



Court File No:

ONTARIO  
**SUPERIOR COURT OF JUSTICE**

Electronically issued  
Délivré par voie électronique : 20-Jan-2020  
Ottawa

**BETWEEN:**

**GIULIA BELEC**

Plaintiff

- and -

**SUN LIFE ASSURANCE COMPANY OF CANADA**

Defendant

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AMENDED      AMENDED  
**STATEMENT OF CLAIM**  
**(Proceeding brought under the *Class Proceedings Act*)**

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*TO THE DEFENDANTS*

*A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.*

*IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the rules of court, serve it on the plaintiff(s) lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.*

*If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.*

*Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your statement of defence.*

- 2 -

*IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.*

*TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.*

**DATE:** January 20, 2020

Issued by \_\_\_\_\_  
Local registrar

Address of Court Office:  
161 Elgin Street  
Ottawa ON K2P 2K1

**TO:** **Sun Life Assurance Company of Canada**  
1 York Street  
Toronto, Ontario, M5J 0B6

- 3 -

**- CLAIM -**

1. The Plaintiff, Giulia Belec, on her own behalf, and on behalf of the members of the class of persons described below (the “Class Members”), claims:
  - (a) an order certifying this action as a class proceeding
  - (b) an order appointing her as the representative Plaintiff;
  - (c) a declaration that the Defendant owed a duty of care to the Class Members to act in the utmost good faith in handling the Class Members’ claims;
  - (d) a declaration that the Class Members have been wrongfully deprived of a cost of living increase payable by the Defendant;
  - (e) damages for breach of contract in the amount of \$10,000,000.00, or such other amount as may be proved in this Honourable Court;
  - (f) punitive, aggravated, and/or exemplary damages in the amount of \$10,000,000.00;
  - (g) prejudgment and postjudgment interest at the rate applicable at the time of the commencement of the loss, as assessed for each individual Class Member, or, in the alternative, in accordance with the *Courts of Justice Act*, R.S.O. 1990 c.C.43, s.128;
  - (h) costs of this action on a substantial indemnity basis; and
  - (i) such further and other relief as to this Honourable court may seem just.
  
2. The Plaintiff, Giulia Belec (“Giulia”), is an individual residing in Carleton Place, Ontario. At all material times, and prior to her subsequent disability, Giulia was an administrator employed by the Federal Government of Canada, Foreign Affairs, located in Ottawa, Ontario. Giulia had been continuously employed with the Federal Government since March 29, 1982.

- 4 -

3. The Defendant, Sun Life Assurance Company of Canada Inc., (“Sun Life”), is an incorporated entity carrying on the business of insurance in the Province of Ontario.
4. At all material times, Sun Life was the insurer under a group insurance policy, bearing policy number 12500-G (the “Policy”). Giulia was insured, at all material times, under the terms and conditions of the Policy pursuant to certificate number CG3904876, Sub Number 003, Control Number 261006-19946-00.
5. The Policy dates back to April 30, 1997 and was initially issued by Sun Life to Her Majesty the Queen in Right of Canada Represented by the President of the Treasury Board.
6. The Policy provides for, amongst other benefits, long-term disability benefits, payable on a monthly basis, for any period of disability together with the payment of an annual cost of living increase.
7. Giulia has been in receipt of disability benefits under the Policy since September 13, 2006 and continues to be in receipt of same to the date hereof.

### **THE CLASS MEMBERS**

8. The Plaintiff brings this action on behalf of herself and others similarly affected, as members of the proposed Class, defined as follows:

- 5 -

*Any and all persons who are currently, or were at any time subsequent to April 30, 1997, in receipt of long term disability benefits, payable by the Defendant under the terms of the Policy, and whose disability benefits were reduced by reason of a specified deductions under the Policy.*

9. The size of the proposed Class is unknown to the Plaintiff and is in the sole knowledge of the Defendant. The Class is so numerous that joinder in a single action is impractical. The Plaintiff and Class Members state, however, that each Class Member should be readily identifiable from information and records available to, and in the possession of, the Defendant.
10. The Plaintiff and Class Members state that prosecuting individual claims against the Defendant would present the potential for varying, inconsistent or contrary judgments and would magnify the delay and expense to all parties resulting from multiple trials of the same factual and legal issues. The cost to pursue individual actions would effectively deny Class Members access to justice.

#### **MATERIAL FACTS**

11. The Policy provides long term disability benefits to all persons insured thereunder who meet the definition of “total disability” as defined in the Policy.
12. Long term disability benefits are payable on a monthly basis.

- 6 -

13. The Policy contains a cost of living provision which entitles the Class Members to a cost of living increase, on an annual basis, fixed in accordance with the terms of the Policy.
14. Since April 30, 1997, the Defendant has failed to pay to the Class Members the cost of living increase to which they are entitled under the terms of the Policy.
15. Since April 30, 1997, the Defendant wrongfully and wilfully misrepresented to all of the Class Members, from time to time, that it was paying the cost of living increase in accordance with the terms of the Policy.
16. The Defendant has misled all of the Class Members by paying them only a portion of the cost of living increase to which they were entitled. The Defendant did so by limiting the cost of living increase to the net monthly disability benefit payable to any given Class Member *after* applying specified deductions thereto when they knew, or ought to have known, that the cost of living increase is to be calculated against the gross monthly disability benefit payable *before* any specified deductions are applied. In the alternative, the Defendant calculated the cost of living increase on the gross monthly disability benefit and then subsequently applied a cost of living increase to the collateral sources of income (the "Offsets") prior to their deduction, irrespective of (1) whether the collateral sources of income were actually indexed for cost of living or (2) whether the Policy permitted deduction of any cost of living increases on the collateral source of income. Further, and in the alternative, the Defendant calculated

- 7 -

the cost of living increases on a inconsistent basis as between insureds under the Policy without justification under the Policy.

17. The Class members seek payment of the cost of living increase to which they are entitled under the terms of the Policy in question dating back to April 30, 1997, as the case may be, and a declaration that the Defendant be compelled to pay cost of living increases, calculated in accordance with the terms of the Policy.

#### **THE REPRESENTATIVE PLAINTIFF**

18. The Plaintiff began receiving long term disability benefits under the Policy on September 13, 2006 and was approved for said benefits beyond the 24-month period on December 20, 2008.

18.1 Commencing on January 1, 2007, and annually thereafter, the Defendant increased the Plaintiff's monthly disability benefit by a cost of living increase, which was, according to the Defendant, calculated in accordance with the terms of the Policy.

19. In January 2009, the Plaintiff qualified for a monthly disability benefit payable to her under the Canada Pension Plan (the "CPP Benefit"). The CPP Benefit was payable retroactively to August 2007.

19.1 Shortly thereafter, the Defendant wrongfully, and contrary to the terms of the Policy, recalculated the Plaintiff's cost of living increase, dating back to January 1, 2008. The re-

- 8 -

calculation of the cost of living increase was made to the monthly disability benefit amount by first reducing the monthly disability benefit amount by the CPP Benefit, for the periods in question, and then applying the cost of living increase to the net monthly disability benefit payable after the aforesaid deduction was applied. In the alternative, the Defendant calculated the cost of living increase on the gross monthly disability benefit and then subsequently applied a cost of living increase to the CPP benefits prior to their deduction, despite the Policy prohibiting the deduction of cost of living increases on CPP benefits.

20. On or about August 31, 2011, the Plaintiff qualified for an early retirement pension, payable to her on a monthly basis, from the Federal Government for medical reasons (the “Early Retirement Pension”).
  
- ~~21. Commencing on January 1, 2012 and again on every January 1 until present, the Defendant purported to pay the Plaintiff a cost of living increase to her monthly disability benefit, allegedly calculated in accordance with the terms of the Policy.~~
  
22. On or about January 19, 2012, the Defendant wrongfully, and contrary to the terms of the Policy, re-calculated the Plaintiff’s cost of living increase, dating back to January 1, 2012. The re-calculation of the cost of living increase was made to the monthly disability benefit amount by first reducing the monthly disability benefit amount by the CPP Benefit and the Medical Retirement Pension, for the periods in question, and then applying the cost of living increase to the net monthly disability benefit payable after the aforesaid deductions were



- 9 -

applied. In the alternative, the Defendant calculated the cost of living increase on the gross monthly disability benefit and then subsequently applied a cost of living increase to the collateral sources of income (the "Offsets") prior to their deduction, despite the Policy prohibiting the deduction of cost of living increases on the collateral sources of income received by the Plaintiff.

23. The Plaintiff states that the Policy's terms and conditions compel the Defendant to pay a cost of living increase, on an annual basis, calculated on the gross monthly disability benefit payable under the Policy *before* any specified deductions, such as the CPP Benefit or Early Retirement Pension, are applied. The Policy prohibits the Defendant from deducting any cost of living increases on the collateral sources of income received by the Plaintiff.
24. The Plaintiff states that when it made a demand to the Defendant to pay the cost of living increase in accordance with the terms of the Policy, that is, to calculate the cost of living increase based on the gross monthly benefit payable to her *before* any specified deductions as permitted under the Policy are applied, the Defendant failed, refused and/or ignored the request.
25. The Plaintiff states that the Defendant has wrongfully denied, and wrongfully withheld from, the Plaintiff and all of the Class Members the cost of living increase to their monthly disability benefits and seeks the relief sought in paragraph 1 hereof.

- 10 -

### **PREJUDGMENT & POSTJUDGMENT INTEREST RATE**

26. The Plaintiff states that the rate of interest applicable to the claims set out in paragraph 1, for each and every one of the Class Members, should be the then prevailing interest rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to the banks listed in Schedule I to the *Bank Act (Canada)* as at the time of the commencement of the loss, as the case may be, to ensure that the Class Members are properly compensated for the time value of money and to ensure that the Defendant does not benefit from its breach of contract.

### **PUNITIVE & EXEMPLARY DAMAGES**

27. In proceeding in the manner described herein, the Defendant knowingly breached the terms of the Policy and preferred its own corporate and financial interests above those of its insureds thereby breaching the duty of good faith owed by a disability insurer to its insured. The Defendant's conduct is reprehensible and deserving of punishment by this Honourable Court to deter this insurer, and other similarly situated insurers, from conducting themselves in this manner in the future.

### **DISCOVERABILITY**

28. The Plaintiff states none of the Class Members knew, nor any reasonable person with the abilities and in the circumstances of the Class Members could have reasonably known, that the Defendant was breaching the terms of the Policy in the manner in which it was calculating the cost of living increase and that a proceeding would be an appropriate means to seek to remedy the breach.

- 11 -

29. The Plaintiff further states that the Defendant wilfully concealed its breach of the Policy in the calculation of the cost of living increase and wilfully misled the Class Members into believing that it was paying them the cost of living increase prescribed under the terms of the Policy.
30. The Plaintiff and the Class Members plead and rely upon the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the *Insurance Act*, RSO 1990, c I-8, as amended, and the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B.
31. The Plaintiff and the Class Members ask that this action be tried in the City of Ottawa.

DATE: January 20, 2020

**CONNOLLY OBAGI LLP**

Litigation Counsel  
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Ottawa ON K2P 1L5

**Joseph Y. Obagi**

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Lawyers for the Plaintiff

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Plaintiff and

Sun Life Insurance Company of Canada

Defendant

Court File No.

SUPERIOR COURT OF JUSTICE  
Proceeding commenced at Ottawa

AMENDED THIS <sup>2<sup>nd</sup></sup>.....DAY / JOUR  
MODIFIÉE DE  
OF / DE ..... March 20 20.....  
PURSUANT TO RULE 26.02(b)  
CONFORMÉMENT A LA REGLE  
OR ORDER  
OU A L'ORDONNANCE  
DATED THIS / FAIT CE .....  
DAY / JOUR OF / DE ..... 20.....  
REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER, COUR SUPÉRIEURE DE JUSTICE

AMENDED THIS .....10.....DAY / JOUR  
MODIFIÉE DE  
OF / DE ..... January, 2022 ..... 20.....  
PURSUANT TO RULE 26.02(b)  
CONFORMÉMENT A LA REGLE  
OR ORDER "M.Ryndzak."  
OU A L'ORDONNANCE The Registrar  
DATED THIS / FAIT CE .....  
DAY / JOUR OF / DE ..... 20.....  
REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER, COUR SUPÉRIEURE DE JUSTICE

AMENDED  
AMENDED

**STATEMENT OF CLAIM**

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