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AT A GLANCE ...

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Hot equity markets mean improved pension funding

The robust equity results of 2013 have helped reduce the sizable deficits of many of the largest defined benefit pension plans in Canada and the United States.

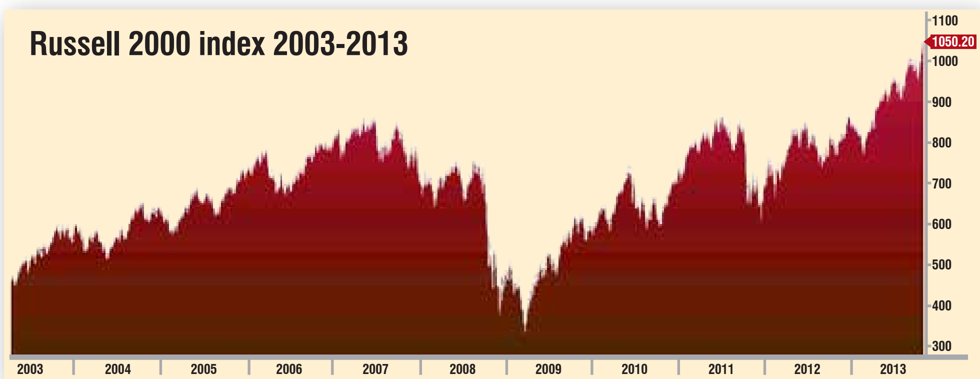
According to the Milliman 100 Pension Funding Index, pension liabilities in the United States decreased in 2013 by $190 billion while plan assets increased by $128 billion, a net gain of $318 billion. This was the first time since 2007 that deficits declined and assets increased.

Milliman principal and actuary John Ehrhardt says the improvements reported in 2013 have almost wiped out the $337 billion loss recorded during the 2008-09 market crash.

The rally in pension funding follows a strong year in world equity markets. The United States market led the way with a 41 per cent improvement over 2012. Canada's equity gains were a far more modest but still very respectable 12.7 per cent. Worldwide, equity markets generated average returns of 35.5 per cent, the strongest since the 2008-09 market crash.

Also supporting pension investment funding was the modest growth in government bond yields. The Government of Canada bond yield rose from a low of 2.37 per cent to 3.28 per cent in 2013.

For many pension plan sponsors, the return to equity market growth is a welcome relief



Equity markets have rebounded from the 2008-09 market crash, resulting in improved pension funding.

Similar trends were recorded in Canada, with the Mercer pension index of 607 public and private sector pension funds reporting an average funding level of 99.9 per cent. A year ago, 60 per cent of pension funds in that index had funding levels of less than 80 per cent. An Aon Hewitt pension index of 275 pension plans reported an average funding level of 93.4 per cent at the end of 2013, an increase of almost 25 per cent from the previous year.

from years of record low interest rates and near-stagnant markets which saw many pension plans slip well below their minimum funding requirements. As late as July 2013, the Dominion Bond Rating Service warned that aggregate funding levels of the 461 defined benefit pension plans that it reviews had fallen into a "danger zone" below the 80 per cent level. (See the October 2013 edition of the *Coughlin Courier* for background.)

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Hot equity markets mean improved pension funding

With the equity storm of 2008-09 apparently over, the big question for pension plan managers and plan sponsors will be *"Where do we go from here?"* Do they continue to build funding ratios to levels exceeding the 100 per cent mark to cushion their plans against the next market downturn? Or, will they yield to the inevitable temptation that comes with pension surpluses and reduce or take a holiday from their pension contributions?

During the market bubble prior to the 2008-09 crash, many plan sponsors excused themselves from making further pension contributions, leaving their organizations with significant pension funding liabilities when the downturn occurred.

The next year will see if pension funding history repeats itself. ❧

Court says pension benefits not deductible from severance pay

The Supreme Court has ruled that an employee's pension benefits cannot be deducted from damages paid for his/her dismissal without cause.

The decision by Canada's highest court separates pensions from earlier court decisions that allowed employers to offset disability income payments from severance awards.

The case involved a man who had worked for 42 years for a major technology company. At age 65, he was terminated without cause and provided with two months' notice. He then filed a suit for wrongful dismissal.

Since he was eligible to receive pension benefits, the former high-tech employee began to collect a pension of more than $2,100 per month after his termination.

