IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wolfe v. Hyundai Auto Canada Corp.,* 2025 BCSC 2670

Date: 20251128
Docket: S223610
Registry: Vancouver

Between:

Mary Therese Wolfe

Plaintiff

And:

Hyundai Auto Canada Corp., Hyundai Motor Company, Hyundai Motor America, Inc., Hyundai Motor Manufacturing Alabama LLC, Kia Canada Inc., Kia Motors Corporation, Kia Motors America, Inc. and Kia Motors Manufacturing Georgia, Inc.

Defendants

Before: The Honourable Justice Douglas

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	K.S. Garcha A. Mahmood P.G. Kuchar C. Smith M.D. Baer (November 28, 2025) S. MacLeod, Articled Student (November 10, 2025)
Counsel for the Defendants:	I. Ishai P.T. Douglas
Québec Class Action Counsel:	S. Turner A. Roulet
Place and Date of Hearing:	Vancouver, B.C. November 10, 2025
Place and Date of Judgment:	Vancouver, B.C. November 28, 2025

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I. OVERVIEW

[1] Mary Therese Wolfe, the representative plaintiff in this class action proceeding, applies for court approval of the settlement of this action, class counsel's fee, and the honorarium to be paid to Ms. Wolfe.

[2] This multi-jurisdictional class proceeding involves certain model year Hyundai, Genesis, and Kia-brand vehicles manufactured, marketed, sold, and/or leased by the defendants in Canada and allegedly equipped with a defective hydraulic electronic control unit in the anti-lock brake system control module (the "ABS Module").

[3] The plaintiff alleges that the ABS Module can short circuit and ignite, thereby presenting an unacceptable risk of engine fire and loss of ABS functionality. Specifically, the plaintiff alleges that moisture and/or other leaks can accumulate within the ABS Module (which is in the engine compartment), and short circuit and ignite, presenting consumers with an unacceptable risk of engine fire and loss of anti-lock brake system functionality.

[4] The settlement class vehicle population comprises approximately 690,000 Hyundai, 1,500 Genesis, and 380,000 Kia-brand vehicles.

II. PROCEDURAL HISTORY

[5] On May 3, 2022, the plaintiff filed a notice of civil claim in this BC action. On October 4, 2023, the plaintiff filed an amended notice of civil claim to add new Transport Canada and/or National Highway Traffic Safety Administration ("NHSTA") recalls pertaining to the alleged ABS Module defect and to redefine the settlement class vehicles to include newly recalled Hyundai and Kia-brand vehicles equipped with the alleged ABS Module defect.

[6] On August 1, 2025, I certified this action as a multi-jurisdictional class proceeding, for settlement purposes only, appointed Ms. Wolfe as the representative plaintiff, approved the plaintiff's notice plan, and granted leave to the plaintiff to further amend her pleading to include residents of Québec within the class definition,

to redefine the affected class vehicles, and to add new Transport Canada recalls with respect to the ABS Module defect in the settlement class vehicles and consumer protection causes of action under the Québec *Consumer Protection Act*, C.Q.L.R., c. P-40.1, and the *Civil Code of Québec*, C.Q.L.R., c. CCQ-1991.

III. OTHER PROCEEDINGS

1. The U.S. Proceedings

[7] On August 25, 2020, February 25, 2022, and April 15, 2022, multi-district litigation was commenced in the United States District Court, Central District of California. The plaintiffs alleged that Hyundai and Kia-brand vehicles of a similar model type and model year as those which are the subject of this BC class action suffered from an ABS Module defect.

[8] On October 20, 2022, the settlement of this US multi-district litigation was preliminarily approved by the United States District Court for the Central District of California. On May 5, 2023, the settlement of this multi-district litigation received final approval from the United States District Court for the Central District of California.

2. The Parallel Québec Action

[9] On June 2, 2022, an application for authorization to institute a parallel class action was filed in the Superior Court of Québec. On September 29, 2023, the plaintiff filed an amended application to add the new Transport Canada and/or NHSTA recalls pertaining to the alleged ABS Module defect in the Québec proceedings.

