CITATION: Pozgaj v. CIBC, 2025 ONSC 6412
COURT FILE NO.: CV-18-00605345-00CP
DATE: 20251119

2025 ONSC 6412 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
	)	
STEPHEN POZGAJ	)	
	)	Garett Hunter, Anthony O'Brien
Plaintiff	)	Michael Robb, for the Plaintiff
	)	
– and –	)	
	)	
CANADIAN IMPERIAL BANK OF COMMERCE and CIBC TRUST CORPORATION	)	Ryan Lax, for the Defendants
Defendants	)	
	)	
	)	
	)	**HEARD:** 5 November 2025

LEIPER, J.

REASONS FOR JUDGMENT

(SETTLEMENT APPROVAL UNDER THE *CLASS PROCEEDINGS ACT*, 1992)

Introduction

[1] This class action has settled, and the plaintiff, Stephen Pozgaj ("the plaintiff" or "Mr. Pozgaj") seeks approval of that settlement. Mr. Pozgaj brought this action which alleged that the defendants improperly paid trailing commissions to discount brokers for services and advice, on behalf of mutual fund owners.

[2] After several mediations, and a negotiation that the plaintiff described as "hard-fought", the defendants have agreed to pay the sum of $26 million, to be shared among investors on a pro rata basis, in accordance with the plan of distribution described below. The defendants are settling the claim without admitting liability.

2025 ONSC 6412 (CanLII)

[3] Mr. Pozgaj's motion seeks several orders required to carry out the settlement. These include orders approving the content and plan of the notice, the proposed distribution protocol, the claims process, and the appointment of Verita as the administrator. Mr. Pozgaj also seeks an order approving an interim payment to the funder of this action, the release of the security previously paid into court by the funder, and the payment of an honorarium to him based on his engagement, and his role in achieving this settlement. Further, class counsel seeks orders approving the payment of their fees and disbursements in accordance with the retainer agreement Mr. Pozgaj signed, and in accordance with an agreement made between his current and former counsel.

[4] For the reasons below, I approve the settlement, dismiss the action and make the orders sought, to complete the distribution of the proceeds of the settlement. I also approve the requested payments to counsel, to the funder and an honorarium to Mr. Pozgaj.

Background

[5] The plaintiff commenced the action in September of 2018 pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c 6.[1] He and the members of the class are unitholders of the CIBC mutual funds and Renaissance mutual funds, which are structured as trusts. The unitholders, many of them "do it yourself" retail investors, held units through online discount brokers, who provide "order execution only services". Discount brokers are not permitted to provide advice or recommendations to their clients. They simply execute trades.

[6] The defendant, CIBC Trust Corporation is the trustee of the CIBC mutual funds. The defendant, Canadian Imperial Bank of Commerce ("CIBC") is the manager of the CIBC Mutual Funds. CIBC Asset Management Inc.("CAM") is a wholly owned subsidiary of CIBC and a corporate affiliate of CIBC Trust. CAM is the trustee and manager of the Renaissance mutual funds.

[7] The claim alleged that the defendants improperly paid trailing commissions to discount brokers on behalf of the plaintiff and class members, for services and advice that were never provided and engaged in other misconduct that harmed the class members. The plaintiff asserted that the defendants' improper payment of trailing commissions to discount brokers amounted to breaches of trust, fiduciary duty and contract. He also asserted that the defendants misrepresented the facts in the "Fund Facts" documents, contrary to section 130 of the *Securities Act*, R.S.O. 1990, c. S. 5.

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[1] *The Class Proceedings Act, 1992*, S.O. 1992, c 6 in force between June 22, 2006, and September 30, 2020, applies to this action.

[8] In the action, Mr. Pozgaj sought to recover the trailing commissions he alleged were improperly paid, along with any investment returns or interest flowing from the payment of those trailing commissions. The class is large: the defendants have client information for approximately 140,000 class members who held mutual funds during the relevant period.

[9] On October 28, 2019, the Court approved a litigation funding agreement with Claims Funding International, PLC ("CFI"). Pursuant to the terms of that agreement, CFI posted security by paying $400,015.14 into court.

[10] On January 25, 2024, Justice Akbarali certified this action as a class proceeding. Class counsel disseminated notice of certification. The opt-out period expired as of May 26, 2024.

[11] Prior to certification, the parties engaged in settlement discussions and a mediation took place in 2021. After the action was certified, the parties attended a second round of mediation in July of 2025. The plaintiff engaged an expert to assist in valuing damages and to inform the preparation of the briefs in the second round of mediation. The defendants gathered and produced payment information concerning the trailing commissions. This time, they succeeded in negotiating a settlement.

