

AMENDED THIS Nov. 17, 2009 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 ( a )

THE ORDER OF  
L'ORDONNANCE DU  
DATED / FAIT LE \_\_\_\_\_

REGISTRAR  
SUPERIOR COURT OF JUSTICE  
GREFFIER  
COUR SUPÉRIEURE DE JUSTICE

(m Brentan)

Court File No. CV-09- 383998-00CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

Mark Dugal, Aaron Murphy, Harlen Bomberry, John O'Malley, Gaetan Sigouin, Armand Charbonneau, Paul Mitchell, Steven Moffatt, John Vasconcelos and David Thompstone  
as Trustees of the  
IRONWORKERS ONTARIO PENSION FUND  
and LEONARD SCHWARTZ

Plaintiffs

- and -

MANULIFE FINANCIAL CORPORATION, DOMINIC D'ALESSANDRO, GAIL C.A.  
COOK-BENNETT, ARTHUR R. SAWCHUK and PETER RUBENOVITCH

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

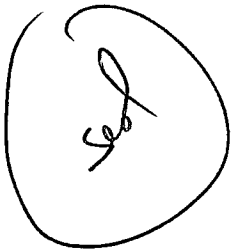
A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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.



IF YOU PAY THE PLAINTIFFS' CLAIM, and \$400.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

✓ Date <sup>29-</sup> July 28, 2009

Issued by M. Brenton  
Local registrar

Address of court office Superior Court of Justice, Toronto  
~~361 University Ave.~~  
Toronto, ON M5G 1T3

**TO: Manulife Financial Corporation**  
200 Bloor Street East  
Toronto, Ontario  
M4W 1E5

**AND TO: Dominic D'Alessandro**  
200 Bloor Street East  
Toronto, Ontario  
M4W 1E5

**AND TO: Peter Rubenovitch**  
200 Bloor Street East  
Toronto, Ontario  
M4W 1E5

**AND TO: Gail C.A. Cook-Bennett**  
200 Bloor Street East  
Toronto, Ontario  
M4W 1E5

**AND TO: Arthur R. Sawchuk**  
200 Bloor Street East  
Toronto, Ontario  
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361 UNIVERSITY AVE.  
10TH FLOOR  
TORONTO, ONTARIO  
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361 UNIVERSITY  
10TH FLOOR  
TORONTO, ONTARIO  
M5G 1E5

## DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “AIF” means Annual Information Form;
- (b) ~~(a)~~ “CJA” means the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
- (c) ~~(b)~~ “Class” and “Class Members” mean all persons and entities, wherever they may reside or be domiciled, who acquired **MFC** securities during the **Class Period**, but excluding the **Defendants**, members of the immediate families of the **Individual Defendants**, any officers, or directors ~~or employees~~ of **MFC** or of any direct or indirect subsidiary of **MFC**, any entity in respect of which any such person or entity has a controlling interest, and any legal representatives, heirs, successors or assigns of any such person or entity;
- (d) ~~(c)~~ “Class Period” means the period from January 26, 2004 to March 26, 2009, inclusive;
- (e) ~~(d)~~ “Cook-Bennett” means the defendant, Gail C.A. Cook-Bennett;
- (f) ~~(e)~~ “CPA” means the Ontario *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended;
- (g) ~~(f)~~ “D’Alessandro” means the defendant, Dominic D’Alessandro;
- (h) ~~(g)~~ “Defendants” means **MFC** and the **Individual Defendants**;
- (i) ~~(h)~~ “EDGAR” means the Electronic Data-Gathering, Analysis, and Retrieval system used by the U.S. Securities and Exchange Commission;
- (j) ~~(i)~~ “Guaranteed Products” means certain products offered by **MFC**, or a direct or indirect subsidiary of **MFC**, which offered guaranteed minimum payments,

results or returns to the purchasers of those products, and includes products generally known as “segregated funds” or “variable annuities”;

- (k) “Guloien” means Donald Guloien, who replaced D’Alessandro as Chief Executive Officer of MFC;
- (l) ~~(j)~~—“**Individual Defendants**” means the defendants **Cook-Bennett, D’Alessandro, Rubenovitch** and **Sawchuk**, collectively;
- (m) “MD&A” means Management’s Discussion and Analysis;
- (n) ~~(k)~~—“**NYSE**” means the New York Stock Exchange;
- (o) ~~(i)~~—“**OSA**” means the *Securities Act*, R.S.O. 1990 c. S.5, as amended;
- (p) ~~(m)~~—“**OSC**” means the Ontario Securities Commission;
- (q) ~~(n)~~—“**Plaintiffs**” means Mark Dugal, Aaron Murphy, Harlen Bomberry, John O’Malley, Gaetan Siguoin, Armand Charbonneau, Paul Mitchell, Steven Moffatt, John Vasconcelos and David Thompstone, as Trustees of the Ironworkers Ontario Pension Fund, and Leonard Schwartz;
- (r) ~~(o)~~—“**Rubenovitch**” means the defendant, Peter Rubenovitch;
- (s) ~~(p)~~—“**Sawchuk**” means the defendant, Arthur R. Sawchuk;
- (t) ~~(q)~~—“**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators; and
- (u) ~~(r)~~—“**TSX**” means the Toronto Stock Exchange.

