

**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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## **TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**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

- 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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**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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## **TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**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

- 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."

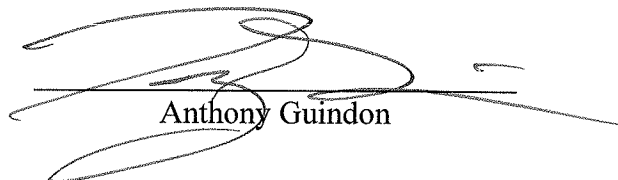
13. By letter dated September 13, 2012, Class Counsel advised Canada's Life legal counsel that the unilateral decision to transfer the assets and liabilities of the Integration Partial Wind Up members to the Plan is not contemplated by the SSA, and is in violation of the SSA and the Judgment. Class counsel 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 cursive script, appearing to read 'G. N.', 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

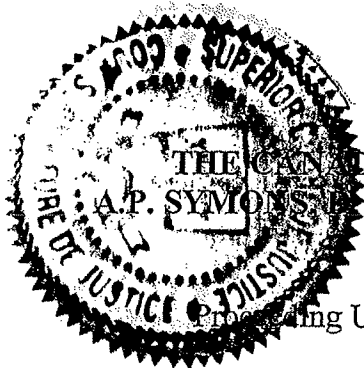
) FRIDAY, THE 27<sup>th</sup> DAY  
) OF JAN, 2012

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;

- (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.

Perell, 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

**A M O N G:**

**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)

- 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 Lakefon Investment Management Ltd.; (ii) the termination of employment of certain Plan members employed by Adason Properties Limited (notified of their termination during the period November 1, 1999 to February 28, 2001); and (iii) the termination of employment of certain Plan members employed by Pelican Food Services Limited, as a result of the outsourcing of certain operations by Canada Life in 2001 (if declared, the "Indago PWU", the "Adason PWU", the "Pelican PWU", and collectively the "Prior PWUs");

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

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

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

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

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

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

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

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

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

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

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

## **1. INTERPRETATION AND DEFINITIONS**

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



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

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

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

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

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

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

- (xvi) **"Court Approval"** means any approval, order, judgment or consent of a Court having jurisdiction over the issue in question and includes the approval of the Québec Superior Court referred to in paragraph 6(c)(vii) of this Agreement.
- (xvii) **"Deemed Payment"** has the meaning set out in paragraph 6(a)(v)(F) of this Agreement.
- (xviii) **"Eligible Group"** means the Eligible PWU Group Members and the Eligible Non-PWU Group Members.
- (xix) **"Eligible Member Group Surplus Share"** has the meaning set out in paragraph 7(a) of this Agreement.
- (xx) **"Eligible Non-PWU Group Members"** means Non-PWU Group Members who meet the criteria in either (A) or (B) below.
  - (A) Those Non-PWU Group Members who are not Cashed-Out Non-PWU Group Members who:
    - (1) are not Opt-Outs, or are Opt-Outs who subsequently sign a binding consent and release that binds them to the Settlement in a form as agreed by Canada Life and the MOU Parties (such agreement not to be unreasonably withheld), and
    - (2) consent to their transfer to the New Plan.
  - If such a Non-PWU Group Member has not fulfilled these conditions prior to the Court Approval date on which the variation of trust contemplated under paragraph 6(c)(iii) is granted, then the Non-PWU Group Member may only become an Eligible Non-PWU Group Member if, prior to the Settlement Approval Date, he or she signs a binding consent and release that binds him or her to the Settlement in a form as agreed by Canada Life and the MOU Parties.
  - (B) Those Non-PWU Group Members who are Cashed-Out Non-PWU Group Members who:
    - (1) are not Opt-Outs, or are Opt-Outs who sign a binding consent and release that binds them to the Settlement in a form as agreed by Canada Life and the MOU Parties (such agreement not to be unreasonably withheld), and
    - (2) consent to the Settlement.

