

HONEYWELL ASCA EMPLOYEE PENSION SURPLUS COMMITTEE

January 2, 2008

TO: Former employees of Bendix Heavy Vehicle Systems / Garrett Canada whose employment were terminated in conjunction with the closure of the company's London, Ontario facility and were affected by the partial wind up of the AlliedSignal Canada Inc. Retirement Plan for Salaried Employees (now the Honeywell ASCa Inc. Retirement Plan for Salaried Employees) (Reg. No. 0222695), effective as at December 31, 1992

Dear Pension Plan Member:

We are the Honeywell ASCa Employee Pension Surplus Committee (the "Committee"), a group of former employees of Bendix Heavy Vehicle Systems and Garrett Canada. We are all former members of the AlliedSignal Canada Inc. Retirement Plan for Salaried Employees (the "Pension Plan", or the "Plan") and were affected by the "partial wind up" of the Pension Plan in conjunction with the closure of the London, Ontario facility in 1992. We have formed a committee in connection with the pension surplus which exists in the Pension Plan and a proposal by the company to distribute that surplus. The Committee consists of Ms. Jacqueline Briand and Mr. Clive Bowden.

We are writing to you to explain the current situation with respect to the Pension Plan surplus, to invite you to a member meeting (described below) to provide you and your family members with an opportunity to ask questions in person, and finally, to ask you to vote in favour of accepting a surplus distribution proposal that we and our legal counsel have negotiated with the company who is now responsible for the Plan, Honeywell ASCa Inc. ("Honeywell", or the "company"). **43 employees**, including yourself, were affected by the 1992 partial wind up. There is currently surplus in the Pension Plan relating to the 1992 partial wind-up of the Pension Plan. As explained in more detail below, as part of the Committee's negotiations with Honeywell, the Committee has been able to get Honeywell agree to a method of calculating the current surplus relating to the 1992 partial wind up so that this surplus is currently estimated to be over **\$1.8 million**. The purpose of this Report is to inform the employees affected by the partial wind up of the terms of this surplus distribution proposal and to provide you with sufficient information so you can decide whether you wish to support it.

Please read this Report carefully, as you will be asked to vote on the Proposal by returning the enclosed Authorization and Retainer Form to our lawyers, Koskie Minsky LLP, which will authorize them to act on your behalf regarding the implementation of the Proposal, including the execution of the "Surplus Sharing Agreement" on your behalf. As stated, you

are invited to attend an information session (time and location of which is set out in this package). The Committee and our legal counsel will be present at this session.

This Report is divided into the following sections:

- A. Background
- B. Who Owns the Surplus (and When Can It Be Accessed)?
- C. The Surplus Distribution Proposal
- D. The Committee's Recommendation
- E. Information Session
- F. Next Steps

A. BACKGROUND

(i) Declaration of Partial Wind Up

On January 16, 1992 the company announced to BHVS/Garrett employees in London, Ontario that effective December 31, 1992 the London facility was to be closed. Affected employees were subsequently given a notice informing them of a "partial wind-up" of the Pension Plan in respect of the BHVS Division. The Notice indicated that a partial wind-up "report" setting out the benefits payable under the Plan was being prepared and filed by the Plan's actuaries with the Ontario pension regulatory agency, the Superintendent of Pensions (now called the Superintendent of Financial Services). The partial wind up "group" comprised 43 BHVS/Garrett employees whose employment was terminated due to the closure of the London facility.

(ii) Settlement of Regular Pension Benefits

In conjunction with the partial wind up, affected employees were given the option of leaving their deferred pension in the Plan for payment at their retirement date, purchasing an annuity from an insurance company, or electing to withdraw the lump sum commuted value of their pension and transferring it into a locked-in registered retirement savings arrangement. You may recall receiving these option forms. While many of you would have made an election regarding the form of payment that was best suited to you, some of you may not. If you did not make an election or if you elected to leave your pension in the Plan, your benefit entitlements remained in the Plan. Subsequently, any benefits that remained in the Plan relating to the partial wind up were provided for by way of an annuity purchase from Industrial Alliance.

(iii) Surplus Existing on the Partial Wind Up

You may or may not have known that the Plan had accumulated surplus assets at the time of the 1992 partial wind up. The surplus existed because there were more assets in the Plan than was required to settle all employees' regular pension benefits. The partial wind up report filed with the Superintendent disclosed that there was approximately **\$124,000** in surplus in the Plan attributable to the 43 affected members of the 1992 partial wind up.

