Canadian Merchant Service Guild

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AFFILIATED WITH
INTERNATIONAL MARITIME PILOTS' ASSOCIATION INTERNATIONAL TRANSPORT WORKERS FEDERATION

BULLETIN

DATE	October 7, 2015
TO	CMSG / SEASPAN ULC MEMBERS
SUBJECT	ARBITRATION AWARD – HEALTH BENEFIT PLAN

Dear Guild Members,

Following this cover page, we enclose a copy of the arbitration award re. the Health Benefit Plan, issued by Arbitrator Dalton Larson on October 5, 2015, which is a final award on the matter, supplementing an interim award issued on April 29, 2015.

This award, when implemented, will see a restructuring of the benefit plan to allow Seaspan to provide health benefits to its employees outside of the CMSG Towboat plan.

Under this award:

- Seaspan will be required to provide "substantially" the same benefits as currently provided by the CMSG Industry plan for the term of the collective agreement.
- The cost of all health benefits shall be entirely paid by the Company, terminating the current co-pay scenario which has Seaspan employees paying a portion of their health benefit costs.
- Any issues over entitlement will be directly enforceable against the Company.
- The administration of the Seaspan health benefit plan will be overseen by a board of trustees, with equal representation from the Guild and Seaspan and chaired by an independent third party.
- Seaspan will be responsible for the administrative costs of the trust.

Some details still have to be determined on how the new benefit plan will be implemented.

In regards to the remaining disputed issues of the Collective Agreement, at the moment we have not scheduled any further hearing dates, but we're awaiting a second award relating to "hours of work and overtime", including the Company's pager proposal, from Arbitrator Larson in the coming weeks.

We will keep you up to date should any major development arise. Please contact your Business Agent, Jeff Sanders, or the Members of the Negotiating Committee with any questions you may have about this update.

CMSG WESTERN BRANCH

IN THE MATTER OF SECTION 79(1)
OF THE CANADA LABOUR CODE

AND

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

SEASPAN MARINE CORPORATION

(the "Company")

AND:

CANADIAN MERCHANT SERVICE GUILD

(the "CMSG")

AND:

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 44

(the "ILWU)

Health Benefit Plans

ARBITRATOR:	Dalton L. Larson
REPRESENTING THE EMPLOYER:	Chris Leenheer David Woolias
REPRESENTING THE CMSG:	Brett Matthews Jeff Sanders
REPRESENTING THE ILWU:	Leo McGrady Sonya Sabet-Rasekh
CASE MANAGEMENT MEETINGS:	May 15, 2015 June 25, 2015
DATES OF HEARINGS:	Written Submissions
DATE OF AWARD:	October 5, 2015

AWARD

1. Background

[1] On April 29, 2015 I issued an interim award in which I discussed the principles that generally govern the issuance of interest arbitration awards. I also provided an analysis of the proposals of the parties on this issue which has been somewhat of a moving target in that the Company dramatically changed its position during the arbitration proceedings. Its original position was that it was prepared to continue the structure of the two industry health care plans without change but it was not prepared to continue to fund the full cost of the plans on an unlimited basis. It took the position that, for whatever reason, the cost of the premiums that it was required to pay under the existing language of the agreements was excessive. The solution that it saw at that time was to cap its contribution level to something comparable to what it was generally paying for excluded staff within the organization.

[2] The Unions opposed any changes that could impact upon the level of benefits being provided to employees. They were not prepared to accept that the premium levels were excessive, or if they were, that there was anything that could be reasonably done in the management of the plans that was not already being done to reduce them. They were adamant that the administration of the two industry plans had been efficient and effective in controlling costs. The evidence provided in the hearings on that issue was, as I discussed in the award, that the trustees of both plans had managed to reduce costs except that the realized savings had generally been used to increase reserves but had not resulted in any significant reductions in the premium costs payable by the Company.

[3] It goes without saying that had the negotiations continued with that focus, which is to say that if we could have found common ground by which the premium costs could be substantially reduced, it would have made it possible to preserve the current structure by which the industry plans are being managed. A problem arose, however, when the Company sought to provide support for the position it was taking that the premium costs were excessive. This support took the form of a Request for Proposals ("RFP") to the local insurance industry generated by Weitzel & Associates which had been retained by Seaspan. The initial purpose of the RFP was not necessarily to find a lower cost carrier but rather to demonstrate that the premium costs of the two industry plans were significantly abherent. As the award indicates, Mr. Weitzel was successful in obtaining proposals from four major insurance companies with dramatically lower premium costs for essentially the same benefits being provided through the industry plans. For Guild members these ranged from $526 to $721 per employee/month depending upon the carrier and for ILWU members even lower, from $347 to $488 compared to about $1000 for the industry plans.

[4] The evidence, however, was that the industry plans would not be able to operate at those premium levels. Similarly, the insurance companies were only prepared to make their offers open for acceptance outside of the industry plans. As Mr. Weitzel explained, their proposals were based upon the experience ratings of the general population and were not isolated to the marine industry. He testified that the proposals were accordingly made on a condition that a new administrative model would have to be adopted. This was because the insurance companies were prepared to treat them as virgin plans that were not encumbered by the industry experience. This then became the focus of the negotiations. Instead of negotiating cost within the existing structure, the discussions switched to whether the projected savings reflected in the proposals could be sustained outside of the industry structure over the longer term.

[5] The Unions were adamantly against withdrawing coverage from the existing industry plans for a number of reasons enumerated in the award, primarily relating to a loss of control. Quite apart from that, they took the

position that the projected savings were illusory at worst and transitory at best because they would be limited to the first term of the contract of insurance, whichever proposal was accepted, and that the premium costs would rise in the next term to essentially the same levels as are currently in effect in the industry plans.

[6] In order to meet those concerns, the Company proposed in the hearings to accept the entire risk of all premium cost increases subject to coverage being provided through a discrete Seaspan plan. In other words, it proposed to do precisely what it said it was not prepared to accept at the outset of negotiations, which was to continue to pay the full cost of coverage. Its proposal in that respect was simple: that the current provisions of the two collective agreements would be deleted and substituted by words to the effect that Seaspan would provide employees with health benefits in substantial compliance with the benefits specified in the existing benefit plans.

2. **Establishing Focused Health Plans**

[7] The premise that I adopted as the foundational base of the Interim Award was that there was ample reason to establish new health benefit plans focused on the peculiar exigencies of the collective agreements between the parties outside of the existing industry plans. In the first place, the Company is not proportionately represented on the board of trustees. In the case of the Canadian Merchant Service Guild Western Branch Benefit Plan it is one of three employer representatives who are effectively competitors whose interests are not always aligned while the Guild has three representatives whose interests are identical. Moreover, the plans were established at a time when the Council of Marine Carriers was an accredited employer's organization which is no longer the case, the point being that the drivers that influence the working conditions of these parties are not the same as those in the general industry. In any event, I determined that even if the premium costs do rise, as the Unions argued they will, the likelihood is that it will not be on a scale that will soon bring them back up to the current levels and, in the meantime, there are significant savings to be had in the near term from accepting one of the current proposals. Nevertheless, I stated that if it were done, it would have to be on three conditions:

1. That substantially all the benefits that are currently being provided to employees as part of the two existing industry health care plans should continue to be required to be provided in any renewal collective agreement;
2. That the offers made by the three extant insurance companies would have to be verified and determined to be open for acceptance; and
3. That the risk of premium cost increases should be borne by the Company.

[8] One underlying issue that is inherent in the establishment of any health plan in a collective agreement relates to enforceability. As with most types of benefits there is an entire range of enforcement options that exist but what one must understand is that while the parties may agree on the level of benefits that may be required to be provided under a policy of insurance, they may not be directly enforceable against the insurance company because it cannot be made a party to the agreement: *Limojet Gold Express Limited and Public Service Alliance of Canada, Local 05/21081and Public Service Alliance of Canada* (2006) 160 LAC (4^{th}) 314 (Larson); quashed 167 (4^{th}) 404 (BCLRB).

