

ONTARIO ENERGY GROUP HVAC EQUIPMENT LEASE CLASS ACTION

Notice of Certification and Settlement Approval Hearing

Une version française de ce document est disponible sur :
<https://www.foremancompany.com/ontario-energy-group>

A Settlement Has Been Reached

On July 25, 2016, a class action was commenced against Ontario Energy Group (“OEG”) and Home Trust Company.

OEG is a company that entered into lease agreements for the installation, rental, and servicing of HVAC equipment (like furnaces, air conditioners, and water heaters) with Ontario consumers. Home Trust Company is alleged to have purchased an interest in the lease agreements, collected money from Class Members under the lease agreements, and to have registered “liens” against Class Members’ homes.

The class action alleges, among other things, that OEG’s lease agreements failed to comply with legal requirements under Ontario’s *Consumer Protection Act, 2002* and other applicable laws. The class action seeks damages and other remedies for the Class.

A Settlement Agreement has been reached on behalf of Class Members to resolve the HVAC equipment lease class action lawsuit against OEG and Home Trust.

Who Can Participate in the Settlement?

The court has defined the class of consumers who can benefit from the settlement (known as “Class Members”) as:

All persons in Ontario who are or were at any time party to a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016, except Excluded Persons.

“Equipment” means furnaces, air conditioners, water heaters, water softeners, water purification systems, boilers, air cleaners, humidifiers, chimney liners, filters, and other equipment or services offered under the Consumer Agreements.

“Excluded Person” means any putative class member who elects to opt out of this class action pursuant to an order of the Court, and each settling defendant, as further defined in the Settlement Agreement.

Anyone who has reached a personal settlement or obtained a judgment in a personal lawsuit or other complaint against OEG may have signed a document called a release. Depending on the language of the release, your eligibility to participate in the class action settlement may be affected. If you have a question about the impact of a release you signed, please contact Class Counsel at the contact information set out below.

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How Was the Settlement Agreement Reached?

The Settlement Agreement has been reached after several rounds of negotiations carried out over more than two years. The negotiations were performed with the help of a retired Chief Justice from the Ontario Court of Appeal who acted as a neutral mediator. The negotiations initially took place over a formal 5 day long bargaining session. A second set of formal multi-day sessions followed. Those sessions stretched into ongoing mediation by phone and by correspondence over several months and finally into direct bargaining sessions between the parties.

Why is there a Settlement Agreement?

In this case, the plaintiff has alleged that the defendants breached certain consumer protection laws in the construction of the OEG lease agreements and related disclosure to Class Members. The defendants deny the plaintiff's claims and maintain that OEG's lease agreements comply with consumer protection laws. The defendants state that they provide an HVAC leasing and servicing program that is comparable in format and pricing to many other similar companies operating in the Ontario marketplace. Without the Settlement Agreement, the case would require a trial, which could be subject to appeals in higher courts in order to determine whether any laws were broken and whether any money or other remedies are owed to Class Members.

The Settlement Agreement allows the case to be resolved for the benefit of Class Members now without further delay. Without the Settlement Agreement, the case would continue. It may take several more years to have a trial and to complete any appeals in this case. In addition to the time it would take for a trial and any possible appeals, the results or outcomes from those processes cannot be predicted with any certainty. The case could be completely successful, completely unsuccessful or somewhere in between.

Even if the case was ultimately successful at a trial, the remedies or benefits that might be ordered by the court for Class Members are also uncertain. In short, if the case continues, there are no guarantees for Class Members in terms of timing or results.

What does the Settlement Agreement Provide?

The Settlement Agreement requires OEG and Home Trust to do the following things for Class Members following approval of the Settlement Agreement by the court:

- Pay CAD \$14.95 million
- Cancellation and arrears forgiveness of up to 225 ongoing lease agreements and gifting of the equipment without further payment or obligation in exceptional circumstances
- A new lower cost equipment buyout program, with fixed and transparent prices that decrease every year, where the lease agreement can be ended and the equipment may be purchased at a reduced cost and in accordance with a formal schedule where the cost of the buyout goes down each year
- Changes to the defendants' lien and security registration practices:
 - On the renewal date, all security registration renewals will be in the form of a Notice of Security Interest and will be limited to an ownership right in the

