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CANADA

COURT OF APPEAL

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-09-022683-122
C.A.
S.C.M. 500-06-000528-105

BRENT MACMILLAN

APPELLANT/Petitioner

-vs.-

ABBOTT LABORATORIES, LIMITED

and

ABBOTT LABORATORIES

RESPONDENTS/Respondents

INSCRIPTION IN APPEAL

1. The Appellant/Petitioner ("MacMillan") inscribes the present matter in appeal before the Court of Appeal, sitting in Montreal.

2. The judgment of the Superior Court was rendered on April 16, 2012 by the Honourable Madam Justice Claudine Roy, J.C.S., sitting in the judicial district of Montreal (the "Judgment").

3. The Judgment rejected MacMillan's Precised and Re-Re-Amended Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the "Motion") against the Respondents/Respondents (together "Abbott").

4. The hearing lasted approximately three (3) days.

5. MacMillan asks that the Judgment be reversed and that the Motion be granted with costs in both courts.

A. Summary of Relevant Facts

6. The Petitioner was prescribed, purchased, and ingested a daily dose of 10 mg of the drug Meridia from a period of approximately June 17th 2004 until around October 31st 2005 (Exhibit R-13).

7. At the end of the year 2005, while still on the drug Meridia, the Petitioner had a serious episode of severe chest pains, sweating, and shortness of breath. The

Petitioner did not see a doctor at the time, but discontinued taking all of his medications as a precaution. Upon speaking to a physician by phone, he was instructed to continue all of his other medications but to stop taking Meridia.

8. In the year 2009, there were 118,264 prescriptions for Meridia worth $19 million dollars that were filled by Canadian retail drug stores, according to the drug research firm IMS Health Canada (Exhibit R-17).

9. On September 2nd 2010, the final results of the Sibutramine Cardiovascular Outcome Trial ("SCOUT") were published in the New England Journal of Medicine (Exhibit R-5). According to the SCOUT trial results, there was a 16% increase in the relative risk of the primary outcome event (a composite of non-fatal myocardial infarction, non-fatal stroke, resuscitation after cardiac arrest, and cardiovascular death) in the Meridia group compared to the placebo group. The primary outcome was driven by non-fatal myocardial infarction and non-fatal stroke;

10. On October 8th 2010, Abbott decided, in collaboration with Health Canada, to voluntarily withdraw the drug Meridia from the Canadian market (Exhibit R-11).

11. Meridia [a weight-loss drug] was first approved in the United States in November 1997 (Exhibit R-7), in Europe in January 1999 (Exhibit R-7), and in Canada in December 2000 (Exhibit R-11).

12. Even at the time of the drug's introduction into the marketplace [i.e. 1997], there was concern about the drug's increase in blood pressure and heart rate. As the FDA put it (Exhibit R-9):

> "Q5. Were there any data at the time of approval that suggested Meridia posed a cardiovascular risk? If so, why did FDA approve this drug?
>
> Yes. At the time of initial approval, the increases in blood pressure and heart rate observed in patients treated with Meridia were identified as the primary safety concerns; however, the benefit-risk profile of 3 of the 5 proposed doses of the drug was deemed favorable and FDA felt that these adverse effects could be monitored with appropriate adjustments in treatment when necessary. FDA approved three doses—5, 10, and 15 mg--out of the five doses--5, 10, 15, 20, and 30 mg--originally submitted by the company."

13. It is well established law that manufacturers of drugs have an elevated duty to inform consumers about any possible health risks. This is a constant obligation that forces drug companies to do, not only proper pre-marketing testing and research, but also up-to-date post-market studies. As stated in *Hollis c. Dow Corning Corp.*, [1995] 4 R.C.S. 634:

> « L'obligation de mise en garde est une obligation constante, qui oblige les fabricants à prévenir les utilisateurs non seulement des dangers connus au

moment de la vente, mais également de ceux qui sont découverts après l'achat et la livraison du produit. »

14. Despite Abbott's knowledge of the issues of increased blood pressure and heart rate caused by Meridia, based on the information publicly available and without the Petitioner's benefit of discovery, it would appear that the Respondents only began to satisfy their constant duty to inform with the performance of the SCOUT study, which started in January 2003 (Exhibit R-8) – over five (5) years after the introduction and sale of Meridia to consumers!

