

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**ONTARIO HOSPITAL ASSOCIATION  
on its own behalf and on behalf of the employers  
listed on schedule "A" attached to the  
Notice of Application**

Applicant

-and-

**ANDY SUMMERS, LEE ROGANO, YVES SHANK, MIKE TRACEY, CAROL  
MCDOWELL, KATHA FORTIER, TODD HUTCHINGS, CONNIE DEMEDEIROS  
AND NELIA CABRAL**

Respondents

**PROCEEDING UNDER** the *Class Proceedings Act*, 1992

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**AFFIDAVIT OF YVES SHANK**

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I, **YVES SHANK**, of the City of Sudbury, in the Province of Ontario, make oath and say as follows:

1. I am a member and the President of Ontario Public Service Employees Union ("OPSEU"), Local 659 in Sudbury, Ontario. I am also on the Provincial Executive of the Hospital Professionals Division of OPSEU. I am a proposed representative respondent in this matter. As such I have knowledge of the matters to which I hereinafter depose.

2. OPSEU is a trade union that represents about 115,000 employees in the broader public service of the Province of Ontario, Canada. The Hospital Professionals Division is a sub-group of OPSEU that specifically represents the interests of its members who are employed by Public Hospitals.
3. I have been a Medical Laboratory Technologist (MLT) at the Sudbury Regional Hospital since 1990. From 1990 to 1995, I was a part-time employee. I became a full-time MLT in 1995.
4. Sudbury Regional Hospital is a Participating Employer, as that term is defined in the Settlement Agreement in this matter, which is attached to my affidavit as Exhibit "A".
5. I have been a member of OPSEU since 1990 when I began employment at the Sudbury Regional Hospital, then the Sudbury General Hospital. In this same year, I was elected as the union steward for OPSEU Local Union 660 ("Local 660") and was subsequently elected as its Vice-President in 1992. In 1999, Local 660 merged with other local unions to become OPSEU Local Union 659 ("Local 659"). In 2001, I was elected President of Local 659, a position I currently hold. Local 659 represents approximately 523 members.
6. In addition to the above, I was also the Chair of OPSEU's Hospital Professionals Division from June of 2007 to November of 2009. In this capacity, I was responsible for representing the interests of approximately 16,000 members.
7. Both of my positions with the union are volunteer and I have remained an active full-time MLT at the Hospital since 1995.

8. As a full time employee, I have paid premiums for and been covered by Sudbury Regional Hospital's long-term disability (LTD) plan since 1995. I continue to pay premiums and receive benefit coverage under the LTD plan.
9. I first became aware of the negotiations which ultimately led to the settlement in this matter several years ago when I was elected as a provincial Vice-Chair of the Hospital Professionals Division in 2005. I was originally apprised of the negotiations by Mr. Frank Pezutto who was also a member of the Hospital Professionals Division and who was responsible for the Demutualization portfolio.
10. In 2007, Frank Pezutto retired and I took over the Demutualization portfolio. As part of this transition, in May 2007, Catherine Bowman, the OPSEU Sector Supervisor at the time, and Marcia Gillespie, who was the OPSEU benefits manager at the time, provided me with a thorough background of the demutualization issue and negotiations.
11. Since 2007, I have actively participated in the proceedings and have attended various meetings in this regard. I have reported back to the Hospital Professionals Division, its members and to the members of Local 659 accordingly.
12. I am prepared to act as a representative of a class comprised of:

*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 1600 and who were employed with a Participating Employer and covered under Policy No. 2100 as of December 29, 1997.*

13. I understand that, in agreeing to seek and accept an appointment by the court as a Representative Respondent, it is my responsibility, among other things:
  - a. To become familiar with the issues to be decided by the court;



This is Exhibit ....**A**.... referred to in  
the affidavit of **Yves Shank** sworn  
before me, this 23rd day of July, 2010.



.....  
A Commissioner of Oaths, etc.

**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"), CANADIAN <sup>AUTOWORKERS'</sup>  
~~UNION OF AUTO WORKERS~~ ("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,.

