

July 12, 2017

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT,
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
THE SOUTH EAST 1/4 OF SECTION 23 TOWNSHIP 83 RANGE 16 WEST OF THE
6th MERIDIAN PEACE RIVER DISTRICT
THE NORTH WEST 1/4 OF SECTION 24 TOWNSHIP 83 RANGE 16 WEST OF THE
6th MERIDIAN PEACE RIVER DISTRICT
THE NORTHEAST 1/4 OF SECTION 26 TOWNSHIP 83 RANGE 16 WEST OF THE 6th
MERIDIAN PEACE RIVER DISTRICT (The "Lands" file 1858)

AND IN THE MATTER OF
THE SOUTH ½ OF SECTION 32 TOWNSHIP 83 RANGE 15 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE MOST WESTERLY AND
SOUTHERLY 80 FEET IN PARALLEL WIDTHS THEREOF (The "Lands" file 1859)

BETWEEN:

Fernand Charles Mertens
(APPLICANT, 1858)

AND:

Leucrotta Exploration Inc.
(RESPONDENT)

AND

BETWEEN:

Roy Giesbrecht and Susan Giesbrecht
(APPLICANTS, 1859)

AND:

Leucrotta Exploration Inc.
(RESPONDENT)

BOARD ORDER

Heard by written submissions received: January 26, 2016, October 3, 2016 and May 5, 2017 on behalf of the Applicants
November 29, 2016 on behalf of the Respondent
Appearances: Thor Skafte, for the Applicants
Dionysios Rossi, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] This is an application for costs brought by the applicant landowners in two applications for rent review against Leucrotta Exploration Inc. (Leucrotta). In both cases, the rent reviews themselves resolved in October 2015 with no increase to the rent payable, but the parties were unable to resolve the landowners' claims for costs.

[2] The Board's authority to award costs is found in section 170 of the *Petroleum and Natural Gas Act* which provides that "the board may order a party...to pay...all or part of the actual costs incurred by another party...in connection with the application..." (emphasis added). The term "actual costs" is defined in section 168 of the *Petroleum and Natural Gas Act* and includes: "actual reasonable fees and disbursements of a professional agent" and "an amount on account of the reasonable time spent by a party in preparing for and attending a board proceeding". Costs are the expenses incurred, including for a landowner's time and for professional assistance, in connection with pursuing an application to the Board and in preparing for and attending a Board proceeding. An award of costs is discretionary.

[3] The Board's Rules set out various factors the Board will consider when exercising its discretion with respect to an award of costs. Those factors include: the reasons for incurring costs, the contribution of counsel and experts retained, the conduct of a party, whether a party unreasonably delayed or lengthened a proceeding, the degree of success in the outcome, and the reasonableness of costs incurred.

[4] Mr. Mertens, the applicant landowner in file 1858 seeks to recover in excess of \$33,000. Of this claim, in excess of \$24,500 is in respect of fees, disbursements and GST paid to his representative, and just over \$8,600 inclusive of GST is for his own time. Mr. and Mrs. Giesbrecht, the applicant landowners in file 1859 seek costs in excess of \$8,000, of which just over \$7,400 is in respect of fees, disbursements and GST paid to their representative and just over \$1,200 is for their own time and disbursements inclusive of GST.

[5] Leucrotta submits the claims are unreasonable, excessive and include amounts not in connection with the rent review applications. Leucrotta submits there is no basis to award an amount of costs beyond what has already been paid and that both applications should be dismissed.

ISSUE

[6] The issue is whether the Board should exercise its discretion to require Leucrotta to pay all or part of the landowners' reasonably incurred costs in connection with the rent review applications in the circumstances of these cases. Prior to determining that issue however, I must assess not only whether the claims are reasonable, but whether they include items beyond actual costs incurred in connection with the Board's proceedings.

BACKGROUND

[7] On January 2, 2015, Mr. Mertens engaged the services of Thor Skafte Consulting Services Ltd. (Skafte Consulting) to assist with negotiations of certain agreements with Leucrotta, and on the same date, Mr. Skafte of Skafte Consulting sent Leucrotta Notices to Negotiate with respect to three surface leases on land owned by Mr. Mertens (the Mertens Leases). The Mertens Leases had originally been entered in 1995, 1996 and 2005 with other operators. They were never registered in the Land Title Office. The Mertens leases were assigned to Leucrotta in 2014.

