

CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN v. ROYAL
GROUP TECHNOLOGIES LTD. et al.

Court File No: 965/06

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Milton

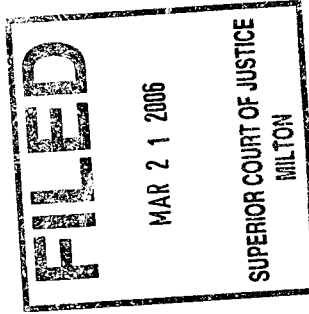
**STATEMENT OF CLAIM
NOTICE OF ACTION ISSUED ON
FEBRUARY 24, 2006**

Siskind, Cromarty, Ivey & Dowler LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright (LSUC#: 36599Q)
A. Dimitri Lascaris (LSUC#: 50074A)
Michael G. Robb (LSUC#: 45787G)
Tel: (519) 672-2121
Fax: (519) 672-6065

Cavaluzzo Hayes Shilton McIntyre & Cornish LLP
Michael Wright (LSUC#: 32522T)
Simon Archer (LSUC#: 46263D)

Solicitors for the Plaintiff



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN

Plaintiff

- and -

ROYAL GROUP TECHNOLOGIES LTD., VIC DE ZEN,
DOUGLAS DUNSMUIR, GARY BROWN, RON GOEGAN, DOMINIC
D'AMICO, GREGORY SORBARA, RONALD SLAGHT and
RALPH BREHN

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM
Notice of action issued on February 24, 2006

I. CLAIM

1. The plaintiff claims:

- (a) A declaration pursuant to section 241(2) of the *Canada Business Corporations Act*, R.S.C. 1985 c. C-44, as amended (the "CBCA") that
 - (i) the acts and omissions of the Defendants have effected a result,
 - (ii) the business or affairs of the defendant Royal Group Technologies Ltd. ("Royal Group") have been carried on or conducted in a manner, or
 - (iii) the powers of Messrs. De Zen, Dunsmuir, Goegan, Brown, D'Amico, Slaght, Brehn and Sorbara (collectively, the "Individual Defendants") as directors and officers of Royal Group have been exercised in a manner

that is oppressive or unfairly prejudicial to or has unfairly disregarded the interests of the Plaintiff and those similarly situated;

- (b) damages, in the amount of \$700,000,000, pursuant to subsection 241(3) of the CBCA, or
- (c) damages in the amount of \$700,000,000 for negligent misrepresentation;
- (d) class-wide punitive and exemplary damages in the amount of \$300,000,000.00;
- (e) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
- (f) costs of this action on a full, or alternatively, substantial indemnity basis; and
- (g) such further and other relief as this honourable Court may deem just.

II. THE PARTIES

2. The plaintiff Canadian Commercial Workers Industry Pension Plan ("CCWIPP") is a corporate pension plan operating from offices in Campbellville, Ontario. It purchased shares in the defendant Royal Group between February 26, 1998 and October 18, 2004 (the "Class Period").
3. CCWIPP brings this action on behalf of all persons who purchased or otherwise acquired securities of Royal Group during the Class Period, other than the Defendants and persons and entities directly related to or controlled by the Defendants. The Plaintiffs seek to recover the damage caused by the conduct of the Defendants as described below.

4. The defendant Royal Group is a company incorporated under the CBCA. It is reporting issuer pursuant to the *Securities Act* R.S.O. 1990, c. S.5, as amended. Its shares are traded on the Toronto Stock Exchange ("TSX") and the New York Stock Exchange ("NYSE").
5. The defendant Vic De Zen is the former chairman of Royal Group, a controlling shareholder, a former director, and one of its founders. Mr. De Zen was terminated from his position as chairman of Royal Group by a special committee of independent directors of Royal Group (the "Special Committee") on November 29, 2004. He was also asked at that time to tender his resignation from the Board of Directors of Royal Group.
6. The defendant Douglas Dunsmuir ("Dunsmuir") is the former president and chief executive officer and a former director of Royal Group. He became Royal Group's president in March, 2002, its co-chief executive officer in September 2003, and chief executive officer in December 2003. He was terminated from his position as president and chief executive officer by the Special Committee on November 29, 2004. At that time he was also asked to tender his resignation from the Board of Directors of Royal Group, which he did on December 17, 2004.
7. The defendant Gary Brown is a former director and the former executive vice president and chief financial officer of Royal Group. He held those positions from 1994 until he retired as of December 1, 2001.
8. The defendant Ron Goegan was Royal Group's senior vice president and chief financial officer from December 1, 2001 until he was dismissed for cause by the Special Committee on November 29, 2004 for having facilitated an undisclosed land

purchase by Royal Group from a related party. At that time, he was also asked to tender his resignation from the Board of Directors of Royal Group.

9. The defendant Dominic D'Amico was a founder of Royal Group and is a significant shareholder. In addition, Mr. D'Amico was an employee of Royal Group.
10. The defendant Greg Sorbara was at material times until November, 2003 a director of Royal Group. Mr. Sorbara resigned from Royal Group's Board of Directors in November of 2003.
11. The defendant Ronald Slaght was at all material times, and remains, a director of Royal Group.
12. The defendant Ralph Brehn was at all material times a member of Royal Group's Board of Directors.
13. Mssrs. Sorbara, Slaght and Brehn constituted the audit committee of the Board of Directors throughout the Class Period. They are occasionally referred to herein collectively as the "Audit Committee".
14. The Individual Defendants and a number of other individuals all served during the class period as directors of Royal Group. They are collectively referred to throughout this document collectively as the "Board of Directors" or the "Board".

III. ROYAL GROUP'S BUSINESS AND OWNERSHIP

15. Royal Group develops and manufactures an extensive line of building and construction products for the homebuilding and renovation, remodelling, construction, fabricating and original equipment manufacturer and consumer markets. It considers itself a world leader in advanced polymer processing and design.

