



**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

JUSTICE P. PERELL

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THURSDAY, THE 20th DAY

OF FEBRUARY, 2020

BETWEEN:

**ELDON FEHR, GAETAN LAURIER,
LESLIE MICHAEL LUCAS, JAMES PATRICK O'HARA,
REBECCA JEAN CLARK, and LLOYD SHAUN CLARK**

Plaintiffs

- and -

SUN LIFE ASSURANCE COMPANY OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiffs for an Order for certification and to determine the terms of certification of this action as a class action further to the direction of the Court of Appeal for Ontario in its Order dated September 5, 2018, and pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, and the Defendant's cross-motion to

settle the terms of certification in this proceeding, were heard on February 3, 2020, at Osgoode Hall, Toronto, Ontario.

THIS COURT, by Order dated November 12, 2015, granted summary judgment in favour of the Defendant with respect to the plaintiffs' claims for negligent misrepresentation, granted summary judgment in part in favour of the Defendant with respect to the plaintiffs' claims for breach of contract, and dismissed the Defendant's motion for summary judgment with respect to the plaintiffs' claims for deceit (fraudulent misrepresentation), breach of the duty of good faith and fair dealing, and for rescission of releases executed under the Flexiplus Options program.

THIS COURT, by Order dated December 7, 2016, dismissed the plaintiffs' motion for certification.

THE COURT OF APPEAL FOR ONTARIO, by Order dated September 5, 2018, ordered certification with respect to certain of the proposed common issues, allowed the plaintiffs' appeal from summary judgment, and directed that this proceeding be remitted to the Superior Court of Justice for certification in accordance with its Reasons and for such further directions as may be necessary.

ON READING the Motion Record filed by the Plaintiffs, and on reading the Cross-Motion Record filed by the Defendant, and on reading the Order and Reasons of the Court of Appeal for Ontario dated September 5, 2018, and such other materials filed by the parties, and on hearing the submissions of counsel for the parties:

1. **THIS COURT ORDERS** ~~that this action be~~ and is hereby certified as a class action.
2. **THIS COURT ORDERS** that there shall be three classes with the following definitions:
 - (a) The "Universal Plus Class" is defined as persons who owned or own a Universal Plus policy sold by MetLife in Canada during the period 1987 through 1998, including any successor owners of the policy.
 - (b) The "Flexiplus Class" is defined as persons who owned or own a Flexiplus policy sold by MetLife in Canada during the period 1987 through 1998, including any successor owners of the policy whose monthly costs of insurance and or monthly administration fee was increased in one or more of 2001, 2006 or 2015 or the ninth year of the policy.
 - (c) The "Optimet Class" is defined as persons who owned or own an OptiMet policy sold by MetLife in Canada during the period 1987 through 1998, including any successor owners of the policy where an increased cost of insurance rate was charged and paid commencing in year nine (9) of the policy.
3. **THIS COURT ORDERS AND DECLARES** that Kim Spencer McPhee Barristers P.C. is hereby appointed as class counsel ("Class Counsel").
4. **THIS COURT ORDERS** that Eldon Fehr and Gaetan Laurier are the Representative Plaintiffs for the Universal Plus Class.

5. **THIS COURT ORDERS** that Eldon Fehr, Leslie Michael Lucas, Rebecca Jean Clark and Lloyd Shaun Clark are the Representative Plaintiffs for the Flexiplus Class.

6. **THIS COURT ORDERS** that James Patrick O'Hara is the Representative Plaintiff for the Optimet Class.

7. **THIS COURT ORDERS** that Angela Watters is hereby removed as a Plaintiff and the title of proceedings shall be amended to read:

BETWEEN:

ELDON FEHR, GAETAN LAURIER,
LESLIE MICHAEL LUCAS, JAMES PATRICK O'HARA,
REBECCA JEAN CLARK, and LLOYD SHAUN CLARK

Plaintiffs

- and -

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Proceeding under the *Class Proceedings Act, 1992*

8. **THIS COURT ORDERS** that the certified common issues are as follows:

1. Was it a term of the Flexiplus policy that the cost of insurance ("COI") rate may be adjusted based on specified factors? If so, is Sun Life liable for breach of contract if increases were based in whole or in part on other factors?

2. Was it a term of the Flexiplus policy that Administrative Fees may be adjusted based on factors related to the cost of administering the policies? If so, is Sun Life liable for breach of contract if increases were based, in whole or in part, on other factors?
 3. Was it a term of the OptiMet policy that the cost of insurance ("COI") rate may be adjusted based on specified factors? If so, is Sun Life liable for breach of contract if increases were based, in whole or in part, on other factors?
 4. Was it a term of the Universal Plus, Flexiplus, and OptiMet policies that the "Maximum Premium" amount set out in the policies was the highest amount of premium that the policyholder would ever be required to pay for the policy in any year, in order to prevent lapse of the policy? If so, are the plaintiffs entitled to a declaration to that effect?
 5. If the answer to any of questions 1, 2, or 3 is that Sun Life breached the contract of insurance, did Sun Life administer the policies in a manner, including violating section 439 of the *Insurance Act*, S.O. 1990, c. I.8 (prohibiting unfair and deceptive practices) such that the breach of contract was concealed?
9. **THIS COURT ORDERS** that the claims asserted on behalf of the class with respect to the common issues are for breach of contract.
10. **THIS COURT ORDERS** that the relief sought on behalf of the class is damages in respect of common issues 1, 2 and 3 and a declaration in respect of common issue 4.

11. **THIS COURT ORDERS** that the Interim Litigation Plan is hereby approved in the form attached as **Schedule A**.

12. **THIS COURT ORDERS** that the Plaintiffs shall within ninety days bring a motion to have a Final Litigation Plan approved by the Court.

13. **THIS COURT ORDERS** that CA2 be appointed as Notice Administrator to administer the Notice Program and to report on Opt-Outs.

14. **THIS COURT ORDERS** that a Class Member may opt out only in the manner set out in the Notice of Certification.

15. **THIS COURT ORDERS** that the Opt-Out Deadline is 60 days after the later of the publication and the distribution of the Notice of Certification pursuant to the Notice Plan.

16. **THIS COURT ORDERS** that no person may opt out of the class proceeding after the Opt Out Deadline, except by court order and that no person who is a minor or mentally incapable within the meaning of section 6 or 45 of the *Substitute Decisions Act* may opt out without leave of the court after notice to the Children's Lawyer, Public Trustee and Guardian, Litigation Guardian, or Guardian, as appropriate.

17. **THIS COURT ORDERS** that the Notice Administrator shall within 90 days after the Opt Out Deadline deliver to the Parties' Counsel an affidavit confirming that notice was delivered in accordance with the Notice Plan and listing: (a) the names and addresses of persons to whom direct notice was sent pursuant to the Notice Plan;

and (b) the names of persons for whom mail was returned and a current address not ascertained.

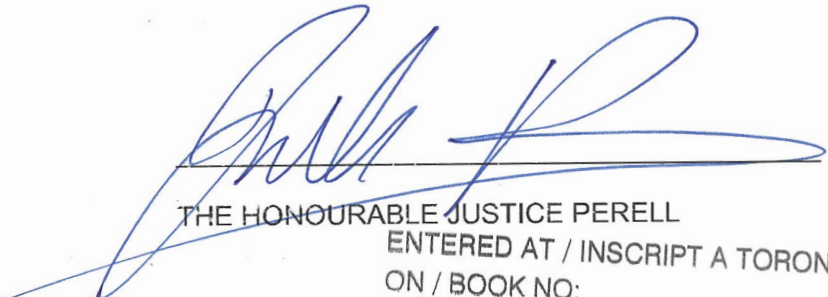
18. **THIS COURT ORDERS** that the Notice Administrator shall within 90 days after the Opt Out Deadline deliver to the Parties' Counsel an affidavit listing the names, addresses, and insurance policy numbers of the persons who have opted out.

