

## **NOTICE OF JUDGMENT IN CLASS ACTION LAWSUITS**

**TO: OWNERS OF PARTICIPATING LIFE INSURANCE POLICIES OF THE LONDON LIFE INSURANCE COMPANY ("LLIC") AND THE GREAT-WEST LIFE ASSURANCE COMPANY ("GWL") BETWEEN NOV. 1997 AND OCT. 1, 2010 ("THE CLASS MEMBERS")**

### **The Lawsuits:**

This notice is about a judgment granted in two separate but related class actions, one filed on behalf of participating life insurance policyholders of LLIC against LLIC and GWL and the other filed on behalf of participating policyholders of GWL against GWL and Great-West Lifeco Inc.

Participating life insurance policies entitle their owner to share in the profits of the life insurance company through the payment of cash dividends, bonus additions to their insurance coverage or credits toward the cost of their premium payments.

GWL and LLIC must keep separate accounts known as participating accounts in respect of their participating life insurance business. The assets in the accounts pay for the insurance benefits provided under the policies and they are the source of payment of the participating dividends or bonuses payable to participating policyholders. The directors of GWL and LLIC declare the amount of dividends or bonuses, if any, to be paid to participating policyholders.

The lawsuits challenged two transactions by LLIC and GWL in 1997 which used \$220 million from their participating accounts in order to help pay for the purchase of LLIC by GWL (the "Par Account Transactions" or the "PATs"). The lawsuits claimed that the transactions were illegal because they broke specific laws that apply to life insurance companies in order to protect participating policyholders, among other things.

The cases were certified to proceed as class actions in 2008. The steps in the litigation process included a 45 day trial in late 2009 and a number of subsequent appeals to higher courts. A final judgment has now been granted on the merits of the cases.

### **The Judgment of the Court:**

The litigation determined that certain provisions of the *Insurance Companies Act (ICA)* were breached. Specifically, the Ontario Court of Appeal held that the Par Account Transactions (PATs) failed to comply with Generally Accepted Accounting Principles, and therefore breached s. 331(4) of the *ICA*. Given this finding, the Court concluded that GWL and LLIC made unlawful transfers of money from these companies' participating accounts to the shareholders accounts contrary to s. 462; and GWL and LLIC charged unlawful expenses to the participating accounts in the form of annual amortization charges each year from 1997 to 2011 contrary to s. 458. Notwithstanding these breaches of the *ICA*, the Court held that there was no evidence of any impact on policyholder dividends. The claim against Lifeco was dismissed.

The remedy for the contraventions of the *ICA* was finally determined in two appeals by the Court of Appeal for Ontario:

- i. The PATs were ordered to be unwound as of December 31, 2011. The Ontario courts cancelled the illegal accounting for the participating account transactions as of December 31, 2011 with the result that future amortization charges will not be incurred by the participating accounts.
- ii. LLIC and GWL were ordered by the Ontario Court of Appeal to pay a total of \$56.43 million on an after-tax basis plus an applicable rate of interest from the shareholders accounts to the participating accounts of LLIC and GWL. This means that the Courts did not make an award directing that money be paid directly to participating policyholders. Rather, the amounts to be paid by LLIC and GWL shareholder accounts are payable to the participating accounts by order of the courts.

Class Members are therefore not required to make a claim or to otherwise take any steps as the money ordered to be returned to the participating accounts must be dealt with in accordance with the dividend policies of GWL and LLIC in the ordinary course of business.

The outcome of the litigation has no impact on policyholder contract terms or conditions.

#### **Costs, Class Counsel Fees and the Class Proceedings Fund:**

It is expected that (1) the lawyers for the Class Members; (2) GWL, Lifeco and LLIC; and (3) the Ontario Class Proceedings Fund will each separately ask the court to approve fees, costs or a levy, as described below.

1. Counsel for the Class Members intend to ask the court to approve a fee payable from the amounts returned to the participating accounts of GWL and LLIC. The contingent fee agreement between the representative plaintiffs and counsel for the Class Members was necessary to ensure that should the claim be successful in recovery from LLIC and GWL, then the lawyers for the Class Members would get paid from the amounts returned to the participating accounts. A maximum fee award of 30% of the recoveries achieved for the class plus taxes and out of pocket expenses is permitted however, the lawyers for the Class Members will ask the court to approve a fee that is lower than the retainer agreement permits, an award of 27.5% of the money returned to the participating accounts (a fee of \$15.5 million) plus taxes and out of pocket costs carried by them in connection with the case.

The lawyers for the Class Members also intend to ask the court to order that GWL and LLIC pay some of the plaintiffs' legal fees. Any amounts that might be paid by LLIC and GWL would reduce any contingency fee payable out of the amounts returned to the participating accounts.

Class members have the right to object or comment on the fee request in writing to the attention of class counsel. All comments must be submitted in writing by November 30, 2015 for a hearing date of January 20, 2016. All comments received by that date will be given to the court.

2. The actions also received financial support from the Ontario Class Proceedings Fund which paid for more than \$1.5 million dollars in out of pocket costs (not legal fees) which were necessary to pursue this case. The Class Proceedings Fund will make a motion to the court under statute to claim, in exchange for its financial support a levy of 10% of the money returned

to the participating accounts (after deduction of any contingent fee payable) plus the repayment of the amounts already paid in support of the litigation.

3. Finally GWL, Lifeco and LLIC intend to ask the court to order that the representative plaintiffs pay some portion of their legal fees. If a costs order is made in favour of GWL, Lifeco or LLIC, these amounts would be paid by the Class Proceedings Fund rather than the representative plaintiffs.

**Additional Information and Questions:**

Additional information concerning the outcome of these class proceedings, including any update to the date of the hearing referred to above, is available at [www.parpolicyclassaction.com](http://www.parpolicyclassaction.com), including links to copies of the full judicial decisions determining their outcome.

Class Members may contact the lawyers for the class to make a comment on the fees or with any questions at:

Harrison Pensa LLP  
Attention: Jonathan J. Foreman  
450 Talbot Street, London, ON N6A 4K3  
Tel: 1.800.263.0489 ext. 759  
Fax: 1.519.667.3362  
E-mail: [parpolicyclassaction@harrisonpensa.com](mailto:parpolicyclassaction@harrisonpensa.com)

Please do not contact the court as court staff cannot assist you.

This notice is approved by the Ontario Superior Court of Justice.