



Brown Mills Klinck  
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Pension, Benefits & Executive Compensation Law

# CBA National Insolvency Law Conference

## Hot Topics, Current Trends and Big Ideas

### **Thinking Outside the Stelco Pension and OPEBs Box**

Elizabeth M. Brown, BMKP Law

September 15, 2017

**Brown Mills Klinck Prezioso LLP**

130 Adelaide St. W., Suite 1005, Box 17, Richmond-Adelaide Centre, Toronto, Ontario M5H 3P5  
416.922.0678 | [elizabeth.brown@bmkplaw.com](mailto:elizabeth.brown@bmkplaw.com)

# Overview

## Inside the Box:

- Pension and OPEBs – Pre-Filing State
- Available Options and Considerations

## Outside the Box:

- Non-Traditional Funding Sources
- Limits on Employer Liability
- New Legal Structures and Governance
- End Result

# Inside the Box: **Pre-Filing State**

- U.S. Steel Canada Inc.'s CCAA Filing Date September 16, 2014

## **Main Pension Plans**

- Closed defined benefit plans (retirees far outnumber actives)
- Combined deficit of ~\$1 billion
- Flat funding (\$70+ million a year) under old Stelco Regulation set to expire December 31, 2015
- Return to regular funding in 2016 was not a viable option
- Unions opposed to plan wind up
- Significant PBGF exposure for Ontario Government

# Inside the Box: **Pre-Filing State**

## **Insured and ASO OPEBs**

- Health, dental, life insurance for 20,000 retirees and dependents
- Minimal deductible or co-pay
- Accounting liabilities of ~\$788 million
- Payments to retirees continued until October 2015 when suspended by court order
- Temporary funds established for emergency needs during CCAA

# Inside the Box: **Available Options and Considerations**

- No purchaser willing to take on pension or OPEB liability
- Limited commitment to fund pension plans or pay OPEBs on an ongoing basis
- No ability to fund wind up deficit under pension plans or OPEBs
- **Pension Option**
  - Wind up pension plans, PBGF payment to partially cover deficit
- **OPEBs Option**
  - Cease OPEBs, unsecured claim for “value” of lost benefits

# Outside the Box: **Non-Traditional Funding Sources**

- Creation of LandCo to hold Stelco Lands with proceeds on the ultimate sale to fund pension plans and OPEBs
- Limited minimum cash funding to pension plans and OPEB vehicles on a flat dollar basis (not actuarially based)
- Cash funding subject to maximum and guarantee
- Additional variable cash funding for pension plans and OPEB vehicles to come from free cash flow, tax savings, carried interest agreements

# Outside the Box: **Limits on Employer Liability**

- Removal of wind up funding obligations under pension plans
- Pension funding obligations limited to specified contributions
- Removal of obligation to deliver OPEBs
- Replace with limited funding commitment to trust
- Trust delivers OPEBs as determined by retirees in future

# Outside the Box: **Legal Structures and Governance**

- Special funding regulation under *Pension Benefits Act* for flat and variable funding
- Amendments to *Pension Benefits Act* to eliminate wind up funding
- Establish Pension Deficit Funding Trust to hold land proceeds and other indirect pension contribution amounts (DoF comfort letter)
- Employee Life and Health Trusts to hold OPEBs funding and pay OPEBs
- Establishment of LandCo to develop, lease and sell land



# Outside the Box: **Legal Structures and Governance**

- New Pension Advisory Committees for employees/retirees
- Union and Employee/Retiree Trustees for Pension Deficit Funding Trust
- Participation in Governance of LandCo
- New Audit Rights for Carried Interest, Tax Savings, Guarantee, Free Cash Flow
- Appointment of New Administrator to Oversee Pension Plans/Collections

# Outside the Box: **End Result**

- Defined benefit pension plans continue on an ongoing basis with pensions paid at 100%
- OPEB coverage continues generally at a reduced level through new vehicles
- Employer funding obligations/liability limited to fixed contributions and variable payments

# Q&A

## Questions and Answers

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