

FILE/DIRECTION/ORDER

CV-17-579285-00CP
CV-14-513403-00CP
Milton Court File 4771114
Ottawa Court File No. 63387115

BEFORE JUDGE

Glustein

ACTION #

Ottawa Court File No. 63387115

Staryna Well Services Ltd. et al

Plaintiff(s)

-v-

Navistar Canada Inc. et al

Defendant(s)

CASE MANAGEMENT: YES NO

COUNSEL: J. Foreman/S. Bowden/A. Legate-Ludfe EMAIL:

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ORDER

DIRECTION TO REGISTRAR

Nature of the motions and overview

The plaintiff(s) in (i) Staryna Well Services et al v. Navistar Canada Inc et al (Toronto Court File No. CV-17-579285-00CP) (the "Consolidated Action"), (ii) Raymond Bruhm et al v. Navistar Canada Inc et al (Toronto Court File No. CV-14-513403-00CP) (the "Bruhm Action"), (iii) Staryna Well Services Ltd et al v. Navistar Canada Inc et al (Milton Court File 4771114) (the "Staryna Action") and (iv) R: A Trans Corp. v. Navistar Canada Inc. et al (Ottawa Court File No. 63387115) (the


Justice Glustein

December 21, 2023
DATE

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"RIA Action" (collectively, the Ontario Actions) bring motions to (i) ~~grant~~ the
discovery of the Ontario Actions as against all defendants, being Navistar Canada, Inc.,
Navistar, Inc., and Navistar International Corporation (collectively, "Navistar") and
(ii) direct that the respective orders along with reasons from this court be posted on the
websites of plaintiffs' counsel and that no other notice under sections 19 or 101.29
of the Class Proceedings Act, 1992, S.O. 1992, c. 6 (the CPA) is required.

For the reasons that follow, I grant the relief sought in the Ontario Actions.
These reasons apply to all of the Ontario Actions. ~~et al.~~

Background

The Ontario Actions are amongst a group of class actions in Manitoba, British
Columbia, Alberta, and Quebec that all raise the same allegation that Navistar
manufactured and sold trucks containing engines that utilized allegedly
defective Exhaust Gas Recirculation (EGR) technology.

Shortly after these actions were commenced, ^{Plaintiffs'} ~~the~~ counsel in the Ontario Actions
entered into a consultation agreement to prosecute the consolidated Action and the

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action in N.C. Transportation Ltd v Navistar International Corporation, et al (Quebec
Registry No. ULC-5-5-144960) (the "BC Action"), on a national basis with Ferris LLP,
Canada in the BC Action. The Motion was preliminarily presented from the British
Columbia jurisdiction since that time.

The BC Action was initially settled ^{as a} national, yet in class proceedings and also
extended to encompass all provinces and territories in Canada on a national basis with
the exception of Quebec. The Quebec Action (403 7308 Leach P.C. v Navistar

Leach Inc et al, Quebec Superior Court File No. SUO-06-000700-140) was resolved
by a settlement agreement approved by the court. No settlement motion or
application was made in either the Manitoba Action (Estate of Veronique Brown v Navistar
Leach Inc et al, Manitoba Queen's Bench File No. C1 14-01-90863) or in the Alberta
Action (Edmund Zechel et al, Zechel Trucking v Navistar Leach Inc, et al, Alberta
Court of Queen's Bench File No. 1403 16425).

National Settlement Agreement

On July 8, 2023, after extensive negotiations between the parties last year, the
the "National Settlement Agreement" was reached between Navistar and the plaintiffs with

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The Discontinuances

Clauses 10.02 to 10.04 of the court-approved Natural Settlement Agreement
pertain to the proposed discontinuance of the Ontario ~~Notice~~ ^{Activity} The plaintiffs into
Ontario Act in their usual or all rights in the Natural Settlement Agreement.
Each of the plaintiffs into Ontario Act has undertaken their usual to discontinue the
Ontario Act and have signed affidavits in support of the present notice

Further notice of settlement agreed and discontinuance

Settlement class members will be receiving further notice related to claims process.
That notice will advise settlement class members that the Natural Settlement Agreement
was approved and that it resolves all outstanding class litigation against the defendant
on a national basis.

Further, counsel for the plaintiffs into Ontario Act is prepared to post a copy
of the usual notice of ~~discontinuance~~ ^{stop} accompanying records to their respective websites
(Ontario Act's website, along with a formal properly executed copy of the discontinuance
pursuant to the Natural Settlement Agreement

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Analysis

I first address the issue of whether the Ontario Act is directly discriminatory.
I then consider whether further notice of the discrimination (beyond the ^{form of} notice prepared by the plaintiff/s) is required.

