



COURT FILE NO. 1201-12838
 COURT COURT OF KING’S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

PLAINTIFFS (APPLICANTS) FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative FIONA SINGH

C90529
 CMH
 Sept 24, 2024

DEFENDANTS (RESPONDENTS) GLAXOSMITHKLINE INC., GLAXOSMITHKLINE LLC, and GLAXOSMITHKLINE PLC.

Brought under the Class Proceedings Act

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT



INFORMATION OF PARTIES FILING THIS DOCUMENT 1000 – 7 Avenue SW, Suite 400
 Calgary, Alberta
 T2P 5L5

Clint Docken K.C. | Casey R. Churko
 Tel: (403) 619-3612
 Fax: (639) 739-2223

AFFIDAVIT OF FIONA SINGH
 (September 11th, 2024)

I, **FIONA SINGH**, of Calgary, Alberta, **AFFIRM AND SAY:**

1. I am a plaintiff and the litigation representative and legal guardian of my son, Muzaffar Hussein. The following statements come from my personal knowledge or from information provided to me by my counsel, Casey R. Churko, which I believe to be true.

2. When I filed this class proceeding, I was represented by E.F. Anthony Merchant, K.C. of Merchant Law Group LLP (“MLG”). On May 3rd, 2019, I changed representation to Casey R. Churko of KoT Law and Clint Docken, K.C. of Guardian Law Group LLP

(“**Guardian**”). On March 30th, 2022, I affirmed representation by Mssrs. Churko and Docken after Mr. Docken departed Guardian.

3. In 2003 and 2004, I was prescribed and ingested Paxil® while pregnant with Muzaffar. He was born with several congenital malformations, including (but not limited to) atrial septal defect, spina bifida, hypospadias, undescended testes, and clubfoot.

A. SETTLEMENT APPROVAL

1. likelihood of success and the risk of loss

4. The nature of the allegations against the defendants (“**GSK**”) are described in the *Amended Amended Statement of Claim* (2019-01-09). GSK has throughout the litigation denied, and continues on settlement to deny, the allegations, which include the following:

- (a) Paxil® and Paxil™ (generic name: paroxetine) (“**Paxil®**”) are teratogens;
- (b) GSK failed to warn that Paxil® is a teratogen and should therefore not be used in pregnancy; and
- (d) GSK actively promoted Paxil® for use in pregnancy, and hid the teratogenicity.

5. On November 17th, 2022, this class proceeding was certified. On December 16th, 2022, GSK appealed the certification order on all certification criteria,¹ including whether the pleadings disclose a cause of action.

6. In 2018 and 2022, certification was denied in a similar class proceeding in Ontario respecting Celexa®,² a drug that is in the same class of drugs as Paxil®, and based on expert evidence by some of the same experts who filed reports in this class proceeding. Because of the outcome in the Celexa® class proceeding in Ontario, I am concerned that GSK might be successful on the appeal of the certification order in this case, and if they are, that the claims of the class members described below will not be advanced in this class

¹ *Civil Notice of Appeal* (2022-12-16) (**Exhibit 7**).

² *Price v H. Lundbeck A/S* (Ont. S.C.J., CV-14-518698).

proceeding nor in any other actions that may subsequently be filed throughout Canada. That was one motivation to settle this class proceeding now rather than continue to pursue the next steps in the certification and post-certification process.

7. The risk of having to pay costs in this class proceeding is also a concern for me. I was successful in the certification application in the King's Bench, and the costs claimed against GSK in a draft bill delivered by my counsel to GSK's counsel were \$545,239.63.³ If the appeal is not resolved against GSK, I am concerned that the amount of costs that will be claimed against me will be of a similar quantum (and more for the appeal).

8. I am also concerned that even if GSK's appeal is dismissed, the common issues trial might be resolved in GSK's favour, and that I will then be subjected to a claim for costs in a multiple of the costs to date for certification. Norton Rose Fulbright was successful in previous pharmaceutical trials or summary judgment motions in *Adam v Glaxosmithkline Inc.* and *Carmichael v Glaxosmithkline Inc.*, and there is therefore a concern that their team would also be successful in this case if a trial of common issues is held.

2. future expenses and duration of litigation

9. I attach a table summarizing the steps taken in this and related class proceedings that Mr. Churko prepared, updated from time to time, and provided to me to keep me informed of the progress of the class proceeding after he was assigned to advance the file at MLG in 2016.⁴ In total, these efforts resulted in the generation of at least 26,008 pages of evidence that was filed with the Court.⁵ Additional details are on the court file.

10. To date, significant time and expenses have been devoted to prosecuting the class proceeding. On an assessment of MLG's time and disbursements in the Alberta King's

³ *Draft Bill of Costs* (2023-03-30) (**Exhibit 8**).

⁴ *Litigation Chronology* (2024-09-13) (**Exhibit 9**).

⁵ *Table of Evidence Filed* (2024-09-09) (**Exhibit 10**).

Bench that was directed by Associate Chief Justice Rooke, MLG claimed \$285,758.92 in disbursements and sought to have me pay them immediately. On September 30th, 2021, the assessment officer directed that they would be assessed after the conclusion of the litigation. My counsel challenged many of the disbursements, and claimed that the proper amount was only \$123,500.95. The agreed upon compromise of \$175,000 for MLG's disbursements, is reflected in the settlement agreement.

11. KoT Law, Guardian, and Napoli Shkolnik Canada also incurred disbursements of more than \$175,000, which is reflected in the settlement agreement. They include disbursements relating to specific claims of class members to assemble their medical records (which will be claimed in the claims administration process for eligible claims). Napoli Shkolnik Canada or its partners also incurred expenses related to an advertising campaign to identify potential Canadian claimants in 2018, to attend various hearings and the mediation with Mr. O'Connor (described below), and for the costs of 2 notice programs in 2024. The largest individual expense items are:

disbursement	cost
advertising campaign (2018)	\$127,756.72
mediation fees (2022) ⁶	\$14,704.13
	\$2,373.00
notice programs (2024)	\$12,500.00
	\$15,537.50
Total	\$172,871.35

3. amount and nature of discovery evidence

12. My counsel assembled 2,503 pages of published medical and scientific literature relating to the factual causation issues engaged in this case, including epidemiological

⁶ Re: Singh - GlaxoSmithKline Mediation (2022-08-29 and 2022-11-04) (Exhibit 6).

studies that report statistically significant associations between paroxetine exposure and congenital malformations and that are the basis of the qualifying malformations that are compensable under the settlement agreement.

13. Although formalized document exchange did not occur before certification in this case, understanding of the case on behalf of the class was facilitated by access to some 5,256 potential exhibits that were marked for use at trial in the United States and that were selected from document productions that were provided by GSK there. The master exhibit list resulted from the review of over 20 depositions of GSK employees and other witnesses, and more than 3 million pages of documents produced by GSK.

14. The resulting public trial transcripts, including a trial that resulted in a verdict in favour of plaintiffs, were accessible to my counsel and were previously filed with this court.⁷ Because of the mixed results in individual trials, however, there was a risk that a single common issues trial in Canada could extinguish the claims of all class members if resolved in favour of GSK in this class proceeding.

15. Although there was no formalized document production by GSK in this class proceeding in Canada, GSK produced additional documents in association with the cross-examination of its group manager of affairs, Mark Braham, including:

- (a) the comprehensive index to the new drug submission that led to the market authorization of Paxil® in Canada and that referenced the animal studies upon which the plaintiffs' case would be made as to what information GSK may have known about the potential teratogenicity of paroxetine before marketing Paxil®; and
- (b) its regulatory correspondence with Health Canada.

16. Mr. Churko requested these documents on my behalf after identifying them in lists of documents that were served in the *Bartram* class proceeding and that were publicly filed

⁷ *Affidavit of Adam Peavy* (2016-09-23), ¶2, at page 10580, previously filed.

as part of the settlement approval hearing in British Columbia. GSK's counsel provided the documents requested to him and they were presented to Mark Braham for questioning at his cross-examination in this class proceeding. The key animal studies that are alleged to have indicated that paroxetine was teratogenic and that were referenced in the comprehensive index were used to cross-examine Dr. Anthony Scialli in detail.

4. terms and conditions of the settlement

17. The settlement agreement is attached hereto.⁸ If the settlement is approved, I expect the following timeline between the date of approval and distribution of compensatory payments to eligible claimants.

Estimate	Event
2024 09 24	Settlement Approval Hearing
2024 09 24	Court Approval Date
2024 10 24	<i>Notice of Settlement Approval</i>
2024 11 25	Effective Date
2024 11 25	Settlement Fund
2024 12 02	Class Counsel Fees Class Counsel Disbursements payment to Health Insurers
2024 12 23	Claims Deadline
2025 03 24	Claims Perfection Deadline
2025 03 24	Compensatory Payments Administration Costs after Lawyer's Fees

⁸ Paxil® and Paxil CR™ National Class Action Settlement Agreement (2024-09-11) (Exhibit 11).

5. personal circumstances of the plaintiffs and class members

a. personal claim

18. The costs of raising Muzaffar that are associated with his congenital malformations have been extraordinary. To accommodate his wheelchair, my father installed a special elevator in my home for \$100,000, I modified the bathroom and yard of my home for \$40,000, and I modified my vehicle for \$27,000.

19. Additional costs of caregiving related to the malformations have been approximately \$60,000 a year. Medical supplies, including catheters, diapers, incontinence aids, and a new wheelchair every 3 years have been or will amount to approximately \$500,000 over his life. These are just some of the many costs associated with his claim.

20. As to my personal claim, I lost employment wages and job advancement opportunities because of the additional time required to care for Muzaffar (essentially a full time job). When I became pregnant with Muzaffar in 2004, my income was \$42,000 per year. After he was born, I stayed home to care for him as no daycare facility would take a child with Muzaffar's complications. I lost an average of \$50,000 for those 6 years. I maintained a reasonable standard of living through support from my parents.

21. When I re-entered the work force, I had to take a lower entry job that was accommodating to my schedule due to Muzaffar's needs. Where I would be advancing my career to where I would be closer to \$75,000 to \$90,000 in salary, I am today able to make only \$62,000 per year due to my current situation.

b. other class members

22. The eligible claimants under the settlement agreement consist of children who were born with anencephaly, spina bifida, encephalocele, craniosynostosis, cleft lip, cleft palate, structural cardiovascular defects, diaphragmatic hernia, gastroschisis, omphalocele, hypospadias, undescended testes, and club foot.

23. I agreed to these conditions because, with the exception of conditions for which there were lower confidence intervals approaching 1.0 (0.97 and 0.98 instead of 1.0 or more), there are statistically significant increases in risk reported in published medical literature to support an association between the specific malformations and paroxetine. Publicly reported associations are contained in a table prepared by my counsel.⁹

24. Given the different views on the science, the inclusion of various categories was the subject of extensive negotiation and compromise. GSK does not agree that there are associations respecting paroxetine and any malformations and would vigorously defend each alleged association. There are other congenital malformations where a statistically significant risk has not been reported, and they are not included in the settlement. For some malformations, the medical literature reports a *decrease* in risk, and those malformations are also not qualifying under the settlement.

25. An anticipated 32 known qualifying claimants was the result of a limited test advertising campaign in 2018 that was described in an affidavit and questioning of Mario D'Angelo,¹⁰ an American attorney who has contributed to the work product of my counsel in this case. The process was detailed in the last of 3 certification briefs of the plaintiffs,¹¹ and referenced in the certification reasons.

26. From 2019, Strategic Litigation Consulting, a medical consulting firm near Dallas, Texas obtained medical records from class members and their health care providers and institutions and paid the disbursements to gather the medical and pharmaceutical records from Canadian institutions on their behalf. More than 30,000 pages of medical records have now been obtained to support and verify the claims of class members. There were additional medical records for those who it was determined did not have eligible claims.

⁹ *Comparative SSRI-Paroxetine Associations* (prepared 2022-08-11) (**Exhibit 5**).

¹⁰ *Affidavit of Mario D'Angelo* (2019-01-03) and *Questioning of Mario D'Angelo* (2019-02-26).

¹¹ *Plaintiffs' Brief of Law* (filed July 30th, 2021),

27. I believe, based on information from my counsel, that there will be 32 known claimants who will establish eligible claims with sufficient documentation and will therefore receive compensation under the settlement. These 32 claimants include those whose medical and pharmaceutical records verify a prescription for and exposure to Paxil® (as opposed to generic paroxetine) and the presence of 1 or more qualifying malformations.

28. Their medical records were also reviewed for potential alternative risk factors for the malformations. The limited confounding factors agreed to in the *Distribution Protocol* as a means of reducing points allocation on individual claims are not comprehensive of all alternate causes that GSK might have raised in individual cases,¹² and reflect a negotiated compromise. They serve as potential reductions for individual eligible claimants; however, no claim will be reduced below 50%. The purpose is to achieve fairness between class members who have different potential risk factors to varying degrees, and differing levels of severity in the malformations and surgeries that they experienced.

6. neutral and third party recommendations

29. After joint conferences between Mr. Churko and the provincial and territorial health care authorities, they have agreed (or have not expressed opposition) to the lump sum settlement amount of \$525,000 to be distributed to them.

30. From March 15th, 2019,¹³ Mr. Churko exchanged correspondence with individual health care authorities to obtain their claims for subrogated health care costs based on the number of known claimants who were likely to submit claims in any settlement administration process. Mr. Churko received the last updated claim on August 28th, 2024.

¹² Risk factors reported in the 2,503 pages of scientific literature referenced above include: alcohol, tobacco, marijuana, and illicit drug use; heredity; amniocentesis; asthma; cancer; chemical exposure; chickenpox; diabetes; falls (e.g. tripping, stairs, etc.); folic acid deficiency; hypertension; kidney or renal issues; obesity; pain-related diagnoses; pesticides, herbicides; radiation exposure; retinoic acid; rubella; thyroid issues; other psychoactive medications (SSRIs, SNRIs, SARIs, TCAs, MAOIs).

¹³ *Letter from Casey R. Churko to Provincial and Territorial Health Care Authorities (2019-03-15) (Exhibit 4)*.

31. The anticipated health care costs of known claimants who are expected to be eligible for compensation under the settlement agreement are as summarized in a table that my counsel prepared and provided to me after circulating the same to the provincial and territorial health care authorities:

	mother child	PR	cardiac	mother	child
1.	B.(B.) R.(A.)	NB	TOF with PA VSD	\$4,435.36	\$11,861.00
2.	B.(W.) B.(J.)	NS	ASD	\$1,085.75	\$9,702.57
3.	B.(C.) B.(M.)	QC	cleft lip and palate	\$0.00	\$110,775.71
4.	B.(S.) O.(A.)	ON	clubfoot	\$0.00	\$783.00
5.	B.(A.) B.(S.)	ON	BAV	\$194.30	\$0.00
6.	C.(J.) A.(H.)	ON	ASD VSD BAV PDA	\$1,246.70	\$58,010.93
7.	C.(S.) B.(J.)	ON	VSD	\$0.00	\$1,898.15
8.	D.(C.) D.(L.)	NL	gastroschisis	\$6,904.45	\$30,558.44
9.	D.(S.) E.(B.)	BC	hole in heart at birth	\$0.00	\$23,506.97
10.	D.(P.) L.(R.)	ON	micrognathia hypospadias	N/A	\$41,643.13
11.	E.(S.) R.(R.)	MB	PDA	\$4,751.79	\$1,767.99
12.	F.(T.) D.(D.)	MB	bilateral vertical talus	\$103,948.18	\$11,469.29
13.	G.(T.) G.(C.)	ON	clubfoot spina bifida	\$0.00	\$129,825.10
14.	I.(E.) I.(F.)	NS	BAV	\$9,281.33	\$38,634.51
15.	J.(J.) S.(T.)	ON	PDA	\$439.00	\$0.00
16.	K.(L.) F.(K.)	BC	4 holes in heart	\$0.00	\$2,183.50
17.	K.(A.) J.(S.)	MB	pulmonary stenosis	\$0.00	\$8,436.93
18.	L.(J.) D.(J.)	NB	cleft lip and palate	\$4,292.87	\$32,831.70
19.	L.(L.) L.(C.)	NS	clubfoot	\$268.94	\$6,819.08

	mother child	PR	cardiac	mother	child
20.	L.(A.) L.(G.)	NS	cleft lip and palate	\$1,281.21	\$33,358.22
21.	M.(J.) M.(H.)	QC	craniosynostosis	\$0.00	\$7,105.32
22.	M.(N.) M.(S.)	ON	clubfoot	\$0.00	\$0.00
23.	M.(K.) M.(B.)	ON	cleft palate	\$31,910.20	\$3,574.20
24.	P.(P.) B.(S.)	NS	ASD VSD	\$11,530.50	\$11,817.65
25.	P.(J.) P.(B.)	ON	cleft palate	\$606.25	\$5,483.70
26.	R.(S.) B.(D.)	AB	ASD VSD PDA	\$9,977.84	\$47,619.31
27.	S.(F.) H.(M.)	AB	ASD Chiari I hypospadias undescended testes clubfoot scoliosis	\$5,719.34	\$910,461.50
28.	T.(T.) T.(M.)	SK	ASD PDA transposition	N/A	\$34,075.90
29.	T.(K.) T.(K.)	ON	craniosynostosis	\$589.31	\$8,677.35
30.	T.(L.) J.(M.)	ON	spina bifida	\$0.00	\$0.00
31.	W.(E.) W.(E.)	ON	spina bifida	\$6,385.30	\$11,653.25
32.	W.(C.) T.(L.)	BC	craniosynostosis	\$0.00	\$2,082.21
TOTAL				\$204,848.62	\$1,596,616.61
AVERAGE				\$6,401.52	\$49,894.27
Total mother and child				\$1,801,465.23	

† These numbers accept the claims submissions at face value, with no challenges for costs unrelated to the malformations, pre-judgment interest, etc.

7. number and nature of objections

32. Of the 7 opt out forms received, each either had no child, no malformations, no prescription dates, a non-qualifying condition (autism), or no complaint that Paxil® caused any problems. Some also expressed concerned that by remaining in the class proceeding, they would be liable to pay expenses, and they wanted to be excluded for that reason.

There was an agreement with GSK that if 5 or more class members opted out, GSK could walk away from the settlement. Each 'opt out' was not a class member.

33. No objections have been communicated to my counsel.

8. presence of good faith and absence of collusion

34. GSK agreed to pursue settlement discussions beginning on August 23rd, 2018 and there was an in person negotiation session at Norton Rose Fulbright in September 2018, and exchanges of correspondence after that.

35. On August 17th, 2022, GSK's counsel and my counsel participated in a mediation with the Honourable Mr. Justice Dennis O'Connor, formerly of the Ontario Court of Appeal, at Norton Rose Fulbright's office in Toronto. I was on call and available from Calgary by video throughout the mediation to provide instructions to accept any reasonable settlement offers that GSK made. The first mediation did not result in a settlement, but it was agreed to continue the mediation process.

36. After subsequent conferences with Mr. O'Connor and written correspondence exchanges in late 2022 and early 2023, the parties reached a settlement agreement in principle with GSK in 2023. Drafts of a formalized agreement continued to be exchanged throughout 2023. The settlement agreement went through at least 12 additional revisions between June 30th, 2023 and September 9th, 2024 in correspondence between GSK's counsel and Mr. Churko before the final agreement was signed on September 11th.

9. does the settlement meet the objectives of improved access to justice

37. Other than one individual claim that was filed in Saskatchewan, *Thompson v Glaxosmithkline Inc.* [QBG-PA-00276-2019] that is to be discontinued under the settlement agreement, I know of no outstanding claims filed in any court in Canada against GSK related to congenital malformations said to have been caused by Paxil®.

38. Other than this class proceeding, there are no other procedures available to compensate class members other than the prospect of filing individual claims almost 20 years after the Canadian product monograph for Paxil® changed in 2006 to reference congenital malformations. That prospect further assumes that the limitation period has not expired for class members who did not become aware of nor rely on this class proceeding.

B. LEGAL FEES

1. time expended by counsel

39. The time expended by MLG, KoT Law, and Napoli Shkolnik Canada was reviewed above and will further be commented on below.

2. complexity of the issues

40. As explained by my counsel, I am aware that the factual and legal issues that might be resolved against the class members on common or individual issues resolution (and on which I take a contrary position) include:

(a) the absence of a duty of care, where children were said to have been injured *in utero* and were therefore not legal persons;

(b) failure to prove breach of the standard of care, where GSK defended on the basis that it complied with all regulatory duties, where Health Canada was involved in considering the product monograph content, and where published epidemiological literature was inconsistent as to whether Paxil® is associated with an increased risk of congenital malformations that would in turn trigger a duty on GSK to warn users in Canada, and where there is evidence that behaviours associated with depression (drinking, narcotics use, etc.) and even untreated depression itself can cause malformations; and

(c) failure to establish factual causation for some or all class members, also based on other complex risk factors that are associated with depression and that would be present whether Paxil® was taken or not.

41. On February 3rd, 2006, GSK changed the Paxil® product monograph in Canada

to reference the risk of congenital malformations, particularly cardiac malformations. There was a likelihood that GSK would succeed in establishing a discharge of their duty to warn from that point on. Eligible claimants under the settlement therefore must have been prescribed Paxil® before the product monograph changed.

3. degree of responsibility assumed by counsel

42. American lawyers who assisted with the litigation included Adam Peavy, who conducted Paxil® trials in the United States, obtained a jury verdict of \$2.5 million, and oversaw the administration of more than a billion dollars in settlement funds, and his colleague Mario D'Angelo. Messrs. Churko, Docken, and D'Angelo and Christopher Schnieders of Napoli Shkolnik's Kansas City office attended the mediation with Mr. O'Connor in Toronto and participated in the subsequent sessions by conference call.

43. Mr. Schnieders and Clint Docken, K.C. (then of Guardian) appeared with Mr. Churko on the application to uphold my change of representation on February 23rd, 2021, and the combined resources of Mr. Churko and Guardian were a factor that permitted me to change my representation from MLG.

4. monetary value in issue

44. Because of the individual issues that will have to be resolved to determine damages for individual class members, I am unable to quantify the extent of GSK's potential liability to all class members. I described the potential value of my personal claim and that of Muzaffar, above. Valuation is one of the many individual inquiries that GSK says needs to be pursued and that poses a risk that the certification order will be overturned on appeal.

5. importance of the matter to the clients

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 belief that I had committed religious sins.

6. degree of skill and competence demonstrated by counsel

46. The skill and knowledge of the case demonstrated by Mr. Churko is evident from 2 certification briefs of law that he drafted and filed in this matter (2018-08-07 and 2021-07-30) and the transcripts of the 4 cross-examinations that he conducted:

	Expert	Questioning	Pages
i.	Mark Braham	2017 04 07	1320
ii.	Karen Feltmate	2017 03 22	978
iii.	Anthony Scialli	2017 05 12	2644
iv.	Gary Shaw	2017 06 02	1632
Total			6574

47. The cross-examinations conducted by Mr. Churko and counsel for GSK included some of the same experts that were set to be called in the British Columbia class proceeding for trial, including Drs. Bérard and Healy for the plaintiffs, both of whom filed expert reports in this class proceeding. The defence experts included Drs. Scialli and Shaw.

7. results achieved

48. Although the result in this class proceeding is greater in monetary value than the result in the prior British Columbia *Bartram* class proceeding, the average per mother-child claim recovery in the claims process is anticipated to be similar.¹⁴

¹⁴ *Affidavit of Graham Kosakoski* (2017-03-15) filed in *Bartram v Glaxosmithkline Inc.* (Vancouver Registry, S081441): (“22. ...while it is impossible at this stage to know how much each eligible claimant will receive, I estimate that: (a) If there are 30 mother-child claims accepted then the average payout per mother child set will be approximately \$116,666.67;”).

8. ratio of the fees to recovery

49. The combined class counsel and lawyer's fees in the settlement agreement are capped at 33.33%. That is consistent with the retainer agreement that I signed. On August 22nd, 2018, I signed a contingency fee agreement with MLG.¹⁵ It provides for payment of 33% of settlement proceeds plus disbursements. The amount of the class counsel fee is 26.66% of the settlement fund, with the balance to 33.33% to be paid to lawyers who represent eligible claimants in the claims administration process.

9. whether a multiplier should be applied and if so at what level

50. A positive multiplier is not being claimed on the time of any counsel who contributed to this class proceeding, with the potential exception of Mr. Docken, K.C., who is to be paid a fixed fee for his appearance on the change of representation application and for his attendance at the mediation with Mr. O'Connor. For other lawyers, there is a negative multiplier resulting from both the \$2,000,000 in class counsel fees and the additional \$500,000 that has been allocated to the claims administration process.

51. For MLG, the negative multiplier is approximately 0.25 of the \$4,221,182.23 in work in progress claimed as of September 6th, 2024. Most of that time, as reported on the *MLG Matter Draft Report* that I described at ¶34(b)(i) of my February 7th, 2020 affidavit, was incurred by Mr. Churko (approximately 3,000 hours of time he incurred in preparing for and conducting cross-examinations, preparing expert affidavits, amending pleadings, and researching and drafting the certification brief). Based on the additional 1,637.17 hours that Mr. Churko devoted to the case from 2019 to today, there will not be a positive multiplier respecting his time.

C. HONOURARIUM

1. devotion of time

52. I committed a significant amount of time to directing and participating in this

¹⁵ *Contingency Fee Agreement (2018-08-22) (Exhibit 3)*.

litigation. I had to take time off work to prepare for and attend cross-examination. That involved reading each affidavit filed by GSK and knowing the names of the experts and the points they made, which I summarize below.

53. I had to learn about civil litigation and class action procedure, including what a statement of claim, affidavit, litigation plan, certification hearing, and representative plaintiff is, and what my role would be in the class proceeding. I learned the names of the 4 prior case management judges that were assigned to hear the case.

54. I learned the definition of the class that I was seeking to represent. I had to understand the distinction between the common and individual issues stages in a class proceeding, and at what stages various notices to class members would be given. I also had to learn about when Paxil® was first marketed in Canada and when the product monographs changed since I was asking to be appointed to represent other class members who used Paxil® at different times after it received market authorization in Canada (May 4th, 1993 for Paxil®, and November 27th, 2003 for Paxil CR®).

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:

- (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 instead 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, loss of

earnings and earning capacity, and loss of enjoyment of life; and
(e) some of any amount awarded would reimburse the costs paid on their behalf by governmental or private insurers for hospital admissions, surgeries, etc.

56. I had to learn about what a product monograph is, including the different parts that were targeted to health care professionals and patients. I located the problems that were alleged to be in the evolving product monographs that were used to market Paxil® in Canada, including where they were said to be less adequate than the statements in Paxil® product labels in the United States.

57. I also had to understand that allegations against GSK included that it failed to properly explain the risks of congenital malformations, and more particularly that GSK should have contraindicated Paxil® for use in pregnancy. The Paxil® product monographs were alleged to be unclear, incomplete, and not current where there was no suggestion that use of Paxil® was associated with congenital malformations until February 3rd, 2006.

58. Throughout the litigation from late 2016 on, I kept in regular contact with Mr. Churko. In preparation for my cross-examination, I absorbed class action concepts, and with my scientific background, I eagerly reviewed the expert reports filed in this case and developed a strong understanding of the litigation theory advanced and the categories of class members I undertook to represent.

59. In March of 2017, I intervened in an application in British Columbia to approve a Paxil® provincial opt-in class proceeding settlement for cardiovascular malformations in *Bartram v Glaxosmithkline Inc.* (Vancouver Registry, S081441). My intervention was necessary to affirm that the claims of class members in this class proceeding would not be compromised by that settlement. The British Columbia settlement agreement and

settlement approval hearing transcript are attached hereto.¹⁶

2. personal hardship and inconvenience

60. I affirmed 8 affidavits over the course of this proceeding. I previously affirmed affidavits in this matter on: October 10th and December 19th, 2012; June 4th, 2014; August 12th and October 12th, 2016; August 31st, 2018; and February 7th and November 24th, 2020.

61. In preparing for my cross-examination, I thoroughly prepared with Mr. Churko. We went over 60 questions that he drafted based on representative plaintiff cross-examination transcripts in other pharmaceutical class actions that he had been counsel on and that were typically posed by other pharmaceutical defence lawyers in those cases. The questions that could reasonably be anticipated to come up related to:

- (a) procedural questions as to my understanding of the class action process and my responsibilities to class members in it;
- (b) the degree of my involvement in the preparation, review, and understanding of filed court documents in this case;
- (c) my personal and academic background and credentials;
- (d) my comprehension of the class definition and common issues advanced in the certification application;
- (e) the threat of my personal exposure to costs of failed applications and the trial;
- (f) the history of this litigation, other MLG Paxil® class actions, and the prosecution of the *Bartram* class proceeding in British Columbia;
- (g) my previous filing of a claim in the United States that was dismissed on territorial jurisdictional grounds; and
- (h) individual issues that differed between class members and I, including interactions with my prescribing physician and other potential risk factors that GSK could advance to alternatively attribute as the cause of Muzaffar's malformations.

¹⁶ *Settlement Agreement* (2017-03-27) (**Exhibit 1**) and *Hearing* (2017-03-27) (**Exhibit 2**).

62. In preparation, Mr. Churko provided me with (and I reviewed) the documents that contained 12,996 pages of affidavits from experts and other persons working for (or with) GSK or counsel for the plaintiffs that were filed on behalf of both the parties, the content of which I understood in summary form to have been as follows:

Expert	Content of Affidavit
<p>Anick Bérard</p>	<p><u>Who is she?</u></p> <ul style="list-style-type: none"> ● epidemiologist (investigates the link between exposures and diseases) <p><u>What did she say?</u></p> <ul style="list-style-type: none"> ● There is scientific literature that paroxetine exposure during the 1st trimester causes congenital malformations that is <ul style="list-style-type: none"> • peer-reviewed, • statistically significant, or • not statistically significant but consistently replicated. ● The risk in the literature is understated as it <ul style="list-style-type: none"> • does not count spontaneous abortions, • relies on paroxetine exposures that were misclassified as occurring outside pregnancy (pregnancy can go undetected), and • is based on small sample sizes (because birth defects are rare). ● Application of the Bradford Hill criteria supports a causal association. ● The increased risk applies to all users. ● Increased risk is best examined by looking at organ-specific groupings. ● Canadian Paxil® product monographs did not clearly, completely, or currently state the teratogenic risks of paroxetine: <ul style="list-style-type: none"> • no reference to many defects; • 1/50 downplays real number of cases when drug is widely prescribed, and the severity of those conditions; • current risk estimates not provided; • no mention of point estimates greater than doubling; • no mention that the risk is present for undetected and unplanned pregnancies; • less disclosure than on the US label (human studies, animal studies); • not Paxil® specific (just says SSRI's). <p><u>Why was it important?</u></p> <ul style="list-style-type: none"> ● There is evidence that Paxil® causes birth defects and that GSK did not warn about it. ● Asking whether there is an increased risk is best determined by looking at birth defects together.
<p>Mark Braham</p>	<p><u>Who is he?</u></p> <ul style="list-style-type: none"> ● GSK's regulatory person <p><u>What did he say?</u></p> <ul style="list-style-type: none"> ● Summary of facts about GSK and Paxil®

Expert	Content of Affidavit
	<ul style="list-style-type: none"> • GSK corporate status in Canada, UK, USA • different Paxil® and Paxil CR™ indications and doses • adequate statements in Advisories, CPS's, DHCPL's, Leaflets, MIL's, and product monographs
<p>Pierre Chue</p>	<p><u>Who is he?</u></p> <ul style="list-style-type: none"> • A psychiatrist in Edmonton <p><u>What did he say?</u></p> <ul style="list-style-type: none"> • Physicians need all data. • Since GSK withheld data, no Canadian physician could discharge their duty to patients. • Paxil® can cause multiple defects, including in the same patient. • extracts from a couple studies; attaches others showing an association • There is a relationship between paroxetine exposure and malformations, and the statement in the Canadian product monograph was late. <p><u>Why was it important?</u></p> <ul style="list-style-type: none"> • evidence of a <i>Canadian</i> psychiatrist that the Canadian Paxil® product monographs were inadequate.
<p>Karen Feltmate</p>	<p><u>Who is she?</u></p> <ul style="list-style-type: none"> • independent regulatory expert <p><u>What did she say?</u></p> <ul style="list-style-type: none"> • There is a public regulatory regime for prescription drugs. <ul style="list-style-type: none"> • NDS review process • PM components • PAAB advertising • GSK excluded pregnant woman from clinical trials, so a bare statement that the risks during pregnancy are unknown is the norm. <p><u>Why is it important to GSK?</u></p> <ul style="list-style-type: none"> • Health Canada approved Paxil®, and the product monographs were good.
<p>David Healy</p>	<p><u>Who is he?</u></p> <ul style="list-style-type: none"> • psychiatrist in Wales <p><u>What did he say?</u></p> <ul style="list-style-type: none"> • animal studies <ul style="list-style-type: none"> • biological plausibility: alterations in serotonin can cause birth defects • real risks <ul style="list-style-type: none"> • SSRI's can cause birth defects, and Paxil® causes more birth defects than other SSRI's. • GSK employed ghostwriters, public relations firms, and key opinion leaders to conceal the risks in the scientific literature. • false benefits <ul style="list-style-type: none"> • Depression in pregnancy is normal and resolves on its own.

Expert	Content of Affidavit
	<ul style="list-style-type: none"> • A placebo is better for most cases. • Non-drug therapies are an option. • The definition of “depression” was expanded to lead to more prescriptions. • GSK employed a false marketing narrative that untreated depression causes birth defects. • GSK targeted women of child bearing years in its Paxil® marketing. ● Paxil® should have been contraindicated for use in pregnancy. ● GSK could have warned that Paxil® was a teratogen by 1997.
<p>Edward J. Lammer</p>	<p><u>Who was he?</u></p> <ul style="list-style-type: none"> ● A physician in the San Francisco area. He is now deceased. <p><u>What did he say?</u></p> <ul style="list-style-type: none"> ● There are different causes of congenital malformations. <ul style="list-style-type: none"> • Different birth defects have different causes. • There are different “windows of susceptibility” for different defects in different trimesters. • No teratogen causes all birth defects. ● Congenital malformations are not a single disease. <ul style="list-style-type: none"> • He describes the types of birth defects. ● Muzaffar’s malformations were caused by genetics, not Paxil®. ● Dr. Chue has no expertise in teratology.
<p>Adam Peavy</p>	<p><u>Who is he?</u></p> <ul style="list-style-type: none"> ● US lawyer who filed my first claim in Philadelphia that was dismissed on territorial jurisdiction grounds. <p><u>What did he say?</u></p> <ul style="list-style-type: none"> ● He describes the US litigation. <ul style="list-style-type: none"> • 500+ plaintiffs, 20+ depositions, 3,000,000+ pages of discovery. • 2 trials in US: \$2,500,000 jury verdict in one. ● He attaches the trial transcripts and public exhibits.
<p>Anthony Scialli</p>	<p><u>Who is he?</u></p> <ul style="list-style-type: none"> ● A clinician, reproductive teratologist <p><u>What did he say?</u></p> <ul style="list-style-type: none"> ● animal studies. Pregnant women are excluded from pre-marketing clinical trials, hence the need for animal studies. <ul style="list-style-type: none"> • GSK animal studies: pup deaths not caused by congenital malformations but by overdose. ● Paxil® was used for many different indications. ● Untreated depression is a risk factor for adverse fetal outcomes. ● The risk-benefit analysis for treatment options differs by patient. ● There are many sources of information and they change over time. ● Pregnancy categories on labels do not reflect different gradations of risk,

Expert	Content of Affidavit
	but rather differences in types of data. <ul style="list-style-type: none"> ● Ingenix study was distributed to Canadian doctors through DHCPL's. ● The Slood animal study is not evidence of teratogenicity in humans. ● One can not extrapolate Prozac® studies to Paxil®.

†I have shaded the reports filed by GSK's experts in grey, and do not believe their statements to be true. Particularly regarding Dr. Lammer's statement that Muzaffar's malformations were caused by genetics, I have a physician's letter stating that genetics was *not* the cause after I did genetic testing. I also understand that GSK opposed the statements made by experts retained on my behalf.

63. Mr. Churko also provided me with the 7,332 pages in transcripts and exhibits from the cross-examinations of these witnesses as they were completed in Montréal, New York, Palo Alto (Stanford), Toronto, and Wales. I spent many nights reviewing and studying these affidavits and transcripts (and other court filings) on my phone and on my iPad after Muzaffar went to bed and during my lunch break at work to learn more to explain what happened to him and to be better prepared to discharge my duties to other class members.

64. After MLG applied to set aside my change of representation and I proposed to withdraw as representative plaintiff to pursue an individual claim (a position that the court considered in upholding my change of representation), GSK sought to have me *immediately* pay costs of \$16,800 plus costs for various cross-examinations (including my own) and to review my 4,000+ pages of medical records, and other costs estimated to total \$90,000. GSK filed an application to seek the same, which I defended.

65. After confirming my willingness to remain as the representative plaintiff, I then had to respond to an application by Marianne Auch and MLG to remove me as the representative plaintiff. After I was successful in the application to overturn my change in representation, MLG then claimed that I also had to *immediately* pay all of its claimed disbursements of \$285,758.92.

66. My counsel successfully defended the demand for immediate payment, and the

costs assessment was deferred but appealed (the appeal was adjourned by consent); but the process caused me considerable stress for months leading up to it. My position on the assessment was that the actual recoverable disbursements of MLG were \$123,500.95, which included disbursements incurred between October 10th, 2012 (the date the action was filed), and April 12th, 2019 (the date of the change in representation). The agreed upon compromise in the settlement agreement is \$175,000.

67. I was employed in the construction industry at \$50,000 a year while supporting Muzaffar as a single mother. The prospect of having to pay these costs awards and losing my house and the wheelchair accessible modifications that had been made to it caused me considerable worry. These factors particularly took an emotional toll on my well being, and caused me to lose sleep.

3. emotional and personal nature of the claims

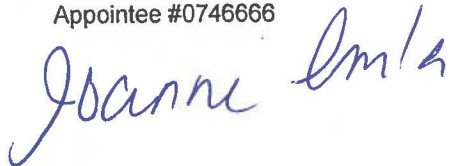
68. The responsibility of staying informed of the filings in the class proceeding while continuing to care for my disabled son and maintaining a job as a single mother left me with little else to do in my life. In the midst of the litigation, in 2017, my father, who had helped me with the extraordinary burdens of raising Muzaffar, passed away, and I was on my own to raise and support Muzaffar and fulfill my duties as the representative plaintiff.

AFFIRMED BEFORE ME at Calgary,)
Alberta this 11th day of September, 2024)


A Commissioner for Oaths in and for
the Province of Alberta)

JOANNE ELAINE IMLER
A Commissioner for Oaths
in and for Alberta)

My Commission Expires May 10, 2025
Appointee #0746666)




FIONA SINGH)

Joanne Imler

This is Exhibit 1 referred to in
the *Affidavit of Fiona Singh*,
affirmed before me this 11th day
of September 2024

Court File No. S081441
Vancouver Registry

EME COURT OF BRITISH COLUMBIA

Joanne Imler
A Commissioner for Oaths in and
for the Province of Alberta

MEAH BARTRAM an Infant,
r and Litigation Guardian, FAITH GIBSON,
and the said FAITH GIBSON

Plaintiffs

AND:

GLAXOSMITHKLINE INC. and GLAXOSMITHKLINE UK LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50



SETTLEMENT AGREEMENT

RECITALS:

WHEREAS the Plaintiffs brought this class action under the *Class Proceedings Act*, R.S.B.C. 1996 c. 50;

AND WHEREAS the Action was certified as a class proceeding by the Court on December 3, 2012 and Faith Gibson was appointed as Representative Plaintiff for the Class;

AND WHEREAS the common issues certified in the Action pursuant to the Certification Order relate to the allegation that the drug, Paxil, causes or increases the likelihood of cardiovascular birth defects in children born to women who ingested Paxil while pregnant, and that the Defendants failed to provide an appropriate warning of that risk during the Class Period;

AND WHEREAS notice of the Action and class certification was published throughout Canada pursuant to orders of the Court, dated March 3, 2015, November 16, 2015, and July 7, 2016;

AND WHEREAS the deadline for non-British Columbia residents to opt-in and British Columbia residents to opt-out of the Action was September 26, 2016. There were opt-in requests delivered by members of the Class who were not resident in British Columbia and opt-out requests from members of the Class resident in British Columbia;

AND WHEREAS the Defendants deny that any damages are payable and deny that the Plaintiffs and/or other Class Members are entitled to relief;

AND WHEREAS the Defendants have not conceded but deny all liability in the Action and believe that they have reasonable defences to the Action and the Allegations;

AND WHEREAS counsel for the Plaintiffs has conducted a thorough analysis of the merits of this Action, and has also taken into account the extensive burdens and expense of litigation, including the risks of trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arm's length negotiations, both directly and with the assistance of a mediator, the Parties wish to settle any and all issues amongst themselves in any way relating to the Allegations;

AND WHEREAS after their investigation, the Representative Plaintiff and Class Counsel have concluded that this Settlement Agreement is reasonable and in the best interests of the Class Members;

AND WHEREAS for the purposes of settlement and contingent on orders by the Court approving the settlement and the terms of this Settlement Agreement, the Representative Plaintiff, Faith Gibson, on her behalf; on behalf of the minor, Meah Bartram; and on behalf of Class Members has consented to a dismissal of the Action against the Defendants and the release of the Defendants from liability in accordance with the terms of this Settlement Agreement;

NOW THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed on the following terms and conditions:

SECTION 1 - DEFINITIONS

1.1 For the purposes of this Settlement Agreement, including its recitals and schedules, the following definitions apply:

- a) "Account" means an interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the Compensation Fund, with the exception of any interest accrued in relation to amounts that may be subject to a Reversion, if the conditions for a Reversion are met, as set out in Section 5.
- b) "Action" means the proceeding commenced by Meah Bartram, an Infant, by her Mother and Litigation Guardian, Faith Gibson, and the said Faith Gibson in the Supreme Court of British Columbia against the Defendants, Court Registry No. S081441, and certified as a class proceeding by the Court.

- c) “Administration Costs” means all costs to administer and distribute the Settlement Fund including the costs and professional fees of the Claims Administrator and Claims Officer and the costs of implementing the Notice of Settlement Approval.
- d) “Allegations” means the assertions of fact or law, causes of action, injuries and damages that were pleaded in the Notice of Civil Claim in the Action and referred to in the common issues certified by Justice Smith on December 3, 2012.
- e) “Approval Hearing” means the hearing at the Court to approve the dismissal of the Action, the settlement and the terms of this Settlement Agreement, including its schedules.
- f) “Approval Order” means the Order of the Court approving the dismissal of the Action, the settlement and the terms of this Settlement Agreement, which shall be substantially in the form attached as Schedule “A”.
- g) “Boscovich Invoice” means the invoice issued by Joseph Boscovich for mediation fees in the amount of \$15,242.33 (Invoice No. 53289).
- h) “Bruneau Invoice” means the invoice issued by Bruneau Group Inc. in relation to providing notice of the class action in the amount of \$67,788.70 (Invoice No. 2016-15).
- i) “Certification Order” means the certification order of Justice Smith, dated December 3, 2012, as entered with the Court on May 1, 2013.
- j) “Claim” means the claim made by a Claimant in accordance with the procedure in the Distribution Protocol, which is attached hereto as Schedule “B”.
- k) “Claimant” means a Class Member, or his or her estate or legal representative, who files a Claim pursuant to the terms hereof.
- l) “Claims Administrator” means the person or entity agreed by the Parties and approved by the Court to administer the claims process in accordance with the Distribution Protocol.
- m) “Claims Deadline” means 180 days from the first publication of the Notice of Settlement Approval of this settlement.
- n) “Claims Officer” means a qualified paediatric cardiologist agreed by the Parties whose role would be to determine *inter alia* whether a Claimant who claims to have been born with a cardiovascular defect was in fact born with a cardiovascular defect; identify the category in the Distribution Protocol within which each Claimant’s claim falls; and assign a points value within the range identified in the Distribution Protocol.

- o) “Class” means any person in Canada, born with cardiovascular defects, to women who ingested Paxil while pregnant, during the Class Period, and the mothers of those persons as defined in the Certification Order.
- p) “Class Counsel” means David M. Rosenberg, Q.C.
- q) “Class Counsel Fee” means 33% of the \$6,200,000.00 Settlement Fund (*i.e.*, \$2,046,000.00), which amount may be subject to a Reversion.
- r) “Class Member” means any person, or his/her estate or legal representative, who is a member of the Class, and who, (i) in the case of an individual not residing in British Columbia, delivered an opt-in request to Class Counsel on or before September 26, 2016; (ii) in the case of an individual residing in British Columbia, did not deliver an opt-out request to Class Counsel on or before September 26, 2016; or (iii) is added to the Class by the Court on an application for such relief, further to the Court’s direction in *Bartram v. GlaxoSmithKline Inc.*, 2016 BCSC 2516.
- s) “Class Period” means the period that runs from January 1, 1993 to December 3, 2012 as defined in the Certification Order.
- t) “Compensation Fund” means the Settlement Fund, less deductions for any Administration Costs, the Class Counsel Fee and applicable taxes and disbursements, and the Honorarium.
- u) “Court” means the Supreme Court of British Columbia.
- v) “Court Approval Date” means the later of:
- i. 31 days after the date on which the Court issues the Approval Order if there is no appeal from the Approval Order; and
 - ii. 31 days after the date on which any appeals from the Approval Order have been finally disposed of if there is an appeal from the Approval Order.
- w) “Damages” means all claims for pain and suffering, non-pecuniary claims, in trust claims, subrogated claims (in the form of claims of Public Health Insurers), past and future income loss claims, past and future care claims, aggravated or punitive damages, and special damages.
- x) “Distribution Protocol” means the plan setting out a Class Member’s entitlement to compensation under this Settlement Agreement and how compensation to Class Members shall be determined and distributed as prepared by Class Counsel and approved by the Court as part of the Approval Hearing, a draft of which is attached hereto as Schedule “B”. 4

- y) “Drugs” means the anti-depressants marketed by GlaxoSmithKline Inc. or its successors or predecessors in Canada under the brand name Paxil and Paxil CR.
- z) “Eligible Claimant” means a Claimant, or his/ her estate representative, who has satisfied the Claims Administrator that:
- a. the Claimant is a member of the Class; in particular,
 - i. the biological mother Claimant took Paxil or Paxil CR - not only a generic form of paroxetine during her pregnancy;
 - ii. the biological mother Claimant took Paxil or Paxil CR during the Class Period; and
 - iii. the Claims Officer has determined that the child Claimant was born with a cardiovascular defect; and
 - b. the Claimant met the notice-period requirement established by the British Columbia Supreme Court in *Bartram v. GlaxoSmithKline Inc.*, 2016 BCSC 1374, or has been added to the class by way of a specific application to the Court.
- aa) “Honorarium” means the amount of \$7,500.00, which shall be paid to the Plaintiff, Faith Gibson, out of the Settlement Fund as compensation for her services as Representative Plaintiff.
- bb) “Notice of Settlement Approval” means the form of notice, agreed to by the Parties, and approved by the Court that informs the Class Members of the approval of this Settlement Agreement, a draft of which is attached hereto as Schedule “C”.
- cc) “Notice of Settlement Approval Hearing” means the form of notice, agreed to by the Parties and for which approval will be sought from the Court, which informs the Class Members of the Approval Hearing.
- dd) “Notice Plan for Notice of Settlement Approval” means the method used for publishing the Notice of Settlement Approval, a draft of which is attached hereto as Schedule “D”.
- ee) “Notice Plan for Notice of Settlement Approval Hearing” means the method used for publishing the Notice of Settlement Approval Hearing.
- ff) “Parties” means the Plaintiffs, Class Members and the Defendants.
- gg) “Health Insurers” means all of the Canadian Provincial and Territorial Ministries of Health or governmental bodies that provide publicly funded plans of healthcare in Canada.

hh) “Health Insurer Claims” means the entitlement of the Health Insurers to any subrogated or direct claims arising from the provision of health care services to Class Members in relation to the Allegations.

ii) “Released Claims” means any and all claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, whenever incurred for liabilities of any nature whatsoever, including without limitation claims, demands, actions, suits or causes of action for personal injuries, general damages, special damages, punitive damages, interest, costs, expenses, penalties, and lawyers' fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, arise in law, under statute or in equity, that the Plaintiffs, the Releasers, Class Members, Health Insurers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating directly, indirectly, or in any manner whatsoever to the Allegations.

jj) “Releasees” means, jointly and severally, the Defendants, GlaxoSmithKline Inc. GlaxoSmithKline UK Limited and their respective present and former parents, subsidiaries, affiliates, officer, directors, employees, insurers, agents, attorney, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.

kk) “Releasers” means, jointly and severally, individually and collectively, the Plaintiffs, Class Members, their family members, Health Insurers, and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns.

ll) “Representative Plaintiff” means Faith Gibson.

mm) “Reversion” means the amount from the Settlement Fund and/or the Class Counsel Fee that is to be returned to the Defendants in the event that there are less than 30 Eligible Claimants.

nn) “Settlement Agreement” means this agreement, as executed by Class Counsel and Counsel for the Defendants.

oo) “Settlement Fund” means the sum of \$6,200,000.00 (Canadian) that the Defendants have agreed to pay to settle the Action.

