

Bankruptcies and Employee Claims

Ontario Federation of Labour – Canadian Labour Congress Pension Summit

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Financial Crisis and Induced Bankruptcies

**Lenders And Bond Investors
Have New Insurance Vehicle**

Called

“Credit Default Swaps”

**Warren Buffet Called Derivatives
“Weapons of Mass Destruction”**

You Don't Need to Own the House to Buy Insurance



Everyone in your neighbourhood can buy fire insurance on your house.

Your neighbours all agree it's a good idea for someone to torch your house.

Insurance cheques arrive in the mail with no questions asked.

Get Insurance Money and Keep the Damaged Goods Opportunity for Double-Dipping



**Insurance on crop damages
due to hail**

\$200,000

**Some of the crop later
harvested and sold**

\$75,000

**Value of crop without a hail
storm**

\$200,000

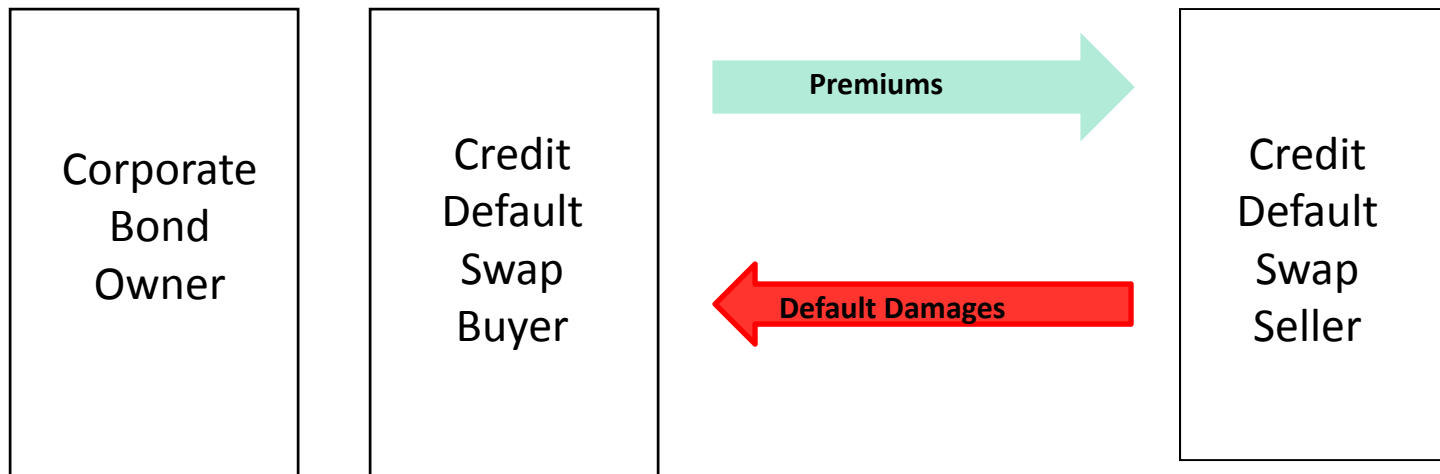
**Farm receipts in year of hail
storm**

\$275,000

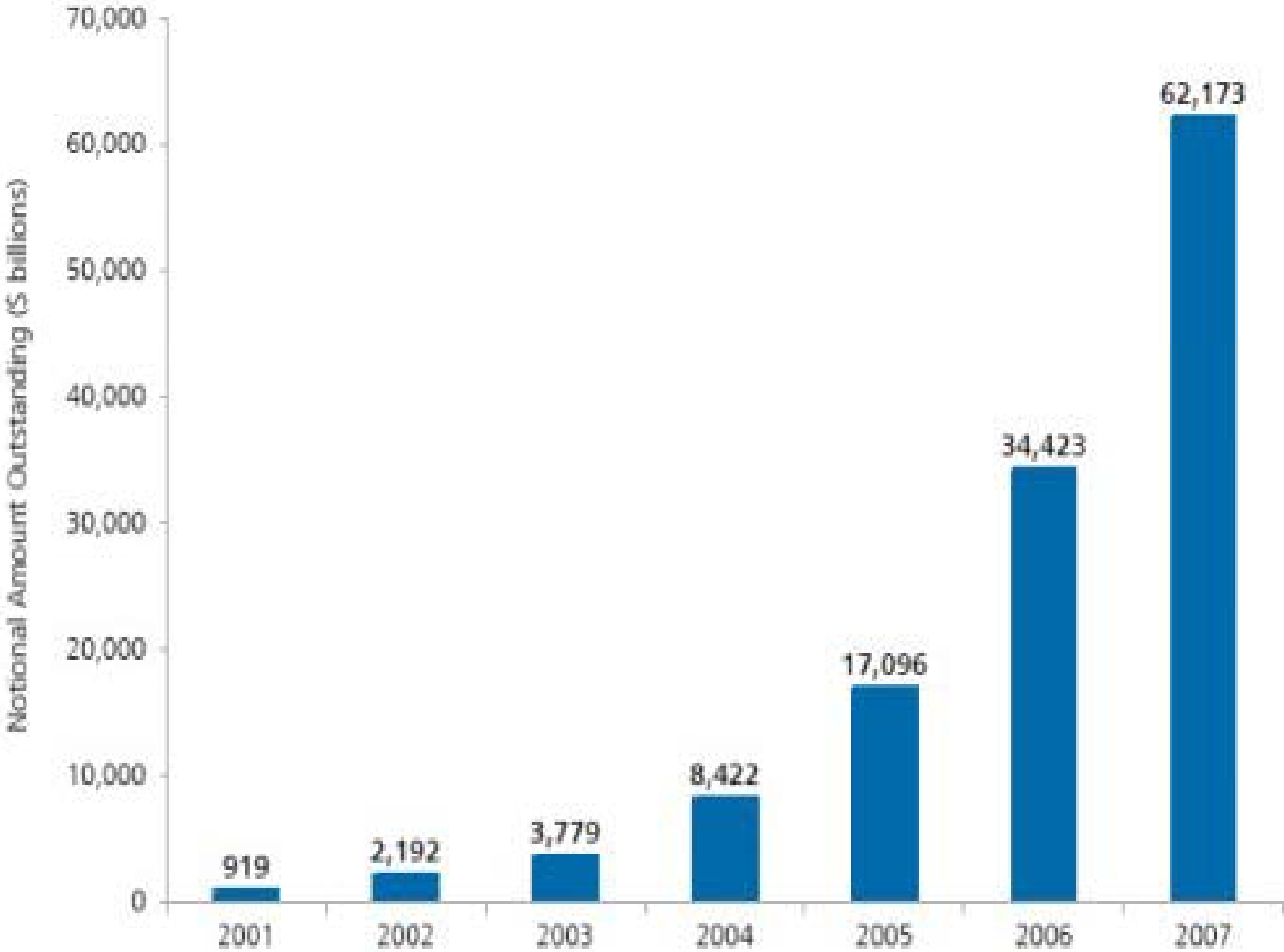
How Do Credit Default Swaps Work?

