

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD OF THE PLAINTIFFS
[VOLUME I OF II]
(Motion to Vary Judgment, returnable March 18, 2013)**

March 11, 2013

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

Plaintiffs

-- and --

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

Defendants

Proceeding under the Class Proceedings Act, 1992

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

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

PROPOSED METHOD OF HEARING:

- a. The motion will be heard orally.

THE MOTION IS FOR:

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

THE GROUNDS FOR THE MOTION ARE:

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

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

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

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

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

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

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

March 11, 2013

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SCHEDULE A

Court File No. 05-CV-287556CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)), THE	DAY
MR. JUSTICE PERELL)	OF), 2013	
)			

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for an order varying the Judgment herein dated January 27, 2012 (the “Settlement Approval Order”) was heard this day in the presence of counsel for the Plaintiffs, counsel for The Canada Life Assurance Company and counsel for the individual Trustee defendants.

ON READING the Settlement Approval Order;

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

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

AND ON READING the affidavits of • and hearing the submission of counsel for the parties;

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

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

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

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

TAB 2

Court File No.05-CV-287556CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

Plaintiffs

-- and --

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

Defendants

Proceeding under the Class Proceedings Act, 1992

AFFIDAVIT OF JONATHAN FOREMAN

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

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

Brief History

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

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

Integration PWU	\$54 million
Pelican PWU	\$2.9 million
Indago PWU	\$1.3 million
Adason PWU	\$6.1 million
Total	\$64.3 million

Material Developments Following Settlement Approval

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

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

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

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

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

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

Steps Taken in Response to the Updated IPWU Surplus Estimate

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

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

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

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

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

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

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

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

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

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

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

18. The parties attended case management conferences before Justice Perell on April 20 and May 7, 2012 to report on the change in circumstances and to obtain approval of a notice update to Class members. Notices were approved and sent to Class Members by direct mail on or before May 15, 2012, and also posted to Class Counsel's website.

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

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

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

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

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

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

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

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

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

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

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

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

28. The main terms of the ASSA are as follows:

1. Canada Life will augment the amount of IPWU surplus by:
 - i. waiving its right to any interest on the amount of its expense reimbursement under the SSA that would have accrued during the period from August 31, 2012 to December 31, 2013 (estimated at \$800,000); and
 - ii. waiving its right to reimbursement of \$500,000 of its professional fees.;
2. The Plaintiffs and CLPENS Executive Committee will augment the amount of IPWU Surplus available for distribution by waiving their entitlement to reimbursement of future legal fees (but not disbursements) previously approved by the Court (estimated at \$200,000), which will be directed to the benefit of the IPWU Sub-Class and Inactive Eligible Class Members;
3. For any member of the IPWU Sub-Class who elected to receive a deferred or immediate pension, their portability rights were satisfied by Canada Life transferring their assets to the ongoing portion of the Plan effective August 31, 2012;
4. The assets and liabilities related to members of the IPWU Sub-Class who elect a deferred or immediate pension will be notionally segregated (the "Segregated

Portion") until the completion of the second surplus distribution (discussed below), if any;

5. Canada Life will fund top-up payments (at an estimated cost of \$1.2 million) in order to ensure that members of the IPWU Sub-Class will receive the minimum surplus shares of \$1,000 contemplated under the SSA;
6. There is the potential for a second surplus distribution to members of the IPWU Sub-Class and Inactive Eligible Class Members, if a surplus exists in the Segregated Portion as at December 31, 2014, subject to the following conditions:
 - 10% of such surplus shall be deducted off the top and remain in the Plan as a cushion;
 - The surplus will be reduced to take into account any contributions and other payments (together with interest at the Plan rate of return) made by Canada Life into the Plan after August 31, 2012 and that are notionally allocated to the Segregated Portion;
 - 69.66% of the net surplus, up to a maximum of \$15 million, will be paid to the IPWU Sub-Class and to Inactive Eligible Class Members, in accordance with the percentages set out in the SSA;
 - The amounts distributed to members of the IPWU Sub-Class and to Inactive Eligible Class Members will be calculated in accordance with a formula which takes into consideration amounts paid under the initial surplus distribution;
 - In order to avoid distributing numerous small amounts, the threshold for surplus payments under the possible second distribution is \$100: if, based on the formula under the ASSA, any individual would be receiving \$100 or less, no payment will be made to that individual and the individual's surplus share will instead be shared with the remaining members (if any) who are receiving \$100 or more.

