

Form 49

[Rule 13.19]

COURT FILE NUMBER 1201 12838

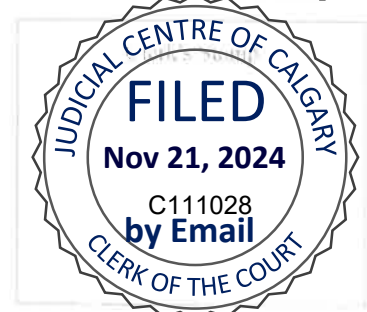
COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE Calgary

PLAINTIFFS Fiona Singh And Muzaffar Hussain, by his litigation Representative Fiona Singh

DEFENDANTS GlaxoSmithKline Inc., GlaxoSmithKline LLC and GlaxoSmithKline PLC

DOCUMENT **AFFIDAVIT OF CLINT DOCKEN  
SWORN NOVEMBER 20, 2024**



CMH  
Dec 6, 2024

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**ROSS NASSERI LLP**  
312 Adelaide St. W, Suite 700  
Toronto ON M5V 1R2  
Tel: 416-572-4910

**Eric S. Block, LSO# 47479K**  
eblock@rossnasseri.com  
Tel: 416-572-4909

**Eric Brousseau, LSO# 68025G**  
ebrousseau@rossnasseri.com  
Tel: 416-572-4906

**Viktor Nikolov, LSO# 84503P**  
vnikolov@rossnasseri.com  
Tel: 416-572-4910 ext. 132

### **AFFIDAVIT OF CLINT G. DOCKEN, K.C.**

I, Clint G. Docken, K.C., of the Hamlet of Bragg Creek, in the Province of Alberta, SWEAR THAT:

1. I am class counsel in the above-noted action (the “**Paxil Class Action**”) and Counsel at Napoli Shkolnik Canada (“**NS Canada**”). As such, I have knowledge of the matters to which I

swear below. To the extent any information in this affidavit is not within my direct knowledge, I have identified the source of the information and believe it to be true.

2. I make this affidavit in support of the application with respect to the portion of the approval of the Paxil Class Action settlement agreement with respect to legal costs, the representative plaintiff's honorarium, disbursements and taxes (the "**Proposed Legal Costs Application**").

### **BACKGROUND**

3. On October 12, 2012, Merchant Law Group LLP ("**Merchant Law**") commenced this action. At the time, Casey R. Churko worked on the Paxil Class Action under Merchant Law.

4. In or about 2019, Churko left Merchant Law after a breakdown in his relationship with the firm. His departure was the subject of litigation and press coverage. The Saskatchewan Court of Queen's Bench (as it then was) released a procedural decision in connection with Churko's action, bearing file number QBG 2389 of 2019 in *Churko v Merchant*, 2019 SKQB 307. A copy of a CBC News article about Churko's departure is attached at **Exhibit "A"**.

5. On April 12, 2019, Churko served Tony Merchant with a Notice of Change of Representation, reflecting that the representative plaintiff in the Paxil Class Action, Fiona Singh, had changed representation from Merchant Law to Churko's professional corporation, KoT Law Professional Corporation ("**KoT**"). A copy of this Notice is attached as **Exhibit "B"**.

6. That same month, Churko approached me and invited me to join him and his firm in litigating the Paxil Class Action. At the time, I was at Guardian Law Group LLP ("**Guardian**"). I agreed and, through Guardian, joined the Paxil Class Action.

7. On May 3, 2019, the representative plaintiff, Fiona Singh, filed a Notice of Change of Representation stating that they had changed the lawyer of record from E.F. Anthony Merchant and Merchant Law to Churko (at KoT) and myself at Guardian. A copy of the Notice of Change of Representation is attached as **Exhibit "C"**. At the time, I was unaware that Singh, through Churko, had already filed a Notice of Change on April 12, 2019. In any event, this May 3 Notice of Change superseded the April 12 Notice of Change.

8. In response to this, Merchant Law triggered a carriage dispute, which among other things, sought to deny Churko's and my carriage of the Paxil Class Action. I was lead counsel in this motion. I argued this motion before this Court. On April 21, 2021, Associate Chief Justice Rooke granted carriage of the Paxil Class Action to me through Guardian, and Churko through his professional corporation, KoT. The order, insofar as it relates to our respective firms, reflects the Notice of Change filed in April 2019 (i.e., before NS Canada was formed) that was the basis for the carriage dispute.

9. I understand that Churko, through KoT, formed NS Canada with the "American Partners," as defined in their partnership agreement, in or about October 2019.

10. On April 1, 2022, I joined NS Canada as Counsel, and transferred my files, including Guardian's Paxil Class Action file, to NS Canada. A copy of the Client Authorization to File Transfer is attached as **Exhibit "D"**. As of then, both Churko and I practiced through NS Canada.

#### **NS CANADA'S ROLE IN THE PAXIL CLASS ACTION**

11. Since I joined NS Canada, Churko and I have always acted through, and on behalf of, NS Canada. Neither of us acted alone. We litigated the Paxil Class Action with other NS Canada

lawyers, including Canadian lawyers Mathew Farrell and Adam Bordignon, and American lawyers like Chris Schnieders and Mario D'Angelo who assisted us with technical expertise and funding.

12. All materials filed with court identified NS Canada as the firm responsible for the Paxil Class Action. For example, the Certification Order granted by Associate Justice Rooke on November 17, 2022 (filed December 19, 2022) lists me as the lawyer on record for the class on behalf of "Napoli Shkolnik". A copy of this Certification Order is attached hereto as **Exhibit "E"**.

13. In August 2022, the NS Canada partners, including the American Partners and Churko, and I attended a mediation with respect to the Paxil Class Action. In the subsequent months, we engaged in settlement discussions and negotiated the terms of a Master Settlement Agreement ("MSA"). The parties reached a settlement in principle in 2023. Churko has previously advised this Court that the parties reached an agreement in principle by June 2024. This is prior to the September 3, 2024, version of the MSA that is discussed below and which continued to reflect the parties' agreement regarding an appropriate and fair allocation of legal fees and disbursements.

#### **THE LEGAL FEE ARRANGEMENT**

14. By September 2024, the parties had agreed on an allocation of legal fees that was reasonable and fair to the class. The allocation consisted of: (i) a class counsel fee of \$500,000, (ii) a limit of 35% on any payment of legal fees, including fees incurred on account of individual retainers with class members, and (iii) uncapped disbursements.

15. This fee structure is a consequence of the medical intricacies of the Paxil Class Action. To qualify for compensation, a prospective class member must satisfy rigorous criteria that are difficult to evaluate. As such, prospective class members require the assistance of counsel who are well-versed in the medical complexities of the Paxil Class Action. NS Canada has already spent a



significant amount of time identifying and assisting individuals access class membership. NS Canada has serviced these clients through individual retainers. Without this assistance, many potential class members would be unable to access any settlement proceeds. I understand that certain clients are giving affidavit evidence to this effect.

16. The fee arrangement described above also accommodated an undertaking to Merchant Law. Associate Chief Justice Rooke defined this as an undertaking by KoT and Guardian to pay Merchant Law “fair and reasonable fees and disbursements” at the end of the Paxil Class Action. In connection with the carriage dispute, Merchant Law claimed to have incurred certain fees and disbursements. At that time, Churko advised me, and I understood based on (a) his advice, (b) Fiona Singh’s affidavit evidence, and (c) my understanding of the file, that Merchant Law’s claim for fees was drastically inflated. I also understood that Merchant Law demanded payment for actions that were entirely out of scope. Specifically, Merchant Law included claims that were unrelated to, and commenced long before, the Paxil Class Action. This conduct aligns with what Justice Ball called Merchant Law’s “multi jurisdictional game of class action ‘whack-a-mole’” in *Duzan v. Glaxosmithkline, Inc.*, 2011 SKQB 118.

17. Churko consistently and repeatedly advised me and others that Merchant Law’s claim was inflated and that a class counsel fee of \$500,000 would in any case be sufficient to cover this claim.

18. I understand that Merchant Law’s purported fees and disbursements in relation to the Paxil Class Action total more than \$4.7 million. All of this, in relation to a \$7.5 million settlement in an action that was both certified and settled after he ceased to be counsel of record. I will leave it to this Court to determine whether that request for fees is “fair and reasonable.”

### CHURKO'S SURREPTITIOUS AMENDMENTS

19. A settlement approval hearing was scheduled for September 24, 2024. Prior to the hearing, I requested that Churko send me the hearing materials, including the final version of the MSA. He provided me certain materials, but he did not include the MSA that was submitted to the Court.

20. I attended the September 24 hearing in person. While I was in the hearing, I received a text from Mario D'Angelo, advising me of certain changes to the MSA, which I still had not received in hard or electronic copy. Specifically, Churko had increased the class counsel fee from \$500,000 to \$2,000,000. Of this \$2,000,000, he directed \$850,000 to his personal professional corporation, \$1,100,000 to Merchant Law—which he incorrectly identified as “former class counsel”—and fixed my fee at \$50,000. He made these revisions without my knowledge and authorization.

21. Churko's revisions conferred unauthorized benefits on himself and Merchant Law to the detriment of the class, his co-counsel, and his partners. Specifically, with respect to:

- (a) The class, Churko immediately diverted \$1,500,000 of the settlement amount (i.e. 20%) away from the amount available to the class, and restricted the amount available for individual retainers, disincentivizing lawyers from seeking out or engaging with prospective class members;
- (b) His partners, Churko diverted funds directly to his personal professional corporation in the MSA, which is unorthodox, without his partners' knowledge or authorization, and despite terms to the contrary in the Partnership Agreement; and
- (c) me, Churko fixed my fee at \$50,000 completely without my knowledge or authorization.

22. At the noon break, I confronted Churko. I told him that we must adjourn the matter, since the revisions—of which I was never notified—prejudice the class by resulting in \$1,500,000 less for its distribution. He refused to cooperate and simply said that he had the representative plaintiff's instructions. I have not seen any communications from the representative plaintiff (who is also my client) confirming this to be the case. I was not copied on any such communications.

23. On October 1, 2024, NS Canada and NS PLLC commenced an action in Ontario, bearing Court File No. CV-24-00728634-0000, with respect to certain partnership matters. The Statement of Claim in that action, a copy of which is **Exhibit "F"**, sets out additional details regarding Churko's conduct in relation to the Paxil Class Action and his other alleged breaches of fiduciary duty towards his NS Canada partners.

24. Since our conversation in the noon break on September 24, 2024, I have not spoken with Churko, except during court appearances and during my cross-examination in connection with the Ontario Action.

**MERCHANT HAS A DISCIPLINARY RECORD AND IS NOT SUBJECT TO THE NMA**

25. I do not believe that Tony Merchant is licensed to practice law in Alberta. I have searched the Law Society of Alberta's website and it does not reflect that there is an "Anthony Merchant" or "Tony Merchant" licensed to practice in Alberta.

26. Lawyers licensed to practice law in one Canadian common law province can practice in the other Canadian common law provinces under the National Mobility Agreement ("NMA"). Section 10 of the NMA states as follows:

10. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 7, a lawyer will be required to do each of the following at all times:

- (a) be entitled to practise law in a home jurisdiction;
- (b) carry liability insurance that:
  - (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
  - (ii) extends to the lawyer's practice in the host jurisdiction;
- (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
- (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
- (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
- (f) have no disciplinary record in any jurisdiction.

27. I understand that Tony Merchant does have a disciplinary record in Saskatchewan. Attached as **Exhibit "G"** is a copy of the Law Society of Saskatchewan's page in respect of Tony Merchant, which reflects that Merchant was disciplined in 2009, 2012, and 2020 (although he was acquitted by the Saskatchewan Court of Appeal in respect of this last conviction).

- (a) The Notice of Suspension for his 2009 conviction, which alongside the balance of his sentence, was upheld by the Court of Appeal for Saskatchewan in the decision reported as 2009 SKCA 33 is attached as **Exhibit "H"**.
- (b) The Notice of Suspension for his 2012 conviction, which alongside the balance of his sentence, was upheld by the Court of Appeal for Saskatchewan in the decision reported as 2014 SKCA 56 is attached as **Exhibit "I"**

28. In light of the foregoing, and unless Merchant has a mobility permit or has given notice to the host governing body (in this case, the Law Society of Alberta), I do not believe that Merchant is authorized or permitted to practice law on a temporary basis and/or appear in this proceeding.



