

TAB 4

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 ALEXANDER HARVEY

I, **ALEXANDER HARVEY**, of the City of Toronto, in the Province of Ontario, a Representative Plaintiff in this action, make oath and say:

1. I was appointed a Representative Plaintiff in this class proceeding by order of the Court dated October 28, 2011. I have been a Plaintiff in this action since its commencement. As such, I have knowledge of the matters to which I hereinafter depose, except where my knowledge is based on information and belief, which I verily believe to be true.

2. This affidavit is sworn further to the affidavit sworn by David Kidd dated January 4, 2012 filed in support of the motion to approve the Surplus Sharing Agreement ("SSA") heard on January 27, 2012. I repeat and rely upon the portions of that affidavit with which I have personal knowledge, and in particular, the following:

- a. Paragraphs 4 – 12 regarding the status of the action;
- b. Paragraph 24 regarding the Plaintiffs' claims in this action;
- c. Paragraphs 25-48 regarding the history of the Plan;
- d. Paragraphs 49-57 regarding the negotiations of the SSA; and

e. Paragraphs 58-70 regarding the terms of the SSA.

Attached to this affidavit at Exhibit "A" is a true copy of David Kidd's affidavit sworn January 4, 2012, excluding exhibits thereto.

Approval of the Amended SSA

3. I, along with the other Representative Plaintiffs, and the Canada Life Pension Rights Group ("CLPENS") Executive Committee were surprised and extremely disappointed to learn about the material change in the estimated valuation of the Integrated Partial Wind-Up Surplus ("IPWU Surplus"). I am a member of the IPWU group.

4. I worked in concert with the other Representative Plaintiffs and the CLPENS Executive Committee with the advice of Class Counsel, and with the support of our actuarial advisor Mr. Marcus Robertson, in order to assess the information received from Canada Life in February 2012 and in the months that followed.

5. I can advise that for the Plaintiffs' part, the news of the drop in IPWU Surplus was greeted with substantial skepticism and that we undertook our due diligence in order to verify that the information received was fair and accurate.

6. Our immediate objective upon learning of the change in circumstances was to test and verify the information provided to us by Canada Life and its external advisors. In the course of that process, we requested substantial information from the company. That information was provided and we took the opportunity to assess that information with the assistance of our actuarial advisor and our counsel.

7. With the advice of our actuarial advisors and Class Counsel, we concluded that the changes in the estimated IPWU Surplus over time were reasonably expressed by the advisors to Canada Life and were calculated using the required Actuarial Standards and Guidance.

8. We subsequently learned that annuities could not be purchased for members of the IPWU group who had elected this option. There was a motion before the Court about Canada Life's intention to unilaterally transfer the assets and liabilities of the IPWU group to the ongoing

Plan. The motion was settled on September 27, 2012, and Justice Strathy was subsequently appointed to mediate the outstanding disputes between the parties. Justice Strathy is an experienced Class Action Case Management Judge and an experienced mediator.

9. Negotiations took place throughout the better part of 2012 with the concentration of activity in the latter half of the year, and full-day mediation took place on December 4, 2012 which I attended.

10. Although the parties were not able to conclude an agreement on December 4, 2012, discussions continued between the parties with the assistance of Justice Strathy. Terms for an amended SSA were reached in the weeks following the mediation.

11. The negotiations were at all times adversarial and hard fought. We did not obtain all of what we sought.

12. The terms of the Amended Surplus Sharing Agreement ("ASSA") are, in my view, the best terms that could be reached under these difficult circumstances, and at least provide for the possibility of a second surplus distribution for Class Members who suffer most acutely from the decrease in the IPWU Surplus, like me.

13. As a result, as Representative Plaintiff, I recommend that the Court approve the terms of the ASSA as fair, reasonable and in the best interest of all Class members.

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

SWORN BEFORE ME at the)
City of Toronto, in the)
Province of Ontario,)
this 7 day of March, 2013.)
)



Commissioner for Taking Affidavits

Mireille Marguerite Giroux, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires June 24, 2014.



Alexander Harvey

This is **Exhibit "A"** referred to in the
affidavit of **Alexander Harvey**
sworn before me, this 7
day of March, 2013

.....


A Commissioner for taking affidavits, etc.

Mireille Marguerite Giroux, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires June 24, 2014.

