E. Circumstantial Fairness and Dabbs Criteria - Unique Context

30. **Motions Judge's perspective.** In the context of the uniqueness of this case, the Motions Judge brought to the forefront of his decision process the notion of circumstantial fairness as a reference framework, not only for determining what considerations might apply to the various Dabbs criteria individually, but also determining the relative weighting of the outcomes. [Reasons 4, 23, 124, 128, 129, 133, 134, 137, 139, 149, 152, etc.].

31. **Appellant's position.** The Appellant argues that circumstantial fairness as a reference framework is an unwarranted departure from established jurisprudence, but the Appellant gives no consideration to the unique context of this case. [Appeal Factum 29, 42]

32. **Unique context.** The Motions Judge comments: "As far as I am aware, this is the first time that parties to an already approved settlement agreement in a class action have sought approval to an amendment to the agreement." [Reason 110] Accordingly, the intent and circumstances relative to the prior approved agreement provides a unique reference base for evaluating the fairness of proposed amendments compared to alternative identified solutions.

33. **Professor Catherine Piché citations on fairness.** Further to the Motions Judge's citations from Prof. Piche's text *Fairness in Class Action Settlements* (Toronto: Carswell, 2011), the following additional comments in her text are notable even though some are provided in reference to procedural and substantive fairness since she was not referencing the unique context of this case:

    - page 264: with regards to lawyers representing the interests of clients (which indirectly includes class members), she comments "when judges have concerns that

that maybe is not as complete a process as it might have been, the more weight has to be put on their own assessment of the overall circumstances"

- page 284, as part of her second recommendation: "instead of relying solely on counsel's arguments at the fairness hearing ... judges ... approve or deny proposed settlements (*or in this case, proposed amendments*) on facts they have actively elucidated for themselves by examination of the parties and witnesses."
- page 284, as part of her third recommendation: "judges not be required to rely upon standardized lists of settlement fairness factors, but that they instead ... balance larger-framed ... fairness inquiries" ... taking into account her page 266 comment: "given the judge's tendency to grade most of the factors with a '7' and above",
- pages 270-271: "In my view, settlement fairness should also be evaluated both before - ex ante - and after - ex post - the settlement's conclusion ... to consider the settlement as a true contract, in which fairness issues might arise at a pre-contractual stage and affect the parties' rights ex post, or in the parties unbalanced relationships."

34. **Presumed consistency between Dabbs criteria and the use of circumstantial fairness as a reference framework.** In the circumstances of this case, there seems to be no reason to presume there is a conflict between the Dabbs criteria and the Motions Judge's use of circumstantial fairness as a reference framework, and such an argument to the contrary by the Appellant begs the question whether it is more appropriate to do what the Appellant and has done and presented a version of the Dabbs criteria considerations without any reference to various elements of circumstantial fairness as referenced by the Motions Judge and/or as

evidenced by the Exhibit materials. The grid chart below illustrates the cross-applicability of various Dabbs criteria considerations and various issues regarding circumstantial fairness.

Factum Section	PRIMARY DABBS CRITERIA > APPEAL ISSUES:	(a) likelihood recovery	(b) discovery	(c) settlement terms	(d) counsel	(e) litigation risk	(f) neutral parties,	(g) objections	(h) good faith bargaining	(i) class communications	(j) information to Court
	a) General considerations										
>	Likelihood of success (e.g. prior admin expense & unique context).	X		X		X		X			
>	Objectors' settlement approach.	X		X			X	X	X	X	X
	Circumstantial Fairness - main										
>	Unique context.	X		X		X		X			
>	"Fiction" surplus estimates.	X		X		X		X	X		
>	"Fickle fate" drop in surplus.	X	X	X	X			X	X	X	X
	Circumstantial Fairness - other										
>	Unprecedented 2011 campaign.			X				X	X	X	
>	Drop in surplus paid to CLA.	X	X					X	X	X	X
>	Deficits funded by CLA.	~		~							
>	Other procedural irregularities.		X		X			X	X	X	X

F. Appellant's Position - Erred on (Other) Elements of Circumstantial Fairness

F1. Role of "Unprecedented" March 2011 Voting Campaign

35. **Appellant's position.** The Appellant argues that the Motions Judge erred ... because the voting campaign was "far from unprecedented", and cites five legal cases.

Appeal Factum [40, 42, 44, 46(a)]

36. **Appellant citation of legal cases.** The five legal cases cited by the Appellant were Sunnybrook, McMaster, Burleton, CBS and Reichhold, but the circumstances for those cases were very different from the current case. None of those cases involved voting on the allocation of surplus from the partial windup of a pension plan and none of them included the set of features described below for the March 2011 voting campaign.

    [Appeal Factum 46(a)]

37. **March 2011 Voting Campaign.** An information/marketing campaign was organized prior to the approval of the SSA. The campaign involved the March 2011 distribution of materials to class members, as well as April 2011 meeting presentations to class members at nine different locations across Canada. The following are features of the campaign that are notable in themselves but would also seem to justify the Motions Judge characterizing the campaign as "unprecedented" (square brackets [ ] reference March 2011 package materials:

- **Acceptance thresholds.** The purpose of the campaign was to encourage members to accept the proposed SSA and to reach <u>combined</u> consent thresholds of at least 75% of PWU class members and 90% of non-PWU class members.

    [March 2011 Information Package form C page 7 and form D pages 10-11]

- **Interdependence.** Canada Life would not agree to the terms for the split of the partial windup surplus unless the non-PWU class members agreed to the windup of the existing plan and the transfer of assets and liabilities to a new plan where Canada Life acquired exclusive rights to the use of surplus within the new plan. [C7, D10-11]
- **Compensation to eligible non-PWU members.** As compensation for agreeing to Canada Life acquiring exclusive surplus rights under the new plan, eligible non-PWU

members would not be paid any surplus from the non-IPWU fund but would instead be assigned a percentage of the IPWU surplus. [D10]

- **Estimate of each IPWU class member's surplus payment.** Each person was provided with an estimate of the surplus payment they would receive (before tax) and advised the amount could be higher or lower. [E2] *(Related arguments regarding this feature of the campaign have been addressed separately under "Appellant's Position – Erred on Expected Surplus Payments vs. 'Fiction' Estimates".)*
- **Non-PWU members consent forms.** The consent forms for non-PWU class members referred only to the transfer to the new plan and made no reference to being asked for their consent for IPWU surplus being paid out to Canada Life. Supposedly the rationale was that nothing in the proposed SSA dismissed the claim of the PWU members to all of the IPWU surplus, and the PWU class members had simply agreed to assign a portion of the IPWU surplus to Canada Life (and through Canada Life to the non-PWU members) in lieu of litigation. [D10]
- **PWU members consent forms.** The PWU member consent forms did agree to surplus being paid to Canada Life but the PWU members were not going to be members of the ongoing plan so they had no financial interest as to whether that portion of the IPWU surplus remained in the ongoing fund or was paid out to Canada Life. [D11]
- **Nondisclosure of speculative investment policy.** The campaign took place in the context that the dollar amount of the estimated surplus that was identified was dependent upon an undisclosed speculative investment policy for the PWU fund.

(Related arguments regarding this non-feature of the campaign have been addressed separately under "Appellant's Position - Erred on 'Fickle Fate' Reasons for Drop in Surplus and the Control of the Parties".)

[March 2011 materials, forms C, D, E and G >> CompDA pg 4-8]

F2. Significance of Drop in IPWU surplus payable to Canada Life

38. **Canada Life would be positioned by the paSSA to benefit exclusively from re-emergence of surplus.** The Motions Judge notes: "unlike the Integration Group they (Canada Life) have a temporally-unlimited ability to recapture the diminishment of the surplus ... For Canada Life there is no arbitrary 2014 deadline for recalculating the surplus in light of what might be better economic conditions", where reference to economic conditions would suffice as just a reference to higher interest rates that would allow the temporarily hidden surplus to re-emerge. [Appeal Factum 40, 42, 44, 46(d)], [Reasons 156-157]

F3. Significance of Canada Life Funding Deficits

39. **Deficit funding.** The Appellant argues that the Motions Judge erred ... because "the Motions Judge completely overlooked the fact that Canada Life will bear 100% of the risk of a deficit developing in the Plan leading up to the date of any future surplus distribution" [Appeal Factum 40, 42, 44, 46(e)]. Canada Life's responsibility for deficits is consistent with its responsibility for investment policy and general obligations regarding the pension plan. That same investment policy has hidden a known quantity of Partial Windup (PWU) surplus. There may be fluctuations in the re-emergence of that surplus, but any deficit that occurs

following an annual surplus payment would be expected to be temporary, to not require immediate funding and was never intended to be funded by the IPWU surplus.

40. As per the terms of the paSSA [Appeal Book pg 398(c)(ii)], distributable surplus could be reduced for any special deficit funding assigned to the notionally segregated PWU fund.

41. **Margin of 10%.** The terms of the paSSA include Canada Life retaining a 10% margin from the re-emerging IPWU surplus. If any such margin was applied due to deficit considerations, it should be applied prior to taking account of the threshold and cap provisions proposed for the Objectors' settlement process. [Appeal Book pg 398(c)(i)]

F4. Procedural Irregularities and Communications to the Court and Class Members

42. This section deals with Appeal Factum 40(iii), 42, 44, 47.

43. **Nondisclosures.** Contrary to the view expressed by the appellant, there appear to be a significant number of irregularities without necessarily categorizing them distinctively between procedural and circumstantial fairness. Nondisclosures are an example, including nondisclosures to both the Court and class members regarding: a) the surplus drop prior to the date of the original settlement approval motion, b) the existence and significance of the speculative PWU investment policy and the corresponding asset-liability duration mismatch, c) misleading communications about the reasons for the drop in surplus and the assertions that the drop in surplus was beyond the control of the parties, and d) assertions that the PWU fund was "mostly immunized".

PART V - OTHER ISSUES PER APPEAL FACTUM

G. $15 Million Cap for Subsequent Surplus Distributions and Form of Surplus

44. **Cap on re-emerging surplus is too low.** The Appellant does not dispute that a $15 million cap would be inappropriately low in the context of the expectations for distributable IPWU surplus. Instead the Appellant creates an unwarranted argument that any subsequent surplus distribution is not to be considered a re-emergence of the original partial windup surplus. [Appeal Factum 33, 38(a)]

H. Non-disclosures Regarding Drop in Surplus Prior to Court Approval of SSA

45. The Appellant states that the IPWU surplus estimate of $54 million provided to the Court for the January 27, 2012 approval of the SSA was "the most recent information **available and presented** to the Court" (emphasis added). The Appellant does not state that the June 30, 2012 estimate of $54 million presented to the Court January 27, 2012, was in fact the most recent information available regarding estimated IPWU surplus. [Appeal Factum 13]

46. **Surplus drop prior to Court approval.** The very large drop in surplus measured as at Dec 31, 2011 was primarily a result of the pre-existing duration mismatch and a 58 basis point drop in the yield rates on real return bonds relative to June 30, 2011. Canada Life should have already been aware of: a) the extent of the duration mismatch, b) real return rates had declined significantly after June 30 and had already dropped by 43 basis points by the first week in November and c) the financial effect of individuals not taking commuted values.

[Jeff Galway correspondence Feb 23, 2012 Appeal Book pg 381-383], [Real Return bond yield rates: http://www.bankofcanada.ca/rates/interest-rates/lookup-bond-yields]

47. **Non-disclosures prior to Court approval.** With regards to the large undisclosed drop in surplus that had already occurred prior to January 27, 2012, there is a lack of evidence and sworn affidavits regarding the timing of internal and external communications within and between the various parties and their advisors prior to the January 27, 2012 Court hearing.

48. **Not arguing SSA null and void.** This document is not arguing that the SSA is null and void and would not support arguments by Canada Life, Class Counsel (e.g. Respondent Factum paragraph 4), or Mr. Mazurek (multiple references but final factum not available) that the SSA can be terminated as a "frustrated" contract, since the circumstance of a huge drop in surplus would have been foreseeable as a result of Canada Life's speculative PWU fund investment policy, and it would also have been foreseeable that other insurers would not be willing to provide insured annuities since it is reasonable to assume that Canada Life had determined prior to 2012 that neither Great West Life nor Canada Life were prepared to convert the pension liabilities into insured annuities. Rather than argue the circumstance of a "frustrated" contract, the parties would seem to have a situation where there is a circumstantial onus on Canada Life to negotiate good faith amendments to the implementation terms for the SSA. Petitioner objectors expressed their view in the March 18, 2013 petition results presented to the Motions Judge that they do not seek cancellation of the original SSA but rather an extended settlement implementation process[CompDA pg 17].

PART VI - MISCELLANEOUS RELATED CONSIDERATIONS

M1. Implications of August 31, 2012 Asset Transfer - FSCO W100-233

49. **August 31, 2012 asset transfer.** As an initial part of the negotiations towards arriving at an amended SSA, PWU assets were transferred from one notionally segregated fund to a different notionally segregated fund. Class members were unaware that such a transfer was taking place and the reasons and implications of such a transfer do not appear to be disclosed in the Appellant's description of the facts. [Appeal Factum 17]

50. **Reason for August 31, 2012 asset transfer.** A Canada Life affidavit stated: "Canada Life is concerned ... if a deficit arises in the Integration PWU prior to the transfer of Integration PWU assets and liabilities to the on-going Plan, that deficit will have to be funded in full by Canada Life prior to the transfer of the Integration PWU assets and liabilities to the on-going Plan", while "any deficit that arises in respect of the on-going Plan ... would not have to be funded by Canada Life immediately, but could be funded over a five-year period starting from the date of the next actuarial valuation." The Motions Judge also noted that reason. [Wallace Robinson CompCap pg 29 paragraphs 15-17], [Reasons 72-73, 107]

51. **FSCO Policy W100-233 (March 10, 2010).** This FSCO policy is referenced in Wallace Robinson affidavit and specifies: "Distribution of Benefits on Partial Wind Up Where Immediate or Deferred Pensions are Not Purchased ... The notional split between the wound up and on-going portions of the pension plan must be maintained until all assets relating the partial wind up have been settled, including a surplus distribution, if any." That provision for

an ongoing notional split of the assets would indicate that the August 31, 2012 transfer did not "finalize" IPWU surplus. **[CompDA pg 26-31, 32-35]**

M2. Canada Life's % Share of IPWU Surplus 43.78% vs. 30.34%

52. **Canada Life assigns 12.44% of Canada Life's 43.78% to the non-PWU class members.** An issue that warrants clarification is why non-PWU class members would be paid a portion of the PWU surplus when a partial windup does not entitle them to such a payment. PWU members are receiving 57.22% of the IPWU surplus and Canada Life has in effect negotiated to take 43.78% of the IPWU surplus, and is assigning 12.44% of that entitlement to the eligible non-PWU members as compensation for Canada Life using the simultaneous windup of the ongoing plan to secure exclusive rights to the use of all of the surplus within the new plan, while not paying any of the non-PWU surplus to the non-PWU members.

M3. Surplus Attributable to Members Taking Commuted Values

53. **Two types of PWU Surplus.** The primary type of PWU surplus is simply the difference between the PWU assets and what the value of the PWU liabilities would be if none of the PWU members were going to take a commuted value. That is the type of surplus that has in effect become hidden by the plan's investment policy. The second type of surplus arises if individuals decide to take the commuted value and the commuted value they would take is less than their share of the pension liability that is used to calculate surplus.

