

Court File No. 24257

*Ontario*  
**THE SUPERIOR COURT OF JUSTICE**

BETWEEN:

**IAN C. MACRAE**

Plaintiff

- and -

**MUTUAL OF OMAHA INSURANCE COMPANY**

Defendant

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Court File No. C964691  
**VANCOUVER REGISTRY**

**In the Supreme Court of British Columbia**

BETWEEN:

**LORNA MURPHY.**

Plaintiff

- and -

**MUTUAL OF OMAHA INSURANCE COMPANY**

Defendant.

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Court File No. 500-06-000044-970

**In the Quebec Superior Court**

BETWEEN:

**BENOIT LACELLE**

Petitioner

- C. -

**LA MUTUELLE D'OMAHA**

Respondent

## SETTLEMENT AGREEMENT

Ian C. MacRae, Lorna Murphy and Benoit Lacelle, in their capacity as proposed class representatives (the "**Plaintiffs**"), and the Defendant, Mutual of Omaha Insurance Company/La Mutuelle D'Omaha ("**Mutual of Omaha**"), whose obligations in law with respect to the subject matter of the claims of the Plaintiffs have been assumed by Westbury Canadian Life Insurance Company ("**Westbury**") (collectively, "the Parties"), hereby enter into this Agreement (hereinafter defined) providing for settlement of the proposed premium offset insurance class actions in the provinces described below, subject to the approval of the Superior Court of Justice, the Supreme Court of British Columbia, and the Quebec Superior Court;

**WHEREAS**, a Statement of Claim proposing a class proceeding issued on October 29, 1996, has been served on Mutual of Omaha in Ontario by Ian C. MacRae, a Statement of Claim proposing a class proceeding issued on August 13, 1996, has been served on Mutual of Omaha in British Columbia by Lorna Murphy, and a motion for authorization for the institution of a class action dated August 7, 1997, has been filed and served on Mutual of Omaha in Quebec by Benoit Lacelle (collectively, "the Class Proceedings");

**WHEREAS**, Plaintiff's counsel in Ontario, namely the firm of Siskind Cromarty, Ivey & Dowler, Plaintiff's counsel in British Columbia, namely the firm of Poyner, Baxter, Poyner, and Plaintiff's counsel in Quebec, namely the firm of Lauzon Belanger, have conducted settlement negotiations with Westbury and its Ontario counsel, namely the law firm of Cassels Brock & Blackwell, its British Columbia counsel, namely the law firm of Douglas Symes & Brissenden, and its Quebec counsel, namely the law firm of Heenan, Blaikie;

**WHEREAS**, Westbury, notwithstanding this Agreement, has denied and continues to deny the Plaintiffs' claims in these actions and in other similar actions in these and other jurisdictions, has denied and continues to deny any wrongdoing or

liability of any kind anywhere to the Plaintiffs or the Class Members (hereinafter defined) they seek to represent and has raised and intends to continue to raise numerous affirmative defences;

**WHEREAS** Westbury may make future adjustments to its dividend scale and interest rates for dividends on deposit which could adversely affect the position of the policies of insurance covered by this Agreement, and it is in the best interest of policy owners that the adverse effect of any such future adjustments be limited;

**WHEREAS**, Westbury values its relations with its policy owners and intends to extend benefits as set forth in this Agreement for business and competitive reasons;

**WHEREAS**, based upon an analysis of the facts and the law applicable to claims of the Class (hereinafter defined) taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with the proposed certification or authorization of class actions, protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Class provided for in this Agreement, the Plaintiffs and the Plaintiffs' counsel have concluded that this Agreement provides substantial benefits to the Class and is fair, reasonable, adequate and in the best interests of the Class;

**WHEREAS**, Westbury and its counsel have similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims in relation to the applicable Class Policies owned by Class Members under the terms of this Agreement;

**WHEREAS**, the Parties intend by this Agreement to resolve all of the claims for or relating to representations, misrepresentations or omissions by Westbury Canadian Life Insurance Company, Life Insurance Company of Royal Bank of Canada, RBC Life Insurance Company, RBC Insurance Holdings Inc., Royal Bank of Canada and Mutual of Omaha Insurance Company or their agents, directors, officers and employees, that

occurred in relation to the applicable Class Policies owned by Class Members under the terms of this Agreement.