SECTION 2 – CONDITION PRECEDENT - COURT APPROVAL

2.1 This Settlement Agreement is subject to and conditional upon Court approval and shall be null and void and of no force or effect unless the Approval Order has been granted and the Approval Hearing has occurred.

SECTION 3 – SETTLEMENT APPROVAL

3.1 The Parties shall use their best efforts to effect this Settlement Agreement. The Representative Plaintiff shall bring an application seeking approval of the Notice of Settlement Approval Hearing, the terms of this Settlement Agreement and the settlement outlined herein, publication of the Notice of Settlement Approval in the accordance with the Notice Plan, appointment of a Claims Administrator, appointment of a Claims Officer, approval of the Distribution Protocol, and directing that any monies owed by the Class be paid.

3.2 In the event that: (1) the Court declines to approve this Settlement Agreement or any part hereof; or (2) the order approving this Settlement Agreement made by the Court does not become a final order; then this Settlement Agreement shall be terminated and, except as provided for herein, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or disclosed to anyone other than as may be required by law or agreed upon by the Parties.

SECTION 4 – SETTLEMENT FUNDS AND OTHER AMOUNTS

4.1 Within 30 days of the Court Approval Date, the Defendants shall pay to Class Counsel, “in trust”, the Settlement Fund.

4.2 Within 30 days of the Court Approval Date, the Defendants shall pay the Bruneau Invoice and the Boscovich Invoice.

4.3 The maximum, all-inclusive payment the Defendants will make, in full and final satisfaction of all claims, including the claims of the Plaintiffs, the Claims of the Class Members, the Class Counsel Fee, the Honorarium, Administration Costs, the Boscovich Invoice and the Bruneau Invoice is \$6,390,000.00.

4.4 The Defendants shall have no responsibility or liability, under any circumstances, for any additional or further payments under this Settlement Agreement or in relation to the settlement and Action.

4.5 The Settlement Fund is intended to compensate the Class Members and their families in relation to Claims arising from the Allegations, to pay the Public Health Insurer Claims (to the extent there are any), the Class Counsel Fee and applicable taxes and disbursements, the Honorarium and any such further amounts as may be payable in relation to the settlement and Action.

SECTION 5 – REVERSIONS

5.1 If there are less than 20 Eligible Claimants, Class Counsel (or the Claims Administrator) will return to the Defendants \$500,000.00 of the Class Counsel Fee and \$1,500,000.00 from the Settlement Fund.

5.2 If there are 20 or more Eligible Claimants but less than 30 Eligible Claimants, Class Counsel will retain the full Class Counsel Fee but Class Counsel (or the Claims Administrator) will return to the Defendants \$1,000,000.00 from the Settlement Fund.

SECTION 6 – CLAIMS ADMINISTRATOR AND CLAIMS OFFICER

6.1 Within 30 days of the execution of this Settlement Agreement, the Parties shall select by agreement a Claims Administrator and a Claims Officer. The selection of the Claims Administrator and Claims Officer shall be subject to the approval of the Court.

6.2 The Defendants shall pay any invoice from the Claims Administrator for Administration Costs within 30 days of receipt of the invoice up to a total amount of \$100,000.00. If the Administration Costs exceed \$100,000.00, the further amounts will be payable from the Settlement Fund.

6.3 After deductions from the Settlement Fund for the Class Counsel Fee and applicable taxes and disbursements and the Honorarium, Class Counsel shall deposit the remaining funds into an Account to be administered by the Claims Administrator. The Claims Administrator may then deduct such further Administration Costs not already paid by the Defendants. The balance remaining in the Account is the Compensation Fund.

6.4 The Claims Administrator shall administer the Account and the Compensation Fund for the benefit of Class Members and the Health Insurers and shall be responsible for any tax filings and taxes or other charges relating to the Account and/or the Compensation Fund.

6.5 The Claims Administrator shall decide the Claims of the Claimants provided these are submitted by the Claimants prior to the Claims Deadline, and shall make payments to the Eligible Claimants and to the Health Insurers in accordance with the Distribution Protocol.

SECTION 7 – OBJECTIONS AND NOTICE OF SETTLEMENT APPROVAL HEARING

7.1 In advance of the Approval Hearing, Class Counsel shall make reasonable efforts to contact Class Members who have delivered opt-in requests in this proceeding, whether by mail or email, to provide them with the Notice of Settlement Approval Hearing in order to notify them of the date of the Approval Hearing, the nature of the Settlement Agreement, and of their right to object to the Settlement Agreement.

7.2 Class Counsel will also provide the Office of the Public Guardian and Trustee of British Columbia and similar entities in the other provinces and territories of Canada with Notice of Settlement Approval Hearing and with a copy of the Settlement Agreement.

7.3 Class Counsel will also publish the Notice of Settlement Approval Hearing as per the Notice Plan for Notice of Settlement Approval Hearing.

7.4 Class Counsel shall also post the date of the Approval Hearing, a copy of the Settlement Agreement, and information about the right of Class Members to object to the Settlement Agreement on Class Counsel's website in advance of the Approval Hearing.

7.5 A Class Member may object to the approval of this Settlement Agreement by sending a written objection by mail, courier, fax or email to Class Counsel.

7.6 The objecting Class Member shall provide his or her name, contact information and a brief statement of the nature and reasons for the objection.

7.7 Class Counsel shall report to the Court, by affidavit, with a copy to the Defendants, providing copies of any objection received prior to the Approval Hearing.

SECTION 8 – RELEASES AND DISMISSALS

Release by Class Members and Releasers

8.1 Upon approval by the Court of this Settlement Agreement, and in consideration of the payment of the Settlement Fund, and for other valuable consideration set forth in the Settlement Agreement, the Releasers are deemed and agree to forever and absolutely release the Releasees from the Released Claims, and the Health Insurer Claims, and further agree not to make any claim or take, participate in, or continue any proceedings (including a crossclaim, third party or other claim) arising out of or relating to the subject matter of the Released Claims against the Releasees and/or any other person, corporation, or entity (including, without limitation, any pharmacists, pharmacies, health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, including relief of a monetary, declaratory, or injunctive nature, from one or more the Releasees.

8.2 The above release applies to each Class Member whether or not the Class Member receives compensation under this Settlement Agreement.

8.3 The Releasers further agree to obtain (or to have the Claims Administrator obtain) a full and final release of the Released Claims from the Health Insurers and/or U.S. Medicare (if applicable) and undertake to indemnify the Releasees from all awards, recoveries, amounts, costs and expenses incurred on account of any claims, liens, demands, rights, or causes of action by the Health Insurers and/or U.S. Medicare (if applicable) claiming:

- a) a lien upon, subrogated interest in, or right or entitlement to the proceeds of this settlement, in whole or in part, for any reason, including the provision of medical and/or hospital care and/or the payment of medical and/or hospital expenses by any third party provider/payer; and/or
- b) a right to reimbursement or subrogation for any reason arising out of the consideration payable under this Settlement Agreement.

Dismissal of the Action

8.4 The Action shall be dismissed with prejudice and without costs as of the date of the Approval Order being granted.

SECTION 9 – CLASS COUNSEL FEE

9.1 Class Counsel may bring an application at the Approval Hearing or on another date for Court approval of payment by the Class of the Class Counsel Fee.

SECTION 10 – INTENTIONALLY OMMITTED**SECTION 11 - NO ADMISSION OF LIABILITY**

11.1 The Parties agree that whether or not the Settlement Agreement is approved by the Court, the Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with the Settlement Agreement, and any action taken to carry out the Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Action or in any other pleading filed by the Plaintiffs.

11.2 The Parties further agree that whether or not the Settlement Agreement is approved by the Court, neither the Settlement Agreement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek court approval of the Settlement Agreement or to give effect to and enforce the provisions of the Settlement Agreement.

SECTION 12 – GENERAL PROVISIONS

12.1 Class Counsel shall publish:

- (a) the Notice of Settlement Approval Hearing, approved by Class Counsel and Counsel for the Defendants, prior to the Notice of Settlement Approval Hearing as per the terms of the Notice Plan for Notice of Settlement Hearing; and
- (b) the Notice of Settlement Approval as attached hereto as Schedule C, or in a substantially similar form approved by Class Counsel and counsel to the Defendants or the Court, within 60 days of the Court Approval Date as per the terms of the Notice Plan of Settlement Approval which is attached at Schedule D, or a substantially similar notice plan as may be agreed to by Class Counsel and the Defendants' counsel or approved by the Court.

12.2 This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of British Columbia.

12.3 The Court shall retain exclusive jurisdiction in the implementation and administration of the Settlement Agreement.

12.4 Class Counsel, the Defendants, or the Claims Administrator may apply to Mr. Justice Nathan Smith of the British Columbia Supreme Court for directions, if necessary, in respect to the implementation and administration of this Settlement Agreement and the Distribution Protocol.

12.5 Other than the payment contemplated by s. 6.2 of this Settlement Agreement, the Releasees shall have no responsibility for and no liability with respect to the administration of this Settlement Agreement and the Compensation Fund.

12.6 This Settlement Agreement, including its schedules, constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and settlement terms in connection herewith.

12.7 The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

12.8 This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

12.9 The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.10 This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an email or facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.

12.11 This Settlement Agreement has been the subject of negotiations and discussion among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect.

12.12 The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.13 Class Counsel shall not publish on their website, or otherwise distribute, any documents relating to the Action (including pleadings, expert reports, transcripts, and documents included on

the parties' Lists of Documents) other than as may be required to advise of the fact that a settlement has occurred and to administer the approved settlement.

12.14 Class Counsel confirms that all negotiations direct or indirect leading up to this Settlement Agreement are confidential and shall not be disclosed to the public by Class Counsel or Class Members.

12.15 The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English. *Les parties reconnaissent avoir exigé et consenti à ce que cette Entente de Règlement et Quittance et tous les documents connexes soient rédigés en langue anglaise.*

12.16 The Schedules to this Settlement Agreement are as follows:

- (a) Schedule "A": Approval Order;
- (b) Schedule "B": Distribution Protocol;
- (c) Schedule "C": Notice of Settlement Approval; and
- (d) Schedule "D": Notice Plan for Notice of Settlement Approval.

12.17 Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.18 Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Plaintiffs and for Class Counsel:

David M. Rosenberg, Q.C.
Rosenberg Kosakoski LLP
671D Market Hill,
Vancouver, BC V5Z 4B5

Telephone: 604-879-4505
Facsimile: 604-879-4934
Email: info@rklitigation.ca

For Defendants:

Randy Sutton
Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street, P.O. Box 84
Toronto, ON M5J 2Z4

Telephone: (416) 216-4046
Facsimile: (416) 216-3930
Email: Randy.Sutton@nortonrosefulbright.com

IN WITNESS WHEREOF, each of the signatories, whether personally or by counsel, has caused this Settlement Agreement to be executed on her/his/their behalf as follows:

Dated:

David M. Rosenberg, Q.C. as Class Counsel
and on behalf of the Plaintiffs

Dated:

Norton Rose Fulbright Canada LLP
on behalf of the Defendants

SCHEDULE A – Approval Order

Court File No. S081441
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MEAH BARTRAM an Infant,
by her Mother and Litigation Guardian, FAITH GIBSON,
and the said FAITH GIBSON

Plaintiffs

AND:

GLAXOSMITHKLINE INC. and GLAXOSMITHKLINE UK LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION
Re: APPROVAL OF SETTLEMENT

BEFORE THE HONOURABLE
MR JUSTICE SMITH

)
) 27/MARCH/2017
)

ON THE APPLICATION of the Plaintiffs coming on for hearing at the Courthouse, 800
Smithe Street, Vancouver, British Columbia on the 27/March/2017;

UPON HEARING David Rosenberg, Q.C., Graham Kosakoski and David Moriarty, counsel
for the Plaintiffs, and Randy Sutton and Sarah Chesworth, counsel for the Defendants, and on
reading the materials filed including the Settlement Agreement and the Schedules thereto, which are
attached to this Order as Schedule "A";

UPON BEING advised that notice of this Settlement Approval Hearing was provided by Class
Counsel pursuant to the terms of the Settlement Agreement, including through the publication of

the Notice of Settlement Approval Hearing in accordance with the Notice Plan relating to the Notice of Settlement Approval Hearing;

THIS COURT ORDERS THAT:

1. The Settlement Agreement attached to this Order as Schedule A, including all of the Schedules thereto, is incorporated by reference into and forms part of this Order and unless otherwise indicated herein, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The Settlement Agreement, including all of the Schedules thereto, is fair, reasonable and in the best interests of the Class Members as defined in the Settlement Agreement.
3. The settlement and terms outlined in the Settlement Agreement, including all of the Schedules thereto and the releases set out therein, is hereby approved and is binding on Class Members, the Releasers, and the Defendants pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms.
4. The steps taken by Class Counsel to notify Class Members of the Approval Hearing are deemed reasonable and appropriate.
5. The Notice of Settlement Approval, in a substantially similar form to that attached as Schedule "C" to the Settlement Agreement, shall be distributed pursuant to the Notice Plan for Notice of Settlement Approval, attached as Schedule "D" to the Settlement Agreement, and such distribution is approved by this Court as being reasonable notice of the settlement and the terms of the Settlement Agreement in accordance with the requirements of the *Class Proceedings Act*.
6. The Defendants shall pay the sum of Six Million and Two Hundred Thousand Dollars (\$6,200,000) to Rosenberg Kosakoski LLP in trust within thirty (30) days of the Court

Approval Date.

7. The Defendants shall pay up to the sum of One Hundred Thousand Dollars (\$100,000) to the Claims Administrator for Administration Costs. If the Administration Costs exceed \$100,000, the further amounts will be payable from the Settlement Fund.
8. The Defendants shall have no responsibility or liability, under any circumstances, for any additional or further payments under the Settlement Agreement or in relation to the settlement and Action.
9. An honorarium of \$7,500 to Faith Gibson, for distinguished service to the Class, is hereby approved. Payment of this amount to Ms. Gibson is authorized as a disbursement to be paid from the Settlement Fund.
10. A Class Counsel Fee of 33% of the Settlement Fund, totaling \$2,046,000 plus applicable taxes and disbursements, to be paid out of the Settlement Fund, is approved for work done on the common issues on behalf of the Class from the commencement of the proceeding to the settlement of the action.
11. The appointment of the Bruneau Group as the Claims Administrator whose responsibilities shall include but may not be limited to: (a) administering the Distribution Protocol; (b) administering the Account and Compensation Fund; (c) accepting and maintaining documents sent from Class Members, including Claims Forms and other documents relating to Claims Administration; (d) determining the validity of Claims in accordance with the terms of the Settlement Agreement and Distribution Protocol; and (e) all other responsibilities designated to the Claims Administrator in the Settlement Agreement is approved. The Claims Administrator will provide Class Counsel and the Defendants with any information or documents that Class Counsel or the Defendants request concerning the administration of the settlement including details of distribution.

12. The Claims Deadline shall be 180 days from the first publication of the Notice of Settlement Approval. Class Counsel will be at liberty to apply to the Court to extend the Claims Deadline for any particular Class Member so long as such application is made within three months of the Claims Deadline and Class Counsel provides notice of the application to the Defendants.
13. The determination of the validity of Claims submitted by Class Members shall be made by the Claims Administrator and the Claims Officer. The decision shall be final and binding and shall not be subject to any further appeal.
14. Without affecting the finality of this Order, this Court shall retain exclusive continuing jurisdiction over the settlement process and the parties thereto, including the Plaintiffs, the Defendants, Class Members, and the Claims Administrator, for all matters relating to supervising, administering, implementing, enforcing and interpreting the Settlement Agreement and the Claims and distribution process thereunder, the enforcement of this Order, and all proceedings related to the Settlement Agreement, both before and after the approval of the Settlement Agreement and the settlement referred to therein becomes final and is no longer subject to appeal. The parties to the Settlement Agreement may apply to this Court for further direction, if necessary, in respect to the implementation and administration of the Settlement Agreement and the Distribution Protocol. This action is otherwise dismissed and all the claims of the class members as against the Defendants relating to the Allegations are extinguished upon payment of the Settlement Fund to Rosenberg Kosakoski LLP.

BY THE COURT

DEPUTY DISTRICT REGISTRAR

APPROVED AS TO FORM:

David M. Rosenberg, Q.C.
Counsel for the Plaintiffs

Randy Sutton
Counsel for the Defendants

SCHEDULE B – Distribution Protocol

Court File No. S081441

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MEAH BARTRAM an Infant,
by her Mother and Litigation Guardian, FAITH GIBSON,
and the said FAITH GIBSON

Plaintiffs

AND:

GLAXOSMITHKLINE INC. and GLAXOSMITHKLINE UK LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

DISTRIBUTION PROTOCOL

Definitions

1. All capitalized terms used in this schedule have the same meaning as in the Settlement Agreement.

Process to Advance a Claim

2. A Class Member who wishes to receive benefits pursuant to the settlement of this class action must provide the Claims Administrator with a completed claim form before the Claims Deadline.

Eligibility Criteria

3. To be eligible for compensation a Claimant must satisfy the Claims Administrator that he or she is an Eligible Claimant.
4. The decision of the Claims Administrator concerning eligibility is final.

Distribution of Settlement Fund

5. Class Counsel shall distribute the Settlement Fund in accordance with the terms of the Settlement Agreement.
6. Subject to any Reversion, the Settlement Fund shall be distributed as follows:
 - a. following receipt of the Settlement Fund, Class Counsel shall first pay its Class Counsel Fee pursuant to Class Counsel's retainer agreement, and applicable taxes and disbursements;
 - b. Class Counsel will then pay the Representative Plaintiff the Honorarium for her services as representative plaintiff; and
 - c. Class Counsel shall then transfer the remaining Settlement Fund to the Claims Administrator.

Damages - Category Assessments

7. A Class Member's entitlement to Damages under this Distribution Protocol shall be determined by the Claims Administrator and Claims Officer as outlined herein.
8. Damages will be assessed by the Claims Administrator and the Claims Officer through a review of the available information by and applying the following grid:

	Severity of Treatment for the Cardiovascular Defect	Points
A	No procedure, only diagnosis and ongoing monitoring	5 to 20
B	One catheter procedure to repair or treat the injury	10 to 20
C	Multiple catheter procedures to repair or treat the injury	20 to 40
D	One surgery to repair or treat the injury	25 to 60
E	Multiple surgeries to repair or treat the injury	40 to 100
F	Death (amounts will be paid to the minor Class Member's mother)	25

9. The Claims Officer will identify the category within which each Class Member's Claim falls and assign a points value within the range identified. In determining the points

value, the Claims Officer will consider the following criteria in relation to the cardiovascular defect:

- A. Severity of injury;
- B. Duration and complexity of treatments;
- C. Likelihood of future complications;
- D. Likelihood of future medical interventions;
- E. Likelihood of future medical/non-medical care; and
- F. Likelihood of vocational impairment.

10. Each biological mother of a Class Member born with a cardiovascular defect will be entitled to 25% of the points that the Class Member is entitled to under this heading in full and complete satisfaction of her own Claim.

General

11. The Claims Administrator may at any time request further information from the Class Member if the Claims Administrator and/or the Claims Officer believes such information is necessary to perform his or her duties.
12. The Claims Administrator and Claims Officer will seek to follow the processes outlined herein, but the Claims Administrator may also establish further processes for the management or the determination of the claims so as to ensure a fair, just and timely hearing of the Claims on the merits, and consistency in the application of this Settlement Agreement, and may implement such revisions upon approval by the Court, after providing 15 days-notice to the Parties.
13. The Claims Administrator and Claims Officer may consider the materials provided to him or her whether or not such materials would be admissible in a court of law. The Claims Administrator may grant extensions of the time to provide materials on the application of a party.
14. Assessment of eligibility and entitlement shall be determined on a balance of probabilities and common law principles.
15. There shall be no appeal from the decisions of the Claims Administrator and/or Claims Officer.

16. Disputes, other than eligibility and assessment of Damages, will be determined pursuant to the laws of British Columbia and where necessary adjudicated by Justice Smith or another Justice of the British Columbia Supreme Court who is appointed in his replacement.

Distribution of Compensation Fund

17. Distribution to Class Members shall be made from the Compensation Fund on a pro-rata basis. All Class Members' Claims will be adjudicated and finally determined, before any amounts for Damages are paid pursuant to the Settlement Agreement.
18. The Claims Administrator shall ensure that any claims or liens in favour of Health Insurers relating to each Eligible Claimant are fully and finally satisfied and a release in favour of the Releasees is obtained from the Health Insurer prior to any payment being made.
19. Distribution of payments to Class Members, other than the Honorarium, will not commence until after all Claims have been determined or adjudicated.

SCHEDULE C – NOTICE OF SETTLEMENT APPROVAL

If you or someone close to you used Paxil¹ while pregnant and gave birth to a child with cardiovascular birth defects or if you were born with cardiovascular birth defects and your biological mother took Paxil while she was pregnant with you, this notice may affect your legal rights.

On March 27, 2017, the Supreme Court of British Columbia approved a settlement of the class action *Bartram v. GlaxoSmithKline Inc. et al.* This class action concerned allegations that the Defendants' drug, Paxil, causes cardiovascular birth defects in children born to women who ingested Paxil while pregnant.

Who is Eligible for the Settlement?

To be eligible to participate in this settlement you must be a member of the class, or the estate or legal representative of a class member, and if you are not a resident of British Columbia, you must have already delivered an opt-in form in the lawsuit, on or before September 26, 2016.

The "Class" is defined as:

"Any person in Canada, born with cardiovascular defects, to women who ingested Paxil while pregnant, and the mothers of those persons."

The "Class Period" runs from:

January 1, 1993 until December 3, 2012

What are the Terms of the settlement?

You can obtain a copy of the settlement agreement by contacting Class Counsel or the Claims Administrator at the address below. In summary, the Defendants agreed to pay compensation to settle the allegations in the lawsuit. This money is available to compensate class members, and to pay public health insurers for their subrogated costs, as well as to pay legal fees and expenses related to the prosecution of this class action.

How Do I Make a Claim For Compensation?

Class members must submit a Claim Form and supporting medical documentation to the Claims Administrator before ●. The Claims Administrator will then determine each class member's entitlement to compensation based on that supporting documentation.

For More Information and/or to Obtain a Claim Form

For more information about the lawsuit and/or to obtain a Claim Form, please contact Class Counsel at:

David Rosenberg, Q.C.
Rosenberg Kosakoski LLP
671D Market Hill,
Vancouver, BC V5Z 4B5

Telephone: 604-879-4505
Facsimile: 604-879-4934
Email: info@rklitigation.ca

Or contact the Claims Administrator at


SCHEDULE D – NOTICE PLAN FOR NOTICE OF SETTLEMENT APPROVAL

The Notice of Settlement Approval shall be published by the following means:

1. Class Counsel shall send a copy of the Notice of Settlement Approval by mail or email to all persons who opted-in to these proceedings on or before September 26, 2016 or otherwise identified themselves to Class Counsel as class members.
2. Class Counsel and/or the Claims Administrator shall post a copy of the Notice of Settlement Approval to the internet.
3. The Claims Administrator shall distribute notice to potential British Columbia class members by way of a Facebook advertising campaign, similar in scope to the September, 2016 post-certification notice campaign in the within action.

This is Exhibit 2 referred to in the Affidavit of Fiona Singh, affirmed before me this 11th day of September 2024

JOANNE ELAINE IMLER
A Commissioner for Oaths
in and for Alberta
My Commission Expires May 10, 2025
Appointee #0746666



1 A Commissioner for Oaths in and for
2 the Province of Alberta
3

March 27, 2017
Vancouver, BC

4 (CHAMBERS COMMENCED AT 10:07 A.M.)
5

6 THE CLERK: Calling the matter of Bartram and others
7 versus GlaxoSmithKline Inc. and another, My Lord.

8 MR. ROSENBERG: Good morning, My Lord. David Rosenberg
9 and with me are Graham Kosakoski, K-o-s-a-k-o-s-k-i,
10 and David Moriarty, M-o-r-i-a-r-t-y. And we're
11 here for the plaintiffs, My Lord.

12 THE COURT: Yes.

13 MR. SUTTON: My Lord, Sutton, S-u-t-t-o-n, and with me
14 Chesworth, C-h-e-s-w-o-r-t-h, for the defendants.

15 THE COURT: Yes.

16 MR. MERCHANT: My Lord, Tony Merchant, Casey Churko,
17 Steve Roxborough. And we -- you have our
18 application, My Lord.

19 THE COURT: Yes. Yes.

20 MR. MERCHANT: Thank you, My Lord.

21 THE COURT: All right.

22 Mr. Rosenberg.
23

24 **SUBMISSIONS FOR THE PLAINTIFFS BY MR. ROSENBERG:**
25

26 Thank you, My Lord. There's -- there are
27 three notices of application before you today.
28 One is to allow a mother and son to be added to
29 the class by consent. One is for settlement
30 approval by the court and that's by consent of the
31 parties. And the third notice of application is
32 on behalf of Mr. Merchant's clients for three
33 things: to amend the class definition, for
34 intervenor status and for a third form of relief
35 which I won't go into right now. Mr. Merchant's
36 application is opposed by one or both of the
37 parties and for various forms of the orders he's
38 seeking.

39 I'd like to first tell Your Lordship that we
40 have reached a settlement, which I should hand up
41 to you if I could find the settlement agreement.
42 Oh, here it is. I've got two copies -- or, sorry,
43 My Lord, one original signed here and one copy for
44 Your Lordship.

45 THE COURT: All right.

46 MR. ROSENBERG: That was signed this morning.

47 THE COURT: Which was the --

2

Submissions for the plaintiffs by Mr. Rosenberg
Order re addition of Coulterman and Gamache to class

1 MR. ROSENBERG: Actually, about five minutes ago.

2 THE COURT: You can have that. Just give me the
3 exhibit. I guess they're going to do something
4 with it.

5 All right.

6 MR. ROSENBERG: We will go through that in due course,
7 My Lord.

8 THE COURT: Okay.

9 MR. ROSENBERG: But before I do, I thought perhaps we
10 should get out of the way the simple addition of
11 the class member. There is an application record
12 that I don't need to really go through but this
13 is --

14 THE COURT: Okay.

15 MR. ROSENBERG: -- to add Kelly Coulterman and Samuel
16 Gamache, the mother and son, to the class. And as
17 I say, it's by consent. And --

18 THE COURT: All right.

19 MR. ROSENBERG: A bit of the background, My Lord, while
20 you're looking at the order. She was a nurse on
21 shift when she found out about the opt-in/opt-out
22 deadline, and as soon as she could she opted in,
23 but she missed it by a day or two. And the
24 parties are consenting to her and her son being
25 added to the class.

26 THE COURT: All right.

27 MR. ROSENBERG: Now, the --

28 THE COURT: All right. I've signed that order.

29 MR. ROSENBERG: Thank you, My Lord.

30 Now, I think the way I would start -- and I'm
31 in Your Lordship's hands here and we may want to
32 discuss this. I would normally tell Your Lordship
33 that the settlement is going by agreement of the
34 parties but of course it's subject to court
35 approval. I would now take you through --

36 THE COURT: M'mm-hmm.

37 MR. ROSENBERG: -- the settlement agreement and the
38 affidavit material and our submissions in that
39 regard. But I know Mr. Merchant's here and his
40 applications, as I understand them, I suppose
41 could have some impact. And so according -- I'm
42 in Your Lordship's hands. I think --

43 THE COURT: Well, I think you're right. I think
44 Mr. Merchant's application should go first but can
45 you just give me for the -- just for the moment
46 just a very brief summary of the settlement --
47 what the settlement ...

3
Submissions for the plaintiffs by Mr. Rosenberg

1 MR. ROSENBERG: Oh, I could, My Lord. The -- there
2 were terms of -- probably the brief summary is
3 best seen in the terms of settlement. And perhaps
4 I could just take you to that. I believe it's
5 attached to the affidavit of Sandra Worden. And
6 in the application record at tab 5 -- take me just
7 a moment --
8 THE COURT: Yes.
9 MR. ROSENBERG: -- to find it.
10 Oh, it's in yours too. Are you sure?
11 Oh, I'm sorry, My Lord. If you go to Graham
12 Kosakoski's affidavit at tab 3, it's also in there
13 and it'll be easier to find in there. At tab 3 of
14 the application record.
15 THE COURT: Yes.
16 MR. ROSENBERG: Let me just make sure I --
17 THE COURT: All right. Tab A.
18 MR. ROSENBERG: Tab A. Yes.
19 THE COURT: Right.
20 MR. ROSENBERG: So this is a -- just by way of
21 background the parties through email and verbally
22 reached the agreement on December 23rd of 2016.
23 THE COURT: M'mm-hmm.
24 MR. ROSENBERG: And then these terms of settlement
25 were, I'd say, exchanged and signed on
26 January 27th and 31st, 2017. And since that date
27 we've been negotiating the finer terms --
28 THE COURT: Yes.
29 MR. ROSENBERG: -- of the detail. But here you have
30 it. The settlement fund, My Lord, that was
31 entered into here is \$6.2 million and you'll see
32 that in paragraph 1.
33 THE COURT: M'mm-hmm.
34 MR. ROSENBERG: The defendants also offered to pay some
35 invoices related to notice, which you'll see --
36 THE COURT: M'mm-hmm.
37 MR. ROSENBERG: -- in paragraph 2, for Bruneau Group.
38 And also to pay the mediator --
39 THE COURT: Right.
40 MR. ROSENBERG: -- Mr. Boscovich, up to -- for a total
41 of \$90,000.
42 THE COURT: Right.
43 MR. ROSENBERG: The total that the defendants have
44 agreed to pay -- the maximum, I should say, as
45 opposed to the total, is \$6.39 million. That's in
46 paragraph 3.
47 THE COURT: Right.

4
Submissions for the plaintiffs by Mr. Rosenberg

1 MR. ROSENBERG: What the settlement contemplates,
2 My Lord, is first a claims officer who's a
3 pediatric cardiologist is selected by agreement of
4 the parties and is subject to court approval as --
5 and the claims administrator is the same in
6 paragraph 5 --
7 THE COURT: M'mm-hmm.
8 MR. ROSENBERG: -- subject to court approval.
9 I'll just tell Your Lordship as we go here
10 that we have got a claims administrator and we're
11 right now talking to a pediatric cardiologist.
12 We're getting close.
13 Then, My Lord, we go through what the
14 eligibility criteria is for the claimant. And
15 they have to be a member of the class and in
16 paragraph 6(a) you'll see that they must establish
17 that they took Paxil or Paxil CR during pregnancy.
18 They -- the mother must have taken it during the
19 class period and the claims officer has to
20 determine that the --
21 THE COURT: Okay.
22 MR. ROSENBERG: -- child claimant was born with a
23 cardiovascular defect.
24 The decision of the claims administrator
25 concerning eligibility is final.
26 THE COURT: M'mm-hmm.
27 MR. ROSENBERG: Then, My Lord, we go through the
28 process to advance the claim. I don't know if
29 Your Lordship needs that --
30 THE COURT: No, I -- that -- no, I don't need that at
31 this stage.
32 MR. ROSENBERG: Okay. And the same with the
33 distribution of the settlement fund. I don't know
34 if you want that but Your Lordship might be
35 interested in the reversions.
36 THE COURT: M'mm-hmm.
37 MR. ROSENBERG: There's a concern that if there -- as
38 Your Lordship is familiar with the background here
39 when we last appeared before you there were give
40 or take a hundred class members --
41 THE COURT: M'mm-hmm.
42 MR. ROSENBERG: -- approximately. Or a hundred people
43 who indicated they were class members.
44 THE COURT: Right.
45 MR. ROSENBERG: There's several more now. But there is
46 an eligibility requirement and if there are less
47 than 20 eligible claimants then class counsel

5

Submissions for the plaintiffs by Mr. Rosenberg

1 returns a portion of the legal fees and a -- and
2 the administrator returns a portion of the
3 settlement fund. That's under reversions.
4 THE COURT: M'mm-hmm.
5 MR. ROSENBERG: And it's staged. So if there's under
6 20 --
7 THE COURT: Right.
8 MR. ROSENBERG: Then if there's under 30.
9 Then, My Lord, we get to how the damages are
10 categorized and this is where the claims
11 administrator and claims officer come into play.
12 THE COURT: Yep.
13 MR. ROSENBERG: You'll see, My Lord, that there's a
14 chart over in paragraph 15 that sets out six
15 different categories. Basically the points run
16 from five points up to 100 points for each
17 claimant. So just for example, if the points
18 turned out -- and we don't know how much they are
19 worth at this point, but if they turned out to be
20 worth \$5,000, then the individuals would get
21 between \$25,000 and \$500,000 for their claims.
22 THE COURT: M'mm-hmm.
23 MR. ROSENBERG: The mother gets -- well, I'll get to
24 that in paragraph 17.
25 In paragraph 16 there's some instructions to
26 the claims officer on identifying --
27 THE COURT: M'mm-hmm.
28 MR. ROSENBERG: -- the category within which each of
29 those member's claims fall.
30 THE COURT: Right.
31 MR. ROSENBERG: And there's criteria for doing so set
32 out there. So this matter is part of the
33 administration and the protocol --
34 THE COURT: Right.
35 MR. ROSENBERG: -- for individual damage assessment.
36 Paragraph 17 indicates, My Lord, that the
37 mothers get 25 percent of their children's
38 damages --
39 THE COURT: Right.
40 MR. ROSENBERG: -- if you like. And the way this
41 works -- paragraph 18, My Lord. It's done on a
42 pro rata basis. So after all the points --
43 THE COURT: Right.
44 MR. ROSENBERG: -- are added up it's distributed.
45 THE COURT: Right. So there's a deadline for people to
46 submit it so it's not -- we're not dealing with
47 the question of reserving funds in case people

6
Submissions for the plaintiffs by Mr. Rosenberg

1 show up later.
2 MR. ROSENBERG: Right.
3 THE COURT: Right. Yep.
4 MR. ROSENBERG: The only provision that allows for that
5 is -- there is one provision that allows -- I
6 think it's -- when we get into the settlement
7 agreement we'll look at this -- three months after
8 the deadline there's -- can be an application to
9 you for extensions.
10 THE COURT: Okay.
11 MR. ROSENBERG: But the administrator's decision is
12 final on eligibility.
13 THE COURT: M'mm-hmm.
14 MR. ROSENBERG: And I haven't really done -- usually I
15 do a timeline on how this all would flow but --
16 THE COURT: M'mm-hmm.
17 MR. ROSENBERG: I think it's safe to say, My Lord, that
18 it's a fairly short timeline. There's 30 days for
19 payment of the settlement.
20 THE COURT: M'mm-hmm.
21 MR. ROSENBERG: Then there's another 30 days before the
22 claims administration is set up. Then I think
23 it's 120 days --
24 THE COURT: Right.
25 MR. ROSENBERG: -- to file the claim. And then there's
26 payout, so --
27 THE COURT: Right. Okay. All right. So --
28 MR. ROSENBERG: I can do that in about two hours later
29 today.
30 THE COURT: All right. Okay.
31 MR. ROSENBERG: Okay. So other than that I'll -- the
32 only thing I would say, My Lord, if we're going to
33 hear from Mr. Merchant, is I might indicate just
34 now -- and I guess I'll do it again afterwards --
35 that the way I see Mr. Merchant and Mr. Sutton
36 having some issues about continuing litigation in
37 Alberta, that really doesn't directly affect me.
38 THE COURT: M'mm-hmm.
39 MR. ROSENBERG: So I may have a word or two to say but
40 I think the issue --
41 THE COURT: All right. Okay.
42 MR. ROSENBERG: And if you'd like I'll move to that
43 table for --
44 THE COURT: All right. Whatever.
45 Mr. Sutton, before we hear from -- do you
46 have anything to say to add to what Mr. Rosenberg
47 has just told me at this point?

7

Submissions for class members Wakeman and Singh
by Mr. Merchant

1 MR. SUTTON: I do not, My Lord. I'm comfortable --

2 THE COURT: Okay.

3 MR. SUTTON: -- with his description.

4 THE COURT: Thank you.

5 MR. ROSENBERG: Tony, do you want us to move?

6 MR. MERCHANT: Yeah, it would be helpful.

7 MR. ROSENBERG: Okay.

8 MR. MERCHANT: Thank you.

9 MR. ROSENBERG: Sure.

10 MR. MERCHANT: Appreciate that.

11 MR. ROSENBERG: No worries.

12

13 **SUBMISSIONS FOR CLASS MEMBERS WAKEMAN AND SINGH**

14 **BY MR. MERCHANT:**

15

16 My Lord, in a moment I'm going to begin
17 really reading through our -- partially reading
18 through these submissions. And so I've provided
19 copies to my colleagues.

20 The -- just for a moment if you look at the
21 application record --

22 THE COURT: M'mm-hmm.

23 MR. MERCHANT: And I'll begin and end by taking the
24 court to tab 8 of the application record --

25 THE COURT: M'mm-hmm.

26 MR. MERCHANT: -- and that's the order that we seek.

27 THE COURT: Right.

28 MR. MERCHANT: We seek either relief in the
29 alternative. But picking up on what my learned
30 friend just said, my expectation is that if that
31 relief were granted my learned friend for the
32 plaintiffs likely takes no objection to that
33 relief being granted because, just as he says,
34 that relief does not affect the plaintiffs in this
35 jurisdiction.

36 And then secondly, from the application
37 record, before I go further, if the court looked
38 at tab 1 and --

39 THE COURT: M'mm-hmm.

40 MR. MERCHANT: In tab 1, My Lord, you'll see that
41 under -- at 12, "Legal Basis," 12(e) and (i). So
42 Ms. Wakeman is a member of the class and under the
43 legislation the court is to hear from class
44 members. So we're here on behalf of Ms. Wakeman
45 and on behalf of Ms. Singh and Muzaffar. If you
46 accepted the defendants' position they say that
47 Ms. Singh is also a member of the class

8
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 notwithstanding that she didn't opt in and she
2 can't recover.

3 THE COURT: M'mm-hmm.

4 MR. MERCHANT: And -- but if we were only here for
5 Muzaffar, the child with spina bifida and all the
6 problems, then we would under (i) be seeking
7 intervenor status. And quoted under (i) is a
8 decision of the supreme court granting intervenor
9 status. And as My Lord will be aware, the court
10 of appeal has rules for intervenor status. The
11 court of -- the supreme court doesn't. But in
12 either way we are, in our submission, properly
13 before you.

14 So as I've said, it's tab 8 we seek but I'm
15 going to take a few minutes on other issues.

16 THE COURT: M'mm-hmm.

17 MR. MERCHANT: And I begin with Singh and Wakeman
18 applying to amend the class definition or have the
19 court impose the terms that it would be without
20 prejudice to the non-resident potential class
21 members who decided not to opt in and recipients
22 who did not opt out to the extent of their
23 congenital malformations.

24 And let me just explain that. So some
25 people -- let's take Singh. Suppose Singh were in
26 this jurisdiction. She -- Muzaffar's claim is a
27 multi-million dollar claim. Muzaffar has \$2
28 million in surgeries. We -- the Singh affidavit
29 says in excess of \$3 million. Muzaffar will never
30 be able to work. It's probably a \$5 million
31 claim. And Muzaffar would be in the circumstance
32 of only being able to recover for his heart
33 problems, which would be a very small part of the
34 claim.

35 So the third part of paragraph 1 is to say
36 that the court ought not to take from British
37 Columbia residents or people who have opted into
38 British Columbia the right to recover for the
39 things that weren't a part of this litigation.

40 THE COURT: Well, doesn't that follow? I mean, isn't
41 that an issue for the Alberta court hearing
42 that -- to determine whether someone falls into
43 the class -- their class or not?

44 And I guess even if I did say it was without
45 prejudice to what happens in Alberta would my --
46 would they have to pay the slightest bit of
47 attention to me?

9

Submissions for class members Wakeman and Singh
by Mr. Merchant

1 MR. MERCHANT: Well, if the court concluded it might
2 not have impact but would be beneficial to say it,
3 you should say it.

4 THE COURT: Oh, I see. Okay.

5 MR. MERCHANT: And -- but on the issue of a British
6 Columbia resident who has a bigger claim, a
7 Muzaffar who has --

8 THE COURT: M'mm-hmm. Yeah.

9 MR. MERCHANT: -- a British Columbia claim, I'll take
10 you to the case of Mr. Justice Cullity in *Coleman*,
11 where he did just that. He said, they only have a
12 certain kind of a claim but I'm going to make it
13 possible for them to pursue other claims.

14 So then you see in paragraph 3 we're into
15 procedural issues. And you've just now been given
16 the settlement agreement. I don't know whether
17 the settlement agreement you were given is what
18 is -- is what was contemplated but it's unusual to
19 come before a court for settlement without having
20 been able to put settlement in advance for the
21 court to consider.

22 Second we say there are problems with the
23 responses to the motion affidavits upon which -- I
24 leave these --

25 THE COURT: M'mm-hmm.

26 MR. MERCHANT: -- procedural things to you.

27 But third is more important. And that's
28 exhibit F of the plaintiff's affidavit is a letter
29 to only eight provincial health care authorities.
30 And the notice to the Alberta Government at G was
31 only regarding three Alberta residents.

32 Now, if the settlement -- if the order that
33 we seek is granted, well, that solves the problem.
34 But if the defendants are correct in suggesting
35 that this settlement binds people in Alberta and
36 Ontario who aren't a part -- didn't opt in, which
37 to me is a stretch but I have to address what I
38 understand the defendants' position to be, if then
39 the attorney general of Alberta would have wanted
40 to be before this court saying whoa, I got notice
41 regarding three claims and there are a whole lot
42 of claims in Alberta.

43 And if you're -- so that's why it's cast as a
44 procedural issue. And there's a specific
45 requirement, as you see footnoted, that says a
46 class proceeding may be settled only with the
47 agreement of the court and on the terms and --

10
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 then go to the next paragraph, which is for
2 British Columbia there's no evidence of the
3 mandatory notice, that the mandatory notice was
4 given. And the *Health Care Recovery Act* is quoted
5 for you with that mandatory requirement. And for
6 some of these individuals the loss is huge.

7 Paragraph -- the next paragraph, we say
8 consent and not just notice is required under
9 other subrogation legislation in other provinces.
10 So if this is -- as I conceptualize it and I
11 believe the plaintiffs conceptualize it this is a
12 British Columbia action plus the people who opted
13 in, then the notice -- the -- no one is afoul of
14 the notice requirements.

15 If, as the defendants might seek to stretch
16 this matter to say, you are caught in Ontario even
17 and although you did not opt in and even -- and
18 although you can't recover but you're still caught
19 because you could have opted in, well, if that's
20 the case then the national requirement in other
21 jurisdictions that's outlined there talking about
22 consent and not just notice applies.

23 And then for -- and lawyers always object
24 when -- we're not parties, My Lord, and the
25 defendants have characterized this as a "Merchant
26 Law Group application." We're not class members.
27 We're not parties. We're here on behalf of
28 individuals.

29 So we then go to the substantive submissions.

30 THE COURT: M'mm-hmm.

31 MR. MERCHANT: As I've been saying to you, *Bartram* is
32 very narrow, and the action that we pursue is
33 broader, and the first -- the -- amending the
34 class definition or remedy the class definition or
35 grant the relief shown in 8. GSK's position is
36 that in approving the court will be extinguishing
37 the claims of all Canadian class members.

