

IMPORTANT LEGAL NOTIFICATION TO CLASS MEMBERS

YOU HAVE BEEN IDENTIFIED AS A MEMBER OF THE CLASS IN THIS LAWSUIT. AS SUCH, YOU ARE ELIGIBLE TO RECEIVE A PAYMENT FROM THE SETTLEMENT OF THIS LAWSUIT.

Please read this document.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The Settlement will provide up to \$15,069,300 to resolve all disputed claims and allegations that Western Express, Inc. and New Horizons Leasing, Inc. (collectively “Defendants”) violated various federal and state laws since the inception of their Lease Purchase program in 2014. For a more detailed description of the claims and allegations, please see Section 2 of this Notice below.
- **Your estimated Individual Settlement Payment is \$<<Award Amount>>.** This amount is an estimate only and your actual payment may be more or less. See Section 3 of the Notice below for more details.
- The two sides disagree as to who would win, and how much could be won, if anything, if the case went to trial.
- **Your legal rights will be affected whether you act or do not act.** Read this Notice carefully.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT: | |
|--|--|
| Do Nothing and Receive Payment | You are automatically a Class Member, and accordingly, you do not need to take any further action to receive money in this Settlement. If the Court grants final approval of the Settlement, you will get a payment. |
| Object | Write to the Court about what you do not like in the Settlement. See Section 7 of the Notice below for more details. |
| Go to a Hearing | Ask to speak in Court about the fairness of the Settlement. See Section 6 of the Notice below for more details. |
| Exclude Yourself | Request to be excluded from the Settlement. If you did not previously opt in to the Fair Labor Standards Act (“FLSA”) collective action, you may exclude yourself fully from all portions of the Settlement. If you do so, you will not receive a settlement payment and you will not release any claims you may have against Defendants. If you did previously opt in to the FLSA collective action, you may exclude yourself from the Rule 23 portion of the Settlement only. If you do so, you will not receive a settlement payment for your Rule 23 claims and will not release any Rule 23 claims you may have against Defendants. However, you will still receive a settlement payment for your FLSA claims and will release your FLSA claims against Defendants. See Section 8 of the Notice below for more details. |

- **These rights and options – and the deadlines to exercise them – are explained in this Notice.**
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

JOHN ELMY, et al.,

Plaintiffs,

v.

WESTERN EXPRESS, INC., et al.,

Defendants.

CIVIL NO. 3:17-cv-01199

Judge Campbell/Frensley

NOTICE OF CLASS ACTION SETTLEMENT

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY.

1. Why did I get this Notice package?

You are receiving this Notice because records indicate that you leased a truck from New Horizons Leasing, Inc. (“New Horizons”) and executed a Contract Hauling Agreement with Western Express, Inc. (“Western Express”) as a driver at some point between the inception of their Lease Purchase program in 2014, and December 3, 2021 (the “Class Period”). The above-referenced lawsuit, *John Elmy, et al. v. Western Express, Inc., et al.* (the “Lawsuit”), is pending in the United States District Court for the Middle District of Tennessee in Nashville, Tennessee (the “Court”). You are receiving this Notice because the Court has ordered that it be mailed to you.

You may also have filed a Consent Form to opt-in and join the FLSA collective action. By submitting a Consent Form, you agreed to litigate your FLSA claims in the Lawsuit and agreed to accept compensation and settle your FLSA claims in the Lawsuit should the Lawsuit settle.

The Court has preliminarily approved a settlement (“Settlement”) of the Lawsuit. The Settlement provides for current and former drivers who leased a truck from New Horizons and executed a Contract Hauling Agreement with Western Express (“Class Members”) to receive a portion of a Fifteen Million, Sixty-Nine Thousand, Three Hundred Dollar (\$15,069,300) fund (“Settlement Fund”). The Court will conduct a hearing (“Fairness Hearing”) to determine if the Settlement should be granted final approval.

