

January 31, 2005

Mr. John Solomon  
Chair, Saskatchewan Workers' Compensation Board  
Chair, AWCBC Sub-committee on Bankruptcy and Insolvency  
6551B Mississauga Road  
Mississauga, Ontario  
L5N 1A6

email: [contact@awcbc.org](mailto:contact@awcbc.org)

Dear Mr. Solomon:

I am writing at this time to communicate the position of Canadian Manufacturers & Exporters (CME) with respect to the proposal of the Association of Workers' Compensation Boards of Canada (AWCBC) pertaining to outstanding premiums and bankruptcy and insolvency legislation.

The issue under discussion is the Secured Creditor Status for Workers' Compensation in Canada's bankruptcy and insolvency legislation.

Workers' compensation delivers wage protection to injured workers and their families and industrial insurance to employers. It is a mutual insurance program benefiting workers, employers and the economy.

### **AWCBC Backgrounder Notes on the Issue**

In May 2003, the Association of Workers' Compensation Boards of Canada (AWCBC) made representations to the Senate Standing Committee on Banking, Trade and Commerce which was conducting a review of Canada's bankruptcy and insolvency legislation. The AWCBC represents Canada's 12 provincial and territorial workers' compensation boards and commissions.

To put some context around the issue, the position of the AWCBC is as follows:

- AWCBC proposed that the Government of Canada to re-instate secured creditor status for workers' compensation in federal bankruptcy and insolvency legislation, specifically, the *Bankruptcy and Insolvency Act (BIA)*.
- Currently workers' compensation is designated as an unsecured commercial creditor limiting its ability to recover unpaid employer premiums lost in bankruptcy. This

ignores workers' compensation status as not-for-profit. Unlike commercial creditors, it is a public service.

- Secured creditor status will put workers' compensation on equal footing with other wage protection providers - CPP/QPP and EI which are secured creditors with the capacity to recover unpaid premiums. Further, secured creditor status would recognize its role as part of Canada's social safety net.
  - Secured creditor status would counter the advantage of the credit industry which has priority in asset distribution under bankruptcy or insolvency.

AWCBC proposes a legislative amendment to re-instate secured creditor status for workers' compensation in the BIA and further, its inclusion in the CCAA. This designation recognizes its fundamental difference with commercial creditors and further, its role as a vital public social and economic instrument within the social safety net.

The amendment would give workers' compensation greater capacity to recover employer premiums lost in bankruptcy, sustain the program and provide wage protection. It supports successful businesses and reduces their subsidy of unsuccessful ones. Moreover, it corrects the current legislative imbalance towards the credit industry.

### **CME's Position**

CME supports the recommendations, and position, as put forth by the AWCBC. These recommendations are particularly important given the collective liability aspect of Workers' Compensation Boards across Canada. Under such collective liability schemes, any outstanding premiums in the system end up being borne by the all the employers who participate in the scheme. This is an unacceptable option and goes to the issue of fairness and equity for the remaining employers.

We agree that the rights of the various Workers' Compensation Boards should be as important to the government of Canada as the rights of the financial institutions and the other creditors whose rights the government sees the need to protect.

We urge the government to accept the AWCBC's recommendations and make the necessary legislative changes to begin to safeguard the financial interests of all the Workers' Compensation Boards across Canada.

Yours truly,



Ian T. Howcroft  
Vice-President  
CME-Ontario