

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

TRUSTEES OF THE MILLWRIGHT REGIONAL COUNCIL  
OF ONTARIO PENSION TRUST FUND

Plaintiffs

- and -

CELESTICA INC., STEPHEN W. DELANEY and ANTHONY P. PUPPI

Defendants

A N D B E T W E E N :

NABIL BERZI

Plaintiff

- and -

CELESTICA INC., STEPHEN W. DELANEY and ANTHONY P. PUPPI

Defendants

A N D B E T W E E N :

HUACHENG XING

Plaintiff

- and -

CELESTICA INC., STEPHEN W. DELANEY and ANTHONY P. PUPPI

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF DEFENCE**

1. The defendants (together, the "Celestica Parties") admit the allegations contained in paragraphs 8-10, 17, 20, 45, 50, 55, 64, 65, 72, 73, 78, 82-84, 86, 99, and 100 of the Fresh as Amended Statement of Claim.

2. The Celestica Parties have no knowledge or insufficient knowledge to admit or deny the allegations contained in paragraph 7 of the Fresh as Amended Statement of Claim.

3. The Celestica Parties deny all other allegations contained in the Fresh as Amended Statement of Claim, except as expressly admitted in this pleading. The Celestica Parties further deny that the plaintiffs are entitled to any of the relief sought against them as set out in paragraph 1 of the statement of claim, or to any other relief.

### **Parties**

4. Celestica Inc. ("Celestica") is a global electronic manufacturing services company, providing a wide range of services and solutions to original equipment manufacturers in the communications, computing, industrial and consumer sectors. Celestica is an Ontario corporation, with its shares trading on the Toronto Stock Exchange under the symbol CLS and on the New York Stock Exchange under the symbol CLS.

5. Stephen W. Delaney ("Mr. Delaney") is an individual resident in the state of Michigan, in the United States. Mr. Delaney was the Chief Executive Officer of Celestica from January 2004 to November 2006.

6. Anthony P. Puppi ("Mr. Puppi") is an individual resident in Woodbridge, Ontario. Mr. Puppi was the Chief Financial Officer of Celestica from January 1994 until April 2007. Mr. Puppi was executive vice-president of Celestica from October 1999 until April 2007.

7. The plaintiffs purport to represent a proposed class of all purchasers of Celestica Shares by primary distribution in Canada or acquisition on the Toronto Stock Exchange or other secondary market in Canada during the period from January 27, 2005 up to and including January 30, 2007.

### **Celestica's Disclosure was Complete, Proper and Timely**

8. Celestica's disclosure and public oral statements during the material time, including Celestica's Q1 2005, Q2 2005, Q3 2005, Q4 2005, Q1 2006, Q2 2006, and Q3 2006 quarterly reports, its 2004 and 2005 annual reports, its management discussion and analysis, and its material change reports (the "Disclosure"), was proper, complete, timely, and met all statutory

and other requirements. None of the Disclosure contained any untrue statements of material fact, nor did any of the relevant disclosure omit to state a material fact necessary to make statements not misleading.

9. All material changes during the material time, including material changes relating to the costs, timing and implementation of the restructuring and the status of Celestica's major customer relationships were fully and properly disclosed, in a timely manner, to the extent disclosure was legally required.

10. All of Celestica's financial statements and other financial information disclosed during the material time were compliant with all applicable accounting principles and fairly presented Celestica's financial condition, results of operations and cash flows. Celestica specifically denies that: it did not properly account for any obsolete inventory; it reported falsely low levels of inventory; it reported false sales; or that it improperly delayed or manipulated payment of expenses. The Celestica Parties put the plaintiffs to the strict proof thereof.

11. The Celestica Parties specifically deny that any of the Disclosure contained misrepresentations relating to Celestica's inventory levels, inventory controls, the success of its restructuring, or its ability to retain major customers.

12. In stark contrast to the allegations of the plaintiffs, Celestica's 2004 and 2005 annual reports set out at length material risk factors that shareholders and prospective investors should carefully consider. These risk factors include the very factors complained of in the Fresh as Amended Statement of Claim, including the following.

- (a) Celestica has had recent operating losses and significant restructuring charges and may experience losses and restructuring charges in future periods. In January 2005, Celestica announced additional pre-tax restructuring charges of between \$225.0 million and \$275.0 million, to be recorded throughout 2005 and 2006. Celestica will continue to evaluate its operations, and may propose future restructuring actions as a result of changes in the marketplace. Any

failure to execute these initiatives can have a material adverse impact on Celestica's results.