16. Until June, 2005, Royal Group had two types of common shares. As of December 31, 2004, there were 77,420,726 Subordinate Voting Shares ("SVS") issued and outstanding. SVS carry the right to one vote per share at all meetings of shareholders, and the right to participate equally as to dividends. SVS are traded on the NYSE and the TSX. The Plaintiff's investment in Royal Group was made through the purchase of SVS over the TSX.
17. As of December 31, 2004 there were also 15,935,444 multiple voting shares ("MVS") issued and outstanding. Each MVS carried 20 votes at all meetings of shareholders, and participated equally as to dividends with each SVS. MVS could also be converted to SVS on a one for one basis.
18. Throughout the Class Period up to June, 2005, Mr. De Zen owned directly or indirectly 100% of the MVS, which represented 80.5% of the voting rights in Royal Group. He also owned 6,035 SVS as of February, 2005.
19. In June, 2005, Mr. De Zen converted his MVS to SVS pursuant to an agreement reached with Royal Group, further detailed below. Since then, there has been only one class of shares in Royal Group, the SVS. There are currently 93,444,502 issued and outstanding shares of Royal Group. All references to Royal Group's shares, securities or common shares herein are references to SVS, unless the term MVS is used.

A. Royal Group's Management

20. Royal Group was founded by Mr. De Zen. Because he owned all of the MVS during the Class Period, Mr. De Zen exercised over 80% of the votes attaching to Royal Group's issued and outstanding shares. During that period, he owned approximately 17% of Royal Group's equity.

21. Mr. De Zen always viewed Royal Group as "his" company, despite the massive amount of capital invested in the company by the Plaintiff and many others through their purchase of Royal Group's shares offered for sale on the TSX and NYSE.
22. The management of Royal Group was thus dominated by Mr. De Zen. His ownership of the MVS and his history with the company gave him the votes and moral authority within the company to direct Royal Group's management, including the Board of Directors. He did so. He appointed those loyal to him to senior positions as directors and officers of Royal Group.

i) The Independent Directors

23. Upon becoming a reporting issuer in 1994, Royal Group began the practice of appointing independent directors to sit on the Board. These individuals were purportedly independent in that they were not a part of Royal Group's internal management, and could therefore supervise the company's management and ensure that the company fairly met its obligations to its shareholders. They were appointed, in effect, to act as the voice of the company's public shareholders, including the Plaintiff. Thus, the independent directors had a special responsibility to:
 - (a) provide the company's public shareholders with oversight of Royal Group's affairs and management;
 - (b) ensure that the interests of the Plaintiff and other public shareholders were not unfairly prejudiced or unfairly disregarded by the company's management;
 - (c) reassure public investors including the Plaintiffs that Royal Group would be operated in the interests of all of its shareholders.

24. The importance of this role was or ought to have been particularly evident to Mssrs. Brehn, Sorbara, and Slaght in these circumstances. The concentration of voting control in the hands of Mr. De Zen and those appointed by him ought to have put Mssrs. Sorbara, Slaght and Brehn on notice that heightened vigilance was required in monitoring the business of Royal Group, and that specific internal controls were required so that the Board of Directors and its Audit Committee could appropriately scrutinize Royal Group's affairs.
25. Despite that, the Audit Committee did not exercise the requisite vigilance. In fact, during the Class Period, Royal Group's internal controls initiated by the Audit Committee were remarkably lax. It did not require the company's officers and directors to submit related party transactions to the Board or the Audit Committee for approval prior to consummating them, nor indeed to disclose such transactions at all.
26. The Board of Directors itself met rarely during the Class Period. At its meetings, the Independent Directors allowed the agenda to be controlled entirely by Royal Group's management, which was loyal to Mr. De Zen. The Independent Directors also allowed the information put before the Board at its meetings to be controlled by Royal Group's management, and condoned a \$60 million threshold for Board review of transactions. This approach meant that neither the Board nor the Audit Committee reviewed or monitored transactions with a value of less than \$60 million, but instead left such transactions entirely to the discretion of management. Such a threshold vastly exceeded the financial materiality threshold for a company of Royal Group's size.
27. The Board of Directors, and particularly Mssrs. Sorbara, Slaght and Brehn knew, or ought to have known that:

- (a) they were not exercising an appropriate level of scrutiny over Royal Group's affairs;
- (b) their failure to do so put the investments of the Plaintiff and other class members at risk; and
- (c) there were steps they could take, such as
 - (i) implementing more stringent internal controls and reporting requirements,
 - (ii) lowering the \$60 million threshold for mandatory Board of Directors review of transactions, and
 - (iii) specifically requiring disclosure and Board of Directors or Audit Committee approval of all related party transactions,

to ensure that Royal Group was run for the benefit of all of its shareholders and that its assets were used only for the legitimate purposes of its business.

28. There were no policies in place during the Class Period which required the disclosure of related party transactions, or that such transactions be reviewed by the Audit Committee or the company's auditors. Royal Group's independent directors knew that they had very little authority, and that management was free to do as it pleased. Yet they failed to take any steps to avert the possible consequences of that situation.
29. Royal Group's failure to implement more stringent reporting and governance requirements continued despite the fact that by 2000, the company's auditors KPMG LLP had raised red flags to the Audit Committee and the Board concerning the company's financial reporting.

IV. RELATED PARTY TRANSACTIONS

30. The Defendants' failure to implement adequate corporate governance procedures resulted in Royal Group entering into a series of related party transactions for the benefit of Mr. De Zen, and certain of the other Individual Defendants (as set out below), to the detriment of the Plaintiffs and class members prior to and during the Class Period.

