

Court of Appeal File No.: C56991
Court File No.: 05-CV-287556CP

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,
JEAN PAUL MARENTETTE, GARRY C. YIP, LOUIE NUSPL,
SUSAN HENDERSON and LIN YEOMANS

Plaintiffs
(Respondents)

- and -

THE CANADA LIFE ASSURANCE COMPANY,
A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT

Defendants
(Appellant)

Proceeding under the *Class Proceedings Act, 1992*

APPEAL BOOK AND COMPENDIUM

VOLUME I OF II

May 24, 2013

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Court of Appeal File No. _____
Court File No. 05-CV-287556CP

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,
JEAN PAUL MARENTETTE, GARRY C. YIP, LOUIE NUSPL, SUSAN HENDERSON
and LIN YEOMANS

Plaintiffs (Respondents)

- and -

THE CANADA LIFE ASSURANCE COMPANY,
A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT

Defendants (Appellants)

Proceeding under the Class Proceedings Act, 1992

NOTICE OF APPEAL

THE CANADA LIFE ASSURANCE COMPANY APPEALS to the Court of Appeal from the Order of Justice Perell dated March 28, 2013, made at Toronto.

THE APPELLANT ASKS that the Order be set aside and an Order be granted substantially in the form attached hereto as Schedule "A" approving the amendment to the settlement herein and varying the Judgment of Justice Perell dated January 27, 2012 (the "Judgment").

THE GROUNDS OF APPEAL are as follows:

- (a) Having found the original settlement to be fair, the Motions Judge erred in dismissing the motion despite having concluded that the Judgment if varied would be more favourable to the Class than the original settlement, and preferable to litigation.

- (b) The Motions Judge erred in finding that the original settlement which he approved on January 27, 2012 is unfair today when that issue was not before him and the only issue was whether the amendment to the Judgment approving the original settlement was fair, reasonable and in the best interests of class members.
- (c) The Motions Judge erred in devising a new test to approve a proposed class action settlement (or an amendment to an approved settlement) which significantly elevates the standard and scope of the test for such approval.
- (d) The Motions Judge erred in considering the fairness of the proposed amendment to the approved settlement in the abstract rather than in the context of the available alternatives.
- (e) The Motions Judge erred in failing to accord appropriate weight to the factors relevant to the determination of the fairness and reasonableness of a proposed class action settlement and whether the settlement is in the best interest of the class members including (a) the amount and nature of discovery, evidence or investigation; (b) recommendation and experience of counsel; (c) recommendation of neutral parties, if any; (d) the presence of good faith, arm's length bargaining and the absence of collusion; and (e) information conveying to the Court the dynamics of and the positions taken by the parties during the negotiation; (f) the settlement terms and conditions; (g) likelihood of recovery or likelihood of success; and (h) future expenses and likely duration of litigation and risk.
- (f) The Motions Judge erred in considering irrelevant factors including the alleged "moral duty" or "moral responsibility" of the Appellant to more fully share in the class members' disappointment.
- (g) The Motions Judge erred in giving undue weight to the number of objectors and the disappointment of objectors in the size of the pension surplus to be distributed.

- (h) The Motions Judge erred in failing to give any weight or sufficient weight to the best interests of members of the Class who were not members of the Integration Partial Wind-Up sub-class.
- (i) The Motions Judge erred in finding that the proposed amendment to the settlement was substantively, circumstantially and institutionally unfair.
- (j) The Motions Judge further erred in describing the settlement as procedurally unfair where the Motions Judge supervised, presided over, and approved all preceding procedural steps and notices to Class members in the matter.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS that the Order is final and an appeal lies to this Court pursuant to section 6(1)(b) of the *Courts of Justice Act*. (If the Court determines otherwise, the Appellant requests an order extending the time to file a Notice of Motion for leave to appeal to the Divisional Court.)

Leave to appeal to this Honourable Court is not required.

Date: April 26, 2013

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Schedule "A"

Court File No. 05-CV-287556CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	MONDAY, THE 18TH DAY
MR. JUSTICE PERELL)	OF MARCH, 2013
)	

BETWEEN:

**DAVID KIDD, ALEXANDER HARVEY,
 JEAN PAUL MARENTETTE, LIN YEOMANS, SUSAN HENDERSON,
 GARRY C. YIP and LOUIE NUSPL**

Plaintiffs

- and -

**THE CANADA LIFE ASSURANCE COMPANY,
 A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT**

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for an order varying the Judgment herein dated January 27, 2012 (the "Settlement Approval Order") was heard this day in the presence of counsel for the Plaintiffs, counsel for The Canada Life Assurance Company, counsel for the individual Trustee defendants as well as the presence of certain objecting class members;

ON READING the Settlement Approval Order;

AND ON being advised that as a result of facts which occurred or became known after the date of the Settlement Approval Order the parties have agreed to amend the agreement

attached as Schedule "B" to the Settlement Approval Order (the "Agreement"), which amendment is dated as of February 1, 2013 (the "Surplus Sharing Agreement – Amendment #2"), a copy of which is attached as Schedule "A";

AND ON READING the affidavits of Jonathan Foreman sworn March 8, 2013, Marcus Robertson sworn March 8, 2013, Alexander Harvey sworn March 7, 2013 and Anthony Guindon sworn March 12, 2013 and hearing the submissions of counsel for the parties as well as submissions made by certain objectors;

AND ON being satisfied that the changes to be effected by Surplus Sharing Agreement – Amendment #2 are for the benefit of the Class and are fair and reasonable;

1. **THIS COURT ORDERS** that the Settlement Approval Order be and is hereby varied as of the date hereof to provide that the word "Agreement" in paragraphs 1, 2, 3, 4, 5, 6, 7, 10 and 11 of the Settlement Approval Order means the Agreement as amended by the Surplus Sharing Agreement – Amendment #2.

2. **THIS COURT FURTHER ORDERS** that paragraph 10 of the Settlement Approval Order is hereby deleted and is replaced by the following paragraph:

10. **THIS COURT FURTHER ORDERS** that should any of the conditions in paragraph 6(a)(i) of the Agreement not be satisfied, then subject to such conditions being waived by Canada Life within 60 days of becoming aware of the condition in question not being satisfied, this Judgment shall be null and void and without prejudice to the rights of the parties to proceed with this action and any agreement between the parties incorporated in this Judgment shall be deemed in any subsequent proceedings to have been made without prejudice.

DAVID KIDD et al.
Plaintiffs

- and -

THE CANADA LIFE ASSURANCE COMPANY et al.
Defendants
Court File No. 05-CV-287556CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

ORDER

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DAVID KIDD et al. - and -
Plaintiffs (Respondents)

THE CANADA LIFE ASSURANCE
COMPANY et al.
Defendants (Appellants)

Court of Appeal File No. 05-CV-287556CP
Court File No. 05-CV-287556CP

**COURT OF APPEAL
FOR ONTARIO**

Proceeding Commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF APPEAL

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ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) THURSDAY, THE 28TH
)
 JUSTICE PERELL) DAY OF MARCH, 2013

BETWEEN:

**DAVID KIDD, ALEXANDER HARVEY, JEAN PAUL MARENTETTE, LIN
 YEOMANS, SUSAN HENDERSON, GARRY C. YIP and LOUIE NUSPL**
 Plaintiffs

- and -

**THE CANADA LIFE ASSURANCE COMPANY, A.P. SYMONS, D. ALLEN
 LONEY and JAMES R. GRANT**
 Defendants

Proceeding under the Class Proceedings Act, 1992

ORDER

THIS MOTION, made by the Plaintiffs for an Order varying the Judgment of the Honourable Mr. Justice Perell dated January 27, 2012 (the "Judgment"), was heard on March 18, 2013 at the Courthouse at Osgoode Hall, Toronto, Ontario.

ON READING the Notice of Motion and the evidence filed by the Plaintiffs, and on hearing the submissions of the lawyers for the parties, and from the objectors Anne Carey, Fred Taggart, Daniel Anderson, Paul Ludzki and Oanh Truong, appearing in person.

1. **THIS COURT ORDERS** that the Plaintiffs' motion is dismissed. There shall be no Order with respect to costs.

ENTERED AT THE COURT OF ONTARIO
 OFFICE OF THE CLERK
 LITIGATION DIVISION

APR 25 2013

AS AT THE COURT OF ONTARIO
 OFFICE OF THE CLERK
 LITIGATION DIVISION

Perell, J.

DAVID KIDD, et al.
Plaintiffs

THE CANADA LIFE ASSURANCE
COMPANY, et al.
Defendants

Court File No: 05-CV-287556CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

(Motion to Vary Judgment, returnable March 18, 2013)

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CITATION: *Kidd v. The Canada Life Assurance Company*, 2013 ONSC 1868

COURT FILE NO.: 05-CV-287556CP

DATE: March 28, 2013

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,
JEAN PAUL MARENTETTE, GARRY
C. YIP, LOUIE NUSPL, SUSAN
HENDERSON and LIN YEOMANS

Plaintiffs

– and –

THE CANADA LIFE ASSURANCE
COMPANY, A.P. SYMONS, D. ALLEN
LONEY and JAMES R. GRANT

Defendants

Proceeding under the *Class Proceedings*
Act, 1992

)
)
) *Mark Zigler and Clio M. Godkewitsch* for
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) Harvey, Jean Paul Marentette, Susan
) Henderson and Lin Yeomans

)
) *Darrell Brown* for the Plaintiffs Garry C.
) Yip and Louie Nuspl

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) Company

)
) *John C. Field* for the Defendants A.P.
) Symons, D. Allen Loney, and James R.
) Grant

)
) HEARD: March 18, 2013

PERELL, J.

REASONS FOR DECISION

I. INTRODUCTION

[1] In this class action, under the *Class Proceedings Act, 1992*, S.O. 1992, c. C.6, the court has already approved a settlement. I shall refer to that settlement as the “Approved Settlement.”

[2] This is a motion, and the moving parties seek the court’s approve for an amendment to the Approved Settlement. I shall refer to the amendment as the “Amended Settlement.”

[3] On a motion to approve a class action settlement, the court’s only choices are to approve or to reject the settlement using the test of whether the proposed settlement is

fair, reasonable, and in the best interests of the class members. The court does not have the choice of fixing or revising the settlement to make it fair, reasonable, or in the best interests of the class members. The court's only choices are to approve or to not approve the proposed settlement.

[4] Most unfortunately, in the case at bar, these choices of approval or disapproval present the court with a double bind, a choice between unpleasant and distressing alternatives. As the discussion below will reveal, the circumstances of the case at bar are such that the court is being asked to make a choice between two courses where neither course is substantively, procedurally, circumstantially, or institutionally fair to the class members.

[5] As I will detail below, in this class action, the Plaintiffs sued Canada Life Assurance Company for a declaration as to the ownership of pension plan surpluses and for damages for breach of the Pension Plan. In the class action, it was alleged that Canada Life employees owned any surplus in their Pension Plan and that Canada Life had wrongfully charged administrative expenses to the Pension Plan. There were also claims for partial wind-ups of the Pension Plan.

[6] In addition to resolving the claims of some Canada Life employees, the already Approved Settlement settled the claims of four discrete groups of claimants, who were identified with four different pension plan partial wind-ups; namely: (1) the Integration Partial Wind Up Group; (2) the Pelican Partial Wind Up Group; (3) the Indago Partial Wind Up Group; and (4) the Adason Partial Wind Up Group.

[7] Under the Approved Settlement: (a) plan members would receive 57.22% of the surplus for their designated part of the Pension Plan; (b) inactive plan members would receive 12.44% of the designated surplus; and (c) Canada Life would receive 30.34% of the surplus allocable to the partial winding ups.

[8] The Plaintiffs and Canada Life elaborately campaigned to secure the support of Class Members for the proposed settlement. There were organized meetings across the country and an elaborate information package. Untypically, and without precedent, the proposed Class Members were asked to vote for or against the Approved Settlement. As a part of the promotional campaign, without being given any guarantee, the Integration Group's members were told that it was estimated that they would be sharing about 70% of a surplus estimated for them to be worth \$55 million.

[9] Unfortunately, after the Approved Settlement was approved by the court and after the parties set about to implement it, almost immediately, they discovered that their assumptions or predications about the value of the surplus to be distributed to the Integration Group were very-very wrong.

[10] The unhappy discovery was that the anticipated surplus of \$55 million, upon which the Approved Settlement had been predicated and which, as noted above, was to be shared by the Integration Group and Canada Life was diminishing dramatically and quickly.

[11] The diminishment of the surplus came about mainly for two reasons. First, a decline in interest rates in the Canadian financial marketplace increased the notional liabilities of the Pension Plan for the Integration Group's members, which liabilities are calculated in accordance with prescribed actuarial principles. Second, a greater than anticipated number of Integration Group class members chose or were deemed to have chosen pension benefit annuities rather than choosing to take the accumulated value of their pension benefits. In other words, fewer Integration Group pensioners than predicted cashed out their benefits and this, in turn, increased the liabilities of the Pension Plan on an on-going basis and all this diminished the actuarially calculated surplus or deficit.

[12] And to further complicate matters, there was another surprise for the Integration Group and Canada Life, because the marketplace for annuities shut down, and annuities were not available for those who had chosen to stay with Canada Life's Pension Plan. The Plan's Administrators had to internalize the cost of the annuities rather than outsource this liability for the pension benefits.

[13] These problems did not, however, materially affect the Pelican, Indago, and Adason Groups' part of the Approved Settlement, nor did the surprises affect current employees of Canada Life, who were to enjoy a two-year contribution holiday under the Approved Settlement.

[14] The problems, however, were grave for the Integration Group because Canada Life proposed to implement the settlement without purchasing annuities. Canada Life intended to unilaterally transfer the assets and liabilities of the Integration Group from the old Pension Plan into the ongoing portion of a new Pension Plan, which had been established as a part of the overall settlement between the parties.

[15] The Integration Group moved to enjoin Canada Life from acting unilaterally to implement the Approved Settlement.

[16] Class Counsel preferred to delay the implementation of the settlement to see if interest rates would rebound and to allow a recalculation of the Pension Plan surplus for the Integration Group when the economy and interest rates might have bounced back. Nothing however could be done to change the impact of the unexpected numbers of Integration Members who had chosen to stay with the Pension Plan.

[17] The injunction motion, however, was not argued. Instead, the parties negotiated a settlement, the "Amended Settlement." The Plaintiffs now move for approval of the Amended Settlement. The Plaintiffs and Canada Life submit that the Amended Settlement is fair, reasonable, and in the best interests of the class members.

[18] The moving parties main argument is that the Amended Settlement is fair, reasonable, and in the best interests of the class members because it is better than the alternative of rejecting the Amended Settlement and just implementing the Approved Settlement, which I will later in this judgment rename the "Stark-Reality" Settlement.

[19] In other words, their argument is that under the Approved Settlement that became the Stark-Reality Settlement, the Integration Group will receive a terribly

disappointing monetary award, but under the Amended Settlement, they will receive a terribly disappointing monetary award with a “shot” at a second distribution of surplus re-calculated as at December 31, 2014 when interest rates may have rebounded. This shot at a second distribution – capped at \$15 million – makes the Amended Settlement fair, reasonable, and in the best interests of the class members and better than the alternative of reviving the litigation, which would be purposeless.

[20] Numerous class members from the Integration Group object to the Amended Settlement, and they ask the court not to approve it. They submit that the Amended Settlement is unfair, unreasonable, and not in the best interests of the Class Members.

[21] Over 90 class members filed a petition with the court, also unprecedented, asking the court not to approve the Amended Settlement but rather to approve a settlement where there would be a temporally unlimited and uncapped second distribution of the surplus. As one petitioner expressed it: “I hope the Honourable Judge sees our petition and gives us some fairness.”

[22] The double bind for the court, however, is that approving the unfair Amended Settlement is monetarily better than the alternative of not approving the Amended Settlement. Approving the unfair Amended Settlement also avoids renewed litigation and the collateral damage to the current employees of Canada Life and the Pelican, Indago, and Adason Groups, who are indifferent to the unfair Amended Settlement and who just want to have this litigation at an end and certainly not resumed.

[23] The court cannot make a fair settlement for the parties, and for the reasons that follow, my conclusion is that the Amended Settlement is not fair. The disappointment and anger of the objectors and the reasons for their objection are reasonable, and, I agree with them that the Amended Settlement is unfair. In my opinion, the Amended Settlement is all of substantively, procedurally, circumstantially, and institutionally unfair. Therefore, I shall not approve it. Approving an unfair settlement would be contrary to both the letter and the spirit of the *Class Proceedings Act*, 1992. It also would be inconsistent with the court’s responsibilities when asked to review a settlement under the *Act*. I cannot in judicial good conscience put the court’s endorsement to the Amended Settlement. Accordingly, I dismiss the motion.

II. FACTUAL BACKGROUND

[24] The Representative Plaintiffs are David Kidd, Alexander Harvey, Jean Paul Marentette, Garry C. Yip, Louie Nuspl, Susan Henderson, and Lin Yeomans.

[25] Each of the Representative Plaintiffs is or was a member or former member of the Pension Plan. They are also members of Canada Life Canadian Pension Plan Members' Rights Group (“CLPENS”), which is a voluntary, unincorporated association of members and former members of the Pension Plan. CLPENS includes active employees, pensioners, deferred vested pension members, and former Canada Life employees whose employment was terminated as a result of various partial wind-ups.

The members of the CLPENS Executive Committee have actuarial experience and are knowledgeable about the operation of the Canada Life Pension Plan.

[26] Class Counsel for the Plaintiffs Kidd, Harvey, Marentette, Henderson and Yeomans are Koskie Minsky LLP and Harrison Pensa LLP. Class Counsel for the Plaintiffs Yip and Nuspl is Sack Goldblatt Mitchell LLP.

[27] The Plaintiffs' action was against Canada Life and against A.P. Symons, D. Allen Loney, and James R. Grant, who are the trustees of the Canada Life Canadian Employees' Pension Plan.

[28] The original trust agreement for a pension plan for Canada Life employees was established on December 31, 1964. Canada Life is the sponsor and administrator of the Pension Plan. The Pension Plan is funded through a trust agreement between Canada Life and the Trustees of the Fund.

[29] Effective January 1, 1997, the Pension Plan was merged with The Canada Life Assurance Company Trust Canadian Staff Pension Fund (1958) and The Canada Life Assurance Company Trust Canadian Agents' Pension Fund. A consolidated Pension Plan was created, and the associated funds were merged into a single fund.

[30] A major issue in this class action is who owns the surplus in the Pension Plan. Pension surplus is the excess value of the assets in a pension plan over the value of the liabilities, both calculated in a manner prescribed by pension laws. The amount of surplus at any given time is actuarially determined under set guidelines and prescribed factors. It will become important to understand that at any given time, a pension surplus is a legal fiction. A pension surplus only becomes tangible and real when trust fund monies calculated at a particular date are actually paid out to the owners of the surplus.

[31] In this class action, the Plaintiffs claimed that the 1997 amendments to the Pension Plan and other amendments relating to the possibility of reversion of surplus assets to Canada Life on plan and fund termination were unlawful and of no force or effect. The Plaintiffs' position was that the Pension Plan surplus belonged to the Class Members.

[32] During the course of its administration of the Pension Plan, Canada Trust made certain amendments to the plan documents that permitted it to charge expenses to the pension fund. In the class action, the Plaintiffs alleged that the plan expense amendments were a breach of contract and a breach of trust.

[33] During the course of its administration of the Pension Plan, Indago Capital Management Inc., a subsidiary of Canada Life, whose employees participated in the Pension Plan, merged with another corporation. As a result of the merger, the employment of 14 employees of Indago was terminated, but there was no partial wind-up of the Pension Plan with respect to the termination of employment.

[34] During the course of its administration of the Pension Plan, the employment of 37 employees of Adason Properties Limited, a subsidiary of Canada Life, was

terminated, but there was no partial wind-up of the Pension Plan with respect to the termination of employment.

[35] During the course of its administration of the Pension Plan, the employment of 38 employees of Pelican Food Services Limited, a subsidiary of Canada Life, was terminated, but there was no partial wind-up of the Pension Plan with respect to the termination of employment.

[36] In 2003, a partial wind-up of the Pension Plan within the meaning of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 was declared as of July 10, 2003 in relation to members of the Pension Plan who were terminated from employment, retired or resigned voluntarily from the Company as a result of the integration of Canada Life with The Great-West Life Assurance Company.

[37] As of June 30, 2005, Canada Life's Partial Wind-up Report for the Integration Group disclosed an estimated partial wind-up surplus of approximately \$93 million attributable to the Integration Group.

[38] In 2005, the Representative Plaintiffs Kidd and Harvey retained Koskie Minsky LLP and Harrison Pensa LLP for their advice and services in relation to the Integration Group Partial Wind-up and about the issue of Canada Life charging expenses to the fund.

[39] Mr. Kidd commenced a class action by Notice of Action issued on April 12, 2005, and filed on May 11, 2005. Mr. Marentette commenced a similar action by Statement of Claim issued on February 3, 2005. He discontinued his action, and he was added as a Plaintiff to Mr. Kidd's action.

[40] These actions were commenced after CLPENS had filed a complaint with the Ontario pension regulator. The complaint led to an investigation by the Financial Services Commission of Ontario ("FSCO"), which investigation was suspended, pending the resolution of the class action.

[41] In the class action, the Plaintiffs made three major claims: (1) they claimed that amendments to the Pension Plan concerning the reversion of surplus assets to Canada Life on Plan and Fund termination were unlawful; (2) they claimed that Canada Life had wrongfully been reimbursed for expenses charged to the Pension Plan in excess of \$41 million; and (3) they claimed that certain groups of employees had a claim for a partial winding-up of the Pension Plan. The action sought winding up orders with respect to the Integration, Pelican, Indago, and Adason Groups.

[42] In October, 2005, the Plaintiffs filed material supporting a motion for certification. The motion for certification was scheduled to be heard in February, 2006, but the original certification motion was adjourned pending settlement discussions.

[43] In April 2007, the parties attended a two-day mediation session facilitated by Justice Winkler, as he then was. The mediation resulted in an agreement on the framework for a potential settlement.

[44] Negotiations continued, and on November 9, 2007, the parties signed a Memorandum of Understanding.

[45] Between 2008 and 2010, the parties continued their negotiations about the details of the proposed settlement. During these negotiations, the Indago, Pelican, and Adason Partial Wind-Ups claims were added to the agenda of matters to be settled.

[46] It was part of the plan to settle that Canada Life would, in effect, restart its Pension Plan under a new trust, which would receive the assets from the Pension Plan. Implementation would also require a court application to obtain a variation of trust.

[47] The negotiations culminated in the Surplus Settlement Agreement, which I have labelled the Approved Settlement. The Surplus Settlement Agreement was conditional on obtaining certain levels of consent from past and present plan members.

[48] The Surplus Settlement Agreement (the Approved Settlement) involved five key elements:

- (1) the assets of the Pension Plan would be transferred to a new Pension Plan;
- (2) administrative expenses would be paid from the assets of the new Pension Plan;
- (3) eligible active Plan members would be able to suspend their contributions to the Plan for two years; (The value of the contribution holiday for active Plan members is \$4.6 million.)
- (4) former Plan members affected by a partial wind-up and other Plan members not included in a partial wind-up (deferred/vested members and pensioners) would each receive a share of the surplus assets (estimated to be worth \$49.4 million) related to the partial wind-ups of the Pension Plan; and
- (5) Canada Life would also receive a share of the surplus related to the partial wind-ups (estimated to be worth \$21.5 million).

[49] Under the Approved Settlement: (a) plan members would receive 57.22% of the surplus for their designated part of the Pension Plan; (b) inactive plan members would receive 12.44% of the designated surplus; and (c) Canada Life would receive 30.34% of the surplus allocable to the partial winding ups.

[50] In March 2011, a detailed information package was sent to all persons included under the Surplus Settlement Agreement (the Approved Settlement).

[51] Following mailing of the Information Packages, a total of 15 meetings were held in cities across Canada (Vancouver, Calgary, Regina, Toronto, London, Montreal and Halifax) to describe the agreement and to provide an opportunity to Class Members to ask questions. At each of the meetings, presentations were made by Canada Life, a CLPENS representative, and Mr. Kidd's counsel. There were also meetings held with

active employees of Canada Life to respond to some of their concerns, on May 17, 18, and 19, 2011, in Regina, London, and Toronto respectively.

[52] By order dated October 26, 2011, I certified this action as a class action for settlement purposes. See *Kidd v Canada Life*, 2011 ONSC 6324.

[53] There was a great deal of support for the proposed settlement. There are 5,228 persons in the classes. As of January 3, 2012, 4,293 Class Members in the Integration Group (82%) voted in favour of settling their claims in accordance with the Surplus Settlement Agreement. Overall, there were just 57 no votes. There was one objector.

[54] The parties moved for approval of the Approved Settlement, which I granted on January 27, 2012, for reasons released on February 6, 2012. See: *Kidd v Canada Life*, 2012 ONSC 740.

[55] As a part of the settlement, Canada Life required an order approving a variation of trust pursuant to the *Variation of Trusts Act*, R.S.O. 1990, c. V.1 and the rule from *Saunders v. Vautier*, (1841), Cr. & Ph. 240, 41 E.R. 482. This too was granted.

[56] I also approved: (a) Sack Goldblatt Mitchell LLP's fee request of \$119,911.47 for legal services to the Adason Group plus \$105,000 for future legal work; and (b) Koskie Minsky LLP and Harrison Pensa LLPs' fee request of \$4,667,845 plus applicable taxes and disbursements of \$60,601.84 plus payment for post-settlement work at an hourly rate without multiplier. Class Counsel was to receive approximately \$5 million for fees and disbursements under the Approved Settlement.

[57] The value of the contribution holiday for active Plan members was \$4.6 million. Thus, the total financial benefit to Class Members from the Approved Settlement was estimated to be \$54 million, plus payment of all of their legal fees and expenses estimated at \$5 million.

[58] However, one month after the settlement had been approved, Class Counsel were advised by Canada Life that the Integration Group's surplus had decreased to \$23.7 million. The explanations for the decrease were that: (a) changes in interest and inflation assumptions with respect to annuity purchases had increased the actuarial cost of these expenses; and (b) a higher than assumed take-up rate of the guaranteed pension option for members of the Integration Group had increased the liabilities, depleting the surplus.

[59] To be more precise, on February 23, 2012, legal counsel to Canada Life provided to Class Counsel a memorandum reflecting updated information on the estimated actuarial surplus available for distribution under the Approved Settlement. The memorandum from Canada Life's actuary indicated that as at December 31, 2011, the Integration Partial Wind Up surplus had diminished from an estimated \$54 million as at June 30, 2011 to approximately \$23.7 million.

[60] The Plaintiffs and the CLPENS Executive Committee were sceptical about the truth of Canada Life's calculation of the Integration Group's surplus, and with the assistance and guidance of Class Counsel and the actuarial advisor; Class Counsel

investigated the information provided by Canada Life. They satisfied themselves that it was correct from an actuarial perspective.

[61] The Plaintiffs and Class Counsel also explored solutions, and two possible solutions were initially identified: (1) delay the implementation of the Approved Settlement to allow a recovery in interest rates with the hope that the surplus would recover; and (2) provide annuities to members of the Integration Group, with indexation provided through an inflation hedging product created and insured by a third party, with a view to reducing the plan liabilities.

[62] With these solutions in mind, Class Counsel approached counsel to Canada Life to initiate negotiations aimed at amending the Approved Settlement.

[63] The parties attended case management conferences before me on April 20 and May 7, 2012 to report on the situation and to obtain approval of a notice to update Class Members of the situation.

[64] Notices were approved and sent to Class Members by direct mail on or before May 15, 2012, and also posted to Class Counsel's website. The letters described the precipitous decline in the Integration Group's surplus and informed the Class Members that the parties were working together to address the situation. The letters were modified for each group because the problems mostly concerned the Integration Group.

[65] Meanwhile, the surplus continued to decline through 2012, and as of August 31, 2012, the Integration Groups' part of the surplus was estimated to be just \$2.6 million.

[66] Based on the new estimates of the surplus and Class Members' share of 69.66% plus the value of the contribution holiday, the monetary value of the Approved Settlement to Class Members was \$14.4 million, down from \$54 million.

[67] Pausing here, in order to understand some of the arguments of the parties discussed below, it is important to appreciate that the reason the surplus in the Pension Plan for the Integration Group declined has nothing to do with a decline in the value of the assets held by the Pension Plan. In fact, the value of the assets has increased slightly.

[68] The reason that the surplus was vaporizing was that the actuarially estimated value of the cost of providing future pension benefits (which estimate is subtracted from the value of the assets to determine whether the plan is in a surplus or deficit position) had increased because of low interest rates and because most Integration Group Plan Members were electing to stay with the Pension Plan rather than choosing the option of taking the commuted value of their pension benefits.

[69] The principle reason for the increase in liabilities was the decline in yields on Government of Canada real-return, long-term bonds. For example, at December 31, 2008, this yield was reported at 2.10%, whereas at December 31, 2011, the yield was reported at 0.45%. At August 31, 2012, the yield on real-return, long-term bonds was 0.40%.

[70] Returning to the factual background, the Plaintiffs, Class Counsel, the CLPENS Executive Committee, and their expert actuarial advisor, Marcus Robertson, had

extensive discussions to analyze the information, to test its accuracy, and to consider next steps. Mr. Robertson is a fellow of the Canadian Institute of Actuaries, a former partner in the firm of Robertson, Eadie & Associates. He had been retained by the Plaintiffs to provide actuarial advice to the Plaintiffs and Class Counsel throughout the class action.

[71] In the interim, Canada Life proceeded to solicit bids for annuities for members of the Integration Group who elected a guaranteed pension option under the Approved Settlement. However, they were no bidders. Canada Life had approached seven Canadian insurance providers (including Canada Life) for immediate and deferred indexed annuities as required under the Approved Settlement. All seven annuity providers declined to take on the business, apparently because of the complicated indexing provisions in the Pension Plan, the number of deferred members, the deferral periods, the unavailability of assets to back the liabilities, and the size of the request.

