

CANADA
PROVINCE OF QUEBEC
DISTRICT OF HULL

N° : 550-06-000026-113

SUPERIOR COURT
(Class Action)

DAVID BROWN

[...]

Petitioner

v.

LLOYD'S UNDERWRITERS

[...]

and

SAMSON ET ASSOCIÉS INC.

Respondents

**AMENDED MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(ARTICLE 1002 C.C.P.)**

IN SUPPORT OF THEIR MOTION, THE PETITIONER, DAVID BROWN [...] RESPECTFULLY SUBMITS THE FOLLOWING:

The Group

1. The Petitioner, David Brown [«Brown»] [...] intends to institute a class action against Lloyd's Underwriters [...] the insurance company of the bankrupted brokerage firm Iforum Financial Services Inc., [...], and against Samson et associés inc., an accountant firm, on behalf of the persons forming part of the group hereinafter described and of which the Petitioner is member, namely:

Description of the Group

All those natural persons, and legal persons with less than fifty (50) employees, who have made various investments proposed to them by Marc Jemus, François Roy and/or Robert Primeau, and/or through

them, and/or in or through companies related to one of them, in the years 2001 to 2005 inclusively.

The Previous Motion to Institute a Class Action on Behalf of the Same Group of Members in the File C.S.Hull 550-06-000024-068

2. At the origin of the present motion to institute a class action is the fraudulent scheme framed and executed by mainly three individuals, namely François Roy [«Roy»], Marc Jemus [«Jemus»] and Robert Primeau [«Primeau»];
3. Another Motion to be authorized to institute a class action was previously filed by the Petitioner David Brown on behalf of the persons forming part of the group described in paragraph 1 above against the following respondents:
 - François Roy,
 - Marc Jemus,
 - Robert Primeau,
 - B2B Trust,
 - Whitney Canada Inc.,
 - Whitney Information Network Inc.,
 - Jean Lafrenière,
 - Lloyd's Underwriters,
 - Lloyd's Canada Inc. and
 - Desjardins Financial Security Investments Inc., also doing business as Optifund Investments Inc. [hereinafter Optifund],

as it appears from a copy of the Re-re-amended Motion for Authorization to Institute a Class Action in the file C.S.Hull 550-06-000024-068, **Exhibit P-1**;

4. This motion was heard by the honourable Justice Michel Deziel of the Superior Court on June 21, 22 and 23, 2010 as against all the respondents, except for Roy, Jemus and Primeau who were under the protection of the bankruptcy laws;
5. Roy and Jemus were since released and the bringing of the class action against them has been authorized by Justice Deziel on May 16, 2011, as it appears from a copy of the Judgment rendered on May 16th, 2011, **Exhibit P-2**;
6. At the beginning of the hearing on June 21, 2010, Petitioner David Brown requested the Court's approval to withdraw the proceedings against Lloyd's Canada because it had been established that it was not an insurance company but rather an administrative structure which had no liability in the present matter;

7. On August 19, 2010, the Honourable Justice Michel Deziel of the Superior Court authorized the bringing of that class action against Whitney Canada inc. and Optifund, as it appears from a copy of that Judgment, **Exhibit P-3**;
8. In the same judgment, the Honourable Justice Deziel refused to grant the authorization for the bringing of a class action against B2B Trust, Whitney Information Network Inc., Jean Lafrenière and Lloyd's Underwriters;
9. On or about September 9, 2010, an appeal was filed by the Petitioner David Brown to reverse in part the conclusions of that judgment and to be authorized to institute a class action against B2B Trust and Whitney Information Network Inc., as it appears from the Inscription in Appeal, **Exhibit P-4**;
10. On or about January 20, 2011, a transaction was reached by the Petitioner David Brown, on one part, and Whitney Information Network Inc. and Whitney Canada Inc., on the other part, which transaction was approved by Justice Deziel on May 16th, 2011, as it appears from a copy of this judgment, **Exhibit P-5**;
11. On November 30, 2010, the Honourable Justice Deziel suspended the proceedings in the file C.S.Hull 550-06-000024-068 pending judgment on the appeal, as it appears from the minutes of a telephone conference, **Exhibit P-6**;
12. The reason of the Honourable Justice Deziel to refuse the authorization of the bringing of the class action against Lloyd's Underwriters was essentially his conclusion that Brown had no interest against this particular respondent, as it appears from this judgment, Exhibit P-3;
13. The proceedings against all the respondents in the initial file as well as in the present seek the condemnation of the respondents in solidarity;
14. The *modus operandi* used by Roy, Jemus and Primeau to commit their fraud can be summarized as follows;

The recruitment of the members of the group

15. The majority of Group Members initially followed a training in real estate investment with Whitney Canada Inc. and/or Whitney Information Network Inc. [hereinafter collectively «Whitney Group»];
16. Others were induced to invest by the reputation of the Whitney Group and the apparent success of the other investors;
17. Whitney Group offers real estate investment trainings based on a program called «The Russ Whitney's Building Wealth System» and represents to future students that they will learn «secret techniques to generate wealth quickly», as it appears

from extracts of Whitney Canada and Russ Whitney Building Wealth Websites, *en liasse*, **Exhibit P-7**;

18. Roy was a mentor working for the Whitney Group who used his position to recruit new investors;
19. Also, Jemus worked as a mentor for the Whitney Group during a short period of time and as a speaker during some of Whitney Group's events;
20. In most cases, the investors, members of the group, were asked to transfer their RRSP's investments to B2B Trust;
21. In addition, in several cases, these investors also borrowed money from B2B Trust for the purpose of investing with Roy, Jemus and Primeau;