19. **THIS COURT ORDERS** that notice of certification of this action as a class proceeding in the forms attached hereto as **Schedules B, C, D** ("the Long Form Notices") and **E** ("the Short Form Notice") is tentatively approved.

20. **THIS COURT ORDERS** that the Plaintiffs shall within ninety days bring a motion to have Final Long Form Notices and a Final Short Form Notice approved by the Court.

21. **THIS COURT ORDERS** that the Final Long Form Notices and the Final Short Form Notice shall be distributed in accordance with the Notice Program approved by the Court and attached hereto as **Schedule F**.

22. **THIS COURT ORDERS** that costs are in the cause for both the motion and cross-motion to settle the Certification Order.



THE HONOURABLE JUSTICE PERELL

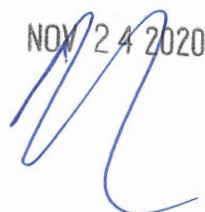
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PER/PAR



SCHEDULE A

Court File No.: CV-10-00411183-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ELDON FEHR, ANGELA WATTERS, GAETAN LAURIER,
LESLIE MICHAEL LUCAS, JAMES PATRICK O'HARA,
REBECCA JEAN CLARK, and LLOYD SHAUN CLARK**

Plaintiffs

- and -

SUN LIFE ASSURANCE COMPANY OF CANADA

Defendant

Proceeding under the Class Proceedings Act 1992

INTERIM LITIGATION PLAN OF THE PLAINTIFFS

I. INTRODUCTION

1. The *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "CPA") requires that a representative plaintiff produce a plan that establishes a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members¹ of the proceeding. Subject to issues of scheduling and appeals, the Plaintiffs propose that the proceeding be conducted in accordance with the following draft Litigation Plan. The final Litigation Plan is subject to revision and approval by this Honourable Court.

¹ As defined in the Fresh as Amended Statement of Claim. Unless otherwise indicated, defined terms will have the meanings ascribed in the Fresh as Amended Statement of Claim.

2. This action concerns the administration of four types of universal life insurance policies: Interest Plus, Universal Flexiplus, Universal Plus, and Universal OptiMet (collectively the "Policies"). The Policies were marketed and sold by the Metropolitan Life Insurance Company or Metropolitan Life Insurance Company of Canada (collectively "MetLife") from 1985 to 1998. MetLife's life insurance business in Canada was sold to the Mutual Life Assurance Company of Canada ("Mutual") in 1998, which changed its name to Clarica Life Insurance Company ("Clarica") in 1999. Clarica was amalgamated into Sun Life Assurance Company of Canada ("Sun Life") (the Defendant in this action) at the end of 2002, and Sun Life has administered the Policies since that time.
3. The Plaintiffs' claims give rise to responsibilities of the Defendant for the administration of the Policies after they were sold, directly and as successor to MetLife, Mutual and Clarica.
4. The Defendant moved to strike a prior version of the statement of claim, which resulted in the decisions of this Court dated October 27, 2011, and of the Court of Appeal for Ontario dated February 25, 2013. The present Fresh As Amended Statement of Claim reflects those decisions, which establish that the pleading discloses causes of action for negligent and fraudulent misrepresentation, breach of contract, breach of the duty of good faith and fair dealing, and deceit and fraud, including claims for waiver of tort, disgorgement, and punitive damages.
5. The Plaintiffs' evidence will include, in part, evidence and statements submitted by Sun Life in the legal action it commenced in 2006 (the "Indemnity Litigation") seeking a declaration that MetLife was responsible to indemnify Sun Life for claims made by policyholders concerning the sale of the Policies.

CLASS COUNSEL

6. The Plaintiffs and proposed Class Members are represented by the law firm of Kim Spencer McPhee Barristers P.C. ("Kim Spencer McPhee"), which has overall responsibility for this litigation as Class Counsel. Kim Spencer McPhee has extensive experience in class action

litigation and insurance litigation, and the knowledge, skill, experience, personnel, and financial resources to prosecute this class action.

7. Class Counsel anticipate that prosecuting this action will require:

- a) the reading, organizing, profiling, scanning, managing and analyzing of thousands of documents;
- b) the taking of testimony of relevant witnesses;
- c) the analysis of complex legal issues; and
- d) the retention of experts and the presentation of expert testimony.

Depending of course on whether the case settles, a trial of Common Issues and follow-on proceedings to determine any remaining Individual Issues may be required.

8. The Plaintiffs have been discussing possible costs indemnification and/or disbursement funding with third-party sources. The Plaintiffs are also considering a possible application to the Class Proceedings Fund. The Plaintiffs will address this issue with the Court, if appropriate, at upcoming case conferences.

III. REPORTING TO AND COMMUNICATING WITH CLASS MEMBERS

9. The Class consists of:

All persons who purchased and owned an Interest Plus, Universal Plus, Universal Flexiplus, or Universal Optimet life insurance policy sold by MetLife in Canada during the period 1985 through 1998, including any successor owners of the policies and the beneficiaries on any policies payable upon the death of the insured.

10. The policyholder information provided by the Defendant indicates in its responding record confirms that there at least 233,182 Class Members in the present litigation. The Defendant should have records showing the names and present (or last known) addresses of all Class Members. The distribution of Class Members among the Policies is estimated as follows:

(a) Interest Plus – 96,967

(b) Universal Flexiplus – 86,212;

(c) Universal Plus – 47,672;

(d) Universal OptiMet – 2,331

11. Class Counsel have included material on the Kim Spencer McPhee website (www.complexlaw.ca), also replicated on the firm's Facebook page, about this litigation (the "Website"). Through this medium, the Class Members will be kept apprised of the progress of the litigation. The Website will also provide access to court documents, court decisions, notices, documentation, and other information relating to the action, as well as answers to frequently asked questions regarding class actions.
12. The Website contains a communication webpage that will provide regular updates on the status of the class action, and contact information for Class Members to submit inquiries to Class Counsel. Prompt responses will be provided.

Class Counsel is also exploring options with regard to a national communications strategy to assist Class Members in identifying themselves as Members. This may include online and print media advertisements. The proposed notification plan is described below in section VI, details of which are included as Schedule "A".

IV. PLEADINGS AND LITIGATION HISTORY

13. The Defendant's Statement of Defence in response to the Fresh As Amended Statement of Claim (May 2013) was served in July 2013.
14. The Defendant had previously brought a motion to strike the claim on September 28, 2011, resulting in this Court's decision dated October 27, 2011, and the decision of the Court of Appeal for Ontario dated February 25, 2013, the results of which are reflected in the Fresh As Amended Statement of Claim (May 2013). The decisions establish that the pleading discloses causes of action for negligent and fraudulent misrepresentation, breach of the duty of good faith and fair dealing, breach of contract, and deceit and fraud, including claims for waiver of tort, disgorgement and punitive damages.
15. Subsequently, the Plaintiff brought a motion to certify this action as a class under the *Class Proceedings Act, 1992*, S.O. 1992. The Defendant brought a cross-motion for dismissal as

statute-barred under provincial limitations statutes. On November 12, 2015, this Court ordered that the Plaintiffs' causes of action for negligent and fraudulent misrepresentation were dismissed as statute-barred, one of the breach of contract causes of action was dismissed as premature, and the Defendant's summary judgment motion related to the remaining breach of contract claims, the fraudulent misrepresentation claims, and breach of good faith and fair dealing claims was dismissed as not statute-barred.²

16. In the same reasons, this Court ordered a further hearing on the certification motion to hear additional evidence on the breach of contract, fraudulent concealment, and breach of the duty of good faith and fair dealing claims. Subsequent to the resumption of the motion for certification, on December 7, 2016 this Court denied the Plaintiffs' motion to certify this case as a class action.³ The Plaintiffs appealed this decision.

17. On September 5, 2018, the Court of Appeal set aside this Court's reasons, and allowed certification of the class on common issues relating to breach of contract and fraudulent concealment as applicable to limitation periods associated with the alleged breaches of contract.⁴ The Court of Appeal set aside the summary judgment on all claims, but declined to certify the class on the basis of the misrepresentation, noting that these claims could instead proceed individually. On proposed common issues related to remedies, the Court of Appeal declined to certify as these would be more properly determined after the common issues trial. The common issues that have been certified are attached as Schedule "B".

