



No. L021149
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PETER GREGG, GEORGE SCHIEVEN, PETER WOOLLEY,
JOHN LANGERGRABER, TERRY BARKER, JAMES
GILCHRIST

PLAINTIFFS

AND:

FREIGHTLINER LTD., DOING BUSINESS AS WESTERN
STAR TRUCKS, TRUST COMPANY A, THE CANADA
TRUST COMPANY AND CIBC MELLON TRUST COMPANY

DEFENDANTS

Brought Pursuant to the *Class Proceedings Act*

ORDER

BEFORE)	THE HONOURABLE MADAM)	WEDNESDAY, THE 16 TH DAY OF
)	JUSTICE BALLANCE)	MARCH, 2011
))	
))	

This matter coming on for hearing at a Case Management Conference at Vancouver, British Columbia on March 16, 2011 and on hearing Jennifer Francis, counsel for the Defendant Freightliner Ltd. ("Freightliner") and Dan Gleadle, counsel for the Plaintiffs :

THIS COURT ORDERS that:

1. A hearing be set for July 6 to 8, 2011 (the "Hearing") for a determination of:

- (a) whether, by reason of a lack of notice, the Certification Order dated January 12, 2005 should be amended to extend the time for certain individuals who are not residents of British Columbia to opt into this proceeding; and/or
- (b) whether the Order of the Court dated October 31, 2008 approving the settlement in this proceeding should be amended to exclude from the definition of Non-BC Failure to Opt Ins any individuals permitted to opt in to this proceeding as a result of an amendment to the Certification Order and to expand the Distribution Group accordingly.

2. The following process and timeline be set in respect of the Hearing:

- (a) The defendant Freightliner shall provide copies of Appendix "A" to this Order (the "Notice"), electronically or by mail, to the individuals set out in Appendix "B" (collectively, the "Individual Complainants"), each of whom has made a complaint or inquiry regarding his or her exclusion from the Distribution Group as defined in the Order of this Court dated October 31, 2008.
- (b) Freightliner shall cause Appendix "A" to be mailed or transmitted to the Individual Complainants on or before March 21, 2011.
- (c) TevlinGleadle Employment Law Strategies ("TevlinGleadle") shall forthwith publish a notice on their website in the form provided in Appendix "C".
- (d) TevlinGleadle will promptly provide a copy of Appendix "A" to any individual who requests information about how to file a complaint for consideration by the court.
- (e) The Individual Complainants or any other individual who:
 - (i) as at October 1, 2001, was a member of the Western Star Pension Plan for Non-Bargaining Employees, including pensioners, deferred vested pension plan members, immediate and deferred annuity recipients or active employees with accrued pension benefits; and
 - (ii) in the period January 12, 2005 to June, 2006 was not resident in British Columbia and failed to opt into this proceeding in accordance with paragraph 10 of the Certification Order

shall have liberty to provide an affidavit regarding his or her exclusion from the Distribution Group for consideration by the Court at the Hearing. Such affidavits shall be delivered to counsel for Freightliner and counsel for the plaintiffs on or before April 21, 2011.


- (f) An individual who provides an affidavit in accordance with paragraph 2(d) above shall be a Participating Complainant for purposes of this Order.

