



COURT FILE NO. 1201-12838
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS FIONA SINGH and
(APPLICANTS) MUZAFFAR HUSSAIN by his litigation representative
FIONA SINGH

CMH
Sept 24, 2024

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

Brought under the Class Proceedings Act

DOCUMENT APPLICATION

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

NOTICE OF APPLICATION

(September 14th, 2024)

NOTICE TO RESPONDENTS:

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date	September 24 th , 2024
Time	10:00 am

Where	Alberta Court of King’s Bench 601 5 St SW Calgary, Alberta T2P 5P7
Before Whom	Honourable Justice E. Jane Sidnell, Case Management Justice
Go to the end of this document to see what else you can do and when you must do it.	

I. REMEDY claimed or sought:

1. An order approving the settlement of this class proceeding and granting the order attached to the settlement agreement (**Schedule 2**), including the approval of the class counsel and lawyers’ fees and honorarium for the representative plaintiff, as submitted or with any amendments agreed upon by the parties and approved by the Court.

2. An order approving notice of settlement approval in the form appended as **Schedule 1**.

3. An order appointing Trilogy Class Action Services Canada as the claims administrator.

II. GROUNDS for making this *Application*:

4. Pursuant to s 35(2) of the *Class Proceedings Act*, a class proceeding may be settled only with approval of the Court. Pursuant to s 35(7), the Court must consider whether notice should be given under s 21.

5. After a mediation and subsequent settlement discussions, the parties reached an agreement in principle to resolve this class proceeding. On September 11th, 2024, they executed a *National Class Action Settlement Agreement*.

6. Notice of the settlement approval hearing was given pursuant to the *Order (Settlement Approval Hearing Notice)* pronounced June 5th, 2024 and filed June 10th, 2024, that informed class members of the settlement approval hearing.

7. The parties have agreed to the content of a notice of settlement approval in the form attached as Schedule A to the settlement agreement (**Schedule 1**). The content of the proposed notice complies with s 35(7) of the *Class Proceedings Act*.

8. Trilogy Class Action Services recommends the means of giving notice as described in Schedule B to the settlement agreement. The parties are of the view that the means comply with s 20(2)-(4) of the *Class Proceedings Act*. The means are similar to the means of giving notice of certification that were approved by the Court on June 5th, 2024.

9. The settlement is fair, reasonable, and in the best interests of the class as a whole.

10. The legal fees and disbursements of class counsel, as agreed to in the settlement agreement, are reasonable.

11. The representative plaintiff's devotion of time, personal hardship and inconvenience, emotional and personal nature of her claim, and extraordinary efforts in this class proceeding merit an honourarium.

12. The defendants consent to the order sought.

III. EVIDENCE to be relied on:

13. *Affidavit of Fiona Singh* (affirmed 2024-09-11).

14. *Affidavit of Paul Battaglia* (affirmed 2024-09-11).

15. The pleadings and proceedings herein.

16. Such other materials as shall subsequently be filed and served.

IV. LAW

A. Applicable Rules

17. *Alberta Rules of Court*, Alta Reg 124/2010, Rule 2.9.

B. Applicable Acts and Regulations

18. *Class Proceedings Act*, SA 2003, c C-16.5, ss 20, 22, 23, 25, 35, 38, and 39.

V. OTHER

A. Any irregularity complained of or objection relied on

19. None.

B. How the application is proposed to be heard or considered

20. Orally or by video conference before the Case Management Justice.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant what it wants in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant a reasonable time before the application is to be heard or considered.

DATED this 11th day of September, 2024.



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

Counsel for the Plaintiffs (Applicants)

SCHEDULE 1 – *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 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

SCHEDULE 1 – Notice of Settlement Approval

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 2 – Draft Order

COURT FILE NO.	1201-12838	Clerk's Stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFFS (APPLICANTS)	FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative FIONA SINGH	
DEFENDANTS (RESPONDENTS)	GLAXOSMITHKLINE INC., GLAXOSMITHKLINE LLC, and GLAXOSMITHKLINE PLC.	

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

DATE ORDER WAS PRONOUNCED:	June 5 th , 2024
JUDGE WHO MADE THIS 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 Releasors 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.

**THE HONOURABLE JUSTICE
E.J. SIDNELL**

DRAFT

APPROVED as to form and content this 24th day of September, 2024:



1000 – 7 Avenue SW, Suite 400
Calgary, Alberta
T2P 5L5

Per:



222 Bay Street
Suite 3000, P.O. Box 53
Toronto, Ontario
M5K 1E7

Per:

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Co-Counsel for the Plaintiffs,
Fiona Singh and
Muzaffar Hussain

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Lawyer for the Defendants,
GlaxoSmithKline Inc.,
GlaxoSmithKline LLC, and
GlaxoSmithKline plc.