

## SHORT FORM NOTICE OF CERTIFICATION

**Did you, or a close family member, have open chest cardiac surgery at a Canadian hospital or cardiac surgery facility between January 1, 2010 and July 23, 2018?**

**If so, a class action lawsuit may affect your rights, if the surgery involved a Sorin 3T Heater-Cooler System**

**The lawsuit alleges that there is a risk of *M. chimaera* infection arising from exposure to a Sorin 3T Heater-Cooler System used during open chest cardiac surgery during that time frame**

The lawsuit does not affect anyone who had open chest cardiac surgery involving a Sorin 3T Heater-Cooler System after July 23, 2018.

Please carefully read this notice about a certified class action

### Who is included in the Class?

This Notice is for anyone who meets one of the following descriptions:

1. **The Patient Class** – every person in Canada, who underwent open chest cardiac surgery during which the Sorin 3T Heater-Cooler System (“HCU”) was used at one of the institutions listed below after January 1, 2010 and before the end date listed for that institution below:

INSTITUTION NAME	City and Province	END DATE
BC Children’s and Women’s Hospital	Vancouver, BC	November 29, 2017
Cardiac, Vascular & Stroke Research Institute	Hamilton, ON	June 29, 2018
CIUSSS Du Saguenay -Lac-Saint-Jean	Chicoutimi, PQ	November 2, 2017
Foothills Medical Centre	Calgary, AB	July 18, 2018
General Hospital Health Sciences Centre	St. John’s, NL	September 3, 2017
Hamilton General Hospital	Hamilton, ON	September 29, 2017
Health Sciences North	Sudbury, ON	November 15, 2017
CHU Hôpital Ste. Justine	Montreal, PQ	October 25, 2017
Chul et Centre mère-enfant Soleil (CMES)	Québec City, PQ	October 31, 2017
CHUM Hôtel Dieu De Montréal	Montréal, PQ	October 17, 2017

<b>INSTITUTION NAME</b>	<b>City and Province</b>	<b>END DATE</b>
Institut de Cardiologie de Montréal	Montréal, PQ	August 31, 2017
Institut Universitaire de Cardiologie	Québec City, PQ	October 19, 2017
IWK Health Centre	Halifax, NS	October 16, 2017
Kelowna General Hospital	Kelowna, BC	December 12, 2017
Kingston General Hospital	Kingston, ON	March 1, 2018
London Health Sciences Centre - University Hospital	London, ON	May 11, 2018
McGill University Health Centre - Glen Site	Montreal, PQ	July 23, 2018
McGill University Health Centre - Montreal General Hospital	Montreal, PQ	November 16, 2017
McGill University Health Centre - Montreal Children's Hospital	Montreal, PQ	November 16, 2017
Ottawa Civic Hospital	Ottawa, ON	April 17, 2018
QEII Health Sciences Centre	Halifax, NS	January 15, 2018
Regina General Hospital	Regina, SK	August 31, 2017
Royal Columbian Hospital	New Westminster, BC	December 14, 2017
Royal Jubilee Hospital	Victoria, BC	December 1, 2017
Royal University Hospital	Saskatoon, SK	October 4, 2017
Saint John Regional	Saint John, NB	November 3, 2017
Sir Mortimer B Davis Jewish General Hospital	Montreal, PQ	October 20, 2017
Southlake Regional Hospital	Newmarket, ON	May 10, 2018
St. Boniface General	Winnipeg, MN	May 11, 2018
St. Paul's Hospital	Vancouver, BC	January 16, 2018
Sunnybrook Hospital	Toronto, ON	March 14, 2018
The Hospital for Sick Children	Toronto, ON	December 14, 2017
Toronto General Hospital	Toronto, ON	May 14, 2018
Trillium Health Partners – Mississauga Hospital	Mississauga, ON	May 17, 2018
University of Alberta Hospital	Edmonton, AB	October 5, 2017

2. **The FLA Class** – all dependents of the Patient Class as defined by s. 61 of the *Family Law Act*, R.S.O. 1990, s. F.3 and similar legislation in the other Provinces. This may include spouses,

children, grandchildren, parents, grandparents, brothers and sisters of the Patient class members.

## What is this Class Action About?

The claim alleges that Sorin 3T Heater-Cooler System units (“HCUs”) manufactured by Sorin Group Deutschland GMBH (“Sorin”) were contaminated with a bacteria called *M. chimaera*. It is also alleged that if this bacteria enters the body, it can potentially cause infections, severe infections have been reported and even death has been reported in the most extreme circumstances.

