

**SETTLEMENT AGREEMENT**

made as of April 15, 2019

COURT FILE NO.: N/C/41/08

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE

JUDICIAL DISTRICT OF MIRAMICHI

CIRCONSCRIPTION JUDICIAIRE DE  
MIRAMICHI

BETWEEN:

ENTRE:

**ALBERT JOHN GAY, KIMBERLEY ANN DOYLE  
and JAMES BLISS WILSON,**

Plaintiffs,

Demandeurs,

- and -

-et-

**REGIONAL HEALTH AUTHORITY 7, a corporation  
incorporated under the laws of the Province of New  
Brunswick,**

First Defendant,

Defendeurs.

- and -

**THE ESTATE OF DR. RAJGOPAL S. MENON,  
AS REPRESENTED BY DR. SANJAY SIDDHARTHA  
AS LITIGATION ADMINISTRATOR,**

Second Defendant.

Brought under the *Class Proceedings Act*,  
S.N.B. 2011, c.125

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## SETTLEMENT AGREEMENT

### SECTION I – PREAMBLE & RECITALS

1.1 Albert John Gay, Kimberley Ann Doyle, and James Bliss Wilson, on their own behalf, and in their capacities as the Representative Plaintiffs in NB Court File No.: N/C/41/08 (the “Action”), the First Defendant, Regional Health Authority 7, and the Second Defendant, the Estate of Dr. Rajgopal S. Menon, as represented by Dr. Sanjay Siddhartha as Litigation Administrator (collectively, “the Defendants”), hereby enter into this settlement agreement (“Settlement Agreement”) providing for the settlement of claims arising from the Amended Notice of Action with Second Amended Statement of Claim, filed with the Court of Queen’s Bench of New Brunswick, Judicial District of Miramichi, on June 30, 2015 (the “Second Amended Statement of Claim”), subject to approval of the Court as set forth herein;

**WHEREAS** the Action was commenced by the Plaintiffs alleging that the Defendants breached their respective obligations in the delivery of pathology services at the Miramichi Regional Health Authority between January 1, 1995, and February 7, 2007;

**WHEREAS** the Parties intend by this Settlement Agreement to resolve all past, present and future claims of Class Members arising out of or relating to the claims set out in the Second Amended Statement of Claim, and further intend that the Released Parties shall receive complete releases from all such Settled Claims on behalf of the Class;

**WHEREAS** the Action was certified as a class action pursuant to the *Class Proceedings Act* (R.S.N.B. 2011, c. 125) by Order of Justice Jean-Paul Ouellette dated March 22, 2016 and amended July 11, 2017 (the “Certification Order”);

**WHEREAS** the putative Class Members were permitted an opportunity to opt out and a limited number of Class Members chose to do so;

**WHEREAS** the Parties participated in good faith in a settlement conference facilitated by Mr. Justice Peter Glennie, pursuant to Rule 50.07 of the New Brunswick *Rules of Court*;

**WHEREAS** the Defendants have denied and expressly continue to deny any wrongdoing or liability of any kind, and this Settlement Agreement shall not be deemed or construed as an admission of any liability on the part of the Defendants;

**WHEREAS** the Parties are desirous of entering into this Settlement Agreement as a final resolution of all claims asserted or which could have been asserted by any Class Member, and to avoid the further expense and inconvenience of continued litigation;

**WHEREAS** the Parties shall seek an Order from the Court, substantially in the form attached hereto as Exhibit "A", approving the Hearing Notice and the Hearing Notice Plan;

**WHEREAS** the Parties shall seek an Order from the Court, substantially in the form attached hereto as Exhibit "B", approving this Settlement Agreement;

**NOW THEREFORE**, in consideration of the terms and conditions, agreements and releases set forth herein, it is agreed by the Parties that this Settlement Agreement embodies all terms and conditions of the resolution of the Action and that the Action be settled and dismissed with prejudice, subject to the approval of the Court, as follows:

## **SECTION II - DEFINITIONS**

2.1 Unless a particular section of this Settlement Agreement explicitly provides for another interpretation, the following terms, as used in this Settlement Agreement and its exhibits, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and *vice versa*, where appropriate. Feminine pronouns and female references shall be deemed to include the masculine, and *vice versa*. The Parties acknowledge that the Settlement Agreement has been the subject of negotiations by all Parties, each with the assistance of independent and competent counsel, such that any statute or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall not apply.

**Action** shall mean New Brunswick Court of Queen's Bench, Court File No. N/C/41/08.

**Claim Deadline** shall mean the date that is two hundred and ten (210) days from the

first date of publication of the Settlement Approval Notice.

***Claim Forms*** shall mean the claim forms to be completed in order to submit a claim for Category 1A/1B or Category 2 compensation, substantially in accordance with Schedule "B" to the Settlement Approval Order.

***Claim Period*** shall mean the period of two hundred and ten (210) days from the first date of publication of the Settlement Approval Notice and Claim Forms and expiring on the Claim Deadline.

***Claims Administration Costs*** shall mean all costs, other than Class Counsel Fees, required to implement this Settlement Agreement and distribute Qualified Class Member Payments, including, without limitation, costs required to execute the Hearing Notice and Settlement Approval Notice Plan.

***Claims Administrator*** shall mean the party approved by the Court to administer, manage and direct the processing of Claim Forms, Release of Medical Records Authorization Forms, and distribution of Qualified Class Member Payments in accordance with this Settlement Agreement.

***Class and Class Members*** shall mean the class certified by Certification Order of Justice Ouellette of March 22, 2016 and subsequently amended July 11, 2017, and defined as follows:

- a) Patients whose tissue samples underwent pathology testing for potential cancer or potential cancer-related disease, and were reported by Dr. Menon at the Regional Hospital between January 1, 1995 and February 7, 2007, and whose tissue samples the Regional Hospital subsequently caused to be retested; and
- b) The estates, children, parents and spouses (as defined by the *Fatal Accidents Act*) of deceased patients.

***Class Counsel*** shall mean the law firms of Wagners and Patient Injury Law.

***Class Counsel Fees*** shall mean all legal fees, disbursements and applicable taxes in respect of all legal services provided by Class Counsel for the benefit of the Class Members, payment of which is subject to approval by the Court.

**Court** shall mean the Court of Queen's Bench in New Brunswick.

**Effective Date** shall mean the date on which the Settlement Approval Order is issued by the Court.

**Eligible Class Members** shall mean Class Members who are still living as of the Effective Date, and who have not opted-out of this Action. For greater certainty, matrimonial and common law spouses will receive no monetary award under this settlement.

**Execution Date** shall mean the date on which this Settlement Agreement is signed by the Parties.

**Final Distribution** shall mean the date on which all cheques have been sent by the Claims Administrator to Qualified Class Members.

**First Defendant** shall mean Regional Health Authority 7.

**First Defendant's Counsel** shall mean the law firm of Cox & Palmer.

**Hearing Notice** shall mean the Court-approved notice, substantially in the form attached hereto as Exhibit "A", Schedule "A" which provides Class Members with notice of the Settlement Approval Hearing and of their right to object to the Settlement Agreement.

