

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-06-00503-108

SUPERIOR COURT OF QUEBEC  
(CLASS ACTION)

---

**JOSÉE ETHIER**, residing and domiciled at 931  
de la Rochelle, Laval, Province of Quebec,  
H7P 3Y3;

Petitioner

vs.

**BAYER INC**, a legal person duly constituted  
according to the law, having its head office at  
77 Belfield Road, in the City of Toronto,  
Province of Ontario, M9W-1G6,

and

**BAYER HEALTHCARE CANADA**, a legal  
person duly constituted according to the law,  
having a principal place of business at 77  
Belfield Road, in the City of Toronto, Province  
of Ontario, M9W-1G6

Respondents

---

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND  
TO ASCRIBE THE STATUS OF REPRESENTATIVE**

(Art. 1002 C.C.P. and following)

---

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER  
STATES THE FOLLOWING:

1. Petitioner wish to institute a class action on behalf of all persons forming part of the Group hereinafter described, and of which the Petitioners is a member, namely:

All residents in Canada who purchased or ingested the product Yasmin, produced, marketed, advertised, sold and/or distributed by Respondents, or any other group to be determined by the Court;

**alternately (or as a subclass):**

All residents in Quebec who purchased or ingested the product Yasmin, produced, marketed, advertised, sold and/or distributed by Respondents, or any other group to be determined by the Court;

(hereinafter, both Quebec resident and non-Quebec resident Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member", the "Consumer(s)");

### **THE RESPONDENTS**

2. The Respondent Bayer Inc. is a corporation registered under the laws of Canada. Bayer Inc. is the Canadian subsidiary of Bayer AG. Bayer Inc. is engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing, and/or introducing into the Canadian consumer market, either directly or indirectly through third parties or related entities, its products, including the prescription drug Yasmin;
3. The Respondent Bayer Healthcare Canada, is a division of Bayer Inc. Bayer Healthcare Canada is engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing, and/or introducing into the Canadian consumer market, either directly or indirectly through third parties or related entities, its products, including the prescription drugs Yasmin;

6. Bayer Inc. and Bayer Healthcare Canada are collectively referred to herein as “Bayer” or the “Respondents.”;

## **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

### **GENERAL INFORMATION ABOUT YASMIN**

#### ***Bayer's Combined Oral Contraceptives – Yasmin***

7. Yasmin is a birth control pill manufactured and marketed by Bayer. It is a combination oral contraceptives, or “COCs,” meaning that it contains an estrogen component and a progestin component. Together, these steroidal components work together in COCs to suppress ovulation, fertilization, and implantation and thus prevent pregnancy;
8. Yasmin was approved by Health Canada for sale in Canada in 2004.

#### ***Yasmin Contains a “Fourth Generation” Progestin***

9. The estrogen component in Yasmin is known generically as ethinyl estradiol. The progestin component is known as drospirenone. Yasmin contains 0.03 milligrams of ethinyl estradiol, and contains 3 milligrams of drospirenone;
10. Yasmin is different from most other combined hormonal birth control pills in that it contains drospirenone, a progestin that is unlike other progestins available in Canada and was never before marketed in Canada prior to its use in Yasmin;
11. Shortly after the introduction of combined oral contraceptives in the 1960's, doctors and researchers found that women using birth control pills had a higher risk of blood clots, heart attacks, and strokes than women not using the pill. As a

result, the various brands of birth control pills were reformulated to reduce the amounts of estrogen. As the amounts of estrogen levels reduced, so too did the risk of blood clots, heart attacks, and strokes;

12. During this time, new progestins were being developed, which became known as “second generation” progestins (e.g. lovenorgestrel). These second generation progestins, when combined with the lower amounts of the estrogen, ethinyl estradiol, helped to reduce the risk of blood clots, heart attacks, and strokes and were considered safer for women;
13. During the 1990's, new “third generation” progestins were developed. Unfortunately, these “third generation” progestins (e.g. gestodene and desogestrel) have been associated with a greater risk of blood clots in the deep veins (deep vein thrombosis or “DVT”) and lungs (pulmonary embolism or “PE”). As a result of this increased risk of blood clots, Health Canada has required that products containing third generation progestins include a warning of the potentially increased risk of thrombosis;
14. Yasmin contains the same estrogen component, ethinyl estradiol, that has been used in the lower dose birth control pills for decades;
15. However, drospirenone is a new type of progestin and is considered a “fourth generation” progestin. No other birth control pills contain drospirenone, except for a recently approved generic version of Yasmin marketed under the trade name Ocella;
16. Since drospirenone is new, there are not decades of data available to support its safe use as there are with second generation progestins. Studies that were done prior to American Food and Drug Administration (FDA) approval, however, indicate that drospirenone has certain effects that are different from those of traditional second generation progestins, and potentially more dangerous;

