



No. S-140490  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**GEORGE JABLONSKY**

PLAINTIFF

AND:

**TIMBERWEST FOREST CORP.**

DEFENDANT

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

**REPLY**

**Filed by:** The Plaintiff, George Jablonsky

**In reply to:** The Defendant, TimberWest Forest Corp.'s Response to Civil Claim filed  
September 19, 2014.

The Plaintiff denies each and every allegation in the Response except as expressly admitted in this Reply.

*Response to Defendant's Part 1, Division 2, Defendant's Version of Facts,  
I – Background*

1. The facts alleged in paragraphs 1 are admitted.

2. The first phrase of paragraph 2: “TimberWest’s corporate history includes several corporate transactions” is admitted. All the rest is denied.

3. The facts alleged in paragraph 3 are admitted but no such variations affected TimberWest’s contractual obligation to provide post-retirement health and welfare benefits to all proposed class members for their lifetimes all at TimberWest’s expense.

4. The facts alleged in paragraph 4 are denied. At all material times TimberWest’s predecessors and, beginning in or about 1997 TimberWest, for itself and its predecessors, provided post-retirement health and welfare benefits to class members until the changes made in 2009 and 2010 described in paragraphs 24 through 28 of the Notice of Civil Claim. At all material times the post-retirement health and welfare benefits had the following common features relevant to this class action:

- (a) payment of MSP where applicable;
- (b) provision through insurance for dental and medical plan coverage; and
- (c) the company from which the employee class member retired, then the successor companies, paid the full cost.

5. The facts alleged in paragraph 5 are denied. The post-retirement health and welfare benefits coverages in place before the reductions implemented by TimberWest beginning on September 1, 2009, described in paragraphs 24 through 28 of the Notice of Civil Claim, were the same for all proposed class members.

6. The facts alleged in paragraph 6 are denied. Following TimberWest’s incorporation in 1997 and subsequent corporate transactions involving certain of the predecessors, TimberWest provided post-retirement health and welfare benefits coverage to all the proposed class members, pursuant to its contractual obligations.

7. The facts alleged in paragraph 7 are denied.

8. The facts alleged in paragraph 8 are admitted. The proposed class including non-employee class members is considerably larger.

9. The facts alleged in paragraph 9 are denied. Alternatively, if there is a separate plan for retirees of Pacific Forest Products, coverages are the same and TimberWest's contractual obligations to Pacific Forest Products' former employees are the same as for all other proposed class members although benefit payment amounts and/or administrative requirements may be different. Also alternatively, if there is a separate plan in respect of retirees resident outside of Canada, it is not a plan different in coverages from the other plans but a consequence of the need for different insurers.

10. Paragraph 10 does not plead any facts.

## *II Crown Zellerbach*

11. The facts alleged in the first sentence of paragraph 11 are admitted. The second sentence is denied. In or about 1970 Crown Zellerbach was amalgamated with 14 of its subsidiaries and continued as Crown Zellerbach. In or about 1982 Fletcher Challenge Limited, a multi-national company based in New Zealand, purchased all or substantially all of the shares of Crown Zellerbach, changed Crown Zellerbach's name to Crown Forest Industries Limited effective October 1, 1983. It continued operations under that name until it or about 1991 when the remaining nonunion salaried employees were transferred to FCCL.

12. In response to paragraph 12, the Plaintiff is unaware of the approximate number of proposed employee class members who retired from Crown Zellerbach and its predecessors to and including 1983.

13. The facts alleged in paragraph 13 are denied as the meaning of "made various forms of Post-Retirement Benefits available" cannot be determined. Crown Zellerbach's employment

contracts with those employee class members who retired from it included deferred compensation in the form of provision of a standard set of post-retirement health and welfare benefit coverages. Those benefit coverages were provided to those employee class members and their spouses from their retirement dates until 2009 and 2010 as described in paragraphs 24 through 28 of the Notice of Civil Claim.

14. The facts alleged in paragraph 14 are denied.

15. The facts alleged in the first sentence of paragraph 15 are admitted. The facts alleged in the second sentence are denied. Crown Zellerbach did publish materials such as brochures, booklets, guides and benefit statements describing post-retirement benefits which formed part of its contracts of employment with employee class members and which did not permit Crown Zellerbach to reduce or eliminate post-retirement health and welfare benefit coverages of the class members, or full payment thereof, after the employee class members' retirements.

