

Presentation on Bill S-216 to the Senate Banking Trade and Commerce Committee  
November 18, 2010, 10:30 A.M.  
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I am a financial expert with 30 years experience in the investment field.  
I am on unpaid retainer working for the dissenting Nortel LTD employees.

Bill S-216 substantially improves the safety of self-insured LTD wage loss replacement and medical reimbursement:

- (a) In general – Self-insured LTD benefits offered primarily at large companies. Moody’s Corporate Default and Recovery Rates for past 22 years show recovery ratios are well above the secured creditor claims at large companies that issue bonds.

AVERAGE CORPORATE DEBT RECOVERY RATES	
LIEN POSITION	1987-2009
Loans	81.10%
Bonds	
Sr. Secured	66.90%
Sr. Unsecured	44.60%
Sr. Subordinated	30.70%
Subordinated	31.00%
Jr. Subordinated	21.30%

Source: P. 8 Moody’s Corporate Default and Recovery Rates, 1920-2009

(b) LTD wage loss replacement and medical reimbursement creditor claims are small.

- Actuarial liabilities for LTD employees in self-insured plans estimated at \$5B to \$9B
- 12,000 to 23,000 LTD employees at corporations are in self-insured LTD plans (1)
- This compares to DBPP liabilities at private corporations of \$415B
- No way of knowing degree of LTD funding in trust accounts, but LTD deficit of 75% would be \$3B to \$6B deficit for all self-insured plans
- LTD deficit of \$6B is 1% of all the credit liabilities of bank loans, bonds and both pension and LTD deficits

\$ Billions	All	% Mix
Bank Debt	263	38%
LTD Plan Deficit	6	1%
Pension Deficit	83	12%
Bonds	337	49%
<b>Total Debt</b>	<b>690</b>	<b>100%</b>
Equity	1,415	
Total Capital	2,105	

Source: OSFI Bank Statistics, Statistics Canada - National Balance Sheet Accounts, Phillips Haeger North Investment Management Submission on Bill C-501 and Diane A. Urquhart

(1) Range of estimates defined by the following assumptions:

Low end - 9 LTD employees per 1000 employees or 0.90% of the labor force + 10% in insured kind

High end - 6% of adult disabled persons covered by an LTD plan - Caledon Institute of Social Policy - Canadians Need a Medium Term Sickness/Disability Income Benefit, January 2008 + 10% in self-insured kind

At average annual private plan disability income of \$33,000 and medical costs of \$5,250 per person, actuarial liability per person is \$385,000 per person

Present Value Factor With Death Rates	10
Nominal Interest Rate	3.50%
Inflation Rate	2.00%
Inflation Protection	60%
Discount Rate	2.3%

(C) Enough money in the Nortel Canadian estate to pay for Bill S-216 with transitional provision

Wage loss replacement and medical reimbursement up to \$106M = \$135M less \$29M HWT distribution, less if the pending appeal is won. If appeal won then \$76M required. [Allowance for \$20M more actuarial liabilities than Mercers estimate. ]

\$1.1B in Canadian Estate out of \$6B global estate.

Without Bill S-216, LTD employees get \$16M or so for wage loss replacement and medical reimbursement instead of \$106M. There are huge inter-country unsecured creditor claims, like the \$2B from Canada to US Estate associated with the US IRS settlement and \$500M to UK Estate for a UK pension plan guarantee. US Estate is double dipping out of the Canada Estate, with degree subject to mediation.

[\$208 M from Carling Facilities sale, less \$75M prior charge for DIP financing, plus up to \$1B from lock-box cash]

#### LTD Wage Loss Replacement and Medical Reimbursement Not a Costly Benefit

- 0.90% of employees are LTD
- \$642 wage loss replacement cost per employee for all types
- Self-insurance of wage loss replacement saves \$64 to \$128 per employee per year
- Wage loss replacement + medical reimbursement at \$5250 per disabled person is 2.5% of payroll
- Bill S-216 is not mandatory insurance or mandatory full funding so it imposes no increase in operating cost
- At such low cost, it is unlikely Bill S-216 decreases provision of LTD benefits
- In any case, LTD persons would rather have no insurance than bogus insurance not there when the employer goes bankrupt; then know to buy private LTD insurance; and, cannot buy such insurance after the onset of disability

#### Cost of Credit and Availability of Credit Impact Negligible

Cost of credit impact for all employee benefits at preferred status is 0.20% of investment grade bonds, including \$50B deficits at 20% of pension liabilities.

