

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM
JUSTICE RADY

)
)

THURSDAY, THE 26TH
DAY OF MAY, 2016

BETWEEN:

JEFFREY LANG, BOBBIE ZEREBECKI and BEVERLEY HALL-ZEREBECKI

Plaintiffs

- and -

BAYER INC., BAYER A.G., BAYER HEALTHCARE A.G., BAYER CORPORATION, and
BAYER HEALTHCARE PHARMACEUTICALS INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

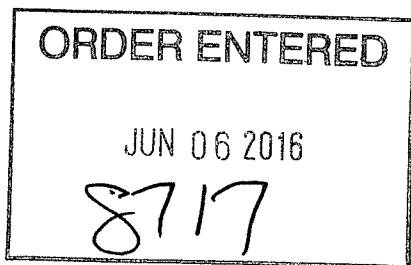
(Fee Approval)


THIS MOTION, made by the Plaintiffs for an Order: (i) approving the retainer agreement dated November 4, 2008 between Jeffrey Lang and Siskinds LLP and the retainer agreement dated September 2009 between Bobbie Zerebecki and Siskinds LLP; and (ii) approving Class Counsel Fees, was heard this day at the Court House, 80 Dundas Street London, Ontario.

ON READING the materials filed and on hearing the submissions of Class Counsel;

1. **THIS COURT APPROVES** the retainer agreement dated November 4, 2008 between Jeffrey Lang and Siskinds LLP, attached hereto as Schedule "A".
2. **THIS COURT APPROVES** the retainer agreement dated September 2009 between Bobbie Zerebecki and Siskinds LLP, attached hereto as Schedule "B".

3. **THIS COURT ORDERS** that the legal fee of \$255,000.00, applicable taxes of \$33,150.00, plus disbursements of \$125,634.28, applicable taxes of \$14,754.02 plus interest on disbursements of \$16,903.26, all totalling \$445,441.56 are approved;
4. **THIS COURT ORDERS** that the Class Counsel legal fee, disbursements, and applicable taxes be paid from the Settlement Amount; and
5. **THIS COURT ORDERS** that an honorarium in the amount of \$7500.00 is approved and will be paid from the Settlement Amount to Ms. Ramacieri;
6. **THIS COURT ORDERS** that an honorarium in the amount of \$~~2000.00~~^{500.00} is approved and *dkR* will be paid from the Settlement Amount to Ms. Laporte;
7. **THIS COURT ORDERS** that an honorarium in the amount of \$2000.00 is approved and will be paid from the Settlement Amount to Mr. Lang; and
8. **THIS COURT ORDERS** that an honorarium in the amount of \$2000.00 is approved and will be paid from the Settlement Amount to Mr. Zerebecki and Mrs. Hall-Zerebecki, together.




The Honourable Justice Rady

Schedule "A"

CONTINGENCY FEE RETAINER AGREEMENT

I, Jeffery Armstrong Lang, residing at 1 Fox Mill crescent, London, Ontario N6J 2B3 (519-641-1535) hereby retain and employ the law firm of Siskinds LLP ("Siskinds") as my solicitors, and hereby authorize them to act as my counsel, in a class proceeding pursuant to the Ontario *Class Proceedings Act*, 1992 (the "CPA"). The class proceeding will name me as a representative plaintiff, on behalf of a class of persons who were treated with the pharmaceutical product Trasylol, also called Aprotinin, and particularly on behalf of all derivative claimants of those who were treated with Trasylol, or such other class as may be certified by the Court (the "Class"). The class proceeding will relate to, among other things, the increased risk of death from being treated with Trasylol.

I understand that my solicitor-client relationship with Siskinds is limited to the above retainer, and that Siskinds may act on matters for other clients who have an interest adverse to mine provided that

- (a) such other matters are outside the scope of this retainer, and
- (b) in the course of this retainer, I have not provided confidential information relevant to such matters to Siskinds.

