CITATION: Pinizzotto v. TILT Holdings, Inc., 2021 ONSC 8001
COURT FILE NO.: CV-20-00639799-00CP
DATE: 20211206

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: STEVEN PINIZZOTTO, Plaintiff

AND:

TILT HOLDINGS, INC., ALEXANDER COLEMAN, MARK HERRON, MICHAEL ORR and TODD HALPERN, Defendants

BEFORE: Glustein J.

COUNSEL: *Garth Myers and Paul Bates,* for the Plaintiff

Miranda Lam, for the Defendants TILT Holdings Inc., Mark Herron, Michael Orr and Todd Halpern

Paul Martin, for the Defendant Alexander Coleman

HEARD: November 29, 2021

REASONS FOR DECISION

OVERVIEW

[1] By reasons dated October 5, 2021, I certified the action on consent and granted ancillary relief, under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (*CPA*).

[2] There are two motions before the court.

[3] In the first motion, the plaintiff, Steven Pinizzotto (Pinizzotto) seeks an order under the *CPA* (i) approving the proposed settlement, (ii) approving the plan to allocate and distribute the settlement fund, (iii) approving Kalloghlian Myers LLP (Class Counsel) as the settlement administrator and Scott Hutchison of Henein Hutchison LLP as the independent referee, and (iv) approving the form, content and method of dissemination of the notice of settlement approval.

[4] In the second motion, Class Counsel seeks an order under the *CPA* approving (i) the retainer agreement between Pinizzotto and Class Counsel dated April 9, 2020 (Retainer Agreement), (ii) Class Counsel's fees, disbursements and taxes, and (iii) the third-party funder's levy.

[5] I issue these reasons collectively for both motions. For the reasons that follow, I grant the relief sought.

FACTS

The action

[6] TILT describes itself as a vertically integrated business-to-business infrastructure and technology cannabis company. It is a publicly traded issuer continued under the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57. During the Class Period (from October 12, 2018 to May 1, 2019), TILT's shares traded on the Canadian Securities Exchange under the ticker symbol TILT and over-the-counter under the ticker symbol TILTF.

[7] Alexander Coleman was TILT's Chief Executive Officer and a director. Mark Herron was TILT's Chief Financial Officer and a director. Michael Orr and Todd Halpern were also TILT's directors.

[8] Pinizzotto commenced this action on April 21, 2020 under the *CPA*. He advanced statutory and common law claims for misrepresentation against TILT and four of its former officers and directors. The action is on behalf of all persons who acquired TILT securities during the Class Period (the "Class" and the "Class Members"). The Class includes purchasers of TILT securities on the primary and secondary markets.

[9] In the claim, Pinizzotto alleges that:

(i) On June 22, 2018, TILT was incorporated to provide for a merger of four entities;

(ii) On October 12, 2018, TILT filed a Management Information Circular attaching its Pro Forma Consolidated Financial Statements reporting goodwill of US$721,065,218 (the goodwill misrepresentation);

(iii) TILT's goodwill was materially overstated and a misrepresentation under the *Securities Act*, R.S.O. 1990, c. S.5 (*OSA*);

(iv) On November 21, 2018, TILT completed a US$119 million primary market capital raise through a subscription agreement by which Class Members acquired TILT shares on the primary market;

(v) The subscription agreement incorporated TILT's Pro Forma Consolidated Financial Statements and therefore incorporated the goodwill misrepresentation;

(vi) On May 1, 2019, TILT released its Consolidated Financial Statements and MD&A for the year ended December 31, 2018 in which it recorded a goodwill writedown of US$496,447,782;

(vii) The goodwill writedown was a public correction of TILT's goodwill misrepresentation under the *OSA*;

(viii) On April 30, 2019, the day before the release of this alleged public correction, the price of TILT's shares closed at $2.79; and

(ix) The price of TILT's shares declined approximately 22% to $2.17 on May 2, 2019.

[10] Pinizzotto sought damages on behalf of: (i) primary market purchasers under the subscription agreement under s. 130.1 of the *OSA* (liability for misrepresentation in offering memorandum) and for negligent misrepresentation, and (ii) secondary market purchasers under s. 138.3 of the *OSA* (liability for secondary market disclosure) and for negligent misrepresentation.

[11] The defendants have denied and continue to deny all liability.

Chronology of the action

(i) Motion for substituted service

[12] In September 2020, after multiple unsuccessful attempts at service, Pinizzotto brought a motion for substituted service on Michael Orr, filing a motion record, factum and book of authorities. The service issue was then resolved when McCarthy Tétrault LLP accepted service of the claim on behalf of Orr.

