

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
JOHNSTOWN DIVISION

KENNETH J. SOWERS, ANTHONY J.	:	
ZANGHI and ROBERT A. HAYDEN, JR., on	:	
behalf of themselves and other similarly situated,	:	
	:	Civil Action No. 3:07-cv-00201-KRG
Plaintiffs,	:	
	:	Judge Kim R. Gibson
v.	:	
	:	
FREIGHTCAR AMERICA, INC.,	:	
	:	
Defendant.	:	

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**IMPORTANT NOTICE ABOUT ELIGIBILITY FOR  
CERTAIN PENSIONS FROM FREIGHTCAR AMERICA, INC.**

**THIS NOTICE CONCERNS A PROPOSED CLASS ACTION SETTLEMENT  
WHICH MAY AFFECT YOUR ELIGIBILITY FOR PENSION BENEFITS.**

You were sent this Notice because you have the right to know about a proposed Settlement of a class action lawsuit and about your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, your eligibility for a pension could be affected.

This package explains the lawsuit, the settlement, your legal rights, and the pension benefits you are eligible for.

Please note that this Notice concerns only the settlement of a class action law suit. This Notice does not concern or address other benefits available under the separate settlement agreement between FCA and USW concerning the closing of FCA's Johnstown facility.

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## BASIC INFORMATION

### 1. Why did I get this notice package?

You received this notice because you fit the following definition:

Any person who:

(i) Was employed at the Johnstown Facility, was accruing service under the FCA Pension Plan as of May 15, 2008 (whether by reason of active employment or layoff), was hired by the Companies in 1988 or 1989 **and** would achieve age and service credit necessary for a Rule-of-65 Pension or a 70/80 Pension by December 31, 2009 with continued accrual of age and service credit; **or**

(ii) Was employed at the Johnstown Facility, was accruing service under the FCA Pension Plan as of May 15, 2008 (whether by reason of active employment or layoff), was hired by the Companies in 1988 or 1989, was covered by the Service Arbitration Award, **and** would achieve age and service credit necessary for a Rule-of-65 Pension by May 31, 2010 with continued accrual of age and service credit ; **or**

(iii) Was employed at the Johnstown Facility, was covered by the FCA Pension Plan as of May 15, 2008, was on the seniority list as of June 19, 2008 **and** was hired by the Companies between August 16, 2004 and October 11, 2004.

### 2. What is this lawsuit about?

The name of this case is *Sowers v. FreightCar America, Inc.*, (Case No. 3:07-cv-00201-KRG). The case is pending in the Johnstown Division of the United States District Court for the Western District of Pennsylvania. The Honorable Kim Gibson is the Judge.

The lawsuit arose out of layoffs by FCA in 2007, which affected the pension eligibility of two groups of employees. Three Plaintiffs filed this case: Kenneth J. Sowers, Anthony J. Zanghi and Robert A. Hayden, Jr. Like you, they are hourly employees of FCA who are members of the USW and who were laid off in 2007.

Plaintiffs have alleged that FCA timed layoffs to prevent **Special Pension Subclass** members (those who fall into Sections (i) or (ii) above) from becoming eligible for a Rule of 65 or a 70/80 Pension or to prevent **Deferred Pension Subclass** (those who fall into Section (iii) above) members from becoming eligible for a Deferred Vested Pension. FCA denies these allegations.

### **3. Why is this a class action?**

In a class action, persons called “Class Representatives” sue on behalf of people with similar claims. The dispute may be resolved in a single case covering all Class Members, who will be bound by the Settlement.

### **4. Why is there a settlement?**

The Court granted Plaintiffs’ request for a Preliminary Injunction. As a result, FCA was directed to return members of both Subclasses to work. FCA appealed this ruling and was granted a “stay” during the appeal. This meant that no members of either Subclass could return to work unless the Court’s ruling was upheld on appeal. While the appeal was pending, the parties negotiated this Settlement.

