

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

Class Action
SUPERIOR COURT

N^o: 500-06-001304-241

MARY-JANE PENNINO

Plaintiff

v.

MERCK & CO., INC.

SCHERING-PLOUGH CANADA INC.

ET AL.

Defendants

APPLICATION
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
(Art. 574 C.C.P.)

TO THE HONOURABLE LUKASZ GRANOSIK, J.S.C., AS CASE MANAGEMENT JUDGE OF THIS CLASS ACTION, THE DEFENDANTS MERCK & CO., INC. AND SCHERING-PLOUGH CANADA INC. STATE THE FOLLOWING:

I. INTRODUCTION

1. Merck & Co., Inc. and Schering-Plough Canada Inc. seek leave to adduce relevant evidence in the context of the Plaintiff's *Demande pour obtenir l'autorisation d'exercer une action collective et pour obtenir le statut de représentante* dated April 2, 2024 (the "**Application**"), namely:
 - a. an affidavit by Kelly E. W. Grez, Corporate Secretary of Merck & Co., Inc., a draft of which is attached herewith as **Exhibit MCI-1**; and
 - b. an affidavit by Chantal Desbiens, Secretary of Schering-Plough Canada Inc., a draft of which is attached herewith as **Exhibit SPCI-1**.
2. Merck & Co., Inc. and Schering-Plough Canada Inc. submit that this evidence should be allowed as it is relevant, useful and necessary for verifying the criteria set out in Articles 574 and 575(2) C.C.P., and fits squarely within the parameters

set out by the Supreme Court of Canada, the Court of Appeal of Quebec and this Court in that regard.

3. This evidence will allow the Court to verify whether the facts alleged appear to justify the conclusions sought as against the Defendants Merck & Co., Inc. and Schering-Plough Canada Inc., and, as the case may be, whether this Court has jurisdiction to authorize a national class as proposed by the Plaintiff.

II. THE PROPOSED CLASS ACTION

4. The Plaintiff wishes to institute a class action on behalf of the following class, described in paragraph 1 of the Application:

Toute personne physique qui, au Canada, s'est fait prescrire et a consommé l'un ou l'autre des médicaments commercialisés sous la marque Suboxone® entre leur date d'entrée respective sur le marché canadien et le 16 mars 2023, et qui a ensuite développé des problèmes dentaires.

ou, subsidiairement :

Toute personne physique qui, au Québec, s'est fait prescrire et a consommé l'un ou l'autre des médicaments commercialisés sous la marque Suboxone® entre leur date d'entrée respective sur le marché canadien et le 16 mars 2023, et qui a ensuite développé des problèmes dentaires.

5. In essence, the Plaintiff claims that the medicine Suboxone is affected by a safety defect and that the Defendants failed to warn consumers of the alleged risks of developing dental problems and how to prevent them, from the initial marketing of Suboxone up until March 16, 2023.
6. The Plaintiff further claims that the Defendants were negligent in that they failed to conduct adequate and sufficient pre-marketing research and testing to determine whether Suboxone was safe.
7. The Plaintiff alleges that she was prescribed Suboxone to treat opioid addiction and consumed the medicine between August 28, 2012 and May 2013. She claims that she began experiencing dental problems, namely cavities.
8. The only allegations of the Application that pertain specifically to the Defendants Merck & Co., Inc. and Schering-Plough Canada Inc. or one of them are found at

paragraphs 17 to 24 of the Application. Those paragraphs focus on the Defendants' alleged corporate structure, operations and their alleged involvement in a licensing agreement with the Defendants described as the "Reckitt defendants" (*"les défenderesses Reckitt"*).

9. As further discussed below, the allegations of the Application provide an incomplete, and in some respect, false, portrait of the operations of the Defendants Merck & Co., Inc. and Schering-Plough Canada Inc. and their alleged role in the manufacturing, testing, marketing and sale of Suboxone in Canada.

