

**SUPERIOR COURT
(CLASS ACTION)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000916-185

DATE: February 1st, 2021

BY THE HONOURABLE SYLVAIN LUSSIER., J.S.C.

AMANDA HAKIM
Plaintiff

v.

PFIZER INC.
and
PFIZER CANADA INC.
and
PFIZER CANADA ULC
Defendants

JUDGMENT

[1] On March 20th, 2018, the Applicant filed an Application for authorization to institute a class action and to appoint a representative on behalf of :

« All persons in Canada (including their estates, executors, or personal representatives) who purchased, used, or acquired Alesse®, birth control pills, and their dependants and family members, or any other Class or Sub-Class to be determined by the Court ».

seeking damages resulting from the use of the defective pills Alesse 21 and Alesse 28®, allegedly designed, manufactured, tested, packed, labelled, marketed, and sold by Defendants.

[2] This Application is premised on the alleged fact that on December 1, 2017, Health Canada issued a safety recall based on the fact that certain packages of birth control pills Alesse 21 and Alesse 28 might contain smaller than normal or broken pills which may reduce effectiveness in preventing pregnancy¹.

[3] The case management of this file was assigned to the undersigned by the Chief Justice of the Superior Court on June 26, 2019.

[4] On December 19, 2018, Defendants Pfizer Inc. and Pfizer Canada ULC filed an Application for Leave to Examine the Applicant, for Communication of Documents, and to Adduce Relevant Evidence.

[5] On January 22, 2019, Justice Chantal Lamarche granted the Defendants' Application.

[6] In accordance with the January 22 decision, the Applicant was examined on September 10, 2019. In the course of that Examination, a number of undertakings were made;

[7] The responses to these undertakings were completed on August 26, 2020;

[8] On September 28, 2020, the Defendants Pfizer Inc. and Pfizer Canada ULC filed another Application for leave to adduce relevant evidence.

[9] On November 10, 2020, the Applicant filed an Application for leave to temporarily stay the Quebec proceedings, on the basis that proceedings having the same parties, cause and object were pending before the Supreme Court of British Columbia.

[10] On January 11, 2021, the undersigned dismissed the Applicant's Application for a temporary stay and fixed the hearing of the Application for authorization to institute class action on April 1st, 2021².

[11] The Applicant is now seeking an Order from the Court for leave to discontinue the Quebec Proceeding.

[12] Applicant advances that, "on a more probing analysis of the criteria of 575 CPC, mainly regarding the Applicant's individual cause of action, it is unlikely that this class action will be granted authorization".

[13] Applicant further alleges that the Quebec class members may be protected by proceedings in British Columbia, where a member meets the set criteria.

[14] As noted by the Court on January 11, the description of the groups in Quebec and British Columbia differ. The Court is also of the opinion that the proceedings are based on different causes, even if the object is conceptually the same.

[15] The Court was not satisfied that the interest of the Quebec class members was adequately protected in British Columbia³.

¹ Paragr. 8 of the Application for Authorization.

² *Hakim c. Pfizer inc.*, 2021 QCCS 160.

³ Article 577 CCP.

[16] The Court record and the present application disclose that a number of Quebec residents have registered with Applicant's counsel concerning this class action.

[17] The Court believes that protection of the interest of the class members requires that these members who have registered be given notice and occasion to express their views concerning the proposed discontinuance.

[18] The granting of the Application for leave to desist will be suspended pending the sending of a notice to the class members, the posting of a notice on counsel's website and a consideration of their responses⁴.

[19] The notice, to be substantially in conformity to the text annexed herein, will provide, in both languages, for members to be able to express their opposition to the discontinuance, or their desire to act as class representative and continue the present action.


[20] Counsel for Applicant will provide the Court with the responses prior to March 21st, 2021, and the Court will decide whether a formal hearing is necessary prior to granting a discontinuance.

FOR THESE REASONS, THE COURT :

[21] **ORDERS** that the notice attached as Annex A be forwarded to the class members that registered with Applicant's counsel, with a copy of the present judgment, and posted on Applicant's counsel's website.

[22] **ORDERS** that the Court be informed of compliance with the present judgment and of any answer received from class members, on or before March 21st, 2021.

[23] **THE WHOLE**, without costs.



SYLVAIN LUSSIER, J.S.C.

