

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 63

Date: 2026 03 19
File No.: QBG-SA-01611-2009
Judicial Centre: Saskatoon

BETWEEN:

DAWN DEMBROWSKI and ALINA POPA (and
LEANNE HUVENAARS, as Participant)

PLAINTIFFS

- and -

BAYER INC., BAYER CORPORATION, BAYER
HEALTHCARE PHARMACEUTICALS INC., BAYER
HEALTHCARE LLC, AND BERLEX LABORATORIES,
INC.

DEFENDANTS

Counsel:

Evatt Merchant, K.C., Dwayne Braun,
Casey Churko and Matthew Baer
Jason Mohrbutter, K.C., Grant Worden,
S. Case, and Y. Yung

for the plaintiffs

for the defendants

JUDGMENT
March 19, 2026

WEMPE J.

I. Introduction

[1] Yasmin and YAZ are combined oral contraceptives sold in Canada. There are three certified product liability class action proceedings (Saskatchewan, Ontario and Quebec) alleging that Yasmin and YAZ are associated with increased risks of serious

side effects. The actions allege the defendants were negligent in the marketing, distribution, and/or sale of Yasmin and YAZ and seek damages for those who developed blood clots and gallbladder disease, as well as derivative claims on behalf of their family members under applicable family law statutes. The defendants deny the allegations.

[2] On July 30, 2025, after more than 15 years of litigation, the parties in this action and the companion Ontario and Quebec actions reached a settlement agreement.

[3] The plaintiffs now seek the following orders:

- (i) Approving the settlement agreement as being fair, reasonable and in the best interests of the class;
- (ii) Approving the Notices of Settlement Approval and corresponding Notice Plan;
- (iii) Appointing Epiq Class Action Services Canada Inc. as the Claims Administrator to administer the Settlement Fund and the Benefits and Distribution Protocol.

[4] The defendants consent to the relief sought.

[5] Class Counsel also seeks court approval of their proposed fees and payment of a modest honorarium to the Representative Plaintiffs. The defendants take no position on the fee arrangement.

[6] The Settlement Agreement was approved in Ontario in *Schwoob v Bayer Inc.*, 2025 ONSC 6607 [*Schwoob*] on November 27, 2025 and in Quebec in *Guindon v Bayer Inc.* (2025 November 26), Montreal No. 500-06-000484-093 (QCCS).

[7] For the reasons that follow, I grant the orders sought and dismiss the action.

II. Litigation History and Background

[8] The litigation history and procedural background are set out in detail in the *Schwoob* decision at paras. 9 to 20. I will not repeat them here.

[9] The Saskatchewan action was commenced on December 11, 2009 with the issuance of a statement of claim. After a number of applications, the matter was certified as a multi-jurisdictional class action by Gabrielson J. on October 15, 2018. He held there were two common issues for the class and Dawn Dembrowski was appointed as representative plaintiff for the class.

[10] Negotiations and the exchange of numerous offers to settle continued until the Settlement Agreement which was executed on July 30, 2025.

[11] The road to settlement was protracted, hard-fought and at arm's length. At the certification stage, the defendants vigorously opposed certification on all five criteria in s. 6(1) of *The Class Actions Act*, SS 2001, c C-12.01.

The Proposed Settlement Agreement

[12] The Settlement Agreement provides for a Settlement Fund of \$9,050,000.00 CAD to be allocated as follows:

- (i) \$8,139,000.00 for payment of compensation to approved Settlement Class Member Claims, as well as Administration Expenses, and Class Counsel Fees as approved by the Courts;
- (ii) \$905,000.00 for the Provincial Health Insurers to be divided among the applicable jurisdictions based on the actual distribution of the products

by Province;

- (iii) \$6,000.00 collectively for the Ontario and Saskatchewan Plaintiff Honoraria, to be divided equally among the Ontario and Saskatchewan Representative Plaintiffs.

