

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE
JUSTICE CONWAY**

) *Wednesday, THE 26th*
) **DAY OF JUNE 2013**

BETWEEN:

SCOTT MACKIE

Plaintiff

- and -



**TOSHIBA OF CANADA LTD. AND
TOSHIBA AMERICA INFORMATION SYSTEMS INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order approving the form and dissemination of the notice of settlement approval hearing, was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the materials filed, and on hearing the submissions of counsel,

1. **THIS COURT ORDERS** that the short and long form notices of the settlement approval hearing are approved in the form attached as Schedules 1 and 2.
2. **THIS COURT ORDERS** that the short and long form notices shall be published pursuant to the method of disseminating notice attached as Schedule 3.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 27 2013

PER / PAR:

Conway J

JUSTICE CONWAY

Schedule 1

Short-Form Notice of Settlement Approval Hearing

NOTICE OF HEARING FOR APPROVAL OF PROPOSED NATIONAL SETTLEMENT OF THE CANADIAN TOSHIBA DLP TELEVISIONS CLASS ACTIONS

TO PROPOSED CLASS MEMBERS:

All physical and moral persons (having less than 50 employees in the year preceding the filing of the Motion for authorization) residing in Quebec who purchased a 2004 or 2005 model year Toshiba Digital Light Projection ("DLP") television or any other group to be determined by the Court.

(collectively the "Proposed Québec Class")

All Canadian residents, excluding residents of Province of Québec eligible to be class members under Québec law, who purchased a 2004 or 2005 model year Toshiba Digital Light Projection ("DLP") television, or any other group to be determined by the Court.

(collectively the "Proposed Ontario Class")

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

A Motion for authorization to institute a Class Action ("Class Action"), bearing Superior Court file number 500-06-000491-098, has been filed against Toshiba of Canada Limited and Toshiba America Information Systems Inc. ("Toshiba") alleging that Toshiba misstated the average useful life of the bulbs contained in the lamps of its 2004 and 2005 model DLP televisions.

A Statement of Claim and a Certification Motion were filed against Toshiba (the "Ontario Class Action") before the Superior Court of Justice of Ontario in the case bearing no. CV-12-456603-00CP.

An agreement (the terms of which are set out in detail in the "**Settlement Agreement**") has been reached in the Class Actions and, in order to become effective, the Settlement Agreement must be approved by the Superior Court of Quebec and the Superior Court of Justice of Ontario.

CONTENT OF THE PROPOSED SETTLEMENT

The proposed Settlement Agreement provides that Toshiba will grant an extension of the warranty on replacement bulbs purchased or received under warranty for 2004 and 2005 model Toshiba DLP televisions from its present period of six months, for an additional six months, or a total of 12 months from the date of purchase of the replacement bulb. Owners of 2004 and 2005 model Toshiba DLP televisions who will

make a claim under this extended replacement bulb warranty after the Settlement Effective Date and within that warranty period will receive a free replacement bulb.

Furthermore, a voluntary program was initiated by Toshiba in May 2006 ("*Remediation Program*") by which owners of certain 2005 Model Televisions included in a specific serial number range posted on www.toshiba.ca received a one-year extension of warranty on the originally installed lamp (thus providing two years of coverage for the lamp and its bulb).

Members of the Proposed Classes who own a Covered Model that does not fall within the serial number range of televisions covered by the Remediation Program and:

- (a) who experienced a single bulb failure outside of the warranty period, but within eighteen (18) months from the date of purchase of the television; or
- (b) who experienced two (2) or more bulb failures outside the warranty period, but within twenty-four (24) months from the date of purchase of the television;

shall be eligible to receive reimbursement for monies expended to purchase the replacement bulb or bulbs.

Members of the Proposed Class who own a 2005 Model Television that falls within the serial number range of televisions covered by the Remediation Program and who purchased one or more replacement bulbs outside the warranty period, but within twenty-four (24) months from the date of purchase of the television, shall be eligible to receive reimbursement for monies expended to purchase the replacement bulb or bulbs.

THE HEARING BEFORE THE SUPERIOR COURT OF QUEBEC ON THE APPROVAL OF THE PROPOSED SETTLEMENT WILL TAKE PLACE ON SEPTEMBER 11, 2013 AT 10:00 A.M., IN ROOM 2.08 OF THE MONTREAL COURTHOUSE LOCATED AT 1 NOTRE DAME STREET EAST, MONTREAL.

THE HEARING BEFORE THE SUPERIOR COURT OF JUSTICE OF ONTARIO ON THE APPROVAL OF THE PROPOSED SETTLEMENT WILL TAKE PLACE ON SEPTEMBER 11, 2013 AT 10:00 A.M., AT OSGOODE HALL, IN COURT ROOM #6 LOCATED AT 130 QUEEN STREET WEST, TORONTO.