38 So as we understand it, that's essentially
39 saying they could have opted in and they didn't
40 opt in, so they've lost their opportunity to opt
41 in. To my -- in my submission that's the same as
42 overruling the legislature of British Columbia.
43 The legislature of British Columbia, if they'd
44 wanted to have automatic national consequences,
45 they would've passed opt-out legislation. They
46 wouldn't have passed opt-in legislation. It
47 really is a submission that there's no difference

11
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 between opt-in legislation and opt-out and really
2 says the legislature was crazy to fiddle with
3 those words, I suppose.
4 And then --
5 MR. SUTTON: I don't mean to interrupt, My Lord,
6 just -- I mean, I could perhaps clarify --
7 THE COURT: M'mm-hmm.
8 MR. SUTTON: -- what our position is. That may sort of
9 circumvent some of the --
10 THE COURT: Yes.
11 MR. SUTTON: -- requests. As we've outlined in
12 paragraph 8, 9 and 10 of our application response
13 we're not taking the position that non-residents
14 are bound by this settlement agreement unless
15 they've opted in.
16 THE COURT: Okay.
17 MR. SUTTON: So I don't know where that's --
18 MR. MERCHANT: That's helpful. Thank you.
19 MR. SUTTON: -- coming from.
20 THE COURT: All right.
21 MR. SUTTON: In respect to the terms of settlement our
22 position is simply these are not required in the
23 order. In relation to the terms of settlement
24 they will be dealt with by the Alberta Court in
25 the fullness of time to the extent there's a claim
26 brought in the context of that action in which an
27 individual who participated in British Columbia
28 seeks to advance a further claim.
29 So we simply say these two provisions --
30 they're not necessary. They shouldn't be added
31 but we're not taking the position --
32 THE COURT: All right. So --
33 MR. SUTTON: -- Mr. Merchant articulates.
34 THE COURT: Okay. Well, I'll hear from you after.
35 Thank you.
36 MR. MERCHANT: That's helpful.
37 In paragraph -- in the next paragraph,
38 paragraph 9, we develop that for the court. And
39 this addresses whether there would be a changed
40 class definition. The certification time is an
41 examination of a different issue. One, you're
42 asking who may be a class member but settlement
43 looks at who is a class member and what and how
44 will the settlement impact.
45 Now, in passing you may think well, what's
46 the significance of that. It's part of the
47 justification for amending the class definition

12
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 now if the court thought that that was an
2 appropriate remedy.

3 The current class definition does not say
4 "resident of British Columbia at any date." And
5 it's a troublesome class definition. Are people
6 caught if they were a resident of British Columbia
7 when the case was commenced, when the case was
8 certified, when the case was settled today, when
9 you deal with the settlement? At what date?
10 Because a person obviously could have gone from
11 one place to another. So it's troublesome in that
12 way.

13 Move paragraph 11 to the fact that the class
14 definition is critical to the adequacy of the
15 4,100 -- 4,146,000. Now, that's the money that
16 will be going -- that Your Lordship has to
17 consider in relation to settlement. That's the
18 money that actually goes to the claimants. And
19 here we say this should be measured against the
20 number of claims that are extinguished and the
21 court has to address what claims are extinguished.

22 So when My Lord said well, if I say something
23 need they necessarily pay attention in Alberta,
24 but you do have to address because you are
25 extinguishing claims as well as addressing who
26 recovers.

27 So if -- and you'll see at the footnote the
28 *Quatell* decision of Chief Justice Brenner, and he
29 said the settlement represents a comprise of
30 disputed claims. For that reason it's -- and so
31 the chief justice was addressing not just that
32 settlement deals with the people who are expected
33 to recover but also the people whose right of
34 recovery comes to an end.

35 In -- on our facts the opting-out process has
36 been complete. 4,146- will be distributed only
37 among class members who contacted counsel for the
38 plaintiffs. Effectively in the result this is a
39 joinder. And you had another example essentially
40 of joinder this morning when somebody else said, I
41 was a day late; let me into the class. And this
42 concept of a joinder -- I'll take you in
43 20 minutes or so to a decision of the Ontario
44 Court rendered on March 20 of this year where the
45 court said, I know there's an application for
46 certification here but this is really more like a
47 joinder and ordered that it be handled as a

13
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 joinder.
2 So it, we submit, is therefore critical to
3 clarify who is a British Columbia resident, that
4 issue of the date when they would have had to have
5 been a British Columbia resident because they're
6 being removed. And that's important for two
7 reasons. Number 1, so the Alberta Court will know
8 whether an individual is bound by the
9 settlement --
10 THE COURT: Well, if a person -- your concern is that a
11 person in British Columbia who didn't opt out and
12 wants to be part of your class; right?
13 MR. MERCHANT: Yes.
14 THE COURT: Okay.
15 MR. MERCHANT: And when did they have to be a resident
16 to be bound because they didn't opt out.
17 THE COURT: Okay.
18 MR. MERCHANT: And the Alberta Court will need some
19 certainty of what that date is. And then that's
20 also --
21 THE COURT: Wouldn't that just be adding a definition
22 to the statute that isn't there? I mean, the
23 statute just says "British Columbia residents." I
24 mean --
25 MR. MERCHANT: But, My Lord, a person might have been a
26 British Columbia resident --
27 THE COURT: Right.
28 MR. MERCHANT: Muzaffar might have been a British
29 Columbia resident in 1956 --
30 THE COURT: Yeah.
31 MR. MERCHANT: -- and somebody could argue that --
32 well, he wouldn't have been because he wasn't
33 alive. His mother might have been a British
34 Columbia resident in 1980 and unless it says "a
35 British Columbia" --
36 THE COURT: Well, I understand that, Mr. Merchant --
37 MR. MERCHANT: Yeah.
38 THE COURT: -- but I mean really what we're dealing
39 with is what the legislature meant by "British
40 Columbia resident." It's not a question of me
41 deciding it in this -- in the context of this
42 case.
43 MR. MERCHANT: Oh, I don't think you are deciding it.
44 THE COURT: Yeah.
45 MR. MERCHANT: I just say, you say a "British Columbia
46 resident as at a particular date."
47 THE COURT: Oh, I see. Yeah. Okay.

14
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 MR. MERCHANT: Because the Alberta Court will need to
2 know that.
3 And that is also so that the court can assess
4 whether the 4,165- is fair -- is a fair and
5 reasonable compromise of the claims. Because only
6 class members who contacted the plaintiffs' law
7 firm will share in the settlement fund. Yet the
8 claims of all class members are being extinguished
9 depending if they were in British Columbia at a
10 particular date.
11 THE COURT: Well, they're only being extinguished in
12 the sense of a specific kind of injury; right? I
13 mean, somebody who's claiming something other -- a
14 different kind of injury, like the person you're
15 talking about, I mean, presumably that's still
16 open to be pursued, isn't it?
17 MR. MERCHANT: We think it is but we believe -- but the
18 defendants' position is different and you heard
19 them say, that's to be decided by the Alberta
20 Court. So --
21 THE COURT: Oh.
22 MR. MERCHANT: If the British -- of course what you
23 decide isn't binding but your conception of what
24 the decision is and what you are settling ought to
25 form a part of --
26 THE COURT: M'mm-hmm.
27 MR. MERCHANT: -- your reasons for settlement.
28 THE COURT: I see. Okay.
29 MR. MERCHANT: Next go to cases where innumerable
30 judges have complained that parties come before
31 them without offering evidence that's
32 meaningful --
33 THE COURT: M'mm-hmm.
34 MR. MERCHANT: -- and no one offers a contrary view.
35 And you see Mr. Justice Belobaba saying, class
36 counsel provide affidavit evidence explaining why
37 the settlement is fair. All that is is class
38 counsel giving their opinion but not explaining --
39 not giving the tools to the judge to decide why
40 it's fair.
41 Later that year the judge said unfortunately,
42 class counsel rarely provide much information.
43 Why is it 17 million and not 37 million or
44 57 million. An unhelpful catalogue of
45 self-serving, almost generic reasons. In *Rosen*,
46 Belobaba J talked about -- you see in
47 paragraph 13 -- the boilerplate comes down to

15
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 this: we're experienced class counsel; trust us.
2 It's not helpful, he says, and it's not
3 persuasive.

4 Went on at the end of paragraph 17, even if
5 the so-called boilerplate in this case is more
6 credible because of the late stage of settlement
7 it only explains why the parties settled but not
8 why they settled for 12 million. And he said
9 class counsel must still present hard evidence of
10 the zone of reasonableness.

11 Now, in this case if the settlement is
12 limited to those who are able to recover then you
13 have the tools to determine "zone of
14 reasonableness." But if the -- if there's any
15 doubt left or any concern -- we have the concern;
16 we hope the court will share the concern -- that
17 people who are unable to recover are -- have their
18 rights lost, well, then the court should address
19 that as a part of considering "zone of
20 reasonableness."

21 And the angst of judges addressing this issue
22 speak to that question of, as the message goes on,
23 essentially courts communicate through their
24 reasons.

25 Next say determining the number of claims
26 that are extinguished requires determining whether
27 the settlement class includes all Canadians who
28 failed to opt in. My friend says, be not
29 concerned about that.

30 Thank you.

31 The class definition is -- "any person in
32 Canada" is broad. So either the class definition
33 should be amended or the court should address --
34 and including address what my colleague just
35 submitted on behalf of the defendants, which we
36 say is significant.

37 And in that regard you see the footnote
38 supportive of what we've been saying: one member
39 of a class who are resident may commence a class
40 proceeding. A person who is not a resident may
41 opt in. That person -- if they fit, only if they
42 fit what is significant about this case. And this
43 case is about certain kinds of heart defects. So
44 they're only allowed to opt in over those narrow
45 issues. So even from the definition, it says and
46 I would invite the court to say, other claims that
47 they may have aren't caught because they wouldn't

16
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 be permitted to opt in over those other claims.

2 Next go to the issue at the end of that
3 paragraph. The court certified a class that
4 included non-residents. And you see the footnote,
5 a class that comprises persons resident in British
6 Columbia and persons not resident in British
7 Columbia must be divided into subclasses. Must be
8 divided.

9 The following paragraph, the evidence
10 required at the settlement stage differs from
11 required at certification. Plaintiff merely
12 provides -- at certification all the plaintiff is
13 providing is some basis in fact -- two or more
14 persons. Now, the parties are required to
15 calculate the number of Canadians who will meet
16 the stated objective criteria because -- you see
17 those words "determined and extinguished."
18 Because "determined" means they're going to
19 recover something but different language applies
20 in terms of "extinguished."

21 Just in passing, and I missed it going by,
22 but if you look back at footnote 8, you see the
23 *Class Proceedings Act* and at the end says,
24 about eight lines down:

25
26 ... the manner and within the time specified
27 in the certification order ... opt in to that
28 class proceeding --
29

30 THE COURT: Okay. Where are you now?

31 MR. MERCHANT: I'm at footnote 8.

32 THE COURT: Okay. Yeah. 15(2). Okay.

33 MR. MERCHANT: Yes. Yes, My Lord.

34 THE COURT: Right.

35 MR. MERCHANT: And -- 16(2) precisely. The next line
36 at the end says:

37
38 ... specified in the certification order ...
39 opt in to that class proceeding ...
40

41 But note at the end it says number 2:

42
43 A person referred to in subsection (1) [sic]
44 who opts in is from that time a member of
45 the ... class proceeding ...
46

47 THE COURT: M'mm-hmm.

17
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 MR. MERCHANT: So this takes us back to this issue of
2 time and some specificity which will be of benefit
3 in the other proceedings.

4 The -- paragraphs 18 and 19 address that the
5 understandable -- and you have to address the
6 rights of the defendant as well. The defendant is
7 looking for relief against potential claims. So
8 that's part of what they would argue they --

9 THE COURT: M'mm-hmm.

10 MR. MERCHANT: -- bargained for. So the value of the
11 settlement to GSK is not the number of people who
12 are going to make claims but we use here the
13 phrase "buying the peace" --

14 THE COURT: M'mm-hmm.

15 MR. MERCHANT: -- from people who then cannot make
16 claims. And Fiona Singh attempted to estimate the
17 number of Canadian class members -- but that's not
18 on the table -- but the number of Canadian class
19 members with cardiac congenital malformations.
20 And then also did some estimating, as you've seen
21 in her affidavit, of the number of people where
22 the defendants have "bought the peace" from
23 British Columbia. And her -- this gives you
24 some -- from some other evidence, other than just
25 the evidence from the --

26 THE COURT: M'mm-hmm.

27 MR. MERCHANT: -- plaintiff and defendant that's worthy
28 of consideration.

29 I commend as well and you -- I took you to
30 Mr. Justice Belobaba and other judges being
31 critical of the settlement process. Note the
32 footnote, footnote 14, fairness in class action
33 settlements --

34 THE COURT: M'mm-hmm.

35 MR. MERCHANT: Or footnote 16, I'm sorry, says the
36 settlement approval process is indeed marked with
37 serious potential for abuse. And the learned
38 author goes on to discuss issues of potential
39 abuse which, with the judiciary's responsibility
40 to the administration of justice and the class,
41 those are the kinds of -- those are the kinds of
42 questions courts have to consider.

43 All right. You see in the next paragraph the
44 intended settlement agreement -- paragraph 20, the
45 intended settlement agreement, because we haven't
46 seen the settlement agreement, is not the
47 determination of claims; it's the extinguishment

18
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 of claims and the same theme that you've been
2 hearing: minor and healed spontaneously
3 cardiovascular defect. Those people, unless it's
4 indicated, are open to being told they have no
5 claim for any other wrongs. And that's those who
6 opted in and British Columbia residents.

7 Paragraph 21. Should be without prejudice to
8 the right of class members, as you've heard.

9 Paragraph 22. We submit the court should
10 address the criteria for determining who are
11 included within the resident subclass -- within
12 the resident class and the subclass and, regarding
13 the non-resident subclass who had to opt in, amend
14 the class definition potentially to provide
15 certainty as to who is bound.

16 23. First the court may settle the class
17 action as a joinder on behalf of those who
18 actually made the claims, because those are the
19 only people about whom you've had information.
20 You've had no information about those who are
21 losing the right of recovery. We have a settled
22 class now. Everybody is before you. That's a bit
23 unusual. Many times settlements are, now we're
24 going to send notice. So this case is somewhat
25 unusual that you have this settled class. And if
26 the settlement is on behalf of known class members
27 then there's a better entitlement for the court --
28 a better basis for the court to say yes, this is
29 fair and reasonable or within the zone of
30 reasonableness. Because you know that -- you know
31 approximately how much money each is going to get.

32 If instead this isn't by way of -- isn't a
33 joinder but a settlement that wipes out other
34 claims, well, then I invite you to examine the
35 Singh evidence about the claims that are being
36 wiped out without any compensation.

37 I mentioned earlier that I would take you to
38 the Baycol case of Mr. Justice Cullity and it's
39 related to what happened in the supreme court
40 here. So Mr. Justice Cullity in *Coleman* -- Baycol
41 was a drug that got certified more or less all
42 over Canada. And on behalf of those who suffered
43 injury from Baycol and settled in British Columbia
44 they settled only for rhabdomyolysis, which was a
45 problem of the nose. Mr. Justice Cullity approved
46 a national opt-out class action settlement as fair
47 and reasonable without prejudice to the rights of

19
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 class members who had other injuries to later
2 participate in another class action.
3 So returning to the issue of, well, should I
4 speak to the Alberta Court, Mr. Justice Cullity
5 decided he would speak to the Alberta Court. So
6 he said yes, I'm settling but it's -- but included
7 it's without prejudice. And following this
8 thinking, the application of what Cullity J did --
9 if this court addressed the issue that would apply
10 both to people who opted in as well as to --
11 THE COURT: Sorry. Just take me to that case. There
12 was a class action -- there was one class action
13 certified in British Columbia.
14 MR. MERCHANT: Yes.
15 THE COURT: Okay. And it was settled in British
16 Columbia.
17 MR. MERCHANT: No. I think it was settled in Ontario.
18 THE COURT: Well, that's not what you say here. You
19 say it was settled --
20 MR. MERCHANT: It was -- okay. It was first settled in
21 British Columbia and then settled in Ontario.
22 THE COURT: Right. And so the Ontario settlement said,
23 without prejudice the right of class members who
24 had other injuries to participate in other class
25 actions.
26 MR. MERCHANT: There were. There was a class action
27 in --
28 THE COURT: Yeah.
29 MR. MERCHANT: There was a class action in
30 Saskatchewan, *Lamb*.
31 THE COURT: Okay.
32 MR. MERCHANT: There was a class action in Manitoba.
33 And there was a class action in Newfoundland
34 Labrador. And may have been in other places as
35 well. So Mr. Justice Cullity wanted to be sure
36 that speaking to other courts he was not by
37 settling the one issue -- because Manitoba had
38 been certified for a wide --
39 Please stand up.
40 MR. CHURKO: Yep. Manitoba was certified after the
41 Ontario settled the limited injury. Then later on
42 Manitoba certified all injuries.
43 THE COURT: M'mm-hmm.
44 MR. CHURKO: It's similar to the situation here.
45 THE COURT: Okay.
46 So what's the status of the Alberta action?
47 Has it been certified?

20

Submissions for class members Wakeman and Singh
by Mr. Merchant

1 MR. MERCHANT: No.

2 THE COURT: Okay.

3 MR. MERCHANT: We -- we've spent \$2.5 million in
4 lawyers' time and \$191,000 on experts and we're --
5 we might have been at certification but the
6 certification -- the judge appointed was elevated
7 to the court of appeal.

8 THE COURT: Okay.

9 MR. MERCHANT: And a new judge is assigned. And we
10 just finished the last questioning.

11 THE COURT: Yes. Okay.

12 MR. MERCHANT: We're very close.

13 THE COURT: I don't need to know the details but --
14 yeah.

15 MR. MERCHANT: We're very close and we're very poor.

16 THE COURT: I'm not sure I believe that.

17 MR. MERCHANT: We've hired -- for \$191,000 we've hired
18 almost everybody we could find.

19 THE COURT: Okay.

20 MR. MERCHANT: Are you available to give expert
21 testimony? I'll add you in.

22 THE COURT: All right. Go ahead.

23 MR. MERCHANT: My Lord, if you examine the decision --
24 if -- we quoted part of what Mr. Justice Cullity
25 wrote but did not include paragraph 35 and on
26 reflection I wish we had. Let me just read
27 paragraph 35 before taking you to parts of these
28 other quotes:

29
30 The point of the objections is not merely --

31
32 This is 35.

33
34 ... is not merely that persons who were
35 injured by ingesting Baycol without
36 contracting rhabdomyolysis would be excluded
37 but, also, that persons who, from a medical
38 standpoint, should be considered to have
39 contracted it might still not be able to
40 satisfy either of the conditions in the
41 settlement definition.

42
43 So you see the settlement here takes away
44 everybody's claim, even and although they may
45 not -- if they have had any heart problem, any
46 heart defect, they may not be able to recover but
47 their claim is still wiped out.

21
Submissions for class members Wakeman and Singh
by Mr. Merchant

1 So at paragraph 35 Judge Cullity said, it's
2 not just that they were injured and they can
3 recover but they might have a minor claim of this
4 nature and still have their rights ended.

5 And then you see in paragraph 36:

6
7 ... settlement class would include only a
8 small percentage of the members of the
9 original putative class ... probable it would
10 exclude a majority of such members ...

11
12 The next bolded part.

13
14 As I indicated earlier in these reasons, I do
15 not believe that, prior to certification, the
16 original class definition is immutable.

17
18 So I said in opening what we seek is at tab 8 but
19 a changed class definition is also in your toolbox
20 to deal with this appropriately, and the court
21 says it could be changed.

22 And then the next highlighted portion:

23
24 ... without certification of a class in which
25 they are included, the court has no power to
26 bind them.

27
28 And then from 37:

29
30 To the extent that Mr. Klein's --

31
32 David Klein.

33
34 To the extent that Mr. Klein's submissions
35 were premised on an assumption that the
36 excluded members' rights to litigate, in this
37 jurisdiction, or elsewhere, the claims
38 originally made on their behalf in this
39 action would be materially affected by the
40 settlement, I do not accept them.

41
42 So addressing -- Judge Cullity was really
43 addressing the very issue that we urge the court
44 consider.

45 Then in paragraph 26, Baycol, multiple
46 Canadian courts certified classes of many injuries
47 and then at the time of settlement amended the

22

Submissions for class members Wakeman and Singh
by Mr. Merchant

1 class definition to rhabdomyolysis claimants only
2 while recognizing that other injury claimants
3 could proceed.

4 So the parallel is in this Paxil case the
5 class was always limited to cardiovascular defect
6 claimants. Thus we have even a stronger case than
7 the case before Mr. Justice Cullity. Because we
8 started -- they always started off cardiovascular
9 alone but Cullity J saw that there could be a lack
10 of fairness for society and acted on that to be
11 sure that an injustice didn't exist. Even a
12 stronger case than was before Cullity J.

13 Paragraph 27 is additional authority for
14 amending a class definition to address
15 multi-jurisdictional concerns. And *Nantais* is
16 before you. Paragraph 15:

17
18 It is also argued that other class
19 proceedings may be certified in other
20 provinces ... any of these practical
21 difficulties which may develop as the matter
22 proceeds can be met by amending the order in
23 question to adjust the size of the class.
24

25 So again, authority.

26 And paragraph 28. Other national
27 pharmaceutical cases. And I refer you to *Tiboni*
28 at the footnote. And there there were two --
29 *Tiboni* is at the divisional court. So this was
30 the decision of the appellate court.

31 In *Vioxx*, Chief Justice -- well, he was
32 Mr. Justice -- Klebuc certified *Vioxx*. We were
33 counsel in Saskatchewan. And then Mr. Justice
34 Cullity certified a very similar *Vioxx* case in
35 Ontario. And the defendants appealed, said we
36 shouldn't have to face two national
37 certifications. And the divisional court said
38 well, it's possible and we think that your claims
39 about the problems are overstated.

40 At the footnote -- the next footnote, really
41 in my submission it's you but moving in the right
42 direction of justice for those who did not opt in
43 and the issue of what happens to British Columbia
44 residents and people who --

45 THE COURT: M'mm-hmm.

46 MR. MERCHANT: -- are caught.

47 So I want to end by saying a few words about

23

Submissions for class members Wakeman and Singh
by Mr. Merchant

1 joinder. And I mentioned the case decided on the
2 27th of -- on the 20th of March. And in -- so
3 it's a long decision. I'll tell you the
4 paragraphs that matter.

5 THE COURT: M'mm-hmm.

6 MR. MERCHANT: But the indicia of joinder in this
7 case -- so number 1, opt-ins are the equivalent of
8 a joinder. They chose to be before this court.

9 Number 2, the Kosakoski affidavit. And at
10 paragraph 22 he sets an anticipated recovery based
11 on alternative plaintiff numbers. You see
12 paragraph 22.

13 THE COURT: M'mm-hmm.

14 MR. MERCHANT: He says there could -- if there were
15 nine claimants it'd be \$222,000 each. If there
16 are 30, it would be \$116,000 each. And so he's
17 addressing fairness.

18 THE COURT: M'mm-hmm.

19 MR. MERCHANT: And then if you look at paragraphs 19 to
20 22 he explains that we think there are only
21 23 claimants, child and mother -- 23 claimants but
22 we think they're all not going to be there. So he
23 really says in that affidavit there are going to
24 be 20 claimants, let's say.

25 THE COURT: M'mm-hmm.

26 MR. MERCHANT: So if there are only 20 claimants then
27 it really is a joinder, not a class action.
28 That's the point. And so with so few it really
29 has all the indicia of a joinder; settle these
30 cases.

31 Number 3, the third point, from the same
32 affidavit.

33 THE COURT: M'mm-hmm.

34 MR. MERCHANT: Paragraph 23 contemplates subrogated
35 recovery only for known class members. I
36 mentioned earlier the deficiencies of notice on
37 the subrogated claims. So if the notice had
38 complied, well, perhaps -- and you have a sense of
39 how significant these claims are. Singh says, I
40 have to give full-time care to my child; never be
41 able to work.

42 THE COURT: He has spina bifida, you said.

43 MR. MERCHANT: Right. Even --

44 THE COURT: Which has nothing to do with, presumably,
45 the cardiovascular issue.

46 MR. MERCHANT: He also had an ASD heart thing but --

47 THE COURT: Yeah.

24

Submissions for class members Wakeman and Singh
by Mr. Merchant

1 MR. MERCHANT: But the -- we're guarding against him
2 being -- losing his whole claim over that little
3 claim.

4 THE COURT: Right.

5 MR. MERCHANT: But Wakeman has had two surgeries, maybe
6 70- or \$80,000. The only point I'm making out of
7 paragraph 23 is the -- there might have been --
8 the governments here are saying well, we have a
9 subrogated claim and we didn't contemplate that
10 you're taking away the claim for people who didn't
11 make contact with the law firms -- with the law
12 firm and in the result that again leads to the
13 benefits of thinking about this as a joinder.

14 Then paragraph 52, number 4. Paragraph 52.

15 THE COURT: M'mm-hmm.

16 MR. MERCHANT: They contemplate a BC-specific Facebook
17 advertising campaign.

18 Paragraph 57 of -- now, I have to tell you
19 this law firm are our friends but --

20 THE COURT: Paragraph 57?

21 MR. MERCHANT: Paragraph 57 is --

22 THE COURT: I know. But there's no -- it ends at 55.

23 MR. MERCHANT: 52. 52, My Lord.

24 THE COURT: Okay.

25 MR. MERCHANT: These law -- I'm saying this firm were
26 our friends, or at least they were before I
27 started making these submissions, but to depose
28 that we're well along the track and it's important
29 the actual number that we have in fees is
30 \$2,718,000 and a hundred and -- I guessed at
31 disbursements 171,000. There's room for your fee,
32 My Lord.

33 So we're -- a huge amount of effort has gone
34 into our belief that we can establish a case for
35 these other people. And the settlement amount --
36 if you become interested in the idea of joinder
37 the settlement amount is appropriate for 20 but --
38 you'll have to decide but -- but difficult if it's
39 wiping out -- if it's wiping out unforeseen
40 claims.

41 Now, what are the paragraphs of this decision
42 again? There were two which I should refer the
43 court.

44 MR. CHURKO: I'll grab them.

45 MR. MERCHANT: My Lord, the Singh affidavit -- just a
46 couple -- I'm almost at the conclusion of my
47 submissions. The Singh affidavit, paragraph 13,

25

Submissions for class members Wakeman and Singh
by Mr. Merchant

1 there's the foundation for -- she says, my claim
2 exceeds 3 million. Paragraphs 12 to 14.
3 2 million in surgeries. It's very lowballing to
4 say it's only a \$3 million claim.

5 But this also --

6 THE COURT: Well, I just -- trying to understand your
7 concern, Mr. Merchant, here. Ms. Singh lives in
8 Calgary. She says she's been an Alberta resident
9 since 1976.

10 MR. MERCHANT: Right.

11 THE COURT: Presumably she didn't opt in --

12 MR. MERCHANT: No.

13 THE COURT: -- to this action.

14 MR. MERCHANT: No.

15 THE COURT: So I just don't understand how she's
16 affected at all --

17 MR. MERCHANT: Good.

18 THE COURT: -- by what's happening here.

19 MR. MERCHANT: Great. If that's included in your
20 decision where --

21 THE COURT: Well, I took that to be what your friend
22 said.

23 MR. MERCHANT: Well, Muzaffar Singh has a heart defect.

24 THE COURT: Right. Yeah.

25 MR. MERCHANT: So I end as I began --

26 THE COURT: M'mm-hmm.

27 MR. MERCHANT: At tab 8.

28 THE COURT: Right.

29 MR. MERCHANT: And --

30 MR. CHURKO: 248.

31 MR. MERCHANT: And in the joinder decision,
32 paragraphs 248 --

33 MR. CHURKO: To 257.

34 MR. MERCHANT: To paragraph 257.

35 THE COURT: Okay.

36 MR. MERCHANT: And, My Lord, unless you have questions,
37 if you don't mind, we'll do that exchange again
38 with my colleagues.

39 THE COURT: All right. Well, we'll take the morning
40 break now and after I'll hear your friends.

41 THE CLERK: Order in chambers. Chambers is adjourned
42 for the morning recess.

43

44 **(CHAMBERS ADJOURNED AT 11:10 A.M. FOR MORNING RECESS)**

45 **(CHAMBERS RECONVENED AT 11:30 A.M.)**

46

47 MR. SUTTON: My Lord, I'm going to respond first to

26

Submissions for the defendants by Mr. Sutton

1 Mr. Merchant's submissions and point of view. I
2 intend to be quite brief.

3 THE COURT: Yeah.

4

5

SUBMISSIONS FOR THE DEFENDANTS BY MR. SUTTON:

6

7

I think there's sort of three points that
8 need to be dealt with.

9

10 The first is in relation to the non-residents
11 who have not opted in and who Mr. Merchant
12 believes may be bound by the settlement. We don't
13 take that position. It's clear from the
14 legislation that to be a class member the
15 individual must have opted in within the deadline.
16 The deadlines were established by Your Lordship
17 and we would not take the position, for example,
18 that Ms. Singh is in any way bound by the
19 settlement agreement in terms of her -- because
20 she has not opted in. And that's clear from my
21 application response.

21

22

23

24

25

26

27

28

29

In relation to the scope of the release you
will see when we go through the settlement
agreement the release is limited to those
allegations included in my friend's statement of
claim, which were focused on cardiovascular
defects. So, again, to the extent there's a class
member who has a claim for a congenital
malformation beyond a cardiovascular defect, that
claim is not being compromised by this case.

30

31

32

33

34

35

36

37

38

39

40

41

From our perspective that issue, in terms of
how the settlement in this case and the analysis
and the damages which are being sought and the
release being granted impacts on a future case
should be dealt with by the judge in that future
case. And if the Singh action is certified, and
to the extent there is someone who recovered in
the *Bartram* proceeding or had a release which
extinguished a claim in the *Bartram* proceeding,
our submission and our position is that that
should be dealt with by the court in Alberta if
that case --

42

43

44

THE COURT: And on the issue of whether that covers --
the extent to which that forecloses all or part of
the claim in the other action.

45

46

47

MR. SUTTON: Right. And, you know, the -- I mean the
complicating issue in terms of us giving direction
or going further is that obviously the congenital

27

Submissions for the defendants by Mr. Sutton

1 malformation, there may be -- it may be part of
2 the cardiovascular defect issue in terms of
3 damages, loss of income, those types of things.
4 You know, we'll have to look at how the claims
5 officer dealt with it in the context of *Bartram* to
6 determine what --

7 THE COURT: M'mm-hmm.

8 MR. SUTTON: -- arises from that cardiovascular defect
9 that was released --

10 THE COURT: Right.

11 MR. SUTTON: -- which is what we're paying for in the
12 context of this claim. And in my submission it's
13 just not appropriate for there to be any sort of
14 further direction to the other court in terms of
15 that issue. It should be dealt with by the court
16 if that case is certified. And, again, the Singh
17 case has not been certified and we are taking the
18 position that it should not be certified.

19 THE COURT: M'mm-hmm.

20 MR. SUTTON: In regard to the residency issue, again, I
21 don't see this as being a live issue today. I'm
22 not sure if there's any resident or non-resident
23 who is confused. The legislation does speak to
24 the time frame in terms of when the person should
25 be a resident or not. My thinking was that it
26 would be in relation to the time when the notice
27 went out and the individual had to determine
28 whether they were opting in and out. That would
29 seem to be the time that they would determine if
30 they're a resident or not.

31 To the extent, again, that someone who is not
32 a resident was confused over whether they were a
33 resident at the time or whether their residency
34 status changed might have impacted their claim, in
35 my submission, that should be dealt with when that
36 individual comes forward. And again, if it's in
37 the context of *Bartram*, this case where the
38 individual says, I didn't realize I was a resident
39 on this date and I didn't either opt out or opt --
40 I guess opt out for BC, that should be dealt with
41 on a factual record and we can determine that
42 individual's residency status and then that would
43 be dealt with.

44 And again, I don't see anyone who has not
45 opted in or is wanting to opt in who's a
46 non-resident having any issue. So, again, that
47 just seems to be a hypothetical point that, in our

28

Submissions for the defendants by Mr. Sutton
Reply for the plaintiffs by Mr. Rosenberg

1 submission --

2 THE COURT: M'mm-hmm.

3 MR. SUTTON: -- need not require an amendment to the
4 class definition and should be addressed at a
5 later date.

6 I don't think there's anything else that my
7 friend raised that we need to respond to, but I'd
8 be happy to take any questions from Your Lordship
9 if that's --

10 THE COURT: All right.

11 Mr. Rosenberg?

12

13 **REPLY FOR THE PLAINTIFFS BY MR. ROSENBERG:**

14

15 My Lord, in the application record our
16 response is at tab 3.

17 THE COURT: M'mm-hmm.

18 MR. ROSENBERG: I set our position there that we're not
19 consenting to the applications before Your
20 Lordship with respect to the first and third
21 terms, which are amending the class definition and
22 the application for intervenor status. We oppose
23 those.

24 With respect to the clarification that my
25 friend is seeking, which is term 2 -- and it's
26 over on page 2 under part 3 of ours -- an order
27 that the approval of the settlement of the class
28 proceeding be on terms that the court considers
29 appropriate, including terms of settlement without
30 prejudice to the claims of non-residents who did
31 not opt in to the class proceeding and the claims
32 of class members to the extent that they seek
33 damages for congenital malformations other than
34 cardiovascular defects, we really take no position
35 on that. But I would just say to Your Lordship
36 that the -- I take this really as an application
37 for declaratory relief. Really that's -- it's not
38 clothed that way but in --

39 THE COURT: M'mm-hmm.

40 MR. ROSENBERG: -- my respectful submission that's
41 really what it is.

42 And I'm not sure given the comments in the
43 Supreme Court of Canada in the *Daniels* decision,
44 *Daniels v. Canada*, [2016] 1 S.C.R. 99, that it
45 would serve any practical utility. Because as
46 Your Lordship's going to hear and my friends will
47 hear, the release itself that's part of the

29

Reply for the plaintiffs by Mr. Rosenberg

1 settlement agreement makes it very clear about who
2 is or who is not released and for what purposes.

3 So --

4 THE COURT: Well, perhaps you should take me to that
5 now, then, and we can deal with it.

6 MR. ROSENBERG: I could do that, My Lord. So I'm -- I
7 could do that right now.

8 In the -- does Your Lordship have the
9 settlement agreement?

10 THE COURT: Somewhere, yes.

11 MR. ROSENBERG: You know what, My Lord? It might be
12 helpful if I go through this -- I'll come to
13 the --

14 THE COURT: All right.

15 MR. ROSENBERG: Because I'm going to do it at one point
16 anyways, so --

17 THE COURT: All right. Sure.

18 MR. ROSENBERG: -- why not do that. Your Lordship,
19 my -- and I'll highlight a few things that'll give
20 my friend Mr. Merchant some comfort as I do it.

21 Starting in the first page in the "whereases"
22 in the "Recitals" --

23 THE COURT: M'mm-hmm.

24 MR. ROSENBERG: You'll see in the third "whereas" that
25 it's restricted really:

26
27 ... the common issues [certified] in the
28 Action pursuant to the Certification Order
29 relate to the allegation that the drug,
30 Paxil, causes or increases the likelihood of
31 cardiovascular birth defects in children ...

32
33 And goes on from there.

34 Over the page there's of course a denial of
35 liability by the defendants. That's in the first
36 two "whereases" on the next page. And you'll see
37 that --

38 THE COURT: M'mm-hmm.

39 MR. ROSENBERG: -- we've conducted a thorough analysis.
40 You'll see in the fourth "whereas" that there was
41 a mediator who dealt with this matter.

42 In the fifth "whereas" there -- this is the
43 point about the settlement agreement:

44
45 ... the Representative Plaintiff and Class
46 Counsel have concluded that this Settlement
47 Agreement is reasonable and in the best

30
Reply for the plaintiffs by Mr. Rosenberg

1 interests of the Class Members ...
2
3 And in the next "whereas" we're consenting to a
4 dismissal under certain terms releasing the
5 defendants from liability.
6 MR. MERCHANT: My Lord, can I interrupt my friend for a
7 moment? Although I understand -- I don't think my
8 colleagues have another copy, perhaps even do they
9 have a draft that we could be --
10 MR. ROSENBERG: Well, the draft's in the materials in
11 the --
12 MR. MERCHANT: Is it the same?
13 MR. ROSENBERG: It's -- the portions that I'm going to
14 refer to about the release are identical.
15 MR. MERCHANT: Okay.
16 MR. ROSENBERG: The one that concerns you will be --
17 THE COURT: Okay.
18 MR. MERCHANT: All right. But we didn't get the draft
19 either.
20 MR. ROSENBERG: Oh, the materials you did get.
21 MR. MERCHANT: All right. We're fine. Thank you.
22 THE COURT: All right.
23 MR. MERCHANT: Sorry to interrupt, My Lord.
24 MR. ROSENBERG: That's okay.
25 THE COURT: Okay.
26 MR. ROSENBERG: There -- the schedule A is the approval
27 order. I won't go to that now, My Lord, but
28 that's referred to in paragraph (f).
29 THE COURT: M'mm-hmm.
30 MR. ROSENBERG: The "Claims Officer" down at (n) is
31 defined as "a qualified paediatric cardiologist."
32 I'm going to go over the page. The "Court
33 Approval Date" in (v) is 31 days after the date on
34 which the court issues the approval order if there
35 is no appeal. And if there is an appeal, it's
36 31 days after the date --
37 THE COURT: M'mm-hmm.
38 MR. ROSENBERG: ... have been disposed of.
39 You'll see over in paragraph (y) that this
40 relates to Paxil and Paxil CR.
41 THE COURT: M'mm-hmm.
42 MR. ROSENBERG: You'll see in (z) who an eligible
43 claimant is. So that they have to -- the claims
44 administrator has to be satisfied really that the
45 claimant's a member of the class.
46 And the notice of settlement approval that
47 will go out in (bb) there is attached as

31
Reply for the plaintiffs by Mr. Rosenberg

1 schedule C and I'll come to that.

2 And the notice plan for notice of the
3 settlement approval is referred to in (dd). And
4 that's schedule D and I'll come to that as well.

5 Now here's something that may concern my
6 friend and Your Lordship on the present
7 application, and that's (ii).

8 THE COURT: M'mm-hmm.

9 MR. ROSENBERG: So I should have actually, My Lord,
10 highlighted "Allegations" to Your Lordship but I
11 went by that too quickly at (d).

12 So sorry. Let me go back --

13 THE COURT: Sorry.

14 MR. ROSENBERG: -- just for one minute.

15 THE COURT: (d)?

16 MR. ROSENBERG: (d).

17 THE COURT: Yes. Okay.

18 MR. ROSENBERG:

19

20 "Allegations" means the assertions of fact or
21 law, causes of action, injuries and damages
22 that were pleaded in the Notice of Civil
23 Claim in the Action and referred to in the
24 common issues certified by Justice Smith on
25 December 3, 2012.

26

27 I don't know if Your Lordship remembers this and I
28 don't expect you will because it's so long ago.

29 THE COURT: M'mm-hmm.

30 MR. ROSENBERG: It's actually over -- almost five, four
31 and a half years. But we argued for birth defects
32 and you narrowed --

33 THE COURT: Right.

34 MR. ROSENBERG: -- the certification of the common
35 issue to cardiovascular birth defects.

36 THE COURT: Yes.

37 MR. ROSENBERG: So the common issue is only
38 cardiovascular.

39 Now, if you go to "Released Claims" in (ii):

40

41 "Released Claims" means any and all claims,
42 demands, actions, suits, causes of action,
43 whether class, individual or otherwise in
44 nature, whether personal or subrogated,
45 whenever incurred for liabilities of any
46 nature whatsoever, including without
47 limitation claims, demands, actions, suits or

32

Reply for the plaintiffs by Mr. Rosenberg

1 causes of action for personal injuries,
 2 general damages, special damages, punitive
 3 damages, interest, costs, expenses,
 4 penalties, and lawyers' fees, whether such
 5 claims, demands, actions, suits or causes of
 6 action are known or unknown, suspected or
 7 unsuspected, arise in law, under statute or
 8 in equity, that the Plaintiffs, the
 9 Releasers, Class Members, Health Insurers, or
 10 any of them, whether directly, indirectly,
 11 derivatively, or in any other capacity, ever
 12 had, now have, or hereafter can, shall, or
 13 may have --

14

15 And these are the important words:

16

17 -- relating directly, indirectly, or in any
 18 manner whatsoever to the Allegations.

19

20 So one would say it's restricted to
 21 cardiovascular --

21

22 THE COURT: M'mm-hmm.

22

23 MR. ROSENBERG: -- birth defects.

23

24 The "Settlement Agreement" referred to in
 25 (nn) was handed up to Your Lordship this morning.
 26 And the "Settlement Fund" is defined as the
 27 \$6.2 million Canadian that the defendants have
 28 agreed to pay to settle the action.

24

25

26

27

28

29

30 Now, if I can go over to section 4, this is
 31 how it sort of works, My Lord. At 4.1:

29

30

31

32 Within 30 days of the Court Approval Date,
 33 the Defendants shall pay to Class Counsel,
 34 "in trust", the Settlement Fund.

32

33

34

35

36 And:

36

37

38 Within 30 days of the Court Approval Date,
 39 the Defendants shall pay the Bruneau Invoice
 40 and the Boscovich Invoice.

38

39

40

41

42 That's the notice invoice from Bruneau.

42

43 THE COURT: M'mm-hmm.

43

44 MR. ROSENBERG: It's defined earlier. And the

44

45 Boscovich invoice is the mediator's invoice.

45

46 And in 4.3 the defendants say the maximum
 47 that they will pay is \$6.390 million.

46

47

33

Reply for the plaintiffs by Mr. Rosenberg

1 THE COURT: M'mm-hmm.

2 MR. ROSENBERG: And then in 4.5 it says:

3

4 The Settlement Fund is intended to compensate
5 the Class Members and their families in
6 relation to Claims arising from the
7 Allegations, to pay the Public Health Insurer
8 Claims (to the extent there are any) --

9

10 I'm going to tell you about that in a moment,
11 My Lord.

12

13 -- the Class Counsel Fee and applicable taxes
14 and disbursements, the Honorarium and any
15 such further amounts as may be payable in
16 relation to the settlement and Action.

17

18 The reason it says after public health insurer
19 claims "to the extent there are any," My Lord, is
20 the statute that provides for subrogation or for
21 health care --

22 THE COURT: M'mm-hmm.

23 MR. ROSENBERG: -- recovery costs came into effect
24 after this action was started and the effective
25 date is after this action was started. So it's
26 our view that there are no --

27 THE COURT: M'mm-hmm.

28 MR. ROSENBERG: -- payable health care recovery costs,
29 but we're still agreeing to get releases for my
30 friends, so -- but Your Lordship should know
31 that --

32 THE COURT: Right.

33 MR. ROSENBERG: -- there -- it may in fact -- it may in
34 effect not reduce the fund --

35 THE COURT: M'mm-hmm.

36 MR. ROSENBERG: -- that's payable to the individuals.
37 Now, section --38 THE COURT: Well, except I guess other -- except in
39 relation to non-residents who've opted in, non-BC
40 residents who've opted in. Because other
41 provinces have had this kind of legislation longer
42 than BC has, I believe.43 MR. ROSENBERG: Well, that's -- we're going to look at
44 it province by province --

45 THE COURT: Okay.

46 MR. ROSENBERG: -- and individual by individual to
47 see --

34

Reply for the plaintiffs by Mr. Rosenberg

1 THE COURT: All right.
2 MR. ROSENBERG: -- if there are any health care
3 recovery costs.
4 THE COURT: Okay.
5 MR. ROSENBERG: Yes, My Lord.
6 Reversions. And I think there's a little bit
7 of a misreading of Mr. Kosakoski's affidavit.
8 I'll go back. We don't know how many class
9 members there are at this point nor could we.
10 THE COURT: M'mm-hmm.
11 MR. ROSENBERG: Because we British Columbia residents
12 who have not opted out are class members.
13 THE COURT: Yeah.
14 MR. ROSENBERG: And we're still finding out. But in
15 any event, because there is no eligibility
16 requirement that's been satisfied at this point by
17 an administrator we don't know how many eligible
18 claimants there are.
19 THE COURT: M'mm-hmm.
20 MR. ROSENBERG: So we've put in a provision here if
21 there's less than 20, the -- class counsel will
22 return to the defendants \$500,000 of the fee and
23 \$1.5 million from the settlement fund. If there
24 are 20 -- in 5.2, if there are 20 or more eligible
25 claimants but less than 30, then we return to the
26 defendants a million dollars from the settlement
27 fund.
28 Then going on, My Lord, to the -- section 6,
29 the "Claims Administrator and Claims Officer" -- I
30 think I mentioned this before.
31 Oh, I should just mention for the purposes of
32 5.1 and 2, understand that each eligible member, a
33 mother and a child, are two --
34 THE COURT: M'mm-hmm.
35 MR. ROSENBERG: So --
36 THE COURT: Right.
37 MR. ROSENBERG: Yeah. So just to make that clear.
38 Dealing now with the "Claims Administrator
39 and Claims Officer," in section 6, My Lord. It
40 says, 6.1, that we will select a claims
41 administrator and a claims officer and will be
42 subject to approval of the court. I've told you
43 that Laura Bruneau has been selected by the
44 parties as the claims administrator and I'm going
45 to take you through her affidavit at one point.
46 But we're still interviewing the claims officer,
47 who are the pediatric cardiologists who are going

35
Reply for the plaintiffs by Mr. Rosenberg

1 to assess the clinical records --
2 THE COURT: M'mm-hmm.
3 MR. ROSENBERG: -- for the purposes of the claims.
4 6.2. Aside from the \$6.2 million, which is
5 the settlement fund, the defendants have agreed to
6 pay the claims administrator for administration
7 costs up to \$100,000. And if the amount exceeds
8 \$100,000 it'll be payable from the fund.
9 Your Lordship will see when we get to Laura
10 Bruneau's affidavit her quote --
11 THE COURT: That's in addition to the 6.39 million?
12 MR. ROSENBERG: No, that's in --
13 THE COURT: That's included.
14 MR. ROSENBERG: -- addition to the 6.2.
15 THE COURT: Oh, it is the 6.2. All right. Yeah. Then
16 the other -- yeah. Right.
17 MR. ROSENBERG: So those -- the components of the
18 difference are the claims administrator up to
19 \$100,000 --
20 THE COURT: Right.
21 MR. ROSENBERG: -- the notice and the mediation fee,
22 so --
23 THE COURT: Right. Okay.
24 MR. ROSENBERG: But, My Lord, when I get to Laura
25 Bruneau's affidavit you'll see that her quote in
26 her proposal to administer the fund is under
27 \$100,000, so --
28 THE COURT: Okay.
29 MR. ROSENBERG: We'll get to that.
30 6.4 says the claims administrator will
31 administer the account and the compensation fund.
32 And 6.5 says that eligibility, if you like,
33 will be determined by the administrator in
34 accordance with the distribution protocol, which
35 I'm going to come to in a moment.
36 Now, here's the point that Your Lordship may
37 be very concerned with on Mr. Merchant's
38 application. It's 8.1.
39 THE COURT: All right.
40 MR. ROSENBERG: Under "Releases and Dismissals."
41 THE COURT: Right.
42 MR. ROSENBERG: So both -- and this goes right to the
43 point. I'm going to read this to Your Lordship:
44
45 Upon approval by the Court of this Settlement
46 Agreement, and in consideration of the
47 payment of the Settlement Fund, and for other

36

Reply for the plaintiffs by Mr. Rosenberg

1 valuable consideration set forth in the
2 Settlement Agreement, the Releasors are
3 deemed and agree to forever and absolutely
4 release the Releasees from the Released
5 Claims, and the Health Insurer Claims, and
6 further agree not to make any claim or take,
7 participate in, or continue any proceedings
8 (including a crossclaim, third party or other
9 claim) arising out of or relating to the
10 subject matter of the Released Claims against
11 the Releasees and/or any other person,
12 corporation, or entity (including, without
13 limitation, any pharmacists, pharmacies,
14 health care professionals, health care
15 providers, or health care facilities) that
16 might claim damages and/or contribution and
17 indemnity and/or other relief under the
18 provisions of the *Negligence Act* or other
19 comparable provincial legislation and any
20 amendments thereto, including relief of a
21 monetary, declaratory, or injunctive nature,
22 from one or more [of] the Releasees.