I understand that this litigation is to be pursued on a contingency basis such that fees and disbursements with respect to the common issues will be payable only in the event of success in the class proceeding.

I understand that, according to the CPA, "success" in a class proceeding includes:

- (a) judgment on the common issues in favour of some or all class members; and
- (b) a settlement that benefits one or more class members.

I understand that legal fees will be charged on a percentage basis and that Siskinds will request a legal fee of 25% (twenty-five percent), plus disbursements, plus applicable taxes from the Court in the event that success in the action is achieved. I understand that the percentage legal fee will be calculated based on all benefits obtained for class members, including party and party costs, notice and administration. By way of example, if the defendants pay by way of settlement \$5,000,000, plus \$500,000 in costs, and \$100,000 toward the cost of notice and administration, I understand that the contingency fee requested will be 25% of \$5,600,000 or \$1,400,000 (one million four hundred thousand dollars), plus disbursements and taxes. If any interim costs are awarded to the plaintiffs in this litigation, Siskinds will retain such monies in order to defray any litigation costs incurred to that date or thereafter.

I understand that Siskinds will pay the cost of all disbursements with respect to this action and that I, Jeffrey Lang, will not pay for any costs or disbursements relative to this litigation, other than the contingency fee and expense referenced above and approved by the Court.

I understand that Siskinds may associate with other law firms in Canada and the United States in the prosecution of this action, in which case this agreement shall apply to those firms as well.

I understand that Siskinds' legal fees shall be subject to approval by the Court.

I understand that a reasonable settlement or judgment in this case could be in the range of \$5,000,000 to \$20,000,000, depending on several factors, including but not limited to, the number of persons in Canada who were adversely affected from being treated with Trasyolol, the strength of the evidence that is obtained in the course of prosecuting this action, and the defendants' capacity to pay. I understand that a more precise estimate of a reasonable settlement amount is not possible at this time.

I understand that in the event that a settlement or judgement is obtained that is consistent with the above estimate, Siskinds may request a fee of \$1,250,000 to \$5,000,000, plus disbursements and applicable taxes, which amounts will be subject to approval by the court. I understand that in considering Siskinds' fee request, the court may consider, among other things, this retainer agreement, the amount of any settlement or judgement obtained, the risk undertaken by Siskinds in prosecuting the action, and the time and expense incurred by Siskinds in prosecuting the action. I also understand that the above estimate of fees is based on the estimated recovery in the preceding paragraph, and that in the event that the settlement or judgment obtained varies from those amounts, the fee sought may vary accordingly. This estimate of fees is therefore in part subject to the same contingencies as are expressed with respect to the estimate of a reasonable settlement or judgment expressed in the preceding paragraph.

I have been advised by Siskinds lawyers that my solicitors in this action will not recover more in fees than the class recovers as damages or receives by way of settlement.

I agree and direct that all funds claimed by Siskinds for legal fees, cost, taxes and disbursements shall be paid to Siskinds in trust from any judgment or settlement money.


I acknowledge: (1) having been advised by Siskinds lawyers that I retain the right to make all critical decisions regarding the conduct of this action, but always with a view to the best interests of the class; (2) having discussed with one or more Siskinds lawyers options for retaining Siskinds other than by way of a contingency fee agreement, including retaining them by way of an hourly-rate retainer, (3) that I have been advised that hourly rates may vary among solicitors and that I can speak with other solicitors to compare rates, (4) that I have chosen to retain Siskinds by way of a contingency fee agreement, and (5) that I understand that all usual protections and controls on retainers between a solicitor and client, as defined by the Law Society of Upper Canada and the common law, apply to the contingency fee agreement.

I understand that, if either I or Siskinds wish to terminate this relationship, I or Siskinds will forthwith move to the Court for directions. I acknowledge that Siskinds has incurred and will continue to incur significant time and financial risk in the prosecution of this action. Accordingly, if I engage another solicitor to act in the action or if I otherwise terminate this agreement and the action is successful, Siskinds will be paid fees and disbursements in accordance with the terms of this agreement.

