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COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS (APPLICANTS)	FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative FIONA SINGH
DEFENDANTS (RESPONDENTS)	GLAXOSMITHKLINE INC., GLAXOSMITHKLINE LLC, and GLAXOSMITHKLINE PLC.
	Brought under the Class Proceedings Act
DOCUMENT	SUBMISSIONS
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BRIEF OF LAW
(September 18th, 2024)

1. The parties jointly seek an order approving the settlement of this class proceeding, the appointment of the claims administrator, the fees and disbursements of counsel, an honorarium for the representative plaintiff, and the content and means of giving notice of settlement approval.

I. SETTLEMENT APPROVAL

2. A class proceeding settlement is not binding unless it is approved by the Court.[1] This Court addressed the test and factors to be considered on an application to approve a settlement in at least 3 reported cases: *Northwest* (Indian residential schools);[2] *Adrian* (tainted blood);[3] and *L.(T.)* (provincial child welfare).[4]

3. A settlement must be fair, reasonable, and in the best interests of the class as a whole.[5] Fairness of the negotiated compromise is presumed. A settlement need not be perfect, just in a "zone or range of reasonableness" amidst various possible resolutions.

(a) As explained in *Heward*:

> [16] While the burden is on the party seeking approval - and the overriding consideration is whether it is fair and reasonable and in the best interests of the class members - a resolution of complex litigation through the compromise of claims is to be encouraged. In determining whether a settlement represents a reasonable compromise of the claims of class members, the court is to accept that there will usually be **a range of reasonable alternatives.**[6]

(b) As explained in *Mignacca*:

> [47] As Cullity J. described it..., in order to reject a proposed settlement "and require the litigation to continue, a court must conclude that the settlement does not fall within **a zone of reasonableness**." ...courts encourage "resolution of complex litigation through the compromise of claims" and such an approach is also "favoured by public policy." …a proposed settlement "negotiated at arm's-length by class

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[1] *Class Proceedings Act*, SA 2003, c C-16.5 **("*CPA*")**: ("35(2) A proceeding may be settled...only with the approval of the Court and subject to any terms or conditions that the Court considers appropriate. (4) A settlement...is not binding unless approved by the Court. (5) A settlement...that is approved by the Court binds every class member...only to the extent provided by the Court.").

[2] *Northwest v Canada (Attorney General)* (Dec. 14th), 2006 ABQB 902, 45 CPC (6th) 171 (McMahon J.).

[3] *Adrian v Canada (Minister of Health)* (June 7th), 2007 ABQB 376 (Ouellette J.) **("*Adrian 376*")**.

[4] *L.(T.) v Alberta (Director of Child Welfare)* (Dec. 18th), 2015 ABQB 815 (Thomas J.).

[5] *Adrian 376*, ¶12, 23, 29. || *L.(T.)*, ¶10, 27, 29.

[6] *Heward v Eli Lilly & Co.* (June 11th), 2010 ONSC 3403, 97 CPC (6th) 382 (Cullity J.) **("*Heward 3403*")**, ¶16.

> counsel" has "a strong initial **presumption of fairness**."
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> [48] Finally, while Cullity J. noted that the settlement must provide "appropriate consideration" to the class for the release of its rights in the litigation, it must be recognized "that there may be a number of possible outcomes within a **zone or range of reasonableness**; all settlements are the product of compromise" and in a settlement parties rarely receive "exactly what they want." Therefore, "fairness is not a standard of **perfection**" and "reasonableness allows for **a range of possible resolutions**." As he noted "a **less than perfect** settlement may be in the best interests of those affected ... when compared to the alternative of the risks and costs obligation."[7]

4. A court must not simply 'rubber stamp' a settlement, but should respect the negotiated compromise of the parties.[8] In *Northwest*:

> [23] S. 35 of the CPA requires Court approval of a class action settlement but provides no standard or test for such approval. Other jurisdictions state the test as whether the settlement is fair, reasonable and in the best interests of the class as a whole. That test is itself reasonable and I adopt it. ...
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> [24] A settlement need not be perfect; it need not be the best for every class member. Settlements by their nature are a product of **negotiations** and **compromises**. The law looks to whether the settlement falls within a range of reasonableness. ...[9]

5. This Court has endorsed at least 2 sets of factors to frame a section 35 analysis. In *L.(T.)*, 8 were employed.[10] *Adrian* used a similar set.[11] Similar factors were also

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[7] *Mignacca v Merck Frosst Canada Ltd.* (Sept. 4th), 2012 ONSC 4931, 33 CPC (7th) 123 (Leitch J.) **("*Mignacca*")**, ¶47-48.

[8] *Adrian v Canada (Minister of Health)* (June 7th), 2007 ABQB 377, 42 CPC (6th) 201 (Ouellette J.) **("*Adrian 377*")**: ("[26] ...the function of the Court is not to be taken as a mere formality or **rubber stamping** of a settlement but that the Court "is not to substitute its judgment for that of the parties who negotiate the settlement. Nor is it the Court's function to litigate the merits of the action."").

[9] *Northwest*, ¶23-25.

[10] *L.(T.)*: ("[12] ...the following **factors** may be considered: (1) likelihood of recovery, or likelihood of success; (2) amount and nature of discovery evidence; (3) settlement terms and conditions; (4) recommendation and experience of counsel; (5) future expense and likely duration of litigation; (6) recommendation of neutral parties, if any; (7) number of objectors and nature of objections; and (8) the

employed in Canadian pharmaceutical settlements.[12] All the enumerated factors need not be considered.[13] The analysis that follows references both sets of factors, and the Plaintiffs address those that are relevant to this settlement approval.

6. Across common law Canada, settlements were reported in 15 pharmaceutical cases (**Appendix 1**). A further unreported decision in a Paxil® class proceeding was approved in *Bartram v Glaxosmithkline Inc.* (Vancouver Registry, S081441).[14] As this is a pharmaceutical class action, the guidance provided by those other courts will also be referenced throughout this brief.

A. likelihood of success and the risk of loss

7. As McMahon J. observed, "Any litigation carries legal risks. The greater the risk of loss the more urgent the need to settle on the best possible terms."[15] The Court

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presence of good faith and the absence of collusion....").

[11] *Adrian 376*: ("[14] For the purposes of this proposed settlement, the following **factors** are considered: a) The likelihood of success and the risk of loss; b) The costs and likely duration of the litigation; c) The terms of the settlement; d) The presence of arms-length bargaining and the absence of collusion; e) The number and nature of objections; f) The recommendation and experience of counsel; g) The recommendations of neutral parties; and h) The personal circumstances of the Plaintiffs.").

[12] *Tesluk v Boots Pharmaceutical PLC* (April 4th, 2002), 21 CPC (5th) 196 (Winkler J.), ¶10. || *Wilson v Servier Canada Inc.* (March 21st. 2005), 252 DLR (4th) 742 (Cumming J.) **("*Wilson 252*")**, ¶42. || *Voutour v Pfizer Canada Inc.* (Nov. 30th), 2011 ONSC 7118 (Perell J.) **("*Voutour*")**, ¶58. || *Goodridge v Pfizer Canada Inc.*, 2013 ONSC 2686, 49 CPC (7th) 342 (Perell J.) **("*Goodridge*")**, ¶49. || *Stanway v Wyeth Canada Inc.* (June 10th), 2015 BCSC 983 (Gropper J.) **("*Stanway*")**, ¶31. || *Mignacca*, ¶44. || *MacMillan v Merck Frosst Canada & Co.* (Oct. 6th), 2016 SKQB 325 (Elson J.) **("*MacMillan*")**, ¶27. || *Sweetland v Glaxosmithkline Inc.* (April 30th), 2019 NSSC 136 (Wood J.) **("*Sweetland*")**, ¶7.

[13] *Stanway*: ("[32] ...some of these factors may be attributed greater significance while others may be disregarded or amalgamated depending on the nature of the facts in each case.").

[14] *Affidavit of Fiona Singh* (2024-09-11) **("*Singh Affidavit*")**, ¶59, Ex. 2.

[15] *Northwest*, ¶26.

should consider that counsel for each party has assessed the risks and determined that it is in the interests of their clients to settle on the terms proposed. In *Perdikaris*:

> [77] Experience teaches that there are many reasons to be cautious and one can never be sure that events happening elsewhere will not have a negative impact here. Simply put, to reject the Settlement Agreement and hold out for more is an unreasonably risky move that could result in class members getting nothing. Taking a case all the way to trial versus accepting a negotiated resolution is always a difficult call to make. There are many factors — known and unknown — that go into the mix. Reasonable, considered and intelligent assessment is required. Here, counsel for the plaintiff and the defendants have made that assessment and have concluded that the Settlement Agreement represents a reasonable compromise when all factors, including litigation hazard, are factored in. My task, as the judge from whom approval is sought, is to carefully review all of the circumstances and weigh potential outcomes, if the matter proceeded to trial, against the settlement achieved. After having applied this judicial scrutiny to the facts before me, I find that this evaluation supports approval of the Settlement Agreement.[16]

8. In this case, there is a real risk that the class proceeding will be resolved in favour of GSK. Risk to the class came from 3 sources: 1- appeal of the certification order; 2- losing the common issues trial; and 3- losing at the individual issues stage.

9. First, the risk of losing at certification comes from GSK's appeal.[17] As in *Sweetland*,[18] certification was granted, and the appeal was put on hold to permit settlement discussions. Certification was denied in a similar class proceeding respecting Paxil®'s sister drug Celexa®.[19] There was even a risk of losing in whole or in part

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[16] *Perdikaris v Purdue Pharma* (Sept. 23rd), 2022 SKKB 214 (Popescul C.J.K.B.) **("*Perdikaris*")**, ¶77.

