

This is Exhibit C referred to in the affidavit of Annelis K. Thorsen, sworn before me, this 23rd day of September, 2004.


A Commissioner for Taking Affidavits, etc.

SUMMARY OF PRE-TRIAL COURT PROCEEDINGS

(1) Plaintiff's Motion for Undertakings/Refusals #1

On April 20, 2000, Plaintiff's counsel cross-examined a representative of the Defendant, Biofarma S.A. on an affidavit sworn in response to the certification motion. Several questions were refused and numerous undertakings given had not been answered. A motion was required to obtain outstanding undertakings and for answers to questions improperly refused. On May 11, 2000, the Plaintiff was partially successful on the motion.

(2) Plaintiff's Motion for Certification / Defendants' Motion to Stay Prior to Certification

At the commencement of the certification motion, heard over six days between May and July 2000, Biofarma moved pursuant to section 106 of the *Courts of Justice Act* and Rule 17.06 of the *Rules of Civil Procedure* to have the action stayed. On September 13, 2000, Biofarma's stay motion was dismissed and the Plaintiff's motion for certification was granted.

(3) Defendants' Motion to Stay Certification Order Pending Appeal

Following certification, the Defendants sought leave to appeal the certification order and moved for a stay of the order, in part due to the requirement for publication of the notice of certification, which was to be paid for by the Defendants. On October 5, 2000 the

stay was granted on the basis that the application for leave to appeal was to be heard within a short period of time.

(4) Defendants' Motion for Leave to Appeal Certification Order (Divisional Court)

In seeking leave to appeal the certification order, the Defendants alleged that errors had been made with respect to several aspects of Justice Cumming's certification decision. On November 21, 2000, Madam Justice Lang of the Divisional Court dismissed the Defendants' leave application.

(5) Defendants' Motion for Leave to Appeal Certification Order (Supreme Court of Canada)

Following the decision of Justice Lang, the Defendants sought leave to appeal the certification order directly to the Supreme Court of Canada pursuant to a seldom used "faint hope" clause under the *Supreme Court of Canada Act*. The Supreme Court of Canada ultimately dismissed the application for leave to appeal without reasons with costs on September 6, 2001.

(6) Plaintiff's Motion to Add British Columbia Subclass

To formalize the arrangement whereby the British Columbia law firm of Klein Lyons was representing the class of persons resident in British Columbia, the Plaintiff moved to add a British Columbia subclass. On May 1, 2001, the motion was granted.

(7) *Defendants' Motion to Consolidate With or Intervene in Knowles Action*

After a consent certification and preliminary approval had been given to a settlement on May 14, 2001 in the *Knowles v. Wyeth Ayerst and American Home Products* action, a similar class proceeding to *Wilson* brought against different manufacturers who marketed and sold fenfluramine under the trade name Pondimin, the Defendants brought a motion to have *Wilson* consolidated with *Knowles*. Alternatively, the Defendants sought leave to intervene in *Knowles* where the final settlement approval was scheduled for July 3, 2001. On July 11, 2001, the motion was dismissed.

(8) *Plaintiff's Motion to Fix a Trial Date*

In light of the numerous procedural delays we were encountering, the Plaintiff moved to fix a trial date, with a view to pushing this matter forward. On July 20, 2001, the Plaintiff's motion was granted.

(9) *Defendants' Motion for Leave to Appeal Decision Denying Consolidation / Intervention in Knowles*

The Defendants sought leave to appeal the decision on the consolidation/ intervention in the *Knowles* proceeding, and on August 17, 2001, Justice Winkler dismissed the motion for leave.

(10) Plaintiff's Motion to Amend the Statement of Claim

Following a review of the documents initially produced by Servier Canada and Biofarma, it became apparent that a number of French corporations affiliated with Biofarma were intimately involved in the manufacturer, development and marketing of the Products. As a result, the Plaintiff sought to amend the claim to add five new French corporations as Defendants. On September 12, 2001, the motion was granted.

(11) Defendants' Motion for Consular Authority

As a result of restrictions imposed by international law, the Defendants moved for an order directing a consular authority of Canada in France to obtain and remove documents from France for the purpose of this proceeding. On September 12, 2001, the motion was granted. Subsequent motions for similar relief were brought leading up to the time of trial.

(12) Plaintiff's Motion for Further Case Management

Because of ongoing delays occasioned by the stay and leave applications, and because of delays in obtaining meaningful discovery from the Defendants, the Plaintiff brought a motion seeking further case management. On September 12, 2002, the motion was granted.

