

FEDERAL COURT

CERTIFIED CLASS ACTION

BETWEEN:

DENNIS MANUGE

PLAINTIFF

- AND -

HER MAJESTY THE QUEEN

DEFENDANT

PROPOSED ORDER

THIS COURT ORDERS the following:

1. The definition of the class shall be amended to the following:

All former members of the Canadian Forces whose long-term disability benefits under S.I.S.I.P. Policy No. 901102 were reduced by the amount of their VAC Disability benefits received pursuant to the *Pension Act* from June 1, 1976 to the date of this order.
2. The opt out date for any new class members added by virtue of this amendment shall be 60 days after this order.
3. Any class member who previously opted out of this action shall have the right to opt back into the action within 60 days of this order.
4. As of the date of this Order, the Defendant has ceased decreasing the Class Members' ongoing SISIP Policy 901102 ("SISIP") long-term disability (LTD) payments by the amount of pension payments made pursuant to section 21 of the *Pension Act*.

5. The Defendant shall repay the difference between the LTD benefits paid and those which ought to have been paid if no *Pension Act* offset was applied (the "Offset").
6. Pre- and post-judgment interest paid on each Offset shall be simple interest calculated as follows:
 - a. 6% from February 1, 1992 to December 31, 1995;
 - b. 5% from January 1, 1996 to December 31, 2008;
 - c. 3% from January 1, 2009 to April 30, 2012; and
 - d. 5% from May 1, 2012 to the date the amount is paid to McInnes Cooper in Trust;(collectively, the "Interest Amount.")
7. The Defendant shall pay each Class Member a one-time additional 3.27% of the Offset (the "Credit for Interest on Potential Tax Payable.")
8. Collectively, the Offset, Interest Amount and the Credit for Interest on Potential Tax Payable shall be referred to as the "Refund."
9. The "Offset" for any Class Member shall be reduced by any amount owing by the Class Member to The Manufacturers Life Insurance Company ("Manulife Financial") (the "Overpayment Recovery.")
10. The Defendant shall also pay \$10 million into a fund (the "Bursary Fund") to be used to fund bursaries for Class Members as follows:
 - a. The Bursary Fund shall exclusively award bursaries annually for the first 7.5 years to individual Class Members, or a Class Member's spouse, child, grandchild, nephew or niece.
 - b. At the completion of the first 7.5 year period and for such time thereafter until the Bursary Fund monies are completely expended, the Bursary Fund shall also award bursaries annually to Veterans who were impacted by the disability pension offset under the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (their Earnings Loss or Canadian Forces Income Support benefit decreased as a result of the disability pension offset), or an eligible individual's spouse, child, grandchild, nephew or niece subject to the limit of available funds annually.
 - c. The bursaries may be used for University, Community College or trade school expenses.

- d. Class Members, eligible individuals, or the estates of either, must make application in order to be considered for the award of a bursary within the limits of the monies available to the Bursary Fund in any given year.
 - e. The Bursary Fund shall earn interest which shall be used to fund bursaries.
 - f. For the first 7.5 years of the existence of the Bursary Fund, bursaries of \$1,300 each to a limit of the first 4,000 class members or the number of applications submitted, whichever is fewer shall be awarded. In addition, further bursaries of the same dollar value may be awarded with the interest accrued during this 7.5 year period.
 - g. At the end of the initial 7.5 year period, the Bursary Fund may award any number of bursaries in each year in the dollar amount referred to in (f) until the Bursary Fund monies are fully expended.
 - h. There will no more than one bursary available on account of each class member.
 - i. The Bursary Fund shall be held by the Association of Universities and Colleges of Canada ('AUCC') and any management fee shall be paid from the corpus of the fund.
11. The Defendant, through Manulife Financial, shall remit to McInnes Cooper in Trust the Refund payable to each Class Member, less any statutorily required withholding tax (the "Withholding") and less any Overpayment Recovery. The Defendant, through Manulife Financial, shall accrue the Refunds payable and deliver those to Class Counsel on a monthly basis within seven days following month end. The Refunds to all Class Members shall be completed within 6 months of this Order, save and except the Refunds to be made to the following Class Members who are required to provide Manulife Financial with updated information in order to process the Refund:
- a. Group 1: Claimants whose LTD benefits were reduced to zero and who were not asked to submit medical and/or financial evidence to prove their total disability status at the end of the initial 24 month period of eligibility;
 - b. Group 2: Claimants whose LTD benefits were reduced to zero and who were asked to submit medical and/or financial evidence, but did not comply. Therefore, their claim was terminated, with cause, at the end of the 24 month period;

- c. Group 3: Claimants whose LTD benefits were reduced to zero and terminated at 24 months due to the claimant's working;
- d. Group 4: the zero sum group members referred in paragraph 16 for which Manulife Financial requires additional medical and financial information as per the proposal at Annex A when such information is not provided by the claimant before April 30, 2013;

which Refunds shall be made within 6 months after Manulife Financial has received the requested information from the Class Members; and

- e. surviving "Spouses" or surviving "Dependent Children" as defined under Part I of SISIP, where no information is available from the Defendant and Manulife Financial to identify the eligible "Dependents" at the time of the Class Member's death;

which Refunds shall be made within 6 months after the eligible "Dependents" at the time of the Class Member's death have been identified and Manulife Financial has received the requested information from these eligible "Dependents."

