

Court File No. CV-11-597

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CITY OF HAMILTON**

Plaintiff

- and -

**HENRY JUROVIESKY and JUROVIESKY & RICCI LLP**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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.

Date:

~~September 6/2011~~

Issued by:

BARBARA S. DAWSON  
Local registrar

Address of court office:

70 Wellington St.  
Brantford Ontario  
N3T 2L9

TO:

Henry Juroviesky  
c/o JUROVIESKY LLP  
Barristers & Solicitors  
4950 Yonge Street, Suite 904  
Toronto, Ontario  
M2N 6K1

AND TO:

JUROVIESKY & RICCI LLP  
c/o JUROVIESKY LLP  
Barristers & Solicitors  
4950 Yonge Street, Suite 904  
Toronto, Ontario  
M2N 6K1

## CLAIM

1. The plaintiff claims:
  - a) payment of the sum of \$11,000,000 for damages sustained as a result of the defendants' negligence;
  - b) pre-judgment and post-judgment interest on the total amount due and owing pursuant to the *Courts of Justice Act* R.S.O. 1990 c. C. 43;
  - c) its costs of this action; and
  - d) such other relief as to this Honourable Court may seem just.

## The Parties

2. The plaintiff, City of Hamilton ("**the City**"), is a municipality constituted as a body corporate pursuant to the provisions of the *City of Hamilton Act*, 1999, S.O. 1999, c. 14, sch. C, as amended.
3. The defendant, Henry Juroviesky is a lawyer licensed to practice law in Ontario whom the City retained to prosecute an action on its behalf.
4. The defendant Juroviesky & Ricci LLP was, at all material times, a limited liability partnership which the City retained to prosecute an action on its behalf.

## Retainer of Defendants

5. By written agreement dated July 7, 2009, Hamilton retained the defendants to pursue recovery of losses the City sustained as a result of being misled by third parties in the purchase of asset backed commercial paper.

6. The retainer agreement required the defendants to take "all viable actions in securing a settlement or court award for amounts invested and lost in the City's purchase of ABCP" including "initiating proceedings against the responsible parties with the court or tribunal of proper jurisdiction" as set out more fully below.
7. The retainer stipulated that it was to be "personal to the named lawyers" while recognizing that other lawyers and consultants may be assigned to perform some of the necessary work". It was stated in the retainer that "...the City regards the named lawyers as solely responsible for the conduct of the file".
8. Henry Juroviesky was specifically mentioned in the retainer agreement, and it was he who executed the agreement.

#### **Nature of Litigation for which Defendants Were Retained**

9. On or about July 24, 2007, the City paid to Deutsche Bank \$9,919,000 for asset backed commercial paper ("**ABCP**") with a face value of \$10 million upon its maturity on September 26, 2007 ("**the Notes**").
10. The Notes were given the highest credit rating of R-1 (high) by Dominion Bond Rating Service. The City purchased the Notes with the understanding that they were liquid and safe commercial paper suitable for conservative short-term investment.
11. Prior to the purchase, no prospectus for the Notes was provided to the City. Additionally, the City was not provided with a copy of the information memorandum or the trust indenture relating to the Notes.
12. On or about August 13, 2007, non-bank ABCP such as the Notes ceased trading in Canada as a result of buyers' concerns over the sub-prime mortgage collapse in the United States and developing turmoil in the international credit default swap markets.

13. Accordingly, the City was unable to redeem the Notes on the maturity date of September 26, 2007. The City has never been paid any portion of the \$10 million that was owed to it upon maturity.
14. Subsequent to the cessation of trading of non-bank ABCP, the Investment Industry Regulatory Organization of Canada published a report in which it was concluded that "securities dealers" did not perform due diligence and misrepresented the safety and liquidity of non-bank ABCP to their retail customers to whom they owed a duty of care and the obligation to ensure suitability. This misrepresentation by securities dealers formed the basis of the litigation that the defendants were retained to prosecute on the City's behalf.

