

Court Administration

DEC 07 2016

Halifax, N.S.

Form 78.05

2009

Hfx. No. 315567

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

ALBERT CARL SWEETLAND and MARY PATRICIA ADDICOTT-ANDREWS

Plaintiffs

- and -

GLAXOSMITHKLINE INC. and GLAXOSMITHKLINE LLC

Defendants



Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28

Order for Certification

sgd
MJW
J.

BEFORE THE HONOURABLE JUSTICE MICHAEL J. WOOD

THIS MOTION was made by the Plaintiffs for an Order for certification of the action as a class proceeding. The motion was heard on September 15-18, 2015. A written decision was released on January 15, 2016, by which the Court granted leave to the Plaintiffs to provide additional evidence and submissions on the section 7(1)(b) criterion that there be an identifiable class of two or more persons, as well as to provide redrafted common issues. The Defendants were also invited to make submissions on these issues. A supplemental written decision was released on June 1, 2016, by which the action was certified as a class proceeding.

UPON READING the Notice of Motion, the evidence filed by the parties, the Litigation Plan and the submissions of counsel;

AND UPON IT APPEARING that it is appropriate to certify the proceeding as a class proceeding in that:

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of two or more persons;
- (c) the claims raise common issues;
- (d) a class proceeding is the preferable procedure; and
- (e) there are Representative Plaintiffs who would fairly represent the Classes, have produced a workable Litigation Plan and have no interests in conflict with the interests of other Class Members.

NOW UPON MOTION, IT IS HEREBY ORDERED:

1. That the action be and is hereby certified as a class proceeding pursuant to sections 4(3) and 7 of the *Class Proceedings Act*.
2. That the Classes be defined as:
 - (a) All persons in Canada, including their estates, who were prescribed and ingested Avandia (the "Primary Class"); and
 - (b) The spouses (including common-law spouses and same-sex spouses), children, grandchildren, parents, grandparents and siblings of deceased members of the Primary Class (the "Family Class").
3. That Albert Carl Sweetland and Mary Patricia Addicott-Andrews, c/o Wagners Law Firm, 1869 Upper Water Street, Suite PH301, Pontac House, Halifax, NS B3J 1S9, be appointed as the Representative Plaintiffs of the Primary Class and the Family Class, respectively.

4. That the claims to be determined and the relief sought are as alleged in the Fresh as Second Amended Notice of Action and Statement of Claim issued on June 5, 2015.
5. That the common issues for determination in this class proceeding, the resolution of which will bind the Class Members, are as follows:
 1. (a) Can AVANDIA cause or contribute to heart failure? If so, what is the magnitude of this increased risk?

(b) Can AVANDIA cause or contribute to heart attacks? If so, what is the magnitude of this increased risk?

(c) Can AVANDIA cause or contribute to strokes? If so, what is the magnitude of this increased risk?
 2. (a) If the answer to (1)(a) is yes, did any of the Defendants breach a duty to warn the users of AVANDIA about the risk of heart failure? If so, when?

(b) If the answer to (1)(b) is yes, did any of the Defendants breach a duty to warn the users of AVANDIA about the risk of heart attack? If so, when?

(c) If the answer to (1)(c) is yes, did any of the Defendants breach a duty to warn the users of AVANDIA about the risk of stroke? If so, when?
 3. (a) If the answer to (1)(a) is yes, was AVANDIA defective or unfit for the purpose for which it was intended and designed, developed, fabricated, manufactured, sold, imported, distributed, marketed or

otherwise placed into the stream of commerce in Canada by one or more of the Defendants, due to the risk of heart failure?

(b) If the answer to (1)(b) is yes, was AVANDIA defective or unfit for the purpose for which it was intended and designed, developed, fabricated, manufactured, sold, imported, distributed, marketed or otherwise placed into the stream of commerce in Canada by one or more of the Defendants, due to the risk of heart attack?

(c) If the answer to (1)(c) is yes, was AVANDIA defective or unfit for the purpose for which it was intended and designed, developed, fabricated, manufactured, sold, imported, distributed, marketed or otherwise placed into the stream of commerce in Canada by one or more of the Defendants, due to the risk of stroke?

4. Is each of the Defendants responsible in law for the acts or omissions of either one or both of the other Defendants in respect of the design, development, fabrication, manufacture, sale, import, distribution, and/or marketing of AVANDIA in Canada?

5. By virtue of unjust enrichment and/or waiver of tort, are the Defendants liable on a restitutionary basis:

(a) to account to any of the Classes, including provincial insurers which have subrogated claims, for any part of the proceeds of the sale of AVANDIA? Or, in the alternative,

(b) such that a constructive trust is to be imposed on any part of the gross revenue from the sale of AVANDIA for the benefit of the Classes, including the provincial insurers which have subrogated claims?