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

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

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

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

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

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

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

Criteria for Approving the ASSA

Arm's Length Bargaining

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

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

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

The Amount and Nature of Investigation and Discovery

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

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

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

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

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

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

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

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

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

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

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

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

Recommendations and Experience of Counsel

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

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

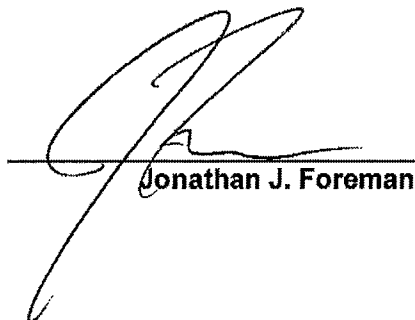
SWORN BEFORE ME at the)
City of London, in the)
County of Middlesex)
this 8 day of March, 2013.)



Commissioner for Taking Affidavits

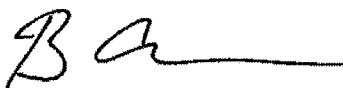
Bradley James Adams, a Commissioner,
etc., Province of Ontario,
while a Student-at-Law.
Expires August 27, 2015.

22354744.2



Jonathan J. Foreman

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

A handwritten signature in black ink, appearing to read 'Ba', followed by a horizontal line.

A Commissioner, etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act*, 1992

AFFIDAVIT OF JONATHAN FOREMAN
(Sworn January 5, 2012)

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

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

BACKGROUND

History of the Litigation and Steps to Settlement

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

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

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

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

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

18. At the conclusion of the first day, a broad general framework for a settlement of the litigation had been established for the parties to consider and to give instructions on overnight.

19. However, there remained a significant number of additional details which had to be analyzed and resolved by the parties. Counsel and clients remained engaged for the following day in continued meetings, teleconferences and analysis aimed at facilitating a resolution of the remaining issues. Justice Winkler also remained engaged with the parties via teleconference in order to assist and facilitate the resolution.

20. Among the issues to be incorporated into the settlement construct and managed to a resolution were other partial wind-ups applicable to the Adason, Indago, and Pelican Foods subsidiaries of the Company.

21. Counsel continued to convene, discuss and resolve additional outstanding issues over the ensuing months.

22. On November 9, 2007, the parties reached a Memorandum of Understanding (referred to hereinafter as "MOU") in respect of a settlement of the litigation. Attached hereto and marked as **Exhibit 'C'** is a true copy of the MOU.

23. At that time, the CLPENS Executive and the Plaintiffs released an announcement to advise interested people that a Memorandum of Understanding had been reached. The Notice explained that an agreed upon framework had been reached, but a final settlement agreement was yet to come. It also described the approximate value of the Integration Partial Wind Up surplus at that time, and the proportionate shares that would be paid to Canada Life, Integration Partial Wind Up members, and other eligible inactive Plan members. The Notice further stated that the remaining eligible active

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

24. The MOU included a lengthy list of requirements respecting process and preconditions to settlement. The parties invested a substantial amount of time and resources in the negotiation and completion of conditions which would give rise to a comprehensive settlement agreement known as the Surplus Sharing Agreement (referred to hereinafter as "SSA").
25. As the terms of the SSA were under negotiation between the parties, a similar settlement agreement had been reached in another legal proceeding which involved the pension plan of Montreal Trust. The settlement agreement reached in *Montreal Trust Company of Canada v. Armstrong et al.* encountered certain unanticipated difficulties as it was making its way through the courts and regulatory approval processes before the Financial Services Commission of Ontario.
26. The difficulties encountered by the *Montreal Trust* settlement could not be ignored by the parties in the within litigation. As a result, there was a period of cautious progress which resulted in some delay in the negotiation of the SSA as the parties awaited a final determination of the viability of the Montreal Trust settlement.
27. Ultimately the *Montreal Trust* settlement was successfully approved after an appeal to the Ontario Financial Services Tribunal. With the approval of the *Montreal Trust* settlement, the parties were able to pursue a negotiated conclusion without impediment.
28. After a further lengthy period of negotiations, the terms of the SSA were essentially concluded late in 2010. With that work complete, the parties began preparation of the information and notice packages to be sent to class

