

Subject - Disability Benefits

**ARBITRATION AWARD**

BETWEEN:

NEWFOUNDLAND AND LABRADOR ASSOCIATION  
OF PUBLIC AND PRIVATE EMPLOYEES  
(hereinafter called the "Union")

AND:

BROWNING HARVEY LIMITED  
(hereinafter called the "Employer" or the "Company")

GRIEVANCE:                      Group Grievance - Long Term Disability

COUNSEL:                      For the Union

Hubert Sutton

For the Employer

Harold M. Smith, Q.C.

ARBITRATOR:                      James C. Oakley

The Arbitration hearing was held at St. John's on February 27, 2007. The parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Arbitrator would remain seized of the matter for thirty (30) days following publication of the Award in the event there was a question of interpretation or compensation arising from the Award.
5. Witnesses were excluded from the hearing.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Newfoundland and Labrador Association of Public and Private Employees, Locals 7003 and 3001 and Browning Harvey Limited, effective May 28, 2003 to May 27, 2006
- Consent 2 - Collective Agreement between Newfoundland and Labrador Association of Public and Private Employees, Locals 7003 and 3001 and Browning Harvey Limited, effective May 28, 2006 to May 27, 2011
- Consent 3 - Grievance Form dated September 8, 2006
- Consent 4 - Letter dated September 8, 2006 from Chris Henley, Employee Relations Officer for the Union to Fabian Connors, Human Resources Manager for the Employer
- Consent 5 - Sun Life Financial Group Benefits booklet - Browning Harvey Limited, Hourly-rated employees plan, effective September 1, 2002
- WM - 1 Union proposals dated March 29, 2003
- WM - 2 Union proposal # 1 dated May 16, 2006
- WM - 3 Union proposal # 2 dated May 26, 2006
- WM - 4 Union proposal # 3 dated May 26, 2006
- WM - 5 Union proposal # 4 dated May 27, 2006

- WM - 6 Union proposal # 5 dated May 28, 2006
- WM - 7 Union proposal # 6 dated May 28, 2006
- WM - 8 Union proposal # 7 dated June 2, 2006
- WM - 9 Union proposal # 8 dated June 4, 2006
- WM - 10 Union proposal # 9 dated June 16, 2006
- WM - 11 Union proposal # 10 dated June 30, 2006
- WM - 12 Union proposal # 11 dated July 1, 2006
- WM - 13 Union proposal # 12 dated July 11, 2006
- WM - 14 Union proposal # 13 dated July 12, 2006
- WM - 15 Union proposal # 14 dated July 13, 2006
- WM - 16 Union proposal # 15 dated July 13, 2006
- WM - 17 Union proposal #16 dated July 13, 2006
- WM - 18 Union proposal # 17 dated July 13, 2006
- WM - 19 Union proposal # 18 dated July 13, 2006
- WM - 20 Union proposal # 19 dated July 13, 2006
- WM - 21 Union proposal # 20 dated July 13, 2006
- WM - 22 Union proposal # 21 dated July 14, 2006
- WM - 23 Union proposal # 22 dated July 14, 2006
- CH - 1 Letter dated July 27, 2006 from Fabian Connors of the Employer to Chris Henley of the Union
- FC - 1 Company proposals - 2006 Collective Agreement dated from March 31, 2006 to July 14, 2006
- FC - 2 Draft Collective Agreement effective May 28, 2006 to May 27, 2011

FC - 3 Letter dated July 5, 2006 from Michael Naugler, Regional Manager, Sun Life Assurance Company of Canada to Bill Jenkins, Jenkins Anthony Inc. re long term disability

### **Nature of the Grievance**

The dispute concerns the obligation of the Employer to establish the Long Term Disability (“LTD”) plan set out in Appendix “C” of the Collective Agreement. During collective bargaining in 2006, the parties negotiated an increase in the maximum monthly amount of long term disability benefits. The Union submitted that the increased maximum amount of long term disability benefit applied to current LTD recipients who were already receiving the maximum at the time of bargaining. Those LTD recipients expected to receive an increase in their monthly payments, according to the Union. The Employer submitted that the revised maximum benefit applied to new claims submitted after the LTD plan was amended and did not apply to current LTD recipients at the time of bargaining.

