Court file # 01-CV-221418CP

ONTARIO
SUPERIOR COURT OF JUSTICE

AMENDED THIS Nov. 18, 2010 PURSUANT TO / MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02 ( )
☑ THE ORDER OF Mr. Justice Nordheimer / L'ORDONNANCE DU
DATED / FAIT LE November 9, 2010
REGISTRAR / GREFFIER
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

B E T W E E N

RICHARD MANDEVILLE, WISMAR GREAVES,
MARCUS JORDAN and ANTHONY BOWEN

Plaintiffs

and

THE MANUFACTURERS LIFE INSURANCE COMPANY

Defendant

Proceedings under the *Class Proceedings Act, 1992*

AMENDED FURTHER FRESH STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: "December 3, 2001"

Issued by: "A. VAICIULENAS"
Registrar

Address of Court
393 University Avenue
Toronto ON M5G 1E6

TO: THE MANUFACTURERS LIFE INSURANCE COMPANY
200 Bloor Street East
Toronto ON M4W 1E5

CLAIM

DEFINED TERMS

1. The terms in boldface below appear in this fresh statement of claim and have the following meanings:

(a) "**Act**" means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

(b) "**Alleyne**" means Stephen Alleyne, who was a senior officer of **LOB**;

(c) "**Barbados Policies**" means the participating life insurance policies and annuity contracts issued or assumed by **Manulife** in respect of policyholders in Barbados in force on December 31, 1994, which **Manulife** transferred to **LOB** by the **May 30, 1996 Agreement**, including:

(i) policies under which insurance had lapsed but under which a contractual right of reinstatement subsisted; and

(ii) the life insurance policies and annuity contracts which had become claims by reason of maturity or death before December 31, 1994 but had not been settled before that date;

(d) "**Bowen**" means the plaintiff, Anthony Bowen;

(e) "**Bowen Policies**" means the following **Participating Policies** issued to **Bowen**:

(i) whole life policy number 8,033,812-2, issued on May 1, 1987, in the insured amount of BDS $50,000;

(ii) whole life policy number 8,057,568-1, issued on April 3, 1989, in the insured amount of BDS $100,000; and

(iii) whole life policy number 8,066,445-1, issued on September 20, 1990, in the insured amount of BDS $30,000.00;

(f) "***Canadian and British Insurance Companies Act***" means the *Canadian and British Insurance Companies Act*, R.S.C. 1985, c. I-12, as amended;

(g) "**CBCA**" means the *Canada Business Corporations Act*, R.S.C., c. C-44, as amended;

(h) "**Class**" means the 8,048 persons resident in Ontario, Barbados and elsewhere who owned one of the **Barbados Policies**;

(i) "**Common Shares**" means common shares in the capital of **MFC**;

(j) "**Conversion Regulations**" means regulation S.O.R./99-422 titled the Mutual Company (Life Insurance) Conversation Regulations;

(k) "**D'Alessandro**" means Dominic D'Alessandro, who was, at all material times, the president and chief executive officer of **Manulife**;

(l) “**Demutualization**” and “**Demutualize**” mean the process of converting a life company that was a **Mutual Insurance Company** into a company with common shares;

(m) **“Eckler”** means Eckler Partners Ltd.;

(n) “**Eckler Report**” means the report dated July 19, 1996 prepared by **McGuinness** of **Eckler;**

(o) “**Eligible Policyholder**” means each holder of a voting policy of **Manulife** on January 20, 1998; and

(p) “**Fixed Allocation**” means the payment of 186 **Manulife** common shares to each **Eligible Policyholder** on **Demutualization**, regardless of the number of policies held;

(q) “**Greaves**” means the plaintiff, Wismar Greaves;

(r) “**Greaves Policies**” means the following **Participating Policies** issued to **Greaves**:

(i) limited payment policy number 2,534,664, issued on May 28, 1976, in the insured amount of BDS $35,000;

(ii) whole life policy number 3,178,614-8, issued on August 25, 1981, in the insured amount of BDS $35,000; and

(iii) whole life policy number 3,547,228-1, issued on August 5, 1985, in the insured amount of BDS $35,000;

(ra) "**Guloien**" means Donald A. Guloien who, at all material times, was a senior vice-president of Manulife and is now its president and chief executive officer;

(s) "**Guy**" means Geoffrey Guy who, by January, 1996, was senior vice-president and was the appointed actuary, also known as the chief actuary, of **Manulife**;

(t) "**Hymans Robertson**" means Hymans Robertson, actuaries, of London, U.K.;

(u) "***Insurance Companies Act***" means the *Insurance Companies Act*, S.C., 1991, c. 47, as amended;

(v) "**Jordan**" means the plaintiff, Marcus Jordan;

(w) "**Jordan Policies**" means the following **Participating Policies** issued to **Jordan**:

(i) whole life policy number 1,333,924, issued on August 1, 1955, in the insured amount of BDS $12,500;

(ii) whole life policy number 1,557,224, issued on February 29, 1960, in the insured amount of BDS $12,500;

(iii) whole life policy number 1,754,926, issued on November 20, 1963, in the insured amount of BDS $15,000; and

(iv) whole life policy number 1,936,336, issued on December 20, 1966, in the insured amount of BDS $10,000;

(x) "**June, 1996 White Paper**" means the **White Paper** titled "1997 Review of Financial Sector Legislation: Proposals for Change";

(y) "**LOB**" means Life of Barbados Limited, which was, at all material times, a corporation incorporated under the laws of Barbados, having its head office in the parish of St. Michael, Barbados, which ~~is~~ was licensed to carry on business as ~~an~~a life insurance company in Barbados. LOB is now known as Sagicor Life Inc.;

(z) "**Mandeville**" means the plaintiff, Richard Mandeville;

(aa) "**Mandeville Policies**" means the following **Participating Policies** issued to **Mandeville**:

(i) whole life policy number M1643241, issued on October 25, 1961, in the insured amount of BDS $15,000.00;

(ii) whole life policy number M2926551, issued on June 19, 1978 in the insured amount of BDS $10,000.00;

(iii) whole life policy number M2734641, issued on June 27, 1979, in the insured amount of BDS $50,000.00; and

(iv) whole life policy number M2991794, issued on June 1, 1981, in the insured amount of BDS $30,000.00;

(bb) "**Manulife**" means the defendant, The Manufacturers Life Insurance Company;

(cc) "**Manulife International**" means Manulife (International) Limited, a subsidiary of **Manulife**, incorporated in Bermuda, which conducts **Manulife's** insurance business in Hong Kong;

(dd) "**Manulife U.S.A.**" means The Manufacturers Life Insurance Company (U.S.A.), a subsidiary of **Manulife**, incorporated in the State of Michigan, which conducts Manulife's insurance business in the United States;

(ee) "**Margolian**" means Beverly Margolian, who was, at all material times, an employee of **Manulife**;

(ff) "**May 30, 1996 Agreement**" means the written assumption reinsurance agreement between **Manulife** and **LOB** whereby **Manulife** agreed to transfer and **LOB** agreed to acquire all **Barbados Policies** and certain other interests, dated and signed in Toronto May 30, 1996, completed on December 31, 1996 and deemed effective as at 12:00:01 a.m. Barbados time on January 1, 1995;

(gg) "**McGuinness**" means Michael McGuinness, an actuary employed by Eckler Partners Ltd., who signed the **Eckler Report**;

(hh) **"Minister of Finance"** means the Minister of Finance of Canada;

(ii) "**Mutual Insurance Company**" and "**Mutual Insurance Companies**" mean an insurance company or companies owned by participating policyholders;

(jj) "**MFC**" means Manulife Financial Corporation incorporated under the ***Insurance Companies Act*** for the purpose of becoming the publicly-owned parent company of **Manulife** and its subsidiaries. Its head office is located in Toronto, Ontario;

(kk) "**O'Connor**" means John O'Connor, who was, at all material times, an employee of **Manulife**, ~~currently~~ holding the position of assistant vice-president and senior counsel;

(ll) **"OSFI"** means the Office of the Superintendent of Financial Institutions, the primary regulator of federally chartered financial institutions, including insurance companies, which was established in 1987 by the *Office of the Superintendent of Financial Institutions Act*;

(mm) "**Ownership Rights**" means the membership rights, ownership rights, **Voting Rights**, property, proprietary and other rights, including the right to participate in the event of demutualization and those rights

particularized in paragraph 23, arising out of the ***Insurance Companies Act*** as a result of being the holder of a **Participating Policy**;

(nn) **"Participating Policy"** means a policy of life insurance issued by **Manulife** that entitles its holder to participate in the profits of **Manulife**;

(oo) "**Petition**" means the joint petition, dated September 23, 1996, by **Manulife** and **LOB** made to the **Supervisor** pursuant to s. 35(1) of the Insurance Act of Barbados;

(pp) "**Pietroski**" means Joseph Pietroski, who was, at all material times, an employee of **Manulife**, ~~, who was~~and the secretary to the board of directors of **Manulife**;

(qq) "**Plan of Demutualization**" means the written plan of **Demutualization** described in a booklet prepared by **Manulife** dated May 25, 1999;

(rr) "**Rubenovitch**" means Peter Rubenovitch, who was, at all material times, a senior vice-president and corporate comptroller of **Manulife**;

(ss) "**Sanction**" means the order of the **Supervisor**, dated November 26, 1996, approving the transfer of the insurance business of **Manulife** in Barbados to **LOB**, which order, the plaintiffs assert, should not be recognized by the Ontario court;

(tt) "**Scheme**" means the nature of the transfer set out in the **May 30, 1996 Agreement**;

(uu) "**Special Dividend**" means the payment by **LOB** of the sum of $20 for each $1,000 of basic sum assured to the beneficiary of each **Participating Policy** on the death of the life insured, or the maturity date of the policy, whichever shall occur first, provided at that time:

(i) the terms and conditions of each such policy have remained unaltered, and

(ii) all premiums due before the Special Dividend payment date have been paid,

estimated to cost **LOB** BDS$7.2 million;

(vv) **"Sunset Clause"** means s. 21 of the 1991 version of the ***Insurance Companies Act*** requiring the government to amend or repeal that version of the ***Insurance Companies Act*** by on or about March 31, 1997;

(ww) "**Supervisor**" means the Supervisor of Insurance of Barbados;

(xx) "**Variable Allocation**" means the allocation of **Manulife** shares to each **Eligible Policyholder** on **Demutualization** based upon a formula dependent on the cash value, death benefits and number of years each policy was in force:

(i) 3.2045 share allocation credits for each $1,000 of cash value;

(ii) 0.~~1~~457~~1~~4 share allocation credits for each $1,000 of death benefits; and

(iii) 3.2031 share allocation credits for each complete year that the eligible policy has been in force;

(yy) **"Voting Rights"** means the right to vote at meetings of policyholders of Manulife; and

(zz) "**White Paper**" means a document tabled in the House of Commons presenting government policy and containing legislative proposals on which the government intends to act.

THE RELIEF SOUGHT

2. Mandeville, Greaves, Jordan and Bowen claim on their own behalf and on behalf of the Class:

~~(a) an order certifying this proceeding as a class proceeding and appointing them as representative plaintiffs for the Class;~~

~~(b)~~(a) a declaration that Manulife owed a fiduciary duty to the plaintiffs and to the other members of the Class ~~regarding the carrying on or the conduct of the business or affairs of Manulife,~~ and that Manulife breached its fiduciary duty to the plaintiffs and the other members of the Class;

~~(c)~~(b) a declaration that Manulife was negligent;

~~(d)~~(c) a declaration that the members of the Class were owners of Manulife on January 20, 1998 and remain owners of Manulife;

~~(e)~~(d) a declaration that Manulife is required to pay to the plaintiffs and to the other members of the Class compensation, or, in the alternative, damages equivalent to the compensation and benefits it paid to each of the Eligible Policyholders on Demutualization;

~~(f)~~(e) punitive damages and the cost of administering the distribution of the recovery in this action, or such further damages as this Honourable Court may find just and appropriate;

~~(g)~~(f) an order directing a reference, if necessary, or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

~~(h)~~(g) prejudgment interest and postjudgment interest, compounded at Manulife's internal rate of return or at such other rate as determined by the Court, pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

~~(i)~~(h) costs of this action on a substantial indemnity basis, including ~~any~~all applicable taxes; and

~~(j)~~(i) such further and other relief as to this Honourable Court seems just.

