CITATION: Banerjee v. Shire Biochem Inc. et al., 2010 ONSC 889
Court File No. 05-CV-293457 CP
Date: 20100208

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

BEFORE: G. R. Strathy J.

COUNSEL: *L. Craig Brown & Darcy Merkur*, for the plaintiff

Sylvie Rodrique & Kelly Friedman, for the defendants, Eli Lilly Canada Inc. and Eli Lilly and Company

Malcolm Ruby, for the defendant, Shire Biochem Inc.

Chris Hubbard & Keegan Boyd, for the defendant, Draxis Health Inc.

DATE HEARD: October 26, 2009 and by teleconferences

DECISION ON CERTIFICATION

[1] This is a motion for certification of a product liability class action and for authorization of a pilot project to permit the parties to explore settlement. The motion was heard on October 26, 2009 but the release of these reasons has been deferred pending the resolution of issues arising from a parallel Québec action: *Lepine v. Shire BioChem et al.* (Québec Court File No. 500-06-000464-095) (the "Québec Action"). As I will explain shortly, those issues have been resolved and the Québec Action has been stayed.

[2] The proposed representative plaintiff, Swapan Banerjee, is 51 years old. He claims that he developed a compulsive gambling addiction as a result of being treated with the drug Permax, which he was prescribed in 2000 for the treatment of Parkinson's disease. He claims to have lost in excess of $200,000. He became alienated from his family and friends and suffered depression, anxiety, guilt and embarrassment. When he ceased taking Permax in 2003, for reasons unrelated to his gambling problem, his compulsive behaviour stopped.

[3] Permax was developed by the defendants Eli Lilly Canada Inc. and Eli Lilly and Company (collectively, "Eli Lilly") and was prescribed primarily for the treatment of people with Parkinson's. It was initially distributed in Canada by the defendant Draxis Health Inc. ("Draxis") and later by the defendant Shire Biochem Inc. ("Shire").

[4] Mr. Banerjee says that the defendants failed to adequately warn him and class members that Permax can cause compulsive self-rewarding behaviour, including pathological gambling. He says that he would have taken appropriate precautions had he been warned of the dangerous side effects of the drug.

[5] The parties have reached an agreement in principle, which permits certification, on consent, against the Defendants Eli Lilly and Shire, subject to the approval of the court and on terms that will be outlined below. The parties, other than Draxis, have also agreed to participate in a pilot project that is designed to identify class members with potentially compensable claims and to obtain information concerning the number, nature and monetary value of those claims.

Counsel for the parties anticipate that this information will provide a factual underpinning to facilitate discussions about the resolution of the claims of the class. Draxis does not agree to certification against it, nor does it agree to participate in the pilot project. It does agree, however, that the issue of certification of the action against it will be deferred, to be revived if necessary, after the pilot project has been completed.

[6] For the reasons set out below, I will grant an order certifying this action as a class action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*C.P.A.*"). I will also approve the pilot project. While this project will suspend the ordinary progress of this action, for a period of about 12 months, it is my view that this is a reasonable step in the circumstances and should be approved by the court.

Background

[7] Parkinson's is a degenerative disorder of the central nervous system. The symptoms of this disorder – tremor, stiffness and slowed movement – are caused, in the most general sense, by the insufficient production of dopamine in the brain. Dopamine is called a "neurotransmitter" – a chemical that relays signals between neurons and other cells. Permax is among a group of drugs called "dopamine agonists" that mimic the effect of dopamine and stimulate the dopamine receptors in the brain.

[8] In one of nature's extraordinary and elegant survival mechanisms, dopamine is also associated with the pleasure system of the brain. It is believed that dopamine is released when people have naturally rewarding experiences, such as eating or engaging in sexual activity. Dopamine provides feelings of enjoyment that reward the behaviour and encourage its repetition. Humans are wired to nourish themselves and TO reproduce because dopamine makes them experience pleasure when they do so.

