

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Commercial Division)  
(Class Action)

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No. 500-06-000302-055

WILHELM B. PELLEMANS

and

MICHEL VÉZINA

**Plaintiffs**

v.

VINCENT LACROIX, et als

**Defendants**

and

PIERRE LAPORTE, C.A., et al.

**Impleaded Parties**

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**THE NORTHERN TRUST COMPANY, CANADA'S DEFENCE**

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**THE NORTHERN TRUST COMPANY, CANADA ("Northern Trust") RESPECTFULLY  
SUBMITS THE FOLLOWING:**

1. With regard to the allegations contained in paragraph 1 of Plaintiffs' Amended Motion to Institute Proceedings (the "**Motion**"), Northern Trust refers to Exhibit P-1 and denies all that is not in conformity therewith.
2. With regard to the allegations contained in paragraph 2 of the Motion, Northern Trust refers to Exhibit P-2 and denies all that is not in conformity therewith.
3. With regard to the allegations contained in paragraph 3 of the Motion, Northern Trust refers to Exhibit P-3 and denies all that is not in conformity therewith.
4. With regard to the allegations contained in paragraphs 4 and 5 of the Motion, Northern Trust refers to the Motion, without any admission whatsoever with respect to the allegations contained therein.

5. With regard to the allegations contained in paragraph 6 of the Motion, Northern Trust refers to the Motion, without any admission whatsoever with respect to the allegations contained therein, and denies that it demonstrated any incompetence, gross negligence and/or recklessness in the performance of its duties as a securities custodian for the Norbourg and Evolution Funds (collectively referred to as the "Funds").
6. With regard to the allegations contained in paragraphs 7 to 9 of the Motion, Northern Trust refers to the Motion, without any admission whatsoever with respect to the allegations contained therein.
7. With regard to the allegations contained in paragraph 10 of the Motion, Northern Trust refers to the consent and agreement regarding the collateral conditions signed by the parties on February 1 and 8, 2008 and ratified by the Court on June 6, 2008, and denies all that is not in conformity therewith.
8. Northern Trust admits the allegations contained in paragraph 11 of the Motion, but ignores the accuracy of Exhibit P-9.
9. With regard to the allegations contained in paragraph 12 of the Motion, Northern Trust refers to Exhibit P-10 and denies all that is not in conformity therewith.
10. With regard to the allegations contained in paragraphs 13 of the Motion, Northern Trust refers to Exhibits P-11 and P-12, without any admission whatsoever with respect to the allegations contained therein, and denies all that is not in conformity therewith.
11. Northern Trust need not reply to argument contained in paragraphs 14 and 15 of the Motion.
12. With regard to the allegations contained in paragraph 16 of the Motion, Northern Trust refers to Exhibit P-87 and denies all that is not in conformity therewith.
13. Northern Trust admits the allegations contained in paragraph 17 of the Motion.
14. Northern Trust ignores the allegations contained in paragraph 18 of the Motion.
15. Northern Trust admits the allegations contained in paragraphs 19 to 21 of the Motion but ignores the accuracy of Exhibit P-15.
16. Northern Trust ignores the allegations contained in paragraph 22 to 28 of the Motion.
17. With regard to the allegations contained in paragraph 29 of the Motion, Northern Trust refers this Honourable Court to Exhibit P-18, without any admission whatsoever with respect to the allegations contained therein, and denies all that is not in conformity therewith.
18. Northern Trust ignores the allegations contained in paragraphs 30 to 39 of the Motion.