[12] When the parties executed the settlement agreement, the action was in the documentary discovery stage. Mr. Pozgaj had produced his documents. The defendants had delivered a first set of 2,211 documents.

[13] The parties signed a settlement agreement on August 20, 2025. On September 17, 2025, the settlement funds were paid into trust and have been invested in an interest bearing GIC for the benefit of the class.

[14] This action is not the first of its kind in Ontario. There are parallel actions alleging similar improper payments of commissions involving discount and other brokers.

[15] The other actions provide context to the settlement considerations in the case at bar. I discuss those next.

The Woodard Action

[16] On November 17, 2022, a related class proceeding was filed against the defendants, styled *Woodard v. Canadian Imperial Bank of Commerce et al*. (the "Woodard Action"). That action sought relief on behalf of investors in CIBC mutual funds for trailing commissions paid to full-service brokers.

2025 ONSC 6412 (CanLII)

[17] On August 1, 2023, the Woodard action was temporarily stayed pending resolution of this action. Counsel in the Woodard action participated in the mediation that led to this settlement in 2025. The parties in that action have also settled.

The Frayce Action

[18] On March 27, 2020, a related proposed class action was commenced against a set of discount brokers, styled *Frayce v. BMO InvestorLine Inc. et al.* The Frayce Action sought recovery from Discount Brokers for trailing commissions paid to them. One of the defendants in the Frayce Action, CIBC Investor Services Inc. (which operates CIBC Investor's Edge, a Discount Broker), is a related corporate entity to the defendants in this action.

[19] On January 20, 2023, the plaintiffs' motion for certification in the Frayce Action was dismissed. On January 24, 2024, the plaintiffs' appeal from the denial of certification was dismissed.

The "Other" 2018 Actions: Settled (Westwood) and Continuing

[20] Siskinds LLP ("Siskinds" or "class counsel") is counsel in six other actions which were launched in 2018 against other institutional trustees who similarly paid trailing commissions to discount brokers. Justice Akbarali approved a settlement in one of those actions ("Westwood") in December 2024. The Westwood Action settled for $70,250,000 without an admission of liability by the defendant.

[21] Class counsel's materials include a comparison between the Westwood settlement and the proposed settlement in the case at bar.

	Westwood Action	**This Action (CIBC and Renaissance Mutual Funds)**	**This Action (CIBC Mutual Funds only)**
Comparative recovery as a percentage of total trailers paid	11.3%	17%	20%
Comparative recovery as a percentage of trailers paid during Two-Year Lookback Windows	41.1%	55%	55%

2025 ONSC 6412 (CanLII)

[22] Class counsel submits that the results achieved in the case at bar are as favourable as those in the Westwood action.

[23] The settlement agreement in this action also includes terms which relate to the non-settled 2018 actions. Specifically, the settlement agreement outlines class counsel's approach going forward in the non-settled 2018 actions:

> a. Siskinds intends to maximize the recovery of damages in the Other 2018 Actions and Siskinds will, acting reasonably and in good faith, seek to negotiate terms in any Subsequent Settlement that are at least as favourable to class members in the Other 2018 Actions as the Settlement Agreement is to Class Members in this Action. This is consistent with Siskinds' understanding of the obligation they owe to class members in the Other 2018 Actions irrespective of the existence of this provision, which is to maximize their recovery;
>
> b. if a Subsequent Settlement of an Other 2018 Action is reached, when disclosure is permitted Siskinds shall advise the Defendants in writing of the Subsequent Settlement, the amount of that Settlement, and acting reasonably and in good faith, whether that Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action as the Settlement Agreement is to the Class Members in this Action having regard to, among other things:
>
> i. the Subsequent Settlement Amount as a percentage of the amount of trailing commissions paid by the applicable defendant(s) to Discount Brokers compared to the Settlement Amount as a percentage of the trailing commissions paid to Discount Brokers by the Defendants (recognizing that there may be limitations in the available data);
>
> ii. factual differences between this Action and the Other 2018 Action impacting the quantum of potential recovery;
>
> iii. whether a Material Adverse Litigation Event has occurred; and
>
> iv. any other factor that, in Siskinds' opinion, impacted the quantum of potential recovery and likelihood of success of the Other 2018 Action compared to this Action;
>
> c. any motion for Court approval of a Subsequent Settlement shall include Siskinds' opinion on whether the Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action as the Settlement Agreement is to the Class Members in this Action. This informational obligation does not fetter Siskinds' discretion with respect to the Other 2018 Actions or the discretion of the plaintiffs

2025 ONSC 6412 (CanLII)

in the Other 2018 Actions. Rather, the obligation requires information to be provided to the Court that is substantially similar to the information that would be provided irrespective of the existence of the reporting obligation; and

d. other than as is expressly stated in section 13 of the Settlement Agreement, no rights of standing are created in favour of the Defendants in respect of the Other 2018 Actions.

