

registered office at 1133 Topsail Road, Mount Pearl, Newfoundland and Labrador, Canada, A1N 5G2.

2. BNGL is a wholly owned subsidiary of SNC-Lavalin Inc. ("SLI"). SLI, through its many subsidiary companies across Canada and around the world, including St. John's, Newfoundland and Labrador ("BNGL"), Sarnia, Ontario ("SLI Sarnia"), Calgary, Alberta ("SLI Calgary"), and London, England ("SLI UK"), provides engineering, procurement, construction and project management services to a variety of industry sectors including, among other things, petroleum, environment and heavy construction.
3. The First Defendant, Altius Minerals Corporation ("Altius Minerals"), is a corporation incorporated and existing pursuant to the laws of Canada and having its registered office at P. O. Box 385, 53 Bond Street, St. John's, Newfoundland and Labrador, Canada, A1C 5J9.
4. Altius Minerals is a publicly traded company on the Toronto Stock Exchange.
5. The Third Defendant, Brian Dalton ("Dalton"), resides at 7 Primrose Place, St. John's, in the Province of Newfoundland and Labrador.
6. The Second Defendant, Altius Resources Inc. ("Altius Resources"), is a corporation incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador and having its registered office at Suite 300, 53 Bond Street, St. John's, Newfoundland and Labrador, Canada, A1C 1S9.
7. Newfoundland and Labrador Refining Corporation ("NLRC") is a corporation incorporated and existing pursuant to the laws of the Province of Newfoundland and Labrador and having its registered office at Suite 300, 53 Bond Street, St. John's, NL, Canada, A1C 5J9.

8. The Fourth Defendants were each a director of NLRC (collectively the "directors of NLRC"). The residency particulars of each of the Fourth Defendants are as follows:
- (a) Brian F. Dalton resides at 7 Primrose Place, St. John's, in the Province of Newfoundland and Labrador, Canada, A1B 4H2.
 - (b) D. Harry Dobson resides at Apartment 11B.02, Le Prince De Galles, 10 Avenue de Grande Bretagne, Monte Carlo 98000 Monaco.
 - (c) Stephen Posford resides at Peach Tree House, Shrubbs Hill, Chobham Surrey GU24 8ST.
 - (d) John A. Baker resides at 209 Waterford Bridge Road, St. John's, in the Province of Newfoundland and Labrador, Canada, A1E 1E4.
 - (e) Jonathan Comerford resides at 134 Stillorgan Heath, Stillorgan, Co Dublin, Ireland.
9. The Fifth Defendants were each a director of Altius Minerals (collectively the "directors of Altuis Minerals"). The residency particulars of each of the Fifth Defendants are as follows:
- (a) Brian F. Dalton, resides at 7 Primrose Place, St. John's, in the Province of Newfoundland and Labrador, Canada, A1B 4H2.
 - (b) Geoffrey Thurlow resides at 11 Marcelle Avenue, Corner Brook, Newfoundland and Labrador, A2H 2M8.

- (c) Fred Mifflin resides at 89 Douglas Drive, Toronto, Ontario, M4W 2B2
 - (d) Don Warr resides at 7 Sidney Place, St. John's, in the Province of Newfoundland and Labrador, A1A 3V4
 - (e) Susan Sherk resides at 103 Bennett's Road, Portugal Cove-St. Phillips, PO Box 5005, St. John's, NL, A1V 5V3
 - (f) John A. Baker resides at 209 Waterford Bridge Road, St. John's, in the Province of Newfoundland and Labrador, Canada, A1E 1E4
 - (g) Roland W. Butler resides at General Delivery, Laurenceton, in the Province of Newfoundland and Labrador, Canada, A0G 2Z0
10. The Sixth Defendants were each a director of Altius Resources (collectively the "directors of Altius Resources"). The residency particulars of each of the Sixth Defendants are as follows:
- (a) Brian F. Dalton resides at 7 Primose Place, St. John's, in the Province of Newfoundland and Labrador, Canada, A1B 4H2.
 - (b) Geoffrey Thurlow resides at 11 Marcelle Avenue, Corner Brook, Newfoundland and Labrador, A2H 2M8.
 - (c) John A. Baker resides at 209 Waterford Bridge Road, St. John's, in the Province of Newfoundland and Labrador, Canada, A1E 1E4.
 - (d) Roland Butler Jr., resides at General Delivery, Laurenceton, in the Province of Newfoundland and Labrador, Canada, A0G 2Z0.

11. Altius Resources was a wholly owned subsidiary of Altius Minerals.
12. Altius Resources was a major shareholder of NLRC.
13. Altius Minerals, Altius Resources and NLRC had common directors and officers, and carried on business in the Province at a single, common registered office.
14. Dalton was a director and the President and CEO of Altius Minerals, Altius Resources and NLRC.
15. Dalton was the controlling mind of Altius Minerals, Altius Resources and NLRC.

Factual Matrix

16. In or about 2005 or 2006, Dalton conceived and proposed a plan to construct and operate a new, grassroots oil refinery to be located in Placentia Bay, Newfoundland and Labrador.
17. Dalton made the proposed refinery a project of Altius Minerals, and Dalton and Altius Minerals formed NLRC for purposes of advancing and evaluating the proposed refinery project.
18. Dalton and Altius Minerals referred to the proposed refinery project as Altius' NLRC Project.
19. Altius' NLRC Project (the "project") was to take place in four stages, as follows:
 - (a) Pre-construction planning, including feasibility study, engineering, public consultation and environmental assessment and permitting (the "project development");

- (b) Construction, including servicing of materials and equipment, site preparation, fabrication, and construction of the refinery and marine terminals (the “project construction”);
 - (c) Operations; and
 - (d) Decommissioning and rehabilitation.
20. Committed incremental equity finance funding was required from equity investors for commencement and completion of the project development, and committed capital finance funding was required for commencement and completion of the project construction.
21. The completion of the project development and the committed incremental equity finance funding required for the project development were not conditional upon securing the committed capital finance funding required for the project construction.
22. NLRC was formed by Dalton and Altius Minerals as a “development-stage equity investment” company of Altius Minerals.
23. A development stage-equity investment company is a company formed by equity investment partners to evaluate the feasibility of proceeding with construction of a development project.
24. A development-stage equity investment company exists, operates and functions in accordance with, *inter alia*, the following accepted common industry understandings, customs and practices, which understandings, customs and practices amount to implicit representations made by the equity investment partners and sponsors of the development project, particulars of which include:

- (a) The equity investment partners provide committed incremental equity finance funding to the company to enable the company to meet its budgetary needs, cash flows requirements and payment obligations throughout the project development and up to the point that capital or other equity finance funding for the project construction is in place.
- (b) The equity investment partners have the asset base to enable them to advance the committed incremental equity finance funding to the company when and as required throughout the project development and up to the point that capital or other equity finance funding for the project construction is in place.
- (c) The equity investment partners do not necessarily have the asset base to finance the project construction, only the project development.
- (d) If, during completion of or following the project development, the equity investment partners decide to proceed with the project construction, the equity investment partners must raise the capital or other equity finance funding for the project construction.
- (e) The cost of and the ability of the equity investment partners to raise the capital or other equity finance funding for the project construction will affect the likelihood of commencement and completion of the project construction, but not completion of the project development and the committed incremental equity finance funding required throughout the project development and up to the point that the capital or other equity finance funding for the project construction is in place.