[9] On the other hand, a policy of insurance may be indirectly enforced against the insurer through the employer if the collective agreement specifies the level of benefits that must be provided, the point being that a union's ability to challenge a denial of benefits through the grievance procedure depends upon the precise wording of the agreement. At one point in the development of the jurisprudence on this issue arbitrators recognized essentially four different relationships, each with different degrees of enforceability which were conveniently set out in *Re University of Guelph and University of Guelph Staff Association* (1995) 50 LAC (4^{th}) 61 (Kaplan) @ p.63-64:

1. The plan or policy is not mentioned in the collective agreement;
2. The collective agreement specifically provides for certain benefits;
3. The employer contracts to pay the premiums for a plan which is not included, directly or indirectly, or by reference, in the collective agreement. The benefits provided under that plan are either not specified or, alternatively are specified in such a way that it is the insurance company which decides on the legitimacy of a claim and any dispute is between the claimant and the insurance company; and
4. The specific plan or policy is referred to in the collective agreement and becomes part of the agreement.

[10] In the second category a grievance with respect to the denial of benefits was regarded as being arbitrable but only against the employer who would then be entitled to seek to be indemnified by the insurer. However, in the fourth category the plan is notionally regarded as directly enforceable because it is a term of the collective agreement, even though the insurance company is not a signatory. More recently, however, because of the expanded jurisdiction accorded to arbitration boards by the Supreme Court of Canada in *Weber v. Ontario Hydro* [1995] 2 SCR 929 and the myriad of cases decided since that time, the University of Guelph categories may be subject to modification. The principle decided in Weber was that exclusive jurisdiction is conferred on labour tribunals to deal with all disputes or differences between the parties which in their essential nature arise from the collective agreement.

[11] This may give rise to a question whether an insurer who is not a direct party to a collective agreement can, nonetheless, be joined as a party to a dispute. In *Pilon v. International Minerals Chemical Corp. Canada Ltd.* (1996) 31 OR (2d) 210 (Ont. CA) a long term disability plan and a benefits handbook were expressly incorporated into the collective agreement. In those circumstances, the court accepted, what has come to be known as the "but for" doctrine that Pilon was not a party to the insurance policy and therefore would ordinarily have no claim "but for" the collective agreement so that it could only be prosecuted at arbitration.

[12] As was noted by Bernie Adell in an article entitled "Update on Overlapping Jurisdiction" Labour Arbitration 2000 some arbitrators took the Pilon decision to mean that as long as an insurance plan was mentioned in the collective agreement, any claim for benefits under the plan was arbitrable and the insurer could be joined as a third party. However, the decision of the Divisional Court in *London Life Co. v. Dubreuil* [1998] OJ No. 3996 (Ont. Div Ct) [QL] was eventually upheld by the Court of Appeal saying that an arbitrator is not empowered to assert jurisdiction over an insurer by adding it as a party defendant to an arbitration.

[13] In British Columbia the claim of entitlement to join third parties to an arbitration outside of a collective agreement has never found fertile ground: *Canada Safeway Limited and United Food and Commercial Workers Union, Local 1518* BCLRB No. B263/98. In that case Arbitrator Hope refused to take jurisdiction in a dispute over the eligibility for benefits under a long term disability plan where the agreement only obliged the employer to provide a plan. His decision was based upon an interpretation of the collective agreement that by agreeing to provide a plan, the employer could not be seen to assume liability for the benefits of the plan. The union appealed the decision to the Labour Relations Board on the argument that it would leave a jurisdictional gap if the employer was not inferentially liable for the benefits because under the Pilon decision the court held that all matters that by their essential character arise under a collective agreement must be dealt with by an arbitrator. Essentially, however, what the LRB held was that the Weber doctrine could not be stretched to give an arbitrator jurisdiction beyond what would be the normal interpretive outcome of the language of the agreement.

[14] See also *HEU v. Health Employers Association of British Columbia [Children and Women's Health Care Centre] and Co-operators Life Insurance Company* (200) 75 BCLR (3d) 257 (BCCA) where the Court of Appeal upheld

the arbitrator's decision not to join the insurer as a party to the arbitration. The Court rejected an argument based upon the extended arbitral jurisdiction of arbitrators saying that an arbitration board only obtains jurisdiction over parties, either by their consent, or as a result of statute. A collective agreement cannot be enforced against persons who are strangers to it. That being the case, the best tactic available to negotiators of collective agreements in this province who seek to make insurance commitments enforceable is to make them binding on the employer, leaving it to the employer to obtain insurance sufficient to indemnify it against liability.

[15] That is precisely the position that the Unions took in this case. They said that they were not interested in attempting to make the insurance carrier directly liable to them for any benefits or presumably even to join the insurance company as a party to any arbitration proceedings in the event of a dispute relating to employee entitlement. They said that they were content to address all such issues directly with the Company leaving it to deal with the insurer on all questions relating to coverage.

[16] In those circumstances, I am prepared to conclude that although the Unions argued vigorously about the viability of the proposals made by the insurance companies including, of course, the future premium costs, their primary purpose was to dissuade me from the position being taken by Seaspan that new plans should be established. The effect of their position on liability is that the relationship that the Company has with insurers is irrelevant to them provided that it assumes liability for the benefits. In that context it seems to me that it does not behoove the Unions to resist efforts by the Company to save the costs of providing the benefits, particularly where, as in this case, it assumes the risk of any premium cost increases during the entire term of the collective agreement.

[17] In fact, that is the tenor of the current agreements. The Employer pays the entire cost of all health benefits. In that sense, there will be no change. The Employer proposes to continue to pay the full cost of the benefits, including any increases that may occur during the term of the agreements and the benefits required to be provided will remain the same but if that is acceptable it should have a right to control the costs. As I said earlier, that its early attempts were to control the costs by imposing a cap on the amount of its contribution but that was eventually discarded in favour of adopting a plan that involves a change in the way in which the benefits are delivered to access those savings. Even though it has been a difficult thing to accept by the Unions, it does not serve their interests to resist reasonable efforts by the Company to control costs where, as here, there will be no loss of benefits to the employees. Most importantly, the Unions will not lose control over the delivery of those benefits because the collective agreements are designed to serve that same purpose.

[18] As I discussed above, in the Interim Award I determined that new focused health plans could properly be established subject to three conditions set out on p.38 as follow:

(1) The offers of the three insurance companies must be extended for acceptance and the initial terms during which the contributed premiums are guaranteed must similarly be extended to the satisfaction of the arbitrator who will also determine which of them should be accepted, if any;
(2) An analysis shall be conducted of the proposals to determine whether they will provide essentially the same benefits as are currently prescribed by Article 1.13 of the ILWU collective agreement and , if not, whether some modification would be justified in order to minimize the contributed premium cost of the insurance; and
(3) Whether the parties have a right to withdraw from the industry plans, the trust agreements and any other agreements by which the plans are currently administered.

[19] I referred those issues back to Counsel, expecting that since the conditions involve substantively legal issues that were capable of objective determination that they would be able to reach agreement on them. I

directed them to contact the three insurance companies either directly or indirectly through Weitzel & Associates to determine if they were prepared to extend their offers including the periods in which the quoted rates would be guaranteed. I also ordered that they conduct an analysis of the proposals and determine if any or all of them substantially meet the benefit requirements of Article 1.13 of the ILWU collective agreement or alternatively, agree on what level of benefits would be acceptable and, finally to determine whether any legal impediments exist in any agreement that would preclude the implementation of my decision to withdraw from the industry plans and to establish new plans. I stated that if Counsel were able to come to an agreement on any or all of those issues that a single report could be made to me to that effect, in the absence of which separate reports should be made no later than 15 days from the date of the Interim Award.

[20] What then happened is that Counsel decided to use the first day of an arbitration that had been scheduled for another arbitration to meet to see if they could agree on the action items that had been specified in the Interim Award. As it was thought that there might be some need for my participation I was asked to be available at the meeting. The outcome was that Counsel agreed to do the following by the close of business on June 12, 2015:

(1) The Company would obtain confirmation from the insurance providers regarding their willingness to extend their offers and the terms on which this could be done;
(2) The Company would arrange for an analysis of the insurance proposals;
(3) The Unions would confirm whether in their view there was any legal impediment to withdrawing from the industry plans; and
(4) The Parties would each provide the arbitrator with an opinion on what they considered to be an appropriate structure for the administration of an internal health care plan.