15. In fact, the public record further indicates that Abbott did not even initiate doing a long-term study but was forced to do so by the European Medicines Agency as a precondition to being allowed to sell Meridia in Europe, as explained by the FDA (Exhibit R-7):

> "The initial European Union approval of sibutramine was in January 1999, but due to concerns about the potential long-term consequences of increases in blood pressure and pulse, a cardiovascular outcomes study was required as a post-approval commitment. This was the genesis of the Sibutramine Cardiovascular Outcomes (SCOUT) trial."

16. Not only did the SCOUT study only begin over five (5) years after Meridia was approved in the USA, but it was also completed in March 2009 (Exhibit R-8). Preliminary results were made available as early as October 2009 (Exhibit R-4):

> "Although the full data from the SCOUT study have not yet been analysed, the study's Data Safety Monitoring Board (a body of independent experts appointed to review regularly the outcome of the clinical trial) informed the Agency in October 2009 of preliminary data indicating that sibutramine is associated with more cardiovascular problems than placebo."

17. Based on these preliminary findings, the European Medicines Agency suspended all marketing authorisations across Europe on August 6th 2010 (Exhibit R-4):

> "Based on the evaluation of the currently available data and the scientific discussion within the Committee, the CHMP concluded that the benefits of sibutramine-containing medicines do not outweigh their risks, and therefore recommended that the marketing authorisations for sibutramine-containing medicines be suspended across the EU.
>
> ...
>
> The European Commission issued a decision on 6 August 2010."

18. Yet, despite the fact that: (1) the SCOUT study was completed in March 2009, (2) preliminary data was available on October 2009, and (3) the sale of sibutramine was halted in Europe on August 6th 2010 - the Respondents waited until October 8th 2010 to withdraw their medication from the Canadian market (Exhibit R-11).

19. The Respondents attempted to distinguish the results of the SCOUT study from the population who were being prescribed Meridia to the various regulatory agencies, in a similar fashion that Abbott argued before the Superior Court of Quebec.

20. The Respondents argued that the increased risk of an adverse cardiovascular event only existed with users that had pre-existing heart disease and because sibutramine was already contraindicated for those people, this was sufficient to allow sales to continue.

21. The Respondents based this on the subdivision in the SCOUT study between the group that had diabetes alone, cardiovascular disease alone, and cardiovascular disease and diabetes together. The Respondents claimed that the only groups affected were those that had cardiovascular disease – meaning that the diabetes alone group did not experience an increased risk of harm.

22. The FDA did not agree with the Respondents breakdown of categories and concluded that there was no great difference in harm between the three (3) subgroups by saying (Exhibit R-7):

> "Numerous sub-group analyses were conducted by the sponsor and the Agency to try and identify a population that had a more favorable benefit:risk profile. The sponsor's analyses focused on three defined cardiovascular (CV) risk groups – Type 2 diabetes mellitus (DM) only, CV only, and CV + DM. According to the sponsor's analyses, in the DM-only sub-group there was no difference in risk for any of the CV outcome events or for all-cause mortality between the sibutramine and placebo treatment groups. However, the FDA's analyses revealed that based on the logrank test interaction p-value of 0.56, the treatment effect did not differ significantly among the three CV risk subgroups."

23. In addition, the FDA concluded that the SCOUT study's results would apply to all sibutramine users. It states (Exhibit R-7):

> "A review of the Adverse Events Reporting System (AERS) of spontaneous reports of serious cardiovascular outcomes associated with the use of sibutramine revealed that some patients had asymptomatic and undetected advanced coronary artery disease. Thus, it is unlikely that patients conforming to any intended treatment group identified by simple clinical criteria alone would be reliably free of risk associated with this agent."

24. Health Canada saw things the same way when it wrote (Exhibit R-11):

> "Despite the previous risk mitigating mitigation measures, there continues to be concern of an increased risk of heart-related adverse events, particularly as people at risk of cardiovascular disease may not have symptoms."

