



No. **L021149**  
Vancouver Registry

**In The Supreme Court Of British Columbia**

Peter Gregg

**Plaintiff**

**And:**

Freightliner Ltd., doing business as Western Star  
Trucks, Trust Company A, The Canada Trust  
Company and CIBC Mellon Trust Company

**Defendants**

**Brought Pursuant to the *Class Proceedings Act*  
Writ of Summons**

**Name and Address of Each Plaintiff:**

Peter Gregg  
315 Peck Road  
Kelowna, BC  
V1X 4R1

**Name and Address of Each Defendant:**

Freightliner Ltd.  
800 - 1070 Douglas St.  
Victoria, BC  
V8W 2S8

CIBC Mellon Trust Company  
1600 - 1066 West Hastings St  
Vancouver, BC  
V6E 3X1

Trust Company A  
Street Address  
City, Province  
Postal

The Canada Trust Company  
4<sup>th</sup> Floor - 700 West Georgia St.  
Vancouver, BC  
V7Y 1A2

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

**To the defendant(s):**

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c.50 for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND the claim made against you, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff's address for delivery which is set out in this writ, and
- (b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

**JUDGMENT MAY BE TAKEN AGAINST YOU IF**

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

**TIME FOR APPEARANCE**

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ served on a person outside British Columbia, the time for appearance by that person, after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

**TIME FOR DEFENCE**

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

1. The address for the registry is:  The Law Courts 800 Smithe Street Vancouver, British Columbia V6Z 2E1
2. The Plaintiff's ADDRESS FOR DELIVERY is:  <b>TevlinGleadle, Employment Law Strategies</b> Barristers & Solicitors 111 Smithe Street Vancouver, British Columbia V6B 4Z8 Telephone: (604) 648-2966 Attention: Daniel B. Gleadle  Fax number for delivery (if any): (604) 648-2967
3. The name and office address of the plaintiff's solicitor is:  Same as address for delivery.

The Plaintiff Peter Gregg 's claim is set out in the attached Statement of Claim.

**Place of Trial: Vancouver, British Columbia**

Dated April 16, 2002

  
\_\_\_\_\_  
Solicitor for the Plaintiff

## **Brought Pursuant to the *Class Proceedings Act***

### **Statement of Claim**

1. The Plaintiff **Peter Gregg** (“**Gregg**”) is an employee of the Defendant Freightliner Ltd. and resides at 315 Peck Road, Kelowna, British Columbia, V1X 4R1.
2. The Defendant, **Freightliner Ltd.** (“**Freightliner Canada**”) is a company originally incorporated pursuant to the laws of the province of British Columbia in 1997, and continued as a company pursuant to the laws of the Dominion of Canada, and with its head office located at 100 - 6701 Financial Drive, Mississauga, Ontario, L5N 7J7. Freightliner Canada is registered in British Columbia as an extra provincial company, with its head office within the province located at 800 – 1070 Douglas Street, Victoria, British Columbia, V8W 2S8.
3. The Defendant, **Trust Company A** (“**Trust Company A**”) is a chartered trust company whose corporate structure and regional head office are unknown to the Plaintiff at this time.
4. The Defendant, **The Canada Trust Company** (“**Canada Trust**”) is a chartered trust company incorporated under the laws of Canada, having its regional head office located at 4th Floor - 700 West Georgia Street, Vancouver, BC, V7Y 1B6.
5. The Defendant, **CIBC Mellon Trust Company** (“**CIBC Mellon**”) is a chartered trust company incorporated under the laws of Canada, having its regional head office located at 1600 - 1066 West Hastings Street, Vancouver, BC, V6E 3X1.
6. The **White Motor Corporation of Canada Limited** (“**White Motor Co.**”) was a body corporate duly incorporated pursuant to the laws of the province of British Columbia between its incorporation in 1946 and its dissolution in 1986.

