

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-06-000831-160

SUPERIOR COURT
(Class Action)

STEVEN SCHEER

Petitioner

v.

BRISTOL-MYERS SQUIBB CANADA CO.

and

OTSUKA CANADA PHARMACEUTICAL INC.

and

LUNDBECK CANADA INC.

Respondents

**JOINT APPLICATION OF THE RESPONDENTS BRISTOL-MYERS SQUIBB CANADA CO.
AND OTSUKA CANADA PHARMACEUTICAL INC. FOR LEAVE TO EXAMINE THE
PETITIONER AND FOR COMMUNICATION OF DOCUMENTS**
(Arts. 574 and 587 CCP)

**TO THE CASE MANAGEMENT JUDGE TO BE APPOINTED HEREIN, THE RESPONDENTS
BRISTOL-MYERS SQUIBB CANADA CO. AND OTSUKA CANADA PHARMACEUTICAL
INC., RESPECTFULLY SUBMIT THE FOLLOWING:**

I. INTRODUCTION

1. The Respondents Bristol-Myers Squibb Canada Co. ("**BMS**") and Otsuka Canada Pharmaceutical Inc. ("**Otsuka**") (collectively, the "**Applicants**") hereby respectfully jointly request leave to examine the Petitioner, Mr. Steven Scheer, out-of-Court and an order for the Petitioner to communicate certain documents prior to the examination and provide consent with respect to delivery of his relevant medical files.

II. THE PROCEDURAL CONTEXT

2. By way of the Petitioner's *Application to Authorize the Bringing of a Class Action and to Appoint the Petitioner as Representative Plaintiff* (the "**Application**"), the Petitioner seeks the authorization to bring a class action against the Respondents on behalf of

persons in Canada (or alternatively, persons in Quebec) who were prescribed and have ingested and/or injected the drug(s) ABILIFY® (“**ABILIFY**”) and/or ABILIFY MAINTENA® (aripiprazole) (the “**Products**”) and their successors, assigns, family members, and dependants, as appears from paragraph 1 of the Application.

3. In his Application, the Petitioner alleges the following with respect to his individual claim:
 - a) Mr. Scheer alleges that he was prescribed ABILIFY in the 10 mg dosage in approximately late 2010, early 2011 and took the medication daily;
 - b) Shortly after taking ABILIFY, Mr. Scheer allegedly began experiencing urges to gamble which escalated over time;
 - c) Mr. Scheer further alleges to have spent time at several rehab centers and was administered ABILIFY while in those centers;
 - d) He allegedly continued to compulsively gamble during his stays in rehab;
 - e) In August 2016, Mr. Scheer alleges that he stopped taking ABILIFY and approximately a month later, his compulsive gambling urges were completely gone; and
 - f) In total, he allegedly lost between \$50,000 and \$60,000 while taking ABILIFY over a period of approximately five years.
4. He does not allege having been administered, having used, or having been prescribed ABILIFY MAINTENA.
5. The Petitioner claims that the Respondents failed to adequately warn about the risk of developing compulsive behaviours while taking the Products, failed to notify of the full scope of the risks known to be associated with the Products and misrepresented the safety of the Products, as appears from paragraph 9 and, in more detail, paragraphs 84 to 92 of the Application.
6. On behalf of the putative class members, the Petitioner is seeking (a) compensatory damages for physical and mental/emotional injuries, out-of-pocket expenses incurred or to be incurred, financial loss (for example, from gambling) and refund of the purchase price of the Products, or alternatively, the incremental costs of the Products as paid for by the putative class members and/or by the relevant provincial health insurer; and (b) unspecified punitive damages.
7. Moreover, the Petitioner seeks compensatory damages on behalf of the users of the Products’ family members and dependants for out-of-pocket expenses, loss of income and future income and loss of support, guidance, care, etc.

III. THE RIGHT TO EXAMINE THE PETITIONER

8. At the hearing of the Application, this Court will be required to analyze the allegations found in the Application in view of the criteria provided at article 575 CCP and developed by jurisprudence.
9. This Court is entitled to a complete, actual and precise disclosure of the facts, rather than general and vague allegations that are unsupported by relevant documentary evidence.
10. The Petitioner's individual claim and his adequacy as the proposed class representative are among the main issues to be analyzed by the Court in the context of the Application.
11. At the authorization hearing the Respondents are entitled to a full and complete defence in this regard.
12. Article 574 CCP empowers this Court to authorize the presentation of appropriate evidence relevant to the analysis of the conditions set out in articles 574 and 575 CCP, including the production of relevant documentary evidence and the examination out-of-court of the Petitioner.

