

CITATION: Kozlovic v. Suunto Oy, 2022 ONSC 3648
COURT FILE NO.: CV-19-80810-CP
DATE: 2022/05/17

SUPERIOR COURT OF JUSTICE – ONTARIO

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

RE: Andrea Kozlovic, Plaintiff

AND:

Suunto Oy, Defendant

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Jeff Orenstein & Andrea Glass, for the Plaintiff

Sean McGarry, for the Defendant

HEARD: June 17, 2022

DECISION, ORDER AND DIRECTION

[1] This is a proposed class proceeding involving allegations that certain Dive Computers manufactured and distributed by the defendant contain defective pressure sensors. Dive computers are devices used by SCUBA Divers in calculating information such as oxygen reserves at different depths or the length of time a diver may remain at a particular depth without the need for decompression. The proposed class is all residents of Canada who purchased any of the specified dive computers in the relevant period of time.

[2] The parties have reached a settlement subject to court approval after appropriate public notice. The hearing today was a motion in chambers in order to certify the class action for settlement purposes, approve the plan of publication, the form of notice to class members and to set a date for the motion to approve the settlement. As the class proceedings judge assigned to this matter, I agreed to deal with the motion during a videoconference with counsel rather than in open court on notice. This is justified because it is on consent and because the settlement provides for notice to the class members. The class members will be given the right to either opt out of the proposed settlement or to object to it. There will be a public hearing at the time of the approval motion.

[3] A settlement such as this is normally arrived at without admission of liability and without a finding that the allegations have been proven. That is the case here. The defendant does not admit there is anything wrong with the dive computers in question but is willing to settle the litigation in a manner that provides a benefit to the members of the proposed class.

[4] I am satisfied that there is already some awareness of this matter amongst the diving community because the details of the litigation are posted on the web site maintained by class counsel and because there was a similar class proceeding in the United States. To certify the class proceeding for settlement purposes, even on consent, the court must still be satisfied that the criteria for certification are met.

[5] In this case, given the nature of the claims, the number of individuals who would have potential rights of action, the proposed claim process and the fact that some benefits will flow to the class members even if the settlement is not ultimately approved, I am satisfied that the statutory criteria are met. A class proceeding is the most appropriate way of arriving at a process to provide remedies to numerous purchasers of the defendant's product. I take notice of the fact that the settlement is limited in its scope. While there is no reason to believe there were any such instances, the settlement will not exclude liability for personal injury or death. It is focused on providing warranty coverage or compensation to class members whose dive computers are defective or require calibration and correction as described in the documents.

[6] Apart from some minor editorial changes identified during the hearing, and subject to the availability of the French version of documents, I am approving the proposed litigation plan leading up to a public approval hearing. During the course of discussion, it was also agreed that the dates for opting out, objecting or asking to be heard at the approval hearing would be harmonized and be 45 days prior to the hearing date.

[7] I have fixed the date for the motion to approve the settlement for October 27th, 2022 at 10:00 a.m. The motion will take place by Zoom videoconference. Unless otherwise notified, the matter will proceed in Virtual Court Room 217 at the following co-ordinates:

Zoom Video Link: <https://ca01web.zoom.us/j/64786220690?pwd=dFNBZEt2dTc0bS9NVXVQYWnkTUIlQT09>

[8] In summary, the action is certified for settlement purposes, the proposed plan of advertising and notification is approved, the proposed claim forms and other documents are also approved and deadlines are set for opting out, objecting or filing an appearance. The motion for approval of the settlement will proceed as set out above unless otherwise ordered.

Mr. Justice C. MacLeod

Date: June 17, 2022