



# The Regional Municipality of Durham Report

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To: Regional Council  
From: Commissioner of Corporate Services and Regional Solicitor  
Report: #2022-A-26  
Date: December 21, 2022

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**Subject:**

Proposed Settlement of Torbear Litigation

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**Recommendation:**

It is recommended to Regional Council:

- A) That Regional Council directs that the Settlement as set out in the conditional Minutes of Settlement, attached as confidential Attachment #2 be approved, with source of funds to be at the discretion of the Commissioner of Finance.
  - B) That Regional Council authorizes and directs the Regional Solicitor to sign such documents as may be required to carry out this Council direction.
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**Report:**

**1. Background**

- 1.1 The Region entered into a construction contract in 2012 with Torbear Contracting Inc. ("Torbear") for the \$49 million Port Darlington Water Pollution Control Plant Phase 2 Expansion (tender number D2012-002) (the Project). The Project experienced challenges and its completion was delayed by 952 calendar days.
- 1.2 Torbear commenced an action for \$19,672,267 (plus HST) against the Region on October 22, 2019, alleging outstanding contract amounts and delays in the Superior Court of Justice. The Region commenced a counterclaim for \$4,502,327 for liquidated damages for delays against Torbear and Aviva Insurance Company of Canada ("Aviva"), Torbear's construction bonding company, on November 13, 2019.
- 1.3 Before the litigation commenced, the parties had attended a mediation in October 2019 to attempt to settle the disputes. The mediation failed.

1.4 Torbear's original claim of \$19,672,267.57 broke out as follows (not including HST):

a.	Balance of contract owing:	\$ 264,434.83
b.	Statutory holdbacks:	\$ 827,229.62
c.	Outstanding change orders:	\$2,227,606.95
d.	Torbear delay claim:	\$6,706,616.85
e.	Quantech (subcontractor) delay claim:	\$4,706,422.00
f.	Malfar (subcontractor) delay claim:	\$5,000,000.00

1.5 A settlement meeting was held on December 15, 2022, at which time a settlement conditional on Council approval was reached. A copy of the Minutes of Settlement is attached as confidential Attachment #2. Settlement discussions are subject to privilege. However, in the event the Minutes of Settlement are approved by Council and the matter is fully and finally resolved, a term of the Minutes of Settlement provides that the terms of the settlement may be publicly disclosed.

## **2. Financial Implications**

2.1 The source of funds required for the settlement will be at the discretion of the Commissioner of Finance.

## **3. Conclusion**

3.1 Regional staff recommend settlement of this matter on the terms and conditions provided in the attached confidential conditional Minutes of Settlement.

**4. Attachments**

Attachment #1: Confidential - Privileged Interoffice Memorandum to Council from the Regional Solicitor, dated December 19, 2022

Attachment #2: Confidential - Minutes of Settlement and Release, dated December 15, 2022

Respectfully submitted,

Original signed by

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Barb Goodwin, MPA, CPA/CGA,  
B.Comm, CPM, CMMIII  
Commissioner of Corporate Services

Original signed by

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Jason Hunt  
Director of Legal Services and Regional  
Solicitor