#### **Late Filing of Statement of Claim**

15. On July 21, 2009, the defendants advised the City that August 13, 2009 (two years after the day on which ABCP stopped trading) would be considered to be the end of the limitation period within which the City would have to commence a claim. The defendants informed the City that a Notice of Action would be filed a week in advance of that date.
16. The plaintiff accepted and relied upon the defendants' advice regarding the limitation period within which the City's claim would have to be commenced.
17. The defendants did file a Notice of Action on August 5, 2009.
18. On August 20, 2009, the defendants confirmed by e-mail correspondence to the City that the statement of claim was due to be filed on September 4, 2009, which was 30 days after the filing of the Notice of Action.
19. On September 3, 2009, the defendants informed the City by email that the statement of claim would be filed in a timely manner the following day.

20. The defendants did not, in fact, file a statement of claim on the City's behalf on September 4, 2009.
21. Without any further consultation with the City whatsoever, the defendants determined that the two-year limitation period did not expire until September 26, 2009. Accordingly the defendants continued to refine and supplement the Statement of Claim and filed it on September 25, 2009.
22. The defendants did not inform the City that a new limitation date would be used until September 25, 2009, well after the deadline for filing a statement of claim under the Notice of Action.

### **Motion for Summary Judgment**

23. Subsequent to the service of the Statement of Claim, certain defendants moved for summary judgment and argued that the City's claim was commenced after the expiration of the relevant limitation period. The motion was heard by the Honourable Justice Frank, who, by endorsement dated December 22, 2010, summarily dismissed the City's action. Justice Frank held that the limitation period did not expire on September 26, 2009 as argued by the defendant Juroviesky, but rather that it had expired between August 6, 2009 and August 23, 2009.
24. The City has appealed the dismissal of its action. As of the date of this pleading, the appeal has not yet been heard.
25. The summary dismissal of the City's action was caused by the negligence of the defendants, particulars of which are as follows:
  - (a) they failed to prepare a statement of claim in a timely manner;
  - (b) they failed to file a statement of claim within 30 days of the Notice of Action as required by the Rules of Civil Procedure;

- (c) they failed to properly commence the action within the limitation period that they themselves had selected;
  - (d) they failed to seek instructions from the City regarding a delayed filing of a statement of claim;
  - (e) they failed to properly instruct and supervise lawyers, employees, and agents for whom they were responsible regarding the expiration of limitation and the timely filing of pleadings;
  - (f) in the alternative, they exposed the City to undue risk in the litigation by choosing a limitation period which was vulnerable to attack by opposing litigants.
26. As a result of the Defendants' negligence, the City has sustained damages, the quantum of which is dependent upon the outcome of the City's appeal of the summary dismissal of its action.
27. Should the Court of Appeal determine that the claim was filed after the limitation period expired, the City's damages will include:
- (a) the damages, interest and costs that would have been payable had the City's claim been filed in time and prosecuted through to settlement or trial;
  - (b) costs payable by the City as a result of the dismissal of its action;
  - (c) disbursements incurred by the City during the course of the summary judgment motion;
  - (d) legal fees and disbursements incurred by the City in the appeal(s) of the summary judgment;
  - (e) disbursements incurred by the City in the prosecution of the action;

28. In the alternative, should the Court of Appeal hold that the Statement of Claim was filed within the limitation period, the City's damages will include:
  - (a) legal fees and disbursements incurred by the City in the appeal of the summary judgment;
  - (b) disbursements incurred during the course of the motion for summary judgment;
29. But for the defendants' negligence, the City would not have sustained any of the above damages, and the action would have been prosecuted through to a successful conclusion, including the payment of costs and disbursements to the City as the successful party in the litigation.
30. The City pleads and relies upon the provisions of:
  - (a) the *Negligence Act*, R.S.O. 1990, c. N1, as amended;
  - (b) the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
  - (c) the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended;
  - (d) the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194.

DATED: September 6, 2011

**CITY OF HAMILTON**

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 Legal Services Division  
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 Hamilton, Ontario  
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