

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE LEDERER)

FRIDAY, THE 12TH
DAY OF SEPTEMBER, 2014

B E T W E E N:

JOHN GOODWIN, JAMES McMAHON and JAMES SPRAY

Applicants
(Moving Parties)

– and –

THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO, THE ONTARIO
SECONDARY SCHOOL TEACHERS' FEDERATION DISTRICT 17, THE EXECUTIVE OF
LOCAL 1310 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, THE ONTARIO
PUBLIC SERVICE EMPLOYEES UNION, and THE SIMCOE COUNTY DISTRICT
SCHOOL BOARD

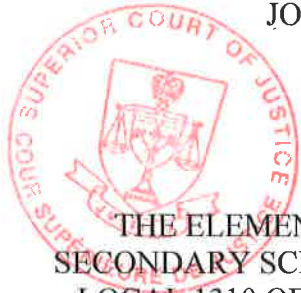
Respondents

**APPLICATION UNDER Rules 14.05(3)(a), (b) and (g) of the
Rules of Civil Procedure and section 60 of the *Trustee Act***

ORDER

THIS MOTION, made by the Applicants for advice and directions of the Court regarding the distribution of the share of the Demutualization Funds due to the Covered Employees in respect of the application for approval of a proposed distribution of demutualization funds held by the Simcoe County District School Board Insurance Trust (the “Demutualization Funds”) was heard this day in the presence of counsel for the Applicants and counsel for the Respondents, no-one opposing this motion.

ON READING the Notice of Motion dated September 2, 2014, the order of this Honourable Court issued on September 30, 2013 (the “September 2013 Order”), the Affidavit of James McMahon, sworn September 2, 2014, and the exhibits thereto (the “McMahon



Affidavit”), the Affidavit of John Goodwin, sworn September 11, 2013, and the exhibits thereto (the “2013 Goodwin Affidavit”), the Affidavit of Aislinn Reid, sworn September 25, 2013 (the “Reid Affidavit”), and on hearing the submissions made by counsel for the Applicants and the Respondents;

AND ON BEING ADVISED that all Parties support the proposed distribution of the Demutualization Funds and the Administrative Trustees are not aware of any opposition to the proposed distribution:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent that they are otherwise defined herein, terms in this Order shall have the meanings ascribed to them in the 2013 Goodwin Affidavit, the Reid Affidavit and the McMahon Affidavit.
2. **THIS COURT ORDERS** that subject to the provisions of this order and in particular paragraph 6 hereof, the distribution of the Covered Employee Share of the Demutualization Funds shall proceed pursuant to the terms of the Demutualization Funds Distribution Formula attached as a Schedule to the September 2013 Order and attached as Schedule “A” to this Order, and more particularly in accordance with the final list of eligible Covered Employees, setting out the final calculations of individual entitlements based on completed Notices of Entitlement, which was prepared following the process more particularly set out in the McMahon Affidavit.
3. **THIS COURT ORDERS** that the final list of eligible Covered Employees identifies the only eligible Covered Employees entitled to share in the distribution of the Covered Employee Share of the Demutualization Funds and no other Covered Employees are eligible to share in the distribution of the Covered Employee Share of the Demutualization Funds.

4. **THIS COURT ORDERS** the Administrative Trustees to pay to the Unions their respective shares of the Covered Employee Share of the Demutualization Funds for distribution to the Covered Employees who are represented by them.

5. **THIS COURT ORDERS** the Administrative Trustees to pay to Eckler the portion of the Covered Employee Share payable to Non-Represented Covered Employees, for distribution by Eckler to such Non-Represented Covered Employees.

6. **THIS COURT ORDERS** that, subject to the following conditions precedent, the distribution of the Covered Employee Share may take place:

- (a) the time for commencement of an appeal shall have passed, no one having commenced, or having indicated their intention to commence an appeal; and
- (b) the Applicants shall have obtained a tax clearance certificate from Canada Revenue Agency in respect of the distribution of the Demutualization Funds to the Covered Employees.