- (b) Moving manufacturing to lower-cost regions could have a material adverse effect on Celestica's financial conditions and results of operations, including risks of transferring production to regions where skills or experience may be more limited, higher operating expenses during the transition, additional restructuring costs associated with the decrease in production levels in higher-cost geographies, and inability to retain existing business or grow future revenue due to potential execution problems resulting from significant headcount reductions, plant closures and product transfer.
- (c) Celestica depends on a limited number of customers or a substantial portion of its revenue and declines in sales to these customers could continue to adversely affect our operating results. Celestica expects to continue to depend upon a relatively small number of customers for a significant portion of its revenue, but cannot assure that present or future large customers will not terminate their manufacturing arrangements with Celestica, or significantly change, reduce or delay the amount of manufacturing services ordered, any of which would adversely effect operating results.
- (d) Most of Celestica's customers do not commit to firm production schedules more than 30 to 90 days in advance, making it difficult to forecast the level of customer orders with certainty and difficult to order appropriate levels of materials and to schedule production and maximize utilization of manufacturing capacity. Customers may also cancel their orders, change production quantities, or delay production. Such changes could cause delay in repayment to Celestica for inventory expenditures incurred, require the return of inventory to suppliers, resale of the inventory, or continued holding of the inventory.
- (e) Restrictions on ability to restructure quickly enough can delay the timing and affect the benefits expected from restructuring efforts. Restrictions on the

ability to close underperforming facilities, delays in customers agreements to product transfers, and volatility in customer demand could prevent the transfer of products to different facilities in a timely and cost-effective manner, and customers may use this opportunity to shift their production to competitors.

### **Forward-Looking Statements not Actionable**

13. Virtually all of the statements alleged to be misrepresentations in the Fresh as Amended Statement of Claim, including the statements pleaded at paragraphs 45, 46, 50, 51, 53, 55, 58, 59, 61, 65-68, 70, 71, 74, 75-78, 82-84, 87, 91 and 95-98, were forward-looking, or matters of forecast, projection or opinion, which do not support a claim for statutory or common law misrepresentation (the "Forward Looking Statements").

14. The Celestica Parties' subjective belief that the Forward Looking Statements were reasonable was not expressly or impliedly asserted to be objectively reasonable in any of the Disclosure. In any event, the Celestica Parties plead that the Forward Looking Statements were objectively reasonable at the time that they were made. To the extent that this changed, any such changes were fully and properly disclosed, in a timely manner, to the extent disclosure was legally required.

15. The Forward Looking Statements all contained, proximate to that information, directly or by incorporation, reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the Forward-Looking Statements.

16. All of Celestica's annual and quarterly reports during the materials time cautioned that they contained forward-looking statements,

including statements concerning possible or assumed future results of operations of Celestica preceded by, followed by or that include the words "believes," "expects," "anticipates," "estimates," "intends," "plans," or similar expressions....Forward-looking statements are not guarantees of future performance. They involve risks, uncertainties and assumptions....and...could affect our future results and could

cause those results to differ materially from those expressed in such forward-looking statements.

17. Celestica's Management's discussion and analysis of financial conditions and results of operations included the following language:

Certain statements contained in the following Management's Discussion and Analysis of Financial Condition and Results of Operations, including, without limitation, statements concerning the words "believes," "expects," "anticipates," "estimates," "intends," "plans," or words of similar import, constitute forward-looking statements. forward-looking statements are not guarantees of future performance and involve risks, uncertainties and assumptions which could cause actual results to differ materially from those anticipated in these forward-looking statements.

18. Celestica's press releases during the material time contained the following language:

This news release contains forward-looking statements related to our future growth, trends in our industry and our financial and operational results and performance that are based on current expectations, forecasts and assumptions involving risks and uncertainties that could cause actual outcomes and results to differ materially.

19. To support a claim for misrepresentation, a statement or representation must be a claim of ascertainable fact, not a mere opinion or expectation. The Fresh as Amended Statement of Claim fails in this respect.

