CITATION: Nardi v. Sorin Group Deutschland GMBH, 2021 ONSC 3735
COURT FILE NO.: CV-17-00579153-00CP
DATE: 20210521

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
BRUNO NARDI	)	
Plaintiff	)	*Margaret Waddell* for the Plaintiff
	)	
- and -	)	
	)	
	)	
SORIN GROUP DEUTSCHLAND GMBH and LIVANOVA CANADA CORP.	)	*Jill Lawrie* for the Defendants
	)	
Defendants	)	
	)	
	)	**HEARD**: In writing

PERELL, J.

REASONS FOR DECISION

[1] Pursuant to the *Class Proceedings Act, 1992*, Bruno Nardi moves for the certification of this medical device products liability action as a class action.

[2] Proposed Class Counsel are a consortium of Flaherty McCarthy LLP and Waddell Phillips Professional Corp.

[3] The Defendants are Sorin Group Deutschland GMBH and Livanova Canada Corp.

[4] Reserving their rights to settle the litigation plan, the Defendants do not oppose the certification of the action.

[5] Mr. Nardi's Statement of Claim pleads causes of action in negligence.

[6] Mr. Nardi proposes the following class definition:

> a. The Patient Class – every person in Canada, who underwent open chest cardiac surgery during which the Sorin 3T Heater-Cooler System was used at one of the institutions listed below after January 1, 2010 and before the end date listed for that institution below:

INSTITUTION NAME	City and Province	END DATE
BC Children's Hospital	Vancouver, BC	November 29, 2017

INSTITUTION NAME	City and Province	END DATE
Cardiac, Vascular & Stroke Research Institute	Hamilton, ON	June 29, 2018
CIUSSS Du Saguenay -Lac-Saint-Jean	Chicoutimi, PQ	November 2, 2017
Foothills Medical Centre	Calgary, AB	July 18, 2018
General Hospital Health Sciences Centre	St. John's, NL	September 3, 2017
Hamilton General Hospital	Hamilton, ON	September 29, 2017
Health Sciences North	Sudbury, ON	November 15, 2017
CHU Hôpital Ste. Justine	Montreal, PQ	October 25, 2017
Chul et Centre mère-enfant Soleil (CMES)	Québec City, PQ	October 31, 2017
CHUM Hôtel Dieu De Montréal	Montréal, PQ	October 17, 2017
Institut de Cardiologie de Montréal	Montréal, PQ	August 31, 2017
Institut Universitaire de Cardiologie	Québec City, PQ	October 19, 2017
IWK Health Centre	Halifax, NS	October 16, 2017
Kelowna General Hospital	Kelowna, BC	December 12, 2017
Kingston General Hospital	Kingston, ON	March 1, 2018
London Health Sciences Centre - University Hospital	London, ON	May 11, 2018
McGill University Health Centre - Glen Site	Montreal, PQ	July 23, 2018
McGill University Health Centre - Montreal General Hospital	Montreal, PQ	November 16, 2017
McGill University Health Centre - Montreal Children's Hospital	Montreal, PQ	November 16, 2017
Ottawa Civic Hospital	Ottawa, ON	April 17, 2018
QEII Health Sciences Centre	Halifax, NS	January 15, 2018
Regina General Hospital	Regina, SK	August 31, 2017
Royal Columbian Hospital	New Westminster, BC	December 14, 2017

INSTITUTION NAME	City and Province	END DATE
Royal Jubilee Hospital	Victoria, BC	December 1, 2017
Royal University Hospital	Saskatoon, SK	October 4, 2017
Saint John Regional	Saint John, NB	November 3, 2017
Sir Mortimer B Davis Jewish General Hospital	Montreal, PQ	October 20, 2017
Southlake Regional Hospital	Newmarket, ON	May 10, 2018
St. Boniface General	Winnipeg, MN	May 11, 2018
St. Paul's Hospital	Vancouver, BC	January 16, 2018
Sunnybrook Hospital	Toronto, ON	March 14, 2018
The Hospital for Sick Children	Toronto, ON	December 14, 2017
Toronto General Hospital	Toronto, ON	May 14, 2018
Trillium Health Partners – Mississauga Hospital	Mississauga, ON	May 17, 2018
University of Alberta Hospital	Edmonton, AB	October 5, 2017

b. **The FLA Class** – all dependents of the Patient Class as defined by s. 61 of the *Family Law Act*, R.S.O. 1990, s. F.3 and similar legislation in the other Provinces. This may include spouses, children, grandchildren, parents, grandparents, brothers and sisters of the Patient class members.