(i) Discrimination

I address the discrimination of the Ontario Act. I rely on the following:

(a) The Ontario Act ^{were} filed in good faith and for the proper purpose

of seeking redress for alleged F&B defect

(b) The BC Act provided first to which order and for the purpose of interjurisdictional efficiency and coordination. The order was predominantly presented in British Columbia since that time

(c) The discrimination does not create prejudice. To the contrary, the facilities the filing of registered claims against affected health products to the class

(d) Public class members in the Ontario Act have been provided with ~~appropriate~~ ^{adequate} notice lodged with the National Settlement Agreement and it will not be out of the BC Act.

(e) ~~There~~ ^{There} is no further notice to be required through the Ontario Act.

(f) Any claims in the Ontario Act are now viable, as the public class members

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(c) No public class member object to the Natural Settlement Agreement
is set to opt out of the BC Actis

(d) Settlement class members will ~~receive~~ ^{receiving} further notice related to
claims prosecuted will direct them to the Natural Settlement Agreement
as opposed to that of registers all custody class litigation apart
to the date of a natural basis.

For the above reasons, I grant the proposed form of notice of distribution.

Conclusion

For the above reasons, I grant the relief sought. Orders to go with the attached
Petition as attached.

Since these reasons are set out in the register website of plaintiff's counsel, I
did not order plaintiff's counsel to do to provide me with a transcript version of these
reasons for my review. I regret the need to make such a subjective assessment to these reasons
upon review of the transcript reasons

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JUDGE'S SIGNATURE

Toronto Court File No. CV-17-579285-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

STAYURA WELL SERVICES LTD.; MCCLARY LOGISTICS LTD.; RAYMOND BRUHM and
KAYANGELA BRUHM

Plaintiffs

- and -

NAVISTAR CANADA INC., NAVISTAR INC., and NAVISTAR INTERNATIONAL
CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

Toronto Court File No. CV-14-513403-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RAYMOND BRUHM and KAYANGELA BRUHM

Plaintiffs

- and -

NAVISTAR CANADA INC. and NAVISTAR INTERNATIONAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

Milton Court File No. 4771/14

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

STAYURA WELL SERVICES LTD.

Plaintiffs

- and -

NAVISTAR CANADA INC., NAVISTAR INC., and NAVISTAR INTERNATIONAL
CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

R&A TRANS CORP.

Plaintiff

- and -

NAVISTAR CANADA, INC., NAVISTAR, INC., AND NAVISTAR INTERNATIONAL
CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

Counsel: J. Foreman, S. Bowden, A. Legate-Wolfe, J. Rochon, R. Podolny, C. Zayid and M. Bridges

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Endorsement

Nature of the motions and overview

The plaintiffs in (i) *Stayura Well Services et al. v. Navistar Canada Inc. et al.* (Toronto Court File No. CV-17-579285-00CP) (the “Consolidated Action”), (ii) *Raymond Bruhm et al. v. Navistar Canada Inc. et al.* (Toronto Court File No. CV-14-513403-00CP) (the “Bruhm Action”), (iii) *Stayura Well Services Ltd. et al. v. Navistar Canada Inc. et al.* (Milton Court File 4771/14) (the “Stayura Action”), and (iv) *R&A Trans Corp. v. Navistar Canada Inc. et al.* (Ottawa Court File No. 63387/15) (the “R&A Action”) (collectively, the “Ontario Actions”) bring motions to:

- (i) approve the discontinuances of the Ontario Actions as against all defendants, being Navistar Canada, Inc., Navistar, Inc., and Navistar International Corporation (collectively “Navistar”); and
- (ii) direct that the respective orders and any reasons from this court be posted on the website of plaintiffs’ counsel and that no other notice under sections 19 and/or 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”) is required.

For the reasons that follow, I grant the relief sought in the Ontario Actions. These reasons apply to all of the Ontario Actions.

Background

The Ontario Actions are amongst a group of class actions in Manitoba, British Columbia, Alberta and Québec that all raise the same allegation that Navistar manufactured and sold trucks containing engines that utilized allegedly defective Exhaust Gas Recirculation (“EGR”) technology.

Shortly after these actions were commenced, plaintiffs' counsel in the Ontario Actions entered into a consortium agreement to prosecute the Consolidated Action and the action in *N & C Transportation Ltd. v. Navistar International Corporation, et al.* (Vancouver Registry No. VLC-S-S-144960)(the "BC Action"), on a national basis with Farris ^{LLP}, counsel in the BC Action. The litigation has been predominantly prosecuted from the British Columbia jurisdiction since that time.

