

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000623-120

DATE: June 27, 2016

IN THE PRESENCE OF: THE HONOURABLE ROBERT CASTIGLIO, J.S.C.

VICTOR EARL KELLY

Petitioner

v.

LAKESHORE GENERAL HOSPITAL / HÔPITAL GÉNÉRAL DU LAKESHORE

- and -

DR. GILLES BOURDON

Respondents

**JUDGMENT ON THE APPLICATION BY THE PETITIONER FOR
AUTHORIZATION OF THE CLASS ACTION FOR SETTLEMENT PURPOSES
ONLY, APPROVAL OF A TRANSACTION AND APPROVAL OF CLASS
COUNSEL FEES**

[1] **CONSIDERING** that on September 17, 2012, the initial petitioner, Mr. Joseph Bohbot, filed a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative against the Respondents, the Lakeshore General Hospital and Dr. Gilles Bourdon;

[2] **CONSIDERING** that the putative class action was filed following the transmission of recall letters to patients who had undergone potentially incomplete colonoscopies at the hands of Dr. Gilles Bourdon at the Lakeshore General Hospital between 2009 and 2012;

[3] **CONSIDERING** that, with the authorization of this Court, the Application was subsequently amended in order to substitute Mr. Victor Earl Kelly as representative;

[4] **CONSIDERING** that during a case management conference call held on April 22, 2015, the parties informed the Court that they had concluded a settlement agreement as a full and final settlement of the class action;

[5] **CONSIDERING** that the Parties subsequently submitted unsigned drafts of the settlement agreement for the Court's review and comment and a hearing was held on September 22, 2015, in order to discuss same and discuss the requirement for the Parties to first confirm and update the current mailing addresses of the Class Members, since the settlement provided for direct notices to be sent to each Class Member by mail;

[6] **CONSIDERING** that on September 23, 2015, the Court issued a first order mentioning that a settlement had been reached and relieving the Respondents of their obligations of confidentiality regarding the private contact information of the 705 Class Members and permitting Respondents to employ all required means in order to update said contact information of the Class Members;

[7] **CONSIDERING** that the Respondents updated the contact information for the Class Members over the next few months and confirmed this to the Court;

[8] **CONSIDERING** that during a case management conference call held on May 16, 2016, the Court approved the content of the Annex A pre-approval notices to be sent to the Class Members and authorized the filing by the Petitioner of the Amended Application for Authorization to Institute a Class Action (Amendment for Settlement Purposes), dated May 5, 2016;

[9] **CONSIDERING** that on May 16, 2016, the Parties provided the Court with final copies of the settlement agreements in both French and English;

[10] **CONSIDERING** that the Parties formally signed the settlement agreements in both French and English between May 19 and 25, 2016;

[11] **CONSIDERING** that the settlement agreement signed by the parties is fair, reasonable and in the best interest of the class members;

[12] **CONSIDERING** that the application for authorization of a class action for settlement purposes meets the criteria set forth in art. 575 C.C.P.;

[13] **CONSIDERING** that class counsel's fees and disbursements are fair and reasonable;

[14] **POUR CES MOTIFS, LE TRIBUNAL :** [14] **FOR THESE REASONS, THE COURT:**

[15] **ACCUEILLE** la demande par le requérant pour autorisation de l'action collective pour fins de règlement seulement, approbation d'une transaction et approbation des honoraires du procureur du groupe;

[16] **ORDONNE** que, pour l'application de ce jugement, les définitions énoncées à l'entente de règlement, pièces R-10 et R-11, s'appliquent et y sont incorporées par renvoi;

[17] **AUTORISE** l'exercice de cette action collective contre les Intimées aux fins d'un règlement hors cour;

[18] **ATTRIBUE** au Requéant le statut de représentant du groupe ci-après décrit:

«Toute personne (incluant sa succession, ses liquidateurs testamentaires ou représentants personnels) ayant subi une colonoscopie entre 2009 et 2012 auprès du Dr Gilles Bourdon à l'Hôpital général du Lakeshore et à qui une lettre de rappel a été transmise par le Centre de santé et de services sociaux de l'Ouest de l'Île en date du 10 septembre 2012 l'invitant à subir une colonoscopie de suivi, ainsi que toute personne (incluant sa succession, ses liquidateurs testamentaires ou représentants personnels) ayant subi une colonoscopie par le Dr Gilles Bourdon à l'Hôpital général du Lakeshore avant 2009 et qui, à sa demande, a subi une colonoscopie de suivi dans le cadre du processus de rappel du Centre de santé et de services sociaux de l'Ouest de l'Île en septembre 2012 (ci-après, les « Membres du Groupe ») »;

[15] **GRANTS** the Application by the Petitioner for Authorization of the Class Action for Settlement Purposes Only, Approval of a Transaction and Approval of Class Counsel Fees;

[16] **ORDERS** that for the purposes of this judgment, the definitions contained in the Settlement Agreement, exhibits R-10 and R-11, shall apply and are incorporated by reference;

