ("IFRS");
26. The information contained in the Impugned Documents misrepresented the financial condition of Penn West. More specifically with respect to, *inter alia*, its operating costs, capital expenditures, royalty expenses, assets, and earnings, the whole as particularized above;
27. The Impugned documents contained inaccurate, false, and misleading financial entries that did not adhere to GAAP and/or IFRS;
28. In addition, numerous press releases issued by Penn West during the Class Period contained the misrepresentations regarding the financial condition of Penn West;
29. Respondents owed a duty to the Petitioner and Group Members at law and under provisions of the Securities Act, to disseminate promptly, or to ensure that prompt dissemination of truthful, complete and accurate statements regarding Penn West's business and affairs, and promptly to correct previously-issued, materially inaccurate information, so that the price of Penn West's publicly-traded securities was based on complete, accurate and truthful information;
30. At all material times, each of the Respondents knew or ought reasonably to have known that the trading price of Penn West's publicly-traded securities was

directly influenced by the statements disseminated by the Respondents concerning the business and affairs of Penn West;

31. Respondents knew or ought reasonably to have known that a failure to ensure that Penn West's disclosures were materially accurate and materially complete would cause Penn West's securities to become inflated, and thus would cause damage to persons who invested in Penn West's securities while their price remained inflated by such false statements;
32. Petitioner also pleads the claim found in Title VIII, Chapter II, Division II of the Securities Act against Respondents;
33. On or about November 30, 2011 Penn West issued debt securities in the form of senior unsecured notes, from which it raised amounts of US\$105 million and \$30 million;
34. Respondents issued or caused to be issued the Offering Memorandum while, as particularized above, it contained misrepresentations;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

35. Petitioner, David Benadiva, is a resident of Quebec, who purchased Penn West securities during the Class Period and continued to hold some Penn West shares after trading closed on July 29th, 2014, the whole as more fully appears from a copy of his TD Waterhouse account statements, communicated herewith as **exhibit P-3**;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

36. Each Member of the Group purchased or otherwise acquired Penn West securities during the Class Period. Thus, each Group Member have common claims that are founded on the same underlying facts as the Petitioner's as they pertain to the acts and omissions of the Respondents;
37. Each Member of the Group suffered damages directly related to the acts and omissions of Respondents;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

38. The composition of the Group makes the application of Articles 59 or 67 C.C.P. impracticable for the following reasons:
 - a) The number of persons included in the group is unknown to Petitioner at the time, but is estimated to be several hundred;
 - b) The Petitioner does not possess the names and addresses of potential Group Members (but are likely known to Respondents);
 - c) In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Respondents. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the judicial system;

39. The recourses of the Group Members raise identical, similar, or related questions of fact or law, namely:
- a) Did the Respondents' acts or omissions violate the Securities Act;
 - b) Did the Respondents make materially untrue and/or misleading statements/omissions during the Class Period;
 - c) Did the Respondents' misrepresentation cause the share price of Penn West's securities to be artificially inflated during the Class Period;
 - d) Did the Respondents therefore commit a fault towards the Petitioner and the Group Members, thereby engaging their liability; and
 - e) What damage was sustained by the Petitioner and the Group Members as a result of the Respondents' faults;
 - f) Are the Respondents jointly and severally liable for the damages sustained by the Petitioner and the Group Members;
40. The interests of justice favour that this motion be granted in accordance with its Conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

41. The action that the Petitioner wishes to institute for the benefit of the Group Members is an action in damages;
42. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are for the Court to:

GRANT the Petitioners' action against the Respondents;

DECLARE that the Respondents made misrepresentations negligently

during the Class Period;

DECLARE that Penn West is vicariously liable for the acts and/or omissions of the individual Respondents;

CONDEMN the Respondents to pay an amount in compensatory damages to every Group Member, in an amount to be determined by the Court, plus interest as well the additional indemnity;

ORDER the treatment of individual claims of each Group Member in accordance with Articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members;

44. Petitioner suggest that this class action be exercised before the Superior Court in the District of Montréal for the following reasons:
- a) The Petitioner resides in the District of Montréal;
 - b) Many Group Members are domiciled or work in the District of Montréal;
 - c) The Petitioners' legal counsel practise law in the District of Montréal;
45. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the Group since the Petitioner:

- a) purchased or otherwise acquired Penn West shares during the class period and continued to hold some shares at the close of trading on July 29th, 2014;
- b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Group members;
- c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with class attorneys in this regard;
- d) is ready and available to manage and direct the present action in the interest of the group members that the Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Group;
- e) does not have interests that are antagonistic or in conflict to those of other group members;
- f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Group Members and to keep them informed;

46. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute

proceedings in damages;

ASCRIBE the Petitioners the status of representative of the persons included in the Group herein described as:

“All persons and entities resident in Quebec who purchased Penn West securities between March 17th 2011 and July 29th, 2014 (the “Class Period”) and continued to hold some or all securities at the close of trading on July 29th, 2014”;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondents’ acts or omissions violate the Securities Act;
- b) Did the Respondents make materially untrue and/or misleading statements/omissions during the Class Period;
- c) Did the Respondents’ misrepresentation cause the share price of Penn West’s securities to be artificially inflated during the Class Period;
- d) Did the Respondents therefore commit a fault towards the Petitioner and the Group Members, thereby engaging their liability; and
- e) What damage was sustained by the Petitioner and the Group Members as a result of the Respondents’ faults;
- f) Are the Respondents jointly and severally liable for the damages sustained by the Petitioner and the Group Members;

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Petitioners’ action against the Respondents;

DECLARE that the Respondents made misrepresentations negligently during the Class Period;

DECLARE that Penn West is vicariously liable for the acts and/or omissions of the individual Respondents;

CONDEMN the Respondents to pay an amount in compensatory damages to every Group Member, in an amount to be determined by the Court, plus interest as well the additional indemnity;

ORDER the treatment of individual claims of each Group Member in accordance with Articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members;

DECLARE that all Group Members that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of publication of the notice to the Group Members;

ORDER the publication of a notice to the Group Members in accordance with article 1006 C.C.P.;

THE WHOLE with costs, including all publication fees.

MONTREAL, OCTOBER 8, 2014

(s) Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for the Petitioner