This Notice describes the Settlement and describes how you can receive a money payment from the Settlement. This Notice also describes how you can object to the Settlement in Section 7, and how you can exclude yourself from the Settlement in Section 8.

2. What is this lawsuit about and why did it settle?

John Elmy and Gerald Biernot, are truck drivers who leased a truck from New Horizons and executed a Contract Hauling Agreement with Western Express and are the “Named Plaintiffs.” They brought this Lawsuit against Defendants on behalf of themselves and all the Class Members. The Named Plaintiffs allege, and Defendants specifically deny, that Defendants allegedly violated federal and state laws in the following ways:

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- 1) by making fraudulent statements and misrepresentations to Class Members about the Lease Purchase program;
- 2) by entering into, and seeking to enforce, unconscionable contracts with Class Members;
- 3) by being unjustly enriched at the expense of Class Members;
- 4) by obtaining and benefitting from involuntary labor of Class Members;
- 5) by violating federal Truth in Leasing Act regulations; and
- 6) by failing to pay the compensation promised in the contracts with Class Members.

The Named Plaintiffs further claim that Defendants allegedly violated the Fair Labor Standards Act (“FLSA”) by misclassifying the Class Members and by paying Class Members less than the minimum wage for all hours worked.

Defendants strongly dispute the allegations, deny any liability, and have what they believe are meritorious defenses to the claims alleged in the Lawsuit. Still, they have decided to settle the Lawsuit at this time because Defendants believe the Settlement is in the best interests of the companies and their employees. The Settlement enables Defendants to avoid the costs and distraction of continuing litigation and instead dedicate their time and resources to ongoing business operations and, as such, benefits both their employees and customers. In exchange for the settlement payments, Class Members will release claims raised in this Litigation. See Section 5 below.

The Class Members’ attorneys, who are referred to as “Class Counsel,” believe that the Settlement benefits the Class Members. The Settlement provides a benefit to a large number of Class Members and enables them to avoid the risk that Defendants could win the lawsuit, in which case Class Members would recover nothing. The Settlement also enables Class Members to recover money without the delay of protracted litigation.

3. What does the Settlement provide and how much will I be paid?

The parties’ attorneys negotiated the Settlement after more than four years of litigation that has enabled each side to understand the risks of proceeding with adversarial litigation. Payment and related records for over six thousand drivers in the class were analyzed. Class Counsel believe that the Settlement is fair and serves the best interests of the Class Members. The Judge overseeing the Lawsuit has “preliminarily approved” the Settlement as fair. The Judge will make his final decision regarding the fairness of the Settlement at the Fairness Hearing described in Section 6 below.

Under the Settlement, Defendants have agreed to pay a Settlement Amount of Fifteen Million, Sixty-Nine Thousand, Three Hundred Dollars (\$15,069,300) to resolve all claims asserted in the Lawsuit. After litigation costs, attorneys’ fees, service payments, an errors and omissions fund, and a reserve fund are subtracted from the Settlement Amount, the remaining fund (“Net Settlement Fund”) will be divided among the Class Members based upon the settlement formula stated in the Settlement Agreement on file with the Court.

The payment each Class Member is entitled to (“Individual Settlement Payment”) will be calculated from the Net Settlement Fund based on a formula that is applied uniformly to each Class Member and that takes into account the number of weeks each Class Member worked during the class period. Each Class Member is entitled to a Minimum Payment of \$300.00 (“Minimum Payment”).

Based on the information provided by Defendants, your Individual Settlement Payment is estimated to be approximately: \$<<Award Amount>>. This amount is an estimate only and your actual payment may be more or less depending on the number of Class Members who opt out of the Settlement and the deductions from the Settlement Fund approved by the Court for litigation costs, attorneys’ fees, and service payments, and the errors and omissions fund and the reserve fund.

