

**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 S.O 1992, c. 6*

**NOTICE OF MOTION
(certification)**

THE PLAINTIFFS will make a motion to the Court on a date to be set by the Case Management Judge at 10:00 a.m. or as soon after that as the Motion can be heard at the Court House, 80 Dundas Street, London, Ontario.

PROPOSED METHOD OF HEARING:

- 1) The Motion is to be heard orally

THE MOTION IS FOR:

- 1) An Order certifying this action as a class proceeding;
- 2) An Order describing as a class:
"All persons who held a participating life insurance policy of the London Life Insurance Company between November 1997 and the date of judgment."
- 3) An Order appointing James Jeffery and D'Alton S. Rudd as the representative Plaintiffs on behalf of the class;

- 4) An Order stating that the common issues in this proceeding are:
- (i) Did the Financial Assistance, Expense Allocation and Capital Transactions described in the Statement of Claim (hereinafter "Impugned Transactions") contravene the *Insurance Companies Act*, S.C. 1991, c. 47 (the "ICA"), specifically:
 - (a) s. 462, in that the Expense Allocation was not legally justified by s. 458 so as to justify a remedy pursuant to s. 1031 of the ICA or other law?
 - (b) s. 521, in that the Impugned Transactions were prohibited related party transactions by s. 521 so as to justify a remedy pursuant to s. 539 of the ICA or other law?
 - (ii) Did the Impugned Transactions breach LLIC's legal obligations to the Class concerning the surplus in the participating accounts, specifically to:
 - (a) To act honestly, in good faith and in the best interest of the Class; or
 - (b) Not to unfairly prejudice and oppress the Class so as to warrant a remedy pursuant to s. 1031 or other law?
 - (iii) Did the directors and offices of LLIC breach their legal obligations by approving the Impugned Transactions, specifically:
 - (a) pursuant to s. 166(1)(a) and (b);
 - (b) pursuant to s. 166(2); and

(c) pursuant to ss. 211 – 212.

So as to warrant a remedy pursuant to ss. 215 and 1031 of the ICA or other law?

(iv) Were any of the shareholders of LLIC, LIG, GWLAC or GWL unjustly enriched by the Impugned Transactions, specifically:

(a) Did the Impugned Transactions enrich the shareholders of LLIC, LIG, GWLAC or GWL?

(b) Was there a corresponding deprivation of the Class?

(c) Was there an absence of juristic reason for the Impugned Transactions, which were a sham, designed to circumvent the ICA, for the purpose of providing the financial assistance to GWLAC?

(v) If the answer to any of #1 to #4 is yes, what remedies are just and appropriate? Specifically, is it just and appropriate to:

(a) restrain LLIC and GWLAC from transferring, paying or debiting to or for the shareholders account of LLIC any benefit of the surplus in the participating account except by leave of this Honourable Court?

(b) require LLIC, LIG, GWL and GWLAC to make restitution to the Class of all benefits derived from the Impugned Transactions?

(c) compel LLIC to distribute dividends, bonuses of other benefits to the Class?

- 5) An Order requiring the Defendants to furnish the Plaintiffs with a complete list of names and contact particulars of all class members;
- 6) An Order specifying that the class shall be notified of this action and the certification of the class in a form to be approved by the Court in the following manner:
 - i) First class mail delivered to the home addresses of class members within 15 days of the Certification Order;
 - ii) To publish twice in the following newspapers:
 - Globe and Mail;
 - National Post;
 - Any other regional or local newspaper which is distributed in a geographical area with a concentration of class members; within 15 days of the Court order; and
 - iii) Posted on the website of class counsel at www.harrisonpensa.com within 15 days of the Certification Order;
- 7) An Order requiring the Defendants to pay the cost of the notice program forthwith;
- 8) An Order specifying that a member of the class may opt out of this class proceeding by sending a written election by mail to the office of class counsel within 75 days of the Certification Order;
- 9) An order specifying that within 30 days after the expiration of the opt-out period, class counsel shall report to the Court the names of the persons who have opted out of this class proceeding;

- 10) Costs of this Motion on a substantial indemnity scale including any applicable taxes; and
- 11) Such further and other Orders as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- a) *The Class Proceedings Act, 1992*
- b) The Rules of Civil Procedure;
- c) The information articulated in the Affidavits of D'Alton S. Rudd and James Jeffery sworn April 6, 2005;
- d) The Court should certify this proceeding as a class proceeding because:
 - i) The Statement of Claim discloses a cause of action;
 - ii) There is an identifiable class of two or more persons;
 - iii) There are common issues raised in the Statement of Claim which, through their resolution, would substantially advance this litigation if not resolve it entirely;
 - iv) A class proceeding is the preferable procedure for the resolution of the common issues proposed in this Notice of Motion;
 - v) The representative Plaintiffs fairly and adequately represent the interests of the class;
 - vi) The Plaintiffs have produced a workable litigation plan for advancing the litigation on behalf of the class;
- e) The proposed method of notifying class members of the action is a reasonable method to provide such notice;
- f) It is reasonable that the responding party pay the full cost of the notice program;

- g) Such further and other grounds as counsel advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- (a) The Statement of Claim issued on January 28, 2005;
(b) The Affidavits of James Jeffery and D'Alton S. Rudd sworn April 6, 2005;
(c) Such further and other evidence as counsel may advise and this Honourable Court may permit,

April 6, 2005

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