[24] I turn next to set out the legal framework for the approval of class actions, fees and related orders.

The Legal Framework: Settlement of Class Actions

[25] The settlement of a class proceeding must be approved by the court, in accordance with well-established principles which date back to Cullity, J's decision in *Nunes v. Air Transat A.T. Inc*., [2005] 20 C.P.C. (6th) 93 (Ont. S.C.) at para. 7. Those principles include the following:

a. The courts encourage the settlement of complex litigation;

b. An arms'-length settlement negotiated by counsel to the class is presumed to be fair;

c. The party seeking approval bears the onus on the motion for approval;

d. The court shall inquire into whether the settlement is reasonable, considering that the class is foregoing its rights to litigate the claim;

e. It is not the function of the court to rewrite or substitute its own view on the content of the proposed settlement;

f. The court should not necessarily approve settlements automatically, nor should it apply the principles mechanically to the record before it;

g. Where the court has concerns, it may give the parties the opportunity to address those concerns.

Robinson v. Medtronic, Inc, 2020 ONSC 1688, 150 O.R. (3d) 328, at para 64; *Osmun v. Cadbury Adams Canada Inc,* 2010 ONSC 2643, 5 C.P.C. (7th) 341, at para 31(e), aff'd 2010 ONCA 841, 5 C.P.C. (7th) 368, leave to appeal refused, [2011] S.C.C.A. No. 55.

[26] The overarching consideration in settlement approval motions is whether the proposed settlement is reasonable, fair and in the best interests of the class: *Robinson v. Medtronic, Inc,* 2020 ONSC 1688, 150 O.R. (3d) 328, at para. 66.

2025 ONSC 6412 (CanLII)

2025 ONSC 6412 (CanLII)

[27] Settlements are assessed according to an objective standard that weighs the result obtained against the risks, potential duration and the expense of ongoing litigation. Where class counsel has significant information which informs the risks from interlocutory motions or other sources, this supports the supervising class action judge's findings and approval: *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670, 9 C.P.C. (8th) 431, at para. 5.

[28] This principled approach to the approval of settlements ensures consistency with the purpose and spirit of the *Class Proceedings Act, 1992*. The reasonableness requirement prevents the supervising judge from arbitrarily inserting their own policy preferences into the outcome of the litigation, or from abdicating their responsibility to the parties and to the public for outcomes that are responsive to the policy objectives of the *CPA*.

Notice

[29] The court will consider several factors relative to the form and scope of the notice to the class, including the cost of giving notice, the nature of the relief sought, the size of the individual claims of the class members, the number of class members, and the places of residence of class members: *Class Proceedings Act, 1992*, s 17(3)-(5), s. 17(3)-(5).

Contingency Retainers in Class Proceedings

[30] Representative plaintiffs may sign contingent fee arrangements with putative class counsel. Contingency retainers are well suited for balancing the risks involved in expensive, hard-fought, lengthy litigation on behalf of class members. Contingency fees encourage efficiency in litigation by discouraging unnecessary work based on an hourly rate model.

[31] A fee agreement between a solicitor and a representative party is not enforceable unless the court approves it: *Class Proceedings Act, 1992*, s. 32(2).

[32] For these reasons, the courts have routinely approved contingency retainers in ranges from 20%-30%: *Baker Estate v. Sony BMG Music (Canada) Inc*, 2011 ONSC 7105, 31 C.P.C. (7th) 320, at paras. 63-64; *Westwood v. TD Asset Management Inc*, 2024 ONSC 6872, at para. 49; *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686, at para 11; *Brown v. Canada (Attorney General)*, 2018 ONSC 3429, at para. 47; *Faiz v. Canadian All Care Inc.*, 2025 ONSC 3217, at para. 42; *Pinizzotto v TILT Holdings, Inc*, 2021 ONSC 8001, at para. 71(ii). *Aggarwal v. TD Asset Management Inc*, 2025 ONSC 989 at para. 40; *Osmun v Cadbury Adams Canada Inc* at para. 21.

Approval of Class Counsel Fees and Disbursements

[33] The court supervises the fees and disbursements sought and must determine whether counsel's fee request is fair and reasonable, while avoiding champertous fees to maintain the

integrity of the profession: *Osmun v Cadbury Adams Canada Inc,* 2010 ONSC 2752, 97 C.P.C. (6th) 169, at para. 12; *MacDonald et al v. BMO Trust Company et al*, 2021 ONSC 3726, at para. 27; *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628, at para. 84.