16. The Plaintiff admits the facts alleged in the first and third sentences in paragraph 16. The second sentence of paragraph 16 is outside the Plaintiff's knowledge.

17. The facts alleged in paragraph 17 are denied. If employee class members retiring from Crown Zellerbach made individual retirement agreements any terms concerning post-retirement health and welfare benefits were identical or substantially similar to terms in all other Crown Zellerbach individual retirement agreements and did not vary Crown Zellerbach's obligation to provide post-retirement health and welfare benefits to those employee class members and their spouses after their retirements without reduction.

18. The facts alleged in paragraph 18 are denied.

19. The facts alleged in paragraph 19 are denied. If any changes were made as alleged there were no changes to benefit coverage and any such changes did not affect Crown Zellerbach's obligation to provide the post-retirement health and welfare benefits to those employee class

members and their spouses after their retirements without reduction.

20. Paragraph 20 is a pleading of law, not fact.

### *III BC Forest Products*

21. The facts alleged in the first sentence of paragraph 21 are admitted. The second sentence is not technically correct. In or about 1987 Fletcher Challenge (New Zealand) purchased a substantial majority of the shares of BC Forest Products. In 1988 BC Forest Products was part of a statutory amalgamation with its subsidiaries. The amalgamated company continued operations as Fletcher Challenge Canada Limited ("FCCL").

22. In response to paragraph 22, the Plaintiff is unaware of the approximate number of proposed employee class members who retired from BC Forest Products in the years specified.

23. The facts alleged in paragraph 24 are denied as the meaning of "made various forms of Post-Retirement Benefits available" cannot be determined. BC Forest Products' employment contracts with those employee class members who retired from it included deferred compensation in the form of provision of a standard set of post-retirement health and welfare benefit coverages. Those benefit coverages were provided to those employee class members and their spouses from their retirement dates until 2009 as described in paragraphs 24 through 28 of the Notice of Civil Claim.

24. The facts alleged in paragraph 24 are denied.

25. The facts alleged in the first sentence of paragraph 25 are admitted. The facts alleged in the second sentence are denied. BC Forest Products did publish materials such as brochures, booklets, guides and benefit statements describing post-retirement benefits which formed part of its contracts of employment with employee class members the terms of which did not permit BC

Forest Products to reduce or eliminate post-retirement health and welfare benefit coverage of class members, or full payment thereof, after the employee class members' retirements.

26. The Plaintiff admits the facts alleged paragraph 26.

27. The facts alleged in paragraph 27 are denied. If employee class members retiring from BC Forest Products made individual retirement agreements any terms concerning post-retirement health and welfare benefits were identical or substantially similar to terms in all other BC Forest Products' individual retirement agreements and did not vary BC Forest Products' obligation to provide post-retirement health and welfare benefits to those employee class members and their spouses after their retirements without reduction.

28. The facts alleged in paragraph 28 are denied.

29. The facts alleged in paragraph 29 are denied. If any changes were made as alleged there were no changes to benefit coverage and any changes did not affect BC Forest Products' obligation to provide the post-retirement health and welfare benefits to those employee class members and their spouses after their retirements without reduction.

30. Paragraph 30 is a pleading of law, not fact.

#### *IV Crown Forest*

31. The facts alleged in paragraph 31 are denied. In or about 1983 Crown Zellerbach and some of its subsidiary companies were statutorily amalgamated. The amalgamated company continued as Crown Forest. In or about 1988, the management operations of Crown Forest, including the salaried non-union employees, transferred to Fletcher Challenge Canada Limited. The terms of the non-union salaried employees' employment remained the same. Crown Forest

continued to operate wood products assets after 1988 under the management of FCCL employees. It ceased to do so in or about 1991.

32. In response to paragraph 32, the Plaintiff is unaware of the approximate number of proposed employee class members who retired from Crown Forest between 1983 and 1988.