(ii) Motion for approval of third-party funding agreement

[13] Immediately after the commencement of this action, Pinizzotto began to explore the availability of third-party funding. Third-party funding was particularly difficult to obtain for the reasons set out below.

[14] First, the estimated damages sustained by the class were modest and, as such, the levy payable to the funder would be proportionately modest. In these circumstances, funders are less likely to offer an indemnity that permits a plaintiff to be reasonably confident that the plaintiff is not exposed to adverse costs.

[15] Second, one of the main concerns identified by funders was the defendants' ability to satisfy a judgment.

[16] Pinizzotto applied for funding from multiple sources, including: (i) the Class Proceedings Fund, (ii) Augusta Ventures Canada Limited ("Augusta"), (iii) another US funder, and (iv) an after-the-event insurance policy.

[17] Class Counsel began negotiating with Augusta in April 2020 and agreed to a term sheet in June 2020. Between June and October 2020, Class Counsel and Augusta engaged in hard-fought negotiations on the terms of the funding agreement. The parties ultimately agreed to a funding agreement in October 2020. Because of the risks described above, the amount of funding ultimately granted by Augusta was less than what was initially sought.

[18] In October 2020, Pinizzotto brought a motion for approval of a third-party funding agreement. The parties negotiated the terms of the order, which ultimately proceeded on an unopposed basis.

(iii) The motions for certification and leave to proceed

[19] In November 2020, Pinizzotto brought: (i) a motion for certification of the action as a class action under the *CPA*; and (ii) a motion for leave to proceed with statutory claims under Part XXIII.1 of the *OSA*.

[20] Pinizzotto filed an extensive motion record in support of his motions, including evidence from:

(i) Patricia O'Malley, an accounting expert, who provided evidence that the alleged goodwill misrepresentation was an untrue statement, and

(ii) Dr. Douglas Cumming, an expert in economics, who provided evidence that the alleged goodwill misrepresentation was material.

[21] Pinizzotto's motion record contained five affidavits and was 3,559 pages in length.

[22] The court set a schedule for the motions, including a hearing for Pinizzotto's motions for certification and leave set for November 2021, with the deadline for the defendants' responding motion records on May 24, 2021. The hearing was later rescheduled for the week of February 28, 2022.

(iv) Motion for production of insurance information

[23] From an early stage, Class Counsel identified the ability to recover from the defendants as a significant risk. Even before the commencement of this action, it was Class Counsel's view that any settlement or judgment would be entirely or almost entirely funded by the defendants' insurance. It was therefore important, at an early stage, to identify TILT's insurance limits.

[24] Pinizzotto began asking for production of the defendants' insurance policies in November 2020. On February 3, 2021, Pinizzotto served and filed a motion record for production of the defendants' insurance information.

[25] On March 2, 2021, TILT delivered the defendants' insurance policies. TILT advised that it did not possess any insurance that responded to the claims. The individual defendants did possess responsive insurance of US$5 million, but that amount had already been eroded by US$641,861.96, with substantial additional sums presented for indemnity. Based on these disclosures, Pinizzotto's motion for production of insurance information was adjourned.

[26] In May 2021, Class Counsel inquired into the status of the remaining insurance limits. TILT advised that as of May 24, 2021, US$2.8 million remained. Accordingly, between March and May 2021, TILT's insurance policy eroded by $1,558,138.04, or about US$560,000 per month.

Settlement negotiations and the terms of the settlement

[27] Given TILT's financial position and the rapidly dwindling insurance proceeds, Class Counsel's view was that it was in the best interests of the Class Members to attempt to negotiate a settlement before the insurance policies completely eroded.

[28] In March 2021, following the receipt of the defendants' insurance information, Class Counsel raised the possibility of a resolution of the action. The parties then engaged in lengthy, hard-fought negotiations that culminated in an agreement-in-principle in July 2021 and a final settlement agreement in September 2021. The negotiations leading to the settlement agreement were conducted on an adversarial, arm's-length basis.

[29] Under the proposed settlement agreement, the defendants have agreed to pay US$3.65 million (approximately $4.67 million as of the date of these reasons) to the Class, subject to court approval. In exchange, the claims against the defendants would be released.

The plan of distribution

[30] The proposed settlement agreement includes a plan of distribution, which sets out the proposed method of distributing the settlement fund.