[9] Permax was approved in 1989 for marketing and sale in the United States for the treatment of the symptoms of certain movement disorders, including Parkinson's. It was approved for sale in Canada in September, 1991. The sale of Permax in Canada ended on August 30, 2007 for reasons having nothing to do with the allegations in this action.

[10] The plaintiff alleges that by as early as 1989, or shortly thereafter, the defendants knew or ought to have known that there was a serious risk of behavioural changes as a result of the ingestion of Permax. For a very small group of Permax users, the drug allegedly caused malfunctions in the brain's circuitry, lead to inappropriate self-rewarding behaviours. These behaviours included compulsive gambling, hyper sexuality, compulsive shopping and obsessive skin-picking.

[11] Each party has produced expert evidence on this issue. The plaintiff's expert pharmacologist, Dr. Celeste Napier, a Professor of Pharmacology at Rush University in Chicago, expresses the opinion that Permax can cause compulsive behaviour and that the drug manufacturer failed to properly test the drug and adequately warn the public of the risks. The experts retained by the defendants, who have equally impressive credentials, question the cause and effect relationship between Permax and obsessive behaviour and in any event dispute that there was a duty to warn throughout the material time.

[12] This action was commenced on July 19, 2005. It was proposed as a national class action on behalf of all Permax users in Canada. The Québec Action was commenced in 2008. Counsel in this action and in the Québec Action have been advancing the claims in a coordinated manner. The parties in the two actions have agreed that the Québec Action will be stayed in order to permit this action and the pilot project to proceed on a national basis and an order to that effect was made by Madam Justice Richer in the Québec Action on January 28, 2010. That order contemplated, and I will provide, that a sub-class of Québec residents be created in this action.

[13] I will begin by examining the action in terms of the test for certification set out in s. 5 of the *C.P.A.* I will then examine the proposed pilot project.

The Test for Certification

[14] The *C.P.A.* is entirely procedural. In the event that s. 5 of the Act is satisfied, certification is mandatory. Section 5(1) states that the Court "shall" certify a class proceeding if:

(a) the pleadings or the notice of action disclose a cause of action;

(b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff;

(c) the claims or defences of the Class members raise common issues;

(d) a class proceeding would be the preferable procedure for the resolution of the common issues; and

(e) there is a representative plaintiff or defendant who,

(i) would fairly and adequately represent the interests of the Class;

(ii) has a plan which sets out a workable method for the advancement of the proceeding on behalf of the Class, including notification of class members; and

(iii) does not, on the common issues, have an interest in conflict with the interests of other class members.

[15] A certification motion is not an assessment the merits of the action. The court is not required to determine whether the plaintiff's claims are likely to succeed. The issue is simply whether the action "can be appropriately prosecuted as a class action": *Cloud. v. Canada (Attorney General)* (2004), 73 O.R. (3d) 401, [2004] O.J. No. 4924 (C.A.), at para. 38, leave to appeal to S.C.C. refused May 12, 2005, [2005] S.C.C.A. No. 50. Other than the requirement that the pleadings disclose a cause of action, the class representative is required to show "some basis in fact for each of the certification requirements set out in s. 5 of the Act": *Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158, [2001] S.C.J. No. 67, at para. 25.

[16] The consent of the defendants to certification does not lessen the responsibility of the plaintiff to demonstrate that the requirements of section 5(1) of the *C.P.A.* have been met and that the case is indeed appropriate: *Vezina v. Loblaw Companies Ltd.* (2005), 17 C.P.C. (6th) 307, [2005] O.J. No. 1974 (Sup. Ct.). Certification affects the rights of the entire class, who will be bound by the judgment or by a court-approved settlement. It is important, therefore, that the court determine that the proceeding is appropriate for prosecution as a class action.

(a) Cause of Action

[17] The plaintiff states that the defendants:

(a) negligently breached their duty of care;

(b) are strictly liable;

(c) are liable for breach of express and/or implied warranty, including breach of warranty under various provincial statutes such as the *Sale of Goods Act*, R.S.O. 1990, c. S.1; and

(d) are liable for negligent and/or fraudulent misrepresentation.