[8] As the parties did not agree to renewed rent for the Mertens Leases, Mr. Skafté filed an application to the Board on April 25, 2015 pursuant to section 166 of the *Petroleum and Natural Gas Act* to resolve the disagreement. The Board registered this application as File 1858.

[9] Mr. and Mrs. Giesbrecht similarly engaged the services of Skafté Consulting to assist with negotiations of certain agreements with Leucrotta and on January 2, 2015, Mr. Skafté sent Leucrotta Notices to Negotiate with respect to two surface leases on land owned by the Giesbrechts (the Giesbrecht Leases). The Giesbrecht Leases were originally entered in 2004 and 2005 with other operators. They were not registered in the Land Title Office. The Giesbrecht Leases were assigned to Leucrotta in 2014.

[10] As the parties did not agree to renewed rent for the Giesbrecht Leases, Mr. Skafté filed an application to the Board on April 17, 2015 pursuant to section 166 of the *Petroleum and Natural Gas Act* to resolve the disagreement. The Board registered this application as File 1859.

The Board's proceedings

[11] The Board joined files 1858 and 1859, as well as a third rent review application filed by Skafté Consulting respecting review of rent payable under surface leases with Leucrotta. The Board conducted a mediation telephone conference on June 17, 2015 for all three cases.

[12] Mr. Skafté sought increases to the rent payable under the Mertens Leases and the Giesbrecht Leases. Leucrotta took the view that the rent being paid under each of the three leases exceeded the losses sustained but indicated it was willing to keep the annual rents at their existing levels. Leucrotta offered to resolve the dispute based on the current rent plus a lump sum payment to each landowner to cover their costs if they signed a new lease. Mrs. Giesbrecht indicated she would accept the offer; Mr. Mertens declined.

[13] Mr. Skafte raised the issue of the landowners' costs which, including Mr. Skafte's accounts, exceeded the amount offered by Leucrotta. Mr. Skafte agreed to produce invoices which Leucrotta agreed to review. The mediator indicated he would conduct a further mediation if the parties were unable to reach final resolution, but indicated that if costs could not be agreed, they would have to be arbitrated.

[14] By email dated July 30, 2015 Leucrotta made formal offers to settle both applications on the following terms:

- File 1858 – Leucrotta offered to pay Mr. Mertens the current amount of annual rent provided for under the Mertens Leases (\$5,000, \$4,080 and \$5,241), an additional one-time payment of \$1,000 per lease (for a total of \$3,000) as well as landowner time at \$50 per hour (\$1,340) and \$2,300 for Mr. Skafte's fees;
- File 1859 – Leucrotta offered to pay the Giesbrechts the current amount of annual rent payable under the Giesbrecht Leases (\$6,357 and \$600); an additional one-time payment of \$1,000 per lease (for a total of \$2,000), as well as landowner time at \$50 per hour (\$400) and \$1,400 for Mr. Skafte's fees.

[15] By this time, Mr. Skafte had billed Mr. Mertens \$8,825.76 in fees and disbursements. He had billed Mr. and Mrs. Giesbrecht \$4,274.26.

[16] Over the next couple of months the parties exchanged email correspondence with proposals and counterproposals for settlement, with the main point of disagreement being the amount of costs claimed.

[17] On October 8, 2015, the Board conducted a second telephone mediation conference and the parties settled on the following terms:

- Annual rent would remain the same as set out in the Mertens Leases and Giesbrecht Leases;

- The landowners would each sign replacement leases at the same annual rental rate as the existing Mertens Leases and Giesbrecht Leases;
- Leucrotta would bear the cost of preparing and submitting the replacement leases to the Land Title Office;
- Leucrotta would pay the landowners an additional one-time payment of \$1,000 per lease (a total of \$2,000 for the Giesbrechts and a total of \$3,000 for Mr. Mertens) for the expense and time in reviewing and executing replacement leases to allow them to be registered on title;
- The issue of costs would be referred to the Board for arbitration.

[18] Between November and December 2015, the parties corresponded with respect to the terms and conditions of the replacement leases, with Mr. Skafté insisting upon himself drafting new leases despite not being a lawyer and despite the parties' agreement that Leucrotta would draft and submit the replacement leases. The parties subsequently executed replacement leases; however, due to unresolvable defects in the original form and content of the Mertens Leases and Giesbrecht Leases, the Land Title Office rejected them for filing.