- (f) General economic conditions will influence the ability of the equity investment partners to raise capital or other equity finance funding for the project construction, but not their ability to provide the committed incremental equity finance funding required throughout the project development and up to the point that the capital or other equity finance funding for the project construction is in place.
25. Dalton and Altius Minerals formed and promoted NLRC as a development-stage equity investment company of Altius Minerals to evaluate the feasibility of the project.
26. The equity investment partners for the project (“project equity investment partners”) included Altius Minerals and Altius Resources as a single entity, and three European entrepreneurs from Ireland and the United Kingdom with proven track records in both debt and finance arrangements for development projects.
27. The three European investors were Desmond Dermot, Harry Dobson and Stephen Posford. Dobson and Posford were also directors of NLRC.
28. The project equity investment partners were also the project sponsors and the founding shareholders of NLRC.
29. In May 2006, the founding shareholders of NLRC exchanged their shares in NLRC for shares in a newly incorporated UK company, called “NLRC plc”.
30. In forming and promoting NLRC as a development-stage equity investment company, Dalton, Altius Minerals and Altius Resources made the following implicit representations to BNGL, which representations were approved, authorized and condoned by each of the directors of each of Altius Minerals, Altius resources and NLRC:

- (a) NLRC was a development-stage equity investment company, existing, operating and functioning in accordance with accepted common industry understandings, customs and practices.
 - (b) The project equity investment partners would provide committed incremental equity finance funding to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligation throughout the project development and up to the point that the capital finance funding for the project construction was in place.
 - (c) The project equity investment partners had the asset base to advance the incremental equity finance funding to NLRC from time to time as required throughout the project development and up to the point that the capital finance funding for the project construction was in place.
 - (d) NLRC had the ability to meet the project budgetary needs, cash flow requirements and payment obligations due to the committed incremental equity finance funding from the project equity investment partners.
31. By late 2005 early 2006, each of the project equity investment partners committed to assume responsibility and provide incremental equity finance funding to NLRC throughout the project development and up to the point that the capital finance funding for the project construction was in place and, accordingly, the project development proceeded.
32. Through the public consultation process and the Altius Minerals and NLRC public announcements and news releases, Dalton, Altius Minerals and Altius Resources made, *inter alia*, the following representations to the public and BNGL, which representations were authorized, condoned

and approved by each of the directors of each of Altius Minerals, Altius Resources and NLRC:

- (a) The project was Altius' project and the public should consider the reputation of Altius Minerals when considering the matter of community relations and the project.
- (b) There was no distinction between Altius Minerals and Altius Resources.
- (c) NLRC included "Altius" and "European Investors".
- (d) The European investors included Desmond Dermot, Harry Dobson and Stephen Posford.
- (e) The "European Investors" were entrepreneurs with proven track records in both equity and debt finance arrangements for development projects.
- (f) Altius and the European investors were the founding shareholders of NLRC.
- (g) Altius' NLRC project was being spear headed by Dalton and Altius Minerals.
- (h) The NLRC founding shareholders were willing and able to provide, and would provide, the required committed incremental equity finance funding throughout the project development and up to the point that the capital finance funding for the project construction was in place.
- (i) NLRC would be able to meet its liabilities and payment obligations throughout the project development and up to the point that the

capital finance funding for the project construction was in place using committed incremental equity finance funding made available by the project equity investment partners from time to time when management of NLRC required funding to meet the project budgetary needs, cash flow requirements and payment obligations.

- (j) NLRC was “a development-stage equity investment” of Altius Minerals.
 - (k) NLRC was “a significantly influenced investee” of Altius Minerals.
 - (l) Altius Minerals was providing administration services to NLRC for the project development.
 - (m) The project equity investment partners had fully funded a US \$7 million initial feasible study for the project.
33. By “Contract For Engineering Services Reference No. 722649-A” dated the June 5, 2006 (the “BNGL contract”), NLRC as “Client” contracted with BNGL as “Consultant” for the provision of study, design and engineering, and environmental services for the project.
34. The BNGL contract provided for monthly invoicing by BNGL and a 30 day payment obligation by NLRC.
35. Under the BNGL contract, BNGL agreed to furnish engineering services in connection with the project. Authorization to perform the engineering services was made by addendum to the BNGL contract by means of an approved work order system signed and approved by the Project Director on behalf of NLRC. The work order system consisted of costs, time, resource (“CTR”) forms and Variation Orders, which specified the scope of the engineering services to be performed by BNGL, an estimate of the

required man hours of service, the expected time for commencement and completion of such services, and the fee to be paid to BNGL for the engineering services based on estimated man hours of service.

36. BNGL provided the services under the BNGL contract using its own local work force and the work force of other SLI subsidiary companies at SLI Sarnia, SLI Calgary and SLI UK.
37. The services under the BNGL contract included a feasibility study carried out between June and October, 2006, design and environmental assessments carried out between September 2006 and May 2008, and the Design Basic Memorandum ("DBM"), basic engineering and geotechnical services carried out between the September 2006 and May 2008. The services relating to the feasibility study were carried out by the BNGL work force and the SLI Calgary work force. The services relating to design and environmental assessments were carried out by BNGL work force and the SLI Sarnia work force. The services relating to the DBM, basic engineering and geotechnical services were carried out by the BNGL work force, the SLI Sarnia workforce and the SLI UK workforce.
38. BNGL sub-contracted portions of the services under the BNGL contract, as was necessary, to local sub-contractors. The local sub-contractors invoiced BNGL directly, which amounts BNGL included in its invoices to NLRC.
39. NorCan Consulting Limited managed the project for, on behalf of, or for the benefit of Dalton, Altius Minerals, Altius Resources and NLRC.
40. Kjell Rustad of NorCan Consulting Limited acted as "Project Director" for the project. Rustad took his direction from Dalton and the directors of NLRC. The directors of NLRC took their direction from Dalton and the directors of Altius Minerals and Altius Resources. The Project Director

acted as the servant and agent of Dalton, Altius Minerals, Altius Resources and NLRC throughout.

41. Under the BNGL contract, the Project Director directed BNGL to perform the engineering services as a step by step process and from time to time as the project development progressed and the committed incremental equity finance funding was available from the project equity investment partners to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations. The Project Director would not authorize and direct BNGL to perform a service under the BNGL contract unless he was assured by Dalton and the directors of NLRC that there would be committed incremental equity finance funding provided from the project equity investment partners.
42. Various CTRs and Variation Orders were signed by the Project Director, at the direction of Dalton, Altius Minerals, Altius Resources and the directors of each of Altius Minerals, Altius Resources and NLRC, throughout the period from May 31, 2006 to April 27, 2008, as addendums to the BNGL contract, authorizing BNGL to perform engineering services.
43. BNGL performed engineering services under the BNGL contract from May, 2006 to April, 2008, all in accordance with BNGL contract and as authorized and directed by the Project Director. BNGL invoiced NLRC accordingly in the total amount of \$35,001,217,214.66. The amount of \$14,406,973.00 has been paid. The amount of \$20,594,244.65 remains unpaid and outstanding.
44. All invoicing and supporting documentation for the services performed under the BNGL contract were submitted by BNGL to NLRC.
45. Prior to December 2007, NLRC promptly paid all BNGL invoices in strict compliance with NLRC's 30 day payment obligation under the BNGL

contract. NLRC used the committed incremental equity finance funding provided by the project equity investment partners to pay those invoices.

46. After December 2007, NLRC did not pay certain of the BNGL invoices dated January 23, 2008, February 20, 2008, March 14, 2008, April 7, 2008 and May 9, 2008. These unpaid invoices relate to services performed by BNGL from about October 2007 onward.
47. Dalton, Altius Minerals, Altius Resources, the Project Director and each of the directors of each of Altius Minerals, Altius Resources and NLRC represented to BNGL, directly and indirectly, by words and conduct, that NLRC was able to meet the project budgetary needs, cash flow requirements and payment obligations throughout the project development and up to the point the capital finance funding for the project construction was in place, including NLRC's payment obligations to BNGL, due to committed incremental equity finance funding from the project equity investment partners. BNGL relied on this representation each time BNGL performed, and continued to perform, the services under the BNGL contract when authorized and directed to do so by the Project Director.
48. Before directing that BNGL perform services under the BNGL contract, the Project Director approved the scope of such work and the amount to be paid to BNGL and confirmed with Dalton and the directors of NLRC that there was committed incremental equity funding from the project equity investment partners to pay for the services. The Project Director, in turn, directed BNGL to perform the services, and by so doing the Project Director represented to BNGL, on behalf of each of the Defendants that there was committed incremental equity finance funding to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations.