[72] With no annuities to be had, Canada Life decided it could implement the Approved Settlement in another way. In August 2012, Canada Life proposed to unilaterally transfer the assets and liabilities of the Integration Group into the ongoing portion of the Pension Plan, and proceed with the implementation of the Approved Settlement. By this time, the anticipated surplus had continued its decline in value, and there was the prospect that there would be no surplus. Canada Life's plan would crystallize the surplus, stop the bleeding, and avoid the risk that the surplus would become a deficit, for which it as plan sponsor would become responsible under the *Pension Benefits Act*.

[73] In other words, because there was no market in Canada for the annuities, Canada Life proposed unilaterally to transfer the liabilities of the partial winding up to the ongoing portion of the Pension Plan, which had been re-established under the Approved Settlement in a way favourable to Canada Life. The Integration Group's surplus would be calculated, in part, on estimated rather than actual annuity prices.

[74] Canada Life took the position that no amendment to the Approved Settlement was necessary following the drop in the surplus, while Class Counsel viewed the Approved Settlement as unworkable and Canada Life's plans as a breach of contract.

[75] The Plaintiffs brought a motion returnable on September 27, 2012 objecting to Canada Life's plans about how to implement the Approved Settlement and seeking the appointment of a mediator.

[76] In their motion, the Plaintiffs sought a declaration that the unilateral actions proposed by Canada Life would breach the terms of the Approved Settlement. Both sides filed evidence that provided details about the circumstances leading to the reduction in the estimated Integration Group's surplus.

[77] The motion was not argued. I made the following endorsement.

This motion for a declaration has been settled on the following terms that shall be incorporated into a court order:

1. Canada Life may proceed to file with FSCO the transfer report concerning the transfer of the Integration PWU assets and liabilities to the ongoing plan.
2. The Representative Plaintiffs shall not object to any such filing and transfer of assets and liabilities to the ongoing plan subject to paragraph 4 below.
3. If the parties do not reach an agreement on the implementation of the Surplus Sharing Agreement within 45 days from today, the court shall appoint a mediator to assist the parties in reaching an agreement; and
4. If no agreement is reached about implementing the Surplus Sharing Agreement, the Representative Plaintiffs reserve the right to take such action as they may be advised.

[78] Following the settlement of the motion, Justice Strathy agreed to act as mediator to assist the parties in resolving their dispute.

[79] In December 2012, the parties attended a one-day mediation, and negotiations in writing followed until the parties came to an agreement to revise the Approved Settlement. The main terms of the Amended Settlement are as follows:

- Canada Life will fund top-up payments (at an estimated cost of \$1.2 million) in order to ensure that Integration Group will receive the promised minimum surplus shares of \$1,000 required under the Approved Settlement.
- Canada Life will waive its right to any interest on the amount of its expense reimbursement under the Approved Settlement (estimated value \$800,000).
- Canada Life will waive its right to reimbursement of \$500,000 of its professional fees.
- The Plaintiffs and CLPENS Executive Committee will waive their entitlement to reimbursement of future legal fees (but not disbursements) previously approved by the Court (estimated at \$200,000).
- For any member of the Integration Group who elected to receive a deferred or immediate pension, their portability rights would be satisfied by Canada Life transferring their assets to the ongoing portion of the Plan effective August 31, 2012.
- The assets and liabilities related to members of the Integration Group who elected a deferred or immediate pension will be notionally segregated (the "Segregated Portion") until the completion of a second distribution, if any.

- If a surplus exists for the notionally segregated Integration Groups assets as at December 31, 2014, there will be a second distribution to the Integration Group and Inactive Eligible Class Members subject to the conditions that:
 - 10% of the 2014 Gross Surplus shall be deducted off the top and remain in the Plan as a cushion;
 - The 2014 Gross Surplus will be reduced to take into account any contributions and other payments (together with interest at the Plan rate of return) made by Canada Life into the Plan after August 31, 2012 and that are notionally allocated to the Segregated Portion.
 - 69.66% of the net Surplus, to a maximum of \$15 million, will be paid to the Integration Group and Inactive Eligible Class Members.
 - In order to avoid distributing numerous small amounts, the threshold for surplus payments under the possible second distribution is \$100.
 - If any individual would be receiving \$100 or less, no payment will be made to that individual and the individual's surplus share will instead be shared with the remaining members (if any) who are receiving \$100 or more.

[80] Under the Amended Settlement, it is anticipated that the surplus for the first distribution for the Integration Group will be \$4,116,740.

[81] I pause here to foreshadow that one of the major objections to the Amended Settlement are about the terms that circumscribe the possible second distribution to the Integration Group.

[82] With the approval of the court, letters were sent to all Class Members in February 2013, describing the proposed amendment to the Approved Settlement and giving notice of the next steps in the proceeding, including this fairness hearing.

[83] Since the mailing of the notices, Class Counsel has fielded over 70 inquiries by Class Members, and Class Counsel has communicated with the objectors.

[84] The Representative Plaintiffs, Class Counsel, and their actuarial advisor believe that the Amended Settlement is the best agreement that can be achieved. They recommend the Amended Settlement as fair, reasonable, and in the best interests of the Class, given the circumstances.

[85] It was Mr. Robertson's opinion that the dramatic reduction in the estimated value of the surplus was directly related to the decline in yields on Government of Canada real-return, long-term bonds and that this decline was a direct result of economic forces beyond the control of the parties. It was his opinion that giving some Class Members the possibility of a future surplus distribution ameliorates this economic misfortune and that overall Amended Settlement presents a better outcome than if the Approved Settlement were implemented without any amendment.

[86] As of the date of the fairness hearing, Class Counsel had received 15 written objections to the Amended Settlement and a petition from over 90 objector-Class Members was filed with the court. I will describe the nature of the objections later in these Reasons for Decision.

[87] In addition, Class Counsel exchanged emails with Class Member Dan Anderson. Mr. Anderson, who has an actuarial background, also participated in two lengthy conference calls with Ms. Clio Godkewitsch of Koskie Minsky LLP and Mr. Robinson, the actuary for the Plaintiffs.

[88] Mr. Anderson's concerns about the Amended Settlement were not placated, and he set them out in two information sheets his concerns. Several of the objectors relied on Mr. Anderson's information sheets that were made attachments to some of the written objections.

[89] At the fairness hearing I spent several hours listening and speaking with the objectors. I heard from five objectors: Paul Ludzki, Fred Taggart, Anne Carey, Dan Anderson, and Emily Truong.

III. THE POSITION OF THE PLAINTIFFS

[90] The Plaintiffs and Class Counsel believe that the Amended Settlement presents the best set of terms that could be negotiated under unanticipated circumstances that seriously undermined implementation of the Approved Settlement.

[91] They submit that Class Counsel, who are very experienced in pension matters and class proceedings, diligently investigated the reasons for the diminution of the surplus and sought to negotiate a reasonable set of amendments in adversarial arm's length negotiations. In their view, these factors favour approving the Amended Settlement.

[92] They point out that mediation and negotiations continued over almost nine months and each of the parties were independently represented and advised by sophisticated legal and actuarial professionals. They note that the terms of the Amended Settlement were reached with the assistance of Justice Strathy in his capacity as a neutral mediator.

[93] On the merits of the settlement, the Plaintiffs submit the analytical question for the court is whether the proposed Amended Settlement is better for the class than the *status quo* of implementing the Approved Settlement to the extent that this is even possible. In this regard, they submit that the question for the court is whether Class Members are likely to recover more from the proposed Amended Settlement than under the Approved Settlement.

[94] The proponents submit that the answer to this question is yes, because under the Approved Settlement, the Integration Group would recover \$1.8 million (its share of \$2.6 million), assuming that the surplus does not diminish further before distribution. Under the Approved Settlement, there will be insufficient funds to pay the minimum

\$1,000 surplus payments and there would be no possible future distribution. In contrast, under the Amended Settlement, the Integration Group will receive at least \$1,000 per eligible member and there is the possibility of a future distribution of surplus in 2014, if available.

[95] Further, Class Counsel submits that approval of the Amended Settlement is superior to the alternative of revived litigation. Class Counsel and the Plaintiffs believe that without the Amended Settlement, the Approved Settlement cannot be implemented because it requires Canada Life to purchase indexed annuities for members of the Integration Group, which Canada Life cannot do and it requires eligible Class members to receive a minimum cash distribution of \$1,000, which is impossible, given the status of the Integration Group's surplus. However, Canada Life disputes that the Approved Settlement cannot be implemented and obviously it disagrees that it is breaching the Approved Settlement.

[96] Canada Life's position raises the issue of whether or not there is a means of challenging any future steps taken by Canada Life to implement the Approved Settlement over the objections of the Plaintiffs. For present purposes, more significantly, the Plaintiffs and Class Counsel assert that Amended Settlement is better for the class than the alternative of litigation about the Approved Settlement or about the original claims in the class action.

[97] The Plaintiffs submit that continued litigation does not represent a viable alternative, as no litigation can restore the surplus. They point out that the estimates of surplus were always variable and dependent on factors such as interest rates and the cost of purchasing annuities and thus the amount of the surplus was never guaranteed, nor could it ever be guaranteed. Further, they note that the plan expense claim of the Plaintiffs has already been compromised, and stands a very limited chance of success given the decision of the Supreme Court of Canada in *Nolan v. Kerry (Canada) Inc.* [2009] 2 S.C.R. 678.

[98] The Plaintiffs submit that revived litigation would be lengthy and expensive and would not have the result of increasing the surplus. Indeed, they submit that the situation may get worse and even the current small surplus may vanish.

[99] The Plaintiffs submit that it would not be fair to the Indago, Pelican, and Adason Groups to hold up the Approved Settlement because of the plight of the Integration Group. In a message from the CLPENS Executive Committee dated March 12, 2013 to class members, the Executive stated:

What to do?

Technically, CLPENS could have asked the Court to set aside the previously-approved settlement on the grounds that it could not be implemented as written. It is not clear that the Court would have done so and, even if the Court agreed to this course of action, we would have been back to the scenario of returning to court to argue about the ownership of the (much diminished) surplus. However, by doing so, no Class Member would receive any current payment. Although members of the IPWU Group had little to lose and may have wished to pursue this strategy,

members of the other partial wind-up groups (Indago, Adason, Pelican Foods) had a lot to lose. As Non-Partial Wind-up members (retirees, deferred vested members and active members) would be part of any subsequent court action, they would receive nothing. Accordingly, CLPENS did not think it right to pursue a solution that eliminated all current payouts in return for the possibility of the partial wind-up groups being declared owners of whatever plan surplus existed at an unknown future date. ... In conclusion, while the outcome of our class action is disappointing, it is the result of unprecedented market developments and your Executive Committee believes that the amended settlement is the best result achievable in the circumstances.

[100] The Plaintiffs and Class Counsel submit that the outcome is fair and reasonable and in the best interests of the Class. They submit that the Amended Settlement ought to be approved.

IV. THE POSITION OF THE OBJECTORS

[101] All of the objectors request the court to not approve the Amended Settlement.

[102] Several of the objectors objected to the approval process, and they submit that they have been denied natural justice. They dispute that they have been properly apprised on the situation after the settlement was initially approved, and they complain that they have not been given ample time or ample information about the causes of the problems and about the merits of the Amended Settlement. This objection is well expressed by Fred J. Taggart in his letter to the court dated March 8, 2013. Mr. Taggart states:

All this is being done via an amendment to the settlement, with no further information sessions for plan members, no opportunity to ask questions, and no opportunity to vote – yet members are bound by all of the terms and conditions and concessions that they agreed to in the original settlement when they would share in \$62 million rather than \$5 million.

[103] Ms. Carey, one of the objectors who spoke at the fairness hearing, asked for an adjournment in order to hire a lawyer to provide her with independent legal advice.

[104] Several objectors found it incomprehensible that the Representative Plaintiffs and Class Counsel did not foresee the problem caused by declining interest rates and the low numbers of class members choosing not to take the commuted value of their pension benefits. Some objectors suggested that Canada Life duped or tricked or schemed to deny them the surplus by purposely delaying the litigation precisely because they knew that the surplus would be depleted.

[105] Several objectors felt that they had been deceived when they agreed to the Approved Settlement and that the Amended Settlement amounts to a revocation of the Approved Settlement. An example of this objection is provided by Ms. Anne Carey in her e-mail message dated March 12, 2013. She writes:

With respect to the substance of the matter, I think it is necessary to emphasize as strongly as possible that the resolution which is being presented at this time does not constitute a minor change or "amendment" but rather represents a virtual rescind of everything that was proposed as late as 2011, when we were asked to agree on the settlement proposed. Specifically, it had been previously confirmed in written communication that I was entitled to approximately \$38,000 of surplus, at this point, the "amendment" is offering me a meagre \$1,000 in lieu of this \$38,000, and others I know stand to lose upwards of \$57,000 to \$98,000.

[106] Several objectors expressed the view that the Integration Group was being singled out for unfair treatment. Objector Mary-Anne Matthews is representative of this view point. In her objection, she wrote:

While I can appreciate and understand that Koskie Minsky, the Plaintiffs and the CLPENS group has done on the members' behalf, particularly over the past year, I feel that the proposed amendment to the settlement is not the best for all of us and I would have preferred a delayed settlement for the [Integration Group] until the economy and interest rates recover to a degree that would afford us an increase in the surplus. It appears to me as though Canada Life/Great West Life will continue to enjoy the benefits afforded to them in the original settlement while those of us in the [Integration Group] (excluding Indago, Pelican Foods and Adason, as well as the current Canada Life employees) will be sacrificing their [benefits]. If the group had an opportunity to come together with one voice, I believe that as a group we would be opposed to the amended proposal being put forth on March 18, 2013. This settlement is not what we voted for in 2011.

[107] Several objectors found the proposal under the Amended Settlement for a second distribution of surplus unfair and unreasonable. This objection is again well expressed by Mr. Taggart in his letter, where he states:

Now that the assets and liabilities have been transferred to the on-going plan, what happens if and when interest rates recover to a historically normal level? Don't the liabilities shrink as rapidly as they ballooned, thus restoring the healthy surplus that the plan has enjoyed for decades? With a certain set of assumptions, we've seen nearly \$100 million disappear in the last 6 years. With a different set of assumptions, might we see the \$100 million reappear in the next 6 years? It is unlikely that we will see a rebound by December 31, 2014 as the US Fed is on record to hold interest rates steady until at least mid-2014. However, if it did magically occur, why would the second surplus distribution be capped at \$15 million?

It seems to this observer that Canada Life has seen a window of opportunity to move assets and liabilities to the ongoing plan, temporarily value the liabilities at historically low interest levels, distribute a severely diminished surplus to the plan members, and then wait for rising interest rates to restore the healthy surplus that the plan has enjoyed for many years. ... Canada Life has locked the members' surplus claims into these tough economic circumstances while insulating their own share and in fact the entire PWU surplus from those same economic circumstances.

[108] Many of the objectors, were upset that the Amended Settlement was vastly different from what they expected when they voted for approval of the Accepted Settlement. Susan Marles made the point neatly in her e-mail message. She wrote:

I am a [Integration Group] member. Like many other members, I am greatly concerned, confused and highly suspicious in the huge drop in surplus. I had agreed to the original surplus settlement based on the amount of surplus what was detailed to me at that time. I understand now that amount in the proposed settlement will be \$1,000, which is vastly different from the amount in which I made the decision to support the surplus settlement. I am objecting to the amendment to the original settlement.

[109] All of the objectors were disappointed; some were angry. Several objectors found the commitments of Class Counsel and Canada Life under the Amended Settlement to augment what remains of the surplus paltry and insulting.

V. DISCUSSION

1. Jurisdiction to Vary an Approved Settlement in a Class Proceeding

[110] As far as I am aware, this is the first time that parties to an already approved settlement agreement in a class action have sought approval to an amendment to the agreement. The Plaintiffs submit that the court has the jurisdiction to grant this relief from two sources; namely: (a) under Rule 59.06(2)(d) of the *Rules of Civil Procedure*; and (b) under s. 12 of the *Class Proceedings Act, 1992*.

[111] Rule 59.06(2)(d) of the *Rules of Civil Procedure* states:

59.06(2) A party who seeks to, [. . .]

(d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed.

[112] Section 12 of the CPA states:

12. The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

[113] I do not think that s. 12 of the *Class Proceedings Act, 1992* applies to the circumstances of this case, because I do not regard settlement approval to be an order respecting the conduct of a class proceeding to ensure its fair and expeditious determination, and it would be odd to resort to this section of the Act, when s. 29 (2) deals expressly with the approval of any settlement. Section 29 (2) states: "A settlement of a class proceeding is not binding unless approved by the court."

[114] It seems obvious to me that s. 29 (2) applies to the circumstances of this case. The parties have entered into a settlement and they seek court approval.

[115] In my opinion, I have jurisdiction under s. 29 (2) to approve or deny approval of the proposed Amended Settlement, and I do not need to resort to rule 59.06 (2).

2. Is the Amended Settlement Fair, Reasonable, and in the Best Interests of those Affected by It?

[116] The design of North American class action regimes is to advance access to justice through a representative action with (a) a genuine claimant, the representative plaintiff, who is the party with legal standing to advance the class members' claims and to represent the class members; and (b) an entrepreneurial Class Counsel, who bears the financial risk of failure but who shares in the class members' aggregate success. Most class actions settle, and under s. 29 (2) of the *Class Proceedings Act, 1992*, a settlement of a class proceeding must be approved by the court to be binding on the parties.

[117] As I noted, in *Berry v. Pulley*, 2011 ONSC 1378 at para. 80, Class Counsel is confronted with an inherent conflict of interest when proposing a settlement of a class action. I stated:

80. As is well known, the settlement of class actions raises very difficult ethical problems for class counsel because of the inherent conflicts of interest that arise because class counsel has an enormous financial interest in the class members' causes of action. There is also the potential conflict of interest of class counsel of having legal and ethical responsibilities to class members whose interests are not homogeneous.

[118] Settlement approval is the most important and difficult task for a judge under all class action regimes, including Ontario's *Class Proceedings Act, 1992*. Since most class actions settle, the integrity and the legitimacy of class actions as a means to secure access to justice largely depend upon the court properly exercising its role in the settlement approval process. In scrutinizing a settlement, the court is called on to protect the interests of the class members who are to be bound by the outcome and who will be compelled to release their claims against the defendant in exchange for their participation in the class action settlement.

[119] The design of the approval process requires the court to carefully scrutinize any proposed settlement. The design of the approval process: (a) requires the proponents of the settlement to justify it; (b) provides an opportunity for those affected by the settlement to be heard; and (c) requires the court to evaluate the settlement and make a formal order. This design is meant both to deter bad settlements and also to ensure good ones that achieve the goals of the class action regime; namely: access to justice, behaviour modification, and judicial economy.

[120] Of these goals of class actions, the most important for the approval process is access to justice, because a settlement always achieves judicial economy, and a settlement may sometimes not achieve behaviour modification yet still be a good settlement. However, a settlement will be a bad settlement if it does not achieve procedural and substantive access to justice. The court's job is to review a proposed

settlement to ensure that the class members have achieved access to justice through a representative action.

[121] The judge's task is difficult because judges are more accustomed and more comfortable adjudicating in the context of an adversarial system, but at the time of the settlement approval process, the active parties to the class action are no longer adversarial, and they all will be recommending the settlement.

[122] I think judges are up to the task, but they are required to be more inquisitorial and to compensate for the adversarial void by being diligent in testing the one-sided arguments of the proponents of the settlement and by being attentive to the views of objectors who may provide cogent counter-arguments to the united front promoting the settlement.

[123] There is a great deal of academic literature and criticism about the law and practice of class action settlements, most of it from the United States, but there are valuable Canadian studies including: C. Piché, *Fairness in Class Action Settlements* (Toronto: Carswell, 2011); J. Kalajdzic, *Access to Justice for the Masses? A Critical Analysis of Class Actions in Ontario* (LL.M. Thesis: University of Toronto, 2009); G. Watson, "Settlement Approval – The Most Difficult and Problematic Area of Class Action Practice" (NJI Conference on Class Actions, 2008); C. Jones, *Theory of Class Actions* (Toronto: Irwin Law, 2003). There are also some settlement approval manuals for judges including: S. Marcus (ed.), *Manual for Complex Litigation* (4th) (Washington, D.C.: Federal Judicial Centre, 2004) and B.J. Rothstein and T.G. Willging, *Managing Class Action Litigation: A Pocket Guide for Judges* (2nd ed.) (Washington, D.C.: Federal Judicial Center, 2009).

[124] In the case at bar, it was not a difficult task analyzing and approving the initial settlement of this action, the Accepted Settlement. The various factors favoured settlement, and there were no warning signs. I did not undertake a detailed explanation of my decision to approve the Approved Settlement. However, in order for me to explain my judgment not to approve the Amended Settlement, it will be necessary for me to review more fulsomely the law and the literature about settlement approval than I did when I approved the Approved Settlement, which was at a time when the parties and the court's understanding of the circumstances of the Integration Group were different.

[125] With respect to the law to be applied under s. 29 (2), I will begin by repeating what I said at paragraphs 108 to 111 of my reasons for granting approval to the Approved Settlement. I stated:

108. To approve a settlement of a class proceeding, the court must find that in all the circumstances the settlement is fair, reasonable, and in the best interests of those affected by it: *Dabbs v. Sun Life Assurance*, [1998] O.J. No. 1598 (Gen. Div.) at para. 9; *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at paras. 68-73.

109. In determining whether to approve a settlement, the court, without making findings of facts on the merits of the litigation, examines the fairness and reasonableness of the proposed settlement and whether it is in the best interests of

the class as a whole having regard to the claims and defences in the litigation and any objections raised to the settlement: *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) at para. 10.

110. When considering the approval of negotiated settlements, the court may consider, among other things: (a) likelihood of recovery or likelihood of success; (b) amount and nature of discovery, evidence or investigation; (c) settlement terms and conditions; (d) recommendation and experience of counsel; (e) future expenses and likely duration of litigation and risk; (f) recommendation of neutral parties, (g) if any; number of objectors and nature of objections; (h) the presence of good faith, arms' length bargaining and the absence of collusion; (i) the degree and nature of communications by counsel and the representative parties with class members during the litigation; and (j) information conveying to the court the dynamics of and the positions taken by the parties during the negotiation: *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 (Gen. Div.) at pp. 440-44, aff'd (1998), 41 O.R. (3d) 97 (C.A.), leave to appeal to S.C.C., [1998] S.C.C.A. No. 372; *Parsons v. The Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at paras. 71-72; *Frohlinger v. Nortel Networks Corp.*, [2007] O.J. No. 148 (S.C.J.) at para. 8; *Kelman v. Goodyear Tire and Rubber Co.*, [2005] O.J. No. 175 (S.C.J.) at paras. 12-13; *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 117; *Sutherland v. Boots Pharmaceutical plc*, [2002] O.J. No. 1361 (S.C.J.) at para. 10.

111. A reasonable and fair settlement is inherently a compromise and a reasonable and fair settlement will not be and need not be perfect from the perspective of the aspirations of the parties. That some class members are disappointed or unsatisfied will not disqualify a settlement because the measure of a reasonable and fair settlement is not unanimity or perfection. See: *Baxter v. Canada (Attorney General)*, [2006] O.J. No. 4968 (S.C.J.) at para. 21; *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 (Gen. Div.) at p. 440, aff'd (1998), 41 O.R. (3d) 97 (C.A.), leave to appeal to S.C.C., [1998] S.C.C.A. No. 372.

[126] As may be observed from this brief discussion of settlement approval, courts have developed a test for settlement approval and courts have developed a non-exhaustive list of factors to use to apply the test. As it happens, the test for settlement approval is almost identical in Canadian and American class actions, and the test involves determining whether the settlement is fair, reasonable, and in the best interests of class members.

[127] Professor Piché in her text *Fairness in Class Action Settlements*, *supra* at pp. 179-80 summarizes the various factors for the settlement approval test into seven factors; i.e.: (1) judicial risk analysis: likelihood of recovery, or likelihood of success on the merits weighed against amount and form of settlement relief; (2) future expense, complexity and likely duration of litigation; (3) class reaction: number and nature of objections; (4) recommendations and experience of counsel and opinion of interested persons; (5) adequacy of representation: good faith and absence of collusion; (6) discovery evidence sufficient for "effective representation" and (7) adequacy of notice of proposed settlement to absent class members. Professor Piché observes that the first

four factors are pertinent to substantive fairness and the remaining three factors are pertinent to procedural fairness.

[128] Professor Piché's summary is very helpful, but I would add to it by suggesting that in addition to using the various factors to determine substantive and procedural fairness, the court should also examine circumstantial fairness and institutional fairness.

[129] By circumstantial fairness, I mean the fairness of the settlement to the parties and the class members in their particular circumstances, and by institutional fairness, I mean the fairness of the settlement from the perspective of a robust notion of access to justice that includes an outcome that objectively should satisfy the class members' entitlement to justice for their grievances.

[130] Having regard to institutional fairness will elevate the standard for approval and send the message that courts will not rubber stamp settlements and turn a blind eye to what are in truth strike suits or suits where the defendant or the defendant's insurer pays a modest price for buying peace rather than paying a fair price to compensate the class members for their injuries. Having regard to institutional fairness will send the message that the court will not rubber stamp settlements where the law suit is genuine but Class Counsel are content to take a low-ball offer because it suits their entrepreneurial business model. Having regard to institutional fairness will send the message that the court will not approve a settlement if through misadventure, incompetence, opportunism, lassitude, or fatigue the Representative Plaintiff and Class Counsel do not achieve a settlement that is truly fair, reasonable, and in the best interests of class members.

[131] *Epstein v. First Marathon Inc.* [2000] O.J. No. 452 (S.C.J.) is one of the very few cases where a settlement has been rejected, and it provides an example of a case where the proposed outcome would have been institutionally unfair. The proposed settlement was that Class Counsel would receive \$190,000 in legal fees and that the class members would receive nothing. The court viewed the settlement as demonstrating that the action was a strike suit, and the court would not approve the settlement.

[132] In Canada, a few settlements have been initially rejected but subsequently approved after the parties fixed an apparent unfairness. See: *Burnett Estate v. St. Jude Medical Inc.*, [2009] B.C.J. 2403; *G.M. v. Associated Selwyn House*, 2008 QCCS 395 and 2009 QCCS 989. Very few settlements have been rejected, and it would be salutary for the institution of class actions if the standard for settlement approval was elevated by having regard to the institutional fairness of the settlement.

[133] With these comments as background, I turn now to evaluate the Amended Settlement and to explain why in my opinion, it is not substantively, procedurally, circumstantially, or institutionally fair. I will begin this part of the discussion by noting the factors that were not particularly helpful.

[134] In determining the fairness of the Amended Settlement, the following factors are not particularly helpful or they are neutral, at best; namely: (a) amount and nature of discovery, evidence or investigation; (b) recommendation and experience of counsel; (c)

recommendation of neutral parties, if any; (d) the presence of good faith, arms' length bargaining and the absence of collusion; and (e) information conveying to the court the dynamics of and the positions taken by the parties during the negotiation.

[135] The fact that a judge, in this case, Justice Strathy, or an experienced mediator facilitated a settlement is in my opinion, nothing more than a narrative fact. I do not know what Justice Strathy's views are about the fairness of the Amended Settlement and his involvement is no testimonial for the Amended Settlement.

[136] The overall thrust of the unhelpful factors is that they are designed to satisfy the court that Class Counsel, which has most to gain and most to lose in taking on a class action, is not acting in their own self-interest in recommending a settlement, and they are designed to ensure the court that the proposed settlement is the product of hard-bargaining and a genuine and intelligent evaluation of the merits of the litigation and the substantive merits of the settlement.

[137] In the case at bar, I have no doubt that Class Counsel tried its best, but in light of the surprises since the Approved Settlement, this is not one of those cases where the court should give the Amended Settlement an "A" for effort.

[138] Thus, the factors associated with the substantive merits of the Amended Settlement are the most weighty factors in the case at bar. It is because of the importance I place on the substantive merits of the Amended Settlement, that I regard the weighty factors to be: (a) the settlement terms and conditions; (b) number of objectors and nature of objections; (c) likelihood of recovery or likelihood of success; and (d) future expenses and likely duration of litigation and risk.

[139] In the circumstances of the immediate case, I also regard the degree and nature of communications by counsel and the representative parties with class members during the litigation as an important factor, but it is a factor that is more pertinent to procedural and circumstantial fairness than it is to substantive fairness.

[140] I turn now to the matter of substantive fairness. Having the above factors in mind, it is analytically helpful to consider not only the substantive fairness of the Amended Settlement but also the fairness of three other settlements, one of which is hypothetical. The other three settlements to consider are: (1) the Approved Settlement; (2) what I shall call the Stark-Reality Settlement; and (3) what I shall call the Objectors' Settlement. An analysis of these four settlements informs why I conclude that the Amended Settlement is substantively unfair.

[141] In my opinion, at the time of its approval, the Approved Settlement was substantively fair. In other words, since the dispute was about who owned a pension plan surplus estimated to be worth \$64.3 million and whether Canada Life should pay \$41 million for wrongful expense charges, a substantively fair settlement was for the class to receive 70% of the surplus, the current employees to receive a two-year contribution holiday, and Class Counsel to receive \$5 million in fees and disbursements.

[142] As explained above, the Approved Settlement, however, was based on mistaken assumptions about future participation in the Pension Plan and about the availability of

annuities and on a false estimate of the surplus. The Approved Settlement has become the Stark-Reality Settlement.

[143] In my opinion, the Stark-Reality Settlement, which is the first branch of the court's double-bind decision, is unfair. In other words, if the litigation were being settled today but without the mistakes and false estimates, the settlement would be the Stark-Reality Settlement. Under this settlement there is only one distribution of surplus and Class Members would recover 70% of a small surplus and Class Counsel is paid \$5 million in legal fees. In my opinion, the Stark-Reality Settlement is unfair.

[144] A 70:30 split was fair in dividing up an estimated surplus of \$64 million. A 70:30 split is not fair in dividing up a surplus of \$14 million, particularly when only Canada Life is in a position to weather the economic storm and where Canada Life achieves significant benefits under the Stark-Reality Settlement (from a new trust arrangement that indisputably allows it to charge for services) and where its own right to claim 100% of any future surplus is unaffected. If there was some component of behavior modification in conceding 70% of an estimated surplus of \$64 million, there is very little in conceding 70% of a surplus of \$14 million, especially when Canada Life is left in a position to economically recover all of what it gives away once the economic conditions right themselves.

