

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-06-001004-197

RICCARDO CAMARDA

Plaintiff

v.

ABBOTT LABORATORIES, LIMITED *et al.*

Defendants

**DEFENDANTS' JOINT APPLICATION FOR
THE COMMUNICATION OF DOCUMENTS
(Art. 574 C.C.P.)**

TO THE HONOURABLE GARY D.D. MORRISON, J.S.C., SITTING IN AND FOR THE DISTRICT OF MONTREAL, AND DESIGNATED TO PRESIDE OVER THE PRESENT MATTER, DEFENDANTS RESPECTFULLY SUBMIT AS FOLLOWS:

A. Introduction

1. Pursuant to the case management directive issued on June 26, 2020 by Justice Gary D.D. Morrison in his capacity as Case Management Judge in this proceeding, this is the joint application on behalf of all Defendants who seek an order requiring that plaintiff execute the necessary consent forms permitting the communication to Defendants of the following medical records:
 - (i) Plaintiff's complete medical records at the Royal Victoria Hospital;
 - (ii) Plaintiff's complete medical records held by other healthcare providers, clinics and hospitals where he had consultations with respect to opioids or which led to the prescription of opioids;
 - (iii) Plaintiff's complete pharmaceutical records, where prescriptions of opioids were dispensed;
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- (iv) Plaintiff's complete Public Prescription Drug Insurance Plan spreadsheet regarding the prescriptions of opioids he was dispensed ("**PPDIP spreadsheet**");
- (v) Plaintiff's complete records with any private insurance company providing coverage for prescription medications, where prescriptions of opioids were dispensed.

B. The Procedural Context

2. In his *Amended Application for Authorization to Institute a Class Action* dated October 25, 2019 (the "**Application**"), Mr. Riccardo Camarda ("**Plaintiff**") seeks this Court's authorization to bring a class action against Defendants on behalf of the following class:

All persons in Quebec who have been prescribed and consumed any one or more of the opioids manufactured, marketed, distributed and/or sold by the Defendants between 1996 and the present day ("Class Period") and who suffer or have suffered from Opioid Use Disorder, according to the diagnostic criteria herein described.

The Class includes the direct heirs of any deceased persons who met the above-mentioned description.

The Class excludes any person's claim, or any portion thereof, subject to the settlement agreement entered into in the court file no (...). (...) 200-06-000080-070, provided that such settlement agreement becomes effective as a result of the issuance of the requisite court approvals.

3. Plaintiff seeks to hold Defendants liable for the damages he alleges having suffered further to his use of opioids over a period of twelve years. He claims that he was first prescribed opioids for pain management following a splenectomy in March 2006.
4. Plaintiff alleges that, over time, his continued use of opioids caused him to develop an addiction thereto, which in turn greatly affected his personal, social, and professional life.
5. In 2018, Plaintiff entered an inpatient program at the Montreal General Hospital to treat his alleged addiction. He was given Suboxone and has been in remission ever since. Plaintiff claims that he has been able to return to his previous life following the inpatient program.
6. Plaintiff further claims that, over the twelve years during which he was prescribed opioids, he was never made aware of the risks of addiction associated with their use. He alleges that he would have never agreed to take opioids in 2006 had these risks been disclosed to him. Plaintiff claims that he would have thus avoided the turmoil caused by the opioid addiction he subsequently developed.

C. Defendants' Right to a Full Answer and Defence with respect to the Criteria of Article 575 C.C.P.

7. In the context of Plaintiff's Application, the Defendants have the right to a full answer and Defence with respect to each of the criteria listed at article 575 C.C.P. It is these criteria which the Court must analyze in order to determine whether plaintiff has met the requirement for authorization, including whether the facts alleged appear to justify the conclusions sought and whether Plaintiff has a valid personal cause of action.

