

**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***

**SUPPLEMENTARY MOTION RECORD OF THE PLAINTIFFS**  
(Motion for Approval of Revised Amendment to SSA, returnable January 10, 2014)

December 23, 2013

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and James R. Grant

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**TAB 1**

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY,  
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-- and --

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

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**AFFIDAVIT OF DESI SKOKLEVA**

I, **Desi Skokleva**, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am a legal assistant at the law firm of Koskie Minsky LLP, one of the two law firms appointed as Class Counsel, and as such I have knowledge of the matters to which I hereinafter depose, except where the facts stated are based on information and belief, in which case I believe the information to be true.
2. Koskie Minsky LLP hosted two webinars for Class Members on November 28, 2013 and December 2, 2013. I am advised by Clio Godkewitsch, who helped deliver the presentations and monitored the webinars, that there were 91 participants at the first one and 47 at the second one. I am further advised that Mark Zigler, Clio Godkewitsch, and Jonathan Foreman addressed dozens of questions that were submitted via email during the webinars in the last "Q & A" portion of the presentations.
3. Since the Notice of Settlement Approval Hearing was sent to Class Members in early November, 2013, I am advised and do verily believe that Class Counsel has received 20 emails and other messages of support regarding the Revised Amendment.

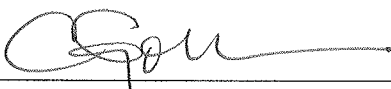
4. The Notice of Settlement Approval Hearing advised Class Members that if they did not support the Revised Amendment they were entitled to file an objection with Class Counsel which would be filed with the Court. On December 20, 2013 we received a letter from Patrick Mazurek disclosing the names of 92 persons who wish to be identified as "Objectors." Attached to this affidavit at Exhibit A is a true copy of the letter from Patrick Mazurek.

5. I am advised by Clio Godkewitsch that as of December 20, 2013 at 5:00 p.m. Class Counsel received 2 formal written objections. Attached to this affidavit are true copies of objections received at the following Exhibits:

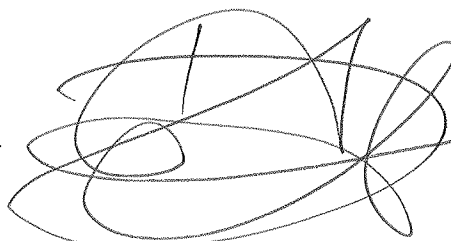
- a. Exhibit B – material received from Dan Anderson;
- b. Exhibit C – material received from Patrick Mazurek.

6. I make this affidavit in conjunction with the motion to approve the Revised Amendment to the Surplus Sharing Agreement and for no other or improper purpose.

SWORN before me at the City of  
Toronto, in the Province of Ontario  
on December 23, 2013.



A Commissioner for taking affidavits



Desi Skokleva

**TAB A**



This is Exhibit <sup>"A"</sup> .....referred to in the  
affidavit of Dei Skokova  
sworn before me, this 23rd  
day of December 2013

Col  
.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**Patrick Mazurek**  
BARRISTERS

31 Prince Arthur Ave. • Toronto, ON • M5R 1B2  
tel 416-646-1936 • fax 416-960-5456  
E-mail patrick@mazurek.ca

---

December 20, 2013

*Via Facsimile to all parties*

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Attention: Jeff Galway

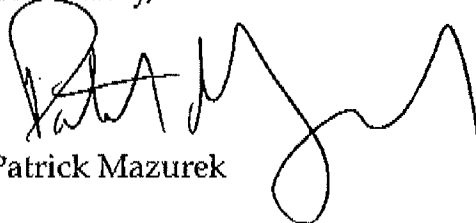
Dear Counsel:

**RE: KIDD, David et al. v. CANADA LIFE ASSURANCE et al.**  
**Court File No: 05-CV-287556CP**

Please find enclosed a list of persons who wish to be identified as Objectors to the most recent settlement proposal in this action (92 persons) - all of whom I will be representing in this regard. We will update all parties as to any changes in this list.

I also wish to advise you that you will be receiving our Affidavit materials for the upcoming fairness hearing electronically, later this afternoon.

Yours truly,



Patrick Mazurek

CC: **HICKS MORLEY HAMILTON STEWART STORIE LLP**  
Toronto-Dominion Tower, 30th floor  
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Anne Carey		
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Arminda Lopes		
Bill Davis		
Bill McIlwaine		
Bob McDonough		
Bruce Brewer		
Bruce Tushingham (Estate)		
Carlo Merenda		
Cecil Adams		
Charles Cooper		
Christopher Labossiere		
Custodia Savino		
Danny Mak		
Dave Newton		
Debbie Simpson		
Diane Johns		
Dorothy Pang		
Eileen Newton		
Eric Mills		
Eugenio Da Silva (Estate)		
Evelyn Emond (Estate)		
Flora Hu		
Francis Howse		
Fred Taggart		
Gary Sturge		
Gene Kitagawa		
Hedy Samek		
Henrietta Harvey		
Henry Rachfalowski		
Howard Newman		
James L. Thomson		
Janice Durst		
Jason Webber		
Jennifer Mahoney		
Jim Evel		
Joan Frantschuk		
Joanne Scott		
John Bond		
John Orviss		
John Rudd		
Judy Foran		
Karen Bordne		
Karen Lubinsky		
Karen Mace		
Karen Mason		
Karl Keil		
Kathy Chapman		
Kelly Gibbs		
Kelly Giusti		

Kim Gadd  
Linda Joll  
Linda Lawlor  
Lisa Choy  
Lyndsey Breslow  
Lynn Nugent  
Marc Prymack  
Margaret Verdis  
Margarita Gelowitz  
Maria Farolan  
Maria Maiato  
Maria Puno  
Maria Silva  
Maria Uncao  
Marilyn Rudd  
Marquerite Hacala  
Mary Walker  
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Nancy Collins  
Norm Daly (Estate)  
Oksana Maslabe  
Patrick Gallagher  
Paul Ludzki  
Phil Davy  
Piri Horvath  
Rafaela Da Silva  
Richard Chong  
Rob Kennedy  
Sam Aston  
Scott Maher  
Shirley Badcock (MacMillan)  
Susan Marles  
Suzanne Conquer  
Teddie Brown  
Timothy Kitigawa  
Tom Strickland  
Val Ashton  
Viola Kirmiziyan  
William Bambury

**TAB B**

This is Exhibit "B" referred to in the  
affidavit of Desi Stokerson  
sworn before me, this 23rd  
day of December, 2013

Gall  
A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 05-CV-287556CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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**

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**CLASS MEMBER INTERVENOR'S COMPENDIUM**  
(Fairness Hearing January 10, 2014)

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December 19, 2013

Dan Anderson, Class Member Intervenor  
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Lawyers for the Plaintiffs Garry C. Yip and  
 Louie Nuspl

TAB 1

**Ontario  
Superior Court of Justice**

05-CV-287556CP  
Kidd et al v. Canada Life et al  
Fairness Hearing January 10, 2014

Class Member Intervenor Compendium  
December 19, 2013

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2	<b>Correspondence on Canada Life affidavit.</b> Dec. 10 correspondence seeking clarifications on Nov 27, 2013 <b>Canada Life</b> affidavit by Wallace Robinson, regarding transfer value elections, PWU investment policy, etc.	2013-12-10	7 - 14
	• above includes: Mercer letter July 25, 2013 comparing transfer values and corresponding pension liabilities on 142 individuals.	2013-07-25	13 - 14
3	<b>PWU Fund Investment Policy.</b> Source: Mercer valuation reports for Dec 2008 & 2011. Identifying part of investment policy where 60% of PWU assets were invested in cash and short term from 2008 to 2012+, implying significant temporary reported surplus loss if interest rates declined.	2008 to 2011	16 - 18
4	<b>Correspondence with FSCO on surplus and transfer values.</b> Three Nov 20 letters to FSCO regarding surplus and transfer value issues (with cover letter).	2013-11-20	20 - 46
	• Cover letter to FSCO and Class Counsel, and other parties.	2013-11-20	20 - 22
	• Letter #1 (issues A & D) - Role of FSCO in court proceedings. > Includes: "The Pension Surplus Journey of the Terminated Canada Life Employees"	2013-11-20	23 - 30 30 - 30
	• Letter #2 (issue B) - Transfer Values > Includes: Comparing effect of different transfer value > Includes: FSCO "approval" of transfer value assumptions.	2013-11-20 2011-04-14	31 - 40 38 - 38 39 - 40
	• Letter #3 (issue C) - Partial Windup Surplus	2013-11-20	41 - 46
5	Additional reference documents following initial discussions with FSCO, distributed in advance of 2013-12-17 written response from	2013-12-17	48 - 58
	• Transfer Values and FSCO Policies	2013-12-17	50 - 54
	• CLA Partial Windup Interest Rate Environment (in context of class action timeline events, including transfer value election	2013-12-08	57 - 58

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6	Dec 17 response from FSCO. Related email correspondence regarding context and deficiencies in FSCO response.	2013-12-17	60 - 70
7	<b>Nov. 7 2013 Plaintiff notice to class members,</b> in context of disregarding October 23 request to address apparent misrepresentations in draft notice.	2013-10-23 2013-11-07	72 - 77
8			79 - 79
9	<b>Appeal document.</b> Dan Anderson Intervenor Factum submitted to Court of Appeal 2013-09-27 after Justice Hoy overruled Canada Life's objections 2013-09-23. An initial draft had been distributed to the parties and to the Court 2013-08-05. The factum includes a detailed table of contents.	2013-09-27	81 - 115
10	<b>Appeal document.</b> Canada Life's Appellant Factum provided to the Court of Appeal 2013-05-27. The factum re-argues the position of Canada Life and Class Counsel in the March 18, 2013 hearing, opposes the principle of circumstantial fairness and argues there were more than 20 errors in law, despite evidence to the contrary on all counts.	2013-05-27	117 - 153

Signature of individual submitting this compendium document: \_\_\_\_\_

Date:

TAB - 2

**Subject:** re: Affidavit Nov 27 by W. Robinson - CLAPWU

**From:** Dan Anderson <dan.anderson@sympatico.ca>

**Date:** 10/12/2013 5:42 PM

**To:** Wallace Robinson - Canada & London Life Pensions <wally.robinson@londonlife.com>, Douglas Rienzo - Osier for CLA\_GWL <drienzo@osler.com>

**CC:** Jeff Galway lead counsel CLA\_GWL <JEFF.GALWAY@blakes.com>, Clio Godkewitsch - Koskie Minsky <cgodkewitsch@kmlaw.ca>, Patrick Mazurek - lawyer <patrick@mazurek.ca>, David Kidd - Lead Plaintiff <alcohekidd@sympatico.ca>, Mark Zigler - Koskie Minsky <mzigler@kmlaw.ca>, Jonathan Foreman - Harrison Pensa <jforeman@harrisonpensa.com>, David Williams - Harrison Pensa <dwilliams@harrisonpensa.com>, Darrell Brown - Sack Goldblatt Mitchell <dbrown@sgmlaw.com>, John Field - Hicks Morley <john-field@hicksmorley.com>, Ben Jagnarine - FSCO Pension Officer <ben.jagnarine@fSCO.gov.on.ca>, "CanadaLifers@yahooogroups.com" <CanadaLifers@yahooogroups.com>  
**BCC:** Fred Taggart <fjtaggart@yahoo.com>, Cecil Adams <cecadams@rogers.com>

December 10, 2013

**Canada Life Partial Wind-Up**

**re: W. ROBINSON'S NOV. 27, 2013 CANADA LIFE AFFIDAVIT**

It is helpful that Mr. Robinson is the individual providing additional Canada Life information to the Court (and indirectly to class members) because he would have first-hand knowledge regarding the operation of the Canada Life partial wind-up fund and the issues related to surplus and transfer values.

As noted in the attached document, there are some statements/attachments within the Nov. 27 affidavit that are particularly notable and in some cases it would be helpful if the Court and class members could be provided with some additional clarifications and supporting documentation (as noted by \* items) well in advance of the January 10, 2014 fairness hearing.

Related considerations are also being addressed in the November 20, 2013 correspondence that was provided to FSCO and Canada Life et al.

Dan Anderson

**attached - "Requests re- W Robinson Nov 27 affidavit - 2013-12-10.pdf"**

--- Attachments: ---

Requests re- W Robinson Nov 27 affidavit - 2013-12-10.pdf

73.8 KB

December 10, 2013

## CANADA LIFE - PARTIAL WIND-UP FUND

16

re: W. ROBINSON'S NOV. 27, 2013 CANADA LIFE AFFIDAVIT

Requests for Supporting Documentation / Clarifications

It is helpful that Mr. Robinson is the individual providing additional Canada Life information to the Court (and indirectly to class members) because he would have first-hand knowledge regarding the operation of the Canada Life partial wind-up fund and the issues related to surplus and transfer values.

As noted below, there are some statements/attachments within the Nov. 27 affidavit that are particularly notable and in some cases it would be helpful if the Court and class members could be provided with some additional clarifications and supporting documentation (as noted by \* items below) well in advance of the January 10, 2014 fairness hearing. Some related considerations are also addressed in the November 20, 2013 correspondence provided to FSCO and Canada Life et al.

**1. Transfer Value Election Periods July-Oct 2011 and Jan-Apr 2013.** Affidavit paragraphs 9-10 and the attachments noted therein, refer to Canada Life's 2010-2011 preparations to provide CLA PWU members with transfer value election forms disclosing individual transfer values. The correspondence identifies that up until April 14 2011 no determination had been made on what transfer value assumptions would be appropriate for the July-Oct 2011 election period.

**\* a) Please provide documentation that identifies communications between Canada Life or Mercer and the FSCO Pension Officer Ben Jagnarine that gave any consideration to using transfer value assumptions consistent with the upcoming 2011 election period,** as would be anticipated by the PBA-prescribed actuarial recommendations and FSCO rules (W100-102 and T800-401), as well as would be expected under basic principles of common sense and fairness. I have spoken to FSCO, and the "approval" that Canada Life obtained does not seem well grounded.

**\* b) Please provide an explanation as to why Canada Life instead sought FSCO approval only for the use of the old 2003-2005 transfer value assumptions referenced in the 2005 Partial Wind-Up report,** even though such assumptions would be inconsistent with the 2011 election period. The substantial decline in interest rates since 2003-2005 would imply that such old assumptions would produce inappropriately low transfer values, while admittedly increasing distributable surplus for Canada Life and the plaintiffs.

Similar considerations would apply to the January 2013 election options (with FSCO rule T800-401 replaced by the similar rule T800-403), particularly where: a) these individuals had apparently not previously intended to select that option and b) the 2013 election period became available only because: a) GWL/CLA told them that insured annuities would not be provided and b) after their associated liabilities and assets had been transferred back into the ongoing pension fund. As per the attached July 25n 2013 Mercer letter, the "surplus" from these 142 individuals was identified as \$9.1 million on the basis of receiving transfer values of only \$11.9 million.

2. **PWU Investment Policy.** The investment policy established in 2008 for the PWU fund is a critical and largely undisclosed factor with regards to the large drop in surplus and potentially also Canada Life's intentions regarding appropriate transfer values. Affidavit paragraph 6 refers to, but does not describe the PWU investment policy.

**\* a) Please provide a description of the specifics of the 2008-2012 PWU investment policy, and some original 2008 documentation (without benefit of 2013 hindsight) that identifies how the investment policy rationale was established (e.g. the large % to be invested in cash and short).**

Such documentation would be helpful to confirm what significance should be attached to affidavit paragraph 6's only comment about the 2008 PWU investment strategy that it was established "*with a view*" to taking account of the liability duration effect of "*Mercer's assumptions as to how many members of the Integration PWU would elect to receive a lump sum transfer*". The Court and most class members would not be aware that future transfer value elections (similar to deaths during the deferred period) would not, from an actuarial and investment perspective, be expected to materially alter the assumed future duration structure of the liabilities when the calculation of the transfer value itself appropriately reflects the present value (and duration structure) of the future pension obligations.

Now, paragraph 6's comment about the PWU investment policy refers to the duration of the assets but does not refer to giving consideration to the duration of the PWU liabilities except in terms of the "*with a view*" reference to Mercer's assumed transfer value election counts.

**\* b) Please provide sample documentation for any time during 2008-2012 when there was either a quantification of the average duration of the PWU liabilities and a comparison to the average duration of the corresponding assets, or a description of the results of any other analysis related to duration matching or immunization to protect the PWU surplus.** Any discussion regarding the duration mismatch objectives in the context of potential changes in future interest rates would certainly be relevant.

The purpose of such documentation would be to help determine the extent to which the PWU investment policy could reasonably be characterized as a speculative policy, either: a) because it was primarily positioned to enjoy a leveraged windfall when interest rates increased while recognizing there would be temporary setbacks if interest rates decreased and/or b) because it was based on speculative presumptions regarding how the transfer value assumptions would be established.

Such speculative policies would provide Canada Life with an opportunity to anti-select against the class members, as illustrated by trying to crystallize distributable surplus as at August 2012 after interest rates had declined significantly and/or by influencing FSCO's decisions on how transfer value assumptions should be established depending on whether interest rates increased or decreased prior to class members being provided with their election options. If interest rates had significantly increased since 2003-2005, Canada Life would have supposedly been aggressively lobbying FSCO to have the transfer values recalculated, per FSCO rules.



December 10, 2013

**3. June 30, 2013 Change in Actuarial Guidance - \$45 million effect**

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Affidavit paragraph 20 notes there was a change in "guidance" from the Canadian Institute of Actuaries Pension Plan Financial Reporting Committee (PPFRC) that has a lump-sum hit of \$45 million on the PWU liabilities, and comments "had there been no transfer of assets and liabilities, this change would have reduced the Integration PWU surplus by approximately \$45 million".

**The comments below are not a request for additional clarifications or documentation**, but just noting some considerations (the comments below do not imply that Canada Life or Mercer or any other representatives or advisors etc have in fact had any direct influence on current "guidance" changes):

- 3.1 FSCO has been asked for its views on Canada Life's presumption that the PWU surplus has been available on a first-call basis to fund the effects of Canada Life's investment policies (e.g. to the extent those policies involved speculative duration mismatch). Those same considerations would apply to whether Canada Life is responsible for funding this sort of "guidance" change in measuring liabilities, separate from an objective process where distributable PWU surplus currently and during an extended settlement implementation process would be tracked in a manner that insulates class members from the transitory decisions of the PPFRC.
- 3.2 Typically the potential bias that one might expect from employers (plan sponsors), pension consultants and, accordingly, the PPFRC (prior to considering the offsetting influence from FSCO and other professional considerations) goes in one direction, a relative understatement of both pension liabilities and commuted values. However, in the case of full or partial wind-ups with plan members entitled to distributable surplus, there is a countervailing interest in at least temporarily increasing liability values to reduce that distributable surplus (but no corresponding increases to commuted values).
- 3.3 The "guidance" change from the PPFRC may be transitory, and class members may find most of the effects disappear in the future, particularly taking into account the dramatic effect that interest rate increases can have on decreasing liabilities and increasing surplus if Canada Life remains invested such that the PWU fund would financially benefit from such interest rate changes.
- 3.4 The above comments do not change the fact that there are uncertainties in how class members move forward on these issues, but an extended settlement implementation process may yet be a necessary element despite the "guidance" changes, if FSCO requires that transfer values be recalculated on an appropriate basis and if the "guarantee" of a 56% payout from Canada Life is not in fact a guarantee but is contingent on most of the surplus payments being funded by essentially ripping off class members who have presumed they had been offered legitimate transfer values.

**4. Expected # of PWU Members Electing Transfer Values.**

Affidavit paragraph 14 contains a set of percentages indicating that during the transfer value election period from July to October 2011, Canada Life expected more than 700 CLA class members would choose a transfer value.

age range	# of CLA PWU members (Dec 2010)	Assumed % Transfer Option	Expected # Transfer Option
< 50	842	70%	589
50-55	202	50%	101
> 55	166	30%	50
<b>Total</b>	<b>1,210</b>	<b>avg. 61%</b>	<b>740</b>

**\* a) Please confirm the number of PWU class members who in fact elected the transfer approach July-Oct 2011.** A review of the change in "deferred pensioner" member counts by age category from Dec 2010 to Dec 2011 (per the actuarial reports) suggests that 66 or fewer class members elected a transfer value during that election period).

**\* b) Please identify for any of the PWU valuations prior to Dec 2012, the effect on the liability values of incorporating the above assumed % of members electing a transfer value, compared to assuming that no members elected a transfer value.**

Information regarding the number of members electing a transfer value, and the financial effect, is relevant to the issue of changes in the PWU surplus, as well as the issue of disclosures regarding the large drop in reported surplus February 2012.

**5. CLA March 2011 Information Packages.** The current proposed payouts are 56% of the individual surplus amounts as communicated to class members in Form E of that package. Page E2 had stated: "Your estimated share of the surplus is based on the estimated Partial Wind-Up surplus as of June 30, 2010" and pages D13-14 identified the PWU surplus as \$62.2 million and identified how the individual amounts were calculated.

Paragraph 13 of the Nov. 27 affidavit, however, states: "The estimates provided to members in their information packages were based on 90% of this amount (i.e. 90% of \$62.2 million).

**\* The question here is whether Nov 27, 2013 is the first time a disclosure had been made to the Court and class members that the individual amounts as communicated to class members March 2011 were in fact already reduced by 10% relative to how the numbers had been represented to class members.** That seems to be a fortuitous approach for Canada Life to have first skimmed off \$6 million prior to applying the now proposed 56% factor.

