

JAN 22 2014



No. S-140490
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GEORGE JABLONSKY

PLAINTIFF

AND:

TIMBERWEST FOREST CORP.

DEFENDANT

NOTICE OF CIVIL CLAIM

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

This action has been started by the plaintiff 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

- (a) 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
- (b) 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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that services, or,
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, George Jablonsky, is a resident of Coquitlam, British Columbia and retired from his previous employment with Fletcher Challenge Canada Limited.
2. The Defendant, TimberWest Forest Corp. ("TimberWest") is an extra-provincial company, registered in British Columbia, with a registered office located at 1300 - 777 Dunsmuir Street, Vancouver, BC, V7Y 1K2.
3. TimberWest is liable for the contractual obligations towards former employees of itself and the following companies ("predecessors") as a consequence of the following corporate transactions described in paragraphs 4 to 12 below.
4. Crown Zellerbach Canada Limited was a company incorporated in or around 1946, and before 1983, carried on operations under that name in the forest industry in British Columbia.

5. Fletcher Challenge Limited was a company that operated in New Zealand. In or around 1983, Fletcher Challenge Limited acquired a controlling interest in Crown Zellerbach Canada Limited and changed the name of the company to Crown Forest Industries Limited.
6. British Columbia Forest Products Limited was a company incorporated in 1946 and before 1987 carried on operations in the forest industry in British Columbia.
7. In or around 1987, Fletcher Challenge Limited acquired the controlling interest in British Columbia Forest Products Limited.
8. In or around 1988, by statutory amalgamation, Crown Forest Industries Limited and British Columbia Forest Products Limited merged and continued as Fletcher Challenge Canada Limited ("FCCL").
9. In or around 1993, TimberWest Forest Limited ("TWFL") (note: not the Defendant TimberWest Forest Corp.) was created by FCCL. Following an initial public offering, FCCL retained ownership of 51 percent of the shares of TWFL.
10. As a result of the foregoing transaction, TWFL became the owner directly or indirectly of the solid wood assets and operations formerly owned and operated by FCCL. TWFL became liable for the contractual obligations of the employees and retirees of former FCCL solid wood operations.
11. In or around 1993, TWFL duplicated the benefit package of FCCL for TWFL employees and retirees, including post-retirement health and welfare benefits.
12. In or around 1997, TimberWest was incorporated and acquired portions of the business of TWFL and Pacific Forest Products Limited. As a result TimberWest became liable for the employees and retirees of TWFL and Pacific Forest Products Limited's operations under the

control of TimberWest. That liability to employees included their deferred compensation in the form of health and welfare benefits for retired employees and their spouses and other dependants.

13. The Plaintiff was employed by British Columbia Forest Products Limited starting on or about on July 29, 1968, and continued his employment with FCCL until his retirement on December 1, 1991, at which time he commenced to receive a pension and health and welfare benefits for himself and his spouse from FCCL. The last position the Plaintiff held was the Assistant Wood Products Accountant. The Plaintiff is presently in receipt of reduced post-retirement health and welfare benefits from TimberWest for himself and his spouse, as described in paragraphs 23 to 27 of Part 1 below.

The Class

14. The Plaintiff brings this action on his own behalf and on behalf of all persons, wherever they reside, who are:

- (a) retired, former salaried, non-unionized employees of any of TimberWest and its predecessors for whom TimberWest reduced coverage and payment for post-retirement health and welfare benefit coverage ("employee class members"); and
- (b) surviving spouses and dependent children of the persons described in the employee class ("non-employee class members")

(and, collectively, "class" or "class members"), or such other class as this court may decide on the motion for certification.

Contractual entitlement to post-retirement benefits

15. The Defendant and its predecessors entered into contracts of employment with the Plaintiff and each of the employee class members.

