

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

BETWEEN:

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

- and -

**THE CO-OPERATORS LIFE INSURANCE COMPANY**

COURT OF QUEEN'S BENCH  
 CLERK / SAINT JOHN  
 Plaintiffs,  
 JUL 30 2020  
 COUR DU BANC DE LA REINE  
 CLERK / SAINT-JEAN  
 Defendant.

Brought under the *Class Proceedings Act*, R.S.N.B. 1990, c.125

**CONSENT ORDER APPROVING DISCONTINUANCE OF PROPOSED CLASS PROCEEDING AND NOTICE**

**BEFORE THE HONOURABLE JUSTICE E. THOMAS CHRISTIE:**

**WHEREAS** a motion by correspondence was made by the Plaintiffs, on consent of the Defendant, for an Order substituting the Plaintiffs' Second Amended Notice of Action and Amended Statement of Claim for the Third Amended Notice of Action and Second Amended Statement of Claim, attached hereto as Schedule "A", and approving the form and content of the proposed Notice to Putative Class Members, attached hereto as Schedule "B";

**AND UPON READING** the materials filed by the Plaintiffs, including the Third Amended Notice of Action and Second Amended Statement of Claim, the proposed Notice to Putative Class Members, and the Affidavit of Nicholas Hooper;

**THIS COURT ORDERS** that the Third Amended Notice of Action and Second Amended Statement of Claim, attached hereto as Schedule "A", shall hereinafter be used in substitution for the Second Amended Notice of Action and Amended Statement of Claim, filed with this Honourable Court on November 7, 2019;

**AND THIS COURT FURTHER ORDERS** that the discontinuance of the proposed class action reflected in that the Third Amended Notice of Action and Second Amended Statement of Claim, attached hereto as Schedule "A", on a without costs basis, is a fair and reasonable resolution of the proposed class action;

**AND THIS COURT FURTHER ORDERS** that the proposed Notice to Putative Class Members, attached hereto as Schedule "B", is hereby approved in accordance with section 37 of the *Class Proceedings Act*, R.S.N.B. 2011, c. 125.

**AND THIS COURT FURTHER ORDERS** that Counsel for the Plaintiffs shall take all steps within its control to direct the Notice to Putative Class Members, attached hereto as Schedule "B", to the current and valid addresses of putative Class Members via postal service.


TC Dated at Saint John, NB, this  
29<sup>th</sup> day of July, 2020.



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J.C.Q.B.

**Consented to as to form:**




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Raymond F. Wagner, Q.C.  
Wagners  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Counsel for the Plaintiffs



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Robert Peters  
Peters Rouse  
839 Aberdeen Street  
Fredericton, New Brunswick E3B 1S9  
Counsel for the Plaintiffs



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Robert Creamer, Q.C.  
Lawson Creamer  
801-133 Prince William Street  
Saint John, New Brunswick E2L 2B5  
Counsel for the Defendant

**SCHEDULE "A"**

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

IN THE COURT OF QUEEN'S BENCH  
OF NEWBRUNSWICK

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,**

Plaintiffs,

- and -

**THE CO-OPERATORS LIFE INSURANCE COMPANY**

~~-and-~~

**ECKLER LTD.,**

Defendants.

~~Brought under the Class Proceedings Act, R.S.N.B. 2011, c.126~~

~~SECOND~~ THIRD AMENDED NOTICE OF ACTION  
(FORM 16B)

AVIS DE POURSUITE  
(FORMULE 16B)

TO:

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

A:

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 expose 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 langage 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 de 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 \_\_\_\_\_ day of May, 2019.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par \_\_\_\_\_ greffier de la Cour à \_\_\_\_\_ ce \_\_\_\_\_ 2019.

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

Sceaude la Cour \_\_\_\_\_ (greffier)

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

(address of court office)

(adresse du greffe)

CLAIM REFER TO SECOND AMENDED STATEMENT OF 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 Dolron, 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,

FAIT

à

this        day of       , ~~2020 May, 2019.~~

le        2017.

~~RAYMOND F. WAGNER, Q.C.  
Lawyer for the Plaintiffs~~

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

~~Wagners  
1869 Upper Water Street  
Suite PH304  
Halifax, NS B3J 1S9  
Telephone: 902.425.7330  
Fax: 902.422.1233~~

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

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

~~Peters-Rouse  
839 Aberdeen Street  
Fredericton, NB E3B 1S8  
Telephone: 506.444.6555  
Fax: 506.444.6555~~

DATED at \_\_\_\_\_, in the Province of New Brunswick this \_\_\_\_ day of \_\_\_\_\_,  
2020.