18. On May 2, 2019, the Supreme Court of Canada denied the Defendant's application seeking leave to appeal the certification/summary judgment decision by the Ontario Court of Appeal.

V. PROPOSED LITIGATION TIMETABLE

19. The Plaintiffs will ask the case management judge to set the schedule for the future conduct of the proceeding, including:

- a) documentary production;

² *Fehr v. Sun Life Assurance Company of Canada*, 2015 ONSC 6931.

³ *Fehr v. Sun Life Assurance Company of Canada*, 2016 ONSC 7659.

⁴ *Fehr v. Sun Life Assurance Company of Canada*, 2018 ONCA 718.

- b) examinations for discovery;
- c) the delivery of experts' reports; and,
- d) the trial of the common issues.

The Plaintiffs may also ask that the schedule be amended from time to time, as required.

- 20. The Plaintiffs intend that any individual issues determinations that may be required after conclusion of the common issues trial and determinations of aggregate liability shall be conducted by persons appointed to conduct references using streamlined procedures, as envisioned under *CPA* section 25.
- 21. Throughout the litigation, the Plaintiffs propose that a schedule of hearing days be set aside for regular case management conferences with the case management judge in order to facilitate the orderly progression of this litigation under the supervision of the Court.
- 22. Although no motions other than those indicated in this plan are currently anticipated by the Plaintiffs, additional motions may be required and will be scheduled as the case progresses.

VI. NOTICE OF CERTIFICATION & OPT-OUT PROCEDURE

- 23. Notice of certification will be provided pursuant to section 17 of the *CPA* in a form and manner approved by this Court.
- 24. The Plaintiffs will ask the Court to:
 - a) settle the form and content for notification of certification in accordance with the requirements of *CPA* section 8 (the "Notice of Certification"), which may include a form for mailing and a summary form for media publication;
 - b) settle the means by which the Notice of Certification will be disseminated (the "Notice Program"); and
 - c) set an opt-out deadline approximately 60 days after the Notice of Certification is disseminated.
- 25. The Policies were sold throughout Canada, so a national Notice Program is proposed.
- 26. The Plaintiffs will request approval of the following Notice Program:

- a) publication of a Notice of Certification (in summary form) in national and major market media, as set out in the attached Schedule "A", which would run in weekend editions of the print media outlined in Schedule "A";
- b) publication of a Notice of Certification (in summary form) in a press release to be issued by the Defendant;
- c) posting of a Notice of Certification by the Defendant on its website at www.sunlife.ca;
- d) mailing a Notice of Certification to each Class Member who is a current policyholder at his or her address as maintained by the Defendant;
- e) mailing a Notice of Certification (in summary form) to each Class Member who is a former policyholder at his or her last known address as maintained by the Defendant;
- f) inclusion of a Notice of Certification in one or more annual or monthly policy or account statements sent to Class Members or policyholders;
- g) sending a Notice of Certification by Class Counsel to Class Members who have provided mail or email addresses to Class Counsel;
- h) posting of a Notice of Certification on Kim Spencer McPhee's Website; and
- i) delivery of a Notice of Certification by Sun Life or Kim Spencer McPhee to any person who requests it.

The Plaintiffs will also request that the Notice of Certification include a phone number and an email address that Class Members may call for consultation with Kim Spencer McPhee personnel if they have any questions.

- 27. The Plaintiffs will request that the Notice Program be administered by a Notice Administrator, to be selected by the parties and approved by the Court; and that the costs of the Notice Program be paid by the Defendant.
- 28. The Notice Administrator shall take reasonable steps to locate and notify any Class Member whose mailed Notice of Certification is returned undelivered.
- 29. The Notice of Certification will outline the significance of opting out – namely that those members of the Class who choose to opt-out before the stipulated deadline will not participate in this action, will not stand to recover any damages, and will not be bound by any judgment or settlement made in this action. The Notice of Certification will state that Class

Members who do not opt-out will be bound by the proceedings, including any judgment or settlement.

30. The Notice of Certification will be accompanied by an Opt-Out Form that Class Members may use to opt out, and instructions that persons wishing to opt out must fax or mail their completed form to the Notice Administrator by the opt-out deadline in order to opt out of the proceeding.
31. The Plaintiffs will ask the Court to order:
 - a) that no person may opt out after the opt-out deadline, except by court order; and
 - b) that no person who is mentally incapable or a minor may opt out without leave of the Court after notice to the Public Trustee and/or Children's Lawyer, as appropriate.
32. The Notice Administrator will deliver to the Court and the parties' counsel an affidavit listing the names, addresses, and policy information for all persons who have opted out, within 30 days after the opt-out deadline. The affidavit will be sealed before being placed in the court file.
33. The Notice Administrator will deliver to Kim Spencer McPhee the names, addresses, and policy information in electronic format for the Class Members to whom notice has been provided, and of Class Members for whom mail was returned and a current address was not ascertained, within 30 days after the opt-out deadline, or as that information may later become available.

VII. DISCOVERY PLAN, DOCUMENTARY DISCOVERY, AND DOCUMENT MANAGEMENT

34. Most of the documents relating to the common issues are in the possession of the Defendant. Those documents will be produced by the Defendant to the Plaintiffs through the normal production, cross-examination, and examination for discovery processes.
35. The Plaintiffs and the Defendant will devise and agree to a Discovery Plan in accordance with Rule 29.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("*Rules of Civil*

Procedure"); and the *Sedona Canada Principles*. The Discovery Plan will describe the scope of documentary discovery; the methods for identifying producible documents; the dates for service of each party's affidavit of documents; information respecting the timing, costs, and manner of the production of documents; the names of persons intended to be produced for oral examinations for discovery; information regarding the timing and length of the examinations; and a timetable for service of expert reports. The Discovery Plan will address the production of hard-copy and electronic documents, and the tools the parties may use to process, copy, sample, search, select, identify, and produce relevant documents, including electronic documents in accordance with the *Sedona Canada Principles*. The Discovery Plan will also describe any agreements or provisions regarding documents that are or may be covered by a privilege or other doctrine restricting disclosure.

36. The Plaintiffs anticipate that document production by the Defendant will be voluminous. The Plaintiffs may seek an order requiring that all productions by the Defendant be made in electronically searchable format. The Plaintiffs have only a small number of documents to be produced.
37. The Plaintiffs anticipate that the Defendant will produce documents relating to any insurance policies that may pertain to its liabilities in this litigation -- including any insurance and reinsurance coverage applicable to the Defendant's own administration of the Policies, and to the administration of the Policies by MetLife, Mutual and Clarica, as predecessors of the Defendant. Because of the scope of these activities, the Plaintiffs anticipate that numerous and complex insurance and reinsurance policies may be involved. The Plaintiffs may seek production of these policies if they are not produced by the Defendant.
38. The Plaintiffs will request that the costs of producing documents in the Defendant's possession or control be paid by the Defendant. The Plaintiffs will pay the costs of producing documents in the Plaintiffs' possession or control.
39. The Plaintiffs have not yet determined whether documents will need to be sought from any non-parties. Documents that originated with MetLife, Mutual Life Assurance of Canada, and Clarica Life Insurance Company will be relevant to the common issues, but because the

Defendant is the corporate successor of those entities (by acquisition or reorganization), the Plaintiffs anticipate that relevant documents from those insurers will now be in the possession of the Defendant. The Plaintiffs already possess copies of many of those documents because they were filed in the Indemnity Litigation. The Plaintiffs will assess whether further production of primary source documents will be requested.

