

In the matter of

O'Neill v. General Motors of Canada Limited

and

Jankowski v. General Motors of Canada Limited and Ally Credit Canada Limited

Memorandum of Settlement

WHEREAS representative plaintiffs Lynn McCullough and Lea Jankowski (collectively the "Representative Plaintiffs"), on behalf of the respective class members in *O'Neill v. General Motors of Canada Limited* (the "O'Neill Class") and *Jankowski v. General Motors of Canada Limited and Ally Credit Canada Limited* (the "Jankowski class") (collectively the "Class Members") entered into class action settlements with General Motors of Canada Limited (now General Motors of Canada Company, "GM Canada") in 2014, which were approved by the Superior Court of Justice and which are binding on the parties (the "Class Action Settlement Agreements");

AND WHEREAS, under the Class Action Settlement Agreements, GM provides out-of-country travel healthcare benefits as described in Schedule "E" to the Class Action Settlement Agreements;

AND WHEREAS GENMO Salaried Pension Organization ("GENMO"), a not-for-profit organization representing the interests of salaried and executive retirees regarding their benefits, raised concerns with GM Canada beginning in 2018 concerning whether GM Canada had altered the terms of the Class Action Settlement by relying on a 90-day stability clause in administering out-of-country travel healthcare benefits, and GM Canada maintained that such a clause had always been a feature of the administration of such out-of-country travel healthcare benefits;

AND WHEREAS GENMO and GM Canada agreed in 2019 that the Class Members would be moved into a separate group (7040) and that there would be no further reference to a requirement of stability in communications with the Class Members, and that out-of-

country travel healthcare benefits would be paid under the Class Action Settlement Agreements so long as the provincial plan made a contribution towards the cost;

AND WHEREAS the Ontario Government ended coverage for out-of-country travel healthcare benefits under OHIP effective January 1, 2020;

AND WHEREAS GM continued to provide out-of-country travel healthcare benefits to Class Members but indicated it did so as an “accommodation” and relied on a 90-day stability clause in the administration of benefits;

AND WHEREAS GM Canada released a new OOC brochure in 2020 which referred to the 90-day stability clause, as well as additional restrictions including a notification requirement, and restrictions on coverage for self-inflicted injuries and restrictions relating to travel to pandemic-affected areas;

AND WHEREAS the Representative Plaintiffs referred the above issues to arbitration under the terms of the Class Action Settlements by letters dated January 10, 2020 and February 28, 2020;

AND WHEREAS on September 23, 2020, the Divisional Court held that the Ontario Government’s decision to remove out-of-country travel healthcare benefits from OHIP was ultra vires, and the Ontario Government is seeking to appeal that decision;

AND WHEREAS the parties, including the Representative Plaintiffs, GENMO, and GM Canada, attended a mediation before Mediator William Kaplan on November 10, 2020, and wish to resolve the above issues without further litigation;

AND WHEREAS all parties are committed to transparency and clarity in the communication of benefits coverage and entitlement for Class Members;

NOW THEREFORE, the parties agree as follows:

1. GM Canada agrees that it is obligated to provide the out-of-country travel healthcare benefits under the Class Action Settlement Agreements, as administered at the time of the execution of Class Action Settlement Agreements

(the “OOC Benefit”), and agrees to continue providing the OOC Benefit, as clarified herein (the “OOC Coverage”) in the event that a province ceases to provide coverage for out-of-country healthcare benefits under a provincial healthcare plan. For greater certainty:

- a. in the event that the Ontario Government’s appeal in the litigation involving OHIP is successful and OHIP no longer provides coverage for out-of-country healthcare benefits, GM Canada agrees it will continue to provide the OOC Coverage;
 - b. if a province ceases to provide coverage for out-of-country healthcare benefits under a provincial healthcare plan, the OOC Coverage will include both the portion of the cost previously covered by the provincial plan as well as the amount of the OOC Coverage that would have been paid under the GM Canada plan;
 - c. in the event that a province ceases to provide coverage for out-of-country healthcare benefits under a provincial healthcare plan, there shall be no reduction in the scope or nature of the coverage provided for the OOC Coverage.
2. Subject to the continued administration of the OOC Coverage as at the time of the Class Action Settlement Agreements, the parties are agreed that so long as a province provides coverage for out-of-country healthcare benefits under a provincial healthcare plan, GM Canada will pay eligible expenses where the provincial plan makes a contribution to the cost. For greater certainty, the parties agree that GM Canada may rely on the stability clause attached at Appendix “A” (the “Stability Clause”) in its initial administration of OOC Coverage claims. In the event that the provincial plan makes a payment towards the cost, GM Canada shall pay the Class Member’s OOC Coverage claim even if such claim was not payable under the Stability Clause.