7. **Western Star Trucks Inc. ("WSTI"):**

- (a) was incorporated under the laws of the Dominion of Canada on December 2, 1980;
- (b) amalgamated with 158127 Canada Ltd., a federal company, on December 31, 1987;
- (c) was continued as a company pursuant to the laws of the Province of British Columbia on May 23, 1991;
- (d) was continued as a company pursuant to the laws of the Dominion of Canada on June 30, 2001;
- (e) amalgamated with Freightliner Canada, a Canadian company, on June 30, 2001.

8. In or about 1966, White Motor Co. began carrying on business in the province of British Columbia, as the "Western Star Division", a business unit that manufactured trucks at its Kelowna truck plant. White Motor Co. continued manufacturing trucks at its plant in Kelowna, British Columbia until 1981.

9. In or about 1981, White Motor Co. sold the assets of its Western Star Division to WSTI, a company incorporated for that purpose, and WSTI has continued to manufacture trucks at its Kelowna truck plant continuously after 1981 to the present time, and since the June 30, 2001 amalgamation, as part of Freightliner Canada.

10. When WSTI purchased the assets of White Motor Co., it also became the successor employer of all of the employees of the White Motor Co., Western Star Division.

11. In or about December, 2001 Freightliner announced that it would be shutting down the Kelowna truck plant, and all operations associated with the manufacture of trucks in British Columbia.

12. Peter Gregg has, for the 29 years since July 23, 1973, been employed in the operations of the Kelowna truck plant. In particular:

- (a) he commenced employment with the White Motor Co., Western Star Division in July, 1973 and he worked continuously until White Motor Co. ceased operation in 1981;
- (b) in 1981, without any break in service, he was employed by WSTI on the same terms as he had previously been employed by White Motor Co. and he has continued in the employment of WSTI (now named Freightliner Canada) since then.

13. In or about 1966 White Motor Co. established a contributory, defined benefit pension plan for the benefit of its Western Star Division, non-unionized employees, their respective families, beneficiaries and estates.

14. Peter Gregg became a member of the pension plan for non-unionized employees working at the Kelowna truck plant, soon after he commenced employment, and has since then been a member of that plan or its successor pension plan.

15. In or about 1981, when WSTI acquired the assets of the Kelowna truck plant from White Motor Co, and succeeded as employer of the employees of such truck plant, including Peter Gregg, it assumed the obligations of White Motor Co. under the pension plan, and continued to administer the pension plan created for the benefit of the employees.

16. The Plaintiff brings this claim on his own behalf and under the *Class Proceedings Act*, R.S.B.C. 1996, c.50 as a representative of the following classes of persons:

- (a) All persons employed by the Defendant Freightliner Canada in British Columbia under a contract of indefinite duration who have received, or who will receive, notice of termination of their employment at any time on or after September 26, 2001 until final closure of the Kelowna truck plant. This class does not include employees who have executed a binding full and final release

in favour of the Defendant Freightliner Canada, or who are proven dismissed for just cause, or who are unionized employees in a bargaining unit (“**Class A**”); and,

- (b) All persons who are members or former members of the pension plan for non-bargaining unit employees of Freightliner Canada, Western Star Trucks division, their respective surviving spouses, former spouses, designated beneficiaries, personal representatives, and all other persons who are beneficiaries of the said pension plan (“**Class B**”).

### **CLAIMS UNDER EMPLOYMENT AGREEMENT**

17. Peter Gregg’s employment agreement with Freightliner Canada and previously White Motor Co. at all material times has provided *inter alia* for:

- (a) an annual base salary;
- (b) an annual performance bonus depending on his individual performance and the performance of the truck plant;
- (c) pay for overtime work beyond 40 hours per week at an overtime rate established by custom between the employee and the employer;
- (d) health and welfare benefits, including Medical Service Plan coverage, extended health and dental coverage, life insurance coverage, and short and long term disability coverage;
- (e) an obligation on the part of the employer to manage and make contributions for the benefit of the Plaintiff to the pension plan in place for the time being;
- (f) post retirement benefits;
- (g) statutory holiday pay;

- (h) DaimlerChrysler New Vehicle Purchase/Lease Plan;
- (i) FlexPlan benefits.