The BC Action was initially certified as a national, opt-in class proceeding, and later extended to encompass all provinces and territories in Canada on an opt-out basis, with the exception of Québec. The Québec Action (*4037308 Canada Inc. v. Navistar Canada Inc. et al.*, Québec Superior Court File No.500-06-000720-140) was resolved by a settlement agreement approved by the court. No certification motion or application was heard in either the Manitoba Action (*Estate of Vernon James Brown v. Navistar Canada Inc. et al.*, Manitoba Queen's Bench File No. CI 14-01-90962) or in the Alberta Action (*Edmund Zechel dba Zechel Trucking v. Navistar Canada Inc., et al.*, Alberta Court of Queen's Bench File No. 1403 16425).

National Settlement Agreement

On June 8, 2023, after extensive negotiations between the parties lasting over a year, the "National Settlement Agreement" was reached between Navistar and the plaintiffs in the BC, Stayura, Bruhm and Consolidated Actions. The plaintiffs and their counsel in the Manitoba, Alberta and R & A Actions are signatories to the National Settlement Agreement. That agreement provides settlement benefits valued at \$14.5 million for the benefit of the settlement class.

The BC Action was certified for settlement purposes on July 24, 2023. Settlement class members (which included all relevant class members in Canada except Québec) were subject to a comprehensive notice program for delivery of notices of certification and of the settlement approval hearing of the BC Action. Consequently, potential class members in the Ontario Actions received notice of the National Settlement Agreement through the court-approved notice program in the BC Action. The notice stated that "the Settlement, if approved, will resolve all outstanding class litigation against the Defendants on a national basis including similar cases previously brought by lawyers in Ontario, Alberta and Manitoba".

Settlement class members, under the notice program, had the opportunity to object to the National Settlement Agreement or opt-out of the litigation between September 18, 2023 and November 17, 2023. No settlement class member objected to the settlement or opted out of the litigation.

The Discontinuances

Clauses 10.02 to 10.04 of the court-approved National Settlement Agreement provide for the proposed discontinuances of the Ontario Actions. The plaintiffs in the Ontario Actions and their counsel are all signatories to the National Settlement Agreement. Each of the plaintiffs in the Ontario Actions have instructed their counsel to discontinue the Ontario Actions and have signed affidavits in support of the present motion.

Further notice of settlement approval and discontinuances

Settlement class members will be receiving further notice related to the claims process. That notice will advise settlement class members that the National Settlement Agreement was approved and that it resolves all outstanding class litigation against the defendants on a national basis.

Further, counsel for the plaintiffs in the Ontario Actions propose to post a copy of the issued orders and these accompanying reasons to their respective Navistar Class Action websites, along with a statement providing a summary of the discontinuance pursuant to the National Settlement Agreement.

Analysis

I first address the issue of whether the Ontario Actions should be discontinued. I then consider whether further notice of the discontinuance (being the form of notice proposed by the plaintiffs) is required.

(i) Discontinuance

I approve the discontinuance of the Ontario Actions. I rely on the following:

- a) The Ontario Actions were filed in good faith and for the proper purpose of seeking redress for the alleged EGR defect;
- b) The BC Action proceeded first to certification and for the purposes of interjurisdictional efficiency and coordination. The litigation has been predominantly prosecuted in British Columbia since that time;
- c) The discontinuances do not create prejudice. To the contrary, they facilitate the flow of negotiated and now approved settlement benefits to the class;
- d) Putative class members to the Ontario Actions have been provided with notice to object to the National Settlement Agreement and to opt-out of the BC Action;
- e) There are no further rights to be conveyed through the Ontario Actions. Any claims in the Ontario Actions are non-viable, as the putative class members in the Ontario Actions have irrevocably released their claims against Navistar relating to the alleged EGR defects.

For the above reasons, I approve the proposed discontinuances of the Ontario Actions. The discontinuances are part of a nationally coordinated settlement agreement sought in good faith, without any prejudice to class members, and avoids the duplication of judicial and party resources.

(ii) Proposed notice

I am satisfied that notice of the discontinuance should be limited to posting the applicable discontinuance order to the website of the respective counsel webpages, along with a copy of these reasons, and a statement providing a summary of to the discontinuance pursuant to the National Settlement Agreement. I rely on the following:

- a) Potential class members in the Ontario Actions received notice of the National Settlement Agreement through the court-approved notice program in the BC Action;
- b) The BC Action notice approval program includes express reference to the discontinuances of the Ontario Actions;
- c) No putative class member objected to the National Settlement Agreement or chose to opt out of the BC Action;
- d) Settlement class members will be receiving further notice related to the claims process which will advise them that the National Settlement Agreement was approved and that it resolves all outstanding class litigation against the defendants on a national basis.

For these reasons, I approve of the proposed form of notice of discontinuance.

Conclusion

For the above reasons, I grant the relief sought. Orders to go with the Ontario Actions as attached.

Date: 12/21/23

Judge's Signature