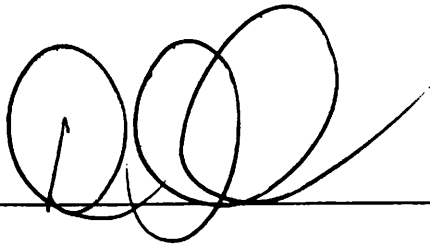
- (g) The defendants shall file and serve on the parties of record and the Participating Complainants a Notice of Application and copies of any supporting material to be relied on by the defendants in relation to the Hearing on or before May 12, 2011.
 - (h) On or before May 12, 2011, the defendant Freightliner shall file and serve on the parties of record and the Participating Complainants an Affidavit describing, in such detail as is available to Freightliner after reasonable inquiry:
 - (i) the steps it took to comply with the notice requirements of the Certification Order in respect of each Participating Complainant; and
 - (ii) whether, with regard to each Participating Claimant, notice was given at the individual's most recent residential address known to Freightliner.
 - (i) The plaintiffs shall file and serve on all parties of record and the Participating Complainants an Application Response and any copies of any supporting material to be relied on by the plaintiffs in relation to the Hearing on or before May 20, 2011.
 - (j) The Participating Complainants shall have liberty to file an Application Response or other form of written submission for consideration by the Court at the Hearing. The Participating Complainants shall cause such response or submission to be delivered to counsel for Freightliner and counsel for the plaintiffs on or before June 10, 2011.
 - (k) A party of record may require a Participating Complainant to make himself or herself available for cross-examination on an Affidavit provided pursuant to this Order.
 - (l) The parties of record and each Participating Complainant shall have leave to address the Court at the Hearing.
3. Leave is granted to any affected party to apply for such other directions in respect of the conduct of the Hearing as may be required from time to time.

The following parties approve the form of this Order:

APPROVALS ATTACHED

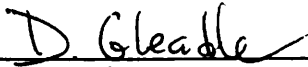


By The Court

REGISTRAR

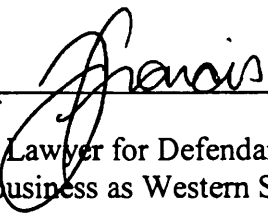


Signature of

Party Lawyer for the Plaintiffs, Peter Gregg, George Schieven, Peter Woolley, John Langergraber, Terry Barker, James Gilchrist

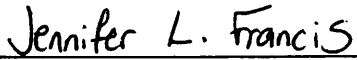


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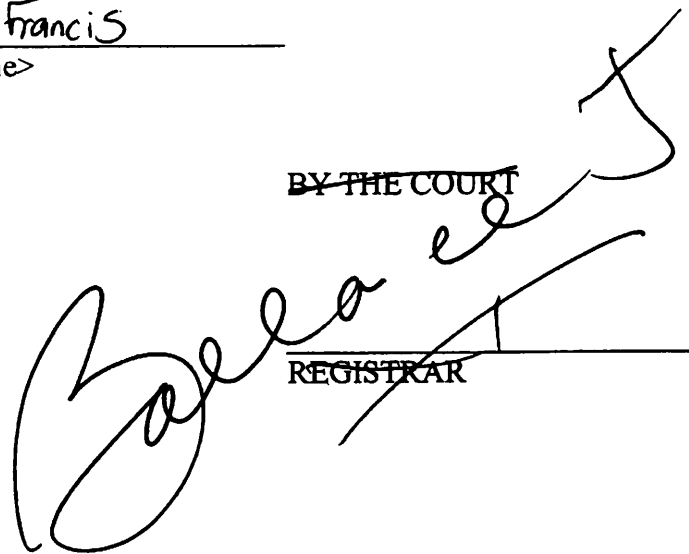
Signature of

Party Lawyer for Defendant, Freightliner Ltd., doing business as Western Star Trucks



<Print Name>

~~BY THE COURT~~



REGISTRAR

APPENDIX "A"

Letter to Individual Complainants

**Re: Peter Gregg et al v. Freightliner Ltd. et al
S.C.B.C. Action No. L021149 (Vancouver Registry)
Pension Class Action**

This letter is directed to you, pursuant to an Order of the Supreme Court of British Columbia, dated March 16, 2011.

As you may be aware, on April 16, 2002, a claim was commenced regarding the defined benefits pension plan for non-bargaining employees of Western Star Trucks Ltd. The claim was certified as a class proceeding pursuant to a certification order dated January 12, 2005. Subsequently, the claim was settled by the payment of \$5.75 million (the "Settlement Amount"). The settlement was approved by court order dated October 31, 2008.