[18] It is alleged that the defendants, among other things:

- failed to conduct adequate tests to determine the risks associated with the use of Permax;
- manufactured and sold Permax without adequately disclosing the increased risk of compulsive and/or obsessive behaviour associated with the drug;
- failed to give Health Canada accurate information concerning Permax;
- failed to adequately warn class members and their physicians of the known or reasonably foreseeable risks of using Permax;
- failed to warn class members and their physicians about the need for behavioural monitoring to ensure early discovery of compulsive and/or obsessive behaviour resulting from the use of Permax; and
- failed to adequately monitor, evaluate and act upon adverse reactions to Permax in Canada and throughout the world.

[19] The claim asserts that class members have suffered damages as a result of the defendants' conduct, including, but not limited to, general damages for pain and suffering and loss of reputation. The plaintiff also seeks special damages including gambling losses, loss of earnings, medical and other bills and expenses, and future medical treatment relating to the consequences of the drug. The claim further alleges that the conduct of the defendants justifies an award of punitive, exemplary, and/or aggravated damages.

[20] The test for establishing a cause of action is the same as the test enunciated under rule 21 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194: assuming the facts stated in the statement of claim can be proved, whether it is, "plain, obvious and beyond a reasonable doubt that the Plaintiff cannot succeed". See: *Peter v Medtronic Inc.*, (2007), 50 C.P.C. (6th) 133, [2007] O.J. No. 4828 (Ont. Sup. Ct.) at paras. 29-30, aff'd. (2008), 55 C.P.C. (6th) 242 (Ont. Div. Ct.); *Hollick v. Toronto (City),* above, per McLachlin C.J. at para. 25; *Cloud v. Canada (Attorney General)*, above, per Goudge J.A. at para. 41.

[21] No evidence is admissible and the material facts pleaded must be accepted as true, unless patently ridiculous or incapable of proof: *Peter v Medtronic Inc.*, above; *Tiboni v. Merck Frosst Canada Ltd*. (2008), 295 D.L.R. (4th) 32, [2008] O.J. No. 2996 (Sup. Ct.) at para. 56.

[22] I am satisfied that the pleadings in this case disclose a cause of action.

(b) Identifiable Class

[23] The plaintiff proposes to define the class 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.

[24] The plaintiff estimates that the size of the class is between 5,000 and 10,000 people. The number of members of the class who developed compulsive behaviour as a result of the drug is likely to be only a fraction of the class members. Information concerning the size of the class, and the likely number of class members who developed compulsive symptoms, will be developed through the pilot project and as the action progresses.

[25] The purposes of the class definition were set out in *Bywater v. Toronto Transit Commission* (1998), 27 C.P.C. (4th) 172, [1998] O.J. No. 4913 (Ont. Gen. Div.), per Winkler J. at para. 10:

> (a) to identify persons who have a potential claim for relief against the defendants;
>
> (b) to define the parameters of the lawsuit so as to identify those persons who are bound by the result; and

(c) to describe who is entitled to notice of certification.

See also: *Tiboni v Merck Frosst Canada Ltd.*, above, at para. 76.

[26] There is no requirement that all class members have an equivalent likelihood of success. The defining aspect of class membership is an interest in the resolution of the proposed common issues: *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534, [2000] S.C.J. No. 63, per McLachlin C.J., at paras. 38 and 54.

[27] A sub-class will be created for Québec residents since the application of the law of Québec gives rise to additional common issues. Class counsel has undertaken to cooperate with plaintiff's counsel in the Québec Action to ensure that members of the Québec sub-class are able to fully participate in the pilot project, to present their claims in the French language and to obtain all necessary information in the French language. As part of the ongoing reporting process referred to later in these reasons, I will expect to receive information in this regard from class counsel.

