

AUG 16 2021

Re-amended with leave of Madam Justice Jackson granted May 28, 2020
Amended pursuant to Rule 6-1(1)(a) on May 22, 2019
Original filed September 20, 2018

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

SECOND AMENDED NOTICE OF CIVIL CLAIM

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

THIS ACTION HAS BEEN STARTED BY THE PLAINTIFFS FOR THE RELIEF SET OUT
IN PART 2 BELOW.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF PLAINTIFFS

PART 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, Raymond Edward Matthews, resides in Nanaimo, British Columbia.
2. The Plaintiff, Donald Dunlop, resides in Calgary, Alberta.
3. The Defendants La Capitale Civil Service Mutual, La Capitale Financial Group Inc., La Capitale Civil Service Insurer Inc. and La Capitale Financial Security Inc. are incorporated under the laws of the Province of Quebec, and have registered offices located at 625 Jacques-Parizeau St. Quebec, G1R 2G5.

4. The Defendant 3602214 Canada Inc. is incorporated under the federal law of Canada with its registered office address located at 7150 Derrycrest Drive, Mississauga, Ontario, L5W 0E5.

5. Other corporations, persons, partnerships, firms and/or individuals not named in this pleading as defendants because their identities are currently unknown to the Plaintiffs, participated as subsidiaries, agents, or affiliates of the named defendants and performed acts and made statements and agreements in furtherance of the Defendants' Actions (as defined below).

Definitions

6. In this claim, the capitalized terms are either defined in with the paragraphs of this claim or are as follows:

- i) **"Class"** means all individuals or entities, wherever resident, who ~~are, or were,~~ between November 30, 2006 and May 28, 2020, a 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 (and is more precisely defined in *Part 3* of this claim, *infra*).
- ii) **"Class Penncorp Business Payments"** means payments made to members of the Class based on Class Retirement Compensation Agreements after they discontinued working with either Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, their subsidiaries, or their acquirers.

- iii) **“Class Retirement Compensation Agreements”** means any agreement with the Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, or their subsidiaries or acquirers which grants or entitles an individual or entity to ongoing compensation either from the sale of Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, or their subsidiaries or acquirers' products or from the business operations and activities of the Defendants.
- iv) **“Defendants”** means La Capitale Civil Service Mutual, La Capitale Financial Group Inc., La Capitale Civil Service Insurer Inc., La Capitale Financial Security Inc. and 3602214 Canada Inc.
- v) **“Plaintiffs”** means Raymond Edward Matthews and Donald Dunlop.

The Plaintiff, Raymond Edward Matthews

7. The Plaintiff, Raymond Edward Matthews (**“Mr. Matthews”**), was an independent contractor who served as a sales agent and manager of various branches of the Pennsylvania Life Insurance Company and the Penncorp Life Insurance Company (both companies hereinafter referred to as **“Penncorp”**).

8. Mr. Matthews held various positions at Penncorp including, but not limited to, the position of manager of Penncorp offices in British Columbia.

9. Penncorp offices throughout Canada sold various insurance products that included, but were not limited to, short and long term disability insurance, hospital care insurance, critical illness and cancer insurance, accident insurance, and life insurance (**“Penncorp Products”**).

10. The sale of Penncorp Products through Penncorp Canadian Offices resulted in revenues to Penncorp (**“Penncorp Product Revenues”**).

11. As an independent insurance salesperson and office manager under contract with PennCorp, Mr. Matthews responsibilities included, but were not limited to, designing, marketing, selling, and servicing various PennCorp Products, training other employees and independent contractors of PennCorp, and developing the distribution channels for PennCorp Products.

12. Mr. Matthews was a manager of PennCorp offices for the region described by PennCorp as the territory of British Columbia, Canada since at least October 1985.

13. PennCorp agreed to give Mr. Matthews compensation as an agent marketing and selling PennCorp Products in British Columbia and as a manager authorized by PennCorp to recruit, appoint, and train agents to market and sell PennCorp Products in British Columbia. The said compensation included, but was not limited to:

- a) Percentages of profits of various offices in British Columbia with 'profits' calculated per compensation schedules agreed to by Mr. Matthews and PennCorp and attached to branch manager agreements; and
- b) Compensation for work as an agent for PennCorp based on commission schedules attached to agent agreements.

(hereinafter referred to as the "**Matthews Retirement Compensation Agreement**")

14. Specifically, as an individual who had worked for PennCorp as an agent for at least ten (10) years, Mr. Mathews' Matthews Retirement Compensation Agreement terms included, but were not limited to, entitlement to compensation in the form of one hundred (100) percent of renewal commissions from PennCorp Products per an agent agreement that extended beyond his retirement, would continue for the remainder of his life, and would continue to be paid to his spouse or estate upon his death.

15. The Matthews Retirement Compensation Agreement is a Class Retirement Compensation Agreement.

16. On or about May 1997, Mr. Matthews retired from working for Penncorp.
17. After retirement, Penncorp made payments to Mr. Matthews pursuant to the Matthews Retirement Compensation Agreement.
18. Penncorp payments to the Mr. Mathews, Donald Dunlop and other members of the Class pursuant to Class Retirement Compensation Agreements are hereinafter referred to as the "**Penncorp Business Payments**".
19. Penncorp agents, sales representatives and office managers such as Mr. Matthews, were compensated by various means including, but not limited to, receiving compensation in amounts related to a percentage of business conducted through specific Canadian Penncorp branches.
20. All business conducted within Canadian Penncorp branches was and is categorized through numerical codes or account numbers (hereinafter referred to as the "**Penncorp Office Codes**"). Mr. Matthews and other employees, contractors, and agents of Penncorp were notified of the appropriate Penncorp Office Codes to be used for particular lines of business, and compensation calculations are dependant upon revenues and expenses being assigned to the appropriate Penncorp Office Code.
21. Penncorp sales representatives and managers, such as Mr. Matthews, had agreements with Penncorp wherein compensation schedules provided the percentages that an individual would receive for certain or any business coded with a specific Penncorp Office Code (hereinafter referred to as the "**Penncorp Compensation Schedules**").

22. A typical PennCorp Compensation Schedule stated percentages of “profits” that an individual would receive for business coded with a specific PennCorp Office Code. The term “profits” would be defined within the PennCorp Compensation Schedule as a calculation of revenue received by PennCorp for business coded with a specific PennCorp Office Code minus expenses associated with that specific PennCorp Office Code.

