




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

CMH  
Dec 6, 2024

*Brought under the Class Proceedings Act*

DOCUMENT	SUBMISSIONS
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT	 1000 – 7 Avenue SW, Suite 400 Calgary, Alberta T2P 5L5

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**BRIEF OF LAW**  
(December 4<sup>th</sup>, 2024)

1. The plaintiffs respond to the *Application (Alternate Proposed Legal Costs)* (2024-10-02) filed on behalf of unnamed applicants (“**Alternate Applicants**”). The representative plaintiff did not instruct the application. She reiterates her position at ¶39-53 of her *Brief of Law* (2024-09-18) in support of the Proposed Legal Costs. Napoli Shkolnik Canada (“**NSC**”) does not have the authorization of Mr. Churko as its only Canadian partner to oppose the settlement (including the legal costs) that Ms. Singh and GSK jointly presented for approval. Without Mr. Churko’s

authorization, all that remains in NSC are 2 American law firms,<sup>1</sup> and Mr. Docken who is being directed by Mr. D'Angelo, an American attorney. The Proposed Legal Costs are patently preferable to the Alternate Proposed Legal Costs. Comparatively, they

	<b>Point</b>	<b>Drafts</b>	<b>Final</b>
(a)	reflect the settlement agreement of the parties (GSK and the representative plaintiff)	✗	✓
(b)	were presented by those parties for approval	✗	✓
(c)	accommodate the ostensible objections of only 2 of the 32 anticipated eligible claimants	✓	✗
(d)	satisfy a court-ordered undertaking in good faith	✗	✓
(e)	seek to deprive MLG and Mr. Churko of any fees	✓	✗
(f)	allow fair comparative remuneration to all counsel	✗	✓
(g)	would avoid additional proceedings and appeals to assess fees and disbursements and to determine the MLG charging order application	✗	✓
(h)	provide incentive to file individual claims	✓	✓
(i)	fairly remunerate the largely administrative work of American counsel who assisted with claims	✗	✓
(j)	allow unlicensed American attorneys to claim fees at rates applicable to licensed Canadian lawyers	✓	✗
(k)	result in overcompensation to lawyers in the distribution protocol	✓	✗
(l)	result in undercompensation to class action lawyers	✓	✗
(m)	are the product of demands of Mario D'Angelo	✓	✗
(n)	further a potentially illegal fee sharing arrangement between Mr. Docken and American attorneys	✓	✗
(o)	result in the most compensation to class members	✗	✓
(p)	are consistent with the 33.33% contingency fee	✗	✓

<sup>1</sup> Churko Affidavit (2024-11-26), ¶1, 7, Ex 2

	Point	Drafts	Final
	agreement with the representative plaintiff		
(q)	reduce disbursements from actual amounts, which provides additional funds for class members	✗	✓
(r)	secured the necessary consent of health insurers	✗	✓
(s)	are consistent with all precedents in prior pharmaceutical class actions	✗	✓
(t)	avoid the need to try issues between NSC partners that they submitted to the Ontario Superior Court	✗	✓
(u)	invite the prospect of inconsistent decisions on fee allocation between Alberta and Ontario	✓	✗
(v)	result in unfairness to American partners of NSC	✗	✗
(w)	breach §10.11 and §10.13 of the settlement agreement by resorting to drafts and negotiations	✓	✗

2. The last of these warrants mention first. The Alternate Applicants seek to implement a draft redlined agreement. Draft agreements provide no rights even to parties, though no settlement agreement (draft or final) named NSC or Mr. Docken as parties. The draft that Mr. D’Angelo attaches is simply a draft. The settlement agreement that was approved by the court (with minor amendments) contains a restriction against the use of drafts.<sup>2</sup>

3. The settlement agreement went through extensive mediation and negotiation, reflected in multiple drafts, over 2 years. Under the agreement, those are also confidential.<sup>3</sup> The representative plaintiff and her counsel will honour that agreement with GSK. The Alternate Applicants’ reliance on drafts and negotiations is a breach of its express terms.

<sup>2</sup> *Singh Affidavit* (2024-09-19), Ex 1, page 13, *Paxil® and Paxil CRTM National Class Action Settlement Agreement (“Settlement Agreement”)*, *Settlement Agreement*: (“10.11 The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.”)

<sup>3</sup> *Singh Affidavit* (2024-09-19), Ex 1, page 13, *Settlement Agreement*: (“10.13 Class Counsel confirms that all mediation and negotiations, direct or indirect, leading up to this Settlement Agreement are confidential and shall not be disclosed to the public by Class Counsel or the Parties themselves.”)

4. The Proposed Legal Costs reflect the agreement of the parties, are fair to all legal counsel (licensed and unlicensed), provide the most compensation to class members and the requisite incentive to file their claims, and preserve the integrity and independence of the profession from foreign control and domineering influence.

***1. The Alternate Applicants are unlicensed American attorneys.***

5. The Alternate Proposed Legal Costs application was neither brought by nor instructed by the representative plaintiff. She applied for approval of the settlement agreement that was agreed to and signed on behalf of the parties. Mr. Docken, in contrast, takes instructions from unlicensed American attorneys. Although he is listed as co-counsel for the plaintiffs, respectfully, the Alternate Applicants are confused about their roles with each other and *vis à vis* the Paxil® class.

(a) Mr. Docken is a “consulting attorney” or “of counsel” to NSC, which to him means he is not a partner or associate.<sup>4</sup> Mr. Docken says that he is counsel *for NSC* (not the Paxil® class).<sup>5</sup> Consistent therewith, in a signed agreement with Mr. D’Angelo,<sup>6</sup> the American partners pay all of Mr. Docken’s office and staff expenses each month, including his professional licensing expenses, in exchange for his provision of a share of the fees in his files,<sup>7</sup> including “Paxil”. Mr. Docken is to receive 10% of the amount that NSC recovers.<sup>8</sup> The difference to him between the draft and actual settlement agreements is \$158,485.17.<sup>9</sup>

(b) Although his consulting agreement expressly denies a partnership,<sup>10</sup> Mr. Docken considers Mr. D’Angelo to be his partner in the Paxil® litigation.<sup>11</sup> He concurrently says that Mr. D’Angelo is his counsel.<sup>12</sup> Mr. Docken elsewhere denies that he knows Mr.