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 DAVID KIDD
(Sworn January 4, 2012)**

I, David Kidd, of the City of Toronto, in the Province of Ontario, a Representative Plaintiff in this action, make oath and say:

1. I am a retired employee of The Canada Life Assurance Company (the "Company") and a former member of The Canada Life Canadian Employees Pension Plan (Registration No. 354563) (the "Plan"), and as such have knowledge of the matters to which I hereinafter depose, except where my knowledge is based on information and belief, which I verily believe to be true.
2. I have been a Plaintiff in this action since its commencement, and by Order of this Court dated October 28, 2011, I was appointed a Representative Plaintiff in this class proceeding.
3. This affidavit is sworn in support of a motion for approval of the settlement of this class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6 (the "CPA"), and associated relief set out in the Notice of Motion.

A. Overview and Status of the Action

4. This action concerns the ownership and use of surplus assets in the Plan. The action also seeks declarations of partial wind ups of the Plan (except the Integration Partial Wind Up, defined below, which has already been declared by the Company) and distribution of surplus funds related to certain past events, namely:

- a. the termination, resignation and retirement of members of the Plan following the 2003 acquisition of Canada Life by the Great West Life Assurance Company (the "Integration Partial Wind Up");
- b. the termination of Plan members employed by Indago Capital Management Inc. as a result of the February 26, 1999 merger of that company with Laketon Investment Management Ltd (the "Indago Partial Wind Up");
- c. the termination of Plan members employed by Pelican Food Services Limited as a result of the outsourcing of operations by Canada Life in 2001 (the "Pelican Partial Wind Up");
- d. the termination of Plan members employed by Adason Properties between November 1, 1999 and February 28, 2001 (the "Adason Partial Wind Up").

5. In addition, the action claims that the Plan and the fund held in respect of the Plan (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.

6. The action was commenced in 2005. The parties entered negotiations aimed at a potential resolution of this matter. In April 2007 the parties attended a two-day mediation facilitated by Justice Winkler. The mediation resulted in an agreement on the framework for a potential settlement. On December 1, 2007, after continued negotiations, the parties signed a Memorandum of Understanding.

7. Between 2008 and 2010 the parties continued negotiations toward a proposal for settling this proceeding, which culminated in a Surplus Settlement Agreement ("SSA"). A true copy of the SSA is attached to this affidavit at Exhibit "A."

8. At all times, the negotiations between the parties were conducted at arm's length and on an adversarial basis. The parties were each represented by sophisticated legal counsel and took advice from their own independent actuarial advisors.

9. A Fresh as Amended Statement of Claim which pleads the claims of the Plaintiffs and reflects the legal issues that are ultimately to be decided in accordance with the SSA was issued and entered on September 21, 2011, a true copy of which is attached to this affidavit at Exhibit "B".

10. The SSA was conditional on obtaining certain levels of consent from past and present Plan members (as further described in the class definition). A comprehensive communication was sent to all persons included under the SSA in March, 2011, followed by a roadshow in several cities across Canada and information sessions for current Company employees.

11. Based on the high levels of consent to the terms of the SSA, the parties proceeded to the implementation stage. The first step in implementing the SSA was certification of this action as a class proceeding, which was granted in written reasons dated October 26, 2011. Attached to this affidavit at Exhibit "C" is a true copy of the Certification Order, dated October 28, 2011.

12. If court approval of the settlement is granted, there will be a regulatory approvals sought from the Financial Services Commission of Ontario ("FSCO") to implement the settlement.

B. Personal Background

13. I commenced employment with the Company on January 2, 1986 and joined as a member of the Plan on January 18, 1988. I started work at the Company as a Pension Investment Consultant. My subsequent duties with the Company included Manager, Group Sales and Business Development Manager.

14. My last day worked at the Company was on or about August 1, 2003, and my retirement date was February 29, 2004, the month I reached age 55. My pension benefits commenced January 31, 2005.

15. I still work in the field of pensions and employee benefits. I do contract work for Sun Life involving employee education meetings for its group retirement plan clients who offer pensions, group RRSPs, DPSPs. I also do pension consulting work for an insurance broker and for an independent consulting actuary. I work approximately 300-400 hours per year.

16. In or about September 2003, I received a letter and Notice from the Company on or about a Partial Wind Up of the Plan. The letter and Notice explain that the Partial Wind Up applies to all members who were terminated by the Company, retired or resigned voluntarily between July 10, 2003 and the completion of the integration between Great-West Life/London Life and the Company which was expected to be a two-year period (the "Integration PWU"). Neither the letter nor the Notice addressed the issue of surplus assets in the Plan. Attached hereto and marked as Exhibit "D" to this my affidavit is a true copy of the letter and Notice I received, dated September 9, 2003.