49. At times throughout 2006 and 2007, the Project Director and the project management team made the following particular representations to BNGL on behalf of each of the Defendants:
- (a) NLRC was a group of investors (the project equity investment partners) that had put up the money to fund the investigation into the feasibility of constructing a oil refinery in Placentia Bay, NL
 - (b) The investors were committed to providing funding to NLRC to keep the project development going until such time as the investors could successfully negotiate capital finance funding for the project construction.
 - (c) The negotiations regarding the capital finance funding for the project construction were going well.
 - (d) The project construction would proceed contingent only on all environmental approvals for the project being in place.
50. The Project Director knew that NLRC did not have the independent means to meet the project budgetary needs, cash flow requirements and payment obligations required throughout the project development and up to the point the capital financial funding for the project construction was in place, including NLRC's payment obligations to BNGL under the BNGL contract, without the committed incremental equity finance funding from the project equity investment partners.
51. The Project Director received representations from Dalton that there was committed incremental equity finance funding that would enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations required throughout the project development and up to the point that the capital finance funding for the project construction was in place, and that BNGL would be paid for its services.

52. Each of the directors of each of Altius Minerals, Altius Resources and NLRC authorized, condoned and approved of the representations made by Dalton to the Project Manager.
53. Each of the Defendants intended that the representations made by Dalton to the Project Director would be communicated by the Project Director to BNGL, by word or conduct, so as to induce BNGL to perform and to continue to perform the services under the BNGL contract.
54. Each of the Defendants knew or ought to have known that the representations made by Dalton to the Project Director were being communicated by the Project Director to BNGL, by word or conduct, so as to induce BNGL to perform the services under the BNGL contract.
55. Each time the Project Director authorized and directed BNGL to perform services under the BNGL contract, the Project Director did so only after receiving representations from Dalton and the directors of NLRC that payment for such services would be forthcoming. The Project Director relied on such representations and the Project Director's reliance was known and intended by each of the Defendants.
56. The Project Director would not direct BNGL to perform services under the BNGL contract unless he received assurances from Dalton and the directors of NLRC that NLRC had the ability to meet the project budgetary needs, cash flow requirements and payment obligations.
57. Each time the Project Director authorized BNGL to perform services under the BNGL contract, the Project Director represented, expressly and implicitly, that NLRC was able to meet the project budgetary needs, cash flow requirements and payment obligations, due to committed incremental equity finance funding from the project equity investment partners.

58. The representations made by the Project Director to BNGL were in fact and in law the representations of each of the Defendants.
59. By October 2007, the Defendants realized that in order to meet the project completion milestone date of December 2011,
- (a) it would be necessary to secure the contract for the fabrication of key heavy walled vessels before completion of the project development and commencement of the project construction, using funding other than the capital finance funding required for commencement of the project construction; and
 - (b) it would be necessary to accelerate the overall project schedule (in particular the early front end engineering design ("FEED") work) before completion of the project development and commencement of the project construction.
60. Also by October 2007, the three European project equity investment partners had decided to no longer fund their proportionate share of NLRC's project development expenditures, including expenditures to be incurred in relation to completion of the project development and acceleration of the overall project schedule. This decision was not disclosed to BNGL.
61. As a result of the decision of the European project equity investment partners, each of the Defendants decided that Altius Minerals would fund in excess of its proportionate share of NLRC's project development expenditures so that the project development could continue and the planned acceleration of the overall project schedule could proceed. At the same time, Dalton, Altius Minerals, Altius Resources and each of the directors of Altius Minerals, Altius Resources and NLRC continued to

seek capital finance funding for the project construction. Each of the Defendants did not disclose these matters were not disclosed to BNGL.

62. In October 2007, Altius Minerals and NLRC entered into a standby subscription letter under which Altius Minerals could, at its discretion, subscribe for up to 4,812,762 common shares in the capital of NLRC at a price of US\$20.78 per share up to December 28, 2008. The proceeds were intended solely for the purposes of funding NLRC's ongoing project development costs, including the plan to accelerate the overall project schedule.
63. In October 2007, each of the Defendants decided to proceed with the planned acceleration of the overall project schedule, and they directed the Project Director to ask BNGL to identify activities that could be progressed to do so. By an October 9, 2007 presentation and an October 12, 2007 proposal, BNGL identified several activities that could be progressed to accelerate the overall project schedule up to the end of January 2008, including commencement of the basic engineering phase and detailed engineering.
64. On October 9, 2007, Altius Minerals publically announced that Haywood Securities had revised Altius Minerals' share value target to \$37, on the basis that a recent Provincial Environmental Impact Study ("EIS") decision "cleared the highest hurdle on the route to the refinery project development".
65. On October 12, 2007, the Project Director signed CTR No. 722649-17 (referred to as Variation Order VO17), to further the plan to accelerate the overall project schedule. Variation Order VO17 authorized BNGL to complete basic engineering start up and detailed engineering early works as per the BNGL proposal. The planned start date was October 15, 2007. The planned completion date was January 31, 2008. The cost was \$3,279,560.00.

66. On October 12, 2007, the Project Director, on behalf of NLRC and at the direction of Dalton and the directors of NLRC, signed a Memorandum of Understanding ("MOU") with SNC-Lavalin Inc. as represented by Anthony Allen of SLI UK, to further the plan to accelerate the overall project schedule. By the MOU, the parties agreed, among other things, to execute a formal Engineering, Procurement and Construction Management ("EPCM") agreement by January 31, 2008, before completion of the project development and commencement and completion of the project construction. The scope of work to be performed by BNGL under the EPCM agreement included basic engineering, detailed design, procurement activities, construction services and construction management.
67. On October 19, 2007, Altius Minerals announced, both publicly and to BNGL, that Altius Minerals was intending to raise \$50 million in bought deal financing and use the proceeds of the share offering towards the purchase of treasury shares of NLRC from time to time as required to fund NLRC and to increase Altius Minerals' ownership in NLRC.
68. The October 19, 2007 announcement reinforced the representations in question that NLRC was able to meet the project budgetary needs, cash flow requirements, and payment obligations for completion of the project development stage and acceleration of the overall project schedule, due to the committed incremental equity finance funding from the project equity investments partners.
69. On October 22, 2007, the Project Director signed CTR No. 722649-19 (referred to as Variation Order VO19), to further the plan to accelerate the overall project schedule. Variation No. VO19 authorized BNGL to carryout a geotechnical site investigation for the proposed refinery site as an addendum to the BNGL contract. The planned start date was October

22, 2007. The planned completion date was January 30, 2008. The cost was \$1,266,694.69

70. The share offering by Altius Minerals was done by way of a short-form prospectus dated November 1, 2007.

71. In the prospectus, Dalton and Altius Minerals made the following representations to the public and BNGL regarding the business of Altius Minerals, which representations were authorized, approved and condoned by each of the directors of each of Altius Minerals, Altius Resources and NLRC:

- The Corporation's principle business activities comprise the generation and acquisition of interests in projects related to natural resources opportunity. The Corporation generally prefers to utilize project level joint venture agreements or subsidiary company structures related to the opportunities it helps to generate which results in it carrying royalty interest and/or minority and non-operating project or equity interests. The primary objective of the Corporation is to build a portfolio of royalty and non-operating equity interests in resource based projects with "royal-class character". The Corporation currently has 12 employees.
- The Corporation traditionally enters into earn-in or joint venture mineral exploration agreements with various industry funding partners and continues to directly invest in new generative projects and initiatives with a goal of attracting additional partners. These agreements typically result in the Corporation holding minority project interests and royalties. Financing for the exploration of the Corporation's mineral properties is provided partially from the Corporation's own operating cash flow, but also through earn-in/joint venture agreements with other exploration and mining companies.

