



COURT FILE NUMBER 1501- 04677

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF: THE STUDENTS' ASSOCIATION OF THE UNIVERSITY OF CALGARY, known as THE UNIVERSITY OF CALGARY STUDENTS' UNION

DEFENDANTS: THE GOVERNORS OF THE UNIVERSITY OF CALGARY and THE UNIVERSITY OF CALGARY

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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File No: 036-098909-123

**NOTICE TO DEFENDANT:**

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

**THE PARTIES**

1. The Plaintiff, The Students' Association of the University of Calgary, known as The University of Calgary Students' Union (the "Plaintiff"), is a statutory body, and a corporation, created to conduct, manage, and control the affairs of the undergraduate students of The University of Calgary (the "U of C"), in the City of Calgary, in the Province of Alberta, pursuant to the *Post-secondary Learning Act*, SA 2003, c. P-19.5 (the "Act"), and amendments thereto.

2. The Defendant, The Governors of the University of Calgary (the "Governors"), is a statutory body, created to conduct, manage, and control the affairs of the U of C pursuant to the *Act*.
3. The Defendant, the U of C, is a statutory body, pursuant to the *Act*.
4. Collectively, where appropriate, the Governors and the U of C will be referred to herein as the "Defendant".
5. At all times material to the within Action, the Plaintiff was unable to own real property without approval from the Defendant, one or both of them. As such, the Defendant holds legal title to the bare land upon which the Building (as defined herein) is located, being legally known as:

PLAN CALGARY 859JK  
 BLOCK "U"  
 CONTAINING 98.8 HECTARES (244.23 ACRES) MORE OR LESS  
 EXCEPTING THEREOUT

PLAN	NUMBER	HECTARES	(ACRES)
SUBDIVISION	1139JK	0.611	(1.51)
SUBDIVISION	2827JK	5.85	(14.44)
SUBDIVISION	6672JK	0.845	(2.09)
SUBDIVISION	8311001	0.11	(0.27)
ROAD	8610644	1.51	(3.72)
ROAD	9412440	0.506	(1.25)
ROAD	0313064	0.038	(0.09)

EXCEPTING THEREOUT ALL MINES AND MINERALS

(herein the "Land")

#### **BACKGROUND AND OVERVIEW**

6. The Plaintiff's claim relates to a trust, fiduciary and contractual relationship that arose out of an ownership arrangement commencing in the 1960's between the Plaintiff and the Defendant to then construct MacEwan Hall and later, the MacEwan Student Center ("MSC") and MacHall ("MacHall") on the Land. In or about 1998, MacEwan Hall was renamed and included within MSC, and a newly constructed facility and lobby was named MacHall ("MacHall"). Collectively, where appropriate herein, MacEwan Hall, MSC and MacHall will be referred to as the "Building").

7. The Plaintiff states, and the fact is, that in or about 1963, the Land was donated to the Defendant by the Province of Alberta and/or the City of Calgary.
8. Between approximately 1969 and the date of filing this Statement of Claim, the Plaintiff has contributed, *inter alia*, over \$19,025,000.00 towards the construction costs, operations and various renovations to the Building on the Land. The Defendant has and continues to benefit and generate revenue from the investments made by the Plaintiff, at the expense and to the detriment of the Plaintiff.
9. The Plaintiff states, and the fact is, that several decades after the Contributions (as defined herein), the Defendant has denied granting the Plaintiff an interest in the Building, or even acknowledging that the Plaintiff is a co-owner of the Building, and instead, has and continues to treat the Plaintiff as a tenant of the Building.
10. Further, the Plaintiff states that the Defendant has threatened to evict the Plaintiff from the Building, citing that the Plaintiff is not an owner of the Building.
11. The Plaintiff's Contributions (as defined herein) to the construction of the Building, the operation and various renovations to the Building were made as an owner, and the Plaintiff and the Defendant are not related. As a result, pursuant to the purchase money resulting trust doctrine (the "PMRT"), there is a presumption that the Plaintiff, who advanced purchase money to assist in the construction, and later the operation and numerous renovations to MacEwan Hall, the MSC, MacHall, and/or the Building, that the parties intended that the Plaintiff would assume the beneficial interest in MacEwan Hall, the MSC, MacHall, and/or the Building, in proportion to its contributions.

