

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM)
JUSTICE HORKINS)
MONDAY, THE 21ST
DAY OF NOVEMBER, 2011

BETWEEN:

REVA WEIN

Plaintiff

- and -

ROGERS CABLE COMMUNICATIONS INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order certifying this proceeding as a class proceeding and approving the Settlement Agreement entered into with the Defendant was heard this day at Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement attached as Exhibit "A" to the Affidavit of Reva Wein sworn May 17, 2011 and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that notice to the Class of the Settlement Agreement and of this Fairness Hearing (the "**Fairness Hearing Notice**"), was made to the Class on a monthly subscriber invoice sent by Rogers to its subscribers from August 26 to September 25, 2011 and was received by October 5, 2011;

AND ON BEING ADVISED that the Fairness Hearing Notice was posted on the website maintained by class counsel on October 7, 2011;

AND ON BEING ADVISED that the Plaintiff and the Defendant consent to this order:

1. THIS COURT ORDERS AND DECLARES that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

CERTIFICATION FOR SETTLEMENT PURPOSES

2. THIS COURT ORDERS that this action is certified as a class proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "**Act**")

3. THIS COURT ORDERS that the class (the "**Class**") shall be defined as comprising all residents of Canada (including their estates, executors or personal representatives) who, during the Claim Period, are or were subscribers of the Services of the Defendant.

4. THIS COURT ORDERS that the claim period (the "**Claim Period**") shall be defined as follows:

For members of the Class who are not resident in Ontario, August 17, 2002 to the date of this Order and for members of the Class who are resident in Ontario, August 17, 2002 to December 31, 2003 and August 17, 2006 to the date of this Order.

5. THIS COURT ORDERS that the claim asserted on behalf of the Class is a claim pursuant to the *Consumer Protection Act*, 2002, S.O. 2002, c. 30 and other similar provincial legislation in Canada, the *Competition Act*, R.S.C. 1985, c. C-34 and for unjust enrichment arising out of the Defendant's allegedly false, misleading and/or deceptive advertising and/or representations of the rates of its Services throughout Canada (the "**Claim**").

6. THIS COURT ORDERS that the action will proceed on the basis of the following common issues in respect of the Claim:

Has the Defendant employed false, misleading and/or deceptive advertising, marketing, promotional or business practices or otherwise made misrepresentations to consumers in respect of the matters referred to in the Statement of Claim, including in respect of its practice of charging subscribers of the Services for a full minute of telephone usage where a call is connected for less than a full minute (the "Charge Per Minute Practice")?

Did or does the Charge Per Minute Practice breach the *Consumer Protection Act*, 2002, S.O. 2002, c. 30 and/or other similar provincial legislation in Canada?

Did or does the Charge Per Minute Practice breach the *Competition Act*, R.S.C. 1985, c. C-34?

Was the Defendant unjustly enriched in respect of the Charge Per Minute Practice?

Has the Class suffered loss or damages in respect of the Charge Per Minute Practice and if so in what amount?

7. THIS COURT ORDERS that Reva Wein of Toronto, Ontario shall be and is hereby appointed as Representative Plaintiff for the Class and that the firm Juroviesky LLP shall be and is hereby appointed as counsel for the Class.

APPROVAL OF SETTLEMENT AGREEMENT

8. THIS COURT DECLARES that the Settlement Agreement is fair, reasonable and in the best interests of the Class.

9. THIS COURT ORDERS that the Settlement Agreement is hereby approved pursuant to s. 29 of the Act and shall be implemented in accordance with its terms.

10. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the Plaintiff and each Class Member.

11. THIS COURT ORDERS AND DECLARES that this Order, including the Settlement Agreement, is binding upon each Class Member, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Proceeding.

DISMISSAL AND RELEASE

12. THIS COURT ORDERS AND DECLARES that each Class Member shall consent and shall be deemed to have consented to the dismissal of the Proceeding as against the Releasees, without costs and with prejudice, and that any and all claims of each Class Member in respect of the Released Claims are hereby dismissed.

13. THIS COURT ORDERS AND DECLARES that each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

14. THIS COURT ORDERS that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on its own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

15. THIS COURT ORDERS AND DECLARES that each of the Releasees has released and shall be conclusively deemed to have forever and absolutely released each of the other from any and all claims for contribution and indemnity with respect to the Released Claims.

