

CITATION: Pill v. Amazon.com, Inc., 2026 ONSC 642
COURT FILE NO.: CV-24-00718720-00CP
DATE: 20260203

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TAYLOR PILL, Plaintiff

– and –

AMAZON.COM, INC. and AMAZON.COM.CA ULC, Defendants

BEFORE: E.M. Morgan, J.

COUNSEL: *James Orr, Kyle Taylor, Alexandra Allison, Dylan MacIsaac, and Alexandra Da Dalt*, for the Plaintiff

Nadia Effendi, Laura Wagner, and Graham Splawski, for the Defendants

HEARD: Motion in writing

THIRD PARTY FUNDING APPROVAL MOTION

[1] The Plaintiff moves under section 33.1 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”), for approval of a third-party funding arrangement. The motion has been heard in writing only, since it is unopposed.

[2] This proposed class action seeks redress on behalf of millions of Amazon customers who are alleged to have been harmed by unfair practices committed by the Defendants in marketing and delivering their Amazon Prime subscription service. Considering the size and complexity of the claim being advanced and the resources that will be required to successfully litigate this claim, a substantial amount of document and data management, document analysis, expert reports, and trial preparation will be required to take the matter effectively through trial.

[3] The Plaintiff is unlikely to be able to bear the financial burden of the litigation.

[4] A funding agreement, entered into on May 9, 2025 and amended on November 18, 2025, has been concluded between the Plaintiff, his counsel, and Benchwalk 25d, L.P. and Bench Walk Associates GP LLP, affiliates of the litigation funder Bench Walk Advisors, LLC (collectively, “Bench Walk”), to permit this action to be pursued on behalf of the proposed Class (the “Agreement”).

[5] Section 33.1 of the *CPA* provides:

Third-party funding agreements

(1) In this section,

‘third-party funding agreement’ means an agreement in which a funder who is not a party to a proceeding under this Act agrees to indemnify the representative plaintiff or provide money to pursue the proceeding under this Act, in return for a share of any monetary award or settlement funds or for any other consideration.

Contingent on court approval

(2) A third-party funding agreement is subject to the approval of the court, obtained on a motion of the representative plaintiff made as soon as practicable after the agreement is entered into, with notice to the defendant.

No force or effect unless approved

(3) A third-party funding agreement that is not approved by the court is of no force or effect.

Agreement to be provided to defendant and filed

(4) For the purposes of the motion, the representative plaintiff shall serve on the defendant, or provide in any other way the court orders, a copy of the third-party funding agreement, and shall file the copy with the court.

Permissible redaction

(5) The representative plaintiff may, subject to the regulations, redact from the copy of the third-party funding agreement provided and filed under subsection (4) information that may reasonably be considered to confer a tactical advantage on the defendant, but no other information shall be redacted from the copy.

Agreement to be provided to judge

(6) The representative plaintiff shall provide to the judge who will be presiding at the hearing of the motion a copy of the complete and unredacted third-party funding agreement, which shall not form part of the court file.

Requirement to disclose

(7) The court may order the representative plaintiff to disclose to a defendant any information in the third-party funding agreement that has been redacted in accordance with subsection (5).

Submissions

(8) The defendant is entitled to make submissions at the hearing of the motion.

Factors

- (9) The court shall not approve a third-party funding agreement unless,
- (a) the court is satisfied that,
 - (i) the agreement, including indemnity for costs and amounts payable to the funder under the agreement, is fair and reasonable,
 - (ii) the agreement will not diminish the rights of the representative plaintiff to instruct the solicitor or control the litigation or otherwise impair the solicitor-client relationship,
 - (iii) the funder is financially able to satisfy an adverse costs award in the proceeding, to the extent of the indemnity provided under the agreement, and
 - (iv) any prescribed requirements and other relevant requirements are met; and
 - (b) it is a term of the agreement that the funder shall be subject to,
 - (i) the same confidentiality requirements in respect of confidential or privileged information in the proceeding to which the representative plaintiff would be subject, and
 - (ii) the deemed undertaking rules set out under the rules of court, as if the funder were a party to the proceeding.