Name of Plaintiff:  
Address for Service:

Edward Hanscomb  
116 Pugsley Street  
Fredericton, NB E3B 6J4

DATED at \_\_\_\_\_, in the Province of New Brunswick this \_\_\_\_ day of \_\_\_\_\_,  
2020.

Name of Plaintiff:  
Address for Service:

Sheldon Palk  
25 Sprucewood Drive  
New Maryland, NB E3C 1C7

DATED at \_\_\_\_\_, in the Province of New Brunswick this \_\_\_\_ day of \_\_\_\_\_,  
2020.

Name of Plaintiff:  
Address for Service:

Alfred Doiron  
32 Despres Road  
Cocagne, NB E4R 2M4



IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

BETWEEN:

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

Plaintiffs,

- and -

**THE CO-OPERATORS LIFE INSURANCE COMPANY**

~~-and-~~

**ECKLER LTD.**

Defendants.

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

**SECOND AMENDED STATEMENT OF CLAIM**

(Form 16C)

(~~Second Third Amended~~ Notice of Action issued on July 14, 2017, ~~2020 May 2019~~)

**The Parties**

1. The Plaintiff, Edward Hanscomb ("Hanscomb") resides in Fredericton, New Brunswick and is a retired employee of Co-op Atlantic.
2. The Plaintiff, Sheldon Palk ("Palk") resides in New Maryland, New Brunswick and is a retired employee of Co-op Atlantic.
3. The Plaintiff, Alfred Doiron ("Doiron") resides in Cocagne, New Brunswick and is a retired employee of Co-op Atlantic.

4. The Defendant, The Co-operators Life Insurance Company ("Co-operators Life") is a body corporate having an office and place of business at 1920 College Avenue, Regina, Saskatchewan and is licensed to carry on business in the provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

~~5. The Defendant, Eckler Ltd. ("Eckler") is a body corporate having an office and place of business at 503-1960 Upper Water Street, Halifax, Nova Scotia and is licensed to carry on business in the provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.~~

~~6.5. The Plaintiffs bring this action pursuant to the *Class Proceedings Act*, R.S.N.B. 2011, c.125 (the "Act") on behalf of all retired employees of Co-op Atlantic who were, prior to Co-op Atlantic being granted creditor protection under the *Companies' Creditors Arrangement Act*, promised, guaranteed or otherwise contractually entitled to receive an Annuity (as hereinafter defined) by or from the Defendants, including any other persons entitled to benefits pursuant to the Annuity (the "Class").~~

#### **Material Facts**

~~7.6.5.~~ Co-op Atlantic was a co-operative which carried on business in Atlantic Canada and operated a wholesale and retail food business comprising more than 150 grocery and convenience stores and also operated a wholesale and retail gasoline business throughout Atlantic Canada.

~~8-7~~ 6. Co-operators Life is an insurance company which, at all times material to this action, provided life and health insurance and various wealth management products, including but not limited to annuities, as well as asset management services to individuals and institutions across Canada.

~~9-8~~ 7. At all times material to this action Co-op Atlantic maintained a pension plan for its employees, ~~including the Class Members~~, the benefits of which the employees would receive upon their retirement from Co-op Atlantic (the "Pension Plan"). ~~The Class Members were members of the Pension Plan.~~

~~10-9~~ 8. At all times material to this action, or in the alternative, until on or about April, 2013, Co-operators Life acted as manager and administrator of the Pension Plan.

~~11-10~~ 9. The Plaintiffs say, and the fact is, that at all times material to this action, or in the alternative, until on or about April, 2013, Co-operators Life invested and managed the assets of the Pension Plan on behalf of the beneficiaries of the Pension Plan who include the employees and former employees of Co-op Atlantic and any other persons entitled to pensions, pension benefits, ancillary benefits or other payments under the Pension Plan, ~~including the Class Members~~.

~~12-11~~ 10. On or about April, 2013, CIBC Mellon became the administrator of the Pension Plan in the place of Co-operators Life.

~~13-12~~ 11. On or about June 15, 2015, Co-op Atlantic applied for and was granted creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA Proceedings").

~~14. 13.~~ 12. On or about June 25, 2015, Eckler Ltd. became the administrator of the Pension Plan in the place of CIBC Mellon.