In May, 1996 the Superintendent approved the distribution of the affected employees' regular pension benefit entitlements, and authorized the distribution of Plan assets to the partial wind up group members. The Superintendent noted the existence of the pension surplus and advised the company that any proposal with respect to the distribution of the surplus attributable to the partial wind up group would have to be dealt with separately. In July, 1998 the Superintendent's office again wrote to the company requesting that it file an application to distribute the surplus from the Plan. The company did not respond to these requests nor made any plans for the distribution of these surplus funds.

(iv) Formation of Committee and Retaining of Legal Counsel

In 1999, the Committee formed for the purpose of making inquiries with respect to the partial wind up surplus. Matters of pension surplus are very technical and complex and highly regulated in Ontario. As such, the Committee decided it needed professional legal advisors who have experience in these matters. The Committee retained the law firm **Koskie Minsky LLP** in Toronto, which has experience in pensions and pension surplus matters and in representing employee and pensioner groups such as ours. Koskie Minsky represented employees across Canada in major pension surplus cases such as those involving Dominion Stores, the National Hockey League, Confederation Life and Eaton's. Koskie Minsky has been advising and representing the Committee since 1999 on the legal issues surrounding the distribution of the surplus arising in connection with the 1992 partial wind up.

The Committee has also retained expert actuarial advisors to assist it concerning the financial aspects of the Plan and the surplus in particular. The Committee retained **Morneau Sobeco**, a national actuarial consulting firm based in Toronto.

In several exchanges of correspondence, our legal counsel wrote to the Superintendent arguing on behalf of the Committee that the surplus attributable to the partial wind up group must be distributed to the 43 affected employees in the partial wind up group. Koskie Minsky also assisted the Committee in a letter-writing campaign to the Minister of Finance in connection with the surplus.

(v) The "Monsanto" case

In 2000, another partial wind up "case" arose before the Superintendent on the identical legal issue that we now face. That legal issue concerned whether the Ontario pension legislation, the *Pension Benefits Act*, requires as a statutory obligation that a company must distribute any surplus assets existing in a pension plan at the time of a partial wind up. That case is known as the "*Monsanto*" case because it involved former employees of Monsanto Canada Inc. who were affected by a downsizing at that company and a related partial wind up of their pension plan. Koskie Minsky represented the former Monsanto employees in these proceedings, which went all the way of the Supreme Court of Canada.

After five years of litigation, the Supreme Court of Canada in July, 2004 ruled that Ontario's *Pension Benefits Act* requires that when a pension plan is partially wound up, any surplus remaining in the pension plan that is attributable to the partial wind up must also be distributed from the plan to the rightful beneficiaries. As a result of the *Monsanto* decision, Honeywell is now required to deal with the distribution of surplus assets relating to the 1992 partial wind up.

It is important to emphasize that while the Supreme Court ruled that surplus must be *distributed* from the Plan, it did not address *to whom* the surplus must be distributed. These are legal questions the answers to which turn on the unique pension plan terms and documents for each company. The Supreme Court also did not address the manner by which an historical partial wind up surplus must be "carried forward" to the present date. That too, was an outstanding legal and actuarial question.

(vi) Subsequent Committee Activities

After the *Monsanto* decision, the Committee, with the assistance of Koskie Minsky, resumed its efforts before the Superintendent to compel the company to quantify and distribute the surplus. In December, 2005, the Superintendent issued a ruling proposing to order Honeywell to distribute the 1992 partial wind up surplus to the 43 affected employees in the partial wind up group. Honeywell has appealed that ruling to an administrative tribunal that addresses pension matters, the Financial Services Tribunal. Honeywell takes the position that it, and not the employees, own the surplus existing in the Plan. The Committee, through Ms. Jacque Briand, is a party to this Tribunal proceeding, and is advocating that the employees, not Honeywell, own the surplus.

In 2006, the parties agreed to adjourn the Tribunal proceedings in order to attempt to negotiate a fair settlement of the surplus issues in the Plan.

B. WHO OWNS THE SURPLUS (AND WHEN CAN IT BE ACCESSED)?

The two most common questions that people ask in these situations are "who owns the surplus in the Pension Plan?" and "why is Honeywell seeking to make a settlement to share the surplus with the affected members?" Koskie Minsky has advised the Committee on these questions. The Committee has been advised that surplus "ownership" in a pension plan is a very complicated and technical matter, and the applicable legal and regulatory rules are different when a pension plan is continuing (or "ongoing"), than when it is terminated (or being "wound-up").

(i) How Does Pension Plan Surplus Arise?

