

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**JAMES JEFFERY and D'ALTON S. RUDD**

Plaintiffs

- and -

**LONDON LIFE INSURANCE COMPANY and  
THE GREAT-WEST LIFE ASSURANCE COMPANY**

Defendants

**Proceeding Under the *Class Proceedings Act*, 1992.**

**AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer, or where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFFS' CLAIM, and \$\_\_\_\_\_ for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.**

Date: January 28, 2005

Issued by: "R. Rath"

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Local Registrar  
80 Dundas Street East  
London, ON

TO: London Life Insurance Company  
255 Dufferin Avenue  
London, Ontario  
N6A 4K1

AND TO: The Great-West Life Assurance Company  
100 Osborne Street North  
Winnipeg, Manitoba  
R3C 3A5

## CLAIM

### Relief Sought

1. The Plaintiffs claim as follows on behalf of participating policyholders of London Life Insurance Company:
  - (a) An order certifying this matter as a class proceeding and appointing the Plaintiffs as representative Plaintiffs on behalf of the class;
  - (b) A declaration that the Financial Assistance, the Capital Transactions, and the Expense Allocation described below were unlawful and contrary to the *Insurance Companies Act*, S.C. 1991, c. 47 (the "ICA");
  - (c) A declaration that the participating policyholders of London Life Insurance Company were unlawfully prejudiced and oppressed by the actuary and Board of Directors of London Life Insurance Company by reason of the approval of the Financial Assistance, the Capital Transactions, and the Expense Allocation;
  - (d) A declaration that The Great-West Life Assurance Company was unjustly enriched to the detriment of the participating policyholders of London Life Insurance Company by the Financial Assistance, the Capital Transactions, and the Expense Allocation;
  - (e) An order restraining London Life Insurance Company from transferring, paying, debiting or otherwise to or for the shareholders accounts of LLIC, or to or for The Great-West Life Assurance Company, any benefit of the monies in the participating accounts except by leave of this Honourable Court;
  - (f) An order requiring The Great-West Life Assurance Company to make restitution to the participating policyholders of London Life Insurance Company for all benefits derived from the Financial Assistance, the Capital Transactions, and the Expense Allocation;

- (g) An order compelling the Board of Directors of London Life Insurance Company to distribute dividends, bonuses or other benefits to the participating policyholders pursuant to section 464 of the *Insurance Companies Act*;
- (h) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (j) Costs of this action on a substantial indemnity basis; and
- (k) Such further and other relief as to this Honourable Court may seem just.

**Parties**

2. James Jeffery ("Jeffery") is a consulting actuary and a former corporate actuary of London Life Insurance Company ("LLIC") residing in London, Ontario. Jeffery is a participating policyholder of LLIC, holding the following participating policies:

<b>Policy Number</b>	<b>Policy Date</b>
539035-7	March 18, 1949
3023077-2	August 3, 1952
3092181-1	January 1, 1955
3138972-0	April 17, 1956
3379477-0	December 5, 1961
3434488-7	January 28, 1963
9283012-3	July 1, 1995
9732918-7	September 27, 1998
7017959-3	February 18, 1980
7536686-3	July 12, 1984
9730008-2	April 1, 1999

3. D'Alton S. Rudd ("Rudd") is a retired consulting actuary residing in London, Ontario. Until his retirement from LLIC in 1982, Rudd had served in the capacity of Chief Actuary, Vice-President, General Manager and Chief Operating Officer of LLIC. Rudd is a participating policyholder of LLIC, holding the following participating policies:

<b>Policy Number</b>	<b>Policy Date</b>
410634-9	December 1, 1943
420928-8	May 26, 1944
3109486-0	May 26, 1955
3166570-0	May 7, 1957
3294048-1	March 28, 1960
3393382-4	February 14, 1962
4563067-5	November 10, 1976
3358690-5	May 26, 1961
Endowment Policy	May 26, 2000

4. LLIC is a leading Canadian life insurance company which carries on business in Ontario, and elsewhere in Canada, from its head office in London, Ontario. LLIC was a wholly owned subsidiary of London Insurance Group Inc. ("LIG"), an insurance holding company governed by Part XVII of the ICA.
5. The Great-West Life Assurance Company ("GWLAC") is a leading Canadian life insurance company carrying on business in Ontario, and elsewhere in Canada, from its head office in Winnipeg, Manitoba. GWLAC is a wholly owned subsidiary of Great-West Lifeco Inc. ("GWL").
6. The business and affairs of LLIC and GWLAC are governed by the *Insurance Companies Act*, S.C. 1991, c. 47, in particular Part I (Interpretation and

Application), Part V (Capital Structure), Part VI (Corporate Governance), Part VIII (Business and Power), Part XI (Self Dealing) and Part XIX (Sanctions).

