

## **PRE-APPROVAL NOTICE**

**Proposed settlement of class proceeding known as *Berry v. Pulley***

**(LAWSUIT BY AIR ONTARIO PILOTS OVER THE  
NON-IMPLEMENTATION OF THE PICHER SENIORITY AWARD)**

PLEASE READ THIS NOTICE CAREFULLY. A SETTLEMENT PROPOSAL MAY  
AFFECT YOUR LEGAL RIGHTS.

**You should read this notice** if you are a pilot who was employed by either Air Ontario or Air Canada, including pilots on furlough, and who was a member of CALPA during the period March 28, 1995 (the date of arbitrator Picher's first Award) to November 14, 1995 (the date on which ACPA was certified as the new bargaining agent for Air Canada pilots).

### **Why this notice has been published**

YOU ARE GIVEN NOTICE because you are either a member of the Plaintiff class or may be a member of Defendant subclass 7 in this class proceeding.

The Representative Defendants for subclass 7 have accepted a settlement offer made by the Representative Plaintiffs. Settlement is conditional upon court approval.

*You are a member of Defendant subclass 7 if you are a Defendant in this action and did not sign the pilot solidarity document (circulated April and May 1995) and you did not communicate with Air Canada management prior to November 8, 1995 for the purpose of preventing implementation of a merged seniority list between Air Canada pilots and the Connector pilots.*

Settlement is conditional upon court approval. There will be a court hearing to determine whether the court approves the Settlement. If the Settlement is approved by the Court, all members of the Plaintiff class and all members of Defendant subclass 7 *who satisfy the terms of the Settlement* will be bound by its terms.

A summary of the settlement and how you may participate in the approval hearing, if you choose to do so, is described below.

### **Summary of Settlement**

The Settlement, if approved by the Court, will dismiss the claim as against each individual member of Defendant subclass 7 who provides a sworn Statutory Declaration that states:

- 1) He/she did not sign the pilot solidarity document; and

- 2) He/she did not communicate with Air Canada management prior to November 8, 1995 for the purpose of preventing implementation of a merged seniority list between Air Canada pilots and the Connector pilots.

If the settlement is approved and if you are a member of Defendant subclass 7 and sign the Statutory Declaration, the action against you will be dismissed. You will receive a further notice if the court approves the settlement.

If you are the estate trustee, administrator or attorney of a Defendant subclass 7 member that is deceased or under disability you may provide the Statutory Declaration based on your own personal knowledge, information or belief. A copy of the standard Statutory Declaration is attached at Schedule 'A'. A copy of the Statutory Declaration for subclass members either deceased or under disability is attached at Schedule 'B'. You will receive further information about completing the Statutory Declarations if the court approves the settlement.

### **How to participate in the Court Hearing – Plaintiff Class Members**

If you are a member of the Plaintiff Class, you will be bound by any Order of the Court approving the settlement. If you support the proposed settlement of the claim as against the members of Defendant subclass 7, as defined above, then you do not have to do anything (but you may attend the Court hearing).

If you are a member of the Plaintiff class and you oppose the proposed settlement of the claim as against the members of Defendant subclass 7, you may do the following:

You may hire your own lawyer to represent you at the hearing. (If you do, you are responsible for paying your own lawyer's fees and expenses.)

To participate in the Court hearing, you or your lawyer should:

- Prepare a written Notice of Objection that sets out:
  - the name, address, telephone number of you and your lawyer, if any; and
  - a written statement of objection to the settlement approval. (The statement of objection should set out the specific reasons for your objection, including any legal authority you wish to bring to the Court's attention and any evidence you wish to introduce in support of your objection)
- At least 10 days before the hearing date:
  - Deliver the Notice of Objection by fax, courier, mail or in person to Plaintiff Class Counsel as indicated below;

If you file a Notice of Objection, you or your lawyer may also appear at the Court hearing and address the Court.