[17] *Singh Affidavit*, ¶5, Ex. 7.

[18] *Sweetland*: ("[3] The defendants appealed the certification order.... By agreement of the parties, the appeal was placed in abeyance in order to permit settlement discussions. ... [8] ... Following certification, the defendants appealed that order and the matter is ready to be argued in the Court of Appeal. If the settlement is not approved, that hearing will take place later this year.").

[19] *Singh Affidavit*, ¶6. See *Price v H. Lundbeck A/S* [(July 16th), 2018 ONSC 4333 (Perell J.) **("*Price 4333*")**; (Feb. 11th), 2020 ONSC 913, 51 CPC (8th) 351 (Corbett, Kitely, Myers JJ.); (Dec. 20th), 2022 ONSC 7160 (Glustein J.) **("*Price 7160*")**; (Feb. 13th), 2024 ONSC 845 (Div. Ct. – Matheson, Ramsay,

based simply on the fact that some courts have not recognized a duty of care to the unborn. This is reflected in the settlement compromise where *in utero* deaths, and consequent derivative claims under fatal accidents legislation, are not eligible. 6 certification briefs were filed by the parties, 3 of which contained GSK's detailed submissions as to why certification should be denied, any one of which, if accepted, could lead to a reversal of the certification order.[20] Even a remand for reconsideration and re-certification would cause considerable delay to the prejudice of class members.

10. If certification is denied, class members will have only the prospect of filing individual actions approximately 20 years after GSK changed the Paxil® product monograph to warn of the risk of congenital malformations, and assuming (against authority)[21] that limitation periods are tolled for those who were not aware of this class proceeding when it was filed.

11. Second, the risk of losing at the common issues trial came from the defences that GSK advanced. Throughout the litigation, GSK denied and continues on settlement

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Schabas JJ.A.)].

[20] *Perdikaris*: ("[79] The class faces significant litigation risks if the Settlement Agreement is not approved. These risks are present at the certification stage (at this point the certification is conditional) and, if certified, at trial and the subsequent individual issues stage that would follow. The defendants intended to oppose certification. The materials filed revealed that the defendants planned to challenge the common issues, preferrable procedure and representative plaintiff criteria. As in the case of any certification application, all the defendants need to do is be successful on **any one** of these challenges to deal a fatal blow to the plaintiff's case for certification.").

[21] *Singh Affidavit*, ¶38. *Jackson v Canadian National Railway* (Nov. 29th), 2012 ABQB 652 (Martin J.): ("[130] ... The purpose of the tolling provision in section 40(1)...is to protect potential members of the putative class who may, operating under the **knowledge of a proceeding** and the assumption that their rights are being pursued, decline to take individual action. Being **unaware** of the Wallace Claim, the Plaintiff cannot be said to have assumed that he was a member of the class in that claims and delayed bringing action as a result. [131] By...the Alberta *Limitations Act*, ...the Plaintiff's claim...is barred.").

to deny allegations that Paxil® is teratogenic, that it breached a duty to warn, and that it actively promoted Paxil® for use in pregnancy notwithstanding the risks alleged.[22]

(a) The Plaintiffs wanted to establish at the common issues trial that Paxil® should have been contraindicated for use in pregnancy, meaning that GSK should have said 'nobody can use it in pregancy'. There may be situtations where the risks to the mother from depression (including the preservation of her life from suicidal ideation) outweighed the risk of malformations to the child. There may be mothers who chose to prioritize their right to self autonomy over their bodies over the safety of their unborn child. It was an uphill battle for the Plaintiffs to establish that no learned intermediary physician should prescribe (and no mother should ever use) Paxil® during pregnancy.

(b) Short of a contraindication against ever using Paxil® while pregnant, where GSK provided a warning respecting congenital malformations in the Paxil® product monographs from 2006,[23] there was more than a reasonable likelihood that only part of the class could be successful in establishing that GSK failed to warn of the risks.[24] As most of the epidemiological literature that reported statistically significant associations between paroxetine and malformations was published *after* 2006, there was also a likelihood that the Plaintiffs could not

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[22] *Singh Affidavit*, ¶4.

[23] *Singh Affidavit*, ¶41.

[24] *Singh Affidavit*, ¶62. The allegations of breach of duty to warn included that the Canadian Paxil® product monographs did not clearly, completely, or currently state the teratogenic risks of paroxetine, and in particular: they made no reference to specific malformations other than cardiac; the reference to 1/50 downplayed the real number of cases when the drug is widely prescribed, and the severity of those conditions; they did not provide current risk estimates; they did not mention reported point estimates that were greater than a doubling; they did not mention that the risk is present in undetected and unplanned pregnancies; they provided less disclosure respecting animal and human studies than on the US label; and they were not Paxil®-specific where Paxil® had been posited to pose greater risks other SSRI's in its class.

establish that GSK breached its duty to warn before then; the only evidence before came from animal studies, which is some (but not much) evidence of teratogenicity when used in human pregnancy, and that GSK has contested.

(c) The Plaintiffs relied on the prolonged delay between adding a warning in the US label in 2005 and the Canadian label only in 2006. That could have seen success for class members, but only those who were prescribed Paxil® during that 1 year window. Mixed success in American Paxil® cases respecting even the American label further supports settlement here, as it did in *Goodridge*.[25]

(d) There was a risk that because Paxil® was not indicated for use in pregnancy, the Court could determine that class members and their prescribing physicians engaged in "off label" use that was not authorized by Health Canada or recommended by GSK. That could wipe out the claims of all class members.

(e) In contrast to other cases, Paxil® has not been withdrawn from the market, and physicians today may prescribe it, including in pregnancy, where the mother is prepared to assume the potential benefits as being greater than the risk of malformations that exists in all pregnancies (with or without Paxil®). Even where statistically significant associations have been reported in studies, the risks are often marginally higher than the background risks of birth defects.

(f) GSK may be held to have met the standard of care where it complied with all regulatory duties, where Health Canada was involved in the product monograph content, and where published epidemiological literature was inconsistent as to whether Paxil® is associated with an increased risk of congenital malformations.

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[25] *Goodridge*: ("[13] ...actions for wrongful death or personal injuries allegedly caused by Neurontin were also commenced in the United States. However, most of the U.S. actions turned out to be unsuccessful. The majority of cases were dismissed with no money paid by Pfizer, and the remaining claims were settled.").

12. The risk of loss at the common issues trial was particularly elevated where Norton Rose Fulbright's team here has previously been successful in litigating the merits of pharmaceutical cases,[26] including in *Adam* and *Carmichael*.[27]

13. The settlement therefore provides relief where there is a real risk that class members (including health care authorities) will not receive anything if the matter proceeds to a common issues trial and they are unsuccessful. Even if the class were successful on the certification appeal, and successful at the common issues trial, the delay in getting there (with appeals at each stage) and then having to resolve individual issues would see any compensation deferred for many years. As explained in *Heward*:

> [20] In particular, I accept counsel's evaluation of the significant litigation risks for the class if the proceeding were to continue. These, and the expense and delay associated with a common issues trial and the individual proceedings that would likely have followed, will be avoided if the settlement is approved. As in other cases involving claims in respect of allegedly defective pharmaceutical products, medical devices or medical malpractice, delays can provide a significant impediment to access to justice by affected class members.
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> [21] The litigation risks involved in the trial of common issues related not only to the reasonableness of the defendant's conduct in dealing with Health Canada and in marketing the drug but, even more fundamentally, to the question whether a causal connection can be established between Zyprexa, diabetes and the other illnesses identified by the plaintiff.[28]

14. Third, as to the risk of loss at the individual issues stage, the situation here is similar to that in *Voutour*,[29] where proving factual causation will be difficult.

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[26] *Singh Affidavit*, ¶8.

[27] *Adam v Glaxosmithkline Inc.*, 2019 ONSC 7066; *Carmichael v Glaxosmithkline Inc.*, 2020 ONCA 447.

[28] *Heward 3403*, ¶20-21.

[29] *Voutour*: ("[15] ...given the state of scientific and medical knowledge, the Representative Plaintiffs confronted substantial **problems proving the connection**, if any, with the use of Bextra and Celebrex with any particular adverse medical condition, many of which could be explained be pre-existing conditions or

(a) There are multiple complex risk factors that are associated with depression, that would be present whether Paxil® was taken or not, and that may independently cause congenital malformations. The risk of losing at the individual issues stage is reduced in this case by capping claims reduction at no more than 50%, where alternate potential causes are present. Such risk factors were many, but were limited by GSK as an aspect of compromise.[30] All class members would not succeed in contested post-common issues trials. The points system sees that severe malformations are compensated more than others that do not require surgery. That achieves fairness between class members.[31]

(b) Another compromise in the settlement is based on the position that a statistically significant association needs to be proven between paroxetine exposure and a specific malformation.[32] Such is a fundamental aspect in applying the Bradford Hill criteria in which causation is proven in toxic torts. The absence of such statistically significant associations previously explained exclusion of some types of cardiac events in *Mignacca*.[33]

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other factors. **Proof of causation would also be problematic** because there was some evidence known to Class Counsel that suggested that any harmful effects from the drug would not occur if use of the drug stopped. These **difficulties of connecting the drug use** to various medical conditions are reflected in the Settlement Agreement and in the objections to it.").

[30] *Singh Affidavit*, ¶28.

[31] *Mignacca*: ("[100] ...it is appropriate that the payments under the settlement take into account the pre-existing cardiovascular **risk factors** of various claimants. ...it makes sense that a person without any of these cardiovascular **risk factors**, who experienced an Eligible Event while on Vioxx, should receive more. ...a claimant's **risk factors** would have impacted on their ability to prove causation and more than likely would also have impacted on any damages awarded in their favour. Therefore, the consideration of **risk factors** ensures fairness in allocation of the settlement amongst Class Members."). ‖ *Singh Affidavit*, ¶28.

