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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “*PBA*”)

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to make an order to specify a termination date, under section 18 of the *PBA* for the Retirement Plan for Salaried Employees of Northern Sawmills Inc., Registration Number 1192400.

TO:

Morneau Shepell Ltd.
895 Don Mills Road
Tower One, Suite 700
Toronto, ON M3C 1W3

Attention: B. Bethune A. Whiston/Lawrence Swartz

Administrator

NOTICE OF INTENDED DECISION

I INTEND TO MAKE AN ORDER, pursuant to section 18 of the *PBA*, to specify the termination date of the Retirement Plan for Salaried Employees of Northern Sawmills Inc., Registration Number 1192400 (the “Salaried Plan”) as November 16, 2010.

REASONS:

Background

1. Northern Sawmills Inc. (“Northern”) established the Retirement Plan for Salaried Employees of Northern Sawmills Inc., Registration Number 1192400 (the “Salaried Plan”) effective June 1, 2007.
2. Northern established and registered the Retirement Plan for Employees of Northern Sawmills Inc., Registration Number 0978270 (the “Hourly Plan”) before June 2007.
3. By order dated September 2, 2010, the Superintendent ordered that the Hourly Plan be wound-up effective January 1, 2008, and by order dated September 2, 2010, the

Superintendent revoked the registration of the Salaried Plan under section 18(1)(b) of the *PBA* (the “Revocation Order”). The Superintendent did not specify the termination date of the Salaried Plan in the Revocation Order.

4. On January 4, 2011, the Ontario Superior Court of Justice (“Court”) in Court File No. CV-10-9042-00CL (“Northern Receivership Proceedings”) appointed the Receiver pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (“*BIA*”) and section 101 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended, over all the assets, undertakings and properties acquired for or used in relation to the business carried on by Northern including all proceeds thereof.
5. Morneau was appointed as administrator of the Hourly Plan on March 11, 2011 and as administrator of the Salaried Plan on August 3, 2011.
6. The Superintendent is required by section 18(3) of the *PBA* to specify the termination date for the Salaried Plan. The Superintendent provided an opportunity for Morneau, G.E. and the Receiver to make submissions with respect to the termination date of the Salaried Plan.
7. The Morneau made written submissions to the Superintendent by letter dated November 18, 2011 in which it, *inter alia*, recommended to the Superintendent that the Hourly Plan and Salaried Plan be treated as one plan and that the wind up date for both plans be November 16, 2010. G.E. and the Receiver each made written submissions to the Superintendent by letters dated September 6, 2012 in which they, *inter alia*, objected to the recommendations made by Morneau.
8. Morneau advanced claims pursuant to section 81.6 of the *BIA* and pursuant to section 57(4) of the *PBA* in relation to both Plans in the Northern Receivership Proceedings (collectively, the “Asserted Pension Claims”).
9. The Receiver brought a motion (the “Motion”) for advice and directions in the Northern Receivership Proceedings on several questions including the quantum of reserves the Receiver was required to hold in relation to the Asserted Pension Claims.
10. In an order dated November 19, 2012, and an endorsement dated November 26, 2012 (the “Endorsement”), Justice Newbould of the Court provided advice and direction to the Receiver in relation to the required reserves.
11. In the Endorsement, the Court concluded that the “process whereby the Superintendent is being asked to change the wind up date for the Hourly Plan is stayed by paragraphs 8 and 9 of the receivership order”. Further, the Court concluded that it was not appropriate to lift the stay to permit the Superintendent to consider changing the wind up date for the Hourly Plan was because, *inter alia*, the wind up date for the Hourly Plan was the subject of a final order by the Superintendent and the Superintendent was *functus officio* on the issue of the Hourly Plan wind up date as a result.
12. The Court did note, in the Endorsement, that the Superintendent was free to set a wind up date for the Salaried Plan and to consider the merger of the Salaried Plan into the Hourly Plan because neither PWC nor GE asserted that the stay operates to prevent the Superintendent from carrying out his obligations to decide these issues.
13. In Minutes of Settlement executed between Morneau, PWC, GE and the Superintendent on January 22, 2013 (the “Minutes”), the parties agreed to settle between themselves all

outstanding matters relating to the Northern Receivership Proceedings, including the Asserted Pension Claims. In the Minutes, Morneau agreed to not pursue its recommendation that the Salaried Plan and Houlihy plan be treated as one pension plan.

Salaried Plan Termination Date

14. Section 18(3) of the *PBA* states that “the revocation of the registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent.” Further section 18(5) states that where the registration of a pension plan “is refused or revoked”, “the administrator shall wind up the pension plan in accordance with the” *PBA* and regulations.
15. The Revocation Order did not specify a date for the termination of the Salaried Plan and the Superintendent is required to do so.
16. The Superintendent proposes to specify November 16, 2010 as the termination date for the Salaried Plan for the following reasons:
 - a. The salaried employees continued to be employed by Northern and accrue service under the Salaried Plan until November 16, 2010. Morneau advised that November 16, 2010 is the latest termination date for non-unionized employees recorded in the data Morneau obtained from Northern; and
 - b. Although Northern did not remit all required contributions to the Salaried Plan there were contributions made to the Salaried Plan in 2008, 2009 and 2010 as follows:
 - i. \$78,331 in August 2008;
 - ii. \$39,941 in May 2009; and
 - iii. \$6,468 in February 2010
17. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416- 590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **31st** day of **January, 2013**.

Original Signed By

K. David Gordon
Deputy Superintendent, Pensions

¹*NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.*

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