

# NOTICE OF CERTIFICATION OF A CLASS PROCEEDING

## *Joseph Michael O'Neill v. General Motors of Canada Limited*

Court File No. CV-10-40251500CP

### **THE CLASS**

#### **TO:**

- a) all salaried and executive retirees of GMCL who retired from GMCL between January 1, 1995 and October 20, 2011, and
- b) all surviving spouses and dependent children beneficiaries of any deceased persons described in (a),<sup>1</sup>

but *excluding*:

- i. former employees of Canadian Automotive Manufacturing Inc. (“CAMI”) who became employees of GMCL as a result of the amalgamation of CAMI and GMCL effective January 1, 2011 and
- ii. retirees of divested units Electro-Motive Canada Co (“EMC”, formerly London Diesel); General Dynamics Land Systems – Canada Corporation (“GDLS”, formerly GM Defense); Peregrine Oshawa Inc. (and its successor Automotive Component Systems of Canada, Inc (“ACSYS”); or Peregrine Windsor Inc. (and its successor Lear Corporation Canada Ltd.) where post-retirement benefits are not provided by GMCL.

(the “Class” or “Class Members”)

**This Notice is published by order of the Ontario Superior Court of Justice**

---

<sup>1</sup> For greater clarity, this means: in respect of people described in paragraph (a) who died prior to October 20, 2011, all surviving spouses of such deceased people, and where there is no surviving spouse or where the surviving spouse died prior to October 20, 2011, all dependent children of such deceased people described in paragraph (a), in all cases such surviving spouses and dependents being persons eligible under GMCL’s benefit plans without regard to the changes to eligibility requirements under GMCL’s benefit plans effective January 1, 2009.

## NOTICE OF CLASS ACTION CERTIFICATION

The Ontario Superior Court of Justice has allowed a class action lawsuit to proceed, which may make it possible for you to obtain compensation for your reduced or eliminated post-retirement and executive post-retirement benefits.

The class action lawsuit alleges:

- GMCL reduced and eliminated post-retirement benefits for the Class Members;
- The changes in post-retirement benefits were in breach of GMCL's legal obligations to the Class Members; and
- The Class Members have suffered financial damages;

The Court has not yet determined whether the lawsuit will succeed. You are being provided with this notice because you may be affected by the outcome of the lawsuit, and so that you can choose to "opt out" of the lawsuit if you wish.

Joseph O'Neill has been appointed the representative plaintiff, and the law firm of Sack Goldblatt Mitchell LLP ("SGM") has been approved by the Ontario Superior Court of Justice to act for the Class Members.

Please contact SGM with any questions about this class action at 416-977-6070 or at the address below. More information is available at <http://www.genmo.ca/> and/or <http://www.sgmlaw.com/en>.

This Notice is published by order of the Ontario Superior Court of Justice and explains:

1. The lawsuit
2. Who might benefit from the lawsuit
3. Your right to choose whether to participate in the lawsuit
4. Financial consequences for you
5. Fees and Funding
6. Other matters

## **1. The lawsuit**

On May 6, 2010, Joseph Michael O'Neill commenced a lawsuit on behalf of salaried and executive retirees whose post-retirement benefits were reduced and eliminated by GMCL.<sup>2</sup> A copy of the Fresh as Amended Statement of Claim can be viewed on the SGM and GENMO websites.

Mr. O'Neill and GMCL reached an agreement that the lawsuit could proceed as a class action. On October 25, 2011, Justice George Strathy has certified the case as a class action on consent and appointed Mr. O'Neill as the representative plaintiff. Justice Strathy's Order does not determine the merits of the claim. A copy of Justice Strathy's Order can be viewed on the SGM and GENMO websites.

Pursuant to the Order, the following causes of action will proceed to trial:

- Breach of contract: Mr. O'Neill alleges that in reducing and eliminating the post-retirement benefits and executive post-retirement benefits, GMCL breached its contracts with the Class.
- Negligent misrepresentation: This claim relates only to a letter sent to salaried and executive retirees after their retirement with respect to the basic group life insurance benefit, which stated they "now have a specified amount of continuing life insurance in effect for the rest of your life." Mr. O'Neill alleges that if GMCL had the right to unilaterally reduce and eliminate the basic group life insurance benefit, then the representations in the letters were untrue, inaccurate, or misleading, and were made negligently.
- Unjust enrichment: This is an alternative claim, which only applies to the surviving spouses and dependent children (group "B"),<sup>3</sup> and only in the event that their claim in contract is unsuccessful because they are found not to have had a direct contractual relationship with GMCL. This alternative claim cannot be pursued if the retirees (group "A") are unsuccessful in their breach of contract claim.

Some issues of fact and law will be tried on a common basis, and individual trials may be required of remaining issues.

## **2. Who might benefit from the case – Class Definition**

Pursuant to the Order of Justice Strathy dated October 20, 2011, Mr. O'Neill has been appointed to act as the representative plaintiff for the Class (as defined on page 1 of this Notice).

