

Federal Court



Cour fédérale

Date: 20160627

**Dockets: T-2175-04
T-2056-11**

Citation: 2016 FC 727

Toronto, Ontario, June 27, 2016

PRESENT: The Honourable Mr. Justice Hughes

Docket: T-2175-04

BETWEEN:

**JANSSEN INC. AND DAIICHI SANKYO
COMPANY, LIMITED**

**Plaintiffs
(Defendants by Counterclaim)**

and

TEVA CANADA LIMITED

**Defendant
(Plaintiff by Counterclaim)**

Docket: T-2056-11

AND BETWEEN:

**JANSSEN-ORTHO LLC, JANSSEN
PHARMACEUTICALS, INC., and OMJ
PHARMACEUTICALS, INC.**

Plaintiffs

and

**TEVA CANADA LIMITED and
DAIICHI SANKYO COMPANY, LIMITED**

Defendants

ORDER AND REASONS AS TO COSTS

[1] On May 31, 2016 I gave a Judgment with Reasons in these actions (cited as 2016 FC 593). I am now addressing the question of costs, left open in that Judgment, as I have received the requested submissions from Counsel for the parties.

[2] In my Judgment, paragraphs 1 and 2, I awarded damages to each of Janssen Inc. and Janssen Pharmaceuticals, Inc. The other two named Plaintiffs in action T-2056-11, Janssen-Ortho LLC, and OMJ Pharmaceuticals, Inc. (collectively called Janssen Puerto Rico in these proceedings) made no claim for damages by the time the trial was heard and I will not award any costs to either of them.

[3] Janssen Inc. and Janssen Pharmaceuticals, Inc. were successful in that they were awarded damages and, therefore, are entitled to costs. The issue becomes the quantum of those costs. Both of these parties were represented by the same solicitors and Counsel in these proceedings and will be awarded costs jointly. I will refer to these two entities simply as Janssen in these reasons.

[4] Janssen's Counsel have submitted a detailed draft Bill of Costs including fees, disbursements and taxes totalling \$1,458,751.00. Counsel for the Defendant Teva takes issue with virtually every item in that Bill and requests that the matter be submitted to an Assessment Officer with certain directions. There is no evidence that any party made any Offer to Settle that would have an effect on the quantum of costs.

[5] An assessment of the allowable quantum of costs and disbursements will be a difficult and tedious matter given the many challenges raised by Teva. An Assessment Officer will have little if any, familiarity with the file. I envision that excessive resources of the Court, and the parties, will be spent in pursuing the many issues that would have to be considered on an assessment.

[6] I will therefore Order that costs as a lump sum be paid to Janssen, inclusive of all fees disbursements and taxes, by Teva in the amount of one million dollars (\$1,000,000.00) which I regard as the most reasonable amount in the circumstances. However, I will give Janssen an option, to be exercised within twenty (20) days from the date of this Order, to have its costs assessed by an Assessment Officer having regard to the directions set out below.

[7] If Janssen elects in a timely manner to have its costs assessed by an Assessment Officer, that Officer is directed to have regard to the following:

1. The costs of the assessment shall be borne by Janssen;
2. The costs are to be assessed at the middle of Column IV;
3. Two Counsel, one senior and one junior, are allowed at trial and one Counsel, a senior, on any motion and any discovery;
4. Teva is entitled to set-off any proven costs thrown away as a result of late disclosure or late concession as to facts or issues by Janssen;
5. Where any pre-trial Order is silent out as to costs, no costs shall be awarded;

6. No costs shall be awarded in respect of any person, other than those set out in paragraph 3, who was in attendance at trial or motion or discovery other than as a witness;
7. No costs shall be awarded in respect of any trip to or from Puerto Rico other than the witness from there;
8. The bills submitted in respect of expert witnesses are excessive and shall be substantially reduced to be in line with the submissions made by Teva herein;
9. No disbursements as to meals, parking or transport in Toronto shall be allowed;
10. No disbursements as to online research shall be allowed;
11. The costs of printing and scanning shall be the same as those charged by the Court for like services;
12. Any agreement between the parties as to shared costs, such as for IMS data, shall be respected.

ORDER

FOR THE REASONS PROVIDED;

THIS COURT ORDERS that:

1. Janssen Inc. and Janssen Pharmaceuticals, Inc. are awarded costs jointly in the sum of \$1,000,000.00 (one million dollars) inclusive of all fees, disbursements and taxes to be paid by Teva Canada Limited forthwith unless, within twenty (20 days) from the date of this Order Janssen Inc. and Janssen Pharmaceuticals, Inc. jointly elect to have costs assessed by an Assessment Officer;
2. If Janssen Inc. and Janssen Pharmaceuticals, Inc. elect such an assessment, the Assessment Officer shall be guided by the Directions set out in Reasons.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2175-04
STYLE OF CAUSE: JANSSEN INC. AND DAIICHI SANKYO COMPANY,
LIMITED V TEVA CANADA LIMITED
AND DOCKET: T-2056-11
STYLE OF CAUSE: JANSSEN-ORTHO LLC, JANSSEN
PHARMACEUTICALS, INC., AND OMJ
PHARMACEUTICALS, INC. V TEVA CANADA
LIMITED AND DAIICHI SANKYO COMPANY, LIMITED

ASSESSMENT OF COSTS WITHOUT PERSONAL APPEARANCE OF THE PARTIES

ORDER AND REASONS AS TO COSTS: HUGHES J.

DATED: JUNE 27, 2016

WRITTEN REPRESENTATIONS BY:

Peter Wilcox
Jason Markwell

FOR THE PLAINTIFF(S)

Marcus Klee
Jonathan M. Giraldi
Aleem Abdulla

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Bellmore Neidrauer LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE PLAINTIFF(S)

Aitken Klee LLP
Barristers and Solicitors
Ottawa, Ontario

FOR THE DEFENDANT