

AMENDED THIS Aug 23/11 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
RÈGLE/LA RÈGLE 26.02 (a)

Court File No. CV-10-40251500CP

THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____
REGISTRAR / GREFFIER
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOSEPH MICHAEL O'NEILL

Plaintiff

- and -

GENERAL MOTORS OF CANADA LIMITED

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$15,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Issued by

MAY 6/10
~~August 22, 2011~~

"O. PALUMBO"
Local registrar

Address of court office 393 University Avenue , 10th FL
Toronto, Ontario
M5G 1E6

TO: GENERAL MOTORS OF CANADA LIMITED
1908 Colonel Sam Drive
Oshawa, Ontario
L1H 8P7

CLAIM

1. The plaintiff claims:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiff as the representative of a class to be certified by the court;
 - (b) a declaration that each member of the class is entitled, to receive from the defendant, post-retirement benefits and/or executive post-retirement benefits, as defined below, without reduction and/or elimination, and a mandatory order directing that the defendant provide the class members with the post-retirement benefits and/or executive post-retirement benefits without reduction or elimination;
 - (c) damages of \$500,000,000.00 for breach of contract, or in the alternative, for breach of fiduciary duty, negligent misrepresentation, and / or unjust enrichment in an amount to be determined at trial or on a reference or references;
 - (d) punitive damages in the amount of \$50,000,000.00
 - (e) pre-judgment and post-judgment interest;
 - (f) the costs of this action on a substantial indemnity basis;
 - (g) the costs of administering the plan of distribution of the recovery in this action; and
 - (h) such further and other relief as may be required and as this honourable court deems to be just.

THE PARTIES

2. The plaintiff, Joseph Michael O'Neill, lives in Havelock, Ontario.
3. The defendant, General Motors of Canada Limited ("GMCL"), is a privately-held company incorporated pursuant to the laws of Canada and has its head office in Oshawa, Ontario.
4. O'Neill was employed by GMCL from 1964 until his retirement in 2002. O'Neill held hourly positions from 1964-1979, and salaried positions from 1979-2002. The last position O'Neill held prior to retirement was Powertrain Resident Manager at GMCL's Oshawa Truck Plant. O'Neill is presently in receipt of pension and post-retirement benefits.
5. GMCL was, at all material times, the employer of every member of group (a) of the proposed plaintiff class described below, and the administrator of the post-retirement benefits and executive post-retirement benefits on behalf of all members of the class.

THE CLASS

6. The plaintiff brings this action on his own behalf and on behalf of the following class of persons:

"(a) all salaried and executive retirees of General Motors of Canada Ltd. who retired between January 1, 1995 and the date on which the certification of this action is finally determined; and

(b) all surviving spouses and dependent children of the persons described in (a)”

(the "class" or "class members").

CONTRACTUAL ENTITLEMENT TO POST-RETIREMENT BENEFITS AND EXECUTIVE POST-RETIREMENT BENEFITS

7. GMCL entered into contracts of employment with each of the class members described in group (a) above.

8. GMCL agreed that in exchange for, and as deferred compensation for, the labour and services provided by each of the class members in group (a), it would pay for or otherwise provide all of the class members in group (a) with various benefits in retirement, including coverage for dental, orthodontic, hearing and vision care; comprehensive medical, long-term and chronic care; semi-private hospital accommodation; prescription drugs; out-of-province medical, paramedical and prosthetic expenses; basic group life insurance, optional group life insurance, and supplementary group life insurance (collectively, the “post-retirement benefits”). GMCL further agreed to provide the executive employees described in group (a) with certain additional benefits in retirement, including Supplementary Group Life Insurance (“SGLI”); Personal Umbrella Liability Insurance (“PULI”); and Canadian Executive Retirement Plan (“CERP” aka “CSERP”) benefits (collectively, the “executive post-retirement benefits”).

9. GMCL agreed to provide certain post-retirement benefits and/or executive post-retirement benefits to the class members in group (b) as deferred compensation

for the labour and services provided by the individuals in group (a). Furthermore, it was contemplated by the parties to the contract, that the class members in group (b) would be entitled to, and would claim, for post-retirement benefits and/or executive post-retirement benefits.

