

# 6.1 The Insurer Files

● Maritime Life has emerged as the acquirer of the Canadian portfolio of Aetna. Maritime is a wholly owned subsidiary of The John Hancock Insurance Company of Boston, Massachusetts, and has been a fine provider of group insurance products and services to Canadians for several decades. The initial statements from Maritime indicate that they plan no major or immediate changes to arrangements with Aetna clients.

● The process of demutualization is picking up speed at Mutual Life [who will become Clarica Life]. Comprehensive packages have been mailed to all policyholders that Mutual is defining as 'participating'. These are the policyholders that will participate in the proceeds from the initial share offering.

● Manulife [Manufacturers Life Insurance Co.] has announced that eligible policyholders of whom there are 675,000 - are invited to a meeting on July 29 [might be a bit cozy], to vote on demutualization. They have also issued information packages, totaling over 300 pages, to each policyholder.

● There are four insurers in the process of demutualizing - Mutual, Manulife, Sun Life and Canada Life. Each will be seeking approval from their participating policyholders, to take the step. Some group contracts are considered 'participating' - especially the older ones. You may want to check the status of yours. According to the rules, the insurers only require a simple majority of those participating shareholders that choose to vote. Experience in other countries suggests that less than 1% of eligible policyholders will actually vote, meaning the measure could pass with as little as a half-percent.



## 6.2 Of Retiring Interest

# Capital accumulation plans

## How employers can manage potential liability risks.

By Greg Hurst, Pension Division Manager, Vancouver

Over the past 15 years there has been a trend to move away from defined benefit pension plans towards capital accumulation plans (CAPs). CAPs include defined-contribution pension plans, group RRSPs, deferred profit-sharing plans and similar programs. This trend has accelerated over the past 5 years and has been accompanied by the entry of many new financial institutions into the employer CAP marketplace. Increased competition has resulted in more investment choices and more variance in service packages and costs.

The trend has also created growing confusion about the employer's role in a retirement program. While the employer's role need not be difficult, it is nevertheless important to consider all of your responsibilities.

Employers can, and should, make every effort to manage the risks associated with their cap. The first requirement for managing liability risks is to identify what those risks might be. To identify risks, we will address two separate questions.

- When is a liability claim against an employer in connection with a CAP most likely to arise?
- What factors might lead to a successful claim?

When is a liability claim most likely to arise? An outcome that falls short of employee expectations as a result of the actions of the employer could set the stage for a liability claim against an employer. A simple example, which in fact occurs quite frequently, is set out in Illustration 1. In all the instances I can recall, the employers made good on the investment losses claimed by employees - even if such loss may have been questionable.

What factors might lead to a successful claim? It is my belief that, in all CAPs, the

employer has a fiduciary responsibility in respect of at least some of its actions. For some CAPs, most notably defined-contribution pension plans, the law imposes a fiduciary standard of conduct on the plan administrator (generally the employer). The law is not so clear for other caps (e.g. group rrsp). Nonetheless fiduciary responsibilities and standards might well apply. The success of a liability claim will hinge upon the standards of conduct demonstrated by the plan administrator.

In Illustration 1, the employer's possession of contributions during the period between payroll deduction and remittance to the CAP has fiduciary characteristics. Regardless of whether or

Illustration 1: The Late Remittance

Participant Expectations:	The employer will promptly remit contributions to the CAP, especially those made by payroll deduction
Possible Outcomes:	Late remittance results in either: A: loss of investment income; or B: avoidance of investment loss (e.g. drop in unit values of the investment before remittance made)
Employer Actions:	Failure to remit contributions in a timely manner
Liability Risk:	Value of lost investment income, if any.

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## Capital accumulation plans... continued from front cover

not a court would hold an employer to a fiduciary standard, it may be prudent for an employer to act according to such a standard in the implementation and operation of its CAPs. A brief discussion of fiduciary characteristics and standards is warranted here.

The following are fiduciary characteristics:

- the ability to exercise discretionary powers;
- the ability to unilaterally exercise powers or discretion so as to affect another person's legal or practical interests;
- the other person is particularly vulnerable to, or at the mercy of, the person holding the discretion or power.

When the above characteristics are (or may be) present, the fiduciary must (or should strive to) meet certain standards of conduct.