3. **Confirmation of Offers from Insurance Companies**

[21] On the date specified, Mr. Leenheer forwarded a report to me dealing with his part of the protocol as follows:

- **Co-operator's Quote** June 4, 2015. The proposed effective date of insurance would be August 1, 2015 and was open for acceptance until that date. Rates would be guaranteed 27 months for Life, Dependent Life and LTD; and 15 months for STD, EHC and Dental. The quote was stated to be on the basis that there is an employer/employee relationship as opposed to members of a union and that the insurer is not bound by the collective agreement which I presume refers to their expectation that there would be a new separate plan;

- **Manulife/Standard Life Quote** Undated. The proposed effective date of insurance would be July 1, 2015 but the offer was stated to remain open for acceptance until September 1, 2015. The proposed rates for Life, AD&D and LTD would be guaranteed for an initial period of 28 months and the rates for STD, Extended Health Care and Dental would be guaranteed for 16 months based on a 60 days renewal notice period provided:

  - the number of covered participants does not change by more than 15%,
  - there is no additional information which may impact both the benefit coverage and proposed rates,
  - there are no legislative changes affecting the provided coverage, and
  - information obtained at implementation is consistent with that contained in the current request.

- **Desjardins Quote** June 1, 2015. The proposed effective date of insurance would be November 1, 2015 but the offer would remain open for acceptance only until September 1, 2015. Premium rates would be guaranteed for 28 months for Life Insurance and LTD and 16 months for other benefits provided there is no change in the plan design during those periods and there is no variation of more than 15% of the demographics of the group or legislative changes.

[22] It is, of course, to be noted that given the amount of time required to complete the award in this matter, each of the quotations has now expired and are no longer open for acceptance. If this approach is going to work, they will have to be extended yet again to accommodate the implementation of the award. Therefore, this award should be seen to be subject to the successful insurer agreeing to extend its offer. If that does not happen or the proposal is otherwise changed, the determinations in this award shall be void and without effect. The entire issue will be open for other determinations.

4. **Analysis of Benefits**

[23] Mr. Leenheer submitted, what he titled, an analysis of benefits against Article 1.13 of the ILWU collective agreement. A review of the submission, however, reveals that the analysis took the form of a report from Weitzel & Co. which compared each of the proposals against the others but did not do as I directed, which was to determine whether they would provide substantially the same level of benefits that are currently contained in the Article. While it is admittedly relevant information from a competitive perspective to know how each proposal compares to the others for purposes of selecting the successful bid, the analysis provided to me does not address the purpose of the award, which was to ensure that in selecting a proposal it will deliver essentially the same level of benefits as employees are currently receiving.

[24] It is true that the submission cross-references the various provisions the subject Article to the counterpart benefits referred to in the proposal but I do not consider it to be a true analysis in any objective sense. It simply points me to pertinent sources of information which I could have obtained without referring it back to the parties. The problem arises in that there are always variations in the manner in which some benefits are administered to which I may not be privy. The language of the contract of insurance and the collective agreement may not be aligned. Definitions may be different. There may be exclusions from coverage or conditions imposed, all of which ought to be taken into account in arriving at a conclusion whether each of the proposals will provide essentially the same coverage as employees currently enjoy. While Counsel went on to submit that the proposals meet or exceed the requirements of the agreement, it is notable that Mr. Weitzel does not attest to it. He provides an opinion on which of the proposals is the more competitive but he does not support the assertion that the proposals will provide essentially the same level of benefits

[25] It is, perhaps, that approach that also resulted in none of the parties providing me with proposed collective agreement language that would address the issue that I had requested. It is true that this particular issue was discussed in a case management meeting at which I was advised that Counsel could not agree on any language and that ultimately I would need to draft the requisite language. I am, of course, prepared to do so to conclude the process but since this is an initiative sought by the Employer, the failure to achieve agreement should in no way be seen to excuse it from proposing collective agreement language that it considered to be appropriate to address the issue. I understand the reluctance of the Unions to suggest language to that effect because they see this aspect of the award as being against their interests. As a pure matter of onus they are not prepared to suggest language that will have the effect of creating a system that they oppose.

[26] On the competitive issue, referring to the proposals, Don Weitzel gives the following opinion:

> They are attached in their entirety as well as our spread sheet summarizing the costing for all three, but using the same volumes and numbers of employees to give a fair comparison. Should you ask us for a recommendation, all three providers represent good choices, however, Standard/Manulife has three advantages:
>
> 1. They are lowest in initial cost;
> 2. They have familiarity with the group and the business sector by virtue of their existing involvement with CMSG; and
> 3. They have shown the greatest desire and flexibility to win the tender.
>
> Any of the three still show savings of over a million dollars per year to Seaspan.

[27] Having said all that, there is an important history that must be seen to have a considerable influence on the ultimate resolution of the issue. Following receipt of the submission from Mr. Leenheer, Counsel for the CMSG requested another case conference meeting to discuss the next steps. Mr. Leenheer took the position that because neither of the Unions had made submissions pursuant to their earlier agreement, no further evidence including legal opinions or other submissions could properly be tendered by them and that the only next step available could be that I would complete the award by choosing the carrier and making a final determination on how the new system should be structured.

[28] Mr. Matthews replied that since I had asked for a detailed analysis whether the proposals from the insurance companies provide the same level of benefits as the current plans, since they had only recently received the extended proposals, the Unions would need additional time to do the analysis. He suggested that thereafter they would expect to have an opportunity to make submissions on the appropriate governance structure, "lest we run into fair hearing issues". Referring in particular to the submission of Mr. Leenheer which included a legal opinion on the structure issue, he argued that it should not be admitted or relied upon in any way because, as he said, it deals with the very issue that the arbitrator must decide. Mr. McGrady supported the application to extend the time, saying that the submission by Mr. Leenheer was substantial, consisting as it did of 137 pages including the legal opinion and that the ILWU would require more time to meet it. He stated that their concerns were compounded by the analysis done by Mr. Weitzel because, as he said, Local 400 had zero confidence in his ability to provide impartial unbiased advice because he was in a conflict of interest. On that basis, he requested an extension for making a submission to July 1, 2015.

[29] As may have been expected, Mr. Leenheer objected to the request for an extension on the grounds that their agreement had been that those matters would be addressed in separate submissions by each of the parties by June 12. Nevertheless, although the Unions had agreed to the time limit, I considered that it was important that I have submissions from the Unions on these outstanding issues before I made my decision. I therefore accepted the motion by Mr. McGrady to extend the time for them to make submissions to July 1.

5. **Who Owns the Policies of Insurance?**

[30] At that point, the submissions of Counsel took on a decidedly strident tone. Mr. Matthews referred to a suggestion apparently made by Mr. Leenheer that I should assign to the Company the right to select which of the three insurance proposals should be adopted, which he vigorously opposed. He even advanced the proposition further arguing that I had no jurisdiction to award an employer owned policy. This rather surprising argument was based on the determination that I made in the Interim Award that the Unions should continue to have a role in the

administration of the insurance through a board of trustees. His essential point was that if there was going to be a board of trustees, it was implicit that the board would own the plans and not the Company.

[31] In particular, he referred to Black's Law Dictionary which defines a "trustee" as one who, having legal title to property, holds it in trust for the benefit of the other. The problem is that the argument assumes that a trust can only be established for the purpose of holding legal title to property on behalf of a beneficiary, which is simply not the case. There is an almost unlimited number of purposes for which a trust may be established, one of which most certainly is to hold legal title to property but even a cursory review of the same dictionary reveals some of the other kinds of trusts that exist that do not involve the ownership of property. Trusts may also be established administer the grant of a right or privilege. Even the definition cited by Counsel goes on to explain that in a strict sense it is one who holds legal title but more broadly it is applied to anyone who stands in a fiduciary relation to another.

[32] It was frankly in the latter sense that I intended it in the Interim Award to apply to the administration of the health plans. This is addressed explicitly in paragraph 148 of the award where I set out the third condition upon which new focused plans might be established, namely that the parties would need to demonstrate that they have a right to withdraw from the existing industry plans and that an appropriate structure could be devised by which the new plan might be administered. It was a very deliberate distinction that I made to assign only the administration of the plans to the boards of trustees. However, I also said, "The administration will obviously be somewhat complicated by the fact that I have provided for a Board of Trustees to exercise administrative oversight over the plans" which meant that the scope of those administrative duties would still have to be defined. For example, I left open the possibility that the insurer would administer all claims under the policy of insurance. Mr. Matthews even conceded that point, saying that the CMSG would not object to the insurer administering the benefits provided that the trust is structured to own the policy.

