

COUR SUPÉRIEURE
(Action collective)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-06-000784-161

DATE : 20 décembre 2017

SOUS LA PRÉSIDENTE DE : L'HONORABLE PIERRE-C. GAGNON, J.C.S.

PATRICK THOMAS WALLACE
Demandeur

c.
COOK MEDICAL INCORPORATED
et
COOK MEDICAL INCORPORATED
et
COOK (CANADA) INC.
et
COOK GROUP INC.
et
WILLIAM COOK EUROPE APS
Défenderesses

JUGEMENT SUR UNE DEMANDE DE SUSPENSION

[1] Toutes les parties, en demande comme en défense, s'accordent pour demander la suspension des procédures dans ce dossier (« l'Action collective québécoise ») où la décision d'accorder ou de refuser l'autorisation n'a pas encore été prise.

[2] Les parties demandent de donner préséance à « l'Action collective ontarienne », qui résulte de la consolidation de deux dossiers ontariens :

- *Arie Kuiper c. Cook (Canada) Inc., Cook Medical Incorporated, a.k.a. Cook Medical Inc., Cook Incorporated, Cook Group, Inc. et William Cook Europe APS*, dossier n° 512-16CP de la Cour supérieure de justice de l'Ontario;
- *Wendy Kopeck et Garry Kopeck c. Cook (Canada) Inc. et Cook Medical LLC*, dossier n° 263-16 (du même tribunal).

[3] Chaque volet de l'Action collective ontarienne a été institué avant l'institution des procédures dans la présente Action collective québécoise.

[4] Les parties font valoir que l'Action collective ontarienne procède diligemment sous la gestion de l'honorable juge Paul M. Perell, qui a fixé l'audition de la demande de certification aux 10, 11 et 12 octobre 2018.

[5] Les parties invoquent litispendance internationale et l'opportunité de donner préséance à l'Action collective ontarienne qui porte essentiellement sur le même litige (préjudice résultant de l'implantation de filtres IVC).

[6] Le juge soussigné a écrit à ce sujet au juge Perell le 28 novembre 2017¹. Le juge Perell a répondu le 30 novembre 2017².

[7] Le Tribunal considère que la suspension temporaire de l'action collective québécoise ne porte pas atteinte à la protection des droits et des intérêts des résidents du Québec.

[8] Le Tribunal accorde la suspension, mais avec des modalités assurant une supervision adéquate des développements à venir.

[9] Aussi, le Tribunal estime opportun de prévenir les parties que des changements imminents dans la gestion de la Chambre des actions collectives, Division de Montréal, entendent accélérer le processus procédural menant au jugement statuant sur l'autorisation. En conséquence, il est anticipé que des jugements de suspension tel celui-ci, seront accordés avec plus de parcimonie.

POUR CES MOTIFS, LE TRIBUNAL :

[10] **ACCUEILLE** la demande de suspension;

[10] **GRANTS** the Application to stay the Class Action;

[11] **SUSPEND** la demande d'autorisation d'instituer une action collective durant une période expirant 60 jours après la date du jugement sur la

[11] **STAYS** the Application for authorization to institute a Class action for a period ending 60 days after the date of the judgment on certification in the above-

¹ Annexe 1 du présent jugement.

² Annexe 2 du présent jugement.

certification dans l' « Action collective ontarienne » identifiée ci-haut; described "Ontario Class Action";

[12] **DÉCLARE** que le tribunal réserve sa compétence et sa discrétion d'ordonner la reprise du déroulement de l'instance à tout moment que le tribunal jugera à propos;

[12] **DECLARES** that this Court retains its jurisdiction and discretion to order the present matter to recommence and proceed at any such time that this Court sees fit;

[13] **DÉCLARE** que chaque partie peut, à sa discrétion, demander au tribunal d'ordonner la reprise de l'instance;

[13] **DECLARES** that any party may, at its discretion, apply to the Court for the present matter to recommence;

[14] **ORDONNE** aux parties d'informer diligemment le tribunal de tous développements dans l' « Action collective ontarienne », et ce, à intervalles d'au plus six mois;

[14] **ORDERS** the parties to keep this Court diligently informed of all developments in the "Ontario Class Action", and at least every six months;

[15] **SANS FRAIS DE JUSTICE.**

[15] **WITHOUT COSTS.**



PIERRE-C. GAGNON, j.c.s.