### **Synopsis of Class Proceeding**

7. The Plaintiffs, Jeffery and Rudd, bring this action as a class proceeding seeking access to justice on behalf of a class consisting of all persons who were or have been participating policyholders of LLIC from November 1997 to date ("the Class"), in order that the court may adjudicate the lawfulness of the Financial Assistance, Capital Transactions, and Expense Allocation described below.
8. In or about November 1997, the GWLAC obtained Financial Assistance in connection with its cost of the acquisition of LIG and LLIC in the amount of up to \$206,000,000.00 transferred from LLIC's participating accounts to its shareholders' accounts, and then to GWLAC. The Financial Assistance was obtained by means of Capital Transactions derived from an Expense Allocation which contravened the ICA, s. 458 and 462.
9. The approval of the Financial Assistance, the Capital Transactions, and the Expense Allocation by LLIC's actuary and Board of Directors was unlawful and contrary to the ICA. The Financial Assistance was obtained by means of related party transactions which were prohibited by Part XI of the ICA. The directors of LLIC who approved the capital transactions and the financial assistance contravened their duties prescribed by Part VI, Division 2, specifically the requirement in s. 212 to abstain from voting in connection with the material contract that was subject to s. 212(1). The Financial Assistance, the Capital Transactions, and the Expense Allocation ought to be set aside by the court pursuant to ICA, s. 215. The Financial Assistance, the Capital Transactions and the Expense Allocation unfairly disregarded the interests of the participating policyholders of LLIC, violated appropriate corporate governance principles, and oppressed participating policyholders.

10. Jeffery and Rudd seek the relief stated in paragraph 1 above on behalf themselves and the Class, including:
- (i) an order pursuant to the ICA, s. 1031(1) setting aside the Financial Assistance, the Capital Transactions, and the Expense Allocation, and
  - (ii) restraining GWLAC from obtaining any Financial Assistance from participating policyholders or the participating accounts of LLIC in connection with its costs of acquisition of LIG.

### **Participating Accounts of LLIC**

11. Participating policies entitled the holders, or owners, to participate in the profits of LLIC. As of December 31, 1997, there were approximately 2.4 million participating policyholders of LLIC. LLIC maintained accounts in respect of participating policies separately from those maintained in respect of other policies. As of December 31, 1997, the participating accounts of LLIC held total assets of approximately \$10,280,000,000.00, and were in a surplus in the approximate amount of \$808,000,000.00.
12. The total assets and surplus of the participating accounts were protected pursuant to s. 456 to 463 of the ICA. Specifically, transfers from the participating accounts were prohibited, except as expressly permitted by the ICA. The shareholders of LLIC were precluded from benefiting from the participating account, except by the annual transfer of an amount limited by s.461 to approximately 2.5% of the profits from the participating policies. The surplus of the participating accounts was to be used to pay or otherwise satisfy a dividend, bonus or other benefit to the participating policyholders pursuant to the ICA, s. 464.

### **Allocation of Expenses of LLIC to the Participating Accounts**

13. The participating accounts of LLIC were credited with investment income each year, and debited in an amount representing a portion of the expenses

of LLIC in accordance with an allocation method approved by the directors pursuant to the ICA, s. 459. Pursuant to the ICA, s. 460, the actuary of LLIC annually reported to the directors on the fairness and equitableness of the method used by LLIC to allocating its investment income and losses, and expenses.

