

UNOFFICIAL ENGLISH TRANSLATION

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000114-005

DATE: September 8, 2006

THE HONORABLE JEAN-FRANÇOIS BUFFONI, J.C.S. PRESIDING :

CHARLES K. VAUGHAN
Petitioner

v.

NEW YORK LIFE INSURANCE COMPANY

and

CANADA LIFE ASSURANCE COMPANY

Respondents

and

FONDS D'AIDE AUX RECOURS COLLECTIFS

Impleaded Party

JUDGMENT

1. The Court is seized of a Motion for Approval of a Settlement Agreement (the "Motion"), following a judgment authorizing the institution of a class action proceeding against the Respondents and the filing of a Motion to Institute Proceedings;
2. The parties, through their respective attorneys, request that this Court grant the Motion;
3. On June 16, 2006, the parties entered into a Settlement Agreement (the "Agreement"), Exhibit R-1, which includes the four (4) following Schedules:
 - Notice to Members of Approval hearing, Schedule A

- New York Life Settlement Claim Form, Schedule B
 - Distribution Protocol, Schedule C
 - Policies of Special Class Members, Schedule D
4. Agreement R-1 defines the class of members who can file a claim as follows:
- “All persons who have acquired or for whom was acquired in Quebec from the Respondent, New York Life Insurance Company, after January 1st, 1979, an individual life insurance contract whereby participation or dividends provided the option of premium offset and/or purchase of paid up insurance with their dividends which policy was assigned assigned to Respondent, Canada Life Assurance Company on April 1st, 1994”;*
5. On June 22, 2006, as well as by subsequent Order, the Court approved the text and the mode of dissemination of the Notice to Members (Exhibit R-2, *en liasse*) pursuant to article 1025 CCQ, and scheduled the hearing of the Motion for September 8, 2006 at 11:30 in room 12.61;
6. Pursuant to the order rendered by this Court on June 22, 2006, as amended, the Notice to Members was published in La Presse, The Gazette, The Suburban, The Canadian Jewish News, Corriere Italiano, Vima: Greek Hellenic Tribune, The Stanstead Journal, and The Record, as well as on the websites of Respondent The Canada Life Assurance Company and of Petitioner’s counsel;
7. The members of the class were therefore duly advised as to the content of Agreement R-1 as well as of the time and place of the hearing of the Motion;
8. Despite these Notices, no written contestation was filed with this Court before the hearing of the Motion and no contestation was presented during the hearing of the Motion;
9. Petitioner has followed the negotiations between the parties very closely and has discussed the terms, conditions and consequences of Agreement R-1 with his counsel;
10. Agreement R-1 seeks to grant to members of the class a reimbursement varying between 25% and 100% of a portion of the premiums payable beyond the offset date provided for in the original illustration;
11. Counsel for both parties have highlighted the advantages of R-1, which was manifestly negotiated in good faith and without collusion between the parties;

12. All of the members of the class may present a claim without any proof of a fault on the part of Respondents;
13. Agreement R-1 also provides that the holders of terminated policies may present a claim;
14. Agreement R-1 also provides for a simple claims procedure which is limited to a summary proof supported by a sworn declaration, pursuant to Schedule B of Agreement R-1;
15. Moreover, Agreement R-1 stipulates procedural guarantees for the members who present a claim, i.e. the assistance of Class Counsel and a right of appeal to the Court in the event of dissatisfaction regarding Respondents' response to the claim;
16. All costs related to the implementation of Agreement R-1, including the publication of the Notices to Members, are to be paid by the Respondents;
17. The Petitioner, holder of a contract originally issued by Respondent New York Life Insurance Company, is satisfied with Agreement R-1 and submits that it is equitable to the members of the class;
18. Moreover, the Agreement provides for a mechanism whereby Petitioner has the option of deeming the Agreement void in case of a prorated reduction of claims which would result in eligible members of the class receiving less than 25% of the Offset Total, as provided for by paragraphs 7 and 8 of Schedule C of Agreement R-1;
19. The benefits provided for under Agreement R-1 do not constitute new insurance contracts and, according to the evidence presented before this Court, do not have any negative tax impact for the members of the class;
20. Petitioner's counsel has also filed a detailed affidavit sworn by Shawn Hogue (Exhibit R-5) in support of the Motion, which affidavit refers, *inter alia*, to the percentage of claims having been presented in a similar class action settlement against Canada Life Assurance Company;
21. Considering the content of that affidavit, it is reasonable to anticipate that the Settlement Fund provided for in Agreement R-1 will suffice to adequately compensate the members of the class;
22. The execution of Agreement R-1 represents an important economy of costs for the members of the class, in comparison to the costs of a contested class action;

