

# NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

## TRASYLLOL® CLASS ACTION NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

### TO ALL CLASS MEMBERS:

To all persons resident in Canada who were treated with **TRASYLLOL®** (aprotinin), or anyone that by virtue of a personal relationship to a person who was treated with **TRASYLLOL®** (including spouses, common law spouses, same-sex partners, as well as parents and children by birth, marriage or adoption), or anyone that has a claim by virtue of a derivative claim by statute or common law in any province or territory.

**TRASYLLOL®** is a drug that was marketed and sold in Canada by Bayer Inc. It is used by surgeons during heart surgery, including to control bleeding during surgery and reduce the need for blood transfusions.

Proposed class action lawsuits were brought in Ontario, Quebec and Alberta alleging that Bayer Inc., Bayer A.G., Bayer Pharma A.G. (formerly Bayer Healthcare A.G.), Bayer Corporation, and/or Bayer Healthcare Pharmaceuticals Inc. (collectively, the "Defendants") negligently manufactured, marketed and sold **TRASYLLOL®** in Canada without adequate warning. The Alberta proceeding was discontinued and the Quebec proceeding was dismissed. The parties to the Ontario proceeding have reached a settlement on behalf of all Canadian Class Members.

The Class Action was certified on consent for settlement purposes. The Court has made no determination of the merits of the claims and the Defendants denied, and continue to deny, the allegations against them in these lawsuits.

Upon Settlement Approval, the Appeal related to the dismissed Quebec proceeding will be discontinued.

### PURPOSE OF THIS NOTICE

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Without any admission of liability or wrongdoing, a Settlement Agreement has been reached. If you would like a copy of the Settlement Agreement, it is available at [www.classaction.ca](http://www.classaction.ca) (English or French) or a copy can be obtained by contacting Class Counsel as listed below.

The Ontario Superior Court of Justice certified the class proceeding on consent of the parties for the purpose of settlement.

The purpose of this Notice is to advise Class Members of their right to opt out of the class proceeding and to notify Class Members of the upcoming settlement approval hearing.

### APPROVAL OF THE SETTLEMENT

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In order for the settlement to become effective, it must be approved by the Court. A motion to approve this Settlement Agreement will be heard by the Ontario Superior

**AGREEMENT**

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Court of Justice in the city of London on May 24, 2016 at 2:30 p.m. At this hearing, the Court will determine whether the Settlement Agreement is fair, reasonable and in the best interests of Class Members.

If you wish to comment or make an objection to the Settlement Agreement, you may deliver a written submission to Class Counsel listed below in advance of the settlement approval hearing. Class Counsel will relay such submissions to the Court. If you so choose, you may appear at the hearing and seek permission to make your submissions orally.

**SETTLEMENT AGREEMENT**

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The Defendants, while not admitting liability, will pay \$1,020,000 (less payments authorized under the Settlement Agreement) (the "Settlement Amount") to the Heart and Stroke Foundation of Canada to settle the claims of the Class Members. No monies will be paid directly to Class Members for injuries.

The Settlement Agreement may be obtained at [www.classaction.ca](http://www.classaction.ca) (English and French) or a copy can be obtained from contacting Class Counsel as listed below.

**OPTING OUT**

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If the Settlement Agreement is Court approved, persons who come within the class definition will automatically be included in the Class unless they exclude themselves from the Class ("Opt Out").

The deadline for Class Members to opt out of the Settlement is **May 1, 2016**. Class Members who have not timely and properly opted out will be bound by the Settlement Agreement, if approved by the Court.

**HOW TO OPT OUT**

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A Class Member who wishes to opt out of the Class must indicate the intention to opt out by completing an Opt Out Form and ensuring it is received by Class Counsel before the Opt Out Deadline. If the Opt Out Form is not received by Class Counsel by the Opt Out Deadline, the Class Member shall remain a member of the Class.

The Opt Out Form may be obtained at [www.classaction.ca](http://www.classaction.ca) (English and French) or a copy can be obtained from contacting Class Counsel as listed below.

The Opt Out Deadline is **May 1, 2016**.

**LEGAL FEES**

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Class Counsel will seek court approval of legal fees of 25%, plus disbursements and applicable taxes. The legal fees, disbursements and taxes, if approved by the Court, will be deducted from the Settlement Amount.

Class Counsel will also seek a specific amount destined for Plaintiffs and the Appellants in the Quebec Proceeding, up to a maximum of \$10,000, per individual, relating to the exercise of their duties as Plaintiffs and Appellants. This amount, if Court approved, will be deducted from the Settlement Amount.

23.6% of the Settlement Amount attributable to the Quebec Proceeding Class Members as described in Schedule "A" of the Settlement Agreement will also be deducted to pay the Fonds d'aide aux recours collectifs, an agency established in Quebec to ensure the financing of class actions.

**FURTHER INFORMATION CLASS COUNSEL**

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For further information please contact Class Counsel as follows:

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**Siskinds LLP  
680 Waterloo Street  
London On N6A 3V8**

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Karen Martel  
Legal Assistant  
Tel.: 519-672-2251 ext. 2278  
Email: Karen.martel@siskinds.com

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**INTERPRETATION** If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

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This Notice has been authorized by the Ontario Superior Court of Justice.