

FEDERAL COURT
CERTIFIED CLASS ACTION

BETWEEN:

SIMON LOGAN

PLAINTIFF

-and-

HIS MAJESTY THE KING

DEFENDANT

FINAL SETTLEMENT IMPLEMENTATION AGREEMENT

WHEREAS the Plaintiff brought this class action against the Defendant alleging that their, and the Class' Canadian Armed Forces long term disability ("CAF LTD") benefits and dismemberment benefits ("Benefits") under the Service Income Security Insurance Plan ("SISIP") Policy 901102 ("SISIP Policy") were improperly calculated;

AND WHEREAS the Federal Court (the "Court") certified this action as a class action by Order dated March 1, 2019 (the "Order");

AND WHEREAS, following a motion to determine a question of law, the Court ruled in favour of the Plaintiff and the Class on the sole common issue by Order dated March 24, 2020;

NOW THEREFORE, in order to implement the Court's March 24, 2020, Order, the Plaintiff and the Defendant (collectively, "Parties" or individually, "Party") have entered into this agreement ("Agreement") to resolve the remaining issues in dispute in this class action on the following terms:

Class Definition

1. The Class definition is amended as follows:

All former members of the Canadian Armed Forces who were released on or before December 31, 2021 and who on or after July 17, 2012 received, long term disability benefits and/or dismemberment benefits under Division 2, Part III(B) of SISIP Policy 901102, and had a monthly allowance from the Canadian Armed Forces in effect on the date of their release from the Canadian Armed Forces or, in the case of a Class "C" member, when the injury was incurred or the illness was contracted.

(a "Class Member", and collectively, the "Class")

2. Any Class Member who previously opted out of this action shall have the right to opt back into the action within 60 days of the date of notice of the Final Order, as defined below.
3. Any Class Member who has not already had the opportunity to opt out shall have the right to opt out within 30 days of the date of notice of the Final Order.

Final Order

4. In this Agreement, the term "Final Order" means the Court's Order approving this Agreement in accordance with its terms, once the time to appeal such Order has expired without any appeal being taken, or, if the Order is appealed, once there has been affirmation of the Order upon a final disposition of all appeals.

Administrator of the Settlement

5. Via a separate order, the Court will appoint The Manufacturers Life Insurance Company ("Manulife") as the administrator of the settlement.

Payment of Additional Amount

6. Manulife will pay each Class Member a lump sum Additional Amount equal to the difference between the Benefits received and the Benefits that would have been received had the Class Member's Benefits under the SISIP Policy been calculated in accordance with the Court's March 24, 2020 Order (the "Additional Amount"), which states:

When calculating (CAF) long term disability benefits and dismemberment benefits under Division 2, Part III(B) of SISIP Policy 901102, a Class member's allowances in effect on the date of their release from the Canadian Armed Forces (or in the case of a Class "C" member, when the injury was incurred or the illness was contracted) should be included in the Class member's monthly pay. Only those allowances that are paid on a monthly basis should be included.

7. For greater certainty, for Class Members who continued to receive monthly Benefits on January 1, 2022, and continuously onward, Manulife will continue to pay their monthly Benefits in accordance with the Court's March 24, 2020 Order from the time their Additional Amount is paid up until their Benefits claim end date.
8. In calculating the payment owed to each Class Member, Manulife will reduce the Additional Amount by any amount owing by the Class Member to Manulife.
9. As available, Manulife will provide Class Members and Class Counsel with an individual calculation summary statement upon payment of the Additional Amount. Any follow up questions may be directed to a central hub located at Class Counsel's office.

10. Veterans Affairs Canada ("VAC") will not recover from any Class Member any Earnings Loss Benefit ("ELB") or Income Replacement Benefit ("IRB") overpayments generated as a result of the payment of the Additional Amount in respect of the period from October 1, 2016, to December 31, 2021, inclusively, or any IRB (or future iteration of VAC's IRB program if applicable) overpayments generated as a result of the payment of the Additional Amount from January 1, 2022, up to the date on which VAC finalizes the re-calculation of the IRB to account for this change in the Class Members' Benefits payment.
11. Once VAC's re-calculations are completed and monthly Benefits payments are being paid in accordance with the Court's March 24, 2020 Order, VAC will begin to apply the full updated Benefits as an offset to the IRB as set out in the *Veterans Well-being Regulations*.