[19] The parties agreed to have the Board issue right of entry orders to replace the Mertens Leases and Giesbrecht Leases on the terms agreed. The Board issued Order 1858-1amd on March 31, 2016 and Order 1859-1amd on April 11, 2016 incorporating the terms of settlement agreed on October 8, 2015 with respect to the annual rent and the additional one-time payment of \$1,000 per lease. The Board's orders have been filed in the Land Title Office.

[20] By the dates of the Board Orders, Mr. Skafté had billed Mr. Mertens \$17,746.43. He had billed Mr. and Mrs. Giesbrecht \$6,517.53.

[21] On November 19, 2015, I conducted a telephone conference and scheduled the issue of costs for a written submission hearing closing March 4, 2016. On January 21,

2016, Mr. Skafté advised he would need additional time to accommodate a medical issue. He filed some submissions on January 26, 2016, and on February 12, 2016, the Board advised it would wait to hear from Mr. Skafté following his recovery and then set dates for further submissions.

[22] On March 10, 2016, Mr. Skafté sought an oral hearing for Mr. Mertens' claim for costs. By letter dated April 11, 2016, the Board denied the application for an oral hearing and asked Mr. Skafté to confirm whether his submissions filed in January were complete, or to advise as to when they would be complete. On April 18, 2016, Mr. Skafté asked the Board to reconsider the decision to decline an oral hearing on costs and by letter of the same date the Board declined to reconsider. Mr. Skafté also filed an application pursuant to section 164 of the *Petroleum and Natural Gas Act* claiming damages arising from Leucrotta's rights of entry to Mr. Mertens' land. The Board registered the damage application as file 1894. This application remains open.

[23] By letter dated April 29, 2016, Mr. Skafté was again asked to confirm whether his costs submissions were complete. On October 3, 2016, Mr. Skafté filed his completed costs submissions with the Board. Leucrotta filed its submissions on November 29, 2016. Mr. Skafté advised he would submit his reply by January 9, 2017, then unilaterally rescheduled that submission date to January 30, 2017. On January 30, Mr. Skafté advised he would not be able to submit his responses by that date but would "as soon as possible". Mr. Skafté submitted his response on May 5, 2017. By then Mr. Mertens had paid \$24,979.99 in fees, disbursements and GST. Mr. and Mrs. Giesbrecht had been billed \$7,492.42 in fees, disbursements and GST.

ANALYSIS

[24] Both Mr. Mertens and Mr. and Mrs. Giesbrecht write letters in support of their claims which are included with the submissions provided by Mr. Skafté.

[25] Mr. Mertens' submission in support of his claim expresses his displeasure with the way Leucrotta has responded to his interests. He alleges Leucrotta has failed to honour terms of the surface lease agreements and has caused damage to his lands. He alleges the profitability of his organic farm has been affected. He says he and Mr. Skaffe have voiced their concerns but Leucrotta's responses leave him with the feeling they do not care about his organic farming income losses and do not understand the rules and regulatory requirements governing organic farming in British Columbia. Mr. Mertens also speaks about his proposal to Leucrotta for a weed control plan and engaging the Oil and Gas Commission to have Leucrotta apply weed control measures.

[26] The Giesbrechts' submission speaks about issues with the previous subsurface rights holders and concerns about air quality from a compressor station two miles south west of their home and questions Leucrotta's business practices. They allege historical and current non-compliance with terms of the leases. They essentially ask the Board to consider the issue of appropriate compensation for Leucrotta's use of their land.

[27] Both submissions speak to being treated fairly in relation to what other landowners recovered for costs and to be compensated in accordance with a pattern of dealings.

[28] Both of these submissions reflect a fundamental misunderstanding of what costs include. A claim for costs is not a claim for damages caused by the right holder. It is not a claim for compensation for a right holder's use of private land. It is not a claim to be compensated for alleged wrong doing or historical grievances. It is not a mechanism to claim remuneration from a right holder. It is not a claim to recover every expense incurred by the landowner as a result of the right holder's activity on their land. It is simply a claim to be reimbursed for the reasonable expenses reasonably incurred, and on account of the reasonable time spent, in pursuing an application to the Board, in this case the reasonable costs incurred in relation to the rent review applications.

[29] I do not blame the landowners for this misunderstanding. Mr. Skafta, as their professional agent, however, should know better. It is evident from his submissions that Mr. Skafta himself does not understand the difference between costs and compensation. This lack of understanding has likely contributed to these proceedings dragging out unnecessarily.