[32] *Singh Affidavit*, ¶22-24, Ex. 5.

[33] *Mignacca*: ("[96] ... Although it remains controversial, there is scientific evidence that suggests that heart attacks and sudden cardiac death occur at **statistically significant** higher levels amongst Vioxx users. ... However, ischemic strokes are not seen to occur at **statistically significant** higher levels among Vioxx

15. In this settlement, all class members will not qualify, but that is an unfortunate component of compromise, and is a regrettable reality even if litigation proceeded to contested individual issues resolution. As explained in *Voutour*:

> [59] A reasonable and fair settlement is inherently a **compromise** and a reasonable and fair settlement will not be and need not be perfect from the perspective of the aspirations of the parties. That some class members are disappointed or unsatisfied will not disqualify a settlement because the measure of a reasonable and fair settlement is not **unanimity** or **perfection**.
> ...
> [68] I appreciate that the proposed settlement does not provide compensation for **all injuries** that occurred to users of Bextra and Celebrex. However, the identification of **compensable injuries** is rational and reflects the considerable litigation risks that other types of injury could not be proven to have a link to Bextra or Celebrex usage. Similarly, the effective date of injuries occurring before the end of 2005 is rational and reflective of a genuine and serious litigation risk.[34]

16. In addition to those individual issues, Ms. Singh accurately predicted the challenges that class members would experience, any one of which could have resulted in a loss when proving individual claims.

> 55. I was aware that even if I succeeded at the common issues trial in establishing breach of a duty to warn, individual class members would have to go through a process to prove that they would not have taken Paxil® if GSK had provided a different warning and that Paxil® actually caused their malformations. This would have required assembling evidence for each class member relating to various individual issues, including that:
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> (a) their doctor would not have prescribed Paxil®;
> (b) they would not have taken Paxil®;
> (c) they would not have had congenital malformations if they had not taken Paxil® where alternative antidepressants they may have taken...also were associated with malformations and where not treating depression with an antidepressant at all was also said to be capable of causing malformations;
> (d) they suffered loss and expenses as a result, including pain and suffering,

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users.... ... [97] Mr. Peerless specifically addressed the objection relating to the fact that pulmonary embolism and deep vein thrombosis were also **not Eligible Events** and as he confirmed, there is no indication in the science that links pulmonary embolism or deep vein thrombosis or similar events to Vioxx. ... The parties were very clear that the Eligible Events negotiated as part of the settlement specifically **exclude events** that were not supported in the scientific data.").

[34] *Voutour*, ¶59, 68.

loss of earnings and earning capacity, and loss of enjoyment of life; ...[35]

17. Finally, in a settlement, class members can recover now rather than 5 or more years into the future (if ever). That favours settlement approval.[36]

B. amount and nature of discovery evidence

18. Although formal exchanges of affidavits of records did not occur, which is consistent with usual pre-certification practice and consistent with *MacMillan*,[37] a significant amount of information was available through: the certification process (some 26,008 pages);[38] published medical and scientific literature (2,503 pages);[39] expert affidavits (12,996 pages) and questioning transcripts (7,332 pages);[40] American discovery (5,256 exhibits selected from 3,000,000+ pages) and trial transcripts;[41] and

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[35] *Singh Affidavit*, ¶55.

[36] *Stanway*: ("[35] Even upon success, ...immediate financial recovery would not result for the class.... Potential appeals could take a few **years** to resolve following which each of the 1100 individuals would need to prove causation in her specific circumstances. Not only could this take **significant time** to resolve (...if one individual trial could be completed every two weeks, it could take up to **40 years** to complete them all), it may prove to be too large a hurdle for some of the class members to prove their individual claims.").

[37] *MacMillan*: ("[15] No pre-trial questioning or examinations for discovery were conducted. That said, ...consideration was given to: ¶information from experts in relevant fields, including...epidemiology; information from Health Canada; ... information provided by defendants;").

[38] *Singh Affidavit*, ¶9, Ex. 10.

[39] *Singh Affidavit*, ¶12.

[40] *Singh Affidavit*, ¶62.

[41] *Singh Affidavit*, ¶13-14. || Access to American discovery has previously supported settlement approval in Canada. See *Goodridge*: ("[11] Class Counsel worked with...U.S. plaintiffs' counsel. Class Counsel was able to gain access to the **discovery documents produced in the U.S. litigation**. ... [12] Before entering into the Settlement..., Class Counsel considered...: ... (d) Information received from U.S. plaintiffs' counsel including access to **U.S. document discovery**;...").

documents disclosed in British Columbia and produced on consent in Alberta,[42] including GSK's Canadian regulatory filings and correspondence with Health Canada.[43] Many were presented to GSK's certification witnesses.[44] More than 30,000 pages of medical records were assembled respecting individual claims.[45] Additional information was obtained from provincial and territorial health care authorities.[46]

C. settlement terms and conditions

19. The settlement is contained in the *Paxil® and Paxil CR™ National Class Action Settlement Agreement*.[47] The core provisions and the timeline for implementation are as set out in **Appendix 2**.

20. Under the settlement, GSK will pay an all-inclusive settlement fund of $7,500,000.[48] In exchange, GSK and its affiliates will secure a comprehensive full and final release from all class members, unless they have opted out, and from the provincial and territorial health care authorities.[49] The releases will also be approved by this Court in the final order.[50] Notice was provided to class members and the public

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[42] *Singh Affidavit*, ¶15-16.

[43] *Singh Affidavit,* ¶15.

[44] *Singh Affidavit*, ¶16.

[45] *Singh Affidavit*, ¶26.

[46] *Singh Affidavit*, ¶31.

[47] *Singh Affidavit*, ¶17, Ex. 11, pp 186-219.

[48] *Singh Affidavit*, Ex. 11, pp 191-92, §1.1(vv), 4.1.

[49] *Singh Affidavit*, Ex. 11, pp. 190-94, 199, 214, §1.1(oo)-(qq), §2.2, §4.2, §7.1-7.3, App. A, Sch. D, ¶39.

[50] *Singh Affidavit*, Ex. 11, pp 204-05, Sch. C, ¶6.

guardians and trustees.[51] There were no objections. The necessity of a comprehensive release is a critical feature of this settlement and was critical to negotiations, as it ensures that the settlement provides finality to GSK on a national basis.

21. GSK's contribution is limited to the all-inclusive $7,500,000 settlement fund, and no further payments are contemplated. The fund will be increased by interest of approximately 3.5% that is to be paid while the claims administrator holds the funds in trust.[52] The interest on the settlement fund is anticipated to be sufficient to pay administration costs before[53] and after the settlement approval hearing, including costs of giving prior notices of certification and of the settlement approval hearing.

22. The settlement provides for a lump sum of $525,000 for provincial and territorial health care authorities in exchange for a release of their direct and subrogated claims.[54] It is roughly 30% of their actual claimed costs, which is more favourable than the 10% in *Sweetland*.[55] As in *Goodridge*, the amount will be allocated on a population basis.[56]

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[51] *Affidavit of Paul Battaglia* (2024-09-11) **("*Battaglia Affidavit*")**, ¶8.

[52] *Singh Affidavit*, Ex. 11, p 186, §1.1(a). || *Battaglia Affidavit*, ¶19.

[53] *Singh Affidavit*, Ex. 11, p 192, §5.4.

[54] *Singh Affidavit*, ¶30 and Ex. 11, p 188, §1.1(s).

[55] *Sweetland*: ("[17] Provincial health insurers...have agreed to release their claims against the defendants in exchange for payment of **ten percent** of the net amount payable to each settling claimant after payment of Class Counsel legal fees and administrative expenses.").

[56] *Goodridge*: ("[32] Any remaining monies in the Settlement Amount after payment of all Approved Claims, Administration Expenses and Class Counsel Fees will be disbursed to the provincial health insurers in addition to the initial $300,000 allocated to those insurers on a pro rata basis, **by population**.").

23. Combined former and current class counsel fees are $2,000,000, being 26.67% of the settlement fund, plus GST.[57] $350,000 is allocated for their combined disbursements,[58] which is much less than the amount of disbursements actually incurred and claimed, and excludes disbursements in relation to other Paxil® class proceedings in Ontario and Saskatchewan that were stayed on consent or by order of the court. Interest is not to be paid on the disbursements.

24. There are separate fees to be paid to lawyers, including class counsel, who represent claimants in the claims administration process.[59] Although they may claim up to 35% of the recovery (depending on when they signed retainer agreements), the amount of the total fees to be awarded is not to exceed 33.33%, but it will be less than that as taxes and disbursements on the individual claims (but not on the class counsel fees) will be accounted for in the cap.

25. The lower percentage for lawyers who signed retainer agreements after the notice of settlement approval hearing is intended to recognize the lesser entitlement for lawyers who rush to sign retainers after receiving notice of the settlement and the fact that there is limited to no risk involved after the settlement in contrast to the high risk that existed at the beginning of (and throughout) the litigation. Class members may submit claims without representation, but it is fair to allocate a nominal sum to class counsel to reflect that risk and the benefits they provided to class members from the

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[57] *Singh Affidavit*, Ex. 11, p 188, §1.1(o).

[58] *Singh Affidavit*, Ex. 11, pp 187-88, §1.1(n).