---

<sup>2</sup> See the full definition of the Class, with exclusions, on page 1

<sup>3</sup> See Class definition on page 1

### **3. Your right to choose whether or not to be part of the lawsuit**

**(a) *You have a right to take part in this class action lawsuit***

DO NOTHING IF YOU WISH TO TAKE PART IN THIS LAWSUIT. If you are a person falling within the Class definition described above, you will automatically be included in the Class unless you opt out of this proceeding. **This means that you will be bound by the result in the lawsuit, win or lose.**

**(b) *How to be excluded from the Class:***

IF YOU DO NOT WANT TO BE PART OF THIS LAWSUIT, you must fill out the “opt-out” form below (or a letter setting out the same information) and send it to SGM at the following address:

To: Sack Goldblatt Mitchell LLP  
20 Dundas Street W., Suite 1100  
Toronto ON M5G 2G8  
Attn: Tricia Brioux

The deadline for opting out is January 21, 2012. If your written request to opt out is not post-marked by that date you will remain a member of the Class.

By opting out of this Class, you are confirming that you do not wish to participate in this class action. If you decide to opt-out of this class action, you will be excluded from any settlement or award of damages awarded by the Court.

Once you opt-out of this class action, you will receive no further communications regarding this action from class counsel.

### **4. Financial consequences for you**

If the lawsuit is successful, the Court may award compensation to the Class as a whole. In the alternative, the Court may also establish a process, including individual hearings, to review the amount of damages each individual Class Member may claim and to assess the amount of damages each individual Class Member may be entitled to receive.

If the class action lawsuit is not successful, the Class Members will not be awarded damages and you will not receive any money. The members of the class, other than Mr. O’Neill, will NOT be responsible for any legal costs of the class action lawsuit and will NOT have any other financial obligations because of the class action lawsuit.

Whether or not the class action lawsuit is successful, all members of the class who do not opt out of the class action will be bound by the judgment of the Court. This means, for example, that after this lawsuit is over, if you remain a class member in this proceeding you could not start your own lawsuit against GMCL for reduction or elimination of your post-retirement benefits and executive post-retirement benefits.

As of the date of this notice the Court has not set a date for trial.

## **5. Fees/Funding**

Mr. O'Neill has retained Sack Goldblatt Mitchell LLP to represent him and the Class in the lawsuit. Pursuant to the retainer arrangement, the legal fees of Class Counsel are billed at their regular hourly rates, plus applicable taxes. These hourly rates may be increased on an annual basis. The legal fees are billed on a regular basis, and are payable regardless of the outcome of the case at trial, and the legal fees are not contingent on the success of the case.

Class members have the option of making a donation towards the ongoing legal fees in this case, but are not required to do so, and will not receive a bill for Class Counsel's legal services. Class members who wish to make a donation towards legal fees may send cheques to Sack Goldblatt Mitchell LLP in trust at 20 Dundas Street W., Suite 1100, Toronto, Ontario, M5G 2G8, attention Tricia Brioux. The memo line of the cheque should be clearly marked "O'Neill v. GMCL".

To date, the legal fees in this case have been reimbursed by GENMO Salaried Pension Organization ("GENMO") out of its membership funds. GENMO is a not-for-profit corporation established by Mr. O'Neill and other GMCL retirees.

Mr. O'Neill has applied for and been granted indemnification and funding from the Class Proceedings Fund ("CPF"). The CPF was established by the Law Foundation of Ontario to provide financial support to class action plaintiffs for disbursements (including faxes, filing fees, expert reports, etc). The CPF has agreed to indemnify Mr. O'Neill for any costs ordered against him by the court in the event that GMCL is successful at trial. In return for its support, the CPF will receive a levy in the amount of 10% in any awards or settlements in favour of the plaintiff, together with a return of any funded disbursements.

## **6. Other matters**

Mr. O'Neill has retained Sack Goldblatt Mitchell LLP to represent him and the Class in the lawsuit. If you wish to participate personally in the lawsuit, you may apply to the Court for permission to do so.

The Court papers in this lawsuit are available for inspection at the office of the Superior Court of Justice, Courthouse, 393 University Ave., Toronto, Ontario, Court File [CV-10-40251500CP](#).

For further information about the class proceeding lawsuit you may contact:

Sack Goldblatt Mitchell LLP  
20 Dundas Street W., Suite 1100  
Toronto ON M5G 2G8  
Attn: Tricia Brioux  
Tel: 416.979.4233  
Fax: 416.591.7333  
www.sgmlaw.com

This notice is published pursuant to the section 17 of the Ontario *Class Proceedings Act, 1992* and was approved by the Court.

Dated \_\_\_\_\_

**OPT OUT NOTICE**

To: Sack Goldblatt Mitchell LLP  
20 Dundas Street W., Suite 1100  
Toronto ON M5G 2G8  
Attn: Tricia Brioux

I confirm that I **do not** wish to be a Class Member in the class action lawsuit *Joseph Michael O'Neill v. General Motors of Canada Limited*. I understand that by opting out I will not be eligible for any compensation that may be awarded in the class action.

I confirm that having chosen to opt-out of this class, I will receive no further communications from class counsel regarding this class action.

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Postal Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

*Note: To opt out this notice must be completed and received at the above address before **January 21, 2012***