C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

No: 500-06-000966-198

(Class action)
SUPERIOR COURT

KAREN BASAL

Applicant

v.

ALLERGAN PLC

-and-

ALLERGAN INC.

-and-

ALLERGAN USA INC.

-and-

MENTOR WORLDWIDE LLC

-and-

JOHNSON & JOHNSON INC.

-and-

IDEAL IMPLANT INCORPORATED

-and-

CLARION MEDICAL TECHNOLOGIES

Defendants

APPLICATION FOR COMMUNICATION OF MEDICAL RECORDS AND FOR AUTHORIZATION TO EXAMINE THE APPLICANT KAREN BASAL
(article 574 CCP)

TO THE HONOURABLE JUDGE CHANTAL TREMBLAY, J.S.C., THE DEFENDANTS ALLEGAN PLC, ALLERGAN INC. AND ALLERGAN USA INC. RESPECTFULLY SUBMIT AS FOLLOWS:

1. The Defendants Allergan PLC, Allergan Inc. and Allergan USA Inc. (collectively ‘‘**Allergan**’’) seek the communication of certain relevant medical records of the Applicant Karen Basal (the ‘‘**Applicant**’’) and the authorization of this Honorable Court to examine the Applicant pursuant to article 574, *para.* 3 of the *Code of Civil Procedure*, CQLR, c. C-25.01 (“**CCP**”).

I. <u>The Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff</u>

2. On January 3, 2019, the Applicant filed an Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff (the “**Authorization Application**”) against defendants Allergan PLC, Allergan Inc. and Allergan USA Inc., Mentor Worldwide LLC, Johnson & Johnson Inc., Ideal Implant Incorporated and Clarion Medical Technologies (the “**Defendants**”) on behalf of the following proposed class:

> “All consumers in Canada (alternatively in Québec) who have received textured surface breast implants manufactured, marketed or sold by Allergan Inc., Inamed Corporation, Mentor Worldwide LLC or Ideal Implant Inc.”

3. The Applicant alleges that the textured breast implants sold by the Defendants are linked to a rare type of cancer known as anaplastic large cell lymphoma or BIA-ALCL.

4. The Applicant claims that during the Class Period (which is not defined in the Authorization Application), the Defendants participated in the sale of textured breast implants that suffered from a safety defect or “risks” and failed to mention the safety and health risks associated with textured breast implants in representations made to class members, and specifically the alleged link between textured breast implants and BIA-ALCL.

5. The Applicant further alleges that the textured breast implants are defective “since the textured implants sold to Class members are at a risk of rupturing and causing cancer” (para. 25 of the Authorization Application).

6. As a result, the Applicant claims that class members are justified in claiming compensatory and moral damages due to the “physical and mental dangers” caused by the textured implants, as well as punitive damages under the *Consumer Protection Act*, CQLR, c. P-40.1 and the *Charter of Human Rights and Freedoms*, CQLR, c. C-12.

7. With regard to her particular situation, which the Court must analyze to determine if the proposed class action should be authorized, the Applicant alleges that:

   a) On May 13, 2016, an unnamed plastic surgeon (“**Dr. X**”) recommended to her the “Natrelle” cohesive silicone gel-filled textured breast implants sold by Allergan;

b) She was reassured by the fact that Allergan's Natrelle implants were marketed as safe and appeared to have virtually no health risks, notably in reference to a brochure communicated as Exhibit P-5 which "appears to have been distributed to Class members since 2008 to present date […]" (para. 37 of the Authorization Application);

c) On September 15, 2016, she underwent breast implant surgery (the "**Surgery**") and it took approximately 10 days for her to recover;

d) She was satisfied with the Surgery, until November 2018, when she came across news articles discussing "the serious health risks associated to textured breast implants and found out about the recall and ban of textured breast implants in France and Europe" (para. 43 of the Authorization Application);

e) Reading these articles caused her to suffer "a great deal of stress" (para. 45 of the Authorization Application);

f) She is aware of at least two other Class members with Natrelle textured breast implants which have ruptured and is ''extremely worried, stressed and concerned'' (paras. 45 and 46 of the Authorization Application);

g) She herself is worried that one of her breast implants may have ruptured (para. 54 of the Authorization Application);

h) She asked Dr. X to remove, free of charge, and to replace her textured breast implants with another type of implant that does not contain the ''safety risks and dangers'' associated with textured implants, but he said that this was not possible to do that free of charge (para. 57 of the Authorization Application).

i) The situation has caused her, amongst other pecuniary losses, "a lot of stress, inconvenience, frustration and loss of time from work" as well as unspecified "physical and mental dangers" entitling her to moral and punitive damages (paras. 62 and 65 of the Application to Authorize the Bringing of a Class Action).

