

Court file no. 1292/97

**ONTARIO COURT (GENERAL DIVISION)**

In the matter of a Claim under the  
Class Proceedings Act, S.O. 1992, c. 6

BETWEEN:

DIRECTRIGHT CARTAGE LTD.

PLAINTIFF(S)

and

(Court seal)

LONDON LIFE INSURANCE COMPANY

DEFENDANT(S)

**FRESH AS AMENDED**

**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 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: May 23, 1997

Issued by \_\_\_\_\_  
Local registrar

Address of court office:

45 Main Street East  
Hamilton, Ontario  
L8N 1E9

*(Name, address and fax number of each defendant)*

TO:

LONDON LIFE INSURANCE COMPANY  
255 Dufferin Avenue  
LONDON, Ontario  
N6A 4K1

## CLAIM

1. The Plaintiff claims:
  - (a) Damages for misrepresentation;
  - (b) Damages for breach of contract, or alternatively, specific performance;
  - (c) Damages for breach of fiduciary duties;
  - (d) Rectification, rescission, restitution and injunctive relief as may be deemed appropriate by this Honourable Court in the circumstances;
  - (e) Punitive, aggravated and exemplary damages;
  - (f) Pre and Post Judgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C43;
  - (g) Costs on a solicitor and client basis;
  - (h) Such further and other relief as this Honourable Court may deem just.

## THE PARTIES

2. The Plaintiff, Directright Cartage Ltd. ("Directright"), is a corporation incorporated pursuant to the Laws of the Province of Ontario carrying on business in the City of Oakville, in the Regional Municipality of Peel.

3. The Defendant, London Life Insurance Company ("London Life"), is a Canadian Federal Corporation with its head office in the City of London, in the County of Middlesex carrying on business as a provider of insurance products.

#### THE FACTS

4. In or about the month of July, 1989, Paul Enright ("Enright"), President of Directright, met with a London Life agent for the express purpose of discussing life insurance products.

5. Similar meetings took place at various times between other individuals ("the Class Members") and London Life agents again for the express purpose of discussing life insurance products.

6. At the meeting of July, 1989 between Enright and a London Life agent, the London Life agent represented to Enright that a "premium offset" Whole Life Insurance Policy from London Life would best suit his needs and the needs of Directright.

7. At similar meetings between the various Class Members and London Life agents at various times, the same, similar or other representations were made to the effect that a "premium offset" Whole Life Insurance Policy from London Life would best suit the needs of the various Class Members, that premiums on the Class Members' policies would only be payable for a fixed number of years or a limited period of time, that the Class Members' policies would have certain total policy values at a specified point in time, that Class Members would participate by way of annual dividends that a certain amount of insurance would be available upon death if certain premiums were paid, that Class Members would receive an income from the policies for a specific period of time and/or that the size, financial strength and reputation of London Life was such that the Plaintiff and Class Members could rely on the representations as guaranteed. Such policies are herein referred to as "premium offset" policies.

8. The recommended "premium offset" Whole Life Insurance Policy was sold on the basis that premiums would be required to be paid for only a limited period of time in order to have the policy fully paid.

9. A "Premium offset" policy is designed to require that the policyholder make payment of premiums only in the early years of the term of the insurance. The premiums paid are significantly higher than would be paid under a normal Whole Life Insurance Policy. The premiums paid are to be invested by the insurer and are intended to generate sufficient growth such that the gain realized on the premiums invested covers future premium payments, contributes to policy values and/or allows for the payment of income from the policy.

10. In this manner, the premiums offset in that they are funded through the growth of the premiums originally paid by the policyholder instead of through continuing payment.

11. Whole Life Insurance Policies are designed to accumulate cash values and surrender values and are intended to remain in force for the entire life of the insured.

12. In contrast, less expensive Term Life Insurance Policies do not accumulate cash values nor surrender values and are designed to only pay death benefits in the event of the death of the insured during the term of the coverage.

13. Whole Life Insurance Policies and particularly "Premium offset" Whole Life Insurance Policies were far more profitable for London Life than Term Life Insurance Policies.

14. "Premium offset" Whole Life Insurance Policies were represented by London Life as requiring premium payments for only a specific limited period of time.

15. It was represented to Enright on behalf of Directright and relied on by him that Directright would be required to make 9 (nine) annual premium payments of approximately \$6,658.99 each in order to purchase \$800,000.00 of Whole Life Insurance.

16. Similar representations were made to various Class Members by London Life agents at various times with respect to policies or changes to policies for the Class Members.

17. London Life provided Enright with computer-generated illustrations and promotional materials and provided London Life agents with training materials and charts all of which promoted the sale of the said Policy and of policies to Class Members. These materials were developed by London Life's Head Office in London, Ontario as part of an overall scheme to mislead customers into believing that their "Premium offset" Whole Life Insurance Policies had attributes which, in fact, they did not possess.

