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IAM LEGAL RESPONSE TO PILOT BRADY AUBIN'S EMAIL

We understand that an email has been circulated which states that the Pension Memorandum of Understanding (MOU) entered into between each of the Air Canada Unions and the Company, has undermined the position of the pension plans because of the provisions which address the issue of a "deemed trust" under federal pension legislation.

It is the view of the IAM and its pension advisors that this view is not true. In order to understand the issue it is important to understand the facts. Here they are:

1. The assets of the pension plans are held in a trust. As a result, the assets of the pension plans cannot be used to satisfy the claims of creditors.
2. Air Canada and its employees, make contributions to the plans as benefits are earned. These contributions are labeled current service contributions.
3. If the Air Canada plans were wound up today, they have a short-fall of 2.85 billion dollars. Under federal law this shortfall must be paid over a five year period. These payments are made quarterly and are labeled special payments.
4. Under federal legislation, these payments become due and owing at the end of each quarter. If such a payment is not made then the federal legislation imposes a trust over the assets of the company to satisfy the payment that was not made. A deemed trust does not apply to the entire unfunded obligation. A deemed trust only applies to the amount of the payment that was not made.
5. A deemed trust does not rank ahead of secured creditors. In order to have any effect the company must have assets that are not subject to the interest of a secured creditor.
6. Air Canada's assets are subject to the interests of secured creditors. In other words, there is very little for a deemed trust to secure.
7. More important, Air Canada has not missed any payments. As a result, if Air Canada were to seek protection, no deemed trust would arise until a payment was missed.
8. The pension MOU provides significant protection to plan members.
9. Federal law does not require an employer to fund an unfunded deficiency on wind-up. The Pension MOU imposes this obligation on Air Canada. The pension MOU can also be rescinded if an insolvency occurs. This means that a deemed trust could arise if payments are missed after an insolvency occurs

Deemed trusts offer a modest level of protection. The best protection is to avoid an insolvency which is the goal of the Pension MOU.

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