

Cause No. S/C/ 442 /10

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

B E T W E E N:

Joe Broczkowski and Abigail Paul

Plaintiffs,

- and -

**St. Anne-Nackawic Pulp Company Ltd.,
St. Anne Industries Ltd., George F.
Landegger, Carl C. Landegger, Arthur L.
Schwartz, the Estate of W. E. Duggan
Gray, the Estate of Robert H. Masson,
Stephen J. Sweeney, Donald J. White,
Michael Connell, James Matheson, C.
Kenneth Goddard, Dennis C. Dochstader,
and Jose L. Alvelo**

Defendants.

NOTICE OF ACTION WITH
STATEMENT OF CLAIM ATTACHED
(Form 16A)

Brought pursuant to the *Class Proceedings
Act*, S.N.B. 2006, c. C-5.1

TO:

**St. Anne-Nackawic Pulp Company Ltd.
103 Pinder Road, P.O. Box 1000
Nackawic, New Brunswick
E6G 2P2**

**St. Anne Industries Ltd.
103 Pinder Road, P.O. Box 1000**

COUR DU BANC DE LA REINE DU
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE
SAINT JOHN

E N T R E:

Demandeur

- et -

AVIS DE POURSUITE ACCOMPAGNE
D'UN EXPOSE DE LA DEMANDE
(FORMULE 16A)

DESTINAIRE:

**Nackawic, New Brunswick
E6G 2P2**

**George F. Landegger
4 International Drive
Rye Brook, New York
United States of America
15073**

**Carl C. Landegger
4 International Drive
Rye Brook, New York
United States of America
15073**

**Arthur L. Schwartz
21 Wedgewood Drive,
West Orange, New Jersey
United States of America
07052**

**The Estate of W.E.Duggan Gray
Vernon, British Columbia**

**The Estate of Robert H. Masson,
20 West Way
Old Greenwich, Connecticut
United States of America
06870-2414**

**Stephen J. Sweeney,
4 International Drive
Rye Brook, New York
United States of America
15073**

**Donald J. White
39 Snowball Cres.
Nackawic, New Brunswick
E6G 1C8**

**James Matheson
4 International Drive
Rye Brook, New York
United States of America
15073**

**Michael Connell
23 Rose Court
Woodstock, New Brunswick
E7M 3B5**

**C. Kenneth Goddard
269 West Trail
Stamford, Connecticut
United States of America
06903**

**Dennis C. Dochstader
776 Panorama Hills Dr NW
Calgary, Alberta
T3K 4T3**

**Jose L. Alvelo
4 International Dr.
Rye Brook, New York
United States of America
10573**

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED.

If you wish to defend these proceedings, either you or a New Brunswick lawyer acting on your behalf must prepare your Statement of Defence in the form prescribed by the Rules of Court and serve it on the Plaintiff or the Plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court office, together with the filing fee of \$50.00,

PAR LE DEPOT DU PRESENT AVIS DE POURSUITE ACCOMPAGNE D'UN EXPOSE DE LA DEMANDE, UNE POURSUITE JUDICIAIRE A ETE ENGAGE CONTRE VOUS.

Si vous désirez présenter une défense dans cette instance, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger un exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de \$50 et une preuve de sa signification:

(a) If you are served in New Brunswick, **WITHIN 20 DAYS** after service on you of this Notice of Action With Statement of Claim Attached, or

(b) If you are served elsewhere in Canada or in the United States of America, **WITHIN 40 DAYS** after such service, or

(c) If you are served anywhere else, **WITHIN 60 DAYS** after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you and without further notice to you **JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.**

You are advised that:

(a) You are entitled to issue documents and present evidence in the proceeding in English or French or both;

(b) The Plaintiff intends to proceed in the English language; and

(c) Your Statement of Defence must indicate the language in which you intend to proceed.