23. PennCorp recorded and delineated expenses for each PennCorp Canadian office for the business conducted to sell and service PennCorp Products (“**PennCorp Product Expenses**”)

24. Regardless of the variety of PennCorp Office Codes notated to business transacted through various Canadian PennCorp branches managed by Mr. Matthews, a portion of compensation received by Mr. Matthews from PennCorp was calculated as a percentage of all business conducted through a particular Canadian PennCorp branch.

25. Business conducted and transacted through a Canadian PennCorp branch included, but was not limited to, the sale, servicing, and renewal of various insurance products.

26. Immediately prior to retirement, all PennCorp Office Codes that were being utilized by PennCorp to calculate business conducted through Canadian PennCorp branches managed by Mr. Matthews were yielding compensation for Mr. Matthews and were profitable. Specifically, pursuant to branch manager agreements between Mr. Matthews and PennCorp, Mr. Mathews was being paid percentages of profits of various offices in British Columbia which included, but was not limited to, percentages of profits based on revenues allocated PennCorp Office Codes that were notated to any and all business conducted and transacted through PennCorp offices in Nanaimo, British Columbia.

27. Immediately after the retirement of Mr. Matthews, all Penncorp Office Codes that were being utilized by Penncorp to calculate business conducted through Canadian Penncorp branches previously managed by Mr. Matthews yielded compensation for Mr. Matthews by way of Penncorp Business Payments.

28. Sometime in 2006, the Penncorp Life Insurance Company was acquired by the defendant La Capitale Financial Group Inc.

29. In or about December 2013, Penncorp Life Insurance Company announced that it would be known as the La Capitale Financial Security Insurance Company.

30. Beginning at a time unknown to Mr. Matthews and continuing through the present day and in breach of the terms of the Matthews Retirement Compensation Agreement, the Defendants engaged in various acts and practices including:

- a) Decreasing Penncorp Business Payments to Mr. Matthews;
- b) Withholding Penncorp Business Payments owed to Mr. Matthews; and
- c) Manipulating Penncorp Office Codes and churning Penncorp Products to decrease or withhold Penncorp Business Payments owed to Mr. Matthews.

31. The Defendants are currently not been making Penncorp Business Payments to Mr. Matthews pursuant to the Matthews Retirement Compensation Agreement.

The Plaintiff, Donald Dunlop

32. The Plaintiff, Donald Dunlop, ("**Mr. Dunlop**") was an independent contractor who served as a sales agent and manager of various branches of Penncorp.

33. Mr. Dunlop held various positions at Penncorp including, but not limited to, the position of manager of Penncorp all offices in Alberta.

34. As an independent insurance salesperson and manager under contract with PennCorp, Mr. Dunlop's responsibilities included, but were not limited to, designing, marketing, selling, and servicing various PennCorp Products, training other employees and contractors of PennCorp, and developing the distribution channels for PennCorp Products in Alberta.

35. On or about August 16, 1995, while Mr. Dunlop was a manager of all PennCorp offices in Alberta, PennCorp agreed to give Mr. Dunlop additional compensation for his work for PennCorp that would extend beyond his retirement and would continue to be paid until his death.

36. In a letter to Mr. Dunlop dated on or about August 16th, 1995, J. Paul Edmondson, President of the Pennsylvania Life Insurance Company, ratified the following aspect of the Dunlop Retirement Compensation Agreement (as defined below) between Mr. Dunlop and PennCorp:

In recognition of your extraordinary accomplishments and dedicated service, Pennsylvania Life Insurance Company and the PennCorp Life Insurance Company along with Gerald Weiner and the V.P.'s of PennCorp Canada have agreed to bestow upon you a special honor. You currently retain a 5% participation in all office codes pertaining to business written in the provinces of Alberta. This participation is hereby grandfathered to you.

This participation extends beyond your retirement and for the remainder of your life. Retirement qualifications are as follows:

- 1) You must be greater than age 60.
- 2) Your age plus years of service must total a number greater than 80.

We at Pennsylvania Life Insurance Company and the PennCorp Life Insurance Company greatly appreciate all the efforts you have made in creating a truly great Canadian success story.

We wish you the greatest success in the future and hope that this small token of our appreciation will in some way continue to acknowledge our gratitude.

(hereinafter referred to as the "Edmondson Letter")

37. Penncorp agreed to give Mr. Dunlop ongoing compensation for his work as an agent marketing and selling Penncorp Products in Alberta and as a manager of Alberta Penncorp operations. The said compensation included, but was not limited to:

- a) Ongoing compensation based on renewal commissions for renewals of various Penncorp Products; and
- b) Compensation equal to five (5) percent of the profits of Penncorp generated through all Penncorp offices in Alberta.

(hereinafter referred to as the **"Dunlop Retirement Compensation Agreement"**)

38. The Dunlop Retirement Compensation Agreement additionally includes retirement compensation similar to the Matthews Retirement Compensation Agreement entitling Mr. Dunlop to compensation in the form of one hundred (100) percent of renewal commissions from Penncorp Products per an agent agreement that extended beyond his retirement, would continue for the remainder of his life, and would continue to be paid to his spouse or estate upon his death.

39. The Dunlop Retirement Compensation Agreement is a Class Retirement Compensation Agreement.

40. Other individuals who were Penncorp managers provinces other than Alberta including British Columbia also received a version of the Edmondson Letter at about the same period as Mr. Dunlop.

41. On or about August 25, 1999, Mr. Dunlop retired from working for Penncorp.

42. Penncorp agents, including Mr. Dunlop, were compensated by various means including, but not limited to, receiving compensation in an amount equivalent to a percentage of business conducted through a specific Canadian Penncorp branches.

43. Prior to retiring, Mr. Dunlop's compensation included, but was not limited to, payments that were calculated as a percentage of business conducted through a particular Canadian Penncorp branch.

44. Regardless of the variety of Penncorp Office Codes notated to business transacted through various Canadian Penncorp branches managed by Mr. Dunlop, the portion of compensation received by Mr. Dunlop from Penncorp was calculated as a percentage of all business conducted through a particular Canadian Penncorp branch.

45. Immediately prior to Mr. Dunlop's retirement, all Penncorp Office Codes that were being utilized by Penncorp to calculate business conducted through all Alberta Penncorp branches were yielding compensation for Mr. Dunlop and were profitable. Specifically, pursuant to the Dunlop Retirement Compensation Agreement between Mr. Dunlop and Penncorp, Mr. Dunlop was being paid percentages of profits from all Penncorp offices in Alberta which included, but was not limited to compensation for Penncorp Office Codes that were notated to any and all business conducted and transacted through any Alberta Penncorp office.

