

No. S167919
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LLOYD ACHTYMICHUK

PLAINTIFF

AND:

BAYER INC., JANSSEN INC., JANSSEN PHARMACEUTICALS, INC.,
and JANSSEN RESEARCH & DEVELOPMENT, LLC

DEFENDANTS

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

ORDER MADE AFTER APPLICATION

BEFORE)
) THE HONOURABLE JUSTICE SHARMA) 01 / 11 / 2024
))

ON THE APPLICATION of the Plaintiff, Lloyd Achtymichuk, coming on for hearing before the Honourable Madam Justice Sharma the Courthouse at 800 Smithe Street, Vancouver, B.C., on the 1st day of November, 2024;

ON READING the materials filed, including the Janssen Settlement Agreement dated as of September 30, 2022, and the Bayer Settlement Agreement dated as of June 5/2024, (together, the "Settlement Agreements");

ON HEARING K.S. Garcha and Perry G. Kuchar, counsel for the Plaintiff, Robin L. Reinertson, and Karine Russell, counsel for the Defendants, Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC (the "Janssen Defendants"), and William McNamara for the Defendant, Bayer Inc.; and

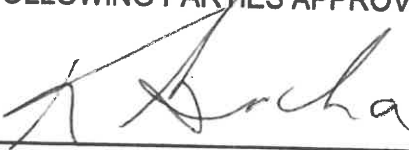
AND ON HEARING the Plaintiff's submissions and the Defendants taking no position;

THIS COURT ORDERS THAT:

1. The Compensation Protocol and Claims Procedures for the Settlement Agreements, attached hereto as **Schedule "A"**, is hereby approved.
2. Class Counsel, Dusevic & Garcha, is appointed to implement and administer the Compensation Protocol and Claims Procedures for the Settlement Agreements.

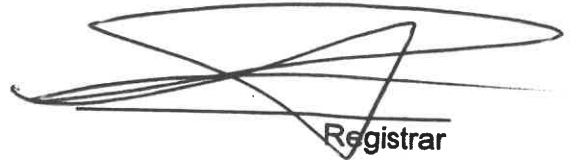
3. Class Counsel, or such other as the Court may direct, shall administer the Settlement Amount of \$1,250,000.
4. The Janssen Defendants and the Defendant, Bayer Inc., shall have no liability whatsoever relating to the implementation and administration of the Compensation Protocol and Claims Procedures for the Settlement Agreements. This includes all aspects of the administration, including, without limitation, any distribution or investment of the Settlement Amount paid by Class Counsel.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:



Signature of K.S. Garcha
Lawyer for the Plaintiff, Lloyd Achtymichuk

By the Court:



Registrar



SCHEDULE "A"

COMPENSATION PROTOCOL & CLAIMS PROCEDURES

A. Definitions

1. Unless otherwise indicated, and in addition to the terms defined herein, the capitalized terms used in this document have the meanings assigned to them in the Janssen Settlement Agreement, dated September 30, 2022, and the Bayer Settlement Agreement, dated June 5, 2024 (together, the "Settlement Agreements"). In addition, the following definitions apply in this document:
 - (a) "Claims Administrator" means Class Counsel and any employees of Class Counsel tasked with implementing and administering the claim process;
 - (b) "Claim" means a claim for compensation made under the Settlement Agreements; and
 - (c) "Claim Form" means the claim package form and the supporting documentation provided therewith.

B. Claim Process

2. Any Class Member who wishes to make a Claim for compensation under the Settlement Agreements shall deliver to, or otherwise provide, the Claims Administrator with a completed Claim Form and all supporting documentation no later than one hundred and twenty (120) days after the Settlement Approval Notice is first published. If the Claims Administrator does not receive a completed Claim Form and supporting documentation from a Class Member by the deadline, then the Class Member shall not be eligible for any compensation whatsoever. The Claims Administrator shall review each Claim Form for completeness and shall advise a Claimant, no later than twenty (20) business days after receipt of the Claim Form, if their Claim Form is incomplete. The Claimant shall complete the Claim Form within the later of: (i) sixty (60) days from the date that the Claims Administrator advises them that their Claim Form is incomplete; or (ii) the Claim deadline to submit a Claim Form and supporting documentation set out in the first sentence of this paragraph.
3. Supporting documentation must be submitted with the Claim Form. The supporting documentation required is documentation from a physician or other medical professional demonstrating the following: (1) that the Claimant was prescribed non-generic brand name Levaquin, Cipro, or Avelox; (2) the date of the Claimant's prescription; (3) that the Claimant was diagnosed with Peripheral Neuropathy within sixty (60) days of use or ingestion of non-

generic brand name Levaquin, Cipro or Avelox; and (4) the date of the Claimant's diagnosis of Peripheral Neuropathy.

