S-110437
Court File No. _____
Vanouver Registry

In the Supreme Court of British Columbia

Between

Michael Miller

Plaintiff

and

Merck Frosst Canada Ltd., Merck Frosst Canada & Co.
Merck & Co., Inc., Merck Sharpe & Dohme Corp.

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must
(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must
(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
(d) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

Parties and Overview

1. This action concerns the prescription drugs Propecia and Proscar which are prescribed as a cosmetic treatment for male pattern hair loss also known as androgenic alopecia. Androgenic alopecia is a naturally occurring process in men – it is not an illness or disease.

2. The active ingredient in Propecia and Proscar is finasteride. The use of finasteride has been linked to a number of serious side effects. These side effects include the development of depression and various forms of sexual dysfunction including but not limited to, erectile dysfunction, reduced ejaculate volume, low sex drive, reduced sexual sensation and infertility. In some patients, the sexual dysfunction is temporary but in others the condition is permanent.

3. The plaintiff, Michael Miller, resides in Vancouver, British Columbia. He was prescribed Proscar by his physician for cosmetic purposes to treat male pattern hair loss. He consumed Proscar for approximately nine months. As a result of his use of Proscar, Mr. Miller suffered devastating mental and physical injuries arising from the development of permanent sexual dysfunction. He brings this action on his own behalf and on behalf of a proposed class of similarly situated persons who were prescribed Propecia or Proscar in British Columbia, and elsewhere in Canada, to be further defined in the plaintiff's application for class certification.

4. The defendant, Merck Frosst Canada Ltd. is a corporation incorporated pursuant to the laws of Canada, with its registered head office in Kirkland, Quebec. Merck Frosst Canada Ltd. is

registered to carry on business in British Columbia and carries on business in British Columbia with an address for delivery in Vancouver, British Columbia. The defendant, Merck Frosst Canada & Co., is a corporation incorporated pursuant to the laws of Canada with its headquarters in Halifax, Nova Scotia. At all material times, Merck Frosst Canada Ltd. and Merck Frosst Canada & Co. were affiliates of the defendant Merck & Co., Inc.

5. The defendant, Merck & Co., Inc. is a corporation incorporated pursuant to the law of the United States of America, with its corporate headquarters at Whitehouse Station, New Jersey, USA. The defendant Merck Sharpe & Dohme Corp. is a subsidiary of Merck & Co., Inc. and is also incorporated under the laws of the United States of America and has its corporate headquarters at Whitehouse Station, New Jersey, US. Merck Sharpe & Dohme Corp. owns the registered trademarks for Propecia and Proscar in Canada.

6. The defendants functioned as a joint enterprise for the promotion and sale of Propecia and Proscar within Canada for their mutual benefit and profit. The defendants may have divided among themselves certain responsibilities for the manufacture and marketing of Propecia and Proscar but each had an independent responsibility to ensure the safety of Propecia and Proscar and the adequacy of the warnings. Within this joint enterprise, the defendants individually and jointly researched, tested, developed, marketed, manufactured, imported, promoted, licensed, labeled, monitored adverse reactions to, and placed into the stream of commerce Propecia and Proscar for sale in Canada and in particular British Columbia.

7. Propecia is the brand name of the 1 milligram tablet of the drug finasteride which is prescribed to treat male pattern hair loss. Proscar is the brand name of the 5 milligram tablet of the drug finasteride. Proscar in its full 5 milligram strength is indicated for the treatment of benign prostatic hyperplasia and prevention of urologic events. In many cases, physicians prescribe Proscar for the treatment of male pattern hair loss instead of Propecia, and advise patients to split the pills into quarters for use. Splitting Proscar into quarters is a more economical option for the patient as one tablet of Proscar can be divided to make four tablets, making the Proscar prescription less expensive for the patient. Proscar and Propecia were approved for sale in Canada by Health Canada in 1992 and 1998, respectively.