72. In the prospectus, Dalton and Altius Minerals made the following representations to the public and BNGL regarding the "equity investment basis" nature of Altius Minerals use of the proceeds of the share offering, which representations were authorized, approved and condoned by each of the directors of each of Altius Minerals, Altius Resources and NLRC:

- The Corporation and NLRC have entered into a standby subscription commitment letter pursuant to which Altius may from time to time, until December 31, 2008,

subscribe for up to 4,812,762 common shares in the capital of NLRC at a price of US \$20.78 per share for the purposes of funding NLRC's operations.

- Management of Altius does not believe that it is reasonable at this time to expect that, as a result of any subscription by it under this commitment letter, Altius would gain control over NLRC or be required to account for its investment in NLRC on other than an equity investment basis.

73. In the prospectus, Dalton and Altius Minerals also made representations to the public and BNGL that there were certain risks relating to the project construction, but they did not make representations that there were any risks relating to completion of the project development or acceleration of the overall project schedule. Specifically, Dalton and Altius Minerals made representations that the project construction would cost significantly more than Altius Minerals was able to contribute from its current asset base, and the ability of NLRC to raise additional capital for the project construction would be influenced by general economic conditions and would effect the likelihood of the completion of the overall project. Dalton and Altius Minerals did not make any representations that the cost of completion of the project development or acceleration of the overall project schedule was more than Altius Minerals was able to contribute from its current asset base, or that the ability of NLRC to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development stage and acceleration of the overall project schedule would be adversely influenced by general economic conditions affecting capital funding for the project construction.
74. On November 13, 2007, Altius Minerals announced, both publicly and to BNGL, that it closed a share offering at a price of \$28 per share with gross proceeds of \$50.4 million. In making the announcement, Altius Minerals confirmed its intention to use the proceeds of the offering to fund the purchase of treasury shares of NLRC from time to time as

required to fund NLRC and to increase Altius Minerals' equity investment in the project and its ownership in NLRC.

75. The November 13, 2007 announcement reinforced the representations in question that NLRC was able to meet the project budgetary needs, cash flow requirement and payment obligations for completion of the project development and acceleration of the overall project schedule due to committed incremental equity finance funding from the project equity investment partners.
76. On November 14, 2007, Altius Minerals announced publicly that its "bigger piece of the refinery pie" resulted in Haywood Securities increasing Altius Minerals' share target to \$41.
77. On November 19, 2007, Altius Minerals announced publicly that "Altius' NLRC" signed agreements with SNC-Lavalin (the MOU) and Japan's IJK Consortium (the heavy walled vessels fabrication contract) for the project.
78. On November 30, 2007, the Project Director signed CTR No. 722649-18 (referred to as Variation Order VO 18), as an addendum to the BNGL contract, to further accelerate the overall project schedule. Variation Order VO18 authorized BNGL to commence discipline activities in mechanical, instruments, electrical, civil and safety in support of process work and start up activities identified in Variation Order VO17. The planned start date for the VO18 scope of work was November 1, 2007. The planned completion date was January 30, 2008. The cost was \$1,418,640.00.
79. In December 2007, Altius Minerals, using the proceeds of the November, 2007 share offering, acquired an additional 750,000 shares in NLRC at a price of US \$20.78 per share for a total additional equity investment in NLRC of \$15.6 million and increased its shareholding interest in NLRC from 36.8% to 39.6%. Dalton, Altius Minerals, Altius Resources and each of the directors of each of Altius Minerals, Altius Resources and

NLRC expected these equity investment funds to be used by NLRC to progress ongoing environmental and engineering work for completion of the project development stage and the acceleration of the overall project schedule.

80. By December 2007, Dalton, Altius Minerals and each of the directors of each of Altius Minerals and Altius Resources decided that Altius Minerals and Altius Resources would no longer provide incremental equity finance funding to NLRC, as the three European project equity investment partners had decided earlier. This decision was known to each of the Defendants, but each of the Defendants did not disclose it to BNGL.
81. On December 20, 2007, Altius Minerals took \$30,092,865.00 of the November 2007 share offering proceeds and advanced it to NLRC as debt financing, to be used by NLRC to make a milestone payment to IJK Consortium to secure the heavy walled vessels fabrication contract (the "IJK contract").
82. The fabrication of the heavy walled vessels was considered a long-lead item required for the project construction, not the project development, and the funds required to secure the IJK contract were intended to come from the capital finance funding for the project construction, not the incremental equity finance funding required for the project development and acceleration of the overall project schedule.
83. Throughout the latter part of 2007, Dalton, Altius Minerals, Altius Resources and NLRC had been negotiating with a US finance company specializing in construction project component financing, with a view to securing specific asset backed bridge finance funding to secure the IJK contract until such time as the capital finance funding for the project construction was in place.

84. As of December 2007, Dalton, Altius Minerals, Altius Resources and NLRC did not expect the specific asset backed bridge finance funding for the IJK contract to be in place until January or February 2008 at the earliest, and the capital finance funding for the project construction to be in place until March or April 2008 at the earliest.
85. Dalton, Altius Minerals, Altius Resources and NLRC determined that the securing of the IJK contract could not wait until the specific asset backed bridge finance funding was in place sometime in January or February 2008, or the project capital finance funding was in place sometime after March 2008.
86. Each of the Defendants decided to allocate a portion of the Altius Minerals' equity investment proceeds from the November 2007 share offering as a form of bridge financing to enable NLRC to secure the IJK contract until such time as the specific asset backed bridge finance for the IJK Contract was in place or the capital finance funding for the project development was in place, whichever ever occurred earlier. This allocation was the \$30,093,000.00 amount which Altius Minerals advanced to NLRC on December 20, 2007.
87. In the November 1, 2007 prospectus, Dalton, Altius Minerals and each of the directors of Altius Minerals had represented that they expected the net proceeds of the share offering to be approximately \$47,480,000, and they anticipated using these net proceeds to fund NLRC's project development expenditures, including completion of the development stage and acceleration of the overall project schedule, in the budgeted amount of \$43 million, consisting of \$16 million for the cost of civil works, \$34 million for the cost of engineering and licensing fees, \$1.5 million for environmental, and \$1.5 for project management and general administration.

88. The \$30,093,000 amount which Altius Minerals advanced to NLRC on December 20, 2007 was intended to be equity finance funding to be used by NLRC to pay for ongoing engineering and environmental services required for the completion of the project development and acceleration of the overall project schedule, not the securing of the IJK contract.
89. Dalton, Altius Minerals, Altius Resources and the directors of each of NLRC, Altius Minerals and Altius Resources improperly directed that the intended \$30,093,000.00 amount of equity finance funding would be advanced to NLRC as secured debt finance funding to secure a long-lead item contract for the project construction, contrary to the representations made to the public and BNGL.
90. T\$30,093,000.00 and the decision by Altius Minerals to no longer provide equity finance funding funds to NLRC and as to advance \$30,093,000.00 as debt finance funding financing to NLRCALRC to secure the IJK contract rendered NLRC an insolvent enterprise as of December 20, 2007 and fundamentally changed the previously represented funding arrangements for completion of the project development and acceleration of the overall project schedule.
91. Dalton, Altius Minerals and Altius Resources did not make any public announcements regarding the fundamental change in the funding arrangements for completion of the project development and acceleration of the overall project schedule, or otherwise disclose the change to BNGL at that time.
92. By December 20, 2007, each of the Defendants knew that NLRC no longer had any committed incremental equity finance funding to enable NLRC to meet the budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, and that NLRC was indebted to Altius

Minerals in the amount of \$30,093,000.00, and that as a result NLRC was an insolvent enterprise.