4. A Claimant shall submit one Claim Form that comprises all of the Claims that he/she/they may have arising from the Settlement Agreements. If more than one Claim Form is submitted, the Claims Administrator will treat them as one Claim Form.
5. If a Claim is being submitted on behalf of a Claimant by his/her/their estate or another person designated to act on behalf of the Claimant, the person completing the Claim shall explain on the Claim Form why he/she/they has/have the authority to act on the Claimant's behalf, and shall attach a copy of any Certificate of Appointment of Estate Trustee, Power of Attorney or other document establishing that authority.
6. Where a Claim Form contains minor omissions or errors, the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.
7. The Claims Administrator shall review each Claim Form and the attached supporting documentation and verify, within thirty (30) days of receipt of the Claim, that the Claimant is eligible to claim for compensation as follows:
 - (a) for an individual claiming as a Class Member, the Claims Administrator shall be satisfied that: (i) the individual did not Opt Out of the Proceeding; (ii) the individual has not previously settled claims against the Janssen Defendants and/or Bayer Defendant in relation to the matters that are subject of the Proceeding, and (iii); the individual was diagnosed with Peripheral Neuropathy within sixty (60) days of use or ingestion of non-generic brand name Levaquin, Cipro or Avelox;
 - (b) for an individual making a Claim on behalf of a Class Member or a Class Member's estate, the Claims Administrator shall be satisfied that: (i) the individual has legal authority to act on behalf of the Class Member or the Class Member's estate in respect of financial affairs; (ii) the person or estate did not Opt Out of the Proceeding; (iii) the individual had not previously settled claims against the Janssen Defendants or Bayer Defendant in relation to the matters that are subject of the Proceeding; and (iv) the person or estate on whose behalf the Claim is submitted was diagnosed with Peripheral Neuropathy within sixty (60) days of use or ingestion of non-generic brand name Levaquin, Cipro or Avelox.
8. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Claims Administrator believes that the Claim is fraudulent, the Claims

Administrator shall disallow the Claim in its entirety.

- 9. Where the Claims Administrator disallows a Claim in its entirety, the Claims Administrator shall send to the Claimant, at the Claimant's postal or email address as indicated in the Claim Form, a notice advising the Claimant of the decision and that he/she/they may make a request for reconsideration to the Claims Administrator within twenty-one (21) days of the date of the notice advising of the disallowance of the Claim in its entirety as set forth below at paragraphs 15-19 under the section "Reconsiderations".

C. Payments by the Claims Administrator

- 10. As soon as possible after: (i) all timely Claim Forms have been processed; (ii) the time to request a reconsideration has expired; and (iii) all requests for reconsideration have concluded, the Claims Administrator shall review its determinations and shall allocate amounts to successful Claimants from the Settlement Amount subject to the following limitations:

- (a) there will be no compensation for individuals who have validly Opted Out or have previously settled claims against the Janssen Defendants and/or Bayer Defendant in relation to the matters that are subject of the Proceeding;
- (b) once Class Counsel Legal Fees, the representative Plaintiff honorarium, administration costs, hearing notice plan costs and taxes approved by the Court have been paid out of the Settlement Amount, the Claims Administrator shall invest the remainder of the Settlement Amount so that it is earning interest during the claims process; and
- (c) after satisfying Class Counsel Legal Fees in the amount approved by the Court, the representative Plaintiff honorarium in the amount approved by the Court, administration costs, hearing notice plan costs and applicable taxes, the remainder of the Settlement Amount, minus the amount allocated for the Provincial Health Care Recovery Fund under the Settlement Agreements, shall be paid or distributed equally to all Claimants with approved Claims, subject to Subparagraph (d)

- 11. Upon completion of paragraph 10 above, the Claims Administrator shall prepare a "Successful Claims Report" advising the Janssen Defendants and Bayer Defendant of the approved Claims and the amounts to be awarded to each successful Claimant.

- 12. Within sixty (60) days of the completion of the Successful Claims Report, the Claims Administrator shall mail the individual compensation cheques to the successful Claimants

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identified in the Successful Claims Report at the postal addresses indicated in the Claim Forms.