D. Defendants' Right to Obtain Plaintiff's Relevant Records

8. Plaintiff alleges that he was diagnosed with thalassemia in late 2005 (para. 2.156). As a result of this medical condition, his physicians recommended he undergo surgery to remove his spleen (para. 2.157).
9. Plaintiff underwent a splenectomy at the Royal Victoria Hospital on March 1, 2006 (para. 2.158).
10. Plaintiff alleges that it is immediately after this surgery that he was first treated with opioids, which were administered to him intravenously at the Royal Victoria Hospital during the two-week post-operative recovery period (para. 2.159).
11. Following the splenectomy, Plaintiff continued to have opioids prescribed to him as an out-patient at the Royal Victoria Hospital. Even after the pain from his surgery subsided, he claims that he suffered from continuing chronic pain due to an overactive bone marrow (para. 2.162).
12. As a result, Plaintiff's hematologist allegedly prescribed opioids to treat this chronic pain over the course of the following twelve years, until approximately February 2018.
13. Plaintiff's opioid use is the foundation of the class action he is seeking to have authorized, and of the legal syllogism underpinning his Application.
14. However, the Application contains only bald, vague and imprecise allegations regarding the specific opioids prescribed to, and taken by, Plaintiff, the reasons these medications were prescribed, and the safety information provided to him by his healthcare professionals at the time of each prescription.
15. For example:
 - (i) Plaintiff does not provide any details regarding his first use of opioids. The Application is silent regarding the actual medications dispensed

and the discussions had with his healthcare professionals at that time (para. 2.159).¹

- (ii) Plaintiff alleges that he was prescribed 2mg of Dilaudid when he was released from hospital on March 20, 2006, to be taken as needed. However, the Application is again silent in respect of the explanations given to him by his treating physician(s) prior to receiving this medication (para. 2.160).
- (iii) Plaintiff also fails to provide any details regarding the quantity of opioids prescribed or the actual medication dispensed during the ensuing 12-year period. It is common knowledge that when a medication is dispensed by a pharmacist, the patient is given the option to choose either the brand-name or the generic version (if a generic version is available). Therefore, when Plaintiff claims that he was prescribed Dilaudid, it is entirely possible that he was dispensed a generic version of the medication. Based on the record before the Court, it is impossible to know which medications Plaintiff actually took, and what quantity was in fact consumed (para. 2.160).
- (iv) Plaintiff does not specify when he was diagnosed as suffering from chronic pain, who reached this diagnosis or what he was told by that physician regarding chronic pain management. It is also unclear what factors lead to this diagnosis, and if elements other than his overactive bone marrow could have led to it (para. 2.162).
- (v) Plaintiff alleges that he received a prescription for Hydromorph Contin and Dilaudid at the start of January 2007. However, the Application is again silent regarding the explanations given to him by the healthcare professionals prior to receiving the medications. Plaintiff also does not specify which opioids were subsequently prescribed by the hematologist (whose name is not provided) for the following twelve years, nor which opioids were effectively dispensed by pharmacies (para. 2.163).
- (vi) Plaintiff does not provide any details regarding his frequent visits to the emergency room. For every undated hospital visit vaguely alluded to, Plaintiff fails to disclose the specific opioids that were administered or prescribed to him and what explanations were given to him by the healthcare professionals prior to receiving the medications (para. 2.166).
- (vii) Further, it is unclear if the opioids referred to at para. 2.168 were limited to Hydromorph Contin and Dilaudid, or if other medications were included in his "regular doses". The allegations in this paragraph are

¹ While Plaintiff mentions that Hydromorphone treated his pain more effectively than Morphine, no additional details are disclosed regarding the specific medications being referred to.

undated and it is impossible to know which specific opioids he may have taken, and when.

