

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., COMINCO PENSION FUND
COORDINATING SOCIETY and TOWERS PERRIN INC.

Defendants

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE MR. JUSTICE
SMITH

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21/Dec/2012

ON THE APPLICATION of the Plaintiffs, James Weldon and Leonard Bleier, coming on for hearing at Vancouver on 21/Dec/2012 and on hearing Reidar Mogerman and Jen Winstanley, lawyers for the Plaintiffs, and Geoffrey Gomery, Q.C., lawyer for the Defendant Teck Metals Ltd., and Hein Poulus, Q.C., and Michael Bromm, lawyers for the Defendant Towers Perrin Inc.;

THIS COURT ORDERS that:

1. By consent, this action is certified as a class proceeding.

2. By consent, the "Class" is described as:

All persons, wherever they reside, who are:

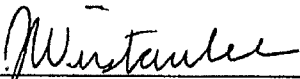
- (i) salaried, pension-eligible, non-union employees of Teck Metals Ltd., Teck Resources Limited, Cominco Resources International Limited, CESL Limited or Agrium Inc., or
- (ii) former salaried, pension-eligible, non-union employees of Teck Metals Ltd., Teck Resources Limited, Cominco Resources International Limited, CESL Limited or Agrium Inc., who terminated employment, by retirement or otherwise, in such a manner that they would have been entitled to defined pension benefits if they had remained members of the defined benefit pension plan,

who elected to move from the defined benefit pension plan to the defined contribution pension plan effective on or about January 1, 1993 including the personal representatives of any who have died, and excluding Judy Erickson and Louise Malkin.

3. By consent, James Weldon and Leonard Bleier are appointed as representative plaintiffs for the Class.
4. By consent, the Common Issues set out in Schedule A to this Order are certified as common issues of fact or law.
5. By consent, at a time to be directed by the Court, notice of certification will be given to the Class in the form set out in Schedule C to this Order and in accordance with the Litigation Plan set out in Schedule B to this Order.

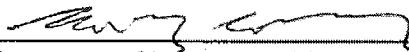
6. By consent, this class proceeding will be conducted in accordance with the Litigation Plan set out in Schedule B to this Order, as amended from time to time and approved by this Honourable Court.

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:

for 

Signature of lawyer for the Class


REIDAR MOGERMAN



Signature of lawyer for Teck Metals Ltd.,

GEOFFREY GOMERY, Q.C.




Signature of lawyer for Towers Perrin
Inc.
HEIN POULUS, Q.C.

By the Court

Registrar

Schedule "A"

Common Issues

Defined terms in this Schedule have the same meaning given to them in the Consolidated and Amended Notice of Civil Claim filed by James Weldon on July 13, 2012.

The Plaintiffs propose the following common issues:

1. Accrual Date of the Cause of Action

- (a) Did the right to bring this action commence January 1, 1993, on the date of each Class Member's retirement, or some other date?

2. Postponement of the Limitation Period

- (a) To what extent, if at all, do the Plaintiffs' claims giving rise to common issues as set out below fall under section 6(3) of the *Limitation Act*, RSBC 1996, c. 266, such that the limitation period applicable to the claims is subject to postponement pursuant to section 6(4) of the Act?

3. Breach of the Duty of Good Faith

- (a) Did Teck breach its duty of good faith owed to the Class Members in the manner that it structured and implemented the DC Plan as alleged?

4. Breach of Fiduciary Duties and Statutory Duties

- (a) Did Teck administer the pension fund as a trust for the Class Members?
- (b) Was Teck acting in its capacity as administrator in preparing and providing the Information Material to Class Members?
- (c) If Teck was acting in its capacity as administrator in preparing and providing the Information Material to the Class Members:
 - (i) Did Teck owe the Class Members a fiduciary duty to act honestly, in good faith, and in their best interests?
 - (ii) Did Teck owe the Class Members a fiduciary duty to avoid any conflicts of interest?
 - (iii) Did Teck owe the Class Members a duty to exercise the care, diligence, and skill that a person of ordinary prudence would exercise when dealing with the property of another person?