**WHEREAS**, the Parties agree that this Agreement, the certification or authorization of the class actions, and any approval of the Agreement by the Courts will not constitute any admission by Westbury Canadian Life Insurance Company, Life Insurance Company of Royal Bank of Canada, RBC Life Insurance Company, RBC Insurance Holdings Inc., Royal Bank of Canada and Mutual of Omaha Insurance Company of liability or damages, or be used as evidence against any of the said companies, or for any other purposes in any other proceeding or matter;

**NOW THEREFORE**, subject to the Courts' approval in Ontario, British Columbia and Quebec, this Agreement embodies the provisions for the resolution of the proposed premium offset insurance class actions brought against Mutual of Omaha/Westbury in the Provinces of Ontario, British Columbia and Quebec, and in any other provinces and territories in Canada relating to Class Policies.

This Agreement includes Notices, Claim Forms, Orders and related documents submitted to the Courts for approval.

## 1. **Definitions**

**"Agreement"** means this agreement, including any appendices hereto, except as modified by further written agreement among the Parties.

**"British Columbia Class"** means all owners and Former Owners of Class Policies whose Class Policy(ies) were applied for in British Columbia and are not resident in Ontario or Quebec on the Classification Date, or who applied for the Policy(ies) in Canada and are resident in British Columbia on the Classification Date.



or seeking leave to appeal the order has expired without an appeal being taken or leave to appeal being sought or, in the event an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals or leave applications as may be taken have been disposed of and the time for further appeal, if any, has expired.

**"Former Owner"** means a person who owned a Class Policy that has lapsed or been surrendered, who owned the policy when it was lapsed or surrendered and the lapse or surrender occurred after December 31, 1994, but before the Classification Date.

**"Future Projected Vanish Point"** means the first premium due date on which the policy's accumulated cash dividends in addition to the projected annual dividends, projected with future interest rates (determined by the Company that will apply if current investment and reinvestment rates continue into the future), is enough to pay for the premiums payable from then to the life insured's age 100.

**"Independent Third Party"** means an individual or individuals, designated by the Parties and approved by the Courts for the Complaint Process described in section 4 hereof.

**"Lapsed Policy"** means a Class Policy that is no longer in force due to non-payment of premiums.

**"MVP Committee"** means the internal committees of Mutual of Omaha and Westbury which adjudicated complaints by policy owners filed prior to the Court Approval Date.

**"Ontario Class"** means all owners and Former Owners of Class Policies whose Class Policy(ies) were applied for in Canada, but in a province or territory other than British Columbia or Quebec, and who are not resident in British Columbia or Quebec on the Classification Date.

**"Out of Pocket Premiums"** means premiums paid directly by the policy owner rather than by the policy owner making use of accumulated cash values and/or dividends from within the policy to pay premiums.

**"Policy File"** means the application file for the Class Policy as held by Westbury, with the exception of medical information and medical documentation.

**"Policy Owner"** means the named individual or entity shown as policy owner for the Class Policy on the Classification Date, on the records for the Class Policy as held by Westbury.

**"Policy Questionnaire"** means the Policy Questionnaire form completed by the Policy Owner to submit a complaint with respect to the sale of the Class Policy in accordance with the Complaint Process described in Section 4 of this Agreement.

**"Quebec Class"** means all owners and Former Owners of Class Policies whose Class Policy(ies) were applied for in Quebec and are not resident in Ontario or British Columbia on the Classification Date, or who applied for the Policy(ies) in Canada and are resident in Quebec on the Classification Date.

**"Sales Agent"** means, for the purpose of this Agreement only, a person who, being an agent or market intermediary, sold a Class Policy as defined in this Agreement.

**"Surrendered Policy"** means a Class Policy that is no longer in force because of the request of the Policy Owner to cancel the policy.

