

**WRIGHT PROFEMUR CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

RODRICK DESBOROUGH

and

WRIGHT MEDICAL TECHNOLOGY CANADA LTD, WRIGHT MEDICAL TECHNOLOGY, INC.
and WRIGHT MEDICAL GROUP, INC.

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WRIGHT PROFEMUR NATIONAL SETTLEMENT AGREEMENT

PREAMBLE & RECITALS

The Parties hereby enter into this Settlement Agreement providing for the settlement of the class action commenced in the Supreme Court of Nova Scotia under Halifax Court File No. 355381 (the "Action") pursuant to the terms and conditions set forth herein, subject to the approval by the Court as set forth herein;

WHEREAS the Action was certified by Order of the Supreme Court of Nova Scotia dated June 25, 2014 on behalf of a national class defined as "all Canadians who were implanted with a Wright Profemur Hip Implant System ("WPHIS") after February 2001 and who have suffered a fracture of the WPHIS device";

WHEREAS the Parties intend by this Settlement Agreement to resolve all outstanding claims of Canadian residents for damages due to the fracture, prior to the Effective Date, of WPHIS devices manufactured by the Defendants and implanted after February 2001;

WHEREAS counsel to the Parties have conducted settlement negotiations;

WHEREAS the Defendants have denied and continue to deny any wrongdoing or liability of any kind;

WHEREAS the Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to Class Members and it is fair, reasonable and in the best interests of Class Members based on an analysis of the facts and applicable law, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method provided in this Settlement Agreement of resolving the claims of Class Members;

WHEREAS the Defendants have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risk, uncertainty and expense of defending protracted

litigation, and to resolve finally and completely the pending and potential claims of Class Members;

WHEREAS the Parties shall seek the Settlement Approval Order;

WHEREAS the provincial and territorial health insurers (“Provincial Health Insurers”) have confirmed that they accept the Settlement Agreement and will not object to court approval of the settlement provided for in this Settlement Agreement, and they will accept payment pursuant to the terms of this Settlement Agreement in satisfaction of their Rights of Recovery pursuant to terms of this Settlement Agreement;

AND WHEREAS the implementation of this Settlement Agreement is subject to the issuance of the Settlement Approval Order;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled on the following terms and conditions:

1. SECTION 1: DEFINITIONS

Unless a particular section of this Settlement Agreement explicitly provides for another interpretation, the following terms, as used in this Settlement Agreement and its Schedules, 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*, where appropriate.

- (a) **“Approved Claimants”** shall mean Class Members who are approved by the Claims Administrator to receive compensation pursuant to this Settlement Agreement.

- (b) **“Approved Claims”** shall mean the claims of Class Members who are approved by the Claims Administrator to receive compensation pursuant to this Settlement Agreement.
- (c) **“Certification Order”** shall mean the Order of the Supreme Court of Nova Scotia issued on June 25, 2014 certifying this Action.
- (d) **“Claim Deadline”** shall mean the date that is three (3) months after the date on which the Phase II Settlement Approval Notice is first disseminated, or such other date as may be approved by the Court.
- (e) **“Claim Form”** shall mean the form substantially similar to the draft attached at Schedule “A”, as it may be further developed by the Claims Administrator in consultation with Class Counsel and Defendants’ Counsel, which Class Members shall complete in order to file a claim under this Settlement Agreement. The required supporting documentation shall form part of the Claim Form.
- (f) **“Claim Period”** shall mean the three (3) month period after the date on which the Phase II Settlement Approval Notice is first disseminated, or such other period as may be approved by the Court.
- (g) **“Claims Administration Costs”** shall mean all costs and applicable taxes incurred for the approval, implementation and operation of this Settlement Agreement, including without limitation costs required to satisfy the Phase I and Phase II Notice Plans and the fees and expenses (and applicable taxes thereon) of the Claims Administrator, but excludes Class Counsel Fees and Disbursements.
- (h) **“Claims Administrator”** shall mean, subject to the approval of the Supreme Court of Nova Scotia, RicePoint Administration Inc.

