

***In the Supreme Court of British Columbia***

Between

JAMES WELDON and LEONARD BLEIER, suing on their own behalf and in a representative capacity on behalf of all former members of defined benefit pension plans sponsored, directed, administered or advised by the Defendants and their predecessors who were caused by the Defendants and their predecessors to cease to participate in those defined benefit pension plans and to participate only in defined contribution pension plans commencing on or about January 1, 1993, wherever they reside

Plaintiffs

and

TECK METALS LTD. and TOWERS PERRIN INC.

Defendants

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

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**NOTICE OF APPLICATION  
REGARDING APPROVAL OF CLASS COUNSEL FEES AND DISBURSEMENTS**

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**Name of Applicants:** Plaintiffs, James Weldon and Leonard Bleier

**TO:** the Defendants, Teck Metals Ltd. and Towers Perrin Inc.

TAKE NOTICE that an application will be made by the applicants to the Honourable Mr. Justice N. Smith at the courthouse at 800 Smithe Street, Vancouver, B.C. V6Z 2E1 on 24/Jul/2015 at 10:00 a.m. for the order set out in Part 1 below.

## **PART 1: ORDERS SOUGHT**

1. Orders pertaining to approval of Class Counsel legal fees and disbursements substantially in the form attached as **Schedule "A"** to this notice of application; and
2. such further and other relief as counsel may request and as this Honourable Court may deem just.

## **PART 2: FACTUAL BASIS**

3. This is a class action brought on behalf of current and former employees of Teck Metals Ltd. ("Teck") and related entities regarding the 1993 conversion of their pension benefits from defined benefit (the "DB Plan") to defined contribution (the "DC Plan"). Towers Perrin Inc. ("Towers") was the actuarial and pension consultant on the conversion.
4. On the eve of trial, after extensive litigation and arms length settlement negotiations, the parties agreed to settle this case for \$4 million (the "Settlement Amount"), plus up to \$300,000 for disbursements incurred prior September 22, 2014 (the "Costs Amount"), in exchange for a release from class members (the "Settlement Agreement"). The parties executed the Settlement Agreement effective October 31, 2014. Under the terms of the Settlement Agreement, the defendants will pay the Settlement Amount and the Costs Amount after the Settlement Agreement is effective.
5. This application is brought for approval of Class Counsel's fees and disbursements, and is brought in conjunction with applications for approval of:
  - (a) the Settlement Agreement (the "Settlement Application");
  - (b) the Settlement Administration and Distribution Plan (the "Distribution Plan"), appointment of Camp Fiorante Matthews Mogerman ("CFM") as claims administrator under the Distribution Plan, and payment of a fee to CFM as claims administrator (the "Distribution Application"); and

- (c) honoraria for the two representative plaintiffs (the "Honoraria Application"; collectively, the "Applications").

6. Class Counsel's fee and disbursement requests are as follows:

Fees		
	33 1/3% of Settlement Amount	\$ 1,333,333.33
	Taxes	\$ 160,000.00
	<b>Total Fees to be paid from Settlement Amount</b>	<b>\$ 1,493,333.33</b>
Disbursements		
	Incurred September 22, 2014 to June 30, 2015	\$ 61,328.61
	Taxes	\$ 3,671.02
	<b>Total</b>	<b>\$ 64,999.63</b>
To be Paid from Settlement Amount		
	Total Fees	\$ 1,493,333.33
	Total Disbursements September 22 to June 30	\$ 64,999.63
	<b>Total to be Paid from Settlement Amount</b>	<b>\$ 1,558,332.96</b>

7. Class Counsel undertook significant risk in pursuing this complex litigation for over six years. The litigation was undertaken on a contingency basis and all of the disbursements were funded by Class Counsel. Class Counsel did not charge interest on the disbursements.

Affidavit #3 of Jennifer Winstanley made on July 15, 2015 ("Winstanley #3) at para. 5

8. The fee sought accords with the terms of the retainer agreement entered into with the representative plaintiffs (the "Fee Agreement") and the representative plaintiffs have indicated their approval of the fee sought.

Winstanley #3 at para. 6.

Weldon Affidavit #4 at a paras. 64-70.

Bleier Affidavit #3 at paras. 39-45.