7. **THIS COURT ORDERS** that, if a Notice of Entitlement and Confirmation and Release was returned and indicates that the Covered Employee is deceased, his or her distribution shall be payable to his or her estate. However, if the executor or administrator of the deceased's estate (probated or otherwise) has instructed the Administrative Trustees to make payment directly to one or more of the estate beneficiaries, the Administrative Trustees shall make payment in accordance with such instructions.

8. **THIS COURT ORDERS** that if any cheques delivered to Covered Employees become stale-dated, the funds from any lapsed cheques will be added to the Trust, to be distributed as

part of the Second Distribution of the Insurance Trust Assets distribution authorized by the judgment of Justice Penny on January 27, 2010 in court file number 09-CV-383073. For greater certainty, cheques that become stale-dated, with such funds being returned to the Trust, will be considered to have been distributed for the purposes of this Order.

9. **THIS COURT ORDERS** that following the distribution of the Demutualization Funds in accordance with this Order, the parties may bring a motion before this Court seeking a release and discharge for the parties and their advisors, including the Actuaries, for acts or omissions with respect to the distribution of the Demutualization Funds. Such motion shall be made on notice to the parties to this proceeding, and a copy of the Notice of Motion shall also be posted on the website established pursuant to the Notice Program.

10. **THIS COURT ORDERS** that the reasonable fees and expenses incurred by the parties in connection with the distribution of the Demutualization Funds, as further particularized in the McMahon Affidavit, be paid out of the Demutualization Funds as follows:

- (a) The Administrative Trustees will first deduct their costs associated with the distribution of the Demutualization Funds from the Covered Employee Share (including the costs associated with the Notice Program, and the costs of preparing the distribution proposal, applying to Court to have the proposal approved, and implementing the distribution). For greater certainty, these costs shall include the Administrative Trustees legal costs, but shall not include the fees billed by the Administrative Trustees' counsel in respect of administration of distributions to deceased Covered Employees, or Non-Represented Covered Employees.

- (b) The Administrative Trustees will then allocate the balance of the Covered Employee Share of the Demutualization Funds between the Unions and the Non-Represented Covered Employees, in accordance with their proportionate shares, as approved in the September 2013 Order.
- (c) Thereafter, the fees and expenses associated with determining Union members' individual entitlements to the Demutualization Funds, including associated legal fees and expenses, in particular the development of the Demutualization Funds Distribution Formula and distribution of each of the Union's respective shares of the Demutualization Funds, shall be paid out of each of the Union's respective shares of the Demutualization Funds.
- (d) The fees and expenses associated with determining the individual entitlements of Non-Represented Covered Employees, including associated legal fees and expenses, shall be paid out of the Non-Represented Covered Employees' share of the Demutualization Funds.

11. **THIS COURT ORDERS** that after the fees are deducted from the Parties' shares in accordance with paragraph 11, individual entitlements will be calculated, and a distribution to individuals of their respective shares of the Demutualization Funds will be carried out along with any relevant Canada Revenue Agency documentation.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 14 2014

PER / PAR:



Justice Lederer

Schedule "A"

AGREEMENT REGARDING MUTUAL LIFE DEMUTUALIZATION PROCEEDS

BETWEEN

**THE ADMINISTRATIVE TRUSTEES FOR THE INSURANCE TRUSTEES OF THE
SIMCOE COUNTY BOARD OF EDUCATION**

and

**THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO, THE ONTARIO
SECONDARY SCHOOL TEACHERS' FEDERATION DISTRICT 17, THE EXECUTIVE
OF LOCAL 1310 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, THE
ONTARIO PUBLIC SERVICE EMPLOYEES UNION and THE SIMCOE COUNTY
DISTRICT SCHOOL BOARD**

(collectively the "Parties")

Policy/Policies

Group benefits insurance police number 4056, held with the former Mutual Life of Canada, which demutualized in 1999 and became the former Clarica Life Insurance Company, which in 2000 merged with the Sun Life Assurance Company of Canada.