25. The same reasoning was used in the editorial of the New England Journal of Medicine, which stated (Exhibit R-6):

"In their article, the SCOUT investigators (who were supported by Abbott Laboratories, the manufacturer of sibutramine) conclude, on the basis of their data, that no changes are indicated in the clinical use of sibutramine, which they say should continue to be limited to persons without preexisting cardiovascular disease. The investigators' conclusion is based on a narrow interpretation of the SCOUT data, in which only the patients with preexisting cardiovascular disease had an increase in the risk of new cardiovascular events. Although this is a defensible interpretation of the findings in the SCOUT trial, the European Medicines Agency, the drug regulation authority in the European Union, disagreed with it. On January 21, 2010, after a detailed analysis of the preliminary data from the SCOUT trial, the agency suspended marketing authorization for all sibutramine-containing medications across the European Union. The rationale was the agency's conclusion that the risks of sibutramine are greater than its benefits. Even though many of the patients in the SCOUT trial had preexisting cardiovascular disease and were therefore being treated outside the labeled indication, the agency noted that obese and overweight persons in general are likely to have an increased risk of sometimes asymptomatic cardiovascular disease and may be harmed by sibutramine. In real-world clinical practice, it can be difficult to reliably identify patients with silent cardiovascular disease who may be placed at risk with sibutramine treatment."

B. <u>Faults Being Claimed Against Abbott</u>

26. What has become clear from the above facts is the following:

i) Had the Respondents performed studies earlier, either before the release of the drug Meridia onto the marketplace or at any reasonable time thereafter and made their findings available to the public and to the regulator, as is their continuing duty under *Hollis c. Dow Corning Corp.*, [1995] 4 R.C.S., it would have been discovered by them and Health Canada that "the benefits no longer outweigh the risks for this drug" (Health Canada's words in Exhibit R-11);

ii) By delaying the testing for over 5 years, from between 1997 to 2003, to begin satisfying the Respondents constant duty to warn under *Hollis c. Dow Corning Corp.*, [1995] 4 R.C.S., and then by keeping Meridia on the market another year and a half from when the study was completed and when the final results were published, from between March 2009 to October 2010, Abbott has been able to profit from the sale of this drug to the tune of over a hundred million dollars for each year that Meridia continued to be sold to consumers.

27. The question that must be put forward as it relates to the claim for a refund of the sale price and for punitive damages under the *Consumer Protection Act* for the drug Meridia must then be:

Can a drug company do the minimum testing required so that it can successfully advocate getting a drug approved worldwide, then delay as long as possible its continuous testing obligation as to its safety and efficacy, so as to be able to continue to generate hundreds of millions of dollars in sales from users, and then when the drug company is finally forced to do public post-market research and it is discovered that the risks of the use of the drug in question are greater that its benefits, withdraw the drug from the market and keep hundreds of millions of dollars in sales proceeds, from the sale of a drug that should have never been put into the market for sale to consumers in the first place or at the very least been withdrawn from sale to consumers at a much earlier date?

28. This question is particularly relevant considering the joint application of articles 228, 253, and 272 of the *Consumer Protection Act*. If one would agree that knowing that the risks of the use of Meridia outweigh its benefits is an "important fact". In the case of an "omission of an important fact" under art. 228 LPC, art. 253 LPC adds an extra presumption in law that "it is presumed that had the consumer been aware of such practice, he would not have agreed to the contract or would not have paid such a high price" (art. 253 LPC). Such a statutory violation would entitle the consumer to a refund of the purchase price paid and would also give rise to punitive damages under art. 272 LPC.

29. The question as it relates to whether or not the drug Meridia can cause or contribute to heart attacks or strokes is:

Considering that the FDA concluded that the "magnitude of risk for major adverse events in the three subgroups were not statistically significantly different" and that "some patients had asymptomatic and undetected advanced coronary artery disease" (Exhibit R-8), and the European Medicines Agency concluded that "because obese and overweight patients are likely to have a higher risk of cardiovascular events, the Committee was of the opinion that the data from SCOUT are relevant for the use of the medicine in clinical practice" (Exhibit R-3), and that Health Canada has concluded that "people at risk of cardiovascular disease may not have symptoms" (Exhibit R-11) – Is it proper at the authorization stage, or was it premature, to conclude that class members would not suffer bodily injury because the scientific evidence shows that the drug would have been contraindicated for those that would have been prescribed Meridia?