**CLAIM**

2. The Plaintiffs' claim:

- (a) a declaration that the Defendants made misrepresentations during the Class Period with respect to, *inter alia*, MFC's risk management practices and exposure to market risks;
- (b) a declaration that the Defendants made the misrepresentations negligently;
- (c) a declaration that MFC is vicariously liable for the acts and/or omissions of the Individual Defendants;
- (d) leave to assert the cause of action set out in s. 138.3 of the *OSA*;
- (e) general and special damages in the sum of \$500 million or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (f) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (g) prejudgement interest and postjudgement interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (h) costs of this action and, pursuant to s. 26(9) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (i) such further and other relief as counsel may advise and to this Honourable Court may seem just.

### OVERVIEW OF THE ACTION

3. MFC is a worldwide financial conglomerate. At all material times, MFC, through various subsidiaries, sold Guaranteed Products. Guaranteed Products share a common feature in that, under certain circumstances, purchasers are entitled to a guaranteed minimum payment, return or result. These products operate in a similar fashion to mutual funds: MFC invests's customers buy a contract, which essentially consists of MFC investing its customer's funds in certain securities, and the contracts owned by the purchasers of ~~these products make or lose money~~ Guaranteed Products are valued based on the performance of those assets. Unlike mutual funds, however, MFC's customers are entitled to a certain minimum result irrespective of the performance of the securities acquired with customer funds.

4. Typically, financial firms offering such products utilize hedging and other risk management strategies to ensure that capital will be available to pay the guaranteed amounts if the underlying securities declined in value. Hedging is the practice of designing an investment structure such that if there are price reversals on certain portions of a portfolio, the resulting losses are made up, in whole or in part, on the hedge positions. Hedging is a form of risk management, and can be accomplished via options, reinsurance, swaps, derivatives or other instruments.

5. Despite its statements to the contrary, MFC did not have an adequate risk management program with regard to, *inter alia*, the Guaranteed Products.

6. Beginning in mid-2007, the world financial markets began to contract. This contraction, which intensified through 2008, was one of numerous extreme market declines that have occurred since the Great Depression, and the risk that such a decline would occur was at all times material to the business of MFC. The Defendants knew of that risk. Nonetheless, MFC, despite its assurances to the contrary, did not have adequate practices in place to protect MFC from that risk.

7. Because MFC's risk management practices were inadequate, MFC was eventually forced to take massive write downs related to its Guaranteed Products. As these write downs and the inadequacy of MFC's risk management practices became known to the market, the price of MFC's securities declined dramatically.

8. The Plaintiffs and Class Members suffered losses as a result of these declines in the price of MFC's securities.

#### THE PARTIES

9. Ironworkers Ontario Pension Fund is a pension fund established for the benefit of certain of the ironworkers and rod-workers of Ontario.

10. Leonard Schwartz is an individual residing in Toronto.

11. ~~9-~~The Plaintiffs purchased shares of MFC during the Class Period, and they continued to hold MFC shares of MFC that they purchased during the Class Period when the price of MFC's securities declined as a result of the correction of the misrepresentations alleged herein.

12. ~~10-~~MFC is a reporting issuer in all the Provinces and Territories of Canada. At all material times, MFC shares were traded on the TSX and the NYSE under the symbol "MFC." Certain related securities are traded or were traded on, *inter alia*, the TSX under the ticker symbols "MFC.PR.A", "MFC.PR.B" and "MFC.PR.C." Securities of MFC may trade or may have traded on certain other exchanges world-wide, including, without limitation, The Stock Exchange of Hong Kong and the Philippine Stock Exchange. MFC also issues various forms of debt instruments which are traded over-the-counter.

13. ~~11-~~MFC is a corporation established pursuant to the *Insurance Companies Act*, S.C. 1991, c. 47, as amended.

14. ~~12-~~MFC is a life insurance company and the holding company of The Manufacturers Life Insurance Company, among other life insurance companies. MFC, together with its subsidiaries, is a global provider of financial protection and wealth management products and services, including individual life insurance, group life and health insurance, long-term care insurance, pension products, annuities and mutual funds. MFC also provides investment management services with respect to its general fund assets, segregated fund assets, mutual funds, and to institutional customers.

15. ~~13.~~ D'Alessandro was MFC's President and CEO from 1994 through the end of 2008. During the Class Period he sold 904,740 shares of MFC for gross proceeds in excess of \$35 million.

16. ~~14.~~ Rubenovitch was a Senior Executive Vice President and Chief Financial Officer of MFC from 1998 to June 2009. Rubenovitch was accountable for managing the financial affairs of the Company. He was responsible for Enterprise Risk Management, Actuarial, Controllers, Taxation, Treasury, Investor Relations, the Reinsurance Division and other financial functions company-wide. As the Company's Chief Credit Officer, he was the Chairman of the Company's Credit Committee and was also a member of the Company's Executive and Management Committees. During the Class Period, Rubenovitch sold 205,200 shares of MFC for gross proceeds in excess of \$8 million.