~~15. 14.~~ 13. From time to time during 2015 and 2016 Eckler Ltd. advised all employees and retired employees of Co-op Atlantic, ~~including Class Members,~~ that the Pension Plan was underfunded and due to the fact that Co-op Atlantic was experiencing severe financial difficulties, pension benefits might have to be reduced in the future.

~~16. 15.~~ 14. Effective December 31, 2015, the New Brunswick Superintendent of Pensions ordered the Pension Plan be wound up.

~~17. 16.~~ 15. By Order of the Court of Queen's Bench of New Brunswick dated October 25, 2016, the CCAA Proceedings were terminated.

#### **The Representative Plaintiffs**

~~18. 17.~~ 16. Hanscomb, Palk and Doiron are all former employees of Co-op Atlantic.

~~19. 18.~~ 17. Hanscomb retired as an employee of Co-op Atlantic on or about December 31, 2003.

~~20. 19.~~ 18. Palk retired as an employee of Co-op Atlantic on or about February 28, 2005.

~~21. 20.~~ 19. Doiron retired as an employee of Co-op Atlantic on or about December 31, 2009.

~~22. 21.~~ 20. Prior to their retirement, each of the Plaintiffs was a member of the Pension Plan.

~~23. 22.~~ 21. Upon retirement, each Plaintiff was presented with an opportunity to receive his pension in the form of an annuity, the terms of which were based upon various retirement options made available to the Plaintiffs (hereinafter referred to as the "Annuity"). Particulars of the retirement options offered to the Plaintiffs are as follows:

- a. Life Only – Payable for the lifetime of the member only.
- b. Life Gtd 5 Yrs – Payable for the lifetime of the member. Payments are guaranteed for a minimum of 60 months, even if the member dies in that time.
- c. Life Gtd 10 Yrs (Normal – Single) – Payable for the lifetime of the member. Payments are guaranteed for a minimum of 120 months, even if the member dies in that time.
- d. Life Gtd 15 Yrs – Payable for the lifetime of the member. Payments are guaranteed for a minimum of 180 months, even if the member dies in that time.
- e. Joint & Survivor Type I 66 2/3% - Payable for life reducing to 66 2/3% upon the member's death and continuing to the member's spouse for life.
- f. Joint & Survivor 66 2/3% Type II (Normal – Married) – Payable for life reducing to 66 2/3% upon the death of either the member or the spouse and continuing for the survivor's remaining lifetime.

- g. Joint & Survivor 66 2/3% Type II Gtd 5 – Payable for life reducing to 66 2/3% upon the death of either the member or the spouse and continuing for the survivor's remaining lifetime. Payments are guaranteed for a minimum of 60 months, even if the member and spouse die in that time.
- h. Joint & Survivor 66 2/3% Type II Gtd 10 – Payable for life reducing to 66 2/3% upon the death of either the member or the spouse and continuing for the survivor's remaining lifetime. Payments are guaranteed for a minimum of 120 months, even if the member and spouse die in that time.
- i. Joint & Survivor 66 2/3% Type II Gtd 15 – Payable for life reducing to 66 2/3% upon the death of either the member or the spouse and continuing for the survivor's remaining lifetime. Payments are guaranteed for a minimum of 180 months, even if the member and spouse die in that time.
- j. Joint & Survivor 100% Type II – Payable for life with no reduction upon the member's death and continuing to the member's spouse for life.
- k. Joint & Survivor 100% Type II – Payable for life with no reduction upon the member's death and continuing to the member's spouse for life. Payments are guaranteed for a minimum of 120 months, even if the member and spouse die in that time.

24. 23. 22. In addition to receiving an Annuity the Plaintiffs also had the option of immediately withdrawing or transferring the commuted value of their pension from the Pension Plan.

~~25. 24. 23.~~ Based on the information about the Annuities provided to them the Plaintiffs all agreed to accept a specific type of Annuity from Co-operators Life who confirmed the terms of the Annuity to the Plaintiffs in writing and in some cases both in writing and orally.

~~26. 25. 24.~~ Upon the retirement of the Plaintiffs, Co-operators Life commenced making the payments to the Plaintiffs pursuant to the terms of the Annuity as agreed upon between the Plaintiffs and Co-operators Life.

~~27. 26. 25.~~ On or about April, 2013, when CIBC Mellon became the administrator of the Pension Plan the Plaintiffs commenced receiving their Annuity payments from CIBC Mellon.

~~28. 27. 26.~~ The Plaintiffs received their Annuity payments from CIBC Mellon until on or about June, 2015, when Eckler Ltd. assumed responsibility for the administration and management of the Pension Plan and Eckler Ltd. continued to make the Annuity payments to the Plaintiffs.

