



NO. S-140490  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GEORGE JABLONSKY

PLAINTIFF

AND:

TIMBERWEST FOREST CORP.

DEFENDANT

**RESPONSE TO CIVIL CLAIM**

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

**Filed by:** TimberWest Forest Corp. (the "Defendant")

**Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant's Response to Facts**

1. The facts alleged in paragraphs 2, 6, 23, 24 and the first sentence of paragraph 12 of Part 1 of the Notice of Civil Claim are admitted, subject to the qualification in paragraph 4 below regarding putative class members.
2. The facts alleged in paragraphs 3, 4, 5, 7 – 11, 15 – 22, 25 – 29 and the balance of paragraph 12, of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1 and 13 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

4. Paragraph 14 of the Notice of Civil Claim alleges that the action is brought on behalf of a "class" which has not yet been certified. TimberWest does not admit anything in respect of putative class members whose identity is not yet ascertainable.

5. Paragraph 30 of the Notice of Civil Claim is a pleading of law, not fact.

## **Division 2 – Defendant's Version of Facts**

### **I. Background**

1. The Defendant, TimberWest Forest Corp. ("**TimberWest**"), is a corporation duly incorporated according to the laws of Canada and extra-provincially registered in British Columbia. TimberWest has a registered office located at 1300 – 777 Dunsmuir Street, Vancouver, BC, V7Y 1K2.

2. TimberWest's corporate history includes several corporate transactions by which TimberWest acquired certain interests in and/or assets of the following companies: Crown Zellerbach Canada Limited ("**Crown Zellerbach**"), British Columbia Forest Products Limited ("**BC Forest Products**"), Crown Forest Industries Limited ("**Crown Forest**"), Fletcher Challenge Canada Limited ("**Fletcher Challenge**"), TimberWest Forest Limited ("**TWFL**"), and Pacific Forest Products Limited ("**Pacific Forest Products**"). These companies are referred to collectively and for convenience as the "**Predecessors**" but without any admission by the use of that term as to the legal relationship between the respective companies and TimberWest.

3. The specific obligations that TimberWest assumed from the Predecessors, if any, including any obligations with respect to former employees of the Predecessors, vary with the nature and specific terms of the relevant corporate transaction.

4. At various times, TimberWest and each of the Predecessors made various forms of post-retirement healthcare benefits available to eligible retired employees (the "**Post-Retirement Benefits**").

5. The specific benefits made available to a particular retired employee and the amount that the retired employee is required to contribute to the cost of such benefits vary depending upon a number of factors including: the company the employee retired from, the

nature of the retired employee's former employment (union or salaried), the location of the retired employee's former employment, when the employee retired, the length of his or her service, and corporate decisions made from time to time by TimberWest and the Predecessors.

6. Following TimberWest's incorporation in 1997 and subsequent corporate transactions involving certain of the Predecessors, TimberWest made Post-Retirement Benefits available to its retired employees and to retired employees of the Predecessors.

7. Each of the plans and programs TimberWest and the Predecessors made available to retirees at various times contain a unique set of benefits and limitations. In particular, these plans and programs vary with respect to, *inter alia*, the specific expenses covered, the percentage of coverage for such expenses, lifetime and annual maximums for overall benefits and/or specific categories of benefits, and eligibility criteria for retirees, spouses and dependants.

8. TimberWest currently provides Post-Retirement Benefits to approximately 450 putative Employee Class Members (as defined in the Notice of Civil Claim) who retired from TimberWest or a Predecessor, and to their eligible spouses and dependants.

9. TimberWest maintains separate plans with separate sets of benefits for retirees of Pacific Forest Products and retirees resident outside of Canada.

10. Particulars of the Post-Retirement Benefits TimberWest and the Predecessors provided, the Predecessors' relationships to TimberWest, and the number of putative Employee Class Members that retired from TimberWest and each of the Predecessors are set out below.

## **II. Crown Zellerbach**

11. Crown Zellerbach was a British Columbia company continued by amalgamation in or about 1970. Crown Zellerbach operated until in or about 1983.

12. Approximately 65 putative Employee Class Members retired from Crown Zellerbach or its predecessors between 1967 and 1983.

13. At certain times, Crown Zellerbach made various forms of Post-Retirement Benefits available to eligible retired employees.

