Court File No. CV-19-0061408600 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

VECCHIO LONGO CONSULTING SERVICES INC.

Plaintiff

- and -

APHRIA INC., VICTOR NEUFELD, ~~CARL MERTON~~, COLE CACCIAVILLANI, ~~CLARUS SECURITIES INC., CANACCORD GENUITY CORP, CORMARK SECURITIES INC., HAYWOOD SECURITIES INC. AND INFOR FINANCIAL INC.~~

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FACTUM OF THE PLAINTIFF

(Motion for Settlement Approval and Class Counsel Fee Approval,
Returnable March 26, 2025)

March 24, 2025

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I. OVERVIEW

1. On this motion, the Plaintiff seeks approval of the Settlement of the certified global Aphria securities misrepresentation class action (the "**Action**").

2. The Action concerns the Defendants' public disclosure throughout the Class Period relating to two international acquisitions – the Nuuvera Transaction and the LATAM Transaction (the "**Transactions**") – and Aphria's internal corporate governance initiative directed at preventing conflicts of interest. Through the Transactions, Aphria acquired cannabis companies in Europe, Central America, and South America for total consideration of approximately $775 million in cash and shares. Aphria's public disclosure described the acquired assets as "world class", "industry-leading", and expected to deliver "accretive cash flow beginning in 2019". Aphria's public disclosure also stated that the Transactions would make it "the Global Leader in the International Medical Cannabis Market". It is pleaded that these and related disclosures by Aphria were actionable misrepresentations.

3. Additionally, it is pleaded that Aphria's public disclosure during the Class Period contained misrepresentations by omission by failing to disclose that certain Aphria insiders, including the Individual Defendants, had undisclosed financial interests in the acquired companies and that Aphria grossly overpaid for the acquired assets.

4. The Action alleged that these misrepresentations were publicly corrected on March 22, 2019 and later on December 3, 2018 with the release of a report by market analysts QCM and Hindenburg Research (the "**Short-Seller's Report**") and related commentary in the financial press.

5. Following the publication of the Short-Sellers' Report, Aphria's share price dropped from $10.51 to $7.60 – a 28% decline. Over the next two days, Aphria's share price continued to fall,

closing on December 5, 2018 at $5.00 per share. In total, between December 3 and 5, 2018, Aphria's share price dropped from $10.51 to $5.00 – a 52% decline.

6. The Plaintiff's experts estimated that if the Court found that the Defendants made actionable misrepresentations throughout the Class Period, as pleaded, damages to Class Members could be as high as $853 million. However, Class Members' damages are subject to the statutory limit imposed by Part XXIII.1 of the Ontario *Securities Act* the ("**OSA**") of 5% of the issuer's market capitalization prior to the misrepresentations being made. By the Plaintiff's case theory, these Part XXIII.1 limited statutory damages to approximately $170.4 million. In contrast, the Defendants' experts argued that the statutory limit on damages was approximately $135 million, based on their case theory.

7. The trial of this Action was scheduled for six weeks commencing on January 13, 2025, however, on January 2, 2025, the Defendants informed Class Counsel that they had engaged bankruptcy counsel and that if the Plaintiff was awarded any substantial damages award even close to the statutory damages it sought at trial, Aphria would immediately move for creditor protection under the *Companies' Creditors Arrangement Act* ("**CCAA**").

8. With this information (which was supported by evidence provided on a confidential basis) Rochon Genova immediately retained its own CCAA counsel to evaluate the risk of Aphria's insolvency on the Action and Class Members' recovery. Rochon Genova was advised that if Aphria became insolvent, any judgment in favour of the Class would be considered a claim on behalf of equity holders and likely uncollectable.

9. While Rochon Genova was confident in the merits of the Action, the proposed insolvency proceeding raised a substantial risk that Class Members would recover **no damages** following a trial, any appeals, and a CCAA proceeding.

10. Defence Counsel also advised Rochon Genova that Aphria's Directors and Officers' Insurance Policy, which was a significant source to fund any settlement or judgment, had approximately $17 million in available proceeds remaining prior to the commencement of trial. It is Rochon Genova's opinion that these proceeds would likely be entirely exhausted by a lengthy trial, appeal and any CCAA proceeding.

11. It is in this context, over the subsequent 11 days, that Rochon Genova negotiated a $30 million settlement. While the amount is lower than originally hoped for, Rochon Genova firmly believes it is the highest achievable in the circumstances. As explained below, Rochon Genova recommends the approval of this Settlement as it is fair, reasonable and in the best interests of the Class.

12. Rochon Genova also seeks the approval of its Class Counsel Fees of $9 million, plus $1.17 million in HST and disbursements of approximately $3,914,500.55 (inclusive of tax). The requested Class Counsel Fees reflect the 30% contingency fee in the retainer agreement with the Representative Plaintiff. The 30% contingency fee is well within the range routinely approved by the Courts. It also recognizes the very substantial risks taken by Rochon Genova in the advancement of this Action, which was complex and protracted. The disbursements incurred are consistent with those incurred in the prosecution of similar complex securities class actions, which require extensive expert evidence to establish liability and damages.

II. FACTS

The Parties

13. The Representative Plaintiff, Vecchio Longo Consulting Services Inc. ("**Vecchio**") is a corporation incorporated under the *Ontario Business Corporations Act* ("**OBCA**"). Edward Anthony Longo is the sole owner and directing mind of Vecchio.[1]

14. The Defendant, Aphria, is an Ontario corporation incorporated under the OBCA. It was a public company and a reporting issuer until May 3, 2021, when it was de-listed following a reverse take-over by Tilray Brands, Inc. ("**Tilray**"). Following the reverse take-over, Aphria became a wholly owned subsidiary of Tilray.

15. Cacciavillani is a former officer and director of Aphria.

16. Neufeld is a former officer of Aphria.[2]

17. Clarus Securities Inc, Canaccord Genuity Corp, Cormark Securities Inc., Haywood Securities Inc. and Infor Financial Inc. (together, the "**Underwriter Defendants**") are underwriters who assisted with Aphria's June 2018 prospectus offering. The Action was discontinued against the Underwriter Defendants on August 8, 2022.[3]

18. Merton is the current CFO of Aphria.[4] The Action was discontinued against Merton on August 6, 2021.[5]

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1 Motion Record of The Plaintiffs [MRP], Tab 3, Affidavit of Anthony Longo sworn March 19, 2025 [Longo Affidavit] at para 1, A20644.
2 MRP, Tab 2, Affidavit of Vicent Genova (Settlement Approval) sworn March 18, 2025 [Genova Affidavit] at para 60(ii), A20201.
3 MRP, Tab 2, Genova Affidavit at para 37, A20196.
4 MRP, Tab 2, Genova Affidavit at para 60(i), A20201.
5 MRP, Tab 2, Genova Affidavit at paras 31-33, A20194-A20195.

The Action

19. The Action was commenced by Statement of Claim on February 7, 2019.[6] The Action originally pleaded negligent misrepresentation; oppression; primary market misrepresentation; and secondary market misrepresentation.[7] The Action was brought on behalf of all persons who acquired Aphria shares during the Class Period.