18. The Plaintiff's employment was for an indefinite term, and it was an express, or alternatively an implied term of the Plaintiff's contract of employment that he would be provided with reasonable and adequate notice of dismissal if his employer were to terminate his employment without just cause.

19. Commencing on or about February 12, 2001, Freightliner Canada agreed to remunerate the Plaintiff for his work by paying him bonuses, in addition to his usual compensation. Since this agreement was made, and in breach of the agreement, Freightliner Canada has failed to pay bonuses to the Plaintiff.

20. Commencing on or about February 19, 2001, Freightliner Canada unilaterally, and in breach of the Plaintiff's contract of employment, ceased paying the Plaintiff for overtime work.

21. Commencing on or about January 6, 2002 Freightliner Canada unilaterally, and in breach of the Plaintiff's contract of employment, reduced the Plaintiff's salary by 5%.

22. The Plaintiff faithfully and diligently performed his duties on behalf of his employer and throughout his employment proved to be a valuable and reliable employee.

23. On or about December, 2001, Freightliner Canada announced that its Western Star Division would be shut down by the fall of 2002.

24. On or about December 3, 2001 Freightliner Canada advised the Plaintiff of its intention to dismiss the Plaintiff without just cause and without reasonable notice, at some

uncertain date in the future. In a letter dated December 3, 2001 to the Plaintiff (**the “Severance Letter”**) Freightliner Canada advised the Plaintiff as follows:

This letter will confirm that your employment with Western Star Trucks, A Division of Freightliner Ltd. (the “Company”) will cease, effective September 30, 2002 **unless you are advised otherwise**. The final date of your employment will be referred to as your “release date”.

....

Please note that you are **not eligible** for the severance package if you voluntarily resign from the Company. [emphasis in original]

....

The combined amount of working notice and severance pay is based upon your date of hire as well as other factors. The severance payment shall equal 11 months’ salary. Your working notice will be from the date of this letter to your release date. **For example, if your release date is September 30, 2002**, you will have been given 10 months working notice and the above severance payment...

You will receive **a letter confirming your release date** and details regarding the specifics of your final pay prior to your release date. [our emphasis]

25. The purported working notice set out in the Severance Letter (**the “Working Notice”**) is not specific and unequivocal such that a reasonable person would be able to make reasonable plans to provide support for his family and arrange his business affairs and career with clear understanding that his or her employment will end as of a date certain. The Working Notice is invalid.

26. In the result the Plaintiff has been left in the impossible situation where he does not know when he will be dismissed, he could be dismissed any day, and he cannot practically seek other employment to support his family, while mitigating the disastrous effect of their unexpected and unjust dismissal.

27. A number of similarly situated employees of Freightliner Canada received substantially the same letter as the Severance Letter and have been dismissed on certain dates prior to September 30, 2002. No one knows when the axe may fall, and as a result mental distress, anguish and unreasonable stress are taking their toll on the Plaintiff and in the workplace.

28. The letters referred to in paragraph 27 and above make no provision for pension contribution during the stated "severance period" or for payment of any surplus from the company pension plan.

29. The Plaintiff is entitled to reasonable notice and compensation for benefits exceeding that set out in the proposal contained in the Severance Letter.

#### **Arrears of Salary and Overtime**

30. The Plaintiff has suffered damages as a result of Freightliner Canada's wrongful reduction of his salary by 5% and failure to pay overtime in accordance with the terms of the parties agreement.

#### **CLAIMS UNDER PENSION PLAN**

##### ***White Motor Co., Western Star Division Pension Plan (1966 through 1981)***

31. In or about 1966 White Motor Co., created a pension plan for the benefit of the non-unionized employees of its new Western Star Division truck plant, and their respective families, beneficiaries and estates (the "**White Motor Co. Western Star Division Pension Plan**").

