

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N:**

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)

**EXHIBIT BOOK**

**VOLUME I OF III**

May 24, 2013

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Proceeding under the *Class Proceedings Act, 1992*

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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,  
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*Proceeding under the Class Proceedings Act, 1992*

## AFFIDAVIT OF JONATHAN FOREMAN

I, JONATHAN FOREMAN, of the City of London, in the Province of Ontario, make oath and say:

1. I am a partner at Harrison Pensa LLP, one of the law firms appointed as Class Counsel, and as such I have knowledge of the matters to which I hereinafter depose, except where the facts stated are based on information and belief, in which case I have stated the source of the information and I believe such facts to be true.
2. I repeat and rely in full on the contents of an earlier affidavit sworn by me on January 5, 2012 in support of the Surplus Sharing Agreement ("SSA"). Attached to this affidavit at Exhibit "A" is a true copy of my affidavit sworn January 5, 2012, excluding the exhibits thereto.
3. I also rely on the affidavit material filed by the plaintiffs in support of a motion scheduled for September 27, 2012 seeking certain declaratory relief and an order requiring the parties to attend at mediation, a true copy of which is attached to this affidavit at Exhibit "B."

### Brief History

4. My affidavit of January 5, 2012 contains a thorough description of the history of this litigation and the circumstances surrounding the conclusion of the SSA, which was approved by this Honourable Court on January 27, 2012.

5. At the time the SSA was agreed upon, the estimated surplus available for distribution as of June 30, 2011 was \$64.3 million, broken down as follows:

Integration PWU	\$54 million
Pelican PWU	\$2.9 million
Indago PWU	\$1.3 million
Adason PWU	\$6.1 million
<b>Total</b>	<b>\$64.3 million</b>

### Material Developments Following Settlement Approval

6. On or about February 23, 2012, less than one month after the Court granted judgment in accordance with the SSA, legal counsel to Canada Life provided to Class Counsel a memorandum reflecting updated information on the estimated actuarial surplus available for distribution under the settlement.

7. The memorandum contained unwelcome news. Class Counsel, the Representative Plaintiffs and the Executive Committee of Canada Life Pension Rights Group ("CLPENS") were exceedingly disappointed to learn that the estimated IPWU Surplus had deteriorated substantially over the second half of 2011. The information provided by Canada Life indicated that the estimated IPWU Surplus value of \$54 million as at June 30, 2011 (net of projected expenses), which was reported to the Court in the settlement approval hearing, had dropped to below \$10 million as at December 31, 2011 (net of projected expenses). The IPWU Surplus

continued to decline through 2012, and as of August 31, 2012 was estimated to be \$2.6 million. The principle factors leading to the decline in surplus at that time were described as follows:

- a. There was a decline in interest rates over the relevant period which substantially increased the estimated cost of purchasing annuities for members of the IPWU Group; and
- b. There was a higher than assumed take-up rate among members of the IPWU Group who elected to receive their pension benefit by way of an annuity.

The effect of these two factors was to substantially increase the cost of providing benefits under the pension plan to IPWU Class Members, resulting in a reduction of the IPWU Surplus.

8. Class Counsel was advised by Canada Life that there was no reduction in the value of the IPWU assets during the relevant time. Canada Life advised Class Counsel that the relevant assets of the pension fund actually increased in value during the impugned period. However, the increase in asset value is far less than the increase in Plan liabilities, creating a net loss over the same period.

#### **Steps Taken In Response to the Updated IPWU Surplus Estimate**

9. Following the disclosure of the decrease in the estimated IPWU Surplus, Class Counsel, the Plaintiffs and the CLPENS Executive Committee held a number of meetings and discussions regarding this change in circumstance, how it might affect the settlement, and which could be done about it.

10. The first steps taken involved an analysis of the information provided in order to test it for reasonableness and accuracy. It should be noted that there was a healthy level of skepticism on the part of the Plaintiffs on the receipt of this information.

11. Members of the CLPENS Executive Committee have substantial actuarial experience and a thorough knowledge of the operation of the Plan.

12. Further, the Plaintiffs and the CLPENS Executive Committee sought the assistance of their expert actuarial advisor Marcus Robertson, who had assisted them throughout the conduct of this litigation.

13. Information was requested from Canada Life and Investigations and research were undertaken in order to analyze information provided by Canada Life, as well as to assess the prevailing market circumstances which lead to the decline in the IPWU surplus.

14. The Plaintiffs and CLPENS Executive Committee reached the reluctant conclusion that the drop in surplus, as presented by Canada Life and its external advisors, was substantially accurate. The expert advice received supported the unfortunate reduction in the estimated IPWU Surplus, and verified that the appropriate actuarial standards and guidance had been applied.

15. As a result of the diminution in the estimated IPWU Surplus, not only were the surplus share estimates communicated to Class Members in 2011 materially reduced, it was questionable whether there would be enough surplus to make the \$1000 minimum surplus share payments to members of the IPWU Group and the Pensioners and Deferred/Vested members (the "Inactive Eligible Class Members"), and Quebec Cash Out Members provided for under the SSA. In short, a fundamental premise underlying the SSA – sharing of a substantial surplus between Canada Life and Plan members – no longer existed.

16. The Plaintiffs and the CLPENS Executive Committee, with the assistance and guidance of Class Counsel and their actuarial advisor, explored ways to work around this change in circumstance. Two possible solutions were initially identified:

- a. To delay the implementation of the SSA in order to allow a recovery in the interest rate environment with the hope that the IPWU Surplus would recover;
- and

- b. To provide annuities to members of the IPWU Group, with indexation provided through an inflation hedging product created and insured by a third party, with a view to reducing the Plan liabilities related to the IPWU Group.

17. Class Counsel approached counsel to Canada Life to initiate negotiations aimed at creating an acceptable amendment to the SSA which could salvage the position of IPWU Class Members and Inactive Eligible Class Members under the SSA.

18. The parties attended case management conferences before Justice Perell on April 20 and May 7, 2012 to report on the change in circumstances and to obtain approval of a notice update to Class members. 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.

19. By letter dated July 11, 2012, Class Counsel was advised that Canada Life had approached seven Canadian insurance providers to solicit interested bids for the provision of immediate and deferred indexed annuities to members of the IPWU Group, as required under the SSA. This letter further advised that all seven annuity providers had declined to bid on the sale of these annuities.

20. Negotiations between the parties to address implementation of the SSA in light of the drop in IPWU Surplus, which had commenced in or about March or 2012, continued without success. Notwithstanding this impasse, and in light of the inability of Canada Life to purchase annuities on behalf of the IPWU group, in August 2012 Canada Life proposed to unilaterally transfer the assets and liabilities of the IPWU Class Members to the ongoing portion of the Plan, and proceed with the implementation of the SSA.

21. Class Counsel opposed this unilateral action on the part of Canada Life, on the grounds that such a course of action would violate the terms of the SSA which required the settlement of basic pension benefits of the IPWU Class Members through the purchase of indexed annuities. Class Counsel also took the position that the SSA could not be implemented under the changed

circumstances because there were insufficient assets to provide eligible Class Members with the minimum guaranteed \$1,000 payment.

22. Accordingly, the Plaintiffs brought a motion returnable on September 27, 2012 seeking a declaration of the Court that the unilateral actions proposed by Canada Life would violate the terms of the SSA, as well as an order directing the parties to attend a mediation to resolve the dispute. Evidence for the motion was filed with the Court by both the Plaintiffs and Canada Life which provided detail on the circumstances giving rise to the reduction in the estimated IPWU Surplus.

23. The September 27, 2012 motion settled, and Justice Strathy was later appointed to mediate the dispute concerning implementation of the SSA between the parties. Attached to this affidavit at Exhibit "C" is a true copy of the endorsement of Justice Perell dated September 27, 2012.

24. On December 4, 2012, the parties convened for a mediation facilitated by the Honourable Justice George Strathy. Although substantial progress was made with the assistance of Justice Strathy, no agreement was reached at the mediation.

25. With further facilitation by Justice Strathy in the weeks that followed, the parties continued their dialogue, which ultimately resulted in an agreement to amend the SSA (the "ASSA"). Attached and marked as Exhibit "D" to this my affidavit is a true copy of the executed ASSA.

***Terms of the Amended Surplus Sharing Agreement ("ASSA")***

26. As a practical matter, the reduction in the IPWU Surplus does not impact the amount of benefits to be paid under the SSA to a number of sub-groups within the Class. Members included in the Adason, Indago and Pelican Prior Partial Wind-Up Sub Classes are not affected to the same extent by the factors that led to the decline in the estimated IPWU Surplus. In contrast to the members of the IPWU group, many of the members of the Prior Partial Wind Ups



elected to transfer their pension benefits out of the Plan, better insulating the Prior Partial Windup Surpluses from the changes in market conditions which increased pension liabilities for the IPWU group. The benefits under the SSA for active Class Members are unaffected by the change in the estimated IPWU Surplus as those benefits are not payable out of the IPWU Surplus.

27. Those sub-groups which are most affected are the members of the IPWU group and the Inactive Eligible Class Members.

28. 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 minimum surplus shares of \$1,000 contemplated 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.

29. Based on the most recent estimates available (as of August 31, 2012), the ASSA would result in estimated payments to the Class as a whole as follows:

Integration PWU Surplus	\$2,600,000 +CL Interest waived: \$800,000 +CL Legal fees waived: \$500,000  Total IPWU Surplus: \$3,900,000  Member share: \$2,716,740  +EstimatedCL Top Up: \$1,200,000 +KM/HP Legal Fees: \$200,000  TOTAL: \$4,116,740
Indago PWU Surplus	\$1,100,000 Member Share: \$766,260
Adason PWU Surplus	\$6,200,000 Member Share: \$4,318,920
Pelican PWU Surplus	\$2,900,000 Member Share: \$2,020,140
Total Member Share of Estimated Surplus	\$11,222,060

In addition, active Plan members who participate will receive a contribution holiday valued at \$4.6 million, bringing the total estimated benefits to the Class under the ASSA to in excess of \$15 million.

30. The ASSA terms are the best terms that could be reached under the current circumstances. It is clearly recognized by the Plaintiffs, by the CLPENS Executive Committee, by Class Counsel and Marcus Robertson that these terms present a reduction in the estimated value of the benefits payable to the IPWU Class Members and Inactive Eligible Class Members under the original SSA. However, it is also acknowledged that the final amount of distributable

IPWU Surplus was never a guaranteed or fixed amount. Further, if the surplus no longer exists at the same level, there is likely to be little purpose to recommending litigation over such a diminished amount.

31. The ASSA gives effect to the terms negotiated under the original SSA, but also gives the Class Members affected by the drop in IPWU Surplus a hope of future recovery. If the parties went ahead with implementing the SSA without amendment, Class Members would receive less benefits, and no prospect of a future surplus distribution. Simply put, the Class is better off under the ASSA than the SSA, because of the fact that the IPWU Surplus simply isn't what it was anticipated to be.

32. In the view of Class Counsel, the Plaintiffs and the CLPENS Executive Committee the ASSA terms are fair and reasonable and ought to be approved.

#### **Criteria for Approving the ASSA**

##### ***Arm's Length Bargaining***

33. The negotiations surrounding the ASSA terms were at all times conducted on an arm's length and adversarial basis.

34. The negotiations consumed approximately 9 months. Each of the parties were independently represented and advised by sophisticated legal and actuarial professionals.

35. As indicated, the ASSA terms were reached following the assistance of the Honourable Justice George Strathy in his capacity as a neutral mediator.

##### ***The Amount and Nature of Investigation and Discovery***

36. The Plaintiffs requested and Canada Life provided data and information for the purposes of assessing the material change in circumstances.

37. Further, as indicated, the Plaintiffs, CLPENS Executive Committee and Class Counsel engaged and relied upon the assistance of experienced actuarial support.

38. As a result, the Plaintiffs, CLPENS Executive Committee and Class Counsel considered themselves sufficiently well informed to enter into the amended SSA terms.

*The Degree and Nature of Communications by Counsel and the Representative Plaintiffs with Class Members during the Litigation*

39. As is noted above, in May 2012 Class Counsel mailed notices to all Class Members, advising of the substantial drop in the IPWU Surplus and the reasons for the decline.

40. Subsequently, and following the conclusion of negotiations in respect of the ASSA, the parties appeared before this Honourable Court on February 12, 2012 and obtained approval to distribute notices to the Class advising them that amended settlement terms had been reached. The notices were disseminated on or before February 15, 2012 in English and in French. Attached and marked as Exhibit "E" to this affidavit are true copies of the notices that were sent to Class Members.

41. Since the mailing of notices in February 2013, Class Counsel have fielded over 80 inquiries by Class Members. It is anticipated that inquiries will continue to be received until the hearing for settlement approval.

42. Class Counsel can report that for the most part, the communications from Class Members reflect disappointment about the change in circumstances, and a level of misunderstanding of the underlying causes of the drop in IPWU Surplus. To assist in responding to the questions and concerns, Class Counsel also posted the September 27, 2012 motion material on its website, which gives details about the drop in the IPWU Surplus from both of the parties.

43. As of the swearing of this affidavit, Class Counsel has received notice from four Class Members indicating objection to the ASSA. Attached to this affidavit at Exhibit "F" are true copies of the correspondence with the four objecting individuals.

44. The substance of the objections express disappointment and surprise on the part of those Class Members regarding the turn of events, and a demand for accountability from Canada Life and its advisors.

45. In the face of the information received by Class Counsel, we are respectful of the views expressed by Class Members, and it is fair to say that the response was not unexpected.

46. Further and perhaps most importantly, Class Counsel remain of the view that the ASSA contains the best set of terms that could be negotiated under these difficult circumstances and that those terms are fair and reasonable and ought to be approved.

*Recommendations and Experience of Counsel*

47. All the members of the Class Counsel team in this case are experienced in class action matters. In addition, members of the counsel team are among the most experienced pension lawyers in the province. They have been assisted in a highly experienced actuarial advisor in Mr. Robertson. Under the circumstances, as indicated, counsel fully recommends the approval of the settlement terms.

48. I make this affidavit in support of the motion to vary the Judgment in accordance with the ASSA and for no other or improper purpose.

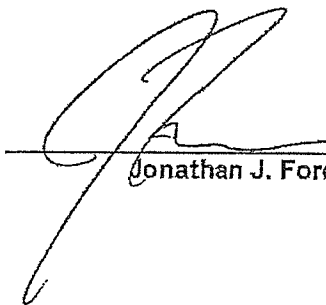
SWORN BEFORE ME at the )  
City of London, in the )  
County of Middlesex )  
this 8<sup>th</sup> day of March, 2013. )



Commissioner for Taking Affidavits

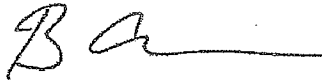
Bradley James Adams, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 27, 2015.

22354744.2



Jonathan J. Foreman

This is EXHIBIT "A" referred to in the  
Affidavit of Jonathan Foreman  
sworn before me this 8 day of March 2013.



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A Commissioner, etc.

Bradley James Adams, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 27, 2015.

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,  
JEAN PAUL MARENTETTE, GARRY C. YIP, LOUIE NUSPL, SUSAN HENDERSON  
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A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT

Defendants

Proceeding under the *Class Proceedings Act*, 1992

AFFIDAVIT OF JONATHAN FOREMAN  
(Sworn January 5, 2012)

I, JONATHAN FOREMAN, of the City of London, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am a partner at Harrison Pensa LLP, legal counsel for the Plaintiffs, and as such, have knowledge of the matters to which I hereinafter depose except where the facts stated are based upon information and belief in which case I have stated the source of the information and I believe such facts to be true.



## BACKGROUND

### *History of the Litigation and Steps to Settlement*

2. Two claims were initially filed in this matter: one on the behalf of Jean Paul Marentette, filed by my firm, and one on behalf of David Kidd et al., filed by Koskie Minsky LLP. The claims were joined shortly after being filed and they were subsequently prosecuted together.
3. An Amended Statement of Claim was filed, issued and entered on September 19, 2005. Attached hereto and marked as Exhibit 'A' is a true copy of the Amended Statement of Claim.
4. In the Amended Statement of Claim, there were two broad claims advanced: a claim in respect of the partial wind-up surplus and a claim on account of the administrative expenses paid out of the pension fund. The claim for the partial wind-up concerned the ownership and use of surplus assets in The Canada Life Canadian Employees' Pension Plan (Registration No. 354563) (referred to hereinafter as "the Plan"). Subsequently, the action was amended to seek declarations of partial wind-ups of the Plan and distribution of surplus funds related to certain past events (collectively referred to hereinafter as the "PWU Claims").
5. In addition, the action claimed that the Plan and the fund held in respect of the Plan (referred to hereinafter as the "Fund") comprise an irrevocable trust (the "Trust") and any and all amendments to the Plan that permit Plan expenses to be paid out of, charged to or reimbursed from the Fund, are invalid, and that the amounts that have left the Fund to pay for Plan expenses should be equitably allocated and distributed among the class members or in the alternative, paid back into the Fund (referred to hereinafter as "the Expenses Claim").
6. The Plaintiffs initially served and filed their motion for certification in or around November 1, 2005.

7. The Defendant Canada Life Assurance Company (referred to hereinafter as "The Company") brought a motion pursuant to Rule 21 of the Rules of Civil Procedure to strike those paragraphs within the Plaintiffs' Statement of Claim, which sought the payment of any amounts awarded in connection with the expenses claim to be distributed directly to class members. Attached hereto and marked as Exhibit 'B' is a true copy of the Defendant's Notice of Motion.
8. There were a series of initial case management conferences in the matter. The motion for certification, as well as the Company's Rule 21 motion, were scheduled to be argued on February 20, 2006. In advance of the motion, the parties agreed to an adjournment.
9. In June of 2006, a case conference was held with Madam Justice Hoy, who had been newly assigned to the case. During that management conference, the certification and Rule 21 motions were scheduled to be heard on November 15 and 16 of 2006.
10. Prior to the argument of the certification and Rule 21 motions, a decision was released in the matter of *Potter v. Bank of Canada* ("Potter"). In *Potter*, the Court resolved issues pertaining to the viability of claims and relief similar to those raised by the Plaintiffs in the within litigation in connection with the expenses claim. Specifically, the Court held that there could be no remedy involving a direct distribution of recovered amounts to class members. Mr. Zigler and Mr. Kaplan of Koskie Minsky acted as counsel to the Plaintiff and the class members in the *Potter* matter.
11. The Plaintiffs in *Potter* sought an appeal, which appeal was scheduled for argument on December 6, 2006.
12. On November 14, 2006, a case conference was held with Madam Justice Hoy where the parties requested a further adjournment of the certification and Rule 21 motions pending the outcome of the appeal in *Potter*, as it had the

potential to assist the parties and the Court in evaluating aspects of the expenses claim.

13. At the same time, the parties had commenced settlement negotiations. Further, the Plaintiffs and the CLPENS Executive entered into a confidentiality agreement with the Company, promising not to divulge the details of the settlement negotiations to anyone. The Confidentiality Agreement permitted reports as to the progress of the negotiations to members of the Class, with the advance consent of the parties.
14. At the case conference before Madam Justice Hoy on November 14, 2006, the parties reported to the Court that settlement discussions had commenced. At the case conference, Madam Justice Hoy made arrangements for the parties to attend a 2-day mediation / settlement conference with Regional Senior Justice Winkler, as he then was (referred to hereinafter as "Justice Winkler"), to take place in the Spring of 2007.
15. The parties attended before Justice Winkler for the mediation on April 24, 2007.
16. On behalf of the Plaintiffs, the mediation was attended by me, Mark Zigler, Dave Williams, Alex Harvey, David Kidd, John Paul Marentette, Wilbert Antler, and the expert actuarial adviser to the plaintiffs, Marcus Robertson. In attendance on behalf of the Defendants were external legal counsel for Canada Life, Jeff Galway and Ian McSweeney, and in-house counsel to Canada Life, Sheila Wagar and Jane Cavanagh, and finally Wally Robinson, the Assistant Vice-President, Pension and Benefits for Canada Life.
17. The mediation continued for a full day with the assistance with Justice Winkler. During that day, Justice Winkler caucused extensively with the parties. Throughout the day, those attending on behalf of the class members advocated vigorously in the interests of the entire class. The positions and

interests of all class members were specifically considered and negotiated with the company, assisted and facilitated by Justice Winkler.

18. At the conclusion of the first day, a broad general framework for a settlement of the litigation had been established for the parties to consider and to give instructions on overnight.
19. However, there remained a significant number of additional details which had to be analyzed and resolved by the parties. Counsel and clients remained engaged for the following day in continued meetings, teleconferences and analysis aimed at facilitating a resolution of the remaining issues. Justice Winkler also remained engaged with the parties via teleconference in order to assist and facilitate the resolution.
20. Among the issues to be incorporated into the settlement construct and managed to a resolution were other partial wind-ups applicable to the Adason, Indago, and Pelican Foods subsidiaries of the Company.
21. Counsel continued to convene, discuss and resolve additional outstanding issues over the ensuing months.
22. On November 9, 2007, the parties reached a Memorandum of Understanding (referred to hereinafter as "MOU") in respect of a settlement of the litigation. Attached hereto and marked as Exhibit 'C' is a true copy of the MOU.
23. At that time, the CLPENS Executive and the Plaintiffs released an announcement to advise interested people that a Memorandum of Understanding had been reached. The Notice explained that an agreed upon framework had been reached, but a final settlement agreement was yet to come. It also described the approximate value of the Integration Partial Wind Up surplus at that time, and the proportionate shares that would be paid to Canada Life, Integration Partial Wind Up members, and other eligible inactive Plan members. The Notice further stated that the remaining eligible active

members who were employed by the Company as of June 30, 2005 (or who subsequently joined the Plan) would receive a 2-year contribution holiday (or equivalent payment), as well as other protections.

24. The MOU included a lengthy list of requirements respecting process and preconditions to settlement. The parties invested a substantial amount of time and resources in the negotiation and completion of conditions which would give rise to a comprehensive settlement agreement known as the Surplus Sharing Agreement (referred to hereinafter as "SSA").

25. As the terms of the SSA were under negotiation between the parties, a similar settlement agreement had been reached in another legal proceeding which involved the pension plan of Montreal Trust. The settlement agreement reached in *Montreal Trust Company of Canada v. Armstrong et al.* encountered certain unanticipated difficulties as it was making its way through the courts and regulatory approval processes before the Financial Services Commission of Ontario.

26. The difficulties encountered by the *Montreal Trust* settlement could not be ignored by the parties in the within litigation. As a result, there was a period of cautious progress which resulted in some delay in the negotiation of the SSA as the parties awaited a final determination of the viability of the Montreal Trust settlement.

27. Ultimately the *Montreal Trust* settlement was successfully approved after an appeal to the Ontario Financial Services Tribunal. With the approval of the *Montreal Trust* settlement, the parties were able to pursue a negotiated conclusion without impediment.

28. After a further lengthy period of negotiations, the terms of the SSA were essentially concluded late in 2010. With that work complete, the parties began preparation of the information and notice packages to be sent to class

members. This was a substantial undertaking which involved a significant investment in time and resources by all parties.

29. Throughout 2010, the parties kept Justice Perell, who had succeeded Justice Hoy as the case management judge in this matter, informed in respect of the progress of the negotiations in respect of the SSA. Advance approval and direction was sought from Justice Perell with respect to a comprehensive notice program to the Class. At a case conference before Justice Perell held on Monday, December 13, 2010, the final form of the Information Package described at paragraph 3 of the Affidavit of Uma Ratnam was reviewed by and approved by Justice Perell. No Order was issued in respect of this approval by the Court.

30. In March of 2011, the Notice Program was launched. Class Members were sent comprehensive packages by mail and were advised of dates of in-person "roadshow" information sessions. The "roadshow" information sessions took place throughout April of 2011. Additional communications and FAQ's were also published for class members. Specifically an additional mailing and in-person information sessions were provided for active employee plan members following the conclusion of the "roadshow" sessions.

31. Very substantial support thresholds from all categories of class members were required to be met in order for the proposal to be concluded. By June of 2011, sufficient consents were obtained such that the settlement could proceed to the approval stage. The first step of the implementation of the SSA was to set a date for the certification motion.

32. The Motion to Certify this action as a class proceeding was held on October 18, 2011. On October 28, 2011, the action was certified pursuant to reasons issued by the Honourable Mr. Justice Perell.

### *The Terms of Settlement*

33. The details of the Settlement are set out in the SSA. Under the SSA, the Company will voluntarily declare partial wind ups for the three prior events involving Indago, Adason, and Pelican Foods in addition to the Integration Partial Wind Up. The SSA provides financial benefits for all members of the Class. The amount of PWU surpluses to be distributed, net of estimated expenses, as of June 30, 2010 are:

Estimated Integration PWU Surplus	\$62.2 million
Estimated Indago PWU Surplus	\$1.2 million
Estimated Adason PWU Surplus	\$5.1 million
Estimated Pelican PWU Surplus	\$2.5 million
<b>Total</b>	<b>\$71 million</b>

34. The Plan members who will participate in the Settlement, as captured in the Class definition, and the number of members in each group, are as follows:

- a. Plan Members included in the Integration Partial Wind Up (2149);
- b. Plan Members who will be included in the Indago Partial Wind Up (15);
- c. Plan Members who will be included in the Adason Partial Wind Up (37);
- d. Plan Members who will be included in the Pelican Partial Wind Up (38);
- e. Deferred/vested members of the Plan as of April 12, 2005 who are not part of the groups described above (451);
- f. Members of the Plan in receipt of a monthly pension from the Plan as of April 12, 2005, or the surviving spouse of a member if the members has died and the spouse is receiving a pension from the Plan on that date, who are not part of the groups described in a-d above (827);

g. All active members of the Plan as at June 30, 3005, plus any new Plan members from that date up to date of certification as a class proceeding (1684); and

h. Former Plan members employed in Quebec who would have been included in the Integration PWU but for their employment in Quebec (29);

35. In sum, the PWU Surpluses (for each of Integration, Indago, Adason and Pelican) will be shared as follows:

a. Partial Wind Up Members will receive 57.22% of the PWU Surplus attributable to them;

b. Non Partial Wind Up Members who are pensioners and deferred/vested Plan members will receive 12.44% of each PWU Surplus;

c. Canada Life will receive 30.34% of each PWU Surplus.