**6. Large drop in reported surplus immediately after the Jan 27, 2012 Court approval.**

Affidavit paragraphs 16 seems to imply that Canada Life first became aware on February 10, 2012 that there was a large drop in surplus ("*Canada Life was first advised by Mercer*"). That apparent implication may, however, lead to a false conclusion particularly in the context of Canada Life and Mercer monitoring interest rates and monitoring the results of the transfer value elections which supposedly could have serious financial implications in terms of seeking the Court's approval January 27, 2012.

**No further clarifications or documentation is requested in that regards herein** (but would be welcome if available), but as noted before there would seem to be a circumstantial onus on Canada Life to bargain in good faith regarding the implementation of the January 27, 2012 surplus sharing agreement

**7. Proposed 56% payout.** If there is a 56% payout of the individual surplus amounts, maybe under the new trust agreement Canada Life should have exclusive control of, say, 56% of the surplus in the ongoing fund, rather than 100%. There is no expectation herein that Canada Life would accept such an approach, but I put it forward to highlight the fact that one of the reasons for the PWU surplus payments was to compensate ongoing plan members for giving up control over the use of surplus in the ongoing plan. **No clarifications or additional documentation is requested in that regards herein.**

Thank you in advance for any clarifications and additional supporting documentation that you are able to provide to the Court and to class members (via the KM website), hopefully well in advance of the January 10, 2014 fairness hearing.

Sincerely,

Dan Anderson

***attached: "Mercer 2013-07-25 on surplus from CVs.pdf" (below)***

**Distribution via email:**

Wallace Robinson  
Douglas Rienzo  
Jeff Galway

Clio Godkewitsch  
Patrick Mazurek  
Other Representatives

Ben Jagnarine - FSCO  
Canadalifers@yahoogroups.ca



**Benedict Ukonga, FSA, FCIA**  
Principal

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

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

25 July 2013

**Subject:** Canada Life Registered Plan - Update on Transferred Liability for 2005 PWU Members

Dear Amy:

As requested, this letter provides an update on the liabilities in respect of the members of the Canada Life Canadian Employees Pension Plan (the "Plan") who were affected by the June 30, 2005 partial plan wind-up, and whose liabilities were transferred to the ongoing portion of the Plan.

The update is to reflect the election of commuted value transfers for partial wind-up members who elected a lump sum transfer on their revised benefit statements. The difference between the original liability to be transferred and the commuted values with interest to August 31, 2012 for these members is as follows:

Original Transfer Liability at August 31, 2012	Commuted Value with Interest to August 31, 2012	Difference at August 31, 2012
\$21,008,000	\$11,881,000	\$9,127,000

Please note that the transferred liability was calculated in accordance with FSCO policy W100-233, and was based on the guidance in the Canadian Institute of Actuaries' educational note on estimating the cost of purchasing annuities (please see our Report on the Transfer of the Liabilities of the Remaining Portion of the 2005 Partial Wind-Up to the Ongoing Portion of the Plan as at August 31, 2012 for information on the assumptions used). The estimated cost of purchasing annuities was calculated as at August 31, 2012. The commuted values were calculated and are based on the commuted value standard (or recommendation, as the case may be) applicable at the time of members' individual termination dates, with interest added from members' individual termination dates to August 31, 2012.





Page 2  
25 July 2013  
Amy Metzger  
London Life

Please feel free to contact us if you have any questions or would like to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'BUKONGA'.

Benedict Ukonga, FSA, FCIA  
Principal

Copy:  
Wally Robinson, London Life  
Douglas Johnson, Mercer

TAB - 3

The Canada Life Canadian Employees  
Pension Plan

Report on the Actuarial valuation for  
Funding Purposes as at December 31, 2008

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In addition to the assets shown above, there are \$859,000 in defined contribution account balances for the retained group and \$579,000 for the partial wind-up group who accrued benefits under the defined contribution provision of the plan during 1999. The resulting market value for the retained group is \$433,424,000, and for the partial wind-up group is \$300,899,000.

We have tested the pensions paid, the lump-sum refunds and the contributions for consistency with the membership data for the plan members who have received benefits or made contributions. The results of these tests were satisfactory.

### Investment Policy

The plan administrator adopted a statement of investment policy and objectives effective March, 2008. This policy is intended to provide guidelines for the manager(s) as to the level of risk which is commensurate with the plan's investment objectives. A significant component of this investment policy is the asset mix.

At the same time, the assets allocated to the partial wind-up group were segmented from the assets of the ongoing portion of the Plan, and are being invested in accordance with the investment guidelines established for this portion of the Plan.

The constraints on the asset mix, and the actual asset mix as at December 31, 2008, are provided for information purposes:

#### Distribution of the Market Value of the Fund by Asset Class – Retained Group

	Investment Policy			Actual Asset Mix as at 31,12,2008
	Minimum	Target	Maximum	
Fixed Income				
▪ Cash and Short Term	0%	3%	10%	3%
▪ Canadian Bonds	20%	30%	40%	46%
▪ Real Return Bonds	0%	10%	20%	
▪ Total	35%	43%	50%	49%
Equity				
▪ Canadian Equities	15%	27%	35%	24%
▪ Foreign Equities	15%	30%	35%	27%
▪ Total	50%	57%	65%	51%
		100%		100%

The Canada Life Canadian Employees  
Pension Plan

Report on the Actuarial Valuation for  
Funding Purposes as at December 31, 2008

**Distribution of the Market Value of the Fund by Asset Class -- Partial Wind-Up Group**

	Investment Policy	Actual Asset Mix
	Target	as at 31.12.2008
<b>Fixed Income</b>		
* Cash and Short Term Bonds	60%	66%
* Canadian Bonds (incl. Real Return Bonds)	28%	25%
	88%	91%
<b>Equity</b>		
* Canadian Equities	12%	9%
* Foreign Equities	0%	0%
* Total	12%	9%
	100%	100%

**Performance of Fund Assets**

The performance of fund assets, net of expenses, from January 1, 2006 to December 31, 2008 as per our calculations (which assume that the next cash flow occurred in the middle of each period, are shown below:

**Rate of Return -- Market Value of Plan Assets**

	Gross	Net
2006	10.51%	10.06%
2007	0.67%	0.22%
2008 (Jan to Mar)	-1.64%	-1.68%
2008 (Apr to Dec)	Ongoing: -13.29%	Ongoing: -13.67%
	PWU: -1.23%	PWU: -1.57%

The average net return on the market value, net of expenses (including transaction fees and withholding taxes) for the ongoing group, since the last valuation at January 1, 2006 was -0.55% per year. This rate is less than the assumed investment return for the ongoing group of 5.25% by 5.80% per year.



The plan administrator adopted a statement of investment policy and procedures. This policy is intended to provide guidelines for the manager(s) as to the level of risk which is commensurate with the Plan's investment objectives. A significant component of this investment policy is the asset mix.

Retained Group				
	Investment Policy			Actual Asset Mix as at December 31, 2011
	Minimum	Target	Maximum	
<b>Fixed Income</b>				
• Cash and Short Term Bonds	0%	3%	10%	3%
• Canadian Bonds	20%	30%	40%	31%
• Real Return Bonds	0%	10%	20%	10%
• Total	35%	43%	50%	44%
<b>Equity</b>				
• Canadian Equities	15%	27%	35%	26%
• Foreign Equities	15%	30%	35%	30%
• Total	50%	57%	65%	56%
		100%		100%
<b>Partial Wind-Up Group</b>				
	Investment Policy			Actual Asset Mix as at December 31, 2011
	Target			
<b>Fixed Income</b>				
• Cash and Short Term Bonds		60%		59%
• Canadian Bonds (incl. Real Return Bonds)		28%		29%
• Total		88%		88%
<b>Equity</b>				
• Canadian Equities		12%		12%
• Foreign Equities		0%		0%
• Total		12%		12%
		100%		100%

TAB - 4

November 20, 2013  
(by email)

**Mr. Brian Mills**  
Deputy Superintendent  
Financial Services Commission of Ontario, Pensions

**Mr. Mark Zigler**  
Class Counsel  
Koskie Minsky LLP

**Re: FSCO Policies and January 10, 2014 Superior Court Fairness Hearing**

**Dear Mr. Mills and Mr. Zigler,**

With apologies to you and your staff, attached is a reissue and re-dating of the three interrelated November 18, 2013 letters, now identified as November 20, 2013 letters, regarding the **June 2005 partial windup of The Canada Life Employees Pension Plan..**

Because some of the considerations herein may apply to legislative as well as regulatory considerations, as a courtesy to other areas that address pension policies that are applicable to windups and partial windups, the distribution list has been revised to include Mr. Bruce McNaughton as Director, Pension Policy Branch, Ministry of Finance and accordingly also includes Mr. John Solursh as Chair of the Financial Services Tribunal and Mr. Phil Howell as the Superintendent of Financial Institutions.

To avoid possible confusion, I have revised the letters to incorporate the previously identified corrections on items that subsequently came to my attention and which, if not corrected, could lead to some confusion. The various paragraphs have also been numbered for easier reference.

For those who have already reviewed the now-replaced Nov. 18 correspondence, the main editing changes and some additional commentary, occur in the following paragraphs:

- letter 1 - paragraphs 14.1 and 19,
- letter 2 - paragraphs 5, 9, 11.1, 14, 17.2, and 20,
- letter 3 - inserting paragraph 8.

The change which may be the most notable is the insertion of paragraphs 8 in the third letter that addresses surplus, because, in the context of the other elements in that letter, paragraph 8 attempts to illustrate, using quotes from Court documents and communications to class members, the reasons for an emerging concern that communications provided to the Court, plaintiffs and class members may be fundamentally contradictory with FSCO's understanding of the definition and application of distributable partial windup surplus. That situation is of concern if FSCO's intent might be to disregard the apparent misrepresentations and wait until there is a final settlement agreement, and then approve the agreement without regard to misrepresentations that preceded were the basis for the agreement. I trust that is not the intent, and that is the reason for

bringing such considerations directly to the attention of FSCO while encouraging FSCO's involvement in clarifying certain considerations, particularly where it is the intent of Canada Life and Class Counsel to ask the Court to accept their presumption that FSCO has de facto already approved the proposed amendment #3 to the pre-existing settlement agreement.

I offer my apologies for the relatively short notice regarding these matters in the context of the January 10, 2014 Superior Court fairness hearing. As referenced in the attached letters, I only last week became aware of FSCO policy G200-100 which identified the legitimacy of FSCO being involved in the Court proceedings and thereby providing assistance to the Court and, indirectly, to plan members in the context of those proceedings. When I had written to senior management at FSCO in July 2013 requesting some guidance regarding FSCO's policies in the context of partial windups, the response I received had been: "My understanding is that the matter is currently before the courts. I have no comments on the matter other than that FSCO is aware of this case and is observing the developments."

By copy of this correspondence I will also request that Class Counsel include this correspondence as part of Class Counsel's motion filing materials for the January 10, 2014 hearing. The purpose of this correspondence, which I am providing as one of the thousands of concerned class members, without independent legal representation, is to communicate directly to Class Counsel (and FSCO) concerns regarding the proposed amended (#3) surplus sharing settlement agreement and to try to do so constructively in the context of the important role of FSCO clarifying the existence and applicability of FSCO's policies and approval criteria as they apply to the circumstance of such partial windups. These matters seem important for the Court's deliberations at the January 10, 2014 fairness hearing in Superior Court.

For more convenient reference, included below is a listing of individuals included in the distribution of these materials.

Sincerely,

Dan Anderson  
dan.anderson@sympatico.ca  
905-823-4914

PS. A copy of this correspondence has been provided to Mr. Solursh because of his senior dual role with both FSCO and FST, even though he is associated with the same law firm as the one that is representing Canada Life, because his consideration of these matters also seemed important. I had addressed some controversial issues with Mr. Solursh regarding transfer values some years ago in his prior role as chair of the Actuarial Standards Oversight Council (ASOC).

PS. Regarding the Ministry of Finance, I was not sure whether to also include a copy to Anthony Guindon in the context of his prior direct involvement in this case providing a sworn affidavit to the Court on behalf of Koskie Minsky LLP on various issues including the (contested) context and reasons for the drop in partial windup surplus. Thus far I have not done so, but Mr. McNaughton might consider Mr. Guindon as a potential resource on some of these matters.

Letter 1 will address issues A & D, letter 2 will address item B and letter 3 addresses item C.

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- A. Introductory Comments
- B. FSCO Policy on Recalculation of Transfer Values (commuted values) (T800-403)
- C. Partial Windup Class Action Lawsuit - Distributable Surplus (FSCO policies?)
- D. FSCO Assisting Superior Court at January 10, 2014 Fairness Hearing (G200-100)

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Financial Services Commission of Ontario:

brian.mills@fSCO.gov.on.ca  
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Koskie Minsky - Class Counsel (plaintiffs):

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Associated with Canada Life and other defendants:

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marvin.ens@mercerc.com

Other representatives for plaintiffs:

jforeman@harrisonpensa.com  
dbrown@sgmlaw.com

Representative for some class members:

patrick@mazurek.ca (Mr. Mazurek)

Superintendent of Financial Institutions,  
Ministry of Finance,  
and Financial Services Tribunal:

ceo@fSCO.gov.on.ca (Mr. Howell)  
bruce.macnaughton@ontario.ca  
john.solursh@fSCO.gov.on.ca

Communications forum for some class members:

canadalifers@yahoogroups.com

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November 20, 2013  
(by email)

To: Financial Services Commission of Ontario:

<b>To: Mr. Brian Mills</b> Deputy Superintendent FSCO Pensions <i>brian.mills@fSCO.gov.on.ca</i>	<b>cc: Mr. Ben Jagnarine</b> Pension Officer FSCO Pension Operations <i>ben.jagnarine@fSCO.gov.on.ca</i>	<b>cc: Ms. Lynda Ellis</b> Senior Manager FSCO Pensions Regulatory Policies <i>lynda.ellis@fSCO.gov.on.ca</i>
-----------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------

To: canadailifeclass@koskieminsky.com; Cc: et al

Re: **A. Introductory Comments**

*B. FSCO Policy on Recalculation of Transfer Values (T800-403)*

*C. Partial Windup Class Action Lawsuit - Distributable Surplus (FSCO policies?)*

**D. FSCO Assisting Superior Court at January 10, 2014 Fairness Hearing (G200-100)**

Dear Mr. Mills,

1. As per the separate November 20 cover letter, this is the first of three interrelated Nov. 20 letters regarding FSCO regulatory considerations as they relate to concerns about a proposed amended partial windup surplus sharing agreement to be addressed at a January 10, 2014 Superior Court fairness hearing.
2. The three different letters are addressed to various individuals at FSCO and jointly to Class Counsel Koskie Minsky, with copies provided to interested parties, including an informal class member communications group..
3. To assist the FSCO staff, some specific questions are listed at the end of each letter.
4. The focus of this correspondence is on the circumstances of the June 2005 **partial windup of The Canada Life Canadian Employees Pension Plan**. Under the related class action proceedings, the lead plaintiff representatives are Class Counsel Koskie Minsky LLP and the representatives for Canada Life are Blake, Cassels & Graydon LLP (Blakes).
5. It seemed appropriate to address this initial introductory letter to your attention as Deputy Superintendent because this letter also addresses item D above (FSCO policy G200-100) which would seem to imply that a senior officer would be involved in the decision as to whether FSCO would provide some guidance to the Court, the various parties, and plan/class members, in the context of the January 10, 2014 fairness hearing before Justice Perell. The guidance might be in the form of helping to identify the applicability and effect of various FSCO regulatory policies and approval criteria, and also confirming whether or not FSCO has in fact already approved the various elements of what will be a proposed amended (#3) settlement.

6. **January 10, 2014 Fairness Hearing.** Class Counsel and/or Canada Life will be filing motion materials by November 29, 2013, for the January 10, 2014 fairness hearing at which time the parties will be asking Superior Court Justice Perell to approve their jointly-sponsored amended (#3) settlement agreement. The 4-page notice to plan members about the fairness hearing is at:  
6.1 [ [http://www.kmlaw.ca/site\\_documents/040157\\_NoticetoClassEN\\_7nov13.pdf](http://www.kmlaw.ca/site_documents/040157_NoticetoClassEN_7nov13.pdf) ]
7. **FSCO policy G200-100 on FSCO involvement in court proceedings.** G200-100 expresses concerns about circumstances where the Court may be called upon to make decisions that in effect bind the actions of FSCO, when FSCO may not have had an opportunity to participate in the proceedings. Accordingly, G200-100 requires that FSCO receive advance notice of such proceedings.  
7.1 [ <http://www.fSCO.gov.on.ca/en/pensions/policies/active/Documents/G200-100.pdf> ]
8. In accordance with the criteria noted on page two of the above referenced policy G200-100, FSCO's participation January 10 seems important with regards to helping to protect the rights of plan members.
9. **Primary reason for FSCO's participation/intervention in the January 10, 2014 hearing.** The original settlement agreement that was court-approved January 27, 2012 requires FSCO approval. At the January 10, 2014 hearing, the parties will apparently be jointly asking the Court to approve an amendment #3 which (in addition to proposing a higher level of surplus distribution than had been proposed at a March 18, 2013 hearing) includes a paragraph #8 that applies convoluted reasoning to argue that FSCO will have de facto already approved the various elements of the proposed amended (#3) agreement. The parties will ask that the Court rule that the proposed settlement can be implemented immediately with no further steps taken to obtain approval from FSCO.
10. **FSCO approval required - paragraph 6(a)(i) of original settlement agreement.** At the previous fairness hearing March 18, 2013 the parties informed Justice Perell that FSCO approval for the original settlement agreement (and the proposed amended (#2) agreement) had not as yet been obtained. Paragraph 6(a)(i) of the original agreement specifies (*underlining added*):

[source: page 88 from kmlaw.ca Appeal Materials May 27, 2013 compendium I of II:  
[http://www.kmlaw.ca/site\\_documents/040157\\_APPEALBOOKCOMPENDIUM\(VOL%20I%20OF%20II\)oftheDefendant\(Appellant\)CanadaLife\\_28may13.pdf](http://www.kmlaw.ca/site_documents/040157_APPEALBOOKCOMPENDIUM(VOL%20I%20OF%20II)oftheDefendant(Appellant)CanadaLife_28may13.pdf)

#### 6. PRECONDITIONS TO SETTLEMENT; STRUCTURE

The Parties agree that any Settlement will be conditional upon the terms and conditions set forth in this paragraph 6(a) being fully satisfied:  
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;

11. **Presumption of FSCO approval - paragraph # 8 of proposed amendment #3.** As noted above, at the January 10, 2014 fairness hearing the parties apparently intend to jointly request that the Court approve the flawed argument in proposed amendment #3 paragraph #8 that FSCO has de facto approved the newly proposed amended (#3) agreement, without having to ask FSCO for such approval (*underlining added*):

[source:

[http://www.kmlaw.ca/site\\_documents/040157\\_SSAAmendment3\\_7nov13.pdf](http://www.kmlaw.ca/site_documents/040157_SSAAmendment3_7nov13.pdf) ]

8. Paragraph 6(a)(i) of the Agreement is amended by renumbering paragraph 6(a)(i) as paragraph 6(a)(i)(A), adding the word "and" at the end, and adding the following new paragraph 6(a)(i)(B) immediately following it:

(B) the Settlement can be implemented on the basis that the distributable surplus related to the Integration PWU has been determined based on the liabilities of those members who exercised their portability rights having been calculated using the methodology and assumptions in the partial wind-up report dated March 31, 2006 as approved by the Superintendent of Financial Services on April 14, 2011;

12. Links to the above-referenced April 14, 2011 FSCO approval letter and the windup report for June 2005 apparently have not as been made available on the Koskie Minsky website (a different link and attachment are provided later with this letter).
13. **The following illustrates some of the context within which amendment #3 paragraph #8 would apparently seek to side-step FSCO approval using the approach described in c) below:**

13.1 **Role of surplus - contrary to FSCO's paradigm?** On the one hand, Canada Life has up until recently taken the position in negotiating with the CLA plaintiffs' representatives that estimated partial windup surplus as at any point in time (including the points in time at which class members sign consent agreements and the Court approves the settlement agreement), is a "fiction" and, until a final settlement disbursement is determined, such surplus must continue to be made available for Canada Life's benefit to fund deficits arising from changes in the relationship between the liabilities and the assets supporting the liabilities, including any adverse results from speculative investment actions adopted by Canada Life.

13.2 **Material impact of (undisclosed) investment policy.** The parties, through joint agreement on communications to class members, apparently believe it continues to be in the best interests of class members (so as to encourage them to accept the proposed settlements) to not disclose to the class members that a primary controllable reason for the very large drop in surplus (from \$58 million to \$3 million) was a Canada Life investment policy for the partial windup fund whereby 60% of the assets were invested in cash and short term. The implied speculative mismatch in the duration structure of the assets and liabilities resulted at least temporarily in a very large drop in estimated surplus, during the time when interest rates continued to decrease, but that same surplus would be



expected to re-emerge once interest rates increased, because the loss was generally not a "realized" loss but the potential present value effect of future reinvestment rates impacting a mismatched duration structure.

