

KING'S BENCH FOR SASKATCHEWAN

Date: 2026 05 14
File No.: QBG-RG-00517-2015
Judicial Centre: Regina

BETWEEN:

THE ESTATE OF MIKE TLUCHAK and VERNA TLUCHAK
PLAINTIFFS

- and -

BAYER INC., BAYER AG, BAYER CORPORATION
and BAYER HEALTHCARE LLC
DEFENDANTS

Counsel:

Evatt Merchant, K.C., and Casey Churko	for the plaintiffs
Jason Mohrbutter, K.C., and Matthew Fleming	for the defendants
Ms. Jeanne Rokosh	self-represented objector

FIAT
May 14, 2026

MITCHELL J.

OVERVIEW

[1] This action was commenced pursuant to *The Class Actions Act*, SS 2001, c C-12.01 [CAA] on March 3, 2015. It alleged that RIVAROXABAN, an oral anticoagulant sold under the brand name XARELTO lacked an antidote to reduce or reverse the anticoagulant effects of this drug. Consequently, the claim asserted that XARELTO is associated with an increased risk of irreversible bleeding including severe haemorrhaging and even death.

[2] Subsequently, it was certified as a class proceeding by Barrington-Foote J.A. (*ex-officio*) on November 14, 2018. See: *Tluchak (Estate) v Bayer Inc.*, 2018 SKQB 311; leave to appeal denied 2019 SKCA 64.

[3] The representative plaintiff, Verna Tluchak [plaintiff] now applies pursuant to s. 38 of the *CAA* for an order approving the proposed settlement agreement dated October 27, 2025 [Settlement Agreement] as against the defendants, Bayer Inc., Bayer AG, Bayer Corporation, and Bayer Healthcare LLC [defendants].

[4] Additionally, the plaintiff seeks an order approving the Settlement Claims Notice, Notice Plan, Class Counsel Fees, and an honorarium for the representative plaintiff.

[5] To that end, Mr. Evatt Merchant, K.C., counsel for the plaintiff, filed a draft Settlement Approval Order.

[6] Subsequently, on April 1, 2026, a hearing was convened respecting the appropriateness of the Settlement Agreement, and court approval of the Settlement Approval Order. Mr. Jason Mohrbutter, K.C. and Mr. Matthew Fleming, counsel for the defendants, advised the defendants consented to the Settlement Agreement, and urged me to approve it.

[7] After hearing submissions from counsel, as well as Ms. Jeanne Rokosh, I reserved my decision.

[8] I pause to observe that Ms. Rokosh is a putative class member who had filed a written submission dated March 3, 2026, objecting to the proposed settlement and the Settlement Agreement. See: Affidavit of Joshua Merchant sworn March 27, 2026, Exhibit "H". However, after listening to her articulate oral presentation, I realized that while she felt the proposed settlement was not optimal because it did not require

Bayer Inc. to take steps to rectify the current situation, she accepted it was a fair settlement and the best settlement that could be achieved in the circumstances.

[9] After reviewing the Settlement Agreement in some detail as well as the written briefs of law, and the oral submissions of counsel, I conclude as follows:

- (a) The Settlement Agreement is approved in its entirety under s. 38 of the *CAA* because it is fair and reasonable, and in the best interests of the class members;
- (b) The contingency fees for class counsel as well as the disbursements paid out are approved under s. 41 of the *CAA* because they are fair and reasonable; and
- (c) The honorarium for the plaintiff is approved because it, too, is fair and reasonable in the circumstances of this litigation.

[10] Accordingly, this short fiat explains why I direct that the Settlement Approval Order may issue in the form of the draft submitted by Mr. Merchant on behalf of the plaintiff.

ANALYSIS

A. Law

[11] For purposes of the analysis which follows, I rely on the legal principles enunciated and applied in recent judgments from this Court, principally *Watch v Live Nation Entertainment Inc.*, 2025 SKKB 10 [*Live Nation*], and *Dembrowski v Bayer Inc.*, 2026 SKKB 63 [*Dembrowski*].

B. Settlement Agreement

[12] The essential terms of the Settlement Agreement are summarized at paras. 17-21 of the Brief of Law (Settlement Approval Hearing) dated March 27, 2026. This agreement applies to class members who are Canadian residents except residents of Québec.

[13] As noted in *Live Nation*, to be approved a proposed settlement must be “deemed to be fair, reasonable, and in the best interests of the class members as a whole”: *Live Nation* at para 28, and *Dembrowski* at para 15. To satisfy these criteria, the proposed settlement “need only fall with a zone of reasonableness”: *Live Nation* at para 30.