36. The 57.22% share of the PWU surpluses will be paid to members of the PWUs proportionally based on the value of the pension benefits they have earned under the Plan. Surplus shares will be paid as taxable cash lump-sum amounts, subject to applicable withholdings for tax. Members who are entitled to more than \$15,000 in surplus may contribute all or part of their share to a registered retirement savings plan (RRSP) without withholdings if, at the time of the surplus distribution, they confirm to the Company that they have available RRSP contribution room. Each PWU member will receive a minimum payment of \$1,000.

37. The 12.44% share of the surpluses will be paid to the pensioners and deferred/vested members proportionally based on the value of the pension benefits they have earned under the Plan. Surplus shares will be paid as taxable cash lump-sum amounts, subject to applicable withholdings for tax. Members who are entitled to more than \$15,000 in surplus may contribute all



or part of their share to a registered retirement savings plan (RRSP) without withholdings if, at the time of the surplus distribution, they confirm to the Company that they have available RRSP contribution room. Each pensioner and deferred/vested member will receive a minimum payment of \$1,000.

38. As part of the Settlement, the Company will establish a new pension plan (referred to hereinafter as the "New Plan") and related new trust fund (referred to hereinafter as "New Fund"). The terms of the New Plan will be identical to the terms of the Plan, except for certain provisions which are required to implement the Settlement, discussed further below.
39. Active members who have consented to the Settlement will be transferred to the New Plan. In addition to the sharing of the PWU surpluses noted above, active members who have consented to the Settlement will receive a two-year contribution holiday. The benefit accrual formula for consenting active Plan members under the New Plan will remain unchanged for two years following the settlement approval. Assets equal to the value of the benefits they have earned will be transferred to the New Plan, along with a proportional amount of surplus in the ongoing Plan. If the active member's employment is terminated before the end of the two-year contribution holiday period, or the member stops earning benefits under the New Plan for any other reason, a lump sum equal to the value of any remaining contribution holidays will be paid to the member, the member's spouse, or estate, as the case may be. A lump sum will also be paid for any approved leaves of absence or any other period during which a member is not required to contribute to the Plan.
40. The Quebec Cash-Outs consist of Plan members who had their entitlements paid out of the Plan before April 12, 2005, who will be treated as members of the Integration PWU.
41. For any Class Member who dies before receiving his or her surplus share or contribution holiday, their payment will be made to his or her spouse,

designated beneficiary or estate, provided that all necessary consents are obtained.

42. The New Plan will be supported by a new Trust Agreement. The Company is seeking a "variation of trust" to obtain certainty regarding its use of assets once Class members are transferred to the New Plan. Under the SSA, the variation of trust will not address surplus ownership in the event of a future wind up of the Plan or New Plan.

43. To achieve certainty under the New Plan, the parties have agreed under the SSA to seek the following Court declarations, for the benefit of the Company:

- a. The Company is entitled to expand the membership of the Plan or New Plan by way of amendment or merger;
- b. The Company is entitled to use assets in the Plan 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;
- c. The Company is entitled to merge all or a portion of the Plan and/or the New Plan with other pension plans;
- d. The Company is entitled to use all or part of any surplus to take contribution holidays in the Plan and/or New Plan with respect to past, current and future benefits;
- e. The Company is entitled to fund benefit enhancements with respect to the Plan and/or New Plan from surplus; and
- f. The Company is entitled to reimbursement from the Plan and/or New Plan all Plan Expenses that were incurred and paid prior to the SSA. Further, the Company can pay for future expenses from the Plan or New Plan, or be reimbursed from the Plan or New Plan, for such expenses that it pays directly.

44. Class Counsel and members of the CLPENS Executive were able to review a draft version of the New Plan Text and New Trust Agreement, to ensure that it complied with the terms of the SSA, and were satisfied that it did.

#### **SETTLEMENT APPROVAL CRITERIA**

##### ***Arm's Length Bargaining and the Absence of Collusion***

45. These proceedings and all settlement negotiations were conducted at all times on an arm's length and adversarial basis.
46. Each of the parties were independently represented and advised by sophisticated legal and actuarial professionals.
47. The negotiated positions of the parties were at all times vigorously advanced. The fundamental terms of settlement were reached with the assistance of a very experienced neutral mediator.

##### ***The Amount and Nature of Discovery, Evidence or Investigation***

48. Class Counsel extensively investigated the factual history surrounding the creation, management, and administration of the Plan. In particular, attendances were made at the Financial Services Commission respecting the historical, archival document maintenance undertaken by it in respect of the Plan. Further, additional inquiries and investigations were made of the Financial Services Commission respecting the archival documentation identified.
49. In addition, CLPENS and members of its organization had extensive exposure to and experience with the historical documentation of the Plan and its operations. Investigations were undertaken by CLPENS and certain of its members in order to ascertain factual matters respecting the Plan.

50. The plaintiffs retained independent expert actuarial advisors to analyze and investigate historical actuarial reports and analyses in respect of the Plan. Further, the plaintiffs' expert actuarial advisors analyzed current actuarial, statistical and other data provided by Canada Life at the request of the Plaintiffs in the context of the settlement discussions undertaken.

#### *Settlement Terms*

51. The settlement terms provide substantial benefits to the class members.

52. All members of the Plan will receive settlement benefits.

53. While there are variations among the class members in the nature of the settlement benefits which will be provided, those differences have been fairly and reasonably arrived at having been made with regard to the prevailing state of the law.

54. In total, the settlement terms are fair and reasonable, and ought to be approved.

#### *The Likelihood of Recovery or Likelihood of Success*

55. The Plaintiffs believe that the partial wind-up groups have a good and arguable case respecting a claim for a share of the partial wind-up surplus.

56. In addition, at the time proceeding was commenced, the Plaintiffs also believed that there was a good and arguable claim for relief respecting the administration expenses of the Plan. However, following the commencement of the case, and more particularly following the negotiation of the MOU, there were material developments in the law respecting the expenses claim, which were adverse to the merits of the claim and the viability of relief claimed in respect of it. As indicated in the affidavit of Ari Kaplan of Koskie Minsky filed in support of this motion, his firm was involved in the other matters in which these material legal developments occurred. As a result, the class

counsel team had experience with and a current understanding of the law as it applied to the expenses claim. Class Counsel closely monitored the risks associated with the changes in the law while negotiating the settlement.

57. There were additional risks in proceeding with this litigation, both with respect to certification and the merits of the case. The Company is a sophisticated and well-resourced entity represented by expert legal counsel. A contested certification motion would have attracted opposition to the proposed common issues. Assuming the matter would have been certified, it would have been vigorously defended on its merits and would have attracted the risks associated with a common issues trial and any appeals.

58. As indicated above, the law in the pension field has evolved substantially in recent years, a factor which represents an additional risk respecting the likelihood of success or failure of the case on its merits.

*The Future Expense and Likely Duration of Litigation*

59. The subject matter of this litigation is complex. This case has required significant resources to resolve and if contested, it will continue to require heavy investment of time and cost by the parties.

60. In the view of class counsel, a contested certification and Rule 21 motion, documentary production and oral discovery, a common issues trial, and the appeals that would have inevitably flowed from them would consume significant time and resources on the part of all parties.

*Information Conveying to the Court the Dynamics of, and the Positions taken by the Parties during, the Negotiations*

61. Canada Life opposed all aspects of the claim but mounted a particularly vigorous opposition to the expenses claim and in particular, the application of that claim and the requested relief to current employees. The Company

brought a Rule 21 motion in order to strike the request for a direct distribution of monetary relief to any class member on account of that claim.

62. During the negotiations, efforts were made to identify a means of delivering a meaningful economic remedy to current employees. Canada Life was resistant to any cash payment being made to active employees given its opposition to the expense claim combined with the lack of entitlement on the part of active employees to the partial wind up surplus. For active members, a contribution holiday was agreed upon rather than a cash payment. This option was not open to the non-active Non-PWU members. The concept of declaring a contribution holiday was ultimately arrived at as an acceptable and valuable, direct financial benefit to active employees.

63. There were adversarial negotiations facilitated by Justice Winkler surrounding the availability of a contribution holiday, the willingness of Canada Life to provide one, and other terms including the duration of the holiday and the treatment of those class members who ceased employment with Canada Life prior to the completion of the holiday. In the view of Class Counsel, the value of the contribution holiday and the other negotiated protections represent a positive resolution of the litigation for active employees relative to the strength of the legal claims advanced on their behalf and in particular, the remedies that may be available to them in respect of those claims.

***The Degree and Nature of Communications by Counsel and the Representative Plaintiff with Class Members during the Litigation***

64. From the outset of the action there have been communications with class members by CLPENS and class counsel.

65. CLPENS has attracted a large membership consisting of all categories of plan members, including active employees. CLPENS has maintained regular communication with its membership, including general membership meetings which have been attended by hundreds of plan members. Class Counsel, the

Plaintiffs, and the CLPENS executive have reported on the within litigation and have presented to its membership on multiple occasions.

66. In addition, Class Counsel has responded to regular inquiries by Class Members throughout the litigation.

67. As described in the affidavit of Uma Ratnam, the parties to this litigation agreed to and did implement a very substantial notice program to class members.

68. That notice program was approved by this court. The details of the program can be summarized as follows:

- a. a very substantial direct mail package to class members;
- b. in-person "roadshow" notification meetings in 7 locations across Canada, where there are concentrations of Canada Life employees;
- c. a 1-800 hotline which was maintained by Class Counsel at Koskie Minsky;
- d. extensive web-based information platforms maintained by Class Counsel including a FAQ section, all news releases and reports, all court documents, an overview of the case, and an up-to-date list of case developments;
- e. FAQ updates were posted to the websites of Class Counsel; and
- f. Particular communications were prepared for active employees and additional in-person information sessions were held for them.

69. The notice program proposed a unique opportunity for class members to vote for or against the settlement, as the terms of the MOU between the parties required specific support thresholds to be met in order for the SSA to be implemented.

70. All required thresholds stipulated within the MOU have been met. Specifically, the following results were obtained:

STATUS UNDER PROPOSAL	NUMBER OF YES VOTES	TOTAL NO. of PLAN MEMBERS	PROPORTION OF TOTAL ELIGIBLE VOTERS
ACTIVE	1349	1684	80%
PENSIONER	717	827	87%
DEFERRED/VESTED	319	451	71%
QUEBEC CASH OUT	21	29	72%
INTEGRATION PWU	1805	2149	84%
INDAGO	12	15	80%
PELICAN	34	38	89%
TOTAL	4257	5193	82%

71. Following the notice program, there were a small number of "no" votes. A total of 57 "no" votes were received while a total of 4,257 "yes" votes were received.

72. Finally, following the certification order in this action, a Notice of Certification and Settlement Approval Hearing was sent to class members by direct mail and by media publication in both official languages.

***The Number of Objectors and Nature of Objections***

73. In the context of the certification motion, a specific objection was advanced by a class member named Brenda McEachern, who purports to speak on behalf of additional class members who have not been confirmed by name to date. The nature of the objection made by Ms. McEachern is essentially that



the SSA does not provide sufficiently generous benefits to active employee plan members.

74. No further written objections to the settlement have been received as of the date of this affidavit.

75. As none of the active employee plan members are members of any of the partial wind-up groups, the only claim which was advanced on the behalf of active employees was the expenses claim.

76. Contrary to the submissions made by Ms. McEachern, the active employee class members will receive considerable settlement benefits which are fair and reasonable under all prevailing circumstances, particularly relating to the state of the law as it applies to the expenses claim.

77. This settlement provides direct financial benefits to active employees in the form of a two-year contribution holiday or the cash value of a two year contribution holiday, in the event that the employee leaves the employ of the Company prior to the commencement of that holiday. In addition, active employees receive the benefit of a negotiated guarantee that the Company will not seek to amend the benefit accrual formula applicable to them under the Plan for the period of two years following the final approval of the SSA.

78. As described in greater detail in the affidavit of Ari Kaplan, the current state of the law is adverse to both the merits of the expenses claim and the remedies claimed in connection with it.

79. As a result, in the view of class counsel, the settlement benefits obtained for active employees compare favorably against the alternative of litigating those issues to a conclusion under the current state of the law.

80. At no time in the course of this litigation or in the course of the negotiation of the settlement were the interests of current employees disregarded or

subordinated. Rather, particular care was taken with respect to their interests in achieving these terms of settlement.


*The Recommendations and Experience of Counsel*

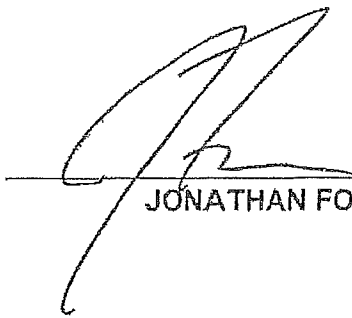
81. Class Counsel has extensive experience in class action matters. More specifically, the members of the class counsel team have considerable experience in the area of class actions involving pension and employment benefit disputes.

82. Class Counsel fully recommends this settlement to all Class Members.

83. I make this Affidavit in support of a motion for Settlement Approval and for no other improper purpose.

SWORN before me at the City of  
London, in the Province of Ontario  
on January 5, 2012.

  
A Commissioner for taking  
affidavits

  
JONATHAN FOREMAN

This is EXHIBIT "B" referred to in the

Affidavit of Jonathan Foreman

sworn before me this 8 day of March 2013.



---

A Commissioner, etc.

Bradley James Adams, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 27, 2015.

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*

MOTION RECORD OF THE PLAINTIFFS,  
DAVID KIDD, ALEXANDER HARVEY AND JEAN PAUL MARENTETTE

(Motion returnable September 27, 2012)

September 20, 2012

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and James R. Grant

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**TAB 1**



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

NOTICE OF MOTION  
(returnable September 27, 2012)

The Plaintiffs David Kidd, Alexander Harvey and Jean Paul Marentette will make a motion to the Honourable Mr. Justice Perell on Tuesday, September 27, 2012, at 1:00 p.m. or as soon after that time as the motion can be heard, at Osgoode Hall, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) A declaration that the transfer of assets and liabilities sought by the defendant in association with the partial windup of the Canada Life Canadian Employees Pension Plan (the "Plan") declared as at June 30, 2005 (the "Integration Partial Wind Up") to the ongoing portion of the Plan constitutes an unauthorized unilateral amendment of the Surplus Sharing Agreement dated September 1, 2011 (the "SSA"), in violation of sections 7(e), 12(c) and 12(h) therein;

- (b) An order requiring the parties to attend a mediation to resolve the problems which have arisen regarding the implementation, interpretation and possible amendment of the SSA; and,
- (c) Such further and other relief as counsel may advise and this Honourable Court may grant.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) By judgment dated January 27, 2012, the settlement of this class proceeding was approved by this Court, in accordance with the terms of the SSA;
- (b) Since the approval of the SSA, the parties have been advised by the actuaries to the Canada Life Assurance Company ("Canada Life") that the estimated value of the surplus associated with the Integration Partial Wind Up has decreased substantially, from approximately \$71,775,000 as at December 31, 2008, to approximately \$3,100,000, as at August 31, 2012 (net of estimated expenses);
- (c) Subsequent to learning of the reduction in the Integration Partial Wind Up surplus, the parties have been discussing how and when to implement the SSA;
- (d) Pursuant to section 7(e) of the SSA, members of the Integration Partial Wind Up are to be provided with their portability options under the *Pension Benefits Act*, including the option of electing to receive their pension through the purchase of an immediate or deferred annuity, within the Assuris limits;
- (e) In or around May, 2012, Canada Life sent a request for proposal to seven insurance providers to purchase annuities for members of the Integration Partial Wind Up Sub Class who had elected this option. All seven annuity providers declined to bid on the purchase of these annuities;

- (f) By letter dated September 12, 2012, counsel to Canada Life advised Class counsel that, given that annuities were not available for purchase, Canada Life intends to transfer the assets and liabilities of the Integration Partial Wind Up Sub Class members who had elected to receive an immediate or deferred annuity to the on-going portion of the Plan effective August 31, 2012, and to effect this transfer as soon as possible;
- (g) Such unilateral action by Canada Life, without an amendment to the SSA, is contrary to section 7(e) of the SSA;
- (h) In addition to violating section 7(e) of the SSA, such a unilateral action by Canada Life without an amendment to the SSA would vitiate sections 7(g) and 8(d) of the SSA, pursuant to which members of the Integration Partial Wind Up Sub-Class and inactive eligible non-partial wind-up Sub-Class members are to receive a minimum surplus payment of \$1,000. The current estimated Integration Partial Wind Up Surplus of \$3.1 million is insufficient to provide the minimum surplus payment of \$1000 to these Class members;
- (i) Pursuant to section 12(d) of the SSA, the SSA can only be amended through the mutual agreement in writing of the parties to the SSA;
- (j) Pursuant to section 12(h) of the SSA, in the event of a dispute over the implementation or interpretation of the SSA, the parties to the SSA are to seek the assistance of the Court to resolve the dispute;
- (k) Section 12 of the *Class Proceedings Act, 1992*, S.O. 1002, C. 6; and,
- (l) Such further and other grounds as counsel may advise and this Honourable Court accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Anthony Guindon, sworn September 20, 2012; and,

(b) The Affidavit of Marcus Robertson, sworn September 20, 2012;

September 20, 2012

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and James R. Grant

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

NOTICE OF MOTION

(Motion returnable September 27, 2012)

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Lawyers for the Plaintiffs, Garry C. Yip and Louie Nuspi

**TAB 2**

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

Defendant

AFFIDAVIT OF ANTHONY GUINDON  
(sworn September 20, 2012)

I, ANTHONY GUINDON, of the City of Toronto, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am an associate at the law firm of Koskie Minsky LLP, who, along with Harrison Pensa LLP and Sack Goldblatt Mitchell LLP, are Class Counsel in this proceeding. As such, I have personal knowledge of the matters to which I depose hereinafter. Where my knowledge is based upon information and belief, I have indicated the source of my knowledge, and verily believe the same to be true.
2. By Judgment of the Superior Court of Justice dated January 27, 2012 (the "Judgment"), the settlement of this class proceeding was approved, in accordance with the provisions of a Surplus Sharing Agreement (the "SSA") between the parties. A true copy of the Judgment, which includes the SSA as a schedule (but excluding other schedules), is attached hereto as Exhibit "A."
3. Shortly following the issuance of the Judgment, the Canada Life Assurance Company's ("Canada Life") actuaries ("Mercer"), reported that the distributable surplus related to the partial windup of the Canada Life Canadian Employees' Pension Plan (the



"Plan") effective June 30, 2005 (the "Integration Partial Wind Up") had been significantly eroded, as a result of, *inter alia*, historically low interest rates. This was communicated to Class Counsel in an email from counsel to Canada Life dated February 23, 2012. The email included a memorandum from Mercer which indicated that, as at December 31, 2012, the Integration Partial Wind Up surplus had diminished from an estimated \$54 million as at June 30, 2011, to approximately \$23.7 million as at December 31, 2011. The most significant reasons cited by Mercer for the reduction in surplus were as follows:

- (a) A change in the interest rate and inflation assumptions in respect of the purchase of annuities; and,
- (b) Higher than anticipated elections among Integration Partial Wind Up Sub Class members for an immediate or deferred annuity.

4. A copy of the February 23 email, along with the Mercer memorandum, is attached hereto as Exhibit "B."

5. Given the impact such a substantial reduction in the surplus available for distribution would have on the recovery of Class members in this proceeding, the parties proceeded to attend two case conferences before the Honourable Mr. Justice Perell on April 20 and May 7, 2012. The principal purposes of these case conferences were to: 1) advise the Court of the status of implementation of the SSA; and 2) seek approval of a draft communication to Class members regarding the precipitous reduction in the Integration Partial Wind Up surplus.

6. A draft letter tailored to each sub-group under the SSA was reviewed and approved by the Court, and on or about May 15, 2012, these communications were mailed to Class members. True copies of the final forms of these letters (in English) are attached hereto as Exhibits "C," "D," "E," and "F."

7. By letter dated July 11, 2012, Class Counsel was advised that Canada Life had approached seven Canadian insurance providers to solicit interested bids for the provision of immediate and deferred indexed annuities to members of the Integration

Partial Wind Up Sub-Class. This letter further advised that all seven annuity providers declined to bid on the sale of these annuities. A true copy of this letter is attached hereto as Exhibit "G."

8. In light of the drastic reduction in surplus available for distribution to the Class, Class Counsel and counsel to Canada Life have had discussions over the last several months about how and when to implement the SSA, to give effect to the parties' intentions and the Class members' expectations. However, to date these discussions have not led to an agreement on an appropriate time and method of proceeding.

9. By email dated September 5, 2012, legal counsel to Canada Life advised Class Counsel that as at June 30, 2012, the estimated value of the Integration Partial Wind Up surplus had declined even further, to approximately \$2.9 million (net of estimated expenses).

10. In a further letter dated September 12, 2012, legal counsel to Canada Life advised Class Counsel that, because annuities could not be purchased for members of the Integration Partial Wind Up Sub-Class who so elected, Canada Life had decided to transfer the assets and liabilities of Integration Partial Wind Up Class members who elected to receive an immediate or deferred annuity to the on-going portion of the Plan, and to do so as soon as possible. A copy of the September 12, 2012 letter is attached hereto as Exhibit "H."

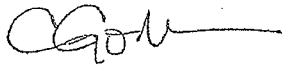
11. In an email dated September 12, 2012, legal counsel to Canada Life advised Class Counsel that as at August 31, 2012, the Integration Partial Wind Up surplus was estimated to be approximately \$3.1 million (net of expenses).

12. On September 13, 2012, legal counsel to Canada Life provided Class Counsel with a copy of a report from Mercer providing an estimate of the financial position on a solvency basis of the portions of the Plan affected by the Integration Partial Wind Up and the partial wind-ups related to the termination of employees of Indago Capital Management Inc., Adason Properties Limited and Pelican Food Services Limited. A true copy of this report is attached hereto as Exhibit "I."

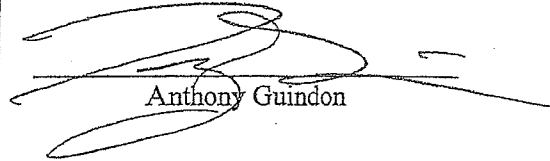
13. By letter dated September 13, 2012, Class Counsel advised Canada's Life legal counsel that the unilateral decision to transfer the assets and liabilities of the Integration Partial Wind Up members to the Plan is not contemplated by the SSA, and is in violation of the SSA and the Judgment. Class counsel advised that the Plaintiffs would oppose any and all steps in this regard by Canada Life. Attached to this affidavit at Exhibit "J" is a true copy of the letter from Koskie Minsky LLP to Canada Life's counsel dated September 13, 2012.

14. I swear this Affidavit in good faith and for no other or improper purpose.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, on  
September 20, 2012.



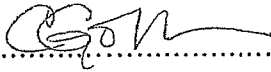
Commissioner for Taking Affidavits



Anthony Guindon

**TAB A**

This is Exhibit "A" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

A handwritten signature in dark ink, appearing to be 'GON', is written over a horizontal dotted line.

A Commissioner for taking affidavits, etc.

Court File No. 05-CV-287556CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
MR. JUSTICE PERELL

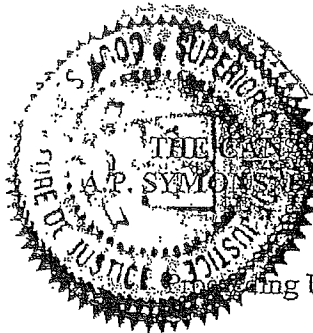
) FRIDAY, THE 13<sup>th</sup> DAY  
) OF JAN, 2012

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, 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;

- 5 -

- (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.

Reid, 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 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 1<sup>st</sup> day of September, 2011

AMONG:

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

-and-

WILBERT ANTLER, 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

- 2 -

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(1).
- (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.

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- (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.
- (l) "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(i) 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



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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:

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- (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,

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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



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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

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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*

- (c) 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.