~~29. 28. 27.~~ Commencing on or about May, 2016, the Annuity payments to the Plaintiffs were suddenly and wrongfully reduced by thirty-two percent (32%) without the consent or agreement of the Plaintiffs, and contrary to the terms of the Annuities issued to the Plaintiffs. The Plaintiffs say that the reduction of their Annuity payment is contrary to the agreement between the parties and representations made by Co-operators Life, is wrongful and illegal and as a result the Plaintiffs have suffered loss and damage for which the Defendants is are liable.

**Causes of Action****A. Breach of Contract by Co-operators Life**

~~30. 29. 28.~~ The Plaintiffs ~~and Class Members~~ held Annuities issued to them by Co-operators Life and therefore, Co-operators Life was contractually obligated to honor the terms of the Annuities and to make payment to the Plaintiffs ~~and Class Members~~ of all the annuity benefits promised to each Plaintiff ~~and Class Member~~ without the reduction which commenced on or about May 2016.

~~31. 30. 29.~~ Notwithstanding the change in plan administration, Co-operators Life continued to have contractual responsibility to make payment of the Annuity benefits due to each Plaintiff ~~and Class Members~~ pursuant to the terms of the Annuity.

~~32. 31. 30.~~ Co-operators Life's failure to honor the terms of the Pension Annuities and its failure to make payment of the Annuity benefits promised to each Plaintiff ~~and Class Member~~ constitutes a breach of contract.

~~33. 32. 31.~~ Further or in the alternative, if Co-operators Life did not issue an Annuity to each Plaintiff ~~and Class Member~~ (which is not admitted but denied) its failure to issue an Annuity constituted a further breach of its contractual obligations to the Plaintiffs ~~and Class Members~~.

~~34. 33. 32.~~ As a result of Co-operators Life's breach of contract, the Plaintiffs ~~and Class Members~~ have suffered loss and damage the particulars of which will be provided at or prior to trial.



~~35. 34. 33.~~ Co-operators Life's failure to honor the terms of the Annuity resulted in a breach of an implied term of the contract with the Plaintiff ~~and Class Members~~ that Co-operators Life would use reasonable care and skill in the issuance, administration and management of the Pension Annuities.

#### **B. Negligent Misrepresentation by Co-operators Life**

~~36. 35. 34.~~ Further and in the alternative, if Co-operators Life failed or refused to issue the Pension Annuities to the Plaintiffs ~~and Class Members~~ as agreed, then the Plaintiffs ~~and Class Members~~ have suffered loss and damage due to their reliance upon the misleading and inaccurate representations made to them by Co-operators Life, the particulars of which are as follows:

- a. The Plaintiffs ~~and Class Members~~ were provided with and relied upon Co-operators Life's assurances and representations that the Plaintiffs ~~and Class Members~~ each held an Annuity as issued by Co-operators Life and would be paid Annuity benefits pursuant to the retirement option selected by each Plaintiff ~~and Class Member~~ at the time of retirement;
- b. The Plaintiffs ~~and Class Members~~ relied on the fact that their Annuity benefits were to continue unaffected by any future financial difficulties which might befall Co-op Atlantic, and the Plaintiffs ~~and Class Members~~ reasonably relied on that fact believing that their future income was secure and would continue as per the terms of the Annuity;

- c. In reliance upon Co-operators Life's representations the Plaintiffs ~~and Class Members~~ took no steps to withdraw the commuted value of their respective pensions for private investment elsewhere;
- d. Had the Plaintiffs ~~and Class Members~~ been advised that their Annuities were not secure, they would have taken the necessary steps to withdraw the commuted value of their pensions for investment elsewhere or, where available, taken the required steps to have the commuted value of their pensions transferred to another registered pension plan in which they were enrolled.

### C. Breach of Fiduciary Obligations by Co-operators Life

~~37, 36, 35.~~ At all times material to this action Co-operators Life stood in a fiduciary relationship with the Plaintiffs ~~and Class Members~~ by virtue of being in a special relationship with the Plaintiffs ~~and Class Members~~, being in a position of power, trust and confidence in relation to the Plaintiffs ~~and Class Members~~.

~~38, 37, 36.~~ The Plaintiffs ~~and Class Members~~ were particularly vulnerable to Co-operators Life owing to Co-operators Life's expertise as an insurance company in the business of issuing annuities and the Plaintiffs ~~and Class Members~~ placed full trust and confidence in Co-operators Life in that regard.