(a) **DANS LES 20 JOURS** de la signification que vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est fait au Nouveau-Brunswick ou

(b) **DANS LES 40 JOURS** de la signification, si elle vous est faite dans une autre région du Canada ou dans les Etats-Unis d'Amérique ou

(c) **DANS LES 60 JOURS** de la signification, si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, **JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.**

Sachez que:

(a) Vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) Le demandeur a l'intention d'utiliser la langue anglaise; et

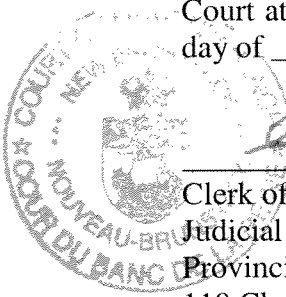
(c) L'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

If you pay to the Plaintiff or the Plaintiff's lawyer the amount of the Plaintiff's claim, together with the sum of \$100.00 for the Plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the Court to have the action dismissed.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100.00 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by the Clerk of the Court at Saint John, New Brunswick, on the *31st* day of August, 2010.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par le greffier de la Cour à Saint Jean, New Brunswick, ce •, 2010.



George S. Pinault

Clerk of the Court
Judicial District of Saint John
Provincial Building
110 Charlotte Street, 4th Floor, Suite 428 413, P.O. Box 5001
Saint John, New Brunswick
E2L 2J4 449

Statement of Claim

Plaintiffs

1. The Plaintiff, Joe Broczkowski, ("**Plaintiff Broczkowski**") is a resident of the Town of Nackawic, in the Province of New Brunswick and was at all material times an employee of St. Anne-Nackawic Pulp Company Ltd. ("**St. Anne Pulp**") and a member of The Pension Plan for Non-Union Salaried Employees (the "**Non-Union Plan**").
2. The Plaintiff, Abigail Paul, ("**Plaintiff Paul**") is a resident of the Town of Woodstock, in the Province of New Brunswick and was at all material times an employee of St. Anne Pulp and a member of The Pension Plan for Hourly Paid and Clerical Union Employees (the "**Union Plan**").

Class

3. Plaintiff Broczkowski and Plaintiff Paul, individually referred to as a "**Plaintiff**" and collectively referred to as the "**Plaintiffs**", bring this action pursuant to the *Class Proceedings Act*, S.N.B. 2006, c. C-5.1 ("**CPA**"), as a class action on their own behalf and on the behalf of a class of people (collectively the "**Class Members**"), who are former employees of St. Anne Pulp who were over the age of 55 as of September 15, 2004 and were at all material times members of the Non-Union Plan and/or the Union Plan (collectively referred to as the "**Pension Plans**").

Defendants

4. The Defendant, St. Anne Pulp, is a bankrupt company, which was incorporated pursuant to the laws of New Brunswick with its registered office at all material times located at 103 Pinder Road in Nackawic, New Brunswick. St. Anne Pulp was at all material times the administrator of the Pension Plans. An Order will be sought pursuant to section 69.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 granting the Plaintiffs leave to proceed against St. Anne Pulp.
5. The Defendant, St. Anne Industries Ltd. ("**St. Anne Industries**"), is a duly incorporated company pursuant to the laws of New Brunswick with its registered office at all material times located at 103 Pinder Road in Nackawic, New Brunswick. St. Anne Industries, including its predecessor corporations, was at all material times the parent company of St. Anne Pulp.
6. The Defendant, George F. Landegger, is a resident of the Village of Rye Brook, State of New York, in the United States of America and was at all material times a director and officer of St. Anne Pulp and St. Anne Industries.
7. The Defendant, Carl C. Landegger, is a resident of the Village of Rye Brook,

State of New York, in the United States of America and was at all material times a director and officer of St. Anne Pulp and St. Anne Industries.

8. The Defendant, Arthur L. Schwartz, is a resident of the Township of West Orange, State of New Jersey, in the United States of America and was at material times a director and officer of St. Anne Pulp and St. Anne Industries.
9. The Defendant, the Estate of W.E.Duggan Gray, is represented by the Executor Dorothea "Thea" Helen Ann Gray who is a resident of the City of Vernon, Province of British Columbia. At all material times, W.E.Duggan Gray was a director and officer of St. Anne Pulp and St. Anne Industries and passed away on July 13, 2006.
10. The Defendant, the Estate of Robert H. Masson, is represented by the Executor, Virginia L. Masson who is a resident of the Town of Old Greenwich, State of Connecticut, in the United States of America. At all material times, Robert H. Masson was a director and officer of St. Anne Pulp and St. Anne Industries and passed away on March 31, 2008.
11. The Defendant, Stephen J. Sweeney, is a resident of the Village of Rye Brook, State of New York, in the United States of America and was at material times a director and officer of St. Anne Pulp and St. Anne Industries.
12. The Defendant, Donald J. White, is a resident of the Town of Nackawic, New Brunswick, and was at all material times an officer of St. Anne Pulp and St. Anne Industries.
13. The Defendant, James Matheson, is a resident of the Village of Rye Brook, State of New York in the United States of America and was at all material times a director and officer of St. Anne Pulp and St. Anne Industries.
14. The Defendant, Michael Connell, is a resident of the Town of Woodstock, New Brunswick, and was at all material times an officer of St. Anne Pulp and St. Anne Industries.
15. The Defendant, C. Kenneth Goddard, is a resident of the City of Stamford, State of Connecticut, in the United States of America and was at all material times an officer of St. Anne Pulp and St. Anne Industries.
16. The Defendant, Dennis C. Dochstader, is a resident of the City of Calgary, Province of Alberta and was at all material times an officer of St. Anne Pulp and St. Anne Industries.
17. The Defendant, Jose L. Alvelo, is a resident of the Village of Rye Brook, State of New York, in the United States of America and was at all material times an officer of St. Anne Pulp and St. Anne Industries.