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

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

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

- (xlix) **"Releasor"** has the meaning set out in paragraph 6(a)(v)(E) of this Agreement.
- (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(l) or further determination regarding its distribution.
- (iii) Following the application of paragraphs 2(a)(i) and 2(a)(ii), unless otherwise agreed to in writing by the MOU Parties, the remaining Gross Partial Wind Up Surplus allocable to each Partial Wind Up shall be reduced as follows:
  - (A) all expenses related to the negotiation and implementation of the Integration MOU and of this Agreement (including all fees, costs and expenses described in this Agreement) ("**Settlement Expenses**") incurred up to December 20, 2007 shall be deducted from the surplus allocable to the Integration PWU;
  - (B) all Settlement Expenses incurred between December 21, 2007 and October 1, 2008 shall be deducted from the surplus allocable to the Integration PWU, the Adason PWU, and the Pelican PWU, with each such Partial Wind Up bearing a portion of such expenses *pro rata* based on the aggregate liabilities of the members affected by that Partial Wind Up as compared to the total liabilities of the members affected by the Integration PWU, the Adason PWU, and the Pelican PWU (such liabilities being those shown in the Partial Wind Up Report as at the date of the applicable Partial Wind Up); in addition, expenses incurred up to October 1, 2008 that specifically relate to only one of the Partial Wind Ups (such as expenses related to the negotiation of a memorandum of

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

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

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

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

### 3. PRELIMINARY MATTERS

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



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

#### 4. COMMUNICATIONS AND CONFIDENTIALITY

Notwithstanding anything in this Agreement to the contrary,

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

#### 5. PROCESS TO SETTLEMENT

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

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

#### 6. PRECONDITIONS TO SETTLEMENT; STRUCTURE

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

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

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

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

- (D) the provisions of the New Plan and related trust deed are valid and effective to permit all reasonable charges, fees, taxes and other expenses (internal or external) as described therein relating to the design, implementation, administration and investment of the New Plan and its trust fund, to be charged to, and paid or reimbursed from, the New Plan trust fund, together with any charges, fees, taxes and other expenses (internal or external) relating to the design, implementation, administration and investment of the Plan that are allocated *pro rata* to the New Plan;
- (E) subject to paragraph 10(a) hereof, any member of the Class who does not opt out of the Class Action as well as such person's heirs, administrators, successors and assigns (the "Releasor") releases and forever discharges
  - (1) Canada Life, its parent, subsidiaries and affiliates and each of their respective current and former officers, directors and employees;
  - (2) current and former members of the CLPENS Executive;
  - (3) the members of the Indago Committee, the Pelican Committee, and the Adason Committee;
  - (4) the Plaintiffs;
  - (5) the Trustees and their predecessors

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

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

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

A times (B divided by C) where

A means: the total amounts that would have been recovered in the Subsequent Proceeding in respect of such claim or claims in respect of all members, former members and past members of the Plan and New Plan had this Settlement not been approved;

B means: the total liability under the Plan and/or the New Plan in respect of the pension benefits accrued by the Class members and by any Opt-Out (or Opt-Outs) who are not parties to the Subsequent Proceeding; and

C means: the total liability under the Plan and/or the New Plan in respect of the pension benefits accrued by all members of the Class and all Opt-Outs;

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

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

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

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

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

- (b) [intentionally left blank]
  - (c) The Settlement shall be structured as follows:
    - (i) [intentionally left blank]
    - (ii) Canada Life will establish the New Plan and will establish a related new trust fund held by individual trustees or a qualified corporate trustee, into which shall be transferred:
      - (A) all Eligible Non-PWU Group Members, except for
        - (1) those Eligible Non-PWU Group Members who are designated by Canada Life under paragraph 6(c)(iv) hereof to remain in the Plan,
        - (2) any Non-PWU Group Members who become Eligible Non-PWU Group members after the Court Approval date on which the variation of trust contemplated under paragraph 6(c)(iii) of this Agreement is obtained by signing a binding consent and release in a form acceptable to Canada Life that binds them to the Settlement, and
        - (3) those Eligible Non-PWU Group Members who are Cashed-Out Non-PWU Group Members
- together with such transferees' existing Plan benefit liabilities plus *pro rata* Plan assets related to the ongoing portion of the Plan;
- (B) to the extent, and only to the extent, required by Canada Life in its sole discretion, all Eligible PWU Group Members who consent to their transfer to the New Plan, together with such transferees' existing Plan benefit liabilities and related *pro rata* Plan assets (for greater certainty, including *pro rata* Final Partial Wind Up Surplus related to the applicable Partial Wind Up) (should such transfer occur, references in this agreement to the "Plan" shall be read as references to the "New Plan", as the context requires); and
  - (C) those spouses, beneficiaries, and estates mentioned in paragraph 8(f) of this Agreement (other than paragraph 8(f)(i) or 8(f)(ii)), together with such transferees' existing Plan benefit liabilities and related *pro rata* Plan assets, provided that they fulfil the conditions imposed under paragraph 8(f)(iii) or 8(f)(iv), as applicable;

