

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia v. Purdue Pharma Inc.*,
2022 BCSC 2288

Date: 20221216
Docket: S189395
Registry: Vancouver

Between:

His Majesty the King in Right of the Province of British Columbia
Plaintiff

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, 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, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P.-S.E.N.C., 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., Imperial Distributors Canada Inc., Amerisourcebergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., Unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Defendants

Before: The Honourable Mr. Justice Brundrett

Oral Reasons for Judgment

(In Chambers)

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No other appearances

Place and Date of Hearing:

Vancouver, B.C.
December 16, 2022

Place and Date of Judgment:

Vancouver, B.C.
December 16, 2022

[1] **THE COURT:** The plaintiff, His Majesty the King in Right of the Province of British Columbia (the “Province”), seeks an order certifying, for settlement purposes only, this action as a class action against:

- 1) Purdue Pharma, Purdue Pharma Inc. and Purdue Frederick Inc. (collectively, “Purdue Canada”)¹ and approving the settlement agreement entered into with Purdue Canada made May 17, 2022 (the “Purdue Canada Settlement Agreement”); and
- 2) Roxane Laboratories Inc., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE, and West-Ward Columbus Inc. (collectively, the “Roxane Defendants”) and approving the settlement agreement entered into with the Roxane Defendants, made April 5, 2022 (the “Roxane Settlement Agreement”).

[2] These proposed partial settlements occur within a putative class action (the “National Governments Opioid Class Action”) brought by the Province and other class member governments seeking recovery of public healthcare costs resulting from alleged wrongful conduct related to opioid manufacturing and distribution. A separate companion class action has been issued against a consulting firm.

[3] The National Governments Opioid Class Action was commenced on August 29, 2018 as a proposed class action in British Columbia and is brought on a national basis on behalf of all ten provincial governments, the governments of the Northwest Territories, Nunavut and Yukon, and the government of Canada (the “Canadian Governments”).

[4] Unlike separate actions that were commenced in other provinces, the plaintiff class in this BC action includes only governments seeking recovery of health care

¹ These parties indicated are as stated in the Province’s notice of application. Purdue Pharma Inc. and Purdue Frederick Inc. are the Canadian Purdue-related entities in this action. The Court was advised that Purdue Pharma is the limited partnership between these two entities and a party to the settlement, but it is not a defendant to the action.

costs, not patients or their family members who suffered damages as a result of addiction to prescription opioids.

[5] A number of preliminary applications relating to jurisdictional, constitutional and pleading issues have been brought to date. Presently, a four-week hearing for the certification of the National Governments Opioid Class Action is scheduled to commence in late 2023.

[6] The pleadings allege that the defendants, who are manufacturers or distributors of opioids, have committed a series of actionable wrongs in the course of their manufacturing, marketing, distribution and sale of prescription opioids in Canada. The Province's claims on behalf of the class include common law, Quebec civil law, and equitable and statutory claims.

[7] The Province pleads that the alleged breaches of common law, equitable and statutory duties and obligations constituted "opioid-related wrongs" under the *Opioid Damages and Health Care Costs Recovery Act*, S.B.C. 2018, c. 35 and parallel legislation in other provinces. The Province alleges that the defendants are liable to the Canadian Governments for opioid-related healthcare, pharmaceutical and treatment costs that were incurred by them from 1996 to the present, as well as in the future.

[8] Although this action is a proposed class action, each of the Canadian Governments has independently executed the Purdue Canada Settlement Agreement and the Roxane Settlement Agreement, and has elected to participate in this action for the purposes of the implementation of the agreements. As such, I am satisfied that it is appropriate to dispense with the need for notice to class members with respect to certification and settlement approval.

[9] Under the terms of the Purdue Canada Settlement, the Canadian Governments will receive \$150,000,000 in funds over the course of seven years. Purdue Canada has agreed to grant the Canadian Governments a security interest

over its personal and real property as security for the payment of the settlement amount.

[10] The Canadian Governments will also receive certain non-financial benefits such as limited-scope documentary disclosure and access to interview a set number of Purdue Canada's senior commercial employees. In exchange, the Canadian Governments release all claims against Purdue Canada and certain related persons.

[11] Purdue Canada advises that the terms of the Purdue Canada Settlement are intended to provide certainty and finality to the parties with respect to the claims made in the National Governments Opioid Class Action, thereby permitting the settling parties to carry on their businesses as purchasers and suppliers of essential medicines, all the while sparing them from the expense, inconvenience, and distraction of burdensome and protracted litigation.

[12] A condition precedent to the Purdue Canada Settlement becoming effective was the final court approval of a \$20,000,000 settlement (with a \$2,000,000 payment to provincial health insurers) of four actions in Saskatchewan, Ontario, Quebec and Nova Scotia over a breach of a duty to warn consumers of the addictive properties of OxyContin (the "OxyContin Settlement"). On September 23, 2022, Chief Justice Popescul of the Saskatchewan Court of King's Bench approved the OxyContin Settlement, in reasons indexed at *Carruthers v. Purdue Pharma*, 2022 SKKB 214.

[13] In addition, in order to permit this settlement, Purdue Canada obtained an order from the Ontario Superior Court of Justice (Commercial List) on October 19, 2022 lifting a stay order imposed in recognition of bankruptcy proceedings in the United States involving the debtors affiliated with the American entities of Purdue Pharma L.P.: see *Purdue Pharma L.P., Re.*, 2019 ONSC 7042.