Background

18. The Non-Union Plan was established on October 1, 1969 and the Union Plan was established on January 1, 1971. The terms of the Pension Plans provided that members of the Pension Plans would be paid specified benefits upon their retirement.
19. St. Anne Pulp prepared Statements of Investment Policies and Goals from time to time for each of the Pension Plans which were delivered to the Class Members. These Statements included, among other things, the statement that the primary goal of the Pension Plans was to provide members the level of retirement income they had been promised.
20. As of December 31, 1998, the assets of the Pensions Plans had funding excesses and were solvent. St. Anne Pulp was advised by its external actuaries, Mercer Human Resources Consulting, that it was not required to contribute to the Pension Plans until the funding excess was reduced.
21. On or about April 1, 1999, St. Anne Pulp amended the Pension Plans to allow early retirement between July 1, 1999 and January 1, 2000 for certain employees who met specific requirements (the “**First Amendment**”). Subsequent to the First Amendment, the Union Plan’s funding excesses were eliminated and the Union Plan had an unfunded liability and solvency deficiency. As a result of the First Amendment, St. Anne Pulp was advised by its external actuaries that it had to make substantial special monthly payments to eliminate the unfunded liability within 15 years, and the value of such special payments over the next five years were to be greater than the solvency deficiency.
22. In 2001, despite the unfunded liability and solvency deficiency of the Union Plan, St. Anne Pulp further amended the Pension Plans to allow early retirement between October 1, 2001 and January 1, 2002 for certain employees who met specific requirements, and offered enhanced pension benefits for some members of the Pension Plans (the “**Second Amendment**”). The First Amendment and the Second Amendment are collectively referred to as the “**Plan Amendments**”.
23. As a result of the Second Amendment, the Union Plan’s unfunded liabilities continued to grow and its solvency deficiency increased. St. Anne Pulp was advised by its external actuaries to increase the substantial special payments to the Union Plan to eliminate the unfunded liability within 15 years, and the value of such special payments over the next five years were to be greater than the solvency deficiency.
24. As a result of the Second Amendment, the Non-Union Plan’s funding excess had been eliminated and the Non-Union Plan had an unfunded liability and solvency deficiency. As a result of the Second Amendment, St. Anne Pulp was advised by

its external actuaries that it had to make substantial special monthly payments to the Non-Union Plan to eliminate the unfunded liability within 15 years, and the value of such special payments over the next 5 years was to be greater than the solvency deficiency.