OVERVIEW

3. Manulife was a Mutual Insurance Company. The members of the Class held Participating Policies.

4. On December 31, 1996, Manulife purported to terminate the Ownership Rights of the members of the Class by transferring their policies to LOB, without their consent ~~and~~, without payment of fair and equitable compensation for their Ownership Rights and without the transfer of a portion of the surplus to them for their benefit. But, Manulife did not have the power or capacity to extinguish the Ownership Rights of the members of the Class.

5. On January 1, 1995, Manulife transferred, by way of indemnity reinsurance, policies of Hong Kong residents to Manulife International. On December

31, 1996, Manulife transferred, by way of assumption reinsurance, with a specific reservation of Voting Rights, policies of United States policyholders to Manulife U.S.A.. In each case, it treated those Participating Policyholders differently from the members of the Class, structuring the transactions to preserve their Voting Rights and their right to participate in the event of Demutualization. The members of the Class were not treated this way.

6. ~~When it acted formally~~ After Manulife announced its intention to Demutualize in January, 1998, ~~Manulife~~ it sought and obtained the consent of the Eligible Policyholders. In addition, ~~it~~ Manulife paid them fair and equitable compensation for the loss of their Ownership Rights.

7. Upon Demutualization, Manulife delivered Common Shares or made payments having an average value of $15,000 to each Eligible Policyholder in exchange for all Ownership Rights that each Eligible Policyholder held.

8. In this action, the plaintiffs assert that Manulife:

(a) owed a fiduciary duty to the members of the Class:

(i) because it was a Mutual Insurance Company; or

(ii) from the time it first contemplated financial restructuring or Demutualization; or

(iii) from in or about January, 1996 when the federal government disclosed to Manulife that the White Paper to be released would express governmental policy that Manulife could Demutualize; or

(iv) by June, 1996 when, because of the Sunset Clause, the federal government made it clear in the June, 1996 White Paper that Manulife would soon have the right to Demutualize;

(b) had neither power nor capacity to terminate the Ownership Rights or, alternatively, the Voting Rights of the members of the Class;

(c) breached its fiduciary duty towards the members of the Class in Ontario, even if it had the power to terminate their Ownership Rights, by exercising this power; and

(d) in Ontario, breached its fiduciary duty towards the members of the Class in exercising this power by closing the May 30, 1996 Agreement;

(e) was negligent because it failed to protect the Ownership Rights or, alternatively, the Voting Rights of the members of the Class when dealing with LOB and while contemplating financial restructuring;

(f) owes to the members of the Class:

(i) compensation equivalent to the compensation that it paid to the Eligible Policyholders on Demutualization; and

(ii) punitive damages.

THE PARTIES

9. Mandeville is a Canadian citizen who resides in Toronto and in the Parish of St. James, Barbados. At all material times, he was the owner of the Mandeville Policies.

10. Greaves is the former Supervisor of Insurance in Barbados. He is currently the Managing Director <u>and Chief Executive Officer</u> of the Insurance Corporation of Barbados Limited. He resides in the Parish of St. Lucy, Barbados. At all material times, he was the owner of the Greaves Policies.

11. Jordan is semi-retired. He is also self-employed as a Managing Director of Lamberts Ltd. and Wildey Shopping Plaza Ltd.. He resides in the Parish of Christ Church, Barbados. At all material times, he was the owner of the Jordan Policies.

12. Bowen is the Executive Vice President Sales and Marketing for Sagicor Life Inc. and General Manager for the Eastern Caribbean and Capital Life and a ~~Managing~~ Director of Ultimate Insurance and Financial Solutions Ltd.. He resides in the Parish of St. George, Barbados. At all material times, he was the owner of the Bowen Policies.

13. Manulife is a life insurance company operating under the laws of Canada with its registered office in Toronto, Ontario. It was incorporated by a Special Act of Parliament on June 23, 1887. On March 19, 1987, it was continued as a company incorporated by letters patent pursuant to the *Canadian and British Insurance Companies Act.*

14. On or about December 19, 1958, Manulife became a Mutual Insurance Company and remained so until September 23, 1999 when, pursuant to Letters Patent of Conversion, it converted to a life insurance company with common shares and became a wholly-owned subsidiary of MFC.

15. In 1996, Manulife was one of the largest life insurance companies in Canada with assets, as at December 31, 1996, greater than $40.2 billion. In 1996,

Manulife operated directly and through subsidiaries in eleven countries and in 200 offices worldwide.

16. Manulife can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions.

MANULIFE'S BUSINESS IN BARBADOS

17. Manulife began operating in Barbados in the 1890's.

18. In 1992, Manulife stopped writing new business in Barbados, an act which the plaintiffs allege was one of the first steps in Manulife's plan for its financial restructuring. From 1992 to December 31, 1996, LOB administered the Barbados branch business of Manulife. By the terms of the May 30, 1996 Agreement, Manulife was deemed to have ceased carrying on its life insurance business in Barbados as of January 1, 1995.

19. Until the transfer of the Barbados Policies and the sale of other of Manulife's assets in Barbados to LOB on December 31, 1996, Manulife was the leading life insurance provider in Barbados.

20. As of May 30, 1996, 25% of the Participating Policies owned by the members of the Class had been in full force and effect for more than 18 years and 50% of the Participating Policies had been in full force and effect for more than 13 years. On

December 31, 1996, the 8,048 members of the Class owned approximately 0.05% of the Participating Policies issued by Manulife.

THE POLICIES OWNED BY THE PLAINTIFFS AND THE OTHER CLASS MEMBERS

21. Manulife issued to the members of the Class the same form of Participating Policies that it sold and issued to persons in Canada, the United States, Hong Kong and elsewhere. The Participating Policies were or were usually issued in Toronto.

22. As owners of the Participating Policies sold by Manulife, the members of the Class had the same Ownership Rights as all other owners of Participating Policies sold by Manulife to persons in Canada, the United States, Hong Kong and elsewhere.

23. The members of the Class:

(a) were members of Manulife, a Mutual Insurance Company;

(b) were entitled to the right and privilege, among other benefits, of an annual dividend in an amount equal to the share of Manulife's divisible surplus apportioned to each of their policies;

(c) were entitled, among other things, to vote at meetings of the policyholders because Manulife, as a Mutual Insurance Company, operated under the principle of "*one participating policyholder – one vote*";

(d) were designated and recognized as owners of Manulife, by s. 90A(21) of the *Canadian and British Insurance Companies Act* as continued by s.13(1)(a), (b) of the *Insurance Companies Act*;

(e) were entitled to vote to elect directors;

(f) were entitled to an equitable share of the amount of money Manulife distributed to the holders of Participating Policies;

(g) were entitled to receive their proportionate share of ~~participate in~~ any surplus available if Manulife was wound up and to participate in the event of demutualization;

~~(g)~~(h) ~~or~~ were entitled to submit proposals, including proposals to make, amend or repeal bylaws at the annual meeting; and

~~(h)~~(i) were entitled to requisition meetings of policyholders.

24. The Barbados Policies state that they are governed by Barbados law, but the Ownership Rights of the members of the Class and others and the right to participate in Demutualization are governed by the laws of Canada.

25. The members of the Class as holders of Participating Policies in Manulife, a Mutual Insurance Company, were by statute, s. 90 A.(21) of the *Canadian and British Insurance Companies Act*, as continued by s. 13(1) (a), (b) of the *Insurance Companies Act,* members of Manulife and thus had a special relationship with Manulife.

BACKGROUND TO THE SALE OF MANULIFE'S BARBADOS ASSETS TO LOB

25A. On or about February 14, 1991, Manulife and other large mutual insurers recommended to the government that the proposed new insurance legislation contain a provision permitting a mutual life insurance company to demutualize.

26. In Canada, Demutualization began on December 13, 1991, when the *Insurance Companies Act* was amended to permit Demutualization, as particularized by

regulation to be made by the Privy Council. In April, 1993, the Privy Council made S.O.R./93-205 permitting Mutual Insurance Companies with capitalization of less than $7.5 billion to Demutualize. These regulations required a Mutual Insurance Company eligible to convert into a company with common shares to place a fair value on the Mutual Insurance Company and to distribute the fair value to the participating policyholders.

27. Before entering into the May 30, 1996 Agreement, Manulife knew that Mutual Insurance Companies throughout the world were involved in the Demutualization process, that the Federal Government intended to give larger Mutual Insurance Companies such as Manulife the power to Demutualize, that in the Demutualization process the value of the company was to be distributed to the participating policyholders, and that the process permitting it to Demutualize was well underway in Canada. Manulife's Plan of Demutualization stated, on page 8, that "*since the early 1980's a number of mutual life insurance companies in the United States, the United Kingdom, Australia and South Africa have demutualized and converted to shareholder-owned companies*." To Manulife's knowledge, some of the companies to Demutualize were these: in July, 1992, Equitable in the United States; in October, 1995, State Mutual in the United States; in 1996, National Mutual in Australia.

28. On or about March 1, 1994, Manulife hired D'Alessandro, former president and chief executive officer of the Laurentian Bank of Canada, as its president and chief executive officer. The plaintiffs allege that Manulife's selection of a chief

executive officer with experience in a publicly traded company was a major step in its plan to gain access to capital through financial restructuring including Demutualization.

29. In or about 1994, Manulife adopted a corporate vision: to become "*the most professional life insurance company in the world, providing the very best in financial protection and investment management services tailored to customers in every market where we do business*." The plaintiffs plead that this corporate vision clearly contemplated the prospect of Demutualization, because it was a means for Manulife to raise capital given the trend towards deregulation in the financial services sector, consolidation in the industry and NAFTA. Access to capital was essential to the ability of Manulife to compete in Canada and abroad.

30. Because of the Sunset Clause, from 1992 to June, 1996 and after, Manulife, directly or indirectly through lobbyists and industry organizations, urged the Federal Government, OSFI, federal politicians and federal bureaucrats to persuade the government to pass legislation and/or a regulation permitting Manulife and other Mutual Insurance Companies with capitalization greater than $7.5 billion to Demutualize. For example, on June 15, 1992, Manulife wrote to the Honourable Jean-Marie Poitras, Chairman of the Senate Standing Committee on Banking, Trade and Commerce, seeking the passage of a regulation permitting Manulife to Demutualize.

31. Before May 30, 1996, while Manulife was involved in the lobbying campaign, its officers, management, lawyers, accountants, investment bankers, and board of directors were also planning how Manulife would proceed to effect the

Demutualization. In support of the plan, Manulife retained accountants, actuaries, investment bankers and lawyers, and it prepared business plans, reports, valuations, analyses and other documents. Before May 30, 1996 or, alternatively, November 14, 1996, Manulife's officers, lawyers, accountants, investment bankers, management and board of directors discussed repeatedly the issue of Demutualization.

32. In this period, 1995 and 1996, Manulife knew that the government of Canada was reviewing its financial services legislation and that it was considering extending the right to Demutualize to Mutual Insurance Companies with capitalization greater than $7.5 billion. Because of the Sunset Clause, Manulife also knew that the government would be preparing a White Paper on the subject in 1996 and would be amending the *Insurance Companies Act* in 1997.