- 13.3 **FSCO approval ?** The challenge with the above circumstances is how to get FSCO approval for a controversial proposal jointly advocated by Canada Life and Class Counsel. The parties' proposed solution as indicated by paragraph #8 appears to be to use the percentage splits in the original surplus agreement and apply the percentages against some current measure of distributable surplus (much lower than the June 2005 surplus plus interest) plus the addition of a modest top-up, to arrive at a fixed dollar amount and then deem that fixed dollar amount to be something that is expressible as some other percentage of the distributable surplus "as approved by the Superintendent of Financial Services"!
14. **Issues B and C are addressed in the other two letters.** The FSCO regulatory policies that are referenced as items B and C in the subject of this email will be dealt with in the two other letters being distributed today, addressed to the various policy and operational areas. The importance of these policies in the context of the current Canada Life deliberations is referenced below.
  - 14.1 **FSCO policy T800-403 on transfer values** addresses the criteria for the calculation / recalculation of transfer values (commuted values) and is an important consideration with regards to fairness to class members, and the determination of distributable partial windup surplus, because the mandatory portability election option periods did not occur until six years (2011) and eight years (2013), respectively, following the declared partial windup year of 2005, but Canada Life used transfer value factors that were based on prevailing interest rates in 2003-2005. This issue will be addressed more fully in the second of the three Nov. 20 letters.
  - 14.2 **Distributable partial windup surplus.** FSCO regulatory policies and approval criteria relating to the determination of distributable surplus for a partial windup plan become particularly important where more than eight years have passed following the declared partial windup date and where the plan sponsor decided to establish a speculative investment policy for the assets supporting the liabilities resulting in an extreme duration mismatch between the assets and the liabilities which significantly impacted the plan sponsor's calculation of distributable surplus (I am uncertain which regulatory policies and approval criteria would apply to the circumstances of this case). This issue will be addressed further in the third of the three Nov. 20 letters.
15. On November 15, 2013, after learning of FSCO policy T800-403, I spoke with Pension Officer Ben Jagnarine for the first time, about the various issues that seemed to be related to the upcoming January 10, 2014 fairness hearing, and I undertook to provide FSCO with some written documentation (which is now in the form of these three letters). Some months ago I had tried corresponding with Chief Actuary Lester Wong on what the related policy issues would be, but at the time FSCO staff were constrained by the understanding

that FSCO had not undertaken to become involved in issues that related to court proceedings.

- 
16. One of the questions you might ask is why I am addressing these issues with FSCO, rather than such considerations being raised with FSCO by the plan administrators, the plan trustees, the former CLPENS executives or by the plaintiffs through Class Counsel (assuming that in fact none of those representatives are addressing these issues with FSCO).
  17. As a related consideration, it seems important that there be a shared awareness of the significant constraints placed upon such representatives in the context of the typically arms-length and sometimes adversarial nature of Class Proceedings, with the related complications of confidentiality agreements and cooperation agreements between the parties, constraining the effectiveness of any sort of plan member representation. To illustrate the effect of those constraints, from May 2012 until the present, all parties appear to have had commitments to jointly advocate the understanding that the PWU fund was largely immunized and that none of the parties had any control over the large drop in surplus from \$58 million (eventually down to \$3 million). From Feb, 2013 until September 2013 they also jointly advocated that something like a \$1,000 minimum for each and every CLA class members was the "best deal" that CLA class members could possibly hope for. There has subsequently been a very significant change in such extreme positions, but (directly or by omission) communications to class members continue to misrepresent the reasons for the prior drop in surplus, and there continues to be a lack of disclosure on issues such as the current level of distributable surplus in the partial windup fund (the most recent estimate was as at August 2012).
  18. The above considerations illustrate the importance of encouraging FSCO's participation in proactively clarifying FSCO regulatory policies and approval criteria with regards to the various issues noted in these three Nov. 20 letters.
  19. My own involvement in addressing these issues is focused on fairness for class members, many of whom are former co-workers. My work in addressing these issues is on a voluntary basis. My prior financial role at Canada Life and involvement on some related industry issues provides some background knowledge that has proven helpful in addressing some of the issues. As a class member and a 'pensioner' in the ongoing plan, I am in the eligible non-PWU group and despite not being a member of the partial windup group have an indirect entitlement via the surplus sharing agreement to a pre-defined percentage of the surplus in the partial windup fund (because of the concurrently-proposed windup of the ongoing plan).
  20. I was one of several objectors who addressed Superior Court March 18, 2013. Then, in September 2013, the Ontario Court of Appeal granted objector-intervenor status for my involvement as a respondent to Canada Life's appeal of Justice Perell's March 28, 2013 decision. I continue to be one of the thousands of individual class member without

independent legal representation who, like almost all other class members, is not considered to be a party to the action.

21. Additional background is available in Part 1 of my Sept. 27, 2013 submission to the Court of Appeal, with other issues addressed in other sections:  
[http://www.kmlaw.ca/site\\_documents/040157\\_dafactum\\_27sep13.pdf](http://www.kmlaw.ca/site_documents/040157_dafactum_27sep13.pdf)
22. Also attached to this email is a November 12, 2013 one-page background overview from the perspective of class members, written prospectively and titled: "**The Pension Surplus Journey of the Terminated Canada Life Employees**"
23. **The following is a list of specific questions, etc.** in the context of the above considerations:
  - 23.1 **de facto FSCO approval?** Providing written confirmation for the Court as to whether FSCO agrees with the asserted implication in proposed amendment #3 paragraph #8 that FSCO has de facto already approved the various elements in the proposed amended #3 settlement agreement.
  - 23.2 **January 10, 2014 hearing.** Request that FSCO participate in the January 10, 2014 fairness hearing either through direct participation at the hearing and/or by providing to interested parties in advance of the hearing, clarifications regarding various FSCO policies and approval criteria as they might apply to the proposed surplus sharing settlement agreement, including the context of the various regulatory considerations noted within these three letters.
24. Guidance regarding FSCO's views on the above questions, etc. would be of interest to the parties, including Class Counsel, as well as plan/class members.

Sincerely,

Dan Anderson  
dan.anderson@sympatico.ca  
Phone: 905-823-4914

... Also: two separate letters addressing topics B and C.  
... Distribution list is as per cover email.

*attached below - "Pension Surplus Journey of CLA PWU group - 2013-11-12.pdf"*

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**The Pension Surplus Journey of the Terminated Canada Life Employees**  
Seeing the Future? - January 2014 perspective, looking back.

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**Sometimes we only understand the journey once we reach the destination.**

**The journey began in 2002**, following demutualization and the start of the process by which the senior leadership of Great West Life and Canada Life (**the Company**) merged, and thousands of Canada Life employees were terminated.

Offsetting the bad news was some potential good news. The terminated employees were considered a partial windup group (**the PWU group**). They were entitled to some (or all) of the surplus in their portion of the pension plan. They also had pension portability rights in the form of either a purchased insured annuity or a transfer value, also known as a commuted value. The Company contested the extent of the PWU group's entitlement to the PWU distributable surplus.

**The end of the journey in January 2014?** Let's now look at the end of the journey, without getting too lost in the details (and deficiencies) regarding financial disclosures, representations, negotiations and the communications process. The following would be the end result if a class action settlement is imposed January 2014 (*unless something changes*):

a) **Insured annuities.** The Company is an insurance company, but in 2012 the Company simply refused to provide the insured annuities required by FSCO to comply with portability rights.

b) **Transfer values.** A legitimate offer of commuted values was never provided to the PWU group. In 2011, and again in January 2013, when the PWU group was finally provided with the opportunity to exercise portability rights through option elections, the commuted values were not calculated using current interest etc. assumptions, but were calculated using assumptions applicable 6 to 10 years previously, with the effect of much lower commuted values overall.

c) **PWU group "agrees" to accept 16% of FSCO-approved IPWU distributable surplus.** The IPWU distributable surplus as at the partial windup date of June 30, 2005 was \$90 million (net of \$3 million for the share of Indago etc. surplus). That surplus was invested in short term assets. By 2014 that FSCO-approved amount would have grown to at least \$125 million.

Class members and plaintiffs may have been unsure of their rights in the context of FSCO requirements and welcomed the fact that any agreement had to be approved by FSCO. The Company appeared to have rejected FSCO's view of distributable surplus and took the position that such surplus was a "fiction", a moving target that must fund adverse results arising from the liability side, even after the original settlement agreement was approved by the Court. The Company would have recognized that FSCO might not agree with that understanding.

The Court has therefore been asked to approve an amendment # 3 that has the effect that the surplus sharing agreement would no longer be an agreed percentage split of a questionable moving target surplus, but would instead be deemed to be simply a fixed dollar amount agreement to pay out \$19.9 million (= 56% x 57.22% x \$62.2 million) and characterized as the PWU group agreeing to only 16% of the FSCO-approved distributable surplus (19.9/125). The amended agreement (amendment #3 para#8) appears to ask the Court to rule that the requirement for FSCO's approval has thereby been satisfied and to allow the settlement payments to proceed.

---

November 20, 2013

(by email)

**Financial Services Commission of Ontario:**

<b>To: Ms. Lynda Ellis</b> Senior Manager FSCO Pension Regulatory Policies lynda.ellis@fSCO.gov.on.ca	<b>To: Mr. Ben Jagnarine</b> Pension Officer FSCO Pension Operations ben.jagnarine@fSCO.gov.on.ca	<b>To: Mr. Lester Wong</b> Chief Actuary FSCO Pension Actuarial lester.wong@fSCO.gov.on.ca
----------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------

To: canadailifeclass@koskieminsky.com; Cc: et al

Re: *A. Introductory Comments*

**B. FSCO Policy on Recalculation of Transfer Values (commuted values) (T800-403)**

*C. Partial Windup Class Action Lawsuit - Distributable Surplus (FSCO policies?)*

*D. FSCO Assisting Superior Court at January 10, 2014 Fairness Hearing (G200-100)*

**Dear Ms. Ellis and Messrs. Jagnarine and Wong,**

1. This is the second of three interrelated Nov. 20 letters addressed jointly to FSCO and Koskie Minsky (with copies et al) with regards to concerns about a proposed amended partial windup surplus sharing agreement to be addressed at a January 10, 2014 Superior Court fairness hearing.
2. Some specific questions are listed at the end of this letter.
3. Because of the relative urgency of these matters, and the fact that some of the regulatory policy considerations herein may have broader application than the current circumstances of the June 2005 **partial windup of The Canada Life Canadian Employees Pension Plan**, I have addressed this letter jointly to your attention with a copy to other interested parties.
4. Herein, I may at times use the terms 'transfer value' and 'commuted value' interchangeably.
5. **FSCO policy T800-403:**  
<http://www.fSCO.gov.on.ca/en/pensions/policies/active/Documents/T800-403.pdf>  
This letter will focus on policy T800-403 "Recalculation of Transfer Values" as referenced at the above link. The issue of recalculating transfer values is an important consideration with regards to fairness to class members, and the determination of distributable partial windup surplus, because the mandatory portability election option periods did not occur until six years (2011) and eight years (2013), respectively, following the declared partial windup year of 2005, but Canada Life used transfer value factors that were based on prevailing interest rates in 2003-2005.
6. **Primary issue.** The primary issue addressed herein is the issue of selecting which transfer value basis, as defined by the Canadian Institute of Actuaries and/or Actuarial Standards

Board, should be used to calculate or recalculate the transfer values for individuals who elect a transfer value as a portability option. The basic choices, depending in part on the length of time between the alternative dates, would be selecting the basis that corresponds to one of the following (generally moving backward in time): a) a date that is reasonably close to when the individual will receive the funds for transfer and reinvestment purposes (2013 or later), b) the dates when the mandated portability election option forms were provided to the individuals (Jan 2013 and May? 2011), c) the partial windup date (June 2005), or d) their "termination date" (2003-2005).

7. **Relevance to the plan members.** The choice of transfer value basis is clearly important to the individuals who receive the transfer values because the choice of basis (e.g. prevailing interest assumptions) can dramatically affect their transfer value and ideally would be consistent with the prevailing interest rates when the fund are transferred and available for reinvestment.
8. The choice of transfer basis is also of secondary, and conflicting, importance to the parties who will share in the distributable surplus, because the lower the transfer values the higher the surplus to be distributed to others.
9. **Relevance to the January 10, 2014 fairness hearing.** Canada Life has offered to "guarantee" an (initial?) payout of distributable partial windup surplus, but there are concerns that the guarantee is conditional on Canada Life's prior use of transfer value bases that were contradictory, unfair and injurious to class members, and a basis that should not, upon further consideration, be acceptable to FSCO. The effect of those old transfer value bases would be, in the context of the proposed amended #3 settlement, to illegitimately inflate estimated partial windup surplus for purposes of applying the percentages agreed to in the January 27, 2012 agreement, while simultaneously for that same purpose, understating distributable surplus relative to the entitlements implied by the partial windup itself and by the surplus that had been identified for purposes of establishing the January 27, 2012 surplus sharing agreement.
10. As a pre-emptive comment, I assume there is agreement amongst all the interested parties that an unfair transfer value would not be defensible on the basis that the plan member could choose to not take a transfer value.
11. **Primary fairness rationale(s).** My understanding is that there are at least two primary focus principles with regards to a fair determination of the transfer value basis.
  - 11.1 **Consistency with then-prevailing interest rates.** One primary consideration is that the interest rate basis that is used should be reasonably consistent with the prevailing interest rates at the time when the individual would receive the transfer value, and such a consideration is apparently reflected in T800-403's reference to the actuarial standards requirement to recalculate transfer values if more than a few months have passed prior to the disbursement of the transfer values (with the standards assuming that the original calculation had used assumptions consistent with the timing for when the election option was

presented to the plan member). Certainly in the context of very long settlement delays, the appropriate calculation and, if necessary, recalculation of transfer values seems warranted (assuming the plan sponsor has not delayed the options and disbursements for the effect of producing a lower calculated transfer value, which is not the case here).

- 11.2 **Date of event.** On the other hand, I understand that FSCO also applies a "date of event" criteria within T800-403 (but not explicitly referenced therein as such). This will be addressed in further detail below.

12. **Approach by Mercer and Canada Life.** For the partial windup members who were terminated in 2003-2005 and were first offered the transfer value option in May? 2011 and then again in January 2013, the transfer values were all apparently calculated using old transfer value bases that reflected interest rates prevailing at the time their employment was terminated. That approach seems unreasonable. One of the class members pointed out this issue back in March 2013 but I assumed they were mistaken because it seemed to make no sense, but then as a result of subsequent events those facts were confirmed to be the case. Generally speaking, it would seem that class members might be generally unaware from the individual correspondence they received that such an approach was being taken, or understand the implications of it, and might well mistakenly interpret the use of a relatively high interest rate for the calculations as being something that would be beneficial for them.
13. **Acknowledgement and disclaimer.** For the purposes of this correspondence, it seemed important to be able to provide some illustration of the apparent financial impact of different transfer value calculation assumptions (bases) in the context of the various alternatives. I would like to acknowledge and thank Jay Jeffery who (despite not being associated with this class action proceeding and being very busy on other work issues) responded generously to my broadcast request for help in providing illustrative comparative calculations that were then used in the attached transfer value comparison presentation, as well as used as in the analysis below for the interest-morality-methodology split of the financial effect, with no offer from me of financial compensation (since this work is being done on a voluntary basis to help others). Please note that the information has been provided on a reasonable best efforts basis with some understanding of the Canada Life pension plan but the figures are not presented as evidentiary or expert calculations of transfer values. It would be helpful if the Mercer actuaries and/or some other resources could confirm the reasonableness of the comparison values and/or provide a revised version. The primary importance of these numbers in any case is their relative values rather than the absolute level of the individual numbers.
14. **Transfer value comparisons - financial impact of calculation assumptions selected.** The attached transfer value comparisons illustrate the significant impact of the selection of the transfer value basis. Using a very old transfer value basis can dramatically understate the transfer values because interest rates were higher in 2003-2005 than currently and than in May? 2011 and January 2013 (in the reverse manner that valuing liabilities using current assumptions dramatically increases the liabilities).



- 14.1 **For example**, as illustrated in the attached comparison, for two individuals, one age 30 and one age 40, when their employment was terminated in 2003, and neither eligible for an unreduced pension at age 60, if the transfer values retroactively calculated January 2013 as at their termination date in 2003 were increased with interest to 2013, the resulting values would still have to be increased further by approximately 88% and 59%, respectively, in order to be equal to what the transfer values would have been if calculated using current (November 2013) transfer value assumptions.
- 14.2 The discrepancy from the retroactively-assigned transfer value basis would have been even greater for those whose transfer values should have been calculated using commuted value assumptions effective in January 2013 (interest rates were lower than in November 2013), and the discrepancy would be somewhat less for those who exercised the May? 2011 election options (interest rates were higher in May? 2011 than in 2013 but still lower than in 2003-2005).
- 14.3 The discrepancy in the calculated transfer values would be greater at younger ages and lower at older ages, apparently becoming negative for some individuals closer to retirement.
15. **Exception case.** In the exception case where a recalculation of the transfer value would produce a lower commuted value payment than indicated by the results when the individual had exercised the option to take a commuted value, then presumably the higher amount would continue to apply.
16. **Interest rates vs. mortality vs. methodology.** The differential financial effects from choosing transfer value bases from different points in time arise primarily from the effect of different prevailing interest rate assumptions, but changes to mortality and methodology also have some effect. In October the supporting detail for the following illustrative analysis of the relative components was provided to Lester Wong and to the Mercer plan actuaries:

The analysis below is somewhat an apples and oranges comparison relative to the attached transfer comparisons because: a) the age ranges are different than in the attached, b) the assumption was an unreduced retirement age of 60 which causes some complications with the last age range, and c) a June 2013 CV assumption had been used rather than November 2013. Please also note the disclaimer above.

**Percentage Increase (Additive) Using June 2013 Rather than 2003 CV Basis**

Age 2003	Age 2013	interest rate effect	method change effect	mortality assump. effect	combined
35	45	43.1%	2.9%	12.6%	58.5%
45	55	16.6%	6.9%	8.8%	32.3%
55	65	-4.4%	2.9%	5.7%	4.2%

On balance, my impression is that using the most recent assumptions (interest and mortality) and the most current methodology would be the most appropriate approach, particularly in the context of the reasons for the settlement delays (e.g. negotiations, effects of Canada Life investment policies, insured annuities not being provided, etc.), but it has yet to be seen how the various parties might argue to the contrary.

17. **Current circumstances seem problematic.** Further to comments, links and attachments in the first Nov. 20 letter, there are two documents ( a) the partial windup report for June 2005 and b) the April 14, 2011 FSCO approval letter from Ben Jagnarine to Mercer) that, when taken together, seem problematic for the following reasons:
  - 17.1 **June 2005 Partial Windup Report.** The partial windup report for June 2005, pages 1-2, states that one of the purposes of the report is to "determine the ... commuted values for members affected by the partial windup" while also stating: "the option for members to transfer funds from the pension fund, however, will not be provided until after this partial wind-up report and subsequent are approved". It seems unlikely the report would have expected such a long delay prior to making transfer values available to class members, which raises the consideration of recalculating the transfer values (which had not as yet been communicated to class members in the form of an election option).  
[ <http://xa.yimg.com/kq/groups/10590384/156393477/name/Partial-Windup-Report-for-June-30-2005.pdf> ]
  - 17.2 **April 14, 2011 FSCO approval letter.** Without addressing the issue of calculating (or recalculating) the transfer values using current transfer value assumptions. this letter appears to state that FSCO's position is that, except for the issue of surplus, "the proposals set out in the (partial windup) report for the distribution of pension benefit entitlements are acceptable for the purposes of the Pensions Benefit Act". (attached below)
  - 17.3 **Not available.** Up to the present time, those two documents do not appear to have been made available to class members via the Koskie Minsky website. I only recently obtained copies and, in the context of proposed amendment #3 paragraph #8, noted their significance with regards to the issue of FSCO approval and the need to address the issue of recalculating the transfer values.
18. **"Date of event" criteria for T800-403.** Page 2 of T800-403 makes reference to the circumstance of "a mandatory portability right ... which becomes effective after an individual's termination date" and implies that the actuarial standards for recalculating transfer values would apply in those circumstances. Later on that page it is noted that portability rights are "time limited". It seems clear therefore that in the case of class members who were terminated in 2003-2005, and were not provided with a time-limited election option shortly after they terminated and instead a mandatory time-limited portability election option became effective in May? 2011 and a second option became

effective in January 2013, then the "dates of events" clearly are May? 2011 and January 2013, and the applicable "date of event" was not their termination date.

19. The following comment appears in paragraph 11 of lawyer Patrick Mazurek's September 27, 2013 submission to the Court of Appeal: "commuted values ... it is the position of these Objectors that presenting such offers 6 to 8 years after termination - at discounted, non-market values - is not fair to those members, and may not be approved by FSCO".
20. **The following is a list of specific questions, etc.** in the context of the above considerations:
  - 20.1 **Transfer value comparison.** Does FSCO have the authority to request from the plan administrator or plan actuaries a transfer value comparison comparable to the illustrative comparison attached to this letter, but perhaps specific to the respective option election periods in May? 2011 and January 2013, to be made available for shared reference by FSCO and the interested parties? Because of the systems available to plan actuaries, and their familiarity with the Canada Life plan, I would expect such a comparison might involve not much more than a few hours of work.
  - 20.2 **Transfer value assumptions and recalculated values.** Under the circumstances for this partial windup group, and considering basic fairness principles, including the "date of event" criteria, and the material impact on the calculation of individual transfer values, does FSCO agree that the transfer values, originally calculated in 2011 and in 2013 based on old transfer value assumptions as at the respective 2003-2005 termination dates, should be recalculated to reflect a) transfer value assumptions applicable to their election option dates in 2011 and 2013, and b) current transfer value assumptions as at, say, November 2013 because, particularly for the May? 2011 group, it is notable that for some members more than half of the transfer value they are entitled to, has not yet been paid to them and interest rates are significantly lower than in May? 2011.
  - 20.3 **Exception cases.** Does FSCO agree that in the few exception cases where a recalculation of the transfer value would produce a lower commuted value, then presumably the higher amount identified when originally making the election would continue to apply.
  - 20.4 **Transfer value option for plan members.** If the transfer values that had been made available were significantly understated at the time that the options were presented to the partial windup group members, should the portability election option be made available again for class members, with the transfer values calculated based on current transfer value assumptions?
21. Guidance regarding FSCO's views on the above questions, etc. would be of interest to the parties, including Class Counsel, as well as plan/class members.