- (d) If Teck owed the Class Members a fiduciary duty to act honestly, in good faith, and in the best interests of the members and former members of BRIP, did Teck breach that duty as alleged?
- (e) If Teck owed the Class Members a fiduciary duty to avoid any conflicts of interest, did Teck breach that duty as alleged?
- (f) If Teck owed the Class Members a duty to exercise the care, diligence, and skill that a person of ordinary prudence would exercise when dealing with the property of another person, did Teck breach that duty as alleged?
- (g) Was Towers an agent of Teck, retained to perform some of Teck's duties, as alleged, or advise Teck on how to perform its duties, as administrator of both the BRIP and the DC Plan, as alleged?
- (h) If Towers was an agent of Teck, was Towers subject to the same fiduciary and statutory duties that apply to Teck?
- (i) If Towers was subject to the same fiduciary and statutory duties that apply to Teck, did Towers breach those duties, as alleged?

5. Deceit and Negligent Misrepresentation

- (a) Was Towers in a special relationship with the Class Members such that Teck and Towers should reasonably have foreseen that the Class Members would rely on information and advice provided by Towers when making their Election to the DC Plan?
- (b) Did Towers owe the Class Members a duty of care in connection with the provision of the Information Material?
- (c) Was the Information Material untrue, incomplete, inaccurate or misleading, as alleged?
- (d) Did Teck know that the Information Material was untrue, incomplete, inaccurate or misleading, as alleged, or was it reckless?
- (e) Did Towers participate, as alleged, in publishing the Information Material to the Class Members?
- (f) Did Towers know that the Information Material was untrue, incomplete, inaccurate or misleading as alleged, or was it reckless?
- (g) Did Teck fail, as alleged, to exercise reasonable care in the preparation of the Information Material?

- (h) Did Towers fail, as alleged, to exercise reasonable care in the preparation of the Information Material?
- (i) Is Teck vicariously liable and responsible at law for the acts or omissions of Towers?

6. Damages

- (a) Is there a formula or model that can be used to determine the difference between the value of each Class Member's pension benefits under the DC Plan and the value of the pension benefits that would have accrued to him or her had her or she remained in the BRIP, and, if so, what is it?

7. Injunctive Relief

- (a) Are the Class Members entitled to an injunction requiring Teck to reinstate them as members of BRIP with all of the rights and benefits that they would have had if they had not transferred to the DC Plan?

Schedule "B"

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and in a representative capacity on behalf of all former members of
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by the Defendants and their predecessors to cease to participate in
those defined benefit pension plans and to participate only in
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LITIGATION PLAN

Introduction

1. After disposition of the certification application, assuming success for the Plaintiffs, the Plaintiffs will ask the court to set a schedule for the remaining steps in the action. Subject to input from the Defendants, and directions from this Honourable Court, the Plaintiffs propose the following litigation plan.

Notice of Certification and Opt-Out / Opt-In Procedures

2. The Plaintiffs propose that notice to the Class should be in the form appended as Schedule "1" to this Litigation Plan, and should be sent to individual Class Members identified from the Defendants' employment and personnel records. If the contact information in the Defendants' employment and personnel records is not current, Class Counsel will take all reasonable steps to locate current contact information for all Class Members.