17. One possible mechanism of action is that drospirenone interacts differently with ethinyl estradiol compared to other progestins, such that it does not sufficiently counterbalance the clotting effects of estrogen as do other progestins, particularly the second generation progestins;
18. Another possible mechanism of action is that drospirenone causes an increase in potassium levels in the blood, which can lead to a condition known as hyperkalemia if the potassium levels become too high. Hyperkalemia can cause heart rhythm disturbances, such as extrasystolies, pauses, or bradycardia. If left untreated, hyperkalemia can be fatal;
19. If hyperkalemia disrupts the normal heart rhythms, the flow of blood through the heart can be slowed to the point that it permits blood clots to form. Blood clots in the heart can then lead to heart attacks, or the clots can break off and travel to the lungs where they can cause pulmonary embolism, or can travel to the brain causing stroke;
20. In April 2002, the British Medical Journal reported that the Dutch College of General Practitioners recommended that older second generation birth control pills be prescribed in lieu of Yasmin as a result of 40 cases of venous thrombosis among women taking Yasmin;
21. In February 2003, a paper entitled *Thromboembolism Associated With the New Contraceptive Yasmin* was published in the British Medical Journal detailing a Netherlands Pharmacovigilance Centre report of five additional reports of thromboembolism where Yasmin was suspected as the cause, including two deaths;
22. In fact, in less than a five-year period, from the first quarter of 2004 through the third quarter of 2008, over 50 reports of death among users of Yasmin or Yaz (a different birth control pill manufactured by Respondents, which is not the focus of the present proceedings), were filed with the FDA. These reports include deaths associated with cardiac arrhythmia, cardiac arrest, intracardiac thrombus,

pulmonary embolism, and stroke in women in their child bearing years. Some deaths reported occurred in women as young as 17 years old;

23. Significantly, reports of elevated potassium levels are frequently included among the symptoms of those suffering death while using Yasmin;

24. Furthermore, several Class Members, using Yasmin, have developed kidney stones, gallbladder disease (with the extreme pain associated with such conditions) and many have had no choice but to have their gallbladder removed, which is the case of the Petitioner herein, as more fully explained hereinbelow;

#### Over-Promotion of Yasmin

25. The Respondents market Yasmin as providing the same efficacy as other birth control pills in preventing pregnancy, but with additional benefits;

26. However, because Yasmin contains the fourth generation progestin drospirenone, it presents additional health risks not associated with other birth control pills;

27. On July 10, 2003, the FDA objected to the characterization made by Bayer AG's American divisions that drospirenone was a benefit compared to the progestin used in other combined oral contraceptives and issued a warning letter stating, "*FDA is not aware of substantial evidence of substantial clinical experience demonstrating that Yasmin is superior to other COCs or that the drospirenone in Yasmin is clinically beneficial. On the contrary, FDA is aware of the added clinical risks associated with drospirenone.....]*". The FDA's warning letter continued by stating that the advertisement failed "*to communicate that the potential to increase potassium is a risk*" or that "*increased serum potassium can be dangerous.*";

**Petitioner Josée Ethier :**

28. Petitioner Josée Ethier was prescribed Yasmin shortly after it was introduced to the Canadian market by the Respondents in 2004;
29. In fact, at that time, Petitioner's doctor told her that a new drug was about to be released, namely Yasmin, and that aside from the normal birth control effects that most pills of that nature provide, Yasmin also caused less water retention and therefore less weight gain, which was an important consideration for Petitioner;
30. It was for this reason that Petitioner accepted to switch her birth control pill to Yasmin;
31. Petitioner therefore started using Yasmin as of 2004 until November of 2008 (with a brief pause during her 2005 pregnancy);
32. During the summer of 2008, Petitioner experienced short bouts of severe abdomen pains;
33. On November 3 2008, Petitioner's abdomen pain returned;
34. This time, the pain did not subside and was constant;
35. Petitioner therefore immediately made her way to the *Cité de la Santé* hospital in Laval, Quebec, where she was admitted;
36. After undergoing multiple tests and examinations, Petitioner was told that she had developed serious stones, which could not be removed and that as a result, her gallbladder needed to be removed as soon as possible;
37. The surgery was therefore scheduled for and conducted two days later, on November 5, 2008;