33. In or about January, 1996, Manulife and its employees Guy, O'Connor, Pietroski and Rubenovitch learned that a White Paper to be released by the federal Department of Finance would express government policy to amend the *Insurance Companies Act* to allow larger Mutual Insurance Companies, such as Manulife, to Demutualize before the expiration of the Sunset Clause. In June, 1996, the Minister of Finance tabled in the House of Commons the June, 1996 White Paper. The June, 1996 White Paper set out federal government policy to allow the larger Mutual Insurance Companies, including Manulife, to Demutualize in 1997. On June 21, 1996, Manulife's management, including Guy and D'Alessandro, reviewed the June, 1996 White Paper.

34. The expression of governmental policy, found on page 25 of the June, 1996 White Paper, reads as follows:

> *The government proposes a number of changes to enhance the access to capital for mutual insurance companies. First, they will be permitted to issue participating shares. Second, the demutualization regime will be extended to apply to all mutual life companies, and added flexibility will be provided. Details are provided in Annex A.*

35. Schedule B to Annex A at page 30 states, in part, as follows:

> *The demutualization regulations embody a number of key principles which are important to guiding the demutualization process, and which would be retained. These include a requirement to place a fair value on the company and to allocate that value to policyholders, along with a requirement that an independent expert provide an opinion on the fairness and equity of the value placed on the company and on the method and assumptions used to calculate that value.*

36. The Demutualization regulation applicable to Manulife required it to place a fair value on the company and to allocate that value to the Participating Policyholders. In contemplating and exercising this function, Manulife was required to act reasonably and not negligently and was exercising a fiduciary duty. Manulife was also a fiduciary by no later than January, 1996, when it learned the substance of the White Paper to be tabled. Alternatively, Manulife was a fiduciary by June, 1996 when it and employees such as D'Alessandro, Guy, O'Connor, Pietroski and Rubenovitch, learned that in the June, 1996 White Paper the government clearly articulated governmental policy that larger Mutual Insurance Companies would soon have the right to Demutualize.

37. The overarching policy objective of the government in structuring the Demutualization process was to impose a ~~fiduciary~~ duty upon Manulife and other Mutual Insurance Companies to ensure that all participating policyholders were

provided for fairly and equitably, including the allocation of the value of the company to them in exchange for their Ownership Rights.

38. As part of its financial restructuring, Manulife arranged for the sale of certain of its foreign assets, including the transfer of its Barbados Policies and the sale of other assets pursuant to the May 30, 1996 Agreement, as described in paragraph 61.

39. By indemnity reinsurance agreement dated December 31, 1994, Manulife transferred to Manulife International all the assets, property and undertakings of its Hong Kong business and, in so doing, preserved the Ownership Rights of the Hong Kong policyholders. Paragraph 2.3 of this agreement provided, in part, as follows:

> *... The parties hereto acknowledge that as between the Transferor and the holders of Policies and Group Retirement Policies, the Transferor shall remain liable to the holders of such Policies and Group Retirement Policies in respect of any liability arising out of such Policies or Group Retirement Policies and nothing herein contained shall release or discharge the Transferor from such liability to the holders of such Policies and Group Retirement Policies. As between the Transferor and Transferee, the Transferee shall undertake and satisfy and shall indemnify and save harmless the Transferor in respect of all liabilities, debts, claims, demands and obligations of the Transferor.*

40. By reinsurance agreement, dated January 3, 1995, between Manulife and Manulife International as reinsurer, Manulife:

> *... agreed to transfer to the Reinsurer and the Reinsurer has agreed to accept the transfer from [Manulife] of substantially all of the assets, property and undertaking of and pertaining to [Manulife's] life insurance business in Hong Kong ... and, in consideration for which the Reinsurer has agreed, inter alia, to indemnify [Manulife] in respect of all liabilities and obligations under the Reinsured Policies and to enter into this Reinsurance Agreement.*

41. The reinsurance agreement also contained the following terms:

1.04 Plan of Reinsurance. Reinsurance provided under this Reinsurance Agreement shall be on the coinsurance plan. The Reinsurer shall establish and maintain all reserves held in respect of the Reinsured Policies.

1.19 No Reinsurance of Policyholder Rights. Notwithstanding any other provision of this Agreement, the Reinsurer shall not assume or indemnify [Manulife] against any rights or claims of holders of Reinsured Policies arising by contract, legislation or operation of law solely out of the fact that [Manulife] is a mutual insurance company including, without limitation, the right to receive notice of and to attend and vote, in person or by proxy, at meetings of policyholders of [Manulife], the right to submit proposals and to requisition meetings of policyholders, the right to participate in a conversion of [Manulife] into a company with common shares and the right to participate in any distribution of surplus upon the winding-up of [Manulife].

42. Manulife's Plan of Demutualization provided that the owners of the Hong Kong Participating Policies transferred to Manulife International would participate in Manulife's Demutualization.

43. By an assumption reinsurance agreement dated December 12, 1996, between Manulife and Manulife U.S.A., Manulife transferred its U.S. business to Manulife U.S.A. and in so doing specifically preserved the Ownership Rights and/or the Voting Rights of the United States policyholders. This agreement read, in part, as follows:

3.1(a) Manulife U.S.A. shall assume all the obligations of Manulife under the Transferred Policies;

...

3.1(d) Manulife hereby authorizes Manulife U.S.A. to exercise all rights and powers in connection with the Transferred Policies and Other Liabilities which Manulife possesses and which it could exercise if the Agreement were not made, and Manulife hereby transfers and assigns to Manulife U.S.A. all its rights, title and interest under or pursuant to the Transferred Policies and Other Liabilities;

...

4.1 It is understood by Manulife U.S.A., that in order to protect the interests of par policyholders, Manulife will not seek a novation of its obligations from the policyholders. Manulife U.S.A. hereby covenants and agrees to indemnify Manulife and save it harmless from all claims, demands, actions, causes of action, proceedings, losses and costs whatsoever in respect of the Transferred Policies resulting from occurrences or happenings subsequent to the Transfer Date;

...

10.1 The Certificate of Assumption shall also state inter alia, that:

(a) Manulife shall be liable to the policyholder, contractholder or certificateholder if Manulife U.S.A. fails to meet its obligations under the policy or contract.

(b) If Manulife ever applies to become a stock company in accordance with the Insurance Companies Act that Transferred Policies which are participating policies will be treated for purposes of the application and for purposes of determining benefits received on any subsequent demutualization as if they had remained a policy of Manulife.

...

(c) That policyholders with Transferred Policies which are participating policies will continue to be allowed to vote at meetings of policyholders of Manulife in the same manner as if such policies had not been transferred.

44. As with the Hong Kong policies, Manulife's Plan of Demutualization provided that the owners of the U.S. Participating Policies transferred to Manulife U.S.A. would participate in Manulife's Demutualization.

45. Before Manulife transferred its policies in Hong Kong on December 31, 1994 and in the United States on December 31, 1996, Manulife carefully considered alternative courses of action and their implications for and impact upon its participating policyholders in Hong Kong and the United States. Manulife and its employees understood that:

(a) in the event of a transfer to a third party stock company, Manulife "*would likely need to compensate US policyholders (e.g. treat it in some ways as a partial demutualization)*"; and that

(b) in the event of a transfer to a subsidiary without transferring all Ownership Rights, such a transfer would be "*Unfair to policyholders without compensation*" and "*...if compensation [was] not given, would damage [Manulife's] reputation for fairness, and would result in future litigation*"

and this understanding was reduced to writing in a document prepared by Manulife and dated February 14, 1994.

46. Before Manulife transferred its Participating Policies in Hong Kong to Manulife International on December 31, 1994 and in the United States to Manulife U.S.A. on December 31, 1996, its solicitors sought Advance Income Tax Rulings from Revenue Canada.

47. In its dealings with Revenue Canada as early as November 1, 1994, Manulife and its employees and agents understood and accepted the principles that "*a mutual insurance company has no power to terminate the proprietary rights of participating policyholders without compensation*" and that "*a transaction which terminated the proprietary rights and entitlement of a class of participating policyholders without appropriate compensation would not receive the required regulatory approval.*" In this action, Manulife should not be permitted to resile from these representations which it made in a letter to Revenue Canada dated November 1, 1994 and on other occasions.

48. When Manulife transferred its Participating Policies in Hong Kong on December 31, 1994 and its Participating Policies in the United States on December 31, 1996, Manulife treated its Hong Kong and United States participating policyholders differently and better than the members of the Class because for its Hong Kong and United States policyholders Manulife:

(a) considered carefully their Ownership Rights and methods of preserving and protecting them because it had concluded that it did not have the power to eliminate Ownership Rights without paying full and fair compensation to the owners of the Ownership Rights;

(b) preserved and protected their Ownership Rights and their right to participation on Demutualization; and

(c) preserved and protected their Voting Rights.

49. As part of its Plan of Demutualization, Manulife recognized the United States participating policyholders and the Hong Kong participating policyholders as Eligible Policyholders and paid them the Fixed Allocation and the Variable Allocation. It did so because it wanted to continue to carry on business in the United States and Asia, because these participating policyholders were a majority of the owners of Manulife and because it concluded that it did not have the power to eliminate Ownership Rights or Voting Rights without payment of full and fair compensation to the Participating Policyholders. By contrast, Manulife did not recognize the members of the Class as Eligible Policyholders. As part of its plan for financial restructuring and in order to facilitate demutualization it had decided to divest itself of its business interests in the Caribbean and it knew that the members of the Class owned ~~less than~~ approximately 0.~~0~~5% of Manulife.

MAY 17, 1990 RESOLUTION OF MANULIFE'S BOARD OF DIRECTORS

50. In 1990, Manulife decided that it would exit the Caribbean-Atlantic region and transfer all the policies there to a single purchaser.

51. On May 17, 1990, Manulife's board of directors passed a resolution which stated as follows:

> *...the Chairman of the Board and Chief Executive Officer or such other officers as he may delegate be and are hereby authorized to enter into negotiations and obtain all required governmental or other approval to effect the transfer (en bloc) of all the assets and liabilities connected with the Company's business in the Caribbean-Atlantic region, consisting of the Bahamas, Barbados, Bermuda, the Cayman Islands and Puerto Rico, to a qualified purchaser satisfactory to the Company, subject to the formal agreement setting out the terms and conditions of such transfer being approved by the Board.*

52. Life of Jamaica was the single purchaser contemplated in the May 17, 1990 resolution. However, the transfer, in block, of Manulife's business in the Caribbean-Atlantic region to Life of Jamaica did not take place.

53. After that, Manulife began to sell off its Caribbean-Atlantic business on a jurisdiction-by-jurisdiction basis.

54. In or after 1992, by an assumption reinsurance agreement Manulife transferred its business in the Bahamas, including the Turks and Caicos Islands, to Global Life Assurance Company Limited for consideration of Bah. $10.5 million. On February 20, 1992, Manulife's board of directors passed a resolution authorizing the transfer.

55. In or after 1992, by an assumption reinsurance agreement Manulife transferred its business in Bermuda to Colonial Life Assurance Company Limited for consideration of Bda. $2.5 million. On February 20, 1992, Manulife's board of directors passed a resolution authorizing the transfer.

56. In or after 1992, by an assumption reinsurance agreement Manulife transferred its business in the Cayman Islands to Global Life Assurance Company Limited for consideration of Cay. $2.917 million. On February 20, 1992, Manulife's board of directors passed a resolution authorizing the transfer.

57. From time to time, in the period May 17, 1990 to May 30, 1996, Manulife attempted to transfer its Barbados block of business.

58. In 1990, Manulife considered that the form of the transfer of the ~~Barbados~~ Bermuda business might be by way of an indemnity reinsurance agreement. If ~~T~~this manner of transfer had been used for the Barbados Policies it would have preserved and protected the Ownership Rights of the members of the Class and permitted them to participate in the Demutualization of Manulife at no cost or material risk to Manulife.