20. The Action alleged that the Defendants made misrepresentations with respect to two transactions entered into by Aphria in 2018, being the Nuuvera Transaction and the LATAM Transaction, as well as misrepresentations about Aphria's internal corporate governance initiative directed at preventing conflicts of interest.[8] Through the Transactions, Aphria acquired cannabis companies in Europe, Central America, and South America for total consideration of approximately $775 million in cash and shares.[9] Aphria's public disclosure described the acquired assets as "world class", "industry-leading", and expected to deliver "accretive cash flow beginning in 2019". Additionally, Aphria's public disclosure also stated that the Transactions would make it "the Global Leader in the International Medical Cannabis Market".[10] The Action pleaded that these and related disclosures by Aphria were actionable misrepresentations.[11]

21. Further, the Action alleged that Aphria's public disclosure during the Class Period contained misrepresentations by omission by failing to disclose that certain Aphria insiders,

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6 MRP, Tab 2, Genova Affidavit at para 5, A20188.
7 Prior to the certification of the Action, the Plaintiff discontinued the negligent misrepresentation and oppression claims.
8 MRP, Tab 2, Genova Affidavit at paras 8-9, A20189-A20190.
9 MRP, Tab 2, Genova Affidavit at para 8, A20189.
10 MRP, Tab 2, Genova Affidavit at para 8, A20189.
11 MRP, Tab 2, Genova Affidavit at para 8, A20189.

including the Individual Defendants, had undisclosed financial interests in the acquired companies and that Aphria grossly overpaid for the acquired assets.[12]

22. It is pleaded that the misrepresentations were partially publicly corrected on March 22 and December 3 and 4, 2018, with the release of reports by market analysts QCM and Hindenburg Research (the "**Short-Sellers' Reports**") and related commentary in the financial press.[13] Following the publication of the Short-Sellers' Report on December 3, 2018, Aphria's share price dropped from $10.51 to $7.60 – a 28% decline. Over the next two days, Aphria's share price continued to fall, closing on December 5, 2018 at $5.00 per share. In total, between December 3 and 5, 2018, Aphria's share price dropped from $10.51 to $5.00 – a 52% decline.[14]

The Carriage Motion

23. At the outset of the Action, Rochon Genova was required to prepare for a carriage motion, as two overlapping actions were commenced by other law firms; (i) the consortium of Koskie Minsky LLP and Siskinds LLP; and (ii) Merchant Law LLP.[15]

24. A carriage motion returnable on May 16, 2019 was scheduled before Justice Perell.[16]

25. Prior to the motion, Merchant Law LLP discontinued their claim.[17]

26. On May 16, 2019, Justice Perell heard the day-long carriage motion.[18]

27. On June 19, 2019, Justice Perell released his reasons for decision, which awarded the Representative Plaintiff, Vecchio Longo Consulting Services Inc. ("**Vecchio**") and Rochon

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12 MRP, Tab 2, Genova Affidavit at para 9, A20189.
13 MRP, Tab 2, Genova Affidavit at para 10, A20189-A20190.
14 MRP, Tab 2, Genova Affidavit at para 10, A20189-A20190.
15 MRP, Tab 2, Genova Affidavit at para 17, A20191.
16 MRP, Tab 2, Genova Affidavit at para 18, A20191.
17 MRP, Tab 2, Genova Affidavit at para 19, A20191.
18 MRP, Tab 2, Genova Affidavit at para 18, A20191.

Genova, carriage of the class proceeding over the claim brought by Koskie Minsky LLP and Siskinds LLP.[19] Justice Perell found that Rochon Genova's theory of the case was superior, concluding:

> In short, in my opinion, and it is not a close call, the [Rochon Genova Case] Theory is the best case theory, win, lose, or draw in the proposed class action.[20]

The Leave and Certification Motions

28. The Leave and Certification Motions proceeded before Justice Perell on August 6, 2021 and August 18, 2022.

29. Rochon Genova undertook substantial efforts to prepare for the Leave and Certification Motion ultimately filing a thirteen volume, 5,195 page motion record comprising nine affidavits.[21] The evidence filed included expert reports opining on: (i) artificial inflation and the economic materiality of the impugned misrepresentations; (ii) the accounting standards and guidelines applicable to Aphria's public disclosure; (iii) market manipulation and the economic materiality of the Nuuvera Transaction; and (iv) the cannabis regimes in Jamaica, Colombia and Argentina.[22]

30. The Defendants' responding record was three volumes comprising three expert reports on: (i) the fairness opinions obtained by the Aphria Board for the Transactions; (ii) the economic materiality of the impugned misrepresentations; and (iii) the materiality of the Aphria insiders' undisclosed interests in the Transactions. It also included a lengthy fact affidavit by the Individual Defendant, Merton, who was also the corporate representative of the Defendant Aphria.[23]

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19 MRP, Tab 2, Genova Affidavit at para 22, A20192.
20 *Rogers v. Aphria Inc.*, 2019 ONSC 3698 at para 105.
21 MRP, Tab 2, Genova Affidavit at para 26, A20192.
22 MRP, Tab 2, Genova Affidavit at para 26, A20192-A20193.
23 MRP, Tab 2, Genova Affidavit at para 27, A20193.

31. The Underwriter Defendants also served a responding motion record, comprising one fact witness affidavit and two expert reports by Fionnula Martin and Wendy Rudd responding to David Lauer's report on market manipulation.[24]

32. On June 23, 2021, Justice Perell heard the initial leave and certification motion.[25]

33. On August 6, 2021, Justice Perell granted leave and certification of: (i) the secondary market misrepresentation claims pursuant to section 138.3 of the *OSA*; and (ii) the prospectus misrepresentation claims pursuant to section 130 of the *OSA*. However, the claims against the Underwriters were only conditionally certified on the grounds that Rochon Genova was required to appoint an additional Representative Plaintiff for Class Members that purchased Aphria shares pursuant to the June 2018 Prospectus Offering.[26] The Representative Plaintiff Vecchio acquired its shares only in the secondary market.

34. Subsequently, the Underwriter Defendants sought leave to appeal Justice Perell's Leave and Certification Decision to the Divisional Court, which was granted.[27]

35. Thereafter, the Plaintiff and the Underwriter Defendants reached an agreement whereby the Action would be discontinued against the Underwriter Defendants in exchange for evidentiary co-operation and the abandonment of the Underwriter Defendants' appeal.[28] This agreement allowed the Action to proceed without further delay.

36. On the basis of this agreement, on August 8, 2022, Rochon Genova brought a motion before Justice Perell seeking to dismiss the Action against the Underwriter Defendants and

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24 MRP, Tab 2, Genova Affidavit at para 28, A20193.
25 MRP, Tab 2, Genova Affidavit at para 32, A20195.
26 MRP, Tab 2, Genova Affidavit at para. 33, A20195.
27 MRP, Tab 2, Genova Affidavit at paras 34-35, A20195.
28 MRP, Tab 2, Genova Affidavit at para 36, A20195-A20196.

unconditionally certify the Action as a class proceeding, and other related relief, which Justice Perell granted.[29]

Class Proceedings Fund

37. On January 16, 2020, the Class Proceedings Fund of the Law Foundation of Ontario (the "**CPF**") granted Class Counsel's initial application for the funding of disbursements and an indemnity for adverse costs.[30] Prior to this, Class Counsel faced the risk of any adverse costs awards and also self-funded all disbursements.

38. Throughout the litigation, the CPF reimbursed $2,615,989.03 (inclusive of HST) of Class Counsel's disbursements. However, the CPF funding arrangement did not include funding the entirety of the Plaintiff's disbursements, resulting in Class Counsel paying $1,298,511.52 in unfunded disbursements – mostly for trial reports.[31] Class Counsel would be unable to recover these disbursements if it was unsuccessful at trial.

39. The disbursements incurred in this case are consistent with the costs associated with prosecuting these types of cases, which require significant expert evidence not only for trial, but also to surpass the "reasonable possibility of success" threshold for the *OSA* Part XXIII.1 Leave Motion. In this case, Rochon Genova also filed expert evidence on the preliminary Carriage Motion. It was Rochon Genova's opinion that such evidence was critical to its success at each stage of the litigation.[32]

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29 MRP, Tab 2, Genova Affidavit at para 37, A20196.
30 MRP, Tab 2, Genova Affidavit at para 41, A20196.
31 MRP, Tab 2, Genova Affidavit at para 42, A20196.
32 MRP, Tab 2, Genova Affidavit at para 44, A20197.

Mediation for the Honourable Warren Winkler, K.C.