III. THE PROPOSED EVIDENCE

10. The draft affidavit by Kelly E. W. Grez (Exhibit MCI-1) seeks to clarify the following facts with respect to the Defendant Merck & Co., Inc.:
 - a. Merck & Co., Inc. is not domiciled in Canada, and it has no headquarters, residence, establishment, offices or facilities of any kind therein. It is not registered to do business and does not sell or market any products to consumers in Canada;
 - b. Merck & Co., Inc. was never the market authorization holder of Suboxone in Canada, and did not have any role in the design, development, manufacturing, approval, packaging, labelling, marketing, promotion, distribution or sale in Canada;
 - c. Merck & Co., Inc. never held the exclusive licensing rights to the distribution of Suboxone in Canada, contrary to what is alleged at paragraph 23 of the Application; and
 - d. Merck & Co., Inc. and Schering-Plough Canada Inc. are separate corporate entities and, Merck & Co., Inc. was not responsible for the operations of Schering-Plough Canada Inc. at any time relevant to the proposed class action, contrary to what is alleged by the Plaintiff at paragraph 24 of the Application.
11. The draft affidavit by Chantal Desbiens (Exhibit SPCI-1) seeks to clarify the following facts with respect to Schering-Plough Canada Inc.:
 - a. Schering-Plough Canada Inc. did not play any role whatsoever in the design, development or manufacturing of the medicine Suboxone;

- b. Schering-Plough Canada Inc. was the market authorization holder for the sale of Suboxone in Canada from May 18, 2007 to April 25, 2011, and distributed Suboxone in Canada during that period pursuant to a license granted by Reckitt Benckiser Group PLC; and
 - c. Schering-Plough Canada Inc. did not play any role in the sale, distribution or marketing of Suboxone in Canada at the time when the Plaintiff was allegedly prescribed and used Suboxone, between August 28, 2012 and May 2013.
- 12. The proposed evidence fills a factual void and establishes the falsity of certain allegations of the Application as they relate to Schering-Plough Canada Inc. and Merck & Co., Inc.
 - 13. This evidence is reasonable and proportional, and it will allow the Court to have a better understanding of the operations and respective roles of the Defendants Merck & Co., inc. and Schering-Plough Canada Inc. as they relate to the facts alleged in the Application.
 - 14. It is necessary in order to allow the Court to assess its jurisdiction over the proposed national class and to undertake an informed and complete analysis of whether the Plaintiff has demonstrated an arguable case as against Schering-Plough Canada Inc. and Merck & Co., Inc. pursuant to Article 575(2) C.C.P .
 - 15. The proposed affidavits were drafted in light of the allegations made in the Application as it currently stands. Schering-Plough Canada Inc. and Merck & Co., Inc. respectfully reserve their rights to amend the present Application for Leave to Adduce Evidence should the Plaintiff file an amended version of the Application.
 - 16. This Application for Leave to Adduce Evidence is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

TO GRANT the present Application for Leave to Adduce Evidence;

TO AUTHORIZE the Defendants, Merck & Co., Inc. and Schering-Plough Canada Inc., to file into evidence the proposed affidavit of Kelly E. W. Grez (Exhibit MCI-1) and the proposed affidavit of Chantal Desbiens (Exhibit SPCI-1) for the purpose of the hearing on the Plaintiff's *Demande pour obtenir l'autorisation d'exercer une action collective et pour obtenir le statut de représentante* dated April 2, 2024.

THE WHOLE without costs, unless this application is contested.

Montreal, May 21, 2025

Blake, Cassels & Graydon L.L.P.

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Solutions Inc. and Pharma Importing
Inc.)

TAKE NOTICE that the present *Application for Leave to Adduce Relevant Evidence* will be presented for adjudication before the honourable Lukasz Granosik, judge of the Superior Court, sitting in and for the district of Montréal, on a date and time to be determined, at the Montréal Courthouse located at 1 Notre-Dame Street East, Montréal, Québec H2Y 1B6, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, May 21, 2025

Blake, Cassels & Graydon L.L.P.

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ORIGINAL

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The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.