

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 10-cv-00408-WJM-MJW

MAKE A DIFFERENCE FOUNDATION, INC., a Mississippi corporation,
Plaintiff,

v.

CHRISTOPHER H. HOPKINS
T. MURRAY WILSON
RONALD BLAKELY
PAUL CHING
BRIAN MACNEILL
RONALD PHILLIPS
JOHN READ
GORDAN TALLMAN
PAMELA WALLIN
THOMAS MILNE
W. SCOTT THOMPSON

Defendants,

and

OILSANDS QUEST INC., a Colorado corporation,

Nominal Defendant.

**SECOND AMENDED STIPULATION AND AGREEMENT OF SETTLEMENT AND
RELEASE**

This Second Amended Stipulation and Agreement of Settlement and Release (“Agreement”) is entered into effective as of the date set forth below by and among: (1) Make A Difference Foundation, Inc. (“Plaintiff”), and derivatively on behalf of Nominal Defendant Oilsands Quest Inc. (“Oilsands”); (2) Defendant Christopher Hopkins (“Hopkins”); (3) Defendants Ronald Blakely, Paul Ching, Brian MacNeill, Ronald Phillips, John Read, Gordan Tallman, Pamela Wallin and T. Murray Wilson (collectively, the “Blakely Defendants”);

(4) Defendants Thomas Milne and W. Scott Thompson (“Thompson/Milne”) (Hopkins, the Blakely Defendants and Thompson/Milne are referred to, collectively, as the “Defendants”); and (5) Oilsands. (In this Agreement, all of the Plaintiff, Defendants and Oilsands are referred to, collectively, as the “Parties.”)

Recitals

WHEREAS, on or about February 24, 2010, Make a Difference Foundation, Inc. (“Plaintiff”) filed a Complaint and later filed an Amended Complaint and a Second Amended Complaint (collectively, the “Complaint”) in the lawsuit captioned *Make a Difference Foundation, Inc. v. Hopkins, et al.*, Case No. 1:10-cv-00408-WYD-MJW (D. Colo.) (“Action”) and asserted derivative claims against Defendants for breach of fiduciary duty, waste and unjust enrichment (hereinafter, “Plaintiff’s Claims”) arising out of: (a) the conditional sale (“Conditional Sale”) of permits to explore the Pasquia Hills region of Saskatchewan, Canada (“Permits”) to Canshale, Corp. (“Canshale”), a company created by the Company’s then-CEO Hopkins (hereinafter, the “Canshale Transaction”), (b) the loan from Oilsands to Canshale (the “Canshale Loan”), (c) the consideration paid to Hopkins when Hopkins resigned as an officer of Oilsands (the “Hopkins Resignation”), (d) the consideration paid to Thompson/Milne when Thompson/Milne resigned as directors of Oilsands (the “Thompson/Milne Resignations”), and (e) other matters alleged in the Complaint (“Other Matters”) (collectively, the Conditional Sale, the Permits, the Canshale Transaction, the Canshale Loan, Hopkins’ Resignation, the Thompson/Milne Resignations or the Other Matters are referred to as “Plaintiff’s Allegations”); and

WHEREAS, Oilsands announced that the Canshale Transaction was cancelled on or about August 13, 2010;

WHEREAS, in the Complaint, Plaintiff alleges that Oilsands suffered injury as a result of Plaintiff's Allegations;

WHEREAS, Defendants and Nominal Defendant Oilsands moved to dismiss the Complaint on November 15, 2010 ("Motion to Dismiss"), which remains pending before the Court;

WHEREAS, Plaintiff believes that a settlement at this juncture on the terms and on the conditions set forth herein is desirable and in the best interests of Oilsands and its shareholders, considering the benefits conferred upon Oilsands by the settlement, the anticipated significant expense of continued litigation (including to Oilsands), and the risks of continued litigation;

WHEREAS, Plaintiff believes that the corporate governance reforms set forth in Section I below will prevent or deter potential future breaches of fiduciary duty similar to those alleged in the Complaint;

WHEREAS, Defendants, while denying wrongdoing, believe that a settlement at this juncture on the terms and conditions set forth herein is desirable, considering the anticipated significant expense and the risks of continued litigation; and

WHEREAS, Oilsands believes that a settlement at this juncture on the terms and conditions set forth herein is desirable and is in the best interests of Oilsands.

