IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jones v. Zimmer GMBH,*
2016 BCSC 1847

Date: 20161006
Docket: S095493
Registry: Vancouver

Between:

Dennis Jones and Susan Wilkinson

Plaintiffs

And

Zimmer GMBH, Zimmer, Inc. and Zimmer of Canada Limited

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Before: The Honourable Mr. Justice Bowden

In Chambers

Reasons for Judgment

Counsel for Plaintiffs:	D. Klein A. Vergis
Counsel for Defendants:	A. Borrell
Place and Date of Hearing:	Vancouver, B.C. June 28, 2016
Place and Date of Ruling given to Parties with Reasons to follow:	Vancouver, B.C. August 24, 2016
Place and Date of Reasons:	Vancouver, B.C. October 6, 2016

Introduction

[1] This is an application for the approval of a proposed settlement as well as counsel fees and disbursements in this class action.

[2] The action was commenced on July 24, 2009 and certified as a class proceeding by this Court on September 2, 2011. The Court of Appeal of British Columbia dismissed an appeal from the certification on January 22, 2013. (*Jones v. Zimmer GMBH,* 2011 BCSC 1198, aff'd 2013 BCCA 21)

[3] A companion class action was certified in Ontario (*McSherry v. Zimmer GMBH,* 2014 ONSC 5527) and there are related proceedings in Quebec (*Major c. Wainberg,* 2016 QCCS 902).

[4] Justice Gouin of the Superior Court of Quebec approved the settlement on July 4, 2016. Justice Perell of the Ontario Superior Court of Justice approved the settlement on July 20, 2016.

Background

[5] The action was based on allegations that the defendants' hip implant, known as the "Durom Cup", was defective because it failed prematurely in some recipients due to a lack of bone adhesion. Where such failure occurs the recommended treatment is revision surgery that involves the replacement of the implant with a new device.

[6] The failure of an implant is painful and disabling. Revision surgery is unpleasant and may result in complications but it also can be reasonably effective in restoring patients' health and function.

[7] Hip implants are known to fail for a variety of reasons. In time and with wear, all hip implants eventually fail. Such failure may require revision surgery but will not necessarily result from a defective implant. This action focused on the premature failure of implants.

[8] The representative plaintiff's expert, Dr. Thomas Turgeon, provided evidence by affidavit that the Durom Cup did not perform as well as other comparable hip implants during the first 4½ years after implantation. If a Durom Cup was defective, the defect generally appeared within that period of time. He also opined that after that period of time the Durom Cup has performed as well as or better than other, comparable implants.

[9] On June 26, 2013, this Court ordered that a Notice of Certification be distributed to 95 hospitals across Canada and that the hospitals be directed to mail the Notice to patients who had been implanted with the Durom Cup. The Notice was mailed to 3,423 patients.

[10] The deadline for residents of British Columbia to opt-out of this class action was December 31, 2013. Fifteen opt-out requests were received by counsel. A total of 1,102 persons have opted-in to the class action. The Notice also informed class members about potential problems with the Durom Cup so that they could seek medical assistance.

[11] Right after the lawsuit was filed in 2009, counsel began interviewing class members. The interviews of 1,102 class members were largely completed by the end of 2013. Some class members advised counsel that they were having no problems with their Durom Cup implant. Some class members reported having problems but no revision surgery. In that case, counsel informed the class member that the Durom Cup had been subjected to a recall for reasons which could necessitate revision surgery and encouraged them to go back to see their specialist, have the problem investigated and determine if revision surgery was necessary. If a class member reported to counsel that they had undergone revision surgery then they were asked to provide authorizations to obtain medical records to confirm that they had received a Durom Cup and that it had been removed. The records of 332 class members were obtained and reviewed. Class members who informed counsel that they had undergone revision surgery, or were medically precluded from undergoing a revision, and who authorized counsel to obtain their medical records

also signed retainer agreements with counsel providing for a 33.33% contingency fee.

Key Terms of the Settlement Agreement

[12] The representative plaintiff in these proceedings, Ms. Susan Wilkinson, and the representative plaintiff in the Ontario class action signed the settlement agreement in November 2015.

[13] A fundamental aspect of the settlement agreement is that class members receive compensation in exchange for a release of their claims. The amount of compensation varies with the nature of a class member's individual claim. A class member who underwent an uncomplicated revision may receive up to $97,500. Someone who experienced a complicated revision may receive up to $172,500. A class member who had not undergone revision surgery by September 1, 2015 (the "Eligibility Deadline") will only be entitled to receive $600.