8. Male pattern hair loss is a common condition thought to be caused by a combination of genetic factors and a hormone, called dihydrotestosterone (DHT). DHT contributes to shortening the growth phase of the hair and to thinning of the hair. According to the defendants, finasteride is a type II 5-Alpha reductase inhibitor that prevents the conversion of androgen testosterone to DHT in the scalp leading to a reduction of hairloss. DHT is a significant hormone that is critical for the proper mental, physical, sexual and fertility functioning of men. The defendants failed to conduct long-term studies on male health to determine the effect of blocking DHT and instead have opted to place their product on the market putting the health of Canadians who use it at risk.

9. The defendants promote the use of Propecia for treatment of male pattern hair loss as a safe treatment with little risk. In their product labeling, the side effects of sexual dysfunction such as decreased libido, erectile dysfunction, ejaculation disorder and decreased ejaculate volume experienced while on the medication are said to resolve. The October 6, 2010 product monograph for Propecia states "Resolution of these adverse reactions occurred in men who discontinued therapy with PROPECIA and in most who continued therapy." This statement is not true. There have been numerous reports in Canada and elsewhere of persistent sexual dysfunction experienced by men who have discontinued use.

10. In 2006, the Swedish Medical Products Agency began investigating reports of persistent sexual dysfunction side effects which continue in men despite discontinuing Propecia. In a report on their website, the Swedish Medical Products Agency states that they asked Merck Sharpe & Dohme to provide them with all the adverse event reports of the effect of sexual function in men. According to the Swedish agency, no data from animal studies or clinical trials of men with hair loss addressing the issue of permanent side effects regarding sexual function was provided by the manufacturer prior to the approval of Propecia for sale in Sweden.

11. A Swedish television station aired a story about the persistent sexual dysfunction experienced after using Propecia. The story is available on the internet on the website YouTube and also there is a published article on the Swedish media website SVT.se. The story includes interviews with a British user who experienced permanent sexual dysfunction after using

Propecia and research scientists who have studied the side effects of Propecia. In 2008, the label for Propecia was changed in Sweden to include the following warning:

> In addition, the following have been reported in post-marketing use: persistence of erectile dysfunction after discontinuation of treatment with PROPECIA.

12. In August 2009, the Swedish media did a follow up article on Propecia. They reported that the Swedish Medical Products Agency concluded that Propecia can lead to permanent erectile dysfunction despite the fact that the manufacturer, Merck Sharpe & Dohme, has long denied it.

13. The product label has been changed in other European countries to include a warning of permanent erectile dysfunction as an adverse reaction. In the United Kingdom, the label now has the following warning:

> In addition, the following have been reported in postmarketing use: persistence of erectile dysfunction after discontinuation of treatment with PROPECIA; male breast cancer (see 4.4 Special warnings and precautions for use)

14. In Italy, the Propecia label, which was revised in March 2010, also includes a warning of persistent erectile dysfunction after discontinuation of treatment.

15. Even though the Canadian product monograph for Propecia was revised on October 6, 2010, these revisions did not include an updated warning regarding the persistence of sexual dysfunction after discontinuation of use. One of the revisions, however, was the inclusion of depression as an adverse experience. The warning about depression was not in the label prior to that date.

16. Propecia as a treatment for male pattern hair loss has been on the market in Canada for over a decade. During this time, Health Canada has received many adverse event reports relating to both Proscar and Propecia. Reporting adverse events to Health Canada is not mandatory for the public or health professionals. However, Health Canada maintains a database of adverse event reports that it receives from the public and health professionals. This database is available to the public online. A review of the adverse event reports associated with Proscar and Propecia

reveals that there have been many complaints of side effects related to sexual dysfunction since approval of these drugs.

17. In the United States, the Federal Drug Agency (FDA) also maintains a database of adverse event reports as part of its post-marketing safety surveillance program for all approved drug products. Propecia was approved in the United States in December 1997 for the treatment of male pattern hair loss. Like Canada, reporting adverse events is on a voluntary basis for health care professionals and consumers. Some of the adverse event reports are available online and earlier reports are available through a freedom of information request to the FDA. A review of the data for Propecia, Proscar and finasteride reveals that the FDA has received numerous complaints of side effects related to sexual dysfunction.