**"Vanish Point"** means the policy anniversary date on which the policy's Accumulated Cash Dividends in addition to the projected Annual Dividends in effect on that Policy Anniversary Date, projected with an interest rate determined

from time to time by the Company, is enough to pay for the current and future annual premiums payable to the life insured's age 100.

## **2. General Relief:**

### **2.1 All Class Policies**

- (i) which were in force on the Classification Date; and
- (ii) whose owners have not undertaken or do not in the future undertake any changes to the Class Policy or exercised or in future exercise any ancillary benefits of the policy that would or may adversely affect the Vanish Point; or
- (iii) whose owners have previously undertaken changes or exercised ancillary benefits of the policy that would or may adversely affect the Vanish Point and who have taken steps to return the policy to the position it would have been in had such changes not taken place or the ancillary benefits of the policy had not been exercised;

will receive the general relief provided in this section. For the purposes of 2.1 (ii) and (iii) above, examples of such adverse policy changes or ancillary benefit elections include, but are not restricted to, changing the face amount of the policy, changing the premium paid on the policy, withdrawing dividends from the policy, receiving an automatic premium loan, and/or exercising the policy loan provisions of the policy that would or may adversely affect the Vanish Point.

Westbury guarantees, that for all such eligible Class Policies, if Westbury's Future Projected Vanish Point would result in a Vanish Point which is estimated to be greater than 100% of the Vanish Point that could have been illustrated on the illustration software available at the time of issue of the Class Policy (the "Original Vanish Point"), Westbury shall reduce that Future Projected Vanish Point by 25% of the difference



between the Future Projected Vanish Point and the Original Vanish Point. Westbury shall further guarantee that for all Class Policies, no Class Policy shall have a Vanish Point that is greater than 190% of the Original Vanish Point.

2.2 With respect to the general relief provided under Section 2.1, Westbury shall guarantee that the sum of the premiums waived or reduced, plus the liability held in respect of future premiums to be waived ("the General Relief Cost") will exceed \$1.5 million. If, the General Relief Cost is less than \$1.5 million, the difference will be applied by reducing premiums at that point in time in proportion to the amounts of dividends on deposit for each policy. Westbury will recalculate the General Relief Cost annually and thereafter provide a written statement to Class Counsel or their successors, advising whether the General Relief Cost is greater than or equal to \$1.5 million, and if not, further advising as to the premium reduction which will be applied.

**3. General Relief for Owners of Lapsed or Surrendered Class Policies:**

A Former Owner shall be eligible, subject to all standard Westbury underwriting requirements applicable to the Former Owner's attained age at the time of election for this relief, for a new universal life insurance policy issued by Westbury for a face amount no higher than that of the policy that lapsed or was surrendered. There will be a fifty percent reduction in the first year premium for that new policy.

In the alternative, any Former Owner as described above shall be eligible to submit a claim in the Complaint Process which is described below.

**4. Complaint Process:**

4.1 There shall be a process for addressing complaints by Policy Owners alleging misrepresentation in the purchase or sale of individual policies (the "Complaint Process"). This Complaint Process is more specifically described in Appendix "A".

4.2 Class Members who elect to submit a complaint through the Complaint Process forfeit all general relief under Sections 2 and 3 of this Agreement.

4.3 Complaints submitted by Class Members shall be dealt with according to the procedures in this Agreement, and the procedures and standards in Appendix "A".

4.4 All Class Members shall have one hundred and twenty (120) days from the date of receiving their Notice of Authorization/Certification and Agreement Approval ("Notice of Approval") to file a Policy Questionnaire.

4.5 For the purposes of this Agreement, the date of receipt by a Policy Owner of their Notice of Approval shall be the earlier date of actual receipt of the Notice of Approval or five (5) days after the date on which the Notice of Approval is sent by ordinary mail to a Class Member at the Class Member's last known address, as shown in the records of Westbury as at the Classification Date. Westbury may extend the time period prescribed for filing a Policy Questionnaire. A Class Member who provides a statement that their Notice of Approval was not received until a certain date, or not at all, shall have sixty (60) days to file a Policy Questionnaire from the date that Westbury advises that the time period has been extended and provides to the Class Member a Policy Questionnaire.

