

Court File No.
07cv-334922CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**COLIN MACKAY, STEVEN GROUND,
HAROLD GROUND, TIM REID and SABINE REID**

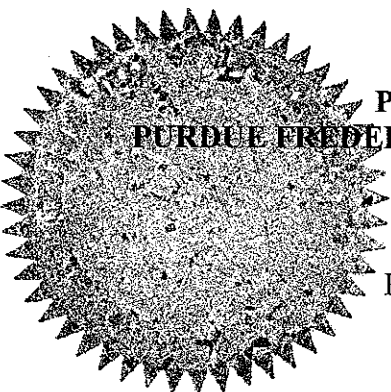
Plaintiffs

-and-

**PURDUE PHARMA, PURDUE PHARMA INC.,
PURDUE FREDERICK INC., THE PURDUE FREDERICK COMPANY, INC. and
PURDUE PHARMA LP**

Defendants

Proceeding under the *Class Proceedings Act, 1992*



STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO

PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: *June 8, 2007*

Issued by: 
Local Registrar
MISSINWA

Address of court office:

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Canada L1W 3W8

AND TO: Purdue Pharma Inc.
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AND TO: Purdue Frederick Inc.
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AND TO: The Purdue Frederick Company, Inc
One Stamford Forum
201 Tresser Boulevard
Stamford CT, USA
06901-3431

AND TO: Purdue Pharma LP
One Stamford Forum
201 Tresser Boulevard
Stamford CT, USA
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CLAIM

1. The Plaintiffs claim:
 - a) an order certifying this action as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the class of persons defined at paragraph 8;
 - b) general damages in the amount of \$100,000,000.00;
 - c) special damages in the amount of \$50,000,000.00;
 - d) punitive damages in the amount of \$25,000,000.00;
 - e) an accounting and an order requiring disgorgement of all revenue received by the Defendants from the sale of Oxycontin® if the class elects to proceed by way of waiver of tort;
 - e) prejudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - f) costs of this action on a substantial indemnity basis and GST thereon; and,
 - g) such further and other relief as this Honourable Court seems just.

I. THE PARTIES**(a) The Plaintiffs**

2. The Plaintiff, Colin MacKay is a resident of Barrie, Ontario. He was prescribed Oxycontin® by his physician in 1996 to treat his pain suffered as a result of an accident. He subsequently developed an addiction to Oxycontin®, which lasted for approximately seven years.

3. The Plaintiff, Steven Ground is a resident of Richmond Hill, Ontario. He was prescribed Oxycontin® by his physician as a result of an accident. He subsequently developed an addiction to Oxycontin®, which lasted for approximately five years.

4. The Plaintiff, Harold Ground is the father of Steven Ground. He resides in Richmond Hill, Ontario.

5. The Plaintiff, Tim Reid is a resident of Wallaceburg, Ontario. He was prescribed Oxycontin® by his physician for treatment of an injury in approximately 2001. He subsequently developed an addiction to Oxycontin®, which lasted for approximately 4 years.

6. The Plaintiff, Sabine Reid, is the wife of Tim Reid. She resides in Wallaceburg, Ontario.

(b) The Defendants

7. The Defendant, Purdue Pharma is a Canadian company incorporated pursuant to the laws of Ontario. It has a head office in Pickering, Ontario.

8. The Defendant, Purdue Pharma Inc. is a Canadian company incorporated pursuant to the laws of Ontario. It has offices in Toronto, Ontario.

9. The Defendant Purdue Frederick Inc is a Canadian company incorporated pursuant to the laws of Ontario. It has offices in Toronto, Ontario.

10. The Defendant Purdue Frederick Company, Inc. is a United States company with an office in Stamford, Connecticut.

11. The Defendant Purdue Pharma LP is a United States company incorporated pursuant to the laws of Delaware. It has an office in Stamford Connecticut.

12. The Defendants are pharmaceutical companies which manufacture Oxycontin®. Between the introduction of the drug and 2001, the Defendants earned over \$2.8 Billion in revenues from the sale of Oxycontin®. Oxycontin® sales accounted for 90 per cent of the Defendants' sales revenues.