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

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

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

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

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

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



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

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

#### 7. SURPLUS ALLOCATION; PWU GROUP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 8. NON-PWU GROUP

### *Active Eligible Non-PWU Group Members*

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

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

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

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

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

*Inactive Eligible Non-PWU Group Members*

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

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

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



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

## 9. FEES AND EXPENSES

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

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

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

#### **10. OTHER TERMS OF THE SETTLEMENT**

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

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

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

## 11. ACKNOWLEDGMENT

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

## 12. GENERAL PROVISIONS

### *Future Surplus Claims*

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

### *Marriage Breakdown*

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

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

### *Disputes*

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

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

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

*Members Not Wishing to Receive Surplus*

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

*Payment to an Estate*

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

*Unlocated Members*

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

*Amendment*

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

*Governing Law*

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

*Language of the Agreement*

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

*Execution*

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

*Entire Agreement*

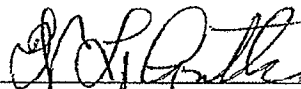
- (n) This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, including for greater certainty the Integration MOU and the Adason MOU, which the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

*Successors and Assigns*

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

Executed as of the date first written above.

**CLPENS EXECUTIVE**



Wilbert Antler



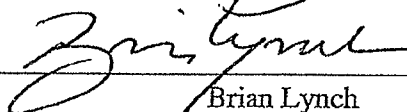
Ed Barrett



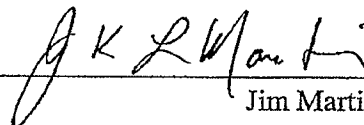
Alexander Harvey



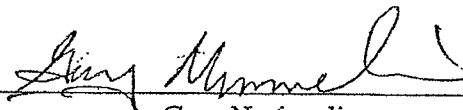
David Kidd



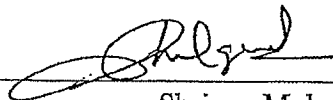
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Jim Martin



Gary Nurmelin

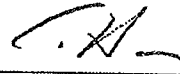


Shriram Mulgund

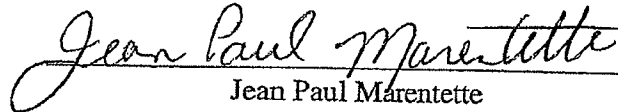
**PLAINTIFFS**



David Kidd



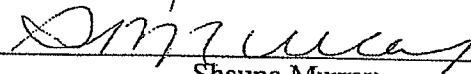
Alexander Harvey

  
Jean Paul Marentette

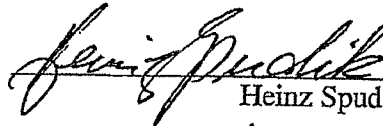
**PELICAN COMMITTEE**



Lin Yeomans

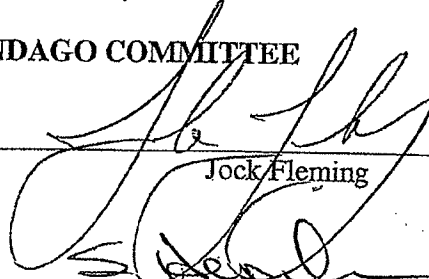


Shauna Murray



Heinz Spudik

**INDAGO COMMITTEE**

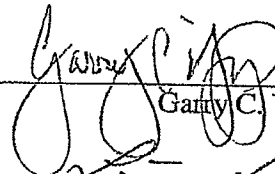


Jock Fleming

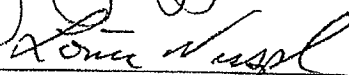


Susan Henderson

**ADASON COMMITTEE**



Garry C. Yip



Louie Nuspi



THE CANADA LIFE ASSURANCE  
COMPANY

By: 

