

July 30, 2021

LBP Holdings Ltd v. Allied Nevada Gold Corp et al

CV-14-50851300-CP

- *Mr. Pelletier* for the plaintiff
- *Ms. Jackson, Ms. Voudouris, Mr. Fabello and Ms. Dingle* for the defendants.

***Motions for the approval of class action settlement, class counsel legal fees and requested honorarium.*** Primary market securities class action has settled for US \$4.375 million or about Can \$5.5 million. No objections from any class members. The criteria for approval are satisfied and the motions are granted. Because the judicial analysis is straightforward, it can be set out succinctly in this brief Endorsement.

- 1. Settlement approval.** I am satisfied on the material before me that the proposed settlement is fair and reasonable and in the best interests of the class. I am also satisfied that the settlement falls within the required zone of reasonableness. On any of the relevant measures [(i) comparison with US settlement; (ii) the damages analysis of plaintiff's experts PWC and McCann; or (iii) the damages analysis of defendants' expert NERA] the settlement achieved herein is better than or well within reasonable bounds.
- 2. Legal fee approval.** The contingency fee agreement provides for a 30 per cent recovery. As discussed in *Cannon*,<sup>1</sup> and further refined in *Brown*,<sup>2</sup> the contingency amount is presumptively valid on the facts herein. I also note that the requested legal fee of C\$1.65M is less than the C\$2.3M that was actually docketed by class counsel over the seven years of litigation. Class counsel's legal fees and disbursements (minus the \$67,691 "staff lawyers" item, as discussed<sup>3</sup>) are approved.
- 3. Honorarium approval.** Representative plaintiffs do not receive additional compensation for simply doing their job as class representatives. It is only where the representative plaintiff can demonstrate a level of involvement and effort that goes beyond what is normally expected and is truly extraordinary or where there is evidence of some level of personal or financial sacrifice that the payment of a significant honorarium is justified.<sup>4</sup> Here, in addition what was normally expected, the Rep P contributed his advanced understanding of the securities market issues,

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<sup>1</sup> *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686.

<sup>2</sup> *Brown v. Canada (Attorney General)*, 2018 ONSC 3429.

<sup>3</sup> The cost of hiring additional "staff" lawyers to review document productions is covered by the contingency fee agreement as "legal fees" and is not a proper "disbursement".

<sup>4</sup> *Aps v. Flight Centre Travel Group*, 2020 ONSC 6779, at para. 43.

sustained a high level of involvement over the seven years of litigation and travelled three times from his home in Nova Scotia to Toronto for cross-examinations and meetings with counsel. An honorarium of \$7000 is reasonable.

4. Orders to go accordingly, approving as well the related notices and administrative appointments requested by class counsel.

**Signed:** *Justice Edward Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective and binding from the date it is made and is enforceable without any need for entry and filing. Any party to this Judgment [Order] may submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.