[34] In doing so, the court must be alive to the tension between the interests of the class and that of class counsel: *Bancroft-Snell v. Visa Canada Corporation,* 2016 ONCA 896, 133 O.R. (3d) 241, at para. 40; *Fresco v. Canadian Imperial Bank of Commerce,* at para. 39.

Plaintiff Honorarium

[35] In Ontario, a representative plaintiff may be paid an honorarium where the supervising court finds that there are exceptional circumstances, and where such an award will serve access to justice: *Fresco v. Canadian Imperial Bank of Commerce,* at para. 110; *Doucet v. The Royal Winnipeg Ballet*, 2023 ONSC 2323 (Div. Ct.); *Baker Estate v. Sony BMG Music (Canada Inc.),* , at para. 95; *Tesluk v. Boots Pharmaceutical Plc.,* (2002), 21 C.P.C. (5th) 196 (Ont. S.C.), at para. 22; *McCarthy v. Canadian Red Cross Society*, [2007] CanLII 21606 (ON SC), at para. 20.

[36] Factors which courts have found may amount to exceptional circumstances include:

a. The requirement of a representative plaintiff to relive past trauma, while relieving the class of that necessity: *Doucet* at para. 58;

b. Real costs exposure: *Fresco* at para. 111;

c. Significant personal hardship: *Fresco* at para. 111;

d. A level of involvement by the representative plaintiff that is truly extraordinary or "well above and beyond the call of duty": *McCarthy v. Canadian Red Cross Society* at para. 20; *Fresco* at para. 112;

e. Any honorarium awarded should be modest in amount both in general terms and in proportion to the recovery by the class members: *Westwood v. TD Asset Management Inc*., at para. 91.

[37] The corollary to the principle that an honorarium is available in exceptional circumstances is that the court will not award an honorarium as a matter of course: *Fresco* at para. 108.

ANALYSIS OF THE ISSUES

Reasonableness of the Settlement

[38] I conclude that the settlement in this case is fair and reasonable and it is in the interests of the class to approve the settlement. This was a moderately complex claim with potential limitation

2025 ONSC 6412 (CanLII)

period defences, and prior disclosure defences. This action has benefited from the certification and the 2024 settlement approval in the Westwood litigation which involved trailing commissions and claims. While this action may not have represented cutting edge developments in the substantial body of trust and fiduciary relationship case law, the plaintiff submits that its application to the commercial trusts of the type used by the defendant has not yet been litigated in the context of trailing commissions and mutual fund trusts.

[39] In addition to legal complexity, the parallel litigation described above added procedural and strategic complexity to class counsel's task in this action. However, with the Westwood action serving as a "test case" for certification of claims of this sort, this case benefited from that finding and consent certification.

[40] Class counsel has assessed the merits of the settlement through the lenses of time, risk and the outcomes of connected litigation, including the Westwood settlement. Their opinion is that the result achieved by the proposed settlement in the case at bar is excellent and has mitigated the litigation risks which are described in the factum as the "many ways" that the plaintiff might have lost this case. The defendants were expected to raise the following defences:

a. There was adequate disclosure to the class: The defendants intended to argue at trial that the trailing commissions paid to discount brokers were repeatedly and adequately disclosed in Fund Facts and other disclosure documents to which the class members had access. The defendants argued that these disclosures used the language required by Canadian securities regulators.

b. The claims were statute-barred: The defendants relied on their disclosures which were sent to, or were accessible to, class members at the time they acquired their mutual fund units. If this argument was accepted, then any losses suffered more than two years from the date the action was commenced in September of 2018, would have been defeated by the two-year limitation period in the *Limitations Act, 2002,* S.O. 2002, c. 24, Sched. B. The defendants sought to apply this defence to any mutual fund units purchased before September 2016, even in circumstances where the class members held those units (and thus had trailing commissions paid) after September of 2016.

c. The Renaissance Mutual Fund: The defendants were expected to argue that these fund holders, who were not added to the class until September 3, 2025, were statute-barred as having been discoverable for more than two years prior to being added, because this action was initiated in September of 2018.

d. No breach of duty because the trailing commissions were not illegal: The defendants were expected to argue that their payment of trailing commissions to Discount Brokers was not illegal. In a heavily regulated industry, the defendants

2025 ONSC 6412 (CanLII)

would argue that securities regulators recognized that there was a need for discount brokers to charge their clients for services rendered. Regulators permitted the payment of trailing commissions to discount brokers until the practice was prohibited on June 1, 2022. The defendants would have argued that they complied with the regulatory ban and stopped paying trailers at that time. Thus they were not liable to the plaintiff for these payments during the period when they were permitted to do so.[2]

e. Limited duty and no standing argument: The defendants recognized that they owed a duty of care under the terms of the operative trust instruments. However, they asserted that the standard and duty of care was owed to the funds, not to the individual beneficiaries such as the class members. The defendants would argue that class members had no standing to enforce the standard and duty of care owed to the funds.

f. Other Defences: The defendants asserted that the trust instruments overrode the provisions of the *Trustee Act*, as pleaded, that there had been no breach of contract.