14. The Post-Retirement Benefits were implemented and subsequently made available to retired employees gratuitously, as a matter of policy and at the discretion of Crown Zellerbach.

15. From time to time, the Post-Retirement Benefits may have been referenced in communication materials such as brochures, booklets or guides produced by Crown Zellerbach and provided to employees. If such references were made, these communication materials were provided to employees for information purposes only and did not, nor were they intended or understood to, form part of the employees' contracts of employment.

16. Some retiring Crown Zellerbach employees received retirement letters that addressed the Post-Retirement Benefits. The information provided in these retirement letters with respect to the Post-Retirement Benefits varies, including with respect to the scope of the Post-Retirement Benefits, their duration, the recipients thereof, and the cost to the recipients. These letters were provided to employees for information purposes only and did not, nor were they intended or understood to, form a contract, as alleged or at all, with any retiring employee.

17. Some retiring Crown Zellerbach employees entered into individual retirement agreements that specifically referenced Post-Retirement Benefits.

18. At all material times, Crown Zellerbach maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits.

19. From time to time, Crown Zellerbach, its successors, and/or TimberWest, gratuitously and without any legal obligation to do so, increased the specific benefits made available to all eligible Crown Zellerbach retirees, including those who had already retired.

20. In the alternative, if Crown Zellerbach owed any legal obligations to any of the putative class members, which is denied, then TimberWest denies that it is liable for any contractual or other obligations owed by Crown Zellerbach to its former employees, to employees of Crown Zellerbach's corporate predecessors, or to the spouses or dependants of those employees.

### III. BC Forest Products

21. BC Forest Products was a British Columbia company incorporated in or about 1946. BC Forest Products operated until in or about 1988.

22. Approximately 50 putative Employee Class Members retired from BC Forest Products between 1974 and 1989.

23. At certain times, BC Forest Products made various forms of Post-Retirement Benefits available to eligible retired employees.

24. The Post-Retirement Benefits were implemented and subsequently made available to retired employees gratuitously, as a matter of policy and at the discretion of BC Forest Products.

25. From time to time, the Post-Retirement Benefits may have been referenced in communication material such as brochures, booklets or guides produced by BC Forest Products and provided to employees. If such references were made, these communication materials were provided to employees for information purposes only and did not, nor were they intended or understood to, form part of the employees' contracts of employment.

26. Some retiring BC Forest Products employees received retirement letters that addressed the Post-Retirement Benefits. The references to the Post-Retirement Benefits in these letters were provided to employees for information purposes only and did not, nor were they intended or understood to, form any contract, as alleged or at all, with any retiring employee.

27. Some retiring BC Forest Products employees entered into individual retirement agreements that specifically referenced Post-Retirement Benefits. Some of these retirement agreements specified that the retirees would continue to receive such Post-Retirement Benefits as were "made available from time to time by the Company to retired salaried employees".

28. At all material times, BC Forest Products maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits.

29. From time to time, BC Forest Products, its successors, and/or TimberWest, gratuitously and without any legal obligation to do so, increased the specific benefits made available to all eligible BC Forest Products retirees, including those who were already retired.

30. In the alternative, if BC Forest Products owed any legal obligations to any of the putative class members, which is denied, then TimberWest denies that it is liable for any contractual or other obligations owed by BC Forest Products to its former employees, to employees of BC Forest Products' corporate predecessors, or to the spouses or dependants of those employees.

#### **IV. Crown Forest**

31. Crown Forest was a British Columbia corporation that began operations in or about 1983. Crown Forest operated until in or about 1988.

32. Approximately 40 putative Employee Class Members retired from Crown Forest between 1983 and 1988.

33. At certain times, Crown Forest made various forms of Post-Retirement Benefits available to eligible retired employees.

34. The Post-Retirement Benefits were implemented and subsequently made available to retired employees gratuitously, as a matter of policy and at the discretion of Crown Forest.

35. From time to time, the Post-Retirement Benefits were referenced in communication materials, including brochures, produced by Crown Forest and provided to employees. These documents, and the references to Post-Retirement Benefits contained therein, were provided to employees for information purposes only and did not, nor were they intended or understood to, form part of the employees' contracts of employment.

36. Limitations to the Post-Retirement Benefits provided by Crown Forest at certain times included, *inter alia*, a lifetime maximum per claimant of \$250,000.