### **Collective Agreement**

The relevant articles of the current Collective Agreement, effective May 28, 2006 to May 27, 2011, are as follows:

#### Article 19 - Employee Benefits and Pension Plan

19:01 The Company shall establish the Plans set out in Appendix “C” to the Browning Harvey Pension Plan on behalf of employees, members of NAPE Locals 7003, St. John’s and Local 3001, Grand Falls/Corner Brook, which shall form part of this Agreement and shall not be changed without the agreement of the Union. The Company is responsible for the application and administration of such Plans with the exception of (i) below.

The premiums for the Plans referred to in this Agreement shall be paid as specified in Appendix “C”. The Plans themselves shall be as follows:

- ...
- (d) Long Term Disability

Appendix “C”

Summary of Employee Benefits and Pension Plan in accordance with this Collective Agreement.

Eligibility

All regular full-time hourly employees are eligible for the following benefits, immediately upon attainment of seniority status as outlined in the Collective Agreement.

Cost Sharing Agreement

In accordance with the Collective Agreement, the following is the cost sharing arrangement between the employee and the Company:

Benefit	Employee Pays	Company Pays
...		
Long Term Disability	Nil	100%

Benefits Provided

Long Term Disability Insurance

Seventy percent (70%) of your monthly earnings is payable upon total disability (as defined in the master policy) from the 15<sup>th</sup> week of disability through to recovery, death or age 65, whichever occurs first, to a maximum of:

- |                       |                          |
|-----------------------|--------------------------|
|                       | Year 1 - Date of Signing |
|                       | \$2,600.00 per month     |
| Year 2 - May 28, 2007 | \$2,600.00 per month     |
| Year 3 - May 28, 2008 | \$2,600.00 per month     |
| Year 4 - May 28, 2009 | \$2,700.00 per month     |
| Year 5 - May 28, 2010 | \$2,800.00 per month     |

NOTE: It should be noted that this Appendix is intended solely as a confirmation of the benefit to be offered and agreed upon by the Union and the Company. To review specific contractual limitations

or exclusions of a particular benefit, reference must be made to the governing Master Policy, currently underwritten by SunLife Assurance Company, under Group Insurance Plan Master Policy No. 56934, Browning Harvey Limited Pension Plan Master Policy No. GH590 and Confederation Life Insurance Company Group Pension Plan Contract Master Policy Plan No. GP 75751.

The relevant articles of the prior Collective Agreement, effective May 28, 2003 to May 27, 2006, are as follows:

#### Appendix “C”

Summary of Employee Benefits and Pension Plan in accordance with this Collective Agreement.

#### Eligibility

All regular full-time hourly employees are eligible for the following benefits, immediately upon attainment of seniority status as outlined in the Collective Agreement.

#### Cost Sharing Agreement

In accordance with the Collective Agreement, the following is the cost sharing arrangement between the employee and the Company:

Benefit	Employee Pays	Company Pays
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Long Term Disability	Nil	100%
...		
Benefits Provided		
...		

### Long Term Disability Insurance

Seventy percent (70%) of your monthly earnings is payable upon total disability (as defined in the master policy) from the 15<sup>th</sup> week of disability through to recovery, death or age 65, whichever occurs first, to a maximum of \$2,000 per month.

...

NOTE: It should be noted that this Appendix is intended solely as a confirmation of the benefit to be offered and agreed upon by the Union and the Company. To review specific contractual limitations or exclusions of a particular benefit, reference must be made to the governing Master Policy, currently underwritten by SunLife Assurance Company, under Group Insurance Plan Master Policy No. 56934, Browning Harvey Limited Pension Plan Master Policy No. GH590 and Confederation Life Insurance Company Group Pension Plan Contract Master Policy Plan No. GP 75751.