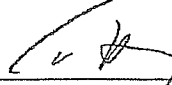
## CLPENS EXECUTIVE



Wilbert Antler



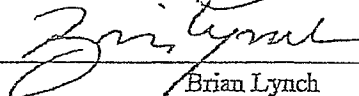
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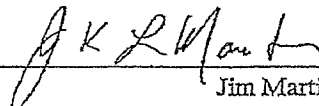
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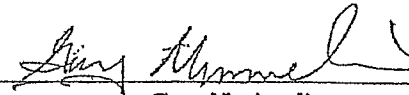
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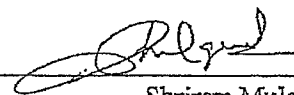
Brian Lynch



Jim Martin



Gary Nummelin



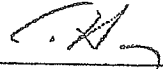
Shriram Mulgund

- 35 -

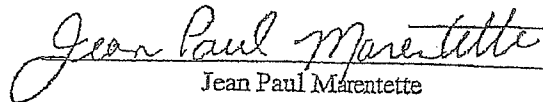
## PLAINTIFFS



David Kidd



Alexander Harvey

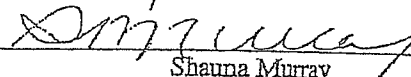


Jean Paul Marentette

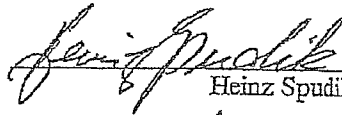
## PELICAN COMMITTEE



Lin Yeomans

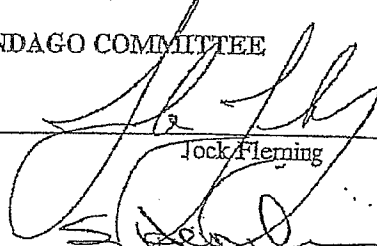


Shauna Murray



Heinz Spudik

## INDAGO COMMITTEE

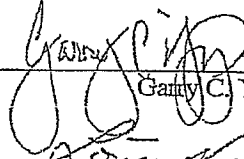


Jack Fleming

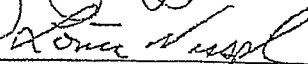


Susan Henderson

## ADASON COMMITTEE


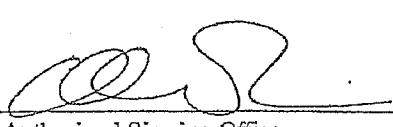


Garry C. Yip

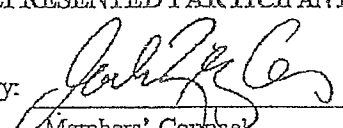
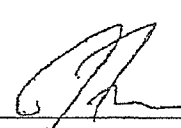
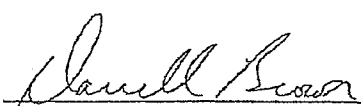


Louie Nuspi

- 36 -

THE CANADA LIFE ASSURANCE  
COMPANYBy:   
Authorized Signing OfficerBy:   
Authorized Signing Officer

## REPRESENTED PARTICIPANTS

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

- 37 -

## NON-REPRESENTED PARTICIPANT

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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 1<sup>st</sup> 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



- 2 -

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

- 3 -

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 FWU 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):

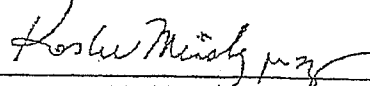
The MOU Parties acknowledge that they have considered and discussed estimates of the fees and expenses expected to be incurred in connection with the Class Action and in negotiating and implementing the Integration MOU, the Adason MOU, and the Settlement. They acknowledge that a reasonable estimate of 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

- 4 -

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

Koslie Minsky per me

Koskie Minsky LLP

ADASON COMMITTEE, by their counsel

Sack Goldblatt Mitchell LLPTHE CANADA LIFE ASSURANCE  
COMPANY, by its counselBy: Benzo

Osler, Hoskin &amp; Harcourt LLP

- 4 -

PLAINTIFFS, by their counsel

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Koskie Minsky LLP

PELICAN COMMITTEE, by their counsel

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Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel

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Koskie Minsky LLP

ADASON COMMITTEE, by their counsel

---

*Danell Brown*  
Sack Goldblatt Mitchell LLP

THE CANADA LIFE ASSURANCE  
COMPANY, by its counsel

By: \_\_\_\_\_

Osler, Hoskin & Harcourt LLP

DAVID KIDD et al.

- and -  
Plaintiffs

THE CANADA LIFE ASSURANCE COMPANY et al.

Defendants  
Court File No. 05-CV-287556CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

JUDGMENT

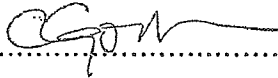
BLAKE, CASSELS & GRAYDON LLP  
Barristers and Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario  
M5L 1A9

Jeff Galway, LSUC#: 28423P  
Tel. No. (416) 863-3859  
Fax No. (416) 863-2653

Lawyers for the Defendant,  
The Canada Life Assurance Company

**TAB B**

This is Exhibit "B" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

A handwritten signature in cursive script, appearing to read 'CGW', is written over a horizontal dotted line.

A Commissioner for taking affidavits, etc.

Desi Skokleva

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**From:** GALWAY, JEFF <JEFF.GALWAY@blakes.com>  
**Sent:** February-23-12 2:21 PM  
**To:** Mark Zigler  
**Cc:** Clio M. Godkewitsch; Anthony Guindon; dwilliams@harrisonpensa.com;  
 jforeman@harrisonpensa.com; McSweeney, Ian; Rienzo, Douglas  
**Subject:** Kidd Harvey  
**Attachments:** Memo re Surplus Changes.pdf; clsurplustracking (5).xls

Dear Mark:

Canada Life has recently received from Mercer an update as at December 31, 2011 of the estimated actuarial surplus available for distribution under the settlement. As you will see from the attached memorandum prepared by Canada Life, two factors-the estimated cost of buying the annuities (due primarily to declining interest rates) and the annuity purchase take up rate vs. commuted value transfer elections-have significantly impacted the most recent estimate of the Integration PWU surplus (net of expenses). The actual cost of buying the annuities will not be known until Canada Life has received annuity purchase quotes. After you have had an opportunity to review the attached memorandum, please call us to discuss.

Jeff

---

*Blakes*

Blake, Cassels & Graydon LLP | Toronto  
 Tel: 416-863-2400 Fax: 416-863-2653  
[blakes.com](http://blakes.com) | [Twitter](https://twitter.com/blakeslaw)

Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents

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Canada Life Canadian Employees Pension Plan  
Partial Wind-Up Surplus Update

The following table shows the estimated surplus of the Integration PWU and the 3 Prior PWUs as of June 30, 2010, December 31, 2010, June 30, 2011 and December 31, 2011 as calculated by Mercer. The total estimated surplus for all 4 partial wind-ups has decreased from \$71.0 million as of June 30, 2010 to \$34.0 million as of December 31, 2011. However, as can be seen from the table below, it is only the estimate of the Integration PWU surplus that has decreased (from \$62.2 million as of June 30, 2010 to \$23.7 million as of December 31, 2011).

SURPLUS (\$ millions)

	June 30, 2010	December 31, 2010	June 30, 2011	December 31, 2011
Integration PWU	\$62.2	\$63.8	\$54.0	\$23.7
Pelican PWU	\$2.5	\$2.9	\$2.9	\$2.9
Indago PWU	\$1.2	\$1.3	\$1.3	\$1.2
Adason PWU	\$5.1	\$6.4	\$6.1	\$6.2
Total	\$71.0	\$74.5	\$64.3	\$34.0

As of June 30, 2011, Integration partial wind-up members had not yet chosen their payment option with respect to their basic benefits, that is, they had not elected the transfer option or the guaranteed pension option. Therefore for each estimate of Integration PWU surplus up until that date, assumptions were made by Mercer relating not only to applicable interest and inflation rates, but also as to which election members would choose for the payment of their benefit entitlement (transfer value or a guaranteed pension). With respect to the guaranteed pension option, the estimated costs of purchasing annuities were based on the preliminary guidance from the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting on the estimated costs of purchasing annuities.

For the December 31, 2011 estimate of the Integration PWU surplus, the *actual* elections made by the members to that date (1419 of 2149 Integration pwu members had made elections) were used to determine the cost of settling the basic benefit entitlement, and the estimated surplus value remaining. For those members who had not yet elected an option as at that date, the assumptions that were applied in the June 30, 2011 estimate re which option members would elect were used.

Note that if the assumption regarding which option members will choose is altered such that all Integration PWU members who have not yet made an election are deemed to have elected the guaranteed pension option (the required default option communicated in member information packages), then the estimate of the Integration Partial wind-Up surplus as of December 31, 2011 is reduced from \$23.7 million to approximately \$8 million.

The interest rate and inflation assumptions used to calculate the estimated costs of purchasing annuities are shown in the following table.

Indexed annuities interest assumptions	June 30, 2010	December 31, 2010	June 30, 2011	December 31, 2011
During deferred period	4.0%	4.5%	4.2%	3.35
After deferred period	3.65%	3.5%	3.5%	2.5%
Inflation assumption	2.2%	2.4%	2.5%	2.0%

The attached table shows the change in Integration PWU surplus due to various factors for each six-month period from January 1, 2010 to December 31, 2011. The most significant factors in the recent change in the Integration PWU surplus estimate are the change in the interest rate used to calculate the cost of annuities, and the high annuity take-up rate.

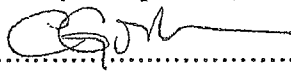
## Canada Life Canadian Employees Pension Plan

Integration PWU Surplus Estimates  
Assuming 3 Prior PWUs are Declared

	Surplus Estimate in \$ million				
	Period				Total Period
	January 1, 2010 June 30, 2010	July 1, 2010 December 31, 2010	January 1, 2011 June 30, 2011	July 1, 2011 December 31, 2011	January 1, 2010 December 31, 2011
Surplus at beginning of period	\$70.7	\$62.2	\$63.8	\$54.0	\$70.7
Changes in surplus during period due to:					
Investment income less interest required on reserves actual experience-January 1, 2011 valuation	\$0.2	\$8.2	\$0.9	\$1.8	\$11.1
change in interest/inflation assumptions re annuity purchase	(\$6.2)	(\$5.3)	(\$2.0)	(\$28.5)	(\$2.0)
effect of election of guaranteed pensions			(\$7.5)	(\$10.2)	(\$47.5)
asset allocation refinement				\$5.9	(\$10.2)
ongoing expenses allocated to Integration PWU	(\$0.7)	(\$0.9)	(\$0.9)	(\$1.7)	\$5.9
other	(\$1.8)	(\$0.4)	(\$0.3)	\$2.4	(\$4.2)
					(\$0.1)
Surplus at end of period	\$62.2	\$63.8	\$54.0	\$23.7	\$23.7

**TAB C**

This is Exhibit "C" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012



.....  
A Commissioner for taking affidavits, etc.

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO MEMBERS OF THE INTEGRATION PARTIAL WINDUP

From: David Kidd, Alex Harvey, and Jean-Paul Marentette, Plaintiffs; on notice to all parties

This announcement is approved by the Court and intended for all Members of the Integration Partial Wind Up Sub-Class included in the Canada Life Class Action Settlement, approved by the Ontario Superior Court of Justice by order dated January 27, 2012.

The purpose of this message is to provide an important update regarding the Settlement. Canada Life and Class Counsel have recently been informed by the external actuarial advisors to Canada Life that certain prevailing conditions in the financial and annuity markets, in concert with greater than assumed rates of election by Class Members of certain benefit settlement options, have adversely impacted the valuation of the Integration Partial Wind Up Surplus ("Integration PWU Surplus"). Specifically, the estimated value of the Integration PWU Surplus has decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses). An explanation of the principal factors leading to this decrease in the estimated Integration PWU Surplus is set out below.

Before reading any further, please be reassured that this decrease in the Integration PWU Surplus in no way affects your basic pension benefit entitlements under the Plan. The pension benefits that you have earned under the Plan, or the monthly benefits that you are currently receiving, are unaffected. Indexing of pensions under the Plan terms is also unaffected. This notice only relates to the Integration PWU Surplus and the financial benefits under the Canada Life Class Action Settlement.

Pension surplus is the excess value of the assets in a pension fund related to a pension plan over the value of the liabilities, both calculated in a manner prescribed by pension laws. The amount of the Integration PWU Surplus at any given time is actuarially determined under set guidelines and depends on a number of factors. Until all the basic benefits of the Integration PWU members have been settled (through a lump-sum transfer from the Plan or the purchase of an annuity), the surplus can only be estimated and may not be precisely determined. The actual amount of surplus may yet vary from the estimate based on the actual cost of purchasing annuities.

The decrease in the estimated Integration PWU Surplus over the six month period noted above is largely attributable to a change in prescribed actuarial assumptions arising from a drop in interest rates, which operate to significantly increase the cost of purchasing annuities. As interest rates decrease, the cost of buying annuities to satisfy the benefit entitlements of the PWU members increases appreciably. A secondary but also significant contributing factor is a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed. The combined effect of low interest rates and the higher annuity take-up rate is to appreciably increase the cost of settling the basic benefits, hence reducing the amount of the estimated Integration PWU Surplus. We note that the Integration PWU assets were mostly

immunized, and there has been no decrease in the value of assets. In fact, the assets have increased in value, but not by an amount sufficient to offset the increase in liabilities.

The decline in interest rates is a function of the current economic climate. The result is that annuity rates are at historically low levels. While changes in the surplus were expected, levels this low were not anticipated at the time of entering into the Surplus Sharing Agreement.

The effect of this decrease in estimated surplus is that there is currently significantly less surplus than the amount used to calculate the surplus share estimates communicated in the Member Information Packages sent out in March, 2011. The surplus estimate in connection with the Integration PWU was always, however, a variable amount (dependent on factors such as interest rate movements and the actual versus estimated cost of purchasing annuities) and accordingly, the amount of surplus to be distributed on the distribution date was never guaranteed, nor could it have been guaranteed. This does not, however, impact your basic pension entitlement whatsoever.

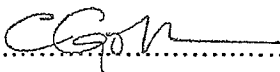
The parties are working together, under the supervision of Justice Perell of the Ontario Superior Court of Justice, to consider options to address the current situation, including possibly delaying the purchase of the annuities for a limited period of time and hence delaying the distribution of surplus shares to Integration PWU and eligible inactive Plan members. While there is no guarantee, if the parties are able to reach agreement to delay the purchase of annuities for a fixed period of time, there is a chance that interest rates will rise during the delay period thereby, depending on other factors, potentially increasing the amount of surplus available for distribution under the Settlement. There is also a risk, however, that interest rates could decline further, and along with them the amount of Integration PWU Surplus available for distribution. We will keep you informed of any developments.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalife@class@kmlaw.ca](mailto:canadalife@class@kmlaw.ca)

**PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE**

**TAB D**

This is Exhibit "D" referred to in the  
affidavit of Anthony Guinden  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

  
.....

A Commissioner for taking affidavits, etc.



THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO PENSIONERS AND DEFERRED/VESTED MEMBERS

From: David Kidd, Alex Harvey, and Jean-Paul Marentette, Plaintiffs; on notice to all parties

This announcement is approved by the Court and intended for all Pensioners, Deferred/Vested, and Quebec Cash-Out Members (together with the spouses, estates, heirs, beneficiaries and representatives of those who have died) included in the Canada Life Class Action Settlement, approved by the Ontario Superior Court of Justice by order dated January 27, 2012.

The purpose of this message is to provide an important update regarding the Settlement. Canada Life and Class Counsel have recently been informed by the external actuarial advisors to Canada Life that certain prevailing conditions in the financial and annuity markets, in concert with greater than assumed rates of election by Class Members of certain benefit settlement options, have adversely impacted the valuation of the Integration Partial Wind Up Surplus ("Integration PWU Surplus"). Specifically, the estimated value of the Integration PWU Surplus has decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses).

Before reading any further, please be reassured that this decrease in the Integration PWU Surplus in no way affects your basic pension benefit entitlements under the Plan. The pension benefits that you have earned under the Plan, or the monthly benefits that you are currently receiving, are unaffected. Indexing of pensions under the Plan terms is also unaffected. This notice only relates to the Integration PWU Surplus and the financial benefits under the Canada Life Class Action Settlement.

Pension surplus is the excess value of the assets in a pension fund related to a pension plan over the value of the liabilities, both calculated in a manner prescribed by pension laws. The amount of the Integration PWU Surplus at any given time is actuarially determined under set guidelines and depends on a number of factors. Until all the basic benefits of the Integration PWU members have been settled (through a lump-sum transfer from the Plan or the purchase of an annuity), the surplus can only be estimated and may not be precisely determined. The actual amount of surplus may yet vary from the estimate based on the actual cost of purchasing annuities.

The decrease in the estimated Integration PWU Surplus over the six month period noted above is largely attributable to a change in prescribed actuarial assumptions arising from a drop in interest rates, which operate to significantly increase the cost of purchasing annuities. As interest rates decrease, the cost of buying annuities to satisfy the benefit entitlements of the PWU members increases appreciably. A secondary but also significant contributing factor is a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed. The combined effect of low interest rates and the higher annuity take-up rate is to appreciably increase the cost of settling the basic benefits, hence reducing the amount of the estimated Integration PWU Surplus. We note that the Integration PWU assets were mostly

immunized, and there has been no decrease in the value of assets. In fact, the assets have increased in value, but not by an amount sufficient to offset the increase in liabilities.

The decline in interest rates is a function of the current economic climate. The result is that annuity rates are at historically low levels. While changes in the surplus were expected, levels this low were not anticipated at the time of entering into the Surplus Sharing Agreement.

The effect of this decrease in estimated surplus is that there is currently significantly less surplus than the amount used to calculate the surplus share estimates communicated in the Member Information Packages sent out in March, 2011. The surplus estimate in connection with the Integration PWU was always, however, a variable amount (dependent on factors such as interest rate movements and the actual versus estimated cost of purchasing annuities) and accordingly, the amount of surplus to be distributed on the distribution date was never guaranteed, nor could it have been guaranteed. This does not, however, impact your basic pension entitlement whatsoever.

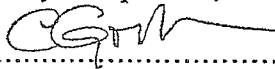
The parties are working together, under the supervision of Justice Perell of the Ontario Superior Court of Justice, to consider options to address the current situation, including possibly delaying the purchase of the annuities for a limited period of time and hence delaying the distribution of surplus shares to eligible Pensioners, Deferred/Vested Members, and Quebec Cash-Out Members of the Class. While there is no guarantee, if the parties are able to reach agreement to delay the purchase of annuities for a fixed period of time, there is a chance that interest rates will rise during the delay period thereby, depending on other factors, potentially increasing the amount of surplus available for distribution under the Settlement. There is also a risk, however, that interest rates could decline further, and along with them the amount of Integration PWU Surplus available for distribution. We will keep you informed of any developments.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalifeclass@kmlaw.ca](mailto:canadalifeclass@kmlaw.ca)

**PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE**

**TAB E**

This is Exhibit "E" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012



.....  
A Commissioner for taking affidavits, etc.

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO MEMBERS OF ADASON, PELICAN AND INDAGO POTENTIAL  
PARTIAL WINDUPS

From: Lin Yeomans, Susan Henderson, Garry C. Yip and Louie Nuspl, Plaintiffs; on notice to all parties

This announcement is approved by the Court and intended for all Members of the Prior Partial Wind Ups, including the Indago Sub-Class, Adason Sub-Class and Pelican Sub-Class, included in the Canada Life Class Action Settlement, approved by the Ontario Superior Court of Justice by order dated January 27, 2012.

The purpose of this message is to provide an important update regarding the Settlement. Canada Life and Class Counsel have recently been informed by the external actuarial advisors to Canada Life that certain prevailing conditions in the financial and annuity markets, in concert with greater than assumed rates of election by Class Members of certain benefit settlement options, have adversely impacted the valuation of the Integration Partial Wind Up Surplus ("Integration PWU Surplus"). Specifically, the estimated value of the Integration PWU Surplus has decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses). The decrease in the estimated Integration PWU Surplus over the six month period noted above is largely attributable to a change in prescribed actuarial assumptions arising from a drop in interest rates, combined with a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed.

Before reading any further, please be reassured that this decrease in the Integration PWU Surplus in no way affects your basic pension benefit entitlements under the Plan. The pension benefits that you have earned under the Plan, or the monthly benefits that you are currently receiving, are unaffected.

The surpluses related to the Indago, Adason and Pelican Partial Wind Ups have not been similarly affected. Members of the Prior Partial Wind Ups elected the form of pension benefit at the time their employment was terminated. The expected annuity purchases were already factored into the surplus estimate. In addition, the amount of liabilities relative to the amount of assets in the Prior Partial Wind Ups was less than in the Integration Partial Wind Up. Consequently, the impact of lower interest rates on the level of surplus of the Prior Partial Wind Ups was relatively less than the impact on the Integration Partial Wind Up surplus amount. The surplus estimates communicated to you in the March, 2011 Information Packages, along with Class Members' individual surplus share estimates, are still reasonable estimates of what you will receive under the Settlement. It is important to note, however, that until surplus is actually distributed the surplus amounts are still estimates, and may go up or down.

The effect of the reduction in the estimated Integration PWU Surplus is that there may be a delay in implementing the Settlement, including the distribution of surplus shares to members of the

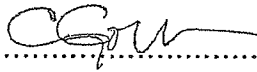
Prior Partial Wind Ups. The parties are working together, under the supervision of Justice Perell of the Ontario Superior Court of Justice, to consider options to address the current situation. We will keep you informed of any developments.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalife@kmlaw.ca](mailto:canadalife@kmlaw.ca)

**PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE**

**TAB F**

This is Exhibit "F" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

A handwritten signature in cursive script, appearing to read 'CGW', is written over a horizontal dotted line.

A Commissioner for taking affidavits, etc.



THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO ACTIVE EMPLOYEES

From: David Kidd, Alex Harvey, and Jean-Paul Marentette, Plaintiffs; on notice to all parties

This announcement is approved by the Court and intended for all "active" Members of the Class included in the Canada Life Class Action Settlement, approved by the Ontario Superior Court of Justice by order dated January 27, 2012, which includes all active members of the Plan as of June 30, 2005 plus any new members up to October 28, 2011 (together with the spouses, estates, heirs, beneficiaries and representatives of those who have died).

Please note that your pension entitlements under the Plan are unaffected by the circumstances described in this notice.

The purpose of this message is to provide an important update regarding the Settlement. Canada Life and Class Counsel have recently been informed by the external actuarial advisors to Canada Life that certain prevailing conditions in the financial and annuity markets, in concert with greater than assumed rates of election by Class Members of certain benefit settlement options, have adversely impacted the valuation of the Integration Partial Wind Up Surplus ("Integration PWU Surplus"). Specifically, the estimated value of the Integration PWU Surplus has decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses).

The decrease in the estimated Integration PWU Surplus over the six month period noted above is largely attributable to a change in prescribed actuarial assumptions arising from a drop in interest rates, as well as a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed. The combined effect of low interest rates and the higher annuity take-up rate is to appreciably increase the cost of settling the basic benefits, hence reducing the estimated amount of the Integration PWU Surplus.

As a practical matter, the reduction in the estimated Integration PWU Surplus does not affect your entitlement under the Settlement. In accordance with the Settlement, active Class Members who are eligible to participate in the Settlement will receive a two year "contribution holiday" under the Plan, which means they will not have to make employee contributions to the Plan during that time. Active members who are otherwise eligible for this contribution holiday but who have left employment before the holiday begins, will receive an equivalent cash payment. The contribution holiday will not be funded out of the Integration PWU Surplus, and therefore is not affected by the decrease in the Integration PWU Surplus.

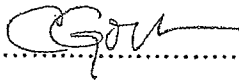
The effect of the reduction in the Integration PWU Surplus is that there may be a delay in implementing the Settlement, however, including a delay in the provision of contribution holidays to eligible active members. The parties are working together, under the supervision of Justice Perell of the Ontario Superior Court of Justice, to consider options to address the current situation. We will keep you informed of any developments.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalifeclass@kmlaw.ca](mailto:canadalifeclass@kmlaw.ca)

PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE.

**TAB G**

This is Exhibit "G" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

  
.....

A Commissioner for taking affidavits, etc.



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

July 11, 2012

VIA EMAIL

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

Jeff Galway  
Dir: 416-863-3859  
jeff.galway@blakes.com

Attention: Mark Zigler

Re: David Kidd et al. v. The Canada Life Assurance Company et al.  
Court File No.: 05-CV-287556CP

Dear Mark:

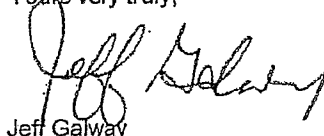
As we have previously discussed, in mid-May of this year Mercer approached seven annuity providers, which were the principal players in this field in Canada (which included Canada Life), and asked each of them to quote on providing annuities for those Partial Wind Up members of the class that have elected a deferred or immediate pension.

Mercer has now advised Canada Life that it has been told by all seven of these annuity providers that they were not prepared to quote on this business. In terms of the reasons given as to why no one was prepared to quote, they include the complicated indexing provisions in the Canada Life Plan, the number of deferred members and the deferral periods, the unavailability of assets to back the liabilities and the size of the request.

Given the circumstances, we should discuss the mechanics for transferring the liabilities for these Partial Wind Up members to the on-going portion of the Plan. Relevant to this discussion and to the timing of any transfer is a May 2012 educational note recently released by the Canadian Institute of Actuaries entitled "Assumptions for Hypothetical Wind-Up and Solvency Valuations with Effective Dates Between December 31, 2011 and December 30, 2012" (copy attached). Note in particular the discussion on page 9 under the heading "Indexed Pensions".

Can you call me to discuss next steps.