4.6 The form of the Notice of Approval shall be different depending upon whether or not the Class Member has an inforce policy or a Lapsed or Surrendered Policy. Copies of the two forms of the Notice of Approval for inforce and Lapsed and Surrendered Policies are found in Appendix "B" and "C" respectively.

4.7 A Class Member may obtain a Policy Questionnaire by completing and returning to Westbury the request on the Class Member Election Form which is Schedule "B" to the Notice of Approval . The form of the Class Member Election Form shall be different depending upon whether or not the Class Member has an inforce policy or a Lapsed or Surrendered Policy. Copies of the two forms of the Class Member Election Form are

attached as Schedule "B" to the corresponding Notice of Approval found in Appendix "B" and "C" as referred to in Section 4.6 above.

4.8 Upon returning a Policy Questionnaire after the Court Approval Date, the Class Member shall be deemed to have waived:

- a) the right to opt out of this Agreement; and
- b) the entitlement to General Relief under Section 2 of this Agreement.

4.9 Class Members other than Former Owners, who establish an entitlement to relief in accordance with the procedures and standards in Appendix "A", shall receive the corresponding relief thereunder in substitution for the general relief under this Agreement. In the event that the Policy Owner has previously undertaken changes or exercised ancillary benefits of the Class Policy that have affected the Vanish Point (as such terms are defined in Section 2.1), such relief shall be conditional on the Policy Owner returning the Class Policy to the position it otherwise would have been in. In the event the relief which is granted in accordance with the procedures and standards in Appendix "A" results in relief pursuant to which it is determined that the Class Member has paid Out of Pocket Premiums in excess of the Out of Pocket Premiums required pursuant to the relief granted, Westbury shall refund such excess premium to the Class Member together with interest on those premiums at the rate paid historically by Westbury on dividends left on deposit with the company.

4.10 Any Former Owner who establishes an entitlement to relief, on the basis of a Score D or better, in accordance with the procedures and standards in Appendix "A", shall be entitled to have their policy reinstated and shall receive the corresponding relief thereunder in substitution for the general relief under this Agreement, subject to the following conditions:

- a) For a surrendered Class Policy, upon:

(i) payment of an amount equivalent to the cash surrender value received at the time of surrender of the Class Policy plus interest on that amount at the rate paid historically by Westbury on dividends left on deposit with the company; and

(ii) payment of an amount equivalent to all additional required premiums to the originally estimated Vanish Point plus interest on those premiums at the rate paid historically by Westbury on dividends left on deposit with the company.

b) For a lapsed Class Policy, upon:

(i) payment of an amount equivalent to all premiums owing to the originally estimated Vanish Point plus interest on those premiums at the rate paid historically by Westbury on dividends left on deposit with the company.

4.11 If a Class Member has submitted a Policy Questionnaire to Mutual of Omaha or Westbury prior to the Court Approval Date, which resulted in the MVP Committee granting relief to the Class Member which the Class Member has accepted by the execution of a Final Release prior to the Court Approval Date, the Class Member may not submit a further Policy Questionnaire thereafter.

4.12 If a Class Member has submitted a Policy Questionnaire to Mutual of Omaha or Westbury prior to the Court Approval Date, which has resulted in the MVP Committee rejecting the complaint or granting relief to the Class Member which provides for less than a guarantee of the originally illustrated Vanish Point, neither of which have been accepted by the Class Member executing a Final Release prior to the Court Approval Date, or where the MVP Committee has not rendered a decision which has been communicated to the Class Member prior to the Court Approval Date, the Class Member shall be entitled to submit a further Policy Questionnaire, or to opt out of this Agreement, and that Class Member shall receive a Notice of Approval including a Class

Member Election Form in the forms attached as Appendix "B" and "C", together with a Policy Questionnaire in the form as attached as Appendix "D".

4.13 If a Class Member submits a Policy Questionnaire prior to the Court Approval Date and the MVP Committee grants relief to the Class Member which provides for a guarantee of the originally illustrated Vanish Point, the Class Member shall be deemed to have waived the right to opt out of this Agreement.

