

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JOSEPH FANTL

Plaintiff

-and-

TRANSAMERICA LIFE CANADA

Defendant

Proceeding under the *Class Proceedings Act 1992*

SETTLEMENT AGREEMENT

RECITALS

- A. On December 29, 2003, a proposed class action entitled *Michael Millman v. Transamerica Life Canada*, Court File No. 03-CV-1975 was commenced in the Ontario Superior Court of Justice in Windsor, Ontario. Mr. Millman was represented by the firms of Sutts Strosberg LLP, solicitors of record, and by Camp Fiorante Matthews LLP.
- B. On October 11, 2005, a Notice of Change of Solicitors was served by Roy Elliott Kim O'Connor LLP ("REKO") on October 11, 2005 and thereafter the court file was transferred from Windsor to Toronto.
- C. Pursuant to the Order of the Honourable Madam Justice Hoy dated April 5, 2006, Joseph Fantl was substituted for Michael Millman as the proposed representative plaintiff and the plaintiff was granted leave to issue a Fresh as Amended Statement of Claim, with Court File No. 06-CV-306061 CP.
- D. On March 28, 2007, an Amended Fresh as Amended Statement of Claim was issued pursuant to Rule 26.02(a).

E. The hearing of the proposed certification motion did not proceed in June 2008 and, thereafter, the parties engaged in settlement discussions, reaching an agreement in principle to settle the excess management fee claim in the above-captioned proceeding.

F. A Notice of Change of Solicitors was delivered by Roy Elliott O'Connor LLP ("REO") on January 18, 2008 following the dissolution of the REKO law firm.

G. On July 16, 2008, a Second Fresh as Amended Statement of Claim was issued pursuant to the Order of Perell J. of the same date.

H. On October 28, 2008, the Parties by their respective solicitors executed a Memorandum of Understanding Concerning Proposed Settlement (attached as **Schedule 3** to this Settlement Agreement) confirming the general agreement in principle to settle the excess management fee claim in the above-captioned proceeding.

I. The Plaintiff and the Defendant by and through their respective counsel of record have participated in arms-length negotiation, including a mediation conducted on May 25 and 26, 2009 by the Honourable Mr. Justice Colin Campbell, and have agreed to settle the Excess Management Fee Claim (as hereinafter defined) in the above-captioned proceeding by entering into this Settlement Agreement for submission to the Court for approval and incorporation into a final judgment.

IT IS HEREBY AGREED to by the Parties, by and through their respective counsel of record, that, subject to the Court's approval, the Excess Management Fee Claim in the above-captioned proceeding shall be finally and fully compromised, settled, released and dismissed, upon and subject to the terms and conditions of this Settlement Agreement, as follows.

A. DEFINITIONS

1. In this Settlement Agreement, in addition to terms that are defined elsewhere herein, the following terms have the meanings specified below. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

- (a) "Action" means Ontario Superior Court Action 06-CV-306061-CP, currently styled *Joseph Fantl v. Transamerica Life Canada*, as most recently amended effective July 16, 2008;
- (b) "Administration Expenses" means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to the implementation and administration of this Settlement including the costs of publishing and mailing notices, the fees, disbursements and taxes payable to the Monitor/Administrator, the Claims Adjudicator and any other expenses approved by the Court;

- (c) "Affected Contract" means an Investment Products Contract or Life Products Contract purchased from the Company offering one or more of the Funds or Fund-Linked GIOs, as more particularly set out in **Schedule 1** hereto;
- (d) "Affiliate" means an affiliate of the Defendant as defined in the *Insurance Companies Act*, S.C., 1991, c.47, as amended and, without limiting the generality of the foregoing, includes AEGON Canada Inc., AEGON Capital Management Inc., AEGON International N.V. and AEGON N.V.;
- (e) "Allowable Management Fees" means the maximum fees (expressed as an annual percentage) which the Company is authorized to charge against a Fund, and shall be the lower of the maximum authorized by the Contract or the SIF where the two differ, and may be Bundled Management Fees or Unbundled Management Fees;
- (f) "Approval Order" means an order or orders of the Ontario Superior Court of Justice: (i) certifying the Excess Management Fee Claim as a class proceeding for the purposes of settlement only; (ii) approving this Settlement as fair, reasonable and in the best interests of the Class Members for the purposes of settlement pursuant to the CPA; and (iii) fixing and approving Class Counsel's Fees;
- (g) "Approval Hearing" means the motion initiated by the Plaintiff for approval of this Settlement Agreement and otherwise for the Approval Order as currently scheduled to be heard August 10 to 12, 2009 ;
- (h) "Bad Address" means the address of a Policyholder or Beneficiary which has generated returned mail;
- (i) "Basis Point" or "bps" means a unit that is equal to 1/100th of 1% and, in the context of this Agreement, Basis Points, or bps refer to fees (such as Management Fees) charged or chargeable against the Funds and expressed in proportion to the net asset value of the Funds;
- (j) "Beneficiary" means a person entitled to payment of benefits under an Affected Contract;
- (k) "Bundled Management Fees" means Management Fees which are defined in an Affected Contract as being inclusive of Investment Advice Fees;
- (l) "Business Day" means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person who needs to take action pursuant to this Agreement is situated or a holiday under the federal laws of Canada applicable in the said Province or Territory;

- (m) "Calculation Date" means the date as of which Restitution is calculated for an Affected Contract, as determined by the Parties and, if necessary, determined by the Court, which the Parties anticipate shall be September 30, 2009;
- (n) "Class Counsel" means Roy Elliot O'Connor LLP;
- (o) "Class Counsel Fees" means the fees, disbursements, GST and other applicable taxes of Class Counsel and the Plaintiff's previous legal counsel, REKO, including the reasonable fees and disbursements of the Plaintiff's accounting and actuarial consultants, Pricewaterhouse Coopers LLP ("PwC"), as may be agreed upon by the Parties and/or fixed or approved by the Court;
- (p) "Claims Adjudicator" means a retired judge or other qualified adjudicator that the Court may appoint to adjudicate Factual Disputes as part of the Dispute Resolution Process;
- (q) "Class" and "Class Members" means all persons as defined in section 2 below;
- (r) "Company" means Transamerica Life Canada or such of its predecessor corporations which have sold the Affected Contracts, including NN Life Insurance Company of Canada and MONY Life;
- (s) "Contract" means a contract of life insurance between the Company and a Policyholder or Policyholders as that term is defined under the Provincial Laws of the jurisdiction in which the Policyholder was resident at the time that the contract of insurance was entered into;
- (t) "CPA" means the *Class Proceedings Act, 1992* (Ontario), S.O. 1992, c.6, as amended
- (u) "Defence Counsel" means Blake, Cassels & Graydon LLP;
- (v) "Dispute Resolution Process" means the process set out in Part F to this Settlement Agreement governing the resolution of Factual Disputes;
- (w) "Effective Date" means the earlier of: (i) the date on which the ability to appeal, if an appeal lies, from the Approval Order has expired without any appeal being taken, namely, thirty (30) days after the date of the Approval Order; or (ii) if any appeals have been taken from the Approval Order, the date on which all such appeals are concluded by way of a final order or judgment;
- (x) "Excess Management Fee Claim" means the claim for damages, unjust enrichment, waiver of tort, an accounting of revenues and profits and declaratory relief claimed in respect of any overcharges of Management Fees up to the date of the Approval Order, as pleaded or which reasonably could have been pleaded in the Action;

- (y) "Factual Dispute" means: (i) a disagreement between the records of the Company and the position of a Class Member with respect to the version of the Affected Contract which the Policyholder has entered into or the SIF received by the Policyholder in connection with his/her application for an Affected Contract or with respect to investment or other policy elections or transaction which might affect the computation of the Restitution; but does not include a disagreement with the underlying assumptions or methodologies adopted in this Settlement; (ii) any disagreement about the person entitled to Restitution or entitled to a death benefit in accordance with Section 17 below; or (iii) any disagreement between the Company and a Class Member in respect of a death benefit claimed to be owing under a Lapsed Policy in accordance with section 17 below;
- (z) "Fixed Return Investments" mean investments offered under an Affected Contract which offer a guaranteed rate of return;
- (aa) "Funds" means those segregated funds offered or made available under the Affected Contracts as set out in **Schedule 2**;
- (bb) "Fund-Linked GIOs" means general interest options selected by a Policyholder or Beneficiary under an Affected Contract, the investment return of which is determined with reference to the net asset value of a Fund, and include the Toronto 35 Composite Index Account, the Can-Am Index Account, the Can-Asian Index Account, the Can-Euro Index Account, the Can-Daq 100 Index Account, the Can-Global Bond Index Account and the Can-Emerge Index Account;
- (cc) "Fund Rate of Return" means the changes over a particular period of time in the daily net asset value of a Fund, after adjustment for distributions and for Management Fee Overcharges;
- (dd) "Investment Advice Fees" mean fees, expenses or charges that are payable to external investment advisors, including without limitation AEGON Capital Management Inc., with respect to the investment of the Funds which are excluded from the definition of Unbundled Management Fees under an Affected Contract;
- (ee) "Investment Products Contract" means one or more of the following Affected Contracts: MONY Manager Series Variable Deferred Annuity, Investment Manager Series (IMS) I, II or III Variable Deferred Annuity, NN Registered Retirement Investment Fund, NN Asset Accumulation Plan, Equity-Linked Accumulation Plan and Money Market Fund Variable Deferred Annuity;
- (ff) "IP Restitution Model" means an algorithmic actuarial model, a summary of which is annexed as **Schedule 5** hereto, designed by Transamerica and approved by Oliver Wyman and being analyzed by PwC, the purpose of which is calculate, in accordance with this Settlement Agreement, the total of the Management Fee

Overcharges, guarantee adjustments, Fund Rate of Return and Pre-Judgment Interest for each Investment Products Contract sold by the Company;

- (gg) “Lapse” means the termination of a Contract due to the failure to pay required premiums, after the expiration of any statutory and/or contractual grace periods;
- (hh) “Life Products Contract” means one or more of the following Affected Contracts: Challenger, Challenger Enterprise, Achiever, Achiever Plus, Discovery 2000, Omnilife and Endeavour;
- (ii) “Life Products Restitution Model” means an algorithmic actuarial model, a summary of which is annexed as **Schedule 6** hereto, designed by the Defendant and approved by Oliver Wyman and being analyzed by PwC, the purpose of which is to calculate, in accordance with this Settlement Agreement, the total of the Management Fee Overcharges, guarantee adjustments, bonus adjustments, cost of insurance restatements, Fund Rate of Return and Pre-Judgment Interest for each Life Products Contract sold by the Company;
- (jj) “Management Fees” means the fees payable to the Company for management and administration of the Funds, as defined in each Affected Contract and described variously as management fees, daily fund management fees, management and administrative fees and management expense ratios in the Affected Contracts and related SIFs and, solely for purposes of this settlement, includes any Investment Advice Fees, Operating Expenses and insurance fees charged in excess of the amounts permitted in the Affected Contracts and related SIFs;
- (kk) “Management Fee Overcharges” means the amount by which the actual Management Fees charged to the Funds exceed the Allowable Management Fees permitted under an Affected Contract and associated SIF, subject to such further adjustments as may be specified in this Settlement Agreement;
- (ll) “Management Fee Reset” means the adjustment by the Company of Management Fees on November 14, 2008 to bring such fees into compliance with the maximum Management Fees prescribed in the Affected Contracts and/or associated SIFs and having regard to any management expense ratio caps in an Affected Contract or associated SIF;
- (mm) “Monitor/Administrator” means the Claims Administration group of Deloitte & Touche LLP appointed pursuant to the Order of Perell J. dated February 27, 2009 and/or as set out in section 37 below;
- (nn) “OER Cap” means a 50 Basis Points maximum to the total Operating Expenses, the excess of which shall be absorbed by the Company;

- (oo) "Operating Expenses" mean those fees, charges, taxes, and/or expenses, in addition to Management Fees and Investment Advice Fees, which the Affected Contracts specify to be the responsibility of a Fund or Funds;
- (pp) "Operating Expense Rebates" means, as reflected in the post-2000 audited financial statements for the Funds, those Operating Expenses or portions thereof that the Company has absorbed, waived or rebated rather than requiring a Fund or Funds to bear in full and for which the Company contends the Fund or Funds are otherwise responsible pursuant to the terms of the Affected Contracts;
- (qq) "Opt Out Deadline" means a date 90 days from the date of the Approval Order or such other date as set by the Court;
- (rr) "Opt Out Form" means a form approved by the Court by which a Class Member may indicate their intention to opt out of this Settlement;
- (ss) "Parties" means the Plaintiff Joseph Fantl and the Defendant Transamerica Life Canada;
- (tt) "Pre-Judgment Interest" means the rate of return, as set out in the IP Restitution Model and the Life Products Restitution Model payable on Management Fee Overcharges for which no Fund Rate of Return is applicable or asserted, and/or the return payable on the Restitution following the Calculation Date, calculated and compounded semi-annually (converted to an equivalent compound daily rate) using the quarterly pre-judgment interest rates for causes of action arising after October 23, 1989 under s. 127 of the Court of Justice Act, R.S.O. 1990, c. C.43, as amended;
- (uu) "Provincial Laws" means the statutes and regulations of the provinces or territories where the Affected Contracts were sold which would otherwise apply to the Affected Contracts;
- (vv) "Policyholder" means the owner of an Affected Contract or, where applicable, their Beneficiary or estate;
- (ww) "Released Claims" means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature whether personal or subrogated, damages whenever incurred and liabilities of any nature and kind whatsoever, including interest, costs, expenses, Administration Expenses, penalties, taxes, Class Counsel Fees and lawyer's fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that had been, have been, could have been, or may in the future be, asserted in respect of the Excess Management Fee Claim in the Action, including, without limitation all claims for breach of contract, indemnity, negligence, breach of duty of care or any other duty (including fiduciary duty or good faith and fair dealing), fraud, misrepresentation, unjust enrichment, disgorgement, conspiracy, misconduct or any violation of any

federal, provincial or other statutes, rules, regulations or common law by any person or entity, which have arisen, arise now or hereafter arise out of, or relate in any manner to the allegations, facts, events, transactions, acts, conduct, occurrences, statements, representations, misrepresentations, omissions, obligations, disclosures, non-disclosures, or any other matter, thing, or cause whatsoever, or series thereof, involved, alleged, set forth in or otherwise related to the Excess Management Fee Claim, or the prosecution, settlement or resolution of the Excess Management Fee Claim in the Action, and to any related claims which have been or might reasonably have been raised in this Action against the Company, its Affiliates and their respective present and former officers, directors, employees, agents, shareholders, beneficiaries, trustees, predecessors, successors, and assigns, provided that Released Claims shall not include any claims related to the Tracking Claim;

- (xx) "Released Persons" means the Company, its Affiliates and their respective past and present directors, officers, employees, trustees, servants, representatives, agents, successors, and assigns and the heirs, executors, administrators, successors, and assigns of each of the foregoing;
- (yy) "Restitution" means a sum of money, calculated in accordance with the terms, adjustments and assumptions in this Settlement Agreement, which shall be credited to an Affected Contract or paid by the Company to a Class Member pursuant to a Restitution Payment;
- (zz) "Restitution Date" means the date on which the Restitution Payment is made which shall be no later than 30 Business Days after the Calculation Date;
- (aaa) "Restitution Payment" means payment of Restitution to Class Members by way of a credit to an Affected Contract resulting in an increase in Units or, where applicable, account value or a payment by cheque to or as directed by the Class Member, subject to any applicable withholding tax;
- (bbb) "Settlement Agreement" means this Agreement together with its schedules;
- (ccc) "Settlement Fund" means the funds transferred by the Company to TD Waterhouse, Private Trust (The Canada Trust Company) and to be held in trust, and to be invested and managed pending distribution by TD Asset Management Inc., and shall be the aggregate of Restitution Payments in respect of Terminated Contracts;
- (ddd) "Settling Class Members" means all Class Members who do not opt out from the Action prior to the Opt Out Deadline, and their successors, heirs, executors, administrators, and assigns;
- (eee) "SIF" means the Summary Information Folder provided to each Policyholder prior to or concurrently with the entering into of an Affected Contract between the

Policyholder and the Company, or if no such Summary Information Folder was provided at that time, the Summary Information Folder that should have been provided in connection with the Affected Contract;

- (fff) "Surrender" means the election by a Policyholder to terminate an Affected Contract by requesting the return of the current cash surrender value of the Policy;
- (ggg) "Terminated Contracts" means Affected Contracts which have terminated prior to the Restitution Calculation Date due to death, Lapse or Surrender;
- (hhh) "Tracking Claim" means the claim by the Plaintiff in this Action for damages related to the alleged failure of the Can-Am Fund to track the performance of the S&P 500 Total Return Index, as set out in the Second Fresh as Amended Statement of Claim, which claim is not settled by this Settlement Agreement, and in which claim both Parties reserve their respective rights;
- (iii) "Unbundled Management Fees" means Management Fees which are not defined in an Affected Contract as being inclusive of Investment Advice Fees;
- (jjj) "Units" means the notional measure of the participation in the investment in each of the Funds by Policyholders for purposes of determining benefits from time to time as defined in the Affected Contracts; and
- (kkk) "VIO" means a Variable Investment Option under a Life Products Contract by which the Policyholder invests in the Units of one or more of the Funds.