Authorized Signing Officer

By: 

Authorized Signing Officer

REPRESENTED PARTICIPANTS

By: 

Members' Counsel  
Koskie Minsky LLP

By: 

Members' Counsel  
Harrison Pensa LLP

By: 

Members' Counsel  
Sack Goldblatt Mitchell LLP

**NON-REPRESENTED PARTICIPANT**

---

Name (print)

---

Signature

**WITNESS**

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

**Name of  
Witness:**

---

(please print)

**Signature of  
Witness:**

**Address of  
Witness:**

**Telephone  
Number of  
Witness:**

(       )

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

-and-

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

-and-

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

-and-

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

- and -

THE CANADA LIFE ASSURANCE COMPANY

- and -

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

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

- and -

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

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

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

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

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

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

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

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

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

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

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

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

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

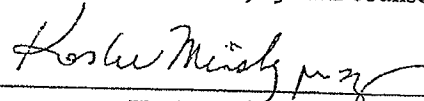
The MOU Parties acknowledge that they have considered and discussed estimates of the fees and expenses expected to be incurred in connection with the Class Action and in negotiating and implementing the Integration MOU, the Adason MOU, and the Settlement. They acknowledge that a reasonable estimate of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

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

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

Executed as of the date first written above.

CLPENS EXECUTIVE, by their counsel

  
Koskie Minsky LLP

PLAINTIFFS, by their counsel

*Koskie Minsky LLP*

Koskie Minsky LLP

PELICAN COMMITTEE, by their counsel

*Koskie Minsky LLP*

Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel

*Koskie Minsky LLP*

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*



- 4 -

PLAINTIFFS, by their counsel

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Koskie Minsky LLP

PELICAN COMMITTEE, by their counsel

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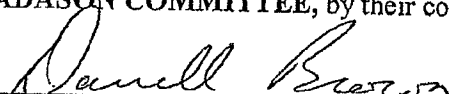
Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel

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Koskie Minsky LLP

ADASON COMMITTEE, by their counsel

  
Sack Goldblatt Mitchell LLPTHE CANADA LIFE ASSURANCE  
COMPANY, by its counsel

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

Osler, Hoskin &amp; 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 'CGM', is written over a horizontal dotted line.

A Commissioner for taking affidavits, etc.

**Desi Skokleva**

---

**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

---



**Blake, Cassels & Graydon LLP | Toronto**

Tel: 416-863-2400 Fax: 416-863-2653

**blakes.com | Twitter**

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

This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you.

L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

**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)**

	<b>June 30, 2010</b>	<b>December 31, 2010</b>	<b>June 30, 2011</b>	<b>December 31, 2011</b>
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
<b>Total</b>	<b>\$71.0</b>	<b>\$74.5</b>	<b>\$64.3</b>	<b>\$34.0</b>

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.

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

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

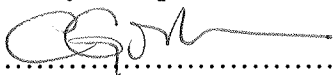
Integration PWU Surplus Estimates  
Assuming 3 Prior PWUs are Declared

	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	\$0.2	\$8.2	\$0.9	\$1.8	\$11.1
actual experience-January 1, 2011 valuation			(\$2.0)		(\$2.0)
change in interest/inflation assumptions re annuity purchase	(\$6.2)	(\$5.3)	(\$7.5)	(\$28.5)	(\$47.5)
effect of election of guaranteed pensions				(\$10.2)	(\$10.2)
asset allocation refinement	(\$0.7)	(\$0.9)	(\$0.9)	\$5.9	\$5.9
ongoing expenses allocated to Integration PWU	(\$1.8)	(\$0.4)	(\$0.3)	(\$1.7)	(\$4.2)
other				\$2.4	(\$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.**

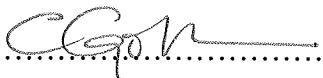
The parties are working together, under the supervision of Justice Perell of the Ontario Superior Court of Justice, to consider options to address the current situation, including possibly delaying the purchase of the annuities for a limited period of time and hence delaying the distribution of surplus 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 [canadalifecclass@kmlaw.ca](mailto:canadalifecclass@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 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 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.

