COURT RULING REGARDING CERTAIN CCWIPP INVESTMENTS

The members of the Board of Trustees were charged in June 2006 with regulatory offences under the Ontario Pension Benefits Act and related Regulations. The relevant time period of these alleged offences was February 15, 2002 to December 31, 2003. Those charged were Trustees during that time period. There were 15 charges in total.

On August 21, 2008, four of the 15 charges were withdrawn by the Crown. Charges against one former Trustee, Howard Preston, were withdrawn by the prosecution for health reasons.

A trial was held in the Ontario Court of Justice respecting the remaining 11 charges.

On December 7, 2009, Madam Justice Brown delivered her decision. She acquitted all of the Trustees on 9 of the 11 counts. In particular, all Trustees were acquitted in relation to every allegation that they, or any one of them, had failed to exercise the required care, diligence and skill in the administration and investment of the Pension Fund respecting any of the named investments: Purely Supreme Foods LLC; Case Financial Inc.; South Ocean Development Co. Ltd. and/or South Ocean Golf and Beach Resort; and, British Colonial Development Company Limited and/or the British Colonial Property.

Madam Justice Brown did find that the three charged Investment Committee members had failed to ensure compliance with the quantitative limits set out in the Federal Investment Regulations which are incorporated by reference into the Ontario Pension Benefits Act. She also found that the balance of the Trustees had failed to adequately supervise the Investment Committee in relation to the quantitative limits. Although the Crown had alleged a more general failure of the Trustees to supervise, the trial judge did not adopt the Crown's position that it had proven that the Trustees failed to adequately supervise the Investment Committee generally, or in relation to any of the various investments specified.

As reflected above, the quantitative limits are set out in the Federal Investment Regulations. There were a number of significant legal issues surrounding the quantitative limits. There are certain exemptions that are built into the legislation. The trial Judge disagreed with the Trustees' position that the exemptions applied. She did note, as a potential mitigating factor, that auditors were in place during the relevant period, though they were not tasked with monitoring and ensuring compliance with the quantitative limits. The investments in excess of the quantitative limits were rectified in 2006. As well, there are now compliance systems in place to ensure that the quantitative limits are not inadvertently exceeded in the future.

Since 2006, the Trustees have utilized the services of an independent compliance officer from Buck Consultants to monitor statutory compliance with quantitative limits and other investment requirements. Quarterly compliance reports are reviewed by the Trustees and filed with FSCO. In addition, the CCWIPP external auditor, BDO Dunwoody LLP, provides an annual certification of compliance with the statutory investment limits.

As noted above, the most recent allegation relates to December 2003, six years ago.

There was no allegation that the Trustees intentionally, or knowingly, caused the quantitative limits to be exceeded. Indeed, there was no allegation of intentional or knowing infringment of any provisions of the Act or Regulations.

The Board Of Trustees
Canadian Commercial Workers Industry Pension Plan