

Amended pursuant to the Order of Mr. Justice N. Smith pronounced on 23/Jan/2014, and pursuant to Supreme Court Civil Rule 8-1(1)(b)(i).
Original filed July 14, 2009 and Oct. 17, 2011.
Consolidated and Amended Notice of Civil Claim filed July 25, 2012

No. VLC-S-S-095159
Vancouver Registry

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

In the Supreme Court of British Columbia

Between
FEB 27 2014



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

SECOND CONSOLIDATED AND AMENDED NOTICE OF CIVIL CLAIM
[Original Writ Of Summons Filed On July 14, 2009,
Amended Without Leave On July 31, 2009]

This action has been started by the plaintiffs for the relief set out in Part 2 below.

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

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

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

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

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

Time for response to civil claim

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

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

PART 1: STATEMENT OF FACTS

The Representative Plaintiffs

1. The plaintiff James Weldon is an employee of Teck Metals Ltd. and resides at 352 Bluns Street, Trail, British Columbia, V1R 3L1.

2. Mr. Weldon is a salaried, pension-eligible, non-union employee of Teck Metals Ltd. who elected to move from the defined benefit pension plan to the defined contribution pension plan effective January 1, 1993.
3. The plaintiff Leonard Bleier was an employee of Teck Metals Ltd. and resides at 1265 McPhee Road, Castlegar, British Columbia, V1N 4L8.
4. Mr. Bleier was a salaried, pension-eligible, non-union employee of Teck Metals Ltd. who elected to move from the defined benefit pension plan to the defined contribution pension plan effective January 1, 1993. He retired on September 1, 2008.

The Class

5. This action is brought on behalf of the plaintiffs and all persons, wherever they reside, who are:
 - (a) salaried, pension-eligible, non-union employees of Teck Metals Ltd., Teck Resources Limited, Cominco Resources International Limited, CESL Limited or Agrium Inc., or
 - (b) 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 (collectively the "Class Members"), or such other class definition as this court may ultimately decide on the motion for certification and includes the personal representatives of any who have died.

The Defendants

6. The Defendant Teck Metals Ltd., formerly Teck Cominco Metals Ltd., ("Teck") which was formerly Cominco Ltd., is a body corporate with its head office at Suite 3300, 550 Burrard Street, Vancouver, British Columbia, V6C 0B3.
7. ~~The Defendant Cominco Pension Fund Coordinating Society is a society established pursuant to the Pension Fund Societies Act of Canada, R.S.C. 1985, c. P8 ("Pension Fund Societies Act") with a chief place of business at Suite 3300, 550 Burrard Street, Vancouver, British Columbia, V6C 0B3.~~
8. ~~The Defendants Teck Metals Ltd., ("Teck") and Cominco Pension Fund Coordinating Society (the "Society") are related and commonly controlled entities.~~
9. The Defendant Towers Perrin Inc., now known as Towers Watson Canada Inc., ("Towers") is a firm of actuarial and pension consultants with a head office at South Tower Suite 1701, 175 Bloor Street East, Toronto, Ontario, M4W 3T6.

Background

10. Prior to September 1, 1992, the plaintiffs and all other Class Members were members of the Basic Retirement Income Plan, which was a defined benefit pension plan (the "DB Plan").
11. At that time, and at all material times since, Teck was the statutory administrator of the DB Plan, and the Cominco Pension Fund Coordinating Society, a society established pursuant to the Pension Fund Societies Act of Canada, R.S.C. 1985, c. P8, with a chief place of business at Suite 3300, 550 Burrard Street, Vancouver, BC, (the "Society") was trustee of the assets of the DB Plan and received and held contributions from Teck in trust for the beneficiaries including the plaintiffs and all other Class Members. Prior to September 1, 1992, and continuing to the present, Towers acted as the actuarial advisor to Teck providing advice as to the design, funding, administration and amendment of Teck pension plans, including the DB Plan.