23
24 And that's the concern here.

25 THE COURT: M'mm-hmm.

26 MR. ROSENBERG: In paragraph 8.4, the action is going
27 to be dismissed without [sic] prejudice and
28 without costs --

29 THE COURT: M'mm-hmm.

30 MR. ROSENBERG: -- at the date of the approval order
31 being granted.

32 And then we go down under "General
33 Provisions," section 12. This is how we're going
34 to publish the notice of the settlement. Well, we
35 have already, My Lord, done -- and you'll hear it
36 when we get into the affidavits -- there's been
37 substantial notice of this hearing today. In fact
38 it kind of went viral in the media along with the
39 date of this hearing --

40 THE COURT: M'mm-hmm.

41 MR. ROSENBERG: -- and the ability of people to contact
42 counsel, including phone number, but:

43
44 Class Counsel shall publish:

45
46 (a) the Notice of Settlement Approval
47 Hearing, approved by Class Counsel and

37
Reply for the plaintiffs by Mr. Rosenberg

1 Counsel for the Defendants, prior to the
2 Notice of Settlement Approval Hearing as per
3 the terms of the Notice Plan for Notice of
4 Settlement Hearing; and
5

6 (b) the Notice of Settlement Approval as
7 attached hereto as Schedule C, or in a
8 substantially similar form approved by Class
9 Counsel and counsel to the Defendants or the
10 Court, within 60 days of the Court Approval
11 Date as per the terms of the Notice Plan of
12 Settlement Approval which is attached at
13 Schedule D ...
14

15 And we're going to get to that publication.

16 For Your Lordship, you may be concerned about
17 the continuing jurisdiction and involvement of the
18 court. And in 12.3 we say:
19

20 The Court shall retain exclusive jurisdiction
21 in the implementation and administration of
22 the Settlement Agreement.
23

24 Just as an example, My Lord, you'll probably see
25 us again, unless it goes as a consent order
26 through the registry, for the appointment of the
27 claims officer --

28 THE COURT: M'mm-hmm.

29 MR. ROSENBERG: -- the pediatric cardiologist. That's
30 one example.

31 In 12.4:
32

33 Class Counsel, the Defendants, or the Claims
34 Administrator may apply to Mr. Justice Nathan
35 Smith of the British Columbia Supreme Court
36 for directions, if necessary, in respect to
37 the implementation and administration of this
38 Settlement Agreement and the Distribution
39 Protocol.
40

41 THE COURT: So, for example, to deal with

42 Mr. Merchant's concern if somebody comes forward
43 and says, I should have been a class member but
44 because I moved to or from British Columbia at
45 some point and didn't opt in or didn't opt out or
46 whatever, then that's something that can be
47 brought before me to determine whether that person

38

Reply for the plaintiffs by Mr. Rosenberg

1 is a member of the class, is it?

2 MR. ROSENBERG: Of this class.

3 THE COURT: Of this class, yes.

4 MR. ROSENBERG: Absolutely.

5 THE COURT: Yes. Right.

6 MR. ROSENBERG: Yes.

7 THE COURT: Right.

8 MR. ROSENBERG: And you've got my friend's point in

9 Your Lordship's comments --

10 THE COURT: Right.

11 MR. ROSENBERG: -- about other actions.

12 THE COURT: Right. Right.

13 MR. ROSENBERG: Yes.

14 My Lord, I think it might be worth going --
15 you've got -- schedule A is the draft order for
16 approval. I think I'll save that for this
17 afternoon.

18 THE COURT: Okay.

19 MR. ROSENBERG: The next -- schedule B is the
20 distribution protocol. We might want to take a
21 look at that. This is how it all works.

22 THE COURT: M'mm-hmm.

23 MR. ROSENBERG: So what it says, My Lord, is -- I'm
24 going to start under 2, "Process to Advance a
25 Claim":

26

27 A Class Member who wishes to receive benefits
28 pursuant to the settlement of this class
29 action must provide the Claims Administrator
30 with a completed claim form before the Claims
31 Deadline.

32

33 And then there's "Eligibility Criteria":

34

35 To be eligible for compensation a Claimant
36 must satisfy the Claims Administrator that he
37 or she is an Eligible Claimant.

38

39 The decision of the Claims Administrator
40 concerning eligibility is final.

41

42 Then if you go over the page we get to
43 "Distribution of Settlement Fund." And I'm going
44 to go right down to "Damages," My Lord, under --

45 THE COURT: M'mm-hmm.

46 MR. ROSENBERG: -- 8:

47

39

Reply for the plaintiffs by Mr. Rosenberg

1 Damages will be assessed by the Claims
2 Administrator and the Claims Officer through
3 a review of the available information by and
4 applying the following grid.
5

6 And you'll see, My Lord, it's scaled, you might
7 say from the least serious cardiovascular defect
8 and --

9 THE COURT: M'mm-hmm.

10 MR. ROSENBERG: -- if that's what it's dealing with,
11 "severity of treatment for the cardiovascular
12 defect" from five points up to 100 points,
13 depending on whether there was no procedure.

14 THE COURT: M'mm-hmm.

15 MR. ROSENBERG: So contrary to what you might have
16 heard this morning there will be class members we
17 anticipate who will have had spontaneous
18 recoveries without any operation of any kind --

19 THE COURT: M'mm-hmm.

20 MR. ROSENBERG: -- and perhaps no ongoing symptoms but
21 under "A" they're still going to get at least five
22 points if they're a class member.

23 THE COURT: M'mm-hmm.

24 MR. ROSENBERG: And then if you can go right down to
25 "multiple surgeries to repair or treat the injury"
26 it'll go up to 100 points.

27 And the claims officer is going to identify
28 which category of these six categories the
29 individual member fits within by assigning -- and
30 within that category then go into how -- which end
31 of the spectrum, if you like, or where in that
32 category, for example, in "A" of 5 to 20 points,
33 whether it's 10 points or 12 points or 15, based
34 on what you'll see in paragraph 9 here, which
35 they'll look at the medical information to
36 determine the severity of the injury, the duration
37 and complexity of treatments, the likelihood of
38 future complications, the likelihood of future
39 medical interventions, the likelihood of future
40 medical or non-medical care and the likelihood of
41 vocational impairment.

42 And then, My Lord, each mother, biological
43 mother, is going to be entitled to 25 percent of
44 the class member's assessed value by the claims
45 officer. And that's in paragraph 10.

46 So as you can see, My Lord, this will
47 require -- if we picture this -- the claims

40

Reply for the plaintiffs by Mr. Rosenberg

1 deadline comes; all the information is submitted
2 to the claims officer and claims administrator;
3 the assessments are all done; the points are all
4 added up; and then the points are divided into the
5 settlement fund. And that's how --

6 THE COURT: M'mm-hmm.

7 MR. ROSENBERG: -- we determine how much a point is
8 and --

9 THE COURT: Right.

10 MR. ROSENBERG: -- then there'll be a distribution.

11 Your Lordship might note that, for your
12 purposes, paragraph 15 might be of interest
13 because there's no appeal from the decisions of
14 the claims administrator or claims officer, so
15 those shouldn't be coming back to court. And we
16 capture that over in paragraph 16, where we say:

17
18 Disputes, other than eligibility and
19 assessment of Damages, will be determined
20 pursuant to the laws of British Columbia and
21 where necessary adjudicated by Justice Smith
22 or another Justice of the British Columbia
23 Supreme Court who is appointed in his
24 replacement.

25
26 So maybe your example of class definition might
27 fit in there. I -- sorry --

28 THE COURT: M'mm-hmm.

29 MR. ROSENBERG: -- of residency.

30 THE COURT: Yes.

31 MR. ROSENBERG: I misspoke there.

32 THE COURT: Yes.

33 MR. ROSENBERG: Of residency may fit in there.

34 Paragraph 19 says distribution doesn't start
35 other than for the honorarium until all the claims
36 have been determined or adjudicated.

37 The sample notice of settlement approval is
38 at schedule C. It's fairly straightforward. And
39 the plan to disseminate it is at schedule D, which
40 is also fairly straightforward.

41 THE COURT: M'mm-hmm.

42 MR. ROSENBERG: Now, having said that, My Lord, we've
43 gone through the settlement agreement. That's
44 going to be most of my submissions for this
45 afternoon if we go there but I think I should
46 return for a moment to Mr. Merchant's
47 applications.

41
Reply for the plaintiffs by Mr. Rosenberg

1 THE COURT: Yes.
2 MR. ROSENBERG: And so I'm back in the respondents'
3 response.
4 THE COURT: Right. Yes.
5 MR. ROSENBERG: And I just had told Your Lordship that
6 the releases really cover the issues.
7 THE COURT: M'mm-hmm.
8 MR. ROSENBERG: So we don't really get into that. But
9 I think I have to say why I'm opposed to amendment
10 of the class definition at this stage. Or for
11 that matter, intervention.
12 As Your Lordship knows, nine years it has
13 taken us to get here. There's been a great deal
14 of notice. In fact the notice issue has gone up
15 to the court of appeal and we've had amendments in
16 this court. And the idea of amending the
17 definition to me is anathema. And I say that
18 because I don't see how you could do it without
19 then giving notice and allowing --
20 THE COURT: M'mm-hmm.
21 MR. ROSENBERG: -- people to come forward and just --
22 that would severely prejudice the position we're
23 in today.
24 So I'm just going to go right down through my
25 factual basis here.
26 THE COURT: Okay.
27 MR. ROSENBERG: And over the page to the legal basis, I
28 just have to say something about class size and
29 membership which I actually address because
30 Mr. Merchant has put in some affidavits on behalf
31 of his clients about class size. And I'm going to
32 go to paragraphs 4 and 5 of my response there,
33 My Lord.
34 THE COURT: M'mm-hmm.
35 MR. ROSENBERG: The -- for a court to put into evidence
36 material about potential class size and individual
37 damages through the affidavit of a non-class
38 member who has brought a different claim in
39 Alberta, it's our position that that evidence is
40 irrelevant and inadmissible. Your Lordship
41 considered evidence of potential class size at the
42 certification application. We tendered
43 epidemiological opinion evidence and other expert
44 evidence as well as statistical information. Your
45 Lordship will recall that because numerosity was
46 an issue on whether or not it was preferable to
47 certify this --

42

Reply for the plaintiffs by Mr. Rosenberg
Surreply for class members Wakeman and Singh by Mr. Merchant

1 THE COURT: M'mm-hmm.

2 MR. ROSENBERG: -- as a class action.

3 The defendants put into evidence opposing
4 opinions and conflicting epidemiological evidence.
5 The contested evidence was considered by you on
6 the issue of whether or not the action should be
7 certified. And that evidence is controversial and
8 there is a great deal of expert evidence about it.

9 And in paragraph 7 we say if the number of
10 class members in this case who have come forward
11 is lower than what the epidemiological evidence
12 suggests is the class size, that could be for a
13 number of reasons. It may be there's a low
14 take-up rate because many of the cardiovascular
15 defects were minor and healed spontaneously or for
16 some other reason.

17 And so I leave Your Lordship with our final
18 position that it would be highly prejudicial to
19 amend the class definition at this point. And
20 there is simply no need to grant intervenor status
21 to the applicants as not only have they come here,
22 My Lord, and made their submissions to Your
23 Lordship and been heard but they've taken
24 advantage of the rules because, as you know, under
25 rule 8-1(16) they shouldn't be handing up written
26 submissions. This is a less than -- an
27 application of less than two hours.

28 THE COURT: M'mm-hmm.

29 MR. ROSENBERG: They've had a full hearing. And in my
30 respectful submission we have a settled class
31 action subject to court approval and it would be
32 the wrong time to be amending the class
33 definition.

34 THE COURT: All right.

35 Mr. Merchant, any reply?

36 MR. MERCHANT: Very briefly, My Lord.

37
38 **SURREPLY FOR CLASS MEMBERS WAKEMAN AND SINGH BY MR. MERCHANT:**

39
40 My learned friend took you to 8-1. He took
41 you to (ii), the released claims. They both tie
42 back -- (ii) ties back to allegations. We simply
43 say that they're too broad. And that's -- that
44 can be remedied. Both my learned friend for the
45 plaintiffs and our position can both be addressed.
46 They say this is what (ii) tells you. They say
47 this is what 8-1 tells you.

43

Surreply for class members Wakeman and Singh by Mr. Merchant
Reasons for judgment

1 Frankly, it's my sense from earlier
2 submissions that the court is not sympathetic to
3 the position we're advancing but believes that the
4 position we are advancing is what ought to be the
5 final conclusion, if I can put it that way. So
6 the reason I say "not sympathetic" is the issue is
7 will you address the matter.

8 And my learned friend's answer is 8-1 solves
9 the problem; (ii) solves the problem. When you
10 review, I say only it's open to a different
11 interpretation than my colleague's interpretation.
12 And if your court -- if this court gives guidance
13 on what this means, that deals with the issue.

14 THE COURT: All right.

15 MR. MERCHANT: And the other matter is the question of
16 intervenor status. My learned friend said well,
17 they're here for Wakeman. We ask that you grant
18 us intervenor status. You've heard us but we ask
19 that you grant intervenor status.

20 THE COURT: All right.

21 MR. MERCHANT: Thank you, My Lord.

22 THE COURT: Thank you.

23

24 **(REASONS FOR JUDGMENT UNDER SEPARATE TRANSCRIPT)**

25

26 MR. MERCHANT: My Lord, thank you for your courtesy. I
27 spoke with my colleague earlier. We may remain or
28 we may not.

29 THE COURT: Yeah. It's up to you.

30 MR. MERCHANT: And if we're not here [indiscernible].

31 THE COURT: That's fine. Thank you.

32 MR. MERCHANT: Thank you, My Lord.

33 THE COURT: Thank you.

34 All right. All right. Mr. Rosenberg, shall
35 we continue?

36 MR. ROSENBERG: Yes. Thank you, My Lord.

37 THE COURT: You didn't want to come back this
38 afternoon, did you?

39 MR. ROSENBERG: No, I'm --

40 THE COURT: Okay.

41 MR. ROSENBERG: I'm content to proceed, My Lord.

42 THE COURT: Okay. All right. Fine.

43 MR. ROSENBERG: But my friend was concerned with timing
44 and I'll say that I intend to take Your Lordship
45 through the materials, so I think I will take an
46 hour, an hour and a half anyway. So --

47 THE COURT: All right.

44

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 MR. ROSENBERG: But let -- why don't we just proceed.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

**SUBMISSIONS FOR THE PLAINTIFFS BY MR. ROSENBERG
RE SETTLEMENT APPROVAL:**

Does Your Lordship have the application
record?

THE COURT: Yes.

MR. ROSENBERG: I'm going to go through that and make
extensive references to the record. But having
gone through the proposed settlement agreement
I've done, I'd say, most of the heavy lifting.
This is sort of the -- a lot of background and it
goes into the criteria for settlement approval --

THE COURT: Okay.

MR. ROSENBERG: -- that Your Lordship's going to --
yeah, that Your Lordship's going to be concerned
with.

So why don't we start with the notice of
application at tab 1.

THE COURT: M'mm-hmm.

MR. ROSENBERG: And we have the orders sought and I
won't go through it, My Lord, other than saying
it's approving the agreement, the proper
publication of notice, appointing Laura Bruneau as
claims administrator, approving class counsel fees
and disbursements. And we say we're going to
address this all in written submissions, which I'm
going to hand up to Your Lordship. I won't yet
because of the piles of paper --

THE COURT: M'mm-hmm.

MR. ROSENBERG: -- that are appearing before you. But
let me say, as I think Your Lordship has probably
already ascertained from the earlier submissions,
that the actual finalized detailed formal
agreement was signed this morning.

So what's in the materials was a draft of
that --

THE COURT: All right.

MR. ROSENBERG: -- and I'm not going to rely on what's
in the application record with respect to the
actual form of the settlement agreement.

THE COURT: Okay.

MR. ROSENBERG: So now you'll see at tab 2 that it's
all going by consent; that is, the settlement
approval is.

THE COURT: Yes.

45

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 MR. ROSENBERG: And at tab -- I'm going to jump to
2 tab 4 and go through the representative
3 plaintiff's affidavit first, if I may, My Lord.

4 THE COURT: All right.

5 MR. ROSENBERG: And this -- now, Your Lordship has been
6 treated to two previous affidavits from the same
7 individual and they're attached to her affidavit.
8 But this is her third affidavit. She is the
9 representative plaintiff.

10 She says that, in paragraph 3, the settlement
11 has been reached, and the terms that we referred
12 Your Lordship to earlier are found at tab 3,
13 that -- sorry, exhibit C, that are attached here
14 to her affidavit. And those are the terms that
15 were incorporated into the final agreement.

16 Then she goes through, My Lord, her history
17 of involvement in this action. She contacted me
18 in December of 2007. In paragraph 5 she
19 instructed me to commence proceedings and to have
20 the matter certified as a class action. Her
21 contingency fee agreement is attached as exhibit D
22 to this my affidavit. She says in paragraph 5
23 it's for one third or 33.333 percent of the
24 settlement.

25 In paragraph 6 she says she instructed me
26 throughout the proceedings and gives details of
27 that.

28 In paragraph 7 she talks about all the things
29 that she's reviewed and points out that she
30 remained in constant communication with me over
31 the last 10 years.

32 And then in paragraph 8 she says she
33 discussed the case with other class members. She
34 responded -- in paragraph 9 she responded to media
35 requests and gave interviews.

36 And she says in paragraph 10 when instructing
37 class counsel on settlement for the class action
38 she was governed -- sorry, she governed my
39 instructions on whether or not the settlement was
40 in the best interests of class members.

41 She says in paragraph 11 that her and I have
42 been in constant communication over the last
43 10 years. She says in paragraph --

44 THE COURT: Is that why she gets an honorarium?

45 MR. ROSENBERG: This is it. Yeah. That's -- she
46 should get a lot for that, My Lord. That's
47 punishment.

46

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 THE COURT: All right.

2 MR. ROSENBERG: Yeah. She said to me that -- in
3 paragraph 12, that she would accept the final
4 settlement offer. Those are the ones that went
5 into the terms.

6 She says in paragraph 13 that this settlement
7 may not result in all members of the class
8 recovering the same level of compensation they
9 would've received if they had proceeded through an
10 individual action and were successful and were
11 awarded damages. She says that she thinks the
12 settlement is in the best interests of the class
13 as a whole. It removes the risk of litigation and
14 provides class members with compensation now and
15 sooner than compensation would otherwise be
16 received.

17 She says in paragraph 15 she understands
18 there's always a risk that the class would not
19 succeed at a trial of the common issues or that
20 the common issues trial would be resolved
21 partially in favour of --

22 THE COURT: M'mm-hmm.

23 MR. ROSENBERG: -- the defendants.

24 Then she says in paragraph 16 that she knows
25 about the expert reports and she goes into why the
26 action could be dismissed on a number of grounds.
27 And this is about litigation risks, so I think we
28 might go through this, My Lord. Although I know
29 you know this from recent case management
30 conferences and looking at the expert reports, but
31 I think it's worth going through:

32
33 Biological evidence demonstrates that there's
34 no plausible developmental link between
35 paroxetine and cardiovascular birth defects.
36

37 These are -- this is the defendants' position
38 based on their expert reports.

39 Then she says in B:

40
41 Even if there were a plausible biological
42 link, epidemiological evidence does not
43 support the conclusion that Paxil causes or
44 increases the likelihood of any
45 cardiovascular birth defects.
46

47 Then C:

47
Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1
2 Even if the scientific evidence did establish
3 that Paxil increased the likelihood of
4 cardiovascular birth defects, the defendants
5 have taken the position that the warning
6 included on the Paxil label was sufficient.
7 Here the defendants argue that they conducted
8 extensive safety testing of Paxil and
9 provided all known information to Health
10 Canada as the information became available.
11 Accordingly the defendants argue that there
12 is no liability for negligence or failure to
13 warn and no breach of duty to class members.
14

15 D:

16
17 Even if the evidence did establish that Paxil
18 increased the likelihood of cardiovascular
19 birth defects and even if the defendants were
20 found to have failed to warn patients, the
21 defendants take the position that
22 cardiovascular birth defects cannot be
23 considered a singular condition. The
24 defendants have argued that the court would
25 have to consider the available evidence for
26 each of the many types of cardiovascular
27 birth defects to determine whether the
28 particular birth defect was related to Paxil.
29 The defendants argue that this exercise would
30 have led to many of our class members not
31 being compensated for their particular birth
32 defect.
33

34 Now, I don't know if Your Lordship remembers this
35 but back at the trial planning conference we got
36 into this a little bit, looking at the expert
37 reports and the statistical likelihood --

38 THE COURT: M'mm-hmm.

39 MR. ROSENBERG: -- of any particular cardiovascular
40 birth defect.

41 THE COURT: Right.

42 MR. ROSENBERG: Yeah. And I think Your Lordship even
43 may have made some comments that might be an issue
44 that we would look at more closely at the common
45 issues trial.

46 But I'll go on from there. E:
47

48

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 The defendants have raised a number of other
2 issues in both their expert opinions and in
3 the briefs that they have provided that raise
4 the prospect that we may not have been
5 successful on the common issues trial either
6 in whole or in part.

7

8 Now I pause there, My Lord. If we weren't
9 successful in whole in the sense that the
10 defendants succeeded that would have ended the
11 matter.

12

THE COURT: M'mm-hmm.

13

MR. ROSENBERG: I think that goes without saying. Now
14 we -- she says in paragraph 17:

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

Even if the common issues trial resulted in
findings that were favourable to the class,
the next step in the proceedings would
involve an assessment of individual claims
and individual causation. Many of the issues
raised above with respect to the common
issues trial could be raised and reargued in
the context of individual causation
assessment and individual damage assessment.

For example, the defendants have
indicated that for each individual class
member they would examine and raise the
multitude of other possible causes of
cardiovascular birth defects, making it near
impossible for a particular class member to
demonstrate that Paxil was the cause of the
particular cardiovascular birth defect in
question.

They said they would challenge the
assessment of individual damages even if
liability were established.

And I'm going to skip down here to the part that I
think that Mr. Merchant might have been perhaps
misunderstanding. But -- we don't know how many
individuals there are but we go on and say -- or
Ms. Gibson says here she understands that if there
are 20 mother/child claims accepted, that is,
eligible claims determined by the administrator to
be valid, then the average amount of each set of
mother/child class members would be -- would
likely exceed \$175,000.

49

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 In paragraph 19 we say that -- she say, the
2 litigation has been ongoing for approximately
3 10 years. If it doesn't settle now, given the
4 position taken by the defendants on general
5 causation, individual causation, assessment of
6 damages and other related issues, it'll go on for
7 many more years.

8 And then she says taking all of the above
9 into account it's her opinion that not only is the
10 settlement a reasonable settlement and not only is
11 the settlement in the best interests of the class
12 but it would be contrary to the best interests of
13 the class to not settle on the terms of the
14 settlement agreement and continue to litigate.

15 And she swears this affidavit in support of
16 the approval of the settlement and class counsel
17 fee and her honorarium.

18 So I don't need to go through any of her
19 exhibits, My Lord, but I turn next to tab 6 to
20 Laura Bruneau's affidavit. Because this is part
21 of the order we're seeking, My Lord, to have her
22 approved by the court as the court administrator.

23 Now, I'll just say Your Lordship may recall
24 her involvement in these proceedings previously.
25 She -- I think to put it mildly, she was a breath
26 of fresh air when she came in and straightened out
27 our notice plan that I will admit went off the
28 rails and was problematic. And she managed to
29 turn it around and get things in order.

30 But she tells us from the beginning that
31 she's the founder and president of the Bruneau
32 Group and she has a great deal of experience
33 administering class actions. And she's attached
34 her firm's qualifications and experience as
35 exhibit A.

36 THE COURT: M'mm-hmm.

37 MR. ROSENBERG: And she's attached her proposal as B,
38 exhibit B.

39 She says that she would agree to serve as
40 claims administrator in accordance with the terms
41 of the proposed settlement agreement and any
42 orders or directions made by the court.

43 Now, I'm going to leave for you, My Lord, her
44 lengthy -- I'll call it promotional material --

45 THE COURT: M'mm-hmm.

46 MR. ROSENBERG: -- but I know Ms. Bruneau from other
47 class actions and she is an experienced and

50
Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 qualified class administrator.

2 And in -- attached at tab B is her proposal.

3 And I think it might be worth looking at this,

4 My Lord. At page 13 --

5 THE COURT: M'mm-hmm.

6 MR. ROSENBERG: -- she concludes under "Background and

7 Understanding of the Class Action" right at the

8 end that:

9

10 It may be that Bruneau Group will be
11 appointed in the event that the settlement is
12 approved by the BC Supreme Court to
13 administer the settlement fund and assess the
14 amounts owing to each class member.

15

16 And then if you go over to page 15 in the top
17 right-hand corner.

18 THE COURT: M'mm-hmm.

19 MR. ROSENBERG: She thinks it's unclear how long the
20 administration will take but she says in the first
21 paragraph she thinks maybe a little over
22 18 months. I hope she's wrong and it's a lot
23 shorter than that but she has a lot of experience.

24 She tells us she'll be the project lead and
25 then she goes down and tells us under "Claims
26 Administration Services" that she'll establish and
27 operate a Paxil litigation settlement centre based
28 out of downtown Ottawa. Personnel will be trained
29 and instructed as required.

30 And then she goes on and tells us about all
31 the things she's going to do, including the
32 receiving the medical opinions, the point
33 allocation from the claims officer, analyzing the
34 medical reports and establishing a distribution
35 plan.

36 And after giving us the detailed outline of
37 what she'll do she gives us her pricing. And
38 you'll see, My Lord, in the box at the bottom of
39 page 16 she sets out that if there's 50 to 100
40 individual claims she'll charge approximately
41 \$100,000. But if there's 1 to 49 individual
42 claims she's going to charge about \$70,000, not
43 including applicable taxes.

44 And that includes almost everything but if
45 you go over to page 17 it tells us some things
46 that won't be included. And one of the things is
47 the settlement fund trustee services and pricing,

51

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 another approximately \$6,000 a year, not including
2 taxes. And of course it doesn't include the
3 claims officer fees, which we're still negotiating
4 with --
5 THE COURT: How will it work, then? If somebody thinks
6 they have a claim do they contact Ms. Bruneau
7 first and then --
8 MR. ROSENBERG: Claims form. Yeah.
9 THE COURT: And then she'll contact the cardiologist or
10 refer.
11 MR. ROSENBERG: Yeah, I think that's the way. And send
12 the materials over and the cardiologist will go
13 through all the materials --
14 THE COURT: Right.
15 MR. ROSENBERG: -- do the assessment and ... yeah.
16 THE COURT: Okay.
17 MR. ROSENBERG: Now, tab 5 of this material -- it looks
18 daunting but we're going to actually skip through
19 it pretty quickly because it's really, if you
20 like, the chronology of the paralegal in my office
21 who --
22 THE COURT: M'mm-hmm.
23 MR. ROSENBERG: -- sets out the history of the
24 proceedings. And I am not going to go through it
25 but I --
26 THE COURT: All right.
27 MR. ROSENBERG: Other than to say you've got there,
28 My Lord, the preliminary matters and the history
29 of all the pleadings.
30 I don't know if Your Lordship recalls way
31 back in 2008 but Madam Justice Boyd was first case
32 managing this. This is in paragraph 9.
33 THE COURT: M'mm-hmm.
34 MR. ROSENBERG: She was the first case management judge
35 and then she had to retire from the bench in order
36 to make sure she didn't deal with this anymore.
37 And then --
38 THE COURT: She would have been available as the
39 mediator, actually.
40 MR. ROSENBERG: Well, we thought about that, quite
41 frankly. Quite frankly, we did think about that.
42 But then in paragraph 14 Mr. Merchant's
43 involvement arises. You'll see that --
44 THE COURT: Yeah.
45 MR. ROSENBERG: -- down there.
46 And now in paragraph 18 we just refer to the
47 face pages of the certification -- they were

52

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 extensive.

2 THE COURT: M'mm-hmm. Yeah.

3 MR. ROSENBERG: And now, in paragraph 19 Your Lordship
4 will see that you had -- you were assigned the
5 task on April 18th, 2011 --

6 THE COURT: Just seems like yesterday.

7 MR. ROSENBERG: Yeah, well ...

8 THE COURT: All right. Okay.

9 MR. ROSENBERG: I can't wait till tomorrow.

10 In paragraph -- we go through -- just to
11 remind Your Lordship of how adversarial this case --

12 THE COURT: M'mm-hmm.

13 MR. ROSENBERG: -- has been, the notice plan -- first
14 of all the medical records in paragraph 23. The
15 defendant wanted the plaintiff's medical records.
16 You denied that. They took it to the court of
17 appeal. Or they tried to take it to the court of
18 appeal and they did actually, I guess, get leave.
19 No, they didn't. They were denied leave. It
20 was -- paragraph 29.

21 THE COURT: M'mm-hmm.

22 MR. ROSENBERG: The appeal was heard on December 21st,
23 2011. Madam Justice Prowse reserved her decision
24 until December 30th, at which time she dismissed
25 the application for leave. So they never did get
26 leave.

27 Then we go over to page 7. We start talking
28 about certification. It was originally set for a
29 three-day hearing before you to commence on
30 October 1st, 2012. We only took two days.

31 THE COURT: M'mm-hmm.

32 MR. ROSENBERG: And you reserved judgment until
33 December 3rd and on December -- at paragraph 35
34 you certified the matter, obviously. But then the
35 defendants took your certification decision to the
36 court of appeal. That's in paragraph 35.

37 Paragraph 38, the appeal was heard on
38 October 1st, 2013, and reserved to October 25th.
39 I recall it was Madam Justice Levine, I think, who
40 delivered the reasons for the court of appeal
41 upholding the certification.

42 Then in paragraph 39 we filed the amended
43 notice of civil claim on March 28th, 2013. And it
44 goes on.

45 In paragraph 45 you'll see that the matter
46 was set for a 40-day trial commencing October 3rd,
47 2016.

53

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 Then we had to deal with the notice plan --

2 THE COURT: M'mm-hmm.

3 MR. ROSENBERG: -- and you made a ruling on that,
4 My Lord. In paragraph 49 we refer to it. This is
5 the difficulties we had with Michael Mooney and
6 Crawford. In paragraph 52 you modified the notice
7 plan.

8 THE COURT: M'mm-hmm.

9 MR. ROSENBERG: And now then in paragraph 53 we filed
10 an application for an order that the common issues
11 trial be heard by a court without a jury.

12 In paragraph 55 we mention that you heard
13 that argument as well as a number of others about
14 production of further documents and discoveries
15 and answers to outstanding questions on July 6th
16 and 7th, 2016. You reserved -- you gave reasons
17 that day on all of the applications except for the
18 jury notice, which you reserved to July 8 -- 28th,
19 2016. And that's in paragraph 55.

20 I'll jump over to paragraph 58. The
21 defendants had filed an application for orders for
22 answers -- for further answers and answers from
23 refusals made at the discovery of Faith Gibson.

24 In paragraph 60 you heard -- at that same
25 time we brought an order amending the -- an
26 application for an order amending the notice plan.
27 Paragraph 62 says you heard the applications on
28 July 6th and 7th and provided oral reasons on
29 July 7th. That was for all but the --

30 THE COURT: M'mm-hmm.

31 MR. ROSENBERG: -- jury trial -- striking the notice of
32 jury trial.

33 Then over the page on page 12 we tell Your
34 Lordship that we had discoveries of a
35 representative of GlaxoSmithKline in Toronto for a
36 couple days back in June of 2015. And then Faith
37 Gibson was examined here in Vancouver on August --
38 on April 27th, 2016.

39 Then we start in on document disclosure on
40 page 12, My Lord. And I think you might recall
41 the defendants telling you that they had more than
42 450,000 pages of documents that had been produced.
43 And that was before the order that you made that
44 they produce the American-related documents --

45 THE COURT: M'mm-hmm.

46 MR. ROSENBERG: -- and the UK-related documents.

47 Paragraph 13. We go over to expert reports.

54

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 THE COURT: M'mm-hmm.

2 MR. ROSENBERG: Your Lordship may recall being handed
3 up a schedule by my friends back at the trial --
4 the pre-trial conference I'll call it. And there
5 were 20 expert reports from --

6 THE COURT: M'mm-hmm.

7 MR. ROSENBERG: -- plaintiffs and defendants. And I
8 think that influenced you in your determination
9 about whether or not this could be a jury trial.
10 There was, I think you said, 850 pages or more.

11 THE COURT: M'mm-hmm.

12 MR. ROSENBERG: Well, the summary of those reports is
13 found at exhibit 70 to the affidavit of Sandra
14 Worden if you wanted to look at that.

15 Then under "Mediation," My Lord, we talk
16 about the mediation before Joseph Boscovich. It
17 wasn't successful obviously because we're still
18 before Your Lordship.

19 We go on and talk about the extensive trial
20 briefs that were filed before you, so you know
21 about that.

22 THE COURT: M'mm-hmm.

23 MR. ROSENBERG: What you may not know is that there was
24 a lot of phone calls around Christmas time.

25 Because we were set to go the beginning -- back
26 before you the beginning of January. And
27 Mr. Sutton and I and others -- I'm not allowed to
28 go into the detail, but we managed to resolve this
29 just before Christmas. You'll see that in
30 paragraph 80.

31 And the next heading is "Legal Fees and
32 Disbursements" but --

33 THE COURT: We'll deal with that after lunch.

34 MR. ROSENBERG: Thank you, My Lord.

35 THE CLERK: Order in chambers. Chambers adjourned to
36 2 o'clock.

37

38 **(CHAMBERS ADJOURNED AT 12:29 P.M. FOR NOON RECESS)**

39 **(CHAMBERS RECONVENED AT 2:09 P.M.)**

40

41 THE COURT: Yes, Mr. Rosenberg.

42 MR. ROSENBERG: Thank you, My Lord.

43

44 **SUBMISSIONS FOR THE PLAINTIFFS BY MR. ROSENBERG**

45 **RE SETTLEMENT APPROVAL (continuing):**

46

47 We were in the affidavit at tab 5 of Sandra

55

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 Worden --

2 THE COURT: M'mm-hmm.

3 MR. ROSENBERG: -- and were about to turn to "Legal Fees
4 and Disbursements" at paragraph 82. And there's
5 other affidavit material I'll refer to but the
6 computerized records for time spent gives you
7 1.288915.75 plus taxes. And the disbursements,
8 paragraph 84, are 174,494.73. They're listed in
9 exhibit --

10 THE COURT: M'mm-hmm.

11 MR. ROSENBERG: -- 79. I'll come back to those numbers
12 later.

13 Now I'm going to go finally in this material
14 to tab 3, which is the affidavit of my partner,
15 Graham Kosakoski and ...

16 THE COURT: Yep.

17 MR. ROSENBERG: Okay. Let me find that. If Your
18 Lordship has that. I am -- there's a heading,
19 "Experience and Recommendation of Counsel." I'm
20 not going to read it. Can I summarize it by
21 saying that we have some experience in class
22 actions in complex litigation. And that'll take
23 us right through --

24 THE COURT: All right.

25 MR. ROSENBERG: -- to paragraph 7, where Mr. Kosakoski
26 says he believes the proposed settlement is a fair
27 and reasonable result and is in the best interests
28 of the class. I guess the point there, My Lord,
29 is we recommend this settlement.

30 And then we go into describing the
31 settlement. And as I told Your Lordship earlier,
32 this affidavit was done before we actually had
33 penned the final detailed settlement, so ...

34 THE COURT: M'mm-hmm.

35 MR. ROSENBERG: But much of the description that is
36 contained starting at paragraphs 10 and following
37 about how it works is what I've taken you through
38 today, so ...

39 THE COURT: All right.

40 MR. ROSENBERG: I think I'll go to paragraph 14,
41 though, because I'm not sure that this has
42 actually been translated in a way. So it says,
43 the severity of treatment that each child claimant
44 has received will be categorized from "A. No
45 procedure, only diagnosis and ongoing monitoring"
46 to "F. Multiple catheter procedures to repair or
47 treat the injury." And then a points value will

56

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 be assigned to the child claimant.

2 Each child claimant will receive a points
3 score ranging from a minimum of five to a maximum
4 of 100. And all mother claimants will then
5 receive 25 percent of the points their child
6 received.

7 So, I mean, I think this is fairly obvious,
8 My Lord, but if a point turns out to be worth
9 about \$5,000, then the range here for children
10 would be from 25,000 to a half million dollars.

11 THE COURT: Something just occurred to me,
12 Mr. Rosenberg.

13 MR. ROSENBERG: Yeah?

14 THE COURT: Is this a matter that requires statutory
15 comments from the public guardian and trustee?

16 MR. ROSENBERG: We've given notice to the public --

17 THE COURT: Oh, you have.

18 MR. ROSENBERG: Yes. And it's in the material that
19 I'll get to.

20 THE COURT: Okay.

21 MR. ROSENBERG: And they've taken the position that
22 they don't need to appear today.

23 THE COURT: Okay. And they don't need to do their
24 comments?

25 MR. ROSENBERG: No. What I think that's -- I think
26 what happens is -- I think their position is once
27 they know the names of the individuals --

28 THE COURT: Oh, I see. I see.

29 MR. ROSENBERG: Because at this point they're
30 undetermined eligible claimants.

31 THE COURT: Well, I'm not sure what they're going to be
32 able to say at that point but -- anyway.

33 MR. ROSENBERG: But -- yeah. Yeah.

34 THE COURT: Okay.

35 MR. ROSENBERG: In paragraph 15, My Lord -- this is the
36 opinion:

37
38 In my opinion the distribution protocol that
39 has been agreed upon strikes a fair balance
40 by creating a process that is both relatively
41 straightforward but also allows for those
42 class members who have suffered the most
43 damages to receive a larger portion of the
44 settlement fund. While in my opinion it
45 would not be fair to simply give all class
46 members the same amount of compensation,
47 given the variation in injuries suffered

57

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 amongst the class, it would also be
2 counterproductive to create a complex
3 settlement process that might result in
4 lengthy and expensive disputes between class
5 members, the defendants and the class
6 administrator.
7

8 THE COURT: M'mm-hmm.

9 MR. ROSENBERG: 16, My Lord -- paragraph 16 talks about
10 the adversarial process that we've avoided here.

11 THE COURT: M'mm-hmm.

12 MR. ROSENBERG: So that the defendants don't -- are not
13 involved in going through all of those various
14 issues related to quantum and individual
15 liability.

16 Paragraph 17. We say it's not possible at
17 this stage to know how much each eligible claimant
18 will receive until all the claims have been
19 processed. But then we give you examples.

20 Well, first of all we talk about the
21 reversion. And then over on paragraph 19 we go
22 into the opt-ins --

23 THE COURT: M'mm-hmm.

24 MR. ROSENBERG: -- by province and they're listed there.

25 Paragraph 20, we've been contacted by more
26 residents since then. I can tell you it's -- I
27 think it's less than 10, though.

28 THE COURT: M'mm-hmm.

29 MR. ROSENBERG: Paragraph 21. You have to keep in mind
30 that not all of these allegations will be accepted
31 by the claims administrator as eligible
32 claimants --

33 THE COURT: M'mm-hmm.

34 MR. ROSENBERG: -- for a number of reasons.

35 Paragraph 22. It's impossible to know what
36 they'll receive but there's estimates there based
37 on different scenarios, whether it's 30 mother/
38 children claims, 20 mother/children claims, 14 or 9.

39 THE COURT: M'mm-hmm.

40 MR. ROSENBERG: Now, I'm going to go, My Lord, to cost
41 and benefits of settlement. And we go through the
42 factors that led us to recommend the settlement.

43 In paragraph 25 we talk about certainty and
44 timely resolution and --

45 THE COURT: M'mm-hmm.

46 MR. ROSENBERG: -- not dragging on for many years. We
47 talk about what I've already been through in the

58

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 affidavit of the representative plaintiff about
2 individual causation and damages in paragraph 27.
3 It could go on for another five years.

4 In paragraph 28 we echo Ms. Gibson's
5 observation that it may not be the same level.

6 THE COURT: M'mm-hmm.

7 MR. ROSENBERG: Although I'm just going to editorialize
8 here for a moment and say that it probably is
9 close to what they'd get if they got 100 percent.
10 It --

11 THE COURT: M'mm-hmm.

12 MR. ROSENBERG: The -- then we go in paragraph 29 to
13 talk about litigation risks that were faced here.
14 And so in paragraph 30 Mr. Kosakoski refers back
15 to Faith Gibson's affidavit. The most significant
16 risk, in paragraph 31, is general causation and
17 whether Paxil has the ability to cause or increase
18 the likelihood of cardiovascular birth defects.
19 If we lost that we would have lost everything.

20 And then this is the tricky part -- we always
21 do as this on settlement approval applications.
22 We show how strong the defendants' case it.

23 THE COURT: Yeah. I --

24 MR. ROSENBERG: You've been here.

25 THE COURT: Yeah. I've been there. Yes.

26 MR. ROSENBERG: So what we've done, My Lord, is in
27 paragraph 32 we've listed our experts, each one of
28 them: Adrian Levy, David Healy and Rick Berard
29 and Michael Levin talked. These are highly --

30 THE COURT: M'mm-hmm.

31 MR. ROSENBERG: -- respected experts in their fields
32 from the head of departments of epidemiology
33 through to the top epidemiologist who studied
34 birth defects related to Paxil to a PhD from
35 Harvard University. I mean, these are our people.
36 They're all highly qualified and we would've of
37 course presented their evidence as the
38 authoritative evidence.

39 But then in paragraph 33 we would've been
40 faced with the evidence that the defendants, who
41 have, I would say, equally qualified and --

42 THE COURT: M'mm-hmm.

43 MR. ROSENBERG: -- highly recognized experts.

44 Dr. Srivastava, Dr. Gary Shaw. Birth defects
45 epidemiologist Dr. Scialli, whose evidence you may
46 not recall but he gave evidence in the --

47 THE COURT: M'mm-hmm.

59

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 MR. ROSENBERG: -- certification hearing.

2 THE COURT: Right.

3 MR. ROSENBERG: So then over to paragraph 34. If we
4 had lost the common issues trial there would have
5 been no compensation whatsoever.

6 THE COURT: M'mm-hmm.

7 MR. ROSENBERG: And then I'm going to skip right down
8 to -- because we've kind of been through this in
9 terms of the -- what I'll call it -- the liability
10 chain. Let me take you to paragraph 37:

11
12 For example, there are individuals who
13 informed us that even though their child was
14 diagnosed with a septal defect shortly after
15 birth, he or she never required surgery.
16 Class members such as this, while often
17 require monitoring by a pediatric
18 cardiologist, often stated to us that there
19 did not seem to be any long-term impact of
20 the condition on their child.

21
22 And then we go into examples of people who are
23 more severely impacted by their defects. And we
24 talk about those. But I don't know if I need
25 to --

26 THE COURT: M'mm-hmm.

27 MR. ROSENBERG: -- get into that, My Lord.

28 Next I'm turning over to page -- to
29 Mr. Kosakoski's comments on class counsel fees. I
30 just heard this morning Mr. Merchant say, I think,
31 he had up to \$2 1/2 million in fees but he hadn't
32 yet gone to certification. But that seemed -- I
33 mean, I don't really know what that has to do with
34 this but it's an interesting observation.

35 The -- we're asking Your Lordship to approve
36 the class counsel fee in accordance with the
37 contingency fee agreement of \$2,046,000 plus
38 applicable taxes and disbursements. That's in
39 paragraph 40.

40 In paragraph 42 we point out that the
41 disbursements, including taxes, are \$174,494.73.

42 We say in paragraph 43 this was a hard-fought
43 battle and our firm has worked on the file for
44 over 10 years without receiving payment for
45 services or reimbursement for any of the
46 disbursements.

47 In paragraph 44 we say mediation was not

60

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 fruitful.

2 In paragraph 45 we say that we'll probably
3 spend another \$50,000 in billable hours
4 participating in the administration of the fund.

5 And then in paragraph 46 we go through that
6 chain, which is important to understand the
7 liability risk, how certification was vigorously
8 contested. But then we went on to -- oh, sorry,
9 this is why the action should have been dismissed
10 on a number of grounds, and we go through them.

11 And --

12 THE COURT: M'mm-hmm.

13 MR. ROSENBERG: I think we've been through that --

14 THE COURT: Yeah, that was in her affidavit.

15 MR. ROSENBERG: It was. Yes. Thank you, My Lord.

16 So in paragraph 47 we conclude by saying,
17 suffice it to say it wasn't a clear winner but a
18 highly risky case which only found success after
19 strenuous and expensive 10-year prosecution.

20 Other cases across Canada have not succeeded and
21 we have. We have to the extent that we've --

22 THE COURT: M'mm-hmm.

23 MR. ROSENBERG: -- reached this stage, in any event.

24 Now, My Lord, there is a requirement that we
25 give notice of the -- this hearing today and we
26 have done so. And I think Your Lordship can be
27 satisfied that even beyond our imagination the
28 media picked up the story --

29 THE COURT: M'mm-hmm.

30 MR. ROSENBERG: -- and it was widely, widely
31 publicized. But we also did a notice program and
32 it -- according to Ms. Bruneau it was a notice
33 program that reached a lot of people: 1,857,308
34 people in terms of the publications and the
35 settlement approval notice.

36 THE COURT: M'mm-hmm.

37 MR. ROSENBERG: Then we've sent notice -- paragraph 51.

38 We sent notice to the -- as Your Lordship
39 inquired, to the various provincial public
40 guardians and provincial health insurers. We told
41 them about today's hearing and that they could
42 appear and take a position.

43 THE COURT: Oh, okay. Good.

44 MR. ROSENBERG: So that's there at paragraph 51.

45 Now, we go to notice of settlement. Laura
46 Bruneau of the Bruneau Group has proposed
47 publication of the notice of settlement take place

61
Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 as follows, and this would be in your order,
2 My Lord, if you accept our position here.

3 52(a), we'd mail notice of the settlement by
4 ordinary mail and email to the last-known address
5 of each person who has identified themselves as a
6 class member or their counsel.

7 And I should just pause there and say,
8 My Lord, there are -- because it might have been
9 confused in this morning's earlier application.
10 There are a whole bunch of people that are
11 represented by other lawyers or have no
12 representation. So we would contact them and let
13 them know. We'd post notice on our website and we
14 also in (b) have established a website through
15 Bruneau Group that is for Paxil class actions.