[33] I will deal with the structure issue more expansively later in this award but for my present purposes I wholly reject any suggestion by Counsel that I am functus officio on this issue. If I were to be seen to be functus, it could only be on the basis that I had spoken my final mind, which is obviously not the case. I did not decide that the board of trustees should own the contracts of insurance or that it would have the authority to sign them. I did decide that a trust should be established under the terms of the collective agreements but I did not address how it should be structured or precisely what authority or role should be assigned to it.

[34] In fact, I am not convinced that it is even proper to speak in terms of anyone owning the policies having regard to the jurisprudence that I discussed earlier that the benefits required to be provided in a collective agreement are not directly enforceable against insurers but only against the employer who agrees to provide the benefits. If the Employer is going to be liable for the benefits, it is logical that it sign the policies and that, frankly, is what I intended. I accept that the parties to a trust agreement may structure it in such a way that the trust would contract with insurers to provide health benefits but where that happens it would have to be seen to put the matter entirely outside the parameters of the collective agreement. My purpose has been to bring the control over them back into the collective agreements.

[35] The problem can be seen in the way the CMSG trust agreement is structured. Article 5.02 provides that the trustees shall procure the health benefits contemplated by the agreement by entering into contracts of insurance or other agreements as they in their absolute discretion from time to time determine and hold insurance policies and/or contracts and/or agreements as owners. What I intended was quite different where the insurance policies would be incorporated into the collective agreement but that the Company would be liable for the

provision of the benefits. The trust contracts with the insurance companies to provide the benefits "as owners" which can only mean that if there was ever a problem it could only be enforced against the trust.

[36] If we then examine the provisions of Article 1.08 of the CMSG agreement in that context, most of them could be seen to be meaningless except those that relate to the payment of premium contributions. Those governing the eligibility of employees to benefits such as subparagraph 8 dealing with the coverage of employees promoted from the unlicensed ranks would not be enforceable against the Company but only the trust. Even subparagraph 4, which purports to obligate the Guild to provide a Health Benefit Plan for all eligible Officers using all of the contributions made by the Company cannot be seen to reflect the proper legal relationship, which is that the trust would provide the plan. The Guild cannot provide the health benefit plan. The only right that the Guild has in that respect is to be represented on the board of trustees.

[37] To continue then with the summary of the procedure to get us this far, on June 22, 2015 Mr. Leenheer wrote to me in response to the letters from Mr. McGrady and Mr. Matthews asserting that in my Interim Award I expressly declined to make a final award on the subject of the Health Plan Arbitration due to the three concerns that I identified at paragraphs 146 – 148 but that upon receipt of the further information I became obligated to issue my final award. He said that Seaspan did not understand the process arising out of the Interim Award to involve any new evidence or submissions back and forth between the parties. Counsel explained that what he understood I was seeking was further information in the form of a report on the three issues and an expert legal opinion on how to best structure the new Health Benefit Plans. He argued that Mr. Matthews had misconceived the process and had in effect concluded that the Interim Award was a final award.

[38] The next day Mr. Matthews wrote a letter in which he took the position that if the Company was right in its view of the process I would be left with only two options: firstly, I could award an Employer owned and governed plan or secondly, I could leave the Seaspan employees in their existing plans because there would be no evidentiary basis for awarding anything else.

[39] My view of that situation is that it really reflected the negotiating positions of the parties and not the reality of what I had ordered in the Interim Award, which I think was clearly expressed. There was no good reason to get into the kind of arguments that developed over the kind of evidence that would be required to address the three conditions and ultimately whether a new system would be practically viable or otherwise remain with the status quo. However, given the intense nature of the rhetoric that was being employed, I scheduled another case management meeting for June 25, 2015 in an attempt to get everyone back on track.

[40] In the meeting I reviewed what I had decided in the Interim Award which was, as I discussed earlier in this award, that I was persuaded that there was adequate reason to establish a new system for the provision of Health Benefits that would be integral with the collective agreements which only involve these parties. I called the industry plans "anachronistic" but that was clearly excessive and not warranted. Nevertheless, I confirmed that I had decided in principle that a new system should be explored to determine if it would be viable and, for that purpose, I established three tests or conditions to measure whether it could be done. I said that these have been variously described but they amount to the same thing:

1. The proposals from the insurance companies would have to be made to be open to acceptance so that the successful bid would be automatically binding on the parties without more;
2. The benefits available from the insurance companies in their proposals must be shown to be substantially the same as those currently being provided as are described in Article 1.13 of the ILWU collective agreement; and

3. The new system can be structured in a way that is commercially efficient and viable so that the defined benefits can be delivered effectively

but that if these things cannot be done then the system should stay as it is.

[41] I said that I expected that I would be provided with information on all those matters that would permit me to decide whether it could be made to work. In the earlier case management meeting on May 15, Counsel agreed and I concurred, that the new information could be done by written submission. We did not consider that it would be necessary to schedule new hearings but it was certainly intended by me that these issues would be addressed by each Party comprehensively with objective verifiable information.

[42] In particular, on the issue of the structuring of the new system, I confirmed my decision in the Interim Award that Seaspan should not be the administrator of the benefits and for that reason it would be necessary to provide an alternative, which is what I wanted the parties to address. Could the insurer administer its own plan? How would employees make a claim? How should we deal with pooled and non-pooled benefits? At a minimum, I said that I thought that the board of trustees would be tasked with the responsibility to ensure that employees obtain the benefits that are contracted for in the policy of insurance.

[43] On June 29 I received a letter from Mr. Matthews requesting an extension of one week to July 8 to complete an analysis of the proposals submitted by the insurance companies. No objections were received from either of the other two parties.

6. **Final Analysis**

[44] Two days later I received an analysis of the proposals from Mr. McGrady on behalf of the ILWU. In his submission he asserted that there are at least 30 instances evident from the proposals that deviate from the current package of benefits available to employees. Although he called them deficiencies, a close examination of them reveals that while many aspects of the various benefits are different, they are not necessarily deficient. Mr. Engler summarized the analysis as follows:

> Standard and Desjardin do not cover Weekly Indemnity (short term disability) or Long Term Disability as in those columns, the comment is non-taxable which means the employee pays the premium. Standard and Desjardin also have a more onerous pre-existing condition clause and they also do not cover payment for treatment centers for drug and alcohol abuse. They also have 30 or more deficiencies in other areas according to the proposals presented.
>
> The Cooperators proposal does not include any coverage for short term disability while at a treatment center for drug or alcohol abuse or payment for staying in the treatment center; they have not included details of their pre-existing conditions language and have over 30 deficiencies as shown in the spreadsheet.

[45] This is to be contrasted with the analysis done by the CMSG. It retained the Coughlin Group, the administrator of its plan which wrote a comprehensive report dated June 30, 2015. Referring to insurance company proposal it concluded as follows:

> The benefits as described are for active working members and are accurate. The quotes received from Weitzel and Associates from three alternative carriers do match the coverage that is currently in place under the CMSG Western Branch Benefit Plan.

[46] Indeed, the author states that the LTD benefit would be improved to age 65 maximum for claims arising on or after September 1, 2015. He says the Manulife/Standard Life quotation reflects a maximum age of 65 so there would be no difference if that particular carrier is chosen to underwrite the Seaspan plan. He correctly notes that it is that carrier that Weitzel and Associates is recommending to Seaspan.

[47] It is also interesting that he provides a historical context to the issue of setting up a new plan because, as he says, the CMSG was originally in the ILWU BC Marine Industry Plan which it left in 1990 to establish its own Western Branch Benefit Plan. He said that on the first day the trustees were informed that all open weekly indemnity claims would be their responsibility and that liability was immediately transferred. Given that precedent, he speculated that it could indicate the direction the CMSG Western Branch Benefit Plan Trustees could be expected to go with open claims if a new plan is established for Seaspan members.