- (i) **“Claims Report”** shall mean the report providing the total number of Approved Claimants and the amount awarded to each Approved Claimant to be prepared by the Claims Administrator and provided to the Parties within thirty (30) business days after the Claim Deadline.
- (j) **“Class” or “Class Members”** shall mean, for purposes of this Settlement Agreement, all Canadian residents who were implanted with a Device after February 2001 and who have suffered a fracture of the Device prior to or on the Effective Date, but excludes any Opt Outs.
- (k) **“Class Counsel”** shall mean the law firm of Wagners.
- (l) **“Class Counsel Fees”** shall mean all legal fees and applicable taxes, as specified in Section 12 of this Settlement Agreement, payment of which is subject to Court approval.
- (m) **“Compensation Protocol”** shall mean the Court-approved plan, substantially in the form attached hereto at Schedule “A”, for administering this Settlement Agreement and distributing the Settlement Payment.
- (n) **“Complication”** shall mean the medical conditions identified in the Compensation Protocol that occurred as a result of a Revision Surgery.
- (o) **“Court”** shall mean the Supreme Court of Nova Scotia.
- (p) **“Defendants”** shall mean those entities named as defendants in the Action.
- (q) **“Defendants’ Counsel”** shall mean the law firm of Stewart McKelvey.
- (r) **“Device”** means the Wright Profemur Hip Implant System at issue in this Action. For certainty, only Devices manufactured by the Defendants are the subject of this Settlement Agreement.

- (s) **“Disbursements”** shall mean out of pocket funds paid by Class Counsel in connection with the Action, recovery of which from the Settlement Payment is subject to Court approval.
- (t) **“Effective Date”** shall mean the date on which the Settlement Approval Order becomes a Final Order.
- (u) **“Escrow Account”** means the interest bearing trust account under the control of Class Counsel with one of the Canadian Schedule 1 banks.
- (v) **“Escrow Settlement Payment”** means the Maximum Settlement Payment to be paid by the Defendants in escrow, pursuant to Section 4.6.
- (w) **“Execution Date”** shall mean the date on which this Settlement Agreement has been signed by Class Counsel and Defendants’ Counsel, collectively.
- (x) **“Final Order”** means any order contemplated by this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, or if an appeal from a final order is taken, once there has been affirmation of the order upon a final disposition of all appeals.
- (y) **“Maximum Settlement Payment”** shall mean a payment of up to CAD\$8,250,000.00.
- (z) **“Objection Deadline”** shall mean the deadline for submitting objections to the Settlement Agreement and/or Class Counsel Fees, as determined by the parties and approved by the Court.
- (aa) **“Opt Out”** shall mean a person who would have been a Class Member but for his or her having provided a valid Opt Out Form before the opt out deadline of December 31, 2015.

- (bb) **“Parties”** shall mean the parties to this Settlement Agreement, which are the Plaintiff and the Defendants, with Class Counsel and Defendants’ Counsel executing the Settlement Agreement on their behalves, respectively.
- (cc) **“Phase I Hearing Notice”** shall mean the notice approved by the Court substantially in the form attached hereto at Schedule “B”, which advises Class Members of the hearing to approve the settlement provided for in this Settlement Agreement.
- (dd) **“Phase I Hearing Notice Date”** shall mean the date on which the Phase I Hearing Notice is first disseminated, which date shall be agreed upon by the Parties, or such other date as may be approved by the Court.
- (ee) **“Phase I Hearing Notice Order”** shall mean the order of the Court that approves the Phase I Hearing Notice, substantially in the form hereto at Schedule “B”.
- (ff) **“Phase I Hearing Notice Plan”** shall mean the method approved by the Court, substantially as described at Schedule “B” hereto, by which the Phase I Hearing Notice will be disseminated.
- (gg) **“Phase II Settlement Approval Notice”** shall mean the notice approved by the Court, substantially in the form attached to the Draft Settlement Approval Order (Schedule “C”), which advises Class Members of the approval of the Settlement Agreement.
- (hh) **“Phase II Settlement Approval Notice Date”** shall mean the date on which the Phase II Settlement Approval Notice is first disseminated, which date shall be agreed upon by the Parties, or such other date as may be approved by the Court.
- (ii) **“Phase II Settlement Approval Notice Plan”** shall mean the method approved by the Court, substantially as described at Schedule “C” hereto, by which the Phase II Settlement Approval Notice will be disseminated.