~~39, 38, 37.~~ In breach of its fiduciary duties to the Plaintiffs ~~and Class Members~~, Co-operators Life failed to act in the best interest of the Plaintiffs ~~and Class Members~~

by failing or refusing to make payment of the Annuity benefits to the Plaintiffs ~~and Class Members~~ and in the alternative if Co-operators Life failed to issue the Pension Annuities to the Plaintiffs ~~and Class Members~~ (which is not admitted) by failing or refusing to issue the Pension Annuities as contracted and in failing to so advise the Plaintiffs ~~and Class Members~~ that the Pension Annuities had not been issued as agreed.

40-39-38. The Plaintiffs ~~and Class Members~~ have sustained loss and damage as a result of Co-operators Life's breach of fiduciary duties.

#### **D. Breach of Provincial Statutes and Regulations by Co-operators Life**

41-49-39. If Co-operators Life failed or refused to issue the Annuities to the Plaintiffs ~~and Class Members~~ as contracted (which is not admitted) then Co-operators Life has failed to comply with the provisions of the *Insurance Act* R.S.N.B. 1973 c.1-12 and in particular sections 369.1 and 369.2 thereof as Co-operators Life's actions amount to unfair or deceptive acts or practice in the business of insurance.

### **E. Negligence of Co-operators Life**

42-44-40. Co-operators Life was negligent or reckless with respect to its management and administration of the Pension Plan, the particulars of which are as follows:

- a. If Co-operators Life did not issue Annuities to the Plaintiffs ~~and Class Members~~ (which is not admitted) then it was negligent or reckless in failing or refusing to do so.
- b. If Co-operators Life did not issue Annuities to the Plaintiffs ~~and Class Members~~ (which is not admitted) then it was negligent in representing to the Plaintiffs ~~and Class Members~~ that it had issued the Plaintiffs ~~and Class Members~~ Pension Annuities upon their retirement.
- c. Co-operators Life failed to use reasonable care and skill in the issuance, administration and management of the Annuities issued to the Plaintiffs ~~and Class Members~~ upon their retirement.
- d. Co-operators Life failed to use reasonable care and skill in the administration and management of the Plaintiffs' ~~and Class Members'~~ pension monies earned as a result of each Plaintiffs' ~~and Class Members'~~ participation in the Pension Plan.

43-42-41. The Plaintiffs ~~and Class Members~~ have sustained loss and damage as a result of the negligence of Co-operators Life.

#### F. Unjust Enrichment of Co-operators Life

~~44. 43. 42.~~ As a result of the actions and inaction of Co-operators Life as referred to above, Co-operators Life has been unjustly enriched at the expense of the Plaintiffs ~~and Class Members~~, in an amount equal to the total unlawful gain obtained by Co-operators Life from the Plaintiffs ~~and Class Members~~.

~~45.~~ ~~Eckler was negligent or reckless and acted in bad faith with respect to its management and administration of the Annuities and the Pension Plan, particulars of which are as follows:~~

~~l. Eckler failed or refused to ascertain and/or confirm that the Plaintiffs and Class Members had been issued Annuities from Co-operators Life upon the retirement of the Plaintiffs and Class Members.~~

~~m. Eckler failed to determine and distinguish that the payments being made to the Plaintiffs were being made to them as annuity payments and not as retirement benefit payments from the Plan.~~

~~n. Eckler failed or refused to review documentation provided to it by the Plaintiffs which would have confirmed that the Plaintiffs had received Annuities from Co-operators Life.~~

~~46.~~ ~~The Plaintiffs and Class Members have suffered loss and damage as a result of the negligence, willful misconduct or bad faith of Eckler in the performance of its duties on behalf of Co-op Atlantic.~~

**~~G. Breach of Fiduciary Duty of Eckler~~**

~~47. At all times material to this action, Eckler stood in a fiduciary relationship with the Plaintiffs and Class Members by virtue of being in a special relationship with the Plaintiffs and Class Members, being in a position of power, trust and confidence in relation to the Plaintiffs and Class Members and having administration and management control over the proceeds of the Annuities and other assets of the Annuities and other assets of the Pension Plan.~~

~~48. The Plaintiffs and Class Members were particularly vulnerable to Eckler owing to the expertise and experience of Eckler in the administration and management of pension funds and plans across Canada and the Plaintiffs and Class Members placed full trust and confidence in Eckler in that regard.~~

