

Bajans In Canada Take On Manulife - Monday 28, January-2002

It's a class action that may take years to wind its way through Canadian courts in Ontario, but if successful, hundreds of Barbadians may collect large sums of money in compensatory and punitive damages from Manulife, a Canadian insurance company.

The suit is being filed in Ontario by Barbadian policyholders who are claiming damages because of Manulife's alleged negligence when the company sold their policies to the Life Of Barbados five years ago.

Harvey Strosberg, a Queen's Counsel in Ontario, who has recovered more than CAN\$1 billion for clients in different class action cases, is representing Barbadians suing the insurance company, which operated there for years as Manufacturers Life Insurance.

Strosberg discussed the reasons behind the court action during an interview with Tony Best.

Q: Why the class action suit by the Barbadians against Manufacturers Life Insurance or Manulife?

A: This is an action against Manulife (alleging) that it was negligent and in breach of its fiduciary duties in failing to include at the time of mutualisation (of the company) the persons who had purchased Manulife policies in Barbados.

On December 31, 1996, Manulife sold its block of its Barbados business to the Life of Barbados Insurance Company. When it did that, we allege, it ought to have protected policyholders' ownerships rights.

Manulife was a mutual insurance company and [was therefore] owned by its policyholders. So, on December 31, 1996, those persons in Barbados who owned life policies were the equivalent shareholders in a stock company.

They had an ownership interest in ManuLife. We assert that without their consent, Manulife disposed of that interest and we assert that it was done by Manulife at a time when it recognised that it would probably be mutualised.

In fact, in January 1998, Manulife got the consent of its policyholders and demutualised.

It went from a mutual company to a stock company and thereby unlocked the inherent value in the company and distributed it to policyholders. By that time, it had already disposed of the interest of the persons who held Barbados policies.

Q: Are you alleging that Barbadians suffered financial losses?

A: Sure. Because on demutualisation if Manulife delivered common shares with an average value of CAN\$15 000, we assert that each policyholder in Barbados who was deprived of this interest suffered a loss on average of about \$15 000. There is a formula

(to calculate the value of the interest) and you wouldn't know precisely what that amount is until you apply the formula to each person. It depends on the size of the policy and how long you had the policy. It is a variable formula.

Q: In addition to the claim for loss of interest, are you seeking punitive damages?

A: We are also seeking punitive damages. It is in the statement of claim.

Q: Where will this legal battle be fought, in Barbados or Canada?

A: This action was started in Ontario. Manulife is a Canadian company with head offices in Ontario and the decision to demutualise was made in Ontario. We say that the laws of Ontario and Canada apply to the duties that Manulife had to its policyholders.

Q: How are you going about the process of getting Barbadians to join in this class action suit against Manulife?

A: I was retained by Barbadians. We have a website: manulifeaction.com where policyholders can register with us. We also intend to be in Barbados on February 4, 5 p.m. where we will have a meeting of people. Over 300 (Barbadians) have registered with us already.

Q: These class action suits tend to drag on for years. Do you expect that a long time to settle this matter?

A: Some class actions go quicker than others. If this case goes to trial it would take several years to do. We anticipate that to get to trial in this case will take two years to three years, maybe a little less.

Q: How about an out-of-court settlement?

A: There is always the potential for a resolution on consent, but I have no reason to expect that that would be the case at this stage.

Q: What has been Manulife's response?

A: I assume that Manulife will be getting a lawyer and filing reply material. I would have no reason to expect otherwise.

Q: How are you going to support your suit? Will you be calling witnesses from the company, seeking documents or both?

A: Most of the facts in this case are not very much in dispute. There wasn't any doubt that there were policyholders in Barbados. There wasn't any doubt that there was a transfer of that block of business to the Life of Barbados. There was no doubt that there

was demutualisation and that these people (Barbadians) were not part of the demutualisation.

The issue is in large measure legal as to whether Manulife was justified in doing what it did. It is significant to note that in December 31, 1996, which was the same day that it got rid of the block of Barbadian business, it transferred a block of business to its subsidiary in the United States and it preserved the right to participate in the demutualisation of those policy holders.

Similarly, on December 1995, Manulife transferred a block of business in Hong Kong and it preserved the right of those policyholders to participate in demutualisation. But it did not do that for the Barbadian policyholders.

Q: Are you alleging discrimination?

A: I am not alleging discrimination. I am saying that that's what happened.

Q: Why then didn't the Barbadians receive similar benefits as the people in the United States and Hong Kong?

A: That's what the court will have to decide.

Q: Will the decision hinge on the interpretation of law or fact?

A: I think the determination will be based on mixed law and fact. The judge will have to decide what the facts are and apply the law.

Q: Do you think you have a strong case?

A : Well, I have worked on this case now for almost three years. I wouldn't have spent that much time on it if I didn't think that it was worth bringing. The nice part of these cases is that I don't make the decision. The court does. The court will decide if we are right or not.

Q: What's your track record on class action suits?

A: I have handled a number of them. I have recovered over a CAN\$1 billion for my clients. I was a class counsel in a case where I acted for a group of people who received blood tainted with hepatitis C. We were successful in suing the federal government (of Canada) and the provinces.

We achieved a pan Canadian settlement of CAN\$1.5 billion. My class got shy of CAN\$ 900 million.

Q: Do you know how much money this class action, if successful, would bring to Barbadians?

A: I don't know what the value of the class action will be because I don't have access to the formula that would calculate the value to each policyholder. One of the things we are doing is that by registering the class members we will then have picture of what each person's policy was.

Then, in due course, we will get the formula from the company. The court will order that produced. We will then be able to do a class-wide configuration of value.

Q: Is that what you call discovery proceedings.

A: Yes. It's part of the discovery process.

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