Surplus arises in a defined benefit plan (such as in the case with our Pension Plan) if there are more assets in the pension fund than are needed to pay the promised regular pensions in accordance with the Plan's benefit formula; the excess is surplus. Pension surplus is an actuarial calculation of the funds at a given date, over and above the amounts required to satisfy current and future pension obligations to all pension plan members. In the present case, this Plan will remain ongoing for active employees not affected by the 1992 partial wind up.

(ii) Surplus Ownership while the Plan is Ongoing

While a pension plan is ongoing, no-one actually "owns" the surplus *per se*. There may be different rules concerning how a surplus in an ongoing plan may be utilized by an employer, but there is generally no obligation on an employer to *distribute* surplus from an ongoing plan. True "entitlement" to surplus only arises when a plan is wound-up and all the assets of the pension fund must be distributed. Consequently, absent a partial wind up (see below), we ordinarily cannot force a distribution of surplus from the Pension Plan.

(iii) *Surplus Ownership on Partial Plan Wind-Up*

When a pension plan is fully wound-up, the assets and liabilities of a pension fund must be dealt with. In such a case, the issue of surplus ownership becomes fundamentally important. Ownership is determined by looking at the historical plan texts and trust documents for the plan and any of its predecessors (in the case of the Pension Plan, this means reviewing documents dating back to the early 1960s when the Plan was operated by Bendix-Eclipse of Canada) to determine whether surplus belongs to the employees and pensioners, or, alternatively, to the company. Our legal team advises us that, if the Pension Plan were completely wound-up today, there would be a very good argument that *all of* the surplus belongs to the pensioners and beneficiaries. The company, however, does not agree, and any attempt by members to claim 100% surplus ownership would likely result in a long legal dispute.

The same principles and conclusions apply to a partial plan wind-up. As previously stated, as a result of the *Monsanto* case, surplus must be distributed from the Plan in connection with the 1992 partial wind up, to the *rightful beneficiaries*, in accordance with the principles articulated above.

Our legal team has cautioned that there is no certainty of success in this type of litigation claiming any surplus. The proceedings initiated by Honeywell before the Tribunal disputing the ownership of the surplus, and any related Court proceedings, can take years to complete and are very costly. In order to avoid a lengthy and expensive process, with no guarantee of success, we believe that a fair settlement, as set out below, is the best option.

(iv) *Requirements for Payments of Surplus on Partial Plan Wind-Up*

The 43 affected members in the 1992 partial wind up group are subject to the Ontario *Pension Benefits Act*. This legislation requires that in order for surplus to be shared between Plan members and an employer, the employer must apply to the Superintendent and show that at least *two-thirds* of the partial wind-up group consent, in writing, to such distribution.

C. THE SURPLUS DISTRIBUTION PROPOSAL

(i) *The original proposal*

The company made a surplus distribution proposal to the Committee in March, 2006. In its original proposal, the company advised that while the original partial wind-up report showed that the partial wind-up surplus existing in 1992 was \$124,000, this had been updated to \$115,000 due to reflect several changes in Plan membership. The Company also advised that the \$115,000 partial wind up surplus existing in 1992 had grown to approximately \$336,000. As stated, the company asserted that it owned this surplus yet, given the small amount and high costs associated with sharing the surplus between the employees and the company, was prepared to distribute the entire sum among the 43 members of the partial wind up group, after deducting all expenses and costs associated with administering the distribution.

The Committee consulted with its actuarial advisors, Morneau Sobeco, concerning the amount of the surplus which was carried forward from 1992. Morneau Sobeco advised the Committee that it disagreed with the sum proposed by the company to be distributed, and that in its view, the “proper” amount of surplus available for distribution in relation to the partial wind up was much higher.

As a result of the Committee's legal and actuarial advice, the Committee rejected the company's original proposal.

(i) The revised proposal

We are pleased to report that our legal counsel has been successful in renegotiating and improving upon the terms of the original proposal. The most significant aspects of the revised proposal (hereinafter called, the "**Proposal**") are that the parties have agreed on the *amount* of surplus which will be distributed, and the division of that surplus as between the company and the partial wind up group. In particular, the parties agreed on a method of calculating the current estimate of the 1992 partial wind up surplus available for distribution. Using that method produces an estimated current partial wind-up surplus amount of approximately \$1.8 Million as at March 1, 2006 . The actual partial wind-up surplus amount available for distribution, after deducting all parties' administrative, legal and actuarial expenses, will be allocated **two thirds (66.6%) to the partial wind up group**, and one third to the company. As of today's date, we are not entirely certain of what the total administrative, actuarial and legal expenses of the Committee and the company will be, nor what the exact amount of surplus is in the Plan that will be available to be distributed. We estimate that there will be **\$1 Million available for allocation among the 43 members of the partial wind up group**, but please understand that this figure will not be known with any degree of certainty until the surplus is ready for distribution.

