

# SUPERIOR COURT

(Class Action Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N° : 500-06-000906-186

DATE : June 21, 2022

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**PRESIDING: THE HONOURABLE DONALD BISSON, J.S.C.**

**(JB4644)**

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**STEVEN VARNAI  
JOANNE GIROUX**  
Applicants

v.

**JANSSEN INC.  
JANSSEN PHARMACEUTICALS INC.  
JANSSEN ORTHO LLC.  
JOHNSON & JOHNSON INC.  
JOHNSON & JOHNSON**  
Defendants

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## JUDGMENT

(on a Motion for Authorization of a Class Action for Settlement Purposes Only and for Notices Approval)

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- [1] **WHEREAS** the parties are involved in a dispute of the nature of a class action;
- [2] **WHEREAS** a settlement agreement has been reached between the Applicants and the Defendants (the "Settlement");
- [3] **WHEREAS** the Applicants ask the Court to:
- a) Authorize the class action for settlement purposes only;
  - b) Grant them, for the purposes of the Settlement, the status of representative plaintiffs of the Settlement Class Members in Québec;

- c) Appoint Trilogy Class Action Services as claims administrator;
- d) Substantially approve the form and the contents of the notices to inform class members, among other things, that a hearing will be held on the approval of the Settlement;
- e) Substantially approve the form and the contents of the notice plan;
- f) Substantially approve the form and the contents of the press release; and
- g) Set a date for the Settlement approval hearing.

[4] **WHEREAS** the Plaintiffs are also asking the Court to approve a method and a time period to opt out of the Québec class;

[5] **CONSIDERING** the application under review;

[6] **CONSIDERING** the absence of contestation;

[7] **CONSIDERING** articles 575, 576, 579, 581 and 590 of the *Code of Civil Procedure*;

[8] **UPON REVIEW**, the application should be granted;

**FOR THESE REASONS, THE COURT:**

[9] **GRANTS** the application;

[10] **DECLARES** that the Settlement (Exhibit RA-1) is incorporated in its entirety by reference in this order;

[11] **DECLARES** that the definitions in the Settlement are incorporated into and shall be applied in interpreting this order;

**Authorization**

[12] **AUTHORIZES** the action as a class action for settlement purposes only;

[13] **ORDERS** that for the purposes of the Settlement, the Québec class be defined as follows:

"All persons resident in Québec (at the time of the authorization), who were prescribed and used Invokana, Invokamet, and/or Invokamet XR in Québec at any time on or before the date of the authorization order; and

All persons, who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages."

[14] **APPOINTS** Steven Varnai and Joanne Giroux, for the purposes of the Settlement, the status of representative plaintiffs of the Settlement Class Members in Québec;

[15] **IDENTIFIES**, for Settlement purposes, the common issue for the Québec Settlement Class:

"Did the Defendants breach a duty to warn of the risk of diabetic ketoacidosis, acute kidney injuries and/or lower limb loss?"

#### **Notices and press release**

[16] **APPROVES** substantially the form and contents of the abbreviated and long-form notices, in English and in French (Exhibit RA-2);

[17] **APPROVES** substantially the form and contents of the notice plan, in English and in French (Exhibit RA-3) and **ORDERS** that the dissemination of the notices to members be made in accordance with the notice plan, within thirty (30) days of this order;

[18] **DECLARES** that the notice plan constitutes fair and reasonable notice to the Settlement Class Members in Québec;

[19] **APPROVES** substantially the form and contents of the press release, in English and in French (Exhibit RA-4) to this order;

#### **Claims administrator**

[20] **APPOINTS** Trilogy Class Action Services as claims administrator;

[21] **DECLARES** that the claims administrator shall execute its obligations as set out in the Settlement and that the Defendants shall have no liability whatsoever relating to the administration of the Settlement, including, without limitation, any distribution or investment of the Settlement Amount paid by the claims administrator or class counsel;

#### **Opt-out**

[22] **APPROVES** substantially the form and contents of the claim form, in English and in French (Exhibit RA-5);

[23] **DECLARES** that the opt-out deadline is set for a date that is sixty (60) days after the date on which the notices are first published;

[24] **DECLARES** that the Québec Class Members may opt-out by sending a complete opt-out form to the claims administrator and to the *Greffé* of the Superior Court by the opt-out deadline;

[25] **DECLARES** that no Class Member may opt-out of the Québec Proceedings after the opt-out deadline;

### **Objections**

[26] **DECLARES** that a Québec Class Member may object to the approval of the Settlement by sending a written objection by pre-paid mail, courier, or email to class counsel in accordance with the Settlement;

[27] **DECLARES** that the objections must be received before 5:00 p.m., Toronto time, five (5) days before the date of the Settlement approval hearing;

[28] **DECLARES** that a Québec Class Member who wishes to object must state in his objection:


- a) His full name, current mailing address, telephone number, and email address;
- b) A brief statement of the nature and reasons for the objection;
- c) A declaration that he believes he is a member of the Québec Class and the reason for that belief; and
- d) Whether he intends to appear at the Settlement approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number and email address of counsel.

[29] **DECLARES** that this order is contingent upon parallel orders being made by the Superior Court of Ontario and the Court of Queen's Bench for Saskatchewan and the terms of this order shall not be effective unless and until such orders are made by the Ontario Court and the Saskatchewan Court;

[30] **TAKES NOTE** that, as provided for in the Settlement, in the event the Settlement referenced in this order is not approved by the Ontario Court and the Saskatchewan Court, then the Settlement shall become null and void pursuant to its terms, and the within order authorizing this class action for settlement purposes is hereby set aside, without further order of this Court;

[31] **SETS** the date of the Settlement approval hearing on September 29, 2022 at the Montréal Courthouse, at noon, in a room in person and via TEAMS, it being understood that the number of the room and the TEAMS link will be posted on the website of class counsel;

[32] **THE WHOLE** without judicial costs.



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DONALD BISSON, J.S.C.

M<sup>e</sup> Erika Provencher  
SISKINDS, DESMEULES, AVOCATS S.E.N.C.R.L.  
Lawyers for the Applicants

Me Marianne Ignacz  
INF S.E.N.C.R.L.  
Lawyers for the Defendants

Hearing date: June 20, 2022 (on file)