### ***Class Counsel Team and Fee Agreements***

9. Camp Fiorante Matthews Mogerma ("CFM") and Victory Square Law Office ("VSLO"; together, "Class Counsel") have worked together closely in pursuing the proceeding.

Winstanley #3 at para. 4.

10. The Fee Agreement provides for a legal fee of up to 33 1/3 % on any settlement or compensation pertaining to the case plus disbursements and applicable taxes. The Fee Agreement also stipulates that Class Counsel will pay all expenses associated with litigating the case and will only be paid fees and expenses in the event of settlement, compensation related to the case, or judgment.

Winstanley #3 at para. 7.

### ***Litigation History***

11. This action was filed as a proposed class proceeding on July 14, 2009, by one of the current representative plaintiffs, James Weldon. The plaintiffs alleged that Teck Metals, with the assistance of Towers, structured and implemented the DC Plan in a way that favoured Teck Metals' interest over those of its employees, transferring risks from Teck Metals to the pension plan members. Specifically, at the time of the election, the defendants allegedly provided the employees with incomplete, inaccurate or misleading information, and were therefore liable for damages and other relief for breach of statutory and fiduciary duties, deceit and negligent misrepresentation.

Winstanley #1 at para. 11.

12. On October 17, 2011, a parallel action was filed by Leonard Bleier, *Bleier v. Teck Metals Ltd. et al*, SCBC Action No. VLC-S-S-116968. The two actions were consolidated by order dated June 21, 2012.

Winstanley #1 at para. 12.

13. The defendants vigorously contested all aspects of liability and damages at every step. They pointed out that while unexpectedly low interest rates had seriously impacted the value of the DC Plan, the interest rates were just that – unexpected.

The defendants' basic position was that hindsight should not be the standard. They said that, based on information that existed in 1993, the material provided to the class members was fair, reasonable, and unbiased.

Winstanley #1 at paras. 14 and 15.

14. The defendants also raised defences and challenged the representative plaintiffs based on limitation periods, duty of care, standard of care, causation and damages. In the six years since it was commenced, this class proceeding has been to the BC Court of Appeal three times. The rulings of this Court and the Court of Appeal on limitation period issues substantially reduced the causes of action available to the class and increased the risks for class members.

Winstanley #1 at paras 10, 14-23.

15. This case has also required extensive case management.

Winstanley #1 at para. 10

16. Class Counsel actively prepared up to the eve of trial. The Settlement Agreement was reached in September 2014. Class Counsel spent a great deal of time reviewing and digesting documents, conducting and defending numerous discoveries, retaining and instructing experts, and otherwise engaging in extensive legal and factual trial preparation.

Winstanley #1 at para. 23.

### ***Negotiations and Settlement***

17. Notwithstanding the risk and uncertainty in this matter, Class Counsel continued to vigorously litigate this matter including hard fought negotiations with the defendants.
18. The parties executed the Settlement Agreement effective October 31, 2014. The Settlement Agreement provides for payment of \$4,000,000 (the "Settlement Amount") plus up to \$300,000 for disbursements incurred up to September 22, 2014 (the "Costs Amount").

19. The defendants have agreed to pay a total of \$291,421.39 (including taxes) in satisfaction of the Costs Amount.

***Risk Undertaken and Time and Expenses Incurred***

20. From the inception of this class action in 2009, the Proceedings have been vigorously litigated. In undertaking this litigation, the following litigation risks have been or are extant:

- (a) the defendants could prove that they did not owe the alleged duties and, in any event, did not do anything wrong ("liability risk");
- (b) people would have joined the DC plan regardless of the information that the defendants disclosed in 1993 at the time of the election ("reliance risk");
- (c) even if the defendants had breached the standard of care, essential causes of action had expired by operation of the *Limitation Act* ("limitation period risk"); and
- (d) even if the class won at trial, the defendants would appeal and it would take many more years to resolve this lawsuit ("appeal risk").

Winstanley #1 at para. 37.

21. Further, in undertaking this action on a percentage contingency basis, Class Counsel took the risk that any recovery would be small and that the percentage fee would not cover the costs associated with bringing the action.

Winstanley #3 at para. 9.

22. There was also a risk that the settlement discussions would not be fruitful and that the time and disbursements expended in relation thereto would be wasted.

