

CITATION: Chrysler Canada Inc. v. Gatens, 2010 ONSC 5467
COURT FILE NO.: 09-CV-389708-00CP
DATE: October 4, 2010

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Chrysler Canada Inc.

Plaintiff

- and -

**John Gatens, Dennis Hryhorchuk, Michael McCue, Joan Deslippe, Richard
Reaume, Larry Garvey, Michael Longmore and Jack Morrison**

Defendants

- and -

**Ken Lewenza and Peter Kennedy on their own behalf respectively and on behalf of
all members of the National Automobile, Aerospace, Transportation and General
Workers Union of Canada (CAW-Canada)**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

COUNSEL:

- Caroline Zayid and Darryl R. Ferguson for the Plaintiff
- Peter H. Griffin and Brendan Gray for the Defendants John Gatens, Dennis Hryhorchuk, Michael McCue, Joan Deslippe, Richard Reaume, Larry Garvey, Michael Longmore and Jack Morrison.
- Murray Gold, Jonathan Ptak and Lewis Gottheil for the Defendants Ken Lewenza and Peter Kennedy

HEARING DATE: October 4, 2010

REASONS FOR DECISION

PERELL, J.

1. Introduction and Overview

[1] When the recent economic crises threatened to bring down North American automobile manufacturers, the manufacturers, including the Plaintiff in this proposed

class action, Chrysler Canada, sought financial assistance from governments in Canada and the United States. In return for their support, the governments demanded that the manufacturers restructure their businesses and produce plans for sustainable business operations. The restructuring plans, in turn, required the manufacturers to demand concessions and sacrifices from their employees, whose continued employment was at risk, and to demand concessions and sacrifices from retired employees, whose retirement benefits were at risk if the Chrysler business enterprise was dissolved in a bankruptcy.

[2] Thus, in a proposed class proceeding, Chrysler Canada sought a declaration that it could unilaterally terminate the post-retirement health care benefits of the Class Members, who are retired former employees of Chrysler Canada, as defined in the Collective Agreement and a declaration that Class Members had no legal or equitable entitlement to continue to receive the benefits. The retirees disputed, however, that they could have their benefits unilaterally terminated.

[3] The parties to the proposed class action have now settled their dispute, and Chrysler Canada moves for certification of a defendant class proceeding for settlement purposes under the *Class Proceedings Act, 1992*, S.O. 1992, c.6 and for approval of the settlement set out in a Settlement Agreement dated October 4, 2010.

[4] The proposed Representative Defendants are John Gatens, Dennis Hryhorchuk, Michael McCue, Joan Deslippe, Richard Rcaume, Larry Garvey, Michael Longmore and Jack Morrison. They are members of a Steering Committee comprised of Chrysler Canada Retirees and surviving spouses of retirees. The proposed Representative Defendants consent to certification and support the settlement.

[5] The Defendants Ken Lewenza and Peter Kennedy are the National President and National Secretary-Treasurer, respectively, of the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada). The CAW holds exclusive bargaining rights at several different facilities owned or operated by Chrysler Canada. They too consent to certification and support the settlement.

[6] The parties to the class action, including Chrysler, the CAW, and Retiree Representatives of the Class reached a settlement that involves substituting the Retiree health care benefits currently provided by Chrysler with post-retirement health benefits to be provided by an independent health care trust (the "Health Care Trust"). Chrysler Canada will contribute a cash payment of approximately \$175 million to the trust fund and issue four promissory notes totalling \$1.15 billion, which are payable to the trust fund over time.

[7] For the reasons that follow, I certify the class action and I approve the settlement.

2. Chrysler Canada and Chrysler Group LLC

[8] Chrysler Canada is a company incorporated under the laws of Canada, with its head office located in Windsor, Ontario. It now has: (a) an automobile assembly facility in Windsor, Ontario; (b) an automobile assembly facility in Brampton; (c) an aluminum casting plant in Etobicoke, Ontario; (d) an automotive research and development centre

in Windsor, Ontario; (e) a national Parts Distribution Centre in Mississauga, Ontario; (f) a regional Parts Distribution Centre in Red Deer, Alberta; (g) a regional Parts Distribution Centre in Montreal, Quebec; and, (h) Regional sales offices throughout the country. During its history, it operated other facilities that are now closed.