19. With regard to the allegations contained in paragraph 40 of the Motion, Northern Trust admits that David Simoneau was the only employee of the Norbourg Group, other than Vincent Lacroix, who could ask Northern Trust to transfer securities under its safekeeping as of July 1, 2002 until January 1, 2005, at which time David Cloutier and Jean Cholette were added and authorized to co-sign instructions to Northern Trust, as appears from the copies of the Norbourg Gestion d'Actifs/Norbourg Asset Management (formerly Norbourg Services Financiers/Norbourg Financial Services) ("NGA") delegations of authority communicated herewith *en liasse* as **Exhibit ND-1**.
20. Northern Trust ignores the allegations contained in paragraph 41 of the Motion.
21. With regard to the allegations contained in paragraph 42 of the Motion, Northern Trust refers this Honourable Court to Exhibit P-24, without any admission whatsoever with respect to the allegations contained therein, and denies all that is not in conformity therewith.
22. Northern Trust ignores the allegations contained in paragraphs 43 and 44 of the Motion.
23. Northern Trust ignores the allegations contained in paragraphs 45 and 46 of the Motion.
24. With respect to the allegations contained in paragraph 47 of the Motion, Northern Trust admits it was acting as custodian of the assets held by the Norbourg Funds, as well as acting as custodian of the assets held by the Evolution Funds and appearing in the Northern Trust monthly reports, which assets were transitioned to Northern trust over a period of several months, beginning on April 1, 2004.
25. Northern Trust denies the allegations contained in paragraphs 48 to 50 of the Motion.
26. Northern Trust admits the allegations contained in paragraphs 51 and 52 of the Motion.
27. With regard to the allegations contained in paragraph 53 of the Motion, Northern Trust denies it was negligent but admits that the AMF did not fulfill its role as a regulator over the Norbourg entities.
28. Northern Trust ignores the allegations contained in paragraphs 54 to 56 of the Motion.
29. Northern Trust admits the allegations contained in paragraph 57 of the Motion.
30. With regard to the allegations contained in paragraph 58 of the Motion, Northern Trust refers this Honourable Court to Exhibit P-27, without any admission whatsoever with regards to the content thereof, and denies all that is not in conformity therewith.
31. Northern Trust admits the allegations contained in paragraphs 59 and 60 of the Motion adding however that Exhibit P-28 is incomplete.
32. With regard to the allegations contained in paragraph 61 of the Motion, Northern Trust refers this Honourable Court to Exhibit P-29, which speaks for itself, without any admission whatsoever with regards to the content thereof.

33. Northern Trust admits the allegations contained in paragraphs 62 to 64 of the Motion.
34. Northern Trust ignores when the fraud began as alleged in paragraph 65 of the Motion and denies the qualification of the withdrawals as "irregular".
35. Northern Trust ignores the allegations contained in paragraph 66 of the Motion adding that the ECH01 account is not a Norbourg or Evolution Fund.
36. Northern Trust ignores the allegations contained in paragraph 67 of the Motion.
37. Northern Trust ignores at this time the allegations contained in paragraphs 68 and 69 of the Motion.
38. With regard to the allegations contained in paragraph 70 of the Motion, Northern Trust refers this Honourable Court to Exhibit P-32, denies all that is not in conformity therewith and denies the qualification of the withdrawals listed in exhibit P-32 (the "Withdrawals") as "irregular".
39. Northern Trust ignores at this time the allegations contained in paragraph 71 of the Motion.
40. Northern Trust admits the allegations contained in paragraph 72 of the Motion.
41. Northern Trust ignores the allegations contained in paragraphs 73 to 80 of the Motion.
42. Northern Trust denies as drafted the allegations contained in paragraph 81 of the Motion, adding that the Withdrawals were all made in accordance with the instructions given by an authorized signatory.
43. Northern Trust ignores the allegations contained in paragraph 82 of the Motion with the exception that it is aware that false Northern Trust reports were produced by the Norbourg Group.
44. Northern Trust ignores the allegations contained in paragraphs 83 to 85 of the Motion.
45. With regard to the allegations contained in paragraph 86 of the Motion, Northern Trust denies that the Withdrawals from Northern Trust were "irregular" and ignores the balance of the allegations.
46. Northern Trust ignores the allegations contained in paragraph 87 of the Motion, adding that the Hedgevest Fund ECH01 is not a Norbourg or Evolution Fund and is therefore not a part of these class action proceedings and reiterates that the Withdrawals from Northern Trust were not "irregular".
47. Northern Trust ignores at this time the allegations contained in paragraphs 88 to 99 of the Motion.
48. Northern Trust admits the allegations contained in paragraphs 100 and 101 of the Motion.

