December 8, 2003

Nicholas Hughes
8930 -113A Street,
Delta, B.C.
V4C 5C3

Registrar

Delivered in Person

Labour Relations Board
600 - 1066 West Hastings Street,
Vancouver, B.C.
V6E 1X3

Dear Sirs/Mesdames,

Re: Hughes Section 12(1) Complaint originally filed October 31, 2003 - Attachments and list of same.

Please find enclosed attachments regards the matter captioned above and a complete list regards same.

Again I apologize for the length of time it has taken me to compile the above captioned documents. I hope the Board will grant me some latitude given the extraordinary size of this file.

The review and assembly of this material has been a formidable task as noted in my application, which has been revised with footnotes for easier navigation, and is also enclosed herein.

It is my hope the Board now has all it requires to process my complaint.

Please take note the Brewery Workers' Union has still yet to provide me with written notification of its rumoured settlement with the Employer, as noted in my complaint.

Also noteworthy is the completion of recent Local 300 elections which has seen the election of former Local 300 president, Gerry Bergunder, as the Union's new Business Agent and Corresponding Secretary.

I'm advised the Union has elected as its new president a gentleman named Roy Graham.

Respectfully,

Nicholas Hughes

Encls/

HUGHES DUTY OF FAIR REPRESENTATION COMPLAINT SECTION 12(1))

PART A - THE APPLICATION

PART B - LIST OF ATTACHMENTS

Section 1 - Labour Relations Documents

1.0 03.08.5 - Letter to Arbitrator Colin Taylor Q.C. from Nicholas Hughes

1.1 03.06.5 - Letter from Arbitrator Colin Taylor Q.C. to Nicholas Hughes

1.2 03.05.23 - Letter to Arbitrator Colin Taylor Q.C. from Nicholas Hughes Application for Intervener and Interested Party Status

1.3 03.01.24 - Supreme Court Order (re: Judicial Review of BCLRB No.B10/2002)

1.4 03.01.23 - Praecipe re: Judicial Review of BCLRB No.B10/2002

1.5 02.01.11 - Decision BCLRB No.B10/2002 (Employer's Section 141 - Reconsideration of BCLRB B244/2000)

1.6 01.07.19 - Statement of Claim re: Hughes v Labatt Brewing Company Ltd.

1.7 00.06.19 - Decision BCLRB No.B244/2000 (Employer's Section 99)

1.8 99.12.09 - Arbitration award ("Second" Taylor Award)

1.9 99.04.23 - Letter Decision BCLRB No.B149/99 (Union's's Section 99)

1.10 97.03.31 - Arbitration award ("Original" Taylor preliminary award)

1.11 95.08.31 - Grievance re: Article 3:3 Loss of Seniority

1.12 95.08.25 - Letter of Termination from Labatt per David Reinboth

1.13 95.07.11 - Grievance re: Article 9 Social Security (Disability Benefits)

1.14 95.10.24 - Record of Employment (*"Termination date was 95.07.21"*)

Section 2 - Victory Square Law Office Correspondence, Submissions etc.

2.0 96.01.20 - Letter to Nicholas Hughes - first contact with Union's law firm

2.1 96.03.21 - Letter to Brewery Workers' Union (Attention Rick Sutherland)

2.2 97.04.02 - Letter to Brewery Workers' Union (Attention Rick Sutherland)

2.3 97.02.07 - Letter to Nick Hughes (Return of my List of Documents)

2.4 98.12.03 - Letter to Brewery Workers' Union (Attention Rick Sutherland)

2.5 99.03.01 - Letter to David Blair of Victory Square Law Office

2.6 99.03.30 - Letter to Labour Relations Board

2.7 99.07.07 - Letter to Arbitration Board (Submissions of the Union following LRB Section 99 decision)

2.8 99.10.12 - Letter to Ministry of Development and Economic Security (re: status of my claim)

2.9 99.10.14 - Letter to Arbitration Board (Submissions of the Union in reply)

2.10 99.12.13 - Letter to Brewery Workers' Union (Attention Rick Sutherland)

2.11 00.08.09 - Letter to Labour Relations Board

2.12 00.02.07 - Letter to Brewery Workers' Union (Attention Rick Sutherland)

2.13 01.02.14 - Letter to Harris & Co. (re: Union's changes to Minutes of Settlement and Terms of Reference)

2.14. 01.03.20 - Letter to Victory Square Law Office from Harris & Co.

2.15 01.04.17 - Letter to Brewery Workers' Union (Attention Gerry Bergunder) (re: settlement proposal)

Section 3 - Hughes' Correspondence

3.0 95.03.29 - Medical release authorization (given to Rick Sutherland)

3.1 95.05.04 - Letter from Rick Sutherland to Dr.G. Parhar (Hughes' physician)

3.2 95.05.15 - Letter to David Reinboth, Labatt Mgr. Human Resources

3.3 95.05.19 - Letter to Rick Sutherland (typed copy - original was handwritten)

3.4 95.05.24 - Letter from Rick Sutherland

3.5 95.06.28 - Letter to Rick Sutherland

3.6 96.02.04 - Envelope containing Manulife W.I. policy No.GL and GH 15064 (cover provided) from Brewery Worker's Union

3.7 97./??.?? - Cover of Confederation Life L.T.D. policy No.GH15164 sent to Paul B. Seale, solicitor for Nicholas Hughes

3.8 97.04.03 - Letter from Rick Sutherland (re: "Original" Taylor preliminary award)

3.9 97.04.18 - Letter to Labour Relations Board

3.10 97.05.12 - Letter to Rick Sutherland (re: arrangement to limit Jim Dunne's recall rights and its effect regards my wrongful termination)

3.11 97.05 23 - Letter to Tom Smith -Local 300 president (see No.12 on page two of the *"Draft Agreed Statement of Facts"* - Attachment 3.10 above)

3.12 97.07.01 - Letter to Labour Relations Board

3.13 98.09.03 - Letter to Gerry Bergunder (Local 300 president) (Request to appear before Union's Executive Board)

3.14 98.10.15 - Four letters to Union's Regional Executive Board (re: Labatt's mistreatment of injured, disabled workers and the Union's conduct regards same - Request for Union's assistance)

3.15 98.10.19 - Letter to Gerry Bergunder (re:appearance before Union's R.E.B. - follow-up remarks)

3.16 98.10.28 - Letter from Gerry Bergunder (re: submissions to R..E.B.)

3.17 98.11.09 - Letter to Gerry Bergunder (re:letter 98.10.28 - request to appear before Union's General Executive Board)

3.18 99.07.05 - Letter to Arbitrator Colin Taylor Q.C. (personal submission)

3.19 99.07.08 - Letter to David Blair (Victory Square Law Office)

3.20 99.11.18 - Letter to Union's General Executive Board (Request for Union's assistance)

3.21 99.11.18 - Letter to Union's Regional Executive Board (re: Violations of the Union's Constitution and By-laws by Rick Sutherland - Charges filed)

3.22 00.01.17 - Letter from Gerry Bergunder (re: Hughes' news releases *"The Nick Hughes Thing"* and *"Labattgate 2000"*)

Section 4 - Hughes' Medical

4.0 95.06.07 - Letter from Dr.G.Parhar (Hughes' personal physician) to Rick Sutherland (re: Hughes' inability to work)

4.1 96.01.10 - Letter to Dr.G.Hirsch from Nicholas Hughes (re: denial of disability benefits and subsequent termination by Labatt)

4.2 02.03.15 - Letter to Dr.G.Parhar from Institute for the Study and Treatment of Pain (therapist's report re:*"muscle spasm*" and chronic pain)

4.3 02.06.03 - Letter from Dr.G.Parhar to Paul B. Seale, solicitor to Hughes (Medical/Legal Report re: Hughes' inability to work)

Section 5 - Miscellaneous Documents

5.0 97.01.06 - *"The LOWdown on Downsizing"* (news release)

5.1 97.01.07 - *"Second 'Ex-Labatt' Employee Cries Foul"* (news release)

5.2 98.??.?? - *"The Question Is..."* (information pamphlet)

5.3 00.01.14 - *'Labattgate 2000'* (news release)

5.4 00.01.17 - 'The Nick Hughes Thing' (news release)

5.5 --------- - excerpts of Labatt collective agreement April 21/94-April 20/00

5.6 --------- - excerpts of Union Constitution and By-laws (Article 4-Section 5)

5.7 98.10.15 - excerpts Hughes' address to Union's Regional Executive Board

5.8 93.04.20 - Labatt plant seniority list pre-downsizing

5.9 01.08.22 - Newspaper article with picture of Nick Hughes - The Record (New Westminster)

5.10 00.??.?? - Editorial cartoon modified to resemble Mike Nunas

Section 6 - Documents provided by Michael Nunas

6.0 94.08.15 - Winding-up Order (re: Confederation Life Insurance Company

6.1 95.01.09 - Record of Employment (Nunas termination was 94.12.22)

6.2 96.01.22 - Letter from Manulife Financial to Wayne F.Guinn, Esq. (solicitor to Michael Nunas)