37. Some retiring Crown Forest employees received retirement letters that addressed the Post-Retirement Benefits. The references to the Post-Retirement Benefits in these letters

were provided to employees for information purposes only and did not, nor were they intended or understood to, form any contract, as alleged or at all, with any retiring employee.

38. Some retirement letters sent prior to approximately 1985 stated that Post-Retirement Benefits would continue for the lifetime of the retiree and of the retiree's spouse, but did not address the cost of the Post-Retirement Benefits.

39. Some retirement letters sent after approximately 1985 stated that while Crown Forest hoped to continue the Post-Retirement benefits to retirees and their dependants at no cost and for the balance of the retiree and spouse's lifetimes, it must of necessity be understood that the cost arrangements may be revised if, in Crown Forest's opinion, conditions so warrant.

40. At all material times, Crown Forest maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits.

41. From time to time, Crown Forest, its successors, and/or TimberWest, gratuitously and without any legal obligation to do so, increased the specific benefits made available to all eligible Crown Forest retirees, including those who were already retired.

42. In the alternative, if Crown Forest owed any legal obligations to any of the putative class members, which is denied, then TimberWest denies that it is liable for any contractual or other obligations owed by Crown Forest to its former employees, to employees of Crown Forest's corporate predecessors, or to the spouses or dependants of those employees.

## **V. Fletcher Challenge**

43. Fletcher Challenge was a British Columbia company continued as a corporate successor to BC Forest Products in or about 1988. Fletcher Challenge began operations in or about 1988 when it acquired portions of the respective businesses of Crown Forest and BC Forest Products. Fletcher Challenge ceased operating at or about the end of 1993.

44. Approximately 130 putative Employee Class Members retired from Fletcher Challenge between 1988 and 1993.

45. At certain times, Fletcher Challenge made various forms of Post-Retirement Benefits available to eligible retired employees.

46. The Post-Retirement Benefits were implemented and subsequently made available to retired employees gratuitously, as a matter of policy and at the discretion of Fletcher Challenge.

47. From time to time, the Post-Retirement Benefits were referenced in communication materials, including brochures, produced by Fletcher Challenge and provided to employees. These documents, and the references to Post-Retirement Benefits contained therein, were provided to employees for information purposes only and did not, nor were they intended or understood to, form part of the employees' contracts of employment.

48. Brochures published by Fletcher Challenge stated that, while Fletcher Challenge hopes to continue the Post-Retirement Benefits for the balance of retirees' and spouses' lifetimes, Fletcher Challenge reserves the right to change or discontinue coverage if the need arises.

49. Some retiring Fletcher Challenge employees received retirement letters that addressed the Post-Retirement Benefits. The information provided in these retirement letters with respect to the Post-Retirement Benefits varies, including with respect to the scope of the Post-Retirement Benefits, their duration, the recipients thereof, the cost to the recipients, and the right of Fletcher Challenge to change or discontinue them. These letters were provided to employees for information purposes only and did not, nor were they intended or understood to, form any contract, as alleged or at all, with any retiring employee.

50. Some retiring Fletcher Challenge employees entered into individual retirement agreements that specifically referenced Post-Retirement Benefits. Some of these retirement agreements specified that the retirees would continue to receive Post-Retirement Benefits "to the extent permitted" by the relevant medical and dental plans.

51. At all material times, Fletcher Challenge maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits.



52. From time to time, Fletcher Challenge, its successors, and/or TimberWest, gratuitously and without any legal obligation to do so, increased the specific benefits made available to all eligible Fletcher Challenge retirees, including those who were already retired.

53. In the alternative, if Fletcher Challenge owed any legal obligations to any of the putative class members, which is denied, then TimberWest denies that it is liable for any contractual or other obligations owed by Fletcher Challenge to its former employees, to employees of Fletcher Challenge's corporate predecessors, or to the spouses or dependants of those employees.

## VI. TWFL

54. TWFL was a British Columbia company, a predecessor of which was incorporated in or about 1987. In or about 1993, that predecessor's name was changed to TWFL.

55. Following an initial public offering in or about December 1993, Fletcher Challenge and its wholly owned subsidiary Elk Falls Forest Industries Limited ("EFFIL") collectively held a majority of the outstanding common shares of TWFL.

56. Between 1993 and 1996, TWFL acquired certain assets from Fletcher Challenge and/or EFFIL, including, *inter alia*, certain sawmills, related timber tenures and logging operations, and certain private timberlands and Crown timber tenures.