**CHURKO HAS MADE RELEVANT STATEMENTS IN THE ONTARIO ACTION**

29. I understand that Churko was cross-examined on his affidavit served in connection with the Ontario Action. In the context of that cross-examination, the transcript of which is publicly filed in Ontario, Churko made the following statements or admissions:

- (a) he did not discuss with his NS Canada partners the revision to the MSA relating to the \$850,000 fee payable to KoT prior to signing the MSA;
- (b) he did not discuss with his NS Canada partners the revision to the MSA relating to the \$1.1 million fee payable to Merchant Law prior to signing the MSA;
- (c) he *did* discuss the \$1.1 million with Merchant Law prior to signing the MSA;
- (d) he refused to give evidence as to who had proposed or suggested the change to the MSA whereby the Class Counsel Fee went from \$500,000 to \$2,000,000 and the breakdown became the breakdown that he submitted to this Court for approval;
- (e) he did not discuss with me the \$50,000 that he allocated to me under the MSA, nor any of the other last-minute revisions to the legal fee provisions in the MSA;
- (f) despite refusing to give evidence of who proposed the \$850,000 and \$1.1 million, Churko readily admitted that *he* had inserted the \$50,000 figure into the MSA; and
- (g) the \$50,000 is Churko's unilateral determination of the value of my work on the Paxil Class Action.

30. Excerpts from the transcript of Churko's cross-examination, dated October 30, 2024, touching on the above issues are attached as **Exhibit "J"**.

31. I obviously do not agree with and did not consent to Churko's unilateral decision about the "value" of my contribution to the Paxil Class Action.

32. More generally, I find it highly unusual that Churko allocated fees directly to himself and myself in the MSA in circumstances where NS Canada is class counsel. The allocation of legal fees directly to individual lawyers rather than to a law firm in a class action settlement is not something that I have seen in my many years of practice. I ask this Court not to endorse Churko's unorthodox approach and to instead carry out its traditional oversight functions under the *Class Proceedings Act*.

## GUARDIAN'S TIME

33. Prior to joining NS Canada, I was a partner at Guardian. At this time, I worked on the Paxil Class Action. The work undertaken by Guardian on behalf of the class and representative plaintiff amounts to 79.80 hours. The vast majority of that time relates to my involvement, or the involvement of other timekeepers who joined NS Canada at the same time as me. Attached as **Exhibit “K”** are records of Guardian’s time in relation to the Paxil Class Action.

**SWORN BEFORE ME** at  
the City of Calgary,  
in the Province of Alberta  
this 20th day of November 2024.

Commissioner for Oaths in and for the  
Province of Alberta

)

CLINT DOCKEN





THIS IS EXHIBIT " A "  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November A.D. 2024  
Gloria Hope Wozniuk



Saskatoon

## Former associate sues Tony Merchant and Merchant Law Group for \$1.25M

Allegations are "scandalous and vexatious," says Tony Merchant

Dan Zakreski · CBC News · Posted: Jun 24, 2019 2:07 PM CT | Last Updated: June 24, 2019



Regina lawyer Tony Merchant between stacks of legal documents. (CBC )

A lawyer who used to work with the Merchant Law Group in Regina is suing the firm and its principals for \$1.25 million.

Casey Churko joined the firm as an associate in July 2005, according to his website, and worked on a number of high-profile class action lawsuits, including one launched

on behalf of Sixties Scoop survivors, and one on behalf of people who had used the painkiller Oxycontin.

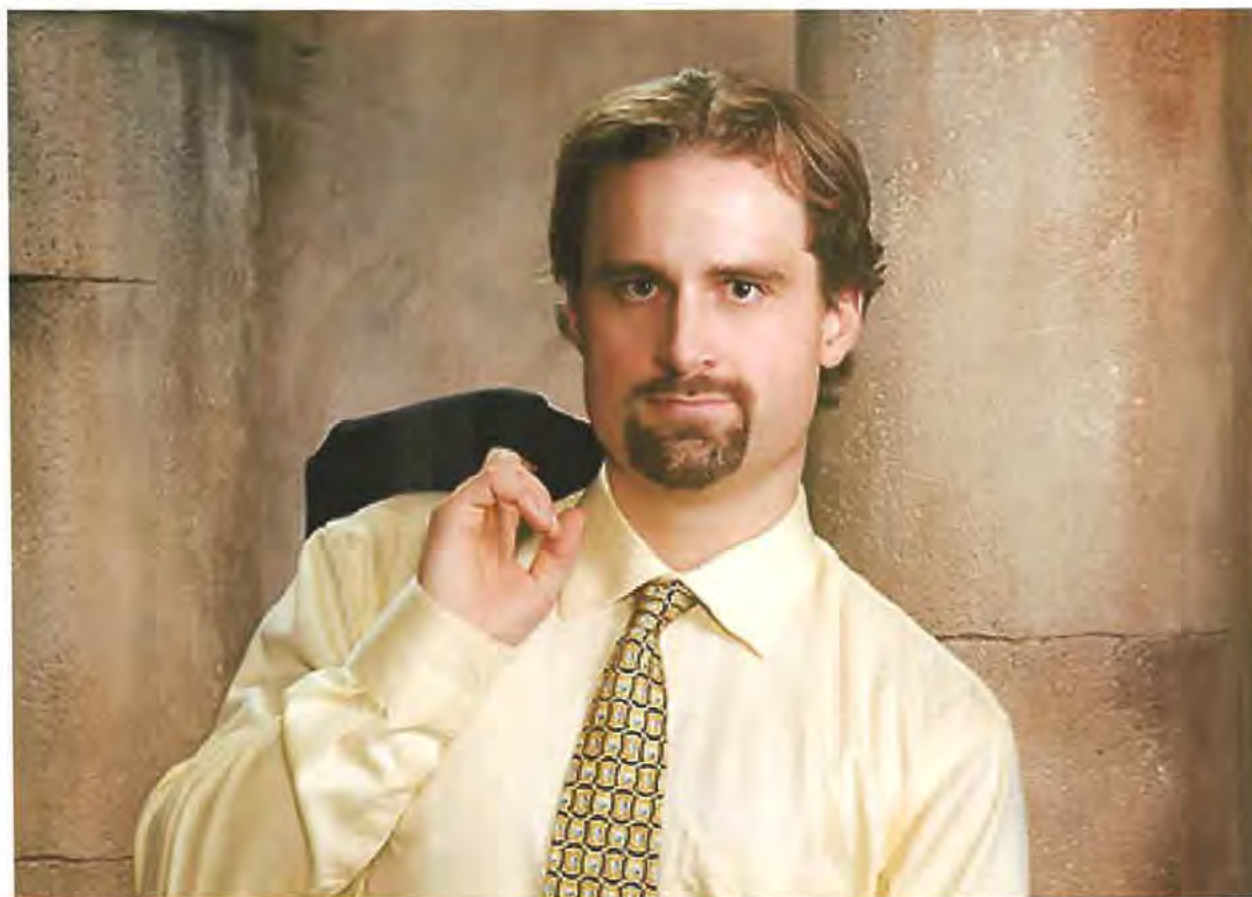
- **Beyond the \$875M settlement: '60s Scoop survivors seek to reclaim families, identities**
- **OxyContin drug maker mulls bankruptcy due to myriad lawsuits**

In a statement of defence, Merchant rejects the allegations as "scandalous and vexatious."

Churko alleges that Tony Merchant unilaterally tried to change the terms of Churko's "associate agreement" after fees came in from class actions suits.

"The Defendants could not 'change the deal' after fees came in on class action files," Churko alleged in a statement of claim filed at Court of Queen's Bench in Saskatoon on Jan. 16.

"In response, Tony loudly shouted toward his office door: (A) 'not only can I, I have changed the deal with every other lawyer in this office' and 'I always change the deal.'"





Casey Churko is suing Merchant Law Firm and its principals for \$1.25 million. (CSC)

Churko alleges that Merchant was slow to pay for work done, which left Churko having to pay experts, court reporters and legal databases.

He also claims that Merchant deliberately shortchanged lawyers in the firm when it came to paying for their work on the major class action files.

"The Defendants entered false and fraudulent time entries and manipulated time sheets, fees and records that eliminated or reduced the Plaintiff's fee entitlements on class action files," the statement of claim said.

These allegations have not been tested in court.

## **Law firm disputes allegations**

Merchant and the firm filed a statement of defence Feb. 20.

"There is no factual basis for the allegations contained in the Claim," the defence statement said.

It said that the contractual arrangement between Churko and the firm could be terminated by either party on notice, or by a narrow set of circumstances.

"Like all law firms, MLG (Merchant Law Group) could vary the terms of the contractual arrangement for its associates, and the contractual arrangement with the Plaintiff was varied from time to time."

Merchant also countered that the firm disputes how much Churko claimed he worked.

"In the years prior to the end of the contractual arrangement in August, 2018, it became difficult to get work from the Plaintiff," the statement of defence said.

"Increasingly in 2017 and 2018, the Plaintiff almost never attended at any MLG office. His suggestion that he was working long hours from home is an issue."

Further, the firm claimed that Churko owes the company \$146,000 in loans.

It wants the court to dismiss the statement of claim with costs, and order Churko to to pay back the amount it alleges is owing.

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1201-1914 Hamilton St.  
Regina, Saskatchewan  
S4P 3N6

This is Exhibit A referred to in the  
Affidavit of Casey R. Churko, affirmed  
October 11, 2024.

A Commissioner for Oaths in and for  
the Province of Ontario

April 12<sup>th</sup>, 2019

GERHARD M. SCHERTZER,  
LSO#30328Q

**MERCHANT LAW GROUP LLP**  
100-2401 Saskatchewan Drive  
Regina, Saskatchewan  
S4P 3N6

Attn: E.F. Anthony Merchant, Q.C.

Singh v. GlaxoSmithKline Inc., Court File Number 1201-12838

Please find enclosed a *Notice of Change of Representation* (April 12<sup>th</sup>, 2019). I look forward to coming to a mutually acceptable arrangement respecting work in progress and disbursements, and I kindly request that you provide a particularized submission for your reasonable fees and disbursements to date on this action.

KOT LAW

Casey R. Churko  
encl. (*Change of Representation*)

THIS IS EXHIBIT " B "  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November A.D. 2024  
Alona B. Sami



Casey R. Churko  
cchurko@kotlaw.ca  
Tel: (306) 540-2284  
Fax: (639) 739-2223

THIS IS EXHIBIT " 2 "  
referred to in the Affidavit of  
Fiona Singh  
Sworn before me this 4  
day of February A.D., 20  

**MATHEW FARRELL**  
Barrister and Solicitor, Notary Public  
in and for the Province of Alberta

COURT FILE NO. 1201-12838  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFFS FIONA SINGH and MUZAFFAR HUSSAIN by  
his litigation representative FIONA SINGH  
DEFENDANTS GLAXOSMITHKLINE INC.,  
GLAXOSMITHKLINE LLC, and  
GLAXOSMITHKLINE PLC.

Clerk's  
Stamp

*Brought under the Class Proceedings Act*

DOCUMENT NOTICE OF CHANGE OF REPRESENTATION  
ADDRESS FOR **KoT LAW**  
SERVICE AND 1201-1914 Hamilton St.  
CONTACT Regina, Saskatchewan  
INFORMATION OF S4P 3N6  
PARTY FILING  
THIS DOCUMENT **Casey R. Churko**  
Tel: (306) 540-2284  
Fax: (639) 739-2223

**Notice of Change of Representation**  
(April 12<sup>th</sup>, 2019)

Fiona Singh and Muzaffar Hussain (by his litigation representative Fiona Singh)  
have changed the lawyer of record from E.F. Anthony Merchant, Q.C., Merchant Law  
Group LLP, to Casey R. Churko, KoT Law.

April 12<sup>th</sup>, 2019



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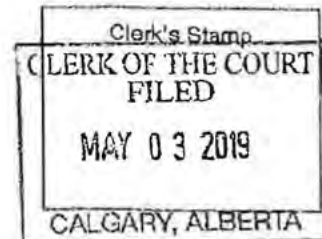
**KoT LAW**  
1201-1914 Hamilton St.  
Regina, Saskatchewan  
S4P 3N6

Casey R. Churko  
Tel: (306) 540-2284  
Fax: (639) 739-2223

Counsel for the Plaintiffs



COURT FILE NUMBER 1201-12838  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE Calgary  
PLAINTIFFS FIONA SINGH and MUZAFFAR HUSSAIN by his  
litigation representative FIONA SINGH  
DEFENDANTS GLAXOSMITHKLINE INC., GLAXOSMITHKLINE  
LLC, and GLAXOSMITHKLINE PLC



DOCUMENT NOTICE OF CHANGE OF REPRESENTATION

ADDRESS FOR SERVICE AND CLINT G. DOCKEN, Q.C.  
CONTACT INFORMATION OF Guardian Law Group LLP  
342 - 4 Avenue S.E.  
PARTY FILING THIS DOCUMENT Calgary, Alberta T2G 1C9  
Telephone: 403-457-7778  
Facsimile: 877-517-6373

THIS IS EXHIBIT "C"  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November A.D. 2024  
Gloria Hope Wozniuk



The Plaintiffs, FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative FIONA SINGH, have changed the lawyer of record from E.F. Anthony Merchant, Merchant Law Group LLP to Casey R. Churko of Kot Law and Clint G. Docken of Guardian Law Group LLP.