(13) Plaintiff's Motion to Validate Service of the Statement of Claim

In November 2001, the Plaintiff moved to have service of Statement of Claim on Biofarma validated. The motion was allowed on November 21, 2001.

(14) Plaintiff's Motion to Allow Attendance of Thomas Smith at Examinations for Discovery

Through our relationship with the U.S. firm of *Lieff Cabraser Heimann & Bernstein*, we came to know Mr. Thomas Smith, a U.S. attorney who was leading the deposition process in the U.S. diet drugs case. Because the U.S. proceeding was at a more advanced stage, the Plaintiff brought a motion to allow his attendance at examinations of the Defendants' representatives for the purpose of providing assistance to Class Counsel. Subject to some restrictions, the Plaintiff's motion was granted on November 22, 2001.

(15) Defendants' Motion to Stay Order re Thomas Smith

The Defendants subsequently moved to stay the November 22, 2001 ruling pending the disposition of their application for leave to appeal. On November 29, 2001, Justice MacKenzie of the Divisional Court dismissed the stay application.

(16) Defendants' Motion to Extend Time for Issuing Third Party Claim

Following the dismissal of the Defence motion to consolidate / intervene in the *Knowles* proceeding, the denied stay application and pending the hearing of the Defendants' appeal in the Court of Appeal on this matter, the Defendants moved for an order

extending the time to issue a third party claim against Wyeth Ayerst and American Home Products for contribution and indemnity for potential damages arising out of the same transactions or occurrences involved in the within action. The Defendants further claimed that the third party claim should be heard together with the main action. On November 30, 2001, the motion was dismissed.

(17) Plaintiff's Motion to Validate Service of the Third Amended Statement of Claim

Following service of the Third Amended Statement of Claim on the newly added French corporate defendants, we moved to have that service validated. The motion was allowed on November 30, 2001.

(18) Defendants' Appeal of Decision to Deny Intervention in Knowles

The Defendants' appeal of the decision on consolidation / intervention in the *Knowles* proceeding was abandoned the day before the appeal was to be heard, and by Endorsement of the Court of Appeal dated December 12, 2001, the appeal was formally dismissed as abandoned.

(19) Defendants' Motion to Set Aside, Vary or Re-Open the Order re Thomas Smith

The Defendants brought a motion seeking to set aside, vary or re-open the Order made permitting Thomas Smith to attend at the examinations for discovery of representatives of the Defendants. This motion was dismissed on December 14, 2001.

(20) Defendants' Motion for Leave to Appeal Order re Thomas Smith

On January 11, 2002, Justice Then of the Divisional Court heard the Defendants' motion for leave to appeal the decision regarding Thomas Smith's attendance at discoveries and ultimately dismissed the application, adopting the approach which had been taken previously by Justice MacKenzie on the stay application.

(21) Defendants' and PMC Motions re MDL Productions & PTO 27

Production of documents in the related Multi-District Litigation *In Re: Diet Drugs* was subject to a Pre-Trial Confidentiality Order No. 27 ("PTO 27"). The parties agreed that discovery material designated as confidential pursuant to PTO 27 would be used only in the MDL. However, PTO 27 provided that a producing party may consent in writing to disclosure beyond the confines of the protective order. As well, the U.S. District Court, after notice to affected parties, could allow expanded disclosure. In December 2002, Servier brought a motion before the U.S. District Court seeking to curtail production of MDL documents in *Wilson* and on December 12, 2001, Special Master Miller of the U.S. District Court made a preliminary oral ruling that, among other things, Canadian parties in *Wilson* were not entitled to receive copies of documents filed in the MDL.

The Plaintiffs Management Committee ("PMC") in consultation with the Plaintiff in *Wilson* subsequently brought a motion in the District Court that PTO 27 be clarified *nunc pro tunc* to permit the use of confidential documents in Canada. By Order dated February 6, 2002, Judge Bartle denied the PMC's motion.

(22) Newly Added Defendants' Motion for Stay / Dismissal of Action on Jurisdictional Grounds

The newly added Defendants (added by Order of September 12, 2001) moved for an order staying or dismissing the action as against them on the basis that the Ontario Superior Court lacked jurisdiction. On March 18, 2002, this motion was dismissed.

(23) Plaintiff's Motion for Undertakings / Refusals #2

Following the partial examination for discovery of the representative of Servier Canada, we moved for an Order requiring that undertakings given be answered and that refusals improperly given be answered. On March 18, 2002, the Plaintiff was found to be substantially successful on the motion.

(24) Plaintiff's Motion for Undertakings / Refusals #3

After the examination for discovery of the representative of the Defendant Biofarma, we were required again to bring a motion to obtain answers to undertakings given and answers to questions improperly refused, one of which requested production of an organization chart. On April 23, 2002, the Plaintiff's motion was substantially granted.

(25) Defendants' Motion for Consular Authority

Further to the addition of the five new foreign Defendants, a motion was brought for an Order for a consular authority of Canada to obtain and remove documents from France for the purpose of this proceeding. The motion was granted on April 23, 2002.

(26) Plaintiff's Motion for Discovery of Non-Party Witnesses

To clarify the voluminous information obtained from Health Canada through an access to information request, we sought to examine as non-party witnesses, two representatives from that agency. The motion was granted on May 3, 2002.

(27) Defendants' Motion for Leave to Appeal Decision re Refusals

Further to the Order requiring answers to undertakings and improperly refused questions dated April 23, 2002, the Defendants sought leave to appeal that decision. On May 23, 2002, Justice Epstein of the Divisional Court dismissed the motion.

(28) Defendants' Motion Challenging the Constitutionality of the Court's Jurisdiction to Entertain a National Class Action Against the Newly Added Foreign Defendants

The five newly added foreign Defendants moved under Rule 21 to challenge the constitutional basis of the court's jurisdiction to entertain a national class action against them. This motion was heard on April 2 and 3, 2002 and on May 24, 2002, was dismissed.

(29) Plaintiff's Motion to Amend Certification Order

Further to the addition of the five new foreign Defendants, The Plaintiff moved to amend the certification Order to reflect the addition of these new parties. The motion was granted on May 29, 2002.

(30) Plaintiff's Motions for Further and Better Affidavit of Documents and for Declaration that Biofarma was in Contempt of Court

In light of the difficulty in obtaining answers to undertakings given on examinations for discovery, and in receiving full production of relevant documents, the Plaintiff brought a motion for a further and better affidavit of documents and for a declaration that Biofarma was in contempt of court. This motion was heard on July 3, 2002. By Order dated July 3, 2002, the Plaintiff was successful in obtaining production of various documents over which privilege had been improperly claimed; however, the decision with respect to the allegation of contempt was reserved.

(31) Defendants' Motion for Consular Authority

Further to undertakings given on examinations for discovery, a motion was brought by the Defendants for an Order for a consular authority of Canada to obtain and remove documents from France for the purpose of this proceeding. The motion was granted on July 10, 2002.

(32) Plaintiff's Motion for Undertakings / Refusals #4

Further to a series of examinations for discovery, the Plaintiff brought another motion to compel answers to undertakings given and answers improperly refused. This motion was heard on July 12, 2002 and the Order requiring answers was released September 9, 2002.

(33) Plaintiff's Motion for Production of MDL Documents

On July 3, 2002 the Plaintiff brought a motion seeking production of documents previously produced by the Defendants in the context of the U.S. Multi-District Litigation *Re: Diet Pills* in CD ROM format and in conjunction with the *Summation* legal data processing system. Our motion was granted, as reflected in the Order signed August 2, 2002.

(34) Plaintiff's Motion for Production of Pharmacovigilance Database

On August 1, 2002, the Plaintiff brought a motion, seeking production of the pharmacovigilance database from one of the Defendants, and seeking information as to the amount remaining available under the Defendants' insurance policies. By Order signed September 3, 2002, the Plaintiff's motion was granted.

(35) Plaintiff's Motion for Discovery of Non-Party Witness

In order to obtain further clarification from Health Canada, we sought to examine an additional representative from that agency as a non-party witness. The motion was granted on September 3, 2002.

(36) Plaintiff's Motion for Undertakings / Refusals #5

As a result of further unanswered undertakings and further questions improperly refused, another motion was brought to compel answers to the questions. By Order dated September 3, 2002, various Defendants were ordered to provide answers on or before September 30, 2002.

(37) Plaintiff's Motion to Direct Defendant LLS to Consent to Release of MDL Database

In the course of teleconferences held on August 9, 16 and 30, 2002, we sought a direction from the Court requiring that the Defendant, LLS, consent to the release of the database or electronic coding within a database created by the Plaintiffs Management Committee in the Multi-District Litigation *Re: Diet Drugs*. By Order dated September 3, 2002, the direction was given and the Defendants were also ordered to provide hard copies of documents identified by the Plaintiffs Management Committee as being important LLS documents.

