Court File No. 05-CV-287556CP

ONTARIO
SUPERIOR COURT OF JUSTICE

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

Plaintiffs

- and -

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

Defendants

Proceeding under the Class Proceedings Act, 1992

CLASS MEMBER OBJECTOR FACTUM

January 6, 2014
(Fairness Hearing January 10, 2014)

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ONTARIO
SUPERIOR COURT OF JUSTICE

KIDD et al v Canada Life et al
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CLASS MEMBER OBJECTOR FACTUM

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PART I - NATURE OF FACTUM

1. As permitted by the October 22, 2013 directive by Justice Perell, this factum is submitted by January 6. It has been prepared without access to the motion factum(s) from the various parties, which are also due on January 6. Accordingly, this factum will reference some of the arguments as presented in the Nov. 28 and Dec. 2, 2013 class member webinars, as well as other

materials that have previously been distributed by the parties. Further details regarding the context for this factum, including the objector's prior involvement in this case, are provided in a more detailed section following the section addressing issues and arguments.

2. **Shared Objective.** This factum is presented within the context of a shared objective of determining appropriately revised implementation terms for the original Surplus Sharing Agreement (SSA) that was approved by the Court January 27, 2012. The implementation of the SSA became circumstantially impaired as a result of events preceding and following the approval of the SSA and factors that had not been disclosed at the time that the SSA was approved. The issues of circumstantial fairness referenced herein, and addressed more fully in the "Additional Considerations" section, primarily impact PWU and deferred-retired pensioner class members, while there appears to be relatively little effect on the determination of the financial interests of the Indago-Pelican-Adason (IPA) class members and the active (non-eligible non-PWU) class members.

PART II - FACTS

3. Identified below are what seemed to be particularly notable facts that I and apparently many others had not been aware of prior to the March 18, 2013 hearing. These are facts that do not seem to have been disclosed thus far in the motion records for this fairness hearing, do not appear to have been appropriately disclosed by Class Counsel to class members and which are not expected to be disclosed by the Canada Life and Plaintiff representatives in their respective factums:

4. **Ratio of transfer values to associated liability values.** For the 142 individuals electing a transfer value in January-April 2013, a July 25, 2013 letter by Mercer identifies that total transfer values of $11.8 million were equal to 56% of the associated transfer liabilities of $21.0

million, implying an 'average' discrepancy of 44% or $64,800 per person. [page 13 in Objector Compendium by Dan Anderson Dec. 19, 2013]. The most notable issues regarding these discrepancies are referenced herein under "egregiously understated transfer values". This information had been identified at an Aug. 27, 2013 case management meeting.

5. **FSCO currently appears to have no effective or meaningful role in the determination and approval of appropriate transfer values for the Canada Life PWU.** Going somewhat out on a limb here, but based on recent communications with FSCO, the focus of current FSCO representatives appears to be primarily limited to Pensions Benefit Act Regulation 29(2) which only deals with the determination of a minimum transfer value. Such a minimum would supposedly be intended to protect plan members from the effects of delayed transfer options, supplemental to the protections provided by the prescribed actuarial standards, but although such a FSCO-defined minimum would be relevant during periods of increasing interest rates, it seems to have become irrelevant in the context of the Canada Life PWU and the 10-year history of declining interest rates. Prescribed actuarial standards require the use of assumptions consistent with the 2011 and 2013 option periods. This issue is addressed in detail in correspondence with FSCO in the context of other PBA and regulatory sections and policies. [Dec. 19, 2013 Objector Compendium by Dan Anderson, primarily on pages 48-55, with related correspondence on pages 31-40 and 60-70].

6. **Investment policy for the PWU fund and the surplus implications of the resulting duration mismatch between the assets and liabilities.** Beginning in 2008 and extending to 2012, the PWU fund investment policy specified 60% of the PWU assets were to be invested in cash and short term bonds, despite the very long-term nature of the deferred pensions. [pages 16-18 in the Objector Compendium by Dan Anderson Dec. 19, 2013]. The various implications

of this investment policy are considered under the "Additional Considerations" section herein which cross-references to the applicable sections in the September 27, 2013 appeal intervenor factum.