Sincerely,  
Dan Anderson  
dan.anderson@sympatico.ca  
905-823-4914

- attached below - "CV compare using Jay Jeffery samples - 2013-11-18 - final.pdf"  
- attached below - "FSCO letter to Mercer on CLA PWU - 2011-04-14"

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Communications forum for some class members:

canadalifers@yahooGroups.com

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# **Quantifying \$ Effect on Transfer Values (Commuted Values)** **When Using OLD (2003-2005) vs. New (2013) CV Calculation Bases**

(Using old basis is inconsistent with using current liability assumptions to value surplus.)  
 (Using old basis is also inconsistent with plan member investing transfer funds at current rates.)

## **Sample Commuted Values per \$1,200 annual pension**

<b>A. Illustrative 2003 Termination</b>				<b>CV1 at 2013</b>	<b>CV2 at 2013</b>	<b>CV2 / CV1</b>
Age at Termination in 2003 ( T )	Age in 2013 ( T+10yr )	Assumed Unreduced Retirement Age	Commuted Value Calculated [1] as at 2003 ( T )	2003 CV Accum with Int @ 6.0% to 2013 ( T + 10 yrs )	Commuted Value Calculated [3] as at 2013 ( T + 10 yrs )	ratio
<b>a) 2003 termination and pension starting age 65</b>						
30	40	65	\$2,046	<b>\$3,664</b>	<b>\$6,881</b>	188%
40	50	65	\$3,665	<b>\$6,563</b>	<b>\$10,422</b>	159%
50	60	65	\$6,563	<b>\$11,753</b>	<b>\$14,668</b>	125%
<b>b) 2003 termination, IF years of service qualified for age 60 unreduced pension</b>						
40	50	60	\$5,490	<b>\$9,832</b>	<b>\$14,268</b>	145%
50	60	60	\$9,832	<b>\$20,114</b>	<b>\$18,703</b>	93%

<b>B. Illustrative 2005 Termination</b>				<b>CV1 at 2013</b>	<b>CV2 at 2013</b>	<b>CV2 / CV1</b>
Age at Termination in 2005 ( T )	Age in 2013 ( T+8yr )	Assumed Unreduced Retirement Age	Commuted Value Calculated [2] as at 2005 ( T )	2005 CV Accum with Int @ 4.5% to 2013 ( T + 8 yrs )	Commuted Value Calculated [3] as at 2013 ( T + 8 yrs )	ratio
<b>a) 2005 termination and pension starting age 65</b>						
30	38	65	\$2,808	<b>\$3,994</b>	<b>\$6,332</b>	159%
40	48	65	\$4,796	<b>\$6,821</b>	<b>\$9,593</b>	141%
50	58	65	\$8,192	<b>\$11,651</b>	<b>\$13,900</b>	119%
<b>b) 2005 termination, IF years of service qualified for age 60 unreduced pension</b>						
40	48	60	\$6,966	<b>\$9,906</b>	<b>\$13,129</b>	133%
50	58	60	\$11,899	<b>\$16,922</b>	<b>\$17,719</b>	105%

		Interest Rates Pre-retirement	Interest Rates Post-retirement	Mortality
(1)	2003 example	6.0% for 15 yrs, then 6.0%	4.0%	GAM83
(2)	2005 example	4.5% for 10 yrs, then 5.5%	4.0%	UP94@2020
(3)	2013 example	2.9% for 10 yrs, then 4.4% *	4.0%	UP94Gen'l

\* Actual CV rates for November, 2013  
 (January 2013 CV rate: 2.5%(10yr) /3.7%)  
 (May 2011 CV rate: 3.8%(10yr) /5.1%)

Assumptions for all commuted values: Unisex 50%M/50%F  
 Pre-ret't death = CV  
 Payment Guarantee: 10 yrs

The above comparisons are understood to be reasonably representative of the commuted values for the Canada Life pension plan but the plan's actuaries (Mercer) are the experts in those commuted values and are asked to confirm that the comparison is reasonable and / or provide alternative comparison values. Please note the disclaimers identified in the second 2013-11-18 [revised to 2013-11-20] letter to FSCO.

**Financial Services  
Commission  
of Ontario****Pension Plans Branch**

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Ontario

47

April 14, 2011

Registration Number: 0354563

Joseph Tang  
Principal  
Mercer (Canada) Limited  
161 Bay Street  
PO Box 501  
Toronto ON M5J 2S5

Dear Dear Mr. Tang:

**Re: The Canada Life Canadian Employees Pension Plan**

We have reviewed the wind-up report and other documents submitted by you in respect of the partial wind up of the above pension plan effective June 30, 2005. Based on this review, the proposals set out in the report for the distribution of pension benefit entitlements are acceptable for the purposes of the Pension Benefits Act, R.S.O. 1990, c. P.89 (PBA). Pursuant to my authority under section 70(3) of the PBA, with the exception of the surplus assets, the distribution of the assets related to the partial wind up in accordance with the report is hereby authorized. Any proposals with respect to the distribution of the surplus assets related to the partial wind up will be dealt with separately. When the proposals for the distribution of the surplus assets are found to be acceptable, we shall proceed with the approval of the wind-up report.

Please note that pursuant to section 70(6) of the PBA, the members, former members and other persons affected by the partial wind up "shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up." The rights and benefits referred to in this subsection include any entitlements to surplus that would exist on a full wind up. Therefore, the PBA requires the distribution of surplus assets on the partial wind up of a pension plan.

When a plan is being partially wound up, the administrator has a fiduciary obligation to ensure that any remaining surplus is paid out in an expeditious manner. In doing this, the administrator must ensure that any interests the beneficiaries or employer have in the surplus are assessed and protected. To satisfy these fiduciary duties, all advice necessary to resolve any surplus entitlement issues should be obtained. In determining surplus entitlement, a review should be made of all relevant plan and trust documents that have existed since the plan's inception. This review should include amendments, provisions regarding the power to amend, relevant predecessor plans, employee booklets, and the like.

Registration Number: 0354563  
Joseph Tang  
April 14, 2011  
page 2

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If you determine that the plan beneficiaries are entitled to the surplus, you should file a supplementary wind-up report, outlining the method by which the surplus will be distributed to the affected beneficiaries. If you determine that the employer is entitled to the surplus, you should advise the employer to apply to the Superintendent for his consent to distribute the surplus. Should you believe, after having obtained appropriate advice, that the matter of surplus entitlement is not clear, you should take appropriate legal steps to clarify the situation in order that the surplus can be paid out.

We ask that you inform us as to your intentions regarding these surplus funds. The PBA and Regulation 909 set out a number of options that are available to you. We suggest that you review these options and decide how you wish to proceed. In addition we ask that you provide a reconciliation of the funds allocated to the partial wind up from the date of wind up to current date. Please submit the reconciliation along with your timetable for the distribution of surplus by June 12, 2011.

In the event you have any questions or concerns, you may contact me directly by telephone at (416) 590-7157. Please quote the registration number shown at the top right-hand corner of this letter.

Yours truly,



Ben Jagnarine

Pension Officer

by Delegated Authority from  
the Superintendent of Financial Services

BJ

Copy: Sandy Overholt, The Canada Life Assurance Company

November 20, 2013

(by email)

**To: Financial Services Commission of Ontario:**

<b>To: Ms. Lynda Ellis</b> Senior Manager FSCO Pension Regulatory Policies lynda.ellis@fSCO.gov.on.ca	<b>To: Mr. Ben Jagnarine</b> Pension Officer FSCO Pension Operations ben.jagnarine@fSCO.gov.on.ca	<b>To: Mr. Lester Wong</b> Chief Actuary FSCO Pension Actuarial lester.wong@fSCO.gov.on.ca
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To: canadailifeclass@koskieminsky.com; Cc: et al

**Re:** *A. Introductory Comments**B. FSCO Policy on Recalculation of Transfer Values (commuted values) (T800-403)***C. Partial Windup Class Action Lawsuit - Distributable Surplus (FSCO policies?)***D. FSCO Assisting Superior Court at January 10, 2014 Fairness Hearing (G200-100)***Dear Ms. Ellis and Messrs. Jagnarine and Wong,**

1. This is the third of three interrelated Nov. 20 letters addressed jointly to FSCO and Koskie Minsky (with copies et al), with regards to concerns about a proposed amended partial windup surplus sharing agreement to be addressed at a January 10, 2014 Superior Court fairness hearing.
2. Some specific questions are listed at the end of this letter. As noted in the other letters, the focus is on the circumstances of the June 2005 **partial windup of The Canada Life Canadian Employees Pension Plan.**
3. From a regulatory point of view, FSCO may not have a significant role with regards to parties negotiating a percentage split of distributable partial windup surplus, but once that percentage split is determined there would seem to be some expectation that FSCO would have a significant role with regards to the criteria that would apply to establishing a quantification for the total amount of distributable partial windup surplus at a point in time and the purpose of that surplus.
4. **Role of partial windup surplus.** Within the context of FSCO's regulatory approach to distributable partial windup surplus, could someone please address the question to what extent there was any intent that once parties reach agreement on a percentage split of some level of distributable partial windup surplus, FSCO's view was that the purpose of the partial windup surplus was that it was to continue to remain available to the plan sponsor to fund subsequent liability changes? One of the primary issues, which should have relevance to both regulatory and circumstantial fairness considerations, is to what extent Canada Life has a unilateral right to subsequently use partial windup surplus to fund losses arising out of a speculative investment policy for investing the assets that support the liabilities in the partial windup fund. For example, despite the very long



term nature of deferred pension liabilities, Canada Life apparently established an investment policy whereby 60% of the assets in the partial windup fund were invested in cash and short term.

5. **Unique circumstances.** On January 27, 2012 Superior Court Justice Perell approved a settlement agreement that defined the percentage split of distributable surplus between Canada Life and the various class members. In other words, a written agreement was established, but it was only expressed in terms of percentages and not in terms of dollar amounts. Then issues arose regarding implementation on a basis consistent with the terms and intent of the agreement.
6. That original agreement has not yet been approved by FSCO. Support for the agreement was based on distributable surplus estimated as being between \$58 million and \$62 million. The written settlement agreement, however, did not specify the level of estimated surplus that was the context for the support of the Court and class members.
7. Subsequent events (including the sudden drop in the estimated surplus from \$58 million to \$3 million) gave rise to a number of issues related to the reasons for the drop in surplus, including questions about compliance with FSCO's regulatory policies and paradigms regarding the determination of distributable partial windup surplus and, more importantly, the purpose of partial windup surplus once the parties had agreed upon a percentage split related to an identified level of such surplus.
8. **Inconsistencies relative to FSCO's understanding regarding partial windup surplus?**  
If FSCO has indeed been monitoring this case, there is an emerging awareness and increasing concern about the apparent contradictions and inconsistencies between: a) the non-communication of what FSCO's perspective is or should be regarding the context, definition and application of distributable partial windup surplus, along with the asset and the liability issues related to the determination of that surplus, and b) the communications and apparently misleading communications that have thus far been provided to the Court, plaintiffs and/or to class members regarding the determination of the amount of distributable partial windup surplus (as distinct from the respective percentage allocations of surplus). The following are examples:
  - 8.1 "there was a dramatic decline in the estimated value of the Plan surplus available for distribution, principally resulting from a decline in interest rates" (March 11 2003 Koskie Minsky motion factum to Superior Court)
  - 8.2 "Shortly following the issuance of the (*January 27, 2012*) Judgment, the Canada Life Assurance Company's ... actuaries ("Mercer"), reported that the distributable surplus related to the partial windup of the Canada Life Canadian Employees' Pension Plan ... effective June 30, 2005 ... 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." (September 20, 2012 affidavit by Anthony Guindon of Koskie Minsky)

- 8.3 "As the Motions Judge himself recognized, at any point in time, pension surplus is a legal fiction and only becomes tangible and real when trust fund monies calculated at a particular date are actually paid out." (Canada Life appeal factum submitted to Ontario Court of Appeal May 27, 2013 by Jeff Galway of Blake, Cassels & Graydon LLP, referencing paragraph 30 in the factual background section of Superior Court Justice Perell's March 18, 2013 "Reasons for Decision" document).
- 8.4 "Subsequent to the settlement approval motion, Canada Life was advised by Mercer that as at December 31, 2011 the estimated surplus attributable to the Integration PWU had decreased from approximately \$54M to approximately \$8M ... The most recent estimate of the Integration PWU surplus provided by Mercer (as at August 31, 2012) is \$3.1M. The assumptions used to generate this estimate are contained in a report prepared by Mercer dated September 12, 2012." (Sept 24, 2012, GWL's Wallace Robinsion's affidavit to Superior Court)
- 8.5 During the March 18, 2013 court hearing, reference was made to Canada Life transferring the PWU assets and liabilities back to the ongoing plan once surplus had dropped to \$2.6 million, and Justice Perell had commented "why should Canada Life have the right to crystallize the damages?" (from personal notes)
- 8.6 "the Integration PWU was always ... a variable amount (dependent on factors such as interest rate movements)" (Feb. 2013 plaintiffs to class members)
- 8.7 "the effect of this decrease in estimated surplus is that there will be substantially less surplus to distribute than the amount used to calculate the surplus share estimates communicated in the Member Information Packages sent out in March 2011." (Feb 2013 plaintiffs to class members)
- 8.8 "The economic factors contributing to the initial decrease in surplus reported to you in Spring 2012 have persisted. As a result, the net estimated Integration PWU surplus available for distribution as at August 30 2012 was \$2.6 million." (Feb 2013 plaintiffs to class members)
- 8.9 "The drop in the estimated Integration PWU surplus is a regrettable consequence of economic circumstances beyond the control of the parties." (Feb 2013 plaintiffs to class members). Insert comment: Canada Life had established a largely undisclosed investment policy for the PWU fund whereby 60% of the assets were invested in cash and short term from 2008 to 2012.
- 8.10 "We note that the Integration PWU assets were mostly immunized." (May 2012 plaintiffs to class members)

- 8.11 "The amount of the Integration PWU surplus at any point in given point in time is actuarially determined under set guidelines and depends on a number of factors." (May 2012 plaintiffs to class members)
- 8.12 "There is also a risk ... that interest rates could decline further, and along with them the amount of Integration PWU Surplus available for distribution. (May 2012 plaintiffs to class members)
9. **January 10, 2014 - Canada Life's surplus-related proposals.** In the amendment #3 that will be under consideration at the fairness hearing, the parties will propose that Canada Life will now "guarantee" the payment of a specific amount of surplus. There are three primary surplus-related concerns regarding the proposals as they relate to FSCO regulatory policies and establishing criteria for FSCO's approval of the settlement:
- 9.1 **Relatively low surplus distribution amount.** The proposed surplus distribution amount is substantially less than would be produced by applying the agreed percentage splits of surplus against the estimated surplus that had formed the basis for the original settlement agreement as approved January 27, 2012. The parties have not as yet provided a reasonable degree of financial disclosure, nor provided financial rationales that would seek to justify the proposed level of surplus payout, relative to their amendment #3 paragraph #8 assertions that FSCO has de facto approved the level of surplus payouts relative to the June 2005 distributable partial windup surplus.
- 9.2 **Extended settlement implementation process?** Failing to provide to class members a full initial payment of their entitlement to partial windup surplus, the parties nevertheless also propose to not include a provision that had been included in draft amendment #2 and was intended to allow class members to share in additional partial windup surplus that is expected to re-emerge as interest rates increase (the surplus suddenly became "hidden" as a result of the extreme duration mismatch of the assets and liabilities combined with an unexpected drop in interest rates). It would be helpful to know how FSCO regulatory policies might accommodate the extended settlement implementation process as originally proposed by the parties, or the more flexible approach as illustrated in paragraph 29 of my September 27, 2013 submission to the Court of Appeal. [http://www.kmlaw.ca/site\\_documents/040157\\_dafactum\\_27sep13.pdf](http://www.kmlaw.ca/site_documents/040157_dafactum_27sep13.pdf)
- 9.3 **Is (initial?) guaranteed surplus payment conditional on unfair transfer values?** The payout "guarantee" appears to be conditional on what has recently been recognized as a seemingly unreasonable approach to calculating transfer values. Removing such a condition would improve the credibility of the proposed surplus payment. This issue is addressed in the comments regarding FSCO policy T800-403 in the second of the three Nov. 20 letters.
10. Several sections in lawyer Patrick Mazurek's September 27, 2013 submission to the Ontario Court of Appeal also raise related questions regarding the consistency of the

jointly proposed agreement with FSCO's approach to determining distributable partial windup surplus:

[http://www.kmlaw.ca/site\\_documents/040157\\_IntervenorFactum\\_27sep13.pdf](http://www.kmlaw.ca/site_documents/040157_IntervenorFactum_27sep13.pdf)

In particular, paragraphs 6, 27 and 28 seem applicable. There are other surplus references that seem less applicable and/or I don't think I share the understanding that is expressed therein.

11. **The following is a list of specific questions, etc.** in the context of the above considerations:

11.1 **Role of partial windup surplus.** In the context that a specified estimate for distributable partial windup surplus had been the basis for a court-approved surplus sharing agreement as at January 27, 2012, is FSCO of the regulatory view regarding the purpose of partial windup surplus that even after such an agreement has been court approved, such an identified level of surplus can subsequently be reduced (prior to applying the court-approved allocation percentages) based on an argument put forward by Canada Life that Canada Life continues to have a unilateral first call on partial windup surplus to fund subsequently reported deficits arising from changes in the value between the liabilities and the assets supporting the liabilities, regardless of the reasons for such changes?

11.2 **Extended settlement implementation process.** In the event that the proposed lump sum surplus distribution payment from Canada Life is deficient relative to the intent of the January 27, 2012 surplus sharing agreement, it would be helpful if FSCO could provide some guidance on the acceptability from a regulatory viewpoint of an extended settlement implementation process, as outlined in paragraph 29 of my September 27, 2013 submission to the Ontario Court of Appeal. The proposal is simply an expansion of an approach that had been proposed by the parties in their amendment # 2 proposals.

12. Guidance regarding FSCO's views on the above questions, etc. would be of interest to the parties, including Class Counsel, as well as plan/class members.

Sincerely,

Dan Anderson  
dan.anderson@sympatico.ca  
phone: 905-823-4914

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Superintendent of Financial Institutions,  
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canadalifers@yahogroups.com

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TAB - 5

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 Date: 17/12/2013 1:14 PM

Subject: Re: FSCO & Canada Life partial windup - Jan 10 Court fairness hearing

(re-sent to revise dates in attached pdf to Dec 17 for consistency with cover email - no other changes)

### **Canada Life PWU Surplus and Transfer Values - FSCO Policies**

Thank you for your letter yesterday afternoon.

Hopefully tomorrow's written response from FSCO will also take into account the **attached considerations** related to prior communications and the December 13 telephone conference call that was primarily addressing FSCO's policies regarding the determination of the partial windup related transfer values.

It is unfortunate that the 10am conference call tomorrow has been cancelled. It would have been helpful if the FSCO actuarial representative Lester Wong had made himself available during that call to assist in reviewing the considerations regarding the transfer value issues (partially addressed in the second of the three November 20 letters).

Almost regardless of the content of the anticipated written response from FSCO on Wednesday, it seems important that a FSCO representative be in attendance at the January 10 fairness hearing in Superior Court to help ensure that Superior Court is properly advised regarding FSCO-related issues.

These are important issues that affect a large number of Canada Life pension plan members, and FSCO appears to have had a pivotal role in its dealings with the Mercer and Canada Life representatives.

Sincerely,  
Dan Anderson

*attached - "Canda Life transfer values and FSCO policies - 2013-12-17 rev.pdf"*

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----- Original Message -----

Subject: FSCO & Canada Life partial windup - Jan 10 Court fairness hearing

From: Pension Inquiries <[PensionInquiries@fSCO.gov.on.ca](mailto:PensionInquiries@fSCO.gov.on.ca)>

To: 'dan.anderson@sympatico.ca' <[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)>

Date: 16/12/2013 2:44 PM//

Dear Mr. Anderson:

Thank you for your email of December 13, 2013, and all prior correspondence sent to our office regarding the Canada Life partial wind up effective June 30, 2005.

Please note that we will respond in writing to your inquiries by the end of day Wednesday December 18, 2013. Since, we will be providing a written response to you, we will cancel our telephone conference scheduled for December 18, 2013 and December 20, 2013 at 10:00 am.

Should you have any further questions, you may contact me as set out below. Please refer to the plan registration number in the subject line of this email.

