

COURT OF APPEAL FOR ONTARIO

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

- and -

THE CANADA LIFE ASSURANCE COMPANY
Defendant (Appellant)

- and -

A.P. SYMONS, D. ALLEN LONEY and JAMES R. GRANT
Defendants (Respondents)

Proceeding under the Class Proceedings Act, 1992

OBJECTOR-INTERVENOR COMPENDIUM (CompDA)
September 27, 2013

Objector Class Member:
(unrepresented)
Dan Anderson
1284 Lewisham Drive
Mississauga, Ontario
L5J 3P7
905-823-4914
dan.anderson@sympatico.ca

**TO: ONTARIO APPEAL COURT JUSTICES reviewing this case
via John Kromkamp, Senior Legal Officer, Ontario Court of Appeal**

COPIES TO:

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9
Jeff Galway (LSUC #28423P)
jeff.galway@blakes.com
Tel: (416) 863-3859
Fax: (416) 863-2653

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

**HICKS MORLEY HAMILTON
STEWART STORIE LLP**

Toronto-Dominion Tower,
Mail Room 32nd Floor or
30th Floor, Box 371, TD Centre
Toronto, ON M5K 1K8
John C. Field (LSUC #23695F)
john-field@hicksmorley.com
Tel: (416) 864-7301 - direct
Tel: (416) 362-1011 - office
Fax: (416) 362-9680

Lawyers for the Defendants (Respondents)
A.P. Symons, D. Allen Loney, and James R.
Grant.

PATRICK MAZUREK

31 Prince Arthur Avenue
Toronto, ON M5R 1B2
416-646-1936 (ext148)
patrick@mazurek.ca
Lawyer for Objectors Anne
Carey and Jan Durst.

CLASS COUNSEL

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900
Toronto, ON M5H 3R3
Mark Zigler (LSUC #19757B)
mzigler@kmlaw.ca
Clio M. Godkewitsch (LSUC #45412G)
cgodkewitsch@kmlaw.ca
Tel: (416) 595-2090
Fax: (416) 977-3316

HARRISON PENZA LLP

450 Talbot Street, P.O. Box 3237
London, ON N6A 4K3
David B. Williams (LSUC # 21482V)
dwilliams@harrisonpenza.com
Jonathan Foreman (LSUC #45087H)
jforeman@harrisonpenza.com
Tel: (519) 679-9660
Fax: (519) 667-3362

Lawyers for the Plaintiffs (Respondents) David
Kidd, Alexander Harvey, Jean Paul Marentette,
Susan Henderson and Lin Yeomans.

SACK GOLDBLATT MITCHELL LLP

20 Dundas Street West
Suite 1100, Box 180
Toronto, ON M5G 2G8
Darrell Brown
dbrown@sgmlaw.com
Tel: (416) 979-4050
Fax: (416) 591-7333

Lawyers for the Plaintiffs (Respondents) Garry
C. Yip and Louie Nuspl

Ontario Court of Appeal - C56991
Kidd et al v. Canada Life et al
Objector-Intervenor Compendium (CompDA)
September 27, 2013

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Tab	Document	Location in Appeal Exhibit Book	CompDA Page No.
1	PWU Fund Investment Policy per Mercer valuation reports Dec 2008 & 2011	Exhibit Book II pg. 282, 283, 380	1 - 3
2	Form F - Decision Form - pages 1-3 Part of March 2011 Information Package sent to IPWU class members. (source: 2012-01-27 KM Record of Motion for Settlement Approval)	not present	4 - 5
3	Form D - Info. - pages 1, 10, 11 (Consents) Part of March 2011 Information Package sent to IPWU class members. (source: 2012-01-27 KM Record of Motion for Settlement Approval)	not present	6 - 8
4	Erroneous references to "Mercer Memorandum" and "most significant reasons cited by Mercer for drop in surplus " 2012-09-20 Anthony Guindon Affidavit	Exhibit Book I pg 46-49	9 - 12
5	Mercer PWU fund movement report 2008-2011 (illustrative)	Exhibit Book II pg 363	13
6	2012-04 Letter to Class Members re: surplus loss & immunized & "beyond control"	Exhibit Book I pg 115-116	14 - 15
7	2013-03-18 Supplementary Documentation (D Anderson)	Exhibit Book III pg 529-553 (extracts)	16 - 25
8	2012-09-24 Wallace Robinson Affidavit (Aug 2012 asset transfer) (source: 2012-09-27 Defendant's Motion Record)	not present	26 - 31
9	FSCO W100-233 - Policy for Partial Windups where Insured Annuities Not Purchased (source: 2012-09-27 Defendant's Motion Record)	not present	32 - 35
10	2012-09-21 - Canada Life (Linda Grieg) affidavit Concerns with assets to match liability duration. (source: 2012-09-27 Defendant's Motion Record)	not present	36 - 38

TAB 1

In addition to the assets shown above, there are \$859,000 in defined contribution account balances for the retained group and \$579,000 for the partial wind-up group who accrued benefits under the defined contribution provision of the plan during 1999. The resulting market value for the retained group is \$433,424,000, and for the partial wind-up group is \$300,899,000.

We have tested the pensions paid, the lump-sum refunds and the contributions for consistency with the membership data for the plan members who have received benefits or made contributions. The results of these tests were satisfactory.

Investment Policy

The plan administrator adopted a statement of investment policy and objectives effective March, 2008. This policy is intended to provide guidelines for the manager(s) as to the level of risk which is commensurate with the plan's investment objectives. A significant component of this investment policy is the asset mix.

At the same time, the assets allocated to the partial wind-up group were segmented from the assets of the ongoing portion of the Plan, and are being invested in accordance with the investment guidelines established for this portion of the Plan.

The constraints on the asset mix, and the actual asset mix as at December 31, 2008, are provided for information purposes:

Distribution of the Market Value of the Fund by Asset Class – Retained Group

	Investment Policy			Actual Asset Mix as at 31.12.2008
	Minimum	Target	Maximum	
Fixed Income				
▪ Cash and Short Term	0%	3%	10%	3%
▪ Canadian Bonds	20%	30%	40%	46%
▪ Real Return Bonds	0%	10%	20%	
▪ Total	35%	43%	50%	49%
Equity				
▪ Canadian Equities	15%	27%	35%	24%
▪ Foreign Equities	15%	30%	35%	27%
▪ Total	50%	57%	65%	51%
		100%		100%

Distribution of the Market Value of the Fund by Asset Class – Partial Wind-Up Group

	Investment Policy	Actual Asset Mix as at 31.12.2008
	Target	
Fixed Income		
" Cash and Short Term Bonds	60%	66%
" Canadian Bonds (incl. Real Return Bonds)	28%	25%
"	88%	91%
Equity		
" Canadian Equities	12%	9%
" Foreign Equities	0%	0%
" Total	12%	9%
	100%	100%

Performance of Fund Assets

The performance of fund assets, net of expenses, from January 1, 2006 to December 31, 2008 as per our calculations (which assume that the next cash flow occurred in the middle of each period, are shown below:

Rate of Return – Market Value of Plan Assets

	Gross	Net
2006	10.51%	10.06%
2007	0.67%	0.22%
2008 (Jan to Mar)	-1.64%	-1.68%
2008 (Apr to Dec)	Ongoing: -13.29%	Ongoing: -13.67%
	PWU: -1.23%	PWU: -1.57%

The average net return on the market value, net of expenses (including transaction fees and withholding taxes) for the ongoing group, since the last valuation at January 1, 2006 was -0.55% per year. This rate is less than the assumed investment return for the ongoing group of 5.25% by 5.80% per year.

REPORT ON THE ACTUARIAL VALUATION FOR FUNDING THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN
PURPOSES AS AT DECEMBER 31, 2011

Investment Policy

The plan administrator adopted a statement of investment policy and procedures. This policy is intended to provide guidelines for the manager(s) as to the level of risk which is commensurate with the Plan's investment objectives. A significant component of this investment policy is the asset mix.