In reviewing his case, the lower courts ordered his severance award to be increased to 20 months. In addition, it ordered that his pension benefits be excluded from the increased settlement. The employer then appealed the case, citing the *Sylvester v. British Columbia* court decision that allowed an employee's disability benefits to be deducted from a similar severance arrangement for dismissal without cause.

At issue was the question of whether disability payments and pension income payouts amount to the same thing when it comes to severance arrangements. While both amount to an income in practical terms, the intent and structure of the payments differ, the Supreme Court ruled.

In its review, the high court said that the closer a benefit is to being an indemnity against a loss of income, the stronger the case for an offsetting deduction from severance payments. However, the Supreme Court noted, pension payments are not an indemnity against a loss but a form of retirement savings paid as deferred compensation in consideration of service. As a result, the terms of the *Sylvester v. British Columbia* decision do not apply to pensions.

The ruling applies even when a pension plan is funded entirely by an employer, the court stressed.

For plan sponsors, the Supreme Court ruling should underscore the importance and uniqueness of pensions. To avoid potential litigation, accrued pension benefits should not be included in total severance calculations. ❧

New law lets common-law spouses receive pension death benefits

Proposed changes to Ontario's Pensions Benefits Act (PBA) will mean that common-law spouses who lived with a deceased pension plan member at the time of his/her death will have priority over former spouses to receive survivor benefits.

The proposed amendments to the PBA, contained in Bill 151, clarify the term *"spouse"* in situations when more than one person could potentially be entitled to a pension's survivor benefits.

The revision follows a complicated 2013 case involving a married couple that executed a will specifying that the wife would be the sole beneficiary of the man's estate on his death. However, the couple separated in 1996 but did not formalize the separation through any legal documentation, such as a separation agreement. By 2000, the man began a common-law relationship with another woman. Despite that fact, in 2002, he designated his former wife and their children as beneficiaries of his pension plan.

In 2008, the man died and both the former wife and the common-law spouse claimed they were entitled to his pension's death benefits. The case then went to litigation.

Since, technically, both women met the spousal definition under the PBA, the Ontario Court of Appeal had to focus its review on Section 48 of the Pension Benefits Act, which deals with the disbursement of benefits to spouses *"living separate and apart from the member."* In its view, the terms and conditions in Section 48 of the PBA could only be met by a legally married or separated spouse, thereby giving priority to former spouses over common-law partners. (See January 2013 and June 2013 editions of the *Coughlin Courier* for background.)

The case ultimately went to the Supreme Court of Canada for a decision. However, it refused to hear the case. As a result, the Court of Appeal decision became law.

The court decision reversed common pension administration practices. Until that time, plan administrators usually disbursed pension benefits to existing common-law spouses ahead of former spouses.

The revised PBA specifies the following:

- when a pension plan member is still legally married to a spouse from whom he/she is separated, and
- is living with a new spouse in a common-law relationship, and
- dies prior to retirement,

the common-law spouse will be entitled to the pre-retirement death benefit.

Similar rules will apply if the deceased member is already receiving a pension income.

Under Section 44 of the revised PBA, if a member is living with a new spouse in a common-law relationship and draws a pension, the pension must be paid on a joint and last survivor basis, with the survivor pension being payable to the common-law spouse.

Since the plurality of Canada's pension plans are registered in Ontario, the new law will apply to pensions across the country. ❧

Quebec announces plans for a longevity annuity at age 75

The Quebec government has announced that it will introduce an action plan that will ultimately see the introduction of a new defined benefit public pension plan in that province.

In a December 12, 2013 announcement, Quebec Labour and Employment Minister Agnès Maltais unveiled the first draft of a new *longevity pension* that would provide all Quebec workers with a defined benefit pension beginning at age 75.

Highlights of the proposed pension include the following:

- The plan would offer a longevity annuity to all Quebec workers beginning at age 75.
- It would be obligatory, similar to the Quebec/Canada Pension Plan.
- Costs will be shared equally between employers and employees.
- The joint employer-employee contribution levels would be 3.3 per cent of pensionable earnings (or 1.65 per cent each) to the yearly maximum pensionable earnings (YMPE) limit ($52,500 in 2014).
- The new plan would be administered by the Régie des rentes, similar to the Quebec Pension Plan, and its assets managed by the Caisse de dépôt et placement du Québec.
- The new plan's pension credits would accrue at a rate of 0.5 per cent of salary per contribution year, to the YMPE maximum. (In today's terms, an individual with 40 years of work experience could potentially earn a supplementary pension of 20 per cent of his/her income to a maximum of $52,500, beginning at age 75.)
- Like the QPP/CPP, the plan would be available universally, regardless of an individual's existing pension arrangements.
- The introduction of the new pension will be phased-in over a five-year period.