Yours truly,  
Ben Jagnarine

Pension Officer  
Pension Plans Branch  
Financial Services Commission of Ontario



**re: TRANSFER VALUES and FSCO POLICIES****- Canada Life Partial Windup -**

The following appear to be key elements:

1. **Role of transfer values.** The basic intent regarding transfer values is portability such that at the point in time when the individual has access to the funds for purposes of an arms-length transfer to another registered product, the transfer value is intended to reflect the current value of the pension liability (as defined by the actuarial transfer value assumptions) so that the individual can fully "port" or "transfer" that value. Accordingly, prescribed actuarial recommendations and standards as recognized by the Pension Benefits Act provide that if there is a significant delay between the calculation date and the transfer date, transfer values should be recalculated using updated actuarial assumptions that take into account changes in prevailing interest rates, rather than simplistically carrying the prior transfer value forward with interest.
2. **Circumstances of Canada Life class members.** Although class members were terminated in 2003-2005, class members who were provided with portability election forms in 2011-2013 were apparently not provided with individual transfer value amounts until they received individual letters in 2011-2013. Class members were assured that the transfer value amounts were calculated in accordance with actuarial standards but the transfer value amounts had not been recalculated for purposes of the 2011-2013 portability option periods. Please also note in section 5 below the graphical display of the circumstances relative to changes in interest rates.
3. **PBA subsections 72(1), 73(2) and 42(1) and PBA Reg. subsection 29(2) and 24.4(1):**  
 PBA - [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90p08\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p08_e.htm)  
 Regs - [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_900909\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900909_e.htm)  
 In a somewhat convoluted manner, PBA regulation subsection 19 (1), (1.1) and (1.2) identify that regulation 29(2) is the applicable subsection. Emphasis is added below.
  - **Reg. 29(2):** If a pension plan is being **wound up in whole or in part**, the **minimum commuted value** of a pension, deferred pension or ancillary benefit in respect of a person who exercises his or her **entitlement under subsection 73 (2)** of the Act is the amount determined **as of the effective date of the wind up** in accordance with section 3500 ("Pension Commuted Values") of the Standards of Practice of the **Actuarial Standards** Board, published by the Canadian Institute of Actuaries, as that section read upon being revised on June 3, 2010. O. Reg. 178/12, s. 29 (1).
  - **PBA 73(2):** A person entitled to a pension benefit **on the wind up** of a pension plan, other than a person who is receiving a pension, is entitled to the rights under **subsection 42 (1) (transfer)** of a member who terminates employment and, for the purpose, subsection 42 (3) does not apply. R.S.O. 1990, c. P.8, s. 73 (2).

- **PBA 42(1):** A former member of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the former member's deferred pension ...
- **PBA 72(1):** Within the prescribed period of time, the administrator of a pension plan that is to be wound up shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the plan, the options available to the person and such other information as may be prescribed. 1999, c. 15, s. 14 (1); 2010, c. 9, s. 54 (1).
- **Reg. 24.4(1):** If, under subsection 73 (2) of the Act, an amount equal to the commuted value of a person's pension benefit becomes payable, the amount accumulates interest from the effective date of the wind up of the pension plan until the beginning of the month in which the amount is paid. O. Reg. 178/12, s. 23 (2).

**Notable considerations** regarding the above sections of the PBA and regulations:

- a) **Effective date of windup - definition.** The term "effective date of the windup" does not appear to be defined in the PBA nor in the regulations, and even having such a definition may not resolve some of the potential problems with the regulation subsections unless one presumes different members of the class have a different effective date of windup for different purposes.

One might presume for Canada Life that the "effective date of the windup" is the same as the class action "declared partial windup date" of June 30, 2005, but selecting that as the definition to apply to the various sections of the regulations seems questionable and in some respects nonsensical when:

- i. Class members entitled to a deferred pension were not entitled to exercise their rights under subsection 73(2) regarding a transfer option until after July 2011 and then again after January 2013.
- ii. Distributable surplus is not being determined based on the surplus as at June 30, 2005 but Canada Life instead proposes to determine distributable surplus as at August 31, 2012 with subsequent ad hoc adjustments.

In any case, the comments that follow are based on the presumption that FSCO representatives and Canada Life representatives have in effect jointly argued that the "effective date of the windup" for purposes of the transfer value considerations is June 30, 2005.

- b) **Limitations regarding regulation subsection 29(2).** Reg. 29(2) by itself only refers to the determination of a minimum transfer value as at the "effective date of the windup" but does not address the determination of the transfer value itself when a class member was in fact denied the right to elect a transfer until many years after the "effective date of the windup". However, the following should also be noted:

- i) 29(2) recognizes that transfer values are to be determined in accordance with actuarial standards, and those standards (in recognition of the fundamental role of transfer values) identify that transfer values should be recalculated when there is an inordinate time lag prior to a transfer amount being made available to an individual for arms-length transfer to another registered product.
  - ii) 24.4(1) at first appears to contradict actuarial standards but in fact seems to have a limited context as noted below (paragraph 3 c) herein).
  - iii) The role of subsection 29(2) in defining a minimum transfer value as at the "effective date of the windup" may have some relevance in economic circumstances with increasing interest rates if the plan sponsor has delayed providing portability options so that lower transfer values will be calculated. However, the 29(2) minimum would appear to have no particular relevance when economic circumstances involve an extended period of declining interest rates and the subsequent calculation of minimum transfer values in accordance with the actuarial standards applicable to a portability option period would produce a higher transfer value to reflect the fact that lower interest rates imply an increase in both the cost of an annuity and an increase in the value of appropriate supporting assets. Accordingly, to a large extent the "minimum" transfer values as defined by subsection 29(2) seem to be irrelevant for the circumstances of the Canada Life partial windup group, except for reference to the fact that (minimum) transfer values are to be determined in accordance with actuarial standards which in turn require the calculation of transfer values consistent with the portability option period.
- c) **Limitations regarding regulation subsection 24.4(1).** Reg. 24.4(1) addresses the crediting of interest to an amount that becomes payable as at the "effective date of the windup", however:
- i) 24.4(1) would likely be intended to address the circumstances where there is a relatively brief delay between the date when a transfer value becomes payable and when the transfer of funds actually takes place (e.g. where the member does not in a timely manner identify the eligible financial institution to which the funds are to be transferred). It is unreasonable to presume that 24.4(1) would apply when the delay was for a period of many years, without giving consideration to the reason for a delay in such a transfer.
  - ii) In any case, 24.4(1) does not appear to address the Canada Life partial windup circumstances when transfer value amounts were not identified and did not become payable until many years after the "effective date of the windup".

2013-12-17 (per email to FSCO)

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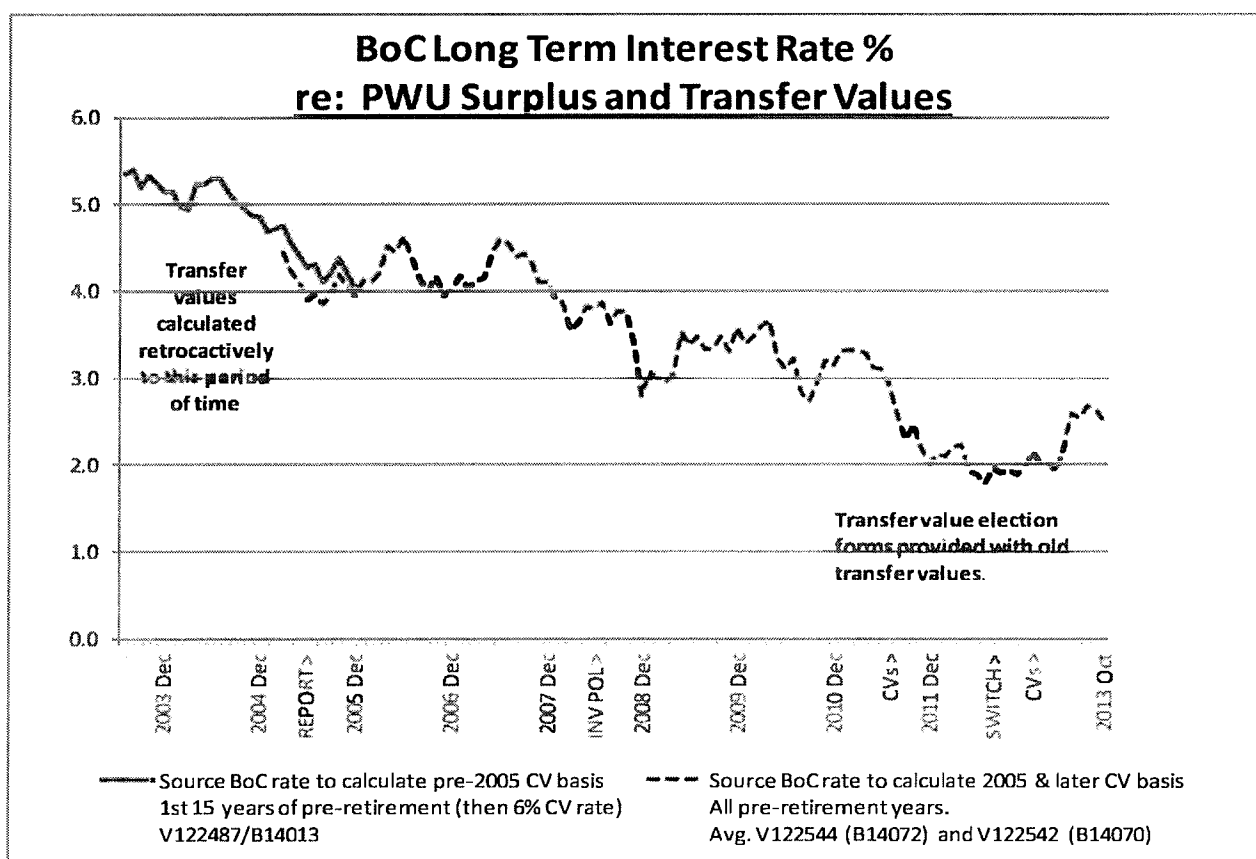
4. **FSCO policy W100-102 Appendix A** deals with transfer values in the case of partial windups: <http://www.fSCO.gov.on.ca/en/pensions/policies/active/Documents/W100-102.pdf>

**"A.1.5 Date of Computation.** Individual commuted values of benefit entitlements normally should be calculated as of the effective date of windup using a basis in effect on that date. **If warranted by the windup circumstances, other computations date(s) may be used."**

Supposedly the word "may" in the above reference is intended to suggest permission, but would more appropriately be replaced by "should", since the condition is "if warranted", and certainly the circumstances of this case warrant calculating the transfer values that would be specific to the portability option periods that occur more than six years after the partial windup date and up to almost ten years after termination. It is strange that the purpose of that appendix A is to provide guidance to FSCO pension officers and other FSCO staff, but provides no illustration of what is meant by "if warranted". There appears to be too much latitude to misinterpret the intended guidance and allow plan sponsors to anti-select against plan members.

5. **Graphical display of circumstances of Canada Life partial windup:**

This display with a more complete description of the elements was provided Dec. 8.



2013-12-17 (per email to FSCO)

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6. **Potentially misleading sentence on 3rd page of FSCO policy T800-401 and T800-403.** The following sentence appears on the third page in those two policy papers: "where a person exercises his or her entitlement under section 73(2) of the PBA, section 29(2) of the Regulation requires the commuted value to be determined as of the effective date of the wind-up". As noted in prior comments above, subsection 29(2) would appear to have a fairly limited application and specifically references a minimum transfer value that appears to have little or no relevance to the circumstances of the Canada Life partial windup. Comments below address the actuarial-based issue of recalculating transfer values which is the primary subject matter for these two policy papers.

7. **FSCO policy T800-401 and T800-403 (Recalculation of Transfer Values).**

<http://www.fSCO.gov.on.ca/en/pensions/policies/active/Documents/T800-401.pdf>

<http://www.fSCO.gov.on.ca/en/pensions/policies/active/Documents/T800-403.pdf>

These two policy papers seem largely the same for purposes here (the former applies from 2001 to 2011 and the latter for 2012 and later). They address the requirement in the PBA-recognized actuarial standards that transfer values be recalculated if there is a significant time delay before the transfer values are determined and/or paid out. Those two FSCO policies both state on page 2 (*adding parenthetical clarification*):

"It is FSCO's view that (*in the case of terminations or a plan wind-up*) section 4 of the Recommendations (*i.e. the requirement to recalculate transfer values*) does not apply ... when a member has a mandatory right to make a portability election within a prescribed period and has made the election within this period."

Now, setting aside the fact that the view as expressed would seem to have notable limitations that would be contradictory with the basic actuarial standards (as identified above in the context of the apparent limitations regarding PBA Regulation subsection 24.4(1)) what matters in the case of Canada Life is that the individuals had not made a such an election as at their termination dates, nor as at the declared partial windup date, and had no opportunity to make such an election until 2011 and then again in 2013.

**Under such circumstances, it would appear that both T800-401 and T800-403 imply that the transfer values should have been recalculated as intended by the actuarial standards using assumptions applicable to the portability option periods.**

Sincerely,

Dan Anderson  
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[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)

Distribution - as per attached  
(As per 2013-12-17 email and prior set of November 20, 2013 letters to FSCO.)

2013-12-17 (per email to FSCO)

63

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**Subject:** CLA Surplus and Interest Rate Timeline

**From:** Dan Anderson <dan.anderson@sympatico.ca>

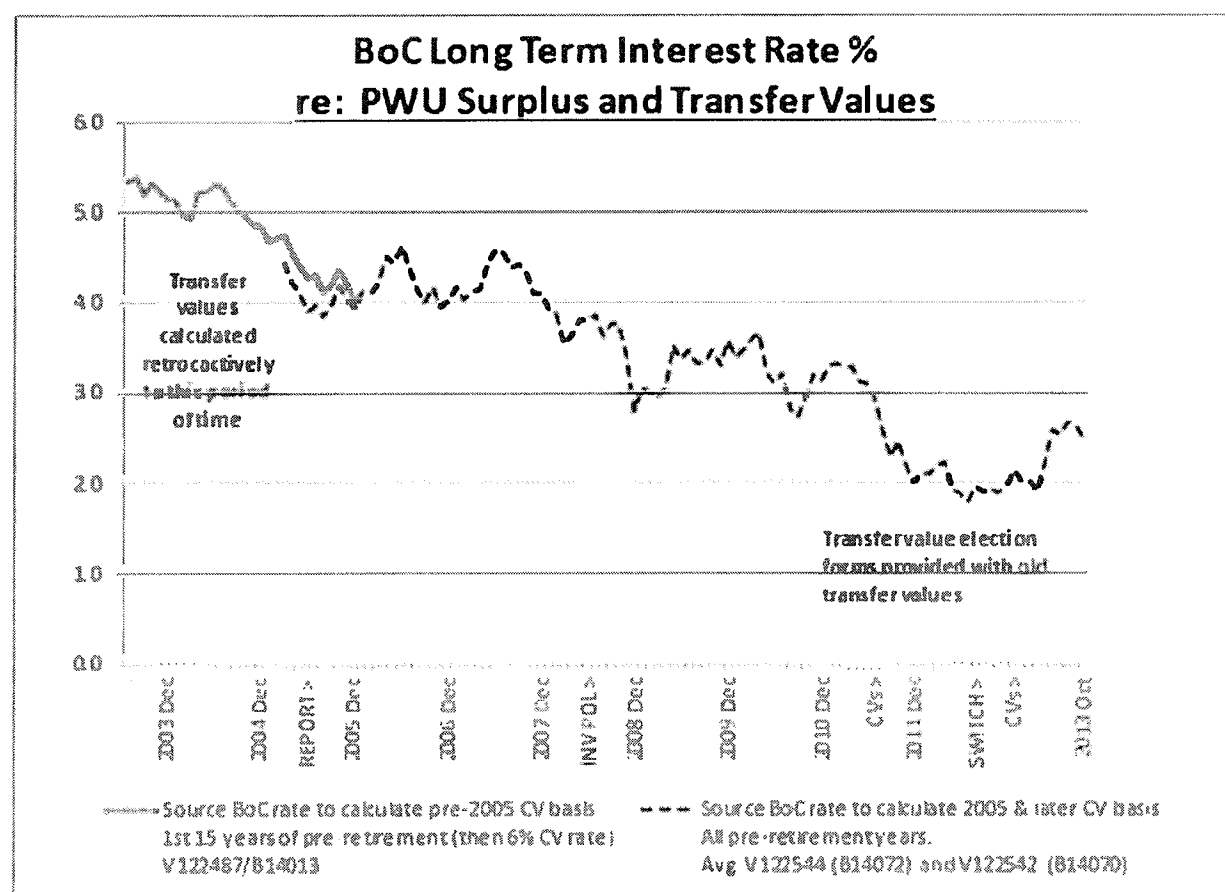
**Date:** 08/12/2013 5:47 PM

**To:** Ben Jagnarine - FSCO Pension Officer <ben.jagnarine@fsc.gov.on.ca>, Wallace Robinson - Canada & London Life Pensions <wally.robinson@londonlife.com>

**CC:** Douglas Rienzo - Osier for CLA\_GWL <drienzo@osier.com>, David Kidd - Lead Plaintiff <alcohekidd@sympatico.ca>, Clio Godkewitsch - Koskie Minsky <cgodkewitsch@kmlaw.ca>, Patrick Mazurek - lawyer <patrick@mazurek.ca>, "CanadaLifers@yahoo.com" <CanadaLifers@yahoo.com>, Jeff Galway lead counsel CLA\_GWL <JEFF.GALWAY@blakes.com>, Mark Zigler - Koskie Minsky <mzigler@kmlaw.ca> Jonathan Foreman - Harrison Pensa <jforeman@harrisonpensa.com>, Darrell Brown - Sack Goldblatt Mitchell <dbrown@sgmlaw.com>, John Field - Hicks Morley <john-field@hicksmorley.com>

**BCC:** Fred Taggart <fjtaggart@yahoo.com> Cecil Adams <cecadams@rogers.com>

The attached two-page document addresses the relationship between various elements in the following overview display where the interest rate context includes a reference timeline covering the timing of the PWU report, establishment of the PWU investment policy, the Aug 2012 "switch" in moving the assets and liabilities, and the prior and subsequent transfer value election periods with the retroactive transfer value calculations.:



Also FWIW, attached is the excel spreadsheet that was used to produce the above display.

attached:

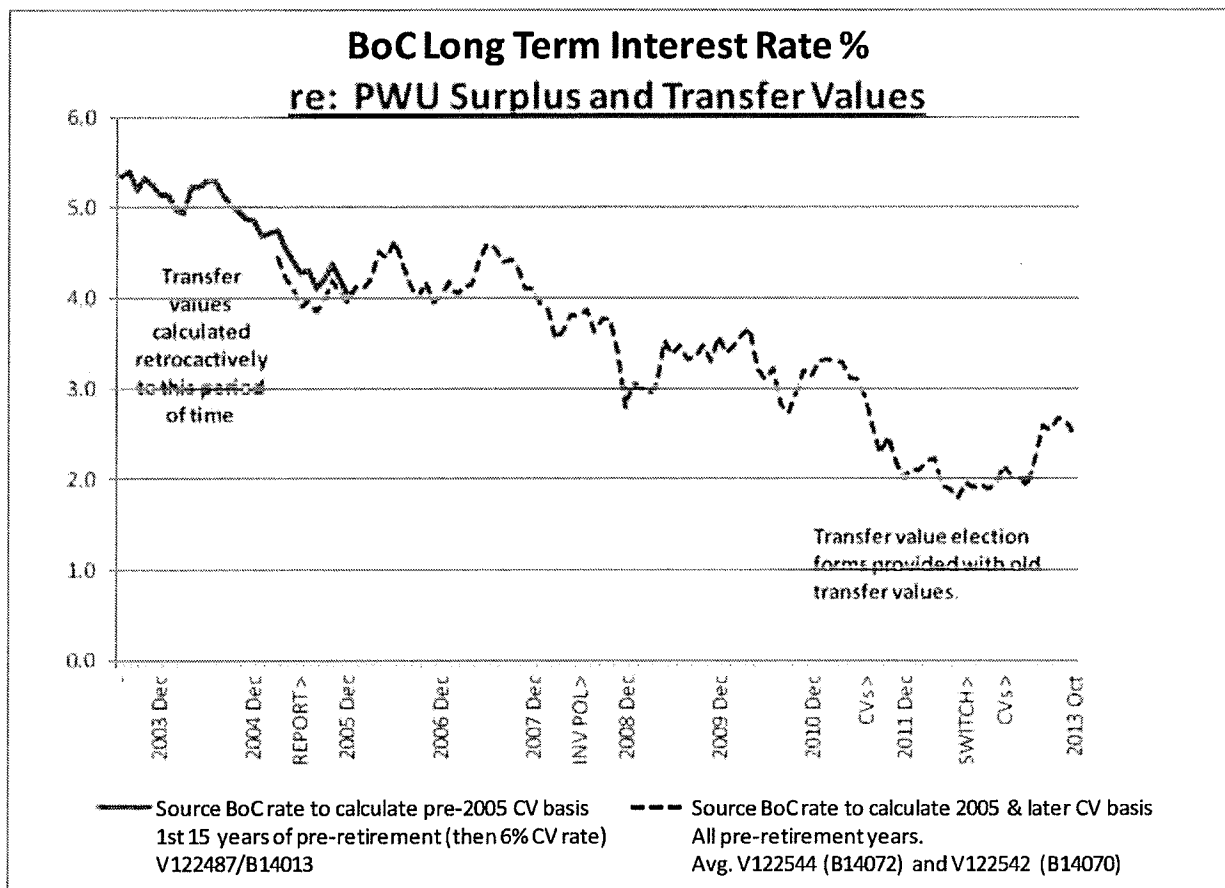
1. "interest rates, surplus & transfer values - 2013-12-08.pdf"
2. "source interest rates for CV bases - 2013-12-08.xlsx"

Attachments:

## CLA PARTIAL WINDUP SURPLUS INTEREST RATE ENVIRONMENT - 2003 to 2013

The interest rate environment and the investment policy for the partial windup fund were primary reasons for the large drop in surplus from, say, July 2005 to Aug. 2012 (\$93 million to \$2.6 million).

On the other hand, the plaintiffs and Canada Life have now identified that same interest rate environment as the reason for a 'silver lining', in the form of 'surplus' from retroactively-calculated transfer values. This newly-identified 'surplus' obtained from a subgroup of class members is now the primary funding source for Canada Life's offer to make a lump sum settlement payment to IPWU class members in lieu of their participating in the re-emergence of surplus after August 2012.



