

SUPERIOR COURT OF JUSTICE

5

B E T W E E N :

IRELAND AND FAIRBAIRN

Plaintiffs

v

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VISKASE COMPANIES INC. AND VISKASE CANADA INC.

Defendants

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R U L I N G S

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BEFORE THE HONOURABLE JUSTICE J. MACKINNON
on April 22, 2008, at BARRIE, Ontario

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APPEARANCES:

M. Wright and J. Hurtado

Counsel for Plaintiffs

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S. Maidment and D. McKechnie

Counsel for Defendants

K. Annand

Counsel for the Child

TUESDAY, APRIL 23, 2008

R U L I N G O N A P P R O V A L

5 MACKINNON, J. (Orally):

I'm satisfied that this action is the type of case for which the Class Proceedings Act was designed and that the requirements in 5(1) of the Act are met. I'm satisfied that the settlement, bearing in mind the risk and uncertainty, is fair, reasonable and in the best interest of the class, taking into account litigation risks and likelihood of success, cross border satisfaction of judgement issues and the like.

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15 Court recognizes that where, as here, a settlement is entered into in class action context with the assistance of experienced counsel that the Court should reject the proposed settlement only if it finds that it does not fall within a range of reasonableness and Court recognizes there's no perfect settlement. Here I have experienced counsel on both sides of the issue and the settlement agreement, in my view, bearing in mind all of the factors that I've seen in the initial filings and specifically in this motion today, falls well within the range of reasonable outcome.

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30 So I am satisfied and will endorse the motion record, on consent order to go as signed. I am also content with the terms of the draft order submitted, and I've signed where it's been left for my signature, and I can tell counsel that the original order, in

5 accordance with my usual practice, is also initialled at the bottom right-hand corner of each and every page of each and every exhibit, appendix and additional page of the order prior to my signing the page.

(Comments from plaintiff counsel)

10 Well that way if there's any confusion later on, any page that doesn't have my initialling is not part of the order. Exhibit B of the initial order is an unsigned draft of the order approving class counsel fee. I've endorsed...not endorsed, I've initialled the bottom right-hand corner of that page only to the extent that it's part of the order that I've made, and I notice that there's no figure yet inserted in that amount even though I know the amount being claimed.

15 I've also endorsed the front of the opt-out threshold agreement document...envelope rather, sealed today pursuant to my order not to be opened or disclosed except with written approval of counsel or further court order.

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R U L I N G O N F E E S

MACKINNON, J. (Orally):

30 This is a motion for approval of class counsel fee of \$125,000 including fees and disbursements, an amount which equates to about thirteen percent of the value recovered under the settlement. The matter was

5 initially commenced by statement of claim in February
of 2007. The claim was subsequently amended, and
litigation was contested. Ultimately a settlement
was brought on before me for Court approval and that
was granted today. In granting the approval I
commented that this was a case entirely appropriate
to be brought under the Class Proceedings Act. Class
counsel brought the action without involving the
10 Ontario Fund and accordingly there was a risk that
they undertook that the Court would not certify the
action or would dismiss the action based on a
preliminary motion. There were also risks that the
Court would not ultimately agree that the aggregate
damage assessment was appropriate.

15 The result obtained in the circumstances was in the
best interest of the class. In coming to that
result, plaintiffs' counsel have done significant
work and there's significant future work to be done,
20 including the work today of course; maintaining the
website ongoing, responding to questions from class
members and estate of class members, seeking
direction for representative plaintiffs about
distribution of funds and monitoring the process
25 ongoing, including the redirecting of any mail and
uncashed cheques. All of the fees and disbursements
for all of that work is included in the costs figure
that's put before me today, such that there would be
no further charges to any of the class members for
30 any of the work inherent in this settlement.

5 The representative plaintiffs initially signed
retainers calling for a twenty percent contingency
fee. The effective percent result here is about
thirteen. In considering the appropriateness of the
amount claimed, Courts consider the degree of risk
and the responsibility assumed by counsel, the result
obtained, the legal complexity of the matters, the
importance of the matters to all members of the
plaintiff class, the degree of skill and competence
10 demonstrated by the experienced solicitors for the
plaintiff class, and the ability of the defendant to
pay. The results obtained and the degree of success
are considered by the Court. The Court should and
does give weight in assessing the value of the amount
15 claimed to the ease with which the benefits are
available through the settlement.

20 The Courts consider the legal complexity, the paucity
of Canadian Case Law on the matters in issue, the
value of the matters an issue. I've already referred
to the plaintiffs' fee expectations and the
plaintiffs' counsel's skill and experience. It's my
view, especially when comforted by statements from
25 plaintiffs' class counsel that the future work is
included, that's it's eminently reasonable in light
of the risks at the outset of the litigation and the
work that will continue ongoing that the fee of
\$125,000 inclusive of fee disbursement and GST is
30 appropriate.

So I'm signing the draft order that you passed up,
and I've inserted the figure \$125,000, and I've

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endorsed the motion record on that motion, counsel.
Mr. Wright and Mr. Hurtado, the plaintiff Mr.
Maidment...Mr. McKechnie rather for the defence order
to go as signed. Anything else from the plaintiff's
point of view?

(Comments from plaintiff counsel)

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Mr. Maidment and Mr. McKechnie, you have attended as
defendants' counsel where a settlement is reached and
the Court makes comments about the effectiveness of
plaintiffs' counsel - both in considering the
proposed settlement and also in considering costs.
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I'm sure in those circumstances it's not always music
to the ears of defence counsel to hear good things
about plaintiffs' counsel. I can tell you, in the
presence of counsel opposite and the representative
plaintiffs that it was clear to me during the
conferences that we had by telephone - I guess there
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were no telephone motions but there were telephone
case management conversations on both sides of this
issue there were effective and experienced counsel.
That effective experience brought focus to the
discussion, and I'm sure that without that focus the
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five of us and the five people in the public gallery
today wouldn't be here on a court settlement. So
congratulations and I think this is one of the cases
where, as I said before, the Class Proceedings Act
worked. It's for the benefit of all concerned both
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on the plaintiffs' side and on the defendants' side
to deal with it in a class proceedings context.
Congratulations.

FORM 2

Certificate of Transcript
Evidence Act, subsection 5 (2)

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I, Diane Robertson, certify that
(Please print name of authorized person(s))

this document is a true and accurate transcript of the recording of _____

Ireland & Fairbairn v
Viskase Companies Inc. &
Viskase Canada Inc. in the **Superior Court of Justice**
(Case name) *(Name of Court)*

held at Barrie, Ontario on April 22, 2008 taken from Recording No.
(Court address)

3811-004-096-2008 which have been certified in Form 1.

May 8, 2008
(Date)


(Signature of authorized person)