

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

B E T W E E N:

DAVID HUMPHREYS, JIM KENNEY, BETTY CHOU,  
WILLIAM G. ARMSTRONG, RUPERT RONALD, BARB MONTESANTO,  
BILL AYRE AND BILL DUNFIELD

Plaintiffs

and

ROBERT JAMES ADAMS, SELECT FINANCIAL SERVICES INC.,  
THE ESTATE OF RON KERFOOTE, DECEASED, THE ESTATE OF DERWIN TREVOR  
DAVIS, DECEASED, SHIRLEY DAVIS, ART KLASSEN  
WILLEM TERMORSHUIZEN, ROBERT ADOURIAN,  
MURRAY HUFFMAN AND JOHN BOOTH

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.  
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 does not have a lawyer, serve it on the plaintiff, 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: March 2, 2001

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

Address of court office:  
45 Main Street East, Suite 110  
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Solicitor for the Defendant, John Booth

## CLAIM

### RELIEF SOUGHT

1. The Plaintiffs claim, on their own behalf and on behalf of all Class Members as set out below:
  - (a) A declaration that any limitations periods known at law that might affect the claim of any of the Plaintiffs and Class Members shall not toll between the commencement of the action bearing court file no. 5526/98 (Hamilton) as issued September 15, 1998, and the commencement of this action under the *Class Proceedings Act*;
  - (b) Damages for breach of contract in the sum of \$10,000,000.00;
  - (c) Damages for negligent misrepresentation in the sum of \$10,000,000.00;
  - (d) Damages for negligence in the sum of \$10,000,000.00;
  - (e) Damages for breach of fiduciary duty in the sum of \$10,000,000.00;
  - (f) Damages for loss of opportunity in the sum of \$10,000,000.00;

- (g) Punitive, aggravated and exemplary damages in the sum of \$1,000,000.00;
2. Prejudgment and post-judgment interest on the amounts claimed in paragraph 1 above pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c.43, as amended;
  3. Costs on a solicitor-and-client basis;
  4. Such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

### **THE PLAINTIFFS**

5. The Plaintiffs are all persons who purchased units of one or more limited partnerships distributed, promoted, issued, sold or organized by the Defendants, or some of them, pursuant to the *Securities Act*, specifically:
  - (a) The Representative Plaintiff, Betty Chou, is/was a unit holder in the “Winterford Limited Partnership”. The following sub-class of Persons were/are unit holders in the “Winterford Limited Partnership”: June Ammerman, Kenneth Askey, Ann

Eygenraam, John Jamieson, James McDowell, William K. Sims and Evelyn Sims, Jerome Selinger, Annie Sterenberg, Estate Trustee of the Estate of Peter Sterenberg, deceased, John Mustard, Barb Warneke and Eva;

- (b) The Representative Plaintiff, David Humphreys, is/was a unit holder in the “Wiltshire Limited Partnership”. The following sub-class of Persons were/are unit holders in the “Wiltshire Limited Partnership”: Dorothy Adams, Chuck Aherne, Julianna Boem, Anne Marie Curto, Don Faris, David Frost, Marilyn Gerritsen, Andy Lapstra, David Lee, Earl Penick, Marilynn Henderson, Tim Degroote, Gerry Taylor, Denise Wolpert, the Orlando Number One Limited Partnership, and the Orlando Number Two Limited Partnership;
- (c) The Representative Plaintiff, Jim Kenney, is/was a unit holder in the “Winchester Limited Partnership”. The following sub-class of Persons were/are unit holders in the “Winchester Limited Partnership”: Janet Adams, Anne Denholm, Mary-Jane Dolbear, Elaine Fawcett, Margaret Koncut, Margaret Koncut, Estate Trustee of the Estate of George Kruchka, deceased, Susan Robinson-Gray, Mary-Anne Trainor, David Wenzel, Margaret Wiebe, Tammy Ho, Cor Vandorp and Martha Krueger;

- (d) The Representative Plaintiff, Bill Ayre, is/was a unit holder in the “Wilmont Limited Partnership”. The following sub-class of Persons were/are unit holders in the “Wilmont Limited Partnership”: Jessie Cooper, Florence Curran, Mario Keshinian, Yvonne Lapstra, Jim Maga, David McClory, Anne Ten-Tusscher, Alison Townsend, Norah Heffernan and Bill Gerritsen;
- (e) The Representative Plaintiff, Barb Montesanto, is/was a unit holder in the “Waterford Limited Partnership”. The following sub-class of Persons were/are unit holders in the “Waterford Limited Partnership”: David Lee as Estate Trustee of the Estate of Gwen Day, deceased, Dawn Faris, John Miles, George Pott, Catherine Riley, 914892 Ontario Limited, Doug Yardley, Don Wells and Jana Sury;
- (f) The Representative Plaintiff, Bill Dunfield, is/was a unit holder in the “Whittleden Limited Partnership”. The following sub-class of Persons were/are unit holders in the “Whittleden Limited Partnership”: James J. Lindamood and Joan Lindamood;
- (g) The Representative Plaintiff, William G. Armstrong, is/was a unit holder in the “Orlando Number One Limited Partnership”, which is/was a unit holder of Wiltshire Limited Partnership. The following sub-class of Persons were/are unit

holders in the “Orlando Number One Limited Partnership”: Anne Bowen, Douglas Bruce, Carol Bullock, Rachel Gies, Bill Greenwood, Jerry Hamstra, Rudy Huist, William McDonald, Alan Smith, Lloyd Wilson, David Lee, Andy Lapstra, Jacqueline Beevers, and Wayne Page;

