

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

NO: 500-06-000784-161

**SUPERIOR COURT**  
(Class Action)

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**PATRICK THOMAS WALLACE** residing at 1485,  
Poirier Street, apartment 3, Montreal, Quebec, H4L  
1H5

Applicant

v.

**COOK MEDICAL INCORPORATED**, doing business  
under **COOK MEDICAL INC.**, legal person, having a  
place of business at 400 Daniels Way, Bloomington,  
Indiana, 47404, United States

and

**COOK INCORPORATED**, legal person, having a  
place of business at 750 Daniels Way, Bloomington,  
Indiana, 47404, United States

and

**COOK (CANADA) INC.**, legal person, having a place  
of business at 165 Mostar Street, Stouffville,  
Ontario, L4A 0Y2, Canada

and

**COOK GROUP INC.**, legal person, having a place of  
business at 750 Daniels Way, P.O. Box 1608  
Bloomington, Indiana, 47402, United States

and

**WILLIAM COOK EUROPE APS**, legal person, having  
a place of business at Sandet 6, 4632 Bjaeversok,  
Danemark

Defendants

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**JOINT APPLICATION TO TEMPORARILY STAY THE CLASS ACTION**

(Articles 25, 49, 168(1) and 577 of the *Code of Civil Procedure* ("C.C.P.")  
and Article 3137 of the *Civil Code of Quebec* ("C.C.Q."))

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**TO THE HONOURABLE PIERRE-C. GAGNON, J.S.C., THE PARTIES JOINTLY AND RESPECTFULLY SUBMIT THE FOLLOWING:**

**A. INTRODUCTION**

1. The parties jointly seek a temporary stay of any and all proceedings related to the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff (the "**Quebec Action**");
2. The requested stay of the Quebec Action is for a period ending 60 days after the certification judgment to be rendered in the below described Ontario Action becomes final;
3. The basis of this application is the existence of parallel class actions, both proposing to represent national classes of plaintiffs;
4. Two separate class actions were initially commenced in Ontario: (1) *Arie Kuiper v. Cook (Canada) Inc., Cook Medical Incorporated, A/K/A Cook Medical Inc., Cook Incorporated, Cook Group, Inc., and William Cook Europe APS*, bearing court file number 512-16CP, and: (2) *Wendy Kopeck and Garry Kopeck v. Cook (Canada) Inc. and Cook Medical LLC*, bearing court file number 263-16;
5. Both Ontario actions were subsequently consolidated into a single action (the "**Ontario Action**");
6. Because the Ontario Action is in all relevant respects identical to the Quebec Action and includes the same class members, the same object and the same defendants, it gives rise to a situation of *lis pendens*;
7. The parties submit that it is in the interests of proportionality and the good administration of justice that the overlapping issues raised in the Quebec Action and the Ontario Action be adjudicated by a single court;
8. The parties further submit that since Cook (Canada) Inc. has its head office in Ontario and since the Ontario Action also contemplates a national class, the Ontario Superior Court of Justice is best placed to hear and resolve the dispute between the parties;

9. The parties submit that there are efficiencies to be gained by having all of the IVC Filter actions case managed by the same judge (as further described below), as the actions involve consideration of similar legal and factual matters;

**B. THE QUEBEC ACTION**

10. On March 22, 2016, the applicant William Thomas Wallace (the "**Applicant**") filed the Quebec Action. The Quebec Action was served on all of the Defendants by April 16, 2016. The Quebec Action was filed on behalf of Canadian residents who have been implanted with one of the Defendants' inferior vena cava filter products ("**IVC Filter Product**") which allegedly caused the Applicant harm because of safety defects and/or a breach of the Defendants' duty to warn. The proposed class is described in paragraph 1 of the Application for Authorization :

« All persons residing in Canada who suffered damages as a result of the implantation of an Inferior Vena Cava Filter, manufactured, marketed, distributed, or sold in whole or in part by the Defendants;

AND

All persons residing in Canada who have suffered damages as a result of the implantation to one of the persons referred to in the preceding paragraph of an Inferior vena cava filter, manufactured, marketed, distributed, or sold in whole or in part by the Defendants, including their spouse, father, mother and other ascendants, children, other parents, legal representatives, other relatives or their estate. »