4.14 If a Class Member disagrees with the decision rendered by the Independent Third Party, the Class Member shall have the right, at his or her own expense, to appeal to the Courts or the Courts' designate solely on the question of whether the Independent Third Party properly applied the Complaint Process in arriving at its decision.

**5. Allocation of the Costs of the Agreement:**

Westbury undertakes to act in good faith in overseeing and implementing the terms of this Agreement and the costs of this settlement are not to be borne by the Class Members by a reduction in benefits otherwise payable to the Class. The annual determination by Westbury of the amount of earnings to be distributed as dividends shall be determined without the inclusion of costs or benefits that are attributable to this settlement.

**6. Opting Out:**

6.1 A Class Member who wishes to be excluded from this Agreement must complete the Opting Out section on the Class Member Election Form and return the Form to Westbury within thirty (30) days of mailing to the Class Member of their Notice of Approval .

6.2 For the purposes of this Agreement the Notice of Approval shall be deemed to have been mailed to the Class Member if sent by ordinary mail to a Class Member at the Class Member's last known address as shown on the records of Westbury on the Classification Date.

## **7. Fraud**

In addition to any other remedy available at law or equity to Westbury or its agents, should any Class Member swear to a false affidavit or knowingly submit false evidence in support of any complaint pursuant to the Agreement, such Class Member shall be disentitled to any benefits under this Agreement.

## **8. Court Approval**

8.1 The terms of the Agreement are subject to and conditional upon a final judgment or Court approval in Ontario, British Columbia and Quebec. Unless so approved by all three Courts the Agreement is of no force and effect.

8.2 On the Court Approval Date, the Agreement shall be binding on all Class Members except those Class Members who opt out as provided in this Agreement.

8.3 In consideration of the entitlement to the general relief under this Agreement or the right to pursue a complaint and appeal in the Complaint Process under this Agreement, Class Members shall, on their own behalf and on behalf of their heirs, administrators, successors and assigns be deemed to have forever released and discharged Westbury Canadian Life Insurance Company, Life Insurance Company of Royal Bank of Canada, RBC Life Insurance Company, RBC Insurance Holdings Inc., Royal Bank of Canada and Mutual of Omaha Insurance Company ("Mutual of Omaha"), their respective predecessors, representatives, parent companies, subsidiaries and affiliates, along with the officers, directors, employees, shareholders, agents, successors and assigns of all such entities, from any and all claims, causes of action,

actions, manner of actions, and costs, arising out of or connected directly or indirectly with claims for or relating to representations, misrepresentations or omissions by Westbury Canadian Life Insurance Company, Life Insurance Company of Royal Bank of Canada, RBC Life Insurance Company, RBC Insurance Holdings Inc., Royal Bank of Canada and Mutual of Omaha Insurance Company or their agents, directors, officers and employees, that occurred in relation to the applicable Class Policies owned by Class Members under the terms of this Agreement.

**9. Effect of The Agreement not being Approved by the Courts:**

If the Agreement is not approved as set out in Section 8:

(a) the Agreement shall be null and void and shall have no force or effect, and no party to the Agreement shall be bound by any of its terms, except for the terms of this Section and Section 1;

(b) the Agreement, and all of its provisions, and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of Westbury Canadian Life Insurance Company, Life Insurance Company of Royal Bank of Canada, RBC Life Insurance Company, RBC Insurance Holdings Inc., Royal Bank of Canada and Mutual of Omaha Insurance Company, the British Columbia Class, the Ontario Class, the Quebec Class and Class Counsel, all of whom shall be restored to their respective positions existing immediately before the Agreement;

(c) the Agreement, the fact of its negotiation and execution, the authorization/certification of the British Columbia, Ontario, and/or Quebec Class and any approval of the Agreement by any Court shall not constitute any admission by Westbury Canadian Life Insurance Company, Life Insurance Company of Royal Bank of Canada, RBC Life Insurance Company, RBC Insurance Holdings Inc., Royal Bank of Canada and Mutual of Omaha Insurance Company or be used as evidence against the said companies and/or their respective predecessors, representatives, parent

companies, subsidiaries and affiliates, along with the officers, directors, employees, shareholders, agents, successors and assigns of all such entities for any purpose or in any other proceeding; and

(d) to the extent it has not already been publicly disclosed, the existence and terms of this Agreement, the fact and terms of its negotiation and execution or the fact of any settlement, shall remain confidential, except to the extent to which such must be disclosed to legal advisors and accountants to the extent necessary to receive professional advice, and then only if such persons are expressly made aware of this confidentiality provision and agree to be bound hereby, notwithstanding being obligated by law or professional ethical standards to maintain the confidentiality of such information.

