FTR Now

Pension Funding In CCAA Restructuring Proceedings

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The pension plan funding difficulties of cash strapped companies have been the focus of significant media attention over the last few months. It is no surprise that two recent decisions of the Quebec Superior Court have gained considerable attention. This FTR Now looks at the AbitibiBowater proceedings and the court's consideration of a company's ability to change benefits set out in a collective agreement and pension funding obligations during CCAA restructuring proceedings.

AbitibiBowater Inc. and several related entities are currently in creditor protection pursuant to the *Companies' Creditors Arrangement Act* (CCAA). The CCAA is bankrutpcy protection legislation, intended to provide a company with creditor protection while it seeks to restructure operations through a "stay of proceedings." Shortly after entering CCAA protection, AbitibiBowater advised its union that it would not be implementing certain improvements to the pension plans which were to take effect on May 1, 2009. These improvements were agreed to by AbitibiBowater in a Memorandum of Agreement with the union, which was then incorporated into 18 collective agreements that remain in force. The company's position was that the CCAA permitted this action, as it could not afford to fund the pension plan improvements

The union challenged this decision by bringing a motion in the CCAA proceedings. The court found that neither the CCAA legislation nor the stay of proceedings granted by the court gave AbitibiBowater the authority to unilaterally modify its obligations under its collective agreements and declared the company's actions null and illegal. The court's decision is consistent with recently passed amendments to the CCAA, which are not yet in force , which confirm that during CCAA proceedings the collective agreement remains in force, unless amended by agreement of the parties.

Just two days after this decision, AbitibiBowater sought, and was granted permission by the court, to suspend all of its otherwise required special payments to fund the solvency deficiencies in its defined benefit pension plans for the period of the stay of proceedings.

This is not the first CCAA proceeding during which a company has ceased to make its special payments. It is noteworthy because the decision affects 33 pension plans with a large number of members and the combined total of the special payments which are now stayed exceed $13 million per month. In the past, other companies in CCAA protection have relied on permissive language in the initial court order which granted the stay of proceedings to cease making these payments. AbitibiBowater took the step of bringing a motion to confirm that it would not make the payments. The court accepted the company's claims that it did not have the liquidity to cover these payments and that if required to make the contributions, the company could be forced to close operations resulting in an immediate loss of jobs. While the company has received a temporary reprieve from its solvency funding obligation, unless the pension deficits are otherwise dealt with in the CCAA process, these special payment funding obligations will resume if and when AbitibiBowater emerges from CCAA protection.

For companies who are not subject to a CCAA stay of proceedings, these *AbitibiBowater* decisions provide no pension funding relief options. The majority of pension plan sponsors who are continuing operations during these difficult economic times, will wish to consider instead the solvency funding relief announced or enacted under the governing jurisdiction. For more information on those measures, please see our FTR Now "Towards Meaningful Solvency Relief" and our comprehensive chart detailing these measures as they have been enacted or announced across the country.

QUESTIONS?

If you have any questions arising out of this *FTR Now*, please contact one of the members of our Pension & Benefits Group, or your regular Hicks Morley lawyer

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