

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000022-968

DATE : September 11, 2001

PRESENT : THE HONOURABLE JUSTICE RICHARD MONGEAU, S.C.J.

BRIAN MCNEIL

Petitioner

v.

LONDON LIFE

Respondent

JUDGEMENT

[1] The Court is seized with a Motion for Authorization to institute a Class Action for the purposes of approving a transaction and be named representative (the "Motion").

PROCEEDINGS

[2] The Petitioner, Brian McNeil, presented a Motion for Authorization to institute a Class action against the Respondent on December 13, 1996, which was amended on August 17, 2000. This Motion was postponed *sine die* (struck) and thereafter replaced by the Amended Motion dated June 18, 2001.

[3] Similar proceedings have been undertaken against the Respondent in Ontario on May 23, 1997 by Directright Cartage Ltd., as well as in British Columbia on May 9, 1997 by John D. B. Walcott and Ina May Lang.

500-06-000120-002

[4] The attorneys representing the parties in the present matter have, jointly with the attorneys representing the parties in the similar instances in Ontario and British Columbia, held negotiations for over two years in order to arrive at an agreement to settle the three class actions out of Court.

[5] On June 29, 2001, the parties signed an Agreement of settlement (exhibit R-1).

[6] On July 18, 2001, the undersigned authorized the publication of the notices to the members provided by ss. 1025 C.C.P. and set the Motion's hearing date for September 7, 2001.

[7] The notices to the members were published according to this Court's July 18, 2001 order and filed into the Court record *en liasse* by the Petitioner (exhibit R-2).

DISCUSSION

[8] The Court believe that a class action is the appropriate procedural method in this matter.

[9] Our colleague, Justice Tingley, in a July 10, 1998¹ decision approving a transaction in a class action, restates the applicable principles in these circumstances as stated by Justice Halperin², said principles to be used as a guide by the Court in approving the Agreement :

[Translation]

"The parties' attorneys submitted to the Court a very recent decision from Justice Sharpe for the Ontario Court in the matter of *Dabbs v. Sun Life*³ in which he lists the criteria, adapted from those developed in American law, that must guide the Court in this appreciation of this subject matter. The Quebec and Ontario class action procedures are very similar and were both inspired from American legislation. Our Court of appeal has already recognised this relationship in its decision in the matter of *Comité d'environnement de la Baie*⁴ penned by Justice Rothman.

The Court does not hesitate to adopt those same criteria in the case at bar, formulated as follows by Justice Sharpe in the case cited :

1. Likelihood of recovery, or likelihood of success;
2. Amount and nature of discovery evidence;

¹ *Doyer v. Dow Corning Corporation and al.*, S.C.M. 500-06-000013-934, 98-07-10, Tingley, J.

² *Pelletier and Lamontagne v. Baxter Healthcare Inc.*, S.C.M. 500-06-000005-955, 98-04-16, Halperin, J..

³ 96-CT-022862, 1998-02-05, j. Sharpe. (Ontario Court, General Division).

⁴ *Comité d'environnement de La Baie Inc. v. Société d'électrolyse et de Chimie Alcan Ltée*, [1990] R.J.Q. 655, 682

3. Settlement terms and conditions;
4. Recommendation and experience of counsel;
5. Future expense and likely duration of litigation;
6. Recommendation of neutral parties if any;
7. Number of objectors and nature of objections;
8. The presence of good faith and the absence of collusion.”

[10] The parties’ attorneys have demonstrated to the Court’s satisfaction, by their representations, that the Agreement R-1 is reasonable, equitable, appropriate, and in the best interests of the class members. The Petitioner is himself a policyholder of a class policy as defined in the Agreement and approves the Agreement R-1. He maintains that it is equitable. The Petitioner possesses the required qualities to represent the group affected by the class action.

[11] Petitioner’s counsel was assisted throughout the negotiations by an actuary and life insurance experts. They have produced an affidavit signed by Mr. David Huff, actuary, who confirms that the Agreement is equitable and compares favourably in its structure and its benefits to other agreements concluded in Canada and the United States in the context of similar class actions instituted against other life insurance companies.

[12] Generally speaking, the Agreement provides two levels of indemnities, that is to say “Global Benefits”, which are made up of a one year enhancement in the policyholder’s dividend as well as a price reduction in the cost of the term insurance component of the Econolife protection for a period of five years, as well as an “Enhanced Benefits” which are awarded to current eligible policyholders for whom Premium Offset was an important factor in their decision to purchase the class policy. These class members will benefit from an increase in the policyholder’s dividend for two additional years as well as a permanent London Life’s 2001 dividend scale, the premium offset date will not exceed 150% of the initial premium offset date.

[13] The settlement Agreement also contains provisions for the examination of individual claims whose results can entitle certain class members to additional benefits. Furthermore, the Agreement foresees an appeal process for decisions made under the individual claims review process.

[14] The Agreement also contains provisions for benefits for former owner of lapsed or surrendered policies. They can either purchase a new policy with a 50% reduction of the first annual premium or participate in the individual claim review process which,

500-06-000120-002

under certain circumstances may permit them to reinstate their lapsed or surrendered policy without proof of insurability.

[15] The Court is presented with a “Statement of Objections” dated August 23, 2001 and a letter and its schedules addressed to it on September 4, 2001 by Mr. Herb Chafey, domiciled in Orillia, Ontario. He was not present at the hearing to make additional representations than those submitted in writing. The Court examined and considered the documents submitted by Mr. Chafey.