Hedged Bond Owner

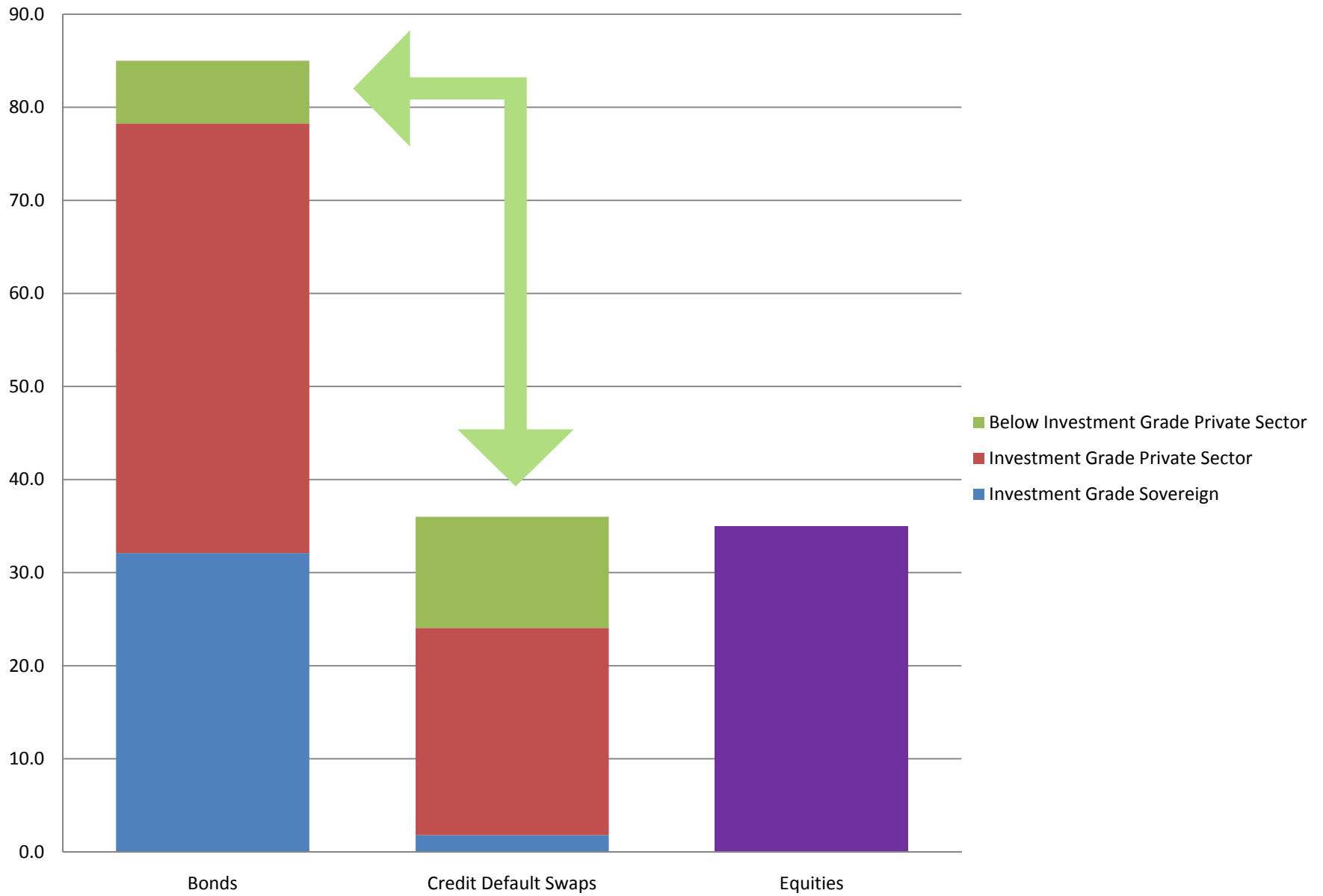
Public Investor



Exponential Growth of the Unregulated Credit Default Swap Market



Size of Global Markets June 2009 (\$Trillions)



Why Should Workers Care About Credit Default Swaps?

Liquidation is preferred over restructuring business as ongoing concern

- **Collect damages from the insurance triggered by bankruptcy filing**
 - **“Accept compromise for restructuring or get nothing”**

Bond owners owning CDSs not in position to get nothing.
- **Keep the bonds, and double dip on later recoveries to create a profit**
- **Make more profit because the BIA says you don't need to pay for:**
 - **pension deficits**
 - **long term disability plan deficits**
 - **unpaid severance**

Why Should Governments Care about Credit Default Swaps and Induced Bankruptcies?

- Ensure economy functioning on sound drivers
- Ensure business is conducted with fair and transparent rules
- Make sure unfair business practices are not taking advantage of
 - Canadian taxpayers harmed by the downloading of employee benefit costs onto social security programs
 - Retirees and survivors
 - Long term disabled employees
 - Terminated workers with unpaid severance
- Counter-balance incentive for liquidations causing job losses