6.3 96.03.14 - Letter from Wayne F.Guinn to Peat Marwick Thorne Inc. (re: Confederation Life in Liquidation)

6.4 96.03.14 - Letter from Wayne F.Guinn to Victory Square Law Office Attention: Marnie MacLeod (re: request for meeting with Victory Square Law Office, Rick Sutherland and Tom Smith)

6.5 96.04.22 - Letter from Wayne F.Guinn to Michael Nunas (re: unscheduled meeting with Marnie MacLeod *sans* Rick Sutherland)

6.6 96.04.23 - Letter from Victory Square Law Office to Wayne F.Guinn (re: representation of Michael Nunas concerning the *"issues of Mr. Nunas' termination and the issue of the cessation of his disability benefits"*)

6.7 96.04.24 - Letter from Wayne F.Guinn to Victory Square Law Office Attention: Marnie MacLeod (re: *"a search of the Union files to obtain copies of any correspondence...with Manulife regarding Mr. Nunas' benefits..."*)

6.8 96.05.31 - Letter from Victory Square Law Office to Wayne F.Guinn (re: ***"the takeover of insurance matters by Manulife Financial... from Confederation Life Insurance Company" - "there would be no interruption in coverage"***)

6.9 96.09.16 - Letter from Rick Sutherland to Michael Nunas (re: Union's abandonment of Nunas' Unjust Termination grievance 95.01.26)

6.10 98.05.13 - Letter from Brewers Distributor Ltd. to Mike Nunas (re: Mike Nunas' job application denial)

6.11 98.10.28 - Copy of letter from Gerry Bergunder to Nick Hughes (in reply to Michael Nunas' complaint of abandonment by the Union)

6.12 98.11.11 - Letter from Mike Nunas to Gerry Bergunder (re: Union's written response to Nunas' complaints to Union's Regional Executive Board)

6.13 99.02.11 - Letter from Gerry Bergunder to Mike Nunas (re: Nunas' complaints to Union's Regional Executive Board - *"blacklisted"*)

6.14 99.07.26 - Letter from Brewers Distributor Ltd. to Rick Sutherland (re: Mike Nunas'Application for Employment - terms and conditions)

6.15 03.06.10 - Letter from Brewers Distributor Ltd. to Mike Nunas (re: Mike Nunas' termination notwithstanding his W.C.B. claim)

6.16 03.07.14 - Grievance complaining of loss of seniority while off work on a W.C.B claim

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Form 12

LABOUR RELATIONS CODE

BRITISH COLUMBIA
LABOUR RELATIONS BOARD

DUTY OF FAIR REPRESENTATION COMPLAINT

(SECTION 12(1))

COMPLAINANT INFORMATION

Nicholas Hughes
8930 - 113A Street, Delta, B.C. V4C 5C3
Tel. (604) 596-9621

WHO IS YOUR COMPLAINT AGAINST?

Brewery Winery Distillery Workers Union Local 300
7128 Gilley Avenue, Burnaby B.C. V5J 4X2
Tel. (604) 433-6353 - Fax (604) 434-7333

WHO IS THE EMPLOYER?

Labatt Breweries of British Columbia

210 Brunette Avenue, New Westminster, B.C.
Tel. (604) 521-1844 - Fax (604) 519-5514 Attention: Andy Muller

WHAT IS YOUR COMPLAINT ABOUT?

My complaint concerns two grievances filed in July and August of 1995 complaining of unpaid W.I. and L.T.D. benefits by the Employer, and unjust dismissal, respectively. These matters have some considerable history which is set forth below. [See Attachments. 1.13 and 1.11]

The matters were set for an arbitration before a panel chaired by Colin Taylor Q.C. in February, 1997. [Attachment No. 1.10]

However, prior to the arbitration's commencement the Employer made a preliminary objection as to the arbitrability of the grievance concerning the disability benefits, its position being the Employer's only obligation was to provide an insurance policy that provided the stipulated benefits and otherwise conformed with the collective agreement, and that it had done so with the purchase of the policy the Employer had contracted with Manulife Financial.

The Employer in addition raised a further objection regards the arbitration board's jurisdiction to determine the L.T.D. portion of the social security grievance.

And notwithstanding the Employer did concede my termination was impermissable if it was found I was unable to work due to disability, to the best of my knowledge the grievance for my unjust dismissal was held in abeyance and was never given any serious consideration by the parties, whatsoever. [Attachment 1.10]

Given the Employer's concession above, the denial by the parties in providing me with an opportunity to validate my disability amounts to a denial of natural justice to me, and as such is in blatant contravention of the Labour Code of British Columbia.

The arbitration of the grievance for disability benefits began with a hearing in February 1997 which resulted in an arbitration award that was inconclusive, and on that basis the Union filed a Section 99 complaint with the L.R.B. on April 30, 1997, the adjudication of which, astonishingly, was delayed by the Board for nearly two full years. The Union's representative, David Blair deemed this delay as *"grossly excessive."* [See Attachments 1.10, 1.9 and 2.4]

In its letter decision BCLRB No.B149/99 issued April 23, 1999, the Board concluded at paragraph 16 *"that the arbitration board failed to provide a resolution to the dispute before it by*

not answering the question which it posed at the end of its award namely whether the Manulife insurance policy contains the stipulated benefits and otherwise conforms with the Employer's obligation under the collective agreement." The matter was remitted *"back to the arbitration board to determine that question."* [Attachment 1.9]

The Board further stated that *"if the answer to that question is no, then the arbitration board will have to hear further from the parties as to what flows from that answer."* [Attachment 1.9] Following the Board's decision above the parties made submissions to Arbitrator Taylor. This resulted in the issuance of Mr. Taylor's second award on December 9, 1999. [Attachments 2.7 and 2.9]

Mr. Taylor's arbitration board concluded with a finding that the answer to the question remitted back to it by the Board was *"no"*. [Attachment 1.8]

Mr. Taylor thus found as a fact that the Manulife policy did not provide the stipulated benefits or conform with the Employer's obligation under the collective greement.

The Employer then filed a Section 99 application of Mr. Taylor's second award. [Attachment 1.5]

The Employer's Section 99 application was dismissed by the Board June 19, 2000 with the issuance of its second decision BCLRB No.B244/2000, upholding Mr. Taylor's decision. [Attachment 1.7]

The Employer then filed a Section 141 leave for reconsideration of BCLRB No.B244/2000. Prior to its adjudication, however, the parties moved to hold matters in abeyance and began settlement talks. [Attachment 1.5]

When after 15 months or so, and repeated inquiries by the Board to the parties as to their settlement attempts, a settlement proved to be unreachable.

On January 11, 2002 the Employer's Section 141 application was finally adjudicated and dismissed on its merits in BCLRB No.B10/2002. [Attachment 1.5]

On April 5, 2002 the Employer petitioned the Supreme Court of British Columbia for Judicial Review of BCLRB No.B10/2002.

Later in 2002 I learned from Sherryl L. Basarab, counsel for the Labour Relations Board that the Employer's petition had been set for hearing January 10, 2003.

Then in early January 2003 and prior to the hearing I was advised by a clerk of the court that the much anticipated hearing had been adjourned.

On January 17, 2003, I contacted Union President Gerry Bergunder to ascertain what was the status of the Employer's Judicial Review application and of my grievances.

Mr. Bergunder mumbled something about a settlement, which I possibly mistook as a reference to a settlement I had reached with Manulife Financial and was something I was unable to discuss with him due to a confidentiality agreement I had signed.

In any event, I specifically asked Mr. Bergunder for something in writing from the Union regards my grievances' status.

On January 24, 2003 the Employer applied for and was granted an order by the Court for a dismissal of the proceedings in their entirety, *"the dismissal of the Petitioner's action have*(ing) *the same force and effect as though made after a trial of the action on the merits."* [Attachment 1.3]

Thus, Arbitrator Taylor's second award had been upheld through three appeals and remains undisturbed and in effect.

In late March 2003, after hearing nothing further from Mr. Bergunder, I sought the assistance of Don Bourdin, the Union's Recording Secretary. I consider Mr. Bourdin a friend and someone I could trust to help me gain some understanding as to what the Union was doing (if anything) regards my grievances.

I asked Mr. Bourdin to inquire as to the status of my grievances. Mr. Bourdin reported back to me that as far as he could tell, the matter of my two grievances appeared to be on the Union's "backburner."

With that in mind I began to draft an application for Intervener and Interested Party status in the matter of my two grievances.

On April 24, 2003 I was able to ascertain that the Employer had petitioned the court requesting an order for dismissal of its application for judicial review of BCLRB No.B10/2002 as noted above. [Attachment 1.3]

On May 23, 2003, having still not received any correspondence from Mr. Bergunder regards my grievances, I faxed an application for Intervener and Interested party status in the matter of my two grievances directly to Arbitrator Taylor. [Attachment 1.2]

On May 26, 2003 I contacted Mr. Taylor to ascertain he had received my faxed application for standing and was told by him that he would have to contact counsel for the parties to see what they wanted to do.