#### **No Prior Knowledge of Celestica Parties**

20. In the alternative, if any relevant disclosure or public oral statements contained untrue statements of material fact, or omitted to state a material fact necessary to make statements not misleading, which is not admitted but expressly denied, then none of the Celestica Parties knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation. The Celestica Parties conducted or caused to be conducted a reasonable investigation before the release of all documents and the making of any public oral statements and had no reasonable grounds to believe that any of them contained any misrepresentations.

21. Furthermore, none of the Celestica Parties deliberately avoided acquiring knowledge that any such document or public oral statement contained a misrepresentation, nor did any of the Celestica Parties, through action or failure to act, commit gross misconduct (or any misconduct) in connection with the release of the such document or the making of any such oral statement. In each case, the Celestica parties put the plaintiffs to strict proof of their allegations.

22. If the Celestica Parties, or any of them, failed to make timely disclosure of a material change, which is not admitted but expressly denied, then none of the Celestica Parties knew, at the time that the failure to make timely disclosure first occurred, of such change and that such change was a material change. The Celestica Parties conducted or caused to be conducted a reasonable investigation before all disclosure and had no reasonable grounds to believe that the failure to make timely disclosure would occur.

23. Furthermore, none of the Celestica Parties deliberately avoided acquiring knowledge of such change, or that such change was a material change, nor did any of the Celestica Parties, through action or failure to act, commit gross misconduct (or any misconduct) in connection with the timing of disclosure of such change. In each case, the Celestica parties put the plaintiffs to strict proof of their allegations.

#### **No Negligent Misrepresentation**

24. In addition to the denial of any misrepresentations, above, which denial is pleaded in respect of both the statutory and common law claims in the Fresh as Amended Statement of Claim, the Celestica Parties plead as follows in respect of the plaintiffs' claim of common law negligent misrepresentation.

#### ***No Duty of Care***

25. The Celestica Parties deny that that Celestica or its directors or officers have a duty of care at law, through continuous public disclosure in the secondary market, to the investing public, including the plaintiffs or any of the proposed class members.

26. The plaintiffs and proposed class members were not the subject of Celestica's continuous disclosure, nor were they part of any existing contractual or other relationship with the Celestica Parties. There is no direct causal proximity between Celestica's disclosure and the plaintiffs' alleged loss. Rather, there are multiple factors that precipitate changes in share price of a publicly-traded company. Imposition of a duty on public issuers, their directors and officers to the investing public, through continuous public disclosure in the secondary market, would frustrate the statutory scheme set out in the *Securities Act*, R.S.O. 1990., c.S.5, as amended (the "OSA"), deny the Celestica Parties the protections provided in part XXIII.1 of the OSA, and would open the door to liability in an indeterminate amount, for an indeterminate time, to an indeterminate class.

***No Detrimental Reliance***

27. The Celestica Parties deny that the plaintiffs or any of the proposed class members altered their position by relying on the alleged misrepresentations or, in the alternative, that any such reliance resulted in a loss. Actual detrimental reliance is a necessary element of a claim for negligent misrepresentation and its absence means that the plaintiffs cannot succeed. The "efficient market" theory, the "fraud on the market" theory or inferred or presumed reliance are not sufficient.

***No Independent Tortious Conduct by Mr. Delaney or Mr. Puppi***

28. Neither Mr. Delaney nor Mr. Puppi has engaged in any acts or omissions that were carried out for a purpose and in a manner attracting personal liability, or exhibiting a separate identity or interest from that of Celestica. Mr. Delaney and Mr. Puppi acted, at all material times, *bona fide* in the interests of Celestica. There is no basis for piercing the corporate veil to visit separate common law liability on Mr. Delaney or Mr. Puppi.

**No Harm or Damage**

29. The Celestica Parties deny that the plaintiffs or the proposed class members have suffered any damages recoverable at law. In the alternative, if the plaintiffs or the proposed class members have suffered any loss or damage, which is denied, then:



- (a) such loss or damage was not caused by the Celestica Parties, or any of them, and the Celestica Parties are not liable for the loss or damage;
- (b) the damages were caused in whole or in part or, in the alternative, were materially contributed to by the negligence of the plaintiffs and the proposed class members;
- (c) the plaintiffs and the proposed class members breached their duty to mitigate their alleged damages;
- (d) the damages are not capable of being quantified on an aggregate basis;
- (e) the damages are excessive and too remote to be recoverable at law; and
- (f) the damages were not proximately caused by any alleged conduct of the Celestica Parties, or any of them.