These fiduciary standards include the following:

- the fiduciary must act prudently and reasonably;
- the fiduciary has a duty of loyalty to those persons for whom he exercises discretionary powers;
- the fiduciary's duty to those persons for whom he exercises discretionary powers must not conflict with his personal interests;
- the fiduciary's actions must be even-handed.

A key aspect of fiduciary responsibility is that it cannot be avoided or transferred, even if the employer has delegated functions or hired agents. The Bell Canada case (Illustration 2) is perhaps, the most often discussed case to date in regard to employer responsibility relating to C A Ps.

In C A Ps, gaps between expectations and outcomes become more apparent as participants near retirement. This seems to suggest that perhaps we really don't have to worry about such issues until some time in the future. The bad news is that, because of the time value of money, variances between expectations and outcomes at retirement could be very large. Therefore, potential risks are best addressed now, rather than later. Table 1 lists activities associated with C A Ps that might have potential liability pitfalls, along with suggestions on how to minimize the risks.

Fiduciary responsibility is not onerous, nor should it detract from the overall value provided by a CAP. The need of employees to accumulate retirement savings, and the ability of employers to add value to such efforts, will outweigh the risks of providing a CAP, if appropriate risk management strategies are employed. A qualified pension consultant can provide valuable assistance in carrying out risk management strategies, often at a marginal cost.

### Illustration 2: Bell Pensioners' Association vs. Bell Canada

Participant Expectations:	Security of assets and guaranteed interest accrual for funds invested in their group RRSP with Confederation Life.
Outcome:	Collapse of Confederation Life led to risk of loss of contributions and guaranteed interest for accounts exceeding deposit insurance level of \$60,000.
Employer Actions:	–Selection of Confederation Life as service provider. –Failure to monitor deposit insurance levels in relation to participant account balances.
Settlement:	Settled out of court. Bell agreed to contribute \$15 million over 5 years (\$3 million per year) to reduce losses of 1800 participants.

Table 1

Activity	Risk Management Strategy
Plan Design	<ul style="list-style-type: none"> <li>• Understand differences between CAP plan types: <ul style="list-style-type: none"> <li>– spousal rights</li> <li>– vesting</li> <li>– locking-in</li> <li>– application of payroll taxes</li> </ul> </li> <li>• Consider impact of design changes on all interested parties (e.g. spouses)</li> </ul>
Selection of financial institution	<ul style="list-style-type: none"> <li>• Conduct a comparative survey of available providers</li> <li>• Ensure that a contractual relationship exists between you (the employer) and the financial institution – this allows the employer some control over services provided and costs to the employer and the employee for those services</li> <li>• Require employer financial statements for the CAP, prepared annually or more frequently</li> <li>• Recognize your (the employer's) potential responsibility for other financial services (especially lending services), which may be marketed to CAP members by the financial institution</li> <li>• Consider carefully the potential for perceived, or even real, conflict of interests before using the services of your corporate lender or its subsidiaries</li> </ul>
Offering investment choice	<ul style="list-style-type: none"> <li>• Assess employee capabilities for making informed decisions</li> <li>• Be prepared to be paternalistic and limit investment choices, if appropriate to your employee group</li> <li>• Ensure an investment and retirement education program is suitable and utilized by employees</li> <li>• Monitor employee investment patterns (utilizing employer statements) <ul style="list-style-type: none"> <li>– review suitability of, and employee participation in, education programs if sufficient asset allocation shifts occur.</li> </ul> </li> </ul>
Managing costs	<ul style="list-style-type: none"> <li>• Compare employee and employer costs to marketplace every 4 or 5 years to ensure continuing cost-competitiveness</li> <li>• Advise employees of all costs, including those paid by employer (if any) and impact of payroll taxes (CPP, EI contributions), and all services available</li> <li>• Avoid endorsing investment funds with back-end loads or deferred sales charges – if employees may be exposed to such charges, advise them in advance that the employer will not be responsible for costs relating to such charges in the event of a switch in financial institutions</li> </ul>
Communications	<ul style="list-style-type: none"> <li>• Ensure applicable statutory requirements are appropriately complied with, e.g. distribution of prospectuses, quality and distribution of employee statements, inclusion of statements about investor or participant rights, statement of investment policies and goals</li> <li>• Review all communications to employees prepared by other parties for accuracy and appropriateness</li> </ul>
Administration	<ul style="list-style-type: none"> <li>• Ensure timely remittance of deposits</li> <li>• Reconcile employer deposit records to employer statements</li> <li>• Ensure all regulatory filings are made</li> </ul>