~~49. In breach of its fiduciary duties to the Plaintiffs and Class Members, Eckler failed or refused to protect the interests of the Plaintiffs and Class Members by failing to ensure the Plaintiffs and Class Members received the full benefit of their Annuities thereby causing loss and damage to the Plaintiffs and Class Members.~~

**Relief Requested**

~~50. 44. 43.~~ The Plaintiffs claim the following relief:

- ~~a. An Order certifying the proceeding as a class proceeding pursuant to the Act and appointing the Plaintiffs as representative Plaintiffs for the class;~~

- ~~b. An Order for an aggregate monetary award pursuant to Section 31 of the Act;~~
- c. General damages for breach of contract, negligence, negligent misrepresentation, breach of fiduciary duty, unjust enrichment and for breach of provincial statutes and regulations;
- d. Exemplary or punitive damages;
- e. An accounting for and discouragement of profits or revenues, or a constructive trust over same;
- f. Costs of this action; and
- g. Such other directions or relief as this Honourable Court deems just.

~~DATED at Halifax, in the Province of Nova Scotia this \_\_\_\_\_ day of May, 2010.~~

~~Name of Lawyer for Plaintiffs:  
Name of Firm:  
Business Address:~~

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~~Raymond F. Wagner Waynor, Q.C.  
WAGNERS  
4860 Upper Water Street, Suite PH301  
Pentac House, Historic Properties  
Halifax, NS B3J 1S0  
Tel. 902 426 7330  
Email: [raywagner@wagners.ca](mailto:raywagner@wagners.ca)  
[raywagner@wayners.ca](mailto:raywagner@wayners.ca)  
Counsel for the Plaintiffs and  
Class Members~~

~~DATED at Fredericton, in the Province of New Brunswick this \_\_\_\_\_ day of May, 2010.~~

~~Name of Lawyer for Plaintiffs:  
Name of Firm:  
Business Address:~~

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~~Robert J. Peters  
PETERS ROUSE  
830 Aberdeen Street  
Fredericton, NB E3B 1S0  
Tel. 506 444 6555  
Email: [ripeters@perlaw.com](mailto:ripeters@perlaw.com)  
Counsel for the Plaintiffs and  
Class Members~~

DATED at \_\_\_\_\_ in the Province of New Brunswick this \_\_\_\_ day of \_\_\_\_\_, 2020.

Name of Plaintiff:  
Address for Service:

Edward Hanscomb  
116 Pugsley Street  
Fredericton, NB E3B 6J4

DATED at \_\_\_\_\_ in the Province of New Brunswick this \_\_\_\_ day of \_\_\_\_\_, 2020.

Name of Plaintiff:  
Address for Service:

Sheldon Palk  
25 Sprucewood Drive  
New Maryland, NB E3C 1C7

DATED at \_\_\_\_\_ in the Province of New Brunswick this \_\_\_\_ day of \_\_\_\_\_, 2020.

Name of Plaintiff:  
Address for Service:

Alfred Doiron  
32 Despres Road  
Cocagne, NB E4R 2M4



## SCHEDULE "B"

### NOTICE OF DISCONTINUANCE OF THE CO-OPERATORS LIFE INSURANCE / CO-OP ATLANTIC PENSION REDUCTION CLASS ACTION

INSERT DATE OF MAILING HERE

**PLEASE READ CAREFULLY. IGNORING THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS**

As you may be aware, a proposed class action was brought on behalf of all retired employees of Co-op Atlantic and/or their spouses who were alleged to have been promised retirement annuities by the Co-operators Life Insurance Company at the time of retirement and were subsequently affected by the 32% reduction in pension payments that came into effect in May 2016.

After investigating the viability of a class action in respect of this 32% pension reduction, a decision was made to discontinue the litigation that had been commenced on behalf of the potential Class Members.

When a proposed class action lawsuit has been filed with the Court, the limitation period applicable to all members of the proposed class stops running. Now that the proposed class action regarding the Co-op Atlantic pension reduction has been discontinued, limitation periods regarding this action have re-commenced. **As a result, any legal action you may wish to pursue with respect to the Co-op Atlantic pension plan is now subject to an active limitation period.**

In the event that you wish to pursue further legal action, it is incumbent upon you to speak with a lawyer licensed to practice law in the Province of New Brunswick.

If you have questions about the discontinuance of the proposed class action and/or would like to obtain more information, please contact Wagners by email at [classaction@wagners.co](mailto:classaction@wagners.co) or by telephone at 1-800-465-8794 / 902-425-7330.

*This Notice has been approved by the New Brunswick Court of Queen's Bench*