17. Due to my experience in the field of pensions and benefits, I was aware at the time I received the letter and notice regarding the Integration PWU that the Fund had a significant surplus and that pursuant to Ontario's *Pension Benefits Act*, the distribution of surplus funds should be addressed. I was also aware of the legal case, *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, which was progressing through the courts at that time and which involved surplus distribution on a partial wind up of a pension plan.

18. When I received notice of the Integration PWU, I became concerned about the rights of members, including myself, to surplus assets.

19. In or about the fall of 2003, I joined a voluntary association of Plan members called Canada Life Canadian Pension Plan Members' Rights Group ("CLPENS"). CLPENS was established to pool resources and to provide information about the Plan and to promote awareness among all Plan members about their pension rights.

20. CLPENS is run by an elected volunteer executive, in accordance with a Constitution, to represent the voice of the employees of the Company who are members or former members of the Plan. There are over 900 members in CLPENS. I have been a member of the CLPENS executive committee since October 2005.

21. I, along with Alexander Harvey, retained legal counsel at Koskie Minsky LLP for their advice and services in relation to the Integration PWU, and the issue of Plan expenses being charged to the Fund.

22. A similar class proceeding was started in London, Ontario in spring, 2005. Rather than engage in a dispute over carriage, we decided to consolidate our cases, adding Jean Paul Marentette as a plaintiff to the action in Toronto (and discontinuing the London action), and entering into a new retainer agreement with both Koskie Minsky LLP and Harrison Pensa LLP.

23. Koskie Minsky LLP retained Marcus Robertson of Robertson, Eadie & Associates, a firm of actuaries and consultants, to provide expert actuarial advice. Mr. Robertson prepared a report dated October 25, 2005 addressing the financial position of the Plan, and information he would expect to see in the Integration PWU Report (which was not yet produced by the Company). Attached to this affidavit at Exhibit "E" is a true copy of the report of Marcus Robertson dated October 25, 2005.

C. The Plaintiffs' Claims

24. As noted above, the Fresh as Amended Statement of Claim seeks a number of declarations concerning the ownership and use of surplus assets under the Plan and Trust, and the Company's rights with respect to the Plan and the Trust. The Plaintiffs seek the following forms of relief:

- a. a declaration that the Plan and the Fund comprise an irrevocable trust held exclusively for the benefit of Plan beneficiaries;
- b. a declaration that Canada Life has no beneficial interest in any assets of the Fund and that no part of the corpus or income of the Fund shall ever revert to Canada Life;

- c. a declaration that any amendments made to the Plan and the Trust that purport to allow surplus to revert to Canada Life or otherwise give Canada Life the right to benefit directly or indirectly from the assets of the Fund are null and void;
- d. a declaration that the Plan and the Trust do not permit the costs of administering the Fund or the costs of administering the Plan (together, the "Plan Expenses") to be paid out of or charged to or reimbursed from the Fund;
- e. a declaration that Canada Life is responsible for the payment of all Plan Expenses and may not charge Plan Expenses to, or seek reimbursement of Plan Expenses from, the Fund;
- f. a declaration that any and all amendments to the Plan and the Trust that purported to permit Plan Expenses to be paid out of, charged to or reimbursed from the Fund, or that otherwise permit or require that Plan Expenses be borne by the Fund (the "Plan Expenses Amendments"), are void and of no effect;
- g. a declaration that any predecessor to the Plan, and any trusts thereunder, did not permit the costs and expenses of administering such predecessor plan and the pension fund held in respect of such predecessor plan to be paid out of, charged to or reimbursed from the pension fund held in respect of such predecessor plan;
- h. an interim and permanent injunction restraining the defendants from causing the Plan Expenses to be paid out of, charged to or reimbursed from the Fund and from otherwise using any part of the Fund for purposes other than for the exclusive benefit of the Plan members;
- i. a declaration that all Plan Expenses the defendants unlawfully caused to be paid out of, charged to or reimbursed from the Fund (the "Revoked Funds") constitute a breach and partial revocation of the Trust;
- j. an accounting of all Revoked Funds by Canada Life;
- k. an order that all Revoked Funds, together with interest compounded annually at the rate of Fund return, be paid to the Class by Canada Life and that such funds be

equitably allocated and distributed among the members of the Class in accordance with the direction of this Honourable Court;

