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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 a Notice of Intended Decision of the Superintendent of Financial Services, under section 69(1) of the *PBA*, to partially wind up the Mine Safety Appliances Company Canadian Pension Plan, Registration Number 0287441

TO:

Mine Safety Appliances Company
MSA Corporate Centre
1000 Cranberry Woods Drive
Cranberry Township, PA 16066
Attention: William J. Berner
Director, Litigation/Risk Management

Employer and Administrator

NOTICE OF INTENDED DECISION

I INTEND TO MAKE AN ORDER, under sections 69(1)(d) of the PBA, that the **Mine Safety Appliances Company Canadian Pension Plan**, Registration Number 0287441 (the “Plan”) be partially wound up effective as at March 1, 2001, in relation to the 37 former members of the Plan who ceased to be employed by Mine Safety Appliances Company (“MSAC”) during the period of March 31, 2000 to March 1, 2001 (both dates inclusive) as a result of a reorganization and partial discontinuance of the business of the employer.

REASONS:

1. Mine Safety Appliances Company (“MSAC”) is the employer and administrator of the Plan.
2. The Plan is a defined benefit pension plan that is registered with the Financial Services Commission of Ontario (“FSCO”).
3. Prior to January 1, 2001, MSA Canada Inc. operated as a wholly owned Canadian subsidiary of MSAC, a US corporation based in Pittsburgh, PA. MSA Canada Inc. was the employer and Administrator under the Plan.
4. Effective January 1, 2001, the Canadian operations of MSA Canada Inc. were restructured to operate as a division of MSAC and certain activities previously done by

employees of MSA Canada Inc. were either discontinued or transferred to MSAC. These changes, *inter alia*, constituted a reorganization and discontinuance of the business of the employer within the meaning of section 69(1)(d) of the *PBA*. A significant number of members of the Plan were terminated as a result of the reorganization and discontinuance in 2000 and 2001.

5. MSA Canada Inc. adopted an amendment, effective January 1, 2000, to the Plan on December 8, 2000 that provided members affected by the reorganization and discontinuance with grow-in rights and full vesting. The amendment identified 37 members who were granted these enhancements and who were identified as "Affected Employees". However, MSA Canada did not declare a partial wind up of the Plan.
6. As of January 1, 1999, there were 131 members in the Plan. The 37 employees who terminated between March 2000 and March 2001 represented about 28% of the total membership in the Plan.
7. Despite the existence of surplus on both a solvency and going concern basis valued as of January 1, 1999, January 1, 2002 and January 1, 2008, MSAC has failed to distribute any surplus attributable to the partial wind up as required by section 70(6) of the *PBA*, and the Supreme Court of Canada decision in *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, even after the Financial Services Commission of Ontario requested it to do so.
8. Section 69(1)(d) of the *PBA* states that the Superintendent by order may require the wind up of a pension plan in whole or in part if a significant number of plan members cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
9. MSAC admitted that the termination of the 37 plan members resulted from the reorganization and/or the partial discontinuance of the business of the employer. At approximately 28% of the 131 members of the Plan at the time of the reorganization/discontinuance, the 37 terminated employees represents a significant number of Plan members terminations within the meaning of section 69(1)(d) of the *PBA*.
10. There are no discretionary reasons not to order a partial wind-up.
11. Such further and other reasons as may 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.

YOU ARE REQUIRED, pursuant to section 89(5) of the *PBA*, to transmit a copy of this notice and the written reasons to the 37 former members identified as “Affected Members” in Appendix “A” of the amendment adopted December 8, 2000.

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 6 day of July, 2011.

Copy: Ken H. Pennell, Mine Safety Appliances Company Canadian

Ken H. Pennell
Payroll Administrator
Mine Safety Appliances Company Canadian
222 – 5535 Eglinton Avenue West
Toronto ON M9C 5K5

Original Signed By

Deputy Superintendent of Financial Services

¹NOTE - 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 seventh day after the date of mailing.

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