17. ~~15.~~ Cook-Bennett, a director of MFC since 1978, was appointed Chair of the Board on October 2, 2008.

18. ~~16.~~ Sawchuk, a director since 1993, was Chairman of the Board from 1998 through October 1, 2008. Sawchuk holds a B.Sc. in Mechanical Engineering from the University of Manitoba and is currently a member of the Association of Professional Engineers of Ontario.

#### **MFC'S CONTINUOUS DISCLOSURE OBLIGATIONS**

19. ~~17.~~ As a reporting issuer in Ontario, MFC was required at all material ~~time~~times to issue and file with SEDAR:

- (a) within ~~60~~45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
- (b) within ~~140~~90 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP, including comparative financial statements relating to the period covered by the preceding financial year; ~~and~~

- (c) contemporaneously with each of the above, a ~~management's discussion and analysis~~MD&A of each of the above financial statements; and
- (d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

20. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future. Form 51-102F1 promulgated under the OSA requires that a reporting issuer provide an analysis of its liquidity, including its ability to generate sufficient amounts of cash and cash equivalents, in the short term and the long term, as well as a discussion of any trends or fluctuations that may affect its liquidity. The Form also requires a quantified and analytical discussion of both the company's financial resources and its financial commitments. For financial instruments and other instruments, reporting issuers must:

- (a) discuss the nature and extent of the use of, including relationships among, the instruments and the business purposes that they serve; and
- (b) describe and analyze the risks associated with the instruments.

21. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

### **THE GROWTH IN MFC'S GUARANTEED PRODUCTS BUSINESS**

22. During the Class Period, purchasers of MFC's Guaranteed Products were guaranteed a minimum return of their investment by means of annual withdrawals spread over a period of twenty or more years.

23. If markets did well, the annuities could be reset periodically at the current market value to provide for increased annual withdrawals. By contract, MFC guaranteed the entire amount of the original investment: if markets dropped, MFC had a contractual obligation to repay the investment over the contract period. Unlike its own equity investments, there was no capital gain upside for MFC in the Guaranteed Products because MFC did not own the related investments. There was, however, considerable downside for MFC if markets fell.

24. The shorter the term of the variable products, the higher the risk associated with the guarantees. This is because the shorter term does not provide the ability to make up a loss over the longer term. The reset option in the Guaranteed Products allows the contract holder to lock in investment gains annually if the market value of a Guaranteed Product contract increases. This resets the contract's deposit value to equal the greater of the deposit value or current market value, and in some cases restarts the contract term with an extended maturity date.

25. The ability of the contract holder to take advantage of voluntary or automatic reset provisions in the contract greatly increased the risk to MFC because resetting the guaranteed amount at a higher level meant that MFC was contingently liable for the higher amount. If the term is not extended, the risk to the insurer is also increased because of the shorter period between the reset date and maturity date.

26. The guarantees proved to be a powerful feature to sell variable products and the decision not to hedge the market risk meant cost savings to MFC that improved the company's reported profits and return on equity from 2004 to 2008. Shortly prior to and during the Class Period, the value of MFC's guarantees, and its corresponding exposure to risk, grew dramatically as indicated in the following chart:

<b>Guaranteed Product Guarantees</b> (expressed in \$millions)			
<u>Fiscal Year ended December 31</u>	<u>Guaranteed Products Under Management</u>	<u>Fund Value<sup>1</sup></u>	<u>Amount at Risk<sup>2</sup> (Guarantees less Related Fund Value)</u>
2003	\$ 71,464	16,117	2,596
2004	117,890	35,664	2,962
2005	139,695	49,096	2,191
2006	172,048	64,114	1,562
2007	174,977	71,800	2,093
2008	164,755	74,422	26,809

### THE MISREPRESENTATIONS

27. ~~18.~~ At or around the start of the Class Period, ~~on January 26, 2004,~~ MFC introduced several new Guaranteed Products, touting this development in a press release titled “Manulife Investments launches new funds.”

28. ~~19.~~ At or around the time of this press release, MFC decided to substantially reduce or eliminate its risk management with regard to some or all of its Guaranteed Products, but did not disclose this fact or, if it did so disclose, did not do so adequately. This decision, made in part by certain of the Individual Defendants, was known to the members of the board of MFC at all material times.

29. ~~20.~~ During The term “segregated fund” – used in various of MFC’s Class Period disclosure documents – is itself materially misleading. It implied that these funds were “segregated” and thus without risk to shareholders. In fact, under circumstances known to the Defendants and that did in fact occur, shareholders would become liable to make these “segregated” funds whole. In addition, during the Class Period, the Defendants: (1) misrepresented that MFC had prudent and appropriate risk management practices and

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<sup>1</sup> Fund value is not defined by Manulife but appears to be the market value of segregated funds on policies where the guaranteed value exceeds market value. Fund value and amount at risk are described as being “net of amounts reinsured” which is, as noted herein, a Misrepresentation.