Heater Cooler Systems are used during open chest cardiac surgery to maintain the patient’s body temperature. Heater Cooler Systems are widely used in Canadian hospitals. The HCUs at issue in this action were used for some, but not necessarily all, surgeries in the specific time periods and in the specific Canadian hospitals listed above.

You may have had open chest cardiac surgery at one of the listed hospitals during the listed time periods; but if a Sorin HCU was not used during your surgery, you are not a class member. .

This Class Action lawsuit alleges that Sorin and its Canadian distributor, LivaNova Canada Corp. (together the “Defendants”) were negligent in the design, manufacture, pre-market and after-market testing, and/or distribution of the HCUs. The claim alleges that the use of these HCUs during open chest cardiac surgery exposed or potentially exposed patients to a *M. chimaera* bacterial infection. The claim also alleges that the Defendants failed to warn the Class members about the risk of *M. chimaera* infection from exposure to the HCUs, and that they failed in their alleged duty to recall the contaminated HCUs.

The Class Action seeks compensation for everyone who was infected with *M. chimaera* following open chest cardiac surgery where a Sorin HCU was used, and their immediate family members, as well as compensation for those patients who received notice that they might have been exposed to an *M. chimaera* infection.

The Defendants deny the Plaintiff’s allegations of negligence in design, manufacturing, pre-market and after-market testing and distribution, and the allegations of failure to warn or recall the HCUs. The Defendants also deny that the use of the HCUs exposed or potentially exposed patients to a *M. chimaera* bacterial infection, and deny the claim for compensation.

Certification of the action simply means that the action may continue as a class proceeding. It does not decide if the Plaintiff’s claims or the Defendants’ defences will succeed.

If you have any questions regarding your medical condition, you should contact your doctor.

Your hospital records from the surgery may indicate if a Sorin HCU was used during your open chest cardiac surgery.

If you have any questions about the class action, you should contact Class Counsel at the addresses below.

## What compensation is claimed?

The Plaintiff and Class Members claim general damages for the injuries the Class members say they have experienced, compensation for their out of pocket losses, punitive damages, aggravated damages, exemplary damages, and the recovery of health care costs incurred by provincial health insurers.

The details of the claims are set out in the 4<sup>th</sup> Amended Statement of Claim. A copy of the Statement of Claim is on Class Counsel's website at [www.livanovaclassaction.com](http://www.livanovaclassaction.com) or <https://waddellphillips.ca/wp-content/uploads/2020/12/FourthASOC.pdf>.

The Defendants' deny the claims for compensation. The Statement of Defence is on Class Counsel's website at <https://waddellphillips.ca/wp-content/uploads/2019/06/19.04.25-Statement-of-Defence.pdf>

## What do I need to do now?

If you are a member of one of the two classes mentioned above and you want to participate in this lawsuit, then you do not have to do anything at this stage. If you do nothing, then you will automatically be included in the Class Action as a Class Member. You will also be legally bound by all orders and judgments of the Court. This means that if a judgment is made by the Court, or if a settlement is reached between the parties, and the settlement is approved by the Court, you are bound by the result.

If you are a Class Member, you will not be able to start or continue with your own lawsuit against the Defendants about the same claims that are included in this Class Action. If the Class gets money or benefits from the Defendants in a judgment or a settlement between the parties, you will be notified about how to ask for a share of the money, or what your options are at that time.

Check <https://waddellphillips.ca/class-actions/LivaNova-class-action/> or <https://livanovaclassactioncanada.com/> from time to time for updates on the progress of the Class Action.

If you do not want to be included in this Class Action and would like to be excluded, please read the section below that talks about opting out.

## Do I have to pay anything?

**There is NO PAYMENT necessary to participate in the Class Action.** Class Counsel will be paid only if this Class Action succeeds at trial or if there is a settlement. Class Counsel have been retained by the Plaintiff on a contingency fee basis. If Class Counsel gets money for the Class, they will ask the Court to approve payment of their fees and expenses from the amount to be paid to the Class. The fee request will not exceed 25% of the money recovered. If the Court grants Class Counsel's request, the fees and expenses will either be deducted from any money obtained for the Class Members, or paid separately by the Defendants. You will not have to pay any of these fees and expenses personally out-of-pocket. Class Counsel do not get paid any fees until the Court approves the amount that they will be paid.

