

**NOTICE OF YOUR RIGHT TO “OPT-IN” TO LAWSUIT AGAINST  
WESTERN EXPRESS, INC. AND NEW HORIZONS LEASING, INC.**

December 27, 2019

Dear Current or Former Western Owner Operator:

Enclosed is a Consent form allowing you to join a lawsuit that has been filed by a former Western Express owner operator who leased a truck from New Horizons; this lawsuit was filed on behalf of the owner operator and other similarly situated owner operators seeking unpaid wages and liquidated damages under the Fair Labor Standards Act (FLSA). The lawsuit is being heard by the United States District Court for the Middle District of Tennessee, Honorable William L. Campbell, Jr. presiding. The Plaintiff Drivers are being represented by Getman, Sweeney & Dunn, PLLC and Swartz Swidler, LLC.

**What this lawsuit is about:**

The lawsuit claims that owner operators were employees, not independent contractors, and that Western failed to pay the owner operators the federal minimum wage each week they drove for Western. The lawsuit seeks back pay and liquidated damages. Western denies Plaintiffs’ allegations that the owner operator drivers are employees. Both Western and New Horizons deny that they have violated the FLSA. The Court has taken no position at this juncture in the case regarding the merits of the Plaintiffs’ claims or of Defendants’ defenses.

**Who can join this lawsuit:**

If you are a current or former owner operator who leased a truck from New Horizons from August 25, 2014 to the present, you may join this case. The District Court for the Middle District of Tennessee, which is hearing this case, has authorized this notice informing you of your right to “opt-in” and be covered by this case. If you do not join this lawsuit, you will not be able to receive any share of any settlement or judgment that the Plaintiff Drivers may obtain. If you do opt-in to the lawsuit, you will be bound by any ruling or settlement in this case. You are entitled to join this case even though Western considered you to be an independent contractor. You will not be obligated to pay the lawyers for their costs or legal fees to participate, except that the Judge may award the lawyers’ fees to be paid by Western. If the case is unsuccessful, the lawyers will be paid nothing.

**No retaliation:**

The law prohibits retaliation against employees for exercising their rights under the FLSA. Therefore, you may not be terminated or subjected to discrimination in any manner because of your exercise of rights under the FLSA, including by joining this lawsuit. Although Western disputes the claims raised in the case, it recognizes the Plaintiff Drivers’ right to pursue these claims.

**How to join:**

To join the case and be represented by the lawyers who are handling this case, you must fill out and return the enclosed Consent Form to:

Getman, Sweeney & Dunn, PLLC  
260 Fair Street  
Kingston, NY 12401  
Fax: (866) 543-9619 Email: [ebates@getmansweeney.com](mailto:ebates@getmansweeney.com)

You can also submit a Consent Form electronically on the lawyers’ website. Consent Forms must be postmarked, faxed, emailed or electronically submitted no later than **April 8, 2020**. You have the right to be represented by a different lawyer if you wish, but you must make separate arrangements with any such lawyer. More detailed information can be learned by calling the lawyers for the Plaintiff Drivers at Getman, Sweeney & Dunn at 845-255-9370, or by viewing the lawyers’ website at: [www.westernexpresslawsuit.com](http://www.westernexpresslawsuit.com).

**Questions? Contact the Drivers’ Lawyers at 845-255-9370 or E-mail: [ebates@getmansweeney.com](mailto:ebates@getmansweeney.com)**

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

**JOHN ELMY, et al,**

**Plaintiffs,**

**v.**

**WESTERN EXPRESS, INC., et al,**

**Defendants.**

**Case No. 3:17-cv-01199**

**CONSENT TO SUE**

I work or worked for WESTERN EXPRESS, INC. as an owner-operator and leased a truck from NEW HORIZONS LEASING, INC. I hereby consent to sue these Defendants in this Fair Labor Standards Act minimum wage case. I understand that by signing this form, I will be represented by the Named Plaintiff and Getman Sweeney & Dunn, PLLC, Swartz Swidler, LLC, and other associated attorneys in bringing any claims I may have under the Fair Labor Standards Act (for unpaid minimum wage, attorney's fees, costs and other relief) in this action. By signing and submitting this consent to sue, I authorize the firms to represent me without prepayment of costs or attorneys' fees. I understand that the funds ultimately retained by the attorneys will be either the fees and costs actually incurred or 1/3 of the total settlement or judgment amount plus incurred costs, whichever is greater. I understand that any fees and costs sought are subject to court approval. I understand that if the case is not successful, I will not be obligated to pay any fees or costs to plaintiffs' counsel.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name exactly as it appears on company pay statements if different than above:

\_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Best Phone Number(s): \_\_\_\_\_

Email: \_\_\_\_\_

Emergency Contact: \_\_\_\_\_

This Consent to Sue is not valid and effective until you have received a receipt from Plaintiffs' Counsel indicating that it has been filed. If you have not received a receipt within 3 weeks from your transmission of the form to us, you must contact us by phone at (845) 255-9370.