**Hearing Notice Approval Order** shall mean the Order of the Court that approves the Hearing Notice and Hearing Notice Plan, substantially in the form attached hereto as Exhibit "A".

**Hearing Notice Date** shall mean the date on which the Hearing Notice is first published, which date shall be no more than five (5) business days following issuance of the Hearing Notice Approval Order, or such other date as may be approved by the Court.

**Hearing Notice Plan** shall mean the Court-approved plan to disseminate the Hearing Notice, substantially as described at Exhibit "A", Schedule "B".

**Hospital** shall mean the Miramichi Regional Hospital.

**Parties** shall mean the Plaintiffs, the First Defendant and the Second Defendant.

***Plaintiffs*** shall mean the Representative Plaintiffs Albert John Gay, Kimberley Ann Doyle and James Bliss Wilson.

***Qualified Class Member*** shall mean an Eligible Class Member who submits a Claim Form on or before the Claim Deadline and is approved for compensation under the Settlement Agreement.

***Qualified Class Member Payment*** shall mean cheque payments made by the Claims Administrator to Qualified Class Members in settlement of the Settled Claims.

***Release of Medical Records Authorization Deadline*** shall mean the date that is ninety (90) days after the first date of publication of the Settlement Approval Notice.

***Release of Medical Records Authorization Form*** shall mean a form substantially in accordance with Schedule "C" to the Settlement Approval Order.

***Released Parties*** shall mean the First Defendant and Second Defendant, jointly and severally, and all their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, predecessors, successors, executors, administrators and assigns.

***Second Defendant*** shall mean the Estate of Dr. Rajgopal S. Menon, as represented by Dr. Sanjay Siddhartha as Litigation Administrator.

***Second Defendant's counsel*** shall mean the law firm of Godbout Fawcett.

***Settled Claims*** shall mean any and all claims of Class Members, against the Released Parties, whether or not assigned and whether known or unknown, asserted or unasserted, past, now existing or in the future, in any way arising out of or relating to any of the allegations made or that could have been made in the Second Amended Statement of Claim.

***Settlement*** shall mean the settlement described in this Settlement Agreement.

***Settlement Approval Notice*** shall mean the Court-approved Notice, substantially as described at Schedule "A" to the Settlement Approval Order attached hereto as Exhibit

“B”, by which notice of Settlement Approval will be disseminated.

***Settlement Approval Order*** shall mean the order of the Court that approves this Settlement Agreement, substantially in the form attached hereto as Exhibit “B” and as provided in paragraph 3.1 of this Agreement.

***Settlement Fund*** shall mean the monies remaining from the Settlement Payment after Class Counsel Fees and Claims Administration Costs and applicable taxes are deducted, which funds shall be used to make the Qualified Class Member Payments, including the Plaintiffs’ honoraria (which are subject to Court approval).

***Settlement Payment*** shall mean the total payment made by the Defendants to Class Counsel of CAD \$2,500,000.00, inclusive of all Class Counsel Fees, costs of notice and Claims Administration Costs, applicable taxes and compensation to Qualified Class Members, as described herein.

***Trust Account*** means the interest-bearing trust account of Wagners established in accordance with the terms of this Agreement.

### **SECTION III – THE ORDER APPROVING THIS SETTLEMENT AGREEMENT**

#### **The Settlement Approval Order**

3.1 The Plaintiffs shall, as soon as is reasonably possible after the Execution Date, file a motion with the New Brunswick Court of Queen’s Bench seeking an Order approving the Settlement Agreement and provide Class Members with an opportunity for objection, on notice of no less than sixty (60) days prior to the hearing of the motion for approval of the Settlement Agreement.

3.2 The Parties shall act diligently and cooperatively in order to secure the appropriate court orders and approvals necessary to implement and give effect to this Settlement Agreement.

#### **Consent to the Settlement Approval Order**

3.3 The Defendants shall consent to the Settlement Approval Order for the purpose of Settlement of the Action and implementation of this Settlement Agreement, without prejudice to



the rights of the Parties to proceed to trial in the event that the Settlement Approval Order is not obtained or this Settlement Agreement is otherwise terminated in accordance with its provisions.

## **SECTION IV - NOTICE TO THE CLASS**

### **Hearing Notice**

4.1 The Parties hereby agree to the form and contents of the Hearing Notice (Exhibit "A", Schedule "A") and of the Hearing Notice Plan (Exhibit "A", Schedule "B") subject to the issuance of the Hearing Notice Approval Order (Exhibit "A"), which shall be sought by way of a motion by the Plaintiffs after the Execution Date.

### **Settlement Approval Notice**

4.2 The Settlement Approval Notice shall be disseminated in accordance with the terms of the Hearing Notice Plan and Settlement Approval Order.

### **Notice of Termination**

4.3 If this Settlement Agreement is terminated after the Settlement Approval Order has been issued, Class Counsel shall, within thirty (30) days of its termination, apply to the Court for an order determining whether a notice of termination shall be provided to Class Members and providing directions as to the form, content, and methods of publishing and disseminating such notice, which costs shall be borne by Class Counsel.

## **SECTION V – DISTRIBUTION OF THE SETTLEMENT PAYMENT**

### **Payment of the Settlement Payment by the Defendants**

5.1 The Defendants agree to pay the Settlement Payment in the all-inclusive sum of CAD \$2,500,000.00 in full and final settlement of the Action, which sum shall be paid into the Trust Account no later than twenty (20) business days after the Effective Date, to be held for the benefit of Eligible Class Members subject to Class Counsel Fees as approved by the Court, and distributed in accordance with this Settlement Agreement. The Settlement Payment shall be funded as follows:

(a) The Second Defendant shall contribute the all-inclusive sum of CAD \$525,000.00 ("Menon Funds"), to be distributed in the following manner:

- i. The sum of CAD \$6,825.00 shall be contributed towards the payment of the Plaintiffs' honoraria, representing 21% of total honoraria payments to be made under this Settlement Agreement;
- ii. Following payment as contemplated in section 9.2, the remaining Menon Funds shall be contributed towards the settlement of Eligible Class Members who are deemed by the Claims Administrator to meet the criteria in Category 1A or 1B of the Compensation Grid attached hereto as Exhibit "C", i.e. those who have suffered harm as a result of a change in diagnosis with respect to a cancer or cancer-related disease;
- iii. In the event of any residue of the Menon Funds, this residue amount shall be subject to a cy-près distribution to the Miramichi Regional Hospital Foundation to be utilized for pathology-related purposes.

(b) The First Defendant shall contribute the all-inclusive sum of CAD \$1,975,000.00 ("Hospital Funds") as follows:

- i. The sum of CAD \$25,675.00 shall be contributed towards the payment of the Plaintiffs' honoraria, representing 79% of total honoraria payments to be made under this Settlement Agreement;
- ii. In the event the claims of Category 1 Eligible Class Members (and Class Counsel Fees and Claims Administration Costs) exceed the Menon Funds available, the Hospital Funds shall be allocated to pay the difference;
- iii. Following payment as contemplated in section 9.1, the remainder of the Hospital Funds shall then be applied to the settlement of Eligible Class Members who are deemed by the Claims Administrator to meet the criteria in Category 2 of the Compensation Grid attached hereto as Exhibit "C", i.e. those who have had a partial or complete change in diagnosis with respect to a cancer or cancer-related disease, to a maximum of CAD \$750.00 net per Qualified Class Member;

- iv. In the event of any residue from the Hospital Funds, it will be subject to a cy-près reversion to the Province of New Brunswick.