Winstanley #3 at para. 10.

***Time Expended and Disbursements Incurred***

23. Class Counsel do not waive any privilege by providing the following description of the time expended and disbursements incurred by counsel. Rather, Class Counsel provide a description of the time expended in order to make helpful disclosure to the Court to assist in the assessment of the fee request.

Winstanley #3 at para. 11.

24. Class Counsel have in place an agreement to share the cost of disbursements incurred pending approval of fees and disbursements, and to share the fees approved in a fair and equitable manner. To prevent inefficiencies with multiple firms working on this case, all counsel agreed to the following guidelines with respect to time:

- (a) While delivering high quality legal services, all counsel shall seek to perform their work in an efficient manner.
- (b) Tasks in the litigation shall be divided out amongst the responsible law firms such that duplicative work will not be performed.
- (c) Unless exceptional circumstances dictate otherwise, a maximum of two professionals from each law firm shall claim payment for time associated with attending meetings or court appearances. Similarly, a maximum of two professionals from each law firm shall claim payment for the review of any document or report in the litigation. By way of example, exceptional circumstances would include, but are not limited to, two professionals from the same law firm attending on a cross-examination of another member of that firm who has sworn an affidavit, or two professionals who are active in the daily matters in a particular file involving a third professional at the firm who has particular expertise in a matter which has arisen in the litigation.
- (d) No payment shall be claimed for reviewing communications between co-counsels that addresses purely organizational or logistical matters.

Winstanley #3 at para. 11.

25. Class Counsel have agreed to and adopted the following guidelines with respect to disbursements:
- (a) Counsel agree that certain expenses which may be properly incurred for the benefit of the class or in the course of the litigation, will not be claimed in any application to the court for reimbursement for the class members.
  - (b) Accommodation charges will be restricted to rates charged at standard business hotels (Sheraton, Hilton, Marriott) or similarly priced alternatives.
  - (c) Meal expenses will be restricted to \$15 per person for breakfast, \$25 per person for lunch and \$45 per person for dinner, plus applicable taxes.
  - (d) Air travel shall be booked as economically as possible, with reimbursement for business class travel only being claimed for flights in excess of three hours unless exceptional circumstances exist.

Winstanley #3 at para 12.

26. This action is six years old. In that time, and in accordance with these guidelines, Class Counsel have docketed time at their usual hourly rates which totals \$1,542,329.00 up to June 30, 2015. This includes time which has been spent to date on administration of the Distribution Plan. Class Counsel have continued to incur time since that date and will incur a substantial amount of further time going forward.

Winstanley at paras.13-16.

27. The total disbursements incurred in this proceeding (excluding taxes) are \$337,378.63. Class Counsel has carried those disbursements without charging interest to the Class. The most significant disbursement is in respect of expert fees.

Winstanley #3 at paras 18-20.

28. Class Counsel have continued to incur disbursements since June 30, 2014 but will not seek repayment of those disbursements.



***Response by Plaintiffs and Settlement Class Members***

**Representative Plaintiffs**

29. The representative plaintiffs approve the fee sought.

Weldon #4 at para.70.

Bleier #3 at para. 45.

**Class Members**

30. Four rounds of notice have now been published and disseminated to class members, most recently on June 16, 2015 (the "Distribution Notice"). The Distribution Notice clearly advised class members that Class Counsel would be requesting a fee of \$1,333,333.33 plus expenses and taxes. The Distribution Notice also clearly advised class members that CFM would also be seeking a \$250,000 fee as claims administrator.<sup>1</sup> The Distribution Notice also provided information about how to get more information or object.

Winstanley #1 at Exhibit F.

31. The Distribution Notice was also posted on Class Counsel's websites on June 16, 2015.

Winstanley #1 at para.32.

32. In addition, Class Counsel developed a "frequently asked questions" or "FAQ" page for their websites (the "FAQ Page"). The FAQ page includes questions and answers specifically dealing with Class Counsel's fees.

Winstanley #1 at para.34

33. Further, Class Counsel held a "town hall" meeting by webinar on June 24, 2015 to answer class members' questions. None of the questions asked dealt with fees.

Winstanley #1 at para.35.

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<sup>1</sup> The request for a fee as claims administrator will be made in the Distribution Application.

