

**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

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

January 6, 2014

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THE CANADA LIFE ASSURANCE COMPANY,
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(SECOND) AFFIDAVIT OF DESI SKOKLEVA

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

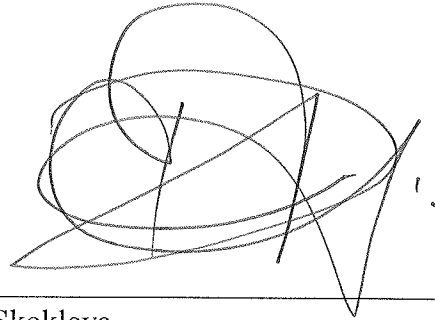
1. I am a legal assistant at the law firm of Koskie Minsky LLP and as such I have knowledge of the matters to which I hereinafter depose, except where the facts stated are based on information and belief, in which case I believe the information to be true. This affidavit is sworn in conjunction with and further to my affidavit sworn on December 23, 2013.
2. In my December 23, 2013 affidavit I attached as exhibits documents received from persons who identified themselves as “objectors” in response to the Notice of Settlement hearing. One of the objections consisted of three affidavits (and supporting documents) filed on behalf of a group of 92 persons represented by Patrick Mazurek.
3. The list of persons represented by Mr. Mazurek has changed over time. I am advised by Clio Godkewitsch and do verily believe that Class Counsel received correspondence from two class members, Maggie Wong and Monica Rimler, that Class Counsel mistakenly believed were represented by Mr. Mazurek. As a result, their objections were not included with my prior affidavit.

- 4. Attached to this affidavit at Exhibit "A" are true copies of the objections from Maggie Wong and Monica Rimler.
- 5. Class counsel has not received any other written objections from Class Members.
- 6. I make this affidavit in conjunction with the motion to approve the Revised Amendment to the Surplus Sharing Agreement and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, on January 6, 2014.



A Commissioner for taking affidavits



Desi Skokleva

This is Exhibit ^{"A"} referred to in the
 affidavit of Desi Stokewa
 sworn before me, this 6th
 day of January 2014
Gold

 A COMMISSIONER FOR TAKING AFFIDAVITS

Nicolas Roux

From: maggy wong <maggywong88@yahoo.ca>
Sent: November-21-13 6:12 PM
To: Canada Life Main Pension Class Action; monica r
Cc: Dan Anderson
Subject: Our voice for the Courts

Categories: Red Category

Dear Koskie Minsky, Via Email: canadalifecclass@koskieminsky.com and attached letter

Further to your recent communication letter dated November 7th, 2013, titled "*Notice to Class Members Concerning the Class Proceeding in respect of the Canada Life Canadian Employees Pension Plan ("the Plan")*", which announced the latest "Revised Amendment" (or #3) to the Surplus Sharing Agreement (SSA), we, as Class Members, have the following comments, concerns and questions:

From page 2:

"In order to arrive at a settlement which met the stated objectives, Canada Life was asked to pay amounts above and beyond the estimated existing Integration Partial Wind Up surplus." - We would like to ask how is Canada Life being asked to pay amounts above and beyond the "estimated existing IPWU surplus" without stating what that number is, when in fact, the only known existing (Court approved) surplus known to the Class, was close to \$62 millions, or 100% of the value that was calculated and given to us in the 2011 Personal Information Statement. At a revised 56% level payout, how is Canada Life being asked to pay amounts above and beyond that?

From page 3:

"If approval of the terms of the Revised Amendment is not granted by the Court, Canada Life will likely seek to enforce the original settlement approved by the Court which would result in the distribution of a much smaller amount of surplus to the Class Members." - Clearly you are not referring to the \$1,000 minimum for each person that Canada Life was proposing, so are you referring to the \$62 millions when the Court approved the settlement?

Also on page 3, we have found the statement "***The Revised Amendment requires Canada Life to pay real money towards a substantial recovery...***" a bit puzzling. Our question is, wasn't the \$62 millions "real money" when the Court approved the agreement? Or fake expectations/fake money for the Class Members?

Other comments, concerns and questions include:

- i) What we now realize in hindsight was the **grossly unfair** high interest rates basis (ranging from 4.50% to 6%), that was used in calculating our commuted values, when in fact, real interest rates were significantly lower when we were given the option to receive the commuted value. Moreover, weren't the "low interest rates" and difficult economic climate, the very reasons presented to us by Canada Life for the massive and incomprehensible depletion of the surplus because of an INCREASE in the value of the liabilities? Your latest letter emphasizes same, referring to the unprecedented economic crisis, and for us to recognize and respect those facts. Moreover, there has been no acknowledgement nor direct confirmation from the regulatory body (FSCO) that the high interest rates used for calculating our commuted values were considered appropriate. Should Canada Life not challenge the legitimacy of the high interest rates basis that was used for calculating the commuted values? We ask the Court to seek guidance from FSCO for a definitive answer, as the commuted values given in 2011 and 2013, would have been significantly lower amounts than they should have been because of the higher interest rate scenario mentioned above.
- ii) Since there has been no disclosure to the Class as to what the actual surplus stands at now; or how this new 56% level payout was derived, you can appreciate that it is **extremely difficult** for Class Members to have to "compromise" (again) on giving up 44% of our portion of the original surplus to Canada Life. While the revised figure is an improvement, it nevertheless represents a **very costly compromise**, especially for those with long employment histories with the company. This compromise suggests accepting a decreased value, albeit reasonable, however, receiving 44% less is **neither reasonable nor a 'fair outcome'**, which is what your latest communication letter has suggested it is. Another puzzling point, is how quickly this amendment #3 took place, as just in September/2013 we were still advised that the amendment #2 would likely be final, i.e.: the \$1,000 amount and we were told that was the best deal possible.