[145] Further, a \$5 million counsel fee under the Stark-Reality Settlement is unfair. The value of the Stark-Reality Settlement to the Class Members is \$14.4 million. In hindsight, knowing what I know now and did not know then, I would not have approved the counsel fee because in the disappointing circumstances of this case, it would be disproportionate (35%) to the value to the class of the settlement. See *Lavier v. MyTravel Canada Holidays Inc.*, 2013 ONCA 92.

[146] This brings the analysis to a hypothetical settlement that I shall call the Objectors' Settlement. As noted above, the objectors propose a different settlement than the one before the court. With two exceptions, the objectors would accept the terms of the Amended Settlement. The exceptions to the Amended Settlement are to remove the cap of \$15 million and to extend the time period for a second distribution beyond the re-calculation date of December 31, 2014.

[147] Analyzing the Objectors' Settlement, in my opinion, an open-ended calculation date for the second distribution would be unreasonable and unfair, but if the re-calculation date of December 31, 2014, at the choice of the Class Members, could be waived and extended to December 31, 2017, then in my opinion, the Objector's Settlement would be fair, reasonable, and in the best interests of the Class Members.

[148] Recalling that the action commenced in 2005, when the surplus was closer to \$100 million, and that it took seven years to more or less deplete the surplus in 2012, a re-calculation date of 2017 is a fairer date to allow the economy to turn over again than is 2014.

[149] The Objector's Settlement Proposal addresses two manifestly unfair elements of the Amended Settlement, the \$15 million cap and the 2014 re-calculation date,

discussed further below, but it does more. The Objector's Settlement addresses Canada Life's moral duty to take more responsibility for the fact that it campaigned for the Approved Settlement with an unprecedented procedure that included a vote by Class Members.

[150] In talking about moral duty, I do not mean to suggest a want of integrity or any moral turpitude. I am rather alluding to Canada Life doing the decent, honourable, and right thing even though there may be no legal obligation to do anything. I say nothing about whether there is a legal responsibility for the estimates and the promotional material, but it seems to me that when Canada Life mounts an elaborate cross-country campaign for the Approved Settlement, there is a moral responsibility to fully share the disappointment when the Approved Settlement becomes the Stark-Reality Settlement even in the absence of a legal obligation.

[151] To show itself as the better corporate citizen, Canada Life cannot simply wash its hands of the matter and say it never guaranteed there would be a significant surplus and that it has exculpated itself from liability by making no promises. There is a circumstantial unfairness if Canada Life does not adequately share the pain of the disappointment of its inaccurate estimates of the surplus and as I will explain below, Canada Life does not adequately share the pain.

[152] I wish to be clear, I am making no finding about whether Canada Life has any legal responsibility for inducing the Approved Settlement, and I am making no finding that the Class suffered any damages as a result of what occurred in the making of the Approved Settlement. I also do not mean to shame Canada Life or Class Counsel. The circumstances were unfair, and it simply strikes me and many objectors that it is circumstantially unfair to persuade the Class Members to endorse the Approved Settlement and then not do more to soften the disappointment of the electorate in the substantive outcome of the campaign, which is the Stark-Reality Settlement.

[153] With this background analysis, I now turn to the substantive fairness of the Amended Settlement.

[154] The apparent purpose of the Amended Settlement is to lessen the pain of the disappearance of the surplus that was to be shared by the Integration Group and Canada Life. However, under the Amended Settlement Class Counsel and Canada Life, the proponents for the Amended Settlement, do very little to share the pain of the Integration Group.

[155] Class Counsel for the Integration Group are to be modestly commended for their \$200,000 indirect contribution to the Amended Settlement, but the fact remains that they shall receive \$4.6 million in counsel fees. I do not see much sharing of the pain by Class Counsel.

[156] As for Canada Life's sharing the pain, under the Amended Settlement with its \$15 million cap, Canada Life's proportionate share of any surplus is potentially increased, and unlike the Integration Group they have a temporally-unlimited ability to recapture the diminishment of the surplus.

[157] For Canada Life, there is no arbitrary 2014 deadline for recalculating the surplus in light of what might be better economic conditions. Should there be a second distribution, the taking of 10% off the top of any second distribution and the cap of \$15 million is a disguised way for Canada Life to increase its share of the surplus from the 30.34% originally allocated to it.

[158] I appreciate that that Canada Life's share of the Integration Group's surplus also declined. It declined to 30.34% of \$3.9 million. Thus, Canada Life's share of the surplus is now around \$1.2 million, which I observe is precisely the sum that Canada Life is contributing to top up the surplus for the first distribution under the Amended Settlement. Thus, Canada Life is not necessarily contributing its own money to the Amended Settlement because there has never been a judicial determination of who actually owns the surplus. The issue of ownership was settled not resolved by the Approved Settlement.

[159] One may admire the negotiating acumen of Canada Life, but its acumen does not make the Amended Settlement reasonable or fair or in the best interests of the Integration Group

[160] Further, I regard the 2014 date for re-calculating the surplus as arbitrary and unfair. It is an offer of a faint hope.

[161] Thus, in my opinion, the Accepted Settlement was fair but is no longer fair. Nevertheless, transformed into the unfair Stark-Reality Settlement, it remains a binding settlement. In my opinion, the Objectors' Settlement as revised would be fair, but it is a hypothetical settlement not before the court. In my opinion, the Amended Settlement is not substantively fair.

[162] In my opinion, the Amended Settlement is also not procedurally fair.

[163] In the context of a representative action, procedural fairness is a nebulous concept. It is nebulous because as a matter of civil procedure, the class members are bound by the result but typically, they are not actively involved in the prosecution of the case, and they have ceded the control of the litigation to their representative and to Class Counsel. In these circumstances, the standards for procedural fairness are unclear.

[164] At the settlement approval stage, procedural fairness is usually achieved by a class member receiving adequate notice of the terms of the settlement, having an opportunity to voice support or opposition, and having a right to make representations at the fairness hearing.

[165] This minimum standard for procedural fairness was met in the case at bar. However, in my opinion, the minimum standard was not good enough for the circumstances of the Amended Agreement.

[166] Having regard to such things as the unprecedented campaign for approval of a settlement agreement and the fact that it is the position of both sides that the misfortune of false estimates was a matter of fickle fate and forces beyond their control, the objectors needed something more than the minimum standard to provide them with

procedural fairness. In my opinion, the proponents of the Amended Agreement ought to have paid for a lawyer to provide the objectors independent legal representation.

[167] While the objectors, particularly the five who spoke at the fairness hearing, proved themselves to be good advocates, their arguments would have been better made if they had been made by legal counsel with the skills to match those of Class Counsel and counsel for Canada Life.

[168] This last comment brings the discussion to the matter of circumstantial fairness and to the matter of what weight should be given to the arguments and positions of the objectors and petitioners.

[169] I do not think that the Amended Agreement is circumstantially fair. First, there is the unfairness, discussed above, of Class Counsel and Canada Life not sharing the disappointment caused by the false estimates. Second, it was not fair for Canada Life, in circumstances where it had campaigned for the Approved Settlement and obtained significant benefits, to potentially improve its proportionate share of the surplus by imposing a cap on the surplus to be shared. Third, there is the unfortunate circumstance that the Pelican, Indago, and Adason Groups are being used as ransom for the Amended Agreement. Fourth, and most significantly, the objectors oppose the Amended Settlement.

[170] Historically, objectors to class action settlements have been few in number, perhaps because they cannot afford to pay for legal representation and are intimidated by the process or perhaps because the harm they individually suffered was never that much in the first place. Nevertheless, the proponents for a settlement, typically, rely on the absence of opposition as a point in favour of settlement approval. In the case at bar, there was almost no opposition to the Approved Settlement.

[171] However, this is no longer the case. There is fierce opposition to the Amended Settlement, and the objectors as individuals had a substantial personal interest to protect. While some of the criticism is misguided, much of the criticism is telling against the fairness of the Amended Settlement.

[172] In my opinion, in the circumstances of this case, considerable weight should be given to the views of the objectors, and they believe the Amended Settlement to be unfair.

[173] Finally, I come to the matter of institutional fairness, which places the settlement approval process in the context of the institutional purposes of class proceedings legislation.

[174] In my opinion, from the perspective of institutional fairness, there is little to commend the Amended Settlement. The best that can be said for it is that it is monetarily better than the Stark-Reality Settlement that is the Approved Settlement and better than the futility of renewed litigation.

[175] However, I do not think that a court should approve an unfair settlement because it is the best monetary choice in a double bind. The court should not approve a

settlement unless it is all of fair, reasonable, and in the best interests of the class. If the proposed settlement is not fair, the court should reject it. The court should not approve an unfair settlement simply because it's the better of two unfair choices.

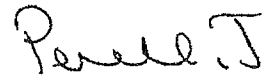
[176] In this case, the Amended Settlement is substantively, procedurally, circumstantially, and institutionally unfair. I do not approve it.

[177] Some good may yet come of not approving the Amended Settlement. It is open to the parties to come back with a fair settlement. But even if they do not, it will be a good thing for others to know that under the *Class Proceedings Act, 1992*, the court will not approve an unfair settlement. If that has the effect of elevating the standard for other settlements, then the institutional purposes of the class proceedings legislation of achieving meaningful access to justice will be served.

VI. CONCLUSION

[178] For the above reasons, I dismiss the motion.

[179] There should be no order as to costs.



Perell, J.

CITATION: *Kidd v. The Canada Life Assurance Company*, 2013 ONSC 1868
COURT FILE NO.: 05-CV-287556CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,
JEAN PAUL MARENTETTE, GARRY C.
YIP, LOUIE NUSPL,
SUSAN HENDERSON and LIN YEOMANS

Plaintiffs

- and -

THE CANADA LIFE ASSURANCE
COMPANY, A.P. SYMONS, D. ALLEN
LONEY and JAMES R. GRANT

Defendants

REASONS FOR DECISION

Perell, J.

Released: March 28, 2013.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,
JEAN PAUL MARENTETTE, GARRY C. YIP, LOUIE NUSPL, SUSAN HENDERSON
and LIN YEOMANS

Plaintiffs

-- and --

THE CANADA LIFE ASSURANCE COMPANY,
A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT

Defendants

Proceeding under the Class Proceedings Act, 1992

NOTICE OF MOTION
(for Settlement Approval of the Amended Surplus Sharing Agreement)

THE PLAINTIFFS will make a motion to the Honourable Justice Perell on March 18, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard at Osgoode Hall, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

- a. The motion will be heard orally.

THE MOTION IS FOR:

- a. An Order varying the Judgment of the Honourable Mr. Justice Perell dated January 27, 2012 (the "Judgment") in the form attached hereto as Appendix A.
- b. Such further and other orders as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- a. This action was commenced by notice of action issued April 12, 2005 and the statement of claim in this matter was issued on May 9, 2005;
- b. After approximately six years of litigation and negotiations, including a mediation with The Honourable Justice Warren Winkler (as he then was), a Surplus Sharing Agreement ("SSA") was reached between the parties;
- c. This matter was certified for settlement purposes on October 28, 2011 following an extensive notice campaign to Class members, and the SSA was approved by this Court on January 27, 2012;
- d. Shortly after the approval of the SSA, Class Counsel were informed by Canada Life and its external advisors that the estimated amount of the Integration Partial Wind-Up surplus (the "IPWU Surplus") had been adversely affected, primarily by two factors: (i) a drop in interest rates over the relevant period, and (ii) the fact that significantly more members of the Integration Partial Wind-Up (the "IPWU Sub-Class") than expected elected (or were deemed to have elected) a guaranteed pension as opposed to transferring the commuted value of their pension entitlement out of The Canada Life Canadian Employees' Pension Plan (the "Plan");
- e. The Plaintiffs and Class Counsel were advised that the value of the IPWU Surplus had decreased from an estimated \$54 million as of June 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of projected expenses). The parties continued to monitor the status of the IPWU Surplus throughout 2012. As at August 31, 2012, the IPWU Surplus was estimated in value at \$2.6 million;
- f. The parties convened for case management conferences on April 20 and May 7, 2012 in order to report on the change in circumstances, the likelihood that the SSA could not be implemented, and to obtain approval of an explanatory notice to Class members;

- g. In June/July 2012 the parties learned that the purchase of annuities for members of the IPWU Sub-Class, as required by the SSA, was impossible;
- h. The Plaintiffs and Canada Life filed affidavit evidence for a motion before this Honourable Court on September 27, 2012 concerning the proposed unilateral action by Canada Life to transfer the assets and liabilities of the IPWU Sub-Class into the ongoing portion of the Plan rather than to purchase annuities as required by the SSA. Those materials explained in considerable detail the circumstances which had emerged;
- i. The September 27, 2012 motion was settled and the Court subsequently appointed Justice Strathy to act as mediator to assist the parties in resolving the dispute concerning implementation of the SSA;
- j. The effect of the significant decrease in the IPWU Surplus is, in part, that there are insufficient funds to pay the minimum \$1000 surplus shares to members of the IPWU Sub-Class, as required under the SSA;
- k. The surpluses attributable to the Prior Partial Wind-Ups (Adason, Indago, and Pelican) have not been affected to the same extent, as most members' pension liabilities have already been settled and thus these surpluses are not as vulnerable to the same economic forces. Further, active employee Class members' benefits under the SSA are also unaffected by the change in the estimated IPWU Surplus, as those benefits are not payable out of the IPWU Surplus;
- l. The parties have negotiated toward to a solution which could salvage some value from the SSA construct for the benefit of all Class members;
- m. The parties attended before Justice Strathy for a full day mediation on December 3, 2012, and following further negotiations in writing, the parties entered into an agreement to amend the existing SSA (referred to hereinafter as the Amended Surplus Sharing Agreement or "ASSA");
- n. The main terms of the ASSA are as follows:

1. Canada Life will augment the amount of IPWU surplus by:
 - i. waiving its right to any interest on the amount of its expense reimbursement under the SSA that would have accrued during the period from August 31, 2012 to December 31, 2013 (estimated at \$800,000); and
 - ii. waiving its right to reimbursement of \$500,000 of its professional fees.;
2. The Plaintiffs and CLPENS Executive Committee will augment the amount of IPWU Surplus available for distribution by waiving their entitlement to reimbursement of future legal fees (but not disbursements) previously approved by the Court (estimated at \$200,000), which will be directed to the benefit of the IPWU Sub-Class and Inactive Eligible Class Members;
3. For any member of the IPWU Sub-Class who elected to receive a deferred or immediate pension, their portability rights were satisfied by Canada Life transferring their assets to the ongoing portion of the Plan effective August 31, 2012;
4. The assets and liabilities related to members of the IPWU Sub-Class who elect a deferred or immediate pension will be notionally segregated (the "Segregated Portion") until the completion of the second surplus distribution (discussed below), if any;
5. Canada Life will fund top-up payments (at an estimated cost of \$1.2 million) in order to ensure that members of the IPWU Sub-Class will receive the promised minimum surplus shares of \$1,000 required under the SSA;
6. There is the potential for a second surplus distribution to members of the IPWU Sub-Class and Inactive Eligible Class Members, if a surplus exists in the Segregated Portion as at December 31, 2014, subject to the following conditions:

- 10% of such surplus shall be deducted off the top and remain in the Plan as a cushion;
 - The surplus will be reduced to take into account any contributions and other payments (together with interest at the Plan rate of return) made by Canada Life into the Plan after August 31, 2012 and that are notionally allocated to the Segregated Portion;
 - 69.66% of the net surplus, up to a maximum of \$15 million, will be paid to the IPWU Sub-Class and to Inactive Eligible Class Members, in accordance with the percentages set out in the SSA;
 - The amounts distributed to members of the IPWU Sub-Class and to Inactive Eligible Class Members will be calculated in accordance with a formula which takes into consideration amounts paid under the initial surplus distribution;
 - In order to avoid distributing numerous small amounts, the threshold for surplus payments under the possible second distribution is \$100: if, based on the formula under the ASSA, any individual would be receiving \$100 or less, no payment will be made to that individual and the individual's surplus share will instead be shared with the remaining members (if any) who are receiving \$100 or more.
- o. The parties attended before this Honourable Court on Tuesday, February 12, 2013 to formally report that an agreement had been reached and to request approval of notices to Class members respecting the ASSA;
- p. The notices were approved and were mailed to Class members and posted to the website of class counsel by Friday, February 15, 2013;
- q. The terms of the ASSA are fair, reasonable and in the best interest of the Class;
- r. The ASSA is recommended by Class Counsel as it reflects the best amended settlement terms which can be reached under the prevailing circumstances;
- s. The factual circumstances enumerated at paragraphs a to p herein constitute sufficient reason to justify a variation to the Judgment;

- t. Sections 12 and 29 of the *Class Proceedings Act*, 1992, S.O.1992 c.6;
- u. The Rule 59.06(2) of the Rules of Civil Procedure; and
- v. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- a. The pleadings and orders herein;
- b. The affidavit of Jonathan Foreman sworn March 8, 2012;
- c. The affidavit of Alexander Harvey sworn March 7, 2012
- d. The affidavit of Marcus Robertson sworn March 8, 2012;
- e. Such further and other documentary relief as counsel may advise and this Honourable Court permit;

March 11, 2013

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ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
MR. JUSTICE PERELL

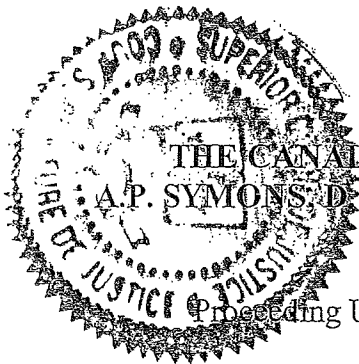
) FRIDAY, THE 27th DAY
) OF JAN, 2012

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,
JEAN PAUL MARENTETTE, LIN YEOMANS, SUSAN HENDERSON,
GARRY C. YIP, and LOUIE NUSPL

Plaintiffs

- and -



THE CANADA LIFE ASSURANCE COMPANY,
A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT

Defendants

Proceeding Under the *Class Proceedings Act*, 1992

JUDGMENT

THIS MOTION for an order approving the settlement of this proceeding in accordance with a Surplus Sharing Agreement made as of the first day of September, 2011 (as amended) (the "Agreement") and for an order pursuant to the *Variation of Trusts Act* R.S.O. 1990, c.V.1 was heard this day in the presence of counsel for the Plaintiffs, counsel for The Canada Life Assurance Company ("Canada Life") and counsel for the individual trustee defendants (the "Trustees").

ON READING the Certification Order herein dated October 28, 2011 (which set out the common issues, described the Class and Sub-Class members, and stated the nature of the claims asserted on behalf of the Class and Sub-Classes, as shown in the copy of the Certification Order attached as Schedule "A"), the Notice of Motion and the evidence filed by the parties (including the list of opt outs set out in Exhibit C to the affidavit of Uma Ratnam sworn January 6, 2012 (the "Opt Outs")), and on hearing submissions of counsel for the parties,

1. **THIS COURT ORDERS** that the settlement of this action on the terms set forth in the Agreement which is attached as Schedule "B" be and is hereby approved pursuant to section 29(3) of the *Class Proceedings Act, 1992* and that Canada Life is accordingly entitled to receive a payment of surplus from the Plan in accordance with Schedule "B".

2. **THIS COURT ORDERS** that the use of capitalized terms in this Judgment shall have the same meaning as found in the Agreement except to the extent that the definition of a term in the Agreement and this Judgment conflict, the definition of the term as set out in this Judgment shall govern.

3. **THIS COURT ORDERS** that the Agreement is valid and binding on the parties to this proceeding and on all members of the Class (as defined in the Certification Order) other than the Opt Outs (hereinafter "Class Member" or "Class Members") and that, following applicable Regulatory Approval, the distribution of surplus shall proceed in accordance with the terms of the Agreement amongst the Class and Canada Life.

4. **THIS COURT ORDERS** that an amendment to the Plan in the form attached hereto as Schedule "C", which provides for the payment of surplus to the parties in accordance

with the Agreement, subject to applicable regulatory filings, shall be considered valid and binding except in respect of the Opt Outs, and Canada Life is hereby authorized to make such amendment as contemplated by the Agreement.

5. **THIS COURT ORDERS** that Canada Life, forthwith upon receipt of applicable Regulatory Approval of the proposed distribution of assets and compliance with applicable legislation, shall cause to be issued transfer instructions to the custodians of the Plan fund, or any successors thereof (the "Custodians"), to transfer assets from the Plan fund pursuant to the Agreement and the Custodians shall transfer and/or distribute the assets as so instructed in accordance with the terms of the Agreement.

6. **THIS COURT FURTHER DECLARES AND ADJUDGES** that the transfer of assets and liabilities from the Plan to the New Plan in accordance with the Agreement is lawful and permissible under the terms of the trusts applicable to those assets.

7. **THIS COURT FURTHER DECLARES AND ADJUDGES** that, in accordance with the Agreement, and subject to such Regulatory Approval as may be required by law (if any):

- (a) Canada Life is, has been and will be entitled to use any surplus in the Plan to take contribution holidays under the Plan with respect to past, current and future benefits (whether provided on a defined benefit or defined contribution basis) and to fund benefit enhancements with respect to all Plan members (past, present or future) from time to time.

- (b) Canada Life is, has been and will be entitled to use any surplus in the New Plan, including, without limitation, any surplus attributable to assets transferred from the Plan, to take contribution holidays under the New Plan with respect to past, current and future benefits (whether provided on a defined benefit or defined contribution basis) and to fund benefit enhancements with respect to all New Plan members (past, present, or future) from time to time;
- (c) the Plan validly permits the Plan membership to be further expanded by way of plan amendment or merger in which case the Plan assets (including surplus) can be used to provide benefits for, and to fund contribution holidays under the Plan taken with respect to, new members (including benefits transferred from another pension plan);
- (d) the New Plan validly permits the New Plan membership to be further expanded by way of plan amendment or merger in which case the New Plan assets (including surplus) can be used to provide benefits for, and to fund contribution holidays taken under the New Plan with respect to, new members (including benefits transferred from another pension plan);
- (e) all or a portion of the Plan and the trust fund held in respect of the Plan (the "Plan Fund") may be merged with other pension plans and/or other pension funds;
- (f) all or a portion of the New Plan and the trust fund held in respect of the New Plan (the "New Plan Fund") may be merged with other pension plans;

- (g) the liabilities in respect of the benefits payable under the Plan and assets in respect of such liabilities may be transferred out of the Plan (by way of plan merger or otherwise) and such assets may be used in any importing plan or merged plan to provide benefits for and to fund contribution holidays taken in respect of all members (past, present or future) of the importing or merged plan;
- (h) the liabilities in respect of the benefits payable under the New Plan and assets in respect of such liabilities may be transferred out of the New Plan (by way of plan merger or otherwise) and such assets may be used in any importing plan or merged plan to provide benefits for and to fund contribution holidays taken in respect of all members (past, present or future) of the importing or merged plan;
- (i) the assets in the Plan and the New Plan can be used in accordance with the Agreement including, without limitation, to make the payments contemplated in the Agreement;
- (j) Canada Life is, has been and will be entitled to charge to and pay from the Plan Fund all reasonable expenses in respect of administering the Plan and the Plan Fund including, without limitation, the amounts identified in paragraph 6(a)(v)(C) of the Agreement, and is, has been, and will be entitled to be reimbursed from the Plan Fund for any such expenses which it has paid or will pay directly;
- (k) Canada Life was entitled to charge and pay all reasonable expenses related to the administration of any predecessor to the Plan or related to the administration of the pension fund of any such predecessor plan from the pension fund held in

respect of such predecessor plan, and was entitled to be reimbursed from such pension fund for any such expenses which it paid directly;

- (l) Canada Life is, has been and will be entitled to charge to and pay from the New Plan Fund all reasonable expenses in respect of administering the New Plan and the New Plan Fund in accordance with the New Plan terms including, without limitation, all reasonable charges, fees, taxes and other expenses (internal and external) relating to the design, implementation, administration and investment of the New Plan and its trust fund together with any charges, fees, taxes and other expenses (internal and external) relating to the design, implementation, administration and investment of the Plan that are allocated *pro rata* to the New Plan, and is, has been, and will be entitled to be reimbursed from the New Plan Fund for any such expenses which it has paid or will pay directly;
- (m) subject to paragraph 10(a) of the Agreement, each Class Member as well as his or her heirs, administrators, successors and assigns (the "Releasor") has released, discharged and foregone as against
 - (i) Canada Life, its parent, subsidiaries and affiliates and each of their respective current and former officers, directors and employees;
 - (ii) the current and former members of the Executive Committee of the Canada Life Canadian Pension Plan Members' Rights Group;
 - (iii) the members of the Indago Committee, the Pelican Committee, and the Adason Committee;
 - (iv) the Plaintiffs; and
 - (v) the Trustees and all former trustees of the Plan Fund

and each of their respective heirs, administrators, agents, advisors, successors and assigns from all actions, causes of action, claims and demands for damages, indemnity, costs and interest and loss or injury of every nature and kind which the Releasor now has, may have had or may hereafter have arising from or in any way related to the Integration PWU, the Prior PWUs, the payment of expenses from the Plan fund, the use of Plan assets to take contribution holidays, and the implementation of the Settlement, including all claims raised in the Class Action; and the Releasor shall not make any claim or take any proceeding in connection with any of the claims released against any other person or corporation who might claim contribution or indemnity under the provisions of any statute or at common law or equity from the persons or corporations herein discharged;

- (n) in the event any action or proceeding is commenced by one or more Opt-Outs or a regulator raising one or more of the claims contained in the Class Action (other than a claim by an Opt-Out or Opt-Outs for entitlement to receive a *pro rata* share of surplus allocable to a Partial Wind Up) (the “**Subsequent Proceeding**”), and in the event the claimant or claimants are successful in the Subsequent Proceeding, a payment is hereby deemed to have been made on behalf of Canada Life, the Trustees and any other person who is a defendant/respondent in the Subsequent Proceeding (the “**Deemed Payment**”) in respect of and in satisfaction of any amount found to be owing in the Subsequent Proceeding. The amount of the Deemed Payment shall be calculated as follows:

A times (B divided by C) where

- A means: the total amounts that would have been recovered in the Subsequent Proceeding in respect of such claim or claims in respect of all members, former members and past members of the Plan and New Plan had this Settlement not been approved;
- B means: the total liability under the Plan and/or the New Plan in respect of the pension benefits accrued by the Class members and by any Opt-Out (or Opt-Outs) who are not parties to the Subsequent Proceeding; and
- C means: the total liability under the Plan and/or the New Plan in respect of the pension benefits accrued by all members of the Class and all Opt-Outs;

where "liability under the Plan and/or the New Plan" means, for PWU Group Members, liability for accrued benefits measured on a solvency basis as at the effective date of the applicable Partial Wind Up, and for Non-PWU Group Members, liability for accrued benefits measured on a solvency basis as at June 30, 2005, and, where an individual is no longer entitled to any benefits under the Plan or New Plan on the relevant date referred to in this paragraph because they received payment in full satisfaction of their benefits, means the amount paid out to them, without adjustment for interest; however, in no event shall the amount of the Deemed Payment exceed the amount found to be owing in the Subsequent Proceeding inclusive of costs and interest;

- (o) any judgment rendered or order issued in a Subsequent Proceeding shall take into account the amount of the Deemed Payment.

8. **THIS COURT FURTHER DECLARES AND ADJUDGES** that subject to paragraph 10 below, the Sub-trust in respect of the assets to be transferred under the Agreement

to the New Plan (the "New Plan Trust") has been validly amended and varied to conform in all material respects to the draft trust agreement and related New Plan text (attached hereto as Schedules "D" and "E" respectively) with the result that the trust terms in respect of such assets permit all such assets to be used in the manner stipulated in paragraphs 7(b), 7(d), 7(f), 7(h), 7(i) and 7(l) above and, pursuant to the *Variation of Trusts Act*, hereby approves such amendment and variation on behalf of any person having directly or indirectly, an interest, whether vested or contingent, under the New Plan Trust who by reason of infancy or other incapacity is incapable of assenting; and on behalf of any person, whether ascertained or not, who may become a beneficiary of the New Plan Trust as at a future date or on the happening of a future event or otherwise become entitled, directly or indirectly, to an interest under the New Plan Trust as at a future date or on the happening of a future event; and on behalf of persons unborn.

9. **THIS COURT FURTHER ORDERS** that should the Superintendent of Financial Services provide his consent pursuant to the *Pension Benefits Act* necessary for implementation of the Settlement and/or the acknowledgement referred to in paragraph 6(a)(x) of the Agreement (the "Acknowledgement"), such consent and/or Acknowledgement shall be filed with this Honourable Court.

10. **THIS COURT FURTHER ORDERS** that should the Superintendent of Financial Services refuse to provide his consent pursuant to the *Pension Benefits Act* necessary for implementation of the Settlement, or should Court Approval of the Quebec Superior Court (as contemplated in paragraph 6(c)(vii) of the Agreement) be denied, as of the date of such refusal or denial this Judgment shall be null and void and without prejudice to the rights of the

parties to proceed with this action and any agreement between the parties incorporated in this Judgment shall be deemed in any subsequent proceedings to have been made without prejudice.

11. **THIS COURT FURTHER ORDERS** that should FSCO / the Superintendent of Financial Services refuse to provide the Acknowledgement, subject to the condition in paragraph 6(a)(x) of the Agreement being waived by Canada Life within 60 days of Canada Life being advised of such refusal, this Judgment shall be null and void and without prejudice to the rights of the parties to proceed with this action and any agreement between the parties incorporated in this Judgment shall be deemed in any subsequent proceedings to have been made without prejudice.

Paul J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 30 2012

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

MB

SCHEDULE A to the Judgment of Perell J.

Court File No. 05-CV-287556CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE
PERELL

) FRIDAY, THE 28th DAY
) OF OCTOBER, 2011

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,
JEAN PAUL MARENTETTE, LIN YEOMANS, SUSAN HENDERSON,
GARRY C. YIP and LOUIE NUSPL
Plaintiffs

- and -

THE CANADA LIFE ASSURANCE COMPANY,
A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT
Defendants

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for certification of this action as a class proceeding was heard this day in the presence of counsel for the Plaintiffs, counsel for The Canada Life Assurance Company ("Canada Life"), counsel for the individual trustee defendants and counsel for Brenda McEachern.

