

**SUPERIOR COURT
Class Action**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000692-141

DATE: January 6, 2021

BY THE HONOURABLE SUZANNE COURCHESNE, J.S.C.

DENIS LABEL

Applicant

v.

BOEHRINGER INGELHEIM (CANADA) LTD./LTEE

and

BOEHRINGER INGELHEIM AUSLANDBETEILIGUNGS GMBH

and

BOEHRINGER INGELHEIM INTERNATIONAL GMBH

and

C. H. BOEHRINGER SOHN AG & CO. KG

Defendants

JUDGMENT

(authorization to amend and temporary stay)

[1] **CONSIDERING** the Applicant's *Application for Leave to Amend the Application for Authorization and for a Continued Temporary Stay*, pursuant to Articles 206, 577, 581, and 585 of the *Code of Civil Procedure*;

- **Background**

[2] **CONSIDERING** that on April 22, 2014, the Applicant filed an *Application for Authorization to Institute a Class Action and to Appoint a Representative Applicant* (the **Application for Authorization**);

[3] **CONSIDERING** that the intended Group Members in this action included all persons residing in Quebec who have taken the drug Pradaxa and their successors, assigns, family members, and dependents (the **Quebec Action**);

[4] **CONSIDERING** that on May 6, 2015, another Applicant, Lionel Whiteduck, filed another class action in Quebec against the same defendants to represent the same class (*Whiteduck v Boehringer Ingelheim (Canada) Ltd. et al.* (500-06-000741-153));

[5] **CONSIDERING** that in 2015, an agreement was reached between the parties to temporarily suspend the Pradaxa litigation in all provinces save for Ontario, to await the outcome of the Ontario certification hearing in *Batten v. Boehringer Ingelheim (Canada) Ltd.* (the **Ontario Action**);

[6] **CONSIDERING** that on November 18, 2015, the Court granted a request to stay the Quebec Action and the Whiteduck action to await the outcome of the Ontario Action;

[7] **CONSIDERING** that on January 5, 2017, the Ontario Superior Court dismissed the certification motion in the Ontario Action, as reported at *Batten v Boehringer Ingelheim (Canada) Ltd.*, 2017 ONSC 53 (Sup. Ct.);

[8] **CONSIDERING** that on November 3, 2017, the Divisional Court upheld the dismissal of certification in *Batten v Boehringer Ingelheim (Canada) Ltd.*, 2017 ONSC 6098 (Div. Ct.);

[9] **CONSIDERING** that leave to appeal to the Ontario Court of Appeal was subsequently denied, and the Ontario plaintiffs did not seek leave to appeal to the Supreme Court of Canada;

[10] **CONSIDERING** that on November 14, 2019, the Whiteduck action was discontinued by consent;

[11] **CONSIDERING** that the Quebec Action is one of many similar actions filed across Canada, including the following actions:

a. *The Estate of Susan Darlene Gareau and Brigitte Pichon v Boehringer Ingelheim (Canada) Ltd./Ltee*, Manitoba Court of Queen's Bench (Winnipeg) No. CI-14-01-87568, filed January 23, 2014 (the **Manitoba Action**);

b. *David St. Cyr v Boehringer Ingelheim (Canada) Ltd./Ltee*, Alberta Court of Queen's Bench (Edmonton) No. 1303-03154, filed March 1, 2013;

- c. *Law v Boehringer Ingelheim (Canada) Ltd./Ltee*, Ontario Superior Court of Justice (St. Catherines) No. 54112/12, filed December 10, 2012;
- d. *Strathis v Boehringer Ingelheim (Canada) Ltd./Ltee*, British Columbia Supreme Court (Victoria) No. 14-2104, filed May 30, 2014;

[12] **CONSIDERING** that Merchant Law Group, attorneys for the Applicant, are counsel in respect of the aforementioned actions, and advise that:

- a) Carriage of the Pradaxa litigation in Ontario was ceded to counsel in the *Batten* action; as such, the *Law* action in Ontario (Exhibit-7) will not proceed;
- b) The *St. Cyr* action in Alberta (Exhibit-6) is to be discontinued;
- c) The Manitoba Action (Exhibit-5) is to be advanced to a motion for certification on behalf of a revised class limited to the estates of those who died following a bleeding event;
- d) Instructions have not yet been confirmed in respect of the *Strathis* (British Columbia) (Exhibit-8) proceedings, and no position is advanced in respect of that action;

[13] **CONSIDERING** that, in light of the outcome of the certification application in the Ontario Action, a narrower national class is expected to be proposed for certification in the Manitoba Action;