Yours very truly,



Jeff Galway

JWGA:lcq  
Encl.

cc: Clio Godkewitsch/Anthony Guindon – Koskie Minsky LLP  
Jonathan Foreman – Harrison Pensa LLP  
John Field – Hicks Morley Hamilton Stewart Storie LLP  
Ian McSweeney/Doug Rienzo – Osler, Hoskin & Harcourt LLP  
Darrell Brown – Sack Goldblatt Mitchell LLP

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Voir au-delà du risque

## *Educational Note*

# Assumptions for Hypothetical Wind-Up and Solvency Valuations with Effective Dates Between December 31, 2011, and December 30, 2012

**Committee on Pension Plan Financial Reporting**

**May 2012**

Document 212032

*Ce document est disponible en français*  
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*Members should be familiar with educational notes. Educational notes describe but do not recommend practice in illustrative situations. They do not constitute Standards of Practice and are, therefore, not binding. They are, however, intended to illustrate the application (but not necessarily the only application) of the Standards of Practice, so there should be no conflict between them. They are intended to assist actuaries in applying Standards of Practice in respect of specific matters. Responsibility for the manner of application of Standards of Practice in specific circumstances remains that of the members in the pension practice area.*

Seeing Beyond Risk

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Institute of  
ActuariesInstitut  
canadien  
des actuaires

Voir au-delà du risque

## Memorandum

**To:** All Pension Actuaries

**From:** Phil Rivard, Chair  
Practice Council  
Gavin Benjamin, Chair  
Committee on Pension Plan Financial Reporting

**Date:** May 24, 2012

**Subject:** Educational Note—Assumptions for Hypothetical Wind-up and Solvency Valuations with Effective Dates between December 31, 2011, and December 30, 2012

This educational note provides guidance on assumptions to be used for hypothetical wind-up and solvency valuations for 2012. It confirms the initial guidance for 2012 assumptions that was provided in an announcement issued on February 6, 2012.

The Committee on Pension Plan Financial Reporting (PPFRC) would like to express its gratitude to BMO Assurance, The Co-Operators, Desjardins Financial Security, Great-West Life, Industrial Alliance, Manulife, Standard Life, and Sun Life for providing the committee with data.

In an educational note provided in 2010, the PPFRC included additional draft guidance on the assumptions to be used for hypothetical wind-up and solvency valuations for very large plans and plans with benefits indexed to the Consumer Price Index in situations where an alternative settlement method was being hypothesized. Comments were invited from pension actuaries and other interested parties. Subsequently, the Actuarial Standards Board established a designated group (DG) to review the practice-specific standards with respect to the selection of assumptions for hypothetical wind-up and solvency valuations. The DG has completed its review and concluded that significant changes to the standards are not appropriate at this time. Consequently, the PPFRC has resumed the process of developing additional guidance relating to the selection of assumptions for hypothetical wind-up and solvency valuations for very large and/or indexed plans in situations where an alternative settlement method is being hypothesized.

The PPFRC is also conducting further research regarding the pricing of indexed annuities and the effect on annuity pricing of the duration of the obligations being purchased.

360 Albert Street, Suite 1740, Ottawa ON K1R 7X7  
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secretariat@actuaries.ca / secretariat@actuaire.ca  
actuaries.ca / actuaire.ca

The PPFRRC expects to issue additional and/or revised guidance as soon as practical following the completion of the above activities.

In accordance with the Institute's Policy on Due Process for the Approval of Guidance Material other than Standards of Practice, this educational note has been prepared by the PPFRRC and has received final approval for distribution by the Practice Council effective May 24, 2012.

As outlined in subsection 1220 of the Standards of Practice, "*The actuary should be familiar with relevant Educational Notes and other designated educational material.*" That subsection explains further that a "practice which the Educational Notes describe for a situation is not necessarily the only accepted practice for that situation and is not necessarily accepted actuarial practice for a different situation." As well, "Educational Notes are intended to illustrate the application (but not necessarily the only application) of the standards, so there should be no conflict between them."

If you have any questions or comments regarding this educational note, please contact Gavin Benjamin at his CIA Online Directory address, [gavin.benjamin@towerswatson.com](mailto:gavin.benjamin@towerswatson.com).

PR, GB



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## 1. INTRODUCTION

According to paragraph 3330.16 of the Standards of Practice, the assumptions used for actual and hypothetical wind-up valuations would

- in respect of benefit entitlements that are assumed to be settled by purchase of annuities, reflect single premium annuity rates,

- in respect of benefit entitlements that are assumed to be settled by lump sum transfer, reflect the standards in section 3500 respecting commuted values, and

- in respect of benefit entitlements that are assumed to be settled in some other manner, reflect the manner in which such benefits would be settled.

This document has been prepared by the Committee on Pension Plan Financial Reporting (PPFRC) and is intended to provide actuaries with guidance in selecting appropriate assumptions for hypothetical wind-up and solvency valuations in respect of benefit entitlements that are assumed to be settled by purchase of annuities or by lump sum transfer with effective dates on or after December 31, 2011, and prior to or on December 30, 2012. For greater clarity, this document does not provide detailed guidance on selecting appropriate assumptions for hypothetical wind-up and solvency valuations in respect of benefit entitlements that are assumed to be settled in a manner other than the purchase of annuities or lump sum transfer.

This educational note confirms the initial guidance for 2012 assumptions that was provided in an announcement issued on February 6, 2012.

## 2. SETTLEMENT METHODS

To comply with paragraph 3330.16 of the Standards of Practice, the actuary would make an assumption for each class of plan members as to the portion of liabilities settled by annuity purchase, commuted value transfer or other manner of settlement. Typically, classes of plan members would include at least

- active members not eligible for retirement,
- active members eligible for retirement,
- retired members and surviving spouses, and
- deferred vested members.

In determining the appropriate assumption for the method of settlement, the actuary would consider

- any legislative requirements to offer specific settlement options to various classes of members,
- the settlement provisions of the plan and, in particular, the options to be provided to members upon plan wind-up,
- the benefit provisions of the plan, for example,

where a plan has generous ancillary benefits, an election to receive a commuted value transfer may be affected by the maximum transfer limits imposed under section 8517 of the Income Tax Act (Canada) Regulations, or

where a plan has inflexible retirement options and few optional forms of payment, a member may prefer to elect a commuted value transfer to increase flexibility in payment terms,

the postulated scenario upon which the hypothetical wind-up is based,

past experience of the plan, when relevant, and

any experience from actual wind-ups of comparable plans of which the actuary may be aware.

All requirements of the Standards of Practice with respect to the development and reporting of assumptions would apply to this assumption.

### 3. BENEFITS ASSUMED TO BE SETTLED BY LUMP SUM TRANSFER

For hypothetical wind-up valuations, of which solvency valuations are a subset, paragraph 3240.05 of the Standards of Practice states, "*For a hypothetical wind-up valuation, the actuary should assume that the wind-up date, the calculation date and the settlement date are coincident.*"

Accordingly, the wind-up liabilities for benefits expected to be settled through the payment of a lump sum transfer would be determined in accordance with section 3500 of the Standards of Practice, applying the assumptions consistent with the particular valuation date.

### 4. BENEFITS ASSUMED TO BE SETTLED BY PURCHASE OF NON-INDEXED GROUP ANNUITIES

#### Methodology

The PPFRC began collecting data from insurers on a quarterly basis in 2009. Six insurers agreed to provide quotes, on a confidential basis, on illustrative blocks of business. The insurers that agreed to provide this information are Desjardins Financial Security, Great-West Life, Industrial Alliance, Manulife, Standard Life, and Sun Life Financial. In late 2011, two additional insurers, BMO Assurance and The Co-Operators, agreed to provide quotes on the same basis.

The PPFRC prepared data for two illustrative blocks of business for non-indexed pensions that were then provided to the insurers. One illustrative block is intended to be representative of a large purchase (i.e., with a total premium greater than \$15 million) and the other illustrative block is intended to be representative of a small purchase (i.e., with a total premium less than \$15 million).

The characteristics of the illustrative blocks of business, as follows, are:

**Large Purchase (approximately \$39 million total premium)****Retirees**

• Number	229
• Average age	66
• Average monthly lifetime pension	\$700
• Number with bridge pension payable to age 65	44
• Average monthly bridge pension	\$322

**Deferred vested**

• Number	95
• Average age	46
• Average monthly lifetime pension at age 65	\$642

**Small Purchase (approximately \$6.4 million total premium)****Retirees**

• Number	24
• Average age	66
• Average monthly lifetime pension	\$710
• Number with bridge pension payable to age 65	5
• Average monthly bridge pension	\$412

**Deferred vested**

• Number	37
• Average age	46
• Average monthly lifetime pension at age 65	\$678

Based on current interest rate levels and assuming that the pensions are not indexed, the durations of the illustrative blocks are as shown here.

	Large Purchase	Small Purchase
Retirees	10.9	10.7
Deferred vested	24.4	24.5
Combined	13.5	17.4

Using these data, the insurers indicated that they would provide realistic quotes (i.e., as though the quotes truly represent blocks of business on which they are bidding) as of the agreed-upon dates. Based on the quotes, the PPFRFC then calculated the implicit discount rate underlying each quote.

The insurers indicated that it would not be appropriate, for competitive reasons, for the PPFRFC to disclose the individual discount rates underlying the insurer quotes, including the discount rate associated with the most competitive quote. Also, the insurers indicated that, in their view, it is not appropriate to rely solely on the most competitive illustrative quote for purposes of establishing group annuity purchase discount rate assumptions because the capacity at which group annuities can be transacted at the best illustrative price might be limited. For example, a particular insurer may not be transacting actual

sales at a particular date, even though illustrative quotes are provided at that date, if the insurer has met its capacity limit.

After lengthy discussions, the PPFRC and the insurers agreed that, for purposes of providing guidance on group annuity purchase discount rates, it would usually be appropriate to reference the average of the discount rates for the three most competitive quotes. In reaching this conclusion, the PPFRC considers the magnitude of the spread between the illustrative quotes (which data are confidential).

The guidance contained in this educational note is partially based on quotes provided by the eight insurance companies on illustrative group annuity business using pricing conditions at December 31, 2011. These data were collected on the same basis as the illustrative quotes as of December 31, 2010 (as described in the May 2011 educational note), and are consistent with the methodology adopted as of each quarter end in 2011. Consistent with the analysis performed at previous quarter ends, the illustrative quote information was supplemented with data on the pricing of actual group annuity purchases during the fourth quarter of 2011 provided by certain actuarial consulting firms.

#### Analysis

The results of the illustrative non-indexed quotations at December 31, 2011, based on the UP94 generational mortality tables (with the AA improvement scale), are summarized below and compared to the previous illustrative quote information provided by the insurers as at September 30, 2011.

AVERAGE OF THE THREE MOST COMPETITIVE QUOTES (USING UP94 GENERATIONAL MORTALITY TABLES)				
	Large Purchase		Small Purchase	
	30/09/2011	31/12/2011	30/09/2011	31/12/2011
<b>Retirees</b>				
• Discount rate	3.57%	3.28%	3.56%	3.36%
• Spread over CANSIM V39062	+ 0.89%	+ 0.87%	+ 0.88%	+ 0.95%
<b>Deferred vesteds</b>				
• Discount rate	3.59%	3.46%	3.52%	3.50%
• Spread over CANSIM V39062	+ 0.91%	+ 1.05%	+ 0.84%	+ 1.09%

The illustrative quotes suggest that an appropriate discount rate for estimating the cost of purchasing a non-indexed group annuity for immediate pensions be determined as the unadjusted yield on Government of Canada (GoC) long-term bonds (CANSIM V39062) increased arithmetically by approximately 90 basis points (bps), in conjunction with the UP94 generational mortality tables.

The pricing information for *actual* group annuity purchases during the fourth quarter of 2011 was also considered. In particular, the data on the actual purchases of non-indexed annuities during the month of December 2011 that were available to the PPFRC produced an average spread of approximately 90 bps above the prevailing unadjusted yield on GoC long-term bonds (CANSIM series V39062).

While the illustrative quotes do indicate differences in the pricing for immediate and deferred annuities, some of the insurers provide their quotes on the basis that the immediate and deferred annuities are comingled in the same purchase. As a result, and based on both the illustrative quotes and the actual group annuity data, the PPFRC has concluded that there is not sufficient evidence at this time to differentiate the guidance on pricing of group annuities for large and small annuity purchases, and immediate and deferred annuities.

#### Guidance for Non-indexed Pensions

Based on the analysis described above, the PPFRC has concluded that an appropriate discount rate for estimating the cost of purchasing a non-indexed group annuity would be determined as the unadjusted yield on GoC long-term bonds (CANSIM V39062) increased arithmetically by 90 bps, in conjunction with the UP94 generational mortality tables. This guidance applies to both immediate and deferred pensions and also applies regardless of the overall size of a group annuity purchase.

#### Example

As at December 31, 2011, the unadjusted CANSIM V39062 rate was 2.41%. This rate would form the basis for developing an appropriate underlying discount rate for valuations of non-indexed group annuities with effective dates of December 31, 2011, and January 1, 2012, to be used in conjunction with the UP94 generational mortality tables. Prior to rounding, an applicable underlying discount rate would then be determined as  $2.41\% + 0.90\% = 3.31\%$ .

Each actuary would use discretion in determining whether to round discount rates to the nearest multiple of five, 10, or 25 basis points. Consistency in the application of such rounding would be maintained.

### 5. INDEXED PENSIONS

As in prior years, data regarding the pricing of annuities indexed to the Consumer Price Index (CPI) are extremely limited. None of the data obtained regarding actual annuity purchases during the fourth quarter of 2011 pertain to indexed annuities. In most cases, the contributing insurers did provide illustrative quote data for the sample blocks on a CPI-indexed basis. It may be noted that the premiums quoted for the illustrative quotes on this and prior occasions are substantially higher than the guidance provided by prior educational notes.

The PPFRC intends to conduct further research in 2012 regarding the pricing of indexed annuities. The analysis will include confirmation as to whether the insurers would be willing to actually transact on the basis reflected in the illustrative annuity quotes. This research may result in the revision of future guidance for estimating the cost of purchasing indexed annuities.

Accordingly, an acceptable proxy for estimating the cost of purchasing a group annuity where pensions are fully indexed to the rate of change in the CPI would be the unadjusted yield on GoC real-return long-term bonds (CANSIM series V39057) in conjunction with the UP94 generational mortality tables. This guidance applies to both immediate and deferred pensions and also applies regardless of the overall size of a group annuity purchase. As at December 31, 2011, the unadjusted CANSIM V39057 rate was 0.45%.

In situations where pensions are partially indexed, indexed to a measure other than the CPI, or contain a deferred component, the actuary would make appropriate provisions for such situations consistent with the guidance provided in this educational note and other relevant educational notes.

#### 6. INDIVIDUAL ANNUITY PRICING

The PPFRC observes that, particularly during a period of capital market turbulence, the pricing of individual and group annuities can differ for reasons such as:

- there is a greater risk of anti-selection for individual annuities,
- the size of the average monthly pension is usually larger for individual annuities,
- individual annuities may have less complex ancillary features,
- the ability to find appropriate fixed-income investments to back the annuity obligation may be a lesser issue for individual annuities due to the relatively small premium size, particularly during a period in which many fixed-income instruments are highly illiquid, and
- the group annuity pricing is underwritten at the time of the quote, while individual annuity pricing for a particular quote may be "automated".

As a result of these factors, the pricing of individual and group annuities can differ significantly, as occurred in late 2008 and early 2009. Where an actuary considers that a plan's hypothetical wind-up or solvency obligations could be settled by the purchase of individual annuities, yields based on relevant individual annuity quotations could be reflected in establishing the annuity purchase discount rate assumption.

#### 7. LARGE PLANS

As noted in prior educational notes, due to capacity constraints within the Canadian group annuity market, it is possible that large plans would not be able to purchase annuities upon plan wind-up. While the capacity of the group annuity market is not clearly known, it is the PPFRC's understanding that during the past few years total transactions in the Canadian group annuity market were less than \$1.5 billion annually. Also, as discussed above, the availability of CPI-indexed annuities of any size may be severely limited.

It may be possible to market a large annuity as a series of smaller annuities over a reasonable period of time, thereby enabling a plan with greater annuity liabilities to access the annuity market anyway. However, this approach may not be suitable, or even possible, in every instance. For example, it may not be possible to settle groups representing annuity liabilities exceeding approximately \$500 million over a reasonable period of time, even through a series of smaller annuities. Further, large plans with inflationary increases tied to an external index (i.e., CPI related) would likely have difficulty in settling liabilities successfully through a group annuity purchase.

It is very difficult to predict how the benefits of members in receipt of a pension would be settled for large plans with, effectively, no access to group annuity markets. In the absence of any practical experience, the actuary would make a reasonable hypothesis for the manner in which the benefits may be settled. In making such hypothesis, the actuary

would consider relevant legislative requirements and regulatory guidance. Based on this hypothesis, the actuary would then develop appropriate assumptions.

Note that, in most circumstances where a plan wind-up is hypothesized, the principles underlying the determination of annuity prices would continue to apply. For example, if it is hypothesized that liabilities are to be settled through an establishment of a replicating portfolio, an actuary would be guided by the underlying philosophy used by insurance companies in pricing group annuities (i.e., that high-quality fixed-income assets with characteristics similar to the liabilities are used to "immunize" the purchase, with further adjustments for expenses and possibly margins for adverse deviations).

#### 8. MORTALITY

Whether or not the actuary is considering a settlement mechanism other than the purchase of annuities, the mortality experience of pensioners can be a factor in developing an appropriate basis. The determinant is whether future pensioner mortality would be expected to be materially higher or lower than average either due to credible and persistent experience or to occupational or demographic factors.

There is evidence that insurers may consider demonstrable substandard mortality experience submitted when establishing the pricing basis for specific group annuities. Insurers also increasingly appear to be considering occupational or pension size data in establishing mortality assumptions for specific group annuities.

The actuary would consider an adjustment to regular annuity purchase assumptions where there is demonstrated substandard or super-standard mortality or where an insurer might be expected to assume significantly shorter or longer than normal longevity based on occupational or demographic factors. In such cases, the actuary would be expected to make provisions for future improvements in mortality in a manner consistent with the mortality improvements inherent in the assumed annuity purchase basis.

#### 9. WIND-UP EXPENSES

Unless the actuary is satisfied that the expenses of wind-up are not to be charged to the pension fund, the actuary would make an assumption regarding these expenses and the assumption would be explicit. Expenses normally include such items as fees related to preparation of the actuarial wind-up report, fees imposed by a pension supervisory authority, legal fees, costs related to the purchase of annuities, and administrative costs related to the settlement of benefits. Actuaries may refer to the educational note Expenses in Funding Valuations for Pension Plans for further guidance.

#### 10. RETROACTIVE APPLICATION

If an actuary has already prepared a funding valuation report with an effective date on or after December 31, 2011, before the publication of this guidance, the actuary would consider paragraphs 1820.33 through 1820.36 of the Standards of Practice to determine whether it is necessary to withdraw or amend the report.

#### 11. FUTURE GUIDANCE

The PPFRRC intends to continue monitoring group annuity pricing on a quarterly basis. Actuaries may use the spreads indicated above for valuations with effective dates on and



after December 31, 2011, up to December 30, 2012, pending any further guidance or other evidence of change in annuity pricing.

Given the volatility in group annuity pricing which has occurred in the past few years, it is entirely possible that revised guidance could become necessary during the year and, if that occurs, there will necessarily be some delay (such as 60 to 90 days) between the effective date of data collection and the publication of revised guidance. When reporting results of a valuation, within a period of 60 to 90 days of the effective date of the valuation, the actuary may wish to alert users of the report to the possibility that revisions could be needed in the event of new guidance being published.

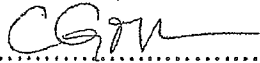
Moreover, actuaries may wish to be mindful of the volatility in group annuity prices when communicating advice related to future hypothetical wind-up and solvency valuations.

The PPFRRC is currently developing guidance and/or conducting research with respect to alternative settlement methods, the pricing of indexed annuities, and the effect of liability duration on annuity pricing.

Responsibility for the manner of application of Pension-specific Standards of Practice in specific circumstances remains that of the member in the pension practice area.

**TAB H**

This is Exhibit "H" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

  
.....

A Commissioner for taking affidavits, etc.



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

September 12, 2012

Jeff Galway  
Dir: 416-863-3859  
jeff.galway@blakes.com

VIA E-MAIL

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3  
Attention: Mark Zigler

RE: David Kidd et al. v. The Canada Life Assurance Company et al.  
Court File No.: 05-CV-287556CP

Dear Mark:

As we have previously discussed, in mid-May of this year, Mercer approached seven annuity providers which were the principal players in this field in Canada and asked each of them to quote on providing annuities for those Integration partial wind up members of the class that have elected a deferred or immediate pension. Mercer subsequently advised Canada Life that it was told by all seven of these annuity providers that they were not prepared to quote on this business. In terms of the reasons given as to why no one was prepared to quote, they included the complicated indexing provisions of the Canada Life Plan, the number of deferred members and the deferral periods and the unavailability of assets to back the liabilities.

Given that annuities are not available for purchase, Canada Life has decided that the prudent course is to transfer the Integration partial wind up class members who elected to receive an immediate or deferred pension to the on-going portion of the Plan and to effect this transfer as soon as possible. As we have advised you, Canada Life is of the view that this is in the best interests of the partial wind-up members in part because as the CIA Guidelines presently stand, the cost to transfer members into the Plan is significantly less than what the actual cost to purchase annuities would likely be if they were available for purchase.

This transfer will be done pursuant to FSCO Policy W100-233. In accordance with this Policy, Canada Life will provide a revised statement to affected Integration partial wind up members who have made (or who have been deemed to have made) an election to receive an immediate or deferred pension in the form of an annuity advising that in the circumstances the Company has decided to transfer their assets and liabilities into the on-going portion of the Plan.

In terms of the report required to be filed with FSCO documenting the transfer of the assets and liabilities of affected Integration partial wind up members to the on-going Plan, this transfer will be made effective as of August 31, 2012. Once the transfer has been completed, subject to receiving the requisite outstanding approvals under the Surplus Sharing Agreement (SSA), any surplus allocable to the Integration partial wind



Page 2

up (and the three proposed prior partial wind ups) will then be distributed in accordance with the terms of the SSA and Judgment of Perell J. dated January 27, 2012.

Yours very truly,



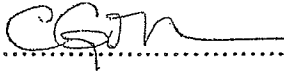
Jeff Galway

JWGA:icq

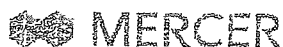
c: Clio Godkewitsch/Anthony Guindon – Koskie Minsky LLP  
 Jonathan Foreman – Harrison Pensa LLP  
 John Field – Hicks Morley Hamilton Stewart Storie LLP  
 Ian McSweeney/Doug Rienzo – Osler, Hoskin & Harcourt LLP  
 Darrell Brown – Sack Goldblatt Mitchell LLP

**TAB I**

This is Exhibit "I" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012



.....  
A Commissioner for taking affidavits, etc.



Benedict O. Ukonga, FSA, FCIA, CFA  
Principal

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Toronto, Ontario M5J 2S5  
416 868 7385 Fax 416 868 7555  
ben.ukonga@mercer.com  
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September 12, 2012

Ms Amy Metzger  
Counsel - Litigation  
The Canada Life Assurance Company  
255 Dufferin Avenue  
London, Ontario  
N6A 4K1

**Privileged & Confidential**  
**Prepared for the Advice of Counsel**

**Subject:** Estimate of the financial position on a solvency basis of the portions of the Canada Life Registered Plan affected by the 2005 partial wind-up and the potential Indago, Adason and Pelican partial wind-ups

Dear Amy:

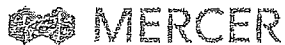
As requested, this letter provides an estimate of the financial position of the portion of the Canada Life Canadian Employees Pension Plan (the "Canada Life RPP" or the "Plan") affected by the June 30, 2005 partial plan wind-up (the "2005 PWU group") and the portions of the Plan affected by the potential Indago, Adason and Pelican partial wind-ups on a solvency basis as at August 31, 2012.

Similar to our previous updates, we have estimated the financial position of the 2005 PWU group under two scenarios:

- Scenario 1: assuming that terminations of Indago, Adason Property Management and Pelican Foods employees who were members of the Plan (the "Historical Potential PWU groups") do not trigger separate partial wind-ups of the Plan; and
- Scenario 2: assuming that separate partial wind-ups of the Plan are triggered by the terminations of Indago, Adason Property Management and Pelican Foods employees who were members of the Plan.

The estimated financial positions of the Historical Potential PWU groups are only shown under scenario 2.





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 September 13, 2012  
 Ms Amy Metzger  
 The Canada Life Assurance Company

Please note the following:

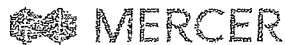
- The liabilities of the 2005 PWU group and the historical potential wind-up groups have been calculated based on market conditions at August 31, 2012. The assumptions used are summarized in Appendix A. They also reflect our current understanding of the provisions of the Canada Life Registered Plan.
- Under Scenario 2, the liabilities of the Indago, Adason and Pelican Foods employees include the estimated liabilities for additional benefits that would arise if partial wind-ups of the Plan were declared in respect of each of these groups.
- For the 2005 PWU group, the cumulative pending expense payments have been updated from June 30, 2012 to August 31, 2012 by increasing the amount at June 30, 2012 with the expenses for this group for July and August 2012 (provided by Canada Life). For the historical potential partial wind-up groups, we have left the cumulative pending expense payments unchanged from the amounts at June 30, 2012. We do not expect these amounts to have materially changed as at August 31, 2012 from their respective amounts at June 30, 2012.

As mentioned in our earlier estimates, these cumulative pending expense payments are being held as "payables" against the assets allocated to the respective groups<sup>1</sup>. Appendix B provides further information on these cumulative pending expense payments:

The cumulative pending expense payments are as follows:

Group	Cumulative pending expense payments
June 2005 partial wind-up group	\$14.2 million
Indago	\$0.0 million
Pelican	\$0.1 million
Adason Property Management	\$0.4 million

<sup>1</sup> Plan assets were segmented before pending expense payments were deducted, therefore, cumulative pending expense payments are being held as payables against the respective groups' allocated assets.