A. Royal St. Kitts Resort Transactions

31. Mssrs. De Zen, Dunsmuir, Goegan, and D'Amico (collectively, the "Resort Defendants"), had a significant investment in, and control over, Royal St. Kitts Beach Resort Ltd. which was, during the period from approximately 1998 to 2002, building a resort in the Caribbean (the "Resort"). The Resort Defendants had ownership interests in the Resort as follows:

- (a) Mr. De Zen: 59.9%
- (b) Mr. Dunsumuir: 5%
- (c) Mr. Goegan: .02%
- (d) Mr. D'Amico: 15%.

32. Throughout that period, the Resort Defendants caused Royal Group to engage in a series of secretive, undisclosed transactions with the Resort. The full particulars of these transactions is known only to Royal Group and the Resort Defendants. The result of those transactions was that Royal Group sold in excess of \$32 million worth of products to the Resort. None of these transactions were disclosed in a timely manner, or reviewed by the Board or the Audit Committee.

B. Vaughan West Lands Transaction

33. In 1998, a company owned by Mr. De Zen, Mr. Brown, Mr. Dunsmuir and other Royal Group insiders purchased a 185 acre parcel of land in Woodbridge, Ontario for approximately \$20.9 million. Immediately after the closing of this transaction, Mr. De Zen directed Royal Group to purchase that same parcel of land for \$27.4 million, resulting in a \$6.5 million gain for Mr. De Zen, Mr. Brown, Mr. Dunsmuir and other Royal Group insiders to the detriment of Royal Group and its shareholders.
34. The particulars of this transaction were not disclosed to shareholders until November of 2004. The transaction was never scrutinized by Royal Group's Board of Directors or its Audit Committee until after it was disclosed. It was this transaction that led to the dismissal of Mssrs. De Zen, Dunsmuir and Goegan.

C. Masonite Warrant Exercise

35. In 2000, Royal Group received, as part of the consideration for the sale of a subsidiary, 200,000 warrants for shares of Premdor Inc., now known as Masonite International Corporation, whose shares are also publicly traded.
36. By 2002, Masonite's shares were trading at approximately US\$21.74 per share. The warrants were accordingly worth approximately US\$8.50 each.
37. Certain Royal Group executives and employees including Mssrs. De Zen, Dunsmuir and Goegan, used their control over the company to exercise the warrants for their own benefit. These persons deposited US\$2.65 million with Royal Group, to fund the company's exercise of the warrants. The executives then caused Royal Group to distribute the Masonite shares obtained to them personally. The result was that individuals including Mssrs. De Zen, Dunsmuir and Goegan misappropriated a Royal Group asset with a value of approximately US\$1.7 million.

38. These transactions were not recorded in Royal Group's accounting records, nor were they disclosed to the Board or the Audit Committee during the Class Period. The \$1.7 million was accounted for as part of the bonus compensation for the involved individuals.

D. Mr. De Zen's Other Self Dealing Transactions

39. In keeping with his view that Royal Group was "his" company, and that its assets were his assets to use as he wished, Mr. De Zen continually used Royal Group's assets for his own personal purposes, and for the benefit of himself and his family.
40. In September of 1995, Royal Group acquired 50% of the shares of Hanmar Mechanical Services Inc. for \$180,000 from Mssrs. De Zen, D'Amico, Brown, Dunsmuir and others. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.
41. In October of 1995, Royal Group acquired all of the shares of Jovien Associates Ltd. ("Jovien") from Mssrs. De Zen, D'Amico, Bordin, Brown, Dunsmuir and others for \$875,000. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.
42. In October of 1995, Royal Group acquired all of the shares of Royal King Electric Ltd. from Mssrs. De Zen, D'Amico, Bordin, Brown, Dunsmuir and others for \$319,243. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.
43. In June of 1996, Royal Group purchased the assets of La Pineta Dining and Banquets Ltd. for \$1.7 million from a company owned by Mssrs. De Zen, D'Amico, Brown, Dunsmuir, Fortunato Bordin (a company employee and shareholder) and

others. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.

44. In January of 1997, a Royal Group subsidiary acquired the shares of Baron Metal Industries Inc. from Mssrs. De Zen, D'Amico, and Fortunato Bordin, among others for \$11.5 million. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.
45. In October of 1998, Roybridge Investments Ltd, a Royal Group subsidiary, purchased 75% of the shares of Top Gun Electrical Supply Ltd. for \$1.9 million from Mssrs. De Zen, D'Amico, Bordin, Brown and Dunsmuir. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.
46. Between 1998 and 2003, Mr. De Zen caused the company to facilitate foreign currency transactions for his own benefit at exchange rates available only to Royal Group. He used Royal Group's bank accounts to facilitate the international transfer of approximately \$95,000,000 of funds belonging to Mr. De Zen. Although these funds were Mr. De Zen's own, his use of the company's facilities was undisclosed to the Board or the Audit Committee. Royal Group was not compensated for the use of its facilities or the administrative burden of completing these transactions.
47. Between 1997 and 2002, Jovien, a subsidiary of Royal Group managed the construction of 4 real estate projects for Mr. De Zen and his family. Royal Group paid invoices for these projects totalling US\$21,100,000. Although Royal Group was later reimbursed, Mr. De Zen was effectively using Royal Group funds to finance his personal projects through these transactions. These transactions were not disclosed to Royal Group's Board or the Audit Committee.

48. In 2002, Royal Group sold switch gear equipment to Roybridge Holdings Limited, a company controlled by Mr. De Zen, for \$243,000. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.
49. In September of 2002, Jovien Associates Ltd., a Royal Group subsidiary was wound up and certain of its assets sold to Mr. De Zen's personal holding company, ZZen Group. No valuation was performed in respect of this transaction. Neither Royal Group's Board nor the Audit Committee reviewed this transaction.
50. In March of 2003, Royal Building Systems Ltd., a Royal Group subsidiary, sold three commercial building units to a partnership including Royal Group employees Galasso, Bitondo, and two of Mr. De Zen's sons for \$346 000. A third party appraiser hired by Kroll Lindquist Avey in the course of its mandate described below opined that the sale prices undervalued those units by 80-150%.

