



Court File no. VLC-S-S-1810216
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAYMOND EDWARD MATTHEWS and DONALD DUNLOP
PLAINTIFFS

AND:

LA CAPITALE CIVIL SERVICE MUTUAL, LA CAPITALE FINANCIAL
GROUP INC., LA CAPITALE CIVIL SERVICE INSURER INC., LA
CAPITALE FINANCIAL SECURITY INSURANCE COMPANY, and
3602214 CANADA INC.
DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER

BEFORE) THE HONOURABLE MADAM JUSTICE JACKSON) APRIL 16, 2021
))

ON THE APPLICATION of Raymond Edward Matthews and Donald Dunlop, Plaintiffs, coming on for hearing at Vancouver, British Columbia the 16th day of April, 2021 and on hearing E.F.A. Merchant, Q.C., A. Tibbs, and I.S. Brar, counsel for the Plaintiffs; and on hearing K.E. Siddall and H. Chu (Articled Student), counsel for the Defendants.

THIS COURT ORDERS that:

1. By consent, the Case Plan attached hereto as Annex A is approved and henceforth has the same effect as if entered as an Order of this Court.
2. By consent, Notice of Certification, substantially in the form presented as Annex B to this order, shall be distributed and published in accordance with paragraphs 7-9 of the Case Plan.
3. By consent, and in accordance with paragraphs 11-13 of the Case Plan, members of the Class may opt out of the class proceeding by completing an Opt-Out Form, the form of which is approved as set forth in Annex C, and returning the same to counsel for the Plaintiffs prior to the expiry of the Opt Out Period (as defined in the Case Plan).

4. The Plaintiffs (jointly and severally) and the Defendants (jointly and severally) shall be equally responsible for one-half of the costs associated with publishing Notice of Certification in the newspapers contemplated by paragraph 9 of the Case Plan.
5. No costs are awarded in respect of this application.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Anthony Tibbs

for Signature of E.F.A. Merchant, Q.C.
 Lawyer for the Plaintiffs
ANTHONY TIBBS

K Suddall

Signature of Kieran Siddall
 Lawyer for the Defendants

BY THE COURT

REGISTRAR

[Handwritten Signature]

ANNEX A: CASE PLAN

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAYMOND EDWARD MATTHEWS and DONALD DUNLOP
PLAINTIFFS

AND:

LA CAPITALE CIVIL SERVICE MUTUAL, LA CAPITALE FINANCIAL GROUP INC., LA
CAPITALE CIVIL SERVICE INSURER INC., LA CAPITALE FINANCIAL SECURITY
INSURANCE COMPANY, and 3602214 CANADA INC.
DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**CASE PLAN
(REVISION 4 – AUGUST 9, 2021)**

A. Interpretation

1. In this Case Plan, the following words and phrases shall have the following meanings:
 - (a) “**CPA**” means *The Class Proceedings Act*, RSBC 1996, c 50;
 - (b) “**Certification Finalization Date**” means the date on which all relevant appeal periods in respect of the Certification Orders have expired;
 - (c) “**Certification Notice**” means such notice as the Court shall approve pursuant to s. 19 of the *CPA*;

- (d) “**Certification Notice Program**” refers to the steps that will be taken and the mechanisms to be employed to deliver notice of certification to the class pursuant to s. 19 of the *CPA*, as contemplated by s. 4(1)(e)(ii) of the *CPA*, described in part C *infra*;
- (e) “**Certification Orders**” means the orders granting certification of this action as a class action, approving the Certification Notice Program, and specifying the opt-out procedure;
- (f) “**Class**” is as defined in the Certification Orders, or as it may from time to time be amended by the parties or the Court;
- (g) “**Case Planning Conference**” means an in-person, telephone or video case planning conference between counsel for the Parties and the Court;
- (h) “**Defendants’ Case Planning Report**” is a document which may be filed by the Defendants in advance of a Case Planning Conference addressing any matter which may be addressed in the Plaintiffs’ Case Planning Report;
- (i) “**Notice Publication Date**” means a date on or after the date of the Certification Order to be determined by agreement of the Parties or direction of the Court on which publications relating to the Certification Notice Program are to commence;
- (j) “**Opt Out Address**” means: By mail, 2401 Saskatchewan Drive, Regina, Saskatchewan, S4P 4H8; By fax, (306) 522-3299; By email, lacapitale@merchantlaw.com;
- (k) “**Opt Out Form**” means a form agreed by the parties and approved by the Court or otherwise as directed by the Court as a component of the Certification Order that permits members of the class to identify themselves and opt out of the certified class proceeding in accordance with s. 16 of the *CPA*;