### **Distribution of the Settlement Fund to Qualified Class Members**

5.2 The Settlement Fund will be subject to distribution among the Qualified Class Members in accordance with the Compensation Grid attached hereto as Exhibit "C".

5.3 In the event the number of claims from Qualified Class Members should exceed the capacity of the Settlement Fund, all Qualified Class Member Payments shall be subject to a *pro rata* reduction.

5.4 As soon as reasonably practicable after the Claim Deadline, the Claims Administrator shall distribute the Settlement Fund, in accordance with the Compensation Grid (Exhibit "C"), to pay the claims of Qualified Class Members.

5.5 Eligible Class Members who believe they meet the criteria for a Category 1A or 1B payment in accordance with the Compensation Grid (Exhibit "C") shall, at their request, and upon sending to the Claims Administrator a completed Release of Medical Records Authorization Form by the Release of Medical Records Authorization Deadline, be provided with copies of their relevant Hospital records by the First Defendant at no charge should they be deemed eligible to apply for Category 1 compensation, for the purposes of claims administration.

5.6 The Qualified Class Member Payments shall be paid by cheque and delivered by regular mail.

5.7 Any interest earned on the Settlement Payment shall accrue to the benefit of the Class and shall become and remain part of the Settlement Fund.

5.8 Taxes payable on any interest that accrues on the Settlement Payment shall be the responsibility of Class Counsel and shall be payable from the interest accrued on the Settlement Payment.

5.9 As of the Effective Date, the Defendants shall have no responsibility, financial obligations, or liability whatsoever with respect to the distribution or administration of the Settlement Payment, or with respect to any conduct of the Claims Administrator, Class Members, Eligible Class

Members, Qualified Class Members or Class Counsel, in connection with the use of, or administration of, the Settlement Payment or otherwise.

## **SECTION VI - CLAIMS PROCESS**

6.1 To qualify for a Qualified Class Member Payment, an Eligible Class Member must:

(a) where they believe themselves to meet the criteria for compensation under Category 1A or 1B of the Compensation Grid (Exhibit C to this Settlement Agreement),

- i. submit a completed Release of Medical Records Authorization Form to the Claims Administrator by the Release of Medical Records Authorization Deadline. The Release of Medical Records Authorization Form must be postmarked not later than the Release of Medical Records Authorization Deadline, or if there is no legible postmark, the Release of Medical Records Authorization Form must be received by the Claims Administrator not later than the Release of Medical Records Authorization Deadline. The Claims Administrator shall reject any Release of Medical Records Authorization Form not clearly postmarked on or before, or received prior to, the Release of Medical Records Authorization Deadline;
- ii. the Claims Administrator will obtain information from the Hospital to enable verification by the Claims Administrator as to whether the Class Member is eligible to submit a claim for Category 1A or 1B, and in the case of eligibility, the Hospital will deliver relevant medical records directly to the Class Member in question, and in the case of ineligibility, the Claims Administrator will communicate same to the Class Member;
- iii. if the Class Member is eligible to submit a claim for compensation under Category 1A or 1B, on receipt of a copy of their relevant medical records at no charge to them, an Eligible Class Member must provide to the Claims Administrator a copy of the medical records they deem

relevant to their claim for compensation under Category 1A or 1B (Exhibit C to this Settlement Agreement) along with the requisite Claim Form described below, the package to be postmarked not later than the Claim Deadline, or, if there is no legible postmark, the package must be received by the Claims Administrator not later than the Claim Deadline. The Claims Administrator shall reject any packages not clearly post-marked on or before, or received prior to, the Claim Deadline; and

- iv. submit a completed Category 1 Claim Form (verified by the Class Member's solemn declaration) to the Claims Administrator postmarked not later than the Claim Deadline, or, if there is no legible postmark, the Claim Form must be received by the Claims Administrator not later than the Claim Deadline. The Claims Administrator shall reject any Claim Form not clearly post-marked on or before, or received prior to, the Claim Deadline.

(b) where they do not qualify for compensation under Category 1A or 1B but believe themselves to meet the criteria for compensation under Category 2 of the Compensation Grid (Exhibit C to this Settlement Agreement), an Eligible Class Member must submit a completed Category 2 Claim Form (verified by the Class Member's solemn declaration) to the Claims Administrator postmarked not later than the Claim Deadline, or, if there is no legible postmark, the Claim Form must be received by the Claims Administrator not later than the Claim Deadline. The Claims Administrator shall reject any Claim Form not clearly post-marked on or before, or received prior to, the Claim Deadline.

6.2 All Release of Medical Records Authorization Forms, Claim Forms and review of relevant medical records shall be processed by the Claims Administrator. The Claims Administrator shall report its activities and progress upon the request of Class Counsel or as ordered by the Court.

6.3 Class Counsel shall pay all Claims Administration Costs from the Settlement Payment.

6.4 The Claims Administrator shall maintain reasonably detailed records of its activities under this Agreement, including all Release of Medical Records Authorization Forms and Claim Forms received, and all Qualified Class Member Payments issued, until one (1) year after all claims are finally resolved and/or paid. Such records shall be made available upon request for inspection by any Party.

6.5 Qualified Class Member Payments shall be in full and final satisfaction of the Class Members' Settled Claims.

6.6 Qualified Class Members shall have six (6) months from the date the Qualified Class Member Payment is sent by the Claims Administrator to deposit their Qualified Class Member Payments. After six (6) months the cheques will be void.

## **SECTION VII - RELEASES AND JURISDICTION OF THE COURT**

7.1 On the Effective Date, each Class Member, whether or not she submits a Claim Form or deposits her Qualified Class Member Payment, shall be deemed by this Settlement Agreement to have completely and unconditionally released, forever discharged and acquitted the Released Parties from any and all claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have in relation to the subject matter of the Action.

7.2 The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, Parties, Class Members and the Claims Administrator to interpret and enforce the terms, conditions and obligations under this Settlement Agreement.

7.3 All claims arising out of the facts pleaded in the Action made or which could have been made in the Action shall be released without admission of liability, and the Action shall be dismissed without costs.

7.4 Notwithstanding any other terms in this Settlement Agreement, it is the intent of the Parties hereto that, subject to Court approval of the Settlement, the Released Parties shall not be liable, either at the present or in the future, to make any payment whatsoever to the Class or Class Members, or any other person in respect of this Action, including costs, other than the Settlement

Payment. The Class and Class Members acknowledge that the Released Parties have no further financial exposure to the Class and Class Members for any amount of the Plaintiffs' claims in the Action or for costs.

7.5 The Plaintiffs hereby acknowledge that upon payment of the Settlement Payment of \$2,500,000.00, the Class and Class Members will have received full and complete satisfaction of their claim in the Action.

