

SETTLEMENT AGREEMENT  
MADE AS OF JUNE 16 , 2006

Between:

**CHARLES KAYE VAUGHAN,**

and

**NEW YORK LIFE INSURANCE  
COMPANY**

and

**THE CANADA LIFE ASSURANCE  
COMPANY**

WHEREAS:

A. Charles Kaye Vaughan (the “Petitioner”), on his own behalf and as representative of the class, and New York Life Insurance Company and the Canada Life Assurance Company (the “Respondents”) enter into this Settlement Agreement providing for the settlement of the action described below, pursuant to the terms and conditions set out below, subject to the approval of the Superior Court of Quebec;

B. On June 16, 2000, the Petitioner filed a Motion for authorization to institute a class action against the Respondents for damages alleged to have been sustained by the Petitioner and the Class Members as a result of the purchase of insurance policies from the Respondent New York Life Insurance Company;

C. On September 18, 2002, the Court rendered judgment authorizing the institution of a class action;

D. Based on an analysis of the facts and the law and taking into account the Respondents' position that they will defend individual claims on the merits in the event that the Petitioner are successful at a common issues trial; and the time involved in proceeding through the common issues trial and individual issues trials, Lauzon Belanger and the Petitioner have concluded that this Agreement includes a fair, cost effective, and assured method of resolving claims of the class, provides benefits to the class and is fair, reasonable, adequate and in the best interest of the class;

E. Subject to the approval of the Court, the Parties agree that this class action and in particular, all claims contemplated, asserted, and unasserted, and raised, directly or indirectly, shall be resolved as set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

***DEFINITIONS***

1. The following terms used throughout this Settlement Agreement shall be defined or construed as follows:

“Appeal Period” – the period during which an appeal from the Approval Order may be commenced;

“Approval Date” - the date when this Settlement Agreement is approved pursuant to Art. 1025 CCP;

“Claim” - a claim to participate in the distribution of the Settlement Fund made by a Class Member;

“Claim Form” - The Claim in the form set out in Schedule B;

“Claim Period” – the four (4) month period commencing the day immediately after the last day of the Appeal Period and ending at 5 p.m. E.S.T. on the last date; of the four (4) month period;

“Claims Process” – the process by which a Class Member’s Claim will be resolved;

“Class Action” - action under the style of cause *Charles Kaye Vaughan v. New York Life Insurance Company and The Canada Life Assurance Company*, Montreal 500-06-000114-005;

“Class Counsel” - the firm of Lauzon Belanger;

“Class Counsel Fee Fund” - \$200,000 (based on the 20% contingency fee agreement in place between the Petitioner and Class Counsel), plus disbursements and applicable taxes, the whole subject to Court approval in conformity with paragraph 10 of the Settlement Agreement;

“Class members” - All persons who have acquired or for whom was acquired in Quebec from the Respondent, New York Life Insurance Company, after January 1<sup>st</sup>, 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 1<sup>st</sup>, 1994;

“Class representative fee” - \$4,500 to be paid to Charles Kaye Vaughan in compensation for time, troubles and disbursements incurred by him in acting as class representative, subject to Court approval;

“Court” - the Superior Court of Quebec;

“Final Claim Amount” – the amount payable to the class member following adjustments as set out in sections 5-8 of Schedule C;

"In-force Illustration": An illustration produced by the Defendants of the Class Member's policy which illustrates (a) the future premium payments required out of pocket, and (b) the illustrated offset date, based on current dividend scales at the time the Claim is made.