Legal Counsel for the Plaintiffs FIONA SINGH and MUZAFFAR HUSSAIN by his litigation representative FIONA SINGH:

GUARDIAN LAW GROUP LLP:

Per:

Clint G. Docken

**WARNING**

This change of representation takes effect after the affidavit of service of this document on each of the other parties is filed. After that date, no delivery of a pleading or other document relating to the action is effective service on the former lawyer of record or at any address for service previously provided by the former lawyer of record, or on the self-represented litigant.

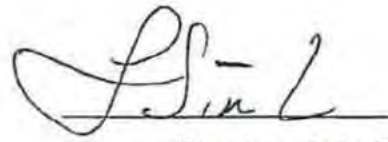
THIS IS EXHIBIT " D "  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November A.D. 2024  
Patricia Kopinski

CLIENT AUTHORIZATION – FILE TRANSFER

I understand that Clint Docken is moving to the Napoli Shkolnik Canada law firm, effective April 1, 2022.

I understand it is my choice as to whether Guardian Law Group LLP, Napoli Shkolnik Canada, or another firm act as my co-counsel.

My choice is Napoli Shkolnik Canada.

  
(Signature of client)  
(Paxil)

CERTIFIED *E. Wheaton*  
by the Court Clerk as a true copy of the  
document digitally filed on Dec 19, 2022

THIS IS EXHIBIT " E "  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November A.D. 2022  
Glenn D. Schertz



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

*Brought under the Class Proceedings Act*

DOCUMENT ORDER

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTIES FILING THIS  
DOCUMENT



1900, 144 – 4<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2P 3N4

Clint Docken, K.C.  
Tel: (888) 531-0675  
Fax: (639) 739-2223

This is Exhibit B referred to in the  
Affidavit of Casey R. Churko, affirmed  
October 11, 2024.

A Commissioner for Oaths in and for  
the Province of Ontario

GERHARD M. SCHERTZER,  
LSO#30328Q

DATE ORDER WAS PRONOUNCED: November 17<sup>th</sup>, 2022

JUDGE WHO MADE THIS ORDER: Hon. Assoc. Chief Justice J.D. Rooke

DATE OF ENTRY December \_\_\_\_, 2022

**ORDER**  
(Class Certification)

UPON THE APPLICATION of the Plaintiffs:

AND UPON READING and HEARING the submissions of counsel for the  
Plaintiffs and of counsel for the Defendants,

**AND UPON HAVING CONSIDERED** the *Amended Amended Statement of Claim*, filed January 9<sup>th</sup>, 2019, and *Affidavits of*:

- (a) *Marianne Auch*, sworn April 23<sup>rd</sup>, 2019 and October 26<sup>th</sup>, 2020;
- (b) *Paul Battaglia*, sworn May 30<sup>th</sup>, 2013;
- (c) *Anick Bérard*, sworn September 10<sup>th</sup>, 2015, and *Questioning* thereon;
- (d) *Mark Braham*, sworn October 15<sup>th</sup>, 2013, and *Questioning* thereon;
- (e) *Robin Cardillo*, sworn March 7<sup>th</sup>, 2017 and March 13<sup>th</sup>, 2019;
- (f) *Pierre Chue*, sworn January 11<sup>th</sup> and December 19<sup>th</sup>, 2013;
- (g) *Mario D'Angelo*, sworn January 3<sup>rd</sup>, 2019 and *Questioning* thereon;
- (h) *Mario D'Angelo*, sworn November 24<sup>th</sup>, 2020;
- (i) *Karen Feltmate*, sworn October 15<sup>th</sup>, 2013 and March 6<sup>th</sup>, 2017, and *Questioning* thereon;
- (j) *David Healy*, sworn September 7<sup>th</sup>, 2016 and *Questioning* thereon;
- (k) *Amy Kerrivan*, sworn February 11<sup>th</sup>, 2020;
- (l) *Marc Kestenberg*, sworn October 10<sup>th</sup>, 2013;
- (m) *Edward Lammer*, sworn October 10<sup>th</sup>, 2013 and August 29<sup>th</sup>, 2014;
- (n) *Adam Peavy*, sworn September 23<sup>rd</sup>, 2016;
- (o) *Anthony Scialli*, sworn October 11<sup>th</sup>, 2013, August 27<sup>th</sup>, 2014, and March 8<sup>th</sup>, 2017 and *Questioning* thereon;
- (p) *Gary Shaw*, sworn March 6<sup>th</sup>, 2017, and *Questioning* thereon;
- (q) *Fiona Singh*, sworn October 10<sup>th</sup>, 2012, December 19<sup>th</sup>, 2012, August 12<sup>th</sup>, 2016, and October 12<sup>th</sup>, 2016, and *Questioning* thereon;
- (r) *Fiona Singh*, sworn February 7<sup>th</sup>, 2020 and November 24<sup>th</sup>, 2020; and
- (s) *Randy C. Sutton*, sworn March 13<sup>th</sup>, 2013;

**IT IS HEREBY ORDERED:**

---

I, \_\_\_\_\_ For the purposes of this Order, capitalized terms used but not defined herein \_\_\_\_\_



shall have the meanings given to them in the Plaintiff's *Amended Amended Statement of Claim*, filed January 9<sup>th</sup>, 2019, a copy of which is attached hereto as Schedule 'A'.

2. The requirements of section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5 are met, and the within proceeding is hereby certified as a class proceeding.

3. The Class is defined as:

Women who were prescribed Paxil® in Canada and subsequently aborted, delivered, or miscarried children with congenital malformations after ingesting Paxil® 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.

4. Fiona Singh is appointed as the Representative Plaintiff for the Class.

5. The nature of the claims asserted on behalf of the Class is the following:

On behalf of Class members, the Representative Plaintiff sues the Defendants in negligence and pursuant to *Family Compensation Legislation* for breach of the duty to warn that paroxetine is teratogenic.

6. The relief sought by the class is aggravated, compensatory, punitive, and statutory damages.

7. The common issues are:

- (a) Is paroxetine teratogenic?
  - (b) If so, did the Defendants breach a duty to warn physicians and patients that paroxetine is teratogenic?
  - (c) Did the Defendants' conduct in the marketing of Paxil® to pregnant women merit an award of punitive damages?
-

Court File No. CV-24-00728634-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NAPOLI SHKOLNIK CANADA and NAPOLI SHKOLNIK PLLC

and

KOT LAW PROFESSIONAL CORPORATION and CASEY R. CHURKO

Defendants

THIS IS EXHIBIT " F "  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 28th  
day of November A.D. 2024  
Brown



**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue  
Toronto ON M5G 1R7

TO: **KOT LAW PROFESSIONAL CORPORATION**

[REDACTED]

AND TO: **CASEY R. CHURKO**

[REDACTED]

## CLAIM

- I. The Plaintiffs, Napoli Shkolnik Canada and Napoli Shkolnik PLLC, claim:
- (a) A declaration that the defendant, KoT Law Professional Corporation (“**KoT**”), has withdrawn as a partner from Napoli Shkolnik Canada (“**NS Canada**”) under Article 16 of the Interjurisdictional Law Partnership Agreement dated October 2, 2019 (the “**Partnership Agreement**”) which governs the relationship between NS Canada’s partners;
  - (b) In the alternative, an order under s. 35 of the *Partnerships Act*, R.S.O. 1990, c. P.5 (“*Act*”) dissolving NS Canada as a result of KoT’s and Churko’s conduct;
  - (c) If dissolution is ordered, a final settlement of accounts in accordance with s. 44 of the *Act*, including an accounting in accordance with the Partnership Agreement and under ss. 30 and 31 of the *Act* for private profits and competition by the Defendants;
  - (d) Damages in an amount to be ascertained for breach of trust, breach of fiduciary duty, deceit, breach of the Partnership Agreement, and for unjust enrichment;
  - (e) An accounting and disgorgement of gains or profits made by the Defendants;
  - (f) An interim, interlocutory and permanent injunction restraining the Defendants from holding themselves out as a partner in, or agent of, NS Canada, including, without limitation, by ceasing to use NS Canada letterhead and email, by ceasing to represent to actual and potential NS Canada clients, opposing counsel, and members of the judiciary that they are a partner in NS Canada, and by ceasing to



take any other action that by any other means identifies them as a partner in NS Canada;

- (g) An immediate order requiring the Defendants to surrender all electronic devices used by either of them to conduct business on behalf of themselves or NS Canada (**“Electronic Devices”**) to a third party for forensic imaging and examination;
- (h) An order appointing Edward Marrocco of Stockwoods LLP as the Independent Supervising Solicitor (**“ISS”**) to oversee the collection and production of documents from the Electronic Devices and Physical Documents (defined below);
- (i) An immediate order requiring the Defendants to produce to the ISS all physical documents in their power, possession or control relating to or arising out of the Defendants’ role with NS Canada (the **“Physical Documents”**);
- (j) An immediate order requiring KoT to produce to the ISS a record of all transactions within KoT’s trust account for the period from October 2, 2019, to the present;
- (k) Pre- and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (l) The costs of this proceeding, plus all applicable taxes; and
- (m) Such further and other relief as to this Honourable Court may deem just.

***The Parties***

2. The Plaintiff NS Canada is an interjurisdictional law partnership that was formed on October 2, 2019, through the Partnership Agreement. NS Canada is a plaintiff class action law firm that practices in cross-border class actions.

3. The Plaintiff Napoli Shkolnik PLLC (“**NS PLLC**”) is a litigation law firm with offices throughout the United States. NS PLLC is a partner in NS Canada.

4. The Defendant KoT is a professional corporation stated as being located in Regina, Saskatchewan. KoT is a partner in NS Canada.

5. The Defendant Casey R. Churko is a lawyer currently residing in Niagara Falls, Ontario. Churko is licensed to practice in Saskatchewan and Ontario. Churko is the principal of KoT, and—until he withdrew from the partnership—was involved in NS Canada’s class actions work.

***The Partnership***

6. On October 2, 2019, NS Canada was formed through the Partnership Agreement between NS PLLC and McIntyre Law P.C. (collectively defined as the “**American Partners**” in the Partnership Agreement), and KoT (defined as the “**Canadian Partner**” in the Partnership Agreement).

7. NS Canada represents plaintiffs in class actions throughout Canada. Since NS Canada’s inception, its American Partners have funded its operating costs. These operating costs include salaries, disbursements, rent, office expenses, and a draw payable to KoT under the Partnership

Agreement. The draw that was paid to KoT was an advance on profits to which KoT would otherwise be entitled, and is repayable under the terms of the Partnership Agreement.

***The Paxil Class Action settlement***

8. On behalf of NS Canada, Churko and Clint Docken are class counsel of record in the years-long class action: *Singh v. Glaxosmithkline Inc. et al.*, bearing Court File No. 1201-12838, before the Alberta Court of King's Bench (the "**Paxil Class Action**"). The Paxil Class Action seeks to recover compensation for children who suffered congenital birth defects caused by in-utero exposure to PAXIL®.

9. Churko, Docken and the American Partners were involved in the litigation, mediation and settlement of the Paxil Class Action.

10. As of October 24, 2023, a Master Settlement Agreement (the "**MSA**") had been largely finalized for the Paxil Class Action.

11. Between October 24, 2023, and September 3, 2024, the MSA, at least insofar as it related to the provisions governing the Class Counsel Fee and Lawyer's Fees (as defined in the MSA), remained largely unchanged.

12. The Alberta Court of King's Bench, which is overseeing the Paxil Class Action, scheduled a settlement approval hearing for September 24, 2024.

13. On the eve of the hearing, Churko unilaterally—and without the consent, knowledge or authorization of either the American Partners or Docken—revised the MSA. Specifically, Churko

quadrupled the Class Counsel Fee from \$500,000 to \$2,000,000, and made the new fee payable as follows under the revised MSA:

- (a) \$850,000 to his personal professional corporation, KoT;
- (b) \$50,000 to Docken; and
- (c) \$1,100,000 to Merchant Law Group, Churko's former employer.

14. Churko's revisions directed funds away from NS Canada and depleted the pool of funds available to the class itself. Churko's unilateral revision amounted to a breach of the Partnership Agreement, and violated the fiduciary duties and confidence that formed the basis of the relationship between the partners.

