

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ewert v. Nippon Yusen Kabushiki Kaisha*,
2026 BCSC 487

Date: 20260210
Docket: S134895
Registry: Vancouver

Between:

Darren Ewert

Plaintiff

And

Nippon Yusen Kabushiki Kaisha; NYK Line (North America) Inc.; NYK Line (Canada), Inc.; Mitsui O.S.K. Lines, Ltd.; Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc.; Kawasaki Kisen Kaisha, Ltd.; “K” Line America, Inc.; EUKOR Car Carriers, Inc.; Wilh. Wilhelmsen Holding ASA; Wilh. Wilhelmsen ASA; Wallenius Wilhelmsen Logistics Americas, LLC; Wallenius Wilhelmsen Logistics AS; Wallenius Lines AB; WWL Vehicle Services Canada Ltd.; Toyofuji Shipping Co., Ltd.; Compania Sud Americana De Vapores S.A.; CSAV Agency North America, LLC; Nissan Motor Car Carrier Co., Ltd.; World Logistics Service (USA) Inc.; Höegh Autoliners AS; Höegh Autoliners, Inc.

Defendants

Before: The Honourable Justice Thomas

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

D.G.A. Jones
M.L. Segal

Counsel for “K” Line and Kawasaki:

J.M. Young
W. Wu

Counsel for Wilh. Wilhelmsen, WWL Vehicle Services, EUKOR, and the Wallenius Defendants:

K. Wright
L. Kelly

Counsel for the Höegh Defendants:

C. Naudie
O. Dixon
D. Williams

Counsel for the NYK Line Defendants:

M. Walli

Place and Date of Trial/Hearing:

Vancouver, B.C.
February 5, 2026

Place and Date of Judgment:

Vancouver, B.C.
February 10, 2026

[1] **THE COURT:** This matter involves applications for approval of a settlement agreement against the Höegh defendants and approval on payment of fees to the plaintiff's solicitors (the "settlement agreement").

Settlement Agreement

[2] The orders sought are set out in Schedule A and essentially consist of approving the settlement and dismissing the actions against the Höegh defendants. The orders sought have been approved in both the Ontario and Quebec courts.

[3] The action was commenced in June of 2013 and relates to a global conspiracy to set prices for the ocean transportation of vehicles on roll-on/roll-off vessels. There are no objections to this settlement. The notice program was approved by the court and has been completed to date.

[4] No distribution of settlement funds will incur until the end of the action. This is consistent with past practice and makes sense given the relatively small amount of funds available to the individual consumers compensated through the pass-through claim and the fact that none of the larger recipients who are much more involved in the claim have expressed a desire for immediate payment.

[5] The court has endorsed 10 factors for consideration in assessing settlements. I agree with the plaintiff's submissions that these are commonly distilled into four broad questions.

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

[6] This is the third settlement. The first settlement with the CSAV defendants was for \$450,000 and was approved on July 22, 2017. The second settlement with the MOL defendants was for seven million dollars and was approved on December 12, 2023. The defendants with the largest amount of commerce remain in the action. It is clear that appropriate investigations have been made. There have been over two million documents that have been individually reviewed in numerous languages.

This matter has been ongoing for nearly 13 years involving multiple court applications.

2. Has collusion or extraneous considerations tainted the negotiations?

[7] This action has been hard fought and intensely litigated. The negotiations were protracted. A mediation before Mr. Cromwell nearly settled the claim, but the plaintiffs went back and settled the matter at a subsequent mediation for additional money. It is clear that the settlement process was adversarial and contested. Even without the initial presumption of fairness, it is clear that this question has been satisfied.

3. Does the settlement reflect an appropriate balance of costs and benefits?

[8] This settlement is for just over two million dollars and also includes a clause for the cooperation of the Höegh defendants in the action, which is of some significance in a price-fixing claim. The total potential overcharge from the Höegh defendants is in the range of \$3,800,000, therefore the settlement represents approximately a 72 per cent recovery on the deemed loss. The alleged conspiracy is in issue, but just as contentious is the period of time that the conspiracy extended, which would have obvious ramifications on the settlement amounts.

[9] The defendants are joint tortfeasors. There is some uncertainty about the effect of the settlement on the remaining defendants and on the action with respect to how the amount of settlement and an apportionment will impact the end result. This uncertainty has led to a standardized procedure to implement these settlements. This procedure has been approved by this court and is an appropriate device to utilize until the issue has been litigated and resolved by this court.

