

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(CLASS ACTION)

No: 500-06-001179-221

LAURENT PELLERIN *et al.*

Applicants

v.

PFIZER INC. *et al.*

Defendants

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

TO THE HONOURABLE JUSTICE CHRISTIAN IMMER, 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. The Defendants seek an order to have the Plaintiff, Mr. Laurent Pellerin ("**Plaintiff Pellerin**"), communicate to Defendants the medical and pharmaceutical records, along with the RAMQ spreadsheet listing the medication taken by Plaintiff Pellerin that was covered by the RAMQ's Public Prescription Drug Insurance Plan (the "**PPDIP spreadsheet**") relevant to this matter;
2. More specifically, the Defendants seek the communication of:
 - (i) Plaintiff Pellerin's complete medical files emanating from Dr. Van Vu Nguyen between June 2021 and March 2022;
 - (ii) Plaintiff Pellerin's full medical records for the five (5) year period preceding the alleged initial prescription of Xeljanz 10 mg to Plaintiff Pellerin in June 2021, or such other period that this Honourable Court may deem more appropriate;
 - (iii) Plaintiff Pellerin's full pharmaceutical records for the five (5) year period preceding the alleged initial prescription of Xeljanz 10 mg to Plaintiff Pellerin in June 2021, or such other period that this Honourable Court may deem more appropriate; and
 - (iv) Plaintiff Pellerin's PPDIP spreadsheet for the five (5) year period preceding the alleged initial prescription of Xeljanz 10 mg to Plaintiff Pellerin in June

2021, or such other period that this Honourable Court may deem more appropriate;

in order to ensure that the Court has before it the necessary facts and essential information to fairly determine whether the conditions of Article 575 C.C.P. are met against Defendants, and whether it should authorize the bringing of a class action against them;

B. The Procedural Context

3. On or about March 9, 2022, an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representatives* was filed by Denise and Roy Appleton against Pfizer Inc., Pfizer Canada ULC and PF Prism C.V., the whole as more fully appears from the Court record;
4. On or about March 8, 2023, an *Amended Application for Authorization to Institute a Class Action and to Obtain the Status of Representatives* (the "**Application**") was filed, which included various amendments, including, *inter alia*, removing Denise and Roy Appleton as Plaintiffs and purported class representatives and replacing them with Laurent Pellerin and Carmen Beorchia, the whole as more fully appears from the Court record;
5. In the Application, the Plaintiffs seek this Court's authorization to bring a class action against Defendants on behalf of the following class:

Subgroup 1

Any natural person who, in Quebec, has suffered a major adverse cardiovascular event ("MACE"), including death, myocardial infarction, coronary revascularization, stroke and hospitalization for heart failure, and / or been diagnosed with cancer after using the drugs Xeljanz and / or Xeljanz XR ("tofacitinib"), since the date of their respective market launch until December 9, 2021;

and

Subgroup 2

Any natural person who suffers or has suffered injury, in Quebec, as a result of MACE and/or the cancer diagnosis received by an individual in Subgroup 1, including his or her spouse, parents, children, and siblings.

or any other class to be determined by the Court. [our translation]

6. Plaintiffs hold Defendants responsible for alleged damages arising from Plaintiff Pellerin's use of Xeljanz 10 mg BID. Xeljanz and Xeljanz XR ("**tofacitinib**") ("**Xeljanz Products**"), are prescription drugs used to treat rheumatoid arthritis, psoriatic arthritis, and ulcerative colitis;

7. The Application alleges that the Defendants are liable as manufacturers because a safety defect in Xeljanz Products, namely the occurrence of MACE and/or a diagnosis of cancer after using Xeljanz Products, arose from the development, research, testing, manufacturing, licensing, packaging, labeling, notices and warnings, marketing, promotion, distribution, and sale of these products, or from the failure to warn of the risks and dangers associated with the Xeljanz Products or how to protect against them;
8. The Application alleges that Plaintiff Pellerin began using Xeljanz 10 mg BID on or about June 25, 2021, for the treatment of ulcerative colitis and that he was subsequently admitted to the Hôpital Pierre-Boucher due to a cerebrovascular accident ("**CVA**") and seizures;
9. In support of the Application, Plaintiff Pellerin has filed limited medical records covering only three hospital visits:
 - (i) **Exhibit P-25 (under seal)**: contains Plaintiff Pellerin's medical records from Hôpital Pierre-Boucher, covering a short hospitalization from June 3 to June 6, 2021 related to his ulcerative colitis (during which he was prescribed tofacitinib), and his hospitalization in March 2022 for his CVA and follow-ups related to same;
 - (ii) **Exhibit P-26 (under seal)**: contains Plaintiff Pellerin's medical records from the Villa Medica Hôpital de Réadaptation pertaining to rehabilitation after his CVA.
10. Plaintiff Pellerin has also provided, as **Exhibit P-24 (under seal)**, his pharmaceutical records at two different pharmacies dating between June 2021 and November 2022;

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

11. Defendants have the right to a full answer and defence in the context of their contestation of the Application and with respect to each of the criteria listed at Article 575 C.C.P., which must be analyzed by the Court in order to determine whether the proposed class action should be authorized.
12. Defendants respectfully submit that the requested documents are not only necessary, useful and reasonable, but essential and indispensable for this Honourable Court to rule on the Application, as they will provide relevant facts that will assist the Court in determining whether the proposed Plaintiffs have a *prima facie* case against them and whether they are appropriate class representatives;
13. The requested documents will ensure that Defendants protect their right to objectively answer vague, ambiguous, contradictory and general allegations of fact which, if not answered by objective and relevant evidence contained in the

requested documents, would lead this Honourable Court in the wrong direction while assessing whether the threshold required to authorize the class action is met;