30. With regard to the Petitioner's situation, the question needs to be asked if:

Considering that the Petitioner has clearly proven his interest as: (1) a purchaser of Meridia, who is entitled to a refund of the purchase price and punitive damages if his common claims against Abbott are proven, and (2) a person who is claiming personal injury on an individual basis, but not as a common issue, whether or not he will be successful when it comes to the individual trials – Can he act as a proper representative for a class action that is intended to deal only with common issues (i.e. not the question of whether or not he or other class

members can show personal injury on an individual basis, necessitating a causal link and recovery of such individual personal injury damages)?

C. Grounds of Appeal

31. The grounds of appeal stem from the following questions:

i. Did the Trial Judge err in law by failing to address the Petitioner's argument to authorize a class action as it relates to the refund of the purchase price of Meridia and punitive damages against the Respondents for having negligently performed their continuous duty to conduct studies and research and thereby pocketing substantial sums of money from the sale of the drug, that at the very least, should have been removed from sale to consumers at an earlier date, the whole in violation of *Hollis c. Dow Corning Corp.*, [1995] 4 R.C.S. 634 and articles 228, 253, and 272 of the *Consumer Protection Act*? [art. 1003 b) C.C.P.]

ii. Did the Trial Judge err in law by concluding that there was no issue to be tried on the merits as it relates to a determinative scientific conclusion of whether or not Meridia causes or contributes to heart attacks and strokes? [art. 1003 b) C.C.P.]

iii. Did the Trial Judge err in law by concluding that the Petitioner could not act as the Representative despite being a member of the class who has purchased Meridia and is claiming a refund, as well as, punitive damages? [art. 1003 d) C.C.P.]

iv. Did the Trial Judge err in law by concluding that the Petitioner could not act as the Representative as he was unable to prove, at the authorization stage, that his serious episode of severe chest pain, sweating, and shortness of breath that he suffered was caused by the Respondents, even though that issue is not being asked to be tried as a common question and that this element of causation, whether it will ultimately be proven or not, will only be dealt with during the individual trials, just as it will be with all of the other class members who claim similar additional personal injury damages? [1003 d) C.C.P.]

v. Did the Trial Judge err in law by concluding that the only class that could be authorized were those who are claiming personal injury and not those that are claiming a refund of the purchase price and punitive damages? [art. 1003 c) C.C.P.]

i) Refund and Punitive Damages

32. The Trial Judge was prepared to authorize the common questions as:

« [132] Si l'autorisation avait été accordée, le Tribunal aurait reformulé les questions ainsi :

...

- Les Intimées Laboratoires Abbott Limitée et Abbott Laboratories doivent-elles rembourser le coût des médicaments payé par les membres?
- La conduite des Intimées Laboratoires Abbott Limitée et Abbott Laboratories justifie-t-elle l'octroi de dommages exemplaires? »

33. The basis of this claim for the refund of the purchase price and punitive damages can be explained by Abbott having:

a) Releasing a drug that they knew, in the year 1997, causes increased blood pressure and heart rate without having any publicly disclosed long-term studies;

b) Waiting over 5 years before performing any public long-term studies (started in 2003) and only because the European Medicines Agency forced them to do so in order to allow them to sell their drug in Europe in 1999;

c) Waiting until October 8th 2010 to "voluntarily withdraw" their drug in Canada even though:

i. The SCOUT study which was conducted over a six-year period had been completed in March 2009;

ii. The preliminary data from the SCOUT study was available as early as one (1) year earlier (October 2009) and already showed an increased risk of an adverse cardiovascular event;

iii. Sales of sibutramine were halted two (2) months earlier in Europe (on August 6th 2010);

34. Therefore, the Respondents are either presumed to have always known about the harm right from the start (art. 53 LPC) or they were negligent in not knowing about the harm of sibutramine significantly before October 8th 2010 (*Hollis c. Dow Corning Corp.*, [1995] 4 R.C.S. 634).