[9] Chrysler Canada is wholly owned by Chrysler Group LLC, which is the corporation formed in 2009 out of a global strategic alliance with Italian Automaker, Fiat Group. It produces vehicles and products under the automotive brands of Chrysler, Jeep®, Dodge, Mopar, and Global Electric Motor Cars.

[10] Chrysler vehicles are distributed and sold in Canada through a nationwide network consisting of over 400 associated dealerships. These dealerships employ approximately 24,000 Canadians.

3. Chrysler Employees and Retirees

[11] Chrysler Canada currently employs 9,000 employees. The vast majority of Chrysler's hourly workers are represented by the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada).

[12] The CAW holds exclusive bargaining rights at several facilities owned or operated by Chrysler Canada. Chrysler Canada and the CAW negotiate collective agreements with respect to the following employees: (a) Production and Maintenance employees at Windsor Assembly, Brampton Assembly, and Etobicoke Casting plant; (b) Clerical and Office employees of Chrysler Canada in its offices in Windsor, Etobicoke Casting, Brampton Assembly, and Windsor Assembly (excepting those employees covered by other agreements or who are not subject to collective bargaining); (c) employees with respect to the parts distribution centres, National PDC, Red Deer PDC and Montreal PDC; and (d) security personnel at Chrysler Canada's location in Windsor.

4. Health Care Benefits

[13] Each of the collective agreements with the CAW contain, among other things, a description of benefits to be provided to the covered employees, which include coverage for such items as hospital expenses, surgical expenses, various medical expenses, drug, dental, vision, hearing aid and out-of-province expenses.

[14] Until now, Chrysler Canada has also provided retirees, who were formerly represented by CAW as active employees, with health care benefits. The benefits provided to retirees at any given time have been based on those being provided to active employees under the collective agreement in force at that time. Currently there are approximately 9,250 Retirees in receipt of benefits. In addition, there are approximately 2,200 surviving spouses and dependents of deceased Retirees receiving benefits.

[15] For every active employee, Chrysler Canada supports approximately 1.4 retirees and surviving spouses. This represents approximately 13,000 Canadians who receive retirement benefits directly from Chrysler Canada

[16] Chrysler Canada does not make individual employment contracts with individual employees who are represented by the CAW, nor has it made any commitments to pay retiree health care benefits to any such employee on an individual basis. Chrysler Canada has not entered into a contractual arrangement with, or made representations to, any individual retiree concerning the extent of, or entitlement to, health care benefits.

5. Chrysler and the Economic Downturn

[17] As is well known, the recent economic crisis or ongoing series of crises in North America and around the world had serious adverse consequences on the automotive sector. The credit crisis had a devastating effect on Chrysler.

[18] The substantial decline of available dealer and consumer financing, as well as, plummeting consumer confidence resulted in a precipitous drop in vehicle sales. Vehicle sales (approximate numbers) in Canada dropped from 233,000 in 2007 to 223,000 in 2008, and to 163,000 in 2009. In the U.S., sales dropped from 2,076,650 in 2007, to 1,453,122 in 2008, and to 931,402 in 2009.

[19] The decline in overall sales and the decline in market share impacted on Chrysler's revenue, generating losses of billions of dollars in 2006, 2007, and 2008. The resulting cash drain combined with the unavailability of credit in the global financial markets, left Chrysler facing a severe and unanticipated liquidity crisis.

6. Request for Government Support

[20] Unable to secure financing from banks and other traditional sources of liquidity, Chrysler and Chrysler Canada turned to the governments of Canada and the U.S. for assistance in late 2008, with the hope of obtaining new financing.

[21] In December 2008, Chrysler submitted a viability plan to the U.S. Congress and renewed a request for US \$7 billion in emergency funding from the U.S. government. Chrysler Canada similarly sent a letter to the Federal Minister of Industry of Canada and the Ontario Minister of Economic Development requesting a \$1.6 billion bridge loan from these two levels of governments.

[22] In response, in January 2009, the U.S. Treasury provided Chrysler with an infusion of approximately US \$4.0 billion in financing while it pursued negotiations with its proposed strategic partner, Fiat.

[23] The Canadian government provided Chrysler Canada with financing of approximately \$1.2 billion between March and May 2009.