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<sup>4</sup> Covill Affidavit (2024-11-25), Ex. D: [Docken Cross: p 13, L8-13 || Schnieders Cross, p 15, L23 to p 16, L18]

<sup>5</sup> Covill Affidavit (2024-11-25), Ex. D: [Docken Cross: p 10, L22 to p 11, L5]

<sup>6</sup> Covill Affidavit (2024-11-25), Ex. D: [Docken Cross: p 11, L6 to p 12, L7]

<sup>7</sup> Churko Affidavit (2024-11-26), ¶7, Ex. 4, Consulting Agreement (2022-04-01), ¶3.2

<sup>8</sup> Churko Affidavit (2024-11-26), ¶7, Ex. 4, Consulting Agreement (2022-04-01), ¶3.1.b., Sch. C

<sup>9</sup> Schedule 1, page xi – Table 4 – Comparison of Amount to be Paid to Docken Under the Draft Compared to the Actual Settlement Agreements

<sup>10</sup> Churko Affidavit (2024-11-26), ¶7, Ex. 4, Consulting Agreement (2022-04-01), ¶9.1

<sup>11</sup> Covill Affidavit (2024-11-25), Ex. D: [Docken Cross: p 38, L7-11]

<sup>12</sup> Covill Affidavit (2024-11-25), Ex. D: [Docken Cross: p 7, L10 to p 8, L6]

D'Angelo's role at all.<sup>13</sup> Mr. D'Angelo is clearly directing Mr. Docken in this class proceeding. Mr. Docken did not ask Mr. Churko to be involved at the Paxil® settlement approval hearing until Mr. D'Angelo demanded that he appear at 5:00 pm on the Friday before the Tuesday hearing.<sup>14</sup>

(c) NSC was not appointed as “class counsel”<sup>15</sup> or “counsel of record”.<sup>16</sup> Mssrs. Churko and Docken are “lawyer of record”,<sup>17</sup> and “class counsel” in the settlement agreement.

## ***2. The agreement was not “unilateral”***

6. The test for a settlement approval is whether it falls within the zone or range of reasonableness. The court's role is not to re-open negotiations or choose one possible agreement over another within that range.<sup>18</sup> In this case, there was no “unilateral amendment” of the settlement agreement. The parties agreed to one (and only one). It was signed on September 11<sup>th</sup>, 2024, and amended on September 18<sup>th</sup> to accommodate health insurers. It is the *only* settlement agreement. The “revised fee arrangement” and “his proposed fee arrangement”<sup>19</sup> are in fact the actual agreement with GSK. The Alternate Applicants ask that the court instead substitute that agreement for a redlined draft that did not receive party assent.

7. The Alternate Proposed Legal Costs are indeed an untenable request to enforce the ‘unilateral demand’ of an American attorney who is neither a party in this class proceeding nor to the settlement agreement. Mr. Churko did not need “authorization” or “consent” from Mr. D'Angelo nor other unlicensed American attorneys. The allegation that he did, based on Article 16 of the partnership agreement, is being pursued (and defended) in Ontario.<sup>20</sup>

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<sup>13</sup> *Covill Affidavit* (2024-11-25), Ex. D: [*Docken Cross*: p 33, L21 to p 35, L3]

<sup>14</sup> *Churko Affidavit* (2024-11-26), ¶8, Ex 8, *Email from Mario D'Angelo to Casey R. Churko* (2024-09-20 @5:00 pm)

<sup>15</sup> *Covill Affidavit* (2024-11-25), Ex. D: [*Churko Cross*: p 49, L11 to p 51, L14 || *Docken Cross*: p 22, L24 to p 24, L6]

<sup>16</sup> *Docken Affidavit* (2024-11-20), Ex J: [*Churko Cross*: p 57, L1-17] || *Covill Affidavit* (2024-11-25), Ex. D: [*Docken Cross*: p 22, L4 to p 23, L20]

<sup>17</sup> *Docken Affidavit* (2024-11-20), ¶5-7, Ex.'s B-C

<sup>18</sup> *Breckon v Cermaq Canada Ltd.* (Feb. 9<sup>th</sup>), [2024 FC 225](#) (Gascon J.) (settlement | fee approval), ¶29

<sup>19</sup> *Alternate Applicants' Brief*, ¶6

<sup>20</sup> *Churko Affidavit* (2024-11-26), ¶7, Ex. 2, §16. The discharge of the undertaking to MLG in good faith was “required by law”, and the instructions of the representative plaintiff to settle Paxil® on the terms presented for approval was client authorization, each of which constitutes an exception to the requirement of American partner approval under §16.

8. The suggestion that American partners of NSC were not aware of the settlement agreement is contested but irrelevant. As co-counsel for the plaintiffs, Mr. Churko had authority to negotiate and sign the agreement. Any accountability between partners is governed by the partnership agreement and will be determined in Ontario.<sup>21</sup> That aggressive action ‘ups the ante’ from the mediation used in the Canadian authorities cited in the plaintiffs’ brief,<sup>22</sup> but is consistent with the use of other procedures to resolve fee allocation disputes between lawyers.<sup>23</sup>

9. The allegations of the Alternate Applicants cloak their real complaint, namely, that an NSC American partner has an unmet expectation. Just as unlicensed lawyers are not parties, they are also not class members. They have no vested interest in a class action. As Rooke ACJKB accepted:

[37] ...The CPA does not, nor was it ever intended to, provide lawyers with a vested interest in the subject matter of the lawsuit entitling them to override the choices of a representative plaintiff..., including the choice of counsel.<sup>24</sup>

10. The Alternate Applicants intervene now to pursue the perceived “vested interest” of an American partner, evidently on the direction of Mr. D’Angelo. They do not have the instructions of the representative plaintiff, who has been represented by Mr. Churko throughout.<sup>25</sup> According to the Ontario claim that the Alternate Applicants attach,<sup>26</sup> an American partner moved for a dissolution of NSC. Here, as in *Fantl*,<sup>27</sup> competing claims for distribution of the Paxil® fees amongst NSC’s partners is being addressed there. Internal accounting between partners, to the

<sup>21</sup> *Docken Affidavit* (2024-11-20), ¶23, Ex. F

<sup>22</sup> *Brief of Law* (2024-09-18), ¶43, citing *Wilson v Servier Canada Inc.* (April 5<sup>th</sup>, 2005 CarswellOnt 6622 (Cumming J.)