57. TWFL operated until in or about 1997, when a predecessor of TimberWest was incorporated and acquired portions of TWFL's business, including, *inter alia*, through the purchase of TWFL shares.

58. Approximately 25 putative Employee Class Members retired from TWFL between 1993 and 1999.

59. At certain times, TWFL made various forms of Post-Retirement Benefits available to eligible retired employees.

60. The Post-Retirement Benefits were implemented and subsequently made available to retired employees gratuitously, as a matter of policy and at the discretion of TWFL.

61. From time to time, the Post-Retirement Benefits were referenced in communication materials, including brochures, produced by TWFL and provided to employees. These documents, and the references to Post-Retirement Benefits contained therein, were provided to employees for information purposes only and did not, nor were they intended or understood to, form part of the employees' contracts of employment.

62. Brochures published by TWFL stated that, while TWFL hopes to continue the Post-Retirement Benefits for the balance of retirees' and spouses' lifetimes, TWFL reserves the right to change or discontinue coverage if the need arises.

63. Some retiring TWFL employees received retirement letters that addressed the Post-Retirement Benefits. The information provided in these retirement letters with respect to the Post-Retirement Benefits varies, including with respect to the scope of the Post-Retirement Benefits, their duration, the recipients thereof, the cost to the recipients, and the right of TWFL to change or discontinue them. These letters were provided to employees for information purposes only and did not, nor were they intended or understood to, form any contract, as alleged or at all, with any retiring employee.

64. Some retiring TWFL employees entered into individual retirement agreements that specifically referenced Post-Retirement Benefits. Some of these retirement agreements specified that the retiree and eligible dependants would be entitled to Post-Retirement Benefits "to the extent permitted by the plan".

65. At all material times, TWFL maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits.

66. From time to time, TWFL, its successors, and/or TimberWest, gratuitously and without any legal obligation to do so, increased the specific benefits made available to all eligible TWFL retirees, including those who were already retired.

67. In the alternative, if TWFL owed any legal obligations to any of the putative class members, which is denied, then TimberWest denies that it is liable for any contractual or other

obligations owed by TWFL to its former employees, to employees of TWFL's corporate predecessors, or to the spouses or dependants of those employees.

## **VII. Pacific Forest Products**

68. Pacific Forest Products was a British Columbia company, a predecessor of which was incorporated in or about 1992. In or about 1993, that predecessor's name was changed to Pacific Forest Products.

69. In or about 1993, Pacific Forest Products acquired certain assets of Canadian Pacific Forest Products Limited.

70. Pacific Forest Products operated until in or about 1997, when a predecessor of TimberWest was incorporated and acquired portions of Pacific Forest Products' business, including, *inter alia*, through the purchase of Pacific Forest Products' shares.

71. Approximately 10 putative Employee Class Members retired from Pacific Forest Products between 1992 and 1997.

72. Approximately 15 putative Employee Class Members retired from predecessors of Pacific Forest Products before 1992.

73. At certain times, Pacific Forest Products made various forms of Post-Retirement Benefits available to eligible retired employees.

74. The Post-Retirement Benefits were implemented and subsequently made available to retired employees gratuitously, as a matter of policy and at the discretion of Pacific Forest Products.

75. From time to time, the Post-Retirement Benefits may have been referenced in communication material such as brochures, booklets or guides produced by Pacific Forest Products and provided to employees. If such references were made, these communication materials were provided to employees for information purposes only and did not, nor were they intended or understood to, form part of the employees' contracts of employment.

76. Some retiring Pacific Forest Products employees may have received retirement letters that addressed the Post-Retirement Benefits. If any such references were made, these letters were provided to employees for information purposes only and did not, nor were they intended or understood to, form any contract, as alleged or at all, with any retiring employee

77. At all material times, Pacific Forest Products maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits.

78. From time to time, Pacific Forest Products, its successors, and/or TimberWest, gratuitously and without any legal obligation to do so, increased the specific benefits made available to all eligible Pacific Forest Products retirees, including those who were already retired.

79. In the alternative, if Pacific Forest Products owed any legal obligations to any of the putative class members, which is denied, then TimberWest denies that it is liable for any contractual or other obligations owed by Pacific Forest Products to its former employees, to employees of Pacific Forest Products' corporate predecessors, or to the spouses or dependants of those employees.