[59] *Singh Affidavit*, Ex. 11, p 189, §1.1(ff).

settlement. The reasonableness of the fees and disbursements will be addressed below. There is also an honourarium of $50,000 for the representative plaintiff.[60]

26. After these deductions, the remainder is the compensation fund[61] that will be used to pay class members who qualify as eligible claimants. The claims are to be assessed by a claims officer who will determine whether claimants satisfy the criteria required for an eligible claim. The parties have agreed to work collectively to appoint the claims officer, and if there is any disagreement as to choice, will return to this Court for direction. Once appointed, the claims officer will assign points to assess the severity of the claims relative to each other. The details respecting claims submissions and determination are provided for in the distribution protocol.[62]

27. Trilogy Class Actions Canada is to be appointed as the claims administrator to receive and forward claims to the claims officer. The claims administrator's fees and expenses are to be paid out of the settlement fund. They are estimated to be $75,000 for less than 50 claims, which includes the cost of providing notice of settlement approval. Unexpected work that is outside the claims administrator's core duties will be paid at reasonable hourly rates, and will be no more than $180,000 unless additional court approval is obtained. In short, the claims administrator's fees are fixed up to a specific amount and require court approval for any additional amount, which is consistent with a similar provision approved in *Sweetland*.[63] The claims officer is also

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[60] *Singh Affidavit*, Ex. 11, p 189, §1.1(ee).

[61] *Singh Affidavit*, Ex. 11, p 188, §1.1(s).

[62] *Singh Affidavit*, Ex. 11, Sch. D, pp 208-19.

[63] *Sweetland*: ("[22] The affidavit of David A. Weir, Senior Vice-President of RicePoint, outlines their fee

to be paid professional fees and disbursements. Assuming $2,500 per claim (an overestimate), they are not expected to exceed $100,000.

28. After the distribution protocol, an estimated $3,863,731 will be available to compensate eligible claimants. Based on current information,[64] there are anticipated to be 30 claims. Class counsel have engaged in extensive attempts to locate class members, and it is expected that the number of eligible claims will be in this range. This would result in average compensatory payments of $128,455 per mother-child pair, 25% of which will go to mothers. The actual amount going to eligible claimants will vary based on the grading of the severity of the malformations as described in the distribution protocol.

29. The detailed distribution protocol has claims submission and processing, proof, points, risk factor deduction, auditing, appeal, pro rata distribution, and court supervision features similar to those approved in *Heward*,[65] *Mignacca*,[66] and *Stanway*.[67]

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agreement. It includes a **fixed amount** of $55,000 which includes case set up, escrow account activities, distribution of payments, and reporting. RicePoint is also to be paid for the expenses of implementing the hearing notice plan and settlement approval notice plan, as well as the cost of processing individual claims. ... All claims for fees and disbursements beyond the initial **fixed fee** and the notice implementation costs (of $18,250.00 plus tax) will be subject to **court approval** before payment.").

[64] *Singh Affidavit*, ¶27, 31.

[65] *Heward 3403*: ("[13] The settlement agreement provides for a claims administrator and contains in schedule G detailed procedures for the receipt and processing of **claims**, and the supporting **evidence** required. Provision is made for the **audit** of claims by the administrator, and by the defendants, with any disputed claims, appeals and the administration process being subject to the supervision and **appellate** authority of the courts in whichever of the three provinces the claimant is resident.").

[66] *Mignacca*: ("[37] The Claims Administrator will implement a **points system** in order to allocate the settlement to Class Members. [38] Heart attack and sudden cardiac death claims are initially assigned 100 **points** and **points** are added or deducted based on various **risk factors** such as.... [39] As Mr. Peerless put

The convenient claims administration portal was explained by Trilogy's president:

> 15. Trilogy shall make the online **claims administration portal** content available in both English and French. **The portal** will allow Claimants to complete the Claim Form electronically and upload their supporting documentation. Class Counsel, the Defendants, and the Claims Officer will have access to the online **claims administration portal** at www.paxilbirthdefectsclassaction.ca/portal and fr.paxilbirthdefectsclassaction.ca/portal to review the claims administration in real time and to access the Claim Forms, supporting documentation and the **claims administration platform**.
>
> 16. Trilogy's proprietary online **claims administration portal** will be designed to be user-friendly to allow Claimants to complete the Claim Form electronically which will have the appropriate dropdown boxes, click-on answers and will automatically calculate the points and Compensation Payment pursuant to the Distribution Protocol. The Claims Officer will be able to upload his or her claim determination for all parties to review. The Eligible Claimant will be able to view the status of their Claim in real time.
> ...
> 18. Trilogy anticipates that the adjudication of Claim Forms will take 3 to 6 months and Compensatory Payments to Eligible Claimants to start 6 to 9 months from September 24th, 2024.[68]

30. Also as in those cases, a number of compromises were made during the negotiations in this case that affect who may qualify for compensation.

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it, the claims process takes into account litigation risks, causation issues, liability issues, damages issues and **pre-existing conditions** in order to ensure fairness among the Class. ... [41] The total settlement apportioned to pay eligible claimants will be distributed to the claimants on a **pro rata** basis based on the number of eligible claims approved and the number of **points** each eligible claim is awarded.").

[67] *Stanway*: ("[24] A detailed **distribution protocol** is provided in Schedule B of the proposed agreement setting out the procedures for determining each class member's eligibility for and proportionate share of compensation. In essence, claimants must submit a claim with supporting **medical documentation** to the claims administrator within one year of the date of settlement approval. The claims administrator will review the claims and decide which are eligible. Compensation will be allocated based on a **points** system according to the relative strength of the claims and severity of the injuries. ... A claimant may **appeal** the decision of the claims administrator regarding whether they are a member of the class, whether they meet the threshold eligibility criteria and whether to award **points** to the claimant and, if so, how many.").

[68] *Battaglia Affidavit*, ¶15-16, 18.

(a) Consistent with *Goodridge*,[69] use of generic versions of Paxil® (in this case paroxetine) will not result in compensation. Paxil® made by GSK must have been used. This is consistent with the finding in *Goodridge*[70] that innovators (such as GSK) do not have a duty of care respecting use of generic versions of their drugs. Paxil® came off patent protection on October 24th, 2003.[71]

(b) Compensation will not be paid for voluntary and involuntary pregnancy terminations. This reflects the finding of an absence of a duty of care in the Celexa® litigation.[72] Compensation will also not be awarded to family members other than mothers. This is consistent with that compromise.

(c) The requirement for Paxil® exposure in the first trimester is consistent with the epidemiological literature. After the first trimester, organs that are susceptible to malformations are formed. There is little or no risk from second and third trimester exposure. Published studies focused on the first trimester.

31. Assuming judicial approval of the settlement on September 24th, 2024,

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[69] *Goodridge*: ("[30] It is not expected that there will be large numbers of Eligible Claims. The majority of individuals who have contacted Class Counsel did not use Neurontin, but rather generic **gabapentin**, because Neurontin has been **off patent protection** for more than a decade.").

[70] *Price 4333*: ("[99]... in *Goodridge*...,[41] I held that the inventor of a drug does not have a **duty of care** to consumers who use a **generic version**..., ...Lundbeck objects that the proposed definition includes...persons who were prescribed Celexa® but ingested a **generic version**.... ...persons who would have received the product monograph of the **generic drug** manufacture should not be Class Members....").

[71] *Singh Affidavit*, Ex. 9, p 175.

[72] *Price 7160*: ("[232] Further, there is no recognized **duty of care** to a future child where, as here, the allegation is, at its core, a failure to provide the mother with fulsome information so that she could make an informed decision about whether to take the drug, regardless of whether the failure to provide informed consent arose before or after conception... ... [234] Consequently, if the class action were to be certified, I would exclude any direct claims by children under s. 5(1)(a)...").

compensatory payments are anticipated to be made to eligible claimants on March 24th, 2025. That assumes that there will be no extensions of the claims perfection deadline and no appeals of the settlement approval or individual eligibility determinations, each of which enhances the fairness of the claims submission and determination process.

D. recommendation and experience of counsel

32. Counsel recommends the settlement. Mr. Churko and Merchant Law Group LLP successfully advanced class actions in many pharmaceutical cases,[73] and led a prior court-approved pharmaceutical settlement respecting wrongful births in this Court.[74] They were assisted by American lawyers who are experienced in Paxil® litigation and who settled many cases in the United States.[75]

E. costs and likely duration of the litigation

33. The litigation has been very time consuming and expensive to date for all involved over more than 12 years. Though such is a feature of class action litigation in Canada, the following comments from *Adrian* are apt:

> [16] The Plaintiffs' action was commenced in 1999, and examinations for discovery had not yet occurred even by 2004 when the negotiations began. If the past pace of the litigation were to continue, it would be **several years** into the future before this matter would ever reach the trial stage. Further, it can be reasonably expected that the court proceedings would not likely terminate at trial, as there would likely

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[73] See, for example, *Dembrowski v Bayer Inc.* [(Sept. 17th), 2015 SKQB 286 (Gabrielson J.) & (Oct. 4th), 2016 SKQB 324 (Gabrielson J.)] and *Tluchak Estate v Bayer Inc.* [(Nov. 14th), 2018 SKQB 311 (Barrington-Foote J.A. *ex officio*); (July 25th), 2019 SKCA 64 (Whitmore J.A.)].

[74] See the unreported *Final Settlement Approval Order* (2015-12-01) of Rooke A.C.J.K.B. in *Kohler v Apotex Inc.* [Calgary Action No. 1303 13736], where Trilogy Class Actions Services also did the claims administration.

