

NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT OF INVOKANA® INVOKAMET® INVOKAMET XR® LITIGATION

PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS

This Notice contains a summary of some of the terms of the Settlement Agreement. All capitalized terms not otherwise defined have the meaning ascribed to them in the Settlement Agreement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

NOTICE OF CERTIFICATION FOR SETTLEMENT PURPOSES

A Canada-wide settlement has been reached in three proposed class actions relating to the prescription drugs Invokana®, Invokamet®, and Invokamet XR®. This notice advises you that as a part of the settlement process, the following lawsuits (the “**Proceedings**”) have been certified/authorized as class actions for settlement purposes: *Estate of Raymond Duck v Janssen Inc. et al.*, Ontario Superior Court of Justice (London) Court File No. CV-18-00000570-00CP; *Ronald Allen Fiddler v Janssen Inc. et al.*, Court of Queen’s Bench for Saskatchewan (Regina) Court File No. Q.B.G. 2809 of 2015; and *Steven Varnai and Joanne Giroux v Janssen Inc. et al.*, Superior Court of Quebec (District of Montreal – Class Actions) Court File No. 500-06-000906-186.

These three Proceedings raised various allegations against the Defendants and sought damages on behalf of Canadians for harm and injuries which were allegedly related to the use of Invokana®, Invokamet®, and Invokamet XR®. The Defendants deny the allegations made in the Proceedings, make no admission as to the truth of these allegations, and deny any wrongdoing.

The allegations made by the Plaintiffs have not been proven in Court and should not be considered in any way to be medical advice.

This Notice advises you of the certification/authorization of the Proceedings as class actions for the purpose of implementing the national Settlement Agreement (the “**Settlement**”) and of the hearings that will be held to decide whether the Settlement should be approved. You may attend the Settlement approval hearings. You can review the originating proceedings, the certification/authorization Orders, as well as the Settlement Agreement and related documents at the settlement website: <http://www.invokanacanadasettlement.com/> or you can contact the Court appointed Claims Administrator, Trilog Class Action Services, at the address listed below.

WHO IS INCLUDED?

If the Settlement is approved, it will apply to: (i) all persons resident in Canada as of the dates in the Orders referenced below who were prescribed Invokana®, Invokamet®, and/or Invokamet XR® in Canada at any time on or before that date; and (ii) all persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages.

Certification/authorization Orders for the purposes of settlement have been granted for the following Classes:

Ontario Class: (i) All persons resident in Canada as of June 16, 2022, with the exception of Saskatchewan Class Members and Quebec Class Members, who were prescribed and used Invokana®, Invokamet®, and/or Invokamet XR® in Canada at any time on or before June 16, 2022; and (ii) All persons, with the exception of Saskatchewan Class Members and Quebec Class Members, who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages.

Saskatchewan Class: (i) All persons resident in Saskatchewan as of June 15, 2022, who were prescribed and used Invokana®, Invokamet®, and/or Invokamet XR® in Saskatchewan at any time on or before June 15, 2022; and (ii) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages;

Quebec Class: (i) All persons resident in Quebec as of June 21, 2022, who were prescribed and used Invokana®, Invokamet®, and/or Invokamet XR® in Quebec at any time on or before June 21, 2022; and (ii) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages.

WHAT IS THE PROPOSED SETTLEMENT?

The Settlement provides for the creation of a \$1.5 million (CDN) settlement fund which will be used to pay the costs of notice and administration, compensation for approved claimants, the claims of provincial health insurers, and class counsel legal fees.

Payments to approved claimants will be made to Class Members who show that they experienced one or more of the medical conditions described below within the specified timeframes. Each medical condition will be assigned points by the Claims Administrator subject to various eligibility criteria. Net settlement proceeds will be allocated among the approved claimants in proportion to the cumulative points they are awarded under the Compensation Protocol. The Compensation Protocol can be found here: <http://www.invokanacanadasettlement.com/> Not all Class Members will be eligible for compensation.

The types of medical conditions that may qualify Class Members for compensation include acute kidney injury, diabetic ketoacidosis, and lower limb loss. You may be eligible for compensation under the Compensation Protocol if you began using or filled a prescription for Invokana®, Invokamet®, or Invokamet XR® prior to the dates below and experienced the relevant medical conditions prior to the dates below:

- for acute kidney injury, January 25, 2016;
- for diabetic ketoacidosis, May 31, 2016; and
- for lower limb loss, September 6, 2017.