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For each Class Member's Minimum Payment, 50% of your settlement amount will be paid, less all ordinary payroll taxes and withholdings. This amount will be reported on an IRS Form W2 after the end of the tax year. The other half of your Minimum Payment will be paid, with no deduction for payroll taxes or withholdings. This amount will be reported on an IRS Form 1099, issued after the end of the tax year. For Class Members who receive an additional pro-rata allocation amount payment over the Minimum Payment, 30% of the additional amount will be paid, less all ordinary payroll taxes and withholdings, and 70% of the additional amount will be paid with no deduction for payroll taxes or withholdings. You will receive one check for your entire Individual Settlement Payment, along with a check stub showing the breakdown between W2 wages and 1099 income, and any taxes withheld.

At the Fairness Hearing, Class Counsel will ask for up to \$5,000,000 of the \$15,069,300 Settlement Fund for the services they provided. Class Counsel will also seek to recover its approved out-of-pocket costs and expenses incurred in the Lawsuit not to exceed \$200,000. This amount will be requested based on the substantial work Class Counsel performed in prosecuting the Lawsuit over more than four years, including, but not limited to, interviewing and collecting documents from over one hundred drivers; reviewing thousands of documents related to the Lawsuit, including hundreds of thousands of electronic records; propounding discovery; answering discovery for a substantial number of Class Members; reviewing and analyzing substantial amounts of payment and time related data; drafting, filing, and arguing numerous motions; consulting with experts; and the risk Class Counsel took in bringing the Lawsuit.

At the Fairness Hearing, Class Counsel will also ask for a service payment of \$20,000 each for the two Named Plaintiffs, and for a service payment of \$5,000 each for the five Class Members who participated in discovery ("Discovery Representatives"). The Service Payments are requested because the Named Plaintiffs and Discovery Representatives provided service to the Settlement Class by helping Class Counsel formulate claims and by assisting in bringing the Lawsuit forward, including, but not limited to, helping with fact investigation and responding to interrogatories and document requests. The Service Payments are separate from, and in addition to, the portion of the Settlement Fund that the Named Plaintiffs and Discovery Representatives may receive as Class Members.

4. How can I receive my payment?

Because you are automatically a Class Member, you do not need to take any further action to receive a payment. However, if your address is different from the address to which this Notice was originally sent, or if you move prior to receiving a check, you should contact the Claims Administrator (see Section 9 below) to notify the Claims Administrator of your new address.

5. What am I releasing as a Class Member?

If the Court grants final approval of the Settlement, the Lawsuit will be dismissed with prejudice, and you will release any and all claims that have accrued, or that were raised, or claims which could have been raised in the Plaintiffs' Second Amended Complaint (ECF Doc. 373) (collectively "Released Claims"), including any and all Rule 23 Released Claims and any and all FLSA Released Claims, if any, during the Release Period as described more fully in Section 9 of the Settlement Agreement. You can access the full Settlement Agreement online at (insert Claims Administrator's website domain name).

6. Final approval of the Settlement at the Fairness Hearing

The Judge presiding over this Lawsuit will conduct a Final Fairness Hearing at 10:30 A.M. on August 29, 2022 in Courtroom 6D of the Fred D. Thompson U.S. Courthouse and Federal Building, 719 Church Street, Nashville, TN 37203. At the Fairness Hearing, the Judge will decide whether the Settlement is sufficiently fair and reasonable to warrant final court approval. You are not required or expected to attend the Fairness Hearing. However, you are welcome to attend at

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your own expense. If you plan on attending, please contact Class Counsel (see Section 10 below) so that the Court can be notified to ensure that there is enough space and time, if requested, allotted for you.

7. How do I object to the Settlement?

If you believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement, either personally or through an attorney at your own expense, by mailing a copy of your written objection to the Claims Administrator or by emailing your objection to the Claims Administrator (see Section 9 below for the Claims Administrator's contact information).