IV. THE PROPOSED SETTLEMENT

[10] In or about July 2023, the parties commenced arm's length settlement discussions to resolve this action and the parallel Québec action. The defendants subsequently provided confirmatory discovery to class counsel. On May 9, 2025, almost two years after settlement negotiations began, the parties finalized and executed the proposed settlement agreement.

[11] Subject to obtaining court approval, the defendants have agreed to settle the claims advanced by the plaintiff on behalf of the settlement class, on the terms set out in the proposed settlement agreement, which is a compromise of disputed claims and not an admission of liability or wrongdoing by the defendants.

[12] The proposed settlement provides benefits to the settlement class members in the form of extended or additional warranty coverage, as applicable, for damage related to the alleged ABS Module defect, a free one-time inspection to determine whether a previously repaired or replaced ABS Module is affected by the ABS Module defect, monetary compensation to those settlement class members who have suffered a total loss of their settlement class vehicles as a result of fire caused by the ABS Module defect, and reimbursement for out-of-pocket expenses incurred in relation to past repairs.

[13] The parties have agreed to compromise their positions and settle the actions as documented in the proposed settlement agreement. Given the benefits set out in the parties' settlement agreement and the risk of continued litigation, the plaintiff and class counsel share the view that the proposed settlement is fair, reasonable, and in the best interests of the settlement class. Plaintiff's counsel underscores that the parties agreed to the proposed settlement after precertification investigation of the factual and legal issues, confirmatory discovery, and arm's length negotiations.

[14] Counsel have advised that the benefits under the proposed settlement of the BC and Québec actions are comparable to those approved in the US multi-district litigation. This proposed settlement contemplates that, once court approval in the BC action is deemed final, class counsel will, with the defendants' consent, apply to the Superior Court of Québec for a court-approved discontinuance of the parallel Québec action.

V. DISSEMINATION OF CERTIFICATION NOTICE

[15] On the evidence filed on this application, I am satisfied that the settlement administrator has disseminated the certification notice in accordance with the notice plan and my order of August 1, 2025, certifying this action for settlement purposes.

[16] By October 29, 2025, the settlement administrator had received 28 valid opt-out requests and one objection to the proposed settlement. The opt-out and objection deadline was November 3, 2025. On November 10, 2025, class-action counsel advised that the total number of valid opt outs had increased to 53.

VI. THE SETTLEMENT BENEFITS

[17] Pursuant to the proposed settlement agreement, settlement class members (i.e., those who purchased or leased a settlement class vehicle in Canada and who are not excluded from the settlement class) may be eligible for the following benefits:

a) Extended or additional warranty coverage for required repairs resulting from an electrical short circuit in the ABS Module and/or failure of the ABS Module that results in engine compartment damage due to smoke or fire;

b) Free one-time inspection of the ABS Modules in settlement class vehicles;

c) Cash payment for qualifying past out-of-pocket repairs;

d) Cash payment for qualifying past repair-related expenses; and/or

e) Cash payment for settlement class vehicles lost due to certain fires.

[18] These benefits are detailed more fully in the proposed settlement agreement.

VII. THE CLAIMS PROCEDURE

[19] Settlement class members have 90 days from the effective date of the settlement to submit a valid claim to the settlement administrator. The settlement administrator will oversee the implementation and administration of the claims program, including verification and determination of claim eligibility and approval of payments to eligible claimants.

[20] The claims procedure is outlined in detail in the proposed settlement agreement. At the conclusion of the claims program, the settlement administrator will

provide a final report to the court, the defendants, and class counsel detailing the number of eligible claimants who received settlement benefits under the claims program and the total value of those settlement benefits.

VIII. APPROVAL SETTLEMENT

[21] A settlement of a class proceeding is not binding unless approved by the court: *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*CPA*], s. 35.

[22] The *CPA* does not set out the test for settlement approval. Rather, the test has been developed by the courts. The guiding principle is that a settlement must be fair and reasonable and in the best interests of the class as a whole: *Cardozo v. Becton, Dickinson and Company*, 2005 BCSC 1612 at para. 16. A class action settlement need not be perfect; rather, it must fall within a range or zone of reasonableness to be approved: *Haney Iron Works Ltd. v. Manufacturers Life Insurance Co.* (1998), 169 D.L.R. (4th) 565 (B.C.S.C.) at para. 27; *Bodnar v. The Cash Store Inc.,* 2010 BCSC 145 at para. 17; Branch & Good, *Class Actions in Canada, 2d ed.,* at 17.2.