38. Petitioner remained in the hospital until the next day, when she was discharged;
39. However, due to her extreme pain and covalence after the surgery, Petitioner was only able to return to work on November 24, 2008;
40. As a result of this ordeal, Petitioner suffered extreme pain and inconvenience, loss of work, emotional distress, all the while having to take care of her three (3) children, two of which are handicapped;
41. Had Petitioner been made aware of these likely serious side effects of taking Yasmin, she would not have agreed to start taking this drug;
42. Petitioner holds Respondents liable for all of this pain, suffering, inconvenience and other damages suffered as a result of taking Yasmin;

#### **FAULTS COMMITTED BY THE RESPONDENTS**

43. The Respondents, through their acts and omissions in designing, manufacturing, marketing, promoting, testing, and distributing Yasmin, committed faults for which the Petitioners are entitled to claim damages; pursuant to, *inter alia*, Articles 1457 and 1469 the Civil Code of Quebec;
44. The Yasmin birth control pill product manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Respondents, was defective in its manufacture when it left the hands of the Respondents in that the product deviated from performance standards expected by the consumer, such that it was unreasonably dangerous to an ordinary user or consumer and posed a serious risk of injury and death;
45. The Respondents ignored scientific findings and warnings from consumers about the risks and negative health effects of Yasmin;



46. Respondents allowed Yasmin to remain on the market in Canada even after these risks became known to them;
47. Respondents did not adequately inform Petitioners and other consumers (the Class Members) of the potential dangers of consuming Yasmin;
48. Respondents repeatedly minimised the negative effects and risks of Yasmin;
49. Respondents knew or should have known of the increased health risks caused by consuming Yasmin;

#### **THE FOOD AND DRUGS ACT**

50. Section 9 of the *Food and Drugs Act*, R.S.C., 1985, c. F-27, prohibits the use of any false pretense, misrepresentation, or deception in the conduct of any trade or commerce with respect to drugs and declares such acts or practices as unlawful;
51. Respondents violated section 9 of the *Food and Drugs Act* by the use of false and misleading representations or omissions of material fact in connection with the marketing, promotion, and sale of Yasmin;
52. Respondents communicated the purported benefits of Yasmin while failing to disclose the serious and dangerous side effects related to the use of Yasmin with the intent that consumers, like the Petitioners, would purchase and ingest Yasmin;
53. As a result of violating the *Food and Drugs Act*, Respondents caused the Petitioners to be prescribed and to use Yasmin, thereby causing severe injuries and damages, as previously described herein;

54. Respondents led the Petitioner to believe that use of Yasmin did not entail any significant increased health risks and/or minimised these risks;
55. Respondents misled the Petitioner by and through statements made by the Respondents, their authorized agents or sales representatives (or through doctors). These representations that Yasmin was safe, effective, and fit and proper for its intended use were made orally and in publications, package inserts, and other written materials to the health care community and the public;
56. In using Yasmin, the Petitioner relied on the representations made by the Respondents to the health care community and the public. As a direct result of Respondents' faults, Petitioner suffered prejudice and is entitled to be compensated for physical and moral damages;

### **THE COMPETITION ACT**

57. Section 52 of the *Competition Act*, R.S.C., 1985, c. C-34., prohibits the use of false and misleading representations or omissions of material fact in connection with the marketing, promotion, and sale of Yasmin. Respondents communicated the purported benefits of Yasmin while failing to disclose the serious and dangerous side effects related to the use of Yasmin with the intent that consumers like the Petitioner would purchase and ingest Yasmin;
58. At all times relevant, Respondents violated section 52 of the *Competition Act* by the use of false and misleading representations or omissions of material fact in connection with the marketing, promotion, and sale of Yasmin. Respondents communicated the purported benefits of Yasmin while failing to disclose the serious and dangerous side effects related to the use of Yasmin with the intent that consumers like the Petitioner would purchase and ingest Yasmin;

59. As a result of violating the *Competition Act*, Respondents caused the Petitioner to be prescribed and to use Yasmin, thereby causing severe injuries and damages, as previously described herein;

#### **THE CONSUMER PROTECTION ACT**

60. Section 228 of the Consumer Protection Act, L.R.Q., c. P-40.1 states that a manufacturer may not fail to mention an important fact in any representation made to a consumer;

61. By failing to adequately warn the Petitioner and other consumers of the serious negative health effects of Yasmin, the Respondents contravened said section of the Consumer Protection Act and committed a fault that caused the Petitioner severe injuries and damages;