### **VIII. TimberWest**

80. A predecessor of TimberWest was incorporated in or about 1997, and in or about 1997 acquired portions of the respective businesses of TWFL and Pacific Forest Products. In or about 1998, that predecessor changed its name to TimberWest.

81. Approximately 90 putative Employee Class Members retired from TimberWest between 1997 and May 1, 2010.

82. At the material times, TimberWest made various forms of Post-Retirement Benefits available to eligible retired employees.

83. The Post-Retirement Benefits were implemented and subsequently made available to retired employees gratuitously, as a matter of policy and at the discretion of TimberWest.

84. From time to time, the Post-Retirement Benefits were referenced in communication materials, including brochures, produced by TimberWest and provided to employees. These documents, and the references to Post-Retirement Benefits contained therein, were provided to employees for information purposes only and did not, nor were they intended or understood to, form part of the employees' contracts of employment.

85. Brochures published by TimberWest at certain times between approximately 1997 and approximately 2002 state that TimberWest reserves the right to alter or discontinue the Post-Retirement Benefits if the need arises.

86. Brochures published by TimberWest at certain times after approximately 2002 state that:

- (a) While TimberWest hopes to continue the Post-Retirement Benefits in the future, it reserves the right to alter or discontinue coverage at any time in its sole discretion;
- (b) TimberWest reserves the right to change the Post-Retirement Benefits at any time, which changes could include, but are not limited to, increasing, decreasing or eliminating (i) coverage for people and benefits, or (ii) amounts for premiums or deductibles; or
- (c) Post-Retirement Benefits are contingent benefits; that is, TimberWest does not guarantee to provide these benefits in their current form indefinitely to retirees, and that in particular TimberWest reserves the right to change these benefits at any time, which changes could include, but are not limited to, increasing, decreasing, or eliminating (i) coverage for people and benefits, or (ii) amounts for premiums and deductibles.

87. Some retiring TimberWest employees received retirement letters that addressed the Post-Retirement Benefits. The information provided in these retirement letters with respect to the Post-Retirement Benefits varies, including with respect to the scope of the Post-Retirement Benefits, their duration, the recipients thereof, the cost to the recipients, and the right of TimberWest to change or discontinue them. The references to the Post-Retirement Benefits in

these letters were provided to employees for information purposes only and did not, nor were they intended or understood to, form any contract, as alleged or at all, with any retiring employee.

88. Some retirement letters sent before approximately 2003 state that while TimberWest hopes to continue the Post-Retirement Benefits, it should be understood that the arrangements for continuation of this coverage may be revised if, in TimberWest's opinion, conditions so warrant.

89. Some retirement letters sent after approximately 2003 state that, while TimberWest hopes to continue the Post-Retirement Benefits indefinitely, it is important for the retiree to understand that the Post-Retirement Benefits are contingent benefits; that is, TimberWest does not guarantee to provide these benefits in their current form indefinitely to eligible TimberWest retirees, and that in particular TimberWest reserves the right to change these benefits at any time, which changes could include, but are not limited to, increasing, decreasing, or eliminating (i) coverage for people and benefits, or (ii) amounts for premiums and deductibles.

90. Some retiring TimberWest employees entered into individual retirement agreements that specifically referenced Post-Retirement Benefits. Some of these retirement agreements specified that the retiree would be entitled to Post-Retirement Benefits, and that while TimberWest hopes to continue these benefits for the balance of the retiree and spouse's lifetimes, TimberWest reserves the right to discontinue coverage at its sole discretion.

91. At all material times, TimberWest maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits.

92. From time to time, TimberWest, gratuitously and without any legal obligation to do so, increased the specific benefits made available to all eligible TimberWest retirees, including those who were already retired.

## IX. Summary

93. An approximate summary of the putative Employee Class Members' retirement dates and the companies they retired from is as follows:

Company	Period	Number of Retirees
Crown Zellerbach	1967 – 1983	65
BC Forest Products	1974 – 1989	50
Crown Forest	1983 – 1984	10
Crown Forest	1985 – 1988	30
Fletcher Challenge	1988 – 1993	130
TimberWest Forest Limited	1993 – 1997	25
Pacific Forest Products corporate predecessors	Pre-1992	15
Pacific Forest Products	1992 – 1997	10
TimberWest	1997 – May 1, 2010	90
Unknown		25

## X. Changes to Post-Retirement Benefits

94. Since the Post-Retirement Benefits were implemented by the Predecessors and TimberWest, the cost of providing the Post-Retirement Benefits to eligible retired employees has increased significantly. The increase in cost is due to factors beyond the control of TimberWest, including increases in Medical Services Plan premiums levied by the Province of British Columbia, de-listing of certain health services from the public medical system and escalating cost of prescription drugs.