93. Each of the Defendants did not disclose to BNGL that NLRC no longer had any committed incremental equity finance funding, that NLRC was indebted to Altius Minerals in the amount of \$30,093,000.00, and that NLRC was an insolvent enterprise.
94. The failure of each of the Defendants to disclose to BNGL that NLRC no longer had any committed incremental equity finance funding, that NLRC was indebted to Altius Minerals in the amount of \$30,093,000.00, and that NLRC was an insolvent enterprise rendered the representations in questions false, inaccurate and misleading.
95. Up to December 20, 2007, it was represented to BNGL that when the Project Director directed services to be performed under the BNGL contract NLRC had committed incremental equity finance funding from the project investment partners to pay for the services, and that as a result NLRC was not an insolvent enterprise.
96. From December 2007 onward, the Project Director continued to direct BNGL to perform services under the BNGL contract, and BNGL continued to perform such services in reliance on the representations in question. Unknown to BNGL during this time, the representations in questions were false, inaccurate and misleading because of the failure by each of the Defendants to disclose that the project equity investment partners were no longer providing incremental equity finance funding to NLRC. This rendered the representations in question misrepresentations, and the misrepresentations were intended to be relied upon by BNGL and induce BNGL to perform the services under the BNGL contract when directed to do so by the Project Director.

97. In December 2007, the Project Director directed BNGL to prepare tender packages for the site preparation and the access road site. The total budget estimate estimated for these scopes this scope of work under was \$167,158,858.00, and the work was expected to start in the first half of 2008.
98. By January 24, 2008, the Defendants realized that negotiation of the EPCM agreement would not be complete by January 31, 2008 as per the MOU. The Defendants wanted negotiations of the EPCM agreement to continue, but they also wanted the initial phases of the EPCM agreement scope of work to commence prior to the EPCM agreement being executed, further to the plan to accelerate the overall project schedule.
99. On January 24, 2008, the Project Director signed for an extension of the closing date of the MOU from January 31, 2008 to February 29, 2008 in order to complete negotiations of the EPCM agreement.
100. On January 24, 2008, the Project Director also signed CTR No. 722649-20 (referred to as Variation Order VO20) as an addendum to the BNGL contract, to further acceleration of the overall project schedule. This was a three month look ahead intended to cover the initial phases of the scope of work under the anticipated EPCM agreement contract documents and would be superseded by the EPCM agreement once it was executed. The planned start date was February 1, 2008. The planned completion date was April 30, 2008. The total cost was \$20,988,080.00.
101. Variation Order VO20 authorized BNGL, for the month of February 2008, to use 135 personnel to perform 21,600 manning hours at an estimated cost of \$3,974,400.00.

102. Variation Order VO20 authorized BNGL, during the month of March 2008, to use 223 personnel to perform 35,680 man hours an estimated cost of \$6,565,120.00.
103. Variation Order VO20 authorized BNGL, during the month of April 2008, to use 349 personnel to perform 55,840 man hours at an estimate cost of \$10,274,560.00.
104. Prior to signing Variation Orders VO17, VO18 and VO20 and performing the services under the Variation Orders, Anthony Allen of SLI UK, acting on behalf of BNGL, sought and received representations from the Project Director, which representations were known, authorized, approved and condoned by each of the Defendants, that the overall project remained viable and the negotiations for the capital or other equity finance funding for the project construction was going well.
105. By representing that the overall project remained viable and capital finance funding efforts were going well, and by signing Variation Orders VO17, VO18 and VO20 and authorizing BNGL to perform the services thereunder, the Project Director, by inference and implication, implicitly represented, or misrepresented as the case may be, on behalf of Dalton, Altius Minerals, Altius Resources and each of the directors of each of Altius Minerals, Altius Resources and NLRC, that BNGL had the continuing ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule.
106. On February 26, 2008, the Project Manager and Fraser Clarke, acting on behalf of the Project Management Team, met with SLI to ascertain SLI's interest in taking an equity position in the project. Anthony Allen of SLI UK attended the meeting. Throughout the meeting, the Project Director and Clarke made positive representations, which representations were approved, authorized and committed by each of the Defendants.

107. On February 17, 2007, NLRC granted a demand loan debenture security to Altius Resources, securing the amount of \$30,092,865.00 which was advanced by Altius Minerals to NLRC on December 20, 2007. The debenture security was dated December 20, 2007
108. On February 19, 2008, a registration was effected by Altius Minerals in relation to the demand loan debenture security, pursuant to the *Personal Property Security Act* (Newfoundland and Labrador) (the "PPSA registration").
109. By the PPSA registration, Altius Minerals was elevated to secured creditor status. This gave the Altius Minerals debt finance funding amount of \$30,092,865.00 a higher priority than the BNGL unpaid invoices amount of \$20,594,244.54, 246.65 in any future claim in NLRC's estate.
110. Each of the Defendants did not disclose to BNGL, the Altius Resources demand loan debenture security or the PPSA registration.
111. On February 26, 2008, the Project Director and Fraser Clarke, acting for, on behalf of, or for the benefit of the Project Management Team, and each of the Defendants met with SLI to ascertain SLI's interest in taking an equity position in the project. Anthony Allen of SLI UK attended the meeting. Throughout this meeting, the Project Director and Clarke made positive representations, which representations were approved, authorized and codoned by each of the Defendants, about the future of the overall project and the negotiations for the capital or other equity finance funding for the project construction. They did not disclose the decision of the project equity investment partners to no longer provide incremental equity finance funding for the completion of the development stage and acceleration of the overall project schedule, or the decision of

Altius Minerals to convert its committed equity investment finance funding to secured debt finance funding.

112. Between March 3 and March 5, 2008, the Project Director told BNGL that the project equity investment partners had decided to slow down the project and, as a result, NLRC was terminating Variation Order VO 20. The Project Director did not direct the termination of Variation Orders VO 17 or VO 18 at that time. He also did not disclose that there was no longer committed equity finance funding from the project equity investment partners to enable NLRC to meet the project current and ongoing budgetary needs, cash flow requirements and payment obligations.
113. On April 11, 2008, the Project Director told BNGL that NLRC was intending to suspend the scope of work under Variation Orders VO17 and VO18. The Project Director requested that SLI UK and BNGL close out the work to date in an orderly and controlled manner and provide a final invoice. The Project Director did not disclose that there was no longer committed incremental equity finance funding available from the project equity investment partners to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations for the over due BNGL accounts and the ongoing payment obligation for the final invoice for the requested close out work.
114. On or about April 28, 2008, BNGL sent cancellation letters respecting the site preparation tender call, as per the direction of the Project Director.
115. In late April or early May 2008, Dalton requested that BNGL continue operating out of the project office in downtown St. John's and providing environmental work and the associated engineering support until the end of July 2008 so as to maintain project value while Dalton and Altius Minerals continued to pursue capital finance funding for the project construction. BNGL agreed on condition that they were paid in advance

in the amount of about \$536,652.58. Dalton agreed to the advance payment, and Dalton and Altius Minerals arranged for the advanced payment to be forwarded to BNGL on May 28,2008.

116. On May 8, 2008, Albert Williams of BNGL provide Dalton with a summary of BNGL's engineering invoices and costs to date and requested payment of same. Williams confirmed that BNGL had shut down the DBM work at SLI Sarnia and the Basic Engineering Work at SLI UK, noting that the close out work had caused significant problems and costs in demobilizing
117. During the period from April to May, 2008, Dalton and Albert Williams of BNGL had various conversations. During one of these conversations, Dalton admitted that the decision to use project development equity finance funding (\$30,093,000.00) to pay for a project construction long lead item (securing the IJK contract) was a mistake which resulted in NLRC not being able to pay BNGL and otherwise meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule.
118. By correspondence dated May 28, 2008 from Albert Williams of BNGL to Dalton, BNGL noted NLRC in default of its payment obligations under the BNGL contract and requested immediate remedy of the default.
119. On June 5, 2008, Albert Williams of BNGL made a further demand for payment of the unpaid invoices and outstanding indebtedness of NLRC.
120. By correspondence dated June 8, 2008 from Dalton to SLI, Dalton disclosed to BNGL for the first time that the project equity investment partners had decided to no longer provide incremental equity finance funding to NLRC to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the

project development and allocation of the overall project schedule, including NLRC's payment obligation to BNGL under the BNGL contract.