[23] The court's role on reviewing the settlement agreement is to either approve it in the best interests of class members or reject it. The court does not tinker with the settlement or provide conditional or partial approval: *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2018 BCSC 2091 at para. 26, citing *McKay v. Air Canada*, 2015 BCSC 1874 at para. 34.

[24] Courts consider the following factors in determining whether the settlement of a class proceeding is fair and reasonable and in the best interests of the class:

a) The likelihood of recovery or success;

b) The amount and nature of discovery, evidence, or investigation;

c) The settlement terms and conditions;

d) The recommendations and experience of counsel;

e) The future expense and likely duration of litigation;

f) The recommendations of neutral parties if any;

g) The number and nature of objections;

h) The presence of arm's length bargaining in the absence of collusion;

i) The degree and nature of communications by counsel and the representative plaintiffs with class members during litigation; and

j) Information conveying to the court the dynamics of and the positions taken by the parties during the negotiations.

(*Jeffery v. Nortel Networks Corp.,* 2007 BCSC 69 at paras 18–19; *Cardozo* at para. 17; *Jones v. Zimmer GMBH,* 2016 BCSC 1847 at para. 42.)

[25] Settlement approval requires consideration of four broad questions:

1) Has counsel of sufficient experience and ability undertaken sufficient investigations?

2) Have collusion or extraneous considerations tainted the negotiations?

3) Does the proposed settlement agreement reflect an appropriate balancing of the costs and benefits of settlement?

4) Are the class members adequately informed?

[26] I consider each question in turn.

1. Have counsel of sufficient experience and ability undertaken sufficient investigations?

[27] When competent class-action counsel recommends the settlement, there is a strong presumption of fairness, and the settlement should only be rejected if it does not fall within a zone of reasonableness: *Pro-Sys Consultants Ltd. v. Microsoft Corporation* at para. 27.

[28] Based on the evidence before me, I accept that:

a) Class counsel and defence counsel here are experienced in class action litigation generally, and class action litigation involving alleged automobile defects specifically;

b) The settlement agreement was negotiated and drafted by experienced counsel with a thorough understanding of the relevant factual and legal issues;

c) The proposed settlement was reached with a sufficient understanding by counsel of the respective strengths and weaknesses of the parties' claims and defences and the potential risks and benefits of continued litigation; and

d) Class counsel had access to publicly available documents on PACER, (Public Access to Court Electronic Records to United States federal courts) regarding the United States multi-district litigation.

[29] I have been advised that class counsel thoroughly researched the factual and legal issues in the BC and Québec actions. I am told that they reviewed information from the parallel US litigation, including pleadings, motion to dismiss materials, and materials related to the United States multi-district settlement and its approval by the United States District Court, Central District of California. Class counsel in this case have also advised that they received confirmatory discovery from the defendants. The settlement proceedings were lengthy, took place over almost two years, and involved many meetings, communications, and exchanges.

[30] I am satisfied that there was arm's length bargaining and that the evidence gives rise to no concern regarding any collusion in the negotiations. The settlement is recommended by counsel of significant experience. I am satisfied on the filed evidence that counsel had sufficient information to make an informed decision about settlement. I conclude that question one can be answered in the affirmative.

2. Did collusion or extraneous considerations taint the negotiations?

[31] When answering this question, the court considers a description of the negotiations, including whether they were arm's length and the product of experienced counsel on both sides: *Ford et al. v. F. Hoffmann-La Roche Ltd. et al.* (2005), 74 O.R. (3d) 758, 12 C.P.C. (6th) 252 (S.C.J.) at paras. 113–114, adopted by this Court in *Ritchie-Smith Feeds, Inc. et al. v. Rhône-Poulenc Canada Inc. et al.*, 2005 BCSC 583 at para. 2.

[32] There is a strong initial presumption of fairness when a proposed class settlement which was negotiated at arm's length by class counsel is presented for court approval: *Ford* at paras. 113–114; *Ritchie-Smith Feeds, Inc.* 583 at para. 2. I accept that the proposed settlement here was negotiated and drafted by experienced counsel for all parties. I have considered their shared view that the proposed settlement is fair, reasonable, and in the best interests of the class. I see no reason to question that representation in this case.