- (l) **“Opt Out List”** means a document containing the names and addresses of Class members who delivered a completed Opt Out Form during the Opt Out Period;
- (m) **“Opt Out Period”** means the period of time between the Notice Publication Date and 60 days after the Notice Publication Date;
- (n) **“Parties”** means the Representative Plaintiffs and the Defendants but does not include Class members other than the Representative Plaintiffs; and
- (o) **“Plaintiff’s Case Planning Report”** is a document to be filed by the Representative Plaintiffs in advance of a Case Planning Conference which shall include:
- (i) a summary of the procedural steps taken and to be taken in the proceeding;
 - (ii) any proposed revisions to the Litigation Plan;
 - (iii) a description of any pending applications, contested or uncontested;
 - (iv) a summary of any other matters which the Representative Plaintiffs propose to address; and
 - (v) any schedules including:
 - proposed amendments to the Litigation Plan;
 - consent orders to be submitted to the Court during case management;
 - the Opt Out List and, if requested by the Court, copies of completed Opt Out Forms;

- a text of the proposed answers to frequently asked questions and other public communication to Class members, and
 - a list of the documents over which there is a dispute about privilege.
2. The *Supreme Court Civil Rules* are incorporated herein and apply to the extent that they are not inconsistent with this Case Plan or the *CPA*.
 3. This Case Plan may be amended, supplemented, or substituted by agreement of the Parties subject to Court approval, or as directed by the Court at a Case Planning Conference.

B. Pleadings

4. The Defendants contemplate delivering, after entry of the Certification Order, a Demand for Further and Better Particulars. The Representative Plaintiffs shall provide a response to the Defendants' Demand for Further and Better Particulars within 30 days of receipt thereof.
5. Within 60 days of the Representative Plaintiffs delivering a response to the Defendants' Demand for Further and Better Particulars, the Defendants shall deliver a Response to Civil Claim.
6. Within 30 days of the Defendants delivering a Response to Civil Claim, the Representative Plaintiffs may deliver a Reply, if so advised.

C. Notices

7. For the purposes of distributing notice of certification, the Defendants shall, by August 31, 2021, provide to counsel for the Representative Plaintiffs a list of each potential member of the Class, including their mail and electronic contact information, and an indication of the manner (e-mail or mail) with which routine

communications have customarily been undertaken with said potential class member.

8. The Defendants shall, by August 31, 2021, cause the notice of certification, as approved by the Court, accompanied by a copy of the issued Certification Orders, to be distributed to each identified potential member of the class in the manner with which routine communications have customarily been undertaken by the Defendants. The direct costs of the distribution of the notice shall be paid by the Defendants.
9. Counsel for the Representative Plaintiffs shall also publish a bilingual notice of certification by August 31, 2021 in each of the *Globe and Mail* and *National Post* newspapers. The Representative Plaintiffs and the Defendants shall be equally responsible for one half of the associated costs.
10. If the common issues are resolved in favour of the Class, the Representative Plaintiffs shall, on notice to the Defendants, submit to the Court for approval a notice to be given to members of the Class in accordance with section 20 of the *CPA*.