E. Related Party Real Estate Transactions

51. In 1997, Royal Group purchased two parcels of real estate from Sam-Sor Enterprises Inc., a company owned by Mr. Sorbara and his family, for \$2,550,000. These transactions and Mr. Sorbara's interest in them was not disclosed. Neither Royal Group's Board of Directors nor the Audit Committee reviewed these transactions.
52. In 1998, Royal Group purchased two parcels of land from Mr. De Zen for \$2,900,000. Neither Royal Group's Board of Directors nor the Audit Committee reviewed these transactions.
53. Between 1994 and 2000, Royal Group sold Mr. De Zen over \$1.3 million worth of real estate. In 2003, the company sold \$350,000 worth of real estate to Mr. De Zen's

family, Royal Group employees, and former employees. Neither Royal Group's Board of Directors nor the Audit Committee reviewed these transactions.

54. Between 1999 and 2001, Royal Group entered into 9 joint land service agreements with Mr. De Zen or entities controlled by him. Neither Royal Group's Board of Directors, nor the Audit Committee reviewed these transactions.

F. Other Related Party Transactions

55. The Defendants had a pattern of engaging in related party transactions, some of which remain known only to the Defendants and not to the Plaintiff.
56. None of the related party transactions described in paragraphs 31-55 above (hereinafter, the "Transactions") was disclosed to Royal Group's shareholders during the Class Period. No formal or informal valuations were performed in respect of any of the Transactions.

G. The Significance of the Transactions

57. Each of the Transactions was material because it was a transaction between Royal Group and a party related to the company.
58. Related party transactions are material to a reporting issuer such as Royal Group even when the financial characteristics of the transaction would not alone render the transaction material. Such transactions are material in a qualitative respect. Shareholders are interested in ensuring that such transactions are fair to the company, and that those transactions are not being used by the company officers, directors, or employees to improperly transfer assets or revenue away from the company, or to improperly transfer costs or liabilities to the company.

59. Accordingly, the Plaintiff and other shareholders have an interest in the qualitative details of such transactions in addition to the quantitative financial interest that they have in all of the transactions of the company.

V. THE DISCLOSURE OF THE TRANSACTIONS

60. In January and February, 2003, rumours about "a supply deal related to a resort and casino in St. Kitts" between Royal Group, and a company controlled by Mr. De Zen's brother were reported in the Canadian business press.
61. These rumours precipitated a decline in Royal Group's share price. On January 23, 2003, Royal Group's shares closed at \$15.29 on the TSX. On January 24, 2003, after Royal Group issued a revision to its earnings estimates for the preceding quarter, Royal Group's shares closed at \$13.01.
62. By February 28, 2003, Royal Group's shares closed at \$10.20, having traded as low as \$10.01 on February 13, 2003. The decline in Royal Group's shares from \$13.01 to \$10.20 was caused by the media's reporting regarding Royal Group's engagement in undisclosed related party transactions. This decline caused a loss to the Plaintiff and other shareholders of Royal Group who had purchased Royal Group's shares prior to the correction.
63. During this period, Royal Group issued no public statement confirming, denying, or correcting these rumours.

A. The Investigations of the Transactions

i) The OSC Investigation

64. On or about December 22, 2003, the OSC advised Royal Group that it had commenced a regulatory investigation into Royal Group's affairs, including the

Transactions, and particularly the flow of goods and services between Royal Group and the Resort.

65. Despite being advised by the OSC that it viewed the fact of the investigation as a material change, Royal Group refused to disclose the existence of the investigation or the Transactions upon which the investigation was based. On or about February 25, 2004 the OSC advised the company that if Royal Group did not disclose the investigation, the OSC would issue its own press release disclosing it.
66. On February 25, 2004, after the close of trading for the day, Royal Group issued a press release disclosing the fact that the OSC was conducting an investigation relating to the company. The press release advised that:
 - the investigation related to \$32 million worth of goods sold by Royal Group to the Resort over the previous 5 years;
 - the RCMP and the CCRA were also involved in the investigation;
 - the company had known about and been cooperating with the investigation since late December, 2003;
 - the company had established a Special Committee of the Board of Directors in December, 2003 to deal with these matters; and
 - the company would continue to cooperate fully with the OSC.
67. On February 25, 2004, Royal Group's shares closed at \$17.36 on the TSX. On February 26, 2004, they closed at \$13.98, a one day loss of approximately 20%. The sharp drop in the trading price of Royal Group's shares was a correction caused

by the disclosure of the OSC's investigation and the additional disclosure of the existence of related party transactions between Royal Group and the Resort.

68. On March 16, 2004, Royal Group issued a press release entitled "Royal Group Special Committee Understands Company Is Not Target of St. Kitts Investigation".

The press release stated that:

- the Special Committee had been advised by the OSC that the ongoing investigation related to transactions between the company and the Resort;
- the investigation was being conducted by the RCMP;
- the company was not considered to be the target of the investigation; and
- the CCRA was not conducting a separate investigation, but was assisting the RCMP in its investigation.

ii) Internal Investigation

69. Following disclosure of the OSC investigation, Royal Group announced that it had established the Special Committee to conduct an independent inquiry into the subject matter of the OSC probe. The Special Committee was made up of Royal Group's independent directors including Messrs. Slaght and Brehm. It retained Kroll Lindquist Avey ("Kroll"), an accounting firm with expertise in forensic accounting and risk assessment, to assist in conducting the investigation.

