

Content on this page has been transferred from the Financial Services Commission of Ontario (FSCO) site as a PDF for reference. Links that appear as related content have also been transferred and can be found at the end of this document.

PCO Decision - June, 1999

Commission Decisions - Applications June 24, 1999

(Note: In this section, "Commission" refers to the Pension Commission of Ontario.)

Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act

At the Commission meeting held June 24, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

1. The Pension Plan for Salaried Employees of TecSyn International Inc., Registration Number C-9520 . Payment of surplus to TecSyn International Inc. (the "Applicant") from The Pension Plan for Salaried Employees of TecSyn International Inc., Registration Number C-9520 (the "Plan"), in the amount of 20% of (a) \$595,806 (the estimated amount of surplus in the plan as at December 31, 1991), plus (b) investment earnings thereon to the date of payment, minus (c) administrative costs and fees not yet deducted as detailed on page 2 of the Application.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

In light of the extensive written submission received from three former members of the Plan (the "Wieler Group") in opposition to the Application, the Commission wishes to include a summary of its reasoning in approving the Application. In the Commission's view, the Application meets the Commission's guidelines and policies governing the process for surplus sharing agreements, in addition to complying with the relevant sections of the Act and Regulation. In particular, the Commission has the following comments:

1. The Commission is satisfied that the Plan documents in effect on the wind-up date of December 31, 1991 provide for the Applicant to share in surplus distribution as of that date, after satisfaction of all liabilities under the Plan.
2. Notice to members and former members meets the Commission's requirements for content and distribution. The Commission noted that the 1966 Royal Trust Agreement was not included with the notice, as it was not available prior to the notice being distributed. In the Commission's view, this omission was not material to the determination of surplus entitlement under the Plan and did not prejudice the members and former members in the surplus sharing group.
3. The percentage of members consenting are well in excess of the minimum requirements of

the Regulation and Commission guidelines. Based on information provided by the Applicant effective June 16, 1999, 94.7% of members, former members and members affected by the partial Plan wind-up on December 31, 1987 consented to the Application. These consents included 96% of members and 70% of former members excluding partial wind-up members. The Commission does not agree with the Wieler Group's submission that percentage of liabilities would be an acceptable or more appropriate measure of consent levels under clause 8(1)(b) of the Regulation.

4. In the Commission's view, the interests of members and former members were supported through the Members' Committee (as defined in the Application), whose legal counsel reviewed Plan documents and provided initial advice regarding surplus distribution methods. In the covering letter to the notice sent to each member and former member, the Applicant also suggested the use of "professional financial and legal advisors, if you have questions of a financial or legal nature".

5. In light of the factors noted above, the Commission has applied its past practice of applying a lower degree of scrutiny to prior Plan documentation in the presence of high levels of informed consent.

6. The Commission agrees with the Applicant's inclusion of partial Plan wind-up members in the surplus-sharing group, particularly in light of the Commission's practice of preserving potential surplus rights of persons affected by the partial wind-up of an ongoing plan that has a surplus. Where an employer has included such persons in any surplus distribution on the subsequent full wind-up of the plan, and has exercised its discretion to do so in a reasonable manner, the Commission ought not to interfere. In this case the Applicant has provided ample justification to include those persons in the surplus sharing group.

7. The Commission acknowledges the different views expressed by the parties regarding the surplus allocation method set out in the surplus sharing agreement, under which surplus would be shared in proportion to years of service. The Commission notes that this method, which was selected with the knowledge of the Members' Committee, is among those considered generally accepted under Commission Policy S900-900, and recognizes that the choice of method can significantly affect the amount of surplus shared by a particular member or group of members. The Commission finds no reason to deny the use of the method selected by the Applicant under this Application.

Applications Approved under subsections 63(7) and (8) of the PBA - Return of Member Contributions

At the Commission meeting held June 24, 1999, the Commission

consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

1. Pension Plan "B" for Designated Employees of Industrial Tires Limited ID 4862-4, Registration Number 999128

Refund of member contributions from the Pension Plan "B" for Designated Employees of Industrial Tires Limited ID 4862-4, Registration Number 999128, in the aggregate amount of \$49,445.11 as at December 31, 1995 plus credited interest to the date of payment.

This consent shall not be effective until the applicant provides the Commission with a certificate from the Actuary stating that the ratio of market value of assets of the Plan to solvency liabilities of the Plan is not reduced as a result of the refund of member contributions covered by this consent.

2. Pension Plan "C" for Designated Employees of Industrial Tires Limited ID4862-4, Registration Number 999110

Refund of member contributions from the Pension Plan "C" for Designated Employees of Industrial Tires Limited ID4862-4, Registration Number 999110, in the aggregate amount of \$31,211.15 as at December 31, 1995 and \$30,366.19 as at December 31, 1994, plus credited interest to the date of payment.

This consent shall not be effective until the applicant provides the Commission with a certificate from the Actuary stating that the ratio of market value of assets of the Plan to solvency liabilities of the Plan is not reduced as a result of the refund of member contributions covered by this consent.

Pension Benefits Guarantee Fund ("PBGF")

Notice of Proposed Declaration

On June 24, 1999, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

- (a) Peoples Jewellers Limited Executive Pension Plan, Registration Number 597666

Updated: August 23, 1999