***Churko's further self-dealing***

15. Concerned with Churko's unilateral revision to the MSA and his refusal to explain himself to the American Partners despite multiple requests that he do so, NS Canada tried to investigate Churko's conduct more broadly. What NS Canada's preliminary investigation revealed is shocking, particularly because Churko is a Court officer.

16. Churko went (and continues to go) to great lengths to conceal his actions from his American Partners and from Docken. He failed to save his work product and client material to NS Canada's server, and refused to produce it to NS Canada despite repeated requests. Churko engaged in a pattern of systemic, concealed self-dealing and breaches of fiduciary duty. These actions are antithetical to the core principles of partnership law.



17. More troubling, Churko also settled opioids class action claims without the consent, authority, knowledge or written approval of the American Partners or his co-counsel. This is a breach of the Partnership Agreement and of fiduciary duty towards his partners, and is also a breach of his duties to the class.

18. In a letter to Churko, NS Canada put its findings to Churko, and concluded that his conduct could only be construed as a withdrawal from the Partnership Agreement. NS Canada required that Churko: (i) immediately cease all contact with NS Canada clients; (ii) preserve all relevant documents; (iii) produce personal and professional devices for forensic inspection; (iv) produce a complete list of all NS Canada matters; and (v) repay KoT's draw in full.

19. Churko denied that there were any issues with his unilateral revision to the MSA. He continues to refuse to cooperate with the American Partners, but has admitted that he: (i) maintains material on a server or device other than NS Canada's server, and (ii) acts for clients other than NS Canada clients.

20. The full extent of the Defendants' self-dealing is known only to Defendants. The Defendants deliberately operated largely offline from NS Canada's server. Since uncovering Churko's pattern of behaviour, NS Canada has repeatedly asked for Churko to turn over client data, which belongs solely to the firm, and to refrain from holding himself out as a partner to the Courts, clients, and opposing counsel in ongoing matters. Churko has refused, and continues to act in a manner that harms the partnership and its clients.

***KoT has withdrawn from the Partnership***

21. Churko's conduct is incompatible with KoT's continuing to be a partner in NS Canada. The Defendants' self-dealing demonstrates an unequivocal intent to act solely in the Defendants' self-interests and in direct opposition to the interests of the partnership *qua* partnership. The breaches of fiduciary conduct are inconsistent with the trust and confidence required for a partnership to continue. His actions are harming NS Canada's vulnerable clients.

22. The Defendants' conduct demonstrates Churko's intent to have KoT withdraw as a partner of NS Canada. Such conduct can only be construed as such.

23. Conversely, the American Partners have at all times acted in the interests of the partnership *qua* partnership. They have demonstrated their clear intention to continue the partnership, even when faced with Churko's harmful self-dealing.

***Alternatively, the Partnership ought to be dissolved***

24. Even if the Defendants have not withdrawn from the partnership, which is not admitted but is expressly denied, there is no feasible path forward for the partnership with KoT's inclusion. As an alternative to KoT's withdrawal, Churko's conduct requires the dissolution of NS Canada.

25. The Defendants have: (i) willfully, flagrantly and repeatedly breached the Partnership Agreement; (ii) conducted themselves in a manner such that it is not reasonably practicable for the other partners to carry on the business in partnership with them; and (iii) are guilty of conduct calculated to prejudicially impact NS Canada's ability to carry on its business.

26. In these circumstances, an order under section 35 of *Act* dissolving the partnership is necessary.

27. If such dissolution is ordered, the Plaintiffs seek a final settlement of accounts under s. 44 of the Act. Considering the Defendants' self-dealing, such settlement must include an accounting in accordance with the Partnership Agreement, including for the draw amount payable by Churko to the remaining partners, and under ss. 30 and 31 of the *Act* for private profits and competition by the Defendants.

***Churko is liable for damages resulting from his breaches***

28. Churko's conduct amounts to breaches of trust, fiduciary duty, deceit, and/or breaches of the Partnership Agreement. The Plaintiffs are entitled to the damages that flow as a result of these breaches.

29. The Plaintiffs will particularize its damages prior to trial.

30. Given the Defendants' breaches of trust, fiduciary duty and/or deceit, the Plaintiffs are entitled to obtain disgorgement of all profits arising out of these breaches. To the extent that the Defendants' profits on the wrongful conduct are greater than the Plaintiffs' damages, the Plaintiffs reserve the right to seek disgorgement as a remedy.

***Churko was unjustly enriched***

31. Churko was enriched by receiving financial contributions from the American Partners, including without limitation, the draw paid to KoT with no corresponding profit. The Plaintiffs

were correspondingly deprived on account of all payments made to Churko, and as a result of Churko's actions against the partnership. There is no juristic reason for this enrichment.

*NS Canada seeks injunctive relief*

32. Churko continues to hold himself out as a NS Canada partner. He has, on at least the two occasions discovered by NS Canada, entered into settlement agreements without the express authority of the American Partners despite the Partnership Agreement's clear wording and his fiduciary duties in that regard. He has admitted that he keeps NS Canada material on a server other than NS Canada's. As such, NS Canada does not know the full extent of his continuing communications with clients, opposing counsel, the courts, and other stakeholders.

33. The Plaintiffs plead that if they are entitled to interim, interlocutory and/or permanent injunctive relief requiring that the Defendants restrain from holding themselves out as partners of NS Canada, surrender electronic devices and physical files for forensic inspection, and allow for the appointment of an independent supervising solicitor ("ISS") to conduct the forensic inspection.

34. There is a strong *prima facie* case that the Defendants' conduct reflects or amounts to a withdrawal from NS Canada or, alternatively, gives rise to the dissolution of NS Canada. This action raises a serious issue to be tried as well.

35. Churko's conduct has caused and will continue to cause the Plaintiffs irreparable harm for which damages are an inadequate and insufficient remedy. The Plaintiffs' law practice is built on its continued relationships with its vulnerable clients, opposing counsel and the Courts. Any unlawful interference in those relationships harms the Plaintiffs in a way that is difficult to quantify and for which damages are inadequate. The Plaintiffs are facing severe reputational damage with



their clients and the Courts, especially as it relates to the Paxil Class Action. There is also a fear that NS Canada is or will be in breach of duties owed to its client.

36. The balance of convenience strongly favours the plaintiffs in granting this relief.

***The appointment of the ISS is just and necessary***

37. Based on Churko's concealment of client work and self-dealing, his admission to maintaining client contact and data on personal devices, and his refusal to produce that information to NS Canada, there is a strong *prima facie* case that personal devices belonging to or used by the Defendants contain information to which NS Canada is entitled. Timely access to this information is imperative for NS Canada to meet its ongoing obligations to class members, clients, opposing counsel and the courts.

38. Churko's refusal to produce this information to NS Canada following repeated demands, both by the American Partners and NS Canada's external counsel, gives rise to the need for a forensic imaging and examination of the Defendants' devices, and for the appointment of an ISS to produce NS Canada information to NS Canada in a timely manner.

39. KoT must produce its trust account records to the ISS so the ISS can determine if KoT has taken any funds into trust that ought to have gone to NS Canada's trust account.

40. The proposed ISS, Edward Marrocco, has considerable experience acting as ISS in this or similar circumstances. The ISS Order contains a reasonable protocol for making NS Canada information available to NS Canada while protecting any other privilege that the Defendants can legally assert over other information contained on their devices.

41. NS Canada and its clients will suffer irreparable harm if the Defendants' devices are not imaged, and an ISS is not appointed to review the images and trust account information and produce NS Canada's information to NS Canada forthwith.

42. The balance of convenience strongly favours appointing an ISS.

43. The Plaintiffs have undertaken to abide by any order concerning damages that this Court may make arising as a result of the injunctive relief requested.

44. The Plaintiffs propose that this action be tried in the City of Toronto.

October 31, 2024

**ROSS NASSERI LLP**  
123 John Street  
Toronto ON M5V 2E2

**Eric S. Block LSO# 47479K**

Tel: 416-572-4909  
eblock@rossnasseri.com

**Eric Brousseau LSO# 68025G**

Tel: 416-572-4906  
ebrousseau@rossnasseri.com

**Viktor Nikolov LSO# 84503P**

Tel: 416-572-4910 ext. 132  
vnikolov@rossnasseri.com

Tel: 416-572-4910

Lawyers for the Plaintiffs

NAPOLI SHKOLNIK CANADA et al.  
Plaintiffs

-and- KOT LAW PROFESSIONAL CORPORATION et al.  
Defendants

Court File No. CV-24-00728634-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

**ROSS NASSERI LLP**  
123 John Street  
Toronto ON M5V 2E2

**Eric S. Block LSO# 47479K**

eblock@rossnasseri.com

Tel: 416-572-4909

**Eric Brousseau LSO# 68025G**

ebrousseau@rossnasseri.com

Tel: 416-572-4906

**Viktor Nikolov LSO# 84503P**

vnikolov@rossnasseri.com

Tel: 416-572-4910 ext. 132

Tel: 416-572-4910

Lawyers for the Plaintiffs

RCP-F 4C (September 1, 2020)

# Discipline Decisions

The Law Society of Saskatchewan discipline process became public in 1995. The most recent decisions are available below. Decisions rendered after 2008 are accessible below by year or by lawyer.

Decisions rendered between 1995 and 2007 are available in the [Historical Discipline Database](#).

All

merchant



Year	Last Name	First Name	Penalty/Disposition Outcome	Status	Documents
2020	Merchant, Q.C.	Evatt Anthony	Suspension, Costs	Suspension, Appeal, Acquittal	<a href="#">2020 SKLSS 6</a> <a href="#">Order - Stay of Suspension - January 11, 2021</a> <a href="#">2022 SKCA 2</a>
2012	Merchant, Q.C.	Evatt Francis Anthony (Tony)	Suspension, Costs	Conviction, Suspension, Appeal	<a href="#">2012 SKLSS 6</a> <a href="#">2014 SKCA 56</a> <a href="#">Notice of Suspension</a>
2009	Merchant, Q.C.	Evatt Francis Anthony (Tony)	Suspension, Fine, Costs	Conviction, Suspension, Appeal	<a href="#">06-06</a> <a href="#">2009 SKCA 33</a> <a href="#">Notice of Suspension</a>

THIS IS EXHIBIT " G " referred to in the Affidavit of CLINT DOCKEY  
Sworn before me this 20th day of November A.D. 2024  
plena document







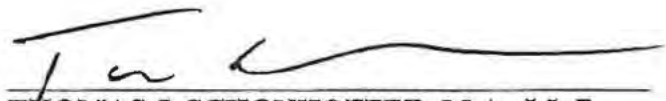
THIS IS EXHIBIT " H "  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November A.D. 2009  
Glenn Thompson



**TO: THE MEMBERS OF THE LAW SOCIETY OF SASKATCHEWAN**

TAKE NOTICE THAT **EVATT FRANCIS ANTHONY MERCHANT, Q.C.** of Regina, Saskatchewan has been suspended as of March 14, 2009 is no longer entitled to practice law for a period of 14 days.

DATED at the City of Regina, in the Province of Saskatchewan, this 13th day of March, A.D. 2009.

  
**THOMAS J. SCHONHOFFER, M.A., LL.B.**  
Executive Director, Law Society of Saskatchewan




THIS IS EXHIBIT " I "  
referred to in the Affidavit of  
CLINT DOUREN  
Sworn before me this 20th  
day of November A.D. 2024  
Gloria Hope Wozniuk



**TO: THE MEMBERS OF THE LAW SOCIETY OF SASKATCHEWAN**

TAKE NOTICE THAT EVATT FRANCIS ANTHONY (TONY) MERCHANT, Q.C. of Regina, Saskatchewan has been suspended and is not entitled to practice law from **June 15, 2014 to and including, September 1, 2014.**

DATED at the City of Regina, in the Province of Saskatchewan, this 13<sup>th</sup> day of June, A.D. 2014.

  
\_\_\_\_\_  
**DONNA R. SIGMETH, Q.C.**  
**Deputy Director**

ONTARIO SUPERIOR COURT OF JUSTICE  
Court File No. CV-24-00728634-0000

Between:

NAPOLI SHKOLNIK CANADA and NAPOLI SHOLNIK  
PLLC,

Plaintiffs,

and

KOT LAW PROFESSIONAL CORPORATION and CASEY R.  
CHURKO,  
Defendants.

The Cross-Examination of Casey  
Churko, a Defendant herein, on his affidavit  
affirmed October 11, 2024, taken pursuant to  
Notice of Examination, taken before Deb  
Beauvais, RPR, CRR, and a Notary Public in  
and for the County of Ramsey, State of  
Minnesota, taken remotely on October 30,  
2024, commencing at approximately 8:30 a.m.

