

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No : 500-06-001004-197

DATE : 18 mai 2023

BY THE HONOURABLE DONALD BISSON, J.S.C.

JB4644

JEAN-FRANÇOIS BOURASSA
Plaintiff

v.

ABBOTT LABORATORIES, LIMITED, ET AL.
Defendants

JUDGMENT

(On the application to authorize the class actions for the purpose of approving the Settlement Agreements and for approving the Settlement Agreements with 3 groups of defendants – ARALEZ, VALEANT and CHURCH & DWIGHT)

[1] **THE COURT** is seized by way of an application entitled *Application to Authorize a Class Action for Settlement Purposes, and to Approve the Settlement Agreements* dated January 25, 2023, to Approve Settlement Agreements entered into between the Plaintiff and the following Defendants (collectively, the “**Settling Defendants**”):

- a) Aralez Pharmaceuticals Canada Inc., Settlement Agreement dated November 10, 2022 (the “**Aralez Settlement Agreement**”);
- b) Valeant Canada Limited (“**Valeant Limited**”), Valeant Canada LP (“**Valeant LP**”) and 4490142 Canada Inc., F.K.A. as Meda Valeant Pharma Canada Inc. (“**4490142**”) (together “**Valeant**”), Settlement Agreement dated December 13, 2022 (the “**Valeant Settlement Agreement**”); and
- c) Church & Dwight Canada Corp., Settlement Agreement dated December 22, 2022 (the “**Church & Dwight Settlement Agreement**”);

[2] **CONSIDERING** the sworn declaration of class counsel Mtre Margaret Siminovitch, dated January 25, 2023, along with Exhibits R-1 to R-3A;

[3] **CONSIDERING** that:

a) Aralez has represented and provided evidence that each of its Opioid Product represented only a very small share of its total sales in the Province of Quebec, and the units sold for each Opioid Product always represented under 0.1% of the opioid medication market in the Province of Quebec, and that Aralez had, and still has, minimal sales and a marginal role in the sale and/or distribution of opioid products during the Class Period, as more fully appears from the sworn declaration of Dr. Bernard Chiasson, Ph.D., Vice-President, Operations and Chief Scientific Officer at Nuvo Pharmaceuticals Inc. doing business as Miravo Healthcare, the parent company of Aralez (Exhibit R-1A)

b) Valeant has represented and provided evidence that each Opioid Product, with the exception of Painex (never sold in Canada), represented only a very small share of the Settling Defendant's total sales in the Province of Quebec, and the Settling Defendant's sale of Opioid Products in Quebec never exceeded 1.5% of overall opioid sales in any given year during the Class Period, as more fully appears from the sworn declarations of Mr. Tibor Kapusy, Director of the regulatory affairs group for Bausch Health, Canada Inc., an entity related to Valeant, and Mr. Daniel Yelin, Assistant General Counsel, Head of Legal Canada for Bausch Health, Canada Inc. (Exhibit R-2A en liasse);

c) Church & Dwight has represented and provided evidence that it manufactured and sold only one prescription opioid product in two different concentrations during part of the Class Period (2001 to 2020), and sales of such opioids represented a small share of the Settling Defendant's total sales in the Province of Quebec with its total aggregate sales of such opioids for the relevant period was less than CAD \$3 million, as more fully appears from the sworn declaration of Ms. Elaine Moreau, Head of Global GXP Compliance and former Director, Quality and Regulatory Affairs Canada, for C&D (Exhibit R-3A);

[4] **HAVING** heard the representations of Class Counsel and counsel for the Settling Defendants;

[5] **CONSIDERING** that the Plaintiff previously had entered into four Settlement Agreements with seven Defendants (the "**Settled Defendants**") which were approved by this Court by judgment dated August 9, 2022¹ and, subsequently, a Settlement Approval notice was published whereby Class Members were informed that, if they wished to opt-out of the entire Class Action, they had to do so by September 16, 2022 (the "**Opt-Out Deadline**");

[6] **CONSIDERING** that a judgment was rendered on March 9, 2023² in which the Court approved the combined Pre-Approval Notice to Class Members announcing the

¹ *Bourassa c. Roxane Laboratories Inc.*, 2022 QCCS 2976.

² *Bourassa c. Abbot Laboratories, Limited*, 2023 QCCS 689.

Settlement Agreements and explaining their nature as well as where to obtain copies of the Settlement Agreements, and further explaining that the Settlement Agreements must be submitted to the Court for approval as well as the rights of Class Members to object (the "**Pre-Approval Order**");

[7] **CONSIDERING** that the Pre-Approval Notice was published in accordance with the Notice Plan (as defined in the Pre-Approval Order);

[8] **CONSIDERING** that three objections have been made by Class Members;

[9] **CONSIDERING** the terms of the Settlement Agreements, in that each Settlement Agreement provides for a full and final release of all claims against the Settling Defendants, in exchange for the payment of the following amounts (collectively, the "**Settlement Amounts**");

a) One hundred and forty-five thousand dollars (CA \$145,000) by the Settling Defendant Aralez, as appears more fully from Exhibit R-1;

b) Three hundred and fifty thousand dollars (CA \$350,000) by the Settling Defendant Valeant, as appears more fully from Exhibit R-2; and

c) One hundred and forty-five thousand dollars (CA \$145,000) by the Settling Defendant Church & Dwight, as appears more fully from Exhibit R-3;

