

MARC-OLIVER BAROCH v. CANADA CARTAGE DIVERSIFIED GP INC., et al.

PROPOSED ADMINISTRATION AND DISTRIBUTION PROTOCOL

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A. DEFINITIONS

1. For the purpose of this Administration and Distribution Protocol the following definitions will apply:
 - (a) **“Canada Cartage”** means Canada Cartage System Limited Partnership, Direct Limited Partnership and Sonar Limited Partnership.
 - (b) **“CHS”** means Cohen Steger Hamilton & Co., who is the damages quantification expert retained by Class Counsel.
 - (c) **“Claims Administrator”** means the entity appointed by the Court to administer the Settlement Agreement and the Distribution Protocol in accordance with this Protocol as approved by the Court, and any employees of such firm.
 - (d) **“Claim Fund”** means the portion of the Settlement Amount remaining after the payments contemplated by the Settlement Agreement and Orders of the Courts (which payments will include approved Class Counsel Fees and disbursements, and administrative expenses).
 - (e) **“Class Counsel”** means Lax O’Sullivan Lisus Gottlieb LLP.
 - (f) **“Class Members”** means all persons who, at any time during the Class Period, were employed by Canada Cartage and who were entitled to receive overtime compensation pursuant to the *Canada Labour Code*, R.S.C. 1985, c. L-2 and its regulations and whose terms and conditions of employment were, for any part of the Class Period, not governed by a collective agreement between Canada Cartage and a union and who have not opted-out of this proceeding.
 - (g) **“Class Period”** means March 1, 2006 to January 30, 2015.
 - (h) **“Court”** means the Ontario Superior Court of Justice.
 - (i) **“Current Employee Class Members”** means Class Members who continue to be employed by Canada Cartage or any of the Defendants.
 - (j) **“Defendants”** mean Canada Cartage Diversified GP Inc., Direct General Partner Corporation, and Canada Cartage System, Limited.

- (k) **“Extended Class Period”** means from January 31, 2015 up to and including the date of the execution of the settlement agreement.
- (l) **“First Distribution”** means the distribution of the first 80% of the Claim Fund.
- (m) **“Former Employee Class Members”** means Class Members who were employed but are no longer employed by Canada Cartage or any of the Defendants prior to the date of the execution of the Settlement Agreement.
- (n) **“HRSDC”** means Human Resources and Skills Development Canada, a department of the Government of Canada responsible for the administration of federal labour standards at the time of the Class Period, now known as Employment and Social Development Canada.
- (o) **“Limitations Adjustment Factor”** means the percentage set out in the below table for each time period:

| | |
|---|------|
| Before Nov. 8, 2011 (Payroll for the week ending Nov. 5, 2011) | 40% |
| Nov. 8, 2011 (Payroll for the week ending Nov. 12, 2011) to Jan. 30, 2015 (Payroll for the week ending Jan. 24, 2015) | 100% |
| Jan. 31, 2015 (Payroll for the week ending Feb. 7, 2015) to Feb. 28, 2019 (Payroll for the week ending Feb. 23, 2019) | 15% |
| Mar. 1, 2019 (Payroll for the week ending Feb. 23, 2019) to June 3, 2021 | 100% |

- (p) **“Notification Letters”** means letters provided to each Class Member describing their Payment, and the hourly rate and dates or periods of employment within the Class Period and, if applicable, Extended Class Period used to calculate their Payment.
- (q) **“Payment”** means the final determined proportionate amount of the Claim Fund sent to an individual Class Member.
- (r) **“Relative Share”** means the proportion of the Claim Fund for a particular Category that an individual Class Member will be entitled to.

- (s) **“Second Distribution”** means the distribution of the remaining 20% of the Claim Fund.
- (t) **“Settlement Agreement”** means the settlement agreement as approved by the Court.
- (u) **“Settlement Amount”** means the twenty-two and a quarter (22.25) million dollars (CAD) paid by the Defendants to the Class.
- (v) **“Survey”** means a procedure undertaken by HRSDC to determine the prevailing industry practice in a geographical area, which might affect the overtime thresholds for certain drivers at Canada Cartage.
- (w) **“Time Records”** means the Payroll Master Spreadsheets and/or timesheets that have already been produced in the litigation and that indicate how much recorded time Class Members worked for Canada Cartage or any the Defendants during the Class Period and, if applicable, the Extended Class Period.