A copy of the proposed Settlement Agreement, the Schedules thereto and the long form Notice to Class Members can be found on www.CanadianDLPsettlement.com and www.clg.org.

Members of the Proposed Classes are entitled to object to the Settlement Agreement and have the right to appear at the hearing. The detailed procedures to be followed by Members of the Proposed Class to submit an objection can be found on www.CanadianDLPsettlement.com and www.clg.org.

**COUNSEL FOR MEMBERS OF THE PROPOSED
CLASSES**

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**PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE SUPERIOR COURT OF QUEBEC
AND THE SUPERIOR COURT OF JUSTICE OF ONTARIO**

Schedule 2

Long-Form Notice of Settlement Approval Hearing

NOTICE OF HEARING FOR APPROVAL OF PROPOSED NATIONAL SETTLEMENT OF THE CANADIAN TOSHIBA DLP TELEVISIONS CLASS ACTIONS

TO PROPOSED CLASS MEMBERS:

All physical and moral persons (having less than 50 employees in the year preceding the filing of the Motion for authorization) residing in Quebec who purchased a 2004 or 2005 model year Toshiba Digital Light Projection ("DLP") television or any other group to be determined by the Court.

(collectively the "Proposed Quebec Class")

All Canadian residents, excluding residents of Province of Québec eligible to be class members under Québec law, who purchased a 2004 or 2005 model year Toshiba Digital Light Projection ("DLP") television, or any other group to be determined by the Court.

(collectively the "Proposed Ontario Class")

PLEASE NOTE THAT:

- **2004 Model Television** shall refer to the following Toshiba brand DLP television models: 44NHM84, 46HM84, 52HM84, 52HMX84, 62HM84, 62HMX84, 62HMX94.
- **2005 Model Television** shall refer to the following Toshiba brand DLP television models: 46HMX85, 52HM85, 52HMX85, 56HM195, 62HM85, 62HMX85, 62MX195, 72MX195, 44HM85, 62HM95 and 62HMX95.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

THE LEGAL PROCEEDINGS

A Motion for authorization to institute a Class Action ("**Class Action**"), bearing Superior Court file number 500-06-000491-098, has been filed in Quebec by Ben-Eli (the "**Petitioner**") against Toshiba of Canada Limited and Toshiba America Information Systems Inc. ("**Toshiba**") alleging that Toshiba misstated the average useful life of the bulbs contained in the lamps of its 2004 and 2005 model DLP televisions.

A Statement of Claim and a Certification Motion were filed by Mackie against Toshiba (the "Ontario Class Action") before the Superior Court of Justice of Ontario in the case bearing no. CV-12-456603-00CP.

An agreement (the terms of which are set out in detail in the "**Settlement Agreement**") has been reached between the Petitioner and Toshiba in the Class Actions. In order for the Settlement Agreement to become effective, it must be approved by the Superior Court of Quebec and the Superior Court of Justice of Ontario (the "**Courts**").

SETTLEMENT APPROVAL HEARING

THE HEARING BEFORE THE SUPERIOR COURT OF QUEBEC ON THE APPROVAL OF THE PROPOSED SETTLEMENT WILL TAKE PLACE ON SEPTEMBER 11, 2013 AT 10:00 A.M., IN ROOM 2.08 OF THE MONTREAL COURTHOUSE LOCATED AT 1 NOTRE DAME STREET EAST, MONTREAL.

THE HEARING BEFORE THE SUPERIOR COURT OF JUSTICE OF ONTARIO ON THE APPROVAL OF THE PROPOSED SETTLEMENT WILL TAKE PLACE ON SEPTEMBER 11, 2013 AT 10:00 A.M., AT OSGOOD HALL, IN COURT ROOM #6 LOCATED AT 130 QUEEN STREET WEST, TORONTO.

CONTENT OF THE PROPOSED SETTLEMENT

Subject to Courts' approval and without any admission of fault or liability on the part of Toshiba, the proposed Settlement Agreement provides that Toshiba will grant an extension of the warranty on replacement bulbs purchased or received under warranty for 2004 and 2005 model Toshiba DLP televisions from its present period of six months, for an additional six months, or a total of 12 months from the date of purchase of the replacement bulb. Owners of 2004 and 2005 model Toshiba DLP televisions who will make a claim under this extended replacement bulb warranty after the Settlement Effective Date and within that warranty period will receive a free replacement bulb.

Furthermore, a voluntary program was initiated by Toshiba in May 2006 ("*Remediation Program*") by which owners of certain 2005 Model Televisions included in a specific serial number range posted on www.toshiba.ca received a one-year extension of warranty on the originally installed lamp (thus providing two years of coverage for the lamp and its bulb).