[24] The terms of the loans required the submission of a revised viability plan to demonstrate Chrysler's ability to achieve and sustain long-term viability, energy efficiency, rationalization of costs, and competitiveness in the North American marketplace.

[25] On March 30, 2009, the Canadian and Ontario governments announced that the restructuring plans submitted by Chrysler and Chrysler Canada did not go far enough to ensure its long-term viability and announced, along with the U.S. government, that further fundamental changes were needed to permit Chrysler or Chrysler Canada to receive any additional government funding.

7. Restructuring Plan

[26] In further meetings with the company, the Canadian and Ontario governments set specific guidelines to be met for providing financial support to Chrysler Canada. They included, among others, completing an alliance with Fiat, reducing labour costs to a level equal to those of Toyota Canada, and the establishment of a Health Care Trust.

[27] To meet the governments' requirements, Chrysler Canada conducted extensive negotiations with the CAW. An important part of the negotiations was the creation of a process to provide funding for the \$1.3 billion CAW-related retiree health benefit obligation.

[28] After intensive bargaining sessions, Chrysler Canada and the CAW agreed to establish a Health Care Trust to provide retiree health care benefits. Chrysler Canada agreed to make certain contributions, the extent of which was fixed and capped. The assets of the Health Care Trust would be entirely separate from those of Chrysler and would not be subject to any claims by Chrysler's creditors, in the event of an insolvency.

[29] The establishment of a Health Care Trust formed an integral part of the agreement with the CAW and was recognized by both the Canadian and Ontario governments as a condition to their funding of the restructuring, which was necessary for the continued sustainability of Chrysler Canada.

[30] The creation of a funded Health Care Trust would transfer a potentially increasing health care obligation on Chrysler's balance sheet to a fixed debt obligation. Chrysler and Chrysler Canada would have no ongoing or future responsibility for the provision of retiree health care benefits, the level or scope of the benefits, or the adequacy of the trust itself.

[31] A number of constituencies made concessions in support of the restructuring including: (a) Chrysler's dealers agreed to reduce both their dealer and service contract margins and reimbursement programs; (b) Chrysler's suppliers agreed to price reductions; (c) Chrysler's largest secured creditors agreed to substantially compromise their first lien debt; and (d) Chrysler's shareholders Daimler and Cerberus agreed, as part of a settlement with Chrysler, to forgive approximately \$2.0 billion of second lien debt and assist in funding Chrysler's pension plans.

[32] The support of the Canadian government is required to change the existing tax regime so that the creation of the Health Care Trust could be achieved without adverse tax consequences to Chrysler or the retirees (and their eligible spouses and eligible dependents) who would be beneficiaries of the trust.

[33] The Canadian government has announced its intention to introduce amendments to the *Income Tax Act* to recognize an "employee life and health trust". The legislation would provide for the treatment of contributions to, income of, and payments from the trust in a tax efficient manner. The Department of Finance (Canada) released revised draft legislative proposals relating to "employee life and health trusts" on August 27, 2010 and released explanatory notes in respect thereof on September 10, 2010. It is intended that the Health Care Trust will be established and maintained as an employee life and health trust.

[34] With the support of the US and Canadian governments, and of Fiat, Chrysler commenced proceedings in the United States (under Chapter 11, section 363) to implement the restructuring through an expeditious sale process.

[35] Chrysler and Fiat negotiated with the U.S. Treasury and the Canadian government for several layers of new financing relating to the restructuring transactions: (a) a US \$4.96 billion, 60-day debtor in possession financing facility from the U.S. Treasury and the Canadian government to fund Chrysler's bankruptcy process, including the expedited sale process; and (b) a US \$7.142 billion senior secured financing facility from the U.S. Treasury and Chrysler and additional available funding of \$1.116 billion from the Canadian government to Chrysler Canada to support the operations of New Chrysler after the sale. Without the government support, including the debtor-in-possession financing, Chrysler would have had no choice but to liquidate its assets.

