



W & NG <whg007@gmail.com>

FW: Commencing Civil Action to Recover Losses

1 message

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Wed, Aug 11, 2010 at 9:43 PM

Wednesday August 11, 2010

Please be advised that MREP Communications will be putting together groups of companies by regions and commencing civil action to recover losses. The industry is too fractured to launch a single class action for Ontario. A single class action would also allow companies not involved in defending the industry to profit from our actions. Action will be started before the end of August.

Damages to the industry are extensive as the value of the individual companies has been decimated.

(You could skip the body of this email and read the information listed under the "Bottom Line")

Background

Currently if you were selling a lawncare business the offers are in the \$0.25 to \$0.35 per dollar gross earnings. Having licensed staff and a client base is the only advantage over starting a new business. The only thing of value in any lawncare business at this point is "good will" which on a good day might add 10% to the value of a business (hence the range from 25% to 35%) The merger and acquisition of competitors is a huge risk for a lawncare company. Current companies purchased on a discounted cash flow, in hopes that the industry could recover. Most companies have little value as the business model is no longer in effect. Some of the smaller companies have released (fired) their staff and reduced their operations to loyal customers and a single truck. It is our understanding that they are some companies operating underground (without a license) with products from outside the province. This is a huge issue for any size company, who can no longer produce

the same results or compete without breaking the rules. A company could face fines in the thousands of dollars and lose their ability (license) to operate if they try to use Health Canada approved products. In addition most companies are not aware of pending investigations for operations in 2008 and 2009 by the MOE. The owner of the company may not be aware of the actions of his employees but is still legally responsible (and financially responsible) for their actions.

Transferring the value of a lawn care company would be tenuous in the best of times. Currently the disposal of equipment at auction depends on the region. Overall there is a glut of equipment as many of the small operators exit the industry. Current market prices on equipment are subjective at best. Pesticide inventories have zero value as the Ontario Government made it illegal to sell any excess stock of product. Service contracts that are renewable year over year are still non-contractual by the serviced client and are nontransferable. Prior to the ban the companies built up a client list based on results by having access to Health Canada approved products. Currently the industry in Ontario is restricted by the province's Ministry of the Environment (MOE) and is unable to reproduce the results in past years. So the client list is an intangible asset because you would not be able to reproduce the same results.

Earnings before interest and taxes (EBIT) are in a state of flux as the cost and availability of products is in question. For example prior to the ban the cost of product per 1000 square feet for weed control could run \$0.10 to \$0.20 for a 2-4D based product. The current replacement for weed control (Class 11) is Fiesta (Neudorff out of Germany) with a cost of \$12.00 to \$25.00 plus the additional service calls (at current application rates there is re-growth of the weeds). This product was not made available until after the start of this season and the costs have eroded any margins for profit. The current demand has out stripped the supply. [Neudorff](#) is not expected to increase production levels until late 2011 to meet current demand. The costs are expected to increase and the availability of the product will also be reduced next year as additional regions come under new pesticide restrictions (Most notably the State of New York). In addition it is our understanding the home owner may have access to the product at a higher concentration than the lawncare companies.

Another example is grub control. For 1000 square feet with Merit would cost around \$3.60. In Ontario there is no registered product for grub control allowed by the MOE. The current offering of "Nematodes" is the only solution which is not a registered pest control product. There are currently over 28 000 species of nematodes and lack of oversight by a governing agency raises legal issues of

liability. The current species offered for sale in Ontario are from Europe. There have not been any studies as to the impact on the environment from introducing a "foreign species" on a massive scale. In the event there are issues or environmental damage as a result of their use; who is going to be liable? Merit is still allowed in Quebec.

<http://www.nysaes.cornell.edu/favicon.ico> (list of suppliers of Entomopathogenic nematodes are list on this link)

In Ontario there is not "Joint and Several Liability". In a recent paper by the Association of Municipalities of Ontario dated April 1, 2010 "The joint and several provisions of the *Negligence Act*, indicate, "Where damages have been caused or contributed to by the fault or neglect of two or more persons ... and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering the loss or damage..." Also known as the 1% rule, the joint and several provisions may oblige a defendant, which is only 1% at fault, to pay the plaintiff's entire judgment particularly in cases where the other defendant is unable to meet a court ordered award. As "deep pocket" defendants with seemingly limitless resources at their disposal large manufactures of pesticides have avoided the sale of "nematodes" to the lawncare industry. Current suppliers of the product do not have the resources in the event there are long term liabilities with the product which means the burden is on the individual lawncare company. Anyone selling their interest in a lawn care company is further discounted as they are no longer exposed to this risk. The Federal and Provincial governments have not scheduled the "nematode products" as a pesticide product but are listed as "alternative pest controls for turf" by University of Guelph GTI and the Province of Ontario. www.guelph turfgrass.ca

