

December 10, 2018

K.L. & K. (London) Limited et al v. Microsoft Corporation et al


CV-18-603591-CP

- Ms. Rumble Peterson and Mr. Harvey Strosberg for the Plaintiffs
- Ms. Beagan Flood for the Defendants

*Motion by class counsel in this certified Ontario class action for approval of the national settlement and legal fees agreement that was achieved mid-trial in British Columbia in Pro-Sys Consultants v Microsoft and recently approved by Justice Myers: see 2018 BCSC 2091. Class counsel in Ontario and Quebec had agreed that the “prime battleground” for the litigation and adjudication of this indirect purchaser completion class action would be in British Columbia. Indeed, as it turned out, more than 99% of the docketed time was recorded by the BC and US legal team that worked on this matter in and for the action in BC. The national settlement, depending on take-up, is capped at \$517 million. The additional legal fees agreement, negotiated after the core settlement was finalized, is capped at approximately \$101 million plus disbursements. Both the settlement agreement and the legal fees amount, subject to verification of certain disbursements, have been approved by Justice Myers in BC: see again 2018 BCSC 2091.*

**Approval of Settlement Agreement for the purposes of the Ontario Action:** In his approval decision, Justice Myers explained in detail why the core national settlement was fair and reasonable to the class members and very much in the zone of reasonableness. I agree with his analysis and his conclusion. The core settlement is hereby approved in Ontario as well. Order to go as per the Order signed by me today.

**Approval of the legal fees payable to class counsel:** This is a mega-fund settlement. I set out my concerns about “windfalls” in this context and the need to use the multiplier approach in such mega-fund cases (as opposed to simply relying on the contingency agreements) in *Brown v Canada*, 2018 ONSC 3429 at paras. 46-62, and on these points I may differ with my esteemed BC colleague. However, I agree with Justice Myers, that using a 2-times multiplier (a multiplier that in my view is justified on the facts of this case given the risks that accrued right up to the mid-trial settlement), the resulting fees award falls within the \$100 million range that was agreed to herein. I note again that 99% of the time expended was docketed by the BC and US team in or for the BC action and less than 1% of the time expended was docketed by class counsel in Ontario. I therefore have no difficulty approving the legal fees agreement (with whatever adjustment, if any, is forthcoming from the BC Court re the disbursements) and I will be pleased to sign the final legal fees Order in due course.

  
Justice Edward P. Belobaba