#### **THE OPERATING AGREEMENTS AND THE REPRESENTATIONS**

12. In 1969, and as a result of the 1967 Contribution (as defined below), two (2) agreements were executed between the Plaintiff and the Defendant, being:
  - a. The Building lease (the "Building Lease") as between the Plaintiff and the Defendant as lessors and co-owners, and, the MacEwan Hall Directorate (the "Directorate") as lessee and operator of the Building, of which

Building held a ground lease (the "Ground Lease") with the Land. The Building Lease explicitly contemplates the Plaintiff as a fifty-five percent (55%) owner of the Building, and the Defendant as a forty-five percent (45%) owner of the Building; and

- b. The 1969 Operating Agreement (the "1969 Agreement"). Specifically, the 1969 Agreement contemplates:

Whereas the Governors [the U of C] and the Union [the SU] have constructed a building called hereinafter referred to as "MacEwan Hall" on that parcel tract of land outlined in red on the plan annexed hereto and marked Schedule "A";

And Whereas the Governors and the Union have agreed to lease MacEwan Hall to the Directorate for a term of five (5) years, in order that the Directorate may maintain, administer, manage and operate MacEwan Hall and institute, supervise and conduct social and education programs utilizing the facilities of MacEwan Hall;

Article I: Definitions and Interpretation

1.01 Definitions

The following expressions, where used in this Agreement, shall have the following meanings:

- a) "MacEwan Hall"- means that building the ownership of which is vested in the Governors and the Union in the following approximate percentages, namely:

Governors	45%
Union	55%

Constructed on that parcel or tract of land outlined in red on the plan annexed hereto and marked Schedule "A";

- b) "Lessee or Lessors"- shall mean the occupant or occupants other than the Governors and/or the Union of space in MacEwan Hall under leases and agreement for tenancy from time to time in effect;

(emphasis added)

13. From 1967, the Plaintiff states, and the fact is, that the Defendant has specifically and repeatedly -over the course of many years- represented to the Plaintiff that it is a co-owner of the Building. Instances of the Defendant verifying the Plaintiff's ownership include, but are not limited to, *inter alia*:
- a. On May 14, 1974, the Defendant re-confirmed via letter that the Plaintiff owns fifty-five percent (55%) of the Building;
  - b. On June 24, 1975, the Defendant confirmed in a Memorandum of Intent that the Plaintiff was an owner of the Building;

- c. On November 21, 1978, the Defendant re-confirmed via letter that the Plaintiff owns fifty-five percent (55%) of the Building; and
- d. Such other instances as will be proven at the trial of this Action.

(collectively, the "Representations").

- 14. Subsequent to the 1969 Agreement, a 1981 operating agreement (the "1981 Agreement"), a 1989 operating agreement (the "1989 Agreement"), a 1991 operating agreement (the "1991 Agreement") and a 1999 operating agreement (the "1999 Agreement") were executed between the Plaintiff and the Defendant (collectively, where appropriate herein, the 1969 Agreement, the 1981 Agreement, the 1989 Agreement, the 1991 Agreement and the 1999 Agreement will be referred to as the "Agreements").
- 15. The Plaintiff states that for reasons unknown to it, and only known to the Defendant, from approximately 1981, wording in the Agreements gradually eroded the Plaintiff's ownership in the Building, when in fact the Plaintiff -at no time- waived or relinquished any ownership interest it had in the Building.
- 16. The Plaintiff states that at all times material to the within Action, it was in a position of unequal bargaining power to the Defendant.
- 17. The Plaintiff states that the 1999 Agreement will expire on December 9, 2015. The Defendant has threatened to evict the Plaintiff from the Building on the expiration of the 1999 Agreement.