35. Summarized by the author of the editorial published in the New England Journal of Medicine (Exhibit R-6):

> "Despite the concern that sibutramine may increase the risk of cardiovascular events, 13 years passed before a clinical trial of sufficient size and duration to provide an accurate assessment of cardiovascular risk was completed."

36. Had Abbott performed their requisite testing and studies in a timely fashion, they would have been required, in accordance with art. 228 LPC, to divulge the

"important fact" that the risks of the use of Meridia to consumers outweigh its benefits.

37. Having failed in this legal requirement, there is a legal presumption, in accordance with art. 253 LPC, that had such disclosure been made, consumers would not have agreed to buy Meridia. In fact, as we know from the reaction of Health Canada today (Exhibit R-11), even without the benefit of art. 253 LPC, Meridia would not have been allowed to remain on the market, had the regulatory agency been aware of the risk/benefit ratio.

38. In addition to the refund, art. 272 LPC allows for punitive damages. It is respectfully submitted that the conduct of Abbott as alleged in these proceedings justifies, at least *prima facie*, an order for exemplary damages so that a manufacturer of drugs cannot and should not take advantage of the regulatory regime in the way that the Respondent did in the present case.

39. If the Respondents are allowed to retain the money from the sale of Meridia during the time period where they neglected to perform their continuing duty to perform testing and delaying the ultimate scientific conclusion that Meridia's risks outweigh its benefits, it would be allowing Abbott to profit from its own turpitude.

40. A refund of the purchase price of Meridia, as well as, punitive damages should have justified a judgment that authorizes a class action on those bases alone.

ii) <u>Scientific Conclusions</u>

41. The Trial Judge made reference to several other drug class actions that were authorized but distinguished them from the case at bar because:

> « [106] M. MacMillan cite tous les jugements où des recours collectifs ont été autorisés contre des compagnies pharmaceutiques sans noter que, dans toutes ces affaires, les requérants ont déposé des études scientifiques, des expertises ou leur dossier médical établissant, à première vue, un lien entre le médicament et l'effet secondaire indésirable :
>
> - dans *Hotte c. Servier Canada inc.*, Mme Hotte avait démontré, au stade de l'autorisation, qu'elle souffrait d'un effet secondaire sérieux et Santé Canada, lors du retrait du médicament, avait émis un avis conseillant à tous les patients de consulter leur médecin immédiatement, les études démontrant un pourcentage élevé d'échocardiogrammes anormaux;
> - dans *Dallaire c. Eli Lilly Canada inc.*, les requérants appuyaient leur réclamation sur un rapport médical;
> - dans *Sigouin c. Merck & Co. inc.*, les requérantes avaient déposé plusieurs articles de revues scientifiques traitant des effets néfastes du médicament sur la santé des utilisateurs;

- dans *Brito c. Pfizer Canada inc.*, et dans *Brousseau c. Laboratoires Abbott ltée*[1], les intimées admettaient que l'effet secondaire reproché pouvait être une conséquence de la médication.

[107] Ici, l'étude SCOUT n'établit aucunement que les personnes à qui le Médicament est destiné présenteraient un risque accru d'infarctus du myocarde et d'accident vasculaire cérébral non fatals. »

42. It becomes difficult to conclude without a hearing on the merits that *prima facia* there is no possibility of an increased risk of heart attacks and strokes to person that do not have pre-existing cardiovascular disease, when one considers the comments of Health Canada, the FDA, the European Medicines Agency, and the medical editorial with regard to fact that:

a) The subdivision between the 3 groups as being "not statistically significantly different" (FDA);

b) The "data from SCOUT are relevant for the use of the medicine in clinical practice" (European Medicines Agency);

c) "In real-world clinical practice, it can be difficult to reliably identify patients with silent cardiovascular disease who may be placed at risk with sibutramine treatment" (NEMJ editorial);

43. This seems to be a question that is better suited for the merits of the action when each party will be able to submit their own expertise as to the question that the Trial Judge was prepared to authorize as a common question of:

- Est-ce que le Meridia® peut causer ou contribuer à causer un infarctus du myocarde ou un accident vasculaire cérébral?