If a separate hearing is required to establish your individual entitlement to a payment, or the amount of such a payment, and you chose to hire your own lawyer to help with that process, then the fees that you pay to that lawyer will be in addition to the amount to be paid to Class Counsel.

The Representative Plaintiff has received financial support for this Class Action from the Ontario Class Proceeding Fund. The Fund will indemnify the Plaintiff for any adverse court cost awards, and it is paying for many of the disbursements that are being incurred to prosecute the case, such as experts' fees and examiner expenses. In exchange for its support, the Fund will be paid a levy of 10% of the net proceeds of any judgment or settlement, and it will be repaid for the disbursements that it has paid.

### **I do not want to be involved in this Class Action. What do I need to do?**

You can exclude yourself from this Class Action by a process known as "opting out." If you opt out, you will not be able to get any money or benefits from this Class Action if a judgment is granted or a settlement is reached. But, if you exclude yourself, you may sue the Defendants on your own. You will not be bound by anything that happens in this Class Action.

To exclude yourself (opt-out), you must deliver a written Opt-Out request to the Notice Administrator. If you send it by mail, it must be postmarked on or before **Monday, September 27, 2021 at 11:59 pm EST**. If you email, fax, or courier the Opt-Out request, it must be time-stamped as having been sent on or before **Monday, September 27, 2021 at 11:59 pm EST**. Opt-Out requests received after this date will not be accepted or valid. Opt out forms will be available on the Notice Administrator's website at: <https://www.trilogyclassactions.ca/>.

**If you are a Patient Class Member and you do not want to participate in the Class Action, your Opt-Out request must clearly state that you are opting out of the *Nardi v Sorin Group Deutschland GMBH & LivaNova Canada Corp.* Class Action, and you must also include your full name, mailing address, email address (if available), telephone number, and your Provincial Health Insurance number.** Failure to include any of this information will result in your Opt-out request being invalid.

If you are a FLA Class Member whose Patient Class Member relative is deceased, your Opt-Out request must clearly state that you are opting out of the *Nardi v Sorin Group Deutschland GMBH & LivaNova Canada Corp.* Class Action, and you must also include the deceased Patient Class Member's full name, mailing address, telephone number, Provincial Health Insurance number, along with the Patient Class Member's date of death, and a statement of whether the FLA Class Member believes that the deceased Patient Class Member's death was related to an *M. Chimaera* infection.

Opt-Out Requests must be sent to:

**Trilogy Class Actions Services**  
117 Queen Street, P.O. Box 1000  
Niagara-on-the-Lake, ON, L0S1J0  
Toll Free: (877) 400-1211  
Fax: (416) 342-1761  
[inquiry@trilogyclassactions.ca](mailto:inquiry@trilogyclassactions.ca)

#### **Deadline for Opting Out:**

No Opt-Out Form or written requests to opt out of this Class Action will be accepted after **Monday, September 27, 2021 at 11:59 pm EST**. If you have not excluded yourself from the Class Action by that time

and date, you will automatically be included in the Class Action as a Class Member, and you may not exclude yourself thereafter.

### What if I have more questions?

This notice summarizes the lawsuit. More details and important documents can be viewed at:

<https://waddellphillips.ca/class-actions/LivNova-class-action/> or

<https://livanovaactioncanada.com/>.

You may contact Class Counsel at either:

<p><b>Waddell Phillips Professional Corporation</b> 36 Toronto Street, Suite 1120 Toronto ON M5C 2C5</p> <p><a href="mailto:reception@waddellphillips.ca">reception@waddellphillips.ca</a></p> <p>1-800-430-3107 (toll-free)</p> <p>You may also fill in the confidential inquiry form on Class Counsel's website at <a href="https://waddellphillips.ca/class-actions/LivNova-class-action/">https://waddellphillips.ca/class-actions/LivNova-class-action/</a></p>	<p><b>Flaherty McCarthy LLP</b> 95 Wellington Street West 10<sup>th</sup> Floor, Suite 1000 Toronto ON M5J 2N7</p> <p><a href="mailto:info@livanovaaction.com">info@livanovaaction.com</a></p> <p>416-368-0231</p>
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This notice was approved by the Ontario Superior Court of Justice. It is a summary of the terms of the certification order. If there is a conflict between the provisions of this notice and the terms of the certificate order, the certification order prevails.