14. In 1992, the directors of LLIC, acting on the advice of its actuarial staff, approved the method for determining the portion of LLIC's expenses and taxes to be allocated to LLIC's participating accounts ("the Allocation Method"), pursuant to the ICA, s. 458. At the same time, LLIC provided to the Office of the Superintendent of Financial Institutions ("OSFI") a copy of the Allocation Method.
15. The Allocation Method contemplated the allocation and expenses equitably among the lines of business, guided by LLIC's commitment to corporate integrity. This Allocation Method contemplated that cost savings or reduction of expenses derived from management action, economies of scale, business acquisition, changes of technology, or any other means, would be allocated equitably between the shareholders and participating policyholders account. Nothing in the Allocation Method contemplated or permitted the transfer from the participating accounts to the shareholders accounts of an amount representing estimated future expense savings to assist with the acquisition costs that may be incurred by a future purchaser of LIG or LLIC, or for any other reason.

#### **Acquisition of LIG by GWLAC**

16. On or about September 11, 1997, GWL and GWLAC offered to acquire all of the outstanding common shares of LIG in order to obtain control of LLIC. The Offer to Purchase provided that GWL and GWLAC had at their disposal the funds necessary to complete the purchase in the amount of \$2,955,000,000.



In or about November 1997, GWL, through its subsidiary GWLAC, completed the acquisition of LIG, and obtained control of LLIC.

17. Notwithstanding the content of the offer to purchase, by no later than July 1997, GWL and GWLAC contemplated obtaining financial assistance from the participating policyholders of LLIC and GWLAC to benefit GWLAC's shareholders by reducing the costs of acquisition of LLIC.
18. Following the closing of the acquisition in November of 1997, the new controlling shareholder of LLIC replaced 16 of the 19 former directors with 12 new shareholders' directors and four new policyholders' directors. Each of the new directors were members of the GWLAC Board of Directors. All of the shareholder directors were affiliated with GWL and GWLAC pursuant to the ICA s.170 and 170.1, namely:

James W. Burns, O.C. Chairman of the Board of the Company, Chairman, The Great-West Life Assurance Company and Great-West Lifeco Inc.; Deputy Chairman, Power Corporation of Canada	Orest T. Dackow President and Co-Chief Executive Officer, Great-West Lifeco Inc.
André Desmarais President and Chief Co-Chief Executive Officer; Power Corporation of Canada; Deputy Chairman, Power Financial Corporation; Chairman, Power Corporation (Asia) Limited	Paul Desmarais, P.C., C.C. Chairman of the Executive Committee, Power Corporation of Canada
Paul Desmarais, Jr. Chairman and Co-Chief Executive Officer, Power Corporation of Canada; Chairman, Power Financial Corporation	Robert Gratton President and Chief Executive Officer, Power Financial Corporation
J. Blair Macaulay Of Counsel to Fraser & Beatty (Barristers & Solicitors) since 1997; previously, Partner, Fraser & Beatty	The Right Honourable Donald F. Mazankowski, P.C. Corporate Director and Business Consultant; previously, Member of the Parliament of Canada, Deputy Prime Minister and Minister of Finance
Raymond L. McFeetors President and Chief Executive Officer of the Company; President and Chief Executive Officer, The Great-West Life Assurance Company; President and Chief Executive Officer, The Great-West Life Assurance Company – Canadian Operations	The Honourable P. Michael Pitfield, P.C., Q.C. Vice-Chairman, Power Corporation of Canada, Member of the Senate of Canada

Michel Plessis-Bélair, F.C.A. Vice-Chairman and Chief Financial Officer, Power Corporation of Canada; Executive Vice-President and Chief Financial Officer, Power Financial Officer, Power Financial Corporation	H. Sanford Riley President and Chief Executive Officer, Investors Group Inc.
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19. Four of the seven former policyholders' directors of LLIC were replaced by the following GWLAC-nominated individuals:

ROBERT G. GRAHAM, Sarasota, Florida Corporate Director; previously, Chairman and Chief Executive Officer, Inter-City Products Corporation	CHARLES H. HOLLENBERG, M.D., O.C. Toronto, Ontario President and Chief Executive Officer, Cancer Care Ontario
JERRY E. A. NICKERSON, North Sydney, Nova Scotia Chairman, H.B. Nickerson & Sons Limited	GUY ST. GERMAIN, C.M. Outremont, Quebec President, Placements Laugerma Inc. (a private holding company)