ON READING the Notice of Motion and the evidence filed by the parties and on hearing submissions of counsel for the parties and for Brenda McEachern,

1. THIS COURT ORDERS that this action be and is hereby certified as a class proceeding under the *Class Proceedings Act, 1992*.

2. THIS COURT FURTHER ORDERS that the Class is identified as:

- (a) all persons, wherever resident, who are or were former members under the Canada Life Canadian Employees Pension Plan (the "Plan") and who were included in the partial wind up of the Plan declared as at June 30, 2005 (the "Integration Partial Wind Up") together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died (the "Integration Partial Wind Up Sub-Class");
- (b) all persons, wherever resident, who are or were former members under the Plan who were employed by Indago Capital Management Inc. and whose employment ceased following (and as a result of) a merger of that company with Laketon Investment Management Ltd. on February 26, 1999 together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died (the "Indago Sub-Class");
- (c) all persons, wherever resident, who are or were former members under the Plan who were formerly employed by Adason Properties Limited and who were notified of their termination of employment between November 1, 1999 and February 28, 2001 together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died (the "Adason Sub-Class");
- (d) all persons, wherever resident, who are or were former members under the Plan who were employed by Pelican Food Services Limited and whose employment with Pelican Food Services Limited ceased as a result of the outsourcing in January 2001 of that company's operations by Canada Life together with the

spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died (the "Pelican Sub-Class");

(e) all persons, wherever resident, who are not included in subparagraphs (a) to (d) above and

- (i) are or were active members of the Plan at any time between June 30, 2005 and the date of this order; or
- (ii) were inactive members of the Plan on April 12, 2005; or
- (iii) were persons otherwise entitled to benefits under the Plan on April 12, 2005

together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died; and

(f) all persons, wherever resident, who were former members previously entitled to benefits or other payments under the Plan and who would have been included in the Integration Partial Wind Up (and therefore would have been part of the Integration Partial Wind Up Sub-Class) but for the fact that their benefits under the Plan were governed by the laws of Quebec, which at the relevant time did not recognize partial pension plan wind ups in its pension legislation and who were not inactive members of the Plan on April 12, 2005, together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died.

3. **THIS COURT FURTHER ORDERS** that the relief sought by the Class shall be:

- (a) a declaration that the fund held in respect of the Plan (the "Fund") is impressed with an irrevocable trust (the "Trust") held exclusively for the benefit of Plan beneficiaries;
- (b) a declaration that Canada Life has no beneficial interest in any assets of the Fund and that no part of the corpus or income of the Fund shall ever revert to Canada Life;
- (c) a declaration that any amendments made to the Plan and the Trust that purport to allow surplus to revert to Canada Life or otherwise give Canada Life the right to benefit directly or indirectly from the assets of the Fund are null and void;
- (d) a declaration that the Plan and the Trust do not permit the costs of administering the Fund or the costs of administering the Plan (together, the "Plan Expenses") to be paid out of or charged to or reimbursed from the Fund;
- (e) a declaration that Canada Life is responsible for the payment of all Plan Expenses and may not charge Plan Expenses to, or seek reimbursement of Plan Expenses from, the Fund;
- (f) a declaration that any and all amendments to the Plan and the Trust that purported to permit Plan Expenses to be paid out of, charged to or reimbursed from the Fund, or that otherwise permit or require that Plan Expenses be borne by the Fund (the "Plan Expenses Amendments"), are void and of no effect;
- (g) a declaration that any predecessor to the Plan, and any trusts thereunder, did not permit the costs and expenses of administering such predecessor plan and the

- pension fund held in respect of such predecessor plan to be paid out of, charged to or reimbursed from the pension fund held in respect of such predecessor plan;
- (h) an interim and permanent injunction restraining the defendants from causing the Plan Expenses to be paid out of, charged to or reimbursed from the Fund and from otherwise using any part of the Fund for purposes other than for the exclusive benefit of the Plan members;
 - (i) a declaration that all Plan Expenses the defendants unlawfully caused to be paid out of, charged to or reimbursed from the Fund (the "Revoked Funds") constitute a breach and partial revocation of the Trust;
 - (j) an accounting of all Revoked Funds by Canada Life;
 - (k) an order that all Revoked Funds, together with interest compounded annually at the rate of Fund return, be paid to the Class by Canada Life and that such funds be equitably allocated and distributed among the members of the Class in accordance with the direction of this Honourable Court;
 - (l) in the alternative to (k), an order requiring the Company to make restitution to the Fund in respect of all Revoked Funds plus interest at the rate set out in (u);
 - (m) damages payable by the Company for breach of trust and contract in the amount of \$150,000,000 in respect of the Revoked Funds, and such amounts to be determined by this Honourable Court;

- (n) a declaration that the Plan and the Trust do not permit the Plan to be merged in whole or in part with any other pension plan;
- (o) a declaration that the Plan and the Trust do not permit the Fund to be merged in whole or in part with the fund of any other pension plan;
- (p) a declaration that Canada Life is precluded from amending the Plan or the Trust to include new classes of members;
- (q) a declaration that the Plan and the Trust do not permit Canada Life to take contribution holidays under the Plan, including contribution holidays in respect of the funding of any defined contribution benefits from the accumulated actuarial surplus in the Plan;
- (r) an order determining the quantum, if any, of the contribution holidays improperly taken by Canada Life and requiring that Canada Life pay all such amounts to the Fund with interest;
- (s) a declaration that the Plan and the Trust do not permit Canada Life to fund benefit enhancements under the Plan from Fund assets including surplus;
- (t) an order determining the quantum, if any, of benefit enhancements under the Plan improperly funded from Fund assets and requiring that Canada Life pay all such amounts to the Fund with interest;

- (u) prejudgment and postjudgment interest under subsections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, compounded annually, or at the Plan rate of return compounded annually, whichever is greater;
- (v) costs on a substantial indemnity basis, together with any goods and services tax or harmonized sales tax which may be payable on any amount pursuant to the *Excise Tax Act*, R.S.C. 1985, c.E-15, as amended, or any other legislation enacted by the Government of Canada or a province of Canada, payable by Canada Life, or in the alternative, payable out of the Fund; and
- (w) such further and other relief as this Honourable Court may deem just.

4. **THIS COURT FURTHER ORDERS** that the relief sought by the Integration Partial Wind Up Sub-Class shall be:

- (a) a declaration ascertaining the amount of surplus in the Plan, or in the alternative, a reference for an accounting of the amount of the surplus in the Plan (the "Integration PWU Surplus") required to be distributed as a result of the Integration Partial Wind Up;
- (b) an order requiring Canada Life to file a partial wind up report with the Superintendent of Financial Services for Ontario that provides for the immediate distribution and payment of the Integration PWU Surplus to the Integration PWU Wind Up Sub-Class.

5. **THIS COURT FURTHER ORDERS** that the relief sought by the Indago Sub-Class shall be an order determining the amount of surplus in the Plan allocable to any partial

wind up of the Plan that may be declared as a result of the events described in paragraph 2(b) above and requiring that such amount be distributed to the Indago Sub-Class in the event of such a partial wind up.

6. **THIS COURT FURTHER ORDERS** that the relief sought by the Adason Sub-Class shall be an order determining the amount of surplus in the Plan allocable to any partial wind up of the Plan that may be declared as a result of the events described in paragraph 2(c) above and requiring that such amount be distributed to the Adason Sub-Class in the event of such a partial wind up.

7. **THIS COURT FURTHER ORDERS** that the relief sought by the Pelican Sub-Class shall be an order determining the amount of surplus in the Plan allocable to any partial wind up of the Plan that may be declared as a result of the events described in paragraph 2(d) above and requiring that such amount be distributed to the Pelican Sub-Class in the event of such a partial wind up.

8. **THIS COURT FURTHER ORDERS** that the claims asserted on behalf of the Class will be claims to the relief set out in paragraphs 3-7 above.

9. **THIS COURT FURTHER ORDERS** that the common issues for the Class are:

- (a) Do the Plan and the Trust permit any Plan Expenses to be paid out of, charged to or reimbursed from the Fund?
- (b) Have Plan Expenses been invalidly paid from Fund assets? If so,
 - (i) what is the quantum of the Plan Expenses invalidly paid from the Fund assets?

- (ii) should all or any portion of the amount of such expenses be repaid by Canada Life to the Fund or to Class members?
 - (iii) should the amount of any such expenses to be repaid to the Fund include interest, and if so how should such interest be calculated?
- (c) Should any injunctive relief in respect of the payment of Plan Expenses from the Fund be granted? If so, on what terms?
- (d) Did any predecessor to the Plan, and any trusts thereunder, permit the costs and expenses of administering such predecessor plan and the pension fund held in respect of such predecessor plan to be paid out of, charged to or reimbursed from the pension fund held in respect of such predecessor plan? If not, what if any relief should be granted?
- (e) Do the Plan and the Trust permit the Plan to be merged in whole or in part with another pension plan?
- (f) Do the Plan and the Trust permit the Fund to be merged with or transferred in whole or in part to the fund of any other pension plan?
- (g) Has Canada Life improperly taken any contribution holidays? If so,
 - (i) what is the quantum of the contribution holidays improperly taken?
 - (ii) should all or any portion of the amount of such contribution holidays be paid by Canada Life to the Fund?
 - (iii) should the amount of any such contribution holidays to be paid to the Fund include interest, and if so how should such interest be calculated?
- (h) Do the Plan and the Trust permit the Plan to be amended to include new classes of members?

(i) Has Canada Life improperly funded benefit enhancements under the Plan from Fund assets including surplus? If so:

- (i) what is the quantum of such benefit enhancements improperly funded?
- (ii) should any amount be paid by Canada Life to the Fund in respect of such benefit enhancements?
- (iii) should any such amount to be paid to the Fund include interest, and if so how should such interest be calculated?

10. **THIS COURT FURTHER ORDERS** that the common issues for the Integration Partial Wind Up Sub-Class are:

- (a) Is the Integration Partial Wind Up Sub-Class entitled to any portion of the Integration PWU Surplus?
- (b) If so, how much is required to be distributed to the Integration Partial Wind Up Sub-Class?

11. **THIS COURT FURTHER ORDERS** that the common issues for the Indago Sub-Class are:

- (a) Is the Indago Sub-Class entitled to any portion of any surplus in the Fund allocable to any partial wind up of the Plan that may be declared as a result of the events described in paragraph 2(b) above?
- (b) If so, how much is required to be distributed to the Indago Sub-Class?

12. **THIS COURT FURTHER ORDERS** that the common issues for the Adason Sub-Class are:

(a) Is the Adason Sub-Class entitled to any portion of any surplus in the Fund allocable to any partial wind up of the Plan that may be declared as a result of the events described in paragraph 2(c) above?

(b) If so, how much is required to be distributed to the Adason Sub-Class?

13. **THIS COURT FURTHER ORDERS** that the common issues for the Pelican Sub-Class are:

(a) Is the Pelican Sub-Class entitled to any portion of any surplus in the Fund allocable to any partial wind up of the Plan that may be declared as a result of the events described in paragraph 2(d) above?

(b) If so, how much is required to be distributed to the Pelican Sub-Class?

14. **THIS COURT FURTHER ORDERS** that David Kidd, Alexander Harvey and Jean Paul Marentette be and are hereby appointed as Representative Plaintiffs for the Class.

15. **THIS COURT FURTHER ORDERS** that David Kidd, Alexander Harvey and Jean Paul Marentette be and are hereby appointed as Representative Plaintiffs for the Integration Partial Wind Up Sub-Class.

16. **THIS COURT FURTHER ORDERS** that Susan Henderson be and is hereby appointed as Representative Plaintiff for the Indago Sub-Class.

17. **THIS COURT FURTHER ORDERS** that Garry C. Yip and Louie Nuspl be and are hereby appointed as Representative Plaintiffs for the Adason Sub-Class.

18. THIS COURT FURTHER ORDERS that Lin Yeomans be and is hereby appointed as Representative Plaintiff for the Pelican Sub-Class.

19. THIS COURT FURTHER ORDERS that the law firms of Koskie Minsky LLP and Harrison Pensa LLP are appointed counsel to the Class, the Integration Partial Wind Up Sub-Class, the Indago Sub-Class, and the Pelican Sub-Class.

20. THIS COURT FURTHER ORDERS that the law firm of Sack Goldblatt Mitchell LLP is appointed counsel to the Adason Sub-Class.

21. THIS COURT FURTHER ORDERS that, subject to paragraph 23, Canada Life send Notice of Certification in the form attached hereto as Schedule A (together with a French language translation) by prepaid first class mail on or before November 17, 2011 to the last known address (where available) of each Class Member (excluding those who have retained Koskie Minsky LLP and Harrison Pensa LLP or Sack Goldblatt Mitchell LLP in this matter).

22. THIS COURT FURTHER ORDERS that Canada Life cause Notice of Certification to be published on two occasions prior to November 17, 2011 in the national edition of the *Globe and Mail* and cause a French translation of such notice to be published on two occasions prior to November 17, 2011 in *La Presse*.

23. THIS COURT FURTHER ORDERS that notice as described in paragraph 22 shall be sufficient, and individual notice as described in paragraph 21 need not be mailed, where an individual or estate is a Class Member by virtue of being an individual or estate described in the phrase "spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died" in paragraphs 2(a) through 2(f).

24. THIS COURT FURTHER ORDERS that members of the Class may opt out of the class proceeding by serving by prepaid first class mail, fax or email notice of desire to opt out of the proceeding on:

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900
Toronto, Ontario M5H 3R3

Attention: Canada Life Class Action

Fax: (416) 977-3316

Email: canadalifecclass@kmlaw.ca

25. THIS COURT FURTHER ORDERS that notice from members of the Class wishing to opt out of the class proceeding must be received at the office of Koskie Minsky LLP by no later than 5 p.m. on January 3, 2012, after which a member may not opt out.

Penel. J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 01 2011

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: *for*

SCHEDULE A

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

IN THE MATTER OF THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN CLASS ACTION LITIGATION

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

PURPOSE OF THIS NOTICE

The purpose of this notice is to advise class members that on October 18, 2011 the litigation involving The Canada Life Employees Pension Plan (the "Plan") was certified as a class action by the Ontario Superior Court of Justice for the purposes of implementing the settlement agreement reached between the parties. The title of proceedings and court file number in the litigation is: *Kidd et al. v. The Canada Life Assurance Company*, court file no. 05-CV-287556CP. This notice also provides information concerning a settlement approval hearing that is scheduled to be heard on January 27th, 2012.

NATURE OF THE PROCEEDING

The litigation raised the following main allegations: 1) the terms of the Plan did not permit the defendant Canada Life to apply pension assets to pay certain administrative expenses of the Plan and 2) the Plan members who were affected by any partial wind up of the Plan are entitled to share in surplus assets held within the Plan. The plaintiffs asked the Court to make various orders including an order that the surplus in the Plan allocable to that portion of the Plan that was partially wound up be distributed to affected members together with an order that Canada Life was not entitled to pay administrative expenses from the Plan fund and that such amounts should be repaid to the Plan fund, with interest. Following lengthy negotiations between the parties, which were facilitated by a Judge of the Ontario Superior Court of Justice, a settlement was reached which is subject to court and regulatory approvals. A summary of the terms of the proposed settlement is set forth below.

MEMBERS OF THE CLASS

The members of the class (the "Class") certified by the Ontario Superior Court of Justice are:

- a) all persons, wherever resident, who are or were former members under the Plan and who were included in the partial wind up of the Plan declared as at June 30, 2005 (the "Integration Partial Wind Up") together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died (the "Integration Partial Wind Up Sub-Class");
- b) all persons, wherever resident, who are or were former members under the Plan who were employed by Indago Capital Management Inc. and whose employment ceased following (and as a result of) a merger of that company with Laketon Investment Management Ltd. on February 26, 1999 (the "Indago Members") together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died (the "Indago Sub-Class");
- c) all persons, wherever resident, who are or were former members under the Plan who were formerly employed by Adason Properties Limited and who were notified of their termination of employment between November 1, 1999 and February 28, 2001 (the "Adason Members") together with the spouses, estates, heirs, beneficiaries, and representatives of

any of the above who has died (the "Adason Sub-Class");

- d) all persons, wherever resident, who are or were former members under the Plan who were employed by Pelican Food Services Limited and whose employment with Pelican Food Services Limited ceased as a result of the outsourcing in January 2001 of that company's operations by Canada Life (the "Pelican Members") together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died (the "Pelican Sub-Class");
- e) all persons, wherever resident, who are not included in subparagraphs (a) to (d) above and are or were active members of the Plan at any time between June 30, 2005 and October 18, 2011; or were inactive members of the Plan (deferred vested members and pensioners) on April 12, 2005; or were persons otherwise entitled to benefits under the Plan on April 12, 2005 (collectively the "Non-Partial Wind Up Group Members") together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died; and
- f) all persons, wherever resident, who were former members previously entitled to benefits or other payments under the Plan and who would have been included in the Integration Partial Wind Up (and therefore would have been part of the Integration Partial Wind Up Sub-Class) but for the fact that their benefits under the Plan were governed by the laws of Quebec, which at the relevant time did not recognize partial pension plan wind ups in its pension legislation and who were not inactive members of the Plan on April 12, 2005, together with the spouses, estates, heirs, beneficiaries, and representatives of any of the above who has died.

The law firms of Koskie Minsky LLP and Harrison Pensa LLP have been appointed as counsel to the Class, the Integration Partial Wind Up Sub-Class, the Indago Sub-Class and the Pelican Sub-Class. The law firm of Sack Goldblatt Mitchell LLP has been appointed as counsel to the Adason Sub-Class.

DESCRIPTION OF THE SETTLEMENT

Under the terms of the settlement proposal, the net surplus allocable to the Integration Partial Wind Up (the "Integration Partial Wind Up Surplus") will be distributed as follows:

- The members of the Integration Partial Wind Up will get 57.22% of the Integration Partial Wind Up Surplus.
- Inactive members of the Plan (i.e. deferred vested members and pensioners) on April 12, 2005 who were not included in the Integration Partial Wind Up nor in any of the Prior Partial Wind Ups (described below), and persons otherwise entitled to benefits under the Plan on April 12, 2005 by virtue of their relationship to a Plan member where the Plan member died prior to that date and was not included in the Integration Partial Wind Up nor in any of the Prior Partial Wind Ups (collectively, the "Inactive Non-Partial Wind Up Group Members"), who consent (if necessary) to the transfer to a new pension plan and variation of trust (described further below), get 12.44% of the Integration Partial Wind Up Surplus.
- Canada Life will get 30.34% of the Integration Partial Wind Up Surplus.
- Those members of the Plan who were employed in Quebec and would have been included in the Integration Partial Wind Up but for the fact that Quebec did not recognize partial plan wind ups in its pension legislation at the relevant time, and who (if necessary) consent to the transfer to a new pension plan and variation of trust, will receive a total amount of surplus which is equal to the amount they would have received had they been treated as a member of the Integration Partial Wind Up.

Active members of the Plan as at June 30, 2005, plus any new Plan members after that date up to October 18, 2011 (the date the class action was certified), who (if necessary) consent to the transfer to the new pension plan and variation of trust, will get a two-year contribution holiday under the Plan.

As part of the settlement proposal, Canada Life will transfer those Non-Partial Wind Up Group Members who are still entitled to benefits under the Plan, and who consent to the transfer, to a new pension plan (the "New Plan"), together with assets equal to the value of the benefits these members have earned under the Plan along with a proportional share of the surplus in the ongoing portion of the Plan. The Non-Partial Wind Up Group Members who consent to the transfer to the New Plan will also be consenting to a variation of the trust under which the Plan assets are held. The benefit formula in the New Plan will be the same as the formula in the current Plan. As part of the settlement proposal, Canada Life has agreed that the benefit formula in the New Plan will not change for at least two years without member approval. Any of the Non-Partial Wind Up Group Members who do not consent to the settlement proposal (including, if necessary, consenting to transfer to the New Plan) will not participate in the settlement; that is, they will not receive any payment of surplus or, if an active member, will not receive a contribution holiday, and if they are still entitled to benefits under the Plan, they will not move to the New Plan.

The settlement proposal also deals with three events that occurred prior to the Integration Partial Wind Up which involved the termination of employment of the Indago Members, the Adason Members and the Pelican Members. Under the terms of the settlement proposal, Canada Life will declare partial wind ups of the Plan in connection with the termination of employment of these Plan members (the "Prior Partial Wind Ups"). The Indago Members, the Adason Members and the Pelican Members will only share in the surplus attributable to the partial wind up in which they are included. The surplus allocable to each of the Prior Partial Wind Ups will be divided on a basis similar to the Integration Partial Wind Up: 57.22% to the members of each Prior Partial Wind Up; 12.44% to those Inactive Non-Partial Wind Up Group Members who consent to the settlement proposal, and 30.34% to Canada Life.

Expenses incurred by the parties related to the negotiation and implementation of the settlement proposal, or related more generally to the Integration Partial Wind Up or the Prior Partial Wind Ups, will be deducted from the surplus allocable to each partial wind up prior to the split described above. There is no direct cost to you as a Class member. Further information on the estimate of the total expenses incurred in connection with the settlement proposal, including Class counsel's fees (which must be approved by the Court) and the terms of the settlement proposal generally, can be found by going to the Koskie Minsky LLP website, www.kmlaw.ca.

OPT-OUT PROCESS

Class members who do not want to be included in the class action have a right to opt out of the proceedings. If you wish to opt out of the class action, you must ensure that a written notice to that effect is received at the office of Koskie Minsky LLP by prepaid first class mail or fax (416-977-3316) or email (canadalifeclass@kmlaw.ca) by no later than 5:00 PM on January 3, 2012. Koskie Minsky's address is:

Koskie Minsky LLP, Barristers & Solicitors
20 Queen Street West
Suite 900, Box 52
Toronto, Ontario M5H 3R3
Attn: Canada Life Class Action

If you are a Class member and opt out, you will not be entitled to participate in the settlement. If you are a Class member and do not opt out, you will be bound by any future Orders in this action and by the terms of the settlement proposal, if the settlement is approved by the Court. The settlement includes a release of certain legal rights against the defendants as set forth in the surplus sharing agreement.

SETTLEMENT APPROVAL HEARING

Class counsel will ask the Court to approve the settlement of the class action and approve Class counsel's fees and disbursements in connection with the class action on January 27th, 2012 at 10 AM at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. At the settlement approval hearing, the Court will consider any objections to or comments concerning either the proposed settlement or Class counsel's motion for approval of its fees and disbursements. Objections or comments are to be made in writing and should be mailed, faxed or emailed to Koskie Minsky LLP at the address listed above on or before January 16th, 2012. Koskie Minsky LLP will ensure that any objections and/or comments received are filed with the Court in advance of the settlement approval hearing. Provided a Class member has made a written submission, subject to the Court's direction, that person shall be entitled to make oral submissions at the settlement approval hearing.

FURTHER INFORMATION

This notice is intended to provide a summary of the terms of the settlement proposal and notify you of your right to opt out of the proceeding. Further particulars of the proposed settlement, the Surplus Sharing Agreement (which includes all details of the settlement proposal), and the Order of the Superior Court of Justice dated October 18, 2011 can be obtained from the Koskie Minsky LLP website at: www.kmlaw.ca. Questions for Class counsel should be directed by email or telephone to:

Koskie Minsky LLP
Tel: 1-800-286-2266
Email: canadalifeclass@kmlaw.ca
Attn: Canada Life Class Action

Harrison Pensa LLP
Tel: 1-800-263-0489 (ext 775)
Email: Canadalifeclass@harrisonpensa.com
Attn: Canada Life Class Action

Counsel to the Class, the Integration Partial Wind Up Sub-Class, the Indago Sub-Class and the Pelican Sub-Class

or

Sack Goldblatt Mitchell LLP
Tel: 416-979-4050
Email: DBrown@sgmlaw.com
Attn: Darrell Brown

Counsel to the Adason Sub-Class

THIS NOTICE HAS BEEN APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.
QUESTIONS ABOUT THIS NOTICE SHOULD NOT BE DIRECTED TO THE COURT.

DAVID KIDD, et al.
Plaintiffs

THE CANADA LIFE ASSURANCE
COMPANY, et al.
Defendants

Court File No: 05-CV-287556CP

ONTARIO

SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

ORDER

(Motion for Certification as a Class Proceeding,
returnable October 18, 2011)

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SCHEDULE B to the Judgment of Perell J.

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN
FINANCIAL SERVICES COMMISSION OF ONTARIO AND CANADA REVENUE AGENCY
REGISTRATION NO. 0354563

SURPLUS SHARING AGREEMENT

Made as of the 1st day of September, 2011

AMONG:

DAVID KIDD, ALEXANDER HARVEY and JEAN PAUL MARENTETTE (hereinafter the "Plaintiffs")

-and-

WILBERT ANTLE, ED BARRETT, ALEXANDER HARVEY, DAVID KIDD, BRIAN LYNCH, JIM MARTIN, GARY NUMMELIN, and SHRIRAM MULGUND in their collective capacity as, and on behalf of, the Executive Committee of CLPENS (hereinafter the "CLPENS Executive")

-and-

LIN YEOMANS, SHAUNA MURRAY and HEINZ SPUDIK in their capacity as the members of the Pelican Pension Committee (hereinafter the "Pelican Committee")

-and-

JOCK FLEMING and SUSAN HENDERSON in their capacity as the members of the Indago Pension Committee (hereinafter the "Indago Committee")

-and-

GARRY C. YIP and LOUIE NUSPL in their capacity as the members of the Adason Pension Committee (hereinafter the "Adason Committee")

- and -

THE CANADA LIFE ASSURANCE COMPANY

- and -

Those individuals in the Class (as defined herein) who have retained Members' Counsel to execute this Agreement on their

behalf (hereinafter the "Represented Participants", by their counsel)

- and -

Those individuals in the Class who have not retained Members' Counsel to execute this Agreement but who have provided their individual consents to this Agreement, as undersigned (hereinafter the "Non-Represented Participants")

(collectively, the "Parties" and individually a "Party")

WHEREAS CLPENS is a voluntary association of individuals who are PWU Group Members or Non-PWU Group Members;

AND WHEREAS Canada Life declared a partial wind up of the Plan for the period between July 10, 2003 and June 30, 2005 following the company's acquisition by The Great-West Life Assurance Company (the "Integration PWU");

AND WHEREAS it is possible that one or more partial Plan wind ups could be declared in connection with certain events occurring prior to the Integration PWU: (i) the termination of employment of certain Plan members employed by Indago Capital Management Inc., as a result of the February 26, 1999 merger of that company with Laketon Investment Management Ltd.; (ii) the termination of employment of certain Plan members employed by Adason Properties Limited (notified of their termination during the period November 1, 1999 to February 28, 2001); and (iii) the termination of employment of certain Plan members employed by Pelican Food Services Limited, as a result of the outsourcing of certain operations by Canada Life in 2001 (if declared, the "Indago PWU", the "Adason PWU", the "Pelican PWU", and collectively the "Prior PWUs");

AND WHEREAS should one or more Prior PWUs be declared prior to the Settlement Approval Date, a revision to the partial wind-up report filed with FSCO in respect of the Integration PWU will have to be filed with FSCO to incorporate and reflect such Prior PWUs, including expenses related thereto;

AND WHEREAS the Plaintiffs, supported by CLPENS, have commenced an action in the Ontario Superior Court of Justice pursuant to the *Class Proceedings Act, 1992* (Ontario) (the "Class Action") through an Amended Statement of Claim dated May 9, 2005, Court File No. 05-CV-287556CP (including any subsequent amendments, the "Amended Statement of Claim" herein) relating among other things to entitlement to surplus under the Plan and the payment of certain expenses out of Plan assets;

AND WHEREAS Canada Life denies any liability with respect to any of the claims advanced in the Class Action;

AND WHEREAS if the Trustees so request, the Plaintiffs have agreed that they shall discontinue the Class Action without costs against the Trustees, on the condition that the

Trustees can once again be named as defendants in the Class Action should the Settlement (defined below) not proceed;

AND WHEREAS the Plaintiffs, the CLPENS Executive, and Canada Life entered into confidential negotiations in an effort to resolve the claims advanced in the Class Action;

AND WHEREAS the Plaintiffs, the CLPENS Executive, and Canada Life executed a Memorandum of Understanding made as of November 9, 2007 (the "Integration MOU"), wherein they agreed, among other things, to enter into confidential negotiations in an effort to conclude a comprehensive settlement of the claims advanced in the Amended Statement of Claim, in addition to all claims relating to the Indago PWU and the Pelican PWU, under an agreement based on the framework and terms of the Integration MOU (the "Settlement");

AND WHEREAS the Pelican Committee and the Indago Committee later joined the negotiations;

AND WHEREAS the Adason Committee and Canada Life entered into a Memorandum of Understanding made as of January 5, 2010 (the "Adason MOU"), wherein they agreed, among other things, to join the negotiations;

AND WHEREAS those negotiations culminated in the preparation of this Surplus Sharing Agreement, which contains the material terms of the Settlement;

NOW, THEREFORE, IN CONSIDERATION OF their mutual covenants, and for other good and valuable consideration, the Parties agree as follows:

1. INTERPRETATION AND DEFINITIONS

- (a) References in this Agreement to the masculine shall include the feminine and vice versa, and references to the singular shall include the plural and vice versa, as the context requires. Headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement. A reference to a paragraph, subparagraph or similar division means a paragraph, subparagraph or other division of this Agreement. Any reference to an agreement by the Parties or the MOU Parties shall mean an agreement in writing.
- (b) Reference in this Agreement to any Regulatory Approval or Court Approval means final Regulatory Approval or final Court Approval, as the case may be, following the expiry of any applicable appeal period or, where an appeal has been taken, final resolution of that appeal.
- (c) Reference in this Agreement to the requirement for an individual to consent to his or her transfer to the New Plan includes any additional consents that may be required from the individual or from the individual's current or former spouse and/or the individual's named beneficiary in order to implement the Settlement, such as consent to the payment of surplus to Canada Life, or consent to a variation of trust involving funds held in, or to be transferred to, the New Plan, or held in the Sub-trust or Sub-trusts described in paragraph 6(c)(iii) of this Agreement.

