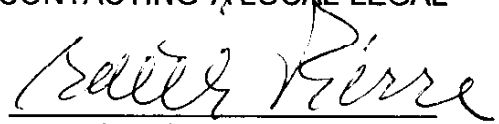


IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: JUL 11 1997

Issued by



Local registrar

Address of court office:

50 Main Street East
Hamilton, Ontario
L8N 1E9

(Name, address and fax number of each defendant)

TO:

CANADA LIFE ASSURANCE COMPANY
350 University Avenue
TORONTO, Ontario
M5G 1R8

CLAIM

1. The Plaintiffs claim, on their own behalf and on behalf of all Class Members as set-out below:

- (a) Damages for misrepresentation;
- (b) Damages for breach of contract;
- (c) Punitive, aggravated and exemplary damages;
- (d) Pre and Post Judgment interest pursuant to the provisions of the *Courts of Justice Act, R.S.O. 1990, c. C43*;
- (e) Costs on a solicitor and client basis;
- (f) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff, Gerald L. Gibbs ("Gerald"), is an individual residing in the City of Richmond Hill, in the Regional Municipality of York.

3. The Plaintiff, David Alan Jarvis ("David"), is an individual residing in the City of Toronto, in the Municipality of Metropolitan Toronto.

~~4. The Plaintiff, Joseph James Brent Dufee ("Brent"), is an individual residing in the City of Mississauga, in the Regional Municipality of Peel.~~

4. ~~5.~~ The Defendant, Canada Life Assurance Company ("Canada Life"), is a Canadian Federal Corporation with its head office in the City of Toronto, in the Municipality of Metropolitan Toronto carrying on business as a provider of insurance products.

~~6. In 1994, Canada Life acquired the Canadian operations of New York Life Insurance Company ("New York Life"), a corporation with its head office in the City of New York in New York State, United States of America carrying on business as a provider of insurance products.~~

~~7. New York Life operates or did operate a Canadian branch office with a head office in the City of Toronto, in the Regional Municipality of Metropolitan Toronto.~~

~~8. New York Life Insurance Company of Canada is a Canadian subsidiary of New York Life incorporated in or about 1984. New York Life Insurance Company of Canada sold life insurance policies in Canada on behalf of New York Life from January 1, 1991 onwards. New York Life Insurance Company of Canada was licenced to carry on business in all provinces and territories of Canada.~~

~~9. When Canada Life acquired the Canadian operations of New York Life, Canada Life assumed responsibility and liability for certain insurance policies issued by New York Life and New York Life Insurance Company of Canada.~~

THE FACTS

~~10. All references to Canada Life set out below include a reference to New York Life and/or New York Life Insurance Company of Canada in respect of policies sold by New York Life and New York Life Insurance Company of Canada and subsequently acquired by Canada Life.~~

5. ~~11.~~ In or about the month of June, 1992, Gerald met with a Canada Life agent for the express purpose of discussing life insurance products.

6. ~~12.~~ In or about the month of March, 1983, David met with a Canada Life agent for the express purpose of discussing Life Insurance Products.

7. ~~13.~~ In or about the month of September, 1986, David met further with a Canada Life agent for the express purpose of discussing additional life insurance products.

~~14. In or about the month of October, 1985, Brent met with a Canada Life agent for the express purpose of discussing life insurance products.~~

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

9. ~~16.~~ At the meeting of June, 1992 between Gerald and a Canada Life agent, the Canada Life agent represented to Gerald that a "premium offset" Whole Life Insurance Policy from Canada Life would best suit his needs. The Policy was described by the Canada Life agent as an "Accelerator" Plan.

10. ~~17.~~ At the meeting of March, 1983 between David and a Canada Life agent, the Canada Life agent represented to David that a "premium offset" Whole Life Insurance Policy from Canada Life would best suit his needs. The Policy was described by the Canada Life agent as an "Accelerator" Plan.

11. ~~18.~~ At the meeting of September, 1986 between David and a Canada Life agent, Canada Life Agent represented to David that another "premium offset" Whole Life Insurance Policy from Canada Life would best suit his needs. The policy was described by the Canada Life agent as an "Accelerator" Plan.

~~19. At the meeting of October, 1985 between Brent and a Canada Life agent, the Canada Life agent represented to Brent that a "premium offset" Whole Life Insurance Policy from Canada Life would best suit his needs.~~

12. ~~20.~~ At similar meetings between the various Class Members and Canada Life agents at various times, the same or similar representations were made to the effect that a "premium offset" Whole Life Insurance Policy from Canada Life would best suit the needs of the various Class Members.

