

April 3, 2013

BY FACSIMILE AND REGISTERED MAIL

Financial Services Tribunal
5160 Yonge Street
Box 85, 14th Floor
Toronto, Ontario
M2N 6L9

Attn: Registrar, Financial Services Tribunal

Re: Form 1 – Request for Hearing on behalf of Navistar Canada Inc. (“Navistar”)

Dear Sir/Madam:

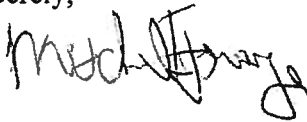
We are writing on behalf of our client, Navistar to submit the enclosed Form 1 – Request for Hearing.

The submission materials are organized as follows:

- Form 1 – Request for Hearing
- Appendix “A” – submission on why Navistar disagrees with the Superintendent’s Notice of Intended Decision

Please contact me at 416.865.8220 or mfrazer@torys.com should any questions arise regarding the submission.

Sincerely,



Mitch Frazer

cc: Fernando Garcia, Navistar Canada Inc.
cc: Henry Van Vroenhoven, Navistar Canada Inc.
cc: Lewis Gottheil, Director of CAW Legal Department



Financial
Services
Tribunal

Form 1 - Request for Hearing

For hearings before the
Financial Services Tribunal

To request a hearing to challenge a proposed or intended decision of the Superintendent of Financial Services, you must complete and file this form with the Registrar, Financial Services Tribunal, by mailing or delivering the form to 5160 Yonge Street, Box 85, 14th Floor, Toronto, ON M2N 6L9, or fax it to (416) 226-7750.

Personal information requested is collected under the authority of the Financial Services Commission of Ontario Act, 1997. This information will be used for the purposes of the proceeding and will be available to all parties to the proceeding and will become part of the public record.

You may represent yourself before the Financial Services Tribunal or you may be represented by someone who is licensed under the *Law Society Act* to practice law or to provide legal services in Ontario (i.e. a lawyer or paralegal) or by someone who is not required to be licensed under that Act (e.g. a trade union representative or a friend helping out on a voluntary basis). If you are not sure whether or not a person can act as your representative (e.g. he or she is not a lawyer or a licensed paralegal), you should contact the Law Society of Upper Canada: (416) 947-3315, or 1-800-668-7380, or lawsociety@lsuc.on.ca. The Financial Services Tribunal cannot assist you in obtaining representation and cannot provide you with information about the authority or licence status of a representative.

NOTE: You are required to fill out ALL sections of this form as completely as possible. Incomplete forms may be returned and may not be processed until they have been properly completed.

Tribunal File No. N/A

Applicant's Name and Address

<input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.		Last name	First name
		GARCIA	FERNANDO
Company name OR Organization			
NAVISTAR CANADA INC.			
Street address		Apt./Unit	
5500 NORTH SERVICE ROAD		SUITE 401	
City	Province	Postal Code/Zip	
BURLINGTON	ONTARIO	L7L 6W6	
Phone number	Ext.	Fax number	Email address
(905) 332-2966			fernando.garcia@navistar.com

Applicant's Representative (if any)

<input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.		Last name	First name
		FRAZER	MITCH
Firm			
TORYS LLP			
Street address		Apt./Unit	
79 WELLINGTON STREET WEST, SUITE 3000		BOX 270, TD CENTRE	
City	Province	Postal Code/Zip	
TORONTO	ONTARIO	M5K 1N2	
Phone number	Ext.	Fax number	Email address
(416) 865-8220		(416) 865-7380	mfrazier@torys.com
The Representative is:			
<input checked="" type="checkbox"/> Lawyer			
<input type="checkbox"/> Paralegal licensed to provide legal services			
<input type="checkbox"/> Not required to be licensed under the <i>Law Society Act</i> and its By-Laws			

Superintendent's Proposed or Intended Decision

You must attach a copy of Superintendent's Notice of Proposal or Intended Decision

Date of Superintendent's Notice of Proposal or Intended Decision MARCH 7, 2013

Why do you disagree with the Superintendent's Proposed or Intended Decision?

Briefly outline why you disagree with what the Superintendent is proposing to do. Use point form if desired. Please be as specific as possible in referring to the statutory provisions relevant to your case.

See Appendix "A", attached.

What do you want the Tribunal to decide or order?

Explain as precisely as possible what decision you want the Tribunal to make. Use point form if desired.

The Company would like the Tribunal to make the following orders:

- i) Only those employees who were "on-roll" as of the effective date of the partial wind up (ie. July 28, 2011) are eligible to participate in the partial wind up of the Plan. Employees who were severed or retired between June 30, 2009 and July 28, 2011 are all excluded from the partial wind up of the Plan.
- ii) The provisions of PBA sections 40(2), 40(3) and 74(7) do not apply with respect to the SER benefits under section 1.03 of the Plan.
- iii) The Superintendent does not have jurisdiction to rule on the applicability of the 0.9 bank service credit under section 7.03(b)(iii) of the Plan. Alternatively, if the Superintendent does have jurisdiction, the 0.9 bank service credit under section 7.03(b)(iii) of the Plan only applies to members who physically returned to work, and thus is not applicable for any members on layoff or Company approved sick leave who did not return to work.

Other Interested Persons:

Other persons who may be affected by an order or decision of the Tribunal in this case, including any trade union(s) with bargaining rights, if applicable.

CAW-Canada and Locals 127 and 35.

French and Accessibility Requirements

A person has the right to communicate with the Registrar's office and at hearings in French as provided in the *French Language Services Act*. If a person intends to communicate in French as a party in a proceeding, the person shall indicate this intention in the Request for Hearing or in a letter filed with the Registrar as early as is practicable.

