

ROBERT TOEVS and YORKTON SECURITIES INC. et al. PHILIP A. DELEON et al. Court File No: 02-CV-231809 CP

Plaintiff Defendants Third Parties

ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at Toronto

PLAINTIFF'S MOTION RECORD

KOSKIE MINSKY LLP 20 Queen Street West, Suite 900, Box 52 Toronto, Ontario M5H 3R3

Kirk M. Baert LSUC #309420 Tel: (416) 595-2117 Fax: (416) 977-3316

SUTTS, STROSBERG LLP Barristers & Solicitors 600 Westcourt Place 251 Goyeau Street Windsor ON N9A 6V4

Harvey T. Strosberg LSUC #126400 Tel: (519) 561-6228 Fax: (519) 561-6203

Solicitors for the Plaintiff

This is a motion for certification of a class proceeding, approval of a settlement and approval of class counsel et al. There are no objectors and all interests are in consent. Namtel class counsel approval is required on all motions.

Jan 10, 2006. The proceeding is brought on behalf of all retail clients of Yorkton Securities in respect of losses incurred by them relating to transactions on the secondary market of a security. Both 4 July. The total amount of the losses is calculated to be \$10,643,000 on the entire class. The amount of the settlement is \$1.75m net of class counsel fees and administration costs, all borne by the defendants. This recovery by class members is 16.44% of their losses. There is, in the settlement agreement, a cash friendly procedure for claims processing and payment by Yorkton to our intent of proposed payment made by Yorkton to our class members. By this is accepted that under the administration of the settlement process to Deloitte & Touche the reasons of cost if the claim is rejected must state the reasons. Should the class member wish to pursue the matter the way may do so by referring it to Mr. Carlson of the court appointed referee, with a written good faith payment. The decision of the referee will be final and binding, subject to the entire provisions of the Act. The settlement is supported by a letter of credit. The case is one which is certifiable under s 5 of the Act. - in that it meets all of the elements of the Act. (over)

Accordingly, an order will go certifying the proceeding.

As for the settlement, it is fair and reasonable in all of the circumstances and in the best interests of the class as a whole. It was negotiated in tough negotiations over a lengthy period, involving mediation. There were 6 firms of counsel all highly experienced action for the plaintiff class. The defendants were admissions and confirmed in the strength of their defenses, both to the certification and on the merits. The criteria as set out in Parson are met. The settlement is approved.

The class counsel fee of \$650,000 all in reflects a multiplier of less than 1. based on docketed time spent. The retainer agreement provided for a 25% fee. When one totals the amount of recovery & fee, the fee is about 25%. The fee is in line with the expectations of the parties. Taking into account the risk, success and other factors the fee is reasonable and is approved.

Judgment shall issue.

W. J.

**TOEVS v. YORKTON, et al. v. DELEON, et al.**  
**COURT FILE NO. 02-CV-231809CP**

ENDORSEMENT OF WINKLER J. OF JANUARY 10, 2006

This is a motion for certification of a class proceeding approval of a settlement and approval of class counsel fee. There are no objectors and all motions are on consent. Nevertheless court approval is required on all motions.

The proceeding is brought on behalf of all retail clients of Yorkton Securities in respect of losses incurred by them relating to transactions on the secondary market of a Security Book4Golf. The total amount of the loss is calculated to be \$10,643,000 for the entire class. The amount of the settlement is \$1.75 or net of class counsel fees and administrative costs, all even by the defendants. Thus recovery by class members is 16.44% of their losses. There is, in the settlement agreement, a user friendly procedure for claims processing and payment beginning with a statement of proposed payment initiated by Yorkton to all class members. If this is accepted that ends the matter. If contested the matter goes to Deloitte & Touche, the administrator who if the claim is rejected must state the reasons. Should the class member wish to pursue the matter further, they may do so by referring it to Mr. Caplan, the court appointed referee, with a modest good faith payment, repayable with any degree of success. The decision of the referee is final and binding, although the entire process is subject to the continuing jurisdiction of this court. The settlement is supported by a letter of credit.

The case is one which is certifiable under section 5 of the *Class Proceedings Act* in that it meets all of the elements of the Act.

Accordingly, an order will go certifying the proceeding.

As for the settlement, it is fair and reasonable in all of the circumstances and in the best interests of the class as a whole. It was negotiated in tough negotiations over a lengthy period, including mediation. There were 4 firms of counsel all highly experienced acting for the plaintiff class. The defendants were adversarial and confirmed in the strength of their defences, both to the certification and on the merits. The criteria as set out in Parson are met. The settlement is approved.

The class counsel fee of \$650,000 all in reflects a multiplier of less than 1 based on docketed time spent. The retainer agreement provided for a 25% fee. When one takes the amount of recovery and fee, the fee is about 25%. The fee is in line with the expectations of the parties. Taking into account the risk, success and other factors the fee is reasonable and is approved.

Judgment shall issue.

Winkler J.