40. Kim Spencer McPhee intends to maintain produced documents using proprietary document management systems.

VIII. EXAMINATIONS FOR DISCOVERY

41. Kim Spencer McPhee intends to seek leave of Court to conduct oral examinations for discovery longer than the seven hours normally permitted, in view of the complexity of the action, under Rule 31.05.1 of the *Rules of Civil Procedure*. The Plaintiffs propose that eight weeks be set aside for the conduct of discoveries, so that examinations can be scheduled during that period without regard to competing obligations of counsel.
42. The Plaintiffs will examine for discovery at least one representative of the Defendant. The Plaintiffs anticipate that examination of more than one representative of the Defendant will be needed. The Plaintiffs will seek the consent of the Defendant, and if that is not forthcoming, the Plaintiffs may request an order for additional examination.
43. Based on the evidence filed in the Indemnity Litigation, the Plaintiffs anticipate that individuals in addition to representatives of the Defendant are likely to have information relevant to material issues in the action that will not be otherwise obtainable. The Plaintiffs will bring a motion under Rule 31.10 for leave to examine for discovery certain non-parties, including representatives of Met Life.
44. Based on the Indemnity Litigation record as well as the Certification Motion record for the current action, the individuals the Plaintiffs may seek to examine, include (but are not limited to):

- (a) Jack Garramone -- In charge of Sales, Distribution and Training at Met Life in Canada during the relevant time period; he became president of Sun Life Financial Distributors (Canada) Inc.;
- (b) Louise Heaney - Director of Customer Relations for Sun Life Assurance Company of Canada during the Indemnity Litigation;
- (c) Kathy Sauvé -- Chief Agent of the Canadian Branch of Metropolitan Life Insurance Company during the Indemnity Litigation;
- (d) Kevin Morrissey -- Vice-President, Asset Liability Management of Sun Life Financial at the time of the Indemnity Litigation; formerly employed at Mutual and Clarica; and
- (e) Dean Chambers -- Vice-President, Individual Insurance, Sun Life Assurance Company of Canada and expert witness for the Defendant regarding actuarial calculations with respect to cost of insurance.

Some of these persons may be non-parties, for example if they are now retirees or employees of other companies.

- 45. The Defendant may examine the Representative Plaintiffs.
- 46. The Plaintiffs intend to ask that examinations for discovery be conducted in Toronto, for convenience and economy.

IX. EXPERTS

- 47. The Plaintiffs expect to offer reports from one or more experts, depending on the how the factual and legal issues develop. The Plaintiffs are consulting with experts but have not made any decision on which, if any, may testify at the common issues trial. The fields of expertise would likely be life insurance, corporate actuarial analysis, policy and product pricing actuarial analysis, and forensic accounting.
- 48. The topics of possible expert testimony may include the following:

- (a) description of the market for life insurance and investment products during the class period, including alternatives available to prospective purchasers;
- (b) description of the methodology for designing and pricing life insurance policies;
- (c) description of the written terms of the Policies at issue;
- (d) analysis of various financial and insurance outcomes for policyholders and for the insurer, based on administering the Policies in accordance with their represented terms, their written terms, and alternative terms;
- (e) analysis of the effect of the alleged breaches of contract for policyholders and for the insurer;
- (f) collection, analysis, and summary of information from the Defendant's records;
- (g) analysis of the terms of the sale of MetLife's Canadian business and the inferences, if any, that may be drawn therefrom;
- (h) analysis of the various positions taken by Sun Life in the Indemnity Litigation and in the administration of the Policies; and
- (i) analysis of revenues and profits realized by the Defendant and its predecessors from sale and administration of the Policies.

49. With respect to the specific types of Policies at issue, the topics of possible expert testimony may include the following:

Universal Plus

- (a) analysis of the circumstances under which a policyholder's premium payment might exceed the Maximum Premium stated in the policy, and the financial and insurance effects of that event;

- (b) analysis of various cost of insurance rates, administrative fees, policy premiums, and interest crediting rates on the policyholders' accumulation funds, lapse exposure, and vanishing premium opportunities;

Universal Flexiplus

- (a) analysis of the circumstances under which a policyholder's premium payment might exceed the Maximum Premium stated in the policy, and the financial and insurance effects of that event;
- (b) analysis of various cost of insurance rates, administrative fees, policy premiums, and interest crediting rates on the policyholders' accumulation funds, lapse exposure, and vanishing premium opportunities;

Universal OptiMet

- (a) analysis of the circumstances under which a policyholder's premium payment might exceed the Maximum Premium stated in the policy, and the financial and insurance effects of that event;
- (b) analysis of various cost of insurance rates, policy premiums, and interest crediting rates on the policyholders' accumulation funds, lapse exposure, and vanishing premium opportunities.

X. DISPUTE RESOLUTION

50. The Plaintiffs are willing to participate in mediation or other non-binding alternative dispute resolution efforts.

XI. THE COMMON ISSUES AND THE COMMON ISSUES TRIAL

51. The Plaintiffs have achieved certification on common issues as described in Schedule "B" attached hereto.
52. The Plaintiffs plan to ask the Court to hold the common issues trial approximately six months after the completion of discoveries, including any motions for refusals or other disputed

issues. The Plaintiffs anticipate that the common issues trial will require approximately four weeks of hearing time.

53. The Plaintiffs expect to present trial evidence on the common issues, including the following:
 - (a) Documentary evidence, statements of litigation positions, and testimony in the Indemnity Litigation between Sun Life and MetLife;
 - (b) Documents obtained from the Defendant concerning the administration of the Policies throughout the class period;
 - (c) Testimony from the Defendant concerning the administration of the Policies throughout the class period;
 - (d) Expert testimony on matters as described above.
54. The Plaintiffs may present testimony from some or all of the named Plaintiffs.
55. A number of the common issues are primarily questions of law, as to which only background factual development will be necessary.
56. If the common issues trial results in a determination of some or all issues in favour of the Plaintiffs, the Plaintiffs will request the Court to enter a common issues judgment under *CPA* section 27, and to decide:
 - (a) whether the Court may determine the aggregate or a part of the Defendant's liability to Class Members and give judgment to the Class Members accordingly, under *CPA* section 24; or
 - (b) whether the Court considers that the participation of individual Class Members is required to determine individual issues, under *CPA* section 25, other than those that may be determined under section 24.

If the Plaintiffs are successful at trial in obtaining an aggregate assessment, as discussed below, resolution of any individual issues will be greatly simplified.

57. At present, the Plaintiffs anticipate that an aggregate assessment of monetary relief under section 24 may be appropriate with respect to the common issues:

(a) on the causes of action for breach of contract – because overcharges by the Defendant based on inflated cost of insurance rates or administrative fees or based on premium charges in excess of the Maximum Premium can be calculated on an aggregate basis, and restituted to the affected Class Members, based on the Defendant's financial records concerning the administration of the Policies;

(b) on the issues for which an equitable remedy of disgorgement is ordered – because revenues and profits obtained by the insurers related to the Policies can be ascertained on an aggregate basis, and, if the Court deems it appropriate, allocated among Class Members on an average or proportional basis under *CPA* section 24(2); and/or

(c) on the issues for which punitive or exemplary damages are ordered -- because allocation under *CPA* section 24(2) should also be appropriate with respect to these damages.

58. If the Court determines that such an aggregate assessment of monetary relief is appropriate, the Plaintiffs may ask the Court to proceed forthwith to make such an assessment; determine whether individual claims are needed to give effect to the assessment; and enter judgment accordingly.

59. Class Counsel also acted as class counsel in *Fanti v. Transamerica Life Canada*, and therefore are familiar with awards of monetary relief on an aggregate and/or individual basis. Class Counsel propose to work with actuarial experts to devise workable methods for assessing damages on an aggregate basis that will address issues of compounding and tax implications.

60. The Plaintiffs do not believe that disgorgement or other equitable remedies necessarily require election of "waiver of tort". However, to the extent that the Court determines that election of waiver of tort is required for these remedies to be applied, the Plaintiffs will decide whether to make the election at an appropriate time. The Plaintiffs believe that,

unlike the case in *Andersen v. St. Jude* in which Justice Lax declined to deal with waiver of tort at trial, the nature of the issues in this action may render it particularly suitable for the trial judge to consider the application of the doctrine of waiver of tort.