## **10. Final Judgment/Order**

10.1 Westbury and Class Counsel on behalf of the British Columbia Class, Ontario Class and Quebec Class will jointly submit proposed final judgments or orders approving the Agreement. The proposed final judgments or orders will each provide that subject to the terms of the Agreement, the judgment or order grants a full and final release and discharge in favour of Westbury Canadian Life Insurance Company, Life Insurance Company of Royal Bank of Canada, RBC Life Insurance Company, RBC Insurance Holdings Inc., Royal Bank of Canada and Mutual of Omaha Insurance Company, their respective predecessors, representatives, parent companies, subsidiaries and affiliates, along with the officers, directors, employees, shareholders, agents, successors and assigns of all such entities, or any other person who might be responsible in fact or in law, for any and all claims or causes of action arising from the allegations in the Class Proceedings including but not limited to any representations, misrepresentations or omissions by any of the above-mentioned persons that occurred in relation to the applicable Class Policies owned by Class Members under the terms of this Agreement.



10.2 Westbury and Class Counsel agree not to issue, enter or execute final judgments or orders until such time as the Agreement is approved by all the Courts before which the Class Proceedings were commenced.

**11. Termination Clause:**

Within 35 days of the last day a Class Member may exclude himself/herself from this Agreement pursuant to Section 6.1 herein, Westbury may unilaterally terminate the Agreement by giving written notice to Class Counsel if, pursuant to Section 6.1 herein, more than 2 percent (2%) of Class Members who are owners of inforce Class Policies as at the Classification Date have at the time of such notice of termination of the Agreement, opted out of this Agreement pursuant to Section 6.1. If such notice of termination of the Agreement is delivered, the provisions of Section 9 of this Agreement shall apply as if this Agreement had not been approved in accordance with Section 8.

**12. Effect of Agreement and Final Judgment or Order:**

Nothing in this Agreement or any Final Judgment or Order shall be considered to affect the validity of any inforce Class Policies, or the terms and conditions of any Class Policies whether inforce, lapsed or surrendered, which terms and conditions remain in full force and effect.

**13. Notice of Approval**

13.1 Westbury shall send a copy of the Court ordered Notice of Approval , a Class Member Election Form and an explanatory question and answer booklet prepared by the Class Counsel and Westbury, by mail to the last known address of the owner of a Class Policy, or if there is more than one owner of a Class Policy to the last known address as shown on the records of Westbury.

13.2 For the purposes of this Agreement a Class Member shall be deemed to have been given notice five (5) days after the date on which their Notice of Approval is sent by ordinary mail to the Class Members' last known address as shown on the records of Westbury.

#### **14. Administration of the Agreement**

14.1 Westbury shall administer the settlement diligently and in good faith in accordance with the terms of this Agreement.

14.2 The process for the delivery of general and individual relief under this Agreement will be subject to audit and review by Class Counsel prior to approval of this Agreement through individual claim auditing, review of statistical claim data, physical auditing of the administrative processes of Westbury and the bilingual information line provided for in Section 17. Following the approval of this Agreement, Class Counsel shall monitor the implementation of this Agreement through the receipt and review of statistical claim data, receipt of Complaint Process decisions and physical auditing of the bilingual telephone information line.

14.3 If in the opinion of Class Counsel, settlement administration is not being performed in a manner consistent with the substance and intent of the Agreement, and Westbury has not remedied the alleged problem after having been given reasonable notice of it, Class Counsel may bring a motion to the Court for directions.