40. On February 21 and 22, 2023, the parties attended a mediation before the Honourable Warren K. Winkler, K.C., former Chief Justice of Ontario. The parties undertook significant efforts to prepare for the mediation, exchanging lengthy and detailed mediation briefs and expert reports.[33]

41. Despite the significant effort (and extensive materials filed)[34] by both sides, the mediation did not result in a settlement. [35]

Discoveries

42. The Defendants produced over 9,600 documents constituting over 100,000 pages for documentary discovery.[36]

43. Class Counsel examined the Defendants for discovery over 10 days throughout June 2023, followed by several tranches of answers to discovery undertakings and production of additional documents.[37]

44. While the parties resolved some of the Defendants' refusals on discovery (with the Defendants answering many, but not all of the refusals), the Plaintiff brought a refusals motion before Justice Perell on October 24, 2023, which was dismissed.[38]

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33 MRP, Tab 2, Genova Affidavit at para 43, A20197.

34 The Plaintiff filed a 100-page mediation memorandum and attached 15 expert reports to its mediation brief. The Defendants delivered a 100-page mediation memorandum and attached 3 expert reports. The Defendants subsequently delivered 5 additional expert reports. The Plaintiff also filed a Reply Mediation memorandum and additional Sur-Reply expert reports on valuation and damages.

35 MRP, Tab 2, Genova Affidavit at para 48, A20198.

36 MRP, Tab 2, Genova Affidavit at para 51, A20198.

37 MRP, Tab 2, Genova Affidavit at para 52, A20198.

38 MRP, Tab 2, Genova Affidavit at paras 54-55, A20199; *Vecchio Longo Consulting Services Inc. v. Aphria Inc.*, 2023 ONSC 6336.

Trial Preparation

45. On August 18, 2023, the Action was set down for trial, and on February 6, 2024 the trial was scheduled for six weeks before the Honourable Justice Morgan commencing on January 13, 2025.[39]

46. Throughout 2024, the parties engaged in extensive trial preparation. In all, 35 expert reports were filed.[40]

47. The Plaintiff served 10 expert reports, and one fact witness affidavit in July and the beginning of August 2024, opining on:[41]

(i) the cannabis regulatory regimes in Colombia, Jamaica, Argentina, Germany and Italy;

(ii) the valuation of the Transactions;

(iii) the accounting standards applicable to Aphria's public disclosure;

(iv) the corporate governance standards applicable to the Defendants;

(v) the economic materiality of the impugned misrepresentations; and

(vi) aggregate damages.

48. By early November 2024, the Defendants served 13 responding reports opining on:[42]

(i) the cannabis regulatory regimes in Colombia, Jamaica, Argentina, Germany and Italy;

(ii) the materiality of the impugned misrepresentation;

(iii) the valuation principles applicable to the cannabis industry during the Class Period;

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39 MRP, Tab 2, Genova Affidavit at para 55, A20199.
40 MRP, Tab 2, Genova Affidavit at para 57, A20199.
41 MRP, Tab 2, Genova Affidavit at para 58, A20199-A20200.
42 MRP, Tab 2, Genova Affidavit at para 59, A20200-A20201.

(iv) the accounting standards applicable to Aphria's public disclosure;

(v) the corporate governance standards applicable to the Defendants;

(vi) the economic materiality of the Short-Sellers' Report; and

(vii) aggregate damages.

49. The Defendants also served five fact witness affidavits in support of their due diligence and reasonable investigation defences.[43]

50. In early December, the Plaintiff served 10 reply reports directly responding to the Defendants' expert reports.[44]

51. Additionally, in preparation for trial, Rochon Genova conducted several witness preparation meetings (over dozen of hours) with each of the Plaintiff's witnesses during the months of October, November and December 2024.[45]

Settlement Negotiations

52. In early December 2024, Joel Rochon met with Defence Counsel, Dana Peebles, to explore settlement. [46]

53. While Class Counsel sought to meet earlier in New York or Toronto, a meeting between Class Counsel, Defence Counsel, Aphria's CFO and Tilray's In-House General Counsel took place on January 2, 2025.[47]

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43 MRP, Tab 2, Genova Affidavit at para 60, A20201.
44 MRP, Tab 2, Genova Affidavit at para 61, A20201-A20202.
45 MRP, Tab 2, Genova Affidavit at para 62, A20202.
46 MRP, Tab 2, Genova Affidavit at para 62, A20202.
47 MRP, Tab 2, Genova Affidavit at para 63, A20202.

54. At that meeting, Mr. Peebles advised that Aphria had retained insolvency counsel at DLA Piper and that, if Aphria was found liable for a significant damages award at trial, anywhere close to the statutory damages the Plaintiff was seeking, it would seek creditor protection for Aphria under the CCAA.[48]

55. Following this meeting, Class Counsel immediately retained Ken Rosenberg and Max Starnino of Paliare Roland as bankruptcy and insolvency counsel to evaluate the insolvency risk and provide strategic advice so that we could proceed in the best interests of the Class.[49]

56. Mr. Peebles later advised that Aphria had also retained Osler, Hoskin & Harcourt LLP as insolvency counsel.[50]

57. Thereafter, the settlement discussions between the Parties continued daily, between their counsel, up to the scheduled start of trial.[51]

Settlement Rationale

58. While Class Counsel remained confident in the merits of the Plaintiff's case, and the evidence prepared for trial, the proposed CCAA proceedings by Aphria raised a serious risk of very minimal recovery of any damages from the Defendants. First, any judgment for damages against Aphria obtained by the Class Members, who were equity holders, would rank behind any secured or unsecured debt owed by Aphria and would likely be uncollectable in any CCAA proceeding. Second, Defence Counsel advised that approximately $17 million then remained in Aphria's Directors and Officers' insurance policy, which was earmarked to be significant source to fund any settlement. However, if the matter proceeded through the anticipated 6-week trial,

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48 MRP, Tab 2, Genova Affidavit at para 64, A20202.
49 MRP, Tab 2, Genova Affidavit at para 65, A20202.
50 MRP, Tab 2, Genova Affidavit at para 64, A20202.
51 MRP, Tab 2, Genova Affidavit at para 66, A20203.

appeals and any CCAA proceeding, the insurance proceeds would be largely exhausted by defence costs and would be unavailable to fund any judgment amount.[52]

The Parties Reached Settlement on the Eve of Trial

59. On the evening of Sunday, January 12, 2025, the parties requested a one-day adjournment of the trial of the Action to permit the parties to continue ongoing settlement discussions.[53]

60. The following afternoon, on Monday, January 13, 2025, the parties advised Justice Morgan, of the proposed resolution of the Action and requested a case conference before His Honour to discuss next steps.[54]

61. On January 16, 2025, counsel attended a case conference before Justice Morgan to advise His Honour of the proposed Settlement and proceeded to schedule the Settlement Approval Hearing.[55]

Notice of Settlement Approval Hearing

62. On February 7, 2025, Justice Morgan granted an Order approving the Notice Plan and appointing RicePoint Administration Inc. d/b/a Verita Global ("**RicePoint**") as the Administrator of the Notice Plan and any Settlement if approved.[56]

63. On February 7, 2025, Rochon Genova posted the Short Form Notice and Settlement Agreement on its website. On this date, RicePoint also published a website dedicated to the Settlement of this action for Class Members accessible at the URL

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52 MRP, Tab 2, Genova Affidavit at para 67, A20203.
53 MRP, Tab 2, Genova Affidavit at para 68, A20203.
54 MRP, Tab 2, Genova Affidavit at para 69, A20203.
55 MRP, Tab 2, Genova Affidavit at para 70, A20203.
56 MRP, Tab 2, Genova Affidavit at para 71, A20204.