### **Evidence**

The witnesses called by the Union were James Kavanagh, Local Union President, Randy Squires, Local Union Vice President, Wayne March, member of the Union negotiating committee, Chris Henley, Employee Relations Officer, Wilson Stuckless, former Local Union President, Sean Penney, member of the Union negotiating committee, and Richard Kieley, alternate member of the Union negotiating committee. The witness called by the Employer was Fabian Connors, Manager of Human Resources.

The Arbitrator received evidence of the negotiating history of the Collective Agreement including evidence of the proposals exchanged between the parties during collective bargaining. The evidence was received on the basis that the extent to which such evidence would be regarded as an aid to the interpretation of the Collective Agreement was an issue to be considered by the Arbitrator in the Award.

Article 19.01 of the Collective Agreement in effect from May 28, 2003 to May 27, 2006 (the “prior Collective Agreement”) stated that the Company would establish the employee benefit plans as set out in Appendix “C”. One of the benefit plans listed in Appendix “C” was long term disability. The Company pays 100% of the premiums for the LTD plan, which has the effect that benefits are taxable when paid to employees. The prior Collective Agreement stated that long term disability benefits were 70% of monthly earnings and were payable upon total disability to a maximum of \$2,000 per month.

At the time of the negotiations for a new Collective Agreement in 2006, there were five employees in receipt of long term disability benefits. There were one or two employees receiving LTD benefits from Great West Life. There were three or four employees receiving LTD benefits from SunLife Assurance Company (“SunLife”). Great West Life was the insurance carrier until May, 2000, at which time the insurance carrier was changed to SunLife. At the time of the negotiations there were 3 employees in receipt of the maximum amount of LTD benefits of \$2,000 per month.

The prior Collective Agreement contained a Note in Appendix “C” stating that reference must be made to the governing master policy underwritten by SunLife, Master Policy No. 56934. The SunLife benefits booklet for the Browning Harvey hourly-rated employees plan, dated September 1, 2002, stated the following with respect to long term disability:

## Long-Term Disability

### General description of the coverage

Long-Term Disability coverage provides a benefit to you if you are totally disabled. You qualify for this benefit if you provide proof of claim acceptable to Sun Life that:

- you became totally disabled while covered, and
- you have been following appropriate treatment for the disability since its onset.

...

Benefits are paid at the end of each month and are based on your coverage on the date you became totally disabled.

The parties reached agreement on the issue of LTD benefits on July 13, 2006 when the Company accepted Union proposal # 17, which stated as follows:

### Appendix "C" - LTD

Year 1	\$2,600
Year 2	\$2,600
Year 3	\$2,600
Year 4	\$2,700
Year 5	\$2,800

There was no reference in any subsequent exchange of proposals to the issue of LTD benefits. Following tentative agreement by the parties on all issues on July 14, 2006, the Union proceeded to conduct ratification votes on July 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> in St. John's, Grand Falls/Windsor and Corner Brook. Following ratification, the employees, who had been on strike, returned to work. The Union submitted a draft Collective Agreement to the Employer for proofreading. By letter dated July 27, 2006 from Fabian Connors, Human Resources Manager for the Employer to Chris Henley,

Employee Relations Officer and chief negotiator for the Union, the Employer referred to certain issues it had identified in the draft Collective Agreement. The letter stated, in part, as follows:

RE: Review of Collective Agreement Draft - 2006-2011

Please be advised that the company has reviewed the draft of the Collective Agreement and the following issues have been identified:

...

Long Term Disability

Issue: The eligibility for new disability applicants for the \$2,600 monthly benefit will be August 01, 2006 due to insurance carrier requirements.