18. Information is also available on websites that have been established to alert the public about the persistent adverse effects that men experience even after they have stopped ingesting Propecia. One of these websites is www.propeciahelp.com. This website is dedicated to spreading awareness about unresolved and persistent side effects from the use of finasteride. It provides a forum to post information, ask questions and describe experiences. The website was initially started as a Yahoo health group in 2003 but when over a thousand members joined by 2006, the group moved to the website www.propeciahelp.com to accommodate its increasing membership.

19. Physicians who treat men's health issues in the United States and Europe have publically expressed their concerns about patients who have permanent sexual, mental and physical side effects after discontinuing finasteride. These physicians have posted information on their websites and have spoken at medical symposiums about the problem of permanent sexual dysfunction from the use of finasteride.

20. Dr. John Crisler, a physician at a men's health clinic in Michigan spoke at a medical symposium about the dangers of finasteride and his observations from treating his patients:

> I am just totally against finasteride. I have had so many patients that have come to me where that medication has destroyed their life.

> ...They take finasteride for even as short as a week and it destroys their lives. And they become depressed, weak, impotent and the problem is when they go off the drug their symptoms remain.

21. Dr. Alan Jacobs, a neuroendocrinologist in New York has started a blog addressing issues related to hormones, behavior and the brain at http://alanjacobsmd.typepad.com/alan-jacobs-mds-blog/ In one of his posts in April 2010 titled "A Neuroendocrine Approach To Finasteride Side Effects In Men", he states:

> I have recently seen an increasing number of men who have developed significant degrees of clinical hypogonadism - low sex drive, erectile dysfunction, reduced sexual sensations and listlessness, fatigue and/or "brain fog" - while either taking finasteride or after stopping the medication, even long after stopping it.
>
> Finasteride certainly helps men fight hair loss and prostate enlargement. However, a considerable number of men have intolerable and sometimes persistent side effects from the medicine. A systematic neuroendocrine approach to this problem should shed light on the cause in a majority of cases and bring relief.

22. Dr. Andrew Rynne, a physician in Kildare, Ireland who is a specialist in treating sexual dysfunction, has also spoken out about the risk of using Propecia. On the website for his clinic, he has posted an entry titled "Male Pattern Baldness and Propecia" where he writes about the problems he has seen in his patients who have taken Propecia:

> I want to shout this from the rooftops. However, I will shout it into cyberspace instead. I want the ear of every young man on this planet who may be experiencing testosterone driven male pattern balding. Please listen to me. Do NOT under any circumstances even for one minute consider taking the testosterone-suppressing drug Proscar or Propecia or Finasteride to give it its chemical name. The consequences of using this drug for male pattern balding can be life shattering.
>
> Here's what the manufacturers Merck say on their Patient's Product Information leaflet about Propecia:
>
> > " In clinical studies for Propecia, a small number of men experienced certain sexual side effects, such as less desire for sex, difficulty in achieving an erection, decrease in the amount semen produced. Each of these side effects occurred in less than 2% of men and went away in men who stopped taking Propecia because of them."

What jumps out at you here is that figure 2%. However, even if you accept this figure as true, and personally I do not accept it, but even if you do, to the uninitiated it might seem like a low figure. But for 2% of men on Proscar to experience serious side effects like erectile dysfunction, loss of libido and reduced volume of semen this is actually a very high and significant figure.

Remember you are dealing here with a naturally occurring normal male phenomenon called 'Male Pattern Baldness'. This is not an illness or a disease. This is a healthy normal occurrence. If in an attempt to "cure" it, you are getting a 2% rate of serious side effects, then that quite frankly is unacceptable.