54. **PWU compared to IPA.** Notably, but tangentially, there is a rather stark contrast between how the SSA will affect PWU members who have yet to receive their commuted values, compared to how it will affect the IPA group members who already received their commuted values. The latter would get back most of the funds that they forfeited when they took a commuted value, while the former must share their average forfeited amounts with the thousands of other PWU members who decided not to take a commuted value. For both the PWU and IPA groups, Canada Life takes its share of the funds forfeited when individuals take a commuted value.

55. **Commuted value basis.** Mr. Mazurek is expected to address what may become FSCO-related concerns about the contradictions between a) using a punitive 2005 basis for determining commuted values but b) not providing the commuted values and determining distributable PWU surplus until some future date.

56. **Redacted.** Noting Sept 22 2013 request to Class Counsel to remove references to controversial "new evidence" in Respondent Factum that lacks motion and full disclosures.

M4. Asset Liability Duration Mismatch and Surplus Drop - the Basics

57. **Basic financial principles.** The references herein to asset and liability duration mismatch and the implied effect of interest rate changes on PWU surplus, involves some basic financial principles and terminology.

58. **Duration of assets and liabilities.** Borrowing the Wikipedia definition of "bond duration": "In finance, the duration of a financial asset that consists of fixed cash flows, for example a

bond (a series of interest payments and a lump sum at maturity), is the weighted average of the times until those fixed cash flows are received." The same concept applies to the duration of an organization's pension liabilities which can be viewed as nothing more than an expected series of future annuity payments, although the payment stream is somewhat variable as a result of mortality, inflation and even commuted values. The duration of a bond would be shorter than the duration-to-maturity of a bond, but the longer the duration-to-maturity the longer the duration.

59. **Duration mismatch of assets and liabilities, or duration gap.** Borrowing the Wikipedia definition of "duration gap": "The duration gap is a financial and accounting term and is typically used by banks, pension funds, or other financial institutions to measure their risk due to changes in the interest rate. This is one of the mismatches that can occur and are known as asset liability mismatches. Another way to define Duration Gap is: it is the difference in the price sensitivity of interest-yielding assets and the price sensitivity of liabilities (of the organization) to a change in market interest rates (yields). The duration gap measures how well matched are the timings of cash inflows (from assets) and cash outflows (from liabilities)."

60. **Effect of market interest rates on changes in PWU surplus.** For illustrative simplicity, let us assume the PWU pension liabilities are predominantly backed up by a portfolio of only cash and fixed-yield bonds. Surplus is calculated as the difference in the present value of the assets and the liabilities. A decrease in interest rates will increase the value of both assets and liabilities, but the effect on surplus is uncertain because it depends on the relative changes in the values of the assets and liabilities. In other words, for all intents and purposes,

the effect of interest rate changes on surplus is completely dependent on the duration gap or duration mismatch, which in turn is primarily dependent on the duration of the assets.

61. **Effect of shorter-duration assets on changes in PWU surplus.** The shorter the duration of the PWU assets relative to the duration of the pension liabilities, the greater the notional "loss" (i.e. drop in surplus) that would result from a drop in interest rates, simply because the shorter the duration of the assets the less the assets will increase in value when interest rates decrease. As illustrated below, the loss effect can be very dramatic because the duration of a bond dramatically leverages the effect of a change in interest rates on the value of the bond, to the extreme that the value of a zero-duration-bond (i.e. cash) is unaffected by any change in interest rates while the value of the liabilities continue to be impacted (i.e. increased) by the decrease in interest rates.

62. **Simplified illustration.** The simplest way to illustrate the financial magnitude effect of asset duration is to consider what is called a strip bond where there are no annual bond interest payments but only a future maturity amount. In fact strip bonds are more appropriate investments for the PWU fund because of the very long term duration of the PWUI pension liabilities since most of the PWU members are many years away from retirement. A strip bond with a remaining duration to maturity of 30 years has a duration of 30 years while a regular 30 year bond with a duration to maturity of 30 years would have a much shorter duration because of the earlier timing of all the interest payments. Calculating the present value of a strip bond is very simple because there is only one future payment that needs to be present valued using a discount interest rate.

63. **Assets supporting the PWU pension liabilities**. If instead of being invested in shorter duration bonds and cash, the PWU assets supporting the liabilities were held in the form of, say, 30 year strip bonds in order to more closely match to the very long duration of the PWU pension liabilities, then decreasing the discount interest rate from, say, 3.5% to 2.5% would have resulted in an increase in those asset values of 34% (with a correspondingly beneficial effect on surplus), but if the funds were instead invested in a strip with a duration to maturity of only 2 years the increase in value would be only 2% rather than 34% and there would have been a correspondingly adverse financial effect.

64. **Assets supporting PWU surplus.** Assets that were earmarked as supporting PWU surplus, as distinct from assets held to fund the liabilities, might reasonably be held in the form of cash and short term bonds to avoid the values being affected by changes in interest rates. The surplus would have thereby been earmarked and protected, with the understanding that Canada Life was responsible for investing the assets that supported the liabilities and any deficits arising from those investment actions should be the responsibility of Canada Life rather than Canada Life continuing to draw upon the surplus that had been earmarked as at the windup date and held in the form of cash and short term bonds.

M5. Role of 'CLPENS Executive' Advocating for paSSA

65. **Role of CLPENS individuals.** [Appeal Factum 10, 15] While acknowledging the personal contributions of the individuals involved in the original SSA deliberations, the significance of the support of the 'CLPENS Executive' for the proposed amended SSA should not be

overstated, taking into account: a) issues related to not disclosing the control of the parties over the drop in surplus, b) the extent to which those individuals were restricted from or simply declined to communicate with CLPENS members, c) the individuals have not been accountable to CLPENS members and have not held elected office since Nov 2010 or earlier, and d) the undertaking that "CLPENS cannot bind the members of the group to a settlement without a vote and will not attempt to do so", where that undertaking should apply equally to their advocating for proposed amendments that are almost unanimously rejected by informed PWU members and deemed by the Motions Judge to be fundamentally unfair. http://www.clpens.com/FAQ.htm

M6. Role of Mercer Communicating on Reasons for Drop in Surplus

66. **Mistaken references to Mercer's role.** The Appellant invites the mistaken interpretation that the parties had no control over the drop in surplus and that Mercer provided a professional assessment of "the most significant reasons" for the drop in surplus, where those reasons do not disclose the dominant significance of the PWU investment policy and the asset-liability duration mismatch [Appeal Factum 14].

67. Canada Life actuaries, who would have reasons to not make full disclosure, appeared to be the authors for the identification of "the most significant reasons", and the assertions that the parties had no control over the drop in surplus. A September 20, 2012 affidavit by Koskie Minsky mistakenly references a "Mercer memorandum" attached to Jeff Galway's February 23, 2012 disclosure of a large drop in surplus and refers to "the most significant reasons

cited by Mercer for the reduction in surplus". [~~Exhibits pg 47~~ CompDA 9-12, paragraphs 3 and 4]. However, Jeff Galway's February 23, 2012 letter clearly states that the document, containing the assertions, was prepared by Canada Life and there appears to be no evidence that Mercer actuaries authored "the most significant reasons". [Appeal Book pg 381-383].

68. **Mercer surplus movement report.** Mercer does produce a standard surplus movement report but that report is not for the purpose of explaining why the increase in asset values was not much more in line with the increase in liability values. [e.g. ~~Exhibits 363~~ CompDA pg13]

M7. Terms of paSSA - Canada Life's Intention to Purchase Annuities for Some Partial Windup Members But Not Others

69. The significance of this issue is somewhat unclear, but subsequent to taking the position that insured annuities would not be purchased for PWU members, the terms of the paSSA anticipate that Canada Life might selectively purchase annuities for some PWU members but not others, and might do so in a manner that would draw from IPWU surplus during the settlement implementation period. [Appeal Factum 21], [Appeal Book pg 396, paragraph 9]

M8. Motions Judge's Terminology of 'Stark Reality' Settlement and 'Moral Duty'

70. **"Moral Duty" and "Stark Reality"** - As noted by the Appellant, the terms "Moral Duty" and "Stark Reality" are problematic because they appear to create some potential connotation confusion for the various readers despite the clarifications provided.

[Appeal Factum 46(c)], [Appeal Factum 29, 40, 44-46], [Reasons 149, 150], [Appeal Factum 29, 40, 44-46], [Reasons 18, 19, 140, 142-145, 150, 152, 161 and 174]

71. Preferable terminology would seem to be, respectively: a) Circumstantial Onus and b) unamended SSA (USSA), or perhaps temporarily-impaired SSA (TISSA) to reflect the understanding that circumstances such as the results of the PWU fund investment policies have resulted in the need for a good faith amendment to establish a more appropriate settlement implementation process that has a more reasonable likelihood that the parties would share in distributable surplus consistent with the original intent of the agreement.

PART VII – COSTS

72. The Objector-Intervenor respectfully notes that the case management Judge has identified that no costs would be awarded for or against.

PART VIII – REQUESTS / RECOMMENDATIONS TO THE COURT

73. The Objector-Intervenor respectfully notes that the case management Judge has advised that the period of time allocated for an oral presentation would be fifteen minutes in consideration of these matters, subject to the discretion of the Justices if less time was considered appropriate to the circumstances.

74. ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 27th day of September, 2013.

Dan Anderson, September 27, 2013

Unrepresented Objector Class Member

DAVID KIDD, ALEXANDER HARVEY
and JEAN PAUL MARENTETTE and
Plaintiffs (Respondents)

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

Court of Appeal File No. C56991

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at TORONTO

OBJECTOR-INTERVENOR (DA) FACTUM

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TAB - 10

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

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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

Plaintiffs (Respondents)

– and –

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

Defendants (Appellant)

Proceeding under the *Class Proceedings Act, 1992*

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

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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

Plaintiffs (Respondents)

- and –

THE CANADA LIFE ASSURANCE COMPANY,
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Defendants (Appellant)

Proceeding under the *Class Proceedings Act, 1992*

**FACTUM OF THE DEFENDANT (APPELLANT),
THE CANADA LIFE ASSURANCE COMPANY**

PART I - NATURE OF THE APPEAL

1. This is an appeal by The Canada Life Assurance Company ("Canada Life") from an order of Justice Perell (the "Motions Judge") in which he refused to approve an amendment to a previously approved class action settlement notwithstanding that the amendment was supported by the Representative Plaintiffs and the Motions Judge's own acknowledgment that the Class members would be better off under the amended settlement than under the previously approved and still binding settlement.

PART II - OVERVIEW

2. This action was commenced in 2005 and involved claims related to the ownership of surplus arising from the partial wind up of The Canada Life Canadian Employees' Pension Plan

(the "Plan") following the acquisition of Canada Life by the Great–West Life Assurance Company in 2003 (defined below as the "Integration Partial Wind Up" or "IPWU"). The action also involved claims relating to the payment of Plan expenses from Plan assets.

3. The parties were able to reach a settlement of the issues in this action and the terms of the settlement were incorporated in a surplus sharing agreement (defined below as the "Surplus Sharing Agreement" or "SSA"). The SSA provides, *inter alia*, for the sharing and distribution of any surplus arising from the IPWU between the IPWU members and Canada Life.

4. In a judgment dated January 27, 2012 (the "Judgment"), the Motions Judge approved the settlement that had been reached between the parties in this class proceeding.

5. As of the date of the settlement approval motion, the most recent estimate by Canada Life's actuarial advisor of the surplus in the Plan attributable to the IPWU was $54 million. This estimate was at a point in time, namely as at June 30, 2011.

6. Within a month of the settlement having been approved, however, Canada Life received an update from its actuarial advisor indicating that as at December 31, 2011, the estimated value of the surplus available for distribution under the IPWU had decreased dramatically. The two biggest factors contributing to the decrease in the estimated surplus attributable to the IPWU between June 30, 2011 and December 31, 2011 were the dramatic drop in interest rates over the relevant period and the fact that significantly more IPWU members than expected elected (or were deemed to have elected) to stay with the Plan rather than choosing the option of taking a commuted value of their pension entitlement out of the Plan.

7. After extensive negotiations throughout most of 2012, the parties reached agreement on amendments to the SSA (the "Amended SSA") which increased the estimated amount of surplus available for distribution to IPWU members and certain other Class members and provided for the possibility of a future surplus distribution if surplus arose in the Plan in the future.

8. The parties sought the Court's approval of the Amended SSA. The Motions Judge, despite concluding that Class members would be better off under the Amended SSA than under the previously approved SSA (which he acknowledged continued to be binding), dismissed the motion. Canada Life asserts he erred in doing so.

PART III - FACTS

9. The action concerned the ownership of surplus assets in the Plan and the use of such assets to pay plan administration expenses. The action also sought declarations of three other potential partial wind ups of the Plan (in addition to the IPWU, which had already been declared by Canada Life).

> Reasons of Perell J. dated March 28, 2013 ("Reasons"), paras. 5, 30-36, 41, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 12, 15-16

10. The Judgment approved the settlement of this matter in accordance with the terms of the SSA between, *inter alia*, Canada Life, the Representative Plaintiffs, and the Executive Committee of the Canada Life Canadian Pension Plan Members' Rights Group ("CLPENS"). The SSA provides for the sharing and distribution of the surplus in the Plan among Canada Life and eligible Class members related to the following past events:

(a) the termination, resignation and retirement of members of the Plan following the 2003 acquisition of Canada Life by The Great-West Life Assurance Company (the "Integration Partial Wind Up" or "IPWU");

(b) the termination of Plan members employed by Indago Capital Management Inc. as a result of the February 26, 1999 merger of that company with Laketon Investment Management Ltd. (the proposed "Indago Partial Wind Up");

(c) the termination of Plan members employed by Pelican Food Services Limited as a result of the outsourcing of operations by Canada Life in 2001 (the proposed "Pelican Partial Wind Up"); and,

(d) the termination of Plan members employed by Adason Properties Limited (notified of their termination between November 1, 1999 and February 28, 2001) (the proposed "Adason Partial Wind Up").

Reasons, paras. 6, 33-36, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 12, 15-16

Judgment dated January 27, 2012 ("Judgment"), Appeal Book and Compendium, Vol. 1, Tab 5, pp. 46-55

11. The Class members who will participate in the settlement include:

(a) Plan members included in the Integration Partial Wind Up (2,149);

(b) Plan members included in the Indago Partial Wind Up (15);

(c) Plan members included in the Adason Partial Wind Up (37);

(d) Plan members included in the Pelican Partial Wind Up (38);

(e) deferred/vested members of the Plan as of April 12, 2005 who are not part of the groups described above (452);

(f) members of the Plan in receipt of a monthly pension from the Plan as of April 12, 2005, or the surviving spouse of a member if the member has died and the spouse is receiving a pension from the Plan on that date, who are not part of the groups described in (a) to (d) above (826);

(g) all active members of the Plan as at June 30, 2005, plus any new Plan members from that date up to date of certification as a class proceeding (1,682); and

(h) former Plan members who would have been included in the Integration Partial Wind Up but for their employment in Quebec (29).