Same, independent legal advice

(10) In determining whether a third-party funding agreement meets the requirements of clause (9) (a), the court shall consider whether the representative plaintiff received independent legal advice with respect to the agreement.

Indemnity for costs

(11) If costs are ordered to be paid by the representative plaintiff, the defendant has the right to recover the costs directly from the funder, to the extent of the indemnity provided under an approved third-party funding agreement.

Security for costs

(12) The defendant is entitled, on motion, to obtain from the funder security for costs to the extent of the indemnity provided under an approved third-party funding agreement, if,

- (a) the funder is ordinarily resident outside Ontario;
- (b) the defendant has an order against the funder for costs in the same or another proceeding that remain unpaid in whole or in part; or

(c) there is good reason to believe that the funder has insufficient assets in Ontario to pay the costs.

[6] Bench Walk has been in operation since 2017 and is a leading litigation funding organization. The record shows that it currently has access to capital commitments, including through affiliated investment vehicles, of over USD 100 million. It states that it has committed the capital necessary to fund this litigation, and I have no reason to doubt that it has the ability to do so.

[7] Before entering the Agreement with Bench Walk, the Plaintiff received independent legal advice from Paul Davis, an experienced class actions lawyer with Paliare Roland Rosenberg Rothstein LLP in Toronto. Some months later, the Plaintiff received additional independent legal advice from Mr. Davis before signing the amended version of the Agreement.

[8] Pursuant to the Agreement, Bench Walk will provide disbursement funding and an adverse costs indemnity up to an agreed maximum amount. The amount of funding is based on counsel's best judgment of the amounts required to fund this litigation through trial. If there is a recovery, Bench Walk will receive repayment of any amounts that it has paid out in disbursement funding, plus a percentage of the litigation proceeds after the payment of lawyer fees and administrative costs, capped at specific amounts based on the stage of the proceeding at which the recovery occurs.

[9] As permitted under section 31.1(5) of the *CPA*, parts of the Agreement have been redacted to prevent sensitive and privileged information from being revealed to the Defendants, third parties, or the public at large. An unredacted version has been provided to the Court. A redacted copy of the Agreement has been served on the Defendants.

[10] The Agreement appears to me to provide the Plaintiff with sufficient funding for disbursements and adverse costs to litigate this action properly through trial. At the same time, it does not appear to overcompensate Bench Walk as funder. The percentage return that Bench Walk will receive is within the range of returns in other funding agreements that have been approved in comparable cases. Moreover, the caps on Bench Walk's return are at the low end of the caps that have been approved in comparable cases: see, e.g., *Difederico v. Amazon.Com Inc.*, 2021 FC 31 (cap of USD 100,000,000); *Hoy v. Expedia Group*, 2021 ONSC 284 (cap of 12.5% of recovery with no dollar limit disclosed); *Barron v. Ford Motor Co.*, 2023 ONSC 6458 (cap of 10% of recovery with no dollar maximum); *Drynan v Bausch Health Companies Inc*, 2020 ONSC 4379 (25% of net recovery with no dollar limit).

[11] The terms of the Agreement are also favorable to the class when compared with the Class Proceedings Fund administered by the Law Foundation. The advantages of the Agreement over Law Foundation funding are described by Plaintiff's counsel as follows (citations omitted):

First, on any recovery by the class in the litigation, the Class Proceedings Fund receives a return of 10% of the recovery amount, with no limits placed on the return. The Agreement in this case, on the other hand, provides reasonable caps depending on when the litigation terminates.

Second, unlike the Class Proceedings Fund, where the plaintiff must re-apply for continued funding at various stages of the proceeding, the funding here will continue to be available, without the need for further application post-certification.

