

# FINANCIAL POST

Wednesday, May 19, 2010

## Suing Big Pharma

Daryl-Lynn Carlson, Financial Post



When Vancouver lawyer David Klein received a phone call from an Alberta mom, Patricia Clow, regarding her 22-year-old daughter's suicide while taking the smoking-cessation drug Champix, he knew it was a fitting case for a class action.

He was aware of lawsuits that had been launched in both Ontario and Quebec against Pfizer Inc., the maker of Champix, and within weeks his law firm, Klein Lyons, would receive inquiries from residents within British Columbia who had similar stories to share about the detrimental side effects of the drug.

So he initiated actions in both Alberta and B.C.

Pharmaceutical firms such as Pfizer are in the crosshairs of plaintiff class-action lawyers these days and Champix is only one of many drug class actions currently wending its way through Canadian courts.

There are at least a dozen drugs under the gun, probably more since no one tracks such statistics. The cases include Vioxx, Fosamax, Mirapex, Didrocal, Actonel, Paxil, Yaz and Yasmin, Depo-Provera, Neurontin, Evra, Oxycontin, Phospho-soda and Trasyolol Zyprexa.

However, drug cases are no slam dunk for the plaintiff lawyers who bring them, said Mr. Klein, who noted that class actions related to pharmaceutical products have been difficult to prosecute.

The sheer time and resources involved in challenging a large pharmaceutical company means lawyers have to be savvy in their approach.

In the Champix matter, Mr. Klein has already contacted the other law firms representing plaintiffs in Ontario and Quebec.

"There's a good possibility we will be working with the Ontario and Quebec lawyers who have started these cases," he said.

"These cases tend to be very expensive to run and they're time consuming," so gleaning insight from other legal teams is an economic necessity.

Lawyer Darcy Merkur, a partner with Thomson Rogers law firm in Toronto, has filed a class action against Boehringer Ingelheim, the maker of Mirapex, which is prescribed to people who suffer from Parkinson's disease.

He agreed that pharmaceutical class actions are particularly complex, largely due to the fact that they're almost always international in scope.

He has been in touch with law firms in the United States, U.K., Australia and South America, regions where similar cases have been filed.

To succeed, lawyers must ascertain whether it was impossible for the drug companies to have known the detrimental side effects, the results of any studies the company conducted or whether the company simply tried to "cover it up," Mr. Merkur said.

"There are a lot of regulatory issues, which are different from other class actions," he said. "Because the drugs have individual impacts you will need some individual investigation to determine the damages that have been suffered by each person."

Lawyer Ray Wagner, of Wagners Inc. in Halifax, has launched a class action on behalf of people using the pain-killer drug OxyContin, produced by Purdue Pharma. He is working with a consortium of four other East Coast law firms, which he said is necessary when taking on a company of such size.

In the United States, Purdue Pharma pleaded guilty in Virginia Federal Court to criminal charges that it had misled doctors and patients regarding the drug's addictive nature. Its executives paid more than US\$600-million in fines.

The company had earlier covered up its knowledge of the drug's addictive nature, and even achieved the dismissal of over a thousand lawsuits in the United States.

Mr. Wagner said not only is the case complex, but the consortium of law firms is trying to initiate a national class action presents its own challenges.

"It's a huge problem in Canada to be able to establish a national class and bind residents in other jurisdictions who have not opted out of the litigation," he said.

Purdue Pharma is a "very well funded company," he said. "It's going to be a hard and expensive fight."

Plaintiff litigator Harvey Strosberg of Sutts Strosberg in Windsor, said pharmaceutical cases are challenging for lawyers primarily because "not everybody who takes the drug has suffered a damage, so there's an individual issue of causation in each claim."

His firm is overseeing one of several class actions involving Vioxx in Canada and notes that success in one jurisdiction does not mean an automatic win in another. In the United States, for example, the Vioxx matter was settled for US\$4-billion, while it's currently been set for trial in Australia.

"What we have to remember is we're dealing with a global economy," said Mr. Strosberg. "Pharmaceutical class actions are like price-fixing cases or securities class actions as they all have international problems."

But the cases are also challenging on procedural fronts and when it comes to damages and compensation.

---

© 2010 The National Post Company. All rights reserved. Unauthorized distribution, transmission or republication strictly prohibited.