The investments in Class C preferred shares: The Companies involved

22. Once the money was in B2B Trust accounts, members of the group were convinced to buy shares in companies controlled by either Roy, Jemus and/or Primeau and/or one of their companies for the purpose of doing real estate investments;
23. For example, the following companies were used for such investments, as well as other companies : Les entreprises de gestion Robert Primeau inc., Pension Positive Inc. and 3877311 Canada Inc., as it appears from extracts of the *Registre des entreprises* of Quebec for two of the companies and of the Registry of Corporations Canada for the other, *en liasse*, **Exhibit P-8**;
24. All these companies declared bankruptcy in 2005 or 2006, as it appears from extracts of the Insolvency Name Search Database of the Office of the Superintendent of Bankruptcy Canada, *en liasse*, **Exhibit P- 9**;
25. The investments proposed were in real estate ventures and were supposed to maintain the RRSP qualification for income tax purposes;
26. Each investment was to be matched to a particular property for investment purposes;
27. A smaller proportion of the real estate investments were done directly with Roy, Jemus and/or Primeau and did not go through one of these companies;

The bankruptcy of the companies and the fraud of Roy, Jemus and Primeau

28. In 2005, Ginsberg, Gingras et Associés Inc. was appointed by the Court as receiver of Pension Positive Inc. and 3877311 Canada Inc. pursuant to section 241 of the *Canadian Business Corporation Act*, R.C.S., 1985, c. C-44 and pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.C.S. 1985, c. B-3;
29. Ginsberg Gingras & Associés made four reports concerning Jemus and Roy and some of their companies;
30. Those reports also point out the participation of Primeau and his companies;
31. More particularly, on July 18, 2005, Ginsberg Gingras & Associés made a first report concerning the financial situation of Pension Positive Inc., as it appears from a copy of that report without the Appendices, **Exhibit P-10**;
32. On January 4th, 2006, Ginsberg Gingras & Associés made a second report concerning Pension Positive Inc., as it appears from a copy of that report without the Appendices, **Exhibit P-11**;
33. On July 22, 2005, Ginsberg Gingras & Associés also made a report concerning the financial situation of 3877311 Canada Inc, as it appears from a copy of that report without the Appendices, **Exhibit P-12**;
34. On January 4th, 2006, Ginsberg Gingras & Associés made another report concerning the financial situation of 3877311 Canada Inc, as it appears from a copy of that report without the Appendices, **Exhibit P-13**;
35. Those reports concluded that both companies were insolvent;
36. According to the reports of Ginsberg Gingras et Associés, the accounting books of the companies controlled by Jemus, Roy and Primeau were full of irregularities and of false entries;
37. It makes it particularly difficult to retrace the details of every investment that went through those companies;
38. More particularly, it makes it impossible to follow the investments made by the Petitioner;
39. However, it makes it clear that no measures were taken to protect the investments made by the members of the Group;
40. Furthermore, Ginsberg Gingras's reports indicate that certain amounts paid to those companies by members of the group were put to other use than investment;

41. More particularly, large sums of money were used to the personal benefit of Jemus, Roy and Primeau or their relatives;
42. Jemus, Roy and Primeau and their companies deliberately and fraudulently misused the money given to them by the Petitioner and other members of the group;
43. Their actions and omissions in relation to the management of the amounts entrusted to them or their companies by the Petitioner and other members of the group were grossly negligent and fraudulent;
44. On September 10, 2010, the Autorité des marchés financiers filed 28 statements of offence under the Securities Act (R.S.Q., c.V1.1) against Jemus, 22 statements of offence under the Securities Act against Roy and 16 statements of offence under the Securities Act against Primeau; These statements of offence were filed as Exhibits R-103, R-104 and R-105 in the first class action concerning the same group;
45. On June 17, 2011, the Attorney General of Canada charged Primeau, Roy and Jemus of fraud against members of the group, as it appears from a copy of the information and summons, **Exhibit P-14**;

The Private Offering Memorandums and the Subscription Agreements

46. In order to sell shares from their companies to members of the group, Jemus, Roy and Primeau prepared some documentation which had to be provided to B2B Trust before the transfer of group members' RRSPs savings to B2B Trust;
47. Therefore, for each company, a Private Offering Memorandum and a Subscription Agreement were provided by Roy and/or Jemus and/or Primeau to indicate how many Class C Preferred Shares were sold to each members of the group;
48. The Private Offering Memorandum for each company was, for all relevant purposes, identical, as it appears from a example of a Private Offering Memorandum from Pension positive, **Exhibit P-15**, from 3877311 Canada Inc., **Exhibit P-16**, and another from Les entreprises de gestion Robert Primeau inc., **Exhibit P-17**;
49. The same can be said with regard to the Subscription Agreements, as it appears from a example of a Subscription Agreement from Pension positive, **Exhibit P-18**, from 3877311 Canada Inc., **Exhibit P-19**, and another from Les entreprises de gestion Robert Primeau inc., **Exhibit P-20**;
50. These documents are on their face inadequate and frivolous;

51. More precisely, without limiting the generality of the foregoing, the Private Offering Memorandums for each company included several errors, omissions and misrepresentations, some of which are detailed in a Report prepared by Alain Falardeau, lawyer specialized in securities, which report is file as **Exhibit P-21** as if it was recited in whole in the present motion;
52. The Subscription Agreements also contained several errors and misrepresentations and omit to include some required information; these problem are also examined in Mr. Falardeau's Report, exhibit P-21;
53. After having analysed an example of a Private Offering Memorandum for each company, Me Falardeau specified at the page 9 of his report, that :

«D'une manière générale, je peux affirmer sans réserve être certain n'avoir jamais lu de notice d'offre d'aussi piètre qualité. La lecture de ces documents me porte à croire que le rédacteur de ceux-ci s'est contenté de copier et de rapiécer des portions de notices d'offre, parfois d'ailleurs inapplicables aux placements concernés. Même si les trois Notices d'offre n'émanent pas de la même société et que leurs dirigeants sont différents, il m'apparaît clair que le rédacteur de ces trois Notices d'offres est la même personne ou, à tout le moins, s'il ne s'agit pas de la même personne, que chacune a copié l'autre »;

54. Mr. Falardeau concluded as follows at page 13 of his report :

«Les trois Notices d'offres que nous avons examinées ne rencontrent nullement les exigences légales applicables à ce genre de document en ce que, elles :