61. Any Class Members who have surrendered their Policies or whose Policies matured or were otherwise terminated are covered by the common issues to the same extent as current policyholders. Damages, rehabilitation, and/or other types of remedies as discussed herein should apply to both current and past policyholders.
62. At present, the Plaintiffs anticipate that, depending on the Court's resolution of common issues and with respect to damages and remedies, it is possible that some individual issues may remain to be determined.
63. If a determination of individual issues is to proceed under *CPA* section 25, the Plaintiffs will request the Court to settle the form and content of a notice under *CPA* section 18 and order that the Notice Administrator disseminate the notice accordingly.

XII. DETERMINATION OF INDIVIDUAL ISSUES

64. Depending on the outcome of the common issues trial, the Court's decisions concerning damages and remedies, and the Court's determinations under *CPA* section 24, as set forth above, the Plaintiffs anticipate it is possible that some or all of the following issues may be subject to individual determination under section 25.
65. With respect to issues concerning breaches of contract, the common issues trial should determine whether the cost of insurance rate, administrative fee, and maximum premium terms of the respective Policies were breached, and if so, the nature and extent of the breach. As stated above, a determination of aggregate liability under *CPA* section 24 may be appropriate for overcharges. The tax effect of lost tax-exempt income can be reflected in the aggregate determination. Any consequential damages suffered by Class Members would probably have occurred only if their Policies lapsed as a result of the overcharges; if such instances are identified from the Defendant's records, the Plaintiffs will propose a common measure of damages for such situations.

66. With respect to issues of fraudulent concealment as applicable to limitations periods concerning the breaches of contract, individual issues may remain in respect of the specific timing of the breaches of contract for each Class Member. The Class is national in scope and as such multiple jurisdictions will be engaged as to their provincial/territorial legislation governing limitations periods.
67. With respect to rescission of releases signed by Class Members in relation to their participation in programs developed by the Defendant intended to ameliorate the Class Members' situations respecting their Policies, individual issues may remain. As a condition of participation in these ameliorative programs, Class Members were required by the Defendant to sign a release of the claims in the present proceeding. Individual issues may remain as to whether Class Members may rescind their releases, whether declaratory relief may be made available stating the releases are not enforceable, or whether another remedy is appropriate.
68. With respect to class members seeking to advance misrepresentation claims against the Defendant (such as Interest Plus policyholders), individual issues will remain including whether such misrepresentation occurred, and the damages suffered as a result.
69. If factual determinations are necessary with respect to individual issues, the Plaintiffs will urge the Court to streamline procedures to the maximum extent possible, consistent with *CPA* section 25(1) & (3):
 - (a) The Plaintiffs may seek a reference under section 25(1)(b) and appointment of referees;
 - (b) The Class Members may retain Class Counsel and/or they may retain individual counsel if they choose;
 - (c) The Class Members shall submit claim forms, including brief written statements concerning the circumstances of their purchases, communication with the Defendant regarding continued administration of their Policies, and any supporting documentation. The claim form shall be deemed to constitute a statement of claim for purposes of the reference;

(d) Within 30 days, the Defendant should submit any contravening evidence. In the instances, probably minute in number, where a genuine issue appears to exist, the parties will proceed with the reference; and

(e) The referees will have the power to award any costs of the assessment.

70. As described above, the Plaintiffs may retain experts to assist with damages and remedies. One approach would be development of a multi-factor damages and rehabilitation model that would take into account relevant factors, depending on the remedies approved by the Court. Some guidance may be found in the Life Products Restitution Model, filed with the Court as Schedule 6 of the settlement agreement in the class action *Fantl v. Transamerica Life Canada*, Court File No.: 06-CV-306061-CP. This model was used to determine restitution amounts per damaged universal life insurance policy in that case.

71. A damages and rehabilitation model in the present case may consider: valuation of the loss of tax exempt earnings; valuation of the cost of obtaining alternative life insurance and investments after lapse of the claimant's policy in comparison with existing coverage and investment costs; valuation of the cost of paying premiums in excess of the maximum premiums stated in Universal Plus, Universal Flexiplus, and Universal Optimet policies; valuation of excessive cost of insurance paid due to excessive rates; and valuation of excessive administrative fees paid.

XIII. DISTRIBUTION PROCESS

72. After any judgments in favour of Class Members become final, the Plaintiffs will request that the Court direct distribution of amounts awarded, under *CPA* section 26, less any appropriate deductions. To the extent practicable the distributions should be made directly by the Defendant; otherwise, an administrator may be employed.

73. If an award is made under *CPA* section 24 and is not fully distributed to Class Members within a reasonable time, the Plaintiffs will make a motion for an appropriate *cy près* distribution of remaining amounts.

XIV. COSTS AND FEES

74. Class Counsel fees, disbursements, and applicable taxes will be subject to Court approval and will be paid out of any funds recovered, unless otherwise ordered. Those amounts will constitute a first charge upon the amounts recovered and will be paid as the first payments from any recoveries.
75. If there are any levies by the Class Proceedings Fund or charges based on a funding and/or indemnification agreement, those amounts shall be paid.
76. Costs of administration shall be paid by the Defendant.

XV. FINAL REPORT

77. Following the final distributions to Class Members and any *cy près* distributions, the Court will be presented with a final report, on such terms and in such manner as the Court may direct. Following the submission of the final report, the administrator, if one was appointed, will be discharged.

XVI. REVIEW OF THE LITIGATION PLAN

78. This Litigation Plan will be reviewed periodically as the litigation progresses, both before and after the determination of the common issues, and may be revised, as necessary, under the continuing case management authority of the Court.

SCHEDULE "A"

Publication List

Market	Newspaper	Avg. Daily Circulation
NATIONAL		
	Globe and Mail	346,543(Weekday) 416,409 (Saturday)
	National Post	183,111 (Weekday) 181,525 (Saturday)
NORTH		
Whitehorse, Yukon	Star	17,99
Nunatsiaq, Nunavut	News	6,500
Northwest Territories	News-North	8,108
BRITISH COLUMBIA		
Kelowna	Daily Courier	10,521(Weekday) 10,547 (Saturday) 10,247 (Sunday)
Penticton	Herald	5,635 (Weekday) 5,492 (Saturday) 5,579 (Sunday)
Prince George	Citizen	14,272
Vancouver	Province	124,377 (Weekday) 138,992 (Sunday)
Vancouver	Sun	141,246 (Weekday) 163,344 (Saturday)
Victoria	Times-Colonist	55,152 (Weekday) 54,789 (Saturday) 54,904 (Sunday)
ALBERTA		
Calgary	Herald	113,850 (Weekday) 110,761 (Saturday)
Calgary	Sun	43,734 (Weekday) 45,484 (Saturday) 55,684 (Sunday)
Edmonton	Journal	99,044 (Weekday) 102,571 (Saturday)
Edmonton	Sun	39,981 (Weekday) 37,748 (Saturdays) 49,355 (Sundays)

Lethbridge	Herald	17,927 (Weekday) 14,340 (Saturday) 12,037 (Sunday)
Medicine Hat	News	12,323
Red Deer	News	11,907 (Weekday) 11,853 (Saturday)
SASKATCHEWAN		
Regina	Leader Post	36,541 (Weekday) 37,326 (Saturday)
Saskatoon	Star Phoenix	43,593 (Weekday) 43,728 (Saturday)
MANITOBA		
Brandon	Sun	11,248
Winnipeg	Free Press	104,909 (Weekday) 138,888 (Saturday)
Winnipeg	Sun	56,211 (Weekday) 47,130 (Saturday) 47,691 (Sunday)
ONTARIO		
Belleville	Intelligencer	7,289
Brantford	Expositor	19,058
Chatham	Daily News	5,447
Cornwall	Standard Freeholder	7,672
Guelph	Mercury	11,343 (Weekday) 11,299 (Saturday)
Hamilton	Spectator	99,391 (Weekday) 103,109 (Saturday)
Kingston	Whig-Standard	18,688
London	Free Press	72,791
Niagara Falls	Review	14,059
North Bay	Nugget	8,860
Owen Sound	Sun Times	13,223
Ottawa	Citizen	105,614 (Weekday) 98,204 (Saturday)
Ottawa	Sun	39,270 (Weekday) 34,471 (Saturday) 35,956 (Sunday)
Ottawa	Le Droit (FR)	34,755 (Weekday) 31,364 (Weekend)
Peterborough	Examiner	16,320
Sault Ste. Marie	Star	37,835
St. Catharines-Niagara	Standard	24,732
Sudbury	Star	10,180
Thunder Bay	Chronicle Journal	21,065 (Weekday)