B. GENERAL PRINCIPLES OF THE ADMINISTRATION

2. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Claim Fund recovered in *Marc-Oliver Baroch v. Canada Cartage Diversified GP Inc. et al.* (the **“Action”**). This protocol is reasonably designed and intended to result in payment to the highest possible proportion of Class Members. To this end, the Claims Administrator and Class Counsel will make reasonable efforts to distribute the Claim Fund to Class Members without the need for Class Members to do anything, except to update their address and confirm their identity if the address retained in the records of Canada Cartage or the Defendants is outdated.
3. This Administration and Distribution Protocol is further designed and intended to calculate, as accurately as possible, given the available Time Records, the amount of actual outstanding overtime pay for each Class Member and allocate the Claim Fund proportionately.
4. Throughout this Action, the parties advanced various positions and arguments about the interpretation of the *Canada Labour Code*, the regulations, limitations period issues, and the burdens of proving exemptions under the *Code*. This Administration and Distribution Protocol is intended to reflect the likelihood of success on various legal positions taken as well as the likelihood that success on

that legal position would lead to an aggregate assessment of damages that would include recovery on that legal position.

5. This Administration and Distribution Protocol incorporates the strengths and weaknesses of the various legal positions noted in paragraph 4, and accounts for the differing overtime pay thresholds applying to Class Members, with the goal of calculating and distributing a reasonably fair, accurate, and just Payment to Class Members. Where records of hours of work are unavailable, then pro-rata distributions are made.

C. THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

6. The Claims Administrator shall administer this Administration and Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement, and the ongoing authority and supervision of the Court.
7. The Claims Administrator's duties and responsibilities shall include the following:
 - (a) providing notice(s) to the Class Members as may be required;
 - (b) receiving information from the Defendants relating to Class Members' identifying information and dates of employment in each of the six Categories listed below in paragraph 8;
 - (c) developing, in consultation with CHS, the algorithm(s)/formula(s)/etc. for calculating Class Members' Payments pursuant to this protocol;
 - (d) developing, implementing, and operating the administration process including a bilingual administration website;
 - (e) making timely calculations, with CHS' assistance, of Class Members' Payments and notifying Class Members of their Payments, and their dates of employment within the Class Period and Extended Class Period;
 - (f) arranging payment to Class Members in a timely fashion;
 - (g) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
 - (h) performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Court;
 - (i) maintaining the administration information so as to permit Class Counsel

to audit the administration at the discretion of Class Counsel or if ordered by the Court;

- (j) dedicating sufficient personnel to respond to Class Members' inquiries in English or French, as the Class Member elects;
- (k) calculating the withholding of both employee and employer portions of CPP, EI, EHT, income tax, provincial statutory workers compensation schemes, and any other statutory amounts remitting same;
- (l) preparing and distributing T4A forms to Class Members;
- (m) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Court;
- (n) reporting to Class Counsel the process and administration expenses;
- (o) holding the Claim Fund in an interest-bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Net Proceeds from that account as authorized;
- (p) cash management and audit control; and
- (q) preparing and submitting reports and records as directed by Class Counsel or the Court.

D. DIVISION OF CLAIM FUND

8. The Claim Fund will be divided into six Categories reflecting the Defendants' and/or Canada Cartage's various payroll systems and records as follows:

| Category | Share of Claim Fund |
|--|----------------------------|
| Payroll Master Spreadsheet employees (Ontario/Quebec drivers and hourly non-drivers) | 80% |
| Warehouse employees | 2% |
| Calgary drivers | 7.5% |
| Western hourly non-drivers | 3.5% |
| Salaried employees | 6.5% |

| | |
|--------------|-------------|
| Others | 0.5% |
| Total | 100% |

9. The first five Categories are intended to reflect all the payroll systems and locations where Class Members were employed that are known to Class Counsel.
10. The “Others” Category is intended to set aside certain Settlement Amounts if it is subsequently discovered that there are Class Members who are not in the other five Categories. If no such Class Members exist, the Share of the Claim Fund allocated for the “Others” Category will be distributed to Class Members in the other five Categories during the Second Distribution.