- (h) The Representative Plaintiff, Rupert Ronald, is/was a unit holder in the “Orlando Number Two Limited Partnership”, which is/was a unit holder of Wiltshire Limited Partnership. The following sub-class of Persons were/are unit holders in the “Orlando Number Two Limited Partnership”. Brian Cumming, Ray Hammond, Steve Johnson, Gary Knapman, Joy Lefebvre, Andrew Packer, Rupert Ronald, Dennis Rowley, Ian Scott, Barb Thomson, Rick Trainor, Jack Vogel, John Warneke, Jim Wiebe, Sau-Lan Kwan, Ruth Lee, Paul Middleton, Robert Morrow and Audrey Scott.
6. The six “W” limited partnerships listed in the above-noted paragraph shall in this claim be referred to collectively as the “W-6 Limited Partnerships”. The two “Orlando” limited partnerships listed in the above-noted paragraph shall in this claim be referred to collectively as the “Orlando Partnerships”.



7. The quantum and dates of the Plaintiffs' and Class Members' individual investments in purchases of limited partnership units are more particularly set-out in the schedule attached hereto as "Schedule 'A'".

**THE DEFENDANTS**

8. The Defendant, Robert James Adams, (hereafter “Adams”), resides in the Province of Ontario and at all material times was a sales person as defined under the *Securities Act*, and carried on business as an investment advisor and promoter of the six W-6 Limited Partnerships. Adams was an agent or employee of Select Financial Services Inc. (hereafter “Select”). Adams was a director, the controlling mind, and administrator of First Orlando GP Inc., the General Partner of the Orlando Number One Limited Partnership. Adams was a director, the controlling mind, and administrator of Wilmont GP Limited, the General Partner of the Wilmont Limited Partnership. Adams was a director, the controlling mind, and administrator of Wiltshire Genpar Limited, the General Partner of the Wiltshire Limited Partnership. Adams was a director, the controlling mind, and administrator of Winterford Genpar Limited, the General Partner of Winterford Limited Partnership.
  
9. The Defendant, Select is a Corporation under the laws of Ontario and was and is registered as a Limited Market Dealer and a Mutual Fund Dealer under the *Securities Act* and carries on business in Ontario. At the all material times, Select was the broker, employer, principal and sponsor of the salespersons selling the limited

partnerships investments described in this claim. Select was the agent in the offering memorandum of each offering of limited partnership units.

10. The Defendant, Willem Termorshuizen, (hereafter "Termorshuizen") a resident of Ontario, was at all material times an investment adviser, employed by and/or agent for the Defendant, Select and sold units in the W-6 Limited Partnerships to various Plaintiffs and Class Members.
11. The Defendant, Derwin Trevor Davis, deceased, (hereafter "Davis") was at all material times an officer, director, employee and controlling mind of the Defendant, Select.
12. The Defendant, Shirley Davis, a resident of Ontario, was at all material times a director of Winterford Genpar Limited, and a director, officer and employee of the Defendant, Select.
13. The Defendant, Ron Kerfoote, deceased (hereafter "Kerfoote") was at all material times a resident of Ontario, and at all material times was a financial planner and investment advisor and an agent or employee of the Defendants, Select and Adams. Kerfoote sold units in the W-6 Limited Partnerships to various Plaintiffs and Class Members. He was also a director of Waterford Genpar Limited, the general partner of the Waterford Limited Partnership.

14. The Defendant, Art Klassen (hereafter “Klassen”), a resident of Ontario, was at all material times a financial planner and investment advisor and an agent or employee of the Defendants, Select and Adams. Klassen sold units in the W-6 Limited Partnerships to various Plaintiffs and Class Members.
15. The Defendant, Robert Adourian, (hereafter “Adourian”), resides in the Province of Ontario and was at all material times and is presently a member of the Law Society of Upper Canada. He was the solicitor for each of the General Partners of the W-6 Limited Partnerships, for each of the W-6 Limited Partnerships, and for each of the limited partners of each W-6 Limited Partnership.
16. The Defendant, Murray Huffman, (hereafter “Huffman”), is and was at all material times a Chartered Accountant in Ontario and resident of the Province of Ontario. Huffman was the accountant for each W-6 Limited Partnership.
17. The Defendant, John Booth (hereafter “Booth”) a resident of Ontario, was at all material times a chartered accountant, financial planner and investment adviser, an agent or employee of the Defendants, Select and Adams, and sold units in the W-6 Limited Partnerships to various Plaintiffs and Class Members. Booth was the president and

director of Second Orlando GP. Inc., the general partner of the Orlando Number Two Limited Partnership.

**THE CLASS AND SUB-CLASSES**

18. The Plaintiffs propose that the Class herein be comprised of the eight sub-classes of named Plaintiffs referred to in paragraphs 5(a) through 5(h) above and more particularly described in Schedule 'A' to this claim.