[48] With respect to the rather different conclusion reached on the ILWU analysis, what must be remembered is that the mandate is not to secure identical benefits. That would be almost impossible to achieve with different carriers involved in the tendering process. The objective is rather to ensure that the benefits provided to employees through this process are substantially the same but that contemplates that there may be some differences.

[49] Probably the main deficiency in the proposals identified by the ILWU are that some of the quoted benefits are said to be non-taxable which it interprets to mean that the employee would have to pay them whereas under the current plan the premium costs are paid by the employer so that when an employee is required to draw benefits they become taxable. I do not interpret the proposal by Standard Life on WI or LTD to mean that the employee must pay the premium costs but merely reflects that if the employee were to pay them the resulting benefit would not be taxable. In the first place, the premise of the Interim Award was if a new internal plan is to be established, Seaspan would be required to continue to pay the full cost of providing benefits. In the second place, it could not be of any concern to Standard Life or, indeed Desjardins, whether the premium costs are paid by the employee or the employer.

[50] Other so-called deficiencies identified by the Union should not be seen to fall within that category but rather are issues that have not been addressed in the proposals such as whether employees are covered while participating in a substance abuse program. None of the three proposals address that issue but I prefer to think that is a mere content error and that it is likely that employees are covered in those circumstances. Even if that is not the case, I am not prepared to conclude that the difference would have the effect of creating a significantly deviant plan.

[51] In more general terms, I am satisfied that the proposals compare favorably with the existing benefits provided to ILWU members of the BC Industry Marine Employee Health Benefit Plan, as they were conceded by Coughlin do to in relation to the CMSG Western Branch Benefit Plan.

7. **Right of Withdrawal**

[52] Amongst other things, Mr. McGrady took a position completely different from the CMSG on the issue of whether the parties have a right to withdraw from the BC Industry Marine Employee Benefit Plan. He said that Local 400 had obtained legal advice on the issue from Murray Campbell of Lawson Lundell who stated as follows:

- There is no express language in the trust agreement dealing with removing employees of certain employers out of the plan;

- However, Article 26 which provides for termination by the mutual agreement of the parties can be interpreted to permit a partial termination;
- The parties to the plan are Local 400, the SIU and the Council of Marine Carriers;
- That a portion of the plan would be wound up in accordance with the Article 26 procedure;
- There would be a notional allocation of the plan's assets between Seaspan's employees and the remaining employees; and
- The allocations and calculations would require the assistance of an actuary.

[53] I am not persuaded that any of that can be taken to preclude the parties to these proceedings from withdrawing from their plans for the purposes of this award. That is the obvious conclusion that must be drawn from the fact that there is no language in the trust agreement that governs the matter of withdrawal. I reject entirely any suggestion that it would constitute a partial termination of the agreement even if it would require a notional allocation of assets between the parties. The evidence on this issue was that it could have an impact on the future operations of the plans but there was no evidence that it would have the immediate effect of causing them to become insolvent and to wind up their affairs. I do not agree that a withdrawal amounts a partial termination within the meaning of Article 26 of the trust agreement.

[54] On July 6, I received a further submission from Mr. McGrady enclosing two letters from Harvey Mason of D.A. Townley and another from Terry Engler which generally describe the administration system employed by the BC Marine Industry Employee Health Plan and, more particularly how claims are processed.

[55] On July 8 I received a notice from Mr. Leenheer advising me that the Parties had entered into negotiations to attempt to settle the Health Benefits Plan issue. He requested that I refrain from issuing my award in the matter until it was determined whether a settlement would be possible. On the same day I received an analysis prepared by the CMSG upon which it based its conclusion that the benefits proposed by the insurance companies generally match the coverage presently in place under the CMSG Western Branch Benefit Plan.

[56] On July 28 I received a letter from Mr. Leenheer advising that while the negotiations had been undertaken with some optimism that they would be successful and had been conducted in good faith, they were ultimately unsuccessful in reaching or even approaching a mutually acceptable resolution of the issues. He said the negotiations had been limited to representatives of the Company and the CMSG and had not been extended to the ILWU because it was seen to be futile once it became apparent that no agreement could be reached with the Guild. He said that it was accordingly the position of the Company that the Parties had done all they could to attempt to comply with my directions in the Interim Award. He stated that under the circumstances it was their view that either of two options was open to me. As he said:

a. you will be satisfied that the conditions set out in your interim award have been met and you will proceed to undertake the task of drafting the collective agreement language that will apply to each collective agreement and issue your final award in accordance with the parameters set out in your interim award; or

b. if you are not satisfied that the conditions set out in your interim award have been met, you will, as you indicated in paragraph 150 of your interim award, "give consideration to alternative arrangements, including a continuation of the existing health plans in each of the respective collective agreements" and issue a final award reflecting the outcome of that consideration.

[57] The following day Mr. Matthews made a further submission arguing yet again that I am without jurisdiction to award an Employer owned plan, a position that I have already rejected. Moreover, he strongly

cautioned against developing and imposing some perceived alternative or hybrid arrangement that could give rise to a myriad of unintended tax, trust and liability consequences. The last submission was from Mr. McGrady on August 19 in which he made a proposal to settle the issue, the details of which I will not disclose. Otherwise, he confirmed his endorsement of the argument made by Mr. Matthews that I was without jurisdiction to award an employer owned plan. He also confirmed the earlier argument that he made in his submission of July 1 that the mutual agreement of the parties to the existing Trust Agreement is required for the partial termination of the plan which I have also rejected.

8. **Successful Bid**

[58] I accept the proposal of Manulife/ Standard as being the one that best meets the peculiar issues that have arisen in this case. The transition to new plans will involve a complex restructuring which will be facilitated by a carrier which is thoroughly familiar with the Parties. Standard Life is the current carrier of the CMSG plan.

[59] The most recent comparison of costs made by Mr. Weitzel dated June 11, 2015 differ somewhat from those that were in effect at the time of the original hearings. In the first round the Standard bid was the second lowest of them all but the current Manulife/Standard bid is now the lowest. The per capita premium cost for the CMSG Division is said to be $691.55 and for the Marine Workers Division $547.24. The total monthly cost for each Division is projected to fall from $227,810.00 to $150,757.57 in the CMSG Division and from $180,586.48 to $114,373.23 in the Marine Workers Division.

[60] Of course, this acceptance is subject to the proposal being extended sufficient that it can be accepted and that all of the quoted benefit specifications remain unchanged. I direct Seaspan to conduct negotiations with Standard Life for that purpose and, if successful, to enter into the contract of insurance by signing the policy and any other requisite documentation, as soon as the necessary administrative arrangements have been made to commence coverage, which I will deal with shortly. The insurer will have to be provided with a copy of the collective agreement language in each case so that it can determine from its point of view if there may be any problematic areas of coverage or administration.

9. **Organizational Structure**

[61] I should like to note in passing that certain of the specifications included in the tender relate to how the insurer proposes to administer the coverage, addressed @ pp. 4 – 9 of the proposal with a covering letter dated June 01, 2015. A short summary of what they call simplified plan administration includes:

- utilization of eServices for making and maintaining claims
- specialty drug programs to integrate the reimbursement of certain prescription drugs with government programs
- prior authorization program for specialty drugs
- management and support program for serious health issues
- generic substitution programs to help offset the escalating costs related to the arrival on the market of highly effective yet more effective drugs, the brand-name equivalents are advantageous
- absence management solutions.

[62] What needs to be said about the implications of the particular organizational structure that I have devised is that Seaspan will be responsible for all the costs of coverage both for the present and during the entire term of the collective agreements in precisely the same way that it did under the previous agreements. It is true that there

are strikingly different approaches as to how benefits are provided under the two agreements in that the CMSG agreement prescribes a set amount it must pay leaving it to the trustees to determine what level of benefits could be provided with the monies available while the ILWU agreement prescribed the benefits required to be provided. What has to be understood, however, is that the latter could have presented serious problems of enforcement because it was the BC Marine Employee Benefit Plan that was implicitly required to provide the benefits but they were not a contracting party to the collective agreement. In effect, both agreements were substantially the same in the sense that the Employer paid the costs, leaving the benefits to be provided through the industry plans.