IV. THE NEED FOR RELEVANT EVIDENCE

13. In the Application, the Petitioner puts himself forward to act as the class representative.
14. When this Court will assess the Application in light of Articles 575(2) and 575(4) CCP, it will do so in view of the Petitioner's personal situation.
15. The allegations in the Application are vague, incomplete and unsupported by relevant documentary evidence. The vagueness is more striking with respect to the alleged individual claim of the Petitioner, who has filed no documentary evidence in support of many of his allegations.
16. As appears from the Application, the Petitioner has put his medical conditions, diagnoses and treatments at issue herein, as well as his alleged personal monetary losses. In fact, these allegations are at the heart of the present matter and purportedly constitute one of the common features of the proposed class.
17. The Petitioner makes the following unsupported allegations with respect to his alleged medical conditions:
 - a) At paragraph 93, an unidentified physician whose speciality is not alleged would have prescribed ABILIFY to the Petitioner in the 10 mg dosage to treat severe anxiety associated with obsessive-compulsive disorder from which he suffered, indicating in a footnote that he was weaned onto the medication;

- b) At paragraph 94, he alleges that he initially filled the prescription for ABILIFY at the Uniprix located in Verdun, Quebec, but switched pharmacies several times;
 - c) At paragraph 97, he alleges that he checked himself into a rehab center, Pavillon Foster in Saint-Philippe, Quebec;
 - d) At paragraph 98, he alleges that he stayed in the rehab center on two occasions for three week periods and was administered ABILIFY every day while there;
 - e) At paragraph 99, he alleges that he attempted suicide by way of an unknown mix of medication and was taken to the Verdun Hospital for treatment;
 - f) At paragraph 100, he alleges that he registered with a separate rehab center, Portage Quebec Adult Day Centre Montreal, as an out-patient;
 - g) At paragraph 102, he alleges that he was admitted to Portage Quebec in-patient center in Prévost, Quebec, where he was administered ABILIFY;
 - h) At paragraphs 103 and 104, he alleges to have checked out of the Portage Quebec rehab center after three months before checking himself back in a week later for a further three months; and
 - i) At paragraphs 106 and 107, he alleges that he ceased taking ABILIFY in August 2016 and that his compulsive gambling problems were completely gone after about a month.
18. However, the Petitioner did not produce a single medical record with respect to any of the allegations above, which necessarily exist, and which constitute the best evidence of his alleged conditions, diagnoses, treatments, time spent in rehab centers and hospitals, and medications prescribed and filled over the relevant period of time, including ABILIFY.
19. The Application is vague and incomplete in regards to the consistency with which he took ABILIFY over the relevant period of time, limiting itself to the date of an initial prescription (2010 or 2011) and the date when the Petitioner stopped taking ABILIFY (August 2016).
20. It is also vague and incomplete in detailing the dosage of ABILIFY that the Petitioner took or was administered throughout that period of time. Whereas at paragraph 93 he indicates that he was prescribed a 10 mg of ABILIFY, the footnote indicates that he was weaned onto the medication. At no other point in the Application does he indicate what dose of ABILIFY he took or was administered.
21. The Petitioner further alleges that he would not have taken ABILIFY if he had known of the risk of suffering from uncontrollable impulses, without explaining what information regarding risks of specific side effects his physician gave him prior to prescribing him ABILIFY or from the pharmacist(s) that filled the prescription for such Product.