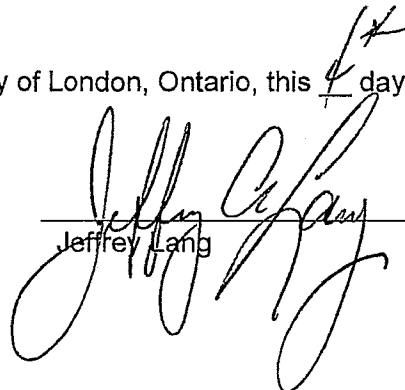
I understand and agree that, in retaining Siskinds to provide the legal services described in this retainer, the collection, use, retention, and disclosure of personal and other sensitive information may be required in order to fulfil those services and related obligations. I have read the Siskinds Privacy Policy respecting the management of personal and sensitive information and understand that such information will be used by Siskinds for only the purposes set out in this Retainer and for no other purpose, without my express written consent pursuant to this Privacy Policy.

This agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Signed, sealed and delivered in the City of London, Ontario, this 14 day of November, 2008.



Witness Name: BRENT BARDON
Address: 2-573 CENTRAL AVE
LONDON, ON.
N6B-2G5



Jeffrey Lang

CONTINGENCY FEE RETAINER AGREEMENT

I, Bobbie Zerebecki, residing at 48 Promenade Way SE, Calgary, Alberta T2Z 3R4 hereby retain and employ the law firm of Siskinds LLP ("Siskinds") as my solicitors, and hereby authorize them to act as my counsel, in a class proceeding pursuant to the Ontario *Class Proceedings Act, 1992* (the "CPA"). The class proceeding will name me as a representative plaintiff, on behalf of a class of persons who were treated with the pharmaceutical product Trasylol, also called Aprotinin, or such other class as may be certified by the Court (the "Class"). The class proceeding will relate to, among other things, the increased risk of death from being treated with Trasylol.

I understand that my solicitor-client relationship with Siskinds is limited to the above retainer, and that Siskinds may act on matters for other clients who have an interest adverse to mine provided that

- (a) such other matters are outside the scope of this retainer, and
- (b) in the course of this retainer, I have not provided confidential information relevant to such matters to Siskinds.

I understand that this litigation is to be pursued on a contingency basis such that fees and disbursements with respect to the common issues will be payable only in the event of success in the class proceeding.

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I understand that Siskinds will pay the cost of all disbursements with respect to this action and that I, Bobbie Zerebecki, will not pay for any costs or disbursements relative to this litigation, other than the contingency fee and expense referenced above and approved by the Court.

I understand that Siskinds may associate with other law firms in Canada and the United States in the prosecution of this action, in which case this agreement shall apply to those firms as well.

I understand that Siskinds' legal fees shall be subject to approval by the Court.

I understand that a reasonable settlement or judgment in this case could be in the range of \$5,000,000 to \$20,000,000, depending on several factors, including but not limited to, the number of persons in Canada who were adversely affected from being treated with Trasyolol, the strength of the evidence that is obtained in the course of prosecuting this action, and the defendants' capacity to pay. I understand that a more precise estimate of a reasonable settlement amount is not possible at this time.

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I understand and agree that, in retaining Siskinds to provide the legal services described in this retainer, the collection, use, retention, and disclosure of personal and other sensitive information may be required in order to fulfil those services and related obligations. I have read the Siskinds Privacy Policy respecting the management of personal and sensitive information and understand that such information will be used by Siskinds for only the purposes set out in this Retainer and for no other purpose, without my express written consent pursuant to this Privacy Policy.

This agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Signed, sealed and delivered in the City of Calgary, Alberta, this ___ day of September, 2009.



Witness

Name:

Address:



Bobbie Zerebecki.