Members of the Proposed Classes who own a Covered Model that does not fall within the serial number range of televisions covered by the Remediation Program and:

- (a) who experienced a single bulb failure outside of the warranty period, but within eighteen (18) months from the date of purchase of the television; or
- (b) who experienced two (2) or more bulb failures outside the warranty period, but within twenty-four (24) months from the date of purchase of the television;

shall be eligible to receive reimbursement for monies expended to purchase the replacement bulb or bulbs.

Members of the Proposed Class who own a 2005 Model Television that falls within the serial number range of televisions covered by the Remediation Program and who purchased one or more replacement bulbs outside the warranty period, but within twenty-four (24) months from the date of purchase of the television, shall be eligible to receive reimbursement for monies expended to purchase the replacement bulb or bulbs.

CLAIMS SUBMISSION PROCESS

Subject to Courts' approval, the Settlement Agreement provides that Toshiba shall only be obligated to pay claims pursuant to the terms of the Settlement Agreement, upon the submission by a Member of the Proposed Class to the Claims Administrator of:

- (a) A Settlement Claim Form, substantially in the form set out in Schedule 3 of the Settlement Agreement. Claims submitted in any other form will be considered null and void; and
- (b) A proof of purchase of the Covered Model. A list of retailers who may provide proof of purchase to Members of the Proposed Class for claims purposes will be made available on www.CanadianDLPsettlement.com; and
- (c) A proof of purchase of the requisite number of bulbs. Proof of purchase shall include any document emanating from a third party retailer that includes the date, amount paid for each bulb and the serial number or part number for each bulb. In the case where such a proof of purchase is not available, a sworn affidavit containing the cost, the date or period of purchase of the bulbs and the place thereof shall be provided.

A copy of the proposed Settlement Agreement, including the Claims Submission Process, the Claim Forms and the Schedules can be found on www.CanadianDLPsettlement.com and www.clg.org.

The period for submitting claims shall begin seven (7) days after publication of the Notice advising of the approval of the Settlement Agreement by the Quebec Superior Court and by the Superior Court of Justice of Ontario and expire ninety (90) days thereafter.

CLASS COUNSEL RECOMMENDATIONS

Members of the Proposed Classes are represented by Class Counsel Consumer Law Group Inc. / Consumer Law Group Professional Corporation, who are highly experienced in class action litigation and recommend the Settlement.

CLASS MEMBERS' RIGHT TO OBJECT

Members of the Proposed Classes who do not oppose the Settlement Agreement need not appear at the hearing or take any other action at this time to indicate their desire to participate in the Settlement.

Members of the Proposed Classes are entitled to object to the Settlement Agreement and have the right to appear at the hearing, in person or through a lawyer.

Any Member of the Proposed Classes who wishes to object to any term of the Settlement Agreement must do so in writing by filing a written objection and mailing it to the Parties' respective counsel at the addresses set forth below. Any such objection must be received by the Parties' respective counsel **no later than ten (10) days prior to the date for the approval hearing**. Any such objection must:

- (a) identify the DLP television purchased by the Member of the Proposed Class (by serial and model number), the date or approximate date of the purchase of the DLP television, the Province in which the DLP television was purchased, and the approximate total dollar amount of such purchase;
- (b) attach copies of any materials that will be submitted to the Court or presented at the approval hearing;
- (c) be signed by the Member of the Proposed Classes; and
- (d) clearly state in detail:
 - (i) the legal and factual ground(s) for the objection;
 - (ii) the Member's name, address and telephone number; and
 - (iii) if represented by counsel, such counsel's name, address and telephone number.

CLASS MEMBERS' RIGHT TO OPT-OUT

Even if the settlement is approved, you will have the option within thirty (30) days of the approval judgment to opt-out of the settlement and consequently opt-out of the class action.

Any objection that fails to satisfy the above-mentioned requirements or that is not properly and timely submitted may be deemed ineffective.

**COUNSEL FOR MEMBERS OF THE PROPOSED
CLASSES**

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INTERPRETATION

This notice is intended as a summary only. Should there be any conflict between the provisions of this Notice and the Settlement Agreement and any of its Schedules, the terms of the Settlement Agreement shall prevail.

**PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE SUPERIOR COURT OF QUEBEC
AND THE SUPERIOR COURT OF JUSTICE OF ONTARIO.**

Schedule 3

Method of Disseminating Notice

The notices referred to in Section 6.1 of the Settlement Agreement will be disseminated in the following manner:

- a) Through publication of a settlement website, which shall be made available through a link on www.CanadianDLPsettlement.com and shall contain a copy of the notices in a form substantially similar to that set forth in the Settlement Agreement.
- b) In addition, TCL and TAIS shall publish each of the two (2) notices referred to in Section 6.1 of the Settlement Agreement as follows: once in the Globe & Mail, once in La Presse, once in the National Post and once in the Montreal Gazette.

SCOTT MACKIE

- and -

TOSHIBA OF CANADA LTD. AND TOSHIBA AMERICA
INFORMATION SYSTEMS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT **TORONTO**

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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