E. CALCULATION OF CLASS MEMBERS’ ALLOTMENT FACTOR

11. To calculate the Payment for each Class Member, the Class Administrator, working with CHS, will first determine each Class Member’s Periodic Allotment Factor (described below) for each Time Period that a Class Member worked for the Canada Cartage or any of Defendants. The Periodic Allotment Factor is then multiplied by the applicable Limitations Adjustment Factor to generate the **“Limitations-Adjusted Allotment Factor”**.
12. The Class Administrator and CHS will determine what Time Periods to use for the computations – weekly, bi-weekly, annually, or, where there is a change in the computation method during a year, by splitting a year into multiple sub-years reflecting the portion of the year that a particular computation method applies to – based on which Time Periods best reflect the payroll practices followed and records available and simplify the computation of the Periodic Allotment Factors.
13. For each Category, each Class Member’s Periodic Allotment Factor will be calculated as follows:
 - (a) Payroll Master Spreadsheet Employees
 - The Periodic Allotment Factor will be calculated using a weighted average of CHS’ models of underpaid overtime, as set out in Schedule A attached.
 - CHS’ models take into account various factors, such as the eligible overtime pay thresholds for different Canada Cartage employment positions, whether HRSDC conducted a Survey for a particular location, etc.

- For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (b) Warehouse employees
- The Periodic Allotment Factor shall be equal to the pay that the Class Member received for that Time Period.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (c) Calgary drivers
- The Periodic Allotment Factor shall be the number of hours worked multiplied by the wage rate including all premiums in that Time Period.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (d) Western hourly non-drivers
- The Periodic Allotment Factor will be calculated by analyzing the underpaid overtime identified in the Defendants' expert, Deloitte's, analysis of Western hourly non-drivers.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (e) Salaried employees
- The Periodic Allotment Factor shall be equal to the pay that the Class Member received in that Time Period.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
14. After the above assessments take place, the Periodic Allotment Factor is multiplied by the applicable Limitation Adjustment Factor to generate the Limitations-Adjusted Periodic Allotment Factor.
15. The sum of each Class Member's Limitations-Adjusted Periodic Allotment Factors in each Category is then divided by the total sum of Limitations-Adjusted Periodic Allotment Factors in the Category to calculate each Class Member's

Relative Share of that Category's Share of the Claim Fund.

16. If a Class Member is in multiple Categories, then a Relative Share will be computed for each Category based on the Time Periods employed in each Category.

F. EXTRAPOLATION PROTOCOL

17. Where there is insufficient data, including for the Extended Class Period, the Claims Administrator will, working with CHS, develop extrapolation methods based on the available data to calculate a Periodic Allotment Factor for affected Class Members.

G. THE ADMINISTRATION PROCESS

18. Generally, the Claims Administration Process will be as follows:

(a) Step 1: Calculation of Total Payment

The estimated Relative Share for each Category that Class Members are entitled to will be calculated by following the above process. The Relative Share for each Category is then multiplied by the Share of the Settlement Amount allotted to that Category to calculate the Payment.

If a Class Member is in multiple Categories, then the Payment for each category should be added together to calculate a Total Payment.

A Class Member is required to have a Payment totalling at least \$50 to be eligible for a distribution. Any calculated Payments to Class Members less than \$50 will be held back to the Second Distribution. If the Claims Administrator's and/or CHS' calculation for the Second Distribution finds that the Payment for certain Class Members is above \$50, then those Class Members will receive said Payment in the Second Distribution. Any Payments of less than \$50 will remain in the Claim Fund to be distributed to Class Members whose Relative Share is above \$50.