The two sides disagree on what would have happened after the appeal. By agreeing to this Settlement, the parties will avoid the costs, risks and delay of further legal proceedings and Class Members will become eligible for Rule of 65 or 70/80 Pension (and associated benefits) or a Deferred Vested Pension. The Class Representatives and attorneys for the Class think this Settlement is in the best interest of Class Members.

## **WHO IS IN THE SETTLEMENT?**

### **5. How do I know if I am part of the settlement?**

You are part of the settlement if you fall within the definition given in the answer to Question 1 above.

You can get a copy of the complete Settlement Agreement by writing to Class Counsel or by visiting Class Counsel’s website (<http://www.stemberfeinstein.com/CaseUpdates.html>) and clicking on document titles listed under the heading “FreightCar America.” You can also get a copy from the USW website: [http://www.usw.org/media\\_center/releases\\_advisories?id=0041](http://www.usw.org/media_center/releases_advisories?id=0041).

### **6. Do I need to do anything to join the case and share in the settlement?**

You do not need to take any action to join the case. If the proposed Settlement is approved by the Court, and you are a member of the Class, you will get the benefits of the Settlement.

### **7. Can I exclude myself from the settlement?**

You cannot exclude yourself (“opt out”) from the Class. If the Settlement is approved, you will be bound by any judgments or orders that the Court enters, you will be deemed to have released FCA from any claims that were or could have been asserted in this case, and you will not be able to sue FCA on those claims. Although you cannot exclude yourself from the case, you can object

to the Settlement and ask the Court not to approve it.

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 8. What does the settlement provide for members of the Special Pension Subclass?

**Special Pension Subclass:** As noted in the answer to Question 1 above, you are a member of the Special Pension Subclass if you fall into either of these two groups:

(i) Was employed at the Johnstown Facility, was accruing service under the FCA Pension Plan as of May 15, 2008 (whether by reason of active employment or layoff), was hired by the Companies in 1988 or 1989 **and** would achieve age and service credit necessary for a Rule-of-65 Pension or a 70/80 Pension by December 31, 2009 with continued accrual of age and service credit ; **or**

(ii) Was employed at the Johnstown Facility, was accruing service under the FCA Pension Plan as of May 15, 2008 (whether by reason of active employment or layoff), was hired by the Companies in 1988 or 1989, was covered by the Service Arbitration Award, **and** would achieve age and service credit necessary for a Rule-of-65 Pension by May 31, 2010 with continued accrual of age and service credit.

The Settlement provides that the FCA Pension Plan will be amended to provide the members of the Special Pension Subclass the following benefits:

- Persons falling under Part (i) above will be eligible for Rule of 65 or a 70/80 Pension and associated benefits (e.g., the \$400 monthly supplement that is part of these Pensions) if they would have met age and service requirements for either of these Pensions by December 31, 2009 had they not been laid off.
- Persons falling under Part (ii) above will be eligible for Rule of 65 Pension and associated benefits (e.g., the \$400 monthly supplement that is part of these Pensions) if they would have met age and service requirements for either of these Pensions by May 31, 2010 had they not been laid off.
- Special Pension Members eligible for a Rule of 65 Pension may begin receiving these pension benefits EITHER on January 1, 2009 OR one year after the date they met the age and service requirements for a Rule of 65 Pension, whichever date is LATER.
  - **Exception:** Special Pension Members who become eligible for a Rule of 65 Pension BETWEEN January 1, 2010 and May 31, 2010 cannot start receiving these pension benefits UNTIL two years after the date on which

they met the age and service requirements for a Rule of 65 Pension. These two years will NOT count as service