		20,250 (Saturday) 18,107 (Sunday)
Timmins	Daily Press	7,117
Toronto	Sun	134,266(Weekday) 124,605 (Saturday) 171,639(Sunday)
Toronto	Star	332,800 (Weekday) 440,442 (Saturday)
Waterloo Region	Record	56,595 (Weekday) 55,466 (Saturday)
Windsor	Star	54,119 (Weekday) 54,767 (Saturday)
QUEBEC		
Montreal	Gazette (ENG)	88,654 (Weekday) 104,175 (Saturday)
Montreal	Journal de Montreal (FR)	232,137 (Weekday) 243,957 (Saturday) 229,084 (Sunday)
Montreal	La Presse (FR)	278,832,172 (Weekday) 340,285 (Saturday)
Montreal	Le Devoir (FR)	32,062(Weekday) 53,955 (Saturday)
Québec City	Journal de Quebec (FR)	149,635 (Weekday) 157,662 (Saturday)
Québec City	Le Soleil (FR)	75,374(Weekday) 96,374 (Saturday) 80,068 (Sunday)
Sherbrooke	La Tribune (FR)	29,659 (Weekday) 33,310 (Saturday)
Trois-Rivières	Le Nouvelliste	42,446 (Weekday) 44,355 (Saturday)
NEW BRUNSWICK		
Fredericton	Daily Gleaner	16,102
Moncton	Times & Transcript	28,888
Saint John	Telegraph Journal	26,957
NOVA SCOTIA		
Halifax	Chronicle Herald	91,952 (Weekday) 93,178(Saturday)
Sydney	Cape Breton Post	18,537 (Weekday) 17242 (Saturday)
PRINCE EDWARD ISLAND		
Charlottetown	Guardian	14,918 (Weekday) 15,368 (Saturday)
Summerside	Journal Pioneer	6,016 (Weekday) 6,089 (Saturday)

NEWFOUNDLAND		
Cornerbrook	Western Star	32,863 (weekly circulation)
St. Johns	Telegram	31,823 (Weekday) 39,700 (Saturday)
Market	Magazine	Circ.
NATIONAL		
	Canadian Business	84,168
	Maclean's	225,963
		472,883
	Reader's Digest	354,639 (large print)
	Report on Business	256,472

SCHEDULE “B” COMMON ISSUES

As used herein, the “Defendant” means Sun Life Assurance Company of Canada. “MetLife” means Metropolitan Life Insurance Company and its subsidiary Metropolitan Life Insurance Company of Canada. “Mutual” means Mutual Life Assurance Company of Canada. “Clarica” means Clarica Life Insurance Company. The “Policies” are the universal life insurance policies called Universal Flexiplus, Interest Plus, Universal Plus, and Universal OptiMet.

The following common issues have been certified for this Class:⁵

General

1. Is the Defendant liable for any wrongful conduct of MetLife, Mutual, and Clarica?

Breaches of contract

2. Was it an express or implied term of the Policies that the cost of insurance rate may be adjusted based on specified factors? If so, did the Defendant breach this term by basing increases, in whole or in part, on other factors?
3. Was it an express or implied term of the Policies that administrative fees may be adjusted based on factors related to the cost of administering the Policies? If so, did the Defendant breach this term by basing increases, in whole or in part, on other factors?
4. Was it an express or implied term of Universal Plus, Universal Flexiplus and Universal OptiMet policies that the “maximum premium” set out in the policies was the highest amount of premium that the policyholder would ever be required to pay for the policy in any year, in order to prevent lapse of the policy? If so, did the Defendant breach this term by charging any Class Members in excess of the maximum premium?

⁵ *Fehr v. Sun Life Assurance Company of Canada*, 2018 ONCA 718.

5. Did the Defendant administer the Policies in a deceitful and fraudulent manner, including by engaging in fraudulent concealment, or in a manner that violated section 439 of the *Insurance Act*, S.O. 1990, c. I.8 (prohibiting unfair and deceptive practices)?

SCHEDULE B

NOTICE OF CERTIFIED CLASS ACTION RE UNIVERSAL LIFE INSURANCE POLICIES SOLD BY METLIFE IN 1985-1998 AND NOW ADMINISTERED BY SUN LIFE

Dear Policy Owner,

This notice is to provide you with important information about a class action lawsuit brought against Sun Life Assurance Company of Canada ("Sun Life") and to describe your rights as a member of the Class, as defined below. You are receiving this letter because Sun Life's records indicate you are or were a holder of a Flexiplus policy, or a representative of such a policy holder. Please read this letter carefully to determine how to proceed.

About the class action lawsuit

This class action concerns Sun Life's administration of four types of universal life insurance policies, including Flexiplus, that were sold to policyholders by Metropolitan Life Insurance Co. ("MetLife") agents between 1985-1998. These policies were subsequently administered by Mutual Life Assurance Company of Canada (in 1998), Clarica Life Insurance Company (between 1999 and 2002), and Sun Life (since 2002).

The class action alleges the following:

- The Cost of Insurance and Administrative Fee charges for Flexiplus policies were improperly adjusted, contrary to the terms of the policy contracts, resulting in improper and higher premium payments by policyholders.
- The "Maximum Premium" set out in the Flexiplus policies was the highest amount of annual premium that the policyholder would ever be required to pay in order to keep the policy in force. This issue may put a cap on your future premium payments, and if you have ever paid more than the maximum set out in the policy, you may be eligible for damages.
- Sun Life engaged in fraudulent concealment of the potential claims from policy holders.

Certification Order

This lawsuit was certified as a national class action by the Ontario Superior Court of Justice (the "**Court**") on *. The Court appointed Angela Watters, Eldon Fehr, Gaetan Laurier, Leslie Michael Lucas, James Patrick O'Hara, Rebecca Jean Clark, and Lloyd Shaun Clark to serve as the representative plaintiffs for the class action. The Court has appointed Kim Spencer McPhee Barristers P.C. as Class Counsel.

Who is included in the Class?

This action is certified on behalf of the following national class:

All persons who purchased and owned an Interest Plus, Universal Plus, Universal Flexiplus, or Universal Optimet life insurance policy sold by MetLife in Canada during the period 1985 through 1998, including any successor owners of the policies and the beneficiaries on any policies payable upon the death of the insured

Persons who previously held Flexiplus policies but whose policies have lapsed, been surrendered, or been paid out (upon the insured's death) are included in the Class as these policyholders may have been

financially injured by excessive Cost of Insurance and Administrative Fee charges, or may have lost coverage due to the excessive charges.

Flexiplus policyholders who entered Sun Life's Flexiplus Options Program and/or signed liability releases are also included in this class action. The plaintiffs allege these liability releases are not enforceable by Sun Life, and this will be determined by the Court at the individual issues stage.

If you believe that you, or any other policyholder whose interests you represent, are included in the class based on the above descriptions, you should read this notice to determine what (if anything) you should do.

What are your options?

Class members have the following options:

1. Do nothing.

By doing nothing, you will remain a member of the Class, and you will be bound by the outcome of this class action, whether favorable or not. This means that if the lawsuit is successful at the common issues trial, or a court approved settlement is reached, you may qualify to share in the relief provided in the lawsuit. On the other hand, if the lawsuit is not successful at trial, you will be bound by that result, and will not be entitled to sue Sun Life individually with respect to the issues covered by the lawsuit.

2. Opt out.

If you do not want to be included in this class action, you may opt out (exclude yourself) from the case. You would be free to pursue individually any claims you may have against Sun Life. If you opt out, you will not be entitled to any compensation or benefits received by Class Members if this lawsuit is ultimately successful. If you wish to opt out, you must write a letter with the following information:

- a) the name, mailing address, email address, and phone number of the person opting out;
- b) the Flexiplus policy number;
- c) the name of this case ("Sun Life class action"); and
- d) a signed statement that "I/we hereby request that I/we be excluded from the Sun Life class action".

Please mail the opt-out notice to:

CA2 Inc.
Attn: Eric Khan
9 Prince Arthur Ave.
Toronto ON M5R 1B2

The opt-out notice must be received no later than *****.

No person may opt out a mentally incapable person without permission of the Court, after notice to the Public Guardian and Trustee, as applicable to Class Members resident in Ontario, and to comparable or equivalent entities in the other provinces and territories, as applicable to Class Members resident in other provinces and territories.

Will I have to pay anything to participate in this class action?

A class action is comprised of two stages: the common issues stage, and the individual issues stage. This lawsuit is currently in the common issues stage, and is advancing towards a common issues trial that will determine important issues common to all Class Members. You will not have to pay anything to be a class member at this stage.

If the plaintiffs are successful at the common issues trial, then the action moves to the individual issues stage. At that time, you will have the option of participating in simplified processes established by the Court to prove your individual claim, and obtain compensation. You may have to bear the costs of doing so, but you will be under no obligation to pursue your individual claim if you choose not to.

Plaintiffs' counsel have entered into an agreement with the representative plaintiffs providing that counsel will not receive payments for their work unless and until the class action is successful in obtaining recoveries or other benefits from the defendant. Any counsel fees or expense recoveries must be approved by the Court.

Additional information

If you have questions about the information in this letter or how the class action applies to you, please contact Class Counsel at:

Kim Spencer McPhee Barristers P.C.
1200 Bay Street, Suite 1203
Toronto, ON M5R 2A5

Attn: Rachael Sider
Phone: (416) 349-6577
Fax: (416) 598-0601
rs@complexlaw.ca

Information can also be obtained from the website: <http://complexlaw.ca/index.html#FL-SunLifeMetLife>.

Please do not contact the Court with any inquiries.

THIS NOTICE HAS BEEN APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.

SCHEDULE C

NOTICE OF CERTIFIED CLASS ACTION RE UNIVERSAL LIFE INSURANCE POLICIES SOLD BY METLIFE IN 1985-1998 AND NOW ADMINISTERED BY SUN LIFE

Dear Policy Owner,

This notice is to provide you with important information about a class action lawsuit brought against Sun Life Assurance Company of Canada ("Sun Life") and to describe your rights as a member of the Class, as defined below. You are receiving this letter because Sun Life's records indicate you are or were a holder of a Universal Plus policy, or a representative of such a policyholder. Please read this letter carefully to determine how to proceed.

About the class action lawsuit

This class action concerns Sun Life's administration of four types of universal life insurance policies, including Universal Plus, that were sold to policyholders by Metropolitan Life Insurance Co. ("MetLife") agents between 1985 to 1998. These policies were subsequently administered by Mutual Life Assurance Company of Canada (in 1998), Clarica Life Insurance Company (between 1999 and 2002), and Sun Life (since 2002).

This class action also seeks a declaration that the "Maximum Premium" set out in the Universal Plus policies was the highest amount of annual premium that the policyholder would ever be required to pay in order to keep the policy in force. If the plaintiffs are successful, this issue may put a cap on your future premium payments, and if you have ever paid more than the maximum set out in the policy, you may be eligible for damages.

The class action also alleges that Sun Life engaged in fraudulent concealment of the potential claims from policyholders.

Certification Order

This lawsuit was certified as a national class action by the Ontario Superior Court of Justice (the "**Court**") on *. The Court appointed Angela Watters, Eldon Fehr, Gaetan Laurier, Leslie Michael Lucas, James Patrick O'Hara, Rebecca Jean Clark, and Lloyd Shaun Clark to serve as the representative plaintiffs for the Class Action. The Court has appointed Kim Spencer McPhee Barristers P.C. as Class Counsel.

Who is included in the Class?

This action is certified on behalf of the following national class:

All persons who purchased and owned an Interest Plus, Universal Plus, Universal Flexiplus, or Universal Optimet life insurance policy sold by MetLife in Canada during the period 1987 through 1998, including any successor owners of the policies and the beneficiaries on any policies payable upon the death of the insured

Persons who previously held Universal Plus policies but whose policies have lapsed, been surrendered, or been paid out (upon the insured's death) are included in the Class as these policyholders may have

been financially injured by premiums exceeding the Maximum Premium, or may have lost coverage due to improper premium increases above the Maximum.

If you believe that you, or another policyholder whose interests you represent, are included in the class based on the above descriptions, you should read this notice to determine what (if anything) you should do.

What are your options?

Class members have the following options:

1. Do nothing.

By doing nothing, you will remain a member of the Class, and you will be bound by the outcome of this class action, whether favorable or not. This means that if the lawsuit is successful at the common issues trial, or a court approved settlement is reached, you may qualify to share in the relief provided in the lawsuit. On the other hand, if the lawsuit is not successful at trial, you will be bound by that result and will not be entitled to sue Sun Life individually with respect to the issues covered by the lawsuit.

2. Opt out.

If you do not want to be included in this class action, you may opt out (exclude yourself) from the case. You would be free to pursue individually any claims you may have against Sun Life. If you opt out, you will not be entitled to any compensation or benefits received by Class Members if this lawsuit is ultimately successful. If you wish to opt out, you must write a letter with the following information:

- e) the name, mailing address, email address, and phone number of the person opting out;
- f) the Universal Plus policy number;
- g) the name of this case ("Sun Life class action"); and
- h) a signed statement that "I/we hereby request that I/we be excluded from the Sun Life class action".

Please mail the opt-out notice to:

CA2 Inc.
Attn: Eric Khan
9 Prince Arthur Ave.
Toronto ON M5R 1B2

The opt-out notice must be received no later than *****.

No person may opt out a mentally incapable person without permission of the Court, after notice to the Public Guardian and Trustee, as applicable to Class Members resident in Ontario, and to comparable or equivalent entities in the other provinces and territories, as applicable to Class Members resident in other provinces and territories.

Will I have to pay anything to participate in this class action?

A class action is comprised of two stages: the common issues stage, and the individual issues stage. This lawsuit is currently in the common issues stage, and is advancing towards a common issues trial that will determine important issues common to all Class Members. You will not have to pay anything to be a class member at this stage.

If the plaintiffs are successful at the common issues trial, then the action moves to the individual issues stage. At that time, you will have the option of participating in simplified processes established by the Court to prove your individual claim, and obtain compensation. You may have to bear the costs of doing so, but you will be under no obligation to pursue your individual claim if you choose not to.

Plaintiffs' counsel have entered into an agreement with the representative plaintiffs providing that counsel will not receive payment for their work unless and until the class action is successful in obtaining recoveries or other benefits from the defendant. Any counsel fees or expense recoveries must be approved by the Court.

Additional information

If you have questions about this letter or how the class action applies to you, please contact Class Counsel at:

Kim Spencer McPhee Barristers P.C.
1200 Bay Street, Suite 1203
Toronto, ON M5R 2A5

Attn: Rachael Sider
Phone: (416) 349-6577
Fax: (416) 598-0601
rs@complexlaw.ca

Information can also be obtained from the website: <http://complexlaw.ca/index.html#FL-SunLifeMetLife>.

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SCHEDULE D

NOTICE OF CERTIFIED CLASS ACTION RE UNIVERSAL LIFE INSURANCE POLICIES SOLD BY METLIFE IN 1985-1998 AND NOW ADMINISTERED BY SUN LIFE

Dear Policy Owner,

This notice is to provide you with important information about a class action lawsuit brought against Sun Life Assurance Company of Canada ("Sun Life") and to describe your rights as a member of the Class, as defined below. You are receiving this letter because Sun Life's records indicate you are or were a holder of an Optimet policy, or a representative of such a policyholder. Please read this letter carefully to determine how to proceed.