[30] Mr. Mertens has commenced a claim for damages. That claim should be pursued separately from this application for costs. To the extent the Giesbrechts wish to pursue claims for loss or damages under section 163 of the *Petroleum and Natural Gas Act* or for alleged non-compliance with the terms of a surface lease under section 164 of the *Petroleum and Natural Gas Act*, they will need to make those applications.

[31] As costs are discretionary and depend on the circumstances of each case, what other landowners recovered as costs in relation to their proceedings is not relevant to a claim for costs in any other proceeding. The concept of “pattern of dealings” is not relevant to determining costs.

[32] The Board’s Rules provide a presumption in favour of landowners receiving their costs in connection with an application for a right of entry but not with respect to other types of applications before the Board. There is no presumption in favour of landowners in a rent review application that they will receive their costs and landowners commencing rent review proceedings should not have any expectation that the costs incurred by them in pursuing that application will necessarily be recoverable.

[33] In the circumstances of these cases, where the landowners accepted a settlement on the basis of the rents in place with a bonus payment, it is not reasonable for them to expect to be able to recover all of their costs in connection with the Board’s proceedings. It remains to determine how much of their costs may be recovered.

Landowners' time

[34] The landowners claim their time at \$100/hour.

[35] Mr. Mertens claims for approximately 83 hours of his time. Many of the time entries relate to matters that are unrelated to the rent review proceedings, but may more properly be the subject of his damage claim. I estimate approximately 31 hours of Mr. Mertens' recorded time to be in relation to preparing for and attending the Board's rent review proceedings. Approximately 18 hours relates to pursuing the claim for costs. The rest of the time, while it may arise from the rights of entry generally, is not in relation to preparing for or attending the Board's rent review proceedings.

[36] The Giesbrechts claim 11 hours of time and \$35.81 in disbursements. Most of the entries in their time sheet appear to relate to the rent review proceedings.

[37] Leucrotta submits the landowners' have already been adequately compensated for their time by virtue of the \$1,000 per lease payment. I do not understand those payments to have been made against the landowners' time preparing for and attending the Board's proceedings, but to have been made in relation to reviewing replacement leases and in consideration of accepting the settlement. The issue of costs, which includes a claim for the landowners' time spent preparing for and attending the Board's proceedings was not resolved but referred to arbitration.

[38] The landowners charge their time at \$100/hour on the basis that is what they and other landowners have agreed in other cases. What other operators and landowners have negotiated for costs in any particular case is not relevant. Where the hourly rate for a landowner's time is not agreed between the parties, the Board will use \$50/hour to compensate landowners for their time in preparing for and attending Board proceedings in the absence of evidence to support what a landowner actually earns on an hourly basis.

Exercising the Board's discretion

[39] Although there is no presumption in favour of a landowner recovering their costs in a rent review proceeding and although the landowners in these cases were not successful in having the rent increased, I exercise the Board's discretion to allow them to recover from Leucrotta the reasonable time spent preparing for and attending the Board's proceedings. Mr. Mertens may recover \$1,550 calculated as 31 hours x \$50 from Leucrotta for his time preparing for and attending the mediation calls. Mr. and Mrs. Giesbrecht may recover \$550 calculated as 11 hours x \$50 from Leucrotta for their time preparing for and attending the mediation calls plus the disbursement claim of \$35.81.

Skafte Consulting accounts

[40] Mr. Skafte is a Chartered Mediator and a Qualified Arbitrator. His services in these proceedings, however, are not those of either a mediator or an arbitrator but of an advocate, a negotiator, and a consultant. It also appears from his accounts to Mr. Mertens that he has provided weed abatement services. It appears he has charged for some services that fall under the definition of "practice of law" in the *Legal Professions Act*, in particular the drafting or revising of instruments related to real estate intended or required to be registered in the Land Title Office. Mr. Skafte is not a lawyer.

[41] Mr. Skafte charges his time at either \$75/hour or \$250/hour. Occasionally, an entry is billed at \$83.83/hour or \$125/hour. He charges for photocopying and printing of documents at either \$0.25/page or \$0.50/page.

File 1858

[42] Mr. Skafte's account includes numerous entries that are not costs in connection with the rent review application. Some of the entries relate to time spent on matters unrelated to the rent review application including meetings with an inspector from the Oil and Gas Commission (OGC), discussions respecting Certificates of Restoration for two of the locations, time spent by Mr. Skafte hand picking weeds to assist Mr. Mertens with

weed control, and time spent by Mr. Skafté in filing the section 164 application. While some of these entries may be expenses incurred by Mr. Mertens that arise from the rights of entry generally, they are not costs in connection with the rent review application.

