Security of Pensions in the Post-*Indalex* World

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Agenda

- Fraser Papers Inc. Bankruptcy
- AbitibiBowater Inc. Insolvency
- The Auto Sector Collapse
- Nortel Networks Limited Insolvency
- *Sun Indalex Finance LLC v. United Steelworkers*
- Implications for Financial Planners
- Questions

Fraser Papers Inc. Bankruptcy

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- Facts
  - > Fraser Papers Inc. commenced *Companies' Creditors Arrangement Act* (CCAA) proceedings on June 18, 2009
  - > Fraser also filed for bankruptcy protection in the U.S.
  - > Fraser sought an order to stop special payments to the pension plans and payments to the supplemental pension plans
  - > Fraser's five defined benefit pension plans had a aggregate deficiency of $250 million

Fraser Papers Inc. Bankruptcy

- Result
  > A plan of arrangement was filed with the court addressing the wind up of the pension plans, treatment of the deficits, and a contractual release of Fraser, its directors and officers, and the purchaser

  > Fraser sold off pieces of the business, and officially dissolved June 23, 2011

  > Retirees from Quebec and New Brunswick had their pensions cut by up to 40%

AbitibiBowater Inc. Insolvency

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- Facts
  - > AbitibiBowater Inc. had an unfunded pension plan liability of approximately $1 billion
  - > Filed for protection under the CCAA in April 2009
  - > Ontario and Quebec governments both agreed to provide restructuring support and funding relief
  - > Restructuring of the pension plans was a key precondition to the implementation of the CCAA plan

AbitibiBowater Inc. Insolvency

- Result
  > Pension payments to retirees continued; wages of current employees cut instead

  > Abitibi given more time to pay solvency deficiency
  - 10-year transition period to return to full funding requirements under the Ontario *Pension Benefits Act* ("PBA")

  > Lump sum pension payments were to be made to employees if mills were shut down in Quebec

AbitibiBowater Inc. Insolvency

- Result
  > Target benefit plans were established for new employees and active employees on a going-forward basis
    - Fixed contribution rate and target defined benefit level
    - Benefits/funding policy setting the methods to vary benefits based on affordability

AbitibiBowater Inc. Insolvency

- Result
  - Abitibi emerged from CCAA protection in December 2010
  - According to 2012 financial filings, the pension liability under legacy pension plans has risen to $1.9 billion…

Auto Sector Collapse

- Facts
  > Ford and General Motors both underwent restructurings

  > Ford
    - Ford rebalanced their pension plans' asset mix and weighted assets more heavily toward fixed income investments (liability driven investing)
    - Ford also began offering lump-sum distribution options to U.S. salaried retirees in 2012
      – To date, $1.2 billion of pension obligations have been settled via lump-sum distributions

Auto Sector Collapse

- Facts
  - > GM
    - Pension issues left untouched during GM's U.S. -financed bankruptcy restructuring in 2009
    - In 2012, GM cut close to a quarter of its U.S. pension obligation by purchasing a group annuity contract and transferring funds and administrative responsibility for 118,000 retirees
    - Also offered lump sum buyouts similar to Ford
    - The two moves cut $26 billion from GM’s $109 billion pension liability

Auto Sector Collapse

- Result
  - GM Canada announced a plan to move to a DC model for salaried employees
  - More than a dozen corporations, led by Ford and GM, offered lump-sum payment to current and/or former employees in satisfaction of pension entitlements
  - Employees will elect how the payment is invested

Nortel Networks Insolvency

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- Facts
  - > Nortel Networks Limited sponsored two defined benefit pension plans
  - > Effective September 30, 2010, Nortel ceased to make contributions to the plans
  - > Insolvency proceedings commenced in January 2011
  - > Unfunded pension liability of approximately $1.5 billion
  - > Funded ratios:
    - For benefits earned in Ontario (non-indexed): 70-75%
    - For benefits earned outside Ontario (indexed): 57-59%

Nortel Networks Insolvency

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- Result
  > Ontario Bill 173
    - Allows persons who are receiving a pension from the Nortel pension plans to have the value of their pension based on the plan funding ratio paid into a life income fund (LIF)
    - Nortel LIF rules are similar to those for general LIFs
      – Investment is permitted
    - Those who don't elect to transfer remain in the Nortel plans
      – Wind up process could continue until 2018 or beyond

Sun Indalex Finance LLC v. United Steelworkers ("Indalex")

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- Facts
  - > Indalex sponsored two pension plans
  - > CCAA proceedings commenced on April 3, 2009
    - Pension plans had wind-up deficiency of $6.75 million
  - > July 31, 2009 – Sale transaction closed for substantially all of its assets
    - DIP lender could not be repaid in full
    - All other secured and unsecured creditors received nothing

Indalex – cont'd

- Result
  - February 1, 2013 – Supreme Court of Canada decision affirms priority of DIP lender over pension deficiency
  - Not enough left over to pay the pension deficiency
  - Pension entitlements could be reduced by up to 50%

Implications for Financial Planners

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- What does this mean for financial planners?
  - > NO STABLE EMPLOYER-PROVIDED RETIREMENT INCOME
    - In a bankruptcy/insolvency, it is possible that defined benefit pensions promised to employees will be reduced if there is a significant funding deficit
    - Employer-sponsored defined benefit pension plans have become less and less common
    - More employers will move to alternative models, such as defined contribution pension plans, group RRSPs or simply not providing a retirement savings plan

Implications for Financial Planners

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- What does this mean for financial planners?
  - > In defined contribution-style models, the investment selection and risk is borne by the employee
    - Many will not have the knowledge or experience in investment strategies, and so will want financial planning advice
  - > Diversification of investments is highly recommended by administrators but little direction is given
    - Expect questions about what this means, and how it applies to pension investment

Implications for Financial Planners

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- What does this mean for financial planners?
  - > Expect other companies to consider transactions similar to Ford, GM and Nortel
    - Lump-sum payouts are growing in popularity among U.S. defined benefit pension plans
    - Lump sums may help companies to de-risk and remove liabilities from financial balance sheets
  - > As a result of these types of transactions, companies may offer financial counseling opportunities to employees

Implications for Financial Planners

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- What does this mean for financial planners?
  - > Employers and pension plan sponsors will increasingly look outside of their organizations for financial planning recommendations
  - > Employers may also want financial planners to provide their employees with investment advice
  - > Expect employees looking to save for retirement to move towards more risk-adverse models in an effort to make sure their savings are protected

Implications for Financial Planners

- What does this mean for financial planners?
  - > Rising life expectancies and low interest rates will continue to put an emphasis on achieving a sustainable retirement income
  - > Many individuals do not have employers who sponsor workplace pension plans
    - These individuals will likely seek financial advice and retirement planning, especially given the current economic climate
  - > Expect an increased interest in alternatives to employer-sponsored pension arrangements
    - E.g. Pooled Registered Pension Plans

Questions?

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