- (jj) **“Provincial Health Insurers”** shall mean all provincial and territorial Ministries of Health or equivalents, provincial and territorial governments, and/or provincial and territorial plans funding medical services throughout Canada.
- (kk) **“Provincial Health Insurer Rights of Recovery”** or **“Rights of Recovery”** shall mean the statutory authority for the recovery of costs of insured health or medical services, pursuant to the empowering legislation of each jurisdiction, set out in the attached Schedule “D”.
- (ll) **“Released Claims”** shall mean any and all manner of claims, demands, actions, suits, civil law and statutory liabilities, and causes of action alleged or that could have been asserted in the Action, including interest, costs, expenses, penalties, and lawyers' fees that Class Members, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Released Parties, whether known or unknown, relating to the the fracture of the Device.
- (mm) **“Released Parties”** shall mean, jointly and severally, the Defendants and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, and representatives, and the successors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.
- (nn) **“Settlement Agreement”** shall mean this Wright Profemur National Settlement Agreement, inclusive of the recitals and schedules attached hereto.
- (oo) **“Settlement Approval Order”** shall mean the order of the Court approving the settlement provided for in this Settlement Agreement, which order shall include

approval of the Phase II Settlement Approval Notice, substantially in the form attached as Schedule "C".

(pp) **"Settlement Payment"** shall mean the payment of an amount not to exceed CAD\$8,250,000.00 (being the Maximum Settlement Payment), inclusive of all interest, taxes, costs, Class Counsel Fees, Disbursements, Claims Administration Costs and compensation for the Approved Claimants and the Provincial Health Insurers.

2. SECTION 2: ORDERS APPROVING PHASE I HEARING NOTICE AND SETTLEMENT

Phase I Hearing Notice Order and Settlement Approval Order

2.1 The Plaintiff shall, as soon as is reasonably possible after execution of this Settlement Agreement, file with the Court a motion seeking the Phase I Hearing Notice Order and, subsequently, a motion seeking the Settlement Approval Order.

2.2 If the Settlement Approval Order is not obtained, or this Settlement Agreement is otherwise terminated in accordance with Section 6, the litigation of this Action will continue on a without prejudice basis.

3. SECTION 3: NOTICE TO THE CLASS

The Notices

3.1 The Parties hereby agree to the Phase I Hearing Notice Plan, the Phase I Hearing Notice, the Phase II Settlement Approval Notice Plan and the Phase II Settlement Approval Notice, all of which are subject to the Court's approval of same, which shall be sought by way of the Plaintiff's motions.

3.2 The costs of implementing the Phase I Hearing Notice Plan and Phase II Settlement Approval Notice Plan will be paid from the Escrow Settlement Payment.

Notice of Termination

3.3 If this Settlement Agreement is terminated and the Court orders that a notice of termination be given to the Class, the Plaintiff will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs.

4. SECTION 4: THE SETTLEMENT BENEFITS

The Settlement Payment

4.1 The Settlement Payment will be comprised of the following funds paid by the Defendants into the Escrow Account based on the number of Approved Claims, and is inclusive of all damages, interest, costs, Class Counsel Fees, Claims Administration Costs, Disbursements and payment to the Provincial Health Insurers, as follows:

- (a) The Defendants shall pay CAD\$155,000.00 per Approved Claim for up to forty-five (45) Approved Claims; and
- (b) The Defendants shall pay CAD\$85,000.00 per Approved Claim for up to an additional fifteen (15) Approved Claims.

4.2 For certainty, the Settlement Payment shall not exceed the Maximum Settlement Payment of CAD\$8,250,000.00, and is dependent upon the number of Approved Claims. For example, if there are thirty-five Approved Claims, the Settlement Payment shall be CAD\$5,425,000.00 (35 x \$155,000.00). If there are fifty-five Approved Claims the Settlement Payment shall be CAD\$7,825,000.00 ((45 x \$155,000.00) + (10 x \$85,000.00)). If there are more than sixty Approved Claims, the Settlement Payment shall be the Maximum Settlement Payment.

4.3 For clarity, the distribution of payments to Approved Claimants will be made by the Claims Administrator in accordance with the Compensation Protocol on the basis of allocated points and after payment of the amounts outlined in Section 4.10, and such payments to

Approved Claimants shall be subject to *pro rata* allocation according to the number of Approved Claims and respective points allocations to Approved Claimants, as further described in the Compensation Protocol.