B. CLASS DEFINITION

2. The class is composed of all persons, or beneficiaries, trustees or other legal or personal representatives of such persons, in Canada and elsewhere who at any time entered into an Affected Contract with the Company, pursuant to which such persons beneficially or notionally invested in Units of, or which Affected Contract otherwise provided benefits based upon the value of, the Funds listed in Schedule 2, which were offered as investment options by the Company.

C. SETTLEMENT NEGOTIATIONS AND MEDIATION

3. The Parties and their counsel have engaged in arms-length, without prejudice settlement discussions for months including participating in a mediation conducted by the Honourable Mr. Justice Colin Campbell. The issues remitted to mediation and the Parties agreement concerning same are annexed as **Schedule 4** hereto. The Parties approved of the ongoing discussions and authorized their respective counsel to conclude this Settlement Agreement.

4. The Defendant has denied and continues to deny each and every allegation of liability and wrongdoing and asserts that it has substantial factual and legal defences to all the claims

alleged and that such claims are without merit. However, the Defendant has concluded that further conduct of the Excess Management Fee Claim aspect of the Action would be protracted and expensive and that it is desirable that the Excess Management Fee Claim be fully and finally settled in the manner and upon the terms and conditions set out in this Settlement Agreement.

5. This Settlement Agreement shall be immediately terminated if the Court does not approve the Settlement Agreement.

D. ASSUMPTIONS AND ADJUSTMENTS IN DETERMINING MANAGEMENT FEE OVERCHARGES AND RESTITUTION

6. For purposes of determining the Allowable Management Fees for calculating Restitution, the Defendant shall adopt the following assumptions, methodology and compromises:

(a) *Net Allowable Management Fees*: Where Management Fees are reported as Bundled Management Fees, but the Affected Contract defines Management Fees as being those services provided by the Company before the addition of Investment Advice Fees, Management Fee Overcharges shall be calculated based on Management Fees net of the Investment Advice Fees;

(b) *Discrepancy between Contract and SIF*: Where there is a discrepancy between Management Fees as stated in the Contract and the SIF, the lower of the two shall be used as the Allowable Management Fee;

(c) *Maximum MERs*: Where an Affected Contract or associated SIF states that the management expense ratio shall not exceed a particular percentage, the Allowable Management Fee shall be adjusted to ensure that it is no greater than 50 bps less than the stipulated maximum management expense ratio;

(d) *Annualization*: Management Fees shall be stated as an annual percentage, to be charged against the Funds on a daily basis. Management Fee Overcharges giving rise to Restitution shall be credited where annualized Management Fees are in excess of the Allowable Management Fees;

(e) *Net of Operating Expense Rebates*: Where the Company has previously waived a portion of the Operating Expenses which the Company contends it would be entitled to charge against any Fund (which the Plaintiff does not admit would be otherwise permitted under the Affected Contracts), the Management Fee Overcharges shall be net of Operating Expense Rebates, to a maximum of 50 bps (the OER Cap), provided that in no case will the impact of netting out the Operating Expense Rebates increase the overall management expense ratio; and

(f) *Notification of Increases*: Where there is a range of fees listed in a Contract or SIF without a notification requirement for any increase, the top end of the range will be used in setting the maximum Allowable Management Fee. Where a Management Fee may be

increased under the terms of the Affected Contract or related SIF with notice, any Restitution shall be calculated using the lower permitted Management Fee up to and including the Management Fee Reset Date of November 14, 2008.

7. *Current Fee Adjustment:* In determining the Allowable Management Fees for Contracts and SIFs which state a "current" or existing Management Fee, identified in **Schedule 7** to this Settlement Agreement, the Defendant shall in those instances where the actual Management Fees charged exceeded the "current" Management Fee indicated in the Affected Contract or SIF apply the lower "current" Management Fee during the 12 month period commencing on the date by which at least 66% of the policies with the particular version of the Affected Contract or related SIF were issued in order to give the majority of policyholders the benefit of approximately 12 months of the lower "current" fees.

8. *Investment Advice Fees Adjustments:* The Investment Advice Fees charged by AEGON Capital Management Inc. to the Funds shall be adjusted downward as necessary to reflect the Investment Advice Fees actually permitted under the investment advice agreements between the Company and this investment advisor from time to time. The Allowable Management Fees shall be adjusted downward as necessary to reflect the charging of Investment Advice Fees by Northwater Investment Management Inc. to the trust in which the Global Market Neutral Fund was from time to time invested.

9. *Insurance Fees:* The insurance fees charged as expenses to the Funds by the Company commencing in 2001 up to the Reset Date shall not be treated as permitted Operating Expenses and shall be treated for Restitution purposes as being included in the actual Management Fees charged by the Company.

10. *Initial Adjustment to 50 Basis Point Fixed Operating Expense Charge in 1999 and 2000:* In determining the actual Management Fees charged to the Funds in 1999 and 2000, the Defendant shall reduce the permitted Operating Expenses from 50 bps to 38 bps in 1999 and to 45 bps in 2000 to reflect actual experience.

11. *Final \$7.5 Million Adjustment:* After all of the foregoing adjustments are made, a final adjustment to the Operating Expenses and, if necessary, Management Fees charged to the Funds during 1998, 1999 and 2000 shall be made to a level that otherwise increases the overall Restitution payable to the Class by \$7.5 million, inclusive of interest, calculated as at June 19, 2009.

E. BASIS OF RESTITUTION OF CLASS MEMBERS

12. The objective of the methodology for Restitution adopted in this Settlement Agreement is to put each Class Member in the position they would have been had any Excess Management Fees not been charged, subject to certain assumptions and compromises some of which were resolved at the aforesaid mediation before the Honourable Mr. Justice Campbell. All payments of Restitution shall be subject to any applicable withholding tax.

13. The Restitution for each Investment Product Contract shall be calculated in accordance with the IP Restitution Model. The Restitution for each Life Products Contract shall be calculated in accordance with the Life Products Restitution Model.

14. Restitution payable in respect of in force Affected Contracts (i.e. active Affected Contracts as at the Restitution Date) to Class Members shall be paid by the Defendant who, pursuant to the Approval Order, shall make such transfers of monies as may be necessary from its general fund to the applicable Funds to purchase and increase the number of Units in each Affected Contract and by adjusting other accounts, cost of insurance, investor bonuses and guarantee values in accordance with the IP Restitution Model or the Life Products Restitution Model, as applicable.

15. The Restitution payments in respect of Terminated Contracts shall be paid forthwith after the Restitution Date into the Settlement Fund. The Settlement Funds payable in respect of Terminated Contracts in excess of the \$50 *de minimis* threshold shall be disbursed to Class Members by cheque co-signed by an authorized representative of the Defendant and an authorized representative of the Monitor/Administrator as soon as practicable after the Restitution Date, provided that in the case of any Class Member with an Affected Contract that was registered at the time of its termination for RRSP purposes, the Defendant shall first request and abide by a written direction to pay the Restitution into another registered account from the Class Member. The Settlement Funds shall be held in Canadian currency and shall be invested and managed by TD Asset Management Inc. and shall be paid out in accordance with the terms of the Settlement Agreement. Unless the Settlement Agreement is terminated as provided herein, the Defendant shall not, under any circumstance, be entitled to the repayment of any portion of the Settlement Funds.

16. *\$50 De Minimus Threshold:* Due to administration costs, no Restitution will be paid to a Class Member in respect of a Terminated Contract where the Restitution under the Settlement would be less than \$50. However, such amounts under \$50 will be paid into and remain in trust, to be given to the Heart and Stroke Foundation as described below.

17. *Lapsed Policies:* The Parties acknowledge that the Restitution payable in respect of some Affected Contracts might, in some circumstances, have been available to pay any outstanding premiums on otherwise Lapsed policies with the potential result that the payment of such premiums may have prevented the Lapsing of the policy and extended the period for which the policy remained active and in force. Transamerica shall determine, for each Lapsed policy of a Class Member, whether and by how much the accumulated value of the Management Fee Overcharges, calculated up to the date of Lapse, could have extended the life of the policy in accordance with the Affected Contract's provisions by one or more months. Class Members with relevant Lapsed policies shall receive written notice from the Defendant indicating the Lapse date of record and the number of months by which the policy could have been extended by reason of the Management Fee Overcharges and return on such Management Fee Overcharges to the relevant permitted accounts calculated to the Lapse date of record (the "New Eligibility Period"). The notice will advise the Class Member that they should contact Class Counsel in the event there has been a death of the life insured in the New Eligibility Period. If proper

documentation is provided supporting proof of death in the New Eligibility Period, the Defendant will apply the Restitution owing for the Management Fee Overcharges towards past premiums and will honour a claim by policy beneficiaries to the applicable death benefit payable in accordance with the terms of the policy. Where the New Eligibility Period extends beyond the Calculation Date, the Class Member will have the option to apply their Restitution to obtain non-forfeiture term life insurance from the Defendant on such reasonable terms as may be agreed to by the Defendant and approved by the Court.

F. DISPUTE RESOLUTION PROCESS

18. Any Factual Dispute shall be dealt with as follows:

(a) First, by the Class member raising the issue, in writing, with Class Counsel. Class Counsel and Defence Counsel shall, acting reasonably, attempt to resolve the issue.

(b) If counsel are unable to resolve the Factual Dispute, the Class Member may submit the Factual Dispute in writing to the Claims Adjudicator for resolution. The Claims Adjudicator shall determine the process for adjudication of the Factual Dispute with the objective of securing an expeditious and cost-effective resolution of the Factual Dispute. The decision of the Claims Adjudicator shall be final and without appeal as to matters of fact or law.

(c) The costs of the Claims Adjudicator and all hearings or other processes associated with the Factual Dispute shall be paid by the Defendant unless the Claims Adjudicator determines that the Class Member's position is frivolous, in which case the Claims Adjudicator shall have jurisdiction to order the Class Member to pay a cost award in favour of the Company for its costs in an amount determined by the Claims Adjudicator.

G. RELEASE

19. Upon the Effective Date, the Parties and the Settling Class Members shall have, and by operation of the Approval Order shall be deemed to have, fully, finally, and forever released, relinquished, and discharged the Released Claims as against every one of the Released Persons. By entering into this Settlement Agreement, each of the Parties represents and warrants that he, she, or it has not assigned, hypothecated, transferred, or otherwise granted any interest in the Released Claims to any Person. Nothing in this Settlement Agreement shall constitute or shall be deemed to constitute a waiver by the Defendant of any defence with respect to any Class Member who opts out of the Settlement Agreement or in the event this Settlement Agreement is not approved by the Court.

20. Upon the Effective Date, the Parties, Settling Class Members, Class Counsel and PwC shall be permanently barred and enjoined from commencing, prosecuting or participating in any action, complaint or proceeding, in any jurisdiction or forum, against the Released Persons related to, or based on, the Released Claims except for proceedings brought pursuant to section 45 of this Settlement Agreement. This Settlement Agreement shall operate conclusively as an

estoppel in the event of any claim, action, complaint or proceeding brought by any Party or Settling Class Members against the Released Persons in respect to the Released Claims. The Defendant and its Affiliates may file this Settlement Agreement and the Approval Order in any action or proceeding that may be brought against it or its Affiliates in order to support any defence or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim. This Settlement Agreement may be pleaded in the event any claim, action, complaint or proceeding is brought, and it may be relied upon for the purpose of an application to dismiss the claim, action, complaint or proceeding on a summary basis, and this Settlement Agreement and the Approval Order shall be a full defence to any such action. No Party, or Settling Class Member, may seek to avoid the application of this Settlement Agreement to the Released Persons based on a lack of privity or mutuality.

21. In the event that any Party or Settling Class Member initiates or seeks to prosecute or participate in any action or proceeding of any kind, including an arbitration, a Released Claim against any of the Released Persons, the Released Persons against whom the Released Claim is asserted shall be entitled to recover from that Party and/or Settling Class Member as applicable the Released Persons' actual costs, including actual legal fees, on a full indemnity basis, in successfully defending the action or proceeding.

22. In the event that any person asserts against one or more of the Released Persons in any forum any claim or cause of action arising out of, or related to, the Released Claims, the Plaintiff and the Settling Class Members hereby expressly waive and disclaim in favour of the Released Persons any right, claim or entitlement to receive any compensation or funds derived from, or otherwise participate in, any recovery or award against the Released Persons in such action or proceeding.

H. COURT APPROVAL OF THE SETTLEMENT AGREEMENT

23. The Parties shall use their best effort to effectuate the terms of this Settlement Agreement. With the exception of the Tracking Claim, the Parties agree to stay all proceedings and actions in the Action, including all discovery, other than proceedings necessary to approve and implement this Settlement Agreement until the Effective Date or the termination of this Settlement Agreement, whichever occurs first.

24. The Defendant shall directly bear all of the costs and expenses reasonably and actually necessary in connection with locating and providing notices to Class Members.

25. Subject to the Court's approval, and for purposes of this Settlement Agreement only, the Defendant will consent to the certification of the Excess Management Fees Claim pursuant to the CPA.

26. The Defendant does not consent to certification of the Class for any purpose other than to effectuate the settlement of the Excess Management Fee Claim. If this Settlement Agreement is

terminated pursuant to its terms or the Effective Date for any reason does not occur, any orders certifying the Class and all preliminary and/or final findings regarding the Courts' certification orders shall be automatically set aside on consent upon notice to the Court of the termination of the Settlement Agreement or the failure of the Effective Date to occur, and the Action shall proceed as though the proceeding had never been certified and such findings had never been made, without prejudice to any Party to either request or oppose class certification on any basis.

27. On behalf of the Plaintiff, Class Counsel shall seek an Order from the Court, in draft form acceptable to the Defendant, acting reasonably, for purposes of obtaining a class settlement and release in favour of the Defendant and other Released Persons in accordance with the terms of this Settlement Agreement and the CPA.