[33] Given the evidence of arm's length negotiations conducted by class counsel from multiple different law firms, I conclude that there are no concerns here that this process has been tainted by collusion. I conclude that the second question can be answered in the affirmative.

3. Does the proposed settlement agreement reflect an appropriate balancing of the costs and benefits of settlement?

[34] This question addresses the heart of the test, which is whether the settlement is fair and in the best interests of the class members. It involves an analysis of the range of reasonableness for settlement; provided the proposed settlement falls within that range of reasonableness, the court should approve it: *Bodnar* at para. 17. The court should have information which allows it to understand the risks of proceeding to litigate, which were accounted for in reaching the compromised settlement.

[35] The court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of litigation rights against the

defendants; however, the court must balance the need to scrutinize the settlement against the recognition that there may be several possible outcomes within that zone or range of reasonableness: *Bodnar* at para. 17; *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2010 BCSC 472 at para. 44.

[36] I accept that there are risks inherent in any litigation and that the defendants raised multiple factual and legal defences which could have prevented recovery at a common issues trial. I acknowledge that this is a complex action which would likely take years and significant expense to litigate to a final judgment. As noted by counsel, the proposed settlement provides certainty, relatively timely relief to consumers comprising the settlement class, and significant benefits.

[37] Having regard to the issues in the BC and Québec actions, the disputed nature of the plaintiffs' claims, the potentially available defences, the risks of non-recovery, reduced recovery, inability to certify a class action and/or maintain any class certification through the trial, potential appeals if the actions were litigated rather than settled, the time and cost of further litigation, and potentially delayed recovery associated with ongoing litigation, I conclude that the proposed settlement is fair and reasonable. I am satisfied that it represents a compromise which accounts for the risk of proceeding to trial, the costs and delays involved with continuing this litigation, and that it increases participation through the notice program.

[38] Taking all this into account, I am of the view that the settlement agreement reflects an appropriate balancing of the costs and benefits of settlement.

4. Are the class members adequately informed?

[39] On the evidence before me, I conclude that the class members have been adequately informed. In assessing whether a settlement is fair, reasonable, and in the best interests of the class, the court must consider as one part of its analysis the number of objections and the nature of objections to the settlement: *Leonard v. The Manufacturers Life Company*, 2020 BCSC 1840.

[40] There was only one objection to the proposed settlement. It relates to the definition of "exceptional neglect" in the settlement agreement; if this definition is met, the vehicle is excluded from the extended warranty program.

[41] Specifically, the one objection raised a concern about parts not being available to effect necessary vehicle repairs within 90 days. As explained by defence counsel, the settlement agreement requires owners to present a settlement class vehicle to an authorized dealer for inspection of the ABS Module within 90 days of:

a) The mailing of the recall campaign notice; or

b) The availability of the parts necessary to repair the settlement Class Vehicles' ABS Module pursuant to the recall at the nearest Kia, Hyundai, or Genesis-authorized dealer, whichever is later.

[42] If owners fail to do one of those two things within 90 days, their settlement Class Vehicles will fall into the "exceptional neglect" category and be excluded from the extended warranty. Notably, vehicle repairs need not be completed within 90 days. Based on the submissions of counsel and my review of the proposed settlement agreement, I accept that the one objection to the proposed settlement is based on a misapprehension of its terms.

[43] I am of the view that the notice campaign has provided class members with adequate information about the settlement. The number of persons who opted out is very small compared to the number of notices that were sent out.

[44] Having considered all the factors in accordance with the *Jeffery* framework, I am persuaded that the settlement agreement provides substantial benefits to the settlement class, is fair, reasonable, and in the best interests of the class members as a whole and falls within the range of reasonableness. Accordingly, I approve it.

IX. THE DISTRIBUTION PROTOCOL

[45] Section 33(1) of the *CPA* grants the court a broad discretion "to direct any means of distribution […] that it considers appropriate". A distribution that is

"consistent" with the underlying facts is "equitable": *Pro-Sys Consultants Ltd. v. Infineon Technologies AG*, 2014 BCSC 1936 at paras. 34–35, citing *Ontario Hospital Association v. Summers*, 2010 ONSC 4497 at para. 31.