[10] Given the risks of litigation, the specific risks involved in the amount of overcharge, and the circumstances of this case, in my view, it is clear that the settlement reflects an appropriate balance.

4. Are the class members adequately informed?

[11] There has been a coordinated and national dissemination of notice to class members approved by the courts. No concern has been raised. In my view, the class members have been adequately informed.

Disposition

[12] For these reasons, I approve the settlement and grant the order as submitted by counsel.

Approval and Payment of Fees

[13] Counsel seeks approval of fees, disbursements incurred, and payment thereof. The purpose of fee approval is to ensure that the fee charged to the class is fair and reasonable and that counsel are appropriately compensated. The objectives of the *Class Proceeding Act*, judicial economy and access to justice depend in part on counsel's willingness to take on class proceedings. In my view, class actions would not be possible without contingency and percentage-based counsel fees.

[14] I have considered the following 11 factors in assessing the reasonableness of counsel fees:

- (1) Time expended. Counsel have expended over eight million dollars of time on this matter from which they have already received approximately \$1,860,000 in fees from previous settlements by the defendants with small to similar and perhaps slightly greater estimated pass-throughs.
- (2) Legal complexity of the matters. As noted in the settlement approval, the matters are legally, procedurally, and factually complex.
- (3) The degree of responsibility of the solicitor. It is clear that counsel have diligently and thoroughly pursued and litigated the claims. They have also self-funded the claims on behalf of their clients, which, in my view, is a significant factor.
- (4) The monetary value of the claims. Although there is a disagreement about the value of the claims, it is clear, based on the potential timeframes and using a 10 per cent pass-through, that the claims are significant.
- (5) Importance of the matter to the client. The matter is important to the client and also to the administration of justice.
- (6) The degree of skill and competence of counsel. Counsel are clearly skilled and competent given how this matter and numerous other matters that they have been involved in have been prosecuted.

(7) Results achieved. As noted in the settlement approval, the settlement of monetary and strategic benefit to the class given the cooperation owed by the defendants to prosecuting the remaining action.

(8) Ability of the client to pay. No individual could reasonably be expected to fund this action, although some of the larger corporations have acted on their own behalf.

(9) Client's expectation as to the amount of the fee. The retainer agreement sets out a 30 per cent contingency agreement. Counsel has expended far more time and hours than this on the action. The other settlements were for 25 per cent contingency, but counsel has expended significantly more time and effort since the earlier settlements. Thirty per cent of the settlement represents just over \$800,000. Contingency fees from 15 per cent to 33 per cent are commonly approved by this court. Given the amount and nature of the work performed by counsel, in my view this is consistent with past approvals and the client's expectation.

(10) Risks undertaken by counsel. *Competition Act* cases are risky, large, complex, and factual dependent and uncertain. In addition, there is considerable complexity and uncertainty about the quantum that the plaintiff may be entitled to even if price fixing should be established. This case has taken well over a decade to prosecute to this point. In my view, given the risk assessed as it existed when litigation commenced and as litigation continues, counsel have taken on significant risk and expense in pursuing this action.

(11) Position of any objectors. No objections have been made.

Disbursements

[15] The current disbursements amount to just over \$350,000. The largest, noteworthy item refers to the discovery and review of documents. However, the amount charged represents a significant saving over similar processes provided by third party providers. In my view, this illustrates the efficiency and economy of class counsel both in this disbursement and in the manner that they pursued the action. I have reviewed each of the proposed disbursement categories. Given the length and nature of the litigation, the disbursements claimed are very reasonable.

Timing of Payment

[16] Counsel seeks interim payment of fees despite the fact that the payment of the settlement has been postponed. This is a common approach in these types of cases. Payment of fees helps finance and advance the prosecution of the action against non-settling defendants, particularly when the actions are self-funded by counsel. In my view, in these circumstances, payment at this time is appropriate.

Disposition

[17] For these reasons, I approve the fees, disbursements, and payment thereof as set out by counsel in their draft order.

[18] Okay. Does anything arise from those reasons?

[19] CNSL D. JONES: Not from the perspective of the plaintiff, Justice.

[20] THE COURT: Okay. I will take that silence to mean that nothing arises. I will leave it to the parties to sign the draft order. The most recent one was submitted to me but requires some modifications. I will leave it to counsel to ensure that the appropriate order is circulated.

[21] CNSL D. JONES: We will do that. Thank you, Justice.

[22] THE CLERK: Order in chambers. Chambers is adjourned.

“Thomas J.”