(c) Common Issues

[28] The following common issues are proposed as against the Defendants Lilly and Shire (referred to in this paragraph as "the Defendants"):

> (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 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 aggravated, 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.

[29] Counsel agreed at the hearing that the words “general damages and/or” should be inserted before “special damages” in paragraph (e) above.

[30] By agreement of the parties, the issue of “waiver of tort” will not be included as a common issue at this time. The Plaintiff may move to add this issue as a common issue by motion to the court at a later date in accordance with the agreement in principle and the consent draft Order.

[31] The existence of common issues is the essential element of a class proceeding. The purpose of the *C.P.A.* is to provide a means for the resolution of these common issues in a single forum: *Bywater v. Toronto Transit Commission,* above, at para. 12.

[32] As stated in *Western Canadian Shopping Centres Inc. v. Dutton*, above, at para. 39, the fundamental issue is whether the determination of the common issues will avoid duplicative fact-finding or legal analysis. In order to avoid this duplication, the court must ensure that the common issues are necessary to the resolution of each class member's claim. However, the common issues need not be determinative of each class member's claim and each class member need not share the same interest in the resolution of the common issues. The common issues criterion is not a high bar: the plaintiff must merely establish some basis in fact to believe that these issues are common: *Hollick v. Toronto(City)*, above, at paras. 18-25.

[33] The court must be careful not to certify a common issue the determination of which turns on facts particular to each class member. In other words, the issues that are common to the class should also be capable of adjudication as a class: see *Glover v. Toronto (City),* (2009), 70 C.P.C. (6th) 303, [2009] O.J. No. 1523 (Ont. Sup. Ct.) at para. 42, *Carom v. Bre-X Minerals Ltd.* (1998), 20 C.P.C. (4th) 163, [1998] O.J. No. 1428 (Ont. Gen. Div.), and *Anderson v. Wilson*. (1999), 44 O.R. (3d) 673, [1999] O.J. No. 2494 (C.A.). In the present case, the issues of standard of care, duty of care, legal entitlement to special damages, and medical monitoring clearly pertain to the class as a whole and are essential to the resolution of each class member's claim.

[34] Similarly, the complex issues of causation and damages raised in this case will not bar certification, as long as these issues are capable of adjudication as a class. With regards to causation, this case can be distinguished from *Glover v. Toronto (City)*, above, at para. 65, where the court found that causation was not an appropriate common issue because it required individual determination. In this case, the common issue of causation is framed generally, asking whether Permax is *capable* of causing the side-effects alleged. The issue of exemplary or punitive damages turns on the conduct of the defendants and therefore can be appropriately determined on a class-wide basis; see *Carom v. Bre-X Minerals Ltd.* (1999), 44 O.R. (3d) 173, [1999] O.J. No. 1662 (Sup. Ct.) at para. 83 and *Gariepy v. Shell Oil Co.* (2002), 23 C.P.C. (5th) 360, [2002] O.J. No. 2766 (Sup. Ct.) at para. 75: "What the defendants knew about their product

and what they did with that information can be determined without any involvement of the members of the proposed class."

[35] However, the issue of aggravated damages cannot form a common issue. Aggravated damages are assessed on an individual basis as part of general non-pecuniary damages: see *Carom v. Bre-X Minerals Ltd.*, above, at para. 83, and *Kotai v. The Queen of the North*, 2007 BCSC 1056, [2007] B.C.J. No. 1573, at paras. 40-42. Accordingly, the word "aggravated" should be removed from common issue (g). This common issue should now read:

> (g) Should the Defendants pay exemplary and/or punitive damages? and, …

[36] With regard to the Québec subclass, an identifiable class may include subclasses, whose common issues are not shared by the entire class. Section 6.5 of the *C.P.A.* states that:

> 6. The court shall not refuse to certify a proceeding as a class proceeding solely on any of the following grounds: …
>
> > 5. The class includes a subclass whose members have claims or defences that raise common issues not shared by all class members.

