



COURT FILE NO. 2001-07073
 COURT COURT OF KING’S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

PLAINTIFFS THE CITY OF GRANDE PRAIRIE and
 (APPLICANTS) THE CORPORATION OF THE CITY OF BRANTFORD

C11492

Feb 2, 2024
CMH

DEFENDANTS APOTEX INC.,
 (RESPONDENTS) APOTEX PHARMACEUTICAL HOLDINGS, INC.,
 BRISTOL-MYERS SQUIBB CANADA,
 BRISTOL-MYERS SQUIBB COMPANY, and OTHERS

Brought under the Class Proceedings Act

DOCUMENT APPLICATION

ADDRESS FOR
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 PARTIES FILING
 THIS DOCUMENT



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FIRST APPLICATION FOR CLASS CERTIFICATION
 (January 18th, 2024)

NOTICE TO RESPONDENTS:

This *Application* is made against you. You are a Respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the *Application* is heard as shown below:

Date	February 2 nd , 2024
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Time	10:00 am
Where	Alberta Court of King's Bench 601 5 St SW Calgary, Alberta T2P 5P7
Before Whom	the Honourable Mr. Justice Glen H. Poelman, Case Management Justice
Go to the end of this document to see what else you can do and when you must do it.	

I. REMEDY claimed or sought:

1. An order certifying this proceeding as one or more multi-jurisdictional class proceeding(s) on the terms proposed herein, or on any other suitable terms.
2. Alternatively, an order adjourning the certification application to permit amendments to the pleadings or to receive additional evidence.

II. GROUNDS for making this *Application*:

3. Capitalized terms used herein are as defined in the *Seventh Amended Statement of Claim* and any further amendments thereto. In particular:

(a) “**Abatement Costs**” were (and are) municipal expenditures that are associated with opioid abuse, addiction, overdoses, and withdrawal that Canadian municipalities would not have incurred but for the Defendants’ breaches of duties, including (without limitation) costs of:

- (i) police, emergency, fire, health, prosecution, rehabilitation, and other services related to crime, social disturbances, domestic violence, and Opioid overdoses;

- (ii) emergency paramedic services, including pre-hospital care and hospital transportation to municipal residents and occupants suffering from Opioid addiction and overdose;
- (iii) purchasing methodone, naloxone, and Opioids to provide to opioid addicts as a medically appropriate emergency response;
- (iv) cleanup and surveillance of public streets, parks, and private residences for illicit Opioids-related activity;
- (v) emergency shelter and low income housing for the homeless;
- (vi) establishing public health programs to respond to the Opioid Crisis;
- (vii) services for families impacted by Opioid addiction and abuse;
- (viii) community outreach and education workshops;
- (ix) opioid addict behaviour modification services, including opioid abuse therapy, harm reduction, and overdose prevention services to opioid addicts within the community; and
- (x) salaries for personnel to staff Opioid response departments.

(b) **“Opioid Crisis”** was and continues to be an epidemic in Canada of widespread inappropriate and unnecessary prescribing of Opioids and consequent opioid abuse, addiction, diversion, and overdose fatalities, and associated conduct including property use conversion and increased crime, and was and is a public nuisance.

(c) **“Unusual Orders”** were orders of Opioids originating from Institutions in Canadian municipalities that were unreasonably excessive in frequency or volume based on the population and number of Institutions in the municipality and deviations from the Institution’s historical orders, and

without limitation, include “suspicious transactions” under the *Narcotics Control Regulations*, CRC, c 1041.

A. Cause of Action

4. The pleadings disclose (or on further amendment can disclose) causes of action against Suppliers¹ and Dealers² who manufactured, imported, distributed, and marketed Opioids in, into, and throughout Canada in negligence, nuisance, and under s 36 of the *Competition Act*, RSC 1985, c C-34.