Fabian Connors testified that he made the statement about Long Term Disability benefits in the letter dated July 27, 2006 because he wanted to clearly state the Employer's understanding on the issue. Mr. Connors testified that after negotiations were concluded, long term disability coverage was increased to a maximum of \$2,600 per month, effective August 1, 2006 for new disability applicants. The position of the Employer was that current LTD recipients would continue to receive maximum monthly payments of \$2,000 and were not entitled to any increase in the maximum amount.

Chris Henley testified that the Employer's position on current LTD recipients was made clear for the first time by the letter dated July 27, 2006. The Union received the letter after the tentative Collective Agreement was ratified by employees and prior to the signing of the Collective Agreement. Mr. Henley said it was the Union's understanding that the increased maximum monthly amount of LTD payments applied to current LTD recipients. Rather than delay the signing of the

Collective Agreement, the Union agreed to sign the Collective Agreement and refer the issue of LTD benefits to arbitration. The Collective Agreement was signed on September 8, 2006. On the same day the Union filed a grievance and sent a letter to the Employer to make clear its position that the increase in maximum LTD benefits applied to all employees. The letter stated, in part, as follows:

RE: Group Grievance dated September 8, 2006  
NAPE File No. BH-035-06

Please be advised that I am sending this letter, along with the signed Collective Agreements, to advise that, even though we are signing the Agreement, we do not agree with the Employer's interpretation of what was agreed to under the Long Term Disability provisions.

It is the Union's position that the amendments to the Long Term Disability provisions apply to the current LTD recipients as well as future applicants. The Union will be forwarding this issue to arbitration immediately.

...

James Kavanagh testified that, during collective bargaining, the Union proposed an increase in the maximum amount of LTD benefits. There had been no change to the maximum amount for over 20 years, and the increase was necessary as a result of increases in the cost of living. The LTD benefits were 70% of monthly earnings. Chris Henley testified that 70% of the average monthly earnings of bargaining unit employees was calculated to be about \$2,800 per month, which exceeded the former maximum LTD benefit of \$2,000 per month.

At the commencement of bargaining, the Union proposed that Appendix "C" be negotiated. By Union proposal # 1, dated May 16, 2006, the Union proposed that bargaining unit employees would

receive the same plan as received by the rest of the Company's employees. By Union proposal # 3, dated May 26, 2006, the Union proposed that the maximum monthly LTD benefits would be increased to \$4,000.

By Company proposal #2, dated May 17, 2006, the Company proposed that Appendix "C" would remain the current agreement. By Company proposal # 3, dated May 25, 2006, the Company proposed that in Appendix "C" for Long Term Disability, the benefits would be \*\*\$2,000 per month non taxable and employee pays 100%. The proposal included a Note stating "\*\*\* for new employees who enter LTD after notice period provided above as per government regulations and carrier policy". The next proposal by the Company on the LTD issue, dated May 27, 2006 was "current agreement". The Union repeated the proposal it made on May 26, 2006 in its subsequent proposals # 4 to # 9, and the Company maintained its position of "current agreement" in its proposals # 5 to # 11. By Company proposal # 12, dated June 30, 2006, the Company proposed LTD - Year 1 - \$2,200, Year 2 - \$2,300, Year 3 - \$2,300, Year 4 - \$2,400, Year 5 - \$2,500 and that other terms of Appendix "C" would be current agreement. By Union proposal # 10, dated June 30, 2006, the Union proposed for LTD - Year 1 - \$2,800.00, Year 2 - \$3,000.00, Year 3 - \$3,200.00. Union proposal # 10 was made in response to Company proposal # 12. During subsequent exchanges of proposals, from Union proposals # 11 to # 16 and Company proposals # 13 to # 19, the parties proposed various maximum LTD monthly payments until eventually agreement was reached on July 13, 2006 on the revised wording in Appendix "C" related to LTD benefits.