70. The initial phase of the investigation was concluded in April, 2004 with the Special Committee concluding that no further action was required. On April 29, 2004, Royal Group issued a press release which stated that:

- the Special Committee had reported to the Board following the completion of the internal investigation by Kroll;
- Kroll had focused on determining whether the company had inappropriately borne any costs related to the Resort, including non-billing or under-billing of costs to the Resort, or other conduct calculated to improperly shift costs to the company;
- Kroll had found no evidence of conduct or actions designed to improperly shift costs to the company from the Resort;
- Kroll had, however, found circumstances which provided the opportunity for improper cost shifting to the company, including weakness in the company's information systems, and a lack of specific controls to ensure independent scrutiny of the interaction between the company and the Resort;
- Kroll had advised the Special Committee that further investigation was not necessary;
- the Special Committee concurred that no further investigation was necessary;
- the company had, on numerous occasions, exercised business judgment in dealing with the Resort, and had done so reasonably on all such occasions; and

- the RCMP investigation was continuing, and that its investigation could produce results material to the company, particularly in relation to past financial disclosure.

71. By the time of the issuance of this press release, only the Transactions relating to the Resort had been disclosed.

iii) The RCMP Production Orders

72. On or about October 5, 2004, the RCMP executed a Production Order on the Bank of Nova Scotia in connection with an investigation of the transactions described above, and in particular the Transactions relating to the Resort (the "First Order"). The First Order related to allegations that Mssrs. De Zen, Dunsmuir and Brown used deceit, falsehood or fraudulent means to defraud Royal Group's shareholders and creditors, and conspired to commit fraud.

73. Again, Royal Group, at the direction of the Individual Defendants, declined to disclose the fact of the RCMP's investigation despite being advised by Market Regulation Services, which monitors trading on the TSX, that it felt the existence of the First Order should be disclosed. Market Regulation Services threatened to halt trading of Royal Group's stock if it did not disclose the First Order.

74. On October 11, 2004, the OSC advised Royal Group that it had a copy of the First Order, and that it considered the existence of the First Order to be a material fact that Royal Group was required to disclose. The OSC told Royal Group that if it did not disclose the First Order, the OSC would issue its own press release disclosing the existence of the First Order.

75. Royal Group and the Individual Defendants did not voluntarily comply with the OSC's direction. Instead, Royal Group chose to commence proceedings in this Court seeking a publication ban on the details of the investigation, on the basis that disclosing the investigation would cause the trading price of Royal Group's publicly traded shares to decline, and cause changes to Royal Group's credit ratings, increasing borrowing costs.
76. Royal Group's application for a publication ban was denied.
77. Finally, on October 15, 2004, some 10 days after it became aware of the First Order, Royal Group disclosed the fact of the First Order and that Mssrs. De Zen, Goegan, Brown and D'Amico were under criminal investigation in relation to the undisclosed Transactions.
78. On October 15, 2004, the company issued a press release which stated that:
 - on October 12, 2004 the OSC had provided the company with a copy of a production order that had been issued on October 5, 2004 by a Justice in Ontario and which was addressed to the Vice President and Chief Security Officer of Scotiabank;
 - Market Regulation Services had halted trading in Royal Group's shares on October 13, 2004 pending the issuance of this press release;
 - the First Order related to the time period between January 1, 1996 and July 30, 2004 and required that documents relating to a subsidiary of the company, the Resort, and two of the Resort's affiliates be provided;

- the documents sought were banking documents and documents relating to research and development grants and related tax credits, as well as the report prepared by Kroll, referenced above;
 - the evidence was sought in support of 5 allegations of violations of the Criminal Code; and
 - the First Order named Mssrs. De Zen, Dunsmuir, and Brown.
79. Royal Group's refusal to disclose the RCMP's investigation resulted in trading in its shares being halted for over 2 days. It also damaged the credibility of Royal Group's management, and potentially impaired Royal Group's ability to refinance credit facilities that were coming due, particularly a term loan of \$424 million coming due on April 28, 2005.
80. Royal Group's October 15, 2004 disclosure of the RCMP investigation left the impression that Royal Group itself was not a target of the RCMP investigation, which was not in fact the case. On October 18, 2004, Royal Group disclosed that it was in fact a target of the investigation regarding the alleged self-dealing transactions.
81. The last trading price of Royal Group's publicly traded shares prior to the disclosure of these Transactions was \$11.28. On October 18, 2004, the first day that Royal Group's shares traded after these disclosures, the stock price fell as low as \$8.70. This drop in the trading price of Royal Group's stock was caused by the disclosure of the RCMP investigation and the facts underlying it.

VI. POST CLASS PERIOD DISCLOSURES

A. Disclosure of Additional Related Party Transactions

82. On October 28, 2004, Royal Group announced that it had received a copy of a second Production Order issued on October 25, 2004 by a Justice, and addressed to the company's lead bank (the "Second Order"). Royal Group indicated that the subject matter of the Second Order was similar to that of the First Order, but was targeted to additional individuals including Msrs. Goegan, D'Amico and Fortunato Bordin, a senior Royal Group employee.
83. On November 29, 2004, the Company issued a press release which stated that:
- Mr. Dunsmuir had been dismissed for cause from his position as Royal Group's President and Chief Executive Officer without severance;
 - Mr. Goegan had been dismissed for cause from his position as Senior Vice President and Chief Financial Officer without severance;
 - Mr. De Zen had also been dismissed as Chairman of the Board;
 - the terminations resulted from the involvement of Msrs. Dunsmuir, Goegan and De Zen in the 1998 Vaughan West Lands transaction (described at paragraphs 33-34 above); and
 - Fortunato Bordin and Dominic D'Amico were also terminated for cause for their involvement in the Vaughan West Lands Transaction.
84. This press release constituted the first public disclosure of the Vaughan West Lands transaction.