[43] I roughly estimate that approximately \$7,000 of Mr. Skafté's account falls within what can be considered actual costs in connection with the rent review applications. These fees and disbursements relate to consultation with the client respecting the rent review proceedings, preparation of material in relation to the rent review, attending the Board's mediation teleconferences for the rent review applications, and associated follow up.

[44] The remainder of the expenses appear to relate to negotiations and discussions generally with Leucrotta about weed abatement and other damage issues, discussions with the OGC respecting reclamation and compliance issues, and other services including weed abatement. Mr. Mertens has filed a claim for damages under section 164 of the *Petroleum and Natural Gas Act*. Some of the expenses, if incurred as a result of the rights of entry, may be the subject of the damage claim, and some may be costs in connection with that application, but they are not properly claimed as costs in connection with the rent review. Approximately \$2,500 in fees and expenses relate to the costs application itself.

[45] By the time Mr. Skafté filed the rent review application to the Board, he had already billed Mr. Mertens in excess of \$7,300. Many of the entries up to this time relate to matters outside of the scope of the rent review proceedings. Some of the entries seem excessive, for example an entry of 14 hours to draft the rent review application and supporting documentation. Some of the expenses are entirely unnecessary, such as photocopying charges to make seven copies of the application and supporting information. The Board does not require more than one copy of an application.

[46] By July 30, 2015, when Leucrotta made a formal offer to settle including payment of \$2,300 towards Mr. Skafté's fees, Mr. Skafté had already billed Mr. Mertens \$8,825.76 of which I estimate approximately \$5,500 to have been in relation to the rent review application. I consider approximately \$3,000 of this amount to have been fees and expenses reasonably incurred to July 30, 2015.

[47] By October 8, 2015, following the Board's second mediation telephone conference call, Mr. Skafté had billed Mr. Merten's in excess of \$13,000. Again, entries cover services outside the scope of the rent review application including 14 hours billed at \$125/hour to hand pick thistle flower seeds on the lease locations.

[48] Following the initial conference call to set up the written submission process to arbitrate costs, Mr. Skafté continued to bill Mr. Mertens for his services, many of which do not relate to the rent review application. Some of those that do relate to the rent review application, are for matters that Mr. Skafté ought not to be billing as they fall within the definition of "practice of law" in the *Legal Professions Act* including the drafting or revising of instruments related to real estate intended or required to be registered in the Land Title Office. Some of the services relate to the damage application and may potentially be recoverable as costs related to that application.

[49] By the time Mr. Skafté put his final response to Leucrotta's costs submissions in the mail on April 18, 2017, Mr. Skafté had charged Mr. Mertens in excess of \$24,000 including expenses for copying and mailing of an excessive number of copies of the submission, some of which is duplicative of the two earlier submissions provided.

[50] Of the \$7,000 of Mr. Skafté's account that actually relates to the rent review application, I estimate approximately \$5,000 of it to be reasonable.

File 1859

[51] The Giesbrechts seeks to recover in excess of \$7,000 in fees, disbursements and GST paid to Mr. Skafté. Most of Mr. Skafté's time appears to have been in connection with the rent review application, although some of it relates to services that fall within the definition of "practice of law" in the *Legal Professions Act* including the drafting or revising of instruments related to real estate intended or required to be registered in the Land Title Office, for which Mr. Skafté should not be billing. Approximately \$1,600 relates to the costs application.

[52] I estimate that approximately \$4,000 of Mr. Skafté's account falls within what can be considered actual costs in connection with the rent review applications. While I question the reasonableness of some of the photocopying and printing charges, for the most part, this amount is reasonable. By July 30, 2015, when Leucrotta made a formal offer to settle including payment of \$1,400 towards Mr. Skafté's fees, Mr. Skafté had billed the Giesbrechts \$4,274.26, of which I estimate approximately \$3,500 to be in relation to the rent review application. For the most part, this amount is not unreasonable.

Exercising the Board's discretion

[53] These were applications for rent review. The only issue in an application for rent review is whether the rent payable under a surface lease needs to be adjusted to compensate the landowner for reasonably foreseeable ongoing prospective losses caused by the right of entry, typically loss of income and tangible and intangible loss associated with nuisance and disturbance.

