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Recent Québec Superior Court Decision Will Lead to Greater Jurisdictional Consistency for National Class Actions

Authors: Nick Rodrigo and Mouna Aber

In a judgment handed down on September 23, 2016, in *Conseil pour la protection des malades et Simon Busque v Biomet Canada inc.*, 2016 QCCS 4574,[1] the Québec Superior Court ordered a stay of proceedings in an application for authorization to institute a class action filed by the Conseil pour la protection des malades, on grounds of *lis pendens* with a concurrent Canada-wide class action to the same effect and between the same parties before the Ontario Superior Court of Justice.

This is the first time a Québec court has exercised, without the parties' consent, the discretion conferred upon it under article 3137 of the *Civil Code of Québec* (CCQ) in order to stay an application for authorization to institute a class action and avoid the duplication in Québec of a national class action pending before a court of another province.

Article 3137 of the CCQ allows a Québec court to stay its ruling on an action brought before it, over which it otherwise has jurisdiction, if another action between the same parties, based on the same facts and having the same subject is pending before an authority outside Québec.

On October 4, 2013, a national class action was brought in Ontario against the Biomet Group on behalf of individuals who were implanted with a Biomet hip replacement device in Canada. The proceeding was certified by the Ontario Court of Justice on December 18, 2015. On June 19, 2015, the Conseil pour la protection des malades filed an application for authorization to bring a class action before the Québec Superior Court covering a group of individuals included in the class described in the national class action and based on similar allegations (Application for Authorization).

After ruling that the conditions required by article 3137 were met, the Québec Superior Court held that the rights and interests of Québec residents will be better served by staying the Application for Authorization and pursuing the national class action in Ontario, which was initiated close to three years ago and is moving ahead quickly. According to the court, staying the Application for Authorization will save time, energy and financial resources and avoid the possibility of conflicting rulings.

[1] Davies acted as counsel for Biomet Canada Inc., Biomet Inc., Biomet Orthopedics, LLC, Biomet Manufacturing, LLC, and Biomet US Reconstruction, LLC.

Key Contacts: Kent E. Thomson, Derek D. Ricci and Nick Rodrigo

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