3. Class Counsel may also, at the direction of the Court, provide notice in the form of an advertisement in the local newspaper of the community or communities where the majority of Class Members are known to be, or have been, employed.
4. The costs of the Notice Program will be paid by the Plaintiffs in the first instance with the right reserved to the Plaintiffs to seek recovery of these costs from the Defendants by order of the judge presiding at the trial of the common issues.
5. The Plaintiffs propose that the opt-out/opt-in date be set for 90 days after the date that the notice is sent to the Class Members.
6. The Plaintiffs propose the following opt-out procedure:
 - (a) a person may opt out of the class proceeding by sending a written election to opt out to counsel for the Plaintiffs before a date fixed by the court; and
 - (b) no Class Member may opt out of the class proceeding after the expiration of the opt-out period.
7. Counsel for the Plaintiffs will receive the written elections to opt out and will report to the court the number and identity of persons who opted out by the date fixed by the court.
8. The Plaintiffs propose the following opt-in procedure:
 - (a) a person may opt in to the class proceeding by sending a written election to opt in to counsel for the Plaintiffs before a date fixed by the court; and
 - (b) no Class Member may opt-in to the class proceeding after the expiration of the opt-in period.
9. Counsel for the Plaintiffs will receive the written elections to opt-in and report to the court the number and identity of persons who opted-in by the date fixed by the court.

Litigation Relating to the Common Issues

10. The first step in the litigation following certification will be a special case brought by consent pursuant to rule 9-3 to determine common issues number one and two. No steps will be taken in the litigation to determine the remaining common issues until common issues number one and two are resolved by the case management judge. A case management conference will be held as soon as possible following resolution of common issues number one and two.
11. The Plaintiffs anticipate that the litigation of the remaining common issues will follow a fairly "traditional" pre-trial and trial plan and propose that a case management conference be arranged within 30 days of the resolution of the first two common issues

in order to first set a trial date, and then address the remaining issues set out below. The Plaintiffs propose that the trial of the common issues be set for a period of three weeks.

12. After a trial date has been set, the Plaintiffs propose that a schedule be set that will ensure that the parties are prepared for trial on the trial date. The schedule will address the following issues:
 - (a) **pleadings** – ensure that pleadings are closed, that all contemplated amendments have been concluded and that all parties have been joined;
 - (b) **identification and simplification of issues** – ensure that liability and damages issues have been simplified and narrowed as much as possible;
 - (c) **discovery** – the Plaintiff proposes that lists of documents be exchanged on the common issues and the examinations for discovery on the common issues be scheduled after lists of documents have been exchanged. The Plaintiff will examine for discovery at least one representative from each of the Defendants but cannot, until the production of the Defendants’ documents has been completed, estimate the time required for each including undertakings and refusals.
 - (d) **expert evidence** – the Plaintiff anticipates the exchange of detailed expert reports.
13. Subject to the availability of the court and counsel, the Plaintiff proposes meetings before the case management judge every 90 days unless the parties agree, or the court directs, that such hearings are not required or are required on a more frequent basis.
14. The Plaintiff proposes that Part 8 of the *Supreme Court Civil Rules* apply to these proceedings.

Judgment

15. The Plaintiff will seek judgment on the common issues at the end of the common issues trial.

Individual Issues

16. Individual issues remaining after resolution of the common issues will include those relating to postponement, causation, and calculation of damages.
17. With regard to the individual issues remaining following resolution of the common issues, the Plaintiff anticipates a further case management conference in order to determine the most efficient method of determining individual issues. Potential methods include mini-trials, arbitrations, representative trials or other means set out in s.27 of the *Class Proceedings Act*.

Schedule "C"

Notice of Certification

Dear Sirs/Mesdames:

Re: Notice of Certification
Weldon v. Teck Metals Ltd. et al, BCSC Action No. 095159

Why am I getting this letter?

This letter has been sent to you because you have been identified as a potential class member in a class action proceeding that has been certified in the Supreme Court of British Columbia. If you are a:

- (a) salaried, pension-eligible, non-union employee of Teck Metals Ltd., Teck Resources Limited, Cominco Resources International Limited, CESL Limited or Agrium, Inc., or
- (b) salaried, pension-eligible, non-union employee of Teck Metals Ltd., Teck Resources Limited, Cominco Resources International Limited, CESL Limited or Agrium, Inc., who terminated employment, by retirement or otherwise, in such a manner that you would have been entitled to pension benefits if you had remained a member of the defined benefit pension plan,

who elected to move from the defined benefit pension plan to the defined contribution pension plan effective on or about January 1, 1993, you are a class member. You are also a class member if you are the personal representative of a deceased class member.