- (viii) Plaintiff relies on his memory in respect of the information disclosed concerning the use of opioids over a 12-year period. Without accessing the Plaintiff's medical records, it is impossible to know what information was in fact disclosed to him at the time of his medical visits. Plaintiff admits that he suffered from "brain-fog" during this period, making it imprudent to rely on his memory alone. Further, the patient information he claims he received in a pharmacy in 2017, where no mention of the risk of addiction is disclosed, is not adduced into evidence (para. 2.170).
 - (ix) Although Plaintiff mentions what medications he was prescribed at para. 2.179, the Application is silent in respect of the explanations given to him by the healthcare professionals prior to receiving these medications. Plaintiff also fails to mention which opioids he actually received at the pharmacy, whether a generic or a brand-name.
 - (x) Plaintiff's described lethargic state in 2017 is not accompanied by any details regarding what specific opioids Plaintiff used, which lead to this alleged condition (para. 2.187).
 - (xi) Plaintiff also does not provide any details as to the dates on which he attempted to stop using opioids "cold turkey". It is unclear which opioids he was taking when making these attempts to quit (para. 2.188).
16. Given the foregoing, a full assessment of whether the authorization criteria of art. 575 C.C.P. are met requires the production of the following medical records.
- (a) *Medical Records – Royal Victoria Hospital*
17. As indicated above, Plaintiff's Application provides very few details about which specific opioids Plaintiff took over the years, at what point in time, and at what frequency. The Court and Defendants are left with a very incomplete picture of the medications at issue in this action.
18. Plaintiff also alleges that he received no information about the risks related to taking opioids. However, he makes these allegations without providing access to his medical records, which records are likely to contain the notes of the prescribing physician(s) made at the time of Plaintiff's treatment.
19. As noted, Plaintiff's course of treatment with opioid medications began when he was a patient at the Royal Victoria Hospital in 2006, following his splenectomy, and continued in the 12 years which followed.
20. Consequently, Defendants seek access to Plaintiff's medical records at that hospital in order to have a more complete picture of the circumstances under which opioid medications were prescribed to him, both initially and during the years which

followed, including the discussions he may have had with his physicians regarding the medications they were prescribing to him.

21. These factual elements are important to a full assessment of whether the criteria for authorization pursuant to art. 575 C.C.P. are met, specifically, whether Plaintiff has a valid personal cause of action and whether the facts alleged in the Application for Authorization appear to justify the conclusions sought.

(b) Medical Records – Other Healthcare Providers

22. If Plaintiff consulted other healthcare providers with respect to opioids in other hospitals or clinics, these records should also be identified, and access should be provided for the same reasons as mentioned above in respect of the Royal Victoria Hospital records.
23. Plaintiff's complete medical records at the Royal Victoria Hospital, along with records held by any other healthcare provider, hospital or clinic where opioids were prescribed, will contain notes concerning these prescriptions, including the type of opioid prescribed and the information provided to the Plaintiff concerning the opioids in question.

(c) Pharmaceutical Records, PPDIP spreadsheet and private insurance plan records

24. The excerpts of Plaintiff's medical record at the Montreal General Hospital's inpatient treatment program, which only cover the span of two months in 2018, do not provide an accurate representation of his specific use of opioids over the period. On the contrary, the extract from this medical record only represents the alleged end of Plaintiff's battle with his opioid use disorder.
25. To exercise a full answer and defence, Defendants must, at a minimum, know which specific opioids were taken and when. This will allow Defendants to know if the medications they manufactured, sold or distributed over the period were actually taken by Plaintiff.
26. Moreover, accessing Plaintiff's pharmacy records where prescriptions of opioids were dispensed is a clear and reliable means to understanding what medications were taken over the period, and at what time.
27. Given that Plaintiff's intake of opioids allegedly lasted more than a decade, his pharmacy records may not be complete. The PPDIP spreadsheet lists the RAMQ-covered medications that were taken by Plaintiff over the period. The PPDIP spreadsheet also extends further back in time than most pharmacy records and therefore, it will fill any gaps in the pharmacy records.
28. However, the PPDIP spreadsheet will only show Plaintiff's pharmaceutical history in respect to medications that are covered by the RAMQ. Should Plaintiff's opioid prescriptions have been covered by a private insurance plan at any time over the period where he claims he consumed opioids, access to his records at the relevant

insurance companies should also be provided, for the same reasons as outlined above.