In respect of consents that will be required from an individual's current or former spouse in respect of such a variation of trust, the parties agree that consents will be sought directly from spouses in the following circumstances:

- (i) where the individual is in receipt of a joint and survivor pension from the Plan, and the spouse is the joint annuitant; or
- (ii) where the spouse or former spouse has an entitlement under the Plan pursuant to a court order or domestic contract on marriage breakdown; or
- (iii) where the spouse or former spouse is the individual's designated beneficiary under the Plan, consent of such spouse/former spouse in his or her capacity as such beneficiary.

The parties agree that they shall obtain an order of the court consenting to any variation of trust hereunder on behalf of all other spouses of individuals affected by the variation of trust.

Instead of obtaining consent from an individual's named beneficiary to a variation of trust, the individual may elect to revoke his or her beneficiary designation under the Plan in order for the individual to participate in the Settlement, if the designation is revocable.

- (d) Reference in this Agreement to the requirement for an individual to sign a binding consent and release that binds them to the Settlement shall mean the signing of such a consent and release by such date prior to the Settlement Approval Date as agreed by Canada Life and the MOU Parties (with such agreement not to be unreasonably withheld), except in the circumstances set out in paragraph 7(l).
- (e) Capitalized terms used in this Agreement have the meanings set out below.
 - (i) **"Active Eligible Non-PWU Group Members"** means those Active Non-PWU Group Members who are Eligible Non-PWU Group Members.
 - (ii) **"Active Non-PWU Group Members"** means employee members of the Plan on June 30, 2005 plus any individual who joined or joins the Plan between June 30, 2005 and the date on which the Class Action is certified by the Court as a class proceeding (none of whom, for greater certainty, were included in the Integration PWU nor in any Prior PWU).
 - (iii) **"Adason Committee"** has the meaning set out in the recitals to this Agreement.
 - (iv) **"Adason MOU"** has the meaning set out in the recitals to this Agreement.

- (v) "Adason PWU" has the meaning set out in the recitals to this Agreement.
- (vi) "Agreement" means this Surplus Sharing Agreement.
- (vii) "Amended Statement of Claim" has the meaning set out in the recitals to this Agreement.
- (viii) "Canada Life" means The Canada Life Assurance Company.
- (ix) "Canada Life's Surplus Share" has the meaning set out in paragraph 7(a) of this Agreement.
- (x) "Cashed-Out Non-PWU Group Members" means Non-PWU Group Members who are no longer entitled to benefits under the Plan on the Roadshow Mailout Date.
- (xi) "CCAs" means the following agreements (and "CCA" shall mean any one of them, as the context may require):
 - (A) the Communication and Confidentiality Agreement made as of November 9, 2006 among the CLPENS Executive, the Plaintiffs, and Canada Life;
 - (B) the Communication and Confidentiality Agreement made as of December 19, 2007 between the Pelican Committee and Canada Life;
 - (C) the Communication and Confidentiality Agreement made as of December 20, 2007 between the Adason Committee and Canada Life; and
 - (D) the Communication and Confidentiality Agreement made as of October 1, 2008 between the Indago Committee and Canada Life;
- (xii) "Class" means the PWU Group Members, the Non-PWU Group Members, the former Plan members identified in paragraph 7(i)(ii), and those persons and estates who may become entitled to a surplus payment hereunder upon the death of such an individual, subject to the order of the Court under the Class Action.
- (xiii) "Class Action" has the meaning set out in the recitals to this Agreement.
- (xiv) "CLPENS" means the Canada Life Canadian Pension Plan Members' Rights Group.
- (xv) "CLPENS Executive" means those individuals identified as such on the first page of this Agreement.

- (xvi) "Court Approval" means any approval, order, judgment or consent of a Court having jurisdiction over the issue in question and includes the approval of the Québec Superior Court referred to in paragraph 6(c)(vii) of this Agreement.
- (xvii) "Deemed Payment" has the meaning set out in paragraph 6(a)(v)(F) of this Agreement.
- (xviii) "Eligible Group" means the Eligible PWU Group Members and the Eligible Non-PWU Group Members.
- (xix) "Eligible Member Group Surplus Share" has the meaning set out in paragraph 7(a) of this Agreement.
- (xx) "Eligible Non-PWU Group Members" means Non-PWU Group Members who meet the criteria in either (A) or (B) below.

(A) Those Non-PWU Group Members who are not Cashed-Out Non-PWU Group Members who:

- (1) are not Opt-Outs, or are Opt-Outs who subsequently sign a binding consent and release that binds them to the Settlement in a form as agreed by Canada Life and the MOU Parties (such agreement not to be unreasonably withheld), and
- (2) consent to their transfer to the New Plan.

If such a Non-PWU Group Member has not fulfilled these conditions prior to the Court Approval date on which the variation of trust contemplated under paragraph 6(c)(iii) is granted, then the Non-PWU Group Member may only become an Eligible Non-PWU Group Member if, prior to the Settlement Approval Date, he or she signs a binding consent and release that binds him or her to the Settlement in a form as agreed by Canada Life and the MOU Parties.

(B) Those Non-PWU Group Members who are Cashed-Out Non-PWU Group Members who:

- (1) are not Opt-Outs, or are Opt-Outs who sign a binding consent and release that binds them to the Settlement in a form as agreed by Canada Life and the MOU Parties (such agreement not to be unreasonably withheld), and
- (2) consent to the Settlement.

In order to become Eligible Non-PWU Group Members, Cashed-Out Non-PWU Group Members must fulfill these conditions prior to the Settlement Approval Date.

- (xxi) "Eligible PWU Group Members" means those PWU Group Members who are either not Opt-Outs or who sign a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement.
- (xxii) "Eligible PWU Group Surplus Allocation" has the meaning set out in paragraph 7(c) of this Agreement.
- (xxiii) "Final Partial Wind Up Surplus" has the meaning set out in paragraph 2(a)(iv) of this Agreement.
- (xxiv) "FSCO" means the Financial Services Commission of Ontario.
- (xxv) "Gross Partial Wind Up Surplus" has the meaning set out in paragraph 2(a)(i) of this Agreement.
- (xxvi) "Inactive Eligible Non-PWU Group Members" means those Inactive Non-PWU Group Members who are Eligible Non-PWU Group Members.
- (xxvii) "Inactive Eligible Non-PWU Group Surplus Allocation" has the meaning set out in paragraph 7(c) of this Agreement.
- (xxviii) "Inactive Non-PWU Group Members" means:
 - (A) those inactive members of the Plan on April 12, 2005 (being the date litigation in respect of the Plan was commenced) who were not included in the Integration PWU nor in any Prior PWU; plus
 - (B) any other individuals entitled to benefits under the Plan on April 12, 2005 by virtue of their relationship with a Plan member, where the Plan member died prior to that date and was not included in the Integration PWU nor in any Prior PWU, such as the surviving spouse or beneficiary of a deceased Plan member in receipt of a survivor pension or entitled to a death benefit under the Plan as at that date.
- (xxix) "Indago Committee" means those individuals identified as such on the first page of this Agreement.
- (xxx) "Indago PWU" has the meaning set out in the recitals to this Agreement.
- (xxxi) "Integration MOU" has the meaning set out in the recitals to this Agreement.
- (xxxii) "Integration PWU" has the meaning set out in the recitals to this Agreement.

- (xxxiii) "Members' Counsel" means Koskie Minsky LLP, Harrison Pensa LLP, and Sack Goldblatt Mitchell LLP (or any one or more of them as the context may require).
- (xxxiv) "MOU Parties" means the Plaintiffs, the CLPENS Executive, the Pelican Committee, the Indago Committee, the Adason Committee, and Canada Life.
- (xxxv) "New Plan" means the new registered pension plan established by Canada Life as described in paragraph 6(c) of this Agreement.
- (xxxvi) "Non-PWU Group Members" means the Active Non-PWU Group Members plus the Inactive Non-PWU Group Members.
- (xxxvii) "Non-Represented Participants" means those individuals identified as such on the second page of this Agreement.
- (xxxviii) "Opt-Outs" means those individuals or estates who opt out of the Class Action.
- (xxxix) "Partial Wind Up Report" means the final report or reports filed with FSCO relating to the Partial Wind Ups.
- (xl) "Partial Wind Ups" or "PWUs" means the Integration PWU and each of the Prior PWUs, and "Partial Wind Up" means any one of them as the context may require;
- (xli) "Parties" and "Party" have the meaning set out in the recitals to this Agreement.
- (xlii) "Pelican Committee" means those individuals identified as such on the first page of this Agreement.
- (xliii) "Pelican PWU" has the meaning set out in the recitals to this Agreement.
- (xliv) "Plaintiffs" means those individuals identified as such on the first page of this Agreement.
- (xlv) "Plan" means The Canada Life Canadian Employees Pension Plan, as amended from time to time.
- (xlvi) "Prior PWUs" has the meaning set out in the recitals to this Agreement.
- (xlvii) "PWU Group Members" means those members affected by the Partial Wind Ups who are included in the Partial Wind Up Report.
- (xlviii) "Regulatory Approval" means any necessary approval from any government regulator having jurisdiction over the issue in question.

- (xlix) "Releasor" has the meaning set out in paragraph 6(a)(v)(E) of this Agreement.
- (I) "Represented Participants" means those individuals identified as such on the second page of this Agreement.
- (li) "Roadshow Mailout Date" means the date on which the first of the roadshow communications are mailed (i.e. the mailing to all Class members describing the proposed Settlement and giving details of information sessions or "roadshows" to be held in locations determined as appropriate by Canada Life, where representatives of the MOU Parties will provide further details regarding the proposed Settlement).
- (lii) "RRSP" means a registered retirement savings plan.
- (liii) "Settlement" has the meaning set out in the recitals to this Agreement.
- (liv) "Settlement Approval Date" means the later of the date on which the Settlement receives Regulatory Approval and the date on which it receives Court Approval.
- (lv) "Settlement Expenses" has the meaning set out in paragraph 2(a)(iii)(A) of this Agreement.
- (lvi) "Subsequent Consenter" has the meaning set out in paragraph 7(l)(i) of this Agreement.
- (lvii) "Subsequent Proceeding" has the meaning set out in paragraph 6(a)(v)(F) of this Agreement.
- (lviii) "Sub-trust" and "Sub-trusts" have the meaning set out in paragraph 6(c)(iii) of this Agreement.
- (lix) "Trustees" means James R. Grant, Allen Loney, and A.P. Symons, named as trustees under the Canadian Staff Pension Plan Trust Deed made as of July 10, 2003.

2. OVERVIEW

Under this Agreement, as further described herein, surplus shall be paid out and/or provided as follows.

- (a) A portion of the surplus in the Plan determined as described in this paragraph 2(a) will be shared, in accordance with paragraphs 7 and 8 hereof, among Canada Life, Eligible PWU Group Members, and Inactive Eligible Non-PWU Group Members.
 - (i) Surplus allocable to each Partial Wind Up shall be set out in the Partial Wind Up Report (in respect of each Partial Wind Up, the "Gross Partial Wind Up Surplus"). For greater certainty, when determining

the surplus allocable to each Partial Wind Up, Plan administrative expenses paid or reimbursed from the Plan prior to the effective date of the applicable Partial Wind Up, as well as those approved by the Trustees or their predecessors but not yet paid or reimbursed from the Plan (plus interest as contemplated under paragraph 6(a)(v)(C) below), shall first be taken into account before determining the surplus position of the Plan at the effective date of the Partial Wind Up, and the surplus allocable to each Partial Wind Up shall be net of expenses incurred or to be incurred on tasks necessary to administer such Partial Wind Up which are separate from this Settlement, including the processing of basic benefit payments to affected members.

- (ii) Following the application of paragraph 2(a)(i), the portion of the surplus allocable to each Partial Wind Up as set out in the Partial Wind Up Report that is allocable to PWU Group Members who are not Eligible PWU Group Members, or allocable to an individual or estate pursuant to paragraph 7(j) but the eligibility conditions under paragraph 7(j) have not been satisfied (determined for each Partial Wind Up based on the relative liabilities of such PWU Group Members versus the liabilities of all PWU Group Members included in that Partial Wind Up, as set out in the Partial Wind Up Report and calculated as at the effective date of the applicable Partial Wind Up), subject to Court Approval, shall remain in the Plan pending distribution pursuant to paragraph 7(l) or further determination regarding its distribution.
- (iii) Following the application of paragraphs 2(a)(i) and 2(a)(ii), unless otherwise agreed to in writing by the MOU Parties, the remaining Gross Partial Wind Up Surplus allocable to each Partial Wind Up shall be reduced as follows:
 - (A) all expenses related to the negotiation and implementation of the Integration MOU and of this Agreement (including all fees, costs and expenses described in this Agreement) ("**Settlement Expenses**") incurred up to December 20, 2007 shall be deducted from the surplus allocable to the Integration PWU;
 - (B) all Settlement Expenses incurred between December 21, 2007 and October 1, 2008 shall be deducted from the surplus allocable to the Integration PWU, the Adason PWU, and the Pelican PWU, with each such Partial Wind Up bearing a portion of such expenses *pro rata* based on the aggregate liabilities of the members affected by that Partial Wind Up as compared to the total liabilities of the members affected by the Integration PWU, the Adason PWU, and the Pelican PWU (such liabilities being those shown in the Partial Wind Up Report as at the date of the applicable Partial Wind Up); in addition, expenses incurred up to October 1, 2008 that specifically relate to only one of the Partial Wind Ups (such as expenses related to the negotiation of a memorandum of

understanding relating only to the members affected by the Partial Wind Up, or expenses related to proceedings before the Financial Services Tribunal or other regulatory body) shall be deducted from the surplus allocable to that Partial Wind Up;

- (C) the remaining Gross Partial Wind Up Surplus allocable to each Partial Wind Up shall be further reduced by all expenses of any nature related to the Partial Wind Ups (other than those already taken into account pursuant to paragraph 2(a)(i)) or the Settlement, including all Settlement Expenses, incurred after October 1, 2008 and up to the Settlement Approval Date, with each Partial Wind Up bearing a portion of such expenses *pro rata* based on the aggregate liabilities of the members affected by that Partial Wind Up as compared to the total liabilities of the members affected by all of the Partial Wind Ups (such liabilities being those shown in the Partial Wind Up Report as at the date of the applicable Partial Wind Up).

- (iv) Following the application of paragraphs 2(a)(i), 2(a)(ii), and 2(a)(iii), the surplus allocable to each Partial Wind Up that is available for distribution in accordance with the Settlement from the Plan or the New Plan, following Regulatory Approval and Court Approval, shall be referred to herein, in aggregate, as the **"Final Partial Wind Up Surplus"**.

- (b) Certain benefits and payments will be provided to the Active Eligible Non-PWU Group Members, as further described herein.

3. PRELIMINARY MATTERS

- (a) Provided the necessary consents are obtained as contemplated under this Agreement from the individuals who would be included in the applicable Prior PWU should it be declared, and provided Court Approval of the Settlement has been obtained as contemplated in this Agreement and the Settlement is proceeding in respect of the Integration PWU, Canada Life shall declare (as applicable) the Indago PWU, the Adason PWU, and the Pelican PWU as part of the implementation of the Settlement.
- (b) No Party shall commence any legal proceeding against any other Party during the term of this Agreement pertaining to the Class Action, other than in accordance with, or in the context of implementing, this Agreement. While the Parties recognize that they cannot bind the pension regulators, the Parties fully support any proceedings or investigations before FSCO/the Financial Services Tribunal or the Superintendent of Financial Services for Ontario or any other regulatory or tax authority relating to the Class Action claims being held and maintained in abeyance, pending the final and binding settlement of such claims for all purposes pursuant to this Agreement. In addition, the Parties shall fully co-operate in the resolution of any Prior PWUs reflected in the Partial Wind Up Report.

- (c) Any Settlement will not be conditional on the successful settlement of the claims on the Plan relating to Prior PWUs.

4. COMMUNICATIONS AND CONFIDENTIALITY

Notwithstanding anything in this Agreement to the contrary,

- (a) the parties to each CCA (who are also Parties to this Agreement) shall abide by the terms of the applicable CCA, which CCAs are in full force and effect and shall continue to be in force until the termination of Settlement discussions or as otherwise provided in the CCAs; and
- (b) all information described in paragraph 5(d), together with any personal information obtained directly by a party to a CCA (or by that party's agents or advisors) from Class members, shall be deemed "Confidential Information" for purposes of the CCAs and shall be used only for the limited purposes of implementing the Settlement as described herein, except for any personal information needed by Canada Life for proper future administration of the Plan or New Plan. Forthwith following the Settlement Approval Date, all such information, or copies or notes thereof, shall be promptly delivered by each such party to their legal counsel to be held on a strictly confidential basis and shall not be used or disclosed thereafter for any purpose that does not directly relate to the Settlement (for greater certainty, however, Canada Life and its agents and advisors may retain such information during the period following the Settlement Approval Date for such time as is necessary in order to arrange for the surplus payments to be made pursuant to the Settlement or in order to otherwise administer the Plan or New Plan). Any electronic copies of such information not in the possession of such a party's legal counsel shall be permanently deleted wherever located or stored. Written confirmation of full compliance with this paragraph 4(b) shall be provided by each such party to the other parties to the applicable CCA following the Settlement Approval Date.

5. PROCESS TO SETTLEMENT

- (a) This Agreement will be endorsed and recommended to PWU Group Members and Non-PWU Group Members by the MOU Parties.
- (b) The MOU Parties shall take co-operative steps to obtain the consents to this Agreement from PWU Group Members that are necessary in order to obtain Regulatory Approval and Court Approval of the Settlement.
- (c) The MOU Parties shall also take co-operative steps to obtain consent from Non-PWU Group Members to transfer to the New Plan as necessary, and any additional such consents from the Eligible PWU Group Members as described in paragraph 6(c)(ii)(B) hereof (related to those Eligible PWU Group Members who consent to being transferred to the New Plan), that are necessary in order to obtain Regulatory Approval and Court Approval of the Settlement.

- (d) With appropriate Court Approvals, Canada Life will provide Members' Counsel and authorized consultants with such information as is required by Members' Counsel for the limited purpose of locating PWU Group Members and Non-PWU Group Members and obtaining and verifying the consents required under this Agreement in order to implement the Settlement. Upon receipt of the necessary PWU Group Member and Non-PWU Group Member consents described in paragraphs 5(b) and 5(c), the Parties shall co-operate to obtain all necessary Regulatory Approvals and Court Approvals and to implement this Agreement in accordance with its terms.
- (e) In the event Court Approvals under paragraph 6(c)(iii) (related to the variation of trust in respect of assets transferred to the Sub-trust or Sub-trusts) are not obtained and the requirements of paragraph 6(c)(iii) are not waived by Canada Life, Canada Life agrees that it will not object to the Class Action being fast-tracked. In terms of the certification motion, Canada Life reserves the right to make submissions on the proper formulation of the common issues.

6. PRECONDITIONS TO SETTLEMENT; STRUCTURE

- (a) The Parties agree that any Settlement will be conditional upon the terms and conditions set forth in this paragraph 6(a) being fully satisfied:
 - (i) any and all Regulatory Approvals and/or Court Approvals required to implement the Settlement are obtained, and as of the Settlement Approval Date no regulatory authority or Court has objected to any of the terms of this Agreement or to its implementation, or issued an order contrary to its terms;
 - (ii) Opt-Outs shall not exceed any of the following thresholds:
 - (A) 2.5% of the PWU Group Members;
 - (B) such number of PWU Group Members whose aggregate actuarial wind up liabilities in the Partial Wind Up Report equal 5% or more of the total PWU Group Member actuarial wind up liabilities in the Partial Wind Up Report;
 - (C) 2.5% of the Non-PWU Group Members; or
 - (D) such number of Non-PWU Group Members whose aggregate actuarial wind up liabilities in the Partial Wind Up Report equal 5% or more of the total Non-PWU Group Member actuarial wind up liabilities in the Partial Wind Up Report;
 - (iii) The aggregate actuarial wind up liabilities in the Partial Wind Up Report of those Non-PWU Group Members who are not Cashed-Out Non-PWU Group Members and who do not become Eligible Non-PWU Group Members prior to the Court Approval date on which the variation of trust contemplated under paragraph 6(c)(iii) is obtained

shall not exceed 10% of the total actuarial wind up liabilities of all Non-PWU Group Members in the Partial Wind Up Report who are not Cashed-Out Non-PWU Group Members;

- (iv) No member of the CLPENS Executive, the Indago Committee, the Pelican Committee, or the Adason Committee, nor any of the Plaintiffs, shall become Opt-Outs;
- (v) As part of the Court Approval of the Settlement, the following declarations shall be made by the Court in relation to the Plan and/or the New Plan as the same shall exist after implementation of the Settlement:
 - (A) subject to applicable regulatory compliance, Canada Life is, has been and will continue to be entitled to: expand the membership of the Plan and/or the New Plan by way of plan amendment or merger and use assets in the Plan and/or New Plan (including surplus) to provide benefits for and fund contribution holidays with respect to new members, including benefits transferred from another pension plan; merge all or a portion of the Plan and/or the New Plan with other pension plans; use all or part of any surplus, howsoever arising, from time to time, to take contribution holidays in the Plan and/or the New Plan with respect to past, current and future Plan and/or New Plan benefits (of any kind) and/or to fund any benefit enhancements with respect to any or all Plan and/or New Plan members (past, present, or future); and, without limiting the generality of the foregoing, Canada Life is entitled to fund defined contribution benefits provided in the Plan and/or New Plan from the accumulated actuarial surplus that exists from time to time in the Plan and New Plan respectively (for greater certainty, other than in the context of the Partial Wind Ups, the declarations made by the Court shall not address entitlement to surplus distribution upon any future termination of the Plan or New Plan in whole or in part);
 - (B) the surplus in the Plan and the New Plan, howsoever arising, can be used in accordance with the Settlement in respect of the Eligible PWU Group Members and the Eligible Non-PWU Group Members, including, without limitation, to fund all benefit, expense and other payments as contemplated in paragraphs 2, 7, 8 and 9 of this Agreement;
 - (C) all reasonable charges, fees, taxes and other expenses (internal or external) charged to and paid or reimbursed from Plan assets or predecessor Plan assets prior to the execution of this Agreement, or approved by the Trustees (or their predecessors) prior to the execution of this Agreement but not yet paid or reimbursed, are proper and valid and shall be paid from the Plan or the New Plan, as the case may be, forthwith in conjunction with the

implementation of this Agreement following the Settlement Approval Date (together with interest on any such expenses approved, but not yet paid or reimbursed, calculated from the date such expenses would otherwise have been paid from the Plan in the normal course, with the rate of interest determined in accordance with paragraph 10(e)); in addition, all reasonable charges, fees, taxes and other expenses (internal or external) incurred at any time in the future relating to the design, implementation, administration and investment of the Plan and its trust fund following the execution of this Agreement are proper and valid and may be paid from the Plan;

(D) the provisions of the New Plan and related trust deed are valid and effective to permit all reasonable charges, fees, taxes and other expenses (internal or external) as described therein relating to the design, implementation, administration and investment of the New Plan and its trust fund, to be charged to, and paid or reimbursed from, the New Plan trust fund, together with any charges, fees, taxes and other expenses (internal or external) relating to the design, implementation, administration and investment of the Plan that are allocated *pro rata* to the New Plan;

(E) subject to paragraph 10(a) hereof, any member of the Class who does not opt out of the Class Action as well as such person's heirs, administrators, successors and assigns (the "Releasor") releases and forever discharges

- (1) Canada Life, its parent, subsidiaries and affiliates and each of their respective current and former officers, directors and employees;
- (2) current and former members of the CLPENS Executive;
- (3) the members of the Indago Committee, the Pelican Committee, and the Adason Committee;
- (4) the Plaintiffs;
- (5) the Trustees and their predecessors

and each of their respective heirs, administrators, agents, advisors, successors and assigns from all actions, causes of action, claims and demands for damages, indemnity, costs and interest and loss or injury of every nature and kind which the Releasor now has, may have had or may hereafter have arising from or in any way related to the Integration PWU, the Prior PWUs, the payment of expenses from the Plan fund, the use of Plan assets to take contribution holidays, and the implementation of the Settlement, including all claims raised in the Amended Statement of Claim; the Releasor

further agrees not to make any claim or take any proceeding in connection with any of the claims released against any other person or corporation who might claim contribution or indemnity under the provisions of any statute or at common law or equity from the persons or corporations discharged by such court order;

- (F) in the event any action or proceeding is commenced by one or more Opt-Outs or a regulator raising one or more of the claims contained in the Amended Statement of Claim (other than a claim by an Opt-Out or Opt-Outs for entitlement to receive a *pro rata* share of surplus allocable to a Partial Wind Up) (the "Subsequent Proceeding"), and in the event the claimant or claimants are successful in the Subsequent Proceeding, a payment is hereby deemed to have been made on behalf of Canada Life, the Trustees and any other person who is a defendant/respondent in the Subsequent Proceeding (the "Deemed Payment") in respect of and in satisfaction of any amount found to be owing in the Subsequent Proceeding. The amount of the Deemed Payment shall be calculated as follows:

A times (B divided by C) where

- A means: the total amounts that would have been recovered in the Subsequent Proceeding in respect of such claim or claims in respect of all members, former members and past members of the Plan and New Plan had this Settlement not been approved;
- B means: the total liability under the Plan and/or the New Plan in respect of the pension benefits accrued by the Class members and by any Opt-Out (or Opt-Outs) who are not parties to the Subsequent Proceeding; and
- C means: the total liability under the Plan and/or the New Plan in respect of the pension benefits accrued by all members of the Class and all Opt-Outs;

where "liability under the Plan and/or the New Plan" means, for PWU Group Members, liability for accrued benefits measured on a solvency basis as at the effective date of the applicable Partial Wind Up, and for Non-PWU Group Members, liability for accrued benefits measured on a solvency basis as at June 30, 2005, and, where an individual is no longer entitled to any benefits under the Plan or New Plan on the relevant date referred to in this paragraph because they received payment in full satisfaction of their benefits, means the amount paid out to them, without adjustment for interest; however, in no event shall the amount of the Deemed

Payment exceed the amount found to be owing in the Subsequent Proceeding inclusive of costs and interest;

- (G) any judgment rendered or order issued in a Subsequent Proceeding shall take into account the amount of the Deemed Payment; and
- (H) liabilities in respect of benefits payable under the Plan and/or the New Plan and assets in respect of such liabilities may be transferred out of the Plan and/or New Plan (by way of plan merger or otherwise) subject only to such regulatory approvals as may be required by law and such assets may be used in any importing or merged plan to provide benefits for and to fund contribution holidays taken in respect of all members (past, present or future) of the importing or merged plan.
- (vi) [intentionally left blank]
- (vii) [intentionally left blank]
- (viii) [intentionally left blank]
- (ix) [intentionally left blank]
- (x) FSCO/the Superintendent of Financial Services for Ontario acknowledges in writing in a form acceptable to Canada Life that FSCO's Plan expense investigation has been permanently discontinued;
- (xi) consents to this Agreement from PWU Group Members are obtained from at least seventy-five percent (75%) of the individuals included in the Integration PWU; in addition, in order for the Settlement to proceed in respect of any Prior PWU, consents to this Agreement must be obtained from at least seventy-five percent (75%) of the individuals included in such Prior PWU, but failure to obtain such consent shall not prejudice the implementation of the Settlement in respect of the Integration PWU (for purposes of determining whether the 75% threshold has been met, where a PWU Group Member has died before receiving his or her individual allocation of the Eligible PWU Group Surplus Allocation, the consent of the individual or estate identified in paragraph 7(j) of this Agreement shall be counted instead of the consent of the deceased PWU Group Member); and
- (xii) to the extent Canada Life exercises its discretion pursuant to paragraph 6(c)(ii)(B) of this Agreement in respect of all PWU Group Members, consents to transfer to the New Plan are obtained from such number of PWU Group Members in each Partial Wind Up whose aggregate actuarial wind up liabilities in the Partial Wind Up Report equals ninety percent (90%) or more of the total PWU Group Member

actuarial wind up liabilities in the Partial Wind Up Report in respect of the applicable Partial Wind Up.

The above terms and conditions are for the sole benefit of Canada Life and can be waived by Canada Life, in whole or in part, in its sole discretion at any time.

- (b) [intentionally left blank]
- (c) The Settlement shall be structured as follows:
 - (i) [intentionally left blank]
 - (ii) Canada Life will establish the New Plan and will establish a related new trust fund held by individual trustees or a qualified corporate trustee, into which shall be transferred:
 - (A) all Eligible Non-PWU Group Members, except for
 - (1) those Eligible Non-PWU Group Members who are designated by Canada Life under paragraph 6(c)(iv) hereof to remain in the Plan,
 - (2) any Non-PWU Group Members who become Eligible Non-PWU Group members after the Court Approval date on which the variation of trust contemplated under paragraph 6(c)(iii) of this Agreement is obtained by signing a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement, and
 - (3) those Eligible Non-PWU Group Members who are Cashed-Out Non-PWU Group Members

together with such transferees' existing Plan benefit liabilities plus *pro rata* Plan assets related to the ongoing portion of the Plan;
 - (B) to the extent, and only to the extent, required by Canada Life in its sole discretion, all Eligible PWU Group Members who consent to their transfer to the New Plan, together with such transferees' existing Plan benefit liabilities and related *pro rata* Plan assets (for greater certainty, including *pro rata* Final Partial Wind Up Surplus related to the applicable Partial Wind Up) (should such transfer occur, references in this agreement to the "Plan" shall be read as references to the "New Plan", as the context requires); and
 - (C) those spouses, beneficiaries, and estates mentioned in paragraph 8(f) of this Agreement (other than paragraph 8(f)(i) or 8(f)(ii)), together with such transferees' existing Plan benefit liabilities and related *pro rata* Plan assets, provided that they fulfil the conditions imposed under paragraph 8(f)(iii) or 8(f)(iv), as applicable;

- (iii) At the date those Eligible Non-PWU Group Members described in paragraph 6(c)(ii)(A) are transferred to the New Plan, its provisions for those of them who are employee members at the time of transfer shall be the same as the provisions of the Plan, except for those New Plan provisions which are required in order to implement the Settlement (including any provisions necessary to expressly reflect the declarations being sought as described in paragraph 6(a)(v)), and subject to paragraph 8(c). For greater certainty, subject to paragraph 8(c), such provisions shall be subject to future amendment in the normal course pursuant to the amending provision in the New Plan.

