

W 09-389708-00CP

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHRYSLER CANADA INC.

Plaintiff

- and -

JOHN GATENS, DENNIS HRYHORCHUK, MICHAEL McCUE, JOAN DESLIPPE
and JACK MORRISON

Defendants

- and -

PETER KENNEDY on their own behalf respectively and on behalf of
International Automobile, Aerospace, Transportation and General Workers
Union of Canada (CAW-Canada)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: October 23, 2009

Issued by


Local registrar

Address of court office 393 University Ave.
Toronto, ON M5G 1E6

TO: John Gatens
1 Joshua Bld.
Brooklin, ON L1M 2J1

AND TO: Dennis Hryhorchuk
20 Cliffside Dr.
Scarborough, ON M1N 1L2

AND TO: Michael McCue
195 Windy Oaks Rd.
Mississauga, ON L5G 1Z5

AND TO: Joan Deslippe
458 Cooper Cres.
Belle River, ON N0R 1A0

AND TO: Jack Morrison
Box 639
Lundar, Wpg
R0C 1Y0

AND TO: Ken Lewenza
c/o CAW – Canada
205 Placer Court
Toronto, ON M2H 3H9

AND TO: Peter Kennedy
c/o CAW – Canada
205 Placer Court
Toronto, ON M2H 3H9

AND TO: Koskie Minsky
Suite 900, Box 52
20 Queen Street West
Toronto ON M5H 3R3

Lawyers for Ken Lewenza, Peter Kennedy and
CAW-Canada

CLAIM

Definitions

1. The following terms used throughout this pleading have the following meaning:
 - (a) “Act” means the *Class Proceeding Act, 1992*, S.O. 1992, c.6;
 - (b) “CAW-Canada” means the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada);
 - (c) “Chrysler” means Chrysler Canada Inc. or its predecessor;
 - (d) “Class” means all persons in Canada or elsewhere who are:
 - (i) a Retiree, or
 - (ii) a Surviving Spouse.
 - (e) “Retiree” means a person who:
 - (i) was employed by Chrysler in Canada and during that employment belonged to a bargaining unit represented by CAW-Canada or its predecessor union; and
 - (ii) as of April 24, 2009, had retired from employment with Chrysler, as a CAW-represented employee, and was eligible to receive post-retirement health care benefits from Chrysler; and
 - (iii) is not deceased.
 - (f) “Surviving Spouse” means a person who
 - (i) is the surviving spouse of a now deceased person who was formerly employed by Chrysler and who had retired from employment as a CAW-represented employee as of April 24, 2009; and
 - (ii) is eligible to receive post-retirement health care benefits from Chrysler.

The Claim

2. Chrysler claims:

- (a) an order pursuant to the *Act* certifying this proceeding as a class proceeding;
- (b) an order appointing the Defendants John Gatens, Dennis Hryhorchuk, Michael McCue, Joan Deslippe and Jack Morrison as representative defendants;
- (c) a declaration that Chrysler may unilaterally terminate the post-retirement health care benefits it provides to Class Members;
- (d) a declaration that the Class Members have no legal or equitable entitlement to continue to receive post-retirement health care benefits from Chrysler;
- (e) its costs of this action pursuant to the Act and/or on a substantial indemnity basis; and
- (f) such further or other relief as this Honourable Court deems just.

The Parties

3. The Plaintiff, Chrysler is a corporation incorporated under the laws of Canada which carries on business in Ontario. Chrysler has its head office in Windsor, Ontario. It is wholly owned by Chrysler Group LLC.

4. The Defendant, John Gatens (“Gatens”), was employed by Chrysler at its Ajax, Ontario location from May 11, 1970 until his retirement on April 30, 2004.

5. The Defendant, Dennis Hryhorchuk (“Hryhorchuk”), was employed by Chrysler at its location in Brampton, Ontario, from November 12, 1969 until his retirement on May 31, 2001.

6. The Defendant, Michael McCue (“McCue”), was employed by Chrysler at its location in Etobicoke, Ontario from June 8, 1970 until his retirement on May 31, 2003.

7. The Defendant, Joan Deslippe (“Deslippe”), is the widow of James Deslippe who was employed by Chrysler at its Windsor, Ontario location from August 20, 1965 until his retirement on June 30, 2001. James Deslippe died on October 23, 2003.

8. The Defendant, Jack Morrison (“Morrison”) was employed by Chrysler at its location in Winnipeg, Manitoba from July 18, 1966 until his retirement on May 31, 2000.

9. Ken Lewenza and Peter Kennedy are respectively the President and Secretary-Treasurer of CAW-Canada. They are necessary parties pursuant to Rule 5.03 of the *Rules of Civil Procedure*.

Health Care Benefits

10. Chrysler has provided, and does provide, certain post-retirement health care benefits to Retirees and Surviving Spouses.

11. Gatens, Hryhorchuk, McCue and Morrison currently receive post-retirement health care benefits from Chrysler as Retirees. Deslippe receives post-retirement health care benefits from Chrysler as a Surviving Spouse.

The Restructuring of Chrysler

12. As a result of the recent global financial market crisis, and associated market conditions, the automotive sector in Canada and the United States has been significantly adversely affected.

13. In the United States, Chrysler LLC (which was then the indirect parent company of Chrysler) filed for relief under Chapter 11 of the United States Bankruptcy Code on April 30, 2009. In conjunction with that proceeding, there has been significant restructuring of Chrysler.

14. The United States Treasury Department together with the Government of Canada and the Government of Ontario supported the court-supervised restructuring. As a condition of their financial support, the governments of Ontario and Canada require Chrysler to eliminate its obligation to provide post-retirement health care benefits to Retirees and Surviving

Spouses. Chrysler is permitted to make certain limited contributions to the costs of future health care benefits for Retirees and Surviving Spouses.

No Continuing Entitlement

15. At all material times, Chrysler has reserved the right to modify, revoke, suspend, terminate or change the post-retirement health care benefits it provides to Retirees and Surviving Spouses from time to time.

16. Any continuation of or increases to post-retirement health care benefits provided to Retirees or Surviving Spouses from time to time by Chrysler were provided without any consideration flowing from the Retirees or from the Surviving Spouses.

17. Chrysler has not entered into any contractual or other obligation whatsoever with the Retirees or Surviving Spouses which would require Chrysler to continue to provide post-retirement health care benefits to Retirees or Surviving Spouses.

18. The Defendants, and other Class Members have no entitlement in law or equity, whether by virtue of a contract or otherwise, to continue to receive post-retirement health care benefits from Chrysler.

19. Chrysler pleads and relies upon:

- (a) the *Act*; and
- (b) the *Rules of Civil Procedure*.

20. Chrysler proposes this action be tried in the City of Toronto.

October 23, 2009

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CHRYSLER CANADA INC.
Plaintiff

and
KEN LEWENZA, ET AL
Defendants

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Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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