[41] The plaintiff consulted experts, notably KSV Advisory on the damages question at mediation, applied lessons learned from the Trayce and Westwood litigation and had the benefit of the first tranche of discovery. I am satisfied that Siskinds had a valid foundation on which to negotiate the settlement amount that it did on behalf of the class.

[42] There are no indicia of conflicts of interest in the settlement proposed. Class counsel have negotiated an all-cash settlement, the settlement is not conditional on approving counsel's fees and disbursements, the contingency retainer agreement encourages early resolution and there is no reversion of any unpaid amounts to the defendants.

[43] I accept the opinion of Siskinds that this is a fair and reasonable settlement. I find that the structure is fair and reasonable and it is in the interests of the class to approve it.

Notice to the Class

[2] Although framed in different legal terms, the Frayce action which was not certified, involved the payment of trailing commissions to discount brokers. The plaintiff submits that this illustrates the viability of the regulatory permission pre-2022 defence for these payments.

2025 ONSC 6412 (CanLII)

[44] Class counsel has proposed a form of notice to the class for making a claim. Class members can either use the streamlined method or they can submit a claim for compensation outside the streamlined method. This form of notice was approved for use in the Westwood action.

[45] In response to the notice to the class, on October 15, 2025, a class member wrote a letter pointing out deficiencies in the Westwood form of notice, which he submitted would carry over to the proposed form of notice in this action. These issues included failing to provide a French version of the settlement agreement, the requirement on investors to provide information and proof of their mutual fund holdings, and the unavailability of a list of eligible mutual funds to assist class members in determining their eligibility to make a claim. The class member included several other concerns with the administrator's website and its administration of the Westwood claim.

[46] Class counsel responded to the class member's concerns in a variety of ways. They posted a French version of the settlement agreement on the firm website, which supplements other information that was available in French and in English. They have ensured that in this case, the administrator will make a list of eligible mutual funds available on its website, as proposed by the class member. As counsel points out, the defendants have provided information that will enable certain members to make a claim by using a pre-populated form. This is intended to alleviate the concern that all class members will be required to provide proof and information of their holdings to receive payment.

[47] On October 21, 2025, class counsel responded to the remaining concerns about the proposed administrator. I discuss those issues below in the section of these reasons dealing with the appointment of Verita.

[48] I am satisfied that class counsel has responded adequately to the issues described in the class member's correspondence. I approve the form of notice, consistent with the Westwood approval and with counsel's response to the concerns raised in the class member's letter.

The Distribution Protocol

[49] The plaintiff proposes a Distribution Protocol that will provide a *pro rata* distribution of the net settlement amount by calculating the trailing Commissions paid by class members who submit a valid claim. These amounts will be based on either client information provided by the defendants, that is the streamlined process, or via a full claims process. The plaintiff believes that many claimants will be able to use the streamlined process, which will achieve a higher take up rate than if every claimant had to search for and provide historical mutual fund holding records to qualify for a payment.

[50] The Distribution Protocol will use data, where available, of the actual trailing commissions paid, using a formula to average out those costs. This is because the percentage of trailing commissions ranged from .05% to 1.25% depending on the series of CIBC mutual fund or

2025 ONSC 6412 (CanLII)

Renaissance Fund held. The settlement agreement uses a .75% of the value of units held for purposes of efficiency and administration. This approach was tested and approved in Westwood.

[51] The Distribution Protocol also considers the higher litigation risks involved with the Renaissance mutual fund claims, which were not asserted until September 3, 2025. As a result of the higher limitations risks, the parties agree that those claims will be discounted and a 20% inclusion rate will be paid. Finally, because the ban on trailing commissions came into effect on June 1, 2022, and the plaintiff is satisfied that the defendants ceased paying trailing commissions in compliance with the prohibition, there will be no compensation paid on the value of units held after that date.

[52] Finally, if there is money remaining after several distributions to the authorized claimants and it is uneconomical to carry out a further distribution, any remainder will be distributed cy-près to the Osgoode Hall Law School Investor Protection Clinic ("Osgoode IPC"). This type of distribution to the general benefit of the class is contemplated by the *Class Proceedings Act, 1992* and by the jurisprudence: *Sun-Rype Products Ltd v. Archer Daniels Midland Company*, 2013 SCC 58,[2013] 3 S.C.R. 545, at paras. 24-27.