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

29. Throughout 2010, the parties kept Justice Perell, who had succeeded Justice Hoy as the case management judge in this matter, informed in respect of the progress of the negotiations in respect of the SSA. Advance approval and direction was sought from Justice Perell with respect to a comprehensive notice program to the Class. At a case conference before Justice Perell held on Monday, December 13, 2010, the final form of the Information Package described at paragraph 3 of the Affidavit of Uma Ratnam was reviewed by and approved by Justice Perell. No Order was issued in respect of this approval by the Court.
30. In March of 2011, the Notice Program was launched. Class Members were sent comprehensive packages by mail and were advised of dates of in-person "roadshow" information sessions. The "roadshow" information sessions took place throughout April of 2011. Additional communications and FAQ's were also published for class members. Specifically an additional mailing and in-person information sessions were provided for active employee plan members following the conclusion of the "roadshow" sessions.
31. Very substantial support thresholds from all categories of class members were required to be met in order for the proposal to be concluded. By June of 2011, sufficient consents were obtained such that the settlement could proceed to the approval stage. The first step of the implementation of the SSA was to set a date for the certification motion.
32. The Motion to Certify this action as a class proceeding was held on October 18, 2011. On October 28, 2011, the action was certified pursuant to reasons issued by the Honourable Mr. Justice Perell.

The Terms of Settlement

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

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

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

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

- g. All active members of the Plan as at June 30, 2005, plus any new Plan members from that date up to date of certification as a class proceeding (1684); and
 - h. Former Plan members employed in Quebec who would have been included in the Integration PWU but for their employment in Quebec (29);
35. In sum, the PWU Surpluses (for each of Integration, Indago, Adason and Pelican) will be shared as follows:
- a. Partial Wind Up Members will receive 57.22% of the PWU Surplus attributable to them;
 - b. Non Partial Wind Up Members who are pensioners and deferred/vested Plan members will receive 12.44% of each PWU Surplus;
 - c. Canada Life will receive 30.34% of each PWU Surplus.
36. The 57.22% share of the PWU surpluses will be paid to members of the PWUs proportionally based on the value of the pension benefits they have earned under the Plan. Surplus shares will be paid as taxable cash lump-sum amounts, subject to applicable withholdings for tax. Members who are entitled to more than \$15,000 in surplus may contribute all or part of their share to a registered retirement savings plan (RRSP) without withholdings if, at the time of the surplus distribution, they confirm to the Company that they have available RRSP contribution room. Each PWU member will receive a minimum payment of \$1,000.
37. The 12.44% share of the surpluses will be paid to the pensioners and deferred/vested members proportionally based on the value of the pension benefits they have earned under the Plan. Surplus shares will be paid as taxable cash lump-sum amounts, subject to applicable withholdings for tax. Members who are entitled to more than \$15,000 in surplus may contribute all

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

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

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

42. The New Plan will be supported by a new Trust Agreement. The Company is seeking a "variation of trust" to obtain certainty regarding its use of assets once Class members are transferred to the New Plan. Under the SSA, the variation of trust will not address surplus ownership in the event of a future wind up of the Plan or New Plan.
43. To achieve certainty under the New Plan, the parties have agreed under the SSA to seek the following Court declarations, for the benefit of the Company:
 - a. The Company is entitled to expand the membership of the Plan or New Plan by way of amendment or merger;
 - b. The Company is entitled to use assets in the Plan or New Plan (including surplus) to provide benefits for, and fund contribution holidays with respect to new members, including benefits transferred from another pension plan;
 - c. The Company is entitled to merge all or a portion of the Plan and/or the New Plan with other pension plans;
 - d. The Company is entitled to use all or part of any surplus to take contribution holidays in the Plan and/or New Plan with respect to past, current and future benefits;
 - e. The Company is entitled to fund benefit enhancements with respect to the Plan and/or New Plan from surplus; and
 - f. The Company is entitled to reimbursement from the Plan and/or New Plan all Plan Expenses that were incurred and paid prior to the SSA. Further, the Company can pay for future expenses from the Plan or New Plan, or be reimbursed from the Plan or New Plan, for such expenses that it pays directly.