46. Immediately after the retirement of Mr. Dunlop, all Penncorp Office Codes that were being utilized by Penncorp to calculate business conducted through Alberta Penncorp branches yielded compensation for Mr. Dunlop by way of Penncorp Business Payments.

47. Beginning at a time unknown to Mr. Dunlop, and continuing through the present day, Penncorp Business Payments to Mr. Dunlop were not in amounts pursuant to Dunlop Retirement Compensation Agreement.

48. Beginning in or about 2015, Mr. Dunlop requested documentation, including, but not limited to, documents pertaining to the business conducted through various Canadian Penncorp branches and documents pertaining to the calculation of his Penncorp Business Payments per the Dunlop Retirement Compensation Agreement ("**Penncorp Business Payments Documentation**").

49. On or about November 2016, Mr. Dunlop received correspondence from Mr. Ross stating that he should contact Mr. Hunt of La Capitale Financial Security Inc. with regards to any issues with the Dunlop Retirement Compensation Agreement.

50. On or about December 5, 2016, Mr. Dunlop received a letter dated December 5, 2016 from Jonathan Roberge, who at the time was an auditor with Ernst & Young LLP ("**Auditor Letter**"). The Auditor Letter stated that Ernst & Young LLP were the auditors of the La Capitale Financial Security Insurance Company and were writing to "...confirm with [Mr. Donald Dunlop] the adequacy of the information we have received from La Capitale Financial Security Insurance Company in relation with the monthly payment you receive" ... "Your 5% special participation for October 2016".

51. On or about December 2016, Mr. Dunlop, replied to both Mr. Ross and the Auditor Letter seeking clarification on why they were requesting documentation which was already in the possession of the Defendants and how the authors of the Auditor Letter calculated the amounts stated as being Mr. Dunlop's Penncorp Business Payments.

52. To date, Mr. Dunlop has not received requisite documentation pertaining to the calculations of his Penncorp Business Payments, including, but not limited to, the requested Penncorp Business Payments Documentation.

53. Mr. Dunlop has not received any reasonable explanation as to why the Defendants are not making Penncorp Business Payments in accordance with the Dunlop Retirement Compensation Agreement.

54. After retirement, Penncorp asserted to Mr. Dunlop that it was making payments to Mr. Dunlop pursuant to the Dunlop Retirement Compensation Agreement.

55. Beginning at a date unknown to Mr. Dunlop and continuing through the present day and in breach of the terms of the Dunlop Retirement Compensation Agreement, the Defendants engaged in various acts and practices including:

- a) Decreasing Penncorp Business Payments to Mr. Dunlop;
- b) Withholding Penncorp Business Payments owed to Mr. Dunlop;
- c) Manipulating Penncorp Office Codes and Penncorp Product Expenses to decrease or withhold Penncorp Business Payments owed to Mr. Dunlop; and
- d) Churning Penncorp Products in order to decrease or withhold Penncorp Business Payments owed to Mr. Dunlop.

The Defendants

56. On or about August 16th, 1995, the Edmondson Letter was forwarded to various managers of Canadian Penncorp branches that now comprise an aspect of some Class Retirement Compensation Agreements.

57. Other managers of Canadian Penncorp branches and the insurance agents who worked through Canadian Penncorp branches have contracts with the Defendants entitling them to Class Penncorp Business Payments pursuant to a Class Retirement Compensation Agreement.

58. Penncorp Life Insurance Company was a wholly owned subsidiary of 3602214 Canada Inc.

59. On or about November 2006, La Capitale Civil Service Insurer Inc., a wholly owned subsidiary of La Capitale Financial Group Inc., which is a wholly owned subsidiary of La Capitale Civil Service Mutual, acquired 70% of the commons shares of 3602214 Canada Inc.

60. As stated on the Defendants' website, in 2006, the "Acquisition of Penncorp Life Insurance Company, which has its head office in Mississauga, Ontario, marks debut of La Capitale's Canadian expansion."

61. The acquisition of the Penncorp's Canadian operations by the Defendants, which was subject to regulatory approval, required the Defendants to assume, at a minimum, all of Penncorp's Canadian operations' debts, obligations, and liabilities which included the Class Retirement Compensation Agreements.

62. Each of the Defendants is aware of the existence of the Class Retirement Compensation Agreements.

63. After the acquisition of Penncorp's Canadian operations by the Defendants, Class Penncorp Business Payments were made to members of the Class.

64. Sometime on or about December 2013, the Defendants' released a media statement stating the following:

Penncorp becomes La Capitale Financial Security

December 16, 2013 – One of Canada's leading disability insurance providers, Penncorp Life Insurance Company is pleased to announce that, effective January 6, 2014, it will be known as La Capitale Financial Security Insurance Company. Along with this name change, the company will take on a new visual identity with the colours of La Capitale Financial Group, its parent company since 2006.

Excellent reputation

This change reflects the key position that the company holds in the La Capitale group. "Including Penncorp under the La Capitale banner will increase awareness of our brand, while allowing us to leverage the synergies among our subsidiaries and position ourselves as a life and health insurance leader," declared Steven Ross, President and Chief Operating Officer of La Capitale Financial Group's Life and Health Insurance and Financial Services division. "Penncorp's solid foundation and excellent reputation in English Canada make it our financial group's ambassador of choice."

Specialist in disability Insurance

This Mississauga-based company specializes in the design and distribution of insurance products and financial solutions tailored to the unique needs of self-employed, skilled tradespeople and other individuals who do not have easy access to traditional insurance and financial products. Penncorp offers the best hospitalization and disability Insurance products

in the country. Its connection to La Capitale gives the company access to a wide range of life and health insurance and savings products.

Benefits for our customers

"We are very proud of our results and of our affiliation with La Capitale Financial Group," said Scott Hunt, Vice-President of Operations. "It has made us even stronger and has put us in an even better position to enable our customers to benefit from solutions that meet their needs."

About Penncorp

Penncorp maintains a strong financial position, managing assets in excess of \$460 million and serving over 100,000 policyholders. The company pays in excess of \$2,000,000 in benefits to clients every month. It's the No. 6 in Disability Insurance providers in Canada.

About La Capitale Financial Group

La Capitale Financial Group has a strong presence throughout Canada. With over 2,900 employees and partners and guided by the values of mutualism on which it was founded, La Capitale works with clients to build, protect and value what they feel counts for their financial security. With assets of over \$4.7 billion, La Capitale occupies a choice position among leading insurers in Canada.

65. Some in 2006, the Defendants changed the name of the Penncorp Life Insurance Company to the La Capitale Financial Security Insurance Company.