#### **THE FACTS GIVING RISE TO PERSONAL CLAIMS BY EACH OF THE MEMBERS OF THE GROUP ARE:**

62. The claims of each Group Member are founded on the same underlying facts as the Petitioner's claims.

63. Each Member of the Group has purchase and/or consumed Yasmin;

64. Group Members were not adequately advised of the potential health effects of consuming Yasmin;

65. Every member of the Group's consent when purchasing Yasmin was vitiated as a result of the false and/or misleading statements made by Respondents, which are described hereinabove;

66. Every member of the Group would not have purchased the Yasmin products in question if it wasn't for Respondents' misleading marketing campaign described above;

67. Each Member of the Group is entitled to claim damages because of the faults committed by the Respondents;

### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

#### **THE COMPOSITION OF THE GROUP MAKES APPLICATION OF ARTICLES 59 OR 67 OF THE CODE OF CIVIL PROCEDURE IMPOSSIBLE**

68. The number of potential Group Members is so numerous that joinder of all Members is impracticable. While the exact number of Group Members is unknown to Petitioner at the present time and can only be ascertained from sales and distribution records maintained by the Respondents and their agents, it can be reasonably estimated that there are thousands of potential Group Members located throughout Canada;

69. Based on the number of potential Group Members, it is impossible for the Petitioner to identify all potential Group Members and obtain a mandate from each of them. Petitioner does not possess the names and addresses of potential Group Members;

70. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondents. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the Court system;

71. Moreover, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province) risks having contradictory judgments on questions of fact and law that are similar or related to all Members of the Class;

72. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;

73. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Class to effectively pursue their respective rights and have access to justice;

**THE IDENTICAL, SIMILAR, OR RELATED QUESTIONS OF LAW OR FACT BETWEEN EACH GROUP MEMBER AND RESPONDENTS**

74. The recourses of the Members raise identical, similar or related questions of fact or law, namely:

- (1) Does consumption of Yasmin cause an increase in negative health effects?
- (2) If consumption of Yasmin does cause an increase in negative health effects, what is the nature and extent of those negative health effects?
- (3) As a result of negative health effects, was Yasmin defective or unfit for the purpose for which they were intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce in Canada by the Respondents?
- (4) Did the Respondents adequately advise and warn the Group Members of the negative health effects associated with the consumption of Yasmin?
- (5) Did the Respondents misrepresent the existence or severity of negative health effects to the Group Members or to health care professionals?

- (6) Did the Respondents knowingly fail to disclose the negative health effects to Group Members?
- (7) If the Respondents did not knowingly fail to disclose the negative health effects to Group Members, ought the Respondents have known about the negative health effects?
- (8) Are Group Members entitled to claim compensatory damages as a result of the acts and omissions of the Respondents?
- (9) Are Group Members entitled to claim moral damages as a result of the acts and omissions of the Respondents?
- (10) Are Group Members entitled to claim exemplary or punitive damages as a result of the acts and omissions of the Respondents?

75. The majority of the issues to be dealt with are issues common to every Group Member;

#### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

76. The action that Petitioner wishes to institute is an action in civil liability on behalf of Group Members who consumed or purchased Yasmin;

#### **THE CONCLUSIONS SOUGHT BY PETITIONER ARE:**

**GRANT** the Petitioner's Motion against the Defendants;

**CONDEMN** Defendants to reimburse to the Members of the Group the purchase price paid for the Yasmin products, plus interest as well the additional indemnity since the date of purchase;

**ORDER** the Defendants to compensate each of the Group Members for the losses suffered as a consequence of the Defendants' actions in an amount to be determined;

**CONDEMN** Defendants to pay an amount in punitive and/or exemplary damages to every Group Member, amount to be determined by the Court, plus interest as well the additional indemnity;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Group Member in accordance with articles 1037 to 1040 of the Code of Civil Procedure;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to give notice to members;

**PETITIONER WILL FAIRLY AND ADEQUATELY PROTECT AND REPRESENT THE INTEREST OF THE MEMBERS OF THE GROUP AND REQUESTS TO BE ASCRIBED THE STATUS OF REPRESENTATIVE**

77. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:

- a. purchased and consumed Yasmin, multiple times per month, over many years, the whole as a result of Respondents' misleading marketing campaign described above;

- b. was not given the chance to make an informed decision and give an informed consent before purchasing and consuming the said products, again due to Respondents' misleading marketing campaign described above;
- c. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
- d. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
- e. is ready and available to manage and direct the present action in the interest of the Class Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
- f. does not have interests that are antagonistic to those of other members of the Group;
- g. has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- h. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

78. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a. Yasmin was sold to many Class Members in the District of Montreal;
- b. The Respondent Bayer Inc. has an office in the District of Montreal;
- c. Petitioner's attorneys practise in the District of Montreal.



