

## LAW OFFICE OF LEWIS GOTTHEIL

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Mr. Gino Marandola,  
Director,  
Pension Plans Branch,  
Financial Services Commission of Ontario,  
5160 Yonge Street,  
Toronto  
Ontario

DELIVERED BY EMAIL

Dear Sir:

Re: Request for Extension of Time made by Navistar Canada Inc.; Navistar  
Canada Inc. Pension Plan Registration No. 0351684

I acknowledge receipt of your email enclosing the request made by the office of Morneau Shepell, agents acting on behalf of Navistar Canada Inc. to delay the deadline by which the Company must file its wind up report pursuant to the order of FSCO dated December 23 2015, and the related orders of the FST and Divisional Court.

My client vigorously opposes any extension of time.  
Our opposition to this request, and FSCO's consideration of the request, must be placed in the proper historical and factual context.

The Chatham workplace which supported the pension plan now being wound up ceased any production activity on June 30 2009. That is almost **seven** years ago. The Company officially announced closure on July 28 2011. That is almost **five** years ago.

The plan wind up obligations and responsibilities of the Company as sponsor and administrator of the plan ought to have been clear to it at least five years ago. The position of the Union was manifestly expressed commencing in 2011 and that position was vindicated **first** by a Notice of Intended Decision (NOID) on **March 7 2013**, **then** by a detailed and comprehensive decision of the FST on **July 11 2014**, and **further** by a unanimous clear decision of three Justices of the Divisional Court released on **July 3, 2015**.

It must be further noted that the details and analysis set out in the NOID and reinforced in the Order of the FST and reasons of the Divisional Court should have come as no surprise to the Company or its agents- they are entirely consistent with existing practice and jurisprudence in Ontario. Navistar and its agents should have appreciated this reality, and prepared for it.

The Company or its agents have had not just multiple months but **at least three years** to assemble the relevant data, and commence the necessary analysis, such that once a final decision of the FST or judiciary was issued, only adjustments or straight forward final calculations would be required.

All along the Company and or its agents knew a wind up report would have to be prepared and filed. **This has not been a case where the issue was whether to prepare such a report.** The only issue in this case was a dispute over coverage or the entitlement of a group of plan members whose identity was reasonably and fully described by the decisions of FSCO, and the FST and Divisional Court. We are taken aback by the statement in the request for extension that meaningful efforts to commence the report appear to have begun only recently, that is, December, 2015 such that more time is now needed.

(Parenthetically my client underlines how to this day the Company thinks it has the discretion to act unilaterally outside of principles of fairness. We are also taken aback by the fact that the Company or its agent saw fit to ask FSCO for an extension, but not have the courtesy to copy the union with that request, notwithstanding the representative role the union has played throughout this file on behalf of the affected plan members and retirees.)

Since the Company knew a report would have to be prepared and knew the basic parameters of the report, there is absolutely no reason in our submission for an extension as requested by the Company.

Please consider the interests of the plan members. Most endure the challenges faced by so many of our fellow Ontarians who have seen their employment

terminated too early and their income drastically cut by actions entirely outside their control or contemplation. The **full** disbursement of their retirement income entitlements must be calculated and administered forthwith.

My client believes that indeed FSCO considered all of these factors when FSCO issued its order of December 23, 2015. The order was proper at that time. The order remains proper today.

Unifor and its Locals 127 and 35 oppose the request for an extension of time. Thank you for your attention to this letter.

*Lewis Gottheil*

Law office of Lewis Gottheil