On June 5, 2003 Mr. Taylor responded to my application with a letter indicating he had been

advised by counsel for the parties that the matter had been settled and accordingly his arbitration board was without jurisdiction. [Attachment 1.1]

On July 14, 2003 I paid a visit to Mr. Bergunder at the Union's office to ascertain why he had delayed in providing me written notification of the Union's alleged settlement with the Employer. He informed me that he had instructed his secretary to send me something yet could not account for her not doing so.

Again I asked Mr. Bergunder for a written explanation regards the Union's dispensation of my two grievances. Again, he promised he would comply with my request. To date Mr. Bergunder has yet to provide me with the information I have requested from him.

On August 5, 2003 I faxed a short note to Arbitrator Taylor asking him to inform me of the date on which he was advised by counsel for the parties that *"this matter is settled"* and to suggest to him that my application for standing was still before him. [Attachment 1.0]

I asked Mr. Taylor that my May 23, 2003 application for standing be set for hearing forthwith.

On September 5, 2003, after receiving no reply from Mr. Taylor I contacted his office to ascertain from him if he would be replying to my letter of August 5, 2003. Mr. Taylor was not in his office at the time of my call. His assistant, Cindy assured me she would contact Mr. Taylor for me and return my call. I still have not heard from Mr. Taylor nor his assistant.

It troubles me that the Union has appeared to have concluded the matter of my long outstanding grievances, but has somehow failed to offer me any proper notification -this despite repeated requests by me to Union President Gerry Bergunder for some written evidence of the parties' alleged settlement, and despite his repeated assurances to me that he would provide me with the information requested.

But with still no evidence provided of the date of the parties' alleged settlement, nor of its terms, and conditions etc. I have no alternative but to assume the Union has chosen to simply abandon me in these matters, and without proper notification of me, it has done so.

And with that in mind, I now file this complaint with the Board.

It should be noted too that the Union has long been aware of my intent to file such a complaint in the event it abandoned my cause. However, to do so prior to that abandonment would have been premature, impractical and undoubtedly unsuccessful.

Thus I have had little alternative but to wait and watch in patient exclusion as the Union went through the motions of purporting to advance my interests in these proceedings.

Furthermore, by not responding in a timely fashion to my numerous requests for relevant

information, I suspect the Union hoped I might exceed time constraints for filing this application.

The Union's reticence towards me is longstanding and demonstrable dating back to May 1997 when, on the advise of the Board's information officer Clive Lytle, I wrote to former Union Business Agent Rick Sutherland to request some information relevant to the arbitration of my grievances. [Attachment 3.8]

Mr. Sutherland at that time refused to provide me with written answers to a number of relevant questions I posed to him regards the Union's handling of my grievances.

Mr. Sutherland's dismissive and arbitrary response to me was to tell me he wouldn't be replying to my request in writing because, in his opinion I was "just playing games."

When Mr. Sutherland declined to respond in writing I sought the assistance of then-President Tom Smith. Mr. Smith, too apparently declined to respond to a written request. [Attachment 3.9]

It is of great concern to me that the Board may misconstrue my waiting for Mr. Bergunder's response as a delay on my part in filing this application. I hope the Board will take my disabledness into consideration.

Because the truth of the matter is that the writing of this application has been for me an arduous and stressful and lengthy endeavour and as a source of great personal anguish has proved to be an aggravation to the painful condition I suffer and live with on a daily basis.

It is noteworthy the nature of my disability often prevents me from accomplishing as much as I might if I was not so constrained by the effects of my chronic pain and muscle spasm. I am frequently sleep deprived and often must spend a great deal of time on my back, in pain and unable to function at a high level. [See Attachments 4.2 and 4.3]

In addition, early in the writing of this application I encountered a problem with my computer, causing me to lose all of the material I had already written, and leaving me to begin again from scratch.

As well, I have refrained so far in making this application in fairness to Mr. Taylor and to give him the opportunity to review the matter of his jurisdiction regards my grievances and respond accordingly.

For given the Board's directive to the parties in BCLRB B149/99 that *"the arbitration board will have to hear further from the parties"*, and with no evidence to show they have done so, I think there is a valid arguement to be made that Mr. Taylor is not at all functus in these matters. [Attachment 1.9]

Furthermore, given Mr. Taylor was likely in receipt of my application for Intervener and Interested Party Status prior to and before hearing from counsel for the parties, it follows then that my application to him has some precedence and thus is still properly before him, and he may rule accordingly.

In that event I may have the opportunity to be granted standing in the matter of my grievances and the arbitration could continue to a fair and just and reasoned conclusion.

However, with no response forthcoming from Mr. Taylor it appears to be necessary to make this formal application to the Board.

I would like to add that it gives me no joy nor pleasure to attack my Union in this manner. In fact, I have always held that the real villain in these matters was the Employer.

But unfortunately, I have had to rely on an unprincipled Union that has shown a marked indifference to its disabled members' suffering and to the Employer's numerous misdeeds.

And so it was for a long time to me perplexing and inexplicable as to exactly why the Union didn't share my outrage for the Employer's conduct. After all, these are grave matters that essentially concern the Employer's mistreatment of a person with a disability.

From my perspective, the Employer's willful termination of an injured and disabled employee is tantamount to kicking a man when he's down, injured and vulnerable. How the Union could stand by and allow that to occur seemed unfathomable to me -but I witnessed it for myself in the case of another former Labatt employee, Michael Nunas.

And when I spoke out about it -when I showed the temerity to question Rick Sutherland regards his (and hence the Union's) conduct concerning the Union' s failure to protect a disabled Michael Nunas from injustice and mistreatment at the hands of the Employer -I became the target for a systematic smear campaign brought about and conducted by Rick Sutherland.

Mr. Sutherland was later aided and abetted by Gerry Bergunder, who would publicly threaten me with expulsion from the Union unless I ceased my *"campaign"* to expose Rick Sutherland for what he was, which in my view was a quisling and as such, a disgrace to the Union.[Attachment 3.20]

From my perspective, Rick Sutherland, and hence the Union appeared to have more regard for the Employer's interests than for those of the Union's own disabled members.

Needless to say, the scales have since fallen from my eyes and I now see all too clearly that the Union's primary role all along has been to protect and insulate itself and its perfidious elected officials from any blame and/or apportioned liability.

Now I see all too clearly that the Union, from a strictly liability viewpoint, has more in common

with the Employer's interests than with those of the disabled members the Union is sworn to protect.

That fundamental conflict of interest has made it undoubtedly impossible for me to attain justice in these matters while being represented by an ethically compromised union whose interests more closely parallel the Employer's than mine.

The Union's attempt to 'cover its own ass' has required by necessity that it severely limit the scope of the arbitration of my grievances, understating, mitigating and virtually turning a blind eye to the Employer's mistreatment of injured and disabled members of the Union.

I submit the Union's pathetic and unprincipled stance has served to effectively protect and insulate the Employer from criminal charges and a damaging arbitration the Union was winning - and would undoubtedly have won -all at the expense of a disabled member whose hands are clean.

HOW DID THE TRADE UNION'S ACTIONS VIOLATE SECTION 12(1)?

The Union and/or its elected officials have acted at various times in a manner that was arbitrary, discriminatory and in bad faith in its representation of me in these matters.

Most recently the Union has failed to provide me with written notification of an alleged settlement of my two grievances, despite repeated requests by me for such notification and despite repeated assurances by its president, Gerry Bergunder that he had and/or would comply with my request for this information.

It is my belief the Union in collusion with the Employer has sought to keep certain facts from coming to light, concerning my grievances and the Employer's conduct regards same -facts that reveal and reflect badly on the role played by the Union and certain of its officials in its failure to uphold the provisions of the collective agreement for me and for other members of the Union.

The Union's representation in the matter of the denial to me of disability benefits by the Employer and my subsequent termination has been duplicitous and lacking any serious resolve from the very beginning, even prior to the filing of my two grievances in the summer of 1995.

To illustrate this point I provide a few examples below. What follows is really only a smattering of events but speaks volumes regards the Union's conduct in these matters.

Acts of Bad Faith by the Union

In a letter dated May 4, 1995 the Union wrote to my physician stating that the Employer through its insurance carrier, Manulife Financial had *"declared* (me) *fit to work"* and had *"threatened to terminate* (me) *if* (I did) *not comply."* [Attachment 3.1]

The passages quoted above were needlessly fabricated by the Union's former Business Agent, Rick Sutherland, and as such is indicative of Mr. Sutherland's duplicitous conduct, if not nature.

For at no time had I ever received such a threat by the Employer. I suggest for the Employer to make a threat of any kind would have been a violation of the Labour Code.

In fact, at the time in question the Employer wasn't providing work to its junior employees as part of its mid-nineties 'downsizing' initiative, so making such a threat would have been unlikely if not unnecessary.