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

SETTLEMENT APPROVAL CRITERIA

Arm's Length Bargaining and the Absence of Collusion

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

The Amount and Nature of Discovery, Evidence or Investigation

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

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

Settlement Terms

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

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

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

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

The Likelihood of Recovery or Likelihood of Success

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

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

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

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

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

The Future Expense and Likely Duration of Litigation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Number of Objectors and Nature of Objections

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

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

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

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

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

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

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

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

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

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

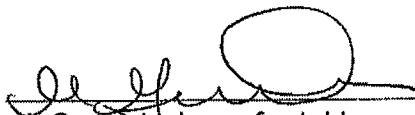
The Recommendations and Experience of Counsel


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

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

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

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


A Commissioner for taking
affidavits


JONATHAN FOREMAN

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



A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

Proceeding under the Class Proceedings Act, 1992

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

(Motion returnable September 27, 2012)

September 20, 2012

KOSKIE MINSKY LLP
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TAB 1

Court File No. 05-CV-287556CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

**NOTICE OF MOTION
(returnable September 27, 2012)**

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

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

THE MOTION IS FOR:

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

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

THE GROUNDS FOR THE MOTION ARE:

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

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

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

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

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

September 20, 2012

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and James R. Grant

DAVID KIDD, et al.
Plaintiffs

**THE CANADA LIFE ASSURANCE
COMPANY, et al.**
Defendants

Court File No: 05-CV-287556CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

NOTICE OF MOTION
(Motion returnable September 27, 2012)

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

TAB 2

Court File No. 05-CV-287556CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

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

Plaintiffs

- and -

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

Defendant

**AFFIDAVIT OF ANTHONY GUINDON
(sworn September 20, 2012)**

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

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

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

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

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

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

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

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

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

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

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

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

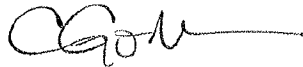
11. In an email dated September 12, 2012, legal counsel to Canada Life advised Class Counsel that as at August 31, 2012, the Integration Partial Wind Up surplus was estimated to be approximately \$3.1 million (net of expenses).

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

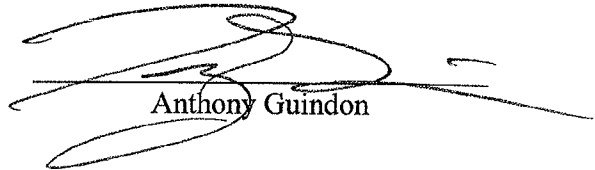
13. By letter dated September 13, 2012, Class Counsel advised Canada's Life legal counsel that the unilateral decision to transfer the assets and liabilities of the Integration Partial Wind Up members to the Plan is not contemplated by the SSA, and is in violation of the SSA and the Judgment. Class counsel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

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

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



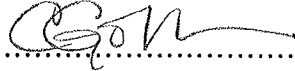
Commissioner for Taking Affidavits



Anthony Guindon

TAB A

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

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

A Commissioner for taking affidavits, etc.

