



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 Proposal of the Superintendent of
Financial Services to Refuse to Consent to a Transfer of Assets under
section 81 of the *PBA* in respect of the following pension plans:

- a) Beachville Lime Limited Pension Plan for Salaried Employees,
Registration Number 0386110 (the “Beachville Lime Plan”) and
- b) Dundas Lime Limited Salaried Employees Pension Plan,
Registration Number 0243287 (the “Dundas Lime Plan”)

TO: **Beachville Lime Limited**
c/o Carmeuse Lime (Canada) Limited
Beachville Operation
PO Box 190, Station Main
Ingersoll, ON N5C 3K5
Attention: Lois Thomson
Payroll Manager

AND TO: **Dundas Lime Limited**
c/o Carmeuse Lime (Canada) Limited
Beachville Operation
PO Box 190, Station Main
Ingersoll, ON N5C 3K5
Attention: Lois Thomson
Payroll Manager

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO CONSENT to a transfer of assets
(merger) effective January 1, 2001, of the Beachville Lime Plan and the Dundas
Lime Plan under section 81 of the *PBA*.

REASONS:

1. Beachville Lime Limited is the Employer and Administrator of the Beachville Lime Plan and Dundas Lime Limited is the Employer and Administrator of the Dundas Lime Plan.
2. In a letter dated May 24, 2002 Mercer Human Resource Consulting (“Mercer”), on behalf of Beachville Lime Limited (the “Applicant”) filed with the Superintendent of Financial Services (the “Superintendent”) a certified copy of the Resolutions of the Board of Directors of the Applicant effecting the merger of the Beachville Lime Plan and the Dundas Lime Plan as at January 1, 2001. The letter provided that other documents supporting the merger would be filed under separate cover and that a certified copy of the application for registration of a pension plan amendment (Form 1.1) would be filed under separate cover along with the restated text regarding the merger of the plans.
3. Staff from the Financial Services Commission of Ontario (“FSCO”) had phone communications with the staff from Mercer on September 12, 2002 where Mercer confirmed that the Beachville Lime Plan was the importing plan and staff from Mercer would forward a transfer report.
4. On November 20, 2002 staff from FSCO wrote to the Applicant regarding the failure to file the Actuarial Report as at December 31, 2001. Staff from FSCO requested the actuarial report be filed no later than January 6, 2003.
5. On December 24, 2002 Mercer forwarded to FSCO an actuarial report on the funding of the Beachville Lime Plan as at January 1, 2001 and a copy of the Actuarial Information Summary form at January 1, 2001. Mercer indicated that these enclosures formed part of the actuarial report on the merger of the Beachville Lime Plan and the Dundas Lime Plan and that the merger report would be filed in January 2003.
6. On March 10, 2004 staff from FSCO wrote to Beachville Lime Limited (and sent a copy to Mercer) advising that an application under section 81 (merger) of the *PBA* had not been filed and asking the Applicant to file the application for the merger in accordance with either of FSCO’s published policies A700-226 or A700-251. The letter also brought to their attention the Ontario Court of Appeal’s decision in *Aegon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.*[2003] O.J. No. 4755 (“*Transamerica*”) and advised that until the Supreme Court of Canada dealt with the case, the Superintendent would treat the Court of Appeal’s decision as binding. The letter also explained FSCO’s requirements for compliance with *Transamerica* (The Supreme Court later denied leave to appeal in *Transamerica*).
7. *Transamerica* is a case about an asset transfer from a pension plan that was subject to a trust and in a surplus position, to a pension plan that was not subject to a trust and in a deficit position. After the transfer, the actuarial surplus that derived from the trust plan was used to fund the employer’s obligations under the non-trust plan. The Court of Appeal for Ontario held that the terms of the trust were not altered by the transfer of assets and the use of actuarial surplus to fund

the non-trust plan was “cross-subsidization” that was not permitted by the terms of the trust. The Court ruled that the terms of the trust prevented the use of the assets in the trust for any purpose other than for the benefit of its beneficiaries.

8. On May 11, 2005 Mercer forwarded to FSCO an actuarial report on the proposed merger of the plans as at January 1, 2001 and a copy of the actuarial information summary at January 1, 2001. Mercer indicated that additional information on the proposed merger would be sent to FSCO before May 18, 2005. Also, Mercer indicated that the actuarial report on the funding of the plan as at December 31, 2003 had been completed and would be sent to FSCO by May 13, 2005.

9. On June 11, 2008 staff from FSCO wrote to Mercer to follow up on the lack of a response to the previous letter of March 10, 2004. The June 11, 2008 letter reminded Mercer that further information was necessary to complete the review. This letter outlined the need for additional information which had not been filed, including: (a) a copy of the Notice required under section 81 of the *PBA* and Policy A700-251; (b) an amendment to the importing plan (or a restated plan text) and a Form 1.1 for both plans; and, (c) a copy of the completed Transamerica Checklist. The relevance of the Transamerica Checklist was discussed and a copy of the checklist was attached to this letter. Staff from FSCO also advised of the Ontario Divisional Court decision in *Baxter et al. v. National Steel Car Limited et. al.* in December 2004.

10. The final letter was sent by staff from FSCO on August 29, 2008 to Mercer to follow up on the lack of a response from the previous letter of June 11, 2008. The August, 29, 2008 letter stated that in order for the review to be completed, a response was required no later than September 30, 2008. No response has been received to date.

11. The Application has now been outstanding for approximately six and three quarter years.

12. 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 *Act*. **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 Proposal is served on you.**¹

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NOTE - Pursuant to section 112 of the *Act* 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.

YOUR WRITTEN NOTICE must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

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

DATED at Toronto, Ontario, this 10th day of March, 2009

K. David Gordon
Deputy Superintendent, Pensions

c.c. Mercer (Canada) Limited
One London Place
255 Queens Avenue
Suite 2400
London, ON N6A 5R8
Attention : Eric Poirier