10. The post-retirement and/or executive post-retirement benefits, which GMCL agreed to pay or otherwise provide to class members, are described in various standard benefits policies, benefits statements, benefits summaries, benefits booklets, compensation journals, insurance certificates, letters, notices, and other written documents provided to or made available to class members by GMCL or by agents or employees of GMCL. Such written documents purported to be, and were in fact, binding on the class members.

11. Further, GMCL and its agents made written promises by way of standard-form letters to class members described in group (a), on or after their retirement, with respect to the basic group life insurance benefits, confirming and committing to the continued provision of a certain amount of such benefits to class members for the remainder of their lives.

12. The post-retirement benefits and executive post-retirement benefits vested irrevocably as work and labour was being performed by class members in group (a), and GMCL could not lawfully reduce or eliminate such benefits or such pro-rata portion of benefits after they were earned. In the alternative, the post-retirement benefits and executive post-retirement benefits vested on the retirement of the class

members described in (a), and GMCL could not lawfully thereafter reduce or eliminate such benefits thereafter.

13. All improvements to post-retirement benefits and executive post-retirement benefits made after retirement also vested as they were provided and GMCL could not lawfully thereafter reduce or eliminate such benefits.

REDUCTION OR ELIMINATION OF POST-RETIREMENT BENEFITS AND EXECUTIVE POST-RETIREMENT BENEFITS

14. In December 2007, GMCL announced various reductions and eliminations to the post-retirement benefits, to take effect at various points in 2008 and 2009, namely:

- (a) salaried and executive retirees could not add new dependents for benefits coverage;
- (b) out of province coverage was limited to not more than 60 days per trip;
- (c) a maximum lifetime out of province benefit was imposed;
- (d) semi-private hospital coverage was eliminated;
- (e) co-payments under the comprehensive medical insurance program were increased;
- (f) the annual maximum for dental and orthodontic benefits was reduced;
- (g) the maximum dispensing fee for prescription drugs was reduced;

- (h) the prescription drug co-payment of \$2 was replaced with co-payment of 10% per prescription;
 - (i) many over the counter medicines were no longer eligible for coverage;
 - (j) prescription drugs were subject to an annual cap per family;
 - (k) the premiums for optional group life insurance were to be adjusted based on new factors including gender and smoking;
 - (l) Survivor Income Benefit Insurance was eliminated; and
15. In August 2008, GMCL announced that effective January 1, 2009, all retirees and surviving spouses were to be automatically enrolled in a medical plan for which there would be a monthly financial contribution required.
16. On February 12, 2009, GMCL announced a 10% temporary reduction to the CERP benefit to take effect May 1, 2009.
17. On February 12, 2009, GMCL announced reductions to the SGLI benefit to take effect in 2009 and 2010.
18. Effective May 1, 2009, GMCL reduced the Canadian Executive Retirement Plan payments to executive retirees by 10%.
19. Effective October 1, 2009, class members who moved to permanently reside in the United States no longer received healthcare coverage comparable to the hospital and medical coverage publicly available in Ontario.
20. On September 30 2009, GMCL announced various further reductions and

eliminations to the post-retirement benefits and executive post-retirement benefits, to take effect in 2010, namely:

- (a) reduction in the basic group life insurance benefit;
- (b) elimination of the option to continue the Supplemental Group Life Insurance ("SGLI") benefit in retirement for executive retirees under age 65;
- (c) for executive retirees turning 65 between October 1, 2009 and December 31, 2009, elimination of the option to continue SGLI in retirement beyond their 65th birthday; and
- (d) further reductions to the Canadian Executive Retirement Plan benefit applicable to executive retirees to take effect in 2010.

21. On December 31, 2009, GMCL announced the elimination of the PULI benefit to take effect in 2010.

BREACH OF CONTRACT

22. GMCL has in fact implemented the reductions in post-retirement benefits and executive post-retirement benefits as set out above, in accordance with its stated intentions, or is in the process of doing so.

