

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**SHEILA WILSON**

**Plaintiff**

- and -

**SERVIER CANADA INC., LES LABORATOIRES SERVIER, SERVIER AMERIQUE,  
INSTITUT DE RECHERCHES INTERNATIONALES SERVIER ("I.R.I.S"), SCIENCE  
UNION ET CIE, ORIL S.A., SERVIER S.A.S., ARTS ET TECHNIQUES DU PROGRES,  
BIOLOGIE SERVIER, INSTITUT DE DEVELOPEMENT ET DE RECHERCHE SERVIER,  
ORIL INDUSTRIE, BIO RECHERCHE SERVIER, INSTITUTO DI RICERCA, IDUX,  
BIOPHARMA ARTEM, SCIENCE UNION S.A.R.L., LABORATOIRES SERVIER  
INDUSTRIE, I.R.I.S. ET CIE DEVELOPEMENT, INFORMATION SERVIER,  
SERVIER MONDE, SERVIER INTERNATIONAL,  
I.R.I.S. SERVICES S.A.R.L., ADIR, SERVIER R&D BENELUX,  
DR. JACQUES SERVIER and BIOFARMA S.A.**

**Défendants**

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF SHEILA WILSON  
(Sworn September 15, 2004)**

**I, SHEILA WILSON, of the City of Toronto, Province of Ontario, MAKE OATH  
AND SAY AS FOLLOWS:**

1. I am the representative Plaintiff in this national class action and, as such, I have knowledge of the matters to which I hereinafter depose. Where I have been informed of

such facts, I have stated the source of these facts and I hereby state that I believe such facts to be true.

2. In or about November 1998, following injuries I believe I sustained after having consumed the diet drug Ponderal, I retained Joel P. Rochon to commence a class action on behalf of Canadians who had ingested the diet drugs Ponderal, Ponderal Pacaps and Redux (collectively, "the Products"). Over the course of the next several days I provided my solicitors with information relevant to my claim. On November 17, 1998, the Statement of Claim was issued.

**Background: Ponderal Treatment and Diagnosis of PPH**

3. In August 1995, I attended at the offices of my family physician, Dr. Taam. After a discussion about weight issues that I had been struggling with, Dr. Taam suggested that I try a course of Ponderal, an appetite suppressant drug.
4. During the course of my Ponderal treatments I took the medication regularly, with the exception of one month in 1996 when I went off the medication to see if I was able to lose weight without drug therapy, without success. Although I experienced some weight loss during my course of treatment with Ponderal, my doctor and I essentially came to the conclusion that the medication, despite having taken it for over a year, had not been particularly effective in controlling my excessive weight. My last prescription was in August 1996.
5. In late 1996, I started to experience a shortness of breath, which became progressively worse by the summer of 1997. My condition progressively deteriorated and required

numerous attendances on physicians. In February 1998 I was diagnosed with pulmonary hypertension by my cardiologist Dr. Goode. In March 1998 I was diagnosed by Dr. John Granton, a specialist in pulmonary disorders, as having primary pulmonary hypertension (“PPH”).

6. I have been advised by Dr. Granton, who remains my treating physician, and do verily believe, that PPH is a progressive and irreversible disease for which there is no cure. It is a profoundly disabling condition which has restricted my basic activities of daily living. I have been advised that historically, the mean survival from onset of symptoms until death for PPH patients under treatment has been between two to five years. I understand that new treatments, as well as potential new treatments still under study, have raised hopes of improved morbidity and mortality rates, although individuals continue to struggle with and die from PPH despite these advances.
7. Since being diagnosed with PPH, I have undergone numerous tests, procedures and treatments, some of which have been quite invasive in nature. These include a heart catheterization, drug response tests, echocardiograms, transoesophageal examinations, chest X-rays and physical examinations. In terms of medication, I have taken many medications in the past for this condition including persantin, as well as prostacycline therapy (known as Flolan) every three hours by inhalation. Although I was offered an opportunity to go on the heart/lung transplant list in 1998, I declined as the chances of me surviving this operation were slim. Current therapies include the use of medications such as Bosentan and sildenafil, coumadin, Digoxin, L-Arginine, Novo-hydrazone. I am also presently required to take oxygen at night and am faced with the prospect of requiring oxygen 24 hours per day.

8. Beyond the physical symptoms, I have had to face the emotional consequences of this disease and the prospect of total dependence, which has caused me a considerable degree of anxiety and has prevented me from enjoying a normal life. My immediate family members have also been profoundly affected by witnessing my health decline and knowing the likely outcome of the disease. I am fortunate at this time to have the strong support of my children and husband, upon whom I have become dependant for care in daily living. I also rely on the assistance of a walker in order to ambulate.