3. Except as expressly addressed herein, the parties agree to reserve their rights concerning the restrictions, limitations and exclusions, if any, applicable to the OOC Benefits in place at the time of the execution of the Class Action Settlement Agreements.
4. The Representative Plaintiffs and GENMO agree that in the event that a province ceases to provide coverage for out-of-country healthcare benefits under a provincial healthcare plan, GM Canada is entitled to apply the Stability Clause in administering and determining claims for OOC Coverage, and is not required to determine claims with reference to the standard that would have been applied by the provincial healthcare plan.
5. The parties agree that there is no requirement for Class Members to notify Green Shield (or any other administrator that may be appointed by GM Canada) prior to receiving treatment. The parties agree that the obligation of notification is as set out in Schedule "E" to the Class Action Settlement Agreements:

In the event of a medical emergency, you must call the Green Shield Canada Travel Assistance Service as soon as possible, or within 48 hours of the commencement of treatment, to ensure you are not exposed to any potential liability for services not eligible.

6. The parties agree that in the event that a provincial plan makes a payment towards any expenses associated with self-inflicted injuries, the GM Canada plan will pay for the expense. The parties agree that if a province ceases to provide coverage for out-of-country healthcare benefits under a provincial healthcare plan, GM Canada may administer and determine the claim subject to the following restriction:

Treatment or service required as a result of suicide, attempted suicide, intentionally self-inflicted injury of you, a travelling companion, or immediate family member.

7. The parties agree that GM Canada shall continue to administer and determine the claim for OOC Coverage subject to the following (and subject to the payment of

out-of-province emergency medical expenses related to COVID-19 for the period from August 15, 2020 through June 30, 2021):

Any expenses incurred for services to treat a medical condition or complications of a medical condition directly or indirectly related to an epidemic or pandemic if, when the trip was booked, or before the departure date:

- An official travel advisory was issued by the Canadian government advising Canadians to avoid either all travel or all non-essential travel regarding any country, region, city, or other key components of your travel arrangements (e.g., cruise ship).
8. GM Canada shall issue a revised brochure in respect of the OOC Coverage, and shall update any information regarding the OOC Coverage on its website or in any claims forms or elsewhere, in a manner consistent with the terms of this agreement. GM Canada shall forward a draft brochure to GENMO within sixty (60) days of the signing of this agreement for review/comment. In the event the parties cannot reach agreement on the terms of the brochure within 120 days of the signing of this agreement, the parties agree to remit the issue to William Kaplan for a final and binding determination.
 9. GM Canada agrees that it shall instruct Green Shield or any administrator on its behalf to communicate with Class Members in a manner consistent with this agreement and agrees to provide Green Shield or any administrator on its behalf with a copy of this agreement.
 10. The parties agree that Mediator William Kaplan shall remain seized of any issues of interpretation, application and enforcement of these Minutes of Settlement.
 11. The parties agree that these Minutes of Settlement are agreed to as a resolution of all of the issues that were raised by the Representative Plaintiffs in the arbitration proceedings commenced under the Class Action Settlement Agreements. The parties agree that these Minutes of Settlement do not affect or prejudice the rights and obligations under the Class Action Settlement Agreements and that court approval of these Minutes of Settlement is not required.

12. This agreement may be executed by counterpart and electronically.

Signed at Toronto, this 10th day of November, 2020

Lynn McCullough

Lynn McCullough

Lea Jankowski

Lea Jankowski

Tom Laurie

Mike Powell

GENMO

Marlene Armitage

GM Canada

Appendix “A” – Stability Clause

The GM Canada OOC Coverage does not pay expenses for pre-existing conditions that are not “stable” as defined below. For clarity, Class Members are covered for any expenses relating to any other conditions that are not related to pre-existing conditions that are not “stable” as defined below.

“Stable” means that during the 90 days before leaving on a trip:

- You have been consistently using the same medications at the same dosages to control your condition. If your dosage has changed, it must be part of your regular treatment or because your condition improved. All medications must be prescribed by a legally qualified medical professional.
- You haven’t needed additional treatment for a recurrence or complications related to your condition.
- You haven’t been diagnosed with, or had tests or a medical consultation for, a new medical condition for which you haven’t had any treatment.
- You don’t have any future appointments scheduled for non-routine examinations, tests, or investigations (including results) for an undiagnosed medical condition.
- You are not scheduled for any exploratory surgical procedures for an undiagnosed medical condition or surgical procedures for a diagnosed medical condition.