25. On or about June 28, 2001, The Toronto-Dominion Bank advised St. Anne Pulp that it did not intend to renew or extend either the operating loan or the term loan beyond their existing termination dates. On or about November 21, 2001, The Toronto-Dominion Bank advised St. Anne Pulp that events of default had occurred under its loans entitling it to exercise its rights of termination and acceleration. St. Anne Pulp was unable to obtain alternate financing from chartered banks.
26. By December 2001, St. Anne Pulp had sought financial assistance from the Province of New Brunswick and, in the course of doing so, had also disclosed its deteriorating financial situation to the Province of New Brunswick.
27. Prior to June 25, 2002, St. Anne Industries delivered cash advances to St. Anne Pulp to pay the indebtedness owing to The Toronto-Dominion Bank and subsequently obtained security for its advances. St. Anne Pulp made payments from time to time to St. Anne Industries for this loan and other loans.
28. On or about July 10, 2002, the Province of New Brunswick loaned to St. Anne Pulp the sum of \$15,000,000. In exchange for this financial assistance, the Province of New Brunswick obtained security over St. Anne Pulp's assets and entered into an inter-creditor priority agreement with St. Anne Industries.
29. On September 14, 2004, all employees of St. Anne Pulp were terminated. As a result, the Province of New Brunswick as represented by the Office of the Superintendent of Pensions ("**Superintendent of Pensions**"), declared a wind-up of the Pensions Plans on September 14, 2004. St. Anne Pulp formally declared bankruptcy on September 15, 2004.
30. For each fiscal year from 2000 to St. Anne Pulp's voluntary assignment in bankruptcy on September 15, 2004, benefits paid out from the Pension Plans greatly exceeded employer and employee contributions.
31. Following St. Anne Pulp's bankruptcy, the Superintendent of Pensions appointed Morneau Sobeco, pursuant to section 52 of the *Pension Benefits Act*, S.N.B 1987, c. P-5.1 ("*PBA*"), as the administrator of the Pension Plans effective September 23, 2004. Morneau Sobeco became a trustee of the funds held in the Pension Plans for the Class Members and other employees and former employees of St. Anne Pulp.
32. In its Actuarial Valuation Reports prepared in December 2007, Morneau Sobeco reported that as of the date of bankruptcy the unfunded liability of the Union Plan

was \$25,885,565 and the unfunded liability of the Non-Union Plan was \$15,327,126.

33. This shortfall in the Pension Plans was to the detriment of the Class Members. Pursuant to Regulations to the *PBA* deemed to have come into force on September 14, 2004, the limited funds were redistributed by Morneau Sobeco to the Class Members. The Class Members suffered financial losses due to the funds in the Pension Plans being insufficient to meet the Pension Plans' respective obligations.

Fiduciary Duty and Duty of Care

34. The Plaintiffs state that St. Anne Pulp had contractual and statutory obligations in relation to the Pension Plans and owed to the Plaintiffs a fiduciary duty and duty of utmost good faith and trust to administer the Pension Plans in accordance with the *PBA* and for the benefit of the Class Members.
35. The Plaintiffs state that the pension funds held pursuant to the Pension Plans were trust property for the benefit of the Class Members, and rely on ss.50 and 51 of the *PBA*. St. Anne Pulp, as administrator of the Pension Plans, held the pension funds in trust on behalf of the Class Members.
36. The Plaintiffs state that George F. Landegger, Carl C. Landegger, Arthur L. Schwartz, W. E. Duggan Gray, Robert H. Masson, Stephen J. Sweeney, Donald J. White, Michael Connell, James Matheson, C. Kenneth Goddard, Dennis C. Dochstader, and Jose L. Alvelo as officers and directors of St. Anne Pulp (collectively the "**Directors and Officers**") had effective control of the funds held in the Pension Plans and directed, authorized, assented to or acquiesced in the actions of St. Anne Pulp. A special and proximate relationship of trust and confidence existed between the Directors and Officers and the Class Members such that the Directors and Officers were fiduciaries of and owed a duty of care to the Class Members. Pursuant to section 18 of the *PBA*, an employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections 17(1), (2) and (3).
37. The Plaintiffs state that, in making their decisions with respect to the Pension Plans, including the Plan Amendments, the Directors and Officers breached their fiduciary duty and duty of care owed by them to the Class Members. The Directors and Officers acted with negligence in dealing with the Pension Plans and the Class Members.
38. The Plaintiffs state from 1999 forward, and in particular at the time of the Plan Amendments, St. Anne Pulp and the Directors and Officers knew or ought to have known that St. Anne Pulp was in a weakened financial condition, that the assets of the Pension Plans were insufficient to pay benefits as promised, and that the additional special payments to the Pension Plans required as a result of the Plan Amendments were not likely to be made, with the result being that pensions

available to the Class Members would be diminished.