Then there is Mr. Sutherland's arbitrary and inexplicable delay of more than 5 weeks in even writing to my doctor -as evidenced by the date of my authorization for the release of such information, March 29, 1995 -a delay that would later be unequivocally denied by president Tom Smith during a plant Union meeting, June 3, 1995. This denial had the same denigrating effect as virtually calling me a liar in front of the entire meeting.
[Attachment 3.0]

In truth my reason for requesting the Union's involvement was due largely to the fact that I had become suspicious the Employer was not treating the matter of my claim for disability with due consideration, and after more than two months of waiting for Manulife to complete its review of my claim, the Employer was still not advising me of <u>anything</u> regards the status of my claim for disability benefits.

My suspicions were confirmed for me when I would later learn from a review of Manulife's private correspondence with Labatt, the insurer had advised and suggested the Employer make me aware of what Manulife required of me to ensure my claim's continuance (at issue was medical information Manulife said they required directly from a specialist I had consulted - information that was readily available to Manulife if only they had taken the time to write to the specialist, but inexplicably they didn't, despite my written authorization to do so).
[Attachment 4.1]

Apparently the Employer ignored Manulife's recommendations and advised me of nothing.

The Employer never did make me privy to Manulife's requests -made solely to the Employer and absolutely crucial to my claim's continuance -and thus the Employer was instrumental in orchestrating and moreover, ensuring my disqualification by its insurance carrier was a fait accompli.

The Union has consistently and arbitrarily disregarded my complaints of impropriety on the part of the Employer regards this misadministration of my claim for disability benefits.

And in reality, Manulife hadn't *"declared* (me) *fit to work"* at all but had simply found there was insufficient medical evidence to support a continuation of my claim .

As to Rick Sutherland's reference to Manulife's 'declaration', it should be noted there is ample evidence found at pages 26-27 of Arbitrator Taylor's original award indicating the Union had never had any contact with the Employer's insurance carrier. [Attachment 1.10]

And at page 2, paragraph 2 of arbitration board member Bill Clark's dissenting opinion: *"The uncontradicted evidence was and in fact it was agreed that, Tom Smith the local president when dealing on behalf of employees who had difficulties with the plan always dealt with the employer. And further, no union representative had ever dealt with the insurer."* (emphasis added) [Attachment 1.10]

Strangely, this *"evidence"* is disturbingly countered by a statement found in a letter dated May 31, 1996 from the Union's former representative law firm to solicitor Wayne F. Guinn.

Regards Mr. Guinn's client, former Labatt employee Michael Nunas, Victory Square Law Office stated at paragraph 2: *"You have copies of all documents that the Union was given by Mr. Nunas and that the Union obtained from Confederation Life with Mr. Nunas' consent."* (emphasis added) [Attachment 6.8]

Then in December 1995, after the Employer had issued a severance/separation payment to me, I telephoned Mr. Sutherland to ascertain if it was alright for me to accept the cheque.

Mr. Sutherland failed to advise me at that time of the serious consequences my acceptance of such a payment by the Employer might hold for me, pursuant to Article 15:5 of the collective agreement which states: *"If an employee applies for and accepts a separation payment hereunder, his employment is terminated and his seniority and other rights under the Collective Bargaining Agreement are cancelled."* [Attachment 5.6]

Mr. Sutherland had a duty and an obligation to ensure that I fully understood the ramifications of my acceptance of such a payment by the Employer, particularly since I was inquiring of him about that very matter.

His response, however was to emphatically assure me that that money was rightfully mine without advising me of the finality such an acceptance would bring to bear on these proceedings. I took the liberty of recording this conversation and will provide it to the Board as evidence of Mr. Sutherland's duplicity and the Union's failure to provide me its duty of fair representation.

From that point onward I developed an extreme distrust of Mr. Sutherland and my overt criticism of his performance as the Union's Business Agent has brought me into sharp conflict with the Union, particularly in regard to the Union's abysmal treatment of a second, senior, injured, disabled and also terminated Labatt employee, Michael Nunas mentioned above.

I will have much more to say about the unfair treatment the parties afforded Mr. Nunas for

whom I remain an unwavering and outspoken advocate.

Incredulously, even after reporting the many concerns I had with Rick Sutherland to the Union's (newly-elected in 1997) president Gerry Bergunder regards the mistreatment of Mr. Nunas and me, Mr. Bergunder has remained a steadfast supporter of Mr. Sutherland. It is notable that the membership wisely saw fit to vote Mr. Sutherland out of office in the fall of 2000.

In November 1999 I filed charges with my Union against Mr. Sutherland for 14 violations of the Union's Constitution and By-laws. [Attachment 3.19]

After nearly ten months of delay on the part of the Union to address that matter, the membership voted at a meeting in September 2000, demanding the Union hold a trial to determine Mr. Sutherland's guilt or innocence regards the charges.

Unfortunately, the tribunal assembled by Mr. Bergunder refused to hear any real criticism of Mr. Sutherland beyond any matters directly related to the arbitration of my grievances, notwithstanding I had specifically stated that my complaints were not *"merely about my termination by Labatt."* [Attachment 3.19]

In fact my fundamental and stated complaint with Rick Sutherland and the Union was and remains *"its indifference to the shabby, unfair treatment by Labatt of injured and disabled Local 300 members during early 1995."* [Attachment 3.19]

After three hours of being continuously thwarted by Mr. Bergunder's handpicked jury in bringing to light the facts regards Mr. Sutherland's numerous violations -this included the denial to me of calling witnesses who had all suffered greatly as a result of Mr. Sutherland's indifference and his conduct as an elected official -I had no alternative but to walk out of the proceedings in protest of what I perceived to be a flawed and predetermined process.

No follow-up letter indicating the trial's outcome -or for that matter even took place -was ever provided by the Union.

A third, and possibly the most egregious, example of the Union's bad faith involves the Union's legal representative in these matters, David Blair.

Following the Union's successful Section 99 application of the first Taylor award, Mr. Blair, in his July 7, 1999 submission to Arbitrator Taylor declared at paragraph 3.7 that *"...a detailed list of discrepancies between* (the) *collective agreement and the insurance coverage provided by the insurer* (was) *(an approach not possible here due to non-disclosure of the policies)"* by the Employer. (emphasis added) [Attachment 2.7]

I take that to mean Mr. Blair did not have that *"detailed list of discrepancies"* in his possession prior to and in time for the preliminary hearing for these proceedings February 14th, 1997.

In fact, in his second award Arbitrator Taylor at page 4, paragraph 2 made particular note of Mr. Blair's submission, citing it as the compelling reason for his arbitration board's inability to make a detailed comparison between the Manulife insurance policy and the collective agreement's respective disability definitions, and more importantly to make a finding regards same.
[Attachment 1.8]

Thus it was Mr. Blair's original failure to provide the arbitration panel with the relevant disability definition comparisons that rendered its first award inconclusive, and thus it follows the Union was directly responsible for at least some of the massive delays incurred in these proceedings -characterised by David Blair in a letter to the Union dated December 3, 1998 as *"grossly excessive"*. [Attachment 2.4]

In fact, the issue of precisely when the Union took possession of the Manulife insurance policies arose out of testimony given and referred to at pages 27-28 in Mr. Taylor's original preliminary award. [Attachment 1.10]

Unfortunately, the matter remained undetermined, at least due in part to the falty memory of past Union President, Tom Smith.

Notwithstanding Mr. Blair's assertion to the contrary -i.e. that the Union could not provide Mr. Taylor at the time of the preliminary hearing in February 1997 with those detailed, comparative definitions *"due to non-disclosure of the policies by the Employer"* -I submit the opposite is true: that the Union had examined the policies in depth and possessed a document detailing and comparing the respective, disability definitions some 11 months prior to the arbitration's commencement!

The document in question can be found as *Appendix B* of a letter from Mr. Blair's law firm to Rick Sutherland and the Brewery Workers Union, dated March 21, 1996 and is provided as an attachment to this application. [Attachment 2.1]

Mr. Blair's failure to provide Arbitrator Taylor with a document that held conclusive proof of the very thing which he was purportedly endeavouring to establish in fact -i.e. that there existed discrepancies between the disability definitions contained in the collective agreement and the Manulife policies - might well be construed as reckless: i.e. gross negligence.

However, his attempt to mislead and deceive Mr. Taylor into believing the Union didn't have such a document in its possession -when in fact it had and moreover, he knew it had -I submit is a fraudulent, obstruction of justice on Mr. Blair's part, deserving of censure in the highest terms.

Furthermore I believe there is a compelling argument to be made that suggests Mr. Blair's original omission in providing Mr. Taylor with the detailed, comparison definitions was both deliberate

and calculated.

Because the trick for David Blair was in somehow only advancing my interests to the first 104 weeks of my disability -and no further -because any further representation of me by the Union beyond 104 weeks of disability would be precedent-setting for the Union and was/is something the Union sought to avoid with diligence and purpose.

Fortunately (for Mr. Blair) the Employer, as already noted herein, initially had raised an objection as to the arbitration board's jurisdiction regards the L.T.D. portion of the grievance.

