

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No.: 500-06-001004-197

RICCARDO CAMARDA

Applicant

v.

ABBOTT LABORATORIES CO. et al.

Respondents

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE, TO EXAMINE
THE PROPOSED APPLICANT AND FOR THE COMMUNICATION OF
PHARMACEUTICAL RECORDS
(Art. 18, 19, 25, 574, 575 CCP)**

**TO THE HONOURABLE GARY D.D. MORRISON, J.C.S., SITTING IN THE DISTRICT
OF MONTREAL, AND DESIGNATED TO PRESIDE OVER THE PRESENT MATTER,
RESPONDENTS PURDUE FREDERICK INC. AND PURDUE PHARMA SUBMIT AS
FOLLOWS:**

I. OVERVIEW

1. To ensure that this Court has all the relevant and accurate evidence necessary for a proper analysis of the authorization criteria under article 575 of the *Code of Civil Procedure* (“**CCP**”), Respondents Purdue Frederick Inc. and Purdue Pharma (“**Purdue**”) hereby seek leave to adduce relevant evidence and to examine Applicant Riccardo Camarda (“**Applicant**” or “**Mr. Camarda**”).
2. Purdue also seeks an order requiring that Mr. Camarda provides the relevant portion of his relevant pharmaceutical records only to determine whether he was ever prescribed Oxycontin and/or OxyNeo, and therefore whether his claim is already covered by the settlement in the class action, bearing Superior Court number 200-06-000080-070 (hereinafter the “**Larose Class Action**”).
3. From December 30, 2019 and until September 21, 2021, the present case as against Respondents Purdue was suspended, given that a *Related Party Stay Order* was in place with the Ontario Superior Court of Justice, Court File No.: CV-19-627656-00CL, as long as the Preliminary Injunction was in force in the United States.

4. As the *Related Party Stay Order* was only lifted on September 21, 2021, Respondents Purdue were not in a position and did not have the chance to file the present application at the same time as the other Respondents.

II. CONTEXT

5. In the latest *Corrected Re-Amended Application for authorization to institute a class action, and to obtain the status of representative*, dated April 29, 2021 (the "**Application**"), initially issued on May 23, 2019, Applicant seeks to represent the following putative class (the "**Class**"):
 - All persons in Quebec who have been prescribed and consumed any one or more of the opioids manufactured, marketed, distributed and/or sold by the Respondents **between 1996 and the present day** ("**Class Period**") and who suffer or have suffered from Opioid Use Disorder, according to the diagnostic criteria herein described.
 - The Class includes the direct heirs of any deceased persons who met the above-mentioned description.
 - The Class excludes any person's claim, or any portion thereof, subject to the settlement agreement entered into in the court file no **200-06-000080-070**, provided that such settlement agreement becomes effective as a result of the issuance of the requisite court approvals.

➤ See para 1 of the *Application* [**our emphasis**]

6. Applicant's legal syllogism and allegations as against the 34 Respondents, including Purdue, are summarized as follows:
 - (a) "the Defendants deliberately misrepresented that opioids were less addictive than they knew them to be, more effective than they actually are, and had a wider range of applications than those approved by health authorities";
 - (b) "the Defendants were negligent in connection with the research, development, manufacture, testing, regulatory licensing, distribution, sale, marketing, and after-market surveillance of opioids in Quebec";
 - (c) the Respondents "failed to adequately warn users of the serious and potentially fatal harms associated with opioid use".

➤ At para 2.1 and 2.2 of the *Application*

III. PURDUE'S PROPOSED RELEVANT EVIDENCE

7. In order to allow this Court to make a determination as to whether Mr. Camarda has an arguable case as required by article 575, paras (2) and (4) CCP, Purdue is seeking leave to adduce relevant evidence.
8. As appears from the Class description and the *Application*, Applicant clearly references and bases his class action on the *Fortier/Larose c. Purdue Pharma* class action, bearing Superior Court number 200-06-000080-070 (hereinafter the "**Larose Class Action**").
 - At para 1, 2.28, .28.1, 2.28.2, 2.28.4, in the *Application*; see also Exhibit P-38
9. Only a copy of the two judgements rendered by Justice Claude Bouchard, J.C.S., in relation to the settlement in the Larose Class Action, dated April 4, 2017 and August 9, 2017, were filed in support of the Application:
 - (a) *Jugement sur autorisation d'exercer une action collective pour des fins de règlement seulement et pour autoriser la publication des avis aux membres*, dated April 4, 2017;
 - (b) *Jugement pour obtenir l'approbation de la transaction et du protocole d'indemnisation*, dated August 21, 2017.
 - Exhibit P-38
10. However, Applicant filed neither the motion for authorization in the Larose Class Action, issued May 11, 2007, nor the amended version of the motion for authorization and its exhibits, dated February 20, 2008.
11. Furthermore, Applicant did not file the annexes A, B, C and D attached to the judgments filed under Exhibit P-38, in particular, copies of the settlement agreement, approval notices, the distribution plan and the indemnity protocol.
12. Applicant's *Application* is therefore incomplete.
13. To ensure that this Court has all the relevant and accurate evidence necessary for a proper analysis of the authorization criteria of article 575 C.C.P, Purdue therefore seeks leave to adduce a copy of the following proceedings and judgments rendered in the Larose Class Action:
 - (a) *Demande d'autorisation d'exercer un recours collectif*, dated May 11, 2007, Exhibit **DPU-1**;