44. And considering that the answer to this common question does not give rise to individual compensation for damages and that each class member will still need to prove causality in their particular case, if this Honourable Court is inclined to authorize the question of a refund of the purchase price and punitive damages, it seems logical that the scientific question be answered so as to help advance the entire classes claims, if it is confirmed that Meridia does, in fact, cause or contribute to heart attacks and strokes.

iii) Representative for Purchase Price and Punitive damages

45. The Trial Judge concluded at numerous places in the Judgment that only those that suffered bodily injury can be members of the class:

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[1] 2011 QCCS 5211.

« [95] Même si un recours devait être autorisé, le groupe ne saurait comprendre toutes les personnes qui ont consommé le Médicament au motif qu'elles auraient été exposées à un risque accru, mais seulement celles qui ont subi un infarctus du myocarde ou un accident vasculaire cérébral.

[96] En effet, pour avoir droit à une indemnisation, il faut avoir subi un préjudice. Le membre qui aurait, sans le savoir, été exposé à un risque accru d'effet secondaire indésirable, sans l'avoir effectivement ressenti, ne subit aucun préjudice.

...

[104] Tel que rédigé, le groupe pourrait inclure des personnes qui ont acheté le Médicament sans jamais le consommer : « taken and/or purchased ».

[105] Le dossier tel que constitué ne permet de déceler aucun indice démontrant que, *prima facie*, des personnes qui ont acheté le Médicament sans le consommer auraient subi un préjudice. À leur égard, il n'y a pas d'apparence de droit. »

46. This, however, ignores the claim for a refund of the purchase price and punitive damages, of which the Petitioner is a perfect representative and has suffered the same damages that the rest of the class has suffered.

47. If it is the decision of this Honourable Court that authorization is justified for the issues of a refund of the purchase price and/or punitive damages, there is no reason to conclude that the Petitioner would not be suitable to represent the entire class.

iv) Representative for Bodily Injury

48. The Trial Judge concluded that the personal situation of the Petitioner was too weak to allow him to be an adequate representative of the class:

[87] Il est vrai que le Tribunal n'a pas à statuer sur le bien-fondé de la réclamation personnelle de M. MacMillan au stade de l'autorisation, mais M. MacMillan qui se dit inquiet par les résultats de l'étude SCOUT n'a même pas jugé bon de vérifier si oui ou non il a été victime d'un infarctus du myocarde à l'automne 2005. Il ne démontre pas s'il est même possible scientifiquement de prouver aujourd'hui que le malaise ressenti en 2005 était bel et bien un infarctus du myocarde et, dans l'affirmative, s'il est possible scientifiquement, après tant d'années, de prouver que ce malaise a été causé par le Médicament.

[88] Depuis 2005, M. MacMillan n'a absolument rien fait pour vérifier son hypothèse qu'il aurait été victime d'un infarctus du myocarde en 2005 et que l'événement aurait été causé par le Médicament.

...

[121] La réclamation personnelle de M. MacMillan est si faible qu'il ne peut agir comme représentant.

49. As previously noted, the Petitioner is clearly an adequate representative when it comes to claiming a refund of the purchase price and for punitive damages. In addition, if this Honourable Court concludes that a class action is justified to deal with those issues on the merits (i.e. purchase price and punitive damages), why would the question of whether or not Meridia can cause or contribute to heart attacks or strokes not be dealt with?