Timing and Method of Payment of Additional Amount

12. For Class Members in receipt of ongoing monthly Benefits at the time of payment, Manulife will make the payment of the Additional Amount in the same manner as the Class Members' monthly Benefits.
13. For Class Members no longer in receipt of ongoing monthly Benefits at the time of payment, but who were in receipt of ongoing monthly IRB payments from VAC as of January 1, 2022, VAC will provide Manulife with the Class Member's most recent contact details on file for Manulife to arrange payment of the Additional Amount, subject to paragraph 21 of this Agreement.
14. For Class Members not in receipt of IRB as of January 1, 2022, and for which Manulife does not have contact information, CAC, the Canadian Armed Forces / Department of National Defence ("CAF/DND"), and SISIP Financial will search their records to find Class Members' contact details and provide them to Manulife for Manulife to arrange payment of the Additional Amount.
15. For Class Members for which neither Manulife, VAC, CAF/DND, nor SISIP Financial can locate Class Members' contact details, the Parties shall, subject to paragraph 21, work with other relevant Government of Canada departments to obtain contact details from those departments or from Class Members and provide them to Manulife for Manulife to arrange payment of the Additional Amount.
16. For Class Members for which neither Manulife, VAC, CAF/DND, SISIP Financial, nor other relevant Government of Canada departments can locate Class Members' contact details, Manulife will inform Class Counsel of such, and Class Counsel, at their own cost, will undertake a time-limited (two (2) months) search to locate Class Members' contact details and provide them to Manulife for Manulife to arrange payment of the Additional Amount.
17. For Class Members for which neither Manulife, VAC, CAF/DND, SISIP Financial, other relevant Government of Canada departments, nor Class Counsel can locate Class Members' contact details after employing best efforts to locate them, Manulife will make payment of the Additional Amount into a *cy-près* settlement fund to be paid in the Veteran's name to an agreed upon Veterans' charity or

charities (to be determined by agreement between the Parties and as approved by the Court).

18. For deceased Class Members, Manulife shall make the payment in the manner as set out in paragraph 35.
19. With regard to Class Members who are bankrupt, nothing in this Agreement alters or supersedes the application of *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3.
20. Manulife will make payments to fifty (50)% of Class Members within one (1) year of the Final Order. Manulife will make payments to one hundred (100)% of Class Members, except estates, and Class Members who have filed appeals, within two (2) years of the Final Order. If Manulife is unable to meet these deadlines, the Defendant will advise the Court and Class Counsel prior to the deadline's expiration and request an extension.

Sharing of Personal Information

21. The Parties will together draft and obtain any additional Court orders to share any personal information of Class Members that may be required for the implementation of this Agreement.

Determination of Class Eligibility for Payment of the Additional Amount

22. For the purposes of Manulife's determination of potential eligibility as Class Members to receive payment of the Additional Amount and ongoing Benefits under this Agreement, "Zero Sum Members" are:
 - a. Medically released CAF members whose monthly Benefits had been reduced to zero due to offsets during the first 24 months following their date of release;
 - b. Medically released CAF members whose monthly Benefits had been reduced to zero due to offsets after the initial 24 months following their date of release; and
 - c. Non-medically released CAF members whose monthly Benefits had been reduced to zero due to offsets, which then led to the termination of Benefits.
23. For the purposes of Manulife's determination of potential eligibility as Class Members to receive payment of the Additional Amount and ongoing Benefits under this Agreement, "Other Zero Sum Members" are medically and non-medically released CAF members who indicate they did not apply for Benefits, as they believed their CAF LTD benefit entitlement would have been zero (\$0.00).
24. For Manulife to assess Zero Sum Members' eligibility as Class Members to receive payment of the Additional Amount, Zero Sum Members must provide Manulife the following information within either six (6) months of the Final Order

or three (3) months from the date on which Manulife requests such information from Zero Sum Members, whichever comes later:

- a. Any employment earnings, business earnings/information or other financial or related information that Manulife requires to calculate any potential Benefits that may be owed to Zero Sum Members;
 - b. Any medical information or other information requested by Manulife in accordance with their assessment of Zero Sum Members' potential eligibility for Benefits during the initial 24 months following their date of release; and
 - c. Confirmation of their intent to join the Class should they meet the Class definition.
25. For Manulife to assess the eligibility of Other Zero Sum Members as Class Members to receive payment of the Additional Amount, Other Zero Sum Members must provide Manulife the following information, within six (6) months of the Final Order:
- a. All personal, medical, financial, as well as any other information Manulife may request to first complete an assessment for a CAF LTD claim using the proper LTD Claim Form; and second, if applicable, to assess the Other Zero Sum Member's eligibility as Class Member; and
 - b. Confirmation of their intent to join the Class should they meet the Class definition.