4.4 The quantum of the Settlement Payment shall in no way limit the number of claimants who shall be afforded an opportunity to settle, and may settle, such claims.

4.5 The validity of all claims shall be adjudicated in accordance with the Compensation Protocol by the Claims Administrator.

Timing of Escrow Settlement Payment by Defendants

4.6 The Defendants shall, no later than fifteen (15) business days after the issuance of the Settlement Approval Order, pay the Escrow Settlement Payment (being the Maximum Settlement Payment) to Class Counsel, to be held in escrow pending completion of the Claim Period and allocation by the Claims Administrator of payment to Approved Claimants. The Escrow Settlement Payment shall be held in trust for the benefit of the Class and the Provincial Health Insurers, with the exception of the portion of the Escrow Settlement Payment used for payment of Claims Administration Costs, Class Counsel Fees and Disbursements. For certainty, Class Counsel Fees and Disbursements shall, subject to and upon Court approval, be paid to Class Counsel from the Escrow Settlement Payment.

Claims Report and Reconciliation of Settlement Payment

4.7 Within thirty (30) business days after the Claim Deadline, the Claims Administrator will provide the Parties with the Claims Report, and there will thereafter be a reconciliation of the Escrow Settlement Payment made by the Defendants in accordance with Section 4.6 with the Settlement Payment actually payable by the Defendants as determined by the number of Approved Claims as set out in the Claims Report. Any surplus Escrow Settlement Payment paid by the Defendants shall be returned to the Defendants.

Taxes and Interest

4.8 All interest earned on the monies in the Escrow Account shall accrue to the benefit of the Class and Provincial Health Insurers and shall become and remain part of the Settlement Payment.

4.9 All taxes payable on any interest which accrues in relation to the Settlement Payment shall be the responsibility of the Class and Provincial Health Insurers and shall be paid by Class Counsel or the Claims Administrator, as appropriate, from the Settlement Payment.

Distribution of the Settlement Payment

4.10 On or after the Claim Deadline, the Claims Administrator shall distribute the Settlement Payment to pay the claims of Approved Claimants, in accordance with the Compensation Protocol, after payment of the following:

- (a) Class Counsel Fees and Disbursements, as approved by the Court;
- (b) Claims Administration Costs;
- (c) payment to Provincial Health Insurers pursuant to this Settlement Agreement; and
- (d) any taxes required by law to be paid to any governmental authority.

Provincial Health Insurer Payments

4.11 Provincial Health Insurers shall be compensated as follows:

- (a) If there are sixty (60) or fewer Approved Claims, each Provincial Health Insurer will receive a gross payment of \$15,000.00 (CAD) (subject to payment of legal fees thereon to Class Counsel, pursuant to Section 4.11(b)) for each Revision Surgery that an Approved Claimant underwent in the Provincial Health Insurer's province or territory. If there are greater than sixty (60) Approved Claims, each gross payment to

a Provincial Health Insurer is subject to a *pro rata* reduction based on the number of actual Approved Claims.

- (b) Provincial Health Insurer payments are subject to payment of legal fees to Class Counsel in the amount of fifteen percent (15%) of the Provincial Health Insurer payment. When the Claims Administrator pays each Provincial Health Insurer, the Claims Administrator shall also remit the applicable fee to Class Counsel.

5. SECTION 5: APPOINTMENT AND ROLE OF CLAIMS ADMINISTRATOR

5.1 The Parties will agree upon a Claims Administrator to be appointed by the Court for the purpose of administering the Settlement.

5.2 The Claims Administrator shall make a determination as to whether each Class Member who seeks payment under the Settlement Agreement is an Approved Claimant. If such person is an Approved Claimant, the Claims Administrator shall determine the amount of compensation due to the Approved Claimant under the Settlement Agreement pursuant to the Compensation Protocol.

5.3 The Claims Administrator shall administer all monies payable under the Settlement Agreement, except as specifically provided for herein, and process all claims of Class Members and Provincial Health Insurers in accordance with the terms of this Settlement Agreement.

