

Court File No. CV-08-700-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

VERNA ANTOINETTE CONLON on her own behalf and as Litigation Administrator for  
the Estate of ALBAN ALOYSIUS CONLON, deceased

Plaintiff

- and -

BRISTOL-MYERS SQUIBB CANADA CO. AND BRISTOL-MYERS SQUIBB  
COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION**

The plaintiff will make a motion to the court on August 19, 2008, at 10:00 a.m. or as soon after as the motion can be heard, before Mr. Justice Murray at the Court House, 491 Steeles Avenue East, Milton, Ontario, L9T 1Y7.

**PROPOSED METHOD OF HEARING:** This Motion is to be heard

- in writing under subrule 37.12(1), on consent;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

**THE MOTION IS FOR:**

1. An Order that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, ss. 2 and 5;
2. An Order that the class be defined as:

All residents of Canada, who ingested Tequin (gatifloxacin) in Canada or for whom Tequin (gatifloxacin) was purchased in

Canada (“Tequin Recipients”) or their personal representatives, heirs, assigns and trustees (“Representative Claimants”), and any other residents of Canada asserting the right to sue the defendants or any Released Party independently or derivatively by reason of their familial relationship with a Tequin Recipient, including without limitation, spouses, common-law spouses, same-sex partners, as well as parents, grandparents, siblings or children, by birth, marriage or adoption (“Derivative Claimants”).

3. An Order that Verna Antoinette Conlon be appointed as the representative plaintiff for Class Members outside of Quebec (“Ontario National Class”);
4. An Order that the within proceeding be certified on the basis of the following common issue:
  - (a) Were the Defendants negligent in the manufacture, marketing, or distribution of Tequin in Canada?
5. A Declaration that the Settlement Agreement with its attached appendices is fair, reasonable, and in the best interests of Class Members;
6. An Order that that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992*;
7. An Declaration that the Settlement Agreement, with its attached appendices, including their preambles and appendices, form part of the Order and are binding upon the representative plaintiffs, upon all Class Members who do not opt-out in accordance with the provisions of the Settlement Agreement, and upon defendants;
8. An Order that the deadline for Class Members to opt-out of the Settlement Agreement be ninety (90) days following the Approval Notice Date, or such other time period as may be approved by the Court, and that after that date, Class Members who have not timely and properly opted-out will be bound by the Settlement Agreement;

9. An Order that Ricepoint Class Action Services be appointed as Claims Administrator in accordance with section 9 of the Settlement Agreement;
10. An Order that the Claims Administrator shall evaluate claims in accordance with the Settlement Agreement with the express understanding that should the medical information available to the Claims Administrator indicate that a Class Member suffered, before any dysglycemic event associated with his or her use of Tequin, an injury of the type for which compensation is being sought, compensation shall be limited to any exacerbation of that injury and claims and losses associated with that exacerbation and not the underlying pre-existing injury. The number of points attributed to the Class Member's current condition shall be set, based on the best available evidence, at a level that accounts for the fact that the Class Member had the pre-existing condition which is not implicated in this litigation and for which no proper claim for the pre-existing claim exists against the settlement funds;
11. An Order that notice of certification and settlement approval shall be published in accordance with the Settlement Agreement;
12. An Order that certification of this proceeding as a class proceeding and the approval of the Settlement Agreement are contingent upon the approval of the Settlement Agreement by both the Ontario and Quebec courts and shall have no force and effect unless and until the Settlement Agreement is so approved, following which this action is dismissed without costs; and
13. Such further and other relief as counsel may request and this Honourable Court deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The pleadings herein disclose a cause of action against the defendants;
2. There is an identifiable settlement class which will be represented by Verna Antoinette Conlon on her own behalf and as Litigation Administrator for the Estate of Alban Aloysius Conlon, deceased;
3. The claims of the class members raise a common issue with respect to the within litigation;
4. A class proceeding is the preferable procedure for the resolution of the common issue;
5. The representative plaintiff, Verna Antoinette Conlon on her own behalf and as Litigation Administrator for the Estate of Alban Aloysius Conlon, deceased:
  - (a) Will fairly and adequately represent the interests of the class;
  - (b) Has a plan which sets out a workable method for the advancement of the proceeding on behalf of the class, including notification of the class members; and
  - (c) Does not have an interest in conflict with the interests of the other class members;
6. The proposed settlement is fair, reasonable and in the best interests of the class;
7. The *Class Proceedings Act, 1992*, S.O. 1002, c.6; and
8. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. The Affidavit of Andrea DeKay, sworn August 7, 2008;
2. The Affidavit of Dr. Sheila Laredo, sworn August 2, 2008;
3. The Affidavit of Verna Conlon, sworn July 24, 2008;

4. The Affidavit of Jennifer Bald, sworn August 11, 2008;
5. The Settlement Agreement, filed;
6. The pleadings and proceedings herein; and
7. Such further and other material as counsel may advise and the Honourable Court may permit.

Date: August 11, 2008

**Siskinds LLP**

Barristers & Solicitors  
680 Waterloo Street  
London, ON N6A 3V8

Charles M .Wright LSUC # 36599Q  
Sabrina Lombardi LSUC # 52116R  
Tel: (519) 672-2121  
Fax: (519) 672-6065

**Hotz Lawyers**

203-100 Upper Madison Ave.  
North York, ON M2N 6M4

Glyn Hotz LSUC #40878M  
Tel: (416) 590-7823  
Fax: (416) 785-7904

Lawyers for the Plaintiff

**TO: Fasken Martineau DuMoulin LLP**  
Barristers & Solicitors  
4200 Toronto Dominion Bank Tower  
66 Wellington Street West  
P.O. Box 20  
Toronto-Dominion Centre  
Toronto, ON M5K 1N6  
  
Paul Martin  
Tel: 416-366-8381  
Fax: 416-364-7813  
  
Lawyers for the Defendants