You may also be eligible for compensation if you experienced the relevant medical conditions listed above within three (3) months after the corresponding dates above if (i) you started using Invokana®, Invokamet®, or Invokamet XR® at least 30 days before said dates, and (ii) you used it continuously from that date to the time of the medical condition, without having either attended your prescribing physician or had your prescription renewed.

Compensation will also be paid to eligible Class Members estates. 10% of the Settlement Amount will be allocated to a Provincial Health Care Recovery Fund for the recovery of costs of insured health or medical services by the Provincial Health Insurers.

If the Settlement is approved, Class Counsel will make an application for class counsel legal fees of \$375,000 plus disbursements and applicable taxes to be paid from the Settlement Amount. Approval of the Settlement is not contingent on the outcome of any application regarding class counsel legal fees.

Any undistributed balance of the settlement amount as determined by the Claims Administrator will be donated, *cy près*, to one or more organizations to benefit diabetic health and research, as approved by the Courts and advised by Class Counsel, subject to any amounts payable to the *Fonds d'aide aux actions collectives*.

RIGHT TO PARTICIPATE OR OPT OUT

If you are a Class Member and wish to participate in the Settlement, you do not need to do anything at this time. Class Members who do not opt out will be bound by the Settlement and the releases in it and will be entitled to share in any of the benefits that may become available to them as Class Members, provided that they proceed within the timeframes provided for in the Settlement to advance their claims.

If you are a Class Member and you do not wish to participate in the Settlement, then you must opt out. Opt-Out Forms are available at <http://www.invokanacanadasettlement.com/> or by contacting Trilogy Class Action Services at the address below. The deadline to opt out of the Settlement and the Proceedings is September 6, 2022. By opting out, you are choosing:

- (1) **not** to take part in the Settlement;
- (2) **not** to participate in any way in the Proceedings, AND
- (3) **not** to participate in any benefits arising from the Settlement or the Proceedings.

If you are a member of the Quebec Class and have filed an individual lawsuit against Janssen Inc., Janssen Pharmaceuticals Inc., Janssen Ortho LLC, Johnson & Johnson, and/or Johnson & Johnson Inc. regarding the same subject matter as this class action and you do not discontinue your individual action before September 6, 2022, you will be deemed to have opted out of this class action.

Class Members **who opt out** will not be bound by the Settlement or the releases in the Settlement and will also not be entitled to share in any of the proceeds that may become available to Class Members as part of the Settlement.

The Proceedings will be dismissed as part of the Settlement. There will be no further opportunity to opt out of the Settlement or the Proceedings.

Members of the Quebec Class who wish to opt out must send their completed Opt-Out Form to Clerk of the Superior Court of Quebec at the following address:

Clerk of the Superior Court of Quebec – Montreal Courthouse
1 Notre-Dame Street East
Montreal, Quebec, H2Y 1B6
Court File No.: 500-06-000906-186

SETTLEMENT APPROVAL HEARINGS

In order for the Settlement to become effective, it must be approved by the Courts of Ontario, Saskatchewan, and Quebec. The Courts must be satisfied that the Settlement is fair, reasonable, and in the best interest of the Class Members. The dates for the Settlement approval hearings have been scheduled as follows:

- (1) Ontario Class Members: September 29, 2022, at 12:00 p.m. (E.S.T.) at the Ontario Superior Court of Justice, 80 Dundas Street, London, Ontario.
- (2) Saskatchewan Class Members: September 29, 2022, at 10:00 a.m. (C.S.T.) at the Court of Queen's Bench, 2425 Victoria Avenue, Regina, Saskatchewan.
- (3) Quebec Class Members: September 29, 2022, at 12:00 p.m. (E.S.T.) at the Superior Court of Quebec, 1 Notre-Dame Street East, Montreal, Quebec.

If any of the Settlement approval hearings are adjourned and/or if the hearings are to be held virtually, details will be posted on the settlement website, <http://www.invokanacanadasettlement.com/>.