PART III - ISSUES AND ARGUMENTS

7. **Problems and resolutions.** The focus herein could have been just on the problems with the proposed amendment or the focus could have been just on alternatives, but it would seem we have to consider both aspects and the interrelationships and so deal with resolutions to the problems. One view on a sequential step for resolutions would be: a) resolve the perceived problems with the transfer values, b) determine Canada Life's position with regards to the two-part Focus Question below perhaps in the context of some substantive and informed mediation that addresses key issues applicable to the current circumstances of the case and, if necessary, develops some basic parameters for an extended settlement implementation process for the parties to participate in surplus as it re-emerges (as per the "Other Considerations" section), and c) provide some opportunity for class members (including plaintiffs) to respond to a revised proposal that is not poisoned by the transfer value problem.

Biggest ethical problem with proposed amendment: transfer values

8. I would respectfully suggest that the biggest ethical problem that has emerged is the fact that the amendment and proposed "guaranteed" surplus payout amounts are apparently conditional on the payment of transfer values in 2011 and 2013 that are now known to have been egregiously understated relative to prescribed actuarial standards, regardless of what now appears to be largely irrelevant and unsupported "approval" letters from FSCO (where it would seem unfair to criticize the representative who would supposedly have been instructed to provide

FSCO's response on these issues). Further considerations are addressed in more detail later in this factum.

Focus Question regarding surplus "guarantees" and transfer value

9. Notwithstanding the arguments that others might present at the January 10 fairness hearing regarding the sufficiency of what is being marketed by Canada Life and Class Counsel as a "guaranteed 56% surplus payout", a key two-part focus question would be the following (and hopefully Canada Life representatives will consult with their clients on this in advance of the fairness hearing):

> **FOCUS QUESTION: If transfer values for all PWU members are recalculated using the prescribed actuarial assumptions applicable to the respective option periods** (assuming any recalculations produced a higher value), and allowance is made for a 2014 option period for those who have not as yet selected a transfer value, **then: a) would Canada Life still honour the proposed guarantee of a 56% surplus payout, and b) if the 56% payout is not in fact guaranteed under such conditions, what alternative payout approach would be proposed** with or without arrangements for an extended settlement implementation period for all parties to participate in sharing in the anticipated re-emergence of the PWU surplus, without Canada Life claiming unilateral first call on using the surplus to fund elements that PWU surplus was never intended to fund**?**

10. The reason for asking the first part of the above two-part Focus Question would be to resolve the following seemingly contradictory comments from Class Counsel:

> "Is this (56% payout) an unconditional guarantee? The answer is, there are no conditions attached to it." (Mark Zigler, Dec 2, 2013 webinar 57:20)
>
> "Article 8 (in proposed amendment #3) simply says that the guarantees and the amounts you (would be paid) are based on the approvals already granted by FSCO and the commuted value amounts already paid out. That is the basis for Canada Life paying the additional $11.3 million, and that is the amended deal" (Mark Zigler, Nov. 28, 2013 webinar ~ 45:00+26:16)

Advocacy of current motion by Class Counsel

11. In accordance with the Class Proceedings Act, Class Counsel has once again had to undertake the role of "selling" a fundamentally flawed agreement to the Court and Class Members, while apparently disregarding key issues as part of that required advocacy. A reasonably insightful analogy might be, and no disrespect is intended by this analogy, the circumstances where a kind and trusted relative is called upon to provide comfort to an elderly family member whose time has come to be convinced to go to a nursing home, or a mental facility. The heart of the facilitator is generally in the right place, helping the underdog, but they have a job to do which, in the case of this class action is somewhat of necessity subject to a contingency fee approach (without the perks that come with advocating for the plan sponsor with deep pockets), and the facilitator must use various forms of persuasion to convince skeptical class members.

12. As indicated here and elsewhere within this factum, the following sort of excerpt is from one of the recent class member webinars, with any necessary clarifications inserted in ( ) brackets and the time locations are as communicated last week to Class Counsel in respect to the webinar mp3 audio files.

