Court File No. CV-20-00641059-00CL
Court File No. CV-20-00641372-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

OBJECTION

To

"The allocation of Representative Counsel's fees/expenses/HST through a pro rata application."

Re: the Settlement surrounding the winding up of PACE Securities, PACE Financial, and First Hamilton Holdings, et al

October 4, 2021 **submitted by: Wayne Gould**

NOTICE OF OBJECTION

TO: info.pacesecuritieslitigation@paliareroland.com

RE: PACE SECURITIES CORPORATION—ALLOCATION OF SETTLEMENT FUNDS

I, THE UNDERSIGNED INVESTOR in preferred shares of Pace Financial Limited, acknowledge that pursuant to the direction of the Honourable Justice Conway dated August 25, 2021, Investors wishing to object to the relief sought by Representative Counsel at the hearing on October 18, 2021are encouraged to notify Representative Counsel of their intention to do so, in writing, by October 4, 2021.

Therefore, I hereby give notice that I object to the order sought by Representative Counsel at the Allocation Hearing for the reasons indicated below:

The allocation of Representative Counsel's fees/expenses/HST through a pro rata application.

Please review the attached report for additional information.

I DO intend to appear and address the court at the Allocation Hearing on October 18, 2021.

I understand that regardless of whether I attend at the hearing my objection will be filed with the court prior to the hearing of the Allocation Motion.

Date: October 4th, 2021

Name: Wayne Gould

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OBJECTION REPORT

This objection is being filed by Wayne Gould. I am a member of the Representative Committee (*Terms/definitions detailed in Appendix "A"*). Although there are members of the committee that support the objection, there are some that don't while others have no opinion or really aren't engaged on the matter.

What is important is that the Representative Counsel formulated this Committee to reflect a cross section of the investor claimants.

The Committee has been comprised of 12 members with varying levels of ongoing interaction and participation. Those members supporting this objection have been totally engaged and informed throughout the entire process and are committed to voicing the concerns of those 700 investor claimants. The objection stands on its own merit.

Please note: The information detailed within this objection report is offered with the best intentions while maintaining the NDA that Representative Committee members were required to sign before being taking on the responsibilities of acting on behalf of the 700 investor claimants.

Objection:

The allocation of Representative Counsel's fees/expenses/HST through a pro rata application.

Solution(s) requested:

That Representative Counsel's fees/expenses/HST be allocated through a model that combines a percentage of the fees/expenses/HST per investor claimant (flat fee) and a percentage based on the recovered amount per investor claimant (pro rata) to be referred to as a "hybrid model".

The hybrid model application being proposed is presented on page 6 (using $5 mil), page 7 (using $6 mil) of this report and in greater detail in Appendix "B".

Reason(s) for Objection:

While the Representative Committee remains appreciative of the efforts of the Court, Representative Counsel and all other parties to move this action through to completion, the application of a strictly pro rata approach to the allocation of the fees/expenses/HST within the settlement distribution scheme negatively impacts the fairness and equity of the final distribution amounts.

As a result of the mediation settlement and proposed professional fees amounts and their respective impact on investor claimant returns, the Representative Committee members had cause to understand the relevance of the distribution and allocation models and attempt to address the perceived anomalies.

As detailed in the Third Report filed by Representative Counsel; “At no time in the course of our engagement leading up to the Settlement, would we have entertained a proposal to segregate or “bucket” Investor Claimants.”

However, the cornerstone defense of this case from the beginning has revolved around the financial impact to those investors nearing or already retired; elderly retirees, most of whom are in their late sixties and seventies; targeted because of their age, limited investment knowledge; time is not on their side.

Regardless of the term you wish to attach to this, Representative Counsel has employed a clear delineation between investor groups to establish strong supporting arguments to settle this case.

The strictly pro rata application of fees/expenses/HST further penalizes this group.

Representative Counsel was well aware of the Representative Committee members objections to the proposed pro rata allocation model for the fees/expenses/HST yet in the July 7, 2021 report to Investor Claimants from PRRR and the July 7, 2021 report to the Ontario Superior Court make reference to a 70% return for investor claimants, potentially creating false expectations.

Please note: While objecting to the allocation of Representative Counsel’s fees/expenses/HST through a pro rata application we have also filed an objection relevant to the fees/expenses/HST being requested by Representative Counsel. As a result, there are references to both $5 and $6 mil for fees/expenses/HST.

Using the figure of $5 mil for fees/expenses/HST:

- a $10k investor claimant would contribute $1,070;
- a $600k investor claimant would contribute $64,200 and
- a $1mil investor claimant would contribute $107,000.