8. The Proposed Representative Defendants

[36] The proposed representative defendants, all of whom are members of a Steering Committee, are:

- John Gatens, a Chrysler Retiree. He was a member of CAW Local 1090, having been full time Chair Person of UAW Local 1090 within the plant until 1984 when he was elected as CAW President of the Amalgamated Local Union representing Chrysler workers and 14 other plant workers within CAW Local 1090. Mr. Gatens continues to represent retirees in Local 1090 as their Chair Person.
- Dennis Hryhorchuk, a Chrysler Retiree who was a member of CAW Local 1285 and is now the Retiree Chairperson for the retiree chapter of that local.
- Michael McCue, a Chrysler Retiree who was a member of CAW Local 1459, CAW Local 1459 Committee Chair Person, elected May 1974 until 2003, a Local Union Trustee (Chair Person) and a Master Bargaining Committee Person. He is now Chair of CAW Local 1459 Retiree Chapter.
- Joan Deslippe, who is the widow of James Deslippe, who was a Chrysler employee in Windsor from August 29, 1965 until his retirement on June 30, 2001. James Deslippe died on October 23, 2003.
- Jack Morrison, a Chrysler Retiree who was a member of CAW Local 144.

- Larry Garvey, a Chrysler Retiree who is the chair of CAW Local 1498 Retirees.
- Richard Reaume, a Chrysler Retiree who was a member of CAW Local 444; and,
- Mike Longmore, a Chrysler Retiree who was a member of CAW Local 444.

[37] The Chrysler Steering Committee retained Lenczner Slaght Royce Smith Griffin LLP, and in particular Ronald Slaght, Q.C. and Peter Griffin, as counsel and counsel to the Class, if certified.

[38] The Steering Committee retained The Segal Company as consulting actuaries, in order to have independent actuarial advice. The work done by The Segal Company was overseen by Thomas D. Levy, a consulting actuary with 41 years of experience, currently the Chief Actuary of The Segal Company and an active participant in the design and implementation of arrangements for Voluntary Employee Benefits Association (“VEBA”) for the Goodyear Company and other entities in similar financial difficulties in the United States. VEBAs are the U.S. versions of the proposed Health Care Trust.

9. Establishment and Funding of Health Care Trust

[39] Chrysler Canada negotiated with the CAW and with the parties to this litigation to implement the proposed Health Care Trust. The negotiations resulted in the Settlement Agreement being presented to this Court.

[40] On May 4, 2009, the then collective agreement between Chrysler Canada and the CAW was amended to provide for certain changes to health care benefits, and committed Chrysler Canada and the CAW, on behalf of employees working as of that date, to the creation of a Health Care Trust to be exclusively responsible for the provision of post-retirement health care benefits.

[41] By ratifying the amendment, active employees agreed to the creation of a Health Care Trust which would assume the obligation to provide them with retiree health care benefits upon their retirement, and not Chrysler Canada.

[42] On June 8, 2009, Chrysler, Chrysler Canada, and the CAW entered into a Term Sheet concerning the creation of a Health Care Trust independent of Chrysler and Chrysler Canada, which would assume the obligation of provision of retiree health care benefits. Pursuant to the Term Sheet, Chrysler Canada agreed to finance the Health Care Trust by way of an initial cash contribution of \$175 million, and the issuance of certain promissory notes. The total funding being provided by Chrysler Canada is approximately \$1.3 billion.

[43] Chrysler anticipates that the changes brought about by the settlement will be viewed favourably by investors, lenders, and credit agencies and will improve Chrysler and Chrysler Canada’s future prospects by giving Chrysler greater access to capital markets, improved costs flow and investment flexibility.

[44] Chrysler is of the view that the funding to be provided by Chrysler Canada to the trust will, based on reasonable actuarial assumptions, provide a reasonable level of assets for the trustees to manage and meet the future health care needs of the Chrysler Canada retirees.

[45] In June 2009, the Steering Committee of Chrysler Retirees was struck in order to participate in the process of negotiations concerning the establishment of the Health Care Trust. Each member of the Steering Committee has been named as a Representative Defendant in this action. Each of the Representative Defendants is drawn from the Chrysler Retiree groups for the geographical areas and locals where Chrysler was active when they were employed.

[46] The agreement between Chrysler Canada and the CAW concerning the establishment and funding of a Health Care Trust was reached following a review of all projections by CAW and Chrysler Canada actuaries.

[47] The Segal Company prepared a report dated September 17, 2010, in which it concluded that its actuarial review and projections, taken as a whole, did not raise concern regarding the proposed terms of the Health Care Trust.