85. Kroll's discovery of that transaction resulted in the terminations of Mssrs. De Zen, Dunsmuir and Goegan, and the company's asking for and eventually obtaining their resignations from Royal Group's Board.
86. Following these disclosures, Royal Group finally adopted a requirement that all individual related party transactions valued at \$100,000 or more be approved by the Audit Committee before they are completed.

B. Royal Group Settles with Mr. De Zen

87. In March, 2005, the company announced that the Special Committee had negotiated a settlement with Mr. De Zen which it was recommending. The terms of the settlement were as follows:
 - (a) Mr. De Zen would repay \$6.5 million plus \$2.2 million interest relating to the gains earned as a result of the Vaughan West lands transaction, which amount would be paid in stock;
 - (b) Mr. De Zen would repay his \$1.13 million bonus from 2002;
 - (c) Mr. De Zen would agree to convert his MVS to SVS;
 - (d) Mr. De Zen would sign a non-compete covenant extending to December of 2006;
 - (e) Mr. De Zen agreed to release all claims against the company;
 - (f) The company agreed to release all claims against Mr. De Zen; and
 - (g) Mr. De Zen agreed to tender his resignation from the Board.

C. The RCMP Investigation Continues

88. On January 28, 2005, the RCMP obtained a search warrant entitling it to obtain additional documents from the Bank of Nova Scotia concerning its investigation into the company's financial activities. On February 1, 2005, the RCMP began a search at the Bank of Nova Scotia's headquarters. The raid occupied as many as 25 RCMP personnel onsite for 2 months. They gathered approximately 100,000 documents.

D. The SEC Investigates

89. Because Royal Group's shares also trade on the NYSE, it is subject to the regulatory authority of the United States Securities and Exchange Commission (the "SEC"). The SEC is also investigating the company's past accounting practices and disclosures. The company has received a number of requests for information from the SEC, including a July 27, 2005 subpoena.

VII. THE DEFENDANTS' OBLIGATIONS

A. Securities Law: Continuous Disclosure

90. Royal Group is a reporting issuer within the meaning of the *Securities Act*, and is accordingly required to comply with the requirements of Part XVIII of the *Securities Act* which require it to file, among other things, notice of any material change in its affairs (section 75), quarterly interim financial statements compiled in accordance with generally accepted accounting principles (section 77), and annual audited financial statements compiled in accordance with generally accepted accounting principles (section 78).
91. In addition, because its shares are listed on the TSX and the NYSE, Royal Group is subject to the requirements of those exchanges, which require it to, among other things:

- (a) make accurate and timely disclosure of all material information which may impact the value of its securities; and
- (b) comply with applicable legislation regarding disclosure of material changes and facts.

92. The failure to comply with those obligations can result in the halting of trading in Royal Group's shares on the TSX and the NYSE, which can effectively deprive shareholders, including the Plaintiffs, of a market for their shares.

i) Material Changes

93. Throughout the Class Period, section 75 of the *Securities Act* required Royal Group to disclose to the public all material changes in its affairs.

94. A material change includes any change in the business, operations, or capital of the company that would reasonably be expected to have a significant effect on the market price or value of Royal Group's securities.

95. The Transactions were material changes. In the circumstances pleaded, disclosure of the Transactions should have been or was expected to have, and did have a significant effect on the market price or value of Royal Group's shares.

96. Rule 61-501 made under the *Securities Act* specifies the content of the disclosure to be given when issuing a material change report in respect of a related party transaction. Section 5.2 of Rule 61-501 requires that a Material Change Report filed in respect of a related party transaction shall include the following:

- (a) a description of the transaction and its material terms;
- (b) the purpose and business reasons for the transaction;

- (c) the anticipated effect on the issuer's business and affairs;
 - (d) a description of
 - (i) the interest in the transaction of every interested party and of the related parties and associated entities of the interested parties; and
 - (ii) the anticipated effect of the transaction on the percentage of securities of the issuer, or of an affiliated entity of the issuer, beneficially owned or controlled by each person or company referred to in subparagraph (i) for which there would be a material change in that percentage;
 - (e) unless the information will be included in another disclosure document for the transaction, a discussion of the review and approval process adopted by the Board of Directors and of the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director, and any material disagreement between the Board and the special committee; and
 - (f) information concerning any valuations provided in respect of the transaction, and if no such valuation information is provided, the reasons why not.
97. With respect to the Transactions, none of this information was disclosed in a timely manner or at all.
- ii) Royal Group's Annual Financial Statements**
98. During the Class Period, section 78 of the *Securities Act* required Royal Group to file audited annual comparative financial statements prepared in accordance with generally accepted accounting principles.

99. Royal Group in fact regularly published annual reports and audited financial statements which, it said, were compiled in accordance with generally accepted accounting principles ("GAAP") in Canada.
100. In each of these reports, Royal Group and its directors made the following misrepresentations regarding Royal Group's financial statements, business and operations:
 - (a) the financial statements included therein were compiled in accordance with Canadian GAAP;
 - (b) Royal Group maintained appropriate internal controls, policies and procedures to provide management with reasonable assurance that assets were safeguarded and that financial records form a proper basis for preparation of financial statements; and
 - (c) the Audit Committee of the Board of Directors ensured that management fulfilled its responsibilities for financial reporting and internal control.
101. The Plaintiffs and other investors relied on those representations in continually assessing whether to buy or sell shares in the company.
102. Further, or in the alternative, the Plaintiff and other class members were damaged by the negligence and/or negligent misrepresentations inasmuch as such negligence and/or misrepresentations caused the price of Royal Group's securities to trade at a price in excess of the price at which such securities would have traded had the representations been materially accurate. Had those representations been accurate, the Plaintiffs and other class members would have paid less for the company's securities, or would not have acquired such securities at all.

