CITATION: Schwoob v. Bayer Inc., 2025 ONSC 6607
COURT FILE NO.: CV-10-52030-00CP
DATE: 2025-11-27

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Ann Schwoob, Cody Schwoob, Kristy Bishop Plaintiffs	M. D. Baer, for the Plaintiffs
– and –	
Bayer Inc. Bayer A.G., Bayer Schering Pharma A.G., Bayer Corporation, Bayer Healthcare, LLC, Bayer Healthcare Pharmaceuticals Inc. Defendants	W. McNamara, G. Worden, N. Mantini, S. Case, for the Defendants

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1991

Corrected Decision: December 1, 2025 - At para. 45 the acronym "VTE" has been removed – No other changes to content have been made.

THE HONOURABLE JUSTICE L. E. STANDRYK

REASONS FOR DECISION

A. Introduction

1. Yasmin and YAZ are combined oral contraceptives (COCs) that are sold in Canada. These products are known as COCs because they combine an estrogen and a progestin component. The estrogen component of both Yasmin and YAZ is ethinyl estradiol, which has been used in many other COCs marketed in Canada. However, they also both contain a progestin called drospirenone (DRSP), which was considered novel when these COCs were initially marketed in 2004 and 2009, respectively.

2. This action is a certified product liability class action under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (*CPA*). There are two companion actions in Saskatchewan and Quebec.

3. The plaintiffs allege that Yasmin and YAZ carry an increased risk of blood clots and other adverse side effects compared to other available oral contraceptives. They allege that 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 provincial family law statutes. The defendants deny the allegations.

4. On July 30, 2025, after more than 15 years of litigation and ongoing negotiation of a potential resolution, the parties in this action and the companion actions in Saskatchewan and Quebec reached a settlement agreement.

5. The plaintiffs seek the following orders:

    a. approval of the Settlement Agreement on the basis that it is fair, reasonable and in the best interests of the class;

    b. approval of the Notices of Settlement Approval and Settlement Approval Press Release directing their publication and dissemination in accordance with the Notice Plan;

    c. directing Epiq Class Action Services Canada Inc. in the capacity of claims administrator to administer the Settlement Fund and claims process in accordance with the Settlement Agreement.

6. The defendants consent to the foregoing relief sought.

7. Class Counsel also seek court approval of their proposed fee and payment of a modest honorarium to the representative plaintiffs. The defendants take no position on the motion to approve the fee arrangement.

8. For the reasons below, I grant the orders sought and dismiss the action.

B. Procedural Background

9. This action was commenced on March 10, 2010, on behalf of all women in Ontario who were prescribed and ingested Yasmin and/or YAZ from the date that these drugs were respectively introduced into the Canadian market. It is one of 13 class actions commenced across Canada in or around 2009 and 2010.

10. Plaintiffs' counsel formed a consortium to advance three of the proposed class actions to certification and discovery while the remaining proceedings remained dormant. The three actions were this action in Ontario, the Saskatchewan action, and the Quebec action.

11. On April 15, 2023, this action was certified as a class proceeding. The certified class comprised Ontario residents who used Yasmin and/or YAZ from the date of their respective introductions onto the Canadian market up to November 30, 2011, as well as dependent family law claimants.

The certified common issues were directed toward general causation, negligence (failure to warn), and waiver of tort. The general causation common issue was defined as:

> Can the use of Yasmin and/or YAZ cause or contribute to an increased risk of pulmonary embolism, deep vein thrombosis, stroke, heart issues and/or gallbladder disease/removal compared to other oral contraceptives?

12. Leave to appeal certification was denied. Notice of the certification decision in Ontario was published on November 10, 2014 — the opt-out period ended in February 2015.

13. Following certification in Ontario, the Saskatchewan and Quebec proceedings eventually certified/authorized after vigorously contested motions on October 15, 2018 and July 26, 2018, respectively.

14. Notice of certification in the Saskatchewan Action was published on November 29, 2018, with an opt-out period ending in February 2019. The Quebec Action was authorized as a class action on July 26, 2018, with an opt-out period ending September 4, 2019.

