

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MARSHA MARTIN and FERN CAMIRAND

Plaintiffs

-and-

**MICHAEL BARRETT, JOHN REBRY, LLOYD CRAWFORD,
WILLIAM DEMERLING, CLAUDE GAUTHIER, CLARE HAYES,
JIM MADILL, MICHAEL STEVENS, BRIAN ASHFORD,
JOHN BLACK, JOHN HILL, CHARLES MACDAID,
JOSEPH MARTIN, JUNE MCFARLANE, LARRY MELNYK,
JOHN STAFFORD, as Trustees of the Participating Co-Operatives
of Ontario Trusteed Pension Plan (FSCO Reg. No. 345736),
THE CANADA TRUST COMPANY, CIBC MELLON TRUST COMPANY,
CIBC MELLON GLOBAL SECURITIES SERVICES COMPANY,
CANADIAN IMPERIAL BANK OF COMMERCE,
MARK EDWARD WORKMAN, carrying on business as
WHITTACAT CONSULTING ASSOCIATES,
WHITTACAT HOLDINGS LTD., TURNBULL AND TURNBULL LTD.,
THE ESTATE OF JOHN A. TURNBULL, deceased, LOUIS ELLEMENT,
ANTHONY F. COOPER and ANTHONY F. COOPER
ACTUARIAL SERVICES LIMITED**

Defendants

STATEMENT OF DEFENCE AND CROSSCLAIM

1. The Defendants, Anthony F. Cooper (“Cooper”) and Anthony F. Cooper Actuarial Services Limited (“Cooper Actuarial Services”) (together the “Cooper Defendants”), admit the allegations contained in the first two sentences of paragraph 38, and the last sentence of paragraph 115 of the Statement of Claim.
2. Save as hereinafter expressly admitted, the Cooper Defendants deny each and every other allegation in the Statement of Claim, and put the plaintiffs to the strict proof thereof.

3. Cooper is an actuary who practices as Cooper Actuarial Services. Cooper is a member of the Canadian Institute of Actuaries as well as a fellow of the Society of Actuaries.
4. Cooper Actuarial Services was retained by the trustees of the Participating Co-Operatives of Ontario Trusteed Pension Plan (the "Plan Trustees") to provide actuarial services from 1997 to early 2003.
5. Cooper was not retained by the Plan Trustees in his personal capacity. Cooper did not owe any legal or other duty to the Plan Trustees or to the Plaintiffs in his personal capacity. As such, there is no basis in law or in fact for any claim against Cooper.
6. Cooper Actuarial Services prepared annual actuarial valuation reports for the years 1997 to 2002 for the Participating Co-Operatives of Ontario Trusteed Pension Plan ("the Plan"). These reports were provided to the Plan Trustees and filed with the Financial Services Commission of Ontario.
7. The Cooper Defendants were not involved in the investment process. In fact, Cooper Actuarial Services relied on the auditor's report and the financial figures provided by the auditor as to the value of the assets of the Plan (except the mechanical calculation with respect to the estimated market value of indexed mortgages).
8. Furthermore, Cooper Actuarial Services relied on the information and decisions made by the Plan Trustees in regards to investments and administration and about which Cooper Actuarial Services were not committed and did not advise.

9. Cooper Actuarial Services carried out its actuarial work in a careful, competent and diligent manner and denies that it was negligent or in breach of any contract in the manner alleged in the Statement of Claim or in any other manner whatsoever.

10. The Cooper Defendants deny that the plaintiffs have sustained the damages alleged in the Statement of Claim and put the plaintiffs to the strict proof thereof. The said damages are, in any event, excessive and too remote.

11. If the plaintiffs have sustained any of the damages alleged in the Statement of Claim, which is denied, those damages are not attributable in whole, or in part, to any actionable act or omission on the part of the Cooper Defendants.

12. The Cooper Defendants ask that this action be dismissed as against them with costs on a substantial indemnity basis.

CROSSCLAIM

13. The Cooper Defendants claim as against the co-defendants Michael Barrett, John Rebry, Lloyd Crawford, William Demerling, Claude Gauthier, Clare Hayes, Jim Madill, Michael Stevens, Brian Ashford, John Black, John Hill, Charles MacDaid, Joseph Martin, June McFarlane, Larry Melnyk, John Stafford, as Trustees of the Plan, The Canada Trust Company, CIBC Mellon Trust Company, CIBC Mellon Global Securities Services Company, Canadian Imperial Bank of Commerce, Mark Edward Workman, carrying on business as Whittacat Consulting Associates, Whittacat Holdings Ltd., Turnbull and Turnbull Ltd., The Estate of John A. Turnbull, deceased, and Louis Ellement:

- (a) contribution, indemnity and other relief over in respect of any damages and costs to which these defendants may be found liable with respect to the plaintiffs;

- (b) costs in defending the main action herein;
- (c) costs of this crossclaim; and
- (d) such further and other relief as this Honourable Court may deem just.

14. These defendants repeat and rely upon the statements contained in the Statement of Defence herein.

15. The Cooper Defendants state that if the plaintiffs sustained the damages alleged in the Statement of Claim, which is denied, and if such damages were caused or contributed to by the conduct of the defendants as alleged in the Statement of Claim, then the Cooper Defendants are entitled to contribution, indemnity and other relief over from the co-defendants.

16. The Cooper Defendants plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c.N.1.

17. The Cooper Defendants ask that this crossclaim be tried together with the main action.

DATED: March 31, 2004

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John Stafford, as trustees of the Participating
Co-Operatives of Ontario Trusteed Pension Plan
(FSCO Reg. No. 345736)

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE AND CROSSCLAIM

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