NOW, THEREFORE, in consideration of the foregoing matters and other considerations, the Parties have entered into and agreed to this Agreement this 28th day of October, 2011 ("the Settlement Date"), consisting of the following agreed terms and conditions:

I. CORPORATE GOVERNANCE REFORMS

1.1 In consideration of the dismissal of this Action with prejudice, the releases between the Parties and other terms contained in this Agreement, Defendants have amended the Oilsands' Related Person Transaction Policy to (1) require that the Company disclose loans

made to officers and directors of the Company in a manner consistent with Federal Securities and Colorado State Law and (2) require approval of any related party transaction involving a “material asset” – defined as constituting over 5% of the Company’s total assets – by a Special Committee. A redline version of Oilsands’ Related Person Transaction Policy that, *inter alia*, details the power and responsibilities of the Special Committee, is attached hereto as Exhibit A.

II. RELEASES

In consideration of the releases, promises and covenants contained herein and other good and valuable consideration, the sufficiency and receipt of which the Parties hereby acknowledge, the Parties agree as follows:

2.1 Plaintiff’s Releases. Upon the Effective Date (defined in Section III below), Plaintiff, for itself and derivatively on behalf of Oilsands, and for its heirs, successors, representatives, assigns and beneficiaries (collectively “Plaintiff Releasing Parties”), release and forever discharge each of the Defendants and Oilsands and all of their past, present and future officers, directors, shareholders, members, partners, managers, employees, agents, attorneys, insurers and their heirs, successors, predecessors, and assigns (collectively, “Defendant Released Parties”) from, and hereby covenant not to sue Defendant Released Parties for, any and all claims, derivative actions of any kind, demands, causes of action, obligations, liens, losses, damages, expenses and/or attorney fees, whether now known or unknown, that Plaintiff Releasing Parties, or any of them, have now or may hereafter have against any of the Defendant Released Parties based upon any act or omission that occurred before the final approval of this Agreement by the Court and that relates to, arises out of, or concerns the Plaintiff’s Claims or Plaintiff’s Allegations. It is possible that other injuries, damages, losses, or future consequences or results not now known based upon any act or omission that occurred before the final approval of this Agreement by the Court will develop or be discovered. This release, and the compromise

upon which it is based, is expressly intended to cover and include, and does cover and include, a release by Plaintiff Releasing Parties of all such future injuries, damages, losses, or future consequences or results not now known based upon any act or omission that relates to, arises out of, or concerns the Plaintiff's Claims or Plaintiff's Allegations. Plaintiff Releasing Parties understand and agree they are giving up any right they may have to bring any legal, equitable or derivative claim against the Defendant Released Parties based upon any act or omission that occurred before the final approval of this Agreement by the Court and that relates to, arises out of, or concerns the Plaintiff's Claims or Plaintiff's Allegations, except for claims based on breach of this Agreement. Specifically excluded from this release are any and all claims or causes of action which will be or have been brought and any and all plaintiffs and putative or other class member of the class described in or to be described in any compliant or future amended complaint in the case captioned *St. Lucie County Firefighters pension Trust Fund, et al. v. Oilsands Quest, et al.*, Case No. 1288 (JSR) (S.D.N.Y.), unless such claims or causes of action relate to, arise out of, or concerns the Plaintiff's Claims. Also excluded from this release are any and all claims or causes of action which will be or have been brought in the case captioned *Peggy Proctor*, derivatively on behalf of Nominal Defendant, *Oilsands Quest, Inc. v. T. Murray Wilson, et al.*, Case No. 2011CV2769 (Denver District Court), unless such claims or causes of action relate to, arise out of, or concerns the Plaintiff's Allegations.

2.2 Oilsands' Releases. Upon the Effective Date (defined in Section III below), Oilsands, on behalf of itself and its shareholders and its successors and assigns (collectively, "Oilsands Releasing Parties"), release and forever discharge each of the Defendant Released Parties from, and hereby covenant not to sue Defendant Released Parties for, any and all claims, derivative actions of any kind, demands, causes of action, obligations, liens, losses, damages,

expenses and/or attorney fees, whether now known or unknown, based upon any act or omission that occurred before the final approval of this Agreement by the Court and that relates to, arises out of, or concerns the Plaintiff's Claims or Plaintiff's Allegations. It is possible that other injuries, damages, losses, or future consequences or results not now known based upon any act or omission that occurred before the final approval of this Agreement by the Court will develop or be discovered. This release, and the compromise upon which it is based, is expressly intended to cover and include, and does cover and include, a release by the Oilsands Releasing Parties of all such future injuries, damages, losses, or future consequences or results not now known based upon any act or omission that relates to, arises out of, or concerns the Plaintiff's Claims or Plaintiff's Allegations. The Oilsands Releasing Parties understand and agree they are giving up any right they may have to bring any legal, equitable or derivative claim against the Defendant Released Parties based upon any act or omission that occurred before the final approval of this Agreement by the Court and that relates to, arises out of, or concerns the Plaintiff's Claims or Plaintiff's Allegations, except for claims based on breach of this Agreement.