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- equipment affixed to the property valued at the amount owing at the date of the renewal under the revised buyout schedule
- Permit security interest to be postponed for any commercially reasonable circumstances
- Letter, available upon request, to confirm that the registration pertains only to the equipment and is not a mortgage on title to the home. The form of this letter is attached as a schedule to the Settlement Agreement.
- A clarified termination option under the lease agreement for those who wish to terminate the lease agreement and have the OEG equipment removed
- Any unpaid energy rebates may be used as a credit towards a buyout or termination
- A debt management program for Class Members who have unpaid arrears
- Other changes to all OEG lease agreements on a go-forward basis:
 - Annual increases to monthly payments are reduced
 - Servicing commitments of OEG clarified
- The Settlement Agreement does not impact ordinary course complaints by Class Members about OEG's performance of its role under the lease agreements

The Distribution and Administration Protocol

If approved, the settlement benefits will be provided to Class Members under a set of rules called a "Distribution and Administration Protocol". Epiq Global will serve as the administrator of the settlement (the "Claims Administrator").

A copy of the draft Distribution and Administration Protocol can be viewed at <https://www.foremancompany.com/ontario-energy-group>.

The draft Distribution and Administration Protocol has been written following interviews with hundreds of Class Members and a detailed review of other economic data and information obtained from Class Members, the defendants and other sources in the course of the litigation.

The draft Distribution and Administration Protocol provides that all Class Members will be eligible to apply for settlement benefits, whether they are currently in an active lease agreement (and still rent equipment from OEG), or whether they previously bought out or terminated their lease agreement (and no longer rent equipment from OEG). The settlement benefits are summarized as follows:

Class Member	Benefits
You continue to rent equipment from OEG under one or more <u>active lease agreement(s)</u>	<ul style="list-style-type: none"> • Eligibility for a single cash payment representing a refund of a portion of monthly rental payments paid; • Potential eligibility for an increase to the single cash payment, where certain demonstrated individual circumstances apply; • Improvements to the lease agreement on a "go-forward" basis, including:

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	<ul style="list-style-type: none"> ○ A reduction of the allowable increase of the monthly rental payment each year; ○ Access to a new lower cost buyout program, with fixed and transparent prices that decrease every year; ○ Other clarifications, enhancements, and improvements to your rights under the lease agreement, all of which is outlined in more detail in the Settlement Agreement; • A commitment from the defendants to a reasonable management of debts and arrears; and, • Potential eligibility to have your lease agreement cancelled, equipment gifted, and arrears forgiven in exceptional circumstances. Such benefits will, except in limited cases as set out in the protocol, be provided in lieu of the single cash payment described above.
<p>You have <u>exited a lease agreement</u> (i.e. you bought out or terminated your lease agreement and no longer rent equipment from OEG)</p>	<ul style="list-style-type: none"> • Eligibility for a single cash payment representing a portion of the amount you paid for: <ul style="list-style-type: none"> ○ monthly rental payments before the date of your termination or buyout; and ○ your termination, buyout, and/or associated arrears, interest, and NSF fees; and, • Potential eligibility for an increase to the single cash payment, where certain demonstrated individual circumstances apply.

The draft Distribution and Administration Protocol proposes to distribute the vast majority of the Net Settlement Fund (which means the settlement money, less court-approved legal fees, disbursements, taxes and administration expenses) according to a set of formulas aimed to reflect the amount of harm alleged to have been suffered by each Class Member.

The formulas in the draft Distribution and Administration Protocol account for factors such as the amount of time in a lease agreement, the monthly payments made, the amount paid to buyout or terminate, if applicable, as well as interest and NSF charges on arrears, along with specified individual circumstances such as mental incapacity at the time the lease agreement was signed, documented misrepresentations from a salesperson, or non-functional equipment (among other circumstances).

The draft Distribution and Administration Protocol further provides that up to a specified percentage of the Net Settlement Fund (plus the 225 active lease agreements eligible for cancellation in exceptional circumstances) may be available to Class Members for specified acute problems that cannot adequately be rectified through an allocation based on the formulas.

A complete list of factors and formulas which may qualify you for compensation can be found in the draft Distribution and Administration Protocol.

The Distribution and Administration Protocol will include the use of an online claims website and hard copy claims submissions. The defendants have provided certain information about Class Members to the Claims Administrator. That information is expected to be utilized by the Claims Administrator to simplify the claims process for Class Members.

The Claims Process – Next Steps:

If the Settlement Agreement is approved by the court, Class Members will be provided with a further notice of the schedule for filing a claims form. The dates for filing claims will be published as soon as possible after the court approves the settlement agreement and the Distribution and Administration Protocol. Updates and information about how to make a claim will be posted as soon as they are available at <https://www.foremancompany.com/ontario-energy-group>.

