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AT A GLANCE ...

Possible GM bankruptcy could unravel pension safety net .... 1 & 2
Coughlin consultant recognized by Governor General 1
Court orders correction of clerical error that changed pension terms 2
Duty of care cited – Pension options must be clear to members and spouses, Court says 3
Costco pharmacies join Coughlin's PPN 4
PPN update 4
Quebec court vetoes benefit suspension 5
OMERS chief says "Super size me" .... 6 & 7
Reported losses of selected large pension plans, 2008 7
Cancer stats put focus on critical illness insurance 7
Prescription drug sales top $21 billion 8
Best selling drugs by type 8
The most popular medication by prescriptions dispensed 8
Coughlin cyclists peddle donations to CHEO 8

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employee benefits specialists

Possible GM bankruptcy could unravel pension safety net

The Ontario government's Pension Benefits Guarantee Fund may face a funding crisis in a matter of weeks.

With increasing speculation that General Motors may seek bankruptcy protection, the Ontario government may soon be faced with its worst nightmare: guaranteeing the pensions of some 30,000 private sector pensioners.

The Guarantee Fund is designed to provide up to $1,000 per month to beneficiaries of failed pension plans. However, with only $100 million at its disposal, the fund can only support approximately 8,300 pensioners drawing the annual pension maximum of $12,000 per year. GM's generous defined benefit arrangement could easily swamp the Ontario government's pension safety net. As well, the bankruptcies of other high profile organizations such as Nortel, AbitibiBowater, Chrysler Canada and others could add additional strain to the plan.

Continued on page 2

Coughlin consultant recognized by Governor General

Coughlin Managed Care Consultant Joe Zadzora was the proud recipient of the Governor General's Caring Canadian Award this past April for his community work supporting the Boys and Girls Club of Ottawa. For several years, Mr. Zadzora has co-chaired the organizing committee of the Club's Annual Brian Smith Memorial Golf Tournament. Over the past 14 years, the tournament has raised more than $1.3 million to send disadvantaged children in the Ottawa area to Camp Smitty. Here, Mr. Zadzora receives the award from Governor General Michaëlle Jean.

...continued from cover

Possible GM bankruptcy could unravel pension safety net

"We would never have all the money that would be needed to top it up to meet all the demands for all Ontarians who are experiencing troubles with their pension plans," Ontario Premier Dalton McGuinty says. *"The $100 million comes nowhere near meeting any liabilities for the auto sector alone, to say nothing of all the other sectors."*

For a government elected on a platform of balanced budgets with no tax increases, the potential bankruptcy of one of Canada's leading companies presents difficult choices including: increasing the province's growing deficit; hiking taxes; or reneging on providing pension support to thousands of unionized workers, pensioners and their families. Whatever decision Mr. McGuinty's government takes, plan sponsors everywhere will likely feel its impact. ❧

Court orders correction of clerical error that changed pension terms

Pension plan documents can be amended to correct clerical errors and mistakes, the Ontario Superior Court says.

In a precedent setting case, the Ontario court has ruled that the terms of pension plans can be changed when plan amendments or documents are omitted or changed to accidentally modify the original intent of the plan.

The case dates to 1992 when a major food processing company amended its defined benefit plan. Prior to that time, member benefits were based on their years of service with the company *while a member of the pension plan.* During the plan amendment process, the words linking member benefits to plan membership were accidentally deleted, resulting in the suggestion that plan benefits were based on members' years of service from their *point of hire.*

If not corrected, the new phrasing would have resulted in additional pensionable service for all pension plan members and substantially more costs to the company.

When union representatives became aware of the error in 2003, they applied to the Financial Services Commission of Ontario to compel the plan sponsor to administer the plan based on its new wording. The company then filed an application with the Ontario Superior Court to reinstate the plan's original terminology.

Under common law, an application for rectification can be made when the true intentions of a party are not accurately recorded in written documentation. In effect, *legal rectification* allows legal documents and contracts to be corrected when they contain errors or mistakes.

In its submission to the court, the company provided testimony from both the individuals who prepared the 1992 plan amendment and the plan consultant who drafted the document stating that they had not intended to omit the wording specifying that members' eligibility for benefits must be based on the date of their enrolment in the pension plan. As well, the company argued, neither the union nor its members could produce proof that they had ever expected the plan's terms of eligibility to change from members' plan enrolment dates to their dates of hire.

The final argument for the company was the fact that, despite the 1992 phrasing omission, the plan's administration and member communications continued to be based on its original terms.