[53] The Osgoode IPC is a pro bono clinic that provides free legal advice to "do it yourself" investors. The Osgoode IPC also undertakes research to aid regulators, policymakers and the courts in understanding issues unique to retail investors. An award to its benefit contributes to policy development, behavioural modification and access to justice for a group that includes members of the class.

[54] I agree that the Osgoode IPC is an appropriate cy-près recipient.

Appointment of Verita as the Claims Administrator

[55] Siskinds recommends Verita as a claims administrator, based on its experience, ability, and because it was appointed as administrator to settle the Westwood action.

[56] Verita estimates that the cost to administer the settlement is in the range of $513,530 to $1,045,111 (not including notice costs or taxes). The range in estimated costs varies depending on the number of claims made, the extent to which correspondence is via email or regular mail, and the number of payments made via e-transfers versus cheques, because cheques are more expensive to issue**.**

[57] This is a reasonable cost of administration, considering prior approvals in similar actions: *Bernstein v. Peoples Trust Company*, 2020 ONSC 5880; *Westwood v TD Asset Management Inc*, at para 40.

2025 ONSC 6412 (CanLII)

[58] I conclude that the estimated costs of the administration are proportionate and reasonable when considered in relation to the size of the settlement, the complexity of the settlement and the number of claims that will likely be processed.

[59] The class member who corresponded with class counsel raised concerns about the web site and practices adopted by Verita as administrator of the Westwood settlement. Class counsel responded in writing to those concerns, as follows:

CONCERN	RESPONSE
2-day wait for a callback	Verita's standard callback time for telephone service in English and French is 24 to 48 hours.
No response to an email on September 30, 2025	Verita confirms that it responded to this email by phone with you on October 2, 2025, and October 8, 2025.
Frequent use of bot detection on the administrator's web page	Bot detection is necessary to maintain the integrity of the claims filing process. Due to the prevalence of fraud involving claims administration processes, current bot detection systems help prevent fraudulent claims, which could otherwise number in the thousands or hundreds of thousands.
The website redirects users to the home page when they switch from English to French	Users are expected to select the language in which they feel most comfortable for the entire claims process. The website is therefore not designed to allow users to switch between languages and redirects the user to the home page if they switch from English to French. We apologize for any inconvenience this may cause during the complaint process.
The "Contact Us" page returns error 104 (when accessed from an interaction page).	This issue is currently being fixed.
No message entry form on the "Contact Us" page as of 10/06/2025	There is no message entry form on the "Contact Us" page. However, an email address and phone number are provided. Group

2025 ONSC 6412 (CanLII)

	members are invited to contact the administrator using this information.
No point of contact for user support	Class members are invited to contact the administrator using the contact details on the "Contact Us" page.
No postal address on the "Contact Us" page	Members of the group using the website are invited to contact the administrator using the contact details on the "Contact Us" page.
It is not possible to file a claim that includes both the amount established by the defendant and funds held elsewhere	This is not correct. Claimants can file additional claims for funds held elsewhere as part of a single claim via the online claim portal. The administrator can assist you with this process.
The form allows the name of the beneficiary of the next payment to be changed, which, …seems to offer an opportunity for fraud.	The claim form allows the name of the beneficiary to be updated to reflect circumstances in which the beneficiary has changed, for example, when an estate is making a claim. Verita has processes in place to review and verify any changes in beneficiaries to prevent fraud.

[60] I am satisfied that class counsel and Verita responded satisfactorily to the list of concerns from the class member. I approve the appointment of Verita as the claims administrator.

Retainer, Fees and Disbursements

[61] The plaintiff submits that consistent with the jurisprudence, the 28% contingency fee provided for in the Retainer Agreement, on a settlement of $26 million is presumptively valid. Both sets of class counsel are experienced, competent, and pursued the action with diligence. Initially, the risk was shared between two firms, Bates Barristers and Siskinds. In 2019, Bates Barristers resigned and Siskinds continued the action to its conclusion. The proposed fees are being shared in accordance with an agreement among counsel, reached in 2020 and then amended in 2024, with Bates Barristers agreeing to a reduction in fees. The result is a *quantum meruit* sharing of fees on an 80-20 split, to reflect work done in the action and the risk assumed by each firm. The same agreement was approved in the Westwood action.

2025 ONSC 6412 (CanLII)

[62] I find that the fee sharing agreement between Siskinds and Bates Barristers should be approved as a fair and reasonable approach to the work done by each firm to advance the litigation and considering the experience of both firms.

[63] Class counsel submits that the contingency fee of 28% should be approved because the retainer agreement aligns counsels' interest with the plaintiff. It ensures compensation is within an appropriate range. Mr. Pozgaj has a full understanding of the fees sought and supports Siskinds' request.