Well-Known Bankruptcies

Credit Default Swap Auctions Held

Abitibi Bowater

General Motors

Edscha

Masonite

Nortel

Quebecor World

Smurfit Stone

Tembec

Other Bankruptcy Proceedings

Canwest

Chrysler

Fairmont Resort

Fraser Papers

Hollinger

Intrawest

New Skeena Forest Products

Terrace Bay Pulp

Financial Institutions on the Nortel Creditor List Also on the CDS List

Barclays *
Bank of Montreal
BNP Paribas
Bank of America *
Citigroup/Citibank *
CIBC *
Citadel
Credit Suisse
Deutsche Bank *
Dresdner Bank
Goldman Sachs
JPMorgan
Lehman
Bank of Tokyo
Merrill Lynch *
Morgan Stanley
Oppenheimer
PNC Bank
Royal Bank of Canada *
State Street Bank & Trust Co
TD Bank/TD Ameritrade /TD Waterhouse Canada
UBS *
Wachovia *
Wells Fargo

Financial Institutions on the Ad Hoc Bondholder Group Also on the CDS List

Loomis Sayles & Company
Pacific Investment Management Co. (PIMCO)
Sankaty Advisors

Leveraged Private Equity Acquisitions Inducing Bankruptcies Too

- **Private equity acquisitions using leveraged loans**
- **Leveraged loans often insured with credit default swaps too**
- **Cash from leveraged loans paid out to private equity owners in Special Dividends**
- **Other stripping of cash otherwise needed to replace and maintain plant and equipment, software, and other expenditures to sustain the business**
- **Private equity owners often already make their profit before the bankruptcy filing**

Performance of Large Private Equity Firms Summary Data on Sponsored Companies

PE Firm	Deals Initiated Prior to 1/1/08						
	Total Deals	In Default		Distress (B3 Neg & Lower)		Default & Distress	
		Deals	% of Total	Deals	% of Total	Deals	% of Total
KKR	20	1	5%	2	10%	3	15%
Madison Dearborn	12	2	17%	1	8%	3	25%
Blackstone	22	3	14%	3	14%	6	27%
JP Morgan	7	-	0%	2	29%	2	29%
Welsh Carson	13	-	0%	4	31%	4	31%
TPG	19	3	16%	3	16%	6	32%
Providence Equity	12	2	17%	2	17%	4	33%
Warburg Pincus	14	1	7%	4	29%	5	36%
Goldman Sachs	21	6	29%	2	10%	8	38%
Bain	22	5	23%	5	23%	10	45%
Carlyle	31	5	16%	11	35%	16	52%
IH Lee	11	5	45%	1	9%	6	55%
Apollo	20	8	40%	5	25%	13	65%
Cerberus	6	2	33%	2	33%	4	67%
Sub Total	229	43	19%	47	21%	90	39%
Adj. for Club Deals	(44)	(7)		(9)		(16)	
Total	186	36	19%	38	21%	74	40%

40% of leveraged private equity acquisitions in trouble

- Half have filed for bankruptcy proceedings
- Half in distress

Moody's Investors Service, November 6, 2009

Key Actions

- **Amend the Federal Bankruptcy and Insolvency Act (BIA) to give preferred status for employee benefits over unsecured creditors**
 - **Long Term Disability Self-Insured Plan Deficits (Priority over Other Employee Groups)**
 - **Pension Fund Deficits**
 - **Unpaid Severance**
- **Get equal cash settlement for Canada Estate & U.S. Estate within the courts administering international bankruptcies**

Contrary Arguments Do Not Hold Water

Impact of getting preferred status for pension claims on the cost of credit for corporations with defined benefit pension plans

- **0.16% annually for investment grade 10 year bonds**
- **0.79% annually for junk 10 year bonds**

Impact on the entire credit market since only about 20% of corporations have these pension plans

- **miniscule .02% for the investment grade 10 year bonds**
- **0.11% for the junk bond 10 year bonds**

34 of 54 countries studied by the OECD and World Bank have either super-priority or preferred status

