Cassels

Wage Earner Protection Program Amendments: Maximum Payment Amount Increases Without Changing $2,000 Super Priority Under the BIA and CCAA

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The omnibus Bill C-86[1] received royal assent on December 13, 2018, and made substantial updates to, among other things, the *Wage Earner Protection Program Act* (WEPPA).

Among these changes included an increase to the maximum payment amount under WEPPA from $3,977 to $7,150. This may cause confusion; however, the amendments only affect payments made by the Government of Canada.

The maximum payment increase does not affect the $2,000 super priority amounts that employees may be entitled to under certain provisions of the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA). Accordingly, secured lenders who reserve in their borrowing base for amounts related to WEPPA do not need to change their practice to reserve $2,000 per employee.

Background and Overview of the Recent Amendments to WEPPA

The Act currently provides financial support to Canadian employees who are owed money when their employer files for bankruptcy or becomes subject to a receivership. The amendments offer broader support and protection of employees with the expectation that there will be a significant increase in the number of applicants who are fully compensated for eligible wages.

The key categories of updates include:

- Broader definition of "Eligible Wages" to among other things, now include wages earned for the period 6 months before the date of filing a notice of intention to make a proposal under the BIA (the 6 months before a proposal filing was already covered);
- Providing for additional situations where the Act may apply including in any CCAA proceeding, BIA proposal proceeding or recognition proceeding where the Court so orders it applies, after consideration of certain prescribed criteria (which are yet to be determined);
- Increased maximum payment as discussed below; and
- Additional requirements in connection with the Crown's right of subrogation.

One of the few provisions that came into force on December 13, 2018, is the increase to the maximum payment.

Prior to the amendments, WEPPA provided for payment of eligible wages up to an amount equal to four weeks of maximum insurable earnings under the *Employment Insurance Act* (EIA). The new provision increases the maximum payment to seven weeks of insurable earnings under the EIA.

The maximum payment amount has grown from $3,977 to $6,960 for 2018 and is $7,150 for 2019. The increased amounts apply retroactively to bankruptcies or receiverships that occurred on or after February 27, 2018.

For further information regarding this matter, please contact Jeremy Bornstein or any other member of the Banking, Lending & Specialty Finance Group.

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[1] Bill C-86, *A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*

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