[75] *Singh Affidavit*, ¶42.

be appeals all the way to the Supreme Court of Canada.[76]

34. The situation here is similar to the situation in *Perdikaris*:

> [85] Another factor to be taken into account is delay. Continued litigation would be the inevitable result of a rejection of the Settlement Agreement. This case has already been ongoing for more than a **decade** and there have been more twists and turns than most could have anticipated. Sending the matter off for certification and, if certified, to a trial would consume **many more years**. Parties not satisfied with rulings have the right to appeal, further adding to the complexity of the situation and the time it would take to have the claims finally resolved, as well as the overall cost of the process.
>
> [86] In conclusion, I find that the Settlement Agreement represents a reasonable settlement when all factors are taken into account, including the significant and very real risks of litigation and the prospect that class members could end up with nothing should the Settlement Agreement not be approved. The settlement funds are currently sitting in trust and are ready to be paid out to class members who have been waiting for monetary compensation for **years**. The approval of the Settlement Agreement facilitates resolution.[77]

F. recommendation of neutral parties, if any

35. The settlement was the product of mediation by a distinguished jurist of the Ontario Court of Appeal. Such has previously promoted court approval.[78]

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[76] *Adrian 376*, ¶18. || See also *MacMillan*, ¶18, 33: ("[33] ...I accept... that, but for this settlement, the litigation would carry on for a number of **years**. Given the complexity of the issues raised in the case, I think it is quite likely that...there would be contested certification hearings followed by a complex common issues trial. Further, there may well be uncertainties associated with the individual assessments of causation and quantum after the common issues trial. Those uncertainties are effectively answered by the application of the agreed-upon Usage Gate and Event Gate criteria set out in the Settlement Agreement.").

[77] *Perdikaris*, ¶85-86.

[78] *Voutour*: ("[34] ... The negotiations included two sessions of...mediation.... Justice Lacoursiere of the Québec Superior Court acted as...mediator. I know Justice Lacoursiere to be a talented and highly regarded jurist, and an experienced class action judge. [35] ...It took another year for a formal agreement....").

G. number and nature of objections

36. Those who purported to opt out were not class members.[79] No objections were received. The requests of the health care authorities to amend the settlement agreement are being accommodated by minor amendments respecting the scope of the release and its consistency with their legislation.

37. As to Ontario's objection, there is precedent for including health care authorities as class members.[80] Since subrogated claims must be pled in the pleading, it is appropriate to include them in the certified class definition. There is no prejudice in doing so, as their claims will be released to the extent permitted by their legislation.

H. presence of arms-length bargaining and the absence of collusion

38. After negotiation that began in 2018,[81] and mediation before Mr. O'Connor, the settlement agreement went through at least a dozen drafts and negotiations both before and after mediation.[82] There is no evidence of collusion.

II. LEGAL FEES

39. There is no specific provision in the *Class Proceedings Act* that requires the Court to approve legal fees; however, when fees are provided for in a settlement

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[79] *Singh Affidavit*, ¶32. || *Battaglia Affidavit*, ¶22, Ex. A.

[80] In *Parker v Pfizer Canada Inc.* (June 21st), 2012 ONSC 3681 (Perell J.), the class included "3. All provincial or territorial **health insurers** who are entitled to assert a claim pursuant to the *Hospitals Act*, R.S.A. 2000, c. H-12, s. 62 and related provincial and territorial legislation".

[81] *Singh Affidavit*, ¶34-35.

[82] *Singh Affidavit*, ¶36.

agreement,[83] the test is the same as on settlement approval, namely whether the fees are fair and reasonable.[84] In *Adrian 377*:

> [16] Although the parties have agreed that the Class counsel fees require Court approval, I am satisfied that Court approval would be required pursuant to s. 35 of the *Class Proceedings Act* even if the parties had not agreed that Court approval was required. Section 35(1) states that a Class proceeding may only be settled...with the approval of the Court. The Class proceedings not only claimed relief for Class members, but also costs. Therefore, the issue of costs (fees and disbursements) which form part of the Class proceeding cannot be settled without being approved by the Court. Therefore, Court approval of Class counsel fees is always required regardless of any agreement between the parties.[85]

40. At least 3 similar sets of factors have been employed to guide the analysis in Alberta: *Northwest*; *Adrian*; and *L.(T.)*:

Alberta	Factors
Northwest	[69] The test is whether the fees sought are reasonable.... [70] The relevant factors include the following: 1. The time expended by counsel. 2. The complexity of the issues. 3. The degree of responsibility assumed by counsel. 4. The monetary value in issue. 5. The importance of the matter to the clients. 6. The degree of skill and competence demonstrated by counsel. 7. The results achieved. 8. Ratio of the fees to recovery. 9. Whether a multiplier should be applied and if so at what level. 10. Whether in contingency cases the fees as a matter of policy are sufficient to provide an economic incentive to counsel
Adrian 377	[11] To determine whether the counsel fees are reasonable, the case law has developed a list of factors which are relevant. The following is a list of the factors which could be considered, but this list is not exhaustive: a) The results achieved; b) The risks

[83] *Voutour*: ("[71] Where the fee arrangements are a part of the settlement, the court must decide whether the fee arrangements are fair and reasonable, and this means that counsel are entitled to a fair fee which may include a premium..., but the fees must not bring about a settlement that is in the interests of the lawyers, but not in the best interests of the class members as a whole:").

[84] *Adrian 377*, ¶10. || *L.(T.)*, ¶30, 34.

[85] *Adrian 377*.

Alberta	Factors
	undertaken; c)The time expended; d) The complexity of the matter; e) The degree of responsibility assumed by counsel; f) The importance of the matter to the client; g) The quality and skill of counsel; h) The ability of the Class to pay; i) The client and Class expectation; j) Avoiding inconsistencies with awards made in similar cases in other jurisdictions; k) Fees in similar cases.
L.(T.)	[31] Factors relevant in assessing the reasonableness of the fees of class counsel include: (a) the factual and legal complexities of the matters dealt with; (b) the risk undertaken, including the risk that the matter might not be certified; (c) the degree of responsibility assumed by class counsel; (d) the monetary value of the matters in issue; (e) the importance of the matter to the class; (f) the degree of skill and competence demonstrated by class counsel; (g) the results achieved; (h) the ability of the class to pay; (i) the expectations of the class as to the amount of the fees, and; (j) the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement....

41. These factors are consistent with those applied in other provinces in the pharmaceutical context.[86] The relevant factors will be addressed below. Primarily, 33.33% is consistent with the retainer the representative plaintiff signed in this case,[87] is presumptively reasonable under class actions law, and results in a fee with a negative multiplier based on time expended.[88] Such fees are fair.

42. Where more than one firm has a claim to fees, the Court should treat them as

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[86] *Boulanger v Johnson & Johnson Corp.* (April 21st), 2010 ONSC 2359, 97 CPC (6th) 78 (Strathy J.), ¶4. || *Voutour*, ¶73. || *Mignacca*, ¶119. || *Goodridge*, ¶52. || *Stanway*, ¶51. || *Sweetland*, ¶28. || *Perdikaris*, ¶96.

[87] *Singh Affidavit*, ¶49, Ex. 3.

[88] *Singh Affidavit*, ¶50.

if it were one firm.[89] Any allocation to other Canadian and American lawyers may be included in the fee.[90] Any amounts payable to American lawyers who contributed should normally be paid out of class counsel fees:

(a) See *Wilson 252*:

> [56] A **United States law firm**, Lieff Cabraser Heimann & Bernstein, with considerable expertise in product liability class actions, has been joined in the application for class fees by the submission of the Canadian class counsel. The factum of class counsel of Rochon Genova includes the **U.S. firm**, together with the B.C. subclass counsel, Klein Lyons.
>
> [57] I do not question the value of the contribution of the **U.S. firm** to the conduct of the class action and its successful conclusion. However, in my view, the **U.S. firm** is properly to be paid from the counsel fees awarded to class counsel. The **U.S. law firm** was not appointed as class counsel by the Court nor is there anything on record to indicate the firm is licensed to provide legal services directly to the public and to represent the class in court in Ontario.
>
> [58] The **U.S. firm** has provided legal advice to class counsel and it is the responsibility of class counsel to meet their obligation of payment to the **U.S. firm**, whatever that commitment might be. The services provided by the **U.S. firm** are, of course, legal services indirectly for the benefit of the class but it is not an obligation of the class to pay this charge. Hence, my use of the term "class counsel" embraces only the counsel for the national class, Rochon Genova, and the counsel for the B.C. subclass, Klein Lyons.

(b) See also *Wilson 6622*:

> [5] ...the U.S. law firm is properly to be paid its fees **from the counsel fees** awarded

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[89] *Wilson 252*: ("[3] This was a cooperative effort by the **two law firms** and both gained significantly by the contribution of the personnel and resources of the other in this very demanding and protracted litigation. The **two law firms** have determined and agreed to a division between the **two firms** of the **global class counsel fees** approved by the Court. Thus, on the matter of the second motion as to the approval of class counsel fees, the Court will address the matter as though there is **a single class counsel law firm**.").

[90] *Stanway*: ("[27] As a result of the settlement terms, the contingency fee is $4,550,000.... Total disbursements...are $813,263.72. These fees and disbursements include $514,235.45 which class counsel is obligated to pay four Canadian law firms who acted as agents and a group of **34 American law firms** who assisted as consultants in this case. Class counsel has chosen to **include this amount in their fees**, rather than treat them as separate disbursements.").

> to class counsel. Any amount payable to **American law firm advisors**...should not **normally** be treated as a simple disbursement by Canadian class counsel outside the determination of the quantum of class counsel fees.
>
> [6] The services provided by the **U.S. law firm** through advice and assistance to class counsel are indirectly for the benefit of the class. Any amount for fees payable to **American legal firm advisors** is notionally for services being provided to the class as a part of the overall legal services being provided to the class by class counsel. Such amount is properly payable by class counsel **out of the class counsel fees** after the determination of the quantum of class counsel fees. Such amount is not properly treated as a disbursement by class counsel outside of the determined quantum of class counsel fees. ...this is the preferable **normative approach**.[91]

43. The resolution of any disputes need not be communicated to the court.[92] Any disputes amongst lawyers should be resolved by mediation after the total class counsel fee is approved as fair and reasonable.[93]

44. Current and former class counsel in this case have agreed to accept less than their actual disbursements.[94] They worked for years without compensation. Interest is not being charged on fees or disbursements.

