### FILE/DIRECTION/ORDER

61-17-579285-00CP 60-14-513403-00CP
Hilton court File 4771/14
BEFORE JUDGE Glustein ACTION # 0+HAWA COUNT ALE NO. 63387115
Streyura Well Services Utd. et d
Plaintiff(s)
-V-
Navistor Conade Inc. et al Defendant(s)
CASE MANAGEMENT: YES NO jforeman@foreman.company.com
COUNSEL: J. Forman / S. Bourden / A legale - Und for EMAIL: or legate wolfe & foreman company, with j'roution & roution of the providence
COUNSEL: J. Rochan / R. Kodolay EMAIL: podday @ rochangenover. worn
C. Zayid / M. Badges C. Zayid @ macently ca ORDER DIRECTION TO REGISTRAR Mbridges @ macently ca
Nature of the mothing of overveu
The plaintills in (i) Stay well services et al u. paratas conche The et al
(Tororb lover File No. (V. 17-579385-00 cP) (He " Consolidated Achor"), (ii)
Raymond Bruhm et al v. Navistar Conado Inc et al (Toronto Louis File no. CU-14-
513403-ouce) (the "Bruhm Actor") Stayurz Wellsonnes Ut at a v. Navistar-
Conche Incet al (Million Court File 4771/14) (the Stayue Action") and (ii) RiA
Trans hope, v. Muister Company, et al Other have been ble No. 63387 115 (the

Brand Justice Glustein

Davarder 21, 2023 DATE

FILE DIRECTION/ORDER-page 2 of 3 Court File Number: \_ "B: A Actua" (collectualy, the OnterroActure) bing motions to (i) approve the dissont neves of the Ontonio Andrins as agained all defendent, being Muster Could, The Nousto, They and Nousto Intendional Corroration ( will adver ") and (ii) direct it the respective onters a long reasons from this want be pushed in the websites of phintyls' was of and that no other notice when reachers 19 and lor 35 gthe (bisponeeding Ad, 1992, S. a 1992, c. b (the CPA) is required. For the reasons that follow, I grant the relief sought in the Ontento Actions, These reasons opply ball of the onlow Actions, and Backgrand The Contino Actions are anongst agory Julassoutions in Marching, Britel (dursh, Allete, as Ducke that all raise the sol allegation that Maistar Noufactual and sold trutes ustaming engines that utilized allegedly Lefabre Filant for Recirculation (FOR) talmology. Shortly dertese actions were conserved in conserved in the order of fiting election of consistion agreened to prosent the housdord has Achin and the

JUDGE'S SIGNATURE

# FILE DIRECTION/ORDER-page 3 of 8 Court File Number. action N'C Transportion Ut a Nocutor Intendinal lagoration et of Warance fegistry no. ULC-5-5-144960) (HiBCAtion"), on and only serie Formille Landen Kok A duin. The Aligher Laska predomintely prosented from the British ( Justre justichies sive that fire. The BC Actus was makely cetted a antrad, your day proceeding and alon etterest to enongos de premes antentores à la de cranget-out series wit He aught of Quese. The Quese Achir 14037308 Loch Dr. - Nourston Landy Ingeld, Weiske Syen - lost file No. 500-06-000700-140) us resched by call green af april 3-16 week, No wy this not or application ungless in entre the Month's Adria (Estate of vormitores. Boson - Mariston Lord Fred al, Manthe Queen's Band File No CI 14-01-90863) or in the Pilest Petro l'edmond reitel d'a reitel Trucking v. Nouiston Conche Dre. ed al, Alberton (and 9 loves) Bend File No- 1403 16425). Natural Ellerad Ascenat

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FILE DIRECTION/ORDER-page 1 of 2 Court File Number: BC, Sayur, bruhmadlowed, ded Adurs. The plaintys and their would with markete, Allet and R'A Activis an mordines I the Noted Settland Agreened. That agreened party attended Statues of \$14.5 million for the septement los The BI Artin was certical for settlemet preper or July 24, 223, Jullenest lon Norstes (ul 11 inderted del relevant montes in Which to a compollance whe prover for deliver of whiles of a Aridia af the settlement good leaving of the BC Action, Besterhal less notes inthe Ontaro Arturs received make gote notual settlement Agreement though the cost gover where program in the BC Action. The notice stated that "the sufferend, if graved, ull reader all and the light again the Defendes an and Joses Including yould as precedy brough & larger on tono, pelest and Marks". Suttend clossortes undertendre program, I de the aposting to object bette Noted Selected Agreend of get and of the let der Scherce 18, 2023 al Novorter 17, 323, No Jettend loss sente objeted bills settlened or ofted out gthe engalis.



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

#### ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

## 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

BETWEEN:

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

Ottawa Court File No. 63387/15

#### ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

#### 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

Emails: jforeman@foremancompany.com, sbowden@foremancompany.com, alegatewolfe@foremancompany.com, jrochon@rochongenova.com, rpodolny@rochongenova.com, czayid@mccarthy.ca, and mbridges@mccarthy.ca.

#### 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 <sup>LLP</sup>, 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. Cl 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.

#### <u>Analysis</u>

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

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

#### ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

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

Plaintiffs

- and -

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Defendants

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

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RAYMOND BRUHM and KAYANGELA BRUHM

Plaintiffs

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

Milton Court File No. 4771/14

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BETWEEN:

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

Ottawa Court File No. 63387/15

#### ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

#### 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

Emails: jforeman@foremancompany.com, sbowden@foremancompany.com, alegatewolfe@foremancompany.com, jrochon@rochongenova.com, rpodolny@rochongenova.com, czayid@mccarthy.ca, and mbridges@mccarthy.ca.

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- 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;
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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