66. Sometime in 2007, the Defendants' released their 2006 annual report to the public ("**2006 Annual Report**") which included the following statements:

...
Penncorp markets individual accident and disability insurance products across Canada. This major acquisition falls perfectly in line with the Mutual's Pan-Canadian expansion plan. The values our group holds so dear are already attracting great interest from Penncorp employees.

...
In line with our strategic priority to accelerate growth in our Life and Health Insurance sector came the acquisition on November 30, 2006, of Penncorp Life Insurance Company, a leading specialty accident and disability insurance provider with its Head Office in Mississauga, Ontario. Penncorp's products and services are not only an excellent complement to La Capitale's existing range; they are also a solid base on which we will be able to build and develop our individual and group insurance activities in the rest of Canada. This acquisition will also increase the group's annual premium income by over \$80 million.

...
The acquisition of Penncorp, while posing a short-term challenge in terms of the adjustments required, will open the door during the second quarter of 2007 to a number of business opportunities.

...
PENNCORP LIFE INSURANCE COMPANY

Since 1971, Penncorp Life Insurance Company has been one of Canada's leading specialty disability insurance companies. It provides products and services primarily to the self-employed, small business owners, affinity groups and qualified individuals.

Based in Mississauga, Ontario, PennCorp has a network of some 200 career agents and has regional branch offices and field representatives in every province. From coast to coast, thousands of Canadians rely on PennCorp for customized long and short term disability, hospital care, accident, critical illness and life insurance solutions.

The company has close to \$262 million in assets and serves over 150,000 policyholders. Each month, PennCorp pays more than \$2,100,000 in benefits. Since November 30, 2006, the company has been affiliated with La Capitale Financial Group.

PRODUCTS AND SERVICES OFFERED

- Short and long term disability insurance
- Hospital care insurance
- Critical illness and cancer insurance
- Accident insurance
- Life insurance

Lynn Grenier-Lew, FSA, FCIA, MAAA, Vice-President, Operations

Eli Pichelli, M.B.A., C.L.U., Vice-President, Sales and Marketing – Career Channel

HEAD OFFICE 55 Superior Blvd Mississauga ON L5T 2X9 905 795-2300 or 1 800 268 2835	Administrative Office 1428 Grande-Allée Blvd Lachenaie QC J6W 6B7 450 492-2272 or 1 800 363-8011	Barrie 431 Huronia Rd., Unit #2 Barrie ON L4N 9B3 705 728-5580 or 1 800 268-5168
Bedford 1600 Bedford Hwy, Suite 209 Sunnyside Place Bedford NS B4A 1E8 902 835-9203	Calgary A-16B 6120 2nd St. S.E. Calgary AB T2H 2L8 403 252-7757	London 4026 Meadowbrooke Drive, Unit 129 London ON N6L 1A4 519 652-0255
Manotick 1165 Beaverwood Manotick ON K4M 1A4 613 692-3590	Mississauga 55 Superior Blvd Mississauga ON L5T 2X9 905 696-8477	Montreal 4949 Métropolitain Blvd E Suite 140 Montreal QC H1R 1Z6 514 735-2058 or 1 877 735-2058
Quebec City 1265 Charest Blvd, Suite 1030 Quebec QC G1N 2C9 418 687-2058	Saskatoon #5 - 2345 Avenue C North Saskatoon SK S7L 5Z5 306 955-3000	Surrey #203B 10190 152A St. Surrey BC V3R 1J7 604 589-1381
Thunder Bay 301 - 1265 East Arthur St. Thunder Bay ON P7E 5H7 807 473-0005	Winnipeg #16 - 1313 Border St. Winnipeg MB R3H 0X4 204 985-1580	

...

67. Sometime in 2008, the Defendants' released their 2007 annual report to the public ("**2007 Annual Report**") which included the following statements:

...

The Life and Health Insurance sector saw additional profits of approximately \$8.3 million over 2006, despite major investments in various operational sectors and a major increase in the number of insureds, a number that rose from 129,500 in 2006 to 133,600 in 2007. These results are mainly due to an exceptional performance in terms of administrative management, investments and the tireless work of our financial security advisors. The

excellent performance of Pennncorp—the Toronto-based subsidiary we acquired in 2006, whose profits have contributed to these results—also deserves credit.

...

With the acquisition of Pennncorp Life Insurance Company and the business development efforts outside Quebec, English language training programs are being offered to employees of our various companies. For the Life and Health Insurance sector, the courses are being offered to more than 80 individuals, while managers in the Property and Casualty Insurance sector have had access to similar courses since the fall of 2007.

...

Sales of individual life insurance by La Capitale Civil Service Insurer and La Capitale Insurance and Financial Services, for instance, grew by 21%. Premium volume for our Pennncorp subsidiary reached \$74.8 million at the end of the year. In individual savings, our portfolio now totals some \$568 million, an increase of 11.9% over 2006, and in group insurance, sales were up by a breathtaking 134%.

...

The acquisition of Pennncorp at the end of 2006 required a great deal of integration work throughout the last year. From a distribution standpoint, we made the entire range of life and health insurance products offered by La Capitale available to Pennncorp agents. Similarly, the financial security advisors at La Capitale now have access to Pennncorp's products. This provides both of these subsidiaries with new insurance solutions, in addition to expanding their business opportunities. We also transferred certain administrative and customer service functions in order to meet specific client needs in each province more effectively. Everything is now in place for our investment in Pennncorp to achieve its full potential.

...

Since 1971, Pennncorp Life Insurance Company has been one of Canada's leading specialty accident and disability insurance providers. It offers products and services primarily to the self-employed, small business owners, affinity groups and other individuals.

Pennncorp, whose Head Office is in Mississauga, Ontario, has a network of some 200 career agents and has branch offices and field representatives in every province. From coast to coast, thousands of Canadians rely on Pennncorp for customized long and short term disability, hospital care, accident, critical illness and life insurance solutions.

...

Pennncorp

Steven Ross, C. Adm. - President and Chief Operating Officer

Lynn Grenier-Lew, FSA, FCIA, MAAA - Vice-President, Operations

Eli Pichelli, MBA, CLU - Vice-President, Sales and Marketing – Career Channel

Neil Brown - Senior Director, Finance

Scott Hunt - Senior Director, Underwriting and Policy Services

Mark Turkiewicz - Senior Director, Claims

...

68. Sometime in 2009, the Defendants' released their 2008 annual report to the public ("**2008 Annual Report**") which included the following statements:

...

