

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No.: 500-06-001004-197

(...) JEAN-FRANÇOIS BOURASSA

Applicant

v.

ABBOTT LABORATORIES CO. et al.

Respondents

AMENDED APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE, (...) FOR THE COMMUNICATION OF PHARMACEUTICAL RECORDS AND TO RESERVE THE RIGHT TO EXAMINE THE PROPOSED APPLICANT DATED JANUARY 12, 2022
(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

(a) leave to adduce relevant evidence and (...)

(b) an order for the communication of the relevant portion of applicant Jean-François Bourassa’s (“Applicant” or “Mr. Bourassa”) pharmaceutical records,

the whole only to determine whether he was ever prescribed OxyContin and/or OxyNeo, and therefore whether his claim is covered by the settlement in the class action, bearing Superior Court number 200-06-000080-070 (hereinafter the “Larose Class Action”).

2. (...) Further, Purdue also seeks an order reserving Purdue's right to later examine Mr. Bourassa on his pharmaceutical records and his knowledge of the Larose Class Action.
3. From December 30, 2019 (...) until September 21, 2021, the present case as against (...) Purdue was suspended (...) by a *Related Party Stay Order* (...) issued pursuant to the CCAA by the Ontario Superior Court of Justice, Court File No.: CV-19-627656-00CL (...).
4. As the *Related Party Stay Order* was only lifted on September 21, 2021, (...) Purdue (...) was 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 (...) *Re-Amended Application dated December 17, 2021 for authorization to institute a class action, and to obtain the status of representative,* (...) (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. (...) Bourassa 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 (...) 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, (...) Mr. Camarda, the previous 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, (...) Mr. Camarda did not file the annexes A, B, C and D attached to and referenced in the judgments filed under Exhibit P-38, in particular, (...) the National Settlement Agreement (referenced at paras. 1 and 2.28 of the *Application*; see also p. 48 of the *Application*), inclusive of the approval notices, the distribution plan and the indemnity protocol.
- 11.1 Mr. Bourassa, the current applicant, did not file the aforementioned documents either and neither did he specify whether or not he was prescribed OxyContin and/or OxyNeo, despite the fact that Purdue’s present application has been on notice since October 29, 2021.
12. (...) Mr. Bourassa’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) (...)

(d) (...)

(e) (...)

(f) (...)

(g) (...)

(h) Copy of annexes A, B, C and D, mentioned in *Jugement pour obtenir l'approbation de la transaction et du protocole d'indemnisation*, dated August 21, 2017 filed as exhibit P-38 by Mr. Bourassa, and renamed as:

(i) DPU-3.1: Annexe A - Entente;

- (ii) DPU-3.2: Annexe B – Avis d’approbation;
- (iii) DPU-3.3: Annexe C – Plan de diffusion;
- (iv) DPU-3.4: Annexe D – Protocole d’indemnisation.

(hereinafter referred to as the “Evidence”)

- 14. The Evidence is relevant at the authorization hearing as it (...) completes the evidence already filed by (...) Mr. Bourassa 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 (...) Mr. Bourassa in relation to the Larose Class Action but it is also (...) relevant because of the clear acknowledgment in the *Application* that:
 - (a) (...)
 - (b) (...)

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 and p. 48 of the *Application* [our emphasis]

- 16. For these reasons, Purdue seeks leave from this Court to adduce a copy of (...) the above-referenced proceedings, exhibits and judgments in the Larose Class Action as relevant evidence.
- IV. (...)
- 17. (...)
- 18. (...)
- 19. (...)
 - (a) (...)
 - (b) (...)