#### **THE MONETARY CONTRIBUTIONS TO THE BUILDING**

- 18. The Plaintiff states, and the fact is, that based upon the Representations, undertakings, assurances and fact that the Plaintiff would be an owner of the Building:
  - a. In 1969, the Plaintiff contributed \$1,925,000.00 (being fifty-five percent (55%) of the construction cost) towards the construction of MacEwan Hall (the "1969 Contributions") on the Land. The Plaintiff required a loan for the 1969 Contributions, upon which it has paid significant interest;

- b. In 1985, the Plaintiff contributed a further \$4,000,000.00 of the \$22,500,000.00 to construct the MSC, being eighteen percent (18%) of the total project cost (the "1985 Contributions");
- c. In 2002, the Plaintiff contributed a further \$13,100,000.00 of the \$16,600,000.00 to expand MacHall and redevelop the MSC, being seventy-nine percent (79%) of the total project cost (the "2002 Contributions");
- d. The Plaintiff has expended millions of dollars in redevelopment, renovations and maintenance to the Building since the 2002 Contributions, with such particulars as will be proven at the trial of this Action (the "Post 2002 Contributions"); and
- e. Such other particulars as will be proven at the trial of this Action.

(collectively, where appropriate herein, the 1969 Contributions, the 1985 Contributions, the 2002 Contributions and the Post 2002 Contributions will be referred to as the "Contributions")

## **TRUST, QUANTUM MERUIT AND FIDUCIARY DUTY RELATIONSHIPS**

### *Existence of Trust*

- 19. At all times material, the Plaintiff states that as a result of the conduct of the Defendant, the Representations, the Agreements, and the Contributions, the Defendant is holding the Plaintiff's proportionate share in the Building in trust, on either of or a combination of a PMRT, an express, resulting or constructive trust.

(collectively, the "Trust")

### *Existence of Quantum Meruit*

- 20. The Plaintiff further states that it is entitled to an equitable and proportionate share in the Building on a *quantum meruit* basis, based on its significant investment and its Contributions into the Building. The Defendant has been unjustly enriched, to the Plaintiff's deprivation, without there being any juristic reason for the enrichment.

("Quantum Meruit")

*Existence of Fiduciary Duty*

21. The Plaintiff states that at times material to the within Action, the Defendant – as registered owner of the Land, owed the co-owner Plaintiff of the Building a fiduciary duty on the basis that:

- a. The Defendant owed the Plaintiff an obligation of good faith and loyalty in regard to their common interests in the Building;
- b. The Defendant owed the Plaintiff an obligation to act honestly, in good faith and in the best interests of the Plaintiff;
- c. The Building could not have been constructed, operated, maintained or renovated without the Contributions;
- d. The Defendant enticed, solicited and induced the Plaintiff to contribute the Plaintiff's Contributions into the Building on the pretence that the Plaintiff would be a co-owner of the Building;
- e. The Defendant was and is in a position of authority to the Plaintiff, and over the Plaintiff's Students' Legislative Council Executive Committee (the "SLCEC"), had access to and was entrusted with the Plaintiff's funds, and was and is bound to act in a manner of good faith toward the Plaintiff;
- f. The Plaintiff reposed its complete trust and confidence in the Defendant and its interests were vulnerable to the exercise of the Defendant's discretion and power. This vulnerability to the Defendant and the Defendant's duty was heightened by the fact that the Defendant held the Plaintiff's interest in the Building in trust for the Plaintiff as the Plaintiff's trustee; and
- g. Such other particulars as will be proven at the trial of this Action.

(collectively, the "Fiduciary Duty")

22. The Plaintiff's trust and confidence in the Defendant with respect to the Building was a result of:

- a. Trust and mutual confidence with the Defendant dating back approximately fifty (50) years;

- b. The shared access to the Building;
  - c. The mutual and common interest in the Plaintiff and the Defendant providing the best possible University education experience for the U of C students;
  - d. The Building Lease;
  - e. The Operating Agreements;
  - f. The Representations; and
  - g. Such other particulars as will be proven at the trial of this Action.
23. As a fiduciary, the Defendant was and is bound to act and demonstrate good faith toward the Plaintiff.

