

CITATION: Mancinelli v. Royal Bank of Canada, 2017 ONSC 5503

COURT FILE NO.: CV-15-536174

DATE: 20170918

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOSEPH S. MANCINELLI, CARMEN
PRINCIPATO, DOUGLAS SERROUL,
LUIGI CARROZZI, MANUEL BASTOS and
JACK OLIVEIRA in their capacity as THE
TRUSTEES OF THE LABOURERS'
PENSION FUND OF CENTRAL AND
EASTERN CANADA, and CHRISTOPHER
STAINES

Plaintiffs

– and –

ROYAL BANK OF CANADA, RBC
CAPITAL MARKETS LLC, BANK OF
AMERICA CORPORATION, BANK OF
AMERICA, N.A., BANK OF AMERICA
CANADA, BANK OF AMERICA
NATIONAL ASSOCIATION, THE BANK
OF TOKYO MITSUBISHI UFJ LTD.,
BANK OF TOKYO-MITSUBISHI UFJ
(CANADA), BARCLAYS BANK PLC,
BARCLAYS CAPITAL INC., BARCLAYS
CAPITAL CANADA INC., BNP PARIBAS
GROUP, BNP PARIBAS NORTH
AMERICA INC., BNP PARIBAS
(CANADA), BNP PARIBAS, CITIGROUP,
INC., CITIBANK, N.A., CITIBANK
CANADA, CITIGROUP GLOBAL
MARKETS CANADA INC., CREDIT
SUISSE GROUP AG, CREDIT SUISSE
SECURITIES (USA) LLC, CREDIT SUISSE
AG, CREDIT SUISSE SECURITIES
(CANADA), INC., DEUTSCHE BANK AG,
THE GOLDMAN SACHS GROUP, INC.,
GOLDMAN, SACHS & CO., GOLDMAN
SACHS CANADA INC., HSBC HOLDINGS
PLC, HSBC BANK PLC, HSBC NORTH
AMERICA HOLDINGS INC., HSBC BANK

)
)
) *Louis Sokolov and Ronald Podolny for the
Plaintiffs*

)
) *Andrew Gray for the Defendants Barclays
Bank PLC, Barclays Capital Inc., and
Barclays Capital Canada Inc.*

)
) *Mark Evans and Adam S. Goodman for the
Defendants HSBC Holdings PLC, HSBC
Bank PLC, HSBC North America Holdings
Inc., HSBC Bank USA, N.A., and HSBC
Bank Canada*

)
) *Neil Campbell and Samantha Gordon for the
Defendants Royal Bank of Scotland Group
PLC, RBS Securities, Inc., Royal Bank of
Scotland N.V., and Royal Bank of Scotland
PLC*

)
) *Eric R. Hoaken and Fahad Siddiqui for the
Defendant Standard Chartered PLC*

)
) *Jessica Kimmel for the Defendants The Bank
of Tokyo Mitsubishi UFJ Ltd., and Bank of
Tokyo-Mitsubishi UFJ (Canada)*

)
) *Peter J. Osborne and Chris Kinnear Hunter
for the Defendants Société Générale S.A.,
Société Générale (Canada), and Société
Générale*

)
) *Robert Carson for the Defendants Royal
Bank of Canada and RBC Capital Markets
LLC*

)
) *Donald B. Houston for the Defendants
Credit Suisse Group AG, Credit Suisse
Securities (USA) LLC, Credit Suisse AG,
and Credit Suisse Securities (Canada), Inc.*