- l. in the alternative to k., an order requiring the Company to make restitution to the Fund in respect of all Revoked Funds plus interest;
- m. damages payable by the Company for breach of trust and contract in the amount of \$150,000,000 in respect of the Revoked Funds, and such amounts to be determined by this Honourable Court;
- n. a declaration that the Plan and the Trust do not permit the Plan to be merged in whole or in part with any other pension plan;
- o. a declaration that the Plan and the Trust do not permit the Fund to be merged in whole or in part with the fund of any other pension plan;
- p. a declaration that Canada Life is precluded from amending the Plan or the Trust to include new classes of members;
- q. a declaration that the Plan and the Trust do not permit Canada Life to take contribution holidays under the Plan, including contribution holidays in respect of the funding of any defined contribution benefits from the accumulated actuarial surplus in the Plan;
- r. an order determining the quantum, if any, of the contribution holidays improperly taken by Canada Life and requiring that Canada Life pay all such amounts to the Fund with interest;
- s. a declaration that the Plan and the Trust do not permit Canada Life to fund benefit enhancements under the Plan from Fund assets including surplus;
- t. an order determining the quantum, if any, of benefit enhancements under the Plan improperly funded from Fund assets and requiring that Canada Life pay all such amounts to the Fund with interest; and

u. interest and costs.

D. The Plan and Trust

(i) Surplus Ownership

25. I am advised by my counsel and do verily believe that member entitlement to a distribution of assets on Partial Wind Up of a pension plan depends on surplus ownership. Ownership of surplus, in turn, depends on the construction of the original Plan and Trust documents.

26. The Fresh as Amended Statement of Claim traces the Plan and Trust language back to its inception, through numerous amendments over the years, to certain key amendments that were made effective January 1, 1997. These key amendments purported to provide for reversion of surplus assets to the Company.

27. The facts and documents supporting the Plaintiffs' claim to surplus ownership are set out in the affidavit of Ari Kaplan, a partner at the law firm of Koskie Minsky LLP.

(ii) Plan Expenses

28. The 1964 Trust Agreement provided in article 7 that the Company shall pay all costs and expenses in connection with the Fund.

29. At a date unknown to the Plaintiffs, between 1964 and 1988, expenses related to the investment and administration of the Fund began to be charged to the Fund. The Plan's Financial Statements since at least 1988 combine the three pension plans that were later merged in 1997, including the Plan, The Canada Life Assurance Company Trusteed Canadian Staff Pension Fund (1958) and The Canada Life Assurance Company Trusteed Canadian Agents' Pension Fund (the "Funds"). The Funds have been combined in the Financial Statements since at least 1988 because they have been under common trusteeship since 1965.

30. The earliest financial statements the Plaintiffs have been able to obtain are dated December 31, 1988, and indicate (at note 3 to the statement) that fees were charged to the Funds that year for specialty growth administration, real estate administration, mortgage services,

investment management and other administration fees. Such charges are alleged to be contrary to article 7 of the 1964 Trust Agreement. Attached to this affidavit at Exhibit "F" is a true copy of the 1988 Financial Statement.

31. The responsibility for payment of Plan expenses changed under the 1993 Trust Agreement, under articles 4 and 5, which required the Trustees to reimburse the Company for charges incurred in the operation of the Plan and the Fund (the "Plan Expense Amendments"). Article 4 of the 1993 Trust Agreement sets out the Duties of the Trustees which includes, in part, the following:

...(h) upon the request of the Plan Administrator, pay for any usual and reasonable expenses incurred in the administration of the Fund and the Plan within 18 months prior to the date of request, ...

32. Article 5 of the 1993 Trust Agreement, relating to the duties of the Plan Administrator, was amended to include the following duty:

...(d)(iii) obtain from the Trustees reimbursement of expenses and charges incurred by the Plan Administrator and the Company relating to the operation of the Fund and the Plan as and when requested by the Company...

33. The Pension Commission of Ontario (now called the Financial Services Commission of Ontario) required the Company to give notice to Plan members of the Plan Expense Amendments. A notice was sent to Plan members, dated August 9, 1994, describing the change to the Trust related to payment of Plan Expenses. A more general letter announcing Plan amendments was sent to members, dated June 1, 1994, that explained under the old policy, the "Company paid the expenses of the Plan directly", but under the new policy, "[i]nvestment expenses and the cost of administering the plan will in future, if the Company requests, be paid from the pension fund." Attached to this affidavit at Exhibits "G" and "H" are true copies of the Plan member letters dated August 9, 1994 and June 1, 1994, respectively.