95. In response to the increasing costs of providing Post-Retirement Benefits, effective on or about September 1, 2009, TimberWest discontinued out-of-province emergency medical coverage for retirees resident in Canada who had retired after 1989.

96. In further response to the increasing costs of providing Post-Retirement Benefits, effective on or about May 1, 2010, TimberWest:

- (a) for retirees resident in Canada who had retired before 1990, froze its contributions to British Columbia Medical Services Plan premiums at the 2010 rate; and
- (b) for retirees resident in Canada who had retired after 1989, implemented the following changes to extended health care benefits:
  - (i) froze its contributions to British Columbia Medical Services Plan premiums at 50% of the 2010 rate;
  - (ii) discontinued out-of-province medical travel/accommodation coverage;
  - (iii) for eligible expenses covered at 80%, no longer increased coverage to 100% after \$1,000 has been paid for a person in a calendar year (inapplicable to members of the plan maintained for retirees of Pacific Forest Products);
  - (iv) reduced pharmaceutical drug coverage from 100% to 80% of the first \$3,000 covered in a calendar year, and 100% thereafter in that calendar year, including dispensing fees;
  - (v) applied Pharmacare's low cost alternative and reference drug program to the reimbursement of eligible drugs and medicines;
  - (vi) introduced a dispensing fee cap of \$8.25 per prescription;
  - (vii) introduced an annual maximum per claimant of \$5,000 for prescription drug coverage; and
  - (viii) introduced a lifetime maximum per claimant of \$250,000.



**Division 3 – Additional Facts**

1. N/A.

**Part 2: RESPONSE TO RELIEF SOUGHT**

1. The Defendant consents to the granting of the relief sought in paragraphs NIL of Part 2 of the Notice of Civil Claim.
2. The Defendant opposes the granting of the relief sought in paragraphs ALL of Part 2 of the Notice of Civil Claim.
3. The Defendant takes no position on the granting of the relief sought in paragraphs NIL of Part 2 of the Notice of Civil Claim.

**Part 3: LEGAL BASIS****I. No Breach of Contract**

1. TimberWest denies any contractual obligation on the part of TimberWest or of any of the Predecessors to provide the Post-Retirement Benefits to the Plaintiff or to any of the putative class members.
2. TimberWest denies that descriptions of various forms of Post-Retirement Benefits set out from time to time in communication materials produced by TimberWest or any of the Predecessors, including brochures, booklets, guides and retirement letters, created or reflected existing contractual obligations. Such descriptions were not intended to be and were not contractual promises.
3. In specific answer to paragraphs 4 – 12 of Part 1 of the Notice of Civil Claim, TimberWest denies that it is liable for any contractual or other obligations owed by any of the Predecessors to their respective former employees, to the employees of their respective corporate predecessors, or to the spouses or dependants of those employees.
4. Further, any alleged contract to provide Post-Retirement Benefits is void for uncertainty and cannot be enforced. In particular, as any Post-Retirement Benefits allegedly promised were subject to modification from time to time (and such benefits that were provided

were modified from to time), it is not possible to determine the essential terms of any alleged contract with a reasonable degree of certainty.

5. In specific answer to paragraph 6 of Part 3 of the Notice of Civil Claim, TimberWest denies that persons other than former employees have standing to bring a claim for breach of contract, whether on the basis of the principled exception to the doctrine of privity or otherwise.

6. In the alternative, if TimberWest or any of the Predecessors were contractually required to provide Post-Retirement Benefits to the Plaintiff or to any of the putative class members, which is not admitted and is expressly denied:

- (a) At all material times, it was an express, or alternatively, an implied term of any such agreement that TimberWest and the Predecessors maintained and reserved the right to amend, including to discontinue, the Post-Retirement Benefits and/or to change the amounts that retired employees are required to contribute to the cost of such benefits; and/or
- (b) TimberWest did not breach any contractual obligation to the Plaintiff or putative class members by the modifications to the Post-Retirement Benefits effective September 1, 2009 and May 1, 2010 as those modifications were contractually permitted.

