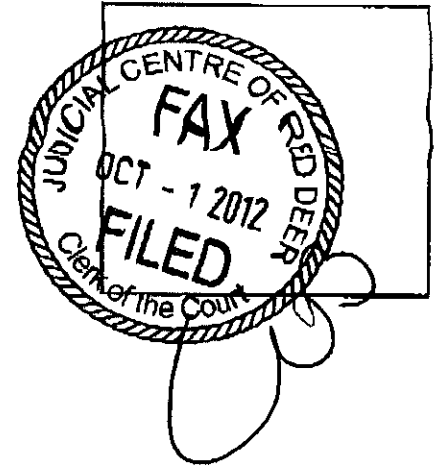


FORM 10  
(RULE 3.25)



COURT FILE NUMBER 1210001029

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE

RED DEER

PLAINTIFFS

Allan Rue and David Jamieson

DEFENDANTS

Assante Wealth Management (Canada) Ltd.,  
Assante Capital Management Ltd., Brian Malley  
and Christine Malley

DOCUMENT

Brought under the *Class Proceedings Act*  
STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

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**NOTICE TO DEFENDANTS**

You are being sued. You are defendants.  
Go to the end of this document to see what you  
can do and when you must do it.

**Statement of facts relied on:**

**The Parties**

1. The Plaintiff, Allan Rue, is an individual resident in the Town of Vermillion, in the Province of Alberta. Mr. Rue is retired.

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2. The Plaintiff, David Jamieson, is an individual resident in the City of Calgary, in the Province of Alberta. Mr. Jamieson is retired.
3. The Defendant, Assante Wealth Management (Canada) Ltd. ("Assante Wealth"), is a federal corporation duly incorporated pursuant to the laws of Canada and Extra-Provincially registered in Alberta. Assante Wealth carries on business in Alberta and throughout Canada.
4. Assante Wealth holds itself out as a leading provider of Integrated wealth management solutions designed to meet the needs and goals of individuals, families and businesses across Canada.
5. Assante Wealth provided financial and wealth management services to the plaintiff class members through the Defendant Assante Capital Management Ltd.
6. The Defendant Assante Capital Management Ltd. ("Assante Capital") is a federal corporation duly incorporated pursuant to the laws of Canada and extra-provincially registered in Alberta. It carries on business in Alberta and elsewhere as a provider of investment advisory services.
7. Assante Capital holds itself out as a member of the Investment Industry Regulatory Organization of Canada ("IIROC"), the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. Assante Capital investment advisors are licensed to sell equity securities, bonds, mutual funds GICs and other securities.
8. Assante Wealth, Assante Capital and Assante Canada shall be collectively referred to herein as Assante.
9. The Defendant Brian Malley is an individual whose last known residence was the Town of Innisfail, in the Province of Alberta.

10. At all material times, Brian Malley was employed by Assante Wealth or Assante Capital or both as an investment advisor to clients of Assante. In the alternative, Brian Malley was an agent of Assante for the purpose of representing Assante and providing investment advice and services to clients of Assante. In the further alternative, Brian Malley was an Independent contractor providing investment advice and services to clients of Assante under the supervision and direction of Assante.
11. At all material times, Brian Malley was subject to the policies, procedures and practices of Assante and Assante had a duty to ensure that Brian Malley was following its policies, procedures and practices.
12. The Defendant Christine Malley is an individual whose last known residence was the Town of Innisfail, in the Province of Alberta. At all material times Christine Malley was employed by Assante Wealth or Assante Capital or both as a manager with oversight over the dealings of Brian Malley. In the alternative, Christine Malley was an agent of Assante for the purpose of representing Assante and providing supervision and oversight over the dealings of Brian Malley. In the further alternative, Christine Malley was an Independent contractor, under the direction and supervision of Assante, providing supervision and oversight over the dealings of Brian Malley for Assante.
13. Brian Malley and Christine Malley are husband and wife.

#### Overview

14. This claim is brought by the representative plaintiffs who, along with all of the class members, sought to save and manage their earnings by utilizing the services of Assante. The class members relied on the representations of Assante that it was a leader in integrated wealth management solutions and that it could provide services tailored to the individual needs of each class member to preserve and grow their savings. The class members further relied on the advice and direction of their investment advisor from Assante, Brian Malley.