Most companies will operate at a loss in order to retain the customers. They will have to generate new revenue streams in order to stay a feasible business. As a result there is little if any value left in the current lawncare business model. Companies will need to expend resources to develop new revenue streams in hopes of generating a net profit and reinventing themselves.

In the past seven years the Ontario Government has been pushing the industry to zero. The Environmental Commissioner of Ontario's Report to the Legislative Assembly on October 6, 2009 touched on the implications of the Pesticide Ban in Ontario. The following was stated on page 71: "In the short-term, however, the ban may have significant effects on the economic health or continued viability of many lawn care businesses, effectively sunseting components of an industry."
http://www.eco.on.ca/eng/uploads/eng_pdfs/2009/ar2008.pdf

Overall any operation in Ontario in 2007 is now worth 25% to 35% of 2010 gross revenues. If their liabilities (wages, severance, taxes and debt), exceed 75% of their gross in 2009 if they shut down today they might break even or operate the full year at a loss. Until new products are made available (3 to 5 years), the supply chain issues are addressed and the regulations are changed, the industry will lose continue to lose another 20% this year over and above last year's losses. We have been in contact with the major supplies of products to the industry and there is nothing of value for the 2011 season. Hence the need to recover current and pending damages.

CAPE/CHEER

As we look at recovering assets for the activist groups we need a starting point. Our focus is on the Canadian Association of Physicians for the Environment and the organizations and levels of government that worked with them. CAPE is a political lobby and not a non-profit organization as they claim. Government Agencies and staff have been bending the rules for this group. Although they have declined to respond to email, faxes and phone calls they may have an issue ignoring a summons.

In spring of 2001 The Canadian Association of Physicians for the Environment (CAPE) created the Canadian Health and Environment Education and Research Foundation (CHEER), the charitable arm of CAPE. They did this after CAPE was refused a charitable registration by CRA. Gideon Forman is listed as the contact on the organization's charitable tax return and holds the same mailing address as CAPE.

CAPE operates and receives funding under THE CANADIAN HEALTH AND ENVIRONMENT EDUCATION AND RESEARCH FOUNDATION BN/Registration Number 892557414RR0001

We have reviewed their charitable tax returns:

2001 no revenue

2002 Gross Revenue \$58 423 (line 118) \$50 950 was received from other registered charities (Line 103)

2003 Gross Revenue \$ 6,256

2004 Gross Revenue \$84 552 (Line 4700) \$10 334 revenue from sale of goods and services (Line 4640), \$50 748 other revenue (Line 4650)

2005 Gross Revenue \$65 263 (Line 4700) \$37 627 was received from other registered charities (Line 4510) \$ 8 256 other revenue (Line 4650)

2006 Gross Revenue \$80 256 (Line 4700) \$49 000 was received from other registered charities (Line 4510) \$ 5 475 other revenue (Line 4650)

2007 Gross Revenue \$31 683 (Line 4700) \$12 250 was received from other registered charities (Line 4510) \$ 500 other revenue (Line 4650)

2008 Gross Revenue \$53 783 (Line 4700) \$ 3 732 was received from other registered charities (Line 4510)

2009 Gross Revenue \$59 466 (Line 4700) \$ 4 128 was received from other registered charities (Line 4510)

The Ontario Trillium Foundation Provide Funding to CAPE and CHEER which is not reflected in their charitable tax returns as revenue from governments or other registered charities.

2009-2010

Canadian Association of Physicians for the Environment

\$95,000 over one year for staff, newsletters and conference fees for the Doctors Renewable Energy Project (DREP). Ontarians will then be better informed about the relative safety and health effects of different energy sources.

Canadian Partnership for Children's Health and Environment (CPCHE) c/o Canadian Environmental Law Association (CELA)

\$300,000 over two years for staff, consultants, outreach conferences and equipment to promote awareness of toxic chemicals and indoor air-quality risks arising from building retrofits and home renovations.