James Kavanagh testified that the Union wanted the increased maximum LTD benefit to apply to all employees, both current and future LTD recipients. He stated that the Union's intention was that employees currently in receipt of LTD benefits, at the time the new Collective Agreement came into effect, would be eligible to receive the maximum amount of \$2,600. He understood this was the effect of the discussions in bargaining. He understood that the increase applied to persons already receiving LTD benefits from SunLife. He said that initially the Union intended to include the employees receiving LTD benefits from Great West Life, however, those employees were not included when the issue was settled. Mr. Kavanagh acknowledged that the Note in Appendix "C" did not say that it was applicable only to the SunLife Master Policy.

Randy Squires testified that the Union proposed an increase in maximum LTD payments for both current and future LTD recipients. His understanding was that the new maximum amounts applied to all persons affected. He said the Union stated on each occasion when the proposals were made in bargaining that they wanted the increases to apply to everyone. He understood that employees in receipt of LTD benefits from the previous insurance carrier, Great West Life, were excluded because the Company no longer had any dealings with Great West Life and there was no reference to Great West Life in the Collective Agreement.

Wayne March testified that it was his understanding that any current LTD recipient would be eligible to receive the increased maximum amount of \$2,600. The increase did not apply to employees covered by Great West Life. He understood from the Company that the benefit paid to current recipients could be changed if the premiums were increased. He did not recall if the

Company said at the time of the Union's May 26<sup>th</sup> proposal that it could not increase the maximum LTD payments for those persons already in receipt of LTD benefits. He believed the Company would have to negotiate with the insurance company to provide the agreed benefits.

Chris Henley testified that at the initial stages of bargaining, the Employer said that the changes to LTD benefits would apply only to new applicants. The Union stated in bargaining that it wanted the changes to apply to everyone, including current LTD recipients. The Employer said that it was not possible to increase the maximum amount paid to current recipients. Mr. Henley testified that a member of the Union's bargaining committee had talked to insurance company representatives and was told that there could be an increase for current recipients if the premium was increased. Mr. Henley testified that the Employer was told that the increase could be arranged. He said the Employer did not dispute the Union's statement and the issue never arose again. Mr. Henley testified that one of the members of the Union negotiating committee, Wilson Stuckless, is in receipt of LTD benefits and his payment is frozen at the maximum of \$2,000. There was reference made in bargaining to Mr. Stuckless' benefits increasing to \$2,600. The Union referred to Mr. Stuckless' situation as an example of how the increase would be applied.

Wilson Stuckless testified that he has been in receipt of LTD benefits since 2004. He receives the maximum of \$2,000 per month less income tax. He testified that during collective bargaining it was discussed with the Employer that the increase in maximum monthly benefits would apply to all employees, both new applicants for LTD benefits and current recipients. The Union understood that the increase would not apply to Great West Life LTD recipients because the Company did not have

any ties to Great West Life as the former insurance carrier. Mr. Stuckless testified that he attended the meeting of employees in Corner Brook for the purpose of conducting a ratification vote for the Collective Agreement. He told the employees that he expected to receive an increase in his monthly LTD benefits to the new maximum amount of \$2,600. Mr. Stuckless testified that he met an insurance agent and a former insurance agent, whose names he did not recall, at a coffee shop in Grand Falls/Windsor, and that they informed him that a new LTD benefit could be negotiated for all employees currently off work if the premiums were increased. Mr. Stuckless did not make any inquiries to SunLife because he understood that employees were not allowed to contact SunLife directly. He said he was not told by the Employer during bargaining that current LTD recipients would not receive the increased maximum amount of \$2,600.

Sean Penney testified that during collective bargaining there was discussion of who would receive the increase in LTD benefits. He said the Union agreed to the increased maximum payment on the understanding it applied to all employees. He did not recall if the Company said that the changes would apply only to new recipients. Richard Kieley testified it was his understanding that the Union was negotiating for an increase in benefits for all employees including current recipients from SunLife.