**THE ORLANDO PARTNERSHIPS**

19. In or about May, 1990, the Defendants, Adams and Select offered for sale and sold investment units in the Orlando Number One Limited Partnership. Adams was the sole director and officer of First Orlando GP Inc., the general partner of the Orlando Number One Limited Partnership. The Offering Memorandum and Limited Partnership Agreement of the Orlando Number One Limited Partnership were prepared by the Defendants, Adams and Adourian.
20. In or about October, 1990, the Defendants, Adams, Booth and Select offered for sale and sold investment units in the Orlando Number Two Limited Partnership. Booth was the sole director and officer of Second Orlando GP Inc., the general partner of the Orlando Number Two Limited Partnership. The Offering Memorandum and Limited

Partnership Agreement of the Orlando Number Two Limited Partnership were prepared by the Defendants, Adams and Adourian.

21. The Orlando Partnerships were developed for the purpose of investing in, holding, renting and selling real property in the State of Florida, one of the United States of America.
22. In or about February and April, 1993, the Defendants, Adams and Booth, purchased or caused to be purchased units in the Wiltshire Limited Partnership on behalf of the Orlando Partnerships contrary to the terms of the Offering Memoranda and Limited Partnership Agreements of the Orlando Partnerships. Further, Adams and Booth offered for sale, marketed and sold the partnership units in the Wiltshire Limited Partnership to the Orlando Limited Partnerships contrary to sections 25(1), 38(1), 38(2), 53(1) and 72(1)(p) of the *Securities Act*.

### **THE W-6 LIMITED PARTNERSHIPS**

23. In the time spanning February 1993 to June 1994, the Defendants, Adams, Select, Kerfoote, Termorshuizen and Klassen distributed, promoted, and sold securities in the form of limited partnership units in the W-6 Limited Partnerships.

24. Units in each of the W-6 Limited Partnerships were issued and sold pursuant to Offering Memoranda prepared by the Defendants, Adams and Adourian, dated:
- (a) Wiltshire Limited Partnership, February 18, 1993;
  - (b) Wilmont Limited Partnership, June 22, 1993;
  - (c) Waterford Limited Partnership, August 27, 1993;
  - (d) Winchester Limited Partnership, November 8, 1993;
  - (e) Winterford Limited Partnership, December 21, 1993; and
  - (f) Whittleden Limited Partnership, May 16, 1994.

The General Partner of each W-6 Limited Partnership had nominal assets.

25. Each W-6 Limited Partnership featured a minimum and maximum aggregate subscriptions. The total subscription among the W-6 Limited Partnerships was in excess of \$6.7 million U.S. or nearly \$10,000,000 Canadian and involved in excess of 100 individual unit holders.
26. The Plaintiffs state and the fact is that the Defendant, Adams, was the controlling mind behind each general partner and promoter of each W-6 Limited Partnership and that he had signing authority for all general partners\* bank accounts.
27. As the controlling mind behind each general partner, Adams retained the Defendant, Adourian as legal counsel and the Defendant, Huffman as accountant for each general partner and each W-6 Limited Partnership.





**THE BANK INVESTMENT PROGRAM**

28. Each of the W-6 Limited Partnerships was set up, sold, promoted and /or operated by the Defendants, Select, Adams, Termorshuizen, Klassen, Kerfoote and Booth, Booth, and the General Partners to engage in the business of buying “discounted Standby Letters of Credit” (hereafter “SLC”) from large banking institutions around the world and then reselling SLC\*s to other large, non-banking financial institutions such as, pension funds, insurance companies and trust companies, making a profit on the rate spread. This investment scheme was promoted by Select, Adams and others under their employ and direction to the Plaintiffs and Class Members as the “Bank Investment Program” (hereafter “B.I.P.”).
29. Offering Memoranda and other documents distributed by the Defendants provided that trading in SLC\*s in the B.I.P. by each W-6 Limited Partnership would be done through “Joint Venture Agreements” between the General Partner of each W-6 Limited Partnership and one of two different “Joint Venturers”, namely, Glaeser Investment Co., Inc., a corporation based in California (hereafter “Glaeser”), or Navy Street Limited, a Bermuda corporation or Navy Street Bancorp Ltd., an Ontario company, (hereafter collectively “Navy”).

30. The Plaintiffs state and the fact is that the Defendants, entrusted with the Plaintiffs\* and Class Members' capital contributions for their partnership units in their respective W-6 Limited Partnerships, transferred those capital funds to the Joint Venturers, either Glaeser or Navy, for the purported purpose of purchasing one or more SLC's from a major bank or banks.
31. Contrary to the terms of the Offering Memoranda of each W-6 Limited Partnership and contrary to the fiduciary obligations of the Defendants, funds raised from the last three W-6 Limited Partnerships (Winchester, Winterford, Whittleden) were directed and co-mingled with funds from the first three W-6 Limited Partnerships (Wiltshire, Wilmont, Waterford) and were used to return capital to arbitrarily selected investors.
32. The Plaintiffs state and the fact is that upon the Defendants' transfer of W-6 Limited Partnership funds to either Navy or Glaeser for the purpose of purchasing SLC's, such funds were absconded by Glaeser and/or Navy, or the principals of either or both.
33. The funds raised in the sales of units of the Winchester, Winterford and Whittleden Limited Partnerships were used by Adams and Select to arbitrarily return capital to certain limited partners in the Wiltshire, Wilmont and Waterford Limited Partnerships.