50. Whether or not the Petitioner will be able to prove on the merits that his personal injury was caused by Meridia or not as an individual issue, will have no effect on other class members' rights. The issue of such personal injury damages was never intended to be a common question. It was admitted by the Petitioner that such a question would require individual trials. This type of reasoning has been applied successfully for the certification of drug related class actions in common law jurisdictions [*Goodridge* v. *Pfizer Canada Inc.*, 2010 ONSC 1095, Schick v. Boehringer Ingelheim (Canada) Ltd., 2011 ONSC 1942, *Heward* v. *Eli Lilly & Company*, 2007 CanLII 2651 (ON SC), *Tiboni* v. *Merck Frosst Canada Ltd.*, 2008 CanLII 37911 (ON SC), *Stanway* v. *Wyeth Canada Inc.*, 2011 BCSC 1057].

51. Therefore, even if the Trial Judge believed that the Petitioner's individual question of causation was "weak", why, especially if authorization is to be granted for a class action to obtain a refund of the purchase price and punitive damages, should authorization for the common question of whether or not Meridia causes or contributed to heart attacks or strokes not be granted? And should the Petitioner not be allowed to represent the class on this issue, considering he is not asking for the court to adjudicate on causation?

v) <u>Identifiable Class</u>

52. For the same reasons as have been already addressed, it is respectfully submitted that a class is identifiable with regard to the refund of the purchase price and punitive damages.

53. It is reasonable to assume that considering the sales in 2009 alone (i.e. 118,264 prescriptions filled, Exhibit R-17) that obtaining mandates from all these consumers would be extremely difficult, if not impossible.

54. Finally, it should be noted that even with respect to only punitive damages, it is now recognized as its own autonomous regime of damages. This means that it is not simply an accessory to compensatory damages, it can be awarded alone (*Riendeau* c. *Brault & Martineau inc.*, 2007 QCCS 4603).

FOR THESE REASONS, THE APPELLANT/PETITIONER RESPECTFULLY REQUEST THAT THE COURT OF APPEAL:

ALLOWS the appeal and sets aside the judgment of the Superior Court dated April 16, 2012;

GRANTS the Appellant/Petitioner's motion seeking authorization to institute the class action;

ASCRIBES to the Petitioner the status of representative for the purpose of exercising the class action on behalf of the following group:

> All persons residing in Canada who have taken and/or purchased the drug MERIDIA® (Sibutramine Hydrochloride Monohydrate) at any time from December 28th 2000 to October 8th 2010;

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

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

- Est-ce que le Meridia® peut causer ou contribuer à causer un infarctus du myocarde ou un accident vasculaire cérébral?
- Les Intimées Laboratoires Abbott Limitée et Abbott Laboratories ont-elles manqué à leur devoir d'information en n'avertissant pas les membres du groupe d'un risque accru d'infarctus du myocarde ou d'accident vasculaire cérébral avec la prise du Meridia®?
- Dans l'affirmative, est-ce que les Intimées Laboratoires Abbott Limitée et Abbott Laboratories ont manqué à leurs obligations légales et contractuelles?
- S'il y a responsabilité, est-elle solidaire?
- Les Intimées Laboratoires Abbott Limitée et Abbott Laboratories doivent-elles rembourser le coût des médicaments payé par les membres?
- La conduite des Intimées Laboratoires Abbott Limitée et Abbott Laboratories justifie-t-elle l'octroi de dommages exemplaires?

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

> GRANT the class action of Petitioner and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to reimburse to each of the members of the class, the purchase price of the product, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

RESERVE the right of each of the members of the class to claim future damages related to the use of Meridia;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

DECLARES that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by law;

FIXES the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDERS the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDERS that said notice be available on the Respondent Abbott Laboratories, Limited website with a link stating "Notice to Meridia users";

REMANDS the file to the Chief Justice of the Superior Court for determination of the judicial district in which the class action will proceed and for appointment of the judge charged with hearing the case;

THE WHOLE with costs in appeal and in the first instance, including publications fees.

Montreal, May 15, 2012

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the APPELLANT/Petitioner

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N°: 500-09-022683-122
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INSCRIPTION IN APPEAL

COPY

Me Jeff Orenstein
CONSUMER LAW GROUP INC.
Avocats • Attorneys
1123, Clark St, 3rd Floor
Montreal, Quebec, H2Z 1K3
Telephone: (514) 266-7863
Telecopier: (514) 868-9690
Email: jorenstein@clg.org

BC 4013
