

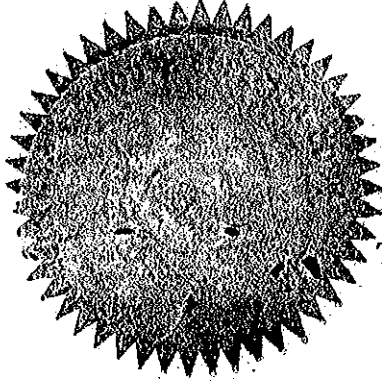
ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE
MR. JUSTICE PERELL

) THURSDAY, THE 18TH
)
) DAY OF APRIL, 2013

BETWEEN:



JOSEPH FANTL

Plaintiff /Moving Party

- and -

TRANSAMERICA LIFE CANADA

Defendant /Respondent

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

ORDER

THIS MOTION by the Plaintiff/Moving Party Joseph Fantl ("Plaintiff") for an Order certifying this action as a class proceeding was heard on April 9 and 10, 2013 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING all material filed, and on hearing the submissions of all counsel:

1. **THIS COURT ORDERS** that the claims and causes of action for breach of implied terms of contract and breach of collateral warranty or collateral contract all as set out in the Second Fresh. as Amended Statement of Claim ("Claim") are hereby struck and dismissed.
2. **THIS COURT ORDERS** that this action is certified as a class proceeding with respect to the claim for breach of express terms of contract and related relief requested as set out in the Claim on behalf of the following class of persons (the "Class"):

All persons in Canada who were invested in the Can-Am Fund after December 30, 1997 under IMS III contracts of insurance with revision dates 11/94, 02/95, 09/95 and 11/96 and IMS RRIF contracts of insurance with revision date 10/95 offered by NN Life Insurance Company of Canada or Transamerica Life Canada, excluding any claims by beneficiaries statute-barred by absolute limitation periods as follows:

Any beneficiaries to whom a death benefit was paid prior to December 29, 2002 under a contract of insurance issued in the Provinces of Ontario, Alberta, British Columbia, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, or Prince Edward Island.

Representative Plaintiff & Class Counsel

3. **THIS COURT ORDERS** that Joseph Fantl is appointed as the Representative Plaintiff on behalf of the Class and that Roy Elliott O'Connor LLP ("REO") is hereby appointed as counsel for the Class.

Common Issues

4. **THIS COURT ORDERS** that the common issues shall be:

Common Issue 1: Was it a term of contracts IMS III revision dates 11/94, 02/95, 09/95 and 11/96 and IMS RRIF revision date 10/95 between Transamerica and Class Members that Transamerica would use Best-Efforts to make the Can-Am Fund replicate the performance of the S&P Total Return Index?

Common Issue 2: If the answer to Common Issue 1 is "yes", did Transamerica breach the "Best-Efforts" term?

Notice of Certification and Opt Outs

5. **THIS COURT ORDERS** that the form of notice of this certification order, the manner and timing of giving notice or opting out of this class action, and all other related matters shall be determined by further Order of this Court.

Costs

6. **THIS COURT ORDERS** that the costs of this motion shall be determined by further Order of this Court.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 30 2013

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: *[Signature]*

Perrell, J

JOSEPH FANTL

Plaintiff

- and -

TRANSAMERICA LIFE CANADA

Defendant

Court File No. 06-CV-306061-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

ROY ELLIOTT O'CONNOR LLP
200 Front Street West, 23rd Floor
P.O. Box 45
Toronto, ON M5V 3K2

David F. O'Connor (LSUC No. 33411E)
J. Adam Dewar (LSUC No. 46591J)

Tel: (416) 362-1989
Fax: (416) 362-6204

Solicitors for the Plaintiff