33. The facts alleged in paragraph 33 are denied as the meaning of “made various forms of Post-Retirement Benefits available” cannot be determined. Crown Forest’s employment contracts with those employee class members who retired from it included deferred compensation in the form of provision of a standard set of post-retirement health and welfare benefit coverages. Those benefit coverages were provided to those employee class members and their spouses from their retirement dates until 2009 as described in paragraphs 24 through 28 of the Notice of Civil Claim.

34. The facts alleged in paragraph 34 are denied.

35. The facts alleged in the first sentence of paragraph 35 are admitted. The facts alleged in the second sentence are denied. Crown Forest did publish materials such as brochures, booklets, guides and benefit statements describing post-retirement benefits which formed part of its contracts of employment with employee class members and which did not permit Crown Forest to reduce or eliminate post-retirement health and welfare benefit coverages of the class members, or full payment thereof, after the employee class members’ retirements and were not effective to modify contracts that retirees from Crown Forest’s predecessors had with those predecessors.

36. The facts alleged in paragraph 36 are unknown to the Plaintiff.

37. The facts alleged in paragraph 37 are admitted.

38. The facts alleged in paragraph 38 are admitted.

39. The Plaintiff is not aware of the content of all of the documents described as “some retirement letters” in paragraph 39. If any such letters were provided, those letters were not contractual.

40. The facts alleged in paragraph 40 are denied.

41. The facts alleged in paragraph 41 are denied. If any changes were made as alleged there were no changes to benefit coverage and any such changes did not affect Crown Forest’s contractual obligation to provide the post-retirement health and welfare benefits to employee class members and their spouses after their retirements without reduction.

42. Paragraph 42 is a pleading of law, not fact.

#### *V Fletcher Challenge*

43. The facts alleged in paragraph 43 are denied as the meaning of “corporate successor” is ambiguous. FCCL is the name of the amalgamated company resulting from the statutory amalgamation of BCFP with BCFP’s subsidiaries in 1988. As stated in paragraph 31, following the amalgamation, BCFP management employees managed the operations of Crown Forest.

44. The Plaintiff is unaware of the approximate number of proposed employee class members who retired from FCCL between 1988 and 1993.

45. The facts alleged in paragraph 45 are denied as the meaning of “made various forms of Post-Retirement Benefits available” cannot be determined. FCCL’s employment contracts with those employee class members who retired from it included deferred compensation in the form of provision of a standard set of post-retirement health and welfare benefits. Those benefits were provided to those employee class members and their spouses from their retirement dates until 2009 as described in paragraphs 24 through 28 of the Notice of Civil Claim.



46. The facts alleged in paragraph 46 are denied.

47. The facts alleged in the first sentence of paragraph 47 are admitted. The facts alleged in the second sentence are denied. The communication materials, including brochures provided to employees described post-retirement health and welfare benefits which formed part of its contracts of employment with employee class members did not permit FCCL to reduce or eliminate post-retirement health and welfare benefit coverage of class members, or full payment thereof, after the employee class members' retirements and were not effective to modify contracts that retirees from FCCL's predecessors had with those predecessors.

48. The facts alleged in paragraph 48 are admitted. The brochures were not effective to alter the contract of employment of FCCL employees. Alternatively, the language of the brochures was not effective to grant or reserve to FCCL the right to reduce post-retirement health and welfare benefits of class members after their retirements.

49. The Plaintiff admits the facts alleged in the first and third sentences in paragraph 49. The second sentence of paragraph 49 is outside the Plaintiff's knowledge.

50. The facts alleged in paragraph 50 are admitted. No class member ceased to be covered for any post-retirement health and welfare benefit, received reduced coverage or received a reduced benefit payment amount because disqualification had any application.

50.1 All the individual retirement agreements referred to in paragraph 50 of the Response to Civil Claim reserved to FCCL the right to amend or discontinue post-retirement health and welfare benefits but provided that the changed benefits could not be substantially less than those provided at the employee's retirement.

51. The facts alleged in paragraph 51 are denied.

52. The facts alleged in paragraph 52 are denied. If any changes were made as alleged there were no changes to benefit coverage and any changes did not affect FCCL's obligation to provide the post-retirement health and welfare benefits to employee class members and their spouses after their retirements without reduction.