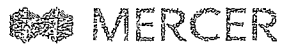
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 The Canada Life Assurance Company

### Estimated Financial Position as at August 31, 2012

Under Scenario 1, assuming partial wind-ups are not declared as a result of the terminations of Indago, Adason Property Management and Pelican Foods employees who were members of the Plan, the estimated financial position of the 2005 PWU group at August 31, 2012 is as follows. For comparison purposes, we show the estimated financial position at June 30, 2012 (and based on the new CIA annuity purchase guidance, which became effective June 30, 2012).

Estimated financial position for 2005 PWU group (\$ million)	August 31, 2012	June 30, 2012
Assets	\$312.7	\$311.6
Pending asset transfer	\$6.9	\$6.7
Liabilities	(\$286.5)	(\$285.8)
Pending expense payments	(\$14.2)	(\$14.0)
Surplus	\$18.9	\$18.5
Provision for future termination expenses	(\$12.7)	(\$12.7)
Surplus net of termination expenses	\$6.2	\$5.8

The provision for future termination expenses for the 2005 PWU group, of \$12.7 million, is an estimate of the future administrative, communications, actuarial, legal and other fees related to the partial wind-up that was provided by Canada Life.



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 The Canada Life Assurance Company

A reconciliation of the change in the estimated financial position from June 30, 2012 to August 31, 2012 is as follows:

(millions)	
Estimated surplus at June 30, 2012	\$5.8
Investment return on assets allocated to the partial wind-up group	\$2.2
Interest on liabilities at 2.7%	(\$1.3)
Impact of election of commuted values	\$1.3
Change in estimated costs of purchasing annuities	(\$1.8)
Increase in pending expense payments	(\$0.2)
All other factors	\$0.2
Estimated surplus at August 31, 2012	\$6.2

***Impact of potential partial wind-up declarations in respect of Indago, Adason and Pelican***

Under Scenario 2, assuming that terminations of employees of Indago, Adason Property Management and Pelican Foods are declared to be separate partial wind-ups of the Plan, the estimated financial position of the different groups within the Plan (excluding Crown DC account balances) as at August 31, 2012 are as follows:



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 The Canada Life Assurance Company

Estimated financial position at August 31, 2012 (\$ million)	2005 PWU group	Indago	Adason	Pelican
Assets	\$316.5 <sup>2</sup>	\$1.5	\$12.2	\$4.3
Liabilities	(\$286.5)	(\$0.2)	(\$5.2)	(\$1.1)
Pending expense payments	(\$14.2)	\$0.0	(\$0.4)	(\$0.1)
Surplus	\$15.8	\$1.3	\$6.6	\$3.1
Termination expenses	(\$12.7)	(\$0.2)	(\$0.4)	(\$0.2)
Surplus net of termination expenses	\$3.1	\$1.1	\$6.2	\$2.9

A reconciliation of the estimated financial position from June 30, 2012 for Indago, Adason and Pelican to the estimated financial position at August 31, 2012 shown in this letter is presented below:

(\$ millions)	Indago	Adason	Pelican Foods
Estimated surplus at June 30, 2012	\$1.1	\$6.1	\$2.9
Investment return on allocated assets	\$0.0	\$0.2	\$0.1
Interest on liabilities	\$0.0	(\$0.0)	\$0.0
Increase in provision for future termination expenses	(\$0.0)	(\$0.0)	(\$0.0)
Changes in estimated costs of purchasing annuities	\$0.0	\$0.0	\$0.0
All other factors	(\$0.0)	(\$0.1)	(\$0.1)
Estimated surplus at August 31, 2012	\$1.1	\$6.2	\$2.9

<sup>2</sup> Reflects pending asset transfer as a result of data changes made



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 September 13, 2012  
 Ms Amy Metzger  
 The Canada Life Assurance Company

### **Membership data, assumptions, and methodology**

For the purpose of preparing the above estimates:

- We have used membership data as at August 31, 2012 for the 2005 PWU and as at December 31, 2011 for the Indago, Adason and Pelican potential partial wind-up groups.
- For the 2005 PWU group, we have reflected members' actual elections for the settlement of their basic benefits.
  - For members who elected a lump sum transfer, we have reflected the payment of their commuted values. We have reflected lump sum payments that the Company has indicated will be made up to September 14, 2012;
  - For members who elected an immediate or deferred pension, we have reflected the estimated cost of settling their benefits through the purchase of deferred or immediate annuities;
  - For members whose settlement elections have not been received, we have assumed these members would elect, or be deemed to elect, an immediate or deferred pension. We have estimated the cost of settling their benefits through the purchase of deferred or immediate annuities.

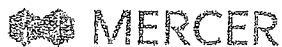
In addition, under scenario 2, we have assumed all Indago, Adason, and Pelican Foods employees with remaining benefit entitlements<sup>3</sup> would elect, or be deemed to elect, to have their benefits settled through the purchase of immediate or deferred annuities.

- The calculations were prepared based on our current understanding of the provisions of the Canada Life Registered Plan;
- We have used the economic assumptions (specifically interest rate and inflation) consistent with the economic conditions at August 31, 2012;

The assumptions used in our calculations are summarized in Appendix A;

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<sup>3</sup> This excludes members who have already received a lump sum transfer (at their initial termination dates) but are entitled to additional benefits as a result of a partial wind-up being declared



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September 13, 2012  
Ms Amy Metzger  
The Canada Life Assurance Company

- We have relied on the August 31, 2012 market value of assets provided to us by Canada Life;
- The estimated financial positions are expressed on a solvency basis;
- The estimated cost of purchasing annuities is based on the Canadian Institute of Actuaries' Educational Note: Assumptions for Hypothetical Wind-up and Solvency Valuations with Effective Dates Between December 31, 2011 and December 30, 2012 effective June 30, 2012;

We note that in Canada, there is very limited data available in the market regarding the pricing of annuities indexed to inflation. The market for these annuities is also virtually non-existent. As a result, it is possible, maybe even likely, that the actual cost of purchasing these annuities will exceed (potentially materially) the estimates shown in this letter.

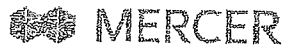
If you have any questions regarding the above, we would be glad to discuss them with you in more detail at your convenience. As always, you can reach me at (416) 868 7385.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. Ukonga", with a stylized flourish at the end.

Benedict O. Ukonga, FSA, FCIA, CFA  
Principal

Copy:  
Wally Robinson: Great-West Life | London Life | Canada Life  
Doug Johnson, Joseph Tang, James Dalton: Mercer



## Appendix A: Key Assumptions

	August 31, 2012	June 30, 2012
Benefits assumed to be settled through annuity purchase		
Nominal interest rate	<u>Immediate retirement</u> Indexed: 2.36% per year Non-indexed: 3.04% per year <u>Deferred retirement</u> Indexed: 3.04% during the deferral period, 2.36% after commencement Non-indexed: 3.04% per year	<u>Immediate retirement</u> Indexed: 2.35% per year Non-indexed: 3.05% per year <u>Deferred retirement</u> Indexed: 3.05% during the deferral period, 2.35% after commencement Non-indexed: 3.05% per year
Mortality rate	UP 94 with generational mortality improvements (sex distinct)	UP 94 with generational mortality improvements (sex distinct)
Inflation	1.95% per year	1.90% per year
Post retirement indexing	We have assumed that the life insurance company would price the annuities as if they were fully indexed for inflation.	We have assumed that the life insurance company would price the annuities as if they were fully indexed for inflation.
Provision for future wind-up expenses:	June 2005 PWU	\$12.7 million
	Indago	\$0.0 million
	Adason	\$0.4 million
	Pelican	\$0.1 million
Member settlement elections	All remaining members of the 2005 PWU group, and remaining Indago, Adason and Pelican members are assumed 100% immediate or deferred annuities	All remaining partial-windup members assumed 100% immediate or deferred annuities
Basis	Solvency	Solvency



## Appendix B

*Reconciliation of the assets allocated to the 2005 PWU group (under scenario 1 and before pending expenses)*

### *Reconciliation from June 30, 2012 to August 31, 2012*

	2005 PWU group
June 30, 2012	\$311,648,000
PLUS	
Members' contributions	\$0
Company's contributions	\$0
Investment income	\$2,182,000
	<u>\$2,182,000</u>
LESS	
Pension and lump sums paid	\$1,123,000
	<u>\$1,123,000</u>
August 31, 2012	<u>\$312,707,000</u>

### *Pending Expense Reimbursements<sup>4</sup>*

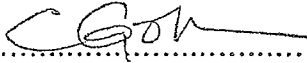
(millions)	2005 PWU group	Indago	Adason	Pelican
June 30, 2012	\$14.0	\$0.0	\$0.4	\$0.1
Estimated plan Expenses – July and August 2012	\$0.2	\$0.0	\$0.0	\$0.0
August 31, 2012	<u>\$14.2</u>	<u>\$0.0</u>	<u>\$0.4</u>	<u>\$0.1</u>

<sup>4</sup> Cumulative pending expenses as provided by Canada Life



**TAB J**

This is Exhibit "J" referred to in the  
affidavit of Anthony Guindon  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

A handwritten signature in black ink, appearing to be 'CGW', is written over a horizontal dotted line.

A Commissioner for taking affidavits, etc.

**KOSKIE  
MINSKY LLP**  
BARRISTERS & SOLICITORS

September 13, 2012

Mark Zigler  
Direct Dial: 416-595-2090  
Direct Fax: 416-204-2877  
mzigler@kmlaw.ca

Via E-mail

Jeff Galway  
Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON  
M5L 1A9

Dear Jeff:

Re: *David Kidd et al. v. The Canada Life Assurance Company et al.*  
Court File No: 05-CV-287556CP  
Our File No. 04/0157

We acknowledge receipt of your letter of yesterday's date, as well as the updated surplus calculation. As we advised you during our conference call on Friday, September 7, 2012, the transfer of assets related to the Integration partial windup class members who elected to receive an immediate or deferred pension to the on-going portion of the Plan is not contemplated by the Surplus Sharing Agreement (the "SSA"), and any unilateral steps by your client without securing both Court approval or our clients' consent to such action would constitute a violation of section 7(e) of the SSA, as well as the Judgment approving the settlement of this action.

The parties to the SSA are under an obligation to cooperate in good faith in the implementation of the SSA, and section 12(h) the SSA requires that any amendment to the SSA be mutually agreed to in writing. Section 12(c) further specifies that, in the event of a dispute between the parties over the implementation or interpretation of the SSA, the parties are to seek the assistance of the Superior Court to resolve such dispute. Finally, as you know, the Superior Court retains supervisory jurisdiction over the implementation of the SSA, pursuant to section 26(7) of the *Class Proceedings Act, 1992*.

Our clients remain ready and willing to negotiate a mutually agreeable resolution to the present impasse, and we are of the view that the assistance of the Court should be sought to resolve this dispute, in accordance with the section 12(c) of the SSA. However, we have firm instructions from our clients to oppose any and all steps by your client to unilaterally alter the SSA, which may include seeking an order of the Court pursuant to section 26(7) of the CPA to stay the implementation of the SSA, pending a negotiated resolution of this dispute. Furthermore, our

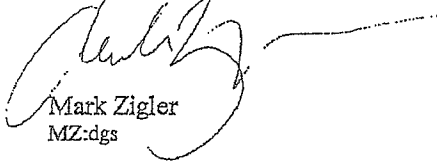
KOSKIE  
MINSKY LLP  
BARRISTERS & SOLICITORS

Page 2

clients will hold Canada Life liable for any adverse consequences flowing from any unilateral steps taken by your client that are not in conformity with the SSA.

Yours truly,

KOSKIE MINSKY LLP



Mark Zigler  
MZ:dgs

c Ian MacSweeney and Douglas Rienzo (*Osler, Hoskin & Harcourt LLP*)  
David Williams and Jonathan Foreman (*Harrison Pensa LLP*)  
Darrell Brown (*Sack Goldblatt Mitchell LLP*)  
Clio Godkewitsch and Anthony Guindon (*Koskie Minsky LLP*)  
Client Committee

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**TAB 3**

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

Plaintiff

- and -

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

Defendant

AFFIDAVIT OF MARCUS ROBERTSON  
(sworn September 20, 2012)

I, MARCUS ROBERTSON, of the Village of Bath, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am a fellow of the Canadian Institute of Actuaries, a former partner in the firm of Robertson, Eadie and Associates, and was retained by the Plaintiffs in the within proceeding to provide actuarial advice to the Plaintiffs and Class Counsel. As such, I have personal knowledge of the matters to which I depose hereinafter. Where my knowledge is based upon information and belief, I have stated the source of my knowledge, and verily believe the same to be true.

2. I have been asked by Class Counsel to swear this Affidavit in support of the motion by the Representative Plaintiffs of the Integration Partial Wind Up Sub-Class for a declaration that a proposed transfer of members of the Integration Partial Wind Up Sub-Class who elected an immediate or deferred annuity to the ongoing portion of the Canada Life Canadian Employees' Pension Plan (the "Plan") by Canada Life constitutes a violation of the Surplus Sharing Agreement between the parties (the "SSA").

3. As I acted as the actuarial advisor to Class Counsel and the Plaintiffs in the context of the negotiation of the SSA, I am familiar with its terms. Class counsel as asked me to describe the annuity purchase process contemplated by the SSA, provide an overview of the reasons for the decline in the Integration Partial Wind Up surplus in this case, and to discuss whether or not the \$1,000 minimum guaranteed payment to members of the Integration Partial Wind Up Sub-Class and eligible members of the Non-Partial Wind-up Sub-Class under the SSA remains capable of implementation, from an actuarial perspective, given the reduction of distributable surplus to approximately \$3.1 million.

4. In preparing my affidavit, I have relied upon the following documents prepared by Canada Life's actuaries ("Mercer"), and provided to me by Class Counsel:

- (a) Report on the Actuarial Valuation for Funding Purposes as at December 31, 2008; and,
- (b) Letter from Benedict O. Ukonga (Mercer) to Amy Metzger (Canada Life) dated September 12, 2012, regarding the estimate at August 31, 2012 of the financial position on a solvency basis of the portions of the Canada Life Registered Plan affected by the 2005 partial wind-up and the potential Indago, Adason and Pelican partial wind-ups.

#### The Partial Wind Ups Generally and the Proposed Annuity Purchase

5. In very general terms, pension surplus represents the excess value of the assets held in a pension fund over the value of the pension plan's liabilities, both calculated in a manner prescribed by regulation. The estimated amount of surplus (if any) in a pension plan at any given time is actuarially determined and depends upon a number of factors. One of the most important factors in determining whether or not a pension plan is in surplus is prevailing interest rates.

6. In the context of a partial plan wind-up, the value of a plan's surplus is determined in the context of settling pension plan members' basic pension entitlements. Under the *Pension Benefits Act* (the "PBA"), if a pension plan member has not yet

retired or is not eligible for early retirement, the plan member is required to be provided with the right to elect one of three options for the settlement of his or her basic pension benefits: 1) the transfer of the commuted value of his or her basic pension benefit to a prescribed locked-in retirement vehicle; 2) the purchase of a deferred annuity from an insurance company; or, 3) the transfer of the commuted value of his or her basic pension benefit to another registered pension plan, provided the administrator of the proposed receiving plan consents to the transfer.

7. For retired pension plan members in receipt of a pension, basic pension benefits in pay have historically been settled through the purchase of an immediate annuity from an insurance company.

8. The pension surplus in respect of a partial wind-up is the amount of assets left once the foregoing basic pension benefits have been settled.

9. At the time the Integration Partial Wind Up was declared by Canada Life, a pension plan administrator who declared a partial wind-up was required to transfer the member's basic pension entitlements from the pension plan in accordance with the options described in paragraph 6 and 7 above. These basic requirements were described by the Financial Services Commission of Ontario ("FSCO"), in Policy W100-231, a copy of which is attached hereto as Exhibit "A."

10. In accordance with this policy and general regulatory requirements, the terms of the SSA were drafted in accordance with the requirement to provide Plan members affected by the Integration Partial Wind Up with their portability options.

11. More recently, FSCO changed its policy with respect to the settlement of basic benefits for pension plan members affected by a partial plan wind-up, as a result of a decision of the Financial Services Tribunal. In this policy, Policy W100-232, dated September 30, 2010, FSCO indicated that:



[a]s a result of the December 2, 2009 Financial Services Tribunal decision respecting an Imperial Oil Limited pension plan, FSCO will no longer require administrators to purchase annuities for members affected by a partial wind up who are entitled to an immediate or a deferred pension. Instead, the administrator may transfer the assets relating to these pension benefits to the on-going portion of the pension plan.

12. A copy of Policy W100-232 is attached hereto as Exhibit "B."

13. It is notable that Policy W100-232 pre-dates the execution of the SSA, which was made effective as of September 1, 2011. While the parties could theoretically have negotiated a provision in the SSA that members of the Integration Partial Wind Up would have their benefits transferred to the ongoing portion of the Plan, they did not do so. Instead, the application provision of the SSA, section 7(e), provided the following:

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.

14. Based upon the information that was provided to Class Counsel, I understand that Canada Life was unable to obtain any quotes from insurance companies in respect of the required annuity purchase.

15. From the standpoint of individuals who elected or are deemed to have elected the purchase of a deferred or immediate annuity, there would likely be little impact on the member in terms of the actual value of the pension received during retirement, whether the pension was paid from the ongoing Plan, or by an insurance company through an

annuity contract. The main differences relate to the nature of the risk and benefit security associated with a particular form of basic benefit settlement, as:

- (a) A pension paid from the ongoing Plan relies upon the, *inter alia*, the value of the assets in the underlying Plan fund, and the solvency of the Plan sponsor, to guarantee the benefit; whereas,
- (b) A pension paid through an annuity contract is secured through the contract with the insurance company providing the annuity, and is, depending upon the amount of the monthly pension being paid through the annuity, guaranteed by an insurance industry organization called Assuris.

#### Reasons for the Decline in the Integration Partial Wind Up Surplus

16. The most significant reason for the decline in the Integration Partial Wind Up Surplus relates to a dramatic increase in the cost of settling the basic pension benefits of the members of the Integration Partial Wind Up.

17. With any pension plan wind up (full or partial), the estimated surplus at the effective date of the wind-up and the actual surplus existing at the completion of the wind up can differ, for several reasons, including 1) data changes (membership data must be confirmed as part of the wind up process), 2) member elections (as noted above, some members have the option of accepting lump sum settlements of their entitlements or having their entitlement purchased from an insurance company, 3) investment returns that are different from the returns assumed at the effective date of the wind up, and 4) differences between the estimated and actual costs of purchasing annuities.

18. In this case, the partial wind up was declared by Canada Life effective June 30, 2005 and basic pension benefits of employees affected by this partial wind-up have not yet been settled.

19. In various correspondences and reports prepared by the Plan's actuary since the effective date of the partial wind-up, the actuary has identified changes in the estimated

surplus and the sources of those changes. I have not attempted to aggregate the figures presented by the Plan's actuary, but instead provide general comments regarding the changes in estimated surplus over time.

20. The changes in estimated surplus that were due to changes in membership data were not material.

21. The effect of individual member elections has been to reduce the estimated amount of surplus. More members than were expected elected pension purchases and annuity purchase prices have been greater than commuted values available for transfer.

22. Regarding investment performance, it is my understanding that Canada Life took steps to partially "immunize" the assets associated with the Integration Partial Wind Up, by moving a significant portion of the assets from equity investments to fixed income investments.

23. In this case, the asset values in respect of the Integration Partial Wind Up have not declined, and in fact, the value of the underlying assets has somewhat increased.

24. There have been, however, significant increases since December 31, 2008 in liabilities related to affected members who elected purchased pensions, and these increases are largely related to the discount rates used by the Plan's actuary. In the following paragraph, I discuss guidance provided to actuaries by the Canadian Institute of Actuaries ("CIA"). For purposes of this document, I limited my comments to guidance related to valuing fully indexed pensions. Similar comments would apply to the valuation of non-indexed pensions, although the discount rates were necessarily different.

25. The CIA has, for several years, provided guidance regarding actuarial bases (discount rates and mortality assumptions) to be used when estimating the cost of purchasing annuities for actuarial valuation purposes. In my experience, actuaries generally follow the CIA's guidance, unless they can support the use of a different basis. For reports on this Plan, the actuary has followed CIA's guidance consistently.

26. For ongoing pension plans, actuaries typically use the guidance when performing solvency and hypothetical wind-up valuations. For pension plans that are being wound up, whether in whole or in part, actuaries use the guidance to estimate the cost of purchasing annuities from insurance companies for members for whom pensions will be purchased in order to complete the full or partial wind-up. The actual cost of the pensions being purchased is determined by the insurance companies that sell annuities.

27. Of the two assumptions covered by the CIA's guidance, the discount rate assumption has the greatest impact. I have not estimated the effect of changes in the discount rates on the estimated purchase prices of pensions and, consequently, the estimated surplus on the partial wind-up of the Plan, but note that these effects have been described in various correspondences and reports prepared by Mercer over the past several years. While I didn't confirm that Mercer's estimates were accurate, they seemed reasonable, given the discount rates that the actuary was using.

28. For actuarial valuations with effective dates between January 1, 2005 and December 31, 2007, the CIA offered no guidance to actuaries with respect to pensions that are indexed in relation to changes in the Consumer Price Index ("CPI"), indicating that it (the CIA) did not have sufficient information to provide "any direct guidance on the appropriate basis to be used to value such annuities."

29. For actuarial valuations with effective dates on or after January 1, 2008, the CIA has consistently recommended, for plans the size of the Plan, that actuaries use the yield on Government of Canada real-return long-term bonds for pensions that are fully indexed to changes in the CPI. Although indexed pensions under this Plan are not necessarily fully indexed to changes in the CPI, the Plan's actuary has made that assumption and I agree with his assumption.

30. The following table illustrates the yields on Government of Canada real-return long-term bonds (CANSIM series V39057) at various dates since December 31, 2007.

Date	Yield on GoC Real-Return Long-Term Bonds
December 31, 2007	1.91%
December 31, 2008	2.10%
December 31, 2009	1.53%
December 31, 2010	1.11%
December 31, 2011	0.45%
June 30, 2012	0.44%
August 31, 2012	0.40%
September 18, 2012	0.39%

31. These rates are measured and reported on a daily basis. In 2012, the yields have ranged from 0.30% (June 1<sup>st</sup> and June 4<sup>th</sup>) and 0.62% (March 19<sup>th</sup>).

#### Minimum Guaranteed Benefits Under the SSA

32. Under the terms of the SSA, the Integration Partial Wind Up surplus is to be divided as follows:

- (a) 57.22% to members of the Integration Partial Wind Up group;
- (b) 12.44% to eligible inactive members of the Non-Partial Wind Up group;  
and,
- (c) 30.34% to Canada Life.

33. Utilizing the most recent estimate provided by Mercer of the Integration Partial Wind Up surplus, the allocation of surplus as between these three groups is approximately as follows:

- (a) Integration Partial Wind Up Group: \$1.77 million;
- (b) Eligible inactive Non Partial Wind Up Group: \$0.39 million; and,
- (c) Canada Life: \$0.94 million.

34. The SSA provides certain minimum guaranteed surplus payments to certain members of the Class. These are set out at sections 7(g) and 8(d) of the SSA, which provide as follows:

7(g) The minimum surplus allocation to each Eligible PWU Group Member shall be \$1,000.

8(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.

35. Based upon the most recent report filed with FSCO by Canada Life, as at December 31, 2008, it was reported that there were 2,146 individuals of the Integration Partial Wind Up Group, and 1,560 individuals in the eligible inactive Non Partial Wind Up Group.

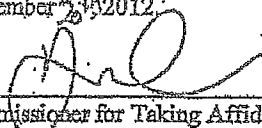
36. Given the available surplus, as estimated at August 31, 2012 by Mercer, the surplus available for distribution would be insufficient to meet the minimum payments guaranteed by sections 7(g) and 8(d) of the SSA, as:

- (a) \$1.77 million, distributed *pro rata* amongst the members of the Integration Partial Wind Up Group, only nets individual surplus allocations of approximately \$825.00 per group member; and,
- (b) \$0.39 million, distributed *pro rata* amongst the members of the eligible inactive Non Partial Wind Up Group, only nets individual surplus allocations of approximately \$250.00 per group member.

- 10 -

37. I make this Affidavit in good faith and for no other or improper purpose.

SWORN BEFORE ME at the Town of  
Picton, in the Province of Ontario, on  
September 2<sup>nd</sup> 2012:

  
Commissioner for Taking Affidavits

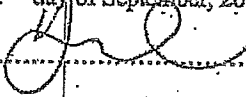
  
Marcus Robertson

Kenneth Gregory Menlove  
Barrister, Solicitor &  
Notary Public  
Province of Ontario

**TAB A**



This is Exhibit "A" referred to in the  
affidavit of Marcus Robertson  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

  
A Commissioner for taking affidavits, etc.

Kenneth Gregory Menlove  
Barister, Solicitor &  
Notary Public  
Province of Ontario

Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario




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SECTION: Wind Up

INDEX NO.: W100-231

TITLE: Distribution of Benefits on Partial Wind Up  
- PBA s. 72(1) and 73(2)  
- Regulation 909 s. 28(2)

APPROVED BY: Superintendent of Financial Services

PUBLISHED: FSCO website (March 2007)

EFFECTIVE DATE: March 30, 2007 [No longer applicable - replaced by W100-232 - September 2010]

REPLACES: W100-230

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This policy replaces W100-230 ("Individual Statement at Wind Up") as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.*

This policy addresses the distribution of the benefits provided under the terms of the pension plan on partial wind up. In this policy, the term "benefits" does not include any benefits arising from the distribution of surplus on partial wind up. On full wind up of a pension plan, all assets of the pension plan must be distributed. Similarly, on partial wind up, the administrator must distribute all assets in the wound up portion of the pension plan.