6/16/16

Date



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

Date

*July 5/10*

Linda Haslam-Stroud  
on behalf of

**ONTARIO NURSES' ASSOCIATION**

Date

Warren Thomas

on behalf of

**ONTARIO PUBLIC SERVICE EMPLOYEES  
UNION**

Date

Michael Hurley

on behalf of

**CANADIAN UNION OF PUBLIC EMPLOYEES**

Date

Marcelle Goldenberg

on behalf of

**SERVICE EMPLOYEES INTERNATIONAL  
UNION**

Date

Lewis Gottheil

on behalf of

**CAW CANADA**

Date

Todd Hutchings

Date

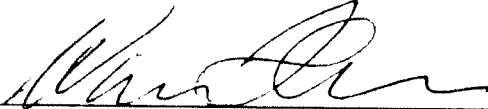
Connie DeMedeiros

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Date

*June 15, 2010*

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Date

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



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Warren Thomas  
on behalf of  
**ONTARIO PUBLIC SERVICE EMPLOYEES  
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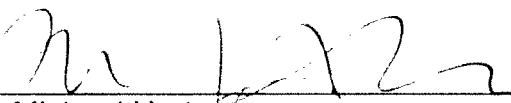
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Linda Haslam-Stroud  
on behalf of  
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Date

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

*June 21, 2010*  
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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  
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Connie DeMedeiros

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

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Marcelle Goldenberg  
on behalf of  
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UNION**

June 18 2010  
Date

Lewis Gottheil  
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Lewis Gottheil  
on behalf of  
**CANADIAN ~~UNION OF~~ AUTOWORKERS UNION** *LS*

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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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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

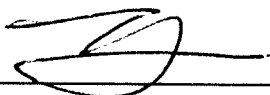
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Lewis Gottheil  
on behalf of  
**CANADIAN UNION OF AUTOWORKERS**

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*June 21, 2010*  
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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on behalf of  
**CANADIAN UNION OF AUTOWORKERS**

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Date

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Todd Hutchings

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*June 16, 2010*  
Date

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Connie DeMedeiros

Date

July 10/10

Nelia Cabral

Nelia Cabral



**Notice to Employees and Former Employees of Member Organizations  
of the Ontario Hospital Association as of December 27, 1997  
This Notice May Affect Your Rights - Please Read Carefully**

To: All current and former employees of member organizations of the Ontario Hospital Association ("OHA") who paid a share of premiums and were covered by the OHA's long-term disability policy (Policy No 2100) as of December 29, 1997.

**Purpose of this Notice**

This is the Second Notice in these proceedings. You can find the first Notice on the web pages listed below.

The OHA and representatives of its members' unionized and non-unionized employees have entered into a Settlement Agreement to distribute the proceeds arising from the demutualization of certain insurance policies that Mutual Life had issued to the OHA (the "Proceeds"). An application was brought in the Ontario Superior Court of Justice to obtain court approval of the Settlement Agreement for the proposed distribution of the Proceeds, as a class proceeding. At a hearing on August 17, 2010, the Ontario Superior Court of Justice certified the application as a class proceeding, appointed representative Respondents and approved the Settlement Agreement.

The purpose of this Second Notice is to provide members of the Class with information on how to opt out of this class proceeding and, if eligible, how to apply for funds under the Cash Recipients Fund. For further details with respect to the Settlement itself, please see the first Notice and the web pages listed below.

**The Class**

The Court certified the application under the *Class Proceedings Act, 1992* for the purpose of effecting the Settlement on behalf of the following class:

All current and former employees of Participating Employers who were employed by a Participating Employer, paid a share of premiums and were covered under its LTD Policy as of December 29, 1997. [NTD: Conform against Order]

The following individuals were named as the representative Respondents on behalf of the Class: Andy Summers, Lee Rogano, Yves Shank, Mike Tracey, Carol McDowell, Katha Fortier, and Nelia Cabral. There are approximately 41,000 employees and former employees who are members of the Class.