13. If, for any valid reason, a cheque is not cashed by the Claimant six (6) months after the date of the cheque, the Claimant shall forfeit the right to compensation and the funds shall be distributed to the Law Society of British Columbia and/or to such other organization as proposed by Class Counsel, the Janssen Defendants and/or Bayer in accordance with paragraph 4.5(1) of the Janssen Settlement Agreement and paragraph 4.5(1) of the Bayer Settlement Agreement.
14. Thirty (30) days prior to the expiry of the six (6) month period described in paragraph 13 above, the Claims Administrator shall send the Claimant a further letter and attempt to contact the Claimant by telephone or email advising him/her/them that he/she/they has/have thirty (30) days to cash the compensation cheque.

D. Reconsiderations

15. An individual who has submitted a Claim Form under the Settlement Agreements and Claims Administration Protocol herein is only entitled to notice of, and reconsideration, by the Claims Administrator, of: (i) a decision to disallow a Claim in its entirety under paragraph 8 and/or; (ii) a determination of ineligibility under paragraph 7. All other determinations of the Claims Administrator are final, and there is no further appeal or review of any decision of the Claims Administrator whatsoever to the Claims Administrator, the Court, or any other court or tribunal.
16. For greater certainty, other than a decision to disallow a Claim in its entirety under paragraph 8, or a determination of ineligibility under paragraph 7, all decisions of the Claims Administrator, including those relating to, *inter alia*, any claims assessment, the quantum of compensation awarded under the Settlement Agreements and Claims Administration Protocol herein, the sufficiency of a Claim, the sufficiency of the supporting documentation, timelines, the late delivery of any Claim or component of a Claim or supporting documentation, or any other matter relating to the claims process are final, which may not be appealed to or put before the Court or any other court or tribunal for any review or a determination.
17. Where a timely request for reconsideration is filed with the Claims Administrator in accordance with paragraph 9 above, the Claims Administrator shall advise the Janssen Defendants and the Bayer Defendant of the request and conduct a review of the request for reconsideration. The Claims Administrator must issue its decision on the reconsideration to the individual who submitted the Claim, Janssen Defendants and the Bayer Defendant

within fourteen (14) days of receipt of the request for reconsideration.

18. Following its determination on a request for reconsideration, the Claims Administrator shall advise the individual submitting the Claim of its determination of the request for reconsideration. In the event the Claims Administrator reverses or modifies its decision, the Claims Administrator shall send a notice specifying the revision to the disallowance or decision to the postal or email address as indicated in the Claim Form.

19. The determination of the Claims Administrator in response to a request for reconsideration is final and binding and is not subject to further review by or appeal to any court or other tribunal.

E. Provincial Health Insurers

20. Any Provincial Health Insurer subrogation claim for the recovery of any costs of insured health or medical services rendered to a Class Member who suffered Peripheral Neuropathy within sixty (60) days of use or ingestion of non-generic brand name Levaquin, Cipro or Avelox shall be made no later than one hundred and twenty (120) days after the Settlement Approval Notice is first published. If the Claims Administrator does not receive a subrogation claim and supporting health, medical services and cost documentation from a Provincial Health Insurer by the Claim deadline, then the Provincial Health Insurer shall not be eligible for any recovery of any subrogation claim it may have, past or future, from the Provincial Health Care Recovery Fund.

21. The Claims Administrator shall advise the Janssen Defendants and Bayer Defendant of any subrogation claim made by a Provincial Health Insurer for the recovery of any costs of insured health or medical services rendered to a Class Member who suffered Peripheral Neuropathy within sixty (60) days of use or ingestion of non-generic brand name Levaquin, Cipro or Avelox, and the amount of the subrogation claim, within thirty (30) days of receipt thereof.

22. Payment to a Provincial Health Insurer for the recovery of any costs of insured health or medical services rendered to a Class Member who suffered Peripheral Neuropathy within sixty (60) days of use or ingestion of non-generic brand name Levaquin, Cipro or Avelox will be made from the Provincial Health Care Recovery Fund and further, will be distributed on a *pro rata* basis where such Provincial Health Insurer subrogation claims exceed the total amount allocated under the Settlement Agreements for the Provincial Health Care Recovery Fund.

23. Payment to a Provincial Health Insurer under paragraph 22 above shall be made within sixty (60) days of the completion of the Successful Claims Report. The Claims Administrator shall advise the Janssen Defendants and Bayer Defendant of any payment made under the Provincial Health Care Recovery Fund to a Provincial Health Insurer and the amount thereof.