USA, N.A., HSBC BANK CANADA,)	
JPMORGAN CHASE & CO., J.P.MORGAN)	<i>Caitlin Sainsbury and Pierre N. Gemson</i> for
BANK CANADA, J.P.MORGAN CANADA,)	the Defendant Deutsche Bank AG
JPMORGAN CHASE BANK NATIONAL)	
ASSOCIATION, MORGAN STANLEY,)	<i>Eliot Kolers</i> for the Defendants UBS AG,
MORGAN STANLEY CANADA LIMITED,)	UBS Securities LLC and UBS Bank
ROYAL BANK OF SCOTLAND GROUP)	(Canada)
PLC, RBS SECURITIES, INC., ROYAL)	
BANK OF SCOTLAND N.V., ROYAL)	<i>Chris Horkins</i> for the Defendants Bank of
BANK OF SCOTLAND PLC, SOCIÉTÉ)	Montreal, BMO Financial Corp., BMO
GÉNÉRALE S.A., SOCIÉTÉ GÉNÉRALE)	Harris Bank N.A., BMO Capital Markets
(CANADA), SOCIÉTÉ GÉNÉRALE,)	Limited
STANDARD CHARTERED PLC, UBS AG,)	
UBS SECURITIES LLC and UBS BANK)	<i>Paul Le Vay</i> for the Defendants Toronto
(CANADA))	Dominion Bank, TD Bank, N.A., TD Group
	Holdings, LLC, TD Bank USA, N.A. and
Defendants)	TD Securities Limited
)
)
Proceeding under the <i>Class Proceedings Act, 1992</i>)	HEARD: September 18, 2017

PERELL, J.

REASONS FOR DECISION

1. Introduction

[1] This is an action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6. The Plaintiffs seek approval of six settlements with a combined value of \$51.5 million. I approve the settlements.

2. Factual Background

[2] I shall describe the factual background below, but the general background facts are also set out in my Reasons for Decision reported as: *Staines v. Royal Bank of Canada*, 2016 ONSC 5270 (Consent Certification No. 1), *Mancinelli v. Royal Bank of Canada*, 2016 ONSC 6953 (Settlement Approval No. 1), *Mancinelli v. Royal Bank of Canada*, 2016 ONSC 7857 (Consent Certification No. 2); *Mancinelli v. Royal Bank of Canada* 2017 ONSC 2324 (Settlement Approval No. 2); *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 3910 (Consent Certification No. 3); and *Mancinelli v. Royal Bank of Canada* 2017 ONSC 4219 (Consent Certification No. 4).

[3] The Plaintiffs, Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos, and Jack Oliveira, in their capacity as The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, and Christopher Staines, sue 16 groups of financial institutions.

[4] The Plaintiffs sue: (1) Royal Bank of Canada, RBC Capital Markets LLC; (2) Bank of

America Corporation, Bank of America, N.A., Bank of America Canada, Bank of America National Association; (3) The Bank of Tokyo Mitsubishi UFJ Ltd., Bank of Tokyo-Mitsubishi UFJ (Canada); (4) Barclays Bank PLC, Barclays Capital Inc., Barclays Capital Canada Inc.; (5) BNP Paribas; BNP Paribas (Canada), BNP Paribas Group, BNP Paribas North America Inc.; (6) Citibank, N.A., Citibank Canada, Citigroup Global Markets Canada Inc., Citigroup, Inc.; (7) Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse Securities (Canada), Inc.; (8) Deutsche Bank AG; (9) The Goldman Sachs Group, Inc., Goldman, Sachs & Co., Goldman Sachs Canada Inc.; (10) HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., HSBC Bank Canada; (11) J.P.Morgan Canada, JPMorgan Chase Bank National Association, JPMorgan Chase & Co., J.P.Morgan Bank Canada; (12) Morgan Stanley, Morgan Stanley Canada Limited; (13) Royal Bank of Scotland Group PLC, RBS Securities, Inc., Royal Bank of Scotland N.V., Royal Bank of Scotland PLC; (14) Société Générale S.A., Société Générale (Canada), Société Générale; (15) Standard Chartered PLC; and (16) UBS AG, UBS Securities LLC and UBS Bank (Canada).

[5] On July 31, 2017, Class Counsel served a motion to add the following parties as Defendants to this action: (a) Bank of Montreal, BMO Financial Corp., BMO Harris Bank N.A., BMO Capital Markets Limited (“BMO”); and (b) Toronto Dominion Bank, TD Bank, N.A., TD Group Holdings, LLC, TD Bank USA, N.A. and TD Securities Limited (“TD Bank”). The motion is scheduled for November 27 and 28, 2017.

[6] In their class action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the Plaintiffs allege that the Defendants conspired with each other to fix prices in the futures exchange market (the “FX Market”). It is alleged that through the use of multiple chat rooms with names such as “The Cartel,” “The Bandits’ Club,” and “The Mafia,” the Defendants communicated directly with each other to coordinate their: (a) fixing of spot prices; (b) control and manipulation of FX benchmark rates; and (c) exchange of key confidential customer information to trigger client stop loss orders and limit orders. The Plaintiffs allege that the Defendants’ conspiracy impacted all manner of FX instruments, including those trading both over-the-counter and on exchanges.

[7] The Plaintiffs, through Mr. Staines, commenced an action by way of Statement of Claim, which was issued on September 11, 2015. The Statement of Claim pleads several causes of action against the Defendants including a statutory right of action for contraventions of Part VI of the *Competition Act*, R.S.C. 1985, c. C-34; namely: civil conspiracy, and unjust enrichment. The Plaintiffs claim damages of \$1 billion plus punitive damages.

[8] The Class Counsel team is made up of lawyers from Sotos LLP, Siskinds LLP, Koskie Minsky LLP, and Camp Fiorante Matthews Mogerman.

[9] Similar litigation has been commenced in Québec. Class Counsel in the Ontario action is working cooperatively with the law firm of Siskinds Desmeules s.e.n.c.r.l (“Siskinds Québec”), counsel to the plaintiff in the Québec action (Court File No. 200-06-000189-152), to prosecute the Québec action.

[10] There is litigation in the United States dealing with similar misconduct as alleged in this action. In the American litigation, settlements were reached in respect of nine groups and then recently, five more groups of defendants. Thus, in the U.S. litigation, settlements have been reached with 14 groups of defendants.

[11] In the U.S. settlements, in addition to compensating class members who transacted

directly with a defendant (the “Direct Class”), the settlements included a component to compensate class members who traded in exchange-traded instruments (the “Exchange-Only Class”) for which there is no equivalent in the case at bar. The particulars of the first nine U.S. settlements, including the global market share of the settling parties and quantum of settlement per market share point, as calculated by U.S. counsel, are as follows:

Bank	U.S. Settlement (USD) (Direct Class)	U.S. Settlement (USD) (Exchange-Only Class)	U.S. Settlement (USD) (Total – Including Notice and Administration)	Global Market Share (2003-2013)	U.S. Settlement / Market Share Pt. (USD)
UBS	\$135,000,000	\$6,075,000	\$141,075,000	11.96%	\$11,795,569
BNP Paribas	\$110,000,000	\$5,000,000	\$115,000,000	2.26%	\$50,884,956
Bank of America	\$180,000,000	\$7,500,000	\$187,500,000	3.90%	\$48,076,923
Goldman Sachs	\$129,500,000	\$5,000,000	\$135,000,000	3.88%	\$34,793,814
JPMorgan	\$99,000,000	\$5,000,000	\$104,500,000	5.60%	\$18,660,714
Citibank	\$394,000,000	\$8,000,000	\$402,000,000	9.97%	\$40,320,963
RBS	\$247,000,000	\$8,000,000	\$255,000,000	6.09%	\$41,871,921
Barclays	\$375,000,000	\$9,000,000	\$384,000,000	9.25%	\$41,513,516
HSBC	\$279,000,000	\$6,000,000	\$285,000,000	5.26%	\$54,182,510

[12] The particulars of the recent five U.S. settlements, including the global market shares of Standard Chartered, Société Générale S.A., Société Générale (Canada) and Société Générale (“SocGen”), and Bank of Tokyo-Mitsubishi UFJ (Canada) (“BTMU”) are as set out in the chart below:

Bank	U.S. Settlement (USD) (Direct Class)	Global Market Share Avg (2003-2013)
Standard Chartered	\$17,200,000	0.91%
Morgan Stanley	\$50,000,000	-
SocGen	\$17,200,000	1.51%
Royal Bank of Canada	\$15,500,000	-
BTMU	\$10,500,000	0.42%

[13] Barclays, RBS, and HSBC have been subject to findings and have had fines levied against them resulting from a number of criminal and regulatory investigations in the U.S. and the U.K. for their conduct regarding the FX Market, as set out below:

Defendants	Regulatory Agency	Date of Order/Fine	Fine Amount
RBS HSBC	Commodity Futures Trading Commission	Nov. 12, 2014	RBS - USD\$290,000,000 HSBC - USD\$275,000,000
Barclays	Commodity Futures Trading Commission	May 20, 2015	Barclays - USD\$400,000,000
HSBC RBS	United Kingdom Financial Conduct Authority	Nov. 12, 2014	HSBC - £216,363,000 RBS - £217,000,000
Barclays	United Kingdom Financial Conduct Authority	May 20, 2015	Barclays - £284,432,000
Barclays RBS	United States Department of Justice	May 20, 2015	Barclays - USD\$650,000,000 RBS - USD\$395,000,000
Barclays RBS	Federal Reserve	May 20, 2015	Barclays - USD\$342,000,000 RBS - USD\$274,000,000
Barclays	New York State Department of Financial Services	May 20, 2015	Barclays - USD\$485,000,000

[14] Standard Chartered, BTMU, and SocGen have not been subject to any findings resulting from criminal or regulatory investigations.

[15] In the previous settlement negotiations, Class Counsel had obtained market share information from *Euromoney*. During recent settlement discussions, Class Counsel was provided with conflicting Canadian market share information from *Euromoney*. Although Class Counsel had verified multiple times, prior to making use of the *Euromoney* data, that it was the Canadian market share information, this discrepancy prompted Class Counsel to make several further requests to *Euromoney* that it reconfirm that the data provided was accurate. In response, *Euromoney* advised that it had mistakenly provided the wrong data to Class Counsel. The corrected data was provided to Class Counsel on April 19, 2017.

[16] According to the corrected data, the Settling Defendants and Previous Settling Defendants had the following shares of the Canadian FX Market during the relevant period:

Bank	Incorrect Canadian Market Share Avg (2007-13)	Corrected Canadian Market Share Avg (2007-13)
UBS	11.8%	8.52%
BNP Paribas	2.18%	3.54%
Bank of America	2.67%	1.16%
Goldman Sachs	3.37%	0.70%
JPMorgan	4.86%	2.24%
Citibank	8.63%	7.45%
RBS	6.38%	1.97%
Barclays	10.21%	8.64%
HSBC	5.39%	5.15%
Standard Chartered	0.77%	0.29%
BTMU	0.40%	0.06%
SocGen	1.38%	1.01%

[17] In the first round of settlements, the court approved settlements with three groups of Defendants: (1) UBS AG, UBS Securities LLC and UBS Bank (Canada) (“UBS”); (2) BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas (Canada), and BNP Paribas (“BNP”); and (3) Bank of America Corporation, Bank of America, N.A., Bank of America Canada and Bank of America National Association (“Bank of America”).

[18] With respect to the impugned transactions, the market share of the first round of Settling Defendants, UBS, BNP, and the Bank of America, was around 17%, now corrected to 13%.

[19] In the first round of settlements, the Plaintiffs recovered \$15.95 million for the Class Members; UBS paid \$4.95 million, BNP paid \$4.5 million, and Bank of America paid \$6.5 million. The Settling Defendants of the first round also agreed to co-operate with the Plaintiffs in the prosecution of the action against the non-Settling Defendants.

[20] In a second round of settlements, the Plaintiffs reached settlements with three more groups of Defendants: (1) The Goldman Sachs Group, Inc., Goldman, Sachs & Co., and Goldman Sachs Canada Inc. (“Goldman Sachs”); (2) JPMorgan Chase & Co., J.P.Morgan Bank Canada, J.P.Morgan Canada, and JPMorgan Chase Bank National Association (“JPMorgan”); and (3) Citigroup, Inc., Citibank, N.A., Citibank Canada, and Citigroup Global Markets Canada Inc. (“Citibank”).

[21] The Defendants of the second round of settlements collectively constituted approximately 17% of the Canadian FX market, now corrected to 10%.

[22] In the second round of settlements, the Plaintiffs recovered \$39.25 million for the Class

Members; Goldman Sachs paid \$6.75 million, JP Morgan paid \$11.5 million, and Citibank paid \$21 million. The Settling Defendants of second round also agreed to co-operate with the Plaintiffs in the prosecution of the action against the non-Settling Defendants.

[23] The third and fourth rounds of settlements are with: (1) Barclays Bank PLC, Barclays Capital Inc., and Barclays Capital Canada Inc. (“Barclays”); (2) HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Bank Canada (“HSBC”); (3) Royal Bank of Scotland Group PLC, RBS Securities, Inc., Royal Bank of Scotland N.V., and Royal Bank of Scotland PLC (“RBS”); (4) Standard Chartered plc; (5) BTMU”; and (6) SocGen.

[24] Under the Settlement Agreement with Barclays, it has agreed to pay \$19,677,205.88.

[25] Under the Settlement Agreement with HSBC, it has agreed to pay \$15,500,000.

[26] Under the Settlement Agreement with RBS, it has agreed to pay \$13,220,000.

[27] Under the Settlement Agreement with Standard Chartered plc, it has agreed to pay \$900,000.

[28] Under the Settlement Agreement with BTMU, it has agreed to pay \$450,000.

[29] Under the Settlement Agreement with SocGen, it has agreed to pay \$1,800,000.

[30] Thus, the recovery from the third and fourth rounds of settlements is \$51,547,205.88 (\$51.5 million) for an aggregate recovery to date of \$106,747,205.88 (\$107 million).

[31] Twelve settlements in the Canadian litigation have been reached to date. A chart comparing the various settlements is set out below:

Bank	US Settlement (USD) (Direct Class)	Fines / Regulatory Findings	Canadian Settlement (CAD)	Global Market Share Avg (2003-2013)	Cdn Market Share Avg (2007-13)	Ratio Cdn to U.S. Settlement	Cdn Settlement (CAD) per Global mkt share point	Cdn Settlement (CAD) per Cdn mkt share point
UBS	\$135,000,000	Yes	\$4,950,000	11.96%	8.52%	2.78%	\$413,880	\$580,986
BNP Paribas	\$110,000,000	No	\$4,500,000	2.26%	3.54%	3.10%	\$1,991,150	\$1,271,186
Bank of America	\$180,000,000	Yes	\$6,500,000	3.90%	1.16%	2.74%	\$1,666,667	\$5,603,448
Goldman Sachs	\$129,500,000	No	\$6,750,000	3.88%	0.70%	3.95%	\$1,739,691	\$9,642,857
JPMorgan	\$99,000,000	Yes	\$11,500,000	5.6%	2.24%	8.80%	\$2,053,571	\$5,133,928
Citibank	\$394,000,000	Yes	\$21,000,000	9.97%	7.45%	4.04%	\$2,106,319	\$2,818,791
RBS	\$247,000,000	Yes	\$13,200,000	6.09%	1.97%	4.05%	\$2,167,488	\$6,700,508
Barclays	\$375,000,000	Yes	\$19,677,206	9.25%	8.64%	3.98%	\$2,127,266	\$2,277,454

Bank	US Settlement (USD) (Direct Class)	Fines / Regulatory Findings	Canadian Settlement (CAD)	Global Market Share Avg (2003-2013)	Cdn Market Share Avg (2007-13)	Ratio Cdn to U.S. Settlement	Cdn Settlement (CAD) per Global mkt share point	Cdn Settlement (CAD) per Cdn mkt share point
HSBC	\$279,000,000	Yes	\$15,500,000	5.26%	5.15%	4.21%	\$2,946,768	\$3,009,709
Standard Chartered	\$17,200,000	No	\$900,000	0.91%	0.29%	3.96%	\$989,011	\$3,103,448
BTMU	\$10,500,000	No	\$450,000	0.42%	0.06%	3.25%	\$1,071,429	\$7,500,000
SocGen	\$18,000,000	No	\$1,800,000	1.51%	1.01%	7.58%	\$1,192,053	\$1,782,178

[32] All the Settlement Agreements provide, among other things, that: (1) the settlement amounts shall be held in an interest-bearing account; (2) the costs of disseminating the Notices of Certification and Settlement Approval Hearings are to be paid from the settlement amounts; (3) the opt-out deadline has been set as part of the earlier settlements and no further opt-out rights will be provided; and (4) the Settling Defendants agree to provide reasonable co-operation to the Class Members in order to assist in the continued prosecution of this action against the non-Settling Defendants.

[33] For the third and fourth rounds of settlements, the Plaintiffs brought motions for orders certifying the action for settlement purposes, approving notices of certification and of the settlement approval hearing, and for related relief. Those motions were granted and the Plaintiffs now move for approval of the third and fourth rounds of settlements.

[34] In my Reasons for Decision for the settlement approval for the first round of settlements, I noted that for future settlement approval motions, the Court would require additional information on the Plaintiffs' calculation of damages. In my Reasons for Decision, *Mancinelli v. Royal Bank of Canada*, 2016 ONSC 6953 (Settlement Approval No. 1), I stated at paras. 34 and 35:

34. Like the objector, I was concerned that at this early juncture of this class proceeding, there was insufficient information about the amount of the settlements being reasonable having regard to the actual damages allegedly suffered by the Class Members, which has not yet been quantified.

35. Nevertheless, having regard to the information that was available from the proceedings in the United States and having regard to the Defendants' minority share of the Canadian market and keeping in mind the very significant litigation risks and also the value to be attributed to the Settling Defendants' co-operation in prosecuting the claims against the non-Settling Defendants who command 85% of the marketplace, I am satisfied that the amount of these early settlements is fair and reasonable. I will, however, expect more information about the methodology of the Plaintiffs' calculation of damages if there are more settlements.

[35] For the second round of settlement approvals, the Plaintiffs retained Professor Ilias Tsiakas, Professor of Finance at the University of Guelph and an expert in foreign exchange markets, to provide an estimate on the range of potential damages suffered by members of the putative class.

[36] Professor Tsiakas has estimated a range of total damages between \$155 million and

\$619.9 million between 2008 and 2013 (*i.e.*, the period that was the subject of regulatory findings) and between \$270 million and \$1,089 million (approximately \$1 billion) for the entire class period.

[37] The settling Defendants hold 17% of the Canadian FX market. The proposed settlements of the six Settling Defendants total \$51.55 million. 17% of \$270 million (the low end of the range of damages) equals \$45.9 million and thus \$51.55 million is a 112% recovery; 17% of \$1,089 million (the high end of the range of damages) equals \$183.6 million and thus \$51.55 million is a 28% recovery.

[38] The aggregate settlements to date total \$107 million from Defendants with a 40% share of the market; 40% of \$270 million (the low end of the range of damages) equals \$108 million and thus \$107 million is a 99% recovery; 40% of \$1,089 million (the high end of the range of damages) equals \$436 million and thus \$107 million is a 25% recovery.

[39] The parties to the settlements seek an order barring any claim for contribution or indemnity against the Settling Defendants. The proposed bar orders provide that if the Court ultimately determines that a right of contribution and indemnity exists between co-conspirators, the Plaintiffs and settlement classes shall restrict their joint and several claims against the non-Settling Defendants. Should the Court determine that no such right exists, the settlement Class Members will be entitled to advance the entirety of their claims subject only to a reduction for the value of the settlement payments received.

[40] Class Counsel recommend the settlements as fair, reasonable, and in the best interests of the class.

[41] The Representative Plaintiffs recommend the settlements.

[42] Notice of the proposed settlement was given in accordance with the order of this Court.

[43] There are no objectors to the settlement.

[44] The Settlement Agreements are conditional upon approval of the Ontario and Québec Courts. A motion for settlement approval in the Québec proceeding is scheduled for September 22, 2017.

3. Settlement Approval

[45] Section 29(2) of the *Class Proceedings Act, 1992*, provides that a settlement of a class proceeding is not binding unless approved by the court. To approve a settlement of a class proceeding, the court must find that, in all the circumstances, the settlement is fair, reasonable, and in the best interests of the class: *Fantl v. Transamerica Life Canada*, [2009] O.J. No. 3366 (S.C.J.) at para. 57; *Farkas v. Sunnybrook and Women's Health Sciences Centre*, [2009] O.J. No. 3533 (S.C.J.) at para. 43; *Kidd v. Canada Life Assurance Company*, 2013 ONSC 1868.

[46] In determining whether a settlement is reasonable and in the best interests of the class, the following factors may be considered: (a) the likelihood of recovery or likelihood of success; (b) the amount and nature of discovery, evidence or investigation; (c) the proposed settlement terms and conditions; (d) the recommendation and experience of counsel; (e) the future expense and likely duration of the litigation; (f) the number of objectors and nature of objections; (g) the presence of good faith, arm's-length bargaining and the absence of collusion; (h) the information

conveying to the court the dynamics of, and the positions taken by, the parties during the negotiations; and (i) the nature of communications by counsel and the representative plaintiff with class members during the litigation. See: *Fantl v. Transamerica Life Canada*, *supra*, at para. 59; *Corless v. KPMG LLP*, [2008] O.J. No. 3092 (S.C.J.) at para. 38; *Farkas v. Sunnybrook and Women's Health Sciences Centre*, *supra*, at para. 45; *Kidd v. Canada Life Assurance Company*, *supra*.