THIS IS EXHIBIT J  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November, A.D. 2024  
Gloria Wozniuk

PAGE

CASEY CHURKO  
Cross-Examination by Mr. Brousseau 3

EXHIBITS MARKED FOR IDENTIFICATION

Exhibit 1 - Notice of Examination 35  
Exhibit 2 - Email re Scheduling 113  
Exhibit 3 - Email re Scheduling 113



APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

ERIC BROUSSEAU, ESQ.  
VICTOR NIKOLOV, ESQ.  
ROSS NASSERI, LLP

123 John Street  
Toronto, Ontario M5V 2E2  
EBrousseau@rossnasseri.com  
VNikolov@rossnasseri.com

ON BEHALF OF THE DEFENDANT:

CASEY CHURKO, ESQ.  
KOT LAW PROFESSIONAL CORPORATION  
1201-1914 Hamilton Street  
Regina, Saskatchewan S4P 3N6  
Casey@caselaw.cc

ALSO PRESENT:

Mario D'Angelo, Napoli Shkolnik  
Paul Napoli, Napoli Shkolnik  
Hunter Shkolnik, Napoli Shkolnik  
Noble McIntyre, McIntyre Law  
Safiya Nanji, Articling Student  
I N D E X

# PROCEEDINGS

(Witness sworn.)

## EXAMINATION

BY MR. BROUSSEAU:

Q. Mr. Churko, I've read your affidavit affirmed  
October 11th, 2024, and I still don't  
understand why you allocated \$850,000 of the  
class counsel fee to KoT. Can you please  
explain that to me?

A. So, first of all, it wasn't my allocation.  
That was a mutual agreement with counsel for  
the defense on behalf of his clients on  
behalf of our mutual clients' respective  
instructions. So I object to the premise of  
your question.

Q. Who first raised the \$850,000 figure?

A. I'm going to object to that. That's  
privileged. You know that settlement  
negotiations are privileged. There's an  
agreement with GSK and its counsel, and I'm  
not going to breach it today.

Q. Mr. Churko, you're aware that my client's  
allegations that you changed the settlement  
agreement and specifically directed \$850,000  
to yourself while a partner at Napoli

Shkolnik Canada is central to this motion,  
and you've not explained why and how that  
came about and I'm asking you about that  
today. Are you going to refuse all questions  
on that topic?

A. No.

Q. Who proposed the \$850,000 figure?

A. Asked and answered.

Q. You did not answer it.

A. I refused it.

Q. Was it GSK that proposed the \$850,000 figure?

A. You're asking the same question a different  
way. It wasn't a unilateral proposal or a  
unilateral agreement or a unilateral change.

Q. I didn't use the word "unilateral." I'm  
asking how that figure was inserted into the  
agreement.

A. I gave you the answer.

Q. No, you didn't, Mr. Churko.

Is it your evidence that GSK has  
any particular interest in how the class  
counsel fee is allocated or arranged as  
between class counsel?

A. Yes, it is.

Q. Okay. And why would GSK care about how that



1 fee is allocated?

2 A. Because they're concerned -- I'm not going to

3 give evidence on behalf of GSK, but GSK is

4 concerned that the global piece be brought

5 with the settlement, and that's what was

6 agreed to and that's what was achieved, one

7 of the components of which was the counsel

8 fee.

9 Q. What do you mean when you say "global piece"?

10 A. There's Paxil litigation all across Canada.

11 This follows Paxil litigation across the

12 United States. In the United States, the

13 Paxil litigation settled in two waves. GSK

14 had bought the piece in the first wave, and

15 then lawyers in the United States came and

16 brought yet additional litigation. In

17 Canada, global piece was the objective.

18 That's my understanding of GSK's motivation.

19 Q. Okay. You acknowledge that prior drafts of

20 the settlement agreement did not include the

21 \$850,000 figure that I'm asking you about?

22 A. There's no reference to \$850,000 in drafts.

23 But, again, the settlement agreement provides

24 that drafts are confidential. I'm going to

25 abide by that agreement. But since your

1 the parties, being GlaxoSmithKline and the

2 representative plaintiff.

3 Q. Is it your evidence that Fiona Singh took the

4 pen and inserted it herself?

5 A. That wasn't my answer.

6 Q. Is it somebody at GlaxoSmithKline who

7 inserted it themselves?

8 A. That wasn't my answer either.

9 Q. Okay. So it would have been counsel who are

10 dealing with the settlement agreement

11 presumably?

12 A. Well, as I said, that's a reasonable surmise,

13 and you can confirm that with your reference

14 to "presumably."

15 Q. So it was either yourself or Mr. Sutton who

16 put that figure into the settlement

17 agreement?

18 A. Well, it was mutual.

19 Q. I don't understand. Did you both press the

20 key at the same time?

21 A. I don't know what "key" you're referring to.

22 Q. Well, when you say "mutual," somebody put the

23 figure into the document.

24 A. Which document?

25 Q. The settlement agreement that I'm asking you

1 client improperly attached draft agreements

2 to the affidavit, Mr. Schnieders, that I am

3 addressing reluctantly and with objection to

4 attaching it at all.

5 Q. Mr. Churko, you can't engage in blatant

6 breaches of fiduciary duty and then hide

7 behind settlement privilege and refuse to

8 answer questions.

9 A. I didn't engage in breaches of fiduciary

10 duty, and I'm offended by that allegation.

11 Q. Okay. Well, it's an allegation that has

12 appeared in our notice of action and notice

13 of motion from the outset.

14 A. It's wrong.

15 Q. Can I please have a yes or no? Prior drafts

16 of the settlement agreement did not include

17 the \$850,000 figure payable to KoT Law?

18 A. I gave the answer. You're asking the

19 question again.

20 Q. At some point that \$850,000 figure was

21 inserted, right?

22 A. That's a reasonable surmise.

23 Q. Who inserted the figure into the settlement

24 agreement?

25 A. It was a mutual settlement agreement between

1 questions about.

2 A. The settlement agreement was mutual between

3 the parties. The \$850,000 was one of many

4 terms in that agreement that was mutually

5 agreed.

6 Q. Mr. Churko, I understand how settlements and

7 contracts work generally and that they are a

8 meeting of the minds. One party proposes

9 terms, another party accepts or inserts other

10 terms. I'm asking you who inserted the term

11 that KoT Law was to receive \$850,000?

12 A. I think this is about the fourth time you've

13 asked that. I'm going to suggest that you

14 move on to your next question. As indicated,

15 you have until 12:30. That way we each get

16 three hours for our respective witnesses

17 today.

18 Q. Mr. Churko, not as indicated. You lied to

19 the court reporter about that as an

20 agreement. We're going to get there, because

21 you lied to the court reporter, and we will

22 get there, trust me.

23 A. I didn't lie to the court reporter. I didn't

24 lie to anybody.

25 Q. Okay. You lied to the court reporter, and we



1 will get there, sir. Don't worry.  
 2 A. I didn't lie to the court reporter.  
 3 Q. Mr. Docken didn't request that \$850,000 be  
 4 directed to KoT Law, did he?  
 5 A. He did not.  
 6 Q. You're content to answer that question but  
 7 not whether it was Mr. Sutton or yourself who  
 8 inserted it?  
 9 A. I gave my answer.  
 10 Q. Well, I've asked if it was Mr. Docken. You  
 11 said no. Was it Mr. Sutton?  
 12 A. Asked and answered.  
 13 Q. On what basis did you answer the question  
 14 regarding Mr. Docken and not regarding  
 15 Mr. Sutton?  
 16 A. Refused. It's legal argument, legal matters.  
 17 Q. When did you advise your Napoli Shkolnik  
 18 Canada partners about the \$850,000 figure?  
 19 A. They had a copy of the agreement by no later  
 20 than the 24-hour period after which it was  
 21 initially requested on September 20th, 2024.  
 22 Q. When did you advise them of the \$850,000  
 23 figure?  
 24 A. Within 24 hours of the request being made.  
 25 Q. Did you draw the \$850,000 figure to their

1 meetings within there. It was a topic of  
 2 frequent discussion.  
 3 Q. Okay. Now I'm getting a different answer,  
 4 because when I asked you about when did you  
 5 draw the \$850,000 figure to your Napoli  
 6 Shkolnik Canada partner's attention, you said  
 7 you sent them the settlement agreement within  
 8 24 hours. Now you're telling me that you  
 9 discussed it with them for two to three  
 10 years. So when did you tell them about the  
 11 \$850,000 figure, Mr. Churko?  
 12 A. I gave my answer. It was not ambiguous, and  
 13 I didn't give two different answers.  
 14 Q. The transcript will say otherwise. But it's  
 15 safe to say that you didn't tell them about  
 16 the \$850,000 figure until you had signed the  
 17 settlement agreement and they requested it  
 18 and you sent it to them. Am I missing  
 19 something there?  
 20 A. That's not accurate.  
 21 Q. Okay. Please tell me what's inaccurate about  
 22 that statement.  
 23 THE WITNESS: Court Reporter, could  
 24 you restate the question or purported  
 25 question, please?

1 attention at any point in time?  
 2 A. The whole settlement agreement was drawn to  
 3 their attention, including the \$850,000  
 4 amount.  
 5 Q. When you say you drew it to their attention,  
 6 describe for me what that means.  
 7 A. That means that a copy of the settlement  
 8 agreement was requested, and within 24 hours  
 9 it was in their possession. And what I'm  
 10 saying there, I'm not talking about the  
 11 actual partners, one of which is on the Zoom  
 12 listening in now, I'm referring to  
 13 Mr. D'Angelo and Mr. Schnieders. At no point  
 14 did Mr. Shkolnik or Mr. Napoli request the  
 15 settlement agreement or any information about  
 16 the Paxil litigation from me.  
 17 Q. Mr. Churko, when you use the term "draw their  
 18 attention" to you, you just mean sending it  
 19 by email? Am I understanding that correctly?  
 20 A. Not with -- the Paxil settlement agreement  
 21 was discussed with Mr. Schnieders and  
 22 Mr. D'Angelo repeatedly over the course of  
 23 two to three years. That was discussed  
 24 during morning meetings, telephone calls and  
 25 email correspondence, and I also include Zoom

1 BY MR. BROUSSEAU:  
 2 Q. I will restate it myself.  
 3 It's safe to say that you did not  
 4 tell your Napoli Shkolnik Canada partners  
 5 about the \$850,000 figure until you had  
 6 already signed the settlement agreement, they  
 7 had requested a copy and you sent it to them  
 8 in, as you say, 24 hours from the request?  
 9 A. I don't understand the question, I'm sorry,  
 10 the way that you phrased it.  
 11 Q. Well, I'm going to ask it again, and you're  
 12 going to say asked and answered, Mr. Churko,  
 13 and that's not helpful for the transcript  
 14 and, frankly, for your position in this  
 15 matter, but let me try and rephrase it.  
 16 I have asked you when, with  
 17 reference to a specific date and time and  
 18 form of communication, did you inform your  
 19 Napoli Shkolnik Canada partners of the  
 20 \$850,000 figure. I think that's a  
 21 sufficiently clear question, and I expect a  
 22 sufficiently clear response.  
 23 A. And I did give the response.  
 24 Q. Yes. You told me that you sent them the  
 25 settlement agreement upon request. That was

- 1 your response. Am I right?
- 2 A. That's correct.
- 3 Q. Okay. So at no point prior to your signature
- 4 on the settlement agreement did you inform
- 5 them that the \$850,000 figure was in the
- 6 settlement agreement?
- 7 A. I signed the settlement agreement. I don't
- 8 know when they first became aware of it.
- 9 Q. I'm not asking when they first became aware
- 10 of it. That would be beyond your knowledge.
- 11 I'm asking when you first advised them of it.
- 12 A. I gave my answer.
- 13 Q. In sending them the signed settlement
- 14 agreement; is that your answer, sir?
- 15 A. That was the very latest that they knew about
- 16 it, was September 20th, '21. But, as I
- 17 mentioned, it was frequently discussed during
- 18 meetings and various other media.
- 19 Q. Okay. Sir, I'm asking for your specific
- 20 knowledge, information, belief, recollection
- 21 of a time when you told your Napoli Shkolnik
- 22 Canada partners that the \$850,000 figure was
- 23 going to be in the settlement agreement.
- 24 That's what I want to know. When did you
- 25 specifically discuss that with them?