The provisions of the New Plan and the trust deed establishing the New Plan trust fund (other than the provisions relating to surplus ownership on New Plan wind-up) shall be confirmed and validated by the Court pursuant to a variation of trust and any other appropriate order. The trust deed may contain such provisions as are necessary to reflect the terms of the New Plan and to facilitate the appointment of a corporate trustee to hold the New Plan trust fund. For greater certainty, the variation of trust shall proceed prior to the transfer of assets and liabilities to the New Plan contemplated in paragraph 6(c)(ii) above, by the creation of one or more new trusts under the Plan (the "Sub-trust" or "Sub-trusts") and the transfer of such assets and liabilities first into that Sub-trust or Sub-trusts, which Sub-trust or Sub-trusts shall be the subject of the variation of trust.

After the variation of trust described in this paragraph 6(c)(iii) has been obtained, the Sub-trust or Sub-trusts shall be transferred to the fund for the New Plan and held under the trust deed establishing the New Plan trust fund;

- (iv) All Non-PWU Group Members who
- (A) are not Eligible Non-PWU Group Members, or
 - (B) are Eligible Non-PWU Group Members as described in paragraphs 6(c)(ii)(A)(2) or (3) hereof,

and such Active Eligible Non-PWU Group Members as Canada Life shall, in its absolute discretion, determine appropriate, together with all Eligible PWU Group Members not affected by any exercise of Canada Life's discretion under paragraph 6(c)(ii)(B) hereof such that they move to the New Plan, shall remain in the Plan;

- (v) The Settlement shall be implemented from the New Plan and related trust fund in respect of Active Eligible Non-PWU Group Members who transfer to the New Plan and begin accruing benefits thereunder, and the Settlement in respect of all other Active Eligible Non-PWU Group Members (including those designated by Canada Life pursuant to paragraph 6(c)(iv) to stay behind in the Plan), Eligible PWU Group

Members, and Inactive Eligible Non-PWU Group Members shall be implemented from the Plan and related trust fund (or the Sub-trust or Sub-trusts as applicable); and

- (vi) [intentionally left blank]
- (vii) The Parties shall take all appropriate steps to ensure that all required Regulatory Approvals and Court Approvals are obtained. For greater certainty, Court Approval shall initially be obtained from the Ontario Superior Court of Justice, and the Plaintiffs shall file an application in the Québec Superior Court for recognition and enforcement of the Court Approval obtained in Ontario. Should the Québec Superior Court refuse to recognize the Court Approval obtained from the Ontario Superior Court of Justice, separate class proceedings shall be initiated in Québec by appropriate representatives of the Class as identified by Members' Counsel, in order to obtain the necessary Court Approval of the Québec Superior Court approving and implementing the Settlement in respect of Québec members of the Class. The costs associated with any such separate class proceedings, including any costs for local counsel to represent members, shall be treated as Settlement Expenses under this Agreement.

7. SURPLUS ALLOCATION; PWU GROUP

- (a) Final Partial Wind Up Surplus shall be shared 30.34/69.66 between Canada Life (30.34%) ("**Canada Life's Surplus Share**") and the Eligible PWU Group Members (69.66%) (the "**Eligible Member Group Surplus Share**"), subject to paragraphs 7(c) and 8(g).
- (b) Final Partial Wind Up Surplus sharing between Canada Life and Eligible PWU Group Members will be on a strict 30.34/69.66 basis. Any "dilution" (for example, through the mandatory inclusion by a regulator of additional individuals in the Prior PWUs and/or the Integration PWU who are not originally contemplated by this Agreement, and who become Eligible PWU Group Members) must be addressed through the allocation of the Eligible Member Group Surplus Share and will not adversely affect Canada Life's 30.34% Final Partial Wind Up Surplus share. It is recognized that if there are any additional partial Plan wind ups discovered or declared prior to final implementation of the Settlement, the Partial Wind Up Report, and the liability, asset and surplus calculations set out therein, may have to be revised, in which case the Final Partial Wind Up Surplus shares and distribution may be revised. In this regard (and leaving aside any potential disposition of the Prior PWUs), Canada Life is unaware of any declared past partial Plan wind ups, other than the Integration PWU.
- (c) The Eligible Member Group Surplus Share shall be allocated as between the Eligible PWU Group Members (the "**Eligible PWU Group Surplus Allocation**") and the Inactive Eligible Non-PWU Group Members (the "**Inactive Eligible Non-PWU Group Surplus Allocation**") on the following basis:

- (i) the Eligible PWU Group Surplus Allocation shall be 57.22% of the Final Partial Wind Up Surplus; and
- (ii) the Inactive Eligible Non-PWU Group Surplus Allocation shall be 12.44% of the Final Partial Wind Up Surplus,

and the Inactive Eligible Non-PWU Group Surplus Allocation shall be allocated and distributed among individual Inactive Eligible Non-PWU Group Members in accordance with paragraph 8 hereof.

- (d) Following the allocations described in paragraphs 7(a), 7(b), and 7(c), the portion of the Final Partial Wind Up Surplus allocable to each Partial Wind Up and available for sharing as described in paragraph 2(a) shall not be aggregated and shared as a common pool among all Eligible PWU Group Members; instead, the portion of the Final Partial Wind Up Surplus allocable to each Partial Wind Up and available for sharing as described in paragraph 2(a) shall only be shared among the Eligible PWU Group Members affected by that Partial Wind Up. The Eligible PWU Group Surplus Allocation, net of any allocation made pursuant to paragraph 7(i), shall be allocated among individual Eligible PWU Group Members *pro rata* to the liabilities set out in the Partial Wind Up Report as at the applicable partial wind up date for each such Member, excluding

- (i) any statutory grow-in benefits, and
- (ii) any additional liability for Members who may elect to receive their benefits in a form of an immediate or deferred annuity

subject to a minimum individual allocation as set out in paragraph 7(g), having regard to applicable regulatory requirements.

- (e) The Parties agree that PWU Group Members shall be given their portability rights under section 73(2) of the *Pension Benefits Act* (Ontario) or under a similar provision in the pension standards legislation applicable to them. Canada Life will arrange for an annuity to be purchased for any PWU Group Member who elects to receive (or is deemed to have elected) a deferred or immediate pension, and the pension provided via such annuity, including indexation (if any), shall be determined in accordance with the terms of the Plan. Any annuities purchased for pensioners or other Plan or New Plan members or former members in conjunction with the Partial Wind Ups shall be insured annuities, and, subject to such reasonable administrative limits as may be imposed by Canada Life, annuities shall only be purchased for an amount that on the date of purchase is within the Assuris limits. The Parties agree that any annuities will be purchased following a competitive bidding process, which may include as potential annuity providers Canada Life and/or any of its affiliates.

- (f) Individual allocations of the Eligible PWU Group Surplus Allocation will be distributed to Eligible PWU Group Members from the Eligible Member Group Surplus Share as a lump sum cash amount, less statutory withholdings, provided, however, that any Eligible PWU Group Member with an individual allocation in

excess of \$15,000 (as estimated by Canada Life as at a date prior to the date on which surplus is distributed pursuant to the Settlement, such prior date to be determined by Canada Life in its sole discretion), will be permitted, subject to appropriate certification of available RRSP contribution room, compliance with the requirements of all applicable laws and receipt of all necessary Regulatory Approvals, to contribute all or part of the amount of the surplus allocation to his/her RRSP without tax withholdings.

- (g) The minimum surplus allocation to each Eligible PWU Group Member shall be \$1,000.
- (h) [intentionally left blank]
- (i) A portion of the Eligible PWU Group Surplus Allocation attributable to the Integration PWU shall be allocated to:
 - (i) those Inactive Eligible Non-PWU Group Members who otherwise would have been included in the Integration PWU, but for the fact that they were employed in a Canadian jurisdiction that at the relevant time did not recognize partial pension plan wind ups in its pension legislation; and to
 - (ii) any former members of the Plan who otherwise would have been included in the Integration PWU, but for the fact that they were employed in a Canadian jurisdiction that at the relevant time did not recognize partial pension plan wind ups in its pension legislation, who were not inactive members of the Plan on April 12, 2005 and who are not Opt-Outs

so that each such individual receives a total amount of surplus which, after taking into account the amount (if any) they receive under paragraph 8(d) of this Agreement, is equal to the amount they would have received had they been treated as Eligible PWU Group Members affected by the Integration PWU hereunder.

- (j) Should any PWU Group Member die before receiving the portion of his or her individual allocation of the Eligible PWU Group Surplus Allocation described in paragraph 7(f), the amount of such surplus that would have been payable to such individual will instead be payable as follows, provided the applicable conditions have been fulfilled:
 - (i) Where the PWU Group Member is survived by a spouse or former spouse who at the time of the PWU Group Member's death is entitled to a pension or other death benefit under the Plan, the surplus shall be paid to that spouse or former spouse; provided that if the death occurs before the Settlement Approval Date such spouse or former spouse, as well as the PWU Group Member's estate and any beneficiary or beneficiaries designated by the PWU Group Member under the Plan,

are either not Opt-Outs or sign a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement; or

- (ii) If there is no such spouse or former spouse, if the PWU Group Member designated a beneficiary or beneficiaries under the Plan and the beneficiary or beneficiaries were entitled to death benefits under the Plan at the time of the PWU Group Member's death, the surplus shall be paid to the beneficiary or beneficiaries (if to more than one beneficiary, in the same proportion as the death benefits); provided that if the death occurs before the Settlement Approval Date, the beneficiary(ies) and the estate of the deceased PWU Group Member are either not Opt-Outs or sign a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement; or
 - (iii) If there is no such spouse or former spouse and no such beneficiary entitled to death benefits under the Plan at the time of the PWU Group Member's death, surplus shall be paid to the deceased PWU Group Member's estate; provided that if the death occurs before the Settlement Approval Date the estate, as well as any beneficiary(ies) designated by the deceased PWU Group Member under the Plan, are either not Opt-Outs or sign a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement.
- (k) In advance of Regulatory Approval of the Partial Wind Up Report, Canada Life may apply for Regulatory Approval to process the payment of pension benefits of some or all of the PWU Group Members.
- (l) Distribution of any remaining surplus following the Settlement Approval Date shall proceed as follows.
- (i) Should any PWU Group Member who is not an Eligible PWU Group Member, or any individual or estate referred to in paragraph 2(a)(ii), come forward within two years following the Settlement Approval Date, and such PWU Group Member, individual or estate signs a binding consent and release in a form acceptable to Canada Life that binds the PWU Group Member, individual or estate to the Settlement, and as required by Canada Life provides an effective and binding consent to any variation of trust needed in order to pay a portion of the remaining surplus to Canada Life, then the portion of surplus allocable to such PWU Group Member, individual or estate (provided the PWU Group Member, individual or estate fulfils such conditions, a "**Subsequent Consenter**"), as described in paragraph 2(a)(ii), shall be distributed as follows:
 - (A) First, a percentage shall be determined, by dividing (1) by (2), where (1) is the amount of the Settlement Expenses paid up to the Settlement Approval Date, and (2) is the amount of the Gross Partial Wind Up Surplus less the amount of surplus determined in accordance with paragraph 2(a)(ii);

- (B) Next, the amount of surplus allocable to the Subsequent Consenter shall be multiplied by the percentage obtained pursuant to paragraph 7(l)(i)(A);
 - (C) Next, the amount of surplus allocable to the Subsequent Consenter shall be reduced by the amount determined pursuant to paragraph 7(l)(i)(B);
 - (D) 57.22% of the amount determined pursuant to paragraph 7(l)(i)(C) shall be distributed to the Subsequent Consenter; and
 - (E) 30.34% of the amount determined pursuant to paragraph 7(l)(i)(C) shall be paid to Canada Life.
- (ii) Two years after the Settlement Approval Date, any Settlement Expenses which remain unpaid shall be paid from any remaining surplus allocable to all Subsequent Consenters who have come forward up to such date (i.e., after the payments described in paragraphs 7(l)(i)(D) and 7(l)(i)(E)).
 - (iii) If any surplus allocable to all Subsequent Consenters who have come forward up to the date which is two years after the Settlement Approval Date remains following the payments in paragraphs 7(l)(i) and 7(l)(ii) above, and such amount of surplus is equal to or greater than \$150,000, then such amount shall be distributed to the Inactive Eligible Non-PWU Group Members, in equal shares, subject to the following conditions:
 - (A) should any Inactive Eligible Non-PWU Group Member have died, then the surplus amount shall be paid instead pursuant to the provisions set out in paragraph 8(f), applied *mutatis mutandis*;
 - (B) to the extent that any such amount is payable to an Inactive Eligible Non-PWU Group Member whose benefits under the Plan and/or the New Plan are or were subject to Québec jurisdiction, or is payable to an individual or estate following the death of such a person, then such surplus payment shall not be made from the Plan or the New Plan; instead, Canada Life will receive such amount as a surplus share under this Agreement, and Canada Life shall pay such amounts to the proper recipient out of Canada Life's surplus share;
 - (C) if any Inactive Eligible Non-PWU Group Member (or their spouse, beneficiary, or estate as applicable) cannot be located, then the amount payable shall be dealt with in accordance with paragraphs 12(f) and 10(d), applied *mutatis mutandis*.
 - (iv) If the amount of surplus allocable to all Subsequent Consenters who have come forward up to such date (if any) remaining following the

payments in paragraphs 7(l)(i) and 7(l)(ii) above is less than \$150,000, then such amount shall be paid to Canada Life.

- (v) Should a Subsequent Consenter come forward more than two years following the Settlement Approval Date, then the portion of surplus allocable to such Subsequent Consenter as described in paragraph 2(a)(ii) shall be distributed as follows:
 - (A) The amount of surplus allocable to the Subsequent Consenter shall be multiplied by the percentage obtained pursuant to paragraph 7(l)(i)(A);
 - (B) The amount of surplus allocable to the Subsequent Consenter shall be reduced by the amount determined pursuant to paragraph 7(l)(v)(A);
 - (C) 57.22% of the amount determined pursuant to paragraph 7(l)(v)(B) shall be distributed to the Subsequent Consenter; and
 - (D) The remainder of the surplus allocable to the Subsequent Consenter shall be paid to Canada Life.

8. NON-PWU GROUP

Active Eligible Non-PWU Group Members

- (a) Each Active Eligible Non-PWU Group Member shall be provided with a member contribution holiday under the Plan (in the case of an Active Eligible Non-PWU Group Member designated to remain in the Plan pursuant to paragraph 6(c)(iv) hereof) or under the New Plan, as the case may be, for a period of 24 months commencing on the first day of January following the Settlement Approval Date.
- (b) Where an Active Eligible Non-PWU Group Member ceases benefit accruals before the end of the 24 month contribution holiday period, he or she shall be provided with a lump sum cash payment out of the Plan or the New Plan as applicable, less applicable withholdings, equal to the amount of the contribution holidays that otherwise would have been provided during the remainder of the 24 month period, based on the member's salary immediately prior to his or her cessation of benefit accruals (except for field managers, where the basis will be the salary paid to them during the 12-month period immediately preceding the cessation of benefit accruals). Where the cessation of benefit accruals is due to the death of the Active Eligible Non-PWU Group Member (or should an Active Non-PWU Group Member die before becoming an Active Eligible Non-PWU Group Member), this lump sum payment shall be made to the recipient of any death benefits under the Plan or New Plan as a result of the death (if the death benefits are payable to more than one recipient, the lump sum shall be divided in the same proportion as the death benefits), or if there is no such person, to the estate of the member, provided that such person or estate is not an Opt-Out and, if necessary, consents to transfer to the New Plan.

Where an Active Eligible Non-PWU Group Member is on long term disability during all or a portion of the 24 month contribution holiday period, at the end of the 24 month period he or she will receive a lump sum payment out of the Plan or the New Plan as applicable, less applicable withholdings, equal to the amount of his or her contributions waived on account of the disability during the 24 month contribution holiday.

Where an Active Eligible Non-PWU Group Member is on a leave of absence from Canada Life and is not accruing benefits under the Plan or the New Plan during all or a portion of the 24 month contribution holiday period, then at the end of the 24 month period he or she will receive a lump sum payment out of the Plan or the New Plan as applicable, less applicable withholdings, equal to the amount of his or her contributions that would have been payable to the Plan or New Plan, as applicable, based on the salary that was being paid to the member immediately prior to the leave (except for field managers, where the basis will be the salary paid to them during the 12-month period immediately preceding their leave), except that where such individual is in receipt of Employment Insurance benefits during their leave of absence, the lump sum payment shall not be made until they return to active employment or their employment terminates, whichever occurs first.

If a cash payment is owing from the Plan or New Plan as contemplated under this paragraph 8(b), notwithstanding this paragraph 8(b) and paragraph 6(c)(v), Canada Life in its sole discretion may pay such amount instead out of its corporate revenues (and shall pay such amount out of its corporate revenues should applicable law prohibit a cash payment from the Plan or New Plan).

- (c) The current New Plan/Plan benefit formula shall remain unchanged for Active Eligible Non-PWU Group Members to the Settlement Approval Date and during the 24 months of their employment with Canada Life following the Settlement Approval Date, unless an Active Eligible Non-PWU Group Member consents to a benefit formula change during such periods.

Inactive Eligible Non-PWU Group Members

- (d) The Inactive Eligible Non-PWU Group Surplus Allocation shall be allocated under the Plan among Inactive Eligible Non-PWU Group Members (or their surviving spouse, beneficiary, or estate described in paragraph 8(f) below, if applicable) *pro rata* to the wind up liabilities of such Inactive Eligible Non-PWU Group Members as of June 30, 2005 (or the date immediately preceding death or cash out, for those individuals whose liabilities under the Plan were reduced or paid out due to death or cash out between April 12, 2005 and June 30, 2005), subject to a minimum allocation of \$1,000 and having regard to applicable regulatory requirements.
- (e) Individual allocations of the Inactive Eligible Non-PWU Group Surplus Allocation will be distributed under the Plan to Inactive Eligible Non-PWU Group Members from the Eligible Member Group Surplus Share as a lump sum cash amount, less statutory withholdings, provided, however, that any Inactive Eligible

Non-PWU Group Member with an individual allocation in excess of \$15,000 (as estimated by Canada Life as at a date prior to the date on which surplus is distributed pursuant to the Settlement, such prior date to be determined by Canada Life in its sole discretion) will be permitted, subject to appropriate certification of available RRSP contribution room, compliance with the requirements of all applicable laws and receipt of all necessary Regulatory Approvals, to contribute all or part of the amount of the surplus allocation to his/her RRSP without tax withholdings.

- (f) Should any Inactive Non-PWU Group Member die before receiving his or her individual allocation of the Inactive Eligible Non-PWU Group Surplus Allocation, the amount of surplus that would have been payable to such individual will instead be payable as follows, provided the applicable conditions have been fulfilled:
 - (i) Where the individual dies and no death benefit or survivor pension is payable from the Plan as a result of the death, and the individual had not yet been transferred to the New Plan (whether or not the individual prior to death had already consented to transfer to the New Plan), the surplus shall be paid from the Plan to the estate of the individual, provided the estate is not an Opt-Out;
 - (ii) Where the individual dies and no death benefit or survivor pension is payable from the Plan as a result of the death, and the individual had already been transferred to the New Plan (having consented to transfer to the New Plan prior to death), the surplus shall be paid from the Plan to the estate of the individual;
 - (iii) Where the individual dies and a death benefit or survivor pension is payable from the Plan as a result of the death, the surplus shall be paid from the Plan to the surviving spouse, beneficiary, or estate of the individual entitled to the survivor pension or death benefit on the date of death (if death benefits are payable to more than one recipient, the surplus shall be divided in the same proportion as the death benefits), provided that such person or estate is not an Opt-Out and, if necessary, consents to transfer to the New Plan;
 - (iv) If a surviving spouse or beneficiary eligible for a surplus payment pursuant to this paragraph 8(f) dies before receiving the payment of surplus (either before or after fulfilling the conditions necessary in order to receive it), then the surplus amount shall be payable to such person's estate out of the Plan, subject to the conditions imposed under paragraphs 8(f)(i) through (iii) above, applied *mutatis mutandis* (with the payment deemed to have been made under the applicable paragraph above, for purposes of this Agreement).
- (g) Notwithstanding any other provision of this Agreement, to the extent that any portion of the Eligible Member Group Surplus Share is payable in cash to an individual whose benefits under the Plan and/or the New Plan are or were subject to Québec jurisdiction (or is payable to an individual or estate following the death

of such a person), then such surplus payment shall not be made from the Plan or the New Plan; instead, Canada Life's Surplus Share will be increased by the aggregate amount payable to such individuals and estates, and Canada Life shall pay such amounts out of Canada Life's Surplus Share.

9. FEES AND EXPENSES

- (a) Except as otherwise provided in paragraph 9(b), the reasonable legal, actuarial, and other fees and expenses incurred by Canada Life, the CLPENS Executive, the Indago Committee, the Pelican Committee, the Adason Committee and the Plaintiffs in connection with the consideration, negotiation and implementation of this Agreement, including, for greater certainty, (i) Court-approved contingency fees of the Plaintiffs, and (ii) fees related to the negotiation of the Integration MOU, the Adason MOU and this Agreement (including internal expenses of Canada Life) shall be payable out of the Plan fund and/or New Plan fund, as set out below, subject to Court Approval and Regulatory Approval. Such fees and expenses shall be paid out of the Gross Partial Wind Up Surplus as described in paragraph 2(a)(iii), following the allocation related to PWU Group Members who are not Eligible PWU Group Members described in paragraph 2(a)(ii), allocated as between the Plan and the New Plan in proportion to the total amount of Gross Partial Wind Up Surplus allocated to the Plan and the New Plan pursuant to this Agreement. To the extent that any fees and expenses related to the implementation of the Settlement are incurred following the Settlement Approval Date, they may, at Canada Life's option, be paid out of Plan or New Plan surplus.
- (b) All reasonable out-of-pocket expenses of the Plaintiffs, the Indago Committee, the Pelican Committee, the Adason Committee and the CLPENS Executive, other than legal fees and disbursements of legal counsel which are dealt with in paragraph 9(a), associated with obtaining required consents as described under this Agreement to a maximum of \$50,000 in the aggregate, shall be paid up front by Canada Life upon submission of supporting receipts. Such expenses shall be reimbursed to Canada Life as an expense related to the implementation of the Settlement as contemplated in paragraph 9(a). If all of the requirements of paragraphs 5 and 6 are otherwise met, but the Settlement does not proceed because a member of the CLPENS Executive, the Indago Committee, the Pelican Committee, the Adason Committee or a Plaintiff, becomes an Opt-Out, such out-of-pocket expenses shall be repaid to Canada Life by the relevant Party. Otherwise, any such out-of-pocket expenses already paid at such time need not be repaid.
- (c) The MOU Parties acknowledge that they have considered and discussed estimates of the fees and expenses expected to be incurred in negotiating and implementing the Integration MOU, the Adason MOU, and the Settlement. They acknowledge that a reasonable estimate of all fees and expenses to be incurred in that regard is \$12 million (which amount does not include any contingency fees that receive Court Approval). The MOU Parties further acknowledge that they have entered into this Agreement to share Final Partial Wind Up Surplus on the basis that the fees and expenses related to the Integration MOU, the Adason MOU and the

Settlement are expected to be approximately that amount, plus any contingency fees that receive Court Approval, but could be more or less than that amount.

- (d) From time to time at such times as agreed by the MOU Parties up until the Settlement Approval Date, the MOU Parties will provide one another with information regarding those fees and expenses incurred which are to be reimbursed as contemplated under this paragraph 9, in summary form so that they can determine whether such fees and expenses are reasonable (but subject to each party not having to disclose any information related to specific individuals or which may compromise privilege or reasonable business confidentiality requirements).
- (e) The MOU Parties hereby acknowledge that they have discussed the most practical and efficient manner in which to allocate the work required to be done in order to implement the Settlement, having regard to their professional advisors' fee rates, each such party's (and their advisors') expertise, experience, and capacity, and other relevant factors such as time and cost, and have agreed that the allocation as agreed is in the best interests of the Class. At regular intervals until the Settlement Approval Date, the MOU Parties shall re-visit this issue in order to ensure that the allocation of work continues to be practical and efficient.

10. OTHER TERMS OF THE SETTLEMENT

- (a) Members of the Class are precluded from seeking wind up surplus ownership declarations from the courts or regulatory authorities, except in connection with their rights as members who are included as members of the wind up group in any actual full or partial wind up of the Plan or the New Plan, as the case may be, which may occur outside of the Settlement.
- (b) To the extent any future partial Plan wind up, effective from a date which is after June 30, 2005, is declared prior to the Roadshow Mailout Date following completion of the negotiations towards this Agreement, such future partial wind up shall be included in the Settlement in accordance with the terms of this Agreement. Such inclusion of any future partial wind up in the Settlement shall, among other things, provide for the allocation and distribution of the surplus allocated to such future partial wind up under the revised Partial Wind-Up Report, or a separate partial wind up report filed with FSCO, in a manner which is consistent with paragraphs 2, 7 and 8 hereof. Those Class members who are included as members of the partial wind up group under any such future partial wind up who, prior to any such declaration, had been considered to be Non-PWU Group Members for purposes of the Settlement, shall cease to be so considered and shall thereafter be included in the Settlement as PWU Group Members.
- (c) Payment of the Eligible Member Group Surplus Share pursuant to this Agreement shall be made to the members of the Eligible Group as soon as practicable following the Settlement Approval Date, as further detailed in paragraph 10(d). Canada Life's Surplus Share shall be paid to Canada Life pursuant to this Agreement as soon as payments to the individuals in the Eligible Group commence, subject to applicable law and regulatory policy.

- (d) As soon as practicable following the Settlement Approval Date, the amount of Final Partial Wind Up Surplus at that time shall be placed in a fixed rate account, such account to be held within the Plan fund. Canada Life shall then cause the surplus share of each individual in the Eligible Group to be calculated, and payments to such individuals shall commence. Once all such payments have been made to the extent possible, and payment of Canada Life's surplus share has been made, any remaining amount that cannot be paid because the individual in the Eligible Group cannot be located shall be placed into an interest-bearing account, also held within the Plan fund, until the amount can either be paid to the individual or otherwise dealt with as contemplated in paragraph 12(f). Should any such individual subsequently be located and should their surplus share remain in the Plan (that is, should it not already have been dealt with as contemplated in paragraph 12(f)), it shall be paid to the individual together with any interest actually earned on the amount payable. Should any amounts remain unpaid from the Plan after ten years following the Settlement Approval Date, they shall be paid to Canada Life. For greater certainty, references in this paragraph 10(d) or in paragraph 10(c) to an individual in the Eligible Group include any other person, beneficiary, or estate entitled to payment pursuant to this Agreement.
- (e) For each year starting in 2003 where expenses described under paragraph 6(a)(v)(C) have not been reimbursed to Canada Life out of the Fund, interest will be payable on the amount to be reimbursed calculated from July 1 of the following calendar year to the date of reimbursement from the Fund. The interest rates to be applied to all such amounts shall be the initial interest rates used in the calculation of the commuted values of non-indexed pensions in July of each applicable year, pursuant to applicable standards established by the Canadian Institute of Actuaries, and will be compounded annually until the date of reimbursement. For illustration purposes the interest rates are as follows for expenses incurred up to the end of 2009:
- | | |
|---------------|---------------------------------------------------|
| 2003 expenses | 5.75% from July 1, 2004 to date of reimbursement; |
| 2004 expenses | 4.25% from July 1, 2005 to date of reimbursement; |
| 2005 expenses | 5.00% from July 1, 2006 to date of reimbursement; |
| 2006 expenses | 5.00% from July 1, 2007 to date of reimbursement; |
| 2007 expenses | 4.00% from July 1, 2008 to date of reimbursement; |
| 2008 expenses | 3.80% from July 1, 2009 to date of reimbursement; |
| 2009 expenses | 3.70% from July 1, 2010 to date of reimbursement. |

For greater certainty, expenses related to the ongoing portion of the Plan or New Plan shall not be paid from the Plan assets attributable to the Integration PWU or the Prior PWUs.

11. ACKNOWLEDGMENT

The Eligible PWU Group Members hereby acknowledge that the payments made to them pursuant to this Agreement are in full satisfaction of any rights to surplus they may have had arising out of the Partial Wind Up applicable to them, whether under section 70(6) of the Ontario *Pension Benefits Act*, under a similar provision in the pension standards legislation applicable to them, or otherwise.

12. GENERAL PROVISIONS

Future Surplus Claims

- (a) Nothing in this Agreement is intended to preclude any Non-PWU Group Member from bringing a further application or action to claim entitlement to a distribution of New Plan or Plan surplus, if any, that may exist in the event of any future occurrence giving rise to a future full or partial wind up of the New Plan or the Plan or any subsequent proposal by Canada Life to withdraw surplus from the New Plan or the Plan.

Marriage Breakdown

- (b) Notwithstanding any other provision of this Agreement, if the entitlement under the Plan or New Plan of any member of the Eligible Group, or such person's surplus allocation or other Settlement payment as contemplated herein, is subject to a court order or domestic contract pursuant to a marriage breakdown, the former spouse of the Eligible Group member may be entitled to receive a portion of the surplus allocation which would otherwise have been paid to the Eligible Group member, and/or may be entitled to be treated as a member of the Eligible Group in his or her own right. Depending upon the entitlement of such former spouse under the Plan or New Plan, Canada Life reserves the right to require the former spouse to consent to transfer his or her entitlements to the New Plan and/or to sign a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement and/or to not be an Opt-Out, in order for the former spouse (and perhaps the member) to be entitled to receive a surplus allocation or other Settlement payment hereunder.