[31] The proposed plan of distribution creates a claims-based process for claimants to seek compensation from the settlement fund. It is designed to provide compensation based on: (i) the date(s) and price(s) at which the shares were acquired, (ii) the date(s) and price(s) at which shares were sold or whether they are still held, and (iii) whether the shares were acquired in the primary or secondary market. The plan of distribution is designed to compensate claimants in accordance with the damages formula under s. 138.5(1) of the *OSA*.

[32] The plan of distribution requires Class Members to deliver to the administrator electronic claim forms with supporting documentation via a secure website. The administrator will perform all the necessary calculations.

[33] The settlement fund is to be distributed to Class Members that acquired their shares in the primary market and in the secondary market. A different risk factor is allocated to claims for each type of claim. Given the significant risks associated with the primary market claims, as discussed below, the risk factor for primary market shares is 0.10, and the risk factor for secondary market shares is 1.0.

[34] Class Counsel proposes to act as the administrator of the settlement, with administration fees and disbursements capped at $175,000 plus taxes.

[35] Under the plan of distribution, an independent referee is to be appointed to determine disputes related to acceptance or rejection of claims. The proposed referee is Scott Hutchison, an experienced litigator in private practice with Henein Hutchison LLP in Toronto. While Henein Hutchison LLP is co-counsel with Kalloghlian Myers LLP on two unrelated matters, Mr. Hutchison is autonomous, independent, and neutral from the parties and counsel in the action.

The proposed notice of settlement approval

[36] The proposed notice plan for settlement approval and the opening of the claim period is the same notice plan that was approved for notice of certification, the opt out period and the settlement approval hearing:

(i) posting the long form notice (the "Phase II Long Form Notice") on Class Counsel's website,

(ii) sending a copy of the Phase II Long Form Notice to all persons who have contacted Class Counsel about the class action,

(iii) issuing a press release advising Class Members of their rights, and

(iii) advertising totaling $20,000, including a link to the notice on Google and Facebook.

Certification and leave to proceed

[37] By order dated October 4, 2021, the court:

(i) certified this action as a class proceeding and granted leave under Part XXIII.1 of the *OSA* for settlement purposes,

(ii) approved the form, content and method of dissemination of the notice of certification and settlement approval,

(iii) appointed Class Counsel as the objections and opt-out administrator to receive objections and opt-outs to the proposed settlement agreement, and

(iv) set the deadline for objections and opt-outs as November 24, 2021.

Notice, objections, and opt-outs

[38] Notice of the hearing for approval of the settlement and ancillary relief was disseminated in accordance with the court's order.

[39] Two class members opted out of the settlement. One class member, Mitchell Gilbert, objected to the settlement. I address Mr. Gilbert's objection at paras. 49-59 below.

The Retainer Agreement

[40] Pinizzotto read the Retainer Agreement carefully and discussed the agreement with Class Counsel before he signed it. He understood and agreed with the terms of the Retainer Agreement when he signed it and reiterated his agreement with the terms at the present hearing. Before the action was commenced, Pinizzotto understood and agreed that the 33% fee was reasonable in the circumstances given the risks involved in this case.

[41] The Retainer Agreement provides that Class Counsel would only be paid its fees and disbursements upon the successful resolution of the action. Success is defined as either a judgment on the common issues in favour of some or all Class Members, or a court-approved settlement that benefits one or more Class Members.

Time incurred by Class Counsel

[42] As of November 19, 2021, Class Counsel incurred 981.93 hours totalling $607,775.75 (excluding taxes). The tasks performed by Class Counsel to achieve this settlement include:

(i) factual and documentary research into the circumstances surrounding the alleged misrepresentations,

(ii) interviewing Pinizzotto and drafting his statement of claim and affidavit in support of certification and leave to proceed,

(iii) amending the claim twice as new factual matters emerged,

(iv) serving the statement of claim on the defendants,

(v) bringing a motion for substituted service on Orr,

(vi) approaching various third-party funders soliciting interest in funding the case,

(vii) identifying a funder willing to fund this action, negotiating terms with a funder, and seeking approval of a third-party funding agreement,

(viii) bringing a motion for production of the defendants' insurance information,

(ix) analyzing TILT's solvency as assisted by an expert,

(x) consulting with a number of potential experts in a number of fields including accounting, materiality and corporate governance,

(xi) preparing a 3,559-page certification and leave to proceed record comprising evidence from, among others (a) Dr. Douglas Cumming, an expert in economics, who provided evidence on materiality, and (b) Patricia O'Malley, an accounting expert, who provided evidence on accounting and the existence of misstatements,

(xii) preparing for and conducting settlement negotiations with the defendants,

(xiii) communicating with putative Class Members,

(xiv) drafting the settlement agreement and preparing material for settlement approval,

(xv) drafting the notice and the notice program,

(xvi) preparing for and attending the motion for certification and approval and the notice program,

(xvii) implementing the notice program,

(xviii) attending various case management meetings, and

(xix) preparing settlement administration.