[63] The Employer provided a legal opinion from Margaret Mason, Bull, Housser & Tupper, on the governance models typically used in the management of health and disability benefits. She said that two basic governance models are employer sponsored and jointly trusteed but in view of what I stated in the Interim Award, in her opinion the employer sponsored model would more closely meet the requirements. She said that the jointly trusteed model does not respond well to the requirement that Seaspan take all the risks. Under a jointly trusteed model the two parties normally share the risk, although that was clearly not the case under the two industry plans. In that case, the trustees jointly managed the benefits but they were entirely paid by Seaspan.

[64] Under this award, not only will Seaspan be responsible to pay for the insurance, it will also be responsible for all related costs including the administrative costs incurred by the boards of trustees. In addition, it will have the sole responsibility for providing specified types and levels of benefits which will be directly enforceable against the Company in the event that there may be deficiencies between what is required by the collective agreements and what is provided by insurers.

[65] I have selected Standard Life to be the insurer for the initial term of the policy. In addition, since I have accepted that the proposed policy would provide substantially the same benefits to employees as are currently being provided, I have decided that the most effective way to deal with the it would be to incorporate it into the collective agreements. In effect, the policy is simply the way in which Seaspan has been required to provide the benefits for the first term of the insurance contract. After that it may elect to do it some other way, which could include such things as self-insurance or different insurance companies for different types of insurance or a combination of self-insurance and commercial insurance, whatever it may consider is the most effective and economical way to provide the benefits. That will give the maximum ability to the Employer to control costs going forward provided that it continue to provide the same benefits. I have also made provision for the possibility that it may be more efficient to administer the non-pooled benefits locally, in which case I order that it shall be done by the new trust entities which are discussed hereafter.

[66] While I have not adopted her report, it is coincidental that Ms. Mason identifies the negotiation of contracts with insurance providers for the provision of benefits, as a feature of the employer sponsored model. Interestingly, she says that an insurance package will often involve a multiplicity of insurers for the different type of benefits to be provided because certain insurers have greater expertise in certain areas. In this case I have required that Seaspan assume all the risk of providing the benefits but I have also given it the ability to manage the cost which may include contracting with single insurers or several of them. The only question remaining in those circumstances is how to delineate the role of the Unions in the administration of those benefits. I have assumed that the process quoted by Standard Life means that it intends to administer all benefits during the first term of the policy.

[67] What must be understood is that what I intended when I referred to a board of trustees in the Interim Award is that the Unions should continue to have a collaborative role not entirely unlike what they had in the industry plans overseeing how the benefits are being administered. I determined that a trust entity with a board of

trustees would be a convenient structure by which it could be organized. When I say a collaborative role, what I mean is one where both the Company and the Unions will have an equal voice in ensuring that the prescribed health benefits plans operate properly. A non-profit society was another possible structure that was available to me but I concluded that a corporate entity would be too cumbersome. In order to ensure that it does not become just another opportunity lost, I made provision for a chairperson who would have dual role to firstly schedule regular meetings of the board and preside over them similarly to the way a corporate board of directors operates but also to break tie votes in the event of an impasse. This person would be entitled to participate fully in all meetings of the board but would not have a vote except where the board is deadlocked.

[68] In order to ensure that the business of the trust is carried out, I think that an ideal person for the role would be someone with actual experience as the chairperson of a corporate board but who also has extensive dispute resolution experience. On that basis, I appoint John P. Sanderson to be the first chairperson of the board of trustees. He will be entitled to a reasonable annual retainer to compensate him for the risk and the ordinary routine involved in managing the organization as well as his normal professional fee for meetings. The amount of the retainer should be somewhat equivalent to a director's fee in a moderately sized corporation but should be negotiated with the board of trustees.

[69] A trust will have to be established through a trust agreement similar in form to the one used to establish the CMSG Western Branch Benefit Plan. Since I do not have experience in that area I am not prepared to draft it myself but rather I will retain Counsel on behalf of and at the cost of the Parties for that purpose. It should not otherwise delay the implementation of this award to activate the policy of insurance with Standard Life. There will be administrative details to work out but those can be dealt with, if necessary, as part of my ongoing jurisdiction to conclude the terms of new collective agreements.

[70] The purposes of the trust will be elaborated in the trust agreement but generally can be described as follows:

1. to manage the business of the trust and to employ such persons as may be seen to be required to carry out that business;
2. to monitor the provision of health benefits to employees including maintaining all pertinent records and statistics relating thereto and to make regular reports to the Parties on the performance of the health benefit plans and provide advice and make recommendations relating thereto;
3. to provide counselling to employees on the health benefits available to employees and to assist them in making claims of every nature and kind relating to the benefits, including government agencies and generally ensure that employees receive the benefits provided by the collective agreement except it shall not extend to the filing of grievances or to the actual enforcement of the collective agreements;
4. to provide such administrative or other assistance to insurers or other related parties as may be considered appropriate and upon such terms as made be agreed;
5. to manage non-pooled benefits such as short term disability, extended health care and dental plans including the establishment of a trust fund for those purposes.

[71] It perhaps does not need to be said that the trust is intended to function as an adjunct business to provide whatever support may be seen to be useful or necessary to assist the insurer to deliver the specified health benefits to employees or to do some of it independently. It should have an office located on or near the company offices in North Vancouver accessible generally to all employees to assist them in making claims. It should be staffed with such clerical and administrative employees as may be necessary. The administration of non-pooled benefits may be a particularly good opportunity to participate more directly in the actual provision of benefits

where it is determined that they can be more efficiently administered internally. All of the defined purposes except no. 5 should be seen to be mandatory functions to be performed by the trusts. Performance of the latter purpose will depend on whether it is determined at any time that the non-pooled benefits can be more efficiently administered locally. The Company is prohibited from doing any of the administration itself other than by participating in the workings of the trusts. If the latter option is exercised, it could have the effect of providing a significant element of financial management which would more closely imitate what is currently being done by the industry plans.

[72] I received two very helpful reports from Harvey Mason, D.A. Townley, who outlined firstly, the cost arrangements involved in the administration of benefits. He said that where the trust is responsible for providing the benefits, it can recoup the administrative costs of providing them from the premium payments. Under the current system, Long Term Disability, Life Insurance, and Accidental Death and Dismemberment benefits are covered by an insurer. In the case of the ILWU, the insurer is Great West Life and, as I have already observed, for the CMSG it is Standard Life. The self-insured benefits which I take to mean "non-pooled benefits" include Weekly or Short Term Disability, Dental and Extended Health Care. He said that the reason the trust uses self-insurance is cost. Self-insurance is usually appropriate when dealing with low-value claims such as eye glasses or dental reimbursements.

[73] He says that if the self-insured benefits are covered by an insurance company, several other components enter the equation. Depending upon the nature of the underwriting arrangement, the insurance company would typically require the trust to pay amounts to be used as reserves by the insurance company. As we have seen, Mr. Weitzel gave evidence on the regulations governing how these funds are accumulated relating particularly to Long Term Disability insurance. So what Mr. Mason is saying is that reserves would also have to be established for the self-insured benefits, which presumably had not previously been done. He said the level of reserves would vary by the nature of the benefit and is typically expressed as a percentage of paid claims. In addition to the reserves, the insurance company will charge the following:

General administration	2.5% - 3.0%
Claims Payment Fees	3.5% - 4.0%
Contingency	1.0% - 1.5%
Profit	1.5% - 2.0%
Premium Tax	2.0%
Broker Compensation	3.0% - 4.0%

[74] With a self-insured model, he said the fees charged would typically be 4.5% - 5.% plus a small per-employee charge of $2.00 - $2.50/mo.