The above timeline also identifies related events such as the timing of the PWU report, establishment of the PWU investment policy, the Aug 2012 "switch" in moving the assets and liabilities, and the prior and subsequent transfer value election periods with the retroactive transfer value calculations.

The interest rates referenced above, in the context of determining current and historical transfer values, were obtained from an excel workbook that an actuary David C Hart makes available to the profession and also makes available to the public via his website, with disclaimers noted therein:

<http://www.an-actual-actuary.com/> (select "Pension Plan CANSIM Rates")



As noted, those interest rates are Bank of Canada long term interest rates. Those same interest rates are used when establishing transfer value assumptions, as noted in the referenced spreadsheet.

The following considerations may be a useful reference for a shared understanding:

**1. Interest rate effect on liabilities and transfer values.** Interest rates (i.e. discount rates) are used to calculate the present value of future pension obligations and the higher the assumed future interest rates the lower the present value. Accordingly, when calculating liabilities to determine the basic PWU surplus, Canada Life is using the interest assumptions as at Aug. 2012 (lower interest rates, higher liabilities, so lower surplus). However, when calculating commuted values, Canada Life is using the interest assumptions from 2003-2005 (higher interest rates, lower commuted value).

**2. Intent of transfer values.** The intent of the actuarial standards for calculating transfer values is to reflect the interest rate environment when the plan member receives the transfer funds.

**3. Three interest rate discount periods.** The discount period can be divided into three sections.

a) **Post-retirement period.** The most complex discount period involves the post-retirement period and involves present valuing the assumed future pension payments (considering interest, indexing and mortality) and expressing the present value as at the assumed retirement date.

b) **The deferred period** from the transfer value payout date to the retirement date is the easiest period of time to understand because present valuing back to the transfer value payout date does not involve indexing and mortality assumptions. Real return bond rates are not relevant for this period. The following is the relative financial effect of using a basic discount rate of 5% during that deferred period instead of a discount rate of 2% (this explains in a simple manner a significant portion of the transfer value comparison differences in the Dec Nov. 20, 2013 letters to FSCO & Class Counsel et al.

deferred period	Basic (simple) financial effect as at transfer payment date from using 5% instead of 2% during the deferred period
10 years	loss of 25%
20 years	loss of 44%

c) **The retroactive calculation** of the transfer values involves the atypical complication of a long retroactive discount period from the transfer value payout date back to the retroactive calculation date (i.e. 2003-2005) but the discount interest rate assumed to be applicable during that time period is **irrelevant** because whatever rate is assumed must then be applied to accumulate the value forward again to the transfer payout date, resulting in no net effect. It is only the effect of the retroactive selection of overstated interest assumptions applicable to the periods of time after the transfer payout date that has an effect, and it is a particularly adverse effect.

Dan Anderson

2013-12-08 distribution:

FSCO (Ben Jagnarine), Plaintiff and Canada Life representatives, Patrick Mazurek, Canadalifers.

TAB - 6

**Financial Services  
Commission  
of Ontario**

**Pension Plans Branch**

5160 Yonge Street  
Box 65  
Toronto ON M2N 6L9

Telephone (416) 226-7778  
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de l'Ontario**

**Direction des régimes de retraite**

5160, rue Yonge  
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Toronto ON M2N 6L9

Téléphone (416) 226-7778  
Télécopieur (416) 226-7777



Ontario

December 17, 2013

Registration Number: 0354563

Dan Anderson

Dan.anderson@sympatico.ca

Dear Mr. Anderson:

**Re: The Canada Life Canadian Employees' Pension Plan**

---

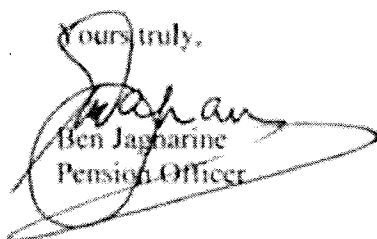
I am sending this letter to confirm the position of the Financial Services Commission of Ontario (FSCO) on the two issues that you have raised in your correspondence and that were discussed during our telephone call on December 13, 2013.

I confirm that FSCO has not provided de facto approval of the settlement that is being put before the Ontario Superior Court of Justice on January 10, 2014. The partial wind up effective June 30, 2005, was approved by FSCO on April 14, 2011 for the distribution of the basic benefits only as it relates to the wind up group of members. We had reviewed the partial wind up report and found that the assumptions and methods shown in the report are consistent with the accepted actuarial practice, FSCO Policies and the Pension Benefits Act and Regulation, from which FSCO derives its powers.

I also confirm that the Financial Services Commission of Ontario Policies T800-403, T800-401, and W100-102 have been reviewed by our legal, actuarial, and policy staff and that FSCO sees no reason to interpret these policies as requiring the commuted values to be changed in the circumstances of this case.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 590-7157, or toll free at 1-800-668-0128, extension 7157. Please quote the registration number shown at the top of this letter.

Yours truly,

  
Ben Jagharine  
Pension Officer

BJ

**Subject: FSCO "response" to Canada Life partial windup issues and  
Jan 10 Court fairness hearing**

**Date:** Wed, 18 Dec 2013 12:40:42 -0500

**From:** Dan Anderson <dan.anderson@sympatico.ca>

**To:** Ben Jagnarine - FSCO Pension Officer <ben.jagnarine@fSCO.gov.on.ca>, Deborah McPhail - FSCO Pension Legal Counsel <deborah.mcphail@fSCO.gov.on.ca>, Lester Wong - FSCO Chief Actuary <Lester.Wong@fSCO.gov.on.ca>, Lynda Ellis - FSCO Pension Policy <lynda.ellis@fSCO.gov.on.ca>

**CC:** Brian Mills - Deputy Superintendent FSCO <brian.mills@fSCO.gov.on.ca>, Clio Godkewitsch - Koskie Minsky <cgodkewitsch@kmlaw.ca>, Jeff Galway - lead counsel CLA\_GWL <jeff.galway@blakes.com>, Douglas Rienzo - Osler for CLA\_GWL <drienzo@osler.com>, Jonathan Foreman - Harrison Pensa <jforeman@harrisonpensa.com>, John Field - Hicks Morley <john-field@hicksmorley.com>, Darrell Brown - Sack Goldblatt Mitchell <dbrown@sgmlaw.com>, David Williams - Harrison Pensa <dwilliams@harrisonpensa.com>, Mark Zigler - Koskie Minsky <mzigler@kmlaw.ca>, John Solursh - Chair FSCO <john.solursh@fSCO.gov.on.ca>, Bruce McNaughton - Pension Policy - Finance <bruce.macnaughton@ontario.ca>, "CEO and Superintendent of Financial Services, Philip Howell" <CEO@fSCO.gov.on.ca>, "CanadaLifers@yahoogroups.com" <CanadaLifers@yahoogroups.com>, Pension Inquiries <PensionInquiries@fSCO.gov.on.ca>, Koskie Minsky CLA class member contact <canadalifeclasse@koskieminsky.com>, Rhonda Booth - Registrar FSCO <rhonda.booth@fSCO.gov.on.ca>

Greetings,

Thank you for your follow-up email on behalf of FSCO and I note the date correction with thanks.

FSCO representatives may have reviewed one-sided motion materials but do not appear to have given serious consideration to the more substantive issues as noted in the November 20 and subsequent communications, and have instead chosen to close the door on establishing a meaningful understanding of the considerations in advance of the January 10 fairness hearing.

There is no comfort at all to the caveat that a January 10 decision by the Court (relying on the nonsensical position that FSCO has taken with transfer values and the lack of oversight guidance thus far regarding surplus considerations) would be conditional on FSCO's approval.

It does not seem sufficient for FSCO representatives to express a dismissive and unsupported conclusion with regards to the determination of transfer values, as seemed to be the case in the FSCO email ~~earlier today~~ {*correction: yesterday afternoon Dec 17*}, when the end result is nonsensical relative to the fundamental purpose of transfer values and even relative to FSCO's own policies and the related regulations.

There does not seem to be any sense to the conclusion that FSCO reached that the plan sponsor can use transfer value assumptions from up to ten years ago. Such a conclusion seems to be based on a facile and misguided interpretation of somewhat poorly written policies and

regulations, where such an interpretation disregards or simply does not understand the implied results. Admittedly there is a limit to the detail that can be incorporated into such policies and regulations, and a dose of common sense must be applied when dealing with unusual circumstances. Presumably the poorly-written nature of the policies and regulations was not done deliberately in order to allow plan sponsors to anti-select against plan members.

The basic challenge is for FSCO to defend their position in a substantive manner, regardless of their option to disregard such a request, because the financial effect on individuals can be very significant, as can be seen for the 142 individuals electing a transfer value in 2013, when comparing their transfer values and the corresponding liabilities. The November 20 letter on the issue of transfer values also provides a quantitative comparison of the potential effect for different age ranges.

Resolving the transfer value issues is important because there also are complex implications with regards to resolving the conflicting class member objectives of establishing fair transfer values while also finding a way to access the surplus that has become hidden as a result of what might reasonably be described as the dramatically adverse results of Canada Life's speculative investment policy. Canada Life has offered a "guaranteed" 56% payout that in many respects is a poison-pill guarantee.

Motion materials in this case are one-sided and to some extent involve various elements that invite concerns regarding conflicts of interest. Both the Canada Life representatives and the plaintiffs' representatives are again advocating together for an inappropriate end result (not unlike both sides previously arguing for crystallizing surplus at the worst possible time and inviting everyone to be thankful they were receiving \$1,000 each).

None of the court-recognized parties (nor FSCO) appear to concern themselves with some basic issues of fairness regarding plan members who have elected a transfer value. Both sets of representatives in this class action, as part of their joint advocacy, have also demonstrated what appears to be a propensity to misrepresent various facts, including the reasons for the drop in surplus and/or not disclosing to class members specifics regarding the nature and implications of investment policies, the relationship between commuted values and liabilities and the current relationship between PWU assets and liabilities prior to efforts to incorporate changes in methodologies for determining liability values.

Plan members think of FSCO as an entity that they can rely upon with regards to helping to ensure fairness for plan members, and a concern would be that such reliance is misguided, with plan sponsors and their representatives (lawyers, pension consultants, etc) having much more effective access for purposes of influencing FSCO decisions.

I do not view the pension officer or counsel as the individuals that make policy decisions, and my impression is that the individuals making policy decisions maintain their anonymity by declining to directly address such matters, unless perhaps they are dealing with plan sponsors. More transparency would be welcome on these sorts of fundamental issues, but perhaps resource constraints preclude that approach.

Best wishes in the new year.

Regards,  
Dan Anderson

905-823-4914  
[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)

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----- Original Message -----

Subject: Re: FSCO "response" to Canada Life partial windup issues and Jan 10 Court fairness hearing

From: Ben Jagnarine <[Ben.Jagnarine@fSCO.gov.on.ca](mailto:Ben.Jagnarine@fSCO.gov.on.ca)>

To: 'Dan Anderson' <[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)>, Deborah McPhail <[Deborah.McPhail@fSCO.gov.on.ca](mailto:Deborah.McPhail@fSCO.gov.on.ca)>, Lester Wong <[Lester.Wong@fSCO.gov.on.ca](mailto:Lester.Wong@fSCO.gov.on.ca)>

Cc: Brian Mills <[Brian.Mills@fSCO.gov.on.ca](mailto:Brian.Mills@fSCO.gov.on.ca)>, Clio Godkewitsch - Koskie Minsky <[cgodkewitsch@kmlaw.ca](mailto:cgodkewitsch@kmlaw.ca)>, Jeff Galway - lead counsel CLA\_GWL <[jeff.galway@blakes.com](mailto:jeff.galway@blakes.com)>, Douglas Rienzo - Osler for CLA\_GWL <[drienzo@osler.com](mailto:drienzo@osler.com)>, Lynda Ellis <[Lynda.Ellis@fSCO.gov.on.ca](mailto:Lynda.Ellis@fSCO.gov.on.ca)>, "Jonathan Foreman - Harrison Pensa" <[jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)>, "John Field - Hicks Morley" <[john-field@hicksmorley.com](mailto:john-field@hicksmorley.com)>, Darrell Brown - Sack Goldblatt Mitchell <[dbrown@sgmlaw.com](mailto:dbrown@sgmlaw.com)>, David Williams - Harrison Pensa <[dwilliams@harrisonpensa.com](mailto:dwilliams@harrisonpensa.com)>, Mark Zigler - Koskie Minsky <[mzigler@kmlaw.ca](mailto:mzigler@kmlaw.ca)>, "John M. Solursh" <[John.Solursh@fstontario.ca](mailto:John.Solursh@fstontario.ca)>, "Bruce McNaughton - Pension Policy - Finance" <[bruce.macnaughton@ontario.ca](mailto:bruce.macnaughton@ontario.ca)>, "CEO and Superintendent of Financial Services, Philip Howell" <[CEO@fSCO.gov.on.ca](mailto:CEO@fSCO.gov.on.ca)>, "CanadaLifers@vahoogroups.com" <[CanadaLifers@vahoogroups.com](mailto:CanadaLifers@vahoogroups.com)>, Pension Inquiries <[PensionInquiries@fSCO.gov.on.ca](mailto:PensionInquiries@fSCO.gov.on.ca)>, Koskie Minsky CLA class member contact <[canadalifeclasse@koskieminskiv.com](mailto:canadalifeclasse@koskieminskiv.com)>, Rhonda Booth <[Rhonda.Booth@fstontario.ca](mailto:Rhonda.Booth@fstontario.ca)>  
Date: 18/12/2013 10:37 AM

Dear Mr. Anderson:

Thank-you for your e-mail of December 17, 2013. To clarify, our response is dated December 17, 2013, not February 17.

To further clarify, we had fully reviewed the motion materials regarding the motion scheduled for January 10, 2014, prior to our letter to you dated December 17, 2013.

We can assure you that when the surplus withdrawal application is filed with FSCO, it will be comprehensively examined for compliance with the Pension Benefits Act.

Should you have any further questions, you may contact me as set out below. Please refer to the plan registration number in the subject line of this email.

Yours truly,

Ben Jagnarine  
Pension Officer

Pension Plans Branch  
Financial Services Commission of Ontario

**Subject:**Re: FSCO "response" to Canada Life partial windup issues and Jan 10 Court fairness hearing

**Date:**Tue, 17 Dec 2013 16:37:24 -0500

**From:**Dan Anderson <dan.anderson@sympatico.ca>

**To:**Ben Jagnarine - FSCO Pension Officer <ben.jagnarine@fSCO.gov.on.ca>, Deborah McPhail - FSCO Pension Legal Counsel <deborah.mcphail@fSCO.gov.on.ca>, Lester Wong - FSCO Chief Actuary <Lester.Wong@fSCO.gov.on.ca>

**CC:**Brian Mills - Deputy Superintendent FSCO <brian.mills@fSCO.gov.on.ca>, Clio Godkewitsch - Koskie Minsky <cgodkewitsch@kmlaw.ca>, Jeff Galway - lead counsel CLA\_GWL <jeff.galway@blakes.com>, Douglas Rienzo - Osler for CLA\_GWL <drienzo@osler.com>, Lynda Ellis - FSCO Pension Policy <lynda.ellis@fSCO.gov.on.ca>, Jonathan Foreman - Harrison Pensa <jforeman@harrisonpensa.com>, John Field - Hicks Morley <john-field@hicksmorley.com>, Darrell Brown - Sack Goldblatt Mitchell <dbrown@sgmlaw.com>, David Williams - Harrison Pensa <dwilliams@harrisonpensa.com>, Mark Zigler - Koskie Minsky <mzigler@kmlaw.ca>, John Solursh - Chair FSCO <john.solursh@fSCO.gov.on.ca>, Bruce McNaughton - Pension Policy - Finance <bruce.macnaughton@ontario.ca>, Phil Howell - Suptd of Financial Services <ceo@fSCO.gov.on.ca>, "CanadaLifers@yahoogroups.com" <CanadaLifers@yahoogroups.com>, pensioninquiries@fSCO.gov.on.ca, Koskie Minsky CLA class member contact <canadalifeclasse@koskieminsky.com>, Rhonda Booth - Registrar FSCO <rhonda.booth@fSCO.gov.on.ca>

**FSCO "response" to Canada Life partial windup issues  
and the January 10 Court fairness hearing**

Thank you for your Feb-17 *{typo correction: Dec 17}* response this afternoon on behalf of FSCO (as attached). The comments therein are not particularly substantive.

My impression is that there may be some indifference or lack of understanding within FSCO with regards to the significant financial effect of these issues on many individual plan members, while recognizing there may be limited resources at FSCO at this time of year (or perhaps at any time).

The best approach might be if we might wait a bit longer until there is an opportunity for someone at FSCO to give serious consideration to the content of the material provided to you earlier this afternoon (reflective of prior communications) and the set of questions and context as presented November 20, 2013. A more substantive response would certainly be welcome in light of the issues that have been noted.

The main concern is that the response from FSCO on these issues may be reflective of the extent to which FSCO essentially rubber-stamps requests from plan sponsors (e.g. the determination of transfer values and the determination of distributable surplus in the context of the unusual

aspects of this partial windup) to accommodate plan sponsors' preferences with only a passing concern with regards to the implications on plan members.

Please let me know if you hear of any developments.

Earlier this afternoon I received an email from the registrar at FSCO, Rhonda Booth, and she noted, with reference to the November 20 correspondence:

"I am writing to you on behalf of Mr. John Solursh, Chair of the Financial Services Tribunal. The matter you are referring to is currently before the Tribunal, an adjudicative entity which functions on matters before it in accordance with its' Rules of Practice & Procedure established in accordance with the Financial Services Commission of Ontario Act. "

I have asked for further clarifications.

In the context of Mr. Solursh's dual role with FSCO and the FST, I would be surprised if Mr. Solursh would himself be involved in any FST deliberations in light of his affiliation with the law firm that is representing Canada Life.

Best wishes and Merry Christmas to all.

Dan

***attached: "2013-Dec-17 'response' from FSCO (#354563) on Canada Life PWU.pdf"***

***attached (same as before):***

***"Canada Life transfer values and FSCO policies - 2013-12-17 rev.pdf"***

---

----- Original Message -----

From: Dan Anderson <[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)>  
 To: Ben Jagnarine - FSCO Pension Officer <[ben.jagnarine@fSCO.gov.on.ca](mailto:ben.jagnarine@fSCO.gov.on.ca)>, Deborah McPhail - FSCO Pension Legal Counsel <[deborah.mcphail@fSCO.gov.on.ca](mailto:deborah.mcphail@fSCO.gov.on.ca)>, Lester Wong - FSCO Chief Actuary <[Lester.Wong@fSCO.gov.on.ca](mailto:Lester.Wong@fSCO.gov.on.ca)>  
 Cc: Brian Mills - Deputy Superintendent FSCO <[brian.mills@fSCO.gov.on.ca](mailto:brian.mills@fSCO.gov.on.ca)>, Clio Godkewitsch - Koskie Minsky <[cgodkewitsch@kmlaw.ca](mailto:cgodkewitsch@kmlaw.ca)>, Jeff Galway - lead counsel CLA\_GWL <[jeff.galway@blakes.com](mailto:jeff.galway@blakes.com)>, Douglas Rienzo - Osler for CLA\_GWL <[drienzo@osler.com](mailto:drienzo@osler.com)>, Lynda Ellis - FSCO Pension Policy <[lynda.ellis@fSCO.gov.on.ca](mailto:lynda.ellis@fSCO.gov.on.ca)>, Jonathan Foreman - Harrison Pensa <[jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)>, John Field - Hicks Morley <[john-field@hicksmorley.com](mailto:john-field@hicksmorley.com)>, Darrell Brown - Sack Goldblatt Mitchell <[dbrown@sgmlaw.com](mailto:dbrown@sgmlaw.com)>, David Williams - Harrison Pensa <[dwilliams@harrisonpensa.com](mailto:dwilliams@harrisonpensa.com)>, Mark Zigler - Koskie Minsky <[mzigler@kmlaw.ca](mailto:mzigler@kmlaw.ca)>, John Solursh - Chair FSCO <[john.solursh@fSCO.gov.on.ca](mailto:john.solursh@fSCO.gov.on.ca)>, Bruce McNaughton - Pension Policy - Finance <[bruce.macnaughton@ontario.ca](mailto:bruce.macnaughton@ontario.ca)>, Phil Howell - Suptd of Financial Services <[ceo@fSCO.gov.on.ca](mailto:ceo@fSCO.gov.on.ca)>, "CanadaLifers@vahoogroups.com" <[CanadaLifers@vahoogroups.com](mailto:CanadaLifers@vahoogroups.com)>, pensioninquiries@fSCO.gov.on.ca, Koskie Minsky CLA class member contact <[canadalifeclass@koskieminskiv.com](mailto:canadalifeclass@koskieminskiv.com)>



Date: 17/12/2013 1:14 PM

Subject: Re: FSCO & Canada Life partial windup - Jan 10 Court fairness hearing

(re-sent to revise dates in attached pdf to Dec 17 for consistency with cover email - no other changes)

**Canada Life PWU Surplus and Transfer Values - FSCO Policies**

Thank you for your letter yesterday afternoon.

Hopefully ~~tomorrow~~{*correction: later today, Dec 17*}s written response from FSCO will also take into account the **attached considerations** related to prior communications and the December 13 telephone conference call that was primarily addressing FSCO's policies regarding the determination of the partial windup related transfer values.

It is unfortunate that the 10am conference call tomorrow has been cancelled. It would have been helpful if the FSCO actuarial representative Lester Wong had made himself available during that call to assist in reviewing the considerations regarding the transfer value issues (partially addressed in the second of the three November 20 letters).

