CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-06-000834-164

SUPERIOR COURT
(Class Action)

ROBERT LANDRY

Petitioner

v.

CONCORDIA INTERNATIONAL CORP.

-and-

MARK THOMPSON

-and-

ADRIAN DE SALDANHA

Respondents

v.

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Mise en cause

MOTION TO AUTHORIZE A CLASS ACTION, APPROVE A SETTLEMENT AGREEMENT, FIX THE OPT-OUT PERIOD AND CLAIMS BAR DEADLINE AND FOR OTHER RELIEF (Articles 575, 590, 593 and 595 *CCP*)

TO THE HONORABLE JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT OF QUEBEC, SITTING AS CASE MANAGEMENT JUDGE, THE PETITIONER RESPECTFULLY STATES AS FOLLOWS:

I. OVERVIEW

1. The present securities class action arises out of the Respondents' alleged failure to disclose adverse material facts as well as misrepresentations relating to Concordia's business model, growth prospects and *pro forma* revenues in Class Period Documents; [1]

2. On June 20, 2018 the parties to the Quebec and Ontario class actions ("Canadian Class Actions") reached a proposed settlement in principle of USD 13.9 million (approximately CAD 18 million);

[1] Unless otherwise mentioned, capitalized terms have the meanings set out in Exhibit EBK-1 to E. Kokmanian's Affidavit **(Exhibit A).**

3. In this motion, the Petitioner seeks the authorization, on consent, of the putative class action under 575 of the *Civil Code of Procedure,* CQLR c C-25.01 ("CCP"), the appointment of an administrator, the fixing of the requisite deadlines for an opt out period and to submit claims, the approval of the proposed settlement and the approval of its legal fees and disbursements;

4. For the reasons set forth below, Counsel and the Petitioner are of the view that the proposed settlement is fair, reasonable and in the best interest of the Class Members;

II. FACTS RELEVANT TO AUTHORIZATION AND SETTLEMENT

5. For purposes of settlement, the Petitioner requests that the present action be authorized pursuant to s. 575 of the CCP;

A. Background of the Present Class Action

6. The Petitioner is a seasoned and sophisticated investor who resides in Quebec;

7. During the Class Period, the Petitioner entered into three transactions whereby he respectively purchased 4000, 4000 and 8000 shares of Concordia for a total of $543,629.97;[2]

8. Concordia is a Canadian-based international specialty pharmaceutical company. Through its subsidiaries, the Company owns a broad portfolio of branded and generic prescription products;

9. Prior to and during the Class Period, Concordia's management included:

   i) Mark Thompson ("Thompson"), Founder, Chairman of the Board, Chief Executive Officer ("CEO") and Director; and

   ii) Adrian de Saldanha ("de Saldanha"), Chief Executive Officer ("CFO");

10. Prior to and during the Class Period, Concordia's common shares were publicly listed for trading on the TSX and on NASDAQ, as well as on alternative exchanges in Europe;

11. It is alleged that Concordia's share price incorporated, and accordingly reflected, the Company's misrepresentations and traded at artificially inflated prices during the entire Class Period. As a result, the Class Members suffered significant damages when the Corrective Disclosure was released;

12. On August 12, 2016, Concordia issued its Corrective Disclosure in which Thompson announced that the Company was materially reducing its earnings guidance to reflect the impact of competition on several products in its North America segment and foreign exchange rates; [3]

13. It is alleged that the Corrective Disclosure informed investors for the first time that:

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[2]As appears from Exhibit RL-1 to R. Landry's Affidavit **(Exhibit B).**
[3]As appears from Exhibit EBK-2 to E. Kokmanian's Affidavit (Exhibit P-19 of the Re-Re-Amended Motion).

i) Donnatal and other drugs such as Nilandron and Plaquenil were facing a substantial increase in market competition which negatively impacted the Company's financial results for Q1 and Q2 2016 as well as its *pro forma* forecasts for annual 2016;

ii) Nilandron and Plaquenil faced an impairment charge of $567.1 million;

iii) Concordia reduced its 2016 projected revenues from 1,020/1,060 million to 859/888 million and reduced its adjusted EBITDA from 610/640 million to 510/540 million;

iv) Concordia reduced its *pro forma* revenues by an average $167 million as well as its adjusted EBITDA by 16.4%;

v) de Saldanha was stepping down; and

vi) Concordia's board members unanimously agreed to suspend its $0.075 dividend per common share payable quarterly;[4]

14. In the aftermath of the Corrective Disclosure, Concordia's stock price as listed on the TSX fell CDN $8.31 per share from its closing price of CAD $21.26 on August 11, 2016, to close at CDN $12.96 per share on August 12, 2016, on unusually heavy trading volume;[5]

15. Concordia's share price performance on the NASDAQ also plummeted. Its stock price dropped US $6.23 to close at US $10.13 following the Corrective Disclosure;[6]

16. It is alleged these material drops in Concordia's share price have caused significant damages to the Class Members and are a direct result of the Respondents' misrepresentations and omissions of material facts throughout the entire Class Period;

17. On November 7, 2016, it is alleged that Concordia released further corrective disclosures whereby it admitted that its sales revenue decreases for certain products such as Nilandron, Plaquenil and Donnatal were a result of generic products that entered the market prior as of September 30, 2015, the whole as appears from the news release dated November 7, 2016;[7]

18. On December 30, 2016, the Petitioner sold his 16,000 shares of Concordia at an average price of $2.96, thereby suffering a loss of $496,269.97;

19. On July 30, 2018, Concordia's shares were delisted from NASDAQ;

B. Quebec and Ontario Procedural History

20. On December 22, 2016, the Petitioner filed a *Motion for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec Securities Act* ("Motion for Authorization") before the Québec Superior Court against

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[4] *Id.*

[5] As appears from Exhibit EBK-3 to E. Kokmanian's Affidavit (Exhibit P-20 of the Re-Re-Amended Motion).

[6] As appears from Exhibit EBK-4 to E. Kokmanian's Affidavit (Exhibit P-21 of the Re-Re-Amended Motion).

[7] As appears from Exhibit EBK-5 to E. Kokmanian's Affidavit (Exhibit P-33 of the Re-Re-Amended Motion).

Concordia, Thompson, de Saldanha, Concordia's board members and Concordia's auditor, the whole as appears from the Court record;

21. The Motion for Authorization sought this Honorable Court's approval to institute a class action pursuant to the *Civil Code of Québec,* CQLR c C-1991 ("CCQ") and pursuant to Title VIII, Chapter II, Division II of the *Securities Act*, CQLR c V-1.1 ("QSA") on behalf of:

> "All Quebec-based persons and entities who acquired Concordia International Corp. securities, that are or were listed for trading on the TSX or on alternative trading platforms in Canada, during the period from November 12, 2015 to August 11, 2016, and held all or some of these securities at the close of trading on August 11, 2016" ("Quebec Class Action");

22. On April 28, 2017, the Petitioner filed an *Amended Motion For Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec Securities Act* ("Amended Motion"), the whole as appears from the Court record;

23. The Amended Motion changed the Class Period to March 23, 2016 until August 11, 2016;

24. On May 31, 2017, the Petitioner filed a partial motion for discontinuance in order to remove several of Concordia's board members and its auditor from the list of named Respondents, the whole as appears from the *Motion for a Discontinuance* filed into the Court record;

25. On June 7, 2017, this Honorable Court authorized the partial discontinuance and ordered that the Petitioner file re-amended pleadings;

26. Pursuant to the Court's order, on June 15, 2017, the Petitioner filed a *Re-Amended Motion For Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec Securities Act* ("Re-Amended Motion"), the whole as appears from the court record;

27. On October 19, 2017, a similar class action bearing Court File No. CV-17-584809-00CP was filed before the Ontario Superior Court of Justice ("Ontario Class Action") whereby the Ontario Petitioners sought the certification of a class proceeding pursuant to the *Class Proceedings Act*, 1992 SO 1992, c 6 and the *Securities Act*, RSO 1990, c S.5 ("OSA");

28. On November 8 2017, the Petitioner filed a funding application for the authorization stage with the *Fonds d'aide aux actions collectives* ("*Fonds d'aide*");