The constraints on the asset mix and the actual asset mix at the valuation date are provided for information purposes:

Retained Group				
	Investment Policy			Actual Asset Mix as at December 31, 2011
	Minimum	Target	Maximum	
Fixed Income				
* Cash and Short Term Bonds	0%	3%	10%	3%
* Canadian Bonds	20%	30%	40%	31%
* Real Return Bonds	0%	10%	20%	10%
* Total	35%	43%	50%	44%
Equity				
* Canadian Equities	15%	27%	35%	26%
* Foreign Equities	15%	30%	35%	30%
* Total	50%	57%	65%	56%
		100%		100%

Partial Wind-Up Group		
	Investment Policy	Actual Asset Mix as at December 31, 2011
	Target	
Fixed Income		
* Cash and Short Term Bonds	60%	59%
* Canadian Bonds (Incl. Real Return Bonds)	28%	29%
* Total	88%	88%
Equity		
* Canadian Equities	12%	12%
* Foreign Equities	0%	0%
* Total	12%	12%
	100%	100%

TAB - 2

Decision Form

Your Personal Data

Name:	Integration PWUmember	Surplus Sharing	
Address:	4 Home Street	Group category:	Integration PWU Group
	City4 Postal4		
Company ID #:	50004		

Important:

Marriage breakdown: If there is a court order or domestic contract related to a separation or divorce from a spouse that affects your pension entitlements, your spouse/former spouse may be entitled to take part in the Settlement Proposal. Before completing and returning this Form, please contact the Canada Life Client Service Centre at 1-888-252-1847 for further information.

Check either "YES" or "NO". (Check one box only.)

☒ **YES, I am in favour of the Settlement Proposal.**

If you are voting "YES":

- ➔ Read Parts 1 and 2 in this document.
- ➔ Complete Part 3, the Signature Section.

☒ **NO, I am not in favour of the Settlement Proposal.**

If you are voting "NO":

- ➔ Complete Part 3, the Signature Section.

Signatories used in this document	
Canada Life	The Canada Life Assurance Company.
Information package	The package of documents mailed to eligible members in March, 2011 that included this Decision Form.
Members' Counsel	Koskie Minsky LLP and Harrison Pensa LLP.
Plan	<i>The Canada Life Canadian Employees Pension Plan</i> , Registration #0354563.
Settlement Proposal	The Settlement Proposal described in the information package. The complete details of the Settlement Proposal are set out in the Surplus Sharing Agreement.
Surplus Sharing Agreement	The legal document that contains the precise legal terms of the Settlement Proposal.

Part 1: Authorization and Retainer

By checking the "YES" box on page 1 of this Decision Form and by signing in the Signature Section at the end of this Form, I **Integration PWU** member instruct **Members' Counsel** to accept on my behalf the **Settlement Proposal** related to the **Plan** as set out and described in the **information package** dated March, 2011 (which accompanied this Form).

By checking the "YES" box on page 1 of this Decision Form, I also hereby retain Members' Counsel to do the following:

- to act as my lawyers in connection with drafting, negotiating, settling and implementing a **Surplus Sharing Agreement** with Canada Life setting out the final terms of the Settlement Proposal;
- to represent me in any proceeding before any body in connection with the Settlement Proposal;
- to receive formal notices on my behalf related to Canada Life's surplus withdrawal application or asset transfer application to any regulatory body and/or related to the partial wind-up of the Plan and/or related to any application to the courts or regulatory authorities in furtherance of the implementation of the Settlement Proposal;
- to consent to the payment of amounts from the Plan to Canada Life pursuant to the Settlement Proposal.
- to amend as necessary and sign the Surplus Sharing Agreement on my behalf, including any release, provided that the contents of the Surplus Sharing Agreement are substantially similar to the Settlement Proposal described in the information package.

I understand that I will not be charged directly for any fees of Members' Counsel, and that under the Settlement Proposal all such fees will be paid directly from the Plan surplus.

TAB - 3

A Detailed Description of What You Need to Know

Please read "Your Information and Instruction Guide" in this information package before reading this document.

Overview of the Settlement Proposal

This document explains a Proposal to settle the court proceedings involving *The Canada Life Canadian Employees Pension Plan* (the "Plan") and to share some financial benefits with you and with others who are entitled to participate in the Proposal (the eligible members).

All eligible members are being asked for their written consent to the Proposal. The Proposal can only proceed with court approval and approval from the applicable regulatory authorities. Court and regulatory approval will only be sought if the necessary levels of consent from you and other Plan members are received.

This document was prepared to help you make an informed decision so you can indicate whether or not you support the Proposal.

This document describes the groups that may benefit from the Proposal, the events that led up to it, the levels of consents necessary, what will happen if the Proposal succeeds, and your important next steps. It also includes a Questions and Answers (Q&As) section to anticipate some questions eligible members may ask. References to specific Q&As appear throughout this document.

Eligible Groups Under the Proposal

The Proposal includes the groups listed below. All groups make up the larger Surplus Sharing Group of eligible members. Your "Personal Information Statement" included in this information package (blue-bordered item E) indicates the group you belong to.

- Plan members included in the "Integration Partial Wind-Up (PWU)." These are members whose employment terminated following the 2003 acquisition of Canada Life by The Great-West Life Assurance Company (Great-West Life). (See Q&A #13 for more information.)

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Future Court Proceedings

So that the Proposal can proceed, several next steps are required in the court proceedings. These are explained under "Next Steps in the Process" starting on page 16.

Member Consents Required

The surplus payments and other benefits will not occur without sufficient member consents. Court and regulatory approvals are also required. The member consents requested are different for the Non-PWU Group than for the PWU Group.

Consents Required from the Non-PWU Group

Those members of the Non-PWU Group who are still entitled to pension benefits under the Plan will be asked to consent to their transfer to the New Plan (described on page 9) and also to the variation of trust (described on page 9).

Note that Canada Life can and may require some of the consenting active members to remain behind in the Plan and not transfer to the New Plan. If this occurs, any consenting active Plan members who remain in the Plan will still participate in the Proposal.

In order for the Proposal to proceed, the following minimum levels of consent (thresholds) *must* be obtained:

- At least 90% of those members of the Non-PWU Group who remain entitled to pension benefits under the Plan must consent to transfer to the New Plan (and also consent to the variation of trust). This 90% is not measured person-by-person; instead, the threshold will be measured based on the *value* of each member's pension benefits under the Plan. In order to reach the necessary threshold, the number of members of the Non-PWU Group who consent must represent at least 90% of the *value* of the pension benefits of all of the Non-PWU Group members who remain entitled to pension benefits under the Plan.
- In addition, two other thresholds must be met:
 - No more than 5% of the members of the *entire* Non-PWU Group (not just those who remain entitled to pension benefits under the Plan), also measured by the value of their pension benefits, can opt out, and
 - No more than 2.5% of the members of the *entire* Non-PWU, measured person-by-person, can opt out.

(See Q&A #14 for an example of how the thresholds will be applied.)

Under the Settlement Proposal, the required number of member consents must be obtained or the Proposal may *not* proceed, in which case eligible members will not receive the financial benefits described in this information package. Canada Life has the right to waive any of the consent requirements in its discretion, which means that it can permit the Proposal to proceed even if one or more of the consent requirements are not met. However, since Canada Life is not obligated to grant any such waiver, all eligible members are encouraged to show their support for the Proposal, and ensure that it does proceed, by sending in the necessary forms.

Meaning of "Opt Out"

Any member of the Class who "opts out" of the court proceedings will not be bound by further orders of the Court, but they will not participate in the Settlement Proposal and will not receive any share of surplus under the Proposal.

See the questions under "Understanding Consent and Opting Out" on pages 24-28 for more information.

Some members of the Non-PWU Group who remain entitled to pension benefits under the Plan will have to obtain consent to the variation of trust from other individuals (such as their spouse), in order for the member to participate in the Proposal. (See Q&A #16 for more information.)

If the Proposal proceeds, those members of the Non-PWU Group who remain entitled to pension benefits under the Plan who *do not* consent to transfer to the New Plan will stay behind in the Plan and will not receive any surplus. Also, any member of the Non-PWU Group (not just those who remain entitled to pension benefits under the Plan) who opts out will not receive any surplus.

Members of the Non-PWU Group who are no longer entitled to pension benefits under the Plan will be asked to consent to the Proposal (although they need not consent to transfer to the New Plan or consent to the variation of trust). If they do not consent to the Proposal, they will not receive any surplus.

Consents Required from the PWU Group

Members of the PWU Group (that is, members affected by the Integration PWU, the Indago PWU, the Adason PWU or the Pelican PWU) will be asked to consent to the Settlement Proposal (thus providing their consent to the withdrawal of a portion of the surplus from the Plan by Canada Life). Such consents are required under the Ontario *Pension Benefits Act*, as well as the laws of certain other provinces.