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[91] *Wilson v Servier Canada Inc.* (April 5th), 2005 CarswellOnt 6622 (Cumming J.) **("*Wilson 6622*")**.

[92] *Wilson 6622*: ("[13] I was advised...that an agreement had been reached between counsel to settle the dispute as to the **sharing** of class counsel fees. I was not advised as to the terms of that agreement.").

[93] *Wilson 6622*: ("[8] During submissions at the hearing to approve class counsel fees, I was advised there was a **dispute as to the allocation of fees** as between national class counsel and counsel for the BC sub-class. [9] This **dispute between counsel** would require **mediation**[.] I would determine the class counsel fees and Mr Justice Winkler would **mediate** the dispute as to the sharing of those fees. [10] There was no **dispute** amongst counsel that the **American legal advisor** had provided services resulting in fees.... [11] I refused the initial request...to treat the **American legal advisor**, in effect, as a co-class counsel.").

[94] MLG claimed disbursements of $285,758.92. NSC's were more than $175,000, including for claims advertising, mediation, and notice programs. *Singh Affidavit*, ¶10-11, 25.

A. factual and legal complexities of the matters dealt with

45. As in *Boulanger*, this case was complex pharmaceutical litigation, involving difficult medical and scientific issues over approximately a decade.[95] Complex scientific evidence was provided by 7 experts, some of whom were set to be called for trial in British Columbia.[96] Expert cross-examinations were conducted throughout the world. The large number of expert reports affirms the complexity of this matter.

B. risk undertaken, including the risk the matter might not be certified

46. The risk that the matter *still* might not be certified is lingering and was addressed above. The same litigation risks that might preclude any (or many) class members from recovering also justify the fee requested.

C. degree of responsibility assumed by class counsel

47. In this case, because the distribution protocol has additional legal fees allocated to lawyers who act on behalf of claimants, there is sufficient incentive to induce them to help claimants and to do it right. This addresses a concern raised in *Northwest*.[97]

D. monetary value of the matters in issue

48. This can not be quantified or predicted. The resolution of the common issues in

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[95] *Boulanger 2359*: ("[7] This was **complex** pharmaceutical products liability litigation, involving difficult medical and scientific issues as well as complicated legal issues. The litigation has spanned **ten years**...").

[96] *Singh Affidavit*, ¶47.

[97] *Northwest*: ("[20] I am concerned specifically about one matter regarding the CEPs. Plaintiffs' counsel are to receive all of their fees for CEP work within 60 days of the implementation date. The result is that they will be paid before their clients receive any money. Thus there is no **incentive** for counsel to assist their existing clients with the preparation, filing and validation of their applications for their CEP and any appeals. ...I need to see a plan which will protect those clients.").

favour of class members has *no* value on its own. Only if and when individual class members successfully pursue the resolution of their individual issues and establish their unique damages will the monetary value be known. Value cannot be assessed for the class as a whole. Any value rests only in individual claims.

E. results achieved

49. Although the result achieved is in the middle of prior pharmaceutical class action settlements,[98] the actual amount on an estimated per claimant basis is far greater than in other settlements, and is similar to amounts recovered in Paxil® litigation in British Columbia.[99] In *Heward*,[100] $12,000 per claimant was seen to be in the "zone or range of reasonableness"; here, the anticipated amount exceeds that, based on known claims to date, and is consistent with the national opt in Paxil® settlement in *Bartram*. Anticipated average payments in *Sweetland* for eligible cardiac events (including heart attacks) were $18,333.33.[101] In *MacMillan*,[102] payments were up to $43,000.

F. time expended by counsel | whether a multiplier should be applied

50. Class counsel devoted 7,000 hours to the prosecution of the claims in *Boulanger*,[103] and 7,700 in *Voutour* before examinations for discovery.[104] Counsel here

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[98] The fund here is larger than 6 of 13 cases where the amount of the fund was known: see Appendix 1.

[99] *Singh Affidavit*, ¶48.

[100] *Heward 3403*, ¶10, 25.

[101] *Sweetland*, ¶14.

[102] *MacMillan*, ¶21.

[103] *Boulanger 2359*, ¶6.

[104] *Voutour*, ¶52-54.

similarly devoted thousands of hours, roughly 4,750 of which were Mr. Churko's. Because of the time expended, the multiplier will be negative. For Merchant Law Group LLP, it will be roughly 0.25.[105]

G. retainer agreement | expectations of the class/client

51. The client's expectation is measured by the retainer agreement.[106] The "contingency fee agreement" was an independent factor in *Sweetland*.[107] A retainer providing for 33.33% was approved in *Stanway*.[108] In this case, the retainer provides:

> 2. fees: The Representative Plaintiff agrees to pay the Lawyers a fee if the Lawyers negotiate a Court-approved settlement of the class proceeding....
>
> (a) If the class proceeding is settled, the Lawyers will be paid **33%** of any settlement proceeds, plus the additional amounts provided for herein.
>
> ...
>
> 3. costs: The Lawyers will receive any costs that the Defendants become liable to pay to the Representative Plaintiff. Such costs could be in excess of $500,000 for the certification motion.... The Representative Plaintiff assigns her interest in any such costs to the Lawyers, and the Lawyers will receive such **costs in addition** to the contingency fee provided for above.[109]

52. The class counsel fee is $2,000,000, or 26.67% of the settlement fund. The additional amount up to 33.33% is consistent with the retainer agreement. The deferral of payment of the additional 6.66% ($500,000) recognizes that additional work is to be done by counsel in the claims administration process, and gives sufficient incentive to do it right. This is also consistent with *Sweetland*:

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[105] *Singh Affidavit*, ¶51.

[106] *Boulanger 2359*, ¶13.

[107] *Sweetland*, ¶28(7.).

[108] *Stanway*, ¶26.

[109] *Singh Affidavit*, Ex. 3, p 129.

> [36] Where the settlement includes a claims administrative process, such as the case here, the courts will frequently defer payment of a portion of counsel fee until the administration is complete.... The underlying rationale is generally to ensure that Class Counsel continue to assist members of the class through the claims process.[110]

H. ratio | consistency with awards in similar cases in other jurisdictions

53. The fees requested here are consistent with the 33% awarded in *Bartram*.[111] The class counsel fee is 26.67% of the settlement fund, which is consistent with the average ~27% awarded in Canadian common law pharmaceutical class actions: See Appendix 1. The additional amount to 33.33% is a presumptively reasonable class counsel fee,[112] and is further consistent with the 30-34% approved in *Voutour*,[113] *Banerjee*,[114] *Stanway*[115] *MacMillan*,[116] and *Casseres.*

III. HONORARIUM

54. Honoraria are not specifically provided for in provincial class actions legislation, but have been consistently awarded. Relevant factors include a "significant amount of time to directing and participating in this litigation", "significant and personal hardship

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[110] *Sweetland*, ¶36.

[111] *Singh Affidavit*, Ex. 1, pp 28, 40; Ex. 2, 118.

[112] *Casseres v Takeda Pharmaceutical Company* (Jan. 28th), 2021 ONSC 2846 (Belobaba J.): ("[9] Based on the retainer agreements, class counsel are entitled to a **30 per cent** contingency fee plus disbursements and taxes. As discussed in *Cannon*,[1] and as further refined in *Brown*,[2] this contingency fee amount is **presumptively valid** on the facts herein and is approved."). In *Cannon*, the presumptively reasonable amount was indeed 33% (not 30%): see ¶12.

[113] *Voutour*, ¶37, 75.

[114] *Banerjee v Shire Biochem Inc.* (Dec. 15th), 2011 ONSC 7616 (Strathy J.), ¶5, 25.

[115] *Stanway*, ¶26, 52, 56.

[116] *MacMillan*, ¶19, 24.

or inconvenience in connection with the prosecution in this litigation", and the "emotional and personal nature of the claims" advanced.[117] $50,000 honoraria have previously been awarded in *Cannon*[118] and *Charette*,[119] to recognize the plaintiff's risk of exposure to costs and more than a mere oversight of the proceedings.

55. Here, Ms. Singh did not keep a log of her time. Her contribution is not measured in hours as in *Cannon*, *Charette*, and *Toth*, but in years. She devoted more than 15 years in pursuit of Paxil® litigation against GSK. She lived it every day. She sacrificed any other life.[120] As she explained:

> 45. Since 2007, and for almost all of Muzaffar's life, Paxil® proceedings, including this class proceeding, have been a fundamental part of my life. The responsibility and the increased costs and time required to attend to Muzaffar's congenital malformations, and my pursuit of compensation from GSK has been a primary focus of my life's activities since he was born. It led to my divorce from Muzaffar's father who blamed me for what happened to Muzaffar based on his

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[117] *L.(T.)*, ¶35.

[118] *Cannon v Funds for Canada Foundation* (May 10th), 2017 ONSC 2670, 9 CPC (8th) 431 (Belobaba J.): ("[13] Class counsel also requests that the court approve the payment of an honorarium…of **$50,000** to compensate him for his extraordinary effort in prosecuting this case over...**eight years**. ...it should be approved. [14] ... He spent more than **280 hours** working on the case, meeting with and instructing class counsel, **swearing affidavits**, being **cross-examined**, producing his private financial documents, participating in the mediation and settlement negotiations.... [15] Mr. Cannon also **put himself at risk financially**....").

