

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.
JUSTICE STRATHY

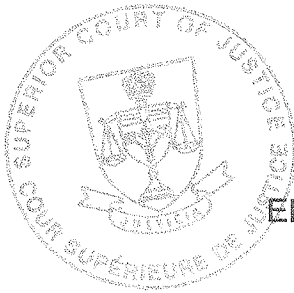
) MONDAY , THE 8th DAY
)
) OF FEBRUARY, 2010

BETWEEN:

SWAPAN BANERJEE

Plaintiff

- and -



SHIRE BIOCHEM INC., DRAXIS HEALTH INC.,
ELI LILLY CANADA INC. and ELI LILLY AND COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order that this action be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*Class Proceedings Act*") was heard on October 26th, 2009 at Osgoode Hall, Toronto, Ontario.

ON READING the Motion Materials and Affidavits filed and on consent of the Plaintiff and of the Defendants, Shire Canada Inc. (formerly Shire BioChem Inc.) ("Shire"), Eli Lilly Canada Inc. and Eli Lilly and Company (collectively, "Lilly"), the Defendant DRAXIS Specialty Pharmaceuticals Inc., formerly DRAXIS Health Inc. ("Draxis") taking no position on the motion, and having regard to the Plaintiff's, Shire's and Lilly's mutual intention of exploring settlement through the "Negotiation Process" referred to herein and, failing settlement, to expedite proceeding to a common issues trial,

1. **THIS COURT ORDERS** that the within proceeding be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act* as against the Defendants Lilly and Shire (hereinafter "the Defendants").

2. **THIS COURT ORDERS** that the Class and Québec sub-class are defined as:

All persons resident in Canada who were prescribed and ingested the drug Permax® (generic name: pergolide mesylate) in Canada at any time on or before the date of this order.

All persons resident in Québec who were prescribed and ingested the drug Permax® (generic name: pergolide mesylate) in Québec at any time on or before the date of this order.

3. **THIS COURT DECLARES** that the nature of the claim asserted on behalf of the Class is a claim for damages or other monetary relief against the Defendants for developing, manufacturing, and selling, without adequate

warning, the drug Permax® (generic name: pergolide mesylate), which the Plaintiff alleges to be defective and, as set out in paragraph 23 of the Amended Statement of Claim, to cause “compulsive/obsessive behaviour, including pathological gambling”.

4. **THIS COURT ORDERS** that Swapan Banerjee be and is hereby appointed as representative Plaintiff in the within proceeding.

5. **THIS COURT ORDERS** that the within proceeding be and is hereby certified on the basis of the following common issues:

- (a) Can Permax® cause compulsive and/or obsessive behavior and related complaints, including pathological gambling?
- (b) If the answer to (a) is yes, is Permax® thereby defective or unfit for the purpose for which it was intended (including usages that ought reasonably to have been foreseen by the Defendants) as designed, developed, fabricated, manufactured, sold, imported, distributed, marketed or otherwise placed into the stream of commerce in Canada by some or all of the Defendants?
- (c) Did the Defendants breach a duty of care owed to the Class by marketing, selling and/or distributing Permax® in Canada?
- (d) Did the Defendants knowingly, recklessly or negligently breach a duty to warn or materially misrepresent any of the risks of harm from Permax®?
- (e) If one or more of common issues (a) through (d) are answered affirmatively, are Class members who are subsequently able to establish valid claims entitled to general damages and/or special damages for reimbursement of gambling losses, other financial losses, medical costs and/or other costs incurred directly or indirectly as a result of the use of the drug Permax®, including those damages related to the diagnosis and treatment of addictions, diseases and/or other conditions caused by Permax®?

- (f) Should the Defendants be required to implement a medical monitoring regime and, if so, what should that regime comprise and how should it be established?
- (g) Should the Defendants pay exemplary and/or punitive damages? and
- (h) Regarding Québec sub-class members:
 - (i) Should any of the common issues (a) through (g) above be answered differently in light of the civil law rules applicable in Québec?;
 - (ii) Should any of the common issues (a) through (g) above be answered differently in light of the *Consumer Protection Act* of Québec?; and,
 - (iii) Should the nature and amount of damages to which Québec class members are entitled to be different in light of the civil law rules applicable in Québec and the *Consumer Protection Act* of Québec and, if so, how and to what extent? and,
- (i) Such further and other common issues as counsel may advise and this Honourable Court deems just and appropriate.

6. **THIS COURT ORDERS** that the "Notice of Certification" attached as Schedule "A" to this order and the "Abbreviated Notice of Certification" attached as Schedule "B" to this order be and are hereby approved. Both Notices will be translated into French and approved by the parties as accurate.

7. **THIS COURT ORDERS** that the Notice of Certification shall be provided to the Class in the following manner (the "Notice Plan"):

- (a) publishing the English version of the Abbreviated Notice of Certification once in each of the national editions of *The Globe and Mail*, *The National Post*, and the *Montreal Gazette*, and if possible, in *The Canadian Journal of Neurological Sciences*;
- (b) publishing the French version of the Abbreviated Notice of Certification once in each of the provincial editions of *La Presse* and *Le Soleil*;

(c) sending the Notice of Certification in both English and French to the following organizations by regular mail:

- (i) Parkinson Society Canada;
- (ii) Parkinson Society British Columbia;
- (iii) Victoria Epilepsy & Parkinson's Center;
- (iv) The Parkinson's Society of Alberta;
- (v) The Parkinson's Society of Southern Alberta;
- (vi) Saskatchewan Parkinson's Disease Foundation;
- (vii) Parkinson Society Manitoba;
- (viii) Parkinson Society Canada Central & Northern Ontario Region;
- (ix) Parkinson Society Canada Southwestern Ontario Region;
- (x) Parkinson Society Ottawa;
- (xi) Parkinson Society Québec;
- (xii) Parkinson Society Maritime Region;
- (xiii) Parkinson Society Newfoundland & Labrador;
- (xiv) Canadian Neurological Sciences Federation;
- (xv) Centre international d'étude sur le jeu et les comportements à risque chez les jeunes de l'Université McGill ;
- (xvi) Centre québécois d'excellence pour la prévention et le traitement du jeu (CQEPTJ);
- (xvii) Gamblers Anonymes - L'intergroupe francophone du Québec
- (xviii) Centre CASA;
- (xix) Centre de prévention et de traitement de la codépendance et des multiples dépendances (CAFAT);
- (xx) Maison Jean Lapointe;
- (xxi) Centre Dollard-Cormier;
- (xxii) Le Virage Réadaptation en Alcoolisme Toxicomanie et Jeu Pathologique; and
- (xxiii) Centre André-Boudreau.