In order for the Proposal to proceed, the following minimum levels of consent (thresholds) *must* be obtained:

- Consent to the Proposal will be required from at least 75% of the members in each Partial Wind-Up before the Proposal can proceed. This threshold will be applied to each Partial Wind-Up separately. For example, 75% of the members affected by the Indago PWU must consent in order for the Proposal to proceed in respect of that Partial Wind-Up. Note that the settlement in respect of the Integration PWU can proceed even if the necessary level of consent for one or more of the Prior Partial Wind-Ups is not reached, but the reverse is not true (i.e., if the necessary level of consent is not obtained from the members affected by the Integration PWU, the Proposal will not proceed for any group).
- In addition, two other thresholds must be met:
 - No more than 5% of the members of the *entire* PWU Group, measured by the value of their pension benefits under the Plan, can opt out, and
 - No more than 2.5% of the *entire* PWU Group members, measured person-by-person, can opt out.

If the Proposal proceeds, members of the PWU Group who opt out will not receive surplus under the settlement; instead, a proportional share of surplus will be set aside for future determination regarding its distribution. (See Q&As #14 and #18 for more information.)

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

Defendant

AFFIDAVIT OF ANTHONY GUINDON
(sworn September 20, 2012)

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

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

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



- (a) A change in the interest rate and inflation assumptions in respect of the purchase of annuities; and,
 - (b) Higher than anticipated elections among Integration Partial Wind Up Sub Class members for an immediate or deferred annuity.
4. A copy of the February 23 email, along with the Mercer memorandum, is attached hereto as Exhibit “B.”

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

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

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

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

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

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

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

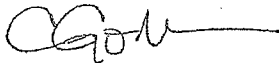
11. In an email dated September 12, 2012, legal counsel to Canada Life advised Class Counsel that as at August 31, 2012, the Integration Partial Wind Up surplus was estimated to be approximately \$3.1 million (net of expenses).

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

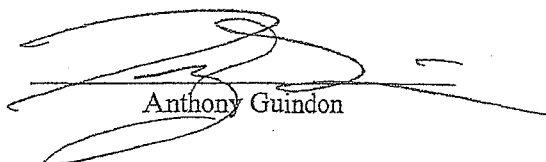
13. By letter dated September 13, 2012, Class Counsel advised Canada's Life legal counsel that the unilateral decision to transfer the assets and liabilities of the Integration Partial Wind Up members to the Plan is not contemplated by the SSA, and is in violation of the SSA and the Judgment. Class counsel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

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

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



Commissioner for Taking Affidavits



Anthony Guindon

TAB - 5

REPORT ON THE ACTUARIAL VALUATION FOR FUNDING PURPOSES AS AT DECEMBER 31, 2011 THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN

Partial Wind-Up Group		
Funding excess (shortfall) as at previous valuation		\$71,775,000
Interest on funding excess (funding shortfall) at 4.24% per year		\$9,522,000
Employer's special payments, with interest		\$0
Employer contribution drawn from excess		(\$32,000)
Expected funding excess (funding shortfall)		\$81,265,000
Net experience gains (losses)		
• Investment return	\$8,699,000	
• Post retirement indexation different than expected	\$780,000	
• Mortality	(\$601,000)	
• Retirement	\$566,000	
Total experience gains (losses)	\$9,444,000	\$9,444,000
Impact of changes in the estimated cost of purchasing annuities		(\$62,381,000)
Changes in assumption of member election between annuities and lump sum transfers due to aging		(\$4,904,000)
Impact of actual elections:		
• Members who elected commuted values	\$7,684,000	
• Members who elected, or were deemed to elect, an annuity purchase	(\$24,555,000)	
Total actual elections impact	(\$16,871,000)	(\$16,871,000)
Pending transfer from retained group's allocated assets		\$6,557,000
Increase in wind-up expense provision		(\$1,000,000)
Data corrections		(\$464,000)
Net impact of other elements of gains and losses		(\$354,000)
Funding excess (shortfall) as at current valuation		\$11,292,000

TAB - 6

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN (the "Plan")

IMPORTANT INFORMATION ABOUT THE CLASS PROCEEDINGS

NOTICE TO MEMBERS OF THE INTEGRATION PARTIAL WINDUP

From: David Kidd, Alex Harvey, and Jean-Paul Marentette, Plaintiffs; on notice to all parties

This announcement is approved by the Court and intended for all Members of the Integration Partial Wind Up Sub-Class included in the Canada Life Class Action Settlement, approved by the Ontario Superior Court of Justice by order dated January 27, 2012.

The purpose of this message is to provide an important update regarding the Settlement. Canada Life and Class Counsel have recently been informed by the external actuarial advisors to Canada Life that certain prevailing conditions in the financial and annuity markets, in concert with greater than assumed rates of election by Class Members of certain benefit settlement options, have adversely impacted the valuation of the Integration Partial Wind Up Surplus ("Integration PWU Surplus"). Specifically, the estimated value of the Integration PWU Surplus has decreased from an estimated \$54 million as of June 30, 2011 (net of projected expenses) to less than \$10 million as of December 31, 2011 (also net of expenses). An explanation of the principal factors leading to this decrease in the estimated Integration PWU Surplus is set out below.

Before reading any further, please be reassured that this decrease in the Integration PWU Surplus in no way affects your basic pension benefit entitlements under the Plan. The pension benefits that you have earned under the Plan, or the monthly benefits that you are currently receiving, are unaffected. Indexing of pensions under the Plan terms is also unaffected. This notice only relates to the Integration PWU Surplus and the financial benefits under the Canada Life Class Action Settlement.

Pension surplus is the excess value of the assets in a pension fund related to a pension plan over the value of the liabilities, both calculated in a manner prescribed by pension laws. The amount of the Integration PWU Surplus at any given time is actuarially determined under set guidelines and depends on a number of factors. Until all the basic benefits of the Integration PWU members have been settled (through a lump-sum transfer from the Plan or the purchase of an annuity), the surplus can only be estimated and may not be precisely determined. The actual amount of surplus may yet vary from the estimate based on the actual cost of purchasing annuities.

The decrease in the estimated Integration PWU Surplus over the six month period noted above is largely attributable to a change in prescribed actuarial assumptions arising from a drop in interest rates, which operate to significantly increase the cost of purchasing annuities. As interest rates decrease, the cost of buying annuities to satisfy the benefit entitlements of the PWU members increases appreciably. A secondary but also significant contributing factor is a higher take-up rate of the guaranteed pension option among members of the Integration PWU than what was assumed. The combined effect of low interest rates and the higher annuity take-up rate is to appreciably increase the cost of settling the basic benefits, hence reducing the amount of the estimated Integration PWU Surplus. We note that the Integration PWU assets were mostly

immunized, and there has been no decrease in the value of assets. In fact, the assets have increased in value, but not by an amount sufficient to offset the increase in liabilities.

The decline in interest rates is a function of the current economic climate. The result is that annuity rates are at historically low levels. While changes in the surplus were expected, levels this low were not anticipated at the time of entering into the Surplus Sharing Agreement.

The effect of this decrease in estimated surplus is that there is currently significantly less surplus than the amount used to calculate the surplus share estimates communicated in the Member Information Packages sent out in March, 2011. The surplus estimate in connection with the Integration PWU was always, however, a variable amount (dependent on factors such as interest rate movements and the actual versus estimated cost of purchasing annuities) and accordingly, the amount of surplus to be distributed on the distribution date was never guaranteed, nor could it have been guaranteed. This does not, however, impact your basic pension entitlement whatsoever.

The parties are working together, under the supervision of Justice Perell of the Ontario Superior Court of Justice, to consider options to address the current situation, including possibly delaying the purchase of the annuities for a limited period of time and hence delaying the distribution of surplus shares to Integration PWU and eligible inactive Plan members. While there is no guarantee, if the parties are able to reach agreement to delay the purchase of annuities for a fixed period of time, there is a chance that interest rates will rise during the delay period thereby, depending on other factors, potentially increasing the amount of surplus available for distribution under the Settlement. There is also a risk, however, that interest rates could decline further, and along with them the amount of Integration PWU Surplus available for distribution. We will keep you informed of any developments.

If you have any questions, please contact Representative Counsel, Koskie Minsky LLP, at 1-800-286-2266 or canadalife@class@kmlaw.ca

PLEASE DO NOT CALL JUSTICE PERELL OR THE ONTARIO SUPERIOR COURT OF JUSTICE

TAB - 7

Supplementary Documentation - DAA

Court Hearing

Refund-Rights Approach


Important Modification
for Proposed Amendments
to Original Settlement Agreement

March 18, 2013

Contents

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Signature of preparer of these documents:


18/March/2013

**PETITION CALLS FOR
MODIFYING THE PROPOSED AMENDED AGREEMENT
Presented at 2013-03-18 CLA Pension Surplus Court Hearing**

The attached petition started March 12, 2013 out of discussions in a Canadalifers email discussion forum in support of March 11 submissions (petition option 2 - Retained-Rights approach).