About the class action lawsuit

This class action concerns Sun Life's administration of four types of universal life insurance policies, including Optimet, that were sold to policyholders by Metropolitan Life Insurance Co. ("MetLife") agents between 1985-1998. These policies were subsequently administered by Mutual Life Assurance Company of Canada (in 1998), Clarica Life Insurance Company (between 1999 and 2002), and Sun Life (since 2002).

- This class action alleges the following:
- The Cost of Insurance charges for Optimet policies were improperly adjusted, contrary to the terms of the policy contracts, resulting in improper and higher premium payments by policyholders.
- The "Maximum Premium" set out in the Optimet policies was the highest amount of annual premium that the policyholder would ever be required to pay in order to keep the policy in force. This issue may put a cap on your future premium payments, and if you have ever paid more than the maximum set out in the policy, you may be eligible for damages.
- Sun Life engaged in fraudulent concealment of the potential claims of policyholders.

Certification Order

This lawsuit was certified as a national class action by the Ontario Superior Court of Justice (the "**Court**") on ***. The Court appointed Angela Watters, Eldon Fehr, Gaetan Laurier, Leslie Michael Lucas, James Patrick O'Hara, Rebecca Jean Clark, and Lloyd Shaun Clark to serve as the representative plaintiffs for the class action. The Court appointed Kim Spencer McPhee Barristers P.C. as Class Counsel.

Who is included in the Class?

This action is certified on behalf of the following national class:

All persons who purchased and owned an Interest Plus, Universal Plus, Universal Flexiplus, or Universal Optimet life insurance policy sold by MetLife in Canada during the period 1985 through 1998, including any successor owners of the policies and the beneficiaries on any policies payable upon the death of the insured

Persons who previously held Optimet policies but whose policies have lapsed, been surrendered, or been paid out (upon the insured's death) are included in the Class as these policyholders may have been financially injured by excessive Cost of Insurance and Administrative Fee charges, or may have lost coverage due to the excessive charges.

If you believe that you, or another policyholder whose interests you represent, are included in the class based on the above descriptions, you should read this notice to determine what (if anything) you should do.

What are your options?

Class members have the following options;

1. Do nothing.

By doing nothing, you will remain a member of the Class, and you will be bound by the outcome of this class action, whether favorable or not. This means that if the lawsuit is successful at the common issues trial, or a court approved settlement is reached, you may qualify to share in the relief provided in the lawsuit. On the other hand, if the lawsuit is not successful at trial, you will be bound by that result and will not be entitled to sue Sun Life individually with respect to the issues covered by the lawsuit.

2. Opt out.

If you do not want to be included in this class action, you may opt out (exclude yourself) from the case. You would be free to pursue individually any claims you may have against Sun Life. If you opt out, you will not be entitled to any compensation or benefits received by Class Members if this lawsuit is ultimately successful. If you wish to opt out, you must write a letter with the following information:

- i) the name, mailing address, email address, and phone number of the person opting out;
- j) the Optimet policy number;
- k) the name of this case ("Sun Life class action"); and
- l) a signed statement that "I/we hereby request that I/we be excluded from the Sun Life class action".

Please mail the opt-out notice to:

CA2 inc.
Attn: Eric Khan
9 Prince Arthur Ave.
Toronto ON M5R 1B2

The opt-out notice must be received no later than *****.

No person may opt out a mentally incapable person without permission of the Court, after notice to the Public Guardian and Trustee, as applicable to Class Members resident in Ontario, and to comparable or equivalent entities in the other provinces and territories, as applicable to Class Members resident in other provinces and territories.

Will I have to pay anything to participate in this class action?

A class action is comprised of two stages: the common issues stage, and the individual issues stage. This lawsuit is currently in the common issues stage, and is advancing towards a common issues trial that will determine important issues common to all Class Members. You will not have to pay anything to be a class member at this stage.

If the plaintiffs are successful at the common issues trial, then the action moves to the individual issues stage. At that time, you will have the option of participating in simplified processes established by the Court to prove your individual claim, and obtain compensation. You may have to bear the costs of doing so, but you will be under no obligation to pursue your individual claim if you choose not to.

Plaintiffs' counsel have entered into an agreement with the representative plaintiffs providing that counsel will not receive payment for their work unless and until the class action is successful in obtaining recoveries or other benefits from the defendant. Any counsel fees or expense recoveries must be approved by the Court.

Additional information

If you have questions about this letter or how the class action applies to you, please contact Class Counsel at:

Kim Spencer McPhee Barristers P.C.
1200 Bay Street, Suite 1203
Toronto, ON M5R 2A5

Attn: Rachael Sider
Phone: (416) 349-6577
Fax: (416) 598-0601
rs@complexlaw.ca

Information can also be obtained from the website: <http://complexlaw.ca/index.html#FL-SunLifeMetLife>.

Please do not contact the Court with any inquiries.

THIS NOTICE HAS BEEN APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.

SCHEDULE E

NOTICE OF CERTIFIED CLASS ACTION RE UNIVERSAL LIFE INSURANCE POLICIES SOLD BY METLIFE IN 1985-1998 AND NOW ADMINISTERED BY SUN LIFE

If you or a family member holds or held an Interest Plus, Universal Plus, Flexiplus, or Optimet universal life insurance policy purchased from Metropolitan Life Insurance Co. in 1985-1998, this notice may affect your rights. Please read carefully.

A national class action lawsuit has been certified against Sun Life with respect to the policies mentioned above. The class is defined as:

All persons who purchased and owned an Interest Plus, Universal Plus, Universal Flexiplus, or Universal Optimet life insurance policy sold by MetLife in Canada during the period 1985 through 1998, including any successor owners of the policies and the beneficiaries on any policies payable upon the death of the insured.

Persons who previously held policies but whose policies have lapsed, been surrendered, or been paid out (upon the insured's death) are included in the Class.

If this describes you or a family member, **you do not need to take any action** at this time – you will automatically be included in the class. If you have any questions, class counsel contact information is on the reverse.

Class action lawsuits work to determine common legal issues that apply to members of the class. There is no cost to participate in the common issues stage of the lawsuit.

Seven plaintiffs have been appointed by the Court to represent the class on your behalf. You do not need to submit any personal information to participate at this time, but should contact Class Counsel in order to ensure your contact information is on file to be directly notified of future developments.

Any judgment obtained on the common issues in this action, whether favourable or not, will bind all of the class members who do not opt out of this proceeding.

FOR MORE INFORMATION, PLEASE CONTACT CLASS COUNSEL:

Kim Spencer McPhee Barristers P.C. 1200 Bay Street, Suite 1203 Toronto, ON M5R 2A5	Attn: Rachael Sider Phone: (416) 349-6577 Fax: (416) 598-0601 rs@complexlaw.ca
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Information can also be obtained from the website: <http://complexlaw.ca/index.html#FL-SunLifeMetLife>. Please do not contact the Court with any inquiries.

SCHEDULE F

NOTICE PROGRAM

The Plaintiffs are directed to pay for the following Notice Program:

- (a) Publication of a Notice of Certification in English in the *Globe and Mail* (average Saturday circulation approximately 420,000) and in French in the *La Presse* (average Saturday circulation approximately 340,000);
- (b) Mailing a Notice of Certification – which could be in the form of a simple, plain language “postcard”–style Notice and directing potential Class Members to the Kim Spencer McPhee website – by a Notice Administrator, to Class Members to their last known mailing or email address, with the addresses being provided to the Notice Administrator by Sun Life;
- (c) Posting of a Notice of Certification on Kim Spencer McPhee’s website; and
- (d) Delivering a Notice of Certification by Sun Life or Kim Spencer McPhee to any person who requests it.

The Notice of Certification shall include a phone number and an email address that Class Members may call for consultation with Kim Spencer McPhee personnel if they have any questions.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

CERTIFICATION ORDER



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