

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE) FRIDAY, THE 27TH
H.J. WILTON-SIEGEL)
) DAY OF MARCH, 2009

BETWEEN:

**IN THE MATTER OF AN APPLICATION BY THE
ADMINISTRATOR OF THE HAWKER SIDDELEY
CANADA INC. PENSION PLAN FOR SALARIED
EMPLOYEES**

Applicant

APPLICATION UNDER Rule 14.05(3)(a) and (b) of the *Rules of Civil Procedure*

ORDER

THIS APPLICATION, made for an Order approving the Applicant's proposal to locate persons entitled to the distribution of remaining funds from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees and directing Hawker to pay any remaining undistributed funds from the Plan to the Accountant of the Superior Court of Justice to the credit of persons entitled to such funds, was heard this day and on Thursday, October 30, 2008 at 330 University Avenue, Toronto, ON.

ON READING the materials filed and on hearing the submissions of the lawyers for the Applicant, the Financial Services Commission of Ontario being properly served and not opposing the relief sought,

AND WHEREAS the definitions of Entitlement Group, Employer, Hawker, Plan, Plan Account and Wind-Up Report set out in Schedule "1" to this Order shall form a part of this Order.

1. **THIS COURT ORDERS AND APPROVES** a notice program to members of the Entitlement Group, consisting of:

- (a) notices to the Entitlement Group at their last-known addresses determined as described in the Affidavit of Orest Smysnuik sworn September 4, 2008 ("Smysnuik Affidavit"), substantially in the form attached as Schedule "2"; and
- (b) a newspaper notice, in English and in French, substantially in the form attached as Schedule "3", published in the publications listed in Schedule "4".

2. **THE COURT FURTHER ORDERS** that, 90 days following such notice, the share of the proceeds remaining in the Plan Account available to members of the Entitlement Group may be distributed pro-rata of the portion of the surplus of the Plan that was paid to them, less applicable taxes, as follows:

- (a) to the members of the Entitlement Group who have returned the enclosed form or responded to the public notice;
- (b) the amount payable to any missing members to be paid to the Accountant (the "Accountant") of the Superior Court of Justice; or
- (c) the amount payable to any missing members in the province of Québec may be paid to the Public Curator of Québec.

3. **THE COURT FURTHER ORDERS** that, upon the payment of any funds to the Accountant, Hawker shall file with the Accountant a list of all missing members and the amount payable to each. Upon presentation of identification satisfactory to the Accountant, such member or his or her heirs, successors or legal representative shall be entitled to the release by the Accountant of the individual amount attributable to such member, together with any accrued interest, without further order of this Court and this Order shall constitute sufficient authority and direction to the Accountant to do so.

4. **THE COURT FURTHER ORDERS** that, 90 days following such notice, the share of the proceeds remaining in the Plan Account available to the Employers may be paid out to the Employers.

5. **THIS COURT ORDERS** that legal and administrative costs and disbursements for bringing this Application, the cost of the notice program, and legal and administrative costs to effect the distribution of the funds from the Plan to the Entitlement Group and to pay money into the Superior Court of Justice or the Public Curator of Québec shall be paid from the Plan Account.

Christina Irwin
Registrar, Superior Court of Justice

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 30 2009

PER / PAR: 

Schedule "1"

"Entitlement Group" is comprised of the following persons:

- (a) the members, former members and other beneficiaries of the Plan included in the Wind-Up Report;
- (b) the former members of the Plan or their beneficiaries, as the case may be, who were alive and in receipt on the wind-up date of a benefit in respect of the Plan from an insurance company; and
- (c) to the extent not otherwise included above, the former members of the Plan who ceased to participate in the Plan as a result of any partial wind-up of the Plan occurring on or after January 1, 1987 (or their beneficiaries, as the case may be) and who were alive on the wind-up date.

"Employers" means Hawker and CGTX Inc.

"Hawker" means Hawker Siddeley Canada Inc., the sponsor and administrator of the Plan.

"Plan" means Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, which was registered in Ontario under No. 0344192.

"Plan Account" means the account established in connection with the Plan, now with AIG Life of Canada.

"Wind-Up Report" means the Actuarial Report on the Wind-Up of the Plan as at June 17, 1996.

Schedule "2"

Notice to former members and beneficiaries

**HAWKER SIDDELEY CANADA INC.
PENSION PLAN FOR SALARIED EMPLOYEES (THE "PLAN")**

To : Former members and beneficiaries of the Plan
Legal representatives of former members and beneficiaries of the Plan

The Plan was wound up as at June 17, 1996 and all basic benefits and surplus were paid out at that time. However, after all assets of the Plan had been distributed, certain amounts were received from an insurance company pursuant to a cost of living adjustment ("COLA") provision in certain annuity contracts that were entered into in connection with the Plan.