> "All sorts of people are coming forward with potential arguments, but arguments only buy you litigation, and I think people have to make a real business choice here. Yes, Canada Life has not been great in how they have conducted this matter. No question about it. But from a pure business point of view is it better to take 56% and be done with this or to keep litigating in the courts?" (Mark Zigler Dec 2 2013 55:40)

13. I support Class Counsel's role and the objective of resolving the implementation of the original court-approved surplus sharing agreement, so as to avoid extended litigation, but some facts may be helpful in considering whether there needs to be a substantive mediation process that takes into account the various concerns that have been identified, and (for example) gives

more substantive consideration to issues such as: a) acknowledging and rectifying the understated transfer values, b) addressing whether Canada Life should have a unilateral first call on prior and re-emerging partial windup surplus to fund speculative investment policies and other developments that were not intended to be funded by the partial windup surplus and c) determining, if necessary, what approaches would have to be put in place for class members to participate over time in re-emerging PWU surplus **if** Canada Life is not prepared to pre-fund surplus payouts that are reasonably consistent with the intent of the Pension Benefits Act and the original surplus sharing agreement, taking into account the considerations regarding the numbers of individuals selecting transfer values and the various issues regarding circumstantial fairness.

Arriving at the proposed 56% payout

14. Class Counsel appears to have advocated a benchmark agreement of 50% of the expected payouts, with that benchmark subsequently adjusted for what appear to have been some misrepresentations in the March 2011 decision packages.

> "I argued ... that people's expectations were raised (by the estimated surplus amounts identified to them when they accepted the original proposed agreement, and) ... if people did not have a guarantee of at least, more than, 50% of that amount, so we shared the risk on the economic turbulence which occurred". (Mark Zigler Dec 2 22:16)

15. The notion of simply "sharing the risk on the economic turbulence" disregards issues such as the role of the speculative and largely undisclosed investment policy that Canada Life established for the PWU fund, and various other issues regarding disclosures and the purpose of PWU surplus. I want to emphasize that there is no intent here to argue that Canada Life has been negligent or that they have mismanaged the assets, but only that the implications, accountability and anti-selective nature of those investment policies must be taken into account.

16. Furthermore, when class members signed consent forms accepting the original surplus sharing agreement, that consent was also based on having been informed that the PWU surplus was $62.2 million, as per page D13 of the March 2011 decision packages, while page E2 provided an individual estimated surplus amount and stated "your estimated share of the surplus is based on the estimated Partial Wind-Up surplus as of June 30, 2010".

17. Not until Wallace Robinson's November 27, 2013 affidavit (paragraph 13) was it disclosed to class members that "the estimates provided to members in their information packages were based on 90% of this amount (i.e. 90% of $62.2 million)".

18. Notably, if the benchmark figure of 50% proposed by Mr. Zigler was adjusted by the parties for the misrepresentation in the March 2011 decision packages, the result (rounding up) is in fact the proposed figure of 50% / 90% = 56% of the individual estimates.

> "Ultimately, the 56% amount made sense because from the point of view of Class Counsel and the representative plaintiffs ... 56% was more than the majority of the money that people had been expecting, it required Canada Life to write a specific cheque, it was guaranteed and that was enough around which we settled" (Mark Zigler Dec 2, 24:35)

19. The phrase "more than the majority of the money that people had been expecting" is so much more persuasive than saying "more than half of the money that people had been expecting".

20. Maybe it is coincidence, but Koskie Minsky marketing materials (www.kmlaw.ca/upload/kmclassactionexperience2_9aug11.pdf) page 21 advertised the fact that as at 2011 there were a total of six cases under the category "Class actions seeking the distribution of pension surpluses", and identified that each and every case had been settled on the basis that plan members received 50% of the pension surplus. These cases, however, would not be dealing with the same issues of a pre-existing agreement and the issues of circumstantial fairness that are applicable to the Canada Life PWU case.

21. It would seem something is needed here, beyond the approach of meritless appeals, disregarding fundamental issues such as the transfer values and PWU investment policy, and an overly simplistic "split it down the middle" paradigm.

Increase in partial windup surplus from August 2012 to June 2013

22. Canada Life's own initial top-up offer of $8 million (rather than the subsequent estimated $11.3 million) was not guaranteed, but only really in the sense that Canada Life apparently intended to take into account post-Aug 2012 changes in PWU surplus (since the PWU assets and liabilities continue to be notionally segregated, as per FSCO requirements, supposedly for that very purpose) and Canada Life should have been open to negotiations regarding how much of the subsequent surplus increase, at least up to June 2013 should be available immediately as distributable surplus, separate from the issue of participating if necessary in future emerging surplus.