[13] In the *Schwoob* decision approving the Settlement Agreement, Standryk J. summarized the other provisions of the Settlement Agreement as follows:

- 23. The Settlement Agreement includes a Benefits and Distribution Protocol designed to provide an accessible and simplified claims program for Settlement Class Members: the process will be confidential; claimants are presumed to be acting in good faith; and the claims administrator will evaluate all claims.
- 24. The claims process allows for Class Members or their estates, as well as family settlement Class Members, to make claims.
- 25. Settlement benefits will be made available to Class Members who can provide evidence that they ingested Yasmin or YAZ during the applicable time and were subsequently diagnosed with one of the qualifying medical conditions. Claimants will not be subject to an adversarial adjudicative process. Claimants will not be required to prove general causation that YAZ or Yasmin caused increased risk or specific causation that caused their injuries, rather than other factors.
- 26. Settlement monies will be distributed to approved claimants based on a points system that provides differing levels of compensation depending on the type of qualifying medical conditions suffered and whether the condition resulted in a qualifying associated fatality. Compensation ranges from \$500 for gallbladder disease to \$13,500 for VTE-associated fatalities.
- 27. The protocol provides a process for reconsideration by the claims administrator.
- 28. Provincial and territorial health insurers are entitled to payment on agreed-upon percentages. The claims administrator will distribute payment to each province and

territory within ten days of receipt of the entire Preliminary Settlement Amount.

29. If there are Settlement monies leftover following the distribution of the Settlement Fund, the claims administrator will distribute the remaining amount cy-près to the Women's Health Collective Canada, or to another organization agreed upon by the parties, minus any amounts payable to the Fonds d'aide aux actions collectives in Quebec (which is required by statute).

[14] The consortium of Class Counsel are aware of approximately 2,000 Settlement Class Members who may be eligible to submit a claim for compensation.

III. Law and Analysis

Settlement Approval

[15] Section 38(3) of *The Class Actions Act* provides that settlement of a class proceeding is not binding unless approved by the court. To approve a settlement of a class proceeding the court must be satisfied the proposed settlement is fair and reasonable, and in the best interests of class members: *Sparvier v Canada (Attorney General)*, 2006 SKQB 533 at para 6; *Driediger v Ashley Furniture Industries Inc.*, 2010 SKQB 437 at para 11 [*Driediger*].

[16] At para. 13 in *Driediger* (and affirmed in *MacMillan v Merck Frosst Canada & Co.*, 2016 SKQB 325 at paras 27-28), Laing C.J.Q.B. (as he then was), held the following factors were relevant when considering whether a proposed settlement was fair and reasonable:

1. Likelihood of recovery or likelihood of success;
2. Amount and nature of discovery, evidence or investigation;
3. Settlement terms and conditions;
4. Recommendations and experience of counsel;
5. Future expense and likely duration of litigation;

6. Recommendations of neutral parties, if any;
7. Number of objectors and nature of objections; and
8. The presence of arms-length bargaining and the absence of collusion.

[17] However, it is not appropriate for the court to rubber stamp settlements. There is a strong presumption of fairness in matters where a proposed final settlement has been negotiated by experienced class counsel at arm's length and presented to the court for approval: *Watch v Live Nation Entertainment Inc.*, 2025 SKKB 10 at para 29 [*Live Nation*]. As Mitchell J. noted, counsel in such matters are in a unique position to assess the risks and rewards of the litigation, and their recommendations should be accorded considerable weight by a reviewing court. A proposed settlement need only fall within a zone of reasonableness; perfection is neither expected nor demanded (*Live Nation* at para 30).

[18] I echo the reasons of Standryk J. in *Schwoob* in finding that the proposed settlement is fair, reasonable and in the best interests of the class as a whole and therefore ought to be approved by this Court. As he noted at para. 40, the materials describe extensive, careful and arm's length settlement negotiations by the parties. Class Counsel, through extensive discovery (over 40,000 documents and 400,000 pages) and years of involvement in this litigation, now fully understand the case that Class Members are required to meet at trial. Notably, they have concluded there are significant hurdles for the class and a real risk that a court adjudicating the matter could find in favour of the defendant.