D. Opting Out

11. Class members may opt out of the class action by delivering a completed Opt Out Form to the Opt Out Address during the Opt Out Period.
12. Within 14 days of the end of the Opt Out Period, counsel for the Representative Plaintiffs shall prepare a final Opt Out List and provide a copy of same to the Defendants.
13. Should any Opt Out Forms be received after the close of the Opt Out Period, counsel for the Representative Plaintiffs shall advise counsel for the Defendants and the Court and seek directions if required.

E. Case Planning Conferences

14. No less than twice per year, unless agreed by the Parties with Court approval or as otherwise directed by the Court, there will be a Case Planning Conference, the purpose of which will be:
 - (a) to review the procedural steps taken and to be taken to satisfy the Court that the proceeding is reasonably moving towards a fair and expeditious determination of common and individual issues, and if the Court is not so satisfied, to identify problems and investigate solutions;
 - (b) to consider the resolution of any controversies, including privileged disputes, without resorting to contested applications; and
 - (c) to schedule the return dates of contested applications and the next Case Planning Conference; and
 - (d) to make any order in respect of the proceeding set out in Rule 5-3, whether or not on the application of the Parties.
15. At least 14 days before each Case Planning Conference, the Representative Plaintiffs shall deliver to the Defendants and file a Plaintiff's Case Planning Report.
16. The Defendants may file a Defendants' Case Planning Report at least 7 days before the Case Planning Conference.

F. Contact with class members and ongoing reporting

17. Counsel for the Representative Plaintiffs shall receive and respond to inquiries about the class action by written correspondence, fax, e-mail, or telephone, and maintain a database of all contacts with members of the Class.
18. This database may be used *inter alia* to provide further notice and ongoing reporting as to the state and progress of the action.

19. At least once every six months, counsel for the Representative Plaintiffs will prepare an update on the progress of the proceeding to members of the Class, which shall be submitted for approval by the Court (without notice to the Defendants unless otherwise directed by the Court) for distribution to all members of the Class known to counsel for the Plaintiffs at that time.

G. Discovery

20. Within 90 days after the filing of the Defendants' Response to Civil Claim, the Parties shall prepare and serve a list of documents on each other in accordance with Rule 7-1(1).
21. No later than 30 days after delivery of the Defendants' List of Documents, each of the Defendants shall nominate as its representative an individual, who is knowledgeable concerning the matters in question in the action, to be examined on behalf of that Defendant.
22. The Representative Plaintiffs may examine the representative nominated by the Defendants or any other person the Representative Plaintiffs consider appropriate and who is or has been a director, officer, employee, agent or external auditor of the party to be examined.
23. The Representative Plaintiffs may apply to the Court for an order permitting the examination of additional representatives of the Defendants.
24. The Defendants may examine the Representative Plaintiffs and may thereafter apply to the Court pursuant to CPA s. 17(2) for an order permitting the examination of other class members.
25. The Representative Plaintiffs and the Defendants will complete examinations for discovery within 180 days after the delivery of their list of documents and any amendments thereto.

H. Experts

26. No later than 60 days after the completion of examinations for discovery, the Parties shall advise one another if they intend to tender the report of an expert witness at the common issue trial and, if they do so intend, they shall also advise the expert's area of expertise.
27. Any Party who intends to tender an expert's report at the common issues trial shall serve the expert's report on the other Parties no later than 180 after the completion of examinations of discovery.
28. Any Party who intends to tender a responding expert's report at the common issues trial shall serve the responding report on the other Parties no later than 120 days after receipt of the expert report delivered in accordance with the preceding paragraph.

I. Refinement of Common Issues

29. The Parties may apply to amend the order certifying this action to deal with any necessary amendments or refinements to any common issues arising from the pleadings, document discovery, examinations for discovery, or expert reports, as the case may be.

J. Trial Management Conference

30. A trial management conference shall take place no later than 90 days after the delivery of experts reports and any responding expert reports.

K. Witness Lists

31. No later than 30 days before the trial management conference, each Party shall file and serve a list of witnesses in accordance with Rule 7-4(1).