All objection(s) to any part of the Settlement must state your name, must be signed by you or your counsel, and set forth your address, telephone number, the last four (4) digits of your social security number or, if you are claiming under a company or corporate name, must include your Federal Employer Identification Number ("FEIN"), and the name of the Action: *John Elmy v. Western Express, Inc.* (Civ. No. 3:17-cv-01199). All objections sent by mail must be postmarked no later than **June 27, 2022**. All objections sent by email must be received no later than **June 27, 2022**. If you submit a timely objection, you may appear, either personally or through an attorney, at your own expense, at the Final Fairness Hearing discussed above. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Fairness Hearing. If you object to the Settlement, Class Counsel will not represent you in your objection.

Any Class Member who does not object in the manner described above shall be deemed to have waived any objections and shall forever be foreclosed from objecting to the fairness and adequacy of the proposed Settlement, the payment of attorneys' fees, service payments, and litigation costs, the claims process, and any and all other aspects of the Settlement. Likewise, as a Class Member, you will be deemed to have released all of the Released Claims against Defendants and be subject to the Release contained in the Settlement Agreement as explained in Section 5 above, and as fully set forth in Section 9 of the Settlement Agreement.

8. How do I exclude myself from the Settlement?

If you **did not** previously opt in to the Fair Labor Standards Act ("FLSA") collective action, you may exclude yourself fully from all portions of the Settlement. If you do so, you will not receive a settlement payment and you will not release any claims you may have against Defendants. If you **did** previously opt in to the FLSA collective action, you may exclude yourself from the Rule 23 portion of the Settlement only. If you do so, you will not receive a settlement payment for your Rule 23 claims and will not release any Rule 23 claims you may have against Defendants. However, you will still receive a settlement payment for your FLSA claims and will release your FLSA claims against Defendants. If you exclude yourself from the Settlement, you cannot object to the Settlement as set forth in Section 7 above.

In order to exclude yourself from all or part of the Settlement as set forth above, you must request to be excluded by mailing a copy of your request to the Claims Administrator, or by emailing your objection to the Claims Administrator (see Section 9 below for the Claims Administrator's contact information).

All requests to be excluded must state your name, must be signed by you, and set forth your address, telephone number, the last four (4) digits of your social security number or, if you are claiming under a company or corporate name, must include your FEIN number, and the name of the Action: *John Elmy v. Western Express, Inc.* (Civ. No. 3:17-cv-01199). All requests to be excluded sent by mail must be postmarked no later than **June 27, 2022**. All requests to be excluded sent by email must be received no later than **June 27, 2022**. If your request to be excluded is not timely postmarked or received, it may be rejected, and you will be bound by the terms of the Settlement, including the Release contained in the Settlement Agreement as explained in Section 5 above, and as fully set forth in Section 9 of the Settlement Agreement.

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9. Are there more details about the Settlement? What if I have questions?

Yes. This Notice summarizes the most important aspects of the Settlement. You can access the full Settlement Agreement online at (insert Claims Administrator’s website domain name). To obtain further information regarding the Lawsuit and the Settlement, you can call Class Counsel or the Claims Administrator. Class Counsel’s contact information is listed below in Section 10 and **the Claim Administrator’s contact information is listed in this Section immediately below.** You will not be charged any money for communicating with Class Counsel or the Claims Administrator. All inquiries by Class Members should be directed to Class Counsel or the Claims Administrator. **Do not contact the Court, Judge, Defendants, or Defendants’ counsel with inquiries.**

Elmy v. Western Express Settlement Administrator
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269
Email: claims@ssiclaims.com
Toll-Free: (833) 594-1999
Fax: (850) 385-6008
www.elmyvwesternexp.com

10. Do I have an attorney in this case?

Yes. The Court has appointed Getman, Sweeney, & Dunn, PLLC and Swartz Swidler, LLC as “Class Counsel” to represent the interests of Class Members in the Lawsuit. Class Counsel will represent you in the Lawsuit and can answer questions for you regarding the Lawsuit and the Settlement. Class Counsel’s contact information is below. You will not be charged any money for Class Counsel’s representation of you; rather Class Counsel will be paid out of the class-wide Settlement Fund. If you object to the Settlement, Class Counsel will not represent you in your objections.

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