

NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**TERESA GOVE**

**PLAINTIFF**

**AND:**

**PFIZER CANADA INC. and PFIZER INC.**

**DEFENDANTS**

*Brought Under the Class Proceedings Act*

**STATEMENT OF CLAIM**

1. The Plaintiff is a sales manager and resides in the city of Burnaby, in the Province of British Columbia.
2. The Defendant, Pfizer Canada Inc., is a federal corporation with its registered head office at 17300 Trans Canada Highway, in Kirkland, Quebec. This Defendant is registered extra provincially pursuant to the *Business Corporations Act* in British Columbia under number A0060723 and has its mailing and delivery address in this province at 2700 – 700 West Georgia Street, Vancouver, British Columbia. At all material times, Pfizer Canada Inc. was and is currently involved in and/or responsible for the research, development, manufacturing, sales, distribution and marketing of Depo-Provera in British Columbia. At all material times, Pfizer Canada Inc. was an affiliate of Pfizer Inc.
3. The Defendant, Pfizer Inc., is a U.S. company with its headquarters in New York, New York. Pfizer Inc. is currently involved in and/or responsible for the research, development, manufacturing, sales, distribution and/or marketing of Depo-Provera in Canada. Initially, Depo-Provera was developed, marketed and sold by Pharmacia and Upjohn Company, a subsidiary of Pharmacia Corp. ("Pharmacia"). In April 2003, Pfizer Inc. acquired Pharmacia.

As a result of this acquisition, Pfizer Inc. is now responsible for all liabilities which result from any acts or omissions of Pharmacia which occurred prior to that acquisition. At all material times, Depo-Provera was manufactured, marketed, sold and/or distributed in Canada directly or indirectly through an agent, affiliate or subsidiary of Pharmacia or Pfizer Inc. References herein to the actions or omissions of the "Defendants" include Pfizer Inc., Pfizer Canada Inc. and the companies for whose actions they are responsible.

4. The business of each of Pfizer Canada Inc. and Pfizer Inc. (collectively "Pfizer") is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Depo-Provera in Canada.
5. At all material times, the Defendants were carrying on business as, *inter alia*, the manufacturer and distributor of Depo-Provera in Canada.
6. In bringing this action on behalf of a class of people in British Columbia who were prescribed Depo-Provera, to be further defined in the motion for certification, the Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act*, RSBC 1996, c. 50 and the *Food and Drugs Act*, R.S.C. 1985, c. F.27 and regulations thereunder.

#### **THE DRUG**

7. Depo-Provera (medroxyprogesterone acetate injectable suspension, USP) is a contraceptive. It is typically prescribed to prevent pregnancy, however, it is also used to treat endometriosis and as a palliative treatment of certain cancers.
8. Depo-Provera was first approved for marketing and sale in Canada as a contraceptive in or about April 1997. The Defendants immediately and heavily promoted Depo-Provera as a better option than other forms of contraceptives.

9. Since its introduction into the Canadian market, sales of Depo-Provera in Canada have been strong. For example, it is one of the top 5 most commonly prescribed drugs for Canadian women aged 17 to 23. Furthermore, between 1999 and 2003 in Canada, its sales more than doubled from \$11.2 million to \$24.1 million per year.

#### **THE RISKS**

10. Depo-Provera has been associated with an increased risk of significant bone mineral density loss, including a significantly increased risk of developing osteoporosis at ages below the statistical norm.
11. The Defendants knew or ought to have known at least as early as 1991 that there was a significant increased risk of significant bone mineral density loss, including early development of osteoporosis, from receiving injections of Depo-Provera. The Defendants failed to adequately apprise the Plaintiff or her physicians of those risks.
12. Neither the patient information pamphlet nor the prescribing information provided to physicians and pharmacists in Canada, warned of the serious risk to all women of significantly reduced bone mineral density associated with receiving Depo-Provera injections.

#### **THE EVENTS**

13. The Plaintiff was prescribed Depo-Provera by her physician and she received her first injection in the fall of 2001 and continued to receive regular injections until approximately April 2005.
14. The Plaintiff received Depo-Provera injections in accordance with the package label and consumer information pamphlet, and in the manner it was intended to be used.
15. In the time period before and during which the Plaintiff was receiving injections of Depo-Provera, she received no warnings about the increased risk of significant bone mineral density loss.

16. The Plaintiff first learned that Depo-Provera might affect her bone mineral density on or about April 2005 when her doctor informed her that Depo-Provera had been associated with an increased risk of Bone Mineral Density loss. At that time her doctor also sent her for a bone mineral density test.
17. Tests conducted after the Plaintiff stopped receiving Depo-Provera injections showed that her bone mineral density could be likened to that of a 70-year-old woman.
18. Had the Plaintiff been aware of the potential for significant bone mineral density loss that she might experience from taking Depo-Provera, she would not have taken the drug.