[14] I have reviewed the proposed Settlement Agreement as well as the affidavits submitted on this application. I have also considered Ms. Roskosh’s submissions, since she was the only class member to file a formal objection. As I indicated, she did not, in truth, oppose the settlement but was disappointed it did not compel the defendants to produce an antidote. She conceded that this settlement was “probably the best” settlement that could be achieved in the circumstances.

[15] Taking all factors into account, I am persuaded that it is fair, reasonable, and in the best interests of the class as a whole. Accordingly, I approve the Settlement Agreement under s. 38 of the *CAA*. This includes the proposed Settlement Approval Notice, and the appointment of MNP Ltd. as the Claims Administrator.

C. Class Counsel Fees and Disbursements

[16] Class counsel fees must be approved by a Court under ss. 41(1) of the *CAA*. To determine a proposed contingency fee arrangement, it is necessary to assess the fairness and reasonableness of the fees requested. This means weighing the risk

assumed by counsel in pursuing the litigation, as well as the result achieved. See: *Live Nation* at paras 47-48, and *Dembrowski* at paras 34-35

[17] Here, class counsel seek approval for a contingency fee of \$1,350,000 (exclusive of applicable taxes) and without the requirement of a further order an additional \$225,000 (exclusive of applicable taxes) as contemplated in the Settlement Agreement all to be shared between two firms: Merchant Law Group LLP, and Consumer Law Group.

[18] Class counsel also seek approval for disbursements in the amount of \$251,687.40 to be shared amongst four law firms: Merchant Law Group LLP, Consumer Law Group LLP, McPhadden LLP, and Siskinds Law Firm.

[19] In *Live Nation* at paras 51-55, I identified several considerations to be weighed when determining if proposed contingency fees were fair and reasonable. Several of those considerations apply here, for example the experience level of class counsel, the amount of billable hours expended, the successful resolution of the claim and the nature of the settlement.

[20] Additionally, I note that those fees represent between 24.2% and 30% of the minimum settlement amount payable by the defendants. These percentages are less than the fee approved in *Live Nation* at para 53, and similar to the fee approved in *Dembrowski* at para 33.

[21] Accordingly, for these reasons, I find the proposed contingency fees and the disbursement amounts to be fair and reasonable under ss. 41(1) of the *CAA*. I approved those amounts requested.

D. Honorarium for the Representative Plaintiff

[22] Finally, class counsel seeks approval of an honorarium of \$25,000 for the representative plaintiff, Mrs. Verna Tluchak [Mrs. Tluchak] to be paid from the settlement amount.

[23] Mrs. Tluchak filed an affidavit sworn on March 27, 2026 [Tluchak Affidavit]. She averred that she has been “heavily involved” in this class action since 2015, following the death of her husband: Tluchak Affidavit at para 3. She proceeds to outline in some detail her late husband’s experience using Xarelto and avers at para. 10: “I believe, based upon the opinion of Dr. Steven Mamus, that it is likely that Xarelto[®] was a cause of husband’s death in October 2014”.

[24] Class counsel submits that by willingly divulging private and difficult familial medical information, Mrs. Tluchak spared other putative class member from doing the same. Additionally, Mrs. Tluchak avers that she was “in regular contact with lawyers at [Merchant Law Group] over the course of this litigation”: Tluchak Affidavit at para 3. Mrs. Tluchak is “a direct signatory” to the Settlement Agreement: Tluchak Affidavit at para 3.

[25] As I noted in *Live Nation* at para 61, honoraria for representative plaintiffs have been increasing in recent years beyond the modest sums previously approved. To be sure, \$25,000 is a generous amount but it is not the highest honorarium approved by other courts. See, for example: *Toth v Canada*, 2019 FC 125 (\$50,000 for representative plaintiff).

[26] On balance, I am satisfied that the honorarium of \$25,000 for Mrs. Tluchak is fair and reasonable in all the circumstances of this litigation. I approve it.

E. Order

[27] Accordingly, I make the following orders:

- (a) The Settlement Agreement dated October 27, 2025 is fair and reasonable, and in the best interests of the class as a whole. It is approved under s. 38 of the *CAA*;
- (b) The class counsel legal fees in the amount of \$1,350,000 plus applicable taxes and without the requirement of a further order an additional \$225,000 plus applicable taxes are fair, reasonable, and approved under s. 42 of the *CAA*;
- (c) The disbursements in the amount of \$251,687.40 plus applicable taxes are fair, reasonable, and approved under s. 41 of the *CAA*;
- (d) An honorarium of \$25,000 for the representative plaintiff, Mrs. Verna Tluchak to be paid from the settlement amount is fair, reasonable, and approved under s. 41 of the *CAA*, and
- (e) The Claims Notice and the Notice Program is acceptable and approved under s. 25 of the *CAA*.

[28] Consequently, the draft Order filed by class counsel may issue.



J.
G.G. MITCHELL