The Certification Order

Mr. Justice Smith certified the action in *Weldon v. Teck Metals Ltd. et al* (the "Class Action") as a class proceeding and appointed James Weldon and Leonard Bleier as the representative plaintiffs for the class.

The Defendants include Teck Metals Ltd., and Towers Perrin.

What is this case about?

The Notice of Civil Claim filed by James Weldon and Leonard Bleier, the representative plaintiffs, alleges that the defendants breached their duty of good faith, fiduciary and statutory duties, and were deceitful and negligent in their conduct prior to each class member's election to transfer from the defined benefit pension plan to the defined contribution pension plan.

Damages and other forms of relief are claimed on behalf of each class member. The damages claimed are in the amount of the difference between the value of a class member's pension

benefits under the defined contribution plan, and the value of their pension benefits had they remained in the defined benefit plan.

What happens next?

Now that the case has been certified as a class proceeding, the class members will have to prove their claims at a common issues trial. The common issues trial will determine all issues that are common to all class members.

After the common issues trial, if the class members are successful on the common issues, individual issues unique to each class member will have to be proven. Individual issues include issues like the postponement of the limitation period applicable to each class member's claims, and the calculation of the amount of damages for each class member.

Class counsel are prepared to represent class members on the resolution of individual issues under the existing fee agreement.

What to do if I live in B.C.?

If you are a British Columbia resident and you wish to participate in the Class Action, please contact class counsel at: Camp Fiorante Matthews Mogerman, 400 – 856 Homer Street, Vancouver, B.C., V6B 2W5, Tel: 604-689-7555, and inform them that you have received this letter and you would like to participate.

If you are a British Columbia resident and you do not wish to participate in the Class Action you must take action to exclude yourself by opting out.

If you do not opt out of the Class Action you will be automatically included in the Class Action and bound by the terms of any judgment or settlement in the Class Action whether favourable or not. You will be entitled to share in the amount of any award or settlement recovered in the class action.

If you wish to opt out of the Class Action you must do so on or before _____ by sending a written election signed by you stating that you are opting out of the Class Action to: Camp Fiorante Matthews Mogerman, 400 – 856 Homer Street, Vancouver, B.C., V6B 2W5.

No class member will be permitted to opt out of the Class Action after _____.

What to do if I live in outside BC?

If you do not live in British Columbia and want to participate in the lawsuit, you must take action to include yourself by sending a written election signed by the class member stating that you wish to opt in to the Class Action to: Camp Fiorante Matthews Mogerman, 400 – 856 Homer Street, Vancouver, B.C., V6B 2W5.

No class member will be permitted to opt in to the Class Action after _____.

If you do not include yourself by the deadline it means that you can bring your own lawsuit and will not be bound by the result in this lawsuit. It also means that you cannot collect any money that might ultimately be paid to class members as a result of this lawsuit.

Legal Fees and Disbursements

Counsel have entered into an agreement with the representative plaintiff with respect to legal fees and disbursements. The agreement provides that counsel will not receive payment for their work unless the class action is successful or costs are received from the defendants. The agreement must be approved by the court to be effective.

Members of the class will not be personally liable to pay class counsel any legal fees or disbursements.

Additional Information

Any questions about the matters in this notice should NOT be directed to the court because its administrative structure is not designed to address this type of inquiry. The certification order and other information may be obtained by visiting class counsel's website at www.cfmlawyers.ca.

Questions for counsel should be directed by email, fax, or telephone to:

Natalie Fulton
Camp Fiorante Matthews Mogerman
Tel: 604-689-7555
Fax: 604-689-7554
Email: nfulton@cfmlawyers.ca

Yours truly,

Camp Fiorante Matthews Mogerman

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