## **SECTION VIII – DENIAL OF LIABILITY**

8.1. The Defendants deny all claims made by the Plaintiffs against the Defendants in the Action.

8.2. The Defendants make no admission of any liability or wrongdoing with respect to any of the claims made by the Plaintiffs.

8.3. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Defendants, or of the truth of any of the allegations alleged in the Action or otherwise, and such is specifically denied by the Defendants.

8.4. This Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out the terms of this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence, in any pending or future civil, criminal or administrative action or proceedings, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Settled Claims or as otherwise required by law.

## **SECTION IX - CLASS COUNSEL FEES**

### **Fee Payment**

9.1 Payment of 79% of approved Class Counsel Fees, approved Claims Administration Costs, and the approved Plaintiffs' honoraria shall be made from the Hospital Funds.

9.2 Payment of 21% of approved Class Counsel Fees, approved Claims Administrations Costs,

and the approved Plaintiffs' honoraria shall be made from the Menon Funds.

### **Fee Approval**

9.3 Class Counsel shall seek Court approval of Class Counsel Fees and Claims Administration Costs in accordance with the *Class Proceedings Act*, S.N.B. 2011, c.125.

9.4 Class Counsel Fees may only be paid out of the Trust Account after all necessary Court approvals and notice periods. Any reasonable Claims Administration Costs necessarily incurred in relation to Hearing Notice and claims administration prior to the Effective Date shall be payable and non-refundable to the Defendants in the event approval of the Settlement Agreement is not granted.

9.5 Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or affect or delay the finality of the Approval Order and the resolution of the Action provided herein.

9.6 The procedure for, and the allowance or disallowance by the Court of, any requests for Class Counsel Fees to be paid out of the Settlement Payment are not part of the Settlement provided for herein, and are to be considered by the Court separately from its consideration of the fairness, reasonableness and adequacy of the Settlement provided for herein.

### **SECTION X - TERMINATION OF AGREEMENT**

10.1 The Settlement Agreement may, at the election of one or more of the Parties, be terminated on the occurrence of any of the following events:

- (a) The Court declines to approve this Settlement Agreement and an order substantially in the form of the Settlement Approval Order is not granted by the Court in final disposition of the matter; or
- (b) The Court declines to dismiss the Action.

10.2 The failure of the Court to approve in full the request by Class Counsel for the Class Counsel Fees shall not be grounds to terminate this Settlement Agreement.



## **Effect of Termination**

10.3 In the event this Settlement Agreement is terminated in accordance with its terms:

- (a) it shall be null and void and shall have no force or effect, and shall not be used as evidence or for any purpose in any litigation or proceeding and the Parties shall not be bound by its terms, except as specifically provided in this Settlement Agreement;
- (b) the Settlement Payment, along with accrued interest, will be returned to the Defendants forthwith in the proportion in which it was paid by each Defendant in accordance with this Settlement Agreement, less any reasonable amounts incurred in relation to providing Hearing Notice and claims administration prior to the Effective Date;
- (c) all negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before the Settlement Agreement was executed; and
- (d) all statutes of limitation and/or repose for all claims asserted in such cases shall be deemed to have been tolled from the date of signature of this Agreement by all Parties until the date of reinstatement and reactivation, or for such longer period as the law may provide without reference to this Settlement Agreement.

## **Termination Orders**

10.4 If this Settlement Agreement is terminated, Class Counsel shall, within thirty (30) days after termination, apply to the Court for an order:

- (a) declaring this Settlement Agreement null and void and of no force or effect;
- (b) determining whether a notice of termination shall be provided to Class Members and, if so, the form, content and method of disseminating such a notice;
- (c) authorizing the payment of all funds in the Trust Account, including accrued interest, to the Defendants directly or indirectly, as the case may be, minus any amounts paid out of the Trust Account, in accordance with this Settlement Agreement; and

- (d) if there is any dispute about the termination of this Settlement Agreement, the Court shall determine any dispute by motion on notice to the Parties.

### **No Opting Out**

10.5 With the exception of the limited number of Class Members who provided a valid opt-out form by the opt-out deadline, no Class Member may exclude herself from the proceedings or from this Settlement Agreement.

## **SECTION XI - MISCELLANEOUS PROVISIONS**

11.1 This Settlement Agreement, including all Exhibits hereto, shall constitute the entire Settlement Agreement among the Parties with regard to the subject matter of this Settlement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Settlement. This Agreement may not be changed, modified, or amended except in writing, with the express written consent of all Parties and with Court approval.

11.2 This Settlement Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Province of New Brunswick.

11.3 This Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

11.4 All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.5 Any notice, instruction, application for Court approval, application for Court orders sought in connection with this Settlement Agreement, or other document to be given by any Party to any other Party shall be in writing:

- (a) if to the Plaintiffs, to the attention of Raymond F. Wagner, QC, Wagners,  
1869 Upper Water Street, Suite PH301, Halifax, Nova Scotia, B3J 1S9;
- (b) if to the First Defendant, to the attention of David T. Hashey, QC, Cox &

Palmer, 400-371 Queen Street, Fredericton, New Brunswick, E3B 1B1;

(c) if to the Second Defendant, to the attention of Catherine A. Fawcett, Godbout Fawcett, 1-50 Hazen Street, Saint John, New Brunswick, E2L 3L1; and

(d) if to other recipients, as the Court may specify.

11.6 The Exhibits to this Settlement Agreement are:

Exhibit "A" – Hearing Notice Approval Order

Exhibit "B" – Settlement Approval Order

Exhibit "C" – Compensation Grid

11.7 No waiver of any provision of this Agreement shall be binding on any Party unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, and no waiver of any provision of this Agreement shall constitute a continuing waiver unless expressly so provided.

11.8 The Settlement Agreement is binding upon, and shall inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Parties.

11.9 The Hearing Notice and Settlement Approval Notice will be available in both English and French. In case of any ambiguity or dispute about interpretation, the English version is official and shall prevail. The First Defendant shall be responsible for translating, at its sole expense, the Hearing Notice and the Settlement Approval Notice.

### **Confidentiality**

11.10 The Parties agree that no public statements shall be made regarding this Settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements will indicate clearly that the Settlement has been the subject of negotiations by all Parties, agreed and approved by the Court without any admission or finding of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the facts alleged in the Action, all of which are specifically denied by the Defendants.

11.11 Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Action or the manner in which the Settlement was conducted. The Parties agree that any public statements that are inconsistent with the terms of this Settlement Agreement could cause irreparable harm, including harm to the businesses and/or reputations of the Defendants.

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/its behalf by its counsel of record, effective as of April 15, 2019.

M. Carter (Maddy Carter)  
For: Raymond F. Wagner, Q.C.  
Wagners Law Firm  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Class Counsel

M. Carter (Maddy Carter)  
For: Chesley F. Crosbie, Q.C.  
Patient Injury Law  
169 Water Street, 4th Floor  
St. John's, NL A1C 1B1  
Class Counsel

\_\_\_\_\_  
David T. Hashey, Q.C.  
Cox & Palmer  
400-371 Queen Street  
Fredericton, NB E3B 1B1  
Counsel for the First Defendant

11.11 Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Action or the manner in which the Settlement was conducted. The Parties agree that any public statements that are inconsistent with the terms of this Settlement Agreement could cause irreparable harm, including harm to the businesses and/or reputations of the Defendants.

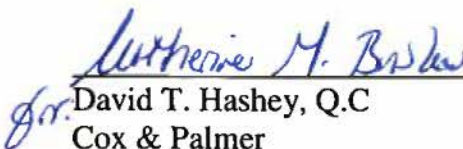
IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/its behalf by its counsel of record, effective as of \_\_\_\_\_, 2019.

---

Raymond F. Wagner, Q.C.  
Wagners Law Firm  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Class Counsel

---

Chesley F. Crosbie, Q.C.  
Patient Injury Law  
169 Water Street, 4th Floor  
St. John's, NL A1C 1B1  
Class Counsel

  
\_\_\_\_\_  
David T. Hashey, Q.C.  
Cox & Palmer  
400-371 Queen Street  
Fredericton, NB E3B 1B1  
Counsel for the First Defendant

A handwritten signature in black ink, appearing to read 'Catherine A. Fawcett', written over a horizontal line.

Catherine A. Fawcett  
Godbout Fawcett  
1-50 Hazen Street  
Saint John, NB E2L 3L1  
Counsel for the Second Defendant

**EXHIBIT "A"**

COURT FILE NO.: N/C/41/08

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE

JUDICIAL DISTRICT OF MIRAMICHI

CIRCONSCRIPTION JUDICIAIRE DE  
MIRAMICHI

B E T W E E N :

E N T R E :

**ALBERT JOHN GAY, KIMBERLEY ANN DOYLE  
and JAMES BLISS WILSON,**

Plaintiffs,

Demandeurs,

- and -

-et-

**REGIONAL HEALTH AUTHORITY 7, a corporation  
incorporated under the laws of the Province of New  
Brunswick,**

First Defendant,

Defendeurs.

- and -

**THE ESTATE OF DR. RAJGOPAL S. MENON,  
AS REPRESENTED BY DR. SANJAY SIDDHARTHA  
AS LITIGATION ADMINISTRATOR,**

Second Defendant.

Brought under the *Class Proceedings Act*,  
S.N.B. 2011, c.125

**ORDER APPROVING HEARING NOTICE AND HEARING NOTICE PLAN**

**BEFORE THE HONOURABLE JUSTICE JEAN-PAUL OUELLETTE**

**THIS MOTION** made by the Plaintiffs, on consent of the Defendants, for an order approving the form and contents of notice to Class Members of a hearing to approve a proposed settlement agreement dated April 15, 2019 (the "Settlement Agreement") (the "Hearing Notice") and the method by which the Hearing Notice is disseminated (the "Hearing Notice Plan"), was heard on the 24<sup>th</sup> day of April 2019 by the Honourable Mr. Justice Ouellette.

**ON HEARING** the submissions of counsel for the Plaintiffs, counsel for the First Defendant, and counsel for the Second Defendant;

**AND ON READING** the materials filed on this motion:

1. **THIS COURT ORDERS** that the definitions in the Settlement Agreement are incorporated into and shall be applied in interpreting this Order.

**Approval of the Hearing Notice**

2. **THIS COURT ORDERS** that the Hearing Notice attached hereto as Schedule "A" is hereby approved.

3. **THIS COURT ORDERS** that the Hearing Notice shall be first published no more than five (5) business days following the date of issuance of this Order.

**Approval of the Hearing Notice Plan**

4. **THIS COURT ORDERS** that the Hearing Notice Plan attached hereto as Schedule "B" is hereby approved.

DATED at \_\_\_\_\_, this \_\_\_\_ day of April, 2019.

---

Judge of the Court of Queen's Bench of New Brunswick



**Consented to as to form:**

For: M. Carter (Maddy Carter)  
Chesley F. Crosbie, Q.C.  
Patient Injury Law  
169 Water Street, 4th Floor  
St. John's, NL A1C 1B1  
Class Counsel

For: M. Carter (Maddy Carter)  
Raymond F. Wagner, Q.C.  
Wagners Law Firm  
1869 Upper Water Street  
Suite 11301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Class Counsel

---

David T. Hashey, Q.C.  
Cox & Palmer  
400-371 Queen Street  
Fredericton, NB E2B 1B1  
Counsel for the First Defendant

---

Catherine A. Fawcett  
Godbout Fawcett  
1-50 Hazen Street  
Saint John, NB E2L 3L1  
Counsel for the Second Defendant


**Consented to as to form:**

---

Chesley F. Crosbie, Q.C.  
Patient Injury Law  
169 Water Street, 4th Floor  
St. John's, NL A1C 1B1  
Class Counsel

---

Raymond F. Wagner, Q.C.  
Wagners Law Firm  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Class Counsel

*for*   
David T. Hashey, Q.C.  
Cox & Palmer  
400-371 Queen Street  
Fredericton, NB E2B 1B1  
Counsel for the First Defendant

---

Catherine A. Fawcett  
Godbout Fawcett  
1-50 Hazen Street  
Saint John, NB E2L 3L1  
Counsel for the Second Defendant

**Consented to as to form:**

For: M. Carter (Maddy Carter)  
Chesley F. Crosbie, Q.C.  
Patient Injury Law  
169 Water Street, 4th Floor  
St. John's, NL A1C 1B1  
Class Counsel

For: M. Carter (Maddy Carter)  
Raymond F. Wagner, Q.C.  
Wagners Law Firm  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Class Counsel

David T. Hashey, Q.C.  
Cox & Palmer  
400-371 Queen Street  
Fredericton, NB E2B 1B1  
Counsel for the First Defendant

Catherine A. Fawcett  
Catherine A. Fawcett  
Godbout Fawcett  
1-50 Hazen Street  
Saint John, NB E2L 3L1  
Counsel for the Second Defendant

## SCHEDULE "A"

### NOTICE OF PROPOSED SETTLEMENT OF THE MIRAMICHI PATHOLOGY CLASS ACTION

#### PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS

#### WHO IS ELIGIBLE?

A proposed settlement ("Settlement") has been reached in the Miramichi Regional Hospital pathology class action. This Notice advises you of the settlement agreement and of the hearing that will be held to decide whether the Settlement should be approved.

In February 2008, notice was given to the public that all pathological tests analyzed by a former pathologist at the Miramichi Regional Hospital, Dr. Rajgopal Menon, during the period from 1995 to 2007, would be subject to an external review.

If the Settlement is approved, it will apply to all "Class Members", which is defined as follows:

- a) Patients whose tissue samples underwent pathology testing for potential cancer or potential cancer-related disease, and were reported by Dr. Menon at the Miramichi Regional Hospital between January 1, 1995 and February 7, 2007, and whose tissue samples the Miramichi Regional Hospital subsequently caused to be retested; and
- b) The estates, children, parents and spouses (as defined by the *Fatal Accidents Act*) of diseased patients.