Demutualization Date of Determination

December 29, 1997

Participating Group (s)

The Participating Groups are the following Parties:

- ◆ the Elementary Teachers' Federation of Ontario ("ETFO"),
- ◆ The Ontario Secondary Teachers' Federation District 17 ("OSSTF"),
- ◆ Local 1310 of the Canadian Union of Public Employees ("CUPE"),
- ◆ Local 330 of The Ontario Public Service Employees Union ("OPSEU") and
- ◆ The Simcoe County District School Board (the "Board")

General Criteria

The Participating Groups' policies must have been in force and in good standing on Date of Determination

Demutualization Premium Qualifying Period

January 1, 1988 to December 29, 1997

Qualifying Benefits

The qualifying benefits provided under the policies are:

- ◆ Life Insurance,
- ◆ Accidental Death and Dismemberment
- ◆ Extended Health,
- ◆ Dental, and
- ◆ Long Term Disability

Participating Group's Share (Group's Share)

The total number of Clarica common shares owned by the Participating Groups as of the date of demutualization July 15, 1999 was 167,597. The value of these shares will be allotted between the Participating Groups in accordance with July 1, 2006 amendment to the May 2, 2000 Joint Trust Agreement between the Participating Groups and as described below:

- a. Thirty-two point nine percent (32.9%) to be paid to the Board;
- b. Sixty-seven point one percent (67.1%) to be paid to employees or former employees of the Board and distributed among them, as follows:
 - i. Ten percent (10%) to employees represented by OPSEU;
 - ii. Ten percent (10%) to employees represented by CUPE;
 - iii. Four percent (4.0%) to the non-bargaining employees;
 - iv. Twenty-six point five percent (26.5%) to employees represented by ETFO;
 - v. Sixteen point six percent (16.6%) to employees represented by OSSTF.

The allocation between the non-bargaining unit employees and employees represented by ETFO and OSSTF was calculated on the basis of each group's proportional share of enrolment in Life Insurance as of the date the shares were received by The Trustees in or about July 1999, as per the July 1, 2006 amendment to the May 2, 2000 Joint Trust Agreement between the Participating Groups. Such allocation is based on data supplied by Sun Life, the insurer at the time, and has been jointly accepted by the undersigned consultants.

Participating Member

A Participating Member is an individual who was covered under one or more of the Participating Group policies for group insurance benefits during the Qualifying Period. If a Participating Member is deceased, Participating Member shall mean the surviving beneficiary or estate of the deceased Participating Member.

Non-Participating Member

A Non-Participating Member is an individual who did not have coverage under one or more of the Participating Group policies for group insurance benefits at any time during the Qualifying Period.

Qualifying Benefit Share

The Qualifying Benefit Share is the percentage of the Participating Group's Share related to the particular Qualifying Benefit.

Each Participating Group will determine how much of its share to assign to each of the Qualifying Benefits. This is because benefit eligibility and participation requirements varied among the Participating Groups (e.g. some coverages were mandatory and some were voluntary) and cost-sharing provisions for Qualifying Benefits also varied by Participating Group.

Distribution of Participating Group Shares

The total value of the Participating Group Shares, less the Contingency Fund to be distributed. Settlement made by each Participating Group to be cash payment to *Participating Members with left over funds after due diligence being put into the ongoing group insurance plans of the respective Participating Groups*

Member Benefit Share

The Member's Benefit Share for each Qualifying Benefit, is the percentage of the Qualifying Benefit Share that is awarded to each Participating Member.

For each Participating Member, the Member's Benefit Share is the pro-rata share of the time during the Qualifying Period that the Participating Member had coverage for the Qualifying Benefit to the aggregate of the times for all Participating Members during the Qualifying Period that they had coverage for the Qualifying Benefit.

Member Total Share

The Member's Total Share is the sum of all the Benefit Shares the member receives for each of the Qualifying Benefits.

Member Value

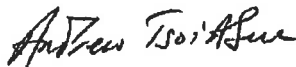
A Member's Value is equal to the Member's Total Share multiplied by the total dollar value of the Participating Group's Share.

Agreement

We, the consultants engaged by one or more of the Participating Groups, confirm that we have discussed and are in agreement with the distribution formula described above in this agreement:



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JOHN GOODWIN, JAMES McMAHON
and JAMES SPRAY
Applicants

THE ELEMENTARY TEACHERS'
FEDERATION OF ONTARIO, ET AL.,
Respondents

Court File No: CV-12-461605

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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