29. Accordingly, it is necessary for Defendants to have access to Plaintiff's pharmacy records, PPDIP spreadsheet and private insurance plan records related to his opioid prescriptions in order to understand which opioids were effectively used by Plaintiff.

(d) Relevant Time Period

30. Access to the medical and pharmaceutical records requested should not be restricted in time. Notably, Plaintiff himself chose to invoke his healthy disposition pre-2006 several times in his Application. These general allegations should be examined in light of Plaintiff's medical and pharmacy records related to opioid prescriptions.
31. A note contained in the Plaintiff's medical record with the Montreal General Hospital (enclosed herewith, see p. 16) shows that he has suffered from chronic pain since childhood. Given that opioids are used to relieve pain, this information tends to indicate that Plaintiff may have taken opioids earlier than at the time of his splenectomy.

E. Conclusion

32. Both the medical and pharmaceutical records, including the PPDIP spreadsheet and records from the private insurer, will serve to fill some important gaps with respect to omissions in Plaintiff's Application, and will allow the Defendants to provide a full answer and defence on the authorization criteria.
33. The records requested are limited to those relating to the Plaintiff's opioid prescriptions, which is central to the Application and more particularly to the Plaintiff's individual cause of action. The Defendants are not seeking to gain access to all of Plaintiff's medical and pharmacy records.
34. Considering the above, the order sought by Defendants meets the criteria of proportionality, will provide important guidance to this Court about whether the criteria under article 575 C.C.P. are met, and will allow the Defendants to put forth a full answer and defence in response to the claims made against them.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

ORDER the Plaintiff to execute the necessary consent forms to allow the Defendants to obtain the following records:

- (i) Plaintiff's complete medical records at the Royal Victoria Hospital;

- (ii) Plaintiff's complete medical records held by other healthcare providers, clinics and hospitals where he had consultations with respect to opioids or which led to the prescription of opioids;
- (iii) Plaintiff's complete pharmaceutical records, where prescriptions of opioids were dispensed;
- (iv) Plaintiff's complete Public Prescription Drug Insurance Plan spreadsheet, where prescriptions of opioids were dispensed;
- (v) Plaintiff's complete records with any private insurance company providing coverage for prescription medications, where prescriptions of opioids were dispensed.

RESERVE the rights of Defendants to apply to this Court for any other preliminary motions relevant to the authorization stage of the proceedings;

THE WHOLE without costs, unless contested.

MONTREAL, August 14, 2020

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP
Attorneys for Defendant
ABBOTT LABORATORIES, LIMITED

MONTREAL, August 14, 2020

Goodmans LLP

GOODMANS LLP
Attorneys for Defendant
APOTEX INC.

MONTREAL, August 14, 2020

IMK LLP

IMK LLP
Attorneys for Defendant
APOTEX INC.

MONTREAL, August 14, 2020

Audren Rolland LLP

AUDREN ROLLAND LLP
Attorneys for Defendant
ARALEZ PHARMACEUTICALS
CANADA INC.

MONTREAL, August 14, 2020

McMillan LLP

MCMILLAN LLP
Attorneys for Defendants
BGP PHARMA ULC
and **MYLAN PHARMACEUTICALS ULC**

MONTREAL, August 14, 2020

IMK LLP

IMK LLP
Attorneys for Defendants
ROXANE LABORATORIES INC. and
BOEHRINGER INGELHEIM
(CANADA) LTD.

MONTREAL, August 14, 2020

DLA Piper (Canada) LLP

DLA PIPER (CANADA) LLP
Attorneys for Defendant
BRISTOL-MYERS SQUIBB CANADA CO.