In its ruling, the Superior Court asserted that *"for the company to be denied rectification and required to fund additional pension benefits that were never intended and which the plan members could not reasonably expect to receive would create an injustice…"*

It then ordered that the original plan terms be restored. This was the first time that *legal rectification* was used to correct pension plan documentation containing an error.

For plan sponsors and trustees, the Superior Court ruling reinforces the need for pension plans to have supporting documentation outlining the *intent* of various plan provisions. As well, it also reinforces the need for pension plan administrators to have detailed and accessible meeting notes, correspondence, and other related documentation even when they date back decades. ❧

Duty of care cited
Pension options must be clear to members and spouses, Court says

Pension plan sponsors have a duty to clearly inform both plan members and their spouses of the potential ramifications of their pension plan options, the Ontario Superior Court has ruled.

The case involves the widow of a retired employee of a large corn miller and processor who successfully argued that she should have received joint and last survivor pension benefits, despite the fact that her late husband did not specify such when he retired and began collecting a pension from the company.

The husband began working for the company in 1961 while his wife remained at home. She never worked outside the home nor did she complete high school. As a result, she was completely dependent on her husband for financial support.

In 2000, the company offered the employee an early retirement package, giving him only two weeks to respond to its offer. He subsequently received an information package containing 14 different pension options. The company did not offer pre-retirement counselling or other support to explain the details and ramifications of the various pension offerings. The employee selected a pension featuring a five-year guarantee with no joint and last survivor benefit, the option that offered the highest income over a five-year period.

When he died three and a half years later, his widow found that the pension income would expire in 18 months, leaving her with no future income.

She then sued the company for negligent representation.

In her arguments to the court, the widow stated that the various options presented to her husband were too complicated for a layperson to understand and that no pre-retirement counselling was offered to either her or her husband. While she confirmed that she did sign a post-retirement spousal survivor benefit waiver, she testified that she did so because her husband thought it was a document that had to be signed by her in order for him to retire and collect his pension. She added that she did not fully appreciate the consequences of signing the spousal waiver form.

In reviewing the case, the Superior Court sided with her, stating that the company owed a *duty of care* to both the employee *and* his wholly dependent wife to clearly communicate that she would receive no benefits should he predecease her. According to the court, the special relationship that exists between an employer and an employee can extend to a spouse, especially when the spouse is expected to give up survivor benefits offered in a pension plan.

The court also held that the company could easily have provided clear and relevant information to the couple about their various pension options.

In fact, the company's failure to provide clear information was "just as misleading as misinformation."

"I would find it reasonable for [the wife] to rely not only on her late husband but on the corporation, which had been his long-term employer and given him years of reliable employment and opportunities for advancement," the court said. *"She had been dependent on that employment as the primary source of income for their family for 40 years and it would be reasonable to assume that the company was continuing to treat her husband fairly and give him complete financial information on which he could make an informed decision."*

The company plans to appeal the ruling.

For plan sponsors, the case demonstrates the need for pension options, and their impact on plan beneficiaries, to be communicated clearly to members and their spouses in laymen's terms. Plus, when early retirement packages are presented, services of credible pre-retirement counsellors or pension professionals should be made available to advise affected members and their spouses. ❧

Costco pharmacies join Coughlin's PPN

The Costco warehouse shopping chain has joined Coughlin & Associates Ltd.'s Preferred Provider Network (PPN) of pharmacies.

Costco operates 25 pharmacies predominantly in the Greater Toronto Area, the Niagara region and southwestern Ontario.

Members of Coughlin's preferred provider network of pharmacies agree to limit their prescription fees to the Ontario Drug Benefit plan maximum, which is currently $7 per prescription. They also limit the mark-up on certain medications to 10 per cent.

The addition of Costco brings the province-wide total of pharmacies in the PPN to 278.

The following is a list of the Costco pharmacy locations.