[48] James Stanford, CAW economist, concluded that the risk that the new trust would not be able to fully fund the promised schedule of benefits is a better risk than the complete elimination of retiree health care benefits that would ensue if Chrysler Canada were liquidated.

10. Highlights of the Proposed Settlement

[49] Highlights of the proposed settlement are as follows:

- Chrysler will contribute a cash payment of \$175 million less the cost of claims and eligible expenses since January 1, 2010, and issue four promissory notes (the "Promissory Notes") for: (i) \$404.9 million, bearing interest of 9%; (ii) \$404.9 million, bearing interest of 9%; (iii) \$265 million, with an implied interest rate of 7.5%; and (iv) a \$75 million non-interest bearing note.
- The Promissory Notes total \$1,150,000,000, and are required to be paid in full no later than June 30, 2024, to the Health Care Trust.
- Following this cash payment and issuing of the Promissory Notes from Chrysler to the Health Care Trust, all future claims for Retiree Health Care Benefits from Class Members who do not opt-out of the class proceeding will be exclusively funded by the Health Care Trust and administered by the Trustees of the Health Care Trust. The Health Care Trust, its Trustees and staff of the Health Care Trust will be completely independent and separate from Chrysler.
- Once the Health Care Trust is established, Chrysler will no longer provide, and the trust will be the sole provider of, post-retirement health care benefits for the Covered Group.

- Under the Health Care Trust, trustees, independent of Chrysler Canada, will manage the Health Care Trust and determine the nature and extent of future benefits.
- All Class Members who do not opt-out will be entitled to participate in the Health Care Trust, and will have released Chrysler, the CAW, the Retiree Representatives (and their representatives and counsel) from any claims related to their health care benefits.
- To receive health care benefits from the Health Care Trust, Class Members must make either a \$15.00 contribution plus applicable taxes (if they are 65 or over or are Surviving Spouses or Dependents) or a \$30.00 contribution plus applicable taxes per month (if they are under 65) and must not have opted-out of the Settlement. Sponsored dependent coverage, other charges and co-payments are in addition to these amounts.
- The Trustees of the Health Care Trust may increase the amount of all monthly contributions, co-payments and other charges in the future.
- Chrysler has agreed to pay the reasonable legal fees, disbursements, and expert fees incurred on behalf of the proposed Representative Defendants in the conduct of the litigation and the settlement. There is to be no multiplier or premium.

11. Recommendation of the Steering Committee

[50] After consultations and deliberations, the Steering Committee decided to support the proposed settlement. Its reasons for doing so were based on the following considerations, among others:

- The circumstances facing Chrysler by the mid-point of 2009 were such that it and the CAW had little practical alternative but to accept the negotiated arrangements. The Steering Committee understood that without those arrangements, the necessary aid from the two levels of Government would not have been available to Chrysler and it would have had to make an insolvency filing.
- Chrysler was adamant that there can be no recourse to Chrysler after completion of the settlements other than as is reflected in the Settlement Agreement.
- The funding of the Health Care Trust by Chrysler is substantial, a total, over time, of \$1,818,960,000 if all scheduled payments, inclusive of interest, are made without prepayments, \$175 Million of which is payable upon implementation of the settlement.
- The actuarial work performed by The Segal Company, and reviewed by the Chrysler Steering Committee, satisfied it that, subject to the assumptions made,

the Health Care Trust has the prospect of sufficient liquidity in the long term to adequately protect Retirees.

12. Communication with Class Members and Objectors

[51] On August 13, 2010, I granted an Order: (i) appointing The Garden City Group as Settlement Administrator for purposes of this proceeding, and (ii) directing the manner in which notice of this Certification and Settlement Approval Hearing shall be provided to the Proposed Class.

[52] On August 27, 2010, Garden City Group mailed 11,454 First Notices to the Proposed Class by first-class mail. In addition, the Garden City Group established a website, www.chryslercanadianretireesclassaction.ca, and an e-mail address for Proposed Class Members to send questions, and established a toll-free Interactive Voice Response system to accommodate telephone requests for information (294 such calls were received).