<sup>2</sup> Amount at risk is defined as “the excess of guaranteed values over fund values on all policies where the guaranteed value exceeds the fund value.”

procedures; (2) failed to make full and timely disclosure of MFC's failure to properly hedge its exposure to market fluctuations in certain of its products, including, without limitation, the Guaranteed Products; (3) failed to disclose adequately the effect this could have on the financial health of MFC; and (4) misrepresented the risks arising from MFC's inadequate risk management (collectively, the "**Misrepresentations**").

30. ~~21.~~—The Misrepresentations included MFC's statements that its investments were "diversified." In reality, MFC's investments related to the Guaranteed Products were not diversified with respect to the risks of those investments. The Defendants ought to have known at all material times that MFC's "diversified" investments, in situations that could and did occur, would become highly correlated, and thus that those investments were not, in fact, diversified.

31. ~~22.~~—Notwithstanding the true state of MFC's risk management, the Defendants made the Misrepresentations in, *inter alia*, MFC's disclosure statements during the Class Period, including MFC's interim and annual financial statements, annual reports, ~~and management's discussion and analysis~~ MD&As and AIFs.

32. ~~23.~~—Throughout the Class Period, the Defendants consistently misrepresented, either explicitly or implicitly, that MFC's risk management practices were adequate.

33. ~~24.~~ ~~In~~ For example, in MFC's 2003 Annual Report, filed on SEDAR on April 1, 2004, MFC stated:

The Company uses derivatives, including foreign exchange contracts, interest rate and cross currency swaps, forward rate agreements and equity options, to manage interest rate, foreign currency and equity risk.

34. ~~25.~~—The 2003 Annual Report also noted that "[t]he targets and limits are designed to ensure investment portfolios are widely diversified across asset classes and individual investment risks."

35. ~~26.~~—At or about the time of those disclosures, however, MFC abandoned effective risk management with respect to the Guaranteed Products.

36. ~~27.~~—In its 2004 Annual Report, filed on SEDAR on March 22, 2005, MFC did not disclose this fact, stating:

Derivatives, including foreign exchange contracts, interest rate and cross currency swaps, forward rate agreements and options, are incorporated into investment strategies where appropriate to manage interest rate, foreign currency risk and equity risk.

37. ~~28.~~–The 2004 Annual Report also stated that “targets and limits are designed to ensure investment portfolios are widely diversified across asset classes and individual investment risks, and are suitable for the liabilities they support.” As alleged above, however, MFC was improperly or ineffectively diversified.

38. ~~29.~~–In its 2005 Annual Report, filed with SEDAR on March 22, 2006, MFC stated:

Derivatives, including foreign exchange contracts, interest rate and cross currency swaps, forward rate agreements and options, are incorporated into investment strategies where appropriate to manage interest rate, foreign currency and equity risks.

39. ~~30.~~–The 2005 Annual Report also mentioned the Guaranteed Products for the first time, stating:

The investment return risk arising from the Company’s off-balance sheet products<sup>+3</sup> is principally due to the uncertainty of future levels of asset-based fees, as well as death and living benefit guarantees provided on variable annuity and insurance products. Guarantees include death, maturity, income and withdrawal guarantees on variable products and segregated funds. *Off-balance sheet product investment return risk is mitigated through benefit guarantee design, limitations on fund offerings and the use of reinsurance. New product benefit guarantees and fund offerings are designed to meet established extreme event risk exposure limits, based on economic capital at risk. Reinsurance is in place on existing business that transfers investment return related benefit guarantee risk where appropriate, subject to established counterparty risk management policies.*

[Emphasis added.]

40. ~~31.~~–The Defendants did not then disclose, however, that the “investment return risk” was not “mitigated;”, or was inadequately mitigated, that MFC’s reinsurance was insufficient or non-existent, and that the Guaranteed Products were not designed to manage effectively the risks to MFC arising from extreme events.

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<sup>+3</sup> A category that includes the Guaranteed Products.

41. ~~32.~~ With regard to diversification, the 2005 Annual Report erroneously stated that “[t]he targets and limits are designed to ensure investment portfolios are widely diversified across asset classes and individual investment risks, and are suitable for the liabilities they support.”

42. ~~33.~~ In its 2006 Annual Report, filed on SEDAR on March 26, 2007, MFC stated:

Risk mitigation activities, such as product and investment portfolio management, hedging, reinsurance and insurance protection *are used to ensure our aggregate risk remains within our risk appetite and limits.*

...

Derivatives, including foreign exchange contracts, interest rate and cross currency swaps, forward rate agreements and options are used to manage interest rate, foreign currency and equity risks. ...

...

*We mitigate investment return risk arising from off-balance sheet products through benefit guarantee design, limitations on fund offerings and the use of reinsurance. We design new product benefit guarantees and fund offerings to meet established extreme event risk exposure limits, based on economic capital. We have reinsurance in place on existing business that transfers investment return related benefit guarantee risk, where appropriate.*

[Emphasis added.]