Name	Address	City	Phone
Costco Pharmacy	150 Kingston Road	Ajax	905-619-2070
Costco Pharmacy	41 Maple View Drive East	Barrie	(705) 733-0521
Costco Pharmacy	100 Biscayne Crescent	Brampton	905-454-1184
Costco Pharmacy	1225 Brant Street	Burlington	905-336- 9660
Costco Pharmacy	50 Queen Elizabeth Blvd	Etobicoke	416-251-2024
Costco Pharmacy	1900 Cyrville Road	Gloucester	613-842-3376
Costco Pharmacy	770 Silver Seven Road	Kanata	613-270-5578
Costco Pharmacy	1015 Centennial Drive	Kingston	613-545-0700
Costco Pharmacy	4438 King Street East	Kitchener	(519) 653-4408
Costco Pharmacy	4313 Wellington Road South	London	(519) 691-0643
Costco Pharmacy	693 Wonderland Road North	London	(519) 474-5303
Costco Pharmacy	1 York Tech Drive	Markham	905-477-0968
Costco Pharmacy	65 Kirkham Drive	Markham	905-201-3509
Costco Pharmacy	5900 Rodeo Drive	Mississauga	905-568-8037
Costco Pharmacy	3180 Laird Road	Mississauga	905-828-3368
Costco Pharmacy	18182 Yonge Street	Newmarket	905-954-4755
Costco Pharmacy	100 Billy Bishop Way	North York	416-635-9724
Costco Pharmacy	1849 Merivale Road	Ottawa	613-727-5822
Costco Pharmacy	485 The Parkway	Peterborough	(705) 750-2609
Costco Pharmacy	35 John Birchall Road	Richmond Hill	905-780-2109
Costco Pharmacy	1411 Warden Avenue	Scarborough	416-288-1172
Costco Pharmacy	3 North Service Road	St. Catharines	905-646-6689
Costco Pharmacy	1465 Kingsway	Sudbury	(705) 524-5650
Costco Pharmacy	71 Colossus Drive	Vaughan	905-264-6783
Costco Pharmacy	4411 Walker Road	Windsor	(519) 972-6365

PPN update

The following pharmacies have joined the Coughlin & Associates Ltd. Preferred Provider Network:

- **Stafford IDA Pharmacy,** located at 1 Stafford Road in Nepean. Its phone number is: 613-726-7999;
- **Seaway Valley Pharmacy** at 507 Main Street, Winchester. It can be reached at 613-774-2633; and
- **Orleans Pharmacy**, of 4275 Innes Road in Orleans. Phone: 613-837-4747.

As well, Blair Road Pharmacy, formerly of 2047 Meadowbrook Road in Ottawa, has ceased operation and is no longer a member of the PPN.

Cancer stats put focus on critical illness insurance

Almost half of all Canadians will develop cancer in the their lifetimes according to the most recent data published by the Canadian Cancer Society.

According to *General cancer stats for 2009,* published on the Society's web site, 40 per cent of Canadian women and 45 per cent of Canadian men will develop cancer during their lifetimes. One in four people are expected to die from the illness.

It is estimated that 171,000 new cases of cancer will be diagnosed in 2009, the Society says. That number excludes the 75,100 non-melanoma skin cancers that will also be diagnosed this year. Approximately 75,300 people will die from the disease in 2009, an average of 1,450 per week.

While those numbers are grim, survival rates for most types of cancer are improving, thanks to improved drugs, medical treatments, technological advances and lifestyle choices. Approximately 62 per cent of cancer victims are expected to survive five years after being diagnosed with cancer, according to the Canadian Cancer Society web site. Survival rates vary considerably by cancer type. However, depending on type and severity, for some, that survival period may be marked by long periods of chemotherapy, rehabilitation and relapses.

For many, coping with the rigid regimes of cancer treatment and the required lifestyle adjustments that follow a cancer diagnosis can be as daunting as the disease itself. In addition, according to a study conducted by the Canadian Cancer Society, 20 per cent of cancer patients say their benefit plan didn't cover everything they needed. That's where critical illness insurance can help.

Critical illness insurance is designed to provide a lump sum benefit on the confirmed physician's diagnosis of any one of a specific number of major illnesses or medical conditions and the policyholder's survival of 30 days or more. Unlike life insurance, which pays a benefit on the policyholder's death, critical illness insurance pays a benefit when a policyholder is diagnosed with a covered illness and *lives.* Most policies include cancer coverage along with other major medical conditions such as heart attack and stroke. The money can be used any way the policyholder wants. For example, to purchase additional home care support, home renovations, extra day care for children or other services that aren't normally covered by government health benefits or traditional group benefit plans.

Like other insurance plans, critical illness insurance has specific minimum requirements or conditions that must be met before a policy can be issued. As well, since people tend to use terms like "heart attack" and "cancer" loosely to describe any number of medical conditions, each of the covered illnesses is specifically defined by the policy using established medical criteria. Medical conditions that don't meet the minimum requirements of those medical definitions may not qualify for reimbursement.

For more information on how you can add *group* critical illness coverage to your benefits plan, contact your Coughlin consultant. For *personal* critical illness coverage for either yourself or members of your family, contact Jackie Moulton jmoulton@coughlin.ca. ❧

Quebec court vetoes benefit suspension

The Quebec Superior Court has ruled that AbitibiBower Inc. cannot unilaterally suspend its early retirement benefits, despite being under bankruptcy protection.