II. <u>Right to the Communication of the Applicant's Relevant Medical Records</u>

8. In order to determine whether the Applicant's allegations justify the relief sought, this Honorable Court must be provided with the essential facts surrounding the Applicant's claim.

9. The Authorization Application contains multiple allegations regarding the safety defects and risks allegedly related to her specific Natrelle breast implants manufactured by the Allergan, as well as her speculation regarding what may have happened to her breast implants following the Surgery, including her belief

that one of her implants may have ruptured (para. 54 of the Authorization Application).

10. In this context, Allergan requests that the Applicant communicate all of her relevant medical, pharmaceutical or consultation records with respect to all hospitals, pharmacies or other health-related establishments or health professionals in relation to the Surgery as well as any follow-up medical treatment related to or resulting from the Surgery.

11. Such records will allow the Court to determine the necessary details regarding the Applicant's textured breast implants and the Surgery, which form the basis of her allegations that her textured implants suffer from a safety defect and risks that are causing damages.

12. More specifically, the medical records relating the Applicant's Surgery will also help this Honorable Court to determine whether the Applicant's belief that one of her implants may have ruptured has any basis in fact justifying the relief sought.

13. Moreover, the Applicant invokes her mental health in numerous paragraphs in her Authorization Application by alleging that she is stressed, worried or concerned and that she is entitled to damages as a result of the ''mental dangers'' caused by her Surgery and textured breast implants, and is specifically claiming $10,000 for ''moral prejudice'' as a result (see paras. 45,46, 62 and 65 of the Authorization Application).

14. In order to understand the nature of the moral prejudice which the Applicant alleges to have suffered and its relation to her breast implants, the Surgery and the articles and other information that she has consulted about the alleged link between her breast implants and BIA-ALCL, it is necessary to obtain all relevant facts with regards to the Applicant's mental health history prior to and after the Surgery, specifically with regards to stress.

15. In this context, Allergan requests that the Applicant communicate all of her medical records with regard to all consultations with a psychologist, a psychiatrist, or other similar health professional after the Surgery as well as all such records for a period of five years prior to the Surgery, specifically with regards to stress.

16. Allergan requests that all medical records ordered to be communicated by this Honourable Court be communicated at least 30 days in advance of any examination of the Applicant which may be authorized by this Court.

III. <u>The Relevance and Scope of the Examination of the Applicant</u>

17. The Authorization Application only presents a partial and incomplete description of factual context surrounding the Applicant's claim, notably with regard to her allegations of the "risks" associated with textured breast implants, the Surgery

itself and the evolution of her physical and mental condition following the Surgery.

18. In this context, the examination of the Applicant before the hearing of the Authorization Application is relevant and useful to provide this Honourable Court with facts relating to:

a) The circumstances surrounding the Applicant's consultation of or exposure to any information, marketing materials, advertisements or any other representations from the Defendants, and specifically Allergan, prior to the Surgery, including her consultations with the unnamed plastic surgeon and any information, marketing materials, documents or advice that was provided to her by the plastic surgeon prior to the Surgery regarding textured breast implants, and specifically the Natrelle textured breast implants, as well as the Applicant's consultation or exposure to information, news articles, warnings, reports or advice prior to the Surgery regarding textured breast implants;

b) The circumstances regarding the Applicant's allegation that she is aware of at least two other class members whose textured breast implants' ruptured causing her stress (para. 46 of the Authorization Application);

c) The details and circumstances surrounding the Surgery itself, and specifically the Natrelle textured breast implants;

d) The factual basis for and details regarding the allegation that one of her breast implants may have ruptured (para. 54 of the Authorization Application);

e) The circumstances and any details regarding any follow-up consultations with any physician or any other mental health professional with regard to her Surgery and any incident or symptoms that she may have experienced following the Surgery;