- 12. Class Members may claim the Withholding as a credit for tax paid as provided under the *Income Tax Act*.
- 13. The Defendant, through Manulife Financial, will issue all required T4 and T4A tax forms to Class Members and the Canada Revenue Agency ("CRA.")
- 14. The Defendant, through Manulife Financial, shall provide to Class Counsel the following information for each Class Member: the Offset, the Interest, the Interest on Potential Tax Payable Credit, the Overpayment Recovery Amount, the Withholding Amount, and any required CRA forms which will be generated at the time the Refund is processed.
- 15. The Defendant, through Manulife Financial, shall provide McInnes Cooper with the Defendant's information about the Class Members' last known address and telephone number.
- 16. The Defendant, through Manulife Financial, shall, for the purpose of determining the eligibility for ongoing LTD benefits:
 - a. Treat Zero Sum Members, medically released post November 30, 1999, as having been disabled pursuant to SISIP for the first 24 months from their release;
 - b. treat Zero Sum Members as having been disabled pursuant to SISIP for the period of time when they:

- (i) qualified for a waiver of premium pursuant to section 12 of Part I of SISIP;
- (ii) qualified for an Exceptional Incapacity Allowance provided for in section 72 of the *Pension Act*, R.S.C. 1985, c. P-6, if the qualifying disability arose while they were insured for the purposes of long-term disability benefits under SISIP;
- (iii) qualified under subsection 42(2) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8, if the qualifying disability arose while they were insured for the purposes of long-term disability benefits under SISIP; or
- (iv) qualified under section 18 or 38 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c. 21, if the qualifying disability arose while they were insured for the purposes of long-term disability benefits under SISIP.

17. Subject to the acceptance of disability by the Defendant, through Manulife Financial as a result of paragraph 16, and subject to the requirement of financial eligibility, the Defendant shall assess disability and if applicable the Refund amount for Zero Sum Members from information available to the Defendant and Manulife Financial from:

- a. their own files;
- b. the files made available pursuant to the orders granted on September 6, 2012, and January 9, 2013 (the "Sharing Orders");
- c. the Declarations provided by Zero Sum Members as per the proposal at Annex A; and
- d. in conjunction with 17 a, b, & c, additional medical information that may be requested from treating physician/doctor/clinic etc. and additional financial information, as per Annex B which information shall be requested as soon as Manulife Financial determines that additional information is necessary;
- e. class members shall have 6 months to respond to any request for information, unless an extension is obtained on application to the Court.

18. Manulife Financial will provide Class Counsel with monthly reports with a list of persons for whom there are information requests that have been outstanding for more than a month pursuant to paragraphs 17(c) or (d).
19. If a dispute arises about whether a Zero Sum Member, including those described in paragraph 11, was disabled (the "Disability Dispute,") that Zero Sum Member shall have 90 days to appeal that finding to the adjudicator (the "Disability Appeal") Laura Bruneau (the "Adjudicator"). Class Members who were previously assessed under SISIP policy 901102 as not totally disabled may, if they declare they did not appeal that determination on the basis of the application of the Offset, appeal to the Adjudicator. The Class Member and Class Counsel shall have the right to file a written brief and any supporting reports or records. The Defendant shall have 30 days to respond (the "Disability Response.") The Class Member and Class Counsel shall have 30 days to reply (the "Disability Reply.") Within 5 days of receipt, the Adjudicator will provide copies of:
 - a. the Disability Appeal to the Defendant and Class Counsel;
 - b. the Disability Response to the Zero Sum Member and Class Counsel; and
 - c. if filed by the Individual Zero Sum Member, any Disability Reply to the Defendant, and Class Counsel

If a Disability Reply is filed with the Adjudicator by Class Counsel, they shall provide copies to the Defendant and the Zero Sum Member within 5 days.

20. If there is a dispute about the calculation of the Refund (the "Calculation Dispute"), the Class Member shall have 30 days after receipt of the Refund to advise the Adjudicator of the dispute (the "Calculation Appeal,") along with any supporting reports or records. The Defendant shall have the right to file a written brief and any supporting reports or records (the "Calculation Response.") The Class Member shall have 30 days to reply (the "Calculation Reply.") The decision of the Adjudicator shall be final in terms of determining the Refund payable in accordance with the Policy and this Order. Within 5 days of receipt, the Adjudicator will provide copies of:
 - a. the Calculation Appeal to the Defendant and Class Counsel;
 - b. the Calculation Response to the Class Member and Class Counsel; and
 - c. if filed by the individual Zero Sum Member, any Calculation Reply to the Defendant and Class Counsel.