Me Christine Nasraoui
Merchant Law Group
Counsel for Plaintiff Amanda Hakim

Me François-David Paré
Me Claudette van Zyl
M. Pierre-Olivier Brodeur, stagiaire
Norton Rose Fulbright Canada
Counsel for Defendants Pfizer inc., Pfizer Canada inc. and Pfizer Canada ULC.

⁴ *Ostiguy c. Procureur général du Québec*, 2005 CanLII 26287 (QCCS); *Hamelin c. Pfizer Canada inc.*, 2020 QCCS 3161.

ANNEX A**NOTICE OF DISCONTINUANCE OF A CLASS ACTION**

1. On March 26, 2018, Applicant instituted a Motion to Authorize the Bringing of a Class Action and to ascribe the Status of Representative in the Superior Court of Quebec, district of Montreal, under file number 500-06-000916-185, on behalf of the following class :

« All persons in Canada (including their estates, executors, or personal representatives) who purchased, used, or acquired Alesse®, birth control pills, and their dependants and family members, or any other Class or Sub-Class to be determined by the Court »

2. On January 25th, 2021, Applicant filed an Application for permission to discontinue the proposed class action, thereby putting an end to the proposed class action.

3. If you wish to object to the proposed discontinuance, you must send a written submission to Class Counsel at the address listed below by March 5, 2021. In the written submission, you must include: (a) your full name, address, telephone number, and email address (if any); (b) all of the reasons for your objection; c) if you wish to be substituted as representative of the proposed class.

Christine Nasraoui, LL.B
Avocate/Lawyer
 Merchant Law Group LLP
 10 Notre-Dame Est, #200
 Montreal, QC H2Y 1B7

ANNEXE A**AVIS DE DÉSISTEMENT D'UNE ACTION COLLECTIVE**

1. Le 26 mars 2018, la demanderesse a déposé en Cour supérieure du Québec, district de Montréal, sous le numéro 500-06-000916-185 une Demande d'autorisation d'exercice d'une action collective pour se faire attribuer le statut de représentant au nom du groupe suivant :

« Toutes les personnes au Canada (incluant leurs ayants droit, liquidateurs ou mandataires) qui ont acheté, utilisé ou obtenu des pilules contraceptives Alesse®, et leurs personnes à charge et membres de leur famille, ou tout autre groupe ou sous-groupe à être décrit par la Cour ».

2. Le 25 janvier 2021, la demanderesse a demandé à la Cour la permission de se désister de l'action collective envisagée (la « Demande de désistement »), mettant ainsi fin à celle-ci.

3. Si vous désirez vous objecter à la Demande de désistement, vous devez envoyer un avis écrit aux avocats de la demanderesse à l'adresse ci-jointe, avant le 5 mars 2021. Dans votre avis écrit, vous devez indiquer : a) votre nom au complet, votre adresse et numéro de téléphone de même que votre adresse courriel, le cas échéant, b) tous les motifs de votre objection et c) si vous désirez devenir représentante du groupe proposé.

Christine Nasraoui, LL.B
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4. The Court will decide if there is a need for a hearing in Court or whether judgment can simply be rendered on the Application to Discontinue without a hearing. If the judge decides that a hearing in Court is necessary, any person that filed a written objection will be informed of the date, time, and place of such hearing and will have an opportunity to be heard by the Court.

5. BE AWARE that if the Court allows the discontinuance, the proposed class action is terminated. Limitation periods (i.e. prescription), which was suspended on March 26, 2018, will no longer be suspended. Therefore, proposed class members will no longer be represented by the proposed class action and will be required to pursue their own action, should they so desire. They may express the will to be the representative of the class and prevent the discontinuance of the proposed class action.

4. Le tribunal décidera si une audition formelle est nécessaire ou si la Demande de désistement peut être accordée sans cela. Si une audition est jugée nécessaire, toute personne s'étant objectée sera informée de la date, heure et du lieu de cette audition et sera entendue par le tribunal.

5. Soyez avisées que si le tribunal permet le désistement, cela met fin à l'action collective envisagée. Les délais de prescription, qui ont été suspendus le 26 mars 2018, recommenceront à courir. Ainsi les membres du groupe proposé ne seront plus représentés dans l'action collective envisagée et devront, si elles le désirent, intenter personnellement un recours. Elles peuvent, pour faire obstacle au désistement, se déclarer prêtes à agir comme représentante du groupe.