

CITATION: Pabla v. Caterpillar of Canada Corporation and Caterpillar Inc.
COURT FILE NO.: 14-60168CP
DATE: 2021/09/09

**COURT OF ONTARIO
SUPERIOR COURT OF JUSTICE**

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

RE: SUKHVIR PABLA

AND

CATERPILLAR OF CANADA CORPORATION AND CATERPILLAR
INC.

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Jeff Orenstein and Andrea Grass, for the Plaintiff

Gordon McKee and Rebecca Torrance, for the Defendants

HEARD: September 8, 2021

CASE MANAGEMENT ORDER AND DIRECTION

[1] This is a proposed class proceeding that was formerly case managed by my colleague Mr. Justice Michel Charbonneau. At his request I have designated myself as the class proceedings judge and assumed the case management duties.

[2] This action has been before the court since 2014 with only sporadic attendances before the case management judge. Amendments to the *Class Proceedings Act, 1992* mean that in future all class proceedings in Ontario must either be scheduled for a certification motion or be subject to an agreed upon or court ordered timetable for such motion within one year of commencement. Also in future, counsel should presume that documents will be filed electronically and the court file will be electronic. Neither of these were the case when this matter was commenced.

[3] I see from a review of the electronic court data base that there appears to be an order of the Registrar dismissing the action on March 28, 2019. This was not known to the parties and was either an order made in error due to the fact that the action was not properly recorded as a class proceeding or is a data entry error. I have set aside any such alleged order and directed that the record be corrected.

[4] The second issue is that the court file does not contain any record of any orders or endorsements from Justice Charbonneau. I suspect that other than advising counsel the identity of who had been appointed in 2014, given the history of the action, no orders or directions were sought by the parties but I request that counsel review their files and provide my Administrative

Assistant with a copy of any orders or endorsements previously made in this matter that I should be aware of.

[5] Subject to those housekeeping matters, this case conference was convened to consider and review minutes of settlement and a proposed consent order for certification for settlement purposes. I have been provided with the motion materials and the draft order as well as the English version of the proposed notices and claim forms. The proposed settlement is dated June 17, 2021.

[6] I am advised that the Ontario proceeding is intended to certify a national class which will not include residents of Quebec. That is because the Quebec class is the subject of a parallel class proceeding in Quebec. (Action no. 500-06-000681-144, District of Montreal). The proposed national class is as follows:

“All Persons in Canada, excluding members of the Quebec Class, who are original purchasers or original lessees, subsequent purchasers or subsequent lessees, including but not limited to those having some rights to residual purchase of vehicles at lease end, of a vehicle (including trucks, buses and other heavy duty vehicles) powered by a Subject Engine.¹ Excluded from the Class are Defendants, all present or former affiliates and/or directors of Defendants, all Persons who have already released claims against Defendants for the relief provided herein, and all persons who will make a timely and valid election to opt-out of the Class in accordance with the provisions of the notice of class certification and opt-out rights. National Class does not include Persons that have previously executed settlement releases concerning the Subject Engines. Such Persons that have previously executed settlement releases are specifically excluded from the Class.”

[7] A similar class definition is proposed for the Quebec class but limited to persons located in Quebec. The settlement is based on obtaining the approval of this court for certification and settlement of a National Class and approval of the Superior Court of Quebec for certification and settlement of the Quebec class. Both courts must make their own assessment and judgments independently, but it will be beneficial to have those decisions made and judgment rendered by each court within the same time frame. Counsel are directed to the Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions and the Provision of Class Action Notice which has been adopted by this court.

[8] As indicated to counsel, I am prepared to enter into court to court communication with my colleague in Montreal if that is of assistance in co-ordinating our respective hearings. Counsel have agreed to convey this to the class proceedings judge in Montreal, the Honourable Mr. Justice Granosik.

[9] On a preliminary basis I have reviewed the proposed settlement, the plan of notice and publication, and the proposed dates for the submission of claims, opting out of the class and filing objections to the settlement. As this matter is on consent, the parties propose that I deal with the certification motion in writing and also that I postpone formal approval until a final version of the approved order together with all attachments.

[10] I am generally satisfied that the action should be certified as a class proceeding for settlement purposes and the proposed plan be approved subject to final court approval at the fairness hearing. I would however like to have the benefit of any decision by my colleague in Montreal, who is responsible for the Quebec proceeding. Furthermore, the formal order should include the French version of the forms and notices which are not yet available.

[11] Subject to any issues arising from the above or to any questions or concerns I may have on a further review of the documents, I am prepared to proceed as counsel suggest and to deal with the motion in writing upon receipt of an approved draft order substantially in the form of the draft contained in the materials.

[12] **The court therefore orders and directs as follows:**

- a. The order of the Registrar dismissing this proceeding was either made in error or is a data entry error. In either case it is set aside and the record is to be corrected in the court data base. This matter is also to be identified as a Class Proceeding.
- b. This order shall be deemed to comply with s. 29.1 of the Act and the time for scheduling the certification motion is extended accordingly.
- c. Subject to the court reviewing the final version of the proposed settlement and the proposed order and subject to any additional concerns or questions arising from the Quebec class proceeding, on consent, the court will deal with the certification motion in writing.
- d. The motion to approve the settlement and to approve any compensation sought by class counsel is provisionally fixed for **January 19, 2022 at 10:00 a.m.** and will be returnable before me at that date and time in open court. If this date is not satisfactory or is not reasonably proximate to a similar date set in the Quebec proceeding, counsel may seek an alternative date by contacting my Administrative Assistant.
- e. Unless the court advises otherwise, the motion to approve the settlement will take place in a virtual court room on the Zoom videoconference platform. Counsel is to obtain the Zoom coordinates from my Assistant and will make those coordinates available to all interested parties.
- f. This is a case management order and is effective without further formality.

C. MacLeod RSJ

Date: September 9, 2021

CITATION: Pabla v. Caterpillar of Canada Corporation and Caterpillar Inc.

COURT FILE NO.: 14-60168CP

DATE: 2021/09/09

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: SUKHVIR PABLA

AND:

CATERPILLAR OF CANADA
CORPORATION AND
CATERPILLAR
INC.

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Jeff Orenstein and Andrea Grass, for the
Plaintiff

Gordon McKee and Rebecca Torrance,
for the Defendants

**CASE MANAGEMENT ORDER AND
DIRECTION**

Regional Senior Justice C. MacLeod

Released: September 9, 2021