For clarity, not all Class Members as described above will be eligible for compensation under this Settlement. To be eligible for payment, a Class Member must be living at the date of approval of the Settlement and must not have opted out of this action. Matrimonial and common law spouses will receive no monetary reward under the Settlement.

Wagners Law Firm is class counsel. You can review the Settlement Agreement at Wagners' website: [www.wagners.co](http://www.wagners.co), or you can contact Wagners at the contact information provided in this Notice.

#### HOW MUCH WILL I RECEIVE UNDER THE SETTLEMENT?

The Settlement provides for a **\$2,500,000.00 (CDN)** settlement payment, which will be used to pay each Eligible Class Member who meets certain criteria and **who submits a Claim Form and, where required, supporting medical records within the deadlines provided.** To obtain relevant medical records to support a claim at no cost the Release of Medical Records Authorization Form must be received within the deadline provided. The Settlement will also be used to pay **legal fees, the costs of notifying Class Members about the Settlement, the costs of administering the claims and of distributing the payments.** If the Settlement is approved, the Settlement Approval Notice will be published and the Claim Forms and Release of Medical Records Authorization Form will be available to Class Members from the Claims Administrator.

The Settlement provides for two categories of awards. You are eligible for compensation under the proposed Settlement if you fall within one of the two categories. Category 1 Class Members are those who suffered harm as a result of a change in Dr. Menon's diagnosis with respect to a cancer or cancer-related disease; Category 2 Class Members are those who had a partial or complete change in Dr. Menon's diagnosis with respect to a cancer or cancer-related disease who do not qualify for an award under Category 1. Category 1 Class Members who submit a completed Release of Medical Records Authorization Form by [DATE], and a completed Category 1 Claim Form and any necessary supporting documentation by

[DATE] (the “**Claim Deadline**”) may be entitled to an award ranging from **CAD \$2,500.00 to a maximum of CAD \$50,000.00**. Category 2 Class Members who submit a Category 2 Claim Form within the Claim Deadline may be entitled to an award of a maximum of **CAD \$750.00**. Awards may be subject to a pro rata reduction depending on the number of claims received by the Claims Administrator.

#### **SETTLEMENT APPROVAL HEARING – JULY 4, 2019 AT 10 A.M.**

The Settlement will only be effective if the Court approves it as being fair, reasonable and in the best interests of Class Members. The Court will determine this at a Settlement Approval Hearing on **July 4, 2019, at 10 a.m.** at the Miramichi Law Courts, 673 King George II Highway, Miramichi, New Brunswick.

You may attend the Settlement Approval Hearing and you may make oral submissions to the Court.

#### **OBJECTING TO THE PROPOSED SETTLEMENT – DEADLINE OF JUNE 27, 2019**

If you wish to object to the proposed Settlement, you may submit a written objection to us, explaining your reason for objecting to the proposed Settlement. **Your written objection must be received by us no later than June 27, 2019 at the mailing address or email address provided below.** We will file copies of all objections with the Court. Do **NOT** send an objection directly to the Court. You may attend the Settlement Approval Hearing and you may make oral submissions to the Court, subject to the permission of the Court.

#### **LEGAL FEES**

At the Settlement Approval Hearing, Class Counsel will request approval for payment of its legal fees, disbursements and applicable taxes. Class Counsel has pursued this lawsuit on a contingency basis and will seek approval from the Court for such payment in accordance with the terms of its retainer agreement with the Representative Plaintiffs, which provides for a fee of 25% of the first \$10 million of a settlement or any part thereof, plus applicable taxes, and recovery of disbursements. The legal fees for which court approval will be sought total \$625,000 plus applicable taxes. Disbursements are estimated to be approximately \$290,000 (inclusive of applicable taxes).

#### **CONTACT US FOR MORE INFORMATION**

The Settlement Agreement is available on our website at **www.wagners.co**.

If you have any questions or wish to update your mailing address, please contact us by email at **classaction@wagners.co** or by telephone at **1-800-465-8794 / 902-425-7330**.

Our mailing address is **Wagners, 1869 Upper Water St., Halifax, Nova Scotia, B3J 1S9**.

*This Notice has been approved by the New Brunswick Court of Queen's Bench*

## **SCHEDULE "B"**

### **NOTICE PLAN**

If approved, the Hearing Notice shall be published/distributed by Class Counsel no more than five (5) business days following the issuance of the Hearing Notice Approval Order and, if approved, the Settlement Approval Notice shall be published/distributed by Class Counsel no more than twenty (20) business days following the issuance of the Settlement Approval Order. The aforementioned Notices shall be published/distributed in the following manner:

#### **Print**

1. The Hearing Notice will be published in both English and French on two (2) consecutive Fridays in each of the *Miramichi Leader* and *L'Acadie Nouvelle*, and will be published once, in both English and French, in the Provincial edition of the *Telegraph Journal*.
2. The Settlement Approval Notice will be published in both English and French on two (2) consecutive Fridays in each of the *Miramichi Leader* and *L'Acadie Nouvelle*, and will be published once, in both English and French, in the Provincial edition of the *Telegraph Journal*.

#### **Website**

3. The Hearing Notice will be posted in both English and French on Wagners' website and will remain posted until July 4, 2019, being the date of the Settlement Approval Hearing.
4. The Settlement Approval Notice will be posted in both English and French on Wagners' website and will remain posted until the Claim Deadline, two hundred and ten (210) days from the first date of publication of the Settlement Approval Notice.

#### **Press Release**

5. Wagners will issue a bilingual press release communicating the content of the Hearing Notice and the Settlement Approval Notice.

#### **Direct Distribution**

6. The Hearing Notice and/or the Settlement Approval Notice will be provided by Class Counsel to any person who requests it/them.

**EXHIBIT "B"**

COURT FILE NO.: N/C/41/08

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE

JUDICIAL DISTRICT OF MIRAMICHI

CIRCONSCRIPTION JUDICIAIRE DE  
MIRAMICHI

BETWEEN:

ENTRE:

**ALBERT JOHN GAY, KIMBERLEY ANN DOYLE  
AND JAMES BLISS WILSON,**

Plaintiffs,

Demandeurs,

- and -

-et-

**REGIONAL HEALTH AUTHORITY 7, a corporation  
incorporated under the laws of the Province of New  
Brunswick,**

First Defendant,

Défendeurs.

- and -

**THE ESTATE OF DR. RAJGOPAL S. MENON,  
AS REPRESENTED BY DR. SANJAY SIDDHARTHA  
AS LITIGATION ADMINISTRATOR,**

Second Defendant.

Brought under the *Class Proceedings Act*,  
S.N.B. 2011, c.125

**SETTLEMENT APPROVAL ORDER**

**BEFORE THE HONOURABLE JUSTICE JEAN-PAUL OUELLETTE**

**THIS MOTION** made by the Plaintiffs, on consent of the Defendants, for an order approving a settlement agreement dated \_\_\_\_, 2019 (the "Settlement Agreement"), was heard on the 4<sup>th</sup> day of July, 2019, at the Miramichi Law Courts, 673 King George Highway, Miramichi, New Brunswick.

