

# mebco NEWS

THE VOICE OF MULTI-EMPLOYER PLAN INTERESTS IN CANADA

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## MEBCO Annual General Meeting to be held February 4, 2005

MEBCO's Annual General Meeting will be held on Friday February 4, 2005 at 10:00 a.m. at the Airport Hilton in Toronto. We encourage all members to attend.

At the Annual General Meeting, members elect the Board of Directors, appoint MEBCO's auditor and review the financial statements, and consider any other motions that are brought by members. The AGM is an ideal opportunity for members to raise issues that concern them and provide feedback on MEBCO's activities.

We also welcome speakers of interest to our members; in 2004 Randy DeFrehn of the National Coordinating Committee for Multi-Employer Plans, MEBCO's American counterpart, updated members on issues multi-employer plans face in the United States. This year we have invited representatives from FSCO and CAPSA to address the meeting.

### Are you interested in joining the Board of Directors?

MEBCO's Board of Directors is made up of an equal number of union trustees, employer trustees and professionals (third party administrators,

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## Season's greetings



The Board of Directors of MEBCO wishes you and your family a joyful holiday season and a happy new year.



actuaries, benefits consultants, lawyers and chartered accountants). The Board meets at least four times a year, either in person or by conference call. All directors volunteer their time and are unpaid.

If you're a member of MEBCO and are interested in becoming more involved with the organization, you may want to

consider running for election to the Board of Directors. For more information, please contact:

**Brian Foote** at [foote@netrover.com](mailto:foote@netrover.com) or

**Alex McKinnon** at [alextooth@mobile.rogers.com](mailto:alextooth@mobile.rogers.com). ∞

## A Pocket Guide to the Liabilities Facing Employee Health and Welfare Plans

By Andrew Brown  
Executive Risk Consultant  
Financial Services Group  
Aon Reed Stenhouse, Inc.

If you're involved in managing defined benefit pension plans, you're familiar with fiduciary liability as a concept. Trustees, investment managers and third party administrators have all heard many times that the responsibility resting on their shoulders is a massive one that they can't afford to take lightly. Similarly, defined contribution pension plans present their own difficulties and responsibilities to their managers.

What about Employee Health and Welfare plans? Do these plans bring with them any of the special exposures of pension plans? Can these liabilities be insured, and at what cost?



Andrew Brown  
Aon Reed  
Stenhouse, Inc.

### Sponsors' responsibilities

On the face of it, comparing exposures seems easy enough. Without an asset base of investments to manage, actuarial valuations and assumptions to juggle or funding issues to worry about, the Employee Health and Welfare plan looks like the benign country cousin of the pension plan in terms of legal exposure. To a certain extent, this is true.

Before we wash our hands of the subject, however, let's go back to basics and make sure that we haven't missed anything. A plan exists to pay benefits to members in the form of dental, medical, disability, or other types of services. The

sponsor has a responsibility to ensure that these benefits are paid as promised, and to communicate the details of the plan properly to its members. Even when the day-to-day administration of the plan is outsourced to a third party, the ultimate responsibility rests with the sponsor. This is as true for the multi-employer plan as the single-employer plan.

### Beware of potential liability

The potential liability of a plan sponsor arises directly from its responsibilities. For plans administered internally by the sponsor organization, union, or association, the key exposure is often referred to as "Employee Benefit Plan Administrative Professional Liability", a needlessly complex term which essentially means the responsibility for proper and accurate administration of the plan.

Plans that outsource their administration to third parties may still be liable for actions of the administrator

Here's an example of a typical claim. A long-term disability plan increases benefits by 20% for a certain class of employees. The increased benefits are formally communicated to plan members. When the benefits come due, an administrative error causes the old entitlement to be paid instead of the increased amount. If the case is an isolated incident with a single plan member, the member could sue the sponsor for the difference. If the problem is a systemic one affecting a

whole class of plan members, the potential for a class action suit (and correspondingly larger damages) exists.

For Employee Health and Welfare plans that outsource the administration of the plan to a third party, the liability is more distant, but it still exists. While the liability may be caused by the administrator's actions, the ultimate responsibility still rests with the sponsor. The main duties of the sponsor who outsources administration of the plan are to perform all necessary due diligence in selecting a third party administrator and to ensure the accuracy and completeness of any communication between the sponsor and plan members.

### **Insure against liability**

Plan sponsors typically insure against liability in one, or both, of two ways. Most fiduciary liability policies cover general administrative liabilities of the plan sponsor, provided that there are no professional liability exclusions added to the policy and that the proper plans have been insured.