53. Paragraph 53 is a pleading of law, not fact.

*VI TimberWest Forest Limited (TWFL)*

54. The facts alleged in paragraph 54 are admitted.

55. The facts alleged in paragraph 55 are admitted.

56. The facts alleged in paragraph 56 are admitted. In addition to the assets acquired as described in paragraph 56, between 1993 and 1996, on making those acquisitions of FCCL operations, TWFL offered employment to many or all of the operations' non-union salaried employees on the same terms and conditions as their employment contracts with FCCL with minor variations not relevant to this litigation. TWFL became legally obligated to provide proposed class members who were retired when TWFL took over operations from FCCL that identical post-retirement health and welfare benefits would be provided to them by TWFL.

57. The facts alleged in paragraph 57 are admitted.

58. In response to paragraph 58, the Plaintiff is unaware of the approximate number of proposed employee class members who retired from TWFL between 1993 in 1999.

59. The facts alleged in paragraph 59 are denied as the meaning of "made various forms of Post-Retirement Benefits available" cannot be determined. TWFL's employment contracts with those employee class members who retired from it included deferred compensation in the form of

provision of a standard set of post-retirement health and welfare benefits. Those benefits were provided to those employee class members and their spouses from their retirement dates until 2009 and 2010 as described in paragraphs 24 through 28 of the Notice of Civil Claim.

60. The facts alleged in paragraph 60 are denied.

61. The facts alleged in the first sentence of paragraph 61 are admitted. The facts alleged in the second sentence are denied. TWFL did publish materials such as brochures, booklets, guides and benefit statements describing post-retirement benefits which formed part of its contracts of employment with employee class members and which did not permit TWFL to reduce or eliminate post-retirement health and welfare benefit coverages of the class members, or full payment thereof, after the employee class members' retirements and were not effective to modify contracts that retirees from TWFL's predecessors had with those predecessors.

62. The facts alleged in paragraph 62 are admitted. The brochures were not effective to alter the contract of employment of TWFL employees. Alternatively, the language of the brochures was not effective to grant or reserve to TWFL the right to reduce post-retirement health and welfare benefits of class members after their retirements.

63. The facts alleged of paragraph 63 are admitted.

64. The facts alleged in paragraph 64 are admitted. No class member ceased to be covered for any post-retirement health and welfare benefit, received reduced coverage or received a reduced benefit payment amount because disqualification had any application.

65. The facts alleged in paragraph 65 are denied.

66. The facts alleged in paragraph 66 are denied. If any changes were made as alleged there were no changes to benefit coverage and any such changes did not affect TWFL's obligation to

provide the post-retirement health and welfare benefits to employee class members and their spouses after their retirements without reduction.

67. Paragraph 67 is a pleading of law, not fact.

## *VII Pacific Forest Products*

68. The facts alleged in paragraph 68 are admitted.

69. The facts alleged in paragraph 69 are admitted.

70. The facts alleged in paragraph 70 are admitted.

71. In response to paragraph 71, the Plaintiff is unaware of the approximate number of proposed employee class members who retired from Pacific Forest Products between 1992 and 1997.

72. In response to paragraph 72, the Plaintiff is unaware of the approximate number of proposed employee class members who retired from predecessors of Pacific Forest Products before 1992.

73. The facts alleged in paragraph 73 are denied as the meaning of “made various forms of Post-Retirement Benefits available” cannot be determined. Pacific Forest Products’ employment contracts with those employee class members who retired from it included deferred compensation in the form of provision of a standard set of post-retirement health and welfare benefit coverages. Those benefit coverages were provided to those employee class members and their spouses from their retirement dates until 2009 as described in paragraphs 24 through 28 of the Notice of Civil Claim.

74. The facts alleged in paragraph 74 are denied.

75. The facts alleged the first sentence of paragraph 75 are admitted. The facts alleged in the second sentence are denied. Pacific Forest Products did publish materials such as brochures, booklets, guides and benefit statements describing post-retirement benefits which formed part of its contracts of employment with employee class members and which did not permit Pacific Forest Products to reduce or eliminate post-retirement health and welfare benefit coverages of the class members, or full payment thereof, after the employee class members' retirements and were not effective to modify contracts that retirees from Pacific Forest Products' predecessors had with those predecessors.