Reasons for Decision of Perell J. dated February 6, 2012, para. 71, Appeal Book and Compendium, Vol. 2, Tab 7, p. 359

12. Under the SSA, 69.66% of the partial wind up surpluses (after expenses) is payable to Class members (other than the active Class members) and 30.34% is payable to Canada Life. The amount of surplus to be distributed to each member is based on his or her respective Plan liabilities but the SSA provides that the minimum share payable to an eligible Class member will be $1,000. The SSA further provides active Class members with a two-year contribution holiday and contemplates the court approving a variation of trust in connection with the transfer of Plan assets to a new pension plan and making certain declarations in connection with the Plan and the new pension plan.

Reasons, paras. 48-49, Appeal Book and Compendium, Vol. 1, Tab 3, p. 17

13. At the date of Judgment, the most recent information available and presented to the Court disclosed that as of June 30, 2011, the estimated surplus attributable to the IPWU (the "IPWU Surplus") available for distribution was $54 million (net of projected expenses and legal fees).

Reasons, paras. 57, 59, Appeal Book and Compendium, Vol. 1, Tab 3, p. 18

14. Within one month after the Judgment, Canada Life's actuarial advisor advised Canada Life that the estimated value of IPWU Surplus had dropped to below $10 million as of December 31, 2011 (net of projected expenses and legal fees). The IPWU Surplus continued to decline through 2012 and as of August 31, 2012 was estimated to be $2.6 million. The principal reasons for the decrease were:

(a) a decline in interest rates over the relevant period which substantially increased the estimated cost of purchasing annuities for members of the IPWU Group; and

(b) a higher than assumed take-up rate among members of the IPWU Group who elected or were deemed to elect to receive their pension benefit in the form of a guaranteed deferred or immediate pension instead of transferring a lump sum commuted value out of the Plan (annuity purchase prices have been greater than the commuted values of pension benefits).

These factors were outside the control of the parties.

Affidavit of Jonathan Foreman sworn March 8, 2013 ("Affidavit of Jonathan Foreman"), paras. 6-7, Exhibit Book, Vol. 1, Tab 1, pp. 2-3; Appeal Book and Compendium, Vol. 2, Tab 8, pp. 370-371

Exhibit B to Affidavit of Jonathan Foreman, Exhibit Book, Vol. 1, Tab 1(B), pp. 110-112; Appeal Book and Compendium, Vol. 2, Tab 9, pp. 381-383

Affidavit of Marcus Robertson sworn March 8, 2013, paras. 8-11, 15, Exhibit Book, Vol. 2, Tab 2, pp. 230-234; Appeal Book and Compendium, Vol. 2, Tab 10, pp. 386-390

Reasons, paras. 10-11, 58-59, 65, 67-69, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 12-13, 18-19

15. The Representative Plaintiffs, CLPENS Executive Committee, Class Counsel and their expert actuarial advisor Marcus Robertson had extensive discussions to analyze this new information, test its accuracy, and consider next steps. The Court approved letters sent to the Class in May 2012 which described the decline in IPWU Surplus, and told the Class that the parties were working together to address the situation, and would keep the Class informed of any developments.

Reasons, paras. 60, 64, 70, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 18-20

16. In the interim, as contemplated by the SSA, Canada Life proceeded to solicit bids for the provision of immediate and deferred indexed annuities for members of the IPWU Sub-class who elected the guaranteed pension option. All of the annuity providers approached to submit a bid declined to do so.

Reasons, para. 71, Appeal Book and Compendium, Vol. 1, Tab 3, p. 20

17. Because annuities were not available for members of the IPWU Sub-class, to implement the settlement and to comply with its obligations under the *Pension Benefits Act* (Ontario), in August 2012 Canada Life proposed transferring the assets and liabilities of the IPWU Sub-class members to the ongoing portion of the Plan (thereby preventing further erosion of the surplus).

Reasons, paras. 72-73, Appeal Book and Compendium, Vol. 1, Tab 3, p. 20

Affidavit of Jonathan Foreman, paras. 20-21, Exhibit Book, Vol. 1, Tab 1, pp. 5-6; Appeal Book and Compendium, Vol. 2, Tab 8, pp. 373-374

18. The Representative Plaintiffs filed a motion (which was scheduled to be heard on September 27, 2012) objecting to Canada Life's intention to transfer the assets and liabilities of the IPWU Sub-class to the ongoing portion of the Plan, and sought the appointment of a mediator. This motion was settled on the basis that, *inter alia*, the Representative Plaintiffs would not object to this transfer. Justice Strathy (as he then was) subsequently agreed to assist the parties in resolving their differences in respect of the SSA.

Reasons, paras. 75-78, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 20-21

19. The parties attended a one-day mediation facilitated by Justice Strathy in December 2012, and negotiations in writing (which were further facilitated by Justice Strathy) continued until the parties came to an agreement to amend the SSA. The amendments to the SSA are captured in the Amended SSA.

Reasons, para. 79, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 21-22

Affidavit of Jonathan Foreman, paras. 24-25, Exhibit Book, Vol. 1, Tab 1, p. 6; Appeal Book and Compendium, Vol. 2, Tab 8, p. 374

20. The Amended SSA augments the amount of IPWU Surplus which is otherwise available for distribution to the Class and also provides for a potential future distribution of surplus to the IPWU Sub-class if a surplus develops in the Plan in the future.

21. The main terms of the Amended SSA are as follows:

(a) Canada Life would augment the amount of IPWU Surplus through:

(i) waiving its right to any interest on the amount of its expense reimbursement under the SSA that accrues during the period from August 31, 2012 to December 31, 2013 (estimated at $800,000); and

(ii) waiving its right to reimbursement of $500,000 of its professional fees;

(b) The Representative Plaintiffs and CLPENS Executive Committee would augment the amount of IPWU Surplus available for distribution by waiving their entitlement to reimbursement of future legal fees (but not disbursements) previously approved by the Court (estimated at $200,000), which would be directed to the benefit of the IPWU Sub-class and Inactive Eligible Class Members;

(c) For any member of the IPWU Sub-class who elected to receive a deferred or immediate pension, their portability rights are satisfied by Canada Life transferring their assets to the ongoing portion of the Plan effective August 31, 2012;

(d) The assets and liabilities related to members of the IPWU Sub-class who elect a deferred or immediate pension would be notionally segregated (the "Segregated Portion") until the completion of the second distribution (discussed below), if any;

(e) Canada Life would fund top-up payments (at an estimated cost of $1.2 million) in order to ensure that IPWU Sub-class receive the minimum surplus shares of $1,000 contemplated under the SSA;

(f) There would be the potential for a second surplus distribution to members of the IPWU Sub-class and Inactive Eligible Class Members if a surplus exists in the Segregated Portion of the Plan as at December 31, 2014, subject to the following conditions:

(i) 10% of the 2014 Gross Surplus would be deducted off the top and remain in the Plan as a cushion;

(ii) the 2014 Gross Surplus would be reduced to take into account any contributions and other payments (together with interest at the Plan rate of return) made by Canada Life into the Plan after August 31, 2012 and that are notionally allocated to the Segregated Portion; and

(iii) 69.66% of the net Surplus, to a maximum payment of $15 million, would be paid to the IPWU Sub-class and Inactive Eligible Class Members, in accordance with the percentages set out in the SSA.

Reasons, para. 79, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 21-22

Affidavit of Jonathan Foreman, para. 28, Exhibit Book, Vol. 1, Tab 1, pp. 7-8; Appeal Book and Compendium, Vol. 2, Tab 8, pp. 375-376

Exhibit D to the Affidavit of Jonathan Foreman, Exhibit Book, Vol. 1, Tab 1(D), pp. 187-196; Appeal Book and Compendium, Vol. 2, Tab 11, pp. 393-402

22. The aggregate value of benefits to be paid to the Class under the Amended SSA (excluding any potential second surplus distribution), if approved, was estimated at the time of the motion below to be:

Integration Partial Wind Up Surplus		$2,600,000
	+CL Interest waived:	$800,000
	+CL Legal fees waived:	$500,000
	Total IPWU Surplus:	$3,900,000
	Member share:	$2,716,740
	+Estimated CL Top Up:	$1,200,000
	+KM/HP Legal Fees:	$200,000
	Member Share:	**$4,116,740**
	TOTAL:	**$4,116,740**
Indago Partial Wind Up Surplus		$1,100,000
	Member Share:	**$766,260**
Adason Partial Wind Up Surplus		$6,200,000
	Member Share:	**$4,318,920**
Pelican Partial Wind Up Surplus		$2,900,000
	Member Share:	**$2,020,140**
Total Member Share of Estimated Surplus		**$11,222,060**
Value of Contribution Holidays for Active Class Members		**$4,600,000**
Total Estimated Benefit to Class Members Under the Amended SSA		**$15,822,060**

Reasons, paras. 79-80, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 21-22

Affidavit of Jonathan Foreman, para. 28, Exhibit Book, Vol. 1, Tab 1, pp. 7-8; Appeal Book and Compendium, Vol. 2, Tab 8, pp. 375-376

23. Under the SSA, the member share of the estimated IPWU surplus is $1,811,160 (69.66% x $2,600,000). In comparison, under the Amended SSA, the member share of the estimated IPWU surplus is $4,116,740. Total estimated benefits to Class members under the Amended SSA are $15,822,060 (excluding any potential second surplus distribution).

24. Following the conclusion of negotiations in respect of the Amended SSA, the parties appeared before the Motions Judge on February 12, 2013 and obtained approval to distribute notices to the Class advising them that amended settlement terms had been agreed upon. Court-

approved letters were sent to all Class members in February 2013, describing and explaining the decline in the IPWU Surplus and the effect on the particular Sub-classes, the terms of the Amended SSA, and giving notice of the next steps in the proceeding.

> Affidavit of Jonathan Foreman, para. 40, Exhibit Book, Vol. 1, Tab 1, p. 11; Appeal Book and Compendium, Vol. 2, Tab 8, p. 379
>
> Exhibit E to Affidavit of Jonathan Foreman, Exhibit Book, Vol. 1, Tab 1(E), pp. 198-211; Appeal Book and Compendium, Vol. 2, Tab 12, pp. 403-416

25. Class Counsel, the Representative Plaintiffs, and Marcus Robertson (the Representative Plaintiffs' actuarial advisor), recommended the Amended SSA as fair, reasonable and in the best interests of the Class.

> Reasons, para. 84, Appeal Book and Compendium, Vol. 1, Tab 3, p. 22

26. A motion was brought before Justice Perell on March 18, 2013 seeking court approval of the amendment to the SSA. While the Motions Judge held that the Amended SSA was monetarily better than the alternative of not approving it, avoids potential renewed litigation and collateral damage to the active Class members as well as to members of the Pelican, Indago and Adason Partial Wind Up groups, he nevertheless refused to approve the Amended SSA.

> Reasons, paras. 22-23, Appeal Book and Compendium, Vol. 1, Tab 3, p. 14

PART IV - ISSUES AND ARGUMENT

27. The fundamental issues on this appeal are:

(i) Did the Motions Judge err in law in his consideration and application of the *Dabbs* criteria (as defined below) in considering whether the

amendment to the settlement is fair, reasonable and in the best interests of the Class?

(ii) Even if the Motions Judge failed to properly apply the *Dabbs* criteria in assessing whether the amendment to the settlement is fair, reasonable and in the best interests of the class, was the Motions Judge nevertheless correct in withholding approval of the amendment?

28. Canada Life asserts that the first issue must be answered in the affirmative and the second issue in the negative.

Standard of Review

29. In considering whether the amendment to the settlement is fair, reasonable and in the best interests of Class members, the Motions Judge discounted the significance of a number of the *Dabbs* criteria and over-emphasized others. In addition, he developed a new test for assessing whether a class action settlement is fair (based upon notions of "circumstantial" and "institutional" fairness) and took into account irrelevant considerations ("moral duty"). These are questions of law where the applicable standard of review is correctness.

Housen v. Nikolaisen, 2002 SCC 33 at para. 8, Book of Authorities, Tab 1

Issue 1 - Amendment Satisfies the *Dabbs* Criteria

30. In assessing whether to approve the amendment to the settlement, the Court must be guided by the same test that applies in respect of a motion to approve a class action settlement, namely is the amendment fair, reasonable and in the best interests of the class as a whole. In

assessing the reasonableness of a proposed settlement, the Court does not, and cannot, seek perfection in every aspect. As noted by Winkler J. (as he then was) in *Baxter v. Canada (A.G.)*:

> ...perfection is not the standard by which the settlement must be measured. Settlements represent a compromise between the parties and it is to be expected that the result will not be entirely satisfactory to any party or class member.
>
> *Baxter v. Canada (A.G.),* [2006] O.J. 4968 (S.C.J.) at para. 21, Book of Authorities, Tab 2
>
> See also *Dabbs v. Sun Life Assurance Co. of Canada,* [1998] O.J. No. 2811 (Gen. Div.) (QL) at p. 9 (per Sharpe J. as he then was), leave to appeal to C.A. denied, [1998] O.J. No. 3622 (C.A.), leave to appeal to S.C.C. denied, [1998] S.C.C.A. No. 372, Book of Authorities, Tab 3

31. In assessing whether a settlement (or in this case, an amendment to a settlement) satisfies the requirement of being fair, reasonable and in the best interests of the class, the courts have recognized the following relevant considerations:

(a) likelihood of recovery or likelihood of success;

(b) amount and nature of discovery evidence;

(c) the settlement terms and conditions;

(d) recommendation and experience of counsel;

(e) future expense and likely duration of litigation;

(f) recommendation of neutral parties, if any;

(g) the number of objectors and nature of the objections;

(h) the presence of arms' length bargaining and absence of collusion;

(i) the degree and nature of communications with class members; and

(j) the dynamics of the negotiation.

(collectively the "*Dabbs* criteria")

Dabbs v. Sun Life Assurance Co. of Canada, [1998] O.J. 1598 (Gen. Div.) at paras. 13-14, Book of Authorities, Tab 4

Parsons v. Canadian Red Cross Society, [1999] O.J. 3572 (S.C.J.) at paras. 71-72, Book of Authorities, Tab 5

32. When these factors are considered in the context of the amendment to the SSA, it is submitted that it is clear that the amendment is fair and reasonable and in the best interests of the Class. In particular:

(a) With respect of factor (a) (likelihood of recovery or likelihood of success), a motion to approve an amendment differs in an important respect from a motion to approve a settlement in the first instance. In a typical class action settlement approval motion, the court is called upon to assess the position of the class under the settlement in comparison to its position if the litigation were permitted to proceed. In a motion to approve an amendment to an already-approved class action settlement, the court must necessarily compare the position of the class under the amended settlement to its position under the existing and binding unamended settlement. The Motions Judge acknowledged that the previously approved settlement remained binding (Reasons, para. 161). He also correctly found and acknowledged that Class members were better off under the amended settlement than under the existing settlement. This was manifestly the case since:

(i) As is apparent from the chart in paragraph 22 above, under the Amended SSA, more money would be available for distribution to the Class than would be available under the SSA.

(ii) If the SSA were to be implemented without any variation or amendment, members of the IPWU Sub-class and Eligible Inactive Members as at the date of the motion below would have received 69.66% of the estimated $2.6 million of IPWU Surplus, or $1.8 million, assuming that the surplus did not diminish further prior to distribution. There would be insufficient funds to pay the minimum $1,000 surplus payments (at least for members of the IPWU Sub-class), and there would be no possible future distribution of surplus.