[14] An important aspect of the settlement is that a class member does not have to prove that the implant they received was defective or the cause of the failure of their implant. All revisions that took place before the "Eligibility Deadline" or were scheduled before that date are eligible for compensation unless the revision surgery was for a purpose other than replacing a Durom Cup.

[15] The settlement is structured on a "claims-made" basis rather than a "lump sum" basis such that the defendants must compensate all class members who satisfy the eligibility criteria without any limit on the amount of their liability as in a lump sum settlement.

[16] The compensation levels are based on counsel's view of damage awards in personal injury cases where a plaintiff has suffered trauma to a hip resulting in the need for a hip replacement. There are no reported decisions in Canada where damages have been awarded for a defective hip implant. Counsel's view is that the amounts to be paid to eligible class members compare favourably with damage awards that might be obtained at trial.

[17] If this settlement is not approved then the action will have to be re-scheduled for a common issues trial in British Columbia. Dates for oral examinations for discovery would have to be set and expert reports would have to be exchanged. A trial of the common issues might not be held until 2018. The estimate for the length of a common issues trial in this case ranges from two to four months. Appeals could extend the date of a final court decision until 2021. Individual damage assessments might then take up to five more years to complete.

[18] Counsel informed the court that to date there have been four individual trials involving the failure of the Durom Cup in the United States and only one of them has resulted in a decision favourable to the plaintiff. Counsel are not aware of any decisions regarding the alleged failure of the Durom Cup outside of the United States.

[19] As this litigation has been in progress for 7 years and the median age of class members is now 61, the passage of time could adversely affect a number of members of the class.

Objections to the Settlement

[20] Fourteen objections were filed in relation to the proposed settlement.

[21] Twelve of the objections relate to the B.C. action and two relate to the Ontario action. All of the objectors filed written submissions regarding their objections.

[22] Six persons objecting to the settlement of the B.C. action made oral submissions on June 28, 2016.

[23] The objections may be summarized as follows:

1. Class members were not notified before September 1, 2015, that unless they had undergone revision surgery or scheduled such surgery prior that date they would only be entitled to nominal compensation.

2. The settlement does not include class members who require revision surgery but for various reasons did not have it or schedule it before September 1, 2015.

3. The settlement was reached before expert reports were exchanged or oral examinations for discovery were held. As a result, the defendants would have known that that plaintiff had little interest in going to trial.

4. The settlement does not provide any compensation for individual claims such as loss of earnings or pain and suffering short of revision surgery.

5. By the time class members became aware of the terms of the settlement, it was no longer possible to opt out of the B.C. action.

[24] The Ontario court received 14 written objections to the settlement. There were no objectors to the settlement in the Quebec proceedings.

The Eligibility Deadline

[25] The Eligibility Deadline is consistent with the expert medical evidence that the Durom Cup does not perform well in patients during the first 4.5 years after implantation, but beyond that point the Durom Cup performs as well, or better than other comparable devices. If the case went to trial, class members who suffered a failure of the device after 4.5 years may not be able to prove that the product failed as the failure of the implant may attributable to other causes.

[26] The average class member will have received the implant at least 8 years before the Eligibility Deadline and no class members will have received an implant less than 4.5 years before the deadline.

[27] Counsel submitted that a firm eligibility deadline is necessary in a claims-made settlement so that the defendants do not face unlimited liability. The Eligibility Deadline also avoids a financial inducement to a class member to seek or undergo revision surgery when it might not otherwise be necessary.

Counsel's Fees and Disbursements and an Honorarium

[28] Plaintiff's counsel was the first law firm in Canada to file a lawsuit in relation to the Durom Cup and the lawsuit preceded the recall of the device by 4 months. Since taking on the lawsuit plaintiff's counsel has performed a substantial amount of work over a period exceeding 7 years until the settlement was reached.

[29] A total of 332 class members have signed retainer agreements with plaintiff's counsel that provide for a 33.33% contingency fee plus taxes and disbursements. Class members who qualify for the $600 payment will not be charged a fee. To the date of the settlement hearing, the disbursements of plaintiff's counsel are just under $300,000.