<https://aphriasettlement.com/>, which contained copies of the Settlement Agreement, Distribution Protocol and Short and Long Form Notice of Settlement Approval Hearing.[57]

64. On February 10, 2025, Notice of the Settlement Approval Hearing was published in the English national editions of *The National Post*, *The Globe and Mail*, *Investor's Business Daily*, *The Wall Street Journal* and the French language tablet edition of *La Presse*.[58]

65. There was also electronic publication of the Notice of Settlement Approval Hearing by targeted advertisements in Canada and the United States in English and French on Yahoo! Finance and various websites.[59]

66. As communicated to the Court, it is Rochon Genova and RicePoint's opinion that Class Members and the public received full and adequate notice of the Settlement.

67. Neither Rochon Genova nor RicePoint received any objections to the proposed Settlement.[60]

The Settlement is Fair, Reasonable and in the Best Interests of the Class

68. It is Rochon Genova's strong view that the proposed Settlement is fair, reasonable and in the best interests of the Class and should be approved.[61]

69. Rochon Genova further submits that the proposed Settlement is the best that could be achieved in the circumstances, especially given Aphria's threatened insolvency. Further, given the advancement of the Action to the eve of trial, Rochon Genova is well-situated to evaluate the risks and benefits of the Settlement versus proceeding with the trial of the Action.[62] While the settlement

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57 MRP, Tab 2, Genova Affidavit at paras 72-73, A20204.
58 MRP, Tab 2, Genova Affidavit at para 74, A20204.
59 MRP, Tab 2, Genova Affidavit at para 77, A20205.
60 MRP, Tab 2, Genova Affidavit at para 92, A20210.
61 MRP, Tab 2, Genova Affidavit at para 80, A20205.
62 MRP, Tab 2, Genova Affidavit at para 80, A20205.

amount is smaller than initially hoped at the beginning of the Action, Rochon Genova believes it is the largest amount attainable in the circumstances. Further, the proposed Settlement provides certainty and finality for Class Members and ensures that Class Members are able to recover a portion of their damages in a timely manner – without having to wait for the completion of trial, appeals, and any insolvency proceeding.[63]

The Representative Plaintiff's Honorarium Should Be Approved

70. Mr. Longo acted as the Representative Plaintiff on behalf of the Class over the past six years. Class Counsel seeks an honorarium of $15,000.00 for Mr. Longo, to recognize his contributions to advancing this Action towards settlement.[64]

71. Mr. Longo was actively involved in every step of the litigation including its commencement, carriage, the Leave and Certification Motions, the discovery process and trial preparation. In this capacity, he fulfilled his duty to fairly and adequately represent the interests of the Class and advance the Action.[65]

72. The requested honorarium recognizes Mr. Longo's contributions and will encourage others to come forward and act as Representative Plaintiffs in future proceedings.

III. ISSUES ON THE MOTION

73. There are four issues before the Court:

(i) approval of the Settlement Agreement and Addendum as fair, reasonable and in the best interests of the Class;

(ii) approval of the Distribution Protocol;

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63 MRP, Tab 2, Genova Affidavit at para 91, A20210.
64 MRP, Tab 2, Genova Affidavit at para 103, A20214.
65 MRP, Tab 2, Genova Affidavit at paras 104-105, A20214.

(iii) approval of Class Counsel Fees and disbursements; and

(iv) approval of the proposed honorarium for the Representative Plaintiff, Vecchio.

IV. LAW AND ARGUMENT

Issue 1: The Settlement is Fair, Reasonable and in the Best Interests of the Class

74. A proposed settlement in a class proceeding must be "fair, reasonable, and in the best interests of the class" to be approved by the Court.[66] In order to determine whether a proposed settlement is "fair, reasonable and in the best interests of the class", the Court will consider the following non-exhaustive factors:

(i) the likelihood of recovery or the likelihood of success;

(ii) the amount and nature of discovery, evidence, or investigation;

(iii) the proposed settlement terms and conditions;

(iv) the recommendation and experience of counsel;

(v) the future expense and likely duration of the litigation;

(vi) the number of objectors and the nature of objections;

(vii) the presence of good faith, arms-length bargaining and the absence of collusion;

(viii) the information conveying to the court the dynamics of, and the positions taken by, the parties during the negotiations; and

(ix) the nature of communications by counsel and the representative plaintiff with Class Members during the litigation.

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66 *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc.*, 2018 ONSC 6447 at para 67.

75. A class action settlement must fall within a "zone of reasonableness" to be approved. Whether a proposed settlement is reasonable will be determined objectively and with regard to the circumstances of each case – recognizing that there are a number of possible outcomes within the range of reasonableness. [67]

76. As this Court held in *Brewers Retail Inc v. Campbell et al*, in evaluating the "reasonableness" of a class action settlement:

> "There is no one magic formula; various settlement possibilities may fall within the zone of reasonableness and be in the best interests of the class, especially when compared to the unpredictable outcome of ongoing litigation".[68]

77. Moreover, as is the case here, where settlement is achieved in the later stages of litigation, the Court may assume that Class Counsel had a complete, or almost complete understanding of the risks and rewards of further litigation, and therefore, may comfortably rely on Class Counsel's recommendation of a proposed settlement.[69]

78. The proposed Settlement is fair and reasonable under all circumstances, as supported by the factors above. It is consistent with both the purposes and spirit of the *Class Proceedings Act*, and the *OSA* which encourages settlement after a reasonable investigation and careful consideration of the merits and risks of continuing litigation. This Court should approve the Settlement Agreement.

(i) The Settlement Provides the Greatest Likelihood of Recovery for Class Members

79. The most significant factor supporting settlement approval is that the settlement provides the greatest likelihood that Class Members can recover some portion of their damages. While

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67 *Des-Rosiers v. Takata Corporation*, 2020 ONSC 8043 at para 26; *Somwar v. Fly Jamaica Airways Ltd.*, 2024 ONSC 209 at para 19.

68 *Brewers Retail v. Campbell*, 2024 ONSC 3496 at para 15.

69 *Ironworkers Ontario Pension Fund v. Manulife Financial Corp.*, 2017 ONSC 2669 [*Ironworkers Ontario Pension Fund*] at para 14.

Rochon Genova is confident about its ability to succeed at trial, given that such a trial would be the first statutory securities misrepresentation common issues trial, an appeal of the trial decision (potentially all the way to the Supreme Court of Canada) was inevitable. At the conclusion of the appeal process and any CCAA proceeding, it was the opinion of Class Counsel that there would likely be no insurance proceeds remaining to fund a judgment.

80. The proposed Settlement provides Class Members with the certainty of recovery in the near term. This is preferable to the considerable risk of proceeding through a lengthy trial, appeals, and a CCAA proceeding and Class Members potentially recovering no damages. As held by Justice Akbarali in a class action settlement approval hearing where the Defendant was insolvent, "a judgment that cannot be enforced would not be of practical value to the class".[70]

(ii) Class Counsel Negotiated the Settlement with Thorough Understanding of Litigation Risks and Evidence

81. Given that settlement was reached on the eve of trial, Rochon Genova had deep and extensive knowledge and understanding of the evidence and allegations in the Action.[71] As detailed above, substantial expert evidence was adduced by both sides on the initial Leave and Certification Motions. Additionally, 35 detailed expert reports were exchanged by the parties in anticipation of trial. Rochon Genova also reviewed over 9,600 documents through the discovery process and examined the Defendants for ten full days. Through these steps in the litigation, Rochon Genova had a thorough understanding of the allegations advanced in the Action and the strengths and weaknesses in its case.

82. While Rochon Genova was confident in the merits of the Action, in addition to the insolvency issue, there was the further risk that the Court would accept the Defendants' reasonable

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70 *Bonnick v. Krimker et al*, 2025 ONSC 1151 [*Bonnick*] at para 32.

71 *Bonnick* at para 36.

investigation and/or due diligence defence. If this occurred, the Class would not be entitled to any damages.