29. On March 19, 2018, the *Fonds d'aide* granted the Petitioner's funding application in part;

30. On August 9, 2018, the Petitioner filed a *Re-Re-Amended Motion For Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec Securities Act* ("Re-Re-Amended Motion"), the whole as appears from the Court record, which amended the Class Period and reverted it to its initial period (i.e. from November 12, 2015 to August 11, 2016);

C. Concordia's CBCA Restructuring

31. Due to the fact that Concordia needed to reduce its debt obligations since it no longer had a sustainable capital structure, on October 20, 2017, Concordia filed a motion in which it sought a preliminary order pursuant to s. 192 (4) of the *Canadian Business Corporations Act*, R.S.C. 1985, c. C-44 ("CBCA"), in connection with a proposed plan of arrangement;

32. The proposed plan of arrangement was expected to:

    i) significantly reduce Concordia's outstanding debt and annual interest costs;

    ii) improve the Company's capital structure; and

    iii) put Concordia on a strong financial footing to execute its long-term growth strategy;

33. Concordia's recapitalization transaction was going to exchange the affected debt instruments for new instruments and equity securities thereby resulting in the reduction of the Company's overall debt obligations by more than $2 billion as well as the dilution of existing common shares;

34. The proposed transaction would also see existing shareholders see these shares consolidated at a ratio of 1 to 300, representing 0.35% of the outstanding limited voting shares;[8]

35. On May 2, 2018, Concordia issued a press release announcing that the Company had:

    i) executed a support agreement with holders of Concordia's secured and unsecured debt in which the holders agree to support the recapitalization transaction and vote in favor of the Company's CBCA plan of arrangement; and

    ii) obtained an interim order from the Ontario Superior Court of Justice authorizing the holding of meetings with debt holders on June 19, 2018 to consider and vote on the CBCA plan of arrangement;[9]

36. On May 9, 2018, Counsel for the Quebec and Ontario Class Action (collectively, "Class Counsel") was served with Concordia's CBCA restructuring materials;

37. Upon reviewing Concordia's restructuring material, Class Counsel was concerned about the impact the restructuring application would have on the Canadian Class Actions. More specifically, if the restructuring application was not approved, Concordia would likely commence bankruptcy and insolvency proceedings which would delay the prosecution of the Class Actions whereas if the restructuring was successful, the Individual Respondents would obtain a full release and the Class Members' recovery would be limited to the wasting insurance policies;

38. Since the U.S. class action was much more advanced than the Canadian ones, had the U.S. petitioner been successful in his claim against the Respondents, the U.S. damages would likely have depleted the insurance policies in their entirety;[10]

[8] As appears from Exhibit EBK-6 to E. Kokmanian's Affidavit.
[9] As appears from Exhibit EBK-7 to E. Kokmanian's Affidavit.

39. Concordia's restructuring was approved by the Ontario Superior Court;[11]

D. Mediation

40. Concordia's CBCA restructuring plan presented an opportunity to resolve the Canadian Class Actions. Resolving the class actions would allow Concordia to complete its restructuring process and emerge with a rather "clean slate".[12] As such, Class Counsel reached out to the Respondents in order to discuss mediation;

41. Counsel for both parties agreed to attend mediation with Joel Wiesenfeld on June 7, 2018, approximately three (3) weeks before the hearing of Concordia's proposed restructuring;[13]

42. U.S. class counsel was invited to the mediation session but declined the invitation;

43. Although the mediation session was unsuccessful, the parties agreed to attend a second mediation session on June 20, 2018, once again before Mr. Weisenfeld;

44. On June 20, 2018, after a second full day of mediation, the parties agreed on a settlement in principle of US $13,900,000.00 ("Settlement Amount") and signed a term sheet to that effect.[14] The term sheet provided for the payment of the Settlement Amount to Strosberg Sasso Sutts LLP in trust within 60 days of the signing of the term sheet;

45. The parties also signed a mediation agreement which precludes them from disclosing the positions taken during the negotiations. As such, the details of the offers exchanged by both parties cannot be disclosed. That being said, the parties submit that the negotiations were adversarial, hard-fought, extensive and at arms-length;

46. Discussions continued for another 6 weeks with regard to the wording of the Settlement Agreement until both parties agreed on a final draft. The Settlement Agreement was eventually executed by both parties on June 30, 2018;[15]

47. On August 15, 2018, US $13.9 million was paid to Strosberg Sasso Sutts LLP' trust account and remains in trust pending the final approval of the settlement;

III. AUTHORIZATION OF THE CLASS ACTION

48. For the purpose of settlement only, the Respondents consent to the authorization of the class action pursuant to the CCP;

49. Nonetheless, as particularized below, the Petitioner submits that the present claim satisfies the criteria of s. 575 CCP;

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[10] As explained below, the US class action was dismissed. That being said, the dismissal was without prejudice and the plaintiffs in the US class action can re-file proceedings.
[11] As appears from Exhibit EBK-6 to E. Kokmanian's Affidavit.
[12] Prior to it being dismissed, Concordia would still have had to address the U.S. class action.
[13] As appears from Exhibit EBK-8 to E. Kokmanian's Affidavit.
[14] As appears from Exhibit EBK-9 to E. Kokmanian's Affidavit.
[15] As appears from Exhibit EBK-1 to E. Kokmanian's Affidavit.

50. For the purpose of settlement, the proposed issue for authorization is whether the Respondents made misrepresentations and omissions of material facts in their public filing and statements regarding Concordia's business practices;

A. THE CRITERIA FOR AUTHORIZATION UNDER SECTION 575 CCP

i. The claims of the members raise identical, similar or related questions of law or fact

51. It is alleged that, at all relevant times during the Class Period, the Defendants failed to disclosure adverse material facts and breached their obligation of periodic and timely disclosure of material changes under the QSA and other Securities Legislation;

52. It is alleged that, at all relevant times during the Class Period, the Respondents breached their obligation to disclose and accurately inform the public of Concordia's affairs;

53. It is alleged that, the QSA, the Securities Legislation, national instruments including NI 51-102, NI 52-109, NI 52-110 and U.S. securities laws including Forms 40-F and 6-K all informed the Respondents of their obligations;

54. It is alleged that, the Respondents also owed the Class Members the duties imposed under s. 1457 CCQ;

55. It is alleged that, the Respondents breached their duties and obligations by making the alleged misrepresentations particularized herein and as such, committed faults against the Class Members;

56. It is alleged that, the Individual Respondents oversaw the preparation and report of all filings including the Class Period Documents to the public and knew or ought to have known of the alleged misrepresentations;

57. In light of the Respondents' alleged misrepresentations in Concordia's Class Period Documents, at all relevant times during the Class Period Concordia's shares traded at artificially inflated prices and did not reflect their true value;

58. It is alleged that, once the public had access to accurate information which revealed the Respondents' misrepresentations, the price of Concordia's stock began its steep decline causing damages to the Class Members;

ii. The facts alleged appear to justify the conclusions sought

59. At this stage of the proceedings, the facts are taken to be true and the Petitioner need only demonstrate that he satisfies the Court of an arguable case;

60. It is alleged that, the Respondents breached their duties and legal obligations towards the Class Members;

61. It is alleged that, the Respondents misrepresented the Company's business plan, growth platform and *pro forma* revenues in the Class Period Documents which violates Title VII, Chapter II, Division I of the QSA and other applicable Securities Legislation;

62. It is alleged that, the Petitioner relied on the Respondents' misrepresentations prior to purchasing Concordia's securities;

63. It is alleged that, the faults committed by the Respondents support the Petitioner's and Class Members' claims;

iii. The composition of the group makes it difficult or impractical to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings

64. Concordia is a multinational pharmaceutical company with millions of securities which are publicly traded on numerous international stock exchanges;

65. In Quebec only, there are likely to be thousands of investors that would qualify as members of the Class;

66. In light of the above, it would be impractical for each Class Member to bring separate proceedings;

iv. The Class Member appointed as representative plaintiff properly represented the Class Members

67. The Petitioner is a Quebec resident;

68. The Petitioner is a professional with extensive investment experience;

69. The Petitioner purchased Concordia shares during the Class Period and suffered monetary damages as particularized herein;