Review and Appeal Processes

26. If this settlement is approved, an Associate Judge will be assigned by the Federal Court's administrator or by the Chief Justice of the Court, to conduct the appeals provided for in this Agreement (the "Associate Judge"). The Court may appoint one or more Associate Judges as required. Class Counsel and Defendant's Counsel will meet with the Associate Judge to develop an appeal process involving the Court.
27. If there is a dispute about the calculation of the Additional Amount ("Calculation Dispute"), the Class Member has 60 days from receipt of the payment of the Additional Amount to advise Manulife of the dispute and send them any supporting reports or records, and request a recalculation and an explanation. Manulife has 60 days to review and answer the dispute.
28. If Manulife's answer does not resolve the dispute, the Class Member may bring their Calculation Dispute before the Associate Judge to be heard in accordance with the appeal process, within 30 days of receipt of Manulife's answer.
29. If a dispute arises about whether a Zero Sum Member, including Other Zero Sum Members, is an eligible Class Member ("Zero Sum Dispute"), the Zero Sum Member has 60 days from receipt of a decision from Manulife to advise Manulife

of the dispute and send them any supporting reports or records, and request reconsideration. Manulife has 60 days to review and answer the dispute.

30. If Manulife's answer does not resolve the dispute, the Zero Sum Member may bring their Zero Sum Dispute before the Associate Judge to be heard in accordance with the appeal process, within 30 days of receipt of Manulife's answer.
31. If a dispute arises about whether a person is an eligible Class Member ("Eligibility Dispute"), that person may bring their Eligibility Dispute before the Associate Judge directly to be heard in accordance with the appeal process at any time within one (1) year of the Final Order. For greater clarity, an Eligibility Dispute includes a determination of whether the criteria for a monthly allowance had been met on the relevant date.
32. An Associate Judge's decision for Calculation Dispute, Eligibility Dispute or Zero Sum Dispute under this appeal process is final and is not subject to any further proceedings, appeal, or judicial review.
33. If there is a dispute about the value of IRB payable to a Class Member following VAC's recalculation of their IRB entitlement to account for the change in their CAF LTD benefit payments (the "Recalculation Dispute"), the Class Member may, upon application, request a review under section 83 of the *Veterans Well-being Act*. The Class Member has 60 days after the date on which they receive notice of VAC's recalculation decision to request a review, unless circumstances beyond the Class Member's control necessitate a longer period, pursuant to paragraph 68(1)(b) of the *Veterans Well-being Regulations*.
34. For greater certainty, the appeal process to the Associate Judge does not apply to any Recalculation Dispute.

Deceased Class Members

35. In cases of Class Members who have died prior to the time of payment, Manulife will make the payment of the Additional Amount directly to the individual or entity in the following order:
 - a. The most recently identified beneficiary under SISIP's Basic Life Insurance, if the Class Member has such insurance (specifically, General Officer's Insurance Plan ("GOIP"); Reserve GOIP; Military Post Retirement Life Insurance Plan);
 - b. The most recently identified beneficiary under SISIP's Optional Life Insurance, if the Class Member has such insurance (specifically: Optional Group Terms Insurance; Reserve Term Insurance Plan; Insurance for Released Member; Coverage After Release; Optional GOIP; Optional Reserve GOIP);
 - c. The most recently listed beneficiary for the Supplemental Death Benefit under the *Canadian Forces Superannuation Act*; or

- d. *Cy-près* settlement fund to be paid in the Veteran's name to an agreed upon Veterans' charity (to be determined by agreement between the Parties and as approved by the Court).

Class Member Inquiries

36. Any inquiries related to whether someone is on the Class list, review and appeal options for an Additional Amount payment, and any other inquiries arising from an Additional Amount payment, or the terms of this Agreement may be directed to a central hub (dedicated email address and phone number) located at Class Counsel's office.