The distribution of surplus on partial wind up is addressed in policies S900-901 ("Allocation of Surplus to Members, Former Members and Other Persons on Wind Up") and S900-910 ("Distribution of Surplus to Employer on Partial Wind Up").

#### Options for Receipt of Benefits

On the partial wind up of a pension plan, several options are provided under the PBA for the distribution of benefits to members, former members and other persons who are entitled to receive benefits from the pension plan as a result of partial wind up.

Active members included in the partial wind up may elect to:

- Transfer the commuted value of the pension benefit, as provided in section 73(2) of the PBA;
- Receive the lump sum cash payment under any of sections 39(4), 50, 63(2), 63(3) and 63(4) of the PBA, subject to the terms of the pension plan; or
- Receive an immediate or deferred pension.

Index No.: W100-231 / Page 2 of 2

Former members and other persons who are included in the partial wind up and are not in receipt of pension payments on the partial wind up date continue to be entitled to a deferred pension commencing at the normal retirement date, or such earlier date as provided under the terms of the pension plan, PBA and Regulation. In addition, section 73(2) of the PBA provides that such persons are entitled to the transfer rights under section 42(1) and that section 42(3) does not apply to limit these transfer rights.

Generally, all persons included in the partial wind up who are in receipt of a pension will continue to receive their pension on the same basis as before the partial wind up. The pension amount may be adjusted at the completion of the partial wind up process, such as where the terms of a multi-employer pension plan permit the reduction of benefits, or where an employer declares bankruptcy and the partial windup has not been fully funded.

If a member who is entitled to make an election does not do so within the prescribed time, or such longer period as the administrator may allow, the member shall be deemed to have elected a deferred or immediate pension.

All immediate and deferred pensions in the wound up portion of the pension plan must be provided through the purchase of life annuities from an insurance company licensed in Canada to provide such annuities.

#### Provision of Individual Statements

The administrator of the pension plan must prepare individual statements, as required by section 72(1) of the PBA. The statements must set out the entitlements and the options available to each member, former member and other person who is entitled to receive benefits or a refund from the pension plan as a result of the partial wind up.

The statements required under section 72(1) of the PBA must contain the information specified in section 28(2) of the Regulation. In respect of former members and other persons who are currently in receipt of or will be receiving a pension, the statement should include full information on the insurance company from which the annuity has been or will be purchased, as well as the name of a contact person there. Where this contact information is not available at the time that the statement is issued, the statement should indicate when and how the information will be provided.

The statements required under section 72(1) of the PBA must be given to the persons who are entitled to receive payment from the pension plan as a result of the partial wind up within 60 days after the administrator receives notice that the Superintendent of Financial Services (Superintendent) has approved the wind up report. Where the Superintendent has approved payment of benefits under section 70(3) of the PBA, the statements must be given to the persons affected by the approval within 60 days after the administrator receives notice of the section 70(3) approval.

#### Distribution of Benefits

Once the Superintendent has approved the wind up report, the distribution of benefits by transfer, cash payment or annuity purchase, as elected by all persons entitled to benefit payments under the wound up portion of the pension plan, should proceed as quickly as possible.

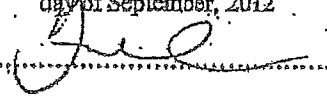
Where the wound up portion of the pension plan is in a deficit position that requires additional funding under section 75 of the PBA, sections 29(7) and 29(8) of the Regulation may place limits on the distribution of benefits from the pension plan. See also policy W100-440 ("Restrictions on Payments in Deficit Situations").

Where the wound up portion of the pension plan is in a surplus position, provision of benefits must be completed before or concurrently with the distribution of surplus from the wound up portion of the pension plan.

The split, either notional or actual, between the wound up and on-going portions of the pension plan must be maintained until all assets of the wound up portion are distributed. When that asset distribution is completed, only the on-going portion of the pension plan will remain.

**TAB B**

This is Exhibit "B" referred to in the  
affidavit of Marcus Robertson  
sworn before me, this 20<sup>th</sup>  
day of September, 2012

  
A Commissioner for taking affidavits, etc.

Kenneth Gregory Menlove  
Barrister, Solicitor &  
Notary Public  
Province of Ontario

Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario




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SECTION:	Wind Up
INDEX NO.:	W100-232
TITLE:	Distribution of Benefits on Partial Wind Up - PBA ss. 72(1) and 73(2) - Regulation 909 s. 28(2)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (September 2010)
EFFECTIVE DATE:	September 30, 2010
REPLACES:	W100-231

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This policy replaces W100-231 ("Distribution of Benefits on Partial Wind Up") as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.*

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the Pensions section of the website through the Pension Policies link.*

This policy addresses the distribution of the benefits provided under the terms of the pension plan on partial wind up. In this policy, the term "benefits" does not include any benefits arising from the distribution of surplus on partial wind up. On full wind up of a pension plan, all assets of the pension plan must be distributed. Similarly, on partial wind up, the administrator must distribute all assets related to the wound up portion of the pension plan.

The distribution of surplus on partial wind up is addressed in policies S900-901 (Allocation of Surplus to Members, Former Members and Other Persons on Wind Up) and S900-910 (Distribution of Surplus to Employer on Partial Wind Up).

#### Options for Receipt of Benefits

On the partial wind up of a pension plan, several options are provided under the PBA for the distribution of benefits to members, former members and other persons who are entitled to receive benefits from the pension plan as a result of partial wind up.

Index No.: W100-232 / Page 2 of 3

Active members included in the partial wind up may elect to:

- \* Transfer the commuted value of the pension benefit, as provided in section 73(2) of the PBA. The transfer rights under section 42(1) entitle a member or former member with a deferred pension under the pension plan to transfer the commuted value of the deferred pension:
  - a) to a pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept it;
  - b) into a prescribed retirement savings arrangement; or
  - c) for the purchase of a life annuity for the member or former member, through a life insurance company licensed in Canada; or
- \* Receive an immediate or deferred pension.

In addition, active members who are eligible will receive lump sum cash payments:

- \* Provided for under sections 39(4), 63(3) and 63(4) of the PBA; or
- \* Provided for under sections 50 and 63(2) of the PBA, if the terms of the pension plan provides for it.

Former members and other persons who are included in the partial wind up and are not in receipt of pension payments on the partial wind up date continue to be entitled to a deferred pension commencing at the normal retirement date, or such earlier date as provided under the terms of the pension plan, PBA and Regulation. In addition, section 73(2) of the PBA provides that persons entitled to a deferred pension but not in receipt of a pension are entitled to the transfer rights under section 42(1) and that section 42(3) does not apply to limit these transfer rights.

Members already in receipt of a pension and included in the partial wind up will continue to receive their pension from the plan if the administrator decides not to purchase annuities in respect of their benefits. If the administrator decides to purchase annuities for these individuals, their pension will be paid from the applicable insurance company.

If a member who is entitled to make an election does not do so within the prescribed time, or such longer period as the administrator may allow, the member shall be deemed to have elected a deferred or, if eligible, an immediate pension.

As a result of the December 2, 2009 Financial Services Tribunal decision respecting an Imperial Oil Limited pension plan, FSCO will no longer require administrators to purchase annuities for members affected by a partial wind up who are entitled to an immediate or a deferred pension. Instead, the administrator may transfer the assets relating to these pension benefits to the on-going portion of the pension plan. For more information regarding this, see policy W100-233 - (Distribution of Benefits on Partial Wind Up Where Immediate or Deferred Pensions are Not Purchased).

#### Provision of Individual Statements

The administrator of the pension plan must prepare individual statements, as required by section 72(1) of the PBA. The statements must set out the information specified in section 28(2) of the Regulation including the options available to each member, former member and other person who is entitled to receive benefits or a refund from the pension plan as a result of the partial wind up.

In respect of former members and other persons for whom the administrator has purchased or intends to purchase an annuity from an insurance company licensed in Canada, the statement should also include information (name and address) of the insurance company from which the annuity has been or will be purchased, as well as the name and contact information of a contact person there. Where this contact information is not available at the time that the statement is issued, the statement should indicate when and how the information will be provided.

Index No.: W100-232 / Page 3 of 3

Where the plan administrator chooses not to purchase annuities for the immediate and deferred pensions relating to the partial wind up, additional information and communication as described in policy W100-233 must be provided to members affected by the partial wind up.

The statements required under section 72(1) of the PBA must be given to the persons who are entitled to receive payment from the pension plan as a result of the partial wind up within 60 days after the administrator receives notice that the Superintendent of Financial Services (Superintendent) has approved the wind up report. Where the Superintendent has approved payment of benefits under section 70(3) of the PBA, the statements must be given to the persons affected by the approval within 60 days after the administrator receives notice of the section 70(3) approval.

#### Distribution of Benefits

The timing of distribution of benefits relating to a partial wind up depends on whether the partial wind up is in a surplus or a deficit position.

Where the partial wind up is fully funded and the Superintendent has approved the partial wind up report, the plan administrator must make payment in accordance with the elections or deemed elections within 60 days after the later of the day in which the administrator receives the applicable person's election or deemed election; and the day on which the administrator receives notice that the Superintendent has approved the report. The provision of benefits must be completed before or concurrently with the distribution of any surplus remaining in the wound up portion of the pension plan.

Where the wound up portion of the pension plan is in a deficit position that requires additional funding under section 75 of the PBA, sections 29(7) and 29(8) of the Regulation may place limits on the distribution of benefits from the pension plan. For example, section 29(8) provides that a life annuity purchase cannot occur until the required funding under section 75 of the PBA has been made. Similarly, the transfer of the assets and liabilities in respect of the immediate and deferred pensions to the on-going portion of the pension plan can only take place once the requirements of section 75 have been met.

Where the plan administrator has chosen not to purchase life annuities for the immediate and deferred pensions of the wound up portion of the pension plan, the transfer of the assets and liabilities in respect of these pensions to the on-going portion of the pension plan shall proceed once all section 75 funding requirements have been met. See also policies W100-102 (Filing Requirements and Procedure on Full or Partial Wind Up of a Pension Plan) and W100-440 (Restrictions on Payments in Deficit Situations).

The split, either notional or actual, between the wound up and on-going portions of the pension plan must be maintained until all assets of the wound up portion are distributed.



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

**MOTION RECORD OF THE PLAINTIFFS,  
DAVID KIDD, ALEXANDER HARVEY AND  
JEAN PAUL MARENTEITE**

(Motion returnable September 27, 2012)

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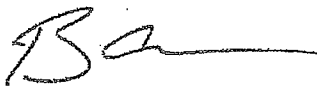
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Lawyers for the Plaintiffs, David Kidd, Alexander Harvey, Jean  
Paul Marenteite, Susan Henderson and Lin Yeomans

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Lawyers for the Plaintiffs, Garry C. Yip and Louie Nuspi

This is EXHIBIT "C" referred to in the  
Affidavit of Jonathan Foreman  
sworn before me this 8 day of March 2013.



---

A Commissioner, etc.

Bradley James Adams, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 27, 2015.

DAVID KIDD, et al.  
Plaintiffs and

THE CANADA LIFE ASSURANCE  
COMPANY, et al.  
Defendants

Court File No: 05-CV-287556CP

Sept 27, 2012

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

1. Canada Life may proceed to file the transfer  
report concerning the transfer of the integration FNU  
assets and liabilities, to the ongoing plan ~~just~~

2. The Representative Plaintiffs ~~will~~ <sup>shall</sup> not object to  
to any such plan and transfer of assets and  
liabilities, ~~is 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.

Perell J.

ONTARIO

SUPERIOR COURT OF JUSTICE  
Proceeding commenced at Toronto

MOTION RECORD OF THE PLAINTIFFS,  
DAVID KIDD, ALEXANDER HARVEY AND  
JEAN PAUL MARENTETTE

(Motion returnable September 27, 2012)

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Lawyers for the Plaintiffs, Gary C. Yip and Louie Nuspi

This is EXHIBIT "D" referred to in the  
Affidavit of Jonathan Foreman  
sworn before me this 8 day of March 2013.



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A Commissioner, etc.

Bradley James Adams, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 27, 2016.

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

SURPLUS SHARING AGREEMENT – AMENDMENT #2

Made as of the 1<sup>st</sup> day of February, 2013

AMONG:

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

-and-

WILBERT ANTLER, 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)

- 2 -

- 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 amended the Agreement as of January 1, 2012 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 wish to amend the Agreement again, as set out below (the "Amendment");

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. Capitalized terms used in this Amendment shall have the meaning set out in the Agreement.
2. In the ninth recital to the Agreement, the concluding words "(the "Settlement")" are deleted.
3. Paragraph 1(e)(vi) of the Agreement (definition of "Agreement") is amended by adding the words ", as amended from time to time" at the end of the paragraph.
4. Paragraph 1(e)(liii) of the Agreement is deleted and replaced with the following:
  - (liii) "Settlement" means the terms agreed to by the Parties in settlement of the claims advanced in the Amended Statement of Claim, in addition to all claims relating to the Indago PWU, the Pelican PWU, and the Adason PWU, under an agreement based on the framework and terms of the Integration MOU and the Adason MOU, all as reflected in this Agreement, as amended.

5. Paragraph 1(e) of the Agreement is amended by adding the following paragraphs in the appropriate alphabetical position, with the existing paragraphs (including paragraph (liii) as amended above) re-numbered accordingly:

(xxxliif) "IPWG" means those Eligible PWU Group Members who were included in the Integration PWU.

...

(liv) "Segregated Portion" has the meaning set out in paragraph 7(e) of this Agreement.

6. In order to provide for additional flexibility in respect of the Quebec court proceedings contemplated under the Agreement, paragraph 6(c)(vii) of the Agreement is amended by adding the following to the end of that paragraph:

The provisions in this paragraph 6(c)(vii) related to Québec court proceedings are for the sole benefit of Canada Life, and may be waived by Canada Life in part or in whole in its sole discretion.

7. In order to increase the surplus allocable to the Integration PWU, Canada Life shall waive a portion of the Settlement Expenses which would otherwise be payable to it under the Agreement, and also waive a portion of the interest accruing on the Plan expenses which it has incurred but for which it has not yet been reimbursed. Accordingly, paragraph 7(a) of the Agreement is amended by adding the following to the beginning of that paragraph:

Notwithstanding the provisions of paragraph 2(a)(iii), Canada Life shall waive its entitlement to reimbursement of a portion of its Settlement Expenses in the amount of \$500,000; in addition, notwithstanding the provisions of paragraphs 2(a)(i) and 10(e), Canada Life shall waive entitlement to reimbursement of an amount equal to the amount of interest that would accrue under such paragraphs from August 31, 2012 to December 31, 2013; and the foregoing amounts shall be added to the Final Partial Wind Up Surplus allocable to the Integration PWU, prior to the division described in this paragraph 7(a).

8. In order to increase the surplus payable to those Eligible PWU Group Members who were included in the Integration PWU (*i.e.*, the "IPWG"), as well as the amount of surplus payable to the Inactive Eligible Non-PWU Group Members, the CLPENS Executive shall waive its entitlement to reimbursement of the future legal fees (but not disbursements) approved by the Ontario Superior Court of Justice on January 27, 2012, which fees would otherwise be payable to it under the Agreement, and direct the resulting amount of increased surplus to those groups. Accordingly, paragraph 7(d) of the Agreement is amended by adding the following to the end of that paragraph:

Notwithstanding the provisions of paragraph 2(a)(iii), the CLPENS Executive shall waive its entitlement to reimbursement of a portion of its Settlement Expenses in the amount of \$250,000, less any Settlement Expenses that consist of disbursements incurred by its legal counsel after January 27, 2012 up to the Settlement Approval Date. Such amount shall be divided in the ratio set out in paragraph 7(c) – 57.22:12.44 – and the larger portion shall be added to that portion of the Eligible PWU Group Surplus Allocation that is payable to the

IPWG. The smaller portion shall be added to the Inactive Eligible Non-PWU Group Surplus Allocation.

9. In order to reflect recent events related to annuity markets, paragraph 7(e) of the Agreement is deleted and replaced with the following:

*Portability – All PWU Group Members*

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.

*Integration PWU members – Transfer to Ongoing Portion of Plan*

For any member of the Integration PWU who elected to receive (or was deemed to have elected) a deferred or immediate pension, their portability rights have been satisfied by Canada Life transferring assets equal to such members' liabilities to the ongoing portion of the Plan effective August 31, 2012.

*Integration PWU members – Segregation of Assets and Liabilities*

The assets and related liabilities referred to in the previous sentence shall be notionally segregated (the "Segregated Portion") until the completion of the second surplus distribution (if any) contemplated in paragraph 11.1 below (or until it is determined that such a surplus distribution will not be occurring). Canada Life shall not purchase annuities for any member of the Integration PWU in satisfaction of his or her Plan benefits before December 31, 2014 without the consent of the Plaintiffs and the CLPENS Executive, which consent shall not be unreasonably withheld.

*Prior PWU members – Annuity Purchase or Transfer to Ongoing Plan*

For any individual included in a Prior PWU who elects to receive (or is deemed to have elected) a deferred or immediate pension, Canada Life will either arrange for an annuity to be purchased, or will arrange for the pension to be provided from the ongoing portion of the Plan, as Canada Life may decide in its sole discretion. If an annuity is purchased for an individual included in a Prior PWU, 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 an individual included in a Prior PWU shall be insured annuities, and, subject to such reasonable administrative limits as may be imposed by Canada Life, shall only be purchased for an amount that on the date of purchase is within the Assuris limits. The Parties agree that any such annuities will be purchased following a competitive bidding process, which may include as potential annuity providers Canada Life and/or any of its affiliates.

10. Canada Life has agreed to fund certain payments under the Agreement, if necessary, related to the minimum surplus amounts that are payable to Eligible PWU Group Members. Accordingly, paragraph 7(g) is amended by adding the following to the end of that paragraph:

For Eligible PWU Group Members who were included in a Prior PWU, in order to make the minimum \$1,000 payment to any individual who otherwise would receive less than that amount, surplus payments to the rest of the individuals in the Prior PWU in question will be reduced on a proportionate basis. Should there not be sufficient surplus allocable to the Prior PWU in order for all



Eligible PWU Group Members included in that Prior PWU to receive at least \$1,000, Canada Life will pay the individuals the additional amount needed such that each individual receives \$1,000.

For members of the IPWG, in order to make the minimum \$1,000 payment to any individual who otherwise would receive less than that amount, surplus payments to the rest of the individuals in the IPWG will not be reduced; instead, Canada Life will pay the individual the additional amount needed such that he or she receives \$1,000.

11. Canada Life has agreed to fund certain payments under the Agreement, if necessary, related to the minimum surplus amounts that are payable to Inactive Eligible Non-PWU Group Members. Accordingly, paragraph 8(d) is amended by adding the following to the end of that paragraph:

In order to make the minimum \$1,000 payment to any Inactive Eligible Non-PWU Group Member (or to the surviving spouse, beneficiary, or estate if applicable) who otherwise would receive less than that amount, surplus payments to the rest of the Inactive Eligible Non-PWU Group Members will be reduced on a proportionate basis. Should the Inactive Eligible Non-PWU Group Surplus Allocation not be sufficient in order for all Inactive Eligible Non-PWU Group Members (or the surviving spouse, beneficiary, or estate if applicable) to receive at least \$1,000, Canada Life will pay the individuals (or estates) the additional amount needed such that each individual (or estate) receives \$1,000. For certainty, if the Inactive Eligible Non-PWU Group Member had named multiple beneficiaries, and surplus is payable to them, the \$1,000 payment will be divided among the beneficiaries.

12. The MOU Parties have agreed that the assets and liabilities transferred to the ongoing portion of the Plan in respect of members of the Integration PWU who elected to receive (or were deemed to have elected) a deferred or immediate pension shall be notionally segregated (*i.e.*, the "Segregated Portion"), and have agreed that should surplus arise in that Segregated Portion as of December 31, 2014, and provided certain other conditions are satisfied, then a portion of such surplus shall be distributed to the IPWG and to Inactive Eligible Non-PWU Group Members. Accordingly, a new paragraph 11.1 is added to the Agreement as set out below.

#### 11.1. SEGREGATED PORTION – POTENTIAL SECOND SURPLUS DISTRIBUTION

- (a) Canada Life's Plan actuaries will determine whether a surplus exists in the Segregated Portion as at December 31, 2014, either on a going concern or wind-up basis, as set out in paragraph 11.1(b). If the going concern or wind-up calculation (or both) disclose no surplus, then no further action will be required and the Segregated Portion need no longer be notionally segregated.
- (b) For purposes of the calculation of surplus under paragraph 11.1(a), the calculation of the liabilities on a going concern basis will be based on the following:
  - (i) Assumptions and methods consistent with acceptable actuarial standards and economic conditions as at December 31, 2014, and not necessarily the same assumptions and methods used for the December 31, 2011 funding valuation of the Plan;

and the calculation of the liabilities on a wind-up basis will be based on the following:

- (ii) Annuity purchase and/or commuted value assumptions applicable as at December 31, 2014;
- (iii) Accepted actuarial standards of practice as at December 31, 2014.

For certainty, no smoothing of assets and/or liabilities will be used in calculating either the going concern or wind-up financial position of the Segregated Portion, and no excludable benefits will be excluded in calculating the liabilities. The Plan actuaries' determination of the surplus position of the Segregated Portion shall be set out in a report certified by them (which will not be a full valuation report of the Plan for funding purposes), and shall be final and binding.

- (c) If the certified report prepared by Canada Life's Plan actuaries identifies a surplus in the Segregated Portion as at December 31, 2014, then, subject to the limit set out in paragraph 11.1(e) below, the surplus in the Segregated Portion calculated on either a going concern or wind-up basis, whichever is less, shall be distributed to the IPWG and to Inactive Eligible Non-PWU Group Members subject to the following adjustments:
  - (i) 10% of such surplus shall be deducted off the top; and
  - (ii) The remaining surplus will be reduced to take into account any contributions and other payments (such as special payments), together with interest at the fund rate of return, that are made by Canada Life into the Plan after August 31, 2012 and that are notionally allocated to the Segregated Portion, all as calculated by Canada Life's Plan actuaries, before determining the amount, if any, of surplus to be distributed.
- (d) 57.22% of the surplus remaining after the adjustments described in paragraph 11.1(c), net of any allocation made pursuant to paragraph 11.1(h), will be paid to the IPWG, and 12.44% will be paid to the Inactive Eligible Non-PWU Group Members, allocated to individuals as set out in paragraphs 11.1(g) and 11.1(i).
- (e) The total of the amounts distributed under paragraph 11.1(d) above and paragraph 11.1(h) below shall not exceed \$15,000,000.
- (f) Any payment of surplus under the second distribution to Plan members subject to Quebec jurisdiction will not be made; instead, the surplus share otherwise payable to such members will remain in the Plan, and Canada Life will pay such amount directly to the Quebec members. In addition, notwithstanding the foregoing provisions of this paragraph 11.1(f), Canada Life reserves the right in its sole discretion to leave the surplus share otherwise payable to all other individuals eligible to participate in the second distribution in the Plan, and to pay amounts otherwise payable to such individuals directly to them.

*Individual Surplus Allocation – IPWG*

- (g) The amount of surplus calculated as set out above in this paragraph 11.1 that is payable to IPWG members shall be allocated to individual members as follows.

Step 1: Calculate the share of surplus each IPWG member would have received in the first distribution under this Agreement, if surplus were equal to the sum of the following amounts:

- (i) The amount of the Eligible PWU Group Surplus Allocation allocable to the IPWG under the first surplus distribution; plus
- (ii) The cost to Canada Life of funding the minimum \$1,000 payment to the IPWG under the first distribution (as set out in paragraph 7(g) above); plus
- (iii) The amount of surplus to be distributed to the IPWG from the Segregated Portion (as calculated above, including the limit under paragraph 11.1(e)).

Surplus in Step 1 shall be allocated to members *pro rata* to the liabilities set out in the Partial Wind Up Report as at the effective date of the Integration PWU, excluding any statutory grow-in benefits, subject to a minimum distribution of \$1,000, with any top-up required to make the minimum \$1,000 surplus payment effected through a reduction of the surplus otherwise payable to other members of the IPWG.

Step 2: The amount payable to each member of the IPWG under the second distribution equals the amount calculated in Step 1, less the amount paid or payable to the individual in the first distribution of surplus under this Agreement.

Step 3: If the amount payable to any member of the IPWG as determined in Step 2 is less than \$100, the member's payment shall be reduced to zero. The amount of surplus to be distributed to the IPWG from the Segregated Portion (including amounts that would otherwise have been payable to members whose allocation under Step 2 was less than \$100) will be distributed to those IPWG members (if any) whose allocation under Step 2 was greater than \$100, *pro rata* to the liabilities set out in the Partial Wind Up Report as at the effective date of the Integration PWU, excluding any statutory grow-in benefits.

*Quebec Members Who Would Have Been IPWG Members – Surplus Allocation*

- (h) A portion of the surplus that is payable to IPWG members as set out in paragraph 11.1(d) above 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 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 under this paragraph 11.1 which, after taking into account the amount (if any) they receive under paragraph 11.1(i), is equal to the amount they would have received had they been treated as IPWG members.

*Individual Surplus Allocation – Inactive Eligible Non-PWU Group Members*

- (i) The amount of surplus calculated as set out above in this paragraph 11.1 that is payable to Inactive Eligible Non-PWU Group Members shall be allocated to individual members as follows.