[64] Further, the material filed confirms that Siskinds and (former counsel) Bates Barristers, carried the cost of a significant investment of time of $928,489.71 before taxes. They paid out disbursements totaling $95,881.90 before taxes. They pursued the action despite knowing that doing so would be resource intensive, with the real possibility of little or no recovery after trial. Counsel seek fees that would encourage class action firms to dedicate firm resources and energy to the pursuit of justice for large classes of individuals with *bona fide* claims.

[65] Although the plaintiff eventually received adverse costs protection from the funder, that agreement was not approved until October 28, 2019. Prior to that time, Siskinds and Bates Barristers indemnified the plaintiff against adverse costs from September 2018. The retainer agreement provides for a specified reduction in the percentage contingency fee to reflect the fact that third-party litigation funding was obtained. Counsel have disclosed the agreement as part of the material filed on the motion.

[66] I find that the fee requested is consistent with prior cases of similar complexity and magnitude. It is consistent with the retainer agreement signed by the plaintiff.

[67] Siskinds' and Bates Barristers gave notice of their fee request to the class. There have been no objections received from any class member to the fee request. This is some indication that the fees sought are within the contemplation of the class. The fee does not take advantage of the client or the class, and thus, I find it is not champertous.

[68] The most significant expense in this action was the cost of expert fees. Counsel submit, and I agree, that the courts often approve expert fees in the hundreds of thousands of dollars to provide in-depth opinions on complex financial questions. I find that the disbursements requested pursuant to the terms of the retainer agreement are fair and reasonable.

[69] The settlement is an all-cash payment, which the defendants have paid into trust. The funds are available for payment of the fees and disbursements sought by class counsel.

[70] I have applied the principles for the evaluation and consideration of class counsel fees and disbursements to the proposed order for approval in this action. I approve the retainer agreement

2025 ONSC 6412 (CanLII)

with the representative plaintiff, the agreement between Bates Barristers and Siskinds, as amended, and the payment of the fees and disbursements in conformity with the retainer agreement.

2025 ONSC 6412 (CanLII)

Payment to the Funder and Release of Security

[71] Earlier in the action, Justice Belobaba approved a funding agreement with CFI. This funding agreement includes a 7% payment to the funder of the "net resolution sum", which is calculated as the resolution sum, less lawyers' fees and disbursements, and the expenses of administration, with adjustments for interest earned on the amounts held pending distribution. The funder's commission cannot be calculated until the administration of the settlement has happened and the final costs are calculated. As a result, the plaintiff seeks to pay an interim amount to the funder of $1,075,000. This interim amount is approximately 92.95% of the funder's estimated full entitlement.

[72] The plaintiff proposes to have the remainder of the funder's commission paid at the conclusion of the administration, once the final administration expenses and other items are known. This amount is consistent with the interim funding commission approved in the Westwood Action, which was 93.13% of the funder's estimated commission.

[73] The plaintiff submits that it can take more than a year after settlement is approved for funds to be distributed to settlement claimants. The funder has carried the risk of adverse costs throughout most of this lengthy period of litigation. Interim payments to funders have been approved in other settled class proceedings: *Westwood v. TD Asset Management Inc*, at paras. 83-88; *Rooney et al v. ArcelorMittal SA et al*, (September 19, 2019), London, 3957-11CP (Ont. S.C), at para. 5; *Ironworkers Ontario Pension Fund v. Manulife Financial Corp*, 2017 ONSC 2669, at paras. 26-28; *Dyck v. 0799714 BC Ltd* et al, (October 3, 2023), Toronto, CV-18-00606411-00CP, (Ont. S.C), at para. 4.

[74] I approve the interim payment to the funder.

[75] The funder paid $400,015 into court as security for costs in the action pursuant to the order. The plaintiff requests that the security be released to the funder forthwith once the action is at an end. This is logical because the rationale for posting security no longer exists.

[76] I approve the release of the funds paid as security for costs as requested by the plaintiff.

Honorarium to the Plaintiff

[77] Counsel seeks a $10,000 honorarium to Mr. Pozgaj based on his exceptional work as a representative plaintiff. This included him taking an active role at every step of this litigation based on his prior work in the mutual funds sector. Since becoming involved in 2018, Mr. Pozgaj reviewed and provided comments on the statement of claim, amendments to the statement of claim,

the defendants' statement of defence, and the reply to the statement of defence. He swore affidavits in support of the motion for approval of the funding agreement and the motion for certification of this Action as a class proceeding.

[78] Counsel's affidavit described Mr. Pozgaj as playing an "active and important role in the negotiation of the settlement." For example, in each of the two mediations of this case, Mr. Pozgaj reviewed and commented on the mediation briefs. He engaged in his own independent analysis of a reasonable settlement range based on the available data. Mr. Pozgaj discussed in detail with counsel the potential settlement (including the appropriate settlement range and the best way to calculate that range) and the best strategy to take. He attended the mediation. The class benefits from Mr. Pozgaj's contribution to achieving this settlement.