34. The 2002 Trust Agreement requires at Article 8(i) that the Trustees reimburse the Plan Administrator for "any reasonable charges, fees, taxes and other expenses, including without limitation any internal expenses of the Plan Administrator and the usual reasonable expenses of any agents of the Plan Administrator incurred in the operation, review, design, amendment and administration of the Plan and investment of the Fund...".

35. The most recent restated Plan text is the 2003 Plan which contains the following provision:

14.05 Plan Expenses

All reasonable charges, fees, taxes and other expenses, including, without limitation, any internal expenses of the Plan administrator and the usual and reasonable expenses of any agents of the Plan administrator, incurred in the operation, review, design, amendment and administration of the Plan and the Trust Agreement or the review, administration, use and investment of the Pension Fund, including Surplus Assets, shall be paid from the Pension Fund unless paid directly by the Company. The Trustee shall, if requested, by the Company, reimburse the Company out of the Pension Fund for any such charges, fees, taxes and other expenses which the Company pays directly.

36. The Plan's financial statements filed with the Financial Services Commission of Ontario disclose the following summary of total costs and expenses charged to the Fund since 1987:

Year	Total Costs and Expenses
1987	\$2,987,000 (partial amount only)
1988	\$3,370,000 (partial amount only)
1989	\$4,529,000 (partial amount only)
1990	not available
1991	not available
1992	not available
1993	not available
1994	\$2,542,000
1995	\$1,734,000
1996	\$2,055,000
1997	\$2,345,000
1998	\$2,342,000
1999	\$3,692,000
2000	\$4,937,000
2001	\$4,344,000
2002	\$3,356,000
2003	\$2,848,000

Attached to this Affidavit at Exhibit "T" are true copies of the Financial Statements for the Plan for the following years: 1989, 1994, 1995, 1996, 1997, 1997, 1998, 1999, 2000, 2001, 2002, and 2003.

37. The Plaintiffs plead that the Plan Expense Amendments were and are contrary to the 1964 and 1989 Trust Agreements, which preclude any portion of the Fund being returned to the Company. The Plan Expense Amendments are alleged to constitute a partial revocation and breach of trust.

(iii) FSCO Expense Investigation

38. By letter dated June 24, 2004, FSCO wrote to the Company to advise that a concern had been raised by Plan members about the payment of Plan Expenses from the Fund (among other things) and invited the Company to make submissions on this point. Attached to this affidavit at Exhibit "J" is a true copy of the letter from FSCO to the Company dated June 24, 2004.

39. The Company's counsel made detailed submissions to FSCO about the validity of the Plan Expenses Amendments by letter dated January 10, 2005. Attached to this affidavit at Exhibit "K" is a true copy of the letter from Osler Hoskin & Harcourt to FSCO, dated January 10, 2005.

40. After this proceeding commenced in 2005, my counsel wrote to FSCO advising that a Statement of Claim had been issued, and stating that the matter should be dealt with by the Ontario Superior Court of Justice. Attached to this affidavit at Exhibit "L" is a true copy of the letter from Koskie Minsky LLP to FSCO dated June 7, 2005.

41. In September 2005, FSCO staff advised the Company that it would be willing to suspend the investigation concerning Plan Expenses and allow the Court to decide the issue, provided that the Company agreed to cease paying any expenses from the Fund during that time. Attached to this affidavit at Exhibit "M" is a true copy of the letter from FSCO to the Company dated September 23, 2005.

42. The Company agreed to FSCO's proposal and FSCO's Plan Expenses investigation was suspended. Attached to this affidavit at Exhibit "N" is a true copy of the letter from Company's counsel to FSCO dated September 28, 2005.

(iv) Amount of Plan Surplus

43. The Actuarial Report for the Plan prepared by Mercer Human Resource Consulting as at December 31, 2008 disclosed a funding excess of \$221,029,000 and a solvency excess of \$165,627,000, which includes the Partial Wind Up Surpluses retained in the Plan. Attached to this affidavit at Exhibit "O" is a true copy of the actuarial valuation of the Plan as at December 31, 2008.