Canadian Coalition for Green Health Care c/o Canadian Association of Physicians for the Environment (CAPE)

\$68,500 over one year for staff, communications and equipment for a greening-of-health-care strategy in hospitals. Toxics will be reduced, alternative cleaning products used, fragrance scent-free policies implemented and more local foods purchased.

2006-2007

Canadian Partnership for Children's Health and the Environment c/o Ontario Public Health Association

\$264,500 over two years to provide information on environmental toxins to public health inspectors, health practitioners and local champions. This will help them ensure school and daycare environments are made healthier for children.

Canadian Association of Physicians for the Environment

\$200,000 over three years to reduce human exposure to toxic chemicals by strengthening the organization's operations across Ontario, increasing its membership and long-term sustainability.

2002-2003

Canadian Association of Physicians for the Environment

\$55,000 over three years to enable volunteers to contribute to policy development, public awareness initiatives and practical projects that will advance understanding and action in the field of children's environmental health.

CAPE is a political organization that has been supported and represented by the Canadian Environmental Law Association in the courts and on grant applications. They should not have received any funding from the Ontario Government unless someone was told to allow the grants. The lack of oversight by the Ontario agencies has continued for almost a decade. The Ministry of the Environment did choose to align with this organization. The Ontario Government and agencies continued to support the actions of this group and their supporters.

If you revert back to the issue of Joint and Several Liability, we will seek damages from CAPE and name all the organizations affiliated with them.

Doctor Meg Sears

This is an excerpt of evidence from Dr. Sears whom is one of the "medical experts" used by CAPE and the Provincial Government.

[CanLII - 2008 CanLII 18365 \(BC W.C.A.T.\)](#)

"Dr. S concludes that the worker's lung cancer was "... most probably the result of exposure to the pesticides that he applied during the course of his employment."

In the report from WCAT page 17 you will see "Sears as a reference.

Copies of numerous articles were submitted to WCAT. I have listed them as follows:

Paz-y-Miño et al.23, McKinlay et al.24, Goode et al.25, Sears et al.26, Nielsen et al.27,

Bolognesi28, Holsapple et al.29, Lee et al.30, Beane Freeman et al.31, Chiu et al.32, and

Samanic et al.33

26 *Sears, M et al. Pesticide assessment: Protecting public health on the home turf. Paediatric Child Health 2006; 11(4):229-234.*

Page 24

"As noted above, in her initial report Dr. S documented information as to the worker's handling and use of pesticides. While I observed above that Dr. S

did not document the source of her information with respect to the worker's work activities, it appears that she interviewed Ms. M. I say that, because the March 15, 2007 newspaper article submitted to WCAT quotes Ms. M to the effect that Dr. S wanted to know every single detail."

With respect, Dr. S is not a physician. I note that there is no report on file from a physician who has linked the worker's various non-cancer symptoms to his occupational exposure.

Page 31

In reviewing the appeal, I observe that the persuasiveness of Dr. S's opinions linking the worker's lung cancer to his occupational exposure is limited by the fact that she is not a medical doctor. In referring to Dr. S's reports, Ms. M's lawyer uses such terms as "medical report" and "expert medical evidence." Yet, Dr. S is not a medical doctor. Her opinions are not medical reports or medical evidence. Dr. G is a medical doctor, as is Dr. B. Yet, Dr. B's opinion is not especially persuasive as it does not include a considered opinion regarding causation. Mr. L is not a medical doctor and his opinion adds little to the adjudication of this appeal.

Page 32

Many epidemiologists are not physicians, and yet their opinions may be highly relevant. As an example, epidemiologists may be in a much better position than physicians to conduct an analysis of available literature concerning whether a link generally exists between an exposure and a disease. Dr. S is not an epidemiologist. Her gathering of information in the literature relevant to the effects of pesticides is, of course, relevant to the issue before me. Her opinion as to whether the worker's cancer is due to the nature of his employment is less relevant. The persuasiveness of opinions of non-physicians is limited when non-physicians seek to provide opinions on causative significance.

Ms. M advised in her September 29, 2007 submission that the BCCA and the Canadian Cancer Society were "...offering to do a complete documentary of [the worker], pertaining to his work with Pesticides and his Cancer. Within the documentary it will be presented and identified that [the worker's] untimely death was a result of exposure to

Pesticides, and that we have to start keeping records of such diseases to prevent it from happening to others." She also advises that "...a major media is interested in my research and [the worker's] story." Such a documentary may indeed be undertaken, yet as of the adjudication of this appeal, no medical opinion has been submitted from a physician from either of the societies mentioned by Ms. M.