[75] He broke down the administrative tasks that must be performed depending upon whether the benefit was self-insured as follows:

Short Term Disability

- We would be notified of a claim by either the employee, the employer or the Union;
- We gather all required information to assess and adjudicate the claim. The required information would include an employee's statement outlining the circumstances giving rise to the claim. Also the employee would provide details of the last day of work, plus sufficient personal information to allow us to verify coverage eligibility;

- We would obtain an employer's statement, which will provide salary/wage rate and verification of the employee's last date at work. The employer's statement also provides an opportunity for the employer to provide any additional information they believe may be useful for us to know to assist with our adjudication;
- Often when reviewing the information from each of the statements, it's necessary to complete further investigations prior to approving or declining the claim. Examples might include clarification of medical information or coordination with other service providers such as ICBC or WorkSafeBC;
- Once all the required information and documentation is received, a decision is made with respect to approving or declining the claim;
- Assuming the claim is approved, we make periodic payments, either by cheque or by direct deposit into the employee's bank account;
- The claim continues to be monitored on an ongoing basis to ensure the employees compliance with recommended medical care and treatment;
- As the Short Term Disability benefit is taxable once in the employee's hands, we make periodic income tax withholding payments to the Canada Revenue Agency on behalf of the disabled employee; and
- In the event that the disability lasts beyond the maximum period of 52 weeks, the claim then shifts to a Long Term Disability claim.

Long Term Disability

- If we determine that it is likely that the claim will go to LTD, we will send the employee the LTD claim package at approximately 40 weeks of disability. The package contains the same type of employee/ employer/ attending physician statements as the Short Term Disability claim adjudication package. In addition, the LTD package includes documentation regarding the Canada Pension Plan disability benefits, detailed work duty assessment documentation and income verification documentation;
- Once this information is received, it is sent to Great West Life, along with the full medical file used to support the Short Term Disability claim;
- Upon receipt of the LTD application, Great West Life begins their adjudication process. Depending upon the information provided, this process can take up to 3 months before a claim decision is rendered;
- Assuming the LTD claim is approved, Great West Life assumes the responsibility of ongoing claim management and monthly payments. Payments would continue until the earliest of the employee recovering, dying or attaining the age of 65.

Life Insurance/ AD&D

- We are notified by a variety of sources. It could be the employer, the union, a beneficiary or an estate representative;
- At that point we would provide the required claim forms, gather the full claim information and provide the claim to the insurance company;
- Upon claim approval, the insurance company pays the benefit to the beneficiary. Typically, this process requires 10 days.

Dental/Extended Health and Vision

- Claims are received by a variety of media, including electronic data interface (EDI), scanned email, facsimile, Canada Post or delivered by hand;
- Claims are reviewed for completeness and eligibility, then adjudicated according to the terms of the benefit plan;

- Reimbursement of eligible claims are paid by direct deposit into the employee's bank account or by cheque -- which can be picked up the following day by the employee or mailed.

[76] Implicit in the Bull Housser Report is a suggestion that I might properly consider an employer sponsored model with an advisory committee. On this view, the board of trustees would only provide advice, as is suggested by the title and would report to either the Seaspan Board of Directors or the finance committee. Its purpose would be to provide the employees' perspective on such things as the performance of the insurers, whether the negotiated benefits were meeting their needs, whether different benefits should be recommended, the experience of employees in making claims, and consideration of the kinds of issues that are driving the plan experience.

[77] While I have always felt that a valuable contribution could be made to corporate boards and advisory committees by persons designated to represent employee interests, it has been my experience that this is not a perspective shared generally by unions. In any event, it would not meet my expectations, which is, as I have already indicated, that the board of trustees would not be limited to providing advice and making recommendations but rather that it would have actual administrative and management duties and responsibilities consistently with such of them as are outlined in paragraph 75 that are not performed by the insurer.

[78] The author of the report also cautions that a trust is a taxpayer for purposes of the Income Tax Act but the trust agreement can be carefully drafted to ensure that the trust qualifies for an exemption. She said that the trustees are generally not paid although their expenses to attend meetings would be. A third party neutral chair, typically an actuary or an individual with significant benefits experience could be engaged. This person would be paid an annual fee.

12. **Conclusion**

[79] The underlying message that I should like to communicate relates to the importance of collaboration to enable the parties to deal effectively with the kinds of disputes that have arisen in this case. It is not an esoteric theory of labour relations but a fundamental reality that effective dispute resolution depends upon there being a respectful relationship between the parties. The problem here does not originate in a lack of ability by the representatives. All the parties have been well served by their representatives who have articulated the positions of their principals with a great deal of skill but because of their poor relationship have not been able to find common ground. What is now needed is to use the opportunities that we have to cement a better relationship at the highest levels.

[80] The restructuring of the health plans should be seen to be such an opportunity. I acknowledge that the Unions see the change as a concession but the reality is that the only substantive change that I have made is how the health care benefits are delivered. The industry trusts will no longer be responsible for procuring insurance. That function is now quite properly allocated to the party which bears the risk of the benefits. Seaspan will be entitled to shop for the most economic carrier that is prepared to deliver the required benefits but it is not entitled to deliver them itself because that would be seen to be a conflict of interest.

[81] On the evidence the industry trusts only manage the non-pooled benefits. The pooled benefits represented by LTD, Life and AD&D have always been administered by the insurers. I have made provision for the possibility that the new trusts may also manage the non-pooled benefits but that will depend on whether it is seen to be economic to do it that way. I have made provision for the structuring of the new trusts with as much authority as is economically feasible but at the end of the day, the purposes for which the trusts are going to be established should be seen to be what they really are, which is to say, opportunities for collaboration. The degree

to which they are taken up will set the tone for the state of labour relations between the parties for the entire term of the new collective agreements.

[82] Otherwise, the health benefits required to be provided to employees are essentially the same as those provided under the previous collective agreements. What must not be ignored, however, is that there will be one significant improvement over past agreements which is that any issues over entitlement will be directly enforceable against the Company. As distinguished from before, Seaspan will not just be responsible to provide insurance for specified benefits but will be responsible for any deficiencies if any insurer fails to provide them.

[83] The prescribed collective agreement language designed to achieve those purposes is contained in appendices attached hereto. In each case the existing agreements shall be amended with immediate effect by deleting the existing language and substituting the language provided in each respective appendix as follows:

(a) Appendix "1" is the Health Plan for the Canadian Merchant Service Guild; and
(b) Appendix "2" is the Health Plan for the International Longshore and Warehouse Union, Local 400, Marine Section.

[84] I reserve jurisdiction to make such mechanical or grammatical corrections to this award as may be required to align it with my general intention and to determine any issues relating to its interpretation or implementation.

Dated this 5th day of October, 2015 at Vancouver, British Columbia

"Dalton L. Larson"

_____

Dalton L. Larson
Arbitrator

Appendix “1”

COLLECTIVE AGREEMENT

Between

SEASPAN MARINE CORPORATION
(hereinafter called the “Company”)

and

CANADIAN MERCHANT SERVICE GUILD
Representing Master, Mates and Engineers
hereinafter called the “Guild”)

1.08 **BENEFIT PLAN**

Health Plan

1. The Company shall provide the health benefits hereafter specified to all eligible Officers in its employ through the Standard Life Assurance Company of Canada (“Standard Life”) with the coverage specified in its quotation dated June 1, 2015 for Long and Short Term Disability, Life, Accidental Death & Dismemberment, Extended Health Care and Dental Care (the “CMSG Health Benefit Plan”).

2. Subject to the terms of the initial contract of insurance, upon expiration of the rate guarantee periods, the Company shall be entitled to contract with another insurer or insurers to arrange coverage at such rates as may be satisfactory to it, provided that the benefits provided in every case are substantially the same as those required by the CMSG Health Benefit Plan. In the event that the Company changes insurers, it shall remain liable during the balance of the term of this Agreement for any deficiencies that shall occur in the provision of the new benefits in relation to those required to be provided by the CMSG Health Benefit Plan.

3. The Company shall also be entitled to contract with the trust entity established under the terms of this Article to provide and administer Short Term Disability, Extended Health Care and Dental Care benefits upon such terms as may be mutually acceptable. In that event the Company shall not bear any liability for those benefits other than to pay the costs incurred by the trust entity to provide them.

4. The costs of all health benefits required to be provided under this Agreement shall be entirely paid by the Company.

5. An eligible Officer is one who has been continuously employed for ninety (90) days and is actively at work except as otherwise provided in this Article.

6. Coverage will be pro rated for those Officers who are eligible and who are employed for part of a month. Laydays shall be credited as employed days.