- Special Pension Subclass Members who would have met the age and service requirements for a Rule of 65 Pension by December 31, 2009 had they not been laid off (and regardless of any break in service after that date), may, if they wish, continue in layoff status in order to become eligible for a 70/80 Pension—as long as they meet age and service requirements for a 70/80 Pension by December 31, 2009.
- Special Pension Subclass Members eligible for a 70/80 Pension may begin to receive 70/80 Pension benefits EITHER on January 1, 2009 OR the date on which they satisfy the age and service requirements for a 70/80 Pension, whichever date is LATER.
  - **Exception:** Special Pension Subclass Members who were eligible for a 70/80 Pension BEFORE May 16, 2008, can begin receiving 70/80 Pension benefits RETROACTIVE to July 1, 2008, starting in the first month after this Settlement receives final Court approval and all appeals are finished.
- Employees who bumped into the bargaining unit AFTER June 19, 2008, are NOT entitled to the benefits of the Settlement.

**A personalized statement addressing your pension eligibility is included with this notice.**

### **9. What does the settlement provide for members of the Deferred Pension Subclass?**

**Deferred Vested Pension Subclass:** As noted in Part 1 above, you are a member of the Deferred Vested Pension Subclass if you fall into the following group:

- (iii) Was employed at the Johnstown Facility, was covered by the FCA Pension Plan as of May 15, 2008, was on the seniority list as of June 19, 2008 **and** was hired by the Companies between August 16, 2004 and October 11, 2004.

The Settlement provides that the FCA Pension Plan will be amended to provide that the members of the Deferred Vested Pension Subclass (hired between August 16, 2004 and October 11, 2004 and who have not resigned) will become fully vested for a Deferred Vested Pension, with five (5) years of service credit.

**A personalized statement addressing your pension eligibility is included with this notice.**

## **10. When will the settlement go into effect?**

The Court will hold a hearing at 1:30 p.m. on November 17, 2008, to decide whether to approve the Settlement. The Court may not make its decision until several weeks after the hearing. If the Court approves the Settlement, there may be appeals. If appeals are filed, it is uncertain how long it will take to resolve them. Assuming the Settlement is approved, the Settlement will go into effect after the time for filing an appeal has expired without an appeal having been filed, or after any filed appeal is concluded. When you will be eligible to receive your pension benefits is explained in the answers to Questions 8 and 9 above.

## **11. What am I giving up in the settlement?**

Under this Settlement, all Class Members give up or “release” the right to sue FCA and its affiliates over the same events and subject matter involved in *this* case, including whether FCA timed layoffs in order to interfere with their attainment of pension eligibility in violation of Section 510 of the Employee Retirement Income Security Act (ERISA).

That means that even if you later discover facts that were not known at Settlement, which you think demonstrate violations by FCA related to this case, you may not sue FCA. Each Class Member assumes the risk that he may discover new information. Even if new information is discovered, the Settlement will be binding.

You will retain your rights to receive the benefits of the Settlement. And you will retain your legal rights as to normal individual disputes about your pension benefits (for example, amount of monthly benefit) and associated benefits.

## **THE LAWYERS REPRESENTING YOU**

## **12. Do I have a lawyer in this case?**

The Court has appointed the following lawyers to represent the Class:

STEMBER FEINSTEIN DOYLE & PAYNE, LLC  
429 Forbes Avenue  
Allegheny Building, 17th Floor  
Pittsburgh, PA 15219

These lawyers are called “Class Counsel.” You will not be charged fees or expenses by them. If you want to be represented by your own lawyer, you may hire one at your own expense.

## **13. How will the lawyers be paid?**

No payment will be made to Class Counsel by Class Members or out of the pension plan. Nor will the size of the fee awarded to Class Counsel have any effect on the funding of FCA’s pension

plan. Under the proposed settlement, FCA will pay Class Counsel's court-awarded attorneys' fees and expenses so long as Class Counsel seeks no more than \$675,000.

Class Counsel's motion and brief supporting its fee request will be filed with the Court at least six weeks before the Fairness Hearing scheduled for November 17, 2008, at 1:30 p.m. In addition to objecting to the proposed Settlement, Class Members may object to the adequacy of representation by Class Counsel or to Class Counsel's motion for attorneys' fees and expenses.