[46] I have reviewed the distribution protocol and the claim forms. I am of the view that they are in simple language and provide class members with an easy method with very little burden on their part to establish a valid claim. There is a process for review of claims that are rejected. Class-action counsel with significant experience have negotiated this distribution protocol and recommended it to the court. I take that into account.

[47] I accept that the distribution plan in this circumstance has been effective in reaching settlement class members. It has included direct email notice, regular mail, settlement websites, and a digital internet notice campaign. I am satisfied that the proposed distribution is reasonable, fair, economical, and practical in the context of the BC and Québec actions.

[48] In summary, having regard to the filed evidence and the submissions of counsel, I conclude that the proposed settlement is fair, reasonable, and in the best interests of the settlement class. I approve the distribution protocol.

X. APPROVAL OF CLASS COUNSEL FEES

[49] Class counsel, Dusevic & Garcha, entered into a contingency fee agreement with Ms. Wolfe, the representative plaintiff in this action, on April 30, 2022. Ms. Wolfe then understood that in the event of success, either by judgment or settlement, class counsel would be paid a percentage of the recovery. The principal terms of the BC CFA are set out in the materials filed on this application. They provided:

a) The plaintiff is not liable to pay any of the expense of the litigation, whether lawyers' fees or costs. Recovery of costs and other expense is contingent upon the recovery being obtained. If no recovery is obtained, the plaintiff will owe nothing for costs and other expenses (para. C.1).

b) The sole contingency upon which the lawyers shall be compensated is a recovery in the litigation, whether by settlement or judgment. The lawyers will request that the court approve legal fees of 33% of the total recovery in addition to the lawyers' reasonable disbursements in the litigation plus taxes (para. C.2).

[50] Class counsel, Slater Vecchio LLP, entered into a contingency fee agreement with the proposed representative plaintiff in the Québec action, Martin Kodybko (the "Québec Plaintiff"), on May 31, 2022 (the "Québec Action CFA"). At the time of executing the Québec Action CFA, the Québec Plaintiff understood that only in the event of success, either by way of judgment or settlement, class counsel would be paid legal fees as a percentage of recovery. The principal terms of the Québec Action CPA are set out in the materials filed on this application. They provided:

a) The Québec Plaintiff is not liable for any expenses that might have been incurred in the execution of their functions of class representative, whether lawyer fees or costs. Recovery of legal fees and expenses is contingent upon recovery being obtained. If no recovery is obtained, the Québec Plaintiff does not owe anything for costs, expenses or fees (paras. 7, 10, and 19, and p. 3 preamble).

b) The sole contingency upon which the class counsel, Slater Vecchio LLP, shall be compensated is a recovery in the Québec Action, whether by settlement or judgment. The Class Counsel, Slater Vecchio LLP, will request the court approve legal fees between a maximum of 25% to 33% of, the total recovery in addition to the disbursements incurred plus taxes. The graduated percentage is dependant on the stage that the favourable result for the class is obtained (para. 17).

[51] Class counsel is not seeking court approval of these CFAs regarding fees.

[52] Pursuant to s. 10.3 of the settlement agreement, the defendants agree to pay fees and disbursements plus applicable taxes to class counsel that are fair and

reasonable in all the circumstances, which were incurred for the prosecution of the BC and Québec actions. Pursuant to s. 10.3 of the settlement agreement, the defendants and class counsel have negotiated counsel fees in the amount of $1,760,000, inclusive of taxes and disbursements, to resolve the BC and Québec actions.

[53] The settlement benefits to be paid to settlement class members under the settlement agreement were negotiated by class counsel and the defendants before any negotiations and discussions regarding counsel fees occurred. No part of counsel fees is to be deducted from the benefits payable to settlement class members under the settlement agreement or from the settlement administration.

[54] Payment by the defendants of counsel fees does not diminish in any manner the settlement benefits payable to settlement class members under the settlement agreement. The settlement agreement is not made conditional upon approval of counsel fees. Class counsel is seeking approval of counsel fees herein separate and distinct from the settlement approval notice of application.