With the acquisition of Pennncorp Life Insurance Company in 2006, the La Capitale name and products are now recognized and appreciated Canada-wide.

...

Sustained growth

For the fifth consecutive year, our in-force portfolio was strengthened by steady growth in all our life insurance operations.

In individual insurance, combined sales for our life insurance companies, specifically La Capitale Civil Service Insurer, La Capitale Insurance and Financial Services and Penncorp Life Insurance Company, totalled nearly \$14 million, a 13.2% increase over 2007. It is important to note that a good part of our growth occurred outside Quebec, reinforcing the wisdom of our decision to diversify geographically. Penncorp Life Insurance Company, which has Canada-wide operations, posted a 19.2% increase in sales compared to the previous year. The number of financial security advisors associated with this subsidiary grew from 166 to 181 by the end of 2008, a factor that bodes very well for future growth.

At year end, our total premium volume for individual insurance amounted to \$147.6 million, a 3.8% increase over the previous year.

...

With its Head Office in Mississauga, Ontario, Penncorp has a network of approximately 200 career agents with branch offices and field representatives in every province. In addition, Penncorp counts on an independent distribution channel across Canada.

Penncorp continues to pursue aggressive growth strategies which build on its key strengths: specialization in personal disability insurance; expertise in the unique needs of the self-employed and skilled tradespeople; development of simple, innovative product solutions; partnership with its distributors; efficient, reliable operations; and a commitment to keeping promises to clients, employees and distributors.

...

69. Sometime in 2010, the Defendants' released their 2009 annual report to the public ("**2009 Annual Report**") which included the following statements:

...

INDIVIDUAL INSURANCE AND ANNUITIES

The individual insurance and annuities division generated significant growth in 2009 despite the negative economic climate at the start of the year. In keeping with our 2009-2011 strategic plan, we focused on four key objectives in 2009: enhancing operational efficiency, developing our distribution channels, improving our products and services and developing the public service market. At year-end, overall sales in premiums and deposits Canada-wide, including La Capitale and Penncorp, had grown by 11%, and individual insurance sales for La Capitale had increased by 12.8%.

...

We also achieved our second objective of developing our distribution networks. Penncorp Life Insurance Company, our member company in Ontario, opened six new regional branch offices, enabling us to increase awareness of La Capitale's brand and products across Canada. We also added 86 new agents to our sales force, bringing the number of exclusive agents across Canada to 423, including 178 advisors who are solely dedicated to serving our Mutual members. In addition, our broker network grew significantly over the course of the year, totalling more than 1,500 at the end of 2009. We should also point out that over 50% of individual insurance sales are now made outside Quebec.

...

70. Sometime in 2011, the Defendants' released their 2010 annual report to the public ("**2010 Annual Report**") which included the following statements:

...
Life and Health Insurance

The Life and Health Insurance sector comprises six of La Capitale Financial Group's 10 member companies, namely La Capitale Civil Service Insurer, La Capitale Financial Services, La Capitale Insurance and Financial Services, Penncorp Life Insurance Company, AGA Financial Group and our interest in Promutuel Life. Once again this year, these companies maintained their growth and delivered strong results. Together, they generated income (before taxes and non-controlling interests) of \$50.9 million, an increase of 6.9% over the previous year.

...
In terms of individual life and health insurance, sales across our distribution channels reached a record \$15.5 million, up 16.8% over 2009. This remarkable performance is the result of the hard work of the advisors at La Capitale Financial Services and Penncorp, as well our broker partners. Note that 91% of sales in the La Capitale Financial Services channel were made in our primary market, the Quebec civil service, which shows that this market segment remains an ongoing priority for us.

...
Moreover, our Ontario subsidiary, Penncorp Life Insurance Company, opened two new branch offices in Mississauga and another in the Saguenay region, thereby raising awareness of not only its own products, but also the La Capitale brand and its products, both in Quebec and the rest of Canada.

...
Moreover, our subsidiary Penncorp Life Insurance Company will soon open three more branch offices, further expanding our service network across Canada. This will further enhance the visibility and reputation of the La Capitale name and brand throughout the country, thereby strengthening our market position.

...

71. Sometime in 2012, the Defendants' released their 2011 annual report to the public ("**2011 Annual Report**") which included the following statements:

...
Individual Life and Health Insurance

Sales of individual life and health insurance generated by our distribution channels were 6.1% higher than the previous year. This is the result of sustained efforts by our La Capitale Financial Services advisors, our Ontario member company Penncorp's field agents, our broker partners and our customer service and product development teams, who, in spite of the economic slowdown, managed to keep our growth on track. Note that 92% of sales by the La Capitale Financial Services channel were to the public service—our core market. Every year we offer special promotions to our primary client base, as well as the option to participate in financial education sessions tailored to the various stages in life. In 2011, we organized 446 of these sessions for more than 8,000 Quebec public service employees, an increase of nearly 21% over 2010.

Penncorp decided to open two new branch offices—one in Manitoba, and the other in Hamilton, Ontario. It also launched the Pillar Series, a new line of disability insurance products designed to meet the needs of blue-collar workers and the self-employed and distributed through our broker partners. This represented 13.1% of our health insurance sales in 2011.

...

72. Sometime in 2013, the Defendants' released their 2012 annual report to the public ("**2012 Annual Report**") which included the following statements:

...
Let me also thank Mr. Robert St-Denis, who retired in October 2012. He played an instrumental role in La Capitale's progress, particularly in the rest of Canada. Penncorp and Unica are now spearheading our Canada-wide expansion.

...
We must also highlight the role played by the 362 agents of our Ontario member company Penncorp in this year's success, not to mention our customer service and product development teams. In spite of the economic uncertainty, they succeeded in designing and marketing products that would support our growth and meet the needs of our clients.

...
Developing and maintaining La Capitale's distribution channels played a pivotal role in the company's success this past year. Special efforts were made to boost our agent retention rate, which reached 80% at La Capitale Financial Services in 2012. Our network of exclusive representatives consists of 157 financial security advisors working with La Capitale Financial Services (CSC) and 362 Penncorp agents, and together they serve clients all across Canada.

73. Sometime in 2014, the Defendants' released their 2013 annual report to the public ("**2013 Annual Report**") which included the following statements:

...
Outside of Quebec

A major highlight of our operations outside Quebec was the change of name for our Ontario-based member company Penncorp Life Insurance Company, now known as La Capitale Financial Security. This change is intended to reflect the significance of the role the company plays in our organization. Bringing Penncorp under the La Capitale banner will enable us to grow our brand across the country and maximize the synergy between our member companies so that we can carve out our place as a leader in the life and health insurance industry. We should also underline the remarkable performance of the 272 agents of this subsidiary in 2013. New business premiums and deposits grew to \$13.9 million, an increase of more than 19% over 2012.