39. The Plaintiffs state that St. Anne Pulp, as administrator of the Pension Plans, was in a conflict of interest while discharging its duties during a time when St. Anne Pulp was in a weakened financial position. St. Anne Pulp had a duty to its shareholder, St. Anne Industries, to maximize its investment, while at the same time had a fiduciary duty to Class Members, as administrator of the Pension Plans, to act in their best interests in taking necessary measures to ensure the Pension Plans were sufficiently funded to meet its obligations.
40. In addition to St. Anne Pulp's conflict of interest, the Plaintiffs state that the Directors and Officers also had conflicts of interest while making decisions affecting the Pension Plans. In accordance with section 79 of the *Business Corporations Act*, SNB 1991, c. B-9.1, the Directors and Officers had a fiduciary duty to act in the best interests of St. Anne Pulp. As well, those Directors and Officers who were also officers and directors of St. Anne Industries had a fiduciary duty to act in the best interests of St. Anne Industries. These duties conflicted with the Directors and Officers' statutory and fiduciary duties to Class Members to take necessary measures to ensure that the Pension Plans were sufficiently funded to meet the Pension Plans' obligations.
41. In the alternative, the Plaintiffs state that if St. Anne Pulp and the Directors and Officers were unaware of the weakened financial position of St. Anne Pulp at the time of the Plan Amendments, which is not admitted but strictly denied, they subsequently became aware of circumstances that placed St. Anne Pulp at risk of not making the required monthly special payments into the Pension Plans. The Plaintiffs state in the further alternative that the Directors and Officers were under a duty to disclose this fact to the Superintendent of Pensions, which they failed to do, and by reason thereof caused the Class Members to suffer damages.
42. The Plaintiffs state that St. Anne Industries was unjustly enriched as a result of the actions of St. Anne Pulp and the Directors and Officers by the payment of monies and granting of security to St. Anne Industries at times when it was required to make monthly special payments to the Pension Plans, and the Plaintiffs state further that such payments constituted unjust preferences and in the result the Class Members suffered loss and damage.
43. The Plaintiffs state that the Directors and Officers, in addition to breaching the fiduciary duty and duty of care which they owed to the Class Members in their personal capacity, knowingly assisted St. Anne Pulp in breaching its fiduciary duty to the Class Members as administrator of the Pension Plans.
44. The Directors and Officers had knowledge, either actual or deemed under the *PBA*, that St. Anne Pulp was the administrator of the Pension Plans, and that the *PBA* imposed a statutory fiduciary duty on St. Anne Pulp to administer the Pension Plans in the Class Members' best interests and to ensure that sufficient

funds were held in trust to meet their obligation to the Class Members under the Pension Plans.

45. The Plaintiffs state that the Directors and Officers furthermore had actual knowledge that the Plan Amendments would have the result of diminishing the available pension funds and causing St. Anne Pulp to breach its fiduciary duty to the Class Members. Despite this knowledge, the Directors and Officers willfully took the necessary steps to allow St. Anne Pulp to amend the Pension Plans.
46. Alternatively, the Plaintiffs state that by disregarding expert actuarial advice regarding St. Anne Pulp's unfunded liability and solvency deficiencies, the Directors and Officers acted recklessly when they took the necessary steps to allow St. Anne Pulp to amend the Pension Plans, without regard to whether St. Anne Pulp had sufficient funds to allow it to carry out its fiduciary duty as administrator of the Pension Plans following the Plan Amendments.
47. The Plaintiffs state that, by amending the Pension Plans in circumstances where it was clear that doing so would diminish the pensions available to the Class Members, St. Anne Pulp violated its fiduciary duty to the Class Members and the provisions of the *PBA*, which enriched St. Anne Industries to the prejudice of the Class Members' rights under the Pension Plans.
48. The Plaintiffs state that the loss suffered by the Class Members and the shortfall in funds available to satisfy the obligations accrued under the Pension Plans was caused, or contributed to, by the negligent acts and omissions of St. Anne Pulp and the Directors and Officers, the particulars of which include:
 - a. Making amendments to the Pension Plans when they knew, or ought to have known, that the Pension Plans were already underfunded and that St. Anne Pulp was insolvent;
 - b. Failing to ensure that the Pension Plans were administered in accordance with the *PBA*, its Regulations, and documents filed with the Superintendent of Pensions for the Province of New Brunswick, contrary to ss. 14(1) and 14(2) of the *PBA*;
 - c. Failing to exercise the care, diligence and skill in the administration and investment of the Pension Plans that a person of ordinary prudence would exercise in dealing with the property of another person, contrary to s.17(1) of the *PBA*;
 - d. Failing to use in the administration of the Pension Plans, and in the administration and investment of the Pension Plans, all relevant knowledge and skill that the administrator or member possesses or, by reason of that person's profession, business or calling, ought to possess, contrary to s.17(2) of the *PBA*;

- e. Permitting their interest and responsibilities vis-à-vis St. Anne Pulp and St. Anne Industries to conflict with their duties and powers in respect of the Pension Plans, contrary to s.17(3) of the *PBA*; and
- f. Any other particulars of negligence, breach of trust, breach of fiduciary duty and breach of contract which may appear at trial.