[47] In determining whether to approve a settlement, the court, without making findings of fact on the merits of the litigation, examines the fairness and reasonableness of the proposed settlement and whether it is in the best interests of the class as a whole having regard to the claims and defences in the litigation and any objections raised to the settlement: *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) at para. 10. An objective and rational assessment of the pros and cons of the settlement is required: *Al-Harazi v. Quizno's Canada Restaurant Corp.* (2007), 49 C.P.C. (6th) 191 (Ont. S.C.J.) at para. 23.

[48] The case law establishes that a settlement must fall within a zone of reasonableness. Reasonableness allows for a range of possible resolutions and is an objective standard that allows for variation depending upon the subject-matter of the litigation and the nature of the damages for which the settlement is to provide compensation: *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 70; *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 (Gen. Div.). A settlement does not have to be perfect, nor is it necessary for a settlement to treat everybody equally: *Fraser v. Falconbridge Ltd.*, [2002] O.J. No. 2383 (S.C.J.) at para. 13; *McCarthy v. Canadian Red Cross Society* (2007), 158 ACWS (3d) 12 (Ont. S.C.J.) at para. 17.

[49] I regard the settlements as fair, reasonable, and in the best interests of the Class Members based on the information available at this juncture of the proceedings.

[50] Having reviewed the motion record and having regard to the various factors used to determine whether to approve a settlement, I am satisfied that the six additional settlements should be approved.

4. Conclusion

[51] For the above reasons, I approve the six settlements.



Perell, J.

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

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JOSEPH S. MANCINELLI, CARMEN PRINCIPATO,
DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS
and JACK OLIVEIRA in their capacity as THE TRUSTEES OF
THE LABOURERS' PENSION FUND OF CENTRAL AND
EASTERN CANADA, and CHRISTOPHER STAINES

Plaintiffs

– and –

ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC,
BANK OF AMERICA CORPORATION, BANK OF AMERICA,
N.A., BANK OF AMERICA CANADA, BANK OF AMERICA
NATIONAL ASSOCIATION, THE BANK OF TOKYO
MITSUBISHI UFJ LTD., BANK OF TOKYO-MITSUBISHI UFJ
(CANADA), BARCLAYS BANK PLC, BARCLAYS CAPITAL
INC., BARCLAYS CAPITAL CANADA INC., BNP PARIBAS
GROUP, BNP PARIBAS NORTH AMERICA INC., BNP
PARIBAS (CANADA), BNP PARIBAS, CITIGROUP, INC.,
CITIBANK, N.A., CITIBANK CANADA, CITIGROUP GLOBAL
MARKETS CANADA INC., CREDIT SUISSE GROUP AG,
CREDIT SUISSE SECURITIES (USA) LLC, CREDIT SUISSE
AG, CREDIT SUISSE SECURITIES (CANADA), INC.,
DEUTSCHE BANK AG, THE GOLDMAN SACHS GROUP,
INC., GOLDMAN, SACHS & CO., GOLDMAN SACHS
CANADA INC., HSBC HOLDINGS PLC, HSBC BANK PLC,
HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK
USA, N.A., HSBC BANK CANADA, JPMORGAN CHASE &
CO., J.P.MORGAN BANK CANADA, J.P.MORGAN CANADA,
JPMORGAN CHASE BANK NATIONAL ASSOCIATION,
MORGAN STANLEY, MORGAN STANLEY CANADA
LIMITED, ROYAL BANK OF SCOTLAND GROUP PLC, RBS
SECURITIES, INC., ROYAL BANK OF SCOTLAND N.V.,
ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE
S.A., SOCIÉTÉ GÉNÉRALE (CANADA), SOCIÉTÉ
GÉNÉRALE, STANDARD CHARTERED PLC, UBS AG, UBS
SECURITIES LLC and UBS BANK (CANADA)

Defendants

REASONS FOR DECISION

PERELL J.