

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

BRIAN CHAPMAN

Plaintiff

and

BENEFIT PLAN ADMINISTRATORS LIMITED, DAVID N. HARVEY, ANTHONY F. COOPER, BBC ACTUARIAL SERVICES LIMITED, WELTON BEAUCHAMP ATLANTIC INC., PLENUS CONSULTANTS, DOUGLAS TAYLOR, TOM BALDWIN, MICHAEL EDWARDS, DAVID FLETT, JOHN JANSEN, ROBERT MUNRO, PATRICK MURDOCK, DAVID PHILP, BRIAN TAYLOR, MICHAEL ASHBY and FRANK BIEKX

Defendants

In the matter of a Proceeding Instituted Pursuant to *The Class Proceedings Act*, 1992, S.O. 1992, c.6

**NOTICE OF CERTIFICATION AND NOTICE OF PENDING MOTION
FOR PARTIAL SETTLEMENT APPROVAL**

TO: All active members, terminated, fully and partly vested members, retired members and beneficiaries or annuitants in receipt of monthly benefits of the Eastern Canada Car Carriers Pension Plan (“ECCCPP”) except all such persons serving as trustees of the ECCCPP at any time from January 1, 2000 to March 13, 2006.

RE: The Eastern Canada Car Carriers Pension Plan

This Notice

This Notice is sent to you pursuant to an Order made by the Honourable Justice Conway of the Ontario Superior Court of Justice on June 12, 2014.

The Notice is intended to advise you of certain rights you have in respect of the above lawsuit (the “Chapman action”). This Notice addresses the following questions:

1. What is the lawsuit about?
2. Am I included in the lawsuit?
3. How do I “Opt Out” of the lawsuit if I do not wish to be included in same?
4. How will the proposed settlement of the lawsuit against the defendants Benefit Plan Administrators Limited and David N. Harvey be given effect? Do I have a right to object to the settlement?
5. How will the lawsuit proceed against the remaining defendants?
6. How will the lawyers be paid? Do I have a right to object to the amount the lawyers claim as fees?

What is the Lawsuit About?

This lawsuit is brought by Brian Chapman, a long time active Member and now former active Member of the ECCCPP as representative plaintiff on behalf of all active members, terminated, fully and partly vested members, retired members and beneficiaries or annuitants in receipt of monthly benefits of the ECCCPP except all such persons serving as trustees of the ECCCPP at any time from January 1, 2000 to March 13, 2006.

The lawsuit alleges that the ECCCPP experienced a significant decline in its solvency ratio over the years from January 1, 2000 – March 13, 2006. On or about August 13, 2007 the Board of Trustees of the ECCCPP announced reductions in service benefits, accrued benefits, bridge benefits and pensions for retired members in order to address the financial deterioration of the Plan. The proposed reductions were approved by the Office

of the Superintendent of Financial Institutions and instituted effective on or about January 1, 2008.

The lawsuit alleges that the financial deterioration of the Plan was due in part to the negligence and/or breach of trust of the defendants in respect of the practice of granting consent to early retirement benefits to all eligible Members who applied for same over the years from January 1, 2000 to March 13, 2006. The alleged negligence and/or breach of trust of the defendants is said to have caused or contributed to the extent of the reduction in benefits and service credits required to address the financial position of the Plan. The defendants deny the allegations against them which have yet to be proven in court.

The parties sought to be held responsible for the effect on the solvency of the Plan by reason of this practice of granting consent to early retirement benefits are as follows:

- (i) Anthony Cooper, who is alleged to have been the Consulting Actuary to the Plan from in or about 1995 until early 2004 and his employer BBC Actuarial Services Limited.
- (ii) Actuary Douglas Taylor of Plenus Consultants who is alleged to have provided advice to the Board of Trustees and/or acted as Consulting Actuary to the Plan from April 29, 2004 until some time in 2006 and his employer Plenus Consultants or Welton Beauchamp Atlantic Inc.
- (iii) The defendants Baldwin, Edwards, Flett, Jansen, Munro, Murdock, Philp, Taylor, Ashby and Biekx who are alleged to have been among the Trustees of the Plan from time to time over the years from January 1, 2000 – March 13, 2006.
- (iv) Benefit Plan Administrators Limited (“BPAL”) who is alleged to have functioned as the administrator of the ECCCPP from in or about 1985 until 2007. David N. Harvey is alleged to have been the individual at BPAL effectively serving in the role of administrator.

