

Court File No.: 97-CV-135179 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. ) ON FRIDAY, THE 20<sup>th</sup>  
JUSTICE PERELL ) DAY OF MAY, 2011

A Proceeding Instituted Pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6

B E T W E E N:

PATRICK BERRY, JAMES DELUCE,  
JEFFREY KARELSEN, ROBERT JAMES SIMERSON  
and ERNEST ZURKAN

Plaintiffs

- and -

CHRIS PULLEY, TOM FRASER,  
JAMES GRIFFITH, PETER WALLACE, GEORGE COCKBURN,  
DENIS BELHUMEUR, GREG MUTCHLER,  
GARY DEAN, YVES FILION, HOWARD MALONE,  
KEVIN VAILLANT and GORDON GRIEG

Defendants

- and -

KENT HARDISTY

Third Party

**JUDGMENT OF APPROVAL**

THIS MOTION for an Order approving a settlement herein, and granting certain relief, was heard this day at Courtroom 4, Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

UPON READING the materials filed and hearing the submissions of counsel for the parties concerning the Plaintiffs' claims against the members of Defendant Subclass 7 and the proposed settlement of those claims:

1. **THIS COURT DECLARES** that the Settlement is fair, reasonable, and in the best interests of the members of the Plaintiff Class and of the members of Defendant Subclass 7, and orders that the Settlement is hereby approved.
  
2. **THIS COURT DECLARES** that the Settlement is binding upon the parties and upon all members of the Plaintiff Class and of Defendant Subclass 7, ~~and orders the parties and all members of the Plaintiff Class and of Defendant Subclass 7 to comply with the terms of the Settlement.~~ <sup>VMP</sup>
  
3. **THIS COURT ORDERS** that a Notice of Approval advising the members of the Plaintiff Class and of Defendant Subclass 7 of the court's approval of this Settlement be distributed in the form attached hereto as **Schedule "A"** according to the requirements of the Notice Plan attached hereto as **Schedule "B"**.
  
4. **THIS COURT ORDERS** that this action be and hereby is dismissed as against each member of Defendant Subclass 7 who delivers to counsel for the Plaintiffs a Statutory Declaration in one of the forms appended to the Notice of Approval on or before November 1, 2011.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUN - 2 2011

AS DOCUMENT NO.:  
A TITRE DE DOCUMENT NO:  
PER / PAR:

*Perell, J*

JUSTICE PERELL  
Ontario Superior Court of Justice

## SCHEDULE "A"

### NOTICE OF APPROVAL

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. THIS SETTLEMENT 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.

*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.*

The Representative Defendants for subclass 7 have accepted a settlement offer made by the Representative Plaintiffs. This Settlement has now been approved by the Ontario Superior Court of Justice pursuant to Section 29 of the *Class Proceedings Act, 1992*. A copy of the Court's Order approving the settlement is attached to this notice at **Schedule "A"**.

All members of the Plaintiff class and all members of Defendant Subclass 7 *who satisfy the terms of the Settlement* are now bound by its terms.

#### **Terms of Settlement**

The Settlement dismisses without costs the Plaintiffs' claim as against each individual member of Defendant subclass 7 who provides to the Plaintiffs' lawyers a sworn Statutory Declaration on or before November 1, 2011 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 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.

The standard Statutory Declaration to be provided to the Plaintiffs' lawyers is attached at **Schedule "B"**. The Statutory Declaration for subclass members either deceased or under disability is attached at **Schedule "C"**.

**What must I do now?**

If you are eligible for the Settlement as a member of Defendant Subclass 7, you must deliver an original copy of the Statutory Declaration signed by you (or the estate trustee, administrator or attorney of the member) and by a Commissioner of Oaths to Defendants' Counsel at the address listed below. Defendants' Counsel will then deliver your Statutory Declaration to the Plaintiffs' lawyers.

The Plaintiffs' lawyers must receive the signed Statutory Declaration on or before November 1, 2011.

Upon receipt of the Statutory Declaration by the Plaintiffs' lawyers on or before November 1, 2011, the Plaintiffs' claim as against you will be deemed to have been released and the action dismissed as against you without costs.

**Contact information**

The address for the delivery of the Statutory Declaration and the addresses for communicating with the lawyers for the Plaintiff and Defendant Classes to obtain advice or full details of the Settlement are 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 N6A 5R8  Russell Raikes Tel: 519-672-9330  Website: <a href="http://www.cohenhighley.com">http://www.cohenhighley.com</a> Email: <a href="mailto:rraikes@cohenhighley.com">rraikes@cohenhighley.com</a>	NELLIGAN O'BRIEN PAYNE LLP Lawyers/Patent and Trade-Mark Agents 1500 – 50 O'Connor Ottawa, Ontario K1P 6L2  Craig Stehr Tel: 613-231-8208  Website: <a href="http://www.nelligan.ca">http://www.nelligan.ca</a> Email: <a href="mailto:airontarioclassaction@nelligan.ca">airontarioclassaction@nelligan.ca</a>

**SCHEDULE 'A'**

[Copy of Order approving Settlement]

**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.], 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 "C"**

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)

**SCHEDULE "B"**

**NOTICE PLAN**

**Settlement of class proceeding known as *Berry v. Pulley*  
(LAWSUIT BY AIR ONTARIO PILOTS OVER THE  
NON-IMPLEMENTATION OF THE PICHER SENIORITY AWARD)  
(Defendant Subclass 7)**

NOTICE OF THE COURT'S APPROVAL OF THE SETTLEMENT (DEFENDANT SUBCLASS 7) SHALL BE DISTRIBUTED TO THE AFFECTED CLASS MEMBERS AS FOLLOWS:

1. Plaintiff Class Counsel shall within 30 days distribute the Notice of Approval by regular mail to each member of the Plaintiff Class, making best efforts to use the most current address information available;
2. Plaintiff Class Counsel shall forthwith post the Notice of Approval on a publicly accessible page of the COHEN HIGHLEY LLP website;
3. Defendant Class Counsel shall within 30 days distribute the Notice of Approval by regular mail to each member of Defendant Subclass 7, as identified in information obtained in the court-ordered questionnaire distributed to all Defendant Class members on or about March 9, 2009, making best efforts to use the most current address information available;
4. Defendant Class Counsel shall within 30 days distribute the Notice of Approval by regular mail to each member of the Defendant Class for whom no response was received for the court-ordered questionnaire distributed to all Defendant Class members on or about March 9, 2009, and make best efforts to obtain current address information for those members whose questionnaire was undeliverable;



5. Defendant Class Counsel shall within 30 days distribute the Notice of Approval by regular mail to each member of the Defendant Class that is known to be deceased at their last known address;
6. Defendant Class Counsel shall forthwith post the Notice of Approval on a publicly accessible page of the NELLIGAN O'BRIEN PAYNE LLP website;
7. Class Counsel shall make efforts through an online search in order to find current address information for any class member for whom the Notice of Approval is returned as undeliverable;
8. The Plaintiff Class shall cover the cost of distributing the Notice of Approval to the Plaintiff Class members.
9. The Defendant Class shall cover the cost of distributing the Notice of Approval to the Defendant Class members.

**BERRY et al.**  
Plaintiffs

vs.

**PULLEY et al.**  
Defendants

vs.

**HARDISTY**  
Third Party

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

**JUDGMENT OF APPROVAL**

**COHEN HIGHLEY LLP**

Lawyers

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Lawyers for the Plaintiffs