121. From December 2007 to April 2008, BNGL performed the services under the BNGL contract which are the subject matter of the unpaid invoices. Throughout, each of the Defendants did not disclose to BNGL that the project equity investment partners had decided to no longer provide incremental equity finance funding to NLRC for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligations to BNGL under the BNGL contract. BNGL relied on the representations to its detriment, being induced by the negligent misrepresentation that there was no change in the funding arrangements for the project that would affect NLRC's ability to meet the project budgetary needs, cash flow requirements and payment obligations.
122. NLRC did not pay the outstanding BNGL invoices because it no longer had the ability to meet the project budgetary needs, cash flow requirements and payment obligations due to the decision of the project equity investment partners to no longer provide incremental equity finance funding for completion of the project development and acceleration of the overall project schedule. Accordingly, NLRC did not meet its payment obligations to BNGL under the BNGL contract. NLRC suspended payment of its debt to BNGL, ceased operations and sought protection from its creditors, including BNGL, under the provision of the *Bankruptcy and Insolvency Act*.
123. By the time Dalton disclosed to BNGL, on June 8, 2008, the decision of the project equity investment partners to no longer provide incremental equity finance funding to NLRC, BNGL had already finished performing services under the BNGL contract and submitted its final invoicing as directed by the Project Director.

124. In June 2008, BNGL asked Dalton to consider paying the local subcontractors who performed services under the BNGL contract. The amount involved was about \$803,890.09. Dalton and Altius Minerals agreed. Dalton arranged for Altius Minerals or Altius Resources to provide the required funding to NLRC and NLRC or Altius Minerals or Altius Resources made the payments directly to the local subcontractors. NLRC's total indebtedness to BNGL under the BNGL contract was reduced accordingly.

Negligent Misrepresentation

125. Each of the Defendants is liable to BNGL for the unpaid indebtedness of NLRC to BNGL under the BNGL contract based on the tort of negligent misrepresentation.

126. Dalton and Altius Minerals, by their words and conduct, directly or indirectly, expressly or implicitly, in their own right and through the direction given by them to the Project Director and by the Project Director to BNGL, represented to BNGL, initially when BNGL entered into the BNGL contract with NLRC and on a continuing and on ongoing basis each time BNGL performed the services under the various addendums to the BNGL contract, that NLRC had the ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule due to the committed incremental equity finance funding from the project equity investment partners.

127. Each of the directors of each of Altius Minerals, Altius Resources and NLRC by their words, conduct, acts and omissions, authorized, condoned and approved the representations in question, each time, and from time to time, the representations in question were made and given.

128. BNGL relied on and was induced by the representations in question to enter into the BNGL contract with NLRC including the various addendums thereto and perform the services under the BNGL contract each time, and from time to time, when directed to do so by the Project Director.
129. BNGL's initial and ongoing reliance on the representations in question were reasonably known to each of the Defendants, giving rise to a special relationship between BNGL and each of the Defendants. Accordingly, each time BNGL undertook the performance of the services under the BNGL contract as directed by the Project Director in reliance on the representations in question, each of the Defendants owed BNGL a duty of care to disclose if the representations in question had become untrue, inaccurate or misleading.
130. By December 2007, Dalton, Altius Minerals and each of the directors of each of Altius Minerals, Altius Resources and NLRC knew that the project equity investment partners had decided to no longer provide incremental equity finance funding to NLRC to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligation to BNGL under the BNGL contract. Accordingly, each of the Defendants knew by December 2007 that the representations in question had become untrue, inaccurate and misleading, and each was under a duty of care to BNGL from December 2007 onward to make disclosure of any misrepresentation before BNGL performed further services under the BNGL contract.
131. From December 2007 to April 2007, the Project Director directed BNGL to perform services under the BNGL contract to further completion of the project development and acceleration of the overall project schedule and

BNGL performed such services as directed, in continuing and ongoing reliance on the representations in question.

132. BNGL did not learn that the representations in question were untrue, inaccurate and misleading until June 8, 2008 when Dalton disclosed that the project equity investment partners decided to no longer provide the committed incremental equity finance funding to NLRC for completion of the project development and acceleration of the overall project schedule.
133. Throughout the period December 2007 to April 2008, each of the Defendants, by their nondisclosure, negligently misrepresented that the representations in question remained true, accurate and reliable, and accordingly each breached their respective duty of care to BNGL in the circumstances.
134. Throughout the period December 2007 to April 2008, BNGL relied in a reasonable manner on the negligent misrepresentations in question, in the performance of the services under the BNGL contract. The reliance was detrimental to BNGL in that damages resulted when NLRC did not meet its payment obligations to BNGL under the BNGL contract.
135. Having regard for all the circumstances, each of the Defendants was under a duty of care to ensure, among other things, as follows:
 - (a) that the express and implied representations in questions made to BNGL were accurate and not prone to mislead;
 - (b) that BNGL be given highly relevant information about the nature and existence of NLRC's ongoing ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall

project schedule, including NLRC's payment obligation to BNGL under the BNGL contract;

(c) that they take reasonable steps to avoid conveying, by inference, implication or otherwise, information to BNGL that would mislead BNGL to believe:

(i) that NLRC had the ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligation to BNGL under the BNGL contract, and

(ii) that the project equity investment partners were committed to providing incremental equity finance funding to NLRC to fund completion of the project development and acceleration of the overall project schedule.

136. Each of the Defendants breached their duty of care and misrepresented the nature and existence of NLRC's ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of project development and acceleration of the overall project schedule, when they directed the Project Director to sign the various CTR forms and Variation Orders and authorize BNGL to perform the related services.

137. The misrepresentations made to BNGL were negligent in character, insofar as they led BNGL to believe that NLRC had the ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligation to BNGL under the BNGL contract, when in fact there was a substantial risk fully known to each of the Defendants that NLRC did not have the

ability to meet its budgetary needs and payment obligations due to the decision of the project equity investment partners to no longer provide incremental equity finance funding.

138. The misrepresentations made to BNGL were different in scope and effect from the contractual obligations of NLRC under the BNGL contract.
139. Under the BNGL contract and its addendums, NLRC had a contractual obligation to pay for the engineering services provided by BNGL under the various CTR forms and Variation Orders. The misrepresentations in question made to BNGL concerned NLRC's ability to meet the project budgetary needs, cash flow requirements and payment obligations for payment of such engineering services, rather than NLRC's legal obligation to pay for such services.

Resultant Damages

140. BNGL relied on the representations in question in deciding to enter into the BNGL contract and each addendum to the BNGL under a CTR form or Variation Order.
141. The representations made to BNGL regarding NLRC's ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligations to BNGL under the BNGL contract, were false, inaccurate, misleading and negligently made, and BNGL sustained losses as a result.
142. But for the misrepresentations made to BNGL, BNGL would not have performed the services under the BNGL contract necessary for completion of the project development and acceleration of the overall project schedule from December 2007 to April 2008 without first

obtaining a written guarantee of payment from Dalton, Altius Minerals and Altius Resources.