**THE BREACH OF TRUST, BREACH OF THE FIDUCIARY DUTY RELATIONSHIP, NEGLIGENT MISREPRESENTATION, AND BREACH OF CONTRACT**

*Breach of Trust*

24. The Defendant has denied the Plaintiff its rightful share in the Building, and in fact, has excluded the Plaintiff from decision making abilities with respect to the Building, thereby causing the Plaintiff losses and damages, which will be proven at the trial of this Action.

(the "Breach of Trust")

*Breach of Fiduciary Duty*

25. The Plaintiff states that the Defendant has breached its Fiduciary Duties owed to the Plaintiff and its obligations to the Plaintiff as trustee. In particular, the Defendant has, *inter alia*:
- a. Improperly used the revenue derived from the Building for its benefit and use;
  - b. Improperly considered its own interest over that of the Plaintiff;
  - c. Improperly withheld documents and financial information as requested by the Plaintiff to support the Plaintiff's purported calculation of its share of the Contributions into the Building;

- d. Improperly engaged in self-dealing by benefitting from the Plaintiff's work and efforts to assist with the construction, operation and renovations to the Building without paying the Plaintiff for its services;
- e. Deliberately removed, *inter alia*, mutual ownership language from the Agreements; and
- f. Such other particulars as will be proven at the trial of this Action.

(the "Breach of Fiduciary Duty")

26. The aforementioned benefits to the Defendant were made or obtained to the detriment of the Plaintiff and for no juristic reason.

*Unjust Enrichment*

27. The Plaintiff states that the Defendant has been unjustly enriched, to which there is no juristic reason for the benefit obtained, and to which the Plaintiff has suffered a corresponding deprivation, by benefitting from the Plaintiff's Contributions, work and efforts in purchasing, operating, managing and renovating the Building.

(the "Unjust Enrichment")

*Negligent Misrepresentation*

28. In the alternative to Breach of Trust, Breach of Fiduciary Duty, and Unjust Enrichment, the Plaintiff states that the Defendant was negligent as to the truthfulness and accuracy of the representations it made to the Plaintiff, which included the Representations (collectively the "Negligent Misrepresentations"). The Plaintiff states given the Defendant's position, such representation were untrue and inaccurate and the Defendant ought to have known of such untruths and inaccuracies.
29. Had the Plaintiff known that the Defendant's Negligent Misrepresentations were untrue and inaccurate, it would not have invested the Contributions into the Building over the years.
30. As a result of its reliance on the Defendant's Negligent Misrepresentations, the Plaintiff has suffered, and will continue to suffer, losses and damages in an amount to be proven at the trial of this Action.

*Breach of Contract*

31. In the further alternative to Breach of Trust, Breach of Fiduciary Duty, and Unjust Enrichment, the Plaintiff claims that the Defendant has breached the Agreements by:

- a. Failing to grant the Plaintiff its proportionate share in the Building;
- b. Failing to act in the best interests of the Plaintiff with respect to the Plaintiff's Contributions to the construction, operation and renovations to the Building; and
- c. Such other particulars as will be proven at the trial of this Action.

(the "Breach of Contract")

*Estoppel*

32. The Plaintiff also states that as a result of the Representations, the Agreements, and the Contributions, the Defendant is estopped from denying the ownership interest of the Plaintiff in the Building, and estopped from evicting the Plaintiff from the Building. The Plaintiff further relies upon the Doctrine of Proprietary Estoppel.

**THE ACTIONS OF THE DEFENDANT ARE HIGH-HANDED**

- 33. The Plaintiff states that the actions of the Defendant have been high-handed. In the circumstances, the Plaintiff states that an award of solicitor and client costs on a full indemnity basis is warranted.
- 34. In furtherance of its claim for Breach of Trust and/or Breach of Fiduciary Duty, the Plaintiff seeks a declaration of the said breaches as well as a declaration confirming that the Defendant holds the Plaintiff's proportionate share in the Building on either of or a combination of a PMRT, an express, resulting or constructive trust.

**DAMAGES**

35. The Plaintiff states that it has sustained damages as a direct result of the actions of the Defendant, as described above. The precise amounts of these

damages are not known to the Plaintiff at this time, and will be particularized in further detail at the trial of this Action.

