

CITATION: Kuiper v. Cook (Canada) Inc., 2024 ONSC 1306
COURT FILE NO.: CV-17-578210-00CP
DATE: 20240301

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)	
)	<i>Daniel E.H. Bach</i> for the Plaintiffs
ARIE KUIPER, WENDY KOPECK, and GARRY KOPECK)	
Plaintiffs)	
- and -)	
)	<i>Paul J. Martin and Sarah Armstrong</i> for the Defendants
COOK (CANADA) INC., COOK INCORPORATED, and WILLIAM COOK EUROPE APS)	
Defendants)	
Proceeding under the <i>Class Proceedings Act, 1992</i>)	HEARD: In writing
)	

PERELL, J.

REASONS FOR DECISION

[1] In this action pursuant to the *Class Proceedings Act, 1992*,¹ Arie Kuiper, Wendy Kopeck, and Garry Kopeck are the representative plaintiffs in a certified action against Cook (Canada) Inc., Cook Incorporated, and William Cook Europe APS.²

[2] The class action relates to optionally retrievable inferior vena cava filters, which are medical devices designed, manufactured, marketed, and sold by the Defendants in Canada. The Class Members are Canadian residents who were implanted with the Cook IVC Filter Products on or before January 8, 2020. They allege that the Defendants marketed and sold the IVC Filters without properly warning of the alleged increased risks of complications and injuries. The Defendants deny the allegations.

[3] Subject to the approval of the Court, the Parties have reached a settlement. The Plaintiffs now move for approval of the notice plan and the notice to the Class Members of the settlement and fee approval hearing, which is to be held on May 17, 2024.

[4] Under the Settlement, the Defendants will provide a claims-made settlement of up to \$54,000 CAD for each Qualifying Fracture Claimant, \$81,000 CAD for each Qualifying Death Claimant, and \$169,500 CAD for each Qualifying Open Surgery Claimant, with a *pro rata*

¹ S.O. 1992, c. 6.

² *Kuiper v. Cook (Canada) Inc.*, 2020 ONSC 128.

reduction in the amount of each payment to the extent that the total amount of the claims in categories (a), (b) and (c) above exceed \$4,062,720 CAD.

[5] The settlement includes a payment of \$2,708,480 for Class Counsel fee, administration costs, notice plan costs, interest, applicable taxes, and certain other qualified claims as provided in the settlement agreement. The final value of the compensation will not be determined until the end of the claim period.

[6] The Parties have agreed on the form and content of a Short-Form and a Long-Form Hearing Notice, as well as a Hearing Press Release.

[7] The Parties agreed on a plan for disseminating the Hearing Notice. It is proposed that the Long-Form Notice be disseminated as follows:

- a. sent by email or direct mail by Class Counsel to all Class Members or possible Class members known to them, to each of the Provincial Health Insurers, to relevant organizations, including, but not limited to: Canadian Hematology Society, Canada Interventional Radiology Association, Heart and Stroke Foundation of Canada and Thrombosis Canada, and to any person who requests it;
- b. posted by Class Counsel, in English and in French, on their respective websites;
- c. posted in English and French on www.ivcsettlement.ca;
- d. sent by the Defendants, in English and French, directly to counsel for all plaintiffs involved in any individual actions in Canada against the Defendants regarding the same or substantially similar allegations who have not previously opted-out of the Class; and
- e. sent by email by the Claims Administrator to any person who requests it, in both French and English where a person is located in Québec (or otherwise specifically requests) or in English otherwise.

[8] The Short-Form Notice will direct readers to the Long-Form Notice. It will be published once in the following newspapers, in either English or French, as appropriate for each newspaper, subject to each having reasonable publication deadlines and costs: (a) *The Globe and Mail*, national edition; (b) *National Post*, national edition; (c) *Toronto Star* (ON); (d) *Le Journal de Québec* (QC); (e) *Le Journal de Montreal* (QC); and (f) *The Gazette* (Montreal, QC).

[9] All Notices will direct potential Class Members to the Settlement Website where they will be able to obtain more information about the Settlement Agreement, review the Settlement Agreement and related documents, and, if the Settlement is approved, to access the claim forms and communicate with the Claims Administrator.

[10] While the *Class Proceedings Act, 1992* requires that notice of certification be given, it does not require that notice of a settlement approval hearing be given. Nevertheless, dissemination of a notice of settlement approval hearing has become convention and has been agreed to by the parties.³

[11] Section 19(1) of the *Class Proceedings Act, 1992* authorizes the court to order any party to give such notice as it considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the proceeding. Section 17(3) of the *Class Proceedings Act, 1992* lists

³ *McCarthy v. Canadian Red Cross Society*, [2007] O.J. No. 2314 (S.C.J.).

the factors that the Court should consider when making an order respecting notice.

[12] In the immediate case, I am satisfied that the notice and the notice distribution plan comply with all the requirements of the *Class Proceedings Act, 1992* and will ensure that Class Members are aware of: (a) the proposed settlement; (b) the date of the Settlement Approval Hearing; and (c) the procedures and timelines for filing an objection.

[13] For the above reasons, I grant the Plaintiffs' motion as requested.

Perell, J.

Released: March 1, 2024

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Defendants

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