70. The Petitioner has a cause of action against the Respondents and has no conflict of interest with Class Members;

71. As stated by the Petitioner in his affidavit, as part of his role as class representative, the Petitioner devoted his time and resources required of him to carry the Class Action forward on behalf of the Class Members. This includes:

i) ongoing communications with Counsel to discuss the case and to provide Counsel with information and documentation to be used in the preparation of various motions;

ii) assisting in the drafting of his affidavits;

iii) reviewing the preparation of motions and the authorization materials;

iv) attending a hearing before the *Fonds d'aide*;

v) participating in the mediation by communicating with and providing instructions to Counsel about settlement values; and

vi) reviewing the terms of the proposed settlement at various stages of the negotiations and providing instructions to enter into the Settlement Agreement;

as appears from Exhibit B;

72. During the prosecution of this claim, the Petitioner fairly. actively and adequately represented the interests of the Quebec Class Members;[16]

IV. THE CRITERIA TO APPROVE A CLASS ACTION SETTLEMENT

73. Article 590 *CCP* requires that a court approve a transaction settling a class action if the court is satisfied that the terms of the settlement are fair, reasonable and in the best interest of the class;

74. In that regard, when determining whether a transaction should be approved, courts should bear in mind the following:

> *[20] Le tribunal doit encourager le règlement à l'amiable en donnant effet à la volonté des parties, à moins qu'il y ait atteinte à l'ordre public.*
>
> *[21] Le tribunal doit prendre garde de ne pas modifier significativement le contrat de transaction conclu par les parties. Le tribunal doit l'approuver tel quel ou refuser de l'entériner, quitte à renvoyer les parties négocier des modifications.*
>
> *[22] Le tribunal ne doit pas exiger la perfection mais décider si en fin de compte, les avantages pour les membres l'emportent sur les inconvénients*. [17]
>
> [our emphasis.]

75. The reasonability and fairness of proposed settlements are determined further to a review of the following criteria:

a) the terms and conditions of the settlement;

b) the benefit to the class;

c) the chances of success;

d) the importance and nature of the administered proof;

e) the requirement to obtain authorization pursuant to s. 225.4 QSA

f) counsel's recommendation and experience;

g) the anticipated cost and time to obtain recovery

h) the number and nature of objections to the settlement;

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[16] As appears from R. Landry's Affidavit.

[17] *Markus c. Reebok Canada inc.*, 2012 QCCS 3562, Petitioners Book of Authorities ("**BoA"),** tab 2, at paras. 20 to 22; see also *Halfon c. Mosse International Inc.*, 2017 QCCS 4300 (CanLII), **BoA,** tab 3, at para. 23 and *Options Consommateurs c. Fédération des caisses Desjardins du Québec*, 2011 QCCS 4841 (CanLII), **BoA,** tab 4, at paras. 26-27.

i) the parties' good faith and absence of collusion; and

j) the support of the Petitioner;[18]

A. The Terms and Conditions of the Settlement

The Settlement Amount

76. The proposed Settlement Agreement provides for a total recovery of USD $13.9 million (all-inclusive of taxes, fees, interest and costs) in full final settlement of the Quebec and Ontario Class Actions with no right of reversion;

77. The Settlement Amount is reasonable given Concordia's financial health, the risk posed by Concordia's CBCA restructuring plans, the litigation risks, Concordia's potential defenses, the parties' estimation as to the value of recoverable damages, the risk of succeeding on the merits at the cost of having incurred substantial legal fees and the risk of collectability of a judgment or settlement obtained at a later date;

The Plan of Notice

78. Pursuant to the Plan of Notice, Class Members will be provided with the following notice of the proposed settlement.

i) publication of the Second Notice in English in at least ¼ page size in the business/legal section of The National Post and the Gazette;[19]

ii) publication of the Second Notice in French online in La Presse;[20]

iii) dissemination of a press release advising of the authorization, settlement approval, procedure to file a claim and procedure to opt-out of the settlement;

iv) publication of the Second Notice in English and French online at www.strosbergco.com/concordia and www.faguyco.com/concordia; and

v) publication of the Second Notice in English and in French in the investor relations section of Concordia's website (at www.concordia.com);

79. Further to the approval of the proposed Settlement Agreement, the Quebec and Ontario Class Actions will be authorized on consent at which point the Second Notice will be published;

The Administrator

80. Class Counsel obtained two proposals from experienced administrators of class actions to act as the administrator of the Quebec and Ontario Class Actions;

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[18] *Markus c. Reebok Canada inc.*, *supra* note 17, **BoA,** tab 2, at para. 23; *Options consommateurs,* 2013 QCCS 1191 (CanLII), **BoA,** tab 5, at para. 41; *Option consommateurs,* 2014 QCCS 4949 (CanLII), **BoA,** tab 6, at para. 49 and *Pellemans c. Lacroix,* 2011 QCCS 1345 (CanLII), **BoA,** tab 7, at para. 20.
[19] As appears from Exhibits EBK-12 and 13 to E. Kokmanian's Affidavit.
[20] *Id.*

81. Class Counsel recommends Trilogy Class Action Services' ("Trilogy") proposal for the following reasons:

    i) Trilogy offered reasonable fixed fees instead of variable fees with no ceiling;

    ii) Trilogy provides bilingual services;

    iii) Trilogy was willing to give advice to Counsel and to prepare a draft Claim Form before the approval hearings and despite the risk that the settlement might not get approved; and

    iv) members of Class Counsel have worked with Trilogy in the past and had a positive experience;

82. Trilogy's past experience includes administering complex class action settlements in Ontario and Quebec, including the Detour Gold and the “Sixties Scoop” settlements;

83. Trilogy has the resources to service Class Members in English and French;[21]

The Opt-Out Procedure

84. Pursuant to the Plan of Notice, once the proposed settlement is approved, both the English and French versions of the Second Notice will be published;

85. Class Members have until the date specified in the Second Notice (which must be at least 45 days after the date on which the Second Notice is last published to file an Opt-Out Form with the Referee, Gregory D. Wrigglesworth of Kirwin Partners LLP, and with the Superior Court's Clerk;[22]

86. Kirwin Partners LLP has the resources to service Class Members who submit objections and Opt-Out Forms in French;[23]

The Claim Process

87. The Plan of Allocation provides for the determination of eligibility as well as the allocation and distribution to each Authorized Claimant of a share of the Compensation Fund;[24]

88. The Plan of Allocation provides for a timely and efficient manner of distributing the Settlement Amount through:

    i) a bilingual national claims and distribution process managed by a single administrator;

    ii) a web-based administration system accessible to all class members; and

    iii) a dispute resolution process;

[21] As appears from Exhibit EBK-32 to E. Kokmanian's Affidavit.
[22] As appears from Exhibits EBK-14 and 15 to E. Kokmanian's Affidavit.
[23] As appears from Exhibit EBK-33 to E. Kokmanian's Affidavit.
[24] As appears from Exhibit EBK-16 to E. Kokmanian's Affidavit.

