

Court File No.: SJ/C/348/2017

IN THE COURT OF QUEEN'S BENCH  
OF NEW BRUNSWICK

COUR DU BANC DE LA REINE DE  
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIERE INSTANCE

JUDICIAL DISTRICT OF SAINT JOHN

CONSCRIPTION JUDICIAIRE DE

BETWEEN:

ENTRE:

**EDWARD HANSCOMB, SHELDON PALK, and ALFRED DOIRON,**

- and -

**THE CO-OPERATORS LIFE INSURANCE COMPANY**

- and -

**ECKLER LTD.,**

COURT OF QUEEN'S BENCH  
CLERK / SAINT JOHN Plaintiffs,

REC'D  
AUG 11 2017  
FILED  
COUR DU BANC DE LA REINE  
GREFFIERE SAINT-JEAN

Defendants.

**Brought under the *Class Proceedings Act*, R.S.N.B. 2011, c.125**

**AMENDED NOTICE OF ACTION  
(FORM 16B)**

**AVIS DE POURSUITE  
(FORMULE 16B)**

TO:

**The Co-operators Life Insurance Company,  
Eckler Ltd.**

À:

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF ACTION.

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 plaintiffs or their 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:

- (a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action, or
- (b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service on you, 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;

PAR LE DÉPOÛT DU PRÉSENT AVIS DE POURSUITE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE 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 Rèles 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) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite, si elle vous est faite 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 États-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) the plaintiffs intend to proceed in the English language; and

(b) le demandeur a l'intention d'utiliser la langue .....; et

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

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

*Where the claim is for a liquidated demand or to recover a debt, with or without interest, insert the following notice:*

*Si la demande a pour objet la perception d'une somme déterminée ou le recouvrement d'une créance avec ou sans intérêts, ajouter le paragraphe suivant:*

If you pay to the plaintiffs or their lawyer the amount of her claim, together with sum of \$100 for her 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 le l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 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 Amanda J. Evans, Clerk of Court at Saint John, New Brunswick, on the 11<sup>th</sup> day of August, 2017.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par \_\_\_\_\_ greffier de la Cour à \_\_\_\_\_ ce \_\_\_\_\_ 2017.



Court Seal \_\_\_\_\_  
(clerk)

Sceau de la Cour \_\_\_\_\_  
(greffier)

Saint John Law Courts, PO Box 5001  
Saint John, NB, E2L 4Y9

(address of court office)


(adresse du greffe)

## CLAIM

1. The Plaintiff, **Edward Hanscomb**, resides in Fredericton, New Brunswick, and is a retired employee of Co-op Atlantic.
2. The Plaintiff, **Sheldon Palk**, resides in New Maryland, New Brunswick, and is a retired employee of Co-op Atlantic.
3. The Plaintiff, **Alfred Doiron**, resides in Cocagne, New Brunswick, and is a retired employee of Co-op Atlantic.
4. The Plaintiffs' bring this action pursuant to the *Class Proceedings Act*, R.S.N.B. 2011, c.125 on behalf of all retired employees of Co-op Atlantic and/or their spouses who were promised a retirement annuity by the Defendant, **Co-operators Life Insurance Company**, at the time of the employee's retirement.
5. The Plaintiffs claim arises as a result of the Plaintiffs not having received all annuity payments and benefits as promised to them at the time of their retirement and is for:
  - a. An order certifying this proceeding as a Class proceeding pursuant to the *Class Proceedings Act*, R.S.N.B. 2011, c.125, and appointing the Plaintiffs as the Representative Plaintiffs for the Class or Classes;
  - b. An order for an aggregate monetary award pursuant to s. 31 of the *Class Proceedings Act*;
  - c. Damages for breach of the terms of an annuity issued by the Defendant, **Co-operators Insurance Company**, to each of the Plaintiffs and Class Members upon their retirement from Co-op Atlantic;
  - d. Damages for the Defendants' breach of an implied contractual term that they would use reasonable care and skill in the issuance, administration and management of annuities issued to the Plaintiffs and Class Members upon their retirement
  - e. Damages for negligence in representing to the Plaintiffs and Class Members that the Defendant, **Co-operators Life Insurance Company**, had issued the Plaintiffs and Class Members an annuity upon their retirement from Co-op Atlantic;
  - f. Damages for negligence by the Defendants in negligently, or recklessly, managing the [fund];
  - g. Damages for breach of fiduciary duty owed by the Defendants to the Plaintiffs and Class Members in the administration of the annuities which **Co-operators Life Insurance Company** had purported to issue to the Plaintiffs and Class Members;

- h. Damages for negligent administration by the Defendants of the Plaintiffs' and Class Members' pension monies earned as a result of each Plaintiffs' and Class Members' participation in the Co-op Atlantic Employees Pension Plan;
- i. Damages for breach of provincial statutes and regulations;
- j. The right to elect before judgment to waive the tort of negligence and to have damages assessed in an amount equal to the gross revenues received by the Defendants, or alternatively, the net income received by the Defendants as a result of their negligent misrepresentation and negligent, or reckless, mismanagement and administration of the annuity;
- k. Damages for unjust enrichment, equal to the total unlawful gain obtained by the Defendants from the Plaintiffs and Class Members;
- l. An accounting for and disgorgement of profits or revenues, or constructive trust over same;
- m. Exemplary or punitive damages;
- n. Costs of this action; and
- o. Such other directions or relief that the Court considers appropriate.

DATED at Fredericton, New Brunswick,  
this 11th day of August, 2017.



**ROBERT J. PETERS**  
Lawyer for the Plaintiffs

**Peters Rouse**  
**839 Aberdeen Street**  
**Fredericton, NB E3B 1S9**  
**Telephone: 506.444.6555**  
**Fax: 506.444.6555**

FAIT \_\_\_\_\_ à

le \_\_\_\_\_, 2017.

\_\_\_\_\_  
*Avocat du demandeur (ou demandeur, s'il  
n'est pas représenté par un avocat)*