MONTREAL, August 14, 2020

Lavery De Billy LLP

LAVERY, DE BILLY, LLP
Attorneys for Defendant
CHURCH & DWIGHT CANADA
CORP.

MONTREAL, August 14, 2020

Oslin Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for Defendants
COBALT PHARMACEUTICALS INC.,
JODDES LIMITED,
PHARMASCIENCE INC.,
SUN PHARMA CANADA INC. and
TEVA CANADA LIMITED

MONTREAL, August 14, 2020

Woods

WOODS
Attorneys for Defendant
ETHYPHARM INC.

MONTREAL, August 14, 2020

Blake Cassels & Graydon LLP

BLAKES, CASSELS & GRAYDON LLP
Attorneys for Defendant
JANSSEN INC.

MONTREAL, August 14, 2020

FERNET AVOCATS inc.

FERNET AVOCATS INC.
Attorneys for Defendants
LABORATOIRE ATLAS INC. and
LABORATOIRE RIVA INC.

MONTREAL, August 14, 2020

TORYS

TORYS
Attorneys for Defendant
SANOFI-AVENTIS CANADA INC.

MONTREAL, August 14, 2020

McCARTHY TETRAULT LLP

McCARTHY TETRAULT LLP
Attorneys for Defendants
PALADIN LABS INC.

MONTREAL, August 14, 2020

OSLER, HOSKIN & HARCOURT LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for Defendant
SANIS HEALTH INC.

MONTREAL, August 14, 2020

MILLER THOMSON LLP

MILLER THOMSON LLP
Attorneys for Defendants
PRO DOC LTÉE

MONTREAL, August 14, 2020

TORYS LAW FIRM LLP

TORYS LAW FIRM LLP
Attorneys for Defendant
PFIZER CANADA ULC

MONTREAL, August 14, 2020

BLAKE, CASSELS & GRAYDON LLP

BLAKE, CASSELS & GRAYDON LLP
Attorneys for Defendants
VALEANT CANADA LP and
4490142 CANADA INC.,
F.K.A. MEDA VALEANT PHARMA
CANADA INC.

MONTREAL, August 14, 2020

BLAKE, CASSELS & GRAYDON LLP

BLAKE, CASSELS & GRAYDON LLP
Attorneys for Defendant
MERCK FROSST CANADA & CO

MONTREAL, August 14, 2020

Fasken Martineau Dumoulin LLP

**FASKEN MARTINEAU DUMOULIN
LLP**

Attorneys for Defendants

**SANDOZ CANADA INC. and
NOVARTIS PHARMACEUTICALS
CANADA INC.**

NOTICE OF PRESENTATION

TO: Me André Lespérance
Me Gabrielle Gagné
**TRUDEL, JOHNSTON &
LESPÉRANCE**
750 Côte de la Place-d'Armes
Suite 90
Montréal (Quebec) H2Y 2X8

(Attorneys for the Plaintiff)

Me Avram Fishman
Me Mark E. Meland
Me Margo R. Siminovitch
Me Tina Silverstein
FISHMAN FLANZ MELAND PAQUIN
4100-1250 René-Lévesque Blvd. West
Montréal (Quebec) H3B 4W8

(Attorneys for the Plaintiff)

TAKE NOTICE that the *Defendants' Joint Application for the Communication of Documents* (Art. 574 C.C.P.) will be presented for hearing at a date and time and as per any modalities to be set by the Honourable Mr. Justice Gary D.D. Morrison, J.S.C.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, August 14, 2020

McCARTHY TÉTRAULT LLP
McCARTHY TÉTRAULT LLP
Attorneys for Defendant
ABBOTT LABORATORIES, LIMITED

MONTREAL, August 14, 2020

Goodmans LLP
GOODMANS LLP
Attorneys for Defendant
APOTEX INC.

MONTREAL, August 14, 2020

IMK LLP
IMK LLP
Attorneys for Defendant
APOTEX INC.