[119] *Charette v Trinity Capital Corporation* (May 23rd), 2019 ONSC 3153, 2019 DTC 5073 (Glustein J.): ("[93] ...both Charette and Cumming faced **"exposure to a real risk of costs"**. **No funding** from the Class Proceedings Funds was provided until well after certification. [94] The summary judgment motion...could have resulted in **massive costs exposure** to both representative plaintiffs. While the certification issue resolved at the hearing, **significant costs** again could have been incurred if that motion had not been successful, for which both representative plaintiffs would have been **personally exposed**. [95] ... Their considerable assistance in...reviewing **expert reports**, attending...**mediation**, and reviewing draft settlement agreements...involved **more than just the "oversight" role** of a representative plaintiff.").

[120] *Singh Affidavit*, ¶68.

belief that I had committed religious sins.[121]

56. She also had to learn the basics of class actions procedure,[122] the complex scientific evidence that was filed by the parties,[123] and the deficiencies that were alleged in the different parts of the product monographs.[124] She filed numerous affidavits and thoroughly prepared for a flawless cross-examination.[125] She learned the class definition that was proposed,[126] and intervened in the British Columbia class proceeding to make sure that the claims of the class members here were not being compromised there.[127] She reviewed the expert reports and other filings over her lunch breaks at work and after she put her son to bed.[128]

57. She was (and still is) exposed to adverse costs awards: potentially more than a half a million dollars to date if the appeal of certification is allowed (and if GSK had costs similar to those claimed by her);[129] and multiples more if the class proceeding moves to a common issues trial.[130] GSK and MLG both made applications to have her

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[121] *Singh Affidavit*, ¶45.

[122] *Singh Affidavit*, ¶53-54.

[123] *Singh Affidavit*, ¶58, 62.

[124] *Singh Affidavit*, ¶56-57.

[125] *Singh Affidavit*, ¶58, 60-61.

[126] *Singh Affidavit*, ¶54.

[127] *Singh Affidavit*, ¶59, Ex. 2.

[128] *Singh Affidavit*, ¶63.

[129] *Singh Affidavit*, ¶7.

[130] *Singh Affidavit*, ¶8.

immediately pay them adverse costs or nearly $300,000 in disbursements when she was a single mother earning $50,000 a year.[131] She risked losing the house that her father helped her modify to accommodate Muzaffar's wheelchair.[132] This flooded her with enormous stress, worry, and lost sleep over many months.[133] Nevertheless, she persevered, participated in the mediation,[134] and helped bring this case to the settlement proposed to this Honourable Court for approval.

58. A greater than $50,000 honorarium is warranted. She earned it, GSK has agreed to pay it, no class member has opposed it, and the Court should approve it.

IV. NOTICE OF SETTLEMENT APPROVAL

59. On a settlement approval, the court is to consider sending an additional notice.[135]

60. The parties have agreed to the content of the notice in the form attached as Schedule 1 to the *Notice of Application*.[136] Although there is no prescribed content for a notice of settlement approval, there are some factors to consider under ss 35(7)[137] and

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[131] *Singh Affidavit*, ¶64-65, 67.

[132] *Singh Affidavit*, ¶67-68.

[133] *Singh Affidavit*, ¶66-67.

[134] *Singh Affidavit*, ¶35.

[135] *CPA*: ("35(7) In...approving the settlement...the Court must consider whether notice should be given under section 21....").

[136] *Notice of Application* (2024-09-11), Sch. 1.

[137] *CPA*: ("35(7) In...approving the settlement...the Court must consider...whether the notice should include...: (a) an account of the conduct of the proceeding; (b) a statement of the results of the proceeding; (c) a description of any plan for distributing any settlement funds.").

20(6), which the proposed notice in this case satisfies.

(a) It describes the proceeding and the settlement result.[138]

(b) It describes class members who are intended to receive the notice and who may therefore submit a claim in the distribution protocol plan.[139]

(c) It describes the quantum of the settlement, and the plan for distribution.[140]

(d) It informs class members how to make a claim for compensation.[141]

(e) It gives an address to which class members may direct further inquiries.[142]

61. In addition to tracking the statutory criteria, the proposed notice is accurate,

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[138] *CPA*: ("20(6) ...notice given under this section must ...(a) **describe the proceeding**...;"). ‖ *Notice of Settlement Approval* (2024-09-11): ("A class proceeding, *Singh v. GlaxoSmithKline Inc*,...was certified regarding the selective serotonin reuptake inhibitor "paroxetine" that GlaoSmithKline and certain affiliates ("GSK") marketed in Canada under the brand names Paxil® and Paxil CR™. The class proceeding alleged that GSK did not warn physicians and patients in the Canadian Paxil® and Paxil CR™ product monographs that either drug posed a teratogenic risk when used during pregnancy.").

[139] *Notice of Settlement Approval* (2024-09-11): ("Class members include....").

[140] *CPA*: ("20(6) ...notice...must ... (f) describe the possible **financial consequences** of the proceedings to class members..."). ‖ *Notice of Settlement Approval* (2024-09-11): ("...GSK agreed to pay an all-inclusive sum of $7,500,000 to settle the allegations in the lawsuit. This money is available to compensate class members, to pay provincial and territorial governments for health care costs they paid on behalf of class members, and to pay legal fees and expenses related to the prosecution of this class proceeding and the administration of the settlement.").

[141] *CPA*: ("20(6) ...notice...must ... (i) describe the rights, if any, of class members...to **participate**..."). ‖ *Notice of Settlement Approval* (2024-09-11): ("Class members must submit a *Claim Form* and supporting documentation to the Claims Administrator at the address...below before <Claims Deadline>. The Claims Officer will then determine each class member's entitlement...based on that supporting documentation.").

[142] *CPA*: ("20(6) ...notice...must ... (j) give an address to which class members...may direct inquiries..."). ‖ *Notice of Settlement Approval* (2024-09-11): ("You may also call 1-877-400-1211 or email inquiry@trilogyclassactions.ca with inquiries about the class proceeding....and how you may participate further. For more information about the lawsuit and/or to obtain a Claim Form, please contact Class Counsel at: ... or contact the Claims Administrator at: ...").

balanced, informative, and independent.[143] Any amendments that are desired by the court can be the subject of suggestions before ultimate approval.[144]

62. The proposed means of giving the notice are listed in Schedule "B" of the settlement agreement.[145] They are similar to those previously approved for the certification and settlement approval hearing notices and parallel those approved in the *Bartram* class proceeding in British Columbia. That was acceptable in *Sweetland*, and the cost of the notice here is greater than in *Sweetland*.[146] Trilogy Class Action Services gave notice of the settlement hearing as ordered, including to provincial and territorial health care authorities and to the public guardians and trustees,[147] and the settlement approval application and settlement agreement were posted on its website. It is able and willing to similarly provide notice of settlement approval as ordered.[148]

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[143] *Walls v Bayer Inc.* (June 1st), 2007 MBQB 131, 217 Man R (2d) 66 (MacInnes J.) (certification notice): ("[28] ...such notice must be informative, **accurate**, **balanced** and **independent**. ... [30] ...acknowledging that the proceeding is adversarial..., ...the notice must be and appear to be **balanced** and **independent**.").

[144] *Sweetland*: ("[25] During the hearing I made a number of **suggestions** with respect to potential amendments to the notice of settlement approval and counsel can send me a revised draft notice for my review and ultimate approval.").

[145] *Battaglia Affidavit*, ¶10. || *Singh Affidavit*, Ex. 11, Sch B.

[146] *Sweetland*: ("[24] Counsel proposes to provide notice of the settlement approval and claims procedure in the same fashion as notice was given for the approval hearing. This is acceptable and the estimated costs of $18,250 plus tax are approved.").

[147] *Battaglia Affidavit*, ¶8.

[148] *Battaglia Affidavit*, ¶9-10.

V. CONCLUSION

63. The parties therefore jointly ask that the Court grant the order requested, in the form attached as Schedule 2 to the application, which is based on Schedule C of the settlement agreement, or with any "minor corrections" that are agreed to by the parties or are deemed necessary by the court.[149]

DATED this 18th day of September, 2024.

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[149] *Northwest*: ("[86] The proposed form of order...approving the Settlement requires some **minor corrections** which were discussed with counsel at the hearing. ... [87] ...I require the following matters to be addressed for reasons already given: 1. ... 2. ... 3. ... [88] ...none of these go to the substance of the Settlement. Instead, they relate to the manner of the administration of the Settlement, which is the responsibility of the courts.").