Mr. Blair could simply wait to see the outcome of the Employer's objection before committing the Union to a representation that encompassed the full measure of my disability. If the Employer's objection was successful then of course, there would be no need for the Union to extend itself further than it wished to.

But now consider the impact that Arbitrator Taylor's determination at pages 13-14 of his second award must surely have on the Union's avoidance in representing a disabled member beyond 104 weeks of his disability -namely, that *"whether there exists a discrepancy between the collective agreement and long-term disability policy disability tests...beyond 104 weeks is properly before the* (arbitration) *board,"*. (emphasis added) [Attachment 1.8]

It's as if the Union had sent Mr. Blair to fight Labatt on my behalf -but with one arm tied behind his back.

Mr. Blair readily acknowledges the parties' concerns in his August 9, 2000 letter to the Board in which he wrote at paragraph 2: *"the preliminary issues...have become more an argument about future arbitrations than Mr. Hughes' claim."*(emphasis added) [Attachment 2.11]

Or, as current Union Business Agent Chuck Puchmayr once put it to me in reference to the Union's representation in protection of my interests: "if we (the Union) do it for you, we have to do it for everybody."

Given the revelatory nature of Arbitrator Taylor's second award I suspect the Union's concerns had just as much to do with past grievances withdrawn -or more likely never filed -by the Union on behalf of other disabled members.

For Mr. Taylor's decision revealed at page 13, paragraph 3 what must surely be a fundamental and long-practised error by the parties, regards eligibility determination for employee disability benefits provided under the collective agreement. [Attachment 1.8]

Furthermore, it is abundantly clear from the chart entitled *"Comparison of Disability Definitions"* found at page 9 of the award, that there existed numerous discrepancies in the disability definitions both up to and beyond 104 weeks of disability. [Attachment 1.8]

The chart, originally found as *"Appendix B"* in Victory Square's March 21, 1996 letter to the Union as noted above, was finally provided for Arbitrator Taylor's consideration by David Blair in his July 7, 1999 submission at page 5. [See Attachments 2.1 and 2.7]

But David Blair resorted to chicanery in attempting to cover-up his original ommission, which undoubtedly was designed to obscure from Mr. Taylor's view the full breadth of the disability definitions' discrepancies.

Thus, the Union has clearly and actively sought to avoid advancing my interests beyond 104 weeks of disability in an extraordinary attempt to avoid *"future arbitrations"* of this kind for other disabled Union members, and to avoid the wrath of at least one member -the aforementioned Michael Nunas -who had been abandoned by the Union in September 1996 on the very basis it had no obligation to represent him beyond 104 weeks of his disability. [Attachment 6.9]

Michael Nunas

A few words about Michael Nunas at this point are in order.

At the time of his termination by the Employer on December 22nd, 1994 Nunas was senior to me and like me was both injured and disabled. Like me he was covered under the same Labatt collective agreement. [Attachments 5.8 and 6.1]

In May 1994 Nunas was in or about his 102nd week of continuous disability (following an horrendous 1992 motorcycle accident in which he sustained numerous injuries after being thrown from his bike) when his L.T.D. benefits were once again interrupted by the insurance carrier, astonishingly I believe, for the third time since his claim began. [Attachment 6.13]

On December 22nd, 1994 he was terminated by the Employer pursuant to Article 3:3 of the Labatt collective agreement -as I was 7 months later -essentially for failing to work 30 shifts in the 12 months prior to his dismissal, notwithstanding he was injured and disabled and unable to work and in receipt of LTD benefits for at least five of those twelve months.[Attachments 5.5 and 6.1]

Yet with full knowledge of the existence of the discrepancies in the disability definitions noted above -and given those discrepancies, the arbitrability of Mr. Nunas' denial of disability benefits by the Employer -the Union made its woeful decision to abandon the senior Mr. Nunas and yet continue its purported representation of me.

This is not only an example of discriminatory conduct (to Mr. Nunas) on the part of the Union but bad faith, personified.

Because the Union filed no grievance on behalf of Mr. Nunas for unpaid L.T.D. benefits as it did for me -this was even after the Union would learn for certain that the Employer, following the

demise of its insurance carrier Confederation Life in June 1994, had contracted a policy with Manulife Financial that provided no liability for L.T.D. claims incurred prior to its take-over. [Attachments 6.0]

This is evidenced in a letter from Manulife Financial to Nunas' marital attorney, Wayne F. Guinn, dated January 22, 1996 in which Manulife advised that pursuant to Manulife's agreement with the no-longer-existent Confederation Life: *"Manulife Financial does not assume any liability for coverage of group long-term disability benefits in respect of claims incurred prior to the liquidation of Confederation Life."* (emphasis added) [Attachment 6.2]

Such was the case with Michael Nunas. Mr. Guinn brought this matter to the Union's attention in early 1996.

In a letter to Victory Square Law Office dated March 14, 1996 Mr. Guinn commented on the level of frustration he was experiencing with the Union, the Employer and its insurance carrier, stating: *"Dealing with* (them) *is like "spinning one's wheels."* Presumably in the mud. [Attachment 6.4]

In a letter to Mr. Guinn dated May 31, 1996, Victory Square Law Office on behalf of the Union advised and acknowledged that: *"The Union was advised orally by Labatt that Manulife would be taking over and that there would be no interruption in coverage"* for eligible employees. (emphasis added) [Attachment 6.8]

Thus the Union surely abandoned Michael Nunas and yet did so, I submit, with the certain knowledge that the Employer had in fact misled the Union concerning the deficiencies of its newly-acquired Manulife policy, in particular regards the *"interruption of coverage"* that left Michael Nunas without an insurer.

As a result of the Employer's failure to provide for him a policy that contained the stipulated benefits, Mr. Nunas was left with nowhere to turn to secure his benefits and then, like me, was subsequently terminated by the Employer.

The foregoing certainly constituted an *"interruption in coverage"* for Mr. Nunas and, notwithstanding the Employer's hollow assurances and promises to the contrary, constitutes the perpetration of a fraud on the Union -one I submit the Employer has long continued to propagate to the arbitration panel and to the Board in the matter of my own grievances.

For long at issue in these proceedings, and noted at page 32, paragraph 3 of Arbitrator Taylor's first preliminary award has been *"as to whether the Manulife policy contains the stipulated benefits and otherwise conforms with the Employer's obligation under the collective agreement."* (emphasis added) [Attachment 1.10]

The Employer's fraudulent attempts to persuade and convince Arbitrator Taylor and the Board

that *"the Manulife policy...fulfilled the Employer's collective agreement obligation under Article 9,"* as noted in Mr. Taylor's original award at page 19, paragraph 5 -when it surely knew otherwise given the lapse in coverage for Mr. Nunas -I suggest is reprehensible and deserves the Board's censure. (emphasis added) [Attachment 1.10]

The Employer's absolute failure to provide Mr. Nunas with an insurer and its attempts to keep that ommision from coming to light while continuing to tout its Manulife policy in these proceedings is surely indicative of insurance fraud, and as such deserves serious rebuke.

And given what must be the Union's firsthand knowledge of -and its defacto acquiescence to -the Employer's fraudulent scheme to deny and deprive Mr. Nunas of insured disability benefits, and moreover, to allow the Employer to continue unrestrained in its propagation of that fraud in these proceedings, it follows the Union has itself committed an obstruction of justice at mine and Mr. Nunas' expense.

The Union's disturbing reticence to bring this crime to light, in my view is surely indicative of the existence of a conspiracy of silence between the parties, designed solely to minimize their respective liability at the expense of a disabled employee -a conspiracy the Union has willingly entered into, notwithstanding that in so doing the Union has readily implicated itself in the Employer's illegal and immoral actions.

Even further proof of the Union's bad faith towards me is found in a letter from Union President Gerry Bergunder to me dated January 17, 2000, written shortly after the issuance of Arbitrator Taylor's second award. [Attachment 3.20]

Aside from the letter's obvious tone of stern admonishment and an intimidating threat of expulsion from the Union, Mr. Bergunder's letter is replete with numerous inaccuracies, factual errors, lies and damaging innuendo. It appears Rick Sutherland was the instigator behind this libellous letter that Mr. Bergunder willfully distributed to the Union's elected Table Officers.

I note Mr. Bergunder at page 1, paragraph 2 readily acknowledges Mr. Taylor's second award *"was in* (my) *favour"* and *"as a result we* (the Union) *are proceeding with your grievance to the next stage."* Mr. Bergunder reiterates that commitment at page 2, paragraph 1 when he states: *"We are close to resolving your difficulties and will not retreat from that process..."* [Attachment 3.20]

But given the Union never did move these matters forward *"to the next stage"* as promised by Mr. Bergunder in his letter to me, I have no choice but to view his broken promises to me as one more glaring example of the Union's bad faith in its representation of me in matters pertaining to the arbitration of my grievances.

As noted herein, Mr. Bergunder has assured me as recently as July 14, 2003, with Michael Nunas as my witness, that he would provide me with a written notification of the parties'

alleged settlement of my grievances. His failure to do so amounts to another broken promise to me by my Union, and as such is indicative of the bad faith and arbitrary disregard afforded me by the Union throughout this long ordeal.