43. ~~34.~~ The Defendants did not then disclose, however, that MFC’s “investment return risk” was not “mitigated,” that reinsurance was insufficient or non-existent, or that the Guaranteed Products were not designed to manage effectively the risks to MFC arising from extreme events. As was the case throughout the Class Period, the Defendants were aware of the material risk of extreme events, but MFC had insufficient risk management to deal with such events.

44. ~~35.~~ With regard to diversification, the 2006 Annual Report erroneously noted that “[t]he targets and limits are designed to ensure investment portfolios are widely diversified across asset classes and individual investment risks, and are suitable for the liabilities they support.”

45. ~~36.~~ ~~In each~~ Each of the 2003, 2004, 2005 and 2006 Annual Reports, ~~the Defendants~~ made repeated reference to reinsurance, despite the fact that said reinsurance was either ineffective or inadequate.

46. ~~37.~~ MFC's investments are subject to, among other risks, market risk which is, in MFC's words, "the risk of loss resulting from adverse investment returns caused by market price volatility, interest rate and credit spread changes, and from adverse foreign currency rate movements." In general, risk management strategies are used to mitigate these risks. According to its 2007 Annual Report, MFC claimed to use a variety of such strategies:

These risks include performance of non-fixed income investments, such as equities, commercial real estate, timberlands and oil and gas properties, interest rate changes, and foreign exchange rate changes, as well as liquidity risk. *These programs are designed to keep potential losses from these risks within acceptable limits.* Global investment policies establish enterprise-wide and portfolio level targets and limits, as well as delegated transaction approval authorities. *The targets and limits are designed to ensure investment portfolios are widely diversified across asset classes and individual investment risks, and are suitable for the liabilities they support.*

...

Several insurance and wealth management products have guaranteed benefits extending well beyond the term for which fixed income assets are generally available in the market. *We manage assets supporting these long-dated benefits to achieve a target return sufficient to support these obligations over their lifetime, subject to established risk tolerances by investing a portion in a diversified basket of non-fixed income assets, with the balance invested in fixed income portfolios.*

...

We mitigate both market price and interest rate risk arising from off-balance sheet products through benefit guarantee design, limitations on fund offerings, use of reinsurance and capital markets hedging. *We design new product benefit guarantees and fund offerings to meet established extreme event risk exposure limits, based on economic capital.* We have reinsurance in place on existing business that transfers investment return related benefit guarantee risk, where appropriate. We also employ dynamic capital markets hedging for a portion of our business.

[Emphasis added.]

47. ~~38.~~ Despite these assurances, MFC was dangerously exposed to the risks it claimed to have mitigated. Specifically, MFC did not have sufficient reinsurance, failed to "design new product benefit guarantees and fund offerings to meet established **extreme event** risk exposure limits" [emphasis added], and was invested in assets that were or would become strongly correlated and which thus were not diversified, and did not engage in substantial or appropriate

“capital markets hedging.” Indeed, some or all of the Defendants repeatedly claimed that they were employing reinsurance, stating for example that “[t]he expected guarantee cost [of the Guaranteed Products] represents the average...of the present values of projected future guaranteed benefit payments, *net of reinsurance*”, yet MFC’s reinsurance was either ineffective or inadequate.

48. ~~39.~~—The Defendants were aware of, and claimed to have prepared MFC for, “extreme events”,<sup>22</sup> such as the market declines that caused the deterioration in the Guaranteed Product portfolio.

49. ~~40.~~—At no time during the Class Period did the Defendants reveal the truth, or reveal the truth adequately, namely that, in or about early 2004, MFC had decided to minimize its risk management in order to increase its short-term profitability. Without adequate risk management, MFC effectively made an undisclosed wager that the markets would continue to rise.

50. ~~41.~~—During the Class Period, D’Alessandro and Rubenovitch certified that certain of the MFC disclosure documents containing the Misrepresentations, namely, MFC’s annual reports, interim financial statements and MD&As, did “not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report”. This statement was false, for the reasons alleged elsewhere herein.

51. ~~42.~~—While serving as Chair of the Board of MFC, each of Sawchuk and Cook-Bennett signed certain of the above disclosure documents, despite the Misrepresentations they ought to have known they contained.

52. ~~43.~~—In 2008, even as the markets began to sustain an extreme contraction, some or all of the Defendants continued to claim that MFC’s risk management practices were adequate.

53. ~~44.~~—On October 13, 2008, MFC released a press release titled “Manulife Financial Corporation releases key aspects of its financial position.” Therein, MFC stated that:

At September 30, 2008, notwithstanding the steep decline of equity markets, Manulife fully expects the fees collected on these contracts will exceed the benefits payable over their lifetime. Despite this, at the end of third quarter,

Manulife held an actuarially determined reserve of \$1.4 billion in respect of any potential future shortfall. This reserve is recalculated every quarter to reflect the passage of time and any change in the market value of assets that may have occurred. Manulife reserves for these guarantees at a high confidence level which, at the end of third quarter, is expected to be at a level exceeding 90%. To the extent that any increase in reserve is required in any period, this would decrease the earnings for that period. In periods of rising market values, the converse would be the case.