15. The class members fell victim to Brian Malley who disregarded the stated investment goals of the class members, who engaged in a one-size fits all investment strategy for the class members that was wholly unsuitable for the investors and who acted in his own best interests which were in conflict with the interests of his client class members. Brian Malley systematically failed to obtain the informed consent of class members with respect to the transactions and risks undertaken on behalf of the class members. He further disregarded specific investment instructions received from class members in order to pursue his own investment strategy that was wholly unsuitable for the class members.
16. Brian Malley advised the class members and implemented his investment strategy in contravention of Assante's policies, procedures and practices and in violation of applicable regulatory standards to which he was subject.
17. Assante failed to supervise Brian Malley to ensure that Brian Malley was acting in accordance with applicable regulatory requirements as well as with Assante's own policies, practices and procedures.
18. Brian Malley is accused of the first-degree murder of one of Assante's clients for whom he acted as investment advisor. Brian Malley and Assante had been hired to manage the funds the client had received following an accident that had rendered her a paraplegic confined to a wheelchair. When that investor/client started asking questions of Brian Malley about the losses in her investment account, Brian Malley sent her a bomb in a package that exploded, killing her.
19. Following the arrest of Brian Malley for the first degree murder of the Assante client to whom he provided services, Assante failed to reassign the investor accounts that had been managed by Brian Malley and completely disregarded the class members allowing the investment accounts to incur further losses. In the alternative, Assante did reassign the investment accounts but the new investment advisor took no steps to evaluate or

otherwise provide any management of the investor accounts thereby resulting in further losses to the class members.

### **The Class**

20. The Plaintiffs brings this Action on their own behalf and on behalf of all clients of Assante whose investment accounts were under the management and direction of Brian Malley, excluding the named Defendants (the "Class" or "Class members").

### **The Improper Investment Scheme**

21. Brian Malley was registered with and governed by IIROC. As a registered member of IIROC, Brian Malley was required to:
- (a) Follow suitability and know your client rules so that he would be familiar with every client's financial situation, investment knowledge and objectives and tolerance for risks;
  - (b) Understand the products he was selling including being aware of the risks of all securities before proceeding with a transaction;
  - (c) Work under the supervision of a firm which would supervise his activities and the activity in client accounts; and
  - (d) Such further and other requirements as may be proved at the Trial of this Action.
22. Brian Malley owed a duty of care to the class members to manage their investment accounts in accordance with their risk tolerances, investment objectives and stated instructions.
23. Upon the class members becoming clients of Brian Malley, a contract was formed between class members and Brian Malley. It was a term of the contract between the class members and Brian Malley, express or implied, that Brian Malley would manage

the class members' investment accounts in accordance with their risk tolerances, investment objectives and stated instructions.

24. Brian Malley breached his IROC obligations, breached his duty of care to the class members and breached his contract with the class members, some of the particulars of which include:

- (a) Failing to obtain know your client information or, where he did obtain know your client information, failing to implement an investment strategy appropriate for the class members;
- (b) Failing to diligently determine class members' investment needs and objectives and to update that information as necessary to ensure it remained current;
- (c) Providing incomplete know your client forms to class members for signature, advising them he would "fill the rest of the form in later," at which time he would falsify the information on the form to facilitate an investment scheme designed to benefit him personally without regard to the suitability of the investment for the class members;
- (d) Failing to ensure the suitability of the financial advice provided to class members;
- (e) Failing to explain to class members the risks associated with each of the investments considered for their accounts and to procure the informed consent of class members with respect to transactions carried out on their behalf;
- (f) Investing and over-investing in equities and other instruments with high to very high risk profiles in violation of the class members' investment objectives and risk tolerances;
- (g) Engaging in excessive trading of securities, including the buying and selling of the same securities over and over in a short period of time, for the purpose of

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generating commissions and without regard to the appropriateness of such trades for the class members;

- (h) Overinvesting his clients in particular securities including Andover Mining Corp. and Petrostar Petroleum Corporation in violation of Assante rules and regulations limiting the percentage of ownership of a single security within a particular investment advisor's portfolio and utilizing his control over a large block of the securities to manipulate the price of the securities for his own benefit and for the benefit of his wife, the Defendant Christine Malley;
- (i) Falsely attributing investment purchases or trades as "unsolicited" when in fact the purchases or trades were made by Brian Malley exercising his discretion without the knowledge or consent of the class members;
- (j) Opening margin accounts and trading in margin accounts without the knowledge or consent of the class members;
- (k) Failing to provide to class members a fair and objective presentation or any information about the costs and risks associated with the use of borrowed funds for investment purposes;
- (l) Failing to advise class members that they should not be relying on the growth in their investment portfolios to make payments on loans obtained for the purpose of investing and that no matter whether the investment portfolio increased or decreased in value, the loan would have to be repaid;
- (m) Failing to disclose all conflicts of interest;
- (n) Failing to ensure the interests of the class members were given precedence over his own interests; and
- (o) Such further and other breaches as may be proved at the Trial of this Action.

