

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. JUSTICE) TUESDAY, THE 6TH DAY
) OF JULY, 2004
MAURICE CULLITY)

B E T W E E N

AHMAD SERHAN, deceased, By his Trustee without a will
ZEIN AHMAD SERHAN and BEVERLEY GAGNON

Plaintiffs

and

JOHNSON & JOHNSON,
LIFESCAN CANADA LTD. and LIFESCAN, INC.

Defendants

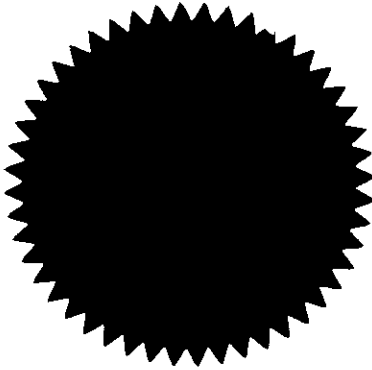
Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiffs for certification of the action, was
heard on April 7 and 8, 2004 at Toronto, Ontario.

ON READING the motion record, filed,

ON HEARING the submissions of counsel for the plaintiffs and the
defendants,



1. THIS COURT ORDERS that the action be and is hereby certified as a class proceeding.

2. THIS COURT ORDERS that the Class is defined as:

All individuals in Ontario and elsewhere in Canada, except British Columbia and Quebec, who acquired a SureStep blood glucose meter manufactured before August 1, 1997, bearing a serial number the first five digits of which were in the series L6000 to L7205 or a serial number in the series L7206-GA-00001 to L7206-GA-01128 on or after February 1, 1996 and/or who used a SureStep test strip, manufactured before March 1, 1998, on or after February 1, 1996, and the personal representatives of any such individuals who have died.

3. THIS COURT DECLARES that Zein Ahmad Serhan, trustee without a will of the estate of Ahmad Serhan, deceased, and Beverley Gagnon are representative parties of the Class and APPOINTS them as the representative parties for the Class.

4. THIS COURT DECLARES that the common issues in the action are:

1. Are the defendants, or any of them, constructive trustees for all, or any, class members of all, or any part of, the proceeds of sales of the SureStep Meter and Strips and any other income made by them in connection with the SureStep Meter, Strips and Associated Paraphernalia, including the lancets and controlled solutions? If so, in what amount and for whom are such proceeds held?

2. Are the defendants, or any of them, liable to account to all, or any, of the class members on a restitutionary basis for all, or any part of, the proceeds of the sales of the SureStep Meter and Strips and any other income made by them in connection with the SureStep Meter, Strips and associated paraphernalia, including the lancets and controlled solutions? If so, in what amount and for whose benefit is such accounting to be made?

3. Should one or more of the defendants pay punitive damages? If so, in what amount and to whom?

4. Who should pay the cost of administering and distributing amounts to which class members are entitled and how, and when, should such cost be determined?

5. THIS COURT ORDERS that the plaintiffs' litigation plan be and is hereby approved in the form attached as schedule 1 to this order.

6. THIS COURT ORDERS that, on or before a date to be fixed by further order of this court, the Class members shall be given notice of the certification, in a form and manner to be determined by further order of this court.

7. THIS COURT ORDERS that a Class member may only opt out of the class action by sending a written election to opt out, signed by the Class member, by pre-paid mail, courier or fax to Howie & Partners, Chartered Accountants, 3036 Walker Road, Windsor, Ontario, Canada N8W 3R4, Attention: SureStep Class Action.

8. THIS COURT ORDERS that no Class member may opt out of the class action unless the written election to opt out is received by Howie & Partners on or before a date and time to be fixed by further order of this court.

9. THIS COURT ORDERS that no person may opt out a minor or a mentally incapable person without leave of this court on notice to The Children's Lawyer or the Public Guardian and Trustee, as appropriate.

10. THIS COURT ORDERS that Howie & Partners shall, on or before a date to be fixed by further order of this court, report to Mr. Justice Cullity by affidavit and

advise as to the names and addresses of those persons, if any, who have opted out of the class action.

11. THIS COURT ORDERS that the balance of the relief sought in the plaintiffs' notice of motion and not yet dealt with by Mr. Justice Cullity be and is hereby adjourned to a date to be fixed by Mr. Justice Cullity.

12. THIS COURT ORDERS that the defendants pay to the plaintiffs their costs of this motion in an amount and on a scale to be determined by Mr. Justice Cullity after a case conference.


