

**Sarasota Navistar Retiree Club
Bill Jones Shy Plan Update February, 2019**

Navistar Motion for Hearing

In August, 2018 Navistar filed a Motion for Hearing before Judge Rice asking that the Court become involved in overseeing voluntary settlement discussions for certain identified open disputes such as SBC claims for back-payment of required Shy Supplemental Plan Profit-Sharing, proper accounting for Medicare subsidies and even my disputes with Navistar over Shy Plan eligibility criteria. In addition Navistar wants to amend the current Shy Plan in very significant ways that would require Court (and to some extent class member) approvals. Navistar's Motion and a Declaration from Navistar's (new) General Counsel outline the disputes and proposed amendments.

The filing of the Motion triggered responses from the UAW, UAW counsel, former Shy Class Counsel, the Supplemental Benefit Committee ("SBC") and SBC counsel. Currently there is no person nor any counsel who specifically represents the salaried employees/retirees. These responses identify the many problems associated with what Navistar seeks to do. The Court "process" appears to be the Court seeking memoranda from all sides from time to time to identify the various issues, each party's position on those issues and ultimately, I suppose, agreement or discharge for those issues. The Court has been scheduling in-court settlement sessions which have for the most part been cancelled and rescheduled. Currently I am unable to "see" the various memoranda that have been filed and can only see the mostly scheduling Orders entered by the Court on the electronic Docket. I am studying the alternatives to obtain participation and representation on behalf of the salaried employees/retirees in this process.

Identified Disputes and Proposed Changes

1. **New UAW Retiree Healthcare Plan.** At the heart of Navistar's agenda for the Motion and process is a proposal to collapse the current Shy Base Plan (an employer sponsored and administered retiree healthcare plan structured as a Medicare Advantage Plan) and establish a new Base Plan that would be structured under a currently existing mammoth UAW multi-employer plan first created some years ago at GM (under supervision of Troy Clarke and Walter Borst). The UAW Plan is structured with a single professional (insurance company) administrator, a single pre-funded healthcare coverage plan, a single professional investment administrator and a separate VEBA

Trust for union-represented retirees of each of the auto manufacturers who have joined the plan. The coverage scheme is similar to Shy but the benefits are not as broad or generous as Shy. Premiums and co-pays are similar to Shy (without the supports provided by the SBC). My back-of-the-envelope estimations are that the UAW plan is pre-funded, on a per-participant basis, as the Shy Plan participants would be if Navistar's \$1 billion APBO were paid up in cash. This Navistar proposal is very complex and loaded with potential problems for Shy participants in loss of coverages and increases in costs. It must be negotiated from the perspective of the guaranteed benefits of the current Shy Settlement but those benefits can theoretically be negotiated away by the UAW. I believe that implementation of such a plan would require some sort of approval by the Shy participants.

2. **Profit Sharing.** Has been litigation or arbitration for over 10 years. Current arbitrator has ruled that all disputed years (2001-2014) are in play and that calculation methodology used by Navistar was improper. Navistar basically continues to stall by every means imaginable. \$50 to \$400 million in dispute. Any recoveries will go to Supplemental Benefit Trust account to permit enhanced benefits, premium and co-pay buy-downs
3. **Medicare Subsidies.** Current Shy Base Plan is an employer sponsored Medicare advantage plan for which Navistar is the master administrator and responsible for administrative costs and claims. Medicare pays Navistar huge amounts under the Medicare advantage structure in return for relieving Medicare of its administrative costs. Over the past few years Navistar has received over \$120 million in Medicare subsidies that Navistar took to its corporate profits rather than push through the Shy Plan VEBA Trusts that would have reduced the Plan's costs and thereby the retirees' monthly premiums. Estimated that retirees paid \$26 million too much in premiums. In litigation with Navistar before Judge Rice.
4. **Shy Plan Eligibility** I have pursued claims that an estimated 1,000 salaried employees/retirees have been wrongfully denied their Shy Plan benefits by Navistar with bogus legal arguments.
5. **Calculation of Shy Plan Related Aggregated Post-retirement Benefit Obligations ("APBO").** Present Value of Future Benefit Obligations and Expected Rate of Return. Navistar's main aim is to replace the current Shy Base Plan with a UAW Retiree Healthcare Plan. Navistar want to replace Shy Base Plan (for which it currently has an estimated \$1 billion APBO liability on its Balance Sheet) with a "pre-funded" UAW retiree healthcare plan that would have no future employer liability. In order to let Navistar out of its current estimated Shy funding liability the parties will have to agree on exactly what that aggregate future liability actually is and reduce it by an

expected rate of return on that pre-funded amount. There is very little agreement among Navistar and the Shy participants as to how to calculate those amounts.

- 6. Navistar acknowledges that Health Benefit Program Committee is hampered by the current process to appoint and retain a Neutral Seventh Member.** Over the more than 20 years of operation we have only once successfully mediated a HBPC tie-vote through this process. Probably need to have a Court appointed, permanent Neutral Seventh Member to avoid lock-up created by HBPC tie-votes. As part of the description of the UAW Plan Navistar suggests that the current HBPC would be dissolved and replaced by a new committee that has no Navistar representative since Navistar would have no future financial obligations for the Base Plan after conversion to a UAW Plan.
- 7. Scope of Shy Base Plan Benefits.** Navistar has forever complained about and tried to unilaterally subvert the level and scope of Shy benefits. Through the proposed settlement process Navistar hopes to “modernize” the Shy benefits. It is transparent that Navistar wants reduce the Shy benefits and costs in various ways that should not be agreed to. I am not sure who is going to strenuously protect those benefits
- 8. Collapse of or Alterations to the Shy Supplemental Plan.** The success of and the cost (e.g. profit-sharing) to Navistar of the Shy Supplemental Benefit Plan is a problem for Navistar. It is suggesting that the benefits (medical coverages) that the Supplemental Benefit Plan currently provides could be rolled into the proposed new UAW retiree plan and its \$500 million VEBA Trust could be “contributed” to the new Base Plan to reduce the total needed to fund the buy-down of Navistar’s APBO. Anything like that cannot be permitted by the SBC as trustees of the Supplemental Trust. Navistar is forever locked into having to make required contributions under the profits sharing provisions and the SBC is forever locked into spending Trust assets only on benefits for the Plan participants. Navistar wants to “settle” the past profit sharing obligations and to create a new (“lower”) profit sharing obligation; there is no legal basis that would allow the SBC to do either. I am confident that the SBC will protect our rights and benefits.

Logistical Issues

- 1. Shy class and legal representation.** The former legal representation of the Shy Class for the 1993 negotiation and documentation of the Shy Settlement and Shy Plan correctly maintain that they no longer represent the class or the Shy participants. They are claiming that the Court must certify a new Shy

class and then appoint class counsel. This is a significant ordeal but basically little can occur under Navistar's Motion until this is sorted out, i.e. who is going to pay for class counsel. Last week Navistar filed a document that seeks Court approval for Navistar entering into various agreements to pay for opposing counsel fees. Question: who represents the salaried employees/retirees/Shy participants? The UAW retiree healthcare plan covers only union-represented employees and retirees. Any attempt now to toss out Navistar salaried employees/retirees would be a disaster but it is not yet apparent if salaried employees and retirees will have legal representation in these proceedings.

- 2. How will we know what is going on, being proposed, being argued, ratified et cetera?** (I have no good idea at this point but I will be "working" on that) Last week at the last hearing Judge Rice asked the parties to consider adding some actual retirees to the process...I have notified Troy and Curt Kramer that I would like to be considered as a retiree to represent the salaried retirees.