11. No other steps have been taken in the Quebec Action.

**C. THE ONTARIO ACTION**

12. On January 27, 2016, a Statement of Claim in Ontario, *Wendy Kopeck and Garry Kopeck v. Cook (Canada) Inc. and Cook Medical LLC*, was issued. A copy of the Statement of Claim bearing court file number 263-16 is attached hereto as **Exhibit P-1**;
13. On February 22, 2016, a second Statement of Claim in Ontario, *Arie Kuiper v. Cook (Canada) Inc., Cook Medical Incorporated, A/K/A Cook Medical Inc., Cook Incorporated, Cook Group, Inc., and William Cook Europe APS*, was issued. A copy of the Statement of Claim bearing court file number 512-16CP is attached hereto as **Exhibit P-2**;

14. On December 13, 2016, by Order of the Ontario Superior Court of Justice these Ontario actions were consolidated into a single action. A copy of the consolidation Order is attached hereto as **Exhibit P-3**;
15. Justice Perell of the Ontario Superior Court of Justice was appointed to case manage the Ontario Action. Justice Perell sits in Toronto;
16. On August 2, 2017, the Plaintiffs in the Ontario Action served their Motion Record for Certification on the Defendants;
17. On August 22, 2017, the parties attended a case conference before Justice Perell. At this case conference, the parties set a procedural schedule for the action leading up to the motion for certification, which has been scheduled to be heard on October 10, 11, and 12, 2018.
18. Counsel in the Ontario Action are also plaintiffs' counsel in the Ontario action of *Winter et al v. Bard Canada Inc. et al*, court file number 1068/16CP ("Winter Action"). The Winter Action was commenced on April 22, 2016;
19. The Winter Action relates to IVC Filters manufactured by the named Defendants, Bard Canada Inc. et al. The medical devices in question in the Winter action are similar to the devices in question in these Quebec and Ontario Actions against the Cook defendants. Justice Perell was also appointed to case manage the Winter Action;
20. Counsel for this Quebec Action are also Plaintiffs' counsel in *Boehmer c. Bard Canada Inc. et al*, court file number 500-06-000786-166 ("Boehmer Action").
21. The Boehmer Action, arises from IVC Filters manufactured by the named Defendants, Bard Canada Inc. et al., such that the medical devices in question are similar to those in the Quebec and Ontario Actions;
22. The Boehmer Action was stayed in favor of the Winter Action, by Order of this Court of Justice Pierre-C. Gagnon, on September 29, 2016, on the basis that such stay was in the best interests of Quebec members. The Court was satisfied that there is *lis pendens* between the Boehmer Action and the Winter Action. Attached here as **Exhibit P- 4** is copy of the stay Order;

23. The Ontario Action and this Quebec action both relate to the Defendants' IVC filters. As stated in the Fresh as Amended Consolidated Statement of Claim, the Ontario Action relates to the following IVC filters manufactured, marketed and/or sold by the Defendants: 1) the Recovery Filter System – Femoral Recovery Filter; 2) the Recovery G2 Filter System – Femoral Delivery; 3) the Recovery G2 Filter System – Jugular/Subclavian Delivery; 4) the G2 X Filter System – Femoral Delivery; 5) the G2 X Filter System – Jugular/Subclavian Delivery; 6) the Denali Vena Cava Filter Femoral; and 7) the Denali Vena Cava Filter Jugular/Subclavian (collectively, the “**Defendants’ IVC Filters**”) (Exhibit P-2);
24. Counsel to the Plaintiffs in the Ontario Action, Siskinds LLP, McKenzie Lake LLP, and Koskie Minsky LLP, are working in cooperation with counsel to the Applicant in the Quebec Action, Siskinds Desmeules, S.E.N.C.R.L.;
25. Counsel for all parties have confirmed their agreement to cooperate in seeking a stay of the present proceedings with the understanding that if the Ontario Action is certified the proposed class will be national in scope;
26. The Applicant Patrick Thomas Wallace has confirmed that he agrees that the Quebec Action should be stayed in favour of the Ontario Action;
27. The Ontario Action proposes a national class that would include the Quebec residents who are the subject of the Quebec Action. As stated in the Fresh as Amended Consolidated Statement of Claim, the Ontario Action was commenced “on behalf of a class of people in Canada who were implanted with one of the Defendants’ IVC Filters, to be further defined on the motion for certification” (Exhibit P-3);
28. The proposed class in the Ontario Action also seeks recovery on behalf of family members who have suffered, among other things, loss of care, guidance, companionship, consortium, financial expenses and special damages arising from the implantation of the Defendants’ IVC Filters ;