- The amendments to the Application for Authorization

[14] **CONSIDERING** that the Applicant proposes to amend the Application for Authorization, limiting the class to "All estates, successors, assigns, family members, and dependents of persons deceased prior to April 29, 2016 who, at the time of death, resided in Québec, had taken the drug Pradaxa, and whose death involved hemorrhage or exsanguination" and to adduce additional exhibits, Exhibits P-5, P-6, P-7 and P-8;

[15] **CONSIDERING** that April 29, 2016 is the alleged date of approval by Health Canada of an antidote for Pradaxa;

[16] **CONSIDERING** that the modification of the Application for Authorization will not prejudice the other putative class members as the applicable prescription period has been suspended since at least April 22, 2014;

[17] **CONSIDERING** that, in view of the foregoing, the proposed amendments to the Application for Authorization are not contrary to the interests of justice and are made to circumscribe the scope of the proposed class, in light of the allegations against the Defendants and the exhibits in support thereof;

[18] **CONSIDERING** that to the present date, the Quebec Action has not been authorized, and no notice has been given to the proposed class;

[19] **CONSIDERING** that the Applicant proposes to provide notice to the class, in the form presented as Exhibit-10, of the amendment to the proposed class by:

- i. Publishing a copy of the same to both the Quebec and Canadian Bar Association class action registries;
- ii. Posting the same on the Merchant Law Group LLP web page for this class action, at the URL <https://www.merchantlaw.com/class-actions/current-class-actions/pradaxa-class-action/>; and
- iii. Transmitting the same by e-mail to each of the Quebec residents who have signed up on the Merchant Law Group LLP web site to receive updates in respect of this action;

[20] **CONSIDERING** that the form, content and proposed method of publication of the notice to the class respect the conditions set forth in the *Code of Civil Procedure*;

- **The Application for Temporary Stay of the Quebec Action**

[21] **CONSIDERING** that Applicant seeks a temporary stay of the Quebec Action, pending a final determination of the Manitoba Action;

[22] **CONSIDERING** that Defendants do not oppose Applicant's demand in this regard;

[23] **CONSIDERING** that the Plaintiff in the Manitoba Action intends to seek a national certification;

[24] **CONSIDERING** that the proposed class in the Manitoba Action includes the class members of the Quebec Action;

[25] **CONSIDERING** that the conditions set forth in article 3137 of the *Civil Code of Quebec* are satisfied in the present matter and that there is *lis pendens* between the Quebec Action and the Manitoba Action;

[26] **CONSIDERING** that the Court must also analyze the application for a temporary stay of the Quebec Action in light of the rights and interests of the Quebec class members in accordance with Article 577 of the *Code of Civil Procedure* (*Micron Technology Inc. c. Hazan*, 2020 QCCA 1104);

[27] **CONSIDERING** that Merchant Law Group LLP has advised the Court that the Plaintiff in the Manitoba Action intends to deliver her certification record by the second quarter of 2021;

[28] **CONSIDERING** that considerable time has elapsed since final dismissal of the Ontario Action in February 2018 and that the Manitoba Action and the Quebec Action have subsequently remained dormant for more than 2 years;

[29] **CONSIDERING** that between February 2018 and January 2020, the Court's requests for updates from the Applicant's Counsel in the Quebec Action remained unanswered;

[30] **CONSIDERING** that since the final dismissal of the Ontario Action in February 2018, the Manitoba Action has not progressed, has not been amended and is not currently under case management;

[31] **CONSIDERING** that the scope of the Manitoba Action is considerably larger than that of the Quebec Action;

[32] **CONSIDERING** that Merchant Law Group LLP has not presented, to the Court's satisfaction, a convincing plan or procedural timetable showing that they will conduct diligently the litigation in the Manitoba Action leading to the certification hearing and, further, will work diligently in order to advance the claims and protect the interests and rights of the Quebec members;

[33] **CONSIDERING** that although judicial economy, cost saving and proportionality are factors in support of avoiding the simultaneous prosecution of motions for certification in different jurisdictions, the Court is not satisfied that the temporary stay of the Quebec Action will better serve the interests of the Quebec class given the circumstances;

FOR THESE REASONS, THE COURT:

[34] **GRANTS** in part the Application to Amend the Application for Authorization and Continue the Temporary Stay of the Within Proceedings;

[35] **PERMITS** the Applicant to amend the Application for Authorization to Institute a Class Action and Appoint a Representative Applicant and to Adduce Exhibits P-5, P-6, P-7 and P-8;

[36] **ORDERS** that notice in the form as presented at Exhibit-10, be published by the Applicant on the Quebec class action registry and on the Canadian Bar Association's class action registry;