#### **CAUSE OF ACTION**

19. The Defendants at all material times owed a duty of care to the Plaintiff to:
  - (a) ensure that Depo-Provera was fit for its intended or reasonably foreseeable use;
  - (b) conduct appropriate testing to determine whether and to what extent injection of Depo-Provera posed serious health risks, including the risk of significant bone mineral density loss; and
  - (c) adequately warn the Plaintiff and her physicians that Depo-Provera carries the risk of significant bone mineral density loss.
20. The Defendants negligently breached their duty of care.
21. The Plaintiff states that her damages were caused by the negligence of the Defendants. Such negligence includes but is not limited to the following:
  - (a) the Defendants failed to ensure that Depo-Provera was not dangerous to recipients during the course of its use and that the drug was fit for its intended purpose and of merchantable quality;

- (b) the Defendants failed to adequately test Depo-Provera in a manner that would fully disclose the magnitude of the risks associated with its use, including but not limited to the risk of significant bone mineral density loss;
- (c) the Defendants failed to give Health Canada complete and accurate information;
- (d) the Defendants failed to conduct any or any adequate follow-up studies on the efficacy and safety of Depo-Provera;
- (e) the Defendants failed to provide the Plaintiff and her physicians with any adequate warning of the risks associated with injections of Depo-Provera, including but not limited to the risk of significant bone mineral density loss;
- (f) the Defendants failed to provide the Plaintiff and her physicians with any or any adequate information and warnings respecting the correct usage of Depo-Provera;
- (g) the Defendants failed to provide any or any adequate updated and current information to the Plaintiff and her physicians respecting the risks and efficacy of Depo-Provera as it came available from time to time;
- (h) the Defendants failed to provide warnings of the potential hazards of Depo-Provera on package labels;
- (i) The Defendants failed to provide adequate warnings of the risks associated with Depo-Provera, including the risk of significant bone mineral density loss in all persons receiving Depo-Provera, on the customer information pamphlets in Canada;
- (j) the Defendants, after noticing problems with Depo-Provera as early as the 1990s, failed to issue adequate warnings, timely recall the drugs, publicize the problem and otherwise act properly and in a timely manner to alert the public, including warning the Plaintiff and her physicians of the drugs' inherent dangers, including but not

limited to the danger of significant bone mineral density loss in all persons receiving Depo-Provera;

- (k) the Defendants failed to establish any adequate procedures to educate their sales representatives and prescribing physicians respecting the correct usage of Depo-Provera and the risks associated with the drug;
  - (l) the Defendants represented that Depo-Provera was safe and fit for its intended purpose and of merchantable quality when they knew or ought to have known that these representations were false;
  - (m) the Defendants misrepresented the state of research, opinion and medical literature pertaining to the purported benefits of Depo-Provera and its associated risks, including the risk of significant bone mineral density loss in all persons receiving Depo-Provera;
  - (n) the misrepresentations made by the Defendants were unreasonable in the face of the risks that were known or ought to have been known to the Defendants;
  - (o) the Defendants failed to timely cease the manufacture and/or distribution of Depo-Provera when they knew or ought to have known that this drug caused or could cause significant bone mineral density loss;
  - (p) the Defendants actively encouraged and/or affirmatively failed to take effective steps to discourage aggressive dispensation of Depo-Provera; and
  - (q) the Defendants breached other duties of care to the Plaintiff and the class of Plaintiffs, details of which breaches are known only to the Defendants.
22. The risks associated with Depo-Provera injections, including the risk of significant bone mineral density loss in all persons receiving Depo-Provera, were in the exclusive knowledge

and control of the Defendants. The extent of the risks was not known and could not have been known to the Plaintiff. The Plaintiff's injuries would not have occurred but for the negligence of the Defendants in failing to ensure that Depo-Provera was safe for use or, in the alternative, for providing an adequate warning of the risks associated with Depo-Provera to the Plaintiff and to the Plaintiff's physicians.

#### **BUSINESS PRACTICES AND CONSUMER PROTECTION ACT**

23. In its sales brochures, advertisements and other forms of representations to the public, the Defendants made statements that had the capability, tendency or effect of deceiving or misleading consumers which constituted deceptive and unconscionable acts and the Plaintiff pleads and relies upon the provisions of the British Columbia *Business Practices and Consumer Protection Act*, RSBC 2004.

#### **DAMAGES**

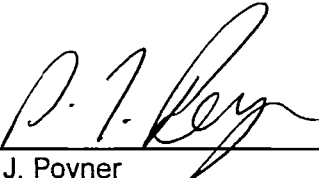
24. The Plaintiff and other class members' injuries and damages were caused by the negligence of the Defendants, their servants and agents.
25. As a result of the Defendants' negligence, the Plaintiff has suffered and continues to suffer serious personal injuries and pain and suffering, including but not limited to significant bone mineral density loss.
26. As a result of the Defendants' negligence, the Plaintiff and other class members suffered and continue to suffer expenses and special damages, of a nature and amount to be particularized prior to trial.
27. The Plaintiff claims punitive, aggravated and exemplary damages for the reckless and unlawful conduct of the Defendants.

WHEREFORE, the Plaintiff claims on her own behalf and on behalf of members of the proposed class as follows:

- (a) General damages;
- (b) Aggravated damages;
- (c) Punitive damages;
- (d) Special damages;
- (e) Costs;
- (f) Interest pursuant to the *Court Order Interest Act*; and
- (g) Such further and other relief as to this Honourable Court may seem just.

**PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA.**

**DATED** at the City of North Vancouver, in the Province of British Columbia, this 22<sup>nd</sup> day of December, 2005.

  
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Patrick J. Poyner  
Solicitor for the Plaintiff

**THIS STATEMENT OF CLAIM** is filed by **PATRICK J POYNER**, of the law firm of **POYNER BAXTER LLP**, Barristers & Solicitors, whose place of business and address for delivery is: Lonsdale Quay Plaza, #408 – 145 Chadwick Court, North Vancouver, B.C. V7M 3K1 – Telephone: 604-988-6321 – Fax: 604-988-3632

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**WRIT OF SUMMONS AND STATEMENT OF CLAIM**

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