

Pension Alert: Pension Termination Joint Liability with Affiliates **Financial Services Tribunal (Ontario) (July 3, 2009)**

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Priscilla H. Healy



John R. Varley

One thorny restructuring issue affecting umbrella operations has recently been addressed in detail by Ontario's Financial Services Tribunal.

If a single pension plan is made available to all employees of an organization which nonetheless operates through separately-incorporated and independent "branches", and some of those branches become insolvent, can the umbrella parent entity be made liable (either completely or jointly) for the resultant wind-up deficiencies on the partial pension plan termination with respect to those insolvent affiliates?

There was some uncertainty as to whether the plan in question was a multi-employer pension plan (MEPP), or a single employer plan ("SEPP") with a number of participating employers, which was not resolved in the decision. The plan had never been administered as a MEPP. The Tribunal here provided a detailed analysis of the role (and pension plan wind-up liability) of "participating employers" who arrange for benefits to be provided under a SEPP.

The decision turned on the issue of which entities had the obligations of an "employer" within the meaning of that term under the Ontario Pension Benefits Act. The tribunal held that those employers who so participated will each have their separate obligations as "employers" with respect to those plan members who received their ordinary remuneration from that particular entity. If a member received remuneration from two different persons (as was the case in the St. Marys' Paper Inc. case) then the wind-up liability for that member's benefits could fall on both or either of such employers. In this case the Victorian Order of Nurses, although the administrator of the plan and having the right to amend the plan, paid none of the remuneration for the employees of the four insolvent branches. The branches were then the only "employer" as regards wind-up liability for their separate groups of "employees".

The tribunal went on to review in detail several alternative theories as to "common law", "controlling" or "joint" employer relationships.

The analysis will undoubtedly be helpful in comparable situations in Ontario, especially umbrella organizations in which operations are split between several incorporated entities.

This article is intended for general information purposes only and should not be relied upon as legal advice.

John R. Varley practices in the area of insolvency, commercial reorganization and secured financing transactions. He can be reached at 416.941.8863 or jvarley@foglers.com.

Priscilla H. Healy is a Consultant at Fogler, Rubinoff LLP in the area of Pensions & Benefits. She can be reached at 416.864.7607 or phealy@foglers.com.