13. ~~21.~~ 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. Such a policy is commonly referred to as a "vanishing premium" policy.

14. ~~22.~~ A "vanishing premium" 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.*

15. ~~23.~~ In this manner, the premiums "vanish" in that they are funded through the growth of the premiums originally paid by the policyholder instead of through continuing payment.

16. ~~24.~~ 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.

17. ~~25.~~ 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.

18. ~~26.~~ Whole Life Insurance Policies and particularly "vanishing premium" Whole Life Insurance Policies were far more profitable for Canada Life than Term Life Insurance Policies.

19. ~~27.~~ "Vanishing premium" Whole Life Insurance Policies were represented by Canada Life as requiring premium payments for only a specific limited period of time.

20. ~~28.~~ It was represented to Gerald and relied on by him that he would be required to make 8 (eight) annual premium payments of approximately \$6,800.00 each in order to purchase \$250,000.00 of Whole Life Insurance. The Policy specifically required an annual premium payment of \$6,890.00 for the first five years and an annual premium payment of \$6,790.00 for the final three years.

21. ~~29.~~ At the meeting of March, 1983, it was represented to David and relied on by him that he would be required to make 11 (eleven) annual premium payments of \$833.36 each in order to purchase approximately \$100,000.00 of Life Insurance.

22. ~~30.~~ At the meeting of September, 1986, it was represented to David and relied on by him that he would be required to make 11 (eleven) annual premium payments of \$2,898.98 each in order to purchase \$500,000.00 of Whole Life Insurance.

~~31. It was represented to Brent and relied on by him that he would be required to make 7 (seven) annual premium payments of approximately \$280.50 each in order to purchase \$50,000.00 of Whole Life Insurance.~~

23. ~~32.~~ Similar representations were made to various Class Members by Canada Life agents at various times with respect to policies for the Class Members.

24. ~~33.~~ Canada Life provided Gerald with computer-generated illustrations and charts which promoted the sale of the said policy. These illustrations and charts were developed by Canada Life's Head Office in Toronto, Ontario as part of an overall scheme to mislead customers into believing that their "vanishing premium" Whole Life Insurance Policies had attributes which, in fact, they did not possess.

25. ~~34.~~ Canada Life provided David with computer-generated illustrations and charts which promoted the sale of the said policies. These illustrations and charts were developed by Canada Life's Head Office in Toronto, Ontario as part of an overall scheme to mislead customers into believing that their "vanishing premium" Whole Life Insurance Policies had attributes which, in fact, they did not possess.

~~35. Canada Life provided Brent with computer-generated illustrations and charts which promoted the sale of the said policy. These illustrations and charts were developed by Canada Life's Head Office as part of an overall scheme to mislead customers into believing that their "vanishing premium" Whole Life Insurance Policies had attributes which, in fact, they did not possess.~~

26. 36. The illustrations and charts along with an orchestrated set of sales techniques, misrepresented the terms, benefits and advantages of the "vanishing premium" Whole Life Insurance Policies in order to induce the Plaintiffs and Class Members to purchase these policies.

27. 37. Canada 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 "vanishing premium" Whole Life Insurance Policies. The agents were not informed of the real risks and costs inherent in the "vanishing premium" Whole Life Insurance Policies. Canada Life's agents were provided with software and/or sample illustrations and charts which allowed them to demonstrate the manner in which the "vanishing premium" Whole Life Insurance Policies operated for potential policyholders.

28. 38. Canada Life's representations with respect to the "vanishing premium" Whole Life Insurance Policies were false, deceptive and misleading. Canada Life's dividend scales, interest rate and investment return projections and resultant policy and dividend illustrations and charts were inconsistent with or contrary to Canada Life's internal forecasts, estimates, analysis or projections concerning future interest rates or dividends.

29. ~~30.~~ Canada Life knew, or ought to have known, that the said policies would not perform as forecasted in the sales illustrations and charts. Canada 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 Plaintiffs 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 Plaintiffs and Class Members as the requirement for full payment of the premium obligations.