**The Terms of the Settlement Agreement**

As of June 1, 2010, there are approximately \$22.5 million in Proceeds being held in trust. The Settlement provides for these Proceeds to be distributed in two parts. As described in the first Notice, \$17.2 million will be allocated to a Premium Holiday for eligible employees and Participating Employers. To be eligible for the Premium Holiday you must:

1. be actively employed with a Participating Employer as of the date the Proceeds are distributed;
2. pay a share of premiums under your employer's LTD policy as of the date the Proceeds are distributed; and
3. be employed with the same Participating Employer that you were employed with on December 29, 1997 and have participated in the LTD policy as of December 29, 1997 that Mutual Life had issued to the OHA at the time.

If you are eligible to receive the Premium Holiday, you do not need to take any action.

The remaining Proceeds (approximately \$5.3 million) will be used to pay for legal and other fees and as a Cash Recipients Fund for Class members who are not eligible for the Premium Holiday. See below for details about the Cash Recipients Fund and how to apply if you are eligible.

After the payment of legal and other fees, and the payment of claims against the Cash Recipients Fund, if there are Proceeds remaining, 50% will be distributed to the OHA and the remaining 50% will be used to provide an additional premium holiday.

If more than 25 persons opt out of the Class, as set out below, under the terms of the Settlement Agreement, these proceedings can be terminated and the funds may not be distributed in accordance with the Settlement, even if the Settlement has been approved by the Court.

### **Costs to You**

One of the terms of the Settlement is that the legal fees and other costs related to this application are to be paid from the Proceeds. None of the fees of legal counsel involved in this proceeding will be based on a contingency fee arrangement. Fees and other costs related to this application, including the process of reaching the settlement, to August 17, 2010, are estimated at \$1.5 million. The amount of the Proceeds available under the Cash Recipients Fund (and any Remaining Funds) will be reduced by the legal fees or other expenses incurred in advancing this matter.

### **Opting Out**

If you wish to remain a member of the Class, you do not need to do anything. If you wish to opt out of the Class, you must ensure a written notice to this effect is received by registered mail or fax before 5:00 p.m. on ► by either Class Counsel at the addresses below.

You are entitled to seek independent legal advice with respect to this Settlement and Opting Out. You may contact your own lawyer, at your own expense. The Court Order approving the proposed Settlement will bind all members of the Class unless they opt out.

### **How to Apply for Payment From the Cash Recipients Fund**

If you are a Class member but are not eligible to receive the Premium Holiday (for example, you are currently on LTD, you are retired, or you are no longer employed with the same employer that you worked for on December 29, 1997), you are entitled to apply for a cash payment from the Cash Recipients Fund.

Class members who have valid claims against the Cash Recipients Fund will receive \$100.00. This amount may be reduced if there is not enough money in the Cash Recipient Fund to provide \$100.00 to each class member who makes a valid claim against that Fund.

**To receive a payment from the Cash Recipients Fund**, you must submit your **name, current home address and proof** that, as of December 29, 1997, you participated in the LTD policy that Mutual Life issued to the OHA at the time to:

#### **Ontario Hospital Association: Demutualization Claims Processing**

Attention: Joanne Philipose  
200 Front Street West  
Suite 2800  
Toronto, ON  
M5V 3L1  
1-866-834-2353  
demutualizationclaims@oha.com

The following proof will be accepted:

- a statement of earnings which covers the period of December 29, 1997;
- your T4 for 1997;
- an approved LTD claim which covers the period of December 29, 1997;
- a pay cheque stub which covers the period of December 29, 1997;
- a letter from a participating Employer confirming that you were a full-time employee on December 29, 1997; or
- other satisfactory documentary evidence of full-time employment with a Participating Employer on December 29, 1997.

If you are applying on behalf of a deceased Class member, you must also submit proof of death and proof of your appointment as executor and trustee of the Class member's estate.