54. 45.—On February 12, 2009 and May 7, 2009, however, MFC announced write downs, totalling \$3.6-billion, to supplement MFC's reserves.

55. Speaking at an industry event in March, 2009, Rubenovitch described the reckless risks MFC had taken. As reported in the Financial Post on March 6, 2009, he stated:

I think the 2004–2007 period is where we differentiated ourselves — in hindsight, unfavourably — by assuming more of the risk than most of our competitors.

...

We felt that retaining the risk would give us a little more volatility and a little more return. It gave us a lot more volatility and considerably less return.

56. 46.—At the end of the Class Period, MFC released its 2008 Annual Report and therein disclosed the true state of MFC's risk management and Guaranteed Products portfolio. The report stated, in part:

The volatile markets affected the 2008 results of all our divisions. All operating divisions incurred losses related to segregated fund guarantees and/or reduced capitalized future fee income on equity-linked and variable universal life products, and reduced fees due to lower levels of assets under management. In addition, all divisions shared in the credit and general fund equity related losses. As a result of the sharp declines in equity markets, balance sheet reserves for segregated fund guarantees were increased to \$5,783 million as at December 31, 2008 compared with \$526 million at the prior year end. The Company's obligations under its segregated fund guarantees are substantially payable over a thirty year period beginning in seven years. Over the long term should equity markets recover, portions of these reserves may reverse into net income. These non cash charges overshadow other business related results.

57. 47.—In its risk management discussion, the report noted:

The ongoing deterioration of the economy overall and severe dislocation of the financial markets continues to weigh heavily on the financial services industry. In this environment, Manulife Financial is not immune. While our disciplined

investment risk management approach resulted in our asset portfolio performing comparatively well, the severe equity market declines had a material impact on the operations of our Company, in large part arising from our variable annuity and segregated fund guarantee exposures.

58. 48--At that time, MFC finally announced that it was planning to implement a hedging strategy:

...we are implementing a comprehensive plan that will allow us to economically achieve a reduced level of exposure to equity market volatility. We have already begun to review our variable annuity guarantee offerings and modify product designs to better balance the features that have attracted customers to these products with the risk that they present to Manulife Financial.

...

Variable annuity guarantees generate the largest component of our exposure risk related to equity markets. We are implementing a comprehensive plan that will allow us to economically achieve a reduced level of exposure to equity market volatility. We have already begun to review our variable annuity guarantee offerings and modify product designs to better balance the features that have attracted customers to these products with the risk that they present to Manulife Financial. We will continue to provide variable annuity and segregated fund offerings, with potential obligations payable over a long time period, generally deferred several years. However, recognizing increasing volatility in equity markets, we will offer product designs and investment fund alternatives with reduced exposure to equity markets. We have also expanded our variable annuity hedging to encompass all new business written in the U.S and the majority of Canadian new business and will look for opportunities to economically hedge existing business.

59. 49--In that same report, Cook-Bennett stated:

Due to guarantees provided by our segregated funds and variable annuity products, we have an exposure to equity markets that required Manulife to increase its balance sheet reserves. As discussed elsewhere in this report, Manulife's obligations under these guarantees are substantially payable over a 30-year period beginning in seven years. Should equity markets recover over the long term, portions of these reserves may reverse into net income. Nonetheless, in order to absorb the accounting impact of the future volatility in financial markets and to provide flexibility for Manulife to capitalize on current market conditions, the Company raised \$4.3 billion through debt and equity offerings in the fourth quarter of 2008.

60. 50--In that same report, D'Alessandro stated:

As a result of the exceptional declines in equity markets, balance sheet reserves for segregated fund guarantees were increased to \$5,783 million as at December 31, 2008 compared with \$526 million at the prior year end. Due primarily to the impact of this increase in non-cash reserves, shareholders' fully diluted earnings for the year were \$0.32 per share, compared with \$2.78 for the previous year. The impact of the reserve strengthening was felt in all operating divisions.

This performance was deeply disappointing...

Professionalism also means delivering consistent value to our shareholders and by this all important standard, our performance in 2008 simply did not measure up. After fourteen years of record results it is profoundly disappointing to me to end my career on such a dismal note. However, we have taken and are taking steps to deal with the challenges posed by our exposure to equity markets and I remain confident that our great company will resume its ascendancy in the years ahead.

61. ~~51.~~ Throughout the Class Period, MFC failed to utilize effective and appropriate risk management and failed to disclose ~~that failure~~ the same. Accordingly, the price of MFC's securities was inflated. When the truth began to emerge, the price of MFC's securities declined severely.

62. Additionally, MFC's actuarial assumptions were overly aggressive and failed to take into account adequately the risks of negative market movement, which risks the Defendants ought to have known were material to MFC.

63. In each of the Annual Reports issued during the Class Period, MFC included a signed 'Appointed Actuary's Report to the Shareholders.' In stated, in the following or substantially similar language, that "the amount of policy liabilities makes appropriate provision for all policyholder obligations and the consolidated financial statements fairly present the results of the valuation," which some or all of the Defendants knew or ought to have known was not the case.

#### POST CLASS PERIOD EVENTS

64. ~~52.~~ On June 19, 2009, MFC disclosed an OSC investigation in a press release titled "Manulife Discloses OSC Notice." The release stated:

... the Company stated that it received an enforcement notice from staff of the Ontario Securities Commission (OSC) this week relating to its disclosure before March 2009 of risks related to its variable annuity guarantee and segregated funds business. The OSC notice indicates that it is the preliminary conclusion of OSC

staff that the Company failed to meet its continuous disclosure obligations related to its exposure to market price risk in its segregated funds and variable annuity guaranteed products. The Company has the opportunity to respond to the notice before OSC staff makes a decision whether to commence proceedings, and the Company intends to cooperate with OSC staff. The Company believes that its disclosure satisfied applicable disclosure requirements.

65. 53.—On that same day, MFC announced that its long-time CFO, the defendant Rubenovitch, had “retired.”

66. On August 6, 2009, MFC cut its dividend by 50%. In a press release issued that same day, Guloien, who replaced D’Alessandro as CEO, stated

...our capital planning must anticipate more conservative economic scenarios than we are currently experiencing and provide more flexibility to respond to both risks and opportunities from a continued position of strength...

67. MFC shares fell from a close of \$26.35 on August 5 to an intra-day low of \$22.21 on August 6, a decline of 15.7%.

68. In an interview with *Bloomberg News*, Guloien tied the dividend cut to a need to protect the company balance sheet against “negative developments,” or market declines. *Bloomberg News* quoted Guloien as stating:

We want to provide the highest degree of comfort that is reasonable for negative developments that could occur...

69. In an interview with the *Globe and Mail*, Guloien continued to tie the dividend cut to a need to consider negative scenarios in managing MFC, saying:

...when we do our capital planning, we have to look at far more negative scenarios than what’s currently happening.

70. As alleged above, MFC failed to disclose, or to disclose adequately, its decision not to protect against “negative scenarios”. This failure caused injury to the Class Members.

71. On September 16, 2009 MFC announced that it was substantially altering its portfolio of Guaranteed Products, and would close its existing products:

**Manulife to offer three new series of segregated funds to meet Canadians’ investment, retirement and estate-planning needs**

Toronto - Manulife will launch a new segregated fund platform in early October with three investment series to offer Canadian investors attractive solutions for their accumulation, income and estate planning needs.

...

In a continued effort to balance product risks/benefits and to simplify its overall product offering, Manulife will also close new sales to its original GIF Select, GIF and GIF encore contracts.

[emphasis added]

### THE DEFENDANTS' NEGLIGENCE

72. ~~54.~~ At all times material to the matters complained of herein, each of the Defendants knew or ought reasonably to have known that the trading price of MFC's securities was directly influenced by the statements disseminated by the Defendants concerning the business and affairs of MFC.

73. ~~55.~~ As such, the Defendants knew or ought reasonably to have known that a failure to ensure that MFC's disclosures were materially accurate and complete would cause the price of MFC's securities to become inflated, and thus would cause damage to persons who invested in MFC's securities while their price remained inflated by such false statements.

74. ~~56.~~ MFC and, by virtue of their position of authority and responsibility within MFC, each of the Individual Defendants, owed a duty to the Plaintiffs and to persons and entities similarly situated, at law and under provisions of the *OSA*, to disseminate promptly, or to ensure the prompt dissemination of, truthful, complete and accurate statements regarding MFC's business and affairs, and promptly to correct previously issued, materially inaccurate, information, so that the market price of MFC's securities was based on complete, accurate and truthful information.

75. ~~57.~~ At all times material to the matters complained of herein, each of the Defendants ought to have known that MFC's Class Period disclosure documents described herein were materially misleading as detailed above. ~~Accordingly, the Defendants have violated their duties to the Plaintiffs and Class Members.~~

76. Accordingly, the Defendants have violated their duties to the Plaintiffs and Class Members.

77. ~~58.~~—The reasonable standard of care expected in the circumstances required the Defendants to act reasonably, candidly and with due care in the course of compiling and disseminating MFC's disclosure documents.

78. ~~59.~~—The Defendants failed to meet the standard of care required by issuing MFC's disclosure documents during the Class Period, which were materially false and/or misleading as described above.

79. ~~60.~~—The Defendants further breached their duty of care as:

- (a) they failed to ensure that material facts and risks relating to investment in MFC's securities were disclosed in MFC's disclosure documents; and
- (b) they failed to maintain appropriate control procedures to ensure that MFC's disclosure documents adequately and fairly presented the business and affairs of MFC on a timely basis.

80. ~~61.~~—The negligence of the Defendants resulted in ~~the~~ damage to the Plaintiffs and Class Members. The Misrepresentations caused the price of MFC's securities to be artificially inflated during the Class Period, when the Plaintiffs and other Class Members purchased MFC's securities. When the true state of MFC's risk management began to be revealed, this artificial inflation began to be removed, and the trading price of MFC's securities was corrected to reflect this new information.

81. ~~62.~~—As a result, the Plaintiffs and Class Members bought their MFC's securities at inflated prices, and suffered a corresponding loss upon the disclosure of the truth.