15. While the certification and authorization processes unfolded in Saskatchewan and Quebec, post-certification steps progressed in Ontario. The defendants filed the first statement of defence in this action in August 2015.

16. Throughout this litigation, the defendants have denied the plaintiffs' allegations. Specifically, the defendants have consistently taken the position that Yasmin and YAZ do not carry any clinically significant increased risk of blood clots that form in the veins (venous thromboembolism or VTE) or in the arteries (arterial thromboembolism or ATE) including deep vein thrombosis (DVT), pulmonary embolism (PE), heart issues or gallbladder disease, compared to other available COCs (i.e., that there is no "general causation"), and that the risks of Yasmin and YAZ are clinically comparable to those of other COCs.

17. The defendants have also consistently maintained that the warnings provided in respect of Yasmin and YAZ were at all times complete and accurate, and that any injuries or damages experienced by the plaintiffs or Class Members are attributable to other causes or factors unrelated to their use of Yasmin or YAZ.

18. The parties moved the action through the discovery phase, which spanned early 2016 to 2021.

19. On or about July 30, 2025, the parties finalized and executed the Settlement Agreement.

20. On August 19, 2025, this court granted the Notice Order approving the form and content of the Notices of Settlement Approval Hearing and Settlement Approval Hearing Press Release ("First Notice"), the Notice Plan to disseminate the First Notice, and the procedures for objecting to the proposed settlement.

Proposed Settlement Agreement

21. If approved, the Settlement Agreement will resolve the Ontario, Saskatchewan and Quebec Actions as well as ten other dormant class actions across Canada.

22. The Settlement Agreement provides for a Settlement Fund of $9,050,000 CAD, to be allocated as follows:

    a. $8,139,000 for distribution to approved Settlement Class Member Claims, after payment of Administration Expenses and Class Counsel Fees;

    b. $905,000 for the Provincial Health Insurers (PHIs), to be divided among the applicable provinces based on the actual distribution of Yasmin and YAZ in each province; and

    c. $6,000 to be divided equally among the Ontario and Saskatchewan representative plaintiffs as honoraria for their time and extraordinary efforts pursuing the litigation and representing the Settlement Class over the course of 15 years.

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).

30. The consortium of plaintiffs' counsel is currently aware of approximately 2,000 people of whom 1,200 have inquired in relation to VTE, 700 with regard to gallbladder issues, and less than 100 in relation to ATE.

C. Law and Analysis

Settlement Approval

31. On October 1, 2020, significant amendments CPA took effect. According to the transition provisions outlined in s. 39 of the current legislative version, the CPA provisions that were in place before October 2020 will govern the Settlement Approval for this class proceeding.

32. Section 29(2) of the CPA provides that a settlement of a class proceeding is not binding unless approved by the court. The court must find that in all the circumstances, the settlement is fair, reasonable and in the best interest of the class: s. 29(2) of the CPA.

33. In addition to the principle that the settlement must be fair, reasonable, and in the best interest of the class, Cullity J. in Nunes v. Air Transat A.T. Inc., [2005] O.J. No. 2527 (S.C.) at para. 7, affirmed, *inter alia*, the following guiding principles on a motion for settlement approval:

    a. The resolution of complex litigation through the compromise of claims is encouraged by courts and favoured by public policy;

    b. There is a strong initial presumption of fairness when a proposed class settlement that was negotiated at arm’s length by counsel for the class is presented for court approval;

    c. To reject the terms of the settlement and require the litigation to continue, a court must conclude that the settlement does not fall within a zone of reasonableness;

    d. A court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of litigation rights against the defendants. However, the court must balance the need to scrutinize the settlement against the recognition that there may be numerous possible outcomes within a zone or range of reasonableness.

    e. It is not the court’s function to substitute its judgment for that of the parties or to attempt to renegotiate a proposed settlement. Nor is it the court’s function to litigate the merits of the action, or on the other hand, to simply rubber-stamp a proposal;

    f. The burden of satisfying the court that a settlement should be approved is on the party seeking approval;

34. The courts have applied a non-exhaustive list of factors in determining whether the proposed settlement is fair, reasonable and in the best interests of the class:

    a. the likelihood of recovery or likelihood of success;

    b. the amount and nature of discovery, evidence or investigation;

    c. the proposed settlement terms and conditions;

    d. the recommendations and experience of counsel;

    e. the future expense and likely duration of litigation;

    f. the recommendation of neutral parties, if any;

    g. the number of objectors and nature of objections;

    h. the presence of arm's length bargaining and the absence of collusion;

    i. information conveying to the court the dynamics of and the positions taken by the parties during the negotiations; and,

    j. the degree and nature of communications by counsel and the representative plaintiffs with Class Members during the litigation.