[53] The Settlement Administrator has received notice of only four objections to the proposed settlement as follows:

- Curtis Speiran views the settlement as a form of blackmail by the Government of Canada in exchange for the loans that it has provided to Chrysler Canada.
- Annino Cedronc's objected to the monthly co-payment requirement for health care benefits.
- Aubrey McNaughten objected to the lack of security on the Promissory Notes that form a component of the Health Care Trust's funding.
- Janina Stepnowski objected that any changes in her retirement policy, was unlawful.

[54] None of the objections provides any indication that the Settlement Agreement is not in the best interest of Class Members or provides any basis to conclude that the interests of Class Members would be better served if the Settlement Agreement were rejected.

[55] It may be noted that the objectors will have the right to opt-out of the class.

13. Retiree Group Meetings

[56] Meetings of Chrysler Retirees were held in Etobicoke, Windsor, Brampton, and Ajax. The meetings were well advertised and well attended.

[57] The following chart provides information about the retiree group meetings:

Date	Meeting / Location	Number of Attendees	Steering Committee Members Present	Advisors

September 13, 2010	CAW Local 1459 Retiree Chapter Meeting, Etobicoke	80	Michael McCue	Ronald Slaght Tom Levy Riley St. Jacques
September 20, 2010	CAW Local 444 Retiree Chapter Meeting, Windsor	3,000	Richard Reaume Larry Garvey Joan Deslippe Mike Longmore	Ronald Slaght Riley St. Jacques
September 23, 2010	Retirees from former Ajax Plant	360	John Gatens	Peter Griffin Riley St. Jacques
September 23, 2010	CAW Local 1285 Retirees, Brampton	450	Dennis Hryhorchuk	Ronald Slaght Riley St. Jacques

[58] At each meeting, those present overwhelmingly supported the Steering Committee's decision to accept and recommend approval of the settlement.

14. Certification

[59] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, the court shall certify a proceeding as a class proceeding if: (a) the pleadings disclose a cause of action; (b) there is an identifiable class; (c) the claims of the class members raise common issues of fact or law; (d) a class proceeding would be the preferable procedure; and (e) there is a representative plaintiff who would adequately represent the interests of the class without conflict of interest and who has produced a workable litigation plan.

[60] Where certification is sought for the purposes of settlement, all the criteria for certification must still be met: *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) at para. 22. However, compliance with the certification criteria is not as strictly required because of the different circumstances associated with settlements: *Bellaire v. Daya*, [2007] O.J. No. 4819 (S.C.J.) at para. 16; *National Trust Co. v. Smallhorn*, [2007] O.J. No. 3825 (S.C.J.) at para. 8; *Nutech Brands Inc. v. Air Canada*, [2008] O.J. No. 1065 (S.C.J.) at para. 9.

[61] The Proposed Class definition is as follows:

(a) all former employees of Chrysler who, as of May 4, 2009, had retired from employment with Chrysler and who at the time of retirement were covered by a Collective Agreement with eligibility to receive Retiree Health Care Benefits under the Chrysler Retiree Plan ("CAW Retirees"). For greater certainty CAW Retirees include persons who immediately prior to their Retirement were employed at the locations or were members of the local unions listed in Schedule K of the Settlement Agreement; and

(b) all persons who, as of the date of this Order, are the surviving spouse of a now deceased person who was, while living,

(i) a CAW Retiree or

(ii) a Chrysler Employee who at the date of his or her death, was eligible to receive an immediate pension under the Chrysler Pension Plan,

where that surviving spouse is eligible for Retiree Health Care Benefits under the Chrysler Retiree Plan ("Surviving Spouse"); and

(c) all persons who, as of the date of this Order, are a surviving dependent of two now deceased persons who were, while living, a CAW Retiree and/or, if applicable, a Surviving Spouse, and who are eligible for Retiree Health Care Benefits under the Chrysler Retiree Plan.

[62] The cut-off date of May 4, 2009 was selected so that only those individuals (as well as their spouses and dependents) who were not employed by Chrysler Canada at the time that the new collective agreement came into place, would be affected by this litigation.

[63] The proposed common issues in the action are:

- Do the Class Members have any legal or equitable entitlement, whether by contract or other enforceable obligation formed at the time of retirement or otherwise, to receive Retiree Health Care Benefits from Chrysler, and if so, the nature and extent thereof.
- Is Chrysler entitled to unilaterally alter or terminate: its provision of Retiree Health Care Benefits to the Class Members; and/or the manner of delivery of Retiree Health Care Benefits to the Class Members?