“Special Class Members” – all Class Members with policy numbers set out in Schedule D;

“Original Class Members” – persons who are members of the class authorized in the Class Action, and for greater certainty, do not include any persons who only own policies which were entitled to benefits under the settlements of the following actions: *Gibbs v. Canada Life Assurance Company*, Ontario Court File 1712/97, *Cope v. The Canada Life Assurance Company*, Quebec Court File 500-06-000051-975, and *Godding v. The Canada Life Assurance Company*, B.C. Court File Vancouver C975356;

“Offset Total” – the amount calculated for each class member under section 2(g) of Schedule “C”;

“Participating Class Member” – All Class Members who have not opted out of the Class Action;

“Parties” - the Respondents and the Petitioner;

“Petitioner” – Charles Kaye Vaughan;

“Releasees” - individually and collectively, the Respondents and all contractors, assigns, directors, officers, lawyers, employees, agents, consultants, advisors, officials and representatives of any type, of the Respondents;

“Respondents” – New York Life Insurance Company and The Canada Life Assurance Company;

“Settlement” - the settlement of the Class Action pursuant to the Approval Order;

“Settlement Agreement” - this settlement agreement reached between the Petitioner and the Respondents including any schedules, as amended or supplemented from time to time;

“Settlement Approval Order” - the Order in which this Settlement Agreement is approved pursuant to Art. 1025 CCP;

“Settlement Approval Hearing” – the hearing at which the court approves the Settlement and issues the Settlement Approval Order;

“Settlement Fund” – \$1,000,000 less the Class Counsel Fee Fund and the Class representative fee and exclusive of Notice costs and administration costs, subject to adjustment pursuant to paragraph 10.

### ***COURT APPROVAL HEARING***

2. Promptly after execution of this Settlement Agreement, the Petitioner and the Respondents shall appear before the Court to (1) seek a date for the Settlement Approval Hearing, and (2) seek approval of a notice substantially in the form attached as Schedule A to be published in each of the Montreal Gazette and La Presse, on one day at least 30 days prior to the Settlement Approval Hearing (the “Pre-Approval Notice”)
3. At the Settlement Approval Hearing, the parties will seek approval of an order , which order shall include a provision amending the class definition to conform with the definition of Class Members, *supra*.
4. If:
  - (a) the Approval Order is not granted, by the Court or on a final appeal, or
  - (b) the Petitioner exercises his rights pursuant to paragraph 8(b) of Schedule C,

then this Settlement Agreement is null and void, and the Parties shall return to the position they were in prior to the execution of this agreement and no materials filed in support of the Settlement Agreement may be relied upon by either Party or by the Court.

***NOTICE OF SETTLEMENT AND TIME FOR MAKING CLAIM***

5. If the Appeal Period expires without an appeal from the Approval Order being brought then, notice will be issued advising Class Members that they have the right to submit a Claim within the Claims Period. .
6. Class Counsel will publish the Newspaper Notice for one day in each of the Montreal Gazette and La Presse; and the Respondents will mail by regular post the Mail Notice to the last known address as shown on the records of the Respondent Canada Life Assurance Company of each known Class Member together with a Claim Form. The Mail Notice shall be deemed to be received 5 days after mailing. The Notice, Settlement Agreement, Approval Order and Claim Form will also be made available on Class Counsel's and the Respondent Canada Life's website.

***NOTICE COSTS***

7. The cost of issuing the Pre-Approval Notice and Post-Approval Notices will be paid by the Respondents.

***SETTLEMENT BENEFITS***

8. Each Participating Class Member who:
  - a. properly completes and submits a Claim within the Claim Period,
  - b. has not executed a release in favour of the Respondent New York Life or the Canada Life Assurance Company in relation to the issues raised in the Class Action,

will be eligible for a percentage of the premiums:

- c. paid by the class member beyond the original offset date out of his or her own funds independent of values in the policy; plus
- d. for any policies that have not lapsed and remain eligible, illustrated to be required to be paid based on an in-force illustration,

as calculated pursuant to the Distribution Protocol set in out Schedule C.

***TAX LIABILITIES***

- 9. The Respondents will not be responsible for any tax liabilities accruing to any Class Member, including any tax arising from the implementation of benefits provided as a result of this Settlement Agreement. It is understood that the benefits provided under this agreement do not constitute new insurance contracts.

***CLASS COUNSEL FEES AND CLASS REPRESENTATIVE FEE***

- 10. The:
  - a. Class Representative's compensation, and
  - b. Class Counsel's fees, inclusive of disbursements and taxes

will be set by the Court on application by Class Counsel to the Court to a maximum of the Class Representative fee and Class Counsel Fee Fund respectively. If the Court approves fees less than the Class Representative fee or the Class Counsel Fee Fund, the excess shall be added to the Settlement Fund.