(iii) Under the Amended SSA, members of the IPWU Sub-class would receive at least $1,000 and would have the possibility of a future distribution of surplus after 2014, if available. The Eligible Inactive Members (i.e. retirees and deferred vested members) would also receive surplus shares and the possibility of a future surplus distribution.

(iv) Members of the Indago Partial Wind Up Sub-class, the Adason Partial Wind Up Sub-class, the Pelican Partial Wind Up Sub-class and active Class members are largely unaffected by the factors impacting the IPWU surplus (described in paragraph 14 above) and the terms of the Amended SSA (but clearly would be affected to the extent the Amended SSA was

not approved and implementation of the SSA was delayed or not implemented at all).

Given that the underlying action is over and subject to a final Judgment, absent an amended settlement, the Class has no likelihood of reaping any additional benefits to those provided by the previously approved settlement.[1]

(b) With respect to factor (b) (amount and nature of discovery evidence), in the context of both the initial disclosure of the diminution of the IPWU Surplus and the subsequent negotiations between the parties, there has been an exchange of actuarial and other information to permit the Representative Plaintiffs and their advisors to assess the reasons for the decline in the estimated IPWU Surplus and to negotiate amendments to the SSA. All relevant material was put before the Court.

(c) With respect to factor (c) (the settlement terms and conditions), the provisions of the Amended SSA give effect to the terms negotiated under the original SSA, while providing Class members affected by the drop in estimated IPWU Surplus with more money than they would otherwise receive under the original SSA together with some hope of additional future payment.

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[1] The only theoretical possibility of further recovery would have been had the original settlement approval order been set aside. No party has sought such relief. In any event, the Representative Plaintiffs concede that the claim in respect of plan administration expenses has little prospect of success in the wake of the Supreme Court of Canada decision in *Nolan v. Kerry (Canada) Inc.*, 2009 SCC 39, Book of Authorities, Tab 6 (see Reasons, para. 97). Furthermore, any ongoing dispute is respect of surplus would have been a dispute about the surplus that actually exists, not that which was once estimated to exist.

(d) With respect to factor (d) (recommendation and experience of counsel), Class Counsel are very experienced in matters involving pension plans and class proceedings, and have brought both pension law and class proceedings expertise to this case. The effective collaboration of two law firms has provided the Representative Plaintiffs with strong legal representation in both fields. Class Counsel and the Representative Plaintiffs recommended the approval of the Amended SSA.

(e) With respect to factor (e), consideration of the cost, duration and risk of ongoing litigation raises unique issues in the context of a motion to amend a previously approved settlement. The underlying action has been fully disposed of. In order for members to pursue a remedy beyond that provided for in the existing unamended SSA, they would have to successfully move to have the Judgment set aside. No such motion has been brought. Even if such a motion were to succeed, the result would be prolonged litigation in respect of entitlement to a smaller surplus and with respect to a plan expense claim which in the wake of the Supreme Court of Canada decision in *Nolan v. Kerry (Canada) Inc.* the Representative Plaintiffs have conceded has little or no chance of success. In short, any such litigation would be lengthy and expensive, and in any event, would not have the result of increasing the IPWU surplus.

(f) In respect of factor (g) (the number of objectors and nature of the objections), it is noteworthy that the Class consists of approximately 5,228 members, 2,149 of whom are in the IPWU Sub-class. Of these numbers, approximately 105 members of the IPWU Sub-class indicated, either directly or by signing a petition,

some objection to the Amended SSA. The objectors thus represented just two percent of the total Class and less than five percent of the IPWU Sub-class. While the objectors are understandably disappointed that the surplus to be distributed is smaller than originally anticipated, they do not allege, let alone establish, that Class members would be better off under the existing settlement than under the amended settlement.

Reasons, paras. 21, 53, 86, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 14, 18, 23

Reasons for Decision of Perell J. dated February 6, 2012, para. 71, Appeal Book and Compendium, Vol. 2, Tab 7, p. 359

(g) In respect of factor (h), the record establishes the presence of extensive arms' length bargaining and absence of collusion in reaching both the original SSA and the terms of the amendment considered on the motion which is the subject of this appeal.

(h) In respect of factor (i) (the degree and nature of communications with class members), the record establishes that in May 2012, Class counsel mailed court-approved notices to all Class members, advising of the diminution in value of the IPWU Surplus, and the reasons for that decline. Class counsel further distributed court-approved notices to the Class by regular mail in English and French, advising of the Amended SSA and the March 18, 2013 motion date to approve the variation to the Judgment. Subsequent to the mailing of these notices, Class counsel fielded over 70 inquiries by Class members, and communicated with all of the objectors.

Reasons, paras. 82-83, Appeal Book and Compendium, Vol. 1, Tab 3, p. 22

(i) In respect of factor (j) (the dynamics of the negotiation), Canada Life took the position that no amendment to the SSA was necessary following the drop in the IPWU Surplus, while Class counsel viewed the SSA in its current form as unworkable. Notwithstanding these diametrically opposed views, and with the assistance of Justice Strathy, the parties over the course of many months negotiated a compromise that addressed not only the issues in implementing the SSA in its existing form but also increased the amount available for immediate distribution to Class members and provided the potential for further future payment to eligible Class members.

33. By refusing, notwithstanding the foregoing, to approve the amendment to the settlement as fair, reasonable and in the best interests of the Class, the Motions Judge erred in his application of the *Dabbs* criteria.

34. In his reasons the Motions Judge discounted the significance of factors (b), (d), (h) and (j). There was no reason for him to have done so.

Reasons, para. 134, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 31-32

35. The Motions Judge was greatly influenced by the objectors. In this respect, it is important to recognize that the number of objectors and the nature of the objections is but one of the criteria to be considered in assessing the appropriateness of a class action settlement. It is submitted that the Motions Judge erred by elevating the weight given to this one factor at the expense of the other relevant considerations. Moreover, in doing so, the Motions Judge failed to

recognize that the objectors represented a very small proportion of the Class and of the IPWU Sub-class, with the result that all members of the IPWU Sub-class have been deprived of the additional benefits conferred by the Amended SSA because of the objections of the relatively few.

36. In addition, in giving undue weight to the position of the objectors, the Motions Judge failed to consider the impact of his decision on active Class members and on members of the Pelican Partial Wind Up Sub-class, the Indigo Partial Wind Up Sub-class and the Adason Partial Wind Up Sub-class. The benefit to be received by these Sub-class members under the SSA has not been impacted to the same extent by the events which have impacted the IPWU Sub-class members or by the Amended SSA, but all of these Class members will potentially lose those benefits if, as a consequence of the Court's refusal to approve the Amended SSA, the settlement does not proceed.

37. 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 and the settlement terms and conditions. His errors in this regard were twofold:

(a) In considering *Dabbs* criteria (a) and (c), the Motions Judge effectively asked himself whether if the amended settlement were before him in March 2013 as a matter of first instance he would conclude that it was fair and reasonable having regard to its terms and conditions and the likelihood of recovery if the action proceeded. In doing so he erred. There already existed a settlement which the Motions judge acknowledged was binding. As such, he was required to consider the position of the Class if the amendment was approved in comparison to the

position of the Class under the terms of the existing binding SSA. By failing to be guided by the comparative benefits to the Class under the Amended SSA in relation to the Class' position under the unamended SSA, the Motions Judge fundamentally misdirected himself with respect to factors (a) and (c) of the *Dabbs* criteria. For the reasons set out above, when the amendment is properly evaluated in the context of the existing binding settlement where further recovery in the underlying action is precluded by the final Judgment, the terms and conditions of the amendment were clearly beneficial to the Class members and *Dabbs* factors (a) and (c) weighed heavily in favour of judicial approval of the amendment.

(b) Even if, contrary to the submission above, it was not an error to evaluate the Amended SSA in terms of whether its terms and conditions would be considered fair and reasonable today under prevailing circumstances without reference to the unamended SSA, it is submitted that the Motions Judge erred in considering the position of the Class under the amended settlement as against the expectations created by the earlier surplus estimates rather than in comparison to the Class' potential recovery if the action had proceeded to trial. 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. As a result, the stakes in the litigation would effectively be limited to the partial wind up surplus amounts, whatever they might be. The previously-estimated surplus amount will not be restored by further litigation. By effectively evaluating the Amended SSA (and the SSA) against members' unachievable expectations rather

than against what might actually be recovered in the action should it proceed forward, the Motions Judge committed a fundamental error.

38. Finally, the Motion Judge's misapplication of the *Dabbs* criteria is highlighted by his comments with respect to two aspects of the Amended SSA, the $15 million cap on any future surplus distribution and the December 31, 2014 deadline for any future surplus distribution (Reasons, paras. 156-160). His errors in this regard are as follows:

(a) with respect to the $15 million cap, the Motion Judge's analysis misses the point that any second distribution of surplus is not part of the IPWU surplus but is *in addition* to the IPWU surplus (any future surplus distribution comes out of the ongoing Plan, not the IPWU surplus which will have been distributed) and further ignores the fact that Canada Life, as Plan sponsor, is the party responsible for funding any deficit that arises in the Plan; and

(b) with respect to the December 31, 2014 deadline, any future deadline selected is by its nature arbitrary. In this case, the December 31, 2014 deadline (which is almost three years after the original settlement approval date) was a reasonable compromise reached between the parties with advice from their advisors.

39. Consequently, when evaluated against the *Dabbs* criteria, it is submitted that the amendment was fair, reasonable and in the best interests of the Class and that the Motions Judge made fundamental errors in failing to so conclude.

Issue 2 – There Are No Other Reasons to Refuse Court Approval of the Amendment

40. Although many Class members would be manifestly better off with the amended settlement than the original settlement, and although the *Dabbs* factors weighed heavily in favour

of finding that the amendment was fair reasonable and in the best interests of the Class, the Motions Judge refused to approve the amendment. In doing so it is submitted that he erred not only through his misapplication of the *Dabbs* criteria but also by:

(i) devising a new test to approve a proposed class action settlement (or an amendment to an approved settlement) which significantly elevated the standard and scope of the test for such approval;

(ii) considering irrelevant factors including the alleged "moral duty" or "moral responsibility" of the Appellant to more fully share in the Class members' "disappointment"; and

(iii) characterizing the settlement as procedurally unfair where the Motions Judge supervised, presided over, and approved all preceding procedural steps and notices to Class members in the matter.

The New Test

41. The *Dabbs* criteria, which have been applied by the courts for 15 years in assessing the fairness of proposed class action settlements, address matters of substantive and procedural fairness. In his decision, the Motions Judge purported to introduce for the first time requirements of "circumstantial fairness" and "institutional fairness". Despite the Motions Judge's attempts at paragraphs 129 and 130 of his Reasons to explain these newly-created concepts, they remain amorphous and ill-defined, although they are in the Motions Judge's words intended to "elevate the standard for approval".

42. In introducing into his analysis new concepts of "circumstantial fairness" and "institutional fairness", the Motions Judge intentionally departed from the substantial body of case law that has been developed and followed by the courts since the *Dabbs* decision in 1998. It is respectfully submitted that this departure from the established jurisprudence was both unwarranted and constitutes a reversible error. The circumstances of class members is already an important part of several factors in the *Dabbs* criteria including (a) likelihood of recovery or likelihood of success, (c) the settlement terms and conditions and (h) the degree and nature of communications with class members. The concern that courts may rubber stamp unfair settlements or turn a blind eye to strike suits that underlay the Motions Judge's introduction of a review for "institutional fairness" is already addressed not only by the *Dabbs* requirement that the Court consider (a) likelihood of recovery or likelihood of success and (c) the settlement terms and conditions, but also by the requirement that the Court consider (g) the presence of arms' length bargaining and absence of collusion and (h) the dynamics of the negotiation.

43. It is submitted that the concerns that underlay the Motions Judge's invention of the concepts of "circumstantial fairness" and "institutional fairness" can be and have historically been addressed through the application of the *Dabbs* criteria and that the Motions Judge erred in attempting to superimpose on these criteria some new and elevated (but ill defined) tests of "circumstantial fairness" and "institutional fairness".

Irrelevant Factors

44. In his reasons (see paragraphs 149 and 150 of the Reasons), the Motions Judge held that Canada Life had a "moral duty" to share the disappointment of Class members (beyond a

corresponding decrease in its own surplus share) when the surplus turned out (without any fault by Canada Life) to be lower than originally estimated.

45. The notion of "moral duty" is not a relevant consideration. The issue is whether the position of the Class is improved by the proposed amendment to the Court approved SSA and whether the amendment is thus fair, reasonable and in the best interests of the Class. If a settlement (or in this case an amendment) otherwise satisfies the substantive and procedural fairness requirements of the *Dabbs* criteria, for a court to refuse to approve the settlement based on a perceived "moral duty" of one of the parties is without jurisprudential support and would be tantamount to the Court disregarding the long-established *Dabbs* test.

46. The Motions Judge's finding that a "moral duty" existed was ill-conceived and without foundation for the following reasons:

(a) The Motions Judge appeared to found Canada Life's alleged "moral duty", at least in part, on what he three times described as the "unprecedented" fact that Class members had been invited in advance to vote on the terms of the proposed class action settlement. Far from being "unprecedented", such votes have been the norm in class actions involving pension surpluses because of the regulatory requirement that any payment of any surplus to a plan sponsor have a prescribed level of support from plan beneficiaries.

Pension Benefits Act Regulations, R.R.O. 1990, Reg. 909, s. 8 (revoked O. Reg. 178/12), at Schedule B

Pension Benefits Act, R.S.O. 1990, c.P-8 as amended, ss. 77.11(7) and (8), at Schedule B

Sunnybrook Health Sciences Centre v. Lorenz, [2009] O.J. 3268

(S.C.J.) at para. 8, Book of Authorities, Tab 7

McMaster University v. Robb, [2001] O.J. No. 5480 (S.C.J.) at para. 4, Book of Authorities, Tab 8

Burleton v. Royal Trust Corp. of Canada, [2003] O.J. 2168 (S.C.J.) at paras. 24, 31, Book of Authorities, Tab 9

CBS Pictures Canada Inc. v. Dillon, [2006] O.J. 3669 (S.C.J.) at para. 3, Book of Authorities, Tab 10

Reichhold Ltd. v. Boyer, [2000] O.J. 290 (S.C.J.) at paras. 8-10, Book of Authorities, Tab 11

(b) The finding of an alleged "moral duty" unduly discounted (i) the evidence that members were always told that the surplus amounts referred to in communications were estimates which could change[2] and (ii) the fact that the reason that the estimates were not realized was not due to any act or omission of Canada Life but due to external factors including a change in prevailing interest rates and the elects of class members.

---

[2] The information package sent to Class members in March 2011 describing the original settlement contained a number of statements to the effect that the surplus amounts referenced therein were estimates only and were subject to change. For example, the Questions and Answers section of the information package contained the following: **"24. Why does my Personal Information Statement show only an estimate of my possible surplus share? How and why could the estimate change?"** The response to this question stated: "The amount of surplus that you actually receive, should the Proposal proceed, will likely be different (higher or lower) than the estimate shown on your Personal Information Statement for various reasons. First of all, until all of the pension benefits earned by members affected by the Partial Wind-Ups are paid or provided for, the value of those benefits will fluctuate (for various reasons, including changes in interest rates), which will affect the amount of the Partial Wind-Up surplus (the more valuable the benefits, the less surplus will remain, and vice versa). Also, the assets of the Plan fund are invested in stocks, bonds and other investments, and therefore the total amount of Partial Wind-Up surplus will also fluctuate depending on the returns on those investments. As the overall Partial Wind-Up surplus fluctuates, so will the amount to be shared by the eligible members." See the information package sent to Class members, Exhibit "S" to January 4, 2012 Affidavit of David Kidd, Exhibit Book, Vol. 3, Tab 8, pp. 555, 584, 600, 603-604; Appeal Book and Compendium, Vol. 2, Tab 13, pp. 417-421.