32. The White Motor Co. Western Star Division Pension Plan consisted of the following elements and had the following characteristics:

- (a) The plan was the successor plan to The White Trucks, a division of White Motor Corp. of Canada Retirement Plan, Quebec registration number C-2399 (the "C-2399 Plan"), which provided, inter alia:

- (i) s. 20.02 “The Company intends that this shall be a permanent Plan for the exclusive benefit of its Members...”;
  - (ii) s. 21.2 “Upon termination of the Plan... the Plan Administrator ... shall provide for an equitable allocation of the funds solely to the Members, remaining in the Plan at the date of termination.”;
- (b) The plan was the successor plan to The Cockshutt Farm Equipment of Canada Limited Pension Plan, Ontario registration number C-877 (the “**C-877 Plan**”) which provided inter alia:
  - (i) s. 6.3, “The Employer shall have no right, title or interest in the contributions made by it to the Trustee and no part of the Fund shall revert to the Employer.
  - (ii) s. 7.1, “The Employer reserves the right to amend or terminate this Plan at any time. The withdrawal or elimination of some (but not all) employees from the Plan shall not constitute a termination of the Plan, which shall continue to exist for the benefit of other employees remaining in or subsequently brought under the Plan...”
- (c) The pension plan was a contributory, defined benefits pension plan;
- (d) The beneficiaries of the plan were the non-unionized employees the Western Star Division truck plant, and their respective families, beneficiaries and estates;
- (e) White Motor Co. was the sponsor of the plan and was to manage the plan and the monies contributed to the plan for the benefit of the beneficiaries of said plan;
- (f) Pursuant to a trust agreement (“**Trust Agreement A**”), monies contributed by the employees or on their behalf by White Motor Co. were to be held by a trustee appointed by White Motor Co. for the benefit of the plan’s beneficiaries;

- (g) The Plaintiff is not presently aware of the identity of the trustee or trustees of this pension plan during the period 1966 through 1981 but the trustee for that time has been named in this proceeding as the Defendant, Trust Company A;
- (h) The plan established a trust fund consisting of the contributions made by or on behalf of its members (the **“White Motor Co. Western Star Division Pension Trust Fund”**);
- (i) The purpose of the White Motor Co. Western Star Division Pension Trust Fund was to provide benefits to employees of Western Star Trucks, the members of the plan, their families, beneficiaries and estates;
- (j) The employer had no right, title or interest in the contributions made to the plan or to the balance of the White Motor Co. Western Star Division Pension Trust Fund;
- (k) In the event that the White Motor Co. Western Star Division Pension Plan was to be wound up, any surplus remaining in the fund over and above amounts needed to pay for defined benefits belonged solely to the member beneficiaries;

33. At various time from 1966 through 1983, contrary to the terms of the then current plan texts and trust agreements, White Motor Co.:

- (a) did not make required contributions to the then current pension fund;
- (b) improperly withdrew monies from the fund, including a withdrawal of about \$305,408 on or about January 1, 1974 and a further \$2,067,012 in 1983;
- (c) used monies from the White Motor Co. Western Star Division Pension Trust Fund for the payment of expenses related to administration of White Motor Co. Western Star Division Pension Plan, such as actuarial fees, administration fees, custodial fees, investment management fees, legal fees, and the like;
- (d) failed to establish a Pension Advisory Committee, at all, or alternatively, failed to provide the Pension Advisory Committee with the information necessary for proper analysis and decision making;

- (e) failed to establish a Statement of Investment Policy and Procedures for the pension fund and/or failed to properly monitor the investments held in the said fund for the benefit of the beneficiaries.