23. With regards to the change in PWU surplus from August 2012 to June 2013, Class Counsel seemed somewhat evasive, but did comment as follows:

> "We did ask for (a PWU surplus estimate) as at June (2013) and ... there were ... significant gains because of the ... change in government bond yields ... in the neighborhood of over $25 million ..." (Mark Zigler Dec 2, 2013 ~ 45:00+14:30)

24. Notably, that $25 million increase in PWU surplus would be due to the effect of higher interest rates, and so would be over and above the increase of $9.1 million that has been attributed to the problematic transfer value elections in 2013.

25. However, Class Counsel noted that Canada Life was arguing that revised "guidance" in October 2013 from a committee of the Canadian Institute of Actuaries comprised largely of pension consulting actuaries who work for plan sponsors, had recommended there be at least

temporary changes to the methodology for calculating liabilities (e.g. introducing a new 100 to 125 basis point deduction from the already low, but recovering, real return bond rates), and Canada Life wanted to have a unilateral first call on re-emerging PWU surplus to fund those new changes even though that was not the intended purpose of PWU surplus. Wallace Robinson's November 27, 2013 affidavit paragraph 20 indicates the conveniently-timed methodology change would have a $45 million adverse effect on surplus. The legitimacy of charging such a change against PWU surplus is questioned on page 10 in my accompanying Compendium. Other related issues regarding that affidavit are addressed on Compendium pages 7 to 14.

26. Rather than challenge Canada Life on those issues, Class Counsel's response appears to have been a preference for what has been marketed as a "guaranteed" approach that seems to only reluctantly make reference to the magnitude of the underlying $25 million increase in PWU surplus.

> "That is why this settlement is based on a guaranteed amount ... we don't want arguments in the court as to whether this is a true surplus or not, whether this actuarial factor governs or that actuarial factor governs, you'll always find an actuary, one way or another, or a former actuary, who will come up with a theory; we're not here to deal with these theories, we are here to put money in people's pockets, and try to end the litigation" (Mark Zigler Dec 2, 2013 - 46:01)
>
> "We cannot turn a non-surplus into a surplus ... we know that Canada Life has this money in a pension fund which may or may not generate a surplus in the future but, but we wanted an amount that was guaranteed to people now" (Mark Zigler Dec. 2, 2013 - 22:50)
>
> "56% of real money, guaranteed regardless of the fluctuations of the market place, that is a much better place to be, given the circumstances" (Mark Zigler Nov 28, 2013 ~ 45:00+ 0:18)

The issue of egregiously understated transfer values

27. Class Counsel appears to have considered the issue of egregiously understated transfer values to be outside its scope of responsibilities regarding the financial interests of class members.

> "Regrettably ... because of how interest rates went from 2005 to 2012, surpluses were created if you took a commuted value because you got a lesser amount tied to 2005 interest rates and not 2012 interest rates." (Mark Zigler Dec 2, 2013 - 8:29) - [Mr. Zigler was speaking in general but seems to be thinking of an illustrative case that is somewhat the exception where someone was prompted again in 2012 to elect a transfer value rather that addressing the broader circumstances of the 2011 and 2013 portability option periods]
>
> "There (are) some people trying to recalculate the commuted values. I don't know why because it will only reduce the surplus otherwise available. Unfortunately there has been a lot of game playing that has been going on here in terms of trying to get the court to approve or not approve. I respect people's ability to come before the court to state their position but if they are trying to change the way the regulatory pension system works in this province, this is not the place to do it and it should not be at the expense of over 5,000 people who are interested in bringing an end to litigation" (Mark Zigler Dec 2 - 26:36)
>
> "Somebody said: 'I pulled my pension out in 2012 to invest on my own in a locked-in plan, did I get ripped off and can I do anything now?'. We don't give anybody investment advice. ... What it does do is increase your surplus share and that of everybody else." (Mark Zigler Dec 2 - 28:34)
>
> "Some people say, isn't that unfair (i.e. the below-market transfer values), and the answer to that is, whether it is or isn't, it is the law of Ontario. The Ontario Pension Benefits Act requires that you calculate commuted values as at the partial windup date but pay them out as at the effective date of the approval of the election" (Mark Zigler Nov 28 ~ 45:00+8:49)