[43] When the time incurred by Class Counsel is compared to the contingency fee sought, it generates a multiplier of 2.44 based on a fee of 33%, or 2.23 based on a fee of 33% less $131,300 payable to the funder.

Disbursements incurred by Class Counsel

[44] Class Counsel incurred disbursements, inclusive of taxes, totalling $153,845.42. These disbursements include fees for three experts (Dr. Douglas Cumming, Patricia O'Malley and Carol Hansell), filing fees, and costs incurred in communicating with class members. Under the funding agreement, the funder has advanced $20,000 in respect of these disbursements. The balance of the disbursements were funded by Class Counsel.

Levies payable to the third-party funder

[45] On November 9, 2020, the court approved a third-party funding agreement between Pinizzotto and Augusta Pool 1 Canada Limited. In exchange for indemnifying Pinizzotto for adverse cost awards and advancing $20,000 for disbursements, the funding agreement provided for payment to the funder of 8% from net recovery if it was resolved before the commencement of the certification and leave or summary judgment motions, or 10% of net recovery afterward, plus $131,300 payable from Class Counsel's fees.

[46] The reason that part of the funder levy was to be paid from Class Counsel fees is that, given the economics of this action and, in particular, the modest damages sustained by the class as well as the collection risk arising from TILT's precarious financial position, no third-party funder was willing to indemnify Pinizzotto without a levy in an amount that was more than 10%, which exceeded what had been approved by courts in prior cases.

[47] Consequently, to obtain funding on terms that were reasonable for the Class and to be able to prosecute the case with an indemnity, Class Counsel agreed to absorb an additional $131,300 levy payable from its court-approved legal fees. The structure of this third-party funder levy reduces the amount payable in legal fees to Class Counsel, an additional risk Class Counsel took in advancing this case.

ANALYSIS

Settlement approval

[48] I rely on the principles summarized in *Robinson v. Medtronic, Inc.*, 2020 ONSC 1688, at paras. 63-68. I find thar the settlement is fair and reasonable based on the following factors:

(i) The settlement amount was US$3.65 million (approximately $4.67 million), which is approximately 70% of the maximum damages (approximately $6.7 million) calculated to have been caused as a result of the alleged goodwill misrepresentation;

(ii) The settlement amount is a strong result given the statutory liability limit of $6.875 million under Part XXIII.1 of the *OSA*;

(iii) The settlement is a strong result, given the risks of the litigation. In particular:

1. The primary market claims were unlikely to succeed at trial because:

(a) they were brought on April 21, 2020, more than 180 days after the alleged public correction on May 1, 2019, and as such could be statute-barred under s. 138 of the *OSA*; and

(b) the alleged misrepresentation was not made in an offering memorandum, as required under s. 130.1 of the *OSA*, and, at best, could only be said to be incorporated by reference (with no explicit incorporation by reference) into the subscription agreement;

2. There were also risks for the secondary market claims (which also would have defeated the primary market claims if the submissions were successful). The defendants would have submitted that:

(a) there was no misrepresentation since valuation of goodwill is an exercise of judgment and no method was explicitly required at the time of TILT's goodwill disclosure;

(b) in any event, the defendants reasonably relied on experts and professional advisors in the calculation of TILT's goodwill; and

(c) there was no public correction since TILT only recorded impairment which had taken place when the revised figure was stated on May 1, 2019;

(iv) There was a significant risk of insolvency on the part of TILT;

(v) TILT had no insurance, and the insurance proceeds available to the remaining defendants were rapidly decreasing;

(vi) An insolvency of TILT could have resulted in a plan of arrangement that could have prohibited claims against officers and directors;

(vii) The settlement amount was in excess of remaining insurance limits;

(viii) There were arm's-length negotiations over seven months between sophisticated and experienced counsel who zealously advocated for the interests of their clients in the negotiations;

(ix) If the class action did not settle, it likely would have continued for at least five years, not taking into account appeals;

(x) Class Counsel have extensive experience in complex securities class action litigation and recommend the settlement; and

(xi) Pinizzotto had a significant interest in the claim, having purchased 87,900 shares during the Class Period at a cost of $343,919.65, and he approved the settlement after extensive communication with Class Counsel.