[7] Mr. Nardi proposes the following common issues:

Common Facts

1. Was *M. Chimaera* bacteria present at the manufacturing and testing facilities (the factory) where the Sorin 3T HCUs (the HCUs) were manufactured? If so, for what period of time?

2. If there was *M. Chimaera* bacteria present at the factory, what strain or strains of *M. Chimaera* were present?

3. If there was *M. Chimaera* bacteria present at the factory, when did the Defendants, or either of them, first learn of this fact?

4. Were any HCUs delivered by the Defendants to Canadian hospitals or cardiac surgery facilities contaminated with *M. Chimaera* bacteria when they left the factory (in the sense of containing a strain of *M. Chimaera* bacteria found to have been present at the factory when the HCUs left the factory)?

(a) If so, for what period of time did this occur?

(b) If so, did any such contamination materially increase the risk of *M. Chimaera* bacterial infection in the Patient Class?

(c) If so, did this render the HCUs dangerous to the Patient Class? If so, how?

5. What impact, if any, would following the HCU's Instructions for Use with respect to disinfection and water preservation have had on any such risk?

Negligence

6. Did the Defendants, or either of them, owe a duty of care to the Class with respect to the:

(a) Design;

(b) Manufacturing;

(c) Pre-market and after-market testing; or

(d) Distribution and sale;

of the HCUs?

7. If the answer to any of 6(a) to (d) is yes, what was the applicable standard of care at the relevant time/s owed by the Defendants, or either of them, to the Class in the circumstances?

8. If the answer to any of 6(a) to (d) is yes, did the Defendants, or either of them, breach the applicable standard of care during any time period in a manner material to any potential increased risk of infection from any *M. Chimaera* found to be present in any HCU when it left the factory? If so, what was the nature of the breach?

9. If the HCUs were contaminated with *M. Chimaera* when they left the factory, did Sorin's actions cause or contribute to this contamination?

10. If the HCUs were not contaminated with *M. Chimaera* when they left the factory, did Sorin's actions cause or contribute to any subsequent contamination of these HCUs as a result of any other HCU(s) leaving the factory with *M. Chimaera* contamination?

Duty to Warn

11. If the HCUs were contaminated or potentially contaminated with *M. Chimaera* when they were delivered by the Defendants to Canadian hospitals or cardiac surgery facilities, did the Defendants, or either of them, owe a duty to the Class to warn of the contamination or potential contamination?

12. If the HCUs were contaminated or potentially contaminated with *M. Chimaera* when they were delivered by the Defendants to Canadian hospitals or cardiac surgery facilities, when did the Defendants, or either of them, first learn of this fact?

13. If the answer to question 11 is yes, did the Defendants, or either of them, breach any such duty to warn during any time period?

Recall

14. Did the Defendants, or either of them, owe a duty to the Class to recall the HCUs?

15. If so, and if the HCUs were contaminated or potentially contaminated with *M. Chimaera*, would a reasonable manufacturer or distributor in the position of the Defendants, have recalled the HCUs?

16. If the answer to question 15 is yes, when would a reasonable manufacturer have recalled the HCUs?

Aggregate Damages

17. Can the damages of all or part of the Class be determined, in whole or in part, on an aggregate basis?

18. If the answer to question 17 is yes, who should pay what amount and to whom?

Punitive Damages

19. Was the Defendants' conduct, or the conduct of either one of them, of the type that could warrant an award of punitive damages?

[8] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, the court shall certify a proceeding as a class proceeding if: (a) the pleadings disclose a cause of action; (b) there is an identifiable class; (c) the claims or defences of the class members raise common issues of fact or law; (d) a class proceeding would be the preferable procedure; and (e) there is a representative plaintiff or defendant who would adequately represent the interests of the class without conflict of interest and there is a workable litigation plan.

[9] In the immediate case, the five requirements for certification are satisfied and the action should be certified.

[10] Order to go as requested. I have signed the Order.

Perell, J.

Released: May 21, 2021

CITATION: Nardi v. Sorin Group Deutschland GMBH, 2021 ONSC 3735
COURT FILE NO.: CV-17-00579153-00CP
DATE: 20210521

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BRUNO NARDI

Plaintiff

- and -

SORIN GROUP DEUTSCHLAND GMBH and LIVANOVA CANADA CORP.

Defendants

REASONS FOR DECISION

PERELL J.

Released: May 21, 2021.