28. Class Counsel, however, appears to be misunderstanding or disregarding a number of important considerations: a) the PBA regulation section 29(2) apparently deals only with calculating a "minimum" transfer value that would be largely irrelevant under the declining interest rate environment that has been experienced over the last ten years, b) prescribed actuarial standards apparently identify that transfer values are to be calculated using assumptions current

at the time that the transfer value options are made available to plan members, c) the options were made available in 2011 and 2013 and were not made available at the declared partial windup date nor at the time of termination and most importantly d) the basic purpose and intent of transfer values. These very serious issues have been addressed to Canada Life, Mercer and FSCO representatives, with copies to the various parties, and neither the FSCO representatives nor any of the parties have as yet responded in any substantive manner. [also item 3 in Mark Zigler's Nov. 18, 2013 letter to Fred Taggart, page 309 in Dec. 23, 2013 Supplementary Motion filing by Class Counsel] [Dan Anderson, Dec. 19, 2013 Compendium pages 50-54, 31-40 and 60-70].

29. In addition to the above referenced correspondence with FSCO representatives and others, the following commentary (reflecting a certain degree of frustration on my part with what seems FSCO's dismissive approach to these serious issues) was provided as part of a widely distributed January 3, 2014 email to FSCO representatives with copies to the parties in this action:

> "It would seem there are numerous qualifications that should be included in the transfer value "approval" from FSCO, including the following:
>
> a) FSCO currently does not really have an effective role with regards to determining whether actual transfer values are "appropriate" particularly in the case of a pension plan with surplus. Someone at FSCO might opine on whether some assumptions were current as at some point in time in the past, but under current economic circumstances such considerations are essentially unrelated to the point in time when the actual individual transfer values would be determined and made available for purposes of transferring the funds,
>
> b) FSCO representatives have not sorted out the contradictions between: i) current FSCO interpretations of FSCO policies, and ii) allowing a plan sponsor to anti-select against plan members by delaying for many years, during a period of declining interest rates, the identification to class members of the class members' transfer values, under current market conditions, and providing those class members with the opportunity to transfer the funds.

c) For historical reasons that would have been more applicable to periods of increasing interest rates, FSCO only defines a "minimum" commuted value as at a point in time and may have some arbitrary rules as to how that 'minimum' might be adjusted forward as a benchmark to a future point in time. Under the declining interest rate environment we have experienced over the last ten years, however, the FSCO-specified minimum transfer values would be redundantly irrelevant relative to the minimum transfer values as determined by prescribed actuarial standards applicable to the 2011 and 2013 election periods.

d) FSCO acknowledges that the PBA requires transfer values to be calculated in accordance with actuarial standards, but does not appear to have any rules or procedures to determine whether the transfer values offered to plan members in 2011 and 2013 have in fact been calculated in accordance with the applicable actuarial standards. In any case, that would apparently not be considered FSCO's role but the role of the pension fund actuaries and it is apparently not the role of FSCO to advise pension actuaries on accepted actuarial practice. It would seem FSCO's only current concern would be whether the transfer values would be less than the largely irrelevant FSCO minimum, at least in the context of a pension fund with a surplus.

e) FSCO may at some point want to determine a minimum transfer value as at the effective windup date for individuals selecting a transfer value, but the FSCO rules have not as yet sorted out the confusion between effective windup dates for purposes of transfer values and the effective windup date for purposes of determining distributable surplus.

f) The FSCO pension area's primary focus (and that of the plan sponsors) would seem to be on the ongoing pension plans and to some extent may not currently care two hoots about the financial interest of plan members who seek to transfer to another registered vehicle,

g) FSCO should caution plan sponsors and pension actuaries (and the Court) to not misinterpret what seems to be FSCO's relatively irrelevant role regarding the issue of determining appropriate transfer values."

Apparent misrepresentation regarding PWU investment policy, etc.

30. In my view, the various communications by Canada Life and Plaintiff representatives have repeatedly failed to appropriately disclose the specifics and the implications of Canada Life's speculative investment policy for the PWU fund, and statements continue to be made that appear to misrepresent those facts; including recent statements such as the following:

> "Although the value of the assets in the pension plan increased because they had been partially what we call 'immunized' in a number of long-term bonds but also some other fixed-income investments, it wasn't enough to offset the increases in the liabilities." (Mark Zigler Dec 2, 2013 - 16:40)
>
> "I've been doing this for certainly well over 25 years of surplus cases, never have we seen this kind of a drop in surplus. No one could have predicted it." (Mark Zigler Dec 2 - 10:15)

31. The issue of misrepresentations on the PWU investment policy is a subset of the identified concerns about misrepresentations to class members, as noted on pages 72-77 in the accompanying December 19, 2013 Compendium for the January 10 2014 hearing, in reference to the notice letter that was mailed to class members November 6, 2013 (apparently not mailed in October as implied by the Alex Harvey and Jonathan Foreman affidavits).