7. In the further alternative, if any putative Employee Class Members entered into contracts for Post-Retirement benefits during their employment, which is not admitted and is expressly denied, and such contracts did not permit TimberWest or a Predecessor to modify the Post-Retirement Benefits as set out in paragraph 6(a) above, then such contracts were varied from time to time by new contracts entered into post-retirement whereby:

- (a) TimberWest or a Predecessor offered to increase the specific content of Post-Retirement Benefits, in consideration for, *inter alia*, the putative Employee Class Member granting TimberWest or the Predecessor the right to modify the Post-Retirement Benefits as set out in paragraph 6(a) above; and

- (b) The Employee Class members accepted such offers by, *inter alia*, accepting the increased Post-Retirement benefits.

8. In the further alternative, the Plaintiff and putative class members are estopped and precluded from alleging that TimberWest breached any contractual obligation owed to any of them.

9. In particular, TimberWest and the Predecessors provided Post-Retirement Benefits to the Plaintiff and putative class members in excess of any contractual or other obligation to do so, in reliance on and subject to an expressed reservation of rights to modify the Post-Retirement Benefits as set out in paragraph 6(a) above.

10. Having accepted Post-Retirement Benefits in excess of any contractual entitlement to receive such benefits, the Plaintiff and putative class members are estopped from alleging that TimberWest or the Predecessor's expressed reservation of rights is not binding on them, and that TimberWest's modifications to the Post-Retirement Benefits breached a contractual obligation owed to them. TimberWest pleads and relies upon laches, estoppel and acquiescence.

11. In the further alternative, if TimberWest breached any contractual obligation owed to the Plaintiff or putative class members, which is not admitted and is expressly denied, TimberWest denies that the Plaintiff or putative class members have suffered damage or loss as claimed, and puts the Plaintiff and putative class members to the strict proof thereof.

12. In the further alternative, if the Plaintiff or putative class have suffered any damage or loss, which is not admitted and is expressly denied, the Plaintiff and putative class members have failed and continue to fail to mitigate any damage or loss suffered.

## II. No Unjust Enrichment

13. In specific response to paragraphs 7 to 10 of Part 3 of the Notice of Civil Claim, TimberWest denies that:

- (a) TimberWest or any of the Predecessors were enriched in the absence of a juristic reason. TimberWest expressly denies it or any of the Predecessors

received the value of the work of Plaintiff and of the putative Employee Class Members on the basis of written or other representations that the Plaintiff or any other putative class members, including spouses or dependants, would receive the Post-Retirement Benefits, either free of charge or at all; and

- (b) The work performed by the putative Employee Class Members gave rise to benefits enjoyed by TimberWest or any of the Predecessors for which any of the putative class members suffered corresponding deprivation.

14. Specifically, but without limiting the generality of the foregoing, TimberWest denies it received any value whatsoever from the spouses or dependants of the putative Employee Class Members or that those spouses or dependants suffered a corresponding deprivation.

### III. No Vesting

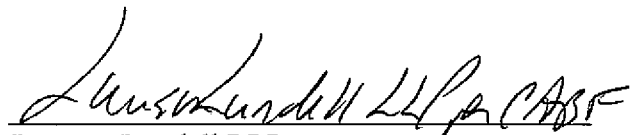
15. In answer to the whole of the Notice of Civil Claim, the Post-Retirement Benefits were never intended to, nor did they ever, vest in the Plaintiff or putative class members. As a result, TimberWest was and remains legally entitled to modify the Post-Retirement Benefits.

Defendant's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A.B. Ferris).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: cferris@lawsonlundell.com

Dated at the City of Vancouver, in the Province of British Columbia, this 19th day of September, 2014.



Lawson Lundell LLP  
Solicitors for the Defendant, TimberWest  
Forest Corp.

This Response to Civil Claim is filed by Craig A.B. Ferris, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

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.

NO. NO. S-140490  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

GEORGE JABLONSKY

PLAINTIFF

AND:

TIMBERWEST FOREST CORP

DEFENDANT

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**RESPONSE TO CIVIL CLAIM**

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2  
Phone: (604) 685-3456  
Attention: Craig A.B. Ferris

CAF/gbb