The new plan is based on the recommendations of the D'Amours Committee, a panel of pension experts appointed to study the development of a supplemental pension plan for the province. Its findings and recommendations were published in an April 2013 report entitled *Innovating for a Sustainable Retirement System.*

Ms. Maltais noted that the creation of the pension will require the input of various industry groups, particularly those that already offer defined benefit pensions to their employees. As a result, three working groups will be created to review and establish financing and other measures to ensure the co-ordination of the new pension plan with existing defined benefit pension arrangements. The three industry sectors include: private sector employers and unions; the municipal sector; and universities.

Public consultations will follow later in 2014. ❧

Supreme Court affirms Ontario ban on pharmacies' private label prescription drugs

The Supreme Court of Canada has upheld the province of Ontario's ban on sales by pharmacies of their own generic private label prescription drugs.

The ruling by the high court effectively torpedoes the plans by the country's major pharmacy chains to introduce their own generic prescription drugs as a way to offset the financial losses they've incurred since 2010 when that province and others capped the price of generic drugs at 25 per cent of their brand name equivalent. (See the April 2010 and June 2010 editions of the *Coughlin Courier* for background.)

In a unanimous decision, the court noted that Canada spends more on prescription drugs per capita than almost every other industrialized country. It also cited that generic drugs were three times more expensive in Ontario than in France, Germany and Britain, five times more expensive than those posted in the United States and 22 times greater than recorded in New Zealand.

The court had unusually harsh words about the pricing practices of the province's pharmacies.

"Each time the government has introduced new measures, market participants have changed their business practices to obviate the restrictions and keep prices high," wrote Supreme Court Justice Rosalie Abella. *"If pharmacies were permitted to create their own affiliated manufacturers whom they controlled, they would be directly involved in setting the formulary prices and have strong incentives to keep those prices high."*

In their submissions to the court, lawyers for the Katz Group, the owner of the Rexall and Pharma Plus drug store chains, and Shoppers Drug Mart argued that the pricing restrictions imposed by the province did not meet the intent or purposes of provincial legislation governing pharmaceutical sales.

The court disagreed.

"The 2010 private label regulations were part of the regulatory pursuit of lower prices for generic drugs and are consistent with the statutory purpose," Justice Abella said.

The ruling does not affect the stores' ability to sell generic over-the-counter medications. ❧

Prescription non-adherence undermines drug plans

Roughly one-third of patients taking popular medications do not adhere to their prescription regimes, according to data published by Express Scripts Canada (ESC).

According to the pharmacy benefit management and drug research firm, non-adherence rates of patients using high blood pressure, high cholesterol and diabetes medications were particularly high, at 28.2 per cent, 29.4 per cent and 35.5 per cent respectively.

Not taking medications as prescribed can lead to medical complications and increased health care costs, ESC says.

Understanding why so many patients do not fill their prescriptions, or veer from the regimes prescribed by their medical practitioners, could result in better outcomes for both patients and plan sponsors who pay for the drugs through their group drug plans.

In discussions hosted by the Canadian Leadership Council on Drug Plan Partnerships this past December, Bessie Wang, director of professional services at Telus, noted that the lack of communication between medical practitioners, plan sponsors and plan members is resulting in both cost inefficiencies and non-adherence by plan members.

"Every stakeholder has their own agenda and interest," Ms Wang told the forum. *"For instance, while the job of a plan sponsor is to contain costs, a physician doesn't have to worry about that."*

The result is that all parties work in silos, often resulting in confusion for plan members and duplication of effort among medical practitioners, she suggests.

An example of working in silos occurs when a plan member is prescribed a medication based on what a doctor may think is best for the member without considering the cost of the medication or whether it is covered under the member's group benefits plan.

"Due to lack of communication, doctors have no information about what drugs are covered for patients. This means that plan members may have to pay out-of-pocket, which, in turn, could result in them not taking the drug and not addressing the health problem," she says.