25. In further breach of his duty of care and in breach of his contract with the class members, Brian Malley enticed and persuaded class members to borrow money in order to increase the size of the investments accounts managed by Brian Malley and Assante thereby increasing the commissions and other compensation generated for the Benefit of Brian Malley and Assante at the expense of the class members.
26. Brian Malley encouraged class members to borrow funds to invest without regard to the suitability of such a strategy for any of the class members' investment objectives.
27. In order to convince the class members to borrow money to invest with him, Brian Malley made false misrepresentations that the returns on the investments purchased with borrowed money would pay the interest and other expenses associated with loans and that the returns generated through the investments would generate enough money to pay back the loans taken out by class members. These representations were false and were made for the purpose of enticing class members to increase their investments for the benefit of Brian Malley and Assante.
28. The class members relied on Brian Malley's representations and suffered losses associated with the debt including interest and other charges as well as the increased exposure to risky investments that were inappropriate for the class members given their financial situation and investment objectives.
29. As a result of the breaches of duties owed by Brian Malley to the class members and the breaches of contract between the class members and Brian Malley, the class members suffered losses including losses associated with commissions paid on improper or excessive transactions, interest charges, borrowing costs and losses to their investment portfolios that would not have been incurred but for the said breaches by Brian Malley.

#### **Breach of Fiduciary Duties**

30. The class members entrusted the management of their savings to Brian Malley and he therefore occupied the position of a fiduciary in relation to the class members. The



class members were vulnerable by virtue of the fact that they gave Assante and Brian Malley control over their savings in order to preserve and grow their savings.

31. Brian Malley exercised his position and influence as an investment advisor to the class members by providing documents to class members for signature knowing which documents and which portions of such documents they should read before they undertook commitments, and he exercised his discretion not to identify those documents and/or portions of documents that explained to the class members their actual or potential risks and obligations. Further he accepted the signatures of class members with the knowledge that the class members would be assuming risks and obligations that they had not been informed about and did not understand.
32. Brian Malley had discretion over the investment accounts entrusted to him by the class members. He exercised his discretion to recommend lenders and products that were calculated to generate the most benefit to him personally without considering whether the recommendations were the most suitable for the class members.
33. Furthermore, Brian Malley had discretion to recommend and implement investment strategies for the class members and he pursued only those investment strategies that he calculated would provide the most benefit to him personally, without considering whether such strategies were the most suitable for the class members.
34. Brian Malley had a fiduciary obligation to act in the best interests of the class members including an obligation not to subordinate the interests of the class members to his own interests.
35. Brian Malley breached his fiduciary obligations to the class members some of the particulars of which include:
  - (a) Failing to obtain know your client information in order to identify the interests of the class members;
  - (b) Engaging in excessive buying and selling of securities in class member accounts;

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- (c) Using class member investment accounts to purchase securities in which Brian Malley had a personal financial interest;
  - (d) Placing his own financial interests over and above those of the class members' interests;
  - (e) Using the discretion at his disposal to manipulate share prices for his own benefit;
  - (f) Disregarding the express instructions provided by class members; and
  - (g) Such further and other breaches of his fiduciary duties as may be proved at the Trial of this Action.
36. As a result of the breaches of fiduciary duties owed by Brian Malley to the class members, the class members suffered losses including losses associated with commissions paid on improper or excessive transactions, interest charges, borrowing costs and losses to their investment portfolios that would not have been incurred but for the breaches of duties owed by Brian Malley.