The order approving the settlement provides that the Settlement Amount will be distributed amongst members of the class who were, as at October 1, 2001, members of the Western Star Pension Plan for Non-Bargaining Employees, including pensioners, deferred vested pension plan members, immediate and deferred annuity recipients, or active employees with accrued pension benefits (the "Distribution Group").

Thus, entitlement to share in the Settlement Amount is dependent on an individual coming within the definition of Distribution Group noted above. To qualify, you must have been:

- (a) a member of the Western Star Pension Plan for Non-Bargaining Employees as at October 1, 2001 (this includes pensioners, deferred vested pension plan members, immediate and deferred annuity recipients, or active employees with accrued pension benefits); and
- (b) a member of the class.

For individuals who were not residents of British Columbia at the time of the certification order in January, 2005, (the "Certification Order") it was necessary to opt-in to the class by completing an Opt-In Notice in order to become a member of the class. Non-residents of British Columbia who failed to complete and return an Opt-In Notice are not considered to be members of the class.

You are receiving this letter because you made a complaint or inquiry regarding your exclusion from the distribution of the Settlement Amount. A hearing has been directed to consider complaints from non-BC residents who claim that they did not receive notice of the requirement to opt-in to the proceeding in accordance with the requirements of the Certification Order.

Only complaints from members of the Western Star Pension Plan as at October 1, 2001 will be considered.

The hearing is scheduled for July 6 to 8, 2011.

At the hearing, the Court will assess individual complaints regarding notice based on evidence, to be presented in affidavit form. An affidavit is a sworn statement. If you wish the Court to consider your individual circumstances, you **must** complete an affidavit and deliver it to the writer and TevlinGleadle Employment Law Strategies, care of Dan Gleadle **on or before April 21, 2011.**

A sample affidavit, showing the form your affidavit should take is enclosed with this letter. A guide to preparing affidavits is available on the BC Supreme Court website at the following address:

<http://www.supremecourtbc.ca/sites/default/files/web/A-Guide-to-Preparing-Your-Affidavit.pdf>

While you may address whatever facts you consider relevant in your affidavit, the Court will be interested in the following matters:

- (a) your status as a member of the West Star Pension Plan for Non-Bargaining Employees as at October 1, 2001;
- (b) your actual place of residence at all times during the period from January 12, 2005 to June, 2006, including proof of residency in some form;
- (c) any notice you may have had of the class proceeding, whether as a result of receiving notice by mail or otherwise (newspaper advertisement, information or discussions from co-worker, review of the TevlinGleadle website, communications from Freightliner, etc);
- (d) any discussions or communications with Freightliner representatives or co-workers as to the advisability of participating in the class proceeding while still working for Freightliner;
- (e) if aware of the class proceeding, your knowledge of the requirement for non-BC residents to complete and return an Opt-In Notice;
- (f) your evidence as to whether you would have elected to opt-in to the class in the period between January 12, 2005 and June, 2006.

In addition to your affidavit, the current class and the defendants will be provided with an opportunity to file submissions and evidence. A copy of these materials will be provided to you only if you choose to pursue this matter by filing an affidavit by April 21, 2011.

In addition to your evidence, you may wish to file written submissions in support of your position or in answer to the position of the plaintiffs or defendants. If you wish to do this, you must ensure delivery of your submissions to the writer and to counsel for the plaintiffs **on or before June 10, 2011.**

If you file an affidavit, counsel for the plaintiffs or defendants may wish to cross-examine you on your affidavit should they consider it appropriate to do so. You may in that event be required to attend in Vancouver, B.C. to answer questions in Court, under oath, relating to the matters dealt with in your affidavit or otherwise relevant to the issues to be determined.

The hearing will proceed on the basis of all of the evidence that has been filed. In addition, counsel for the plaintiffs and the defendants may make oral submissions to the court with respect to the evidence and the applicable legal principles. This option is also open to you. You can attend in person or by representative or you may retain a lawyer to attend on your behalf.

