

CANADA / JUDGMENT

Ewert v. Denso Corp.

2017 BCSC 2412

COURT

Supreme Court of British Columbia

DECIDED

7 December 2017

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2017 BCSC 2412 Ewert v. Denso Corp. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ewert v. Denso Corp., 2017 BCSC 2412 Date: 20171207 Docket: S132353 Registry: Vancouver Between: Darren Ewert Plaintiff And Denso Corp.; Denso International America, Inc.; Techma Corporation; Denso Manufacturing Canada, Inc.; Denso Sales Canada, Inc.; Fujikura Ltd.; Fujikura America, Inc.; Furukawa Electric Co., Ltd.; American Furukawa, Inc.; Lear Corp.; Kyungshin-Lear Sales and Engineering, LLC; Leoni AG; Leoni Wiring Systems, Inc.; Leonische Holding, Inc.; Leoni Kabel GmbH; Leoni Wire Inc.; Leoni Elocab Ltd.; Sumitomo Electric Industries, Ltd.; Sumitomo Wiring Systems, Ltd.; Sumitomo Electric Wiring Systems, Inc.; K&S Wiring Systems, Inc.; Sumitomo Wiring Systems (U.S.A.) Inc.; Sumitomo Electric Wintec American, Inc.; S-Y Systems Technologies Europe GmbH; Yazaki Corporation; Yazaki North America, Inc.; G.S Electech, Inc.; G.S. Wiring Systems Inc.; G.S.W. Manufacturing, Inc. Defendants Brought Under the Class Proceedings Act, R.S.B.C. 1996, c. 50 Before: The Honourable Madam Justice Griffin Oral Ruling No. 1 AWHs: Settlement Approval re S-Y Systems In Chambers Counsel for Plaintiff: Sharon D. Matthews, QC Michelle L. Segal Kathryn Duke Counsel for Defendants S-Y Systems: Katherine L. Kay Counsel for Defendants Leoni AG, Leoni Wiring Systems, Inc., Leonische Holding, Inc., Leoni Kabel GmbH, Leoni Wire Inc., Leoni Elocab Ltd.: James Gotowiec (Appearing via telephone) Counsel for Defendants Sumitomo Electric Industries, Ltd., Sumitomo Wiring Systems, Ltd., Sumitomo Electric Wiring Systems, Inc., K&S Wiring Systems, Inc., Sumitomo Wiring Systems (U.S.A.) Inc., Sumitomo Electric Wintec American, Inc.: A. Neil Campbell (Appearing via telephone) Counsel for Defendants Furukawa Electric Co., Ltd., American Furukawa, Inc.: Kevin Wright Todd M. Shikaze Counsel for Denso Corp., Denso International America Inc., Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc.: Sandra A. Forbes (Appearing via telephone) Place and Date of Hearing: Vancouver, B.C. December 7, 2017 Place and Date of Judgment: Vancouver, B.C. December 7, 2017

- [1] THE COURT: In giving these reasons for judgment I have relied, to a considerable degree, on the thorough submissions of plaintiff's counsel as well as the plaintiff's notice of application and affidavit materials. Approval of Settlement with S-Y Systems: AWHs Action No. S132353
- [2] The first application before me is in Action No. S132353, which is described as the "automotive wire harness systems" action ("AWHS").

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- [3] This is an application for approval of a settlement agreement entered into with a defendant known as Yazaki Systems Technologies GmbH, formerly S-Y Systems, and referred to as S-Y Systems.
- [4] All the plaintiffs in the British Columbia, Ontario and Quebec parallel AWHs cases that are represented by class counsel are parties to the settlement agreement. It is national in scope and subject to court approval here and in Ontario and Quebec.
- [5] Settlements have already been achieved and approved by the courts in BC, Ontario and Quebec in the AWHs actions which total approximately \$25.5 million. I pause to say settlements have been cascading in the sense that they have been negotiated and reached with different groups of defendants at different times in the proceeding. S-Y Systems is the last defendant in the AWHs proceeding.
- [6] The first settlement in the proceeding gave class members an opportunity to opt out of the action and notice advised that no further right to opt out would be provided. Two Japanese car manufacturers, namely Toyota and Honda, and one North American car manufacturer, namely Ford, opted out.
- [7] There have been criminal proceedings in the United States in relation to auto parts price fixing. Those proceedings, as well as proceedings in Japan, have been the inspiration for the class actions. To some extent they have also provided a source of information to the class counsel in prosecuting the auto parts class actions.
- [8] In this regard I will back up to say that there are 17 auto parts class actions filed in British Columbia which overlap with 41 auto parts class actions filed in Ontario. Class counsel are prosecuting these various class actions, and so far over \$39 million has been recovered for the benefit of the various settlement class members in the various auto parts cases.
- [9] With that background we come to the present application for approval of the last settlement in the AWHs proceeding.
- [10] The proposed settlement will involve S-Y Systems paying \$50,000 in trust for the benefit of the settlement class members. Class counsel believes this amount is reasonable and justified based on a number of factors, including:
1. S-Y Systems is not a party that has pleaded guilty to price fixing in Canada or the United States.
 2. S-Y Systems' counsel has provided evidence to persuade plaintiffs' counsel that S-Y Systems did not sell product to any relevant automobile manufacturers identified in the plaintiff's contested certification motion record in the Ontario AWHs action. It appears that S-Y Systems had some European sales to Renault, but it also appears that its parts did not make it into Renault vehicles sold in Canada during the relevant time period.

3. As the last defendant, S-Y Systems has been subject to disclosure by the other defendants in the AWHs action. The other settlements have typically involved the settling defendants assisting the plaintiffs with prosecuting the remaining claims. None of the other settling defendants have identified S-Y Systems as a participant in the conspiracy.

4. S-Y Systems is the last remaining defendant in this proceeding.

[11] Notice of this settlement was approved following a hearing on September 21, 2017 and notice has been disseminated to class members. No objection has been received. The representative plaintiff has consented to the settlement and instructed class counsel to seek approval of the settlement. Class counsel, who have considerable experience in prosecuting these claims, recommends approval of the settlement.

[12] The test for approval of a settlement of the class proceeding is by now well-known. The court must find that it is fair, reasonable and in the best interests of the class.

[13] A number of factors were identified by Mr. Justice Groberman, as he then was, in *Jeffery v. Nortel Networks*, 2007 BCSC 69, as being important considerations in improving a class proceeding settlement as follows, at para. 18:

1. Likelihood of recovery or likelihood of success;
2. Amount and nature of discovery, evidence or investigation;
3. Settlement terms and conditions;
4. Recommendations and experience of counsel;
5. Future expense and likely duration of litigation;
6. Recommendations of neutral parties, if any;
7. Number of objectors and nature of objections; and
8. The presence of arms-length bargaining and the absence of collusion.

[14] In the present case all of these factors weigh in favour of the proposed settlement. The settlement was negotiated at arm's-length by experienced counsel. While the settlement agreement does result in only modest benefits to the settlement class members this is a reflection of the risks. There are practical concerns that weigh in favour of settlement, including the risks of non-recovery, the delay in taking the case to trial, and the financial uncertainties in the automotive industry which could make enforcement of any judgment difficult.

[15] Considering all of these factors, I find that the proposed settlement is fair, reasonable and in the best interests of the class and I therefore grant my approval of the order as sought.

[16] I also find that it is fair and reasonable for the settlement funds to be distributed in accordance with an already approved distribution protocol which this court previously found was reasonable, fair and adequate.

[17] That concludes my ruling on the first application. "The Honourable Madam Justice Griffin"

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