**You have until ► to submit your name, current home address and proof of your eligibility. If your application is not received by ► or is incomplete, you will not be entitled to any payment from the Cash Recipients Fund.**

## **Questions and Additional Information**

For further information, including the full Settlement Agreement, the list of Participating Employers, and any questions concerning these proceedings you can contact the Class Counsel as follows:

### **Contact information for Class Counsel to Class Members represented by (or formerly represented by) a Union:**

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

Barristers & Solicitors

474 Bathurst Street, Suite 300

Toronto, ON M5T 2S6

Fax: (416) 964-5895

#### **Please direct inquiries to:**

Telephone: 1-877-398-5711

Email: [moconnor@cavalluzzo.com](mailto:moconnor@cavalluzzo.com)

Web site for Class Members: [www.cavalluzzo.com/Class-Actions.aspx](http://www.cavalluzzo.com/Class-Actions.aspx) (click on OHA class proceeding)

### **Contact information for Class Counsel to Class Members who are (or were) non-unionized employees:**

Koskie Minsky LLP

Barristers & Solicitors

P.O. Box 52

20 Queen Street West, Suite 900

Toronto, ON M5H 3R3

Fax: (416) 977-3316

#### **Please direct inquiries to:**

Telephone: 1-866-777-6341

Email: [ohaclassproceeding@kmlaw.ca](mailto:ohaclassproceeding@kmlaw.ca)

Web site for Class Members: [www.kmlaw.ca/case-central](http://www.kmlaw.ca/case-central) (click on OHA class proceeding)



## EXHIBIT "A"

### Notice to Employees of Member Organizations of the Ontario Hospital Association as of December 29, 1997 – This Notice May Affect Your Rights. Please Read Carefully.

#### Notice

This notice is directed at all current and former employees of member organizations of the Ontario Hospital Association ("OHA") who were covered by the OHA's long-term disability policy (Policy No 2100) as of December 29, 1997. The OHA has entered into a Settlement Agreement (described below) which affects your rights. Some of you may be entitled to receive a premium holiday under your current LTD policy as a result of the Settlement Agreement. However, this notice is specifically directed at those of you who will not be entitled to a premium holiday. You are in this group and should read this notice carefully if:

- You were employed by a Participating Employer on December 29, 1997. Participating Employers are OHA member organizations which participated in the OHA's long-term disability policy as of December 29, 1997 (the list of Participating Employers can be found at the following web site: XXX); and

- You were covered by the OHA's LTD policy as of December 29, 1997 and had paid a share of the premiums for this coverage; and

- You are not currently paying premiums under an LTD policy of a Participating Employer (eg you are currently on LTD, you are retired or you are not working full time); or

- You are currently paying premiums under an LTD policy of a Participating Employer but it is not the same Participating Employer as you worked for on December 29, 1997.

**If you are in this group (called the "Contingency Claimants"), this Notice is to advise you how to apply for a cash payment under the terms of the Settlement Agreement.**

#### Settlement Agreement

The OHA entered into a settlement agreement (the "Settlement Agreement") with representatives of its members' unionized and non-unionized employees. The unions involved in the Settlement Agreement are ONA, OPSEU, CUPE, SEIU and the CAW. The Settlement Agreement provides for the distribution of proceeds arising from the demutualization of certain insurance policies that Mutual Life had issued to the OHA (the "Proceeds"). The OHA commenced an application under the *Class Proceedings Act* for approval of the Settlement Agreement. The application was certified as a class proceeding and the Settlement Agreement was approved by the Honourable XX on [insert date].

#### The Class

The class certified by the court consists of all current and former employees of Participating Employers who were employed with a Participating Employer and covered under the OHA's LTD Policy as of December 29, 1997 and who had paid a share of the premiums for this coverage.

#### The Terms of the Settlement Agreement

Under the Settlement Agreement, 17.2 million dollars of the Proceeds will be paid to Participating Employers. Participating Employers are to use this money solely for the purpose of providing a premium holiday under their LTD policies for both themselves and their employees in proportion to the premiums that the employer and employees respectively pay under the policy.