[17] **AUTHORIZES** the bringing of this class action against the Respondents for the purposes of settlement;

[18] **APPOINTS** the Petitioner as representative plaintiff of the group herein described as:

“Every person (including their estates, executors or personal representatives), who underwent a colonoscopy between 2009 and 2012 performed by Dr. Gilles Bourdon at the Lakeshore General Hospital and who was sent a recall letter from the West Island Health and Social Services dated September 10, 2012 inviting him or her to undergo a repeat colonoscopy, as well as every person (including their estates, executors or personal representatives) who underwent a colonoscopy performed by Dr. Gilles Bourdon at the Lakeshore General Hospital before 2009 and who, at his or her request, underwent a repeat colonoscopy as part of the recall operation launched by the West Island Health and Social Services Centre in September 2012 (hereinafter the “Class Members”);”

[19] **DÉCLARE** que l'entente de règlement, pièces R-10 et R-11 (incluant son préambule et ses Annexes) (ci-après « l'Entente de règlement ») constitue une transaction au sens des articles 2631 et suivant du *Code civil du Québec*, obligeant toutes les parties et tous les Membres de l'action collective qui ne se sont pas exclus en temps opportun;

[19] **DECLARES** that the Settlement Agreement, exhibits R-10 and R-11 (including its Preamble and its Appendixes) (hereinafter "the Settlement Agreement") constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Class Members who have not excluded themselves in a timely manner;

[20] **DÉCLARE** que l'Entente de règlement est valide, équitable et raisonnable, et qu'elle est dans le meilleur intérêt des Membres du Groupe;

[20] **DECLARES** that the Settlement Agreement, is valid, fair, reasonable and in the best interest of the Class Members;

[21] **APPROUVE** l'Entente de règlement en accord avec l'article 590 du *Code de procédure civile*;

[21] **APPROVES** the Settlement Agreement in accordance with article 590 of the *Code of Civil Procedure*;

[22] **DÉCLARE** que l'entente de règlement fait partie intégrante du présent jugement;

[22] **DECLARES** that the Settlement Agreement is an integral part of this judgment;

[23] **ORDONNE** aux parties et aux Membres du Groupe, sauf ceux exclus conformément à l'Entente de règlement et au présent jugement, de se conformer aux termes et conditions de l'Entente de règlement;

[23] **ORDERS** the parties and the Class Members, with the exception of those who are excluded in accordance with the terms and conditions of the Settlement Agreement and with this judgment, to abide by the terms and conditions of the Settlement Agreement;

[24] **ORDONNE** que chaque Membre du Groupe qui désire s'exclure de l'Entente de règlement et, par conséquence, ne pas être lié par l'Entente de règlement, agisse conformément au processus d'exclusion prévu à l'Entente de règlement et à l'Annexe « B »;

[24] **ORDERS** that each Class Member who wishes to opt out of the Settlement Agreement and thus not be bound by it, act in conformity with the Opt-out Process provided for in the Settlement Agreement and Schedule "B";

[25] **DESIGNE** McCarthy Tétrault S.E.N.C.R.L., s.r.l., procureurs de l'intimé Dr. Gilles Bourdon, administratrice du règlement;

[25] **DESIGNATES** McCarthy Tétrault LLP, counsel for the Respondent Dr. Gilles Bourdon, as administrator of the Settlement;

[26] **APPROUVE** le versement par les intimées de la somme de 500\$ au

[26] **APPROVES** the payment by the Respondents of the sum of \$500 to the

requérant à titre d'indemnité pour les frais encourus et efforts investis par lui à titre de requérant au litige;

Petitioner as indemnity for the costs he incurred and the efforts he invested as petitioner in the litigation;

[27] **APPROUVE** le versement aux Procureurs du Groupe, Lex Group Inc., des honoraires extrajudiciaires et frais, tel que prévu à la clause 5.2 de l'Entente de règlement;

[27] **APPROVES** the payment to Class Counsel, Lex Group Inc., of the extrajudicial fees and costs as provided for at section 5.2 of the Settlement Agreement;

[28] **RÉSERVE** le droit des parties de s'adresser au tribunal pour résoudre quelque litige que ce soit découlant de l'Entente de règlement;

[28] **RESERVES** the right of parties to ask the Court to settle any dispute arising from the Settlement Agreement;

[29] **DONNE ACTE** à l'engagement des intimées de respecter les dispositions du Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives, RLRQ, c. F-3.2.0.1.1., et leur **ORDONNE** de s'y conformer;

[29] **GIVES ACT** to the undertaking of the Respondents to abide by the provisions of the Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives, RLRQ, c. F-3.2.0.1.1., and **ORDERS** them do so;

[30] **LE TOUT** sans frais de justice.

[30] **THE WHOLE** without legal costs.



ROBERT CASTIGLIO, J.S.C.

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Date of hearing: June 23, 2016