

May 1, 2015

[Endorsement attached to Motion Record]

Dennis Caponi v The Canada Life Assurance Company et al

- Mr. Zigler and Mr. Ptak for the class (P)
- Mr. Galway and Mr. Shapiro for the defendant Canada Life (D)
- Mr. Field for the defendant Trustees

Motion for Settlement approval and Counsel Fee approval. After more than seven years of litigation, including two mediations and lengthy negotiations, the parties have settled this class action and seek court approval. Class counsel also move for approval of their legal fees and for the payment of a \$10,000 honorarium for the representative plaintiff for his significant contribution to the progress and success of this action.

The proposed Settlement is approved.

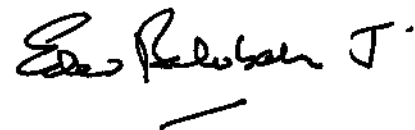
This class action concerns the partial wind-up of an unregistered supplemental pension plan administered by D and the payment of allegedly deficient commuted value lump sums to some 259 class members rather than the 'guaranteed' stream of retirement income. The Settlement provides that D will pay \$14.55 million. After all deductions, the class will receive just over \$10 million. This will result in a 27 to 28% increase in each class member's January 31, 2005 commuted value. The average individual payment will be \$37,000 but some class members with more significant losses will receive up to or just over \$600,000.

The range of overall loss as calculated by P and D's actuarial experts was between \$1.8 and \$19.2 million.¹ Given the many risks in proceeding to trial, as set out in the written submissions, the Settlement herein in the amount of \$14.55 million, in my view, is fair and reasonable. I have no difficulty concluding that the Settlement is in the best interests of the 257 class members (the original count was 259, but two persons have opted out.) The Settlement is approved.

The legal fees and the \$10,000 honorarium are approved.

Class counsel is seeking \$2.75 million in legal fees (which amounts to a *de facto* 19% contingency, well under the 33% maximum set out in the retainer agreement) plus taxes and disbursements. As I noted in *Cannon*, the more principled approach to class counsel legal fee approval is via contingency amounts rather than via multipliers. The *de facto* 19% contingency being claimed herein is easily approved. I am also satisfied, given the extensive participation of the representative plaintiff, that the payment of a \$10,000 honorarium is fully justified.

Orders to go as per the draft Orders signed today.



¹ There was one objector, Mr. Taggart, who attended court today to advise that he did not oppose the Settlement but suggested (without hard evidence) that the actual loss, given interest rates, was closer to \$30 Million. Even is this is so, the \$14.55 Million mid-point is well within the zone of reasonableness.