[55] Section 38(2) of the *CPA* provides that an agreement regarding fees and disbursements between a solicitor and a representative plaintiff must be approved by a court to be enforceable. The agreement must be in writing and must: a) state the terms under which fees and disbursements are to be paid; b) give an estimate of the expected fee; and c) state the method by which payment is to be made: *CPA*, ss. 38(1) and (2).

[56] In circumstances where class counsel fees are being sought based on a contingency pursuant to an agreement between the plaintiff and class counsel, the approval of fees is dependent upon the courts assessing the reasonableness of class counsel fees in consideration of a non-exhaustive list of factors: *Cardozo* at para. 25; *Green v. Tecumseh Products of Canada Limited,* 2016 BCSC 217 at para. 57; *McLean v. Cathay Pacific Airways Limited,* 2021 BCSC 1456 at para. 48.

[57] If class counsel fees are not sought under a contingency fee agreement and are subject to an agreement between class counsel and a defendant not being paid out of the settlement fund, or both, then the courts in British Columbia have applied a less stringent test for fee approval and have given greater deference to good-faith negotiation attempts between counsel for the parties: *Killough v. The Canadian Red Cross Society*, 2007 BCSC 941 at para. 9.

[58] In *Killough*, the court stated that either under the *CPA* or its inherent jurisdiction, the court need not inquire into an agreement for the payment of fees as between class counsel and a defendant so long as the payment does not diminish the value of the fund that would otherwise be available to the benefit of the class members, which is an issue that is properly to be dealt with at the settlement-approval stage: *Killough* at paras. 8, 9, 13.

[59] The jurisprudence in Canada confirms that in circumstances where class counsel of class proceedings filed in different jurisdictions cooperate to settle their respective actions through a single and unique national class action settlement, courts may approve fees sought for work conducted in all actions through a single-fee approval motion and decision: *Breckon v. Cermaq Canada Ltd.,* 2024 FC 225.

[60] The fee agreement between class counsel and the defendant seeks fees for work in the BC and Québec actions and approval of these fees through a single motion, thereby further promoting judicial economy, one of the three objectives of class proceedings.

[61] Review of class counsel fees should be considered separately from the settlement of the class proceeding: *Quatell v. Attorney General of Canada,* 2006 BCSC 1840 at paras. 17–18. The test for the approval of legal fees is whether the fees sought are fair and reasonable: *Adrian v. Canada (Minister of Health)*, 2007 ABQB 377 at para. 10. A consideration that is properly warranted is that class counsel is not being “bought off” by the defendant or has not “had their obligations to their clients affected by receiving a substantial amount of fees”: *Adrian* at para. 29.

[62] Class counsel has advised that in this case, fees were not discussed and negotiated until after a settlement had been reached, citing *Adrian* at paras. 30–31.

[63] Having regard to the submissions of counsel and the affidavit evidence filed on this application, I am satisfied that:

a) The proposed settlement makes substantial monetary and non-monetary relief available to current and former owners and lessees of approximately 1,071,500 settlement class vehicles;

b) The 12-year and 5-year warranty extensions apply automatically, and settlement class members may claim each and every category of reimbursement for which they qualify;

c) Although the proposed settlement does not create a traditional common fund, the economic value of the proposed settlement is substantial; and

d) The proposed settlement provides lengthy warranty coverage for required repairs resulting from the defective ABS Module, free one-time inspection of the settlement class vehicles' ABS Modules, cash payment for qualifying past out-of-pocket repairs, cash payment for qualifying past repair-related expenses and/or cash payment for settlement class vehicles lost due to fire.

[64] The BC and Québec actions were commenced on May 3, 2022, and June 2, 2022, respectively, and included allegations of negligence, breach of warranty, and consumer protection statutes.

[65] The litigation risk assumed by counsel is a function of probability of success and complexity of the proceedings, and the time and resources expended to pursue the litigation: *Parsons v. Canadian Red Cross Society* (2000), 49 O.R. (3d) 281 (S. Ct. J.) at paras. 13, 18–47.

[66] I accept that class counsel assumed significant legal risks in pursuing the BC and Québec actions. As noted by class counsel:

a) The defendants denied liability from the outset of the BC and Québec actions and would likely have maintained their position if litigation had continued;

b) The defendants asserted various defences to support their denial of liability, and

c) The plaintiffs would likely have had to withstand an application to dismiss, obtain class certification, survive potential applications for a decertification and for possible summary judgment, and prevail at trial and on any subsequent appeal.