- (b) *Requête amendée pour obtenir l'autorisation d'exercer un recours collectif et obtenir le statut de représentant*, dated February 20, 2008, **DPU-2** and the Exhibits R-1 to R-8, filed in support thereof, renamed as:
- (i) **DPU-2.1** (R-1): Limited Partnerships Report;
 - (ii) **DPU-2.2** (R-2): Documents from Strategis.gc.ca;
 - (iii) **DPU-2.3** (R-3): Document from Strategis.gc.ca;
 - (iv) **DPU-2.4** (R-4): Document titled "20 ans de brevets au Luxembourg";
 - (v) **DPU-2.5** (R-5): Documents in relation to Corporation Napp Pharmaceutical Limited;
 - (vi) **DPU-2.6** (R-6): Extract of patent with Canadian government with Form IV;
 - (vii) **DPU-2.7** (R-7): Patents transfer and Assignment;
 - (viii) **DPU-2.8** (R-8): Purdue US Plea Agreement and Annexes A to M.
- (c) *Jugement sur permission de modifier un acte de procédure*, dated March 14, 2012; Exhibit **DPU-3**;
- (d) *Demande pour obtenir l'autorisation d'exercer une action collective pour fins de règlement seulement et pour autoriser la publication des avis*, dated March 31, 2017, Exhibit **DPU-4**;
- (e) *Jugement sur autorisation d'exercer une action collective pour des fins de règlement seulement et pour autoriser la publication des avis aux membres*, dated April 4, 2017, and the annexes A, B, C and D, filed in support thereof, Exhibit **DPU-5**;
- (f) *Demande pour obtenir l'approbation de la transaction et du protocole d'indemnisation*, dated August 4, 2017, Exhibit **DPU-6**;
- (g) *Jugement sur modification de consentement à la définition du Groupe de Québec*, dated August 21, 2017, Exhibit **DPU-7**.

(hereinafter referred to as the "**Evidence**")

14. The Evidence is relevant at the authorization hearing as it will allow to complete the evidence already filed by Applicant in relation to the Larose Class Action, which was initially issued on May 11, 2007.

15. The Evidence is necessary not only for the Court to fill in the gaps in the evidence already filed by Applicant in relation to the Larose Class Action but also serves as follows:
 - (a) Anyone in Quebec who was prescribed and consumed OxyContin or OxyNeo at anytime from January 1, 1996 to February 28, 2017 should be completely excluded from the Class.
 - (b) The allegations and legal syllogism in the Larose Class Action and those in the present proposed Class Action allegations are extremely similar and overlap. Therefore, as of at least May 11, 2007, addiction risks in relation to opioid medication were already known, both to the healthcare industry and the patients; hence, all claims post-May 11, 2010 are prescribed due to the 3 year limitation period.
16. For these reasons, Purdue seeks leave from this Court to adduce a copy of all the proceedings, exhibits and judgments in the Larose Class Action as relevant evidence.

IV. EXAMINATION OF APPLICANT

17. Purdue also seeks leave from this Court to proceed with the examination of Applicant, as he does not specify if he was prescribed and consumed OxyContin or OxyNeo.
18. Thus, the examination of Applicant is relevant to determine whether Applicant's personal claim is covered by the Larose Class Action.
19. If leave to examine Applicant is granted, Respondents Purdue will be limiting the examination in court to the following two subjects, for a maximum duration of 20 minutes:
 - (a) Applicant's knowledge of the Larose Class Action (as clearly stated at para 1 and 2.28 of the *Application* and Exhibit P-38 filed in support of the *Application*);
 - (b) Whether Applicant was ever prescribed and used OxyContin or OxyNeo between 1996 and 2017.