Court File No. 05-CV-287556CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE PERELL

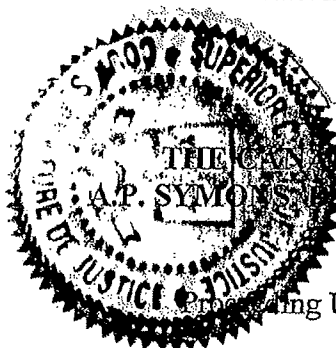
) FRIDAY, THE 17th DAY
) OF JAN, 2012

BETWEEN:

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

Plaintiffs

- and -



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

Defendants

Coming Under the *Class Proceedings Act, 1992*

JUDGMENT

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

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

1. **THIS COURT ORDERS** that the settlement of this action on the terms set forth in the Agreement which is attached as Schedule "B" be and is hereby approved pursuant to section 29(3) of the *Class Proceedings Act, 1992* and that Canada Life is accordingly entitled to receive a payment of surplus from the Plan in accordance with Schedule "B".
2. **THIS COURT ORDERS** that the use of capitalized terms in this Judgment shall have the same meaning as found in the Agreement except to the extent that the definition of a term in the Agreement and this Judgment conflict, the definition of the term as set out in this Judgment shall govern.
3. **THIS COURT ORDERS** that the Agreement is valid and binding on the parties to this proceeding and on all members of the Class (as defined in the Certification Order) other than the Opt Outs (hereinafter "Class Member" or "Class Members") and that, following applicable Regulatory Approval, the distribution of surplus shall proceed in accordance with the terms of the Agreement amongst the Class and Canada Life.
4. **THIS COURT ORDERS** that an amendment to the Plan in the form attached hereto as Schedule "C", which provides for the payment of surplus to the parties in accordance

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

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

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

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

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

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

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

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

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

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

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

A times (B divided by C) where

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

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

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

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

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

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

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

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

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

Paul J.

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

JAN 30 2012

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

SCHEDULE B to the Judgment of Perell J.

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

SURPLUS SHARING AGREEMENT

Made as of the 1st day of September, 2011

AMONG:

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

-and-

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

-and-

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

-and-

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

-and-

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

- and -

THE CANADA LIFE ASSURANCE COMPANY

- and -

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

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

- and -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. INTERPRETATION AND DEFINITIONS

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

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

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

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

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

- (d) Reference in this Agreement to the requirement for an individual to sign a binding consent and release that binds them to the Settlement shall mean the signing of such a consent and release by such date prior to the Settlement Approval Date as agreed by Canada Life and the MOU Parties (with such agreement not to be unreasonably withheld), except in the circumstances set out in paragraph 7(1).
- (e) Capitalized terms used in this Agreement have the meanings set out below.
 - (i) "Active Eligible Non-PWU Group Members" means those Active Non-PWU Group Members who are Eligible Non-PWU Group Members.
 - (ii) "Active Non-PWU Group Members" means employee members of the Plan on June 30, 2005 plus any individual who joined or joins the Plan between June 30, 2005 and the date on which the Class Action is certified by the Court as a class proceeding (none of whom, for greater certainty, were included in the Integration PWU nor in any Prior PWU).
 - (iii) "Adason Committee" has the meaning set out in the recitals to this Agreement.
 - (iv) "Adason MOU" has the meaning set out in the recitals to this Agreement.

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

- (xvi) **"Court Approval"** means any approval, order, judgment or consent of a Court having jurisdiction over the issue in question and includes the approval of the Québec Superior Court referred to in paragraph 6(c)(vii) of this Agreement.
- (xvii) **"Deemed Payment"** has the meaning set out in paragraph 6(a)(v)(F) of this Agreement.
- (xviii) **"Eligible Group"** means the Eligible PWU Group Members and the Eligible Non-PWU Group Members.
- (xix) **"Eligible Member Group Surplus Share"** has the meaning set out in paragraph 7(a) of this Agreement.
- (xx) **"Eligible Non-PWU Group Members"** means Non-PWU Group Members who meet the criteria in either (A) or (B) below.
 - (A) Those Non-PWU Group Members who are not Cashed-Out Non-PWU Group Members who:
 - (1) are not Opt-Outs, or are Opt-Outs who subsequently sign a binding consent and release that binds them to the Settlement in a form as agreed by Canada Life and the MOU Parties (such agreement not to be unreasonably withheld), and
 - (2) consent to their transfer to the New Plan.