The non-adherence issue and its financial impact on drug plans is one area that insurers, benefits consultants and plan sponsors could explore together, the forum was told.

"We need to translate the benefits of adherence into financial terms," says Manulife Financial Director of Pharmacy Benefits Connie Wong. *"It's not readily available from carriers. And, if we can't measure it, there's no way to establish that it's actually delivering value."*

Establishing mechanisms whereby pharmacies, insurance carriers and benefits consultants promote or remind members to take their medication should be encouraged, Ms Wong concluded. ❧

QPP maximums for 2014

The Régie des Rentes du Québec has announced the 2014 contribution maximums for the Quebec Pension Plan (QPP.) They are as follows:

- Maximum pensionable earnings: $52,500.
- Contribution rate for plan members: 5.175 per cent of pensionable earnings.
- Contribution rate for employers: 5.175 per cent of employee pensionable earnings.
- Combined employee-employer contribution rate: 10.35 per cent of pensionable earnings.
- Maximum death benefit: $2,500. ❧

2014 federal contribution limits

The Canada Revenue Agency has set the following contribution limits for selected retirement plans for 2014:

- Yearly maximum pension earnings (YMPE): $52,500.
- Defined contribution pension plan contribution limit: $24,930.
- RRSP contribution limit: 18 per cent of income to a maximum of $24,270.
- Deferred profit sharing plan (DPSP) limit: $12,465.
- Defined benefit pension plan contribution limit: $2,770. ❧

Disability accommodation results in discrimination charge

The Ontario Human Rights Tribunal has ruled in favour of a woman who claimed she was discriminated against due to a disability, despite the fact that the Tribunal agreed that her employer had acted in good faith to accommodate her medical condition.

The case involved a nursing home health care aid who experienced swelling in her skin and legs that prevented her from walking or standing.

While the employer sought to accommodate her disability by considering various light duties for her that did not involve standing, the woman rejected various suggestions, stating that she preferred to do easier tasks, such as assisting with recreational activities like bingo calling.

The employer felt that her expectations were unrealistic. Working with her union, the employer eventually devised a position whereby she could fold laundry while sitting.

Again, the woman refused to co-operate with the plan, citing her leg pain. Complicating the problem was her doctor's medical report and other supporting letters, which were general in nature and listed only the tasks she could not perform, rather than clarifying her physical capabilities.

With no other light functions available, the plan sponsor then notified her to return to work or face termination. The women refused and again provided a letter from her doctor stating that she could not perform this job. She was then terminated.

The woman responded by taking her case to the Human Rights Tribunal, declaring she faced discrimination resulting from her disability.

In reviewing her case, the Tribunal agreed that the employer had acted in good faith in attempting to accommodate her medical condition by offering her an alternative position. However, it noted, while it agreed that her physician's statements were vague and provided no reason for his assessment, the employer was not qualified to dispute the medical evaluation. As a result, the Tribunal ruled in favour of the woman and awarded her with damages.

According to the Tribunal, the employer should have asked the woman's doctor for more information to support his assessment. This could have been done directly, or through a medical assessment conducted by an independent medical expert.

For plan sponsors, the nursing home case should reinforce the need to actively manage all aspects of short and long-term disability claims. While, in this case, the employer worked well to find an alternative position for the claimant, it failed to secure specific medical evidence to confirm the severity of her medical condition. By failing to do that, it allowed the claimant to block their efforts at accommodation, which prevented the establishment of a rehabilitation plan and return to work protocol.

Coughlin & Associates Ltd. offers disability management services that include short and long-term claims adjudication, case management, payment administration, advisory services, recordkeeping, work planning, adjudication appeals management and other assistance. For more information, contact Coughlin Managed Care Consultant **Joe Zadzora** at 613-231-2266, Ext. 256, or, toll-free, 1-888-613-1234, Ext. 256, or email jzadzora@coughlin.ca

Canada Post to seek pension concessions

Canada Post says that it will seek pension concessions in an effort to reduce its operating costs.

As part of a wide-ranging cost cutting initiative that will see first class postal rates increase from 63 cents to 85 cents and the elimination of door-to-door postal delivery within the next five years, the crown corporation says it plans to make pension reform a top priority.