## **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the settlement or some part of it.

### **14. What does it mean to object?**

Objecting is telling the Court that you do not like something about the Settlement. It will have no bearing on your right to Settlement proceeds if the Settlement is approved.

### **15. How do I tell the Court that I don't like the settlement?**

You can object to the Settlement if you dislike any part of it, including the terms of Settlement or the fees requested by Class Counsel. You can give reasons why you think the Court should not approve the Settlement.

To object, you must send a letter saying that you object to the Settlement in *Sowers v. FreightCar America, Inc.* Be sure to include "Case No. 3:07-cv-00201-KRG" on the first page, along with your name, address, phone number, signature, and reasons you object to the Settlement (and, if applicable, the name, address and phone number of your attorney).

You must mail the objection to all of the address below postmarked no later than October 15, 2008. If you fail to do so, the Court will not consider your objections.

STEMBER FEINSTEIN DOYLE & PAYNE, LLC  
429 Forbes Avenue  
Allegheny Building, 17th Floor  
Pittsburgh, PA 15219

REED SMITH LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
Attention: Patrick W. Ritchey



## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you are not required to.

### 16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at 1:30 p.m. on November 17, 2008, in Courtroom A at the United States Courthouse, Johnstown, Pennsylvania, Johnstown Division, Penn Traffic Building, 319 Washington Street, Johnstown, PA 15901.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court cannot change the terms of the Settlement or order the parties to accept terms different from those in the Settlement; it can only approve or disapprove the Settlement agreed to by the parties.

The Court will determine whether and to what extent parties will be permitted to speak at the hearing. The Court will also decide the amount of Class Counsel's fees and expenses. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

### 17. Do I have to go to the fairness hearing?

No. Class Counsel will answer questions the Court may have. You are, however, welcome to come at your own expense. If you send an objection, you do not have to go to Court to talk about it. As long as your objection is postmarked by October 15, 2008, the Court will consider it. Your lawyer may attend at your expense, but it is not necessary.

### 18. May I speak at the hearing?

You may ask the Court for permission to speak—with or without an attorney—at the Fairness Hearing. To do so, you must send a letter to the address(es) indicated in the answer to Question 15, saying that it is your "Notice of Intention to Appear." Be sure to include your name, address, telephone number, and your signature (and, if applicable, the name, address and telephone number of your attorney). Your Notice of Intention to Appear must be postmarked no later than October 15, 2008.

## IF YOU DO NOTHING

### 19. What happens if I do nothing at all?

The Settlement does not require you to do anything and there is no penalty for doing nothing at all. If you are entitled to the benefits of Settlement, you will receive these as discussed in the answers to Questions 8 and 9 above.

## GETTING MORE INFORMATION

### 20. Are there more details about the settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may obtain a copy of the Settlement Agreement by requesting a copy from Class Counsel or by visiting Class Counsel's website (<http://www.stemberfeinstein.com/CaseUpdates.html>), and clicking on document titles listed under the heading "FreightCar America." You can also get a copy from the USW website: [http://www.usw.org/media\\_center/releases\\_advisories?id=0041](http://www.usw.org/media_center/releases_advisories?id=0041).

You can also inspect any of the documents filed in this case, free of charge, by visiting the Clerk of Court, United States District Court for the Western District of Pennsylvania, Johnstown Division, United States Courthouse, Penn Traffic Building, 319 Washington Street, Johnstown, PA 15901 during regular business hours. You can purchase copies of those documents from the Clerk of Court.

### 21. How do I get more information?

You can call 1-888-355-1735 toll free for answers to common questions about the Settlement, plus other information to help you determine whether you are a Class Member. PLEASE DO NOT CONTACT THE COURT. Court personnel cannot or are not authorized to answer your questions.

DATE: