ONSC decision in Kwong v iAnthus Capital Holdings Inc.

March 14, 2024

In *Kwong v iAnthus Capital Holdings Inc.*, the Ontario Superior Court issued an important reminder that in class proceedings, a settlement will only be approved where the parties can demonstrate that the settlement is fair, reasonable, and in the best interests of the class.

Background

The plaintiff, on behalf of the class of shareholders, claimed against the corporate defendant, iAnthus Capital Holdings Inc., alleging that iAnthus had omitted material facts in their disclosed statements to shareholders. When such facts were eventually disclosed, the value of iAnthus' common shares plummeted and never recovered.

In May 2020, a class proceeding was filed against iAnthus and others in the United States. In July 2020, and in September 2020, two putative class proceedings were commenced in Canada for the same underlying issue as the U.S. proceeding. In 2021, the Canadian proceedings were consolidated but, as a secondary market misrepresentation matter, leave to proceed was required and the motion for leave was scheduled for February 2022. Between consolidation and the motion for leave, the parties to the Canadian proceeding advised the Court that a settlement had been reached, subject to Court approval. In November 2023, the Ontario Superior Court certified a class action on consent of the parties, and a motion to approve settlement was scheduled for 2024.

The decision: The Ontario Superior Court does not approve class settlement

The proposed settlement terms called for the defendant to pay C$500,000.00 in exchange for a class release. This settlement amount reflected all that remained under the defendant's insurance policy following its settlement of the U.S. proceeding for U$2.9 million (approximately C$3.9 million). The amount was subject to deductions for legal fees, administration fees, a representative plaintiff honorarium, and disbursements that left approximately $196,000 for class distribution.

The Court acknowledged the strong presumption of fairness in a proposed settlement that was negotiated at arms-length by experienced counsel, and that a proposed settlement need not be a perfect solution, only a solution within the range of reasonable outcomes. However, and despite these presumptions, the Court did not approve the settlement based on a troubling lack of evidence in the record.

Specifically, the Court identified the plaintiff's failure to obtain an expert opinion, and the parties' decision not to proceed with discoveries, as acts which produced an evidentiary record that was deficient in:

1. explaining the plaintiff's evaluation of the claim;
2. demonstrating the likely recovery amount per shareholder;
3. illuminating the settlement negotiation between parties; and
4. justifying a significantly inferior settlement as compared to the U.S. settlement despite evidence that Canadian trading volume was 1.5 times that of the U.S. during the relevant time.

Key takeaways

This decision provides a timely reminder of the importance of a sufficient evidentiary record in any class settlement. This is pertinent for all parties who are considering resolution of a class proceeding, particularly at an early stage. A court's job is not to rubber-stamp a settlement simply because it was reached through an arms-length negotiation by experienced class counsel. The onus rests with the plaintiff to prove that a settlement is fair, reasonable, and in the best interests of the class, and a court will require a sufficient evidentiary record to make its assessment of that criteria. While litigation cost is an important factor for parties to consider in any proceeding, any decision to forgo steps in a proceeding that would otherwise bolster an evidentiary record may impact the viability of a proposed settlement.

If you have any questions about class proceedings, BLG's team of experienced litigators in this space, identified as key contacts below, would be happy to hear from you.

By

Robert Stefanelli, Glenn Zakaib

Expertise

Disputes, Insurance Claim Defence

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.