89. The uniform percentage reduction referred to above is applied to reflect the compromise inherent to the proposed settlement;

90. In order to obtain compensation from the Settlement Amount, Class Members must submit a completed Claim Form with all supporting documentation to the Administrator on or before the Claims Bar Deadline;

91. The Claims Bar Deadline shall be set in the Second Notice and must be at least 120 days after the on which the Second Notice is last published;

92. The claim process is simple. The supporting documentation required of Class Members is their proof of purchase and sale of Concordia's securities;

93. Once a Claim Form is received by the Administrator, the latter shall:

    i) determine the number of shares purchased during the Class Period and held as of the close of trading on August 11, 2016 ("Qualified Shares");

    ii) determine whether the Claimant is eligible to participate in the distribution;

    iii) calculate the *pro rata* distribution; and

    iv) calculate the Authorized Claimant's actual or notional loss on Qualified Shares, pursuant to the formula set forth in Claim Form ("Maximum Entitlement");

94. Each Qualified Share is entitled to an equal portion of the net Settlement Amount up to the Claimant's Maximum Entitlement;

95. Subject to the Claimant's right to refer the Administrator's decision to the Referee for review, the Administrator's decisions are final and binding;

96. If 10% or more of the net Settlement Amount remains in the Escrow Account 180 days from the date of distribution, the Administrator shall allocate the remaining funds amongst the Authorized Claimants in an equitable fashion up to their Maximum Entitlement;

97. If less than 10% of the Settlement Amount remains in the Escrow Account, or after each Authorized Claimant is paid up to their actual or notional loss, the remaining funds will be paid *cy près* to a recipient(s) selected by Class Counsel and approved by the relevant court pursuant to the Plan of Allocation and subject to any payment to the *Fonds d'aide* as provided for by applicable regulation;[25]

98. In no circumstances will any of the Settlement Amount revert back to the defendants;

99. The Plan of Allocation also provides for an honorarium to the representative plaintiffs of the Quebec and Ontario Class Actions;

Termination Provisions

100. Concordia has the right to terminate the proposed settlement agreement if:

[25] As appears from Exhibit EBK-16, at para. 37.

i) the agreement is not approved by the Quebec or Ontario Superior Court;

ii) the agreement is materially modified by the court prior to approving it;

iii) the approval orders are not upheld on appeal; or

iv) the Opt-Out Threshold defined the in the Collateral Agreement is exceeded;

101. Concordia's right to terminate the settlement agreement can be waived;

B. The Benefit To The Class

102. The proposed settlement is beneficial to the Class Members in that:

i) Members will obtain compensation within a relatively short timeframe;

ii) the process to file a claim is simple and efficient;

iii) the settlement would put an end to the litigation (and to Class Members' uncertainties) and guarantee a favorable result; and

iv) the settlement provides monetary compensation to Class Members who, due to Concordia's restructuring, might have received little or no compensation;

C. The Chances of Success

103. The proposed settlement required compromise and is the result of a balancing act between the risks and the benefits at the various stages of the litigation;

104. The significant litigation risks involved in advancing the present action include:

i) obtaining authorization pursuant to s. 225.4 QSA and 575 CCP;

ii) being able to prove liability and assessing damages at the trial on the merits;

iii) the delay and cost associated with litigation, including appeals;

iv) the time-value of money received by Class Members now as opposed to in many years from now;

v) the potential that Concordia's insurance policies would be depleted prior to the adjudication of the Class Action due to the then on-going U.S. class action[26]; and

vi) the amount recovered represents a reasonable percentage of the damages that Members might recover; and

vii) the Respondents' ability to pay a judgment in the Class Members' favor or a settlement several years from now;

[26] As stated above, the U.S. class action against Concordia was not certified. However, the dismissal was without prejudice and plaintiffs in the U.S. class action can re-file proceedings.

105. The present class action advances both a civil claim and a secondary market claim against the Respondents;

106. In order to institute a secondary market claim, the Petitioner must obtain the court's authorization pursuant to s. 225.4 QSA which requires he produce sufficient credible evidence to persuade the court that there is a reasonable possibility that the action will be resolved in his favor.[27] The Petitioner is therefore held to a higher evidentiary burden, i.e. that of demonstrating a reasonable possibility of success;

107. The Petition can only resort to publicly available information to attain his higher evidentiary burden. The Petitioner therefore faces the risk of not being able to satisfy this higher burden;

108. In the alternative, the Respondents can obtain authorization from the court to adduce evidence and potentially cross-examine the Petitioner in order to demonstrate that his claim has no possibility of success;

109. The Petitioner could have difficulty meeting the authorization threshold because:

    i) Concordia did not restate its financial statements;

    ii) no regulatory proceedings were filed against Concordia in Canada or in the U.S.A.;

    iii) Concordia will argue it disclosed the risks associated to its business model; and

    iv) the petitioner in the similar U.S. class action, raising similar allegations, did not obtain authorization;

110. Even if the secondary market claim is authorized, the Petitioner may not be successful on the merits for the following reasons:

    i) the trial judge could conclude that the alleged misrepresentations were not misrepresentations pursuant to the QSA;

    ii) the trial judge could conclude that the alleged misrepresentations were not material;

    iii) the trial judge could conclude that there was no Corrective Disclosure; and

    iv) the trial judge could conclude that the share price dropped for reasons other than the publication of the Corrective Disclosure;

111. As particularized at paras. 31 to 39, Class Members would also face the serious risk that their claims would be extinguished as a result of Concordia's CBCA restructuring plan and its depleting insurance policies;

112. Additionally, in order for the Petitioner and Class Members to be successful on the merits, they would have to overcome the following defenses likely raised by the Respondents;

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[27] *Theratechnologies inc. v. 121851 Canada Inc.,* [2015] 2 SCR 106, **BoA**, tab 1, at para. 29; *Catucci c. Valeant Pharmaceuticals International Inc*., 2017 QCCS 3870 (CanLII), **BoA,** tab 8. at paras. 151-153.

No Actionable Misrepresentation

113. In order to advance a claim under Title VIII, Chapter II, Division II of the QSA, the Petitioner must convince this Honorable Court that Concordia published documents which contained a misrepresentation i.e. a misleading information or an omission of a material fact;

114. Pursuant to the s. 5 of the QSA, a material fact is a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued;

115. The Respondents would likely have filed various expert reports alleging that Concordia's alleged misrepresentations about its business model and growth prospects is not a fact that would be expected to or did have a significant effect on the market price of its securities;

116. If the Petitioner is unable to establish that Concordia made misrepresentations, his secondary market claim will likely be dismissed;

No Corrective Disclosure

117. In order to advance a secondary market claim pursuant to s. 225.4 QSA, the Petitioner must have acquired or disposed of Concordia's securities during the period between the time when Concordia made a misrepresentation and the time when the misrepresentation was publicly corrected;

118. Concordia would argue that to constitute as a corrective disclosure, there must be a link between the corrective disclosure and the misrepresentation and that the Corrective Disclosure put forth by the Petitioner does not correct many of the alleged misrepresentations (for example, the Corrective Disclosure does not refer to AMCo, compliance with the Code of Conduct or Donnatal's sales force);

119. The second hurdle the Petitioner would face is that the Corrective Disclosure should reveal new information to the market therefore exposing the alleged misrepresentation;

120. The Respondents will likely argue that the Corrective Disclosure did not reveal any new information that the market was not already aware of;

121. For example, Concordia's 2015 AIF dated March 23, 2016 informed investors that the Company made "cost adjustments" i.e. price increases, that it may continue to do so and that there could be "no assurances that sales of the Corporation's pharmaceutical products will be unaffected by these cost adjustments.[28] The Respondents will likely also argue that analyst reports as far back as May, 2015 identified the risks related to Concordia's price increases;[29]

122. During an earnings call, Concordia's representatives also informed investors of "new entrants" in the Donnatal space thereby addressing the increase in market competition;[30]

[28] As appears from Exhibit EBK-26 to E. Kokmanian's Affidavit.
[29] As appears from Exhibits EBK-19 to 25 to E. Kokmanian's Affidavit.
[30] As appears from Exhibit EBK-27 to E. Kokmanian's Affidavit.