103. These representations were false throughout the Class Period because:
- (a) the Transactions were not disclosed in those financial statements despite the requirement contained in section 3840 of the Canadian Institute of Chartered Accountants Handbook ("CICA Handbook") which states that related party transactions should be recorded in financial statements;
 - (b) as stated above, Royal Group did not, during the Class Period, have in place adequate internal controls to ensure that it had financial records to form a proper basis for preparation of financial statements; and
 - (c) the Audit Committee did not ensure that Royal Group's management met its financial reporting responsibilities and was not taking any reasonable steps to do so.

iii) Royal Group's Interim Financial Statements

104. During the Class Period, section 77 of the *Securities Act* required Royal Group to file quarterly comparative financial statements prepared in accordance with generally accepted accounting principles.
105. Accordingly, during the Class Period, Royal Group filed quarterly interim financial statements.
106. In each of these interim financial statements, Royal Group represented that those financial statements were prepared in accordance with Canadian GAAP.
107. None of those interim financial statements disclosed the existence and nature of the Transactions.

iv) Canadian GAAP

108. Canadian GAAP is codified in the CICA Handbook. Section 3840 records considers the accounting treatment of related party transactions. Section 3840.43 provides that:

An enterprise should disclose the following information about its transactions with related parties:

- (a) a description of the relationship between the transacting parties;
- (b) a description of the transaction(s), including those for which no amount has been recorded;
- (c) the recorded amount of the transactions classified by financial statement category;
- (d) the measurement basis used;
- (e) amounts due to or from related parties and the terms and conditions relating thereto;
- (f) contractual obligations with related parties, separate from other contractual obligations; and
- (g) contingencies involving related parties, separate from other contingencies.

109. Section 3840.45 of the CICA Handbook states that the rationale for the reporting of all related party transactions is as follows:

Information about related party transactions is often more significant to a financial statement user than information about unrelated party transactions, regardless of the size of the transactions. When considering disclosure of related party transactions, the qualitative as well as the quantitative characteristics of materiality are considered.

110. Canadian GAAP requires that all related party transactions be disclosed and evaluated because such transactions may be material transactions at lower financial thresholds than non-related party transactions. This is as a result of a qualitative aspect in which the user of a financial statement user may be interested in those

related party transactions. That qualitative aspect relates to the use to which the company's assets are being put by its management, and to ensuring that those assets are not misused or dissipated.

111. The Plaintiff had an interest in being made aware of related party transactions entered into by Royal Group even if those transactions were not financially material. The fairness of those transactions, and Royal Group's willingness to disclose them and have them evaluated, speaks to the integrity of Royal Group's management, which is a significant factor in the market's evaluation of the value of Royal Group's securities.
112. Given the passage of time since the actual transactions were completed, it is now extremely difficult to accurately evaluate the fairness of those related party transactions. In these circumstances, the burden lies on the Defendants to establish that the above transactions were in fact fair and in the best interests of Royal Group.

B. Corporate Law:

i) Directors & Officers Disclosure of Interests

113. Section 120 of the CBCA required Royal Group's directors and officers to disclose any interest they had in any material contract entered into by the company during the Class Period, failing which such transactions may be set aside.
114. Accordingly, the Plaintiffs and those similarly situated had a reasonable and legitimate expectation that Royal Group's officers and directors identified herein would disclose their interests in transactions entered into by Royal Group.
115. The Defendants knew that their failure to meet this obligation would adversely impact the company's share price, and accordingly harm the Plaintiff and class members. As

such, their failure to do so unfairly prejudiced and unfairly disregarded the interests of the Plaintiff and other class members.

116. As set out above, Royal Group's officers and directors identified herein failed to disclose their interests in numerous transactions in which Royal Group engaged.

ii) Directors' and Officers' Duty of Care

117. Section 127 of the CBCA provides as follows:

122. (1) Every director and officer of a corporation in exercising their powers and discharging their duties shall

(a) act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

118. In respect of each of the Transactions, the directors failed to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Royal Group's directors and officers failed to meet this standard by:

- (a) failing to disclose to the Board of Directors and Royal Group's shareholders the Transactions;
- (b) failing to implement policies or procedures to detect related party transactions; and
- (c) generally failing to apply an adequate level of scrutiny or oversight to the conduct of Royal Group's business by its management to detect the Transactions.

119. The directors and officers of Royal Group failed to act honestly and in good faith with a view to the best interests of the corporation. Royal Group's officers and directors acted in their own interests by:
- (a) engaging in the Transactions;
 - (b) failing to disclose the Transactions to the company's shareholders; and
 - (c) failing to implement policies or procedures to detect related party transactions.
120. Accordingly, the Plaintiff and those similarly situated had a reasonable and legitimate expectation that Royal Group's officers and directors identified herein would act in accordance with their statutory duty of care.
121. The Defendants knew or ought to have known that their failure to meet this obligation would adversely impact the company's share price, and accordingly harm the Plaintiff and other class members. As such, their failure to do so unfairly prejudiced and unfairly disregarded the interests of the Plaintiff and other class members.

iii) Oppressive Conduct

122. In the circumstances, the Plaintiff and those similarly situated had a reasonable and legitimate expectation that Royal Group's officers and directors would use their powers to direct the company for Royal Group's best interests, and, in turn, in the interests of its shareholders. More specifically, the Plaintiff had a reasonable expectation that:
- (a) the Defendants would not engage in undisclosed related party transactions
 - (b) the Defendants would promptly disclose the Transactions and their interests therein;