18. The materials along with an orchestrated set of sales techniques, misrepresented the terms, benefits and advantages of the "Premium offset" Whole Life Insurance Policies in order to induce the Plaintiff and Class Members to purchase these policies. The illustrations and charts showed the Class Members' premiums ending after a fixed number of years or a limited period of time, showed Class Members having income available for a specified period of time and/or showed Class Members having certain total policy values at a point in time, which values would be available to offset policy premiums for retirement or other income or for other purposes.

19. London Life's agents attended training sessions and/or were provided with sales manuals and documentation, all of which were designed to encourage the agents to rely upon the computer generated illustrations and charts to sell the "Premium offset" Whole Life Insurance Policies. The agents were not informed of the real risks and costs inherent in the "Premium offset" Whole Life Insurance Policies. London Life's agents were provided with software and/or sample illustrations and charts which allowed them to demonstrate the manner in which the "Premium offset" Whole Life Insurance Policies operated for potential policyholders.

20. London Life's representations with respect to the "Premium offset" Whole Life Insurance Policies were false, deceptive and misleading whether by misrepresentation or non-disclosure. London Life's dividend scales, interest rate, management of the participating account and investment return projections and resultant policy and dividend illustrations and charts were inadequate and inconsistent with or contrary to London Life's internal forecasts, estimates, analysis or projections concerning future interest rates or dividends.

21. London Life knew, or ought to have known, that the said policies would not perform as forecasted in the sales illustrations and charts. London Life knew or ought to have known that in order to maintain the forecasted cash values of the policies, it would be necessary for the Plaintiff and Class Members to make additional payment of premiums and that the obligation to pay premiums would continue for a period of years substantially in excess of the number of years that had been represented to the Plaintiff and Class Members as the requirement for full payment of the premium obligations.

22. London Life omitted from its illustrations, charts and sales materials and concealed from its agents and customers including the Plaintiff and Class Members, material facts regarding the London Life illustrations and performance of these policies, including such facts as the extreme volatility of the products, the manner in which it managed the participating account, the highly interest-rate sensitive nature of the illustrations used to induce sales of the policies, and the substantial effect of even minor variations in interest rates on the performance illustrated which would result in premium payments not offsetting as represented or certain other policy benefits not being received.

23. This course of conduct was conceived with the intention of increasing sales of the "Premium offset" Whole Life Insurance Policies. These policies involved larger premium payments and specifically, larger premium payments at the beginning of the terms, thus generating larger fees and larger commissions than other life insurance policies.

24. London Life purported to include written disclaimers in some of the sales materials regarding the "Premium offset" Whole Life Insurance Policies and either failed to provide same to, or intentionally concealed them from, potential policyholders. The said disclaimers were misleading and inaccurate as follows:

- (a) "Current Dividends" were, in fact, artificially inflated and did not reflect actual investment returns;
- (b) London Life knew or ought to have known that investment returns would decrease dramatically in the near future and failed to provide this information to the Plaintiff and Class Members;

- (c) London Life failed to inform the Plaintiff and Class Members that a slight reduction in the dividend scale would cause not only a reduction in the death benefit illustrated but would also cause premium payment obligations to continue for a significant period of time beyond the date on which it was represented that they would end and would result in total policy values or income benefits not reaching illustrated, represented or assured levels.

25. London Life presented the attributes of the "Premium offset" Whole Life Insurance Policies as well as the disclaimers in a false and misleading manner and London Life is now estopped from relying on the said disclaimers. The Plaintiff specifically pleads and relies upon the provisions of the *Business Practices Act* R.S.O. 1990, c. B. 18 and the *Consumer Protection Act*, R.S.O. 1990, c. C. 31.

26. As a result of and in reliance on the representations of London Life as set-out above, the Plaintiff, Directright, entered into a contract to purchase London Life Policy number 7272056-8 ("the Policy") and Class Members entered into contracts to purchase their respective London Life policies of insurance, or made changes to such policies. Subsequent references to purchase of a policy by a Class Member includes changes to policies by Class Members where applicable.

27. London Life has informed the Plaintiff that it will be required to pay premiums for a period of several years beyond the period represented at the time of contracting in order to maintain the Policy in good standing. The Plaintiff has been further informed by London Life that the cash value and surrender value of the Policy does not presently reflect the values represented at the time of contracting and upon which the Plaintiff relied in making its decision to purchase the Policy.