Forward-Looking Information

123. Growth prospects constitute forward-looking information. As such, Concordia would likely have attempted to avail itself of s. 225.22 QSA as a complete defense to the misrepresentations about its growth prospects;

124. Section 225.22 QSA allows a defendant to defeat an action for misrepresentation in forward-looking information by proving that (i) the document contains reasonably cautionary language which clearly identified the forward-looking information as such and (ii) the defendant had a reasonable basis for making the projections set out in the forward-looking information;

125. For example, the Petitioner alleges that the Respondents made misrepresentations in the Q1 2016 earnings call because they reaffirmed Concordia's Earnings Guidance instead of revising it;

126. The Respondents will likely argue that at the end of the call, Concordia's Vice President of Investor Relations made the following cautionary statement:

> "... Please note that statements made during this call may include forward-looking statements and information and future oriented financial information regarding Concordia and its business and disclosure regarding possible events, conditions or results that are based on information currently available to management which should indicate managements' expectation of future growth, results of operations, business performance and business prospects and opportunities."[31]

127. Such cautionary statements are problematic and arguably constitute a defense to the earnings guidance misrepresentation;

Statutory Damages Cap

128. Pursuant to s. 225.33 of the QSA, damages payable by defendants are the lesser of (i) the amount determine pursuant to s. 225.28 or 225.29 QSA and (ii) the greater of 5% of Concordia's market capitalization and $1,000,000 less any damages the defendants have been ordered to pay by way of a judgment in relation to the same alleged misrepresentation;

129. Concordia's limitation of liability is calculated based on its market capitalization. For the mediation, Class Counsel calculated that Concordia's liability was limited to approximately $100 million under the QSA;

130. Had the Class Action proceeded, the Respondents would likely have filed expert reports that called that amount into question;

131. This assumption is consistent with the position adopted by Concordia during mediation;

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[31] *Id.*

Confounding Factors

132. In an attempt to reduce the value of the Class Members' claim, the Respondents would likely refer to s. 225.30 QSA and argue that the decrease in the price of its securities is the result of confounding factors unrelated to the alleged misrepresentations;

133. For example, the Respondents would likely argue that Concordia's downward revision of its Earnings Guidance was the result of a reduction in the GBP/USD foreign exchange rate following the Brexit vote on June 23, 2016;

134. Should the Court conclude that the decline in the price of Concordia's shares is partially or wholly attributed to a confounding factor, Concordia's maximum liability will be decreased accordingly;

135. Counsel cannot disclose the positions taken by each party during the mediation. That being said, this Honorable Court should note that there was a serious disagreement about the value of the present claim since the Respondents are of the view that confounding events dramatically reduce the value of damages;

Conclusion

136. The potential arguments and defenses raised by the Respondents would have been problematic for the Class Members. This is further demonstrated by the fact that on July 27, 2018, certification of the U.S. class action was denied;

137. The proposed settlement reflects Counsel's assessment of the chances of success against each Defendant and constitutes a reasonable and fair compromise;

D. The Importance and Nature of the Administered Proof

138. As part of its due diligence and legal obligation, prior to instituting the present claim, Counsel reviewed tens of thousands of pages documents, including annual information forms, MD&As, financial statements, earning call transcripts, news releases and analyst reports;

139. Counsel reviewed additional documents prior to and during the mediation and would have reviewed tens of thousands more pages of information had the claim gone to trial;

140. Counsel retained the services of Dr. Craig McCann Ph.D., C.F.A. (a financial economist and analyst) to prepare an expert report on materiality which was filed into the court record in support of the Re-Amended Motion;[32]

141. Counsel also retained the services of Dr. McCann to respond to the report provided by Concordia's economists for mediation purposes in relation to the value of the claim. As a result of the work performed by Dr. McCann, Counsel gained in-depth understanding of the economic issues at play in the present claim;

[32] As appears from Exhibits EBK-28.

142. Although Dr. McCann did not entirely agree with the conclusions of the Respondents' expert, the exercise allowed Counsel to have an informed view of the various scenarios with respect to damages;

143. As a result of Counsel's due diligence, Class Counsel was able to evaluate the risks based on an appropriate evidentiary basis and to negotiate with the Respondents;

E. The Requirement to Obtain Authorization under Section 225.4 of the QSA

144. As previously mentioned, pursuant to s. 225.4 QSA, the Petitioner is held to a higher evidentiary burden i.e. that of demonstrating a reasonable possibility of success;

145. An increased evidentiary burden at authorization directly increases the risk that the Petitioner's motion for authorization is denied;

146. Dr, Craig McCann was retained, in part, to opine on the materiality of the Respondents' misrepresentations and to meet the petitioner's increased burden;

147. Had the litigation continued, the Respondents would likely have filed rebuttal expert reports thus increasing the length and cost of the authorization hearing;

F. The Anticipated Cost and Time to Obtain Recovery

148. The practical value of an expedited recovery is a significant factor to consider;

149. If the proposed settlement is not approved, the Canadian Class Actions will proceed and Class Members will not be paid until the actions are concluded, if successful;

150. Had the parties not agreed to the proposed settlement, the next step in the proceeding would have been the adjudication of the Respondents' Application to adduce evidence;

151. Following the adjudication of the Respondents' application, and all other potential preliminary motions, an authorization hearing of at least 2 days would have been scheduled;

152. In the event that authorization were to be granted, the parties would then have to undergo extensive discovery and several expert reports would have been filed in relation to materiality and quantification of damages;

153. Finally, a trial on the merits likely lasting a minimum of several weeks would have been scheduled;

154. Based on Class Counsel's experience, it expects that it would have taken approximately 6 to 7 years before the issues were finally adjudicated and, if successful, the Class Members were able to recover any monetary compensation from the Respondents (assuming that their insurance policies are not depleted by then);

155. As stated by Justice Prévost, S.C.J. in *Pellemans c. Lacroix*, as to the probable course of high-profile cases:

> *[24] Si l'affaire devait aller à procès, le jugement ne serait vraisemblablement prononcé que dans environ 20 ou 24 mois, avec la possibilité d'un appel à la*

Cour d'appel et, peut-être, à la Cour suprême du Canada. Et ce, sans compter le temps et l'argent qui seraient investis dans les autres recours connexes.

[25] En somme, le rejet du règlement proposé reporterait de cinq à dix ans tout espoir pour les membres d'un remboursement significatif de leurs investissements, sans garantie d'un résultat favorable.

[26] Dans les circonstances, la transaction apparaît juste, équitable et dans le meilleur intérêt des membres du groupe. Elle sera approuvée.[33]

156. Should the litigation continue, Counsel is of the view that millions of dollars in legal fees and disbursements will be incurred;

G. Counsel's Recommendation and Experience

157. The Canadian Class Actions were a collaborative effect on the part of Faguy & Co., Morganti Legal and Strosberg Sasso Sutts LLP. Each of these three firms specializes in securities class actions;

158. Insofar as the Quebec counsel is concerned, Faguy & Co. has extensive securities class action experience and is prosecuting more securities class actions in the province of Quebec than any other law firm;[34]

159. Faguy & Co. was also *ad litem* counsel for the consortium of law firms that successfully obtained the first authorization in Quebec in a contested proceeding pursuant to s. 225.4 QSA in *Valeant Pharmaceuticals*;[35]

160. Counsel recommended that the Petitioner accept the proposed settlement since it is fair, reasonable, in the best interest of the Class Members, promotes judicial efficiency and access to justice as well as promotes the free flow of information in capital markets;

161. Counsel is of the view that the compensation awarded to the Class is just, reasonable and proportional to the risks and uncertainties inherent to class actions, especially in light of Concordia's restructuring plans;

H. The Number and Nature of Objections to the Settlement

162. Further to an extensive and wide dissemination of the Notices, no Quebec or Ontario Class Member has objected to the approval of the proposed settlement;[36]

163. Of note, according to NERA Economic Consulting, the average settlement of statutory secondary market cases in Canada is CDN $13.4 million;[37]

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[33] *Pellemans c. Lacroix, supra*, note 18, **BoA,** tab 7, at paras. 24-26.
[34] Examples include securities class actions against Valeant Pharmaceuticals, Volkswagen AG, TD Bank and against The Stars Groups Inc. (then known as Amaya Inc.) in what has been called the largest insider trading scandal in Canadian History.
[35] *Catucci c. Valeant Pharmaceuticals International Inc*., 2016 QCCS 3431 (CanLII), **BoA,** tab 8.
[36] As appears from Exhibit EBK-31 to E. Kokmanian's affidavit.
[37] As appears from Exhibit EBK-29 to E. Kokmanian's Affidavit.