In *Andersen v. St. Jude Medical Inc*. (2003), 67 O.R. (3d) 136, [2003] O.J. No. 3556 (Sup. Ct.) at para. 20, Cullity J. held, based on this provision, that a different statutory regime in Alberta, potentially affecting the right of recovery of Alberta residents, was not a bar to certification of a national class provided an Alberta subclass was created. See also the decision of Cullity J. in *LeFrancois v. Guidant Corp.* (2008), 56 C.P.C. (6th) 268, [2008] O.J. No. 1397 (Ont. Sup. Ct.) at para. 77.

[37] For these reasons, and with the modification to common issue (g), the case before me satisfies the common issues certification requirement as established by s. 5(1)(c) of the *C.P.A.*

Preferable Procedure

[38] The preferable procedure analysis requires that the court consider the purposes of class proceedings – access to justice, judicial efficiency and behaviour modification – and to assess whether certification promotes these purposes: *Hollick v. Toronto (City)*, above, per McLachlin C.J. at para. 15; *Pearson v. Inco Ltd.* (2005), 78 O.R. (3d) 641, [2005] O.J. No. 4918 (C.A.), per Rosenberg J.A. at para. 67, leave to appeal refused [2006] S.C.C.A. No. 1 (S.C.C.).

[39] The Court will also consider whether a class proceeding constitutes a fair, efficient and manageable way of determining the common issues presented by the claim: *Hollick v. Toronto* (City), above, per McLachlin C.J. at para. 28; *Pearson v. Inco Ltd*., above, per Rosenberg J.A. at para. 67.

[40] I am satisfied that individual actions would be prohibitively expensive, given the serious and complex medical and scientific issues in the action. I agree with the submission of plaintiff's counsel that individual litigation is not a practical or economically viable option. By definition, many of the members of the class have a serious medical condition and claim to have experienced financial and emotional injury that would seriously impair their capacity to pursue individual actions. A class proceeding in this case gives class members access to justice that would be beyond their individual reach.

[41] I am also satisfied that a class proceeding would promote judicial economy by permitting the common issues to be decided on a class-wide basis and that certifying this case will promote behaviour modification in relation to the testing and marketing of pharmaceuticals.

[42] Product liability class actions have commonly been certified by Canadian courts: *Heward v. Eli Lilly & Co*. (2007), 39 C.P.C. (6th) 153, [2007] O.J. No. 404 (Sup. Ct.), aff'd. (2008), 91 O.R. (3d) 691, [2008] O.J. No. 2610 (Div. Ct.); *Nantais v. Telectronics Proprietary (Canada) Ltd.* (1995), 25 O.R. (3d) 331, [1995] O.J. No. 2592 (Gen. Div.), leave to appeal to Div. Ct. refused, [1995] O.J. No. 3069, 36 C.B.R. (3d) 231; *Wilson v. Servier Canada Inc*. (2000), 50 O.R. (3d) 219, [2000] O.J. No. 3722 (Sup. Ct.), leave to appeal to S.C.C. refused, [2001] S.C.C.A. No. 88; *Bendall v. McGhan Medical Corp*. (1993), 14 O.R. (3d) 734, [1993] O.J. No. 1948 (Gen. Div.), leave to appeal refused, [1993] O.J. No. 4210 (Gen. Div.); *Serhan v. Johnson and Johnson* (2004), 72 O.R. (3d) 296**,** [2004] O.J. No. 2904.

[43] While individual issues, perhaps difficult individual issues, will remain after the trial of the common issues, the resolution of the common issues will significantly advance the proceedings and may enable the court to devise expeditious and cost effective mechanisms to address the individual issues.

(e) Representative Plaintiff

[44] The final requirement for certification is that there be a representative plaintiff who would fairly and adequately represent the interests of the class, has produced a suitable litigation plan, and does not have a conflict of interest, on the common issues, with other class members. The court must be satisfied that "the proposed representative will vigorously and capably prosecute the interest of the class …": *Western Canada Shopping Centres Inc.*, above, at para. 41.

