

Date: September 26, 2023

**ONTARIO SUPERIOR COURT
OF JUSTICE**

B E T W E E N :

DARRYL GEBIEN

Plaintiff

- and -

APOTEX INC., APOTEX PHARMACEUTICAL HOLDINGS, INC., BRISTOL-MYERS SQUIBB CANADA, BRISTOL-MYERS SQUIBB COMPANY, PALADIN LABS, ENDO PHARMACEUTICALS INC., ENDO INTERNATIONAL PLC, JANSSEN INC., JOHNSON & JOHNSON, PHARMASCIENCE INC., JODDES LIMITED, PRO DOC LIMITEE, THE JEAN COUTU GROUP (PJC) INC., MYLAN PHARMACEUTICALS ULC, MYLAN N.V., PURDUE PHARMA INC., PURDUE PHARMA L.P., THE PURDUE FREDERICK COMPANY INC., PURDUE FREDERICK INC., RANBAXY PHARMACEUTICALS CANADA INC., SUN PHARMACEUTICAL INDUSTRIES LTD., HIKMA LABS INC., HIKMA PHARMACEUTICALS PLC, WEST-WARD COLUMBUS INC., SANIS HEALTH INC., SANDOZ CANADA INC., SANDOZ INTERNATIONAL GMBH, TEVA CANADA LIMITED, TEVA PHARMACEUTICALS USA, INC., TEVA PHARMACEUTICAL INDUSTRIES LTD., ACTAVIS PHARMA COMPANY, VALEANT CANADA LP/ VALEANT CANADA S.E.C, BAUSCH HEALTH COMPANIES INC., AMERISOURCEBERGEN CANADA CORPORATION, KOHL + FRISCH DISTRIBUTION INC., NU-QUEST DISTRIBUTION INC., ABBOTT LABORATORIES INC. LIMITED; and PROCURITY INC.

Defendants

- *Vlad Calina* and *Caitlin Leach* for the Plaintiff
- *Robert Carson* for Pharmascience Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Teva Canada
- *Nando De Luca* for Apotex Inc. and Apotex Pharmaceutical Holdings Inc.
- *Jill Lawrie* and *Emily Hazlett* for Janssen Inc. and Johnson & Johnson
- *Fadi Amine* for Pro Doc Limitee
- *Samantha Gordon* for Mylan Pharmaceuticals ULC.
- *Karin Sachar* for Sanis Health Inc.
- *Peter J. Pliszka* and *Pavel Sergeyev* for Sandoz Canada Inc.
- *Anna Iourina* for Amerisourcebergen Canada Corporation, Kohl & Frisch Distribution Inc., and Procurity Inc.

- *David Neave and Rebecca von Ruti* for Bristol-Myers Squibb Canada and Bristol-Myers Squibb Company
- *Rebecca Torrance* for the Bosch Valeant entities (observer)

FILE DIRECTION

[1] This is a case management conference in this multi-defendant proposed class action under the *Class Proceedings Act, 1992*, S.O. 1992. Phase One of the certification motion is scheduled for October 17-20 and 23, 2023.

[2] The Plaintiffs brought a motion for approval of a third party funding agreement, which was heard in writing. On August 11, 2023, I released Reasons for Decision¹ in which I decided some matters but left some matters to be resolved. In the result, I adjourned the motion for Third-Party Funding Agreement approval to provide Dr. Gebien and Putative Class Counsel an opportunity to resolve the genuinely meaningful objections that some Defendants had raised to the terms of the third party funding agreement. In paragraph 9 of my Reasons for Decision, I stated:

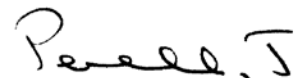
9. None of the Defendants' substantive objections appear to me to be insurmountable to resolve, but it is not for the Court or for the Defendants to broker, negotiate, or draft, an approvable Third-Party Funding Agreement for the parties to that Agreement. I, therefore, adjourn the motion for approval of the Third-Party Funding Agreement to a case management conference to be scheduled within twenty days. The purpose of the conference will be to set a timetable for the resumption of this hearing. If the parties to the Third-Party Funding Agreement are not disposed to submit a revised Agreement, then I shall dismiss the motion for approval at the case management conference.

[3] The parties attended on September 15, 2023 and advised that they are making progress in resolving the outstanding issues but require further time to do so. I therefore adjourned the case management conference to September 26, 2023, 9 a.m. (virtual attendance).

[4] The parties reported that they **may** have reached an agreement in principle, but the form of the agreement, the signing of the agreement, and the defendants' review of the agreement in final form remains outstanding.

[5] In these circumstances, I am adjourning the case management conference for one week to October 3, 2023 at which time the Plaintiffs should present the agreement that they propose for court approval and at which time the Defendants should advise the court what their respective positions are with respect to court approval, i.e., do they not oppose or should the matter proceed to a contested hearing, which I will schedule next week, if necessary.

[6] On a final matter, next week, I will advise the parties about the availability of a courtroom for an in court hearing of the motions and canvass their views about proceeding in court as opposed to a virtual hearing.



Perell, J.

¹ *Gebien v. Apotex Inc.*, 2023 ONSC 4651.