Phase 1 Notice - Notice of Upcoming Settlement Approval Hearing

37. Class Members will be provided with a notice of the upcoming settlement approval hearing approved by the Court and in the manner set out below:
 - a. Manulife will distribute the Phase 1 Notice to the Class Members' last known address or using their last known preferred method of contact;
 - b. Class Counsel will publish the Phase 1 Notice on their website, and a link to the Notice which includes their website address will be placed on VAC and SISIP's websites;
 - c. VAC will post a Page Alert on MyVAC Account with a link to the Notice on Class Counsel's website; and
 - d. Class Counsel will email the Phase 1 Notice to Class Members for whom they have an email address.
38. The Defendant will pay the costs of providing the Notice, except for the cost of publishing notices on Class Counsel's website and delivering the emails to known Class Members.

Phase 2 Notice - Settlement Approval

39. Class Members will be provided with a notice of settlement approval approved by the Court and in the manner set out below :
 - a. Manulife will distribute the Phase 2 Notice to the Class Members' last known address or using their last known preferred method of contact;
 - b. Class Counsel will publish the Phase 2 Notice on their website, and a link to the Notice which includes their website address will be placed on VAC and SISIP's websites;
 - c. VAC will post a Page Alert on MyVAC Account with a link to the Notice on Class Counsel's website; and

- d. Class Counsel will email the Phase 2 Notice to Class Members for whom they have an email address.
40. The Defendant will pay the costs of providing the Notice, except for the cost of publishing the notices on Class Counsel's website and delivering the emails to known class members.

Additional Amount Deductions

41. Manulife will deduct the Court approved amount for Class Counsel's fees and disbursements and HST ("Deducted Fees") from the Additional Amount payable to each class member, and pay the Deducted Fees to Class Counsel at the end of each month.

Releases

42. 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 their heirs, executors, successors or assigns may at any time in the future have against the Defendant by reason or resulting from all claims raised or capable of being raised in this action.

In particular, 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 their heirs, executors, successors or assigns may at any time in the future have against the Defendant arising from all claims/amounts owing prior to July 17, 2012.

43. The Plaintiff hereby acknowledges, and the Class Members are hereby advised, that neither Class Counsel nor the Defendant or their counsel are providing any advice about the taxable nature of the Additional Amount, and/or other possible implications regarding VAC's management of overpayments.
44. All requirements of the *Income Tax Act*, RSC, 1985, c. 1, continue to apply, along with Manulife's obligations thereunder, including withholding or reporting, in making payments of the Additional Amount to Class Members.

Federal Court Approval of Class Counsel Fees and Disbursements

45. Class Counsel will seek the Court's approval for payment of disbursements and fees, in a separate motion, to be heard contemporaneously with the motion seeking approval of the Agreement, subject to the directions of the Court.
46. The Defendant will not take a position with respect to Class Counsel's motion for approval of payment of disbursements and fees without leave of the Court.

Language

47. Class Counsel will arrange and pay for a French language version of this Agreement and any Schedules to be prepared, to be reviewed also by CAF/DND. The French language version will not be required at the time of execution of the English language version of this Agreement. The French version shall be of equal weight and force at law.

Acknowledgements

48. The Parties each hereby affirm and acknowledge that:
 - a. They or their representative with the authority to bind the Party with respect to the matters set forth herein has read and understood the Agreement;
 - b. Their counsel has fully explained to them the terms of this Agreement and their effect;
 - c. They or their representative with the authority to bind the Party fully understands each term of the Agreement and its effect; and
 - d. No Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Agreement, with respect to that Party's decision to execute this Agreement.

Authorized Signatures

49. Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Parties identified below their respective signatures and their law firm(s).

Counterparts

50. The Agreement may be executed in counterparts, each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same Agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing the Agreement.

Motion for Directions and Ongoing Jurisdiction

51. The Parties may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Agreement.
52. All motions contemplated by this Agreement shall be on notice to the Parties.
53. The Court will retain and exercise continuing and ongoing jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Agreement.
54. The Parties agree to work collaboratively to obtain any additional Court Orders or directions to assist in the administration and payment of this class action.

Amendments and Termination

55. Except as expressly provided in the Agreement, no amendment may be made unless agreed to by the Parties in writing and approved by the Court.
56. This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled and the Court orders that the Agreement is completed.
57. This Agreement will be rendered null and void and no longer binding on the Parties in the event that the Court does not grant its approval at the settlement approval hearing.

DATED at Halifax, Nova Scotia (Class Counsel) and Ottawa, Ontario (Defence Counsel), this 22nd day of December 2022.

CONSENTED AS TO FORM AND CONTENT



ATTORNEY GENERAL OF CANADA

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