- (c) the Defendants would not attempt to conceal the Transactions and their interests therein;
 - (d) the Defendants would not use their power to direct the resources and affairs of the company for their own interests;
 - (e) the Defendants would take reasonable steps to ensure that the company's shareholders were made aware of material developments in Royal Group's affairs; and
 - (f) the Defendants would implement corporate governance procedures, including
 - (i) mandatory review and disclosure of related party transactions,
 - (ii) Board of Directors and Audit Committee scrutiny of all such transactions to ensure that the company was run in the interests of all of its shareholders; and
 - (iii) reducing the materiality threshold for transaction review by the Board.
123. Instead, as set out above, Msrs. De Zen, Dunsmuir, Goegan, Brown, and D'Amico repeatedly used Royal Group's assets and facilities for their own purposes and interests. Msrs. Brehn, Slaght and Sorbara took no or insufficient steps to ensure that the company met those expectations, despite being directly charged with protecting the interests of the company's public shareholders.
124. This conduct was oppressive and unfairly prejudicial to the Plaintiff and other class members, and unfairly disregarded their interests. These Defendants were charged with the operation of Royal Group for the benefit of all of its shareholders. The value of the shareholders investments was based on, among other things:

- (a) the profitability of the company;
- (b) the perception in the market place of the integrity of the company's management and its ability to run the company in the interests of all shareholders;
- (c) the perception in the market that the company was compliant with its disclosure obligations;
- (d) the company's ongoing representation that its corporate governance procedures met with reasonable standards, and that the business of the company was subjected to reasonable scrutiny; and
- (e) the company's ongoing representation that its affairs and financial reporting were being conducted in accordance with Canadian GAAP.

125. This conduct impaired the ability of the Plaintiff and other class members to make informed investment decisions about their shares in Royal Group. But for the conduct of the Defendants, the Plaintiff would not have suffered the damages set out below.

VIII. DAMAGES

A. Compensatory Damages: The Market Corrections of Royal Group's Share Price

126. The damages occasioned by the conduct of the Defendants particularized above relate to the correction of the trading price for Royal Group's shares on the TSX upon the market becoming appropriately informed about the company's business and management.

127. There were 3 significant corrections related to the disclosure of the Transactions and investigations cited above. Each of these corrections resulted in a quantifiable per

share loss suffered by each shareholder who held the shares at the time of each correction. The dates and magnitudes of the losses are as follows:

Date	Per Share Magnitude of Correction
February, 2003	\$2.81
February, 2004	\$3.38
October, 2004	\$1.42

B. Punitive, Aggravated and Exemplary Damages

128. The conduct of the Defendants as set out herein is of such an egregious character as to warrant an award of punitive, aggravated or exemplary damages. In particular, Mssrs. De Zen, Dunsmuir, Brown, D'Amico and Goegan have shown by their conduct a remarkable preference for their own interests and disregard for the interests of the Plaintiffs and other shareholders of Royal Group. This conduct is worthy of this Court's strong denunciation in the form of a significant award of punitive, aggravated or exemplary damages.

IX. SERVICE OUTSIDE ONTARIO

129. The Plaintiff pleads and relies on clauses 17.02 (g), (h), (o) and (p) of the *Rules of Civil Procedure* for services of this Statement of Claim outside Ontario. Specifically, the Plaintiff says that:

- (i) In respect of clause 17.02(g), the claim is in part in respect of a tort committed in Ontario as pleaded above;
- (ii) in respect of clause 17.02(h), the claim is in respect of damages suffered by the Plaintiff in Ontario, as pleaded above;

- (iii) in respect of 17.02(o), each of the Defendants is a necessary or proper party to this proceeding; and
- (iv) in respect of clause 17.02(p), the Defendants carry or carried on business in Ontario during the relevant period.

X. VENUE FOR TRIAL

130. The Plaintiffs request that this action be tried at Milton, Ontario.

March , 2006

Siskind, Cromarty, Ivey & Dowler LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright (LSUC#: 36599Q)
A. Dimitri Lascaris (LSUC#: 50074A)
Michael G. Robb (LSUC#: 45787G)
Tel: (519) 672-2121
Fax: (519) 672-6065

Cavaluzzo Hayes Shilton McIntyre & Cornish LLP
474 Bathurst St., Suite 300
Toronto, ON M5T 2S6

Michael Wright (LSUC#: 32522T)
Simon Archer (LSUC#: 46263D)
Tel: (416) 964-1115
Fax: (416) 964 5895

Solicitors for the Plaintiff

TO: Royal Group Technologies Ltd.
1 Royal Gate Boulevard
Woodbridge, Ontario
L4L Z78

AND TO: Vic De Zen
100 Zenway Boulevard
Vaughan, ON
L4H 2Y7

AND TO: Douglas Dunsmuir
78 Owen Blvd.
Toronto, ON
M2P 1G3

AND TO: Gary Brown
c/o Royal Group Technologies Ltd.
1 Royal Gate Boulevard
Woodbridge, Ontario
L4L Z78

AND TO: Ron Goegan
46 Veronica Cres RR 1
Sharon, ON
L0G 1V0

AND TO: Domenic D'Amico
413 London Road
Newmarket, ON
L3Y 6G3

AND TO: Gregory Sorbara
99 Highland Lane
Richmond Hill, ON
L4C 3S1

AND TO: Ronald Slaght
130 Adelaide Street West
Toronto, ON
M5H 3P5

AND TO: Ralph Brehn
1101 Sugarsands Blvd., Apt 9
Singer Island
Riviera Beach, Florida
33404

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Milton

**STATEMENT OF CLAIM
NOTICE OF ACTION ISSUED ON
FEBRUARY 24, 2006**

Siskind, Cromarty, Ivey & Dowler LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright (LSUC#: 36599Q)
A. Dimitri Lascaris (LSUC#: 50074A)
Michael G. Robb (LSUC#: 45787G)
Tel: (519) 672-2121
Fax: (519) 672-6065

Cavaluzzo Hayes Shilton McIntyre & Cornish -LP
Michael Wright (LSUC#: 32522T)
Simon Archer (LSUC#: 46263D)

Solicitors for the Plaintiff