[19] The Settlement Agreement and Protocol will provide Canadian women and their families with compensation for the harms they have endured, ensuring certainty of outcome and finality. Class Members will benefit from receiving clearly defined compensation now, avoiding the uncertainties and risks associated with prolonged litigation: *Schwoob* at para 42.

[20] The significant litigation risks in this matter were aptly described by Standryk J. at paras. 43 to 48, as follows:

43. The key common issue in each of the Ontario, Saskatchewan, and Quebec actions is whether Yasmin and YAZ carry an increased risk of VTE, ATE, or gallbladder disease, compared to other available oral contraceptives, and whether that risk is significant enough that it ought to have been warned of or would have changed class members' behaviour.
44. Several studies and research sources have been referenced in the materials before me: EURAS, Ingenix, LASS and Jick et. al., that show no statistically significant increased risks to users. The EURAS study, mandated by European regulators, and the Ingenix study, required by U.S. regulators, were extensive prospective studies that track two distinct groups of individuals – one group using YAZ and Yasmin, and the other using alternative oral contraceptives. These studies are recognized for their reliability in part due to the ability of researchers to manage confounding factors by gathering comprehensive data through questionnaires and interviews to allow assessment of variables such as BMI, family history, and smoking status which are relevant to a thorough and accurate evaluation of outcomes.
45. In addition to the foregoing studies, it is relevant that Health Canada has never required the defendants to provide updated labelling regarding associated risks of ATE or gallbladder disease.
46. Moreover, in a 2023 medical negligence trial, Justice J.E. Ferguson considered the relative risks of blood clots associated with YAZ compared to other COCs and found the alleged increased risks not to be significant: see *McLean v. Valadka*, 2023 ONSC 6803, at para. 39.
47. Even if the plaintiffs could successfully prove general causation, individual Class Members would still need to establish specific causation, namely, that Yasmin or YAZ caused their particular injuries and that a warning about an additional incremental risk would have changed that Class Member's behaviour.
48. In addition to the general risks associated with lengthy

protracted litigation, fading memories, availability of witnesses, vagaries of trial testimony, I am satisfied there was a risk regarding proof of general causation at a common issues trial. The risk would equally apply to Class Members who used Yasmin or YAZ, family Class Members, and Provincial Health Insurers.

[21] Similarly in *Carruthers v Pharma*, 2022 SKKB 214 at paras 79-83 [*Carruthers*], Popescul C.J.K.B. noted that the significant litigation risks that would be encountered at both the common and individual issues stage were important factors in considering the approval of a settlement.

[22] Without this proposed settlement, the proceedings would be protracted, the outcome uncertain, and even if successful, the Class Members would not receive compensation for several more years. I agree with Class Counsel that the benefits of a relatively immediate and certain settlement at this stage cannot be overstated.

[23] This was another factor considered by Popescul C.J.K.B. in *Carruthers* where he noted:

[85] Another factor to be taken into account is delay. Continued litigation would be the inevitable result of a rejection of the Settlement Agreement. This case has already been ongoing for more than a decade and there have been more twists and turns than most could have anticipated. Sending the matter off for certification, and, if certified, to a trial would consume many more years. Parties not satisfied with rulings have the right to appeal, further adding to the complexity of the situation and the time it would take to have the claims finally resolved, as well as the overall cost of the process.

[24] There were seven objections received as of January 15, 2026.

[25] I have carefully read and reviewed each of the objections. The objections for the most part express concern that the proposed settlement does not adequately reflect compensation proportionate to the harms suffered.

[26] As noted by Standryk J., the objections assume proof of both general and specific causation and imply that injury, by itself, warrants compensation: *Schwoob* at para 50.

[27] Each of the Representative Plaintiffs, having considered the advice and recommendations of experienced counsel as well as their own personal experience in this litigation, support approval of the proposed Settlement Agreement. In addition, Class Counsel notes there were hundreds of Class Members who did not object and expressed support for the proposed settlement and/or an interest in making a claim under the settlement if approved. The Court also received a statement of support from a mother who described her grief and the impact of the loss of her daughter.