The specific allegations against each of these defendants are set out in the Amended Fresh Statement of Claim, a copy of which will be available for review on the Adair Barristers LLP website at adairbarristers.com on or before July 2, 2014.

The lawsuit seeks some \$14.5 million in damages for the alleged negligence and/or breach of trust of the defendants in respect of the practice of granting consent to early retirement. The claim against each defendant is for that proportion of the damages if any

agreed upon or assessed by the court equal to any apportionment of negligence as against that defendant.

The plaintiff will propose that any damages awarded against the defendants be payable to the Eastern Canada Car Carriers Pension Plan to be divided between that Plan and the Canadian Auto Carhaulers and Logistics Plan in the proportion agreed upon between those two Plans and as approved by the Superintendent of the Office of Financial Institutions.

Who is Included in the Lawsuit?

The *Class Proceedings Act*, 1992 (Ontario) provides in part that the plaintiff(s) in an action such as this must move for certification of the action as a class proceeding in order for the action to go forward as such. Brian Chapman brought a motion for Certification returnable before the Honourable Justice Conway of the Ontario Superior Court of Justice in June 2013. Justice Conway made a Certification Order in respect of the action on June 27, 2013.

The Certification Order appoints Brian Chapman as the Representative Plaintiff. His responsibilities as such are generally to cause the action to be properly prosecuted on behalf of all Class Members.

The Certification Order establishes the “Class” of persons on whose behalf this action is brought. That Class of persons is defined as follows:

All active members, terminated, fully and partly vested members, retired members and beneficiaries or annuitants in receipt of monthly benefits of the Eastern Canada Car Carriers Pension Plan (“ECCCPP”) except all such persons serving as trustees of the ECCCPP at any time from January 1, 2000 to March 13, 2006.

You are a member of the Class and are automatically included in the action. You do not have to do anything to “join” the class action. If you remain in the class action, you will be bound by any decision of the court in this proceeding whether favourable or not to the Class.

How do I “Opt Out” of the Lawsuit?

The *Class Proceedings Act*, 1992 provides that if you do not wish to be included in the class action, you may “opt out”. If you opt out of the class action, you will not be bound by any decision of the court in this proceeding nor will you have the right to participate in any settlement. You will have the right if you wish to opt out to bring your own action for the relief claimed if you choose to do so.

If you do not wish to be included in the class action, you must fill out the Opt-Out Coupon on p.8 of this Notice and send it to Adair Barristers LLP by registered mail at the address shown on the Opt-Out Coupon or by facsimile to the attention of Geoffrey Adair at 647-689-2059. The deadline for opting out is August 31, 2014. If your written request to opt out is not received by that date, you will remain a member of the class.

The Proposed Partial Settlement of the Lawsuit

Brian Chapman and the defendants Benefit Plan Administrators Limited and David N. Harvey entered into a Class Action Settlement Agreement (the “Settlement Agreement”) on or about February 14, 2014 settling the within action as against those two defendants only. The Settlement Agreement requires Benefit Plan Administrators Limited and David N. Harvey to pay the sum of \$1.1 million all-inclusive for the benefit of all class members as directed by the Ontario Superior Court of Justice. A copy of the Settlement Agreement may be viewed on the website of Adair Barristers LLP on or after July 1, 2014.

The Settlement Agreement is subject to the approval of a judge of the Ontario Superior Court of Justice. The Representative Plaintiff Brian Chapman will be bringing a motion for court approval of the settlement on September 9, 2014 at 10:00 a.m. before the Honourable Justice Conway at the courthouse in the City of Toronto.