<sup>23</sup> *Sonego c Danone Inc.*, [2012 QCCS 6176](#) (Castiglio J.C.S.) (to intervene) (English): (“[27] Merchant seeks rather to assert its rights against Me Assor, rights which result not from the transaction between Sonego and Danone, but rather from the Association Agreement that it signed with Me Assor in 2009. ... [29] The dispute...concerns exclusively Merchant and Me Assor, who will have to discuss the interpretation and application of their..Association Agreement. ... [36] ... Merchant may bring an action against Me Assor...and discuss its right to receive a portion of the fees possibly received by Me Assor.”)

<sup>24</sup> *Singh v Glaxosmithkline Inc.* (April 21<sup>st</sup>), [2021 ABQB 316](#), 28 Alta LR (7<sup>th</sup>) 342 (Rooke ACJQB) (change of counsel) (“*Singh 316*”), ¶37, citing *Fantl v Transamerica Life Canada* (May 7<sup>th</sup>), [2009 ONCA 377](#), 95 OR (3d) 767 (Goudge, Simmon JJ.A., Winkler C.J.O.) (“*Fantl*”), ¶67

<sup>25</sup> *Singh 316*: (“[27] The PRP has changed law firms, but, effectively, not her active counsel. ...the PRP asserts under oath that Mr. Churko was, effectively her counsel when he was at Merchant Law, and she wants him to continue.”)

<sup>26</sup> *Docken Affidavit* (2024-11-20), ¶23, Ex F

<sup>27</sup> *Fantl*: (“[3] In 2006, Mr. Fantl retained the law firm of...REKO...to act in the prosecution of the intended class action lawsuit.... Toward the end of 2007, REKO dissolved. ... [68] ...Mr. Kim’s investment of time and effort in the action while at REKO will be protected through the process of dissolving that firm.”)

extent that they survived the American partner's withdrawal from the partnership,<sup>28</sup> should not be addressed here. The Alternate Applicants have chosen their forum. Alleged detriment to NSC partners is for the Ontario action. The lack of detriment to the class is the focus here.

**3. The class receives more with the proposed legal costs than the alternate.**

11. There is no detriment to the class from the Proposed Legal Costs in comparison to any draft. To those familiar with the fine details of the settlement agreement, the Alternate Applicants' suggestion that the class has been 'short-changed' by the fees agreed to is obviously unsustainable. The Alternate Applicants are obstinately committed to describing an "MSA"<sup>29</sup> that does not exist. There is no document by that name. The misunderstanding on which the Alternate Applicants' objection is based is their allegation that the settlement denies class members \$1.5 million. While prior drafts should not be considered under §10.11, it is plain that the class receives *more* under the settlement agreement than under the drafts that the Alternate Applicants attach. The settlement agreement (but no draft) contains the following cap on fees:

8.5 Notwithstanding any other provision of this Settlement Agreement, the aggregate amount of the Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) **shall not exceed 33.33%** of the Settlement Fund plus interest thereon, and the amount of the Class Counsel Fees shall not be less nor more than \$2,000,000 plus GST.

[SCHEDULE D – Distribution Protocol] 38. ... The amount of the combined Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) **will not exceed 33.33%** of the Settlement Fund. Lawyers' Fees (but not the Class Counsel Fees) will be proportionately reduced if the amount of the combined Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) otherwise determined herein would exceed [33.33%] of the Settlement Fund plus interest....<sup>30</sup>

12. A detailed comparison of the draft versus the settlement agreement is in **Schedule 1**. The Alternate Proposed Legal Costs would result in \$351,140.36 less to the class than the Proposed Legal Costs. The actual settlement agreement caps the fees at 33.33% (not 35% as in the draft), and

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<sup>28</sup> *Churko Affidavit* (2024-11-26), ¶7, Ex. 2, §25 of the partnership agreement governs the abandonment of any claim to legal fees and recovery of the partnership draw upon American partner withdrawal.

<sup>29</sup> *D'Angelo Affidavit* (2024-11-20), ¶18-24, Ex.'s B-D

<sup>30</sup> *Singh Affidavit* (2024-09-19), *Settlement Agreement*, page 12, §8.5, and page 31, ¶38

that includes the disbursements and taxes on lawyers' fees in the distribution protocol. The Proposed Legal Costs therefore reserve more for the class than the Alternate. The amount going to health insurer class members was specifically increased from \$400,000 in the draft to \$525,000 in the settlement agreement, being the difference between 35% and 33.33% of \$7,500,000.