...
... 2013 Total Assets of Penncorp Life Insurance Company - \$490,442,[000]...

...2013 Total liabilities of Penncorp Life Insurance Company - \$370,018,[000]...

...2013 Equity of Penncorp Life Insurance Company - \$120,424,[000]...

74. Sometime in 2015, the Defendants' released their 2014 annual report to the public ("**2014 Annual Report**") which included the following statements:

...
Moreover, we must highlight the remarkable performance in 2014 of the 232 agents in our subsidiary La Capitale Financial Security, formerly Penncorp Life Insurance Company. New business premiums and deposits grew to reach \$16.1 million, a 15.4% increase over 2013.

These financial statements include the financial statements of La Capitale Civil Service Mutual and the subsidiaries listed below:...La Capitale Financial Security Insurance Company... % interest 2014 [is] 100%...

...

La Capitale Financial Security

Based in Mississauga, Ontario, La Capitale Financial Security (formerly Penncorp Life Insurance Company) offers simplified, personal disability insurance products and financial solutions designed to fit the unique needs of small business owners, self-employed workers, skilled tradespeople and other individuals who do not have easy access to traditional insurance and financial products. La Capitale Financial Security has a network of 272 career agents with branch offices and field representatives across Canada, and also relies on an independent distribution channel.

PRODUCTS AND SERVICES OFFERED

Short- and long-term disability insurance

Long-term care insurance

Hospital care insurance

Critical illness and cancer insurance

Life insurance

...

75. Sometime in 2016, the Defendants' released their 2015 annual report to the public ("**2015 Annual Report**") which included the following statements:

...

LA CAPITALE FINANCIAL SECURITY

Based in Mississauga, Ontario, La Capitale Financial Security (formerly Penncorp Life Insurance Company) offers simplified, personal disability insurance products and financial solutions designed to fit the unique needs of small business owners, self-employed workers, skilled tradespeople and other individuals who do not have easy access to traditional insurance and financial products. La Capitale Financial Security has a network of 190 career agents with branch offices and field representatives across Canada, and also relies on an independent distribution channel.

Products and services offered

- Life insurance

- Disability insurance

- Critical illness insurance

- Long-term care insurance

- Savings and investment products

- Mortgage loans

- Payroll Deduction Privilege

...

76. Sometime in 2017, the Defendants' released their 2016 annual report to the public ("**2016 Annual Report**") which included the following statements:

...

Similarly, La Capitale continuously scrutinizes its processes to improve the effectiveness and efficiency of its technology operations. Doing so enabled us to generate considerable savings during the past year, without jeopardizing the high quality level of our communications and

infrastructure networks. In this regard, I wish to highlight the completion of the processing repatriation activities of La Capitale Financial Security to our head office processing centre, which put an end to our contract with an external supplier.

...

77. Since on or about November 2006, in addition to Penncorp Products, the Defendants began marketing and selling various “La Capitale” life and health insurance products through Penncorp Canadian offices (**“La Capitale Products”**).

78. Since on or about November 2006, the sale of La Capitale Products have accrued revenues for the Defendants (**“La Capitale Revenues”**).

79. Since on or about November 2006, the Defendants have recorded expenses for the marketing, sale, and servicing of La Capitale Products through Penncorp Canadian offices (**“La Capitale Product Expenses”**).

80. Every year since on or about November 2006, the sale of La Capitale Products through Penncorp Canadian offices have accrued profits for the Defendants (**“La Capital Product Profits”**).

81. Since on or about November 2006, the Defendants have not provided the Class with any portion of La Capital Product Profits pursuant to the Class Retirement Compensation Agreements.

82. Since on or about November 2006, the Defendants have deducted La Capitale Product Expenses from Class Penncorp Business Payments.

82a. To the extent that Class Penncorp Business Payments are calculated on the basis of “profits” (being revenue minus expenses), it was an implied term of the Class Retirement Compensation Agreements that expenses (including operating expenses) would not be deducted without the corresponding revenues being included in the calculation.

82b. It was an implied term of the Class Retirement Compensation Agreements that the Defendants would not engage in conduct designed to, or which had the effect of, prematurely extinguishing the entitlement of Class Members to renewal commissions through, *inter alia*, the churning of policies from Penncorp Products into La Capitale Products.

83. Since on or about November 2006, the Defendants have not made accurate or complete Class Penncorp Business Payments owed to the Class pursuant to the Class Retirement Compensation Agreements by engaging in one or more of the following acts:

- (a) Not attributing any La Capitale Revenues to Class Penncorp Business Payments calculations;
- (b) Not attributing any La Capitale Profits to Class Penncorp Business Payments calculations;
- (c) Attributing La Capitale Product Expenses to Class Penncorp Business Payments calculations without attributing La Capitale Revenues to Class Penncorp Business Payments calculations;
- (d) Attributing La Capitale Product Expenses to Class Penncorp Business Payments calculations without attributing La Capitale Profits to Class Penncorp Business Payments calculations;
- (e) Attributing inflated La Capitale Product Expenses to Class Penncorp Business Payments calculations;
- (f) Classifying Penncorp Product Revenues as either La Capitale Revenues or La Capitale Profits and not attributing La Capitale Revenues or La Capitale Profits to Class Penncorp Business Payments calculations;
- (g) Not attributing the correct amount of Penncorp Product Revenues to Class Penncorp Business Payments calculations;
- (h) Inflating the amount of Penncorp Product Expenses attributed to Class Penncorp Business Payments calculations;
- (i) Churning Penncorp Products into La Capitale Products;

- (j) Providing incentives to Defendants' employees, including but not limited to engaging in rebating or tied selling to change Penncorp Products into La Capitale Products;
- (k) Collecting La Capitale Revenues, La Capitale Profits, and Penncorp Product Revenues and not making Class Penncorp Business Payments;
- (l) Failing to keep an accounting of funds from business conducted through the operations of Defendants' Canadian Penncorp offices; or
- (m) Failing to keep an account of funds to be held in trust by the Defendants, for the Class, to meet the ongoing obligations of the Class Retirement Compensation Agreements.