In its May 5, 2009 ruling, the court said that the company's move to suspend the benefits was *"rather unfair and rather inept"* because the change had not been negotiated with the Communications, Energy and Paperworkers Union of Canada, its employees' labour representative. As well, the company did not rescind the extra payments employees make to pay for their share of the benefit.

The company had argued that it could not afford to pay for the benefit that allows workers to retire at age 57 instead of 58. The benefit costs the company $68 million per year.

In a separate ruling on May 8, 2009, the Quebec court did allow AbitibiBowater Inc. to suspend its contributions to offset its $1 billion pension deficit. That ruling saves the company more than $13 million per month. ❧

OMERS chief says "Super size me"

Is bigger always better?

It is to the head of the Ontario Municipal Employees Retirement System (OMERS) pension plan.

According to Michael Nobrega, chief executive officer of the province's second largest pension plan, the Ontario government should mandate the merger of public and private pension plans to ensure that plans have the critical mass to invest in global markets.

Mr. Nobrega asserts that only giant pension funds with over $100 billion in assets under management have the size and scope to invest on a global scale and to keep pace with the changing global economic environment.

In an address to the Conference Board of Canada's annual pension summit, Mr. Nobrega asserted that, despite its $44 billion in assets, the OMERS plan still *"cannot compete against the global giants as a small player. Nor can other plans."* As a result, the OMERS chief executive officer says his pension will actively seek to manage assets of other pension plans.

OMERS President and CEO, Michael Nobrega

While he supports voluntary pension mergers as a first step, Mr. Nobrega conceded that government action might be required to force the consolidation of some pension plans.

"None of us is going to consolidate willingly with anybody else, no matter how compelling the arguments," he noted.

The biggest beneficiaries of super sized pension plans would be plan members, Mr. Nobrega said.

"You need resources to manage these plans. These are complex areas," he stressed. "Plan size may be a greater determinant of a member's ultimate pension than plan design. Large plans generally perform better than small ones."

Using the OMERS plan as an example, Mr. Nobrega noted that its relatively large size allowed the plan to diversify into a number of different investment vehicles and develop extensive oversight mechanisms to allow it to avoid the worst of the market crash brought on by the subprime mortgage crisis.

On the surface, Mr. Nobrega's proposal has been cautiously but still warmly received by the Ontario government, which itself has encouraged some of its institutions to merge their pension assets.

On April 23, 2009, the provincial government urged the province's 15 universities to merge their $13 billion in pension assets in an effort to cut costs and provide them with more leverage to take advantage of investment opportunities.

"We're encouraging them," says Darcy McNeill, spokesperson for Ontario Finance Minister Dwight Duncan. *"We believe there are advantages to scale, so we would point that out."*

However, consolidating plan assets among several plan sponsors may be easier said than done. Just because a number of plan sponsors, such as universities, share common goals or markets doesn't necessarily mean the management and performance of their pension plans are uniform.

A good example is the University of Toronto (U of T) pension plan that, under the management of the University of Toronto Asset Management group, the organization that runs the university's $2.8 billion pension plan as well as its $1.5 billion endowment fund, suffered investment losses of $1.5 billion in 2008. The losses were mainly attributable to a combination of currency hedging, the equity market meltdown and involvement with questionable hedge funds, including one managed by convicted Wall Street financier Bernard Madoff.

It is unlikely that the province's other smaller universities will be open to assuming the U of T's sizable investment liabilities just to support a government-endorsed pension consolidation exercise.

While consolidation can provide both asset strength and investment scope to fund managers, size still can't replace good management backed by sound governance practices, opponents of consolidation argue.

"There is an underlying assumption that individuals make mistakes and pension plans are better at achieving results. This might be the case but I suspect that the average 18 per cent decline in pension fund market values this year would provide little solace to people about to retire if their benefit were based

on the plan's experience," says University of Calgary Professor Jack Mintz writing in the *Financial Post.*

In other words, despite their size, super pension funds are not necessarily shielded from market fluctuations. For example, the Caisse de dépôt du Québec, one of the country's largest pension plans, recently reported a loss of $40 billion for 2008, a 25 per cent decline. The California Public Employees' Retirement System (CalPERS), lost $81 billion, shrinking that pension plan's assets by a third to $170 billion from $251 billion.