13. The Alternate Applicants' unilateral request was not agreed to by any party. It benefits only them, but at the expense of MLG, Mr. Churko, and the class. Mr. Docken's fee sharing arrangement with Mr. D'Angelo would see his average hourly rate increased to \$2,083.19 if the Alternate Proposed Legal Costs are approved, while MLG's would decrease to \$76.29 for the eligible period (\$51.61 for all periods). Mr. Docken's rate would be approximately 25 to 40 times greater than MLG's. The application is in Mr. Docken's better interests, but is not in the best interests of the class. His interests were (and are) fairly protected in the Proposed Legal Costs in a way that is horizontally equitable among all counsel involved. The class is best protected by the settlement that Ms. Singh instructed and submitted in the discharge of her duties to achieve the most compensation for the class, not the most fees for Mssrs. D'Angelo and Docken.<sup>31</sup>

14. As the class receives more under the settlement agreement than under the drafts, there was no breach of fiduciary duty to the class. The suggestion is offensive. So is any suggestion that lawyers are treated unfairly in the settlement agreement. The final agreement (but not the draft) complies with the undertaking to MLG for its 9 years of work, and is fair to Mr. Churko for his 1,765.37 hours (post-MLG)<sup>32</sup> and to Mr. Docken for his 100.08 hours.<sup>33</sup> Ross Nasser LLP says NSC has been litigating this action since 2019.<sup>34</sup> MLG has been litigating it since 2012. Mr. Docken has not established that his role was other than as Ms. Singh described it: a 1 day hearing; and 1 day mediation.<sup>35</sup> He has not explained his repetitive entries of 2 hours and 0.3 hours.

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<sup>31</sup> *Persaud v Talon International Inc.* (Nov. 10<sup>th</sup>), [2022 ONSC 6359](#) (Perell J.) (settlement | fee approval), ¶85: (“[85] ... A class action is not the property of entrepreneurial Class Counsel; the class action belongs to the litigants not their lawyer. ... A representative plaintiff is obliged to act in the best interests of the class members and not in the best interests of Former Class Counsel or Current Class Counsel for that matter.”)

<sup>32</sup> *Churko Affidavit* (2024-11-26), ¶15, Ex. 11

<sup>33</sup> *Docken Affidavit* (2024-11-20), ¶33, Ex K (21.90 hours) || *Covill Affidavit* (2024-11-25), Ex. D (Page 33, L5-10) (50 hours) || *Wozniuk Affidavit* (2024-11-22), ¶3, Ex A (28.18 hours). This includes time that Guardian wrote off.

<sup>34</sup> *Alternate Applicants' Brief*, ¶1

<sup>35</sup> *Singh Affidavit* (2024-09-19), ¶42-43, 50



\$50,000 is fair and reasonable for him. The Alternate is an injustice to MLG and Mr. Churko.

15. Finally, so as to dispel any lingering sense of unfairness, Mr. Docken did not request the settlement materials; however, the brief he admitted to receiving explained the fees.<sup>36</sup> Having had the agreement for 2 months, he has not established that the Alternate Proposed Legal Costs are better for the class, just for he and the American attorneys he represents as their “counsel”.

***4. The Alternate Applicants should pay solicitor-client costs.***

16. The applicants had information to know that more (not less) money was going to the class by no later than September 20<sup>th</sup>, 2024, but continued to make and pursue allegations of “surreptitious” conduct against Mr. Churko. They allege fraud in the pleading that Mr. Docken attached. They allege Mr. Churko’s conduct as counsel for the plaintiffs lowers the integrity of the profession. D’Angelo even threatened to refer the matter to the “crown prosecutor”.<sup>37</sup>

17. Such attacks on professional integrity and character should be sanctioned.<sup>38</sup> Churko has a spotless disciplinary history. Persisting in allegations of fraud after obtaining information to conclude that they should be abandoned warrants solicitor-client costs.<sup>39</sup> In alleging that the class receives less from the fees, disbursements, and taxes in the settlement agreement in comparison to the drafts, Mr. Docken did not consider “Lawyers’ Fees” nor the distribution protocol.<sup>40</sup> Mr. D’Angelo intentionally excluded that portion from the draft that he attached.<sup>41</sup> Neither read the agreement with the fine detail required to understand each item and the bottom line in Schedule 1.

18. Although D’Angelo is not a party, he directed and attended the proceedings throughout. Canadian courts have previously sanctioned non-party American lawyers who insist on financing,

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<sup>36</sup> *Brief of Law* (2024-09-18): (“52. The **class counsel fee** is **\$2,000,000**, or 26.67% of the settlement fund. The additional amount up to 33.33% is consistent with the retainer.... The deferral...of the additional 6.66% (**\$500,000**) recognizes that additional work is to be done by counsel in the claims administration process, and gives sufficient incentive to do it right.”).

<sup>37</sup> *Churko Affidavit* (2024-11-26): ¶9, Ex. 10

<sup>38</sup> *J-Sons Inc. v N. M. Paterson & Sons*, [2003 MBCA 156](#), [2003] 7 WWR 437, ¶25-26 || *Moore v Habib-Allah*, [2022 ONSC 6034](#), ¶22

<sup>39</sup> *Hamilton v Open Window Bakery Ltd.*, [2004 SCC 9](#), [2004] 1 SCR 303, ¶8, 26

<sup>40</sup> *Covill Affidavit* (2024-11-25), Ex. D: [*Docken Cross*: p 45, L2 to p 47, L18 || *Schnieders Cross*: p 85, L22-25]

<sup>41</sup> *Churko Affidavit* (2024-11-26), ¶17, Ex. 7 || *D’Angelo Affidavit* (2024-11-20), Ex. D

managing, controlling, directing, and “quarterbacking” the manner in which class actions are advanced in Canada.<sup>42</sup> Mr. D’Angelo tried to “quarterback” an adjournment, and even threatened to ruin Churko’s life.<sup>43</sup> What is alleged to have been Mr. Churko’s “unilateral action” in brokering this settlement agreement, even if true, was settling a Canadian class action by practicing Canadian law, and would have been justified to maintain the independence of the Canadian bar. The offensive allegations of the Alternate Applicants merit solicitor-client costs.

### **5. Conclusion**

19. The Alternative Applicants’ request to vary the settlement agreement should be denied. The Proposed Legal Costs should be approved, and the Alternate should be disregarded or rejected. The settlement agreement, including legal fees, should be approved as agreed to by the parties (with the minor amendments previously ordered). The Alternate Applicants should pay solicitor-client costs for making allegations of deception and fraud that were neither sustained nor justified.