Fabian Connors testified that he reviewed the draft Collective Agreement and prepared the letter to the Union to clarify the Employer's understanding that increased LTD monthly payments applied only to new claims. There was no change made to the Note in Appendix "C" and payment of benefits was subject to the conditions of the insurance policy. Mr. Connors testified that he made inquiries regarding LTD benefits during collective bargaining, and he received a copy of a letter sent

by fax from SunLife to the local agent, Bill Jenkins. The letter was dated July 5, 2006 and stated, in part, as follows:

RE: Long Term Disability

Further to our conversation regarding the level of Long Term Disability Benefits, as you know, an employee is covered for a benefit amount based on the salary level and benefit level of the plan at any given time and while actively at work the benefits level will fluctuate as salary changes occur and if the plan design is changed.

At the date of disability, however, benefits accounts become frozen based on the salary level and plan design in effect at that date. This is also the level of benefit upon which premiums have been paid.

After the date of disability there can be no salary change or plan design changes which would affect the disabled employees benefit.

...

Mr. Connors testified that he relied upon the letter when the issue was discussed in collective bargaining. He did not show the letter to the Union at the time he received it because he did not believe it was necessary, and the letter simply confirmed the Employer's stated position. He gave a copy of the letter to the Union in August, 2006 after the issue arose when he was reviewing the draft Collective Agreement.

### **Union Submission**

The Union submitted that the purpose of collective bargaining was to provide improved benefits for the members of the bargaining unit. The effect of the Employer's interpretation was that improved benefits applied only to future employees and not to current longstanding employees. The Union did

not agree that a new employee could receive a higher amount of LTD monthly benefits than a longstanding employee who was in receipt of benefits prior to the coming into force of the Collective Agreement. The Employer's interpretation had the effect that there could be four different maximum amounts of LTD benefits being paid to employees by the year 2010, namely \$2,000, \$2,600, \$2,700 or \$2,800.00, depending on the date of application for benefits. Prior to the current Collective Agreement, the maximum amount for all employees was \$2,000. There was no agreement that employees were to be treated differently. The agreement made by the parties has the effect that the Company has agreed to pay the extra \$600 per month to employees, such as Wilson Stuckless, whose monthly payments were formerly subject to the maximum \$2,000 per month. The Employer had proposed to change the LTD provisions for current employees and then proposed to revert to the current agreement. The Union witnesses all had the same understanding that the increased maximum amount of monthly payments would apply to current LTD recipients. It was necessary to consider the true intent of the parties. The reference to the master policy was only relevant to determine eligibility based on the definition of disability. Eligibility for LTD benefits was not an issue for current recipients, such as Wilson Stuckless, because they were already considered eligible for benefits. The Union requested that the grievance be allowed.

### **Employer Submission**

The Employer submitted that the onus was on the Union to prove that the Union's interpretation was what both parties had intended. The unilateral intent of one party was not sufficient. The parties are presumed to have intended what was stated in the Collective Agreement. Article 19.01 states that

the Company shall establish the plans set out in Appendix “C”. Article 19.01 was not amended in the last round of bargaining. The same Note is contained in Appendix “C” in both the current Collective Agreement and the prior Collective Agreement. The Note states that the limitations and exclusions in the policy apply and that Appendix “C” is intended solely as a confirmation of the coverage. As a result of the Note, the parties intended to refer to the SunLife Master Plan, which was available to the parties at the time of negotiations. The Master Plan states that an employee must be actively at work to be entitled to receive long term disability benefits. The current LTD recipients are not actively at work. The Master Plan also states that LTD benefits are payable based on the coverage available on the date of disability. The Employer’s proposal on May 25<sup>th</sup> was to change only parts of Appendix “C”, and the Note and other parts of Appendix “C” would remain as per the current agreement. The Employer relied on a letter from the insurance company stating that it was not possible to change the benefits payable to those persons currently in receipt of LTD benefits. It was unnecessary to refer to extrinsic evidence of bargaining history as there was no agreement to change the Master Policy except to change the maximum monthly benefits. Even if bargaining history was considered, there was no representation by the Employer that the increased maximum monthly benefit would apply to current LTD recipients.

### **Considerations**

The Arbitrator will consider the interpretation of Article 19 and Appendix “C” of the Collective Agreement. When interpreting the Collective Agreement, the Arbitrator will have regard to the intention of the parties. In Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, at paragraph

4:2100 the authors state as follows:

It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it. As one arbitrator, quoting from *Halsbury's Laws of England*, stated in an early award:

The object of all interpretation of a written instrument is to discover the intention of the author, the written declaration of whose mind it is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as is possible, and as the law will permit.

And further:

But the intention must be gathered from the written instrument. The function of the Court is to ascertain what the parties meant by the words they have used; to declare the meaning of what is written in the instrument, not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent to the intention.

Accordingly, in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions.

The Arbitrator also refers to principles of interpretation discussed in *Brown & Beatty, Canadian Labour Arbitration*, 4th edition, in particular, that the language should be viewed in its normal or ordinary sense (paragraph 4:2110), that it should be presumed that all the words used were intended to have some meaning (paragraph 4:2120), that preceding collective agreements may be used as an aid to determine the intention of the parties with respect to any changes made (4:2240), and that the language is to be interpreted within the context of the collective agreement as a whole (paragraph 4:2150) and the industrial relations practices of the parties (paragraph 4:2300).

A collective agreement may also refer to external documents which may be incorporated into the collective agreement or may be used as an aid to the interpretation of the collective agreement (Brown & Beatty, *Canadian Labour Arbitration*, 4<sup>th</sup> edition, paragraph 4:1210). In this case, the parties have agreed in the Note in Appendix “C” to refer to the governing Master Policy, underwritten by SunLife, for the purpose of reviewing the specific contractual limitations or exclusions of a particular benefit. Therefore, reference to the Master Policy may be made pursuant to the Note in Appendix “C”.

Evidence was presented with respect to bargaining history, in particular, the exchange of proposals made by the parties during collective bargaining and the statements made during bargaining. Generally such evidence is considered extrinsic evidence and may only be used as an aid to interpretation where the collective agreement is found to be ambiguous (Brown & Beatty, *Canadian Labour Arbitration*, 4<sup>th</sup> edition, paragraph 3:4400). Before considering evidence of bargaining history, the Arbitrator will consider whether the language may be interpreted by applying principles of interpretation to the language set out in the Collective Agreement.

Article 19.01 of the Collective Agreement states that the Company will establish the plans set out in Appendix “C”, which shall form part of the Collective Agreement. One of the plans to be established is the long term disability plan. Appendix “C” states that the Company will pay 100% of the cost of the long term disability plan. The benefit provided for long term disability insurance is 70% of monthly earnings, payable upon total disability (as defined in the Master Policy) up to the

maximum amount of \$2,600 in the first 3 years of the term of the Collective Agreement, increasing to \$2,700 in the 4<sup>th</sup> year and \$2,800 in the 5<sup>th</sup> year.

The parties do not dispute that the Employer has provided the long term disability plan as set out in Appendix “C” for employees of the Company who apply for LTD after the implementation date of the Collective Agreement. The parties dispute whether the increase in maximum monthly payments applies to persons who were LTD recipients prior to the implementation date. At that time there were 5 employees in receipt of LTD benefits, and 3 of those employees were receiving the maximum amount permitted under the prior Collective Agreement of \$2,000 per month. The parties also dispute whether the increase in maximum monthly benefits in the 4<sup>th</sup> and 5<sup>th</sup> years of the term of the Collective Agreement will apply to persons already receiving the maximum amount of LTD benefits prior to the increase, for example, whether an employee receiving \$2,600 per month LTD benefits will be eligible for an increase to \$2,700 per month in the 4<sup>th</sup> year.