(v) The Integration Partial Wind-Up

44. A Partial Wind Up of the Plan within the meaning of the *Pension Benefits Act*, R.S.O. 1990, ch. P.8 ("PBA") was declared as of July 10, 2003 by the Company in relation to members of the Plan who were terminated from, retired or resigned voluntarily from the Company as a result of the integration with The Great-West Life Assurance Company ("The Integration Partial Wind up").

45. The letter and Notice provided by the Company that notified members about the Integration PWU did not refer to the existence of surplus in the Fund, to the distribution of the surplus on the partial wind up, nor to any potential entitlement that Plan members may have to any surplus assets in the Fund.

46. The Company filed the Integration PWU Report in April 2006. In that report, the Company did not make any proposal or provide any assurance to the Integration PWU Sub-Class concerning surplus sharing. The Report discloses an estimated partial wind-up surplus of \$92,994,000 attributable to the Integration PWU Sub-Class as of June 30, 2005. Attached to this affidavit at Exhibit "P" is a true copy of the Partial Wind Up Report.

47. The assets of the pension trust, including the Integration PWU surplus, are invested funds, the value of which can fluctuate along with the performance of the financial markets. The Plaintiffs were advised by legal counsel for Canada Life that steps were taken to protect the Integration PWU surplus within the pension trust from the volatilities of the market following the mediation with Regional Senior Justice Winkler, as he then was.

48. The Actuarial Valuation of the Plan as at December 31, 2008 disclosed that the Integration PWU Surplus had decreased to \$71,775,000.

E. History of the Litigation and Steps To Settlement

49. The Plaintiffs served and filed their motion for certification in November, 2005. Canada Life also brought a motion to strike paragraphs within the Plaintiffs' Statement of Claim, which sought the payment of any amounts awarded in connection with the Plan Expenses claim to be distributed directly to Class Members.

50. Following a series of initial case management conferences, the parties were scheduled to argue the motion for certification, as well as the Company's motion to strike, in February of 2006. Due to scheduling difficulties, and in light of the commencement of settlement discussions between the parties, the hearing was adjourned.

51. In June of 2006, a case conference was held with Justice Hoy, who was newly assigned to the case, and the certification and motion to strike were set for November 15 and 16 of 2006. On November 14, 2006, a case conference was held with Justice Hoy where the parties requested a further adjournment pending the outcome of the appeal in *Potter v. Bank of Canada*, which dealt with the issue raised in the Company's motion to strike.

52. In the same endorsement, the Court noted the report of the parties that settlement discussions had commenced. The Company had made a settlement offer on November 9, 2006 and the Plaintiffs were ordered to provide a responding settlement offer by December 31, 2006. The parties were ordered to report on the status of settlement discussions at a case conference which was scheduled for February 22, 2007.

53. The parties agreed to engage Justice Winkler to facilitate a mediation of the dispute, which took place in April 2007. Prior to the mediation, in November 2006, 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 Class, with the advance consent of the parties.

54. I attended the two-day mediation facilitated by Justice Winkler with my fellow Plaintiffs, my counsel, and other members of the CLPENS Executive Committee including Wib Antler, Alex Harvey, and Jean Paul Marentette. The mediation started with everyone present in the same room, but very shortly the clients were segregated into separate rooms. My counsel came in and out of our room, having discussions with us, with Justice Winkler, and with counsel for the Company.

55. At the conclusion of the mediation, the parties had reached an agreement in principle, but there were significant items that were yet to be resolved. By November 2007, the parties had

concluded a Memorandum of Understanding. Attached to this affidavit at Exhibit "Q" is a true copy of the Memorandum of Understanding dated November 9, 2007.

56. The CLPENS Executive and Plaintiffs released an announcement to advise interested people that they had entered into a Memorandum of Understanding. The Notice explained that an agreed upon framework had been reached, but a final settlement agreement was yet to come. It also described the amount of the Integration PWU surplus, and the proportionate shares that would be paid to the Company, Integration PWU 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 protection. Attached to this affidavit at Exhibit "R" is a true copy of the Announcement which was posted to the Koskie Minsky LLP website on December 1, 2007, in French and English.

57. The parties continued to work toward achieving a comprehensive settlement of all issues over the next two years. The CLPENS Executive had numerous meetings with our counsel and actuarial advisor to raise concerns, ask questions, review drafts of the SSA, and receive legal advice. In addition, I spent many hours outside of the formal CLPENS meetings reviewing drafts of the SSA, and speaking with my fellow Executive members about issues that might arise.

