

# NOTICE OF THE SETTLEMENT APPROVAL HEARINGS FOR THE SURESTEP CLASS ACTIONS

Read this notice carefully as it may affect your rights.

## THE "SURESTEP BLOOD GLUCOSE MONITORING SYSTEM"

This notice is directed to all persons in Canada who acquired or used a SureStep blood glucose meter and/or a SureStep test strip defined below. Class actions were commenced in Ontario, British Columbia and Quebec seeking damages as a result of the purchase and use of the affected SureStep blood glucose meters and test strips which the plaintiffs allege contained defects known to the defendants Johnson & Johnson, LifeScan Inc. and LifeScan Canada Ltd.. A settlement has been reached in the class actions in Ontario, British Columbia and Quebec, all subject to court approval. The settlement is a compromise of disputed claims. The defendants do not admit any wrongdoing or liability.

## THE CERTIFICATION ORDERS

On July 6, 2004, the Ontario action was certified as a class proceeding for a class 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-O1128, 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. No person opted out of the Ontario class action.

On August 15, 2008, the BC action was certified as a class proceeding for a class defined as "all persons in British Columbia, 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 (the "SureStep Meter") and/or who used a SureStep test strip, manufactured before March 1, 1998, on or after February 1, 1996 (the "Strips"), and the personal representatives of any such individuals who have died." No person opted out of the BC action.

On December 7, 2001, a Motion for authorization to institute a class action was filed by petitioner Frédéric Bisson in the Quebec Superior Court (Québec City registry), Court File No. 200-06-000022-015. The proposed class is: "All Quebec residents who have purchased and used a SureStep blood glucose meter manufactured before August 1, 1997, and 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 All Quebec residents who have purchased or used a SureStep test strip manufactured before March 1, 1998 and distributed on or after February 1, 1996.", The parties will seek to have the Quebec motion for authorization authorized on a consent basis for settlement purposes only.

## THE SETTLEMENT

If the settlement is approved by all of the courts, the defendants will provide the following:

1. to the Canadian Diabetes Association:
  - (a) diabetic monitoring products valued at \$1,250,000 as part of a Compassionate Use Programme for distribution to persons in Canada with diabetes;
  - (b) \$270,000 for the administration of the Compassionate Use Programme;
  - (c) \$700,000 for a Public Awareness Programme

2. to Diabete Quebec \$185,000;
3. to the Fonds d'aide aux recours collectifs (Quebec) \$15,000;
4. to the Class Proceedings Fund \$80,000; and
5. to class counsel \$1.5 million for legal fees, disbursements and taxes, subject to court approval.

#### LEGAL FEES, DISBURSEMENTS, TAXES AND LEVY

Class counsel entered into agreements with the representative plaintiffs with respect to legal fees and disbursements which provided that counsel would not receive payment for their work unless the class actions were successful or costs were received from the defendants. Class counsel in Ontario, British Columbia and Quebec have agreed to accept \$1.5 million in payment of their fees, disbursements and all applicable taxes.

The plaintiffs in the Ontario class received financial support from the Class Proceedings Fund. As a result, the Class Proceedings Fund is entitled to 10% of the settlement funds in respect of the Ontario class plus \$26,360.01 of financial support advanced to the plaintiffs that has not been repaid. The plaintiffs in the Quebec class have agreed to pay the Fonds \$15,000.

#### THE APPROVAL HEARINGS TO CONSIDER APPROVING THE PROPOSED SETTLEMENT

The courts will decide whether to approve the proposed settlement and will fix the fees, disbursements and taxes to be paid to class counsel at approval hearings to be held:

- (a) Ontario - on December 15, 2010 at 10:00 a.m. at the Courthouse, 361 University Avenue, Toronto, ON.
- (b) BC – on January 14, 2011 at 10:00 a.m. at the Courthouse, 800 Smithe Street, Vancouver BC.
- (c) Quebec - on January 13, 2011 at • at the Courthouse, 300, boulevard Jean-Lesage, Québec, Québec.

#### OBJECTIONS

Any class member in the actions who objects to the proposed settlement may attend the appropriate approval hearing in person or send a representative. Class members who do not oppose the proposed settlement need not appear at an approval hearing or take any other action at this time. If the settlement is approved all class members in all actions will be bound by the results, and will not be permitted to commence separate proceedings against the Defendants in respect of the claims made in the class action.

The court will consider all objections to the proposed settlement by class members or potential class members, and request that these objections be sent in writing, to be received prior to the applicable hearing date as described above, by prepaid mail or courier to: McCarthy Tétrault LLP, Attention: Caroline Zayid, P.O. Box 48, Suite 5300, Toronto Dominion Bank Tower, Toronto, ON M5K 1E6; or by email to: czayid@mccarthy.ca; or by fax to: 416 868-0673.

It would be helpful if the written objections included the following information:

1. the person's name, address, telephone number and mailing address;

2. a brief statement of the nature of and the reasons for the objection;
3. a declaration that the person believes that he or she is a class member and the reason for that belief; and
4. whether the person or a representative intends to appear at the court hearing in person, or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.

#### OPTING-OUT OF THE QUEBEC CLASS ACTION

##### N.B. This applies only to members of the Quebec class action:

If you are a class member in the Quebec class action and you do not wish to be bound by the Settlement, you must opt-out of it. Generally, it is only those who wish to institute an individual law suit, at their own costs, that should opt-out.

In order to opt-out of the Settlement and of the class action, you must send a letter to the Clerk of the Superior Court of Quebec with a copy to Quebec Class Counsel Siskinds Desmeules and to Donald Bisson at McCarthy Tétrault, Suite 2500, 1000 De La Gauchetière Street West, Montreal QC H3B 0A2, before the Opt Deadline (i.e. 90 days following the publication of the Approval Order). This letter must contain the following information:

- your name, address and phone number;
- you are a member of the class in Quebec;
- a reference to the Court file, as follows: Frédéric Bisson v. Johnson & Johnson et al., Quebec Superior Court (Québec City registry), Court File No. 200-06-000022-015; and
- a declaration that you wish to opt-out of the Quebec class action.

#### ADDITIONAL INFORMATION

Additional settlement information is available at the website [www.surestepclassaction.com](http://www.surestepclassaction.com) or by communicating with one of the counsel firms acting for the class members:

Ontario	British Columbia	Quebec
Kirk Baert	J.J. Camp	Simon Hebert
Koskie Minsky LLP	Camp Fiorante Matthews	Siskinds Desmeules
900 - 20 Queen Street West	Lawyers	Avocats
Toronto, ON M5H 3H3	4th floor,	Les Promenades du Vieux-Quebec
	865 Homer Street	43 Rue Buade, Bur 320
Tel: 416.595.2117	Vancouver, BC V6B 2W5	Quebec City, QC G1R 4A2
Fax: 416.204.2889	Tel: 1.800.689-2322	Tel: 418.694.2009
e-mail: kbaert@kmlaw.ca	Fax: 604.689.7554	Fax: 418.694.0281
	email: jjcamp@cfmlawyers.ca	email: simon.hebert@siskindsdesmeules.com

Class members who consider it desirable or necessary to seek the advice and guidance of their own lawyers do so at their own expense.

#### **INTERPRETATION**

This notice is a summary of some of the terms of the proposed settlement. If there is any conflict between the provisions of this notice and the terms of the settlement, the terms of the settlement prevail. You may review the terms of the settlement at the website [www.surestepclassaction.com](http://www.surestepclassaction.com).

**Any questions about the matters in this notice should not be directed to the courts as their administrative structures are not designed to address this type of inquiry.**

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