16 And then there's going to be a BC-specific
17 Facebook advertising campaign to notify
18 individuals. And, My Lord, the reason that's
19 BC-specific of course is because of the
20 opt-in/opt-out date.

21 THE COURT: M'mm-hmm. Yeah.

22 MR. ROSENBERG: Then we propose in 53 that this
23 publication take place on the later of 31 days
24 after the date on which this court issues the
25 order approving the settlement if there's no
26 appeal, and if there is an appeal, after it's been
27 dealt with, 31 days after that.

28 Then we go, My Lord, Mr. Kosakoski talks
29 about administration of settlement. In
30 paragraph 54 we're recommending the Bruneau Group.
31 And that's all I really --

32 THE COURT: Okay.

33 MR. ROSENBERG: -- have to say about that.

34 Now, although I've already sort of been
35 through all this, I'm going to hand up three
36 things: the -- our written submissions, the only
37 objection by an objector, if I can call it that --
38 and I'll get to that -- and a book of authorities.

39 THE COURT: Okay.

40 MR. ROSENBERG: I guess -- the easiest one to deal
41 with, I suppose, is I might go first to the
42 one-page email from an objector which came this
43 morning. Up until this morning I was prepared to
44 get up and say to Your Lordship there were no
45 objectors.

46 THE COURT: M'mm-hmm.

47 MR. ROSENBERG: This person, Renee Heresh [phonetic],

62

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 has sent this email to our firm and I'd ask that
2 you note a few things about it. It's not a class
3 member. It's not a cardiovascular defect. And
4 her concern is that her son may develop health
5 problems at a later age.
6 THE COURT: M'mm-hmm.
7 MR. ROSENBERG: But that's the only --
8 THE COURT: Well, it ...
9 MR. ROSENBERG: I don't even know if I can really call
10 it --
11 THE COURT: It doesn't even say what the injury is. I
12 suppose it could be -- I mean, I don't know.
13 MR. ROSENBERG: Yeah. Well, it says he's having
14 trouble because he runs out of breath.
15 THE COURT: Yeah.
16 MR. ROSENBERG: It could be -- you're right. It could
17 be ... In any event --
18 THE COURT: All right.
19 MR. ROSENBERG: -- it's all I've got on that. Next I
20 think --
21 THE COURT: You might want to pass it on to Mr. Merchant.
22 MR. ROSENBERG: Yes.
23 THE COURT: No, seriously.
24 MR. ROSENBERG: No. And we do.
25 THE COURT: Yeah. All right. Okay.
26 MR. ROSENBERG: That's our *modus operandi*, if you like.
27 THE COURT: Right. Okay.
28 MR. ROSENBERG: The --
29 THE COURT: Yes.
30 MR. ROSENBERG: I'm going to turn to the submissions,
31 the written submissions.
32 THE COURT: M'mm-hmm.
33 MR. ROSENBERG: Which I'm going to -- I've really been
34 through them all. If anything, it's a summary of
35 what I've already said. I'll just give you the
36 references.
37 In paragraph 5 that was Your Lordship's
38 reasons on the production of the plaintiff's
39 medical records.
40 THE COURT: M'mm-hmm.
41 MR. ROSENBERG: That's at tab 1 of the authorities
42 and --
43 THE COURT: Yeah.
44 MR. ROSENBERG: At paragraph 6 leave to appeal
45 dismissed by Madam Justice Prowse. You'll find
46 that at tab 2 of the brief of authorities.
47 The certification decision of yours is found

63

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 at tab 3 of the brief of authorities. That's
2 mentioned in paragraph 7.

3 And then in paragraph 8 we say on
4 December 3rd, 2012, this proceeding became the
5 first and currently only certified class action
6 regarding Paxil and birth defects.

7 Mr. Merchant made some submissions about the
8 subclass or dividing it up and you'll see that in
9 paragraph 8(c). The class was divided into member
10 residents and those members not resident. So that
11 was done.

12 THE COURT: M'mm-hmm.

13 MR. ROSENBERG: You -- the common issues are stated in
14 paragraph 9 and need not go through that.

15 The notice of appeal is referred to in
16 paragraph 11 and Justice Levine's reasons -- Madam
17 Justice Levine's --

18 THE COURT: M'mm-hmm.

19 MR. ROSENBERG: -- reasons. That's at tab 4 of your
20 brief --

21 THE COURT: Yes.

22 MR. ROSENBERG: -- of authorities.

23 Then we go -- in paragraph 12 we talk about
24 all these steps that we have taken here. In
25 paragraph (c), 12(c), we mention your -- the
26 application and notice. Reasons of yours are
27 found at tab 5 concerning the notice plan.

28 And then you've got the examinations for
29 discovery at (e) of Mark Brayham [phonetic]. Then
30 the modification of the notice plan in (f). And
31 then down to (h), the discovery of Ms. Gibson.
32 And then in paragraph (i) Your Lordship may recall
33 from last summer we had a series of contested
34 chambers applications --

35 THE COURT: Yes.

36 MR. ROSENBERG: -- which I need not go into. Your
37 reasons on that are -- on the first four of those
38 matters mentioned in (i) -- are found at tab 6 of
39 the brief of authorities.

40 THE COURT: M'mm-hmm.

41 MR. ROSENBERG: And then the jury notice decision is
42 found at tab 7 of the brief of authorities.

43 THE COURT: M'mm-hmm.

44 MR. ROSENBERG: And then we go -- if Your Lordship --
45 in paragraph 13 we point out the common issues
46 trial was set for January 16th and even though we
47 went to mediation we couldn't settle.

64

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 And then in paragraph 14 we talk about trial
2 preparation. Your Lordship, in paragraph 14(c)
3 you gave reasons out of -- from the trial
4 management conference of December 13th and those
5 are found at tab 8 --

6 THE COURT: Yes.

7 MR. ROSENBERG: -- of the brief of authorities.

8 And we say in paragraph 15 of our submissions
9 that the settlement was reached on December 23rd,
10 2016, with a formal settlement agreement to
11 follow.

12 In paragraph 16 we talk about document
13 discovery and the defendants listed over 450,000
14 pages of documents. I think you could say this
15 was a document-heavy case.

16 THE COURT: M'mm-hmm.

17 MR. ROSENBERG: In paragraph 17 we mention the
18 20 expert reports that were served in this case.
19 And I think we could just summarize that as saying
20 the common issues trial would have been a battle
21 of experts. Quite a complex, difficult common
22 issues trial.

23 So we go down now to -- well, you'll know
24 there's eight reported decisions that have come
25 out of this court and the court of appeal in this
26 case listed at paragraph 18.

27 And then we go to the issues. Under C,
28 "Issues," really the issue is whether or not this
29 court should approve the settlement. And in
30 determining that -- I don't say that here but we
31 say it later -- the issue is whether the
32 settlement's fair and reasonable. And I think to
33 really consider that, Your Lordship has to
34 consider the sub-issues in paragraph 19; that is,
35 the liability risk to the plaintiffs, the number
36 of class members and the quantum of their damages.

37 So we go through the liability risks.

38 THE COURT: M'mm-hmm.

39 MR. ROSENBERG: In paragraph 20 the point we've already
40 made, if we lost general causation we would lose
41 it all.

42 In paragraph 21 we set out the duelling
43 experts.

44 THE COURT: M'mm-hmm.

45 MR. ROSENBERG: Our experts in 21. The defendants'
46 experts in 22. And then we conclude that in
47 paragraph 23 by saying, suffice it to say that the

65

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 issue of general causation with respect to Paxil
2 is a matter in which there's not a clear general
3 consensus. It would have been reasonable for the
4 trier of fact to accept the theories of either
5 side's competing experts, which again presented a
6 large risk for the plaintiffs. That's just on
7 general causation.

8 And I just pause there to say that alone,
9 that alone, My Lord, would have justified what
10 I'll call the significant litigation discount.
11 But we go on from there and talk about the
12 additional risks, which I've been through in the
13 affidavits. But paragraph 24 sets out a nice
14 chain, if you like.

15 THE COURT: M'mm-hmm. Yeah.

16 MR. ROSENBERG: There was -- we've been through whether
17 the risk was -- the warning was sufficient,
18 whether or not cardiovascular birth defects is a
19 singular condition. And then you've got the final
20 problem of individual claims and individual
21 causation in 24(c).

22 THE COURT: M'mm-hmm.

23 MR. ROSENBERG: So that -- you've seen the table of
24 expert reports we mention in paragraph 25. You
25 know the difficulties with -- that the plaintiffs
26 faced in the common issues trial if it proceeded.

27 Now, then we go to the number of class
28 members. And in paragraph 26 we tell Your
29 Lordship how many there were as of late
30 February 2017. We give you the geographic
31 breakdown.

32 THE COURT: Now, does that -- does each one -- is that
33 the mother and child for each one?

34 MR. ROSENBERG: No. I think that's times two. So --

35 THE COURT: Well, you have three in Alberta, so ...

36 MR. ROSENBERG: I think --

37 THE COURT: I'm just trying to figure out how you get
38 an odd number.

39 MR. ROSENBERG: That's right. I think that would be
40 six. Well, you can because --

41 THE COURT: Yeah. Right.

42 MR. ROSENBERG: -- the plaintiff here had two children.

43 THE COURT: Oh, right. Yeah.

44 MR. ROSENBERG: So it's possible.

45 THE COURT: Okay. Yeah. That's true. Yeah.

46 MR. ROSENBERG: But that's, I think --

47 THE COURT: Right. Yeah. Okay.

66

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 MR. ROSENBERG: Let me be sure. Oh, that is total
2 claimants.
3 THE COURT: Oh, okay.
4 MR. ROSENBERG: My mistake.
5 THE COURT: All right. So --
6 MR. ROSENBERG: Oh, yeah. It would have to be because
7 there's --
8 Okay. I don't need to go into that. Oh
9 that's why there's three.
10 THE COURT: Okay.
11 MR. ROSENBERG: I see. One of the mothers in Alberta
12 had a child that died.
13 THE COURT: Oh, I see. Okay.
14 MR. ROSENBERG: Thank you.
15 THE COURT: All right.
16 MR. ROSENBERG: And then in paragraph 27 we point out
17 there's more BC residents who may be eligible that
18 have come forward since then.
19 And these -- in paragraph 28 the point is
20 that these are self-identified potential class
21 members. They may not be eligible.
22 So I call it numerosity or number of members
23 that may be eligible. It's impossible to know
24 exactly how many there are at this stage and that
25 point's made in paragraph 29.
26 THE COURT: M'mm-hmm.
27 MR. ROSENBERG: Then we go over the page to "Quantum of
28 Damages." I think Your Lordship has the point
29 that it's a spectrum. We say this in
30 paragraph 32. At one end there's people who will
31 have a full, healthy life without any
32 cardiovascular symptoms that'll be ongoing and
33 those will be nominal. And at the other end of
34 the paragraph we say in 33 there are more serious
35 cases that might require significant compensation
36 under multiple heads of damages.
37 In paragraph 34 the -- we make the point that
38 the defendants take the position that, for those
39 who have severe injuries such as the one who had
40 spina bifida --
41 THE COURT: M'mm-hmm.
42 MR. ROSENBERG: -- I think you were referred to -- that
43 type of injury, there's going to be causation
44 issues related to that, individual causation
45 issues.
46 I'm going to jump over to the settlement on
47 page 15. It's a \$6.2 million settlement fund to

67

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 compensate class members, and we take off class
2 counsel fees, the honorarium and public health
3 insurer claims. There's a reversion in the event
4 there's not a lot of eligible claimants.

5 Paragraph 38. We talk about the distribution
6 protocol that'll be administered by the claims
7 administrator in conjunction with the
8 cardiologist.

9 Your Lordship's already been through the
10 settlement agreement, so you've --

11 THE COURT: M'mm-hmm.

12 MR. ROSENBERG: -- seen how it works. It's set out in
13 paragraph 39 and 40.

14 And in paragraph 41 we submit that the
15 distribution protocol strikes a fair balance by
16 creating a process that's both relatively
17 straightforward but allows for those class members
18 who have suffered the most damages to receive a
19 larger portion of the settlement fund and it also
20 avoids lengthy and expensive adversarial disputes.

21 Now, going to the law on this, My Lord,
22 it's -- I'm in paragraph 42. Section 35 of the
23 *Class Proceedings Act* says that a class proceeding
24 may be settled with the approval of the court.

25 In paragraph 43 you have a very recent
26 decision from Justice Bowden of our court in which
27 he summarized the test for approving a class
28 action settlement. My Lord, that decision is in
29 your brief of authorities at tab 13. It -- I
30 think I might take you to that case, if I may,
31 My Lord.

32 THE COURT: M'mm-hmm.

33 MR. ROSENBERG: This is tab 13. It's the settlement of
34 the hip -- oh, I'm sorry. I said --

35 THE COURT: Yep.

36 MR. ROSENBERG: Oh, okay. Yep. Thank you, My Lord.

37 That is the hip implant case.

38 THE COURT: Yes.

39 MR. ROSENBERG: And there were 14 objectors to this
40 settlement. I wonder if I hand up my authorities
41 to Your Lordship because I have a note to take you
42 to --

43 THE COURT: Yeah.

44 MR. ROSENBERG: Is it -- paragraphs -- oh, is that
45 mine? No. That's --

46 I'm taking you to paragraphs 33 to 37.

47 THE COURT: All right.

68

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 MR. ROSENBERG: That's fine.

2 I'm going to take you to paragraph -- because
3 this is a very recent decision --

4 THE COURT: M'mm-hmm.

5 MR. ROSENBERG: -- of our court dealing with this.

6

7 The CPA does not provide a test for
8 settlement approval.

9 The overall question in deciding whether
10 to approve a settlement is whether the
11 settlement is fair, reasonable, and in the
12 best interests of the class as a whole.

13

14

And then there's references to authorities.

15

16

The law was summarized in *Bodnar*, as follows:

17

18

19

20

21

22

... The court need not dissect the
proposed settlement with an eye to
perfection. Rather, the settlement must
fall within a range or zone of
reasonableness to be approved.

23

24

25

26

27

28

29

The court must consider the risks
and benefits associated with continuing
the litigation in deciding whether to
approve the settlement. The question
for determination is whether there are
any disadvantages to the settlement that
justify its rejection.

30

31

32

33

34

The court is not entitled to modify
the terms of a negotiated settlement.
Its power is limited to approving or
disapproving the settlement reached by
the parties.

35

36

37

38

39

40

41

The recommendation and experience
of counsel are significant factors for
consideration on an approval
application. There is a presumption of
fairness when a proposed settlement is
negotiated at arm's length by class
counsel ...

42

43

And:

44

45

46

47

The court may take into account evidence
of expected participation in the
settlement by class members when

69

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 determining the sufficiency of available
2 settlement funds.

3
4 And *Sawatzky* is then cited:

5
6 Public policy favours the settlement of
7 complex litigation. There is a strong
8 presumption of fairness where a settlement
9 has been negotiated at arm's length.
10 Experienced class counsel is in a unique
11 position to assess the risks and rewards of
12 the litigation and his or her recommendations
13 are given considerable weight by the
14 reviewing court. [Decision cited.]

15 The court cannot re-write the
16 settlement. All it can do is approve or
17 reject the settlement.

18
19 And then I take you in this decision as well,
20 My Lord, to paragraph 60 to 62 on counsel's fees:

21
22 The contingency fee of 33.33% --

23
24 That's the same as this case, My Lord.

25
26 -- is within the typical range for class
27 actions in British Columbia. [Authorities
28 cited.]

29 Having considered the work undertaken by
30 counsel for the plaintiff over a period of
31 7 years since commencing this lawsuit,
32 including the work in relation to a contested
33 certification and appeal therefrom, three
34 mediations before an experienced mediator and
35 the resulting claims-based liability of the
36 defendants, along with the amounts of
37 compensation which appear to be comparable to
38 the range of damages that might have been
39 available had this matter gone to trial, I
40 have concluded that counsel's fees and
41 disbursements plus applicable taxes should be
42 approved.

43
44 An honorarium at 62:

45
46 In the circumstances I am satisfied that
47 Ms. Wilkinson's contributions to this lawsuit

70

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 in helping to bring it to a conclusion that
2 was in the best interests of the class
3 members justifies the payment of an
4 honorarium to her in the amount of \$10,000.
5

6 I just remind Your Lordship we are asking for
7 \$7,500 here for the representative plaintiff.

8 And then next I'm back in my --

9 THE COURT: M'mm-hmm.

10 MR. ROSENBERG: -- written submission at paragraph 44.

11 And I'm going to refer you to another recent
12 decision of *Stanway v. Wyeth* --

13 THE COURT: M'mm-hmm.

14 MR. ROSENBERG: -- the hormone replacement therapy
15 case. That case is found in your brief of
16 authorities at tab 16. It's another recent
17 case -- class action settlement.

18 THE COURT: M'mm-hmm.

19 MR. ROSENBERG: It's Madam Justice Gropper. And
20 although it's -- paragraph 44 is mistaken when it
21 attributes those words to Madam Justice Gropper.
22 She's actually quoting from the *Bodnar* case --

23 THE COURT: M'mm-hmm.

24 MR. ROSENBERG: -- at paragraph 30 of her reasons. But
25 if we can go to tab 16 you'll see that. Just
26 flipping over in the brief of authorities to
27 *Stanway v. Wyeth* --

28 THE COURT: M'mm-hmm.

29 MR. ROSENBERG: -- and I want to refer Your Lordship to
30 paragraphs 29 to 33 first of all.

31 THE COURT: M'mm-hmm.

32 MR. ROSENBERG: And this is --

33 THE COURT: Yeah.

34 MR. ROSENBERG: There it is. And she says:

35
36 The test for approving a class action
37 settlement is whether it is fair, reasonable
38 and in the best interests of the class as a
39 whole. This is to ensure the rights of
40 absent class members are protected, given
41 they are not a party to the agreement.
42

43 Paragraph 30:

44
45 Madam Justice Dickson explained the court's
46 approach in *Bodnar v. The Cash Store Inc.* ...
47

71

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 And those are the quotes in our written
2 submissions.

3 THE COURT: M'mm-hmm.

4 MR. ROSENBERG: Paragraphs 17 to 21. And the standard
5 is whether in the circumstances it's fair,
6 reasonable and in the best interests of the class
7 as a whole. And I've already been through all
8 this.

9 THE COURT: M'mm-hmm.

10 MR. ROSENBERG: I won't go into that again. But in
11 paragraph 31 Madam Justice Gropper goes through
12 various factors that --

13 THE COURT: M'mm-hmm.

14 MR. ROSENBERG: -- determine that. And she lists 10
15 factors which we put into our -- paragraph 45 of
16 our written submissions.

17 THE COURT: Yeah.

18 MR. ROSENBERG: Those are factors and I don't know that
19 if I need go through those with Your Lordship now.

20 And then she says, over at paragraph 32, some
21 of the factors might be attributed greater
22 significance while others may be disregarded
23 depending on the nature of the facts in each case.

24 And then she goes on to consider each of
25 them. And what she says finally in that case,
26 My Lord, at paragraphs 52 to 55 -- this is on fees
27 again:

28
29 The class counsel fees in this case have been
30 calculated as \$4,550,000 plus taxes for a
31 total of \$5,096,000, based on a contingency
32 fee of 33.33%. Total disbursements,
33 including taxes and interest, are
34 \$813,263.72. Fees and disbursements
35 constitute roughly 43% of the total
36 settlement fund. In applying the above
37 factors to class counsel's fees, I am
38 satisfied it is fair and reasonable.

39

40 And then Justice Cullen's comments in *White v.*
41 *Canada* are cited --

42 THE COURT: M'mm-hmm.

43 MR. ROSENBERG: -- concerning a 30 percent contingency
44 fee. And this is what Justice Cullen says over
45 the page:

46

47 In the circumstances, counsel, in taking on

72

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 the case involving a significant commitment
2 of time and the ongoing payment of
3 disbursements incurred a significant risk to
4 their own economic interests, which if not
5 adequately compensated for, would discourage
6 similar willingness in the bar to take on
7 difficult cases on such a basis in the
8 future. In such circumstances, there is
9 clearly the expectation of a higher fee than
10 in a non-contingency fee basis.

11 There have --

12
13 And in paragraph 54:

14
15 There have been considerable risks for class
16 counsel as they have pursued this litigation
17 to completion on their own, rather than with
18 a consortium of counsel from various
19 provinces. They worked on the case for ten
20 years and the 22 expert affidavits point to
21 the complexity of the issues. Furthermore,
22 class counsel points out that for complex
23 personal injury lawsuits in B.C., a fee of up
24 to 40% is permissible ...

25
26 And then he approves --

27 THE COURT: M'mm-hmm.

28 MR. ROSENBERG: Sorry, she approves the class counsel
29 fee.

30 So -- and that's what we do in our written
31 submissions starting at page 19.

32 THE COURT: Yes.

33 MR. ROSENBERG: We go through the benefits of
34 settlement, that this is largely repetitive.

35 THE COURT: M'mm-hmm.

36 MR. ROSENBERG: Paragraph 52, we make the point we
37 avoid the adversarial process.

38 Paragraph 54, we go through the likelihood --
39 likely recovery for --

40 THE COURT: M'mm-hmm.

41 MR. ROSENBERG: -- different numbers of class members.

42 In paragraph 55 we go through some other
43 pharmaceutical cases in which medical devices were
44 approved.

45 And in paragraph 57 we make the point that
46 another five years of litigation would be a
47 conservative estimate in this case if we didn't

73

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 settle it.

2 Now paragraph 58 has to be amended, My Lord,
3 because we say we didn't receive any objections to
4 the settlement and Your Lordship has now seen the
5 perhaps one exception to that.

6 By the way, the other case that I first
7 referred you to, *Jones v. Zimmer*, had 14
8 objectors --

9 THE COURT: M'mm-hmm.

10 MR. ROSENBERG: -- in that case. So perhaps that is
11 the reason -- one of the reasons for lengthy
12 reasons for judgment. I don't know.

13 Paragraph 59. We say notice was advertised
14 widely.

15 Paragraph 60. We make the point that we gave
16 notice to the provincial public guardians and
17 health insurers.

18 I think Your Lordship is in a position to
19 know that there was an absence of collusion
20 between the plaintiffs and defendants in this
21 case. That point's made in paragraph 61.

22 The -- with respect to the representative
23 plaintiff, Ms. Gibson, in paragraph 62 we go
24 through --

25 THE COURT: You've already taken me to her affidavit.

26 MR. ROSENBERG: Right. So -- and I've taken you to J,
27 "Publication of the Notice." I think I've taken
28 you through how we would do that.

29 THE COURT: M'mm-hmm.

30 MR. ROSENBERG: And then under "Administration of the
31 Settlement," we've taken you through Laura
32 Bruneau's affidavit, which speaks to that.

33 And then under "Compensation for the
34 Representative Plaintiff," I've put in the *Parsons*
35 case in paragraph 70 from our court of appeal, in
36 which -- that's tab 14 of your authorities. And
37 Justice Saunders for the court of appeal sets out
38 really the factors to take into account. And if I
39 can greatly generalize it, it's almost a quantum
40 merit assessment and in this case --

41 THE COURT: M'mm-hmm.

42 MR. ROSENBERG: -- I think the \$7,500 is well within
43 the range.

44 Then we go to "Class Counsel Fees and
45 Disbursements" under "M" and the application
46 legislation is section 38 of the *Class Proceedings*
47 Act. 38(1) says an agreement respecting fees and

74

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 disbursements between a solicitor and a
2 representative plaintiff must be in writing and
3 must state the terms under which fees and
4 disbursements are to be paid.

5 And then over in paragraph 74 -- you did see
6 the contingency fee agreement for 33.33 percent in
7 writing. We just talk about what we've been
8 through in this case and I would just note in
9 paragraph 78:

10
11 The settlement confirms counsel's contingency
12 fee agreement with Ms. Gibson and provides
13 for a payment of class counsel fees of
14 \$2,046,000, which is one third of the
15 settlement fund, plus applicable taxes and
16 disbursements.

17
18 And Your Lordship knows from the materials that's
19 \$174,494.73. That's --

20 THE COURT: That was the disbursements.

21 MR. ROSENBERG: Yes, including taxes on the
22 disbursements.

23 THE COURT: Yes.

24 MR. ROSENBERG: And that's from the --

25 THE COURT: And what about taxes on the fees? Do we
26 have to --

27 MR. ROSENBERG: I haven't calculated that yet.

28 THE COURT: Yeah.

29 MR. ROSENBERG: I have to do that. Oh, sorry, we do --
30 I didn't see it in here.

31 I may be mistaken, My Lord. We'll check
32 that. I know the disbursements are in Sandra
33 Worden's affidavit at paragraph 84, sorry -- at,
34 yeah, paragraph 84.

35 THE COURT: All right.

36 MR. ROSENBERG: Paragraph 79 speaks of the time we've
37 spent. I've taken you now -- well, I'll take
38 you -- I don't have to go to the case but in
39 paragraph 80 this is what Justice Cullen said in
40 *White v. The Attorney General of Canada*, which is
41 found --

42 THE COURT: Yeah.

43 MR. ROSENBERG: -- at tab 18 in your brief of
44 authorities:

45
46 In the circumstances --
47

75

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 THE COURT: You've already --

2 MR. ROSENBERG: Oh, I've already done that?

3 THE COURT: You've already referred to that passage.

4 MR. ROSENBERG: Thank you, My Lord.

5 And the legal principles which govern a
6 section 38 application are discussed in a number
7 of cases. And I don't know if I need to go
8 through them.

9 THE COURT: No.

10 MR. ROSENBERG: There's a typo in paragraph (b), that
11 should be "start" instead of "slart."

12 THE COURT: M'mm-hmm.

13 MR. ROSENBERG: I don't need to go to those.

14 THE COURT: Okay.

15 MR. ROSENBERG: And so in -- at the conclusion we
16 request --

17 It isn't. No, I'm good.

18 We request an order approving the settlement
19 in the certified class proceeding. And I've set
20 out, actually, a draft order in this attached to
21 the settlement --

22 THE COURT: Yes.

23 MR. ROSENBERG: -- agreement. And maybe I should go
24 back to that in conclusion and say that's what
25 we're asking for.

26 I don't believe we have calculated the taxes.

27 But --

28 THE COURT: Okay.

29 MR. ROSENBERG: The draft order is found at -- too bad
30 this isn't numbered. It's schedule A. It's about
31 halfway through.

32 THE COURT: Yeah. Yes. Okay.

33 MR. ROSENBERG: So it starts out with -- let me just go
34 to what the court orders.

35 THE COURT: M'mm-hmm.

36 MR. ROSENBERG:

37

38 The Settlement Agreement attached [to this
39 Order] as schedule A, including all of the
40 Schedules thereto, is incorporated by
41 reference into and forms part of this Order
42 [and] unless otherwise indicated ... the
43 definitions as set out in the Settlement
44 Agreement apply to and are incorporated into
45 this order.

46 The Settlement Agreement ... is fair,
47 reasonable and in the best interests of [the]

76

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 Class Members ...

2 The settlement terms outlined in this
3 Settlement Agreement, including all of the
4 Schedules [thereto] and [the] releases [set
5 out therein], is [hereby] approved and
6 binding on Class Members, the Releasors, and
7 the Defendants pursuant to section 35 of the
8 *Class Proceedings Act* ... shall be
9 implemented in accordance with its terms.

10 The steps taken by Class Counsel to
11 notify Class Members of the Approval Hearing
12 are deemed reasonable and appropriate.

13 The Notice of Settlement Approval, in a
14 substantially similar form to that attached
15 as Schedule "C" to the Settlement Agreement,
16 shall be distributed pursuant to the Notice
17 Plan for Notice of Settlement Approval,
18 attached as Schedule "D" to the Settlement
19 Agreement, and such distribution is approved
20 by this Court as being reasonable notice of
21 the settlement and the terms of the
22 Settlement Agreement in accordance with the
23 requirements of the *Class Proceedings Act*.

24 The defendants shall pay the sum of
25 \$6,200,000 to Rosenberg Kosakoski LLP in
26 trust within 30 days of the court approval
27 date.

28 The defendants shall pay up to the sum
29 of \$100,000 to the Claims Administrator for
30 Administration Costs. If the Administration
31 Costs exceed \$100,000, the further amounts
32 will be payable from the Settlement Fund.

33 The defendants shall have no
34 responsibility or liability, under any
35 circumstances, for any additional or further
36 payments under the Settlement Agreement or in
37 relation to the settlement and Action.

38
39 Can I pause there, My Lord, and say that assumes
40 that the defendants are paying the mediator and
41 the Bruneau invoice, which is part of the
42 settlement agreement. That's the --

43 THE COURT: M'mm-hmm.

44 MR. ROSENBERG: -- other amount.

45
46 9. An honorarium of \$7,500 to Faith Gibson,
47 for distinguished service to the Class, is

77

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 hereby approved. Payment of this amount to
2 Ms. Gibson is authorized as a distribution
3 (sic) to be paid from the Settlement Fund.

4 10. A Class Counsel Fee of 33% of the
5 Settlement Fund, totaling 2,046,000 plus
6 applicable taxes and disbursements --
7

8 And I've added this.
9

10 -- in the amount of \$174,494.73, to be paid
11 out of the Settlement Fund, is approved for
12 work done on the common issues on behalf of
13 the Class from the commencement of the
14 proceeding to the settlement of the action.

15 11. The appointment of the Bruneau
16 Group as the Claims Administrator whose
17 responsibilities shall include but may not be
18 limited to administering the Distribution
19 Protocol; administering the Account and
20 Compensation Fund; accepting and maintaining
21 documents sent from Class Members, including
22 Claims Forms and other documents relating to
23 Claims Administration; determining the
24 validity of Claims in accordance with the
25 terms of the Settlement Agreement and
26 Distribution Protocol; and all other
27 responsibilities designated to the Claims
28 Administrator in the Settlement Agreement is
29 approved. The Claims Administrator will
30 provide Class Counsel and the Defendants with
31 any information or documents that Class
32 Counsel or the Defendants request concerning
33 the administration of the settlement details
34 of distribution.
35

36 12. The Claims Deadline shall be 180
37 days from the first publication of the Notice
38 of Settlement Approval. Class Counsel will
39 be at liberty to apply to the Court to extend
40 the Claims Deadline for any particular Class
41 Member so long as such application is made
42 within three months of the Claims Deadline
43 and Class Counsel provides notice of the --
44

45 There's a typo there.
46
47

78

Submissions for the plaintiffs by Mr. Rosenberg
re settlement approval

1 -- notice of the application to the
2 Defendants.

3 13. The determination of the validity
4 of Claims submitted by Class Members shall be
5 made by the Claims Administrator and the
6 Claims Officer. The decision shall be final
7 and binding and shall not be subject to any
8 further appeal.

9 14. Without affecting the finality of
10 this Order, this Court shall retain exclusive
11 continuing jurisdiction over the settlement
12 process and the parties thereto, including
13 the Plaintiffs, the Defendants, Class
14 Members, and the Claims Administrator, for
15 all matters relating to supervising,
16 administering, implementing, enforcing and
17 interpreting the Settlement Agreement and the
18 Claims and distribution process thereunder,
19 the enforcement of this Order, and all
20 proceedings related to the Settlement
21 Agreement, both before and after the approval
22 of the Settlement Agreement and the
23 settlement referred to therein becomes final
24 and is no longer subject to appeal. The
25 parties to the Settlement Agreement may apply
26 to this Court for further direction, if
27 necessary, in respect to the implementation
28 and administration of the Settlement
29 Agreement and the Distribution Protocol.
30 This action is otherwise dismissed and all
31 the claims of the class members as against
32 the Defendants relating to the Allegations
33 are extinguished upon payment of the
34 Settlement Fund to Rosenberg Kosakoski LLP.

35
36 So that's the form of the order we're seeking,
37 My Lord. And those are my submissions. Thank
38 you.

39 THE COURT: All right.

40 Mr. Sutton, anything to say here?

41 MR. SUTTON: We're happy with the ...

42 THE COURT: Okay. All right.

43
44
45
46
47

79
Reasons for judgment
Reporter's certification

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

(REASONS FOR JUDGMENT UNDER SEPARATE TRANSCRIPT)

THE CLERK: Order in chambers. Chambers is adjourned.

(CHAMBERS ADJOURNED AT 3:09 P.M.)

Reporter's Certification:

I, Christy L. Pratt, RCR, Official Reporter in the Province of British Columbia, Canada, BCSRA No. 535, do hereby certify:

That the proceedings were transcribed by me from an audio recording provided of recorded proceedings, and the same is a true and accurate and complete transcript of said recording to the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my name and seal this 1st day of August, 2017.

Christy L. Pratt, RCR
Official Reporter

CONTINGENCY FEE AGREEMENT

BETWEEN:

This is Exhibit 3 referred to in the *Affidavit of Fiona Singh*, affirmed before me this 11th day of September 2024

FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative **FIONA SINGH**
211 New Brighton Drive
Calgary, Alberta
T2Z 0E4

(“Representative Plaintiff”)


A Commissioner for Oaths in and for the Province of Alberta

-and-

JOANNE ELAINE IMLER
A Commissioner for Oaths in and for Alberta

MERCHANT LAW GROUP LLP
400, 2710 - 17th Avenue SE
Calgary, Alberta
T2A 0P6

(“Lawyers”)

My Commission Expires May 10, 2025
Appointee #0746666

1. The Representative Plaintiff retained the Lawyers, and the Lawyers represent the Representative Plaintiff, in class proceedings against GlaxoSmithKline entities (“Defendants”) regarding congenital malformations caused by the prescription of Paxil® and Paxil-CR® in Canada during pregnancy. The Representative Plaintiff agrees to pay costs, disbursements, fees, interest, and taxes as provided for herein.

2. fees: The Representative Plaintiff agrees to pay the Lawyers a fee if the Lawyers negotiate a Court-approved settlement of the class proceeding or obtain a judgment on common issues in favour of class members.

(a) If the class proceeding is settled, the Lawyers will be paid 33% of any settlement proceeds, plus the additional amounts provided for herein.

(b) If the class proceeding results in a judgment on common issues that is favourable to class members, the Lawyers will be paid


(i) 35% of any amounts awarded to class members, including the Representative Plaintiff, that the Lawyers represent in subsequent individual issues claims and

(ii) 20% of any amounts awarded to class members that the Lawyers do not represent in subsequent individual issues claims.

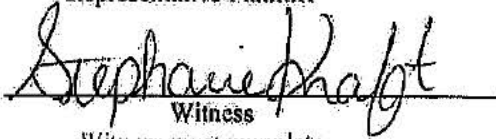
3. **costs:** The Lawyers will receive any costs that the Defendants become liable to pay to the Representative Plaintiff. Such costs could be in excess of \$500,000 for the certification motion and could exceed \$10,000,000 if the class proceeding advances to a common issues trial. The Representative 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.
4. **disbursements:** The Lawyers have paid expenses during the course of this matter, and will continue to do so, including filing fees and court costs, investigators' fees, expert witness fees, reporter fees and transcript costs, photocopying and printing, courier charges and postage, facsimile and long distance telephone charges, and travel. The Representative Plaintiff will not be responsible for any of these disbursements, even if the class proceeding is unsuccessful. The Lawyers will be reimbursed for such disbursements out of settlement or claims resolution proceeds in addition to the fee and costs payable above.
5. **us lawyers:** The Lawyers have consulted with American attorneys who have expertise in trying and settling Paxil® litigation in the United States. The Lawyers may pay reasonable consulting fees to such attorneys as a disbursement out of the fees to be paid to the Lawyers.
6. **outlay:** To date, the Lawyers have paid approximately \$250,000 as disbursements and have docketed approximately \$3,500,000 in fees at their ordinary hourly rates to investigate and prosecute Paxil® and Paxil CR® congenital malformation class actions in Canada.
7. **taxes:** The Representative Plaintiff will additionally pay any applicable governmental taxes on amounts to be paid to the Lawyers under this Agreement.
8. **other:** If the Representative Plaintiff received or subsequently receives communications from the Lawyers stating terms that are more favourable than the terms of this Agreement, the more favourable terms will apply and those communications and this Agreement will be read as one agreement.
9. **defendant pays:** In the alternative to payment of the amounts provided for under this Contingency Fee Agreement, the Lawyers may be paid any amounts that the Defendants agree to pay under a Court-approved settlement of the class proceeding.

10. **termination:** Within 5 days after a copy of this Contingency Fee Agreement is served, the Representative Plaintiff may terminate it by giving written notice to the Lawyers without incurring any liability for fees, but the Representative Plaintiff may be liable to reimburse the Lawyers for reasonable disbursements. At any other time, the Representative Plaintiff may terminate the Agreement by giving written notice of termination to the Lawyers and by paying or undertaking to pay the reasonable fees and disbursements determined by a review officer or judge of the Court of Queen's Bench of Alberta.

Dated: August 20, 2018

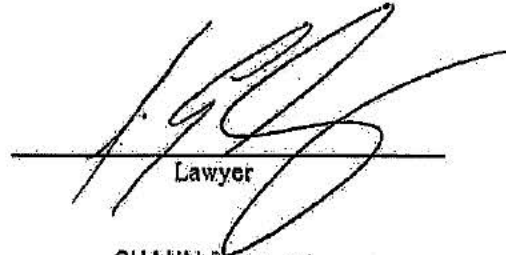


Representative Plaintiff



Witness

Witness must complete
an Affidavit of Execution



Lawyer

SHAUN FLANNERY
Barrister and Solicitor



1201-1914 Hamilton St.
Regina, Saskatchewan
S4P 3N6

This is Exhibit 4 referred to in the
Affidavit of Fiona Singh, affirmed before
me this 11th day of September 2024

Joanne Imler
A Commissioner for Oaths in and for
the Province of Alberta

JOANNE ELAINE IMLER

A Commissioner for Oaths
in and for Alberta

My Commission Expires May 10, 2025
Appointee #0746666

Casey R. Churko¹

cchurko@kotlaw.ca

Tel: (306) 540-2284

Fax: (639) 739-2223

March 15th, 2019

YK	Marguerite Fenske	Marguerite.Fenske@gov.yk.ca
BC	Mollie Margetts	AGHCCRAClassActions@gov.bc.ca
NWT	Karen Lajoie	Karen.Lajoie@gov.nt.ca
NU	Anne Marie Hedley	ahedley@gov.nu.ca
AB	Suzanne Maier	Suzanne.Maier@gov.ab.ca
SK	Cheryl Pepin	cpepin@health.gov.sk.ca
MB	Karen Dyck	karen.dyck@gov.mb.ca
ON	Anne Utley	anne.utley@ontario.ca
QC	France Drouin	france.drouin@ramq.gouv.qc.ca
NB	Mark Thompson	mark.thompson@gnb.ca
PEI	Paula MacFadyen	pmmacfadyen@gov.pei.ca
NS	Shauna Gray	shauna.gray@novascotia.ca
NFL	Chantelle MacDonald Newhook	chewhook@gov.nl.ca

Paxil® Congenital Malformations

I write to notify you of potential direct or subrogated claims for the recovery of health care costs from congenital malformations caused by the use of the selective serotonin reuptake inhibitor Paxil® (paroxetine) during the first trimester of pregnancy.

¹ A member of the Law Societies of Saskatchewan (LSS#4416) and Ontario (LSO#75828D).

There are at least two potential plaintiffs per injury – mother and child – each with a separate set of health care costs. In the Appendix, I include the names of KoT Law clients and their birth dates, provincial health care numbers, and malformations. The date of injury is generally the date of birth of the infant.

I also list the provinces where it is known that the claimants received health care services, however I advise that you do a search for each claimant in case they received health care in your province on a transient basis. Further, the malformations often require lifelong surgical procedures and other health care services, so please consider the potential claims for future health care costs in all provinces.

This introductory Appendix is summary. Please contact me to further discuss the claims or for additional information that will help identify the beneficiaries or calculate the cost of the health care services they received (and will continue to receive), including the names of physicians and hospitals they attended. I will provide an unredacted list of health care numbers in a subsequent e-mail.

Settlement discussions with GlaxoSmithKline Inc., the marketer of Paxil® in Canada, are ongoing, thus I ask that you devote any resources you can to this matter. On notice and with your consent, I propose to seek approval of any settlements on behalf of minor claimants, wherever currently or historically resident, in the Ontario Superior Court of Justice, near GlaxoSmithKline Inc.'s head office.

Thank you for your prompt attention to these claims.

KOT LAW

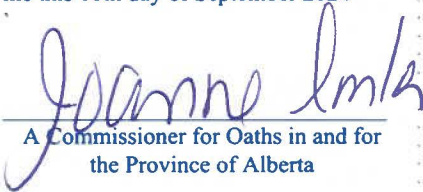
A handwritten signature in black ink, appearing to read 'Casey R. Churko', written over a light grey rectangular background.