[54] Mr. Skafté submits that Leucrotta did not engage in collaborative negotiations in an effort to resolve the rent review claims. However, Mr. Skafté's submissions in support of significantly increased rents were not based on established principles respecting rent review. Mr. Skafté's submissions confused annual rent with claims for damages, double counted alleged loss by applying an inappropriate formula to calculate rent, and did not

support the amounts claimed with appropriate evidence of actual or prospective loss. The evidence initially presented did not demonstrate that the present rents did not adequately compensate for actual and prospective ongoing loss, such that, in the circumstances, there was little to negotiate. Mr. Skafté presented revised offers for rent that while more modest in the increase claimed, still did not effectively establish that the current rent would not adequately compensate for ongoing loss and continued to confuse rent review with claims for damages and other issues.

[55] Once the rent review itself was resolved, with no increase to the annual rent being paid, Mr. Skafté's conduct unnecessarily delayed and hindered resolution of the rent review claims by his insistence on drafting leases, a task for which he is not qualified or permitted to charge a fee.

[56] Upon accepting resolution of the rent review applications on the basis that the current rents would remain in place, Mr. Skafté has unreasonably insisted on full recovery to the landowners of his fees, despite that they were not successful in having the rents increased and despite that, as discussed above, much of Mr. Skafté's account, particularly with respect to the claim on behalf of Mr. Mertens, does not relate to professional fees and disbursements in connection with the rent review proceedings.

[57] The claim for costs demonstrates Mr. Skafté's confusion over the concepts of costs and damages, by continuing to advance claims, particularly with respect to that advanced on behalf of Mr. Mertens that are inappropriate and unreasonable. The claim for costs has been unreasonably delayed for a year and a half while Mr. Skafté's fees and disbursements continue to escalate unnecessarily.

[58] As I have said before in assessing claims for costs (see for example *Velander v. Imperial Oil Resources Ltd.*, Order 1726-2, December 11, 2012), the Board does not want to discourage landowners from seeking appropriate professional assistance to pursue remedies under the *Petroleum and Natural Gas Act*. On the other hand, the

Board does not want the opportunity to claim costs to work against reasonable assessments of the likelihood of success of any claim or to encourage unnecessary process.

[59] The Board is left with the dilemma that Mr. Mertens and Mr. and Mrs. Giesbrecht, who felt they required professional assistance, have incurred professional fees in excess of what is reasonable and, in Mr. Mertens' case, for services far beyond the scope of the rent review proceedings that are not recoverable as costs in the rent review proceedings.

[60] While it was not reasonable in the circumstances for the landowners to expect to be able to recover all of the fees paid to Skaft Consulting, it would not have been unreasonable for Leucrotta to contribute an amount towards the landowners' costs, and Leucrotta offered to do that. Leucrotta's July 2015 offers to contribute towards a portion of Mr. Skaft's fees fell a bit short of half of the reasonable fees in connection with the rent review applications incurred to that date. It is possible that the claim for costs could have settled if full recovery of Mr. Skaft's accounts had not been pursued.

[61] In the circumstances, there are reasons to exercise the Board's discretion to allow recovery of any part of Mr. Skaft's fees. I am nevertheless not comfortable to simply dismiss the claims with the result that Leucrotta makes no contribution towards Mr. Skaft's accounts. In all of the circumstances, I will require Leucrotta to contribute just over 1/3 of what I have found to be the professional fees and disbursements reasonably incurred in relation to the rent review proceedings. In Mr. Mertens case that amount is \$2,500 ($1/3 \times \$5,000 = \$1,667$ rounded to \$1,700) and in Mr. and Mrs. Giesbrecht's case that amount is \$1,200 ($1/3 \times \$3,500 = \$1,167$ rounded to \$1,200).

CONCLUSION

[62] I exercise the Board's discretion to allow the landowners to recover a portion of their costs reasonably incurred in the rent review proceedings. Mr. Mertens may

recover \$1,550 towards his time spent in preparing for and attending the Board's proceedings and \$1,700 towards the fees and disbursements of his professional agent for a total of \$3,250. Mr. and Mrs. Giesbrecht may recover \$550 towards their time spent in preparing for and attending the Board's proceedings, disbursements of \$35.81, and \$1,200 towards the fees and disbursements of their professional agent for a total of \$1,785.81.

ORDER

File 1858

[63] The Board orders Leucrotta Exploration Inc. to pay Fernand Charles Mertens \$3,250.00 in costs.

File 1859

[64] The Board orders Leucrotta Exploration Inc. to pay Roy and Susan Giesbrecht \$1,785.81 in costs.

DATED: July 12, 2017

FOR THE BOARD



Cheryl Vickers, Chair