[49] Mr. Gilbert attended at the hearing to object to the settlement. Mr. Gilbert was a well-informed shareholder who provided a concise and researched submission to the court. His involvement as a shareholder and interested class member is admirable. However, in the circumstances of the case, I find that it is in the best interests of the Class Members to approve the settlement.

[50] Mr. Gilbert does not object to the amount of the settlement or the fees sought by Class Counsel with respect to the claim for the goodwill misrepresentation. Mr. Gilbert's concern is that the proposed release between the parties to the settlement is unnecessarily broad, since it bars all claims which either were brought, or could have been brought, by the Class Members against the defendants in relation to the TILT shares.

[51] Mr. Gilbert is concerned that there may be fraud claims "left on the table" which could have been pursued by the Class Members against the directors and officers, who Mr. Gilbert submits might have significant personal assets (as insurance likely would not cover claims of fraud). Mr. Gilbert submits that fraud claims could have arisen with respect to the goodwill writedown as well as "some other matter such as fraud, material misrepresentation, gross negligence, or negligence".

[52] Mr. Gilbert relies on newspaper articles from *The Globe and Mail* and *The Boston Globe* which reported, among other things, payments to TILT executives and board members after the writedown, and issues arising from TILT's acquisition of Blackbird and a settlement reached with the Cannabis Control Commission in June 2021, all of which Mr. Gilbert describes as raising "serious allegations … against Alex Coleman as part of the investigative process" .

[53] For the above reasons, Mr. Gilbert submits that the release should be limited to claims arising from the goodwill misrepresentation.

[54] However, I find that the release in the present case is fair and reasonable, falling within the zone of reasonableness of a settlement agreement. It is not a basis for the court to reject the settlement (the only option available if the settlement is not approved: *Kauf v. Colt Resources, Inc.*, 2021 ONSC 2814, at para. 30(vii)).

[55] It is reasonable for defence counsel to insist on a full release from class members with respect to any claims the class members could have made with respect to share value, as defendants will not settle litigation without certainty that the proceedings are final. Consequently, the release in the present case is similar to that signed in other securities class actions.

[56] It is the role of Class Counsel to consider whether other claims, including fraud claims, are viable. In the present case, many of the allegations purported to be the basis of the fraud occurred three years ago, and have not been the subject of any claims to date. Further, Class Counsel

reviewed the allegations relevant to those claims, and the newspaper articles relied upon by Mr. Gilbert, and determined that those claims would not support further recovery.

[57] To the contrary, it was the opinion of Class Counsel that raising additional fraud claims would hinder recovery by adding unnecessary issues, increasing costs, and exposing the Class Members to costs consequences if unfounded allegations of fraud were not established. Consequently, Class Counsel considered it in the best interest of the Class to restrict the claim to the goodwill misrepresentation issue. There is no basis to question that decision.

[58] Further, there is no evidence of any effect on share price from the alleged fraudulent conduct. When the conduct relied upon by Mr. Gilbert was disclosed in the newspaper articles, there is no evidence of any damages arising because of a decrease in share price. To the contrary, when the *Boston Globe* article was published, TILT's share price increased by 3%.

[59] Consequently, even if the directors or officers had personal assets (including proceeds from the sale of TILT shares), there is no evidence that Class Counsel "left anything on the table" by including all claims in the release. To the contrary, the decision of Class Counsel to limit the claim to the goodwill misrepresentation resulted in a significant settlement in the face of TILT's solvency issues and dwindling insurance proceeds.

[60] For the above reasons, I approve the settlement.

Plan of distribution approval

[61] The plan of distribution requires each Class Member to provide an electronic claim setting out biological and trading information. The administrator will calculate each Class Member's damages based on the information provided.

[62] Under the plan, the risk factor of 0.1 applied to primary market claimants is reasonable given the significant risks applicable to their claims. Primary market recovery at a rate of 10% of that available to secondary market claimants reflects the much greater likelihood of success by the secondary market holders at trial. Such an allocation is within a zone of reasonableness based on the ability of the respective Class Members to recover their losses.