I. NOTICE REQUIREMENTS AND OPTING OUT

28. Upon approval, the Defendant shall provide notice, at its sole expense, to Class Members of the Settlement Agreement in accordance with a notice plan to be approved by the Court.

29. Class Members who do not wish to be bound by the Settlement Agreement may opt out of the Settlement Agreement in the manner to be specified in the Approval Order.

30. The Monitor/Administrator shall provide such particulars as the Court may direct in the Approval Order with respect to Class Members that opt out.

31. The Parties acknowledge that if the Settlement Agreement is approved and the Effective Date occurs, it is the Defendant's intention to pay Restitution to all Class Members irrespective of their decision to Opt Out and, without admission of liability, to rely upon the payment of such Restitution in any subsequent litigation that may be commenced by any Class Member with respect to any matter related to the Excess Management Fee Claim.

J. CLASS COUNSEL FEES

32. Class Counsel Fees and expenditures shall be paid by the Defendant pursuant to the terms and conditions specified below. The Class Counsel Fees which Class Counsel would otherwise be entitled to seek and recover from the Class Members under its retainer agreement with the Plaintiff or otherwise, shall be paid directly by the Defendant.

33. For clarity, if this proposed Settlement is approved, Class Counsel shall not seek to enforce any contingency fee arrangements previously agreed upon with the Plaintiff as against the recovery by individual Class Members, and the amounts paid in Restitution to each Class Member by the Defendant shall not be diminished or attached by any claim for Class Counsel Fees.

34. The amount of Class Counsel Fees shall either be agreed upon by the Parties prior to the Approval Hearing and approved by the Court, or shall otherwise be fixed by the Court, at a hearing immediately following the Approval Hearing.

35. Class Counsel shall provide the Defendant and Defence Counsel by no later than July 24, 2009 with full particulars of the fees and disbursements being claimed in connection with this settlement, including copies of all docket entries and supporting invoices in respect of disbursements and with the same detailed information from PwC in respect of their fees and disbursements. All such docket entries may be redacted for privileged information, particularly given the outstanding Tracking Claim. Any docket entries, invoices or information disclosed in connection with the Tracking Claim shall not, however, constitute or be argued by the Defendant to amount to a waiver of privilege over those entries, invoices or information. Any dispute regarding the sufficiency of the dockets or propriety of redactions may be addressed by the Court prior to or at the Approval Hearing, and Class Counsel shall provide, if necessary, unredacted docket entries to the Court for that purpose. Class Counsel shall also provide the Defendant and Defence Counsel with its reasonable estimate of the fees and disbursements to be incurred up to and including the conclusion of the Approval Hearing to allow the Parties to reasonably and effectively attempt to agree on Class Counsel Fees. Class Counsel will also make its best efforts to provide docket entries and supporting invoices for the balance of the period up to the Approval Hearing as they become available. All such docket entries and estimates, and all copies thereof, shall be returned to Class Counsel if the Settlement is not approved, and the Defendant agrees that the privilege over such dockets or estimates shall not be waived or affected in such circumstances.

36. In the event that this Settlement Agreement is approved, the Parties shall agree upon the amount of any further Class Counsel Fees and disbursements, including the reasonable fees and disbursements of PwC, to be paid by the Defendant in connection with the implementation of this Settlement Agreement and Class Counsel shall provide the Defendant and Defence Counsel full particulars of such fees and disbursements, including copies of docket entries and supporting invoices. In the event of disagreement concerning same, the Court shall from time to time, upon motion by the Plaintiff or Class Counsel on notice to the Defendant, fix the amount of such fees and disbursements.

K. ROLE OF MONITOR/ADMINISTRATOR

37. The Claims Administration group of Deloitte & Touche LLP, or such other person or organization as may be appointed by the Court from time to time, will act in a non-adjudicative role, as the monitor and administrator of this settlement, for purposes of verifying and monitoring the calculation and distribution of Restitution. In particular, the Monitor/Administrator shall provide the following services to the Parties and to the Court:

(a) *Data Verification:* The Monitor/Administrator shall work with the Defendant to confirm and verify address and other data from the Defendant's administrative systems concerning Policyholders and its successful transmission to the mailing house engaged to provide notice mailings to Class Members;

(b) *Bad Address Rectification:* The Monitor/Administrator shall work with the Defendant to implement a system for resolving Bad Addresses and updating the Defendant's administrative systems in accordance with the protocol described in Section L below;

(c) *Call Centre Monitoring:* The Monitor/Administrator shall work with both the Defendant and with Class Counsel with respect to supervising and assisting with the operation of a call centre to receive inquiries from Class Members following Court approval of this Settlement and in particular shall assist with:

- (i) Developing and modifying as necessary appropriate call centre scripts;
- (ii) Reporting to the Parties and to the Court, if requested by the Court, on the volume and nature of calls received from Class Members and others;
- (iii) Providing such technical assistance as may be required with telephone and computer systems used in call centre operations;
- (iv) Sampling calls to ensure that scripts previously approved by Class Counsel are complied with;
- (v) Confirming that data such as address changes is properly recorded on the Defendant's administrative systems for purposes of future mailings; and
- (vi) Providing such further assistance as may be requested by the Parties.

(d) *Tracking of Opt-Outs:* The Monitor/Administrator shall compile a list of Class Members who opt out of the settlement.

(e) *Monitoring of Restitution Distribution:* The Monitor/Administrator shall monitor the transfer of funds by the Defendant to the Settlement Fund and the transfer of funds to the account of Class Members with in force Affected Contracts, co-sign cheques payable to Class Members with Terminated Contracts and verify the transfer of undistributed Settlement Funds to charity as described below in section 38. The Monitor/Administrator shall further assist in the development of communications to Class Members to assist in responding to enquiries concerning the computation of Restitution in respect of each Affected Contract.

L. UNDISTRIBUTED SETTLEMENT FUNDS AND CHARITY

38. Subject to compliance with any applicable unclaimed property legislation, any Restitution held in the Settlement Fund which remains unclaimed 18 months after the Approval Order (including any Restitution in respect of a Terminated Contract which is below the \$50 *de minimis* threshold) will be paid to the Heart and Stroke Foundation. Before any property may be considered unclaimed, the Defendant shall have first made reasonable efforts to locate the eligible Class Member. In the case of Class Members with Terminated Contracts who are entitled to \$50 or more but less than \$500 in Restitution, if official notices to them (including the notice of the fairness hearing to approve the proposed settlement) are returned, the Defendant will engage the services of the National Search Unit of Service Canada in an effort to obtain current addresses for these Class Members. If the Restitution owing to such Class Members is \$500 or more, the Defendant will engage a search firm to attempt to locate them.

M. FAILURE TO OBTAIN APPROVALS

39. In the event this Settlement Agreement is not approved by the Court, or an appeal precludes the consummation of the settlement provided for herein in accordance with the terms and conditions of this Settlement Agreement, or this Settlement Agreement otherwise fails to become effective, the Parties shall be restored to their respective positions in the Action as though this Settlement Agreement had never been made. In such event, the terms and provisions of this Settlement Agreement shall have no further force and effect and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Courts in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*. In the event that the settlement provided for in this Settlement Agreement is terminated or fails to become effective in accordance with the terms hereof, then any amount remaining in the Settlement Fund shall be immediately refunded to the Defendant.

N. NO ADMISSION OF WRONGDOING

40. The Defendant expressly denies any wrongdoing by it or any Affiliate, director, officer, or employee or agent of the Defendant or any Affiliate (collectively "Related Parties"). Neither this Settlement Agreement, whether or not consummated, nor any negotiations, discussions, or proceedings in connection herewith, shall be:

(a) offered or received against the Defendant or the Related Parties as evidence, or construed or deemed to be evidence, of any presumption, concession or admission by the Defendant or the Related Parties of the truth of any fact alleged by the Plaintiff, Class Members, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defence that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendant or the Related Parties;

(b) offered or received against the Defendant or the Related Parties as evidence, or as a presumption, concession or admission, of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Defendant or the Related Parties, or against the Plaintiff or the Class Members or Class Counsel or their experts and consultants as evidence of any infirmity in the claims of the Plaintiffs or the Class;

(c) offered or received against the Defendant or the Related Parties as evidence, or a presumption, concession, or admission, of any liability negligence, fault, or wrongdoing, or in any way referred to for any other reason as against the Defendant or the Related Parties, their counsel, or their experts and consultants, in any civil, criminal, or administrative action or proceeding, other than such proceeding as may be necessary to give effect to provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, the Defendant and the Related Parties may refer to it to effectuate the liability protection granted to them hereunder; or

(d) construed against the Defendant or the Related Parties, the Plaintiff, the Class, their respective counsel, or their respective experts and consultants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

O. MISCELLANEOUS PROVISIONS

41. The Parties acknowledge that they have required and consented that this Settlement Agreement, its Schedules and all related documents, be prepared in English. Les parties aux présentes conviennent et exigent que cette Convention et tous les documents qui s'y rattachent soient rédigés en Anglais.

42. The captions contained in this Settlement Agreement are inserted only as a matter of convenience and in no way define, extend, or describe the scope of this Settlement Agreement or the intent of any provision thereof.

43. In the computation of time in this Settlement Agreement, except where a contrary intention appears,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

(b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

44. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the Province of Ontario without regard to choice of law rules.

45. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties, only to the extent they have already done so, submit to the jurisdiction of the Court for purposes of implementing, enforcing, interpreting, administering or otherwise relating to the settlement provided for in this Settlement Agreement.

46. This Settlement Agreement, and the Recitals herein, the Schedules attached hereto, constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Recitals or Schedules other than the representations, warranties, and covenants contained and memorialized in such documents. Any and all prior and contemporaneous agreements, negotiations, discussions, representations, warranties, and inducements concerning the Action, this Settlement Agreement, and the subjects addressed in this Settlement Agreement are merged and integrated into this Settlement Agreement.

47. The Recitals and Schedules to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

48. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement shall have no bearing upon the proper interpretation of this Settlement Agreement.

49. This Settlement Agreement was negotiated in good faith, at arms length, mutually drafted by all of the Parties, and entered into freely by the Parties with the advice, input, and participation of their own independent legal counsel. In the event that an ambiguity exists in any provision of this Settlement Agreement, such ambiguity is not to be construed against any Party as the drafter of the document.

50. This Settlement Agreement shall be binding upon the Parties and the Class Members and their successors, heirs, executors, administrators, and assigns, and their respective counsel, experts and consultants, and shall enure to the benefit of the Parties, the Class Members, and the Released Persons, as well as their successors, heirs, executors, administrators, and assigns, and their respective counsel, experts and consultants.

51. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

52. Prior to the Approval Hearing this Settlement Agreement may be amended, modified, waived, or discharged only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. Prior to the Approval Hearing, amendments and modifications may be made without notice to the Class Members unless otherwise ordered by the Court. Following the Approval Hearing, any such amendment or modification may be made on the consent of the Parties and the approval of the Court.

53. The Memorandum of Understanding (Schedule 3) as it relates to the confidentiality of information shall survive this Settlement Agreement, except that the disclosure of such information may be made (i) with the approval of the Party who provided the information or (ii) if required, authorized or ordered by the Court, in an *in camera* proceeding or otherwise as may be directed by the Court.

54. Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, or by facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

If to: Joseph Fantl

c/o Roy Elliott O'Connor LLP
Barristers
Suite 2300 – 200 Front Street West

Toronto, ON M5V 3K2

Tel.: 416.362.1989
Fax: 416.362.6204
Attention: David F. O'Connor

If to: Transamerica Life Canada

c/o Blake, Cassels & Graydon LLP
Barristers & Solicitors
199 Bay Street, Suite 2800
Commerce Court West
Toronto, ON M5L 1A9

Tel: 416.863.2940
Fax: 416.863.2653
E-mail: maryjane.stitt@blakes.com
Attention: Mary Jane Stitt

or to any such address or individual number as may be designated by notice given by any Party to another.

55. Counsel executing this Settlement Agreement on behalf of any Party hereby warrants that such counsel has the full authority to do so.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by their respective counsel as of the 10th day of July, 2009.

JOSEPH FANTL
By his counsel, Roy Elliott O'Connor LLP

Per: 

David O'Connor

TRANSAMERICA LIFE CANADA
By its counsel, Blake, Cassels & Graydon LLP

Per: 

Mary Jane Stitt

SCHEDULE 1 – Insurance Contracts Included in the Settlement

The insurance contracts included in the settlement are:

Variable Deferred Annuity Contracts (Investment Products)

Mony Manager Series/Investment Manager Series (IMS) I
IMS II
IMS III
NN Registered Retirement Income Fund (NN RRIF)
NN Asset Accumulation Plan
Money Market Fund
Equity Linked Annuity Policy

Life Products

Challenger/Challenger Enterprise
Achiever/Achiever Plus
Endeavour
Omnilife
Discovery 2000

SCHEDULE 2 – Funds Included in the Settlement

The 28 segregated funds included in the settlement are:

1. American Asset Allocation Fund
2. American Equity Index Fund
3. Asset Allocation Fund (also known as the Balanced Fund)
4. Bond Fund
5. Canadian 35 Index Fund
6. Canadian Communications Fund
7. Canadian Financial Services Fund
8. Canadian Growth Fund
9. Canadian Resources Fund
10. Canadian Small Cap Fund
11. Can-Am Fund
12. Can-Asian Fund
13. Can-Daq 100 Fund (also known as the Can-Daq Fund)
14. Can-Emerge Fund
15. Can-Euro Fund
16. Can-Global Bond Fund
17. Dividend Fund
18. Equity Fund
19. European Equity Index Fund
20. Information Technology Fund
21. International Bond Index Fund
22. International Brands Fund
23. Mid-Term Bond Fund (also known as the Bond Fund, but distinct from #4 above)
24. Global Market Neutral Fund (also known as the Elite Fund)
25. T-Bill Fund
26. Money Market Fund
27. 5 Year Pooled Fund
28. Global Fund

SCHEDULE 3

Court File No. 06-CV-306061-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JOSEPH FANTL

Plaintiff

- and -

TRANSAMERICA LIFE CANADA

Defendant

Proceeding under the Class Proceedings Act 1992

**MEMORANDUM OF UNDERSTANDING
CONCERNING PROPOSED SETTLEMENT**

1. The parties hereto, by their respective solicitors, hereby confirm the general agreement in principle first raised in or about September of 2007, as amended or modified in subsequent communications between counsel for the parties, to settle the excess management fee claim in the above-captioned proceeding (the "Action").

2. The proposed settlement class shall include all persons, or beneficiaries, trustees or other legal or personal representatives of such persons, in Canada and elsewhere who at any time entered into contracts with the Transamerica Life Canada ("Transamerica"), NN Life Insurance Company of Canada or its predecessors (collectively the "Defendants") pursuant to which the persons beneficially or notionally invested in units of, or which contracts otherwise provided benefits based upon the value of, the following segregated funds (the "Transamerica Funds") which were offered as investment options by the Defendants:

1. American Asset Allocation Fund
2. American Equity Index Fund

3. Asset Allocation Fund (also known as the Balanced Fund)
4. Bond Fund
5. Canadian 35 Index Fund
6. Canadian Communications Fund
7. Canadian Financial Services Fund
8. Canadian Growth Fund
9. Canadian Resources Fund
10. Canadian Small Cap Fund
11. Can-Am Fund
12. Can-Asian Fund
13. Can-Daq 100 Fund (also known as the Can-Daq Fund)
14. Can-Emerge Fund
15. Can-Euro Fund
16. Can-Global Bond Fund
17. Dividend Fund
18. Equity Fund
19. European Equity Index Fund
20. Information Technology Fund
21. International Bond Index Fund
22. International Brands Fund
23. Mid-Term Bond Fund (also known as the Bond Fund, but distinct from #4 above)
24. Global Market Neutral Fund (also known as the Elite Fund)
25. T-Bill Fund
26. Money Market Fund
27. 5 Year Pooled Fund
28. Global Fund

3. Transamerica will pay restitution to the class members if they were charged management fees for the Transamerica Funds in excess of the amounts permitted in, or contrary to the provisions of, the applicable contracts or represented in related summary information folders. Such restitution shall be determined pursuant to a methodology to be negotiated and agreed upon by the parties and subsequently approved by the Court at a consent certification and settlement approval hearing in the context of the Action. Restitution will be paid to class members without regard to any potential limitation periods.

4. Transamerica's agreement to pay restitution in respect of any excess management fees pursuant to the proposed settlement is not conditional on the withdrawal of the tracking error claims made in the Action regarding the Can-Am Fund.

5. The settlement shall include both variable annuity contracts (IMS I, IMS II, IMS III and NN RRIF) as well as the NN Asset Accumulation Plan (NAAP), Money Market Fund and Equity Linked Annuity Policy (ELAP). The settlement shall also include the Challenger, Discovery 2000, Achiever, Achiever Plus, Endeavour and Omnilife universal life insurance contracts. The restitution program will, *inter alia*, address the impact of any excess management fees charged to the Transamerica Funds to the extent that any such excess management fees negatively affected the valuation and returns of any variable investment options offered under these universal life contracts or negatively affected the valuation and returns of any fund-linked general interest options offered under such contracts.

6. Transamerica acknowledges that counsel for Joseph Fantl, the proposed representative plaintiff ("Class Counsel") were required to engage an expert to assist Class Counsel in, *inter alia*, examining and analyzing the historic accounting information to be provided by Transamerica regarding the fees and expenses charged to the Transamerica Funds, evaluating and commenting on the proposed restitution methodology, plan of distribution and compensation ultimately to be paid to class members and otherwise assisting Class Counsel in the negotiation of a settlement which is fair, reasonable and appropriate for class members. Class Counsel have engaged Pricewaterhouse Coopers LLP as their expert. Transamerica agrees to pay the reasonable fees and expenses of Pricewaterhouse Coopers LLP as a disbursement incurred by Class Counsel upon the approval of the proposed settlement, with such expert fees and expenses to be agreed upon by the parties or, failing agreement between the parties, to be determined by the Court following the settlement approval hearing, at the same time that the overall fees and disbursements of Class Counsel are approved or determined.

7. All information exchanged among Transamerica, its counsel, experts and consultants (Blake Cassels & Graydon LLP, Deloitte & Touche LLP, Cole & Partners and Oliver Wyman) and Class Counsel and their experts and consultants for purposes of the settlement discussions and negotiations contemplated hereunder shall be on a without prejudice basis and subject to settlement privilege, held in strictest confidence by the recipients and not be disclosed to any other person without the prior written consent of the party (plaintiff or defendant) from whom

the information was obtained. The parties acknowledge, however, that a copy of this memorandum of understanding may be provided to the Court prior to any settlement fairness or approval hearing.

8. The legal fees and disbursements of Class Counsel, which Class Counsel would otherwise be entitled to seek and recover from the class members, shall be paid directly by Transamerica in such amounts to be agreed upon by the parties and Class Counsel and then approved by the Court or, failing such agreement, in an amount to be determined by the Court. The Court will approve or determine the overall fees and disbursements of Class Counsel as aforesaid at a motion for that purpose to be heard following the settlement approval hearing. For clarity, if the proposed settlement is approved, Class Counsel shall not seek to enforce any contingency fee arrangements previously agreed upon with the representative plaintiff as against the recovery by individual class members, and the amounts paid in restitution to each class member by Transamerica shall not be diminished or attached by any claim for legal fees and disbursements of Class Counsel or their experts and consultants.

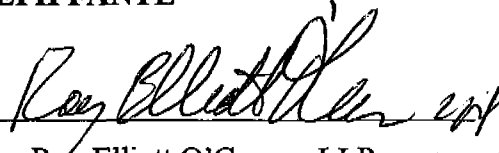

9. The parties and their experts and consultants shall continue to work diligently towards resolving all issues necessary in order to, *inter alia*, secure court approval of the notice program before the end of November 2008 and to have the settlement fairness hearing heard before the end of April 2009, in each case subject to further directions or Orders of the Court, with the objective of concluding the settlement and paying restitution to class members before the end of 2009. Following the execution and delivery of this memorandum of understanding, the parties shall continue to work in good faith to draft, in advance of the hearing in November of 2008, a common statement of issues to be addressed and processes to be followed in the continuing settlement negotiations, and thereafter to work in good faith towards a final settlement agreement and settlement approval by the Court.

10. Nothing contained in this memorandum of understanding shall be deemed to be, or may be used as an admission of, or evidence of, or raise any presumption or inference of the validity of any of the claims asserted in the Action or create any inference or presumption of, any

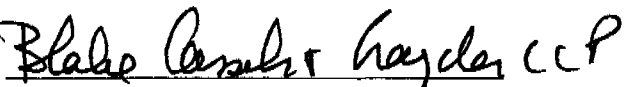
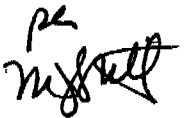
liability, fault or wrongdoing of any of the Defendants in any proceeding in any court, administrative agency or other tribunal.

IN WITNESS WHEREOF, each of the Parties has caused this memorandum of understanding to be executed by their counsel of record on or about the 28th day of October, 2008.

JOSEPH FANTL

Per:  ccf
Roy Elliott O'Connor LLP 

TRANSAMERICA LIFE CANADA

Per:  ccf
Blake, Cassels & Graydon LLP 

SCHEDULE 4 – Issues Submitted for Mediation to the Honourable Justice Colin Campbell and Minutes of Settlement

Fantl v. Transamerica – List of Issues for Mediation

Fees and Expenses

1. Contractual Interpretation:
 - (a) What types of expenses may be charged to the funds in addition to the contractual “management fees” or “management and administration fees” (the “Fees” or “Fee”)? Has the defendant charged improper expenses, and if so, which expenses, on which contracts and in what time periods?
 - (b) When restating the policyholder accounts to provide class members with the amounts they would have received or retained had the overcharges not occurred, can the defendant include in the calculation of the restatement expenses that it actually incurred but did not, at the time in question, fully pass through to the funds to the extent it would have been contractually permitted to do? In other words, should compensation for overcharges on Fees be calculated without regard to undercharges on other expenses which otherwise could have been charged to the funds?
 - (c) Does the reference to an “expected” MER (management expense ratio) in certain of the contracts operate to set an effective maximum MER for the funds for any period in respect of those contracts? If so, on which contracts, and for what period should that effective maximum apply?
2. In determining the actual Fees charged to the funds prior to 2001 for purposes of calculating excess Fees, can the defendant deduct all or part of the 50 basis points operating expense recovery fee that NN Life included in the amounts charged against the funds in the Company’s administrative systems?
3. After 2001, did further Fee increases occur and, if so, was any notice of a further Fee increase required where the Fees remained within the contractually stated maximums?

Interest Rate

4. What is the appropriate pre-judgment interest rate payable on restitution amounts once the policyholder has removed the money from the contract?

Recovery of Less than Principal Amount of Overcharges

5. Does the “follow the money” restitution model (which tracks a policyholder’s investment decisions with respect to the funds in question and attributes the same returns to overcharges as to other amounts invested in the funds) provide a fair and reasonable basis of compensation or should that approach be adjusted for class members who, due to their actual investment decisions, did not in fact earn a net positive return on their investments in the funds?

Lapsed Policies

6. How should the parties deal with the potential situation where policies lapsed prior to the policyholders' death and so death benefits were not paid, but the policies would not have lapsed if any overcharged Fees/expenses had remained in the policyholders' accounts?

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOSEPH FANTL

Plaintiff

- and -

TRANSAMERICA LIFE CANADA

Defendant

Proceeding under the Class Proceedings Act 1992

**MINUTES OF SETTLEMENT PURSUANT TO
MEDIATION CONDUCTED BY CAMPBELL J.
MAY 25 AND 26, 2009**

1. The parties hereto, by their respective solicitors, hereby confirm their agreement, following mediation conducted by the Honourable Justice Colin Campbell at Toronto on May 25 and 26, 2009, to settle the issues outlined in the mediation brief of the plaintiff dated May 11, 2009 (the "Plaintiff's Mediation Brief") on the following basis.

2. **Issue 2: Pre-2001 Operating Expenses:** In determining the actual Fees charged to the funds prior to 2001 for purposes of calculating excess Fees, the defendant shall not deduct a 50 basis point ("bp") operating expense charge, but rather shall deduct a lesser number of bps in respect of operating expenses from the Fees recorded in the NN Life administration systems during the 1998 - 2000 financial years to generate the payment of additional restitution to prospective class members of \$7,500,000, inclusive of interest. The calculation of the lesser number of bps as aforesaid will take place in advance of the settlement approval hearing and is expected to occur at or about the time that the restitution program is finalized and all of the necessary individual policyholder data is available for input into the program.

3. **Issues 1 and 3 (Fees and Expenses) and Issue 5 (Recovery of Less than Principal Amount of the Overcharge):** In consideration of the adjustment to the pre-2001 operating expense charges and additional restitution to be paid pursuant to paragraph 2 above, the plaintiff shall withdraw his claims for further adjustment or compensation to the class in respect of the issues described Issues 1, 3 and 5 of the Plaintiff's Mediation Brief. The parties agree that the restitution methodology shall be the "follow the money" approach outlined in Transamerica's segregated fund and universal life restitution models, as agreed to by the parties. This is not intended or taken to be a waiver of the right of the Plaintiff's counsel to pursue the answer to the outstanding due diligence questions that the plaintiff, his counsel or PwC have noted as necessary, if relevant to the proposed settlement.

4. **Issue 4: Interest Rate -** The parties agree that the interest payable on restitution amounts after the monies have left the contract shall be calculated using the quarterly pre-judgment interest rates, compounded semi-annually, for causes of actions arising after October 23, 1989, as published pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.

5. **Issue 6: Lapsed Policies -** The parties agree that Transamerica will determine, for each lapsed policy of a prospective class member, whether and by how much the accumulated value of the overcharged Fees, calculated up to the date of lapse, would have extended the life of the policy by one or more months, having regard only to the accumulated values in the non-registered accounts within the policy as of the date of lapse and the relevant contractual provisions concerning lapse. As part of the restitution program, class members with relevant lapsed policies shall receive a letter indicating the lapse date of record and the number of months by which the policy could have been extended by reason of the overcharges and return on overcharges to the relevant non-registered accounts calculated to the lapse date of record (the "New Eligibility Period"). The letter will invite the recipient to contact class counsel in the event there has been a death of the life insured in the New Eligibility Period. If proper documentation is provided supporting proof of death in the New Eligibility Period, Transamerica will apply the restitution owing for Fee overcharges towards past premiums and will honour a claim by policy beneficiaries to the applicable death benefit payable in accordance with the terms

of the policy. The process for dealing with the lapsed policies shall be addressed as part of the settlement and shall be subject to court approval and review, if necessary or appropriate.

6. The parties shall incorporate terms necessary to carry the foregoing into effect as may be necessary, together with terms previously agreed upon concerning the settlement, into the settlement agreement to be executed by the parties which agreement shall be subject to court approval. Nothing contained in these Minutes of Settlement shall be deemed to be, or may be used as an admission of, or evidence of, or raise any presumption or inference of the validity of any of the claims asserted in this proposed class proceeding or create any inference or presumption of, any liability, fault or wrongdoing of any of the defendant in any proceeding in any court, administrative agency or other tribunal. The parties agree to work in good faith to memorialize the proposed settlement terms to date into a final settlement agreement which is satisfactory to both parties and in accordance with the foregoing.

IN WITNESS WHEREOF, the Parties have caused these Minutes of Settlement to be executed by their respective counsel as of the 26th day of May, 2009.

JOSEPH FANTL

Per: 

Roy Elliott O'Connor LLP

TRANSAMERICA LIFE CANADA

Per: 

Blake, Cassels & Graydon LLP

SCHEDULE 5

Segregated Funds Restitution Model

1. Introduction and scope

TLC management has determined that the company has charged fund management fees and certain other expenses on its IMS portfolio of segregated funds that were greater than was permitted under the terms of the segregated fund contracts or represented in the related summary information folders. The company has therefore embarked on an effort to determine

1. the extent of fund overcharges, which involves investigating actual fund management fees and expenses charged and the corresponding allowable fees and expenses; and
2. the appropriate amount of restitution to be paid to the affected policyholders, which involves building a model to calculate the accumulated amount of past overcharges for each IMS segregated fund policy.

This document focuses on the model build workstream, i.e. it does not address the development of historical actual or allowable fund charges. This required first step, which is required input for the model, is being carried out by the company with the support of Deloitte and Cole and Partners. However, this document does address issues concerning the interpretation of the overcharges developed in the first step.

2. Definitions

This section defines terms that are used throughout the remainder of the document.

Actual Charge Rate – the rate that was actually charged to a segregated fund for investment management and other expenses

Allowable Charge Rate – the rate that can be charged against segregated fund assets, pursuant to the terms of the contract or as represented in the summary information folder

Data Cutoff Date – the date on which we take a snapshot of the transactions history used to calculate restitution. This date should be as close as possible to the Restitution Payment Date, but early enough to allow any necessary audits to be performed on the calculations.

Deposit – net new money coming into the policy

Dollar Excess Charge – the dollar amount of an excess charge, equal to the Excess Charge Rate multiplied by the prevailing account value

Excess Charge Rate – the excess, if any, of the Actual Charge Rate over the Allowable Charge Rate

Gross Restitution Amount – all Dollar Excess Charges for a given policy, accumulated to the Restitution Date

Guarantee Bucket – the collection of deposits/account values that fall under a given guarantee.

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Net Restitution Amount – the total amount owed to a given policyholder in respect of past excess charges, equal to the Gross Restitution Amount reduced for Top-up Amounts already paid

Reset Date – the date where the company resets the management fees on inforce contracts and the contracts stop incurring further excess charges

Restitution Payment Date – the date at which the restitution will be made in respect of past excess charges. The Restitution Payment Date used as a placeholder in the current calculations is July 31, 2007; the final Restitution Payment Date is likely to be in the summer of 2009.

Top-up Amount – the amount paid on death of the insured or maturity of the guarantee equal to the excess of the applicable guaranteed value (GMDB or GMMB) over the account value

Top-up Date – the date on which a policy/beneficiary was paid a Top-up Amount

Withdrawal Sources – the amounts that are deducted from selected funds in a withdrawal or transfer transaction

Withdrawal Uses – allocations of the Withdrawal Sources; can be other funds and/or a cash payout to the policyholder

3. Model environment and validation

The restitution model was developed using Corporate Actuarial's in-house Unix APL platform for segregated funds. For testing and validation purposes, the results from the APL platform were reproduced on a sample basis using Microsoft Excel models.

4. Model

4.1. Highlights

In simple conceptual terms, the restitution model calculates the Gross Restitution Amount (GRA) for a given segregated fund Guarantee Bucket as follows:

$$GRA_g = \sum_f \sum_t AV_{g,f,t} \times ECR_{f,t} \times AF_{f,t}$$

where

- g is the Guarantee Bucket index
- f is the fund index;
- t is the time index; the model uses a daily time step;
- $AV_{g,f,t}$ is the account value under guarantee g invested in fund f at time t ;
- $ECR_{f,t}$ is the Excess Charge Rate for fund f at time t , multiplied by the time elapsed since time $t-1$; and
- $AF_{f,t}$ is the accumulation factor for fund f from time t to the Restitution Payment Date

In words, the calculation of the GRA has 3 steps:

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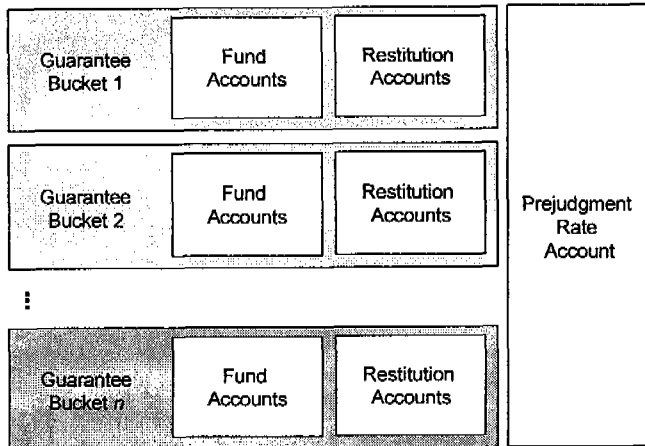
- 1) Recreate historical account values on each day for each fund held under each Guarantee Bucket in the contract using historical transactions data.
- 2) For each fund and day, multiply the end-of-previous-day Account Value by the Excess Charge Rate, and divide by 365. This determines the day's Dollar Excess Charge for that fund.
- 3) Accumulate the Dollar Excess Charge to the Restitution Payment Date. The rate used for the accumulation is
 - a. the return in the fund on which the Dollar Excess Charge occurred for as long as the money remains in the given fund;
 - b. the return on any subsequent funds to which monies are transferred ("follow the money")
 - c. the prejudgment interest rates for the time after funds are withdrawn from the contract

The excess charges may require a recalculation of the contract's guaranteed amounts, i.e. the GMDB and the GMMB. More on this in the section *Adjusting guarantees on account of Restitution*.

The GRAs are then reduced by any Top-up Amounts already paid to the policyholder or beneficiary, to arrive at Net Restitution Amounts (NRAs). The amounts would have already been paid at the policyholder's death, as part of Guaranteed Minimum Death Benefit (GMDB), or at a guarantee maturity date, in the form of a Guaranteed Minimum Maturity Benefit (GMMB) top-up. More on this in the section *Offset to Gross Restitution Amount*.

4.2. In greater detail

To better understand the model, consider the following structure:



The calculation of the gross and net restitution amounts is performed for each individual contract, and when there are multiple guarantees under a single contract, then also for each Guarantee Bucket. We need to track restitution amounts at the Guarantee Bucket level in order to properly process any offsets.

Some contracts feature deposit year and fund-based guarantees. For such contracts, deposits made over time to a given contract fall under the same Guarantee Bucket only if the deposits were made within the same calendar year and to the same fund. For such contracts, a deposit made to another fund in the same year, or to the same fund in a different calendar year, creates a separate Guarantee Bucket. For example, say three deposits are made to a contract on February 28th of three consecutive calendar years, and each of

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the deposits is allocated to funds A and B. In this case, every year's deposit would create two Guarantee Buckets (one for fund A and one for fund B), for a total of six separate Guarantee Buckets.

Other contract forms commingle more deposits into a single Guarantee Bucket. For example, RRIF contracts commingle all deposits made within a 10-year window after the first deposit.

For each Guarantee Bucket, we track:

1. Fund Accounts (FA): This grouping of funds recreates each policy's historical fund balances using the full history of transactions, as they occurred. These FAs serve to establish the asset base on which the company charged excess management fees and other expenses; and
2. Restitution Accounts (RA): These accounts shadow the FAs, i.e. there is one RA for each FA. In each period, if a given FA was charged excess fees or expenses, the dollar amount of such overcharge is credited to the corresponding RA. The balance in each RA accumulates at the corresponding FA's period-by-period return increased for the excess fees/expenses (i.e. at the rate of return that the corresponding FA would have earned had there been no excess fees or expenses charged to the FA).

Finally, we also need a Prejudgment Rate Account (PRA). This is just one account for the contract, irrespective of the number of Guarantee Buckets. When monies leave the policy (due to policyholder withdrawal), pro-rata amounts are transferred from the corresponding RAs to the PRA. Amounts in the PRA accumulate at "prejudgment interest rates". In accordance with the contracts, when there are multiple Guarantee Buckets, withdrawals from a given fund are processed on a first-in-first-out (FIFO) basis, such that withdrawals are first applied to the oldest Guarantee Bucket, then to the second oldest, and so on.

If there is a transfer of monies between funds in the FA then there is a matching transfer from the RA in amounts equal to the prorated amounts of the transfer in the FA. Such transfers between funds may cause a new Guarantee Bucket to be created, and in that case the transfer from the corresponding RA would also follow to the new Guarantee Bucket's RA.

The treatment of restitution amounts on withdrawals and transfers, where we cause the restitution accounts to mimic the movement of the underlying fund accounts, is what we call the "follow the money" approach. This approach was selected, rather than leaving the restitution amounts in the source accounts, for the following reasons:

- It eliminates "orphan" restitution accounts, such that when a fund account is completely withdrawn, we don't keep restitution amounts in the said account
- It is more effective at keeping the asset mix in line with the contract holder's actual asset allocation

With this framework, the restitution model does not in practice separately accumulate each day's Dollar Excess Charge to the Restitution Payment Date, as described in the previous subsection. Rather, it calculates the GRA using an equivalent roll-forward approach, at the Guarantee Bucket/Fund level. That is:

$$GRA_{g,f,t} = (GRA_{g,f,t-1} \times GF_{f,t}) + (AV_{g,f,t} \times ECR_{f,t}) + NT_{g,f,t}$$

where

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$GF_{f,t}$ is the daily growth factor for fund f at time t , equal to $AF_{f,t-1}/AF_{f,t}$;
 $NT_{g,f,t}$ is the net transfer of restitution funds into (out of) the Guarantee Bucket/Fund combination's RA at time t , associated with the transfers of funds between the underlying FAs; and
other quantities are as defined above.

In words, there are three steps to each day's processing:

1. Accumulate the previous day's accumulated gross restitution amount at the relevant rate; more on this in the section *More on rates used to accumulate Dollar Excess Charges*.
2. Add the current day's Dollar Excess Charge
3. Process movements of money between accounts

Examples are included in the Appendix.

5. More on Excess Charge Rates

We use the Excess Charge Rates provided by "Actuals_vs-Allowables_NN_Seg_UL_By_Product.xls". This Excel workbook was prepared by Cole & Partners for the company and shows Excess Charge Rates by product, fund and calendar year. We use the "Total Overcharge" shown in columns FQ through GF.

The collection of funds available under IMS segregated fund investment contracts has changed and expanded over the years. Early contracts only included a short list of 5-6 funds, while the latest issues include a list of 23 funds. However, as new funds were introduced on newer contracts, those new funds were also made available to older inforce contracts. Since the older contracts are silent on the maximum charge allowable on the funds that were introduced later, we use the maximum charge applicable when the fund was first introduced.

6. More on rates used to accumulate Dollar Excess Charges

The Dollar Excess Charges are accumulated to the Restitution Payment Date. The rate used to accumulate the daily excess charges can have a material impact on the total restitution amount.

In summary (more detail below), the objective is to make policyholders whole by accumulating the daily Dollar Excess Charges in a manner consistent with their historical investment decisions with respect to their segregated fund policy. We call this approach "follow the money", because we make the overcharges follow the underlying funds as they are transferred across funds or withdrawn from the contract:

- As long as money stays in a fund, we accumulate overcharges at the fund's historical returns, increased by the Excess Charge Rate.
- When money is transferred from one fund to another fund under the same contract, we assume that the accumulated overcharges follow to the new fund.
- When the transfer is partial, we transfer a pro-rata share of the accumulated overcharges to the new fund.
- When an amount is withdrawn from the contract, we assume a pro-rata share of the accumulated overcharges is also withdrawn, and starts accumulating at prejudgment interest rates up to the Restitution Payment Date.

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Prejudgment interest rates are established under the *Courts of Justice Act (Ontario)*. Since 1992, these have ranged from a high of 8.3% to a low of 2.3%, with the 1992-2007 average being 4.6%. Since 2001, the year in which most Excess Charge Rates are non-zero for the first time, they range from a high of 6% to a low of 2.3%, with an average of 3.6%.

When accumulating from the excess charge date to the Restitution Payment Date, we distinguish between up to three separate accumulation periods:

- 1) from the time the overcharge occurs to the time the policyholder either transfers the money out of the fund attracting the overcharge to another fund or withdraws it from the contract entirely;
- 2) from the time money is transferred out of the fund attracting the overcharge and into another segregated fund under the same contract to the time the money is withdrawn completely from the contract; and
- 3) from the time money is withdrawn from the contract to the Restitution Payment Date.

We now examine each of these periods and the appropriate accumulation rate for each one.

6.1. As long as money stays in the segregated fund which attracted the overcharge

The most reasonable rate to use to accumulate the overcharges during this period is the rate that would have been earned on the said segregated fund. To be more precise, it is the rate that would have been earned had there been no excess fund charges. Therefore, we increase the reported historical fund returns by the Excess Charge Rates.

The data we currently have at the segregated fund level to determine the historical fund returns are the funds' historical daily net asset values (NAVs). Ordinarily, one might think that the return on a given fund from time t_0 to time t_1 is simply given by $\frac{NAV_{t_1}}{NAV_{t_0}}$, and that therefore that's all the data we need. However,

IMS funds distribute income earned by the funds by distributing additional units in the fund rather than by increasing the NAVs. Therefore, the true returns on these funds are given by $\frac{NAV_{t_1} \times Units_{t_1}}{NAV_{t_0} \times Units_{t_0}}$ assuming no

deposits or withdrawals were made in the time interval t_0 to t_1 , and that the increase in the number of units is solely due to income distributions. The transaction history that we use to recreate the historical account values also includes income distribution/reinvestment activity. We therefore can and do calculate the correct fund returns (i.e. reflecting income reinvestment) for each contract using its own transaction history data.

6.2. After the money is transferred to another fund under the same contract

When money is transferred out of one fund into another fund under the same contract, we then start accumulating the overcharges at the new fund's return. If only a portion of the money in the source fund is transferred to a new fund, then a pro-rata share of the accumulated overcharges from the source fund are assumed to be transferred to the new fund. We call this approach "follow the money", because we make the overcharges follow the underlying funds as they are transferred from fund to fund.

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When multiple transactions take place on the *same day*, Withdrawal Sources and associated Overcharges are pooled, and reallocated pro-rata to Withdrawal Uses. If Withdrawal Uses include a cash payout, the corresponding overcharge amount will go to the Prejudgment Interest account. The rest of the overcharge will be allocated in proportion to the amounts received by other funds. Deposits are effectively allocated pro-rata to Withdrawal Uses. Note that, in our proposed model, you cannot have a cash payout and a Deposit on the same day.

6.3. After the money is partially or fully withdrawn from the contract

When funds are withdrawn from the contract, we assume that associated overcharges are also withdrawn, and therefore discontinue the use of fund-specific accumulation rates. This is consistent with the “follow the money” approach and the policyholder’s choice to discontinue his/her investment in the said fund/contract. In the case of a partial withdrawal, a pro-rata share of the accumulated overcharges is also withdrawn.

Overcharges that are assumed to be withdrawn continue to be accumulated, but now using a different rate. We use the prejudgment interest rates.

Prejudgment interest rates are established by the Deputy Attorney General for each calendar quarter. The restitution model uses a daily time step and uses daily compounding in accumulating restitution amounts. The daily rate used is the equivalent to the annual prejudgment interest rates, compounded semi-annually and adjusted quarterly. For example, if we need to accumulate an amount of overcharge that has been withdrawn from the contract on October 15, 2005, we will use the following set of interest rates to accumulate that amount to the Restitution Payment Date:

2.8% from 15-Oct-05 to 31-Dec-05 (the accumulation factor would be $(1+0.014)^{(2 \times 77/365)} = 1.005883$);

3.3% from 1-Jan-06 to 31-Mar-06 (accumulation factor = $1.0165^{(2 \times 90/365)} = 1.008103$);

3.8% from 1-Apr-06 to 30-Jun-06 (accumulation factor = $1.019^{(2 \times 91/365)} = 1.009429$);

4.5% from 1-Jul-06 to 30-Sep-07; etc.

7. Adjusting guarantees on account of restitution

There are a few situations which will prompt an adjustment to the segregated fund guaranteed benefits, i.e. the GMMB and GMDB.

1. If the total amount in a given Guarantee Bucket's Restitution Accounts is greater than the Top-up Amount paid on that guarantee on the Top-up Date, then the guarantees for that Guarantee Bucket need to be increased on that date by X% of the excess of the said total amount over the Top-up Amount paid, where X is the relevant GMDB or GMMB guarantee percentage.
2. If the policy guarantees were reset by the policyholder, then the guaranteed amounts should be recalculated as X% of the Guarantee Bucket's total account value including the amounts in the Restitution Accounts on the guarantee reset date.
3. Both top-ups and resets will cause ripple effects in the subsequent adjustments to guarantees due to withdrawals, transfers and further resets. As a result, the guarantees will be recalculated for all transactions subsequent to either a top-up or a reset.
4. The guarantees will also be adjusted in the event that there is an amount in the Prejudgment Rate Account that is allocated back to the Fund Accounts on the Restitution Payment Date. In that case,

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the guarantees will be increased by X% of the amount transferred back from the Prejudgment Rate Account to each Guarantee Bucket, without affecting each Guarantee Bucket's maturity date.

In no case will guarantees be reduced as a result of these adjustments.

8. Offset to the Gross Restitution Amount

The Gross Restitution Amount represents the amount due to policyholders in respect of past excess fund charges on the assumption that the policyholder was *not* made whole in some other way. The policyholder or beneficiary may have already received a payment from the company that effectively included this Gross Restitution Amount or some portion thereof. The Net Restitution Amount is the Gross Restitution Amount, decreased for the value of Top-up Amounts already received. However, the Net Restitution Amount cannot be less than zero.

Regardless of contract form, a Top-up Amount paid in respect of one Guarantee Bucket cannot be used to offset a restitution amount due in respect of another Guarantee Bucket, nor to reduce the amount in the PRA.

Case 1: Top-up Amount paid into fund and policy continued in force

If a Top-up Amount was paid into a policy's fund balance (i.e. the guarantee matured and rolled-over for a new 10-year term), the Top-up Amount will be included in the policy's historical transaction data. If such Top-up Amount was *less* than the Gross Restitution Amount for the relevant Guarantee Bucket calculated as at the Top-up Date, then the Net Restitution Amount at that time equals the Gross Restitution Amount minus the Top-up Amount. If instead such Top-up Amount was *greater* than the Gross Restitution Amount calculated as at the Top-up Date, then the Net Restitution Amount at that time is zero for the given Guarantee Bucket. In either case, the Net Restitution Amount would then resume accumulating if the Top-up Date was before the Reset Date.

Case 2: Top-up Amount paid on death or on surrender coinciding with maturity of GMMB

If a Top-up Amount was paid out in cash directly to the policyholder or beneficiary, because the top-up was paid either at death or at surrender coinciding with a GMMB maturity date, then the historical transaction file may not include the Top-Up Amount. However, we know that the policy terminated on that Top-up Date and there are no further transactions. Therefore we can simply accumulate the Top-up Amount to the Restitution Payment Date at the prejudgment interest rates (PJI), at which point it will offset the Gross Restitution Amount due, which is also accumulated at PJI from the date of death/surrender to the Restitution Payment Date. If the Top-up Amount accumulated to the Restitution Payment Date is larger than the Gross Restitution Amount at that same date, then the Net Restitution Amount is zero.

It is theoretically possible that a policy first qualifies for a top-up under Case 1 above, then later also qualifies for a top-up on death under Case 2.

Note that for Case 1 we can build the adjustment for the Top-up Amount directly into the daily restitution calculations because the Top-up Amount is necessarily included in the transaction history. For top-ups paid at death or surrender (Case 2), the transaction history may not include such top-up information (could

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vary on a case-by-case basis), so we will use a separate process that will take the Net Restitution Amount produced by the model and decrease it for any Top-Up Amount paid that was not captured by the transaction file used by the restitution model. An inventory of all Top-up Amounts paid will be maintained for this purpose.

9. Treatment after the Data Cutoff Date

The preceding sections were written as if we had all transaction data right up to the Restitution Payment Date. In reality, for practical reasons, we will have a Data Cutoff Date. The Data Cutoff Date is the date on which we take a snapshot of the transactions history used to calculate restitution. This date should be as little time as possible before the Restitution Payment Date, yet early enough to allow any necessary audits to be performed on the restitution calculations.

Two items are worth mentioning regarding this time period. First, we will need to continue tracking payments of Top-Up Amounts made in this period, and make adjustments to the restitution amounts for these top-ups. Second, since we no longer have transaction data to recalculate the funds' returns for this period, we will use the prejudgment interest rates to accumulate the restitution amounts to the Restitution Payment Date; this is also easier to audit.

10. Payment of Net Restitution Amounts

As with the calculation and accumulation of restitution amounts, the *payment* of restitution amounts is inspired by the follow-the-money principle.

For policies which terminated before the Restitution Payment Date, we will issue a cheque for the amount of the Net Restitution Amount.

For policies which are still inforce at the Restitution Payment Date, the Net Restitution Amount will be deposited into the contract's segregated funds with then current positive balances. This will be performed in two steps:

1. All amounts in Restitution Accounts will be transferred back into the associated Fund Accounts, at the Guarantee Bucket level.
2. The amount in the Prejudgment Rate Account will be allocated to the Fund Accounts in proportion to the amounts allocated back from the Restitution Accounts (step 1 above). Since there is only one PRA, this allocation will be performed across all Guarantee Buckets.

This two-step approach avoids splitting the Net Restitution Amount into a portion that is deposited back to the contract and another portion that is paid by cheque, thereby simplifying the communication to the policyholder concerning the restitution.

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Appendix 1: Examples

Example 1

Exhibit 1 illustrates the follow-the-money concept described in this document. In this case, the policyholder transfers money from funds A, B and C to funds D and E. There is no money leaving the contract and no new money deposited into the contract. In this example, we assume that all funds are in the same Guarantee Bucket, and remain so after the transactions.

Exhibit 1: Processing multiple same-day transactions

Fund Name	Before transactions		Same-day transactions			After transactions	
	Fund Balance	Accum. Restitution	Type	Amount	Reallocate Restitution	Fund Balance	Accum. Restitution
Fund A	1,000	20	WD	(500)	(10)	500	10
Fund B	500	-	WD	(500)	-	-	-
Fund C	500	5	WD	(200)	(2)	300	3
Fund D			DEP	400	4	400	4
Fund E			DEP	800	8	800	8
Total in contract	2,000	25		0	0	2,000	25
PRA		-			0		0
Total WD				1,200			
Total DEP				1,200			
Total GRA to reallocate					12		

Monies are withdrawn from funds A, B and C. Pro-rata shares of the accumulated restitution amounts are also withdrawn from the corresponding restitution accounts. For example, 50% of Fund A's account value was withdrawn, so 50% of the \$20 in the corresponding restitution account is also withdrawn. This \$10 is pooled with the \$2 restitution amount withdrawn from restitution account for fund C, for a total \$12. The \$12 is reallocated to the deposits in funds D and E.

Example 2

In this case, the policyholder transfers money from funds A, B and C to funds D and E, but withdraws a portion of the funds from the contract. All funds are and remain in the same Guarantee Bucket.

Exhibit 2: Multiple same-day transactions, with net withdrawal

Fund Name	Before transactions		Same-day transactions			After transactions	
	Fund Balance	Accum. Restitution	Type	Amount	Reallocate Restitution	Fund Balance	Accum. Restitution
Fund A	1,000	20	WD	(500)	(10)	500	10
Fund B	500	-	WD	(500)	-	-	-
Fund C	500	5	WD	(200)	(2)	300	3
Fund D			DEP	300	3	300	3
Fund E			DEP	600	6	600	6
Total in contract	2,000	25		(300)	(3)	1,700	22
PRA		-			3		3
Total WD				1,200			
Total DEP				900			
Total GRA to reallocate					12		

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A total of \$1,200 was withdrawn from the funds, of which \$900 was transferred to other funds in the contract and \$300 (or 25%) was taken as a cash withdrawal from the contract. A corresponding 25% of the accumulated restitution that follows-the-money ends up in the prejudgment interest (PJI) account.

Example 3

In this case, the transactions seem to show that the policyholder transfers money from A to C and B to D and deposits new money into fund E. All funds are and remain in the same Guarantee Bucket.

Exhibit 3: Multiple same-day transactions, with net deposit

Fund Name	Before transactions		Same-day transactions			After transactions	
	Fund Balance	Accum. Restitution	Type	Amount	Reallocate Restitution	Fund Balance	Accum. Restitution
Fund A	1,000	20	WD	(500)	(10)	500	10
Fund C			DEP	500	3	500	3
Fund B	500	5	WD	(500)	(5)	-	-
Fund D			DEP	500	3	500	3
Fund E			DEP	1,500	9	1,500	9
Total in contract	2,000	25		1,500	0	3,000	25
PJI account		-			0		0
Total WD				1,000			
Total DEP				2,500			
Total GRA to reallocate					15		

The point of this example is to highlight that we do not read policyholder intentions into a single day's transactions. As such the only conclusions we draw from the above set of transactions is that the policyholder added \$1,500 to the policy and the desired net movement of funds. Therefore, as in earlier examples, we pool the \$15 of restitution corresponding to the withdrawn funds and reallocate pro-rata to all deposits.

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Example 4

In this example, we illustrate the adjustment to the guarantee and the offset to the Gross Restitution Amount, for the case where the Top-up Amount paid is greater than the GRA. All funds are and remain in the same Guarantee Bucket.

Exhibit 4: Offset to GRA, Adjusted Top-up Amount is greater than GRA

		----- Transaction Data -----			----- Restitution Calculations -----			
		Fund Value	GMDB	Top-up Amount paid	GRA	Adjusted GMDB	Adjusted Top-up Amount	NRA
Time	Event							
[...]								
8		1,475.00	1,000.00		10.00	1,000.00		10.00
9	Reset	1,500.00	1,500.00		17.72	1,517.72		17.72
10		1,450.00	1,500.00		24.47	1,517.72		24.47
11		1,400.00	1,500.00		30.75	1,517.72		30.75
12	Death	1,450.00	1,500.00	50.00	39.25	1,517.72	67.72	17.72
13					41.21			18.61
14	Restitution Payment Date				43.27			19.54

In year 9, the policyholder reset the contract's guarantees to \$1,500, the fund value at that time. If there had been no overcharges, the fund value would have been \$17.72 higher, and hence the GMDB amount would have been higher by that amount after reset. Three years later, the policyholder died when the policy's fund value was \$1,450. In addition to receiving the fund value, the policyholder received a Top-up Amount of \$50, for a total death benefit of \$1,500 (i.e. the GMDB amount). In the absence of the overcharge, the policyholder would have received \$17.72 more. The policyholder is entitled to the greater of the Adjusted Top-up Amount (\$67.72) and the GRA at that time (\$39.25). The greater of the two amounts is the Adjusted Top-up Amount of \$67.72. Since the policyholder already received a Top-up Amount of \$50, a Net Restitution Amount of \$17.72 is due at that date.

Example 5

This example is the same as the previous one, with the exception that the Adjusted Top-up Amount is less than the GRA. All funds are and remain in the same Guarantee Bucket.

Exhibit 5: Offset to GRA, Adjusted Top-up Amount is less than GRA

		----- Transaction Data -----			----- Restitution Calculations -----			
		Fund Value	GMDB	Top-up Amount paid	GRA	Adjusted GMDB	Adjusted Top-up Amount	NRA
Time	Event							
[...]								
8		1,475.00	1,000.00		10.00	1,000.00		10.00
9	Reset	1,500.00	1,500.00		17.72	1,517.72		17.72
10		1,450.00	1,500.00		24.47	1,517.72		24.47
11		1,400.00	1,500.00		30.75	1,517.72		30.75
12	Death	1,480.00	1,500.00	20.00	40.06	1,517.72	37.72	20.06
13					42.06			21.06
14	Restitution Payment Date				44.16			22.11

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As in the previous example, the policyholder is entitled to the greater of the Adjusted Top-up Amount (\$37.72) and the GRA at that time (\$40.06). The greater of the two amounts is the GRA of \$40.06. Since the policyholder already received a Top-up Amount of \$20, a Net Restitution Amount of \$20.06 is due at that date.

Example 6

In this example, we illustrate the impact of a Top-up Amount paid on a GMMB where the contract continues in force. All funds are and remain in the same Guarantee Bucket.

Exhibit 6: Top-up Amount paid on GMMB maturity greater than GRA

		----- Transaction Data -----			----- Restitution Calculations -----				
Time	Event	Fund Value	GMMB/ GMMB	Top-up Amount paid	GRA	Adjusted GMMB	Fund value adjust	Adjusted Top-up Amount	NRA
[...]									
9		900.00	1,000.00		10.00	1,000.00	-		10.00
10	GMMB Maturity	950.00	1,000.00	50.00	15.36	1,000.00	-	50.00	-
11		995.00	1,000.00		21.31	1,000.00	-		4.98
12		950.00	1,000.00		25.03	1,000.00	-		9.52
13	Death	900.00	1,000.00	100.00	28.34	1,000.00	-	100.00	-.*
14					29.76				-
15	Restitution Payment Date				31.25				-

* was \$13.57 before being reduced to zero.

In year 10, the GMMB matured and a Top-Up Amount of \$50 was credited to the policy's fund value. Since this Top-Up Amount is greater than the GRA, the NRA is zero. Three years later, the policyholder died and received a Top-Up Amount of \$100. Again, since the Top-Up Amount is greater than the NRA, the NRA, which was \$13.57, is reduced to zero. If instead the fund value at death had been greater than 1,000, then the NRA would have been \$13.57.

Example 7

This is the same as example 1 except that we assume that the deposits to funds A and C were made in two separate years, such that the fund balances are split across Guarantee Buckets. The policyholder transfers money from funds A, B and C to funds D and E. There is no money leaving the contract and no new money deposited into the contract. Note that the allocation of the accumulated restitution is different after the fund transfers than in Example 1; this is due to the FIFO treatment applied to the withdrawals and transfers.

Exhibit 7 shows that monies are withdrawn from funds A, B and C, but in each case starting with the earliest Guarantee Buckets. Pro-rata shares of the accumulated restitution amounts are also withdrawn from the corresponding restitution accounts. For example, 17% of *Guarantee Bucket 3, Fund A's* account value was withdrawn, so 17% of the \$6 in the corresponding restitution account is also withdrawn. This \$6 is pooled with the other restitution amounts withdrawn, for a total of \$19. The \$19 is reallocated to the deposits in funds D and E, in Guarantee Buckets 6 and 7 respectively.

SCHEDULE 5

Exhibit 7: Multiple Guarantee Buckets

Gtee Bucket	Fund Name	Before transactions		Same-day transactions			After transactions	
		Fund Balance	Accum. Restitution	Type	Amount	Reallocate Restitution	Fund Balance	Accum. Restitution
1	Fund A	400	14	WD	(400)	(14)	-	-
2	Fund B	500	-	WD	(500)	-	-	-
3	Fund A	600	6	WD	(100)	(1)	500	5
4	Fund C	200	4	WD	(200)	(4)	-	-
5	Fund C	300	1	--	-	-	300	1
6	Fund D			DEP	400	6.33	400	6.33
7	Fund E			DEP	800	12.67	800	12.67
Total contract		2,000	25		0	0	2,000	25
PRA			-			0		0
Total WD					1,200			
Total DEP					1,200			
Total GRA to reallocate						19		

Example 8

This example uses the same starting position as example 7, but instead of transferring funds, the contract holder dies. See Exhibit 8. A new column was added to show the Guaranteed Value for each Guarantee Bucket. Two of the Guarantee Buckets were in-the-money, i.e. had a guaranteed death benefit which was greater than the fund balance. For these two Guarantee Buckets (1 and 2), Top-up Amounts of \$12 and \$10 were paid, for a total of \$22. The Gross Restitution Amount (GRA) on that date was \$25, spread across four Guarantee Buckets. We compare the GRA to the Top-up Amount paid for each Guarantee Bucket. If the GRA is greater than the Top-up Amount, then the excess is the Net Restitution Amount (NRA); otherwise NRA is nil. In total, while the total GRA was only \$3 greater than the Top-up paid, the NRA is still \$13.

Exhibit 8: Multiple Guarantee Buckets, on date of death

Gtee Bucket	Fund Name	Gtee Value	Fund Balance	Top-up paid on death	Gross Rest'n Amount	Net Rest'n Amount
1	Fund A	412	400	12	14	2
2	Fund B	510	500	10	-	-
3	Fund A	540	600	-	6	6
4	Fund C	190	200	-	4	4
5	Fund C	290	300	-	1	1
Total contract		1,942	2,000	22	25	13

SCHEDULE 6

Life Products Restitution Model

1. Introduction and scope

TLC management has determined that the company has charged fees and expenses on certain investment options available to certain Universal Life (UL) contracts that were greater than was permitted under the terms of the underlying segregated funds or represented in the related summary information folders. The company has therefore embarked on an effort to determine

1. the extent of fund overcharges, which involves investigating actual fund management fees and expenses charged and the corresponding allowable fees and expenses; and
2. the appropriate amount of restitution to be paid to the affected policyholders, which involves building a model to calculate, for each affected UL policy, the accumulated amount of past fund overcharges, consequent monthly cost of insurance (COI) overcharges, and consequent under-crediting of bonus interest amounts.

This document focuses on the model build workflow, i.e. it does not address the development of historical actual or allowable fund charges. This required first step, which is required input for the model, is being carried out by the company with the support of Deloitte and Cole and Partners.

2. Definitions

This section defines terms that are used throughout the remainder of the document.

Additional Bonus Entitlements – the portion of the Gross Restitution Amount representing credits of bonus interest on policyholder funds that were not originally credited as a result of past Excess Fund Charges, Excess COI Charges and earlier foregone bonus credits.

Bucket – a Construct which contains accounts which may attract Excess Fund Charges on underlying segregated funds.

Construct – a collection of account groupings, including Fund Accounts, Restitution Accounts, MD and Bonus Accounts and Prejudgment Rate Accounts (all of these are defined in sections 3 and 4).

Construct Group – a collection of one or more Constructs sharing a common tax treatment.

COI – the cost of insurance charge deducted from the policyholder account balance to pay for the insurance coverages included in the UL policy.

Deposit – net new money coming into the policy

Excess COI Charges – the portion of the Gross Restitution Amount representing excess COI charges levied against policyholder funds as a follow-on effect of the Excess Fund Charges.

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Excess Fund Charge Rate – the excess, if any, of the rate that was actually charged to a segregated fund for fund management and other expenses over the rate that can be charged against segregated fund assets, pursuant to the terms of the contract or as represented in the summary information folder

Excess Fund Charges – the portion of the Gross Restitution Amount arising out of the excess fund charge rates levied against the underlying segregated fund investment options.

Gross Restitution Amount – the sum of the Excess Fund Charges, the Excess COI Charges and the Additional Bonus Entitlements.

NAAR – the net amount at risk for the base insurance coverage, equal to the excess of the current death benefit (that would be payable on death of the insured) over the current policyholder account balance.

Net Restitution Amount – the total amount owed to a given policyholder in respect of past excess charges, equal to the Gross Restitution Amount reduced for any equivalent benefits already received on death or otherwise.

Restitution Payment Date – the date at which the restitution will be made in respect of all past excess charges, i.e. for excess fund charges, excess COI charges and enhanced bonus entitlements (see section 5).

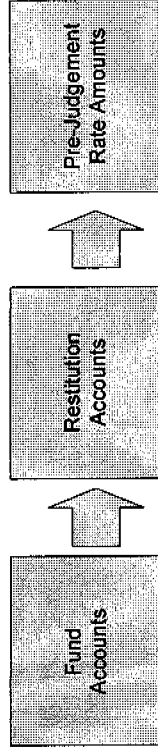
Withdrawal Sources – the amounts that are deducted from selected funds in a withdrawal or transfer transaction

Withdrawal Uses – allocations of the Withdrawal Sources; can be other funds and/or a cash payout to the policyholder

SCHEDULE 6

3. Background – Investment Products model

A workstream parallel to this one is developing a model to calculate restitution amounts for the Investment Products (IP) invested in the same underlying segregated funds as are at the source for restitution on these UL policies. The model for restitution on IP policies was the reference for the development of the UL restitution model, although they share no common programming code. The basic logic and methodology for the UL restitution model is identical to that of the Investment Products model. A brief description of the IP model follows.



One can view the IP model as having three account groupings.

1. Fund Accounts (FA): This grouping of funds recreates each policy's historical fund balances using the full history of transactions, as they occurred. These FAs serve to establish the asset base on which the company charged excess management fees and other expenses.
2. Restitution Accounts (RA): These accounts shadow the FAs, i.e. there is one RA for each FA. In each period, if a given FA was charged excess fees or expenses, the dollar amount of such overcharge is credited to the corresponding RA. The balance in each RA accumulates at the corresponding FA's period-by-period return increased for the excess fees/expenses (i.e. at the rate of return that the corresponding FA would have earned had there been no excess fees or expenses charged to the FA).
3. Prejudgment Rate Account (PRA): This is actually just one account. When monies leave the policy (due to policyholder withdrawal), corresponding amounts are transferred from the RAs to the PRA. Amounts in the PRA accumulate at "prejudgment interest rates", which are established by the Deputy Attorney General under the *Courts of Justice Act (Ontario)* for each calendar quarter. The restitution model uses a daily time step and uses daily compounding in accumulating restitution amounts. The daily rate used is the equivalent to the annual prejudgment interest rates, compounded semi-annually and adjusted quarterly.

If there is a transfer of monies between funds in the FA then there is a matching transfer in the RA in amounts equal to the prorated amounts of the transfer in the FA. This is the "pro-rata/follow the money" approach.

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4. Introduction to UL restitution model

The UL model presented here is intended to handle the NN UL plans, including the Challenger plan which represents the bulk of the policies and the most complex of designs. The Challenger plan combined a traditional UL plan with RRSP and non-RRSP Segregated Funds in an effort to offer a one-stop financial solution for its clients. The UL model needs to account for deposits, transfers, surrenders, deductions for cost of insurance charges and policy fees (aka monthly deductions), bonuses, and applicable premium taxes, which can all interact with multiple fund constructs.

Unlike the IP model where restitution amounts simply need to be tracked in order to credit the appropriate interest, UL restitution amounts impact other calculations within the UL policy. For example, a segregated fund overcharge can have an impact on the monthly deduction (MD) for COI and the bonus calculations.

The UL restitution model comprises of four (4) *Construct Groups*. The Construct Groups were created to improve the tax efficiency of restitution transfers. The Construct Groups are:

1. General Accounts (G): Subject to deferred taxation or tax free treatment (death claims), invested in the company's general account, whether in fixed/guaranteed interest options or in equity-linked pass-through options
2. Segregated Accounts (E): Subject to accrual taxation, invested in pass-through segregated fund investment options
3. Registered Accounts (R): Registered retirement savings plans, subject to deferred taxation, invested in either the company's interest accounts or in segregated funds
4. Shuttle Accounts (S): Subject to accrual taxation, these investments are not technically part of the UL contracts but are associated with and affect the UL contracts, in that amounts are transferred to/from the Shuttle Accounts from/to accounts in other Construct Groups according to available tax-exempt room within the UL contracts; invested in any of the company's general account or segregated fund investment options.

The UL restitution model comprises eight (8) *Constructs*. Each Construct is a collection of Accounts. Whereas the IP model comprises a single Construct of three account groupings, the UL model needs eight Constructs, each of which will have up to 5 possible account groupings (see diagram on page 6). The five (5) Constructs that have a potential Excess Fund Charge are referred to as *Buckets*. Each Bucket contains FAs and RAs consistent with the IP model. The eight Constructs differ in (1) the types of investments available, and (2) the tax treatment afforded to the investments within them. In the order shown on page 6, the eight Constructs are:

1. General Account Interest Accounts – tax-sheltered GICs and account backing policy loans
2. Bucket 1: General Interest Options (GIO) – these refer to the tax-sheltered general account investments
3. Bucket 2: Non-RRSP Variable Investment Options (VIO) – segregated funds
4. Bucket 3: RRSP VIO – segregated funds
5. RRSP Interest Accounts
6. Shuttle General Account Interest Accounts – non tax-sheltered interest accounts
7. Bucket 4: Shuttle General Interest Options (GIO) – non tax-sheltered general account investments
8. Bucket 5: Shuttle Non-RRSP Variable Investment Options (VIO) – external segregated funds

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The five possible account groupings within each Construct are:

1. Fund Accounts (FA): These are equivalent to the FAs used in the IP model, although the UL model includes more than just segregated funds in these accounts. There also are interest accounts, accounts linked to segregated funds, and policy loan security accounts. They all share the common trait that they serve only to recreate the policy's history of account balances as they were.
2. Restitution Accounts (RA): Also equivalent to the RAs used in the IP model, there is a RA corresponding to each FA susceptible of attracting an Excess Fund Charges. As such, there are only RAs in the five Bucket Constructs.
3. Prejudgment MD and Bonus Accounts (PMDBA): These accounts are used to accumulate Excess COI Charges and Additional Bonus Entitlements, both of which were ultimately caused by the Excess Fund Charges on the underlying segregated funds. Amounts in these accounts accumulate at prejudgment interest rates.
4. Internal Prejudgment Rate Accounts (IPRA): These are the RAs for Constructs that do not attract Excess Fund Charges themselves but may end-up having accumulated overcharges transferred to them on a transfer of funds from a FA in a Bucket to a FA in a non-Bucket Construct.
5. External Prejudgment Rate Accounts (EPRA): These are equivalent to the PRA in the IP model, except that there is an EPRA in each Construct Group rather than just one for the policy.

The first four account groupings are all *Internal* accounts, whereas the last grouping represents *External* accounts. Internal accounts represent investments that are to be included in the inner workings of the UL contract, i.e. in the calculations of COI charges and bonus entitlements. External accounts represent amounts that have left the UL policy coincident with a partial withdrawal of money from the UL policy or when a policy lapses.

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Construct Grouping	Account Type	Fund Accounts	Restitution Accounts	Prejudgment MD and Bonus Accounts	Internal Prejudgment Rate Accounts	External Prejudgment Rate Accounts
General Accounts (G)	Interest Accounts	Interest & Policy Loan Security Accounts		General Accounts PMDBA	General Accounts IPRA	General Accounts EPRA
	Bucket 1 GIO Accounts	GIO Fund Accounts	GIO Restitution Accounts	General Accounts PMDBA		General Accounts EPRA
	Bucket 2 VIO Accounts non-RRSP	VIO non-RRSP Fund Accounts	VIO non-RRSP Restitution Accounts	Segregated Accounts PMDBA		Segregated Accounts EPRA
Segregated Accounts (E)						
	Bucket 3 VIO Accounts RRSP	VIO RRSP Fund Accounts	VIO RRSP Restitution Accounts	Registered Accounts PMDBA		Registered Accounts EPRA
Registered Accounts (F)	Interest Accounts RRSP	Interest Accounts		Registered Accounts PMDBA	Registered Accounts IPRA	Registered Accounts EPRA
	Interest Accounts	Interest & Policy Loan Security Accounts				Shuttle Accounts EPRA
Shuttle Accounts (S)	Bucket 4 GIO Accounts	GIO Fund Accounts	GIO Restitution Accounts			Shuttle Accounts EPRA
	Bucket 5 VIO Accounts non-RRSP	VIO non-RRSP Fund Accounts	VIO non-RRSP Restitution Accounts			Shuttle Accounts EPRA

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The UL restitution model will be programmed in APL, building on existing code used for other modeling purposes. This will expedite the restitution timeline. The model will be able to generate output for all amounts that are calculated, split by Construct and by account within each Construct, and split by Excess Fund Charges, Excess COI Charges and Additional Bonus Entitlements.

5. UL restitution modeling methodology

The UL restitution model starts with the calculation of excess management fees and expense charges on underlying segregated funds. This part is the same as in the IP model. The UL model then requires additional calculations to handle UL-specific features. We have broken down the description of the model calculations into the following topics, each discussed in the following subsections.

1. Excess Fund Charges
2. Impact of withdrawals and fund transfers
3. Additional Bonus Entitlements
4. Excess COI Charges
5. Tax-exempt test processing
6. Offsets to Gross Restitution Amounts
7. Application of Net Restitution Amounts

5.1 Excess Fund Charges

At the base of the restitution model is the calculation of amounts representing excess fund management and expense charges levied against segregated funds in which policyholder monies are invested, or to which other investment options' returns are linked. The first step is therefore to reproduce the policy's historical *daily* balances in each of the FAs held by the policy. Having recreated the balances for each FA, each day's Dollar Excess Fund Charge is easily calculated as the product of the daily Excess Fund Charge Rate multiplied by the fund's account balance. These amounts are deposited in the corresponding RAs, and are accumulated at the rates of return earned on the associated FAs, increased by the Excess Fund Charge Rate, for as long as the monies remain in these RAs.

5.2 Impact of withdrawals and fund transfers

Over the life of the UL policy, the policyholder can make many deposits, fund transfers and withdrawals. Each of these transactions has an impact on balances in the FAs. When the policyholder withdraws money from one of the FAs, we assume a pro-rata share of the amount in the associated RA is also withdrawn and follows to the same destination as the funds leaving the FA. We call this the "follow-the-money" approach. The primary impact of using the follow-the-money approach is that the amount sitting in one RA that is transferred to another RA, IPRA or EPRA (due to transfer from corresponding FA) is that it may use a different rate to accumulate going forward after the transfer/withdrawal date up to the Restitution Payment Date.

The approach is essentially the same as used in the IP model, but is complicated here due to the existence of the eight Constructs and four Construct Groups. In summary, we use a three-step process:

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1. Follow the money and restitution amounts *within* each Construct and Construct Group on a pro-rata basis
2. Follow any net surrender and deposit amounts resulting from step 1 *across* all Construct Groups on a pro-rata basis
3. Deal with remaining net amounts:
 - Negative amounts are then treated as surrenders from the policy and associated restitution amounts held in Prejudgment Rate Accounts
 - Positive amounts are then considered new deposits.

The methodology presented in more detail below treats daily transactions in an objective manner. We interpret each daily set of policyholder-instigated fund transactions (deposits, withdrawals, transfers) as having the simple objective of moving money around between funds or into/out of the policy. We do not focus on the series of transactions used by the policy administrator to effect the fund movements/allocations; rather we focus on the resulting movement of funds. Therefore, when multiple transactions take place on the *same day*, Withdrawal Sources and pro-rata amounts in associated RAs and IPRA's are pooled, and reallocated pro-rata to Withdrawal Uses, first within the same Construct, then the same Construct Group, and finally across Construct Groups. If Withdrawal Uses include a cash payout, the corresponding pro-rata amounts in associated RAs and IPRA's will go to the Construct's EPRA. The rest of the overcharge will be allocated in proportion to the amounts received by other FAs. Deposits are also allocated pro-rata to Withdrawal Uses. Note that, in our model, you cannot have a cash payout and a Deposit on the same day.

Example – Net transactions on a single day:

Fund	Construct Group	Starting State		Transaction Data	
		Fund Balance	Restitution Balance	Trxn Type	Trxn Amt
Interest A	General Accounts	500	20	Surr	-250
Interest B	General Accounts	500	5	Surr	-100
GIO A	General Accounts	500	30	Surr	-150
GIO B	General Accounts	0	0	Dep	100
GIO C	General Accounts	0	0	Dep	100
Interest C	Shuttle Accounts	100	10		
VIO A	Shuttle Accounts	0	0	Dep	50
VIO B	Shuttle Accounts	0	0	Dep	150
Totals		1600	65		-100

Step 1 – Within Construct Groups

The key steps to the net methodology that are performed on each historical business day are:

- 1.1 For all funds within a Construct Group, the model totals/pools all withdrawals and their associated pro-rata RAs or IPRA.
- 1.2 For each individual fund deposit, calculate the associated pro-rata amounts of RAs or IPRA against the balance in step 1.
- 1.3 Remaining net surrender balances are used in step 2 where the amount will be compared to any net amount generated by transactions from other Construct Groups.

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- ◆ Negative surrender balances may have associated restitution amounts. These surrenders may be transfers to other Construct Groups or surrenders from the policy.
- ◆ Positive surrender balances represent excess deposits that may be filled in from excess surrenders (possibly with associated restitution amounts) from other Construct Groups or may be considered Deposits.

Step 1 example – General Accounts:

Fund	Starting State		Transaction Data		Allocate RA to Deposits	
	Fund Balance	Restitution Balance	Trxn Type	Trxn Amt	Restitution Amount	Trxn Type
Interest A	500	20	Surr	-250	-10	
Interest B	500	5	Surr	-100	-1	
GIO A	500	30	Surr	-150	-9	
GIO B	0	0				Dep 100
GIO C	0	0				Dep 100
Totals	1500	55		-500	-20	200 8

$$= [100 / 500] \times 20$$

Surrender Balance	-500	-20	-300	-12
Restitution Balance				

Step 1 example – Shuttle Accounts:

Fund	Starting State		Transaction Data		Allocate RA to Deposits	
	Fund Balance	Restitution Balance	Trxn Type	Trxn Amt	Restitution Amount	Trxn Type
Interest C	100	10				
VIO A	0	0	Dep	50	0	0
VIO B	0	0	Dep	150	0	0
Totals	0	0		200	0	0

Surrender Balance	0	0	0
Restitution Balance			

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Step 2 – Across Construct Groups

On each historical business day the net methodology involves:

- 2.1. Construct Group Level Allocation:
 - o Calculate pro-rata restitution amount transfers from Construct Groups with negative balances to Construct Groups with positive balances.
- 2.2. Construct Level Allocation:
 - o Allocate transferred restitution amounts to each construct within Construct Groups with positive balances on a pro-rata basis.
- 2.3. Fund Level Allocation:
 - o Allocate transferred restitution amounts to individual funds within Constructs with positive balances on a pro-rata basis.
 - o Any deposit transactions in the non-Bucket interest accounts that attract a transfer of restitution amounts from one of the five Buckets will result in these restitution amounts to be held in the IPRA. These accounts will affect the MD and Bonus calculations. Transfers from the non-Bucket interest accounts to one of the five Buckets will cause a pro-rata amount in the IPRA to be transferred into the RAs of the target Bucket.
- 2.4. Deal with remaining balances:
 - o Any remaining negative balances are considered policy surrenders with the associated pro-rata amounts in the RAs or IPRA are transferred to the EPRA of the source Construct.
 - o Any remaining positive balances are simply considered Deposits.

Step 2 – Example:

Step 2.1 – Construct Group Level Allocations

Fund	Prior to Netting (End of Step 1)			
	General Accounts		Shuttle Accounts	
	Net Trxn Amount	Restitution Transfer	Net Trxn Amount	Restitution Transfer
Step 1 Ending Balances	-300	-12	200	?

	Post Netting			
	General Accounts		Shuttle Accounts	
	Amount	Restitution Balance	Amount	Restitution Balance
Matched Transactions	-200	-8	200	8
Unmatched Transactions	-100	-4		
	-300	-12	200	8

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Step 2.2 – Construct Level Allocations

	Shuttle Accounts		
	Unmatched Trxn Amount	Unmatched Restitution Transfer	Matched Restitution Transfer
Interest accounts	0	?	0
Bucket 4 - GIO	0	?	0
Bucket 5 - VIO	200	?	8
Totals	200	?	8

Step 2.3 – Fund Level Allocations

	Shuttle Accounts, Bucket 5 - VIO		
	Trxn Amount	Unmatched Restitution Transfer	Restitution Transfer
VIO A	50	?	2
VIO B	150	?	6
Totals	200	?	8

Step 2.4 - Excess Amounts Deposited into the General Accounts Construct Group's EPRA

	General Accounts	
	Amount	Restitution Balance
Unmatched Transactions	-100	-4
EPRA		4

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Summary after all steps:

Fund	Construct Group	End State	
		Fund Balance	Restitution Balance
Interest A	General Accounts	250	10
Interest B	General Accounts	400	4
GIO A	General Accounts	350	21
GIO B	General Accounts	100	4
GIO C	General Accounts	100	4
Interest C	Shuttle Accounts	100	10
VIO A	Shuttle Accounts	50	2
VIO B	Shuttle Accounts	150	6
EPRA	General Accounts		4
Totals		1500	65

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Additional Example

Step 1 – Within Constructs

Segregated Accounts Bucket 2 – VIO	Starting State		Transaction Data			Allocate RA to Deposits			End of Step Balance		
	Fund Balance	Restitution Balance	Trxn Type	Trxn Amt	Restitution Amount	Trxn Amt	Pro-Rata Surrender Allocation	Pro-Rata Restitution Amount	Fund Balance	Restitution Balance	Unmatched Amount
VIO A	500	20	Surr	-100	-4				400	16.0	
VIO B	500	5	Surr	-200	-2				300	3.0	
VIO C	500	30	Dep			200	120	2.4	700	32.4	80
VIO D	0	0	Dep			200	120	2.4	200	2.4	80
VIO E	0	0	Dep			100	60	1.2	100	1.2	40
Totals	1500	55		-300	-6	500	300	6	1700	55	200

Unmatched Deposit (Surrender) Balance		-300						200		200	
Restitution Balance				-6				0		0	

General Accounts Bucket 1 – GIO	Starting State		Transaction Data			Allocate RA to Deposits			End of Step Balance		
	Fund Balance	Restitution Balance	Trxn Type	Trxn Amt	Restitution Amount	Trxn Amt	Pro-Rata Allocation Surrenders	Pro-Rata Restitution Amount	Fund Balance	Restitution Balance	Unmatched Amount
GIO A	500	60	Surr	-400	-48				100	12.0	
GIO B	0	0	Dep			200	200	24	200	24.0	
Totals	500	60		-400	-48	200	200	24	200	24.0	0

Unmatched Deposit (Surrender) Balance				-400				-200		-200	
Restitution Balance				-48				-24		-24	

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Step 2 – Across Construct Groups

Fund	Prior to Netting (End of Step 1)		Post Netting (End of Step 2)	
	General Accounts	Segregated Accounts	General Accounts	Segregated Accounts
	Unmatched Trxn Amount	Restitution Transfer	Unmatched Trxn Amount	Restitution Balance
Step 1 Ending Balances	-200	-24	200	?
Remaining Deposit (Surrender)	-200	-24	200	?
Totals	-200	-24	200	24

Allocation of Restitution Amounts to Constructs

	Segregated Accounts	
	Unmatched Trxn Amount	Matched Restitution Transfer
Bucket 2 - VIO	200	24
Totals	200	24

Allocation of Restitution Amounts to Deposits

	Segregated Accounts, Bucket 2 - VIO		
	Unmatched Trxn Amount	Matched Restitution Transfer	Final Restitution Balance
VIO A			16.0
VIO B			3.0
VIO C	80	9.6	42.0
VIO D	80	9.6	12.0
VIO E	40	4.8	6.0
Totals	200	24	79

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5.3 Additional Bonus Entitlements

Various iterations of the UL products include a client investment bonus. This bonus is typically calculated annually beginning at a particular policy anniversary and is a percentage credited to the funds in the policy. In some instances the client must qualify for the bonus based on a pre-determined amount of premium or a target level of fund value. The bonus percentage can also be tiered and vary with the rate of return of the funds within the policy.

The following describes the various ways restitution amounts increase the funds inside a policy thereby affecting the bonus, and the modelling methodology that will be applied.

- a) Restitution amounts increase the fund value which increase the bonusable amount (i.e. the amount that is multiplied by the bonus percentage). Since our data extract will include the actual amount of bonus credited and the fund value, the model will be able to calculate the bonus rate by dividing the first number by the second number. The model will then calculate the bonus refund by multiplying the bonus rate by the restitution amounts in the RAs, PMDBAs and IPRAs.
- b) Restitution amounts (RAs, PMDBAs and IPRAs) increase the fund value which may now allow the policy to qualify for the bonus under the fund value criteria. The model will be able to calculate whether the fund value adjusted for restitution amounts qualifies the policy for the bonus and, if so, a bonus restitution amount will be calculated.
- c) Restitution of Excess Fund Charges may increase the year's rate of return on policyholder funds over the threshold to qualify for a higher bonus rate. The model will recalculate the policy's rate of return accounting for the restitution accounts and the proper bonus rate will be applied accordingly.

Additional Bonus Entitlements can originate in all eight Constructs – in Buckets and non-Buckets alike – because prior excess charge amounts in Buckets can be transferred to non-Buckets when funds are transferred across underlying FAs. Additional Bonus Entitlements are credited to and accumulate in each Construct's PMDBA. All amounts in these accounts will remain in the Construct where they are generated. We do not apply the “follow the money” approach to Additional Bonus Entitlements because most versions of the policy allocate the bonus based on the then current deposit allocation and our systems do not have historical records of deposit allocation instructions. It's worth noting that TLC estimates Additional Bonus Entitlements to represent only about 5% of the total Gross Restitution Amount.

SCHEDULE 6

5.4 Excess COI Charges

This applies only to policies that feature the level death benefit option. The NAAR on UL policies with the increasing death benefit option are not affected by these restitution amounts and therefore accrue no Excess COI Charges.

The COI is calculated by multiplying the contractually guaranteed COI Rate by the Net Amount at Risk (NAAR). In a UL policy with a level death benefit option, the NAAR decreases as the fund value increases. Restitution amounts increase the fund value thereby reducing the NAAR and reducing the COI that ought to be charged. Therefore, restitution of Excess Fund Charges causes an overcharge of COI which requires a refund of Excess COI Charges. Similarly, past Excess COI Charges and past Additional Bonus Entitlements also increase the current account balances and decrease the NAAR. The total accumulated amounts in RAs, PMDBAs and IPRAAs act to reduce the NAAR and therefore enter into the calculation of the current period's Excess COI Charge.

Since our data extract will include the actual amount of COI charged and the NAAR, the model will be able to calculate the COI rate by dividing the first number by the second number. The model will then calculate the refund of COI by multiplying the COI rate by accrued balances in the RAs, PMDBAs and IPRAAs. The workings of the policy are such that COI charges may be deducted from one or many funds in the policy.

The Excess COI Charges will be credited into each Construct's PMDBA in proportion to the amounts that generated the refund. As in the case of Additional Bonus Entitlements, Excess COI Charges can be generated within the five Buckets and the non-Bucket interest account Constructs. Refund of Excess COI charges will be credited to and accumulate in each Construct's PMDBA. All amounts in these accounts will remain in the Construct where they were generated.

Any refund of COI generated by the VIO FAs will be further increased to refund any excess premium tax charged on the COI overcharge.

Estimate

On an individual policy basis, the refund of COI would be a percentage of the restitution amount and would vary by age, sex and smoking status. Here are some approximate examples of the percentages:

COI rates as % of NAAR (current product)		
Age	Male	
	Non-Smoker	Smoker
30	0.15%	0.20%
50	0.30%	0.70%
70	2.00%	4.75%

As a rough estimate, the total refund for Excess COI Charges would represent 0.06% of the Gross Restitution Amount, based on:

- o data showing about 20% of the affected block has the level death benefit option; and
- o assuming a COI rate of \$3/1000 based on an average age of 50.

SCHEDULE 6

5.5 Tax-exempt test processing

As per the Income Tax Act, each UL policy undergoes a legally required tax exemption test on each policy anniversary to ensure the policy's General Accounts cash surrender value falls within prescribed limits in order to maintain the policy's tax exempt status. If a policy fails the test, corrective actions are taken. Possible corrective actions are: (1) increasing the face amount up to 8% of the death benefit and/or (2) transferring funds from the General Accounts to the Shuttle Accounts. The Shuttle Accounts are taxable and may include Interest Accounts, GIO Fund Accounts and/or VIO Fund Accounts. For some contract forms, the funds in the Shuttle Accounts are automatically "shuttled" back into the General Accounts when tax-sheltered room becomes available.

Restitution amounts can increase the GIO fund value and cash surrender value and, as such, can have an impact on the past tax status of the policy. The tax exempt test is very complex and re-testing previous anniversaries would be very cumbersome. However the tax exempt test is a self correcting mechanism since each policy will need to pass the test at its next anniversary. As such, each policy that is credited a restitution amount will go through the tax exempt test at the next anniversary and if any fail the test the appropriate adjustments will be made to maintain the policy's tax exempt status.

The tax exempt test process at the next policy anniversary will realign the *policy accumulating fund* (a term in the Income Tax Act referring to cash surrender value) with the exempt test policy accumulating fund. The restitution amount is considered to be a one-time adjustment to the accumulating fund, which will be credited to the policy on the Restitution Payment Date.

5.6 Offsets to Gross Restitution Amounts

As in the case of IP policies, there may be offsets against the Gross Restitution Amount. However, since there are no guaranteed minimum maturity benefits on the UL segregated fund investment options, there cannot be any offset due to top-up on maturity. There can still be an offset due to top-up on death. There can also be an offset when a death benefit was paid on a level death benefit policy, irrespective of whether there was a top-up on the underlying segregated fund. A Net Restitution Amount will be calculated as the Gross Restitution Amount, reduced for equivalent payments received by the policyholder.

SCHEDULE 6

Appendix 1: Summary of possible fund movements for each account type

This section summarizes the possible transfers among the different account groupings. This may help to solidify understanding of the model.

Restitution Accounts (RAs)

- Can have money enter via a restitution payment from attracting amounts in the analogous Fund Accounts or from investment income on the restitution amount in the Restitution Account or by following the money on a net deposit from another Restitution Account in another Construct.
- Restitution Accounts can have money leave and go to another Restitution Account via a follow-the-money on matched net surrenders or it can have money leave to go into an EPRA via follow-the-money on an unmatched net surrender from the policy.

Internal Prejudgment MD and Bonus Accounts (PMDBAs)

- Excess COI Charges and Additional Bonus Entitlements calculated on a policy level will be prorated to each Construct based on the balance in each Construct's RAs, PMDBA and IPRA.
- Amounts in the PMDBAs can only have money leave if the entire policy collapses at which point the amounts will be put into an EPRA.

External Prejudgment Rate Accounts (EPRA)

- EPRAs can only have money enter when there is an unmatched net surrender from a Construct.
- Money does not technically ever leave an EPRA but in the case of the collapse of the policy, the sum of the amounts in these buckets can be treated as a single amount and will continue to be accumulated at the prejudgment interest rates.

Internal Prejudgment Rate Accounts (IPRA)

- IPRA in the Interest Account Construct can have money enter via follow-the-money on a net deposit from another RA in another Construct.
- IPRA in the Interest Account can have money leave and go to another RA via a follow-the-money on matched net surrenders or it can have money leave to go into an EPRA via follow-the-money on an unmatched net surrender from the policy.

SCHEDULE 7 - Current Management Fee Adjustment

Joseph Fantl vs. Transamerica Life Canada

List of Affected Policies with "Current Fees" Language

Product	Rate Scale	Start	End
Challenger	A.2	Apr-93	Sep-93
Challenger	A.2	Sep-93	Nov-93
Challenger	3	Nov-93	Jan-95
Challenger	3	Jan-95	May-95
Challenger	5	May-95	Jan-96
Challenger	6	Jul-96	Dec-96
Challenger	6	Dec-96	Feb-97
Challenger	7	Feb-97	Jul-97
Challenger	8	Jul-99	Dec-99
Challenger	9	Dec-99	Sep-00
Discovery 2000		Dec-92	Apr-93
Discovery 2000		Apr-93	Sep-93
Discovery 2000		Sep-93	Feb-95
Discovery 2000		Feb-95	May-95
Discovery 2000		May-95	
Achiever		Feb-89	Jun-90
Achiever Plus		Oct-90	Jun-91
Achiever Plus		Jun-91	Nov-91
Achiever Plus		Dec-92	Apr-93
Achiever Plus		Apr-93	Sep-93
Achiever Plus		Sep-93	Feb-95
Achiever Plus		Feb-95	Aug-95
Achiever		Aug-95	Jan-96
Achiever		Jan-96	Jul-96
Achiever		Jul-96	Dec-96
Achiever		Dec-96	Jul-97
Achiever		Jul-97	Mar-98
IMS II		Sep-92	Sep-93
IMS II		Sep-93	May-94
IMS II		May-94	Nov-94
IMS III		Nov-94	Feb-95
IMS III		Feb-95	Sep-95
IMS III		Sep-95	Jun-96
IMS III		Jun-96	Nov-96
IMS III		Nov-96	Oct-97
NN AAP		Sep-93	
NN RRIF		Oct-95	Dec-95
NN RRIF		Dec-95	Nov-96
NN RRIF		Nov-96	Oct-97
Omnilife		Mar-91	Nov-91
Omnilife		Nov-91	Dec-92
Omnilife		Dec-92	