DATED this 4<sup>th</sup> day of December, 2024.



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<sup>42</sup> *Poulin v Ford Motor Co. of Canada Ltd.* (Dec. 14<sup>th</sup>, 2007), [52 CPC \(6<sup>th</sup>\) 294](#) (Ont. S.C.J. - MacKenzie J.) (costs against Motley Rice), [¶5, 7, 40-47, 58, 61-62, 69-70, 80](#)

<sup>43</sup> *Churko Affidavit* (2024-11-26), [¶9](#), Ex. 10

Table 1 – Comparison of Fees and Class Member Compensation Between the Draft and Final Settlement Agreements					
	Term	Draft	Final	+ / -	Notes
1.	Settlement Fund	+\$7,500,000	+\$7,500,000	\$7,500,000	
2.	Administration Costs before	-\$59,325	-\$59,325	±\$0	• for notice of certification (\$25,000) & notice of settlement approval hearing (\$27,500), plus HST (\$6,825). Counsel for the Plaintiffs paid \$28,037.50. See <i>Singh Affidavit</i> , ¶11.
3.	Health Insurer Claims	-\$400,000	-\$525,000	+\$125,000	• The Health Insurers would not agree to \$400,000, hence the change to that term. Mr. Churko insisted that the difference of \$125,000 come off of total lawyers' fees, not Compensatory Payments.
4.	Class Counsel Fees plus GST	-\$525,000	-\$2,100,000	-\$1,575,000	<ul style="list-style-type: none"> <li>• GST was not addressed in the draft. This assumes 5% GST is added.</li> <li>• The actual settlement agreement includes \$2,000,000 plus GST.</li> <li>• There are no legal fees allocated to MLG under the draft agreement. The Alternate Applicants assumes that the \$500,000 Class Counsel Fee will go to MLG, while simultaneously advancing that MLG was not Class Counsel. MLG would not agree to \$500,000 plus GST to satisfy the undertaking. GSK wanted MLG to be on board with the settlement to avoid facing future prospective litigation.</li> </ul>
5.	Class Counsel Disbursements	-\$490,571.81	-\$321,962.50	+\$168,609.31	<ul style="list-style-type: none"> <li>• In the draft settlement agreement: <ul style="list-style-type: none"> <li>◦ D'Angelo says that NSC's disbursements are \$227,355.06 [<i>D'Angelo Affidavit</i> (2024-11-20), ¶16], although he also says they are \$264,468.84 based on \$193,042.95 USD x 1.37 exchange rate [<i>Churko Affidavit</i> (2024-11-26), ¶6, Ex 6, Page 33 of 47]. D'Angelo's disbursements are in addition to NSC's share of Administration Costs before. He did not include \$17,077.13 for Mr. O'Connor's mediation fees. \$490,571.81 assumes the real amount is \$227,355.06.</li> </ul> </li> </ul>

*Schedule 1 – Table Comparing Legal Fees and Class Member Compensation*

					<ul style="list-style-type: none"> <li>◦ <i>Covill Affidavit</i> (2024-11-25) (¶6) says MLG disbursements are \$246,139.62 between the time of filing the class proceeding and the change of representation.</li> <li>• In the actual settlement agreement: <ul style="list-style-type: none"> <li>◦ \$350,000 minus plaintiffs’ counsel’s reimbursement for their 50% share of 2 prior notices under ¶2 above is \$321,962.50.</li> </ul> </li> </ul>
6.	Honorarium	-\$50,000	-\$50,000	±\$0	
7.	amount held to apply interest	+\$5,975,103.19	+\$4,443,712.50	-\$1,531,390.69	
8.	interest on Account (1 year)	+\$194,190.85	+\$144,420.66	-\$49,770.19	• assumes 3.25% interest per year
9.	Compensation Fund	+\$6,169,294.04	+\$4,588,133.16	-\$1,581,160.88	
10.	Administration Costs after	-\$87,575	-\$87,575	±\$0	• \$77,500 plus GST/HST of 13%
11.	Claims Administrator expenses	-\$25,000	-\$25,000	±\$0	• estimated
12.	Claims Officer’s fees	-\$100,000	-\$100,000	±\$0	• estimated fees and expenses, assuming \$2,500/Claimant
13.	Compensation Fund before deducting Lawyers’ Fees, taxes and disbursements	+\$5,956,719.04	\$4,375,558.16	-\$1,581,160.88	
14.	Lawyers’ Fees, taxes, and disbursements	-\$2,307,051.24	-\$499,750	-\$1,807,301.24	<ul style="list-style-type: none"> <li>• In the draft settlement agreement: <ul style="list-style-type: none"> <li>◦ Total legal fees are capped at 35%, or \$2,625,000.</li> <li>◦ Assuming that all Eligible Claimants are represented by Class Counsel, the Lawyers’ Fees in the draft are \$2,084,851.66, comprised of 35% of \$5,956,719.04 to which <u>\$104,242.58</u> in GST is added.</li> <li>◦ D’Angelo has not accounted for disbursements, but estimates them to be</li> </ul> </li> </ul>