(38) Defendants' Appeal of the Decision re Constitutionality of National Class Action

The Defendants appealed the decision relating to the issue of the constitutionality of a national class to the Court of Appeal. The Plaintiff in turn brought a motion to quash the appeal, and on October 2, 2002 in oral reasons, the appeal was quashed.

(39) Plaintiff's Motion to Further Amend the Statement of Claim

Following a review of the voluminous productions and as a result of information gleaned on oral discoveries, the Plaintiff moved to further amend the claim to add nineteen additional corporate defendants, as well as Dr. Jacques Servier as a personal defendant. On September 11, 2002, the amendment was allowed.

(40) Plaintiff's Motions for Undertakings / Refusals #6 & #7

As a result of numerous unanswered undertakings and based on questions improperly refused on examinations for discovery, a further motion to compel such answers was required. By Orders dated September 24 and 27, 2002, various questions were ordered answered.

(41) Motions Respecting Further Productions from LLS and for Contempt of LLS

Following the Order dated September 3, 2002, directing LLS to consent to the release of the database or electronic coding within a database created by the PMC in the MDL, the Plaintiff brought a motion for the production of further documents of LLS and two

deposition transcripts contained in the productions by defendants made in the MDL. In addition, the Plaintiff moved to withdraw the affidavit of Thomas Smith made in support of the above motion and also for contempt in respect of LLS for failure to comply with the Court's Order of September 3, 2002. These issues were the subject of case conferences on September 16 and 20, 2002 and resulted in formal motions presented to the Court on September 23, 2002.

In the Court's Endorsement dated September 27, 2002, the Plaintiff's motion for production was dismissed on the basis that the documents sought were produced by defendants other than LLS in the MDL and that LLS did not have the power to consent to the release of documents produce in the MDL and subject to PTO 27 by parties other than itself. The Plaintiff was, however, successful in obtaining copies of the two deposition transcripts and in being permitted to withdraw the affidavit of Thomas Smith. The contempt motion was adjourned to a date to follow the disposition of the appeal process in respect of the Order dated September 3, 2002.

(42) Defendant's Motions for Stay of Order re LLS Productions

On September 23, 2002, the Defendants brought a motion for a stay of the Order respecting LLS productions pending the hearing of a motion for leave to appeal that Order. The Defendants also moved for answers to questions allegedly improperly refused on the cross-examinations of Arnold Levin and Lindsay Lorimer, affiants in support of the Plaintiff's motion for further LLS productions. In the Court's Endorsement dated September 27, 2002, the Defendants' motion for a stay was granted.

Given the disposition of the Plaintiff's motion for further productions, the refusals motion was found to be moot and was not addressed. However, Justice Cumming observed as an aside that there was not any real merit to the Defendants' contention in respect of the refusals and that they were in the main justified.

(43) Plaintiff's Motion to Validate Service of the Amended Claim

After successfully amending the claim, the Plaintiff brought a motion to validate service of the Fresh As Amended Statement of Claim on the newly named Defendants. By Order dated October 17, 2002, the motion was granted.

(44) Plaintiff's and Defendants' Motions to Strike Expert Reports

In December 2002, following the exchange of expert reports, the Defendants brought a motion to compel production of documents and other information relied upon by the plaintiff's experts, to strike a report in its entirety and to strike out portions of expert reports. The Plaintiff, in turn, brought a cross-motion to compel production of underlying documents and information relied upon by the defence experts and sought to strike limited portions of certain defence expert reports. On January 14, 2003, both motions to compel production of the documents were allowed and both applications to strike out portions of the expert reports were dismissed.

(45) Defendants' Motion to Stay / Dismiss Action Against Newly Added Defendants on Jurisdictional Grounds

The newly added Defendants brought a motion for an order staying or dismissing the action as against them on the basis that the court did not have jurisdiction. On January 14, 2003 the motion was dismissed.

(46) Defendants' Motion to Strike Claim Against Dr. Servier

In January 2003, the Defendant, Dr. Servier, brought a motion for an order striking out the Fresh as Amended Statement of Claim on various grounds, including that the claim did not disclose a reasonable cause of action against him personally. By Reasons for Decision dated January 24, 2003, Justice Cumming dismissed the motion.

(47) Defendants' Motion to Prevent Further Discovery of Dr. Servier

The Defendants next brought a motion for an order preventing any further examination for discovery of Dr. Servier. Following the addition of Dr. Servier as a Defendant, the plaintiff sought to examine him further as a party. By Endorsement dated January 24, 2003, Dr. Server's motion was dismissed.