34. At various time from 1966 through 1983, contrary to the terms of the then current plan texts, trust agreements, legislation governing pension plans and its trust obligations to the plan beneficiaries, Trust Company A:

- (a) made inappropriate payments from the White Motor Co. Western Star Division Pension Trust Fund to White Motor Co. including, on or about January 1, 1974, a payment of \$305,408 and a further \$2,067,012 in 1983;
- (b) permitted White Motor Co. to use monies from the White Motor Co. Western Star Division Pension Trust Fund for the payment of expenses related to administration of the Pension Plan, such as actuarial fees, administration fees, custodial fees, investment management fees, legal fees and other costs;
- (c) permitted White Motor Co. to fail to establish a pension advisory committee, at all, or alternatively, to fail to provide the committee with the information necessary for proper analysis and decision making;
- (d) permitted White Motor Co. to fail to establish a Statement of Investment Policy and Procedures for the pension fund and/or to fail to properly monitor the investments held in the said fund for the benefit of the beneficiaries.

**Western Star Trucks Inc. Pension Plan 1981 through 2002**

35. In or about 1981 when Freightliner Canada (then named Western Star Trucks Inc.) purchased the assets of the Western Star Division from White Motor Co, and assumed the employment contracts of the non-unionized employees of such division, it also assumed the obligations that had until then been held by White Motor Co. with respect to the pension plan.

36. The current plan sponsored by Freightliner Canada is the Western Star Trucks Inc. Pension Plan for Non Bargaining Employees (the “**Western Star Trucks Inc. Pension Plan**”). The Western Star Trucks Inc. Pension Plan:

- (a) was previously registered in Ontario under the *Ontario Pension Benefits Act* as plan C-18086, and governed by the *Ontario Pension Benefits Act*; and
- (b) is now registered in British Columbia and governed by the *Pension Benefit Standards Act*, R.S.B.C. 1996 c.352 as plan P086209.

37. The Western Star Trucks Inc. Pension Plan consisted of the following elements and had the following characteristics:

- (a) The plan was the successor plan to several prior pension plans including:
  - (i) The White Trucks, a division of White Motor Corp. of Canada Retirement Plan, Quebec registration number C-2399 (the “**C-2399 Plan**”);
  - (ii) The Cockshutt Farm Equipment of Canada Limited Pension Plan, Ontario registration number C-877 (the “**C-877 Plan**”);
  - (iii) The White Motor Co. Western Star Division Pension Plan;
- (b) The pension plan was a contributory, defined benefits pension plan;
- (c) The beneficiaries of the plan were the non-unionized employees the Western Star Division, and their respective families, beneficiaries and estates;
- (d) Western Star Trucks Inc., now named Freightliner Canada, was the sponsor of the plan and was to manage the plan and the monies contributed to the plan for the benefit of the beneficiaries of said plan;
- (e) At all material times between 1981 and the present time, monies which had been contributed to the pension plan were held pursuant trust agreements whereby

trust companies were to act as trustees of the monies for the plan's beneficiaries. In particular:

- (i) Canada Trust was the trustee of the Western Star Trucks Inc. Pension Plan pursuant to a trust agreement (hereinafter referred to as the "**Canada Trust Company Trust Agreement**"), between April 1, 1981 and April 30, 2000;
- (ii) CIBC Mellon was the trustee of the Western Star Trucks Inc. Pension Plan pursuant to a trust agreement (hereinafter referred to as the "**CIBC Mellon Trust Agreement**") since March 1, 2000;
- (f) The Western Star Trucks Inc. Pension Plan established a trust fund consisting of monies that had been contributed on behalf of the members of the White Motor Co. Western Star Division Pension Plan as well as ongoing contributions made by and on behalf of its members (the "**Western Star Trucks Inc. Pension Trust Fund**");
- (g) The purpose of the Western Star Trucks Inc. Pension Trust Fund was to provide benefits to employees of the members of the Western Star Trucks Inc. Pension Plan, their families, beneficiaries and estates;
- (h) The employer had no right, title or interest in the contributions made to the plan or to the balance of the Western Star Trucks Inc. Pension Trust Fund;
- (i) In the event that the Western Star Trucks Inc. Pension Plan was to be wound up, any surplus remaining in the fund over and above amounts needed to pay for defined benefits belonged solely to the member beneficiaries;