34. The Plaintiffs state and the fact is that the Plaintiffs and Class Members have not received a distribution of profits nor a return of capital and further state that no SLC was ever purchased by either Joint Venturer on behalf of any one of the W-6 Limited Partnerships.

## **LIABILITY OF THE DEFENDANTS**

### **Breach of Statute**

35. The Plaintiffs and Class Members plead that Ontario securities law prescribes certain duties owed by brokers, sales agents, issuers and others, to investors and further imposes implied terms of contract and contractual duties as between brokers, sales agents, issuers and others, and investors.
36. The Plaintiffs state and the fact is that units of each W-6 Limited Partnership were issued, distributed, organized, promoted and sold by Select, Adams, Termorshuizen, Klassen, Kerfoote and Booth to the Plaintiffs and Class Members in contravention of sections 25(1), 38(1), 38(2), 53(1) and 72(1)(p) of the *Securities Act*, the particulars of which are set-out below.

37. Select and its sales agents did not meet and maintain the registration requirements under section 25(1) of the *Securities Act*.
38. Select and its sales agents made written and oral representations to all Plaintiffs and Class Members that any limited partner may redeem all or part of his or her limited partnership unit upon sixty (60) days written notice to the general partner, contrary to section 38(1) of the *Securities Act*.
39. Select and its sales agents made written and oral representations to all Plaintiffs and Class Members that these securities would yield annual returns in excess of twenty (20) percent, contrary to section 38(2) of the *Securities Act*.
40. Select and its sales agents failed to prepare and file a prospectus in respect of the offering of these securities, contrary to section 53(1) of the *Securities Act*.
41. The Defendants, Select, Adams and Adourian, constructed the Offering Memoranda of each W-6 Limited Partnership to state that the partnership units were offered pursuant to the “seed capital” exemption from prospectus requirements of section 72(1)(p) of the *Securities Act*. However, the offering did not meet the prospectus exemption in that:

- (a) solicitations were made to more than fifty prospective purchasers;
- (b) each purchaser was not provided with substantially the same information that a prospectus would provide;
- (c) the purchasers were not investors who by virtue of their net worth and investment experience were able to evaluate the prospective investment on the basis of the information provided; and,
- (d) the promoter had acted as a promoter of another issuer pursuant to this exemption within the previous twelve months.

### **Breach of Contract**

42. The Defendants, Select, Adams, Termorshuizen, Klassen, Kerfoote and Booth contracted with the Plaintiffs and Class Members that they:
- (a) would provide competent and timely investment advice connected with the Plaintiffs\* and Class Members' investment accounts;

- (b) would assist the Plaintiffs and Class Members in the management of their investment portfolios;
  - (c) would provide the Plaintiffs and Class Members with conservative investment advice and recommend investment purchases for the Plaintiffs and Class Members in accordance with the low risk tolerances of the Plaintiffs and Class Members;
  - (d) would manage the investments of the Plaintiffs and Class Members in accordance with the *Securities Act*, and Regulations thereto, the rules, regulations and by-laws of the Investment Dealers Association and Select's own internal compliance rules, policies, practices and procedures; and
  - (e) would manage the investments of the Plaintiffs and Class Members in accordance with the respective investment objectives of the Plaintiffs and Class Members.
43. It was a term of each of the agreements between each of the Plaintiffs and Class Members and each of the Defendants, Select, Adams, Termorshuizen, Klassen, Kerfoote and Booth, that these Defendants would exercise all reasonable care, skill, diligence and competence, as financial planning consultants, investment advisors,

investment brokers, in respect of all of the investment dealings between each of the Plaintiffs and Class Members and each of these Defendants.

44. The loss of capital in each W-6 Limited Partnership was caused by the breach of contract by Select, Adams, Termorshuizen, Klassen, Kerfoote and Booth, the particulars of which are set-out below:

- (a) They failed to take steps to determine the net worth, investment knowledge, experience, and risk tolerance of each of the Plaintiffs and Class Members;
- (b) They failed to take steps to properly assess the reliability, credibility and suitability of Navy and Glaeser as intermediaries and as custodians of the funds of the W-6 Limited Partnerships;
- (c) They failed to take steps to ensure that funds entrusted to Navy and Glaeser would be used to actually purchase SLCs;
- (d) They failed to take steps to retain control and security over W-6 Limited Partnership funds entrusted to Navy and Glaeser;



- (e) They failed to assess the credibility of the Joint Venturers and the B.I.P. despite the fact that the Royal Canadian Mounted Police had issued warnings about similar investment scams;
- (f) They failed to provide copies of the relevant Offering Memoranda, Partnership Agreements and Joint Venture Agreements to the Plaintiffs and Class Members;
- (g) They breached contractual duties imposed upon them by the *Securities Act*, the Regulations made thereunder, the general by-laws, rules and regulations of the Investment Dealers Association and Select's own guidelines, policies, practices and procedures.