If such a Non-PWU Group Member has not fulfilled these conditions prior to the Court Approval date on which the variation of trust contemplated under paragraph 6(c)(iii) is granted, then the Non-PWU Group Member may only become an Eligible Non-PWU Group Member if, prior to the Settlement Approval Date, he or she signs a binding consent and release that binds him or her to the Settlement in a form as agreed by Canada Life and the MOU Parties.
 - (B) Those Non-PWU Group Members who are Cashed-Out Non-PWU Group Members who:
 - (1) are not Opt-Outs, or are Opt-Outs who sign a binding consent and release that binds them to the Settlement in a form as agreed by Canada Life and the MOU Parties (such agreement not to be unreasonably withheld), and
 - (2) consent to the Settlement.

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

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

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

- (xlix) **"Releasor"** has the meaning set out in paragraph 6(a)(v)(E) of this Agreement.
- (i) **"Represented Participants"** means those individuals identified as such on the second page of this Agreement.
- (ii) **"Roadshow Mailout Date"** means the date on which the first of the roadshow communications are mailed (i.e. the mailing to all Class members describing the proposed Settlement and giving details of information sessions or "roadshows" to be held in locations determined as appropriate by Canada Life, where representatives of the MOU Parties will provide further details regarding the proposed Settlement).
- (iii) **"RRSP"** means a registered retirement savings plan.
- (liii) **"Settlement"** has the meaning set out in the recitals to this Agreement.
- (liv) **"Settlement Approval Date"** means the later of the date on which the Settlement receives Regulatory Approval and the date on which it receives Court Approval.
- (lv) **"Settlement Expenses"** has the meaning set out in paragraph 2(a)(iii)(A) of this Agreement.
- (lvi) **"Subsequent Consenter"** has the meaning set out in paragraph 7(1)(i) of this Agreement.
- (lvii) **"Subsequent Proceeding"** has the meaning set out in paragraph 6(a)(v)(F) of this Agreement.
- (lviii) **"Sub-trust"** and **"Sub-trusts"** have the meaning set out in paragraph 6(c)(iii) of this Agreement.
- (lix) **"Trustees"** means James R. Grant, Allen Loney, and A.P. Symons, named as trustees under the Canadian Staff Pension Plan Trust Deed made as of July 10, 2003.

2. OVERVIEW

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

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

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

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

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

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

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

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

3. PRELIMINARY MATTERS

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

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

4. COMMUNICATIONS AND CONFIDENTIALITY

Notwithstanding anything in this Agreement to the contrary,

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

5. PROCESS TO SETTLEMENT

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

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

6. PRECONDITIONS TO SETTLEMENT; STRUCTURE

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

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

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

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

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

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

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

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

A times (B divided by C) where

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. SURPLUS ALLOCATION; PWU GROUP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Should a Subsequent Consenter come forward more than two years following the Settlement Approval Date, then the portion of surplus allocable to such Subsequent Consenter as described in paragraph 2(a)(ii) shall be distributed as follows:

- (A) The amount of surplus allocable to the Subsequent Consenter shall be multiplied by the percentage obtained pursuant to paragraph 7(l)(i)(A);
- (B) The amount of surplus allocable to the Subsequent Consenter shall be reduced by the amount determined pursuant to paragraph 7(l)(v)(A);
- (C) 57.22% of the amount determined pursuant to paragraph 7(l)(v)(B) shall be distributed to the Subsequent Consenter; and
- (D) The remainder of the surplus allocable to the Subsequent Consenter shall be paid to Canada Life.

8. NON-PWU GROUP

Active Eligible Non-PWU Group Members

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

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

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

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

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

Inactive Eligible Non-PWU Group Members

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

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

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

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

9. FEES AND EXPENSES

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

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

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

10. OTHER TERMS OF THE SETTLEMENT

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

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

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

11. ACKNOWLEDGMENT

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

12. GENERAL PROVISIONS

Future Surplus Claims

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

Marriage Breakdown

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

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

Disputes

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

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

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

Members Not Wishing to Receive Surplus

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

Payment to an Estate

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

Unlocated Members

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

Amendment

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

Governing Law

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

Language of the Agreement

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

Execution

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

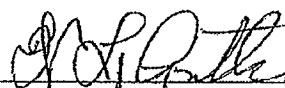
Entire Agreement

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

Successors and Assigns

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

Executed as of the date first written above.