The balance of the Proceeds will go into what is called the Contingency Fund. If you are a Contingency Claimant (as described under Notice above), you are entitled to a cash payment from the Contingency Fund. You must make a claim to the Contingency Fund and, if your claim is accepted, you will be mailed a cheque for \$100 [Note: is this the amount taking into account preparing T4s?]. This amount may be reduced if there is not enough money in the Contingency Fund to provide \$100 to each person who makes a valid claim against the fund.

For further details of the terms of the Settlement Agreement, please visit: [insert web site]

#### How to Apply for Your Payment

To make a claim, you must submit proof that, as of December 29, 1997, you participated in the LTD policy that Mutual Life issued to the OHA at the time. This proof consists of:

- a statement of earnings which covers the period of December 29, 1997;
- your T-4 for 1997;
- an approved LTD claim which covers the period of December 29, 1997;
- a pay cheque stub which covers the period of December 29, 1997;
- a letter from a participating Employer confirming that you were a full-time employee on December 29, 1997; or
- other satisfactory documentary evidence of full-time employment with a Participating Employer on December 29, 1997.

You must submit your proof by mailing to : [insert details] **Please note that you have until [insert date that is 60 days following notice] to submit proof of your participation. If you do not submit proof of your participation by [insert date that is 60 days following notice], you will not be entitled to any payment.**

#### For More Information

A complete copy of the Settlement Agreement and other information are available on the Internet at [insert website].

The representatives of the employees in this class proceeding have retained counsel. Questions concerning the Settlement and how it affects you should be directed to the following number: [insert details regarding dedicated phone line] or to the lawyers acting for the representatives of the employees at the following addresses:

Elizabeth McIntyre  
Cavalluzzo Hayes Shilton McIntyre & Cornish LLP  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto ON M5T 2S6 Fax (416) 964-5895

Susan Philpott  
Koskie Minsky LLP  
Barristers & Solicitors  
P.O. Box 52  
20 Queen Street West, Suite 900  
Toronto ON M5H 3R3 Fax (416) 977-3316



## EXHIBIT "B"

### Notice to Employees of Member Organizations of the Ontario Hospital Association as of December 29, 1997 – This Notice May Affect Your Rights. Please Read Carefully.

#### Notice

This notice is directed at all current and former employees of member organizations of the Ontario Hospital Association ("OHA") who were covered by the OHA's long-term disability policy (Policy No 2100) as of December 29, 1997. The OHA has entered into a Settlement Agreement (described below) which affects your rights. Employers participating in this Settlement ("Participating Employers") are organizations which participated in the OHA's long-term disability policy as of December 29, 1997. The list of Participating Employers can be found at the following web site: XXX.

#### Purpose of this Notice

The OHA and representatives of its members' unionized and non-unionized employees have entered into a Settlement Agreement in relation to the distribution of proceeds arising from the demutualization of certain insurance policies that Mutual Life had issued to the OHA (the "Proceeds"). The unions involved in the Settlement Agreement are ONA, OPSEU, CUPE, SEIU and the CAW. The OHA commenced an application in the Superior Court of Justice under the *Class Proceedings Act* to obtain court approval of the Settlement Agreement and the proposed distribution of the Proceeds.

In order for the Settlement Agreement to become effective, it must be approved by the Ontario Superior Court of Justice. A hearing will be held on \_\_\_\_\_ at which time the Ontario Superior Court of Justice will decide whether or not the Settlement Agreement should be approved.

#### Class Proposed

At the hearing on XXX, the parties will seek to certify the case for the purpose of effecting the Settlement on behalf of the following class:

All current and former employees of Participating Employers (see web site XXX) who were employed by a Participating Employer and covered under the OHA's LTD Policy as of December 29, 1997 and who had paid a share of the premiums for this coverage.