34. The deadline for objections is July 17, 2015. As of July 15, 2015, Class Counsel had received four objection letters from three class members, none which object to Class Counsel's fees. Any further objections will be brought to the Court's attention at the hearing.

Winstanley #1 at para.38.

Winstanley #2 at para 36.

35. Class Counsel have received a number of emails from class members recognizing the work that Class Counsel have done on their behalf.

Winstanley #1 at para. 39.

Winstanley #2 at para. 37.

### **PART 3: LEGAL BASIS**

#### ***General Principles Regarding the Award of Class Counsel Fees***

36. The purpose of the fee approval requirement is to ensure that the fee charged to the class is fair and reasonable, and that Class Counsel are appropriately compensated. Class action litigation is challenging and risky. The fee "should not only reward counsel for meritorious efforts, but it should also encourage counsel to take on difficult and risky class action litigation." The real risk of failure, with financial consequences to counsel, cannot be ignored.

*Bodnar v Cash Store Inc.*, 2010 BCSC 145 at para. 23-25 [*Bodnar*];

*Pro-Sys Consultants Ltd. v. Infineon Technologies AG*, 2014 BCSC 1936 [*Pro-Sys*];

*Abdulrahim v Air France*, 2011 ONSC 512 at para. 9-10 [*Air France*];

*Jeffery v Nortel Networks*, 2007 BCSC 69, 68 BCLR (4th) 317 at para. 73 [*Jeffery*];

*Endean v Canadian Red Cross Society*, 2000 BCSC 971, [2000] 8 WWR 294 at paras. 57-64 [*Endean*].

37. In assessing the fairness and reasonableness of requested fees, the courts have recognized that the objectives of the *Class Proceedings Act* – judicial economy,

access to justice and behaviour modification – are dependent, in part, upon counsel's willingness to take on class proceedings.

*Endean, supra* at paras. 87-88.

38. The access to justice element of class proceedings differentiates fee approvals in the context of class actions from fee approvals in non-class proceedings.

*Pro-Sys* at para. 61.

39. Contingency fees help promote access to justice in that they allow counsel, not the client, to finance the litigation. Percentage contingency fees also promote judicial economy in that they encourage efficiency in the litigation and discourage unnecessary work that might otherwise be done simply to increase the lawyer's base fee. Class counsel submit that percentage contingency fees properly emphasize the quality of the representation and the results achieved, and ensure that counsel are not penalized for efficiency.

*Endean* at para. 88;

*Ford v F. Hoffman-La Roche Ltd.*, (2005) 12 CPC (6th) 226 (Ont. S.C.J.) at paras. 58- 62 [*Ford*];

*Air France, supra*, at para. 10;

*Baker (Estate) v Sony BMG Music (Canada) Inc.*, 2011 CanLII 93085 (ON SC) at para. 63-67 [*Baker*].

40. This, in turn, depends on the incentives available to counsel to assume the risks and accept the financial burden of carrying class proceedings. In most cases, a premium on fees is provided to reward Class Counsel for accepting this risk and taking on meritorious but difficult matters. Effective class actions would therefore not be possible without contingency and percentage-based fees.

*Ford, supra* at paras. 58- 62.

41. The amount payable pursuant to the retainer agreement is the starting point for the analysis of the proposed fee. As noted by Madam Justice Dickson in *Bodnar, supra*, "the issue for determination is whether the agreement operates

reasonably in the context, given the fee proposed.” Madam Justice Dickson also noted that, “...if the proposed fee is to be reduced, a principled basis for the reduction must be identified”.

*Bodnar, supra*, at paras. 25 and 26.

42. The courts have reviewed the range of contingency fees awarded to Class Counsel under the *Class Proceedings Act*. Approved percentage contingency fees in British Columbia have generally ranged from 15% to 33%.

*Bodnar, supra* at para. 26.

43. In class actions, the courts have preferred percentage contingency fees over other fee arrangements, such as the lodestar or multiplier approach, which rewards counsel based on a multiplier of their base fee. The multiplier approach has been criticized for encouraging inefficient use of time and duplicative and unjustified work, discouraging early settlement, and failing to reward efficient time-management.

*Endean, supra* at paras. 10-25.