Other important aspects of the Proposal are as follows:

- **Individual Surplus Allocation.** Members' individual surplus shares (called an "Individual Surplus Allocation") will be calculated and allocated as among the members (or persons claiming through them) by giving each member a *pro rata* share of the aggregate surplus attributable to the total partial wind-up group, based on the ratio of each of member's normal monthly retirement pension relative to the total normal monthly retirement pensions of all partial wind-up members. For example (and for demonstration purposes only), if a member's monthly pension is equal to \$750, and the total sum of all members' monthly pensions is \$35,000 then that member can expect to receive an Individual Surplus Allocation of $\$750/\$35,000$ of the amount allocated to the partial wind-up group or \$21,430 (assuming that \$1,000,000 will be available for distribution among the partial wind-up group). The enclosed "Estimated Individual Surplus Share" statement included with this package provides an estimation of what you would receive at the time of the surplus distribution (assuming that \$1,000,000 will be available for distribution among the partial wind-up group). However, we stress this is only an estimate and your actual share will not be known until the partial wind up is complete.
- **Form of Payment.** As a general rule, each member will receive his or her Individual Surplus Allocation in cash. Like your regular form of pension income, this means that income taxes on the total sum will be deducted and withheld at source. However, the Committee was successful in negotiating with the company for each member to have the *option* of electing to take your Individual Surplus Allocation as a *benefit enhancement* to your regular pension. This will permit your share to be tax-deferred. The enclosed "Estimated Individual Surplus Share" statement included with this package contains some information relating to this benefit enhancement/tax sheltering

option. You will not be asked to make any election in relation to the form of payment until after the members of the partial wind-up group have voted on this Proposal.

- For a member who previously transferred the commuted value of his or her pension benefit in the Plan out of the Plan into a registered retirement vehicle (such as a locked-in RRSP or LIRA), that member will be able to transfer the lump-sum value of this benefit enhancement into a LIRA or other approved vehicle. For each partial wind-up member who did not previously transfer the commuted value of his or her pension as above, the company provided the pension by way of an annuity purchase from an insurance company. For these members, the election to take your Individual Surplus Allocation as a *benefit enhancement* to your regular pension will permit you to take a monthly increase to your regular annuity pension payments, in lieu of the lump sum cash payment.
- If the Income Tax Act requirements relating to the proposed benefit enhancement as they apply to you prevents your entire Individual Surplus Allocation being used to provide you with a tax-deferred election option, any excess of the Individual Surplus Allocation over the value of the increase will be payable in cash less required income tax withholdings. Also, the ability to receive a benefit enhancement is subject to the receipt of any required approvals by federal and provincial governmental authorities and subject to applicable Income Tax Act limitations.
- **Expenses Deducted from Surplus.** All reasonable legal, actuarial, custodial and other fees, expenses, and disbursements of both Honeywell and the Committee incurred in connection with settling the partial wind up will be paid out of, and deducted from, the surplus prior to it being allocated to the company and the partial wind up group. These expenses will include the planning, negotiation and implementation of the Proposal, advice given to and legal action taken by each party prior to the settlement, including the proceedings initiated before the Superintendent and the Financial Services Tribunal. This term of the settlement **relieves each member of the partial wind up group from having any obligation to directly pay or contribute toward any of the Committee's legal and other costs during this process.** The Committee will not solicit you for any fees, all of which will be recovered from the surplus. Please also be aware that the Committee is made up of volunteers who are **not** compensated for their time and efforts in working towards this surplus settlement.

Once all consents and approvals are obtained, the terms of the Proposal will "fully and finally" resolve all outstanding issues with respect to the surplus existing on the partial wind up of the Plan.

D. THE COMMITTEE'S RECOMMENDATION

Another important term to the Proposal is that **it is conditional on the Committee obtaining a threshold of positive votes and consents from at least 2/3 of the partial wind up group members (or persons claiming through them) indicating that they are in favour of this**

Proposal. In other words, at least 29 members of the group must support the Proposal, or else the company has the right to withdraw from the settlement.

As such, the Committee unanimously recommends the Proposal to everyone in the partial wind up group. The surplus distribution and wind-up can only occur in a timely manner if we receive this threshold of support from the members.