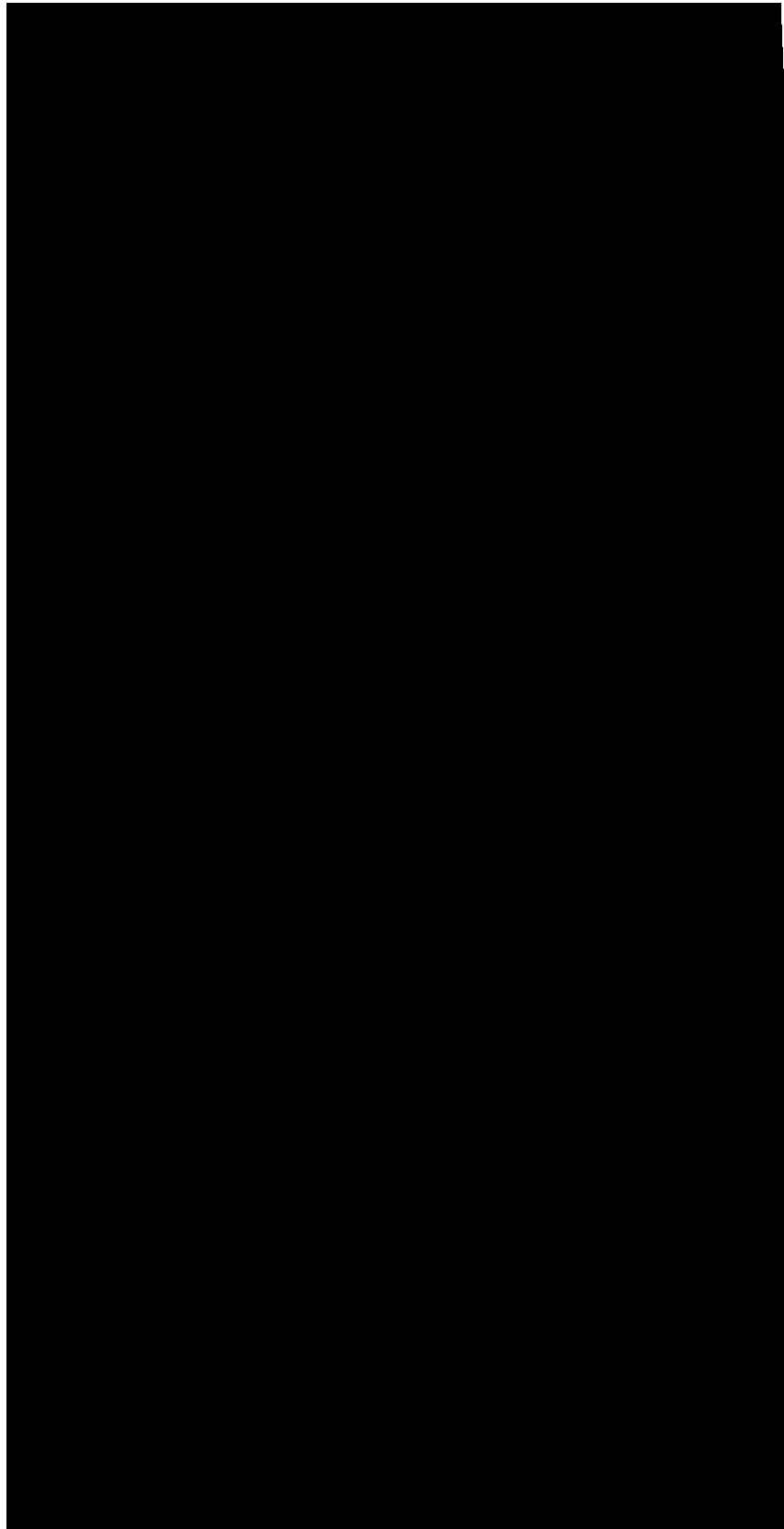
30. ~~40.~~ Canada Life omitted from its illustrations, charts and sales materials and concealed from its agents and customers including the Plaintiffs and Class Members, material facts regarding the Canada Life illustrations and performance of these policies, including such facts as the extreme volatility of the products, 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 "vanishing" as represented.

31. ~~41.~~ This course of conduct was conceived with the intention of increasing sales of the "vanishing premium" 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.

32. ~~42.~~ Canada Life purported to include written disclaimers in some of the sales materials regarding the "vanishing premium" 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) Canada 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 Plaintiffs and Class Members;
- (c) Canada Life failed to inform the Plaintiffs 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.

33. ~~43.~~ Canada Life presented the attributes of the "vanishing premium" Whole Life Insurance Policies as well as the disclaimers in a false and misleading manner and Canada Life is now estopped from relying on the said disclaimers. The Plaintiffs specifically plead and rely 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.