	Pensions	Severance
	Priority Status	Priority Status
EUROPE		
Austria	Preferred status	Super-priority
Belgium	Preferred status	Preferred status
Czech Republic	9% of Estate Limit	Preferred status
Denmark	Super-priority	Super-priority
Finland		Preferred status
France	Super-priority with certain restrictions	Super-priority
Germany	Buyers legally bound to fund pensions	Preferred status
Hungary	Preferred status	Preferred status
Ireland	Preferred status	Super-priority statutory amount
Italy	Super-priority	
Latvia		Preferred status by contract
Luxembourg	Super-priority	Preferred status @ 50%
Malta	Super-priority state pension rights	Preferred status
Norway	Preferred status	Preferred status
Poland	Preferred status	Preferred status
Romania	Preferred status below fixed secured but above floating secured	
Scotland	Preferred status below fixed secured but above floating secured	Preferred status below fixed secured but above floating secured
Slovakia	Preferred status below fixed secured but above floating secured	Collective agreement
Slovenia	Super-priority	
Spain	Super-priority with certain restrictions	Super-priority with certain restrictions
Sweden	Preferred status	Employee Security Agreements
Switzerland	Preferred status	

34 Countries

38 Countries

International Comparison of Priority Status for Employee Claims

	Pensions	Severance
	Priority Status	Priority Status
NORTH AMERICA		
Mexico	Super-priority	Super-priority
AUSTRALASIA		
Australia	Preferred status	Preferred status
China	Preferred status below fixed secured but above floating secured	Preferred status below fixed secured but above floating secured
Hong Kong	Preferred status below fixed secured but above floating secured	Preferred status (capped)
Indonesia	Super-priority	Super-priority
Japan	Preferred status	Preferred status (capped)
Korea	Super-priority	Super-priority
Malaysia		Preferred status
New Zealand	Preferred status	Preferred status
Thailand	Preferred status	Preferred status
Vietnam	Preferred status	Preferred status
SOUTH AMERICA		
Brazil	Super-priority (Subject to 150 X minimum wage limit 2005)	Super-priority (Subject to 150 X minimum wage limit 2005)
Chile	Super-priority	Super-priority
Columbia	Super-priority	Super-priority
Venezuela	Preferred status	Preferred status
OTHER		
Egypt		Super-priority
Israel	Preferred status below fixed secured but above floating secured	Preferred status below fixed secured but above floating secured
Russia	Super-priority with certain restrictions	Super-priority with certain restrictions
Tunisia		Super-priority
United Arab Emirates		Super-priority

34 Countries

38 Countries

6 Countries Do Not Have Preferred Status, But Have Public Pension Insurance

**Bulgaria
England
Finland
Germany
Netherlands
United States**

7 Countries Have Both Preferred Status And Public Pension Insurance

**Denmark
Ireland
Luxembourg
Scotland
Sweden
Switzerland
Japan**

No Protection

For Pension Benefits

Greece (Higher % public pension)
Portugal (Higher % public pension)
Canada
Cyprus
Estonia
Lithuania
Singapore
South Africa

Czech Republic (Higher % public pension)
Latvia
Malaysia
Egypt
Tunisia
United Arab Emirates
Bulgaria

14 Countries

For Severance

Greece
Portugal
Canada
Cyprus
Estonia
Lithuania
Singapore
South Africa

England
Estonia
Italy
Netherland
Romania
Slovenia
Switzerland
United States

16 Countries

Impact of Federal Government Doing Nothing

If Federal bankruptcy laws amendment for the preferred status of pension and long term disability plan claims and unpaid severance are not made:

- The Federal Government has to bear responsibility for more than 30% cuts in retiree pensions, 50% to 70% cuts in LTD pensions and severance income for hundreds of thousands of Canadians affected by corporations in bankruptcy.**
- Canadian taxpayers must pay billions of dollars for the downloading onto social security programs and reduced income taxes due to bankrupt corporations being permitted to walk away from their obligations to former employees.**

COMPASS CEO Poll Give Priority to Pensions in Bankruptcy

Table 2b: (Q2) To what extent do you agree with the following proposals from some Opposition members RANDOMIZE

	Mean	7	6	5	4	3	2	1	DNK
Give priority of pensions in the event of corporate bankruptcy	5.1	24	24	24	11	5	6	6	1
Expand the CPP	4.8	19	23	16	18	11	6	7	0
Provide companies with tax incentives to build pension surpluses	4.8	17	21	28	13	7	3	11	0

Citizens speak up:

- Credit default swaps and private equity inducing bankruptcies**
- Key players profiting from bankruptcies**
- Canada losing jobs**
- Former employees losing income**
- Taxpayers being downloaded social security costs**

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