You have the right to attend on and participate in that motion and object to the proposed settlement if you so desire.

What Happens to the Remainder of the Action?

Brian Chapman intends to continue to prosecute the action against the remaining defendants.

Chapman anticipates that a judge of the Superior Court of Ontario will hear and determine the common issues specified in the Certification Order at a trial on a date to be set by the Superior Court of Justice.

The resolution of the common issues may result in all issues in this class action being determined with finality. Alternatively, there may be individual issues left to resolve at the conclusion of the common issues trial. Either way Notice of the result of the common issues trial and any remaining individual issues will be provided to you.

Legal Representation and Costs

The Representative Plaintiff, Brian Chapman, has retained Geoffrey Adair of the law firm of Adair Barristers LLP (“Class Counsel”) to represent the Class Members in these proceedings.

Inquiries concerning this proceeding should be directed to Mr. Adair at:

ADAIR BARRISTERS LLP
Commerce Court North
25 King Street West, Suite 1101
P.O. Box 127, Commerce Court Postal Station
Toronto ON M5L 1E2
Attention: Geoffrey Adair
Tel: 416.499.9940
Fax: 647.689.2059
gadair@adairbarristers.com

Adair Barristers LLP has entered into a Contingent Fee Agreement with Brian Chapman whereby the legal fees and disbursements are payable to Adair Barristers LLP only in the event and out of any proceeds recovered by settlement of the class action or judgment. You are not responsible for any payment of legal fees or disbursements to Class

Counsel nor are you responsible for the payment of any costs that may be awarded against Mr. Chapman.

The Settlement Agreement provides that the \$1.1 million settlement with the defendants Benefit Plan Administrators Limited and David N. Harvey is inclusive of costs.

Class Counsel intends to request payment of the sum of up to \$275,000 be paid to Adair Barristers LLP out of the settlement funds of \$1.1 million, on account of their fees, disbursements and applicable taxes.

This request is subject to the approval of this Honourable Court. Adair Barristers LLP intends to make the request on the same date, time and place as they seek approval of the settlement by Justice Conway on September 9, 2014 at 10:00 a.m. at the courthouse in the City of Toronto. You have the right to attend at that time and object to part or all of the payment of legal fees, disbursements and applicable taxes to counsel.

You may ascertain the exact location of the court house in Toronto where the motions will be heard for approval of the settlement and the approval of counsel fees by calling Adair Barristers LLP at 416-499-9940 prior to the hearing date.

Date: June 12, 2014

ADAIR BARRISTERS LLP

Commerce Court North
25 King Street West, Suite 1101
P.O. Box 127, Commerce Court Postal Station
Toronto ON M5L 1E2

Geoffrey D. E. Adair, Q.C. (11419F)

Tel: 416.499.9940

Fax: 647.689.2059

Lawyers for the Plaintiff

BRIAN CHAPMAN v. BENEFIT PLAN ADMINISTRATORS LIMITED et al.

OPT OUT COUPON

TO: ADAIR BARRISTERS LLP
Commerce Court North
25 King Street West, Suite 1101
P.O. Box 127, Commerce Court Postal Station
Toronto ON M5L 1E2

Attention: Geoffrey D. E. Adair, Q.C.
Tel: 416.499.9940
Fax: 647.689.2059

This Opt Out Coupon only needs to be completed if you wish to opt out of the Class Action.

To opt out please sign this coupon below and send it to Adair Barristers LLP by registered mail or facsimile so that it is received on or before August 31, 2014.

Name of Class Member (please print)

Signature of Class Member

BRIAN CHAPMAN
Plaintiff

-and- BENEFIT PLAN ADMINISTRATORS LIMITED et al.
Defendants

Court File No. 08-CV-346438-CP

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PROCEEDING COMMENCED AT
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NOTICE OF PENDING MOTION FOR PARTIAL
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Fax: 647.689.2059

Lawyers for the Plaintiff

RCP-E 4C (July 1, 2007)