Arbitrary Conduct by the Union

The Union's arbitrary conduct is truly exemplified by the Union's apparent and arbitrary refusal to provide me with proper notification or any details whatsoever of an alleged recent settlement with the Employer regards my grievances.

When was this settlement reached? What were its terms? Was it a fair settlement? Was it just? Did the settlement provide any relief for me, the grievor? What has the Union achieved for its members in these proceedings, and at what cost? Why won't the Union provide me with this type of information?

Equally, what has been the point of an arbitration that's lasted more than seven years without progressing beyond the preliminary stages? Has this experience proved to be nothing more than an exercise in futility for all concerned?

Has the matter of the unjust termination of a disabled employee ceased to have any importance to the Union, whatsoever?

Or more likely, have I simply become a sacrificial lamb to the parties' cover-up of their own inadequacies and administrative errors, regards the provisions of the collective agreement relevant to employees with disabilities?

Why haven't I been allowed to win in an arbitration that has clearly and demonstrably been going in my favour?

The Union's arbitrary conduct is best summarized by Rick Sutherland's own explanation to me for the Union's apparent disregard for my allegations of impropriety on the part of the Employer regards its administration of my claim for disability benefits.

These allegations were provided to the Union in detail in a press release I distributed in January 1997 entitled *"The Lowdown on Downsizing"*. [Attachment 5.0]

In my first meeting with him, David Blair advised me I had accused the Employer of "criminal" conduct (although nowhere in the text do I use the word "criminal"). Notwithstanding Mr. Blair's opinion, my response to him was that the content of *"The Lowdown on Downsizing"* is fair comment.

In any event, the Union chose to simply turn a blind eye to the Employer's egregious conduct concerning my allegations of misadministration regards my claim for disability benefits.

With little if any scrutiny by the Union of the Employer's conduct, Mr. Sutherland told me in a September 1998 Union meeting: "If you weren't disabled you would have been terminated, anyway," implying no harm was done to me by the Employer, and thus no investigation of the Employer's conduct nor appropriate action by the Union was warranted.

Well, in reality I have suffered great hardship and prolonged deprivation as a result of the Employer's actions, the least of which include the breaking of numerous provisions of the collective agreement, as well as its frivolous and completely unfounded preliminary objections to the arbitrability of my grievance for disability benefits.

And yet, Mr. Sutherland's dismissive attitude of absolute disregard and arbitrary indifference has been the underlying and defining theme in the Union's representation of me throughout these proceedings, and has ensured the Union's absolute failure in upholding the provisions of the collective agreement -not only for me but for the entire membership of the Union.

It has also provided the impetus for what I perceive to be a personal and hostile vendetta waged against me by Rick Sutherland for my plain and outspoken criticism of him regards his conduct as an elected official of the Union.

This is certainly evidenced by his malicious reporting to Mr. Bergunder of alleged abuse of Mr. Sutherland by me (something I categorically deny), which resulted in the aforementioned libellous and threatening letter to me from Union President Gerry Bergunder dated January 17, 2000. [Attachment 3.20]

For the record I wish to state that I have never been abusive of Mr. Sutherland -on the contrary it is he who has been abusive of me. Nor have I ever threatened him, as has been publicly alleged by Roy Vance, currently a member of the Union's General Executive Board.

However, as Mr. Nunas will attest, in October 1998, my appearance before the Union's Regional Board was met with abusive profanity by Mr. Sutherland before his stomping out of the meeting in a huff. Mr. Sutherland seemingly had some difficulty in distinguishing himself from his job as Business Agent for the Union and simply refused to hear any criticism from me, whatsoever. [See Attachments 3.13 and 3.16]

But even prior to this, I'm told by one former elected official of the Union -who tells me he'll swear that -Mr. Sutherland referred to me on at least one occasion as "that wacko, Nick Hughes" in an attempt to denigrate me to elected officials of the Union, undoubtedly to poison their minds against me.

Discrimination by the Union

I now turn to the discriminatory aspects of the Union's conduct, particularly as it pertains to the

termination of a disabled employee under Article 3:3 of the collective agreement. [Attachment 5.5]

As already noted herein the Employer conceded and in fact *"agreed"* with the Union my termination was impermissable if I was unable to work due to disability.

The collective agreement provides specific protection for the disabled employee in the form of a directive to the parties. Article 3:1 states in part: *"3:1:1...Seniority service records for purpose of permanent layoffs shall not be considered broken by reason of ...(c) Sickness or injury..."*. (emphasis added) [Attachment 5.5]

Furthermore, such an action would be deemed illegal under the Human Rights Code of British Columbia which the parties are bound by.

The Union is further bound by a provision found in its own Constitution: Article 4, Section 5 of the Union's Constitution and By-laws states that *"The Union shall not discriminate against...a member contrary to the Human Rights Code of British Columbia..."* [Attachment 5.6]

In a letter dated March 21, 1996 Victory Square Law Office provided its legal opinion to the Union regards my termination by the Employer pursuant to Article 3:3 of the collective agreement. [Attachment 2.1]

At page 2 under the heading *"Termination Grievance"* the letter stated: *"In our opinion, if the Union were to take the grievance concerning Hughes' termination to arbitration, the Union's chances of success would be excellent."* [Attachment 2.1]

The legal opinion continues with *"...the Union could argue that the provision (*Article 3:3) *discriminates against disabled employees and is contrary to the B.C. Human Rights Act...If a discrimination arguement were successful, however, an arbitrator might apportion liabilty to the Union for agreeing to the discriminatory provision."* (emphasis added) [Attachment 2.1]

And at page 17, paragraph 4.7, under the heading *"Discriminatory Aspects of Article 3:3"* the Union is advised it *"may share the blame for the discriminatory aspects of this clause. In addition, any failure to protect Hughes from discrimination may constitute a breach of the Union's duty of fair representation: Cameron v Teamsters Local 213, BCLRB No. 46/81.* [Attachment 2.1]

And therein lies the rub: at the forefront of the Union's representation of me lies its chief concern for its own blame and liability and its determination to avoid same.

Given that fundamental conflict of interest, my right to fair treatment in these matters has been egregiously compromised and, indeed, precluded absolutely by the Union's very participation.

The grievance for unjust termination was presented to Arbitrator Taylor at the arbitration's

onset but was never addressed in any meaningful way, presumably for the reasons outlined above by the Union's own legal representatives.

It is clear the Union had some serious liability issues it sought to avoid -all at the expense of my collective bargaining rights and the rights conferred on me by the B.C. Human Rights Act.

Given my termination by the Employer has been allowed to stand unchallenged by the Union, I suggest the Union's failure to protect me from the very discrimination it was in contemplation of in March 1996 is self-evident.

I am confident the parties' alleged recent settlement, particularly regards the matter of my termination by the Employer, will undoubtedly prove to be equally discriminatory to me on the basis that I have a physical disability that prevents me from working.

Furthermore, there is evidence to show mine is not an isolated case. There are other members of the Union whose employment was terminated while they were disabled and unable to work - most notably, Michael Nunas -both at Labatt and other plants in the bargaining unit.

As well, the Union has recently had to launch yet another grievance on behalf of Michael Nunas, in complaint of his recent termination by Brewers Distributers Limited (jointly owned and operated by Labatt and Molson) while Mr. Nunas was off work on a W.C.B. claim. Mr. Nunas' grievance is provided here as an attachment. [Attachment 6.16]

Ironically, this would then be the second time in less than a decade Mr. Nunas had been terminated by Labatt or its subsidiary while disabled and unable to work.

This is all indicative of what must surely be seen as persistent and calculated discriminatory conduct by these Employers, and as such reflects on and reveals the Union's longstanding and consistently poor track record in providing any protection for its disabled members, notwithstanding its constitutional obligation and duty to do so.

It remains to be seen if the Union intends to hold B.D.L. responsible for its recent actions regards Mr. Nunas, or merely discard his grievance after a suitably lengthy period of time -as was done to him in 1996, and as I believe the Union has done to me in its abandonment of my grievances.

It appears likely the Employer's brazen acts of discriminatory treatment of disabled employees may continue ad infinitum, as long as it can continue to rely on the Union to allow such conduct to go unchecked.

The question here of course, is will the Board allow this discriminatory and illegal conduct to continue with such impunity or put a stop to it, finally?

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Effects of the Union's Inaction

As a result of my disability, numerous employment opportunities available to non-disabled members of my Union have been forever lost to me.

As well, the Employer's termination of me (as well as other tortious acts alleged by me committed in its misadministration of my claim for disability benefits) effectively sabotaged my claim for disability benefits.

Coupled with the Union's failure to proceed to arbitration on my behalf regards the termination grievance, my unjust termination has proved to be far more than a simple inconvenience for me.

It has in fact been an absolutely insurmountable impediment to achieving the disability benefits I claim are owed to me, in both my civil action against Manulife Financial (costing me in excess of $40,000 in legal fees for which I seek reimbursement here in the form of aggravated damages) and in these labour relations proceedings with the Employer.