- 1 I'm asking you about when you specifically
- 2 advised individuals associated with Napoli
- 3 Shkolnik Canada about the \$850,000 figure. I
- 4 don't have an answer to that, other than I
- 5 gave them the signed settlement agreement
- 6 when they asked for it on the eve of the
- 7 settlement hearing. I'm asking you and I'm
- 8 trying to be fair to you, sir. This is your
- 9 opportunity to provide me with any other
- 10 answer or evidence.
- 11 A. The settlement agreement was signed on
- 12 September 11th, and individuals within Napoli
- 13 Shkolnik Canada were aware of the figure at
- 14 that point.
- 15 Q. Okay. And on what basis do you make that
- 16 assertion?
- 17 A. Because drafts and the signed settlement were
- 18 circulated by email. My email was constantly
- 19 monitored by more than one person, so I have
- 20 no doubt in my mind that as of September 11th
- 21 both Napoli Shkolnik partners and
- 22 individuals, to use your term, associated
- 23 with Napoli Shkolnik Canada knew by that
- 24 point.
- 25 Q. So your assertion is not based on the fact

- 1 A. Well, first of all, why don't -- I'd like for
- 2 you to clarify what you mean by Napoli
- 3 Shkolnik partners, because two of them are on
- 4 the call. D'Angelo is not a partner.
- 5 There's various individuals involved. Who
- 6 are you referring to when you're referring to
- 7 Napoli Shkolnik partners?
- 8 Q. Why don't we just say anybody associated with
- 9 Napoli Shkolnik Canada.
- 10 A. So Mario D'Angelo and Christopher Schnieders
- 11 and also Paul Napoli had my emails forwarded
- 12 to them. As soon as I got an email account
- 13 my activity was under constant scrutiny and
- 14 supervision. I exchanged settlement
- 15 agreement drafts repeatedly with opposing
- 16 counsel, most of which was by email. So that
- 17 is why I say I don't know at what time any
- 18 particular partner knew of it, but I can tell
- 19 you the very latest.
- 20 Q. Mr. Churko, we're going to be here all day
- 21 with answers like that. I'm asking about
- 22 when you informed anyone at Napoli Shkolnik
- 23 Canada, not when under your theories people
- 24 were reading your emails and ought to have
- 25 learned of your breaches of fiduciary duty.

- 1 that you copied anybody else at Napoli
- 2 Shkolnik Canada on any emails on which those
- 3 drafts were exchanged?
- 4 A. They were copied on all my emails. They had
- 5 them forwarded to them.
- 6 Q. Sir, forwarding and being copied on an email
- 7 are different terms. You appreciate that?
- 8 A. The recipient of the forwarded email received
- 9 all my emails, and there were at least three
- 10 who received all of my emails through
- 11 forwarding. I don't understand what
- 12 distinction you're trying to draw.
- 13 Q. I've been asking for what feels like an
- 14 eternity, but has only been approximately ten
- 15 minutes, how you informed those associated
- 16 with Napoli Shkolnik Canada about the
- 17 \$850,000, and your answer is my emails were
- 18 monitored and therefore they would have seen
- 19 this. Is that -- again, sir, I'm just trying
- 20 to understand your evidence. Is that your
- 21 evidence?
- 22 A. You can go back and read the transcript if
- 23 you want to keep badgering on this point.
- 24 It's your time that you're using. You can do
- 25 as you see fit.

- 1 Q. Let me put it this way: At no point before  
2 you signed the settlement agreement did you  
3 ever make a copy of that settlement agreement  
4 directly available to anybody at Napoli  
5 Shkolnik Canada and specifically raise the  
6 \$850,000 figure with them?
- 7 A. I disagree with that.
- 8 Q. Okay. Please tell me on what basis you  
9 disagree with that.
- 10 A. Because each individual who had my emails  
11 forwarded received a copy of it, of the  
12 settlement agreement.
- 13 Q. I'm asking -- Mr. Churko, I don't want your  
14 theories about how your emails were dealt  
15 with. I'm asking you did you take any steps  
16 to bring this to their attention, not whether  
17 auto forwarding did.
- 18 Did you, Casey R. Churko,  
19 principal of KoT Law Professional  
20 Corporation, take any steps to advise your  
21 Napoli Shkolnik Canada partners of that?
- 22 A. I did. I sent the email, and it was  
23 forwarded to them.
- 24 Q. What email? You said you sent the email.  
25 What email are you talking about?

- 1 forwarding works. Whenever I get an email  
2 from anybody, whoever the email is forwarded  
3 to gets it. And whenever I send an email to  
4 anybody, those who have the email forwarded  
5 receive it.
- 6 Q. Mr. Churko, are you going to answer my  
7 questions about whether you took any positive  
8 steps to make that information available to  
9 your Napoli Shkolnik Canada partners?
- 10 A. I've answered that question, and you've asked  
11 it multiple times.
- 12 Q. We'll let a judge decide whether you have, in  
13 fact, answered that question.
- 14 How did the figure of \$1.1 million  
15 to Merchant Law Group make its way into the  
16 settlement agreement?
- 17 A. That figure represents a good-faith  
18 compliance with a professional undertaking  
19 and an order of the court that Merchant Law  
20 Group's fees and disbursements be protected.  
21 And that was another term -- another  
22 undertaking that I was obliged to comply  
23 with. I was obliged to comply with a court  
24 order, and that was a term that was agreeable  
25 to GSK as well.

- 1 A. The emails where the settlement agreement was  
2 attached, both in draft and in signed format.
- 3 Q. You sent that email to who?
- 4 A. Well, there's various emails, most of which  
5 involved counsel for GSK, and other emails  
6 involved other people as well, too. But all  
7 of my emails were forwarded to NS partners.
- 8 Q. Okay. You forwarded those emails?
- 9 A. They were forwarded by the email service,  
10 whoever set up the system for my emails to be  
11 forwarded. It was a joint effort.
- 12 Q. Okay. You have no specific knowledge of  
13 that. In any event, I'm asking you did you  
14 take steps and now you're just, again,  
15 telling me about automatic forwarding of your  
16 emails.
- 17 Did you specifically send the  
18 emails to anybody at Napoli Shkolnik Canada?  
19 Not whether the system forwarded them, did  
20 you, Casey R. Churko, forward the emails or  
21 copy anyone on those emails?
- 22 A. Yes. All my emails were forwarded.
- 23 Q. By you personally? You hit the forward  
24 button?
- 25 A. It's an automatic forward. You know how

- 1 Q. Okay. Tell me about your discussions with  
2 your Napoli Shkolnik Canada partners about  
3 including that term in the settlement  
4 agreement.
- 5 A. The undertaking and how to comply with it was  
6 one of the most frequently discussed topics  
7 of the settlement with Mr. D'Angelo and  
8 Mr. Schnieders. That was a specific term  
9 that was thoroughly discussed during  
10 mediation and subsequent meetings, subsequent  
11 morning meetings, and subsequent telephone  
12 discussions. There was few terms there were  
13 more discussed than the undertaking to  
14 Merchant Law Group.
- 15 Q. Okay. Did you specifically discuss the \$1.1  
16 million figure with your Napoli Shkolnik  
17 Canada partners?
- 18 A. Yes, I did.
- 19 Q. When and how did you specifically discuss  
20 that?
- 21 A. That was from September 20th when D'Angelo  
22 requested a copy of the signed settlement  
23 agreement. Chris Schnieders called it an  
24 MSA, and it was talked about particularly  
25 after September 24th. But the professional



- 1       undertaking was frequently discussed before  
2       then.
- 3       Q. Okay. I'm asking about the \$1.1 million  
4       figure in particular. My question didn't use  
5       the word "undertaking." And just so I  
6       understand your answer, Mr. Churko, you  
7       discussed it with them by giving them a copy  
8       of the signed settlement agreement on or  
9       about September 20th; is that your evidence,  
10      sir?
- 11      A. No, it wasn't. My evidence has been  
12      transcribed, and you can read it again.
- 13      Q. Okay. When is the first date on which you  
14      discussed or raised personally with your  
15      Napoli Shkolnik Canada partners the \$1.1  
16      million figure in the settlement agreement?  
17      Not the undertaking, the \$1.1 million figure.
- 18      A. As soon as it was asked of me. And the first  
19      time I was specifically asked about it was on  
20      September 24th and September 25th.
- 21      Q. That's the first time you discussed it with  
22      your Napoli Shkolnik Canada partners?
- 23      A. The undertaking, as I said, was frequently  
24      discussed. Few topics were discussed more.  
25      The \$1.1 million figure, I was specifically

- 1       settlement?
- 2       A. Yes, I did.
- 3       Q. When did you report that to them?
- 4       A. As soon as I was asked.
- 5       Q. On September 24th and 25th?
- 6       A. Yes.
- 7       Q. Okay. I'd like an undertaking for your  
8       communications with anyone at Merchant Law  
9       Group relating to the Paxil class-action  
10      settlement, please.
- 11      A. That's refused at this time. Your client,  
12      Mr. Schnieders and Mr. D'Angelo, haven't even  
13      filed a statement of claim at this point.  
14      The issues in the litigation have not been  
15      defined. I'm not going to give that  
16      undertaking at this time.
- 17              I will, however, fully comply with  
18      all disclosure obligations of litigants in  
19      Ontario.
- 20      Q. Mr. Churko, when you were negotiating and  
21      finalizing the settlement agreement, what  
22      email address did you use?
- 23      A. Cchurko@napolilaw.com, and which I believe  
24      was also forwarded to cchurko@napolilaw.ca.
- 25      Q. Those are the only email addresses that you

- 1       asked about that on September 24th and 25th,  
2       and I immediately provided the information  
3       and the answers to the questions that I was  
4       asked.
- 5       Q. Did you speak with Tony Merchant about that  
6       figure?
- 7       A. Yes, I did.
- 8       Q. When did you speak to him?
- 9       A. Before the agreement was signed. He was  
10      willing to sign the agreement on the basis of  
11      a \$1.1 million figure. He was not willing to  
12      do it on the less than \$500,000 that  
13      Mr. Schnieders thought he was going to get
- 14      Q. So you had that conversation with  
15      Mr. Merchant before the agreement was signed,  
16      but you didn't even report that conversation  
17      to your partners in Napoli Shkolnik Canada,  
18      did you?
- 19      A. In good faith I engaged in several  
20      discussions with them about the settlement  
21      agreement.
- 22      Q. Did you report to your Napoli Shkolnik Canada  
23      partners that you had agreed with Merchant  
24      Law Group that they would receive \$1.1  
25      million under the Paxil class-action

- 1       used to negotiate and finalize the settlement  
2       agreement?
- 3       A. Yes.
- 4       Q. You did not use your KoT Law email address?
- 5       A. No.
- 6       Q. You did not use your caselaw email address?
- 7       A. No.
- 8       Q. You did not use your me.com email address?
- 9       A. No.
- 10      Q. So all drafts and all correspondence relating  
11      to the negotiation of the Paxil class-action  
12      settlement agreement would be found in your  
13      Napoli Law email address?
- 14      A. No.
- 15      Q. Okay. So help me understand why that's not  
16      the case.
- 17      A. I communicated through multiple channels,  
18      mediums and platforms with multiple people.
- 19      Q. Please describe those channels, mediums and  
20      platforms.
- 21      A. I'm not going to now. What I objected to is  
22      the appointment of an ISS to go through and  
23      copy my computer. My position, there's no  
24      basis for that, and I'm not now going to  
25      indirectly give the answers that that



- 1 A. I take the position that nobody was appointed  
2 class counsel, including Mr. Docken and I. I  
3 think I made that clear in the detailed  
4 discussion about that term.  
5 Q. So what was your role?  
6 A. That's vague and overexpansive of a question.  
7 Could you particularize it?  
8 Q. If you were not class counsel, what was your  
9 role in the Singh litigation?  
10 A. Counsel for plaintiffs.  
11 Q. What was Mr. Docken's role in the Singh  
12 litigation?  
13 A. Co-counsel for the plaintiffs.  
14 Q. What was Napoli Shkolnik Canada's role in the  
15 Singh litigation?  
16 A. It did not have any role, other than through  
17 me.  
18 Q. Did you personally pay for disbursements in  
19 relation to that litigation, sir?  
20 A. I did. I paid for some, yes.  
21 Q. Did you pay for all of them?  
22 A. No.  
23 Q. Napoli Shkolnik paid for some, didn't they?  
24 A. They did pay for some, yes.  
25 Q. And is it your position that Napoli Shkolnik

- 1 understand that the Paxil class action was  
2 authorized litigation as defined in the  
3 partnership agreement?  
4 A. I had not given a thought to that  
5 specifically. I did my duty as counsel for  
6 the plaintiffs on that matter.  
7 Q. You never turned your mind to whether it fell  
8 within the definition of authorized  
9 litigation?  
10 A. That wasn't the answer I gave. I have now  
11 given consideration to it, and I would like  
12 to go through the definition with you to  
13 particularize my comments.  
14 Q. Well, I'd like you to tell me then, because I  
15 asked you is it authorized litigation and you  
16 told me some double negative, which was  
17 frankly a bit confusing. So is it -- now  
18 that you have considered the question, is it  
19 your position that it is authorized  
20 litigation?  
21 A. That involves a question of law, but I would  
22 like to go through the definition of it with  
23 you to provide my comments to thoroughly  
24 answer your question.  
25 MR. BROUSSEAU: Madam Reporter, I