Reference may be made to the Master Policy pursuant to the Note in Appendix “C” to determine the applicable limitations or exclusions. The Master Policy states that “benefits are paid at the end of each month and are based on your coverage on the date you became totally disabled”. The Master Policy provides a method for the calculation of monthly payments, which is based on 70% of monthly earnings. The reference in the Master Policy to the date of total disability, means that the calculation of 70% of monthly earnings is made on the date of total disability. Even where the monthly earnings for a person in the same position increase after the date of disability, the monthly payments do not increase based on the increased monthly earnings for that position. Similarly, the

calculation of the maximum amount payable is also determined, according to the Master Policy, by the date of total disability. The SunLife Master Policy, entered as an exhibit, is effective September 1, 2002. Therefore the limitations or exclusions of the Master Policy were in effect at the time of collective bargaining in 2006. The Employer also received confirmation from SunLife by letter dated July 5, 2006 stating that coverage is based on salary level, benefit level and plan design in effect on the date of disability. The letter stated that plan design and benefit level applies to those employees who are actively at work, and therefore any changes to plan design or benefit level could not apply to persons who were current LTD recipients at the time of bargaining in 2006. The letter dated July 5, 2006, unlike the Master Policy, is not referenced in the Collective Agreement, and may not be considered as an aid to the interpretation of the Collective Agreement. However, it is noted that the content of the letter is consistent with the Master Policy

The Arbitrator refers to the prior Collective Agreement as an aid to interpretation to determine the intention of the parties. The prior Collective Agreement contains the same Note in Appendix "C" which refers to the Master Policy. The contents of the Note in the prior Collective Agreement and the Master Policy were available to the parties at the time of bargaining.

When the Collective Agreement is read as a whole, including the Note, and the Master Policy referenced in the Note, the Employer has complied with the requirements of Article 19.01 and Appendix "C" by providing a long term disability plan with maximum benefits determined according to the date of disability. There is no requirement in Appendix "C" that the Employer provide a long term disability plan that will change the level of benefit, by increasing the maximum

amount of benefit, for those persons who were LTD recipients prior to the implementation date of the Collective Agreement. There is no requirement that the Employer provide a plan that will increase the maximum amount of benefit in the 4<sup>th</sup> year and 5<sup>th</sup> year of the term of the Collective Agreement for persons already in receipt of benefits from a claim approved prior to the start of the 4<sup>th</sup> year or 5<sup>th</sup> year. The Employer has provided the plan as negotiated, having regard to the language used by the parties in the Collective Agreement.

The Arbitrator has determined that the Collective Agreement may be interpreted by applying the principles of interpretation to the language used by the parties in the Collective Agreement, and it is unnecessary to refer to extrinsic evidence of statements made during collective bargaining. It is noted that if extrinsic evidence were to be considered, there is no evidence of any clear and unequivocal statement, by any Employer representative during collective bargaining, that the increase in the maximum amount of LTD monthly payments would apply to current recipients.

The Arbitrator has considered the submission by the Union that the Employer's interpretation of the Collective Agreement, in effect, discriminates against current LTD recipients when compared to future LTD claimants, and the parties would not have intended such a discriminatory effect. However, the plan design, referred to in the Note in Appendix "C" provides that the amount of benefit is based on the monthly earnings of an employee on the date of disability. Employees in receipt of long term disability benefits are paid a monthly benefit depending on the income of the employee on the date of disability. There is no provision in the plan design that monthly benefits will increase for current LTD recipients at such time as there is a future wage increase for employees

in the same position as the recipient. Also, the Union has accepted that the increased maximum monthly benefits would not be available to employees who were in receipt of long term disability benefits from the previous insurance carrier. The Employer's interpretation of the Collective Agreement is accepted by the Arbitrator because the parties agreed to a plan design where the amount of benefit, including the maximum monthly payment, is determined based on the date of disability.

### **Decision**

The grievance is denied. The Employer complied with the Collective Agreement by establishing the Long Term Disability plan required by Appendix "C".

**DATED** this 2<sup>nd</sup> day of May, 2007.

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James C. Oakley  
Arbitrator