    See: *Doucet v. The Royal Winnipeg Ballet*, 2022 ONSC 976, at para. 48, rev'd in part 2023 ONSC 2323; *Kidd v. The Canada Life Assurance Company*, 2013 ONSC 1868, 115 O.R. (3d) 256, at para. 125; *Farkas v. Sunnybrook and Women's Health Sciences Centre* (2009), 82 C.P.C. (6th) 222 (Ont. S.C.), at para. 45; *Fantl v. Transamerica Life Canada*, 2009 CanLII 42306, at para. 59 (ON SC); *Corless v. KPMG LLP*, 2008 CanLII 39784 (ON SC).

35. Whether a settlement is fair and reasonable and in the best interests of the class must be adjudged in relation to the class as a whole: see Nunes, at para. 18. Settlement does not have to be perfect, nor is it necessary to treat every class member equally: *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 2324, at para 39.

36. Reasonableness allows for a range of possible resolutions. It is an objective standard that allows for variation depending on the subject matter of the litigation and the nature of the damages for which the settlement is to provide compensation: see *Mancinelli*, at para.39.

Is the Settlement Agreement fair and reasonable and in the best interests of the Class as a whole?

37. The plaintiffs have satisfied me that the settlement is fair, reasonable and in the best interest of the class as a whole and should be approved in this case. While I have carefully considered each of the guiding principles and relevant factors, I only reference and explain those that I find particularly persuasive.

38. The litigation has been ongoing for 15 years.

39. Class Counsel reviewed and considered the defendant's pleadings, expert reports, written and oral arguments at the certification/authorization stage and at subsequent motions, transcripts, and tens of thousands of productions. Moreover, Class Counsel had worked cooperatively with plaintiffs' counsel in the parallel U.S. proceedings and had gained insights into the strengths and weaknesses of the case based on those interactions.

40. The materials before me describe an extensive, careful, and arm's length settlement negotiation 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. They have concluded that there are significant hurdles to success for the class and there is a real risk that a court adjudicating this matter could find in favour of the defendant.

41. Class Counsel, who have a demonstrated expertise in class action litigation, unequivocally recommend approval of the Settlement Agreement. Courts recognizes that Class Counsel are well-positioned to evaluate the risk of litigation and conclude that settlement is in the best interests of the class: *Dadzie v. Ontario*, 2025 ONSC 6342, at para. 128, citing *Jost v. Canada (Attorney General)*, 2025 FC 1193, at para. 29 citing *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670, at para 5.

42. There is never a guarantee of success or recovery in litigation. The Settlement Agreement and the Protocol will provide Canadian women and their families with compensation for the harms they have endured, ensuring both certainty of outcome and finality. Class Members will benefit from receiving clearly defined compensation now, thereby avoiding the uncertainties and risks associated with prolonged litigation.

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 ERUAS 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.

49. Six individuals filed an objection to the proposed settlement. I have read each of the objections. The Objectors expressed deep concern that the proposed settlement does not adequately reflect compensation proportionate to the harms suffered.

50. These objections assume proof of both general and specific causation and imply that injury, by itself, warrants compensation. The risks regarding proof of general and specific causation respond to the assumptions underlying the objections filed.

51. 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 Settlement Agreement. In addition to the evidence from the representative plaintiffs supporting approval, the court received a statement of support from a mother who also described her grief and the enduring impact of the loss of her daughter.

52. All of the statements received by the court underscore the human dimension behind this proceeding. While each Objector would prefer a larger amount of compensation, Class Counsel acknowledges that no amount of compensation could compensate Settlement Class Members for their injuries and related emotional trauma and expenses. Settlement is a compromise that reflects the risks, delay and expense of continuing litigation. Moreover, 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.