**D. OTHER IVC ACTIONS**

29. On May 13, 2016, an Amended Notice of Civil Claim commencing a class proceeding against the Defendants and against certain Bard entities in British Columbia was filed by

Merchant Law Group. The Amended Notice of Civil Claim was served on the Defendants on May 27, 2016. A copy of the Amended Notice of Civil Claim filed in *Irene Fraser v. Cook Group, Inc., Cook, Inc., Cook Medical, LLC, William Cook Europe ApS, C.R. Bard, Inc., and Bard Peripheral Vascular, Inc.*, bearing court file number 178129, is attached hereto as **Exhibit P-5**;

30. The proposed class is composed of all residents of (a) British Columbia and (b) Canada who were implanted with the Cook Defendants' (as defined therein) Recovery and G2 lines of IVC filters, as stated at paragraph 12 of the Amended Notice of Civil Claim (Exhibit P-5). No further steps have been taken in respect of this action;
31. On November 10, 2016, a Statement of Claim commencing a class proceeding was filed against the Defendants and certain Bard entities in Saskatchewan by Merchant Law Group. A copy of the Statement of Claim filed in *Bussey v. Cook Group, Inc, Cook, Inc., Cook Medical, LLC., William Cook Europe APS, C.R. Bard, Inc. and Bard Peripheral Vascular, Inc.*, bearing court file number QBG 2729, is attached hereto as **Exhibit P-6**;
32. An initial case management conference in this Saskatchewan proceeding was recently held on September 25, 2017. At that time, no timetable was established for future steps in the proceeding but plaintiff's counsel indicated its intention to deliver materials in respect of a certification application by the end of November. Thereafter, a further case management conference will be convened to discuss a timetable for the action.

**E. LIS PENDENS**

33. The parties submit that there is *lis pendens* between the Quebec Action and the Ontario Action since there is an identity of parties, cause and object;

**(a) Same Parties**

34. The Defendants named in the Ontario Action and in the Quebec Action are the same;
35. Indeed, both the Ontario Action and the Quebec Action propose a national class, which includes Quebec residents;

**(b) Same Cause**

36. The essential facts in support of the Quebec Action and the Ontario Action are related to the implantation of IVC filters, which were allegedly manufactured, marketed and/or sold by each of the Defendants. The causes of action in both proceedings arise from the harm that these products allegedly caused to those that received them and, in the Ontario Action, to their family members. The actions also allege that the Defendants failed to adequately warn of such harm;
37. More specifically, the legal duties allegedly owed by the Defendants and the alleged grounds of negligence listed in the Quebec Application for Authorization are substantially the same in the Ontario Action's Fresh as Amended Consolidated Statement of Claim;

**(c) Same Object**

38. The object of the Quebec Action and the Ontario Action is the same: both seek the authorization/certification of a class action in pursuit of compensation for those who have allegedly suffered harm as a result of the implantation of IVC filters;

**F. RECOGNITION OF AN ONTARIO JUDGMENT**

39. A final decision in the Ontario Action is capable of recognition and enforcement in Quebec;
40. The Ontario Superior Court of Justice has jurisdiction over the Applicant and the Defendants;
41. The Ontario Superior Court of Justice will, moreover, respect the fundamental principles of procedure and public order;
42. The existence of the Quebec Action will not be a bar to the recognition and enforcement of the decision arising out of the Ontario Action since the Quebec plaintiff undertakes to discontinue the Quebec Action, with the consent of the Defendants, if the Ontario Superior Court of Justice grants certification. A decision in the Ontario Action can therefore result in enforcement and recognition in Quebec;

43. If the Plaintiffs are successful on their motion to certify the Ontario Action as proposed, the Defendants will not oppose the recognition and enforcement of the final decision of the Ontario Action in Quebec;

**G. PROTECTION OF THE RIGHTS AND INTERESTS OF QUEBEC CLASS MEMBERS**

44. The stay of the Quebec Action in favour of the proceeding in Ontario is consistent with the Court's duty to protect the rights and interests of Quebec residents;