But here is the real lie that Merck is giving you in its Patient's Leaflet. Do you see that bit there about "went away in men who stopped taking Propecia – " That is simply not true and Merck know full well that it is not true. They know it is not true because I and hundreds of other doctors and thousands of patients have told them that these side effects do not always go away when you stop taking Propecia. We continue to be ignored of course. Merck in a multi-billion multinational company. In some cases men who have taken Proscar, even for a few months, have unwittingly condemned themselves to a lifetime of Sexual Anhedonia, the most horrible and cruel or all sexual dysfunctions.

I have spoken to several young men in my clinic in Kildare who continue to suffer from sexual anaesthesia and for whom all sexual pleasure and feelings have been obliterated for all time. I have felt their suffering and shared their devastation. If you would like to learn more about this subject then visit them on www.propeciahelp.com Please spread the word around. Taking Propecia for balding can have utterly disastrous consequences.

23. In 2001, the Therapeutics Initiative at the University of British Columbia assessed the available information regarding Propecia. The Therapeutics Initiative was established in 1994 by the Department of Pharmacology and Therapeutics in cooperation with the Department of Family Medicine at the University of British Columbia. Its mission is to provide pharmacists and physicians with unbiased information regarding prescription drugs. In their review printed in the March/April 2001 Therapeutics Letter, they conclude that there are unknown risks with use of this medication and state that "long term adverse effects are unknown at this time". The defendants still have not conducted a study of the long term effects of Propecia.

24. The Therapeutics Initiative report also points out that Canadian physicians feel the impact from direct to consumer advertising of pharmaceuticals that is allowed in the United States. Patients request specific brand names of drugs advertised in the United States. Even though direct to consumer advertising is not permitted in Canada, the U.S advertising makes its way to Canada by way of magazines advertisements and in television advertisements on the US

networks available in Canada. In 1999, $100 million dollars was spent on direct to consumer advertising of Propecia in the United States. Like Canada, the US product label for Propecia does not contain the warning of persistent sexual dysfunction after discontinuing use of the drug.

25. The defendant Merck & Co. Inc. posts information about Propecia on its website, www.propecia.com. Under the tab Possible Side Effects, the defendant states:

> A small number of men had sexual side effects, with each occurring in less than 2% of men. These include less desire for sex, difficulty in achieving an erection, and a decrease in the amount of semen. These side effects went away in men who stopped taking PROPECIA because of them. In addition, these side effects decreased to 0.3% of men or less by the fifth year of treatment.

This statement is deceptive and misleading as it fails to point out that there have been numerous reports of men who suffer persistent sexual side effects even after discontinuing use.

26. As the manufacturer of a pharmaceutical drug, the defendants must keep up to date with scientific developments pertaining to their drugs in the research, adverse reaction reports, scientific literature and other available methods. When additional dangerous or potentially dangerous side-effects from the drug's use are discovered, the manufacturer must make all reasonable efforts to communicate the information to prescribing physicians. If there is evidence which tends to show a serious danger inherent in the use of a drug, the defendants are not entitled to ignore or discount that information in the product warning; they must be up-front and present the entire picture to physicians and consumers.

27. Even if the probability of injury is small or it may only affect a small group of users, this must be balanced against such considerations as the nature of the drug, the necessity for taking it, and the magnitude of the increased danger to the individual consumer. In this case, the defendants' drugs are prescribed for a cosmetic purpose (to treat hair loss) but carry a serious side effect (permanent sexual dysfunction). This information needs to be communicated to consumers and their physicians so that an informed decision can be made on whether the risk of developing a serious permanent side effect is reasonable for a cosmetic treatment.

28. There is ample information available to show that men have experienced sexual dysfunction as a persistent side effect after discontinuing use, and yet the defendants have not

updated their warning. The defendants have ignored all of this information and continue to promote their products as safe. The defendants are refusing to do this because adding the warning would affect the sales of this profitable medication. The defendants are placing the profits of their company above the health of Canadian consumers.

