

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000758-157

DATE : April 28, 2021

PRESIDING : THE HONOURABLE YVES POIRIER, J.S.C.

PIERRE VACHON

Applicant

v.

GLAXOSMITHKLINE INC ET AL.

Defendants

JUDGMENT

[1] The Court is seized of the Applicant's "*Application for leave to discontinue the application for authorization*", pursuant to Article 585 of the *Code of Civil Procedure*;

[2] This class action relates to prescription drug Avodart (dutasteride) manufactured by the Defendants ("GSK");

[3] CONSIDERING that the parties reached an agreement on September 1, 2019 to discontinue this proposed class action as part of a Settlement Agreement ("Settlement");

[4] CONSIDERING that the filed proceeding and Settlement have provided and will provide:

- a. suspension of the limitation period from the date of commencement of the first Avodart Class Action (the Saskatchewan Action), which was issued November 28, 2013, until 90 days following the publication of the Notice of discontinuances of the Ontario and Quebec Actions on Merchant Law Group LLP's ("MLG's") website, the Canadian Bar Association Class Action Database, and the Superior Court of Québec Registry of Class Actions.
- b. resolution now of known claims;
- c. a mechanism for resolution of further claims; and
- d. Notice Plan.

[5] CONSIDERING that the discontinuance will not prejudice putative members of the class. On the contrary, the terms of the discontinuance facilitate the fair resolution of claims where GSK denies liability and any potential recovery is very remote.

[6] CONSIDERING that as part of the discontinuance and related Settlement Agreement, GSK has agreed to pay \$275,000.00, inclusive of taxes for legal fees and up to an additional \$5,000.00 for verifiable disbursements;

[7] CONSIDERING that four (4) actions were commenced by the Merchant Law Group in relation to Avodart. The first Avodart class action in Canada was issued in Saskatchewan on November 28, 2013, followed by the British Columbia Action on March 20, 2014. The Ontario action was issued on April 1, 2014, and the Quebec Action on September 10, 2015. The within claim alleges that the Defendant was negligent causing injuries and harm to the proposed class members who were prescribed and ingested Avodart (dutasteride). Avodart is indicated for the treatment of benign prostate hyperplasia ("BPH"), commonly referred to as an enlarged prostate;

[8] CONSIDERING that Saskatchewan Action is the most advanced. The Plaintiffs have filed their Notice of Application for Certification on July 10, 2014. The Plaintiffs have also taken significant steps to advance the Saskatchewan Action towards Certification, including preparing evidence from putative class members and having lengthy discussions with prospective expert witnesses;

[9] CONSIDERING that Merchant Law Group LLP ("MLG"), counsel for the Plaintiffs of the within Action, and the Other Actions, maintained an Avodart Class Action sign-up page at <https://www.merchantlaw.com/class-actions/current-class-actions/avodart-class-action>;

[10] CONSIDERING that MLG had been contacted by 80 individuals who expressed an interest in the Avodart class action;

[11] CONSIDERING that throughout 2015, counsel for the parties engaged in meaningful settlement discussions. In addition to numerous teleconferences and email discussions, counsel met in Regina, Saskatchewan on April 16, 2018, and continued their negotiations over a period

of many months. Settlement discussions included negotiation for specific terms to further the interests of the putative class, a fulsome evaluation of the individual cases being considered for resolution, as well as development of a workable plan for addressing future claims. It was not until September 1, 2019, after significant negotiations, that an agreement was reached.

[12] CONSIDERING that Pierre Vachon who acts as Representative Plaintiff in two capacities, has maintained contact with counsel since the issuance of his Claim. He has considered the Settlement proposal and has given his instructions to discontinue the class proceeding.

SETTLEMENT ACHIEVED

[13] CONSIDERING that the settlement agreement reached by the parties includes an efficient process to resolve the individual claims of the known class members, and a plan for providing notice to further potential class members ("Plan of Notice") which culminates with an opportunity to settle the claims of individuals identified as potential claimants following the notice within a specified time period ("Settlement Program Period"). This Settlement is predicated upon discontinuing all four class actions;

[14] CONSIDERING that the proposed resolution process involved a detailed discussion and review of each individual claim of the known class members. Negotiations included significant consideration of each Claimant's individual facts to generate a global settlement amount to allow fair and reasonable resolution of the claims;

[15] CONSIDERING that the parties have agreed to a global settlement amount to resolve the known claims arising from the use of Avodart (dutasteride) that are represented by MLG ("Settling Claimants"). The global settlement amount will be allocated by MLG to the Settling Claimants in proportion to the individual damages suffered;

[16] CONSIDERING that the parties have agreed to a process for resolving future claims in a manner similar to the resolution of the claims of the Settling Claimants;

[17] CONSIDERING that the Settlement Program Period will run for 90 after the publication of Notice with respect to the discontinuance (the "Notice") of this class proceeding, during which time GSK will consider resolution of claims (not included within the initial global settlement), which would have otherwise been captured by the proposed class action, without requiring commencement of an action, provided notice is given to GSK within this time period by MLG, together with certain information about the Claimant;

[18] CONSIDERING that the parties have agreed on the form of the Notice. The parties have also agreed on the Plan of Notice;

[19] CONSIDERING that by agreement between the parties, the Notice of Discontinuance of the Saskatchewan Action will not be filed until 90 days after publication of the Notice.