MONTREAL, August 14, 2020

Audren Rolland LLP

AUDREN ROLLAND LLP
Attorneys for Defendant
ARALEZ PHARMACEUTICALS
CANADA INC.

MONTREAL, August 14, 2020

McMillan LLP

MCMILLAN LLP
Attorneys for Defendants
BGP PHARMA ULC
and **MYLAN PHARMACEUTICALS ULC**

MONTREAL, August 14, 2020

IMK LLP

IMK LLP
Attorneys for Defendants
ROXANE LABORATORIES INC. and
BOEHRINGER INGELHEIM
(CANADA) LTD.

MONTREAL, August 14, 2020

DLA PIPER (CANADA) LLP

DLA PIPER (CANADA) LLP
Attorneys for Defendant
BRISTOL-MYERS SQUIBB CANADA CO.

MONTREAL, August 14, 2020

Lavery De Billy LLP

LAVERY, DE BILLY, LLP
Attorneys for Defendant
CHURCH & DWIGHT CANADA
CORP.

MONTREAL, August 14, 2020

Osler Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for Defendants
COBALT PHARMACEUTICALS INC.,
JODDES LIMITED,
PHARMASCIENCE INC.,
SUN PHARMA CANADA INC. and
TEVA CANADA LIMITED

MONTREAL, August 14, 2020

WOODS

WOODS

Attorneys for Defendant
ETHYPHARM INC.

MONTREAL, August 14, 2020

Blake Cassels & Graydon LLP

BLAKES, CASSELS & GRAYDON LLP

Attorneys for Defendant
JANSSEN INC.

MONTREAL, August 14, 2020

Fernet Avocats Inc.

FERNET AVOCATS INC.

Attorneys for Defendants
**LABORATOIRE ATLAS INC. and
LABORATOIRE RIVA INC.**

MONTREAL, August 14, 2020

TORYS

TORYS

Attorneys for Defendant
SANOFI-AVENTIS CANADA INC.

MONTREAL, August 14, 2020

McCarty Tétrauld LLP

MCCARTHY TÉTRAULT LLP

Attorneys for Defendants
PALADIN LABS INC.

MONTREAL, August 14, 2020

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for Defendant
SANIS HEALTH INC.

MONTREAL, August 14, 2020

Miller Thomson LLP

MILLER THOMSON LLP

Attorneys for Defendants
PRO DOC LTÉE

MONTREAL, August 14, 2020

TORYS Law Firm LLP

TORYS LAW FIRM LLP

Attorneys for Defendant
PFIZER CANADA ULC

MONTREAL, August 14, 2020

MONTREAL, August 14, 2020

Blake, Cassels & Graydon
BLAKE, CASSELS & GRAYDON LLP
Attorneys for Defendants
VALEANT CANADA LP and
4490142 CANADA INC.,
F.K.A. MEDA VALEANT PHARMA
CANADA INC.

Blake, Cassels & Graydon LLP
BLAKE, CASSELS & GRAYDON LLP
Attorneys for Defendant
MERCK FROSST CANADA & CO

MONTREAL, August 14, 2020

Fasken Martineau Dumoulin LLP
FASKEN MARTINEAU DUMOULIN
LLP
Attorneys for Defendants
SANDOZ CANADA INC. and
NOVARTIS PHARMACEUTICALS
CANADA INC.

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ORIGINAL

M^e Michel Gagné /
Me Emmanuelle Poupart /
Me Samuel Lepage /
137277-522068

BC0847

McCarthy Tétrault S.E.N.C.R.L., s.r.l.
Avocats • Agents de brevets et marques de commerce
Barristers & Solicitors • Patent & Trade-mark Agents

Bureau 2500
1000, rue De La Gauchetière Ouest
Montréal (Québec) H3B 0A2
Tél. : 514 397-4100
Télec. : 514 875-6246
notification@mccarthy.ca