"We see pensions as a major area of focus because the size of the deficits and the volatility is disproportionate to the size of the business," says Canada Post Chief Executive Officer Deepak Chopra. *"We need to find solutions that are consistent with the corporation's ability to sustain the plan."*

The Canada Post pension plan has a deficit of $6.5 billion. The federal government has given the corporation a four-year window to eliminate its unfunded liabilities. Concessions could include higher pension contributions, benefit reductions or both.

The corporation employs more than 60,000 people.

The Canadian Union of Postal Workers (CUPW) strongly opposes the cost cutting measures and has countered by proposing that the postal service expand its product offerings to include postal banking and other new revenue-generating services. Many European postal services offer a variety of financial, travel and other services in addition to traditional mail and parcel delivery.

Canadian mail delivery volumes are declining by approximately five per cent per year. ❧

Check your travel insurance coverage before leaving Canada

One in three travellers do not have emergency medical travel insurance when they travel outside Canada, according to data published by the Travel Health Insurance Association of Canada (THIAC.)

The potential problem for those people is that provincial health care coverage outside Canada is extremely limited. That could turn a holiday or business trip outside the country into a major debt.

"Only six per cent of Canadians realize that provincial health plans cover about nine per cent of medical expenses when you are travelling outside of Canada," says THIAC President John Thain. *"Travel health insurance can protect against unforeseen medical expenses."*

According to the THIAC, 21 per cent of travellers surveyed by that organization have had to receive medical treatment while travelling outside Canada. Gastrointestinal problems, infections and fractures were the most common medical conditions that required medical care.

In jurisdictions with no or limited universal health care, even simple fractures can result in sizeable medical bills. For example, treating a fracture in the United States can cost as much as $10,000.

While many group benefit plans provide emergency out-of-country medical coverage, plan members should always check the terms and coverage maximums of their group policy before leaving Canada.

If your group benefit plan does not include out-of-country coverage, Coughlin's Individual Financial Services department can develop a personal travel insurance plan to fit your coverage needs. For more information, contact **Matt Picciano** at 613-231-2266, Ext. 334, or, toll-free, 1-888-613-1234, Ext. 334 (mpicciano@coughlin.ca) or **Richard Séguin** at 613-231-2266, Ext. 204, toll-free, 1-888-613-1234, Ext. 204 (rseguin@coughlin.ca). ❧

Fast facts

- The federal government has approved Air Canada's plans to tackle its $1.4 billion pension deficit. The airline plans to channel an average of $200 million per year toward the deficit from 2014 to 2020.
- The majority of Canadians report that they are not better off financially than they were a year ago, according to a Sun Life poll. The December 2013 survey says that 57 per cent of respondents noted that their financial position had deteriorated from the same time in 2012. With response levels of 63 per cent, Quebecers were most likely to say they were worse off than a year ago. The survey also found that only 36 per cent of respondents planned to make a contribution to a registered retirement savings plan (RRSP) in 2014.
- The maximum Canada Pension Plan (CPP) benefit has increased to $1,038.33 per month from the 2013 payout level of $1,012.50. The maximum Old Age Security (OAS) benefit rose to $551.54 per month from $550.99.
- Effective February 1, 2014, Alberta employers will be required to allow their employees to take eight weeks of unpaid compassionate leave to support seriously ill family members. The ill family members must have a significant risk of death within 26 weeks and require the support of one or more other members of their family. A doctor's certificate is required.
- A total of 53 per cent of Canadians have not opened a tax-free savings account (TFSA), according to an ING Direct survey. Almost one-third of those surveyed admit they don't understand how TFSAs work.
- -Percentage of household income directed to retirement savings among those earning less than $50,000 per year, according to an Angus Reid poll of 3,000 Canadians: seven.

  -Percentage directed to retirement savings among those earning between $50,000 and $100,000 per year: nine.

  -Percentage of households not making any retirement savings: 15.
- The Superior Court of California has blocked an attempt by the city of San Jose to cut the pension benefits of its retired employees. The court ruled that vested pension benefits are protected by state laws.
- In a tight 51 per cent to 49 per cent vote, members of Boeing machinists' union have agreed to freeze that company's defined benefit pension plan, beginning in 2016. Starting then, members will be covered by a new defined contribution pension plan. ❧

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PPN update

- **Greenbank Hunt Club IDA Pharmacy** has joined the Coughlin PPN. They can be reached at: 250 Greenbank Road in Nepean. Their phone number is: 613-288-1414. ❧