THE SALE TO LOB

59. On or about September 18, 1995, well before the May 30, 1996 Agreement, Manulife entered into a letter of intent with LOB. The letter of intent clearly stated that the agreement was "*subject to formal approval by the Board of Directors of each company.*"

60. On April 12, 1996 or thereafter, Manulife's management decided that the form of the transfer of the Barbados Policies to LOB had to be structured so that Manulife's "*exposure to ... liability be kept to a minimum if not close to being eliminated or hedged.*" and so that Manulife would not pay compensation to or for the benefit of the Class. In making ~~this~~ these decisions, Manulife's management failed to consider that the members of the Class held Ownership Rights and that Manulife was required or ought to structure the agreement with LOB to preserve the Ownership Rights or, alternatively, the Voting Rights of the members of the Class or alternatively to pay fair compensation to the Class. Had Manulife recognized its obligation to pay compensation to or for the benefit of the Class, it would not have entered into the May 1996 Agreement.

60A. In April 1996, Guy signed Manulife's internal actuarial report stating that, in his opinion, the transfer of the Barbados Policies to LOB was fair and reasonable even though the Class was not paid compensation for the loss of their Ownership Rights or a share of Manulife's surplus. Guy failed to amend this report after D'Alessandro stated in June 1996 at the strategic planning session that he planned to initiate a strategy to the board to pursue Demutualization, that Manulife needed to do it on its own timetable and that probably meant fairly soon.

61. By the May 30, 1996 Agreement, Manulife attempted to eliminate its liability to the members of the Class by agreeing with LOB that:

(a) Manulife was to transfer to LOB assets having an aggregate value of approximately BDS $111,000,000, excluding real estate and mortgages;

(b) LOB was required to assume responsibility for approximately 13,621 Manulife individual insurance policies owned by approximately 8,048 persons;

(c) LOB was required to obtain the prior written consent of Manulife to sell, transfer or otherwise convey the obligations arising under the Barbados Policies to another insurer for a period of ten (10) years commencing January 1, 1995; and that

(d) the transfer of policies and sale of assets was expressly made pursuant to the *Insurance Companies Act*; and

(e) the closing of the transfer was conditional upon the approval, among others, of the Supervisor and the Minister of Finance.

62. Manulife and LOB could have achieved the same business result, at no additional cost and without material risk to Manulife, by formulating the May 30, 1996 Agreement as an indemnity reinsurance agreement or as an assumption reinsurance agreement with a specific reservation of Ownership Rights or, alternatively, Voting Rights in a contractual form similar to that used when Manulife transferred its policies in the United States to Manulife U.S.A. or similar to that used in a transfer of the Canadian branch of Prudential Insurance Company of America to London Life referenced in Guy's letter dated September 6, 1996 to Hymans Robertson. Such structures would have preserved the Ownership Rights or, alternatively, the Voting Rights of the members of the Class, permitted them to participate whenever Manulife Demutualized and would have resulted in no additional cost or material financial risk to Manulife. Manulife was negligent and in breach of its fiduciary duty in failing to do so.

63. As part of the process of obtaining regulatory approval in Canada and Barbados, Manulife and LOB retained Eckler as an independent actuary to prepare the

Eckler Report on the proposed transfer of the life insurance and annuity business of the Barbados branch of Manulife to LOB.

64. Before the preparation of the Eckler Report, Eckler:

(a) reviewed the form of the May 30, 1996 Agreement;
(b) gave advice to Manulife as to the nature of the Barbados transfer; and
(c) after the preparation of the Eckler Report lobbied Hymans Robertson.

65. Before the preparation of the Eckler Report and unknown to the members of the Class, by fax dated June 3, 1996, Manulife's employees Guy and Margolian instructed McGuinness to amend its draft report and to assume and conclude that a transfer of the Barbados Policies to LOB by the May 30, 1996 Agreement would extinguish the Ownership Rights of the members of the Class, that Manulife neither contemplated nor intended Demutualization, that the likelihood of it Demutualizing was remote and the Ownership Rights had no material value. By so doing, they compromised and co-opted Eckler, the independent actuary.

66. Page 17 of the Eckler Report states:

The transferred policyholders lose their right to participate in Manulife's government and acquire no comparable right in LOB because its policyholders do not participate in its government. That loss is acceptable in view of the other advantages of the transfer. The transferred policyholders also lose their rights under the special circumstances of Manulife undergoing a demutualization. It is doubtful what, if any, portion of surplus the participating policyholders would be entitled to in the event of a demutualization. Furthermore, the management of Manulife have stated that the company has no intention of demutualizing at present and that demutualization is not contemplated in any of its business plans. Under these circumstances, the likelihood of demutualization is remote and these rights have no material value.

67. To Manulife's knowledge, because of the activities set out in paragraphs 64 to 66, Eckler compromised its status as the independent actuary.

68. Inherent in the Eckler Report is the premise that Manulife had the power to extinguish Ownership Rights without payment of full and fair compensation to the Participating Policyholders. The Eckler Report was also based on the premise that if the Ownership Rights of the members of the Class had material value, they would have to be protected in any transfer or fair compensation paid to the members of the Class for their loss.

69. No later than January, 1996 or, alternatively, by November 14, 1996, the date of the hearing before the Supervisor, Manulife and its employees knew that Manulife intended to Demutualize~~,~~; and/or that Demutualization was part of its business plans or its plans for financial restructuring~~,~~; and/or that the strategic direction of Manulife was toward Demutualization~~,~~; and/or that the likelihood of Demutualization was foreseeable and/or high, not remote~~,~~; and/or that Demutualization had to be seriously considered in the foreseeable future; and/or that the value of the Ownership Rights or, alternatively, the Voting Rights and the right to participate on Demutualization were substantial. Thus, the assumptions and conclusions McGuinness was instructed to make by Guy and Margolian were erroneous and/or false and misleading.

70. Pursuant to the Barbados Insurance Act, the Supervisor authorized LOB and Manulife to give notice to the members of the Class of the Petition and the right to

inspect documents. The notice was given by publication in newspapers and by radio advertisements. The notice made no reference to Ownership Rights and did not state that the result of an order sanctioning the transfer would be the elimination or extinguishing of the Ownership Rights of the members of the Class.

71. LOB applied to the Exchange Control Authority, Barbados and the Supervisor for permission to complete the transaction contemplated by the May 30, 1996 Agreement. In the Petition addressed to the Supervisor dated September 23, 1996, Manulife and LOB stated that "*the object of this Petition is to obtain the sanction of the Supervisor...to a scheme...set out in the*" May 31, 1996 Agreement... "*for the transfer to [LOB] of the insurance business carried out in Barbados by Manulife.*"

72. The Supervisor ordered that a hearing take place on November 14, 1996 because eight Barbados policyholders, including Greaves and Jordan, objected to the transfer.

73. Pursuant to s. 35A(2)(b) of the Barbados Insurance Act, the Supervisor was required to publish, not less than 14 days before the hearing, the date, time and place of the hearing in a newspaper and in the Official Gazette. The Supervisor published notice in The Advocate newspaper, on October 30, 1996 and in the Official Gazette on November 4, 1996. Thus, the notice given by the Supervisor to the members of the Class did not comply with s. 35A(2)(b). Moreover, the notice made no mention of Ownership Rights or Voting Rights.

74. In the summer of 1996, the Supervisor retained Hymans Robertson as his independent actuary to prepare an independent actuarial report. Commencing in August, 1996, Manulife and its representatives, including Eckler ~~Partners Ltd.~~, began lobbying Hymans Robertson in an attempt to convince Hymans Robertson to conclude that Manulife was not required to and should not be required to pay any amount to the members of the Class for any loss of Ownership Rights.

75. On June 23, 24 and 25, 1996, Manulife's executives held a strategic planning session at Langdon Hall. Demutualization was discussed. D'Alessandro said that he intended to initiate a strategy to the board of directors to pursue a demutualization, that Manulife needed to do it on its own timetable and that probably meant fairly soon. D'Alessandro then instructed Guloien to look into whether Manulife would keep a par surplus fund in the event of Demutualization. Guloien did so.

76. The minutes confirming the statement by D'Alessandro and the assigned task to Guloien were prepared by Jennifer Rowe and were circulated to D'Alessandro, Guy, Rubenovitch, Guloien and others along with a memo requesting any comments or changes. No person challenged the accuracy of the minutes.

77. In October 1996, an insurance industry meeting was held at Langdon Hall. Guy and others from Manulife attended. The information at the meeting indicated that OSFI's preferred model of demutualization was that the value of the company be allocated to the participating policyholders.

78. In preparation for the November 14, 1996 hearing, the Supervisor published the following rules:

> *1. Opening Remarks by Supervisor of Insurance.*
> *2. Applicants are invited to make oral representation with emphasis being placed on additional points to those raised in letters.*
> *Applicants with Attorneys to start first.*
> *Applicant to produce any document and invite any person to give supporting information on his behalf.*
> *3. Applicant or any person speaking on his behalf to be interviewed by representative of each company – i.e. Life of Barbados and Manufacturers Life, to clarify any points raised.*
> *4. Procedure to be repeated for each applicant who wished to be heard.*
> *5. Company to make oral representations in respect of points raised and be interviewed by Applicants or Attorneys.*
> *6. Procedure to be repeated for each Company.*
> *7. Brief summaries to be given by applicants and companies.*
> *8. Closing remarks by Supervisor of Insurance.*
> *9. No evidence to be taken on oath, as the Supervisor of Insurance has no power to administer oaths in matters of this sort.*
> *10. Hearing to be relatively informal, as it is intended to be a fact-finding exercise to assist the Supervisor of Insurance in [deciding] whether or not to sanction the scheme.*

79. The Supervisor's rules for the November 14, 1996 hearing did not contemplate the Supervisor meeting or having discussions with LOB and Manulife, parties to the hearing, in the absence of the other parties to the hearing.

80. In October, 1996, Hymans Robertson's draft report was sent to Manulife and to Eckler~~ Partners Ltd.~~. Manulife, and its employees Guy and Rubenovitch, were adamantly opposed to Manulife having to pay any compensation to the members of the Class for loss of their Ownership Rights and they set about to persuade Hymans Robertson to change its draft report, particularly paragraph 6.11 which reads as follows:

> *6.11 Taking all these factors into account, we would suggest that some form of special bonus would be equitable and would be helpful and possibly necessary in convincing the transferring policyholders that their interests were fully protected in the transfer. To achieve this object, this might take the form of a special dividend representing, say, one year's normal dividend. The cost of a full year's dividend is approximately BD $2.2 million.*

81. In time, Hymans Robertson succumbed to the persuasion of Guy and Eckler ~~Partners Ltd.~~ and delivered its final report dated November, 1996 containing a revised paragraph 6.11:

> *6.11 Taking all these factors into account, we would suggest that some form of dividend review would be equitable and would be helpful and possibly necessary in convincing the transferring policyholders that their interests were fully protected in the transfer.*

82. Hymans Robertson delivered a letter of transmittal dated November 11, 1996 with its final report which states, in part, as follows:

> *I would like to emphasise that the reasons for removing specific reference to the form of benefit and its cost from our report was to permit sufficient room for manoeuvre to the parties, and to Manufacturers Life in particular. We have definitely not changed our view that some compensation, preferably in excess of BD$2 million, is required in order for us to be able to recommend the transfer to you.*

83. Manulife never disclosed to Greaves, Jordan or any other Barbados policyholder at the November 14, 1996 hearing or any time:

(a) that Hymans Robertson had a written draft report, a final report and a letter of transmittal;

(b) that Hymans Robertson believed compensation for the members of the Class was warranted and contemplated negotiations; and

(c) that there were discussions among employees of Hymans Robertson, Eckler ~~Partners Ltd.~~ and Manulife about Hyman Robertson's opinion that compensation to the members of the Class was warranted.