The Plaintiff's Particulars

29. On or about May 21, 2008, the plaintiff saw his physician as he was concerned that his hair was starting to thin in certain areas on his head. At the appointment, the plaintiff's physician recommended that he take Propecia as a treatment for male pattern hair loss. Rather than prescribe Propecia, his physician prescribed Proscar which has the same active ingredient as Propecia but in a higher dose. His physician advised him to split the pill into quarters and to ingest one quarter daily. The plaintiff took the drug regularly as directed.

30. After about a month of taking Proscar, the plaintiff started to notice a change in his behaviour. He had no interest in sexual activity and he felt anxious and nervous in social situations for no particular reason. This behaviour was out of character for him.

31. The symptoms of sexual dysfunction increased as the months progressed. He became barely able to maintain an erection, he produced little, if any, ejaculate, he had no spontaneous erections, and he derived no pleasure or effect from manual stimulation.

32. Due to the severity of the side effects, the plaintiff ceased taking Proscar on or about January 31, 2009. His sexual function has not recovered. Prior to taking the drug, he did not have a history of sexual dysfunction. His lack of sexual function has led him to feel distraught and overwhelmed. He has had difficulty with personal and sexual relationships. He has contemplated suicide.

33. The plaintiff has seen several health professionals regarding his symptoms of sexual dysfunction including several endocrinologists and a sexual psychologist. He has had blood tests to assess his hormone levels and was prescribed a hormone therapy treatment. The hormone therapy did not resolve his symptoms.

34. The plaintiff has not recovered from the side effects of his consumption of Proscar, and it has caused him long lasting physical and psychological injury. The drug has diminished his quality of life and health, and it has had a negative impact on his personal relationships.

35. At the time he began to take Proscar, the plaintiff was a student in the fashion and art school program at Vancouver Community College. As a result of consuming Proscar, he had to leave the program as he found it too stressful to cope with the side effects and a full course load. He has not been able to return to the program.

36. The defendants' medical literature states that any side effects related to sexual dysfunction experienced while on the medication should resolve with discontinuation of use. The plaintiff has discontinued his use of this medication, yet his symptoms persist.

37. Neither the plaintiff, nor his physician, had received an adequate warning from the defendants about the risk of injury. To the contrary, the defendants continue to market and promote their product without providing clear and adequate warning.

38. The plaintiff would not have taken Proscar had he or his physician been adequately warned of the risks associated with Proscar.

Part 2: RELIEF SOUGHT

39. The plaintiff claims, on his own behalf, and on the behalf of a class of similarly situated persons resident in British Columbia and elsewhere in Canada, as follows:

(a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff under the *Class Proceeding Act*;
(b) general damages
(c) special damages
(d) punitive damage
(e) relief pursuant *Business Practices and Consumer Protection Act,* S.B.C. 2004, c.2;
(f) recovery of health care costs incurred by the Ministry of Health Services on their behalf pursuant to the *Health Care Cost Recovery Act,* S.B.C. 2008, c.27, and comparable legislation in the other provinces and territories;
(g) costs;
(h) interest pursuant to the *Court Order Interest Act*, RS.B.C. 1996, c.79; and
(i) such further and other relief this Honourable Court may deem just.

Part 3: LEGAL BASIS

Negligence and Failure to Warn

40. As the manufacturers, marketers, developers, distributors, labelers and/or importers of Propecia and Proscar, the defendants were in such a close and proximate relationship to the plaintiff, and other class members, as to owe them a duty of care. They caused the drug to be introduced into the stream of commerce in Canada, and they knew that any dangers or adverse effects related to the drug would cause foreseeable injury to the plaintiff and class members.

41. The defendants owed a duty to the plaintiff and class members to exercise reasonable care when designing, testing, manufacturing, marketing, labeling, promoting, distributing, importing, and selling Propecia and Proscar.