*Schedule 1 – Table Comparing Legal Fees and Class Member Compensation*

					<p>\$2,000 USD per claim, or <u>\$112,340</u> CAN using his 1.37 exchange rate on the estimated 41 Claimants, and assuming that GST of \$5,617 is charged on the disbursements (medical records processing fees charged by US consultants).</p> <ul style="list-style-type: none"> <li>◦ If there are unrepresented Eligible Claimants, Class Counsel will be entitled to a maximum of \$2,125,000, after accounting for the \$500,000 Class Counsel Fee.</li> <li>• In the actual settlement agreement: <ul style="list-style-type: none"> <li>◦ The additional \$125,000 for Health Care Claims correspondingly reduced the total fees from \$2,625,000 to roughly \$2,500,000 in the final settlement agreement. That assured their agreement to the settlement.</li> <li>◦ Lawyers’ Fees, GST and disbursements are capped at \$499,750, after deducting the \$2,000,000 Class Counsel Fees from \$7,500,000.</li> <li>◦ The \$499,750 includes GST and disbursements. Assuming the same \$117,957 in disbursements plus GST, the amount of Lawyers’ Fees is \$363,612.38, or roughly \$11,362.89 per Eligible Claim (assuming 32).</li> </ul> </li> </ul>
15.	Compensatory Payments	+\$3,649,667.80	+\$3,875,808.16	+226,140.36	<ul style="list-style-type: none"> <li>• There is \$226,140.36 more to be distributed to Eligible Claimants under the actual settlement agreement that Mr. Churko finalized and that the parties signed than under the draft agreement that the Alternate Applicants ask to be imposed.</li> </ul>
16.	add Health Insurer Claims	+\$400,000	+\$525,000	+\$125,000	<ul style="list-style-type: none"> <li>• Health Insurers are class members, thus the amount going to them must be considered in the amount going to the class.</li> </ul>
17.	Amount available to the class	+\$4,049,667.80	+\$4,400,808.16	+\$351,140.36	<ul style="list-style-type: none"> <li>• There is <b><u>\$351,140.36</u></b> more going to the class under the actual settlement agreement that Mr. Churko finalized and that the parties signed than under the draft agreement that the Alternate Applicants ask to be imposed.</li> </ul>

*Schedule 1 – Table Comparing Legal Fees and Class Member Compensation*

...

3.	Health Insurer Claims	Amount
Draft	<p>(cc) “Health Insurer Claims” means the entitlement of the Health Insurers to any subrogated or direct claims arising from the provision of health care services to Class Members in relation to the Allegations, and pursuant to legislation that permits the recovery of health care costs or medical expenses from third parties.</p> <p>...</p> <p>39. Within 7 days of the Effective Date, the Claims Administrator shall pay Health Insurers <b>CDN \$400,000</b> out of the Settlement Fund for healthcare costs recovery in full and final satisfaction of any and all claims they have respecting any and all Class Members, provided that each signs full and final releases in forms that are satisfactory to each Health Insurer. Health Insurers shall thereafter have no role in the Distribution Protocol</p>	-\$400,000†
Actual	<p>(dd) "Health Insurer Claims" means the entitlement of the Health Insurers to any subrogated or direct claims arising from the provision of health care services to Class Members in relation to the Allegations, and pursuant to legislation that permits the recovery of health care costs or medical expenses from third parties.</p> <p>...</p> <p>39. Within 7 days of the Effective Date, the Claims Administrator shall pay Health Insurers <b>CDN \$525,000</b> out of the Settlement Fund for healthcare costs recovery in full and final satisfaction of any and all claims they have respecting any and all Class Members, provided that each signs full and final releases in forms that are satisfactory to each Health Insurer. Health Insurers shall thereafter have no role in the Distribution Protocol</p>	-\$525,000††

† *Churko Affidavit* (2024-11-26), Ex 7 (Page 36 of 47, ¶39)

†† *Singh Affidavit* (2024-09-19), Ex 1 (Page 31, ¶39)

4.	Class Counsel Fees	Amount
Draft	<p>(m) “Class Counsel” means Clint Docken, K.C. and Casey R. Churko</p> <p>...</p> <p>(o) “Class Counsel Fee” is <b>CDN \$500,000</b>, separate and apart from Lawyer’s Fees.</p>	\$525,000 with GST†

*Schedule 1 – Table Comparing Legal Fees and Class Member Compensation*

4.	Class Counsel Fees	Amount
Actual	<p>(m) "Class Counsel" means</p> <p style="padding-left: 40px;">(i) Casey R. Churko, practicing through KoT Law Professional Corporation; and</p> <p style="padding-left: 40px;">(ii) Clint Docken, K.C., practicing through Clint Docken Professional Corporation.</p> <p>(bb) "Former Class Counsel" means E.F. Anthony Merchant, K.C. of Merchant Law Group LLP (being Class Counsel before April 12th, 2019).</p> <p>...</p> <p>(o) "Class Counsel Fees" is <b>CDN \$2,000,000</b>, separate and apart from Lawyers' Fees, to be paid as follows:</p> <p style="padding-left: 40px;">(i) \$850,000, to be paid to KoT Law Professional Corporation;</p> <p style="padding-left: 40px;">(ii) \$50,000, to be paid to Clint Docken Professional Corporation; and</p> <p style="padding-left: 40px;">(iii) \$1,100,000, to be paid to Former Class Counsel in full and final satisfaction of the <u>undertaking</u> that the Honourable Associate Chief Justice J.D. Rooke referenced at ¶38 of <i>Singh v Glaxosmithkline Inc.</i>, 2021 ABQB 316.</p>	\$2,100,000 with GST††

† *D'Angelo Affidavit* (2024-11-20), Ex D (§1(q))

†† *Singh Affidavit* (2024-09-19), Ex 1 (Page 5, §1(o))

5.	Class Counsel Disbursements	Amount
Draft	<p>(n) "Class Counsel Disbursements" means the actual amount of legitimate and reasonable disbursements incurred by or at the request of Class Counsel or Merchant Law Group LLP between the filing of this Class Proceeding (and no other class action or class proceeding filed anywhere in Canada at any time relating to the prescription or use of Paxil®, Paxil CR™, or paroxetine) and the Effective Date; except that the disbursements that may be claimed by Merchant Law Group LLP shall further be limited to those incurred before April 12th, 2019, being the date that the Plaintiffs served a Notice of Change of Representation, and shall be further reduced by the costs awarded against Merchant Law Group LLP on April 21st, 2021.</p>	-\$490,571.81†
Actual	<p>(n) "Class Counsel Disbursements" means the agreed amount of legitimate and reasonable disbursements incurred by or at the request of Class Counsel and Former Class Counsel between the filing of this Class Proceeding (and no other class action or class proceeding filed anywhere in</p>	-\$321,962.50††

Schedule 1 – Table Comparing Legal Fees and Class Member Compensation

	Canada at any time relating to the prescription or use of Paxil®, Paxil CR™, or paroxetine) and the Effective Date; except that the disbursements that may be claimed by Former Class Counsel shall further be limited to those incurred before April 12th, 2019, being the date that the Plaintiffs served a Notice of Change of Representation. The amount of disbursements as agreed to is: <b><u>\$175,000</u></b> for Napoli Shkolnik Canada; and <b><u>\$175,000</u></b> for Merchant Law Group LLP.	
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† Sources: *D’Angelo Affidavit* (2024-11-20): (“16. ...the American Partners have spent \$227,355.06 CAN”) || *Covill Affidavit* (2024-11-25): (“6. ... The disbursements during that period was \$246,139.62.”)