In order to consider any further compromise, we would like to have at least the opportunity to provide some input or suggestions. Thus, we would like to make the following suggestion for the Court to consider:

1. For the Class Members who do not wish to wait, allow them to elect their 56% payout portion now.
2. For the Class Members who are agreeable to wait, allow them to retain the rights to share in the re-emergence of the surplus together with Canada Life which shouldn't be difficult considering the proposed to amended payout level went from less than 1% (\$1,000 minimum to 56%) to at least 85% of the original settlement level, if not 100%.

We strongly feel that these suggestions would result in a **win-win** situation for both Class Members and Canada Life. We would also like to emphasize that as Class Members, our previous silence (as with thousands of class members), was due to the lack of understanding of the litigation process since there has been a serious lack of transparency and the forthcoming of information along with the sheer complexity of the case.

Silence in this case by the Class Members, has **not** meant the acceptance of anything, but rather sheer frustration and lack of clarity of the case, which you yourself have indicated in your last letter, as having been due to the "**difficult and unprecedented nature of the economic and other circumstances which have complicated the implementation**". To this day, the "other circumstances" have not been fully disclosed, yet we are asked to accept a payout or additional cut, which is 44% less than initially confirmed to us.

In closing here, as Class Members, we simply **cannot accept** this **unfair** Revised Amendment (#3), hence, we would very much like our above mentioned concerns be addressed and governed by the fairness of the Courts.

To this effect, could you please include our comments in the materials that you send to the Court so that other class members can see our comments. We also think it is important that you include the comments that Mr. Dan Anderson sent to you and FSCO with respect to some of these issues.

Sincerely,
Maggie Wong and Monica Rimler - Class Members

Nicolas Roux

From: maggy wong <maggywong88@yahoo.ca>
Sent: November-27-13 3:32 PM
To: Canada Life Main Pension Class Action; Clio M. Godkewitsch
Cc: monica.7a@lives.ca
Subject: Our voice for the Courts (additional questions and comments) - NO NEED TO RESPOND
Attachments: Responses to Ms Godkewitsch at Koskie Minsky Nov 27, 2013.pdf

Dear Ms. Godkewitsch, November 27, 2013
 Via email to cgodkewitsch@kmlaw.ca and canadalifeclasse@koskieminsky.com

Thank you for your November 26th response, but the following points still remain unclear to us:

- 1. "The amount of the IPWU Surplus as at August 12, 2012 is \$11.8 million, and as the Notice states, under the Revised Amendment CL will pay an additional sum of approximately \$11.3 million to top up everyone to 56%"** - What is still puzzling here, is why would the Plaintiffs have agreed to ignore the surplus build up after August, 2012, .i.e. why has it been locked-in as of this date? Have you obtained more recent estimates for that surplus?
- 2. "The Court did not "approve" the IPWU surplus amount and has no ability to do this."** But isn't it correct that, at the very least, the court did rely on that estimate to have arrived at the original settlement agreement? And why have Class Members not been told about Canada Life's investment policies and their effect on their surplus? Why are Class Members expected to suffer the consequences of questionable investment policies?
- 3. "We understand that Canada Life followed required regulatory procedure to offer this option to members, and that the bases for calculation was approved by FSCO."** - What exactly does "understand" mean? Given that there are serious concerns that FSCO may have approved an "unfair" commuted value basis, that should not have been approved in the first place, why would Class Counsel not challenge FSCO when the difference would be rather significant, especially for those with very long employment histories?
- 4. "CL would seek to implement the SSA with the IPWU Surplus of \$11.8 million, and no top-up payment by CL"** - Canada life may try to act unilaterally, but would the court not recognize that they may be in a poor position to do so given all that has taken place? Has Canada Life acted in good faith? If so, why have they not disclosed the reasons for the colossal drop in surplus; the existence and significance of their investment policy? Canada Life may even have misled the court on the current level of surplus when the court approved the original settlement agreement.
- 5. "Under the Revised Amendment, there is no uncertainty, you will get 56%."** - If we get what you're saying, then is this 56% "guaranteed" if the Courts approve it? Will the Courts then enforce it? And if the Courts do not approve it, then exactly what % will we be getting and what is the % relative to since the Courts did not approved the original IPWU as Canada Life now claims as per your response #2 above.
- 6. "Taking a commuted value was an option, not a mandatory requirement."** - Are class members who took a commuted value considered second-class members then? Considering the various ages of employees, wouldn't that 'option' have been more of a 'right' to do so?

In closing here, we would appreciate if you forward these following additional comments and concerns to the Courts and we would not mind sharing it with the rest of the Class. Thank you.

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Sincerely,

Maggie Wong and Monica Rimler – Class Members

DAVID KIDD, et al.
Plaintiffs

and

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

Court File No: 05-CV-287556CP

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SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

SECOND SUPPLEMENTARY MOTION

RECORD OF THE PLAINTIFFS

(Motion for Approval of Revised Amendment to SSA, returnable January 10,
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