With continuing market volatility and many experts predicting the ultimate demise of smaller defined benefit pension plans, plan sponsors and members should expect to face the *"Is bigger always better?"* question in the months and years ahead. ❧

Reported losses of selected large pension plans, 2008

Plan sponsor	Loss	Percentage
Ontario Municipal Employees Retirement System	$8 billion	-15%
Canada Pension Plan	$19 billion	-16%
Ontario Teachers Pension Plan	$21 billion	-18%
Caisse de dépôt du Québec	$40 billion	-25%
Median percentage loss experienced by Canadian pensions, as reported by Morneau Sobeco		-16.5%

Cancer drug costs being passed to private plans and members

The cost of oral *"take at home"* cancer medications is being shifted from public health care plans to non-government sources such as group extended health care plans and private funding, the Cancer Advocacy Coalition of Canada (CACC) says.

In its *Annual Report Card on Cancer Care in Canada,* the CACC warns that *"take at home"* therapies now account for half of all cancer drug expenditures.

While most medications prescribed in hospital settings are covered by provincial health care plans, prescriptions administered outside of hospitals usually have to be paid privately. For plan sponsors and individuals, that means the cost of expensive cancer treatment medications is being transferred to them. With the number of cancer patients expected to grow by 55 per cent by 2020, employers and individuals *"should be aware of the magnitude and pace of these shifts,"* the group warns.

"Oncology drugs are usually made available much sooner under private plans than government plans and since most new products are tablets, they do not have to be administered in hospital and funded by the public purse," the CACC warns. *"While cancers most often occur in older Canadians, 30 per cent (48,000) are diagnosed annually in the working age population, those 18 to 60 years old."*

The CACC predicts cost pressures could ultimately result in plan sponsors having the final say on who and what will be covered under group insurance plans as well as what exclusions may be featured in such plans.

"The bigger issue is that a reasonable 20 per cent co-pay on a $60 average drug becomes unaffordable when the drug costs $25,000 or more. This is a major void that neither the insurance industry nor the government have yet solved," the group says.

Total costs for take home cancer drugs in 2007 by category ($ millions)

Drug type	Public	Private	Total
Supportive medications	$54.40	$48.43	$102.83
Chemotherapy agents	$36.29	$18.81	$55.10
Hormones	$221.58	$56.71	$278.29
Tyrosine kinase inhibitors	$75.61	$36.43	$112.04
Miscellaneous	$4.80	$2.67	$7.47

(Source: Cancer Advocacy Coalition of Canada, *Report Card on Cancer in Canada 2008.*) ❧

Prescription drug sales top $21 billion

Prescription drug sales topped the $21 billion mark in Canada last year, according to data released by IMS Health, a major pharmaceutical research and consulting firm.

Canadians spent $21.4 billion in 2008, the organization says, a $1.2 billion increase from 2007.

For the first time since tracking began, the number of generic drugs dispensed exceeded prescriptions for name brand medications, the drug research firm says. A total of 51.6 per cent of prescription medications dispensed were generic drugs.

Cost cutting by both consumers and government health care plans accounts for the jump in generic drug sales, says Jim Keon, president of the Canadian Generic Pharmaceutical Association.

"With governments running deficits, it makes sense to maximize the use of generics," he says.

Mr. Keon went on to estimate that the use of generic medications saved the Canadian health care system approximately $3 billion last year.

A total of 453 million prescriptions were dispensed in Canada last year, the IMS Health group reported, an average of 14 prescriptions per Canadian.

In a separate study released in April 2009 by the Canadian Institute for Health Information (CIHI), expenditures by the private sector accounted for $12.6 billion in drug costs last year, compared to $11.2 billion for the public sector. Private insurers pay two-thirds of the private sector-based costs. ❧

Best selling drugs by type

Cardiovascular	$3.2 billion	Gastrointestinal	$1.8 billion
Cholesterol lowering	$2.4 billion	Hormone replacement	$1.0 billion
Psychotherapeutics	$2.2 billion		

The most popular medication by prescriptions dispensed

Lipitor® (cholesterol)	14.8 million

(Source: IMS Health)

Coughlin cyclists peddle donations to CHEO

Team Coughlin was awarded the 2009 Top Fundraising Team at the *CN Cycle for CHEO* fundraising rally held on May 8. The Coughlin team raised more the $20,000 for the children's hospital. Presenting Coughlin's donation are (left to right): Vice-President Finance & Operations Ken Kaitola; Junior Programmer Jennifer Moore; SEPs Client Account Representative Stéfanie Labelle; Voluntary Life Assistant Mélanie Brière; and Claims Assessor Kathleen Lemire. ❧

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