F. The Terms of Settlement

58. The details of the proposed settlement are set out in the SSA. Under the SSA, the Company will voluntarily declare Partial Wind Ups for the three prior events referenced in the introduction (Indago, Adason, Pelican). 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
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59. 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 PWU (2148);
- b. Plan Members who will be included in the Indago PWU (15);
- c. Plan Members who will be included in the Adason PWU (37);
- d. Plan Members who will be included in the Pelican PWU (38);
- e. Deferred/vested members of the Plan as of April 12, 2005 who are not part of the groups described above (494);
- 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 (826);
- g. All active members of the Plan as at June 30, 2005, plus any new Plan members from that date up to date of certification as a class proceeding (1681); and
- h. Former Plan members employed in Quebec who would have been included in the Integration PWU but for their employment in Quebec (29).

60. 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.

61. 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 \$1000.

62. 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 \$1000.

63. As part of the SSA, the Company will establish a new pension plan (the "New Plan") and related new trust fund ("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.

64. Active members who have consented to the proposed settlement will be transferred to the New Plan, and 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.

65. The Quebec Cash-Outs consist of Plan members who reported for work in Quebec and who had their entitlements paid out of the Plan before April 12, 2005. They will be treated as members of the Integration PWU.

66. In the event that a Class Member dies before receiving his or her surplus share or contribution holiday, payment will be made to his or her spouse, designated beneficiary or estate, provided that all necessary consents are obtained.

67. 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.

68. 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;

- f. The Company is entitled to reimbursement from the Plan and/or New Plan of 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.

69. 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.

70. The SSA also deals with payment of the parties' expenses. Expenses incurred in the negotiation and implementation of the SSA, and those generally related to the Partial Wind Ups, will be deducted from the surpluses attributable to the Partial Wind Ups. The SSA defines "settlement expenses" as "all expenses related to negotiation and implementation of the SSA." The SSA terms dealing with payment of the parties' expenses can be summarized as follows:

- a. All Settlement Expenses incurred up to December 2007 will be deducted from the Integration PWU Surplus only;
- b. Settlement Expenses incurred between December 21, 2007 (the date that the Adason and Pelican Committees joined the settlement negotiations) and October 1, 2008 will be deducted from the Integration, Adason and Pelican PWU surpluses, with each surplus bearing a share of the Settlement Expenses that is proportional to the value of the pension benefits of the members included, compared to the value of the benefits of all members included in all three Partial Wind Ups;
- c. Other expenses of the parties incurred to October 1, 2008 that specifically relate to only one of the Partial Wind Ups, will be deducted from the surplus attributable to that Partial Wind Up;
- d. Settlement Expenses and other expenses incurred after October 1, 2008 (the date that the Indago Committee joined the settlement negotiations) will be deducted from the surpluses attributable to all four Partial Wind Ups. Each Partial Wind Up will bear a portion of the expenses that is proportional to the value of the

pension benefits of its included members, as compared to the total value of the pension benefits of all members included in all four Partial Wind Ups.

G. Communications with Class Members and Notice of the Proposed Settlement

71. Shortly after the claim was filed in 2005, Class Counsel established a website, toll-free hotline, and email path, to provide Plan members with updates concerning the progress of the litigation and respond to questions. The website has been updated as events warranted.

72. During the settlement negotiations which spanned several years, the Plaintiffs and CLPENS were constrained by the Confidentiality Agreement, which prohibited disclosure of any aspects of the negotiations or terms of settlement. Shortly after the Memorandum of Settlement was reached, CLPENS released an announcement to its membership of the essential terms of the Proposed Settlement, and also advised that there was still a significant amount of work yet to do.

73. Since CLPENS was established, it has held annual general meetings (except in 2010 and 2011) to keep its members apprised of the progress of this case. Many active employees have attended these meetings, as well as the social gatherings which have typically followed them. The general tenor of feedback after signing the MOU from active employees was very favourable.

74. I have also socialized from time to time with Plan members who are still active employees, and have discussed this case in an informal way, while respecting the confidentiality arrangements which have been in effect at various times.

75. In March 2011 a comprehensive Information Package was sent to all Class Members detailing the Proposed Settlement. Attached to this affidavit at Exhibit "S" is a true copy of the Information Package.