2.3 Releases by the Defendant Released Parties. Upon the Effective Date, each of the Defendant Released Parties shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged Plaintiff and Plaintiff's Counsel from all claims, arising out of, relating to, or in connection with their institution, prosecution, assertion, settlement or resolution of the Complaint, the Plaintiff's Claims and Plaintiff's Allegations.

2.4 The Parties and each of them, further covenant and agree that they will not take any action, nor assert any claim, complaint, debt, damage, lien, cause of action, warranty, suit, liability, obligation or demand, whether in law or in equity, contract or tort, judicially or

administratively, against any other Party, or any of their shareholders, owners, members, managers, directors, officers, agents, partners, employees, successors, assigns, parents, subsidiaries, affiliates or representatives, arising from, or in any way relating to, any act or omission that occurred before the final approval of this Agreement by the Court and that relates to, arises out of, or concerns the Plaintiff's Claims or Plaintiff's Allegations.

2.5 Dismissal of Claims. If and when a final Order or Judgment approving this Agreement is entered by the Court and the Fee Award (described in Paragraph 4.2 below) is deposited by the Defendants and Oilsands in the Trust Account of Don Barrett, P.A., account number 6020026636 at BankPlus, an FDIC insured National bank in Lexington, Mississippi, the Parties agree the Court shall dismiss with prejudice the Action, including all claims asserted therein, and with all Parties to pay their own costs and attorneys' fees, other than as set forth herein.

III. CONDITIONS AND EFFECTIVE DATE

3.1 The Effective Date of this Agreement shall be deemed to occur when each and every one of the following conditions shall have occurred:

(a) The Court has approved in all material respects the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, and Settlement Hearing ("Notice") attached as Exhibit B to this Agreement; the Summary Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, and Settlement Hearing ("Summary Notice") attached as Exhibit C to this Agreement; the manner of providing of the Notice by Oilsands to its shareholders of record and the manner of publication by Oilsands of the Summary Notice as described in Paragraph 4.1 below;

(b) The Court has granted final approval to the Agreement and entered a Final Order and Judgment, in all material respects identical to that attached as Exhibit D hereto; and

(c) The times to appeal from the Final Order and Judgment have elapsed with no appeal being filed, or, alternatively, if any appeal(s) are taken the underlying orders are affirmed in their entirety in all material respects and are no longer subject to any further appeals or requests for rehearing.

3.2 The Parties agree, and agree to cause their respective counsel, to (i) use their best efforts to effectuate the terms and conditions of the Agreement in an expeditious a manner as possible; (ii) cooperate in preparing any and all necessary papers to pursue and effectuate the terms and conditions of the Agreement; and (iii) cooperate with one another in seeking the necessary approvals and orders to effectuate the conditions described in Sections 4.1(a) – (c) above.

3.3 Should any of the foregoing conditions fail to occur, including if the Court should decline to grant a requested approval, or if any of the conditions set forth in sections 3.1(a) through (c) above have failed to occur by the date of the final Settlement Hearing, this Agreement shall terminate, and, with the exception of this Section III and Section 5.1, be null and void and of no force and effect for all purposes, and all negotiations, transactions, and proceedings connected with the Agreement shall be without prejudice to the rights of any party in the Action, who shall be restored to their respective positions immediately prior to the execution of the Agreement.

IV. NOTICE; ATTORNEYS' FEES AND EXPENSES

4.1 Notice of the terms set forth in the Agreement shall be provided to current record holders and beneficial owners of common stock of Oilsands pursuant to Order of the Court as follows:

(a) Broadridge Consulting, as agent for Plaintiff's attorneys, shall mail the Notice (Exhibit B) to the current record holders and beneficial owners of common stock of Oilsands as of the date Ordered by the Court;

(b) Oilsands shall cause the newswire services PR Newswire and CNW Group to issue the Summary Notice once to the public in both the United States and Canada;

(c) Until after the Court approves the Final Order and Judgment (Exhibit D), Oilsands' website (www.oilsandsquest.com) will provide access to the content of the Notice (Exhibit B). The homepage of the Oilsands website will contain a statement or heading identifying the settlement, along with a hyperlink that brings users directly to a web page containing the content of the Notice;

(d) The Fleischman Law Firm, 565 Fifth Avenue, Seventh Floor New York, NY 10017 will provide the Notice in response to written requests for the Notice by interested persons.