#### **Christine Malley's Conflict of Interest and Failure to Monitor**

37. At all material times, Christine Malley was employed by Assante as an office or branch manager. In the alternative, Christine Malley was an independent contractor or acted as Assante's agent in the role of office or branch manager for Assante. One of her duties was to supervise the investment advisors working out of the branch to ensure their compliance with Assante policies, practices and procedures.
38. Christine Malley was assigned supervisory duties over Brian Malley. Christine and Brian Malley are husband and wife.
39. As the Assante employee charged with supervisory duties over the investment advisor handling the accounts of the class members, Christine Malley owed a duty of care to the

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class members to properly and diligently supervise the handling of their accounts. Christine Malley breached that duty of care and completely failed in her duties or ignored her duties and allowed Brian Malley to act in a manner contrary to the best interests of the class members. Some of the particulars of the breaches of duty to the class members include:

- (a) Failing to properly supervise or supervise Brian Malley's investment accounts at all;
- (b) Failing to report violations of Assante policies, practices and procedures to her superiors within Assante;
- (c) Failing to report regulatory violations to her superiors within Assante;
- (d) Working in concert with Brian Malley for her own benefit and the benefit of Brian Malley to the detriment of the class members;
- (e) Such further and other breaches of the duties owed to the class members as may be proved at the Trial of this Action.

40. Furthermore, Christine Malley was in a conflict of interest in that she had a financial interest in Andover Mining Corp., a company that Brian Malley heavily invested the class members in without regard to the suitability of that investment for the class members.

41. In the days following her husband's arrest for the first-degree murder of one of his clients, Christine Malley sold 700,000 shares in Andover Mining Corp worth approximately \$300,000.00.

42. In the days following her husband's arrest, Christine Malley was contacted by members of class regarding their investment accounts. Christine advised class members that everything was fine, it would be resolved and that it was business as usual. These actions resulted in the class members remaining in unsuitable investments with

exposure to losses when they should have been moved into *safer investments in line* with their actual investment objectives.

43. The breaches of duties owed to the class members by Christine Malley and the conflict of interest that Christine Malley was in caused or contributed to the losses sustained by the class members, which losses include a reduction in the value of their investment accounts, commissions paid on improper or excessive transactions, interest and other charges associated with money borrowed on the advice and direction of Brian Malley.

#### **Assante's Vicarious Liability**

44. Assante is vicariously liable for the losses incurred as a result of the conflict of interest that Brian Malley was in and as a result of the breaches of contract and breaches of the duty of care and fiduciary duties owed to the class members by Brian Malley.
45. Assante is vicariously liable for the losses incurred as a result of the conflict of interest that Christine Malley was in and the breaches of duty of care owed to the class members by Christine Malley.

#### **Assante's Direct Liability**

46. At all material times, Assante owed a duty of care to the class members to supervise their accounts and ensure that Assante policies, procedures and practices that were in place to protect investors such as the class members were being followed.
47. Upon becoming clients of Assante, a contract was formed between Assante and the class members. It was a term of the contract between Assante and the class members, express or implied, that Assante would have in place policies, procedures and practices to ensure oversight of its investment advisors and that it would require all of its investment advisors to adhere to its practices, policies and procedures.
48. Assante breached its duty of care and contractual duties owed to the class members, some of the particulars of which include:

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- (a) Failing to establish, implement and enforce adequate policies, practices and procedures to ensure that Assante investment advisors have properly assessed the suitability of particular investments or investment strategies for class members having regard to the relevant criteria such as the risk tolerance, age, investment knowledge and experience and the investment objectives of the individual class members;
- (b) Delegating some or all of the supervisory functions of Assante over its investment advisor Brian Malley to Brian Malley's wife;
- (c) Ignoring numerous warning signs of improper investment practices engaged in by Brian Malley on behalf of class members including the high volume of supposed unsolicited trades by class members in the same equities, particularly in Andover Mining Corp. and the excessive trading in securities within class member accounts;
- (d) Ignoring unusual trades or trading patterns in investor accounts;
- (e) Failing to detect and make inquiries into investment practices engaged in by Brian Malley on behalf of class members that conflicted with the policies, procedures and practices of Assante;
- (f) Failing to have proper procedures and safeguards in place to ensure that Assante's policies, practices and procedures were followed by Brian Malley;
- (g) Upon the arrest of Brian Malley for the first-degree murder of one of Assante's clients, failure to handle the class member accounts appropriately or at all;
- (h) Failing to monitor and take steps to preserve assets in the class members' accounts following the arrest of Brian Malley;
- (i) Such further and other breaches of contract and breaches of duty of care as may be proved at the Trial of this Action.