45. The causes of action advanced in the Ontario Action are equivalent to the wrongs alleged in the Quebec Action, such that if the rights and interests of the proposed class members in the Quebec Action were adjudicated in Ontario, those rights and interests would be similarly treated;

46. Moreover, Ontario law, like Quebec law, recognizes and provides remedies for injuries arising from safety defects and failure to warn of the kind alleged in the Quebec Action and the Ontario Action;

47. The Ontario Action will also advance the rights and interests of Quebec residents by ensuring that their rights and interests are adjudicated in an efficient manner before an experienced case-management judge. By prosecuting the IVC filter class actions in a single proceeding, Quebec residents will benefit from judicial economy and their counsel will not invest time and costs simultaneously in two jurisdictions;

48. Quebec residents will not suffer any prejudice because the Quebec Action will not be dismissed but will only be temporarily stayed. In the event that the Ontario Action is not efficiently conducted, the Applicant will be able to defend the rights and interests of Quebec residents by seeking a lift of the stay of the proceedings in the Quebec Action;

49. Furthermore, if the Applicant seeks to discontinue the Quebec Action and this Court is not satisfied that the rights and interests of the Quebec class members will be protected, the court will continue to be seized of the matter and will have the jurisdiction to disallow or not a discontinuance;



**H. THE DISCRETION OF THE COURT AND INTEREST OF JUSTICE**

50. It is within this Court's discretion to stay the Quebec Action in order to allow the Ontario Action to proceed in an efficient manner and to avoid a multiplicity of proceedings with the potential for contradictory decisions;
51. For the purpose of prosecuting the class actions commenced in Ontario and Quebec in an efficient manner and to avoid contradictory decisions, the Applicant and the Defendants have agreed to undertake steps to proceed with the above-referred actions in a cooperative manner;
52. The Ontario Action has been assigned to and will be case-managed by Justice Perell, a sophisticated and experienced class action judge, in Toronto, which is in close proximity to where Cook (Canada) Inc. has its head office;
53. Granting a temporary stay of the proceedings will thus be consistent with the principle of proportionality, judicial economy and the good administration of justice;
54. Granting a temporary stay of the proceedings will likewise avoid potential contradictory judgments and multiple proceedings, which will be both expensive and taxing on limited judicial resources;

**I. TEMPORARY STAY**

55. The parties seek a stay of the Quebec Action for a period ending 60 days after the certification judgment to be rendered in the Ontario Action is final in order to take steps to have the Ontario Action expedited under the Ontario case-management process. Prior to the termination date of any stay ordered by this Court, the parties undertake to advise this Court of the status of the Ontario Action;

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the Joint Application to Temporarily Stay the Quebec Action;

**STAY** any and all proceedings related to the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff for a period ending 60 days after the certification judgment to be rendered in the below described Ontario Action is final;

ALL OF WHICH IS SOUGHT without costs.

Montreal, October 11 2017

*Fasken Martineau Dumoulin LLP*

**Mr Noah Boudreau**

**nboudreau@fasken.com**

**FASKEN MARTINEAU DUMOULIN LLP**

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Lawyer for the Defendants

Quebec, October 11 2017

*Siskinds Desmeules*

**Mr Karim Diallo**

**karim.diallo@siskindsdesmeules.com**

**SISKINDS DESMEULES AVOCATS S.E.N.C.R.L.**

43, rue De Buade, bureau 320

Quebec (Quebec) G1R 4A2

Telephone: 418-694-2009

Fax: 418-694-0281

Lawyers for the Applicant

**AFFIDAVIT**

I, the undersigned, KARIM DIALLO, lawyer, exercising my profession at Siskinds Desmeules, s.e.n.c.r.l., located at 43 rue De Buade, Quebec (Quebec), G1R 4A2, do solemnly affirm as follows:

1. I am one of the lawyers for the Applicant;
2. All of the facts alleged in the Joint Application to Temporarily Stay the Class Action are true.

AND I HAVE SIGNED:



KARIM DIALLO

SOLEMNLY AFFIRMED BEFORE ME in the City of Quebec, in the Province of Quebec, this 11 day of October, 2017.



Commissioner for Oaths for the Province of Quebec



C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

NO: 500-06-000784-161

SUPERIOR COURT  
(Class Action)

---

**PATRICK THOMAS WALLACE** residing at 1485,  
Poirier Street, apartment 3, Montreal, Quebec, H4L 1H5

Applicant

v.