V. COMMUNICATION OF APPLICANT'S PHARMACEUTICAL RECORDS

20. Furthermore, as Applicant does not specify if he was either prescribed or consumed OxyContin or OxyNeo, Purdue also seeks the communication of certain of Applicant's pharmaceutical records.
21. More precisely, as appears from the *Application*, Applicant alleges the following:

- (a) Applicant claims he was prescribed opioid medication for a period of 12 years, as appears from para. 2.163 of the *Application*;
 - (b) Applicant refers at several instances in the *Application* to *opioids*, in general, and the effects they had on him, without clarifying whether he also took OxyContin and/or OxyNeo, as appears, for example, from para. 2.170, 2.173, 2.177, 2.184.
22. Purdue therefore seeks an order requiring that Applicant either provides a copy of or signs the necessary authorizations and/or consent forms allowing the communication to Respondents Purdue of part of his relevant pharmaceutical records before the authorization hearing, such as:
- (i) Copy of the Dossier Santé Québec (“**DSQ**”);
 - (ii) Copy of the Hospital prescription, *feuille d’administration des médicaments* (“**DSQ**”);
 - (iii) Copy of the Public Prescription Drug Insurance Plan spreadsheet regarding the prescriptions of opioids he was dispensed (“**PPDIP spreadsheet**”).
23. Given the Larose Class Action, it is necessary for this Honourable Court to have access to Applicant’s relevant pharmaceutical records to clarify whether Applicant was prescribed throughout the alleged 12-year period of addiction either OxyNeo or OxyContin.
24. The present *Application for Leave to Adduce Relevant Evidence, to Examine the Proposed Class Representative and for the Communication of Pharmaceutical Records* is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

- A.** **GRANT** the present *Application for Leave to Adduce Relevant Evidence, to Examine the Proposed Class Representative and for the Communication of Pharmaceutical Records*;
- B.** **ALLOW** Respondents Purdue Frederick Inc. and Purdue Pharma to file **Exhibits DPU-1 to DPU-7**, as evidence at the hearing on authorization of this proposed class action;
- C.** **ALLOW** Respondents Purdue Frederick Inc. and Purdue Pharma to examine Applicant for a duration of 20 minutes on the following two subjects:
 - (a) Applicant’s knowledge of the *Fortier Larose c. Purdue Pharma* class action, bearing Superior Court number 200-06-000080-070;

- (b) Whether Applicant was ever prescribed and used OxyContin or OxyNeo between 1996 and 2017;
25. **ORDER** the Applicant Riccardo Camarda to provide a copy of or sign the necessary authorizations and/or consent forms allowing the communication to Respondents Purdue Frederick Inc. and Purdue Pharma of the following pharmaceutical records:
- (i) Copy of the Dossier Santé Québec (“**DSQ**”);
 - (ii) Copy of the Hospital prescription, *feuille d’administration des médicaments* (“**DSQ**”);
 - (iii) Copy of the Public Prescription Drug Insurance Plan spreadsheet regarding the prescriptions of opioids he was dispensed (“**PPDIP spreadsheet**”).
- D. **THE WHOLE**, with legal costs to follow.

Montréal, October 29, 2021

Borden Ladner Gervais

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NOTICE OF PRESENTATION

TO: The Service List

TAKE NOTICE that the present *Application for Leave to Adduce Relevant Evidence, to Examine the Proposed Applicant and for the Communication of Pharmaceutical Records (Articles 18, 19, 25, 574, 575 C.C.P.)* will be presented for hearing and allowance before the Honourable Gary D.D. Morrison, of the Superior Court of Québec of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, on or about November 22, 2021.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montréal, October 29, 2021

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**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE, TO EXAMINE THE PROPOSED APPLICANT AND FOR
THE COMMUNICATION OF PHARMACEUTICAL RECORDS**

EXHIBIT DPU-1	<i>Demande d'autorisation d'exercer un recours collectif, dated May 11, 2007.</i>
EXHIBIT DPU-2	<i>Requête amendée pour obtenir l'autorisation d'exercer un recours collectif et obtenir le statut de représentant, dated February 20, 2008.</i>
EXHIBIT DPU-2.1	Limited Partnerships Report (R-1);
EXHIBIT DPU-2.2	Documents from Strategis.gc.ca (R-2);
EXHIBIT DPU-2.3	Document from Strategis.gc.ca (R-3);
EXHIBIT DPU-2.4	Document titled "20 ans de brevets au Luxembourg" (R-4);
EXHIBIT DPU-2.5	Documents in relation to Corporation Napp Pharmaceutical Limited (R-5);
EXHIBIT DPU-2.6	Extract of patent with Canadian government with Form IV (R-6);
EXHIBIT DPU-2.7	Patents transfer and Assignment (R-7);

- EXHIBIT DPU-2.8** Purdue US Plea Agreement and Annexes A to M (R-8).
- EXHIBIT DPU-3** *Jugement sur permission de modifier un acte de procédure, dated March 14, 2012.*
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- EXHIBIT DPU-7** *Jugement sur modification de consentement à la définition du Groupe de Québec, dated August 21, 2017.*

A copy of these exhibits is notified herewith.

Montréal, October 29, 2021

Borden Ladner Gervais

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COMMUNICATION OF
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(ART. 18, 19, 25, 574, 575 CCP)
AND LIST OF EXHIBITS**

ORIGINAL

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