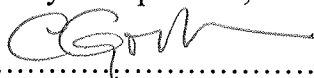
If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or [canadalifeclass@kmlaw.ca](mailto:canadalifeclass@kmlaw.ca)

**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 handwritten signature in black ink, appearing to be '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 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 'CGU', 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 [canadalife@kmlaw.ca](mailto:canadalife@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 handwritten signature in cursive script, appearing to read 'Gou', is written over a horizontal dotted line.

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.

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

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## ***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



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.

The PPFRC 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 PPFRC 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.

	<b>Large Purchase</b>	<b>Small Purchase</b>
<b>Retirees</b>	10.9	10.7
<b>Deferred vested</b>	24.4	24.5
<b>Combined</b>	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 PPFRRC then calculated the implicit discount rate underlying each quote.

The insurers indicated that it would not be appropriate, for competitive reasons, for the PPFRRC 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.

<b>AVERAGE OF THE THREE MOST COMPETITIVE QUOTES (USING UP94 GENERATIONAL MORTALITY TABLES)</b>				
	<b>Large Purchase</b>		<b>Small Purchase</b>	
	<b>30/09/2011</b>	<b>31/12/2011</b>	<b>30/09/2011</b>	<b>31/12/2011</b>
<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 PPFC 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 PPFC 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 PPFC 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 PPFRFC 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 PPFRFC’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 PPFRC 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.





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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**

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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

*Blakes*

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,

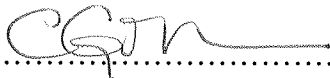
  
Jeff Galway

JWGA:lcq

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.

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September 12, 2012

Ms Amy Metzger  
Counsel - Litigation  
The Canada Life Assurance Company  
255 Dufferin Avenue  
London, Ontario  
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**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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 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:

<b>Group</b>	<b>Cumulative pending expense payments</b>
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).

<b>Estimated financial position for 2005 PWU group (\$ million)</b>	<b>August 31, 2012</b>	<b>June 30, 2012</b>
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

<b>Estimated financial position at August 31, 2012 (\$ million)</b>	<b>2005 PWU group</b>	<b>Indago</b>	<b>Adason</b>	<b>Pelican</b>
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:

<b>(\$ millions)</b>	<b>Indago</b>	<b>Adason</b>	<b>Pelican Foods</b>
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



Page 6  
 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



Page 7  
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 black ink, appearing to read "BUKONGA".

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*

	<b>2005 PWU group</b>
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>*

<b>(millions)</b>	<b>2005 PWU group</b>	<b>Indago</b>	<b>Adason</b>	<b>Pelican</b>
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	\$14.2	\$0.0	\$0.4	\$0.1

<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

.....CGW.....

A Commissioner for taking affidavits, etc.

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**

**ଅନୁସନ୍ଧାନ ପ୍ରାବଳିକା**

## **TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**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 provide 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.

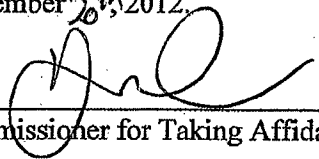
35. Based upon the most recent report filed with FSCO by Canada Life, as at December 31, 2008, it was reported that there were 2,146 individuals of the Integration Partial Wind Up Group, and 1,560 individuals in the eligible inactive Non Partial Wind Up Group.

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.

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 20<sup>th</sup> 2012.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

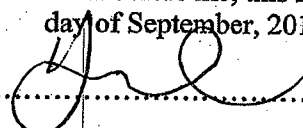


\_\_\_\_\_  
Marcus Robertson

**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  
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.:	W100-231
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.

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").

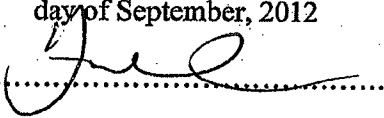
Where the wound up portion of the pension plan is in a surplus position, provision of benefits must be completed before or concurrently with the distribution of surplus from the wound up portion of the pension plan.

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.

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.

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 MARENTETTE**

**(Motion returnable September 27, 2012)**

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