[79] As representative plaintiff, Mr. Pozgaj has subjected himself to greater scrutiny than other class members in taking on the role of representative plaintiff in litigation which involved high profile institutions. This meant that Mr. Pozgaj's name was publicized, not only in the notices to the class but also in the media. He willingly engaged in advocacy work about the practices which he believed to be fundamentally unfair to retail investors, including being interviewed by the media, and drafting a submission to Canadian securities regulators about proposed regulatory changes.

[80] Finally, Mr. Pozgaj submitted an affidavit for the consideration of the court on this motion to approve the settlement. He supports the orders sought.

[81] In the Westwood action, Akbarali, J. concluded that a similarly situated representative plaintiff had given exceptional service to the action. She granted a modest honorarium of $10,000. Counsel makes the same request here, based on Mr. Pozgaj's similar significant commitments to this litigation and his role in achieving the settlement. At paragraphs 96 and 97 of her reasons for decision in *Westwood*, Akbarali, J. wrote:

> In this case, the evidence discloses that Mr. Westwood was an admirable representative plaintiff. He was engaged, diligent, and committed to advancing the interests of the class. Without Mr. Westwood agreeing to take on the role of representative plaintiff on the decision of the prior representative plaintiff to step aside, the action could not have continued. Mr. Westwood's commitment lead to a significant settlement for the class. The amount of the honorarium sought is minimal in the context of the overall settlement award, and raises no concerns about conflict of interest.
>
> In my view, Mr. Westwood's extraordinary efforts for the class are part of the reason that an excellent settlement has been reached in this case. On the facts of this case, a $10,000 honorarium is consistent with the guidelines set out in *Doucet* and *Fresco*.

2025 ONSC 6412 (CanLII)

[82] During the settlement approval motion, I called on Mr. Pozgaj to address the court in his role as representative plaintiff. Consistent with the written record, his engagement with this action and his desire to pursue justice for the members of the class was apparent.

[83] Considering the jurisprudence above and applying the principles to the question of whether Mr. Pozgaj should receive an honorarium, I find that as with the representative plaintiff in Westwood, Mr. Pozgaj has gone "beyond the call of duty" in his commitment and dedication to achieving justice for the class. His specialized knowledge clearly served class counsel in terms of negotiating a settlement for the benefit of the class. His willingness to be the public face of the issue in the media meant he faced greater scrutiny because of his role. Finally, given similar findings by Akbarali, J., in similar parallel litigation involving a different representative plaintiff and defendant, I find that to grant an honorarium is a valid exercise of judicial comity, supporting consistency and predictability: *R. v. Sullivan*, 2022 SCC 19, [2022] 1 S.C.R. 460, at para. 75.

[84] The honorarium of $10,000 can fairly be described as modest. It is modest in proportion to the total amount recovered, $26 million, and to counsel's fees which I have approved at $7,280,000. To put the "cost" of the honorarium to the class in perspective, if the $10,000 honorarium were shared among the 140,000 class members, this would amount to $.07 per class member.

[85] I exercise my discretion to approve the payment of an honorarium to Mr. Pozgaj.

Conclusion

[86] For the reasons provided, I make the orders as requested and:

a. Approve the settlement agreement and dismiss the action against the defendants;

b. Approve the second notice and the notice plan;

c. Approve the distribution protocol, the claim form and the claim process, and the appointment of Verita as administrator;

d. Approve counsel fees in the amount of $7,280,000 plus tax of $2,329,600, approve disbursements in the amount of $95,881.90 plus applicable taxes and approve the agreement between Siskinds and Bates Barristers;

e. Approve an interim payment to the funder in the amount of $3.25 million as soon as practicable, with the remainder of its entitlement to be paid at the conclusion of the administration of the settlement, and approve the release of the $400,000 in security the funder paid to the Accountant of the Superior Court of Justice forthwith after the effective date of the settlement;

2025 ONSC 6412 (CanLII)

f. Approve the plaintiff's request for an honorarium of $10,000.

Leiper, J.

Released: November 19, 2025

2025 ONSC 6412 (CanLII)

CITATION: Pozgaj v. CIBC, 2025 ONSC 6412
COURT FILE NO.: CV-18-00605345-00CP
DATE: 20251119

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

STEPHEN POZGAJ

Plaintiff

– and –

CANADIAN IMPERIAL BANK OF COMMERCE and CIBC TRUST CORPORATION

Defendants

REASONS FOR JUDGMENT

Leiper J.

2025 ONSC 6412 (CanLII)