1. Competition Act

5. The pleadings disclose a cause of action against the Defendants for breach of s 52 of the *Competition Act*. To promote the over-prescription, use, and sales of Opioids in Canada, Suppliers and Dealers made (and continue to make) “**False or Misleading Representations**” including the following.

- (a) Opioids are less likely to be abused than other forms of pain relief.
 - (i) Newer Opioid formulations successfully deter abuse.
- (b) Opioids are less addictive than other forms of pain relief.
 - (i) The risk of addiction is low or non-existent when Opioids are taken as prescribed by patients with long-term chronic pain.
 - (ii) The risk of addiction from long-term Opioid use is low.
 - (iii) The risk of addiction from Opioids can be easily identified with screening tools.

¹ “**Suppliers**” include: Apotex; Bausch; Bristol-Myers; Endo; Hikma; Janssen; Mylan; Pharmascience; Pro Doc; Purdue; Sandoz; Sanis; Sun; and Teva.

² “**Dealers**” include Suppliers and: Abbott; Imperial; Jean Coutu; Kohl & Frisch; L.P.G.; McKesson; Nu-Quest; Procurity; Shoppers Drug Mart; Loblaw; uniPHARM; and Wal-Mart

(iv) The risk of addiction from Opioids can be easily managed, including through patient-physician agreements.

(v) Signs of addiction from long-term Opioid use are simply “pseudoaddiction” that can be treated with more Opioids.

(c) The risk of diversion from Opioids is lower than other forms of pain relief.

(d) Opioid doses can perpetually be increased without limit and without a greater risk of abuse, addiction, diversion, tolerance, and withdrawal.

(e) Long-term Opioid use improves functioning.

(i) Long term Opioid use for chronic pain is effective.

(ii) Opioid formulations provide 12 hours of pain relief.

(f) Opioids are less likely to cause tolerance than other pain medications.

(g) Opioids are less likely to cause withdrawal symptoms than other forms of pain relief.

(i) Opioid withdrawal can be easily managed.

(ii) Opioid withdrawal can be avoided by tapering.

6. Suppliers systemically made these False or Misleading Representations throughout North America (including in Canada) in multiple ways, including by:

(a) placing advertisements containing the False or Misleading Representations in medical journals;

(b) authoring and distributing educational materials to Canadian healthcare professionals at private and public presentations and seminars;

(c) funding and directing patient advocacy and other front groups to distribute such educational materials;

(d) employing and directing sales representatives to visit doctors, nurses, and pharmacists in their clinics, hospitals, offices, and locations throughout Canada; and

(e) sponsoring or authoring and publishing studies in medical and scientific literature, using paid ghostwriters and key opinion leaders.

7. Suppliers' False or Misleading Representations:

(a) caused widespread inappropriate and unnecessary prescriptions of Opioids for non-indicated uses that were filled in Dealers' pharmacies in Canadian municipalities; and

(b) caused class members to incur Abatement Costs.

8. Suppliers' False and Misleading Representations, and Dealers' failure to detect and deter Unusual Orders,³ caused or contributed to the Opioid Crisis, and endangered and unreasonably interfered with the lives, safety, and health of the residents of Canadian municipalities. On behalf of class members, the Plaintiffs claim reasonable Abatement Costs.

2. Negligence

9. The pleadings disclose a cause of action against Dealers in negligence. Dealers owed class members a duty of care (the breach of which caused class members to incur Abatement Costs) to take reasonable steps to prevent the

³ "Unusual Orders" were orders of Opioids originating from Institutions in Canadian municipalities that were unreasonably excessive in frequency or volume based on the population and number of Institutions in the municipality and deviations from the Institution's historical orders, and include "suspicious transactions" under the *Narcotics Control Regulations*, CRC, c 1041.

diversion of Opioids in their communities, including to:

- (a) know the ‘client’ in the community who placed the order for Opioids;
- (b) monitor for Unusual Orders;
- (c) detect and identify potentially Unusual Orders;
- (d) further investigate potentially Unusual Orders;
- (e) refuse or reject Unusual Orders; and
- (f) report Unusual Orders to Health Canada and diversion-related activity (including theft and unusual loss of Opioids) to local police forces.