76. Following mailing of the Information Packages, a total of 15 meetings were held in cities across Canada (Vancouver, Calgary, Regina, Toronto, London, Montreal and Halifax) to further describe the SSA and provide an opportunity to proposed Class Members to ask questions. At each of the meetings, a presentation was made by the Company, by me (or another CLPENS representative), and by my counsel. In addition, there were question and answer periods where

Company representatives were absent from the room. Attached to this affidavit at Exhibits "T" is a true copy of the PowerPoint presentation of the Plaintiffs.

77. At each of the roadshows I attended, I personally spoke with members about the proposed settlement. Many people had questions about the process leading up to the proposed settlement, and how the Plaintiffs had balanced the interests of the different classes of Plan members.

78. In response to some frequently asked questions, Class Counsel posted two notices on its website, one for active employees and one for pensioners. Attached hereto at Exhibit "U" are true copies of the two notices, in French and English.

79. Following the roadshows, an additional letter was sent by the CLPENS Executive to proposed Class members who had not yet returned a Decision Form. The letter addressed some specific concerns that had been raised by active employees of the Company at the roadshows and in communications with counsel. Attached hereto at Exhibit at "V" is a true copy of the letter dated May, 2011.

80. Around the same time, the Company sent a letter to all active members of the Plan clarifying the answers to some commonly asked questions, and stating the Company's intentions with respect to changing pension benefits for employees. Attached to this affidavit at Exhibit "W" is a true copy of the letter from the Company dated May, 2011.

81. There were also additional meetings held with active employees of the Company to respond to some of their concerns, on May 17, 18, and 19, 2011, in Regina, London, and Toronto respectively. I attended all of the meetings, which included a brief presentation by a Company representative, followed by a question and answer period with me and my counsel while Company representatives were out of the room.

82. I am advised by the Company's counsel, and do verily believe, that an internal email was sent by the Company to all employees to announce the additional meetings for actives. Attached at Exhibit "X" are true copies of the emails to all employees dated May 10, 2011, and May 11, 2011.

83. I am advised by the Company's counsel, and do verily believe, that an email was sent to all active employees on August 24, 2011 providing an update on the status of votes on the settlement proposal, and advising that the parties had agreed to move forward to implement the proposal. Attached at Exhibit "Y" is a true copy of the email dated August 24, 2011.

H. Why I Support This Settlement

84. I believe that the SSA is comprehensive and ultimately fair according to the advice of our actuarial and legal counsel. I come to this view having the benefit of being personally involved since before commencement of the court proceeding. In short, I am in full agreement with the proposed settlement.

85. The SSA, if approved, will settle a number of issues, however it will not preclude any future claim by Plan members to surplus ownership on Plan termination. This right has been deliberately preserved.

86. I have been advised by my counsel and believe that although the claim to surplus ownership case has merit, the other claims, particularly the claim concerning Plan Expenses, is tenuous. Further, I am advised that even if the Class succeeded in the Plan Expenses claim, the remedy of "direct payments" to Plan members for improperly paid assets out of a pension plan has been rejected by Ontario courts.

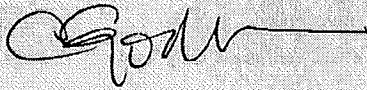
87. Counsel has also advised me and the other Representative Plaintiffs that notwithstanding any success, appeals by the Company could have the effect of delaying a resolution for many years. Given that it has already been six years since commencement of the proceeding, the Representative Plaintiffs are anxious to see a settlement that gives Class Members financial benefits sooner rather than later.

88. The proposed settlement gives the Class Members certainty. The proposed settlement represents a reasonable and rational compromise. Given the inherent uncertainty in going to court, I believe that the proposed settlement represents a fair bargain between us and the Company.

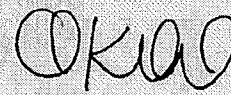
89. On the whole, as a Representative Plaintiff and a direct participant on the negotiating team over many years, I am satisfied that the settlement secured in this case is fair and reasonable. My view is supported by competent legal and actuarial advice, and in all of the circumstances, I believe the settlement will deliver fair and reasonable benefits to the members of the Class.

90. I recommend approval of this proposed settlement to this Honourable Court as being fair, adequate, reasonable, and in the best interests of the Class.

SWORN before me at the City of
Toronto, in the Province of Ontario
on January 4, 2012.



A Commissioner for taking affidavits



DAVID KIDD

DAVID KIDD, et al.
Plaintiffs

and

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

Court File No: 05-CV-287556CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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

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