16. THIS COURT ORDERS AND ADJUDGES that this action be and is hereby dismissed against the Defendant without costs and with prejudice.

NOTICE AND OPT-OUT

17. THIS COURT ORDERS that notice to the class of approval of the Settlement Agreement (the "**Settlement Approval Notice**") shall be made on a monthly subscriber invoice sent by Rogers to its subscribers beginning on December 1, 2011 and continuing until December 31, 2011, such that it is received by subscribers by January 15, 2012 (the "**Notice Date**").

18. THIS COURT ORDERS that the Settlement Approval Notice shall be in the form attached to this Order as Schedule "A".

19. THIS COURT ORDERS that in order not to be bound by or take the benefit of the Settlement Agreement and the disposition of the Proceeding, members of the Class may opt out of the Proceeding (the "**Opt-Out Class Members**") pursuant to the process described in the Settlement Approval Notice.

DEEMED OPT-OUT OF FORMER CUSTOMERS

20. THIS COURT ORDERS that any Class Member who is not a subscriber for the Defendant's Services as at the Notice Date ("**Former Customers**") shall, at the time of commencing an individual proceeding against the Releasees (or any of them) in respect of the Released Claims, be deemed to be an Opt-Out Class Member.

21. THIS COURT ORDERS that any and all Opt-Out Class Members shall only be entitled to pursue an individual action or proceeding against the Releasees (or any of them). All persons, including each Class Member and each Opt-Out Class Member, are hereby prohibited from commencing or maintaining a proceeding under the Act (or any other class proceeding statutes) in respect of the Released Claims, and any such claims are released, remised and forever discharged.

22. THIS COURT ORDERS that the limitation period with respect to any individual proceeding that may be commenced by Former Customers in respect of the Released Claims is tolled for four years from the date of this Order.

APPROVAL OF CLASS COUNSEL FEE

23. THIS COURT ORDERS AND DECLARES that the Class Counsel Fee (in the amount of \$100,000.00) is fair and reasonable and is hereby approved.

24. THIS COURT ORDERS AND DECLARES that this Order is a final order and any appeal shall be made to the Court of Appeal within 30 days pursuant to Rule 61 of the *Rules of Civil Procedure*.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO.:
LE / DANS LE RÉGISTRE NO.:

NOV 25 2011

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

A handwritten signature, possibly of a registrar or clerk, is written over the 'PER / PAR:' field of the stamp.

Justice C. Hoffman
(Signature of judge, officer or registrar)

Form of Notice

On November ■, 2011, Madam Justice Horkins of the Ontario Superior Court of Justice approved a settlement of a Class Proceeding (Court File No. CV-08-00360887 CP) alleging that Rogers was unclear in describing that it charges for long distance services on a per minute basis and not on a per second basis.

Rogers disputes the allegations in the Class Proceeding. However, in recognition of our important relationship with our subscribers and the costs of litigation, Rogers agreed to settle the Class Proceeding.

Pursuant to the settlement, Rogers Communications will be providing all of its current Rogers Home Phone Long Distance subscribers whose accounts are in good standing, including small office and home office subscribers, two free days of long distance calling **anywhere in Canada** on July 1 and July 2, 2012 (the "**Call Days**"). This offer does not apply to long distance calling from wireless devices or any International calls. As former Rogers Home Phone Long Distance subscribers will not be able to take advantage of the Call Days, Rogers will make a charitable donation of \$100,000 to the Law Foundation of Ontario's Access to Justice Fund in lieu of making a payment to those former subscribers. For more information on the Fund, please visit www.lawfoundation.on.ca/atjf.

PLEASE READ THE FOLLOWING AS IT AFFECTS YOUR RIGHTS

If you do not wish to participate in the settlement, please visit www.rogers.com/ldoptout and complete the online form by no later than February 16, 2012. If you do not opt out of the settlement by February 16, 2012, you will be bound by the terms of the settlement and will not be able to file any claim against Rogers in respect of this matter.

If you have any questions, please contact Juroviesky LLP at 416.481.0718.

REVA WEIN
Plaintiff

and

ROGERS CABLE COMMUNICATIONS INC.
Defendant

Court File No: CV-08-00360887CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
44th Floor, 1 First Canadian Place
Toronto Canada M5X 1B1

Matthew I. Milne-Smith (LSUC#: 44266P)
Steven G. Frankel (LSUC#: 58892E)
Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Defendant