

NOTICE OF APPROVED SETTLEMENT

TO: **ALL CLASS MEMBERS IN *FANTL v IVARI* – CAN-AM FUND REPLICATION
CLASS ACTION**
COURT FILE NO.: **06-CV-306061-CP**

In reasons for decision released on December 12, 2023, the \$7 million Settlement of this proceeding was approved by the Ontario Superior Court of Justice as being fair, reasonable, and in the best interests of the Class Members.

The agreement to settle this matter does not imply any liability, wrongdoing or fault on the part of ivari. None of the allegations against ivari have been proven and ivari expressly denies any liability, wrongdoing, or fault.

For more information about this class action and the approved settlement, please visit:
<https://www.canamfundclassaction.ca/>

History of this Class Proceeding

The Plaintiff's Statement of Claim alleged that the Defendant made commitments or representations related to the Can-Am Fund replicating the performance of the S&P 500 Total Return Index on a best efforts basis. The Can-Am Fund was available as an investment option through a number of different insurance policies offered by the Defendant. The alleged commitments and representations were either: i) express contractual commitments in the Class Members' written insurance contracts ("Contract Class Members"); or ii) representations (not contractual promises) contained in the "summary information folders" that were provided to Class Members in connection with their application for their insurance contract (Class Members with for whom the alleged commitments and representations are found only in the summary information folders are "Misrepresentation Class Members"). The text of the court-ordered class definition is available for review at: www.canamfundclassaction.ca.

Following a series of court decisions and appeals issued between 2013 and 2017 this action was certified (or approved to proceed) as a class action with Joseph Fantl as the representative plaintiff.

The Class was notified of the certification of this class action in 2019 and given the opportunity to exclude themselves (opt-out) from this class action. Anyone remaining in this class action following the close of the opt-out period agreed to be bound by any decision at trial or court-approved settlement in this action.

Following several years of additional litigation, including an extensive discovery process and a mediation before a retired judge, the Parties reached the settlement summarized below. As set out above, the settlement was approved on December 12, 2023, following a hearing in the Ontario Superior Court of Justice on December 11, 2023.

The Approved Settlement

Under the Settlement, the Defendant ivari has agreed to make an all-inclusive settlement payment of CAD \$7 million. Compensation to Class Members (the "Net Settlement Fund") will be paid from the net amount of the \$7 million sum remaining after payment of Class Counsel's legal fees and incurred expenses,

settlement administration expenses, and payments owing the Class Proceeding Fund (including the Fund's 10% statutory levy).

In exchange for its \$7 million payment, ivari will receive a full release of all claims and any potential claims that the Class Members may have against it relating to the Best Efforts Replication Claim relating to the Can-Am Fund. The Net Settlement Fund will be distributed among the Class Members pursuant to the court-approved Distribution Protocol (defined below).

The Parties have agreed, and the Court has approved, the following Distribution Protocol to distribute the Net Settlement Fund:

1. No Class Member is required to make a claim or provide evidence regarding their individual allocation. Instead, each relative share of the Net Settlement Fund allocated to a qualifying Class Member has been calculated on the basis of that Class Member's Can-Am Fund transaction data that is already in the possession of ivari;
2. An outside financial services and consulting firm has been retained to calculate each Class Member's individual share of the Net Settlement Fund;
3. Individual Class Member allocations are based on a comparison of the returns of their investments in the Can-Am Fund to the returns of the S&P 500 Total Return Index between June 1, 2000 through July 31, 2019. Individuals who divested from the Can-Am Fund prior to June 1, 2000 or invested after July 31, 2019 will not be entitled to a share of the Net Settlement Fund;
4. The difference between a Class Member's Can-Am Fund returns and the S&P 500 Total Return Index within that time period is used to generate a notional amount specific to that Class Member;
5. The statutory pre-judgement interest of 3.3% was then added to this notional amount for each Class Member from the time of their divestment from the Can-Am Fund or July 31, 2019 (whichever is earlier) to May 3, 2023;
6. Due to the difficulties in establishing misrepresentation claims, Class Members whose insurance contracts did not contain express best efforts language (i.e. Misrepresentation Class Members) have had their notional amount reduced by 50% to account for the greater risks and lower likelihood of recovery on the misrepresentation claims if the case had proceeded forward on the merits;
7. Class Members whose insurance contracts contained express best efforts language (i.e. Contract Class Members) did not have their notional amount reduced;
8. The notional entitlement for each Class Member as calculated and potentially reduced as per above will in turn be expressed as a percentage of the sum of all notional amounts and then multiplied by the Net Settlement Fund to determine the initial allocation of each Class Member;
9. Class Members whose initial allocation amounts to \$50 or less shall not receive any compensation from the Net Settlement Fund, and \$50 or less amounts otherwise allocated to those Class Members shall be distributed to the balance of the Class on the basis of their proportionate share. Please refer to the enclosures with this Notice to determine if you are allocation amounts to \$50 or more;
10. The Funds from any uncashed compensation cheques will be pooled and, 13 months following the first distribution of settlement funds, will be paid out in a second

- distribution to those Class Members who cashed cheques during the first distribution, with each such Class Member receiving a proportionate percentage of the uncashed compensation calculated by dividing the value of their cashed cheque from the initial distribution by the sum total value of all cashed cheques from the initial distribution; and,
11. Any Settlement Funds remaining following the second distribution will not be returned to ivari but will be donated to charity.

The complete text of the Distribution Protocol can be reviewed at: www.canamfundclassaction.ca.

Updating Class Member Contact Information

In order to communicate with you better and to assist in the mail-out of cheques, Class Members are requested to confirm or update their contact information by sending an email to the settlement administrator Epiq Class Action Services Canada, Inc. at info@canamfundclassaction.ca or through the change of address link or portal at www.canamfundclassaction.ca.

Class Counsel's Motion for Fee Approval

The law firm of Roy O'Connor LLP is Class Counsel and has represented the members of this Class in this action for the last 11 years of the litigation. Roy O'Connor LLP can be reached as set out below.

As set out above, Class Members do not have to personally pay Class Counsel for the work that they have done or for the disbursements that they have carried over the years since this case began. The Representative Plaintiff entered into a contingency fee agreement with Class Counsel at the outset of the case, providing that Class Counsel are to be paid only in the event of a successful settlement or trial judgment. As provided for in that contingency fee agreement, the Court approved legal fees of 30% of the \$7 million Settlement Fund minus unrecouped disbursements of \$182,893.64 and permitted Class Counsel to retain prior costs awards totalling \$198,249.05 for a total fee, exclusive of taxes, of \$2,243,380.96. HST on legal fees totalling \$265,867.15 shall be paid out of the Settlement Fund as well.

In this case, the Plaintiff has received financial support from the Class Proceedings Fund (the "Fund"), which is a body created by statute and designed to allow access to the courts through class actions in Ontario. The Fund agreed to reimburse the Plaintiff for some disbursements incurred in pursuing this action. The Fund would also have been responsible for costs that may have been awarded against the Plaintiff in this case. In exchange, the Fund is entitled to recover, from any court award or settlement in favour of the Class Members, the amounts it has reimbursed the Plaintiff for disbursements as well as 10% of any amounts payable to Class Members.

Interpretation

This notice only contains a general summary of some of the terms of the Settlement Agreement. As stated above, a full copy of the Settlement Agreement can be found at www.canamfundclassaction.ca. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

More Information

For more information about the class proceeding lawsuit, you may contact:

ROY O'CONNOR LLP

Barristers

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Email: info@royoconnor.ca

Tel: (416) 362-1989

Web: www.canamfundclassaction.ca

**PLEASE DO NOT CALL IVARI, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION.
THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS ABOUT THE LAWSUIT OR SETTLEMENT.**

This notice is published pursuant to the Ontario Class Proceedings Act and was approved by the Court.