(hereinafter collectively referred to as the "**Defendants' Actions**")

84. The Defendants' Actions are ongoing.

85. All of the Defendants were at all material times, either directly or through a wholly-owned subsidiaries, agents, or affiliates, either participants in the Defendants' Actions or were willfully blind or reckless to the fact that other defendants, their subsidiaries, their agents, or their affiliates were engaging in the Defendants' Actions throughout Canada including British Columbia.

86. Since on or about November 2006, the Defendants either authorized at least one or more of their subsidiaries, agents, or affiliates to engage in the Defendants' Actions, or were willfully blind or reckless to the fact that other defendants, subsidiaries, agents, or affiliates authorized other defendants, their subsidiaries, their agents, or their affiliates to engage in the Defendants' Actions throughout Canada including British Columbia.

87. Since on or about November 2006, the Defendants' Actions were dishonest and fraudulent and knowingly engaged in for the purpose of decreasing the monetary amounts to be paid to members of the Class pursuant to Class Retirement Compensation Agreements.

88. The Defendants have provided no notice that they are engaging in the Defendants' Actions.

89. The Defendants have provided no explanation as to why they are engaging in the Defendants' Actions.

Damages

90. As a result of the acts and omissions of the Defendants including, but not limited to, the Defendants' Actions, the Plaintiffs and Class members have suffered damages, in an amount to be determined at trial, for *inter alia* unpaid, underpaid, and future unpaid or underpaid Class Penncorp Business Payments ("**Accumulating Damages**").

Punitive damages

91. The injuries suffered by the Plaintiffs and the Class were a reasonably foreseeable consequence of the Defendants' acts and omissions including, but no limited to, the Defendants' Actions.

92. The acts and omissions of the Defendants including, but not limited to, the Defendants' Actions, were an immediate and proximate cause of the injuries and losses suffered by the Plaintiffs and the Class.

93. The Plaintiffs and the Class would not have suffered the aforementioned injuries but for the Defendants' acts and omissions including, but no limited to, the Defendants' Actions

94. The reprehensible, shameful, and outrageous conduct of the Defendants, which includes, but is not limited to, the Defendants' Actions, deprived the Plaintiffs and the Class of necessary retirement income in the golden years of their lives.

95. The conduct, including, but no limited to, the Defendants' Actions, was designed to deceive and defraud the Plaintiffs and the Class and does not meet the minimal requirements of honesty in performance required of all contractual dealings in Canada.

96. The reprehensible, shameful, and outrageous conduct of the Defendants, which includes, but is not limited to, the Defendants' Actions, offends the public's sense of decency and warrants a claim of punitive damages.

97. The Defendants' wrongs including, but no limited to, the Defendants' Actions, are continuing and the Defendants have made no adequate effort to compensate the Plaintiffs for the wrongs suffered and have treated their assertions in a dismissive and disrespectful fashion.

PART 2: RELIEF SOUGHT

98. The Plaintiffs, on their own behalf and on behalf of the Class members, seek the following:

- (a) General and special damages for each Class member, including damages for breach of trust, breach of duty of good faith, breach of contract, fraudulent misrepresentation, negligence, and loss of future income, in an amount to be determined at trial;
- (b) An accounting of Class Penncorp Business Payments;
- (c) Aggravated, exemplary, and punitive damages;
- (d) Pre-and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79; and
- (e) Such further and other relief as this Honourable Court may consider just.

PART 3: LEGAL BASIS

99. The Plaintiffs incorporate by reference the pleadings above.

100. This is a proposed class proceeding on behalf of the Plaintiffs and :

- ~~(a) a putative class of all individuals or entities, wherever resident, who are, or were, between November 30, 2006 and May 28, 2020, a 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 (and is more precisely defined in Part 3 of this claim, *infra*)' offices.; and~~
- ~~(b) a putative extra-provincial class of all persons or entities resident outside of British Columbia who are a party to any agreement with the Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, or their subsidiaries or acquirers which granted or entitled them to ongoing compensation from either the sale of Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, or their subsidiaries or acquirers' products or from the business operations and activities of the Defendants' offices.~~

~~101. The Plaintiffs reserve the right to amalgamate the aforementioned classes into a single national class at certification, pursuant to changes in the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 to come into force after the issuance of this notice of civil claim.~~

102. The Plaintiffs state that the Defendants have each acted through their various subsidiaries, employees, mandatories, contractors, agents, or affiliates and are vicariously liable for all actions thereof.

Breach of Trust

103. The relationship between the Defendants and the Plaintiffs, and the Defendants and the Class, is a trust relationship (the “Trust”) in that:

- (a) The Defendants have agreements with the Plaintiffs and the Class, including but not limited to the Class Retirement Compensation Agreements, to collect and remit Penncorp Business Payments, Class Penncorp Business Payments, and other payments to the Plaintiffs and the Class pursuant to said agreements;
- (b) The subject-matter of the Trust are the funds collected, maintained, and held in trust for the Class to meet the obligations of the Class Retirement Compensation Agreements; and
- (c) The object of the Trust are the members of Class who have Class Retirement Compensation Agreements and have ceased to be employed by either Pennsylvania Life Insurance Company, the Penncorp Life Insurance Company, their subsidiaries, or their acquirers;
- (d) At all material times it was the intention of the Class that the Defendants hold the subject matter of the Trust set out at paragraph 103(b) above in trust; and
- (e) At all material times there was an express (or alternatively implied) declaration of trust by the Defendants and an alienation of trust property, i.e. the subject matter of the Trust as set out at paragraph 103(b) above, to the Defendants to be held for the Class as specified beneficiaries.

104. The Trust required an accounting of funds from business conducted through the operations of Defendants’ Canadian Penncorp offices with certain funds to be held in trust by the Defendants, for the Class, to meet the ongoing obligations of the Class Retirement Compensation Agreements.

105. The Defendants’ Actions were dishonest and fraudulently designed to decrease the amounts to be held in trust for the Class and ultimately paid pursuant to Class Retirement

Compensation Agreements. The Defendants failed to develop a coherent management policy geared to either immediate or long-term goals. The Defendants' Actions were contrary to their fiduciary duties owed to the Class.

106. The Defendants' Actions were in breach of the Trust as the Defendants' Actions failed to appropriately account for funds from business conducted through the operations of Defendants' Canadian Penncorp offices and failed to hold in trust the funds to meet the ongoing obligations of the Class Retirement Compensation Agreements. At all material times the Defendants were or should have had knowledge of such failure.

106a. The Defendants failed to act honestly and in good faith with a view to the best interests of the Trust, and failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

107. The Defendants, as separate entities, knowingly received funds that were subject to the Trust and engaged in the Defendants' Actions. As such, the Defendants received property subject to a trust in favour of the plaintiff. The Defendants applied such property for their own use and benefit. Such property was taken from the Class in simple breach of trust. The Defendants had knowledge of facts sufficient to put a reasonable person on notice or inquiry of the breach of trust.