[37] **ORDERS** that the notice in the form as presented in Exhibit-10, be posted on the Applicant's attorneys' web site for a period of at least 120 days from the date of this Judgment ;

[38] **ORDERS** that notice in the form as presented in Exhibit-10, be sent by the Applicant's attorneys to each Québec resident who has submitted their contact information to the attorneys in respect of this proposed class action;

[39] **DISMISSES** the application for temporary stay of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff filed by Applicant Denis Lebel on April 22, 2014;

- [40] **ORDERS** that the stay order of November 18, 2015 in the present file be lifted;
- [41] **RESERVES** the right of the parties to seek a further temporary stay in the present file;
- [42] **CONVENES** the attorneys for Applicant and for Defendants to a case management conference to be scheduled at the latest by January 29, 2021;
- [43] **THE WHOLE**, without legal costs.



SUZANNE COURCHESNE, S.C.J.

Me Christine Nasraoui
MERCHANT LAW GROUP LLP
Attorney for the Applicant

Me Sidney Elbaz
Me Scott Maidment
MC MILLAN LLP
Attorneys for the Defendants

Hearing date: December 21, 2020 (by audio conference)

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Exhibit-10

**NOTICE OF THE AMENDMENT OF THE QUEBEC CLASS ACTION COMMENCED
AGAINST BOEHRINGER INGELHEIM CONCERNING PRADAXA**

Take notice that, on January 6, 2021, the applicant Denis Lebel was authorized to amend his *Application for authorization to institute a class action and to appoint a representative plaintiff*, dated April 22, 2014, in the file number 500-06-000692-141. The amendments have the effect of changing the proposed definition of the class as follows:

Original Proposed (April 22, 2014)

All persons residing in Quebec who have taken the drug Pradaxa and their successors, assigns, family members, and dependents or any other group to be determined by the Court.

Revised Proposal (January 6, 2021)

All estates, successors, assigns, family members, and dependents of persons deceased prior to April 29, 2016 who, at the time of death, resided in Quebec, had taken the drug Pradaxa, and whose death involved hemorrhage or exsanguination

A copy of the judgment rendered by the Superior Court of Quebec authorizing the amendment, and the amended application for authorization, is available on the Registry of class actions website <https://www.registredesactionscollectives.quebec/en>: **The allegations contained in the amended application for authorization to institute a class action have not been proven in court and are contested by the defendants.**

By reason of this amendment, the operation of Article 2908 of the Civil Code of Québec has ceased and limitation periods (prescription) are no longer suspended for persons who are not included in the revised definition of the class.

Nothing in this notice is intended to be legal advice and you may wish to consult your own attorney.

AVIS DE MODIFICATION DE L'ACTION COLLECTIVE INTENTÉE AU QUÉBEC CONTRE BOEHRINGER INGELHEIM CONCERNANT PRADAXA

Prenez note que le requérant Denis Lebel a été autorisé à amender sa *Demande pour autorisation d'exercer un recours collectif et obtenir le statut de représentant*, datée du 22 avril 2014, sous le numéro de dossier 500-06-000692-141, le 6 janvier 2021. Les modifications ont pour effet de changer la définition proposée du groupe comme suit :

Proposition originale (22 avril 2014)

Toutes les personnes résidant au Québec qui ont consommé la drogue Pradaxa et leurs successeurs, ayants droit, membres de la famille et personnes à charge ou tout autre groupe à déterminer par la Cour.

Proposition révisée (6 janvier 2021)

Toutes les successions, successeurs, ayants droit, membres de la famille et personnes à charge des personnes décédées avant le 29 avril 2016 qui, au moment du décès, résidaient au Québec, avaient pris le médicament Pradaxa et dont le décès a été causé par une hémorragie ou une exsanguination.

Une copie du jugement rendu par la Cour supérieure du Québec autorisant la modification, ainsi que la demande d'autorisation modifiée, sont disponibles sur le site du Registre des actions collectives : <https://www.registredesactionscollectives.quebec/>. Les allégations contenues dans la *Demande pour autorisation d'exercer un recours collectif et obtenir le statut de représentant* telle qu'amendée n'ont pas été prouvées devant la Cour et sont contestées par les Défenderesses.

En raison de cette modification, l'application de l'article 2908 du *Code civil du Québec* a cessé et les délais de prescription ne sont plus suspendus pour les personnes qui ne sont pas incluses dans la définition révisée du groupe.

Rien dans le présent avis ne constitue un avis juridique et vous pouvez consulter votre propre avocat.