

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o: 500-06-000831-160

DATE: September 24, 2018

BY: **THE HONOURABLE MR. JUSTICE PIERRE-C. GAGNON, J.S.C.**

STEVEN SCHEER
Class Applicant

vs.

BRISTOL-MYERS SQUIBB CANADA CO.
and
OTSUKA CANADA PHARMACEUTICAL INC.
and
LUNDBECK CANADA INC.
Defendants

JUDGMENT ON PARTIAL DISCONTINUANCE

[1] On December 12, 2016, the Class Applicant filed an Application to Authorize the Bringing of a Class Action & to Appoint the Petitioner as Representative Plaintiff (the "AforA") on behalf of the following class:

"All persons residing in Canada who were prescribed and have ingested and/or injected the drug(s), ABILIFY® and/or ABILIFY MAINTENA® (aripiprazole) and their successors, assigns, family members, and dependants, or any other group to be determined by the Court;

Alternatively (or as a subclass)

All persons residing in Quebec who were prescribed and have ingested and/or injected the drug(s), ABILIFY® and/or ABILIFY MAINTENA® (aripiprazole) and their successors, assigns, family members, and dependants, or any other group to be determined by the Court;";

[2] The Class Applicant named the following 3 entities as Respondents in the AforA:

- I. Bristol-Myers Squibb Canada Co. ("Bristol-Myers")
- II. Otsuka Canada Pharmaceutical Inc. ("Otsuka")
- III. Lundbeck Canada Inc. ("Lundbeck")

[3] The AforA alleges that Bristol-Myers and Otsuka are the co-sponsors for ABILIFY in Canada (see paras. 8 to 10 of the AforA) and that Otsuka and Lundbeck are the co-sponsors for ABILIFY MAINTENA in Canada;

[4] On July 16, 2018, the Class Applicant filed an application for a partial discontinuance seeking permission to discontinue the present legal proceedings as against Respondent Lundbeck (Art. 585 C.C.P.);

[5] On September 24, 2018, the above-mentioned Application was heard by the Court;

[6] The reasons alleged in the above-mentioned Application to support the partial discontinuance are the following:

(a) ABILIFY MAINTENA was on the market for only 19 months before the product monograph warnings included pathological gambling as a potential side effect of ingesting and/or injecting ABILIFY MAINTENA (see paras. 27, 28 & 68 of the AforA)¹;

(b) ABILIFY MAINTENA is only indicated for the more serious illness of schizophrenia (and not also for bipolar disorder and as an adjunctive treatment of major depressive disorder (MDD)).² Due to the characteristics of the disease, schizophrenics are not as readily able to engage in compulsive conduct as those afflicted with bipolar disorder and/or MDD;

(c) ABILIFY MAINTENA is only indicated for individuals with stabilized schizophrenia, meaning, that atypical antipsychotics have already been tolerated (as observed by a physician);

(d) The similar allegations that have been made in the U.S. proceedings (MDL No. 2734 – *In Re: Abilify (Aripiprazole) Products Liability Litigation*) do not specifically included ABILIFY MAINTENA;

(e) Of the 1,331 Class Members that inputted their information on the dedicated CLG webpage, only 3 referred to ABILIFY MAINTENA;

(f) There will be no prejudice to those Class Members that may have taken ABILIFY MAINTENA in any case;

¹ ABILIFY MAINTENA was launched in Canada on February 12, 2014 and the inclusion of pathological gambling as a potential side effect of ingesting and/or injecting ABILIFY MAINTENA on the product monograph was on September 15, 2015.

² See Exhibits 50 and 51 to the AforA.

[7] SEEING the above-mentioned Application, as well as, the Exhibits in support thereof produced in the Court record;

[8] HEARING the representations made by the Class Applicant's attorneys;

[9] GIVEN the consent by the Respondent Lundbeck to the discontinuance without legal costs;

[10] GIVEN that the Class Applicant's attorneys undertake to place a notice on the Central Registry of Class Actions, on the website www.clg.org, and to email all persons who contacted Consumer Law Group to express interest in the present action;

[11] CONSIDERING that the Court finds the partial discontinuance to be in the interest of justice.

[12] **FOR THESE REASONS, THE COURT:**

[13] **GRANTS** the present Application;

[14] **ORDERS** the Class Applicant to file his act of discontinuance no later than the 10th day after the date of this judgment;

[15] **APPROVES** the text of the public notice to putative members, as follows:

Version française :	English version:
<p data-bbox="256 1150 800 1331"><u>AVIS DE DÉSISTEMENT PARTIEL D'UNE ACTION COLLECTIVE</u> (relativement au médicament ABILIFY MAINTENA et envers Lundbeck Canada inc. seulement)</p> <p data-bbox="245 1402 808 1730">1. SOYEZ AVISÉ que par jugement du 24 septembre 2018, la Cour supérieure a autorisé le Demandeur du Groupe à se désister de la demande d'autorisation d'une action collective relativement au médicament ABILIFY MAINTENA et à l'égard de la Défenderesse Lundbeck Canada inc. seulement;</p> <p data-bbox="245 1768 808 1940">2. La demande d'autorisation d'une action collective se poursuit relativement au médicament ABILIFY et à l'égard des autres Défenderesses identifiées aux actes de procédure.</p>	<p data-bbox="873 1150 1360 1251"><u>NOTICE OF PARTIAL DISCONTINUANCE OF A CLASS ACTION</u> (with respect to the drug ABILIFY MAINTENA and with regard to Lundbeck Canada Inc. only)</p> <p data-bbox="829 1402 1398 1688">1. BE AWARE that by judgment dated September 24, 2018, the Superior Court has authorized the Class Applicant to discontinue his application to authorize a class action, with respect to the drug ABILIFY MAINTENA and with regard to Defendant Lundbeck Canada Inc. only;</p> <p data-bbox="829 1768 1398 1940">2. The application to authorize a class action continues with respect the drug ABILIFY and with regard to the other Defendants identified in the proceedings.</p>

- [16] **ORDERS** that said public notice be published in bilingual format:
- (a) on the Class Actions Registry;
 - (b) on the website www.clg.org for a duration of at least 120 consecutive days;
- [17] **ORDERS** that copy of said public notice be sent by email to every person having expressed to Class Applicant's counsel of their interest in the present action;
- [18] **WITHOUT LEGAL COSTS.**



PIERRE-C. GAGNON, J.S.C.

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