108. The Defendants knowingly assisted other defendants, their subsidiaries, their employees, their mandatories, their contractors, their agents, or their affiliates to receive funds that were subject to the Trust and engage in the Defendants' Actions. The Defendants perpetrated a dishonest and fraudulent breach of trust. At all material times, the Defendants had actual knowledge, alternatively were reckless or willfully blind, of the dishonest and fraudulent breach of trust.

109. In the alternative, any Defendant who did not directly handle the funds to be held in trust for the Class are liable to the Class as trustees *de son tort* as each took on themselves to act as trustees by administer funds that were to be held in trust to meet the ongoing obligations of the Class Retirement Compensation Agreements by either knowingly not holding said funds in trust to meet the ongoing obligations of the Class Retirement Compensation Agreements or knowingly participating in the Defendants' Actions.

Breach of Duty of Good Faith

110. The Defendants owe the Plaintiffs and the Class a duty of honest contractual performance with the regards to the, Matthews Retirement Compensation Agreement, Dunlop Retirement Compensation Agreement, and the Class Retirement Compensation Agreements.

111. The Defendants have failed to meet the standard of honestly required of them as a contracting party to the Class Retirement Compensation Agreements by acting dishonestly and engaging in the Defendants' Actions.

112. The Defendants' Actions are being engaged in to lie and mislead the Plaintiffs and the Class about Defendants' contractual performance.

113. The Defendants engaged in the Defendants' Actions knowing that the said actions were not in good faith or would negatively effect the legitimate contractual interests of the Plaintiffs and the Class.

Breach of Contract

114. The Plaintiffs and the Class have contractual agreements with the Defendants which include, but are not limited to the Class Retirement Compensation Agreements.

115. The Defendants have breached their Class Retirement Compensation Agreements with the Plaintiffs and the Class by:

- a) engaging in the Defendants' Actions;
- b) misleading the Plaintiffs and the Class about their performance pursuant to the Class Retirement Compensation Agreements; or
- c) absconding trust funds of the Plaintiffs and the Class;

Fraudulent Misrepresentation

116. The Defendants made false statements to the Plaintiffs and the Class that they were not engaging in the Defendants' Actions or that Class PennCorp Business Payments were being made pursuant to Class Retirement Compensation Agreements or to deceive and not pay Accumulating Damages. At all material times the Defendants knew that such statements were untrue. Alternatively, at all material times the Defendants made such statements without belief in the truth of the statements. Alternatively, at all material times the Defendants were reckless as to whether the representations were true or false.

117. The Plaintiffs and the Class had worked for several years to advance the interests of Defendants and relied on the Defendants' statements that they were not engaging in the Defendants' Actions and were appropriately making Class PennCorp Business Payments pursuant to Class Retirement Compensation Agreements.

118. As a result of relying on the Defendants' false statements that they were not engaging in the Defendants' Actions or that Class PennCorp Business Payments were being made pursuant to Class Retirement Compensation Agreements:

- a) the Plaintiffs and the Class were persuaded into incurring Accumulating Damages; and

- b) members of the Class were induced into agreements releasing the Defendants' from their liability for Class Retirement Compensation Agreements; and
- c) members of the Class suffered a loss as a consequence of the Defendants' false statements.

Negligence

119. The Defendants owed a duty of care to the Plaintiffs and the Class to:

- a) ensure that their subsidiaries, their employees, their mandatories, their contractors, their agents, or their affiliates did not engage in the Defendants' Actions;
- b) ensure that the subsidiaries, employees, mandatories, contractors, agents, or affiliates of other defendants did not engage in the Defendants Actions;
or
- c) investigate and report any action or omission that negatively effected the legitimate contractual interests of the Plaintiffs and the Class pursuant to the Class Retirement Compensation Agreements

120. The Defendants were negligent by:

- a) engaging in the Defendants' Actions;
- b) allowing their subsidiaries, their employees, their mandatories, their contractors, their agents, or their affiliates to engage in the Defendants' Actions;
- c) not investigating or reporting the Defendants' Actions.

121. As a result of the Defendants' negligence, the Plaintiffs and Class have suffered Accumulating Damages.

Unjust Enrichment

121a. The Defendants Actions include not making any payments, or unlawfully decreasing payments owed to the Class pursuant to Class Retirement Compensation Agreements (the "Owed Payments").

121aa. As such, the Defendants have acquired property for their own benefit at the expense of the Class to whom the Defendants owe a fiduciary duty. The Defendants have wrongfully obtained profits from their position. Alternatively, the Defendants knowingly interfered with (or alternatively knowingly received) the property, being trust property. Therefore, the Defendants were the constructive trustees of a trust to which the Class were beneficiaries.

121ab. The Defendants were under an equitable obligation to the Class.

121ac. The Owed Payments in the hands of the Defendants have resulted from deemed or actual agency activities of the Defendant in breach of their equitable obligation to the Class.

121ad. The Defendants have a legitimate reason for seeking an order for payment of the Owed Payments.

121ae. There are no factors which would render imposition of a constructive trust unjust in all the circumstances of the case.

121b. The Defendants have each been unjustly enriched by their receipt of the Owed Payments.

121c. The Plaintiffs and members of the Class have suffered a corresponding deprivation in the amount of the Owed Payments.

121d. There is no juristic reason to permit the Defendants to retain the Owed Payments, which ought to be relinquished as restitution to the Plaintiffs. There are no grounds in either law or justice for the Defendants to retain the Owed Payments, taking into account the legitimate expectations of both the Class and the Defendants

Plaintiff's Address for Service: Merchant Law Group LLP
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Attn: E.F. Anthony Merchant, Q.C.


Fax number for service: (604) 951-7721

Email address for service: tmerchant@merchantlaw.com,
ibrar@merchantlaw.com,
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Place of Trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1

Second Amended Notice of Civil Claim
Dated: April 5, 2021


E.F. Anthony Merchant, Q.C.
Lawyer for the Plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM

This is a claim for damages arising from a breach of trust, a breach of duty of good faith, a breach of contract, fraudulent misrepresentation, and negligence, or restitution for unjust enrichment.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues regarding probate of an estate

Part 3: THIS CLAIM INVOLVES

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflicts of law
- ☐ none of the above
- ☐ do not know

Part 4: ACTS RELIED ON:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50.