#### **15. Legal Fees and Expenditures**

Westbury agrees to pay the reasonable fees and disbursements of Class Counsel in connection with this Agreement, as mutually agreed or determined by the Courts. Such

fees and disbursements will not include representation by Class Counsel in the Complaint Process.

#### **16. Tax Liabilities**

Westbury warrants that the application of the guarantees contained in Section 2, above, to Class Policies, will not result in any additional tax consequences or liabilities to Class Members receiving such relief. This warranty is based upon the state of the law at the time that this Agreement is entered into, and does not apply to any consequences or liability arising from changes in the law after the date of this Agreement.

#### **17. Bilingual Telephone Information Line**

Westbury shall establish a bilingual (English and French) telephone information line to provide information, but not advice, to Class Members regarding this Agreement and the Complaint Process.

#### **18. Determination of Class Membership**

The residence of, and policies owned by, Class Members for all purposes under this Agreement shall be as shown on Westbury's records on the Classification Date, unless and until written evidence to the contrary is provided to Westbury by the Class Member which evidence must be provided no later than 60 (sixty) days after the Court Approval Date.

#### **19. Appendices to the Agreement**

The Parties have reviewed and approved the form and content of Appendices "A" to "C" and all Schedules attached thereto.

## **20. French Version**

20.1 This Agreement, in terms identical to the English version, shall be executed in French at the same time as the English version. In the event of a difference in the interpretation of the English and French version of this Agreement, the English version shall prevail.

20.2 The parties have expressly requested that this Agreement and any related Appendices or documents be drafted in the English language.

20.3 Les parties ont expressément convenu que la présente entente ainsi que tous documents ou annexes s'y rattachant soient rédigés en anglais.

## **21. Interpretation:**

In the event of a conflict between the provisions of this Agreement and any of the Appendices or documents thereto, the terms of this Agreement shall prevail. Matters of interpretation of this Agreement shall be determined by the Courts.

## **22. Governing Law:**

This Agreement shall be interpreted in accordance with the law of the Province of the Class to which the Class Member belongs.

**23. Change of Name/Successor Companies**

The Parties agree that this Agreement shall apply to successor companies of Westbury and any reference in this Agreement and any Appendices attached to this Agreement shall be amended to reflect such successor company or companies.

DATED at Toronto, June 9, 2000.



Cassels Brock & Blackwell  
as counsel in Ontario to  
Westbury Canadian Life Insurance Company

Siskind, Cromarty, Ivey & Dowler  
On their own behalf and as counsel to Ian C. MacRae

DATED at Vancouver, \_\_\_\_\_, 2000.

Douglas, Symes & Brissenden  
as counsel in British Columbia to  
Westbury Canadian Life Insurance Company

Poyner, Baxter, Poyner  
On their own behalf and as counsel to Lorna Murphy.

DATED at Montreal, June 9, 2000.

*Heenan Blaikie*

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Heenan, Blaikie  
as counsel in Quebec to  
Westbury Canadian Life Insurance Company

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Lauzon Belanger  
On their own behalf and as counsel to Benoit Lacelle

DATED at Toronto, \_\_\_\_\_, 2000.

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Caseels Brock & Blackwell  
as counsel in Ontario to  
Westbury Canadian Life Insurance Company

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Siskind, Cromarty, Ivey & Dowler  
On their own behalf and as counsel to Ian C. MacRae

DATED at Vancouver, June 9, 2000.

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Douglas, Symes & Brissenden  
as counsel in British Columbia to  
Westbury Canadian Life Insurance Company

\_\_\_\_\_  
Poyner, Baxter, Poyner  
On their own behalf and as counsel to Loma Murphy.



DATED at Montreal, June 9th, 2000.

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Heenan, Blaikie  
as counsel in Quebec to  
Westbury Canadian Life Insurance Company

*Lauzon Belanger*  
Lauzon Belanger  
On their own behalf and as counsel to Benoit Lacelle

DATED at Toronto, *June* 9, 2000.

Cassels Brock & Blackwell  
as counsel in Ontario to  
Westbury Canadian Life Insurance Company



Siskind, Cromarty, Ivey & Dowler  
On their own behalf and as counsel to Ian C. MacRae

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