### **Terms of the Settlement**

9. On January 27, 2003, the parties attended at court-ordered mediation, which, I am advised by Joel Rochon, and believe, continued until January 30, 2003. I was in attendance on the first day of the mediation, along with my husband. Thereafter, I was kept informed by Class Counsel as to the status of negotiations. As a result of the mediation, the parties arrived at an Agreement in Principle to resolve this action, which was reduced to writing and executed on February 21, 2003.
10. When a consensus was reached amongst counsel, I was asked for and gave my approval to the broad terms of the agreement in principle. I was further advised of the \$25,000,000 settlement fund and up to \$15,000,000 in the form of additional settlement funds to be made available to Class Members and secured by a letter of credit. While the Agreement in Principle provided the broad parameters for settlement, I was advised by Joel Rochon and believed that the more detailed terms relating to, among other things, the claims process and criteria for qualifying for compensation, remained to be negotiated.

11. During the settlement negotiation process, I and my husband spoke and met with Joel Rochon, Vincent Genova and Annelis Thorsen and the other associates of *Rochon Genova* on a number of occasions and were apprised of the material developments in the litigation and thereafter during the settlement negotiations which have continued since February 2003. Throughout the negotiation process, I provided my general approval to the material developments respecting settlement negotiations.
12. In July of this year my husband and I met with Joel Rochon and Sakie Tambakos and were advised that the parties were still negotiating the final terms of some of the exhibits, including the medical conditions list, medical diagnosis form, as well as the compensation grid. Following further ongoing consultation, I was provided with copies of the settlement documents for my review and discussed same with Mr. Rochon and Mr. Tambakos at that time.
13. On September 1, 2004, I was advised by Joel Rochon that final agreement was very close to being reached on all settlement documents. Since then I have reviewed the revised settlement agreement with exhibits and based on my review of the settlement documents, I am satisfied that the settlement is fair and in the best interests of the Class.
14. I understand that the settlement will provide compensation to Class Members who have been diagnosed with PPH and VHD and meet the diagnostic criteria set out in the settlement documents. I am advised by Joel Rochon that these criteria were agreed upon by all Parties following extensive consultation with medical experts, including my own respirologist, Dr. Granton.

15. I also understand that the settlement will provide total initial payment to the provincial health insurers (with the exception of Quebec) of \$1,000,000, with the possibility of further amounts being distributed in the event that there is a residue from the \$25,000,000 settlement fund. I am advised by Mr. Rochon, and believe, that the consent of all relevant provincial health insurers has been secured and instructions provided to accept these settlement terms.
16. I understand that individual claims (including audited FDA Positive claims), will be reviewed by a Claims Adjudicator who will be a Qualified Physician as defined in the Settlement Agreement and who will make a determination in accordance with the medical conditions list as to whether a Class Member is entitled to a matrix-level benefit. FDA Positive claims that are not selected for audit will be reviewed by the Settlement Administrator. I also understand that in the event that a Class Member disagrees with the disposition of a Claims Adjudicator, in certain circumstances, the Class Member may challenge the determination to Justice Winkler whose decision on the matter will be final and binding.
17. Based on my many discussions with Joel Rochon and my involvement and experiences in this litigation, I became personally aware of the many risks involved in proceeding with a common issues trial of this magnitude. I understand that the alternative to resolving the class action is the prospect of continued litigation with an uncertain outcome.
18. As part of the settlement, I understand that the Defendants will also be responsible for the cost of administration of the settlement and for paying for the notice programmes.

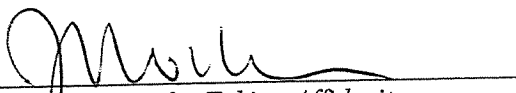
19. I am also aware of the general advantages afforded by settlement. In this context, I have seriously reflected on the settlement and believe that all things considered, is one that I believe is generally deserving of Court Approval.

20. With respect to the levels of compensation provided for in the Settlement Agreement, these are located in the Matrix found at Exhibit "F" to the agreement. I have reviewed this Matrix, together with the supplementary benefits (referred to as the "Bump-Up" language) provided for the most seriously injured eligible claimants and believe these benefits to be in the best interests of the Class Members.

21. Overall, I believe that the settlement provides valuable benefits to Class Members, who after many years of protracted litigation and, in many cases, after years of struggling with their medical conditions, finally stand to qualify for compensation.

22. I make this affidavit in support of a motion to approve the Settlement Agreement and for no other purpose.

SWORN BEFORE ME at the City )  
of Toronto, in the Province of Ontario, )  
this 17th day of September, 2004. )

  
A Commissioner for Taking Affidavits

  
Sheila Wilson