

A Prompt Response And Fair Compensation Package Help To Defeat Class Action Certification

November 16, 2018

On October 16, 2018, the Ontario Superior Court of Justice released a decision in [Richardson v. Samsung](#), denying certification of a proposed national class action.

The case is about cell phones that were alleged to overheat, creating a risk of fire or explosion. The manufacturer and Health Canada issued a recall of the phones. In her decision, Justice Rady, wrote "this being a product liability case, one might think it is ideal for certification (para. 2)" but found that some prerequisites to certification were not met in the case.

The plaintiff's complaint was that the manufacturer's compensation package following its recall of the devices was inadequate, because it did not properly reimburse consumers for their losses. The Court disagreed.

While the Court questioned whether the action met several of the requirements for certification, Rady J.'s comments in the preferable procedure analysis are most noteworthy.

The Court found that manufacturer's compensation program was indeed the preferable procedure for addressing any damages incurred by the proposed class. Further, it found that the existence of the compensation program directly addressed the concerns of access to justice and behaviour modification (considered principal advantages of class actions). It also found that Samsung's prompt response to the issues with its product was behaviour that ought to be encouraged as it "demonstrate(d) the response of a responsible corporate citizen (para. 74)."

Due to the compensation program, which meant that the proposed class had already been reimbursed, the Court found that access to justice was not an issue.

A key takeaway from this case is that a prompt and fair response which compensates consumers following an identified fault or issue with a product may be an important factor in defeating a proposed class action in the future.

By

[Naveen Hassan](#)

Expertise

[Class Actions](#), [Insurance Claim Defence](#), [Disputes](#)

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 725 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.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.