I. The Parties' Good Faith and the Absence of any Collusion

164. Due to its concerns about Concordia's restructuring plans, Class Counsel reached out to the Respondents in good faith in order to schedule a mediation session;

165. The mediation was conducted before Joel Wiesenfeld, a seasoned attorney and an experienced and neutral mediator;

166. The proposed settlement is the result of intense negotiations over the course of two (2) days as well as mutual concessions;[38]

J. Support of the Petitioner

167. The Petitioner supports and recommends approval of the proposed settlement which he considers fair and reasonable;[39]

Conclusion

168. In light of the impending CBCA proceedings commenced prior to mediation, the result of the U.S. certification motion, the defenses available to the Respondents, the risks associated with litigation, the assessment of damages and the collectability of a future settlement or judgment, the proposed settlement is fair, reasonable, is in the best interest of the Class Members and falls within the range of acceptable settlement;

169. Counsel respectfully submits that the proposed Settlement Agreement should be approved;

V. CLASS COUNSEL FEES

A. Counsel Fees Allocated to the Quebec and Ontario Class Actions

170. Whereas the Quebec Class Action is limited to residents of Quebec, the Ontario Class Action provides for a worldwide class, with the exception of shareholders residing in Quebec and those who purchased on a U.S. exchange;

171. For the purpose of the fee approval motions filed before the Quebec and Ontario Superior Court, Class Counsel agrees to notionally allocate the Settlement Amount between both actions based on the population percentages;

172. Based on the most recent census, Quebec has approximately 23% of Canada's population;

173. In view of the foregoing, Counsel for the Quebec Class Action asks this Honorable Court to approve a 30% contingency fee based on 23% of the Settlement Amount, for a total of US $959,100.00, plus disbursements and all applicable taxes;[40]

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[38] *Option Consommateurs c. Infineon Technologies, a.g.*, (2013) *supra* note 18, **BoA,** tab 5, at para. 40.
[39] As appears from R. Landry's affidavit (the Petitioner is currently overseas and was not able to execute his affidavit before a commissioner of oaths. A duly executed copy will be filed into the court record prior to or at the hearing schedule for October 10, 2018).
[40] 23% of US $13.9 million is US $3,197,000.00.

174. Counsel for the Quebec Class Action has incurred total disbursements of CAD $8,312.69 and US $48,127.50 further to the prosecution of the Quebec Class Action. Further disbursements will be incurred in the preparation for and attendance to the approval hearing of the present motion. Counsel will provide an update setting out the final disbursement at the settlement approval hearing, if required;

175. Counsel for the Ontario Class Action will ask the Ontario Superior Court to approve a 33% contingency fee based on 77% of the Settlement Amount, for a total of US $3,531,990.00, plus disbursements and all applicable taxes;[41]

176. Class Counsel's request to obtain fees equivalent to 33% of 77% of the Settlement Amount for the Ontario Class Action and 30% of 23% for the Quebec Class Action was included in the notice disseminated to Class Members across Canada;

177. No Class Member has objected to Class Counsel's fee request;[42]

178. The Respondents have no representations to make to the court regarding the fees and disbursements sought;

B. Applicable Criteria

179. Fair and reasonable class counsel fees should be approved by the court;

180. As stated by the Honorable Justice Chaput, S.C.J. in *Guilbert c. Sony BMG Musique (Canada) inc.*:

> [34] The measure of what is fair and reasonable is stated in the Code [of Professional Conduct of Lawyers, CQLR c B-1, r 3.1]:
>
> 8. Determination and payment of fees [now s. 102]
>
> 3.08.01. The advocate must charge and accept fair and reasonable fees.
>
> 3.08.02. The fees are fair and reasonable if they are warranted by the circumstances and correspond to the professional services rendered. In determining his fees, the advocate must in particular take the following factors into account:
>
> (a) experience;
>
> (b) the time devoted to the matter;
>
> (c) the difficulty of the question involved;
>
> (d) the importance of the matter;
>
> (e) the responsibility assumed;

[41] 77% of US $13.9 million is US $10,703,000.00.
[42] As appears from Exhibit EBK-31 to E. Kokmanian's affidavit.

(f) the performance of unusual professional services or professional services requiring exceptional competence or celerity;

(g) the result obtained*;*

(h) the judicial and extrajudicial fees fixed in the tariffs*.*

3.08.03. The advocate must avoid all methods and attitudes likely to give to his profession a profit-seeking or commercial character.[43]

181. The criteria governing the setting of fees can be summarized as such:

"[TRANSLATION]

Finally, an exceptional power among all others, at the end of the trial, the judge determines extrajudicial fees for the attorney for the representative, including in the case of an out-of-court settlement (s. 32, para. 2, *Act respecting the class action*)*:*

32. … The court must hear the Fonds before deciding the payment of costs, determining the fees of the representative's attorney, or approving a transaction on costs or fees.

Thus, this type of judicial review is carried out with the opinion of the Fonds when it has provided financial aid, and its presence is justified by the objective of recovering the amounts of money to which it is entitled. Of course the management of the individual proceeding does not provide for such a fee fixing mechanism. As conceived, the court's power of exception is discretionary and is not limited to approving a settlement between the parties regarding the fees. Any question as to the determination of extrajudicial fees falls under its jurisdiction, including a request to amend or contest from one of the members. The judge seized of the application for the setting of fees takes into account the criteria in the *Code of ethics of advocates*, such as the importance and nature of the matter, including the time and effort devoted thereto, preferably by simply applying a formula using a predetermined percentage of the amount awarded. (pp. 37-38)

Barring error or omission as in *Clavel v. Productions musicales Donald K. Donald inc*., the Court generally shows deference and simply approves the fees as claimed. Agreements fixing fees at a percentage of the amount awarded (15% to 33%) are common and have been found in the case law to be fair and reasonable. The dominant tendency, however, has been to base the assessment of fees on the general factors set out in the *Code of ethics of advocates,* as in any other case, sometimes using a multiplier to take into account the scope and difficulty of the case, ultimately to justify and approve an agreement based on a percentage (pp. 174-175)."[44]

[our emphasis]

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[43] *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432, **BoA,** tab 9, at para. 34; see also *Pellemans c. Lacroix*, *supra* note 18, **BoA,** tab 7, at para. 51.

[44] Pierre Claude Lafond, *Le recours collectif, le rôle du juge et sa conception de la justice*, (Cowansville, Qc.: Yvon Blais, 2006) at 37-38, 174-175 in *Guilbert c. Sony BMG (Canada) inc.*, *supra* note 36, **BoA,** tab 9, at para. 45.

182. As particularized below, Counsel respectfully submits that its legal fees are fair and reasonable and should be approved by this Honorable Court;

i. The Risk Assumed by Counsel

183. Although the element of risk is not specifically identified at s. 102 of the *Code of Professional Conduct*, courts have held that they cannot disregard the fact that attorneys work on a case for a number of years without any guarantee of success;[45]

184. The risk assumed by Counsel is directly related to the level of complexity of a claim;

185. The Petitioner filed a claim pursuant to Title VIII, Chapter II, Division II of the *Securities Act*, CQLR c V-1.1 ("QSA"). As such, at authorization, the Petitioner must demonstrate that his claim was brought in good faith and that there is a reasonable possibility that the claim would be resolved in his favor pursuant to s. 225.4 QSA. The Petitioner's evidentiary burden at authorization is therefore increased;

186. Additionally, due to the fact that the Respondents do not admit any responsibility, on the merits, the Petitioner would have had to convince this Honorable Court that:

i) the Respondents published documents that contained misrepresentations in relation to Concordia's business model and growth prospects;

ii) the misrepresentations related to facts that may reasonably be expected to have a significant effect on the market price of Concordia's securities;

iii) the Respondents published a corrective disclosure which corrected the misrepresentations; and

iv) the value of Concordia's securities dropped due to the publication of the Corrective Disclosure; and

v) Class Members suffered a monetary loss as a result of the decrease in the market value of their securities;

187. The funding obtained from the *Fonds d'aide* did not eliminate the risk assumed by Counsel since it provided limited funding (the main portion being allocated to expert fees) solely for the authorization stage;

188. Counsel also faced significant risk with regard to the collectability of a judgment or settlement at a later date;

189. As stated by this Honorable Court in *Pellemans c. Lacroix*, 2011 QCCS 1345 (CanLII):

> *[101] Lorsque, comme en l'instance, l'avocat accepte dès le départ d'assumer la responsabilité des coûts et des risques liés à l'exercice du recours collectif et à son rejet éventuel, à l'exclusion du représentant, il apparaît justifié que l'ampleur de ces risques soit reflétée dans l'honoraire à pourcentage négocié avec son client. Il faut s'attendre à une certaine adéquation entre l'importance*

[45] *Guilbert c. Sony BMG Musique (Canada) inc.*, *supra* note 36, **BoA,** tab 9, at para. 41.

des risques assumés par l'avocat, d'une part, et le pourcentage qui sera éventuellement payé par les membres, le cas échéant, d'autre part.