Discoverability

49. The Plaintiffs state that the Defendants' breaches of duties were only known, and could only have been known, after St. Anne Pulp made a voluntary assignment in bankruptcy on September 15, 2004.

Impact on Plaintiff Broczkowski

50. The Plaintiff Broczkowski, began working with St. Anne Pulp in 1975 as an Engineering Technologist, in the Engineering Department. In 1977 he was promoted to Maintenance Supervisor. As his career with St. Anne Pulp progressed, the Plaintiff was given increasing responsibility in the supervision of skilled tradesmen.
51. In 1993, the Plaintiff Broczkowski was promoted to Assistant Maintenance Superintendent, and made a lateral move to Senior Maintenance Planner in 1999.
52. On or about October 1, 2001, the Plaintiff Broczkowski, at the age 55 years old, officially retired after being offered a buy-out by St. Anne Pulp. The Plaintiff Broczkowski did return however during maintenance shut downs of St. Anne Pulp to help with planning and to support front line supervision.
53. The Plaintiff Broczkowski was receiving a monthly bridge benefit under the Non-Union Plan which was meant to supplement his pension until the age of 65 when he could begin drawing CPP payments
54. Pursuant to the Non-Union Plan, the Plaintiff Broczkowski would receive his pension until his death, and if his wife should survive him, the Non-Union Plan would pay her 60% of his pension until her death.
55. The Pension Plans were ordered to be wound-up as at September 14, 2004 and subsequently the Plaintiff Broczkowski was advised that the commuted value of the remainder of his reduced pension would be transferred to the institution of his choice for investment (referred to as "**entitlement**").
56. On or about March 1, 2006, the Plaintiff Broczkowski's pension was reduced to

83% of his expected pension pursuant to the Non-Union Plan. His pension payments were further reduced on February 1, 2007 until December 31, 2008 to 72% of his original expected pension as amounts were being recovered from each pensioner for alleged overpayments and interest.

57. On February 8, 2008, the Plaintiff Broczkowski was advised by Morneau Sobeco that the wind-up commuted value of his pension as at September 14, 2004 was \$681,985.70. The commuted value to the date of wind-up of March 1, 2008 is \$809,994.41, when using the interest rate of 5.1% per annum, or a factor of 1.1877, which was the same interest rate used by Morneau Sobeco to calculate the amount of overpayments.
58. However, as a result of the breaches identified above, the Plaintiff Broczkowski was advised that his actual entitlement as at September 14, 2004 was only \$494,505.02. After adjusting for interest until March 1, 2008 using the same rate, his entitlement was \$587,323.61. The net entitlement loss of the Plaintiff Broczkowski's reduced pension was \$222,670.80.
59. Between September 14, 2004 and March 1, 2008, the Plaintiff Broczkowski received \$155,727.30 from bridging and his pension. This amount in addition to interest of \$15,403.99 was deducted from the amount of his entitlement, with interest, leaving only \$416,183.39.
60. As a result of the Plaintiff Broczkowski's reduced pension, the Plaintiff Broczkowski began receiving CPP payments at age 60. As a result, a substantial penalty was imposed, which has resulted in reduced monthly payments and an overall substantial loss of income.

Impact on Plaintiff Paul

61. The Plaintiff Paul began working with St. Anne Pulp in 1970 performing data entry and remained in that position until 1982.
62. Between 1982 and 1999, the Plaintiff Paul worked in the Sales and Purchasing Department and remained in this position until her retirement.
63. On or about December 31, 1999, the Plaintiff Paul was offered an early retirement package. The Plaintiff Paul retired at the age of 57 years old.
64. The Plaintiff Paul was receiving a monthly bridge benefit under the Union Plan which was meant to supplement her pension until the age of 65 when she could begin drawing CPP payments.
65. Pursuant to the Union Plan, the Plaintiff Paul would receive her pension until her death.