30. The Celestica Parties plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

31. To the extent that the plaintiffs assert a claim in negligence, it is a claim for pure economic loss that is not recoverable at law.

#### **Leave Should not be Granted to Proceed With Statutory Claims**

32. The secondary market liability provisions in the statutes of the provinces and territories upon which the plaintiffs and all of the proposed class members seek to rely do not apply. The statutory claims of the plaintiffs and of all proposed class members pre-date the coming into force of the applicable statutory provisions. These provisions do not operate retroactively. Accordingly, the statutory causes of action did not exist at the time of the events in issue.

33. In any event, the plaintiffs' delay of nearly four years in advancing the claims in the Fresh as Amended Statement of Claim is indicative that the statutory claims of the plaintiffs and all proposed class members are not brought in good faith, nor, as set out above, is there a

reasonable possibility that the claims of the plaintiffs and all proposed class members will succeed at trial, as required by Part XXIII.1 of the *OSA* and analogous statutes of all provinces and territories.

### **Claims Barred**

34. The plaintiffs' claims and the claims of all proposed class members are barred by the operation of s. 138 of the *OSA*, the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B and analogous statutes of all provinces and territories.

35. The plaintiffs' claims and the claims of all proposed class members are barred by the doctrine of *laches*.

### **Not Appropriate to Proceed as a Class Proceeding**

36. The Celestica Parties state that this action is not appropriate for class treatment as the plaintiff cannot establish the criteria required by section 5(1) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended (the "*CPA*").

37. In particular:

- (a) the Fresh as Amended Statement of Claim does not disclose a cause of action as the proposed representative plaintiffs have failed to plead the material facts relied upon to establish either negligent or statutory misrepresentation;
- (b) the plaintiffs' proposed class definition does not satisfy the requirements of the *CPA* as it is overly inclusive in that it includes persons or entities who were not holding Celestica shares at the end of the proposed class period, which persons or entities would have incurred no loss as a result of the alleged conduct;
- (c) the claim does not raise any common issues within the meaning of the *CPA*;
- (d) a class proceeding is not the preferable procedure as it is clear that any issues that can be phrased commonly play a minimal role in the context of the entire claim which manifestly requires a review of individual circumstances; and

- (e) the proposed representative plaintiffs have not provided a workable litigation plan.

38. The Celestica Parties, therefore, respectfully request that this action be dismissed with costs.

June 22, 2012

BLAKE, CASSELS & GRAYDON LLP  
Barristers & Solicitors  
199 Bay Street, Ste. 4000  
Commerce Court West  
Toronto, Ontario M5L 1A9

Nigel Campbell LSUC#: 23437H  
Tel: (416) 863-2429

Ryan A. Morris LSUC#: 50831C  
Tel: (416) 863-2176  
Fax: (416) 863-2653

Lawyers for the Defendants

TO: KOSKIE MINSKY LLP  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

Kirk M. Baert LSUC#: 30942O  
Tel: (416) 595-2177

Michael Mazzuca LSUC#: 33377A  
Tel: (416) 595-2101

Jonathan Ptak LSUC#: 45773F  
Tel: (416) 595-2149  
Fax: (416) 977-3316

Lawyers for the Plaintiffs

AND TO: HIMELFARB PROZANSKI LLP  
Barristers & Solicitors  
480 University Avenue, Suite 1401  
Toronto, ON M5G 1V2

Peter Prozanski LSUC#: 27466O  
Trent Morris LSUC#: 35597N  
Tel: (416) 599-8080  
Fax: (416) 599-3131

Lawyers for the Plaintiffs

TRUSTEES OF THE MILLWRIGHT  
REGIONAL COUNCIL OF ONTARIO  
PENSION TRUST FUND et al.  
Plaintiffs

CELESTICA INC. et al.  
and  
Defendants

Court File No: CV-11-424069-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF DEFENCE**

BLAKE, CASSELS & GRAYDON LLP  
Barristers & Solicitors  
199 Bay Street, Ste. 4000  
Commerce Court West  
Toronto, Ontario M5L 1A9

Nigel Campbell LSUC#: 23437H  
Tel: (416) 863-2429

Ryan A. Morris LSUC#: 50831C  
Tel: (416) 863-2176  
Fax: (416) 863-2653

Lawyers for the Defendants