6. That the Class Members shall be given notice of the certification of this action as a class proceeding, in accordance with the form of the Notice of Certification, attached as Schedule "A" hereto, and in the manner as provided in the Litigation Plan.
7. That the Notice of Certification and its distribution satisfy the requirements of s. 22(6) of the *Class Proceedings Act*.
8. That the cost of providing the Notice of Certification to the Class Members will be borne by the Plaintiffs, subject to same being awarded to the Plaintiffs as disbursements at the conclusion of the common issues trial if the common issues are established against the Defendants.
9. That the Litigation Plan produced by the Plaintiffs is a workable method of advancing the proceeding subject to clarification and amendment if required.
10. That a Class Member may opt-out of the class action by sending a completed and signed Opt-Out Form, a copy of which is attached hereto as Schedule "B", to counsel for the Plaintiffs on or before the date to be determined by agreement of counsel and approved by the Court or (in the absence of any agreement of counsel) as directed by the Court.
11. That the parties adopt the following schedule for the remaining steps in the action:
 - (a) Sixty (60) days from the date the Certification Order has been issued by the Court, the Defendants shall deliver their Statements of Defence;
 - (b) Six (6) months following the delivery of the Statements of Defence and/or Reply, the parties will exchange their Affidavits of Documents;

- (c) Eight (8) months following the exchange of the Affidavits of Documents, the parties will complete their examinations for discovery;
- (d) Six (6) months after all undertakings arising out of the examinations for discovery have been concluded, the Plaintiffs will deliver any expert report(s);
- (e) Three (3) months after receiving the Plaintiffs' expert report(s), the Defendants will deliver any responding expert report(s); and
- (f) The parties will request a Case Management Conference for the purpose of scheduling the common issues trial.

12. That the costs of this certification motion be paid forthwith by the Defendants in an amount agreed to by the parties or, in the absence of any such agreement, in an amount determined by the Court.

Issued December 7, 2016.

S. Drysdale
Prothonotary

Consented to as to form:

SARAH DRYSDALE
Deputy Prothonotary

[Handwritten signature]

Raymond F. Wagner, Q.C.
Solicitor for the Plaintiffs
Wagners
1869 Upper Water Street
Suite PH301, Pontac House
Halifax, NS B3J 1S9

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document,
identified by the seal of the court, is a true
copy of the original document on the file herein.

DEC 07 2016

S. Drysdale
Deputy Prothonotary

[Handwritten signature]

Mary M. Thomson
Solicitor for the Defendants
Gowling WLG (Canada) LLP
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, Ontario M5X 1G5

SARAH DRYSDALE
Deputy Prothonotary

SCHEDULE "A"

NOTICE OF CERTIFICATION OF THE AVANDIA CLASS ACTION

To: Users of AVANDIA Diabetes Medication

Notice Of Certification:

Class Members be advised of a certification of a class action lawsuit regarding the alleged harm caused by the diabetes medication AVANDIA. It is alleged that AVANDIA increases the risk of heart failure, heart attack and/or stroke.

Who is included?

There are two classes (collectively "Class Members"):

- a) All persons in Canada, including their estates, who were prescribed and ingested AVANDIA (the "Primary Class"); and
- b) The spouses (including common-law spouses and same-sex spouses), children, grandchildren, parents, grandparents and siblings of deceased members of the Primary Class (the "Family Class").

If you are a Class Member you do not need to do anything at this point to get the benefit of any ruling on the common issues. A judgment on the common issues will bind all Class Members who do not opt-out, whether favourable or adverse to the class.

What is the nature of the claims?

Compensation and/or damages for negligent design, development and testing of AVANDIA, negligent distribution and marketing of AVANDIA, and waiver of tort.

What options do Class Members have?

Class Members may opt-out of the class action by sending an "Opt-Out Form," signed by the Class Member, to class counsel on or before the deadline stipulated in the Opt-Out Form.

Class Counsel Compensation:

The Representative Plaintiffs have entered into a Contingency Fee Agreement with class counsel. Class counsel will apply to the Court at the conclusion of the case to have their legal fees approved. Class counsel will pay for all case expenses incurred in prosecuting the case and if the case is successful, class counsel will apply to the court to be reimbursed for these case expenses. If the case is not successfully settled or tried, class counsel will not be paid or be reimbursed for any expenses.

Where can Class Members get more information? You may contact class counsel for more information.

If you do not want to participate, you must opt out on or before the deadline stipulated in the opt out form. If you opt out you will not be entitled to share in any recovery.

For more information, or to access opt-out forms, visit

<http://www.wagners.co>

or contact class counsel at the address below:

Wagners
1869 Upper Water Street
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9
Office: 902-425-7330
Toll Free: 1-800-465-8794
Fax: 902-422-1233
[Email: seriousinjury@wagners.co](mailto:seriousinjury@wagners.co)

Representatives of the Class:

Albert Carl Sweetland
Mary Patricia Addicott-Andrews

c/o Wagners
1869 Upper Water Street
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9

This summary notice has been approved by the Supreme Court of Nova Scotia. Do not Contact the Court about this Certification

SCHEDULE "B"

2009

Hfx. No. 315567

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

ALBERT CARL SWEETLAND and MARY PATRICIA ADDICOTT-ANDREWS

Plaintiffs

- and -

GLAXOSMITHKLINE INC. and GLAXOSMITHKLINE LLC

Defendants

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

**OPT-OUT FORM
DEADLINE – 2017**

I, _____, opt out of the class action against the above-named Defendants with respect to the diabetes medication Avandia.

I understand that by opting out of the class action, I will not be entitled to share in any recovery or take any benefit of any ruling in this case, but I will be free to bring my own claim if I wish. I understand that if I opt out of the class action and wish to bring my own claim, my own claim may be subject to a limitation period. I understand this Opt Out Form must be received by Wagners by _____.

My information is as follows:

Print Name of Class Member:	_____	Date of birth:	_____
Email address:	_____	Telephone:	_____
Address:	_____	Address2:	_____
City, Prov.:	_____	Postal Code:	_____
Date:	_____	Signature:	_____