[30] The representative plaintiff, Ms. Wilkinson, has requested that this Court approve an honorarium for her services to the class. Her involvement in the proceedings to date has required personal sacrifice and some hardship. Her work included speaking to the media so that others might be informed of the problems with the Durom Cup and seek medical treatment.

Analysis

[31] A class proceeding may be settled only with the approval of the court. Without court approval, a settlement is not binding.

[32] Section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*CPA*], provides:

> 35(1) A class proceeding may be settled, discontinued or abandoned only
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> (a) with the approval of the court, and
>
> (b) on the terms the court considers appropriate.
>
> (2) A settlement may be concluded in relation to the common issues affecting a subclass only
>
> (a) with the approval of the court, and
>
> (b) on the terms the court considers appropriate.
>
> (3) A settlement under this section is not binding unless approved by the court.

> (4) A settlement of a class proceeding or of common issues affecting a subclass that is approved by the court binds every member of the class or subclass who has not opted out of the class proceeding, but only to the extent provided by the court.
>
> (5) In dismissing a class proceeding or in approving a settlement, discontinuance or abandonment, the court must consider whether notice should be given under section 20 and whether the notice should include
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> (a) an account of the conduct of the proceeding,
>
> (b) a statement of the result of the proceeding, and
>
> (c) a description of any plan for distributing any settlement funds.

[33] The *CPA* does not provide a test for settlement approval.

[34] The overall question in deciding whether to approve a settlement is whether the settlement is fair, reasonable, and in the best interests of the class as a whole: *Cardozo v. Becton, Dickinson and Company*, 2005 BCSC 1612 at para. 16; *Parsons v. Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151 (Ont. S.C.J.); *Bodnar v. The Cash Store Inc.*, 2010 BCSC 145 at para. 17.

[35] The law was summarized in *Bodnar,* as follows:

> [17] … The court need not dissect the proposed settlement with an eye to perfection. Rather, the settlement must fall within a range or zone of reasonableness to be approved.
>
> [18] The court must consider the risks and benefits associated with continuing the litigation in deciding whether to approve the settlement. The question for determination is whether there are any disadvantages to the settlement that justify its rejection.
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> [19] The court is not entitled to modify the terms of a negotiated settlement. Its power is limited to approving or disapproving the settlement reached by the parties.
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> [20] The recommendation and experience of counsel are significant factors for consideration on an approval application. There is a presumption of fairness when a proposed settlement is negotiated at arm's length by class counsel and -
>
> [21] The court may take into account evidence of expected participation in the settlement by class members when determining the sufficiency of available settlement funds.

(See also: *Sawatzky v. Société Chirurgicale Instrumentarium Inc.* (1999), 71 B.C.L.R. (3d) 51 (S.C.) at para. 21).

[36] Public policy favours the settlement of complex litigation. There is a strong presumption of fairness where a settlement has been negotiated at arm's length. Experienced class counsel is in a unique position to assess the risks and rewards of the litigation and his or her recommendations are given considerable weight by the reviewing court. (*VitaPharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at paras. 111-114 and 144.)

[37] The court cannot re-write the settlement. All it can do is approve or reject the settlement. (*Sawatzky,* at para. 20)

[38] A court should be careful not to reject a settlement and suggest that if certain changes were made it would be approved because the parties may have gone to their limits in negotiations and an attempt to re-open a settlement may cause it to unravel. (*Semple v. Canada (Attorney General)*, 2006 MBQB 285 at para. 26)

[39] The parties bear the burden of satisfying the court that the settlement should be approved. Class members have standing to participate at the settlement approval hearing and to object to the settlement. (*McCarthy v. Canadian Red Cross Society*, [2007] O.J. No. 2314 (S.C.J.) and *Kutlu v. Laboratorios Leon Farma, S.A.*, 2015 ONSC 5976 at para. 38.)

[40] As settlement approval hearings are generally non-adversarial, the parties are expected to provide full and frank disclosure to the court, analogous to the disclosure requirements at an *ex parte* hearing. This disclosure obligation is tempered by the fact that if the settlement is not approved, then the litigation will continue, and so counsel may be appropriately guarded in their submissions as they may relate to that possibility. (*McCarthy*)

[41] The fact that class counsel has consulted with experts is a factor supporting the reasonableness of the settlement. (*Mignacca v. Merck Frosst Canada Ltd.,* 2012 ONSC 4931 at paras. 96-100.)