Casey R. Churko
encl. (Appendix)

COSTS	MOTHER	DOB	Health #	CHILD	DOI	Health #	INJURY
QC							facial
ON							cleft lip and palate
AB							musculoskeletal
NF							
ON							heart
							ASD VSD BAV PDA
							urogenital
							undescended left testes
							gastrointestinal
							gastrochisis
NB							gastrointestinal
							omphalocele
							musculoskeletal
							clubfoot
							musculoskeletal
							craniosynostosis
ON							heart
							VSD
NL							gastrointestinal
							gastrochisis
BC							heart
							ASD VSD
NS ON							musculoskeletal
							micrognathia (small jaw)
MB							urogenital
							hypospadias
ON							musculoskeletal
							bilateral vertical talus
NS							musculoskeletal
							clubfoot
NB NS							neural tube
							spina bifida
NS							heart
							BAV
AB							facial
							cleft lip and palate
ON							musculoskeletal
							clubfoot
NS							musculoskeletal
							craniosynostosis
QC							facial
							cleft palate
ON							heart
							ASD VSD
AB							heart
							ASD VSD PDA
AB							heart
							ASD
							neural tube
							spina bifida
							urogenital
							hypospadias imperforate anus undescended testes
							musculoskeletal
							clubfoot congenital left hip dysplasia scoliosis
SK							heart
							ASD PDA transposition of great arteries
NS ON							musculoskeletal
							craniosynostosis
ON							neural tube
							spina bifida
BC							musculoskeletal
							craniosynostosis

JOANNE ELAINE IMLER
 A Commissioner for Oaths
 in and for Alberta
 My Commission Expires May 10, 2025
 Appointee #0746666

COMPARATIVE SSRI-PAROXETINE ASSOCIATIONS

Comparison of SSRI and Paroxetine Associations	This is Exhibit 5 referred to in the	i
A. OVERALL	Affidavit of Fiona Singh, affirmed before	i
1. Any	me this 11th day of September 2024	i
a. Major		ii
b. Minor	A Commissioner for Oaths in and for	iii
c. Other	the Province of Alberta	iii
B. ORGAN/SYSTEM		iv
1. Cardiac		iv
a. Severe		v
b. Other		v
2. Non-Cardiac		vi
a. Gastrointestinal		vi
b. Digestive		vi
c. Genital		vi
d. Musculoskeletal		vii
e. Nervous System		vii
f. Neural Tube Defects		viii
g. Respiratory		viii
h. Urinary		viii
C. SPECIFIC		x
1. Cardiac		x
a. Conotruncal		x
b. Septal		x
i. ASD/VSD		xii
ii. ASD		xii
iii. VSD		xiii
c. PVS		xiii
d. VOTO's		xiv
i. LVOTO		xiv
ii. RVOTO		xiv
e. TOF		xv
f. Miscellaneous		xv
2. Non-Cardiac		xvi
a. Ear, Eye, Face, Neck		xvi
i. Cleft Palate/Lip		xvi
ii. Esophageal Atresia		xvii
b. Gastrointestinal		xviii
i. Omphalocele		xviii
ii. Small Gut Atresia		xviii
iii. Pylorostenosis		xviii
iv. Abdominal Wall Defects		xviii
v. Gastroschisis		xix
c. Genital and Urinary		xx
i. Hypospadias		xx
ii. Anal Atresia		xx
iii. Renal Dysplasia		xx
d. Musculoskeletal		xxi
i. Craniosynostosis		xxi
ii. Limb Reduction Defects		xxi
iii. Clubfoot		xxii
iv. Other Limb Defects		xxii
e. Neural		xxii
i. Anencephaly		xxii

**Comparison of SSRI and Paroxetine Associations
Chronologically Arranged by Publication Date
(AdjOR where available)**

A. OVERALL

1. Any

	†	Study	SSRI	paroxetine	where
1.	1.	Kallen (2007)	congenital malformations 0.89 (0.79 1.07)	congenital malformations 1.03 (0.76 1.13)	Sweden
2.	2.	Alwan (2007)		18 birth defects pooled 1.6 (0.9 2.7)	United States
3.	1.	Kornum (2010)	any malformation 1.3 (1.1–1.6)	any malformation 1.1 (0.6 1.9)	Northern Denmark
4.	3.	Colvin (2011)	any birth defect 1.12 (0.94 1.32)	any birth defect 0.94 (0.63 1.39)	Western Australia
5.	1.	Nordeng (2012)	any malformation 1.22 (0.81 1.84)	any malformation 0.95 (0.30 3.02)	Norway
6.	1.	Furu (2015)	any birth defect <i>sibling controlled</i> 1.13 (1.05–1.20) 1.06 (0.91 1.24)	birth defects 1.16 (0.95 1.41)	Denmark, Finland, Iceland, Norway, Sweden
7.	1.	Jordan (2016)	all anomalies 1.09 (0.99 1.21)	all anomalies 1.17 (0.84 1.64)	Denmark / Norway / Wales

a. Major

		Study	SSRI	paroxetine	where
8.	1.	Kulin (1998)	major malformation 1.06 (0.43 2.62)		Canada / United States
9.	2.	Malm (2005)	major malformations 1.0 (0.6 1.7)	major malformations 0.4 (0.1 3.3)	Finland
10.	3.	Oberlander (2008)	major congenital anomalies 0.61 (-1.44 0.21)	major congenital anomalies 2.92 (2.04–4.16)	British Columbia
11.	4.	Pedersen (2009)	<u>one or more redemptions</u> major 1.07 (0.87 1.31) <u>two or more redemptions</u> major 1.21 (0.91 1.62) <u>more than one type of SSRI</u> major malformations 1.62 (0.83 3.16)	<u>one or more redemptions</u> major malformations 0.93 (0.55 1.55) <u>two or more prescriptions</u> major malformations 1.41 (0.79 2.51)	Denmark
12.	2.	Reis (2010)	relatively severe malformation 1.08 (0.97 1.21)	relatively severe malformation 1.20 (0.90 1.61)	Sweden
13.	5.	Colvin (2011)	any major birth defect 1.05 (0.87 1.27)	any major birth defect 0.99 (0.65 1.51)	Western Australia
14.	2.	Malm (2011)	overall major congenital anomalies 1.08 (0.96 1.22)	overall major congenital anomalies 1.22 (0.91 1.64)	Finland
15.	6.	Nordeng (2012)	major malformation 1.07 (0.60 1.91)	major malformation 1.70 (0.55 5.63)	Norway
16.	4.	Jimenez-Solem (2012)	major [3 month pauser 1.27 (0.91-1.78)] 1.33 (1.16–1.53)	major 1.25 (0.84 1.85)	Denmark
17.	2.	Kallen (2013)	relatively severe malformations 0.94 (0.87 1.01)	relatively severe malformations 1.11 (0.87 1.40)	Sweden
18.	7.	Ban (2014)	all MCAs combined all MCAs (vs. unmedicated depression) 1.01 (0.88 1.17) 0.93 (0.78 1.11)	all MCAs combined all MCAs (vs. unmedicated depression) 1.08 (0.77 1.50) 1.01 (0.71 1.44)	United Kingdom
19.	8.	Berard (2017)	major congenital malformations 1.07 (0.93 1.22)	major congenital malformations 1.24 (0.99 1.55)	Quebec

b. Minor

		Study	SSRI	paroxetine	where
20.	1.	Pedersen (2009)	<u>one or more redemptions</u> minor 0.98 (0.72 1.33) <u>two or more redemptions</u> minor 0.88 (0.54 1.41) <u>more than one type of SSRI</u> minor malformations 1.08 (0.34 3.38)	<u>one or more redemptions</u> minor malformations 1.14 (0.59 2.21) <u>two or more prescriptions</u> minor malformations 1.43 (0.64-3.22)	Denmark

c. Other

		Study	SSRI	paroxetine	where
21.	1.	Alwan (2007)		14 non cardiac birth defects 1.5 (0.9 2.7)	United States
22.	2.	Pedersen (2009)	<u>one or more redemptions</u> <u>two or more redemptions</u> <u>more than one type of SSRI</u> non-cardiac malformations 0.95 (0.35 2.57)	<u>one or more redemptions</u> <u>non-cardiac malformations</u> 1.00 (0.57 1.78) <u>two or more prescriptions</u> non-cardiac malformations 1.59 (0.85 2.99)	Denmark
23.	2.	Kornum (2010)	noncardiac malformations 1.2 (1.0–1.6)	noncardiac malformations 1.2 (0.6 2.2)	Northern Denmark
24.	3.	Colvin (2011)	other defects 1.05 (0.52 2.12)	other defects 0.62 (0.09 4.41)	Western Australia
25.	2.	Jimenez-Solem (2012)	other malformations and teratogenic syndromes 1.36 (0.68 2.74) 2.78 (0.67 11.6)		Denmark
26.	4.	Ban (2014)	other anomalies 1.30 (0.61 2.77)		United Kingdom

B. ORGAN/SYSTEM
1. Cardiac

		Study	SSRI	paroxetine	where
27.	1.	Kallen (2007)	any cardiac defect 0.97 (0.77 1.21)	any cardiac malformation 1.63 (1.05–2.53)	Sweden
28.	2.	Louik (2007)	any cardiac defect 1.2 (0.9 1.6)	any cardiac defects 1.4 (0.8 2.5)	United States
29.	3.	Oberlander (2008)	<u>cardiovascular congenital defects</u> * risk differences 0.21 (-0.14 0.56)	<u>cardiovascular congenital defects</u> * risk differences 0.70 (0.34 1.45)	British Columbia
30.	1.	Pedersen (2009)	<u>one or more redemptions</u> all 1.37 (0.96 1.96) <u>two or more redemptions</u> all 1.44 (0.86 2.40) <u>more than one type of SSRI</u> <u>cardiac malformations</u> 3.42 (1.40–8.34)	<u>one or more redemptions</u> cardiac malformations 0.72 (0.23 2.23) <u>two or more prescriptions</u> cardiac malformations 0.88 (0.22 3.55)	Denmark
31.	1.	Reis (2010)	any cardiovascular defect 0.99 (0.82 1.20)	any cardiovascular defect 1.66 (1.09–2.53)	Sweden
32.	1.	Kornum (2010)	cardiac malformations 1.7 (1.1–2.5)	cardiac malformations 0.5 (0.1 3.6)	Northern Denmark
33.	4.	Colvin (2011)	cardiovascular defects 1.60 (1.10–2.31)	cardiovascular defects 1.76 (0.83 3.72)	Western Australia
34.	1.	Nordeng (2012)	cardiovascular malformation 1.51 (0.67 3.43)		Norway
35.	1.	Jimenez-Solem (2012)	of the heart <i>3 month pauser</i> 1.85 (1.07-3.20) 2.01 (1.6–2.53)	of the heart 1.54 (0.77 3.1)	Denmark
36.	1.	Kallen (2013)	any cardiac defect 0.92 (0.81 1.05)	any cardiac defect 1.63 (1.17–2.27)	Sweden
37.	1.	Ban (2014)	heart heart (vs. unmedicated depression) 1.14 (0.89 1.45) 1.04 (0.76 1.41)	heart heart (vs. unmedicated depression) 1.78 (1.09–2.88) 1.67 (1.00–2.80)	United Kingdom
38.	5.	Huybrechts (2014)	any cardiac malformation 1.25 (1.13–1.38)	cardiac malformations 0.94 (0.73 1.21)	United States (46 States & Washington D.C.)
39.	1.	Knudsen (2014)	congenital heart defects 1.64 (0.89 3.00)		Denmark (Funen County)
40.	1.	Furu (2015)	any cardiac birth defects 1.15 (1.05–1.26)	any cardiac defects 1.30 (0.96 1.75)	Denmark, Finland, Iceland, Norway, Sweden
41.	1.	Wemakor (2015)	CHD 1.41 (1.07–1.86)	CHD 1.53 (0.91 2.58)	Europe (12 Countries)
42.	1.	Jordan (2016)	congenital heart defects 1.03 (0.86 1.24)	congenital heart defects 1.76 (1.09 2.85)	Denmark / Norway / Wales
43.	6.	Berard (2017)		cardiac malformations 1.45 (1.12–1.88)	Quebec

		Study	SSRI	paroxetine	where
44.	7.	Nembhard (2017)	CHD (genetics-dependant for SSRI users) 1.79 (1.14-2.80) to 7.95 (2.50-25.40)		United States

a. Severe

		Study	SSRI	paroxetine	where
45.	1.	Knudsen (2014)	severe CHD 4.03 (1.75-9.26)		Denmark (Funen County)
46.	2.	Wemakor (2015)	severe CHD 1.56 (1.02-2.39)	severe CHD 1.08 (0.44 2.63)	Europe (12 Countries)
47.	3.	Jordan (2016)	severe CHD 1.50 (1.06-2.11)	severe CHD 1.59 (0.51 4.95)	Denmark / Norway / Wales

b. Other

		Study	SSRI	paroxetine	where
48.	1.	Kallen (2007)	unspecified cardiac defect 1.04 (0.42 2.15)	unspecified cardiac defect 1.83 (0.22 6.63)	Sweden
49.	2.	Alwan (2007)		4 cardiac birth defects 1.7 (0.9 3.1)	United States
50.	3.	Colvin (2011)	other congenital anomaly of heart 1.77 (0.99 3.16)	other congenital anomaly of heart 0.69 (0.10 4.96)	Western Australia
51.	4.	Malm (2011)	all major cardiovascular anomalies 1.09 (0.90 1.32)	all major cardiovascular anomalies 1.09 (0.66 1.79)	Finland
52.	5.	Nordeng (2012)	cardiovascular malformation 1.51 (0.67 3.43)		Norway
53.	6.	Huybrechts (2014)	other cardiac malformation 1.34 (1.17-1.54)	other cardiac defect 1.10 (0.78 1.55)	United States (46 States & Washington D.C.)

**2. Non-Cardiac
a. Gastrointestinal**

		Study	SSRI	paroxetine	where
54.	1.	Pedersen (2009)	one or more redemptions gastrointestinal 1.13 (0.56 2.27)		Denmark
			two or more redemptions gastrointestinal 0.92 (0.29 2.84)		
55.	2.	Colvin (2011)	gastrointestinal defects 0.98 (0.59 1.65)	gastrointestinal defects 0.31 (0.04 2.20)	Western Australia

b. Digestive

		Study	SSRI	paroxetine	where
56.	1.	Malm (2011)	digestive system 0.87 (0.54 1.38)	digestive system 0.67 (0.17 2.69)	Finland
57.	2.	Jimenez-Solem (2012)	digestive system <i>3 month pauser</i> 1.8 (1.04–3.12) <i>0.75 (0.11 5.35)</i>	of the digestive system 2.09 (0.52 8.39)	Denmark
58.	3.	Ban (2014)	digestive system 1.43 (0.79 2.61)		United Kingdom
59.	4.	Wemakor (2015)	digestive system 1.13 (0.69 1.87)	digestive system 1.25 (0.54 2.90)	Europe (12 Countries)
60.	5.	Berard (2017)		digestive system 0.96 (0.54 1.71)	Quebec

c. Genital

		Study	SSRI	paroxetine	where
61.	1.	Pedersen (2009)	genital (hypospadias and undetermined sex) 0.78 (0.32 1.88)		Denmark
62.	2.	Colvin (2011)	urogenital defects 0.96 (0.69 1.34)	urogenital defects congenital anomaly of genital organs 1.14 (0.59 2.20) 1.20 (0.53 2.68)	Western Australia
63.	3.	Malm (2011)	urogenital 1.09 (0.80 1.50)	urogenital 1.51 (0.75 3.04)	Finland
64.	1.	Jimenez-Solem (2012)	of the external genital organs <i>3 month pauser</i> 1.55 (0.99 2.44) <i>0.89 (0.22 3.59)</i>	of the external genital organs 3.83 (1.71–8.57)	Denmark

		Study	SSRI	paroxetine	where		
65.	4.	Ban (2014)	genital system genital system (vs. unmedicated depression)	0.71 (0.46 1.08) 0.57 (0.35 0.92)	genital system genital system (vs. unmedicated depression)	0.97 (0.40 2.37) 0.81 (0.32 2.02)	United Kingdom
66.	5.	Nishigori (2016)	urogenital abnormality urogenital abnormality other	3.227 (1.460–7.134) 4.316 (1.906–9.774)			Japan
67.	6.	Berard (2017)		genital organs	0.79 (0.41 1.52)		Quebec

d. Musculoskeletal

		Study	SSRI	paroxetine	where		
68.	1.	Colvin (2011)	musculoskeletal defects	0.80 (0.53 1.20)	musculoskeletal defects certain musculoskeletal deformities	0.47 (0.15 1.46) 0.47 (0.12 1.89)	Western Australia
69.	2.	Malm (2011)	musculoskeletal (also including limb defects)	0.96 (0.75 1.23)	musculoskeletal (also including limb defects)	1.11 (0.61 2.02)	Finland
70.	3.	Jimenez-Solem (2012)	of the musculoskeletal system	1.29 (0.64 2.59)	of the musculoskeletal system	1.2 (0.17 8.55)	Denmark
71.	4.	Ban (2014)	musculoskeletal system	0.91 (0.44 1.88)	musculoskeletal system	0.56 (0.07 4.53)	United Kingdom
72.	5.	Berard (2017)		musculoskeletal system	1.01 (0.75 1.37)		Quebec

e. Nervous System

		Study	SSRI	paroxetine	where		
73.	1.	Kallen (2007)	any CNS malformation	0.85 (0.51 1.39)			Sweden
74.	2.	Colvin (2011)	nervous system defects	0.85 (0.40 1.80)			Western Australia
75.	3.	Malm (2011)	central nervous system	1.03 (0.68 1.57)	central nervous system	0.32 (0.05 2.27)	Finland
76.	4.	Jimenez-Solem (2012)	nervous system	1.13 (0.54 2.39)	nervous system	1.19 (0.17 8.45)	Denmark
77.	5.	Ban (2014)	nervous system	1.39 (0.82 2.34)			United Kingdom
78.	6.	Berard (2017)		nervous system	1.34 (0.74 2.42)		Quebec

f. Neural Tube Defects

		Study	SSRI	paroxetine	where
79.	1.	Kallen (2007)	neural tube defects 0.49 (0.06 1.78)		Sweden
80.	2.	Louik (2007)	neural-tube defects 0.6 (0.2 1.4)	neural tube defects 3.3 (1.1–10.4)	United States
81.	3.	Malm (2011)	neural tube defects† 1.85 (1.07–3.20)		Finland
82.	4.	Wemakor (2015)	neural tube (s,p,c) 0.90 (0.43 1.88)		Europe (12 Countries)
83.	5.	Reefhuis (2015)			United States
84.	4.	Jordan (2016)	neural tube defects 1.43 (0.89 2.30)		Denmark / Norway / Wales
85.	5.	Anderson (2020)	any neural tube defect 0.99 (0.74-1.33)	any neural tube defect 1.40 (0.70-2.80)	United States

g. Respiratory

		Study	SSRI	paroxetine	where
86.	1.	Kallen (2007)	diaphragmatic hernia 1.27 (0.15 4.57)*		Sweden
87.	2.	Louik (2007)	diaphragmatic herina 1.8 (0.7 4.2)	diaphragmatic hernia 1.2 (0.2 8.9)	United States
88.	3.	Alwan (2007)	diaphragmatic hernia 1.6 (0.8 3.3)		United States
89.	4.	Colvin (2011)	respiratory system defects 2.09 (0.85 5.15)	respiratory system defects 3.99 (0.98 16.26)	Western Australia
90.	5.	Malm (2011)	respiratory tract 0.61 (0.28 1.30)	respiratory tract 0.67 (0.09 4.78)	Finland
91.	6.	Jimenez-Solem (2012)	respiratory system 1.41 (0.67 2.98)	of the respiratory system 1.52 (0.21 10.8)	Denmark
92.	7.	Ban (2014)	respiratory system 1.56 (0.77 3.15)	respiratory system 1.25 (0.18 8.96)	United Kingdom
93.	8.	Wemakor (2015)	respiratory systems* 1.08 (0.50 2.35)		Europe (12 Countries)
94.	9.	Berard (2017)		respiratory system 0.95 (0.41 2.21)	Quebec

h. Urinary

		Study	SSRI	paroxetine	where
95.	1.	Colvin (2011)	urogenital defects 0.96 (0.69 1.34)	urogenital defects congenital anomaly of urinary system 1.14 (0.59 2.20) 0.96 (0.31 3.00)	Western Australia

		Study	SSRI	paroxetine	where
96.	2.	Malm (2011)	urogenital 1.09 (0.80 1.50)	urogenital 1.51 (0.75 3.04)	Finland
97.	3.	Jimenez-Solem (2012)	of the internal urinary system 0.84 (0.45 1.57)		Denmark
98.	4.	Ban (2014)	urinary system 1.20 (0.79 1.82)	urinary system 0.99 (0.32 3.10)	United Kingdom
99.	5.	Nishigori (2016)	urogenital abnormality urogenital abnormality other 3.23 (1.46–7.13) 4.32 (1.91–9.77)		Japan
100.	6.	Berard (2017)		urinary system 0.47 (0.19 1.14)	Quebec

C. SPECIFIC
1. Cardiac
a. Conotruncal

		Study	SSRI	paroxetine	where
101.	1.	Louik (2007)	conotruncal defects 1.2 (0.6 2.1)	conotruncal defects 1.7 (0.6 5.1)	United States
102.	2.	Alwan (2007)	conotruncal heart defects 1.3 (0.8 2.1)	conotruncal heart defects 1.6 (0.7 4.0)	United States
103.	3.	Pedersen (2009)	one or more redemptions conotruncal heart defects 0.50 (0.07 3.58)		Denmark
104.	3.	Malm (2011)	conotruncal heart defects 0.46 (0.14 1.46)	conotruncal heart defects 2.46 (0.60 10.03)	Finland
105.	3.	Furu (2015)	conotruncal and major arch anomalies 0.95 (0.67 1.35)	conotruncal and major arch anomalies 2.27 (1.01–5.07)	Denmark, Finland, Iceland, Norway, Sweden
106.	4.	Anderson (2020)	conotruncal defects 1.41 (1.12–1.77)	conotruncal defects 1.40 (0.75–2.61)	United States

b. Septal

		Study	SSRI	paroxetine	where
107.	1.	Louik (2007)	septal defects 1.2 (0.8 1.8)	septal defects 0.8 (0.3 2.2)	United States
108.	2.	Alwan (2007)	septal heart defects 1.1 (0.7 1.6)	septal heart defects 1.7 (0.8 3.5)	United States
109.	3.	Pedersen (2009)	one or more redemptions septal heart defects 1.83 (1.22–2.75) two or more redemptions septal heart defects 1.99 (1.13–3.53) two year follow up septal heart malformation 1.70 (1.13–2.55) more than one type of SSRI septal heart defects 4.70 (1.74–12.7)	one or more redemptions septal 0.41 (0.06 2.91) two or more prescriptions septal heart defects 0.76 (0.11 5.43)	Denmark
110.	3.	Kornum (2010)	septal heart defects 1.4 (0.8 2.3)	septal heart defects 0.7 (0.1 4.6)	Northern Denmark
111.	3.	Jimenez-Solem (2012)	septal defects 3 month pauser 2.56 (1.41–4.64) 2.04 (1.53–2.72)	septal defects 1.89 (0.85 4.23) atrial septal defects 3.51 (1.57–7.87) ventricular septal defects 1.13 (0.28 4.54)	Denmark
112.	4.	Kallen (2013)	septum defects 0.94 (0.80 1.14)	septum defects 1.67 (1.12–2.50)	Sweden
113.	5.	Wemakor (2015)	septal defects 1.36 (0.99 1.87)	septal defects 1.92 (1.09–3.37)	Europe (12 Countries)

i. ASD/VSD

		Study	SSRI	paroxetine	where
114.	1.	Kallen (2007)	VSD and/or ASD 1.10 (0.84 1.44)	VSD and/or ASD 1.81 (0.96 3.09)	Sweden
115.	1.	Furu (2015)	atrial/ventricular septal defects 1.17 (1.05 1.31)	atrial and ventricular septal defect 1.37 (0.96 1.95)	Denmark, Finland, Iceland, Norway, Sweden
116.	2.	Berard (2017)		ventricular/atrial septal defect 1.39 (1.00–1.93)	Quebec

ii. ASD

		Study	SSRI	paroxetine	where
117.	1.	Alwan (2007)	atrial septal defect ostium secundum atrial septal defect not otherwise specified 1.1 (0.6 1.8) 1.0 (0.4 2.5)		United States
118.	2.	Colvin (2011)	ostium secundum type ASD 2.73 (1.26–5.89)	ostium secundum type ASD 3.68 (0.90 14.99)	Western Australia
119.	3.	Malm (2011)	atrial septal defects 1.04 (0.64 1.69)	atrial septal defects 1.28 (0.41 4.00)	Finland
120.	3.	Jimenez-Solem (2012)	atrial septal defects 3 month pauser 2.6 (1.84–3.68) 2.61 (1.17–5.84)	atrial septal defects 3.51 (1.57–7.87)	Denmark
121.	3.	Knudsen (2014)	ASD 2.82 (0.88 9.04)		Denmark (Funen County)
122.	3.	Furu (2015)	atrioventricular septal defects 1.22 (0.77 1.91)		Denmark, Finland, Iceland, Norway, Sweden
123.	3.	Wemakor (2015)	atrial septal defect (ASD) ASD without severe CHD 1.71 (1.09–2.68) 1.54 (0.94 2.52)	atrial septal defect (ASD) ASD without severe CHD 1.38 (0.52 3.69) 1.65 (0.62 4.42)	Europe (12 Countries)
124.	4.	Reefhuis (2015)		atrial septal defects 1.8 (1.1–3.0)	United States

iii. VSD

		Study	SSRI	paroxetine	where
125.	1.	Alwan (2007)	perimembranous ventricular septal defect 1.2 (0.7 1.9)		United States
126.	2.	Colvin (2011)	bulbus cordis of cardiac septal closure VSD 1.23 (0.71 2.15) 0.99 (0.44 2.15)	bulbus cordis of cardiac septal closure VSD 1.80 (0.67 4.83) 1.56 (0.39 6.30)	Western Australia
127.	3.	Malm (2011)	ventricular septal defects† 1.20 (0.96 1.50)	ventricular septal defects† 1.01 (0.54 1.88)	Finland
128.	4.	Jimenez-Solem (2012)	ventricular septal defects 3 month pauser 3.74 (1.93-7.23) 1.62 (1.05–2.5)	ventricular septal defects 1.13 (0.28 4.54)	Denmark
129.	5.	Huybrechts (2014)	VSD 1.20 (1.04–1.39)	VSD 0.73 (0.49 1.09)	United States (46 States & Washington D.C.)
130.	4.	Knudsen (2014)	VSD 0.94 (0.35 2.53)		Denmark (Funen County)
131.	6.	Wemakor (2015)	ventricular septal defect VSD without severe CHD 1.12 (0.77 1.61) 1.12 (0.76 1.65)	ventricular septal defect 1.90 (1.04–3.48) VSD without severe CHD 2.12 (1.15–3.92)	Europe (12 Countries)
132.	7.	Reefhuis (2015)			United States
133.	8.	Jordan (2016)	ventricular septal defect 0.93 (0.7 1.22)	ventricular septal defect 2.61 (1.47 4.62)	Denmark / Norway / Wales

c. PVS

		Study	SSRI	paroxetine	where
134.	1.	Alwan (2007)	pulmonary-valve stenosis 1.3 (0.7 2.4)		United States
135.	2.	Knudsen (2014)	pulmonary valve stenosis 3.47 (0.83 14.50)		Denmark (Funen County)
136.	3.	Jordan (2016)	pulmonary valve stenosis 1.10 (0.58 2.09)		Denmark / Norway / Wales

d. VOTO's
i. LVOTO

		Study	SSRI	paroxetine	where
137.	1.	Louik (2007)	LVOTO 1.6 (0.9 2.9)	LVOTO 0.5 (0.1 3.9)	United States
138.	2.	Alwan (2007)	LVOTO defects 0.9 (0.5 1.7)	LVOTO 1.3 (0.4 3.8)	United States
139.	3.	Pedersen (2009)	<u>one or more redemptions</u> LVOTO 0.69 (0.10 4.93)		Denmark
140.	3.	Malm (2011)	left ventricular outflow tract defects 0.93 (0.40 2.13)		Finland
141.	3.	Furu (2015)	LVOTO 1.09 (0.80 1.49)		Denmark, Finland, Iceland, Norway, Sweden
142.	4.	Anderson (2020)	LVOTO 1.33 (1.04-1.69)	LVOTO 1.07 (0.52-2.21)	United States

ii. RVOTO

		Study	SSRI	paroxetine	where
143.	1.	Louik (2007)	RVOTO 2.0 (1.1–3.6)	RVOTO 3.3 (1.3–8.8)	United States
144.	2.	Alwan (2007)	RVOTO defects 1.3 (0.7 2.2)	RVOTO 2.5 (1.0--6.0)	United States
145.	3.	Pedersen (2009)	<u>one or more redemptions</u> RVOTO 1.67 (0.53 5.23)		Denmark
146.	3.	Malm (2011)	right ventricular outflow tract defects 1.74 (0.85 3.57)	right ventricular outflow tract defects 4.68 (1.48–14.74)	Finland
147.	4.	Huybrechts (2014)	RVOTO 1.11 (0.89 1.38)	RVOTO 1.07 (0.59 1.93)	United States (46 States & Washington D.C.)
148.	3.	Furu (2015)	RVOTO <i>sibling controlled</i> 0.56 (0.21 1.49)	RVOTO 2.54 (1.31–4.90)	Denmark, Finland, Iceland, Norway, Sweden
149.	5.	Anderson (2020)	RVOTO 1.71 (1.36-2.16)	pulmonary valve stenosis 2.10 (1.10-4.02)	United States

e. TOF

		Study	SSRI	paroxetine	where
150.	1.	Alwan (2007)	tetralogy of fallot 1.2 (0.6 2.5)		United States
151.	2.	Wemakor (2015)	tetralogy of fallot 3.16 (1.52–6.58)		Europe (12 Countries)
152.	3.	Anderson (2020)	tetralogy of fallot 1.62 (1.20-2.19)	tetralogy of fallot 1.49 (0.63-3.51)	United States

f. Miscellaneous

		Study	SSRI	paroxetine	where
153.	1.	Alwan (2007)	transposition of the great arteries hypoplastic left heart coarctation of aorta 1.4 (0.7 3.0) 0.6 (0.2 2.1) 0.8 (0.3 2.0)		United States
154.	2.	Colvin (2011)	anomalies of pulmonary valve hypoplastic left heart syndrome other anomaly of circulatory system patent ductus arteriosus adjusted for gestational age anomalies of pulmonary artery other of peripheral vascular system 1.85 (0.75 4.54) 2.26 (0.82 6.22) 2.91 (1.82–4.65) 3.48 (1.87–6.47) 3.07 (1.65–5.73) 5.61 (1.95–16.13) 4.38 (1.55–12.40)	anomalies of pulmonary valve other anomaly of circulatory system patent ductus arteriosus adjusted for gestational age anomalies of pulmonary artery other of peripheral vascular system 1.74 (0.24 12.51) 3.62 (1.49–8.81) 1.49 (0.21 10.69) 1.28 (0.18 9.17) 19.94 (6.00–66.22) 10.37 (2.48–43.35)	Western Australia
155.	3.	Malm (2011)	transposition of great arteries 0.60 (0.15 2.52)		Finland
156.	3.	Furu (2015)	situs anomalies and looping defects 1.00 (0.52 1.90)		Denmark, Finland, Iceland, Norway, Sweden
157.	3.	Wemakor (2015)	Ebstein's anomaly 8.23 (2.92–23.16)	Ebstein's anomaly 6.43 (0.85 48.54)	Europe (12 Countries)

2. Non-Cardiac
a. Ear, Eye, Face, Neck

		Study	SSRI	paroxetine	where	
158.	1.	Kallen (2007)	severe ear malformations eye malformations	0.54 (0.27 1.07) 0.93 (0.82 2.07)	Sweden	
159.	2.	Colvin (2011)	CA of ear, face, and neck CA of eye	1.25 (0.62 2.54) 0.95 (0.23 3.86)	Western Australia	
160.	3.	Jimenez-Solem (2012)	of the eye	1.43 (0.68 3.01)	of the ear, face and neck 8.32 (1.16–59.81)	Denmark
161.	4.	Ban (2014)	eye	0.82 (0.36 1.86)	eye 0.83 (0.12 5.76)	United Kingdom
162.	5.	Wemakor (2015)	ear, face and neck eye	0.71 (0.22 2.25) 1.13 (0.52 2.47)	eye (p) 1.37 (0.41 4.59)	Europe (12 Countries)
163.	6.	Berard (2017)		eye, ear, face and neck	0.75 (0.30 1.86)	Quebec

i. Cleft Palate/Lip

		Study	SSRI	paroxetine	where		
164.	1.	Kallen (2007)	orofacial cleft	0.80 (0.46 1.39)	Sweden		
165.	2.	Louik (2007)	cleft lip with or without cleft palate cleft palate alone	1.5 (0.9 2.5) 0.9 (0.4 2.0)	cleft lip with or without cleft palate cleft palate alone	1.2 (0.4 3.6) 1.5 (0.4 5.3)	United States
166.	3.	Alwan (2007)	cleft lip with or without cleft palate cleft palate alone	0.8 (0.5 1.4) 0.8 (0.4 1.5)	cleft lip with or without palate cleft palate alone	1.3 (0.5 3.1) 1.7 (0.6-4.8)	United States
167.	4.	Pedersen (2009)	one or more redemptions cleft lip with or without cleft palate cleft palate alone two or more redemptions cleft lip with or without cleft palate cleft palate alone	1.2 (0.5 2.9) 1.2 (0.3 4.92) 1.61 (0.6 4.3) 2.65 (0.66 10.68)		Denmark	
168.	5.	Malm (2011)	cleft lip with or without cleft palate cleft palate	0.62 (0.25 1.51) 1.18 (0.67 2.08)	cleft lip with or without cleft palate cleft palate	0.91 (0.13 6.52) 2.65 (0.98 7.14)	Finland
169.	4.	Jimenez-Solem (2012)	oro-facial clefts	1.02 (0.46 2.27)		Denmark	
170.	6.	Ban (2014)	orofacial cleft	1.06 (0.58 1.93)		United Kingdom	

		Study	SSRI	paroxetine	where
171.	7.	Reefhuis (2015)		cleft palate 1.3 (0.7 2.3)	United States
172.	8.	Jordan (2016)	oro-facial clefts 1.05 (0.68 1.60)		Denmark / Norway / Wales

ii. Esophageal Atresia

		Study	SSRI	paroxetine	where
173.	1.	Kallen (2007)	esophageal atresia 1.25 (0.31 4.98)		Sweden
174.	2.	Alwan (2007)	esophageal atresia 1.3 (0.6 2.7)		United States
175.	3.	Nishigori (2016)	esophageal atresia 25.466 (3.413–189.983)		Japan

b. Gastrointestinal
i. Omphalocele

		Study	SSRI	paroxetine	where
176.	1.	Alwan (2007)	omphalocele 2.8 (1.3–5.7)	omphalocele 8.1 (3.1–20.8)	United States
177.	2.	Malm (2011)		omphalocele 1.83 (0.25–13.25)	Finland
178.	2.	Furu (2015)	omphalocele 0.92 (0.58–1.44)		Denmark, Finland, Iceland, Norway, Sweden
179.	3.	Reefhuis (2015)		omphalocele 3.5 (1.3–8.0)	United States

ii. Small Gut Atresia

		Study	SSRI	paroxetine	where
180.	1.	Kallen (2007)	small gut atresia 1.63 (0.44–4.18)		Sweden
181.	2.	Nishigori (2016)	small intestine atresia 40.020 (5.234–306.028)		Japan

iii. Pylorostenosis

		Study	SSRI	paroxetine	where
182.	1.	Kallen (2007)	pylorostenosis 1.55 (0.76–3.14)		Sweden
183.	2.	Louik (2007)	pyloric stenosis 1.1 (0.6–1.8)	pyloric stenosis 0.7 (0.2–2.6)	United States
184.	3.	Colvin (2011)			Western Australia

iv. Abdominal Wall Defects

		Study	SSRI	paroxetine	where
185.	1.	Kallen (2007)	abdominal wall defect 1.16 (0.24–3.40)		Sweden
186.	2.	Jimenez-Solem (2012)	abdominal wall defects 1.04 (0.14–7.44)		Denmark
187.	3.	Ban (2014)	abdominal wall 1.41 (0.43–4.59)		United Kingdom
188.	4.	Nishigori (2016)	abdominal abnormality 2.374 (0.998–5.650) abdominal abnormality other 2.850 (1.055–7.701)		Japan
189.	5.	Jordan (2016)	abdominal wall defects 1.92 (1.13–3.24)		Denmark / Norway / Wales

v. Gastroschisis

		Study	SSRI	paroxetine	where
190.	1.	Alwan (2007)	gastroschisis 1.3 (0.6 2.6)	gastroschisis 2.9 (1.0–8.4)	United States
191.	2.	Furu (2015)	gastroschisis 1.65 (0.87 3.15)		Denmark, Finland, Iceland, Norway, Sweden
192.	2.	Wemakor (2015)			Europe (12 Countries)
193.	3.	Reefhuis (2015)		gastroschisis 2.5 (1.2–4.8)	United States
194.	2.	Jordan (2016)	gastroschisis 1.92 (0.97 3.78)		Denmark / Norway / Wales
195.	3.	Anderson (2020)	gastroschisis 1.28 (0.92-1.77)	gastroschisis 2.91 (1.56-5.44)	United States

**c. Genital and Urinary
i. Hypospadias**

		Study	SSRI	paroxetine	where
196.	1.	Kallen (2007)	hypospadias 1.18 (0.80 1.75)		Sweden
197.	2.	Louik (2007)	hypospadias 1.1 (0.7 1.9)	hypospadias 1.0 (0.3 3.3)	United States
198.	3.	Alwan (2007)	hypospadias, 2nd or 3rd degree 0.7 (0.4 1.4)	hypospadias, 2nd or 3rd degree 0.6 (0.2 2.4)	United States
199.	1.	Reis (2010)	hypospadias 1.30 (0.94 1.80)	hypospadias 2.45 (1.12–4.64)	Sweden
200.	1.	Kallen (2013)	hypospadias 0.94 (0.73 1.21)	hypospadias 1.69 (0.81 3.12)	Sweden
201.	1.	Furu (2015)	hypospadias 0.99 (0.79 1.25)		Denmark, Finland, Iceland, Norway, Sweden
202.	1.	Wemakor (2015)	hypospadias (p) 1.34 (0.86 2.09)	hypospadias (p) 1.34 (0.58 3.09)	Europe (12 Countries)
203.	4.	Reefhuis (2015)		hypospadias 1.1 (0.6 1.9)	United States
204.	1.	Jordan (2016)	hypospadias 1.15 (0.82 1.61)	hypospadias 1.52 (0.57 4.06)	Denmark / Norway / Wales

ii. Anal Atresia

		Study	SSRI	paroxetine	where
205.	1.	Louik (2007)	anal atresia 1.9 (0.8 4.3)	anal atresia 1.0 (0.1 7.8)	United States
206.	2.	Alwan (2007)	anorectal atresia 0.7 (0.3 1.8)		United States
207.	3.	Furu (2015)	anal atresia 1.43 (0.88 2.32)		Denmark, Finland, Iceland, Norway, Sweden
208.	3.	Wemakor (2015)	ano–rectal atresia and stenosis 2.46 (1.06–5.68)	ano rectal atresia and stenosis 2.82 (0.66 11.96)	Europe (12 Countries)
209.	3.	Jordan (2016)	ano-rectal atresia and stenosis 1.85 (0.86 3.96)		Denmark / Norway / Wales

iii. Renal Dysplasia

		Study	SSRI	paroxetine	where
210.	1.	Wemakor (2015)	renal dysplasia (s) 3.01 (1.61–5.61)	renal dysplasia (s) 1.62 (0.38 6.95)	Europe (12 Countries)
211.	1.	Jordan (2016)	renal dysplasia 1.57 (0.83 2.98)		Denmark / Norway / Wales

d. Musculoskeletal
i. Craniosynostosis

		Study	SSRI	paroxetine	where
212.	1.	Kallen (2007)	craniosynostosis 1.53 (0.56 3.33)		Sweden
213.	2.	Louik (2007)	craniosynostosis 0.8 (0.2 3.5)	craniosynostosis 1.7 (0.2 14.4)	United States
214.	3.	Alwan (2007)	craniosynostosis 2.5 (1.5–4.0)	craniosynostosis 2.3 (0.8-6.4)	United States
215.	1.	Pedersen (2009)	<u>one or more redemptions</u> craniosynostosis 0.89 (0.22 3.56) <u>two or more redemptions</u> craniosynostosis 0.96 (0.13 6.83)		Denmark
216.	1.	Malm (2011)	craniocynostosis 1.53 (0.61 3.87)	craniocynostosis 2.16 (0.30 15.64)	Finland
217.	1.	Furu (2015)	craniosynostosis 2.11 (1.01–4.39)		Denmark, Finland, Iceland, Norway, Sweden
218.	1.	Wemakor (2015)	craniosynostosis (s) 2.48 (0.99 6.22)		Europe (12 Countries)
219.	1.	Jordan (2016)	craniosynostosis 0.81 (0.3 2.21)		Denmark / Norway / Wales
220.	4.	Berard (2017)		craniosynostosis 1.53 (0.72 3.25)	Quebec
221.	5.	Anderson (2020)	craniosynostosis 1.77 (1.39-2.26)	craniosynostosis 1.61 (0.80-3.23)	United States

ii. Limb Reduction Defects

		Study	SSRI	paroxetine	where
222.	1.	Kallen (2007)	limb-reduction defects 0.44 (0.05 1.59)		Sweden
223.	2.	Louik (2007)	limb-reduction defects 1.7 (0.9 3.4)	limb-reduction defects 1.0 (0.1 8.3)	United States
224.	1.	Furu (2015)	limb reduction 0.97 (0.59 1.62)		Denmark, Finland, Iceland, Norway, Sweden
225.	1.	Wemakor (2015)	limb reductions 1.15(0.50 2.65)	limb reductions 1.86 (0.56 6.17)	Europe (12 Countries)
226.	1.	Jordan (2016)	limb reduction 0.81 (0.36 1.82)		Denmark / Norway / Wales

iii. Clubfoot

		Study	SSRI	paroxetine	where
227.	1.	Louik (2007)	clubfoot 2.2 (1.4–3.6)		United States
228.	2.	Colvin (2011)		talipes 1.79 (0.44 7.23)	Western Australia
229.	3.	Furu (2015)	clubfoot 1.34 (1.05–1.71)		Denmark, Finland, Iceland, Norway, Sweden
230.	3.	Wemakor (2015)	clubfoot (s,p) 2.41 (1.59–3.65)	clubfoot (s,p) 2.99 (1.44–6.21)	Europe (12 Countries)
231.	3.	Jordan (2016)	talipes equinovarus / Clubfoot 1.20 (0.79 1.80)		Denmark / Norway / Wales

iv. Other Limb Defects

		Study	SSRI	paroxetine	where
232.	1.	Jimenez-Solem (2012)	of the limbs 3 month pauser 0.93 (0.71 1.23) 1.37 (0.80 2.32)	of the limbs 0.91 (0.43 1.92)	Denmark
233.	2.	Ban (2014)	limb limb (vs. unmedicated depression) 0.88 (0.62 1.25) 0.82 (0.54 1.25)	limb limb (vs. unmedicated depression) 0.92 (0.41 2.06) 0.94 (0.41 2.15)	United Kingdom
234.	3.	Nishigori (2016)	upper limb abnormality 4.466 (1.102–18.089)		Japan
235.	4.	Anderson (2020)	any limb deficiency 1.25 (0.90-1.73)	any limb deficiency 1.59 (0.71-3.54)	United States

e. Neural
i. Anencephaly

		Study	SSRI	paroxetine	where
236.	1.	Alwan (2007)	anencephaly 2.4 (1.1–5.1)	anencephaly 5.1 (1.7-15.3)	United States
237.	2.	Wemakor (2015)	anencephaly(s) 0.89 (0.28 2.84)		Europe (12 Countries)
238.	3.	Reefhuis (2015)		anencephaly 3.2 (1.6–6.2)	United States
239.	3.	Anderson (2020)	anencephaly and craniorachischisis 1.24 (0.77-1.99)	anencephaly and craniorachischisis 3.43 (0.99-11.82)	United States



JOANNE ELAINE IMLER
 A Commissioner for Oaths
 in and for Alberta
 My Commission Expires May 10, 2025
 Appointee #0746666

Borden Ladner Gervais LLP
 Lawyers | Patent & Trade-mark Agents
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West
 Toronto, ON, Canada M5H 4E3
 T 416.367.6000 F 416.367.6749
 blg.com

Napoli Shkolnik Canada
 1201-1914 Hamilton St.
 Regina, SK S4P 3N6

This is Exhibit 6 referred to in the
Affidavit of Fiona Singh, affirmed before
 me this 11th day of September 2024

August 29, 2022

Attention: Casey Churko


 A Commissioner for Oaths in and for
 the Province of Alberta

Invoice # 698148528
 Page 1

Norton Rose Fulbright Canada
 222 Bay Street, Suite 3000
 Toronto ON M5K 1E7

Attention: Randy Sutton

Re: Singh - GlaxoSmithKline Mediation

File No: 031345/000165

PROFESSIONAL SERVICES rendered to August 26, 2022 in connection with the above matter as described in the attached.

Preparing for mediation including reviewing mediation documents; preparing for and attendance at mediation; reviewing Plaintiffs' proposal; forwarding proposal to Defendants and to all other matters related to herein:

1 day @ \$7,500
 6.3 Hours @ \$875 per hour

Fees	\$ 13,012.50
Disbursements and Other Charges	0.00
HST on Fees and Taxable Disbursements and Other Charges	1,691.63
Total this Invoice	<u>14,704.13</u>
Less Funds Applied from Trust	<u>(11,841.16)</u>
TOTAL BALANCE DUE	<u>CAD \$ 2,862.97</u>



Borden Ladner Gervais LLP
 Lawyers | Patent & Trade-mark Agents
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West
 Toronto, ON, Canada M5H 4E3
 T 416.367.6000 F 416.367.6749
 blg.com

Napoli Shkolnik Canada
 Norton Rose Fulbright Canada
 Re: Singh - GlaxoSmithKline Mediation

August 29, 2022
 Invoice # 698148528
 File No: 031345/000165
 Page 2

Payor Summary	<u>Fees</u>	<u>Disb</u>	<u>Taxes</u>	<u>Less Trust</u>	<u>Total</u>
Napoli Shkolnik Canada	\$ 6,506.25	\$ 0.00	\$ 845.81	(5,841.16)	\$ 1,510.90
Norton Rose Fulbright Canada	6,506.25	0.00	845.82	(6,000.00)	1,352.07

THIS IS OUR ACCOUNT - E. & O.E.

BORDEN LADNER GERVAIS LLP

Borden Ladner Gervais LLP

For: Dennis R. O'Connor



Borden Ladner Gervais LLP
 Lawyers | Patent & Trade-mark Agents
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West
 Toronto, ON, Canada M5H 4E3
 T 416.367.6000 F 416.367.6749
 blg.com

Napoli Shkolnik Canada
 1201-1914 Hamilton St.
 Regina, SK S4P 3N6

November 4, 2022

Attention: Casey Churko

Invoice # 698172608

Page 1

Norton Rose Fulbright Canada
 222 Bay Street, Suite 3000
 Toronto, ON M5K 1E7

Attention: Randy Sutton

Re: Singh - GlaxoSmithKline Mediation

File No: 031345/000165

PROFESSIONAL SERVICES rendered to October 31, 2022 in connection with the above matter as described below.

Preparing for and attending conference calls with counsel for Defendants and counsel for Plaintiffs; reviewing emails from counsel for Defendants and Plaintiffs; preparing emails to counsel for Plaintiffs and Defendants; and to all other matters related to herein:
 4.8 Hours @ \$875 per hour

Fees	\$ 4,200.00
Disbursements and Other Charges	0.00
HST on Fees and Taxable Disbursements and Other Charges	546.00
Total this Invoice	<u>CAD \$ 4,746.00</u>

Payor Summary	<u>Fees</u>	<u>Disb</u>	<u>Taxes</u>	<u>Total</u>
Napoli Shkolnik Canada	\$ 2,100.00	\$ 0.00	\$ 273.00	\$ 2,373.00
Norton Rose Fulbright Canada	2,100.00	0.00	273.00	2,373.00

THIS IS OUR ACCOUNT - E. & O.E.

BORDEN LADNER GERVAIS LLP

Borden Ladner Gervais LLP

For: Dennis R. O'Connor



Borden Ladner Gervais LLP
 Lawyers | Patent & Trade-mark Agents
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West
 Toronto, ON, Canada M5H 4E3
 T 416.367.6000 F 416.367.6749
 blg.com

Napoli Shkolnik Canada
 1201-1914 Hamilton St.
 Regina, SK S4P 3N6

November 4, 2022
 Invoice # 698172608
 Page 2

Norton Rose Fulbright Canada
 222 Bay Street, Suite 3000
 Toronto ON M5K 1E7

Re: Singh - GlaxoSmithKline Mediation

File No: 031345/000165

REMITTANCE COPY

Fees	\$ 4,200.00
Disbursements and Other Charges	0.00
HST on Fees and Taxable Disbursements and Other Charges	546.00
	<hr/>
Total this Invoice	<u>CAD \$ 4,746.00</u>

Payor Summary	<u>Fees</u>	<u>Disb</u>	<u>Taxes</u>	<u>Total</u>
Napoli Shkolnik Canada	\$ 2,100.00	\$ 0.00	\$ 273.00	\$ 2,373.00
Norton Rose Fulbright Canada	2,100.00	0.00	273.00	2,373.00

PLEASE REFER TO PAYMENT OPTIONS PAGE FOR REMITTANCE INFORMATION.

JOANNE ELAINE IMLERA Commissioner for Oaths
in and for AlbertaMy Commission Expires May 10, 2025
Appointee #0746666**COURT OF APPEAL OF ALBERTA****Form AP-1**
[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: **2201-0305AC**

TRIAL COURT FILE NUMBER: **1201-12838**

REGISTRY OFFICE: **CALGARY**

PLAINTIFFS/APPLICANTS: **FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative FIONA SINGH**

STATUS ON APPEAL: **RESPONDENTS**

DEFENDANTS/RESPONDENTS: **GLAXOSMITHKLINE INC.
GLAXOSMITHKLINE LLC and
GLAXOSMITHKLINE PLC.**

STATUS ON APPEAL: **APPELLANTS**

DOCUMENT: **CIVIL NOTICE OF APPEAL**




APPELLANT'S ADDRESS FOR
SERVICE AND CONTACT
INFORMATION:

Norton Rose Fulb
400 3rd Avenue S
Calgary, Alberta T

This is Exhibit 7 referred to in the
Affidavit of Fiona Singh, affirmed
before me this 11th day of September
2024

Phone: +1 403.26
Fax: +1 403.26

Randy Sutton
Justine Smith


A Commissioner for Oaths in and for
the Province of Alberta

Counsel for the Appellants, GlaxoSmithKline Inc.,
GlaxoSmithKline LLC, GlaxoSmithKline PLC

CONTACT INFORMATION OF ALL
OTHER PARTIES:

Napoli Shkolnik
1900, 144 – 4th Avenue S.W.
Calgary, Alberta
T2P 3N4

Phone: +1 888.531.0675
Fax: +1 639.739.2223

Clint Docken, K.C.

Counsel for the Respondents, Fiona Singh and Muzaffar Hussain
by his litigation representative Fiona Singh

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: November 17, 2022

Date entered: Not yet entered

Date served: Not yet served

Official neutral citation of reasons for decision, if any:

(do not attach copy) *Singh v Glaxosmithkline*, 2022 ABKB 762

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. Indicate where the matter originated:

Court of King's Bench

Judicial Centre: Calgary

Justice: The Honourable Associate Chief Justice J. D. Rooke

On appeal from a King's Bench Master or Provincial Court Judge?: No

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

Permission to Appeal Not Required.

4. Portion being appealed (Rule 14.12(2)(c)):

The whole decision is being appealed.

5. Provide a brief description of the issues:

Reviewable errors were made by the Court below in deciding to certify the Plaintiffs' claim as a class action for the following reasons:

- a. The Court erred in law in finding the Amended Amended Statement of Claim filed January 9, 2019 disclosed a cause of action for the purpose of class

- certification pursuant to section 5(1)(a) of the *Class Proceedings Act*, S.A. 2003, C C-16.5 ("*Class Proceedings Act*").
- b. The Court erred in fact and in law in finding the existence of an identifiable class of two or more persons pursuant to section 5(1)(b) of the *Class Proceedings Act*.
 - c. The Court erred in fact and in law in finding that the claims of the prospective class members raised any common issues pursuant to section 5(1)(c) of the *Class Proceedings Act* given the scope and breadth of the prospective class and the nature of the proposed common issues and claims being advanced.
 - d. The Court erred in fact and in law in finding the class proceeding would be a preferable procedure for the fair and efficient resolution of any common issues that might exist pursuant to section 5(1)(d) of the *Class Proceedings Act* and in doing so failed to give proper consideration to the provisions of section 5(2) of the *Class Proceedings Act*.
 - e. The Court erred in fact and in law in finding the proposed representative plaintiff met the requirements pursuant to section 5(1)(e) of the *Class Proceedings Act*.