Page 34

Reimbursement has been requested in connection with expenses of \$300.00 and \$1,361.00 incurred for the reports of Drs. B and S, respectively. I consider that reimbursement of those expenses associated with the reports would be appropriate. Item #13.23 of WCAT's MRPP provides that WCAT will generally order reimbursement of expenses for attendance of witnesses or obtaining written evidence, regardless of the results in the appeal, where (1) the evidence was useful or helpful to the consideration of the appeal or (2) it was reasonable for the party to have sought such evidence in connection with the appeal.

This will help show that "Dr. S" is earning income on her opinion but will also lets us show the "value" of her opinion.

There are other cases where Meg Sears has been the expert witness. In each and every case her expert opinion was tossed out.

[17] Dr. Sears did conduct research and produced copies of various articles and papers prepared by other authors that related to these medical or scientific fields and she attached them to her affidavits filed in these proceedings. Dr. Sears has significant experience in this type of work and has conducted medical research in the past in conjunction with or under the direction of medical professionals. However, she has no specific expertise in the fields of epidemiology, toxicology, immunology and endocrinology. Upon review of the materials filed in this motion, neither Dr. Sears nor the plaintiffs have established that she possesses the requisite knowledge or qualifications to adopt or comment on the views expressed in the articles and publications of the other researchers or authors that she has attached to her affidavits. In such circumstances, her affidavits and opinions do not meet the test of admissibility for expert opinion evidence. Accordingly, they are not admissible in these proceedings and are struck from the record.

2009 NBQB 204

Court File No. MC040506

Bottom Line

The individual companies have a choice to recover damages or do nothing. We will be seeking damages for individual companies based on one to four times earnings for compensatory damages and punitive damages depending on the individual company. We will seek damages for current companies and companies that have been forced to downsize or close, including employees. We will group the companies in regions with lawyers who will be working for a percentage (25% to 40%) of the recovered funds. MREP's fee will be 5% of all funds recovered. The amount paid to lawyers and MREP will only be on success of the action. We will discount our fee by the funds already paid to MREP by the company or individual in the pass 3 years.

We will not be working for any companies not under contract with our services. We will not be doing any work for any company in Ontario without the current subscription fee. We will no longer provide "free information" to the manufacturers or the lawncare industry while paying the overhead costs. If you are interested in staying up-to-date on the proceedings there is now a fee.

You have two options email money transfer for \$282.50 (\$250 plus HST):

Payee: MREP Communications
Email: info@mrepcommunications.com

Security Question: What is my phone number?
Security Answer: 6135312657

This is the prefer method and you should contact your financial institution if you have any questions on how to proceed.

Or by sending a cheque for \$282.50 (\$250 plus HST) by priority post to:

M-REP Communications
PO Box 24010
1201 Division Street
Kingston Ontario, Canada
K7K 7A6

Once received a non-discloser form will be sent. When the form is returned you will be receiving updates generally on the second Tuesday of each month and or after each day in court. We will not be providing information to trade groups for circulation to their members for the same fee. This fee will cover the next 6 months of proceedings, including the pending actions against members of municipal councils. We reserve the right to refuse companies or individuals without explanation.

If your company decides to proceed with the recovery of damages our fee is an additional \$125.00 plus HST (\$16.25) for a total \$141.25 per month for 6 months. If your company has not paid the subscription fee by August 16th you will not be entitled to any services or support. If you are unable to make this cut off date, you will need to contact MREP in writing before August 13th to make

arrangements. If you operate outside of Ontario please provide your contact information in an email as there is a different cut off dates and rules for different provinces. We are about to start another project that will require the majority of our time.

If your company is a supplier of products to the industry, please have your lawyers contact MREP in writing.

The information in this email is not a binding contract as one will be provided when the fee is paid. Those companies wishing additional information need to understand we are now billing by the hour. Our hourly fee is \$165.00 plus HST (21.45) for a total of \$186.45.

Information about our next court date on September 20th, 2010 on the charges surrounding the "misappropriation of public funds" will be sent out on Tuesday August 17th, 2010 to companies that have paid their subscription fee.

Sincerely,

Info

c/o Jeffrey Lowes

Director of Government & Industrial Relations

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