In either case my pursuit of those benefits has been hampered and prejudiced absolutely; first by the Employer's termination of me; secondly, and more importantly to this application, by the Union's inaction regards same.

This is evidenced by a letter to me dated October 28, 1998, in which Union President Gerry Bergunder conceded that the Article 3:3 *"...grievance was launched because if* (I) *were no longer an employee of the company,* (I) *would not be eligible for anything, including ongoing disability benefits."*(emphasis added) [Attachment 3.14]

Notwithstanding Mr. Bergunder's concession above, the unfortunate reality regards my unjust termination is that the matter has been left unattended and completely uncontested by the Union, much to my detriment.

Following the Board's Letter decision BCLRB No.B149/99 issued April 23, 1999, I was disturbed to find that my grievance for unjust termination had appeared to have 'fallen off the table' and lost its importance in the proceedings.

Equally troubling was the Union's refusal to elaborate for me as to the grievance's current status.

Thus on July 5, 1999 I wrote to Arbitrator Taylor and specifically asked him as to what had become of my wrongful termination grievance but received no reply from him. [Attachment 3.16]

What is known regards my termination is found at page 4, paragraph 1 of Arbitrator Taylor's

first award in which *"the Employer agreed that this action was impermissable if the Grievor was unable to work due to disability."* I take that to mean the Employer was in agreement with the Union. [Attachment 1.10]

But it must be noted, that to date I have yet to be given an opportunity to present any evidence in support of my disability's existence. This is effectively a denial to me of natural justice.

As arbitration board member Bill Clark noted at page 3, paragraph 3 of his dissenting opinion of Mr. Taylor's original award: *"The grievor has been denied his right to an arbitration to determine the level of his disability. He is entitled to have his case heard under the provisions of the Collective Agreement."* (emphasis added) [Attachment 1.10]

Mr. Clark's words ring as true today as they did in March 1997. However, I would add that the denial of my right to an arbitration has been made as much by the Union as the Employer.

Indeed, for me the real obstacle to my *"right to an arbitration,"* and to my right to natural justice as provided by the Labour Code has in fact, been the Union itself.

As already demonstrated by Mr. Bergunder's letter above, the outstanding matter of my termination by the Employer was hugely compromising and prejudicial to my ability to successfully sue the Employer's insurance carrier in civil court.

The Union readily acknowledged that *"if* (I) *were no longer an employee of the company,* (I) *would not be eligible for anything, including ongoing disability benefits,"* and thus must bear the blame for its failure in not rectifying that situation in a timely fashion. [Attachment 3.14]

And whereas it is true I have settled under great duress my claim with Manulife -I was suffering greatly and unable to afford the medical treatment I required -the Board should take note that in no way do I seek double indemnity from the Employer.

I do however, seek to have the Employer's liability to me properly determined regards the relevant labour issues -which includes but is not limited to the payment to me of any and all outstanding disability benefits -so that I may continue to seek to secure any and all outstanding benefits and monies owed to me by the Employer, and to win my personal vindication regards its unlawful termination of me. I seek a just and reasoned conclusion to these matters.

And given Arbitrator Taylor's and the Board's decisions regards these matters, coupled with the Union's own submissions July 7, 1999 to Mr. Taylor at page 12, paragraph 5.2, concerning the Employer's liability, it would appear the Employer has a great deal of liability and outstanding obligations to me. [Attachment 2.7]

And given the effect of *Weber v Ontario Hydro (1995) - 125 DLR (4th) - 583 (SCC)* it is equally

clear that the labour relations forum is not only the correct venue in which to make that determination, but the only one available to me.

Disabled and Unable to Work

And so for the record, I wish to state unequivocally that I remain disabled and unable to work. Proof is furnished in a medical/legal report provided by my physician and attached to this application. [Attachment 4.3]

I am confident the medical evidence will show beyond a doubt that the Employer terminated my employment in spite of my disability, and in spite of its own concession that to do so was *"impermissable."*

Finally, I wish to emphasise that the Union's failure to protect me from the great injustice imposed upon me by the Employer has had a truly detrimental and lasting effect on me, particularly regards (but not limited to) any likely future employment prospects available to me.

For surely, as in the case of Michael Nunas, I have been wrongly cast in the role of a malingerer by the Employer, a stigma and a stain unduly placed on my reputation that is sure to have a long-term and undoubtedly deleterious effect on my life.

Such has been the case with Michael Nunas who in 1997, following his recovery from his motorcycle accident, found himself unemployed and unable to find employment in an industry he had faithfully worked in since 1980. Mr. Bergunder will attest to that.

In fact, in his conclusion to his letter to Mr. Nunas dated February 11, 1999, Mr. Bergunder wrote: *" I do agree that because of the Labatt situation, the industry appears to have "blacklisted" you."* [See Attachments 6.10 and 6.13]

Mr. Bergunder made a commitment to Mr. Nunas to *"correct this injustice"*. [Attachment 6.13]

What Mr. Bergunder failed to mention -but it deserves to be said -is that it was Rick Sutherland's and the Union's original failure and refusal to act on a disabled Michael Nunas' behalf in the first place, that contributed to *"this injustice"* imposed on Mr. Nunas and served to create *"the Labatt situation."* [Attachment 6.13]

Unfortunately, the *"injustice"* to which Mr. Bergunder refers persists incorrected, as Mr. Nunas appears to still be *"blacklisted"* having been turned down for three jobs in the brewing industry this past summer due, it would appear, to his bad reference from Labatt.

There is no doubt in my mind that the same fate awaits me in the event I ever recover sufficiently to return to active employment.

Thus it is clear I simply cannot rely on Mr. Bergunder and the Union to salvage my reputation as a hard-working and reliable employee, and thus require the Board's assistance in that important endeavour.

"The Labatt Situation"

The seriousness of *"the Labatt situation"* cannot be understated.

Nor can the enormity of the Union's repeated and longstanding abandonment of its obligation and duty to protect its weakest and most vulnerable members from discriminatory and unfair treatment at the hands of an unscrupulous employer.

When did the Union adopt such an abominable posture of absolute submission to the Employer's illegal and immoral acts? Where has this policy of *laisser faire,* of a virtual year-round 'open season' for disabled employees, found its origins?

I suggest the 'evil genius' behind this merciless business is the merciless former Business Agent for the Union, Rick Sutherland. Some genius. Some business.

Rick Sutherland and his right-hand man Tom Smith have been employed at Labatt for the better part of the last three decades. Together with another Labatt 30-years-plus man named Tony Flegel, these three men have comprised the axis of the Union's representation at the New Westminster plant for possibly decades.

As Business Agent and President, respectively, Sutherland and Smith held considerable power and influence on the Union's direction, particularly during the time in question.

During the Employer's mid-nineties 'downsizing' initiative -which coincided with the discontinuance of mine as well as Michael Nunas' disability benefits and which resulted in our subsequent, respective terminations by the Employer -the Union's chain of command was thus:

Rick Sutherland instructed the Union's representative law firm, Victory Square Law Office; Tom Smith by virtue of his presidency of the Union chaired not only the Labatt plant grievance committee, but also the Union's Regional and General Executive boards; Tony Flegel too, I believe, was a member of all three committees.

Thus the plant grievance committee -comprised of Tom Smith as chairman, with Tony Flegel and mechanic Martin McCormick -met with and took their advisements from a lawyer whose instructions came solely from Rick Sutherland.

In the case of Mike Nunas, Mr. Sutherland enjoyed unflinching support from Smith and Flegel when in September 1996 the grievance committee took the matter of Nunas' unjust termination to the Union's General Executive Board -of which both Smith and Flegel were voting members -

with a recommendation to abandon Mr. Nunas' grievance. [Attachment 6.9]

Thus, based solely on Rick Sutherland's arbitrary decision to dump Nunas -and fortified by a Victory Square Law Office recommendation to do so and Tom Smith's urging with additional support from Tony Flegel -the Union's General Executive Board was countenanced to allow Michael Nunas' unjust termination by the Employer to go unchallenged, notwithstanding he was disabled and had provided these Union officials with medical proof of same.

My understanding of the Union's reasoning for its abandonment of Nunas was that, like me, if he hadn't been disabled he would have been terminated, anyway -so no big deal.

Current Business Agent Chuck Puchmayr, has conceded privately to me and to Nunas that Mr. Sutherland's arbitrary opinion of both Nunas and I was that we were merely "swinging the lead" -malingering in a futile and misguided attempt to avoid our respective terminations by the Employer.

It is my further understanding that Mr. Sutherland promoted this erroneous notion to other Union officials as a means to garner their support of his decision to abandon Nunas.

I am further advised by a former Union official that he'll swear that Mr. Sutherland helped the process along, by first denigrating Mr. Nunas to the Union's table officers in much the same way he did me, with words to the effect: "that goddamn biker Nunas hasn't got a hope in hell."

Gerry Bergunder has certain knowledge of *"the Labatt situation"* as it pertains to Michael Nunas and me -presumably as a result of my bringing it to his attention.