143. It is likely, in the circumstances, that Dalton, Altius Minerals and Altius Resources would have provided a written guarantee, guaranteeing NLRC's payment obligations to BNGL under the BNGL contract, but if they did not, BNGL would not have performed the services under the BNGL contract.
144. Accordingly, the amount of the resultant losses suffered by BNGL is the outstanding amount of \$20,594,244.65 payable by NLRC to BNGL under the BNGL contract for the services performed by BNGL from about October 2007 to April 2008.
145. Respecting the unpaid amount of \$20,594,244.65, Dalton and NLRC disputed some portion of the amount of \$8,267,468.30, comprising of the sum of \$2,873,723.67 under Invoice No. 11016 dated April 7, 2008 for the period covering February 21, 2008 to March 19, 2008, and the sum of \$5,393,744.63 under Invoice No. 11078 dated May 9, 2008 for the period March 20, 2008 to April 30, 2008. Dalton and NLRC did not dispute the remaining amount of \$12,326,776.35.
146. The total amount due and payable by NLRC to BNGL under the BNGL contract is \$20,594,244.65, plus interest in accordance with the terms of paragraph 6.3 of the BNGL contract.
147. Paragraph 6.3 of the BNGL contract provides that overdue accounts shall bear interest at the prime rate published by the Royal Bank of Canada, Montreal office plus two percent (2%) per annum.

Deceit

148. BNGL repeats each of the proceeding paragraphs and states that, in addition to liability based on the tort of negligent misrepresentation, each of the Defendants is liable to BNGL based on the tort of deceit.
149. From the project inception, in or about November 2005, to about October 2007, each of the Defendants knew that the project equity investment partners had been collectively funding NLRC, and that throughout this period there had been no risk that NLRC would be unable to meet the project budgetary needs, cash flow requirements and payment obligations, including NLRC's payment obligations to BNGL under the BNGL contract.
150. By October 2007, each of the Defendants had knowledge of each of the following matters:
- (a) Dalton and Altius Minerals were anxious for the project to progress and they wanted to complete the project development and accelerate the overall project schedule so that by the time the capital finance funding for the project construction was in place the project would be on target to meet its milestone completion date of December 2011.
 - (b) In order for NLRC to meet the project budgetary needs, cash flow requirements and payment obligations associated with completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligations to BNGL under the BNGL contract, NLRC needed additional equity finance funding of about \$47 million.
 - (c) The three European project equity investment partners had decided to no longer provide incremental equity finance funding to NLRC for completion of the project development and acceleration of the over all project schedule, including NLRC's payment obligations to BNGL under the BNGL contract.

- (d) Altius Minerals had decided to provide the additional incremental equity finance funding required to enable NLRC to continue to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligations to BNGL under the BNGL contact.
151. By November 2007, each of the Defendants had knowledge that Altius Minerals had raised about \$47 million of additional incremental equity finance funding to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligations to BNGL under the BNGL contract.
152. By December 2007, each of the Defendants had knowledge of each of the following matters:
- (a) Negotiations with lenders to secure specific asset backed bridge finance funding for the IJK contract and capital finance funding for the project construction were ongoing.
 - (b) There was a substantial degree of uncertainty associated with securing both the specific asset backed bridge finance funding for the IJK contract and the capital finance funding for the project construction. While Dalton appeared enthusiastic, each of the directors of each of Altius Minerals, Altius Resources and NLRC reasonable believed that such financing would not materialize.
 - (c) Altius Minerals and Altius Resources, like the other project equity investment partners, was no longer providing committed incremental equity finance funding to NLRC to enable NLRC to

meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligations to BNGL under the BNGL contract.

- (d) Dalton, Altius Minerals and Altius Resources decided to take about \$30,093,000.00 of the approximate \$47 million amount which had been raised by Altius Minerals as additional committed incremental equity finance funding for NLRC and convert it to debt finance funding for NLRC to be used by NLRC to secure the IJK contract on what Dalton, Altius Minerals and Altius Resources gambled would be a temporary basis until the earlier of the specific asset backed bridge finance funding for the IJK contract or the capital asset finance funding for the project construction materialized.
- (e) NLRC was an insolvent enterprise.
- (f) The \$30,093,000.00 amount of debt finance funding from Altius Minerals to NLRC was secured by way of a demand loan debenture granted to Altius Resources Demand Debenture in the event the gamble did not pay off.
- (f) The gamble had a significant degree of risk for NLRC's ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the over all project schedule, including NLRC's payment obligations to BNGL under the BNGL contract, particulars of which include:
 - (i) If either the specific asset backed bridge financing funding for the IJK contract or the capital finance funding for the project construction materialized, then the \$30,093.000.00

amount would be converted back to incremental equity finance funding to enable NLRC to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the over all project schedule, and BNGL would be paid for their engineering services.

- (ii) If neither the specific asset backed bridge financing funding for the IJK contract nor the capital finance funding for the project construction materialized, then the approximate \$30,093,000.00 would remain as debt finance funding secured by the Altius Resources Demand Debenture in priority to NLRC's payment obligations to BNGL under the BNGL contract, and BNGL would not be paid for the their engineering services, the cost of which each of the Defendants reasonable knew would be in the range of \$20,000,000.00.

153. Each of the Defendants knew that if there was any hope that Dalton, Altius Minerals, Altius Resources and NRLC could secure specific asset backed bridge finance funding for the IJK contract and capital finance funding for the project construction, it was critical to maintain project value while the related negotiations were ongoing so as to ensure that the project would be positively received by the lenders.

154. Each of the Defendants knew that in order to maintain project value so as to ensure that the project was positively received by the lenders, it was critical that BNGL performed the engineering services necessary for completion of the project development and acceleration of the overall project schedule as and when directed to do so by the Project Director.

155. Each of the Defendants knew that in order for BNGL to perform the necessary engineering services for completion of the project development and acceleration of the overall project schedule, it was critical that BNGL continue to believe that NLRC had the ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligations to BNGL under the BNGL contract.

156. By at least December 2007 onward, each of the Defendants knew, each time BNGL performed engineering services under the BNGL contract as directed by the Project Director, that NLRC did not have the present ability to meet the project budgetary needs, cash flow requirements and payment obligations, including NLRC's payment obligation to BNGL under the BNGL contract, and there was a substantial risk that NLRC would not have the future ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the overall project schedule, including NLRC's payment obligation to BNGL, due to the decision of the project equity investment partners, including Altius Minerals/Altius Resources, to no longer provide committed incremental equity finance funding to NLRC, and the uncertainty associated with securing the specific asset backed finance funding for the IJK contract and the capital finance funding for the project construction.

157. Each of the Defendants intentionally chose not to disclose the risk in question and its underlining circumstances to BNGL, for fear that BNGL would not perform engineering services where there was no reasonable prospect of being paid, resulting in project value not being maintained, the project not being positively received by the lenders, NLRC not being able to secure the specific asset backed bridge finance funding for the IJK contract and the capital finance funding for the project construction,

the Altius' NLRC oil refinery project not succeeding, and the Altius Minerals' publically traded stock value suffering a loss.

158. In the circumstances, each of the Defendants committed the tort of deceit, particulars of which, in summary, include:

- (a) Each of the Defendants made a false representation of fact, namely that from December 2007 onward, there was no risk that NLRC would be unable to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the over all project schedule, including NLRC's payment obligations to BNGL under the BNGL contract.
- (b) Each of the Defendants made the representation with knowledge of its falsity, in that each of the Defendants knew that NLRC did not have the present ability to meet, and there was a substantial risk that NLRC would not have the future ability to meet the project budgetary needs, cash flow requirements and payment obligations for completion of the project development and acceleration of the over all project schedule, including NLRC's payment obligations to BNGL under the BNGL contract, due to the decision of the project equity investment partners to no longer provide any equity finance funding to NLRC, and the uncertainty with securing the asset backed bridge finance funding for the IJK contact and the capital asset funding for the project construction.
- (c) Each of the Defendants made the representation with the intent that it should be acted upon by BNGL as a method of obtaining contractual benefits for NLRC (performance by BNGL of the requested engineering services by the Project Director) and economic benefits for each of the Defendants (maintaining project value and maintaining Altius Minerals' stock value), and in a

manner which resulted in damage to BNGL (performing engineering services for which BNGL was not paid and for which it was reasonably known to each of the Defendants there was no reasonable likelihood that BNGL would be paid).

