

CITATION: Romita v. Intellipharmaeueuties International Inc., 2021 ONSC 6760
COURT FILE NO.: CV-19-00614686-00CP
DATE: 20211012

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: VICTOR ROMITA and CHRISTOPHER PEARCE, Plaintiffs

– and –

INTELLIPHARMACEUTICS INTERNATIONAL INC. and ISA ODIDI,
Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Albert Pelletier*, for the Plaintiffs

David Neave and Rebecca von Rütli, for the Defendants

HEARD: October 12, 2021

SETTLEMENT, HONORARIUM, AND COUNSEL FEE APPROVAL

[1] The parties bring this motion for approval of the settlement they have reached as well as for approval of class counsel’s fees. I have previously granted leave to proceed under the Ontario *Securities Act*, RSO 1990, c. S 5 (“OSA”) and certification under section 5(1) of the *Class Proceedings Act*, SO 1992, c. 6 (“CPA”) for the purposes of this settlement: *Romita v. Intellipharmaeueuties International Inc.*, 2021 ONSC 4557.

[2] The claim alleges that the Defendant’s value and share-price were artificially inflated after February 29, 2016, when the Defendants released the company’s Annual Information Form and Annual MD&A for its fiscal year ended November 30, 2015. The Plaintiff claims that this misrepresentation caused losses to shareholders who had acquired shares on the TSX up to February 29, 2016 and who held some or all of those shares until the close of trading on July 26, 2017.

[3] The settlement amount is a relatively modest \$266,000, which represents roughly (with adjustment for currency conversion) 10% of the settlement of the parallel U.S. class action. Approximately 90% of the investors in the Defendant acquired their shares on NASDAQ while 10% acquired their shares on the TSX.

[4] The settlement amount, less lawyers' fees, disbursements, taxes, and, as discussed below, an honorarium to the representative Plaintiff, will be paid to the Class Action Clinic at the University of Windsor as a *cy-près* distribution instead of being allocated to class members. Class counsel explains that the reason for this is that the costs of administering any Plan of Allocation would in all likelihood exceed the available funds. The representative Plaintiff supports the proposed *cy-près* distribution.

[5] In my view, settlement of the litigation in this way achieves certainty on a timely basis for all parties. I am advised by counsel that the terms of the proposed settlement were achieved after extensive negotiation. Counsel are all well experienced with claims of this nature and were all acting at arm's length. The settlement amount is proportionate to the resolution achieved in the U.S.-based class action. Further, the Windsor Clinic provides research support for class actions, works on law reform initiatives in the field, and serves a valuable educational role for law students. It is a worthy cause and an appropriate recipient of a *cy-près* award.

[6] Class Counsel advise that Notice of the settlement has been distributed to the class in accordance with the certification Order of June 28, 2021. Class Counsel also inform me that the deadline for objection and opt-outs has passed and that they have not received any objections to the proposed settlement agreement, nor have they received any request to opt-out. In all, the settlement appears to me to be fair, reasonable, and in the best interests of class members. Likewise, the proposed short-form second Notice, long-form second Notice, and Plan of Notice to class members to notify them of the settlement agreement and implement its terms are also fair and reasonable.

[7] The settlement also calls for a \$10,000 honorarium to be paid to the representative Plaintiff, Victor Romita. This court has previously indicated that "where a representative plaintiff can demonstrate that he or she has rendered active and necessary assistance in respect of the preparation of a case which aided in the ultimate outcome, it may be appropriate to award compensation to the representative plaintiff in his or her own right": *Seed v Ontario*, 2017 ONSC 3534, at para 18.

[8] The record establishes that Mr. Romita's contribution to the class' effort has been significant and that it meets this test. It is fair and reasonable that he receive an honorarium as proposed.

[9] Class counsel seek approval of their fees in the amount of \$130,000, plus disbursements. The retainer agreement with the representative Plaintiff dated February 9, 2018 allows for a contingency fee of between 28% and 33% of the total value recovered in the settlement. Calculated on an hourly rate, class counsel's fees come to in excess of \$400,000.

[10] My colleague Perell J. indicated in *Lavier v. MyTravel Canada Holidays Inc.*, 2013 ONSC 92 that the Court has an interest in "providing access to justice to those with claims that would otherwise not be brought, and providing an economic incentive to class counsel such that they will continue to take class action cases and do them well." In light of these goals and the modest amount of fees being sought here, class counsel's fee request is fair and reasonable.

[11] The Settlement agreement, the short-form second Notice, the long-form second Notice, and the Plan of Notice, are hereby approved.

[12] The payment of an honorarium in the amount of \$10,000 to Victor Romita is also approved.

[13] In addition, class counsel fees in the amount of \$130,000 and disbursements in the amount of \$16,000, inclusive of all taxes, are approved.

[14] The action is dismissed without costs.



Morgan J.

Date: October 12, 2021