45. In addition to the above, it was a term of each of the agreements between each of the Plaintiffs and Class Members and the Defendant, Select, that Select would supervise and monitor the Defendants, Adams, Termorshuizen, Klassen, Kerfoote and Booth, to ensure that the sales of the partnership units was in accord with Ontario securities law and, in particular:

- (a) that each investor would be provided with substantially the same information that is provided in a prospectus;

- (b) that each sales representative and Select met and maintained all registration requirements under applicable Ontario securities legislation; and,
  - (c) that each Plaintiff and Class Member had the requisite net worth and investment experience to purchase investment units of the limited partnerships.
46. The loss of capital in each W-6 Limited Partnership was caused by the further breach of contract by Select the particulars of which are set out below:
- (a) Select failed to ensure that steps were taken by their agents and employees to determine the net worth, investment knowledge, experience, and risk tolerance of the Plaintiffs and Class Members;
  - (b) Select failed to ensure that steps were taken by their agents and employees to properly assess the reliability, credibility and suitability of Navy and Glaeser as intermediaries and as custodians of the funds of the W-6 Limited Partnerships;
  - (c) Select failed to ensure that steps were taken to ensure that funds entrusted to Navy and Glaeser would be used to actually purchase SLCs;

- (d) Select failed to ensure that steps were taken to retain control and security over W-6 Limited Partnership funds entrusted to Navy and Glaeser;
- (e) Select failed to ensure that the credibility of the Joint Venturers and the B.I.P. were assessed as appropriate investments despite the fact that the Royal Canadian Mounted Police had issued warnings about similar scams;
- (f) Select breached contractual duties imposed upon them by the *Securities Act*, the Regulations made thereunder, the general by-laws, rules and regulations of the Investment Dealers Association and Select\*s own guidelines, policies, practices and procedures;
- (g) Select failed to supervise Adams and other servants, agents, and employees selling units of the W-6 Limited Partnerships to the Plaintiffs and Class Members; and,
- (h) Select failed to assess and monitor the suitability of its servants, agents or employees, and their investment advice to the Plaintiffs and Class Members to purchase units in the W-6 Limited partnerships.

47. The Defendant, Adourian, contracted with the Plaintiffs and Class Members, as individual limited partners, that he:
- (a) would provide competent and timely legal advice to the Plaintiffs and Class Members respecting legal matters of the W-6 Limited Partnerships; and,
  - (b) would ensure that the offering, sale and distribution of partnership units to the Plaintiffs and Class Members was in accordance with the *Securities Act*, and Regulations thereto.
48. It was a term of each of the agreements between each of the Plaintiffs and Class Members and the Defendant, Adourian, that he would exercise all reasonable care, skill, diligence and competence, as a lawyer in respect of all of the legal matters between each of the Plaintiffs and Class Members and each of the limited partnerships, the general partners, the agent and Defendant, Select, and the Joint Venturers.
49. The loss of capital in each W-6 Limited Partnership was caused by the further breach of contract by Adourian the particulars of which are set out below:

- (a) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to determine the net worth, investment knowledge, experience, and risk tolerance of the Plaintiffs and Class Members;
- (b) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to properly assess the reliability, credibility and suitability of the Joint Venturers, Navy and Glaeser, as intermediaries and as custodians of the funds of the W-6 Limited Partnerships;
- (c) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to ensure that funds entrusted to Navy and Glaeser would be used to actually purchase SLCs;
- (d) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to retain control and security over W-6 Limited Partnership funds entrusted to Navy and Glaeser; and,

- (e) Adourian failed to ensure that the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership, did not breach contractual duties imposed upon them by the *Securities Act*, the Regulations made thereunder.
  
- 50. The Defendant, Huffman, contracted with the Plaintiffs and Class Members, as individual limited partners, that he:
  - (a) would provide competent and timely accounting advice to the Plaintiffs and Class Members respecting accounting matters of the W-6 Limited Partnerships; and,
  - (b) he would provide accounting and financial reporting services in accord with the terms of his retainer and engagement, which terms included the terms of the Offering Memoranda, the Limited Partnership Agreements, generally accepted accounting principles, and generally accepted auditing standards.
  
- 51. It was a term of each of the aforesaid agreements between each of the Plaintiffs and Class Members and the Defendant, Huffman, that he would exercise all reasonable care, skill, diligence and competence, as an accountant in respect of all of the accounting matters between each of the Plaintiffs and Class Members and each of the limited partnerships, the general partners, and the agent and Defendant, Select.

52. The loss of capital in each W-6 Limited Partnership was caused by the further breach of contract by Huffman the particulars of which are set out below:

- (a) he failed to report to the Plaintiffs and Class Members that the Defendants, Adams and Select, the general partners of each limited partnership, and that each limited partnership had failed to maintain full, complete and accurate books of account and records of the partnership business in accordance with the terms of the Limited Partnership Agreement of each limited partnership and in accordance with generally accepted accounting principles;
- (b) he failed to provide the requisite accounting statements as required of his terms of retainer and engagement and in compliance with the terms of the Limited Partnership Agreement of each limited partnership;
- (c) he failed to provide accurate accounting statements which would have revealed that the Defendants, Adams and Select, the general partners of each limited partnership, and the each limited partnership had failed to maintain full, complete and accurate books of account and records of the partnership business in accordance with the terms of the Limited Partnership Agreement

of each limited partnership and in accordance with generally accepted accounting principles and generally accepted auditing standards;