4.2 Oilsands shall bear the cost of mailing the Summary Notice as described in 4.1(a) above up to \$28,000, and any costs beyond that amount shall be borne by Plaintiff's counsel. Oilsands shall bear the cost of the notice set forth in paragraphs 4.1(b) & (c) above. Plaintiff's attorneys shall bear the cost of providing notice as described in paragraph 4.1(d) above. None of the other Defendants shall be responsible for any costs associated with the notice of this Agreement.

4.3 In light of benefits claimed to have been produced for Oilsands by Plaintiff's attorneys in connection with this Agreement and the litigation leading up to it, Plaintiff and Plaintiff's Counsel intend to seek an aggregate award from the Court, to be paid solely by Oilsands, of \$250,000 as compensation for attorneys' fees and expenses, subject to Court approval ("Fee Award"). Plaintiff and Plaintiff's Counsel agree not to request that any greater aggregate amount be awarded to Plaintiff's Counsel by the Court, agree not to seek payment of attorneys' fees and expenses from any person or entity other than Oilsands, and agree that no other or greater payments or awards shall be requested from the Court. The Parties agree that any Court order requiring payments or providing awards of fees and expenses that is not consistent with the agreed limitations provided within the first two sentences of this Section 4.2 shall be deemed an unagreed material alteration of the terms of this Agreement and a failure to grant the approvals required by Section 3.1(b) hereof. Oilsands and Defendants agree not to object to the amount of the \$250,000 requested fee award.

4.4 Within 10 calendar days of the Final Order and Judgment becoming final and non-appealable, Oilsands shall cause the amount of the fee awarded by the Court to be deposited to the following Escrow Account: Trust Account of Don Barrett, P.A., account number 6020026636 at BankPlus, and FDIC insured National bank in Lexington, Mississippi.

V. MISCELLANEOUS

5.1 No Admission of Liability. It is expressly understood and agreed that the Parties and all other releasing parties do not admit any liability or wrongdoing arising out of the incidents underlying this Action, but rather, they expressly deny and contest any such liability or wrongdoing. Furthermore, this Agreement was entered into in compromise of disputed claims, solely for the purpose of avoiding the costs, expenses, and uncertainties associated with future

litigation, and this Agreement shall not be construed as an admission of liability or wrongdoing on the part of any person.

5.2 Severability. The failure by any particular Defendant or Oilsands to comply with any term of this Agreement or the Court Order approving this Agreement shall not give rise to a claim against any other Defendants or Parties who have complied. Nor shall the failure by any Defendant or Oilsands to comply with any term of this Agreement or the Court Order approving this Agreement affect the releases of other Defendants or Parties who have complied.

5.3 Advice of Counsel. Each party hereto received independent legal advice from attorneys of his, her or its choosing with respect to the advisability of entering this Agreement, the releases provided for in this Agreement and with respect to the terms and conditions of this Agreement. This Agreement has been negotiated by the Parties and counsel. It is not to be construed against any party as the drafting party.

5.4 Entire Agreement. This Agreement in the form as finally approved by the Court embodies the entire agreement of the Parties. There are no further or other promises, agreements, understandings, terms, conditions or obligations other than those contained herein. This Agreement supersedes all previous communications, representations or agreements, either verbal or written, between the Parties or their attorneys.

5.5 No Rights of Subrogation. Plaintiff represents and warrants that no person, entity, firm, corporation, or insurance company, has received any rights of subrogation, or substitution to the claims made, or which could have been asserted by Plaintiff in the Action, and that there are no liens – voluntary, involuntary, statutory, or otherwise – relating to the Plaintiff's Claims in the Action, or this Agreement. Defendants and Oilsands represent and warrant that no person, entity, firm, corporation, or insurance company, has received any rights of subrogation, or

substitution to the claims, if any, which could have been asserted by Defendants and/or Oilsands in the Action, and that there are no liens – voluntary, involuntary, statutory, or otherwise – relating to such claims or this Agreement.

5.6 No transfer or Assignment of Claims. Plaintiff represents and warrants it has not assigned, transferred or conveyed, nor purported to assign, transfer or convey to any person, entity, firm, corporation, or insurance company, any rights, claims, or causes of action (or any portion thereof) they may have, or have had, against any or all of the Defendants, with respect to the Plaintiff's Claims in the Action or any matters described in the Action. The Defendants and Oilsands represent and warrant they have not assigned, transferred or conveyed, nor purported to assign, transfer or convey to any person, entity, firm, corporation, or insurance company, any rights, claims, or causes of action (or any portion thereof) they may have, or have had, against the Plaintiff, with respect to the claims, if any, which could have been asserted by Defendants and/or Oilsands in the Action.