**ON HEARING** the submissions of counsel for the Plaintiffs, counsel for the First Defendant, and counsel for the Second Defendant;

**AND ON READING** the materials filed in support of this motion:

1. **THIS COURT ORDERS** that the definitions in the Settlement Agreement are incorporated into and shall be applied in interpreting this Order.
2. **THIS COURT ORDERS** that the Settlement Agreement is fair and reasonable and in the best interests of the Class, and is hereby approved pursuant to section 37(1) of the *Class Proceedings Act*, and shall be implemented in accordance with its terms.
3. **THIS COURT ORDERS** that \_\_\_\_\_ be appointed as the Claims Administrator.
4. **THIS COURT ORDERS** that the Claims Administrator is authorized to obtain and/or have access to relevant personal health information of Class Members who submit a Claim Form and/or a Release of Medical Records Authorization Form, in order to assess eligibility for a Qualified Class Member Payment.
5. **THIS COURT ORDERS** that the form and content of the Settlement Approval Notice substantially in the form attached as Schedule "A" is approved.
6. **THIS COURT ORDERS** that the Settlement Agreement be otherwise implemented in accordance with its terms.

**Representative Plaintiffs' Honoraria**



7. **THIS COURT ORDERS** that Albert John Gay shall receive an honorarium in the amount of \$12,500.00, payable from the Settlement Fund, which monies shall not be deemed to be taxable income.

8. **THIS COURT ORDERS** that Kimberley Ann Doyle and James Bliss Wilson shall each receive an honorarium in the amount of \$10,000.00, payable from the Settlement Fund, which monies shall not be deemed to be taxable income.

DATED at \_\_\_\_\_, this \_\_\_\_ day of April, 2019.

\_\_\_\_\_  
Judge of the Court of Queen's Bench of New Brunswick

**Consented to as to form:**

\_\_\_\_\_  
Chesley F. Crosbie, Q.C.  
Patient Injury Law  
169 Water Street, 4th Floor  
St. John's, NL A1C 1B1  
Class Counsel

\_\_\_\_\_  
Raymond F. Wagner, Q.C.  
Wagners Law Firm  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Class Counsel

\_\_\_\_\_  
David T. Hashey, Q.C.  
Cox & Palmer  
400-371 Queen Street  
Fredericton, NB E2B 1B1  
Counsel for the First Defendant

\_\_\_\_\_  
Catherine A. Fawcett  
Godbout Fawcett  
1-50 Hazen Street  
Saint John, NB E2L 3L1  
Counsel for the Second Defendant

## SCHEDULE "A"

### NOTICE OF SETTLEMENT APPROVAL OF THE MIRAMICHI PATHOLOGY CLASS ACTION (INSERT DATE OF MAILING HERE)

#### **PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS**

A settlement ("Settlement") has been reached in the Miramichi Regional Hospital pathology class action. In order to receive payment under the Settlement, you must obtain a Claim Form from the Claims Administrator and send the completed Claim Form to the address provided below **by [X] (the "Claim Deadline")**. Additional documents may be required, as outlined below.

#### **WHO IS INCLUDED?**

In February 2008, notice was given to the public that all pathological tests analyzed by a former pathologist at the Miramichi Regional Hospital, Dr. Rajgopal Menon, during the period from 1995 to 2007, would be subject to an external review.

The Settlement applies to all "Class Members", defined as follows:

- a) Patients whose tissue samples underwent pathology testing for potential cancer or potential cancer-related disease, and were reported by Dr. Menon at the Miramichi Regional Hospital between January 1, 1995 and February 7, 2007, and whose tissue samples the Miramichi Regional Hospital subsequently caused to be retested; and
- b) The estates, children, parents and spouses (as defined by the *Fatal Accidents Act*) of diseased patients.

For clarity, not all Class Members as described above will be eligible for compensation under this Settlement. To be eligible for payment, a Class Member must be living at the date of approval of the Settlement and must not have opted out of this action. Matrimonial and common law spouses will receive no monetary reward under the Settlement.

Wagners Law Firm is class counsel. You can review the Settlement Agreement at Wagners' website: [www.wagners.co](http://www.wagners.co), or you can contact Wagners at the contact information listed later in this Notice.

#### **HOW MUCH WILL I RECEIVE UNDER THE SETTLEMENT?**

The Settlement provides for a **\$2,500,000.00 (CDN)** settlement payment, which will be used to pay each Eligible Class Member who meets certain criteria and **who submits a Claim Form and, where required, supporting medical records within the deadlines provided**. To obtain relevant medical records to support a claim at no cost the Release of Medical Records Authorization Form must be received within the deadline provided. The Settlement will also be used to pay **legal fees, the costs of notifying Class Members about the Settlement, the costs of administering the Settlement and of distributing the payments**.

The Settlement provides for two categories of awards. You are eligible for compensation under the Settlement if you fall within one of the two categories. Category 1 Class Members are those who suffered harm as a result of a change in Dr. Menon's diagnosis with respect to a cancer or cancer-related disease; Category 2 Class Members are those who had a partial or complete change in Dr. Menon's diagnosis with respect to a cancer or cancer-related disease who do not qualify for an

award under Category 1. Category 1 Class Members who submit a completed Release of Medical Records Authorization Form by [DATE], and a completed Category 1 Claim Form and any necessary supporting documentation by [DATE] (the "Claim Deadline") may be entitled to an award ranging from CAD \$2,500.00 to a maximum of CAD \$50,000.00. Category 2 Class Members who submit a Category 2 Claim Form within the Claim Deadline may be entitled to an award of a maximum of CAD \$750.00. Awards may be subject to a pro rata reduction depending on the number of claims received by the Claims Administrator.

### **HOW DO I RECEIVE MY PAYMENT?**

If you believe you are a Category 1 Class Member who suffered harm as a result of a change in Dr. Menon's diagnosis with respect to a cancer or cancer-related disease, **in order to receive your payment you must:** (1) submit your completed Release of Medical Records Authorization Form to the Claims Administrator **on or before [DATE]** (if you wish to obtain your records at no cost); (2) on receipt of a copy of your relevant medical records (which will be provided at no charge to you if the Release of Medical Records Authorization Form is received on or before [DATE]), you must submit the documents you believe support your entitlement to compensation **and** a completed Category 1 Claim Form to the Claims Administrator at the address provided below **on or before the expiry of the Claim Deadline of [DATE]**.

If you believe you are a Category 2 Class Member who had a partial or complete change in diagnosis with respect to a cancer or cancer-related disease, and you do not qualify for an award under Category 1, **in order to receive your payment you must** submit a completed Category 2 Claim Form to the Claims Administrator at the address provided below **on or before the expiry of the Claim Deadline of [DATE]**.

Payments will be mailed out by regular mail as soon as possible after the Claim Deadline. Cheques must be deposited within six (6) months from the time they are sent out.

### **LEGAL FEES**

Class Counsel pursued this lawsuit on a contingency basis and sought approval from the Court for such payment in accordance with the terms of its retainer agreement with the Representative Plaintiffs, which provides for a fee of 25% of the first \$10 million of a settlement or any part thereof, plus applicable taxes, and recovery of disbursements. The legal fees for which court approval will be sought total \$625,000 plus applicable taxes.