[67] Class counsel submit that the proposed settlement is the most favourable outcome for settlement class members given the risks and the amount of time involved in this litigation. They note that as part of the proposed settlement, class counsel has negotiated a notice program, which they submit will positively impact the take-up rate of the proposed settlement.

[68] I accept that class counsel entered into the proposed settlement with a sufficient understanding of the strengths and weaknesses of the parties' respective claims and defences, and of potential risks versus benefits of continued litigation, including, but not limited to, the ability to establish and/or the extent of establishing liability, alleged damages, class certification, and maintenance of class certification through trial and appeal. I accept that class counsel had sufficient information to make an informed decision about settlement.

[69] Based on the submissions of counsel and the evidence filed on this application, I conclude that the proposed settlement provides substantial benefits to, and is in the best interests of the settlement class, and is fair, reasonable, and adequate when considering the risks in litigating the BC and Québec actions, including, but not limited to, the disputed nature of the claims, the potential defences thereto, the risks of non-recovery or reduced recovery to the settlement class, the risks of inability to certify a class and/or to maintain any class certification through

trial, and potential appeal if the BC and Québec actions were litigated rather than settled, the substantial burdens, time and expense of further litigation, and the delays of potentially recovery associated with continued litigation of the BC and Québec actions.

[70] Class counsel's fee request is supported by the representative plaintiffs in both the BC and Québec actions and is being resolved by the same settlement agreement based on the orders issued after the consent certification and notice-approval hearing. The representative plaintiff's approval of and support for a fee request is not something to be taken lightly: *Fantl v. Transamerica Life Canada*, 2009 ONCA 377 at para. 44.

[71] I conclude that the requested class counsel fee, inclusive of taxes and disbursements, is reasonable given the risks assumed and the time and resources expended, and I approve it.

XI. APPROVAL OF THE REPRESENTATIVE PLAINTIFF'S HONORARIUM

[72] Compensation to the representative plaintiff is appropriate where the plaintiff has provided “competent service” by fulfilling the duties imposed upon him or her and success has been achieved for the class: *Parsons v. Coast Capital Savings Credit Union,* 2010 BCCA 311 [*Parsons* 2010]. The amount of compensation awarded to the representative plaintiff should be proportionate to the benefit derived by the class, his or her efforts in the litigation, and the risks that he or she assumed: *Parsons* 2010 at paras. 19–21.

[73] This Court has previously approved compensation to representative plaintiffs in the amount of $10,000 for their service and contributions: *Casavant v. Cash Money Cheque Cashing Inc*., 2010 BCSC 148; *Bodnar*; *Pro-Sys Consultants Ltd.*; *Denluck v. The Board of Trustees for the Boilermakers’ Lodge 359 Pension Plan*, 2021 BCSC 242; *Jones v. Zimmer GMBH*, 2016 BCSC 1847.

[74] Relevant factors include:

a) Active involvement in the initiation of the litigation and retainer of counsel:

b) Exposure to a real risk of costs;

c) Significant personal hardship or inconvenience in connection with the prosecution of the litigation;

d) Time spent and activities undertaken in advancing the litigation;

e) Communication and interaction with other class members; and

f) participation at various stages in the litigation, including discovery settlement negotiations and trial.

(*Robinson v. Rochester Financial Limited*, 2012 ONSC 911 at para. 43.)

[75] Based on the submissions of counsel, the affidavit evidence filed, and the authorities cited, I accept that representative plaintiff, Ms. Wolfe, has been actively involved in this action since its inception.

[76] I approve payment of the proposed $10,000 honorarium to Ms. Wolfe, payable from the class counsel fee payable to Dusevic & Garcha and McKenzie Lake Lawyers LLP. Class counsel confirm that the representative plaintiff in the Québec action does not seek an honorarium.

XII. DISPOSITION

[77] In summary, I make the following orders:

a) The proposed settlement is approved;

b) The proposed class counsel fee is approved; and

c) The proposed honorarium for Ms. Wolfe, the representative plaintiff in this action, is also approved.

"Douglas J."