5.7 Further Cooperation: The Parties agree to cooperate fully and execute any and all supplementary documents that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

5.8 Authority to Execute. The individuals executing this Agreement on behalf of the Parties represent and warrant that they have the authority to act on behalf of their principal and execute this document on their principal's behalf.

5.9 Limited Right to Appeal. The Parties covenant and agree not to appeal the Final Order and Judgment. Nothing in this paragraph should be construed to grant or confer any right of appeal to any party or nonparty to this action, other than as already exists and as provided by applicable law, if any.

5.10 This Agreement is the entire agreement between the Parties and supersedes any prior agreements, written or oral.

5.11 This Agreement requires authorized signatures on behalf of all Parties, in each of the signature lines set forth below, but may be executed in counterparts. All counsel who execute this Agreement on behalf of their clients represent and warrant that they have authority to do so on behalf of their respective clients.

5.12 Pending Court approval of the Agreement, the Parties agree to stay any and all proceedings other than those incident to the Agreement itself. The Parties shall agree to extensions of time with respect to pleadings and other Court deadlines and filings as are appropriate in the context of this Agreement.

5.13 No third parties are intended beneficiaries of this Agreement and the promises contained therein, with the exception of those non-Parties who are among the Released Parties to whom the Releases contained in Section II extend.

5.14 This Agreement may be amended only by a written instrument executed by all Parties or by attorneys authorized to act on their behalf.

5.15 This Agreement shall be governed by the laws of Colorado.

5.16 In the event that the Court or any other court is called upon to interpret this Agreement, no one party or group of parties shall be deemed to have drafted the Agreement.

5.17 The section headings used throughout this Agreement are for convenience only and shall not affect the construction or interpretation of the Agreement.

5.18 Other than as required by law, none of the Parties, nor any of the Parties' respective attorneys or representatives, shall issue any press release or make any other public

statement describing this Agreement which disparages any Party or accuses any Party of any wrongdoing.

5.19 The Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

<p>DAVIS GRAHAM & STUBBS LLP</p> <p><u>/s/ Jonathon D. Bergman</u> Jonathon D. Bergman Terry R. Miller 1550 Seventeenth St., Suite 500 Denver, CO 80202 Telephone: (303) 892-9400 Facsimile: (303) 893-1379</p> <p><i>Attorneys for Defendants Ronald Blakely, Paul Ching, Brian MacNeill, Ronald Phillips, John Read, Gordan Tallman, Pamela Wallin, and T. Murray Wilson</i></p>	<p><u>/s/ Patrick M. Groom</u> Patrick Groom Witwer, Oldenburg, Barry & Johnson, LLP 822 7th Street, #760 Greeley, CO 80631 Telephone: (970) 352-3161 Facsimile: (970) 352-3165</p> <p>Don Barrett Barrett Law Group, P.A. 404 Court Square North Lexington, MS 39095-0927 Telephone: (662) 834-9168 Facsimile: (662) 834-2628 dbarrett@barrettlawgroup.com</p> <p>Keith M. Fleischman The Fleischman Law Firm 565 Fifth Ave., Seventh Floor New York, NY 10017 Telephone: (212) 880-9571 Facsimile: (917) 591-5245</p> <p><i>Attorneys for Plaintiff Make a Difference Foundation, Inc.</i></p>
<p>SHOEMAKER GHISELLI & SCHWARTZ LLC</p> <p><u>/s/ Andrew R. Shoemaker</u> Andrew R. Shoemaker 1811 Pearl Street Boulder, CO 80302 Telephone: (303) 530-3452 Facsimile: (303) 530-4071 <i>Attorney for Defendant Christopher H. Hopkins</i></p>	<p>BURNS FIGA & WILL, P.C.</p> <p><u>/s/ Trevor A. Crow</u> Jennifer M. Osgood Trevor A. Crow 6400 S. Fiddlers Green Circle, Suite 1000 Greenwood Village, CO 80111 Telephone: (303) 796-2626 Facsimile: (303) 796-2777 <i>Attorneys for Defendants Thomas Milne and W. Scott Thompson</i></p>

<p>PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP</p> <p><u>/s/ Erica S. Platt</u></p> <p>Andrew G. Gordon Erica S. Platt 1285 Avenue of the Americas New York, New York 10019 Telephone: (212) 373-3000 Facsimile: (212) 492-0543 <i>Attorneys for Nominal Defendant Oilsands Quest Inc.</i></p>	
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EXHIBIT A

Redline of Oilsands' Related Party Transaction Policy

EXHIBIT B

Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, and
Settlement Hearing

EXHIBIT C

Summary Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action,
and Settlement Hearing

EXHIBIT D

Final Order and Judgment