[64] I am satisfied that for settlement purposes, all the criterion for certification have been satisfied in the case at bar.

[65] I, therefore, certify this application as a class proceeding pursuant to the *Class Proceedings Act, 1992*.

15. Settlement Approval

[66] To approve a settlement of a class proceeding, the court must find that in all the circumstances the settlement is fair, reasonable, and in the best interests of those affected by it: *Dabbs v. Sun Life Assurance*, [1998] O.J. No. 1598 (Gen. Div.) at para. 9; *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at paras. 68-73.

[67] In determining whether to approve a settlement, the court, without making findings of facts on the merits of the litigation, examines the fairness and reasonableness of the proposed settlement and whether it is in the best interests of the class as a whole having regard to the claims and defences in the litigation and any objections raised to the settlement: *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) at para. 10.

[68] When considering the approval of negotiated settlements, the court may consider, among other things: (a) likelihood of recovery or likelihood of success; (b) amount and nature of discovery, evidence or investigation; (c) settlement terms and conditions; (d) recommendation and experience of counsel; (e) future expenses and likely duration of litigation and risk; (f) recommendation of neutral parties, (g) if any; number of objectors and nature of objections; (h) the presence of good faith, arms-length bargaining and the absence of collusion; (i) the degree and nature of communications by counsel and the representative parties with class members during the litigation; and (j) information conveying to the court the dynamics of and the positions taken by the parties during the negotiation: *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 (Gen. Div.) at 440-44, *aff'd* (1998), 41 O.R. (3d) 97 (C.A.), leave to appeal to S.C.C. refused Oct. 22, 1998, [1998] S.C.C.A. No. 372; *Parsons v. The Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at paras. 71-72; *Frohlinger v. Nortel Networks Corp.*, [2007] O.J. No. 148 (S.C.J.) at para. 8; *Kelman v. Goodyear Tire and Rubber Co.*, [2005] O.J. No. 175 (S.C.J.) at paras. 12-13; *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 117; *Sutherland v. Boots Pharmaceutical plc*, [2002] O.J. No. 1361 (S.C.J.) at para. 10.

[69] In my opinion, the settlement in this case is fair, reasonable, and in the best interests of the Class Members. In arriving at this conclusion, one of the most persuasive factors was that the settlement provided a better alternative to class members than a class proceeding, which, win or lose, imperilled the Class Members retirement benefits. If the Class Members were unsuccessful in defending the class action, their benefits would be unilaterally terminated, but if they successfully defended the class action, their benefits would be lost by the failure of the Chrysler Canada restructuring. The settlement avoids a no-win choice and would appear to be in the best interests not only of the Class Members but to be the preferable course for Chrysler Canada, its existing employees, and other Canadian employees.

[70] Another important factor was that Class Members were ably represented and advised by very experienced counsel and actuarial consultants who exercised due diligence and who have recommended the settlement. Moreover, there was the presence of good faith, vigorous arms-length bargaining and the absence of collusion.

[71] Also important was that there has been a strong notice program and consultation with the Class Members, who have expressed strong support for the settlement.

[72] While the settlement has some disadvantages and is not perfect, because the promissory notes are not secured debt and Chrysler Canada continues to operate in a very competitive and precarious business, the settlement also has the advantage that the autonomy of the Health Care Trust will over time ensure its independence from the business fortunes of Chrysler Canada and in the short time will help Chrysler Canada sustain its business.

[73] The involvement and diligence of the members of the Steering Committee and of the CAW is impressive and I place great weight on the recommendation of the members of the Steering Committee and their reasoning for supporting the settlement.

[74] With respect, the objector's objections do not address the fundamental issue of whether the settlement is in the best interests of Class Members.

[75] Accordingly, I approve the settlement.

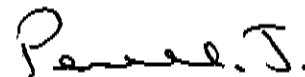
16. Conclusion

[76] I grant certification and approve the settlement. I declare the Settlement Agreement is fair, reasonable and in the best interests of the Class.

[77] I appoint Garden City Group Inc. as Settlement Administrator.

[78] I approve the form of order set out in the motion record.

[79] The motion is granted and an order should issue accordingly.



Perell, J.

Released: October 4, 2010

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Defendants

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