L. Trial of the Common issues

32. The common issues trial shall be scheduled at the Trial Management Conference.
33. At any time following the delivery of the Defendants' Response to Civil Claim, any Party may deliver a summary trial application for the adjudication of the common issues, or any of them.

M. Individual Issues

34. If the common issues are resolved in favour of the Class, a procedure for the resolution of individual issues shall be determined in accordance with s. 27 of the CPA.
35. Class members will have the choice to retain counsel of their choosing for the determination of individual issues. While some may choose to retain counsel for the Representative Plaintiffs to represent them in this aspect of the proceeding, they will not be required to do so.

DATED AT VANCOUVER, BRITISH COLUMBIA THIS 17TH DAY OF MAY, 2019.

REVISED (#2) THIS 5TH DAY OF APRIL, 2021.

REVISED (#3) THIS 16th DAY OF APRIL, 2021 per Matthews v La Capitale Civil Service Mutual, 2021 BCSC 798.

REVISED (#4) THIS 9TH DAY OF AUGUST, 2021 by consent of the parties.

ANNEX B: NOTICE OF CERTIFICATION

CLASS PROCEEDING CERTIFICATION NOTICE

A class proceeding has been certified by the British Columbia Supreme Court (*Matthews and Dunlop v La Capitale Civil Service Mutual, La Capitale Financial Group Inc., La Capitale Civil Service Insurer Inc., La Capitale Financial Security Insurance Company, and 3602214 Canada Inc.*, VLC-S-S-1810216) on behalf of: "all individuals or entities, wherever resident, who were, between November 30, 2006 and May 28, 2020 party to any agreement with the Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, or their subsidiaries or acquirers which grants or entitles them to ongoing compensation from the Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, their subsidiaries, their acquirers or from the business operations and activities of the Defendants." (the "Class")

WHAT IS THIS CLASS ACTION ABOUT?

The action alleges that the Defendants engaged in conduct (the "Defendants' Actions") that deprived the Class of compensation owed pursuant to various agreements between the Class and the Defendants. The alleged Defendants' Actions includes the inclusion of certain expenses by the Defendants in the calculation of compensation owed to the Class and the churning of various Defendants' products to eliminate compensation owed to the Class. The Class claims a monetary judgment for damages flowing from the breaches of legal duties and obligations, including but not limited to, breach of trust, breach of contract, misrepresentation, negligence, and unjust enrichment. The Defendants deny the allegations and the Court has not made a decision on the merits of the claims.

OPTING OUT OF THE CLASS ACTION

If you are a Class member, you are automatically included in the class action, unless you opt out. If you wish to opt out, you must send a completed Opt Out Form to Merchant Law Group LLP by courier, e-mail, fax, or mail by October 30, 2021. You can obtain the Opt Out Form and addresses at www.merchantlaw.com/lacapitale or by calling 306-359-7777.

If you do **not** opt out of the class action, you will be affected as follows.

- (a) You will be bound by the Court's findings at trial as to whether the Defendants breached any obligations toward you. If the Court finds in favour of Class members, you may later have to participate in a further process to prove individual issues, including the amount of any loss that you incurred as a result.
- (b) You may be unable to bring or participate in any other legal proceeding against the Defendants that alleges that they have breached any agreement you may have had with the Defendants.
- (c) You will be bound by any settlement of the class action that is approved by the Court and will be permitted to share in any monetary proceeds by way of such settlement.

LEGAL REPRESENTATION

The Court has appointed Raymond Matthews and Donald Dunlop as the representative plaintiffs, who have retained counsel on a contingency fee basis, whereby the lawyers, subject to the approval of the Court as required by the *Class Proceedings Act*, will be paid (i) 33% of the first \$5 million recovered plus (ii) 25% of the next \$5 million recovered plus (iii) 20% of any recovery above \$10 million, plus (iv) all applicable taxes and disbursements incurred.