In addition, should a PWU Group Member or Non-PWU Group Member die prior to receiving his or her surplus allocation or other Settlement payment hereunder, and the death benefit or survivor pension payable as a result of the death is divided between two or more individuals pursuant to a court order or domestic contract related to the member's previous marriage breakdown, then any surplus allocation or other Settlement payment as contemplated herein that is payable to the recipient of Plan death benefits or survivor pension pursuant to this Agreement shall, subject to the provisions of the court order or domestic contract and applicable law, be divided between the same individuals in the same proportion as the death benefit or survivor pension. Canada Life reserves the right to require the individuals to consent to transfer their entitlements to the New Plan and/or to sign a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement and/or to not be Opt-Outs, in order for the individuals to be entitled to receive a surplus allocation or other Settlement payment hereunder.

Disputes

- (c) Notwithstanding any other provision of this Agreement, should any individual in the Eligible Group (or any other person, beneficiary, or estate entitled to payment pursuant to this Agreement) dispute the calculation prepared by Canada Life as to

the amount of his or her entitlement under this Agreement, or should any individual who is not in the Class claim that he or she should have been included in the Class, then, failing resolution of such dispute between the individual in question and Canada Life, such dispute shall be resolved in accordance with the process specified in Schedule "A" attached hereto.

Should a dispute arise between the MOU Parties regarding the interpretation of this Agreement or implementation of the Settlement, all reasonable attempts to settle the dispute in a co-operative manner shall be made, failing which the MOU Parties agree to approach the Court for its assistance in resolving the dispute.

Members Not Wishing to Receive Surplus

- (d) Should any member of the Eligible Group (or any other person, beneficiary, or estate entitled to payment pursuant to this Agreement) not wish to receive the surplus otherwise payable to them under this Agreement, it shall not be paid to them but shall be distributed to the other members of the Eligible Group and to other persons, beneficiaries, and estates entitled to payment pursuant to this Agreement as part of the Eligible Member Group Surplus Share, provided that such individual or estate delivers a written instruction and release to Canada Life in a form acceptable to Canada Life, prior to the Settlement Approval Date.

Payment to an Estate

- (e) In the event that, pursuant to this Agreement, a surplus amount is to be distributed to the estate of a deceased individual, where there are personal representatives of the estate such amount may be paid to the deceased's personal representative(s), or to such persons as the personal representatives or their agents may direct.

Unlocated Members

- (f) Canada Life shall use reasonable efforts to locate all members of the Eligible Group or any other person, beneficiary, or estate entitled to payment pursuant to this Agreement. The CLPENS Executive shall assist in this regard, and Canada Life will provide information to permit them to do so, subject to applicable laws and policies regarding protection of personal information. In the event that any members of the Eligible Group, or any other persons or estates entitled to payment pursuant to this Agreement, cannot be located in order to effect the distribution to the relevant parties of the portion of the Eligible Member Group Surplus Share to which they are entitled under this Agreement, then subject to paragraph 10(d), such amounts shall be dealt with by Canada Life in accordance with the requirements of applicable law including, where applicable, payment to any governmental entity authorized to accept such amounts.
- (g) [intentionally left blank]

Amendment

- (h) This Agreement may only be amended by written agreement of the MOU Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof nor shall any such waiver constitute a continuing waiver unless expressly stated.

Governing Law

- (i) This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Language of the Agreement

- (j) The Parties have required that this Agreement and all deeds and documents relating to this Agreement be drawn up in the English language. Les Parties aux présentes ont exigé que le présent contrat et tous autres contrats et documents afférents aux présentes soient rédigés en langue anglaise.

Execution

- (k) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
- (l) Any Non-Represented Participant who signs this Agreement shall, upon a copy of such signed Agreement being delivered to Canada Life, be bound by this Agreement and thereby evidence his or her irrevocable consent to the terms and conditions herein. Each Non-Represented Participant further acknowledges that he/she has been advised to obtain independent legal advice with respect to the Settlement and this Agreement, and has either obtained such advice or has decided that such advice is not necessary.
- (m) The execution of this Agreement by Members' Counsel on behalf of the Represented Participants shall, upon a copy of such Agreement being delivered to Canada Life, together with an affidavit from Members' Counsel listing the persons whom it represents and stating that Members' Counsel is authorized to execute this Agreement on behalf of such persons, constitute the agreement of each such Represented Participant to be bound by this Agreement and thereby evidence the irrevocable consent of each of the Represented Participants to the terms and conditions herein.

Entire Agreement

- (n) This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, including for greater certainty the Integration MOU and the Adason MOU, which the MOU Parties agree are superseded upon execution of this Agreement.

Successors and Assigns

- (o) This Agreement shall be binding on and enure to the benefit of the Parties hereto and their respective spouses, beneficiaries, successors, assigns, heirs, administrators and executors.

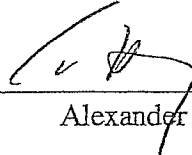
Executed as of the date first written above.

CLPENS EXECUTIVE

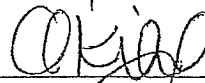
Wilbert Antler



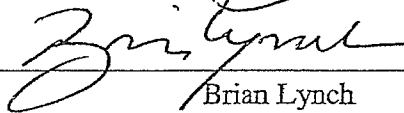
Ed Barrett



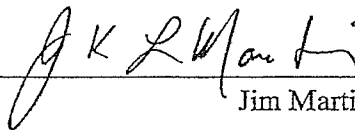
Alexander Harvey



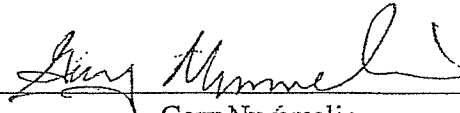
David Kidd



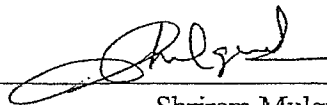
Brian Lynch



Jim Martin



Gary Nurimelin

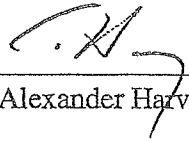


Shriram Mulgund

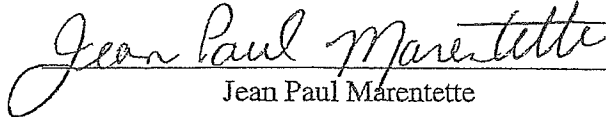
PLAINTIFFS



David Kidd



Alexander Harvey

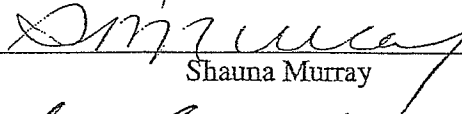


Jean Paul Marentette

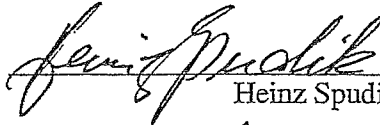
PELICAN COMMITTEE



Lin Yeomans

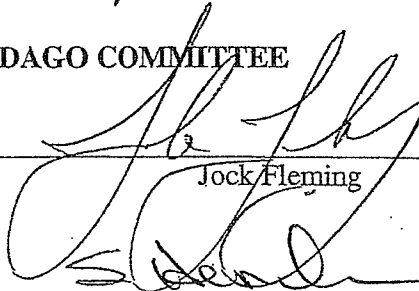


Shauna Murray



Heinz Spudik

INDAGO COMMITTEE

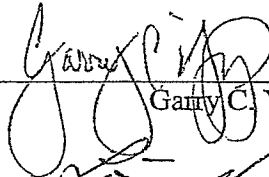


Jock Fleming

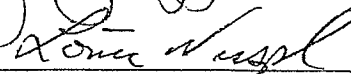


Susan Henderson

ADASON COMMITTEE



Garry C. Yip



Louie Nuspi

THE CANADA LIFE ASSURANCE
COMPANY

By: 

Authorized Signing Officer

By: 

Authorized Signing Officer

REPRESENTED PARTICIPANTS

By: Members' Counsel
Koskie Minsky LLPBy: Members' Counsel
Harrison Pensa LLPBy: Members' Counsel
Sack Goldblatt Mitchell LLP

NON-REPRESENTED PARTICIPANT

Name (print)

Signature

WITNESS

I, the undersigned, confirm that I have witnessed the execution of this document by the above signatory, and that the signatory is competent of mind and that this document was read personally by, or was read to, the signatory, and the signatory understands the nature and contents of this document.

**Name of
Witness:**

(please print)

**Signature of
Witness:**

**Address of
Witness:**

**Telephone
Number of
Witness:**

()

(include area code)

SCHEDULE "A" to the Surplus Sharing Agreement (paragraph 12(c))

DISPUTES REGARDING INDIVIDUAL ENTITLEMENT

1. Where:

(a) Any member of the Eligible Group or any other person, beneficiary, or estate entitled to payment pursuant to this Agreement disputes the calculation of his or her entitlement under the Agreement as set out in the statement of individual entitlement sent to the Disputant by Canada Life (the "Surplus Statement") under the terms of the proposed Settlement; or

(b) Any individual claiming to be a member of the Eligible Group wishes to make a claim to an entitlement under the Agreement,

(in either case, hereinafter referred to as a "Disputant"), he or she may submit a dispute by delivering written notice (entitled "Notice of Dispute") to Canada Life.

2. The Notice of Dispute shall contain a detailed statement of the basis on which the calculation set out in the Surplus Statement is being disputed, or the basis on which the Disputant claims to be a member of the Eligible Group, as applicable.

3. Any such Notice of Dispute shall be delivered no later than 30 days after the Ontario Superior Court of Justice (the "Court") approves the Settlement in accordance with the Agreement, failing which a Disputant shall not be entitled to raise such a dispute.

4. Within 45 days of receipt of the Notice of Dispute, Canada Life shall provide the Disputant with a written response ("Response to Notice of Dispute") which shall provide Canada Life's position in response to the Notice of Dispute.

5. Within 10 days of the Disputant having been provided with Canada Life's Response to Notice of Dispute, the dispute shall be referred to a referee (the "Referee") agreed to by the Disputant and Canada Life. If the Disputant and Canada Life are unable to agree upon a Referee, the Referee will be designated by ADR Chambers.

6. In all cases, the review conducted by the Referee shall be based solely on the terms of the Agreement, the Notice of Dispute and Response to Notice of Dispute. The Referee shall make his or her decision and communicate it to Canada Life and the Disputant within 30 days after the Referee receives such materials.

7. The issues to be determined by the Referee shall be limited to (as applicable based on the Notice of Dispute):

(a) whether the Disputant is a Class member;

(b) the quantum of entitlement of the Disputant under the Agreement.

8. For greater certainty, the Referee shall have no authority to award to a Disputant any relief other than an amount of surplus payable under the Agreement in accordance with its terms.

9. The Disputant and Canada Life agree to abide by the Referee's decision and the Referee's decision shall be final and binding on the parties to the review. No appeal shall be permitted from the Referee's decision including on questions of law.
10. The fees and expenses of the Referee incurred in this review shall be borne in the first instance by Canada Life and in turn shall be paid as part of the Settlement Expenses pursuant to paragraph 2(a)(iii)(C) of the Agreement. Canada Life's costs of participating in the arbitration, including its counsel fees and disbursements, shall be treated as Settlement Expenses pursuant to paragraph 2(a)(iii)(C) of the Agreement. The Disputant shall bear his or her own costs.
11. Where several Notices of Dispute raise the same issue, at Canada Life's request the reviews may be consolidated. Whether or not one or more reviews are consolidated, the same Referee may serve in more than one review.
12. The review shall be confidential. Unless required to do so by law, Canada Life, the Disputant, and the Referee may not disclose to others the existence, content, or results of the review without the prior written consent of Canada Life and the Disputant.

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN
FINANCIAL SERVICES COMMISSION OF ONTARIO AND CANADA REVENUE AGENCY
REGISTRATION NO. 0354563

SURPLUS SHARING AGREEMENT – AMENDMENT #1

Made as of the 1st day of January, 2012

AMONG:

DAVID KIDD, ALEXANDER HARVEY and JEAN PAUL MARENTETTE (hereinafter the “Plaintiffs”)

-and-

WILBERT ANTILER, ED BARRETT, ALEXANDER HARVEY, DAVID KIDD, BRIAN LYNCH, JIM MARTIN, GARY NUMMELIN, and SHRIRAM MULGUND in their collective capacity as, and on behalf of, the Executive Committee of CLPENS (hereinafter the “CLPENS Executive”)

-and-

LIN YEOMANS, SHAUNA MURRAY and HEINZ SPUDIK in their capacity as the members of the Pelican Pension Committee (hereinafter the “Pelican Committee”)

-and-

JOCK FLEMING and SUSAN HENDERSON in their capacity as the members of the Indago Pension Committee (hereinafter the “Indago Committee”)

-and-

GARRY C. YIP and LOUIE NUSPL in their capacity as the members of the Adason Pension Committee (hereinafter the “Adason Committee”)

- and -

THE CANADA LIFE ASSURANCE COMPANY

- and -

Those individuals in the Class (as defined herein) who have retained Members’ Counsel to execute this Agreement on their

behalf (hereinafter the "Represented Participants", by their counsel)

- and -

Those individuals in the Class who have not retained Members' Counsel to execute this Agreement but who have provided their individual consents to this Agreement, as undersigned (hereinafter the "Non-Represented Participants")

(collectively, the "Parties" and individually a "Party")

WHEREAS the Parties entered into a Surplus Sharing Agreement (the "Agreement") as of September 1, 2011;

AND WHEREAS the Agreement may be amended by written agreement of the "MOU Parties" as defined therein, being the Plaintiffs, the CLPENS Executive, the Pelican Committee, the Indago Committee, the Adason Committee, and Canada Life;

AND WHEREAS the MOU Parties wish to amend the Agreement to clarify what is included in the "Settlement Expenses" (as defined therein) that can be paid out of surplus pursuant to the Agreement;

AND WHEREAS the MOU Parties have instructed their counsel to execute this amendment to the Agreement on their behalf;

NOW, THEREFORE, IN CONSIDERATION OF their mutual covenants, and for other good and valuable consideration, the MOU Parties agree as follows:

1. Paragraph 2(a)(iii)(A) of the Agreement is hereby amended by adding the words "the Class Action," following "all expenses related to", such that it reads in its entirety as follows (underlining shows the added words):

all expenses related to the Class Action, the negotiation and implementation of the Integration MOU and of this Agreement (including all fees, costs and expenses described in this Agreement) ("Settlement Expenses") incurred up to December 20, 2007 shall be deducted from the surplus allocable to the Integration PWU;

2. Paragraph 9(a) of the Agreement is hereby amended by adding the words "the Class Action and with" immediately prior to the words "the consideration, negotiation and implementation of this Agreement, including, for greater certainty...", so that it reads in its entirety as follows (underlining shows the added words):

Except as otherwise provided in paragraph 9(b), the reasonable legal, actuarial, and other fees and expenses incurred by Canada Life, the CLPENS Executive, the Indago Committee, the Pelican Committee, the Adason Committee and the Plaintiffs in connection with the Class Action and with the consideration, negotiation and implementation of this Agreement, including, for greater certainty, (i) Court-approved contingency fees of the Plaintiffs, and (ii) fees

related to the negotiation of the Integration MOU, the Adason MOU and this Agreement (including internal expenses of Canada Life) shall be payable out of the Plan fund and/or New Plan fund, as set out below, subject to Court Approval and Regulatory Approval. Such fees and expenses shall be paid out of the Gross Partial Wind Up Surplus as described in paragraph 2(a)(iii), following the allocation related to PWU Group Members who are not Eligible PWU Group Members described in paragraph 2(a)(ii), allocated as between the Plan and the New Plan in proportion to the total amount of Gross Partial Wind Up Surplus allocated to the Plan and the New Plan pursuant to this Agreement. To the extent that any fees and expenses related to the implementation of the Settlement are incurred following the Settlement Approval Date, they may, at Canada Life's option, be paid out of Plan or New Plan surplus.

3. Paragraph 9(c) of the Agreement is hereby amended by adding the words "in connection with the Class Action and" immediately following the words "The MOU Parties acknowledge that they have considered and discussed estimates of the fees and expenses expected to be incurred", and the words "Class Action, the" immediately following the words "The MOU Parties further acknowledge that they have entered into this Agreement to share Final Partial Wind Up Surplus on the basis that the fees and expenses related to the" so that it reads in its entirety as follows (underlining shows the added words):

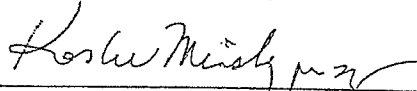
The MOU Parties acknowledge that they have considered and discussed estimates of the fees and expenses expected to be incurred in connection with the Class Action and in negotiating and implementing the Integration MOU, the Adason MOU, and the Settlement. They acknowledge that a reasonable estimate of all fees and expenses to be incurred in that regard is \$12 million (which amount does not include any contingency fees that receive Court Approval). The MOU Parties further acknowledge that they have entered into this Agreement to share Final Partial Wind Up Surplus on the basis that the fees and expenses related to the Class Action, the Integration MOU, the Adason MOU and the Settlement are expected to be approximately that amount, plus any contingency fees that receive Court Approval, but could be more or less than that amount.

4. This amendment to the Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

5. The Parties have required that this amendment to the Agreement and all deeds and documents relating to this Agreement be drawn up in the English language. Les Parties aux présentes ont exigé que le présent contrat et tous autres contrats et documents afférents aux présentes soient rédigés en langue anglaise.

Executed as of the date first written above.

CLPENS EXECUTIVE, by their counsel



Koskie Minsky LLP

PLAINTIFFS, by their counsel

Kos Lie Minsky per me

Koskie Minsky LLP

PELICAN COMMITTEE, by their counsel

Koslie Minsky per me

Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel

Julie Kaul per me

Koskie Minsky LLP

ADASON COMMITTEE, by their counsel

Sack Goldblatt Mitchell LLP

THE CANADA LIFE ASSURANCE
COMPANY, by its counsel

By:

Beinzo

Osler, Hoskin & Harcourt LLP

PLAINTIFFS, by their counsel

Koskie Minsky LLP

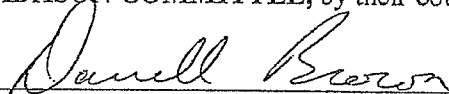
PELICAN COMMITTEE, by their counsel

Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel

Koskie Minsky LLP

ADASON COMMITTEE, by their counsel


Sack Goldblatt Mitchell LLP

THE CANADA LIFE ASSURANCE
COMPANY, by its counsel

By: _____
Osler, Hoskin & Harcourt LLP

SCHEDULE C to the Judgment of Perell J.

[Canada Life letterhead]

CERTIFICATE

The undersigned, Associate Secretary of The Canada Life Assurance Company ("Canada Life"), hereby certifies that attached hereto are amendments to The Canada Life Canadian Employees Pension Plan, and that such amendments were duly authorized at a meeting of the Board of Directors of Canada Life held on [date].

Dated at [Winnipeg, Manitoba] this ● day of ●, 201●.

●
Associate Corporate Secretary

Amendments to The Canada Life Canadian Employees Pension Plan (the "Plan")

The following amendments are effective ●.

1. The following new section 17.07 is added to the Plan:

17.07 Partial Wind-Up Surplus Settlement Proposal

(a) Definitions

For purposes of this Section 17.07:

- (i) "2005 Partial Wind-Up" means the partial wind-up of the Plan declared by the Company as at June 30, 2005 in respect of members of the Plan who on or before June 30, 2005 resigned, retired, had their employment terminated, or were notified that their employment would be terminated as a result of the integration of the operations of The Canada Life Assurance Company and The Great-West Life Assurance Company following the July 10, 2003 acquisition of The Canada Life Assurance Company by The Great-West Life Assurance Company;
- (ii) "Prior Partial Wind-Ups" means the following partial wind-ups of the Plan declared by the Company:
 - (A) the partial wind-up related to the termination of employment of certain members of the Plan employed by Indago Capital Management Inc., as a result of the February 26, 1999 merger of that company with Laketon Investment Management Ltd.;
 - (B) the partial wind-up related to the termination of employment of certain members of the Plan employed by Adason Properties Limited, all of whom were notified of their termination during the period November 1, 1999 to February 28, 2001;
 - (C) the partial wind-up related to the termination of employment of certain members of the Plan employed by Pelican Food Services Limited, as a result of the outsourcing of certain operations by The Canada Life Assurance Company in 2001;
- (iii) "Surplus Sharing Agreement" means the agreement dated September 1, 2011 (as it may be amended) between the Plaintiffs, the CLPENS Executive, the Pelican Committee, the Indago Committee, the Adason Committee, The Canada Life Assurance Company, the Represented Participants, and the Non-Represented Participants, all as defined therein, addressing among other things the distribution of surplus attributable to the 2005 Partial Wind-Up and the Prior Partial Wind-Ups.

(b) Partial Wind-Up Surplus Distribution

Notwithstanding any other provision of the Plan, surplus assets attributable to the 2005 Partial Wind-Up and the Prior Partial Wind-Ups remaining after the payment of all benefits owed to Members and Field Management Members included in the 2005 Partial Wind-Up and the Prior Partial Wind-Ups, or owed to any Spouse, Beneficiary or estate entitled to benefits under the Plan where the Member or Field Management Member has died, after taking into account all fees and expenses payable from such surplus pursuant to the Surplus Sharing Agreement, shall be distributed in accordance with the Surplus Sharing Agreement, with a portion of the surplus being payable to the Company as set out in the Surplus Sharing Agreement.

(c) Asset Transfer

Notwithstanding any other provision of the Plan, certain assets shall be transferred from the Plan to The Canada Life Canadian Employees New Pension Plan, as set out in paragraph 6(c)(ii) of the Surplus Sharing Agreement and Section 1.09 of the Plan.

(d) Implementation

The distribution of surplus and transfer of assets contemplated in this Section 17.07 shall occur as soon as practicable following the date on which the Company obtains all necessary regulatory approvals therefor.

SCHEDULE D to the Judgment of Perell J.

TRUST AGREEMENT

made as of

the • day of •, 201•

between

THE CANADA LIFE ASSURANCE COMPANY

and

RBC DEXIA INVESTOR SERVICES TRUST

governing the Trust Fund

in respect of

The Canada Life Canadian Employees New Pension Plan

Confidential Draft

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[NTD: To be updated, if necessary, prior to execution.]

THIS TRUST AGREEMENT (the "Agreement") is entered into this • day of •, 201•.

BETWEEN:

THE CANADA LIFE ASSURANCE COMPANY, a company incorporated under the *Insurance Companies Act* (Canada) (hereinafter referred to as the "Company")

OF THE FIRST PART

AND:

RBC DEXIA INVESTOR SERVICES TRUST, a trust company incorporated under the laws of Canada (hereinafter referred to as the "Trustee")

OF THE SECOND PART

WHEREAS the Ontario Superior Court made an order dated • (the "Settlement Order") approving the settlement of legal proceedings (the "Settlement") that had been commenced against the Company by certain members of The Canada Life Canadian Employees Pension Plan (the "Old Plan");

AND WHEREAS among other things the terms of the Settlement provided for the Company to create a new pension plan, into which would be transferred certain members and former members of the Old Plan;

AND WHEREAS the Company has therefore established and maintains a pension plan known and designated as The Canada Life Canadian Employees New Pension Plan (the "Plan" as hereinafter further defined);

AND WHEREAS the Company is the administrator of the Plan for all purposes including Applicable Law;

AND WHEREAS as part of the Settlement, the terms of the trust which held assets to be transferred from the Old Plan to the Plan to initially form the Trust Fund as defined herein were varied through trust beneficiary consent and through the consent of the court under the Ontario *Variation of Trusts Act*, the consent of the court having been provided under the Settlement Order;

AND WHEREAS the Company has directed the trustee(s) of the Old Plan to transfer such assets to the Trustee, to be held in trust hereunder;

AND WHEREAS the Company and the Trustee have agreed to enter into this Agreement to provide for the appointment and duties of the Trustee as trustee and custodian;

AND WHEREAS it is the intention that the primary assets to be held by the Trustee in the Trust Fund pursuant to this Agreement will be one or more Insurance Policies of a Canadian licensed insurance company as required for the purpose of funding the benefits under the Plan.

NOW THEREFORE, in consideration of the premises and of the mutual covenants set forth in this Agreement, the Company and the Trustee hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the meanings ascribed to them below:

- Applicable Law:** shall mean any existing or future laws, regulations, policies or orders made and promulgated under statutory authority by any governmental or regulatory body, commission or agency purporting to have jurisdiction over the Trust Fund, all as the same may be amended from time to time and, for greater certainty, shall include, but not be limited to, the *Income Tax Act* (Canada) and similar legislation of a province or territory, and federal, provincial or territorial pension legislation.
- Beneficiary(ies):** shall mean any person entitled to receive benefits or other payments under the Plan and, subject to Applicable Law, includes the Company.
- Business Day:** shall mean any day on which The Toronto Stock Exchange is open for business.
- Direction:** shall mean all directions, notices, requests, instructions and objections given in accordance with Article 9 by an officer, person or other representative authorized to act on behalf of the Company or an Investment Manager, as the case may be.
- Insurance Company:** shall mean an insurance company or companies incorporated and licensed under the laws of Canada or a province thereof which have issued an Insurance Policy, and may for greater certainty, be the Company or an affiliate or associate of the Company.
- Insurance Policy:** shall mean a segregated fund policy or policies of an Insurance Company issued or assigned to the Trustee under this Agreement as Trust Property for the purpose of funding the benefits under the Plan as permitted by Applicable Law and documentation related to such policy and its administration, including application and quotation documents and agreements relating to the servicing or administration of such Insurance Policy.

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- Plan:** shall mean The Canada Life Canadian Employees New Pension Plan maintained by the Company and registered with the appropriate regulatory authorities for the purpose of providing pension and other benefits to certain of its employees and certain of the employees of any designated subsidiary or affiliated corporation, as may be amended from time to time.
- Trust Fund:** shall mean The Canada Life Canadian Employees New Pension Plan Trust Fund, as described in Article 2 hereof.

ARTICLE 2 ACCEPTANCE OF TRUST

2.1 Trust Fund

All assets as shall be paid or delivered or caused to be paid or delivered by the Company from time to time to the Trustee and acceptable to the Trustee, together with any earnings, profits and increments thereon and all assets from time to time substituted therefor, less authorized payments therefrom, shall constitute the Trust Fund established in conjunction with the Plan and shall be held by the Trustee in trust and applied by the Trustee in the manner and for the purposes provided in this Agreement. The appointment of the Trustee is effective as of the day first above written.

Money paid or property distributed by the Trustee in accordance with the provisions of this Agreement shall cease to form part of the Trust Fund upon the Trustee's taking such action as is normally required for making payments or delivering property.

2.2 Appointment and Acceptance of Trust

The Company hereby appoints the Trustee as trustee of the Trust Fund, and the Trustee hereby accepts such appointment and agrees to hold, invest, administer and distribute the Trust Fund subject to the terms and conditions of this Agreement.

2.3 No Implied Duties

The Trustee shall have only such duties and responsibilities as are specifically set forth in this Agreement or as may be imposed under Applicable Law.

2.4 Accounting to Beneficiaries

No Beneficiary shall require an accounting of the Trust Fund except by or through the Company.

2.5 Fiscal Year

The fiscal year of the Trust Fund shall end on the 31st day of December of each year.

ARTICLE 3
CONCERNING THE TRUSTEE

3.1 Responsibilities of the Trustee

The Trustee shall:

- 3.1.1 hold title to all assets comprising the Trust Fund including, but not limited to, the Insurance Policy, any money market instruments, and all cash, for the account of the Trust Fund;
- 3.1.2 keep the Trust Fund distinct from its own assets and from those of any other person in the accounts and records kept by the Trustee;
- 3.1.3 subject to Applicable Law, make all distributions, disbursements and payments out of the Trust Fund from time to time to any person (including the Company) on a Direction of the Company or, on a Direction of the Company, direct the Insurance Company to do so;
- 3.1.4 notify the Company upon the receipt by it of any assignment or attempted assignment or notice thereof or of any involuntary assignment, seizure, garnishment or any process of law or execution or notice thereof in respect of any benefit payable out of the Trust Fund;
- 3.1.5 act in accordance with a Direction of the Company;
- 3.1.6 receive all contributions under the Plan or other transfers of assets made by the Company to the Trust Fund acceptable to the Trustee or, with the prior approval of the Company, by any other person or persons on behalf of the Company;
- 3.1.7 on Direction from the Company, remit to the Insurance Company all contributions received under the Plan or other transfers of assets except as otherwise required for payment of taxes, fees, compensation or expenses as permitted or required under this Agreement;
- 3.1.8 as and when required by Applicable Law, notify applicable regulatory authorities of the failure of the Company to remit required contributions to the Trust Fund when due;
- 3.1.9 keep accurate and detailed accounts, books, statements and records of all assets, investments, receipts and disbursements and other transactions with respect to the Trust Fund, which shall be open to inspection and/or audit, with reasonable prior notice, at all reasonable times during normal business hours by any person duly authorized by the Company;
- 3.1.10 furnish to the Company or any person designated in writing by the Company or as required by Applicable Law, within 90 days following the close of each fiscal year of the Trust Fund, or of such other period as may be agreed upon between

the Company and the Trustee, and within 90 days after the removal or resignation of the Trustee or termination of the Trust Fund, a written statement of account setting forth all investments, receipts, disbursements and other transactions effected by it during such period, including any information of a similar kind that the Trustee is entitled to receive from an Insurance Company in relation to an Insurance Policy held during such period pursuant to the terms of such Insurance Policy or any other agreement between the Trustee and the Company and/or the Insurance Company and such other statements and reports as may be mutually agreed upon by the Company and the Trustee; such written statements of accounts shall be in such form and detail as mutually agreed upon by the Company and the Trustee from time to time; for greater certainty, the Company hereby agrees and acknowledges that the Trustee shall have no liability or responsibility for the validity, accuracy or contents of any information received from an Insurance Company in this regard;

- 3.1.11 prepare and file all information and tax returns required to be made or filed by or in respect of the Trust Fund by the Trustee under Applicable Law and provide copies thereof to the Company;
- 3.1.12 pay out of the Trust Fund all taxes of whatever kind that may be levied or assessed under existing or future Applicable Law upon or in respect of the Trust Fund or any money or property forming a part thereof; provided that notice of all such levies and assessments shall be given to the Company prior to the payment of such levies and assessments out of the Trust Fund and provided further that the Trustee shall review all such levies and assessments made with a view to determine the applicability, correctness or legal validity thereof, and in cases where the Trustee has reasonable cause to believe that any such levies or assessments are inapplicable, incorrect or not legally valid, the Trustee shall notify the Company of same. If, following such notification, the Company is of the opinion that any such levies or assessments are inapplicable, incorrect or not legally valid, the Company may require the Trustee to contest any such levies or assessments on behalf of and at the expense of the Trust Fund. The Company may also, with prior written notice to the Trustee, contest the validity of any such levies or assessments on behalf of and at the expense of the Trust Fund. For greater certainty and notwithstanding the foregoing, the Trustee shall be liable for the payment of any and all taxes and assessments levied or assessed under existing or future Applicable Law upon or in respect of the Trust Fund directly attributable to its failure to comply with the Standard of Care set forth in Section 3.2 of this Agreement. For the purposes of this Section 3.1.12, the word "taxes" shall include any interest or penalty that may be levied or imposed on the Trust Fund in respect of any taxes but shall not include any taxes applicable to any disbursements, distributions or payments made out of the Trust Fund by the Trustee in the normal course of the Trustee's administration of the Trust Fund;
- 3.1.13 pay out of the Trust Fund:

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- (a) all reasonable expenses with respect to the operation or administration of the Trust Fund including, without limitation, such fees or compensation of the Trustee as set out in Section 10.7 hereof;
- (b) the reasonable expenses and compensation of agents and counsel appointed by the Trustee in respect to the Trust Fund as provided herein; and
- (c) on a Direction of the Company in each instance, any fees and expenses of a consulting actuary or other provider of services, including the Trustee or its affiliates, to or in respect of the Plan or the Trust Fund and any expenses (internal or external) incurred by the Company in the administration of the Plan or Trust Fund, including without limitation the reasonable premiums, expenses and compensation of the Insurance Company;

unless such fees, compensation and expenses are first paid directly by the Company, within such time and upon such terms as may be agreed to by the Trustee and the Company from time to time, in which case the Company may, pursuant to a Direction, be reimbursed therefor from the Trust Fund.