Both Nunas and I in fact met with Mr. Bergunder on April 10, 2002, whereupon I provided him with documentary evidence and elucidated for him in great detail the truth of the Nunas/Hughes debacle, *"the Labatt situation"*, as Mr. Bergunder refers to it.

During our meeting Mr. Bergunder was made aware (possibly for the first time) of the Employer's fraudulent denial and depriving of Mike Nunas' disability benefits resulting in his subsequent termination by the Employer, and of Rick Sutherland and Victory Square Law Office's role in allowing the Employer's illegal action at Nunas' expense -apparently with little if any effect on Mr. Bergunder.

Perhaps one result of that meeting is that Gerry Bergunder, in not bringing these matters to light has effectively condoned the Employer's illegal action regards Nunas and has undoubtedly joined Rick Sutherland et al in sustaining the cover-up of that action.

For there can be no room for 'fence-sitting' in a matter as serious as an Employer's fraudulent denial of disability benefits to a disabled employee, in particular when that denial results in the disabled employee's subsequent termination by the Employer.

The Union is faced with a clear choice: it either acts to right that wrong or it becomes a party to the wrong. Clearly in the case of Michael Nunas and in my case too, the Union has opted for the latter.

Victim or Vindicated?

It should be noted that upon his taking office as the Union's elected Business Agent in 2001, Chuck Puchmayr saw fit to dismiss Victory Square Law Office as the Union's representational law firm, instead hiring the firm Fiorello Glaven.

Unfortunately for me however, Mr. Puchmayr sadly decided to continue to burden me with David Blair's continued albeit conflicted, unethical representation in the matter of my two grievances.

Currently, Union elections are now underway and it is anyone's guess who will be the legal representatives following the election of the next Business Agent, for which both Messrs. Bergunder and Puchmayr are in the running.

I conclude by stating regards my grievances and my allegations of improper conduct by the Employer: I remain vigilant in my belief the Employer, prior to terminating my employment, acted in bad faith in its role as a conduit between the insurer and me, jeopardizing and effectively sabotaging my claim for disability benefits.

As determined by Arbitrator Taylor at page 12 paragraph 3, and at page 13 paragraphs 3 and 4 of his second award, the Employer wrongly delegated the task of disability determination to the carrier and in fact subjected me to *"a different...more stringent...disability test than is provided in the collective agreement."* [Attachment 1.8]

In my view, the foregoing suggests the Employer preferred to effectively 'hide behind the skirts' of its insurance carrier -running the risk of course, that in doing so the Employer not only may have been (and in fact, was shown to be) in breach of the collective agreement, but was likely guilty of treating an employee with perfunctory disregard for his disability.

Relying on the erroneous position taken above, the Employer next terminated my employment notwithstanding there existed the possibility I was indeed disabled, and did so willfully with the certain knowledge that to do so was to compromise and effectively undermine and prejudice my right to claim disability benefits <u>beyond my date of termination</u>, July 21, 1995. [Attachment 1.14]

The termination of a disabled employee is a serious matter given the foregoing and given the illegality of such an action, and as such requires careful consideration by the Employer.

And given the Employer concedes such an action is impermissable, then prior to effecting the decision to terminate an employee that presents with a disability, the Employer has a duty and

an obligation to investigate fully the employee's claim of disability and to accomodate his disability, if possible.

Such consideration was never afforded me by the Employer and as such the Employer's conduct must be seen to go beyond simple, perfunctory carelessness and even recklessness.

And given the Employer's agenda of 'downsizing' its plant seniority list during the time in question -and its obvious and long-held determination to include me in that initiative -it follows that the Employer's primary desire to be unburdened of me was likely sufficient motivation to allow the Employer to treat my claim for disability benefits in a less than scrupulous manner.

Truly, the Employer had a vested interest in seeing its insurance carrier disqualify me from receiving disability benefits and acted accordingly to make that a reality.

That's a serious and disturbing allegation. But so too is breach of trust, which I am convinced the Employer is guilty of in the matter of its administration of my claim with its insurance carrier.

In my view the Employer's conduct in its administration of mine and Michael Nunas' respective claims for disability benefits and the Employer's subsequent termination of Nunas and me is well over the line and as such raises a number of suspicions deserving of proper scrutiny.

Unfortunately Rick Sutherland, Gerry Bergunder and the Union appear to disagree with that position. That fundamental disagreement lies at the heart of this application and raises the question: how much disregard by the Employer for an employee's rights, human and otherwise, is the Union willing to tolerate and, indeed overlook?

But the Board should take note that regardless of the views of Sutherland, Bergunder et al, I am more than simply a grievor in these matters. I am first and foremost a victim and as such I am either vindicated or I am to remain victimized. Indeed, there may be little room for anything in-between.

And although I choose to be vindicated, I think even more importantly I deserve to be exonerated; as does the Employer's and the Union's respective misconduct deserves to be fully exposed and rightly censured.

I respectfully ask that the Board provide me with that opportunity in granting this application.

REMEDIES

The remedies I seek are as follows (but not limited to):

1. A detailed, reasoned and written response by the parties to the numerous allegations herein.

2. An oral hearing before the Board to hear evidence and witness testimony to determine the merits of this application.

3. Full disclosure by the Union of all documents in its possession, agreements, etc. made with the Employer pertaining and/or relevant to mine and Michael Nunas' grievances. Included here of course, isthe Union's recent, alleged settlement with the Employer: specifically as to when did the settlement occur?, what were the terms of the agreement?, what relief did the settlement provide for the grievor?, and a reasoned explanation as to why the Union has withheld this information from me for so long.

4. An order by the Board for the resumption and completion of the arbitration of my two grievances for unpaid disability benefits and unjust termination, respectively, costs to be borne by the Union.

5. A granting to me of Intervener and Interested Party Status in all matters pertaining to my grievances.

6 Permission to retain independent legal counsel for any and all proceedings pertaining to my two grievances, the costs and fees for which are to be borne by the Union.

7. A declaration by the Board that there exists an inconsistency between the respective disability tests found in the Manulife policies and the collective agreement, for the period beyond 104 weeks. Arbitrator Taylor commented at page 14, paragraph 2 of his second award: *"For the purpose of this decision, we do not find it necessary to determine if there is an inconsistency between the disability tests for the period beyond 104 weeks. That issue was not addressed by the Employer."* Notwithstanding his remarks above, the "*inconsistency between the disability tests for the period beyond 104 weeks"* is indisputable as evidenced by the chart provided at page 9 of Arbitrator Taylor's second award entitled *"Comparison of Disability Definitions."*

8. Aggravated, special, and punitive and exemplary damages as deemed appropriate. In other cases the same principles have been expressed: see Warner v. Arsenault (1982), 53 N.S.R. (2d) 146 (N.S.S.C.A.D.), where Pace J.A., speaking for the court, made the following statements in respect of the circumstances which will permit the awarding of punitive damages, at p. 152: *"Exemplary or punitive damages may be awarded where the...conduct is such as to merit punishment. This may be exemplified by malice, fraud or cruelty as well as other abusive and insolent acts towards the victim. The purpose of the award is to vindicate the strength of the law and to demonstrate to the offender that the law will not tolerate conduct which wilfully disregards the rights of others."* (emphasis added)

9. An indepth examination and inquiry by the Board to determine the parties' conduct regards

the Nunas/Hughes debacle and their attempts to conceal the facts concerning our respective, unlawful terminations.

10. Unspecified relief for Michael Nunas, liability to be apportioned to the parties at the Board's discretion.

11. Such other relief deemed just by this Board.

HAVE YOU SOUGHT ASSISTANCE FROM ANY OTHER AGENCY IN THIS MATTER?

There are no other pending appeals that I know of, with the exception of a civil suit filed by me in 2001 against the Employer for wrongful dismissal.

With a six year time limitation looming, the suit was filed as a failsafe in the event the Union failed to resolve the matter of my unjust termination in a timely fashion. However, it is doubtful the court would entertain such a suit given the dispute essentially arises out of a collective agreement.

It may be necessary to file a complaint with the B.C. Human Rights Tribunal depending on the outcome of this application.

As well, a complaint to the Law Society regards the allegation concerning David Blair's attempt to mislead Arbitrator Taylor regards the Union's possession and examination of the Manulife policies, may yet be forthcoming.

This could well depend on the Board's decision (or not) to hold the Union and its representative, Mr. Blair, accountable for the ethical misconduct alleged herein.

Respectfully,

Nicholas Hughes
Dated October 28, 2003

A list of attachments is not provided here but is being prepared. There are a great number of relevant documents and their assembly is proving to be a formidable task. I have filed this application in the interim and will soon provide the Board with the attachments and a list of same.

As an addendum to this application I have provided footnotes (for ease of navigation) in

reference to the complete List of Applications, which is also included here for the first time. In addition I have corrected a typo found at the bottom of page 22: the final sentence now refers to a medic**al**/ legal report. In future please refer to this updated copy of the application. 03/12/08.