†† In the actual settlement agreement, \$350,000 minus plaintiffs’ counsel’s reimbursement for their 50% share of 2 prior notices is \$321,962.50.

...

14.	<b>Lawyers’ Fees, taxes, and disbursements</b>	<b>Amount</b>
Draft	<p>(ee) “Lawyer’s Fees” are up to 35% of Compensatory Payments paid to Eligible Claimants who are represented by Class Counsel or another lawyer of their choosing who has a valid and enforceable retainer agreement with an Eligible Claimant. Lawyer’s Fees paid to lawyers other than Class Counsel shall not exceed 25% where the retainers were executed before the Notice of Settlement Approval Hearing is given and 10% where the retainers were executed after. Class Counsel will receive 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented.</p> <p>...</p> <p>(x) “Distribution Protocol” means the plan setting out a Class Member’s entitlement to make a Claim under this Settlement Agreement and how Compensatory Payments to Eligible Claimants and Lawyer’s Fees shall be determined and distributed, as approved by the Court as part of the Settlement Approval Hearing, a draft of which is attached hereto as Schedule “D”.</p> <p>...</p> <p>8.2 Class Counsel and other lawyers retained by an Eligible Claimant may charge Lawyer’s Fees as a percentage of the Compensatory Payments paid to an Eligible Claimant that they represent after the determination of the Compensatory Payment by the Claims Officer, plus disbursements and applicable taxes.</p> <p>8.3 The amount of the Lawyer’s Fees shall not exceed 35% of the Compensatory Payment allocated to any Class Member who is represented. For any Eligible Claimants who are unrepresented, Lawyer’s Fees will be 15% of the Compensatory Payments to the Eligible Claimant.</p> <p>...</p>	-\$2,307,051.24†



*Schedule 1 – Table Comparing Legal Fees and Class Member Compensation*

14.	<b>Lawyers' Fees, taxes, and disbursements</b>	<b>Amount</b>
	<p>8.5 Notwithstanding any other provision of this Settlement Agreement, the aggregate amount of the Class Counsel Fee and Lawyer's Fees shall not exceed 35% of the Settlement Fund plus interest thereon, and the amount of the Class Counsel Fee shall not be less nor more than \$500,000.</p> <p>...</p> <p>38. Lawyer's Fees will be paid as and when Compensatory Payments are made to Eligible Claimants from the Compensation Fund. Subject to Section 8.5 of the Settlement Agreement, the Claims Administrator shall pay to Class Counsel:</p> <ul style="list-style-type: none"> <li>(a) 35% of the Compensatory Payments made to Class Members they represent plus disbursements and applicable taxes;</li> <li>(b) 10% of the Compensatory Payments made to Eligible Claimants who are represented by other lawyers who executed retainer agreements with Class Members before the Notice of Settlement Approval Hearing is given plus applicable taxes, and such other lawyers may also claim disbursements and applicable taxes;</li> <li>(c) 25% of the Compensatory Payments made to any Eligible Claimants who are represented by other lawyers who executed retainer agreements with Class Members after the Notice of Settlement Approval Hearing is given plus applicable taxes and such other lawyers may also claim disbursements and applicable taxes; and</li> <li>(d) 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented plus applicable taxes.</li> </ul> <p><b><u>The amount of the combined Class Counsel Fee and Lawyer's Fees will not exceed 35% of the Settlement Fund.</u></b> Lawyer's Fees (but not the Class Counsel Fee) will be proportionately reduced if the amount of the combined Class Counsel Fee and Lawyer's Fees otherwise determined herein would exceed 35% of the Settlement Fund plus interest thereon.</p>	
Actual	<p>(ff) "Lawyers' Fees" are, subject to section 8.5, up to 35% of Compensatory Payments paid to Eligible Claimants who are represented by Class Counsel or another lawyer of their choosing who has a valid and enforceable retainer agreement with an Eligible Claimant. Lawyers' Fees paid to lawyers other than Class Counsel shall not exceed 25% where the retainers were executed before the Notice of Settlement Approval Hearing is given and 10% where the retainers were executed after. Class Counsel will receive 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented.</p> <p>...</p> <p>(x) "Distribution Protocol" means the plan setting out a Class Member's entitlement to make a Claim under this Settlement Agreement and how Compensatory Payments to Eligible Claimants and Lawyers' Fees shall be determined and distributed, as approved by the Court as part of the Settlement Approval Hearing, a draft of which is attached hereto as Schedule "D".</p> <p>...</p>	-\$499,750††