The plaintiffs and GWL representatives have had ongoing access to the online petition (and supporting rationale) to monitor it, and have received updated snapshots of the petition as it progressed,

The plaintiffs declined to use their email distribution list to inform class members of the petition and to provide a link to the petition.

Of those who have become aware and participated in the petition, primarily windup group members whom it would directly affect, there is almost unanimous support for modifying the agreement to incorporate the Retained-Rights approach, in the context of the supporting rationale and the advantages and disadvantages.

The Retained-Rights approach does not adversely affect other groups in the class, and does not adversely affect GWL relative to the original agreement.

Petitioners have indicated they do not support the approach of cancelling the original surplus sharing agreement and starting the entire litigation process all over again, but they simply want a reasonable and justified modification to the proposed amended agreement.

Also attached is some of the correspondence clarifying the context of the petition with petitioners and with GWL and plaintiff representatives.

This document last updated March 15, 2013 2:00pm DAA
Current version is accessible at: [LINK](#)

Canada Life Pension Surplus for Partial Windup Group

RETAINED-RIGHTS APPROACH

Contents

- A. March 11, 2013 submission for March 18 Court hearing
- B. Subsequent clarifications or revisions
- C. Additional Links
- D. Disadvantages of Retained-Rights Approach
- E. Advantages of Retained-Rights Approach

A. March 11, 2013 submission for March 18 Court hearing. Described below is a proposed modification for the proposed amended agreement of surplus sharing. The modification involves an approach that had been under discussion per the Canadalifers@yahoogroups.com discussion forum up to and including March 11, 2013 and submitted to class action legal counsel Koskie Minsky March 11, 2013 in advance of March 18, 2013 Court hearing on proposed amended surplus sharing agreement. *[The term "notionally" has been added to the title, consistent with the March 12 clarifications.]*

Retain Rights to Distributable Surplus, in *Notionally-Segregated* Windup Pension Fund

a) **Agreement on % share of surplus.** Stop the legal expenses and recognize that the main result of the legal action has been to establish an agreement on the proportionate share of the surplus in the windup group segregated fund (along with the effect of the proposed amendments). The settlement date, which could be as at Dec 2011 or Dec 2012 would be primarily for the purpose of finalizing those % shares.

b) **Continue to segregate the windup pension plan.** Because of the inappropriate investment mix that has been positioned to produce leveraged gains only when interest rates rise, the windup fund should continue to be segregated until there is a reasonable opportunity for the surplus to be restored (excluding of course any additional pension contributions that GWL might make ... which seems unlikely anyway),

c) **Individuals decide when to cash out their % share.** Rather than being forced to cash out your share of the surplus when things are so bad, individuals would retain their

Retained-Rights Approach

proportionate interest in the surplus as it rebuilds in the fund, and every year or every 3 years when the fund would be revalued anyway for ongoing reporting, individuals would have the option to take out their share of the surplus, with this option staying in effect subject to a mandatory payout after, say, 9 years (or longer) if no election was made prior to that point.

d) GWL gets to withdraw surplus only as individuals cash out their % share. CLA windup members would benefit from the fact that GWL also retains a financial interest in the surplus in the fund because GWL would only be able to remove a portion of that surplus as individuals remove their proportionate share of the surplus.

e) How can this approach be implemented without unnecessary complications and expense? The real value in this approach is individuals retaining the option of deciding when to cash out, and retaining that option for an extended period of time. The % shares of the distributable surplus would not have to change over time other than to recognize that distributable surplus would itself be proportionately smaller as others have taken out their share. There is no need to complicate the process by making an argument that individual % shares change as individuals age relative to their retirement date.

B. Subsequent clarifications or revisions.

1. March 12, 2013: **OPTION 2.** The above approach is identified as OPTION 2 in the petition being prepared by CLA class action members.
2. March 12, 2013 clarification: **Notionally-Segregated.** The ongoing segregation of the windup plan assets would only be for the purpose of financially tracking the financials (in particular the future build-up of distributable surplus), and it would not be a true segregation in the event of something like insolvency.
3. March 15, 2013. **"Retain-Rights" Approach.** For the sake of brevity, the above approach is also being described in various correspondence as the Retained-Rights approach.
4. March 15., 2013. Determining materiality for implementation purposes. An implementation of the Retained-Rights approach would likely consider a materiality limit on whether an individual would have the option of deciding in future when to cash out their share of distributable surplus
5. March 15, 2013. Including a draft summary in sections D and E for various advantages and disadvantages noted in prior communications.

Retained-Rights Approach

C. Additional Links

To request further clarifications of the intentions regarding the approach as described above, please post comments and questions at the discussion forum Canadalifers@vahoogroups.com

For the main rationale considerations regarding the above approach, see sections D and E (advantages and disadvantage) and the attached documentation provided for the March 18, 2013 Court hearing, and the related petition website:

1. Rationale for retained-rights approach (March 11 submissions):

A shortened quick-link: [retained-rights-rationale](#) , or:

<http://www3.sympatico.ca/dan.anderson/CLA-PEN-SURP/retaining-rights-windup-2013-03-11.pdf>

2. Fred Taggart's March 8 submission commentary:

<http://www3.sympatico.ca/dan.anderson/CLA-PEN-SURP/FT-2013-03-08.pdf>

(you may need to download to your computer for a better image)

3. Website for March 12-17 2013 Petition:

A shortened quick-link: [petition](#) , or (remove line-break):

<https://docs.google.com/spreadsheet/ccc?key=0ArIY5XwDDuKIdGw1TONLeFNHR1AOY0EOYXNhVmlfcHc&usp=sharing>

IF PROBLEMS ACCESSING PETITION ... first click on the following link (a Google Docs bug):

<https://accounts.google.com/logout>

4. Current version of this document:

<http://www3.sympatico.ca/dan.anderson/CLA-PEN-SURP/option-2.pdf>

D. Disadvantages of the Retained-Rights Approach

1. **Administration - surplus payouts.** There would be some basic administration costs with regards to advising members in future of the revised amount of distributable surplus to which they would be entitled, and processing their request if they decide to take their payment at that time. The company would try to minimize such costs, perhaps through access to a website with each member having a personal password.
2. **Administration - notional segregation.** There would be some bookkeeping costs associated with the notional segregation of the assets (and liabilities) for the purposes of tracking distributable surplus, although such an approach was already contemplated by the current draft amended agreement which provided for ongoing segregation up until Dec 2014 for purposes of tracking the distributable surplus.
3. **Uncertainty.** The amount of future distributable surplus is uncertain, as has been illustrated in the experience from 2006 to 2012.
4. **Frequency of option.** The option to cash out might be presented annually or less frequently, but that would be a negotiated item.
5. **Other?**

Retained-Rights Approach

E. Advantages of the Retained-Rights Approach

1. **Beneficial to both GWL and windup members.** Both GWL and the windup group members would have the potential/expected opportunity to withdraw a higher level of distributable surplus in future, more consistent with the original level of the partial windup surplus. Windup group members aware of this approach are advocating for its implementation (see petition).
2. **Legitimate / ethical option to extend to the windup group members.** When the windup was declared, windup group members were entitled to share in a total distributable surplus of over \$100 million, and the only issue at hand was what proportion of the surplus they would be entitled to. By the time a decision was made on their proportionate share, the estimated total distributable surplus had fallen to about \$50 million. Subsequently it has dropped to about \$3 million. The primary reason for the drop appears to be the plan's investment policy. The balance of the rationale regarding "legitimacy" is contained in the documents accessible by the links in section C.
3. **No adverse effect on other class members.** See the comments under "consistency with original agreement" and "consistency with proposed amended agreement".
4. **Consistency with original agreement.** The windup group members are not seeking to change the percentage of distributable surplus to which they would be entitled, nor does the retained-rights approach alter the amounts to which other class members are entitled. The retained-rights approach would allow all members the opportunity to receive exactly the same amount to which they would be entitled under the unmodified amended agreement, including those members in the windup group who decide they want to cash out their share of the surplus at the settlement date.
5. **Consistency with proposed amended agreement.** Except for the modification of allowing individuals the right to make a future decision on when to cash out their % share of distributable surplus (when hopefully distributable surplus has recovered from the current level), the retained-rights approach is consistent with the proposed amended agreement.
6. **Flexibility.** Windup group members can cash out their proportionate share as at the settlement date, or can defer the decision when to take their cash out.
7. **Administration - notional segregation.** The current draft amended agreement already anticipated an ongoing notional segregation of the assets and liabilities, but just for a shorter time period (until Dec 2014).
8. **Only notional segregation of assets.** In the unlikely event of insolvency, the combined assets of the partial windup pension group and the prior 'ongoing' pension group would be available collectively (although it is likely there would no longer be any further distributions of distributable surplus).
9. **Other ?**

Draft 2013-03-10

Partial Windup Group's Segregated Pension Fund Surplus

(\$ millions)

See commentary in notes below the summary.