[45] Mr. Banerjee falls within the class definition. I am satisfied that he is an appropriate representative plaintiff. He has a compelling interest in the outcome of this proceeding. He is represented by counsel who are experienced in both class actions and product liability litigation and who have the resources and capacity to see this action through to trial on the common issues if necessary. Significant steps have been taken, to date, to prepare for the litigation, to investigate the technical issues, and to communicate with prospective class members. The Plaintiff has produced a detailed litigation plan that sets out a workable method of advancing the proceeding on behalf of the Class.

[46] For these reasons, I am satisfied that this proceeding should be certified as a class action.

The pilot project

[47] Section 12 of the *C.P.A.* provides that the court make any order that is appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination:

> The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

[48] As noted earlier, the parties, other than Draxis, have reached an agreement, subject to the approval of the court, to undertake a pilot project, referred to as the "Negotiation Processs", that will obtain detailed information concerning the members of the class and potentially compensable claims, with a view to exploring the possibility of a global resolution. I am satisfied

that this project is put forward by both parties in good faith and that it has regard to the best interests of the class as a whole. I am also satisfied that it is reasonable and practical and that it can be undertaken without unduly interfering with the progress of the action. While there is no guarantee that the Negotiation Process will ultimately bear fruit, it is a reasonable step to take in the circumstances. The court will remain involved in the management of this proceeding and periodic case conferences will be held to monitor the progress of the project.

[49] The parties will retain their rights against Draxis, and Draxis will retain its rights. Draxis agrees to stand aside, for the moment, to let the other parties work through the analysis of the potential claims. If the matter is not ultimately resolved, the plaintiff is at liberty to move to certify the action as against Draxis. The plaintiff is also entitled to move to add waiver of tort as a common issue.

[50] Any settlement as a result of the pilot project will be subject to the approval of the court.

[51] The parties have agreed on a timeline that will be incorporated into a timetable to be approved by the court. Notice will be given to the class within approximately 60 days. Class members will be invited and encouraged to participate in the pilot project and to provide details of their claims by responding to a questionnaire. They will have approximately 90 days to deliver answers to the questionnaire and supporting information to class counsel. The parties will then generate information that will enable them to discuss a resolution and it is anticipated that settlement discussions will occur within approximately six to nine months from this date.

[52] The court will remain involved in monitoring the pilot project. I have suggested to the parties that the timetable should include a case conference in approximately nine months time, or earlier if appropriate or if requested by any party, to review the status of the project. If the matter has not been resolved, a further case conference will be held within one year from this date, to review the state of settlement discussions and to discuss whether the litigation is to be resumed.

Conclusion

[53] In conclusion and in summary:

(a) these proceedings are certified as a class proceeding pursuant to the *C.P.A.*, as against the defendants Lilly and Shire;

(b) the class is defined as: “All persons resident in Canada who were prescribed and ingested the drug Permax (generic name: pergolide mesylate) in Canada at any time between January 1, 1989 and before the date of this order”;

(c) the Québec sub-class is defined as “All persons resident in Québec who were prescribed and ingested the drug Permax (generic name: pergolide mesylate) in Québec at any time before the date of this order”;

(d) the nature of the claim asserted on behalf of the class is 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”;

(e) Mr. Banerjee is appointed representative plaintiff;

(f) the proceeding is certified on the basis of the common issues set forth above at paragraph 28, as amended by paragraphs 29 and 35 above;

(g) the notice plan, notice of certification and abbreviated notice of certification are approved and the costs of such notice shall be paid by the defendants; and

(h) the pilot project is approved, and class counsel shall provide periodic reports to the court concerning the progress of the project, including a settlement conference to be held prior to May 31, 2010.

[54] As agreed by the parties, the costs of this motion are to be payable by the defendants to the plaintiff in the cause in an amount, if not agreed upon, to be fixed by the court at the conclusion of the trial of the common issues.

G.R Strathy J.

February 8, 2010