- 1 Canada, other than --  
2 A. Sorry, I just want to clarify that. Napoli  
3 Shkolnik did pay some disbursements through  
4 the American partners. The American partners  
5 contributed to the disbursements of the  
6 litigation, as did I; all three partners did.  
7 Q. Because it was authorized litigation under  
8 the international law partnership agreement,  
9 jurisdictional law partnership agreement,  
10 right?  
11 A. It -- the definition of authorized litigation  
12 is broad enough to include the Paxil class  
13 action.  
14 Q. So it was authorized litigation? Do you  
15 agree with that statement?  
16 A. I don't believe I've ever taken the position  
17 that it was not authorized litigation, but  
18 I'm hesitating because you're getting into a  
19 bit of legal conclusion. I'm here today to  
20 testify as to fact. But I would be pleased  
21 to go through the definition of authorized  
22 litigation in the partnership agreement and  
23 provide my comments on how it affects Paxil.  
24 Q. In the years that you were a partner through  
25 KoT at Napoli Shkolnik Canada, did you

- 1 sec we're at 10:46. Why don't we take the  
2 morning break.  
3 (A recess was taken from 9:47-10:01 a.m.)  
4 BY MR. BROUSSEAU:  
5 Q. Mr. Churko, I'm going to ask you questions  
6 now about -- sorry, one more question  
7 regarding the Paxil class action.  
8 How did the \$50,000 fee payable to  
9 Mr. Docken come about?  
10 A. That was my reasoned estimate of the fairness  
11 of a fee to Mr. Docken for his helpful  
12 contribution to the class action. And I  
13 detail that in my affidavit, as to what his  
14 role was. And it turns out it may have been  
15 too high, because yesterday he said he had 50  
16 hours, which means he's getting \$1,000 an  
17 hour, which is multiples more than any other  
18 lawyer in this matter is going to get.  
19 He additionally said that he may  
20 have had other time from before Napoli, but  
21 you refused to permit -- sorry, not you,  
22 Mr. Nikolov refused to permit him to  
23 elaborate upon that.  
24 Q. Mr. Churko, you've now told me that it was  
25 your idea to include the \$50,000, but you

1 will recall that you refused questions about  
2 whose idea it was to insert the \$850,000  
3 figure. Do you care to revisit that refusal  
4 in light of your answer just now?

5 A. I don't believe that they're inconsistent.  
6 No, I don't.

7 Q. Okay. We will be asking the court to draw  
8 the obvious but adverse inference that it was  
9 your idea to include the \$850,000 payable to  
10 KoT Law in the settlement agreement.

11 I turn now to the opioids class  
12 action as defined in our materials, and you  
13 understand what I am talking about when I  
14 refer to that class action?

15 A. No, I don't, because there's more than one  
16 opioids class action. There's many of them.  
17 And if you want to get technical about it,  
18 none of them are class actions yet because  
19 there has been no certification order issued  
20 in any of them.

21 Q. Okay. Let's refer to the national  
22 municipalities and local governments class  
23 action relating to the opioids. Does that  
24 narrow the scope of actions that we're  
25 talking about?

1 A. I believe I know what you intend, but I don't  
2 want to attempt to infer what you intend.

3 But if you're referring to the proposed class  
4 action that was filed in the Alberta Court of  
5 King's Bench, the current plaintiffs of which  
6 are Grand Prairie and the City of Bradford,  
7 then I know what proceeding you're referring  
8 to. But it would be helpful if you could  
9 reference the court file number to be  
10 certain.

11 Q. 2001-07073.

12 A. I'd have to verify that number. Would you  
13 like me to verify that?

14 Q. Why don't I just put it up on screen.  
15 Do you see that?

16 A. There is some confusion from time to time  
17 about the court file number because one of  
18 the 7s looks like a 1. But I know what  
19 proceeding you're referring to when you show  
20 me that page.

21 Q. The page that I'm showing you is in fact  
22 Exhibit C to your affidavit affirmed October  
23 11th, 2024. Do you see that?

24 A. Yes.

25 Q. Is this proceeding authorized litigation

1 under the partnership agreement?

2 A. That proceeding, yes, it is. I believe it  
3 is.

4 Q. Okay.

5 A. Although I didn't authorize that proceeding  
6 to be filed. That was filed -- I became  
7 involved in that matter from December of 2022  
8 on. So at the time it was filed, I do not  
9 believe it was authorized litigation.

10 Q. But it has since become authorized  
11 litigation?

12 A. I believe it's consistent with the definition  
13 of authorized litigation in the partnership  
14 agreement.

15 Q. Well, I have your answer that it is.

16 A. That wasn't my answer.

17 Q. Sir, the transcript will speak for itself,  
18 don't worry.

19 When and how did you receive client  
20 authorization to settle?

21 A. Each of the clients signed the settlement  
22 agreement. And you could use that as the  
23 date, but it was actually earlier. The  
24 signatures just reflect the date that they  
25 signed it. But it was no later than that

1 date, let's put it that way.

2 Q. Okay. And I'd like an undertaking for the  
3 client authorizations or the emails in which  
4 you obtained client signatures on that  
5 settlement agreement.

6 A. So that's part of that email that you showed  
7 me with six points earlier that I wanted to  
8 discuss with you and you wouldn't discuss.  
9 And I'm not going to provide that undertaking  
10 to you on this cross-examination today. I  
11 will fully comply with all my discovery  
12 obligations if and when your client, or  
13 clients, I'm not sure who it is, decide to  
14 actually file a statement of claim and bring  
15 this litigation formally into the next stages  
16 of the litigation under the rules of court.

17 Q. They're referred to as rules of procedure  
18 here, but okay. So that's a refusal for that  
19 undertaking then, sir?

20 A. Today, at this time it is, yes.

21 Q. Okay. And I'll ask for the same separate  
22 undertaking that I requested in respect of  
23 the Paxil class action, which is the  
24 particulars in terms of to, from, who was  
25 copied, date, time of emails in which those



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5664	2021/02/16	MF	- Email from client	Y	Billed	0.20	365.00	77.00
6037	2021/03/18	GW	- receipt and review of email from Anthony Tibbo, to email to and from Matthew Farrell; to email to all counsel	Y	Billed	0.25	200.00	50.00
961	2021/02/22	MF	- meeting with co-counsel	Y	Billed	1.50	365.00	577.50
1917	2021/02/22	CD	- conference call	Y	Billed	0.50	650.00	325.00
3675	2021/02/22	GW	- receipt and review of email from Paula Safadi, to review file, to email with brief, to receipt and review of further email from Paula Safadi, to respond with copies of 2 filed affidavits	Y	Billed	0.75	200.00	150.00
119	2021/02/23	CD	- preparation for and attendance at court	Y	Billed	4.00	650.00	2,600.00
1702	2021/02/23	GW	- preparation of materials for Clint Docken and Casey Charke re application to various emails from and to Casey Charke, to printing various documents for Casey Charke	Y	Billed	1.75	200.00	350.00
4247	2021/02/25	MF	- Emails to and from CC and CC	Y	Billed	0.30	365.00	115.50
5695	2021/03/11	MF	- Emails to and from co-counsel	Y	Billed	0.20	365.00	77.00
5693	2021/03/31	MF	- Email from Casey Charke	Y	Billed	0.20	365.00	77.00
2251	2021/04/01	MF	- Telephone call and email to and from opposing counsel and co-counsel	Y	Billed	0.70	365.00	260.50
281	2021/04/02	CD	- various conference calls	Y	Billed	2.00	650.00	1,300.00
1739	2021/04/07	MF	- email and telephone call to co-counsel, text message to Tony Merchant	Y	Billed	0.90	365.00	348.50
1916	2021/04/07	CD	- conference call	Y	Billed	0.50	650.00	325.00
3490	2021/04/08	MF	- Telephone call to Tony Merchant, email from Tony Merchant; telephone call to CGD and MO	Y	Billed	0.40	365.00	154.00
4246	2021/04/09	MF	- Email to and from co-counsel	Y	Billed	0.30	365.00	115.50
811	2021/04/11	CD	- various emails, to office outcall	Y	Billed	1.00	650.00	650.00
3491	2021/04/12	MF	- Email to and from co-counsel; telephone call to CC	Y	Billed	0.40	365.00	154.00
2979	2021/04/14	CD	- office consult	Y	Billed	0.30	650.00	195.00
1495	2021/04/16	MF	- Email and telephone call to co-counsel	Y	Billed	1.10	365.00	423.50
1915	2021/04/16	CD	- various telephone calls	Y	Billed	0.50	650.00	325.00
202	2021/04/21	CD	- review of decision; various telephone calls	Y	Billed	2.00	650.00	1,300.00
4710	2021/04/21	GW	- receipt and review of email from Paula Safadi, to review	Y	Billed	0.50	200.00	100.00

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33470	2021/08/13	CD	- To conference call	Y	Billed	0.50	650.00	325.00
34650	2021/08/13	GW	- To receipt of pleadings from Tony Merchant office, to discussions with Matt Farrell; to email to review office and counsel	Y	Billed	0.50	200.00	100.00
34961	2021/08/13	GW	- To receipt and review of package from Tony Merchant office x 5 volumes, to email to Tony Merchant, to follow up email to Tony Merchant office	Y	Billed	0.30	200.00	60.00
34134	2021/08/17	MF	- Email - from GW, telephone call to client	Y	Billed	0.30	410.00	123.00
34933	2021/08/17	GW	- To receipt and review of various emails with electronic copies of 5 volumes of pleadings from Tony Merchant office; to download and save to file; to email to all counsel	Y	Billed	0.80	200.00	160.00
34835	2021/08/17	GW	- To receipt and review of correspondence from Tony Merchant, to email to all counsel	Y	Billed	0.10	200.00	20.00
34137	2021/08/18	MF	- Telephone call - to merchant review email from merchant; telephone call to Casey Charke	Y	Billed	1.50	410.00	615.00
34930	2021/08/18	GW	- To receipt and review of instructions from Matthew Farrell, to email to counsel with correspondence to review office	Y	Billed	0.30	200.00	60.00
34141	2021/08/20	MF	- Email - from court	Y	Billed	0.30	410.00	123.00
35061	2021/08/26	MF	- Emails - to and from opposing counsel and co-counsel	Y	Billed	0.40	410.00	164.00
33910	2021/09/07	MF	- Telephone call - to opposing counsel, telephone call to co-counsel; emails to co-counsel	Y	Billed	0.40	410.00	164.00
35363	2021/09/09	GW	- To preparation of case management checklist	Y	Billed	0.30	200.00	60.00
36036	2021/09/23	CD	- Conference call	Y	Billed	0.50	650.00	325.00
37057	2021/09/27	MF	- Draft - revision language re-brief; review, telephone call to co-counsel	Y	Billed	2.30	410.00	943.00
36943	2021/09/27	CD	- Various telephone calls	Y	Billed	0.30	650.00	195.00
36946	2021/09/27	CD	- To receipt of decision brief	Y	Billed	0.30	650.00	195.00
37041	2021/09/28	MF	- Review - and revision of schedule	Y	Billed	2.10	410.00	861.00
37021	2021/09/30	MF	- Attendance - at hearing; meeting with co-counsel; update to co-counsel	Y	Billed	2.50	410.00	1,025.00
38008	2021/10/03	CD	- Office consult	Y	Billed	0.30	650.00	195.00
37793	2021/10/07	MF	- Email - Email from C. Sridharan	Y	Billed	0.20	410.00	82.00
37814	2021/10/09	MF	- Emails before Opposing Counsel	Y	Billed	0.30	410.00	123.00

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Paxil-Drug Class Action/50416-001

Matter Owner	Clint Docken
Client Funds-Operating	0.00
Client Funds-Trust	0.00
Unpaid Balance	0.00