36. As a result of the Breach of Trust, the Breach of Fiduciary Duty, the Unjust Enrichment, Negligent Misrepresentations and/or the Breach of Contract by the Defendant, the Plaintiff has lost the opportunity to invest the funds that were Contributions into the Building for other investments. In the circumstances, the Defendant is responsible for the Plaintiff's full losses.

### **INJUNCTIVE RELIEF AND INTERIM PRESERVATION OF PROPERTY**

37. In addition to the relief described above, the Plaintiff seeks interim injunctive relief pending disposition by this Court in that:
- a. The Defendant, and any person, firm or corporation acting on behalf of, or owned or controlled (directly or indirectly) by the Defendant, or any person, firm or corporation as trustee, nominee, alter-ego or agent of the Defendant, and all persons who have notice, must be restrained and absolutely prohibited from directly or indirectly disposing of, dealing with, assigning or conveying the Building, Land, or any portion thereof; and
  - b. The Plaintiff is entitled to continue to occupy and operate the Building pursuant to the terms of the 1999 Agreement, until such further Order from this Honourable Court.
38. The Plaintiff states that the principles of injunctive relief for the preservation of property support the granting of the injunctive relief sought herein.
39. The Plaintiff has demonstrated serious issues to be tried, namely:
- a. Whether the Defendant has engaged in a Breach of Trust;
  - b. Whether the Defendant has breached its fiduciary obligations to the Plaintiff;
  - c. Whether the Defendant has been unjustly enriched to the detriment of the Plaintiff;
  - d. Whether the Defendant has made negligent misrepresentations to the Plaintiff;

- e. Whether the Defendant has engaged in a breach of contract with the Plaintiff; and
  - f. Such other issues as will be particularized at the trial of this Action.
40. Unfairness will result if the injunctive relief is not granted. The Defendant has refused to acknowledge the Plaintiff's ownership interest in the Building, and in fact has outright denied same: therefore, the Plaintiff may lose its rightful share in the Building in the event the Defendant chooses to dispose or convey the Building, Land, or any portion thereof.
  41. The balance of convenience favours the granting of the said injunction. The said injunction will not prejudice the Defendant, and the Plaintiff gives an undertaking as to damages.
  42. In the alternative, the Plaintiff states it is entitled to continue to access and occupy the Building pursuant to an easement and the Defendant is now estopped from denying same.

#### **GENERAL**

43. The Plaintiff pleads and relies upon the doctrine of relief against forfeiture.
44. The Plaintiff pleads and relies upon the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, Part IX, and amendments thereto, insofar as Goods and Services Tax is payable in respect of the Plaintiff's claims or costs.
45. The Plaintiff pleads and relies upon the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, and the amendments thereto.
46. The Plaintiff pleads and relies upon the provisions of the *Judicature Act*, R.S.A. 2000, c. J-2, and the amendments thereto.
47. The Plaintiff pleads and relies upon the provisions of the *Land Titles Act*, R.S.A. 2000, c. L-4, and the amendments thereto.
48. The Plaintiff pleads and relies upon the provisions of the *Law of Property Act*, R.S.A. 2000, c. L-7, and the amendments thereto.
49. The Plaintiff pleads and relies upon the provisions of the *Post-secondary Learning Act*, SA 2003, c. P-19.5, and amendments thereto.

50. The Plaintiff pleads and relies upon the provisions of *The University Act*, R.S.A. 1955, c. 179, and amendments thereto.
51. The Plaintiff pleads and relies upon the provisions of *The University Act*, R.S.A. 1966, c. 105, and amendments thereto.
52. The Plaintiff pleads and relies upon the provisions of *The University Act*, R.S.A. 1980, c. U-5, and amendments thereto.
53. The Plaintiff pleads and relies upon the provisions of *The University Act*, R.S.A. 2000, c. U-3, and amendments thereto.