49. Northern Trust ignores at this time the allegations contained in paragraphs 102 to 106 of the Motion.
50. Northern Trust ignores the allegations contained in paragraphs 107 to 112 of the Motion.
51. Northern Trust ignores the allegations contained in paragraph 113 of the Motion and denies that the transfer instructions were illegal from Northern Trust's point of view.
52. Northern Trust ignores the allegations contained in paragraphs 114 to 159 of the Motion.
53. With respect to the allegations contained in paragraph 160 of the Motion, Northern Trust refers this Honourable Court to the Custodian Agreements filed as Exhibits P-87 and P-88 (the "Custodian Agreements") and denies all that is not in conformity therewith.
54. With regard to the allegations contained in paragraph 161 of the Motion, Northern Trust refers this Honourable Court to *Regulation 81-102 Mutual Funds* and denies all that is not in conformity therewith.
55. Northern Trust denies as drafted the allegations contained in paragraph 162 of the Motion.
56. With regard to the allegations contained in paragraph 163 of the Motion, Northern Trust refers this Honourable Court to the Civil Code of Quebec and denies all that is not in conformity therewith.
57. With regard to the allegations contained in paragraphs 164 to 166 of the Motion, Northern Trust refers this Honourable Court to *National Instrument 81-102 Mutual Funds* and denies all that is not in conformity therewith.
58. Northern Trust denies the allegations contained in paragraphs 167 to 169 of the Motion.
59. With regard to the allegations contained in paragraphs 170 and 171 of the Motion, Northern Trust refers this Honourable Court to the Custodian Agreements and denies all that is not in conformity therewith.
60. Northern Trust denies as drafted the allegations contained in paragraph 172 of the Motion adding that the number of the Funds under custody in April 2004 increased but that the nature of the contractual relationship did not change.
61. Northern Trust denies the allegations contained in paragraphs 173 and 174 of the Motion.
62. Northern Trust denies the allegations contained in paragraphs 175 and 176 of the Motion.
63. Northern Trust admits, in part, the allegations contained in paragraph 177 of the Motion, adding, however, that as of January 1, 2005, Jean Cholette and David Cloutier were authorized to co-sign as signatories for the Norbourg and Evolutions Funds, the whole as more fully appears from a Exhibit ND-1.

64. Northern Trust denies the allegations contained in paragraphs 178 to 203 of the Motion.
65. Northern Trust admits the allegations contained in paragraphs 204 to 206 of the Motion.
66. With regard to the allegations contained in paragraphs 207 and 208 of the Motion, Northern Trust refers this Honourable Court to the *Act respecting the autorité des marchés financiers* and denies all that is not in conformity therewith.
67. With regard to the allegations contained in paragraphs 209 to 214 of the Motion, Northern refers this Honourable Court to the legislation governing the AMF, and denies all that is not in conformity therewith.
68. Northern Trust ignores the allegations contained in paragraphs 215 and 216 of the Motion.
69. With regard to the allegations contained in paragraph 217 of the Motion, Northern refers this Honourable Court to the legislation governing the AMF, and denies all that is not in conformity therewith.
70. Northern Trust ignores the allegations contained in paragraphs 218 to 309 of the Motion.
71. With regards to paragraph 310 of the Motion, Northern Trust denies the allegations concerning Northern Trust and ignores the balanced of the allegations.
72. Northern Trust ignores the allegations contained in paragraphs 311 to 313 of the Motion.
73. With regard to the allegations contained in paragraph 314 of the Motion, Northern Trust refers this Honourable Court to Exhibit P-35 and denies all that is not in conformity therewith.
74. Northern Trust ignores the allegations contained in paragraphs 315 to 323 of the Motion.
75. With regard to the allegations contained in paragraph 324 of the Motion, Northern Trust admits that it was acting as custodian of the assets held by the Evolution Funds, which assets were transitioned to Northern Trust by Trust Banque Nationale over a period of several months, beginning on April 1, 2004, and ignores the rest of the allegations contained in the said paragraph.
76. Northern Trust ignores the allegations contained in paragraphs 325 to 356 of the Motion.
77. With regard to the allegations contained paragraph 357 of the Motion, Northern Trust prays act of the implied admission that the members of the class are bound by the choice of law clauses contained in the contracts to which the Defendants are party, refers to Article 1260 *CCQ*, and denies all that is not in conformity therewith.
78. With regard to the allegations contained in paragraphs 358 to 360 of the Motion, Northern Trust refers to Articles 1278, 1308 and 1309 *CCQ*, and denies all that is not in conformity therewith.

79. With regard to the allegations contained in paragraphs 361 to 363 of the Motion, Northern Trust refers to the *Civil Code of Quebec* and denies all that is not in conformity therewith.
80. Northern Trust ignores the allegations contained in paragraphs 364 to 369 of the Motion.
81. With regard to the allegations contained in paragraph 370 of the Motion, Northern Trust admits that it was acting as custodian of the assets held by the Evolution Funds, which assets were transitioned to Northern Trust over a period of several months, beginning on April 1, 2004, and ignores the rest of the allegations contained in the said paragraph.
82. With regard to the allegations contained in paragraph 371 of the Motion, Northern Trust refers to Exhibit P-87 and denies as drafted the balance of the allegations contained in the said paragraph.
83. Northern Trust ignores the allegations contained in paragraphs 372 to 385 of the Motion.
84. With regard to the allegations contained in paragraph 386 of the Motion, Northern Trust refers to Exhibit P-87 and denies all that is not in conformity therewith.
85. Northern Trust ignores the allegations contained in paragraphs 387 and 388 of the Motion.
86. With regard to the allegations contained in paragraphs 389 (i) (ii) (iv) (v) and (vi) of the Motion, Northern Trust refers to the Motion and denies the allegations contained in paragraph 389 (iii) of the Motion.
87. Northern Trust ignores, at this time, the allegation contained in paragraph 390 of the Motion.
88. With regard to the allegations contained in paragraph 391 of the Motion, Northern Trust refers to Exhibit P-95 and denies all that is not in conformity therewith.