Me Karim Diallo
SISKINDS DESMEULES AVOCATS
Avocats pour le demandeur

Me Noah Boudreau
FASKEN MARTINEAU DuMOULIN
Avocats pour les défenderesses

ANNEXE 1



THE HONOURABLE MR JUSTICE PIERRE-C. GAGNON
SUPERIOR COURT OF QUÉBEC

Court House, 1, Notre-Dame Street East, Montréal (Québec) H2Y 1B6
Phone : 514 393-2019 Fax : 514 228-4497
pierre-c.gagnon@judex.qc.ca

Montreal, November 28, 2017

The Honourable Mr. Justice Paul M. Perell
Superior Court of Justice
361 University Avenue
Toronto, Ontario, M5G 1T3

RE : Kuiper v. Cook (Canada) Inc. & al.
Court file N° : 512-16 CP

and

Kopeck v. Cook (Canada) Inc. & al.
Court file N°: 263-16;
both consolidated into a single action ("Ontario Action")

Wallace v. Cook Medical Incorporated & al.
S.C.Montréal N°: 500-06-000784-161 ("Québec Action")

Dear Colleague :

I am writing in my capacity of coordinating judge for class actions in Montréal.

I am informed that you are seized of an application for certification in the matter of the "Ontario Action" identified above.

I am seized of a joint application to temporarily stay the class action in the matter of the "Québec Action", also identified above. Please find attached a copy of the joint application. I have not found it necessary to delegate the case to another colleague at this early stage.

Before ruling on the joint application, I need to take into consideration Article 577 of the Québec Code of Civil Procedure (its second paragraph, in particular) :

577. The court cannot refuse to authorize a class action on the sole grounds that the class members are part of a multi-jurisdictional class action already under way outside Québec.

If asked to decline jurisdiction, to stay an application for authorization to institute a class action or to stay a class action, the court is required to have regard for the protection of the rights and interests of Québec residents.

If a multi-jurisdictional class action has been instituted outside Québec, the court, in order to protect the rights and interests of class members resident in Québec, may disallow the discontinuance of an application for authorization, or authorize another plaintiff or representative plaintiff to institute a class action involving the same subject matter and the same class if it is convinced that the class members' interests would thus be better served.

It may very well be that the judgments to be delivered in Ontario will adequately protect the rights and interests of Québec residents.

But, if only to mention some potential issues:

- The "Ontario Action" may fail to get certified, leaving my Court to decide whether the "Québec Action" is to be authorized (as the criteria are different);
- The "Ontario Action" may be certified for a class that leaves out the residents of Québec;
- Both official languages must be taken into account for public notices and the claims process.

Therefore, in my respectful view, my Court cannot relinquish jurisdiction altogether in the "Québec Action". I propose to grant the temporary stay, with conditions such as:


- Requesting counsel for Applicant to report periodically on the progress in the "Ontario Action";
- Filing diligently in the Québec file any judgment or ordinance that you issue in the "Ontario Action".

If you see fit, I will gladly send you copy of my judgments and ordinances in the "Québec Action".

I trust that you will agree with me by reply letter that coordination among judges will increase efficiency and avoid some duplication of efforts.

I look forward to exchanging with you further in this joint matter, and others.

Yours very truly,



Pierre-C. Gagnon, j.s.c.

PCG/cb

Enclosure

Cc. Mtre Karim Diallo (*SISKINDS DESMEULES*), Québec City
Mtre Noah Boudreau (*FASKEN MARTINEAU DuMOULIN*), Montréal City

ANNEXE 2

THE HONOURABLE
MR. JUSTICE PAUL PERELL
SUPERIOR COURT OF JUSTICE

COURT HOUSE
361 UNIVERSITY AVENUE
TORONTO, ONTARIO M5G 1T3
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L'HONORABLE
JUGE PAUL PERELL
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PALAIS DE JUSTICE
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November 30, 2017

The Honourable Mr. Justice Pierre-C. Gagnon
Superior Court of Quebec
Court House
1 Notre-Dame Street East
Montreal, Quebec
H2Y 1B6

Dear Colleague:

Re: *Kuiper v. Cook (Canada) Inc. et al. (17-CV-578210CP)*
Kopeck v. Cook (Canada) Inc. et al.
Wallace v. Cook Medical Incorporated et al.

Thank you for your letter of November 28, 2017. I agree with your letter and look forward to collaborating with you.

Yours truly,

A handwritten signature in black ink, appearing to read "Perell", written over a horizontal line.

The Hon. Mr. Justice Paul M. Perell

PMP/ce