Class Counsel's legal fees, disbursements and applicable taxes will be paid out of the Settlement. At the Settlement Approval Hearing, Class Counsel requested and received the Court's approval for payment of their fees, disbursements and applicable taxes in the total amount of \$~~X~~.

### **FOR MORE INFORMATION**

The Settlement Agreement is available on our website at [www.wagners.co](http://www.wagners.co).

The Court has appointed \_\_\_\_\_ as the Claims Administrator for the Settlement. **To receive compensation, you must mail your completed documents to the Claims Administrator at the following address:**

[Address]

**If you are a Category 1 Class Member, the Release of Medical Records Authorization Form must be postmarked no later than [DATE], or if there is no legible postmark, the Release of Medical Records Authorization Form must be received by the Claims Administrator no later than [DATE]. Otherwise you will not receive your relevant medical records at no charge.**

**The Claim Form and, for Category 1 Class Members, the relevant medical records, must be postmarked no later than the Claim Deadline of [X], or if there is no legible postmark, the Claim Form must be received by the Claims Administrator no later than the Claim Deadline of [X].**

**You may contact the Claims Administrator for further details at:**

**[email / phone]**

**If you have questions about the Settlement and/or would like to obtain more information, please contact Wagners by email at [classaction@wagners.co](mailto:classaction@wagners.co) or by telephone at 1-800-465-8794 / 902-425-7330.**

**This Notice contains a summary of some of the terms of the Settlement. If there is a conflict between this Notice and the Settlement, the terms of the Settlement shall prevail.**

***This Notice has been approved by the New Brunswick Court of Queen's Bench***

## EXHIBIT "C"

### COMPENSATION GRID

**In the event that the Qualified Class Member Payments exceed the Settlement Fund, all Qualified Class Member Payments shall be subject to *pro rata* reduction.**

#### **Category 1A – Psychiatric or Psychological Disturbance Arising from Change in Diagnosis**

Eligibility/Verification	Proof	Award
<p><b>Who is eligible to apply:</b></p> <p>Class Members who had a partial or complete change, as determined by Gamma Dynacare/Dr. Henderson.</p> <p>Eligibility for Category 1A payment verified as follows:</p> <ul style="list-style-type: none"> <li>Initial pathology testing performed by Dr. Menon for potential cancer or cancer-related disease as determined by the Rokosh report.</li> <li>Confirmation from a Hospital representative to the Claims Administrator that the claimant's initial pathology report was reviewed by Gamma Dynacare/Dr. Henderson and noted as a partial or complete change. Initial pathology report with addendum to be provided to the claimant by the Hospital at its own expense, if necessary, as well as any additional relevant hospital records required, upon the written consent for release signed by the claimant.</li> </ul>	<ul style="list-style-type: none"> <li>Medical records indicating psychiatric or psychological disturbance arising directly from change in diagnosis (e.g. treatment sought from GP, specialist). This can include an otherwise unrequired visit to a physician for the purpose of: interpretation of the changed diagnosis, and/or an interpretation of the records by a physician.</li> </ul>	<p>\$2500</p>

**EXHIBIT "C"**

<b>Category 1B – Physical and/or Psychological Injury Caused by Discrepancy That Has Potential to Result in Medical Harm</b>		
<b>Eligibility/Verification</b>	<b>Categories</b>	<b>Award</b>
Who is eligible to apply:	<u>Mild Harm (one or more of the following):</u>	\$10,000
Class Members who received a change in diagnosis from Dr. Henderson or Gamma Dynacare and the change had potential to result in medical harm, as determined in the Rokosh Report (estimated maximum 972 Class Members).	<ul style="list-style-type: none"> <li>Medical records indicating psychiatric or psychological disturbance arising directly from change in diagnosis (e.g. treatment sought from GP, specialist)</li> <li>Medical records indicating later medical consultation or testing was obtained due to change in diagnosis (regardless of the outcome thereof)</li> </ul>	
Eligibility for Category 1B payment verified as follows:	<u>Medium Harm (one or more of the following):</u>	\$25,000
<ul style="list-style-type: none"> <li>Initial pathology testing performed by Dr. Menon for potential cancer or cancer-related disease as determined by the Rokosh report.</li> <li>Confirmation from a Hospital representative to the Claims Administrator that the claimant's initial pathology report was reviewed by Gamma Dynacare/Dr. Henderson and noted as a partial or complete change. Initial pathology report with addendum to be provided to the claimant by the Hospital at its own expense, if necessary, as well as any relevant hospital records required, upon the written consent for release signed by the claimant.</li> <li>To be verified by claims administrator: Rokosh Report categorized</li> </ul>	<ul style="list-style-type: none"> <li>Overdiagnosis with consultation: Medical records indicating Dr. Menon over-diagnosed, leading to inappropriate and/or unnecessary medical <b>consultation</b> (but not treatment)</li> <li>Wrong diagnosis: Wrong diagnosis, although it did <b>not</b> lead to a different course of treatment or intervention but led to delay in diagnosis, to a degree that the delay would likely lead to increase in morbidity or mortality</li> </ul>	
	<u>Severe Harm (one or more of the following):</u>	\$50,000
	<ul style="list-style-type: none"> <li>Missed cancer: Missed malignancy or pre-malignancy (failure to identify a malignancy or pre-malignancy later identified by Gamma Dynacare) that led to delay in diagnosis, to a degree that the delay would likely lead to increase in morbidity or mortality</li> </ul>	

## EXHIBIT "C"

<p>change as having potential to result in medical harm.</p> <ul style="list-style-type: none"> <li>Additional specific eligibility criteria for mild/medium/severe harm subcategories of Category 1B are as described in the adjacent column.</li> </ul>	<ul style="list-style-type: none"> <li>Overdiagnosis with treatment: Medical records indicating Dr. Menon over-diagnosed, leading to inappropriate and/or unnecessary medical treatment (Dr. Menon's diagnosis exceeded, in severity, the diagnosis subsequently provided by Gamma Dynacare)</li> <li>Wrong diagnosis that led to a different course of treatment or intervention</li> </ul>
<p style="text-align: center;"><b><i>Category 2 – Payment for Partial or Complete Change</i></b></p>	
Eligibility/Verification	Award
<p>Who is eligible to apply:</p> <p>Class Members who had a partial or complete change, as determined by Gamma Dynacare/Dr. Henderson, but do not receive compensation under Category 1. If compensation is received under Category 1, no Category 2 award is payable.</p> <p>Eligibility verified as follows:</p> <ul style="list-style-type: none"> <li>Initial pathology testing performed by Dr. Menon for potential cancer or cancer-related disease as determined by the Rokosh report</li> <li>Confirmation from a Hospital representative to the Claims Administrator that the</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of \$750 per person (net of legal fees/notice/claims administration costs)</li> </ul>

## EXHIBIT "C"

<p>claimant's initial pathology report was reviewed by Gamma Dynacare/Dr. Henderson and noted as a partial or complete change. Initial pathology report with addendum to be provided to the claimant by the Hospital at its own expense, if necessary, and upon the written consent for release signed by the claimant.</p>	
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