20. On or about November 26, 1997, the Board of Directors of LLIC resolved that the participating policyholders should provide financial assistance from the participating accounts to GWLAC to reduce its costs of acquisition of LIG and LLIC. Subsequently, the sum of \$180,000,000.00 was paid, transferred, debited or otherwise contributed from the participating accounts of LLIC to the shareholders accounts of LLIC, and then transferred to the benefit of GWL and GWLAC to reduce their costs of acquisition of LIG and LLIC (the "Financial Assistance").
21. The Financial Assistance was provided by means of the following agreements, payments and arrangements, including accounting and actuarial entries in the books and records of LLIC (the "Capital Transactions"):
- (a) assets valued at up to \$206,000,000 were transferred from the participating accounts of LLIC to the credit of the shareholders' accounts of LLIC;

- (b) in the participating policy accounts of LLIC, a prepaid expense asset was established of up to \$206,000,000.00;
- (c) in the LLIC shareholders' account, a deferred revenue account in the amount of \$206,000,000.00 was established;
- (d) the LLIC shareholders' account paid or credited to or for GWLAC an amount of up to \$206,000,000.00 in exchange for a promissory note;

By these transactions, assets valued at up to \$206,000,000.00 held in the participating accounts of LLIC were converted to the benefit of GWLAC.

- 22. The Financial Assistance, and the Capital Transactions, were based upon the opinion of the actuary of LLIC, approved by its Board of Directors on or about November 26, 1997, that expenses would be saved in future by means of the integration of the business of LLIC and GWLAC (the "Expense Allocation"). The projected cost savings were not, and could not be, expenses of LLIC's participating accounts in 1997 or any other financial year.
- 23. The annual report of LLIC for the year 1997 stated that the Board of Directors of LLIC approved a contribution of up to \$206,000,000 towards the acquisition costs incurred by GWLAC based on the opinion of the appointed actuaries of both companies and two actuarial consulting firms that the transaction treats participating policyholders fairly. The sum of \$180,000,000 was shown as transferred to the shareholders account.
- 24. At the April 20, 1998 LLIC annual meeting, Rudd questioned the information shown in the annual report. Subsequently by letters, telephone calls and meetings from time to time, Rudd objected to the Financial Assistance. By solicitor's letter dated October 26, 1999, Rudd requested a copy of all information and documentation related to the Financial Assistance. No reply was received. To date, GWLAC and LLIC have not accounted to the participating policyholders, to the public or to this Honourable Court for the Financial Assistance, the Capital Transactions, and the Expense Allocation.

25. On or about May 7, 1999, Jeffery wrote to Mr. Raymond McFeetors, President and Chief Executive Officer of LLIC to object to the financial assistance. Jeffery suggested a method of participating policyholder review and oversight in connection with the transaction. Jeffery received no reply from LLIC.

### **Governance Failure**

26. In considering the Financial Assistance, the Capital Transactions, and the Expense Allocation, the directors and officers of LLIC were legally obligated to comply with the ICA, s. 166(2), and were subject to the duties of care specified by the ICA, s. 166(1).
27. The ICA, s. 458 did not permit a debit or transfer from the participating accounts of a life insurance company in respect of projected future expense savings to assist with acquisition costs incurred by a purchaser of the life insurance company. The allocation of projected cost savings to the participating accounts contravened the ICA, s. 458.
28. As of November 1997, LIG, GWL and GWLAC were related parties to LLIC within the meaning of the ICA, s. 518. Note 11 of the 1997 Annual Report of LLIC described GWLAC as a related party to LLIC. The Financial Assistance, the Capital Transactions, and the Expense Allocation were related party transactions prohibited by the ICA, s. 521. The Plaintiffs on behalf the Class request remedies pursuant to the ICA, s. 539.
29. The Financial Assistance, the Capital Transactions, and the Expense Allocation constituted material contracts between LLIC and LIG, GWL and GWLAC within the meaning of the ICA, s. 211(1). The shareholder directors of LLIC failed to disclose their interest in these material contracts, and were not entitled to them by reason of the prohibitions imposed by the ICA, s. 212.

The Plaintiffs on behalf of the Class request remedies pursuant to the ICA, s. 215.

