

**TAB 2 – EXHIBIT A**

**Notice Order**

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.	:	
	:	ELECTRONICALLY FILED
FREIGHTCAR AMERICA, INC.,	:	
	:	
Defendant	:	

**PROPOSED ORDER ON JOINT MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AGREEMENT AND PROPOSED CLASS NOTICE**

Plaintiffs Kenneth J. Sowers, Anthony J. Zanghi, and Robert A. Hayden, Jr., individually and as representatives of the Plaintiff Class (collectively, "Class Representatives"), brought this class action against Defendant FreightCar America, Inc. ("FCA") under ERISA § 510, 29 U.S.C. § 1140. The Class Representatives alleged that FCA intentionally prevented class members from becoming eligible for pensions and related welfare benefits.

In an initial ruling issued January 11, 2008 and in Findings of Fact and Conclusions of Law explaining that ruling issued on February 11, 2008, the Court entered a preliminary injunction and certified a plaintiff class. The parties since have agreed to the following amended class definition, which the Court hereby adopts as the controlling class 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.

Persons in Sections (i) and (ii) constitute the "Special Pension Subclass." Persons in Section (iii) constitute the "Deferred Vested Pension Subclass."

The parties have entered into a Settlement Agreement dated August 5, 2008 ("Settlement Agreement") resolving Plaintiffs' claims in this case. On August 5, 2008, the parties filed a Joint Motion seeking preliminary approval of that Settlement Agreement and an Order approving notice to the Class in the form and manner agreed to by the parties.

NOW THEREFORE, upon review of the Joint Motion and the supporting materials submitted by the parties, it is HEREBY ORDERED THAT:

1. The Settlement Agreement (Ex. 1 to the brief in support of the Joint Motion) is preliminarily approved.
2. The Court will conduct a hearing, pursuant to Federal Rule of Civil Procedure 23(e)(1)(C), commencing on \_\_\_\_\_ 2008, for the purpose of considering the fairness, reasonableness, and adequacy of the Settlement Agreement and to consider objections to the

Settlement, if any. Other than the parties, no person will be heard at the hearing unless that person files an objection in writing with the Court postmarked on or before \_\_\_\_\_, 2008.

3. Class Representatives shall provide notice, pursuant to Rule 23(e)(1)(B), to the Class of the Settlement Agreement and of the \_\_\_\_\_, 2008 Hearing. Class Representatives will use their best efforts to send notice to individual Class Members by first class mail in substantially the form set forth in Tab 2, Exhibit A(i) of the Settlement Agreement by \_\_\_\_\_, 2008. Class Representatives will also cause a copy of the notice to be published in the for one week in the Johnstown Tribune Democrat within ten (10) days of the date of this Order.

DATED: \_\_\_\_\_

Entered: \_\_\_\_\_  
The Honorable Kim R. Gibson