

## **AGREEMENT REGARDING MUTUAL LIFE DEMUTUALIZATION PROCEEDS**

BETWEEN:

**ONTARIO HOSPITAL ASSOCIATION ON ITS OWN BEHALF AND ON BEHALF OF THE EMPLOYERS LISTED ON SCHEDULE "A" ATTACHED TO THIS AGREEMENT**

and

**ONTARIO NURSES' ASSOCIATION ("ONA"),  
ONTARIO PUBLIC SERVICE EMPLOYEES UNION ("OPSEU"), CANADIAN UNION OF PUBLIC EMPLOYEES ("CUPE"), SERVICE EMPLOYEES INTERNATIONAL UNION ("SEIU"), NATIONAL AUTOMOBILE AEROSPACE TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW Canada) ("CAW"), Todd Hutchings, Connie DeMedeiros and Nelia Cabral**

**WHEREAS** as of December 29, 1997, the Ontario Hospital Association (the "OHA") was the policyholder of record for Mutual Life Assurance Company of Canada ("Mutual Life") Group Policy Nos. 14000 and 2100, which policies were in existence as of December 29, 1997;

**AND WHEREAS** the OHA was the bargaining agent for employers who, as of December 29, 1997, were members of the OHA and whose employees participated in Policy Nos. 2100 or 14000;

**AND WHEREAS** from January 1, 1976 to December 31, 1983, long-term disability benefits were insured under Policy No. 14000 but, after 1983, no new premiums were paid under this policy although employees who became entitled to and

are still receiving benefits under this policy continue to receive benefit payments from this policy;

**AND WHEREAS** from January 1, 1984 to December 31, 1991, long-term disability benefits were administered by Mutual Life for the OHA under an Administration Services Only ("ASO") agreement (Policy No. 94000);

**AND WHEREAS** until 1992, group life insurance and accidental death and dismemberment benefits were provided under Mutual Life Policy No. 2100 and optional life insurance benefits were provided under Mutual Life Policy No. 16000;

**AND WHEREAS** from January 1, 1992 to date, long-term disability, group life insurance and optional life insurance benefits have all been provided under Mutual Life Policy No. 2100 with Policy Nos. 16000 and 94000 being incorporated into Policy No. 2100;

**AND WHEREAS** Mutual Life selected December 29, 1997 as the date for purposes of crystallizing the policyholders' entitlements to the proceeds arising from the demutualization of Mutual Life;

**AND WHEREAS** the OHA was a policyholder of record as of December 29, 1997 and was therefore eligible to receive proceeds arising out of the demutualization of Mutual Life;

**AND WHEREAS** Mutual Life allocated proceeds arising out of the demutualization to those who were policyholders of record as of December 29, 1997 based on premiums paid for insurance benefits for the period 1988 to 1997;

**AND WHEREAS** Mutual Life paid the demutualization proceeds in respect of Policy No. 2100 under which the Hospitals of Ontario Disability Income Plan ("HOODIP"), the Hospitals of Ontario Group Life Insurance Plan ("HOOGLIP") and the Hospitals of Ontario Volunteer Life Insurance Plan ("HOOVLIP"), inclusive of accidental death and dismemberment benefits, are all insured, to the OHA;

**AND WHEREAS** these proceeds were deposited to an account and have accumulated interest since the date of deposit (the demutualization proceeds and accumulated interest are hereinafter referred to as the "Proceeds") pending the determination of how to distribute the Proceeds and that, to date, the Proceeds have only been used to pay for expenses related to the administration of the Proceeds;

**AND WHEREAS** ONA, OPSEU, CUPE, SEIU and the CAW (collectively the "Unions") are parties to collective agreements with employers who were members of the OHA as of December 29, 1997, and are bargaining agents for employees of those employers (the "Unionized Employees");

**AND WHEREAS** Todd Hutchings, Connie DeMedeiros and Nelia Cabral (the "Non-Union Representatives") are each employed by one of the OHA or a member organization of the OHA, and participated in and had insurance coverage under Policy No. 2100 as of December 29, 1997

**AND WHEREAS** Policy Nos. 2100 and 16000 covered both the Unionized Employees and those employees of OHA member organizations who were not represented by any of the Unions (the "Non-Union Employees");

**AND WHEREAS** both Unionized Employees and Non-Union Employees may have paid premiums for life insurance coverage and disability insurance coverage under one or more of Policy Nos. 2100 and 16000;

**AND WHEREAS** between 2000 and 2005, the OHA met with representatives from the Unions and the Non-Union Representatives to discuss the disposition of the Proceeds;

**AND WHEREAS** counsel for the OHA, counsel for the Unions and counsel for the Non-Union Representatives attended a mediation with William Kaplan on September 26, 2005;

**AND WHEREAS** the parties had further discussions regarding distribution of the Proceeds following the September 26, 2005 mediation;

**AND WHEREAS** the parties agree that the terms of this Agreement represent a fair and equitable distribution of the Proceeds which is in the interests of all concerned and which is consistent with the benefit plans concerning which the Proceeds arose;

**AND WHEREAS** the parties have agreed to the following process to facilitate the distribution of the Proceeds, subject to the approval of the Ontario Superior Court of Justice (the "Court");

**AND WHEREAS** the parties executed a prior version of this Agreement in early 2010;

**NOW THEREFORE** the Parties agree as follows:

**1. Definitions**

**"Account"** means the account in which the Proceeds are currently held by the OHA.

**"Contingency Amount"** means the Proceeds less the amount referred to in paragraph 2(a) below and is also known as the Cash Recipients Funds.

**"Participating Employers"** means the OHA and those OHA member employers who participated on December 29, 1997 under the OHA LTD Policy (Policy No. 2100) or their successors.

**"Respondent Class"** means the class of persons described in paragraph 4(b) of this Agreement.

**2. Distribution of the Proceeds**

Subject to the approval of the Court, the parties agree to the following distribution of the Proceeds:

**(a) Premium Holiday for Participating Employers and Employees** Out of the Proceeds, the amount of \$17,200,000.00 (seventeen million, two hundred thousand dollars) shall be paid to each Participating Employer listed on Schedule "A" attached to

this Agreement, on a pro-rata basis, based on the number of employees the Participating Employer had who were covered under Policy No. 2100 as of December 29, 1997. For purposes of clarity and by way of example, a pro rata payment shall be calculated as follows: assuming there were 41000 employees of Participating Employers covered under Policy No. 2100 as of December 29, 1997 and assuming Hospital X had 100 employees covered under Policy No. 2100 as of December 29, 1997, the payment made to Hospital X would be approximately \$41,950.00 (i.e. \$17.2 million divided by 41000 employees multiplied by the number of employees of Hospital X).

As a condition of receiving its pro-rata payment, each Participating Employer must use this money solely for the purpose of providing a premium holiday under its respective LTD policy for both itself and its employees in proportion to the premiums that the Participating Employer and its employees respectively pay under the policy. For purposes of this distribution, it is understood that for an employee to be eligible for a premium holiday, he or she must be a member of the Respondent Class and:

(a) be actively employed with the Participating Employer as of the dates the proceeds are distributed;

(b) pay a share of premiums under the applicable LTD policy as of the dates the proceeds are distributed; and

(c) have participated in the OHA LTD Policy (Policy No. 2100) on December 29, 1997 with the Participating Employer.

**(b) Adjudication and Disbursement of Contingency Amount**

Members of the Respondent Class who are ineligible to receive a premium holiday under paragraph 2(a) above may make a claim for payment out of the Contingency Amount ("Claimants"). After a final court order approving this Agreement, the parties shall provide notice to members of the Respondent Class in substantially the form attached as Exhibit A, subject to court approval. This notice shall be communicated to members of the Respondent Class by:

- publication in the Globe and Mail newspaper;
- publication on the OHA website;
- publication on the websites of the Unions;
- publication on the websites of each of the Participating Employers

Within 60 days of the publishing of the notice, Claimants must submit proof to an administrative person to be designated by the OHA that they participated in the OHA LTD Policy (Policy No. 2100) as of December 29, 1997 as an employee of a Participating Employer. Proof of such participation must consist of either:

- (i) a statement of earnings;
- (ii) a T-4; or
- (iii) an approved LTD claim
- (iv) a pay cheque stub;
- (v) a letter from the Participating Employer confirming that the Claimant was a full-time employee at the relevant time; or
- (vi) other satisfactory documentary evidence of full-time employment with a Participating Employer as of December 29, 1997.

If a Claimant fails to submit proof of participation in accordance with the above within 60 days of the publishing of the notice, the Claimant shall not be entitled to any payment from the Contingency Amount. For claims from Unionized Employees that are rejected, one representative designated by the applicable Union and one representative designated by the OHA shall review any such rejected claims. For claims from Non-Union Employees that are rejected, one representative designated by the Non-Union Employees and one representative designated by the OHA shall review any such rejected claims. Any disputes that remain regarding rejected claims from either

Unionized Employees or Non-Union Employees shall be referred to Arbitrator William Kaplan for final and binding resolution.

Within a further 60 days after the deadline for submitting proof of participation has passed, each successful Claimant will be mailed a cheque in the amount of \$100.00. In the event that there are not enough funds in the Contingency Amount to provide \$100.00 to each successful Claimant, each successful Claimant will be mailed a cheque representing a pro-rata share of the Contingency Amount.

To the extent that there are funds remaining in the Account at a time to be determined and approved by the Court, those funds shall be distributed as follows:

(i) 50% of the funds remaining shall be deposited with the OHA. It is understood that these funds may be used, in part, as a contingency for claims made by Participating Employers or their successors that have not ratified this Agreement and are accordingly not listed on Schedule "A" attached to this Agreement; and

(ii) 50% of the funds remaining shall be used to provide premium holidays for employees of Participating Employers who, as of the date the balance of the Contingency Amount is to be distributed, (i) are actively employed by a Participating Employer which has continued to participate in Policy No. 2100 up to the date the balance of the Contingency Amount is to be distributed, (ii) pay a share of premiums under LTD Policy No. 2100, and (iii) participated in LTD Policy No. 2100 on December 29, 1997.

### **3. Expenses**

It is agreed that reasonable administrative expenses associated with managing and administering the Proceeds and each party's reasonable legal and consulting fees and out-of-pocket expenses already incurred and to be incurred by the parties in connection with the distribution of the Proceeds, including the negotiation and implementation of this Agreement, the administration of the Contingency Amount, publication costs and any related court proceeding, shall be charged against the Contingency Amount before it is subject to any disbursement.

#### 4. Process

The parties agree:

- (a) that the OHA will commence an application under Rule 14.05 of the *Rules of Civil Procedure* as a class proceeding under the *Class Proceedings Act, 1992*, R.S.O. 1992, c. 6 in order to determine entitlement to the Proceeds;
- (b) that there shall be a single class of respondents, referred to as the "Respondent Class", which shall be defined as all current and former employees of Participating Employers who have paid a share of premiums for life insurance coverage and/or disability insurance coverage under one or more of Policy Nos. 2100 and 16000 and who were employed with a Participating Employer and covered under Policy No. 2100 as of December 29, 1997.
- (c) that the following persons will be put forward for appointment as representatives of the Respondent Class: Andy Summers, Lee Rogano, Yves Shank, Mike Tracey, Carol McDowell, Katha Fortier, Todd Hutchings, Connie DeMedeiros and Nelia Cabral.
- (d) that notice to the members of the Respondent Class of the certification motion, their right to opt out of the Respondent Class, and the settlement agreement reached by the parties as set out in paragraph 2 of this Agreement shall be provided by:

- publication in the Globe and Mail newspaper;

- publication on the OHA website;

- publication on the websites of the Unions;

- publication on the websites of each of the Participating Employers

Notice shall be in substantially the form attached hereto as Exhibit B, to be approved by the Court.

- (e) that a dedicated phone line will be established to answer questions and provide information regarding the demutualization process.
- (f) that the OHA and the representatives of the Respondent Class will jointly make a motion to the court for an order certifying the OHA's application as a class proceeding and approving the settlement contained in paragraph 2 of this Agreement pursuant to the *Class Proceedings Act, 1992* and for a declaration of entitlement to the Proceeds in accordance with the terms of the settlement. The order sought shall be substantially in the form attached hereto as Exhibit C.

#### **5. Agreement Conditional**

It is agreed that each of the parties shall have the right to terminate this Agreement if more than 25 persons opt out of the class proceeding. It is further understood that the OHA has the right to terminate this Agreement if, prior to the certification motion being heard, the OHA is satisfied that it does not have sufficient support among the Participating Employers for this Agreement. This Agreement is conditional upon the Court approving the distribution of the Proceeds as set out in paragraph 2 of this Agreement and the payment of expenses as set out in paragraph 3 of this Agreement.

#### **6. Investment of the Proceeds**

It is agreed that the Proceeds shall remain in the Account until distributed.

#### **7. Obligation to Promote Settlement**

The parties agree to promote among their members/principals the terms of the settlement set forth in paragraph 2 of this Agreement and to recommend same, if necessary, for ratification.

#### **8. Communications**

The parties agree that a question and answer sheet will be jointly developed and that the parties may use such to answer questions from their members or principals.

Questions which are not addressed on the question and answer sheet will be directed to the dedicated phone line established pursuant to paragraph 4(e) of the Agreement.

**9. Dispute Resolution**

The parties agree that this Agreement shall not form part of any collective agreement or employment contract and that any disputes regarding this Agreement shall not constitute a “difference” between any of the parties for grievance purposes and shall not be the subject of any claim, complaint or grievance whatsoever by any employee or former employee or any of the parties and that a grievance arbitrator shall have no jurisdiction to deal with any claim, complaint or grievance arising out of this Agreement. Disputes between the parties which arise in connection with the interpretation of this Agreement shall be resolved by the parties. In the event of a dispute which is incapable of resolution by the parties, a dispute will be referred to Arbitrator William Kaplan.

**10. Without Prejudice or Precedent**

This Agreement is without prejudice or precedent to any claims that have arisen or may arise as a result of the demutualization of any mutual insurance company under any group insurance policy covering employees of OHA member employers not addressed by this Agreement.

**11. Counterparts**

This Agreement may be executed in counterparts.

**IN WITNESS WHEREOF**, the parties by their duly authorized officers, have signed this agreement,.

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Date

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Doug Miller  
on behalf of  
**ONTARIO HOSPITAL ASSOCIATION**

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Date

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Linda Haslam-Stroud  
on behalf of  
**ONTARIO NURSES' ASSOCIATION**

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Date

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Warren Thomas  
on behalf of  
**ONTARIO PUBLIC SERVICE EMPLOYEES  
UNION**

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Date

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Michael Hurley  
on behalf of  
**CANADIAN UNION OF PUBLIC EMPLOYEES**

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Date

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Marcelle Goldenberg  
on behalf of  
**SERVICE EMPLOYEES INTERNATIONAL  
UNION**

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Date

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Lewis Gottheil  
on behalf of  
**CAW CANADA**

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Date

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Todd Hutchings

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Date

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Connie DeMedeiros

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Date

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Nelia Cabral