- CLPENS split? -						
Start of Period	2006-12-31	2008-12-31	2011-06-30	2008-12-31	2011-12-31	2006-12-31
	2 years	2 yr, 6 mo	6 mo	3 years	8 months	5 yrs, 8 mo
Starting surplus	103.4	71.8	54.0	71.8	11.3	103.4
Revision to est. windup expenses:						
a) expense paid (*2)	0.0			0.0	0.0	0.0
b) revised est future pay't (*2)	-9.8			-10.8	-12.7	-12.7
c) deduct starting estimate (*2)	<u>2.8</u>			<u>9.8</u>	<u>10.8</u>	<u>2.8</u>
net change in est. expense	-7.0	0.0	-1.0	-1.0	-1.9	-9.9
Interest on surplus	15.8	7.9	1.6	9.5	0.2	25.5
Surplus transfers (*1)	0.0	0.0	6.1	6.1		6.1
Primary surplus changes						
- split? -						
1. Net MV changes (*3) to:						
a) MV adj liabilities	5.7	-11.2	-51.2	-62.4	-5.2	-61.9
b) MV adj supporting assets	<u>-23.3</u>	<u>7.3</u>	<u>1.5</u>	<u>8.7</u>	<u>0.0</u>	<u>-14.6</u>
Net MV adjustment >>	-17.6	-4.0	-49.8	-53.7	-5.2	-76.5
2. 'Gain' from individuals taking lump-sum payouts (*4):						
a) realized 'gain' on payouts	0.0			7.7	1.3	9.0
b) revised expected future gains	see *4				see *4	0.0
c) deduct prior expectation	<u>-25.4</u>			<u>-29.5</u>	<u>-3.1</u>	<u>-58.0</u>
Net 'gain' from payouts >>	-25.4	-21.8	0.0	-21.8	-1.8	-49.0
Balance	2.6	0.0	-0.9	0.4	0.0	3.0
Ending surplus	71.8	54.0	10.0	11.3	2.6	2.6
End of Period	2008-12-31	2011-06-30	2011-12-31	2011-12-31	2012-08-31	2012-08-31
Data Sources >>	pg 12 of 2008ye valn report (Sept 2009)		per surplus estimate in CLPENS~ letter (May 2012)	pg 12 of 2011 ye valn report (Sept 2012)	1. pg 5 of 2012-10-11 trnsfr report 2. Amy info 2012-10-09 (*5)	combined

*1 - the surplus transfers relate to revised surplus allocations, relative to the non-windup group, per various data changes regarding the original split of the liabilities between both groups.

*2 - The total cumulative windup expenses (also called settlement expenses) to be paid at time of the settlement for legal, administrative, actuarial and communications costs, including interest, increased from an expected value prior to 2006 YE of \$4.7 million (already deducted from the starting surplus) to an expected level as at Aug 31, 2012 of \$12.7 million. Apparently the current expected level as at March 2013 is \$13.7 million. This would be in addition to whatever expenses might have already been paid but not identified explicitly in the surplus movements?

*3 - MV (market value) changes would be expected here to generally net to zero, except to the extent that the investment policy took a gamble on either the equity markets (pre-2008) or (post-2008) invested in bonds that had an average remaining term significantly shorter than the average term of the liabilities, hoping for a net gain if interest rates increased but guaranteeing substantial leveraged market value losses (i.e. MV of liabilities would increase without a corresponding increase to the supporting assets) if interest rates fell, which is what happened.

*4a - Notably, the approach of a collective 'gain' from lump sum payouts seems unreasonable in the context of the windup allocations, although one could argue in this case that the other windup group members may not in fact have have profited from that windfall gain, to the extent that the fund management's investment policies have more than wiped out such potential 'gains'?

*4b - For this lump-sum (commuted values) category of profits, it is the net of these two numbers that matters here. To make it easier to tie back to the reports (and due to a lack of sufficient info) the numbers do not respectively represent the full revised amount of surplus from commuted value payouts and the full original expectation of such profits.

The following would be a more complete presentation of this item:

2. 'Gain' from individuals taking lump-sum payouts (*4):	2 years	2 yr, 6 mo	6 mo	3 years	8 months	5 yrs, 8 mo	
a) realized 'gain' on payouts	0.0			7.7	1.3	9.0	
b) revised expected future gains	32.6			3.1	0.0	0.0	*4
c) deduct prior expectation	<u>-58.0</u>			<u>-32.6</u>	<u>-3.1</u>	<u>-58.0</u>	*4
	-25.4	-20.8	-1.0	-21.8	-1.8	-49.0	

So it appears that there was an expected 'gain' of \$58 million as part of the surplus estimate, and the result was a gain of only \$9 million. A rather illusory notion of a questionable form of surplus.

*4c - The 8 month estimate (Dec 2011 to Aug 31 2012) for the adjustment to the 'gain' from individuals taking lump sum cashouts is apparently based on the 2012-10-09 memo noted above (i.e. the difference between the ending surpluses of 5.7 and 2.6), but might also be some conservatism in the overall estimated surplus provided by the negotiating team. Nevertheless, the figure has been used to estimate back to 2006YE what the estimated gain was expected to be from individuals taking lump sum payouts.

*5 - For the 8 months ending Aug 31, 2012 the surplus reconciliation in the 2012-10-11 transfer document seems inconsistent with (and misleading relative to) the approach taken in the prior years' valuation reports. For example, instead of identifying interest on surplus, it shows a much higher amount for interest on liabilities instead, which results in an apples and oranges comparison in the analysis. Also (in addition see the comments for *4c. The presentation also raises the question whether "interest on pending expense reimbursement" which is disclosed in this document is not disclosed in the the other surplus movements ??

**F.****KEY FOCUS QUESTION**

The following question was presented to the plaintiff's and their legal counsel, but would also be applicable to opposing counsel and clients.

During your negotiations ... did you have any knowledge of the duration structure of the bond holdings in the windup plan assets, relative to the duration structure of the liabilities, and were you aware that the primary reason for the huge drop in surplus was because the duration structure of the assets was dramatically shorter than the duration structure of the liabilities, which would guarantee huge losses if interest rates fell (but would generate correspondingly large increases to surpluses if / when interest rates increased) ?

It bears repeating that a binding contractual agreement was established/accepted by the Court's order January 2012, and the implementation of that agreement has apparently been frustrated by the pension plan investment policies overseen by opposing lawyers' clients and by the related financial information that appears to have been withheld by the clients until after the Courts adopted the original agreement.

M. Unrealized Losses - 'Illustration' (contin)

CLA owes Mary \$1,100 end of year one.

Market
Interest rates 10% (all durations)

Cash

Assets = Liabilities = \$1,000 start of year one.

Approach #1 - Immunize / Match

- Purchase one year asset (10%^{annual} interest) maturing \$1,100 end year one.
- Effect of subsequent^{market} interest rates NIL
on surplus

Approach #2 - Shorter Asset Duration

- Purchase 3-month asset (10% annualized) to reinvest after 3-months expecting interest rates to increase.
- Scenario:
 - one month later^{market} interest rates drop to 6%, but prior to reinvestment date recover to market interest rates of 9% or 10%.
- Effect on calculated surplus:
 - end of month one [unrealized loss]^{annualized}
 - > substantial loss assuming interest loss of 4% = 10% - 6% during months 4 to 12
 - end of month three
 - > no actual loss if rate 10%.
 - > smaller loss if rate 9%.
 - > actual loss depends on months 3-12.