Arguing there are no reasonable alternatives to the proposed amendment

32. The following would be other Canada Life and Class Counsel arguments that focus on more aggressive persuasion in the form of assertions (once again) that there would be no reasonable alternative to accepting the proposed amendment ... focusing on class members' fears of uncertainty and proposing unwarranted alternatives such as scrapping the original SSA, while seeking to put a burden of responsibility on the Court:

> (You can oppose the proposed settlement and by doing so) "(blow apart) this whole settlement which is your other option, litigate surplus ownership on a much smaller surplus amount and re-litigate the plan expenses issue, play that game of Russian roulette with the money of the class, you can put that provision to the Court, the Class Plaintiffs have said no" (Mark Zigler Nov 28, 2013 ~ 45:00+0.11, including recollection of lead-in)
>
> "The Alternatives. ... I am advised by my counsel ... it is arguable that the SSA is incapable of implementation ... on that basis, the Representative Plaintiffs could seek to set aside the SSA by having a court declare that it is frustrated. If we were to be successful in doing this, we would be left with no settlement agreement ..." (Alex Harvey Nov.27, 2013 affidavit, paragraph 57) ... notably "frustration of purpose" occurs when

> events are "unforeseen" or "no one could have predicted", which would not seem applicable to the circumstances of this case.
>
> "The Alternatives. I understand that Canada Life takes the position that the SSA is (unilaterally) enforceable (by Canada Life)" (Alex Harvey Nov.27, 2013 affidavit, paragraph 57), implying that it is a credible scenario that Canada Life can unilaterally crystallize the surplus as at August 31, 2012 and proceed without regard to the issues of nondisclosures regarding the drop in surplus and the effect of Canada Life's investment policy (and the issue of transfer values).

33. Jonathan Foreman's Nov. 27, 2013 affidavit paragraph 28 also seems to provide a similar bleak description of the alternatives in going forward.

Class Counsel Fees - "shared pain"

34. I support the objective of Class Counsel being fairly compensated for their time and effort, but my impression is that Class Counsel is overselling the notion of "shared pain" or that such perceived "shared pain" is a compelling reason for Justice Perell to ignore issues such as the injustice in the transfer values and the various surplus-related issues.

35. As per Jonathan Foreman's November 27, 2013 affidavit paragraph 26, under the current proposal it appears that Class Counsel would still be expected to receive full payment to cover all their legal fees from the start of the litigation through to the foreseeable future at an average charged rate of approximately $400 an hour, plus receive an additional 50% multiplier bonus on top of those legal fees (some of which might be interest, but since interest is consistently ignored for the surplus comparisons, it may as well be ignored here as well).

36. That understanding contrasts somewhat starkly with the perspective presented in Alex Harvey's Nov. 27, 2013 affidavit paragraph 52 and is presented in Class Counsel's webinar presentation (page 136 of Plaintiff's Nov 29, 2013 Motion Record) that Class Counsel was in effect working for free after January 2012. That understanding would seem to be misleading to the lay person because of the role of the class action multiplier factor. In other words it seems

more balanced to have an understanding that what in hindsight, as a result of subsequent developments, had turned out to be an inappropriately bloated multiplier factor of 2.5, was now being reduced, rather than presume there is really a basic loss of legal fees and working for free.

37. On the other hand, if Class Counsel (with the help of other counsel) secures a significantly improved level of surplus payout in the future, that would seem to warrant some improvement to Class Counsel's multiplier factor at that point in time, in addition to all fees.

Additional Considerations

38. The Sept 27, 2013 appeal intervenor factum that I submitted to the Court of Appeal (separate from the intervenor factum submitted by Mr. Mazurek on behalf of his clients) was primarily prepared to provide a response to the parties' numerous meritless assertions that the Motions Judge had erred in his March 28, 2013 decision, and to respond to their apparent intention to re-argue the full hearing. The appeal intervenor factum also more fully addressed key related issues regarding this case. Prior to the March 18, 2013 hearing there had been only one week available to address Class Counsel's March 11, 2013 motion filing for the March 18 fairness hearing, so more time subsequently became available to address the issues.