V. COMMUNICATION OF (...) MR. BOURASSA'S PHARMACEUTICAL RECORDS

20. Furthermore, as (...) Mr. Bourassa does not specify if he was either prescribed or consumed OxyContin or OxyNeo, Purdue also seeks the communication of certain of (...) Mr. Bourassa's pharmaceutical records.
21. More precisely, as appears from the *Application*, (...) Mr. Bourassa alleges the following:
- (a) (...) Mr. Bourassa claims he was prescribed opioid medication (...) since around November 27, 2005, as appears from (...) paras. 2.212 and 2.213 of the *Application*;
 - (b) (...) Mr. Bourassa refers at several instances in the *Application* to the specific opioids (...) he was prescribed, and the effects they had on him, (...) however, Mr. Bourassa does not clarify whether he also took OxyContin and/or OxyNeo, as appears, for example, (...) at paras. 2.213, 2.214, 2.216, 2.217, 2.219 and 2.224.
22. Purdue therefore seeks an order requiring that (...) Mr. Bourassa either provides a copy of or signs the necessary authorizations and/or consent forms allowing the communication to (...) 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 (...) Mr. Bourassa's relevant pharmaceutical records to clarify whether (...) Mr. Bourassa was prescribed either OxyNeo or OxyContin throughout the alleged (...) period of addiction (...) starting in 2005.

VI. RESERVE OF RIGHT OF EXAMINING MR. BOURASSA

- 23.1 Purdue also seeks an order from this Court reserving Purdue's right to proceed with the examination of Mr. Bourassa as the *Application* does not specify if he was prescribed and consumed OxyContin or OxyNeo.
- 23.2 Thus, the examination of Mr. Bourassa is relevant to determine whether his personal claim is covered by the Larose Class Action.

24. The present Amended Application for Leave to Adduce Relevant Evidence, (...) for the Communication of Pharmaceutical Records and to Reserve the Right to Examine the Proposed Applicant is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

A. **GRANT** the present Amended Application for Leave to Adduce Relevant Evidence, (...) for the Communication of Pharmaceutical Records and to Reserve the Right to Examine the Proposed Applicant;

B. **ALLOW** Respondents Purdue Frederick Inc. and Purdue Pharma to file **Exhibits DPU-1 to DPU-(...) 3.4**, as evidence at the hearing on authorization of this proposed class action;

C. (...)

25. (...)

C.1 **ORDER** the Applicant Jean-François Bourassa 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”);

C.2 **RESERVE** Respondents Purdue Frederick Inc. and Purdue Pharma right to examine Applicant Jean-François Bourassa on the following two subjects:

(a) Applicant Jean-François Bourassa’s knowledge of the Fortier Larose c. Purdue Pharma class action, bearing Superior Court number 200-06-000080-070;

(b) Whether Applicant Jean-François Bourassa was ever prescribed and used OxyContin or OxyNeo between 1996 and 2017;

D. **THE WHOLE**, with legal costs to follow.

Montréal, January 12, 2022

Borden Ladner Gervais

Borden Ladner Gervais LLP

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NOTICE OF PRESENTATION

TO: The Service List

TAKE NOTICE that the present Amended Application for Leave to Adduce Relevant Evidence, (...) for the Communication of Pharmaceutical Records and to Reserve the Right to Examine the Proposed Applicant dated January 12, 2022 (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 (...) January 17, 2022.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montréal, January 12, 2022

Borden Ladner Gervais

Borden Ladner Gervais LLP

Lawyers for Respondents

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**AMENDED LIST OF EXHIBITS IN SUPPORT OF THE AMENDED APPLICATION
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE, (...) FOR THE
COMMUNICATION OF PHARMACEUTICAL RECORDS AND TO RESERVE THE
RIGHT TO EXAMINE THE PROPOSED APPLICANT DATED JANUARY 12, 2022**

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	(...)
<u>EXHIBIT DPU-3.1</u>	<u>Annexe A - Entente;</u>
<u>EXHIBIT DPU-3.2</u>	<u>Annexe B – Avis d’approbation;</u>
<u>EXHIBIT DPU-3.3</u>	<u>Annexe C – Plan de diffusion;</u>
<u>EXHIBIT DPU-3.4</u>	<u>Annexe D – Protocole d’indemnisation.</u>
EXHIBIT DPU-4	(...)
EXHIBIT DPU-5	(...)
EXHIBIT DPU-6	(...)
EXHIBIT DPU-7	(...)

A copy of these exhibits is notified herewith.

Montréal, January 12, 2022

Borden Ladner Gervais

Borden Ladner Gervais LLP

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JANUARY 12, 2022 (ART. 18, 19, 25, 574, 575
CCP), AMENDED LIST OF EXHIBITS AND
EXHIBITS DPU-3.1 À DPU-3.4**

ORIGINAL

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