TAB - 8

**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 WALLACE B. ROBINSON
(Sworn September 24, 2012)**

I, **WALLACE B. ROBINSON**, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

1. I am Assistant Vice-President, Pension Benefits, at The Canada Life Assurance Company ("Canada Life"). I am a Fellow – Canadian Institute of Actuaries and a Fellow – Society of Actuaries and I am familiar with The Canada Life Canadian Employees Pension Plan (the "Plan") and the proposed settlement of this proceeding. I therefore have knowledge of the matters to which I swear in this affidavit, except where such knowledge is stated to be based on information and belief, in which case I believe those facts to be true.

Estimate of the Integration Partial Wind Up Surplus

2. As of the date of the settlement approval motion in this matter (January 27, 2012), the most recent Mercer estimates of the surplus in the Plan attributable to the Integration partial wind up (the "Integration PWU") and the Indago, Adason and Pelican proposed partial wind ups (the "Indago PWU", "Adason PWU" and "Pelican PWU", respectively) was approximately \$64.3M (Integration PWU \$54M; Pelican PWU \$2.9M; Indago PWU \$1.3M and Adason PWU \$6.1M). These estimates were as at a point in time namely as at June 30, 2011.

3. Between June 30, 2011 and December 31, 2011, however, there were two external events which significantly impacted the estimate of the Integration PWU surplus causing a decrease in the estimated surplus. As discussed in a memorandum entitled "Canada Life Canadian Employees Pension Plan –Partial Wind-Up Surplus

Update" (attached to my affidavit as Exhibit "A"), the two biggest factors contributing to the decrease in the estimated surplus attributable to the Integration PWU between June 30, 2011 and December 31, 2011 were the dramatic and persistent drop in interest rates over the relevant period and the fact that significantly more Integration PWU members than expected elected (or were deemed to have elected) a guaranteed pension as opposed to transferring the commuted value of their pension entitlement out of the Plan.

4. Subsequent to the settlement approval motion, Canada Life was advised by Mercer that as at December 31, 2011 the estimated surplus attributable to the Integration PWU had decreased from approximately \$54M to approximately \$8M (assuming all Integration PWU members who had not yet chosen their payment option with respect to their basic benefits were deemed to have elected to receive a guaranteed pension).

5. The most recent estimate of the Integration PWU surplus provided by Mercer (as at August 31, 2012) is \$3.1M. The assumptions used to generate this estimate are contained in a report prepared by Mercer dated September 12, 2012. A copy of this report is attached to my affidavit as Exhibit "B" (see scenario 2 – page 5).

Transfer of Integration PWU Members to Ongoing Plan

6. In May of this year, acting upon Canada Life's direction, Mercer approached seven annuity providers and asked them to quote on providing annuities for the Integration PWU members who had elected (or were deemed to have elected) to receive a guaranteed pension. None of the seven annuity providers in question were prepared to quote on this business.

7. As plan administrator, Canada Life is required under the *Pensions Benefits Act* (Ontario) to settle the basic benefits of persons affected by a partial wind up. Given the fact that no insurer was prepared to quote on providing annuities, in order to complete the Integration PWU and in order to implement the settlement, Canada Life's only option is to settle basic benefits by transferring the assets and liabilities related to these Integration PWU members into the on-going portion of the Plan and pay the pensions for this group out of the Plan. This transfer would be done in accordance with Financial Services Commission of Ontario ("FSCO") policy W100-233 (a copy of which is attached hereto as Exhibit "C"). As discussed in this policy, FSCO's position is that plan administrators are not required to purchase annuities for members affected by a partial plan wind-up; instead, administrators can settle the basic benefits of affected partial wind-up members by transferring the assets and liabilities of those members to the on-going portion of the pension plan.

8. As discussed at page 3 of the FSCO policy, where annuities are purchased for partial wind-up members through an insurance company, the cost to settle the liabilities is known and the partial wind-up surplus or deficit is the amount left after the annuity purchase cost and plan wind-up expenses are deducted from the partial wind-up assets.

9. The FSCO policy goes on to note that where an administrator chooses not to purchase annuities for the partial wind up members, the transfer of assets and liabilities to the ongoing plan is based upon the estimated cost of purchasing annuities. This estimate is to be calculated based on guidance contained in Educational Notes published by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting (the "CIA Committee").
10. The estimated Integration PWU surplus of \$3.1M as at August 31, 2012 (referred to in paragraph 5 above) is based upon the estimated cost of purchasing annuities calculated in accordance with the CIA Committee's Educational Notes.
11. The amount of the pension payable to Integration PWU members will be the same whether their pension is provided by way of an annuity or is provided from the Plan.

Impending Change to the CIA Committee's Guidance on Estimating the Premium Cost of Indexed Annuities

12. In May of this year, in an Educational Note, the CIA Committee discussed its guidance in respect of estimating the cost of purchasing an indexed annuity. A copy of this note is attached hereto as Exhibit "D". In this note, the CIA Committee stated that while the data concerning the pricing of indexed annuities is extremely limited, information collected from insurers who provided illustrative quote data revealed that the premiums quoted were substantially higher than the estimated premiums calculated in accordance with the guidance provided by prior Educational Notes.
13. In this same Educational Note, the CIA Committee went on to state:
- The PPFRC intends to conduct further research in 2012 regarding the pricing of indexed annuities. The analysis will include confirmation as to whether the insurers would be willing to actually transact on the basis reflected in the illustrative annuity quotes. This research may result in the revision of future guidance for estimating the cost of purchasing indexed annuities.
14. In an Educational Note supplement dated August 16, 2012, the CIA Committee reiterated the point made in its earlier note that the illustrative premium quotes provided by insurers to the CIA Committee were substantially higher than the estimated premiums calculated in accordance with the guidance provided by prior Educational Notes, and that the Committee was in the process of conducting further research regarding the pricing of indexed annuities. The Committee again stated that this research may result in the revision of future guidance for estimating the cost of purchasing indexed annuities. A copy of the August 16, 2012 Educational Note supplement is attached hereto as Exhibit "E".

15. Based upon these Educational Notes, Canada Life is concerned that if there is a delay in transferring assets and liabilities related to the Integration PWU members to the ongoing Plan, the guidance provided by the CIA Committee that is used to estimate the cost of purchasing annuities may change in the interim. Given the CIA Committee's statements that the premium quotes provided by insurers for the illustrative quotes are "substantially higher" than the guidance provided by prior Educational Notes, any such change made to the CIA's Guidance will increase the estimated cost of purchasing indexed annuities.

16. By way of example, based upon the figures provided in the Mercer September 12, 2012 report (Exhibit "B" hereto), if the new CIA Committee's guidance resulted in a reduction of 50 bps (0.5%) in the net rate of return used to calculate the cost of purchasing indexed annuities, and had this new guidance been in effect as of August 31, 2012, then as at that date there would have been no Integration PWU surplus but an estimated Integration PWU deficit of approximately \$19.5M. For each additional 50 bps reduction in the net rate of return there would be a further increase in the estimated deficit of an additional \$22.5M. If a deficit arises in the Integration PWU prior to the transfer of Integration PWU assets and liabilities to the on-going Plan, that deficit will have to be funded in full by Canada Life prior to the transfer of the Integration PWU assets and liabilities to the on-going Plan.

17. I would note that if the Integration PWU assets and liabilities are transferred to the on-going Plan prior to any change in the CIA Committee's guidance, any subsequent change in the CIA Committee's guidance for indexed annuities could result in a solvency deficit arising in the on-going Plan (as the CIA Committee's guidance is also utilized by actuaries when they prepare an actuarial valuation). That said, any deficit that arises in respect of the on-going Plan as a result of a change in the CIA Committee's guidance would not have to be funded by Canada Life immediately, but could be funded over a five-year period starting from the date of the next actuarial valuation.

18. Given the likelihood (in my view) that there will be a change in the CIA Guidance which will lead to an increase (likely a significant increase) in the estimated cost of purchasing indexed annuities, there is some urgency in Canada Life effecting the transfer of Integration PWU assets and liabilities to the on-going plan prior to this change becoming effective so as to preserve some surplus for distribution to the Integration PWU members and to avoid the prospect of Canada Life having to fully fund a large Integration PWU deficit. In this regard, I note that changes in the CIA Committee's guidance can be announced with retroactive effect (as recently occurred when the CIA Committee changed its guidance with respect to estimating the cost of purchasing non-indexed annuities-see the August 16, 2012 Educational Note Supplement attached hereto as Exhibit "E").