84. Prior to the November 14, 1996 hearing, and unknown to the members of the Class, the Supervisor met privately with, among others, Alleyne, Guy, Rubenovitch, other representatives of Manulife and Freddie Clarke, the lawyer for LOB and/or Manulife. At this meeting, the Supervisor said that he would not sanction the transfer

unless it was sweetened by a payment to the members of the Class. LOB then told the Supervisor that it would pay a further amount to the members of the Class.

85. On November 14, 1996, the Supervisor held a hearing. At the hearing, Alleyne and Guy ~~gave evidence~~<u>made statements which were not given under oath</u>. ~~During their evidence~~<u>While making these statements</u>, they did not disclose their private discussions with the Supervisor, LOB's agreement to pay the Special Dividend and the Supervisor's agreement to Sanction the transfer.

86. At the hearing on November 14, 1996, Guy said that Manulife had no plan or intention to Demutualize and that the likelihood of Demutualization was remote and filed the Eckler Report. He did not disclose the contents of the June, 1996 White Paper and the Sunset Clause, the substance of the discussion at the June 23 to 25, 1996 meeting, D'Alessandro's statement, the information from the October 1996 meeting about OSFI's preferred model for demutualization, the fact that the sale of the Barbados book of business to LOB was part of a business plan to prepare Manulife for Demutualization, even though he described various regimes of Demutualization in the United States and elsewhere.

87. After the November 14, 1996 hearing, Guy, Rubenovitch, Alleyne and Freddie Clark again met secretly with the Supervisor. Alleyne again told the Supervisor that LOB would pay the Special Dividend and delivered to the Supervisor a memorandum on behalf of LOB and Manulife, outlining the particulars of the Special Dividend. LOB and Manulife said that the Special Dividend had a present value of BDS

$7.2 million. As a result, the Supervisor agreed with LOB and Manulife that he would approve the transfer by issuing the necessary Sanction provided LOB paid the Special Dividend.

88. During the secret meetings with the Supervisor, Manulife and LOB represented to the Supervisor that the present value of the Special Dividend was BDS $7.2 million when they knew that its present value was in the range of BDS $500,000. They intended that the Supervisor rely upon this representation. The Supervisor relied upon the representation and in the Sanction, announced that the value of the Special Dividend was BDS $7.2 million. This announcement was made, to the knowledge of Manulife, for "*optics*" purposes, was materially misleading and was a sham initiated by Manulife and LOB to make the Sanction more palatable to the members of the Class and to encourage them to do business with LOB.

89. The Supervisor's two secret meetings with Guy, Rubenovitch, Freddie Clark and representatives of LOB and Manulife before and after the November 14, 1996 hearing violated ss. 18(8) and (9) of the Constitution of Barbados.

90. Greaves, Jordan and the other members of the Class did not know that:

(a) Hymans Robertson prepared a draft report, a final report and a letter of transmittal contemplating negotiation;

(b) Manulife and its representatives had lobbied Hymans Robertson and cause it to change its draft report;

(c) on two occasions the Supervisor secretly met with representatives of LOB and Manulife;

(d) LOB had secretly agreed to pay the Special Dividend;

(e) the Supervisor secretly agreed with LOB and Manulife to issue the Sanction on condition that LOB pay the Special Dividend;

(f) the Special Dividend had a present value of BDS $500,000 and not BDS $7.2 million;

(g) that the disposition of Barbados policies was intended to eliminate Ownership Rights; and

(h) Manulife had protected the rights of US and Hong Kong par policyholders to participate in the event of Demutualization.

91. On November 26, 1996, the Supervisor issued the Sanction approving the Scheme set out in the Petition. By letter dated December 5, 1996, the Supervisor advised Greaves that he approved the Scheme but he did not send to him a copy of the Sanction. The Sanction approved the Agreement and the transfer of the Barbados Policies to LOB but subject to the approval of the Minister of Finance. The Supervisor did not have the power or capacity to extinguish the Ownership Rights or, alternatively, the Voting Rights of the members of the Class and the Sanction did not do so.

92. The Supervisor would not have or ought not to have approved the transfer of the Barbados Policies to LOB:

(a) if he had been advised that Manulife was lobbying the government to give it the right to Demutualize; or

(b) if he was advised that Manulife had preserved the right of U.S. policyholders and Hong Kong policyholders to participate in Demutualization; or

(c) if he was advised that Manulife intended to Demutualize or would soon likely consider whether or not to Demutualize and that the prospect of Manulife Demutualizing was not remote; or

(d) if he had been advised of the contents of the June, 1996 White Paper and the Sunset Clause referred to in paragraphs, and 32, 34 and 35 above; or

(e) if Manulife had not by means of the Eckler Report and by statements made on its behalf at the November 14, 1996 hearing made the misrepresentation that it had no intention of Demutualizing, that Demutualization was not part of its business plans, that the prospect of Demutualization was remote, that the Ownership Rights had no material value and that the scheme of Demutualization in Canada was uncertain; or

(f) if he had been advised that at the June, 1996 Langdon Hall strategic planning session D'Alessandro said that he intended to initiate a strategy to the board of Manulife to pursue a demutualization; or

(g) if he had been told that the information at the October, 1996 meeting at Langdon Hall was that OSFI's preferred model for demutualization allocated the value of the company to the participating policyholders; or

(h) if he knew that the Special Dividend did not have a present value of BDS $7.2 million but that the present value of the Special Dividend was about BDS $500,000; or

(i) if he knew that the Ownership Rights of the members of the Class in the event of Demutualization were worth in the range of CDN $120,000,000.

93. After the Sanction was issued on November 26, 1996, Manulife applied to OSFI and sought the approval of the Minister of Finance pursuant to s. 254 of the *Insurance Companies Act* permitting it to complete the May 30, 1996 Agreement. Manulife tendered the Sanction to OSFI but did not disclose the facts set out in paragraphs 64 to 85.

94. OSFI reviewed the Eckler Report and the Sanction and reported and recommended to the Minister of Finance that:

> *...Pursuant to the Barbados Insurance Act, the Supervisor of Insurance held a hearing on November 14, 1966 at which time policyholders who objected to the transfer, in addition to the companies involved, could be heard. As a result of the representations made at the hearing and LOB's decision to pay a special dividend equal to $20 for each $1,000 of insurance to beneficiaries of participating policies on the death of the life insured*

> *or the maturity date of the policy, the Supervisor of Insurance approved the transfer on November 26, 1996. That approval does not require that any change be made to the terms of the transfer agreement between Manulife and LOB.*
>
> ...
>
> *Based on our review of the proposed transaction and on the conclusions of the independent actuary, we are satisfied that it is appropriate for The Manufacturers Life Insurance Company to enter into an agreement to transfer its Barbados branch business to Life of Barbados Limited.*

95. By memorandum dated December 20, 1996, the Minister of Finance approved the transfer. OSFI's recommendation dated December 18, 1996 is attached to it. In providing his approval, the Minister of Finance considered that "*policyholders who raised objections to the transfer had an opportunity to present their objections to the...Supervisor...at a public hearing which took place on November 14, 1996.*" The Minister of Finance assumed that the November 14, 1996 hearing and the Sanction which followed were the result of a fair, unbiased process, an erroneous assumption for the reasons set out in paragraphs 64 to 85.

96. In providing his approval, the Minister of Finance relied, in part, on the conclusions in the Eckler Report, conclusions based, in part, on the misrepresentation of Manulife that it had no intention of Demutualizing, that Demutualization was not part of its business plans, that the likelihood of Demutualization was remote and that the value of the Ownership Rights in Manulife was not material.

97. In the documents delivered while seeking the approval of the transfer of Barbados Policies, Manulife acknowledged that the members of the Class were among

the group of members or owners of Manulife, a Canadian Mutual Insurance Company, and that they had the rights particularized above in paragraph 23.

98. When Manulife sought and obtained regulatory approvals for the sale to LOB in Canada and Barbados, it stated that it had no plans to Demutualize and that the prospect of Demutualization was remote.

99. During the regulatory approval process in Barbados and Canada, Manulife failed to disclose that it was considering or working on a plan to Demutualize or to financially restructure itself~~,~~; and/or that the strategic direction of Manulife was toward Demutualization~~,~~; and/or that the regulatory framework in Canada would soon change to permit it to Demutualize~~,~~; and/or that the prospect of Demutualization was not remote; and/or that in the transfer of its United States policies and its Hong Kong policies it had preserved those policyholders' rights to participate in Demutualization~~.~~; and/or ~~At the time it sought the orders particularized in paragraphs 69 and 88,~~ the officers, management and board of directors of Manulife intended to Demutualize Manulife or to financially restructure Manulife and were developing plans for that very purpose or knew that they would soon have to decide whether or how to implement Demutualization.

100. Manulife did not ask the members of the Class to consent to the transfer of the Barbados Policies or to the elimination of their Ownership Rights. Moreover, the members of the Class did not consent to the transfer of the Barbados Policies. In the Agreement, Petition and notice of the application to transfer the Barbados Policies,

Manulife did not mention Ownership Rights and did not disclose that it intended to eliminate the Ownership Rights of the members of the Class. The members of the Class did not consent to the elimination of their Ownership Rights and the Sanction did not extinguish their Ownership Rights or, alternatively, their Voting Rights. The Minister of Finance did not have the capacity or power to extinguish the Ownership Rights and the December 20, 1996 approval did not extinguish the Ownership Rights or, alternatively, the Voting Rights of the members of the Class.

101. Pursuant to the May 30, 1996 Agreement, the transfer of the Barbados Policies to LOB was completed without the consent of the members of the Class. Thus, Manulife did not cancel the Barbados Policies and LOB did not issue replacement policies and no member of the Class entered into a new contract with LOB and no novation occurred.

102. Despite the fact that Manulife recognized the Ownership Rights of the members of the Class during the regulatory process described in paragraphs 69 and 88 in Barbados and in Canada, it failed to offer or to pay compensation to them for expropriating or extinguishing their Ownership Rights.

103. Manulife did not ask the regulators in Canada and in Barbados to make any order extinguishing the Ownership Rights of the members of the Class, and the regulators in Canada and Barbados did not and could not make any such order. Under the law of Barbados, the Sanction could not and did not extinguish the Ownership Rights or, alternatively, the Voting Rights of the members of the Class. Because of the facts set

out above, neither the Sanction nor the December 20, 1996 approval should be recognized or enforced in this action.

104. The plaintiffs plead that neither the Sanction nor the order dated December 20, 1996 from the Minister of Finance has preclusive effect and neither precludes the members of the Class from bringing this action for, among other reasons, the facts set out in this pleading.

105. The members of the Class plead that Manulife did not have the power to extinguish the Ownership Rights or, alternatively, the Voting Rights of the members of the Class and that from and after January 1, 1997, they were entitled to all benefits, rights and privileges as holders of Participating Policies, and that Manulife wrongfully failed to recognize them as Eligible Policyholders in the formal Demutualization process that began on January 20, 1998.

THE DEMUTUALIZATION OF MANULIFE

106. In January 1996, Manulife knew of the Sunset Clause and knew that the government had expressed an intention to amend the *Insurance Companies Act* to permit large capital Mutual Insurance Companies such as Manulife to Demutualize.

107. On June 19, 1996, the June, 1996 White Paper issued and, because of the existence of the Sunset Clause, completely altered the legislative landscape. The June, 1996 White Paper expressed governmental policy to amend the *Insurance Companies*

Act and to pass regulations to permit large Mutual Insurance Companies, such as Manulife, to Demutualize as particularized, in part, in paragraphs 34 and 35. Manulife knew that this expression of governmental policy would or probably would be enacted into law because of the Sunset Clause.