- contiennent des erreurs importantes sur l'admissibilité des dispenses invoquées;*
- contiennent des erreurs factuelles ou de compréhension graves du ou des rédacteurs (...)*
- omettent des éléments essentiels pour que l'investisseur puisse savoir dans quoi il investit (...);*

55. After reviewing the documentation of the three companies, Mr. Julien Béliveau from Services financiers Square Victoria Inc. made the same statement of facts in his report dated April 15, 2008, at page 27, which report is filed as **Exhibit P-22** as if it was recited in whole :

«Les vices de fond et de forme de la documentation examinée sont les mêmes, mutatis mutandis, dans le cas des trois compagnies émettrices [Pension Positive Inc., 3877311 Canada Inc. et Les entreprises de gestion Robert Primeau inc.]. Ils sont tels qu'ils représentent une moquerie d'un processus légitime de financement des sociétés par appel à l'épargne.»;

56. Also, as far as the Petitioner knows, no valid prospectus were ever submitted to the Autorité des marchés financiers for any of the three companies involved, namely Pension Positive inc., 3877311 Canada inc. and Les entreprises de gestion Robert Primeau inc., nor did they receive any legislative or discretionary exemption to submit such prospectus;
57. If such prospectus had been submitted to one of these institutions, it is obvious it would have never been authorised as a valid prospectus, as it appears from Mr. Falardeau's Report at page 10, Exhibit P-20;
58. If these Private Offering Memorandums and Subscription Agreements could have looked legitimate for the average non professional investors, it should have been obvious that they were not for any professional or advised investor or consultant and/or trustee;
59. These Private Offering Memorandums and Subscription Agreements were requested by B2B Trust to complete transactions in the members of the group RRSPs accounts, as it appears from B2B Trust's Small Business Transaction – Documentation –Check List, **Exhibit P-23**;
60. These documents were provided to B2B Trust directly by Marc Jemus or other representative of securities firms;
61. Both B2B Trust and the securities firms involved were grossly negligent in considering these documents as valid Private Offering Memorandums and Subscription Agreements;

The involvement of Iforum Securities Inc and Iforum Financial Services Inc.

62. To execute transactions in their self-directed RRSP's accounts and to buy shares from Pension Positive Inc., 3877311 Canada Inc. and Les entreprises de gestion Robert Primeau inc. members of the group were represented by a securities firm;
63. Jemus was the first representative for several members of the group when he was working for Optifund and/or Iforum Financial Services Inc. and/or Iforum Securities inc. [for the last two companies collectively «IForum»], as it appears from a sample of B2B Trust RRSP account statements from members of the

group on which Marc Jemus and Iforum Financial Services appear as representative, *en liasse*, **Exhibit P-24** and on which Marc Jemus and Optifund appear as representative, *en liasse*, **Exhibit P-25**;

64. In most cases these accounts were later transferred to another representative within Optifund and/or Iforum Financial Services Inc. and/or Iforum Securities Inc.;
65. In several cases, there was some confusion as to who was the representative of some members, as it appears from **Exhibit P-26**;
66. Iforum Financial Services Inc. and Iforum Securities Inc. are two affiliated companies acting as mutual fund brokers and investment dealers, as it appears from the relevant extracts of Le registre des entreprises (CIDREQ) for those companies, *en liasse*, **Exhibits P-27 and P-28**;
67. In addition to Jemus, other individual brokers from Iforum Securities Inc. were involved with members of the group regarding the transactions in litigation, among them: Yves Mechaka, Enrico Bruni and Denis Hogan, as it appears from Brown's non financial Account changes Form and B2B Trust, statements samples **Exhibit P-29**, Brown's Investor Letter of Direction, **Exhibit P-30**, Darlene Brown's B2B Trust statements of account samples, **Exhibit P-31** and Exhibit P-26;
68. Members of the group signatures were guaranteed on several documents by different representative of Iforum Financial Services Inc., **Exhibit P-32**, and Iforum Securities Inc., Exhibits P-20, P-30 and **Exhibit P-33**;
69. In the vast majority of cases, members of the group only dealt with Jemus and/or Roy and never spoke with another mutual fund dealer;
70. In the vast majority of cases, members of the group did not even know who was their official designated representative for the purpose of doing transactions in their B2B Trust RRSP's self-directed accounts;
71. In some cases, Iforum representatives agreed to act in accordance with powers of attorney given by members of the group when they knew or should have known that these members of the group had signed the said powers of attorney without knowing their mandate and without understanding the implications of the said powers of attorney;
72. The type of transactions proposed to members of the group, namely investments in private companies, involved very serious risks;
73. In such cases, dealers and brokers have a significantly higher responsibility to inform their clients of the risk involved, each with regard to their own financial situation and their own risk sensibility;
74. At the minimum, this requires that the dealers and brokers know their clients;

75. The members of the group were not properly informed by their dealers or brokers of the level of risk involved in relation to their investments in these three companies;
76. Furthermore, even though the documents regarding the buying of the shares of Pension Positive Inc., 3877311 Canada Inc. and Les entreprises de gestion Robert Primeau Inc. were on their face frivolous, Iforum representatives or employees promoted and supported the sale of Class C preferred shares from those companies to members of the group;
77. Also, some representatives of Iforum illegally sold securities other than mutual fund securities without having the proper authorization to do so;
78. At least 43 members of the group were at one point or another represented by someone from Iforum Securities Inc. when purchasing Class C preferred shares from 3877311 Canada Inc.;
79. At least 29 members of the group were at one point or another represented by someone from IForum Financial Services Inc. when purchasing Class C preferred shares from Pension Positive Inc.;
80. Only for those transactions the capital invested by members of the group amounts to more than 3,3 million dollars;
81. Furthermore, the Report on 3877311 Canada inc. from Ginsberg Gingras & Associés dated January 4th, 2006, Exhibit P-13 on page 6, confirms that large amounts of money of Class C preferred shareholders were dealt with through IForum;
82. However, Petitioner cannot give at this point a precise estimation of the number of members or the amount of money invested through Iforum representatives since they do not have complete files for at least 90 members;
83. IForum received one percent of each transaction in commission, which were directly deducted from the investment, as it appears from the Report on 3877311 Canada inc. from Ginsberg Gingras & Associés dated January 4th, 2006, Exhibit P-13 on page 6;
84. Iforum Financial Services Inc. and Iforum Securities Inc. are responsible for the acts and omissions of their representatives and/or employees;
85. Furthermore, the above allegations demonstrate a serious lack of supervision of its representative and/or employees by Iforum Financial Services Inc. and Iforum Securities Inc.;