66. On or about September 14, 2004, the Pension Plans were wound-up and the Plaintiff Paul was advised that the commuted value of the remainder of her reduced pension would be transferred to the institution of her choice for investment.
67. On or about March 1, 2006, the Plaintiff Paul's pension was reduced to 83% of her expected pension pursuant to the Union Plan. Her pension payments were reduced again on February 1, 2007 until December 31, 2008, to 65% of her original expected pension as amounts were being recovered from each pensioner for alleged overpayments and interest.
68. On February 8, 2008, the Plaintiff Paul was advised by Morneau Sobeco that the wind-up commuted value of her pension as at September 14, 2004 was \$304,383.08. The commuted value to the date of wind-up of March 1, 2008 is \$361,515.78, when using the interest rate of 5.1% per annum, or a factor of 1.1877, which was the same interest rate used by Morneau Sobeco to calculate the amount of overpayments.
69. However, as a result of the breaches identified above, the Plaintiff Paul was advised that her entitlement as at September 14, 2004 was only \$210,436.85. After adjusting for interest until March 1, 2008 using the same rate, her entitlement was \$249,935.84. The net entitlement loss of Plaintiff Paul's reduced pension was \$111,579.94.
70. Between September 14, 2004 and March 1, 2008, the Plaintiff Paul received \$79,748.18 from the bridging and her pension. This amount in addition to interest of \$8,296.59 was deducted from the amount of her entitlement, with interest, leaving only \$161,887.28.
71. As a result of the Plaintiff Paul's reduced pension, the Plaintiff Paul began receiving CPP payments at age 60. As a result, a substantial penalty was imposed, which has resulted in reduced monthly payments and an overall substantial loss of income.

Aggravated, Punitive and Exemplary Damages

72. The activities of Defendants were carried out with reckless, callous and wanton disregard for the interests of the Plaintiffs and Class Members. The Defendants knowingly compromised the interests of the Plaintiffs and Class Members, solely for the purpose of monetary gain.
73. Consequently, the Plaintiffs and Class Members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with the Defendants' outrageous behaviour.

General

74. The Plaintiffs intend to rely on the *PBA*, as amended and specifically sections 17, 18, 50(1), 50(2), 51(2), 51(4) and 51(5); the *CPA*, as amended; section 79 of the *Business Corporations Act*, SNB 1991, c. B-9.1, as amended; and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, as amended and specifically section 69.4.
75. The Plaintiffs plead and rely upon Rule 19.01 (h), (i) and (o) of the *Rules of Court* of New Brunswick in support of service upon the Defendants outside New Brunswick, without leave, and state that this action is in respect of tortious conduct committed in New Brunswick; in respect of damages which have been sustained in New Brunswick arising from the commission of such torts; and this action involves persons outside of New Brunswick who are a necessary and proper party to an action properly commenced against a person in New Brunswick.

Relief Sought

76. The Plaintiffs therefore claim against the Defendants, jointly and severally, on their behalf and/or on the behalf of the Class Members as follows:
- a. An order certifying this action as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs;
 - b. An order for the payment of the difference between the commuted value of their pensions as of the wind-up date and the entitlement calculated as of the wind-up date for the Plaintiffs and all Class Members; which represents a loss of \$222,670.80 for the Plaintiff Broczkowski and a loss of \$111,579.94 for the Plaintiff Paul;
 - c. An equitable lien upon the assets of St. Anne Pulp and/or St. Anne Industries sufficient to satisfy payment of the amounts found due, as pleaded herein;
 - d. A declaration that St. Anne Industries has been unjustly enriched at the expense of the Plaintiffs and the other Class Members by the actions of St. Anne Pulp and the Directors and Officers and an order for restitution of such enrichment;
 - e. Damages for negligence, breach of trust, and/or breach of fiduciary duty against St. Anne Pulp, St. Anne Industries, and the Directors and Officers in their personal capacities;
 - f. Damages against the Directors and Officers for knowing assistance of breach of trust and knowing assistance of breach of fiduciary duty with respect to the negligence, breach of trust, and/or breach of fiduciary duty by St. Anne Pulp;

g.. General damages for negligence, breach of trust and/or breach of fiduciary duty;

h. Aggravated, Punitive and Exemplary Damages;

i. Interest;


j. Costs on a solicitor/client basis or such other basis as the Court may determine;

k. Costs of providing appropriate notice to Class Members and administering this proposed class proceeding for their benefit; and

l. Such further and other relief as this Honourable Court deems just.

77. The Plaintiffs intend to proceed in the English language.

DATED at Saint John this 3rd day of August, 2010.


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