JUSTICE

ENTERED AT WINDSOR	
In Book No.	15
re Document No.	3583
on	OCT 12 2006
by	R

PLAINTIFFS' LITIGATION PLAN
(pursuant to s. 5(1)(e)(ii) of the *Class Proceedings Act, 1992*)

COMMUNICATION WITH PUTATIVE CLASS MEMBERS

1. Plaintiffs' counsel have developed a web site at www.surestepclassaction.com for this proposed class proceeding. Current information on the status of this action is posted, and will be updated regularly. Copies of the publicly filed court documents, court decisions, notices, documentation and other information relating to the proposed class action are accessible from the web site. A toll-free phone number and e-mail contact have also been provided by plaintiffs' counsel.

PLEADINGS

2. The plaintiffs will ask the court to order the defendants to deliver their statements of defence before the hearing of the certification motion.

PRODUCTION

3. The plaintiffs will ask the court for an order fixing a date for the delivery of affidavits of documents and the production of documents, and an order requiring the defendants to produce their documents covered by the U.S. protective order, neither of which need await the decision on certification.

4. Plaintiffs' counsel will manage the productions with a document management system. All productions will be summarized and scanned electronically. This will enable counsel to quickly access, organize and analyze the documents.

EXAMINATIONS FOR DISCOVERY

5. The plaintiffs will ask the court to fix dates for the examinations for discovery which need not await the decision on certification.

6. The plaintiffs intend to make a motion to the court for an order allowing them to examine multiple representatives of the defendants.

7. The plaintiffs anticipate that the examinations for discovery of the defendants will take approximately six (6) days, subject to refusals and undertakings.

NOTIFICATION OF CERTIFICATION AND OPT-OUT PROCEDURE

8. If the action is certified as a class proceeding, the court will be asked to:
- (a) set an opt-out date ninety (90) days after the date of the order certifying the action;
 - (b) settle the means by which notice of the certification and the opt-out period will be given; and

- (c) settle the form and content for notification of the certification and the opt-out period generally in accordance with the form attached hereto (the “Notice of Certification”).

9. The plaintiffs will request that the Notice of Certification be:

- (a) published once in the national edition of *The Globe and Mail*;
- (b) published once in the following publications, subject to publication deadlines:
 - (i) *Diabetes Dialogue*, Canada’s diabetes magazine published by the Canadian Diabetes Association;
 - (ii) Canadian Diabetes Care Guide;
 - (iii) *Countdown Magazine*, a magazine published by the Juvenile Diabetes Foundation Canada;
- (c) with the consent of the Canadian Diabetes Association, posted at www.diabetes.ca;
- (d) posted at www.surestepclassaction.com;
- (e) available orally by recorded message at counsel’s toll-free line; and
- (f) forwarded by counsel to any person who requests it.

10. The plaintiffs will ask the court to order that no person may opt out a minor or a person who is mentally incapable without leave of the court after notice to the Children’s Lawyer and/or the Public Guardian and Trustee, as appropriate.

11. The plaintiffs will ask the court to appoint Howie & Partners, a firm of chartered accountants, to receive written documentation from any class member opting out of the class action and, within thirty (30) days after the expiration of the opt-out period, deliver to the court

and the parties an affidavit listing the names of all persons who have opted out of this class action.

EXCHANGE OF EXPERT OPINIONS

12. The plaintiffs will ask the court to order the exchange of expert opinions within four (4) months after completion of examinations for discovery, undertakings and any motions for refusals.

CASE MANAGEMENT

13. Following certification, examinations for discovery and the exchange of expert opinions, the plaintiffs will seek to attend before the court in order to clarify and/or redefine the common issues, if required.

14. Although no motions are currently anticipated by the plaintiffs except as indicated in this Litigation Plan, motions may be required as the case progresses.

DISPUTE RESOLUTION

15. The plaintiffs are willing to participate in mediation or non-binding alternative dispute resolution efforts.

TRIAL OF THE COMMON ISSUES

16. The plaintiffs will ask the court to hold the trial of the common issues six (6) months after the completion of examinations for discovery, undertakings and any motions for refusals.

ALLOCATION OF AGGREGATE AWARD

17. Assuming that the common issues are resolved by judgment in favour of the plaintiffs, the plaintiffs will ask the court to divide among the class members the following: the corpus of the constructive trust and punitive damages.

NOTICE OF RESOLUTION OF COMMON ISSUES

18. Assuming that the common issues are resolved by judgment in favour of the plaintiffs, the court will be asked to settle the form and content of a notice of resolution of the common issues and to set a date by which class members will be required to file their claim with a person designated by the court (the "Notice of Resolution").

19. The plaintiffs will ask the court to order that the Notice of Resolution be distributed substantially in accordance with the notice program set out at paragraph 9 hereof.

