



EXPECT THE BEST

Blaney  
McMurtry  
BARRISTERS & SOLICITORS LLP

# Benefit Issues: The Latest Word

Presented by :

Elizabeth J. Forster  
416.593.3919  
[eforster@blaney.com](mailto:eforster@blaney.com)

2 QUEEN STREET EAST, SUITE 1500 TORONTO, CANADA M5C 3G5

TEL 416.593.1221

FAX 416.593.5437

WWW.BLANEY.COM

# *Brito v. Canac Kitchens*

- Age: 55
- Years of Service: 24
- Income: \$71,000

July 15,  
2003

August 1,  
2003

November 6,  
2004

May 15,  
2005

March 5,  
2007

Date of  
Termination

Begin  
New Job

Date of  
Disability

End of  
Notice  
Period

65<sup>th</sup>  
Birthday

Canac Compensation less (ESA + mitigation)

17 weeks  
STD

Damages for loss of  
LTD coverage

Blaney  
McMurtry  
BARRISTERS & SOLICITORS LLP

# Recommendations:

1. Provide LTD coverage with a conversion privilege
2. Contract out of obligation to provide LTD coverage on termination beyond the statutory notice period

- 3. Reimburse employee for cost of replacement coverage

# *O'Neill v. General Motors*

## 2 Classes of Retirees:

1. Former non-union salaried employees
2. Former Executives



1. Retirement benefits are important to retired employees and their families

2. Retirement benefits can be changed even after employee has retired provided contract is clear and unambiguous

## Salaried Employees

“Your health care coverage...  
will be provided at GM’s  
expense for your lifetime.”

“Your basic life insurance  
will be continued for you  
for your lifetime.”

1. Benefits provided as  
deferred compensation -  
not gratuitously

2. Whether benefits (or vested rights) can be changed depends on whether employer has contractual right to do so

3. No clear reservation of right to reduce benefits

4. Language in benefit documents such that employees had reasonable expectation benefits would continue for life



5. Employment contract will be interpreted to protect employees unless there is clear language to the contrary

# Executives

“Benefits paid under this program may be reduced or eliminated with prior approval of the Board”

“Executives should reasonably have understood that the... [benefits] were not guaranteed and could be reduced or eliminated even after retirement.”

# Salaried Employees Eligible for Retirement

Post 1994:

GM “reserves the right to amend, modify, suspend or terminate any of its programs (including benefits)...

Changes to plans can be made during active employment but not after retirement

The End