3.2 Standard of Care

In exercising its powers and performing its duties hereunder, the Trustee shall act honestly and in good faith with the degree of care and diligence that a professional trustee familiar with the custody and administration of the assets of registered pension plans would exercise when acting in like capacity under circumstances then prevailing (the "Standard of Care").

3.3 Limitation of Liability

- 3.3.1 Subject to Section 6.2, the Trustee shall not be liable for any loss to or diminution of the Trust Fund resulting from any act or omission in connection with the affairs of the Trust Fund, except to the extent that such loss or diminution is directly caused by the Trustee's own breach of the Standard of Care or other material term of this Agreement.
- 3.3.2 Subject to Subsection 3.1.8, the Trustee shall have no duty or responsibility with respect to the administration of the Plan, the collection of contributions required to be made under the Plan by the Company or the employees of the Company or any other party on behalf of the Company, nor for the adequacy of the Trust Fund to meet and discharge any payments and liabilities under the Plan.
- 3.3.3 The Trustee shall not be responsible for any loss to or diminution of the Trust Fund resulting from the acquisition or retention of any assets of the Trust Fund, including but not limited to acquiring, holding or retaining an Insurance Policy made in accordance with a Direction of the Company.

- 3.3.4 Subject to the Standard of Care, the Trustee shall not be liable to any person for any action taken in accordance with a Direction of the Company, or for failure to act in the absence of a Direction of the Company where a Direction is required under this Agreement. The Trustee may rely and act upon any statement, report or opinion prepared by or any advice received from the auditor of the Trust Fund appointed by the Company from time to time, or from solicitors or other professional advisors of the Trust Fund and shall not be responsible nor held liable for any loss or damage resulting from so relying or acting if the advice was within the area of professional competence of the person from whom it was received and provided the Trustee has met the Standard of Care and acted in good faith in relying thereon.
- 3.3.5 Upon the expiration of 90 days from the date of mailing of any statements as provided under Subsection 3.1.10 hereof, the Trustee shall be fully released and discharged from any liability or accountability to anyone with respect to its acts and transactions disclosed in such statements, except with respect to those acts or transactions identified by the Company and in respect of which the Company has filed written notice to the Trustee pursuant to Subsection 7.1.6 hereof, or which are a breach of the Standard of Care or other material term of this Agreement.
- 3.3.6 Notwithstanding any other term of this Agreement, the Trustee shall have no responsibility or liability whatsoever for administering the Trust Fund in the event that it contains assets not consisting of cash, Insurance Policies, or money market instruments.

3.4 Indemnification

Each party shall indemnify and save harmless the other, and its affiliates, subsidiaries and agents, and their respective directors, officers, and employees (each an "Indemnified Party"), from and against all costs, expenses (including reasonable costs of litigation and reasonable legal fees and expenses), damages, claims, actions, demands and liabilities to which the Indemnified Party may become subject, as a result of any act or omission in connection with this Agreement, except to the extent such costs, expenses, damages, claims, actions, demands or liabilities are incurred as a result of the negligence, wilful misconduct or lack of good faith of the Indemnified Party, or with respect to the Trustee, a breach of the Standard of Care or other material term of this Agreement.

For greater certainty, the commencement of formal legal proceedings shall not be a precondition for indemnification hereunder. Further, none of the provisions of this Agreement shall require the Trustee to expend or risk its own funds, appear in, prosecute or defend proceedings, or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless the Trustee is first indemnified to its satisfaction.

3.5 Self-Dealing

The Trustee's services to the Company are not exclusive and, subject to the limitations

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otherwise provided in this Agreement on the power and authorities of the Trustee, the Trustee may for any purpose, and is hereby expressly authorized from time to time in its discretion to, appoint, employ, invest in, contract or deal with any individual, firm, partnership, association, trust or body corporate, including without limitation, itself and any partnership, trust or body corporate with which it may directly or indirectly be affiliated or in which it may be directly or indirectly interested, whether on its own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of this Agreement.

Without limiting the generality of the foregoing, the Company hereby authorizes the Trustee to act hereunder notwithstanding that the Trustee or any of its divisions, branches or affiliates may:

- (a) have a material interest in the transaction or that circumstances are such that the Trustee may have a potential conflict of duty or interest including the fact that the Trustee or any of its affiliates may:
 - (i) purchase, hold, sell, invest in or otherwise deal with other property of the same class and nature as may be held in the Trust Fund, whether on its own account or for the account of another (in a fiduciary capacity or otherwise);
 - (ii) provide brokerage services to other clients;
 - (iii) act as financial adviser to the issuer of such securities;
 - (iv) act as agent for more than one client with respect to the same transaction;
 - (v) use in other capacities knowledge, procedures, systems, processes or other expertise gained in its capacity as Trustee hereunder; provided that such use is not detrimental to the best interests of the Trust Fund;
 - (vi) invest the assets of the Trust Fund in the securities or other assets of any of its affiliates; and
 - (b) earn profits from any of the activities listed herein,
- without being liable to account therefor and without being in breach of this Agreement.

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ARTICLE 4
POWERS OF THE TRUSTEE

4.1 Powers Exercisable on a Direction from the Company

The Trustee may, on a Direction from the Company:

- 4.1.1 apply for and enter into an Insurance Policy, as policyholder, for the purpose of funding the benefits under the Plan in whole or in part and take any and all action as may be required in respect of an Insurance Policy, including depositing from time to time certain assets of the Trust Fund with an Insurance Company pursuant to such Insurance Policy; and direct an Insurance Company to take instructions from the Company in respect of any or all of the Trustee's duties as policyholder of an Insurance Policy;
- 4.1.2 hold and retain an Insurance Policy in trust hereunder;
- 4.1.3 terminate an Insurance Policy in accordance with the terms of the Insurance Policy or otherwise as agreed with the Insurance Company;
- 4.1.4 deposit any Insurance Policy forming part of the Trust Fund with any bank or other depository; and,
- 4.1.5 make, execute, acknowledge and deliver any and all contracts, waivers, releases or other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted.

4.2 Powers Exercisable at the Discretion of the Trustee

The Trustee shall have the power, in its discretion, to:

- 4.2.1 hold in trust any assets that it may acquire hereunder and generally to exercise any of the powers of an owner with respect to any such assets held in the Trust Fund;
- 4.2.2 advance monies by overdraft to the Trust Fund, on such terms and conditions as the Trustee may determine, for the purposes of the payment of benefits and other disbursements pursuant to a Direction of the Company and for the general administrative purposes of the Trust Fund. In order to secure the obligations of the Trust Fund to repay such borrowings, the principal and interest charged on such borrowing shall be paid out of the Trust Fund and shall constitute a charge against the Trust Fund until paid;
- 4.2.3 retain any uninvested cash balances held from time to time in the Trust Fund and in its sole discretion hold such balances on deposit with a bank or such other deposit taking institution, including the Trustee or an affiliate of the Trustee in any jurisdiction, in such interest bearing account as the Trustee, in its discretion, may determine;

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- 4.2.4 commence, defend, adjust or settle suits, administrative or legal proceedings in connection with the Trust Fund, in consultation with the Company, and represent the Trust Fund in any such suits, administrative or legal proceedings and keep the Company informed; provided, however, that the Trustee shall not be obliged or required to do so unless it has first been indemnified to its satisfaction against all expenses and liabilities sustained or anticipated by the Trustee by reason thereof, except where such suits, administrative or legal proceedings directly result from a breach by the Trustee of the Standard of Care or other material term of this Agreement;
- 4.2.5 retain, in consultation with the Company, such external counsel, auditors, advisors, agents or other persons (who may also be retained by the Company) as the Trustee may deem necessary from time to time for the purpose of discharging its duties hereunder and in accordance with Subsection 3.1.12, pay out of the Trust Fund their reasonable expenses and compensation;
- 4.2.6 dispose of any part of any cash balance held in the Trust Fund on such terms as the Trustee may determine, in order to pay any outstanding obligations imposed on the Trust Fund or repay any outstanding loan authorized by this Agreement, provided that the Company has been provided with prior written notice of the Trustee's intention to do so;
- 4.2.7 do all such acts, take all such proceedings and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may, in its sole discretion, deem necessary to administer the Trust Fund, and to carry out the purposes of this trust.

4.3 Powers Inexhaustible

The exercise of any one or more of the powers provided in this Article 4 or any combination thereof from time to time shall not be deemed to exhaust the rights of the Trustee to exercise such power or powers or combination of them thereafter from time to time.

ARTICLE 5 TRUSTEE AS CUSTODIAN

5.1 Custody of the Trust Fund

The assets of the Trust Fund shall be held in Canada by the Trustee.

5.2 Recording of Assets

All assets of the Trust Fund shall at all times and in all circumstances be clearly recorded in the books and records of the Trustee so as to show that the beneficial ownership of such assets is vested in the Trust Fund.

ARTICLE 6
THIRD PARTIES

6.1 Selection and Monitoring of Agents

The Trustee shall act in accordance with the Standard of Care in the selection and monitoring of its agents. The Trustee shall hold each agent to a commercially reasonable standard of care under its contract of employment.

6.2 Liability for Agents

Subject to Section 6.4 hereof, if the Trust Fund suffers a loss as a result of any act or omission of an agent appointed by the Trustee and if such loss is directly attributable to the failure of such agent to comply with the Standard of Care in the provision of any service to be provided by it under this Agreement, then the Trustee shall assume liability for such loss directly, and shall reimburse the Trust Fund accordingly. The Trustee shall not, however, have any responsibility or liability in connection with or arising out of any act or omission of an agent appointed by the Company or appointed by the Trustee on the Direction of the Company, regardless of any other provision of this Agreement.

Other than as stated above and in Section 6.1, the Trustee shall not be liable for any act or omission of any agent appointed by the Trustee.

6.3 Rights of Agents

For greater certainty, any rights, powers, authorities, benefits, and limitations on liability or limitations on responsibility whatsoever granted to the Trustee under this Agreement or conferred upon the Trustee or otherwise at law shall be deemed to have been granted by the Company to any and all agents appointed by the Trustee, and in furtherance thereof, any references to "the Trustee" herein shall be construed as references to such agents.

6.4 Loss from Agent Insolvency

For greater certainty, the Trustee shall not be responsible for any loss or diminution in respect of the Trust Fund resulting from the bankruptcy or insolvency of any agent of the Trustee, except to the extent that the Trustee fails to meet the Standard of Care with respect to the selection and monitoring of such agent.

ARTICLE 7
CONCERNING THE COMPANY

7.1 Responsibilities of the Company

The Company hereby represents and warrants that it has full power and authority to enter into this Agreement, and to perform all of its obligations hereunder, and more specifically and without limitation, the Company shall:

- 7.1.1 have full responsibility for the administration of the Plan;
- 7.1.2 have full responsibility for making all decisions related to, and for managing, the investment of the Insurance Policy, and the investment of the Trust Fund in one or more Insurance Policies and money market instruments;
- 7.1.3 ensure that any Direction of the Company is given in accordance with the provisions of the Plan and Applicable Law;
- 7.1.4 provide the Trustee with a current copy of the Plan and all amendments thereto as and when requested by the Trustee;
- 7.1.5 provide the Trustee annually, or at such shorter period as agreed between the Company and the Trustee, a certificate of the Company setting forth the amount of the contributions required under the provisions of the Plan and Applicable Law in respect of a particular year, the dates on which such contributions are due and the proposed method of funding such contributions;
- 7.1.6 review any statement provided by the Trustee in accordance with Subsection 3.1.10 hereof and notify the Trustee in writing of any errors, omissions or discrepancies of which it may be aware and which are contained in such statement;
- 7.1.7 provide the Trustee with Directions, copies of certificates or other documentation or information as may be required by the Trustee to fulfill its obligations under Applicable Law, this Agreement or as the Trustee may reasonably request;
- 7.1.8 provide the Trustee with Directions as to the acquisition, retention or disposition of Insurance Policies in a timely and sufficient manner to ensure that an appropriate Insurance Policy as required for the purpose of funding the benefits under the Plan is maintained at all times in the Trust Fund;
- 7.1.9 provide the Trustee with certified copies of the Company's signing authorities, as set out in Schedule "A" hereto, as amended from time to time;
- 7.1.10 notify the Trustee of any transfer or other payment of funds to or from the Trust Fund that is subject to locking-in or other provisions of Applicable Law and provide the Trustee with all relevant information and documentation as required by such Applicable Law;
- 7.1.11 have full responsibility for compliance with unclaimed property legislation, as applicable, and shall direct the Trustee to provide information or remit unclaimed property as the case may be to the appropriate regulatory authority where required;

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7.1.12 provide the Trustee in a timely manner with such records, receipts, reports and other documentation as may be requested or required by the Trustee; and

7.1.13 perform such duties as may be required from time to time in connection with the administration of the Plan and the fulfillment of the obligations under the Direction and Agency Agreement substantially in the form set out in Schedule "B" hereto;

and otherwise carry out the due and proper administration of the Plan. All such actions shall be undertaken, where applicable, in accordance with this Agreement, the Plan, the statement of investment policies and procedures of the Plan, and all laws, regulations, policies, rules, decrees or orders binding on or affecting the Plan or the Trust Fund, and the Company shall ensure such compliance by each of its directors, officers, employees or agents involved in such activities.

7.2 Audit of Accounts

The Company may cause the accounts relating to the Trust Fund to be audited not more frequently than annually and within 180 days following delivery to the Company of a written statement of account pursuant to Subsection 3.1.10 hereof. Such audit shall be conducted by an independent certified accountant selected and retained by the Company. During its normal business hours and subject to the Trustee receiving reasonable advance written notice of the audit, the Trustee shall provide such accountant with all such information and with all such access to its records and accounts as may be reasonably required to conduct the audit subject to such fees and charges of the Trustee as may be agreed upon by the Company and the Trustee. The Company shall provide to the Trustee a certified copy of any audit report prepared by such accountant promptly after delivery thereof to the Company.

7.3 Insurance Policies of the Company

The Trust Fund is permitted to invest in and to hold Insurance Policies issued by the Company, its affiliates and subsidiaries, and the Company is permitted to make a commercially reasonable profit from any such Insurance Policies holding investments made by the Trust Fund.

ARTICLE 8 INVESTMENTS

8.1 Investment of Trust Fund

The Trustee shall invest and reinvest the Trust Fund in an Insurance Policy or money market instruments, strictly in accordance with Directions of the Company. For greater certainty, it is hereby confirmed that the Trustee shall have no responsibility for the investment management of the Trust Fund nor for any investment decisions except for carrying out Directions. The investment of the assets of the Trust Fund shall not be limited in any way to investments authorized for trustees under Applicable Law.

ARTICLE 9
COMMUNICATIONS

9.1 Directions

All Directions shall be given in one of the methods authorized by Section 9.3 below and shall be given by an authorized officer, person or other representative of the Company.

The Trustee may, from time to time, upon giving prior notice to the Company, prescribe the form of Direction that it will require for certain types of actions on the part of the Trustee which require authorization by the Company.

The Company shall, from time to time, provide to the Trustee a certificate, substantially in the form set out in Schedule "A" hereto, signed by the President and Chief Executive Officer or Senior Vice-President, Corporate Resources of the Company stating the name(s) and title(s) of the authorized officer(s), person(s) or representative(s) authorized to act on behalf of the Company together with specimen signatures of all such authorized officers, persons or representatives (the "Authorized Signatories"). The Company shall keep the Trustee informed as to any changes of the Authorized Signatories, and the Trustee shall be entitled to rely upon the identification of such persons as specified in each such certificate as the persons entitled to act on behalf of the Company for the purposes of this Agreement until a later certificate respecting the same is delivered to the Trustee.

Without limiting the foregoing, in the case of Directions sent through one of the Trustee's secured access channels, including ViewFinder, or sent directly between electromechanical or electronic terminals (including, subject to Section 9.7, the internet or unsecured lines of communication), the Trustee shall be protected in relying on such Directions as if they were written Directions from the Company executed by an authorized signatory of the Company. The Trustee shall be entitled, without further inquiry or investigation, to assume that such Directions have been duly and properly issued by the Company and that the sender(s) is/are duly authorized to act, and to provide Directions, on behalf of the Company.

Subject to the Standard of Care and compliance with the other material terms of this Agreement, the Trustee shall:

- (a) be fully protected in acting upon any Direction believed by it to be genuine and presented by the Authorized Signatory(s); and
- (b) be under no duty to make any investigation or inquiry as to any statement contained in any such Direction but may accept such statement as conclusive evidence of the truth and accuracy of such statement.

9.2 Limitations in respect of Directions

The Trustee shall act in accordance with Directions, and subject to the Standard of Care and compliance with the other material terms of this Agreement, shall be fully protected

and absolved from any liability arising therefrom. If the Trustee is not provided with Directions when required hereunder, then the Trustee shall be fully protected and absolved from any liability arising from the failure to act in the absence of Directions.

9.3 Methods of Communication

All communications hereunder (including, for greater certainty, Directions) must be given by one of the following methods of communication:

- personal or courier delivery;
- prepaid ordinary mail;
- authenticated telex;
- facsimile;
- S.W.I.F.T.;
- one of the Trustee's secured client access channels, including ViewFinder;
- directly between electromechanical or electronic terminals (including, subject to Section 9.7, the internet or unsecured lines of communication); or
- telephone (subject to Section 9.5).

Communications should be addressed, as applicable, as follows:

(a) in the case of the Trustee:

RBC Dexia Investor Services Trust
155 Wellington Street West, 5th Floor
P.O. Box 7500, Station "A"
Toronto, Ontario
M5W 1P9

Attention: Head of Client Service

Telephone: (416) 974-9548

Facsimile: (416) 955-2956

(b) in the case of the Company:

The Canada Life Assurance Company
100 Osborne Street North
Winnipeg, Manitoba
R3C 3A5

Attention: Senior Vice-President, Corporate Resources

Telephone: (204) 946-7600

Facsimile: (204) 946-4116

or at such other address and number as the party to whom such communication is to be given shall have last notified to the party giving the same in the manner provided in this Section.

9.4 Deemed Delivery

Any communication delivered personally shall be deemed to have been given and received on the day it is so delivered (or if that day is not a Business Day, on the next succeeding Business Day). Subject to disruptions in the postal service, any communication sent by prepaid ordinary mail shall be deemed to have been given and received on the fifth Business Day following the date of mailing. Any communication given by authenticated telex, facsimile, S.W.I.F.T., one of the Trustee's secured client access channels or directly between electromechanical or electronic terminals (including, subject to Section 9.7, the internet or unsecured lines of communication) shall be deemed to have been given and received on the Business Day it is transmitted provided that it was received before 3:00 p.m. (Toronto time), and, if received after 3:00 p.m. (Toronto time), it shall be deemed to have been given and received on the Business Day following the day of transmission provided in each case that confirmation of transmission is available from the party giving the communication.

Nothing in this Agreement shall create an obligation for the Trustee to constantly monitor its electronic communication equipment, provided that reasonable monitoring is performed within business hours of the Trustee where communications are sent and the Trustee will not be held liable for an omission to act from not receiving electronically transmitted communications (including, without limitation, Directions). In the event of any disagreement as to whether electronic communications (including, without limitation, Directions) have been received by the Trustee, the sender will have the onus of proving that such electronic communications have been so received.

9.5 Telephone Directions

With respect to telephone Directions, the Company shall endeavor to forward written Directions confirming such telephone Directions on the same day that such verbal Directions are given to the Trustee. The fact that such confirming written Directions are not received or that contrary Directions are received by the Trustee shall in no way affect the validity of any transactions effected by the Trustee on the basis of the telephone Directions.

9.6 Recording of Telephone Communications

The Company acknowledges and agrees that some or all telephone communications between the parties, including, without limitation, Directions, may be recorded by the Trustee. In the event of any disagreement as to the content of any communication given by telephone, the Trustee's recording will be conclusive and determinative of the contents of such communication.

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9.7 Internet

The Company agrees and confirms that the Trustee, in providing the services hereunder, may forward reports and information to the Company and/or to the Company's authorized agents, and may receive and act upon communications and instructions (including without limitation, Directions) received from the Company and/or the Company's authorized agents, through use of the internet or any other electronic means of communication which is not secure.

The Company agrees and acknowledges that the internet is not a secure or confidential means of communication, and that accordingly, there are certain risks inherent in its use. The Company therefore agrees that the Trustee shall bear no responsibility or liability whatsoever for any errors and omissions, or direct, indirect or consequential losses or damages that are directly attributable to the use of the internet as a means of communication, including any losses or damages arising from viruses or worms, or the interception, tampering or breach of confidentiality of data or information transmitted which is not encrypted and authenticated in accordance with the Trustee's encryption standards.

The Company also agrees that the Trustee may rely and act upon any email instructions or Directions received via the internet from the Company, without the Trustee having to take any further actions of any kind to verify or otherwise ascertain the validity of such instructions or Directions, and any such instructions or Directions shall be binding on the Company on whose behalf the e-mail instructions or Directions shall have been given and that the Company shall not make any claim or take any action or proceedings against the Trustee for any losses or damages whatsoever suffered by reason of the Trustee accepting and acting upon such instructions or Directions.

ARTICLE 10

RESIGNATION, REMOVAL, APPOINTMENT OF SUCCESSOR AND REMUNERATION OF TRUSTEE

10.1 Resignation

The Trustee may resign at any time after giving 90 days' notice in writing to the Company, or after such shorter notice as may be mutually agreed by the Company and the Trustee.

10.2 Removal Without Notice

The Company shall have the power, exercisable in writing, to remove the Trustee without notice, at any time that:

10.2.1 the Trustee shall be declared bankrupt or shall be insolvent;

10.2.2 the assets or the business of the Trustee shall become liable to seizure or confiscation by any public or governmental authority; or

10.2.3 the Trustee shall cease to have the qualifications set out in Section 10.6 hereof.

10.3 Removal With Notice

The Company may remove the Trustee for any reason at any time upon 90 days' notice in writing or upon such shorter notice as may be mutually agreed upon by the Company and the Trustee.

10.4 Appointment of Successor

In the event of resignation or removal of the Trustee under this Agreement or in the event a vacancy shall otherwise arise in the trusteeship of the Trust Fund, the Company shall appoint a successor funding agent as successor to the Trustee and shall ensure that such successor has the qualifications set out in Section 10.6 hereof.

Notwithstanding the foregoing, any trust company resulting from the merger or amalgamation of the Trustee with one or more trust companies and any trust company which succeeds to substantially all of the trust business of the Trustee shall thereupon become the successor to the Trustee hereunder without further act or formality with like effect as if such successor had originally been named trustee herein.

10.5 Obligations Upon Resignation or Removal

In the event of the resignation or removal of the Trustee, the Trustee shall, upon a Direction of the Company, transfer title to and pay over all of the assets comprising the Trust Fund and all relevant books and records maintained by the Trustee for the purpose of its responsibilities under this Agreement to the successor funding agent appointed under Section 10.4 hereof. Upon such transfer, subject to Section 3.3.5 hereof, the Trustee shall be relieved of all future responsibilities under this Agreement.

10.6 Qualifications of Successor Funding Agent

No person shall at any time be eligible to be appointed as a successor funding agent to the Trustee other than a person permitted under Applicable Law.

10.7 Fees and Expenses of the Trustee

In consideration of the services provided by the Trustee hereunder, the Trustee shall be entitled to such compensation from the Company as may be agreed upon from time to time in writing between the Company and the Trustee. In addition, the Trustee shall be reimbursed for any disbursements and expenses incurred in the provisions of its services hereunder.

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ARTICLE 11
AMENDMENT AND TERMINATION OF AGREEMENT

11.1 Amendment of Agreement

This Agreement may be amended at any time and from time to time, by an instrument in writing executed by the Company and the Trustee. The Company and the Trustee shall amend this Agreement if, at any time, they are required to do so in order to comply with Applicable Law.

11.2 Termination or Revocation of Agreement

This Agreement may be terminated or revoked by the Company on 30 days prior written notice to the Trustee (or such shorter period as may be agreed upon between the Company and the Trustee).

Within 60 days of such termination or revocation, the Trust Fund shall be paid out by the Trustee or by the Insurance Company on a Direction of the Company subject to Subsection 7.1.10 hereof provided:

11.2.1 any fees and expenses payable under this Agreement from the Trust Fund, shall first be deducted and paid;

11.2.2 no such payment, except those made under Subsection 11.2.1 hereof shall be made without satisfactory evidence being provided to the Trustee that such approvals or consents of applicable federal or provincial regulatory authorities, as may be required under any Applicable Law, have been obtained and copies thereof furnished to the Trustee and where applicable any conditions set forth in such approvals and consents have been fully met to the satisfaction of such regulatory authorities; and

11.2.3 the provisions of this Agreement shall survive any termination or revocation until all assets comprising the Trust Fund have been paid out or distributed.

ARTICLE 12
MISCELLANEOUS

12.1 Severance of Illegal or Invalid Provision

If any term, provision or part of this Agreement shall be held illegal, invalid or unenforceable in whole or in part for any reason by a Court of competent jurisdiction, such determination shall not affect the validity or enforcement of any other term, provision or part of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable term, provision or part had never been inserted herein.

12.2 Assignment

Subject to Section 10.4 hereof, this Agreement may not be assigned by the Trustee without the consent in writing of the Company, not to be unreasonably withheld, but may be assigned by the Company to a successor to the business of the Company or to a corporation with which the Company may amalgamate or merge or a corporation resulting from any restructuring or reorganization of the Company.

12.3 Successor

Any trust company resulting from the merger or amalgamation of the Trustee with one or more trust companies or any trust company, which succeeds to substantially all of the business of the Trustee shall thereupon become the successor to the Trustee hereunder without further act or formality.

12.4 Interpretation

Unless the context requires otherwise, any terms or provisions importing the plural shall include the singular and vice versa and any terms or provisions importing the masculine gender shall include the feminine gender and vice versa.

12.5 Confidentiality

Subject to Section 3.5(a)(v) hereof, the Trustee shall hold in confidence all information relating to the Trust Fund and may only release such information to others where required by Applicable Law or pursuant to a Direction of the Company.

12.6 Execution in Counterparts

This Agreement may be executed in counterparts each of which when so executed shall be deemed to be an original and all counterparts together shall constitute one agreement.

12.7 Governing Law

This Agreement shall be construed, administered and enforced according to the laws of the Province of Ontario and the laws of Canada applicable therein.

12.8 Force Majeure

The Trustee shall not be liable or responsible for any loss or damages, whatsoever, resulting from official action (including nationalisation and expropriation), currency restrictions or devaluations, acts or threat of war or terrorism, insurrection, revolution or civil disturbance, acts of God, strikes or work stoppages, inability of any settlement system to settle transactions, interruptions in postal, telephone, telex and/or other communication systems or in power supply, or any other event or factor beyond the reasonable control of the Trustee.

12.9 Entire Agreement

This Agreement and any schedules or exhibits hereto constitute the whole and entire agreement between the parties in respect of the subject matter hereof and cancel and supersede any prior written or verbal agreements including undertakings, declarations or representations made with respect thereto.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

THE CANADA LIFE ASSURANCE
COMPANY

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

RBC DEXIA INVESTOR SERVICES TRUST

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

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SCHEDULE "A" TO THE TRUST AGREEMENT
BETWEEN THE CANADA LIFE ASSURANCE COMPANY
AND RBC DEXIA INVESTOR SERVICES TRUST
DATED AS OF THE • DAY OF •, 201•
CERTIFICATE OF AUTHORIZED SIGNATORIES

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INSERT C.O.A.S. HERE

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SCHEDULE "B" TO THE TRUST AGREEMENT
BETWEEN THE CANADA LIFE ASSURANCE COMPANY
AND RBC DEXIA INVESTOR SERVICES TRUST
DATED AS OF THE • DAY OF •, 201•
DIRECTION AND AGENCY AGREEMENT

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INSERT D.A.A. HERE

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DAVID KIDD et al. -and- THE CANADA LIFE ASSURANCE
COMPANY et al.

Plaintiffs
(Respondents)

Defendants
(Appellant)

Court of Appeal File No. C56991
Court File No. 05-CV-287556CP

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**APPEAL BOOK AND COMPENDIUM
VOLUME I OF II**

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