

## Ontario Court of Appeal revisits arbitrability of employee benefit claims

If a new ruling by the Ontario Court of Appeal stands, it will be a case of "everything old is new again" on the issue of the proper venue for the pursuit of employee benefit claims. In both July 1997 and January 1999, we followed the somewhat tumultuous course of events unleashed by the Court of Appeal's decision in *Pilon v. International Minerals & Chemical Corporation and London Life Insurance Co.*, a decision which led to great uncertainty about whether employee benefit claims are arbitrable, and seemed to imply that all such claims are. (See "[Ontario Court of Appeal decides arbitrability of employee benefit claims](#)" and "[Confusion over arbitrability of employee benefit claims resolved - maybe](#)".)

We last reported that the Ontario Divisional Court had appeared to restore the pre-*Pilon* approach of arbitrators to this issue. Arbitrators had held that the proper venue for employee benefit claims was determined by the language of the collective agreement: if that language indicated an intention by the employer to be responsible for providing benefits, the claim could be arbitrated. If the agreement was silent on benefits, or if the employer undertook only to pay plan premiums, the employee had to sue the insurer in court.

Now, in *London Life Insurance Co. v. Dubreuil Brothers Employees Assn.* (July 13, 2000), the Ontario Court of Appeal has affirmed the Divisional Court's ruling. It expressed agreement with the Divisional Court's holding that the controversial decision in *Pilon* never intended to bring about a fundamental expansion of arbitrators' jurisdiction:

"There is no suggestion [that *Pilon*] contemplated that the arbitrator would adjudicate the issue of the insurer's obligation to the employee under the terms of the policy. Such a conclusion would constitute a root and branch change in the law relating to labour arbitration. It would require the arbitrator to resolve a dispute not between the parties to the collective agreement, but between an employee and a stranger to that agreement."

We will keep readers informed in the event this decision is appealed.

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