**AND FOR FURTHER PLEA, NORTHERN TRUST STATES AS FOLLOWS:**

**I. INTRODUCTION**

89. Northern Trust is a trust company founded in 1994 and is a leading provider of global custody and related services to corporations and institutions in Canada.
90. Northern Trust became the first foreign-owned trust company to be granted full trust powers in Canada. The Northern Trust Company ("NTC"), Northern Trust's parent company, is a Chicago-based bank that has been operating since 1889.
91. It is important to clarify what is a fundamental misunderstanding in the allegations contained in the Motion with regard to the role and obligations of Northern Trust as custodian of the Funds.

92. Northern Trust's role, pursuant to the Custodian Agreements, was to hold the assets of the Funds in custody and execute the instructions of the investment advisor, NGA, against actual cash and securities holdings held by the Funds and to report the adjustments to NGA and any other entity as instructed by NGA.
93. Northern Trust did not provide the services of trustee, investment advisor nor fund accountant for the Funds at any time. As such, Northern Trust did not have the obligation to oversee the management of the Funds nor was Northern Trust privy to investment strategy, the internal accounting at NGA or any other Norbourg entity, the identity of the investors nor any information concerning the investors .
94. Sections 1.08 and 2.03 of the Custodian Agreements specify that Northern Trust "shall have no responsibility or discretion for investment management of the securities or other property of the Funds" and that in executing the instructions of NGA Northern Trust "shall be fully protected and absolved from any and all liability" except where there is a breach of the custodian's standard of care.
95. The aforementioned sections are consistent with Section 6 of Regulation 81-102 concerning Mutual Funds, which provides for the standard of care of the custodian and allows for the indemnification of the custodian as long as it meets that standard of care.
96. There is no dispute that the investment advisor, NGA, was authorized to give instructions to Northern Trust on behalf of the Funds (Exhibits P-13, P-88 and ND-1).
97. Northern Trust respectfully submits that it is not responsible for the misappropriation of the assets by authorized investment advisor to the Funds and others after the assets of the Funds were withdrawn from Northern Trust at the direction of the authorized party.
98. Northern Trust acted in accordance with both its contractual and legal obligations and, moreover, as will be evidenced at trial, Northern Trust acted in conformity with the industry standard of care regarding custodians in Canada.

## II. ALLEGATIONS OF NEGLIGENCE

### **Allegedly "Irregular" Withdrawals**

99. The qualification of the Withdrawals from Northern Trust as "irregular" or "illegal" is misleading and incorrect. What was illegal, was the misappropriation of the Funds' assets by NGA, Lacroix and others after they were withdrawn from Northern Trust at the direction of an authorized party.
100. Northern Trust denies Plaintiffs' allegations that the Withdrawals were "irregular" and "illegal". Plaintiffs claim the withdrawals were irregular for the following reasons :
  - a. The money was transferred into "ordinary" corporate accounts, as opposed to "trust" accounts (paragraph 180 of the Motion);

- b. The money was not sent to a contracting party (paragraph 180 of the Motion);
- c. The Withdrawals were done following signed requisitions by either Vincent Lacroix or David Simoneau, without the authorization of the unit holders (paragraph 181 of the Motion);
- d. The amounts transferred were large amounts (paragraphs 183 and 184 of the Motion); and
- e. The amounts transferred were even numbered amounts (paragraphs 183 and 184 of the Motion).

**a. Corporate vs. Trust Accounts**

- 101. Northern Trust did not have the contractual or legal obligation to ensure that transfers of Fund assets be sent to a "trust account" nor did it possess any information that would allow it to identify a bank account as a "trust" account.
- 102. Moreover, Plaintiffs' contention that a custodian must ensure compliance by the Norbourg Group with Regulation 81-102 is baseless. The AMF alone has the obligation and authority to ensure compliance with provincial securities laws and regulations by licensed investment advisors or managers in the province of Quebec.
- 103. As will be evidenced at trial, industry practice does not support Plaintiffs' contention that a custodian must ensure that the withdrawals are transferred to accounts maintained as "trust accounts" internally by its clients.

**b. Beneficiary of Transfers**

- 104. Northern Trust did not have the contractual or legal obligation to ensure that transfers of Fund assets be sent to only NGA or Placements Norbourg ("PN").
- 105. As will be evidenced at trial, industry practice does not support Plaintiffs' contention that the custodian must only transfer assets of the Funds to the party with whom it contracts.