**REMEDY SOUGHT, JOINTLY AND SEVERALLY:**

- a. A declaration that a PMRT arose in favour of the Plaintiff entitling the Plaintiff to a fifty-five percent (55%) share in the Building, or in such other amount as this Honourable Court may deem just;
- b. In the alternative, a declaration that the Plaintiff's fifty-five percent (55%) share in the Building, or in such other amount as this Honourable Court may deem just, is held in trust for the Plaintiff by the Defendant, either on an express, resulting or constructive trust basis;
- c. A declaration that the Plaintiff is a fifty-five percent (55%) owner in the Building, or in such other amount as this Honourable Court may deem just;
- d. An Order directing the Registrar of Land Titles of Southern Alberta to register the Plaintiff on title to the Land as owner with a fifty-five percent (55%) share in the Building, or in such other amount as this Honourable Court may deem just, with the Defendant;
- e. An Order permitting the Plaintiff to register a copy of the Order as a caveat from this Honourable Court against title to the Land;
- f. In the alternative, directions from this Honourable Court as to the terms of the trust upon which the Building is held by the Defendant and a declaration that the Plaintiff is the beneficial owner of the Building proportionate to its Contributions, and that the Plaintiff is entitled to a charge against the Land for the Contributions;

- g. In the alternative, general damages and/or such further amounts to be proven at trial for any harm or loss suffered by the Plaintiff for Breach of Trust, Breach of Fiduciary Duty, Unjust Enrichment, Negligent Misrepresentation and/or Breach of Contract, in an amount to be determined at the trial of this Action;
- h. A declaration that the Defendant has a trust obligation to the Plaintiff, and is in breach of its trust obligations owed to the Plaintiff;
- i. A declaration that the Defendant is in a fiduciary relationship with the Plaintiff, and that the Defendant has breached the said duty;
- j. A declaration that the Defendant has been unjustly enriched by its conduct, to the detriment of the Plaintiff, without juristic reason;
- k. An order for an accounting of all of the Defendant's income, expenses and profits and/or losses generated from the operation of the Building;
- l. An equitable tracing order over all funds held by, or on behalf of, the Defendant, originating from the Plaintiff, in, to, and through any financial institution, accounts or deposit facilities of the Defendant and in, to, or through any assets purchased by the Defendant (including the Building and/or any part thereof) using, in whole or in part, the Plaintiff's money;
- m. Damages arising out of the detection, investigation, and quantification of the losses suffered by the Plaintiff, in such amounts as will be proven at the trial of this Action;
- n. An interim, interlocutory and permanent mandatory order requiring the Defendant, as well as its agents, employees or any person acting under its instructions and any person having knowledge of this order, including financial institutions, to:
  - i. Preserve and disclose any and all financial records, including, but not limited to, bank statements, tax returns, internally-generated and externally reviewed financial statements, activity statements, investment reports, general ledgers, and all other financial records, reports and statements relating to the Defendant (collectively, the "Financial Records") as well as all

records of communications with investment advisors, counsel, accountants, account representatives, real estate agents, vendees, potential vendees or others (collectively, the "Communications"), by, or on behalf of the Defendant, that refer to or in any way deal with the Building, Land, or any portion thereof;

- ii. Cease and restrain from directly or indirectly disposing of, dealing with, assigning or conveying the Building, Land, or any portion thereof; and
  - iii. Allow the Plaintiff to continue to occupy and operate the Building pursuant to the terms of the 1999 Agreement, until such further Order from this Honourable Court.
- o. In the alternative, a Declaration that the Plaintiff is entitled to continue to access and occupy the Building pursuant to an easement, until such further Order from this Honourable Court;
  - p. In the alternative, damages for unjust enrichment in an amount to be proven at the trial of this Action;
  - q. In the alternative, an order granting the Plaintiff relief against forfeiture;
  - r. For the purposes aforesaid, and for all other purposes hereof, all proper directions, enquiries and accounts;
  - s. Solicitor and client costs on a full indemnity basis;
  - t. Any applicable Goods and Services Tax, pursuant to the terms of the *Excise Tax Act*, R.S.C. 1985, c. E-15, Part IX, and amendments thereto;
  - u. Interest on the above claimed awards, pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1; and
  - v. Such further and other relief as this Honourable Court may deem just.

**NOTICE TO THE DEFENDANTS:**

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.