The parties will also seek to have the following individuals named as the representative Respondents on behalf of class members: [insert names]

#### The Terms of the Settlement Agreement

Under the Settlement Agreement, \$17.2 million of the Proceeds will be paid to Participating Employers. Participating Employers are to use this money solely for the purpose of providing a premium holiday under their LTD policies for both themselves and their employees in proportion to the premiums that the employer and employees respectively pay under the policy. In order to be eligible for a premium holiday, you must be a Class member and:

- (a) be actively employed with a Participating Employer as of the dates the Proceeds are distributed;
- (b) pay a share of premiums under your employer's LTD policy as of the date the Proceeds are distributed; and
- (c) be employed with the same Participating Employer that you were employed with on December 29, 1997 and have participated in the LTD policy as of

December 29, 1997 that Mutual Life had issued to the OHA at the time.

The balance of the Proceeds will go into what is called the Contingency Fund. If you are a Class member but are not eligible to receive a premium holiday (for example, you are currently on LTD, you are retired, or you are no longer employed with the same employer that you worked for on December 29, 1997), you will be entitled to a cash payment from the Contingency Fund. After legal and other expenses of this proceeding are paid out of the Contingency Fund, Class members who are ineligible to receive a premium holiday will be able to make a claim for payment out of the Contingency Fund. In the event the court approves the Settlement Agreement, you will have 60 days from the publishing of a notice to Class members to submit proof of your entitlement. Further details of how to apply for this cash payment will be set out in a notice if the Settlement Agreement is approved, and can also be found at the web site XXX. If your claim is accepted, you will be mailed a cheque of \$100.00. This amount may be reduced if there is not enough money in the Contingency Fund to provide \$100.00 to each person who makes a valid claim against the fund.

If there are any funds left over in the Contingency Fund after all valid claims have been made against it, the remainder will be distributed as follows:

- (a) 50% of the amount remaining will be deposited with the OHA for use, in part, as a contingency for claims made by Participating Employers or their successors that have not ratified this settlement; and
- (b) 50% of the amount remaining will be used to provide premium holidays for employees of Participating Employers who, as of the date this remaining money is distributed:

1. are still actively employed by a Participating Employer that has continued to participate in the LTD Policy currently sponsored by the OHA (OHA Benefit Plans);
2. pay a share of premiums under the LTD Policy currently sponsored by the OHA (OHA Benefit Plans); and
3. participated in the LTD Policy as of December 29, 1997 that Mutual Life issued to the OHA at the time.

#### Settlement Approval Hearing

If you are a member of the proposed class and you do not oppose Settlement, you need not appear at the Settlement Approval Hearing or take any other action at this time. If you are a member of the proposed class and you wish to comment on or make an objection to the terms of the Settlement Agreement, you are encouraged to send your name, address and brief reasons for the objection to Class Counsel at the address and fax number listed below prior to \_\_\_\_ . Class Counsel will forward each of these submissions to the Court and you will be entitled to appear at the Approval Hearing on \_\_\_\_ and be heard if you wish to do so.

## Order Binding on All Members of the Class

Please be advised that an order of the Court in this application (including an order approving the proposed settlement) will bind all members of the Class unless a person chooses to opt out of the class proceeding in accordance with the instructions below.

### Opting Out

In order to opt out of the class proceeding, you must ensure that a written notice to this effect is received by registered mail or fax before 5:00 p.m. on \_\_\_\_\_ by either Elizabeth McIntyre or Susan Philpott at the addresses below.

If you wish to remain a member of the Class, you do not need to do anything at this time. You may wish to obtain independent legal advice with respect to this matter if you choose to opt out of the proceeding.

### Right to Participate

If you opt out of the class proceeding, the OHA may, on notice to you, seek to add you as a named respondent to the application in which case, you will be able to participate directly and individually in the application by filing a Notice of Appearance with the court. In such circumstances, you may be required to bear your own legal costs and may become subject to an award against you for the costs of the other parties.

### Costs to You

One of the terms of the settlement is that the legal fees and other costs related to this application are to be paid from the Proceeds. None of the fees of legal counsel involved in this proceeding will be based on a contingency fee arrangement.