Please do not contact the writer in respect of inquiries in this matter, other than purely administrative matters. The writer is counsel for the defendant and cannot give you legal advice with respect to the matters raised by this letter. If you require assistance in understanding the issues raised in this letter or in completing your affidavit, you should consult a lawyer.

Copies of the various orders referred to in this letter and other information regarding this proceeding is available on the website maintained by class counsel in this matter, TevlinGleadle Employment Law Strategies. You can view the website at:

<http://www.tevlingleadle.com/class-actions/western-star-pension-class-action.html>

The address of plaintiffs solicitors is:

TevlinGleadle Employment Law Strategies
700 – 1006 Beach Avenue
Vancouver, BC
V6E 1T7

The address of the solicitor for the defendant Freightliner is:

Fasken Martineau DuMoulin
2900-550 Burrard Street
Vancouver, British Columbia
V6C 0A3

Appendix "B"

Individual Complainants

1. Paul Foster
2. Len Eburne
3. Wendy Killin
4. Scott Killin
5. Michael Edge-Partington
6. Richard Oliver
7. Anthony Bliss
8. Frank Day
9. Grant McGinn
10. Eric Schredl
11. Bob Mura
12. John Box
13. Brian McCool
14. Frank Schauble
15. Daniel Goulet

Appendix "C"

Form of notice on Tevlin Gleadle website

On April 16, 2002, a claim was commenced regarding the defined benefits pension plan for non-bargaining employees of Western Star Trucks Ltd. The claim was certified as a class proceeding pursuant to a certification order dated January 12, 2005. Subsequently, the claim was settled by the payment of \$5.75 million (the "Settlement Amount"). The settlement was approved by court order dated October 31, 2008.

The order approving the settlement provides that the Settlement Amount will be distributed amongst members of the class who were, as at October 1, 2001, members of the Western Star Pension Plan for Non-Bargaining Employees, including pensioners, deferred vested pension plan members, immediate and deferred annuity recipients, or active employees with accrued pension benefits (the "Distribution Group").

Thus, entitlement to share in the Settlement Amount is dependent on an individual coming within the definition of Distribution Group noted above. To qualify, you must have been:

- (g) a member of the Western Star Pension Plan for Non-Bargaining Employees as at October 1, 2001 (this includes pensioners, deferred vested pension plan members, immediate and deferred annuity recipients, or active employees with accrued pension benefits); and
- (h) a member of the class.

For individuals who were not residents of British Columbia at the time of the certification order in January, 2005, it was necessary to opt-in to the class by completing and delivering an Opt-In Notice before June, 2006. Non-residents of British Columbia who failed to complete and deliver an Opt-In Notice are not considered to be members of the class.

A number of individuals made inquiries and/or provided notice of complaint regarding their exclusion from the distribution of the Settlement Amount on the basis that they did not receive notice advising them of the requirement to opt-in. A hearing has been scheduled to consider these and other similar complaints.

The hearing is scheduled for July 6 to 8, 2011. At the hearing, the Court will assess individual complaints regarding deficient notice. Complaints will be considered only if the complainant:

- (a) as at October 1, 2001, was a member of the Western Star Pension Plan for Non-Bargaining Employees, including pensioners, deferred vested pension plan members, immediate and deferred annuity recipients or active employees with accrued pension benefits; and
- (b) in the period January 12, 2005 to June, 2006 was not resident in British Columbia and failed to opt into this proceeding.

If you wish to file a complaint, you must do so by **April 21, 2011**.

For more information on how to file a complaint, please contact TevlinGleadle to receive an information package. You should contact TevlinGleadle by emailing Dan Gleadle at dgleadle@tevlingleadle.com.

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TRUST COMPANY

DEFENDANTS

ORDER

FASKEN MARTINEAU DuMOULIN LLP

Barristers & Solicitors
2900 - 550 Burrard Street
Vancouver, B.C., V6C 0A3
604 631 3131

Counsel: Jennifer Francis
Matter No: 258255.00010

DYE & DURHAM CORPORATION

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