82. Had the Defendants exercised reasonable care and diligence in connection with the issuance of MFC's Class Period disclosure documents referenced herein, MFC's securities would have traded during the Class Period at a price that reflected their true value.

### NEGLIGENT MISREPRESENTATION

83. ~~63.~~ MFC's disclosure documents referenced above were prepared, at least in part, for the purpose of attracting investment in MFC, and with the intention that members of the investing public would rely upon the documents in making the decision to purchase MFC's securities.

84. ~~64.~~ The Defendants ought to have known that, by making the Misrepresentations, the price of MFC's securities would rise and/or remain at artificially high levels, and that investors would rely upon the Misrepresentations in making their decisions to purchase MFC's securities.

85. ~~65.~~ MFC made the Misrepresentations by issuing the disclosure documents referenced above. The Individual Defendants made the Misrepresentations by authorizing, permitting and/or acquiescing in the drafting and issuance of those disclosure documents, and/or by signing them.

86. ~~66.~~ The Defendants made the Misrepresentations negligently, intending that the Plaintiffs and the other Class Members would rely upon them, which they did to their detriment by purchasing MFC's securities during the Class Period.

87. ~~67.~~ The Plaintiffs and each other Class Member relied directly or indirectly upon the Misrepresentations by reading and acting upon disclosure documents containing the Misrepresentations, or alternatively, by reading and acting upon documents that contained information derived from the Misrepresentations.

88. ~~68.~~ Further, or in the alternative, given the relationship as pleaded below between MFC's disclosures and the price of MFC's securities, the Plaintiffs and each other Class Member relied upon the Misrepresentations by the act of purchasing or acquiring MFC's securities in the open market.

89. ~~69.~~ The Plaintiffs and each other Class Member suffered damages and loss as a result of their reliance on the misrepresentations in purchasing MFC's securities.

**THE RELATIONSHIP BETWEEN MFC'S DISCLOSURES AND THE PRICE OF MFC'S SECURITIES**

90. 70.—The price of MFC's securities was directly affected during the Class Period by the issuance of the disclosure documents described herein. The Defendants were aware at all material times of the effect of MFC's disclosures upon the price of its MFC's securities.

91. 71.—The disclosure documents referenced above were filed, among other places, with SEDAR, EDGAR, the TSX and the NYSE, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

92. 72.—MFC routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of MFC's securities. MFC provided either copies of the above referenced documents or links thereto on its website.

93. 73.—MFC regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of press releases on newswire services in Canada, the United States and elsewhere. The price of MFC's securities was directly affected each time MFC communicated new material information about MFC's financial results to the public.

94. 74.—MFC was the subject of analysts' reports that incorporated some of the material information contained in the disclosure documents referred to above, with the effect that any recommendations to purchase MFC securities in such reports during the Class Period were based, in whole or in part, upon that information.

95. 75.—MFC's securities were and are traded, among other places, on the TSX and the NYSE, which are efficient and automated markets. The price at which MFC's securities traded promptly incorporated material information about MFC's business and affairs, including the omissions and/or misrepresentations described herein, which were disseminated to the public through the documents referred to above and distributed by MFC, as well as by other means.

### VICARIOUS LIABILITY OF MFC

96. ~~76.~~ MFC is vicariously liable for the acts and omissions of the Individual Defendants particularized in this Claim.

97. ~~77.~~ The acts or omissions particularized and alleged in this Claim to have been done by MFC were authorized, ordered and done by the Individual Defendants, and other agents, employees and representatives of MFC, while engaged in the management, direction, control and transaction of the business and affairs of MFC. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of MFC.

98. ~~78.~~ At all material times, the Individual Defendants were officers and/or directors of MFC. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiffs and the other Class Members.

### RELIEF SOUGHT

99. ~~79.~~ As a result of the acts and omissions described above, the Plaintiffs and the other Class Members were induced to over-pay substantially, and/or did over-pay substantially, for MFC's securities. Such persons and entities have suffered damages equivalent to the loss in market value that occurred when MFC corrected the Misrepresentations.

### PART XXIII.1 OF THE OSA

100. ~~80.~~ The Plaintiffs intend to deliver a notice of motion seeking, among other things, an order granting leave to assert the statutory causes of action particularized in Part XXIII.1 of the OSA, and, if granted leave under s. 138.8(1) of the OSA, to plead the causes of action set out in s. 138.3 thereof.

### REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

101. ~~81.~~ The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other thing:

- (a) MFC is a reporting issuer in Ontario;
- (b) MFC's shares trade on the TSX which is located in Toronto, Ontario;
- (c) MFC is headquartered in Toronto, Ontario;
- (d) the MFC disclosure documents referred to herein were disseminated in and from Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario;
- (f) MFC carries on business in Ontario; and
- (g) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

102. ~~82.~~ The Plaintiffs request that this action be tried at Toronto.

~~July 28, 2009 - November 13, 2009~~

✓ - July 29, 2009 -

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And

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Defendants

Court File No: CV-09- 383998-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

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