108. As pleaded in paragraph 75, in June, 1996, Manulife held a strategic planning session at Langdon Hall and D'Alessandro said that he intended to initiate a strategy to the board of Manulife to pursue a demutualization. D'Alessandro instructed Guloien to look into whether Manulife would keep a par surplus fund in the event of demutualization and Guloien did so.

109. In October, 1996 Manulife, and, in particular, Guy, as a result of his attendance at the Langdon Hall meeting, knew that OSFI's preferred model for demutualization allocated the value of the company to the participating policyholders.

110. At Manulife's December 12, 1996 board of directors meeting or informal meeting of the members of the Board, D'Alessandro raised the issue of Manulife Demutualizing because he knew of the June, 1996 White Paper and the Sunset Clause and that Manulife had to develop a plan to implement Demutualization.

111. By November 14, 1996, Guy knew that the strategic direction of Manulife was or probably would be toward Demutualization. From November 14, 1996 to January 17, 1997, Guy had no fresh information about Demutualization. On January 17, 1997, Guy wrote to D'Alessandro and said that "*Manulife needs to prepare for*

[D]emutualization." When he did so, Guy believed that the policy statements about Demutualization contained in the June, 1996 White Paper would be or probably would be enacted into the *Insurance Companies Act* on or about March 31, 1997. In February, 1997, D'Alessandro authorized Guy to establish a committee to implement a Demutualization process because D'Alessandro and Manulife believed the policy statements about Demutualization in the June, 1996 White Paper would be or probably would be enacted into the *Insurance Companies Act* on or about March 31, 1997 or soon thereafter.

112. Before Guy and Margolian instructed Eckler on June 3, 1996 that the likelihood of Demutualization was remote or, alternatively, by the time Guy testified at the November 14, 1996 hearing, Manulife and its employees knew or ought to have known that a study of the technical implementation of Demutualization as contemplated by Guy's January 17, 1997 memorandum was necessary and that Demutualization was foreseeable.

113. ~~On~~ Because Guy knew that D'Alessandro planned to initiate a strategy to the board to pursue Demutualization, on January 17, 1997, Guy, in a memo, advised D'Alessandro that he believed that Manulife needed to prepare for demutualization and that he would like to begin a study of demutualization with the objective of creating a workable plan for Manulife.

114. By April 22, 1997, Manulife had established a team to conduct a study into demutualization. The team included Guy, Rubenovitch and Margolian.

115. On March 12, 1999, the Privy Council enacted the Conversion Regulations.

116. On January 20, 1998, before the Conversion Regulations were made or released to the public, the board of directors of Manulife authorized management to develop a conversion proposal and formally announced its intention to Demutualize, and thereby to convert Manulife from a Mutual Insurance Company to a public company with common shares. When Manulife formally announced its intention to Demutualize on January 20, 1998, it relied solely on the statements of governmental intention set out in the June, 1996 White Paper because it knew the Sunset Clause required the government to amend the *Insurance Companies Act*.

117. As stated in its announcement, Manulife recognized that fundamental to Demutualization was the consent of the participating policyholders at a special meeting to approve the Plan of Demutualization which, Manulife asserted, allocated Manulife's value fairly and equitably among the approximately 750,000 Eligible Policyholders.

118. Manulife further stated that "*policyholders who hold a participating policy originally issued by the Manufacturers Life Insurance Company and later transferred to a subsidiary company, will also be eligible if they continue to hold their participating policy until the entitlement date.*"

119. On May 19, 1999, Manulife's board of directors approved the Plan of Demutualization.

120. The Plan of Demutualization stated that "*Manufacturers Life is owned by its participating policyholders who have ownership rights in the company*" and recognized only the Eligible Policyholders as persons eligible for compensation and eligible to vote at a special meeting to either approve or reject the Plan of Demutualization.

121. The Plan of Demutualization provided, in part, as follows:

(a) Manulife would become a wholly owned subsidiary of MFC;

(b) Manulife's estimated market value would be paid to Eligible Policyholders by issuing Common Shares to them;

(c) the issuance of Common Shares to the Eligible Policyholders would fairly compensate them for the loss of their Voting Rights;

(d) each Eligible Policyholder would be paid the Fixed Allocation;

(e) each Eligible Policyholder would be paid the Variable Allocation; and

(f) after Demutualization, the Eligible Policyholders would elect one-third of the members of Manulife's board of directors.

122. Under the Plan of Demutualization, the Fixed Allocation was paid to compensate Eligible Policyholders for the loss of Voting Rights, and the Variable Allocation was paid to compensate Eligible Policyholders for the loss of the right to share in Manulife's residual value. The Plan of Demutualization allocated about 25% of the Common Shares as Fixed Allocation and about 75% of the Common Shares as Variable Allocation.

123. Based on Manulife's own calculation, on Demutualization each Eligible Policyholder received Common Shares, or the equivalent in cash or policy credits, with a minimum market value of at least $4,000 and, on average, each Eligible Policyholder received Common Shares valued at $15,000.

124. On July 29, 1999, the Plan of Demutualization was approved by the Eligible Policyholders at a special meeting of Eligible Policyholders.

125. Manulife negligently, arbitrarily ~~and~~or wrongly decided that the Barbados policyholders were not eligible to participate in the Plan of Demutualization because:

(a) Manulife completed the May 30, 1996 Agreement on December 31, 1996, approximately one (1) year before January 20, 1998, the date when it announced the Plan of Demutualization;

(b) Manulife did not specifically agree to continue to treat the Barbados Policies as Participating Policies of Manulife;

(c) Manulife did not specifically agree to continue the Voting Rights of the members of the Class;

(d) Manulife did not specifically agree, before closing the May 30, 1996 Agreement, that the members of the Class would be entitled to vote and to participate in Demutualization; and/or

(e) Manulife wrongly concluded that the closing of the May 30, 1996 Agreement had extinguished or eliminated the Voting Rights of the members of the Class.

126. On September 23, 1999, Manulife converted from a Mutual Insurance Company to a wholly-owned subsidiary of MFC, a company with publicly traded common shares.

THE PLAINTIFFS AND THE OTHER MEMBERS OF THE CLASS WERE ELIGIBLE POLICYHOLDERS

127. Manulife ought to have recognized the members of the Class as Eligible Policyholders because as a matter of law the May 30, 1996 Agreement, the Sanction and the December 20, 1996 approval by the Minister of Finance did not extinguish their Ownership Rights or, alternatively, their Voting Rights.

MANULIFE BREACHED ITS FIDUCIARY DUTY TO THE MEMBERS OF THE CLASS

128. Manulife owed the same fiduciary duty to each member of the Class, a duty separate and apart from the terms of a specific policy, but one that arose out of a relationship created between Manulife as a Mutual Insurance Company and each participating policyholder who held Ownership Rights on the issuance of a Participating Policy. The relationship between Manulife and the members of the Class was longstanding as particularized in paragraph 20.

129. Alternatively, Manulife reasonably expected that it owed and it did owe a fiduciary duty to each member of the Class and on Demutualization was required to place a fair value on the company and to allocate the value among all participating policyholders, including the members of the Class. This fiduciary duty arose:

(a) when Manulife first contemplated Demutualization; or

(b) no later than January, 1996, when the Department of Finance disclosed to Manulife, its employees and others that its White Paper to be released would express governmental policy that large Mutual Insurance

Companies, such as Manulife, would soon have the right to Demutualize; or

(c) when Manulife negotiated and entered into the May 30, 1996 Agreement; or

(d) no later than June, 1996, when, because of the Sunset Clause, the Department of Finance issued the June, 1996 White Paper which expressed governmental policy that large Mutual Insurance Companies such as Manulife would soon have the right to Demutualize and that the value of the company had to be distributed to the participating policyholders; or

~~(d)~~(e) in June 1996 when D'Alessandro at a strategic planning session stated that he planned to initiate a strategy to the board to pursue Demutualization, that Manulife needed to do it on its own timetable and that probably meant fairly soon; or

~~(e)~~(f) by early November, 1996 when Manulife's preparation for the November 14, 1996 hearing began.

130. Manulife owed and reasonably expected that it owed and it did owe the same fiduciary duty to each member of the Class for the following reasons:

(a) each member of the Class, by statute, held Ownership Rights;

(b) Manulife knew that it had a heightened responsibility towards its members because it knew that its members did not have a right to assert an oppression remedy against Manulife, Manulife not being a CBCA corporation and the *Insurance Companies Act* not affording the members this remedy;

(c) each member of the Class ~~stands~~ stood in precisely the same special relationship with Manulife as every other participating policyholder, that is, in a relationship of trust and confidence relating to his, her or its Ownership Rights;

(d) each member of the Class had a longstanding relationship with Manulife and by purchasing a Participating Policy contributed to the financial success of Manulife and increased Manulife's value;

(e) each member of the Class by purchasing a Participating Policy demonstrated his, her or its reliance on Manulife to act in his or her or its mutual best interests;

(f) each member of the Class ~~stands~~ stood in precisely the same contractual relationship with Manulife as every other participating policyholder;

(g) Manulife was in a special relationship with the members of the Class and its other participating policyholders because Manulife was a Mutual Insurance Company and the members of the Class were some of its owners because they held Ownership Rights;

(h) Manulife had a power of decision making relating to its dealing with LOB and the timing of its consideration of whether or not to Demutualize and the terms it would seek, if any, to protect the interests of the Class in the event of transfer of the Class' participating policies to LOB;

(i) each member of the Class was vulnerable to economic loss which might result depending upon how Manulife exercised the power of decision making relating to his, her or its Ownership Rights;

(j) each member of the Class was vulnerable because no regulator was charged with the sole responsibility of protecting his or her or its Ownership Rights;

(k) each member of the Class was vulnerable because Manulife could or could attempt to transfer the Barbados Policies without the consent of each member of the Class and could set the terms of so doing when negotiating with LOB;

(l) each member of the Class was vulnerable because he, she or it held Participating Policies of low value and was among the poorest of Manulife's policyholders and Manulife held a power imbalance over them because of its knowledge of the relevant facts, knowledge unknown to the members of the Class;

(m) Manulife controlled the process which resulted in the disenfranchisement of the members of the Class and the expropriation of their Ownership Rights, or, alternatively, the Voting Rights, and Manulife knew that the members of the Class reasonably expected Manulife to deal with them fairly and reasonably and not to extinguish their Ownership Rights or, alternatively, their Voting Rights, because they were members and owners of Manulife, a Mutual Insurance Company;

(n) Manulife had the power to preserve and protect the Ownership Rights or, alternatively, the Voting Rights of the members of the Class when negotiating with LOB and to permit them to participate in Demutualization by structuring its transaction with LOB as it did for its participating policyholders in the United States and Hong Kong at no additional cost or material risk to Manulife;

(o) Manulife crafted the terms of the May 1996 Agreement and the Plan of Demutualization and knew that the members of the Class reasonably expected Manulife to deal with their interests fairly and reasonably;

(p) Manulife controlled the timing and all other aspects of its dealings with LOB, the timing of its consideration of whether or not to Demutualize, and the Demutualization process and could have announced its intention to Demutualize or its intention to establish a timeline within which to explore the possibility of Demutualization before November 14, 1996;

(q) in crafting the Demutualization process, Manulife was distributing the value of Manulife as a company and in this process and in the period leading up to the decision of whether or not to Demutualize it was required to act with scrupulous fairness and objectivity;

(r) each member of the Class and Manulife reasonably expected Manulife to preserve and protect his, her or its Ownership Rights or, alternatively, Voting Rights in Manulife and Manulife in its negotiations with LOB could have protected their interests;

(s) each member of the Class and Manulife reasonably expected Manulife to deal honestly, candidly, directly and fairly with regulators and in preparation for dealing with the regulators;

(t) each member of the Class and Manulife reasonably expected Manulife to deal with him, her or it honestly, candidly and fairly; and

(u) Manulife unilaterally dealt with the Minister of Finance and Hymans Robertson.