6. Provide a brief description of the relief claimed:

The Defendants respectfully seek:

- a. an Order dismissing the Plaintiffs' application to certify the within proceedings as a class proceeding under the *Class Proceedings Act*,
- b. such further and other relief as this Honourable Court may direct.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

No

8. Does this appeal involve the custody, access, guardianship, parenting time, decision-making responsibility, contact or support of a child? (Rule 14.14(2)(b))

No

9. Will an application be made to expedite this appeal?

No

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)

No

11. Could this matter be decided without oral argument? (Rule 14.32(2))

No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e), 14.83)

No

13. List respondent(s) or counsel for the respondent(s), with contact information:

Napoli Shkolnik
1900, 144 – 4th Avenue S.W.
Calgary, Alberta
T2P 3N4

Phone: +1 888.531.0675

Fax: +1 639.739.2223

Attention: Clint Docken, K.C.

Counsel for the Respondents, Fiona Singh and Muzaffar Hussain by his litigation representative Fiona Singh

14. Attachments (check as applicable)

N/A Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

N/A Earlier order of Master, etc. (Rule 14.18(1)(c))

N/A Order granting permission to appeal (Rule 14.12(3)(a))

N/A Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.

COURT FILE NO. 1201-12838

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative FIONA SINGH

DEFENDANTS GLAXOSMITHKLINE INC.,
GLAXOSMITHKLINE LLC, and
GLAXOSMITHKLINE PLC.

Brought under the Class Proceedings Act

DOCUMENT BILL OF COSTS

Clerk's
Stamp

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTIES FILING
THIS DOCUMENT



1900-144 4th Avenue SW
Calgary, Alberta
T2P 3N4

Clint Docken K.C.
Tel: (403) 619-3612
Fax: (639) 739-2223
cdocken@napolilaw.ca

This is Exhibit 8 referred to in
the *Affidavit of Fiona Singh*,
affirmed before me this 11th day
of September 2024

Joanne Elaine Imler
Commissioner for Oaths in and for
the Province of Alberta

BILL OF COSTS (PLAINTIFFS)
(Prepared: March 31st, 2023)

This is the Plaintiffs' *Bill of Costs* respecting the Plaintiffs' certification application that was decided in *Singh v Glaxosmithkline Inc.* (Nov. 17th), 2022 ABKB 762 (Rooke ACJ) and resulting *Order (Class Certification)* (filed December 19th, 2022).

Fees Claimed:

ITEM NO.	CERTIFICATION HEARING/BRIEFS	AMOUNT
s 1(1)	<i>Certification Statement of Claim</i> (2019-01-09)	\$4,725

JOANNE ELAINE IMLER
A Commissioner for Oaths
in and for Alberta
My Commission Expires May 10, 2025
Appointee #0746666

ITEM NO.	CERTIFICATION HEARING/BRIEFS	AMOUNT
s 8(1) + 20-21	complex contested 2 day Chambers Application where a Brief is required (2018-08-07), under Column 5 of Schedule C, by analogy to Appeal Court argument \$4,050 per ½ day (2019-01-08 am) \$2,160 (2019-01-08 pm) \$2,160 (2019-01-08 am) \$2,160 (2019-01-08 pm)	\$10,530
	second counsel fee \$2,025 per ½ day (2019-01-08 am) \$1,080 (2019-01-08 pm) \$1,080 (2019-01-08 am) \$1,080 (2019-01-08 pm)	\$6,345
19(1) analogy	certification brief	\$10,800
	supplemental brief (2019-04-19)	N/A \$0
	supplemental brief (2021-07-30)	N/A \$0
	SUB-TOTAL	\$32,400
ITEM NO.	QUESTIONING	AMOUNT
s 5(1)(2)-(3)	Dr. Healy \$2,025 (2016-12-15 pm)	\$2,025
	Dr. Berard \$2,025 (2016-12-20 am) \$2,025 (2016-12-20 pm)	\$4,050
	Fiona Singh \$2,025 (2017-02-22 am)	\$2,025
	Karen Feltmate \$2,025 (2017-03-06 am) \$2,025 (2017-03-06 pm)	\$4,050
	Mark Braham \$2,025 (2017-04-07 am) \$2,025 (2017-04-07 pm)	\$4,050

ITEM NO.	QUESTIONING	AMOUNT
	Dr. Scialli \$2,025 (2017-05-12 am) \$2,025 (2017-05-12 pm)	\$4,050
	Dr. Shaw \$2,025 (2017-06-02 am) \$2,025 (2017-06-02 pm)	\$4,050
	Mario D'Angelo \$2,025 (2019-02-26 am)	\$2,025
	SUB-TOTAL	\$26,325
ITEM NO.	CASE MANAGEMENT	AMOUNT
s 9(1)	Strekaf J. (2013-01-22)	\$1,350
	Strekaf J. (2014-10-31)	\$1,350
	Strekaf J. (2015-01-15)	\$1,350
	Strekaf J. (2016-06-14)	\$1,350
	Strekaf J. (2016-10-20)	\$1,350
	Rooke A.C.J. (2019-12-04)	\$1,350
	SUB-TOTAL	\$8,100
	SUB-TOTAL	\$66,825
	Multiplier†	x 3
	TOTAL	\$200,475

† *Macaronies Hair Club and Laser Center Inc. v. BofA Canada Bank* (Feb. 17th), 2022 ABQB 143 (Rooke ACJQB) (costs - settlement approval)

Subtract Prior Costs Awards to GSK (On Consent):

ITEM NO.	COSTS TO GSK	AMOUNT
N/A	Ontario order (2009-04-03)	-\$25,000†
N/A	Strekaf J. Order (2016-10-20)	-\$16,800†
	TOTAL	-\$41,800

† This will come off of MLG's disbursements.

Taxable Disbursements (subject to GST):

DESCRIPTION	AMOUNT
MLG's claim for taxable disbursements	\$126,415.33†
social media advertising campaign \$93,684 US at 0.7333 as of 2018-12-31	\$127,756.72
TOTAL	\$254,172.05

† Plaintiffs' assessment disputed \$69,797.13 of this amount.

Non-taxable Disbursements (not subject to GST):

DESCRIPTION	AMOUNT
MLG's claim for non-taxable disbursements	\$109,660.23†

† Plaintiffs' assessment disputed \$45,608.39 of this amount.

Other Charges:

DESCRIPTION	AMOUNT
N/A	N/A

GST:

(a) Amount claimed on \$200,475 fees:	<u>\$10,023.75</u>
(b) Amount claimed on disbursements:	<u>\$12,708.60</u>
(c) Amount claimed on other charges:	<u>\$0.00</u>
TOTAL GST:	<u><u>\$22,732.35</u></u>

Total amount claimed:

Fees:	<u>\$200,475</u>
Set off of costs to GSK (by agreement)	<u>-\$41,800</u>
Taxable Disbursements:	<u>\$254,172.05</u>
Non-taxable Disbursements:	<u>\$109,660.23</u>
Other Charges:	<u>\$0.00</u>
GST:	<u>\$22,732.35</u>
TOTAL:	<u><u>\$545,239.63</u></u>

Amount allowed by assessment officer:

Fees:	<u>\$</u>
Taxable Disbursements:	<u>\$</u>
Non-taxable Disbursements:	<u>\$</u>
Other Charges:	<u>\$</u>
GST:	<u>\$</u>
TOTAL:	<u><u>\$</u></u>

Person responsible for preparation of this Bill of Costs:



1900-144 4th Avenue SW
Calgary, Alberta
T2P 3N4

Clint Docken K.C.
Tel: (403) 619-3612
Fax: (639) 739-2223
cdocken@napolilaw.ca

DRAFT

This is Exhibit 9 referred to in the
Affidavit of Fiona Singh, affirmed before
me this 11th day of September 2024

Litigation Chronology


A Commissioner for Oaths in and for
the Province of Alberta

JOANNE ELAINE IMLER
A Commissioner for Oaths
in and for Alberta
My Commission Expires May 10, 2025
Appointee #0746666

Litigation Chronology
(Colour Coded by Event Type)

Blue	Contingency Fee Agreement
Brown	Change of Counsel
Green	Court Rulings
Orange	Merchant-Rosenberg Agreements
Red	Certification Steps
Violet	Filing of Actions and Motions
Yellow	Filing of Evidence

Date	PR	Event
May 4 th , 1993	CA	● Health Canada issued a Notice of Compliance for Paxil®
Oct. 24 th , 2003	CA	● generic paroxetine introduced into Canada
Nov. 27 th , 2003	CA	● Health Canada issued Notice of Compliance for Paxil CR™
Feb. 3 rd , 2006	CA	● Congenital malformations statement added in the Paxil® and Paxil CR™ product monographs
2007		
May 25 th , 2007	ON	● <i>Romano</i> (MLG) filed
Oct. 3 rd , 2007	BC	● <i>Bennison</i> (Rosenberg) filed
Oct. 1 st , 2007	AB	● <i>Singh</i> (Complaint in Philadelphia)
Oct. 25 th , 2007	ON	● Court orders certification steps
Nov. 2 nd , 2007	BC	● <i>Wakeman</i> (MLG) filed

Litigation Chronology

Date	PR	Event
2008		
Feb. 27 th , 2008	BC	● <i>Bartram</i> (Rosenberg) filed in British Columbia
May 7 th , 2008	BC	● MLG and Rosenberg agree to take no steps in <i>Wakeman</i> (MLG) and <i>Bennison</i> (Rosenberg) pending determination of certification in <i>Bartram</i> (Rosenberg)
May 30 th , 2008	SK	● <i>Duzan</i> (MLG) filed in Saskatchewan
Nov. 28 th , 2008	BC	● Rosenberg writes that no steps will be taken in <i>Bartram</i> (Rosenberg) pending determination of <i>Duzan</i> (MLG)
2009		
Apr. 3 rd , 2009	ON	● <i>Romano</i> (MLG) discontinued in Ontario on the basis that <i>Duzan</i> (MLG) would advance
Aug. 26 th , 2009	SK	● Ball J. schedules certification steps in <i>Duzan</i> (MLG)
2010		
July 26 th , 2010	SK	● Ball J. grants leave to apply to extend times for certification steps
Sept. 7 th , 2010	SK	● MLG tells Ball J. that <i>Bartram</i> (BC) will proceed now
Nov. 29 th , 2010	SK	● MLG tells Ball J. that <i>Duzan</i> (MLG) will not proceed
Dec. 21 st , 2010	SK	● GSK moves for a stay of <i>Duzan</i> (MLG)
2011		
Jan. 24 th , 2011	BC	● <i>Bennison</i> (formerly Rosenberg) discontinued
Mar. 21 th , 2011	SK	● Ball J. stays <i>Duzan</i> (MLG) as a proposed class action
2012		
Oct. 10 th , 2012	AB	● P's filed <i>Statement of Claim</i>
Oct. 10 th , 2012	AB	● P's swear <i>Singh #1 Affidavit</i>
Dec. 3 rd , 2012	BC	● Smith J. certified <i>Bartram</i> (Rosenberg) for a limited class
Dec. 19 th , 2012	AB	● P's swear <i>Singh #2 Affidavit</i>

Litigation Chronology

Date	PR	Event
2013		
Jan. 22 nd , 2013	AB	● P's file certification motion
Mar. 14 th , 2013	AB	● D's file <i>Sutton Affidavit</i>
Aug. 1 st , 2013	AB	● Strekaf J. set a pre-certification schedule requiring D's to respond by Oct 15 th and P's by Nov 15 th
Oct. 10 th , 2013	AB	● D's serve <i>Kestenberg Affidavit</i>
Oct. 15 th , 2013	AB	● D's file responding affidavits (<i>Braham, Feltmate, Kestenberg, Lammer, Scialli</i>)
Dec. 20 th , 2013	AB	● P's file reply evidence (<i>Chue #2, Samra</i>)
2014		
June 4 th , 2014	AB	● P's file reply evidence (<i>Singh #2B</i>)
June 10 th , 2014	AB	● D's apply to strike affidavits (<i>Chue #2, Singh #3, Samra</i>)
July 22 nd , 2014	AB	● In oral reasons, Strekaf J. strikes <i>Singh #2B</i> and <i>Samra</i> , and permits <i>Chue #2</i> subject to D's right to reply
Sept. 11 th , 2014	AB	● D's file sur-reply affidavits (<i>Lammer and Scialli</i>)
Oct. 31 st , 2014	AB	● Strekaf J. directs submissions to be exchanged by Jan. 26 th ; certification hearing to be held Feb. 5 th
2015		
Jan. 9 th , 2015	AB	● P's serve <i>Altman Affidavit</i>
Jan. 14 th , 2015	AB	● Strekaff J. directs that if P's state intention to rely on additional affidavits, the Feb. 5 th certification hearing will be adjourned
Jan. 15 th , 2015	AB	● P's state intention to file further expert evidence, and Feb. 5 th hearing is adjourned
Feb. 5 th , 2015	AB	● Certification hearing adjourned
Sept. 16 th , 2015	AB	● P's serve <i>Bérard Affidavit</i>
2016		
Feb. 16 th , 2016	AB	● P's serve <i>Healy #1 Affidavit</i> , excluding exhibits

Litigation Chronology

Date	PR	Event
Mar. 31 st , 2016	AB	● P's serve <i>Healy #1 Affidavit</i> exhibits
June 14 th , 2016	AB	● Strekaf J. hears P's motion to extend time and to rely on <i>Bérard</i> , <i>Altman</i> , and <i>Healy</i> affidavits
June 27 th , 2016	AB	● After hearing in Calgary, Strekaf J. gave oral reasons <ul style="list-style-type: none"> • <i>Altman Affidavit</i> struck • <i>Healy #1 Affidavit</i> struck with leave to file <i>Healy #2</i> • <i>Bérard Affidavit</i> admitted with leave to cross-examine
Aug 12 th , 2016	AB	● P's swear <i>Singh #3 Affidavit</i>
Sept. 7 th , 2016	AB	● P's serve <i>Healy #2 Affidavit</i>
Sept. 23 rd , 2016	AB	● P's serve <i>Peavy Affidavit</i>
Oct. 12 th , 2016	AB	● P's swear <i>Singh #4 Affidavit</i>
Oct. 20 th , 2016	AB	● Mr. Merchant files an application to file the <i>Peavy Affidavit</i> and <i>Healy #2 Affidavit</i> and to set a certification schedule
Oct. 20 th , 2016	AB	● Hearing before Strekaf J. leads to written order filed December 22 nd , 2016, which, <i>inter alia</i> , set new certification schedule <ul style="list-style-type: none"> • Strekaf J. orders the <i>Amended Statement of Claim</i> to be filed by Nov. 12th, 2016 • Strekaf J. orders the P's to pay \$16,800 in costs • Strekaf J. announces appointment to the Court of Appeal and says another judge will be appointed
Nov. 12 th , 2016	AB	● P's serve <i>Certification Statement of Claim</i>
Dec. 15 th , 2016	AB	● D's questioned Dr. Healy via video conference
Dec. 20 th , 2016	AB	● D's questioned Dr. Bérard in Montreal
2017		
Jan 5 th , 2017	AB	● Nixon J. appointed Poelman J. as the new case management judge
Feb. 15 th , 2017	AB	● D's were to deliver responding affidavits (adjourned by consent to March 8 th , 2017)
Feb. 22 nd , 2017	AB	● D's questioned Ms. Singh in Calgary
Mar. 6 th , 2017	AB	● Karen Feltmate swears <i>Feltmate #2</i>

Litigation Chronology

Date	PR	Event
Mar. 6 th , 2017	AB	● Dr. Shaw swears <i>Shaw #1</i>
Mar. 7 th , 2017	AB	● Robin Cardillo swears <i>Cardillo #1</i>
Mar. 8 th , 2017	AB	● Dr. Scialli swears <i>Scialli #3</i>
Mar. 22 nd , 2017	AB	● Mr. Churko questioned Karen Felmate in Toronto
Mar. 27 th , 2017	BC	<ul style="list-style-type: none"> ● Justice Smith approves settlement of <i>Bartram</i> class action at hearing with oral reasons <ul style="list-style-type: none"> • Mssrs. Merchant and Churko appear in Vancouver to seek clarification of how the settlement impacts Singh • Mr. Sutton confirms that <i>Bartram</i> is not intended to settle the Singh non-cardiac claims or the cardiac claims of non-BC residents who did not opt in • Smith J. approved a \$6,200,000 settlement of cardiac only claims and a 33% counsel fee
Apr. 7 th , 2017	AB	● Mr. Churko questioned Mark Braham in Toronto
May 12 th , 2017	AB	● Mr. Churko questioned Dr. Scialli in New York
June 2 nd , 2017	AB	● Mr. Churko questioned Dr. Shaw in Palo Alto
July 13 th , 2017	AB	<ul style="list-style-type: none"> ● Poelman J. recuses himself and says he will ask Nixon J. to reassign the case <ul style="list-style-type: none"> • He was followed by Eamon J., then Rooke A.C.J.
Sept. 23 rd , 2017	AB	● Dr. Shaw swears <i>Shaw #2</i>
2018		
Aug. 7 th , 2018	AB	● P's file certification brief
Aug. 22 nd , 2018	AB	● Ms. Singh signs <i>Contingency Fee Agreement</i> and <i>Singh Affidavit</i>
Aug. 22 nd , 2018	AB	● MLG files application to approve <i>Contingency Fee Agreement</i>
Sept. 6 th , 2018	AB	<ul style="list-style-type: none"> ● Social media advertising campaign begins (cost of \$93,684 US) <ul style="list-style-type: none"> • 154 qualifying Canadian leads are identified • Their medical records are obtained
Sept. 10 th , 2018	AB	● D's file certification brief
Sept. 18 th , 2018	AB	● Certification was scheduled, but was adjourned after Eamon J. passed the file to Rooke A.C.J.Q.B. shortly before the hearing

Litigation Chronology

Date	PR	Event
2019		
Jan. 3 rd , 2019	AB	● P's serve <i>D'Angelo #1</i>
Jan. 8 th -9 th , 2019	AB	● Certification Hearing held in Calgary before Rooke A.C.J.Q.B. <ul style="list-style-type: none"> • P's filed the <i>Certification Statement of Claim</i> as an <i>Amended Amended Statement of Claim</i> • Rooke A.C.J.Q.B. orders that the P's may file <i>D'Angelo #1</i> and the D's can reply, and additional submissions may be filed, and the P's will pay costs
Feb. 26 th , 2019	AB	● D's questioned Mario D'Angelo in Toronto
Mar. 13 th , 2019	AB	● Robin Cardillo swears responding affidavit
Apr. 5 th , 2019	AB	● D's filed submissions on the <i>D'Angelo Evidence</i> (2 nd certification brief)
Apr. 12 th , 2019	AB	● KoT Law serves a <i>Notice of Change of Representation</i> on Mr. Merchant along with a letter offering to protect his fee: Please find enclosed a Notice of Change of Representation (April 12 th , 2019). I look forward to coming to a mutually acceptable arrangement respecting work in progress and disbursements, and I kindly request that you provide a particularized submission for your reasonable fees and disbursements to date on this action.
Apr. 19 th , 2019	AB	● MLG filed submissions on <i>D'Angelo Evidence</i>
Apr. 23 rd , 2019	AB	● <i>Affidavit of Marianne Auch #1</i> sworn
c. Apr. 2019	AB	● Mr. Merchant serves an undated and unsigned <i>Notice of Application (Substitution of Plaintiff)</i> (" <i>Substitution Application</i> ") seeking to replace the P's with Marianne Auch
May 3 rd , 2019	AB	● P's serve a <i>Notice of Change of Representation</i> on Mr. Merchant appointing Clint Docken of Guardian Law and Casey R. Churko of KoT Law as lawyers of record
June 19 th , 2019	AB	● Rooke A.C.J.Q.B. sends letter to counsel asking that they agree to a schedule for the <i>Substitution Application</i>
Oct. 16 th , 2019	AB	● P's file an <i>Application by Fiona Singh</i> seeking to withdraw as representative plaintiff
Nov. 29 th , 2019	AB	● D's file a <i>Defendants' Written Argument</i> on the <i>Withdrawal Motion</i>

Litigation Chronology

Date	PR	Event
Nov. 5 th , 2019	SK	● <i>Thompson</i> action filed
Dec. 3 rd , 2019	AB	● P's file a <i>Brief of Law</i> in response to D's requests that she pay costs as a condition of withdrawing
Dec. 4 th , 2019	AB	● At a case management conference Rooke A.C.J.Q.B. asks D's to file a formal application for any costs it seeks
Dec. 20 th , 2019	AB	● D's file an <i>Application</i> seeking costs against the P's as a condition of withdrawing (" Costs Motion ")
2020		
Feb. 7 th , 2020	AB	● P's serve <i>Singh #5</i> explaining why she served a change of representation (poor treatment at MLG)
Feb. 11 th , 2020	AB	● P's serve <i>Kerrivan Affidavit</i>
Mar. 6 th , 2020	AB	● D's file a <i>Written Argument</i> on D's <i>Costs Motion</i>
Mar. 12 th , 2020	AB	● Mr. Merchant serves <i>Written Submissions of Marianne Auch</i>
Mar. 13 th , 2020	AB	● P's file <i>Brief of Law</i> on D's <i>Costs Motion</i>
Mar. 23 rd , 2020	AB	● Hearing of D's <i>Costs Motion</i> was scheduled, but was adjourned due to COVID-19 court closure
Sept. 30 th , 2020	AB	● At case conference, Rooke A.C.J.Q.B. asks counsel to agree to a scheduling order for the <i>Substitution Application</i>
Oct. 22 nd , 2020	AB	● <i>Affidavit of Jaco Erasmus</i> sworn
Oct. 26 th , 2020	AB	● <i>Affidavit of Marianne Auch #2</i> sworn
c. Oct. 2020	AB	● Mr. Merchant serves an undated and unsigned <i>Notice of Application for Charging Order</i> (" Charging Application ")
Nov. 24 th , 2020	AB	● P's serve <i>Singh #6</i> and <i>D'Angelo #2</i>
2021		
Jan. 15 th , 2021	AB	● Mr. Merchant serves <ul style="list-style-type: none"> • <i>Written Argument of the Proposed Plaintiff, Marianne Auch, and</i> • <i>Applicant's Brief of Law (Re: Charging Order)</i>
Feb. 23 rd , 2021	AB	● Rooke A.C.J.Q.B. hears the <i>Substitution Application</i> and <i>Charging</i>

Litigation Chronology

Date	PR	Event
		<i>Application</i>
Apr. 21 st , 2021	AB	<ul style="list-style-type: none"> ● Rooke A.C.J.Q.B. decides the <i>Substitution Application</i> against MLG, with an undertaking by counsel for the P's to pay "fair and reasonable" fees / disbursements "at the end of the action" if the P's are successful. ● costs ordered against MLG
May 19 th , 2021	AB	<ul style="list-style-type: none"> ● Mr. Merchant denies liability for P's <i>Bill of Costs</i>
May 27 th , 2021	AB	<ul style="list-style-type: none"> ● Rooke A.C.J.Q.B. directs assessment of MLG's costs before Assessment Officer, and an "undertaking" to pay those costs.
June 30 th , 2021	AB	<ul style="list-style-type: none"> ● D's file 3rd certification brief
Jul. 30 th , 2021	AB	<ul style="list-style-type: none"> ● P's file responding brief on certification
Aug 11 th , 2021	AB	<ul style="list-style-type: none"> ● MLG files <i>Confidential Evidence for a Review Hearing</i> to assess disbursements
Sept. 30 th , 2021	AB	<ul style="list-style-type: none"> ● Assessment conducted to consider MLG's disbursements; officer determines that MLG is not entitled to a payment forthwith
c. Oct. 30 th , 2021	AB	<ul style="list-style-type: none"> ● MLG filed undated <i>Notice of Appeal of Review Officer's Decision</i>
2022		
Nov. 17 th , 2022	AB	<ul style="list-style-type: none"> ● Rooke A.C.J.Q.B. released certification reasons [2022 ABKB 762]
Dec. 19 th , 2022	AB	<ul style="list-style-type: none"> ● Certification order filed with the court
Dec. 16 th , 2022	AB	<ul style="list-style-type: none"> ● GSK files <i>Civil Notice of Appeal</i> in the Court of Appeal
2023		
Aug. 18 th , 2023	AB	<ul style="list-style-type: none"> ● Parties agree to extend, and the Court of Appeal approves the extension of, the filing deadlines
Nov. 1 st , 2023	AB	<ul style="list-style-type: none"> ● Parties again agree to extend, and the Court of Appeal approves the extension of, the filing deadlines
Nov. 5 th , 2023	AB	<ul style="list-style-type: none"> ● <i>Affidavit of Paul Battaglia</i> affirmed to describe the proposed means of giving the certification notice
2024		
Jan. 5 th , 2024	AB	<ul style="list-style-type: none"> ● Sidnell J. appointed as case management justice, by letter from Nixon A.C.J.K.B.
Feb. 6 th , 2024	AB	<ul style="list-style-type: none"> ● P's file application to approve notice of class action certification

Litigation Chronology

Date	PR	Event
Feb. 8 th , 2024	AB	● hearing before Sidnell J. to approve the content and means of giving notice of class certification
Feb. 8 th , 2024	AB	● Sidnell J. approves <i>Certification Notice</i>
May 29 th , 2024	AB	● <i>Affidavit of Paul Battaglia</i> affirmed to describe the giving of certification notice and the opt outs
May 29 th , 2024	AB	● P's file application to approve notice of settlement approval hearing
Apr. 24 th , 2024	AB	● Parties again agree to extend, and the Court of Appeal approves the extension of, the filing deadlines
June 5 th , 2024	AB	● hearing before Sidnell J. to approve the content and means of giving notice of settlement approval hearing
June 5 th , 2024	AB	● Sidnell J. grants <i>Settlement Approval Hearing Notice</i>
June 5 th , 2024	AB	● Sidnell J. makes <i>Sealing Order</i>
June 18 th , 2024	AB	● <i>Affidavit of Paul Battaglia</i> in redacted form filed in compliance with the <i>Sealing Order</i>

This is Exhibit 10 referred to in the
Affidavit of Fiona Singh, affirmed before
me this 11th day of September 2024


A Commissioner for Oaths in and for
the Province of Alberta

JOANNE ELAINE IMLER
A Commissioner for Oaths
in and for Alberta
My Commission Expires May 10, 2025
Appointee #0746666

TABLE OF EVIDENCE FILED
(as of September 9th, 2024)

	evidence	sworn	cite	party	¶	pp.
1.	Marianne Auch	Apr. 23, 2019	AOMA#1	MLG	25	10
		Oct. 26, 2020	AOMA#2	MLG	44	46
2.	Paul Battaglia	May 30, 2013	AOPB#1	RP	27	259
		Nov. 5 th , 2023	AOPB#2	RP	26	6
		May 29 th , 2024	AOPB#3	RP	11	6
3.	Anick Bérard	Sep. 10, 2015	AOAB	RP	91	398
	Questioning	Dec. 20, 2016	QOAB	D	0	558
4.	Mark Braham	Oct. 15, 2013	AOMB	D	56	1044
	Questioning	Apr. 7, 2017	QOMB	RP	1238	1320
5.	Robin Cardillo	Mar. 7, 2017	AORC	D	11	212
6.	Pierre Chue	Jan. 11, 2013	AOPC#1	RP	29	105
		Dec. 19, 2013	AOPC#2	RP	23	125
7.	Mario D'Angelo	Jan. 3, 2019	AOMD#1	RP	31	112
		Nov. 24, 2020	AOMD#2	RP	31	6
	Questioning	Feb. 26, 2019	QOMD	D	647	136+
8.	Jaco Erasmus	Oct. 22, 2020	AOJE	MLG	6	11
9.	Karen Feltmate	Oct. 11, 2013	AOKF#1	D	49	178
		Mar. 6, 2017	AOKF#2	D	11	96
	Questioning	Mar. 22, 2017	QOKF	RP	1013	978

TABLE OF EVIDENCE FILED

	evidence	sworn	cite	party	¶	pp.
10.	David Healy	Sep. 7, 2016	AODH	RP	117	115
	Questioning	Dec. 15, 2016	QODH	D	395	200
11.	Amy Kerrivan	Feb. 11, 2020	AOAK	RP	7	2
12.	Marc Kestenberg	Oct. 10, 2013	AOMK	D	40	255
13.	Edward Lammer	Oct. 10, 2013	AOEL#1	D	71	39
		Aug. 29, 2014	AOEL#2	D	17	84
14.	Adam Peavy	Sep. 23, 2016	AOAP	RP	6	10588
15.	Anthony Scialli	Oct. 11, 2013	AOAS#1	D	55	52
		Aug. 27, 2014	AOAS#2	D	16	27
		Mar. 8, 2017	AOAS#3	D	36	55
	Questioning	May 12, 2017	QOAS	RP	0	2644
16.	Gary Shaw	Mar. 6, 2017	AOGS#1	D	87	71
		Sep. 23, 2017	AOGS#2	D	12	19
	Questioning	Jun. 2, 2017	QOGS	RP	0	1632
17.	Fiona Singh	Oct. 10, 2012	AOFS#1	RP	6	3
		Dec. 19, 2012	AOFS#2	RP	35	23
		Aug. 12, 2016	AOFS#3	RP	14	4
		Oct. 12, 2016	AOFS#4	RP	8	3
		Feb. 7, 2020	AOFS#5	RP	39	23
		Nov. 24, 2020	AOFS#6	RP	2	4
	Questioning	Feb. 22, 2017	QOFS	D	0	4337
18.	Randy Sutton	Mar. 13, 2013	AORS	D	43	222
TOTAL					4375	26008

**PAXIL® AND PAXIL CR™
NATIONAL CLASS ACTION SETTLEMENT AGREEMENT**

WHEREAS the Plaintiffs brought this proceeding under the *Class Proceedings Act*, SA 2003 c C-16.5, and the Honourable Associate Chief Justice J.D. Rooke certified the Class Proceeding by *Order (Class Certification)* pronounced November 17th, 2022 and filed December 19th, 2022;

AND WHEREAS the Defendants appealed all aspects of the *Order (Class Certification)* by *Civil Notice of Appeal*, filed December 16th, 2022, and deny that any Damages are payable and that the Plaintiffs and/or other Class Members are entitled to relief, and have not conceded but deny all liability and believe that they have reasonable defences to the Class Proceeding and the Allegations;

AND WHEREAS the common issues proposed for certification relate to allegations that Paxil® and Paxil CR™ cause or increase the likelihood of certain congenital malformations in children born to women who ingested Paxil® or Paxil CR™ while pregnant, and that the Defendants failed to provide an appropriate warning of that risk during the Class Period;

AND WHEREAS counsel for the Plaintiffs have conducted a thorough analysis of the merits of the Allegations, and have also taken into account the extensive burdens and expense of litigation, including the risks of trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arm's length negotiations, both directly and with the assistance of a mediator, the Parties wish to settle any and all issues between the Defendants and Class Members in any way relating to the Allegations;

AND WHEREAS after their investigation, the Representative Plaintiff and Class Counsel have concluded that this *Settlement Agreement* is fair, reasonable, and in the best interests of the Class;

AND WHEREAS for the purposes of settlement, and contingent on orders by the Court approving the settlement and the terms of this *Settlement Agreement*, the Representative Plaintiff, on her behalf, on behalf of the minor, Muzzafar Hussain, and on behalf of Class Members, has consented to a dismissal of the Class Proceeding against the Defendants and the release of the Defendants from liability in accordance with the terms of this *Settlement Agreement* having been fully advised of the terms of this *Settlement Agreement* and the settlement herein;

AND WHEREAS the Defendants have entered into this *Settlement Agreement* without any admission of liability;

NOW THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Proceeding be settled and dismissed on the following terms and conditions:

Section 1 – Definitions

1.1 For the purposes of this *Settlement Agreement*, including its recitals and schedules, the following definitions apply:

- (a) **“Account”** means a special interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank into which the Compensation Fund

shall be paid by the Defendants and on which the interest accrued will be added to the Compensation Fund.

- (b) **“Administration Costs”** means the costs of giving the *Notice of Certification*, *Notice of Settlement Approval Hearing*, and the *Notice of Settlement Approval* and the amounts invoiced to administer and distribute the Compensation Fund, including the expenses and professional fees of the Notice Provider, Claims Officer, and the Claims Administrator.
- (c) **“Allegations”** means the assertions of fact or law, causes of action, injuries, and damages that were pleaded in the *Amended Amended Statement of Claim*, filed January 9th, 2019.
- (d) **“Certification Order”** means the *Order (Class Certification)* of the Honorable Associate Chief Justice Rooke, pronounced November 17th, 2022 and filed December 19th, 2022.
- (e) **“Claim”** means the claim made by a Claimant in accordance with the procedure in the Distribution Protocol, which is attached hereto as **Schedule “D”**.
- (f) **“Claimant Child”** means a Class Member who was born with a Qualifying Congenital Malformation, or his or her estate or legal representative, who files a Claim pursuant to the terms hereof.
- (g) **“Claimant Mother”** means a Class Member who was prescribed Paxil® or Paxil CR™ in Canada and subsequently aborted, delivered, or miscarried children with Qualifying Congenital Malformations after ingesting Paxil® or Paxil CR™ while pregnant, or her estate or legal representative, who files a Claim pursuant to the terms hereof.
- (h) **“Claims Administrator”** means Trilogy Class Action Services, the person or entity agreed to by the Parties and approved by the Court to assist the Claims Officer with the administration of the claims process in accordance with the Distribution Protocol.
- (i) **“Claims Deadline”** means 90 days from the publication of the *Notice of Settlement Approval*, unless extended as provided for in the *Settlement Approval Order*.
- (j) **“Claims Officer”** means a qualified and independent physician agreed to by the Parties who will determine, *inter alia*: whether a Claimant was born with a Qualifying Congenital Malformation; identify the category in the Distribution Protocol within which each Claim falls; and assign a points value within the range identified in the Distribution Protocol.
- (k) **“Claims Perfection Deadline”** means 90 days after the Claims Deadline.
- (l) **“Class”** means women who were prescribed Paxil® or Paxil CR™ in Canada and subsequently aborted, delivered, or miscarried children with congenital malformations after ingesting Paxil® or Paxil CR™ while pregnant; family members who may make claims under *Family Compensation Legislation* following the death of, or injury in relation to the congenital malformations; children born alive to such women; and provincial and territorial governments who paid health care costs on their behalf.
- (m) **“Class Counsel”** means
 - (i) Casey R. Churko, practicing through KoT Law Professional Corporation; and
 - (ii) Clint Docken, K.C., practicing through Clint Docken Professional Corporation.
- (n) **“Class Counsel Disbursements”** means the agreed amount of legitimate and reasonable disbursements incurred by or at the request of Class Counsel and Former Class Counsel

between the filing of this Class Proceeding (and no other class action or class proceeding filed anywhere in Canada at any time relating to the prescription or use of Paxil®, Paxil CR™, or paroxetine) and the Effective Date; except that the disbursements that may be claimed by Former Class Counsel shall further be limited to those incurred before April 12th, 2019, being the date that the Plaintiffs served a *Notice of Change of Representation*. The amount of disbursements as agreed to is: \$175,000 for Napoli Shkolnik Canada; and \$175,000 for Merchant Law Group LLP.

- (o) **“Class Counsel Fees”** is CDN \$2,000,000, separate and apart from Lawyers’ Fees, to be paid as follows:
 - (i) \$850,000, to be paid to KoT Law Professional Corporation;
 - (ii) \$50,000, to be paid to Clint Docken Professional Corporation; and
 - (iii) \$1,100,000, to be paid to Former Class Counsel in full and final satisfaction of the undertaking that the Honourable Associate Chief Justice J.D. Rooke referenced at ¶38 of *Singh v Glaxosmithkline Inc.*, 2021 ABQB 316.
- (p) **“Class Member”** means any person, or his/her estate or legal representative, who is a member of the Class and did not deliver an *Opt-Out Form* to the Notice Provider on or before April 8th, 2024.
- (q) **“Class Period”** means the period that runs from January 1st, 1993 to April 8th, 2024.
- (r) **“Class Proceeding”** means the proceeding commenced by Muzzafar Hussain, by his Mother and Litigation Guardian, Fiona Singh, and the said Fiona Singh, in the Court of King’s Bench of Alberta against the Defendants (Court File No. 1201-12838), and that was certified as a class proceeding by the *Certification Order*.
- (s) **“Compensation Fund”** means the Settlement Fund after deducting: Administration Costs incurred before the *Settlement Approval Order* is made; \$525,000 to resolve Health Insurer Claims; the Class Counsel Fees and Class Counsel Disbursements and applicable taxes thereon; and the Honorarium; and after adding the interest while the Settlement Fund is held in the Account. After deductions, the Administration Costs incurred after the *Settlement Approval Order* and Compensatory Payments will be fully paid from the remainder of the Compensation Fund.
- (t) **“Compensatory Payments”** means the amounts that are allocated to Eligible Claimants out of the Compensation Fund, including the amounts allocated for Lawyers’ Fees.
- (u) **“Court”** means the Court of King’s Bench of Alberta.
- (v) **“Court Approval Date”** means the later of September 24th, 2024 and the date on which the Court approves the *Settlement Agreement*.
- (w) **“Damages”** means all claims for pain and suffering, loss of guidance, care and companionship, non-pecuniary claims, in trust claims, subrogated claims (in the form of claims of Health Insurers and non-governmental insurers), past and future income loss claims, past and future care claims, aggravated or punitive damages, and special damages.
- (x) **“Distribution Protocol”** means the plan setting out a Class Member’s entitlement to make a Claim under this *Settlement Agreement* and how Compensatory Payments to Eligible Claimants and Lawyers’ Fees shall be determined and distributed, as approved by the

Court as part of the Settlement Approval Hearing, a draft of which is attached hereto as **Schedule “D”**.

- (y) **“Effective Date”** means the later of:
- (i) 60 days after the Court Approval Date if there is no appeal from the *Settlement Approval Order*; and
 - (ii) the date on which any appeals from the *Settlement Approval Order* have been quashed or finally disposed of.
- (z) **“Eligible Claimant”** means a Claimant, or his or her estate representative, who has satisfied the Claims Officer that he or she is a Class Member who is eligible for a Compensatory Payment, and, in particular that:
- (i) the Claimant Mother or the biological mother of a Claimant Child was prescribed Paxil® or Paxil CR™ for use during her First Trimester of pregnancy;
 - (ii) the Claimant Mother or the biological mother of a Claimant Child took Paxil® or Paxil CR™ during the Class Period while in her First Trimester of pregnancy who delivered a Claimant Child, born alive, who has been diagnosed with one or more Qualifying Congenital Malformations; and
 - (iii) there is a medical or other reliable record or affidavit indicating that (1) a physician determined that the Claimant Child had or has one or more Qualifying Congenital Malformations, and (2) the biological mother of the Claimant Child took Paxil® or Paxil CR™ (and not generic paroxetine) during her First Trimester of pregnancy.

Further information with respect to eligibility is contained within the Distribution Protocol.

- (aa) **“First Trimester”** means the first 13 weeks of pregnancy calculated from the date of the last menstrual period.
- (bb) **“Former Class Counsel”** means E.F. Anthony Merchant, K.C. of Merchant Law Group LLP (being Class Counsel before April 12th, 2019).
- (cc) **“Health Insurers”** means all of the provincial and territorial ministries of health or governmental bodies that provide publicly funded plans of health care in Canada.
- (dd) **“Health Insurer Claims”** means the entitlement of the Health Insurers to any subrogated or direct claims arising from the provision of health care services to Class Members in relation to the Allegations, and pursuant to legislation that permits the recovery of health care costs or medical expenses from third parties.
- (ee) **“Honorarium”** means the amount of CDN \$50,000.
- (ff) **“Lawyers’ Fees”** are, subject to section 8.5, up to 35% of Compensatory Payments paid to Eligible Claimants who are represented by Class Counsel or another lawyer of their choosing who has a valid and enforceable retainer agreement with an Eligible Claimant. Lawyers’ Fees paid to lawyers other than Class Counsel shall not exceed 25% where the retainers were executed before the *Notice of Settlement Approval Hearing* is given and 10% where the retainers were executed after. Class Counsel will receive 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented.

- (gg) **“Notice Provider”** means Trilogy Class Action Services, who provided the *Notice of Certification* and the *Notice of Settlement Approval Hearing* and will provide the *Notice of Settlement Approval*.
- (hh) **“Notice of Certification”** means the form of notice, approved by the Court on February 8th, 2024 that informed Class Members of certification of the Class Proceeding.
- (ii) **“Notice of Settlement Approval”** means the form of notice, agreed to by the Parties and approved by the Court, and to be given within 30 days of the Court Approval Date, that informs Class Members, including Health Insurers, of the approval of this *Settlement Agreement*, the process for making Claims, and the Distribution Protocol, a draft of which is attached hereto as **Schedule “A”**.
- (jj) **“Notice of Settlement Approval Hearing”** means the form of notice, approved by the Court as Schedule 1 to the *Order (Settlement Approval Hearing Notice)* pronounced June 5th, 2024 and filed June 10th, 2024, that informed Class Members, including Health Insurers, of the Settlement Approval Hearing.
- (kk) **“Notice Plan for Notice of Settlement Approval”** is the means used for giving the *Notice of Settlement Approval*, attached hereto as **Schedule “B”**.
- (ll) **“Opt-Out Form”** means the form approved by the Court as Schedule 2 to the *Order (Certification Notice)*, pronounced February 8th, 2024 and filed February 9th, 2024.
- (mm) **“Parties”** means the Representative Plaintiff and the Defendants.
- (nn) **“Qualifying Congenital Malformations”** as defined include only the following structural congenital malformations (birth defects):
- (i) anencephaly;
 - (ii) spina bifida;
 - (iii) encephalocele;
 - (iv) craniosynostosis;
 - (v) cleft lip;
 - (vi) cleft palate;
 - (vii) structural cardiovascular defects;
 - (viii) diaphragmatic hernia;
 - (ix) gastroschisis;
 - (x) omphalocele;
 - (xi) hypospadias;
 - (xii) undescended testes; and
 - (xiii) club foot.
- (oo) **“Released Claims”** means any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, whether personal or subrogated, whenever incurred for liabilities of any nature whatsoever, including without limitation claims, demands, actions, suits or causes of action for personal injuries, general damages, special damages, punitive damages, interest, costs, expenses, penalties, and lawyers’ fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, arise in law, under statute or in equity, that the Plaintiffs, the Releasors, Class Members, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating directly or indirectly, to the production, manufacture, design, sale, marketing, advertising, sale, possession, handling, ingestion, exposure, or use of Paxil® or Paxil CR™ as they relate to the conduct of the proceedings or in any other manner whatsoever to the Allegations.

- (pp) **“Releasees”** means, jointly and severally, the Defendants, GlaxoSmithKline Inc., GlaxoSmithKline LLC, and GlaxoSmithKline PLC, and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing as well as anyone involved in the distribution, prescription or dispensation of Paxil® or Paxil CR™ to the Class Member and it is agreed that to the extent that a Releasee is not a Party to the *Settlement Agreement* all such releases are intended third party beneficiaries of the *Settlement Agreement*.
- (qq) **“Releasers”** means, jointly and severally, individually and collectively, the Plaintiffs, Class Members (excluding provincial and territorial governments who paid health care costs), and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns.
- (rr) **“Representative Plaintiff”** means Fiona Singh.
- (ss) **“Settlement Agreement”** means this agreement, as executed by Class Counsel, Former Class Counsel and counsel for the Defendants on behalf of, respectively, the Representative Plaintiff and the Defendants, and by the Health Authorities.
- (tt) **“Settlement Approval Hearing”** means the hearing at the Court to approve the dismissal of the Class Proceeding, the settlement, and the terms of this *Settlement Agreement* (including its *Schedules*).
- (uu) **“Settlement Approval Order”** means the Order of the Court approving the dismissal of the Action, the settlement, and the terms of this *Settlement Agreement*, which shall be substantially in the form attached as **Schedule “C”**.
- (vv) **“Settlement Fund”** means CDN \$7,500,000, and for greater clarity, will be the maximum amount paid by the Defendants in any and all circumstances, as described herein.
- (ww) **“Trilogy Invoices”** means the invoices delivered by Trilogy Class Action Services from time to time for services rendered as the Notice Provider and Claims Administrator in the implementation of this *Settlement Agreement*, including for services already provided respecting the *Notice of Certification* and the *Notice of Settlement Approval Hearing*.

Section 2 – Conditions Precedent To Settlement Approval

- 2.1 This *Settlement Agreement* is subject to and conditional upon Court approval and shall be null and void and of no force or effect if the *Settlement Approval Order* is not granted and sustained on any appeals therefrom.
- 2.2 Class Counsel shall ensure that, prior to or concurrently with filing the application for approval of the *Settlement Agreement*, that all Health Insurers have been provided with *Notice of the Settlement Approval Hearing*, have been asked to approve the *Settlement Agreement*, and have been asked to agree to sign a release agreeable to the Defendants that is in accordance with each Health Insurers’ respective subrogation and/or health care cost recovery legislation. Class Counsel shall also make best efforts to ensure that, prior to the Settlement Approval Hearing, any documentation required by the Health Insurers in relation to the approval of the *Settlement Agreement*, such as but not limited to the *Notice of Proposed Terms of Settlement* pursuant to Section 13 of the *Health Care Costs Recovery Act* (British Columbia), has been requested from, or completed and provided by, the Health Insurers.

Section 3 – Settlement Approval

- 3.1 The Parties shall use their best efforts in good faith to effect this *Settlement Agreement*, both before and after it receives Court approval. The Representative Plaintiff shall bring applications seeking approval of: the appointment of the Notice Provider; the appointment of the Claims Administrator; the content and means of giving the *Notice of Settlement Approval*; the Distribution Protocol; and this *Settlement Agreement* and the settlement outlined herein.
- 3.2 In the event that: (1) the Court declines to approve this *Settlement Agreement* or any part hereof; or (2) the Court order approving this *Settlement Agreement* does not become a final order; then this *Settlement Agreement* shall, unless the Parties agree otherwise, be terminated and, except as provided for herein, it shall be null and void and will have no further force or effect, shall not be binding on the Parties or the Class, and shall not be used as evidence or otherwise in any litigation in accordance with section 9.2 of this *Settlement Agreement*, or disclosed to anyone other than as may be required by law or agreed upon by the Parties.