7. Where an Officer is promoted from the unlicensed ranks and he works continuously, health benefit plan coverage will be maintained under the unlicensed plan to the first (1^{st}) day of the fourth (4^{th}) month following such a promotion, then entitlement to benefits under the CMSG Health Benefit Plan will commence. In the event the Officer is subsequently demoted back to the unlicensed ranks, coverage will continue under the CMSG Health Benefit Plan for a full three (3) calendar months, then revert to coverage under the unlicensed plan on the first (1^{st}) of the month following.

8. Coverage will commence immediately for any eligible Officer who returns to active full-time employment with the Company within six (6) months of the date of his leaving employment. If an Officer does not return to active full-time employment within the six (6) month period, he will be considered a new employee and will be subject to the ninety (90) day continuous employment provision. Where an Officer retains recall rights under Article 1.12(9) he will not be subject to the waiting period on returning to work.

9. The Officer's pay shall be maintained, including red days, during the waiting periods for short term disability payments up to a maximum of seven (7) red days.

10. An Officer on short term disability will be entitled to top-up his entitlement up to full basic wages with laydays. Laydays will include red days (unearned leave) as follows: seven (7) days red day credits for each year of service with the Company up to a maximum of forty-five (45) red days inclusive of any red days the Officer might have had when going off on weekly indemnity.

11. Officers who would otherwise have been laid off will not be entitled to be supplemented with red days. Where an Officer is not expected to return to work and who is medically supported before going on LTD, red days will not be available for top-up.

12. Officers who qualify for and elect red day top-up under this clause will be required to sign a reasonable debt repayment agreement with the Company prior to any red day top up being paid.

13. When an Officer is on short term disability benefits or WCB benefits for up to fifty-two (52) weeks, the Company will pay the full cost of coverage together with the BC Medical Plan premiums. An Officer who is laid-off when on these benefits will continue to have these premiums paid by the Company.

14. Any rebate of EI insurance premiums will be retained by the Company to offset health benefit coverage.

15. The Company will pay one hundred per cent (100%) of the BC Medical Services Plan premiums.

Trust Entity

16. The Parties shall enter into a trust agreement for the establishment of a new trust entity with purposes that shall include but not be limited to the following:

(1) to manage the business of the trust and to employ such persons as may be required to carry out that business;

(2) to monitor the provision of health benefits to employees including maintaining all pertinent records and statistics relating thereto and to make regular reports to the Parties on the performance of the health benefit plans and provide advice and make recommendations relating thereto;

(3) to provide counselling to employees on the health benefits available to employees and to assist them in making claims of every nature and kind relating to the benefits, including government agencies and generally ensure that employees receive the benefits provided by the collective agreement except it shall not extend to the filing of grievances or to the actual enforcement of the collective agreement;

(4) to provide such administrative or other assistance to insurers or other related parties as may be considered appropriate and upon such terms as may be mutually agreed; and

(5) to manage non-pooled benefits such as short term disability, extended health care and dental plans including the establishment of a trust fund for those purposes.

17. A Board of Trustees shall be established under the terms of the trust agreement comprised of five (5) positions. Each party shall be entitled to appoint two trustees who each shall have one vote.

18. The trustees shall then appoint an independent person to act as the Chairman of the Board who shall schedule regular meetings of the board and preside over them. The chairperson shall be entitled to participate fully in all meetings of the board but without a vote except where the board is deadlocked in which case he/ she shall have one vote.

19. The entire cost of the administration of the trust shall be paid by the Company. The trustees shall be entitled to be reimbursed their expenses incurred in the discharge of the duties. The independent chairperson shall be entitled to a reasonable annual retainer and a professional fee for attendance the meetings plus reasonable expenses.

Health Plan Booklet

20. The Board of Trustees shall produce a Health Plan Booklet for distribution by the Company to each employee, which summarizes all of the terms, conditions and benefits of the CMSG Health Benefit Plan.

Appendix “2”

COLLECTIVE AGREEMENT

Between

SEASPAN MARINE CORPORATION
(hereinafter called the “Company”)

and

INTERNATIONAL LONGSHORE & WAREHOUSE UNION LOCAL 400,
MARINE SECTION
(hereinafter called the “Union”)

1.13 **BENEFIT PLAN**

Health Plan

1. The Company shall provide the health benefits hereafter specified to all eligible unlicensed employees in its employ through a policy of insurance with the Standard Life Assurance Company of Canada (“Standard Life”) with the coverage specified in its quotation dated June 1, 2015 for Long and Short Term Disability, Life, Accidental Death & Dismemberment, Extended Health Care and Dental Care (the “ILWU Health Benefit Plan”).

2. Subject to the terms of the initial contract of insurance, upon expiration of the rate guarantee periods the Company shall be entitled to contract with another insurer or insurers to arrange coverage at such rates as may be satisfactory to it, provided that the benefits provided in every case are substantially the same as those required by the ILWU Health Benefit Plan. In the event that the Company changes insurers, it shall remain liable during the balance of the term of this Agreement for any deficiencies that shall occur in the provision of the new benefits in relation to those required to be provided by the ILWU Health Benefit Plan.

3. The Company shall also be entitled to contract with the trust entity established under the terms of this Article to provide and administer Short Term Disability, Extended Health Care and Dental Care benefits upon such terms as may be mutually acceptable between them. In that event the Company shall not bear any liability for those benefits other than to pay the costs incurred by the trust entity to provide them.

4. The costs of all health benefits required to be provided under this Agreement shall be entirely paid by the Company.

5. An eligible unlicensed employee is one who has been continuously employed for ninety (90) days and is actively at work except as may be otherwise provided in this Article.

6. Coverage will be pro-rated for those unlicensed employees who are eligible and who are employed for part of a month. Laydays shall be credited as employed days.

7. Where an unlicensed employee is promoted from the unlicensed ranks to an Officer and he works continuously, the health benefits will be maintained under the ILWU Health Benefit Plan up to the first (1^{st}) day of the fourth (4^{th}) month following such a promotion, then entitlement to benefits under the CMSG Health Benefit Plan will commence. In the event the unlicensed employee is subsequently demoted back to the unlicensed ranks, coverage will continue under the CMSG Health Benefit Plan for a full three (3) calendar months, then revert to coverage under the ILWU Health Benefit Plan the first (1^{st}) day of the fourth (4^{th}) month following.

8. Coverage will commence immediately for any eligible unlicensed employee who returns to active full-time employment with the Company within six (6) months of the date of his leaving employment. If an unlicensed employee does not return to active full time employment within the six 6 month period, he will be considered a new employee and will be subject to the ninety (90) day continuous employment provision. Where an unlicensed employee retains recall rights under Article 1.09(f) he will not be subject to the waiting period on returning to work.

9. The pay of unlicensed employees shall be maintained, including red days, during the waiting periods for short term disability payments up to a maximum of seven (7) red days.

10. Unlicensed employees on short term disability benefits shall be entitled to top off their benefits up to full monthly basic wages with lay days. Such lay days shall include red days (unearned leave) as follows: seven days red day credit for each year of service with the Company up to a maximum of forty-five (45) red days, inclusive of any red days that the unlicensed employees might have had when going off on short term disability.

11. Unlicensed employees who would otherwise have been laid off will not be entitled to be supplemented with red days. Where an unlicensed employee is not expected to return to work upon receiving doctor's advice to that effect before going on LTD, red days will not be available for top off.

12. Unlicensed employees who qualify for and elect red day top up under this clause will be required to sign a reasonable debt repayment agreement with the Company prior to any red day top up being paid.

13. When an employee is on long term disability benefits, the premium for BC Medical will be paid by the Company.

Trust Entity

14. The Parties shall enter into a trust agreement for the establishment of a new trust entity with purposes that shall include but not be limited to the following:

(1) to manage the business of the trust and to employ such persons as may be required to carry out that business;

(2) to monitor the provision of health benefits to employees including maintaining all pertinent records and statistics relating thereto and to make regular reports to the Parties on the performance of the health benefit plans and provide advice and make recommendations relating thereto;

(3) to provide counselling to employees on the health benefits available to employees and to assist them in making claims of every nature and kind relating to the benefits, including government agencies and generally ensure that employees receive the benefits provided by the collective agreement except it shall not extend to the filing of grievances or to the actual enforcement of the collective agreement;

(4) to provide such administrative or other assistance to insurers or other related parties as may be considered appropriate and upon such terms as may be mutually agreed; and

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