The Committee has had the benefit of legal counsel and actuarial experts while it negotiated the Proposal. Our advisors and the Committee believe that, under the circumstances, the Proposal is very reasonable, very fair and a **very good deal for the members**. The Proposal significantly increases the original share of surplus proposed to be distributed to the members and provides for a tax-deferred manner by which to receive the shares.

The alternative to accepting the Proposal is costly, lengthy and risky litigation, none of which is advisable in this case.

E. INFORMATION SESSION

There will be an information session so that you may attend in person and hear an explanation of the Proposal. The details of the information session are as follows:

Thursday, January 31, 2008 at 6:00 p.m.

Ramada Inn
817 Exeter Rd.
London, Ontario

The Rembrandt Room

The members of the Committee and counsel from Koskie Minsky LLP will be present at this meeting and will describe the Proposal to you and will be available to answer your questions.

We recommend that you attend the information session, if at all possible. If you decide to accept the Proposal, you may send your Authorization and Retainer Form to Koskie Minsky LLP beforehand, or you can deliver it at the session if you prefer to attend.

If you cannot attend, and you have questions about the Proposal, please contact Koskie Minsky using the information at the end of this letter

We look forward to seeing you at the information session, if possible.

F. NEXT STEPS

(i) Supporting the Proposal

Once you have read this Report and the rest of the information in this package and are comfortable with the Proposal, please fill out and sign the enclosed Authorization and Retainer Form. **To support the Proposal, check the "YES" box on the enclosed Authorization and Retainer Form, then sign it before an adult witness, and return it to Koskie Minsky LLP in the enclosed envelope by no later than February 15, 2008.**

By checking "YES" on the Authorization and Retainer Form, you are authorizing Koskie Minsky LLP or the Committee to:

1. act on your behalf;
2. receive all notices and formal documentation relating to the settlement as may be required by a court or pension regulator;
3. sign a Surplus Sharing Agreement (which will implement the terms of the Proposal) on your behalf;
4. release your claims to the surplus in exchange for your share of surplus; and
5. represent you before the Superintendent, the Tribunal, the regulators and/or the courts, as necessary, in order to obtain approval for the Proposal.

As stated previously, even after all the consents from members have been obtained and the Surplus Sharing Agreement signed, the associated request to withdraw the surplus must then be approved by the applicable regulators and courts. Court proceedings will be commenced by the parties in connection with the Proposal in order for the court to approve the settlement.

As a result of the foregoing steps, we anticipate that, even if the Proposal is accepted by the group swiftly, it will likely take a year before any surplus distribution can take place. **We hope to see a distribution in late 2008.**

(ii) The Importance of Voting

We need your vote. Failure to vote is the same as voting "NO".

Again, if the Proposal does not receive the requisite level of support, it may not go forward. We believe very strongly that the set of terms contained in the Proposal is the best settlement available. We encourage you to support the Proposal by checking "YES" on your Authorization and Retainer Form and returning it to Koskie Minsky LLP as soon as possible.

(iii) No Cost to You

There is no direct cost to you for the services of Koskie Minsky LLP or of any advisors retained by the Committee. The company and the Committee have agreed that the legal costs of the Committee and the members of the sharing group who retain Koskie Minsky LLP will be paid from the surplus prior to distribution. The members of the Committee serve as volunteers and receive no compensation.

(iv) Phone Number and Email

If you have any questions about the Proposal, please contact Koskie Minsky LLP at 1-888-502-7456 or at **BHVS**pension@kmlaw.ca. You may also contact Koskie Minsky by facsimile at 416-204-2897, or by writing to us at:

Honeywell ASCa Employee Pension Surplus Committee
c/o Koskie Minsky LLP
20 Queen Street West,
Suite 900, Box 52
Toronto, ON M5H 3R3.

We have also set up a dedicated webpage page which provides additional information, including an electronic copy of this report. You can access this page at www.kmlaw.ca, by clicking on "Pension Surplus" under the heading "Client Links", followed by the Honeywell ASCa tab.

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Once again, please return your completed Authorization and Retainer Form to Koskie Minsky LLP as soon as possible, but in any event no later than February 15, 2008 in the envelope addressed to Koskie Minsky LLP, provided with this Report.

We thank you for your anticipated support. If you have any questions, please feel free to contact our legal team (being our advisors and counsel) or any of the Committee members listed below. We look forward to hearing from you.

Yours sincerely,

Jacqueline Briand and Clive Bowden.
Honeywell ASCa Employee Pension Surplus Committee

Enclosures: Estimated Individual Surplus Share
Authorization and Retainer Form
Postage-paid return envelope