TO LEARN MORE ABOUT THIS CLASS ACTION

For more information on this class action, please visit <http://www.merchantlaw.com/lacapitale>

You can contact Matthews and Dunlop through their lawyers: Merchant Law Group LLP, 2401 Saskatchewan Drive, Regina, SK, S4P 4H8, Tel: (306) 359-7777, Fax: (306) 522-3299, Email: lacapitale@merchantlaw.com, Attn: E.F. Anthony Merchant, Q.C. / Iqbal S. Brar / Anthony Tibbs.

This is not an advertisement or solicitation by a lawyer. The Court has approved the content of this notice, and it affects your legal rights. You should seek independent legal advice to consider your options.

AVIS D'AUTORISATION DE RECOURS COLLECTIF

La Cour suprême de la Colombie-Britannique a homologué un recours collectif (Matthews et Dunlop c. La Capitale Civil Service Mutual, La Capitale Financial Group Inc., La Capitale Civil Service Insurer Inc., La Capitale Financial Security Insurance Company et 3602214 Canada Inc., VLC-SS-1810216) au nom de : « toutes les personnes physiques ou morales, quel que soit leur lieu de résidence, en relation contractuelle entre le 30 novembre 2006 et le 28 mai 2020 avec la Pennsylvania Life Insurance Company, la Penncorp Life Insurance Company, ou leurs filiales ou acquéreurs, et consécutivement en droit d'obtenir une rémunération continue de la Pennsylvania Life Insurance Company, de la Penncorp Life Insurance Company, de leurs filiales, de leurs acquéreurs ou des opérations et activités commerciales des Défendeurs » (le « recours collectif »).

À QUOI CORRESPOND CE RECOURS COLLECTIF?

Les Défendeurs sont accusés d'avoir adopté des mesures (les « actes des Défendeurs ») privant les Plaignants de l'indemnisation due en vertu de divers accords entre ces derniers et les Défendeurs, et notamment d'inclure certaines de leurs dépenses dans le calcul de la rémunération due aux Plaignants et d'éliminer la rémunération par le remplacement abusif de divers produits des Défendeurs. Les Plaignants réclament un jugement pécuniaire en dommages-intérêts découlant des manquements aux devoirs et obligations juridiques, y compris notamment l'abus de confiance, la rupture de contrat, les fausses déclarations, la négligence et l'enrichissement illégitime. Les Défendeurs nient les accusations et la Cour n'a pas décidé du bien-fondé de la plainte.

RETRAIT DU RECOURS COLLECTIF

Si vous faites partie des Plaignants, vous êtes automatiquement inclus dans le recours collectif sauf si vous vous en excluez. Si vous souhaitez vous en retirer, vous devez envoyer un formulaire d'exclusion dûment rempli à Merchant Law Group LLP par messenger, courriel, fax ou courrier avant le 30^e octobre 2021. Vous pouvez obtenir ce formulaire et les adresses de destination sur le site www.merchantlaw.com/lacapitale ou en appelant le 306-359-7777.

Si vous ne vous retirez pas du recours collectif, voici comment celui-ci vous affectera.

- (a) Vous serez lié par les conclusions de la Cour relatives au procès déterminant si les Défendeurs ont manqué à leurs obligations envers vous. Si le tribunal donne raison aux Plaignants, vous pourrez ensuite avoir à participer à un autre procès pour prouver les dommages individuels, y compris le montant de toute perte que vous avez subie en conséquence des actes des Défendeurs.
- (b) Vous pourriez ne pas pouvoir engager ou participer à toute autre procédure judiciaire accusant les Défendeurs d'avoir violé tout accord que vous auriez pu passer avec eux.
- (c) Vous serez lié par tout règlement du recours collectif approuvé par la Cour et serez autorisé à recevoir votre part de tout produit monétaire déterminé par le biais de ce règlement.