Using the figure of $6 mil for fees/expenses/HST:

- a $10k investor claimant would contribute $1,280;
- a $600k investor claimant would contribute $76,830 and
- a $1mil investor claimant would contribute $128,050.

Hybrid model versus Pro rata or Flat Fee

Supporting Details:

First, let’s understand the distinction between the various investors.

On one end there’s the lesser amount investor complementing their savings, RRSPs, etc. while as the investments become larger, it’s the group planning for or already retired. One question that arises is what dollar value distinguishes one group from the other?   For the purposes of this discussion, the ability to accumulate savings of $100k or greater for investment may put your circumstances into the group most impacted.

The following figures are extracted from Representative Counsel's "Modeling of Alternative Allocation Scenarios" as detailed in their submission (page 213) of the "Third Report."

Pro rata model:

Using the figure of 610 investors and $5 mil for fees/expenses /HST, 329 invested (between $0-50,000) $6,934,000 and would contribute $739,858 toward fees. That's 53.9% of the investors contributing only 14.8% while the remaining 46.1% of investors contribute 85.2% towards the fees/expenses/HST.

Using the figure of 610 investors and $6 mil for fees/expenses /HST, 329 invested (between $0-50,000) $6,934,000 and would contribute $887,899 toward fees. That's 53.9% of the investors contributing only 14.8% while the remaining 46.1% of investors contribute 85.2% towards the fees/expenses/HST.

The majority of the Representative Committee members question how pro rata meets the fair/equitable test, whether at $5mil or $6mil.

There are Representative Committee members who feel strongly that because every claimant investor received the same or equal representation, the fees/expenses/HST should be allocated equally between each claimant.

Flat Fee model:

Using the figure of 610 investors and $5mil for fees/expenses/HST, each claimant would contribute $8,197.

Using the figure of 610 investors and $6mil for fees/expenses/HST, each claimant would contribute $10,477.

Please note: The above figures would be slightly higher if applied due to the necessary reallocation of fees/expenses/HST for those investor claims at or below the flat fee amount. A simple calculation that could be employed by the accountants.

Illustrating the extremes of each model tended to polarize Representative Committee members and as a result, the Committee evaluated the combination of both and would propose a hybrid model that applies 30% flat fee and 70% pro rata.

Please refer to the charts on pages 6 and 7 that illustrates the hybrid 30% - 70%, flat fee and pro rata.

Not to minimize the impact on the lesser amount investor but from the very beginning of this case, there has been a clear distinction relevant to the attributes of certain investors and the need to explore, find and implement a timely solution.

In a variety of filed reports (Ernst & Young, MNP Ltd. and PRRR) and court decision documents (Justice Markus Koehnen Ontario Superior Court of Justice), one would find similar comments:

- Many of the Investor Claimants are near or at retirement age, such that they need compensation on a timely basis and will not benefit from protracted litigation;
- They are elderly retirees, most of whom are in their late sixties and seventies;
- The funds they invested were retirement funds from within their RRSP's and RRIF's;
- In many cases, the income stream and capital withdrawals were a critical component for them to be able to meet and fund their daily living expenses;
- "mom and pop" investors who lack securities market sophistication, and
- This is the group targeted because of their age, limited investment knowledge, retiring/retired or needing the promise of higher interest.

With the exception of the Representative Counsel Third Report filed September 27, 2021, that refers to the negative experience of one $10k investor (page 47 para 66), we have yet to find comments relevant to the negative impact on the "small investor".

Post financial collapse of their investments, this group has grappled with the significance of their loss and the personal impact of the events that continue to linger:

- Many in this group saved for years and years (decades) for the sole purpose of saving for their retirement years;
- This group has had the greatest post financial collapse impact;
- This group suffered the most for lost interest income earnings;
- This group has the larger amounts of <u>unrecovered</u> investment money;
- This group will never get that money back and many need these funds to pay for their expenses in retirement;
- This group will never generate any future income on the unrecovered monies;
- The unrecovered monies still have life altering financial implications for many in this group, and
- This group still bares the emotional and mental burden of the entire ordeal and those unrecovered monies. Some may never recover from the impact.

How can any allocation model that further penalizes this group be considered fair and equitable?

There is no dispute that pro rata is the precedent for allocation/distribution plans but let's be clear; there are different applications of the pro rata process.

*Pro rata is a Latin term used to describe a proportionate allocation. It essentially translates to "**in proportion**," which means a process where <u>whatever is being allocated will be distributed in equal portions</u>.*

Different applications may include:

- Claim/recovery = cents on the dollar distribution
- Recovery/claimant = equal amounts per person distribution
- Recovery/damages = award based on severity of damages distribution
- Fees/claimant = equal amounts per claimant - allocation

All are pro rata but different applications.