28. London Life has similarly informed the Class Members as set-out above.

29. In or about 1991, London Life began to reduce the dividends payable on its policies but failed to so inform policyholders, including the Plaintiff and the Class Members and as a result thereof, the Plaintiff and the Class Members continued to make premium payments without knowing that the assumptions upon which they had purchased the policies had changed dramatically.

30. The Plaintiff and Class Members have suffered damages in that they have been or will be required to make further premium payments. In addition, the cash value or surrender value of the policies and/or insurance coverage (death benefit) and/or the income benefit under the policies will be or has been significantly compromised.

31. Failure to make additional premium payments will result or has resulted in the policies lapsing and the benefit of the policies will be lost or has been lost.

32. Further, the Plaintiff and certain Class Members have suffered loss in that they were induced to replace existing policies with new policies, in some cases using in whole or in part the policy values

## MISREPRESENTATION

33. London Life misrepresented the nature of the "Premium offset" Whole Life Insurance Policies such that the Plaintiff and Class Members were induced to purchase policies of insurance which did not, in fact, possess the qualities which had been ascribed to them by London Life and the Plaintiff and Class Members allege that had they known the true nature of the said policies they would not have purchased them.

34. The Plaintiff and Class Members reasonably relied upon the representations of London Life to their detriment and plead and rely upon the doctrine of detrimental reliance.

35. London Life owed a duty of care to the Plaintiff and Class Members to accurately represent their products and, in particular, to not mislead the Plaintiff and Class Members in order to induce them to purchase a product which was not, in fact, suited to their needs but rather would provide London Life with the greatest profits, and a duty to warn the Plaintiff and Class Members:

- (a) of all the material facts affecting the decision to purchase a policy of insurance;
- (b) that the policies being purchased were not payable on a limited term and that the forecasts and other contents of any illustrations or charts were not guaranteed;
- (c) at the time that London Life knew or ought to have known, that the dividend performance on the policies was going to be significantly below that which had been represented to the Class Members, and to inform the Class Members of that fact so that they could make an informed decision whether to retain the policies and continue payments or choose alternatives for insurance and/or other investments.

## BREACH OF CONTRACT

36. The illustrations, charts and sales materials used to induce the Plaintiff and Class Members to enter into contracts of insurance and the representations pleaded in paragraph 7 above formed essential terms of the said contracts which London Life has breached.

## BREACH OF FIDUCIARY DUTY

37. London Life owed fiduciary duties to some or all Class Members including a duty of utmost good faith which London Life breached by its conduct pleaded herein. As a result, Class Members have suffered damages and London Life has been unjustly enriched.

38. Due to the intentional and wrongful conduct of London Life, the Plaintiff and all Class Members are entitled to recover punitive, aggravated and exemplary damages.

39. The Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act*, S.O. 1992, c. 6.

## RELIEF REQUESTED

40. The Plaintiff and all Class Members claim as against the Defendant as follows:

- (a) Damages for misrepresentation;
- (b) Damages for breach of contract, or alternatively, specific performance;
- (c) Damages for breach of fiduciary duties;

- (d) Rectification, rescission, restitution and injunctive relief as may be deemed appropriate by this Honourable Court in the circumstances;
- (e) Class-wide punitive, aggravated and exemplary damages;
- (f) Pre and Post Judgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C43;
- (g) Costs on a solicitor and client basis;
- (h) Such further and other relief as this Honourable Court may deem just.

41. The Plaintiff proposes that this action be tried in the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth.

*(Name, address, telephone and fax numbers of plaintiff's solicitor or plaintiff)*

Date of issue: May 23, 1997

SCARFONE, HAWKINS LLP  
Barrister(s) and Solicitor(s)  
Suite 1050-120 King Street West  
HAMILTON, Ontario  
L8N 3P9

Attention: DAVID THOMPSON  
JEFFREY C. TEAL

Tel: (905) 523-1333  
Fax: (905) 523-5878

Solicitors for the Plaintiff

DIRECTRIGHT CARTAGE LTD.

PLAINTIFF(S)

and

LONDON LIFE INSURANCE COMPANY

DEFENDANT(S)

(Short title of proceeding)

**Court file no.**

**ONTARIO COURT (GENERAL DIVISION)**  
Proceeding commenced at Hamilton

**FRESH AS AMENDED**  
**STATEMENT OF CLAIM**  
**(GENERAL)**  
*(Form 14A under the Rules)*

DYE & DURHAM CFS  
*Name, address, telephone and fax numbers of solicitor or party*

SCARFONE, HAWKINS LLP  
Barrister(s) and Solicitor(s)  
Suite 1050-120 King Street West  
HAMILTON, Ontario  
L8N 3P9

Attention: DAVID THOMPSON  
JEFFREY C. TEAL

Tel: (905) 523-1333  
Fax: (905) 523-5878

Solicitors for the Plaintiff