38. At various time from 1981 through the present time, contrary to the terms of the then current plan texts, trust agreements, and legislation governing pension plans, Western Star Trucks Inc., now named Freightliner Canada:

- (a) permitted Peat Marwick, the receiver of White Motor Co. to improperly withdraw monies from the White Motor Co. Western Star Division Pension Trust Fund,

including a withdrawal of about \$2,067,012 in 1983, and failed to take steps to recover those monies;

- (b) did not make required contributions to the Western Star Trucks Inc. Pension Trust Fund, including contributions amounting to at least \$2,654,295;
- (c) improperly withdrew monies from the Western Star Trucks Inc. Pension Trust Fund, including a withdrawal of about \$2,813,000 in 1985;
- (d) used monies from the Western Star Trucks Inc. Pension Trust Fund for the payment of expenses related to administration of the pension plan, such as actuarial fees, administration fees, custodial fees, investment management fees, legal fees and other costs;
- (e) failed to establish a pension advisory committee, at all, or alternatively, failed to provide the committee with the information necessary for proper analysis and decision making;
- (f) failed to establish a Statement of Investment Policy and Procedures for the Western Star Trucks Inc. Pension Trust Fund and/or failed to properly monitor the investments held in the said fund for the benefit of the beneficiaries.

39. At various time from April 1, 1981 through to April 30, 2000, contrary to the terms of the then current plan texts, trust agreements, legislation governing pension plans and its trust obligations to the plan beneficiaries, Canada Trust:

- (a) permitted Peat Marwick, the receiver of White Motor Co. to improperly withdraw monies from the White Motor Co. Western Star Division Pension Trust Fund, including a withdrawal of about \$2,067,012 in 1983, and failed to take steps to recover those monies;
- (b) made inappropriate payments from the Western Star Trucks Inc. Pension Trust Fund to Freightliner Canada including, in 1985, a payment of about \$2,813,000;

- (c) permitted Freightliner Canada to use monies from the Western Star Trucks Inc. Pension Trust Fund for the payment of expenses related to administration of the Western Star Trucks Inc. Pension Plan, such as actuarial fees, administration fees, custodial fees, investment management fees, legal fees and other costs;
- (d) permitted Freightliner Canada to fail to establish a pension advisory committee, at all, or alternatively, to fail to provide the committee with the information necessary for proper analysis and decision making;
- (e) permitted Freightliner Canada to fail to establish a Statement of Investment Policy and Procedures for the Western Star Trucks Inc. Pension Trust Fund and/or to fail to properly monitor the investments held in the said fund for the benefit of the beneficiaries;

40. At various time since CIBC Mellon became the trustee through the present time, contrary to the terms of the then current plan texts, trust agreements, legislation governing pension plans and its trust obligations to the plan beneficiaries, CIBC Mellon:

- (a) made inappropriate payments from the Western Star Trucks Inc. Pension Trust Fund to Freightliner Canada;
- (b) permitted Freightliner Canada to use monies from the Western Star Trucks Inc. Pension Trust Fund for the payment of expenses related to administration of the Western Star Trucks Inc. Pension Plan, such as actuarial fees, administration fees, custodial fees, investment management fees, legal fees and other costs;
- (c) permitted Freightliner Canada to fail to establish a pension advisory committee, at all, or alternatively, to fail to provide the committee with the information necessary for proper analysis and decision making; and
- (d) permitted Freightliner Canada to fail to establish a Statement of Investment Policy and Procedures for the Western Star Trucks Inc. Pension Trust Fund and/or to fail to properly monitor the investments held in the said fund for the benefit of the beneficiaries.

41. From December, 2001, when the Defendant Freightliner Canada announced the closure of operations, it failed to revise the Statement of Investment Policy and Procedures to take into account the fact that the Western Star Trucks Inc. Pension Plan would be wound up after the closure and to minimize the risks to the plan beneficiaries.