[20] CONSIDERING that MLG has kept the Representative Plaintiffs informed about the progress of the within Action;

[21] CONSIDERING that Mr Vachon understands that the proposed settlement will resolve the claims of the 15 Known and Eligible Claimants, including his own claim;

[22] CONSIDERING that Mr Vachon also understands that the proposed settlement will establish a settlement program period to resolve potential claims, and that the settlement is contingent upon court approval of the discontinuances of the Ontario Action and Quebec Action;

[23] CONSIDERING that taking all the aforementioned into consideration, Mr Vachon instructed class counsel to seek this Honourable Court's approval of the discontinuation of this action;

[24] CONSIDERING that Mr Vachon supports Class Counsel's application for fees and disbursements;

[25] CONSIDERING that the parties have agreed to costs of \$275,000.00, inclusive of taxes for legal fees and services and up to an additional \$5,000.00 for verifiable disbursements provided by counsel for the Plaintiffs for the benefit of the class.

[26] CONSIDERING that MLG has docketed time that exceeds \$467,420.05, plus applicable taxes, for the benefit of the class. MLG has invested time in advancing the litigation to achieve this Settlement including: meeting with and obtaining instructions from the Plaintiffs at various stages of the litigation; preparing, issuing, and serving the Statement of Claim; researching and understanding the applicable issues, including obtaining an expert opinion report; drafting and filing certification materials; and various communications and correspondences with counsel for the Defendants and others;

[27] CONSIDERING that to the extent that it was identifiable, the time related to individual client work, advice, and negotiations is not included and has been separated out;

[28] CONSIDERING that considerable work remains to be done by the Plaintiffs' counsel, including facilitating implementation of some of the Plan of Notice and responding to inquiries from potential class members and their lawyers regarding the Settlement;

[29] CONSIDERING that MLG has incurred disbursements of approximately \$6,242.75, plus applicable taxes including costs for research and resource material, issuing and serving the Statement of Claim, obtaining an expert opinion report, filing the Certification Record, courier, copies, telephone calls, and mileage and travel;

[31] CONSIDERING that the filed proceeding and Settlement have provided and will provide: suspension of the limitation period from November 28, 2013 until 90 days after publication of the Notice; resolution of the known claims; a mechanism for resolution of future claims; and notice to the class paid for by the Defendants.

[32] CONSIDERING that upon further consideration, and in light of the ongoing parallel actions and the national settlement, the Applicant would like to discontinue the present proceeding;

[33] CONSIDERING that the present proposed class action has not been authorized, and no notice has been given to the proposed class;

[34] CONSIDERING that the Applicant is therefore of the view that notice to the proposed class is not necessary in the circumstances beyond the plan of notice;

[35] CONSIDERING that Ontario Motion for leave to discontinue the class action was granted by the Honourable Justice Belobaba, as per his signed Order of January 27, 2020;

[36] CONSIDERING that the present application is well founded in fact and in law;

PAR CES MOTIFS, LE TRIBUNAL :	FOR THESE REASONS, THE COURT:
[37] ACCUEILLE la présente <i>Demande en Désistement</i> ;	[37] GRANTS the present <i>Application for leave to discontinue the Application for authorization to institute a class action</i> ;
[38] PERMET au Demandeur de se désister de sa <i>Demande en autorisation d'exercer une action collective et d'attribuer le statut de représentant</i> ;	[38] AUTHORIZES the Applicant to discontinue his Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative;
[39] PERMET que l'avis aux membres tel que présenté à la Pièce-1 soit déposé au dossier de la Cour;	[39] AUTHORIZES the filing in the court record of a Notice of Discontinuance;
[40] ORDONNE que l'avis aux membres tel que présenté à la Pièce-1 soit publié par le Demandeur au registre des actions collectives du Québec et au registre des actions collectives de l'Association du Barreau Canadien;	[40] ORDERS that notice in the form as presented at Exhibit-1 , be published by the Applicant to the Quebec class action registry and to the Canadian Bar Association's class action registry;

[41] **ORDONNE** que l'avis aux membres tel que présenté à la **Pièce-1** soit publié sur le site internet des avocats du Demandeur pour une période de 90 jours de la date du présent jugement;

[41] **ORDERS** that notice in the form as presented at **Exhibit-1**, be posted on the Applicant's attorneys' web site for a period of 90 days from the date of this Order;

[42] **LE TOUT**, sans les frais de justice.

[42] **THE WHOLE**, without legal costs.



YVES POIRIER, J.S.C

Me Christine Nasraoui
MERCHANT LAW GROUP LLP
Attorney for the Applicant

Me STÉPHANE PITRE
BLG
Attorney for the Defendants