131. Manulife had the unilateral power to decide when and whether it would establish a timeline within which to decide whether or not to Demutualize, how it would protect the interests of the Class when negotiating the terms of the May 1996 Agreement, whether it would structure the transfer to LOB as an indemnity reinsurance agreement or as an assumption reinsurance agreement, or as an assumption reinsurance agreement with a specific reservation of Ownership Rights or Voting Rights, whether and when it would seek permission of the regulatory authorities to transfer the Barbados Policies, whether it would advise the regulatory authorities that it was considering

Demutualization when it sought approval of the transfer, whether it would disclose to the Supervisor the expected changes in the regulatory framework in Canada, whether it would disclose to the Supervisor that it must soon decide on a timetable within which it would decide whether or not to Demutualize and whether the Barbados Policies would participate on Demutualization.

132. Manulife breached its fiduciary duty to the Class by, among other things:

(a) negotiating and entering into and closing the May 30, 1996 Agreement without preserving for the Class the right to participate in the event of Demutualization and without paying to the Class their share of Manulife's surplus;

(b) entering into and closing the May 30, 1996 Agreement without the express authorization of Manulife's board of directors, as was done in the transfer of business in the Bahamas, including the Turks and Caicos Islands, Bermuda and the Cayman Islands;

(c) entering into and closing the May 30, 1996 Agreement without the express authorization of Manulife's executive committee or management committee;

(d) deciding to seek orders under s. 254 of the *Insurance Companies Act* and ss. 34 and 35 of the *Insurance Act* of Barbados;

(e) seeking orders under s. 254 of the *Insurance Companies Act* and/or ss. 34 and 35 of the *Insurance Act* of Barbados without specifically preserving the Ownership Rights or, alternatively, the Voting Rights of the members of the Class and their right to participate on Demutualization;

(f) failing to maintain the members of the Class in a category which would entitle them to participate in Demutualization;

(g) failing to treat the members of the Class in the same manner it treated its United States policyholders, its Hong Kong and its Philippines policyholders and by failing to preserve and protect the Ownership Rights or, alternatively, the Voting Rights of the members of the Class as it preserved and protected the Ownership Rights and the Voting Rights of its United States, Hong Kong and Philippines participating policyholders;

(h) failing to include the members of the Class as Eligible Policyholders in the Plan of Demutualization;

(i) failing to consider the consequences of the May 30, 1996 Agreement to the members of the Class on Demutualization;

(j) distributing the value of the Class members' interest in Manulife to the Eligible Policyholders;

(k) preferring the interests of Eligible Policyholders to the interests of the members of the Class and by failing to understand that its own economic interests were not advanced by eliminating the Ownership Rights or the Voting Rights of the members of the Class;

(l) failing to disclose to the Supervisor at the November 14, 1996 hearing that it had preserved the right of the Hong Kong, United States and Philippines policyholders to participate in the event of Demutualization and that the June, 1996 White Paper when taken in conjunction with the Sunset Clause expressed the governmental policy that larger Mutual Insurance Companies, such as Manulife, would be permitted to or probably would be permitted to Demutualize by on or about March 31, 1997, that it was lobbying the Canadian Government for a statutory amendment which would permit it to Demutualize and that at a strategic planning session of Manulife in June 1996 that D'Alessandro stated that he planned to initiate a strategy to the board to pursue Demutualization, that Manulife needed to do it on its own timetable and that probably meant fairly soon;

(m) failing to have its management and board of directors specifically consider whether and how to protect the Ownership Rights or the Voting Rights of the members of the Class after learning in January, 1996 of the intended change in the regulatory framework in Canada and/or after the issuance of the June, 1996 White Paper;

(n) failing to understand that it had a fiduciary duty at the time the June, 1996 White Paper issued because the Sunset Clause made it probable or highly probable, if not certain, that the *Insurance Companies Act* would be amended by March 31, 1997 or soon thereafter to give to Manulife the power to Demutualize;

(o) failing to amend its Bylaws to permit the members of the Class to maintain their Ownership Rights or, alternatively, their Voting Rights;

(p) failing to appreciate that it could preserve and protect the Ownership Rights or, alternatively, the Voting Rights of the members of the Class after the transfer of the Barbados Policies to LOB at no additional cost and at no material risk to Manulife;

(q) failing to structure the transaction with LOB as an indemnity reinsurance agreement or as an assumption reinsurance agreement with a specific

reservation of Ownership Rights or Voting Rights when it knew that the financial statements of Manulife would reflect those transactions exactly as the May 30, 1996 Agreement was reflected and there would be no additional cost or material risk to Manulife if it did so;

(r) failing to disclose to the members of the Class, OSFI and the Minister of Finance that it had persuaded Hymans Robertson to change its report to delete a recommendation that the Barbados policyholders be paid BDS $2.2 million;

(s) twice meeting in secret with the Supervisor;

(t) failing to disclose to the members of the Class, OSFI and the Minister of Finance that it met in secret with the Supervisor;

(u) striking a private deal with the Supervisor;

(v) misleading the Supervisor, OSFI, the Minister of Finance and the members of the Class as to the present value of the Special Dividend to be paid by LOB;

(w) failing to disclose to the Supervisor and/or the members of the Class and/or OSFI and/or the Minister of Finance that the true present value of the Special Dividend was in the range of BDS $500,000;

(x) failing to decide whether or not to Demutualize before November 14, 1996;

(y) failing to advise the Supervisor that Manulife would soon have to establish a timeline within which Manulife would decide whether or not to Demutualize;

(z) failing to advise the Supervisor that the prospect of Demutualization was not remote;

(aa) failing to advise the Supervisor, OSFI and the Minister of Finance that the conclusions in the Eckler report that "*the likelihood of Demutualization was remote*" and that the Ownership Rights had no material value were erroneous;

(bb) failing to establish before November 14, 1996 a timeline within which to decide whether or not to Demutualize;

(cc) failing to advise the Supervisor at the November 14, 1996 hearing that Manulife had to soon consider a timeline within which to decide whether or not to Demutualize;

(dd) focusing on removing a contingent liability for the Barbados Policies from its balance sheet without considering the interests of the members of the Class or how to preserve their Ownership Rights or their Voting Rights;

(ee) persuading Hymans Robertson to change its draft report;

(ff) failing to advise Hymans Robertson about the state of the law respecting demutualization in Canada; and

(gg) co-opting and compromising Eckler, the independent actuary, in the transaction with LOB.

MANULIFE WAS NEGLIGENT

133. Manulife and its employees owed a duty of care to the members of the Class because of the proximity of their relationship, that is, because the members of the Class held Ownership Rights and/or were participating policyholders in Manulife, a Mutual Insurance Company and an elimination of the Ownership Rights would cause foreseeable harm to them.

134. Guy was Manulife's chief actuary and, as a result of holding this position, he had a duty to protect the interests of all policyholders, including the members of the Class.

135. The reasonable standard of conduct (care) expected in the circumstances required Manulife and its employees to act fairly, reasonably, honestly and candidly in the period leading up to the announcement of its intention to Demutualize, in the Demutualization process, in dealing with the Ownership Rights and Voting Rights of

members of the Class, in the administrative process before the Supervisor and in dealing with OSFI and the Minister of Finance.

136. Manulife, through its employees, officers, directors and agents, failed to meet the reasonable standard of conduct (care) expected in the circumstances ~~was negligent~~ in that:

(a) it entered into the May 30, 1996 Agreement;

(b) it entered into the May 30, 1996 Agreement and/or closed the May 30, 1996 Agreement without the express authorization of its board of directors;

(c) it failed to properly consider the consequences of the May 30, 1996 Agreement to the members of the Class in the event of Demutualization;

(d) it failed to consider the prospect of Demutualization when it entered into the May 30, 1996 Agreement;

(e) it failed to continue the members of the Class in a category which would permit them to participate in Demutualization after it closed the May 30, 1996 Agreement;

(f) it failed to consider the consequences to the members of the Class of eliminating them as the owners of Participating Policies;

(g) it failed to coordinate its exploration of the concept of financial restructuring or Demutualization with its decision to transfer the Barbados Policies;

(h) it failed to impose any or any reasonable business systems to ensure that the members of the Class would not be prejudiced while financial restructuring or Demutualization was being considered or was likely to be considered;

(i) it failed to preserve and to protect the Ownership Rights or, alternatively, the Voting Rights of the members of the Class when negotiating the May 30, 1996 Agreement, given the Sunset Clause and the expected change in legislation in Canada in or about March 31, 1997;

(j) it failed to preserve and to protect the Ownership Rights or the Voting Rights of the members of the Class as it preserved and protected the Ownership Rights and Voting Rights of its United States, Hong Kong and

Philippines participating policyholders and failed to structure the transaction with LOB as an indemnity reinsurance agreement or an assumption reinsurance agreement with a specific reservation of Ownership Rights or Voting Rights;

(k) it failed to treat the members of the Class the same as it treated its Hong Kong and Philippines policyholders;

(l) it failed to treat the members of the Class the same as it treated U.S. residents to whom it had issued Manulife Participating Policies, even though the U.S. policies were transferred to Manulife U.S.A. on December 31, 1996, the same day the May 30, 1996 Agreement closed;

(m) it failed to make full, frank disclosure to OSFI and the Minister of Finance that it was considering or was likely to soon consider Demutualization, that it had misconducted itself in the Barbados administrative process and that the present value of the Special Dividend was not BDS $7.2 million;

(n) its chief actuary, Guy:

(i) ~~,~~ failed to fairly advise the Supervisor of the prospects of Manulife Demutualizing and because of the Sunset Clause the expected change in legislation in Canada that would permit Manulife to Demutualize;

(ii) prepared and signed the internal appointed actuarial report described in paragraph 60A without exercising reasonable skill and care;

~~(n)~~(iii) failed to amend the internal actuarial report after the strategic planning session in June 1996 where D'Alessandro stated that he planned to initiate a strategy to the board to pursue Demutualization, that Manulife needed to do it on its own timetable and that probably meant fairly soon;

(o) it failed to advise the Supervisor, OSFI and the Minister of Finance that it had instructed McGuinness, in the preparation of the Eckler Report, to assume that Manulife had no intention of Demutualizing, that it was not contemplating Demutualization and that the likelihood of Demutualization was remote and the Ownership Rights had no material value;

(p) it expropriated or extinguished the Ownership Rights or, alternatively, the Voting Rights of the members of the Class without payment of any or any adequate compensation when at a minimum, it ought to have paid to or for the benefit of the Class their proportional share of the surplus;

(q) it sought orders under s. 254 of the *Insurance Companies Act* and ss. 34 and 35 of the *Insurance Act* of Barbados;

(r) it sought orders under s. 254 of the *Insurance Companies Act* and ss. 34 and 35 of the *Insurance Act* of Barbados without preserving the right of the members of the Class to participate on Demutualization and without disclosing its intention to initiate a strategy to the board to pursue Demutualize or that the June, 1996 White Paper stated governmental policy that larger Mutual Insurance Companies, such as Manulife, would soon have the power to Demutualize or that necessarily it must soon establish a timeline within which it must decided whether or not to Demutualize;

(s) it transferred the value of the Ownership Rights and Voting Rights of the members of the Class to other holders of Participating Policies, without payment of any or any adequate compensation;

(t) it preferred the interests of the Eligible Policyholders to the interests of the members of the Class;

(u) it failed to instruct its officers and employees that Manulife had a ~~fiduciary~~ duty to the Class members to act reasonably and consider the Ownership Rights that the Class held;