**COOK MEDICAL INCORPORATED**, doing business  
under **COOK MEDICAL INC.**, legal person, having a  
place of business at 400 Daniels Way, Bloomington,  
Indiana, 47404, United States

And

**COOK INCORPORATED**, legal person, having a  
place of business at 750 Daniels Way, Bloomington,  
Indiana, 47404, United States

And

**COOK (CANADA) INC.**, legal person, having a place  
of business at 165 Mostar Street, Stouffville,  
Ontario, L4A 0Y2, Canada

And

**COOK GROUP INC.**, legal person, having a place of  
business at 750 Daniels Way, P.O. Box 1608  
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And

**WILLIAM COOK EUROPE APS**, legal person, having  
a place of business at Sandet 6, 4632 Bjaeversok,  
Danemark

Defendants

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**LIST OF EXHIBITS**

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**Exhibit P- 1:** Statement of Claim of the Ontario Action in *Wendy Kopeck and Garry Kopeck v. Cook (Canada) Inc. and Cook Medical LLC*, court file number 263-16;

- Exhibit P- 2:** Statement of Claim of the Ontario Action in *Arie Kuiper v. Cook (Canada) Inc., Cook Medical Incorporated, A/K/A Cook Medical Inc., Cook Incorporated, Cook Group, Inc., and William Cook Europe APS*, court file number 512-16CP;
- Exhibit P- 3:** Orders from the Ontario Superior Court of Justice dated December 13, 2016;
- Exhibit P- 4:** Stay Order from the Québec Superior Court, dated September 29, 2016.
- Exhibit P- 5:** Amended Notice of Civil Claim filed in *Irene Fraser v. Cook Group, Inc., Cook, Inc., Cook Medical, LLC, William Cook Europe ApS, C.R. Bard, Inc., and Bard Peripheral Vascular, Inc.*, court file number 178129;
- Exhibit P- 6:** Statement of Claim filed in *Bussey v. Cook Group, Inc, Cook, Inc., Cook Medical, LLC., William Cook Europe APS, C.R. Bard, Inc. and Bard Peripheral Vascular, Inc.*, court file number QBG 2729.

Référence interne : 67-182

**INFORMATION SUR LE DOSSIER**

**Patrick Wallace v. Cook Medical Incorporated and AIs. (Action collective relative à IVC Filter)**

500-06-000784-161

Supérieure

Montréal

**EXPÉDITEUR**

**Christine Béland**

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**DESTINATAIRE**

**Me Noah Boudreau**

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**DÉTAILS DE LA NOTIFICATION**

**Date d'envoi de la notification :** 11 octobre 2017

Heure : 15:26 HNE

État de la notification : Notifiée

Nature du(des) document(s) : Joint Application to Temporarily Stay the Class Action, pièces -1 à P-6 à son soutien

**DOCUMENT(S) NOTIFIÉ(S)**

Nom

Clé de validation

Exhibit\_P-1.pdf

5272450ae604cac26e00fd977b119ad

Exhibit\_P-2.pdf

a0b3be2899131a68c1b92664191272b7

Exhibit\_P-3.pdf

27032a81adda07febce3eb27190d5c6d

Exhibit\_P-4.pdf

fa647f2a89d33c20fc0c3ca0f43013df

Exhibit\_P-5.pdf

0db22b01d6b208b46ff80ce6244f506f

Exhibit\_P-6.pdf

946132b2c99b279eb0ec491888658b23

Joint\_Application\_to\_Temporarily\_Stay\_the\_Class\_Action.pdf

30e59ba21b3b865e25bce70e18cd8bc5

**CONCLUSION**

Todoc certifie que le destinataire a été notifié par courriel et que les documents transmis ont été mis à sa disposition.

**No.:** 500-06-000784-161

**SUPERIOR COURT**  
(Class Action)  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**PATRICK THOMAS  
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Defendants

**JOINT APPLICATION TO TEMPORARILY STAY  
THE CLASS ACTION  
(Art. 25, 49, 168(1) and 577 C.C.P.  
and Art. 3137 C.C.Q.),  
AFFIDAVIT, LIST OF EXHIBITS and  
EXHIBITS D-1 TO D-4**

ORIGINAL