Minimum Surplus Allocations Under the Surplus Sharing Agreement

19. At paragraphs 32-36 of his affidavit sworn September 20, 2012, Mr. Robertson speaks to the \$1000 minimum surplus allocation to Eligible PWU Group Members and Inactive Eligible Non-PWU Group Members. In his affidavit, Mr. Robertson indicates that Inactive Eligible Non-PWU members' share of available surplus based on Mercer's August 31, 2012 estimate would be insufficient to meet the minimum \$1000 payment under the SSA.

These statements by Mr. Robertson do not accurately reflect the terms of the SSA under which \$1.65M, not \$0.39M, would be allocated to Inactive Eligible Non-PWU Group Members based on the August 31, 2012 estimate.

20. Under the Surplus Sharing Agreement (the "SSA"), section 7(a) provides that the "Final Partial Wind Up Surplus" shall be shared 30.34%/69.66% between Canada Life and the Eligible PWU Group Members ("Eligible Member Group Surplus Share"). "Final Partial Wind Up Surplus" is defined in section 2(a)(iv) of the SSA to mean the aggregate (net of administrative and legal expenses) of the Integration PWU surplus, the Indago PWU surplus, the Adason PWU surplus and the Pelican PWU surplus.

21. Section 7(c) of the SSA goes on to provide that the Eligible Member Group Surplus Share shall be allocated as between Eligible PWU Group Members ("Eligible PWU Group Surplus Allocation") and the Inactive Eligible Non-PWU Group Members ("Inactive Eligible Non-PWU Group Surplus Allocation") on the following basis:

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

22. Section 7(c) of the SSA then states that the Eligible Non-PWU Group Surplus Allocation shall be allocated and distributed among individual Inactive Eligible Non-PWU Group Members in accordance with section 8 of the SSA. Section 8(d) of the SSA provides that the Inactive Eligible Non-PWU Group Surplus Allocation shall be allocated among the Inactive Eligible Non-PWU Group Members *pro rata* to their wind up liabilities, subject to a minimum allocation of \$1,000.

23. Accordingly, the surplus to be allocated to the Inactive Eligible Non-PWU Group members is 12.44% of the aggregate of the surplus allocable to each of the Integration PWU, Indago PWU, Adason PWU and Pelican PWU.

24. Based upon the Mercer September 12, 2012 report, the estimated surplus for each of the Integration PWU, Indago PWU, Adason PWU and Pelican PWU as at August 31, 2012 was as follows:


Integration PWU	\$3.1M
Indago PWU	1.1M
Adason PWU	6.2M
Pelican PWU	<u>2.9M</u>
	\$13.3M

25. Accordingly, based on the surplus estimates as at August 31, 2012 the Inactive Eligible Non-PWU Group Member surplus share under the SSA would have been 12.44% of \$13.3M or \$1.65M.

26. There are 1418 Inactive Non-PWU Group members. Not all of the 1418 Inactive Non-PWU Group members, however, are Inactive Eligible Non-PWU Group members (ie some of these individuals did not provide the requisite consent required under the SSA.) Even if the \$1.65M were distributed *pro rata* amongst the 1418 Inactive Non-PWU Group members, the result would be an individual surplus allocation of \$1,167 per Inactive Non-PWU Group member.

27. Given that section 7(d) of the SSA explicitly provides that for the Eligible PWU Group Members the Final Partial Wind Up Surplus is not to be shared as a common pool but allocated to each partial wind up, I agree with Mr. Robertson that based on the August 31, 2012 Mercer estimates, approximately \$1.77M in surplus would be allocated to the Integration PWU members resulting in an allocation of approximately \$825 per member.

SWORN BEFORE ME at the City of London,
in the Province of Ontario, on September 24,
2012.



Commissioner for Taking Affidavits



WALLACE B. ROBINSON

TAB - 9

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario



SECTION: Wind Up

INDEX NO.: W100-233

TITLE: **Distribution of Benefits on Partial Wind Up Where Immediate or Deferred Pensions are Not Purchased**

APPROVED BY: Superintendent of Financial Services

PUBLISHED: **FSCO** website (June 2010)

EFFECTIVE DATE: **March 10, 2010**

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fSCO.gov.on.ca. All pension policies can be accessed from the Pensions section of the website through the Pension Policies link.

Administrators of pension plans (administrators) are no longer required to purchase annuities for members affected by a partial wind up who are receiving pension payments, or who chose or were deemed to have chosen a deferred pension (Affected Group). However, administrators may still purchase annuities for the Affected Group, as provided under section 43 of the PBA, if it determines that it is prudent to do so.

This policy outlines a procedure for administrators to follow in the event that the administrator chooses not to purchase annuities for the Affected Group. This policy also provides guidance on the determination of the value of the liabilities for the Affected Group and the timing of the transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan. Unless specifically noted otherwise in this policy, the term "transfer" refers to the transfer of the assets and liabilities of the Affected Group.

Please note that this policy does not apply to members affected by the partial wind up who are eligible and have elected a transfer of the commuted value of the pension benefit out of the pension plan under section 42(1) of the PBA.

If administrators and their agents have questions about plan wind ups, they should refer to the PBA and Regulation. Additional information may also be obtained from other policies published by FSCO that deal with wind up issues. Policies are intended to clarify the interpretation of the PBA and Regulation in certain situations and to assist administrators and their agents in understanding the requirements of the PBA, Regulation and FSCO's practices so that full compliance can be achieved.

Background

The July 29, 2004 Supreme Court of Canada decision in respect of Monsanto Canada Inc. required the distribution of any surplus related to the wound up portion of the plan as part of the partial wind up process in order to complete the distribution of assets related to the partial wind up. In this process, the administrator was required to distribute all of the assets of the plan associated with the partial wind up. To satisfy that requirement, the Superintendent took the position that the purchase of annuities was necessary to settle the benefits that were payable to members, former members (including retired members) and other persons affected by the wind up who did not elect a transfer of the commuted value of their benefits. However, on December 2, 2009, the Financial Services Tribunal in a decision in respect of an Imperial Oil Limited pension plan held that administrators may satisfy the requirement to distribute plan assets related to the Affected Group's benefits on partial wind up by transferring the assets to the on-going portion of the plan and are not required to purchase annuities for this group.

Communicating the impact of the decision not to purchase annuities

In the event of a partial wind up, the plan administrator will need to make a decision as to whether or not to purchase annuities for some or all of the Affected Group. This decision must be communicated to FSCO and to all persons affected by the partial wind up.

If the administrator decides not to purchase some or all of the annuities, the administrator will be required to transfer the assets and liabilities in respect of the members of the Affected Group who chose to receive their pension benefits from the pension plan, to the on-going portion of the pension plan in order to complete the distribution of assets related to the partial wind up (Note: The transfer is said to be a notional transfer as the assets and liabilities of the Affected Group will simply remain in the plan).

FSCO will require the administrator to advise all persons affected by the partial wind up as to the impact on their pension benefit when a pension payment is being provided under the pension plan as opposed to it being provided through an annuity purchased from an insurance company. This information is to be included in the individual statement issued to all persons affected by the partial wind up (setting out the person's entitlement under the plan and the options available to those persons) as required under section 72(1) of the PBA and section 28(2) of the Regulation. The information being provided should clearly indicate that their pension benefits will be payable or continued to be payable from the pension plan and that any subsequent settlement will be subject to the terms of the plan and its funded status at that time.

Partial Windup Reports already Filed

In a situation where a partial wind up report has been filed with FSCO indicating that annuities are to be purchased for the Affected Group and the administrator subsequently decides not to purchase the annuities, the administrator is required to advise FSCO of the decision, revise the report to reflect the change and file the revised report with FSCO for review. Furthermore, **for those members who made elections based on the administrator's previous decision to purchase annuities, the administrator is required to provide a revised statement to the Affected Members who made an election to receive an immediate or deferred pension on the premise that annuities will be purchased for them.** The revised statement will include the information described above where annuities are not being purchased.

Basis for Determining the Value of Immediate and Deferred Pensions

Section 29(8) of the Regulation **does not permit the payment of commuted values or purchase of annuities until the partial wind up deficit, if any, has been fully funded** (except for a payment of the current value of any additional voluntary and/or required contributions made by the member employee prior to the wind up date). Where there is a partial wind up deficit as at the wind up date, section 31(2) of the Regulation requires additional funding over no more than 5 years annually in advance or funding by way of an immediate lump sum.

