

Federal Court



Cour fédérale

Date: 20130415

Docket: T-463-07

Edmonton, Alberta, April 15, 2013

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

DENNIS MANUGE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

THIS COURT ORDERS that:

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. From the amount payable under paragraph 11, Class Counsel shall be entitled to deduct:
- (a) for legal fees, an amount equal to 8% of:
 - (i) the Refund as defined in paragraph 8 (and before any reduction for Overpayment Recovery as defined in paragraph 9); plus
 - (ii) the value of any debts cancelled as a result of this Court's Order dated May 1, 2012;
 - (b) for disbursements, an amount equal to 0.079% of:
 - (i) the Refund as defined in paragraph 8 (and before any reduction for Overpayment Recovery as defined in paragraph 9); plus
 - (ii) the value of any debts cancelled as a result of this Court's Order dated May 1, 2012;

(c) the statutorily required GST, HST and applicable provincial sales tax from the Refund and remit that amount to the Canada Revenue Agency or applicable provincial agency;

(d) but in no event shall the total amount payable for legal fees and disbursements be greater than the amount of the Refund less any Overpayment Recovery

31. Class Counsel shall not deduct or charge any legal fees or disbursements on any increased or new monthly payments that were paid from June 2012 to date.

32. Class Counsel shall not deduct or charge any legal fees or disbursements on amounts received from the Bursary Fund.

33. Application No. T-296-09 shall be discontinued without costs to any party.

34. 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.

35. This Order is made on a without costs basis.

“R.L. Barnes”

Judge

Annex "A"

1. Starting no later than October 22, 2012, Manulife Financial will begin to pay monthly LTD benefits to 893 zero sum claimants (less those that are deceased) whose file have been closed for more than two years due to *Pension Act* offset. The issuing of the cheques by Manulife Financial will be completed no later than November 9, 2012. The effective date of the payments will be October 1, 2012.
2. These monthly LTD payments will be made on a without prejudice basis for an initial period of 90 days.
3. The payments will correspond to the last calculation that was made by Manulife Financial before it was offset to zero due to the *Pension Act* offset plus an adjustment based on the cost of living indexed from the date of closure of the claim to the present date. If, after the removal of the *Pension Act* offset, remaining offsets do not put this claim in a positive pay status, no without prejudice payments will be made.
4. The claimants will not be required to provide medical or financial information in order to start receiving the LTD payments for the initial 90 days.
5. By February 9, 2013, claimants will be required to fill in and return a declaration to Manulife Financial providing a status update on their medical condition and financial circumstances for the purpose of continuing the without prejudice payments.
6. If the declaration indicates that the claimant's medical condition and financial information have not changed since the closure of the file, the claimant will not be required to provide additional information to Manulife Financial for the purpose of qualifying under this proposal.
7. If the declaration indicates a change in the medical condition and/or financial information, Manulife Financial will require the claimant to provide additional information as set out in the declaration and any necessary follow up.
8. In the event the declaration is not supplied by February 9, 2013, the monthly LTD payments would cease.
9. If a declaration is submitted by February 9, 2013, Manulife Financial will continue to pay, on a without prejudice basis, the monthly LTD payments through the month of April 2013.
10. Manulife Financial will review the files and determine the actual entitlements to LTD benefits based on the information submitted by the claimants. Payments will be made accordingly.
11. At any time that full information is received from the claimants, Manulife Financial will adjudicate their claims and payments will be made on the basis of their adjudication results, which could occur prior to April 30, 2013.
12. If additional information requested by Manulife Financial has not been provided by the claimant by April 30, 2013, the without prejudice payments would cease. LTD payments

would not be commenced until the information has been provided and Manulife Financial has determined the actual entitlement to LTD benefits.

13. If the review conducted by Manulife ultimately reveals either overpayments or underpayments during the period ending April 30, 2013, Manulife Financial will make the necessary adjustments.
 - i) In the event of an overpayment, Manulife Financial will make the adjustments, first out of any retroactive payments, and second, out of future payments if there is no retroactive entitlement or such is not sufficient to recover the adjustment. In the event it is later determined that the claimant is not entitled to either retroactive or future payments, Manulife Financial will seek to recover the overpayments from the claimants.
 - ii) If an underpayment was made during the period ending April 30, 2013, Manulife Financial will pay the difference to the claimant.
14. The terms of this proposal are subject to any final agreement negotiated by the parties and approved by the court.
15. Class counsel will be advised of any cheques that are returned to sender and may seek further direction from the court in respect of these individuals.

Annex "B"

Name
Address

RE: SISIP Long Term Disability (LTD)
Claim #

On February 14, 2013, the Federal Court approved a Settlement Order in the matter of *Manuge v. Her Majesty the Queen*, a Class Action initiated on behalf of all former members of the Canadian Forces whose SISIP LTD benefits were reduced by the amount of their *Pension Act* Disability pension (the "Offset").

You are receiving this letter as you have been identified as an individual who may be entitled to benefits as a result of the Settlement Order, but for whom we do not already have adequate records.

You may have received a previous request from us for information, but we did not receive anything from you. If you wish to be eligible for a refund you need to respond to this request.

In order to determine whether you are entitled to benefits, we need you to provide updated medical and financial information.

In order to qualify, you must meet the definition of "totally disabled" from the date of closure of your file to present. "Totally disabled" means: there is clear, objective medical evidence, satisfactory to the Insurer, which confirms that you are incapacitated by an active, medically determinable physical or mental impairment which prevents you from performing any and every duty of any substantially gainful occupation or employment for which you are reasonably qualified by education, training or experience.

If you feel you meet the above definition and may be entitled to benefits, please provide the following:

a) A report from your specialist or treating physician, outlining your medical condition since the date of your discharge from the Canadian Forces relevant to the determination as to whether you have been "totally disabled" since your release. This information should include whether you have already been determined to be totally disabled for the purpose of receiving other disability benefits, such as CPP or QPP. If you or your doctors have any questions with respect to the information required to be provided in support of your application, please contact Class Counsel at SISIP LTDsettlement@mcinnescooper.com, or by calling us at (902) 444-8417.

b) Copies of any Notice of Entitlements you have from the CPP or QPP agencies.

c) A Statement of your earnings from the time your SISIP file was closed to present. If you don't have this information, the Canada Revenue Agency will provide you with this information if you call 1-800-959-8281 and request form RC 143E for years you worked. Please advise the Canada Revenue Agency that you are a member of the Manuge Class Action, and call us at the number noted below to let us know that you have made this request from the Canada Revenue Agency.

You must return this information in the postage paid envelope no later than 180 days from date of this letter. Upon receipt of this information we will proceed with the assessment of your claim.

Should you have any questions, please feel free to contact our office by calling 1-855-370-0025. You can also contact Class Counsel at SISIP LTDsettlement@mcinnescooper.com or (902) 444-8417.

SISIP Services

Annex “C”

Notice of Approval of Settlement in the Class Action Regarding the Reduction of SISIP Disability Benefits

Manuge v Her Majesty the Queen, Court File No. T-463-07.

What is this action about?

Under the terms of the SISIP LTD Plan, a disabled former Canadian Forces member's benefits were reduced by the amount of their *Pension Act* disability pension (the “Offset”). The Plaintiff, Dennis Manuge, brought this class action to challenge the legality of the Offset.

On April 4, 2013, the Court approved an agreement between the Plaintiff and the Defendant setting out how the Offset should end, how past Offset amounts should be refunded, and other key details (the “Agreement”). The Court's decision is available at leavenovetbehind.ca.

Why am I getting this notice?

You have been identified as a member of the Class. The Agreement affects your rights.

Who are the Class Members?

The Court approved the following definition of the Class: “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.”

What are the terms of the Agreement?

In summary, the Agreement provides for the following:

- All future payments of benefits will not be reduced by the Offset.
- All debts owing by the Class resulting from the Offset will be eliminated.
- There will be a Gross Refund consisting of the following amounts:
 - All Offset amounts going back to June 1, 1976, the date the Offset began (the “Retroactive Offset”).
 - Interest on the Retroactive Offset at the following rates:
 - 6% from February 1, 1992 to December 31, 1995;
 - 5% from January 1, 1996 to December 31, 2008;
 - 3% from January 1, 2009 to April 30, 2012; and
 - 5% from May 1, 2012 to the date the amount is paid to McInnes Cooper in Trust and
 - An additional 3.27% on the Retroactive Offset to ease income tax implications of the Gross Refund
- The Defendant will also pay \$10 million to a Bursary Fund for Class Members or their family members.
- Any disputes over the amounts payable to Class Members or their medical eligibility will be handled by an independent adjudicator.

The full terms of the Agreement are available at leavenovetbehind.ca.

What do I have to do to make a claim?

Under the approved Agreement:

1. Class Counsel will send a letter to the most recent address that Manulife has on file. You must sign and return the address confirmation form to McInnes Cooper;
2. If your benefits under the SISIP LTD Plan were reduced to zero because of the Offset (i.e. you were "Zero Sum"), you may have to provide certain information to show that you were eligible for benefits beyond the initial 24 month "own occupation" period. Under the Agreement, much of the collection of the required information will be automatic. However, you may still have to submit information to prove you are eligible, and at what level.

New Class Members

All class members are automatically included, including new class members added for the period prior to April 17, 1985 and after [to be determined] X, 2008. If you were recently added to the class action by the Court's latest order and do **not** want to take part in the action, you have to opt out. **But if you opt out, you will not get any refund under the Agreement.** If you still want to opt out, you must contact McInnes Cooper. They will explain the process to you, and provide you with the required form. The required form to opt out has to be delivered to McInnes Cooper by June 14, 2013.

Will there be deductions from the Gross Refund?

As always with any SISIP LTD benefits, there will be an amount withheld for taxes. Your actual tax payable may be less than the amount withheld when you file your return in which case you could receive a tax refund.

There will be an approximate 9% deduction for legal fees, sales taxes and expenses, but these amounts should be tax deductible.

Finally, if you owe SISIP money for any other reason, this amount will be deducted.

When will I receive my retroactive payment?

If you were already in receipt of SISIP benefits, it is expected that your refund will be sent out over the next three months.

If you were not in receipt of benefits (i.e. you were a "Zero Sum Member"), then you may receive your benefits just as quickly. However, if Manulife requires further information, they may be in touch with you for that additional information.

If you believe you are entitled to a refund, but have not received your refund over the next six months, do not hesitate to contact McInnes Cooper at the below contact information for assistance.

If you receive benefits, but the amount has not been calculated correctly, or if you believe you should have received benefits and have not, you have right to appeal to an independent adjudicator. Please contact McInnes Cooper for more information.

What if I want more information?

For more information, please contact McInnes Cooper at:

SISIPClassAction@mcinnescooper.com

(902) 444-8417 (English)

(506) 877-0831 (French)

SISIP Class Action

McInnes Cooper

PO Box 730, Halifax, NS

B3J 2V1