(v) it failed to take any steps to protect the members of the Class after learning in January, 1996 that the Federal Government intended to or probably would give it the power to Demutualize, and after the issuance of the June, 1996 White Paper because of the Sunset Clause and failed to disclose the existence of the June, 1996 White Paper to the Supervisor;

(w) it failed to exercise reasonable care and judgment in instructing McGuinness;

(x) it instructed McGuinness to assume for the purposes of the Eckler Report that Manulife had no intention to Demutualize and the prospects of Demutualization were remote and that the Ownership Rights have no material value when it knew or ought to have known that Manulife had such an intention or necessarily would soon consider whether or not to Demutualize and thus the Ownership Rights and the Voting Rights of the members of the Class had material value;

(y) it instructed McGuinness to assume for the purposes of the Eckler Report that Demutualization was not part of Manulife's business plans when it knew or ought to have known that Demutualization was or might soon become part of and central to Manulife's long-term business plans and that the strategic direction of Manulife was towards Demutualization and that D'Alessandro had been speaking about demutualization since he became CEO of Manulife in 1994;

(z) it instructed McGuinness to assume for the purposes of the Eckler Report that the likelihood of Demutualization was remote, and the Ownership Rights have no material value and that the right of the members of the Class to participate in Demutualization was remote when it knew or ought to have known that the likelihood of Demutualization was realistic or high and the value of the right of the members of the Class to participate in Demutualization was substantial and the strategic direction of Manulife was towards Demutualization;

(za) it failed to instruct McGuinness to change the assumption that the likelihood of Demutualization was remote and the Ownership Rights had no material value after the strategic planning session in June 1996 when D'Alessandro said that he planned to initiate a strategy to the board to pursue Demutualization, that Manulife needed to do it on its own timetable and that probably meant fairly soon;

(aa) it failed to appreciate that it could preserve and protect the Ownership Rights or the Voting Rights of the members of the Class at no additional cost or material risk to Manulife by structuring the transaction with LOB as an indemnity reinsurance agreement or as an assumption reinsurance agreement with a specific reservation of Ownership Rights or Voting Rights;

(bb) it instructed McGuinness that the likelihood of Demutualization was remote without considering fairly, reasonably or at all whether there was a realistic prospect or realistic possibility of Demutualization;

(cc) it represented to the Supervisor that the likelihood of Demutualization was remote without considering fairly, reasonably or at all whether there was a realistic prospect of Demutualization and did not disclose that at a strategic planning session in June 1996 D'Alessandro said that he planned to initiate a strategy to the board to pursue Demutualization, that Manulife needed to do it on its own timetable, that probably meant fairly soon and that D'Alessandro instructed Guloien to look into whether Manulife would keep a par surplus fund in the event of Demutualization;

(dd) it failed to do any or any reasonable due diligence before advising the Supervisor and McGuinness that the prospect of Demutualization was remote and that the Ownership Rights had no material value;

(ee) it erroneously concluded that the prospect of Demutualization was remote and the Ownership Rights had no material value when, in fact, the prospect of Demutualization was reasonably high and not remote and the Ownership Rights had material value;

(ff) it failed to reconsider its 1990 decision to transfer the Barbados Policies in light of the Sunset Clause and the June, 1996 White Paper which

demonstrated that legislative and regulatory changes would be enacted on or about March 31, 1997 that would or probably would permit it to Demutualize;

(gg) it failed to amend its instructions to its employees to transfer the Barbados business in light of the anticipated legislative and regulatory changes to be enacted on or after March 31, 1997 that would permit it to Demutualize;

(hh) it failed to instruct its employees to preserve the rights of the members of the Class to participate on Demutualization as a term of the transfer of the Barbados Policies;

(ii) it failed to consider an alternate structure of dealing with LOB that would preserve the right of the members of the Class to participate if Manulife Demutualized, preferring to eliminate a contingent liability of no material risk to preserving the Ownership Rights or the Voting Rights of the members of the Class;

(jj) it failed to institute any or any reasonable system to ensure that the Ownership Rights or the Voting Rights of the members of the Class were protected in the event of a transfer of the Barbados Policies;

(kk) it failed to have its board of directors consider whether or not to preserve the Ownership Rights or the Voting Rights of the members of the Class after the government disclosed in January, 1996 and in its June, 1996 White Paper that larger Mutual Insurance Companies, such as Manulife, would be permitted or probably would be permitted to Demutualize on or about March 31, 1997;

(ll) it deprived the members of the Class of the opportunity of participating in the event of Demutualization by failing to have its board of directors consider this issue in the period January 1, 1996 to December 31, 1996;

(mm) it failed to advise the Superintendent, the Class and OSFI that D'Alessandro planned to initiate a ~~process~~ strategy to the board through which Manulife ~~began to explore the possibility of~~ would pursue a strategy to the board to pursue Demutualization in a timely manner and that probably meant fairly soon;

(nn) it failed to initiate a process through which Manulife began to explore the possibility of Demutualization before November 14, 1996;

(oo) it failed to advise the Supervisor at the November 14, 1996 hearing that Manulife would soon initiate a strategy or process through which Manulife would begin to explore the possibility of Demutualization, that the Sunset Clause and the June, 1996 White Paper demonstrated that there would be legislative and regulatory change in Canada on or about

March 31, 1997 and that the conclusions expressed in the Eckler report were erroneous;

(pp) it met twice secretly with the Supervisor and failed to disclose these meetings to the members of the Class, OSFI and the Minister of Finance;

(qq) it persuaded Hymans Robertson to change its draft report, failed to give all relevant information to Hymans Robertson including that D'Alessandro said at the strategic planning session in June 1996 that he planned to initiate a strategy to the board to pursue Demutualization, that it needed to do it on its own timetable and that probably meant fairly soon, and failed to disclose this ~~change~~ strategy or these facts to the members of the Class, OSFI and the Minister of Finance;

(rr) it failed to disclose to the members of the Class, OSFI and the Minister of Finance the existence of Hymans Robertson's draft report, final report and letter of transmittal;

(ss) it failed to disclose to the members of the Class, OSFI and the Minister of Finance that LOB had twice secretly met with the Supervisor and agreed to pay the Special Dividend;

(tt) it made the misrepresentation or was a party to the making of the misrepresentation that the Special Dividend had a present value of BDS $7.2 million when it knew the present value was approximately BDS $500,000;

(uu) it failed to disclose to the members of the Class that the Special Dividend had a stated present value of BDS $7.2 million only for the purpose of optics and that the true present value was approximately BDS $500,000;

(vv) it failed to disclose to the Supervisor, OSFI and the Minister of Finance that the present value of the Special Dividend was approximately BDS $500,000, not the BDS $7.2 million stated in the Sanction;

(ww) it failed to structure the transaction with LOB as an indemnity reinsurance agreement or as an assumption reinsurance agreement with a specific reservation of Ownership Rights or Voting Rights when it knew that if it had done so the financial statements of Manulife would reflect those transactions exactly as the May 30, 1996 Agreement was reflected and there would be no additional cost or material risk to Manulife ~~if it did so~~;

(xx) it failed to do those reasonable acts which would have preserved the Ownership Rights or the Voting Rights of the members of the Class; and

(yy) it failed to unequivocally recognize the members of the Class as owners of Manulife.

THE DAMAGES SUFFERED BY THE MEMBERS OF THE CLASS

137. The plaintiffs and each member of the Class have suffered damages and loss as a result of Manulife's negligence and breach of fiduciary duty particularized above.

138. If Manulife had acted fairly and ~~honourably~~reasonably, it would not have entered into the May 30, 1996 Agreement or if it did so, it would have preserved the Ownership Rights and the Voting Rights of the members of the Class ~~would have been preserved and the Supervisor would not have issued~~ and the Sanction~~, OFSI would not have recommended approving the May 30, 1996 Agreement~~ and the Minister of Finance's ~~would not have issued his~~ approval on December 20, 1996 would have preserved the Ownership Rights.

139. The plaintiffs plead that the compensation offered to Eligible Policyholders under the Plan of Demutualization was fair and equitable.

140. Each of the members of the Class failed to receive the cash equivalent of the Common Shares or other compensation each should have received in accordance with the formula for payment under the Plan of Demutualization at the date of Demutualization or, in the alternative, has suffered foreseeable damages equal to the value of such Common Shares and other compensation.

141. Manulife has precise knowledge of the information necessary to apply the formula to calculate the compensation for each member of the Class had each been recognized as an Eligible Policyholder. Manulife also has the ability to calculate the number of Common Shares or other compensation each member of the Class would have received under the Plan of Demutualization. Thus, the compensation or damages can be assessed globally obviating the need for individual references.

142. As a result of Manulife's conduct, the plaintiffs and the other members of the Class have suffered foreseeable loss and/or damages, being:

(a) the cash equivalent of Common Shares or other compensation (plus compound interest thereon) they would have received had they been recognized as Eligible Policyholders when Manulife Demutualized; or

(b) the value of damages, being the value of the Common Shares and other compensation they would have received had they been recognized as Eligible Policyholders when Manulife Demutualized plus compound interest thereon.

THE CLAIMS FOR DAMAGES AND COSTS INCLUDE THE COSTS OF ADMINISTRATION

143. The plaintiffs and the other Class members are also entitled to recover as damages or costs, the costs of distributing the recovery in this action, costs that will probably exceed $3,000,000.

PUNITIVE DAMAGES

144. The plaintiffs plead that Manulife's conduct was arrogant, high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful,

willful, in intentional disregard of the Ownership Rights and Voting Rights of the members of the Class, and indifferent to the consequences.

145. Manulife highjacked or was a party to the highjacking of the administrative process in Barbados. It made the misrepresentation or was a party to making the misrepresentation to the Supervisor that the Special Dividend had a present value of BDS $7.2 million when it knew the misrepresentation was for the purpose of optics only, and that the present value of the Special Dividend was approximately BDS $500,000. It rewrote or caused to be rewritten both the Eckler Report and the Hymans Robertson report, suppressed the true value of the Special Dividend and failed to disclose to the Supervisor the substance and existence of the June, 1996 White Paper as part of a pattern of deception and misconduct.

146. When Manulife intentionally failed to disclose to the members of the Class, to OSFI and to the Minister of Finance that it had twice met secretly with the Supervisor and that the Special Dividend did not have a present value of BDS $7.2 million, it disenfranchised, expropriated, extinguished or attempted to disenfranchise, expropriate or extinguish the Ownership Rights and the Voting Rights of the members of the Class, who were among the poorest and most vulnerable of all Manulife's participating policyholders.

147. For such abhorrent conduct, Manulife is liable to pay punitive damages.

STATUTES

148. The plaintiffs plead and rely upon the *Insurance Companies Act*; the *Act*; the *CBCA*; the Conversion Regulation; the *Courts of Justice Act*; Regulation P.C. 1999-422; the *Canadian and British Insurance Companies Act*; *An Act to Amend the Canadian and British Insurance Companies Act*, S.C. 1957, c.11, s. 4; *Winding-up Act*, R.S.C. 1985, c.W-11, s. 95; *Canadian Bill of Rights*, S.C. 1960, c.44, s. 2(e); the *Insurance Act* of Barbados, ss. 34, 35, 35A and 36; ~~and~~ the Constitution of Barbados, ss. 1, 16, 18(8) and 18(9) and the Rules of Professional Conduct of the Canadian Institute of Actuaries.

PLACE OF TRIAL

149. The plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

Date: December 3, 2001

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MANDEVILLE et al. vs. THE MANUFACTURERS LIFE INSURANCE COMPANY

Plaintiffs | Defendant

Court File No. 01-CV- 221418

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

AMENDED FURTHER FRESH STATEMENT OF CLAIM

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