**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the group herein described as:

All residents in Canada who purchased or ingested the product Yasmin, produced, marketed, advertised, sold and/or distributed by Respondents, or any other group to be determined by the Court;

**alternately (or as a subclass):**

All residents in Quebec who purchased or ingested the product Yasmin, produced, marketed, advertised, sold and/or distributed by Respondents, or any other group to be determined by the Court;

**IDENTIFY the principle questions of fact and law to be treated collectively as the following:**

- (1) Does consumption of Yasmin cause an increase in negative health effects?
- (2) If consumption of Yasmin does cause an increase in negative health effects, what is the nature and extent of those negative health effects?
- (3) As a result of negative health effects, was Yasmin defective or unfit for the purpose for which they were intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce in Canada by the Respondents?
- (4) Did the Respondents adequately advise and warn the Group Members of the negative health effects associated with the consumption of Yasmin?

- (5) Did the Respondents misrepresent the existence or severity of negative health effects to the Group Members or to health care professionals?
- (6) Did the Respondents knowingly fail to disclose the negative health effects to Group Members?
- (7) If the Respondents did not knowingly fail to disclose the negative health effects to Group Members, ought the Respondents have known about the negative health effects?
- (8) Are Group Members entitled to claim compensatory damages as a result of the acts and omissions of the Respondents?
- (9) Are Group Members entitled to claim moral damages as a result of the acts and omissions of the Respondents?
- (10) Are Group Members entitled to claim exemplary or punitive damages as a result of the acts and omissions of the Respondents?

**IDENTIFY the conclusions sought by the class action to be instituted as being the following:**

**GRANT** the Petitioner's Motion against the Defendants;

**CONDEMN** Defendants to reimburse to the Members of the Group the purchase price paid for the Yasmin products, plus interest as well the additional indemnity since the date of purchase;

**ORDER** the Defendants to compensate each of the Group Members for the losses suffered as a consequence of the Defendants' actions in an amount to be

determined;

**CONDEMN** Defendants to pay an amount in punitive and/or exemplary damages to every Group Member, amount to be determined by the Court, plus interest as well the additional indemnity;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Group Member in accordance with articles 1037 to 1040 of the Code of Civil Procedure;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

**DECLARE** that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

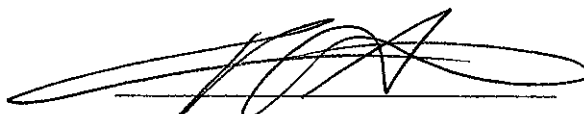
**ORDER** the publication of a notice to the Members of the Group in accordance with article 1006 C.C.P.;

**THE WHOLE** with costs to follow.

**MONTREAL, March 26, 2010**

Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP  
Merchant Law Group, LLP



**MERCHANT LAW GROUP LLP**  
Attorneys for Petitioner and the  
Class Members

**NOTICE TO DEFENDANT  
(Art. 119 C.C.P.)**

**TAKE NOTICE** that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this action or application, you must first file an Appearance, personally or by advocate, at the Courthouse of Montreal situated at 1 Notre Dame East, Montreal, Quebec, within ten (10) days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the ten (10) day period.

If you file an Appearance, the action or application will be presented before the Court on **May 31, 2010 at 9:00 AM**, in room **2.16** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

**MONTREAL, March 26, 2010**

Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP  
Merchant Law Group, LLP

**MERCHANT LAW GROUP LLP**

Per: 

David Assor  
Attorneys for Petitioner and the Class  
Members

---

**SUPERIOR COURT OF  
QUEBEC**

---

DISTRICT OF MONTREAL

---

**JOSÉE ETHIER**

Petitioner

- VS -

**BAYER INC.**

-and-

**BAYER HEALTHCARE CANADA**

Respondents

**MOTION TO AUTHORIZE THE  
BRINGING OF A CLASS ACTION  
AND TO ASCRIBE THE STATUS OF  
REPRESENTATIVE  
(ART 1002 C.C.P. and following)**

---

**COPY FOR MERCHANT LAW GROUP LLP**

---

*Me David Assor and Me Owen Falguero*

**MERCHANT LAW GROUP LLP**

10 Notre-Dame E., Suite 200

Montreal, Quebec

H2Y 1B7

Telephone: (514) 842-7776

Telecopier: (514) 842-6687

**BC 3841**