23. Agreement R-1 also represents a positive end for them considering the delays which would have resulted from a contested class action;
24. With respect to Petitioner's counsels' legal fees, they shall be later adjudicated upon by this Court in conformity with the law and taking into consideration, *inter alia*, paragraph 10 of Agreement R-1 and the Fee Agreement between Petitioner and Class Counsel;
25. A Notice to Members, Exhibit R-6, shall be published once in the daily newspaper La Presse, in French and in the daily newspaper The Gazette, in English, and Respondents shall send, by regular mail, a copy of that Notice to the last known address of each member of the class appearing on Respondent The Canada Life Assurance Company's records, and such Notice shall be accompanied by a Settlement Claim Form, Schedule B of Agreement R-1;
26. Moreover, the approval judgment and the Settlement Claim Form (Schedule B) shall be available on the Website of Class Counsel and on Respondent The Canada Life Assurance Company's Website;
27. Each member of the class shall then be duly advised of the approval of Agreement R-1 and of the rights arising therefrom;
28. Counsel for both parties have demonstrated, by the evidence they presented and their representations, that Agreement R-1 is reasonable, equitable and appropriate, as well as in the best interest of the class;
29. Agreement R-1 having been negotiated in English and the mother tongue of the Petitioner Mr. Vaughan and the representatives of the Respondents being English, in the case of contradiction between the English and French versions of the Agreement, the English version will prevail;

30. WHEREFORE THIS COURT:

31. **APPROVES** Agreement R-1 entered into by the parties on June 16, 2006 in settlement of the present class action;
32. **APPROVES** the definition of the class provided for in Exhibit R-1, as follows:

"All persons who have acquired or for whom was acquired in Quebec from the Respondent, New York Life Insurance Company, after January 1st, 1979, an individual life insurance contract whereby participation or dividends provided the option of premium offset and/or purchase of paid up insurance with their dividends which policy was assigned to Respondent, Canada Life Assurance Company on April 1st, 1994"

33. **DECLARES** that Agreement R-1 constitutes a transaction according to article 2631 C.c.Q, which binds all the parties and all the members bound by the Agreement;
34. **DECLARES** that Agreement R-1 signed by the parties is reasonable, equitable, appropriate and in the best interest of the class;
35. **APPROVES** the content of Notice R-6, in English and in French;
36. **ORDERS** the publication of Notice R-6 once in the daily newspaper La Presse and once in the daily newspaper The Gazette;
37. **ORDERS** the mailing, by Respondents, of a copy of that Notice to the last known address of each member of the class appearing on Respondent the Canada Life Assurance Company's records, which shall be accompanied by a Settlement Claim Form, Schedule B of Agreement R-1;
38. **ORDERS** Respondents and Class Counsel to post the approval judgment and the Settlement Claim Form (Schedule B) on their respective Websites;
39. **RESERVES** the parties' rights to present all other motions seeking any order necessary to ensure the proper implementation of this transaction.
40. **THE WHOLE** without costs.

Montreal, September 8, 2006

True copy of the original signed on September 8, 2006

(S) JEAN-FRANÇOIS BUFFONI

Me Yves Lauzon
Me Careen Hannouche
LAUZON BÉLANGER inc.
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Me Robert E. Charbonneau
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Me Ward K. Branch
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