83. There was also the risk that even if liability was established, the Court would find (as the Defendants argued) that the alleged misrepresentations prior to July 2018 did not result in any damages to the Class, thereby limiting the cap on the requested damages to a maximum of $135 million.

84. Finally, as explained above, the risk that the Class could not recover any damages if Aphria commenced insolvency proceedings dwarfed all other litigation risks and the Plaintiff's meritorious case. [72]

85. In these circumstances, the Court may rely on Rochon Genova's recommendation that this proposed Settlement be approved, given the risks to Class Members of receiving nothing if the action proceeds to trial.[73]

(iii) No objections to the proposed Settlement

86. Although Class Members have received adequate notice of the proposed Settlement, to date, neither Rochon Genova nor the Administrator have received any objections to the proposed Settlement. The complete absence of objections to a proposed settlement, as is the case here, is indicative of the reasonableness of a proposed settlement.[74]

(iv) Continuing the Action Will Incur Significant Litigation Expenses

87. If the Settlement is not approved, the Action would proceed through a six-week trial and likely through appeals and insolvency proceedings. This will result in the parties incurring

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72 *Silver v. Imax*, 2016 ONSC 403 at para 31.

73 *Ironworkers Ontario Pension Fund* at para 14.

74 *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647 at para 29; *Farkas v Sunnybrook & Women's College Health Science Centre*, 2009 CanLII 44271 at para 50.

significant litigation expenses. Additionally, Aphria's Directors and Officer's Insurance Policy will be substantially if not entirely depleted, which will diminish a significant source to fund any settlement or judgment for Class Members.

(v) The Settlement Was Achieved through Counsel's Arms-Length Bargaining

88. A proposed class action settlement, presented to the Court for approval, is strongly presumed to have been negotiated at arm's length by counsel.[75] In this case, counsel negotiated the proposed Settlement over several days – between January 2, 2025 and up to January 13, 2025, when counsel advised Justice Morgan of the proposed Settlement. Counsel negotiated on behalf of their clients, and in their clients' best interests, at all times. There is no evidence or suggestion of collusion.

(vi) The Settlement's Terms and Conditions are Fair

89. The key terms of the Settlement are that:

(i) the Defendants will pay $30 million for the benefit of the Class;

(ii) the Action will be dismissed against the Defendants, with prejudice;

(iii) Class Members who are also class members in the U.S. Action may continue to participate in the U.S. Action, but may not recover damages for the same overlapping shares in both actions;

(iv) RicePoint is appointed as the Administrator of the Notice Plan and for the administration of Class Members' claims;

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75 *Ainslie v. Afexa Life Sciences Inc.*, 2010 ONSC 4294 at para 31.

(v) Class Members have received notice of the Settlement Approval Hearing and will receive adequate notice of the Settlement Approval pursuant to the Notice Plan;

(vi) the Settlement Amount will be distributed to Class Members pursuant to the proposed Distribution Protocol; and

(vii) the Settlement is non-reversionary and any remaining amounts will be distributed to eligible Class Members *pro rata*, and if any further amounts remain, those will be awarded to a *cy-près* recipient approved by this Court.

90. It is the considered opinion that of Class Counsel that the proposed Settlement is fair, reasonable and in the best interests of the Class.

(vii) Class Counsel is Experienced in Securities Class Actions and Recommends the Settlement

91. As noted, Rochon Genova is experienced in prosecuting and advancing securities class actions. Notably, Rochon Genova has successfully prosecuted the only two securities class action trials in Canada. Based on all the circumstances and especially in light of the risk that Class Members would receive nothing, or close to nothing, if the Plaintiff obtained damages in the amount sought, Rochon Genova strongly recommends the proposed Settlement as in the best interests of the Class.

(viii) The Representative Plaintiff and Class Members Received Timely Notice of Litigation Developments through the Action

92. Rochon Genova provided the Representative Plaintiff and Class Members with routine updates throughout the Action.

93. As described above, Rochon Genova regularly communicated with the Representative Plaintiff to obtain instructions and brief Mr. Longo on the developments in the Action.

94. Similarly, the Rochon Genova webpage dedicated to the Action was frequently updated through the litigation.

95. This factor supports approval of the Settlement.

Issue 2 – The Proposed Distribution Protocol is Fair and Reasonable

96. The proposed Distribution Protocol should be approved as fair, reasonable and in the best interests of Class.[76]

97. The Distribution Protocol was prepared with the assistance of the Plaintiff's damages expert, Frank Torchio. It was based on a Distribution Protocol previously considered and approved by this Court in *Green v. CIBC*.[77]

98. The proposed Distribution Protocol was designed to fairly distribute the Settlement proceeds to Class Members on a *pro rata* basis. It relies on the Plaintiff's materiality and damages expert, Professor Gregg Jarrell's, measurement of the artificial inflation to Class Members' shares throughout the Class Period.[78]

99. The total Settlement Amount is lower than the estimated damages experienced by each Class Member, necessitating a *pro rata* distribution. The amount to be received by each Class Member is described as the "Notional Entitlement Amount". The Distribution Protocol calculates each Class Members' Notional Entitlement Amount in a manner consistent with how damages are calculated under section 138.5 of Part XXIII.1 of the *OSA*.[79]

100. Mr. Torchio's evidence is that the Distribution Protocol, in his opinion:

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76 *Zaniewicz v. Zungui Haixi Corporation*, 2013 ONSC 5490 at para 59.
77 *Green v. CIBC*, 2022 ONSC 373 at para 70.
78 MRP, Tab 4, Affidavit of Frank Torchio sworn March 14, 2025 ("**Torchio Affidavit**") at para. 23, p. 6, A20346.
79 MRP, Tab 4, Torchio Affidavit at paras. 19-22, p. 5-6, A20345-A20356.

(i) will result in a fair distribution of any settlement fund among Class Members;

(ii) is consistent with the unique damages formulae provided by section 138.5 of Part XXIII.1 of the *OSA*; and

(iii) is capable of being administered in an efficient and effective manner.[80]

101. The proposed Distribution Protocol should be approved because it is fair, reasonable and in the best interests of the Class.[81]

Issue 3 – Counsel Fees are Fair and Reasonable

102. Rochon Genova seeks approval of Class Counsel Fees and disbursements, summarized as:

(i) $9,000,000 in legal fees;

(ii) $1,170,000 in HST on legal fees; and

(iii) $3,914,500.55 in disbursements, inclusive of HST.

103. Rochon Genova also seeks approval of the levy payable to the CPF, which is estimated to be $1,521,549.95. The requested Class Counsel Fees are equal to 30% of the total Settlement Amount and reflects the contingency fee set out in the Retainer Agreement Rochon Genova entered into with the Representative Plaintiff. The Retainer Agreement contemplates that Class Counsel Fees will be 30% of any settlement or judgment, where: (a) the total value is less than $50 million; and (b) the Settlement is achieved after the Action is set down for trial.

104. Ontario Courts have routinely approved contingency fees of up to 33% in class action settlements.[82] In fact, a 33% contingency fee has been described as presumptively valid in class

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80 MRP, Tab 4, Torchio Affidavit at paras 17-26, A20674-A20677.