Almost regardless of the content of the anticipated written response from FSCO on ~~Wednesday~~ (*correction: later today*), it seems important that a FSCO representative be in attendance at the January 10 fairness hearing in Superior Court to help ensure that Superior Court is properly advised regarding FSCO-related issues.

These are important issues that affect a large number of Canada Life pension plan members, and FSCO appears to have had a pivotal role in its dealings with the Mercer and Canada Life representatives.

Sincerely,  
Dan Anderson

*attached - "Canda Life transfer values and FSCO policies - 2013-12-17 rev.pdf"*

---

----- Original Message -----

Subject: FSCO & Canada Life partial windup - Jan 10 Court fairness hearing  
From: Pension Inquiries <[PensionInquiries@fSCO.gov.on.ca](mailto:PensionInquiries@fSCO.gov.on.ca)>  
To: 'dan.anderson@sympatico.ca' <[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)>  
Date: 16/12/2013 2:44 PM//

Dear Mr. Anderson:

Thank you for your email of December 13, 2013, and all prior correspondence sent to our office regarding the Canada Life partial wind up effective June 30, 2005.

Please note that we will respond in writing to your inquiries by the end of day Wednesday

December 18, 2013. Since, we will be providing a written response to you, we will cancel our telephone conference scheduled for December 18, 2013 and December 20, 2013 at 10:00 am.

Should you have any further questions, you may contact me as set out below. Please refer to the plan registration number in the subject line of this email.

Yours truly,  
Ben Jagnarine

Pension Officer  
Pension Plans Branch  
Financial Services Commission of Ontario

----- Original Message -----

From: Dan Anderson <[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)>  
To: Jeff Galway lead counsel CLA\_GWL <[JEFF.GALWAY@blakes.com](mailto:JEFF.GALWAY@blakes.com)>, Douglas Rienzo - Osler for CLA\_GWL <[drienzo@osler.com](mailto:drienzo@osler.com)>  
Cc: Clio Godkewitsch - Koskie Minsky <[cgodkewitsch@kmlaw.ca](mailto:cgodkewitsch@kmlaw.ca)>, Brian Mills - Deputy Superintendent FSCO <[brian.mills@fSCO.gov.on.ca](mailto:brian.mills@fSCO.gov.on.ca)>, Deborah McPhail - FSCO Pension Legal Counsel <[deborah.mcphail@fSCO.gov.on.ca](mailto:deborah.mcphail@fSCO.gov.on.ca)>, Ben Jagnarine - FSCO Pension Officer <[ben.jagnarine@fSCO.gov.on.ca](mailto:ben.jagnarine@fSCO.gov.on.ca)>, Lester Wong - FSCO Chief Actuary <[Lester.Wong@fSCO.gov.on.ca](mailto:Lester.Wong@fSCO.gov.on.ca)>, Lynda Ellis - FSCO Pension Policy <[lynda.ellis@fSCO.gov.on.ca](mailto:lynda.ellis@fSCO.gov.on.ca)>, Jonathan Foreman - Harrison Pensa <[jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)>, John Field - Hicks Morley <[john-field@hicksmorley.com](mailto:john-field@hicksmorley.com)>, Darrell Brown - Sack Goldblatt Mitchell <[dbrown@sgmlaw.com](mailto:dbrown@sgmlaw.com)>, David Williams - Harrison Pensa <[dwilliams@harrisonpensa.com](mailto:dwilliams@harrisonpensa.com)>, Mark Zigler - Koskie Minsky <[mzigler@kmlaw.ca](mailto:mzigler@kmlaw.ca)>, John Solursh, Bruce McNaughton - Pension Policy - Finance <[bruce.macnaughton@ontario.ca](mailto:bruce.macnaughton@ontario.ca)>, Phil Howell - Suptd of Financial Services <[ceo@fSCO.gov.on.ca](mailto:ceo@fSCO.gov.on.ca)>, "CanadaLifers@yahoogroups.com" <[CanadaLifers@yahoogroups.com](mailto:CanadaLifers@yahoogroups.com)>  
Date: 13/12/2013 12:40 PM  
Dec. 13, 2013

Subject: Re: FSCO & Canada Life partial windup - Jan 10 Court fairness hearing

#### **Initial FSCO Response on Canada Life Partial Wind-Up**

Pending further clarifications from FSCO, this email is belatedly forwarding the attached acknowledgement email that I received Nov 29 from FSCO.

As a result of some discussions this morning with FSCO, I now understand that one purpose of the attached letter was to serve as the FSCO response to the following question-request in the November 20, 2013 letter addressed to Brian Mills, Deputy Superintendent of Insurance:

*" 23.1 de facto FSCO approval? Providing written confirmation for the Court as to whether FSCO agrees with the asserted implication in proposed amendment #3 paragraph #8 that FSCO has de facto already approved the various elements in the proposed amended #3 settlement agreement. "*

The attached Nov. 29 letter from FSCO includes the following statement, apparently in the context of the assertions presented in amendment #3 paragraph #8:

*"Please note that the Superintendent's approval on April 14, 2011. of the partial wind up dated March 31, 2006. did not include the surplus ..."*

FSCO has not as yet provided a response to the various questions in the two November 20 letters addressed to Lynda Ellis, Ben Jagnarine and Lester Wong.

I have reviewed various FSCO policies and had initial discussions with FSCO regarding the issue of the transfer values. It seems clear to me that on the basis of: a) fairness, b) common sense given the purpose of transfer values, c) the actuarial Recommendations as required by the PBA, d) FSCO policies T800-401, T800-403 and appendix A of W100-102, all of them indicate that the transfer values should have been recalculated for purposes of the Jan-April 2013 and July-Oct 2011 option election periods and not doing so has resulting in many transfer values being understated by more than 50% relative to the transfer values that were paid.

More than 200 class members appear to have been affected by the low transfer values and, yes, there would seem to be implications for the proposed settlement unless Canada Life honors their "guarantee" of 56% surplus payout relative to the communications prior to the Court's approval of the original surplus sharing agreement.

However, it is unclear whether FSCO representatives will address the disconnect between the above understanding and FSCO's April 14, 2011 approval letter to Canada Life.

Rather than rectify what appears to be an error by FSCO (assuming one of their mandates is to help ensure fairness to plan members rather than accommodate the wishes of plan sponsors), the current indications are that FSCO may simply take the position that if someone doesn't like what FSCO has already done then they will need to deal with the Financial Services Tribunal, after the Court proceeds with the understanding that FSCO has approved the understated transfer values.

Also, contrary to my understanding from earlier discussions with FSCO, apparently FSCO representative have not been in attendance at the prior court hearings on the Canada Life partial wind-up.

Regards,  
Dan Anderson

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----- Original Message -----

Subject: RE: FSCO & Canada Life partial windup - Jan 10 Court fairness hearing

Date: Fri, 29 Nov 2013 19:36:05 +0000

From: Ben Jagnarine <[Ben.Jagnarine@fSCO.gov.on.ca](mailto:Ben.Jagnarine@fSCO.gov.on.ca)>

To: 'Dan Anderson' <[dan.anderson@sympatico.ca](mailto:dan.anderson@sympatico.ca)>

CC: Mark Zigler - Koskie Minsky <[mzigler@kmlaw.ca](mailto:mzigler@kmlaw.ca)>

Dear Mr. Anderson:

Please find attached an acknowledgement to the letters submitted via your email below regarding the Canada Life Canadian Employees' Pension Plan partial wind up.

Should you have any further questions, you may contact me as set out below.

Yours truly,

Ben Jagnarine  
Pension Officer  
Pension Plans Branch  
Financial Services Commission of Ontario

----- Original Message -----

From: Dan Anderson [<mailto:dan.anderson@sympatico.ca>]

Sent: November-20-13 5:03 PM

To: Ben Jagnarine - FSCO Pension Officer <[ben.jagnarine@fSCO.gov.on.ca](mailto:ben.jagnarine@fSCO.gov.on.ca)>, Mark Zigler - Koskie Minsky <[mzigler@kmlaw.ca](mailto:mzigler@kmlaw.ca)>, Brian Mills - Deputy Superintendent FSCO <[brian.mills@fSCO.gov.on.ca](mailto:brian.mills@fSCO.gov.on.ca)>, Lynda Ellis - FSCO Pension Policy <[lynda.ellis@fSCO.gov.on.ca](mailto:lynda.ellis@fSCO.gov.on.ca)>, Lester Wong - FSCO Chief Actuary <[Lester.Wong@fSCO.gov.on.ca](mailto:Lester.Wong@fSCO.gov.on.ca)>

Cc: Clio Godkewitsch - Koskie Minsky <[cgodkewitsch@kmlaw.ca](mailto:cgodkewitsch@kmlaw.ca)>, Jeff Galway lead counsel CLA\_GWL <[jeff.galway@blakes.com](mailto:jeff.galway@blakes.com)>, Douglas Rienzo - Osler for CLA\_GWL <[drienzo@osler.com](mailto:drienzo@osler.com)>, Ben Ukonga - Mercer <[Ben.Ukonga@mercercor.com](mailto:Ben.Ukonga@mercercor.com)>, Marvin Ens - Mercer <[Marvin.Ens@mercercor.com](mailto:Marvin.Ens@mercercor.com)>, Patrick Mazurek - lawyer <[patrick@mazurek.ca](mailto:patrick@mazurek.ca)>, John Field - Hicks Morley <[john-field@hicksmorley.com](mailto:john-field@hicksmorley.com)>, Jonathan Foreman - Harrison Pensa <[jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)>, Darrell Brown - Sack Goldblatt Mitchell <[dbrown@sgmlaw.com](mailto:dbrown@sgmlaw.com)>, Wally Robinson - Canada & London Life Pensions <[wally.robinson@londonlife.com](mailto:wally.robinson@londonlife.com)>, Canada Life Main Pension Class Action <[canadalifeclass@koskieminsky.com](mailto:canadalifeclass@koskieminsky.com)>, Phil Howell - Suptd of Financial Services <[ceo@fSCO.gov.on.ca](mailto:ceo@fSCO.gov.on.ca)>, Bruce McNaughton - Pension Policy - Finance <[bruce.macnaughton@ontario.ca](mailto:bruce.macnaughton@ontario.ca)>, John Solursh - ASOC chair and lawyer <[John.Solursh@blakes.com](mailto:John.Solursh@blakes.com)>, "[CanadaLifers@yahoogroups.com](mailto:CanadaLifers@yahoogroups.com)" <[CanadaLifers@yahoogroups.com](mailto:CanadaLifers@yahoogroups.com)>

Subject: Re: FSCO & Canada Life partial windup - Jan 10 Court fairness hearing

The attached cover letter provides an explanation for the attached revised documents and the revised distribution list. For those that have reviewed the prior documents, the (now-numbered) sections that were revised are identified. The summary questions at the end are essentially unchanged except for clarifications included as noted.

Thanks,

Dan Anderson

attachments:

- "2013-11-20 - cover letter - CLA PWU and FSCO.pdf"
- "2013-11-20 - FSCO-1 on CLA PWU & Journey.pdf"
- "2013-11-20 - FSCO-2 on CLA PWU & CV compare & approval.pdf"
- "2013-11-20 - FSCO-3 on CLA PWU.pdf"

Same as before, letter 1 will address issues A & D, letter 2 will address item B and letter 3 addresses item C.

- A. Introductory Comments
- B. FSCO Policy on Recalculation of Transfer Values (commuted values) (T800-403)
- C. Partial Windup Class Action Lawsuit - Distributable Surplus (FSCO policies?)
- D. FSCO Assisting Superior Court at January 10, 2014 Fairness Hearing (G200-100)

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November 18, 2013

To: FSCO, and Class Counsel Koskie Minsky

Cc: per distribution

Re: Concerns regarding proposed amendments to CLA partial windup settlement agreement.

In accordance with the November 7, 2013 notice from plaintiffs to class members, this Nov. 18 email and the attached Nov. 18 letters to FSCO identify objections and concerns regarding the proposed amended (# 3) settlement agreement, where those objections and concerns relate specifically to various applicable FSCO regulatory policies as well as the related issues of fairness to class members.

This email includes three interrelated Nov. 18, 2013 letters addressed jointly to various individuals at FSCO and Koskie Minsky, addressing concerns related to the proposed amended (# 3) surplus sharing agreement and the applicable FSCO regulatory policies and approval criteria.

The first letter is addressed to Brian Mills, Deputy Superintendent of Insurance, and focuses on the apparent intentions of Canada Life and Class Counsel to ask the Court January 10, 2014, by means of amendment # 3 paragraph # 8, to in effect side-step the requirement for FSCO's approval of the partial windup settlement agreement.

The second two letters are addressed to FSCO operational/policy areas and focus on FSCO regulatory policies regarding the determination of distributable surplus and the recalculation of transfer values.

My submission here is in the context of being one of the thousands of class members without independent legal representation, identifying potential objections and concerns directly to Class Counsel.

Sincerely,

Dan Anderson

cc: as per distribution

TAB - 7

**Subject:** proposed communication to class members

**From:** Dan Anderson <dan.anderson@sympatico.ca>

**Date:** 23/10/2013 10:46 AM

**To:** David Kidd - Lead Plaintiff <alcohekidd@sympatico.ca>, Alex Harvey - Lead Plaintiff <alexh@sympatico.ca>

**CC:** Jean Paul Marentette <marentettes@rogers.com>, Clio Godkewitsch - Koskie Minsky <cgodkewitsch@kmlaw.ca>, Mark Zigler - Koskie Minsky <mzigler@kmlaw.ca>, Jonathan Foreman - Harrison Pensa <jforeman@harrisonpensa.com>, Darrell Brown - Sack Goldblatt Mitchell <dbrown@sgmlaw.com>, Patrick Mazurek - lawyer <patrick@mazurek.ca>, Fred Taggart <fjtaggart@yahoo.com>

Oct. 23, 2013

To: David Kidd and Alex Harvey, Lead Plaintiffs

cc: as indicated

**subject: Proposed Communication to Class Members**

David and Alex, this email is addressed primarily to you because you are the IPWU plaintiffs who, along with Jean-Paul Marentette, are identifying yourselves as the authors of the proposed notice to class members as per the draft document reviewed in the Oct 22 case management meeting with Justice Perell. Accordingly, as respected former Canada Life employees, you are inviting class members to trust in the integrity of the communication.

Identifying this sort of correspondence as "court-approved" (as was done in the Feb 2013 and May 2012 letters), would seem to heighten the invitation to "trust" in the integrity of the communication.

However, as a result of the Oct 22 meeting, it seems that the reference in the communications to "court-approved" should perhaps be changed to "Canada Life approved" (either implicitly or explicitly), which would convey a very different message to class members that you have in fact been constrained in your communications and invite class members to review the document with some reservations.

Class Counsel clarified to the Court yesterday that the notice document was a draft document only and Class Counsel was only looking for initial comments from Justice Perell. Objectors noted concerns about apparent misrepresentations and a lack of certain disclosures in the draft document, but Justice Perell noted it was not the role of the Court nor his intent to regulate or adjudicate on the content of the communication from Class Counsel (i.e. the lead plaintiffs) to class members.

The Class Proceedings Act apparently relies on the integrity of the representative plaintiffs, with provision for input from objectors. The reference to such communications being "approved" by the Court appears to be a misnomer. The key consideration in advance of the motion hearing would appear to be whether Canada Life or the other parties (class members are not parties) "object" to the proposed communication.

In the context that the document is a draft document, and an element in the current negotiations with Canada Life, the purpose herein is to suggest some changes for your consideration, in the context of the advice you might receive from Class Counsel and the other parties.

**1. Addressing (unintended) misrepresentations in prior letters to class members.**

With the benefit of hindsight, some of the content of the prior letters includes what appear to be pivotal misrepresentations of the facts, as the facts are currently known. The key issues are whether the assets were "largely immunized" and whether the parties had any control on the extent to which interest rate changes affected the pension surplus.

It seems essential that the current proposed communications address those key issues in some reasonable manner, recognizing Canada Life's sensitivity to the issues. Although you might have been encouraged to fully self-censor your draft communication prior to reviewing it with Canada Life, it seems more appropriate to put in some reasonable albeit muted disclosure, and then determine to what extent Canada Life would find such disclosure acceptable.

The following is illustrative, but may be too muted as an initial proposal to Canada Life: "To provide some clarifications regarding comments that were made in the Feb 2013 and May 2012 letters to class members, the parties have determined that an important part of the explanation for the extent of the prior drop in surplus was the investment of a significant portion of the PWU fund assets in shorter term bonds in anticipation that interest rates would increase, and the revised proposed settlement takes account of that understanding and the anticipated increase in surplus when interest rates increase."

I expect Class Counsel or others might present you with counterarguments to such a disclosure.

For example, they might argue that Canada Life will not accept any such information being sent to Class Members. If that is the case, rather than self-censor, let Canada Life explicitly confirm their objections and/or alternative wording. (see item # 5 below)

Class Counsel might also argue that the letter to class members should only contain information that everyone can understand. But if that was the case, then there would not have already been assertions made in the prior correspondence that the assets were "largely immunized" and assertions that the economic circumstances affecting surplus were "beyond the control of the parties". There must be a balance in communicating consistently to a wide range of class members without a selective and intermittent presumption that there is a broad lack of financial understanding amongst class members.

## **2. Disclosure of current estimated PWU surplus.**

The prior letters to class members provided an estimate of the level of IPWU surplus. The last estimate was as at Aug. 31, 2012. FSCO requires an ongoing notional segregation of the assets and liabilities until there is regulatory approval and the surplus is distributed. The letter to class members should disclose a more current estimate of the IPWU surplus, regardless of the intent of the parties to possibly later provide a revised estimate via a phone-accessed webinar presentation that some class members may not be able to access.

## **3. Communications with objectors.**

With regards to the misleading assertion in the draft communication that the "the plaintiffs ... maintained communications with Class Members who had objected to the proposed amendment", could you perhaps change that to say something more reflective of the communication process: "the plaintiffs continued to review communications from Class Members who had objected to the proposed amendment".

## **4. Other ?**

There are other issues that warrant disclosure, including a meaningful financial rationale for the 56% payout in the context of: a) disclosing the amount of the current and prior estimated surplus coming from the application of the controversial old commuted value basis, b) giving away the extended settlement approach where class members could participate in the anticipated re-emergence of the PWU surplus, c) dependence on FSCO approving the controversial old commuted value basis in the context of when the funds become available to invest, e) risks that surplus sharing agreement is put at the risk of being null and void if FSCO does not approve the controversial old commuted value basis, etc.

## **5. Court-approved versus defendant-approved.**

The unqualified expression of "court-approved" seems a misrepresentation. The term "Canada Life approved" would be reasonable but I expect Canada Life representatives would refuse the inclusion of such an adjective because it could make the defendants a party to communications that they might be aware were misrepresentations of the facts. Perhaps the best one might hope for would be to make no reference to the communication being approved by some other body or, more correctly noting: "To the extent this announcement was not opposed by the other parties, it has been approved by the Court for distribution to ...".

I'll defer to Patrick Mazurek's group and your own knowledge of the circumstances regarding other suggestions.

Best wishes,

Dan Anderson



**Notice to Class Members Concerning the Class Proceeding  
in respect of the Canada Life Canadian Employees Pension Plan (the "Plan")**

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

**The purpose of this communication is to provide all Class Members with notice of a new amendment (the "Revised Amendment") to the settlement which was originally approved by the Ontario Superior Court of Justice by Order dated January 27, 2012, and to advise of the process for seeking Court approval of the amended settlement terms.**

**Information sessions regarding the Revised Amendment will be held for Class Members during which questions may be directed to Class Counsel. Further details regarding the rights of Class Members and the upcoming information sessions are provided below.**

This is a court-approved notice which follows all previous court-approved notices to Class Members concerning the class proceeding in respect of the Plan. A detailed history of the proceedings is posted on the website of Class Counsel at <http://www.kmlaw.ca/canadalifeclass>.

**The Ontario Superior Court Declined to Approve the Previous Amendment to the Surplus Sharing Agreement ("SSA"):**

In March 2013, the Ontario Superior Court of Justice declined to approve the previous amendment to the terms of the SSA (which as noted above had been approved by the Court in January, 2012). The previous amendment, which was described in a notice sent to all Class Members earlier this year, was negotiated in response to the fact that the estimated Integration Partial Wind Up surplus was significantly lower than the estimate of the surplus at the time the SSA was originally approved by the court in January, 2012. The Court's reasons for decision may be accessed on Class Counsel's website at <http://www.kmlaw.ca/canadalifeclass>. Canada Life filed an appeal to the Ontario Court of Appeal asking that court to overturn the decision of the lower court and to approve the proposed amendment to the SSA. The appeal was scheduled to be heard on October 9, 2013.

**The Plaintiffs Pursued Further Negotiations with Canada Life and Agreement on a Revised Amendment to the SSA Has Been Reached:**

After the Court declined to approve the previous amendment to the SSA, Class Counsel sought further negotiations with Canada Life. In September and October of 2013 negotiations commenced and progressed such that new settlement terms were reached. Canada Life adjourned its appeal to the Ontario Court of Appeal to allow the parties time to reach agreement on the wording of the Revised Amendment to the SSA to reflect the agreement reached between the parties. The terms of the Revised Amendment are subject to Court approval.

In negotiating the terms of the Revised Amendment, the plaintiffs and Class Counsel paid close attention to the reasoning of the Ontario Superior Court in its decision declining to approve the previous amendment to the SSA that was considered by the Court in March of this year. In assessing that decision and all other prevailing circumstances, the plaintiffs set out to achieve the following objectives in the negotiations: 1) recover as much of the lost value under the settlement as possible for Class Members; 2) secure a guaranteed recovery for Class Members such that settlement benefits will not be at risk of contingent events and uncertain future economic conditions, and 3) deliver those guaranteed results in a timely way without any further delay.