Professional Service Detail: Paxil-Drug Class Action/50416-001

ID	Date	Time/Session	Task	Enter	Status	Hours	Rate	Amount
2660	2021/01/04	GW	- review list of defendants for service out of our office, to prepare email naming defendants to Penny Yuan re: ordering corporate searches (2); to email to Penny Yuan; to email to Matthew Farrell	Y	Billed	1.00	200.00	200.00
5663	2021/01/04	MF	- email from assistant	Y	Billed	0.20	365.00	77.00
340	2021/01/05	MF	- drafting subpoenas; draft letter to court; text message to Corporate Search; text message to Casey, MO, merchant; email to co-counsel	Y	Billed	3.10	365.00	1,190.50
6646	2021/01/05	GW	- email from and to Penny Yuan	Y	Billed	0.10	200.00	20.00
3676	2021/01/06	GW	- receipt and review of email from Penny Yuan; to review corporate searches (15) submitted corporate searches and email to file on drive; to email to Penny Yuan	Y	Billed	0.75	200.00	150.00
539	2021/01/06	MF	- Review of submissions to court	Y	Billed	2.10	365.00	806.50
208	2021/01/09	MF	- Review to brief, telephone calls to and from Casey, emails to and from Casey	Y	Billed	3.30	365.00	1,463.00
220	2021/03/03	MF	- Review of brief, telephone calls and emails to and from Casey and CGD	Y	Billed	3.70	365.00	1,474.50
814	2021/02/03	CD	- conference call	Y	Billed	1.00	650.00	650.00
1701	2021/02/05	GW	- receipt and review of email from Casey Mehta; to email to Matthew Farrell; to review of brief of fax; to preparation of QB filing request form; to email to CGD filing re: filing brief for hearing on February 23, 2021; to email to Matthew Farrell; to review of brief email covering pleadings	Y	Billed	1.75	200.00	350.00
6936	2021/02/10	GW	- receipt of the Court's order, to email to co-counsel	Y	Billed	0.15	200.00	30.00
6935	2021/02/12	GW	- discussion with Clint Docken; to email to co-counsel re: Feb 23rd hearing	Y	Billed	0.15	200.00	30.00

THIS IS EXHIBIT " K  
referred to in the Affidavit of  
CLINT DOCKEN  
Sworn before me this 20th  
day of November A.D. 2024  
Gloria Hope Wozniuk



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2058	2021/04/23	MF	- meeting with co-counsel	Y	Billed	0.80	365.00	308.00
3489	2021/04/30	MF	- Email to and from co-counsel, emails CC	Y	Billed	0.40	365.00	154.00
2058	2021/05/11	MF	- Email to and from Credit Card Expense; telephone call to MDA	Y	Billed	0.80	365.00	308.00
5981	2021/05/12	MF	- Email from Credit Card Expense - email from GM	Y	Billed	0.20	365.00	77.00
382	2021/05/13	MF	- Review and preparation of brief and conducting paid discussion for ACTIA	Y	Billed	2.70	365.00	1,029.50
4245	2021/05/13	MF	- emails from CC	Y	Billed	0.30	365.00	115.50
812	2021/05/17	CD	- office consult, to various telephone calls	Y	Billed	1.00	650.00	650.00
3484	2021/05/17	MF	- Review of decision re call; email to and from CC	Y	Billed	0.40	365.00	154.00
4761	2021/05/17	GW	- various emails re: Bill of Costs and disbursements; to email to Casey Charke	Y	Billed	0.50	200.00	100.00
2976	2021/05/18	CD	- review of Bill of Costs	Y	Billed	0.30	650.00	195.00
6634	2021/05/18	GW	- receipt and review of Bill of Costs; to email to Tony Merchant	Y	Billed	0.35	200.00	70.00
1914	2021/05/20	CD	- reviewed various emails	Y	Billed	0.50	650.00	325.00
6646	2021/05/27	GW	- receipt and review of correspondence from ACJ Rostke	Y	Billed	0.10	200.00	20.00
31554	2021/06/30	MF	- Emails - to and from co-counsel	Y	Billed	0.40	410.00	164.00
31723	2021/07/12	MF	- email - from opposing counsel	Y	Billed	0.20	410.00	82.00
32067	2021/07/15	CD	- To conference call	Y	Billed	0.50	650.00	325.00
34073	2021/07/23	MF	- Review of brief; discussion with MDA; email to and from co-counsel	Y	Billed	2.50	410.00	1,025.00
35077	2021/07/30	GW	- To receipt and review of email from Casey Mehta (Casey Charke email); to preparation of various pleadings for filing (Brief, Affidavit, and Compensation); to preparation of correspondence to ACJ Rostke; to preparation of special instructions re: ACJ Rostke, to attending to filing of Civil Special Pleading, to emailing all counsel, to various emails with Casey Charke	Y	Billed	2.00	200.00	400.00
35049	2021/08/03	GW	- To review pleadings filed; to email to Paula Safadi with all filed pleadings; to receipt and review of email from taking office, to email to Clint Docken	Y	Billed	0.80	200.00	160.00
34877	2021/08/13	GW	- To preparation of case management summary	Y	Billed	0.35	200.00	70.00

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52486	2022/06/29	CD	Conference call	Y	Billed	0.30	850.00	195.00
Total						79.80		34,500.50

Timekeeper Activity Summary:Paxil-Drug Class Action/50410-001

Timekeeper	Time Spent	Rate	Amount
Gloria Wozniak	13.60	200.00	2,720.00
Matthew Farrell	24.70	385.00	9,509.50
Matthew Farrell	19.60	410.00	8,036.00
Clint Docken	21.00	650.00	14,235.00
Total			34,500.50

Professional Service Summary:

Total Hold Hours	0.00
Total Unbilled Hours (Billed)	0.00
Total Unbilled Hours (No Charge)	0.00
Total Billed Hours	79.80
Total Hold Amount	0.00
Total Unbilled Amount (Billed)	0.00
Total Billed Amount	34,500.50
Total Paid Amount	0.00

Additional Charges Detail: Paxil-Drug Class Action/50410-001

ID	Date	Describe	Balance	Status	Quantity	Rate	Amount
11779	2021/01/01	Expense Recovery - Photocopies - April 15, 2019 - Dec 31 2020	Y	Billed	1	278.10	278.10
12071	2021/01/01	Expense Recovery - File Opening charge - April 15, 2019	Y	Billed	1	175.00	175.00
12235	2021/01/01	Expense Recovery - Court filing fee - October 15, 2019	Y	Billed	1	100.00	100.00
12269	2021/01/01	Expense Recovery - Courier fees - Feb 2, 2020 - March 13, 2020	Y	Billed	1	89.80	89.80
14933	2021/01/01	Expense Recovery - Court fees - Affidavit - November 24, 2020	Y	Billed	1	9.00	9.00

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37828	2021/10/14	MF	Telephone Call to Opposing Counsel - Telephone Call to Opposing Counsel	Y	Billed	0.30	410.00	123.00
38063	2021/10/18	CD	- Telephone call with Casey Chucho	Y	Billed	0.30	850.00	195.00
38873	2021/10/20	CD	- Telephone call with Marie D'Angelo	Y	Billed	0.30	850.00	195.00
38275	2021/10/21	MF	Emails to/from Co-Counsel, Telephone calls to/from Co-Counsel Emails to/from Co-Counsel, Telephone calls to/from Co-Counsel	Y	Billed	0.70	410.00	287.00
38891	2021/10/21	CD	- Office consult	Y	Billed	0.30	850.00	195.00
38313	2021/10/22	MF	Telephone Calls & Emails - Telephone Call To Co-Counsel, Emails to/from Co-Counsel	Y	Billed	0.70	410.00	297.00
39460	2021/10/28	MF	Email from Opposing Counsel - Email from Opposing Counsel	Y	Billed	0.30	410.00	123.00
39499	2021/11/01	MF	Email from Opposing Counsel - Email from Opposing Counsel	Y	Billed	0.20	410.00	82.00
39513	2021/11/02	MF	Email from Opposing Counsel - Email from Opposing Counsel	Y	Billed	0.20	410.00	82.00
40229	2021/11/09	MF	Emails To/From Co-Counsel - Emails To/From Co-Counsel	Y	Billed	0.30	410.00	123.00
40233	2021/11/10	MF	Emails To/From Co-Counsel, Video Meeting With Co-Counsel - Emails To/From Co-Counsel, Video Meeting With Co-Counsel	Y	Billed	1.10	410.00	451.00
42498	2021/11/10	CD	- Office consult	Y	Billed	0.30	850.00	195.00
40255	2021/11/15	MF	Emails To/From Co-Counsel, Revision of Letter To Opposing Counsel - Emails To/From Co-Counsel, Revision of Letter To Opposing Counsel	Y	Billed	0.60	410.00	246.00
40258	2021/11/16	MF	Email To/From Co-Counsel - Email To/From Co-Counsel	Y	Billed	0.20	410.00	82.00
42472	2021/12/08	MF	Emails From Co-Counsel - Emails From Co-Counsel	Y	Billed	0.20	410.00	82.00
44710	2021/12/29	CD	- Review of various emails	Y	Billed	0.50	850.00	235.00
45025	2022/01/07	MF	Email from Opposing Counsel	Y	Billed	0.20	410.00	82.00
45858	2022/01/18	MF	Telephone calls & Emails to/from Co-Counsel	Y	Billed	0.40	410.00	164.00
47461	2022/01/18	CD	- Conference call	Y	Billed	1.00	850.00	850.00
47483	2022/01/18	CD	- Conference call	Y	Billed	1.00	850.00	850.00
47424	2022/01/26	MF	Telephone call to Co-Counsel, Emails from Co-Counsel	Y	Billed	0.90	410.00	369.00
47504	2022/01/26	CD	- Conference call	Y	Billed	1.00	850.00	850.00
50015	2022/02/07	CD	Various emails	Y	Billed	0.50	850.00	325.00

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Total Hold Amount	0.00
Total Unbilled Amount (Billed)	0.00
Total Billed Amount	2,113.25
Total Paid Amount	0.00

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15434	2021/01/01	Expense Recovery - Fax Expense - May 6 2019 - November 27 2019	Y	Billed	1	6.75	6.75
22562	2021/01/01	Expense Recovery - Postage	Y	Billed	1	0.65	0.65
12127	2021/02/17	Parker Dubside Szaszkevicz LLP - Invoice #43806 re document execution in Edmonton	Y	Billed	1	148.23	148.23
12907	2021/02/17	General Bank Entry - Copying BW Copy/Print	Y	Billed	1	36.75	36.75
15472	2021/02/17	General Bank Entry - Copying Color Copy/Print	Y	Billed	1	7.00	7.00
12573	2021/02/18	General Bank Entry - Copying BW Copy/Print	Y	Billed	1	52.65	52.65
12850	2021/02/18	General Bank Entry - Copying Color Copy/Print	Y	Billed	1	39.50	39.50
12563	2021/02/18	Expense Recovery - Postage	Y	Billed	1	9.85	9.85
12823	2021/02/22	General Bank Entry - Copying BW Copy/Print	Y	Billed	1	40.25	40.25
12723	2021/02/23	General Bank Entry - Copying BW Copy/Print	Y	Billed	1	45.50	45.50
14818	2021/02/23	General Bank Entry - Copying Color Copy/Print	Y	Billed	1	9.50	9.50
11878	2021/02/25	General Bank Entry - Copying Color Copy/Print	Y	Billed	1	200.00	200.00
30844	2021/02/25	General Bank Entry - Copying BW Copy/Print	Y	Billed	1	1.40	1.40
38137	2021/08/28	Courier Fee - Edmonton Law Courts - Courier Fee/Lawyer's Service	Y	Billed	1	58.29	58.29
38136	2021/09/29	Courier Fee - Merchant Law Group - Courier Fee/Lawyer's Service	Y	Billed	1	82.92	82.92
38598	2021/10/21	Courier Fee - Courier Fee/Lawyer's Service	Y	Billed	1	37.36	37.36
53382	2022/01/01	April 15 2018 - Postage	Y	Billed	1	1.70	1.70
53383	2022/01/01	October 15 2018 - Court filing fee	Y	Billed	1	100.00	100.00
53384	2022/01/01	Feb 12 2020 - Courier	Y	Billed	1	19.80	19.80
53386	2022/01/01	Feb 7 2020 - Courier	Y	Billed	1	40.00	40.00
53387	2022/01/01	March 13 2020 - Courier	Y	Billed	1	30.00	30.00
53388	2022/01/01	Nov 24 2020 - Court fees	Y	Billed	1	9.00	9.00
53416	2022/05/11	Faxes	Y	Billed	1	6.75	6.75
53417	2022/05/11	Print/Reproduction - Printing/Photocopies	Y	Billed	1	478.10	478.10
Total							2,113.25

Additional Charges Summary:

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Professional Service - All Matters Summary:

Total Hold Hours	0.00
Total Unbilled Hours (Billable)	0.00
Total Unbilled Hours (No Charge)	0.00
Total Billed Hours	79.60
Total Hold Amount	0.00
Total Unbilled Amount (Billable)	0.00
Total Billed Amount	34,500.50
Total Paid Amount	0.00