12. Two of the main risks for the funding of defined benefit pension plans are (1) that the return on the investments of the fund will be less than the return required to fund benefits at the predicted level of interest rates (the investment risk), and (2) the risk that interest rates will be lower than predicted which increases the amount required to fund the pension benefit (the annuity risk).
13. Annuity risk is particularly sensitive to declining long-term interest rates. In 1982 long-term interest rates began to decline. These declines incurred annuity risk which greatly increased the cost of funding the DB Plan. Continuing interest rate declines would accelerate the increase in the cost of funding and thereby increase the risk that the cost could not be met by contributions at existing levels and investment returns. Teck would be required to pay the resulting shortfall.
14. In or around 1992, Towers recommended that Teck change its pension plan design primarily to reduce its DB Plan risks, particularly investment and annuity risk. The primary change recommended by Towers was the implementation of a new defined contribution pension plan initially known as the "Cominco Defined Contribution Pension Plan" (the "DC Plan").
15. Teck, on the advice and with the assistance of Towers, implemented the DC Plan effective January 1, 1993.
16. Teck, on the advice and with the assistance of Towers, implemented the DC Plan for the purposes of:
 - (a) reducing to the extent possible its exposure to the risks of the DB Plan by transferring that risk to salaried employees, including the plaintiffs and all other Class Members; and
 - (b) reducing pension costs and expenses associated with the DB Plan.
17. In or around August or September 1992, Teck informed the plaintiffs and all other Class Members that they had the option of electing (the "Election") either:
 - (a) to remain in the DB Plan, or

(b) to transfer to the DC Plan.

18. Making the Election to the DC Plan required the plaintiffs and all other Class Members to give up their entitlement to their defined benefit pensions and consent to the transfer of the actuarial value of their accrued pension benefits in the DB Plan to the DC Plan.
19. Teck and Towers informed the plaintiffs and all other Class Members that the Election was irrevocable.
20. On or about September 1, 1992, Teck and Towers informed the plaintiffs and all other Class Members that the deadline to make the Election was November 30, 1992.
21. Teck, as employer of the plaintiffs and all other Class Members and administrator of the DB and DC Plans, had special skills and knowledge of defined benefit and defined contribution pension plans in general and in particular the probability that individuals cannot achieve pensions comparable in value to defined benefit plans at the same level of contribution.
22. Towers, as actuarial advisor to Teck and agent of Teck in the administration of the DB and DC Plans, had special skills and knowledge of defined benefit and defined contribution pension plans in general and in particular the probability that individuals cannot achieve pensions comparable in value to defined benefit plans at the same level of contribution.
23. In or around September, 1992, Teck provided the plaintiffs and each of the other Class Members with a booklet titled "Introducing the DC Plan – Your New Pension Alternative" (the "Booklet") and a computer program called the "Interactive Decision Model Computer Program" (the "Computer Program") (collectively the "Information Material").
24. Towers assisted Teck in the preparation of the Information Material and approved its contents.

25. Teck and Towers constructed, designed, wrote and programmed the Information Material with the intention of causing the plaintiffs and all other Class Members to transfer to the DC Plan.
26. Teck and Towers knew, or ought to have known, that in making the Election to transfer to the DC Plan the plaintiffs and all other Class Members would rely on the Information Material.
27. The preface to the Booklet, at page 1, stated:

The handbook [referring to the Employee Information Handbook], this booklet and the computer program should provide you with all the information you need to make an **Informed decision**. [Emphasis in original]
28. The only reasons stated in the Information Material for introducing the defined contribution scheme were under the heading "Why the Change" at page 5 of the Booklet:
 - (a) "The major reason for changing the type of pension plan is because of the changing nature of the workforce. Fewer and fewer people are spending their entire working career with one employer." [Emphasis in original]
 - (b) "An equally important reason is that recent changes in taxation rules mean that defined contribution plans can now provide adequate retirement income for employees. Before January 1, 1991, the amount that could be tax-sheltered for retirement through capital accumulation plans was much less than could be tax-sheltered under defined benefit pension plans. Now the rules are much more equal and, if anything, tend to favour capital accumulation plans such as the DC Plan." [Emphasis in original]
 - (c) "Defined benefit plans such as BRIP are designed to provide the greatest benefit to employees who spend their entire career with one employer. While BRIP is an excellent plan for career employees, it may not be as

appropriate for employees who think that they may be facing a career change before retirement." [Emphasis in original]