(c) Finally, the Motions Judge incorrectly treated the "Approved Settlement" and the "Stark Reality Settlement" as separate and distinct. There was always only one settlement. The Approved Settlement did not change with the passage of time and become the Stark-Reality Settlement (defined by the Motions Judge to be the settlement if it had occurred in March 2013 taking into account updated surplus estimates). The SSA never promised Class members any specific amount but only a share of whatever surplus attributable to the IPWU and the Indago, Pelican and Adason Partial Wind Ups actually existed after deduction of projected expenses and legal fees. 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.

Reasons, paras. 30, 143, 150, Appeal Book and Compendium, Vol. 1, Tab 3, pp. 15, 33-34

(d) The Motions Judge's finding of a breach of "moral duty" also discounted the impact of the decline in the surplus value on the amount of Canada Life's own surplus share.

(e) Finally, in criticizing the terms on which a second surplus distribution may be made to Class members pursuant to the terms of the amendment, the Motions Judge completely overlooked the fact that Canada Life will bear 100% of the risk of a deficit developing in the Plan leading up to the date of any future surplus distribution.

Procedural Fairness

47. The record and reasons of the Motions Judge clearly establish that the Court was kept fully advised of developments subsequent to the date of the original settlement approval motion. Subsequent to the original settlement approval, the parties attended before the Motions Judge on April 20 and May 7, 2012 to report on the situation. Furthermore, as discussed above, the parties attended before the Motions Judge on February 12, 2013 to obtain Court approval of the notices to be sent to the Class describing the terms of the amendment to the SSA and next steps.

48. In these circumstances, and in light of the *Dabbs* analysis above, it is submitted that there were no procedural issues or irregularities which justified withholding approval of the Amended SSA.

PART V - ORDER REQUESTED

49. Canada Life requests that the Order below be set aside and that an order be granted substantially in the form attached as Schedule "A" to the Notice of Appeal approving the amendment to the settlement herein and varying the Judgment of Justice Perell dated February 27, 2012.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27TH DAY OF MAY, 2013

Jeff Galway
Blake, Cassels & Graydon LLP
Lawyers for The Canada Life Assurance Company

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

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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

Plaintiffs (Respondents)

– and –

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

Defendants (Appellant)

Proceeding under the *Class Proceedings Act, 1992*

CERTIFICATE

Counsel for the Appellant certifies that an order under subrule 61.09(2) is not required.

Counsel for the Appellant estimates that 2 hours will be required for oral argument, not including reply.

Jeff Galway

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

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Housen v. Nikolaisen,* 2002 SCC 33
2. *Baxter v. Canada (A.G.),* [2006] O.J. 4968 (S.C.J.)
3. *Dabbs v. Sun Life Assurance Co. of Canada,* [1998] O.J. No. 2811 (Gen. Div.), leave to appeal to C.A. denied, [1998] O.J. No. 3622 (C.A.), leave to appeal to S.C.C. denied, [1998] S.C.C.A. No. 372
4. *Dabbs v. Sun Life Assurance Co. of Canada,* [1998] O.J. 1598 (Gen. Div.)
5. *Parsons v. Canadian Red Cross Society,* [1999] O.J. 3572 (S.C.J.)
6. *Nolan v. Kerry (Canada) Inc.,* 2009 SCC 39
7. *Sunnybrook Health Sciences Centre v. Lorenz,* [2009] O.J. 3268 (S.C.J)
8. *McMaster University v. Robb,* [2001] O.J. No. 5480 (S.C.J.)
9. *Burleton v. Royal Trust Corp. of Canada,* [2003] O.J. 2168 (S.C.J.)
10. *CBS Pictures Canada Inc. v. Dillon,* [2006] O.J. 3669 (S.C.J.)
11. *Reichhold Ltd. v. Boyer,* [2000] O.J. 290 (S.C.J.)

SCHEDULE "B"

LIST OF STATUTES

Class Proceedings Act, 1992, S.O. 1992, c. 6

Court may determine conduct of proceeding

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

Discontinuance, abandonment and settlement

Settlement without court approval not binding

29. (2) A settlement of a class proceeding is not binding unless approved by the court.

Effect of settlement

(3) A settlement of a class proceeding that is approved by the court binds all class members.

Pension Benefits Act Regulations, R.R.O. 1990, Reg. 909, s. 8 (revoked O. Reg. 178/12)

8. (1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,

(a) the payment is to be made to or for the benefit of members, former members and other persons, other than an employer, who are entitled to payments under the pension plan on the date of wind up; or

(b) the payment is to be made to an employer with the written agreement of,

(i) the employer,

(ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and

(iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Superintendent considers appropriate in the circumstances.

(2) Despite subsection (1), a payment may be made from surplus out of a pension plan that is being wound up in whole or in part if,

(a) the payment would have been permitted by this section as it read immediately before the 18th day of December, 1991; and

(b) notice of proposal to wind up the pension plan was given to the Superintendent of Pensions before December 18, 1991.

(3) Subsections (1) and (2) do not apply after December 31, 2011.

Pension Benefits Act, R.S.O. 1990, c.P-8 as amended, ss. 77.11(7) and (8) 160

Entitlement to surplus

Agreement about surplus

77.11 (7) A written agreement among the following persons may provide for payment of surplus to the employer in the circumstances specified in the agreement and as of the date specified in the agreement:

1. If the surplus is to be paid to the employer while the pension plan continues in existence,
   i. the employer,
   ii. at least two-thirds of the members of the pension plan (and, for this purpose, a trade union that represents members may agree on behalf of those members), and
   iii. the number which is considered appropriate in the circumstances by the Superintendent of former members, retired members and other persons who are entitled to payments under the pension plan as of the specified date for payment of the surplus.
2. If the surplus is to be paid to the employer on the wind up of the pension plan in whole,

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 is amended by striking out "on the wind up of the pension plan in whole" in the portion before subparagraph i and substituting "on the wind up of the pension plan". See: 2010, c. 24, ss. 26 (6), 49 (4).

   i. the employer,
   ii. at least two-thirds of the members of the pension plan (and, for this purpose, a trade union that represents or represented members on the date of the wind up may agree on behalf of those members), and
   iii. the number which is considered appropriate in the circumstances by the Superintendent of former members, retired members and other persons who are entitled to payments under the pension plan as of the date of the wind up.
3. If the surplus is to be paid to the employer on the partial wind up of the pension plan,
   i. the employer,
   ii. at least two-thirds of the members of the pension plan affected by the partial wind up (and, for this purpose, a trade union that represents or represented affected members on the date of the partial wind up may agree on behalf of those members), and
   iii. the number which is considered appropriate in the circumstances by the Superintendent of former members, retired members and other persons who are affected by the partial wind up and who are entitled to payments under the pension plan as of the date of the partial wind up.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is repealed. See: 2010, c. 24, ss. 26 (7), 49 (4).

Effect of agreement

(8) A written agreement prevails over any document that creates and supports the pension plan and pension fund, it prevails over subsections (2), (3) and (4), and it prevails despite any trust that may exist in favour of any person.

DAVID KIDD et al.	**- and -**	**THE CANADA LIFE ASSURANCE COMPANY et al.**
Plaintiffs (Respondents)		Defendants (Appellant)

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

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

FACTUM OF THE DEFENDANT (APPELLANT), THE CANADA LIFE ASSURANCE COMPANY

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

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DAVID KIDD, ALEXANDER HARVEY, et al Plaintiffs	-and-	THE CANADA LIFE ASSURANCE COMPANY, et al Defendants	Court File No. 05-CV-287556CP

ONTARIO
SUPERIOR COURT JUSTICE

Proceeding commenced at TORONTO

Proceeding under the Class Proceedings Act 1992

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

Dan Anderson, Class Member
(without independent legal representation)
1284 Lewisham Drive
Mississauga, Ontario
L5J 3P7
905-823-4914
dan.anderson@sympatico.ca

TAB C

This is Exhibit "C" referred to in the
affidavit of Desi Scarlett
sworn before me, this 3rd
day of December 2013

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 05-CV-287556CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID KIDD, ALEXANDER HARVEY
JEAN PAUL MARIONETTE, 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

AFFIDAVIT OF ANNE CAREY

I, ANNE CAREY, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY (*or* AFFIRM):

1. I am a member of the Integrated Partial Wind- Up group, (IPWU); and as such have knowledge of the facts set out in this affidavit.
2. In the Fall of 2003 my employment with The Canada Life Assurance Company ("CLA"), was terminated due to the company having been acquired by The Great West Life Assurance Company, ("GWL") in July of that year.

3. I had enjoyed a successful 18 year career with the company prior to that time, and had been looking forward to continuing my career there while contributing to the success of the company. During my last three years at the company I had been a project manager overseeing the defense of the company's first Class Action Lawsuit, initiated by Policyholders concerning their "vanishing" premiums. Today, I am facing the "vanishing" of the "true" value of my commuted pension and the Plan Surplus.

4. From the fall of 2003 to the spring of 2011, I ceased to receive any annual statements (or any information for that matter) regarding my Registered Pension Plan with CLA, something I had long enjoyed receiving each year, as validation of my efforts to plan for retirement.

5. However, on one or two occasions, during this interval on my own, I initiated contacting the CLA/GWL, and through a convoluted process and procedure, dealing with several offices located between Regina/ Winnipeg/London/Toronto, I eventually tracked down a pension representative who was able to send me some information.

6. I was cautioned by this pension person/s that I would not receive disclosure of certain aspects, specifically my commuted value, pending

the outcome of the distribution of surplus. This did not make sense to me then and still does not make sense to me today. I did not understand why I had to wait eight years, before being informed about or allowed to transfer the commuted value of my commuted pension. No one has ever provided any explanation as to why there was this delay.

7. **A full eight years after being terminated,** in June of 2011, I received a package from Mercer Benefits Processing Centre, offering me "a one time opportunity to elect the commuted value transfer option" of my Canada Life Registered Pension Plan. I was given 90 days to take up that option, failing which I would be deemed to have chosen the opposite (maintain my rights to my pension benefit payments). A copy of that letter and package is attached as Exhibit "A" to this affidavit.

8. In that package, I was also informed that "regulatory approval" was required in order to distribute all Registered Plan assets attributable to the partial wind-up group. No explanation was provided then, or has been provided since, as to why such approval was not obtained promptly after the effective date of the wind-up in 2005.

9. I made the election on the basis and understanding that I would receive the fair and full current value of my future pension benefits, as of that time. I trusted that the company I had worked hard for all those years, could be depended upon to deal with me (and all of the others in my position), in a fair way. I was concerned at the time about the time made available to decide. I would have preferred more time to decide what to do - but I understood there was an inflexible deadline so I made the decision within the 90 day window that was allowed.

10. It was confirmed to me at that time that the net commuted value transfer of my Registered Plan Pension as of July 1, 2011 was $287,184.00.

11. I instructed Mercer to transfer the "Transfer Limit" amount as prescribed by the Income Tax Act of Canada, of my Registered Pension Plan over to a locked - in - LIF - Life Income Fund - an annuity type plan with Manulife Financial, and the balance split between an RRSP contribution, and a small amount paid to me in cash less with- holding tax. It frankly never crossed my mind that the CLA I had worked for would deal with me and my pension rights in anything but an honest, open and good faith manner.

12. I did not know at the time of my election that the commuted value amount offered to me was no where near the "true" value of my pension entitlements at that time, nor close to the amount required to recreate the full stream of future pension income I needed and was depending upon. It was my intent to try to recreate the sort of financial protection package I had enjoyed under the CLA pension. When I agreed to take this option I had no idea that the amount paid to me by way of this CV buy-out was no where near enough to do so, given the prevailing market rates in 2011, when I actually received the transfer of the funds from the fund.

13. No one at CLA, or Mercer, or anyone acting on behalf of the Fund or its Trustees, indicated in any way that the cash value offer had been calculated based on estimates from back at the time of my termination (when they should have made the offer) - and was therefore very substantially less than the amount they were actually valuing my pension entitlements at the very time they presented this offer to me in 2011.

14. It seems to me that CLA and the Fund Trustees are trying to have it both ways, at my expense (and to their advantage). They have chosen to ignore their obligation to provide me with a cash value offer as of

the time of my termination (or at least as of the effective date of the wind-up) - but have chosen to be hyper-vigilant about calculating the cash value as at the time of my termination. It seems obvious to me that ***these two rules are clearly designed to work together to ensure that persons such as myself are given a cash value offer that is fairly valued as at the time it is presented.*** By failing to provide the offer at the correct time, but then using the highly dated estimates, CLA and the Trustees have turned the purpose of the rules on their head - by causing me (and all the others) to receive offers that are severely under-valued as of the day they were presented (inexplicably late) in June 2011.

15. I also confirm that it is my understanding that with respect to the *Pension Surplus* entitlement, that at least $20M (and perhaps upwards of $30M) of the amount being proposed for distribution at this time by way of "surplus sharing" has been derived by way of these systemic underpayments of CV buy-outs to people in my position. What is being proposed before the court at the upcoming fairness hearing - in the form of an *amendment* to the original Surplus Sharing Agreement - is in my view an attempt by CLA/GWL, to derive off the backs of approximately 400+ members (who, like myself, unwittingly elected to accept a grossly under valued CV offer), the means by which to pay

the PWU members their claim to the PWU portion of the surplus - after ten years of delay to grind it out of us.

16. In the aftermath of the fairness hearing conducted in March, 2013, it came to my attention for the first time that I had in fact been "hoodwinked", by CLA/GWL, (and/or Mercer Benefits Processing Centre, Plaintiff Counsel and the CLPENS Executive,) with respect to this undervaluation of my CV offer (as set out above) and with respect to my right to share of the Plan Surplus as of the effective date of the wind-up.

17. With respect to the surplus it was represented in the "glossy brochure", I received from Canada Life in March 2011 that I would receive approximately $38,000 as my share of the payment due on the "surplus sharing agreement".

18. When that agreement was presented to the Court for approval in January 2012 representations were made that there would be an amount of approximately $62.2M to be distributed (reduced to approximately $49M after payment of very substantial legal fees and expenses of approximately $13M).

19. It is now apparent that approximately half those estimates were based on grossly unrealistic estimates of how much "profit" the Fund would realize by way of members (such as myself) accepting grossly undervalued (and unfair) CV offers - while the other half was based on dated (under) estimates of the liabilities of the Plan (which failed to factor in the rapidly declining real rates of return on investments, of which Canada Life must have been fully aware). It is now apparent that the actual amount available for distribution under the SSA as of January 27, 2012 (i.e. at the time the SSA - and the proposed legal fees - were presented for approval) was in fact well under $10M.

