

News

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October 7, 2003

Class Action Lawsuit Against BC Rail Ltd.

Lawsuit Alleges Breach of Fiduciary Duties in Surplus Allocations

A class action lawsuit was filed last Friday in the Supreme Court of British Columbia on behalf of hundreds of retired and deferred members of the BC Rail Pension Plan. The suit alleges that the defendant improperly allocated a \$151.7 million Pension Fund surplus.

The class action was filed by Fred Ruddell of Vancouver. Mr. Ruddell is a retired member of the BC Rail Pension Plan and serves as the retiree representative on the Pension Plan's newly created Advisory Committee. He and several other B.C. Rail pensioners have tried to get B.C. Rail to respond to their concern about the surplus allocation but their efforts have yet to produce any positive result. As a last resort, Mr. Ruddell filed the class action lawsuit. He is represented by class action lawyer David Klein of Klein Lyons.

For over 5 years, the B.C. Rail Pension Plan has had an actuarial surplus. The surplus is the amount by which the Pension Plan's assets and projected income exceed its projected liabilities. The Statement of Claim states that according to the 2002 Annual Report, the Pension Plan still had a surplus of \$151.7 million. In response to the sizeable surplus, BC Rail amended the Pension Plan in 1998 to suspend its obligations and the obligation of Active Members of the Plan to make financial contributions to fund the Plan. It did not, however, provide financial benefits to the retired members whose contributions helped to create the surplus.

According to the Statement of Claim "A pension fund is held in trust for its beneficiaries. The administrator of such a fund may not favour one group of beneficiaries over another, but must treat all equally. Nor may it favour its own interests over a group of beneficiaries but this is exactly what the Defendant has done. It has not had to pay into the Pension Plan for some time, saving itself money. The Active Members have also not had to pay into the Pension Plan, saving them money. The people however who originally paid into the Pension Plan and created the surplus, the Retired Members and Deferred Vested Members, have experienced no benefit from the surplus if they retired before the obligation to make contributions was suspended or they received only a disproportionately small benefit in comparison with Active Members if they retired subsequent to the suspension of contributions."

The lawsuit alleges that B.C. Rail breached its fiduciary duty to the retired and deferred vested members of the Pension Plan. Mr. Ruddell is seeking a reallocation of the surplus "impartially and even-handedly among all Plan members by granting the class members a proportionate share of the surplus in accordance with the actuarial liabilities which they represent."

B.C. Rail is a subsidiary of the British Columbia Railway Corporation, a provincial crown corporation. B.C. Rail has featured prominently in the news since the Provincial Government announced its intention to privatize the company.

According to plaintiffs' counsel David Klein "the decision to suspend contributions to the Pension Plan must confer a benefit on all members regardless of their category. After all the contributions of the retired and deferred members were instrumental in the creation of the surplus."

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