Do you intend to communicate in French?

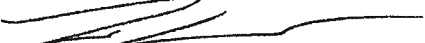
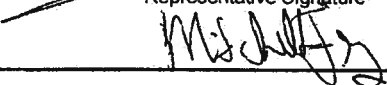
- Yes
- No

Do you have any accessibility requirements for the proceeding? (e.g., wheel chair access, sign language interpreter, visual aids, or any other accommodation)

- Yes
- No

If yes, please describe

Signature

Applicant Name (please print)	Applicant Signature	Date (yyyy/mm/dd)
FERNANDO GARCIA		2013/04/03
Representative Name (please print)	Representative Signature	Date (yyyy/mm/dd)
MITCH FRAZER		2013/04/03

Appendix "A"

Navistar Canada Inc. (the "Company") disagrees with the Superintendent's Notice of Intended Decision with respect to the Navistar Canada Inc. Non-Contributory Retirement Plan (the "Plan") for the following reasons.

1) The Superintendent's wind up group is over-inclusive

- The Superintendent correctly found that July 28, 2011 was the effective date of the wind up.
- Notwithstanding this finding, the Superintendent went on to find that the wind up group was made up of former employees of the Company who were severed or retired between June 30, 2009 (when the collective agreement expired) and July 28, 2011, the effective date of the wind up.
- Former employees who voluntarily chose to sever their employment with the Company after the expiry of the collective agreement:
 - (i) had the opportunity to consult with the Canadian Auto Workers' union (the "CAW") and obtain independent legal advice before making their decision, and therefore gave their informed consent to be bound;
 - (ii) received consideration for severing their employment;
 - (iii) signed waivers releasing the Company of any further claims;
 - (iv) had, in some cases, voluntarily chosen to withdraw all of their benefit entitlements under the Plan and transfer them to an arrangement best suited to their interests, and as a result were no longer members of the Plan as at July 28, 2011; and
 - (v) should not have been included by the Superintendent in the partial wind up of the Plan.
- Former employees who retired between the expiry of the collective agreement and the effective date of the wind up:
 - (i) were afforded by the Company all of their rights and benefits under the collective agreement, even though the collective agreement had expired;
 - (ii) had the opportunity to consult with the Canadian Auto Workers' union (the "CAW") and obtain independent legal advice before making their decision, and therefore gave their informed consent to be bound;
 - (iii) were, by the effective date of July 28, 2011, no longer active members of the Plan, but instead were retired members in receipt of pension benefits from the Plan; and

- (iv) should not have been included by the Superintendent in the partial wind up of the Plan.

2) The Superintendent erred in granting special early retirement benefits

- Eligibility for special early retirement (“SER”) benefits under the Plan is determined by the terms of the Plan, including its Exhibits.
- Schedule "C" (which is an Exhibit to the Plan) was intended to be crucial to the determination of employee eligibility for SER.
- A plain reading of the clear language of section 1.03 of Schedule “C” is that SER benefits shall be provided to employees “upon proper application”, i.e., if the terms and conditions of eligibility properly apply to the employee. Both prospective and retrospective conditions must be met.
- The SER benefit eligibility is fact-specific to each individual employee. Even if an employee is initially eligible for SER benefits, there are conditions subsequent that may terminate these rights. SER benefits require post-consent monitoring for individual compliance, and as such should not be treated in a catch-all manner.
- Sections 40(2), 40(3) and 74(7) of the Pension Benefits Act (“PBA”) do not apply to the SER benefits because SER benefits are not benefits that are provided to members under the terms of the Plan unless and until the Company elects to exercise its option to provide them. In this they differ from rights under the normal retirement, regular early retirement, disability retirement and legislated early retirement provisions.
- The Superintendent erred in deciding that subsections 40(2), 40(3) and 74(7) of the PBA should apply to the SER benefits.
- In any event, decisions regarding the SER benefits of members who terminated service prior to June 30, 2009 are outside of the scope of the partial wind up of the Plan.
- The Superintendent’s decision regarding the SER benefits of members who terminated service prior to June 30, 2009 is outside of the scope of the partial wind up of the Plan.

3) The Superintendent did not have jurisdiction to deal with credited service

- In an application for a partial plan wind up, the scope of the Superintendent’s jurisdiction is limited to matters dealing with the partial wind up of the plan, namely, the wind up date and the wind up group.
- The Plan provides for employees who return to work, after a period of layoff or sick leave, to receive from the Company credited service for the period of their absence.
- Credited service is not a matter related to the wind up date or the wind up group.

- The Superintendent did not have jurisdiction over credited service because it is outside of the scope of a partial plan wind up.
- The Superintendent advised, during the process before him, that he did not believe he had jurisdiction to deal with this matter. The Company was entitled to rely on his statement and should not be faced with a finding on credited service in the Notice of Intended Decision by the Superintendent.

4) The Superintendent erred in finding entitlement to credited service

- It has been the longstanding Company practice that employees are only entitled to receive the 0.9 “bank” of credited service upon their physical return to work. Where, for any reason, an employee’s service ended prior to returning to active service the “bank” service was removed from his/her credited pension service history and final credited service was calculated as such.
- The Company has made previous agreements with the CAW that crediting of service for the period of leave is not applicable if the member does not return to work.
- Company past practices are determinative in respect of crediting of “bank” service.
- The Superintendent erred in disregarding Company past practice and awarding credited service to former employees who were in the wind up group (as defined, over-inclusively, by the Superintendent).
- The Superintendent also awarded credited service to former employees who were not in the wind up group, and who terminated employment prior to June 30, 2009.
- The Superintendent erred in making a finding beyond the scope of the partial wind up.