16. The Defendant and its predecessors agreed that their payment for the work of the employee class members before their retirements included deferred compensation payable after their retirements. The deferred compensation included payment for health and welfare benefits for class members beginning at the retirement of each employee class member from his or her employment with the Defendant or a predecessor. Specifically, with respect to health and welfare benefits, the Defendant and its predecessors agreed to pay for and provide various benefits to all of the class members in retirement, including payment of provincial medical plan premiums where required (for example, for residents of British Columbia, the British Columbia Medical Service Plan) ("MSP"), dental care, and an extended health care plan that includes payment for prescription drugs, semi-private hospital rooms, out-of-province medical costs (including medi-assist), vision care, hearing assistance, services of health care professionals including chiropractors, naturopaths, podiatrists, massage therapists, physiotherapists, and other benefits (collectively, the "post retirement health and welfare benefits").

17. The post-retirement health and welfare benefits which the Defendant and its predecessors agreed to pay or otherwise provide to the class members were described in standard benefit policies, benefit statements, benefit summaries, benefit booklets, letters, and other similar documents (the "post-retirement health and welfare documents"). These documents contained the terms and conditions of the employment benefits that the Defendant and its predecessors provided to employee class members following their retirements.

18. The post-retirement health and welfare documents were standard form documents delivered by or on behalf of the Defendant and its predecessors to, and applied to, all employee class members and available through them to non-employee class members. No employee class member was provided different post-retirement health and welfare benefits than those stated in the post-retirement health and welfare documents. The post-retirement health and welfare documents stated the terms of the Plaintiff and employee class members' contracts of employment in relation to post-retirement health and welfare benefits.

19. The Defendant and its predecessors made written promises by way of standard-form letters to the Plaintiff and the employee class members, before, on and after their retirements, with respect to the post retirement health and welfare benefits, confirming and committing to the continued provision of the post-retirement health and welfare benefits to all employee class members for the remainder of their lives.

20. Some of the employee class members were induced by lump sum payments, in addition to employment compensation, to terminate their employment with the Defendant or its predecessors on a date earlier than they would have chosen to retire without inducement. The Defendant and its predecessors still provided those early-terminating class members with the post-retirement health and welfare benefits as a term of their termination (an "early retirement agreement").

21. Many of the early-terminating class members who terminated their employment as part of an early retirement agreement were also required to sign a release.

22. Employee class members who were not party to an early retirement agreement did not sign any agreement or release.

Changes to Retirement Benefits

23. By standard form letters dated on or about September 3, 2008 to the Plaintiff and the other employee class members, the Defendant advised the Plaintiff and the other employee class members who retired *on or after* January 1, 1990, and their spouses and dependants, that it would eliminate out-of-province emergency medical coverage effective September 1, 2009.

24. Consistent with its September 3, 2008 form letters, effective on or about September 1, 2009, the Defendant discontinued out-of-province emergency medical coverage for the Plaintiff and the other employee class members who retired on or after January 1, 1990 and their spouses and dependants.

25. By a set of standard form letters dated on or about March 10, 2010, the Defendant advised the employee class members who retired *prior to* January 1, 1990 that effective May 2010, it would freeze its payment for MSP premiums to the 2010 levels, i.e. it would not pay any increase to premium levels after 2010.

26. By a different set of standard form letters also dated on or about March 10, 2010, the Defendant advised employee class members who retired *on or after* January 1, 1990 and their spouses and dependants, that it would, effective May 2010:

- (a) for those who reside in British Columbia or other Provinces requiring payment for government health care will be required to pay the full monthly premium cost for coverage under the BC Medical Services Plan or its equivalent in those other Provinces ("MSP") discontinue full payment monthly but make an annual lump sum payment to each member of the class of 50% of the total annual 2010 MSP premium cost with no future increases;
- (b) reduce coverage for semi-private hospital rooms from 100% to 80%;
- (c) with respect to prescription drugs: (i) implement a maximum dispensing fee of \$8.25 per prescription (ii) limit payment to the maximum amount permitted under British Columbia's PharmaCare's Low Cost Alternative Program (or similar program in other provinces) (iii) reduce prescription drug coverage from 100% coverage including dispensing fees without limit to 80% of the first \$3,000 of covered prescription drug costs and 100% of covered prescription drug costs on amounts exceeding \$3,000, including dispensing fees, per calendar year per claimant and (iv) implement a \$5,000 per calendar year, and a \$250,000 lifetime, maximum covered prescription drug cost per claimant;
- (d) reduce reimbursement for in-province medical travel when treatment is not available in locale from 100% to 80%; and
- (e) eliminate reimbursement for out-of-province medical travel expenses when treatment is not available in-province.