[42] Factors to consider when the reasonableness of a settlement is being assessed are:

1. the likelihood of recovery, or the likelihood of success;
2. the amount and nature of discovery evidence;
3. settlement terms and conditions;
4. recommendations and experience of counsel;
5. future expense and likely duration of litigation;
6. recommendations of neutral parties, if any;
7. number of objectors and nature of objections;
8. presence of good faith and absence of collusion;
9. degree and nature of communications by counsel and the representative plaintiffs with class members during litigation;
10. information conveying to the court the dynamics of, and the positions taken by the parties during the negotiation.

(*Cardozo* at para. 17; and *Fakhri v. Alfalfa's Canada, Inc. (c.o.b. Capers Community Market)*, 2005 BCSC 1123 at para. 8)

[43] In *Jeffery v. Nortel Networks*, 2007 BCSC 69 at para. 28, Groberman J. (as he then was) distilled these factors into "four broad questions":

- Has counsel of sufficient experience and ability undertaken sufficient investigations to satisfy the court that the settlement is based on a proper analysis of the claim?
- Is there any reason to believe that collusion or extraneous considerations have influenced negotiations such that an inappropriate settlement may have been reached?
- On a cost/benefit analysis, are the plaintiffs well-served by accepting the settlement rather than proceeding with the litigation? and
- Has sufficient information been provided to the members of the class represented by representative plaintiffs, and, if so, are they generally favourably disposed to the settlement?

[44] Few proposed settlements have been rejected in Canada: *Kidd v. Canada Life Assurance Co.*, 2013 ONSC 1868 at para. 132.

[45] The parties proposing the settlement bear the burden of satisfying the court that it is fair, reasonable, and in the best interests of the class as a whole: *Burnett v. St. Jude Medical, Inc.*, 2008 BCSC 1163 at para. 17. The settlement proponents "have an obligation to provide sufficient information to permit the court to exercise its

function of independent approval": *Ford v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 at para. 123 (Sup. Ct. J.). To perform its function "the court must possess adequate information to elevate its decision above mere conjecture": *Burnett v. St. Jude Medical, Inc.*, 2009 BCSC 82 at para. 133, quoting *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 at para. 92 (Sup. Ct. J.).

[46] Plaintiff's counsel has an overarching duty to act in the best interests of the class as a whole: *Richard v. HMTQ*, 2007 BCSC 1107 at para. 42, leave to appeal allowed 2007 BCCA 570, application to quash appeal dismissed 2008 BCCA 53.

[47] The following is a consideration of the factors from *Cardozo* and *Jeffery* in the context of this case:

(a) The Likelihood of Recovery or Success

Based on the evidence and submissions at the certification hearing and the evidence of the expert in this case it is complex litigation. There is certainly a risk that the plaintiffs would not be successful at the common issues trial. Even if successful at trial, the plaintiffs face the prospect of lengthy appeals and further individualized proceedings.

(b) The Amount and Nature of Discovery Evidence

Documents disclosed and the medical records of class members provided counsel with evidence that would have been used to help prove the case against the defendants and that ultimately were used in the negotiation process leading to the settlement.

(c) The Settlement Terms and Conditions

Having considered the settlement terms together with the expert evidence and the submissions of counsel for the plaintiff and the defendants, it is my view that the settlement terms are reasonable. I will say more about the objections concerning the Eligibility Deadline later in these reasons.

(d) Recommendations of Neutral Parties, If Any

The settlement was negotiated with the assistance of a highly experienced mediator, the Honourable George Adams, at three mediation sessions.

(e) Recommendations and Experience of Counsel

Counsel for the plaintiffs and the defendants are both very experienced in the field of class actions and where personal injury is involved. Both counsel recommend the settlement.

(f) Future Expense and Likely Duration of Litigation

I am satisfied that if a common issues trial were necessary it would likely extend for at least 4 months and be followed by appeals that could delay a final decision for a number of years. The cost and expense associated with such future litigation have not been estimated but would clearly be very substantial.