CLPENS EXECUTIVE

Wilbert Antler



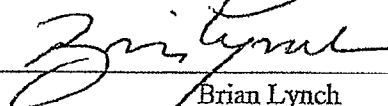
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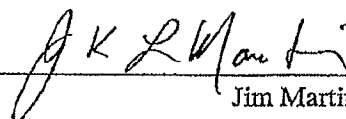
Alexander Harvey



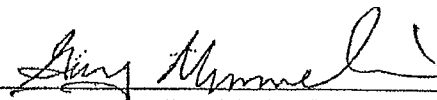
David Kidd



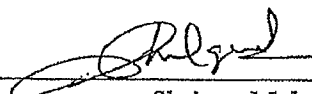
Brian Lynch



Jim Martin



Gary Nummelin



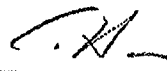
Shriram Mulgund

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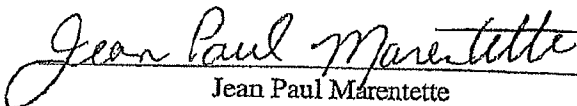
PLAINTIFFS



David Kidd

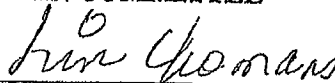


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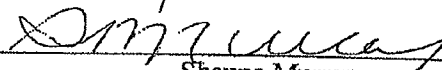


Jean Paul Marentette

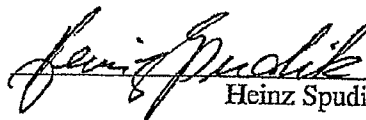
PELICAN COMMITTEE



Lin Yeomans

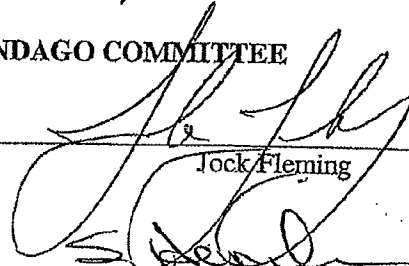


Shauna Murray



Heinz Spudik

INDAGO COMMITTEE

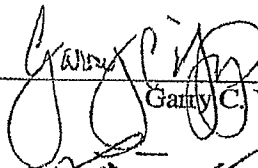


Jock Fleming

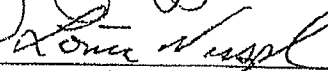


Susan Henderson

ADASON COMMITTEE



Garry C. Yip



Louie Nuspi

THE CANADA LIFE ASSURANCE
COMPANY

By: 

Authorized Signing Officer

By: 

Authorized Signing Officer

REPRESENTED PARTICIPANTS

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

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NON-REPRESENTED PARTICIPANT_____
Name (print)_____
Signature**WITNESS**

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

Name of
Witness:_____
(please print)Signature of
Witness:Address of
Witness:Telephone
Number of
Witness:

()

(include area code)

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

DISPUTES REGARDING INDIVIDUAL ENTITLEMENT

1. Where:
 - (a) Any member of the Eligible Group or any other person, beneficiary, or estate entitled to payment pursuant to this Agreement disputes the calculation of his or her entitlement under the Agreement as set out in the statement of individual entitlement sent to the Disputant by Canada Life (the "Surplus Statement") under the terms of the proposed Settlement; or
 - (b) Any individual claiming to be a member of the Eligible Group wishes to make a claim to an entitlement under the Agreement,