(c) **The Class**

13. The Plaintiffs brings this class proceeding on their own behalf and on behalf of classes of persons as defined below:

- a) All persons in Canada, excluding Québec, who were prescribed and purchased and/or used Oxycontin® manufactured by the Defendants (“Class 1 Members”); and
- b) All persons who on account of a personal relationship to a Class 1 Member are entitled to assert a derivative claim for damages pursuant to section 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended, and comparable provincial and territorial legislation. (“Family Class Members”).

II. MATERIAL FACTS

Oxycontin®

14. Oxycodone is a narcotic which is frequently prescribed for the treatment of moderate to severe short-term and long-term pain. It is also prescribed for use in palliative care for the terminally ill.

15. Oxycontin® was approved by the U.S. Food and Drug Administration in 1995. It was approved by Health Canada in 1996 as a prescription opioid.

16. Oxycontin® is formulated to release oxycodone over a long period of time. If however, Oxycontin® is crushed or chewed, or is inhaled through the nose, injected or swallowed, the oxycodone is released quickly and is absorbed rapidly. This produces a heroin-like euphoria

17. Usage of Oxycontin® results in dependency on the drug. This dependence requires more frequent and higher doses and leads to addictions in patients.

18. Abrupt withdrawal of Oxycontin® may also pose problems for patients, causing withdrawal symptoms. Moreover, many patients require medical detoxification, including a weaning off Oxycontin®, or prescriptions of clonidine or methadone

19. The concerns about Oxycontin® have been well known to the Defendants and to government health regulators for many years. In 2003, the Newfoundland and Labrador government established the Oxycontin® Task Force to assess the extent of the abuse of Oxycontin® in that province.

20. In May 2007, Purdue Pharma LP and some of its executives agreed to pay over \$600 million in penalties in the United States as a result of misleading consumers and physicians about the addictive properties of Oxycontin®. Purdue Pharma LP's executives also pleaded guilty to criminal charges in the United States federal court. The Purdue Frederick Company, Inc. also pleaded guilty to "misbranding" in the marketing of Oxycontin®.

Plaintiffs' Circumstances

(a) Colin MacKay

21. Mr. MacKay was in a workplace related accident in 1996. In order to treat and manage the severe pain caused by the accident, his family physician prescribed Oxycontin®.

22. Mr. MacKay ingested Oxycontin® for a period of seven years. He became addicted to Oxycontin® as a result of his long usage of the drug

23. As a result of his addiction to Oxycontin®, Mr. MacKay's marriage broke down and he was denied access to his children. He was unable to work while he was addicted to Oxycontin®.

24. In recent years, Mr. MacKay has been through a medical detoxification programme. He has been using hydramorphine for pain relief.

(b) Steven Ground

25. Steven Ground suffered an aggravation of an old hockey injury to his shoulder during a work-related accident, as a result of which he was prescribed Oxycontin® for pain relief. He ingested Oxycontin® for approximately five years and developed an addiction to Oxycontin® as a result of the long usage of the drug.

26. During his period of addiction, when he attempted to discontinue using the drug, he suffered from powerful withdrawal symptoms, including sleeplessness, night-sweats and vomiting. He became depressed as a result of his addiction and eventually sought assistance with detoxification. He has since then been ingesting methadone.

(c) Harold Ground

27. Harold Ground is the father of Steven Ground. Throughout the period of his son's addiction to Oxycontin®, he provided support and guidance to Steven and helped his son deal with the detoxification programme.

(d) Tim Reid

28. Tim Reid was injured in a workplace related accident in 1983. As the result of the aggravation of this injury, he was prescribed Oxycontin® in 2001. He ingested Oxycontin® for approximately 4 years and developed an addiction to Oxycontin® as a result.

29. During his period of addiction, when he attempted to discontinue use of the drug, or even to moderate his dosages, he suffered from powerful withdrawal symptoms. He eventually determined on his own to seek assistance with detoxification. He has since then been ingesting methadone.

(e) Sabine Reid

30. Sabine Reid is the wife of Tim Reid. Throughout the period of her husband's addiction to Oxycontin®, she provided support and guidance to Tim and helped her husband deal with the detoxification programme.

III. CAUSES OF ACTION**(a) Negligence**

31. At all material times, the Defendants owed a duty of care to the Plaintiffs and other Class Members and breached the standard of care expected in the circumstances.

32. The Defendants knew or ought to have known that Oxycontin® had addictive properties and could cause damage to persons who ingested it.

33. The Defendants breached their duty to the Plaintiffs and the Class Members by failing to accurately inform them of the risks associated with ingesting Oxycontin®. The Plaintiffs state that their injuries and damages and the damages of other Class Members were caused by the negligence of the Defendants. Such negligence includes but is not limited to the following:

- a) failing to ensure that Oxycontin® was not dangerous to consumers and that it was fit for its intended purpose and was of merchantable quality;
- b) failing to provide accurate information to consumers regarding the risks of Oxycontin®;
- c) actively misleading consumers about the risks of Oxycontin®;
- d) failing to recall Oxycontin® immediately once the risks of addiction were known to them; and,
- e) further and other particulars of negligence within the knowledge of the Defendants.

34. The Plaintiffs plead that, by virtue of the acts described herein, the Defendants are liable to them in damages. Each of the Defendants is vicariously liable for the acts and omissions of the others for the following reasons:

- a) each was the agent of the other;
- b) each Defendant's business was operated so that it was inextricably interwoven with the business of the other;
- c) each Defendant entered into a common advertising and business plan with the other to manufacture, test, distribute and sell Oxycontin®; and,
- d) each Defendant operated pursuant to a common business plan to distribute and sell Oxycontin®.

(b) Strict Liability

35. The Defendants are strictly liable for some or all of the damages suffered by the Plaintiffs and other Class Members in that:

- a) the Defendants manufactured Oxycontin®;
- b) Oxycontin® is an opioid prescription drug that is considered to be inherently dangerous;
- c) The Plaintiffs and other Class Members had no opportunity to inspect or test Oxycontin® to ensure its safety;
- d) Oxycontin® was used by the Plaintiffs, Colin MacKay and Steven Ground, Tim Reid and other Class 1 Members.

(c) Breach of Warranty

36. The Defendants warranted to the Plaintiffs and the Class that Oxycontin® was of merchantable quality and fit for use. The Defendants breached the warranty to the Plaintiffs and the Class by manufacturing, testing, marketing, distributing and selling Oxycontin® which was inherently dangerous to users and which the Defendants knew or ought to have known would lead to dependency and addiction.

(d) Waiver of Tort

37. As a result of the Defendants' conduct described herein, the Plaintiffs reserve the right to elect at the trial of the common issues to waive the tort of negligence and to have damages assessed in an amount equal to the gross revenues earned by the Defendants, or the net income received by the Defendants, or a percent of the proceeds from the sale of Oxycontin® as a result of the Defendants' conduct

38. The Plaintiffs claim that such an election is appropriate for the following reasons:

- a) Revenue was acquired in a manner in which the Defendants cannot in good conscience retain;
- b) The integrity of the marketplace would be undermined if an accounting was not required;
- c) Absent the Defendants' tortious conduct Oxycontin® could not have been marketed nor would they have received any revenue in Canada; and
- d) The Defendants engaged in wrongful conduct by putting into the marketplace a product which causes or has the potential to cause serious risks of injury.

(e) Breach of Sections 36 and 52 of the *Competition Act*

39. As a result of their conduct in actively marketing Oxycontin® as less addictive, less subject to abuse, and less likely to cause withdrawal than other pain medications, the Defendants are liable under sections 36 and 52 of the *Competition Act* for knowingly or recklessly making a representation to the public that is false or misleading in a material respect. The Defendants at all times knew, or were reckless as to their knowledge that Oxycontin® was and is a highly addictive drug.

40. The Plaintiffs plead and relies upon the facts and allegations referred to above.

41. By virtue of making representations to the public as to the effectiveness of Oxycontin®, the Defendants breached section 52 of the *Competition Act*, R.S.C. 1985, c. C-34, in that the representations:

- a) were made to the public;
- b) were made for the purpose of promoting the business interests of the Defendants;
- c) were false and misleading in a material respect; and,
- d) stated a level of safety of ingesting Oxycontin® which was not accurate.

42. The Plaintiff plead that the non-disclosure of the serious effects of ingesting Oxycontin® constituted material and misleading representations for the purposes of section 52 of the *Competition Act*.

43. The Plaintiffs plead that they and other Class Members relied upon the Defendants' representations. Alternatively, the Plaintiffs rely upon section 52(1.1) of the *Competition Act* and plead that it is unnecessary for any Class Member to show actual reliance on the misleading statements of the Defendants for the purposes of establishing a breach of the *Competition Act*.

44. As a result of the breach of section 52 of the *Competition Act*, the Plaintiffs and Class Members have suffered damages and are entitled to a civil remedy pursuant to section 36(1) of the *Competition Act*.

(f) Damages

45. As a result of the negligence of the Defendants, the Plaintiffs, Colin MacKay and Steven Ground, Tim Reid and other Class1 Members have suffered the following damages:

- a) Personal injury, including drug dependency and addiction;

- b) Special damages for out of pocket expenses including the costs associated with detoxification programmes, counselling and other methods to wean themselves off Oxycontin®;
- c) Cost of future care and services to treat their drug dependency and addiction;
- d) Loss of income; and,
- e) Such further and other damages the particulars of which will be provided prior to trial.

46. The Plaintiffs, Harold Ground and Sabine Reid, bring this action on behalf of all Family Class Members pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, as amended, and other comparable provincial and territorial legislation to recover pecuniary and non-pecuniary losses resulting from the illnesses and/or injuries of Class 1 Members. The damages claimed by Family Class Members include:

- a) actual expenses reasonably incurred for the benefit of a Class 1 Member;
- b) a reasonable allowance for travel expenses actually incurred in visiting the Class 1 Member during his or her treatment or recovery;
- c) where, as a result of the injury, nursing, housekeeping or other services have been provided for a Class 1 Member, a reasonable allowance for loss of income or the value of the services; and
- d) an amount to compensate for the loss of guidance, care and companionship that the Family Class Member might reasonably have expected to receive from a related Class 1 Member if the injury or death had not occurred.

47. The Plaintiffs and the other Class Members are also entitled to recover, as damages or costs in accordance with the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of administering the plan to distribute the recovery of this action.

48. The Plaintiffs plead that the Defendants have acted in such a high-handed, wanton and reckless manner, without regard to public safety, as to warrant a claim for punitive damages. In particular, the Defendants continued to maintain Oxycontin® in the stream

of Canadian commerce and continued to market the product as safe and effective when it knew or should have known of the risks associated with its use.

IV. REAL AND SUBSTANTIAL CONNECTION

49. There is a real and substantial connection between the subject matter of this action and the Province of Ontario for the following reasons:

- a) Purdue Pharma, Purdue Pharma Inc., and Purdue Frederick Inc. carry on business in Ontario;
- b) Purdue Pharma, Purdue Pharma Inc., and Purdue Frederick Inc. have a registered place of business in Ontario;
- c) The Plaintiffs, Colin Mackay, Steven Ground and Tim Reid were prescribed Oxycontin® and ingested it in Ontario;
- d) The Plaintiffs reside in Ontario; and,
- e) The Plaintiffs' damages, and those of other Class Members resident in Ontario, were sustained in Ontario.

V. SERVICE *EX JURIS*, STATUTES AND PLACE OF TRIAL

50. This statement of claim may be served without court order outside Ontario because the claim is:

- a) in respect of a tort committed in Ontario (rule 17.02(g));
- b) in respect of damages sustained in Ontario arising from a tort or breach of contract however committed (rule 17.02(h));
- c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and,
- d) against a person carrying on business in Ontario (rule 17.02(p)).

51. The Plaintiffs rely upon the following statutes:

- a) *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

- b) *Negligence Act*, R.S.O. 1990, c. N.1;
- c) *Sale of Goods Act*, R.S.O. 1990, c. S.1;
- d) *Consumer Protection Act 2002*, S.O. 2002, c. 30, Sched. A.;
- e) *Competition Act*, R.S. 1985 c. C 34; and
- f) *Family Law Act*, R.S.O. 1990, c. F.3

52. The Plaintiffs propose that this action be tried in Toronto.

Date: June 8, 2007

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COLIN MACKAY, ET AL

v.

PURDUE PHARMA, ET AL

Plaintiffs

Defendants

Court File No.:

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

**PROCEEDINGS COMMENCED AT
TORONTO**

STATEMENT OF CLAIM

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