



Citation: 2021 BCSECCOM 472

## Settlement Agreement

**Richard Ryan Penn**

*Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Richard Ryan Penn (Penn) agree as follows:

### **Agreed Statement of Facts**

#### ***Overview***

1. Penn failed to disclose his trades and shareholdings accurately as required: (1) on the System for Electronic Disclosure by Insiders (SEDI), (2) through early warning reports and news releases, and (3) in management information circulars.

#### ***Background***

2. Penn is British Columbia resident. He was registered as a dealing representative with an investment dealer between 2010 and 2013.
3. He has been a director of Black Tusk Resources Inc. (the Issuer) since November 2016 and its Chief Executive Officer since May 2017.
4. The Issuer is a junior mineral exploration company, with its shares listed on the Canadian Securities Exchange.
5. As a director or officer of the Issuer, Penn is an insider under section 1(1) of the Act and, as a director and the Chief Executive Officer of the Issuer, Penn is a reporting insider under section 1.1(1) of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104).

#### ***Misconduct***

##### **Failure to File on SEDI**

6. As an insider, Penn was required, under section 87(2) of the Act, to file reports disclosing his ownership of the Issuer's securities, in accordance with the regulations.
7. Specifically, he was required to file insider reports on SEDI within five days of changes to his beneficial ownership of, or control or director over, the Issuer's securities, as required by section 3.3 of NI 55-104.
8. From January 2018 to December 2020, Penn:
  - (a) engaged in 488 transactions involving the Issuer's securities that were required to be reported on SEDI, involving a total of 22,189,950 shares with a combined value (either the acquisition cost or proceeds of sale) of \$1,733,427, but



- (b) failed to report 425 of those transaction (87% of the total), involving 14,515,950 shares (65% of the total) valued at \$1,155,947 (67% of the total).

#### Failure to File Early Warning Reports

9. From September 2017 to February 2019, Penn held 10% or more of the Issuer's common shares.
10. Penn ceased to hold 10% or more of the Issuer's common shares in February 2019, but did not file an early warning report or issue and file a news release as required by section 5.2(3) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104).
11. Between September 2017 and February 2019, Penn's shareholdings decreased from over 31% of the Issuer's common shares to less than 10%. Under section 5.2(2)(a) of NI 62-104, he should have filed an early warning report and issued and file a news release each time he disposed of more than 2% of the Issuer's common shares. Penn did not make that filing and disclosure.

#### False or Misleading Statement in a Required Filing

12. The Issuer filed management information circulars for its annual general meeting held in:
  - (a) October 2019, that falsely stated Penn held 2,924,500 of the Issuer's shares as of the record date, when he actually held only 1,093,725 (only 37% as many), and
  - (b) November 2020, that falsely stated Penn held 5,014,500 of the Issuer's shares as of the record date, when he actually held only 505,075 (only 10% as many).
13. Those management information circulars also misstated the number of shares held by the Issuer's Chief Financial Officer.
14. By misstating Penn's and its Chief Financial Officer's holdings of its securities, the Issuer contravened the prohibition in section 168.1(1)(b) of the Act against making false or misleading statements in a required filing.
15. Penn authorized, permitted, or acquiesced in the contravention by the Issuer, and is therefore liable for it under section 168.2 of the Act.

#### ***Factors Relevant to Settlement***

16. Penn fully cooperated with Staff. He has made the required SEDI filings and paid late fees of \$9,100. He also directed the Issuer to publish a news release correcting his shareholdings as disclosed in the most recent management information circular.
17. Penn traded using accounts in his own name, with Canadian institutions. There is no evidence that he attempted to hide his trading in the Issuer's securities.



**Undertaking(s)**

18. Penn undertakes:

- (a) to pay \$75,000 to the British Columbia Securities Commission in respect of settlement of this matter which sum is due and payable immediately without further demand; and
- (b) to complete a course of study acceptable to the Executive Director on the duties and responsibilities of directors and officers of public companies, within six months of the date of this settlement agreement.

**Waiver**

¶ 2 Penn waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

**Counterpart**

¶ 3 This Settlement Agreement may be signed in counterpart and all such counterparts of signed copies, whether delivered electronically or otherwise, shall be read or construed together as if they formed one originally executed document.

¶ 4 December 9, 2021

*Richard Penn*

¶ 5 \_\_\_\_\_  
Richard Ryan Penn

(Redacted) )  
 Witness Signature )  
 (Redacted) )  
 Witness Name (please print) )  
 (Redacted) )  
 (Redacted) )  
 Address )  
 (Redacted) )  
 Occupation )

¶ 6 December 14, 2021

*Peter Brady*

¶ 7 Peter J. Brady  
Executive Director