(in either case, hereinafter referred to as a "Disputant"), he or she may submit a dispute by delivering written notice (entitled "Notice of Dispute") to Canada Life.
2. The Notice of Dispute shall contain a detailed statement of the basis on which the calculation set out in the Surplus Statement is being disputed, or the basis on which the Disputant claims to be a member of the Eligible Group, as applicable.
3. Any such Notice of Dispute shall be delivered no later than 30 days after the Ontario Superior Court of Justice (the "Court") approves the Settlement in accordance with the Agreement, failing which a Disputant shall not be entitled to raise such a dispute.
4. Within 45 days of receipt of the Notice of Dispute, Canada Life shall provide the Disputant with a written response ("Response to Notice of Dispute") which shall provide Canada Life's position in response to the Notice of Dispute.
5. Within 10 days of the Disputant having been provided with Canada Life's Response to Notice of Dispute, the dispute shall be referred to a referee (the "Referee") agreed to by the Disputant and Canada Life. If the Disputant and Canada Life are unable to agree upon a Referee, the Referee will be designated by ADR Chambers.
6. In all cases, the review conducted by the Referee shall be based solely on the terms of the Agreement, the Notice of Dispute and Response to Notice of Dispute. The Referee shall make his or her decision and communicate it to Canada Life and the Disputant within 30 days after the Referee receives such materials.
7. The issues to be determined by the Referee shall be limited to (as applicable based on the Notice of Dispute):
 - (a) whether the Disputant is a Class member;
 - (b) the quantum of entitlement of the Disputant under the Agreement.
8. For greater certainty, the Referee shall have no authority to award to a Disputant any relief other than an amount of surplus payable under the Agreement in accordance with its terms.

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

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

SURPLUS SHARING AGREEMENT – AMENDMENT #1

Made as of the 1st day of January, 2012

AMONG:

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

-and-

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

-and-

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

-and-

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

-and-

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

- and -

THE CANADA LIFE ASSURANCE COMPANY

- and -

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

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

- and -

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

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

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

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

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

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

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

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

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

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

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

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

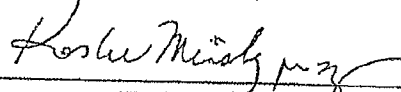
3. Paragraph 9(c) of the Agreement is hereby amended by adding the words "in connection with the Class Action and" immediately following the words "The MOU Parties acknowledge that they have considered and discussed estimates of the fees and expenses expected to be incurred", and the words "Class Action,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

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

4. This amendment to the Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
5. The Parties have required that this amendment to the Agreement and all deeds and documents relating to this Agreement be drawn up in the English language. Les Parties aux présentes ont exigé que le présent contrat et tous autres contrats et documents afférents aux présentes soient rédigés en langue anglaise.

Executed as of the date first written above.

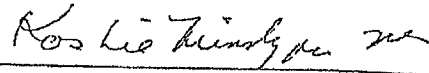
CLPENS EXECUTIVE, by their counsel



Koskie Minsky LLP

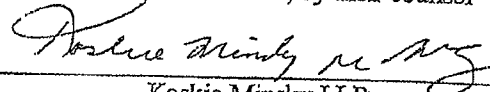
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PLAINTIFFS, by their counsel



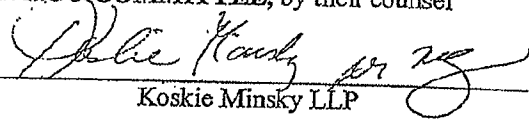
Koskie Minsky LLP

PELICAN COMMITTEE, by their counsel



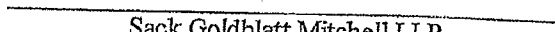
Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel



Koskie Minsky LLP

ADASON COMMITTEE, by their counsel


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

Osler, Hoskin & Harcourt LLP

- 4 -

PLAINTIFFS, by their counsel

Koskie Minsky LLP

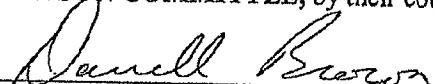
PELICAN COMMITTEE, by their counsel

Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel

Koskie Minsky LLP

ADASON COMMITTEE, by their counsel


Sack Goldblatt Mitchell LLP

THE CANADA LIFE ASSURANCE
COMPANY, by its counsel

By: _____

Osler, Hoskin & Harcourt LLP

DAVID KIDD et al.

- and -
Plaintiffs

THE CANADA LIFE ASSURANCE COMPANY et al.

Defendants

Court File No. 05-CV-287556CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

JUDGMENT

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