81 MRP, Tab 2, Genova Affidavit at para 102, A20214; MRP, Tab 4, Torchio Affidavit at paras 17-26, A20674-A20677.

82 *Lawrence v. Symantec Corporation*, 2024 ONSC 2621 at para 14.

action settlements.[83] By way of example, class action settlements with comparable settlement amount and fees are summarized below:

Citation	Fee Percentage Approved	Total Settlement Amount
Cannon v. Funds for Canada Foundation, 2013 ONSC 7686	33%	$28.2 million
Middlemiss v. Penn West Petroleum, 2016 ONSC 3537	33%	$26.5 million
Baroch v. Canada Cartage, 2021 ONSC 7376	30%	$22.25 million
Good v. Toronto Police Services Board, 2020 ONSC 6332	28%	$16.5 million
C.S. v. Ontario, 2021 ONSC 6851	27%	$15 million

105. The approval of fees, and disbursements is summarized below:

Fee Item	Amount
Settlement Amount	$30,000,000.00
Counsel Fees	(9,000,000.00)
HST on Counsel Fees	(1,170,000.00)
Disbursements exclusive of HST	($3,914,500.55)
Budgeted Administration Expenses	($700,000.00)
Total	**$15,215,499.55**
Estimated Levy Payable to the CPF[84]	$1,521,549.95
Amount Available for Distribution to Class Members	**$13,693,949.51**

83 *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 at para 9.

84 The Levy is calculated as 10% of the Settlement Amount less Class Counsel Fees Disbursements, Administration Expenses and applicable taxes.

106. There are also several factors which support the approval of the requested Class Counsel Fees and disbursements specifically in relation to this case:

(i) **Securities class actions are complex, protracted and high-risk:** Securities class actions, such as this case, require substantial investment of Class Counsel's time and resources. Rochon Genova worked tirelessly on the prosecution of the Action without payment for any legal fees over the past six years. The value of Rochon Genova's docketed time on the Action is approximately $7.6 million, which is modestly lower than the requested fees. This represents a 1.2-times multiplier on the actual time docketed.[85]

(ii) **Securities class actions require extensive evidence early in the litigation:** Plaintiffs in securities class actions must file significant evidence to succeed on the preliminary leave and certification motion. To obtain leave, a plaintiff must establish "a reasonable possibility that the action will be resolved at trial in favour of the plaintiff", which is a significantly higher burden than the ordinary certification test.[86]

(iii) **Rochon Genova undertook significant risk in prosecuting the Action:** Prior to January 2020, Rochon Genova was exposed to any adverse costs rendered in the Action. Class Counsel also faced the risk of not recovering over $1.2 million of unfunded disbursements in the Action:

(iv) **The significant result achieved for the Class:** The negotiated $30 million Settlement Amount is a very significant amount, especially in light of the Defendants' credible

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85 *Osmun v. Cadbury Adams Canada Inc.*, 2010 ONSC 2752 at para. 31.

86 *Silver v. Imax*, 2009 CanLII 72342 at para. 294.

threat of commencing insolvency proceedings, which raised considerable risk of no recovery, at all, for the Class.

(v) **The advancement of the public interest and investor protection through the Action:** The Action raised important public interest issues, as the prosecution of securities class actions is integral to upholding investor protection and confidence in the capital markets. As the Ontario Court of Appeal recognized in *Stewart*, private civil liability actions under Part XXIII.1 do not simply advance the private interests of an aggrieved investor – they also serve the public interest by promoting compliance with the overall regulatory scheme. Additionally, private securities misrepresentations actions supplement the public enforcement of the *OSA*.[87]

(vi) **No objections to the requested Class Counsel Fees sought:** Rochon Genova and the Administrator did not receive any objections to the requested Class Counsel Fees.

107. Based on the foregoing, the requested Class Counsel Fees and disbursements are fair and reasonable in the circumstances. Class Counsel respectfully requests that they be approved.

Issue 4 – The Representative Plaintiff's Honorarium Should Be Granted

108. The requested honorarium of $15,000 for the Representative Plaintiff is a fair recognition of the Representative Plaintiff's unwavering commitment and contribution to advancing the Action and securing the proposed Settlement for the benefit of the entire Class.

109. This Court has routinely approved *honoraria* where a Representative Plaintiff has participated actively in the litigation and made a significant contribution to bringing the litigation

87 *1654776 Ontario Limited v. Stewart*, 2013 ONCA 184.

to a conclusion.[88] In *Doucet*, the Divisional Court noted that there were nearly 50 cases where Ontario courts have approved *honoraria* ranging between $5,000 and $15,000.[89] Recently, the Ontario Court of Appeal in *Fresco v. CIBC*, stated that it is appropriate to award an honorarium where a representative plaintiff has demonstrated a level of involvement and effort that is "truly extraordinary".[90]

110. Here, Mr. Longo, on behalf of Vecchio, has acted as the sole Representative Plaintiff for more than six years and demonstrated a very high-level commitment to advancing this Action on behalf of the Class. He participated from the initial commencement of this action, through the carriage motion, leave and certification motion, examinations for discovery, mediation, trial preparation, and in the settlement negotiation process on the eve of trial.

111. Mr. Longo was fully informed about the progress of this litigation through the many comprehensive status reports received from Class Counsel including lengthy follow-up discussions with Counsel about those reports both via virtual Zoom meetings and by in-person meetings. He spoke with lawyers at Rochon Genova on numerous occasions, asked many probing questions, received advice and provided well informed instructions at every step of this process. Given his extensive professional experience as a CFO of the Canadian subsidiary of a US public company, his familiarity with public company reporting requirements, and his experience as an entrepreneur who has managed, bought and sold businesses, Mr. Longo made a meaningful contribution at every step of this Action.[91]

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88 *Allen v. The Manufacturers Life Insurance Company*, 2016 ONSC 5895 at para 36; *McSherry v. Zimmer GmbH*, 2016 ONSC 4606 at para 54.

89 *Doucet v The Royal Winnipeg Ballet*, 2023 ONSC 2323 (Div. Ct) at para 116.

90 *Fresco v. CIBC*, 2024 ONCA 628 at para. 112.

91 MRP, Tab 2, Genova Affidavit at para 106, A20215.

112. In summary, Mr. Longo made a significant contribution to the substantial result achieved for the Class and the requested honorarium appropriately recognizes this and may encourage others to step forward to fulfill the important role of representative plaintiff.[92]

113. Class Counsel respectfully requests that this Court recognize Mr. Longo's contributions with the requested honorarium.

V. ORDER REQUESTED

114. The Plaintiff request an order approving:

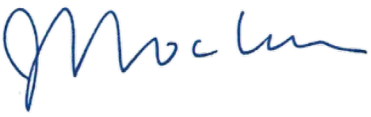
(i) the Settlement Agreement as fair, reasonable and in the best interests of the C;ass;

(ii) the Distribution Protocol as fair and reasonable;

(iii) Class Counsel Fees and disbursements as being fair and reasonable; and

(iv) the payment of the $15,000.00 honorarium to the Representative Plaintiff.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 24th day of March, 2025



Joel P. Rochon
Peter R. Jervis
Douglas M. Worndl
Rabita Sharfuddin
Aylin Manduric

[92] MRP, Tab 2, Genova Affidavit at para 107, A20215.

SCHEDULE "A"

1. *Rogers v. Aphria Inc.*, 2019 ONSC 3698
2. *Vecchio Longo Consulting Services Inc. v. Aphria Inc.*, 2023 ONSC 6336
3. *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc*, 2018 ONSC 6447
4. *Des-Rosiers v. Takata Corporation*, 2020 ONSC 8043
5. *Somwar v. Fly Jamaica Airways Ltd*., 2024 ONSC 209
6. *Ironworkers Ontario Pension Fund v. Manulife Financial Corp.*, 2017 ONSC 2669
7. *Brewers Retail v. Campbell*, 2024 ONSC 3496
8. *Bonnick v. Krimker et al*, 2025 ONSC 1151
9. *Silver v. Imax*, 2016 ONSC 403
10. *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647
11. *Farkas v Sunnybrook & Women's College Health Science Centre*, 2009 CanLII 44271
12. *Ainslie v. Afexa Life Sciences Inc.*, 2010 ONSC 4294
13. *Zaniewicz v. Zungui Haixi Corporation*, 2013 ONSC 5490
14. *Green v. CIBC*, 2022 ONSC 373
15. *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686
16. *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537
17. *Baroch v. Canada Cartage*, 2021 ONSC 7376
18. *Good v. Toronto Police Services Board*, 2020 ONSC 6332
19. *C.S. v. Ontario*, 2021 ONSC 6851
20. *Lawrence v. Symantec Corporation*, 2024 ONSC 2621

SCHEDULE "B'

Class Proceedings Act, 1992, S.O. 1992, c. 6

Settlement

27.1 (1) A proceeding under this Act may be settled only with the approval of the court. 2020, c. 11, Sched. 4, s. 25.