If you require legal advice in relation to the Settlement, you may contact Plaintiffs' Class Counsel as indicated below.

**How to participate in the Court Hearing – Defendant Subclass 7 Members**

If you are a member of Defendant subclass 7, as defined above, and you support of the Settlement you do not need to do anything (but you may attend the Court hearing.) If you oppose the Settlement, you may do the following:

You may hire your own lawyer to represent you at the hearing. (If you do, you are responsible for paying your own lawyer's fees and expenses.)

To participate in the Court hearing, you or your lawyer should:

- Prepare a written Notice of Objection Appearance that sets out:
  - the name, address, telephone number of you and your lawyer; and
  - a written statement of objection to the Settlement approval. (The statement of objection should set out the specific reasons for your objection, including any legal authority you wish to bring to the Court's attention and any evidence you wish to introduce in support of your objection.);
- At least 10 days before the hearing date:
  - Deliver these documents by fax, courier, mail or in person to Defendant Class Counsel as indicated below.

If you file a Notice of Objection, you or your lawyer may also appear at the Court hearing and address the Court.

If you require legal advice in relation to the Settlement, you may contact Defendants' Class Counsel as indicated below.

**Location and time of hearing**

The Court hearing to decide whether to approve the Settlement will be held in the Ontario Superior Court of Justice on **May 20<sup>th</sup>, 2011, at 10:00 a.m. at Osgoode Hall in Courtroom #4, 130 Queen St. West, Toronto, Ontario, M5H 2N5.**

The addresses for delivery of any Notices of Objection and the addresses for contacting Class Counsel to obtain advice or full details of the Settlement is as follows:

<b>If you are a member of the Plaintiff Class:</b>	<b>If you are a member of the Defendant Class:</b>
COHEN HIGHLEY LLP Barristers and Solicitors 255 Queens Avenue, 11th Floor London, Ontario	NELLIGAN O'BRIEN PAYNE LLP Lawyers/Patent and Trade-Mark Agents 1500 – 50 O'Connor Ottawa, Ontario

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**SCHEDULE 'A'**

In the matter of *Berry et al. v. Pulley et al.* (Court File No. 97-CV-135179 CP),

I \_\_\_\_\_ [insert name], of the \_\_\_\_\_  
[municipality, etc.], a member of Subclass 7 do solemnly declare that:

1. I did not sign the pilot solidarity document marked as Exhibit 27 to the examination for discovery of James Griffith.
2. I did not communicate with Air Canada management prior to November 8, 1995 for the purpose of preventing implementation of a merged seniority list between the Air Canada pilots and the Connector pilots.

And I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me at the \_\_\_\_\_ [municipality, etc.] on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
A commissioner, etc.

\_\_\_\_\_  
(Signature)

**SCHEDULE 'B'**

In the matter of *Berry et al. v. Pulley et al.* (Court File No. 97-CV-135179 CP),

I \_\_\_\_\_ [insert name], of the \_\_\_\_\_  
[municipality, etc.], as \_\_\_\_\_ [estate trustee, attorney, etc.] in  
respect of \_\_\_\_\_ [name of member of subclass 7] do solemnly  
declare that:

1. To the best of my knowledge, information and belief, \_\_\_\_\_  
[name of subclass 7 member] did not sign the pilot solidarity document marked as  
Exhibit 27 to the examination for discovery of James Griffith.

2. To the best of my knowledge, information and belief, \_\_\_\_\_  
[name of subclass 7 member] did not communicate with Air Canada management prior to  
November 8, 1995 for the purpose of preventing implementation of a merged seniority  
list between the Air Canada pilots and the Connector pilots.

And I make this solemn Declaration conscientiously believing it to be true, and knowing that it is  
of the same force and effect as if made under oath.

Declared before me at the [municipality, etc.] on this the [day] of [month], [year].

Declared before me at the \_\_\_\_\_ [municipality, etc.] on this the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
A commissioner, etc.

\_\_\_\_\_  
(Signature)