f) The allegation that the Applicant suffered stress as a result of reading the article communicated as Exhibit P-11 and other related articles and information (para. 45 of the Authorization Application) and the factual basis for and details regarding the allegation that textured breast implants cause "physical and mental dangers" (para. 65 of the Authorization Application);

g) The Applicants' allegation that she has suffered ascertainable and compensable loss and damages, including trouble and inconvenience and moral damages as a result of the alleged safety defects or risks of the textured breast implants and omissions by Defendants in relation to the textured breast implants;

h) The description and composition of the proposed class, the identification of the implants and the Defendants covered by the proposed class action;

i) The facts regarding the Applicant's ability to properly represent the members of the proposed class, including the nature of the steps taken by her leading up to and culminating in the filing of the Authorization Application, as well as her efforts, if any, to identify other members of the proposed class (para. 95 (b) of the Authorization Application).

19. The Applicant's examination regarding these subjects is limited to what is relevant and useful to this Honorable Court's analysis of the criteria for authorization of the class action pursuant to article 575 CCP, more particularly with regard to the appearance of right requirement (article 575 (2) CCP) and the Applicant's ability to properly represent the members of the proposed Class and Subclass members (article 575 (4) CCP).

20. The examination, which will not exceed two hours, is proportionate to the nature, importance and complexity of this proposed national class action.

21. Allergan suggests that this examination be held out of court and before the hearing of the Authorization Application.

22. It is in the interest of justice and the parties that Allergan be authorized to examine the Applicant.

23. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

ORDER Applicant Karen Basal to communicate, within thirty (30) following the judgment and at least 30 days prior to any examination of the Applicant Karen Basal that might be authorized by the Court, the following medical records:

a) All of her medical, pharmaceutical and consultation records respecting health care and treatment received from all hospitals, pharmacies or other health-related establishments and all healthcare professionals in relation to the Surgery alleged at paragraph 40 of the Authorization Application as well any follow-up medical treatment related to or resulting from the surgery;

b) All medical records relating to all consultations and/or treatment with a psychologist, a psychiatrist, or other similar health professional after the Surgery as well as all such records for a period of five years prior to the Surgery, specifically with regards to stress.

AUTHORIZE Defendants Allergan PLC, Allergan Inc. and Allergan USA inc. to examine the Applicant Karen Basal out of court and before the hearing of the Authorization Application for a maximum of two hours regarding the following subjects:

a) The circumstances surrounding the Applicant's consultation of or exposure to any information, marketing materials, advertisements or any other representations from the Defendants, and specifically Allergan, prior to the Surgery, including her consultations with the unnamed plastic surgeon and any information, marketing materials, documents or advice that was provided to her by the plastic surgeon prior to the Surgery regarding textured breast implants, and specifically the Natrelle textured breast implants, as well as the Applicant's consultation or exposure to information, news articles, warnings, reports or advice prior to the Surgery regarding textured breast implants;

b) The circumstances regarding the Applicant's allegation that she is aware of at least two other class members whose textured breast implants' ruptured causing her stress;

c) The details and circumstances surrounding the Surgery itself, and specifically the Natrelle textured breast implants;

d) The factual basis for and details regarding the allegation that one of her breast implants may have ruptured;

e) The circumstances and details regarding any follow-up consultations with any physician or any other mental health professional with regard to her Surgery and any incident or symptoms that she may have experienced following the Surgery;

f) The allegation that the Applicant suffered stress as a result of reading the article communicated as Exhibit P-11 and other related articles and information and the factual basis for and details regarding the allegation that textured breast implants cause "physical and mental dangers";

g) The Applicants' allegation that she has suffered ascertainable and compensable loss and damages, including trouble and inconvenience and moral damages as a result of the alleged safety defects or risks of the textured breast implants and omissions by Defendants in relation to the textured breast implants;

h) The description and composition of the proposed class, the identification of the implants and the Defendants covered by the proposed class action;

i) The facts regarding the Applicant's ability to properly represent the members of the proposed class, including the nature of the steps taken by her leading up to and culminating in the filing of the Authorization

Application, as well as her efforts, if any, to identify other members of the proposed class.

THE WHOLE with legal costs.

Montreal, this April 12th, 2019

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(Class Action)

ORIGINAL

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