[14] The terms of the Roxane Settlement Agreement provide for a payment of \$290,000 for the benefit of the Canadian Governments. As part of its settlement, the Roxanne Defendants will provide cooperation and further disclosure of records in the ongoing class action proceeding.

[15] The smaller settlement in respect of the Roxane Defendants is accounted for by the fact that the Roxane Defendants had limited participation in the opioids market, which would have ended by 2001 at the latest, and stood at the lowest end of the spectrum of relative market share compared to other defendants.

[16] Certification for the purposes of settlement by both groups of defendants is proposed on a without prejudice basis to the rights of the non-settling defendants to contest certification in the ongoing litigation against them. Both proposed settlements include a bar order which ensures the non-settling defendants are not prejudiced by the settlement agreements. Both proposed orders declare that the settlements will have no effect on the continuing prosecution of the underlying action or any other proceeding.

[17] It is apparent that both proposed settlement agreements are the product of extensive discussions and negotiations by the parties involved. The Purdue Canada Settlement was reached after lengthy negotiations and a formal mediation process conducted before an independent mediator.

[18] Court approval is required for a binding settlement in class proceedings. Section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [CPA] sets out the statutory requirements for the settling, discontinuation or abandonment of a class proceeding.

[19] The CPA does not provide a specific test for settlement approval. Rather, the test has been developed by the courts. The guiding principle is that a settlement must be "fair and reasonable and in the best interests of the class as a whole": *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192 at para. 58; *Denluck v. The Board of Trustees for the Boilermakers' Lodge 359 Pension Plan*, 2021 BCSC 242 at paras. 11–15.

[20] While each class member is likely to have their own individual views of any settlement, the court is required to consider the collective interest when reviewing a

settlement. Here, consideration of the collective interest is facilitated by the fact that all class member governments have approved of the proposed settlements.

[21] The standard for approval of a settlement is whether, in all of the circumstances, the settlement is fair, reasonable and in the best interest of the class as a whole. The court need not dissect the proposed settlement with an eye to perfection. Rather, the settlement must fall within a range or zone of reasonableness to be approved: *Bodnar v. The Cash Store Inc.*, 2010 BCSC 145 at para. 17. I have taken into account the numerous factors to consider when assessing the reasonableness of a settlement as set out in *Fakhri et al. v. Alfalfa's Canada, Inc.*, 2005 BCSC 1123 at para. 8 and *Coburn and Watson's Metropolitan Home v. BMO Financial Group*, 2018 BCSC 1183 at para. 33, aff'd 2019 BCCA 308.

[22] While I have considered all aspects of the proposed settlement, I note the following in particular:

- experienced counsel have undertaken extensive investigation into the adequacy of the settlements;
- all class members have opted in and consented to the settlements, and there are no absent class members;
- the class member governments are sophisticated governmental entities capable of assessing their own interests and the public interest;
- there is no reason to believe that any collusion or extraneous considerations have influenced negotiations;
- on a cost/benefit analysis, the plaintiff class appears to be well-served by accepting the settlement; and
- extensive information has been made available to members of the class to consider the proposed settlement agreements.

[23] The Purdue Canada Settlement Agreement was negotiated with the Purdue Canada defendants (who remain solvent) against the backdrop of bankruptcy proceedings in relation to their United States counterparts (Purdue Pharma L.P. and The Purdue Frederick Company Inc.). I am advised, and I accept, that the Purdue Canada Settlement Agreement will result in significantly greater benefits for the Canadian Governments than they would likely have obtained had they advanced their claims through the US bankruptcy process against the United States counterparts to Purdue Canada.

[24] In relation to both proposed settlements, there are considerable risk factors associated with the ongoing litigation and thus considerable value in an early settlement between the participating parties.

[25] While they do not consent to the proposed orders for settlement, the non-settling defendants have withdrawn their objections to the proposed settlements while maintaining their rights to fully assert their positions in the underlying action.

[26] On the basis of the materials before me, a *prima facie* case for certification against the two groups of defendants for settlement purposes has been made out under s. 4 of the *CPA* with the Province as the representative plaintiff.

[27] Having scrutinized the two settlement agreements in detail, and having had regard to the factors set out in *Fakhri*, I assess that both settlement agreements are fair, reasonable and in the best interests of the Canadian Governments. I can discern no reason not to approve of the proposed settlements.

[28] The Canadian Governments class is certified, for settlement purposes only, as between the parties to the proposed settlement agreements in accordance with the terms set out therein.

[29] The Purdue Settlement Agreement is hereby approved, along with the ancillary relief sought and consented to, and shall be implemented and enforced in accordance with the terms of the orders sought.

[30] The Roxane Settlement Agreement is hereby approved, along with the ancillary relief sought and consented to, and shall be implemented and enforced in accordance with the terms of the orders sought.

[31] All right, that is the end of my reasons. Is there anything we need to address?

[32] CNSL R. MOGERMAN: The only point that arises, Justice, is that adjunct order, which was Tab 3, and that was the order, because we are now certified, in the event that we need to discontinue, that is the order that would allow us to discontinue if the settlement agreement isn't final within the time period.

[33] THE COURT: Yes, I had a look at that and I am prepared to approve that order as well. So that order will go.

[34] CNSL R. MOGERMAN: Then nothing else from us, thank you Mr. Justice.

[35] THE COURT: All right. I don't see any other speakers so I'll leave it there. Thank you, counsel. We'll adjourn.

"Brundrett J."