VI. AUTHORITIES

	A. Judicial	Pages
1.	*Adrian v Canada (Minister of Health)* (June 7th), 2007 ABQB 376 (Ouellette J.) (settlement approval)	2, 4, 21
2.	*Adrian v Canada (Minister of Health)* (June 7th), 2007 ABQB 377, 42 CPC (6th) 201 (Ouellette J.) (fee approval)	3, 23
3.	*Boulanger v Johnson & Johnson Corporation* (April 21st), 2010 ONSC 2359, 97 CPC (6th) 78 (Strathy J.) (fee approval)	24, 27-29
4.	*Cannon v Funds for Canada Foundation* (May 10th), 2017 ONSC 2670, 9 CPC (8th) 431 (Belobaba J.) (settlement | fee approval)	30, 31
5.	*Charette v Trinity Capital Corporation* (May 23rd), 2019 ONSC 3153, 2019 DTC 5073 (Glustein J.) (settlement | fee approval	31
6.	*Dembrowski v Bayer Inc.* [(Sept. 17th), 2015 SKQB 286, 482 Sask R 211 (Gabrielson J.) (certification adjourned) & (Oct. 4th), 2016 SKQB 324, 5 CPC (8th) 422 (Gabrielson J.) (certification granted)]	20
7.	*Goodridge v Pfizer Canada Inc.* (May 8th), 2013 ONSC 2686, 49 CPC (7th) 342 (Perell J.) (settlement | fee approval)	4, 8, 12, 14, 19, 24
8.	*Heward v Eli Lilly & Co.* (June 11th), 2010 ONSC 3403, 97 CPC (6th) 382 (Cullity J.) (settlement | fee approval)	2, 4, 9, 10, 17, 18, 24, 28
9.	*Jackson v Canadian National Railway* (Nov. 29th), 2012 ABQB 652, [2013] 4 WWR 311 (Martin J.) (certification denied)	6
10.	*L.(T.) v Alberta (Director of Child Welfare)* (Dec. 18th), 2015 ABQB 815 (Thomas J.) (settlement | fee approval)	2, 3, 23, 24, 31
11.	*MacMillan v Merck Frosst Canada & Co.* (Oct. 6th), 2016	4, 12, 21, 28,

	A. Judicial	Pages
	SKQB 325 (Elson J.) (settlement | fee approval)	30
12.	*Northwest v Canada (Attorney General)* (Dec. 14th), 2006 ABQB 902, 45 CPC (6th) 171 (McMahon J.) (settlement | fee approval)	2-4, 23, 27, 36
13.	*Parker v Pfizer Canada Inc.* (June 21st), 2012 ONSC 3681 (Perell J.) (certification granted)	22
14.	*Perdikaris (Carruthers) v Purdue Pharma* (Sept. 23rd), 2022 SKKB 214 (Popescul C.J.K.B.) (settlement | fee approval)	5-6, 21, 24
15.	*Price v H. Lundbeck A/S* (July 16th), 2018 ONSC 4333 (Perell J.) (certification denied)	5, 19
16.	*Price v H. Lundbeck A/S* (Dec. 20th), 2022 ONSC 7160 (Glustein J.) (certification denied)	5, 19
17.	*Stanway v Wyeth Canada Inc.* (June 10th), 2015 BCSC 983 (Gropper J.) (settlement | fee approval)	4, 12, 17, 18, 24, 25, 29, 30
18.	*Sweetland v Glaxosmithkline Inc.* (April 30th), 2019 NSSC 136 (Wood J.) (settlement | fee approval)	4, 5, 14, 17, 24, 28-30, 35
19.	*Tesluk v Boots Pharmaceutical PLC* (April 4th, 2002), 21 CPC (5th) 196 (Winkler J.)	4
20.	*Voutour v Pfizer Canada Inc.* (Nov. 30th), 2011 ONSC 7118, 38 CPC (7th) 360 (Perell J.) (settlement | fee approval)	4, 9, 11, 21, 23, 24, 28, 30
21.	*Walls v Bayer Inc.* (June 1st), 2007 MBQB 131, 217 Man R (2d) 66 (MacInnes J.) (certification notice)	35
22.	*Wilson v Servier Canada Inc.* (April 5th), 2005 CarswellOnt 6622 (Cumming J.) (fee approval)	26
23.	*Wilson v Servier Canada Inc.* (March 21st, 2005), 252 DLR (4th) 742 (Cumming J.) (settlement | fee approval)	4

	B. Statutes	Pages
24.	*Class Proceedings Act*, SA 2003, c C-16.5, ss 20, 35	2, 33, 34

Appendix 1 - Prescription Pharmaceutical Settlement & Fee Approvals in Canada

	case	drug	date	fee approved	disbursements	%	settlement
1.	*Tesluk v Boots Pharmaceutical PLC* (2002), 21 CPC (5th) 196 (Winkler J.)	Synthroid	2002 04 04	$616,822	$50,000	27.4%	$2,250,000
2.	*Wilson v Servier Canada Inc.* (2005), 252 DLR (4th) 742 (Cumming J.) & 2005 CarswellOnt 6622 (Cumming J.)	Ponderal Redux	2005 03 21	at least ~$10,700,000	$2,619,536 (includes $1,349,732 fees to U.S. counsel)	N/A	$43,000,000 maximum
3.	*Boulanger v Johnson &Johnson Corporation* (2009), 83 CPC (6th) 109 (Strathy J.) & 2010 ONSC 2359 (Strathy J.)	Prepulsid	2010 04 21	at least $1,500,000	$200,284.75	N/A	$8,750,000, but with a reversion
4.	*Heward v Eli Lilly & Co.*, 2010 ONSC 3403 (Cullity J.) & 2011 ONSC 6455 (Horkins J.)	Zyprexa	2010 06 11 2011 10 31	US $6,000,000	N/A + $500,000 contribution by defendants + $14,661.60 (Ontario disbursements after first approval plus taxes)	~25%	~US $24,084,224.03 nationally
5.	*Voutour v Pfizer Canada Inc.*, 2011 ONSC 7118 (Perell J.)	Bextra Celebrex	2011 11 30	$4,000,000	$212,068.87	33.33%	$12,000,000
6.	*Banerjee v Shire Biochem Inc*. 2011 ONSC 7616 (Strathy J.)	Permax	2011 12 21	$811,563.03	$49,548.08	33.82%	$2,400,000
7.	*Mignacca v Merck Frosst Canada Ltd.*, 2012 ONSC 4931 (Leitch J.)	Vioxx	2012 07 17	$6,000,000	$1,130,056.27	up to 25%	$21,806,250 – $36,881,250

	case	drug	date	fee approved	disbursements	%	settlement
8.	*Goodridge v Pfizer Canada Inc.*, 2013 ONSC 2686 (Perell J.)	Neurontin	2013 05 08	$1,036,283	$322,471.07	25%	$4,800,000
9.	*Stanway v Wyeth Canada Inc.*, 2015 BCSC 983 (Gropper J.)	Premplus Premarin	2015 06 10	$4,550,000	$813,263.72	33.33%	$13,650,000
10.	*MacMillan v. Merck Frosst Canada & Co.*, 2016 SKQB 325 (Elson J.)	Fosamax Fosavance	2016 10 06	$2,000,000	N/A	31.37%	$6,375,000
11.	*Sweetland v Glaxosmithkline Inc.*, 2019 NSSC 136 (Wood J.)	Avandia	2019 04 30	$966,666.67	N/A	23.48%	$4,116,667.67
12.	*Wenham v Canada (Attorney General)*, 2020 FC 590 (Phelan J.)	Thalidomide	2020 05 08	≤$1,850,000	$40,797.05	15% but capped	N/A
13.	*Casseres v Takeda Pharmaceutical Company*, 2021 ONSC 2846 (Belobaba J.)	Actos	2021 04 16	$7,500,000	N/A	30%	$25,000,000
14.	*Perdikaris v Purdue Pharma*, 2022 SKKB 214 (Popescul C.J.K.B.)	Oxycontin	2022 09 23	$4,650,000	$537,049.41	23.25%	$20,000,000
15.	*Fiddler v Janssen Inc.*, 2023 SKKB 29 (Mitchell J.)	Invokana	2023 02 08	$375,000	$51,384.42	25%	$1,500,000
Rough Averages				~$3,503,755.65	~$547,859.97	~27%	~$13,552,295.84

ALLOCATION OF THE SETTLEMENT FUND			
§	**Definition**	**$**	**Notes**
1.1(vv)	Settlement Fund	+$7,500,000	
5.4	Administration Costs before	-$52,500	for notice of certification & notice of settlement approval hearing
1.1(s)	Health Insurer Claims	-$525,000	
1.1(o)	Class Counsel Fees	-$2,000,000	
	GST on Class Counsel Fee	-$100,000	
1.1(n)	Class Counsel Disbursements	-$323,750	excludes plaintiffs' 50% share of 2 prior notices above under 5.4
1.1(ee)	Honorarium	-$50,000	
N/A	amount held to apply interest	$4,448,750	
1.1(s)	interest on Account (est. 1 year)	+$144,584.38	assumes 3.25% interest per year
1.1(s)	Compensation Fund	+$4,566,231	
5.4(i)	Administration Costs after	-$87,575	$77,500 plus GST/HST of 13%
5.4(i)	Claims Administrator expenses	-$25,000	estimated
1.1(b)	Claims Officer's fees	-$100,000	estimated fees and expenses, assuming roughly $2,500/Claimant
1.1(ff)	Lawyers' Fees, taxes, and disbursements	-$500,000	maximum based on cap of 33.33% of Settlement Fund
1.1(t)	Compensatory Payments	$3,853,656	
	per Eligible Claimant average	$128,455.20	assuming 30 Eligible Claimants

TIMELINE OF STEPS			
§	**Estimate**	**Event**	**Notes**
1.1(ss)	2024 09 24	Settlement Approval Hearing	
1.1(v)	2024 09 24	Court Approval Date	assumes approval on the hearing date, with or without written reasons to follow
1.1(hh)	2024 10 24	*Notice of Settlement Approval*	within 30 days of Court Approval Date (i.e. before the Effective Date)
1.1(y)	2024 11 25	Effective Date	Court approval +60 days assuming no appeals
4.3	2024 11 25	Settlement Fund	GSK to pay $7,500,000
8.4 **¶39**	2024 12 02	Class Counsel Fees Class Counsel Disbursements payment to Health Insurers	Effective Date + 7 days
1.1(i)	2024 12 23	Claims Deadline	Notice of Settlement Approval + 90 days assuming *Notice of Settlement Approval* is given on September 24th, 2024 and assuming no extension is granted under ¶11 of the *Settlement Approval Order*
1.1(k)	2025 03 24	Claims Perfection Deadline	Claims Deadline + 90 days
1.1(t) **1.1(b)** **1.1(ee)**	2025 03 24	Compensatory Payments Administration Costs after Lawyer's Fees	assuming no extensions of the Claims Perfection Deadline appeals under ¶11 of the *Settlement Approval Order* and ¶36 of the *Distribution Protocol*

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