

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Karsten Henriksen, Plaintiff

**AND:**

Samsung Electronics Canada Inc., Defendant

**BEFORE:** Leitch J.

**COUNSEL:** Matthew Baer and Emily Assini, for the plaintiff

Gordon McKee, for the defendant

J. VanDamme general counsel also present

**HEARD:** March 27, 2019

**ENDORSEMENT RE: SETTLEMENT**

- [1] The parties move for approval of a settlement agreement dated December 11, 2018, reached as a result of mediation.
- [2] This action was certified for settlement purposes on December 12, 2018 at which time the form and method of providing notice of the settlement to the class was also approved.
- [3] The class members are residents of Canada (other than Quebec) who are the original or subsequent purchaser of a Washer for household use (excluding certain other parties particularized in the class definition).
- [4] The defendant sold approximately 256,000 Washers in Canada as of November 2016, at which time Health Canada issued a recall notice.
- [5] The claims administrator has implemented the notice program and over 93,000 notices were emailed and over 54,000 notices were sent by mail. In addition, the notice was published in a number of national and regional newspapers. Class counsel reported satisfaction with the effectiveness of the notice program.
- [6] In 2016, the defendant voluntarily provided remedial options to persons who owned affected Washers.
- [7] Pursuant to the voluntary recall, consumers were provided with two options. In contrast, under the settlement agreement, five options are available which I need not particularize other than noting that they are an enhanced minimum recall rebate, a settlement recall

rebate, a recall repair additional benefit, top separation relief and commitment for recall repair.

- [8] I am satisfied that the settlement is fair, reasonable and in the best interests of the class and approved same by signing the order presented by counsel at the hearing on March 27, 2019. In arriving at this conclusion, I have considered the well-recognized factors outlined in the jurisprudence presented in the factum of class counsel.
- [9] It is important to note that the settlement was reached following negotiations which were described as “hard-fought” and indeed it is clear that certain material terms were not agreed to among the parties until very late in the process.
- [10] Importantly, class counsel have advised the court that the settlement agreement is a fair and reasonable compromise of the litigation and recommends approval of the settlement. The representative plaintiff has instructed class counsel to seek settlement approval.
- [11] While this settlement has been reached prior to discovery, class counsel advised that they had undertaken significant investigation, had retained an expert and were confident that they had adequate information to evaluate the settlement. A full certification record had been prepared.
- [12] It is significant that this settlement is comparable to a settlement arrived at in the United States.
- [13] The submissions made by counsel were most helpful in understanding the incremental value of the settlement over and above what was offered in the voluntary recall.
- [14] It is also important that there has been a very small opt-out from the class and a very small number of objections (five), the majority of which raise issues that are unrelated to the subject matter of the settlement or the settlement itself. The remaining two objections have been explained or accounted for by the materials filed by counsel and do not justify non approval of the settlement.
- [15] Class counsel have also outlined the risks in proceeding with the litigation, noting in particular the procedural risks in relation to certification of the action as explained in the affidavit sworn in support of the settlement.
- [16] As part of the settlement, the defendant will pay the fees and disbursements of class counsel which I note do not result in any “premium” being paid to counsel. The retainer agreement entered into with the representative plaintiff is approved, the amount of legal fees and disbursements being paid by the defendant to class counsel pursuant to the settlement agreement is specifically approved, as is a modest service award to the defendant. The order providing for these terms was signed at the settlement approval hearing.

  
Justice L. C. Leitch

**Date:** April 5, 2019