86. Also, Iforum Financial Services Inc. and Iforum Securities Inc. failed to take the appropriate measures to make sure that none of their representative sold securities without the proper authorization;
87. On the whole, Iforum Financial Services Inc. and Iforum Securities Inc. have acted with the utmost negligence and have failed to fulfill their basic obligations towards the members of the group, which has caused the Petitioner and other members of the group to be illegally and fraudulently deprived of considerable amounts of money, both as lost investment and loss of profit;
88. Iforum Financial Services Inc. and/or Iforum Securities Inc. have totally failed to fulfill their obligation, thus causing Petitioner and other members of the group to lose their money in adventurous and fraudulent investments and is therefore jointly liable towards Petitioner and other members of the group for the damages they have suffered;
89. Generally, Iforum Financial Services Inc. and/or Iforum Securities Inc. have never made any effort to know their clients, their financial capacity, their understanding of the investments they were about to make and, consequently, have totally failed to provide them with adequate advices as would have done a serious and professional broker;
90. Furthermore, and without restricting the generality of the terms used above, Iforum Financial Services Inc. and/or Iforum Securities Inc., their managers and employees:
 - have exercised no control over the activities and representations of their representatives in their dealings with the members of the group;
 - have let their representatives sell to the members of the group investments for which these representatives were not legally qualified to sell;
 - have let their representatives sell securities while these representatives were in conflict of interests;
 - have let their representatives sell to the members of the group shares of companies based on documents which were on their face not serious and frivolous;
 - have let the members of the group be reassured that Iforum Financial Services Inc. and/or Iforum Securities Inc. were acting as reliable and serious broker firms while they, together with their managers, representatives and employees, have totally neglected to ascertain the validity of the investments made by the members of the group through them;

- have let the members of the group believe that their investments were admissible as deductions for the purpose of income taxes, which was not the case in most instances;
91. On November 9, 2005, pursuant to the *Securities Act*, (R.S.Q., c. V-1.1) and the *Act respecting the Autorité des marchés financiers* (R.S.Q., c. A-33.2), the Bureau de décision et de révision en valeurs mobilières made a recommendation to the Quebec Finance Minister to name an administrator, on a provisional basis, to manage both Iforum Financial Services Inc. and Iforum Securities Inc., as it appears from a copy of this decision of the Bureau de décision et de révision en valeurs mobilières dated November 9, 2005, **Exhibit P-34**;
 92. On the same day, the Bureau de décision et de révision en valeurs mobilières rendered another decision to prohibit Iforum Financial Services Inc. and Iforum Securities Inc. to enter into any transaction on securities, as it appears from a copy of that decision and a copy of another decision in rectification dated November 10, 2005, *en liasse*, **Exhibit P-35**;
 93. Following the nomination of an external administrator pursuant to the recommendation of the Bureau de décision et de révision en valeurs mobilières, a series of orders were rendered to facilitate the administration of Iforum Financial Services Inc. and Iforum Securities Inc., as it appears from a copy of those decisions dated November 21, 2005, November 25, 2005, November 30, 2005, December 6, 2005 and February 2, 2006, *en liasse*, **Exhibit P-36**;
 94. On or about December 13, 2005, Iforum Securities Inc. went bankrupt, as it appears from an extract of the Office of the Superintendent of Bankruptcy Canada database, **Exhibit P-37**;
 95. On or about December 13, 2005, Iforum Financial Services Inc. went bankrupt, as it appears from an extract of the Office of the Superintendent of Bankruptcy Canada database, **Exhibit P-38**;
 96. Lloyd's Underwriters («Lloyds») is an insurance company, as it appears from the relevant extracts of *Le registre des entreprises (CIDREQ)* for this company, *en liasse*, **Exhibit P-39**;
 97. At all relevant times to these proceedings, Lloyd's Underwriters was the professional liability insurer of Iforum Financial Services Inc., a copy of the Professional Liability Insurance policy for Iforum Financial Services Inc. covering the period from February 14, 2005 to February 14, 2006 is submitted as **Exhibit P-40**;
 98. [...]
 99. [...]

100. The Petitioner and all other members of the group whose money has been transmitted through Iforum Financial Services Inc. and/or Iforum Securities Inc. have the right to recover the damages they sustained against Lloyd's [...], being the insurer of Iforum Financial Services Inc. [...], their representatives and employees;