39. For purposes of the January 10, 2014 fairness hearing, however, some of the considerations in the appeal intervenor factums might at least temporarily be considered secondary to some of the issues addressed within this January 6, 2014 factum and so, rather than redundantly repeat the content of those sections within this factum, the following cross-reference is provided for optional reference to specific page and paragraph #s in that appeal intervenor factum that begins on page 81 in my December 19, 2013 Objector Compendium provided for this hearing.

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40. Further to the issues as addressed in this factum and in the above additional considerations, a relatively wide range of important additional related considerations seem to be addressed quite effectively in Fred Taggart's December 20, 2013 affidavit.

PART IV - NATURE OF FACTUM - Additional Details

41. **Background context -** March 18 Superior Court hearing. In addition to four other class members, I participated in the March 18, 2013 Superior Court fairness hearing before Justice Perell as a class member objector to address what appeared to be fundamental misrepresentations by both main parties (e.g. the primary reasons for the drop in surplus and whether the surplus was 'gone' for good), and to also propose an alternative resolution supported almost unanimously by the results of an on-line petition by 100 PWU class members during the one week period following Class Counsel's March 11 2013 filing of their motion documents for the March 18 hearing. After the Court's March 28 decision rejecting the proposed agreement by Canada Life and Class Counsel, Canada Life appealed, with the support of Class Counsel.

42. Background context - October 9 appeal hearing (cancelled). On August 6, 2013 I provided the parties and the Court with a draft appeal-intervenor factum for purposes of the October 9 appeal hearing. On September 20 Justice Hoy of the Ontario Court of Appeal overruled Canada Life's objections and approved my motion to intervene as an unrepresented objector class member, in addition to the unopposed intervention by legal representative Mr. Mazurek. Mr. Mazurek and I each submitted a final appeal intervenor factum as required by September 27, 2013. On October 2, the Court was advised that Canada Life was going to abandon their appeal and, along with Class Counsel, present a different proposal to Justice Perell in Superior Court.

43. **Objector class member.** As a non-PWU retired pensioner my own focus has been, on a strictly volunteer basis, to try to assist the Courts and the parties to resolve some apparent misunderstandings or misrepresentations and thereby help to arrive at a reasonably fair settlement for CLA class members, many of whom would be former co-workers. I have communicated extensively with the parties, and continue to provide extensive related communications to perhaps 300-400 class members via an informal "Canadalifers" yahoo discussion/email group.

44. My prior work as an employee of Canada Life included professional responsibility for the valuation of all the Canada Life Group Pension liabilities, including responsibility for developing the asset and liability cash flow duration mismatch analysis for the $5.2 billion of Canadian and US insured annuity and GIC liabilities. Further details were provided as part of the documentation provided for the March 18, 2013 hearing [as per Canada Life's May 24, 2013 Appeal Exhibits pages 456, 543-544, 529-553, 511-521 that are not part of this hearing's motion record].

45. Disclaimer. Because of largely unrelated but interdependent changes that Canada Life proposed in order to secure complete control over the surplus in Canada Life's ongoing pension plan (as distinct from the PWU fund), as a deferred/retired pensioner in the ongoing pension plan I and other ongoing pensioners had been assigned a pre-defined percentage entitlement to the distributable PWU surplus as part of the original surplus sharing agreement, but I am not advocating before the Courts on the basis of my own personal self-interest, nor do I profess to be before the Court as an expert on anything, nor do I represent any professional body or other class members.

PART V – COSTS

46. In the context of this class member objector factum and the fairness hearing, my understanding is that there are no costs that would be awarded for or against.

PART VI – REQUESTS / RECOMMENDATIONS TO THE COURT

47. Hopefully there will be an opportunity to address the Court January 10, 2014 in order to possibly provide some response to the oral submissions by the various parties January 10, and the factums that they are expected to submit on January 6, 2014.

48. ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 6th day of January, 2014.

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Dan Anderson, January 6, 2014

Unrepresented Objector Class Member

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

ONTARIO
SUPERIOR COURT JUSTICE

Proceeding commenced at TORONTO

Proceeding under the Class Proceedings Act 1992

CLASS MEMBER OBJECTOR FACTUM

(Fairness Hearing January 10, 2014)

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