# 6.3 Product Developments

**Viagra** Now that the product is 'legal' in Canada, we shall stop tracking its progress. Below is the final version of our chart showing initial insurer positions. Our thanks to Terry Wallace, consultant in the Toronto office, for maintaining this information for us. At a future point, we shall report on the actual impact of the product on group plans, relative to expectations.

## TREATMENT FOR ERECTILE DYSFUNCTION (Male Impotence) SUMMARY OF INSURER POSITIONS ON VIAGRA - MAY 1999

Most insurers have deemed the average course of treatment will be approximately \$1,000 per year based on "reasonable" treatment. The cost is approximately \$14 per tablet and a monthly prescription of 8 - 10 tablets is considered reasonable.

Other medications (injectable and suppositories) used to treat ED include

YOHIMBINE  
CAVERJECT  
PAPAVERINE  
MUSE (new September 1998 - fewer side effects than Viagra)  
SPECIAL NOTE: if an insurer is already paying for other medications in this category, a position to exclude Viagra and not all other ED treatments may be deemed discriminatory.

INSURER	STANDARD POSITION	ALTERNATIVES
AETNA	They will exclude Viagra, plus all future drugs introduced to treat ED. Existing treatments will continue to be covered. This is quite different from Aetna's previous stance (before the drug was approved) which was to include them at \$1,000 per year per claimant	Will include Viagra + future treatments at a maximum of \$1,000 per year - cost must be quoted (probably between 5% and 15%)
BLUE CROSS	Effective May 01, 1999 Blue Cross will exclude ALL erectile dysfunction products from their formularies. They consider Viagra a lifestyle drug	If a policyholder wishes to include them, Blue Cross will do so at an annual maximum of \$1,000 per insured person. The cost will be calculated based on the demographics of the plan but is expected to be between 5% and 20%.
CANADA LIFE	Viagra will be excluded as it is not considered "medically necessary" (no mention of treatment of existing ED drugs)	Can be included at an annual max of \$1000 for an additional \$4.68 per employee per month. Groups <50 lives coverage for Viagra available in a "lifestyle package" @ \$1,000 annual, plus Smoking Cessation @ \$500 and Fertility @ \$8,000 (both lifetime maximums). Cost is between \$6.50 and \$10.00 on size.
EQUITABLE	Will only cover drugs "which are prescribed by a written prescription of a physician, dentist, osteopath or podiatrist and which are life sustaining" Other non life sustaining drugs that have become generally accepted as eligible under most employer sponsored plans will continue to be covered This wording excluded Viagra	To include Viagra, the additional cost is: \$500 maximum - \$2.90 per ee/per month \$1000 maximum - \$4.80 per ee/per month
GREAT-WEST	Included with \$1,000 maximum on all ED drugs - 5.5% increase on drug card plan rates and 4% increase to EHC rates under reimbursement plans Selectpac groups- exclude	Policyholder must sign requested amendment or Viagra will be excluded. Effective January 1, 1999, GW is implementing a \$1,000 maximum for ED treatment on all plans. Selectpac groups - include at \$1,000 maximum, increase depending on size, from +6% on 30+; to +96% on 3 lives
IMPERIAL LIFE	Exclude	< 20 lives - Cost Plus > 20 lives - Include with rate adjustment of approximately 4%-8%, exclude, or cost plus.
LIBERTY HEALTH	Exclude Viagra (no mention of other ED drugs but they currently cover Calverject on some of their formularies but not Muse)	Will include Viagra to a maximum of 24 tablets every 3 months with an annual maximum of \$1,000 and a 50% co-insurance level. Increase in cost of 3%-8% depending on group
MANULIFE	Since the current plans cover other ED treatments, Manulife encourages their clients continue coverage for all ED drugs If the client chooses to exclude all sexual dysfunction drugs, the following will be excluded: Androgen, Calverject, Muse, Testosterone and Yohimbine Other custom Triple Mixture drugs are also excluded. However, since some drugs listed above may be prescribed to treat conditions not related to ED, claims will be identified and Manulife will request confirmation of the condition. If it is not related to ED Manulife will consider current and future claims for this claimant for payment	Offer 2 options:  Include, to a usual and customary limit of 8 pills per month, increase of 3.5% for groups over 50 lives (under 50 based on a graded scale, up to 140% for a 2 life group) Exclude ALL drug treatments for sexual dysfunction. This cannot be done in Quebec because of RAMQ legislation - all drugs on the formulary must be covered. If Viagra is ever added to the formulary, it must be covered and all other drugs currently on the RAMQ formulary for sexual dysfunction cannot be excluded now.
MARITIME	Standard plans will exclude ALL erectile dysfunction medications as of April 9, 1999	If client wants, ED drugs can be covered to a variety of maximums - all options cover everything in the ED drug category except Viagra with no maximum! Viagra can be covered at \$500, \$1,000, or unlimited maximum at increases of 3.5%, 6.5% and 7.5% respectively. They even offer the option of covering Viagra on an individual exception basis at 5% up front.
MUTUAL LIFE	Exclude ALL erectile dysfunction products	Include at a maximum of \$1,200 annually at a minimum increase of 4% - have to get a quote on each group.
PROVIDENT LIFE	Exclude all NEW erectile dysfunction drugs, and limit coverage to a maximum of \$1,000 per calendar year	Clients may choose to include Viagra, and all new ED drugs, to a maximum of \$1,000 per calendar year. Treatments must be medically necessary Additional cost is 6% regardless of case size
STANDARD LIFE Current Clients	INCLUDE Viagra to a maximum of \$1,000 per calendar year - rates will increase by 4.5%	Clients may choose to exclude Viagra, plus any future ED treatments but the plans will still cover injectables and suppositories such as Calverject and Muse now and in the future
STANDARD LIFE New Clients	EXCLUDE Viagra and future ED treatments but the plan will cover injectables and suppositories.	Clients may choose to add Viagra - manual rate increase is 4.5%
SUN LIFE	Existing clients have the choice to include or exclude Viagra (no mention of other ED drugs) There is no mention of what the standard plans will include in the future, but if a client did not respond to the bulletin Viagra would be excluded.	Viagra can be included (with an annual dollar limit) Additional cost per employee, per month is as high as \$52.78 for groups of 3 lives, to \$3.17 for groups over 50 lives. They also note that "although you may choose to exclude Viagra, provincial legislation may supercede your decision" - we assume this refers to provincial formularies adding this drug in the future.



## Alberta

It was International Midwives Day on May 5, and Alberta did not miss the opportunity. They announced \$400,000 funding for "evaluating the integration of midwifery

services into the participating authorities . . . as new primary providers". Seems they are getting close to official recognition. It is not stated whether Alberta medicare plan will cover midwifery costs.



## Manitaba

Not to be outdone, on the same day, Manitoba announced \$1 million to support the establishment of the Colleges of Midwives of Manitoba, by March 2000. This

will also assist in the hiring of midwives and the establishment of their practices. The College will regulate the practice. Manitoba has already passed legislation declaring midwives to be "autonomous primary health care providers".



## Nova Scotia

Nova Scotia announced that, with effect from April 1, its Seniors' Drug Plan will only pay second to any private drug plans - group or individual. Then, one insurer -

Canada Life - announced that the insurance industry is "seeking further clarification" from the government, and we should await the outcome. If nothing changes, this will be a very significant development, especially for employer-sponsored retiree plans. One insurer estimated that it could add \$1,000 per retired person to plan costs - which logically means that is about how much the government would save. Heath has, for many years, suggested that employers take extreme care with retiree plan designs, in order to insulate themselves from just this form of cost shifting - a fixed maximum benefit per year is one solution.



## Ontario

Effective April 1, Ontario has reduced coverage in two relatively high profile areas of the OHIP plan. The maximum payable per year for Chiropractors reduces to \$150 from \$220,

and for Physiotherapy, the visit charge of \$12.20 is not changed, but an annual maximum of 150 visits is implemented. Although small, each of these represent cost shifts to group plans, unless you impose plan limits to offset them.

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