- (d) he failed to provide timely accounting statements as required by the terms of retainer and engagement and in compliance with the terms of the Limited Partnership Agreement of each limited partnership;
- (e) he failed to accurately reflect the market value of the marketable securities of the partnerships;
- (f) he failed to disclose and report with sufficient detail the related-party transactions of the partnerships;
- (g) he failed to properly report the details of the changes in the owner's equity during the period of the financial statements;
- (h) he continued in his engagement as a public accountant while knowing that there was reason to believe that the statements of the partnerships were false or misleading;



- (i) he prepared financial statements in a 'Notice to Reader' reporting format contrary to the terms of the Limited Partnership Agreement and the requirement that such reports be 'Review Engagement' or 'Audited' reporting format.

### **Negligence**

53. The Plaintiffs and Class Members plead that each of the Defendants, Select, Adams, Termorshuizen, Klassen, Kerfoote and Booth owed a duty of care to the Plaintiffs and Class Members and that these Defendants would exercise all reasonable care, skill, diligence and competence, as financial planning consultants, investment advisors, investment brokers, in respect of all of the investment dealings between each of the Plaintiffs and Class Members and each of these Defendants.
54. The loss of capital in each W-6 Limited Partnership was caused by the negligence, of Adams, Select, Termorshuizen, Kerfoote, Klassen, and Booth, the particulars of which are set-out below:
  - (a) They failed to take steps to determine the investment knowledge, experience, and risk tolerance of the Plaintiffs and Class Members;

- (b) They failed to take steps to properly assess the reliability, credibility and suitability of Navy and Glaeser as intermediaries and as custodians of the funds of the W-6 Limited Partnerships;
- (c) They failed to take steps to ensure that funds entrusted to Navy and Glaeser would be used to actually purchase SLC's;
- (d) They failed to take steps to retain control and security over W-6 Limited Partnership funds entrusted to Navy and Glaeser;
- (e) They failed to assess the credibility of the Joint Venturers and the B.I.P. despite the fact that the Royal Canadian Mounted Police had issued warnings about similar scams;
- (f) They carelessly and negligently failed to provide copies of the relevant Offering Memoranda, Partnership Agreements and Joint Venture Agreements to the Plaintiffs and Class Members;
- (g) they breached duties imposed upon them by the *Securities Act*, the Regulations made thereunder, the general by-laws, rules and regulations of the Investment Dealers Association and Select's own guidelines, policies, practices;

- (h) Select was specifically and formally directed to 'watch' the activities of Adams by the Ontario Securities Commission, however, Select failed to supervise Adams and other servants, agents, and employees selling units of the W-6 Limited Partnerships to the Plaintiffs and Class Members;
  - (i) Select failed to assess and monitor the suitability of its servants, agents or employees, including Adams and Booth and their investment advice to the Plaintiffs and Class Members to purchase units in the W-6 Limited Partnerships;
  - (j) They failed to provide timely, accurate statements of accounts to the Plaintiffs and Class Members; and,
  - (k) Despite encountering problems in procuring return of funds from the Joint Venturers, they carelessly and negligently continued to organize, promote and sell units in the Winchester, Winterford and Whittleden Limited Partnerships.
55. The Defendants, Adams, Select, Termorshuizen, Kerfoote, Klassen and Booth mismanaged the investment accounts of the Plaintiffs and Class Members by promoting and recommending the purchase and holding of units in each of the W-6

Limited Partnerships despite the fact that those securities were risky, speculative and unsuitable for the Plaintiffs and Class Members. As a result, the Plaintiffs and Class Members have lost all capital invested in the W-6 Limited Partnerships.

56. The Plaintiffs and Class Members plead that the Defendant, Adourian owed a duty of care to the Plaintiffs and Class Members and that he would exercise all reasonable care, skill, diligence and competence, as a lawyer in respect of all of the legal matters between each of the Plaintiffs and Class Members and each of the limited partnerships, the general partners, the agent and Defendant, Select, and the Joint Venturers.
57. The loss of capital in each W-6 Limited Partnership was caused by the negligence, of Adourian the particulars of which are set out below:
- (a) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to determine the net worth, investment knowledge, experience, and risk tolerance of the Plaintiffs and Class Members;
  - (b) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to properly

assess the reliability, credibility and suitability of the Joint Venturers, Navy and Glaeser, as intermediaries and as custodians of the funds of the W-6 Limited Partnerships;

- (c) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to ensure that funds entrusted to Navy and Glaeser would be used to actually purchase SLC's;
- (d) Adourian failed to ensure that steps were taken by the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership to retain control and security over W-6 Limited Partnership funds entrusted to Navy and Glaeser; and,
- (e) Adourian failed to ensure that the Defendants, Select and Adams, the general partners and each W-6 Limited Partnership, did not breach duties imposed upon them by the *Securities Act*, the Regulations made thereunder.

58. The Plaintiffs and Class Members plead that the Defendant, Huffman owed a duty of care to the Plaintiffs and Class Members and that he would exercise all reasonable care, skill, diligence and competence, as an accountant in respect of all of the

accounting matters between each of the Plaintiffs and Class Members and each of the limited partnerships, the general partners, and the agent and Defendant, Select.