27. On May 1, 2010, the Defendant proceeded with the changes identified in paragraphs 25 to 26 above. The following table at paragraph 28 is a summary of all of the reductions to the post-retirement health and welfare benefits of the class.

28.

Table - Summary of Benefit Changes by TimberWest¹

Reduction Start Date	Pre-Reduction Benefit Provided by TW	Change for Pre-January 1, 1990 Retirees	Change for On & After January 1, 1990 Retirees
Sep. 1, 2009	Out-of-Province Medical Coverage ² TimberWest paid 100%	unchanged	eliminated
May 1, 2010	MSP TimberWest paid 100%	TimberWest pays premiums frozen at 2010 rate	TimberWest pays 50% of premiums frozen at 2010 rate
	Semi-Private Hospital Room TimberWest paid 100%	unchanged	TimberWest pays 80%
	In-Province Medical Travel (treatment not available in locale) TimberWest paid 100%	unchanged	TimberWest pays 80%
	Out-of-Province Medical Travel Expenses (treatment not available in-province) TimberWest paid 100%	unchanged	eliminated
	Prescription Drugs:		
	Dispensing Fees TimberWest paid 100%	unchanged	TimberWest pays maximum \$8.25 per prescription
	Drug type No restrictions	unchanged	TimberWest pays only maximum permitted under PharmaCare's Low Cost Alternative Program
	Co-pay TimberWest paid 100%	unchanged	TimberWest pays 80% on first \$3000 covered amount and 100% on covered amounts exceeding \$3000 including dispensing fees per calendar year per claimant
	Annual Maximum None	unchanged	TimberWest pays maximum of \$5000 per claimant
	Lifetime Maximum None	unchanged	TimberWest pays maximum of \$250,000 per claimant

¹ This table does not show post-retirement health and welfare benefits that were not changed, including dental, vision and services of health care professionals.

² Including medi-assist.

29. A number of the employee class members have predeceased this action. Prior to September 1, 2009, the Defendant continued to provide post-retirement health and welfare benefits to non-employee class members. After September 1, 2009, the Defendant has continued to provide the post-retirement health and welfare benefits to non-employee class members in the reduced form described in paragraphs 23 to 27, and the table summarized in paragraph 28.

30. The deceased class members are represented by their executors, beneficiaries or other personal representatives of their estates.

Part 2: RELIEF SOUGHT

1. The Plaintiff on his own behalf and on behalf of the class members seeks the following relief:

- (a) an order certifying this action as a class proceeding against the Defendant and appointing the Plaintiff as representative Plaintiff in respect of the class members;
- (b) a declaration that the Plaintiff and each member of the class is entitled, to receive from the Defendant, post-retirement health and welfare benefits, as defined above, without reduction and/or elimination, and a mandatory order directing that the Defendant provide the class members with the post-retirement health and welfare benefits for the life of the class member without alteration of the scope of coverage, coverage limits or deductibles, all at the Defendant's expense;
- (c) an order that the Plaintiff and each member of the class is entitled to damages in the amount of all premiums or portions of premiums that each class member has paid MSP, since May 1, 2010;

- (d) in the alternative to sub-paragraph (c) above, a declaration that the Defendant account for and make restitution to the Plaintiff and each member of the class in an amount equal to the amount the Plaintiff and each class member paid to MSP;
- (e) an order that the Plaintiff and each member of the class is entitled to damages for the amounts paid by the Plaintiff and each member of the class for out-of-province medical coverage between September 1, 2009 and the present;
- (f) damages to those class members who did not vacation out-of-province due to the unavailability or excessive cost of obtaining out-of-province medical coverage;
- (g) an order that the Plaintiff and each member of the class is entitled to damages for the amounts paid by the Plaintiff and each member of the class for prescription drugs between May 1, 2010 and the present;
- (h) general damages for breach of contract;
- (i) pre-judgment interest and post-judgment interest according to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (j) such further and other relief as this Court may consider just.