[28] As acknowledged by Class Counsel, no amount of compensation will compensate Settlement Class Members for their injuries, related emotional trauma and expenses. However, settlement is a compromise that reflects the risks, delay and expense of continuing litigation. As noted by Standryk J., the Settlement Protocol has been developed with the goal of avoiding re-traumatization through a confidential, non-adversarial process that enables Settlement Class Members to receive compensation without requiring proof of causation or damages: *Schwoob* at para 52.

[29] In the circumstances, I am satisfied that the proposed Settlement Agreement is fair, reasonable and in the best interests of the class.

[30] In addition, I approve the Notices of Settlement Approval and Notice Plan. The Plan is comprehensive and will ensure that all Class Members and the public at large are informed of the Settlement Approval.

[31] Finally, I appoint Epiq Class Action Services Canada Inc. as Claims Administrator. Epiq is well-known to Class Counsel and has extensive experience and expertise in providing notice and administering class action services. They were

previously appointed by this Court to manage the First Notice and the objection process. Epiq is familiar with this litigation, and it is appropriate they be appointed as claims administrator.

Class Counsel Fees

[32] Section 41(1) of *The Class Actions Act* provides that an agreement respecting fees and disbursements between a lawyer and a representative plaintiff must be in writing and must:

- (a) state the terms under which fees and disbursements are to be paid;
- (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class action; and
- (c) state the method by which payment is to be made, whether by lump sum or otherwise.

[33] Class Counsel in the three actions (Saskatchewan, Ontario and Quebec) collectively seek legal fees of 30% on the sum of \$8,145,000 representing the Settlement Amount (\$9,040,000) less the money directed to the Provincial Health Insurers (\$905,000). The Settlement Agreement provides that Yasmin/YAZ was distributed as follows: 21.51% in Ontario, 50.53% in Quebec, and 27.96% in the rest of Canada. Accordingly, the amount of legal fees requested by Class Counsel in Saskatchewan is \$683,202.60 plus GST/PST for a total of \$758,354.89. This amount is significantly less than the time docketed by Class Counsel. In addition, Class Counsel is requesting disbursements totalling \$252,295.53. The total sum therefore being requested for legal work and expenses of Class Counsel to litigate this action is \$1,010,650.42.

[34] In considering whether the fees claimed are fair, reasonable and in the best interests of the class in *Carruthers*, Popescul C.J.K.B. held that the following factors are relevant:

1. the factual and legal complexities of the claim;
2. the risks undertaken, including the possibility that the action might not succeed;
3. the degree of responsibility of class counsel;
4. the monetary value of the matters at issue;
5. the degree of skill and competence demonstrated by class counsel;
6. the result achieved; and
7. the contingency fee agreement.

[35] Class Counsel in this matter assumed significant risk. There was no guarantee of certification or success on the merits. The litigation has been lengthy and uncertain.

[36] The fee agreement between Class Counsel and the Representative Plaintiff meets the requirements of s. 41. The terms are consistent with the retainer agreements approved in the Ontario and Quebec proceedings and the percentage sought (30%) is consistent with those approved in other class actions: *Schwoob* at paras 62-64.

[37] In the circumstances, I am satisfied the fees and disbursements sought are fair and reasonable.

Approval of Proposed Honorarium

[38] A modest honorarium of \$1,000 each is being sought for the Saskatchewan plaintiffs for their time and extra efforts pursuing the litigation over the past 15 years.

[39] The Representative Plaintiffs have played a significant role in this litigation in advancing the Class Members' access to justice. As noted by Standryk J. at para. 79, their involvement has been extensive, including discovery obligations requiring they disclose their personal experiences, sustained communication with Class

Members through various channels, and the emotional weight of exposure to their own and the personal trauma of others.

[40] I approve the honorarium sought on behalf of the Representative Plaintiffs.

IV. Conclusion

[41] For the foregoing reasons, I approve the Settlement Agreement, the Notices of Settlement Approval and corresponding Plan, the appointment of Epiq Class Action Services Canada Inc. as Claims Administrator, Class Counsel fees and disbursements and the Representative Plaintiffs' honorarium.

[42] The order may issue in the form filed.

J.
R.C. WEMPE