

NOTICE OF CERTIFICATION AND SETTLEMENT

HOURLY BANK BENEFIT PLAN CLASS ACTION

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Why did I get this Notice?

Your employer emailed you this Notice because your rights may be affected by the proposed settlement of the Hourly Bank Benefit Plan Class Action (the “**Settlement Agreement**”).

What is the Hourly Bank Benefit Plan Class Action about?

This Class Action made various allegations against the Defendants in relation to an Hourly Bank Health and Welfare Benefit Plan (the “**Defendants’ Benefit Plan**”) for hourly employees in which employees (the “**Proposed Class Members**”) had allegedly participated. It was alleged that the Defendants made misrepresentations concerning the operation of the Defendants’ Benefit Plan and engaged in other wrongful conduct as set out in the Action.

The allegations in the Action included that the Defendants, or any of them, refused to transfer the Proposed Class Members’ banked hours in their individual hourly bank accounts over to their new benefit plans, after they, at the behest of their employers, left the Defendants’ Benefit Plan to participate in the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the “**New Plans**”).

The Plaintiffs in the Action sought a transfer of banked hours of the Proposed Class Members from the Defendants’ Benefit Plan to one of the New Plans, or the cash equivalent of those hours, and the “growth in reserves” of the Fund of the Defendants Benefit Plan as a result of the participation of the Plaintiffs in the Defendants’ Benefit Plan.

Among the causes of action alleged by the Plaintiffs in the Action are misrepresentation, breaches of the *Competition Act*, breaches of the *Consumer Protection Act* (Alberta), the tort of deceit/civil fraud, unjust enrichment, breach of contract, negligent misrepresentation, breach of trust and breach of fiduciary duty, and civil conspiracy.

How do I know if I am a Class Member?

You are a Class Member for settlement purposes if you meet all criteria below:

- (1) You were employed on an hourly wage basis by a Participating Firm in the Merit Contractors Association Benefit Plan (the “**Defendants’ Benefit Plan**”).
- (2) You participated in the Defendants’ Benefit Plan offered by the Merit Contractors Association Benefit Plan Trust (the “**Trust**”).
- (3) Your employer ceased to be a Participating Firm in the Trust in the calendar year 2020.
- (4) Your employer then ceased to be a Participating Firm in the Defendants’ Benefit Plan in 2020 and moved directly to become a Participating Firm in any of the Saskatchewan

Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the “**New Plans**”) in 2020.

(5) The individual hourly employee (you) continued to be employed by the same Participating Firm on a continuous basis to the time that the Approval Order is granted.

(6) You have not Opted Out of the Class Action.

WILL I RECEIVE ANY MONEY IF I AM A CLASS MEMBER?

If the Alberta Court of King’s Bench (the “**Court**”) approves the Settlement Agreement, **Class Members will receive no money.**

Under the Settlement Agreement, the Defendants will pay the sum of **\$450,000.00** (the “**Settlement Amount**”) in full and final settlement of all claims of Plaintiffs in the Class Action including the claims of the Proposed Class Members against the Defendants. The Settlement Amount includes all legal fees, disbursements, taxes, and Administration Expenses and in return for the Settlement Amount, the Defendants will receive Releases and a dismissal of the Class Action.

Instead, the Settlement Amount, less (i) Administration Expenses as approved by the Court; (ii) Class Counsel Disbursements as approved by the Court; and (iii) Class Counsel Fees as approved by the Court (the “**Net Settlement Amount**”) will be distributed as **honoraria and donated to certain organizations** (the “**Distribution Plan**”), which is described in better detail below.

REASONS FOR PROPOSED DISTRIBUTION PLAN

The Action was prosecuted by Class Counsel and Affidavits (sworn statements of evidence) were filed by the Plaintiffs, an expert for the Plaintiffs, and others. Counsel for the Defendants cross-examined most of the individuals who swore those Affidavits as part of the Certification Application.

During this process, it became evident to Class Counsel that they would have significant difficulty proving the allegations that have been made in the action, including the allegation that employees (the Proposed Class Members) suffered a loss of their hour banks after transferring from the Merit Benefit Plan to their New Plans– a core claim in the Action

The Defendants filed a series of Applications with the Court including an Application to have the Action dismissed. Rather than face the risk that such an Application could be successful leaving the Plaintiffs (and the Proposed Class) with nothing, the Plaintiffs, through their counsel, chose to negotiate a resolution of the Action. The terms of that resolution are set forth in the Settlement Agreement.