[102] En l'absence d'une telle entente, il est raisonnable de présumer que dans de nombreux dossiers, un membre refuserait de se porter représentant aux fins de l'exercice du recours collectif. Ainsi, c'est l'accès même à la procédure du recours collectif, recours unique, qui se verrait compromis à une époque où de plus en plus d'intervenants de notre société se questionnent sur l'accessibilité à la justice.

[our emphasis.]

ii. Class Counsel's Time and Expense

190. Counsel for the Quebec Class Action instituted the present claim in December of 2016. Aside from obtaining partial funding from the *Fonds d'aide,* Counsel received partial payment for disbursements, but has not received any sums for its legal fees;

191. Counsel was actively involved in advancing the Quebec Class Action and in settling both the Quebec and Ontario Class Action;

192. The work done by Counsel up to this stage reflects its constant and competent efforts, which ultimately led to a settlement, including a concrete Plan of Allocation for Class Members;

193. Counsel also spent a considerable amount of time seeking to have the Settlement Agreement approved by this Honorable Court. If the proposed settlement is not approved, the time and expense devoted to achieving this settlement will be of little value in the prosecution of the claim and may never be recovered;

194. If the proposed settlement is approved, Counsel will have to devote a significant amount of time to implement the settlement, including:

i) ensuring the dissemination of notices in accordance with the Plan of Notice;

ii) communicating with Class Members who contact Counsel with questions;

iii) monitoring the implementation of the settlement to ensure that applicable procedures are followed;

iv) addressing questions and issues raised by the Administrator;

v) reviewing the Administrator's updates;

vi) reviewing the final distributions list; and

vii) attending to any other matters that might to be raise during the implementation of the settlement, including motions for directions on behalf of Class Members;

195. As of September 28, 2018, Class Counsel has invested over 1,760 hours, having a value of over $965,000. Quebec Counsel's time represents the highest investment of the three firms in terms of hours worked and WIP value, as appears from para. 92 of Exhibit A;

196. As at October 2, 2018, further to the prosecution of the Quebec Class Action, Faguy & Co has incurred total disbursements of CAD $8,312.69 and US $48,127.50;[46]

197. On February 10, 2017, the Petitioner executed a *Convention of a Professional Mandate* ("Convention") which states that in the event that the Class Action is successfully resolved, Counsel will be compensated in the amount of 30% of the benefit recovered, plus all applicable taxes;[47]

198. Percentage fee agreements have long since been recognized by Quebec law, particularly in the context of class actions:

> *[52] Les conventions d'honoraires à pourcentage sont reconnues depuis longtemps en droit québécois et particulièrement dans le domaine des recours collectifs. La jurisprudence, de façon unanime, a reconnu la légalité de telles conventions afin de récompenser adéquatement les procureurs qui acceptent des mandats complexes et coûteux en assumant les risques. Ces conventions dites « contingency fees » permettent aux procureurs d'être rémunérés en cas de succès seulement.*
>
> *[53] Le montant dû aux procureurs des représentants du groupe et des sinistrés sur la base de cette convention doit être approuvé par le Tribunal à moins qu'il ne soit pas juste et raisonnable dans les circonstances.*[48]

199. In fact, over the years, Courts have generally integrally approved and applied executed fee agreements for class actions limited to Quebec;[49]

200. When determining whether to approve a fee request from Class Counsel, Courts should take the Class Members' interests into account. That being said, as stated by this Honorable Court:

> *[66] Pour le tribunal, veiller sur l'intérêt des membres ne consiste pas à prendre leur part au détriment indu des avocats qui travaillent pour le groupe, et encore moins à donner raison inconsidérément à tous les mouvements d'humeur. [...]*
>
> *[67] Dans certains cas, l'intérêt des membres peut consister à garder les avocats motivés à persévérer même quand les procédures sont longues, ardues et risquées, au point où leur rémunération est nulle durant des mois et des années. Le paiement d'honoraires à un stade interlocutoire fait partie du coffre à outils à cet effet.*[50]

201. In *Options consommateurs c. Infineon Technologie, a.g.*, the plaintiff, an association devoted to promoting and defending consumers' interests, discussed the importance of motivating class counsel to advance such lawsuits:

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[46] As appears from Exhibit EBK-30 *en liasse* of E. Kokmanian's Affidavit.
[47] As appears from Exhibit RL-2 to R. Landry's Affidavit.
[48] *Bouchard c. Abitibi Consolidated*, 2004 CanLII 26353 (QC CS), **BoA,** tab 11, at paras. 52-53.
[49] *Pellemans c. Lacroix*, *supra* note 18, **BoA,** tab 7, at para. 56.
[50] *Option Consommateurs c. Infineon Technologies, a.g.*, (2013) *supra* note 18, **BoA,** tab 5, at paras. 66-67.

> 9. It is important that contingency fee agreements are respected, and that the percentage contingency fees agreed to between class counsel and representative plaintiffs be honoured in order to ensure predictability and thereby promote access to justice, especially for consumers who almost invariably do not have sufficient resources to mount an individual lawsuit in circumstances such as exist in the Proceedings. I am concerned that, if the courts set an arbitrary dollar amount as the highest fee achievable by class counsel for public policy reasons, this might create a disincentive which could amount to conflict of interest between class counsel and class members, and jeopardize the relationship between class counsel and their representative plaintiff clients.
>
> 10. Since such an arbitrary fee will be reported as a precedent in jurisprudence, it will be public knowledge. In particular, defence counsel will become aware of such an arbitrary fee… In cases, such as the Proceedings, where Class Counsel seek interim fees and file contingency fee agreements as exhibits, some defendants may be motivated to decrease the amount of money that they are willing to offer to settle a class action because class counsel are at or near the maximum arbitrary fee that they are likely to be awarded.
>
> 11. Percentage contingency fee agreements create valuable incentives for class counsel, as they encourage class counsel to, among other things, achieve the highest settlements possible in order to generate the largest percentage fee. If class counsel are faced with an arbitrary maximum fee, then once they achieve sufficient settlements to get them at or near that maximum arbitrary fee, class members may think that class counsel will settle cheaply with any remaining defendants to close down the case. This conflicts with the class members' interest in maximizing recovery.
>
> 12. In summary, to impose a maximum arbitrary fee may create a disincentive that could be harmful for future class actions. [51]
>
> [our emphasis.]

202. As stated by Justice Strathy J. in *Abdulrahim v. Air France*, 2011 ONSC 512:

> [9] In class action litigation, the court must also consider the goals of class proceedings, particularly in terms of access to justice. The fee of class counsel must be both fair and reasonable. It should not only reward counsel for meritorious efforts, but it should also encourage counsel to take on difficult and risky class action litigation. The risk undertaken by the lawyer, and the success achieved, are important considerations in determining the fee: *Maxwell v. MLG Ventures Ltd.* (1996), 30 O.R. (3d) 304, [1996] O.J. No. 2644 (Gen. Div.); *Windisman v. Toronto College Park Ltd.*, above; *Serwaczek v. Medical Engineering Corp.*, above; *Parsons v. Canadian Red Cross Society* (2000), 49 O.R. (3d) 281, [2000] O.J. No. 2374 (S.C.J.).
>
> [10] The courts have recognized that the objectives of the *C.P.A.* – judicial economy, access to justice and behaviour modification – are dependent, in part, upon counsel's willingness to take on class proceedings. This, in turn, depends on the incentives available to counsel to assume the risks and accept the financial burden of carrying class proceedings. A premium on fees is the reward

[51] *Option Consommateurs c. Infineon Technologies, a.g.*, (2014) *supra* note 18, **BoA,** tab 6, at para. 137.

> to class counsel for accepting this risk and taking on meritorious but difficult matters: *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.*, [2005] O.J. No. 1117 at paras. 59-61 (S.C.J.); *Parsons v. Canadian Red Cross Society*, above, at 287.
>
> [our emphasis.]