Step 1: The share of surplus each Inactive Eligible Non-PWU Group Member would have received in the first distribution under this Agreement, if surplus were equal to sum of the following amounts, shall be determined:

- (i) The amount of the Inactive Eligible Non-PWU Group Surplus Allocation under the first surplus distribution; plus
- (ii) The amount of surplus to be distributed to the Inactive Eligible Non-PWU Group Members from the Segregated Portion (as calculated above, including the limit under paragraph 11.1(e)).

Surplus in Step 1 shall be allocated to members *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 distribution of \$1,000, with any top-up required to make the minimum \$1,000 surplus payment effected through a reduction of the surplus otherwise payable to other Inactive Eligible Non-PWU Group Members.

Step 2: The amount payable to each Inactive Eligible Non-PWU Group Member under the second distribution equals the amount allocated in Step 1, less the amount paid or payable to the individual in the first distribution of surplus under this Agreement.

Step 3: If the amount payable to any Inactive Eligible Non-PWU Group Member as determined in Step 2 is less than \$100, the member's payment shall be reduced to zero. The amount of surplus to be distributed to the Inactive Eligible Non-PWU Group Members from the Segregated Portion (including amounts that would otherwise have been payable to members whose allocation under Step 2 was less than \$100) will be distributed to those Inactive Eligible Non-PWU Group Members (if any) whose allocation under Step 2 was greater than \$100, *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).

- (j) Should any IPWG member or Inactive Eligible Non-PWU Group Member die before receiving a payment of surplus under this paragraph 11.1, the amount of surplus that would have been payable to such individual will instead be payable as follows:
    - (i) Where the individual is survived by a spouse or former spouse who at the time of the individual'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;
    - (ii) If there is no such spouse or former spouse, if the individual designated a beneficiary or beneficiaries under the Plan, the surplus shall be paid to that beneficiary or those beneficiaries; or
    - (iii) If there is no such spouse or former spouse, and no beneficiary had been designated by the individual, surplus shall be paid to the individual's estate.
  - (k) Any distribution of surplus under this paragraph 11.1 may be combined with the first distribution of surplus contemplated under this Agreement, as Canada Life may determine appropriate in its sole discretion.
  - (l) Individuals included in the Prior PWUs will not share in any second surplus distribution as contemplated in this paragraph 11.1.
  - (m) Any second surplus distribution as contemplated in this paragraph 11.1 will be subject to applicable regulatory approvals, if any.
13. This Amendment shall be subject to the approval of the Ontario Superior Court of Justice pursuant to section 29 of the Ontario *Class Proceedings Act, 1992*. Unless and until the Ontario Superior Court of Justice approves this Amendment, it shall be of no force or effect.
  14. 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.
  15. 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.

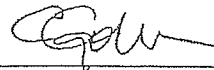
CLPENS EXECUTIVE, by their counsel



Koskie Minsky LLP

- 10 -

PLAINTIFFS, by their counsel



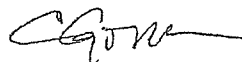
Koskie Minsky LLP

PELICAN COMMITTEE, by their counsel



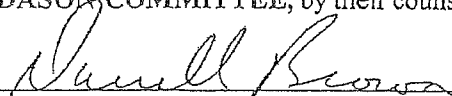
Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel



Koskie Minsky LLP

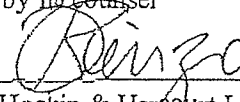
ADASON COMMITTEE, by their counsel



Sack Goldblatt Mitchell LLP

THE CANADA LIFE ASSURANCE  
COMPANY, by its counsel

By:



Osler, Hoskin & Harcourt LLP

This is EXHIBIT "E" referred to in the  
Affidavit of Jonathan Foreman  
sworn before me this . 8 day of March 2013.



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A Commissioner, etc.

Bradley James Adams, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 27, 2015.

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO MEMBERS OF THE INTEGRATION PARTIAL WINDUP

From: David Kidd, Alex Harvey, and Jean-Paul Marentette, Plaintiffs; on notice to all parties

This letter has been approved by the Court and is intended for all members of the Integration Partial Wind Up Sub-Class included in the Canada Life Class Action Settlement (the "Integration PWU Group"), which settlement was approved by the Ontario Superior Court of Justice by order dated January 27, 2012 (the "Settlement").

The purpose of this letter is to provide an update of events related to the Settlement since May 2012, as well as notice of next steps. Please be assured that, for those members who did not elect to transfer a lump sum amount out of the Plan in satisfaction of their basic pension benefits, and who therefore continue to be entitled to benefits under the Plan, nothing discussed in this letter affects benefits you have earned under the Plan, or the monthly benefit that you are currently receiving. Indexing of pensions under the Plan terms, for those eligible for it, is also unaffected. This letter describes proposed changes to the Settlement, as well as information regarding the source of payment of your pension benefits (for those members who continue to be entitled to benefits under the Plan).

In May 2012 we wrote to the Class to explain that the estimated value of the Integrated PWU Surplus had decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses). The principal factors leading to this decrease in estimated surplus were described as 1) a change in the prescribed actuarial assumptions arising from a drop in interest rates, which operate to significantly increase the cost of settling members' basic benefits; and 2) a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed.

The effect of this decrease in estimated surplus is that there will be substantially less surplus to distribute than the amount used to calculate the surplus share estimates communicated in the Member Information Packages sent out in March 2011. The surplus estimate in connection with the Integration PWU was always, however, a variable amount (dependent on factors such as interest rate movements) and accordingly, the amount of surplus to be distributed was never guaranteed, nor can it be guaranteed at this time.

The decrease in estimated surplus does not, however, impact your basic pension entitlement whatsoever.

With the assistance of Class Counsel, we have been working to find ways to address this situation. After lengthy negotiations, we have reached an agreement with Canada Life which gives effect to the Settlement while taking into account the changed economic circumstances.

As your court-appointed representatives, we support the changes to the Settlement that have been negotiated, which represent the best possible outcome in difficult economic circumstances.



The parties will be bringing a motion in Court to amend the Settlement in accordance with an agreed set of terms (the "Amended Settlement") on March 18, 2013 at 10 AM at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. At the hearing, the Court will consider any objections to or comments concerning the proposed amendment to the Settlement. Objections or comments are to be made in writing and should be faxed (416-204-2897), emailed (canadalifeclass@kmlaw.ca) or mailed to Koskie Minsky LLP at the address listed below on or before March 11, 2013. Koskie Minsky LLP will ensure that any objections and/or comments received are filed with the Court in advance of the hearing. Provided a Class member has made written submissions, subject to the Court's discretion, that person shall be entitled to make oral submissions at the hearing to consider the proposed amendment to the Settlement. As the Court will only be considering the amendments to the Settlement, objections must be limited to the substance of the proposed amendments, and should not address the Settlement itself, which has already been approved by the Court. Do not write directly to the judge.

#### Purchase of Annuities

The Settlement required Canada Life to purchase annuities for all members of the Integration PWU Group who did not elect to transfer a lump sum amount out of the Plan in satisfaction of their earned pension benefits. In the Spring of 2012 Canada Life approached seven Canadian insurance companies to solicit bids to provide these annuities, but none of the insurance companies chose to provide bids. Because this term of the Settlement therefore could not be implemented, Canada Life instead transferred the assets and liabilities related to these members of the Integration PWU Group to the ongoing portion of the Plan. For these members, their pensions will therefore be paid from the Plan, and not through an annuity purchased from an insurance company as originally contemplated under the Settlement.

Those members of the Integration PWU Group who had not elected to transfer a lump sum amount out of the Plan in satisfaction of their earned pension benefits received a letter from Mercer in January 2013, informing them that their pension would be paid from the ongoing Plan instead of through an annuity issued by an insurance company. In order to comply with regulatory requirements, these members were given a second opportunity to elect the lump sum transfer option instead.

#### Amount of Surplus

The economic factors contributing to the initial decrease in surplus reported to you in Spring, 2012 have persisted. As a result, the net *estimated* Integration PWU Surplus available for distribution as at August 31, 2012 was \$2.6 million.

Under the Amended Settlement, the parties have agreed to augment the surplus available for distribution as follows:

- Canada Life will waive its right to receive interest on its expense reimbursement from the Plan, in respect of the period from August 31, 2012 to December 31, 2013, and the amount otherwise payable to it will be added to the Integration PWU Surplus. It is

estimated that this will increase the Integration PWU Surplus by approximately \$800,000;

- Canada Life will waive reimbursement of a portion of its legal fees in the amount of \$500,000, and will apply this amount to the Integration PWU Surplus;
- In addition, Class Counsel will forego the legal fees that were approved by the Court for work to be completed after the settlement in January 2012, estimated at \$200,000, and this amount will be paid solely to the benefit of the Integration PWU members and to the Pensioners and Deferred Vested Members.

Under the Settlement, Class Members will receive at least the promised \$1000 minimum lump-sum payment. In accordance with the current Settlement, if any member of the Integration PWU Group, or any Pensioner or Deferred Vested Member, would be receiving less than \$1000 in surplus, the surplus shares for individuals receiving more than \$1000 would be reduced and a portion of their surplus would be re-allocated to those who would otherwise receive less than \$1000, to bring everyone up to \$1000. Under the Amended Settlement, however, Canada Life will make any top-up payments required to bring the surplus share for members of the Integration PWU Group up to that \$1000 level, if such a member would otherwise be receiving less than \$1000 (estimated cost to Canada Life of \$1,200,000).

While these aspects of the Amended Settlement are intended to increase the amount of Integration PWU Surplus ultimately available for distribution, it is important to note that the amount of surplus to be distributed cannot be guaranteed.

#### Possible Second Surplus Distribution

The Settlement provided for a one-time payment of surplus shares to members of the Integration Partial Wind Up, to Pensioners and Deferred Vested Members, and to members affected by the Prior Partial Wind-Ups. Under the Amended Settlement, the parties have now agreed that a second surplus distribution may also occur in the future, as further described below.

Under the Amended Settlement, there may be a second distribution of surplus to members of the Integration PWU Group and to eligible Pensioners and Deferred Vested members if a surplus exists as at December 31, 2014 (the "2014 Gross Surplus") related to the assets and liabilities transferred to the ongoing portion of the Plan in respect of the Integration PWU Group members who do not elect to transfer their benefits out of the Plan. If the certified actuarial report of the Plan actuary discloses such a surplus, then a portion of such surplus, calculated in accordance with the terms of the Amended Settlement, will be distributed to the Integration PWU Group and eligible Pensioners and Deferred Vested Members subject to the following calculations and limits:

- 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 assets and liabilities related to the Integration PWU Group members;

- \* 69.66% of the net Surplus will be paid to the Integration PWU Group and eligible Pensioners and Deferred Vested members, in accordance with the percentages set out in the Settlement;
- \* The total amount of all surplus payments to the Integration PWU Group and to eligible Pensioners and Deferred Vested Members under the possible second distribution will be capped at \$15 million;
- \* The amounts distributed to members of the Integration PWU Group and to eligible Pensioners and Deferred Vested Members will be calculated in accordance with the formula set out in the Amended Settlement, 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 Amended Settlement, 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.

The drop in the estimated Integration PWU surplus is a regrettable consequence of economic circumstances beyond the control of the parties. The Amended Settlement gives effect to intentions under the original Settlement based on the much lower surplus, but gives hope for a future distribution of surplus if the underlying economic assumptions improve. We recommend the Amended Settlement as fair and reasonable, and in the best interests of the Class as a whole.

The Settlement for PWU members of the Pelican, Adason and Indago groups, and the contribution holidays for active Plan members, are not changing under the Amended Settlement.

A copy of the proposed amendment to the Settlement can be found on our Representative Counsel's website, at <http://www.kmlaw.ca/Case-Central/Overview/?rid=56>.

#### Next Steps

As stated above, the parties are bringing a motion for approval of the Amended Settlement on March 18, 2013, at 10:00 a.m. Any Class member who wishes to object to the amendments to the Settlement may do so by submitting their objection in writing to Class Counsel at the following address by no later than March 11, 2013:

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

If the amendment to the Settlement is approved, the plaintiffs will file an application in the Quebec Superior Court for recognition and enforcement of the Court Approval in Ontario. Following the court processes, the parties will seek the required regulatory approvals.

Assuming all the court and regulatory approvals are obtained, the surplus distribution will proceed.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalifeclass@kmlaw.ca](mailto:canadalifeclass@kmlaw.ca)

PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT  
OF JUSTICE

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO PENSIONERS AND DEFERRED/VESTED MEMBERS

From: David Kidd, Alex Harvey, and Jean-Paul Marentette, Plaintiffs; on notice to all parties

This letter has been approved by the Court and is intended for all Pensioners, Deferred/Vested, and Quebec Cash-Out Members (or the spouses, estates, heirs, beneficiaries and representatives of those who have died) included in the Canada Life Class Action Settlement, approved by the Ontario Superior Court of Justice by order dated January 27, 2012 (the "Settlement").

The purpose of this letter is to provide an update of events related to the Settlement since May 2012, as well as notice of next steps. Please be assured that, for those members who continue to be entitled to benefits under the Plan, nothing discussed in this letter affects benefits you have earned under the Plan, or the monthly benefit that you are currently receiving. Indexing of pensions under the Plan terms, for those eligible for it, is also unaffected. This letter describes proposed changes to the Settlement, as well as information regarding the source of payment of your pension benefits (for those members who continue to be entitled to benefits under the Plan).

In May 2012 we wrote to the Class to explain that the estimated value of the Integrated PWU Surplus had decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses). The principal factors leading to this decrease in estimated surplus were described as 1) a change in the prescribed actuarial assumptions arising from a drop in interest rates, which operate to significantly increase the cost of settling members' basic benefits; and 2) a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed.

The effect of this decrease in estimated surplus is that there will be substantially less surplus to distribute than the amount used to calculate the surplus share estimates communicated in the Member Information Packages sent out in March 2011. The surplus estimate in connection with the Integration PWU was always, however, a variable amount (dependent on factors such as interest rate movements) and accordingly, the amount of surplus to be distributed was never guaranteed, nor can it be guaranteed at this time.

The decrease in estimated surplus does not, however, impact your basic pension entitlement whatsoever.

With the assistance of Class Counsel, we have been working to find ways to address this situation. After lengthy negotiations, we have reached an agreement with Canada Life which gives effect to the Settlement while taking into account the changed economic circumstances.

As your court-appointed representatives, we support the changes to the Settlement that have been negotiated, which represent the best possible outcome in difficult economic circumstances.

The parties will be bringing a motion in Court to amend the Settlement in accordance with an agreed set of terms (the "Amended Settlement") on March 18, 2013 at 10 AM at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. At the hearing, the Court will consider any objections to or comments concerning the proposed amendment to the Settlement. Objections or comments are to be made in writing and should be faxed (416-204-2897), emailed (canadalife@kmlaw.ca) or mailed to Koskie Minsky LLP at the address listed below on or before March 11, 2013. Koskie Minsky LLP will ensure that any objections and/or comments received are filed with the Court in advance of the hearing. Provided a Class member has made written submissions, subject to the Court's discretion, that person shall be entitled to make oral submissions at the hearing to consider the proposed amendment to the Settlement. As the Court will only be considering the amendments to the Settlement, objections must be limited to the substance of the proposed amendments, and should not address the Settlement itself, which has already been approved by the Court. Do not write directly to the judge.

Amount of Surplus

The economic factors contributing to the initial decrease in surplus reported to you in Spring, 2012 have persisted. As a result, the net *estimated* Integration PWU Surplus available for distribution as at August 31, 2012 was \$2.6 million.

Under the Amended Settlement, the parties have agreed to augment the surplus available for distribution as follows:

- Canada Life will waive its right to receive interest on its expense reimbursement from the Plan, in respect of the period from August 31, 2012 to December 31, 2013, and the amount otherwise payable to it will be added to the Integration PWU Surplus. It is estimated that this will increase the Integration PWU Surplus by approximately \$800,000;
- Canada Life will waive reimbursement of a portion of its legal fees in the amount of \$500,000, and will apply this amount to the Integration PWU Surplus;
- In addition, Class Counsel will forego the legal fees that were approved by the Court for work to be completed after the settlement in January 2012, estimated at \$200,000, and this amount will be paid solely to the benefit of the Integration PWU members and to the Pensioners and Deferred Vested Members.

Under the Settlement, Class Members will receive at least the promised \$1000 minimum lump-sum payment. In accordance with the current Settlement, if any member of the Integration PWU Group, or any Pensioner or Deferred Vested Member, would be receiving less than \$1000 in surplus, the surplus shares for individuals receiving more than \$1000 would be reduced and a portion of their surplus would be re-allocated to those who would otherwise receive less than \$1000, to bring everyone up to \$1000. Under the Amended Settlement, however, Canada Life will make any top-up payments required to bring the surplus share for members of the Integration PWU Group up to that \$1000 level, if such a member would otherwise be receiving less than \$1000 (estimated cost to Canada Life of \$1,200,000).

While these aspects of the Amended Settlement are intended to increase the amount of Integration PWU Surplus ultimately available for distribution, it is important to note that the amount of surplus to be distributed cannot be guaranteed.

Possible Second Surplus Distribution

The Settlement provided for a one-time payment of surplus shares to members of the Integration Partial Wind Up, to Pensioners and Deferred Vested Members, to Quebec Cash-Out Members, and to members affected by the Prior Partial Wind-Ups. Under the Amended Settlement, the parties have now agreed that a second surplus distribution may also occur in the future, as further described below.

Under the Amended Settlement, there may be a second distribution of surplus to members of the Integration PWU Group, to eligible Pensioners and Deferred Vested members, and to Quebec Cash-Out Members, if a surplus exists as at December 31, 2014 (the "2014 Gross Surplus") related to the assets and liabilities transferred to the ongoing portion of the Plan in respect of the Integration PWU Group members who do not elect to transfer their benefits out of the Plan. If the certified actuarial report of the Plan actuary discloses such a surplus, then a portion of such surplus, calculated in accordance with the terms of the Amended Settlement, will be distributed to these groups subject to the following calculations and limits:

- 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 assets and liabilities related to the Integration PWU Group members;
- 69.66% of the net Surplus will be paid to the Integration PWU Group, to eligible Pensioners and Deferred Vested members, and to Quebec Cash-Out Members, in accordance with the percentages set out in the Settlement;
- The total amount of all surplus payments to the Integration PWU Group, to eligible Pensioners and Deferred Vested Members, and to Quebec Cash-Out Members under the possible second distribution will be capped at \$15 million;
- The amounts distributed to members of the Integration PWU Group, to eligible Pensioners and Deferred Vested Members, and to Quebec Cash-Out Members will be calculated in accordance with the formula set out in the Amended Settlement, 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 Amended Settlement, 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.

The drop in the estimated Integration PWU surplus is a regrettable consequence of economic circumstances beyond the control of the parties. The Amended Settlement gives effect to intentions under the original Settlement based on the much lower surplus, but gives hope for a future distribution of surplus if the underlying economic assumptions improve. We recommend the Amended Settlement as fair and reasonable, and in the best interests of the Class as a whole.

The Settlement for members of the Pelican, Adason and Indago groups, and the contribution holidays for active Plan members, are not changing under the Amended Settlement.

A copy of the proposed amendment to the Settlement can be found on our Representative Counsel's website, at <http://www.kmlaw.ca/Case-Central/Overview/?rid=56>.

#### Next Steps

As stated above, the parties are bringing a motion for approval of the Amended Settlement on March 18, 2013, at 10:00 a.m. Any Class member who wishes to object to the amendments to the Settlement may do so by submitting their objection in writing to Class Counsel at the following address by no later than March 11, 2013:

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

If the amendment to the Settlement is approved, the plaintiffs will file an application in the Quebec Superior Court for recognition and enforcement of the Court Approval in Ontario. Following the court processes, the parties will seek the required regulatory approvals.

Assuming all the court and regulatory approvals are obtained, the surplus distribution will proceed.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalifecclass@kmlaw.ca](mailto:canadalifecclass@kmlaw.ca)

**PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE**



THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO ACTIVE EMPLOYEE CLASS MEMBERS

From: David Kidd, Alex Harvey, and Jean-Paul Marentette, Plaintiffs; on notice to all parties

This letter has been approved by the Court and is intended for all individuals who are members of the Active Sub-Class included in the Canada Life Class Action Settlement (the "Active Group"), which settlement was approved by the Ontario Superior Court of Justice by order dated January 27, 2012 (the "Settlement"). The Active Group includes all active members of the Plan as of June 30, 2005 plus any new members up to October 28, 2011 (or the spouses, estates, heirs, beneficiaries and representatives of those who have died).

The purpose of this letter is to provide an update of events related to the Settlement since May 2012, as well as notice of next steps. Please be assured that nothing discussed in this letter affects benefits you have earned under the Plan. This letter describes proposed changes to the Settlement.

In May 2012 we wrote to the Class to explain that the estimated value of the Integrated Partial Wind-up Surplus (the "Integration PWU Surplus") had decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses). The principal factors leading to this decrease in estimated surplus were described as 1) a change in the prescribed actuarial assumptions arising from a drop in interest rates, which operate to significantly increase the cost of settling members' basic benefits; and 2) a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed.

We also advised you that, as a practical matter, the reduction in the estimated Integration PWU Surplus does not affect your entitlement under the Settlement. In accordance with the Settlement, active Class Members who are eligible to participate in the Settlement will receive a two year "contribution holiday" under the Plan, which means they will not have to make employee contributions to the Plan during that time. Active members who are otherwise eligible for this contribution holiday but who have left employment before the holiday begins, will receive an equivalent cash payment. The contribution holiday will not be funded out of the Integration PWU Surplus, and therefore is not affected by the decrease in the Integration PWU Surplus.

With the assistance of Class Counsel, we have been working to find ways to address the reduction in the estimated Integration PWU Surplus. After lengthy negotiations, we have reached an agreement with Canada Life which gives effect to the Settlement while taking into account the changed economic circumstances. The proposed amendment to the Settlement includes a possible second surplus distribution to members of the Integration Partial Wind Up and to eligible pensioners and deferred vested members.

None of the changes in the Amended Settlement affect the entitlements of the Active Group under the Settlement.

A copy of the proposed amendment to the Settlement can be found on our Representative Counsel's website, at <http://www.kmlaw.ca/Case-Central/Overview/?rid=56>.

As your court-appointed representatives, we support the changes to the Settlement that have been negotiated, which represent the best possible outcome in difficult economic circumstances.

#### Next Steps

The parties will be bringing a motion in Court to amend the Settlement in accordance with an agreed set of terms (the "Amended Settlement") on March 18, 2013 at 10 AM at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. At the hearing, the Court will consider any objections to or comments concerning the proposed amendment to the Settlement. Objections or comments are to be made in writing and should be faxed (416-204-2897), emailed ([canadalifecclass@kmlaw.ca](mailto:canadalifecclass@kmlaw.ca)) or mailed to Koskie Minsky LLP at the address listed below on or before March 11, 2013. Koskie Minsky LLP will ensure that any objections and/or comments received are filed with the Court in advance of the hearing. Provided a Class member has made written submissions, subject to the Court's discretion, that person shall be entitled to make oral submissions at the hearing to consider the proposed amendment to the Settlement. As the Court will only be considering the amendments to the Settlement, objections must be limited to the substance of the proposed amendments, and should not address the Settlement itself, which has already been approved by the Court. Do not write directly to the judge.

Any Class member who wishes to object to the amendments to the Settlement may do so by submitting their objection in writing to Class Counsel at the following address by no later than March 11, 2013:

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

If the amendment to the Settlement is approved, the plaintiffs will file an application in the Quebec Superior Court for recognition and enforcement of the Court Approval in Ontario. Following the court processes, the parties will seek the required regulatory approvals.

Assuming all the court and regulatory approvals are obtained, the surplus distribution will proceed.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalifecclass@kmlaw.ca](mailto:canadalifecclass@kmlaw.ca)

**PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE**

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")  
IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS  
NOTICE TO MEMBERS OF ADASON, PELICAN AND INDAGO POTENTIAL  
PARTIAL WINDUPS

From: Lin Yeomans, Susan Henderson, Garry C. Yip and Louie Nuspl, Plaintiffs; on notice to all parties

This letter has been approved by the Court and is intended for all members of the Pelican, Adason and Indago Partial Wind Up Sub-Classes (the "Prior PWUs") included in the Canada Life Class Action Settlement (the "Prior PWU Group"), which settlement was approved by the Ontario Superior Court of Justice by order dated January 27, 2012 (the "Settlement").

The purpose of this letter is to provide an update of events related to the Settlement since May 2012, as well as notice of next steps. Please be assured that, for those members who did not elect to transfer a lump sum amount out of the Plan in satisfaction of their basic pension benefits, and who therefore continue to be entitled to benefits under the Plan, nothing discussed in this letter affects benefits you have earned under the Plan, or the monthly benefit that you are currently receiving. Indexing of pensions under the Plan terms, for those eligible for it, is also unaffected. This letter describes proposed changes to the Settlement, as well as information regarding the source of payment of your pension benefits (for those members who continue to be entitled to benefits under the Plan).

In May 2012 we wrote to the Class to explain that the estimated value of the Integrated Partial Wind-up Surplus (the "IPWU Surplus") had decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses). The principal factors leading to this decrease in estimated surplus were described as 1) a change in the prescribed actuarial assumptions arising from a drop in interest rates, which operate to significantly increase the cost of settling members' basic benefits; and 2) a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed.