**c. Unitholder Instructions**

- 106. The investor or unitholder of Funds has no rights over the assets held by the Funds and has no authority to provide instructions to Northern Trust.
- 107. As mentioned above, and in conformity with industry practice, Northern Trust has no knowledge of nor contact with the unitholders of the Funds.
- 108. As such, there is no basis in either contract, law or custom for the statement that Northern Trust had an obligation to obtain unitholder approval before following the instructions received from NGA, the investment advisor of the Funds.

**d. and e. Large and Even Numbered Figures**

109. As will be evidenced at trial, contrary to Plaintiffs' contentions, it is customary in the industry for withdrawals to be of different amounts, both small or substantial, even or odd numbered.
110. Indeed, large round number withdrawals are most common as the fund accountants proceed with several investor withdrawals at once, netting out the value after the amount is withdrawn.
111. In conclusion, Northern Trust submits that there was nothing irregular or illegal about the Withdrawals singled out by Plaintiffs from the thousands of transactions that took place in the Funds over a six year period.

**April 1, 2004 Custodian Agreement**

112. As will be evidenced at trial, in accordance with industry practice, Northern Trust was entitled to rely upon the representations made to it by the parties and their attorney, that Placement Norbourg Inc. was authorized to sign as trustee of the Evolution Funds.
113. Without prejudice to the foregoing, even if Placement Norbourg Inc. was not authorized to sign as trustee, which is not admitted, there are no damages resulting from the alleged incorrect designation of the trustee in the April 1, 2004 Custodian Agreement as Northern Trust received its instructions only from NGA, which was the authorized investment advisor for the Evolution Funds under the prospectus.

**Security of Data in Northern Trust Reports**

114. There is also no basis for Plaintiffs' statement that Northern Trust had an obligation to ensure that its clients cannot manipulate the data in their reports.
115. As will be evidenced at trial, it is a standard industry practice for clients to download custodial data to various investment management systems, either directly (electronically) or indirectly (CD-Roms), in order to allow said systems to report financial data to the investment managers and funds accountants, thereby enabling them to determine the daily net asset value.

**Overdrafts**

116. As will be evidenced at trial, overdrafts are a normal occurrence in a mutual fund account as trading activity and timing of same will often result in an overdraft.
117. In accordance with industry practice, in the event of an overdraft, Northern Trust's automated system advances such funds as may be necessary to cover any overdrafts as a loan and charges its clients interest thereon until it has been fully reimbursed.

**Audit confirmations**

118. Contrary to the allegation at paragraph 189 of the Motion, it is not industry best practice for a custodian to keep track of requests obtained from auditors with regards to all of its clients' assets and ensure that all clients' auditors send such requests regularly.
119. The custodian's role is limited to responding to requests for positive confirmation of assets from its clients' authorized auditors.

**III. DAMAGES**

120. Plaintiffs and the members of the class do not have any interest or standing to sue Northern Trust.
121. Subsidiarily and without prejudice to the foregoing, the damages claimed by Plaintiffs and the members of the class are wholly unsubstantiated by the evidence alleged and filed in this class action.
122. Moreover, the damages claimed by Plaintiffs and the members of the class are purely speculative and do not represent the actual loss of Plaintiffs and the members of the class further to their investment in the Funds nor take into account the actual recovery of their loss, either in whole or in part, after the indemnity paid by the AMF, the compensation received by the liquidator of the Funds and the potential recovery in the bankruptcies of Vincent Lacroix and the various Norbourg entities.

**IV. CONCLUSION**

123. In conclusion, Northern Trust acted in accordance with its contract, the law and the standard of care applicable to custodians in the safekeeping of the assets held by the Funds.
124. Northern Trust respectfully submits that it is not responsible for the misappropriation of the assets by authorized investment advisors to the Funds and others after the assets of the Funds were withdrawn from Northern Trust at the direction of an authorized party.
125. The present Defence is well founded in fact and in law.

**WHEREFORE MAY IT PLEASE THIS HONOURABLE COURT TO:**

**DISMISS** the action by Plaintiffs and the members of the class as against The Northern Trust Company, Canada;

THE WHOLE with costs, including the costs of experts, against Plaintiffs.

Montreal, June 30, 2008

(SGD) Osler, Hoskin & Harcourt LLP

**TRUE COPY**

Osler, Hoskin & Harcourt LLP  
Osler, Hoskin & Harcourt LLP

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**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for Defendant  
The Northern Trust Company, Canada

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**THE NORTHERN TRUST COMPANY,  
CANADA'S DEFENCE**

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