[63] Finally, the potential cy-près distribution to the Osgoode Investor Protection Clinic is reasonable, as the clinic's purpose is related to the issues in the action and the cy-près distribution would only arise if two conditions are met: (i) the escrow account is in a positive balance (whether by reason of tax refunds, uncashed cheques or otherwise) after 180 days from the date of distribution; and (ii) it is no longer economically feasible to allocate the remaining funds on a *pro rata* basis among the claimants, consistent with the principles for such distribution as I discuss in *Cass v. WesternOne Inc.*, 2018 ONSC 4794, at para. 91.

[64] For the above reasons, I approve the plan of distribution.

Approval of administrator and referee

[65] It is reasonable to appoint Class Counsel to administer the settlement. Class Counsel is capable of conducting the administration of the settlement in a timely and efficient manner and will act with neutrality and objectivity as administrator. The fees as administrator are capped at $175,000 plus taxes (inclusive of disbursements), a fee which is reasonable in the circumstances.

[66] The proposed referee, Mr. Hutchison, is a senior lawyer with experience in securities class action proceedings. He is autonomous, independent and neutral both from the parties and from counsel in the action.

[67] Consequently I approve of Class Counsel as administrator and Mr. Hutchison as referee.

Notice of settlement approval

[68] The notices are clear. They provide Class Members with instructions on how to submit a claim for compensation.

[69] The notice plan includes (i) posting the "Phase II" long-form notice on Class Counsel's website, (ii) sending a copy of the Phase II long-form notice to all persons who contacted Class Counsel about the class action, (iii) issuing a press release advising Class Members of their rights, and (iv) advertising on Google and Facebook in an amount up to $20,000.

[70] A similar notice plan was approved with respect to the notice of settlement. For similar reasons, I find that it is fair and reasonable and consistent with notice plans approved in prior securities class actions.

Fee and Retainer Agreement approval

[71] I approve the Retainer Agreement and find that the fees claimed are fair and reasonable. I rely on the following:

(i) The contingency fee agreement is presumptively valid (*Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686, at paras. 8-10);

(ii) The 33% contingency is reasonable and has been frequently approved by the court (e.g., *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537, at paras. 19-20; *Reddock v. Canada (Attorney General)*, 2019 ONSC 7090, at para. 8);

(iii) The amount of fees sought is not excessive;

(iv) Pinizzotto has a full understanding of the fees sought and supports the amount;

(v) There are no objectors to the fees sought;

(vi) Class Counsel undertook significant risk, and agreed to pay $131,300 from its own fees in order to obtain protection for adverse costs (and $20,000 disbursements);

(vii) The multipliers of 2.4 based on a 33% recovery, or 2.23 based on a fee of 33% less the $131,300 payable to the funder, are reasonable, particularly given the risk involved in this litigation and the successful settlement;

(viii) Disbursements of $153,845.42 incurred by Class Counsel are reasonable, including costs for three experts, filing fees and costs incurred in communicating with Class Members;

(ix) The case was complex. It required consideration of both the business combination giving rise to TILT and its goodwill. Class Counsel relied on detailed expert evidence, and had to consider legal issues such as whether TILT's goodwill was material, the effect of liability for representations in *pro forma* financial statements that were purported to be published for illustrative purposes, the reasonable investigation defence, and the issue of public correction when the defendants submit that the writedown of goodwill on May 1, 2019 was correct;

(x) The risks were higher since there were relatively modest estimated damages suffered by the Class, which can lead to modest settlements and comparatively modest fees, as well as a strong risk against recovery based on TILT's precarious solvency and declining available insurance proceeds; and

(xi) The results achieved were very strong.

[72] For the above reasons, I approve the Retainer Agreement and the fee requested of $1,353,246.25 plus taxes of $175,922.01 and disbursements (inclusive of taxes) of $153,845.42, $20,000 of which is to be reimbursed to the third party funder.

Levy payable to third party funder

[73] By order dated November 9, 2020, the court approved the third party funding agreement which provided payment to the funder of 8% from net recovery if the action was resolved before the commencement of certification and leave or summary judgment motions, or 10% of net recovery afterward, plus payment of $131,300 from Class Counsel's fees. Applying that levy to the settlement yields a gross levy to the funder of $325,024.91, plus reimbursement of $20,000 for disbursements, which I approve.

ORDERS

[74] Counsel provided the court with draft orders at the hearing which are consistent with the above reasons. I have signed those orders and provide them to counsel with these reasons.

GLUSTEIN J.

Date: 20211206

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Defendants

REASONS FOR DECISION

Glustein J.

Released: December 6, 2021