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Where annuities are purchased for the Affected Group through an insurance company, the cost to fully settle the liabilities is known and the wind up surplus or deficit is calculated as the difference between the assets allocated to the partial wind up group and the sum of the following:

- (a) commuted value entitlements (for eligible members who elect commuted value transfers under section 73(2) of the PBA),
- (b) any cash lump sum payment payable under sections 39(4), 50, 63(2), 63(3) and 63(4) of the PBA,
- (c) the annuity purchase premium paid to a life insurance company (for members who are eligible for and chose or were deemed to have chosen an immediate or a deferred pension), and
- (d) partial wind up expenses.

Where an administrator chooses not to purchase annuities for the Affected Group, the wind up surplus or deficit is calculated the same way as above except that, instead of an actual annuity purchase premium paid to a life insurance company, the value of the immediate and deferred pensions would be based on the applicable guidance from the Educational Notes published by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting for the purpose of estimating annuity premiums as at the date a determination is to be used.

Timing of Transfer of the Assets and Liabilities of the Affected Group

Where there is a deficit as at the partial wind up date, section 75 of the PBA and section 31 of the Regulation require additional contributions to be made into the pension fund by the plan sponsor to increase the level of the funded position of the wind up assets to 100%. Until this funding is complete (either by way of amortized payments over no more than 5 years or an immediate lump sum), the administrator is required to track the assets and liabilities relating to the partial wind up separate and apart from the assets and liabilities relating to the on-going portion of the pension plan. When there is no further amount to be funded under section 75 of the PBA, the transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan can occur once written confirmation from the actuary of full funding of the partial wind up is received by FSCO. FSCO will also require administrators to provide written confirmation to FSCO that the transfer of the assets and liabilities of Affected Group to the on-going portion of the pension plan has occurred. Confirmation about the transfer as set out above can be included in the annual reports required by section 32 of the Regulation, or can be provided in a separate letter addressed to the Superintendent.

In a situation where the sponsor of a pension plan is required to fund a partial wind up deficit and the financial position of the wound up portion of the pension fund after settlement of all benefits reveals there are assets remaining, the employer may apply for a refund of overpayment of contributions (under section 78(4) of the PBA) equal to an amount that is not in excess of the required payments made to fund the partial wind up deficit. If, after the refund of overpayment to the employer, there still remain assets then that amount may be distributed as surplus assets in accordance with the PBA and Regulation.

Where there is a surplus as at the partial wind up date and the financial position of the wound up portion of the pension fund after the wind up effective date shifts to a deficit position, the employer must pay the deficit in the manner and the times set out in section 31 of the Regulation. If the payment date is more than five years from the partial wind up date the payment must be paid in a lump sum payment. Once funding is complete, the transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan can occur provided that confirmation of full funding of the partial wind up is received by FSCO.

Where there is a surplus as at the wind up date, the transfer of the assets and liabilities of the Affected Group can occur prior to the completion of the surplus distribution. The form of surplus distribution may be a lump sum cash payment or an increase to pension benefits to members affected by the wind up. For more information regarding the distribution of surplus on partial wind up, see policies S900-901 ("Allocation of Surplus to Members, Former Members and Other Persons on Wind Up") and S900-910 ("Distribution of Surplus to Employer on Partial Wind Up").

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Tracking the pension benefits of the Affected Group

The notional split between the wound up and on-going portions of the pension plan must be maintained until all assets relating the partial wind up have been settled, including a surplus distribution, if any. That is, upon the (notional) transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan, the administrator must ensure that Affected Group receive the pension benefit they are entitled to (including any grow-in entitlement as provided for Ontario members, early retirement subsidies, etc.)

Completion of Partial Wind Up

The administrator must advise the Superintendent in writing once all assets have been distributed from the wound up portion of the pension plan. Once the Superintendent is advised of this distribution, the file on the partial wind up will be closed.

TAB - 10

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**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 LINDA GREIG
(Sworn September 21, 2012)**

I, **LINDA GREIG**, of the Town of Aurora in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am a Senior Associate at Mercer (Canada) Limited ("Mercer"). I have knowledge of the matters to which I swear in this affidavit, except where such knowledge is stated to be based on information or belief, in which case I believe those facts to be true.

Background

2. I have been employed by Mercer since 1988. I am a Certified Employee Benefits Specialist and hold a Life Insurance Agent license in the Province of Ontario. I am the annuity specialist consultant for Mercer clients in Ontario, consulting to our clients around the structuring, process and placement of group annuity purchases. Since 2006, I have also been the annuity placement consultant to Mercer consultants across Canada.

Solicitation of Annuity Quotations

3. Mercer provides actuarial consulting services to The Canada Life Assurance Company.

4. In connection with the 2005 partial wind up of The Canada Life Canadian Employees Pension Plan (the "Plan") (the "Integration PWU"), on or about May 14, 2012, Mercer sent request for bid packages to seven insurance companies, inviting each company to submit a quotation on providing annuities for those Integration PWU members who elected (or who were deemed to have elected) to receive an immediate or deferred pension.

5. The seven companies in question were Sun Life Financial, Desjardins Financial Security, Industrial Alliance, BMO Life Assurance Company of Canada, Manulife Financial, Standard Life and Canada Life. These are the seven largest group annuity providers in Canada.

6. Each of the seven companies received the same bid package. A copy of my cover letter to Sun Life Financial (excluding the individual member data included in each bid package) is attached hereto as Exhibit "A".

7. In my letters to the seven annuity providers, the Plan was not specifically identified and Canada Life was referred to as ABC Canada Ltd.

8. By June 12, 2012, Mercer had been advised by each of the seven annuity providers that they would not be submitting an annuity quote in respect of the Integration PWU. There were two principal reasons given as to why each company was not prepared to quote. The first relates to the large percentage of individuals in the Integration PWU group who are entitled to a deferred pension (as opposed to an immediate pension). Given the longer time horizon over which deferred annuity payments are paid, insurers prefer quoting on annuity business where the proportion of deferred members to immediate pensioners is low.

9. The second reason for not providing an annuity quote articulated by the majority of the annuity providers related to the complicated indexing feature of the Plan (described in detail starting at page 12 of my letter). The concern was this feature would make the underwriting extremely difficult.

10. Some of the other concerns articulated by the seven annuity providers, in terms of why they were not prepared to quote for this group, included the high liability value of the group, the administrative complexity of the Plan, and the difficulty in finding suitable assets to appropriately match the liability of this annuity obligation stream.

11. Given the reasons provided by these seven companies as to why they were not prepared to provide an annuity quote in connection with the Integration PWU members, I think it is very unlikely that any of these insurance companies (which are the companies generally willing to provide group annuity quotes), if approached again, would quote on providing annuities for this group.

Indexed Annuity Pricing

12. Based upon my experience, I fully expect that even if an annuity quote could be obtained from an annuity provider for indexed pensions, where the indexing is solely linked to changes in the level of the Consumer Price Index (CPI), that any quote obtained would be substantially higher than the estimate that is generated by the application of the applicable Educational Note on estimating the cost of purchasing annuities issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting (the "Committee"). In recent years, to the extent that Canadian annuity providers have been prepared to quote on providing indexed annuities, where the indexing is linked to CPI, these quotes have been substantially higher than the estimated cost of purchasing these same annuities as per the guidance from the Committee.

13. I am aware of a Mercer client who went to market in 2012 to obtain indexed annuity quotes for pensions where the indexing was linked to CPI. Mercer received quotes from two insurers on the 220 members in question. Based upon Mercer's actuarial calculations, the implied discount rate utilized by the annuity providers who submitted the quotes was approximately 165 to 184 basis points lower than the discount rate guidance provided in the Committee's Educational Notes to estimate the cost of buying an indexed annuity. In other words, the cost to the Mercer client to purchase these indexed annuities was substantially higher than the estimated cost to purchase the indexed annuities based on the Committee's guidance.

SWORN BEFORE ME at the City of Toronto
in the Province of Ontario, on September 21,
2012.



Commissioner for Taking Affidavits

Elliot Patterson Saccucci, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law,
Expires April 27, 2014.


LINDA GREIG

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

and

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

Court of Appeal File No. C56991

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at TORONTO

OBJECTOR-INTERVENOR (DA) FACTUM

Dan Anderson, Objector-Intervenor
(without legal representation)

Dan Anderson
1284 Lewisham Drive
Mississauga, Ontario
L5J 3P7
905-823-4914
dan.anderson@sympatico.ca

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

and

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

Court of Appeal File No. C56991

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Proceeding commenced at TORONTO

OBJECTOR-INTERVENOR COMPENDIUM

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(without legal representation)

Dan Anderson
1284 Lewisham Drive
Mississauga, Ontario
L5J 3P7
905-823-4914
dan.anderson@sympatico.ca