[16] The Court also examined a letter dated September 4, 2001 that was sent to the attorneys involved in this matter by Mtre. Michael S. Deverett, an attorney representing certain people from Ontario who object to the approval of this settlement by their province’s Superior Court. The objections raised by Mtre. Deverett are of the same nature as those raised by Mr. Chafey.

[17] The Court believes it necessary to underline that the inclusion of Mr. Chafey in the Quebec Group is not evident and his status could be put into doubt. However, the Court is not deciding this issue because of Mr. Chafey’s absence from the hearing.

[18] The Court has also examined a decision approving the settlement, handed down recently, on September 5, 2001, by Chief Justice Brenner of the Supreme Court of British Columbia.

[19] Chief Justice Brenner was confronted by the same objections as those raised before this Court.

[20] The Petitioner’s attorneys and the Respondent’s attorneys responded to Mr. Chafey’s objections and comments. The Court is satisfied by the responses made and does not see any reason to not ratify this Agreement.

[21] The Agreement foresees that those who do not wish to accept it have the possibility to exclude themselves from the Group and commence or pursue an individual recourse. This opportunity gives Mr. Chafey another possibility to consider.

[22] Furthermore, the Agreement stipulates that a notice of its approval will be sent by mail to all current policy owners. This notice will be sent at London Life’s expense to the last known address of these class members included in the class action. The Respondent will publish a notice to the former owners once in each of the twenty-eight (28) Canadian dailies identified in Schedule H of the Agreement. As a result, the class members will then be duly advised of the Agreement’s approval, their rights stemming from the Agreement and the procedure for opting out of the class action.

500-06-000120-002

[23] At the appropriate time and place, the Court will have to approve the content and the mailing of these notices.

FOR THESE REASONS, THE COURT :

MAINTAINS the Petitioner's Motion;

AUTHORISES the class action in the present file;

DESCRIBES the group whose members will be bound by this judgement as follows :

“Quebec Class” means all Class Members who reside in Quebec on the Court Approval Date, or who purchased Class Policies in Quebec and reside outside Ontario or British Columbia on the Court approval Date;

“Class Member” means any Owner or Former Owner of a Class Policy, provided that a Class member who exercises the right to opt out of the Agreement as provided in either Article 5.1 or 5.2 ceases to be a Class member;

“Class Policy” means any participating life insurance policy other than the Equity Series as set out in Appendix B of the Agreement, which was issued by London Life in Canada between January 1, 1980 and December 31, 1995 and any Econolife Policy, which is in force as of the Court Approval Date (a “Current Class Policy”) or which has become a Lapsed or Surrendered Policy between January 1, 1992 and the Court Approval Date (a “Lapsed or Surrendered Class Policy”), but does not include those policies in respect of which Owners or Former Owners have released London Life from claims relating to Premium Offset or to any Acquisition of those policies, or those Owners or Former Owners who opt out of the Agreement as provided in either Article 5.1 or 5.2. For greater certainty, policies issued by The Prudential Insurance Company of America in Canada and assumed by London Life in 1996 are not Class Policies;

“Court Approval Date” means the latest of the dates on which the orders/judgements of the Supreme Court of British Columbia, the Ontario Superior Court of Justice, and the Quebec Superior Court approving the Agreement and any order(s) / judgement(s) contemplated by Article 8.2 have become final. For purposes of this Agreement, an order / judgement becomes final when the time

500-06-000120-002

for appealing or seeking leave to appeal the order has expired without an appeal being taken or leave to appeal being sought or, in the event an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals that may be taken have been disposed of and the time for further appeal, if any, has expired.

ATTRIBUTES the status of representative to Brian McNeil;

IDENTIFIES the principal question of fact and law to be determined collectively as follows :

Did the use of illustrations and/or any verbal or written representations create an obligation on the part of London Life Insurance Company with respect to a specified offset date, the policy value or the specified income benefits, despite the terms of the policy itself and the terms of any illustration ?

APPROVES the Agreement signed between the parties on June 29, 2001 (exhibit R01) in settlement of the present class action and **ORDERS** the parties and the members bound by the settlement to comply with it;

DECLARES that the aforesaid Agreement constitutes a transaction as per ss. 2631 of the Quebec Civil Code binding all the parties and all the members bound by the settlement;

DETERMINES that the exclusion period is the one defined in article 5 of the Agreement and **DECLARES** that after expiration of the exclusion period, a member cannot exclude himself from the group and will be bound by the Agreement and the approval judgement in conformity with article 11 of the Agreement;

DECLARES that the Agreement signed by the parties is just, reasonable, equitable, appropriate, and in the best interests of the class members;

RESERVES the parties' rights to present any other motion necessary to the implementation of the present transaction;

500-06-000120-002

Draft Translation

PAGE : 7

THE WHOLE without costs.

(SGD) Richard Mongeau

RICHARD MONGEAU, J.C.S.

Mtre. Yves Lauzon and Mtre. Gilles Gareau

LAUZON, BÉLANGER

Attorneys for Petitioner

Mtre. Louis Lacoursière and Mtre. Julie Chenette

MCCARTHY TÉTRAULT LLP

Attorneys for Respondent

Hearing date : September 7, 2001