The arrangement that provided for the COLA refunds has been terminated and, as at March 27, 2009, the balance of the COLA refunds was \$● . This amount constitutes surplus assets and will be dealt with accordingly, i.e., this amount, less all fees and expenses relating to the distribution of the amount, will be split 50/50 between the former members and beneficiaries of the Plan and the employers under the Plan.

In order to receive your share of the members' portion, less any applicable tax, you must complete and return the attached form before ● 2009. The amount payable to those former members and beneficiaries who do not return the form will be paid into the Superior Court of Justice of Ontario.

Date: _____

Hawker Siddeley Canada Inc.

HAWKER SIDDELEY CANADA INC. SALARIED EMPLOYEES PENSION PLAN
COLA REFUND PAYMENT

- Name of former member or beneficiary: _____

- Social insurance number: _____

- If the former member or beneficiary is dead
please indicate whether the payment should
be made to the estate or the legal representative Estate

Indicate the name of the legal representative

- Address: _____

- Telephone Number: _____

Date: _____

Name: _____

(Signature)

Please return the Form to:

Westcoast Actuaries Inc.
908-1166 Alberni Street
Vancouver, BC
V6E 3Z3

Schedule "3"

Public Notice

**HAWKER SIDDELEY CANADA INC.
PENSION PLAN FOR SALARIED EMPLOYEES (THE "PLAN")**

The Plan was wound up as at June 17, 1996 and all basic benefits and surplus were paid out at that time. Hawker Siddeley Canada Inc. ("Hawker") has recently written to former members and beneficiaries of the Plan with respect to additional amounts that are payable in connection with the Plan. If you are a former member or beneficiary of the Plan or the legal representative of such former member or beneficiary and have not received a letter from Hawker, please contact Westcoast Actuaries Inc., 908-1166 Alberni Street, Vancouver, BC, V6E 3Z3 (1-888-888-1668)

AVIS PUBLIC

Régime de retraite des employés salariés de Hawker Siddeley Canada inc. (le "Régime")

Le Régime a été terminé en date du 17 juin 1996 et toutes les prestations de base et le surplus ont été payés par la suite. Hawker Siddeley Canada inc. ("Hawker") a récemment écrit aux anciens participants et bénéficiaires du Régime relativement à certains montants additionnels qui sont payables en rapport avec le Régime. Si vous êtes un ancien participant ou bénéficiaire du Régime ou le représentant légal d'un ancien participant ou bénéficiaire et que vous n'avez pas reçu la lettre de Hawker, veuillez contacter Westcoast Actuaries inc., 908-1116 Alberni, Vancouver, BC, V6E 3Z3 (1-888-888-1668).

Schedule "4"

1. St. John's Telegram
2. Halifax Chronicle Herald
3. Journal de Montreal
4. Toronto Star
5. Regina Leader Post
6. Calgary Herald
7. Vancouver Province

IN THE MATTER OF AN APPLICATION BY THE ADMINISTRATION OF THE
HAWKER SIDDELEY CANADA INC. PENSION PLAN FOR SALARIED EMPLOYEES
Applicant

Court File No.: CV-08-7744-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

OGILVY RENAULT LLP
Barristers and Solicitors
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

Alan B. Merskey LSUC#413771
Tel: (416) 216-4805
Dera J. Nevin LSUC#: 466930
Tel: (416) 216-4036
Fax: (416) 216-3930

Lawyers for the Applicant

Plan administrator in respect of the distribution of funds
arising after completion of ~~the~~ plan wind-up. Where the
Pension Benefits Standards Act is silent, it is appropriate to
apply the general principles of trust law in respect of the
trust arrangements pertaining to the plan; Schmidt v
Av Products [1994] 2 S.C.R. 64. In this case, the
applicable principles can be found in the Trustee Act. Section
36(1) of the Trustee Act provides that a trustee may
apply for an order for payment into court and section
36(4) provides for such an order in respect of
trust ~~corpus~~ property belonging to a person whose
address is unknown upon ~~the~~ in connection with the
passing of accounts. ~~I have approached the issue for~~
~~me with~~ before me is a passing of accounts inasmuch
as the court must address the same issues in the
context of a winding up of ~~the~~ a pension plan as are
required ~~in~~ in respect of ~~an~~ a proceeding brought under
section 36(4) of the Trustee Act.

On the basis of the foregoing, therefore,
the applicant is entitled to the relief sought
in this application. Order to go on the form attached.

W. Hon. M.J.