The Evaluation of the shares

101. All the Subscription Agreements for each company provided that each Class C Preferred Share was sold for an amount of \$1.00, as it appears, from an example for each company, Exhibits P-18, P-19 et P-20;
102. Together with the Subscription Agreements, B2B Trust requested that a Qualified Investment/Valuation Certificate of Opinion be submitted for each subscription of shares by a member of the group, as it appears from B2B Trust's small business Transaction-Documentation-Check-list, Exhibit P-23;
103. These Qualified Investment/Valuation Certificate of Opinion provided an evaluation of the fair market value of the shares and provided an opinion with regard to the qualification of the investments as RRSPs investments for income tax purposes;
104. These Qualified Investment/Valuation Certificate of Opinion for the shares of Les entreprises de gestion Robert Primeau inc., Pension Positive Inc. and 3877311 Canada Inc. were provided to members of the group and B2B Trust through Jemus, Roy and Primeau;
105. All those certificates for the Class C preferred shares from Les entreprises de gestion Robert Primeau inc. were prepared and signed by respondent Samson et Associés inc. and its employee Mr. Serge Lafortune, as it appears from an example of such certificate for Brown's shares, **Exhibit P-43**;
106. The Qualified Investment/Valuation Certificate of Opinion for the shares of Pension Positive Inc. were prepared and signed by another accountant, namely Pierre Selfani, and were also provided to B2B Trust and the members of the group through Roy, Jemus and/or Primeau;
107. The Qualified Investment/Valuation Certificate of Opinion for the shares of 3877311 Canada Inc. were prepared and signed by either Mr. Lafortune or Mr. Selfani, as it appears from samples of such certificates prepared by Mr. Lafortune and Mr. Selfani, *en liasse*, **Exhibit P-44**;
108. For the period from 2001 to 2004, every certificate of evaluation prepared by either Mr. Lafortune and Mr. Selfani for the shares of Les entreprises de gestion Robert Primeau inc., Pension Positive Inc. and 3877311 Canada Inc. indicates a fair market value of 1,00 \$;

109. It is highly unlikely that the fair market value of the shares of three different companies remained the same value of 1,00 \$ at all time during a period of four years;
110. Leclerc Juricomptables Inc. was mandated to analyse the Qualified Investment/Valuation Certificate of Opinion prepared and signed by Mr. Lafortune and Mr. Selfani with regard to the shares of Les entreprises de gestion Robert Primeau Inc., 3877311 Canada Inc and Pension Positive Inc., as it appears from their report dated March 31, 2008, **Exhibit P-45**;
111. At page 16 of their report, Leclerc Juricomptables Inc. concluded as follow with regard to the evaluation done by Mr. Lafortune or the lack thereof:

«nous ne croyons pas que M. Lafortune n'ait procédé à une opinion d'évaluation proprement dite selon la [Circulaire d'information 89-3 de l'Agence du revenu du Canada] ou même selon les standards ou normes disponibles de [L'institut canadien des experts en évaluation d'entreprises]. (...)

Dans le présent cas, nous considérons que ni M. Lafortune ni M. Selfani n'aurait procéder à une évaluation pouvant supporter une opinion de [juste valeur marchande] (...). En effet, ils n'ont pas respecter les normes d'exercice en évaluation d'entreprises en utilisant la valeur aux livres des actions en tant que leur [juste valeur marchande] sans faire de travail additionnel pouvant supporter une telle valeur»[sic];

112. During his examination by Me Guy C. Gervais on March 21, 2007 Mr. Lafortune described how he did the evaluation of the shares in the following terms :

Q. [77] Oui, mais je veux que vous m'expliquiez comment vous avez fait pour en arriver à établir que ça valait vraiment (1 \$). C'est ça que je veux savoir.

R. La valeur au pair des actions, la valeur d'émission.

Q. [78] Vous vous êtes basés uniquement sur la valeur d'émission et non pas sur la valeur aux livres de ces actions-là ?

R. (...) Mon travail consistait à demander «Est-ce qu'il y a une valeur autre des actions privilégiées à

ce moment-là ?» et on m'a répondu que, non, il y a pas d'autre valeur autre que les actions, que les actions valent un dollar (1 \$) l'action à ce moment là.

113. Furthermore, Mr. Lafortune during this examination admitted that he never did any evaluation of companies, as it appears the transcription of his testimony, **Exhibit P-46** at pages 4 and 25.
114. Leclerc Juricomptables Inc. did an evaluation of the shares of the three companies at three different dates, as it appears from the Annex B of their report, Exhibit P-45;
115. Eventhough it was impossible to do a complete evaluation, Leclerc Juricomptables Inc. concluded as follows at p. 13 of the Annex B of the Reports, Exhibit P-45 :

«nous avons déterminé que la [juste valeur marchande] par actions pour les actions des sociétés [Les entreprises de gestion Robert Primeau Inc.] au 31 octobre 2002, Pension [positive Inc.] au 24 février 2003 et 3877311 [Canada Inc.] au 31 mars 2003 se situent dans une fourchette de [juste valeur marchande] allant de 0,00 \$ à 0,78 \$.

Toutes les [justes valeurs marchandes] par action étaient, à leur dates d'évaluation respectives nulles ou inférieures à 1,00 \$ contrairement à plusieurs certificats d'opinion d'évaluation signés par M. Serge Lafortune et M. Selfani qui incluent tous 1,00 \$ comme [juste valeur marchande] et ce aux différentes dates» [sic];

116. Mr. Lafortune and respondent Samson & Associés never estimated or evaluated the shares at the date indicated on each of the evaluation certificate as they said they did in these certificates;
117. Furthermore, the Respondent Samson et Associés Inc. prepared the financial statements for Les entreprises de gestion Robert Primeau Inc. for the years 2002 and 2003, as it appears from a copy of those financial statements, *en liasse*, **Exhibit P-47**;
118. This constitute a conflict of interest that should have prevented Samson et Associés Inc. to provide evaluation of the shares for that period;

The Qualification of the Investments as RRSPs Investments for Income Tax Purposes

119. All the Qualified Investment / Valuation Certificate of Opinion signed by Mr. Lafortune certified that the investments of members of the group were admissible as RRSPs investments for income tax purposes, as it appears from a sample of such certificates, Exhibits P-43 and P-44;
120. Nonetheless, several members of the group received a notice from Canada Revenue Agency informing them that their investments in Pension Positive Inc., 3877311 Canada Inc., and/or Les entreprises de gestion Robert Primeau Inc. were considered as withdrawals from their RRSPS, as it appears from letters exchanged between Revenue Canada and Darlene Brown, **Exhibit P-48**;
121. As a result, the amount of those investments that were completely lost by the members of the group are being added to their revenue for income tax purposes;
122. Respondents are responsible for that loss of qualification;
123. Therefore, respondents are liable for the amount of income tax that each member of the group paid and / or will have to pay following the disqualification of their RRSPs, including interests and / or penalties related to it;

The Liability of Samson et Associés Inc. and Lafortune

124. Pierre Selfani who did the same kind of evaluation of the shares as Mr. Lafortune was declared guilty of several contraventions to the *Code de déontologie des comptables en management accrédités du Québec* and to the *Code des professions*, as it appears from a decision of the Conseil de discipline, **Exhibit P-49**;
125. Mr. Lafortune and respondent Samson et Associés Inc. were negligent in accepting a mandate for which Mr. Lafortune was clearly not qualified;
126. Mr. Lafortune was also grossly negligent in the way he carried his mandate: he did not respect the basic rules applicable for the evaluation of the fair market value of shares, he never even tried to determine such value, he simply put the issuance price of the shares as their fair market value on every certificate of evaluation;
127. Samson et Associés Inc. is responsible for the acts and omissions of its employee and/or representative Mr. Lafortune;
128. Furthermore, Samson et Associés Inc. demonstrated a serious lack of supervision of its employee and/or representative Mr. Lafortune;

129. On or about August 2007, the trustee Ginsberg, Gingras et associés inc. in the bankruptcy of 3877311 Canada inc., represented by Gervais and Gervais, attorneys, filed a Motion against Mr. Lafortune, as it appears from a copy of that Motion in the Court file number C.S. Hull 550-11-009166-068, **Exhibit P-50**;
130. At the same time, the same trustee filed similar proceedings in the bankruptcy of Les entreprises de gestion Robert Primeau inc., as it appears from a copy of that Motion in the Court file number C.S. Hull 550-11-009165-060, **Exhibit P-51**;
131. A Motion to dismiss was granted by the Superior Court in both cases, which judgments were reversed by the Court of Appeal, as it appears from the judgments of the Court of Appeal rendered on May 19, 2011, *en liasse*, **Exhibit P-52**;
132. In order to protect the rights of the members of the group, the Petitioner decided to file this Motion to Institute a Class Action against Samson et Associés Inc., since class members also have a direct interest against these respondents;
133. Samson et Associés inc. is jointly liable with the other respondent for the members' losses;
134. All the paperwork for the investments was provided by Roy, Jemus and/or Primeau: the subscription agreements or prospectus and the certificate of evaluation of the shares;
135. Also, the documents prepared by Mr. Lafortune were provided to B2B Trust through the dealers and brokers from Optifund and/or from Iforum;
136. Representatives from Optifund and Iforum were negligent in submitting these documents for their clients for investments purposes without alerting them of their blatant frivolous nature;

The losses of Members of the Group

137. The faults and negligence of the respondents caused the members of the group to lose large amounts of money;
138. According to Primeau himself, as cited in the Pension Positive Report of January 4th, 2006, Exhibit P-11, approximately 700 to 800 transactions were completed for members of the group;
139. The total amount in capital is difficult to determine but is estimated at this point at \$10,000,000.00;

140. During the period of 2001 to 2005, more than 160 investors from across Canada and the United States invested savings, RRSPs and other amounts at the inducement of or through Roy, Jemus and/or Primeau;
141. The investment money was fraudulently diverted for the personal benefit of Jemus, Roy and Primeau and their relatives and/or managed in a grossly negligent manner;
142. As a result, each member of the Group lost their real estate investments;
143. Furthermore, several members of the group received a notice from Canada Revenue Agency informing them that their investments in Pension Positive Inc. or in other companies controlled by Jemus, Roy or Primeau were considered withdrawals from their RRSPs; with the result that the amount of those investments that were completely lost by the members of the group had been added to their revenue for income tax purposes;
144. Therefore, the respondents are personally and jointly liable for the amount of income tax that each Member of the Group paid and/or will have to pay following the disqualification of their RRSPs, including interest and/or penalties related to it;
145. Each member of the group is also entitled to moral damages and damages to compensate their troubles and inconveniences to the amount of 50 000,00 \$

David Brown's Situation

146. Brown's personal claim against the Respondents is based on the following facts:
147. Between September 2002 and late 2003, Brown and his wife, Darlene Sandra Brown, took training in real estate investment in a program developed by Russ Whitney;
148. Brown and his wife have met or were referred to Roy, Jemus and Primeau during these real estate investment trainings;
149. Brown and his wife invested a total amount of \$65,246.00 at the inducement and through Jemus, Roy and Primeau;
150. Of this, \$7,737.86 were from Brown's RRSPs which were transferred to B2B Trust, at the request of Jemus and Roy;
151. Furthermore, on March 5, 2004, B2B Trust approved a \$23,806.00 self-directed RRSP loan submitted by Brown, the whole as appears from a letter from Gary Wilhelm, Assistant Vice-President of Investment Lending & Credit Risk at B2B Trust, communicated in support hereof as **Exhibit P-53**;

152. On her part, Brown's wife transferred to B2B Trust a total amount of \$12,452.58 of self-directed RRSPs;
153. Also, Brown's wife borrowed from B2B Trust an amount of \$21,957.00 which was to be invested with or through Jemus, Roy and/or Primeau;
154. Again at the inducement and through Roy, Jemus and/or Primeau, Brown and his wife made some equity investments in preferred shares in some of their related companies;
155. More particularly, on or about March 11, 2004, Brown's wife purchased 24,686.00 Class C preferred shares of 3877311 Canada Inc., for one dollar (\$1,00) each, as it appears from the Subscription Agreement for those shares, Exhibit P-19 and as it appears from a B2B Trust statement of account, **Exhibit P-54**;
156. Also, on or about June 10, 2004, Brown purchased 23,490.00 Class C preferred shares of Les entreprises de Gestion Robert Primeau Inc. for one dollar (\$1,00) each, as it appears from the Subscription Agreement for those shares, Exhibit P-20 and as it appears from a B2B Trust statement of account, **Exhibit P-55**;
157. In both cases, the shares were evaluated by respondents Samson and Associates and Mr. Serge Lafortune at a value of one dollar (\$1,00) each, as it appears from a Qualified Investment/Valuation Certificate of Opinion dated September 15, 2003 with regard to Brown's wife investment, **Exhibit P-56** and another dated February 18, 2004 with regard to Brown's investment, Exhibit P-43;
158. In the same documents respondents Samson and Associates and Mr. Serge Lafortune certified that in both cases *«the investment in the Corporation is a Qualified Investment for a Registered Plan»*;
159. Furthermore, Brown lent \$7,690.00 to Marcel Chartrand, a builder in Hawkesbury, with a third row mortgage even though he was led to believe his investment was to be secured with a second row mortgage, the whole as appears from Exhibit P-55;
160. Brown's wife also lent \$9,380.00 with a third row mortgage given by Marcel Chartrand, which she was told by Jemus was a second row mortgage the whole as appears from Exhibit P-54;
161. All of Brown and his wife's investments were made with and through their self-directed RRSPs accounts at B2B Trust;
162. At all relevant times, the transactions Brown and his wife made through B2B Trust were handled directly or indirectly by either Jemus, Roy or Primeau who acted as middlemen between them and B2B Trust;

163. In fact, Brown's designated advisor when he first applied to open an account at B2B Trust was Optifund Investment inc., represented by Marc Jemus, as it appears from the Account Opening Form dated January 29, 2003, **Exhibit P-57**;
164. Optifund Investment inc. was also the dealer who managed the transfer of Brown's RRSPs to B2B Trust, as it appears from the Transfer Authorization for Registered Investment Form dated January 29, 2003, **Exhibit P-58**;
165. The same dealer guaranteed Brown's signature on his Self-Directed RSP Loan Application Form, as it appears from a copy of this Form dated January 28, 2004, **Exhibit P-59**;
166. On or about October 6, 2004, Brown's dealer identity changed to IForum Securities Inc. represented by Mr. Enrico Bruni, as it appears from a Non Financial Account Changes Form of B2B Trust dated October 6, 2004, Exhibit P-29;
167. Mr. Bruni and IForum Securities Inc. guaranteed Petitioner's signature on the Subscription Agreement for the purchase of 23 490 Class C preferred Shares of Les Entreprises de Gestion Robert Primeau inc., as it appears from a copy of that Subscription Agreement dated June 10, 2004, Exhibit P-20;
168. On Petitioner's Letter of Direction to B2B Trust regarding that investment, Mr. Denis Hogan from IForum Securities inc. guaranteed Petitioner's signature, as it appears from that Letter of Direction dated October 6, 2004, Exhibit P-30;
169. However, the Petitioner never met nor spoke directly with neither Mr. Bruni nor Mr. Hogan from Iforum Securities Inc.;
170. Nonetheless, Mr. Bruni and Mr. Hogan have made some transactions on behalf of Petitioner and guaranteed his signature on several occasions;
171. The equity investment under Brown wife's name was supposed to go in part towards the down payment on condominiums;
172. Brown and his wife could never get an answer as to the status of that project after Jemus and Roy got their money;
173. Brown and his wife found out later on that Jemus and Roy's companies never purchased the land to build the condominiums (Chemin du Golf project);
174. Another part of the investment made under Brown wife's name was supposed to be used for the down payments on three properties in Gatineau (Chemin Des Grives properties);

175. Brown and his wife were later informed by a third party, namely Doyle Seloyski, that the above-mentioned properties had been sold to another buyer;
176. However, Brown and his wife were never reimbursed the money they gave 3877311 Canada Inc. for that investment and, to their knowledge, it has never been redirected to any other property;
177. Brown and his wife also lost their third row mortgages investment;
178. Brown is entitled to claim from the Respondents jointly the total amount of lost capital on his investments made through Jemus, Roy and Primeau or at their inducement, more precisely the amount of \$31,324.67;
179. Brown is also entitled to claim from the Respondents jointly all the interest he has paid on his loan, more precisely the amount of \$5,723.24;
180. Brown is also entitled to claim from the Respondents jointly all the administration fees paid to B2B Trust in the amount of \$2,914.45;
181. Furthermore, the Petitioner is entitled to claim from the Respondents jointly an amount of \$50,000.00 for his troubles and inconvenience and loss of opportunity;

[...]

Identical, similar or related questions

235. The identical, similar, or related questions of fact and law between each member of the group and the respondents which the Petitioner wishes to have settled by the class action are as follow :
 - a. Did Roy, Jemus and/or Primeau act fraudulently in regard to the investments made at their inducement or through them and/or through one of their companies?
 - b. In the affirmative, did Roy, Jemus and/or Primeau engage in a common course of action to commit such a fraud?
 - c. Did Iforum Securities Inc. and Iforum Financial Services Inc. employees and/or representatives act negligently in regard to the investment made through them by members of the group?
 - d. Is the insurance company Lloyd's Underwriters liable for the acts and omissions of Iforum Securities Inc. and Iforum Financial Services Inc. and their employees and/or representatives?
 - e. Did Samson et associés inc. and its employee and/or representative Serge Lafortune breach their professional duties towards the members of

the group and were negligent in the evaluation of the shares of the companies?

- f. Are the Respondents jointly liable for the losses sustained by the members of the group?
- g. Are the members of the group entitled to be compensated for the loss of their investments made at the inducement or through one of the respondents or their companies?
- h. Are the members of the group entitled to the restitution of all interests and administration fees paid in relation to loans contracted for the purpose of investing at the inducement or through one of the respondents or their companies?
- i. Are the Group members entitled to the reimbursement of the amount paid to Revenue Canada following the disqualification of their RRSPs, including penalties and interest?
- j. Are the Group members entitled to moral damages caused by the Respondents' actions and/or omissions?

Individual question

236. The only question of fact and law which is specific to each member of the group is the quantum of the damages;

The nature of the recourse

237. The nature of the recourse which the Petitioner wishes to exercise on behalf of the members of the Group is an action in civil liability damages;

The conclusions

238. The conclusions sought by the Petitioner are :

GRANT the Petitioner action against the Respondents;

CONDEMN the Respondents jointly to pay Brown the sum of \$39,962.36, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

[...]

CONDEMN the Respondents jointly to pay each Group Member an amount corresponding to their lost investments and the interest paid in relation to any loans they contracted pursuant to those investments, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

CONDEMN the Respondents jointly to reimburse each Group Member the amounts paid to Revenue Canada following the disqualification of their investments as RRSP, including penalties and interest;

CONDEMN the Respondents jointly to pay each Petitioner and each Group Member an amount of \$50,000.00, under reserve to be completed according to the evidence as general damages for troubles and inconveniences and loss of opportunities, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

ORDER the collective recovery of the damage claims;

CONDEMN the Respondents jointly to pay such other amounts and grant the Group members such further relief payment as this Honourable Court may determine as being just and proper;

THE WHOLE with cost, including the costs of all exhibits, experts, expertise and publication notices.

Representative status

239. The Petitioner requests that he be granted the status of representative for the following reasons :
240. He is member of the group;
241. He is well informed of the facts alleged in this motion;
242. He has the required time, determination and energy to bring this matter to a conclusion and adequately represent the Group members;
243. He cooperates with their attorneys and respond diligently and articulately to any requests they made and they fully comprehend the nature of the class proceedings;
244. He is in contact with several other Group members;
245. He is not in any conflict of interest with other Group members;

246. He has chosen one of the important and experienced plaintiffs firm in Canada in the area of class actions;
247. He was previously designated as a an adequate representative of the members of the group in a related class action, as it appears from the Judgment of the Honourable Justice Deziel dated August 19, 2010, Exhibit P-2;

The Petitioner proposes that the class action be brought before the Superior Court of the District of Hull for the following reasons:

248. The main part of the fraud happened in the district of Hull;
249. Most of the investments of the Group members were related to real estates in the district of Hull and the surrounding area;

WHEREUPON THE PETITIONER PRAY:

THAT the present motion be granted;

THAT the bringing of a class action be authorized as follows:

A civil liability action for damages

THAT the status of representative be granted to David Brown [...] for bringing the said class action for the benefit of the Group described as follows, namely:

Description of the Group

All those natural persons, and legal persons with less than fifty (50) employees, who have made various investments proposed to them by Marc Jemus, François Roy and/or Robert Primeau, and/or through them, in and/or through companies related to one of them, in the year 2001 to 2005 inclusively.

THAT the principal questions of fact and law be dealt with collectively and be identified as follows:

Did Roy, Jemus and/or Primeau act fraudulently in regard to the investments made at their inducement or through them and/or through one of their companies?

In the affirmative, did Roy, Jemus and/or Primeau engage in a common course of action to commit such a fraud?

Did Iforum Securities Inc. and Iforum Financial Services Inc. employees and/or representatives act negligently in regard to the investment made through them by members of the group?

Is the insurance company Lloyd's Underwriters liable for the acts and omissions of Iforum Securities Inc. and Iforum Financial Services Inc. and their employees and/or representatives?

Did Samson et associés inc. and its employee and/or representative Serge Lafortune breach their professional duties towards the members of the group and were negligent in the evaluation of the shares of the companies?

Are the Respondents jointly liable for the losses sustained by the members of the group?

Are the members of the group entitled to be compensated for the loss of their investments made at the inducement or through one of the respondents or their companies?

Are the members of the group entitled to the restitution of all interests and administration fees paid in relation to loans contracted for the purpose of investing at the inducement or through one of the respondents or their companies?

Are the Group members entitled to the reimbursement of the amount paid to Revenue Canada following the disqualification of their RRSPs, including penalties and interest?

Are the Group members entitled to moral damages caused by the Respondents' actions and/or omissions?

THAT the conclusions sought with respect to such questions be identified as follows:

GRANT the Petitioner's action against the Respondents;

CONDEMN the Respondents jointly to pay Brown the sum of \$39,962.36, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

[...]

CONDEMN the Respondents jointly to pay each Group Member an amount corresponding to their lost investments and the interest paid in relation to any loans they contracted pursuant to those investments, the whole with interest

and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

CONDEMN the Respondents jointly to reimburse each Group Member the amounts paid to Revenue Canada following the disqualification of their investments as RRSP, including penalties and interest;

CONDEMN the Respondents jointly to pay [...] Petitioner and each Group Member an amount of \$50,000.00, under reserve to be completed according to the evidence as general damages for troubles and inconveniences and loss of opportunities, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

ORDER the collective recovery of the damage claims;

CONDEMN the Respondents jointly to pay such other amounts and grant the Group members such further relief payment as this Honourable Court may determine as being just and proper;

THE WHOLE with cost, including the costs of all exhibits, experts, expertise and publication notices.

THAT it be declared that any Group member who has not requested exclusion from the Group be bound by any judgement to be rendered on the class action in accordance with the *Code of Civil Procedure*;

THAT the delay for exclusion be set at thirty (30) days from the notice to the Group members and that at the expiration of such delay, any Group member who has not requested exclusion be bound by any such judgment;

THAT it be ordered that a notice to the members be published in the *Globe and Mail* and *Le Droit*;

THAT the Respondents be ordered to assume the publication costs of the Notice to Members;

THAT the record be referred to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

THAT the clerk of this Court be ordered, upon receiving the decision of the Chief Justice, in the event that the class action is brought to another district, to transmit the present record to the clerk of the designated district;

The whole with cost, including the cost of notices.

Montréal, January, 18th, 2013

SYLVESTRE, FAFARD, PAINCHAUD
Attorneys for the Petitioner



SYLVESTRE FAFARD PAINCHAUD
AVOCATS

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Nombre de pages incluant le présent bordereau : 29

Nom des parties : **Brown et al. c. Lloyd's Underwriters et al.**
C.S.H no : **550-06-000026-113**
Nature du document : **Annexe 1**

EXPÉDITEUR

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SYLVESTRE FAFARD PAINCHAUD
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