[10] **CONSIDERING** that the Settlement Amounts are inclusive of all amounts, including interest and costs, and Class Counsel's legal fees (which shall be fixed by the Court), apart from the cost of Notices to Class Members, and that the Settlement Agreements are made without any admission of liability on the part of the Settling Defendants;

[11] **CONSIDERING** that the class action will continue against the remaining Defendants (the "Non-Settling Defendants"), excluding any other Defendants who have entered into Settlement Agreements with the Plaintiff which have been approved by the Court;

[12] **CONSIDERING** that the Court here is in total agreement with the entirety of the decision in *Bourassa c. Roxane Laboratories Inc.* by Morrison J. of August 9, 2022, and indicates that it adopts it all in its entirety as if reproduced here;

[13] **CONSIDERING** that all the criteria adopted by the case law under Art. 590 of the *Code of Civil Procedure* are met here;

[14] **CONSIDERING** that the Court is satisfied that the opt-out requirements in relation to a partial Settlement, the presence of yet undistributed Settlement Amounts, the discontinuance provision and the Bar Order and related solidarity provisions all meet the requirements of the case-law and the protection of class members;

[15] **CONSIDERING** that the Settlement Agreements are fair, reasonable and in the best interests of the Class Members;

[16] **CONSIDERING** that the proposed Settlement Approval notices are satisfactory, as well as their plan of distribution;

[17] **CONSIDERING** as a result that the three objections are not a bar to the approval of the Settlement Agreements, as two do not indicate any details and one is simply asking for more money for class members;

[18] **CONSIDERING** that the Settling Defendants support the Plaintiff's Settlement Approval Application;

[19] **CONSIDERING** that the Settlement Amounts will bear interests in the trust accounts of class counsel;

[20] **CONSIDERING** that class counsel is not seeking any fees and disbursements for now, these issues being left for later, and **CONSIDERING** that the validity of the Settlement Agreements are not linked to class counsel fees;

[21] **CONSIDERING** that the Court cannot accept the argument of the Fonds d'aide aux actions collectives to the effect that it should impose a timetable for class counsel to ask for the approval of class counsel fees, as section 30 of *the Act respecting the Fonds d'aide aux actions collectives*³ does not provide for any time frame, and as the timing of such claim by class counsel is currently a matter of litigation strategy and privilege;

[22] **CONSIDERING** however that class members should be left eternally without the prospect of compensation, and that therefore the Court will ask Plaintiff and Class Counsel to make to the Court an annual report at each anniversary date of this judgment indicating their intents with regards the distribution of the Settlement Amounts and the approval of class counsel fees;

[23] **CONSIDERING** that the Court can however impose on the execution of the Settlement Agreement a "reddition de compte" or "jugement de cloture", even though the whole process currently ends with discontinuances, it being understood that this "reddition de compte" will be given by Plaintiff and class counsel once the Settlement Amounts will have been distributed in accordance with eventual orders from this Court;

FOR THESE REASONS, THE COURT:

[24] **GRANTS** the Plaintiff's Settlement Approval Application;

³ RLRQ, c. F-3.2.0.1.1.

[25] **AUTHORIZES** the Class Action for the sole purpose of approving the Settlement Agreements, being the Aralez Settlement Agreement, the Valeant Settlement Agreement and the Church & Dwight Settlement Agreement;

[26] **APPOINTS** Jean-François Bourassa as having the status of Representative Plaintiff for purposes of the present settlements only;

[27] **ORDERS** that for the purposes of this Judgment, the definitions and defined terms contained in the various respective Settlement Agreements shall apply to the parties to each thereof and are incorporated by reference herein;

[28] **DECLARES** that the Settlement Agreements are fair, reasonable and in the best interests of the Class Members;

[29] **APPROVES** the Aralez Settlement Agreement between the Plaintiff and Defendant Aralez;

[30] **APPROVES** the Valeant Settlement Agreement between the Plaintiff and Defendants Valeant Canada Limited, Valeant Canada LP and 4490142 Canada Inc., F.K.A. as Meda Valeant Pharma Canada Inc.;

[31] **APPROVES** the Church & Dwight Settlement Agreement between the Plaintiff and Defendant Church & Dwight Canada Corp.;

[32] **APPROVES** the payments of the Settlement Amounts by the Settling Defendants to the Plaintiff, as set forth in the Settlement Agreements;

[33] **DECLARES** that the Class Action against the Settling Defendants is settled out of Court for all legal intents and purposes whatsoever, in accordance with the specific terms contained in the present judgment;

[34] **DECLARES** that, by operation of this Settlement Approval Order, unless the Aralez Settlement Agreement is terminated in accordance with the provisions of Section III thereof, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Approval Order will have, fully, finally, and forever released, relinquished and discharged the Released Parties from all Released Claims, as those terms are defined in the Aralez Settlement Agreement, for all legal intents and purposes whatsoever;