D. Defendants' Right to Obtain Plaintiff Pellerin's Relevant Medical and Pharmaceutical Records, and his PPDIP Spreadsheet

14. It appears from the above-referenced Exhibits that Plaintiff Pellerin was prescribed Xeljanz Products during his hospitalization related to his ulcerative colitis in June 2021, and that he continued to be prescribed Xeljanz 10 mg between June 2021 and March 2022 by his gastroenterologist, Dr. Van Vu Nguyen;
15. It further appears from these Exhibits that Dr. Van Vu Nguyen was the doctor monitoring Plaintiff Pellerin's ulcerative colitis prior to his June 2021 hospitalization for the condition and until his CVA in March 2022;
16. However, Plaintiff Pellerin has not provided any of his medical records related to his consultations with and treatment by Dr. Van Vu Nguyen;
17. Obtaining these medical records is essential and indispensable for authorization purposes, because Plaintiff Pellerin alleges that he and the rest of the class members were not given adequate, sufficient and timely notice that the use of Xeljanz Products was associated with increased risks of suffering a MACE and/or a cancer diagnosis;
18. However, as appears from Exhibit P-25, the increased risk of CAV was known by medical professionals at the time of his March 2022 hospitalization;
19. It is therefore critical to know what, if anything, was discussed with the medical professional who continued to prescribe him the Xeljanz Products and in particular, what warnings Dr. Van Vu Nguyen discussed with his patient, especially in light of the prescription recommendations for Xeljanz Products for patients with ulcerative colitis;
20. In the Application, Plaintiff Pellerin places his medical condition at the heart of the debate raised by the request for authorization, and his legal syllogism depends on it. Despite this, he does not provide his relevant medical records. The information he received from his treating physician when he was prescribed and continued to be prescribed the Xeljanz Products is a central element of his authorization request;
21. In sum, Plaintiff Pellerin's complete medical files with Dr. Van Vu Nguyen between June 2021 and March 2022, will reveal the notes concerning the context of these prescriptions. These will also shed light on the dosage prescribed, and the discussions had with Plaintiff Pellerin concerning the Xeljanz Products.

22. In addition to the above, it appears from the above-referenced Exhibits that Plaintiff Pellerin has a complex medical history. He suffers from various afflictions and has been prescribed numerous pharmaceutical products in 2021 and 2022 alone;
23. In light of the above, there could be more than one possible cause of the alleged harm, and therefore the medical records preceding the prescription of the Xeljanz Products to Plaintiff Pellerin would be critical to the Court to properly filter the case at the authorization stage;
24. In order to determine whether Plaintiff meets the authorization criteria of Article 575(2) and 575(4) C.C.P., the Defendants ask this Honourable Court to require Plaintiff Pellerin to provide his full medical records for the five (5) year period preceding the alleged initial prescription of Xeljanz Products in June 2021, or such other period that this Honourable Court may deem more appropriate;
25. Moreover, for the same reasons indicated above, accessing Plaintiff Pellerin's full pharmaceutical records going further back than June 2021 is a clear and reliable means to understanding specifically what drugs were taken over the years. Defendants request such records for the five (5) year period preceding the alleged initial prescription of Xeljanz Products in June 2021, or such other period that this Honourable Court may deem more appropriate;
26. In the event that the pharmacy records are not complete, the PPDIP spreadsheet lists the medication taken by Plaintiff Pellerin that was covered by the RAMQ over the years. Therefore, the PPDIP spreadsheet from the RAMQ should fill any gaps left by the pharmacy records. Defendants request Plaintiff Pellerin's PPDIP spreadsheet from the RAMQ for the five (5) year period preceding the alleged initial prescription of Xeljanz Products in June 2021, or such other period that this Honourable Court may deem more appropriate;
27. Both the medical and pharmaceutical records requested, together with the PPDIP spreadsheet, will serve to palliate omissions in Plaintiffs' Application, and allow Defendants to present a full defence on the criteria for authorization.
28. In light of the above, the order sought by Defendants meets the criteria of proportionality, will provide necessary guidance to this Court about whether the criteria under 575 C.C.P. are met in this file, and will allow Defendants to provide a full answer and defence to the claims made against them.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

ORDER the Plaintiff Pellerin to:

- a) Sign consent forms allowing Defendants to obtain the following records:

- i) Plaintiff Pellerin's complete medical files emanating from Dr. Van Vu Nguyen between June 2021 and March 2022;
- ii) Plaintiff Pellerin's full medical records for the five (5) year period preceding the alleged initial prescription of Xeljanz 10 mg to Plaintiff Pellerin in June 2021, or such other period that this Honourable Court may deem more appropriate;
- iii) Plaintiff Pellerin's full pharmaceutical records for the five (5) year period preceding the alleged initial prescription of Xeljanz 10 mg to Plaintiff Pellerin in June 2021, or such other period that this Honourable Court may deem more appropriate; and
- iv) Plaintiff Pellerin's PPDIP spreadsheet for the five (5) year period preceding the alleged initial prescription of Xeljanz 10 mg to Plaintiff Pellerin in June 2021, or such other period that this Honourable Court may deem more appropriate;

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.

MONTRÉAL, April 21, 2023

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Pfizer Canada ULC and PF Prism C.V.***

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CANADA
PROVINCE OF QUÉBEC
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v.

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Defendants

NOTICE OF PRESENTATION

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TAKE NOTICE that the present *Defendant's Application for the Communication of Documents* (Art. 574 C.C.P.) will be presented for adjudication before the Honourable Christian Immer, j.c.s., of the Superior Court of Québec of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, at a date to be determined by the Court.

PLEASE GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, April 21, 2023

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No.: 500-06-0001179-221

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ORIGINAL

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