

Update

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PENSION & BENEFITS ALERT!!!!

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DEMUTUALIZATION

WHAT DOES DEMUTUALIZATION MEAN?

Many unions are parties to collective agreements which provide insured benefits to employees - group benefits like long term disability, life insurance, vision care and major medical coverage.

Some of these plans are provided by insurance companies called *mutual insurance companies*. These companies have been owned by their policy-holders up to now, rather than by shareholders through shares which trade on the stock market. In March of 1999 the Canadian government passed legislation permitting large insurance companies to "**demutualize**". Several companies are now going through this process, called "**demutualization**". This means that they are converting their ownership structure to a share structure. Policyholders will no longer have an ownership interest. To compensate for the loss of this ownership interest, **eligible**

policyholders (those who owned policies called "**participating policies**") are being offered a choice of cash or shares (called "**demutualization benefits**") in the new publicly traded companies.

Four companies servicing the Canadian market initially indicated that they would be going through the demutualization process. Some have already completed it.

- < *Clarica* (formerly *Mutual Life*): shares began trading in July, 1999, and distributions of demutualization benefits have now taken place.
- < *Manulife*: shares began trading on September 24, 1999 and distributions of demutualization benefits have already taken place.
- < *Canada Life*: policyholders approved demutualization in September 1999, and distributions should be complete by year-end.

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< *Sun Life*: policyholders will vote on demutualization on December 13, 1999, and if approved distributions will take place by early April 2000.

In addition, a fifth company based in Quebec has approved demutualization.

< *Industrial-Alliance (Canada)*: policyholders approved demutualization in November, 1999. Demutualization is scheduled for March 2000.

A number of other Canadian insurance companies are mutual insurance companies, and may join the trend.

The government estimates that if the first four of these companies alone complete the demutualization process, \$10 billion will be distributed to 2 billion policyholders.

WHAT DOES THIS MEAN FOR GROUP PLANS?

Some of those 2 billion policyholders are the employers of your members, and the policies involved are the group benefit plans which provide benefits for your members.

Most of the policies eligible for demutualization benefits are individual life insurance policies. The insurers say that many group insurance policies are not participating policies, and will not be eligible for demutualization benefits.

But some group plans *are* participating policies! It is important that you find out whether the policies which insure your members are eligible!

IF GROUP POLICIES ARE PARTICIPATING POLICIES, WHAT HAPPENS TO THE DEMUTUALIZATION BENEFITS?

Under collective agreements, the **employer** is often the registered policyholder. According to the records of the insurance company, if the policy is a participating policy, the **employer** had the ownership interest, and therefore the **employer** has been given compensation for the loss of that interest.

In some cases employers have already received substantial payments from the insurance companies. Others may have opted to receive shares.

Have they told you about this? Have they told you what they plan to do with this windfall?

Where demutualization benefits are being paid, employers should negotiate with the union about how this money should be used. Possibilities include using it to give employees a premium holiday, or paying it to the union to be used for the benefit of employees.

In some cases employers have been advised by their lawyers that they are entitled to keep the money or the shares for themselves.

EMPLOYEES SHOULD BENEFIT FROM DEMUTUALIZATION

Benefit plans are negotiated for the benefit of the employees. The benefits under those plans should go to the employees. Employees have given up other advantages at the bargaining table - often wage increases - to get and improve those benefit plans. Employers bought these group benefit plans because they were obliged to by the collective agreement.

Why should the employer get a windfall just because it is the registered policy owner?

Companies should be considered to hold these windfalls from the insurance companies in trust for the benefit of employees.

This is obvious when employees have paid the premiums themselves, either entirely or in part, either for basic or for optional enhanced benefits. It should also be case where the employer has paid the premiums, since companies do this to fulfill obligations under collective agreements which unions have negotiated on behalf of their members.

WHAT SHOULD YOU DO ABOUT THIS?

< First

You should review all the benefit plans for employees you represent, and identify plans held with companies which have demutualized already, or are planning to do so in the near future.

< Second

If employers with these plans haven't already involved the union in the process, you should approach the company to find out whether it expects to receive demutualization benefits from the insurance company. If the company

tells you that its policy isn't eligible for demutualization benefits, **ask why!** If it tells you that it has received or expects to receive benefits, **ask what it plans to do with the windfall!**

< Third

If the company does not plan to negotiate with the union to use the money for the benefit of employees, you should contact us immediately.

WE CAN

- < Assist you to determine whether the benefit plan at your workplace is an “eligible policy” for demutualization benefits.
- < Review your benefit plan and collective agreement, and advise on the possibility of filing a grievance.
- < Present an effective, cost-efficient arbitration case, where the grievance route is the best strategy.
- < Advise on other strategies where grievances may not be available, including simple civil suits or more complex class actions.
- < Work with you in appropriate cases to use benefits litigation or Alternative Dispute Resolution (ADR) for non-union employees affected by demutualization. This may be a good organizing strategy!

REMEMBER !

You should move quickly to assess the situation and get advice. There are time limits that may apply both to grievances and to court actions. These time limits will vary from collective agreement to collective agreement, and even perhaps from benefit plan to benefit plan. You should bear in mind that courts do not have the power arbitrators may have in some cases to forgive missed time lines.

PENSION PLAN ADMINISTRATOR FOUND LIABLE FOR NEGLIGENCE IN FAILING TO PROVIDE COMPLETE INFORMATION

In a decision released in September, 1999, the Ontario Court of Appeal has upheld a lower court ruling that a pension fund administrator acted negligently when she failed to inform a union member and his spouse “in express terms” that if the wife signed a waiver of spousal benefits, she would receive no pension when her husband died.

In February of 1990 Gabriel Deraps learned that he had lung cancer. He was a member of the Labourers’ International Union, and in April of 1990 he and his wife Monique met with the pension counsellor employed by the union’s pension plan to discuss disability benefits. The couple received advice about the impact of the spousal waiver on Gabriel’s disability benefits, and they filled out and signed forms in the counsellor’s office.

The spousal waiver form did not clearly and expressly state that if the spouse waived Joint and Survivor benefits, she would get no pension when her husband died. The counsellor did not specifically discuss this issue with either of the Deraps, believing that if they asked no questions, they must have understood what they were signing.

Gabriel Deraps died about eight months after the meeting with the pension counsellor. It was only around the time her husband died that Monique Deraps learned that benefits would cease altogether on his death. She sued the pension plan for negligence in failing to give her proper advice.

The Court of Appeal held that:

[T]he failure to provide Monique Deraps or her husband with complete information on what the implications of signing the waiver would be, represented a breach of a duty to exercise reasonable care in providing information to persons who would be expected to rely on it.

The pension counsellor was acting as an agent for the pension plan, and therefore the plan was found liable to Monique Deraps for damages representing her loss of benefits because she signed the spousal waiver.

This case clarifies that pension advisors have a high standard of care in advising plan beneficiaries. They are required to advise **“competently, accurately and fully.”** Unions who take on the task of providing advice to their members on pension and benefit issues would be well advised to ensure that the employees and officials who do this work are aware of their important responsibilities and are carefully and fully trained to carry them out.

Deraps v. Labourers' Pension Fund of Central and Eastern Canada, [1999] O.J. No. 3281 (Released September 13, 1999)