Not binding without court approval

(3) A settlement under this section is not binding unless approved by the court. 2020, c. 11, Sched. 4, s. 25.

Effect of settlement

(4) If a proceeding is certified as a class proceeding, a settlement under this section that is approved by the court binds every member of the class or subclass, as the case may be, who has not opted out of the class proceeding, unless the court orders otherwise. 2020, c. 11, Sched. 4, s. 25.

Settlement must be fair and reasonable

(5) The court shall not approve a settlement unless it determines that the settlement is fair, reasonable and in the best interests of the class or subclass members, as the case may be. 2020, c. 11, Sched. 4, s. 25.

Differences not a bar

(6) The court may approve a settlement even if individual class or subclass members, including a representative party, are subject to different settlement terms. 2020, c. 11, Sched. 4, s. 25.

Evidentiary requirements

(7) On a motion for approval of a settlement, the moving party shall make full and frank disclosure of all materials facts, including, in one or more affidavits filed for use on the motion, the party's best information respecting the following matters, which the court shall consider in determining whether to approve the settlement:

1. Evidence as to how the settlement meets the requirements of subsection (5).
2. Any risks associated with continued litigation.
3. The range of possible recoveries in the litigation.
4. The method used for valuation of the settlement.
5. The total number of class or subclass members, as the case may be.

6. A plan for allocating and distributing the settlement funds, including any proposal respecting the appointment of an administrator under subsection (14), and the anticipated costs associated with the distribution.

7. The number of class or subclass members expected to make a claim under the settlement and, of them, the numbers of class or subclass members who are and who are not expected to receive settlement funds.

8. The number of class or subclass members who have objected or are expected to object to the settlement, and the nature or anticipated nature of the objections.

9. A plan for giving notice of the settlement to class or subclass members in the event of an order under section 19, and the number of class or subclass members who are expected to obtain the notice.

10. Any other prescribed information. 2020, c. 11, Sched. 4, s. 25.

Notice of settlement approval

(12) In approving a settlement, the court shall consider whether notice of the settlement should be given under section 19, and whether such notice should include,

(a) an account of the conduct of the proceeding;

(b) a statement of the result of the proceeding;

(c) a description of any plan for distributing settlement funds;

(d) any other prescribed information; and

(e) any other information the court considers appropriate. 2020, c. 11, Sched. 4, s. 25.

Supervisory role of the court

(13) The court shall supervise the administration and implementation of the settlement. 2020, c. 11, Sched. 4, s. 25.

Court-appointed administrator

(14) The court may appoint a person or entity to act as an administrator to administer the distribution of settlement funds. 2020, c. 11, Sched. 4, s. 25.

Duty of administrator, other person or entity

(15) An administrator appointed by the court or, if no administrator is appointed, the person or entity who administers the distribution of the settlement funds, shall administer the distribution in a competent and diligent manner. 2020, c. 11, Sched. 4, s. 25.

Report

(16) No later than 60 days after the date on which the settlement funds are fully distributed, including any distribution under section 27.2, the administrator or other person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the settlement funds before distribution.
2. The total number of class or subclass members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class or subclass members who made a claim under the settlement and, of them, the numbers of class or subclass members who did and who did not receive settlement funds.
6. The amount of the settlement funds distributed to class or subclass members and a description of how the settlement funds were distributed.
7. The amount and recipients of any distribution under section 27.2, and the amount, if any, that was subject to reversion or otherwise returned to the defendant.
8. The number of class or subclass members who objected to the settlement and the nature of their objections.
9. The number of class or subclass members who opted out of the class proceeding.
10. The smallest and largest amounts distributed to class or subclass members, the average and the median of the amounts distributed to class or subclass members, and any other aggregate data respecting the distribution that the administrator or other person or entity who administered the distribution considers to be relevant.
11. The administrative costs associated with the distribution of the settlement funds.
12. The solicitor fees and disbursements.
13. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
14. Any other information the court requires to be included in the report. 2020, c. 11, Sched. 4, s. 25.

Same

(17) Once the court is satisfied that the requirements of subsection (16) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order. 2020, c. 11, Sched. 4, s. 25.

Same

(18) If the regulations so provide, the administrator or other person or entity who administered the distribution, or such other person or entity as may be prescribed, shall provide, in accordance with the regulations, a copy of the approved report to the person or entity specified by the regulations. 2020, c. 11, Sched. 4, s. 25.

Fees and disbursements

32 (1) An agreement respecting fees and disbursements between a solicitor and a representative party shall be in writing and shall,

(a) state the terms under which fees and disbursements shall be paid;

(b) give an estimate of the expected fee, whether contingent on success in the class proceeding or not; and

(c) state the method by which payment is to be made, whether by lump sum, salary or otherwise. 1992, c. 6, s. 32 (1).

Court to approve agreements

(2) An agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court, on the motion of the solicitor. 1992, c. 6, s. 32 (2).

Discontinuance, abandonment and dismissal for delay

Court approval required

29 (1) A proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate. 2020, c. 11, Sched. 4, s. 26.

Notice

(2) In approving a discontinuance or abandonment, or in dismissing a proceeding for delay, other than under section 29.1, the court shall consider whether notice should be given under section 19, and whether such notice should include,

(a) an account of the conduct of the proceeding;

(b) a statement of the result of the proceeding;

(c) any other prescribed information; and

(d) any other information the court considers appropriate. 2020, c. 11, Sched. 4, s. 26.

Securities Act, R.S.O. 1990, c. S.5

Definitions

1 (1) In this Act,

"misrepresentation" means,

(a) an untrue statement of material fact, or

(b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made; ("présentation inexacte des faits")

Liability for misrepresentation in prospectus

130 (1) Where a prospectus, together with any amendment to the prospectus, contains a misrepresentation, a purchaser who purchases a security offered by the prospectus during the period of distribution or during distribution to the public has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against,

(a) the issuer or a selling security holder on whose behalf the distribution is made;

(b) each underwriter of the securities who is required to sign the certificate required by section 59;

(c) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;

(d) every person or company whose consent to disclosure of information in the prospectus has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

(e) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses (a) to (d),

or, where the purchaser purchased the security from a person or company referred to in clause (a) or (b) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against such person, company or underwriter, in which case the purchaser shall have no right of action for damages against such person, company or

underwriter. R.S.O. 1990, c. S.5, s. 130 (1); 2004, c. 31, Sched. 34, s. 6; 2006, c. 33, Sched. Z.5, s. 13.

Defence

(2) No person or company is liable under subsection (1) if he, she or it proves that the purchaser purchased the securities with knowledge of the misrepresentation. R.S.O. 1990, c. S.5, s. 130 (2).

Idem

(3) No person or company, other than the issuer or selling security holder, is liable under subsection (1) if he, she or it proves,

(a) that the prospectus or the amendment to the prospectus was filed without his, her or its knowledge or consent, and that, on becoming aware of its filing, he, she or it forthwith gave reasonable general notice that it was so filed;

(b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he, she or it withdrew the consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;

(c) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he, she or it had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his, her or its report, opinion or statement as an expert,

(i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his, her or its report, opinion or statement, or

(ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his, her or its report, opinion or statement as an expert, he, she or it forthwith advised the Commission and gave reasonable general notice that such use had been made and that he, she or it would not be responsible for that part of the prospectus or the amendment to the prospectus; or

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document, and he, she or it had reasonable grounds to believe and did believe that the statement was true. R.S.O. 1990, c. S.5, s. 130 (3).