Third, the balance of the entire Class Proceedings Fund as of December 31, 2024, which was \$42,478,740 and is required to support all of the matters that the Class Proceedings Fund funds, is smaller than the Funder's capital commitments exceeding USD \$100 million.

[12] In the event that a settlement is reached in the upcoming mediation in the spring of 2026, the Agreement reduces the funder's return in the event of a settlement by a specified date and allows the Court to reduce the return even further. The Agreement therefore falls within the range of percentage returns approved by the courts while offering more competitive caps on the funder's return than funding agreements that have been approved in comparable cases.

[13] Plaintiff's counsel attest to the fact that the Agreement was the product of arms-length negotiations. It appears to have yielded appropriately competitive terms.

[14] As required by section 33.1(9)(a) of the *CPA*, the Agreement will not diminish the rights of the representative Plaintiff to instruct counsel, and it will not impair the lawyer-client relationship between counsel, the Plaintiff, and the class. Further, the Agreement contains safeguards to ensure that the Plaintiff retains the ability to instruct counsel and that counsel retain the ability to act in the Plaintiff's and class's best interest. The Agreement also confirms that the Plaintiff has the right to direct the conduct of the proceedings and to settle the proceedings, subject to notifying Bench Walk of any settlement offers made or received. It also protects solicitor-client privilege and the confidentiality of the Plaintiff's and class' information.

[15] These provisions are virtually identical to those approved by this Court in *Lochan. v. Binance Holdings Limited*, 2023 ONSC 2142, at paras. 10-11. I see no reason not to approve them here as well.

[16] Plaintiff's counsel seeks a further Order that his present counsel be designated as counsel for the proposed class. The Order is to preclude the filing of similar actions in this Court without leave of the Court and notice to Plaintiff's counsel. The request aims to prevent copycat actions, which would duplicate the efforts of all parties and undermine the investment by Plaintiff's counsel and Bench Walk in advancing the action.

[17] Counsel advise that two other actions alleging similar facts have been filed in Canada - *Gauderault v. Amazon.com.ca*, ULC, No. 500-06-001428-255 (Superior Court of Quebec) and *Soni v. Amazon.com.ca*, ULC, S-259170.88 (Supreme Court of British Columbia). Those actions were commenced only after a settlement was announced between Amazon and the U.S. Federal Trade Commission in September 2025. No other known actions have been filed in Ontario.

[18] In two relatively recent proposed class actions concerning approval of a litigation funding agreement similar to this case, the Federal Court and this Court, respectively, have found it appropriate to grant a plaintiff's request for an order barring similar proceedings in this Court without leave of the Court, on notice to counsel for the proposed class: see *Eaton v. Teva Canada Limited*, 2021 FC 968, at paras. 79-80; *Lochan*, supra, at para. 13. The rationale for this type of Order is self-evident given the funding body's commitment, and the Court's need to see that commitment, to invest substantial resources in the action.

[19] In these circumstances, section 13.1(8) of the *CPA* authorizes an order precluding similar actions if (a) "the proceeding would involve the same or similar subject matter and some or all of the same class members as an existing proceeding under this Act"; and (b) "more than 60 days have passed since the existing proceeding was commenced."

[20] More than 60 days have passed since the present action was commenced. Accordingly, the preclusion of similar actions is justifiable in principle and is authorized by the *CPA*. Other actions may be commenced in Ontario that parallel the present action, but only with leave of the Court. In addition, class members will have the usual opportunity to opt out of the present action at the certification stage. The preclusion Order approved here is for the purposes of protecting the class' interest, and is not designed to prejudice or limit the choices of any individual class members.

Disposition

[21] The Agreement and documents related to the third-party funding of this action, as requested in the Notice of Motion, are hereby approved.

[22] Orr Taylor LLP is appointed as counsel for the proposed class. No other proceeding shall be commenced in this Court in respect of the allegations in this proceeding without leave of the Court on notice to Orr Taylor LLP.

Date: February 3, 2026

Morgan J.