49. As a result of the breaches of duties owed by Assante to the class members and the breaches of contract between the class members and Assante, the class members suffered losses including losses associated with commissions paid on improper or excessive transactions, interest charges, borrowing costs and losses to their investment portfolios that would not have been incurred but for the said breaches by Assante.

#### General Damages

50. Assante and Brian Malley held themselves out to the class members as capable of protecting and increasing the investments and retirement funds belonging to the class members.
51. Assante and Brian Malley were offering peace of mind to the class members with respect to their investments, some of the particulars of which include:
- (a) Stating that their mission is to create wealth and prosperity for Canadian families;
  - (b) Stating that ensuring the security of assets entrusted to them by clients is a key priority;
  - (c) Representing to the class members that their investments and retirement savings will be safe;
  - (d) Representing to the class members that their investments and retirement savings will grow to provide a comfortable retirement fund;
  - (e) Such further and other representations regarding the peace of mind offered to the class members by Assante and Brian Malley.
52. When the class members entered into the contract with Assante and with Brian Malley it was a contract that was to provide, in part, peace of mind to the class members. The breaches of contract as set out herein destroyed that peace of mind that the class

members had bargained for and caused the class members severe and ongoing mental distress, anguish and hardship.

53. Furthermore, the breaches of the duty of care owed to the class members by Assante and Brain Malley destroyed the peace of mind that the class members ought to have enjoyed had the breaches not occurred. The breaches of the duties owed to the class members caused the class members severe and ongoing mental distress, anguish and hardship.

#### **Punitive Damages**

54. The conduct of the Defendants, and each of them, merit punitive damages in that the conduct constituted high-handed, malicious and highly reprehensible conduct that departs to a marked degree from the standards expected of financial advisors, investment firms and their employees, agents or contractors.

#### **A Class Proceeding Is Appropriate**

55. The allegations regarding breaches of duties owed to the class members and breaches of contract are common to all of the claims of the proposed class members. Determination of the nature and extent of the duties owed and the terms of the alleged contract are common to all of the claims made.
56. Furthermore, whether the actions of the Defendants merit an award of punitive damages is a common issue that can be determined on a common basis.
57. A determination of the common issues will substantially advance the proceedings even though some issues relating to individual assessment of damages may remain to be determined.
58. Individual class members as individuals cannot match the resources of Assante and its representatives. The individual claims of each class member would not be economical to pursue individually. The Class Members would be denied access to justice in the absence

of a class proceeding. This is especially so given that much of the financial resources otherwise available to the class members has been lost as a result of the actions of the Defendants.

59. It is unlikely that an individual could or would seek prospective relief to deter future misconduct by Assante. Assante is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on its policies, procedures and practices. This class proceeding will impact Assante such that it will have to ensure that its policies, procedures and practices are sufficient to protect its clients.
60. The Representative Plaintiffs and Class Members propose that the Trial of the common Issues take place at the Court House in the City of Red Deer, in the Province of Alberta.
61. The Representative Plaintiffs and Class Members plead and rely on the *Class Proceedings Act, SA 2003, c C-16.5* and the *Alberta Rules Of Court, Alta Reg 124/2010*.

**Remedy sought:**

62. The Representative Plaintiffs and Class Members Seek:
- (a) An order certifying this action as a class proceeding and appointing the Plaintiffs as the representatives of a class to be certified by the Court;
  - (b) Damages for losses suffered by the class members in the sum of \$50,000,000.00 or such other amount as may be proven at trial;
  - (c) General damages for the class members in the sum of \$20,000,000.00 or such other amount as may be proven at trial;
  - (d) Punitive damages against Assante and Brian Malley in the amount of \$10,000,000.00 each or such other amount as the Court may deem appropriate in the circumstances;



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- (e) An order, pursuant to s. 30 of the *Class Proceedings Act*, R.S.A. 2003, C. C-16.5 directing an aggregate monetary award;
- (f) An order, pursuant to s. 32 of the *Class Proceedings Act*, R.S.A. 2003, C. C-16.5 allowing for the use of standard claim forms or other documentary evidence or such other procedure as warranted under the circumstances;
- (g) An order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- (h) Pre-judgment and post-judgment interest;
- (i) The costs of this action on a substantial indemnity basis;
- (j) The costs of administering the plan of distribution of the recovery in this action; and
- (k) Such further and other relief as may be required and as this Honourable Court deems to be 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 RED DEER, 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.