203. Justice Strathy's comments were adopted by this Honorable Court in *Option Consommateurs c. Infineon Technologies, a.g.*;[52]

204. Fee agreements should benefit from a presumption of validity and should only be set aside if it is demonstrated that in the circumstances, the agreement is unfair and unreasonable for the Class Members or if one of the grounds for nullity under the CCQ applies;[53]

205. A fee agreement which sets legal fees in accordance with a percentage of the amount obtained, ranging from 15% to 33%, is considered fair and reasonable in case law.[54] By way of example, this Honourable Court recently approved a 33% class counsel fee in a settlement of a securities class action, which was also settled prior to authorization;[55]

206. The Petitioner agrees with the legal fees sought by Class Counsel and has also stated that securities class actions provide access to justice to investors and class counsel must be incentivized to bring actions such as the present one forward;[56]

207. The Class Action was prosecuted and settled in approximately 2 years from the date of the Corrective Disclosure;

208. As stated by Mr. Justice Belobaba "(…) it is only through a robust contingency fee system that class counsel will be appropriately rewarded for the wins and losses over many files and many years of litigation and that the class action will continue to remain viable as a meaningful vehicle for access to justice."[57]

209. Counsel's diligence and skill secured a US $13.9 million for the Class. This skill and effort should be recognized and rewarded;

iii. The Complexity of the File and the Specialization of Counsel

210. The Quebec Class Action is complex and constitutes a high-risk case which Counsel has advanced since 2016 without any guarantee of remuneration;

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[52] *Option Consommateurs c. Infineon Technologies, a.g.,* 2012 QCCS 3506 (CanLII), **BoA,** tab 12,at para. 10, *Option Consommateurs c. Infineon Technologies, a.g.,* (2013) *supra* note 18, **BoA,** tab 5, at para. 59 and *Option Consommateurs c. Infineon Technologies, a.g.,* (2014) *supra* note 18, **BoA,** tab 6, at para. 134.

[53] *Pellemans c. Lacroix*, *supra* note 18, **BoA,** tab 7, at para. 50.

[54] *Id* at para. 53.

[55] *Benadiva v. Penn West Petroleum Ltd. et al*, 500-06-000713-0145, **BoA,** tab 13.

[56] As appears from R. Landry's affidavit (the Petitioner is currently overseas and was not able to execute his affidavit before a commissioner of oaths. A duly executed copy will be filed into the court record prior to or at the hearing schedule for October 10, 2018).

[57] *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537 (CanLII), **BoA,** tab 14, at para. 19.

211. Counsel is comprised of experienced attorneys involved in numerous Quebec and Canadian-wide securities class actions;

212. Litigating class actions requires certain specific requirements:

    i) Attorneys bear an accrued responsibility to ensure that information is disseminated to the members and that their questions are addressed;

    ii) Attorneys must have a high level of expertise since, as in the present case, they often face experienced opponents with significant financial and human resources; and

    iii) Class actions require that attorneys be constantly available since, in addition to involving demanding work, class actions are subject to special management by a single judge. As such, the pace of litigation no longer belongs to counsel;[58]

213. Counsel applied the requirements listed above and recognized the risk posed by the CBCA restructuring and the opportunity to reach out to opposing counsel in order discuss mediation. Without counsel's initiative, it is unlikely that the Canadian Actions would have resolved, especially in light of the US decision to dismiss certification;

214. The risk assumed by Counsel is even greater in the context of a secondary market securities class action which bears the heightened burden of demonstrating a reasonable possibility of success and where expert reports are often required at the authorization stage of the proceedings;

iv. The Importance of the Matter to Class Members

215. Settlement of the Canadian Class Actions achieves access to justice, judicial economy and can be expected to modify the behavior of public companies' senior management;

216. Counsel believes that no individual actions were commenced since the cost of prosecution of an individual action would have exceeded the individual's losses. Thus, but-for the institution of the present Class Action, it is unlikely that the Class Members would have been able to achieve any recovery;

v. The Result Obtained

217. Despite Concordia's restructuring plans, Class Counsel secured US $13.9 million (approximately CAD 18 million) in settlement funds for the Quebec and Ontario Class Action;

218. As a result of their work with Dr. McCann during the mediation process, and taking into account the litigation risks, risks of insolvency, potential defenses raised by Concordia and arguments relating to confounding factors, the settlement is an excellent result for class members;

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[58] *Pellemans c. Lacroix*, *supra* note 18, **BoA,** tab 7, at paras. 104-107.

vi. Petitioner's Honorarium

219. Quebec Courts have the power to authorize the payment of an honorarium when provided for in the terms of the proposed settlement;[59]

220. Counsel respectfully requests that this Honorable Court award a CAD $10,000.00 honorarium to the petitioner in recognition of his contribution to the present action. The same request is being made for the proposed Ontario representative plaintiffs ($10,000.00 each);

221. The Petitioner acted conscientiously throughout the litigation and should receive a symbolic recognition for the work and energy he expended on behalf of the Class Members;

222. The Petitioner did not request this honorarium nor was it promised to him by Counsel;

223. In *Blanchet c. Longueuil (Ville de)*, 2019 QCCS 5462 (CanLII), the Honorable Justice Wagner (as he was then) approved an honorarium of $10,000.00 to the representative plaintiff for his role in the litigation further to a settlement of $450,000.00;[60]

224. In *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866 (CanLII), this Honorable Court awarded an honorarium of $30,000.00 to the representative plaintiff further to a settlement of approximately 6 million;[61]

225. The honorarium provided for in the Plan of Allocation is merited, fair, reasonable and does not cause prejudice to the Class Members;

Conclusion

226. As particularized herein, and in accordance with s. 102 of the *Code of Professional Conduct of Lawyers*, the fees requested by Class Counsel are warranted by the circumstances and proportionate to the professional services rendered;[62]

227. Counsel hereby agrees to reimburse the entirety of the sums it received from the *Fonds d'aide* in the amount of CAD $18,059.42;

FOR THESE REASONS, MAY IT PLEASE THIS HONORABLE COURT TO:

GRANT the present motion; and

ISSUE the Order in the form attached hereto as **Exhibit "C"**.

THE WHOLE WITHOUT COSTS.

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[59] *Union des consommateurs c. Pfizer Canada inc.*, 2012 QCCS 16 (CanLII), **BoA,** tab 15, at paras. 70-76.
[60] *Blanchet c. Longueuil (Ville de)*, 2010 QCCS 5462 (CanLII), **BoA,** tab 16, at para. 11 a) ii).
[61] *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866 (CanLII), **BoA,** tab 10, at paras. 52-56.
[62] *Option Consommateurs c. Infineon Technologies,* (2013) *supra* note 18, **BoA,** tab 5, at para. 64.

MONTREAL, this 3rd day of October, 2018

(S) FAGUY & CO.

FAGUY & CO. BARRISTERS & SOLICITORS INC.
Attorneys for the Petitioner

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-06-000834-164

SUPERIOR COURT
(Class Action)

ROBERT LANDRY

Petitioner

v.

CONCORDIA INTERNATIONAL CORP.
-and-
MARK THOMPSON
-and-
ADRIAN DE SALDANHA

Respondents

v.

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Mise en cause

NOTICE OF PRESENTATION

TO: Me Marianne Ignacz
NORTON ROSE FULBRIGHT CANADA
1, Place Ville Marie, Suite 2500
Montréal (Québec)
H3B 1R1

SIRS:

PLEASE TAKE NOTICE that Petitioner's *Motion to Authorize a Class Action, Approve a Settlement Agreement, Fix the Opt-out Period and Claims Bar Deadline and for Other Relief* will be presented before the Superior Court on **Wednesday, October 10, 2018 at 9:30 a.m.** at the Montreal Courthouse, 1 Notre-Dame St. E, Montreal, Québec, in a room to be determined by The Honourable Pierre-C. Gagnon.

MONTREAL, this 3rd day of October, 2018

(S) Faguy & Co.

FAGUY & CO. BARRISTERS & SOLICITORS INC.
Attorneys for Petitioner