Section 4 – Settlement Fund

- 4.1 The Settlement Fund is intended to compensate Class Members in relation to Claims arising from the Allegations, and to pay: the Health Insurer Claims; the Class Counsel Fees, Lawyers' Fees, Class Counsel Disbursements and applicable taxes thereon; the Honorarium; the Administration Costs; and any such further amounts as may be payable in relation to the settlement and Class Proceeding.
- 4.2 The maximum, all-inclusive payment the Defendants will make, in full and final satisfaction of all claims, costs and expenses, including the Claims of the Plaintiffs, Claims of the Class Members, Health Insurer Claims, Class Counsel Fees and Lawyers' Fees and Class Counsel Disbursements plus applicable taxes thereon, Honorarium, and Administration Costs (which include the Trilogy Invoices), is CDN \$7,500,000.
- 4.3 On the Effective Date, the Defendants shall pay the Settlement Fund to the Claims Administrator in trust. The Defendants shall have no responsibility or liability, under any circumstances, for any additional or further payments under this *Settlement Agreement* or in relation to the settlement and/or Class Proceeding, including as it pertains to any dispute, arisen, arising, or yet to arise, as to the Class Counsel Fees, Class Counsel Disbursements, Lawyers' Fees, the Honorarium, the Trilogy Invoices, Administration Costs, or costs from any action or proceeding relating to the subject matter of the Class Proceeding. In the event that any such dispute arises, the Defendants will be immediately notified of the dispute by Class Counsel, and will have the right, at their option, to participate and make submissions in the determination of that dispute by Court hearing if necessitated.

Section 5 – Notice Provider And Claims Administrator

- 5.1 Class Counsel has and shall continue to retain Trilogy Class Action Services as the Notice Provider, subject to the approval of the Court.
- 5.2 Class Counsel shall retain Trilogy Class Action Services as the Claims Administrator, subject to the approval of the Court.
- 5.3 Class Counsel shall retain a Claims Officer, subject to the approval of the Court.
- 5.4 Before the Effective Date, Class Counsel and the Defendants paid or will pay the Notice Provider up to \$52,500, which the Parties agree would or will be divided equally between them. Class Counsel agrees and will ensure that the Notice Provider has already or will promptly prepare and

deliver corresponding Trilogy Invoices before payment is made. After the Effective Date, the Claims Administrator shall pay the Claims Administrator from the Account:

- (i) \$77,500 if the number of Eligible Claimants is between 1 and 49,
- (ii) \$102,500 if the number of Eligible Claimants is between 50 and 74, and
- (iii) \$127,250 if the number of Eligible Claimants is 75 or more.

All amounts stated in this section are exclusive of applicable taxes and the expenses of the Claims Administrator. Such expenses may be reimbursed to the Claims Administrator from the Account on a dollar-for-dollar basis based on the actual expenses incurred by the Claims Administrator. Such expenses are anticipated to include (but are not limited to) expenses for any long distance phone calls, postage, courier, bank fees, travel, and costs related to maintaining a post office box, toll-free telephone number, and claims portal devoted to the administration of this settlement.

- 5.5 The Claims Administrator shall receive the Claims of the Claimants provided these are initiated by the Claimants before the Claims Deadline or any extension thereof provided for herein, and shall assist the Claims Officer with the Claims Officer's determination of the amounts of Compensatory Payments and Lawyers' Fees in accordance with the Distribution Protocol.

Section 6 – Objections

- 6.1 Class Counsel will provide the Health Insurers with formal notice of the proposed settlement as required under applicable subrogation and/or health care costs recovery legislation, in addition to a copy of the *Settlement Agreement*.
- 6.2 Class Counsel will ensure that any revisions or objections to the *Settlement Agreement* and the terms therein are immediately brought to the attention of counsel for the Defendants.
- 6.3 A Class Member may object to the approval of this *Settlement Agreement* only by sending a written objection by courier, email, fax, or mail to the Notice Provider. Any objecting Class Member shall provide his or her name, contact information, and a brief statement of the nature and reasons for the objection.
- 6.4 The Claims Administrator shall report to the Court, by affidavit, with a copy to the Defendants, and provide copies of any objections received prior to the Settlement Approval Hearing.

Section 7 – Releases And Dismissals

- 7.1 Upon approval by the Court of this *Settlement Agreement*, and in consideration of the payment of the Settlement Fund, and for other valuable consideration set forth in this *Settlement Agreement*, the Releasers will be deemed and hereby expressly agree to forever and absolutely release the Releasees from the Released Claims, and further agree not to make any claim or take, participate in, or continue any proceedings (including a cross claim, third party or other claim) arising out of or relating to the subject matter of the Released Claims against the Releasees and/or any other person, corporation, or entity (including, without limitation, any pharmacists, pharmacies, health care professionals, health care providers, or health care facilities) that might give rise to a claim for damages and/or contribution and indemnity and/or other relief either generally or under the provisions of any provincial or territorial apportionment or contributory negligence legislation, and any amendments thereto, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.

- 7.2 The Releases and Dismissals set out herein apply to each Class Member whether or not the Class Member receives compensation under this *Settlement Agreement* as an Eligible Class Member and can be relied on as a defence in any further claim that may be advanced by any Class Member.
- 7.3 The Representative Plaintiff agrees to make best efforts to obtain through Class Counsel a full and final release of the claims of the Health Insurers in substantially the form attached hereto as **Appendix "A"** and the Releasors undertake to indemnify the Releasees from all awards, recoveries, amounts, costs and expenses incurred on account of any claims, liens, demands, rights, or causes of action by the Health Insurers and/or U.S. Medicare (if applicable) claiming a lien upon, subrogated interest in, or right or entitlement to the proceeds of this settlement, in whole or in part, for any reason, including the provision of medical and/or hospital care and/or the payment of medical and/or hospital expenses by any third party provider/payer, and/or a right to reimbursement or subrogation for any reason arising out of the consideration payable under this *Settlement Agreement*.
- 7.4 As of the Effective Date, the Class Proceeding shall be dismissed with prejudice and without costs and the Defendants shall abandon their appeal in the Alberta Court of Appeal.
- 7.5 The Defendants agree to further abandon any claim for costs against any Class Member who has been a plaintiff in any previously filed class action or other proceeding in Canada, and whether costs have been ordered to date or not.
- 7.6 After the Effective Date, any Class Member who has not opted out, will immediately dismiss on a with prejudice basis any action or proceeding pertaining to recovery relating to the subject matter of the Class Proceedings on a without costs basis, regardless of whether or not compensation is received under this *Settlement Agreement*, including the plaintiffs Megan and Tammy Thompson (Saskatchewan Court of King's Bench (QBG-PA-000276-2019)).
- 7.7 To the extent such action or proceeding is not dismissed within 30 days of the Effective Date as contemplated in section 7.6, the Plaintiff on behalf of each Class Member, agrees to consent to a dismissal or discontinuance of the action or proceeding at the request of, or on the application of the Defendants, on a with prejudice and without costs basis and to pay the legal costs associated with the steps taken by the Defendants.

Section 8 – Legal Fees

- 8.1 Class Counsel may bring applications at the Settlement Approval Hearing or on a subsequent date for Court approval of payment of the Class Counsel Fees and Class Counsel Disbursements and applicable taxes thereon. Notice of such a hearing will be provided to the Defendants. The Defendants will not oppose any applications for approval of the Class Counsel Fees, Class Counsel Disbursements, Honorarium, and Lawyers' Fees, insofar as any such applications are not contrary to the terms of this *Settlement Agreement*.
- 8.2 Class Counsel and other lawyers retained by an Eligible Claimant may charge Lawyers' Fees as a percentage of the Compensatory Payments paid to an Eligible Claimant that they represent after the determination of the Compensatory Payment by the Claims Officer, plus disbursements and applicable taxes, but subject to the limits provided for in section 8.5.
- 8.3 The amount of the Lawyers' Fees shall not exceed 35% of the Compensatory Payment allocated to any Class Member who is represented, subject to the limits provided for in section 8.5. For any Eligible Claimants who are unrepresented, Lawyers' Fees will be 15% of the Compensatory Payments to the Eligible Claimant.
- 8.4 The Claims Administrator shall pay each lawyer of Class Counsel and Former Class Counsel their respective shares of the Class Counsel Fees within 7 days of the Effective Date, and Lawyers'

Fees plus disbursements and applicable taxes directly to Class Counsel and other lawyers retained by Eligible Claimants when payments are made to Eligible Claimants.

- 8.5 Notwithstanding any other provision of this *Settlement Agreement*, the aggregate amount of the Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) shall not exceed 33.33% of the Settlement Fund plus interest thereon, and the amount of the Class Counsel Fees shall not be less nor more than \$2,000,000 plus GST.

Section 9 – No Admission of Liability

- 9.1 The Parties agree that whether or not the *Settlement Agreement* is approved by the Court, the *Settlement Agreement* and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with the *Settlement Agreement*, and any action taken to carry out the *Settlement Agreement*, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Class Proceeding or in any other pleading filed by the Plaintiffs.
- 9.2 The Parties further agree that whether or not the *Settlement Agreement* is approved by the Court, neither the *Settlement Agreement* nor any document relating to it shall be disclosed as or offered in evidence in any action, claim, or proceeding in any court, agency, arbitration, or tribunal, except to seek Court approval of the *Settlement Agreement* or to give effect to and enforce the provisions of the *Settlement Agreement*.
- 9.3 The Parties further understand and agree that the Defendants have entered into this *Settlement Agreement* without any admission of liability, and that the *Settlement Agreement* is conditional on the agreement not being used as a precedent or in evidence in any proceedings whatsoever, regardless of venue or jurisdiction, whether between the Defendants and any other person, including by a party, legal counsel, or Class Member involved in this Class Proceeding at any point.

Section 10 – General Provisions

- 10.1 This *Settlement Agreement* shall be governed, construed, and interpreted in accordance with the laws of Alberta and Canada.
- 10.2 The Court shall retain exclusive jurisdiction in the implementation and administration of the *Settlement Agreement* and any disputes arising therefrom.
- 10.3 Class Counsel, the Defendants, or the Claims Administrator may apply to the case management judge in the Class Proceeding for directions in respect of the implementation and administration of this *Settlement Agreement*, including the Distribution Protocol.
- 10.4 Other than the payments contemplated under this *Settlement Agreement*, the Releasees shall have no responsibility for, and no liability with respect to, the administration of this *Settlement Agreement* and the Compensation Fund.
- 10.5 This *Settlement Agreement*, including its *Schedules*, constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and settlement terms in connection herewith.
- 10.6 The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this *Settlement Agreement*. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this *Settlement Agreement*, unless expressly incorporated herein.

- 10.7 This *Settlement Agreement* may not be modified or amended except on written consent of all Parties, and any such modification or amendment must be approved by the Court.
- 10.8 The representations and warranties contained in this *Settlement Agreement* shall survive its execution and implementation.
- 10.9 This *Settlement Agreement* may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an email or facsimile signature shall be deemed an original signature for purposes of executing this *Settlement Agreement*. This *Settlement Agreement* may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.
- 10.10 This *Settlement Agreement* has been the subject of negotiations, mediation, and further discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this *Settlement Agreement* shall have no force and effect.
- 10.11 The Parties further agree that the language contained or not contained in previous drafts of this *Settlement Agreement*, or any agreement in principle, shall have no bearing upon the proper interpretation of this *Settlement Agreement*.
- 10.12 Class Counsel shall not publish on their website, or otherwise distribute, any documents relating to the Class Proceeding (including pleadings, expert reports, and transcripts) other than as may be required to advise of the fact that a settlement has occurred and to administer the approved *Settlement Agreement* in accordance with its terms.
- 10.13 Class Counsel confirms that all mediation and negotiations, direct or indirect, leading up to this *Settlement Agreement* are confidential and shall not be disclosed to the public by Class Counsel or the Parties themselves.
- 10.14 The Parties acknowledge that they have required and consented that this *Settlement Agreement* and all related documents be prepared in English and French. *Les parties reconnaissent avoir exigé et consenti à ce que cette Entente de Règlement et Quittance et tous les documents connexes soient rédigés en langue anglaise et française.*
- 10.15 The Schedules to this *Settlement Agreement* are as follows:
- (a) Schedule A – *Notice of Settlement Approval*
 - (b) Schedule B – *Notice Plan for Notice of Settlement Approval*
 - (c) Schedule C – *Settlement Approval Order*
 - (d) Schedule D – *Distribution Protocol*
 - (e) Schedule E – *Claim Form*
- 10.16 Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this *Settlement Agreement*.
- 10.17 Where this *Settlement Agreement* requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs, Class Counsel:

Napoli Shkolnik Canada
1000 – 7 Avenue SW, Suite 400
Calgary, Alberta
T2P 5L5

Clint Docken K.C. | Casey R. Churko
Tel: (306) 540-2284
Fax: (639) 739-2223
Email: cchurko@napolilaw.com

Former Class Counsel:

Merchant Law Group LLP
2710 17 Ave SE #400
Calgary, Alberta
T2A 0P6

E.F. Anthony Merchant, K.C.
Tel: (403) 237-7777
Fax: (403) 273-9411

Email: tmerchant@merchantlaw.com

For the Defendants:

Norton Rose Fulbright Canada LLP
222 Bay Street
Suite 3000, PO Box 53
Toronto, Ontario
M5K 1E7

Randy Sutton
Tel: (416) 216-4046
Fax: (416) 216-3930
Email: Randy.Sutton@nortonrosefulbright.com

IN WITNESS WHEREOF, each of the signatories, whether personally or by counsel, has caused this *Settlement Agreement* to be executed on her/his/their behalf as follows:



Dated: 2024-09-10

Casey R. Churko, as Class Counsel on behalf of the Plaintiffs



Dated: 2024-09-11

E.F. Anthony Merchant, K.C., as Former Class Counsel



September 10, 2024

Dated:

Norton Rose Fulbright Canada LLP on behalf of the Defendants

APPENDIX "A"

FORM OF RELEASE FOR HEALTH INSURERS

For and in consideration of the payment certain amounts pursuant to a *Settlement Agreement* between the Parties dated [XX], the sufficiency of which is hereby acknowledged, His Majesty the King in Right of the [PROVINCE/TERRITORY OF ●], as represented by the [HEALTH INSURER ENTITY] (the **Releasor**) does for herself and for her agents hereby remise, release and forever discharge the Defendants, GlaxoSmithKline Inc., GlaxoSmithKline LLC, and GlaxoSmithKline PLC, and their respective present and former parents, subsidiaries, affiliates, officer, directors, employees, insurers, agents, attorney, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing (the **Releasees**) from any and all claims made pursuant to the [LEGISLATION NAME] which the Releasor ever had, now has or could have, for or by reason of or arising out of or in any way connected with personal injuries suffered by any person in [PROVINCE/TERRITORY] born with Qualifying Congenital Malformations (as defined in the *Settlement Agreement*) to a woman who ingested Paxil® or Paxil CR™ while pregnant during the period of January 1, 1993 to [DATE], and their biological mothers, who did not deliver an *Opt-Out Form* on or before April 8th, 2024, and which relate to assertions of fact or law, causes of action, injuries and damages that were pleaded in the Court File No. 1201-12838 filed in the Court of King's Bench of Alberta (Calgary), as amended on January 9th, 2019, (the **Action**) and referred to in the common issues certified by the Honourable Associate Chief Justice Rooke, pronounced November 17th, 2022 and filed December 19th, 2022.

It is further expressly understood and agreed that the payment herein shall not be construed as an admission of liability on the part of the Releasees by whom liability is expressly denied. The Release and the *Settlement Agreement* contain the entire agreement between the Releasor and Releasees, and the terms of the Release are contractual and not a recital.

In witness whereof, I, ● have hereunto set my hand at the [CITY], in the [PROVINCE/TERRITORY], this ● day of ●, 2023 as duly authorized signatory on behalf of His Majesty the King in Right of the [PROVINCE/TERRITORY OF ●], as represented by the [HEALTH INSURER ENTITY].

[signature line]

SCHEDULE A – Notice of Settlement Approval**LEGAL NOTICE:
PAXIL® AND PAXIL™ USED IN CANADA DURING PREGNANCY****NOTICE OF SETTLEMENT APPROVAL**

A class proceeding, *Singh v GlaxoSmithKline Inc*, Court File No. 1201-12838, commenced in the Alberta Court of King's Bench, was certified regarding the selective serotonin reuptake inhibitor "paroxetine" that GlaxoSmithKline Inc. 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. The allegations in the class proceeding are denied by GSK and have not been proven in court. The parties have agreed to settle the class proceeding rather than proceed to trial.

WHO IS ELIGIBLE FOR THE SETTLEMENT?

To be eligible to participate in this settlement, you must be a member of the class, or the estate or legal representative of a class member. The class is defined as:

women who were prescribed Paxil® or Paxil CR™ in Canada and subsequently aborted, delivered, or miscarried children with congenital malformations after ingesting either drug while pregnant, family members who may make claims under *Family Compensation Legislation* following the death of, or injury to such children, children born alive to such women, and provincial and territorial governments who paid health care costs on their behalf.

SETTLEMENT TERMS

You can obtain a copy of the *Settlement Agreement* by contacting Class Counsel or the Claims Administrator at the addresses below. In summary, 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.

HOW TO MAKE A CLAIM

Class members must submit a *Claim Form* and supporting documentation to the Claims Administrator at the address listed below before <Claims Deadline>. The Claims Officer will then determine each class member's entitlement to compensation based on that supporting documentation.

ADDITIONAL INFORMATION

This is not an advertisement or solicitation by a lawyer. The Court has approved the content of this notice, and it affects your legal rights. You should seek independent legal advice to consider your options. You can review additional documents related to the class proceeding at www.paxilbirthdefectsclassaction.ca. You may also call 1-877-400-1211 or e-mail inquiry@trilogyclassactions.ca with inquiries about the class proceeding and for further information on whether you are a class member and how you may participate further.

For more information about the lawsuit and/or to obtain a *Claim Form*, please contact Class Counsel at:



1000 - 7 Avenue SW, Suite 400
Calgary, Alberta
T2P 5L5

Clint Docken KC | Casey R. Churko

Tel: (306) 540-2284

Fax: (639) 739-2223

cchurko@napolilaw.com

or contact the Claims Administrator at:

Paxil Birth Defects Class Action
c/o Trilogy Class Action Services
117 Queen Street, P.O. Box 1000
Niagara-on-the-Lake, Ontario
L0S 1J0

Tel: (877) 400-1211

Fax: (416) 342-1761

E-mail: claims@trilogyclassactions.ca

SCHEDULE B – Notice Plan for *Notice of Settlement Approval*

The *Notice of Settlement Approval* shall be given by the following means:

1. The Notice Provider shall send a copy of the *Notice of Settlement Approval* by mail or email to individuals who identified themselves as Class Members. Class Counsel shall provide the Notice Provider with a list of known Class Members.
2. The Notice Provider shall deliver the *Notice of Settlement Approval* to Health Authorities.
3. The Notice Provider shall deliver the *Notice of Settlement Approval* to the offices of the provincial and territorial public guardians and trustees.
4. The Notice Provider shall post a copy of the *Notice of Settlement Approval* at www.paxilbirthdefectsclassaction.ca.
5. The Notice Provider shall distribute notice to potential Class Members by way of Google advertisements.
6. Notice may be distributed in any other suitable manner which the Parties may agree to, provided that the total cost of giving *Notice of Settlement Approval* shall not exceed \$27,500.
7. Class Counsel may supplement this Notice Plan in any other lawful means and at their own cost.

SCHEDULE C – Settlement Approval Order

ACTION NUMBER 1201-12838

COURT COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS FIONA SINGH and
MUZAFFAR HUSSAIN by his
litigation representative FIONA SINGH


DEFENDANTS GLAXOSMITHKLINE INC.
GLAXOSMITHKLINE LLC and
GLAXOSMITHKLINE PLC.



Brought under the Class Proceedings Act

DOCUMENT **ORDER**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT



1000 – 7 Avenue SW, Suite 400
Calgary, Alberta
T2P 5L5

Clint Docken, K.C. | Casey R. Churko
Tel: (403) 619-3612
Fax: (639) 739-2223

DATE ORDER WAS PRONOUNCED:	September 24 th , 2024
JUDGE WHO MADE THE ORDER:	Hon. Justice E.J. Sidnell

ORDER
(Settlement Approval)

UPON THE APPLICATION of the Plaintiffs:

AND UPON READING the *Settlement Agreement* and the *Schedules* thereto, which are attached to this Order as Schedule “1”

AND ON HEARING the submissions of counsel for the Plaintiffs and of counsel for the Defendants;

AND UPON BEING ADVISED that notice of this Settlement Approval Hearing was provided by the Claims Administrator pursuant to the terms of the *Order (Settlement Approval Hearing Notice)* pronounced June 5th, 2024 and filed June 10th, 2024;

AND UPON HAVING CONSIDERED all materials filed and used at the hearing;

IT IS HEREBY ORDERED:

1. The *Settlement Agreement* attached to this *Order* as Schedule “1”, including all of the *Schedules* thereto, is incorporated by reference into and forms part of this *Order* and unless otherwise indicated herein, for the purposes of this *Order*, the definitions set out in the *Settlement Agreement* apply to and are incorporated into this *Order*.

2. The *Settlement Agreement*, including all of the *Schedules* thereto, is fair, reasonable, and in the best interests of the Class and is hereby approved and is binding on Class Members, the Releasors, and the Defendants pursuant to the *Class Proceedings Act*, SA 2003 c C-16.5, s 35 and shall be implemented in accordance with its terms. The steps taken by the Notice Provider to notify Class Members of the Settlement Approval Hearing are deemed reasonable and appropriate.

3. The *Notice of Settlement Approval*, in a substantially similar form to that attached as Schedule “A” to the *Settlement Agreement*, shall be distributed pursuant to the Notice Plan for *Notice of Settlement Approval*, attached as Schedule “B” to the *Settlement Agreement*, and such distribution is approved by this Court as being reasonable notice of the settlement and the terms of the *Settlement Agreement* in accordance with the requirements of the *Class Proceedings Act*.

4. The Claims Administrator may be paid up to \$180,000 without further Court approval for Administration Costs (excluding its expenses and applicable taxes). If the Administration Costs of the Claims Administrator exceed \$180,000 (excluding its expenses and applicable taxes), further amounts may be payable from the Compensation Fund on further application to, and with the approval of, the Court. Any work required of the Claims Administrator that is not part of its core duties in relation to the Distribution Protocol may be billed at the following hourly rates: \$150 for translations; \$325 for senior management; \$155 for information technology; \$155 for project management; and \$65 for administrative duties.

5. The Defendants shall have no responsibility or liability, under any circumstances, for any additional or further payments as set out in the *Settlement Agreement*, including in relation to the settlement, Class Proceeding, or discontinuance of any individual actions of the Class Members pertaining to the subject matter of the Class Proceeding.

6. Any and all claims, whether direct, subrogated, or otherwise, that a Releasor or a Health Insurer may otherwise have had against the Releasees, Plaintiffs, or any Class Member, and whether arising by

statute, equity, or at law, is hereby and forever released and discharged, and the Releases as outlined in the *Settlement Agreement*, including in Appendix "A", provided by the Releasers and the Health Insurers are approved by this Court as being fair and reasonable and shall be binding on Class Members who have not opted out and the Health Insurers.

7. The Honorarium for the Representative Plaintiff's extraordinary service to the Class, being \$50,000, is hereby approved. Payment of this amount to the Representative Plaintiff is authorized as a disbursement to be paid from the Settlement Fund.

8. The Class Counsel Fees and Class Counsel Disbursements plus applicable taxes thereon is approved for work done on behalf of the Class from the commencement of the Class Proceeding (and not before) to the Effective Date. The method for determining Lawyers' Fees is approved for work done and to be done on behalf of Eligible Claimants. The Class Counsel Fees, Class Counsel Disbursements, and Lawyers' Fees are approved only with respect to this proceeding and no other.

9. The appointment of Trilogy Class Action Services as the Claims Administrator, whose responsibilities shall include but may not be limited to (a) administering the Distribution Protocol in collaboration with the Claims Officer, (b) accepting and maintaining documents sent from Class Members, including *Claim Forms* and other documents relating to Claims administration, (c) administering the Settlement Fund and Compensatory Payments, and (d) all other responsibilities designated to the Claims Administrator in the *Settlement Agreement*, is hereby approved. The Claims Administrator will provide Class Counsel and the Defendants with any information or documents that Class Counsel or the Defendants request concerning the administration of the settlement including details of distribution.

10. The appointment of a Claims Officer, to be agreed to by the Parties or further Order of this Court and whose responsibilities shall include but not be limited to (a) reviewing medical records of the Claimants, (b) determining whether a Claimant Child was born with a Qualifying Congenital Malformation, (c) identifying the category in the Distribution Protocol applicable to the Qualifying Congenital Malformation, and (d) assigning a points value within the ranges set out in the Distribution Protocol, is hereby approved.

11. The Claims Deadline shall be 90 days from the publication of the *Notice of Settlement Approval*. A Class Member, whether represented or unrepresented, will be at liberty to apply to the Court to extend the Claims Deadline or the Claims Perfection Deadline for up to 60 days, so long as such application is made before the Claims Deadline or Claims Perfection Deadline and the Class Member provides notice of the application to the Claims Administrator, Class Counsel, and counsel for the Defendants. Such application will be unnecessary if Class Counsel, the Claims Administrator, and counsel for the Defendants each agree to extend the Claims Deadline, and where the Class Member explains the need for the extension to the satisfaction of both Class Counsel and counsel for the Defendants.

12. The Distribution Protocol attached as Schedule "D" to the *Settlement Agreement* is hereby approved. The determination of the validity of the Claims submitted by Class Members shall be made by the Claims Administrator and may be appealed as outlined in the *Settlement Agreement* to the Court of King's Bench within 30 days of the Claims Administrator's decision. The appeal shall be determined by Justice E. Jane Sidnell, or her designate, on the basis of written submissions only. All submissions will be provided to the Defendants. The appeal decision shall be final and binding, and shall not be subject to any further appeal. Disputes, other than eligibility and assessment of Compensatory Payments, will be determined pursuant to the laws of Alberta and Canada, and where necessary will be adjudicated by the case management justice in the Court of King's Bench.

13. Without affecting the finality of this *Order*, this Court shall retain exclusive continuing jurisdiction over the settlement process and the Parties thereto, including for all matters relating to supervising, administering, implementing, enforcing, and interpreting the *Settlement Agreement* and the Claims and Distribution Protocol thereunder, the enforcement of this *Order*, and all proceedings related to the *Settlement Agreement*, both before and after the approval of the *Settlement Agreement* until the settlement referred to therein becomes final and is no longer subject to appeal. The Parties may apply to this Court for further direction, if necessary, in respect of the implementation and administration of the *Settlement Agreement* and the Distribution Protocol. This Class Proceeding is otherwise dismissed and all the Claims of the Class Members as against the Defendants relating to the Allegations are extinguished upon distribution of the Compensation Fund.

**CLERK OF THE COURT OF
KING'S BENCH OF ALBERTA**

APPROVED as to form and content as the Order granted:

Napoli Shkolnik Canada

1900-144 4th Avenue SW
Calgary, Alberta
T2P 3N4

Clint Docken KC | Casey R. Churko

Tel: (306) 540-2284
Fax: (639) 739-2223
cchurko@napolilaw.com

CASEY R. CHURKO

Counsel for the Plaintiffs,
Fiona Singh and Muzaffar Hussain

Per:

Norton Rose Fulbright Canada LLP

222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario
M5K 1E7

Randy Sutton

Tel: (416) 216-4046
Fax: (416) 216-3930

randy.sutton@nortonrosefulbright.com

RANDY SUTTON

Counsel for the Defendants,
GlaxoSmithKline Inc.,
GlaxoSmithKline LLC, and
GlaxoSmithKline plc

Per:

SCHEDULE D – Distribution Protocol

1. All capitalized terms used in this schedule have the same meaning as in the *Settlement Agreement*.

Process to Advance a Claim

2. A Class Member who wishes to receive benefits pursuant to the settlement of this Class Proceeding must provide the Claims Administrator with a *Claim Form* (Appendix 1) before the Claims Deadline.

3. Mailed or couriered *Claim Forms* received after the Claims Deadline but post marked or deposited with the courier on or before the Claims Deadline will be deemed received on the post marked date or the date deposited with the courier.

4. E-mailed or faxed *Claim Forms* will be deemed received on the date received by the Claims Administrator

Determination of Eligibility

5. To receive a Compensatory Payment, a Claimant must satisfy the Claims Administrator that he or she is an Eligible Claimant by the completion and submission of a valid *Claim Form* with related medical and pharmacy records.

6. To be eligible for compensation, the Claimant Mother, Claimant Child, or their legal or estate representative must satisfy the Claims Officer that:

- (a) Neither the Claimant Mother or Claimant Child:
 - i. had a cardiovascular birth defect with no other Qualifying Congenital Malformation(s); and
 - ii. was a resident of the Province of British Columbia prior to February 3, 2006 when they were prescribed Paxil® or Paxil CR™;
- (b) The records described below confirm that the Claimant Mother of the Claimant Child was prescribed branded (and not generic) Paxil® or Paxil CR™ (**Paxil**) in Canada.
- (c) Paxil was dispensed to the Claimant Mother during the First Trimester of pregnancy.
- (d) The prescription for Paxil referred to in paragraph 6(b) was dispensed:
 - i. prior to February 3, 2006, in which case no percentage reduction will be applied to any Compensatory Payment;
 - ii. between February 3, 2006 and February 3, 2007, in which case a reduction of 50% will be applied to any Compensatory Payment; or
 - iii. February 3, 2007 or later, in which case, the Claimant will not be eligible for compensation.
- (e) The Claimant Child was born alive and subsequently diagnosed with a birth defect that constitutes a Qualifying Congenital Malformation.

Qualifying Congenital Malformations

7. Qualifying Congenital Malformations are limited to the following exhaustive list:

- (a) Anencephaly;

- (b) Spina bifida;
- (c) Encephalocele;
- (d) Craniosynostosis;
- (e) Cleft lip;
- (f) Cleft palate;
- (g) Structural cardiovascular defects;
- (h) Diaphragmatic hernia;
- (i) Gastroschisis;
- (j) Omphalocele;
- (k) Hypospadias;
- (l) Undescended testes; and
- (m) Club foot.

8. To establish a diagnosis of a Qualifying Congenital Malformation, and the severity and/or necessary medical intervention to treat or resolve same, the Class Member must provide supporting medical documentation, which may include medical records, clinical records, hospital records, pathology records, laboratory records, and similar records. The records may be supplemented by a sworn affidavit of the Class Member's health care provider that confirms the diagnosis, treatment, and nature of the injury.

Reduction in Compensation for Confounding Factors

9. The Claims Officer will have the discretion to reduce the points value assigned to Claims of eligible Class Members on a percentage basis up to a maximum of 50% where there are confounding factors from the list below that, in the opinion of the Claims Officer based on his or her review of the available medical records, may have caused or contributed to the Qualifying Congenital Malformation(s) or other underlying health issues that impacted the Class Member's health, care, and/or quality of life, being:

- (a) genetic diagnoses of the kind associated with one or more of the Qualifying Congenital Malformations;
- (b) smoking, alcohol and/or illicit drug use of the mother during pregnancy;
- (c) maternal age;
- (d) pre-gestational diabetes;
- (e) metabolic disorders during pregnancy;
- (f) body mass index outside of the normal range (18.5 to 25);
- (g) significant physical trauma experienced during pregnancy; and/or
- (h) exposures to medications or chemicals during pregnancy that are associated with birth defects, as determined by the Claims Officer.

10. Additionally, and to account for the resolution of class action litigation commenced in British Columbia concerning the use of Paxil during pregnancy, and the resulting compensation received by class members diagnosed with a cardiac defect, a percentage reduction may be applied where the Class Member resided in British Columbia and the Claimant Child was diagnosed with a cardiovascular defect in addition to at least one other Qualifying Congenital Malformation to reflect that any claim by these Class Members for a cardiovascular defect was previously settled.

Evidence of Prescription and Use

11. To establish the prescription and ingestion of Paxil necessary to being an Eligible Claimant, the Class Member must provide either prescription records, medical records, hospital records, clinical records, pharmacy records, receipts and/or insurance records (the **Records**) that show that brand name Paxil distributed by GSK was prescribed or dispensed to the Class Member in Canada during their First Trimester of pregnancy.

12. Where the records described in Item #11 are unavailable, and there is therefore no Record confirming that the Class Member was prescribed and/or ingested branded Paxil during the First Trimester, then the following may be considered by the Claims Administrator as acceptable evidence of the Class Member's prescription and use of branded Paxil:

- (a) A signed letter from the Class Member's physician who treated the Class Member at the material time, which includes current contact information, confirming that, to the best of his or her recollection, branded Paxil was prescribed to the Class Member, or that the treating physician was otherwise aware that the Class Member was ingesting branded Paxil, during the First Trimester of the pregnancy; and
- (b) An affidavit sworn by the Class Member's physician who treated the Class Member at the material time explaining that:
 - i. a search of the treating physician's records was undertaken and no Record confirming proof of ingestion or use of branded Paxil could be located;
 - ii. the physician treated the Class Member at the material time;
 - iii. based on the review of the treating physician, there is no Record that contradicts the treating physician's recollection with respect to the timing of use and branded Paxil being prescribed or ingested;
 - iv. to the best of the treating physician's knowledge, there is no reason to doubt the accuracy of his or her recollection with respect to the Class Member's prescription or use of Paxil during the First Trimester;
 - v. his or her memory should be considered sufficient in the absence of Records; and
 - vi. the treating physician agrees to comply with any further questions or audits conducted by the Claims Administrator with respect to statements that the Class Member was prescribed or ingested branded Paxil during the First Trimester.

13. A statement by the Class Member that Paxil was ingested during the First Trimester of pregnancy is not sufficient unless the physician described in Item #12 is deceased or has ceased to practice and if medical records, including hospital records or physician notes, state that no medications were taken during pregnancy, the Class Member will not be eligible for compensation.

14. Evidence of prescription or purchase of Paxil will also be considered evidence of ingestion of the drug.

15. Where, after the first date of generic entry of paroxetine occurred, supporting medical documents reference only “paroxetine” and there is no indication in the evidence provided that Paxil, as opposed to generic paroxetine, was prescribed, then the Class Member will not be eligible for compensation.

16. For greater certainty, this settlement is designed to compensate for the use of branded Paxil distributed by GSK only, and not generic paroxetine.

Eligibility and Compensation to the Discretion of the Claims Administrator and Claims Officer

17. Whether eligibility can be accurately determined through the *Claim Form* and the Records provided will be to the sole discretion of the Claims Administrator and Claims Officer.

18. It is the responsibility of the Class Member, or his/her legal or estate representative, to provide sufficient evidence to support his/her Claim. Any fees or charges incurred by the Class Member with respect to filing his/her Claim are the responsibility of the Class Member.

19. The determination of the validity of the Claims submitted by Class Members shall be made by the Claims Administrator and may be appealed to the Court of King’s Bench within 30 days of the Claims Administrator’s decision. The appeal shall be determined by Justice E. Jane Sidnell, or her designate, on the basis of written submissions only. The appeal decision shall be final and binding, and shall not be subject to any further appeal.

20. The Claims Officer shall review each *Claim Form* and determine whether the individual is an Eligible Claimant.

21. If a person is acting on behalf of the Claimant Mother or Claimant Child, the Claims Administrator shall require verification that the person has the legal authority to do so, and if the person is a lawyer in any jurisdiction, that he or she is licensed to practice law in a Canadian province or territory.

22. Upon the request of counsel to the Plaintiffs or Defendants, or the Claims Officer, or at the discretion of the Claims Administrator, the Parties agree that the Claims Administrator may conduct an audit or such other review to confirm the veracity of (a) the Records, (b) the treating physician’s letter and accompanying affidavit, and/or (c) the absence of the Records and explanation for that absence. The Claims Administrator and Claims Officer may revoke any findings with respect to eligibility and/or adequate evidence of the Class Member’s claim as a result of the Claims Administrator’s review or audit.

Distribution of Settlement Fund

23. The Claims Administrator shall distribute the Settlement Fund in accordance with the terms of the *Settlement Agreement* and based on the determinations of the Claims Officer.

Damages – Category Assessments

24. A Class Member’s entitlement to a Compensatory Payment under this Distribution Protocol shall be determined by the Claims Officer as outlined herein.

25. Compensatory Payments will be assessed by the Claims Officer through a review of the medical records and other documents submitted on behalf of the Claimant Mother, Claimant Child, or from the submissions of a physician applying the following grid:

Cardiac Malformations: atrial septal defect excluding patent foramen ovale; atrioventricular septal defect; coarctation of the aorta; transposition of the great vessels; hypoplastic left heart syndrome; pulmonary atresia; pulmonary stenosis; tetralogy of fallot; total anomalous pulmonary venous return; tricuspid atresia; truncus arteriosus; and ventricular septal defect.		
A.	No procedure, only diagnosis and ongoing monitoring	5 to 10

B.	Non-surgical treatment(s) to repair or treat the malformation(s)	10 to 20
C.	One surgery to repair or treat the malformation(s)	20 to 60
D.	Multiple surgeries to repair or treat the malformation(s)	40 to 100

Neural Tube Defect Malformations: anencephaly; spina bifida; and encephalocele

A.	No procedure, only diagnosis and ongoing monitoring	5 to 10
B.	Non-surgical treatment(s) to repair or treat the malformation(s)	10 to 20
C.	One surgery to repair or treat the malformation(s)	20 to 50
D.	Multiple surgeries to repair or treat the malformation(s)	40 to 75

Skeletal Malformations: club foot

A.	No procedure, only diagnosis and ongoing monitoring	5 to 10
B.	Non-surgical treatment(s) to repair or treat the malformation(s)	10 to 15
C.	One surgery to repair or treat the malformation(s)	15 to 30
D.	Multiple surgeries to repair or treat the malformation(s)	30 to 50

Abdominal Malformations: gastroschisis; omphalocele; and diaphragmatic hernia

Urinary/Genital Malformations: undescended testes and hypospadias

A.	No procedure, only diagnosis and ongoing monitoring	5 to 10
B.	Non-surgical treatment(s) to repair or treat the malformation(s)	10 to 15
C.	One surgery to repair or treat the malformation(s)	15 to 20
D.	Multiple surgeries to repair or treat the malformation(s)	20 to 35

Craniofacial Malformations: cleft lip; cleft palate; and craniosynostosis.

A.	No procedure, only diagnosis and ongoing monitoring	1 to 5
B.	Non-surgical treatment(s) to repair or treat the malformation(s)	5 to 10
C.	One surgery to repair or treat the malformation(s)	20 to 30

D.	Multiple surgeries to repair or treat the malformation(s)	30 to 60
----	---	----------

26. The Claims Officer will identify the categories within which each Class Member's Claim falls and assign a points value within the range identified. Where a Class Member has more than one malformation, he or she will be awarded a points value respecting each category into which the Claim falls.

27. In determining the points value within the range, the Claims Officer will consider the following criteria in relation to the congenital malformations and the Claimant Child's medical condition:

- A. Severity of malformation(s);
- B. Duration and complexity of treatments;
- C. Likelihood of future complications;
- D. Likelihood of future medical interventions;
- E. Likelihood of future medical/non-medical care; and
- F. Likelihood of vocational impairment.

28. Each eligible Claimant Mother of a Class Member born alive with a Qualifying Congenital Malformation will be entitled to 25% of the points that the eligible Claimant Child is entitled to under this heading in full and complete satisfaction of her own Claim and the claims of any other Family Members.

General

29. The Claims Officer will seek to follow the processes outlined herein, but the Claims Officer may also establish further processes for the management or the determination of the Claims so as to ensure a fair, just, and timely determination of the Claims on the merits, and consistency in the application of this *Settlement Agreement*, and may implement such revisions upon approval by the Court, after providing 15 days' notice to the Parties.

30. The Claims Officer may at any time request further information, via the Claims Administrator, from the Class Member if the Claims Officer believes such information is necessary and available to validate the Claim, including as it pertains to ambiguities or inconsistencies in the Claim.

31. If the Class Member has legal counsel, all inquiries or requests will be sent to his/her lawyer. If the Claims Administrator does not receive the additional information requested or responding answers within 90 days after advising the Class Member of the deficiency or request, the Claim shall be assessed on the basis of the material provided by the Class Member.

32. The Claims Officer may consider the materials provided whether or not such materials would be admissible in a court of law. The Claims Officer may grant extensions of the time to provide materials on the written request of a Claimant; provided that all documentation respecting Claims shall be submitted on or before the Claims Perfection Deadline, and the Claims administration process shall be completed within a further 60 days thereafter.

33. The Claims Officer shall make best efforts to adjudicate a Claim and render a decision as to eligibility and point allocation within 60 days of receiving a Claim.

34. The Claims Administrator shall provide the decision of the Claims Officer in writing by way of a letter or email to the Class Member. If the Class Member has legal counsel, the decision will be sent to counsel directly.

35. Confirmation of eligibility and entitlement shall be determined on a balance of probabilities and common law principles. The determination of the validity of the Claims submitted by Class Members shall be made by the Claims Administrator and may be appealed as outlined in the *Settlement Agreement* to the Court of King's Bench within 30 days of the Claims Administrator's decision. The appeal shall be determined by Justice E. Jane Sidnell, or her designate, on the basis of written submissions only. The appeal decision

shall be final and binding, and shall not be subject to any further appeal. Disputes, other than eligibility and assessment of Compensatory Payments, will be determined pursuant to the laws of Alberta and Canada, and where necessary will be adjudicated by the case management justice in the Court of King's Bench.

Distribution of Compensation Fund

36. Compensatory Payments to Class Members shall be paid from the Compensation Fund on a pro-rata basis based on the number of points. All Claims will be adjudicated and finally determined before any amounts for Compensatory Payments are paid pursuant to the *Settlement Agreement*.

37. Compensatory Payments will not be paid until the Claims Administrator has satisfied itself of the adequacy and veracity of the evidence and documents provided by all Class Members in support of their Claims. In the event that Compensatory Payments are paid and the Parties subsequently learn that the Records or other supporting evidence of a Class Member's Claim were misrepresented or fraudulent, the Defendants and Claims Officer reserve all rights and remedies to recover the entirety of the Compensatory Payment at issue.

38. Lawyers' Fees will be paid as and when Compensatory Payments are made to Eligible Claimants from the Compensation Fund. Subject to section 8.5 of the *Settlement Agreement*, the Claims Administrator shall pay to Class Counsel:

- (a) 35% of the Compensatory Payments made to Class Members they represent;
- (b) 10% of the Compensatory Payments made to Eligible Claimants who are represented by other lawyers who executed retainer agreements with Class Members before the *Notice of Settlement Approval Hearing* is given;
- (c) 25% of the Compensatory Payments made to any Eligible Claimants who are represented by other lawyers who executed retainer agreements with Class Members after the *Notice of Settlement Approval Hearing* is given; and
- (d) 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented.

The amount of the combined Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) will not exceed 33.33% of the Settlement Fund. Lawyers' Fees (but not the Class Counsel Fees) will be proportionately reduced if the amount of the combined Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) otherwise determined herein would exceed 35% of the Settlement Fund plus interest thereon.

39. Within 7 days of the Effective Date, the Claims Administrator shall pay Health Insurers CDN \$525,000 out of the Settlement Fund for healthcare costs recovery in full and final satisfaction of any and all claims they have respecting any and all Class Members, provided that each signs full and final releases in forms that are satisfactory to each Health Insurer. Health Insurers shall thereafter have no role in the Distribution Protocol

40. Distribution of payments to Class Members (other than the Honorarium), will not commence until after all Claims have been determined or adjudicated.

5. Provide the date of the commencement of your last menstrual period prior to the period of pregnancy: _____

6. Select for the congenital malformation(s) for which the Claim is made:

Malformation	Specific Injuries
<input type="checkbox"/> Cardiac	Structural cardiac congenital malformations, including: <ul style="list-style-type: none"> <input type="checkbox"/> atrial septal defect excluding patent foramen ovale <input type="checkbox"/> atrioventricular septal defect <input type="checkbox"/> coarctation of the aorta <input type="checkbox"/> transposition of the great vessels <input type="checkbox"/> hypoplastic left heart syndrome <input type="checkbox"/> pulmonary atresia <input type="checkbox"/> pulmonary stenosis <input type="checkbox"/> tetralogy of fallot <input type="checkbox"/> total anomalous pulmonary venous return <input type="checkbox"/> tricuspid atresia <input type="checkbox"/> truncus arteriosus <input type="checkbox"/> ventricular septal defect
<input type="checkbox"/> Craniofacial	<ul style="list-style-type: none"> <input type="checkbox"/> cleft lip and/or palate <input type="checkbox"/> craniosynostosis
<input type="checkbox"/> Neural tube	<ul style="list-style-type: none"> <input type="checkbox"/> anencephaly <input type="checkbox"/> spina bifida <input type="checkbox"/> encephalocele

- Abdominal
 - gastroschisis
 - omphalocele
 - diaphragmatic hernia

- Skeletal
 - club foot

- Urinary / genital
 - undescended testes
 - hypospadias

7. Provide the name and address for any physician, hospital, or other healthcare professional or institution who treated the child for any condition listed above, with dates of treatment if known:

Provider	Address	Dates of Treatment

8. Has the child had surgery for any of the conditions listed above?

- Yes No

i. If the child has had surger(ies) please list below the type of surgery, hospital and date.

Type of Surgery	Facility/Hospital	Dates of Surgeries

9. Describe and provide supporting documentation regarding the likelihood of future medical interventions, if any, arising from the congenital malformation:

10. Describe and providing supporting documentation, regarding any vocational impairment, if any, arising from the congenital malformation.

11. Describe and provide supporting documentation which speaks to the likelihood of potential future complications, if any, arising from the congenital malformation.

12. The undersigned hereby consent(s) to the disclosure of the information contained herein to the extent necessary to process this Claim for Compensatory Benefits. Each person signing below agrees to cooperate with the Claims Administrator and Claims Officer and to provide any necessary medical record authorizations and releases for the Claims Officer to gather information needed to substantiate or audit the Claim. Each person signing below acknowledges and understands that this *Claim Form* is an official Court document approved by the Court that presides over the settlement, and that submitting it to the Claims Officer is equivalent to filing it with a court. After reviewing the information which has been supplied on this form, each person declares under penalty of perjury that the information provided in this form is true and correct to the best of his/her knowledge, information and belief.

Signature of Claimant Child (if an adult)

(dd/mm/yyyy)

Signature of Mother or Litigation or other Guardian

(dd/mm/yyyy)

This and the previous 33 pages are Exhibit 11 referred to in the *Affidavit of Fiona Singh*, affirmed before me this 11th day of September 2024

JOANNE ELAINE IMLER

A Commissioner for Oaths
in and for Alberta

My Commission Expires May 10, 2025
Appointee #0746666



A Commissioner for Oaths in and for
the Province of Alberta