3. Nuisance

10. The pleadings disclose a cause of action against the Defendants in public nuisance. The Opioid Crisis that the Defendants caused or materially contributed to endangered and unreasonably interfered with the lives, safety, and health of the residents of Canadian municipalities.

B. Identifiable Class

11. There is an identifiable plaintiff class that includes Canadian municipalities and their dependent special-purpose bodies who are authorized to, did, and will continue to incur Abatement Costs.

12. There is also an identifiable defendant class or classes of Suppliers and Dealers of Opioids.

C. Common Issues

13. There are common issues including the following:

- (a) In their marketing of Opioids in Canada, did Suppliers or Dealers

knowingly or recklessly make False or Misleading Representations within the meaning of s 52 of the *Competition Act*, RSC 1985, c C-34? If so, which Defendants, how, and when?

(b) Did Dealers owe a duty of care to class members to detect, deter, deny, and report Unusual Orders? If so, did any Dealers breach their duty of care? If so, which Dealers, how, and when?

(c) If any Defendants knowingly made False or Misleading Representations, or breached their duty of care to class members, did they cause or materially contribute to an Opioid Crisis in Canada that reasonably justifies class members incurring Abatement Costs?

(d) What criteria should be used to determine whether the Opioid Crisis constituted a public nuisance in Canadian municipalities?

(e) If one or more Defendants caused or materially contributed to an Opioid Crisis that caused class members to incur Abatement Costs for which the Defendants are liable under the *Competition Act*, in negligence, or in nuisance, how should liability be apportioned between such Defendants?

(f) Did the conduct of all or any of such Defendants merit an award of punitive damages? If so, which Defendants and why, and how much should be awarded?

D. Preferable Procedure

14. A class action is the preferable procedure for fairly and efficiently resolving the common issues.

(a) The Defendants nationally marketed and distributed federally regulated Opioids in a common market to an inter-provincially mobile population. A

single common issues trial will achieve judicial economy and avoid inconsistent decisions respecting the Defendants' common culpable acts and omissions across multiple provinces and territories.

(b) Canadian municipalities are established by legislatures in each province in common ways, despite different organizational structures and names. Canadian municipalities have common revenue raising mechanisms and can and do incur common Abatement Costs and programs. Abatement Costs and programs are common across Canada in municipalities of different sizes established by different provincial legislation. False or Misleading Misrepresentations led to Abatement Costs in municipalities across Canada, regardless of size.

(c) Historical regulatory fines and penalties in the United States and Canada were ineffective in deterring False or Misleading Representations. Compensatory and punitive damages are most optimally determined on a national basis in a single trial, rather than in multiple trials at the provincial or municipal level.

E. Representative Plaintiff.

15. Any of the Plaintiffs would fairly and adequately represent class members, have produced a workable method of notifying class members of (and advancing) the proceeding, and do not have a conflict of interest on the common issues.

III. EVIDENCE to be relied on:

16. *Affidavits of Melissa Byers, Joseph Robert Lyons and Zachary Todd Taylor, Jean-Marc Nadeau, Dr. Matthew Perri III, Dr. Robyn Tamblyn, and such*

other affidavits and expert reports as shall subsequently be filed.

IV. LAW

A. Applicable Rules

17. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 2.7, 2.9, and 3.62(6).

B. Applicable Acts and Regulations

18. *Class Proceedings Act*, SA 2003, c C-16.5.

V. OTHER

A. Any irregularity complained of or objection relied on

19. None.

B. How the *Application* is proposed to be heard or considered:

20. Orally before the Case Management Judge appointed under Rule 4.12(3).

DATED this 18th day of January, 2024.



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Counsel for the Plaintiffs (Applicants)

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant what it wants in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant a reasonable time before the application is to be heard or considered.