22. Compulsive gambling can be caused by a multitude of factors, some linked to obsessive-compulsive disorder, of which the Petitioner suffers according to the Application. However, without any medical documents, it is impossible for the Respondents to evaluate whether the Petitioner is an appropriate representative for the putative class and whether he has a valid personal cause of action.
23. In addition to the allegations regarding his medical condition, the Petitioner makes the following unsupported claims with respect to his alleged monetary losses:
 - a) At paragraph 96, he alleges that he withdrew \$2,500 from his RRSPs at the Laurentian Bank, that he sold his car and his jacket for a fraction of their worth, that he purchased merchandise from stores with his own credit cards and those of friends and family to then sell them at pawn shops for a fraction of their value, and that he pawned gold; and
 - b) At paragraph 108, he alleges that he lost between \$50,000 and \$60,000 due to compulsive gambling while taking ABILIFY.
24. The Petitioner however failed to produce any records with respect to the allegations of monetary loss, including any bank records for RRSP funds or other money withdrawn, any credit card records and receipts for merchandise sold or purchased, any receipts from casinos or other locations where he may have gambled, documents which necessarily exist, and constitute the best evidence of his allegations of monetary loss.
25. As such, in order to verify the facts giving rise to his individual claim, the Respondents must be entitled to verify what other possible risk factors or causes exist for this type of behaviour and identify whether such allegations of monetary loss are supported by documentary evidence.
26. Finally, the existence of a putative national class (Art. 575(3) CCP) will be analysed in view of the investigation made by the Petitioner.
27. As such, in order to determine whether the Petitioner qualifies as an adequate representative pursuant to Article 575(4) CCP, this Court needs to be apprised as to the investigation conducted regarding the issues at stake and the situation of the other putative class members, including those who were prescribed and ingested ABILIFY MAINTENA.
28. Yet, the Application does not disclose the investigation, if any, that the Petitioner carried out respecting the allegations in the Application, the composition of the proposed class, the situation of the other alleged members, if there are any, and his involvement in the preparation of the Application, other than to simply state that he "spent time researching this issue on the internet" and is "convinced that the problem is widespread" (paragraph 143 of the Application).
29. Other than vague allegations regarding the adverse events reported to Health Canada, only ten out of 597 of which mention a gambling disorder (Exhibit R-35), the Application

does not provide any information with respect to the existence of other putative class members and their respective situation in Canada.

V. THE PROPOSED EXAMINATION AND ORDER FOR THE COMMUNICATION OF DOCUMENTS

30. Based on the foregoing, in order to verify the facts giving rise to the Petitioner's individual claim, and to determine the Petitioner's adequacy to act as class representative, the Applicants respectfully submit that they should be granted leave to examine the Petitioner with respect to:
- a) the Petitioner's diagnosis of obsessive-compulsive disorder and other treatments received for this condition;
 - b) the symptoms that the Petitioner experienced due to his diagnosis of obsessive-compulsive disorder, prior to taking ABILIFY;
 - c) any other possible diagnoses he may have received;
 - d) other possible treatments proposed by his physician to treat obsessive-compulsive disorder and/or its related conditions;
 - e) the information and documentation that were provided to him prior to being prescribed ABILIFY, either by a physician or a pharmacist;
 - f) the specific doses of ABILIFY that he took or was administered and for what period of time;
 - g) the specific dates that he stayed in the various rehab centers and at the Verdun Hospital;
 - h) the specific circumstances regarding his stay at the Verdun Hospital and the duration of his stay;
 - i) whether he received any other treatment, other than ABILIFY, while at the rehab centers and at the Verdun Hospital;
 - j) whether he received any outpatient services following his stays in rehab centers or in the Verdun Hospital and what those services consisted of;
 - k) whether he disclosed his compulsive gambling issue with any physician or other professional;
 - l) the circumstances surrounding his decision to stop taking ABILIFY in August 2016;

- m) whether he discussed the decision to stop taking ABILIFY with his physician and whether he began to take another medication in its place;
 - n) the investigation conducted by the Petitioner as to the existence and the personal situation of other putative class members;
 - o) any investigations undertaken by the Petitioner to contact members of the proposed class, and the results of these efforts; and
 - p) his participation in the preparation of the Application.
31. Furthermore, the Applicants respectfully request that this Court order the Petitioner to:
- a) provide to the Applicants a list of all of the physicians and other health professionals that he consulted, the hospitals and rehab centers that he stayed in, the pharmacies where he filled prescriptions and any other medical facility or professional that may have in their possession medical records relevant to the present proposed class action in regards to consultations, symptoms experienced, diagnosis or treatments for (a) obsessive-compulsive disorder; (b) anxiety or depression; (c) compulsive gambling (d) the persistence of any side effects related to the foregoing;
 - b) sign consent forms that would allow the Applicants to obtain the relevant medical records from the professionals and facilities comprised in the list referenced above; and
 - c) provide the Applicants with any bank records, credit card statements, receipts for purchases or sales of goods, any receipts from casinos or other locations where he may have gambled that may demonstrate his alleged monetary losses due to compulsive gambling.
32. Once the Applicants have the requested documents in hand, the requested examination should be held at least 45 days following such reception, to allow time for the Applicants to evaluate such documents.
33. Such examination should last approximately three hours, and should be conducted out-of-Court, in Montreal, on a date agreed upon by the parties or as directed by this Court in absence of any agreement between the parties.
34. This Application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the Respondents Bristol-Myers Squibb Canada Co. and Otsuka Canada Pharmaceutical Inc. to examine out of Court the Petitioner, Mr. Steven Scheer, at a date

to be determined by the parties or by this Court in the absence of any agreement, but not less than 45 days following reception of the documents requested herein, on the following topics:

- a) the Petitioner's diagnosis of obsessive-compulsive disorder and other treatments received for this condition;
- b) the symptoms that the Petitioner experienced due to his diagnosis of obsessive-compulsive disorder, prior to taking ABILIFY;
- c) any other possible diagnoses he may have received;
- d) other possible treatments proposed by his physician to treat obsessive-compulsive disorder and/or its related conditions;
- e) the information and documentation that were provided to him prior to being prescribed ABILIFY, either by a physician or a pharmacist;
- f) the specific doses of ABILIFY that he took or was administered and for what period of time;
- g) the specific dates that he stayed in the various rehab centers and at the Verdun Hospital;
- h) the specific circumstances regarding his stay at the Verdun Hospital and the duration of his stay;
- i) whether he received any other treatment, other than ABILIFY, while at the rehab centers and at the Verdun Hospital;
- j) whether he received any outpatient services following his stays in rehab centers or in the Verdun Hospital and what those services consisted of;
- k) whether he disclosed his compulsive gambling issue with any physician or other professional;
- l) the circumstances surrounding his decision to stop taking ABILIFY in August 2016;
- m) whether he discussed the decision to stop taking ABILIFY with his physician and whether he began to take another medication in its place;
- n) the investigation conducted by the Petitioner as to the existence and the personal situation of other putative class members;
- o) any investigations undertaken by the Petitioner to contact members of the proposed class, and the results of these efforts; and

p) his participation in the preparation of the Application.

ORDER the Petitioner to:

- a) provide to the Respondents Bristol-Myers Squibb Canada Co. and Otsuka Canada Pharmaceutical Inc. a list of all of the physicians and other health professionals that he consulted, the hospitals and rehab centers that he stayed in, the pharmacies where he filled prescriptions and any other medical facility or professional that may have in their possession medical records relevant to the present proposed class action in regards to consultations, symptoms experienced, diagnosis or treatments for (a) obsessive-compulsive disorder; (b) anxiety or depression; (c) compulsive gambling (d) the persistence of any side effects related to the foregoing;
- b) sign consent forms that would allow the Respondents Bristol-Myers Squibb Canada Co. and Otsuka Canada Pharmaceutical Inc. to obtain the relevant medical records from the professionals and facilities comprised in the list referenced above; and
- c) provide any bank records, credit card statements, receipts for purchases or sales of goods, any receipts from casinos or other locations where he may have gambled that may demonstrate his alleged monetary losses due to compulsive gambling.

RESERVE the rights of Respondents, Bristol-Myers Squibb Canada Co. and Otsuka Canada Pharmaceutical Inc., to apply to this Court for leave to adduce relevant evidence in the form of an expert report or affidavit interpreting the medical and health files received from the physicians, health professionals, hospitals, rehab centers, pharmacies, etc. referenced herein, in order to aid this Court in assessing the authorization criteria at article 574 CCP;

THE WHOLE without costs, unless contested.

Montréal, August 18, 2017



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Canada Co.**



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NOTICE OF PRESENTATION

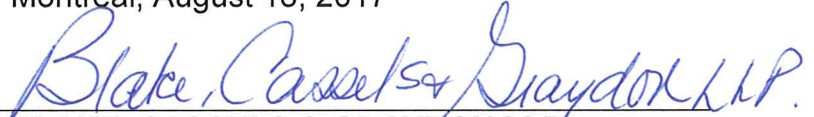
TO: Me Jeff Orenstein
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Attorneys for Petitioner

TAKE NOTICE that the present *Joint Application of the Respondents Bristol-Myers Squibb Canada Co. and Otsuka Canada Pharmaceutical Inc. for Leave to Examine the Petitioner and for Communication of Documents* will be presented for adjudication before the case management judge to be appointed, on a date, at a time and in a room to be determined by such judge of the Montréal Courthouse located at 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, August 18, 2017



BLAKE, CASSELS & GRAYDON LLP
Attorneys for Respondent **Bristol-Myers**
Squibb Canada Co.

N°: 500-06-000831-160

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(ARTS. 574 AND 587 CCP)

ORIGINAL

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