53. For these reasons, I am satisfied that the proposed settlement is fair, reasonable and in the best interests of the class.

Approval - Notices of Settlement Approval and Settlement Approval Press Release and Notice Plan

54. The Notices of Settlement Approval and Press Release (the Second Notice) are similar to that previously approved by the Court. The Notice in both short and long form is clear. The proposed distribution includes various methods of publication, such as print, newswire, and online platforms, as well as sponsored search listings in both English and French on websites like Google, Yahoo, and Bing. Additionally, it encompasses direct mail and email notifications, along with publication on Class Counsel's website. This comprehensive approach effectively informs all Class Members and the public at large of the Settlement Approval.

55. For these reasons, I approve the Notices of Settlement, Press Release and Notice Plan.

Approval of Epiq Class Action Services Canada Inc. as Claims Administrator

56. The evidence demonstrates that Epiq is well-known to Class Counsel and possesses extensive experience and expertise in providing notice and administering class action services. Epiq has already been appointed by a previous order of this court and is actively engaged in fulfilling its responsibilities in this class action, having managed the First Notice and the objection process.

57. Epiq is familiar with this case, and I am confident that continuing to appoint Epiq as the claims administrator is appropriate.

Class Counsel Fee Approval

58. Section 33 of the *CPA* recognizes the right of a representative plaintiffs to enter into a contingency fee arrangement with Class Counsel. Section 32(1) sets out the formal requirements of an agreement respecting fees and disbursements. Section 32(2) stipulates that the retainer agreement is not enforceable unless approved by the court.

59. Class Counsel has filed the retainer agreements with the court. The retainer agreements are detailed and meet the requirements of ss. 32 and 33 of the CPA: they specify the terms under which fees and disbursements shall be paid; provide an estimate of the expected fee; and state the method of payment.

60. I am satisfied on the evidence before me that the terms of the retainer agreements were explained to and understood by the representative plaintiffs and were accepted by them. The representative plaintiffs approve and support the requested Class Counsel Fees in the amount sought.

61. Prior to approving fees and disbursements, the court must be satisfied they are fair and reasonable: s. 32(2.1) of the CPA. The starting point is to consider the amount payable under the retainer agreement: *Austin v. Bell Canada*, 2021 ONSC 5068, at para. 10, citing *Commonwealth Investors Syndicate Ltd. v. Laxton*, [1994] 117 D.L.R. (4th) 382, at para. 47 (B.C.C.A).

62. The retainer agreements contemplate a fee of 30 percent of the value of all benefits obtained for the Class plus applicable taxes and disbursements paid out of the Settlement Fund.

63. In Cannon v. Funds for Canada Foundation, 2013 ONSC 7686, at para. 10, Belobaba J. found that a contingency fee of up to 33 percent is presumptively valid and enforceable. In subsequent decisions, Belobaba J. refined this "presumed" validity approach, stating that the reasonableness of the agreed contingency fee percentage may also depend on the size of the recovery: see *MacDonald et al v. BMO Trust Company et al*, 2021 ONSC 3726, at paras. 21, 25.

64. The contingency fee is consistent with what courts have traditionally presumed reasonable.

65. The general principles to consider in an assessment of what is fair and reasonable were endorsed by the court of appeal in *Smith Estate v. National Money Mart Company*, 2011 ONCA 233, 106 O.R. (3d) 37 at para. 80 and include: the factual and legal complexities of the matters; the risk undertaken; the degree of responsibility assumed by Class Counsel; the monetary value of the matters in issue; the importance of the matter to the class; the degree of skill and competence demonstrated by Class Counsel; the results achieved; the ability of the Class to pay; the expectations of the Class as to the amount of the fees; and the opportunity cost to Class Counsel in the expenditure of time in pursuit of the litigation and settlement.

66. Class Counsel in the Actions (Ontario, Saskatchewan and Quebec) collectively seek legal fees of 30 percent 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).

67. The amount of fees sought in each jurisdiction of the class proceeding is based on the actual amount of Yasmin/YAZ distributed in each jurisdiction. The amount of Yasmin/YAZ distributed in Ontario was 21.51 percent.