(g) Number of Objectors and Nature of Objections

i. With respect to objectors, *Dabbs v. Sun Life Assurance Co. of Canada*, [1998] O.J. No. 1598 at paras. 20–21 (Ct. J. (Gen. Div.)) as quoted in *Burnett*, 2008 BCSC 1163, states at para. 15:

> 20 In general, the procedural rights of all participants in the approval process must reflect the nature of the process itself and the special role of the court. The matter cannot be viewed in strictly adversarial terms. The plaintiff and the defendant find themselves in common cause, seeking approval of the settlement. The objectors have their own specific concerns which, upon examination, may or may not be reflective of the interests of the class as a whole.
>
> 21 In view of the fact that the purpose of the exercise is to ensure that the interests of the unrepresented class members are protected,

> the court is called upon to play a more active role than is called for in strictly adversarial proceedings. It is important that the court itself remain firmly in control of the process and that the matter not be treated as if it were a dispute to be resolved between the proponents of the settlement on the one side and the objectors on the other.

ii. The sixth factor in *Fakhri,* and the fourth question in *Jeffery,* indicate that the number of nature of objections is a relevant factor to consider in approving a settlement.

iii. Relative to the United States, objections to settlements in Canada are rare: *Kidd* at para. 170. However, they are "carefully heard and considered useful": Catherine Piché, *Fairness in Class Action Settlements* (Toronto: Carswell, 2011) at 76. Indeed, they are entitled to great weight: *Ford v. F. Hoffmann-La Roche* at para. 179. As explained in *Kidd*:

> [121] The judge's task is difficult because judges are more accustomed and more comfortable adjudicating in the context of an adversarial system, but at the time of the settlement approval process, the active parties to the class action are no longer adversarial, and they all will be recommending the settlement.
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> [122] I think judges are up to the task, but they are required to be more inquisitorial and to compensate for the adversarial void by being diligent in testing the one-sided arguments of the proponents of the settlement and by being attentive to the views of objectors who may provide cogent counter-arguments to the united front promoting the settlement.

iv. Nonetheless, the court's role is the same whether or not there are objectors: to independently and objectively analyze the settlement to determine if it is fair, reasonable, and in the best interests of the class as a whole. The court is concerned with the interests of the class as a whole, rather than the interests of

particular members: *Endean v. Canadian Red Cross Society* (1999), 68 B.C.L.R. (3d) 350 at para. 19 (S.C.).

v. The proportion of the class opposed to the settlement is a consideration. Here there were only 14 objectors out of 1,102 class members. In my view, a low percentage of objectors points to the reasonableness of a proposed settlement and supports its approval while a large proportion of objections indicates that a proposed settlement may not be fair and reasonable. Examples where this Court has considered a low percentage of objections as militating towards approval may be found in *Green v. Tecumseh Products of Canada Limited*, 2016 BCSC 217 at para. 32 and *Jeffery* at para. 62.

vi. A low percentage of objections does not always weigh in favour of approval. As stated in *Fairness in Class Action Settlements* at 192:

> The lack of significant opposition by class members may signify that they found the proposed settlement to be fair, and hence, that it presumably *is* fair. But it may also signify that class members failed to react to the proposed settlement because they were unaware of its existence or terms, of the class action litigation, or alternatively, that they did not have a sufficient opportunity to object because the "notices were too confusing, [they] had insufficient information, or [...] were not given an adequate opportunity to voice their objections."

vii. There is little guidance on what type of objections should be considered compelling.

[48] My views regarding what I consider to be the significant objections made in this case are as follows:

1. Class members were not notified that unless they had undergone revision surgery or scheduled such surgery prior to September 1, 2015 they would only be entitled to nominal compensation.

[49] It is important to note that individual class members do not participate in the conduct of the litigation during the common issues phase of a class action. This Court appointed a representative plaintiff to prosecute the action on behalf of the class and to instruct counsel for the class.

[50] Most settlement negotiations in a lawsuit are conducted in private and are privileged and confidential as was the case here. The representative plaintiffs in the Ontario and B.C. proceedings attended mediation sessions which went on over a period of two years. Clearly it would have been neither feasible nor appropriate for class members generally to be involved.

[51] In relation to the fairness of the Eligibility Deadline, it is important to note that during the interview process if a class member informed counsel that they were having problems with a Durom Cup implant they were encouraged to go to their specialist and determine if they needed revision surgery. They were so informed before the end of 2013 and thus had almost two years to seek medical advice and, if necessary, schedule revision surgery before the Eligibility Deadline.

[52] Furthermore, no class member received a Durom Cup less than 4.5 years before the Eligibility Deadline after which time, the Durom Cup performed as well as or better than other implants. In other words, after that date, proof of causation would have become very challenging.