In terms of the financial consequences to you, if the legal fees are paid as intended under the terms of the settlement, the amount of the Proceeds to which you would otherwise be entitled may be reduced by legal fees or other expenses incurred in advancing this matter.

### Questions

Questions concerning this proceeding should be directed to the following number **[Insert details regarding dedicated phone line]** or, alternatively, to the lawyers acting for the Representative Respondents at the following addresses:

Elizabeth McIntyre  
Cavalluzzo Hayes Shilton McIntyre & Cornish LLP  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, ON M5T 2S6

Fax: (416) 964-5895

Susan Philpott  
Koskie Minsky LLP  
Barristers & Solicitors  
P.O. Box 52  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3

Fax: (416) 977-3316





Respondents and upon being advised that the parties have reached a settlement in this proceeding and have consented to the following orders:

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992, c. 6*.
2. **THIS COURT FURTHER ORDERS** that the Respondent Class is identified 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 Mutual Life Assurance Company of Canada Group Insurance Policy Numbers 2100 and 16000 and who were employed with a Participating Employer and covered under Policy Number 2100 as of December 29, 1997. Participating Employers are defined as the Ontario Hospital Association and those Ontario Hospital Association member employers (or their successors) who participated on December 29, 1997 under the Ontario Hospital Association's Long-term Disability Insurance Policy (Policy Number 2100).

3. **THIS COURT FURTHER ORDERS** that the common issues for the Respondent Class are:

(a) who is entitled to the demutualization proceeds arising under one or more of Mutual Assurance Company of Canada Group Insurance Policy Numbers 2100 and 16000, (the "Proceeds"); and

(b) how the Proceeds shall be distributed or otherwise dealt with.

4. **THIS COURT FURTHER ORDERS** that **[insert names of representatives of the Respondent Class]** be and are hereby appointed as Representative Respondents for the Class.

5. **THIS COURT FURTHER ORDERS** that notice to members of the Respondent Class shall be provided in the form of the notice attached as Schedule "B" hereto by publication in the Globe and Mail newspaper and on the websites of the Ontario Hospital Association, the Ontario Nurses' Association, the Ontario Public Service Employees Union, the Canadian Union of Public Employees, the Service Employees International Union and the Canadian Auto Workers as well as on the websites of the Participating Employers. Any member of the Respondent Class who does not wish to be bound by the agreement referred to in paragraph 6 below must opt out of the Respondent Class by way of notice served upon counsel for the Respondent Class within 30 days of the date of this Order. Counsel for the Respondent Class will serve counsel for the applicant and file with the court a copy of any notice received from any member of the Respondent Class and shall do so within 35 days of the date of this Order. This Order and the agreement referred to in paragraph 6 below shall be binding upon all

members of the Respondent Class who do not opt out pursuant to this paragraph.

6. **THIS COURT FURTHER ORDERS** that the proposed settlement as set out in the Agreement entered into between the parties and attached hereto as Schedule "C" is a full and final resolution of the application and is hereby approved and adopted by this Court.
7. **THIS COURT FURTHER ORDERS** that:
  - (a) Any member of the Respondent Class who does not opt out of the settlement and this proceeding pursuant to paragraph 5 will be enjoined and barred from bringing or prosecuting any action, application or other legal proceeding against any or all of the Ontario Hospital Association or the employers listed on Schedule "A" attached hereto and/or any of their respective Board members, officers, employees, or their respective heirs, administrators, successors or assigns, for any claim that was, or could have been, raised in this application;
  - (b) The Ontario Hospital Association and the employers listed on Schedule "A" attached hereto and their respective Board members, officers, employees and their respective heirs, administrators, successors and assigns are fully and finally released from any and all claims by any member of the Respondent Class who does not opt out of the settlement and this proceeding pursuant to paragraph 5 that was, or could have been, raised in this application; and



- (c) This paragraph does not affect the rights of any party to enforce this Order and the settlement of this application.