- 11. The Respondents will pay the amount of fees awarded by the Court immediately on

expiry of the time to appeal the Settlement Approval Order if no appeal has been filed.

12. Class counsel undertake to reimburse from the Class Counsel Fee Fund the Class Action Assistance Fund of all funds advanced by the latter to class counsel.

### ***CLAIMS PROCESS***

13. Upon expiry of the time to appeal the Settlement Approval Order if no appeal has been filed, the Respondents will invest the Settlement Fund in an interest bearing account.
14. In order to recover from the Settlement Fund, Class Members must deliver or mail a properly completed and signed Claim Form to the Respondents such that it is received by Respondents during the Claim Period.
15. After the Claim Period is complete, Respondents shall apply the Distribution Protocol described in Schedule C and determine the Final Claim Amount for each Class Member who has submitted a Claim Form within the Claim Period.
16. Upon determination of all qualifying Class Members' Final Claim Amount, the Respondents will mail to each qualifying Class Member a cheque in the amount of the Final Claim Amount.
17. The Respondents will be responsible for any costs incurred by the Respondents in the claim process.

### ***RELEASE OF THE RESPONDENTS***

18. Each Participating Class Member shall be deemed to have released and forever discharged the Releasees of any and all claims, law suits, demands and causes of action that were asserted or could have been asserted by or on behalf of or through the Plaintiff or any Class Member individually, collectively or otherwise, for any claims made, arising from or related to the claims made in the Class Action, or any claims for liability or damages arising from representations, omissions, or other conduct that occurred during or



in connection with the purchase and sale of the Participating Class Member's policies (the "Released Claims"). Further, no Class Member shall pursue or assert a claim against any other person if by doing so the person against whom the claim was asserted would but for the extinguishment of such claims against the Releasees have a cross-claim or third party claim, or other claim for contribution or indemnity against the Releasees. No claims for contribution, indemnity, subrogation or other claims over shall be made by any person or any party against the Releasees with respect to the Released Claims, whether direct, derivative, subrogated, asserted, unasserted, or asserted in a representative capacity, inclusive of interest, QST, GST and costs, and whether within the Class Action or within any other proceeding.

19. It is understood and agreed that this is a compromise of a disputed claim and that the waiver of costs by the Respondents and the payment of settlements to Class Members are not admissions of liability on the part of the Respondents, by whom liability is expressly denied.
20. Notwithstanding the foregoing, this release does extend to, and will not be interpreted to derogate from any rights of the Class Member under this Settlement Agreement or any obligations of the Respondents to the Class Member under this Settlement Agreement.

### ***MISCELLANEOUS***

21. In the event that an appeal is taken from the Approval Order, all obligations under this Settlement Agreement shall be stayed pending resolution of the appeal. If the Approval Order is upheld on final appeal, this Settlement Agreement will continue except that the dates set out herein will be modified by the parties and approved by the court.
22. The Court shall retain supervisory jurisdiction over the Class Action and the interpretation of the Settlement Agreement, including the hearing of any Appeals pursuant to Schedule C, except that the Court shall be functus officio in respect of the dismissal of the Class Action against the Respondents.

23. The law of the Province of Quebec governs this Settlement Agreement.

Dated at Montreal, this 16th day of June, 2006.

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**Charles Kaye Vaughan, the Representative Petitioner**

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**Lauzon Bélanger inc.**  
Attorneys for Petitioner

**New York Life Insurance Company**

**Per:** \_\_\_\_\_

**Per:** \_\_\_\_\_

**The Canada Life Assurance Company**

**Per:** \_\_\_\_\_

**Per:** \_\_\_\_\_

**Borden Ladner Gervais**  
Attorneys for Respondents  
**New York Life Insurance Company and**  
**Canada Life Assurance Company**

**Per:** \_\_\_\_\_

**Branch McMaster**  
Counsel for Borden Ladner Gervais