For plans with third party administrators, the administrator has traditionally been added as an insured under the sponsor's fiduciary liability policy. This covers the liability of the

administrator for the work they do for that sponsor's named plans. However, in recent years the trend in the insurance industry has been to move away from this approach in favour of issuing a separate professional liability policy dedicated specifically to the administrator. In either case, the fiduciary liability policy is useful in picking up these Employee Health and Welfare exposures in addition to achieving its primary purpose – covering pension plan liabilities.

The other way that Employee Health and Welfare exposure is often insured is by adding an "Employee Benefits Liability" extension onto a general liability policy. While this covers many of the same liabilities, it shares the limits of liability available for general liability claims, as opposed to fiduciary liability claims.

Whatever the particular mix of plans, it pays to take a step back and make sure that adequate measures in terms of due diligence, risk management, and insurance are in place. Should Employee Health and Welfare plans be the number one concern on a risk manager's mind? Probably not. Do Employee Health and Welfare Plans represent a particular exposure that needs to be addressed? Absolutely. ∞

## **New FSCO consultative group on multi-employer pension plans**

The Financial Services Commission of Ontario ("FSCO") has established a new consultative group to consider the interests of multi-employer pension plans ("MEPPs"). The group, which is the brainchild of Mark Zigler of Koskie Minsky, is intended to promote two-way communication between FSCO and representatives of MEPPs so that the government will be better informed about the interests of MEPPs.

The advisory committee had its first meeting in November, 2004, and will continue to meet on a quarterly basis. Members include Bill Anderson, president of MEBCO; Brian Foote, MEBCO director and representative of the construction industry; Tom Levy, MEBCO director and actuary; Bryan Kogut of BDO Donwoody, Mike Gallagher, the business manager of Local 793

of the International Union of Operating Engineers and Mark Zigler. David Gordon, the Deputy Superintendent of Pensions, and his associates represent FSCO.

A similar committee was established in Alberta last year. Terry Crawley represents MEBCO on that committee, which meets every two months to discuss issues affecting MEPPs with Ellen Nygaard, the Deputy Superintendent of Pensions of Alberta, and her staff.

The development of these bilateral committees is an important step in ensuring that the interests of MEPPs and their members are considered before new government policy is developed, and one that we hope will be followed by the other provinces. ∞

# Is your benefit plan ready for the aging boomers?

The baby boom generation – which is generally defined as anyone born between 1947 and 1966 – is steadily aging. As its members age, private benefit plans face increased costs for two reasons:

- Aging boomers will increase their health care consumption, and increase the costs faced by the plans
- There will be a decreasing number of active workers funding the benefits drawn by an increasing number of retired workers.

As this demographic shift marches on, governments continue to offload costs to our multi-employer benefit plans. This combination of factors means that plan trustees must continually monitor the design of their benefit plans to ensure that they are meeting the needs of plan members in a cost-effective manner.

## Double trouble for benefit plans

The use of health care benefits rises dramatically after age 50. By 2006, over 50% of Canada’s almost 10 million baby boomers will have reached this age, with all boomers reaching age 50 by 2016. Their use of high cost items such as prescription drugs, vision care, hearing aids, semi-private hospital rooms, and nursing care will all be increasing, which means a greater financial demand on benefit plans.

And as the baby boomers age, the number of active workers to retirees is declining in Canada – in 1966 there were 7 workers

for every retiree and by 2000 that ratio was 5:1. The aging of the baby boomers will lower that ratio further. This means fewer contributors to benefit plans relative to the number of people who are eligible for benefits.

As the baby boomers age, there will be fewer contributors to benefit plans relative to the number of people who are eligible for benefits

## Government offloading – an additional burden

The continual shifting of costs from the public sector to private benefit plans places additional pressure on those plans.

For example, the trend towards early discharge from hospital creates costs for private benefit plans as prescription medication that was once provided as a part of in-hospital care becomes a cost that must be covered by the patient. In addition, some of the newer, more expensive medication won’t be covered by provincial drug plans for seniors, which will place a further burden on private benefit plans with post-retirement benefits.

Plan sponsors need to continually monitor legislative and regulatory changes that affect benefit plans, so that the plans can be redesigned appropriately. They may also have to consider ways to reduce costs to the plans, including some form of cost-sharing with plan members or increased deductibles or co-insurance levels or more favourable to reduce costs at the provider level. ∞

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