20. It is in my view an outrage that the Court was presented with these representations as to anticipated distributions in January 2012 - as CLA and/or other parties must have been aware (or certainly should have been aware) that some or all of those figures were no longer accurate. Specifically - the actual CV offer "take up" would have been fully known to Canada Life by no later than late September 2011 (i.e. at the - 90 day limit for accepting the offers that were mailed June 22, 2011.) There was therefore no reason whatsoever to rely upon any "estimates" as to the " profits" to be realized by way of such undervalued offers. That amount was known or should have been known to Canada Life four months before the January 2012 hearing.

21. Similarly, CLA would have (or should have) been aware of the significant decline in "real rates of return" interest rates in the seven months leading up to the January 2012 hearing, which would significantly increase liability estimates (and decrease surplus estimates.) Knowing what we know now, it is therefore not surprising that less than four weeks after the January 2012 hearing CLA made it known that the real net amount for distribution under the SSA (assuming legal fees and expenses stayed at $13M), was no more than about $8M (as of that time).

22. To date, CLA has still not disclosed when and how this updated information came to their attention. It appears to me that the fair and honourable thing the parties could and should have done in the circumstances was to return to the Court with the accurate figures, to allow for further consideration of the fairness.

23. I would like to draw to the Court's attention that I have consulted with two friends and colleagues, who are also members of the PWU Group and the class, one of whom elected a CV offer when it was again offered to her this year, and another who has been solicited on more than one occasion to do so, and has wisely not done so. In both cases

their originally communicated commutation values were in line with my own, and after seeking further information they have determined that the "true" commuted value of their commuted Registered Pension benefits (i.e. the amounts at which CLA was actually valuing their benefit entitlements) were approximately $150,000.00, greater than what was offered ed to them originally. Also, in August of this year Class Counsel presented and informed the court that approximately 8 or $9M had been realized as "profits" from the commutation of approximately another 140+ class members who had done what I had done, and elected to accept the offer and transfer their commuted value - this time when they were offered yet another election in 2013. This appears to indicate an average of approximately $60-70,000.00 of underpayment to each of those persons (with a corresponding gain for the fund).

24. Had I known at the time of my commutation, that my Registered Pension benefits were so undervalued, and that I was in fact being ripped off, I would have demanded an explanation and taken further steps to make certain I was provided with a properly valued offer.

25. I have today made such a demand to Mercer and The Canada Life Assurance Company to make restitution of the full "true" value of my

commuted value as of June 2011 (with interest) and payable to me immediately (see letter attached as Exhibit B). I intend to take the matter up with FSCO as well, if I do not get an appropriate payment from CLA/Fund.

26. I also understand it to be that class members such as I, who elected the commuted option, **are not** being represented by Class Counsel in this action, in this respect. They have advised that the cash value underpayments is not an issue in this action and that they do not represent these members with respect to that issue. However, by the same token, they are advancing that there be a distribution of the funds realized from such underpayments by way of settlement of the surplus claims of the entire group. This does not make sense to me. These two issues are intrinsically linked.

27. In closing, I believe it is safe to say that we, the PWU Group members, and in particular the members who took the undervalued commutations, have been treated unfairly and with complete disregard throughout this entire process by CLA and the Plan Trustees - the very parties to whom we entrusted our future retirement benefits. Our interests have also not been well protected by CLPENS and class counsel.

SWORN BEFORE ME at the City)
Toronto, this 20th day of, December)
2013.)
)
)
_____)
A COMMISSIONER, ETC.

_____
Anne Carey

MERCER

Mercer Benefits Processing Centre
70 University Avenue
P.O. Box 5
Toronto, Ontario M5J 2M4

June 22, 2011

ANNE MARIE CAREY
85 COLONIAL AVENUE
SCARBOROUGH ON M1M 2C4

Dear MS. CAREY:

The Canada Life Canadian Employees Pension Plan
Partial Wind-Up Benefit Election Package

You are included in the partial wind-up of the Canada Life Canadian Employees Pension Plan (the "Registered Plan"), Registration Number 0354563. The partial wind-up includes members of the Registered Plan (other than those in Quebec) whose employment with Canada Life (the "Company") terminated during the integration period following the acquisition of Canada Life by Great-West Life. The partial wind-up cannot be completed until regulatory approval to distribute all Registered Plan assets attributable to the partial wind-up has been obtained, and that regulatory approval will not be forthcoming until the court action commenced by certain former Registered Plan members has been resolved. However, Canada Life has received permission from the Superintendent of Financial Services to settle the basic benefits for partial wind-up members of the Registered Plan. The enclosed material outlines the options available to you with respect to your basic benefits.

The distribution of partial wind-up surplus will not proceed until the court action has been resolved and regulatory approval has been obtained. It is important to note that the option you elect with respect to your basic benefits will not affect any partial wind-up surplus allocation to which you may become entitled.

You are currently receiving a pension benefit from the Registered Plan. As previously communicated in your retirement option package, a transfer option of your Registered Plan pension could not be offered to you prior to receiving approval of the wind-up report from the Financial Services Commission of Ontario ("FSCO"). Now that FSCO's approval has been received, you are entitled to elect to transfer the lump-sum value of your Registered Plan pension to a prescribed transfer vehicle. The attached *Statement of Benefits and Election of Option* (the "Statement") (2 copies) outlines the value of your Registered Plan pension currently in pay and the options now available to you in accordance with the Registered Plan provisions and the provincial pension legislation applicable to your province of employment.

(over...)

MERCER

Every effort has been made to ensure that the information shown on the enclosed package is correct. The Company reserves the right to amend the calculations in order to correct any data errors. If you believe any of the information in the Statement is incorrect or if you have any questions about your pension benefits, please call the Mercer Benefits Processing Centre at 1-888-841-7967.

Please complete one copy of the *Statement of Benefits and Election of Option* and any additional required forms as indicated under your elected option, and return it within **90 days** in the self-addressed envelope to the Mercer Benefits Processing Centre. **If you do not return the completed Statement postmarked by that date, you will be deemed to have chosen *Option 1 – Continuation of Monthly Pension*.**

In order to ensure that you receive your entitlements in a timely manner, please complete and return the Statement, even if you wish to receive your benefits in the default form. Should you elect the Commuted Value Transfer option, it may take 4 to 6 weeks to process your election upon receipt of your completed Statement. **Please note that this is your only opportunity to elect the Commuted Value Transfer option.**

Please retain the other copy for your records.

Sincerely,

Mercer Benefits Processing Centre

Enclosure

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (THE "REGISTERED PLAN")
REGISTRATION NUMBER: 0354563
PARTIAL WIND-UP AS OF JUNE 30, 2005

Statement of Benefits and Election of Option Following the Partial Wind-Up of the Registered Plan as of June 30, 2005

Name:	ANNE MARIE CAREY
ID Number:	835072
Address:	85 COLONIAL AVENUE SCARBOROUGH ON M1M 2C4

This Statement is based on the information in the Registered Plan records. If you believe any of the information is incorrect or if you have any questions about this Statement, please contact the Mercer Benefits Processing Centre at 1-888-841-7967 immediately.

Member Information

Date of Birth:	JANUARY 13, 1955
Date of Employment:	MARCH 18, 1985
Date of Plan Entry:	MARCH 16, 1987
Date of Termination of Participation:	NOVEMBER 28, 2003
Pensionable Service:	16.7535 YEARS
Highest Average Earnings:	$86,333.89
Normal Retirement Date:	JANUARY 31, 2020
Pension Commencement Date:	MAY 31, 2010
Province of Employment:	ONTARIO
Spouse Information at Date of Termination of Participation	
Marital Status:	MARRIED
Spouse's Name:	BRENDAN M. CAREY
Spouse's Date of Birth:	SEPTEMBER 28, 1953
Spouse Information at Pension Commencement Date	
Marital Status:	MARRIED
Spouse's Name:	BRENDAN M. CAREY
Spouse's Date of Birth:	SEPTEMBER 28, 1953
Beneficiary(ies):	BRENDAN M. CAREY KEVEN M CAREY BRENDAND CAREY LORRAINE A. CAREY
Monthly Registered Plan Pension with indexing at JANUARY 2011:	$1,147.39
Employee Contributions with Interest at NOVEMBER 28, 2003:	$50,915.97

Your Registered Plan Pension Benefits

Accrued Pension

You have commenced your Registered Plan pension of $1,129.02 per month on MAY 31, 2010, payable in the form chosen at your elected retirement date.

Your Registered Plan pension is indexed annually at a rate based on both the change in the Consumer Price Index and the rate of return on the Registered Plan's assets. Your pension as at January 2011 is $1,147.39 per month.

Your Payment Options

Your benefits under the Registered Plan can be paid to you in ***one*** of the following options:

Option 1 – Continuation of Monthly Pension

You may elect to continue to receive your pension payment of $1,147.39 per month, payable in the form chosen at your elected retirement date.

Option 2 – Commuted Value Transfer

You may elect to receive a locked-in transfer of $198,620.27, which represents the commuted value of your accrued pension at NOVEMBER 28, 2003.

Please note it may take approximately 4 to 6 weeks from the date the completed Statement is received before payment is finalized. Interest will be credited from the date of your termination of participation to the date of payment.

Note: The commuted value transfer will be reduced by any pension payments that you have already received from the Registered Plan, with interest. At July 1, 2011, the net commuted value transfer of your Registered Plan pension is $287,184.00.

The transfer of the commuted value of your pension with interest, on a tax-sheltered basis, cannot exceed the maximum "Transfer Limit" prescribed by the *Income Tax Act* of Canada. Any amount in excess of this transfer limit must be paid in cash, less withholding taxes. At July 1, 2011, the Transfer Limit is estimated to be $147,214.73. The actual Transfer Limit will be re-calculated at the time the transfer is made and it may be higher or lower than the amount shown here.

More Information on Monthly Pension

If you choose to continue your monthly pension, you should note the following:

Annuity

If you choose to continue your monthly pension, an annuity will be purchased on your behalf by the Registered Plan from a Canadian licensed life insurance company. The purchased annuity will be payable in the same amount and on the same terms and conditions of payment as the pension you are currently receiving from the Registered Plan.

Once the annuity purchase has been made, the selected insurance company will be responsible for the administration of the payments of your benefits under the Registered Plan.

Indexing

Your pension will continue to be adjusted annually to protect against some of the effects of inflation. The adjustment is based on both the change in the Consumer Price Index and the rate of return on the Registered Plan's assets.

More Information on Transfers

If you choose to transfer the commuted value of your benefit out of the Registered Plan, you must make all arrangements with the institution/employer who will be receiving the transfer, including completing all relevant forms. The additional forms that are required are listed in the "***Election – Payment of Benefit***" section. You must also ensure that the issuer of your locked-in arrangement is a financial institution acceptable to the provincial pension authorities.

Except where indicated otherwise, the transferred amount will be locked-in and can only be used to provide a life annuity or a life income fund. If you die before your annuity commences, the current value of the transferred amount will be paid as a death benefit to your eligible spouse, beneficiary or estate, as the case may be.

Please note it may take approximately 4 to 6 weeks from the date the completed Statement is received before payment is finalized.

Actuarial Assumptions

The commuted value of your pension was calculated as at NOVEMBER 28, 2003 in accordance with Registered Plan provisions and applicable legislation, and is consistent with the *Recommendations for the Computation of Transfer Values from Registered Pension Plans effective September 1, 1993* recommended by the *Canadian Institute of Actuaries*. Following are the actuarial assumptions used in determining the commuted value of your pension:

Retirement Age:	Your normal retirement age or, if applicable, the eligible retirement age at which the commuted value of your pension is maximized.
Interest Rates:	5.75% per year for the first 15 years following NOVEMBER 28, 2003, 6.00% per year thereafter.
Mortality Table:	GAM83 (50% male and 50% female)
Marital Status:	We have used your actual marital status at the date of termination of participation if the assumed Retirement Age is the age at the date of termination of participation. Otherwise, we have assumed a probability of 100% that you will have an eligible spouse at pension commencement or death.
Age Difference:	Where available, we have used the actual difference between your age and your spouse's age at the date of termination of participation. Otherwise, we have assumed that the male partner will be three years older than the female partner.

Pension Adjustment Reversal

If you elect ***Option 2 – Commuted Value Transfer***, you ***may*** be entitled to a Pension Adjustment Reversal (PAR). A PAR restores some RRSP contribution room which was lost due to pension plan participation as reported through Pension Adjustments. A PAR is calculated for any member who elects to receive a lump-sum payment (cash or transfer) in complete settlement from a pension plan. A PAR is reported 30 to 60 days after the end of the calendar quarter in which the transfer is made.

A PAR is not calculated when a member elects to receive the monthly pension.

Examination of Documents

You are entitled to examine the pension plan documents and the wind-up report on submission of a written request to the Mercer Benefits Processing Centre.

This Statement was prepared in collaboration with Mercer, an independent consulting firm. The Registered Plan is registered with the Financial Services Commission of Ontario and the Canada Revenue Agency under Registration No. 0354563.

Every effort has been made to report information accurately, but the possibility of error exists. Should you notice any errors in this Statement, please advise the following so the Company records can be corrected:

Mercer Benefits Processing Centre
70 University Avenue
P.O. Box 5
Toronto ON M5J 2M4

Details of your benefits are found in the laws and legal documents on which the Registered Plan is based. The information furnished in this Statement is subject to these legal documents which will govern in case of difference or error.

Exhibit "B"

December 20, 2013 Via Fax: 416-351-5900

Ms. Linda Gee
Mercer Benefits Processing Centre
70 University Avenue,
P.O. Box 5,
Toronto ON M5J 2M4

Re: Anne Marie Carey - Ex-Canada Life Employee # 835072

Dear Ms. Gee;

I am writing in follow up to my request to commute my Canada Life Pension back in the fall of 2011. At that time you were of assistance to me and therefore I do not hesitate to contact you directly, once again.

It has subsequently come to my attention in the spring of this year, whilst having a lawyer, look into things for me in respect to my *Pension Surplus,* that when I made the decision to commute my pension in the fall of 2011, I was in fact duly ***underpaid*** the "true" value of my pension at that time.

At this time, I am demanding that the balance of the "true' amount owing to me by the The Canda Life Assurance Company and your company, processing centre, be made payable to me immediately, and with interest, as of June 22, 2011.

I would like to express my complete disgust that I and approximately 400 other hardworking, terminated, employees who gave the best years of our lives to Canada Life, would be deceived in this manner.

I also would like to instruct, that my lawyer, Mr. Patrick Mazurek is granted full authorization and access to deal with you and your firm directly, on my behalf, in this matter going forward.

Thank you for immediate attention.

Anne M. Carey
85 Colonial Ave.,
Toronto On M1M 2C4

Court File No. 05-CV-287556CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

Plaintiffs

--and--

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

Defendants

Proceeding under the Class Proceedings Act, 1992

AFFIDAVIT OF JANICE DURST

I, JANICE DURST, of the City of Toronto, in the Province of Ontario, MAKE AN OATH AND SAY:

1. I was employed at Canada Life Assurance Company ("CLA") from August 1981 until February 4, 2004. Through a bridging agreement my severance was applied to extend my service date to November 2006 at which time my status became 'retired'. I am a member in the Integration PWU (Partial Wind-Up) Group category of class members in this action.