In the event that the Settlement Agreement is not approved by each of the Courts in a form agreed to by the parties to the Proceedings, the Settlement Agreement shall terminate, and its terms shall no longer be binding on Class Members. In that case, all parties shall be restored to their pre-Settlement Agreement positions and the certification/authorization orders shall be set aside.

OBJECTING TO THE PROPOSED SETTLEMENT AND OPPORTUNITY TO APPEAR

If you wish to object to the proposed Settlement, you must submit a written objection that must be received no later than September 24, 2022.

Your written objection must be sent to the Claims Administrator and received no later than 5:00 p.m. E.S.T. on September 24, 2022, at the address listed below in this Notice. The Claims Administrator will file copies of all objections with the Courts.

You may also attend the hearings on the dates noted above, and if you have submitted a written objection, you may request to make oral submissions to the Court(s).

NOTICE OF SETTLEMENT APPROVAL

If the proposed Settlement is approved by the Courts, a notice of approval will be published on <http://www.invokanacanadasettlement.com/> and otherwise made available as ordered by the Court. Class Members will have a limited amount of time to submit a claim for compensation. If the proposed Settlement is approved, a downloadable version of the claim package will be made available online at <http://www.invokanacanadasettlement.com/> or, alternatively, a claim package can be requested from the Claims Administrator by e-mail at: inquiry@trilogyclassactions.ca by telephone at 1-877-400-1211 or by regular mail at the address listed below. If you intend to submit a claim under the proposed Settlement, you must do so on or before the expiry of the claim period, which will be posted on the settlement website: <http://www.invokanacanadasettlement.com/>.

WHO REPRESENTS ME? CLASS COUNSEL ARE:

Siskinds LLP
275 Dundas Street, Unit 1
P.O. Box 2520
London, Ontario, N6B 3L1

Tel.: (519) 672-2121
Fax: (519) 672-6065
Charles M. Wright
Email: charles.wright@siskinds.com

Siskinds Desmeules, Avocats

43 Rue De Buade
Bureau 320
Quebec City, Quebec, G1R 4A2
Tel.: (418) 694-2009
Fax: (418) 694-0281
Erika Provencher
Email: recours@siskinds.com

Merchant Law Group LLP

100-2401 Saskatchewan Drive
Regina, Saskatchewan, S4P 4H8
Tel.: (306) 359-7777
Fax: (306) 522-3299
E.F. Anthony Merchant, Q.C.
Email: tmerchant@merchantlaw.com

LEGAL FEES

At the Settlement approval hearings, Class Counsel will request approval for payment of their fees, disbursements, and applicable taxes. Class Counsel has pursued this lawsuit on a contingency basis of 25% and will seek approval from the Courts for class counsel legal fees of \$375,000 plus disbursements and applicable taxes in accordance with the terms of their retainer agreements with the representative plaintiffs. Individual Class Members may be responsible for legal fees incurred in advancing their claims under the Settlement, in accordance with any retainer agreements they may have entered into.

FOR MORE INFORMATION:

For more information on the status of the approval hearings or on how to opt out of the Settlement, comment, or object to the Settlement, or to view the Settlement Agreement, visit <http://www.invokanacanadasettlement.com/> which will be periodically updated with information on the Settlement approval process and the Proceedings.

This Notice is a summary of the Settlement. You should consult the Settlement Agreement at the settlement website: <http://www.invokanacanadasettlement.com/> or contact Class Counsel or Trilogy Class Action Services for specific details as to your rights and obligations under the Settlement.

If you have questions about the Settlement and/or would like to obtain more information and/or copies of the Settlement Agreement and related documents in both English and French, please visit the settlement website at <http://www.invokanacanadasettlement.com/> or contact the Claims Administrator at:

Trilogy Class Action Services

Invokana Class Action Settlement
117 Queen Street, PO Box 1000
Niagara-on-the-Lake, Ontario, L0S 1J0
Tel: (877) 400-1211
Fax: (416) 342-1761
inquiry@trilogyclassactions.ca

PLEASE DO NOT CALL THE DEFENDANTS OR THE COURTS ABOUT THESE PROCEEDINGS.

This Notice has been approved by the Ontario Superior Court of Justice, the Court of Queen's Bench for Saskatchewan, and the Superior Court of Quebec