59. The loss of capital in each W-6 Limited Partnership was caused by the negligence of Huffman the particulars of which are set out below:

- (a) he failed to report to the Plaintiffs and Class Members that the Defendants, Adams and Select, the general partners of each limited partnership, and the each limited partnership had failed to maintain full, complete and accurate books of account and records of the partnership business in accordance with the terms of the Limited Partnership Agreement of each limited partnership and in accordance with generally accepted accounting principles;
- (b) he failed to provide the requisite accounting statements as required of his terms of retainer and engagement and in compliance with the terms of the Limited Partnership Agreement of each limited partnership;
- (c) he failed to provide accurate accounting statements which would have revealed that the Defendants, Adams and Select, the general partners of each limited partnership, and each limited partnership had failed to maintain full, complete and accurate books of account and records of the partnership business in

accordance with the terms of the Limited Partnership Agreement of each limited partnership and in accordance with generally accepted accounting principles and generally accepted auditing standards;

- (d) he failed to provide timely accounting statements are required by the terms of retainer and engagement and in compliance with the terms of the Limited Partnership Agreement of each limited partnership;
- (e) he failed to accurately reflect the market value of the marketable securities of the partnerships;
- (f) he failed to disclose and report with sufficient detail the related-party transactions of the partnerships;
- (g) he failed to properly report the details of the changes in the owner's equity during the period of the financial statements;
- (h) he continued in his engagement as a public accountant while knowing that there was reason to believe that the financial statements of the partnerships were false or misleading; and,

- (i) he prepared financial statements in a 'Notice to Reader' reporting format contrary to the terms of the Limited Partnership Agreement and the requirement that such reports be 'Review Engagement' or 'Audited' reporting format.

### **Negligent Misrepresentation**

60. The loss of capital in each W-6 Limited Partnership was caused by negligent misrepresentations of Adams, Select, Termorshuizen, Kerfoote, Klassen and Booth, the particulars of which are set out below:

- (a) They made the following negligent representations to all Plaintiffs and Class Members through written statements in literature prepared and distributed by these Defendants:

- i. They negligently and carelessly represented to the Plaintiffs and Class Members that their capital would be preserved and would be fully secured by a bank at all times in secure bank accounts under the control of Adams, Select and the general partners, when Adams and the other Defendants knew, or ought to have reasonably known that this was not true;



- ii. They negligently and carelessly represented to the Plaintiffs and Class Members that the rate of return on their investments in units of the W-6 Limited Partnership B.I.P. would yield in excess of 5% per quarter or 20% per year when Adams and the other Defendants knew, or ought to have reasonably known that this was not true; and,
  - iii. They negligently and carelessly represented to the Plaintiffs and Class Members that the partnership units were offered pursuant to the “seed capital” exemption from prospectus requirements of section 72(1)(p) of the *Securities Act* and that they have complied with Ontario securities law when Adams and the other Defendants knew, or ought to have reasonably known that this was not true.
- (b) They made the following negligent representations to all Plaintiffs and Class Members through oral statements consistent with literature prepared and distributed by these Defendants:
- i. They negligently and carelessly represented to the Plaintiffs and Class Members that their capital would be preserved and would be fully secured by a bank at all times in secure bank accounts under the control of Adams, Select and the general partners, when Adams and the other

Defendants knew, or ought to have reasonably known that this was not true;

- ii. They negligently and carelessly represented to the Plaintiffs and Class Members that the rate of return on their investments in units of the W-6 Limited Partnership B.I.P. would yield in excess of 5% per quarter or 20% per year when Adams and the other Defendants knew, or ought to have reasonably known that this was not true; and,
- iii. They negligently and carelessly represented to the Plaintiffs and Class Members that the partnership units were offered pursuant to the “seed capital” exemption from prospectus requirements of section 72(1)(p) of the *Securities Act* and that they have complied with Ontario securities law when Adams and the other Defendants knew, or ought to have reasonably known that this was not true.

61. The Plaintiffs and Class Members relied upon the negligent misrepresentations of Adams, Select, Termorshuizen, Kerfoote, Klassen and Booth and it was reasonable for each Plaintiff and Class Member to do so.

62. The Plaintiffs and Class Members plead that their individual and reasonable reliance upon the three negligent misrepresentations set out above may be inferred upon the facts that:

- (a) These misrepresentations were made throughout literature and documents produced and distributed by the Defendants, Adams, Select, Termorshuizen, Kerfoote, Klassen and Booth;
- (b) These misrepresentations were material;
- (c) These misrepresentations were calculated and intended to induce prospective investors and purchasers of limited partnership units; and,
- (d) the losses suffered by the Plaintiffs and Class Members is consistent with each of the Plaintiffs and Class Members having acted upon each negligent misrepresentation.

63. Furthermore, the Plaintiffs and Class Members plead that the Defendants, Adams, Select, Termorshuizen, Kerfoote, Klassen and Booth, made these misrepresentations while possessing or being required by law to possess particular knowledge of the net worth, investment knowledge, experience, and risk tolerance of each of the Plaintiffs

and Class Members and, accordingly, whether these misrepresentations were negligently made and relied upon may be inferred from the knowledge and conduct of each of these Defendants.