For comparison purposes, the Hybrid, Pro rata (cents/dollar) and Flat Fee models are presented below demonstrating the relevance of the fees application.

Disclaimer: The following charts contain calculations that may be slightly different than information offered in other reports. I am not an accountant nor mathematician and understand how finite the calculations are, impacts the final amounts shown.

Models are illustrated using $5 and $6 mil.

Fees Allocation Comparison Chart @ $5mil

A: Pro rata $5,000,000/46,856,600=0.107 per investment dollars claimed.
B: Flat Fee 5,000,000 fees divided by 610 claimants = $8,197 per claimant (final calculation may be slightly higher due to the reallocation of fees attributed to less than $10k claims)
C: Hybrid 30% Flat Fee & 70% Pro rata

Investment $$	Recovered $$	Pro rata Fees "A"	Net Recovery	Flat Fee Fees "B"	Net Recovery	Hybrid 30/70% Fees "C"	Net Recovery
1,000	853	107	746	853	0	567	286
5,000	4,265	535	3,730	4,265	0	2,834	1,431
10,000	8,530	1,070	7,460	8,197	333	3,209	5,321
25,000	21,325	2,675	18,650	8,197	13,128	4,334	16,991
50,000	42,650	5,350	37300	8,197	34,453	6,209	36,441
100,000	85,300	10,700	74,600	8,197	77,103	9,959	75,341
200,000	170,600	21,400	149,200	8,197	162,403	17,459	153,141
400,000	341,200	42,800	298,400	8,197	333,003	32,459	308,741
500,000	426,500	53,500	373,000	8,197	418,303	39.959	386,541
750,000	639,750	80,250	559,500	8,197	631,553	58,709	581,041
1,000,000	853,000	107,000	746,000	8,197	844,803	77,459	775,541

Note: NO investor receives $0.00. Investor claims of $5k or less will receive a minimum 28.62% return. Any remaining fee/expenses/HST will be reallocated to the remaining investor claims.

Fees Allocation Comparison Chart @ $6mil

A: Pro rata $6,000,000/46,856,600=0.128 per investment dollars claimed.
B: Flat Fee 6,000,000 fees divided by 610 claimants = $9,836 per claimant (shown as slightly higher due to the reallocation of fees attributed to less than $10k claims)
C: Hybrid 30% Flat Fee & 70% Pro rata

Investment $$	Recovered $$	Pro rata Fees "A"	Net Recovery	Flat Fee Fees "B"	Net Recovery	Hybrid 30/70% Fees "C"	Net Recovery
1,000	853	128	725	853	0	567	286
5,000	4,265	640	3,628	4,265	0	2,834	1,431
10,000	8,530	1,281	7,256	10,477	0	3,841	4,689
25,000	21,325	3,201	18,141	10,477	10,848	5,176	16,149
50,000	42,650	6,403	36,280	10,477	32,173	7,401	35,249
100,000	85,300	12,805	72,562	10,477	74,823	11,851	73,449
200,000	170,600	25,610	144,990	10,477	160,123	20,751	149,849
400,000	341,200	51,220	289,980	10,477	330,723	38,551	302,649
500,000	426,500	64,025	362,809	10,477	416023	47,451	379,049
750,000	639,750	96,038	544,213	10,477	629,273	69,701	570,049
1,000,000	853,000	128,050	725,618	10,477	842,523	91,951	762,049

Note: NO investor receives $0.00. Investor claims of $5k or less will receive a minimum 28.62% return. Any remaining fee/expenses/HST will be reallocated to the remaining investor claims.

A further illustration of the three models is offered at Appendix "B".

In closing:

Following a review of the three models, the hybrid application of 30%/70% ensures the most equitable solution for those most impacted in this action and is in keeping with their contribution to the success of the suit and therefore, we respectfully request the Court approve the application of the 30% flat fee and 70% pro rata model as presented.

This objection is being filed by Wayne Gould.

APPENDIX "A"

Term/definitions:

Claimant – same as Investor Claimant

Investor Claimants – means all individuals who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants and any related persons or organizations (collectively "Defendants") in respect of: (i) the purchase PACE Financial Limited's Series A 5% Cumulative Redeemable Retractable Non-voting Term Preference Shares; and, (ii) the purchase of equivalent investments in FHH as well as FHH warrants (collectively, with (i) the "Preference Shares").