29. Teck informed the plaintiffs and all other Class Members that the purpose of the Computer Program was to allow the plaintiffs and all other Class Members to input numbers projecting the anticipated value of their pensions under the DB Plan with the anticipated value under the DC Plan. The Computer Program did not allow for a rate of return on investment of less than 6% per year for the DC Plan projections. The Booklet contained only two references to the 6%:
 - (a) At page 16: "The prescribed method requires that a long-term bond rate be assumed for the first 15 years, and that 6% be assumed thereafter."
 - (b) At page 25: "The program can accommodate assumptions of 6% to 12%, in half percentages." [Emphasis in original]
30. The Information Material was inaccurate, incomplete and misleading because it failed to inform the plaintiffs and all other Class Members:
 - (a) that, on the Election to transfer to the DC Plan, Teck would cease to be exposed to all the cost risks, including the investment and annuity risks of the DB Plan, and that those risks would be transferred to the plaintiffs and all other Class Members making that Election;
 - (b) that Teck's stated reasons for establishing the DC Plan did not apply to Teck employees at all, applied only if numerous conditions were satisfied including a requirement that the employee terminate employment before about age 48, or applied only to employees younger than the great majority of those in the DB Plan in 1991;
 - (c) that changes in taxation rules were either irrelevant to the DC Plan because the proposed Teck contribution level to the DC Plan accounts was the same or less than its current cost of benefits under the DB Plan and remained below the pre-1991 contribution limits;

- (d) the changes in taxation rules were favourable only to DC Plan members who were making RSP contributions to obtain pension income in addition to their pension income from the Teck Plans;
- (e) of the amount of the benefits to Teck, including reduced pension costs and expenses, that would directly result from the implementation of the DC Plan and the plaintiffs and all other Class Members' Election to transfer to the DC Plan;
- (f) that the DB Plan value calculations used for comparison in the graphs were based on a "Prescribed Method" and that method is relevant only to a point-in-time calculation of value and had no relevance to the estimation of DB Plan actuarial values over a long term;
- (g) of the drastic increase in the cost of pension income that would result from a continuation of the decline in long-term interest rates (which is also the amount by which the value of their DB Plans would have increased) and the decrease in their ability to purchase that pension income that would result from rates of DC Plan investment returns below 6%;
- (h) of the implications of the minimum 6% interest rate used in the Computer Program calculations on the comparison between the DB Plan and the DC Plan;
- (i) that the investment rate of return expectations in the Computer Program did not note those returns were net of all administration expenses of DC Plan members;
- (j) that in using the Computer Program the rates of return on investment chosen as the basis for estimating the amounts of DC Plan accounts over time had to be the rate of return net of all administration costs that would be incurred by them;

- (k) that Teck's administration costs of the DB Plan were much lower than the total administration costs that would be expected to be incurred by DC Plan members;
 - (l) the impact of all administration fees that would be incurred by those making the Election to transfer to the DC Plan, including costs of investment advice and the management expense fee charged to members under the DC Plan, on the investment return expectations;
- 31. Teck and Towers did not advise the plaintiffs or any of the other Class Members to seek specialized, professional independent advice in pension design, risk, and management prior to making the Election.
- 32. Teck and Towers did not give the plaintiffs and all other Class Members a reasonable period of time to find and instruct an independent advisor qualified to give advice on the risks involved in making the Election to transfer to the DC Plan, obtain advice and make an informed decision regarding the Election.
- 33. Teck, on the advice and with the knowledge of Towers, did not disclose to the plaintiffs or any of the other Class Members Teck's actual pension cost and solvency decline in the previous 10 years or cost and solvency projections provided by Towers to Teck on the cost of continuing to provide benefits under the DB Plan compared to its expected cost of contributing to the DC Plan.
- 34. Teck and Towers created the Information Material and selected the information included in the Information Material with the intention of persuading as many DB Plan members as possible to make the Election to transfer to the DC Plan.
- 35. Teck and Towers knew, or ought to have known, that the Information Material was incomplete, inaccurate and misleading and would cause the plaintiffs and all other Class Members to transfer to the DC Plan.

36. The plaintiffs and all other Class Members, relying on the Information Material, elected to transfer to the DC Plan and ceased to be members of the DB Plan on January 1, 1993.
37. Teck favoured its own interests to the detriment of the plaintiffs and all other Class Members when preparing and distributing the Information Material.
38. ~~The Society favoured the interests of Teck over the interests of the plaintiffs and all other Class Members as members of the DB Plan in failing to advise them of the high risks of making the Election to the DC Plan and the inadequacy of disclosure of these risks in the Information Materials.~~
39. Towers favoured the interests of Teck over the interests of the plaintiffs and all other Class Members as members of the DB Plan when preparing and distributing the Information Material and when advising Teck on the pension plan design changes.
40. Before the Election was made Towers did not advise putting in place, and Teck did not put in place, a system for tracking the sufficiency of the DC Plan account balances of the plaintiffs and all other Class Members to purchase the pension they would have accrued under the DB Plan.
41. ~~Before the Election was made, the Society did not warn the beneficiaries of the DB Plan of the risk of transferring to the DC Plan.~~
42. After the Election was made, Teck did not provide the plaintiffs and all other Class Members with an investment vehicle or strategy which would permit them to apply their defined contribution account balances during their participation in the DC Plan to obtain the pension income that they anticipated based on the Information Material.
43. After the Election was made, Teck did not provide the plaintiffs and all other Class Members with an investment vehicle or strategy to prevent further deterioration of their ability to purchase pension income under the DC Plan.

44. As a result of Teck, ~~the Society~~, and Towers' conduct, the plaintiffs and all other Class Members have suffered, or will suffer, damages in the amount of the difference between the value of their entitlement under the DC Plan and the value of the entitlements they would have accrued in the DB Plan but for their Elections.

PART 2: RELIEF SOUGHT

45. The plaintiffs on their own behalf and on behalf of the Class Members seeks the following relief:
- (a) an order certifying this action as a class proceeding and appointing the plaintiff Weldon, and if required Bleier, as representative plaintiff;
 - (b) a declaration that Teck, in its capacity as employer, owed the plaintiffs and all other Class Members a ~~duty of good faith~~ and fiduciary duty to advise its employees fully of the consequences of their Elections and breached those duties;
 - (c) a declaration that Teck, in its capacity as pension administrator, and Towers, in its capacity as agent and advisor to Teck, owed the plaintiffs and all other Class Members fiduciary duties and statutory duties and breached those duties;
 - (d) a declaration that ~~Teck, the Society and~~ Towers owed the plaintiffs and all other Class Members a duty of care and breached that duty;
 - (e) an injunction requiring Teck to reinstate the plaintiffs and all other Class Members as members of the DB Plan with all of the rights and benefits that they would have had if they had not transferred to the DC Plan;
 - (f) an order for an accounting of the profits made by Teck as a result of the plaintiffs and all other Class Members' transfer to the DC Plan;

- (g) damages in the amount necessary to provide the plaintiffs and all other Class Members with the pension and other benefits that would have accrued to them had they remained in the DB Plan, or a declaration of entitlement to those amounts;
- (h) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1986, c. 79, s. 128; and
- (i) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

~~Breach of the Duty of Good Faith~~

- 46. ~~The relationship between Teck and the plaintiffs and all other Class Members was an employer-employee relationship. As employer of the plaintiffs and all other Class Members, Teck owed them a duty of good faith in its interactions with them with respect to their pensions and pension benefits.~~
- 47. ~~The relationship between the Society and the plaintiffs and all other Class Members was a trustee-beneficiary relationship. As the trustee of the pension plan, the Society owed the plaintiffs and all other Class Members a duty of good faith in carrying out their duties as a trustee.~~
- 48. ~~Teck's and the Society's actions, detailed in paragraphs 14 to 43, were in breach of the fiduciary duty and duty of good faith owed to the plaintiffs and all other Class Members.~~

~~Breach of Fiduciary Duties and Statutory Duties~~

- 49. At all material times, Teck as the employer and administrator, and the Society as the trustee, administered and held the pension fund and administered the pension plan as a trust for the plaintiffs and all other Class Members and owed the plaintiffs and all other Class Members a fiduciary duty, a duty to act honestly,

in good faith and in the best interests of the members and former members of the plan, and a duty to avoid any conflicts of interest.

50. At all material times, Towers was an agent of Teck and owed the plaintiffs and all other Class Members a fiduciary duty, a duty to act honestly, in good faith and in the best interests of the members and former members of the plan and a duty to avoid any conflicts of interest.
51. Teck as the statutory administrator and the Society as the trustee of the plaintiffs' and all other Class Members' pension plan and owed the plaintiffs and all other Class Members the duties of care set out in the federal *Pension Benefits Standards Act*, R.S.C. 1985, c.32, (the "PBSA"). In preparing and providing the Information Material to the plaintiffs and all other Class Members, Teck was acting in its capacity as administrator and owed the plaintiffs and all other Class Members a fiduciary duty, a duty to exercise the degree of care that a person of ordinary prudence would exercise in dealing with the property of another person, a duty to employ their professional knowledge and skill in the administration of the pension plan or pension fund and a duty to avoid any conflicts of interest.
51. Towers was an agent of Teck, retained to perform some of Teck's duties, or advise Teck on how to perform its duties, as administrator of both the DB Plan and the DC Plan.
52. Towers was subject to the same duties that apply to Teck under s.8 of the PBSA..
53. Teck's, the Society's, and Towers' actions, detailed in paragraphs 14-43, were in breach of the fiduciary duties and statutory duties that they owed to the plaintiffs and all other Class Members.

~~Deceit and Negligent Misrepresentation~~

54. ~~Teck, the Society and Towers, and the plaintiffs and all other Class Members,~~ were in a special relationship such that ~~Teck, the Society and Towers~~ ought to

have reasonably foreseen that the plaintiffs and all other Class Members would rely on the Information Material when making their Election to transfer to the DC Plan.

55. The Information Material was untrue, incomplete, inaccurate or misleading.
56. Teck knew that the Information Material was untrue, incomplete, inaccurate or misleading, or was reckless as to whether or not the Information Material was untrue, incomplete, inaccurate or misleading.
57. ~~Teck, the Society and Towers~~ knew, or ought to have known, that the Information Material was untrue, incomplete, inaccurate or misleading.
58. The plaintiffs and all other Class Members did rely on the Information Material when making the Election, and that reliance was reasonable.
59. The plaintiffs and all other Class Members' reliance on the Information Material resulted, or will result, in damage to them.
60. Teck is vicariously liable and responsible at law for the acts, including omissions, of ~~Towers and the Society.~~

Damages

61. ~~As a result of Teck's breach of the duty of good faith, and Teck, the Society and Towers' breach of their fiduciary duties and statutory duties and negligent misrepresentation,~~ the plaintiffs and all other Class Members have suffered, or will suffer, damages in the amount of the difference between the value of their entitlement under the DC Plan and the value of the entitlements they would have accrued in the DB Plan but for their Elections.

Disgorgement

62. As a result of its breach of fiduciary duty, Teck has obtained significant financial benefits including the benefit of having transferred the investment risk of the pension plans to the plaintiffs and all other Class Members and the reduced

costs and expenses associated with the DC Plan. Teck is required to disgorge these benefits to the plaintiffs and all other Class Members.

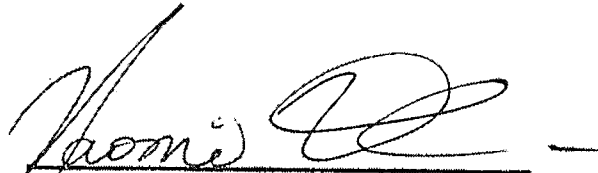
Plaintiffs' address for service:

CAMP FIORANTE MATTHEWS MOGERMAN
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 688-7555
Fax: (604) 688-7554

Email: service@cfmlawyers.ca

Date: 13/July/2009



Signature of lawyer
for plaintiffs

for

Camp Florante Matthews Mogerman
Reidar Mogerman

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The Plaintiffs claim the right to serve this pleading on the Defendants, Teck Metals Ltd., Cominco Pension Fund Coordinating Society and Towers Perrin Inc., outside British Columbia on the grounds that the proceeding:

- (a) Involves the administration of a trust which is principally carried on in British Columbia;
- (b) concerns contractual obligations, to a substantial extent, that were to be performed in British Columbia;

- (c) concerns restitutionary obligations that, to a substantial extent, arose in the British Columbia;
- (d) concerns a tort committed in British Columbia; and
- (e) Involves a claim for an injunction ordering a party to do or refrain from doing things
 - (i) in British Columbia, and
 - (ii) in relation to property in British Columbia that is immovable or movable property.

The Plaintiffs rely on s.10 (d), (e), (f), (g) and (l) of the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28.

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

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

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

A claim for damages and injunctive relief for breach of fiduciary and statutory duties, breach of the duty of good faith, and negligent misrepresentation.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

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

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)

- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

THIS CLAIM INVOLVES:

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

1. *Pension Benefits Standards Act*, R.S.B.C. 1996, c. 352
2. *Court Order Interest Act*, R.S.B.C. 1996, c. 79
3. *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28