The overall impact on Canadian bond market is -1.5%.

LTD deficits are apt to be about 5% of total pension deficit, severance and LTD claims.

So, cost of credit impact 1 bps. This means if the cost of credit was 3.25% before it is 3.26% after.

-0.1% correction of bond price.

Overall impact of bond price decline and higher corporation interest costs PV is \$0.5B

#### March 31<sup>st</sup> Settlement Agreement and Application of Bill S-216

Bankruptcy procedures are broken and failed to make use of the laws currently in place to protect the trust accounts for the disabled. [ITA for HWTs (IT85R2) and WLRPs (IT428), Trust Acts, Common Law on Breach of Fiduciary Duties, CCAA 19 (2) & BIA 178 (1) (d)]

Agreement reached under the duress of withdrawn medical funding within 24 hours.

Unethical reliance on a single disabled person as representative of the 300 LTD employees outside of the CAW.

Representative not elected.

No evidence or requisite majority support of the LTD group and no vote on the settlement agreement.

All material information held under N.D.A., limiting consultations with group and second opinion independent experts.

7% consideration given in exchange for legal release of the Nortel governance committees and third party trustees, despite preliminary evidence of breach of trust. Five days to prepare for opposition after

receiving first indication that there was very large shortfall in the HWT for the LTD wage loss replacement benefit. Leave to appeal denied.

Six months after the settlement agreement see the financial statements, actuarial reports and plan legal documents and are able from these to determine for the first time that there has been \$59 million of HWT assets improperly removed from the trust. \$32 M HWT assets used to pay for Nortel expenses that were not the purpose of the employer contributions put into the trust; and \$27M HWT loan to Nortel written off.

Bill S-216 largely removes the disabled from the bankruptcy court where they should never be due to the stress compounding their symptoms and accelerating their deaths. Process reduced to validation of their actuarial liabilities. No need to litigate breaches of trust within HWTs and new ELHTs

#### Litigation of Transition Clause

Highly unlikely any of the bond owners or suppliers would litigate against these vulnerable sick persons that have been put into poverty by Nortel breaking its promise on a peace of mind contract. Furthermore, would quickly see that the money sought in the litigation was not rightfully belonging to the other creditors due to (a) wrongful removal of assets from the HWT prior to the bankruptcy filing, plus (b) error in the interpretation of the HWT Trustee Agreement termination clause wording.

Appeal of HWT by the Dissenting LTD of the HWT Distribution methodology is going to take place in any case. Other litigation on the withdrawn HWT assets may also occur.

Possible to allocate portion of bankruptcy estate for the litigation, while letting the balance of disbursement to proceed.

#### Transition Provision

### **TRANSITIONAL PROVISION**

Application or greater certainty, this Act applies to a debtor in respect of whom proceedings under the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* have commenced before the coming into force of this section, **provided that, in any such proceeding, the court has not sanctioned a final plan of arrangement or compromise under section 6 of the *Companies' Creditors Arrangement Act*, or approved a proposal under section 60 of the *Bankruptcy and Insolvency Act*.**

**Retroactive Effect**    **(2) This Act retroactively affects the rights and obligations acquired by the debtor under any agreement, including a settlement agreement, entered into before this section is proclaimed in force.**

Bill S-216 a practical and low cost solution for peace of mind self-insurance contracts that fail at the time an employer files for bankruptcy. CDS contracts defined as Eligible Financial Contracts with Super-Priority and not subject to CCAA court stay.

CPP Disability less than CPP Pension + OAS

HWT funding for wage loss replacement benefit not enforced compared to pension plans.

More opposition to mandatory insurance and full funding of HWTs and new ELHTs than to Bill S-216 paying the piper only at the time of bankruptcy.

- (1) “secured creditor” means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors’ meeting in respect of any of those bonds;