42. The defendants jointly and severally owed a duty of care to the plaintiff and class members to ensure that Propecia and Proscar was safe for its intended use. Particulars of the defendants' negligence include:

(a) failing to test Propecia and Proscar properly and thoroughly before releasing the drug to the market;

(b) failing to adequately disclose the serious side effects of Propecia and Proscar;

(c) failing to conduct an adequate and timely analysis of adverse event reports;

(d) failing to instruct their employees to accurately and candidly disclose consumer complaints and serious side effects of Proscar and Propecia to Health Canada in a timely manner, or at all;

(e) employing inadequately trained personnel;

(f) failing to provide adequate warnings of the potential long term effects of ingesting Propecia and Proscar on the package inserts and labels;

(g) marketing Propecia and Proscar in such a way as to give the plaintiff and class members no reason to suspect that Propecia and Proscar had potentially harmful and serious adverse effects;

(h) failing to design and implement an appropriate post marketing surveillance system to monitor and quickly identify adverse risks;

(i) placing Propecia and Proscar on the market when they knew or ought to have known that these drugs that the potential risks of these drugs outweighed their potential benefits;

Business Practices and Consumer Protection Act

43. The defendants' solicitations, offers, advertisements, promotions, sales and supply of Propecia and Proscar for personal use by the plaintiff and by class members were "consumer transactions" within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA"). With respect to those transactions, the plaintiff and class members who ingested Propecia and Proscar are "consumers" and the defendants are "suppliers" within the meaning of the BPCPA.

44. The defendants' conduct in their solicitations, offers, advertisements, promotions, sales and supply of Propecia and Proscar had the capability, tendency or effect of deceiving or misleading consumers regarding the safety and efficacy of Propecia and Proscar. The defendants' conduct in its solicitations, offers, advertisements, promotions, sales and supply of Propecia and Proscar were deceptive acts and practices contrary to s.4 of the BPCPA. The defendants' deceptive acts and practices included the failure to properly disclose all material facts regarding the risks of using Propecia and Proscar.

45. In their product labeling and in their advertisements to consumers, the defendants' solicit, promote and advertise that any sexual dysfunction side effects such as decreased libido, erectile dysfunction, ejaculation disorder and decreased ejaculate volume experienced while on the medication should resolve with either continued use, or upon discontinuation of use. The Propecia Product Monograph dated October 6, 2010, for example, states "Resolution of these

adverse reactions occurred in men who discontinued therapy with PROPECIA and in most who continued therapy." This claim is not true as there are many men who continue to suffer from side effects of sexual dysfunction long after discontinuing use. If the defendants had conducted proper pre-market testing, or had conducted proper post-market testing, they would have known that their products carry this serious risk.

46. The defendants have changed the warning labels for Propecia in Europe, which now state: "In addition, the following have been reported in post-marketing use: persistence of erectile dysfunction after discontinuation of treatment with PROPECIA" but have not provided this same warning to consumers in Canada. The defendants have done nothing to alert consumers to the risk of persistent side effects of sexual dysfunction. There has been no additional information placed on the product labeling nor has a "Dear Doctor" letter been sent to physicians alerting them to the post-marketing adverse events. Instead, the defendants concern is to maintain the presence of their products in the marketplace keeping consumers and their physicians in the dark about the serious risks caused by this cosmetic treatment.

47. The defendants breached the BPCPA by failing to disclose that some men may experience persistent serious side effects of sexual dysfunction and in making representations that any side effects experienced would go away after discontinuing use, when this is not true.

48. As a result of the defendants' deceptive acts and practices, the plaintiff and class members have suffered loss and damages. The plaintiff seeks injunctive relief and declaratory relief and damages and statutory compensation pursuant to ss.171 and 172 of the BPCPA on his own behalf and on behalf of class members who purchased Propecia or Proscar in British Columbia. Such relief includes the disgorgement of the profits or revenues received by the defendants from the sale of Propecia and Proscar in British Columbia.

49. The declaratory and injunctive relief sought by the plaintiff in this case includes an order under s.172 of the BPCPA that the defendants advertise any judgment against them and that they properly inform consumers and their physicians of the risks of persistent side effects of sexual dysfunction associated with the product which includes sending a "Dear Doctor Letter" to alert physicians to this problem.