34. ~~44.~~ As a result of and in reliance on the representations of Canada Life as set-out above, the Plaintiff, Gerald, entered into a contract to purchase Canada Life Policy number 2893209 ("the Policy/Policies").
35. ~~45.~~ As a result of and in reliance on the representations of Canada Life as set-out above, the Plaintiff, David, entered into a contract to purchase Canada Life Policy number 2414705 ("the Policy/Policies"), in April, 1983.
36. ~~46.~~ As a result of and in reliance on the representations of Canada Life as set-out above, the Plaintiff, David, entered into a contract to purchase Canada Life Policy # 2556781 ("the Policy/Policies"), in September, 1986.
- ~~47.~~ ~~As a result of and in reliance on the representations of Canada Life as set out above, the Plaintiff, Brent, entered into a contract to purchase Canada Life Policy number 42046971 ("the Policy/Policies").~~
37. ~~48.~~ Canada Life has informed the Plaintiffs that they will be required to pay premiums for a period of several years beyond the periods represented at the time of contracting in order to maintain the Policies in good standing. The Plaintiffs have been further informed by Canada Life that the cash value and surrender value of the Policies do not presently reflect the values represented at the time of contracting and upon which the Plaintiffs relied in making their decision to purchase the Policies.

38. ~~49.~~ Canada Life has similarly informed the Class Members as set-out above.

39. ~~50.~~ In or about late 1992, Canada Life began to reduce the dividends payable on its policies but failed to so inform policyholders, including the Plaintiffs and the Class Members and as a result thereof, the Plaintiffs and the Class Members continued to make premium payments without knowing that the assumptions upon which they had purchased the policies had changed dramatically.

40. ~~51.~~ The Plaintiffs 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 will be or has been significantly compromised.

41. ~~52.~~ Failure to make additional premium payments will result in the policies lapsing in the future and the benefit of the policies will be lost.

42. ~~53.~~ The Plaintiffs and Class Members have suffered further loss in that it was their expectation, based upon the representations made by Canada Life's agents, that the "vanishing premium" Whole Life Insurance Policies would operate as safe, secure and profitable investments which could be drawn upon in future years to provide financial security, allowing policyholders early retirement.

MISREPRESENTATION

43. 54. Canada Life misrepresented the nature of the "vanishing premium" Whole Life Insurance Policies such that the Plaintiffs 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 Canada Life and the Plaintiffs and Class Members allege that had they known the true nature of the said policies they would not have purchased them.

44. 55. The Plaintiffs and Class Members reasonably relied upon the representations of Canada Life to their detriment and plead and rely upon the doctrine of detrimental reliance.

45. 56. Canada Life owed a duty of care to the Plaintiffs and Class Members to accurately represent their products and, in particular, to not mislead the Plaintiffs 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 Canada Life with the greatest profits.

BREACH OF CONTRACT

46. 57. The illustrations, charts and sales materials used to induce the Plaintiffs and Class Members to enter into contracts of insurance formed essential terms of the said contracts which Canada Life has breached.

47. ~~58.~~ Due to the intentional and wrongful conduct of Canada Life, the Plaintiffs and all Class Members are entitled to recover punitive, aggravated and exemplary damages.

48. ~~59.~~ The Plaintiffs plead and rely upon the provisions of the *Class Proceedings Act*, S.O. 1992, c. 6.

RELIEF REQUESTED

49. ~~60.~~ The Plaintiffs and all Class Members claim as against the Defendant as follows:

- (a) Damages for misrepresentation;
- (b) Damages for breach of contract;
- (c) Class-wide punitive, aggravated and exemplary damages;
- (d) Pre and Post Judgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C43 as amended;
- (e) Costs on a solicitor and client basis;
- (f) Such further and other relief as this Honourable Court may deem just.

50. ~~61.~~ The Plaintiffs 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: July 11, 1997

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

Attention: DAVID THOMPSON
JEFFREY C. TEAL

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

Solicitors for the Plaintiffs

GERALD L. GIBBS

PLAINTIFF(S)

and

CANADA LIFE ASSURANCE COMPANY

DEFENDANT(S)

(Short title of proceeding)

Court file no.

1712/97

ONTARIO COURT (GENERAL DIVISION)
Proceeding commenced at Hamilton

Service of the herein document admitted
this 14th day of July, 1997
for Canada Life Assurance Company
by Andrea Stockelart at 2:36

**AMENDED
STATEMENT OF CLAIM
(GENERAL)**

(Form 144 under the Rules)

DYE & DURHAM CFS

Name, address, telephone and fax numbers of solicitor or party
BROWN, SCARFONE, HAWKINS
Barrister(s) and Solicitor(s)
Suite 1050-120 King Street West
HAMILTON, Ontario
L8N 3P9

Attention: **DAVID THOMPSON**
JEFFREY C. TEAL

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

Solicitors for the Plaintiff

Fax number, if known, of person on whom document is to be served
Fax: