

Court File Number: T-132-11



FEDERAL COURT – ~~TRIAL DIVISION~~

PROPOSED CLASS PROCEEDING

PEPPER HORNBY

PLAINTIFF

SHAW CABLESYSTEMS G.P.

DEFENDANT

**STATEMENT OF CLAIM TO THE DEFENDANT**

**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 a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on

request to the Administrator of this Court at Ottawa (telephone: 613-992-4238) or at any local office.

**IF YOU FAIL TO DEFEND THIS PROCEEDING**, judgment may be given against you in your absence and without further notice to you.

Date: JAN 3 1 2011

Issued by: \_\_\_\_\_  
[Registry Officer]

Original signed by  
Sheila de Santos  
Registry Officer

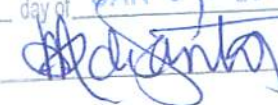
Address of local office: Federal Court of Canada  
Box 10065  
Pacific Centre, 3<sup>rd</sup> Floor  
701 West Georgia Street  
Vancouver, BC V7Y 1B6

TO: Shaw Cablesystems G.P.  
900, 630 3<sup>rd</sup> Avenue SW  
Calgary, AB T2P 4L4

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the \_\_\_\_\_

day of JAN 3 1 2011 A.D. 20 \_\_\_\_\_

Dated this \_\_\_\_\_ day of JAN 3 1 2011 20 \_\_\_\_\_



**Sheila de Santos**  
**Registry Officer**  
**Agent du greffe**

## CLAIM

1. The Plaintiff claims on his own behalf and on behalf of all putative class members:
  - (a) a declaration that Shaw breached the *Interest Act*, R.S.C. 1985, c. I-15;
  - (b) a constructive trust over all interest charges paid by the putative class members to Shaw;
  - (c) general and special damages;
  - (d) interest pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;
  - (e) an order requiring disgorgement of Shaw's unjust gains resulting from the interest charges;
  - (f) costs of this action on a solicitor and client basis; and
  - (g) such further relief as this Honourable Court may deem just.

## THE PARTIES

2. The Plaintiff is a businessman who resides in the Municipality of West Vancouver, in the Province of British Columbia.
3. The Defendant, Shaw Cablesystems G.P. ("Shaw"), is a general partnership of the following:

	Head Office Information	
	Mailing Address	Delivery Address
Shaw Communications Inc.	900, 630 3 <sup>rd</sup> Avenue SW Calgary, AB T2P 4L4	900, 630 3 <sup>rd</sup> Avenue SW Calgary, AB T2P 4L4
Shaw Cablesystems Limited	900, 630 3 <sup>rd</sup> Avenue SW Calgary, AB T2P 4L4	900, 630 3 <sup>rd</sup> Avenue SW Calgary, AB T2P 4L4
Videon Cablesystems Inc.	900, 630 3 <sup>rd</sup> Avenue SW Calgary, AB T2P 4L4	900, 630 3 <sup>rd</sup> Avenue SW Calgary, AB T2P 4L4

## NATURE OF THE MATTERS AT ISSUE

4. Shaw is one of the largest providers of cable television, internet access and telephone services in Canada which services it provides to subscribers in British Columbia, Alberta, Manitoba, Saskatchewan and Ontario.
5. The Plaintiff is a subscriber to the cable television services provided by Shaw.
6. Shaw charges subscribers, including the Plaintiff, interest on moneys not paid by the billing due date calculated at 2% per month compounded monthly.

## THE LAW

7. Invoices sent by Shaw to its subscribers, including the Plaintiff, stipulate that amounts owing after the "billing due date are subject to an interest charge, calculated at 2% per month, compounded monthly". In contravention of the *Interest Act*, R.S.C. 1985, c. I-15, Shaw has failed and continues to fail to state on its invoices what the annualized interest rate is upon compounding the said monthly 2% interest charge and as a result thereof, the Plaintiff and all other putative class members have sustained damages.
8. Shaw was and is unjustly enriched at the expense of the Plaintiff and other subscribers. Particularly, but without limitation:
  - (a) the interest charges are paid by the Plaintiff and other subscribers;
  - (b) the interest charges are paid to Shaw; and

- (c) there is no legal authority for the charging of interest exceeding the rate or percentage of 5% per annum.

## THE CLASS

9. This action is brought as a proposed class action by the named Plaintiff pursuant to Rule 334.12 of the *Federal Courts Rules*, as amended, on behalf of all subscribers in Canada to the services provided by Shaw who have paid interest charges to Shaw at rates that are in contravention of the *Interest Act* as aforesaid.

10. The number of putative class members is, as yet, undetermined, however, it is anticipated that the unlawful conduct of Shaw which forms the basis of these proceedings is widespread and that the proposed class is so large that joinder of all members of the proposed class as plaintiffs would be impractical.

11. There are questions of law and fact common to the proposed class. The claims of the Plaintiff are typical of the claims of the proposed class and the Plaintiff herein will adequately represent and protect the interests of the said proposed class.

12. Separate actions by individual members of the proposed class would create a risk of inconsistent adjudications with respect to individual members of the said class, which could establish incomplete standards of conduct for Shaw.

13. Questions of law and fact common to the members of the proposed class with respect to the relief claimed predominate over questions affecting individual members. A class action is superior to other available methods for a fair and efficient adjudication of this controversy.

14. The Plaintiff, who is a member of the proposed class, has sustained financial loss as a result of the unlawful conduct of Shaw as alleged in this Statement of Claim and has no conflict with other members of the proposed class.

15. In the absence of a class proceeding, Shaw will retain the benefits of its wrongful conduct because putative class members are unlikely to bring, and have not brought, separate individual lawsuits due to the size of individual class members' claims and their limited resources as compared to the costs of litigation and the resources of Shaw.

16. The questions of law and fact common to the class, which predominate over individual questions, include, but are not limited to, the following:

- (a) Did Shaw charge interest to subscribers calculated on the basis of 2% per month compounded monthly?
- (b) Did Shaw charge subscribers interest on a basis contrary to the provisions of the *Interest Act*?
- (c) Was Shaw unjustly enriched by collecting interest from subscribers at rates that were contrary to the provisions of the *Interest Act*?

## **COSTS**

17. Shaw's conduct is egregious and warrants an award of costs on an exemplary and solicitor and client basis.

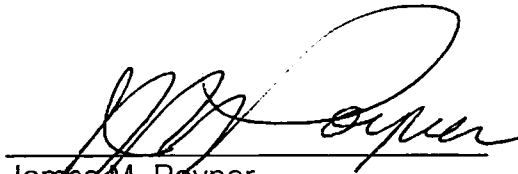
**LEGISLATION**

18. The relief claimed in this action is pursuant to and arises from the *Interest Act*, the *Federal Courts Act*, and the *Federal Courts Rules*, as amended.

43. The Plaintiff proposes that this action be tried in the City of Vancouver, Province of British Columbia.

DATED at the City of North Vancouver, in the Province of British Columbia, this 28<sup>th</sup> day of January, 2011.

**PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA**



James M. Poyner  
Solicitor for the Plaintiff

**THIS STATEMENT OF CLAIM** is given by:

James M. Poyner  
**POYNER BAXTER LLP**  
Barristers & Solicitors  
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North Vancouver, BC V7M 3K1  
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