DISTRIBUTION

20. The plaintiffs will ask the court to order that the amounts awarded be distributed in such manner as the court may direct.

INSUFFICIENT EXIGIBLE ASSETS

21. In the event there are insufficient exigible assets to satisfy all awards, the court will be asked to give further instructions to ensure that there are no priorities amongst eligible class members.

FUNDS NOT DISTRIBUTED

22. The court will be asked to order that any monies not distributed to the eligible class members or required for the approved legal and administrative expenses be distributed cy-près as the court directs for research projects in Canada in education and outreach having to do with diabetes to benefit, among others, class members who are not identified or do not pursue a claim or whose claims are not individually assessed.

REVIEW OF THE LITIGATION PLAN

23. This Litigation Plan will be reconsidered and may be revised under the continuing case management authority of the court, if required, both before and after the determination of the common issues.

**NOTICE TO USERS OF CERTAIN SURESTEP BLOOD GLUCOSE METERS AND TEST STRIPS
CERTIFICATION OF THE SURESTEP CLASS ACTION**

**This notice may affect your rights.
Please read carefully.**

NOTICE

This notice is directed to all individuals who acquired certain SureStep blood glucose meters and strips, as defined below, on or after February 1, 1996. A class action relating to SureStep is pending in the Ontario Superior Court of Justice. The action is *Serhan et al. v. Johnson & Johnson, LifeScan Canada Ltd. and LifeScan, Inc.*, file # 01-GD-51928 (the "Class Action").

CERTIFICATION

On •, 2004, Mr. Justice Maurice Cullity of the Ontario Superior Court of Justice certified the action as a class proceeding, appointed Zein Serhan, Trustee without a will of Ahmad Serhan, and Beverley Gagnon as the representative plaintiffs and defined the Class as follows:

All individuals in Ontario and elsewhere in Canada, except British Columbia and Quebec, who acquired a SureStep blood glucose meter manufactured before August 1, 1997, bearing a serial number the first digits of which were in the series L6000 to L7205 or a serial number in the series L7206-GA-00001 to L7206-GA-01128, in Canada on or after February 1, 1996 and/or who used a SureStep test strip, manufactured before March 1, 1998 on or after February 1, 1996, and the personal representatives of any such individuals who have died.

If you are a member of the proposed Class, your rights will be affected. You have until • 2004 to opt out of the Class Action.

RELIEF SOUGHT

The Class Action seeks damages and other relief for each Class member as a result of their acquisition and use of the affected SureStep meters and strips which contained defects known to the defendants.

OPT OUTS

Any Class member who wishes to opt out of the Class Action must do so **on or before •, 2004** by sending a written election signed by the Class member stating that he or she opts out of the Class Action to: Howie & Partners, Chartered Accountants, 3036 Walker Road, Windsor, ON N8W 3R4, Attention: SureStep Class Action

The written election must be received by Howie & Partners by 5:00 p.m. EDT on •, 2004 to be effective.

No person may opt out a minor or a mentally incapable person without permission of the court after notice to The Children's Lawyer or the Public Guardian and Trustee, as appropriate.

All Class members who do not opt out will be bound by the terms of the judgment, whether favourable or not, and whether or not he or she makes a claim.

No Class member will be permitted to opt out of the Class Action after •, 2004.

LEGAL FEES AND DISBURSEMENTS

Counsel have entered into an agreement with the representative plaintiffs with respect to legal fees and disbursements. This agreement provides that counsel will not receive payment for their work unless and until the Class Action is successful or costs are recovered from the defendants. This agreement must be approved by the court to be effective. Members of the Class will not be personally liable to pay counsel any legal fees or disbursements.

ADDITIONAL INFORMATION

Any questions about the matters in this Notice should **not** be directed to the court because its administrative structure is not designed to address this type of inquiry. A complete copy of the certification order and other material describing the Class Action may be obtained by visiting the website at www.surestepclassaction.com.

Requests for information or questions for counsel should be directed by email, fax or telephone to:

Harvey T. Strosberg, Q.C.	Kirk Baert
Tel: 1-519-561-6213	Tel: 416-595-2117
Fax: 1-519-561-6203	Fax: 416-204-2889
e-mail: hts@strosbergco.com	e-mail: kbaert@koskieminsky.com

This notice is approved by The Honourable Mr. Justice Maurice Cullity of the Ontario Superior Court of Justice

AHMAD SERHAN et al

vs JOHNSON & JOHNSON et al

Plaintiffs

Defendants

Court File No 01-GD-51928

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

ORDER

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SOLICITORS FOR THE PLAINTIFFS

FILE 60-900-000
REF HTS/ba