2. In October 2004, the Canada Life Pension Plan Members' Rights Group ("CLPENS") was formed. A copy of the CLPENS Mission Statement and Constitution are attached as Exhibit A and Exhibit B to this Affidavit. It was and is my understanding that a primary purpose for the formation of the CLPENS group was to provide a forum for dealing with issues arising out of the partial wind-up of the Canada Life Assurance Canadian Pension Plan ("the Fund") that was underway as of that time.

3. On October 5, 2004 I attended the inaugural Annual General Meeting ("AGM") CLPENS. A copy of the Minutes of that meeting are attached as Exhibit C to this Affidavit. The minutes show that it was communicated to members that there was :...a surplus of over $200 million" at that time (although it is not entirely clear if that is referring to a surplus in the entire Fund, or to the portion of such surplus that would be attributable to the PWU Group).

4. I paid $100 for voting membership in this group in October 2004, and a further $25 as my initial annual fee (thereafter payable each September 1st). I subsequently paid that $25 amount each year. I have not been able to ascertain the year we were advised at a meeting that no further annual fees would be collected (since the fund was sufficient) but it might have been in 2007 or 2008. The CLPENS Treasurer reported that the organization had a fund balance of $27,369.62 at April 2005.

5. The next general meeting of CLPENS took place April 27, 2005 (not an AGM). The Minutes of that meeting are attached as Exhibit D to this Affidavit. The next general meeting of CLPENS was the AGM that took place on October 19, 2005. The Minutes of that meeting are attached as Exhibit E to this Affidavit.

6. AGM's were held in each of the next three years, at approximately the same time each year. The Minutes (as posted on the CLPENS website) for

meetings held October 25, 2006, November 2007, and November 5, 2008 (the final AGM) are attached as Exhibits F, G and H, respectively.

7. As there have never been any further AGM's, the terms of office of all members of the Executive of CLPENS (including representative plaintiff Alex Harvey) all expired no later than November 5, 2010 - and some (including representative plaintiff David Kidd) had in fact expired in November 2009 (as those persons had been last elected in November 2007) - as the Constitution provided for terms of a maximum of two years. It should be noted that the terms of the Executive members all expired well before they each apparently signed the proposed settlement agreement (Surplus Sharing Agreement - or "SSA") in September 2011, and even longer before they signed the proposed amendments to the SSA - including the proposed amendment under consideration by this Court at this time. It should also be noted that members of the CLPENS group such as myself have not had any opportunity to vote about, or to even provide input about, the direction to be taken by the group, even after it became apparent to the (former) CLPENS executive that the presentation that had been made to the PWU Group members in 2011 had been based upon fundamentally and grossly incorrect estimates. In these circumstances I do not consider the CLPENS Executive to have had any legal basis - nor any actual mandate - to enter into any of the proposed settlements they have apparently signed - including the one presently being presented to this Court for approval.

8. On November 18, 2009 I attended the CLPENS Information Meeting - which turned out to have been the last CLPENS meeting to date. The Minutes of that meeting are attached as Exhibit I to this Affidavit). The Minutes show that members were advised that the most recent estimate of what was referred to as "the surplus position of the partial wind-up portion of the fund" had dropped from $103 m. (at January 1, 2006) to $72 m. (at January 1, 2009). Reasons given were i) "Investment results being less than assumed" ($22.5 m.), and ii) "changes in actuarial assumptions with respect to greater uptake by members choosing to

receive the Pension Income as opposed to Commuted Value" (presumably the other $8.5 m. of the drop in estimated value).

9. It is noted that there was no mention at that time of any reduction due to changes in the valuation of liabilities (or due to changes to actuarial assumptions or practices with respect to that subject). It is also noted that the inclusion of this second "reason" indicates that even at that time the estimators were assuming some increase in the value of this notional "wind-up surplus" would accrue as a result of an apparent intention (as no offers had yet been made) to make CV offers at amounts well below what those persons' pension entitlements were being valued at for all other purposes under the Plan - including for the purpose of estimating the liabilities of the Plan (and hence the surplus in the Plan) as of that time. Otherwise there would be no reason to think that the "uptake rate" would have any effect on the estimation of the surplus.

10. It is also noted that there had apparently already been estimates made at that time as to how many people would opt for such undervalued CV offers - and even more curious, it was purported that changes were being made to such assumptions (this is years before any such CV offers were actually made). No one has ever clarified what assumptions were made in that regard, or the basis upon which such assumptions were made (or changed), nor who made those assumptions. Although referred to in the Minutes (and elsewhere in the Court record) as "actuarial assumptions" there is no evidence whatsoever to demonstrate that these estimates as to "uptake rate" were made by an actuary, or based on any actuarial expertise. More importantly, there is no reason to think those estimates would be made by an actuarial expert, as those estimates would appear to be nothing but guesstimates as to how many PWU Group members might be induced to accept an undervalued buyout of their pension entitlements. It would seem that if it is known that the CV offers will be undervalued (as of the time they are made) then the only sensible estimate (or at least the only prudently conservative estimate) would be that virtually no one would accept

such a buyout - and hence there should be little effect on surplus arising out of such CV offers.

11. The CLPENS Executive has held no further meetings or information meetings since the one described above in November 2009. Most importantly, they made no effort to communicate with the members subsequent to the representation by CLA in February 2012 that the amount proposed to be paid out under the SSA was dramatically lower than what had been indicated when that agreement was circulated to members in 2011 (and presented to the Court for approval in January 2012). As a person who had been an active participant of CLPENS I find it very puzzling and alarming that CLPENS would completely fail to communicate with members (as it was required to do by its Constitution and Mission Statement) at the very time when such communication was most crucial. As a result we PWU Group members lost our avenue and opportunity to get any explanation for the changed circumstances and/or to have input into the determination of the appropriate course of action in such circumstances. Instead, the (former) CLPENS Executive and the class representatives, and class counsel apparently opted to completely discontinue communications with the members of CLPENS (and with the PWU Group members) during these crucial times.

12. Furthermore, CLPENS effectively eliminated the means of us CLPENS members communicating with our colleagues as the CLPENS meetings had been the primary method of doing so - and because CLPENS refused to provide us with access to (or contact information for) the other members - citing confidentiality.

13. One potential factor in CLPENS effectively ceasing to operate at a crucial time is that the (former) CLPENS Executive apparently entered into some form of "Confidentiality Agreement" with some or all of the parties to this action (for reasons I can neither understand nor ascertain). To the best of my knowledge this Agreement has never been made public - although some reference has been

made to such Agreement from time to time as some form of constraint on class counsel and the class representatives and CLPENS to communicate candidly with the PWU Group members. I do not know what it says, nor has any explanation been offered as to why it was necessary for CLPENS to enter into such any such Agreement. I am not aware of the CLPENS Executive having received any authority to enter into such an Agreement. I am deeply concerned that entering into such an Agreement is likely incompatible with the central purpose/mission statement of CLPENS.

14. There were no further communications from CLPENS following the November 2009 Information Meeting until they sent an email communication in October of 2010 (copy attached as Exhibit J to this Affidavit) advising that the matter was moving forward and that there would be no 2010 AGM - and that we would be receiving information packages in the new year. We finally received such an offer/package near the end of March, 2011. A copy of the package I received is attached as Exhibit K to this Affidavit.

15. I was frequently in touch with a number of my CLPENS member colleagues throughout this Nov. 2009 to March 2011 period of near zero information/communications. We were puzzled and wondering why we were not hearing more details. Many were feeling the need to collaborate with the greater CLPENS Member population, but we had no means to communicate other than through the facility of the CLPENS meeting. However we continued to trust that the Executive were making sure that our best interests were being advanced and protected. When the March 2011 package was distributed to all PWU Group members, this provided some assurance that despite the lengthy gap in communications CLPENS was still looking out for the best interest of the members.

16. In June 2011 I subsequently received (along with all other PWU Group members) a CV offer (at the undervalued amounts). Although it is my

understanding that such offers were supposed to be made promptly after termination, this was the first time I received any communication whatsoever about this from CLA or the Fund. A copy of the package I was sent at that time is attached as Exhibit L to this Affidavit. I did not accept that CV offer. It is my understanding that this sort of package was mailed to all PWU Group members at that time (i.e. late June 2011). This subject is addressed further below (starting at paragraph 28).

17. The next communication received by myself and members of the PWU Group was a Notice sent in May 2012 from the Plaintiffs (via Koskie, Minksy LLP) which stated that *"...the estimated value of the Integration Partial Wind Up Surplus has decreased from an estimated $54 million as of June 30, 2011 (net of projected expenses) to less than $10 million as of December 31, 2011 (also net of expenses)."* That Notice stated outright that *"...levels this low were not anticipated at the time of entering into the Surplus Sharing Agreement"*. The Notice concluded by stating that *:The parties are working together ...to consider options to address the current situation...We will keep you informed of developments"*. A copy of the May 2012 Notice is attached as Exhibit M to this Affidavit.

18. As it turned out what followed was an interval of ten months of "radio silence" as myself and the PWU Group members heard nothing further until late February 2013, when a subsequent Notice was sent, advising of a proposed amendment to the SSA (the "ASSA") that involved dramatically and extremely reduced entitlements - and of a March 18, 2013 Court hearing. A copy of that subsequent Notice is attached as Exhibit N to this Affidavit.

19. In the materials filed with the Court in March 2013 we learned (for the first time) that CLA (and apparently the plaintiffs and class counsel as well) had taken the position that they were permitted to in some way 'reassess' the surplus amount attributable to the PWU by moving the liabilities related to members of that Group to a different notional "sub-category" - retroactive to August 31, 2012

- and to value those liabilities based on the historically low interest rates at that time (as opposed to valuing them on the same basis that they were valued when they were apparently moved into that notional "sub-category" years earlier) thereby effectively eliminating any surplus to be distributed under the SSA. Indeed, it appears to be the position of CLA that in the absence of "profits" from the gross undervaluation of the CV offers there was in fact no "surplus" at all in the notional "sub-category" for the PWU in the SSA - but in fact a significant deficit. I and the other PWU Group members were completely unaware that any of these movements in the notional "sub-categories were being undertaken.

20. After the Court refused to approve the ASSA in March 2013 both CLA and the plaintiffs appealed the Court's refusal. Copies of the Factums filed by those parties (in June and August, respectively) in support of such appeal are Attached as Exhibits O and P to this Affidavit. Also attached as Exhibit Q is the Factum filed (in September) by counsel acting for me and other members, responding to that appeal. In that responding Factum we set out a large number of the questions and concerns we had raised about the proposed settlement - and about the lack of key information relating to the proposed settlement. The vast majority of those questions and concerns have never been addressed by the parties at all - and those that have been have certainly not been addressed in any satisfactory way.

21. Immediately after the March 2013 Court ruling myself and other members indicated to class counsel, through our counsel, that we wished to participate in any future communications with CLA or it's counsel. Attached as Exhibit R to this Affidavit is a copy of our counsel's letter to class counsel in this regard, dated March 28, 2013, together with a copy of the reply to that letter.

22. In any event, we were advised consistently by class counsel - right through to the attendance at the Superior Court hearing in late August 2013 - that no negotiations with CLA about a revised agreement had taken place since

March 28, as CLA refused to participate in such negotiations (which is hardly surprising given that class counsel was supporting them in the pending appeal of that March ruling). After our Factum respecting that appeal had been delivered we were advised on October 4 that the appeal was being abandoned, as the parties had agreed to a revised settlement proposal. This was the very first time that I and the other persons who had come forward with objections (or my counsel) had been advised that such a revised agreement was even being considered. We had absolutely no opportunity to have any input in the process - although it would appear that it was the objection of members that had in fact been the catalyst for the process.

23. On November 7, 2013 we were advised for the first time of the terms of this "new deal" made between the parties (and again, oddly, indicating the former CLPENS Executive members as parties to the agreement). There had been no effort after the spring of 2011 to ascertain the wishes of the PWU Group members, or to even allow input of any kind, though some of us had taken steps since at least March of 2013 to make it clear that we wanted such information and input.

24. There has also been no effort made to ascertain the wishes of the class members generally (or the PWU Group in particular) since the November 2013 disclosure of the terms of the "new deal". The tools for doing so are readily available - as CLPENS was created for just this purpose - but the plaintiffs and class counsel have failed to use that group, or any other means, to solicit input from the members - and they have taken the position that they are the only ones with authority to communicate with the membership. As indicated, the CLPENS Executive members have abdicated their undertaking to lead the group, allowing it to become non-functional in the crucial stages of this proceeding.

25. The only effort of the plaintiffs and class counsel to communicate with the members since the "new deal" was revealed has been the conducting of two so

called "webinars" (on November 28 and December 2, respectively). Each of these were approximately one hour in length, and consisted primarily of a talk by class counsel that briefly described the proposed changes - but did not address the concerns we had previously identified. There was then a brief period of approximately 15 minutes during which class counsel read out or paraphrased questions from among those which had been sent in electronically during the "webinar" (the only method for doing so). The answers that were provided to the selected questions were vague and cursory. Little if any new facts or information was provided.

26. We were advised by class counsel that approximately 90-100 persons had participated in the first "webinar". While I am not in a position to know who those persons were, it is my expectation that a large proportion of them were people from the group of approximately 100 who have come forward to identify themselves as members of our objector group.

27. I will add that I was concerned and insulted by some of the comments during the "webinar" - including the December 2 reference to the Nortel debacle, with the inference that our circumstances are in some way comparable - which to me is preposterous. I consider this type of comment to be nothing short of an attempt to instill fear and plant unfounded doubts in the minds of members - and to undermine the input of the objectors. The comment did nothing to make me feel as though we should consider ourselves in any way lucky to have the privilege of fighting for justice in this matter.

28. A package dated June 22, 2011 and posted on June 29, 2011 was sent to me by Mercer Benefits - providing me for the first time with a commuted value offer (see Exhibit L). Information included the Commuted Value amount to be $375,245.70 - with a Transfer Limit of $349,065.21. I have no idea why this offer was only sent to me in 2011 - rather than years earlier. The package contained no information that would have allowed me to understand that the amount did not

reflect the (then) current actual valuation of my future pension rights - and I did not understand that to be the case until very recently. The letter states, in bold - **"Please note that this is your only opportunity to elect the Commuted Value Transfer option."** The letter made it clear that unless you sent back the enclosed form indicating your intention to take a CV transfer within 90 days from that letter, you would be deemed to have declined the CV offer and to have retained your pension rights (to be funded by annuity). I declined to respond during the 90 day period (i.e. before September 29, 2011), thereby defaulting to Deferred Pension.

29. However, in November 2011 I inexplicably received a further letter from Mercer Benefits dated November 7, 2011 (copy attached as Exhibit S to this Affidavit) referencing the June 2011 package and purporting to extend the 90 Day Period to December 9, 2011. Although I have no direct knowledge, I can only assume that similar letters were sent to all other members who had not taken up the CV option - at the reduced valuations. I was very surprised to receive this follow up as I assumed the deadline for acceptance had passed. I found this letter to be an unnecessary annoyance and potentially harassment - as I felt very much like I was receiving additional pressure to elect to receive the commuted value of my Pension.

30. Given what I have learned more recently about the valuations relative to the proposed settlement of the claim to surplus, this subsequent mailing appears to have been a clear attempt to induce more members to take up what CLA knew to be severely undervalued CV offers - to the benefit of CLA. I have no idea on what basis they claimed to be able to extend the time for acceptance - as I knew of others who had accepted the CV offers under the time pressure of the 90 day limit. I find it appalling that CLA would present such undervalued offers to the long-serving employees that it had terminated - without even calling that to their attention.