We also advised that the surpluses related to the Prior PWUs were not similarly affected. Members of the Prior PWUs elected the form of pension benefit at the time their employment was terminated. The expected annuity purchases were already factored into the surplus estimate. In addition, the amount of liabilities relative to the amount of assets in the Prior PWUs was less than in the Integration Partial Wind Up. Consequently, the impact of lower interest rates on the level of surplus of the Prior PWUs was relatively less than the impact on the Integration Partial Wind Up surplus amount. The surplus estimates communicated to you in the March, 2011 Information Packages, along with Class Members' individual surplus share estimates, are still reasonable estimates of what you will likely receive under the Settlement. It is important to note,

however, that until surplus is actually distributed the surplus amounts are still estimates, and may go up or down.

With the assistance of Class Counsel, we have been working to find ways to address the reduction in the estimated IPWU Surplus. After lengthy negotiations, we have reached an agreement with Canada Life which gives effect to the Settlement while taking into account the changed economic circumstances. The proposed amendment to the Settlement includes a possible second surplus distribution to members of the Integration Partial Wind Up and to eligible pensioners and deferred vested members only.

As your court-appointed representatives, we support the changes to the Settlement that have been negotiated, which represent the best possible outcome in difficult economic circumstances.

The only change introduced by the Amended Settlement which directly impacts the members of the Prior PWUs is that Canada Life will have the discretion to purchase annuities on your behalf, or to pay your pension from the ongoing portion of the Plan. As a practical matter, this only affects members who did not already settle their basic benefits from the Plan.

A copy of the proposed amendment to the Settlement can be found on our Representative Counsel's website, at <http://www.kmlaw.ca/Case-Central/Overview/?rid=56>.

#### Next Steps

The parties will be bringing a motion in Court to amend the Settlement in accordance with an agreed set of terms (the "Amended Settlement") on March 18, 2013 at 10 AM at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. At the hearing, the Court will consider any objections to or comments concerning the proposed amendment to the Settlement. Objections or comments are to be made in writing and should be faxed (416-204-2897), emailed ([canadalifeclass@kmlaw.ca](mailto:canadalifeclass@kmlaw.ca)) or mailed to Koskie Minsky LLP at the address listed below on or before March 11, 2013. Koskie Minsky LLP will ensure that any objections and/or comments received are filed with the Court in advance of the hearing. Provided a Class member has made written submissions, subject to the Court's discretion, that person shall be entitled to make oral submissions at the hearing to consider the proposed amendment to the Settlement. As the Court will only be considering the amendments to the Settlement, objections must be limited to the substance of the proposed amendments, and should not address the Settlement itself, which has already been approved by the Court. Do not write directly to the judge.

Any Class member who wishes to object to the amendments to the Settlement may do so by submitting their objection in writing to Class Counsel at the following address by no later than March 11, 2013:

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

If the amendment to the Settlement is approved, the plaintiffs will file an application in the Quebec Superior Court for recognition and enforcement of the Court Approval in Ontario. Following the court processes, the parties will seek the required regulatory approvals.

Assuming all the court and regulatory approvals are obtained, the surplus distribution will proceed.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalifeclaim@kmlaw.ca](mailto:canadalifeclaim@kmlaw.ca). For members of the Adason Sub-Class, you may also contact Darrell Brown, counsel for the Adason Sub-Class at 416-979-4050 or via email at [DBrown@sgmlaw.com](mailto:DBrown@sgmlaw.com).

PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE

This is EXHIBIT "F" referred to in the  
Affidavit of Jonathan Foreman  
sworn before me this 8 day of March 2013.



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A Commissioner, etc.

Bradley James Adams, a Commissioner,  
etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 27, 2015.

Clio M. Godkewitsch

From: Clio M. Godkewitsch  
 Sent: March-07-13 1:49 PM  
 To: 'anne\_carey@rogers.com'  
 Cc: Canada Life Main Pension Class Action  
 Subject: RE: Canada Life Class Action

Ms. Carey,

We acknowledge receipt of your email below. We will bring your objection to the Court's attention. Should you wish to make submissions to the Court regarding the fairness of the proposed amendments to the Surplus Sharing Agreement, you may attend as Osgoode Hall on March 18, 2013 at 10 a.m. As noted in the Notice to the Class, your right to make submissions at the hearing will be subject to the Court's discretion, and the Court will only be considering amendments to the Settlement. As such, objections must be limited to the substance of the proposed amendments, and should not address the Settlement itself, which has already been approved.

Clio

From: anne\_carey@rogers.com [mailto:anne\_carey@rogers.com]  
 Sent: February-21-13 6:36 PM  
 To: Clio M. Godkewitsch  
 Cc: Canada Life Main Pension Class Action; clpens@rogers.com; Mark Zigler; Anthony Guindon; jan\_durst@rogers.com  
 Subject: Re: Canada Life Class Action

Thank you for your response.

Interest Rates have been at historic lows since 2003 when GWL laid off 3K plus Canada Lifers, and every single piece of communication since then in respect of our surplus, never once mention, highlighted, referenced or pointed out to the reality that you have outlined below. On the contrary, it has been communicated several times the amount of approx. \$38K I would be receiving.

I am not an actuary, however, it appears to me that someone...made a grossly incompetent forecast on the uptake numbers of CLA pensions remaining with CLA - resulting in this situation - which - from my perspective has very little if anything to do with low interests. We are dealing with one of Canadas largest Insurers, surely they know going back to 2007 the ultimately long term effect of these said interest rates.

Regardless, I am not agreeing to this amendment, and if push comes to shove, that \$1K piddly amount I shall be directing towards a private Civil Action.

In the meantime, myself and few others are soliciting Media assistance in bringing this to the attention of any and all other poor joe-blows like ourselves, who have been taken on.

Great Waste of Life - that is exactly the words used back in 2003 - by other employees of companies taken over by them - how true.

Anne Carey

-- On Thu, 2/21/13, Clio M. Godkewitsch <[cgodkewitsch@kmlaw.ca](mailto:cgodkewitsch@kmlaw.ca)> wrote:

From: Clio M. Godkewitsch <[cgodkewitsch@kmlaw.ca](mailto:cgodkewitsch@kmlaw.ca)>  
 Subject: Canada Life Class Action  
 To: [anne\\_carey@rogers.com](mailto:anne_carey@rogers.com)  
 Cc: "Canada Life Main Pension Class Action" <[canadalifecclass@koskieminsky.com](mailto:canadalifecclass@koskieminsky.com)>, [clpens@rogers.com](mailto:clpens@rogers.com), "Mark Zigler" <[mzigler@kmlaw.ca](mailto:mzigler@kmlaw.ca)>, "Anthony Guindon" <[aguindon@kmlaw.ca](mailto:aguindon@kmlaw.ca)>, [jan\\_durst@rogers.com](mailto:jan_durst@rogers.com)  
 Date: Thursday, February 21, 2013, 8:31 PM

Dear Ms. Carey,

Your email has been forwarded to me for response.

There are no meetings with Class Members scheduled to take place before the Court hearing on March 18, however we are always accessible to respond to questions, and will do so throughout this process.

The settlement has already been approved by the Court and that decision cannot be reversed. The original settlement – which members had the opportunity to consent to – was incapable of being implemented for the reasons described in the letters to Class members. Amending the settlement in the proposed manner makes it possible to give effect to the agreement, as well as provide some hope for a future surplus distribution. Canada Life did not believe that the agreement was incapable of being implemented, and was prepared to go ahead in any event, but we were able to negotiate some terms that would secure at least the minimum payments for members, and create an opportunity for another distribution if economic circumstances improve.

We appreciate the significant frustration among the Class. No action against the Plan actuaries is under consideration or has any chance of success. It is important to note that the decline in surplus is NOT as a result mismanagement of pension assets. In fact, the assets have grown over the period of this litigation. However, the liabilities – i.e. the cost of paying pensions to all the members of the Integration Partial Wind Up group – have also increased in the same period, to the extent that they have eaten away at the surplus. This is primarily because of low interest rates: when interest rates are low, it costs more to buy an annuity to pay for a pension. Prevailing interest rates are not within the control of the parties, nor did anyone envision that they would decline to historically low levels. This is not a case where someone is at fault, rather it is the unfortunate consequence of poor economic circumstances.

We realize this is cold comfort, but we cannot change the facts. Please be reassured that your Court-appointed representatives, who are also members of the Integration Partial Wind Up Group like you and are affected precisely the same way, have acted in the best interests of all Class members at every step of the process, and are committed to seeing this through to conclusion.

Clio

From: [anne\\_carey@rogers.com](mailto:anne_carey@rogers.com) <[anne\\_carey@rogers.com](mailto:anne_carey@rogers.com)>  
 Subject:  
 To: "[clpens@rogers.com](mailto:clpens@rogers.com)" <[clpens@rogers.com](mailto:clpens@rogers.com)>  
 Cc: "[jan\\_durst@rogers.com](mailto:jan_durst@rogers.com)" <[jan\\_durst@rogers.com](mailto:jan_durst@rogers.com)>  
 Date: Monday, February 18, 2013, 8:59 PM



When are we having a meeting to discuss this criminal handling of our Surplus? Why are the group members not having a vote on this amendment? Has anyone thought of going to the media? Bring another against the company actuaries? Any "reasonable" man or woman would agree we were all led down the garden path on this one.....Yours very truly and taking action.....Anne Carey

Clio M. Godkewitsch

Koskie Minsky LLP  
Barristers & Solicitors  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON  
M5H 3R3

Tel: 416.595.2120  
Fax: 416.204.2827

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Uma Ratnam

---

From: Anthony Guindon  
Sent: February-21-13 2:36 PM  
To: 'Henry\_Rachfalowski@manulife.com'  
Subject: Canada Life

Dear Mr. Rachfalowski,

We acknowledge receipt of your email dated February 20, 2013. We will bring your objection to the Court's attention. Should you wish to make submission to the Court regarding the fairness of the proposed amendments to the Surplus Sharing Agreement, you may attend at the motion at Osgoode Hall on March 18, 2013, at 10 a.m. As is noted in the Notice to the Class, your right to make such submissions at the hearing will be subject to the Court's discretion, and the Court will only be considering the amendment to the Settlement. As such, objections must be limited to the substance of the proposed amendments to the Settlement, and should not address the Settlement itself, which has already been approved by the Court.

Regards,

ANTHONY GUINDON  
Koskie Minsky LLP  
900-20 Queen Street West  
Toronto, Ontario  
M5H 3R3  
Tel: 416-595-2118  
Fax: 416-204-2826  
email: [aguindon@kmlaw.ca](mailto:aguindon@kmlaw.ca)

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Uma Ratnam

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From: Henry Rachfalowski <Henry\_Rachfalowski@manulife.com>  
 Sent: February-20-13 4:53 PM  
 To: Canada Life Main Pension Class Action  
 Subject: Changes to Settlement

To Whom It May Concern,

I am opposed to the changes proposed in the undated Notice to Members of the Integration Partial Windup (February 2013 on your website). I believe that all fees and expenses should be revisited and I believe that the distribution of any funds should be done on a pro-rata basis.

Henry A. Rachfalowski  
 Vice President & Senior Managing Director, Canadian Credit  
 Manulife Financial  
 200 Bloor Street East, NT4, B15  
 Toronto ON M4W 1E5  
 Bus: 416-852-3773  
 Fax: 416-852-6333  
 Exec. Assistant: Deborah Halls (416) 852-4098 x 224098

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Uma Ratnam

From: Canada Life Main Pension Class Action  
 Sent: February-22-13 2:30 PM  
 To: 'oktruong@yahoo.ca'  
 Subject: CL - Oanh Emily Truong

Dear Oanh,

Thank you for your email. In terms of your question regarding the potential second surplus distribution, we are not in a position to estimate whether there will in fact be a sufficient surplus to generate a second distribution, nor the amount of such a surplus. The amendment simply specifies that any second distribution will be capped at a maximum of \$15 million. While we hope such a distribution will take place, much will depend upon the future economic conditions.

We will bring your objection to the Court's attention. Should you wish to make submission to the Court regarding the fairness of the proposed amendments to the Surplus Sharing Agreement, you may attend at the motion at Osgoode Hall on March 18, 2013, at 10 a.m. As is noted in the Notice to the Class, your right to make such submissions at the hearing will be subject to the Court's discretion, and the Court will only be considering the amendment to the Settlement. As such, objections must be limited to the substance of the proposed amendments to the Settlement, and should not address the Settlement itself, which has already been approved by the Court.

Regards,

Communications Department  
 Koskie Minsky LLP | Barristers & Solicitors  
 Toll-Free Hotline 1-800-286-2266 / Fax 416-204-2897  
 E-mail [canadalifecclass@kmlaw.ca](mailto:canadalifecclass@kmlaw.ca)  
<http://www.kmlaw.ca/canadalifecclass>

If you no longer wish to receive our email messages, please email us at [canadalifecclass@kmlaw.ca](mailto:canadalifecclass@kmlaw.ca)

--- On Thu, 2/21/13, Oanh Truong <[oktruong@yahoo.ca](mailto:oktruong@yahoo.ca)> wrote:

From: Oanh Truong <[oktruong@yahoo.ca](mailto:oktruong@yahoo.ca)>  
 Subject: Re: Recent Developments  
 To: "Pension Group" <[clpens@rogers.com](mailto:clpens@rogers.com)>  
 Date: Thursday, February 21, 2013, 12:04 PM

Dear Sirs, Madams,

Thank you for letting me know.

I understand the difficult economic time, interest rate can effect the surplus.

However, it should not be a main reason to reduce the PWU substantially.

It is Employee's pension plan, our surplus. We already give up already so much.

In my opinion, no matter what we should receive closed to estimated.

My concern is the possible second distribution. Is it going to be 15 millions??

I am going to object to the amendments.

Hopefully the issue will be resolved fairly, reasonable.

Sincerely ,

Oanh Emily Truong  
416 251 4052  
416 816 9955  
[Oktruong@yahoo.ca](mailto:Oktruong@yahoo.ca)

On 2013-02-20, at 12:32 PM, "Pension Group" <[clpens@rogers.com](mailto:clpens@rogers.com)> wrote:

In case anyone has not received the February 2013 letter from Koskie Minsky LLP, this is to let you know that their website has been updated to reflect the most Recent Developments concerning the Surplus Settlement. Copies of the letters sent to affected groups are available here.

Uma Rathern

---

From: Paul Ludzki <pludzki@sympatico.ca>  
Sent: March-06-13 10:01 PM  
To: Canada Life Main Pension Class Action  
Subject: Letter of Objection to Canada Life Class Action Settlement Amendments  
Attachments: CLA Settlement Objection.doc; ATT1818002.txt

My Letter of Objection to the amended settlement in the Canada Life class action proceedings is attached.

To Counsel for the Canada Life ex-employees and to the Ontario Superior Court

Re: Canada Life Employees Pension Plan – Class Action Proceedings and Amended Settlement Proposal

I object to the amended settlement on the grounds that it violates the principle of natural justice. It rewards Canada Life (Great West Life) for a decade of resistance to paying the employees their share of the pension surplus, and it penalizes the employees for spending all that time negotiating and eventually agreeing to a dramatically different settlement than what we are presented with now.

The numbers speak for themselves. During the ten years that have passed since Great West Life spent \$7.4 Billion dollars to buy Canada Life, Great West Life recorded an annual profit of around \$2 Billion per year (more, in most years). All this time the company held on to the estimated \$100 Million pension surplus, resisting ex-employees' claim to it, knowing that the employees are losing years of opportunity to enjoy their share of the money while the company merrily goes along making money regardless of what happens to the pension surplus. Finally a settlement is reached, on the basis of which the ex-employees are given an estimated payout which sounds significant, so we agree to the settlement. However the settlement is engineered so that the wealthy insurance company doesn't simply pay the settlement amount to the employees, but rather it is "required" to ask other insurance companies to provide annuities to the plaintiffs. Lo and behold, these other insurance companies decline to do so, and Great West/Canada Life, after counting another \$2+ billion dollar profit in the ensuing year, is able to plead poverty and an inability to pay out even the half of the \$100M surplus it had settled for, instead declaring that it is now only able to pay 3% of the original surplus, on the basis of "a change in the prescribed actuarial assumptions" and the fact that a lot of the ex-employees selected one of the pension options they were offered by the company (which pensions, incidentally, have been frozen for 10 years because of the company's intransigence and preference for legal manoeuvring.)

Great West Life (Canada Life) can easily afford to pay the amounts that were estimated in the original settlement proposal. Hiding the surplus back inside the ongoing pension plan does not change that fact. Neither do "difficult economic circumstances" change that fact. (At \$2+ Billion profit per year, Great West Life is clearly not suffering from difficult economic circumstances.)

The plaintiffs and their lawyers should not accept this settlement and the court should not enforce it. The court should enforce a payout in line with the numbers that were presented to the ex-employees when the settlement was first proposed. Anything less is a violation of the trust and goodwill expressed at the time by the employees, and a perversion of the settlement agreement which only benefits the company.

Paul Ludzki  
43 Lawrence Ave. W.,  
Toronto, ON M5M 1A3  
Canada Life employee 1994-2004

Piche, Amanda

---

From: dfilipovi@sympatico.ca  
 Sent: March-07-13 10:24 PM  
 To: Canada Life Main Pension Class Action  
 Cc: clpens@rogers.com  
 Subject: revised \* re. Canada Life Pension Plan: Objections/Comments for hearing of March 18, 2013

\*\*\* Please use this version instead of the one send earlier today. It corrects a date from Feb. 4/13 to Feb. 14/13 \*\*\*

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*The following letter is entrusted to Koskie Minsky LLP for filing with the Court in advance of the hearing*

Objections / Comments to the amendments to the Settlement for consideration by Ontario Superior Court

While the letter of the law may have been adhered to in "managing" the surplus funds from an estimated \$92,994,000 at June 30, 2005 (Line 33 of the Feb. 6/12 document from Ontario Superior Court) to an estimated \$2.6 million at August 31, 2012 (letter of Feb. 14/13 from CLPENS), the Smell Test has been failed, badly.

All the waiving of rights to receive interest (a measly \$800G), waiving reimbursement of legal fees (a meager \$500G), foregoing legal fees (a paltry \$200G) mentioned in the letter of Feb. 14/13 is much too little, much too late – just insulting. The parties responsible for the stewardship of these funds should have been exercising sound action years earlier.

The letter of Feb. 14/13 stated "The drop in the estimated Integration PWU surplus is a regrettable consequence of economic circumstances beyond the control of the parties." This hand-washing of any responsibility and utter lack of accepting accountability is very disappointing.

Based on the atrocious governance of funds by the parties charged with stewardship of the moneys of +2,000 others I cannot believe that the proposed settlement represents the best possible outcome. I therefore wish to formally object to the proposed amendments to the Settlement.

Sincerely,  
 David Filipovich  
 Canada Life employee 1989 - 2003



Piche, Amanda

---

From: Fred Taggart <fjtaggart@yahoo.com>  
Sent: March-08-13 8:01 AM  
To: Canada Life Main Pension Class Action  
Subject: Amended Settlement Court Proceedings on March 18, 2013  
Attachments: CLA-CLPENS Amendment - Response to Court PDF.pdf

Attached is commentary that I wish to have presented to the Court for consideration in the above matter.

I intend to share this document later today with each member of the CLPENS Executive Committee and then later again more broadly with plan members who may have an interest in these proceedings.

Please confirm receipt of the attached PDF file and please also confirm that this commentary will be presented to the Court prior to March 18, 2013.

Sincerely,

Fred Taggart

4204 Colonial Drive,  
Mississauga, ON L5L 4B9

March 8, 2013

The Honourable Justice Perell  
Ontario Superior Court of Justice

#### Background

I am a member of the Canada Life Pension Plan and a former executive at Canada Life. I was employed by Canada Life from 1973 until 2003. My last position at Canada Life was Vice President, Individual Insurance where I was responsible for the individual insurance operations in Canada. Prior to that, I was Vice President, Investments and Pensions and was responsible for Group Pension operations and individual wealth accumulation products in Canada. I was part of the executive team that lost employment after the acquisition of Canada Life by Great-West Life in 2003. More than 2100 other employees of Canada Life also lost their jobs during this period.

I am also a former member (Oct, 2005 to Oct, 2007) of the CLPENS Executive Committee. I resigned from the Executive Committee in late October, 2007. Since that time, and until now, I did not speak against the settlement and I voted in support of the settlement that was presented in March, 2011.

I am very concerned with the disappearance of surplus from the Pension Plan. I am also concerned with the process that has been followed to get us to the point where individual plan members have to approach the court to be heard.

This proposed amendment is a hugely material change to the original settlement, and the settlement as amended would not have the support of members.

#### Where did the surplus go?

The original settlement proposed distributing \$62m of surplus. This was down from a reported PWU surplus of \$103m in 2006. The reasons given for the sharp drop were:

- 1) less investment income than anticipated
- 2) a change in actuarial assumptions - now expected that more people will opt for a guaranteed benefit rather than a commuted value

That brought the surplus down to \$72m and, net of expenses the expected distribution was \$62m.

After the settlement was approved by the court, the reported surplus dropped from \$62m to less than \$10m. The reasons given for this second sharp drop were:

- 1) persistent low interest rates which increase the cost of the basic benefits
- 2) a change in actuarial assumptions ... now recognize that even more people opted for a guaranteed benefit rather than a commuted value

It should be noted that both the low interest environment and the number of people opting for a guaranteed benefit were known well before the court date.

As a prelude to this amendment now before the court, we hear that the surplus has dropped to a mere \$2.6m and it may be enhanced slightly with forgiveness of interest charges and by waiving a small portion of the legal fees. The reasons given for this latest drop in surplus are:

- 1) persistent low interest rates which increase the cost of basic benefits
- 2) a much higher take-up rate than anticipated of those opting for a guaranteed benefit rather than a commuted value

We also learn that Canada Life was unable to find a provider of insured annuities for this group of members (those in the Partial Wind-up) despite shopping the opportunity among 7 life insurers in Canada. Instead, Canada Life will be "forced" to keep paying the members from the fund.

Some questions the Court may wish to explore are:

- 1) Why would the number of people opting for a guaranteed benefit rather than a commuted value have any effect on the surplus? These two options are supposed to be actuarially equivalent. Of course they will only be actuarially equivalent if they are valued using the same assumptions.

These two options in fact use widely different assumptions. Canada Life calculates the commuted values as of the member's termination date. Therefore the actuarial assumptions are based on a standard effective in 1993 and uses interest and mortality assumptions that are 10 years and 30 years respectively out of date. Those opting for a commuted value are assumed to earn 6% annually on the money - for each and every year from 2003 onwards. This assumption drives down the commuted value. The mortality assumption is based on mortality tables from 1983 and therefore ignores that people now live longer. By overstating interest rates and

understating how long people will live, the commuted value (i.e. the value of the pension) is significantly understated. The high take-up rate of those opting for a guaranteed benefit should come as a surprise to no-one. Members simply cannot replace the lost income stream with the commuted values offered.

Now let's look at those who opt for guaranteed benefits – how are their pensions valued? The actuarial assumptions used to value those pensions are the very opposite of those used for the commuted values. Not only do they now reflect longer lifespans (as they should) but they also assume that today's historically low interest rates will persist into the future. This increases the "assumed" cost of the benefit and eats into the surplus.

So, again, the question is, why would the value of the pension differ depending on whether the benefit is left in the fund or taken out? Actuarial standards set in 1993 never anticipated that disbursements would be made 20 years later using those standards, or that plan sponsors would conveniently ignore updated standards that are meant to ensure equitable treatment.

One of the ways to ensure that no-one "games" the system is to give plan members a choice of a commuted value or an insured annuity – the understanding being that market competition will always provide a fair cost for an insured annuity. This leads to the next question.

2) Why would no insurance company in Canada want to bid on a block of business that is in the hundreds of millions of dollars? Was the bid structured in such a way as to preclude any reasonable response? Who were the 7 companies that Canada Life approached? Did they include Canada Life itself, sister company London Life, parent company Great-West Life? If annuities are purchased, current pension values are crystallized and members can have comfort that the cost to the fund is both fair and permanent. If instead, those pension costs are simply estimated there is no assurance that the cost to the fund is either fair or permanent.

3) 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 \$100m disappear in the last 6 years. With a different set of assumptions, might we see the \$100m reappear in the next 6 years?

It is unlikely that we will see a rebound by 31Dec14 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 \$15m?

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. With a timely decision to make payments from the fund rather than purchasing annuities, 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.

#### The process is unfair

All of 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 believed they would share in \$62m rather than less than \$5m.

This negotiation process has dragged on for 8 years now. Suddenly, when the surplus has nearly evaporated (and only temporarily so), there is a rush to bring closure to the process. The original settlement was approved by the court on January 27, 2012. Members heard nothing more from CLPENS until May, 2012 when they were informed that the surplus had dropped by more than 80%. Then no further communication until the third week of February, 2013 when we learn the surplus has dropped a further 60%, and a settlement amendment was announced along with a pre-arranged court date. At that time, members had a mere three weeks to attempt to understand what has transpired and to individually comment or object to the court.

#### What should the Court do?

I respectfully submit that the Court should disallow this amendment. The original settlement terms should be enforced or, if that is not possible, then the original settlement set aside.

When members voted in favour of the settlement, they granted many concessions to Canada Life – forgiveness of expenses withdrawn from the plan in the past, the right to take future expenses from the plan, effective control of future surplus (to fund company contributions holidays). They also signed a release against any future claims against the Plan assets.

None of that would now have the support of plan members.

Respectively submitted,

Fred J Taggart

**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

**EXHIBIT BOOK  
VOLUME I OF III**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, ON M5L 1A9

**Jeff Galway (LSUC #28423P)**  
Tel: (416) 863-3859  
Fax: (416) 863-2653

Lawyers for the Defendant (Appellant),  
The Canada Life Assurance Company