42. At various times between 1981 and the present, Western Star Trucks Inc./Freightliner Canada, breached its fiduciary duties owed to the beneficiaries of the Western Star Trucks Inc. Pension Plan, including the Plaintiff, by failing to act honestly and in good faith and in the best interests of the said beneficiaries, and by acting in its own interest in conflict of its duties to the beneficiaries.

43. By making inappropriate withdrawals from the Western Star Trucks Inc. Pension Trust Fund and by taking contribution holidays and charging administrative expenses, Western Star Trucks Inc./Freightliner Canada:

- (a) converted the Plaintiff's property to its own use;
- (b) attempted to, and did, divert substantial portions of the Western Star Trucks Inc. Pension Trust Fund away from the provision of benefits for members of the pension plan to Western Star Trucks Inc./Freightliner Canada's own use;
- (c) failed to act honestly and in good faith and in the best interests of the members of the Western Star Trucks Inc. Pension Plan;
- (d) failed to fully fund the Western Star Trucks Inc. Pension Plan as required by the plan texts; and
- (e) failed to pay administrative expenses and/or unlawfully expended administrative expenses contrary to the plan texts and the common law.

44. The Plaintiff also claims that the Defendants Trust Company A, Canada Trust, and CIBC Mellon, *inter alia*, breached their trust duties imposed on these Defendants, *inter alia*, by failing to protect the interests of the beneficiaries and by participating in this breach

of trust through collaboration with White Motor Co., Western Star Trucks Inc./Freightliner Canada's withdrawal of surplus and the taking of illegal contribution holidays and the charging of administrative expenses contrary to the terms of the plan texts, trust agreements, and the common law despite its full knowledge of the terms of the pension plan.

45. The Plaintiff claims against all the Defendants for breach of trust, and against Freightliner Canada on the basis of unjust enrichment.

46. The most recent actuarial valuation of the Western Star Trucks Inc. Pension Plan conducted by the actuaries appointed by Freightliner Canada as at December 31, 2000 showed that the Western Star Trucks Inc. Pension Trust Fund had an actuarial surplus of \$3,416,775 on a going concern basis and an actuarial surplus of \$4,864,064 on a solvency basis after providing for all of the plan's liabilities.

47. In the calculation of the solvency surplus the actuaries included a reserve for plan solvency expenses of \$481,500. The Plaintiff says that Freightliner Canada has an obligation pursuant to section 57 of the *Pension Benefit Standards Act* to pay the wind-up expenses of the plan themselves and that they do not have the right to pay these expenses from the pension fund.

48. The Plaintiff is entitled to compensation from the Defendants for the wrongful use of monies from the various pension funds by White Motor Co. and Western Star Trucks Inc./Freightliner Canada, to pay for the expenses related to the administration of the pension plans, for the payment of funds out of the pension funds, and for the failure to make contributions to the pension funds in accordance with the terms of the plan texts and trust agreements and for the failure to establish and monitor the Statement of Investment of Investment Policy and Procedures, and for the failure to revise the Statement of Investment of Policy and Procedures after the closure was announced.

Wherefore the Plaintiff claims on his own behalf and on behalf of the members of Class A and Class B as follows:

**Against Freightliner Canada:**

- (a) A declaration that the Working Notice is invalid;
- (b) A declaration that the Plaintiff is entitled to reasonable notice and compensation for benefits in addition to those set out in the proposal contained in the Severance Letter;
- (c) A declaration that the Plaintiff is entitled to payment of all unpaid overtime since February 19, 2001;
- (d) A declaration that the Plaintiff is entitled to compensation for the 5 % salary reduction since January 5, 2002;
- (e) A declaration that the beneficiaries of the Western Star Trucks Inc. Pension Plan are entitled to the existing surplus and that no part of the fund belongs to the Defendant Freightliner Canada;
- (f) An accounting of and repayment of all:
  - (i) monies improperly used for the administration of the White Motor Co. Western Star Division Pension Plan or the Western Star Trucks Inc. Pension Plan;
  - (ii) monies improperly paid to Freightliner Canada out of the White Motor Co. Western Star Division Pension Plan or the Western Star Trucks Inc. Pension Fund;
  - (iii) all contributions to the Western Star Trucks Inc. Pension Fund that were improperly not paid by Freightliner Canada;
  - (iv) investment earnings that would have accrued to the Western Star Trucks Inc. Pension Fund but did not due to the failure of Freightliner Canada to

implement the SIPP, monitor it properly and revise it in contemplation of the wind up of the Western Star Trucks Inc. Pension Plan, together with interest on these amounts at the rates that they would have earned if they had been part of the Western Star Trucks Inc. Pension Fund at the relevant time and if the Defendant Freightliner Canada had implemented, monitored and revised the SIPP appropriately from time to time;

- (g) Costs pursuant to section 37 of the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (h) Such further and other relief as this Honourable Court may consider just.

**Against Trust Company A:**

- (a) An accounting of and repayment of all:
  - (i) monies improperly used for the administration of the White Motor Co. Western Star Division Pension Plan; and,
  - (ii) monies improperly paid to White Motor Co. or to Peat Marwick, the receiver of White Motor Co. out of the White Motor Co. Western Star Division Pension Fund;
- (b) Costs pursuant to section 37 of the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (c) Such further and other relief as this Honourable Court may consider just.

**Against Canada Trust Company:**

- (a) An accounting of and repayment of all:
  - (i) monies improperly used for the administration of the White Motor Co. Western Star Division Pension Plan or the Western Star Trucks Inc. Pension Plan; and,

- (ii) monies improperly paid to White Motor Co. or to Peat Marwick, the receiver of White Motor Co. out of the White Motor Co. Western Star Division Pension Fund;
- (iii) monies improperly paid to Freightliner Canada out of the Western Star Trucks Inc. Pension Fund;
- (b) costs pursuant to section 37 of the Class Proceedings Act, R.S.B.C. 1996, c.50;
- (c) such further and other relief as this Honourable Court may consider just.

**Against CIBC Mellon Trust Company:**

- (a) A declaration that the beneficiaries of the Western Star Trucks Inc. Pension Plan are entitled to the existing surplus and that no part of the Western Star Trucks Inc. Pension Trust Fund belongs to the Defendant Freightliner Canada;
- (b) An accounting of and repayment of all:
  - (i) monies improperly used for the administration of the Western Star Trucks Inc. Pension Plan,
  - (ii) monies improperly paid to Freightliner Canada out of the Western Star Trucks Inc. Pension Fund,
  - (iii) investment earnings that would have accrued to the Western Star Trucks Inc. Pension Fund but did not due to the failure of Freightliner Canada to implement the SIPP, monitor it properly and revise it in contemplation of the wind up of the Western Star Trucks Inc. Pension Plan, together with interest on these amounts at the rates that they would have earned if they had been part of the Western Star Trucks Inc. Pension Fund at the relevant time and if the Defendant Freightliner Canada had implemented, monitored and revised the SIPP appropriately from time to time;
- (c) Costs pursuant to section 37 of the Class Proceedings Act, R.S.B.C. 1996, c.50;

(d) Such further and other relief as this Honourable Court may consider just.

**Against All Defendants**

(a) A declaration that all sums properly attract interest pursuant to the *Court Order Interest Act*;

Place of trial: Vancouver, British Columbia

Dated April 16, 2002



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Solicitor for the Plaintiff

This **Writ of Summons and Statement of Claim** is filed and delivered by firm of TevlinGleadle, Employment Law Strategies, whose place of business and address for delivery is 111 Smithe Street, Vancouver, B.C., V6B 4Z8, Telephone (604) 648-2966, Fax (604) 648-2967