68. The total amount of fees requested by Class Counsel in this Action is $525,596.85, plus HST of $68,327.59 for a total of $593,924.44. This amount is significantly less than the docketed time.

69. Considered in terms of a multiplier, these fees represent a multiplier of approximately .14 times the current time and approximately .13 times the expected time of Class Counsel at the time of conclusion of the litigation. Both figures fall below the range of 1 to 4: see *MacDonald*, at para. 36, footnote 33.

70. The issues in the litigation were of great importance to the Class Members. The risk to Class Counsel in proceeding with the action was significant. Class Counsel in this Action has expended $839,156.51 in disbursements plus taxes of $107,010.34 over the past 15 years.

71. In addition to the foregoing amount sought for reimbursement of disbursement expenditures, Class Counsel are requesting interest of $267,575, pursuant to section 33(7)(c) of the CPA. Interest has been calculated over six-month intervals, which is the acceptable approach for calculating interest on disbursements: see *McDonald v. Home Capital Group*, 2017 ONSC 5195 para 24.

72. The total sum requested for reimbursement of disbursements and interest is $1,212,741.85.

73. The reimbursement of disbursements and interest thereon is contemplated by the retainer agreement. The majority of the disbursements incurred were necessary and reasonable in the context of this complex class proceeding. They primarily relate to the retention and consultation of experts integral to ensuring that the positions advanced on behalf of the plaintiffs were properly supported and re-assessed as the case evolved. Disbursements incurred to consult with counsel in the U.S. proceeding were appropriate, allowing Class Counsel to assess further information, expert evidence and trial strategy that might not otherwise have been available to them.

74. The issues raised in this litigation were of great importance to Class Members. This was equally clear on review of the affidavit material filed by the representative plaintiffs and the statements received from Objectors all of whom referenced the impact of underlying events on their lives. The risk undertaken by Class Counsel in pursuing this matter was substantial. Over the course of many years, counsel devoted significant time and resources to a complex and evolving case involving numerous court appearances and a protracted discovery and negotiation process. Without the dedication and commitment of Class Counsel, Class Members could have been deprived of meaningful access to justice.

75. For reasons which include the foregoing, I am satisfied that the fees and disbursements sought are fair and reasonable.

Approval of the Honorarium

76. Settlement contemplated a small amount of $6,000 to be divided equally among the lead representative plaintiffs in Ontario and Saskatchewan actions as honorarium for their time and extraordinary efforts pursuing this litigation over the past 15 years.

77. An honorarium is not an award, but recognition of the meaningful contribution made by the representative plaintiffs to the Class Members' pursuit of access to justice: *Johnston v. The Sheila Morrison School*, 2013 ONSC 1528, 37 C.P.C. (7th) 417, at para. 43.

78. In *Doucet*, the Divisional Court held that a modest payment to the representative plaintiffs could be available in exceptional circumstances. It summarized the factors to be considered in exercising the court's discretion: see Doucet, at para. 92.

79. The representative plaintiffs have played a significant role in this litigation. And advancing Class Members' access to justice. Their involvement has been extensive, including discovery obligations that required them to disclose their personal experiences. They sustained communication with Class Members through various channels, with the emotional weight of exposure to the personal trauma of others and the ongoing glare of their own.

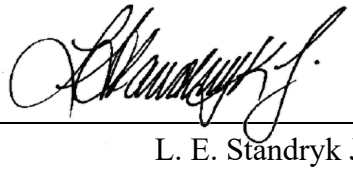
80. All Class Members have been notified about the proposed honorarium. The amount allocated among the representative plaintiffs is, to say the least, quite modest.

81. For the foregoing reasons, I approve the honorarium sought on behalf of the representative plaintiffs.

D. Conclusion

82. For the foregoing reasons, I approve the Settlement Agreement, Notices of Settlement Approval, Notice Plan, appointment of Epiq Class Action Services as claims administrator, Class Counsel Fees, and representative plaintiffs' honorarium.

83. Orders to go as requested.



L. E. Standryk J.

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Defendants

REASONS FOR DECISION

L. E. Standryk, J.

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