50. It is not necessary for the plaintiff and class members to establish reliance on the defendants' deceptive acts or practices in order to establish breach of the BPCPA and a remedy for that breach. In the alternative, if reliance is required to establish statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the plaintiff and class members on the defendants' deceptive acts and practices.

Causation and Damages

51. As a result of the defendants' negligence and the defendants' breach of the BPCPA, the plaintiff and class members have suffered and will continue to suffer loss and damage. Such loss and damage was foreseeable by the defendants. Particulars of the loss and damage suffered by the plaintiff and class members which were caused or materially contributed to by the aforementioned acts of the defendants include:

(a) personal injury;

(b) special damages for medical expenses and out of pocket expenses;

(c) loss of both past and prospective income; and

(d) cost of future care.

52. The conduct of the defendants warrants a claim for punitive damages. They have conducted themselves in a high-handed, wanton and reckless manner, and without regard to public safety. Particularly egregious is the defendants' lack of warnings regarding sexual dysfunction in light of all the available information indicating that men are experiencing persistent sexual dysfunction after discontinuing use. The defendants have ignored the labeling changes in other countries and have continued to market the product in Canada as safe and effective when they knew or should have known of the risks associated with its use.

53. This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of conduct such as the defendants', to advance public safety and to achieve the goal of both specific and general deterrence.

Health Care Cost Recovery

54. The plaintiff and class members have a claim for the recovery of health care costs incurred on their behalf by the British Columbia Ministry of Health Services and by other provincial and territorial governments. The plaintiff pleads the *Health Care Cost Recovery Act,* S.B.C. 2008, c. 27 and the comparable legislation from the other provinces and territories.

Jurisdiction

55. The plaintiff relies on ss. 13, 7 and 10 of the *Court Jurisdiction and Proceedings Transfer Act,* S.B.C. 2003, c.28 and pleads that there is a real and substantial connection between the subject matter of this action and the Province of British Columbia for the following reasons:

(a) the defendants marketed and sold Propecia and Proscar in British Columbia;

(b) the plaintiff resides in British Columbia; and

(c) the plaintiff's damages were sustained in British Columbia.

Plaintiff's address for service:
Suite 1100, 1333 West Broadway
Vancouver, BC V6H 4C1 Canada

Fax number address for service: 604-874-7180

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: January 24, 2011:

.....
Signature of
[ ] plaintiff [x] lawyer for plaintiff

Mr. David A. Klein

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

56. This action is a proposed class proceeding that concerns the prescription drugs Propecia and Proscar (active ingredient finasteride) which is prescribed as a treatment for male pattern hair loss. Propecia and Proscar have been linked to development of several serious side effects. These side effects include depression and various forms of sexual dysfunction including but not limited to, erectile dysfunction, reduced ejaculate volume, low sex drive, reduced sexual sensation and infertility. The plaintiff alleges that the defendants breached the duty of care to the plaintiff in the designing, testing, manufacturing, marketing, labeling, promoting, distributing, importing, and selling Propecia and Proscar. The plaintiff alleges that the defendants' negligence resulted in damage and loss to the plaintiff and a class of similarly situated individuals.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[*Check one box below for the case type that best describes this case.*]

A personal injury arising out of:

[ ] a motor vehicle accident

[ ] medical malpractice

[x] another cause

A dispute concerning:

[ ] contaminated sites

[ ] construction defects

[ ] real property (real estate)

[ ] personal property

[ ] the provision of goods or services or other general commercial matters

[ ] investment losses

[ ] the lending of money

[ ] an employment relationship

[ ] a will or other issues concerning the probate of an estate

[x] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[check all boxes below that apply to this case]

[x] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4:

Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2

Class Proceedings Act R.S.B.C. 1996, c. 50

Court Order Interest Act, R.S.B.C. 1996, c. 79

Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28

Health Care Cost Recovery Act, S.B.C. 2008, c. 27