Representative Committee - a committee comprised of Investors

Committee – same as the Representative Committee

Fees – Fees/expenses/HST

Investor Steering Committee - a committee combined of Representative Committee and Representative Counsel Members

Representative Counsel - Paliare Roland is appointed to represent the Investor Claimants

PRRR – is Representative Counsel

APPENDIX "B"

Illustration of Hybrid 30% - 70% model, Pro rata and Flat Fee models

Model "HYBRID" 30% flat fee & 70% pro rata (cents/dollar) using $5,000,000

Flat Fee per claimant = 5,000,000 fees divided by 610 claimants = $8,197 per claimant

A) Using 30% of the legal fees = $8,197/30%=$2,459 per claimant;

Pro rata amount

B) The remaining 70% of legal fees could be allocated on a pro-rata basis. The more invested, the more contributed to the remaining 70% of the legal costs. 70% of fees = $3,500,000/46,856,600=$.075 per dollar invested.
C) Multiply the investment by .075 plus 2,459 (70% + 30%) = fees contribution;
D) Multiply the investment by 0.853 (40,000,000/46,856,600=0.853 per dollar investment recovered), minus fees owing equals net investment recovered.
E) Divide the net recovered by the investment amount = return per dollar invested

Application per $1, 5, 10, 25, 50, 100, 200, 400, 500, 750 and 1,000k investment

Investment $$	Recovered $$	Fees/expenses/HST	Net Recovery $$	% of Return	% of Total Fees
1,000	853	567	286	28.62	0.06
5,000	4,265	2,834	1,431	28.62	0.06
10,000	8,530	3,209	5,321	53.21	0.06
25,000	21,325	4,334	16,991	68.0	0.09
50,000	42,650	6,209	36,441	72.9	0.12
100,000	85,300	9,959	75,341	75.34	0.20
200,000	170,600	17,459	153,141	76.57	0.35
400,000	341,200	32,459	308,741	77.18	0.65
500,000	426,500	39.959	386,541	77.31	0.80
750,000	639,750	58,709	581,041	77.47	1.17
1,000,000	853,000	77,459	775,541	77.55	1.55

Note: NO investor receives $0.00. Investor claims of $5k or less will receive a minimum 28.62% return. Any remaining fee/expenses will be reallocated to the remaining investor claims.

In this scenario, 329 investors of 610 in total (or 53.9% of total) had less than $50,000.00 each invested representing approx. $6,934K or 14.8% of the total investment pay approx. $1,582K or 26.3% of fees.

PRRR Pro rata: Per Claimant contribution to total legal fees/expenses/HST :

$5,000,000/46,856,600=0.107 per investment dollars claimed.
Application per $1, 5, 10, 25, 50, 100, 200, 400, 500, 750 and 1,000k investment

Investment $$	Recovered $$	Fees/expenses/HST	Net Recovery $$	% of Return	% of Total Fees
1,000	853	107	746	74.6	0.002
5,000	4,265	535	3,730	74.6	0.01
10,000	8,530	1,070	7,460	74.6	0.02
25,000	21,325	2,675	18,650	74.6	0.05
50,000	42,650	5,350	37300	74.6	0.11
100,000	85,300	10,700	74,600	74.6	0.21
200,000	170,600	21,400	149,200	74.6	0.43
400,000	341,200	42,800	298,400	74.6	0.86
500,000	426,500	53,500	373,000	74.6	1.07
750,000	639,750	80,250	559,500	74.6	1.61
1,000,000	853,000	107,000	746,000	74.6	2.14

In this scenario, 329 investors of 610 in total (or 53.9% of total) had less than $50,000.00 each invested representing approx. $6,934K or 14.8% of the total investment pay approx. $888K or 14.8% of the total fees and costs.

Flat Fee Model

Flat Fee per claimant = 5,000,000 fees divided by 610 claimants = $8,197 per claimant
Application per $1, 5, 10, 25, 50, 100, 200, 400, 500, 750 and 1,000k investment

Investment $$	Recovered $$	Fees/expenses/HST	Net Recovery $$	% of Return	% of Total Fees
1,000	853	853	0	0	0.02
5,000	4,265	4,265	0	0	0.09
10,000	8,530	8,197	333	3.33	0.16
25,000	21,325	8,197	13,128	52.5	0.16
50,000	42,650	8,197	34,453	68.9	0.16
100,000	85,300	8,197	77,103	77.1	0.16
200,000	170,600	8,197	162,403	81.2	0.16
400,000	341,200	8,197	333,003	83.25	0.16
500,000	426,500	8,197	418,303	83.66	0.16
750,000	639,750	8,197	631,553	84.2	0.16
1,000,000	853,000	8,197	844,803	84.5	0.16

In this scenario, 329 investors of 610 in total (or 53.9% of total) had less than $50,000.00 each invested representing approx. $6,934K or 14.8% of the total investments pay approx. $3,056K or 50.9% of the total fees and costs. Fees/expenses/HST reducing the net recovery to $0 need to be reallocated and is not illustrated in this chart.