[53] I agree with the comments of Perell, J. in the companion Ontario class action, *McSherry v. Zimmer GMBH*, 2016 ONSC 4606, at paras. 46 and 47:

> [46] The most serious objectors criticism of the settlement was a provision that set a deadline for the revision surgery having occurred or having been scheduled. If a Class Member missed the deadline then he or she would not qualify for any substantial compensation under the settlement. In this regard, it should be recalled that the settlement provides compensation of only $600 for Class Members who are unrevised and only this level of compensation is

> available for a Class Member who had revision surgery scheduled after the deadline specified in the settlement agreement.
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> [47] I am persuaded, however, that the precondition to substantial compensation under the settlement agreement is fair and reasonable. Medical devices are not perfect and may fail for reasons other than negligent manufacture. Setting a deadline by reference to whether or not the patient had or scheduled revision surgery is reasonable and reflects the increased difficulty a Class Member would have in proving causation with the passage of time after the medical device has been implanted.

2. The settlement does not include class members who require revision surgery but for various reasons did not have it or schedule it before September 1, 2015.

[54] The comments regarding the objections in paragraph 1 apply equally to this objection. In addition, if a class member was able to satisfy counsel with medical records that they could not have revision surgery for medical reasons they qualified for compensation of $40,000.

[55] An ethical issue also faced counsel if class members were informed that to qualify for the amount of compensation available they had to schedule or undertake revision surgery before the Eligibility Deadline in that a financial incentive would have been created for some class members to proceed with revision surgery that may not have been necessary.

3. The settlement was reached before expert reports were exchanged or oral examinations for discovery were held. As a result, the defendants would have known that that plaintiff had little interest in going to trial.

[56] This objection is answered by the comments regarding the objection in paragraph 1 above that the conduct of the litigation is in the hands of counsel as instructed by the representative plaintiff and is not subject to the views of class members in general. This objection also implicitly goes to amount of the overall settlement and, generally, an objection that the overall settlement amount is insufficient is unpersuasive because a settlement is a compromise of claims. (See

Warren K. Winkler et al., *The Law of Class Actions in Canada*, (Toronto: Canada Law Book, 2014) at 312–313.)

4. The settlement does not provide any compensation for individual claims such as loss of earnings or pain and suffering short of revision surgery.

[57] The comments regarding the objection in paragraph 3 above apply equally to this objection.

5. By the time that class members became aware of the terms of the settlement it was no longer possible to opt out of the B.C. action.

[58] When, as here, a lawsuit is certified as a class proceeding, the legislation requires that class members make a decision to opt in or opt out of the proceeding before the outcome of the litigation is known. Class members must elect to be bound by the judgment on the common issues, whether by settlement or a decision of the court, and whether favourable or unfavourable. A class member is not permitted to wait on the sidelines and make their decision after knowing the results of the litigation. (*Cannon v. Funds for Canada Foundation*, 2014 ONSC 2259). The predictability and finality required by the parties to resolve a class action would be undermined if a class member could change their election after knowing the results of the litigation.

Settlement Approval

[59] Having regard to the factors referred to in these reasons, I have concluded that the settlement agreement in this case is fair, reasonable and in the best interests of the class members as a whole, and should be approved. The publication of the notice of settlement is also approved.

Counsel's Fees

[60] The contingency fee of 33.33% is within the typical range for class actions in British Columbia. (*Pro-Sys Consultants Ltd. v. Infineon Technologies AG*, 2014 BCSC 1936 and *Stanway v. Wyeth Canada Inc.,* 2015 BCSC 983).

[61] Having considered the work undertaken by counsel for the plaintiff over a period of 7 years since commencing this lawsuit, including the work in relation to a contested certification and appeal therefrom, three mediations before an experienced mediator and the resulting claims-based liability of the defendants, along with the amounts of compensation which appear to be comparable to the range of damages that might have been available had this matter gone to trial, I have concluded that counsel's fees and disbursements plus applicable taxes should be approved.

An Honorarium

[62] In the circumstances, I am satisfied that Ms. Wilkinson's contributions to this lawsuit in helping to bring it to a conclusion that was in the best interests of the class members justifies the payment of an honorarium to her in the amount of $10,000.

Claims Administrator

[63] The settlement agreement shall be administered by Crawford Class Action Services, an experienced claims administrator.

"Bowden, J."