44. The following factors are relevant in assessing the reasonableness of Class Counsel fees:

- (a) the time expended by the solicitor;
- (b) the legal complexity of the matters to be dealt with;
- (c) the degree of responsibility assumed by the solicitor;
- (d) the monetary value of the matters in issue;
- (e) the importance of the matter to the client;
- (f) the degree of skill and competence demonstrated by the solicitor;
- (g) the results achieved;
- (h) the ability of the client to pay;

- (i) the client's expectations as to the amount of the fee;
- (j) the risk undertaken by counsel, including the risk that the action might not be certified; and
- (k) the position of any objectors.

*Jeffery, supra* at para. 70;

*Pro-Sys, supra* at para. 57 & 61.

### **The Time Spent By Counsel and Complexity of the Matter**

45. From the inception of this proceeding, nearly six years ago, to June 30, 2015, Class Counsel have docketed time totalling \$1,542,329.00. This significant sum reflects the length and complexity of this litigation.

Winstanley #3 at paras.13-16

46. Class Counsel assumed full responsibility for the matter from beginning to end, carrying the matter and funding all disbursements.

47. This litigation was vigorously contested by any measure. It has been to the Court of Appeal on three occasions and required substantial case management. The legal issues dealt with were complex and novel.

Winstanley #1 at para.10.

48. Class Counsel's fee request of \$1,333,333.33 works out to a multiplier of approximately 0.86 on the basis of Class Counsel's hourly rates and time incurred to June 30, 2015. With the addition of the fee request of \$250,000 to act as Claims Administrator, and on the basis of time incurred to June 30, 2015, the fee works out to a multiplier of 1.03. Class Counsel will continue to incur time to act as Claims Administrator.

Winstanley #3 at para. 17.

### **Results Achieved**

49. As noted above, this case involved substantial legal risks. In order to win, the plaintiffs needed to establish liability against one of both of the defendants for a

cause of action that had not yet expired under the *Limitation Act*. They then had to win the common issues trial on liability and win complex and uncertain arguments relating to reliance, causation, damages, and postponement.

Winstanley #1 at paras 36, 40 and 50.

50. In light of these risks, the Settlement Agreement has resulted in significant monetary compensation for settlement class members.

### **Litigation Risk Assumed by Class Counsel**

51. The litigation risk assumed by counsel is a function of the probability of success, the complexity of the proceedings, and the time and resources expended to pursue the litigation.

*Parsons v Canadian Red Cross Society* (2000), 49 OR (3d) 281 at paras. 13 & 18-47(SCJ) [*Parsons*].

52. The Proceedings were exceedingly vigorously litigated by both sides. The defendants were represented by some of the most competent defence counsel in Canada. This created substantial risks, which Class Counsel assumed.

Winstanley #1 at para.10.

53. The risks involved in pursuing the class litigation must be assessed as they existed when the litigation commenced and as the litigation continued. The jurisprudence is clear that risk cannot be assessed with the benefit of hindsight.

*Gagne v Silcorp Ltd* (1998), 41 OR (3d) 417 at paras. 16-19 (CA).

### **Conduct by Class Counsel**

54. The degree of skill and competence demonstrated by Class Counsel was very high as evidenced by the degree of success achieved in this litigation. The careful, deliberate and thorough distribution planning process also reflects the skills, competence and efforts of Class Counsel. As in the *Manuge* case, the settlements here resulted from the "skillful and tenacious advocacy of Class

Counsel in the context of an adversarial contest involving equally skilled and tenacious opposing counsel.”

*Manuge v Canada*, 2013 FC 341 at para. 29

55. Class Counsel have worked cooperatively in the proceeding pursuant to self-imposed guidelines which protect against potential inefficiencies. By agreement of Class Counsel, the fee requested will be shared amongst Class Counsel. This sharing will not affect the Settlement Amount available to class members.

Winstanley #1 at Exhibit F.

Weldon #4 at para. 66.

Bleier #3 at para. 41.

#### **Clients' Expectation and Appropriateness of Fees Sought**

56. Class Counsel are seeking 33 1/3% of the Settlement Amount, plus disbursements of \$61,328.61, plus applicable taxes of \$3,671.02 for a total of \$64,999.63. This fee request is consistent with the Fee Agreement and is supported by the plaintiffs.

Weldon # 4 at para. 70 and Exhibit A.

Bleier # 3 at para. 45 and Exhibit A.

57. As the Ontario Court of Appeal has noted, a “representative plaintiff in a class action lawsuit is a genuine plaintiff, who chooses, retains and instructs counsel and to whom counsel report.” Their approval of and support for a fee request should not be taken lightly.

*Fantl v. Transamerica Life Canada*, 2009 ONCA 377, 95 O.R. (3d) 767 at para. 44.

58. Fee agreements at that percentage are standard in the class actions field in recognition of the inherently risky nature of this work and the important legal policy objectives of access to justice and behaviour modification that inform class proceedings legislation. Contingency fees at the higher end reflect the reality that not all cases will be won and compensation for winning cases allow counsel to take on cases where the claim is meritorious but the outcome is uncertain.

59. The fee request is also consistent with the fees awarded by the courts in other class proceedings. Percentage contingency fees approved in class actions have typically ranged from 15% to 33%.

*Bodnar, supra* at para. 26.

60. In a recent Ontario case, Belobaba J., an experienced class action judge, created the concept of the “presumptive validity” of a 33% contingency fee as long as the representative plaintiff understood the fee agreement. He noted that injecting greater predictability into the judicial approach to contingency fees will “encourage greater use of the class action vehicle, enhancing access to justice.”

*Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 at paras. 8- 10.

61. It is too early to tell if this call for greater consistency through the adoption of presumptive validity of a 33% contingency agreement will be more broadly endorsed. However, it is consistent with the prevailing judicial analysis which takes the amount payable under the retainer agreement as the starting point for the Court’s judgment.

*Bodnar, supra*, at paras. 25 and 26.

62. It is difficult to convey the difficulties inherent in the building, maintenance and management of a plaintiffs’ practice in the class action field. Fees from winning cases must assist in maintaining the ongoing viability and strength of contingency practices. Business expenses, case disbursements and unpaid legal time must be carried for many years and for many cases in practices of this type. Fees in successful cases must also assist in overcoming the deficits created by losses. This allows for thriving practices that contribute to access to justice and behaviour modification. Large fees create headlines but large losses get barely any attention. Losses have a tremendous negative impact on a practice with consequent ramifications for the class action plaintiffs’ bar. While these risks are assumed, the upside of winning must extend to fees that are substantial enough to balance the scales by rewarding the heavy investment in time and resources and the assumption of risk.



Winstanley #3 at para. 8

63. This important reality has been recognized by the courts:

It should be noted in this regard that this action was commenced in 2005. Thus, for over five years Class Counsel has undertaken this action without any remuneration. In the meantime, rent had to be paid, lawyers and staff had to be paid salaries, and expenses were incurred and paid. Without a substantial firm infrastructure and resources, an action of this kind would be an impossible undertaking.

*Air France, supra* at para. 16.

64. Class members were given very clear notice of Class Counsel's fee request. The request is therefore in line with their expectations.

Winstanley #1 at Exhibit F.

65. Canadian courts have recognized that Class Counsel are entitled to reasonable fees to compensate for the difficult contingency cases in which they have to wait many years before recovering any of their fees and the ever present risk of recovering nothing if the case is unsuccessful. Fees should not only reward meritorious effort but also encourage counsel to take on risky class action litigation:

If first-class lawyers cannot be assured that the Courts will support their reasonable fee requests, how can the Courts and the public expect them to take on risky and expensive litigation that can go for years before there is a resolution?

*Baker, supra* at para. 67.

66. Nor should a reasonable fee agreed upon in a contingency agreement be reduced because the matter was resolved through settlement negotiations rather than a trial. Settlement negotiations require substantial expenditures of time and resources. Furthermore, in class actions, settlement agreements must be approved by the court and so they maintain the risk that they might not be approved.

*Manuge, at paras. 36-38*

**The Position of any Objectors**

67. Class Counsel have received no objections with regard to Class Counsel's fee request. Instead, Class Counsel have received a number of emails recognizing the work have done on their behalf.

Winstanley #1 at para. 39.

Winstanley #2 at para. 37.

***Conclusion***

68. Class Counsel submit that the fees and disbursements sought are fair and reasonable, and should be approved.

**PART 4: MATERIAL TO BE RELIED ON**

69. Affidavit # 1 of Jennifer Winstanley made July 15, 2015.

70. Affidavit #2 of Jennifer Winstanley made July 15, 2015.

71. Affidavit # 3 of Jennifer Winstanley made July 15, 2015.

72. Affidavit # 4 of James Weldon made July 10, 2015.

73. Affidavit #3 of Leonard Bleier made July 13, 2015.

74. Such further and other material as counsel may advise and this Honourable Court may permit.

The applicant estimates that the application will take one hour.

This matter is within the jurisdiction of a master.

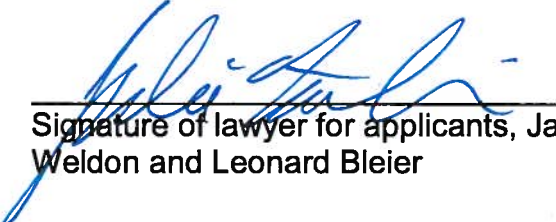
This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

(a) file an application response in Form 33,

- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 16 /July/2015

  
\_\_\_\_\_  
Signature of lawyer for applicants, James  
Weldon and Leonard Bleier

Julie R. Facchin

*To be completed by the court only:*

Order made

- in the terms requested in paragraphs ..... of Part 1 of this notice of application
- with the following variations and additional terms:

.....  
.....  
.....

Date: ..... Signature of  Judge  Master

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**APPENDIX**

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THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

# SCHEDULE A

No. S-095159  
Vancouver Registry

## *In the Supreme Court of British Columbia*

Between

JAMES WELDON and LEONARD BLEIER, suing on their own behalf and in a representative capacity on behalf of all former members of defined benefit pension plans sponsored, directed, administered or advised by the Defendants and their predecessors who were caused by the Defendants and their predecessors to cease to participate in those defined benefit pension plans and to participate only in defined contribution pension plans commencing on or about January 1, 1993, wherever they reside

Plaintiffs

and

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Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

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### **ORDER MADE AFTER APPLICATION REGARDING APPROVAL OF CLASS COUNSEL FEES & DISBURSEMENTS**

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BEFORE THE HONOURABLE MR. JUSTICE N. SMITH ) ) ) 24/Jul/2015

ON THE APPLICATION of the plaintiffs, James Weldon and Leonard Bleier, coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 24/Jul/2015, and on hearing J.J. Camp, Q.C. Reidar Mogerman and Julie Facchin, counsel for the plaintiffs; Irwin Nathanson, Q.C., counsel for the defendant, Teck Metals Ltd.; and Hein Poulus, Q.C. and Michael Bromm, counsel for the defendant, Towers Perrin Inc. and on reading the materials filed;

THIS COURT ORDERS that:

1. For the purposes of this order, "Settlement Amount" means the amount of \$4,000,000 to be paid by the defendants in final settlement of this action.
2. Class Counsel legal fees of \$1,333,333.33 plus taxes of \$160,000.00 for a total of \$1,493,333.33 are granted as being fair and reasonable in the circumstances of this action;
3. Class Counsel disbursements in the amount of \$61,328.61 plus taxes of \$3,671.02 for a total of \$64,999.63 are granted as being fair and reasonable in the circumstances of this action;
4. Class Counsel legal fees and disbursements as described in paragraphs 2 and 3 shall be paid from the Settlement Amount;
5. Endorsement of this Order by counsel for the Defendants shall be dispensed with.

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

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Signature of lawyer for the plaintiffs

J.J. Camp, Q.C.

By the Court

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Registrar

No. S-095159  
Vancouver Registry

***In the Supreme Court of British Columbia***

Between

JAMES WELDON and LEONARD BLEIER, suing on their own behalf and in a representative capacity on behalf of all former members of defined benefit pension plans sponsored, directed, administered or advised by the Defendants and their predecessors who were caused by the Defendants and their predecessors to cease to participate in those defined benefit pension plans and to participate only in defined contribution pension plans commencing on or about January 1, 1993, wherever they reside

Plaintiffs

and

TECK METALS LTD. and TOWERS PERRIN INC.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

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**ORDER MADE AFTER APPLICATION  
CLASS COUNSEL FEES AND DISBURSEMENTS**

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