Register Your Email Address with Class Counsel:

Class Counsel have arranged for a simple process for Class Members to provide updated contact information including a current email address. For Class Members **who have not done so already**, an email address allows for faster electronic communication throughout the process.

In order to do so, please visit <https://www.foremancompany.com/ontario-energy-group> where you will find an automated form that will allow you to provide contact data and other details about your contract with OEG.

The Settlement Approval Hearing:

The Settlement Agreement must be approved by the court before the settlement benefits can be provided to Class Members. There will be a hearing on September 23, 2021 at 10am where the court will decide whether or not to approve the Settlement Agreement. Given the COVID19 protocols that are currently in place, details of the hearing (in-person or by videoconference) are not known at this time. Please contact Class Counsel (contact particulars below) or visit <https://www.foremancompany.com/ontario-energy-group> for the most up to date information.

Your Right to Provide Comments or Objections:

Class Members are invited to review the Distribution and Administration Protocol and to share any comments on it with Class Counsel. Your comments may be used to make changes or improvements to the Distribution and Administration Protocol.

Class Members also have the right to comment upon or object to the settlement terms.

All comments or objections are to be sent to Class Counsel at classactions@foremancompany.com or in writing to the address below before September 13, 2021. Class Counsel will provide all comments and objections received to the court. Please do not contact the court directly. No one at the court will be able to answer your questions.

Your Right to Opt-Out of the Class Action and Settlement:

Class Members also have the right to opt-out of the class action:

- Class Members who opt-out will not be able to collect any of the settlement benefits or otherwise participate in the class action lawsuit.
- If you do not opt-out, you will be bound by and eligible to participate in this settlement (if approved) and you will not be able to start or continue your own case against OEG or Home Trust regarding the claims at issue in this case.

This means that if you have already started your own lawsuit against OEG and/or Home Trust about the same issues raised by the class action, you will be bound by the Settlement Agreement (and your individual lawsuit will be *dismissed*), unless you opt-out.

If you want to opt-out, your opt-out form must be received **by September 13, 2021 at the latest**. For complete instructions on how to opt-out, please view the opt-out form found at www.foremancompany.com/ontario-energy-group or contact Class Counsel at: classactions@foremancompany.com or 1-855-814-4575 ext. 109.

If the Settlement Agreement is approved, you will not have another opportunity to opt-out in the future. If the Settlement Agreement is not approved or if it otherwise fails to take effect, a case management conference will be held to seek the court's direction with respect to next steps, including the form and content of an additional notice to Class Members and to any person who opted-out. If the Settlement Agreement is not approved, settlement opt-outs will be set aside and Class Members will have another opportunity to decide whether or not they want to remain in the class, subject to the direction of the Court.

Payment of the Legal Fees and Expenses of the Lawyers for the Class:

At the same time as the settlement approval hearing, Class Counsel will make a request to be paid for their legal work and the expenses they have carried on this matter. Class Counsel started the class action in 2016. Their work has been performed on a contingent fee basis since that time. That means that they have not been paid for their work to date nor have they been reimbursed for over \$175,000 plus applicable taxes in out of pocket expenses they have paid for expert witnesses and other requirements for the case. Subject to Court approval, the costs associated with: (i) providing notices to the class and (ii) claims administration will also be paid out of the amounts recovered.

Class Counsel agreed at the outset that they would only be paid if and when they recovered money for Class Members. The fee request will be **up to 25%** of the amounts recovered, plus applicable taxes and repayment of the out of pocket amounts they have paid for the benefit of the case.

If you wish to comment on or make an objection to Class Counsel's fees, a written submission must be delivered to Class Counsel (contact particulars below) **by September 13, 2021**. Class Counsel will forward all such submissions to the court.

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Class Counsel:

Foreman & Company represents the court-appointed representative plaintiff and Class Members. You can contact Class Counsel by mail, telephone, fax or email at the following contact particulars:

Mail: 4 Covent Market Place
Attention: Kassandra Gauld (Hallett)
London, Ontario N6A 1E2

Tel: 1-855-814-4575 ext. 109
Fax: 1-226-884-5340
Email: classactions@foremancompany.com

This Notice provides only a summary of the class action and the proposed Settlement Agreement. A copy of the Settlement Agreement, the proposed Distribution and Administration Protocol and other important documents can be viewed at <https://www.foremancompany.com/ontario-energy-group>.