76. The facts alleged in paragraph 76 are admitted.

77. The facts alleged in paragraph 77 are denied.

78. The facts alleged in paragraph 78 are denied. If any changes were made as alleged there were no changes to benefit coverage and any changes did not affect Pacific Forest Products' obligation to provide the post-retirement health and welfare benefits to employee class members and their spouses after their retirements without reduction.

79. Paragraph 79 is a pleading of law, not fact.

#### *VIII TimberWest*

80. The facts alleged in paragraph 80 are admitted.

81. In response to paragraph 81, the Plaintiff is unaware of the approximate number of proposed employee class members who retired from TimberWest between 1997 and May 1, 2010.

82. The facts alleged in paragraph 82 are denied as the meaning of “made various forms of Post-Retirement Benefits available” cannot be determined. TimberWest’s employment contracts with those employee class members who retired from it included deferred compensation in the form of provision of a standard set of post-retirement health and welfare benefit coverages. Those benefit coverages were provided to those employee class members and their spouses from their retirement dates until 2009 as described in paragraphs 24 through 28 of the Notice of Civil Claim.

83. The facts alleged in paragraph 83 are denied.

84. The facts alleged in the first sentence of paragraph 84 are admitted. The facts alleged in the second sentence are denied. TimberWest did publish materials such as brochures, booklets, guides and benefit statements describing post-retirement benefits which formed part of its contracts of employment with employee class members and which did not permit TimberWest to reduce or eliminate post-retirement health and welfare benefit coverages of the class members, or full payment thereof, after the employee class members’ retirements and were not effective to modify contracts that retirees from TimberWest’s predecessors had with those predecessors.

85. The Plaintiff is not aware of the brochures referred to in paragraph 85. If such brochures were published, they were not effective to alter the contracts of employment of TimberWest employees. Alternatively, the language was not effective to grant or reserve to TimberWest the right to reduce post-retirement health and welfare benefits that TimberWest was providing to class members at the date of the employee class members’ retirements.

86. The facts alleged in paragraph 86 are admitted but the brochures were not effective to alter the contracts of employment of TimberWest employees. Alternatively, the language of the statements was not effective to grant or reserve to TimberWest the right to reduce post-retirement health and welfare benefits that TimberWest was providing to class members at the date of the employee class members’ retirements.

87. The facts alleged in paragraph 87 are admitted.

88. The facts alleged in paragraph 88 are admitted.

89. The facts alleged in paragraph 89 are admitted.

90. The facts alleged in paragraph 90 are admitted.

91. The facts alleged in paragraph 91 are denied.

92. The facts alleged in paragraph 92 are denied. If any changes were made as alleged there were no changes to benefit coverage and any such changes did not affect TimberWest's obligation to provide the post-retirement health and welfare benefits to employee class members and their spouses after their retirements without reduction.

## *IX Summary*

93. The facts stated in paragraph 93 are admitted, as stated, to be "an approximate summary" relating to employee class members. It does not include non-employee class members.

94. The facts alleged in paragraph 94 are unknown to the Plaintiff. In any event, the facts alleged are irrelevant.

95. The facts alleged in paragraph 95 are admitted but "retirees" as used in the paragraph includes both employee and non-employee class members and the reason for the discontinuance is not known by the Plaintiff.

96. The facts alleged in paragraph 96 are a repetition of those stated in paragraphs 25 and 26 of Part I of the Notice of Civil Claim and are admitted, with the following exceptions:

- (a) the Plaintiff admits that the \$250,000 lifetime maximum applied to all extended health benefit charges and not solely prescription costs, as stated in the Notice of Civil Claim;
- (b) Timberwest also reduced:
  - (i) coverage for semi-private hospital rooms from 100% to 80%;
  - (ii) coverage for in-province medical travel when treatment is not available in locale from 100% to 80%; and
- (c) the changes affected both employee and non-employee class members.

The reason for the changes is not known to the Plaintiff.

A handwritten signature in black ink, appearing to read "David Blair", with a stylized flourish above the name.

Date: October 17, 2014

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Signature of David Blair  
Lawyer for filing party