Part 3: LEGAL BASIS

Breach of Contract

1. It is a term of the contract between the Defendant and the Plaintiff and all other employee class members that the Defendant would continue to provide the post-retirement health and welfare benefits to the Plaintiff and all other class members at the sole cost to the Defendant and its predecessors for their lifetime and the life of his or her spouse and dependent children.

2. The Plaintiff and each of the class members' claim is against the Defendant for breach of contract due to the Defendant's breach of the contract between the plaintiff and each of the class members by failing to maintain all post-retirement health and welfare benefits at its sole cost.

3. The Defendant breached the contract when it, having regard exclusively to its own interests and contrary to the interests of the Plaintiff and all other class members, required the Plaintiff and all other class members to contribute to the cost of the post-retirement health and welfare benefits.

4. The Defendant breached the contract when it, having regard exclusively to its own interests and contrary to the interests of the Plaintiff and all other class members, ceased to provide out of province medical coverage to the Plaintiff and all other class members.

5. As a result of the Defendant's breach of contract, the Plaintiff and all other class members have suffered, or will suffer:

- (a) damages paid by the class members as a result of the reductions to the post-retirement health and welfare benefits made by the Defendant; and
- (b) lost opportunity to travel out of province.

6. Alternatively, the non-employee class members in their own legal capacity, bring a claim of breach of contract on the basis of the principled exception to the doctrine of privity given that:

- (a) the Defendant and the retiree class members intended to extend post-retirement benefits to surviving spouses; and
- (b) the surviving spouses have satisfied the conditions of eligibility for payment contemplated by the contract as they are the survivors of the retired employee class members.

Unjust Enrichment - Quantum Meruit

7. In the alternative, if the Defendant is not contractually obliged to provide the post-retirement health and welfare benefits to the non-employee class members, the non employee class members are entitled to recover the value of the post-retirement health and welfare benefits on the basis of unjust enrichment, *quantum meruit* and third party recovery.

8. The Defendant received the value of the work of the employee class members on the basis of its written representations in the post-retirement health and welfare documents that the class members would receive the post-retirement health and welfare benefits.

9. The work performed by the employee class members gave rise to benefits enjoyed by the Defendant and its predecessors, for which all the class members suffered corresponding deprivation.

10. The Defendant received the value of the work of the Plaintiff and all other employee class members on the basis of its written representations in the post-retirement health and welfare documents that the Plaintiff and all other class members, including spouses and dependants, would receive the post-retirement health and welfare benefits at no cost to the class members or his or her spouse.

Effect of the Defendant's actions

11. As a result of the Defendant's breach of contract as set out above, the Plaintiff and the class members have and will continue to sustain the following damages:

- (a) the amount paid by the class members as a result of the reductions to the post-retirement health and welfare benefits made by the Defendant; and
- (b) the loss of vacation for those who could not afford to purchase out-of-province medical coverage.

12. The Defendant's actions have had a significant impact on the Plaintiff and the class members. Many of the class members live on fixed incomes and given their advanced age, they are limited in their ability to increase their financial obligations.

13. As a result of the Defendant's unilateral and unlawful conduct, the class members have lost elements of the post-retirement benefits to which they are entitled.

Plaintiff's address for service:

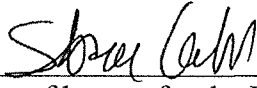
Victory Square Law Office LLP
500 - 128 West Pender Street
Vancouver, BC V6B 1R8

Fax number for service: 604-684-8427

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, B.C., V6Z 2E1

Date: January 22, 2014



Signature of lawyer for the Plaintiff
John Rogers

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim for damages for a breach of contract.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning

an employment relationship

Part 3: THIS CLAIM INVOLVES

a class action

Part 4:

The Class Proceedings Act, RSBC 1996, c. 50

Court Order Interest Act, RSBC 1996, c. 79