If a Calculation Reply is filed with the Adjudicator by Class Counsel, they shall provide copies to the Defendant and the Zero Sum Member within 5 days.

21. The decision of the Adjudicator on any Disability Dispute or Calculation Dispute shall be final, with no right of appeal. The Adjudicator's decision shall be in accordance with the terms of SISIP Policy 901102. The Adjudicator shall have the right to recommend rules and protocols to the Defendant and Class Counsel, and if necessary to seek direction from the Court on notice to the Defendant and Class Counsel.
22. The Defendant shall retain its usual rights under SISIP Policy 901102 in relation to the provision of or requests for medical or financial evidence for future payments other than the Refund.
23. Class Members who are deceased shall be entitled to payments payable to the date of death, which payments shall be paid only and directly to living persons who were eligible "Dependents" at the time of the Class Member's death as defined in Part I of SISIP Policy 901102. Payments are to be made in the following priority:
 - a. All of the payments shall be paid to the surviving "Spouse" of the deceased member, with "Spouse" being defined as set out in Part I of SISIP Policy 901102 with reference to the member's date of death.
 - b. If there is no surviving spouse of the deceased member, all payments shall be divided equally and paid to the "Dependent Children" as defined in part I of the SISIP Policy with reference to the member's date of death.
 - c. If there is no surviving "Spouse" or surviving "Dependent Children" as defined under Part I of SISIP Policy 901102 with reference to the member's date of death, no payments shall be payable by the Defendant.
24. A firm jointly selected by the parties shall be appointed to review, monitor and report quarterly on the process of the Defendant's compliance with paragraphs 5-23 until such time as the Court directs (the "Monitor"). If the parties cannot agree upon a firm, an application will be made to the Court to appoint a Monitor.
25. Laura Bruneau shall be appointed as Adjudicator.
26. The Monitor and the Adjudicator's accounts shall be paid by the Defendant, with any dispute on these accounts or the scope of their work to be resolved by the Court.

27. Class members are deemed to provide a release in favour of the Defendant in the following form:

IN CONSIDERATION of the Defendant's agreement to the terms of this Order, each Class Member DOES HEREBY RELEASE and forever discharge the Defendant and its officers, directors, employees, agents, parent, subsidiaries, affiliates, predecessors, successors, and assigns, jointly and severally, from any and all losses, damages, debts, liabilities, costs, claims, suits, actions, causes of action, and demands whatsoever which the Class Member ever had, now has, or which the Class Member or his or her heirs, executors, successors or assigns may at any time in the future have against the Defendant by reason of or resulting from the Offset excepting any entitlement to increased CPI benefits payable under sections 22, 23, 42, and 44 of Section III(B) of SISIP Policy 901102, but including all claims raised or capable of being raised in this action.

28. The Court will determine any entitlement to increased CPI benefits payable under sections 22, 23, 42, and 44 of Section III(B) of SISIP Policy 901102 on further joint application of the parties, but this determination will not delay the implementation of the within settlement. After the determination, the Court will provide further directions, if necessary, on any addition to the Refund, subject to any potential appeals.
29. Class Members will be provided notice in a form approved by the Court (the "Notice") and in the manner set out below :
- a. The Defendant shall instruct Manulife Financial to distribute the appropriate Notice to the last known address on file for the Class Members;
 - b. The Notice will be published on Class Counsel's website, and a link to same shall be placed on the front page of the Veterans Affairs Canada and SISIP websites;
 - c. The Notice shall be emailed by Class Counsel to class members of whom they are aware;
 - d. The parties will issue a joint press release in respect of the Notice;
 - e. The Defendant will pay the costs of providing Notice, except for the cost of publishing the Notice on Class Counsel's website and delivering the emails to known class members; and

- f. The Defendant will advise Class Counsel of any Notice returned to sender, and Class Counsel will be entitled to take any further steps to locate this individual at their own expense.
- 30. Class Counsel fees and disbursements shall be approved by the Court after hearing submissions.
- 31. McInnes Cooper shall be paid fees and disbursements in an amount and in the manner ordered by the Court.
- 32. Application No. T-296-09 shall be discontinued without costs to any party.
- 33. The Court retains general supervisory jurisdiction over the Action as well as any issues arising that may be brought forward to the Court on application of any party.
- 34. This Order is made on a without costs basis.

Judge

Order Consented To:

Paul Vickery, Lori Rasmussen, and Travis Henderson
Solicitors for the Defendant

Order Consented To:

Ward Branch, Peter Driscoll, and Dan Wallace
Solicitors for the Plaintiff Class