

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

**SUPERIOR COURT
(Class Action)**

No.: 500-06-000948-188

MICHAEL POHORESKY

and

HAROLD POHORESKY

Plaintiffs

v.

OTSUKA PHARMACEUTICAL INC. **CANADA**

and

LUNDBECK CANADA INC.

Defendants

**APPLICATION TO SUSPEND THE CLASS ACTION
(Article 49 C.C.P.)**

**IN SUPPORT OF THEIR APPLICATION TO SUSPEND THE CLASS ACTION,
THE PLAINTIFFS RESPECTFULLY SUBMIT AS FOLLOWS:**

1. On or around 9 October 2018, the Application to Authorize the Class Action was notified upon Defendants and upon Defendants' related corporate entities domiciled in Japon, Denmark and the United States, being Otsuka Pharmaceutical Company Limited, Otsuka Pharmaceutical Development & Commercialization Inc., H. Lundbeck A/S and Lundbeck Research USA Inc. (the "**Foreign Entities**"), the whole as it appears from the Court record.
2. On 3 December 2021, the Honourable Suzanne Courchesne, J.S.C., authorized the class action against the Defendants and the Foreign Entities, as it appears from the Court record.

3. On 16 February 2022, the Québec Court of Appeal granted the Foreign Entities leave to appeal Justice Courchesne's authorization decision, as it appears from the judgment of the Honourable Lucie Fournier, J.C.A., filed in the Court record.
4. On 12 September 2022, the Québec Court of Appeal granted the appeal of the Out-of-Province Defendants and quashed the authorization of the class action against the Foreign Entities, as it appears from the Québec Court of Appeal Judgment denounced in support hereof as **Exhibit R-1**.
5. On 14 November 2022, Plaintiffs filed an Application for Leave to Appeal the judgment of the Québec Court of Appeal (R-1) in the Supreme Court of Canada, as it appears from a copy of the Application for Leave to Appeal denounced in support hereof as **Exhibit R-2**.
6. On 21 November 2022, the Registry Officer of the Supreme Court of Canada advised the parties that Plaintiffs' Application for Leave to Appeal had been accepted for filing and that the Supreme Court file number in this matter is 40452, as it appears from a copy of the Registry Officer's letter, denounced in support hereof as **Exhibit R-3**.
7. As at the present date, Justice Courchesne's authorization decision is not final nor does it have force of *res judicata*.
8. On 16 December 2022, Plaintiffs notified an Originating Application against the Defendants, but not against the Foreign Entities, the whole as it appears from the Court record.
9. The causes of action asserted by Plaintiffs against the Defendants and the Foreign Entities are based largely upon the same facts and will require the administration of similar or identical evidence, the whole as it appears from Re-Re-Modified Application to Authorize a Class Action and from the Originating Application filed in the Court record.
10. Given the foregoing, forcing Plaintiffs to proceed only against the Defendants even as the appeal proceedings against the Foreign Entities follow their course before the Supreme Court of Canada constitutes a disproportional and potentially duplicative use of the parties' and the Court's resources.
11. In the circumstances, the litigation of the class action against Defendants pending the outcome of Plaintiffs' appeal before the Supreme Court of Canada is contrary to the interests of class members and to the sound and efficient administration of justice.
12. The suspension sought causes no prejudice to Defendants.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

SUSPEND the class action against the Defendants until the issuance of a final judgment by the Supreme Court of Canada in the file number 40452;

DE BENE ESSE, **RELIEVE** Plaintiffs of the default (if any) to file the originating application within the time limit of three (3) months from the authorization decision and **AUTHORIZE** Plaintiffs to modify the originating application to implead Otsuka Pharmaceutical Company Limited, Otsuka Pharmaceutical Development & Commercialization Inc., H. Lundbeck A/S and Lundbeck Research USA Inc. as defendants to the class action.

THE WHOLE without costs, except in case of contestation.

MONTRÉAL, December 16, 2022

Woods s.e.n.c.r.l./LLP

Woods LLP

Counsel for the Plaintiffs

Bogdan-Alexandru Dobrota

Laurence Ste-Marie

adobrota@woods.qc.ca

lstemarie@woods.qc.ca

notification@woods.qc.ca

2000 McGill College ave., suite 1700

Code BW 0208 / Our File: 5415-2

MONTRÉAL, December 16, 2022

Rochon Genova LLP

ROCHON GENOVA LLP

Avocats Conseil

Joël Rochon

Golnaz Nayerahmadi

jrochon@rochongenova.com

gnayerahmadi@rochongenova.com

121 Richmond St W, suite 900

Toronto, ON M5H 2K1

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ORIGINAL

Mtre. Bogdan-Alexandru Dobrota
Mtre. Laurence Ste-Marie
File No.: 5415-2
Woods LLP
Barristers & Solicitors
2000 McGill College Ave., Suite 1700
Montreal, Quebec H3A 3H3
T 514 982-4545 F 514-284-2046
Notification: notification@woods.qc.ca
Code BW 0208