REPRÉSENTATION LÉGALE

La Cour a nommé Raymond Matthews et Donald Dunlop comme représentants des Plaignants ; ceux-ci ont engagé des services juridiques sur la base d'honoraires conditionnels, selon lesquels leurs avocats seront rémunérés, sous réserve de l'approbation de la Cour comme l'exige la *Loi sur les recours collectifs*, à hauteur de (i) 33 % des premiers 5 millions de dollars récupérés plus (ii) 25 % des 5 millions de dollars suivants récupérés plus (iii) 20 % de tout recouvrement supérieur à 10 millions de dollars, plus (iv) toutes les taxes applicables et les frais engagés.

POUR EN SAVOIR PLUS SUR CE RECOURS COLLECTIF

Pour plus d'informations sur ce recours collectif, veuillez visiter le site <http://www.merchantlaw.com/lacapitale>.

Vous pouvez contacter Matthews et Dunlop par l'intermédiaire de leurs avocats : Merchant Law Group LLP, 2401 Saskatchewan Drive, Regina, SK, S4P 4H8, Tél. : (306) 359-7777, Fax : (306) 522-3299, Courriel : lapitale@merchantlaw.com, Avocat : E.F. Anthony Merchant, Q.C. / Iqbal S. Brar / Anthony Tibbs.

Cet avis ne constitue pas une publicité ou une sollicitation émanant d'un avocat. La Cour a approuvé le contenu de cette publication et celle-ci affecte vos droits légaux. Nous vous recommandons de consulter un conseiller juridique indépendant pour examiner vos options.

ANNEX C: OPT-OUT FORM

LA CAPITALE CLASS PROCEEDING - OPT-OUT FORM

You are a member of the class in the class proceeding certified by the British Columbia Supreme Court styled as *Matthews and Dunlop v La Capitale Civil Service Mutual, La Capitale Financial Group Inc., La Capitale Civil Service Insurer Inc., La Capitale Financial Security Insurance Company, and 3602214 Canada Inc.*, VLC-S-S-1810216 (the “Proceeding”) if you are among:

all individuals or entities, wherever resident, who were, between November 30, 2006 and May 28, 2020 party to any agreement with the Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, or their subsidiaries or acquirers which grants or entitles them to ongoing compensation from the Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, their subsidiaries, their acquirers or from the business operations and activities of the Defendants (the “Class”)

Complete this opt-out form **ONLY** if you are a member of the Class **AND** you wish to be excluded or removed from participating in the Proceeding. This form must be received by Merchant Law Group LLP (“MLG”) via mail, courier, fax, or email on or before October 30, 2021 at the following coordinates:

La Capitale Class Action c/o MLG **Fax:** (306) 522-3299
2401 Saskatchewan Drive **Email:** lacapitale@merchantlaw.com
Regina, Saskatchewan S4P 4H8

Your Name: _____

Your Mailing Address: _____

City *Prov* *Postal Code*

Your Telephone Number: _____

Email Address: _____

By signing below, I certify that I do not wish to participate in the Proceeding and I understand that, by opting out, I will not receive any part of the money or benefits that may be obtained on behalf of the Class. Furthermore, I acknowledge and agree that MLG may disclose all information relating to this opt-out to the Court and to the lawyers for the Defendants.

Signature	Date
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No. S1810216
Vancouver Registry

In the Supreme Court of British Columbia

Between

RAYMOND EDWARD MATTHEWS and
DONALD DUNLOP

Plaintiffs

and

LA CAPITALE CIVIL SERVICE MUTUAL,
LA CAPITALE FINANCIAL GROUP INC.,
LA CAPITALE CIVIL SERVICE INSURER INC.,
LA CAPITALE FINANCIAL SECURITY
INSURANCE COMPANY, and 3602214 CANADA
INC.

Defendants

ORDER MADE AFTER APPLICATION

NORTON ROSE FULBRIGHT CANADA LLP

Barristers & Solicitors
1800 – 510 West Georgia Street
Vancouver, BC V6B 0M3
Telephone: (604) 687-6575
Direct Facsimile: (604) 641-4949
Attention: Kieran E. Siddall

Agent: West Coast Title Search Ltd.

KES/lc

Matter# 1001047672