(b) Step 2: Notification Letters

The Claims Administrator will prepare Notification Letters individualized for each Class Member describing: (i) the Class Member's dates or periods of employment within the Class Period and, if applicable, the Extended Class Period grounding their membership in each Category, (ii) the Total

Payment that each Class Member is estimated to receive, and (iii) where applicable, the process for Class Members to follow to identify any errors in the Class Member's his/her dates or periods of employment within the Class Period and, if applicable, the Extended Class Period.

Class Members will receive Notification Letters from the Claims Administrator via direct mail at the address in the Defendants' records.

The Claims Administrator will also cause a template Notification Letter to be posted on the website accessible to the general public with respect to the Class Action.

(c) **Step 3 – First Distribution**

Class Members will be provided with cheques consisting of 80% of their Payment, less employee and employer portions of CPP, EI, EHT, income tax, provincial statutory workers compensation schemes, and any other statutory withholding amounts.

(d) **Step 4 – Second Distribution**

Within a set time after the First Distribution, the Claims Administrator will process the Second Distribution and distribute cheques to Class Members consisting of the remaining 20% of their Payment, less employee and employer portions of CPP, EI, EHT, income tax, provincial statutory workers compensation schemes, and any other statutory withholding amounts. The Payment of the Second Distribution may be adjusted to account for, among other things, any errors identified following the First Distribution and/or redistributing of Payments less than \$50.

(e) **Step 5 – Remittance**

The Claims Administrator, identifying Canada Cartage System Limited Partnership, Direct Limited Partnership, Sonar Limited Partnership or any of the Defendants (as applicable) as the employer, will remit Canada Pension Plan, Employment Insurance, Employer Health Tax, income tax, provincial statutory workers compensation schemes contributions and any other statutory withholding amounts and provide T4A forms to Class Members.

(f) **Step 6 – Report**

The Claims Administrator will provide a report on the results of the Administration and Distribution to Class Counsel, who will report to the Court.

H. CLASS COUNSEL

19. Class Counsel shall oversee the process and provide advice and assistance regarding this Administration Protocol and Distribution Protocol.

I. RESIDUAL DISCRETION

20. Notwithstanding the foregoing, if, during the Administration Process, Class Counsel have reasonable and material concerns that the Administration and Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Administration and Distribution Protocol or for further directions with respect to the distribution of the Claim Fund.
21. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendants, CHS, and the Claims Administrator.

J. RESIDUAL DISTRIBUTION

22. If there remains any amount of the Claim Fund after the First Distribution and Second Distribution have been made in accordance with the provisions of this Administration and Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Court to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy près* distribution, if appropriate.

I. CONFIDENTIALITY

23. All information received from the Defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

Schedule A – Weighing of CHS’ Models for Payroll Master Spreadsheet Employees

CHS has created and calculated detailed models for Class Members’ underpaid overtime and will be adjusting them to implement the different assumptions set out below:

| Legal issue/dispute | Date range | Overtime Thresholds, Canada Cartage’s Recordkeeping, and HRSDC factors | Weight |
|----------------------------|-----------------------------------|--|--------|
| Shunter overtime threshold | | 8/40 | 30% |
| | | 9/45 | 70% |
| City distance threshold | Before June 27, 2010 | 16 km | 20% |
| | | Survey | 60% |
| | | 160 km | 20% |
| | After June 27, 2010 | Survey | 80% |
| | | 160 km | 20% |
| “Unknown” trips | | All unknown trips treated as city | 20% |
| | | All unknown trips treated as highway | 80% |
| Shunter wage rate | June 3, 2012 to December 29, 2012 | Original wage rate | 50% |
| | | Reduced wage rate | 50% |
| | After December 30, 2012 | Original wage rate | 15% |
| | | Reduced wage rate | 85% |

A Periodic Allotment Factor can be calculated by taking a weighted average of the different models based on these percentages.

For non-drivers (i.e. entries without TCC codes), these CHS models use a formula that calculates a Periodic Allotment Factor based on an 8 hour per day, 40 hour per week overtime threshold and including the entirety of the employee’s underpaid overtime based on the weekly formula, along with 20% of any additional underpaid hours calculated using the daily formula.