14.	Lawyers’ Fees, taxes, and disbursements	Amount
	<p>8.2 Class Counsel and other lawyers retained by an Eligible Claimant may charge Lawyers' Fees as a percentage of the Compensatory Payments paid to an Eligible Claimant that they represent after the determination of the Compensatory Payment by the Claims Officer, plus disbursements and applicable taxes, but subject to the limits provided for in section 8.5.</p> <p>8.3 The amount of the Lawyers' Fees shall not exceed 35% of the Compensatory Payment allocated to any Class Member who is represented, subject to the limits provided for in section 8.5. For any Eligible Claimants who are unrepresented, Lawyers' Fees will be 15% of the Compensatory Payments to the Eligible Claimant.</p> <p>...</p> <p>8.5 Notwithstanding any other provision of this Settlement Agreement, the aggregate amount of the Class Counsel Fees and Lawyers' Fees (including disbursements and taxes on Lawyers' Fees but not Class Counsel Fees) shall not exceed 33.33% of the Settlement Fund plus interest thereon, and the amount of the Class Counsel Fees shall not be less nor more than \$2,000,000 plus GST.</p> <p>...</p> <p>38. Lawyers’ Fees will be paid as and when Compensatory Payments are made to Eligible Claimants from the Compensation Fund. Subject to section 8.5 of the Settlement Agreement, the Claims Administrator shall pay to Class Counsel:</p> <ul style="list-style-type: none"><li>(a) 35% of the Compensatory Payments made to Class Members they represent;</li><li>(b) 10% of the Compensatory Payments made to Eligible Claimants who are represented by other lawyers who executed retainer agreements with Class Members before the Notice of Settlement Approval Hearing is given;</li><li>(c) 25% of the Compensatory Payments made to any Eligible Claimants who are represented by other lawyers who executed retainer agreements with Class Members after the Notice of Settlement Approval Hearing is given; and</li><li>(d) 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented.</li></ul> <p><b><u>The amount of the combined Class Counsel Fees and Lawyers’ Fees (including disbursements and taxes on Lawyers’ Fees but not Class Counsel Fees) will not exceed 33.33% of the Settlement Fund.</u></b> Lawyers’ Fees (but not the Class Counsel Fees) will be proportionately reduced if the amount of the combined Class Counsel Fees and Lawyers’ Fees (including disbursements and taxes on Lawyers’ Fees but not Class Counsel Fees) otherwise determined herein would exceed 35% of the Settlement Fund plus interest thereon.</p>	

† *D’Angelo Affidavit* (2024-11-20), Ex D (§1(x), (ee), §8.2, 8.3, 8.5) || *Churko Affidavit* (2024-11-26), Ex 7 (Page 36 of 47, ¶38) || *Covill Affidavit* (2024-11-25), Ex C (“23. ...the cost to obtain the medical records needed to support a claim will average \$2000 USD per claim”)

†† *Singh Affidavit* (2024-09-19), Ex 1 (Pages 5-6, §1(x), (ff); Pages 11-12, §8.2, 8.3, 8.5; Page 31, ¶38)

Table 2 – Comparable Fees to Lawyers Under the Actual Settlement Agreement

Lawyers	Amount	Hours	Average Hourly Rate
Churko	\$850,000	1,765.37†	\$481.49
Docken	\$50,000	100.08††	\$499.60
Guardian (including Docken)	N/A	221.04†	N/A
MLG	\$1,100,000	9,678.49‡	\$113.65
MLG (abbreviated period)	\$1,100,000	6,553.58‡‡	\$167.85
D’Angelo’s staff + NSC	\$363,612.38	2,893.27 †‡	\$125.68

† *Churko Affidavit* (2024-11-26), ¶15, Ex 11. This includes time up to November 23<sup>rd</sup>, 2024 only and is post-MLG time only.

†† *Docken Affidavit* (2024-11-20), ¶33, Ex K (21.90 hours) || *Covill Affidavit* (2024-11-25), Ex. D (Page 33, L5-10) (50 hours) || *Wozniuk Affidavit* (2024-11-22), ¶3, Ex A (28.18 hours). This includes time that Guardian wrote off.

† *Docken Affidavit* (2024-11-20), ¶33, Ex K (79.8 hours) || *Wozniuk Affidavit* (2024-11-22), ¶3, Ex A (141.24 hours). This includes time that Guardian wrote off, and includes Guardian staff time.

‡ *Covill Affidavit* (2024-11-04), ¶5, Ex A

‡‡ *Covill Affidavit* (2024-11-25), ¶4-6, Ex. A. This excludes time for MLG staff. This includes Churko’s time with MLG.

†‡ *D’Angelo Affidavit* (2024-11-20), ¶14 (2,124 + 769.27 hours). D’Angelo’s staff does not have licensed Canadian lawyers. The 769.27 includes unspecified staff and lawyer time. D’Angelo included staff time whereas MLG did not.

**Table 3 – Comparable Fees to Lawyers Under the Draft Settlement Agreement**

<b>Lawyers</b>	<b>Amount</b>	<b>Hours</b>	<b>Average Hourly Rate</b>
Churko	\$0	1,765.37	\$0
Docken	\$208,485.17†	100.08	\$2,083.19
Guardian (including Docken)	N/A	221.04	N/A
MLG	\$500,000††	9,678.49	\$51.61
MLG (abbreviated period)	\$500,000††	6,553.58	\$76.29
D’Angelo’s staff + NSC †	\$1,876,366.49	2,893.27	\$648.53

† \$208,485.17 is 10% of \$2,084,851.66

†† This assumes that the \$500,000 “Class Counsel Fee” is re-written to include MLG where MLG is not defined as “Class Counsel” in the draft agreement.

† This is \$2,084,851.66 Lawyers’ Fees minus Docken’s 10% “consulting fee” of \$208,485.17.

**Table 4 – Comparison of Amount to be Paid to Docken Under the Draft  
Compared to the Actual Settlement Agreements**

	Amount to be Paid to Docken	Amount
Draft	\$2,084,851.66 x 10%†	\$208,485.17††
Actual	\$50,000	\$50,000

† *Churko Affidavit* (2024-11-26), ¶7, Ex 4 *Consulting Agreement*: (“3.1.b. For each of the cases listed on “Schedule C”, Docken shall be paid 10% of the net fees recovered by Napoli”).

†† Note this amount will further be reduced by deducting the amount advanced by Napoli to facilitate the transfer of the files from Guardian. The Alternate Applicants have not disclosed how much that is. If the amount is greater than \$208,485.17, Mr. Docken may not receive anything under the draft Paxil® agreement.