Idem

(4) No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert unless he, she or it,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation. R.S.O. 1990, c. S.5, s. 130 (4).

Idem

(5) No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he, she or it,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation. R.S.O. 1990, c. S.5, s. 130 (5).

Limitation re underwriters

(6) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by the underwriter. R.S.O. 1990, c. S.5, s. 130 (6).

Limitation in action for damages

(7) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of such damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon. R.S.O. 1990, c. S.5, s. 130 (7).

Joint and several liability

(8) All or any one or more of the persons or companies specified in subsection (1) are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable. R.S.O. 1990, c. S.5, s. 130 (8).

Limitation re amount recoverable

(9) In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public. R.S.O. 1990, c. S.5, s. 130 (9).

No derogation of rights

(10) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law. R.S.O. 1990, c. S.5, s. 130 (10).

Liability for secondary market disclosure

Documents released by responsible issuer

138.3 (1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) each director of the responsible issuer at the time the document was released;

(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;

(d) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and

(e) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (1, 2).

Public oral statements by responsible issuer

(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) the person who made the public oral statement;

(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;

(d) each influential person, and each director and officer of the influential person, who knowingly influenced,

(i) the person who made the public oral statement to make the public oral statement, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and

(e) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (3).

Influential persons

(3) Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(b) the person who made the public oral statement;

(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(d) the influential person;

(e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and

(f) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (4).

Failure to make timely disclosure

(4) Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act or the regulations and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

(a) the responsible issuer;

(b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and

(c) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (5); 2006, c. 33, Sched. Z.5, s. 15.

Multiple roles

(5) In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (6).

Multiple misrepresentations

(6) In an action under this section,

(a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and

(b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (7).

No implied or actual authority

(7) In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation. 2004, c. 31, Sched. 34, s. 12 (8).

Burden of proof and defences

Non-core documents and public oral statements

138.4 (1) In an action under section 138.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company,

(a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;

(b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (1).

Same

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 138.3 in relation to an expert. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (2).

Failure to make timely disclosure

(3) In an action under section 138.3 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company,

(a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;

(b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (3).

Same

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 138.3 in relation to,

(a) a responsible issuer;

(b) an officer of a responsible issuer;

(c) an investment fund manager; or

(d) an officer of an investment fund manager. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (4).

Knowledge of the misrepresentation or material change

(5) A person or company is not liable in an action under section 138.3 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security,

(a) with knowledge that the document or public oral statement contained a misrepresentation; or

(b) with knowledge of the material change. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (5).

Reasonable investigation

(6) A person or company is not liable in an action under section 138.3 in relation to,

(a) a misrepresentation if that person or company proves that,

(i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or

(b) a failure to make timely disclosure if that person or company proves that,

(i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (6).

Factors to be considered by court

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the court shall consider all relevant circumstances, including,

(a) the nature of the responsible issuer;

(b) the knowledge, experience and function of the person or company;

(c) the office held, if the person was an officer;

(d) the presence or absence of another relationship with the responsible issuer, if the person was a director;

(e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;

(f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;

(g) the period within which disclosure was required to be made under the applicable law;

(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;

(i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;

(j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and

(k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (7, 8).

Confidential disclosure

(8) A person or company is not liable in an action under section 138.3 in respect of a failure to make timely disclosure if,

(a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75 (3) or the regulations;

(b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;

(c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;

(d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation; and

(e) where the material change became publicly known in a manner other than the manner required under this Act or the regulations, the responsible issuer promptly disclosed the material change in the manner required under this Act or the regulations. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (9); 2006, c. 33, Sched. Z.5, s. 16 (1, 2).

Forward-looking information

(9) A person or company is not liable in an action under section 138.3 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

1. The document or public oral statement containing the forward-looking information contained, proximate to that information,

i. reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and

ii. a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information.

2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information. 2004, c. 31, Sched. 34, s. 13 (10).

Same

(9.1) The person or company shall be deemed to have satisfied the requirements of paragraph 1 of subsection (9) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement,

(a) made a cautionary statement that the oral statement contains forward-looking information;

(b) stated that,

(i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and

(ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(c) stated that additional information about,

(i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and

(ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily-available document or in a portion of such a document and has identified that document or that portion of the document. 2004, c. 31, Sched. 34, s. 13 (10).

Same

(9.2) For the purposes of clause (9.1) (c), a document filed with the Commission or otherwise generally disclosed shall be deemed to be readily available. 2004, c. 31, Sched. 34, s. 13 (10).

Exception

(10) Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or the regulations or forward-looking information in a document released in connection with an initial public offering. 2004, c. 31, Sched. 34, s. 13 (10); 2006, c. 33, Sched. Z.5, s. 16 (3).

Expert report, statement or opinion

(11) A person or company, other than an expert, is not liable in an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that,

(a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and

(b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (11).

Same

(12) An expert is not liable in an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (12).

Release of documents

(13) A person or company is not liable in an action under section 138.3 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the

person or company did not know and had no reasonable grounds to believe that the document would be released. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (13).

Derivative information

(14) A person or company is not liable in an action under section 138.3 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

(a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or an exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer;

(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (14); 2010, c. 26, Sched. 18, s. 39.

Where corrective action taken

(15) A person or company, other than the responsible issuer, is not liable in an action under section 138.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act or the regulations,

(a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and

(b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act or the regulations was made by the responsible issuer within two business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules,

promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (15); 2006, c. 33, Sched. Z.5, s. 16 (4).

Damages

Assessment of damages

138.5 (1) Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions.

2. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, assessed damages shall equal the lesser of,

   i. an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions, and

   ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,

      A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are

defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, or

B. if there is no published market, the amount that the court considers just.

3. In respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,

i. if the issuer's securities trade on a published market, the trading price of the issuer' securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, or

ii. if there is no published market, the amount that the court considers just. 2002, c. 22, s. 185; 2006, c. 33, Sched. Z.5, s. 17; 2007, c. 7, Sched. 38, s. 12 (1-4).

Same

(2) Damages shall be assessed in favour of a person or company that disposed of securities after a document was released or a public oral statement made containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, assessed damages shall equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions.

2. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the

misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, assessed damages shall equal the lesser of,

i. an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and

ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,

A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, or

B. if there is no published market, the amount that the court considers just.

3. In respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,

i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, or

ii. if there is no published market, then the amount that the court considers just. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 14; 2006, c. 33, Sched. Z.5, s. 17; 2007, c. 7, Sched. 38, s. 12 (5-8).

Same

(3) Despite subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure. 2002, c. 22, s. 185.

Proportionate liability

138.6 (1) In an action under section 138.3, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant shall be liable, subject to the limits set out in subsection 138.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 15 (1).

Same

(2) Despite subsection (1), where, in an action under section 138.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 15 (2).

Same

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2). 2002, c. 22, s. 185.

Same

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action. 2002, c. 22, s. 185.

Limits on damages

138.7 (1) Despite section 138.5, the damages payable by a person or company in an action under section 138.3 is the lesser of,

(a) the aggregate damages assessed against the person or company in the action; and

(b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 138.3, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 16.

Same

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure. 2002, c. 22, s. 185.

Restriction on discontinuation, etc., of action

138.10 An action under section 138.3 shall not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court shall consider, among other things, whether there are any other actions outstanding under section 138.3 or under comparable legislation in other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure. 2004, c. 31, Sched. 34, s. 19.

VECCHIO LONGO CONSULTING SERVICES INC.
Plaintiff

and-

APHRIA INC. *et al.*
Defendants

Court File No. CV-19-0061408600 CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

FACTUM OF THE PLAINTIFF
(Motion for Settlement Approval and Class Counsel Fees Approval Returnable March 26, 2025)

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