The plaintiffs and Class Counsel also maintained communication with Class Members who had objected to the proposed amendment considered by the Court in March 2013. The concerns raised by those Class Members were also given due consideration in the formulation of the Revised Amendment terms. The Revised Amendment was negotiated exclusively by the plaintiffs through Class Counsel with Canada Life. After several rounds of hard bargaining a result was achieved which we believe ensures a fair outcome for all Class Members in the circumstances. This outcome is far preferable to continued litigation.

In order to arrive at a settlement which met the stated objectives, Canada Life was asked to pay amounts above and beyond the estimated existing Integration Partial Wind Up surplus. The company has agreed to do so in addition to other concessions it has made, all of which is further described below.

**The Revised Amendment Terms:**

The terms of the Revised Amendment achieve the stated goals. A copy of the proposed Revised Amendment can be reviewed on the website of class counsel at <http://www.kmlaw.ca/canadalifeclass>, the key terms of which are as follows:

- 1) There will be a single distribution of surplus to the Class which will occur immediately following court and regulatory approval.
- 2) Each member of the Integration Partial Wind-Up Sub Class and each member of the Inactive Eligible Non-PWU Sub Class (i.e. pensioners and deferred/vested members) are guaranteed to receive a surplus payment equal to the greater of 56% of the amount that was estimated on their Personal Information Statement in 2011, and \$1000. Canada Life will contribute an amount (estimated to be approximately \$11.3 million) which, when added to the existing amount of surplus, and after taking into account the adjustments set out in paragraphs 3 and 4 below, will provide these guaranteed payments.
- 3) Class Counsel will waive a total of \$1,000,000 in legal fees which were previously approved by the Court, and will not charge any legal fees incurred from January, 2012 to completion of this matter – more than two years of legal work. Those amounts will be applied for the benefit of the Integration Partial Wind-Up Sub Class and each member of the Inactive Eligible Non-PWU Sub Class members exclusively, and will not be shared with Canada Life under the SSA provisions.
- 4) Canada Life will waive its entitlement to reimbursement of a portion of its settlement expenses in the amount of \$500,000, and will also waive entitlement to a portion of the interest on its outstanding expenses (estimated at \$800,000), and these amounts will be added to the Integration Partial Wind-Up Surplus to be distributed.
- 5) In all other material respects, the SSA remains unchanged, including for active Class Members and for members of the Prior Partial Wind Ups in connection with Adason, Pelican and Indago who were not affected by the diminution in the Integration Partial Wind-Up Surplus.

**Factors to Consider in Assessing the Revised Amendment Terms:**

All Class Members are asked to recognize and respect the fact that litigation of this type is inherently risky and unpredictable. In addition, the difficult and unprecedented nature of the economic and other circumstances which have complicated the implementation of the initial settlement have added an unusual level of risk and uncertainty to the proceedings. The plaintiffs and Class Counsel have an obligation to identify and manage adverse risks in the case for the benefit of Class Members and to seek results which reflect the legal merits of Class Members' claims.

Compromise is necessary in order to secure these settlement benefits on a guaranteed basis and without further risk, and delay. The plaintiffs and Class Counsel consider the terms of the Revised Amendment to be a very strong resolution of the matters in issue and commend them to Class Members and the Court for approval. The Revised Amendment is the result of extensive negotiations in which numerous proposals were exchanged before a final resolution was reached.

If approval of the terms of the Revised Amendment is not granted by the Court, Canada Life will likely seek to enforce the original settlement approved by the Court which would result in the distribution of a much smaller amount of surplus to the Class Members. Alternatively, the parties will be required to resume litigation over an uncertain surplus with uncertain results. The Revised Amendment requires Canada Life to pay real money towards a substantial recovery all on a guaranteed basis without delay, once regulatory approval is received.

**Court Approval Hearing:**

The motion to approve the terms of the Revised Amendment will be heard on **January 10, 2014 at 10:00 a.m.** at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**Class Members' Rights:**

The plaintiffs and Class Counsel will be hosting web-based information sessions for Class Members. During these sessions, the plaintiffs and Class Counsel will deliver a presentation and will answer questions from Class Members which can be posted over the internet. Those sessions will be held on the following dates and times:

- 1) November 28, 2013 at 5:00 p.m. E.S.T.
- 2) December 2, 2013 at 5:00 p.m. E.S.T.

For details on how to access the webinars, please visit Class Counsel's website prior to the scheduled dates.

Class Members may also access Class Counsel's website at <http://www.kmlaw.ca/canadalifeclass> to view the formal Revised Amendment, or any other documents in this proceeding, and make inquiries of Class Counsel by phone toll free at 1-800-286-2266 or by e-mail at [canadalifeclass@kmlaw.ca](mailto:canadalifeclass@kmlaw.ca).

If Class Members do not support the terms of the Revised Amendment, they may file an objection, which will be communicated to the Court. Class Members who wish to object must do so in writing no later than **December 20, 2013** by sending their objection to Class Counsel by fax (416-204-2897), e-mail ([canadalifeclass@kmlaw.ca](mailto:canadalifeclass@kmlaw.ca)) or by mail to Koskie Minsky LLP at the following address:

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

Provided a Class Member has made a timely written submission, subject to the Court's discretion, Class Members may also be permitted to make oral submissions at the **January 10, 2014** hearing to approve the terms of the Revised Amendment.

All other questions should be directed to Class Counsel.

**Please do not contact the Court or the presiding judge directly.**

TAB - 8

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TAB - 9

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

**COURT OF APPEAL FOR ONTARIO**

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

- and -

THE CANADA LIFE ASSURANCE COMPANY  
Defendant (Appellant)

- and -

A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT  
Defendants (Respondents)

Proceeding under the Class Proceedings Act, 1992

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**OBJECTOR-INTERVENOR (DA) FACTUM**  
**September 27, 2013**

---

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(unrepresented)  
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**TO: ONTARIO APPEAL COURT JUSTICES reviewing this case  
via John Kromkamp, Senior Legal Officer, Ontario Court of Appeal**

**COPIES TO:**

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**OBJECTOR-INTERVENOR (DA) FACTUM - DAN ANDERSON**

Court of Appeal File No. C56991

Court File No. 05-CV-287556CP

Kidd et al v. Canada Life et al

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**PART I - NATURE OF OBJECTOR-INTERVENOR (DA) FACTUM**

1. **Context.** This document addresses deficiencies in the arguments as presented in Canada

Life's May 27, 2013 appeal of the March 28, 2013 order by Justice Perell (the Motions Judge) that rejected the proposed amended Surplus Sharing Agreement (paSSA) as fundamentally unfair.

2. **No party respondents.** This document was motivated by the understanding that all the parties were jointly advocating to overturn the Judge's decision, despite: a) the legitimacy of the Judge's reasons and what seems the almost unanimous support among informed and affected Integration Partial Windup (IPWU) members and b) the availability of an effective and fair alternative.

3. **Objector.** I participated in the March 18, 2013 hearing as: a) an unrepresented IPWU class member (retired pensioner), and b) a former Canada Life employee whose prior work experience had included professional financial review responsibility for the valuation of all the group pension liability valuations, including responsibility for developing the asset and liability cash flow duration mismatch analysis for the \$5.2 billion of Canadian and US insured annuity and GIC liabilities. [Appeal Exhibits pages 456, 543-544, 529-553, 511-521]

4. **Shared Objective.** This factum is presented within the context of a shared objective of determining appropriate amendments for the settlement implementation terms for the previously approved Surplus Sharing Agreement (SSA). The implementation of the SSA became circumstantially impaired as a result of events preceding and following the approval of the SSA and factors that had not been disclosed at the time that the SSA was approved.

5. **Scope of Document.** The wide range of issues addressed in this document reflects the fact that the Canada Life Appeal Factum does not simply address one or two points of law but puts forward arguments on a wide range of issues, including a re-presentation of the arguments presented by Class Counsel at the March 18, 2013 hearing, and arguing that the Motions Judge erred in more than 20 instances. Accordingly, even with a submission expected from Mr. Mazurek addressing some of the issues on behalf of some objectors and other class members, there was a wide range of appeal issues to address in this document.
6. **Focus.** The comments herein will primarily focus on the circumstances from the perspective of the Integrated Partial Windup (IPWU) class members, including both Partial Windup (PWU) and eligible non-partial-windup (non-PWU) members. The issues of circumstantial fairness addressed herein primarily impact IPWU class members, while there appears to be relatively little effect on the determination of the financial interests of the Indago-Pelican-Adason (IPA) class members and the active (non-eligible non-PWU) class members.
7. **Unrepresented objectors.** The views expressed in this document are presented to the Court as the views of one unrepresented objector who over the last six months has communicated extensively on the various issues with the parties to this action and with other objectors and class members. Subsequent to Aug 25, 2013 in an on-line petition which was an expanded version of the petition referenced in the Motions Judge's decision, 50 of the original objectors responded to that expanded petition and all except two of the responders has not only self-identified as an unrepresented objector but has also said yes to the question of whether a prior and lengthier draft of this intervenor factum as provided August 5, 2013 to the objectors and the parties, should be reviewed by the Appeal Justices as part of their deliberations. There is

no intent here to imply that those petitioners expressly reviewed and/or supported the specific content of this document or the prior draft version. The parties received updates of the petition results and the comments of the various petitioners.

8. **Limitations and compendium.** My apologies for any shortcomings herein. On September 23 the Court ruled under case management that, despite unconditional objection by Canada Life, an unrepresented objector intervenor factum could be filed, subject to the condition that a revised factum and compendium be served/filed by Sept. 27, 2013. The compendium is referenced as CompDA while the Appeal compendium is referenced as Appeal Book.

## **PART II - OVERVIEW**

9. **Addressing Appeal Factum arguments.** This document addresses the key deficiencies in multiple Appeal Factum arguments that the Motions Judge erred in arriving at his decision.
10. **Circumstantial fairness.** This document addresses the legitimacy of the Motions Judge's decision to introduce the principle of circumstantial fairness as a reference framework for considering and weighting the various Dabbs criteria within the context of the unique circumstances of this case, and also addresses the various elements of circumstantial fairness contested by the Appellant.
11. **Motions Judge not limited to a forced choice.** This document addresses the legitimacy of the Motions Judge rejecting a proposed amended agreement despite the Appellant's explicit and implicit arguments that: a) the Motions Judge must make a forced choice based only on the fact that the amendments would improve on the impaired results from the originally approved agreement and b) the Motions Judge's decision must disregard the following: i) the

intent of the original agreement, ii) the extent to which the results had become impaired, iii) the extent to which the amendments improved the results, iv) the reasons why the results had become impaired and v) the apparent identification of an alternative amended settlement implementation process that would take into account all of those other considerations.

12. **Drop in surplus.** This document identifies the largely undisclosed role of: a) the speculative investment policy for the PWU fund and b) the financial implications regarding a dramatic asset-liability duration mismatch as the primary (and controllable) reason for such a large drop in surplus and the reason that much of the drop in surplus would be expected to be a temporary unrealized notional loss.
13. **Illustrative Objectors' Settlement.** This document addresses the Appellant's identified concerns regarding a proposed alternative settlement implementation process, and hopefully a shared objective, for determining appropriate amendments to the settlement implementation terms for the original surplus sharing agreement.

### **PART III - FACTS**

14. **Appellant's description of facts.** This document will disagree with a number of the non-factual arguments presented as facts in the Appeal Factum: a) the extent of the non-disclosure of the surplus drop prior to the Court approving the SSA January 2012 [Appeal Factum 13], b) the most significant reasons for the drop in surplus [Appeal Factum 14], c) the testing of the reasons for the drop in surplus [Appeal Factum 15], and d) the purpose and effect of the August 31, 2012 asset transfer [Appeal Factum 17].

15. **2008 PWU fund investment policy and asset-liability duration mismatch.** Beginning in 2008 and extending to 2012, the PWU fund investment policy provided for 60% of the PWU assets to be invested in cash and short term bonds. That investment policy is referenced in two detail appeal exhibits but not referenced in any of the parties' communications regarding the drop in surplus. [~~Appeal Exhibits pg 282-283, 380~~] [CompDA pg 1-3]
16. **Drop in IPWU surplus.** It bears repeating, from the perspective of IPWU class members, that pursuant to class members signing written agreements April 2011 consenting to the implementation of a surplus sharing arrangement (and the transfer of ongoing pensioners to a new plan forfeiting certain rights regarding plan surplus), based on an estimated \$62 million of distributable IPWU surplus, the reported surplus suddenly dropped without plausible explanation from \$54 million (as estimated when the Court was asked to approve the agreement January 27, 2012) to \$10 million as at Dec. 2011 (per May 2012 letter to class members), and then to \$2.6 million as at August 2012 (per Feb. 2013 letter to class members, also advising that insured annuities would not be purchased for PWU members), with all parties in effect asserting that the drop in surplus was "beyond the control of the parties". [Appeal Book pg 404, 418}, [~~Appeal Exhibits 115~~] [CompDA pg 14]

## **PART IV - ISSUES AND ARGUMENTS AND DABBS CRITERIA**

### **A. Appellant's Position - Likelihood of Success (e.g. Admin Expenses)**

17. The Appellant argues that "most fundamentally the Motions Judge erred in his consideration of factors (a) and (c) of the Dabbs criteria — the likelihood of greater recovery if court



approval were withheld ... (because) he erred in considering the position of the Class ... as against the expectations created by the earlier surplus estimates ... (even though) ... it has been conceded by the Representative Plaintiffs that in the wake of *Nolan v. Kerry (Canada) Inc.* the plaintiffs' claim in respect of administration expenses is now of little merit."

[Appeal Factum 37, 33]

18. **Context of SSA amendments rather than original SSA.** The arguments regarding plan administration expenses illustrate various arguments that would have been resolved as a result of the establishment of the terms of the SSA, which includes provision for Canada Life to charge administration expenses against the new plan [Motions Judge's Reasons 48(2)] as distinct from charging it against the IPWU surplus. The matter at hand in the Appeal Court's deliberations would be the Motions Judge's rejection of the Proposed Amended SSA, in the context of encouraging the parties to negotiate good-faith amendments in the context of circumstantial fairness and the Dabbs criteria, without proposing that the parties revisit prior arguments such as the issue of prior administration fees. It would seem much more appropriate for the parties to consider what amendments would more likely result in recoveries consistent with the expected levels of distributable surplus communicated to plan members March 2011, taking into account issues regarding unrealized losses resulting from the asset and liability duration mismatches, as referenced herein.

**B. Appellant's Position - Erred on Expected Surplus Payments vs. 'Fiction'****Estimates**

19. **Expected surplus amounts.** The Appellant argues that surplus estimates provided to class members were nothing more than a "fiction" because the values could change [Appeal Factum 40, 42, 46(b)(i), 46(c)]. Class members would have been generally aware that the specific dollar amounts (rounded to the nearest dollar) as identified in their March 2011 form E were not a guaranteed amount, but those dollar amounts did represent the amount of surplus they could EXPECT to receive. By definition an expected amount is an amount where it is deemed equally likely that the amount could be higher or lower. It was a best estimate amount based on the work of professional actuaries and in the context of professional asset management.

**C. Appellant's Position - Erred on 'Fickle Fate' Reasons for Drop in Surplus and the Control of the Parties**

20. **Fickle fate reasons.** The Motions Judge comments: "it is the position of both sides that the misfortune of false estimates was a matter of fickle fate and forces beyond their control ... (and partially for that reason) ... the objectors needed something more than the minimum standard to provide them with procedural fairness." [Reasons 166], [Appeal Factum 14, 17, 40, 42, 44, 46(b)(ii)]
21. **Speculative investment policy and duration mismatch.** There was in fact a decrease in interest rates, but the most significant (and controllable) reason for the drop in surplus appears to have been the relatively short-term nature of the assets in the PWU fund as

evidenced by the PWU investment policy of holding 60% of the PWU fund assets in cash and short term (while less than 5% of assets of the ongoing pension plan were targeted to be held in cash and short term), with the implications of a dramatic asset-liability duration mismatch. Such an investment policy is referenced herein as a speculative investment policy because it would not be consistent with the duration structure of the pension liabilities and because of the implied highly leveraged risk exposure to interest rate changes. . [Appeal Exhibits pg 282-283, 380] [CompDA pg 1-3]

22. **Focus Question for Canada Life, Plan Trustees and Plaintiffs.** The following question was highlighted, but unanswered, during the March 18 2013 hearing: "During your negotiations ... did you have any knowledge of the duration structure of the bond holdings in the windup plan assets, relative to the duration structure of the liabilities, and were you aware that the primary reason for the huge drop in surplus was because the duration structure of the assets was dramatically shorter than the duration structure of the liabilities, which would guarantee huge losses if interest rates fell (but would generate correspondingly large increases to surpluses if / when interest rates increased) ?"

[Appeal Exhibits 550] [CompDA pg 24]

23. **Insurers' concerns about asset-liability duration mismatch.** Reasons cited for insurers not providing insured annuities for the PWU members included the longer liability durations implied by a high % of younger members "and the difficulty in finding suitable assets to appropriately match the liability of this annuity obligation stream". [CompDA pg 37]

24. **Asset Liability Duration Mismatch and Surplus Drop - the Basics.** The references herein to asset and liability duration mismatch and the implied effect of interest rate changes on

PWU surplus, involve some basic financial principles and terminology that are outlined in more detail in a corresponding reference section herein.

25. **Unrealized notional loss.** Such a surplus loss is very much a notional "unrealized" loss and is very different from an investment loss that would be experienced from a drop in equity values. Understanding those considerations is relevant to the issue of the likelihood of recovery and Canada Life positioning itself to benefit exclusively from the re-emergence of that hidden IPWU surplus when interest rates increase. **[illustration: CompDA pg 25]**
26. **Not arguing negligence.** There is no intention in this document to imply negligence or fund mismanagement with regards to the investment policy for the PWU fund, but there would be issues regarding the unilateral nature of the speculative investment policy, the extent to which there was not reasonable disclosure of the potential implications, and the adverse results relative to the expectations and intent of the original SSA, all of which collectively would seem to imply, at a minimum, a circumstantial onus on Canada Life to act in good faith in reaching agreement on an appropriately amended settlement implementation process. Presumably it is not the role of the Court of Appeal to rule on the extent to which Canada Life was responsible for the drop in surplus nor would the Court be expected to accept Canada Life's unsupported assertions that Canada Life had no responsibility and no control over such a large drop in surplus.
27. **Currently no independent financial and actuarial advisors.** None of the financial and actuarial resources currently involved as advisors, plaintiffs and defendants have claimed to be providing an independent role and none have provided disclosures to the Court and class members regarding the significance of the speculative PWU investment policy and the

duration mismatch of the PWU fund. On the contrary, various parties have made comments that contradict the facts (e.g. May 2012 letter to class members: "the plan is mostly immunized" and communications implying that the parties had no control over the drop in surplus). [e.g. ~~Appeal Exhibits pg 115-116~~] [e.g. CompDA 14-15], [Appeal Factum 14].

#### **D. Appellant's Position - Erred on Illustrative Objectors' Settlement**

28. **Motions Judge not ruling pre-emptively.** When the Motions Judge states in Reasons paragraph 161: "the Objectors' Settlement as revised would be fair", he also notes "but it is a hypothetical settlement not before the court". Accordingly, the Appellant (and Class Counsel) would be misguided if they concluded that the Motions Judge had pre-emptively ruled that simply defining a longer point-in-time end date (and removing the \$15 million cap) would in itself be sufficient to render a fair settlement under the circumstances. [Reasons 161], [Appeal Factum 38]

#### **29. Process during longer settlement implementation period.**

a) **Conditional Settlement versus Gamble Settlement.** As noted by the Appellant when suggesting that the Motions Judge erred [Appeal Factum 38 b)], depending arbitrarily on any single future point in time for only a single final pay-out would under the circumstances represent a relatively blind gamble for the class [Appeal Factum 38(b)]. It would be instead be preferable to have a settlement implementation process that was appropriately conditional on the re-emergence of the surplus.

b) **Implementation Period.** Extending the potential maximum recovery period to 2020 rather than 2017 would seem more appropriate since there are no guarantees, and Canada Life has significant control through the investment policies. Also, it would seem

- appropriate to provide for annual payouts of distributable IPWU surplus during the settlement implementation period as it re-emerges and an earlier finalization of the settlement process can still take place if warranted by the extent of re-emergence
- c) **Target Threshold to End Implementation Process Earlier.** With a longer maximum period it would be reasonable to finalize the settlement earlier if surplus has recovered sufficiently based on a pre-determined target threshold, making a distinction between surplus hidden by duration mismatches and surplus from commuted value decisions.
- d) **Reasonable Cap on Cumulative Distributable Surplus per Original Expectations.** It would be reasonable to have a cap on the cumulative IPWU surplus payout consistent with the original expectations regarding distributable surplus, making a distinction between surplus hidden by duration mismatches and surplus from commuted value decisions. As noted by the Motions Judge, the Appellant's proposed \$15 million cap does not seem reasonable. [Reasons 156, 157]
- e) **Annual Surplus Payments during Implementation Period.** Administratively, the most practical approach would seem to be to provide for an annual calculation and payout of IPWU surplus to the extent that distributable IPWU surplus has re-emerged, with a determination as to whether the surplus threshold requirement has been reached, and subject to an overall cap.
- f) **Automatic Annual Process rather than Member-Specific Options.** The above approach would be in lieu of the more administratively awkward process of each member deciding when to cash in their rights to the IPWU surplus.