31. In January 2013 I received yet another letter dated January 3, 2013 along with a further package from Mercer Benefits (copy attached as Exhibit T to this Affidavit) asking me to once again to consider taking the same CV offer that was presented in 2011, despite having been previously advised that the June 2011 offer was my "only opportunity to elect the Commuted Value Transfer option". The Commuted Value quoted was again $375,245.70, the same as the Mercer communication of June 2011 (i.e. there were not even any adjustments with respect to interim interest). Again, there was nothing in the package to allow me to understand that the amount quoted was dramatically less than the current CLA valuation of my future pension benefits. I once again declined to respond and retained my Deferred Pension.

32. On August 21, 2013 I wrote to CLA to obtain a current commuted value of my plan. The response I received from J. Savage, Great-West Life/London Life/ Canada Life indicated that the value as of that time was $544,059.53 - representing a staggering difference from the CV offers that had been presented to me twice in 2011 - and as recently as earlier this year. Specifically, the new figure was $168,813.83 higher than what I had previously been offered - meaning the earlier offer represented a shortfall of more than 30% from what CLA thought my future pension benefits were really worth at the time they made the CV offer. (copies of these August 2013 communications with CLA are attached as Exhibit U to this Affidavit).

33. I have prepared a letter of complaint to the Superintendent of Financial Services regarding this matter, which I will be filing with them before year end.

34. Attached as Exhibit V of this Affidavit is a chart I have prepared showing the different estimations that have been presented as to the surplus in the Fund as a whole at different points in time from 2000 to the present - as well as the estimations with respect to the notional "sub-category" for the PWU Group that

began to surface in 2006. It should be noted that the members have not been provided with estimates for the Fund as a whole for the years after 2006.

35. Attached as Exhibit W is a chart downloaded from the Bank of Canada website showing the monthly summaries of the interest rate on real rate of return bonds" over the last few years.

36. This Affidavit has been sworn by way of response to the motion for approval of the most recent amend13ed settlement of this action - and for no other or improper purpose.

Sworn before me at Toronto)
in the province of Ontario)
on December 20, 2013)
)
)

P. Mazurek
(Commissioner, etc.)

Janice M. Durst
JANICE DURST

Exhibit "A"

CLPENS

THE CANADA LIFE CANADIAN PENSION PLAN MEMBERS' RIGHTS GROUP

About Us

Mission Statement

- To acquire information and promote awareness about the administration, financial status, and future plans for the Canada Life Canadian Staff Trusteed Pension Plan, and about members' rights under the Pension Benefits Act.
- To provide a forum for individual members to share information and concerns about their pension plan.
- To give members a common voice when addressing the corporation or regulatory authorities regarding Canada Life Canadian Staff Pension Plan Issues.

Who We Are

CLPENS is a voluntary association of individuals who have a financial interest in the Canada Life Canadian Staff Trusteed Pension Plan. The group was formally established at its inaugural meeting on October 5, 2004.

It is run by an elected volunteer executive, in accordance with its Constitution, which was ratified at the first meeting. The executive usually meets once each month, and a general meeting is held every year in October.

Funding was received from the voting members of CLPENS, through initiation fees and annual dues.

Communication with members is primarily through electronic means, via e-mail and this website.

Privacy Statement

We will maintain the confidentiality of the names, e-mail addresses and other personal information that may be provided for the purpose of any membership in the Canada Life Canadian Pension Plan Members' Rights Group. Such information will be used for the basic operations of this Group, including communications between the Executive, its committees and our membership. We will not provide any such personal information to another organization or individual outside of our general membership, without your consent.

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Executive Committee

President	Wilbert Antler
Vice-President	Ed Barrett
Secretary/Treasurer	Gary Nummelin
Committees	Alex Harvey
	David Kidd
	Brian Lynch
	Jim Martin
	Shriram Mulgund

For brief biographies, click here.

Constitution

To view the CLPENS constitution, click here.

Exhibit "B"

Date Last Revised: October 3, 2004

CANADA LIFE

CANADIAN PENSION PLAN

MEMBERS RIGHTS GROUP

CONSTITUTION

ARTICLE 1 NAME

The group shall be known as "CANADA LIFE CANADIAN PENSION PLAN MEMBERS RIGHTS GROUP", THE GROUP or CLPENS, for short.

ARTICLE 2 PURPOSE

To promote and to encourage the exercise of and to protect the members' rights under the Canada Life Canadian Employees Pension Plan. This is to be done first, where possible, by fostering co-operative relations with The Company and The Trustees and second by taking more affirmative action as may be required.

ARTICLE 3 DIRECTORS AND EXECUTIVE OFFICERS

All Directors shall be elected from among the voting members for a term of two years. The number of such Directors shall be not less than six and not more than eleven, as directed by the voting members at an Annual General Meeting from time to time. Should a vacancy occur from among the Directors, the Executive Committee may fill the vacancy for the balance of the term from among the voting members.

The Directors shall elect among themselves four Executive officers; President, Vice-President, Secretary and Treasurer each of whom shall be a Director.

ARTICLE 4 EXECUTIVE COMMITTEE

The Executive Committee shall consist of the Directors and the immediate Past President.

The Executive Committee shall have the responsibility for conducting the business of The Group and for implementing its policies and projects. If any member of the Executive Committee consistently misses meetings, he or she shall forfeit the office and a vacancy shall be declared.

ARTICLE 5 DUTIES OF EXECUTIVE OFFICERS

All members of the Executive Committee shall have a general duty to attend Committee meetings unless excused by the President. In addition, each Director shall have duties as assigned by the President or the Executive Committee and each Executive Officer shall have the duties described in the By Laws.

ARTICLE 6 NOMINATIONS AND ELECTIONS

Nominations for Director will be sought and made by mail or e-mail and will be finalized at the Executive Committee meeting in September. Elections shall take place at the General Meeting in October of every year. Votes may be cast in person at the meeting, by proxy at the meeting, by mail prior to the meeting or by e-mail prior to the meeting.

No Executive officer shall hold the same office for more than two successive terms, but after a lapse of one term may assume the office again. No Director shall be appointed to more than one Executive Office.

ARTICLE 7 MEMBERS

Members shall be of two kinds; members and voting members. Any person who is entitled to current or future benefits payable under the Plan may become a member upon application to the Executive, such application to be accompanied by such evidence of eligibility as may be required.

Any member may become a voting member upon payment of the current annual fee, an initiation fee if applicable and any other fees as may be determined by the Executive Committee and may continue to be a voting member upon payment of any annual fees and assessments as may be designated from time to time.

ARTICLE 8 FEES

Fees shall be of three kinds:

i) an annual fee,
ii) an initiation fee and
iii) special assessments

The amount and timing of any fee shall be set by a majority vote of the members or set by the Executive Committee and ratified by a majority vote of the members at the next general meeting.

ARTICLE 9 MEETINGS

An Annual General Meeting shall be held in the month of October of every year.

The Executive Committee may call a Special General Meeting at any time and shall call a Special General Meeting within 15 days of a request to do so signed by at least 15 voting members. The date of the Special General Meeting shall not be more than 45 days after the date the meeting is called. The only business to be conducted at a Special General Meeting shall be that which is detailed in the notice calling the Meeting.

A quorum of any General Meeting shall be 20 voting members or two thirds of the total number of voting members, if less. Proxy votes shall count towards the Quorum. The notice calling the Meeting shall be posted on the website at least one month prior to the date of the meeting and by any other means as may be determined by the Executive Committee to ensure the widest possible circulation.

Executive Committee meetings shall be held at the discretion of the President, at a time and place selected by him or her, except that it shall be an obligation to hold one such meeting at least every second month.

ARTICLE 10 CONSTITUTION COMMITTEE

The Constitution Committee shall consist of the Executive Officers of the Group and shall be chaired by the Past President.

Any suggested amendments to the Constitution must be made in writing and have the signatures of at least 12 voting members before submission to the Constitution Committee for consideration. These changes can only be at a General Meeting by a vote duly called by notice to all voting members and carried with a two-thirds majority of all voting members present at the meeting either in person or by proxy.

By Laws shall be enacted or amended by the same procedure, except that the change shall be carried by a simple majority vote.

ARTICLE 11 FINANCE COMMITTEE

The Treasurer shall be the Chairman of the Finance Committee which shall consist of the Treasurer, one or more Executive officers appointed by the Executive Committee and up to 2 Directors.

ARTICLE 12 SPECIAL COMMITTEES

With the exception of the Committees established by this Constitution, other special committees may be established either by a majority vote of the voting members or by the Executive Committee. Any such committee must have a stated specific purpose. The executive Committee shall appoint a chairperson of each such committee from among the voting members. Each such chairperson shall have the right to attend and to speak at Executive Committee meetings dealing with matters within the purview of the

special committee but shall not have a vote at such meeting.

ARTICLE 13 TREASURER'S REPORT AUDIT

The Treasurer's report for the fiscal year shall be audited in the month of September by persons appointed at the previous Annual General Meeting.

~~ARTICLE 14 PROCEDURES~~

Parliamentary practice shall be followed at all meetings.

The Executive will maintain a website which shall contain:

i) The purpose and mandate of The Group.
ii) Notice of any General Meeting and any known votes.
iii) Minutes of previous General Meetings (up to three in number).
iv) Notice of any Executive Committee meeting.
v) Any other notices or information.

Any item posted on the website shall be an official communication of The Group.

ARTICLE 15 FISCAL YEAR

The Fiscal Year of The Group shall start on September 1st and end on August 31st.

BY LAWS

BY LAW 1 DIRECTORS AND OFFICERS

The Executive Committee will arrange a plan of rotation so that, as nearly as possible, the terms of office of at least 4 Directors shall expire at each Annual General Meeting.

Immediately following the Annual General Meeting there shall be held an Executive Committee meeting for the purpose of appointing the Executive Officers from amongst the Directors and for conducting any business decided upon at the General Meeting.

BY LAW 2 DUTIES OF OFFICERS

The Executive Officers shall have the following duties in addition to any responsibilities assigned by the voting members at a General Meeting or by the Executive Committee:-

a) PRESIDENT: He or she shall be responsible for the overall operation of the Group, chair all general meetings of The Group as well as Executive Committee meetings. In the event of a tie vote on any matter not provided for in the Constitution, the President shall have a second vote.

b) VICE-PRESIDENT: It shall be the duty of the Vice-President to take charge of all meetings in the absence of the President and to perform any other duties as assigned by the President.

c) SECRETARY: The Secretary shall be responsible for keeping a record of all Executive Committee actions and for keeping a record of all Executive, Special and Annual General Meetings and shall be responsible for the proper handling of notices calling any such Meeting. The Secretary shall be responsible for the correspondence of The Group and for keeping records of such correspondence. The Secretary shall also be responsible for keeping an up to date roll of all members and their status.

d) TREASURER: It shall be the duty of the Treasurer to maintain the monetary assets of The Group, and in particular to deposit all money received in the bank, issue a separate receipt for all funds turned over to him or her and to make a report at each Executive Committee, Special or General meeting. All cheques shall be signed by any two of the President, Treasurer and Secretary. The Treasurer shall keep a petty cash fund not to exceed $25.00 or such greater amount as may be agreed from time to time by the Executive Committee.

e) PAST PRESIDENT: He or she shall be responsible for managing the nomination process.

BY LAW 3 SPECIAL COMMITTEES

As soon as practical after the formation of a special committee, the Executive Committee shall appoint a chairperson (if not already appointed by the majority vote of the voting members) and shall issue a mandate in writing which clearly sets out:-

The scope of the committee's purpose and authority and any limitations thereto,

The minimum and maximum size of the committee,

The names of any persons the Executive Committee require to have included,

The nature and timing of any written reports required.

The executive officer to whom the committee will directly report, and

Any other specific requirements or instructions.

As soon as practical after the first meeting of the committee, the chairperson shall submit to the Treasurer a budget for Executive Committee approval. The Chairperson shall also submit a list of those serving on the committee. The Chairperson may request assistance from and/or appoint to the committee any member.

Minutes shall be kept of all meetings and such minutes are to be available to any member of the Executive Committee

BY LAW 4 EXECUTIVE COMMITTEE

For all Executive Committee Meetings, presence of 5 Executive Committee members including at least two Executive Officers shall constitute a quorum. Any Director who misses three consecutive meetings without having been excused in advance by the Secretary shall forfeit the office.

By a notice to the Secretary at least two weeks in advance, any voting member may request to make a presentation to the Executive Committee at its next meeting or to attend the meeting as an observer. Upon approval of the request, the Secretary will send to the member an official notice of the next meeting as soon as it is fixed.

The minutes of meetings will not be published but shall be available for inspection by any voting member. If so requested and if the request is approved, extracts of the minutes may be available for publication

BY. LAW 5 SIGNING OFFICERS

Each Executive Officer shall be a signing officer. At least two signatures shall be required on any instrument unless otherwise authorized by the Executive Committee.

For cheques and any other instrument transferring money, one of the signatures must be that of the Treasurer.

For a contract, one of the signatures must be that of the President.

BY LAW 6 FEES

The annual membership fee and the initiation fee shall be established or changed by a majority of voting members at an Annual General Meeting present either in person or by proxy.

A special assessment shall be established by the Executive Committee, shall be payable immediately and shall be ratified or rejected by a majority of members present at the next General Meeting either in person or by proxy.

The Executive Committee shall decide any matters in dispute as to the collection, timing and interpretation of the fee schedule. The Executive Committee shall also make any rules or procedures to ensure the orderly collection and/or refund of fees.

BY LAW 7 MEMBERS

Once a person has applied for membership and satisfied the Secretary that the eligibility conditions are met, the person will be a member. Upon payment of an annual fee and an initiation fee together with any special assessments the Executive Committee has determined must be paid, the member will become a voting member.

A voting member will remain a voting member as long as the member remains eligible and pays all annual fees and special assessments which fall due.

A member (voting or otherwise) will cease to be a member if all benefits payable under the Plan to that member have been discharged.

BY LAW 8 FINANCE COMMITTEE

It shall be the duty of the Finance Committee to:-

a) establish a budget to be approved by the Executive Committee and to be ratified at the next General Meeting

b) establish a fundraising plan,

c) develop and review fiscal procedures, and

d) monitor spending and budget compliance.

BY LAW 9 EXPENSES AND REMUNERATION

Any person who renders service to the Group shall have any expenses so incurred refunded provided

that:-

a) the establishment of an expense account shall have been authorised by the Executive Committee in advance of the expense being incurred, except that this shall not apply in the case of a member of the Executive Committee in the performance of duties of the office,

b) the Treasurer shall have received receipts or similar evidence that the expense has been incurred and paid, and

c) the total of the amounts refunded shall not exceed the maximum approved by the Executive Committee.

No person who is eligible to be a member of the Group shall receive remuneration from the Group either directly or indirectly in any form whatsoever unless the payment of such remuneration has been approved by a majority of the voting members present at a general meeting in advance of the services being rendered. Without restricting the generality of the foregoing, remuneration shall include fees, salary, wages and honoraria. Further, no person who is eligible to be a member of the Group shall receive such remuneration in respect of services performed while that person was a member of the Executive Committee or within two years after ceasing to be such a member.

Exhibit "C"