- (d) BNGL acted upon the false representation in performing the engineering services under the BNGL contract, and sustained damage by doing so when NLRC did not meet its payment obligation to BNGL under the BNGL contract.

Alter Ego

- 159. Alternatively, Dalton, Altius Minerals and Altius Resources are liable to BNGL for the unpaid indebtedness of NLRC to BNGL under the BNGL contract based on the doctrine of alter ego, piercing the corporate veil, and common law agency and partnership principles.
- 160. The refinery project was Dalton and Altius' refinery project. Altius Minerals wholly owned Altius Resources, and Altius Resources was a major shareholder of NLRC. Dalton was a director and controlling mind of Altius Minerals, Altius Resources and NLRC. Dalton formed NLRC to advance and evaluate the refinery project.
- 161. Altius Resources, as the parent company of NLRC, Altius Minerals, as the major shareholder of Altius Minerals, and, Dalton as the controlling mind of Altius Minerals, Altius Resources and NLRC, fully dominated the actions of NLRC, the subordinate company, such that NLRC had, in the true sense of the expression, no practical independent functioning of its own.
- 162. The relationship between NLRC and Altius Minerals, in the circumstances, was in the nature of "principal and agent" or

“partnership” or both. As a result, Altius Resources is liable to BNGL for NLRC’s indebtedness.

163. BNGL pleads the doctrine “alter ego” and asks that the “corporate veil” of NLRC be lifted and Dalton, Altius Minerals and Altius Resources be found liable for NLRC’s indebtedness to BNGL, on the following basis:

- (a) NLRC was formed without capital.
- (b) NLRC, Altius Minerals and Altius Resources collectively participated in a non-arms length reviewable transaction respecting the Altius Resources Demand Debenture.
- (c) The directors of NLRC and its major shareholder, Altius Minerals, expressly directed nondisclosure by NLRC to BNGL when the NLRC shareholders decided to no longer provide the committed incremental equity finance funding for the pre-constructions phase of the project.
- (d) NLRC and Altius Minerals, while seemingly separate corporate entities, were, in the circumstances, in fact one enterprise with respect to the refinery project, pursuant to a partnership or agency arrangement or otherwise.
- (e) NLRC, in the circumstances, was a mere agent of Altius Minerals, the major shareholder of NLRC.
- (f) In the circumstances, the use of the NLRC corporate structure was, of itself, never intended by Dalton, Altius Minerals or the directors of NLRC, to provide the capital to pay NLRC liabilities as they become due. The intention in that regard was always that Altius Minerals and the other project equity investment partners

would provide the necessary equity finance funding to pay the liabilities of NLRC in relation to the development stage work.

- (g) Dalton, the directors of NLRC, Altius Minerals and Altius Minerals as a major shareholder of NLRC effectively disregarded the corporate entity of NLRC and made NLRC a mere conduit for the transaction of their own private business, namely that of Altius Minerals. In this respect, Dalton and Altius Minerals intentionally committed a wrongful or inequitable act in the name of NLRC, insofar as they now take the position that the liabilities of NLRC for the development stage work were never intended to be paid out of the committed incremental equity being provided by the project equity investment partners.
- (h) In the circumstances, NLRC was organized and operated as a mere conduit of Dalton and Altius Minerals to facilitate the refinery project. Dalton and Altius Minerals approved of NLRC's inadequate capitalization and made it known to the public and BNGL that funding for the pre-construction phase work would be from committed incremental equity finance funding from the NLRC shareholders, including Altius Minerals. In this respect, Altius Minerals, Altius Resources and Dalton used NLRC for personal purposes, namely to enhance the share value of Altius Minerals, a publicly traded company on the TSE, through the refinery project.
- (i) NLRC was a mere instrumentality of Dalton, Altius Minerals and Altius Resources, and thus, Dalton and Altius Minerals are as responsible as NLRC for NLRC's indebtedness to BNGL.
- (j) Dalton and Altius Minerals were the guiding minds of NLRC. Dalton personally dealt with BNGL and made representations as to how the refinery project would be funded, which were acted

upon, and were intended by Dalton, Altius Minerals and Altius Resources, to be acted upon, by BNGL. Later, when Dalton, Altius Minerals and the directors of each of NLRC and Altius Minerals learned that the NLRC shareholders had decided to no longer provide the committed incremental equity finance funding for the pre-construction phase of the project, they failed to disclose this change in NLRC's funding arrangements to BNGL, and remained silent from December, 2007 to May, 2008, during which time BNGL continued to perform services as requested by the Project Manager, and Altius Minerals was counting on a rise in the value of company's on the TSE.

- (k) Such further and other particulars as may become apparent at trial. The Fourth Defendant, D. Harry Dobson, resides in Monaco. The Fourth Defendant, Stephen Posford, resides in England, the Fourth Defendant, Jonathan Comerford, resides in Ireland. The Fifth Defendant, Fred Mifflin, resided in Ontario, Canada. The Statement of Claim shall be served on each of these Defendants outside the Province with leave pursuant to paragraph (h) and (i) under rule 6.07(1).

164. The facts supporting service of the Statement of Claim outside the Province without leave pursuant to rule 6.07(1) (h) and rule 6.07(j) include the following:

- (a) the proceeding is founded on the tort of negligence misrepresentation, the tort of deceit and the doctrine of piercing the corporate veil. Each of the torts were committed within the province, as is more particularly set out within the Statement of Claim;

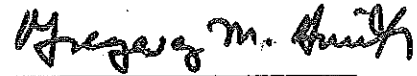
- (b) each of the Defendants who reside outside the province is a necessary or a proper party to the proceeding, and the proceeding, as more particularly set out in the Statement of Claim; and
- (c) The proceeding is properly brought against another person, namely each of the remaining Defendants, who will be served within the jurisdiction as they reside within the province.

Relief

165. The Plaintiff, BAE-Newplan Group Limited, therefore claims against each of the First Defendant, Second Defendants, Third Defendant, Fourth Defendants, Fifth Defendants, Sixth Defendants, jointly and severally, as follows:

- (a) Special damages in the amount of \$20,594.244.65;
- (b) Punitive and exemplary damages based on the tort of deceit;
- (c) Interest in accordance with clause 6.3 of the BNGL contract (the prime interest rate published by the Royal Bank of Canada, Montreal office plus 2% per annum);
- (d) Costs; and
- (e) Such further and other relief as this honourable court deems meet and just.

DATED at St. John's, in the Province of Newfoundland and Labrador, this
1st day of October, 2008.



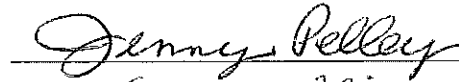
Gregory M. Smith
Curtis, Dawe
Solicitors for the Plaintiffs
P.O. Box 337
St. John's, NL
A1C 5J9

TO : Newfoundland & Labrador
Refining Corporation
Defendants
Suite 300, 53 Bond Street,
St. John's, NL,
A1C 5J9

AND TO:

ISSUED at St. John's, in the Province of Newfoundland and Labrador this
day of *October*, 2008.

15th


Court Officer

you cause to be filed in the Registry of the Supreme Court of Newfoundland at St. John's, a Defence and unless within the same time a copy of your Defence is served upon the Plaintiff or the Plaintiff's solicitor at the Plaintiff's solicitor's stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of (or such sum as may be allowed on taxation) for costs to the Plaintiff or the Plaintiff's solicitor within ten (10) days from the service of this notice upon you, then this proceeding will be stayed.

TO: Newfoundland & Labrador
Refining Corporation
Defendants
Suite 300, 53 Bond Street,
St. John's, NL,
A1C 5J9