30. The Plaintiffs on behalf of participating policyholders of LLIC state that the Financial Assistance, the Capital Transactions, and the Expense Allocation were unfairly prejudicial to the participating policyholders and constituted oppression of them. The participating policyholders of LLIC were vulnerable to the exercise of power and control by the Board of Directors of LLIC. All of the steps concerning the Financial Assistance, Capital Transactions and Expense Allocations were conducted in secret without notice to or consultation with the participating policyholders. No independent actuarial or legal advice was obtained for or provided to participating shareholders. The participating policyholders of LLIC were defenceless to the exercise of power and control by LLIC, LIG, GWL and GWLAC. The Capital Transactions and Expense Allocation were a sham, designed to circumvent the restrictions of the ICA, in order to provide Financial Assistance to GWLAC. The Financial Assistance, the Capital Transactions, and the Expense Allocation did not comply with Generally Accepted Accounting Principles, contrary to s. 331(4) of the ICA. The Defendants knew or ought to have known that the ICA precluded, and did not permit, the Financial Assistance, the Capital Transactions and the Expense Allocation.

### **Regulatory Failure**

31. The Superintendent of Financial Institutions (the "Superintendent"), appointed pursuant to the Office of the Superintendent of Financial Institutions Act, R.S.C. 1985, c. 18 as amended ("OSFI"), was legally responsible to supervise GWLAC and LLIC to ensure compliance by them with the ICA, and to protect the rights and interest of participating policyholders.
32. Rudd wrote to Mr. John R. Thompson, Deputy Superintendent of Operations at OSFI on April 21, 1998 to request that OSFI exercise its jurisdiction to

ensure compliance. Mr. Rudd's correspondence was acknowledged by OSFI but no meaningful steps were taken in response to Rudd's request.

33. The Plaintiffs on behalf of the Class state that the Financial Assistance, the Capital Transactions, and the Expense Allocation were made in contravention of the ICA. The participating policyholders were prejudiced by the failure of the Superintendent to protect the rights and interest of participating policyholders. The Financial Assistance, the Capital Transactions, and the Expense Allocation prejudiced the rights of the members of the Class.

### **Damages and Remedies**

34. The Plaintiffs on behalf of participating policyholders of LLIC make this claim as complainants under the ICA, s. 1031 seeking orders for compliance with set out in paragraph 1 above.
35. The Plaintiffs on behalf of the Class seek an order requiring GWLAC and GWL to disgorge any and all benefits derived by them from the Financial Assistance, Capital Transactions, and Expense Allocation, including compound interest on those benefits at a rate equal to the actual cost of capital of GWL and GWLAC. The Plaintiffs, on behalf of the Class, seek an order requiring LLIC to rescind the financial assistance, capital transactions and expense allocations and restore the participating accounts with respect to any and all detriments resulting from these transactions.
36. The Plaintiffs state that the restrictions on transfers from participating accounts provided by sections 456 to 463 of the ICA are of critical importance to participating policyholders of Canadian life insurance companies. Nothing in the ICA permits a person or entity acquiring or controlling a Canadian life insurance company to obtain financial assistance from the participating accounts, whether in an amount equal to projected cost savings or according to any other business rationale. The ICA makes it unlawful to do so.

37. The Plaintiffs on behalf of the Class further seek an order restraining LLIC and its shareholders from transferring, paying, debiting or otherwise providing to or for GWLAC any benefit of the monies in the participating accounts except by leave of this Honourable Court.
38. The Plaintiffs on behalf of the Class seek an order compelling the Board of Directors of LLIC to distribute dividends, bonuses or other benefits to participating policyholders pursuant to the ICA section 464 that would have been paid but for the actions of the Defendants complained of in this proceeding.

#### **Class Proceeding**

39. The Plaintiffs bring this action as proposed representatives of a class consisting of all persons who own or have owned participating life insurance policies of LLIC at any time between November 1997 and the present date.
40. The Plaintiffs are persons who will fairly and adequately represent the interests of the Class, and who do not have an interest in conflict with the members of the Class.
41. The claims of the Class raise common issues and a class proceeding would be the preferable procedure for the resolution of the common issues.

#### **Other Matters**

42. The Plaintiffs propose that the trial of this action be at London, Ontario.

January 28, 2005

**HARRISON PENZA<sup>LLP</sup>**

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JAMES JEFFERY and D'ALTON S. RUDD

-and-

LONDON LIFE INSURANCE COMPANY and  
THE GREAT-WEST LIFE ASSURANCE COMPANY

Plaintiffs

Defendants

Court File No. 46300CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AMENDED STATEMENT OF CLAIM**

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