[35] **DECLARES** that, by operation of this Settlement Approval Order, unless the Valeant Settlement Agreement is terminated in accordance with the provisions of Section III thereof, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Approval Order will have, fully, finally, and forever released, relinquished and discharged the Released Parties from all Released Claims, as those terms are defined in the Valeant Settlement Agreement, for all legal intents and purposes whatsoever;

[36] **DECLARES** that, by operation of this Settlement Approval Order, unless the Church & Dwight Settlement Agreement is terminated in accordance with the provisions of Section III thereof, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Approval Order will have, fully, finally, and forever released, relinquished and discharged the Released Parties from all Released Claims, as those terms are defined in the Church & Dwight Settlement Agreement, for all legal intents and purposes whatsoever;

[37] **DECLARES** that:

- a) The Plaintiff and the Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees, and the Non-Settling Defendants are thereby released with respect to the proportionate liability of the Releasees proven at trial or otherwise, if any;
- b) The Plaintiff and the Class Members shall henceforth only be able to claim and recover damages in the present Class action, including punitive damages, interest, additional indemnity, fees and costs attributable to the conduct of the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- c) Any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Released Parties or relating to the Released Claims shall be inadmissible and void in the context of the present Class Action; and
- d) this Court shall have full authority to determine the proportionate liability of the Releasees at the trial, or other disposition of the proceedings, whether or not the Releasees appear at the trial or other disposition, and the proportionate liability shall be determined as if the Releasees are parties to the proceedings;

[38] **APPROVES** the discontinuance of the Class Action without costs (including any previously accrued or awarded costs) as against the Settling Defendants;

[39] **APPROVES** the form and content of the French and English versions of the Settlement Approval Notice attached *en liasse*, as an Annex, and as modified by the present Judgment;

[40] **ORDERS** Class Counsel, within 10 days of the date of this Judgment, to post the Settlement Approval Notice in both English and French on its Facebook page and Website for a period of at least 90 days, as well as in the online registry of class actions offered by the Superior Court of Quebec, and to email the said Settlement Approval Notice in both English and French to each person who has registered on Class Counsel's Website to receive information regarding the Class Action;

[41] **DECLARES** that the Class Members who have not already opted out by the Opt-Out Deadline are bound by this Judgement and the Settlement Agreements, as well as any other judgments that would be rendered in connection with the Class Action;

[42] **ORDERS** and **DECLARES** that the Releases shall become effective pursuant to the terms and conditions provided for in the respective Settlement Agreements;

[43] **ORDERS** the Plaintiff and Class Counsel to make to the Court an annual report at each anniversary date of this judgment indicating their intents with regards the distribution of the Settlement Amounts and the approval of class counsel fees;

[44] **INDICATES** that this Court keeps jurisdiction to impose on the execution of the Settlement Agreement a "reddition de compte" or "jugement de cloture", it being understood that this "reddition de compte" will be given by Plaintiff and class counsel once the Settlement Amounts will have been distributed in accordance with eventual orders from this Court;

[45] **THE WHOLE**, without legal costs.



DONALD BISSON, J.S.C.

Mtre Jean-Marc Lacourcière, Mtre Zoé Christmas
TRUDEL JOHNSTON & LESPÉRANCE

Mtre Mark Meland, Mtre Margaret Siminovitch, Mtre Betlehem Lala Endale
Mtre Tina Silverstein, Mtre Justin Reiter, Mtre Hugo Carrier-L'Italien
FISHMAN FLANZ MELAND PAQUIN S.E.N.C.R.L.
Attorneys for Plaintiff

Mtre Marie Audren, Mtre Marc-André Grou
AUDREN ROLLAND S.E.N.C.R.L.
Attorneys for defendant Aralez Pharmaceuticals Canada inc.

Mtre Myriam Brixi
LAVERY, DE BILLY S.E.N.C.R.L.
Attorneys for defendant Church & Dwight Canada Corp.

Mtre Francis Rouleau
BLAKE, CASSELS & GRAYDON S.E.N.C.R.L.
Attorneys for defendants
Valeant Canada Limited, Valeant Canada LP and 4490142 Canada inc.

Mtre Nathalie Guilbert
For the Fonds d'aide aux actions collectives

Mtre Michel Gagné
McCarthy Tétrault s.e.n.c.r.l., s.r.l.
For Abbot Laboratories inc.

Mtre Anne Merminod
Borden Ladner Gervais s.e.n.c.r.l., s.r.l.
For Purdue Frederick inc. and Purdue Pharma

Mtre Marie-Ève Gingras
Société d'avocats Torys S.E.N.C.R.L.
For Pfizer Canada ULC

Mtre Corina Manole
Société d'avocats Torys S.E.N.C.R.L.
For Sanofi-Aventis Canada inc.

Mtre Jean-Michel Boudreau
IMK L.L.P.
For Apotex inc.

Date of hearing: May 8, 2023