64. The Plaintiffs and Class Members plead that each of the Plaintiffs and Class Members had a special relationship with each of the Defendants, Adams, Select, Termorshuizen, Kerfoote, Klassen and Booth by virtue of their position and capacity as financial planning consultant, investment advisor or investment broker.

**Breach of Fiduciary Duty**

65. The loss of capital in each W-6 Limited Partnership was caused by breach of fiduciary duty of Adams, Select, Termorshuizen, Kerfoote, Klassen, Booth, Adourian and Huffman.
66. The Plaintiffs and Class Members plead that each of the Plaintiffs and Class Members placed their trust and confidence in the Defendants, Adams, Select, Termorshuizen, Kerfoote, Klassen, Booth, Adourian and Huffman, who stood in a fiduciary relationship with the Plaintiffs and Class Members by virtue of their positions and capacities as financial planning consultant, investment advisor, investment broker, lawyer and accountant of the Plaintiffs and Class Members.

67. The Plaintiffs and Class Members repeat and rely upon all of the particulars pleaded above in asserting that all of the Defendants breached a fiduciary duty owed to each of the Plaintiffs and Class Members.
68. Adams, Select, Termorshuizen, Kerfoote, Klassen, Booth, Adourian and Huffman owed a fiduciary duty to the Plaintiffs and Class Members to use reasonable care and judgment in giving advice concerning investment in the W-6 Limited Partnerships and to diligently investigate the background and probity of the Joint Venturers and to put in place sufficient procedures and safeguards to ensure funds entrusted to the Joint Venturers were secure and could not be absconded.
69. Select is responsible in law for the negligence of their agents/employees who sold units in the W-6 Limited Partnerships and is specifically negligent in failing to properly supervise Adams and Booth and any other agents/employees in the provision of investment advice to the Plaintiffs and Class Members with respect to investment in the W-6 Limited Partnerships.

**Derwin Trevor Davis and Shirley Davis**

70. The Plaintiffs and Class Members plead that Davis and Shirley Davis, as directors and officers of Select, are liable at law to the Plaintiffs and Class Members. The particulars of such liability are set-out below:

- (a) David and Shirley Davis by their special relationship with the Plaintiffs and Class Members and by their special knowledge of financial investments owed a duty of care to the Plaintiffs and Class Members;
- (b) Davis and Shirley Davis were the directing and controlling minds of Select;
- (c) Davis and Shirley Davis, as owners and shareholders, had a personal financial interest in Select and the financial success of Select, which was enhanced and improved by the promotion, distribution and sale of limited market securities by the Defendants, Adams, Termorshuizen, Kerfoote, Klassen;
- (d) The Defendants, Adams, Termorshuizen, Kerfoote, Klassen, were agents or employees of Select and Davis and Shirley Davis had direct knowledge of their negligent and wrongful conduct, the particulars of such conduct are set out above;

- (e) Particularly, Davis and Shirley Davis knew the statutory and non-statutory duties and obligations of financial investment brokers and advisors to know and maintain proper records of the net worth, investment knowledge, experience, and risk tolerance of each of the Plaintiffs and Class Members and to maintain proper books, records and accounts, of the investment transactions of the Plaintiffs and Class Members, but, in spite of their knowledge, were wilfully blind to the negligent and wrongful conduct of the other Defendants in pursuing their own financial gain;
  
- (f) During the early stages of the B.I.P. in 1993, Davis and Shirley Davis were specifically advised of the negligent acts and wrongful conduct complained of by the Plaintiffs and Class Members, but failed to take any action whatsoever to protect the interests of the Plaintiffs and Class Members; and,
  
- (g) Davis and Shirley Davis had direct knowledge or ought to have known that the other Defendants had promoted, distributed and sold these limited market securities in contravention of the *Securities Act*, as set out above, but failed to take any steps protect the capital investments of the Plaintiffs and Class Members.

71. By reasons of the cavalier, high-handed and reckless conduct of each of the Defendants and the flagrant breach of statute by each of the Defendants, the Plaintiffs and Class Members plead that they are entitled to aggravated and punitive damages.
72. By reason of the wrongful acts of the Defendants above, the Plaintiffs and Class Members have suffered severe financial loss and damage including a diminution of the entire capital invested in units in the W-6 Limited Partnerships and lost investment opportunities. Further, the Plaintiffs and Class Members have suffered the emotional stress of suffering financial losses.

### **STATUTES RELIED UPON AND PLEADED**

73. The Plaintiffs and Class Members plead and rely upon the *Class Proceedings Act*, S.O. 1992, c.6, the *Securities Act*, R.S.O. 1990, c.S.5 and regulations thereto; the *Limited Partnerships Act*, R.S.O. 1990, c.L.16; the *Partnerships Act*, R.S.O. 1990, c.P.5; the *Negligence Act*, R.S.O. 1990, c.N.1; and the *Courts of Justice Act*, R.S.O. 1990, c.C.43; all as amended.
74. The Plaintiffs and Class Members propose that this action be tried at the City of Hamilton, Province of Ontario.



March 2, 2001

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**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT HAMILTON

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**STATEMENT OF CLAIM**

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