

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20180501
Docket: S078806
Registry: Vancouver

Between:

Lana Wakelam

Plaintiff

And

**Johnson & Johnson, Johnson & Johnson Inc.
McNeil Consumer Healthcare Canada, Novartis Consumer Health
Canada Inc./Novartis Santé Familiale Canada Inc., Novartis Pharmaceuticals
Canada Inc./Novartis Pharma Canada Inc. Shoppers Drug Mart and
Wyeth Consumer Healthcare/Wyeth Soins De Santé Inc.**

Defendants

Before: The Honourable Mr. Justice Grauer

**Oral Reasons for Judgment
In Chambers**

Counsel for Plaintiff:

R. Mogerman
N.J. Kovak

Place and Date of Trial/Hearing:

Vancouver, B.C.
May 1, 2018

Place and Date of Judgment:

Vancouver, B.C.
May 1, 2018

[1] **THE COURT:** This is an application seeking approval of a proposed cy-près distribution of funds received pursuant to settlement agreements in this class action proceeding.

[2] The nature of the claim concerned children's cough medicine marketed by several defendants for use by children under the age of six that was supplied, offered for sale, advertised, or promoted by the defendants in 1997 through 2011. The claim was that it was essentially a waste of money and ineffective, in fact risky.

[3] On December 22, 2011, I certified the matter as a class proceeding, but on January 30, 2014, that decision was reversed by the Court of Appeal principally on the basis that the law had changed since my decision.

[4] The class sought leave to appeal to the Supreme Court of Canada but that was denied. It appears that since then the law has swung back again, but the fact remains that there is nothing further to be done with this case.

[5] I did approve a settlement that was reached between several of the defendants that resulted in a payment of \$290,000, which funds have been held in an interest-bearing trust account. I later approved the payment of disbursements to counsel from that fund in the total of \$129,626.68 plus taxes.

[6] At this stage, the amount left in trust for the benefit of the settlement class is \$154,788.89. Class counsel seek no legal fees. The proposal is that the remaining funds be paid by way of cy-près distribution to the British Columbia Children's Hospital Foundation. This is based upon a number of propositions, including that the amount is such and the class size is such that arranging for distribution among members of the class would be impracticable and would cost far too much money.

[7] I am satisfied that the proposed cy prè distribution represents a result that is fair, reasonable and in the best interests of the class. There is a clear and rational connection between the subject matter of the case, the interests of the class members, and the recipient, BCCH Foundation, which is of course the charitable arm of British Columbia's tertiary care centre for children's health.

[8] Accordingly, I approve the *cy près* distribution as requested, and I also order that the formal order need not be presented to the defendants for signature and may be entered without that.

[9] I congratulate counsel for the class for their work on this matter, for the result they have achieved and for their forbearance in relation to fees.

[10] Is there anything else?

[11] MR. MOGERMAN: No, My Lord. Thank you.

[12] MS. KOVAK: I have a draft order I can hand up.

[13] THE COURT: Excellent. I did forget to mention what is included in the order I am signing: you have leave to discontinue the action without costs.

“Grauer J.”