

**SUPERIOR COURT OF JUSTICE**

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**FAX COVER SHEET**

Date: DEC 8, 2010

TO:

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FROM: JUSTICE G. STRATHY

TOTAL PAGES (INCLUDING COVER PAGE): 4

MESSAGE:

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**CITATION:** *Singer v. Schering-Plough Canada Inc.*, 2010 ONSC 6776  
**COURT FILES:** CV-08-00359531-0000CP  
CV-08-00359523-0000CP  
**DATE:** 20101208

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN:

**BRIAN SINGER**

Plaintiff

- and -

**SCHERING-PLOUGH CANADA INC.**

Defendant

AND BETWEEN:

**BRIAN SINGER**

Plaintiff

- and -

**PLAYTEX LIMITED, SUN PHARMACEUTICAL CORP.,  
and PLAYTEX PRODUCTS INC.**

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**DATE HEARD:** By written submissions

**COUNSEL:** *Henry Juroviesky & Eli Karp*, for the plaintiff

*F. Paul Morrison & Glynnis P. Burt*, for the defendant Schering-Plough  
Canada Inc.

*Alan H. Mark & Randy C. Sutton*, for the defendants  
Playtex Limited et al.

### **ENDORSEMENT**

**G.R. Strathy J.**

[1] The plaintiff moves for an order approving a settlement between the parties to these actions and dismissing the actions without costs.

[2] On January 7, 2010, I dismissed the plaintiff's motions for certification of these actions under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6: *Singer v. Schering-Plough Canada Inc.*, [2010] O.J. No. 113. I subsequently awarded the defendants in each action costs in the amount of \$200,000: *Singer v. Schering-Plough Canada Inc.*, [2010] O.J. No. 1243.

[3] The plaintiff has appealed these orders to the Divisional Court and the appeals have been perfected.

[4] The parties have reached a settlement of these actions, subject to the approval of the court. The terms are:

(a) the plaintiff will abandon his appeals and the actions will be dismissed against the defendants, without costs; and

(b) the defendants waive any claim for costs.

[5] The plaintiff has filed an affidavit setting out his reasons for wishing to end the litigation. He points, primarily, to his absence of any significant financial stake in the litigation and a potential exposure to costs, notwithstanding an indemnification agreement given by his counsel. The plaintiff acknowledges that he has been informed by his lawyers that they have a conflict on this issue, in light of the indemnification agreement, and he has waived independent legal advice.

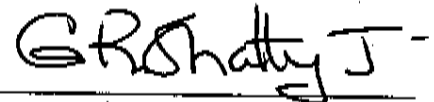
[6] The plaintiff's appeal has little chance of success and there is little likelihood of the action being certified. I found that the plaintiff failed on all five headings of s. 5(1) of the *C.P.A.*, any one of which would have been fatal to certification. There is no question that the appeal would be vigorously opposed by the defendants. I see no point in requiring the plaintiff to proceed with an appeal, and to risk another substantial adverse costs award, when the prospects of success are negligible.

[7] I would be more concerned about the abandonment of these actions, and of any potential conflict of plaintiff's counsel, had I concluded that there was a substantial class whose interest required protection or that the continuation of the proceedings would promote the goals of the *C.P.A.* As I said in my reasons dismissing the certification motion, there was no evidence that anyone other than the plaintiff had an interest in the actions or was interested in asserting a claim. The goal of behaviour modification is of little importance in light of a sophisticated regulatory regime that addresses the issues in this action.

[8] I will therefore approve the settlement and grant an order dismissing these actions without costs.

[9] Notice of this decision, as well as a copy of this endorsement and copies of the orders dismissing the actions without costs, shall be posted on the website of counsel for the plaintiff for a period of 90 days. Except to that extent, notice of the settlement approval is dispensed with.

[10] Counsel may submit revised orders, reflecting these reasons, for my signature.



G.R. Strathy J.

Released: December 8, 2010