OPTING OUT OF CLASS ACTION

If any Class Member wishes to opt out of the settlement, they will be given the opportunity to complete an **Opt-Out Form** after the settlement approval hearing on November 17, 2024. They

will need to submit it to Class Counsel by December 2, 2024. Further instructions on the Opt-Out Form will be emailed to Class Members by their employers on or after November 27, 2024.

Any Class Member who elects to Opt Out of the proposed settlement of this Action and does so successfully (the “**Opt Out Individuals**”), will have the option to start their own individual action against the Defendants **at their sole expense**.

Class Counsel warns those individuals who are contemplating Opting Out that if they choose to opt out and pursue own individual lawsuit at their own cost, they will likely face **significant problems proving their case**, as did the Plaintiffs in the Action.

If unsuccessful in prosecuting their own action, the Opt Out Individuals may be **responsible for the payment of costs** to the Defendants. Such costs will be the **sole responsibility** of the Opt Out Individuals.

APPROVAL HEARING IN EDMONTON, ALBERTA

On **November 20, 2024**, counsel for the Plaintiffs will apply to Court to have the Class Action certified for settlement, and for the Settlement Agreement, Class Counsel Fees and Class Counsel Disbursements approved by the Court (the “**Approval Hearing**.”)

The Approval Hearing will be held at the Law Courts Building, 1A Sir Winston Churchill Square, Edmonton, Alberta, at **10 o'clock am**.

Class Members do not need to attend the Approval Hearing but are welcome to do so.

CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATIVE EXPENSES

At the Approval Hearing, Class Counsel (as identified below) will ask the Court to approve their legal fees, which will be 30% plus applicable taxes charged on the Net Settlement Amount (“**Class Counsel Fees**”).

Class Counsel will also ask the Court to approve Honoraria of \$5,000 for both individual Plaintiffs, Class Counsel Disbursements, Administration Expenses and of a distribution plan (the “**Distribution Plan**”).

THE DISTRIBUTION PLAN

The Net Settlement Amount will be distributed in accordance with the Distribution Plan attached as Schedule “E” to the Settlement Agreement, which, in general terms, provides that:

- (a) \$10,000 will be distributed evenly between the Representative Plaintiffs, Michael Rempel and Evan Martindale as Honoraria for their efforts in advancing the litigation (“**Honoraria**”);
- (b) The remaining Net Settlement Amount, after deduction of Honorarium will then be distributed as follows:
 - a. 37% to **Saskatchewan Polytechnic** for their trades’ programs School of Construction (saskpolytech.ca), with 2/3 to be split between the Saskatoon

Campus and the Regina Campus and the remaining 1/3 to be split between the Moose Jaw Campus and Prince Albert Campus;

- b. 34% to the **Red River Scholarship Fund for apprentices** (<https://www.rrc.ca/future-students/awards/>);
- c. 12% to **Build a Dream** (<https://www.webuildadream.com/donate/> in Ontario);
- d. 17% to **Techsploration** (<https://www.techsploration.ca/>) and **Skills Canada Nova Scotia** (<https://www.skillsns.ca/>)

OBJECTIONS

If you wish to **OBJECT** to the approval of the Settlement Agreement, Class Counsel Fees, Class Counsel Disbursements, Administration Expenses or the payment of Honorarium to the Representative Plaintiffs, you must deliver a letter or written objection by mail, fax or email to Class Counsel and must be received by **November 12, 2024**.

What needs to be included in my objection letter?

Your letter to Class Counsel should contain the following:

- Your full name, current mailing address, telephone number and email address;
- Confirmation that you are a Class Member;
- A statement explaining whether you are objecting to the Settlement Agreement, Class Counsel Fees, Class Counsel Disbursements, Administration Expenses and/or the payment of Honorarium to the Representative Plaintiffs, and why;
- Confirmation of whether you intend on coming to the Approval Hearing, whether alone or with a lawyer.

OTHER

A copy of the Third Amended Statement of Claim, the Settlement Agreement including the Distribution Plan may be found on:

<https://rhelaw.com/class-action/mercon-class-action/>

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

ANY QUESTIONS ABOUT THIS NOTICE SHOULD BE DIRECTED TO CLASS COUNSEL

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THIS NOTICE, AND DISTRIBUTION OF IT, HAS BEEN AUTHORIZED BY THE COURT OF
KING'S BENCH OF ALBERTA