23. In retroactively and unilaterally purporting to modify the consideration previously earned by class members in group (a), and now due and accruing, GMCL has breached and is continuing to breach its contracts with the class members.

24. Furthermore, it was a term of the contracts that GMCL would act in good faith, which term GMCL breached by reducing or eliminating the post-retirement and

executive post-retirement benefits, having regard exclusively to its own interests, and contrary to the interests of class members.

UNJUST ENRICHMENT – *QUANTUM MERUIT*

25. In the alternative, if the defendant is not contractually obliged to provide the post-retirement benefits and executive post-retirement benefits as set out above, the class members are entitled to recover the value of such benefits on a *quantum meruit* basis.

26. The defendant received the value of the class members' work and labour on the basis of its written representations described in paragraph 10 and 11 above, that class members would receive the post-retirement benefits and executive post-retirement benefits.

27. The work performed by the class members in group (a) gave rise to benefits enjoyed by GMCL, for which the class members suffered corresponding deprivations.

28. Class members are therefore entitled to recover the value of the unreduced post-retirement benefits and executive post-retirement benefits, by reason of GMCL's acquiescence in the receipt of work and labour on the basis that the post-retirement benefits and executive post-retirement benefits would be paid.

BREACH OF FIDUCIARY DUTY

29. In the further alternative, GMCL owed fiduciary duties to the class members by virtue of being the employer, benefits sponsor and benefits administrator and thus being in a position of power, trust and confidence in relation to the class members.

35. If GMCL had the right to modify or terminate the basic group life insurance benefit (which is denied), then the written representations to class members in group (a) with respect to the basic group life insurance benefit described in paragraph 11 were untrue, inaccurate and/or misleading, and were made negligently. Class members in group (a) reasonably relied on such representations to their detriment, including by not purchasing or maintaining alternate or additional life insurance.

EFFECT OF THE DEFENDANT'S ACTIONS

36. As a result of GMCL's breaches of contract and tortious and unlawful conduct as set out above, the class members have and will continue to sustain damages, including but not limited to losses equal to the value of the lost post-retirement benefits and executive post-retirement benefits, as measured by the total savings achieved by GMCL in effecting the reductions and eliminations to the post-retirement benefits and executive post-retirement benefits.

37. GMCL's actions have had a serious impact on the class members. Many of the class members live on modest non-indexed fixed incomes, and they are particularly vulnerable as a result of their advanced age, susceptibility to health problems, and limited capacity to assume increased financial burdens or to seek additional employment income.

38. As a result of GMCL's unilateral and unlawful conduct, the class members have been and will be compelled to forego the post-retirement benefits and executive post-retirement benefits to which they are entitled, or to pay increased amounts of

their non-indexed fixed incomes, where possible, to attempt to replace the reduced or eliminated post-retirement benefits and executive post-retirement benefits.

39. In particular, class members have been and will be compelled to pay additional costs for the post-retirement benefits and executive post-retirement benefits to which they are entitled, in the form of premiums, fees, co-payments, and increased deductibles, or will be forced to forego the benefits and their attendant value.

40. Class members failed to purchase alternate or additional benefits when such were available, or were available at a lower cost. Class members have suffered damages accordingly.

A CLASS PROCEEDING IS APPROPRIATE

41. The class members, as individuals, cannot match the resources of GMCL. The individual claims of each class member would not be economical to pursue individually. The class members would be denied access to justice in the absence of a class proceeding.

42. It is unlikely that an individual could or would seek prospective relief to deter future misconduct by GMCL with respect to post-retirement benefits. Moreover, GMCL is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on its behaviour. This class proceeding will either produce a voluntary change in the behaviour of GMCL or result in a court order which will compel a change in its behaviour. The alternative to this class proceeding is a multiplicity of proceedings where similar factual and legal issues would be raised.

This would be inefficient and could result in inconsistent findings and would be a waste of judicial resources.

The Plaintiffs propose that this action be tried at: Toronto.

August 22, 2011

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Court File No: CV-01-40251500CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at

FRESH AS AMENDED STATEMENT OF CLAIM

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