6. SECTION 6: TERMINATION OF THE SETTLEMENT AGREEMENT

General

6.1 Each of the Parties shall have the right to terminate this Settlement Agreement in the event that:

- (a) the Settlement Approval Order is denied and, following any appeal, the denial of the Settlement Approval Order becomes a Final Order; or

- (b) the Settlement Approval Order was to be entered but is reversed on appeal and the reversal becomes a Final Order.

Effect of Termination

6.2 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 the Parties and Provincial Health Insurers shall not be bound by its terms (including, for certainty, the release provisions), except as specifically provided in this Settlement Agreement;
- (b) all negotiations, statements and proceedings relating to this Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties and the Provincial Health Insurers, and the Parties and Provincial Health Insurers shall be deemed to be restored to their respective positions existing immediately before this Settlement Agreement was executed;
- (c) any Escrow Settlement Payment made by the Defendants to Class Counsel pursuant to Section 4.6 as at the date of termination shall be returned to the Defendants; and
- (d) the Plaintiff shall be responsible for payment of any costs and expenses incurred prior to the date of termination, including any notice and administration costs, as well as any costs associated with the publication and distribution of the resulting notice of termination to the Class pursuant to Section 3.3.

Survival

6.3 Notwithstanding Section 6.2(a) of this Settlement Agreement, if this Settlement Agreement is terminated, the provisions of this Section, and Sections 3.3, 6.2 and 6.4 through 6.7, and the definitions applicable thereto of this Settlement Agreement, shall survive termination and shall continue in full force and effect. The definitions and Schedules shall

survive only for the limited purpose of interpreting these sections of this Settlement Agreement, but for no other purposes.

Accounting

6.4 If this Settlement Agreement is terminated, Class Counsel shall, no later than thirty (30) days after such termination, account to the Court and the Defendants for all payments made from the Escrow Settlement Payment.

Termination Orders

6.5 If this Settlement Agreement is terminated, Class Counsel shall, no later than thirty (30) days after termination, apply to the Court, on notice to the Claims Administrator, for an order:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for those sections listed in Section 6.3 of this Settlement Agreement; and
- (b) requesting an order setting aside the Settlement Approval Order in accordance with the terms of this Settlement Agreement.

6.6 Subject to Section 6.7 of this Agreement, the Parties shall consent to the orders sought in any motion made pursuant to Section 6.5 of this Settlement Agreement.

6.7 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.

7. SECTION 7: RELEASES

Release – Class Members

7.1 Upon the Effective Date, and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, Class Members forever and absolutely release the Released Parties from the Released Claims.

7.2 Without limiting any other provisions herein, each Class Member, whether or not he or she submits a claim or otherwise receives an award, will on the Effective Date be deemed by this Settlement Agreement completely and unconditionally to have released and forever discharged the Released Parties from any and all Released Claims that were asserted, or could have been asserted, in the Action and is forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively or derivatively, asserting against any of the Released Parties any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.

Third-Party Contribution or Indemnity Claims

7.3 Class Members who commence or continue litigation against any person or entity who may make a claim for contribution and/or indemnity against the Defendants and/or any Released Parties shall limit the value and right of recovery of such claim against such person or entity to the quantum of damages, interest, costs and all losses and other compensation proven and apportioned against such person or entity, severally and not jointly with the Defendants and/or any Released Parties.

Release – Provincial Health Insurers

7.4 Each Provincial Health Insurer Payment received by a Provincial Health Insurer in connection with an Approved Claim shall be in full and final satisfaction of that Provincial Health Insurer's Rights of Recovery with respect to the recoverable costs of services whether already provided or to be provided to the given Approved Claimant in relation to the fracture of his or her Device, and the Provincial Health Insurer shall have no other claim of recovery pursuant to its governing legislation in relation to these costs.

7.5 For certainty, any Rights of Recovery in relation to the fracture of Devices of those Class Members who do not become Approved Claimants are not affected by this Settlement Agreement and are not hereby released.

8. SECTION 8: SUBMITTING CLAIMS

8.1 Claims shall be submitted by Class Members by the Claim Deadline in the manner contemplated by the Compensation Protocol attached at Schedule "A".

9. SECTION 9: OBJECTION TO SETTLEMENT AGREEMENT OR LEGAL FEES

9.1 A Class Member may object to the approval of the Settlement or approval of Class Counsel Fees by sending a written objection by mail, courier, fax, or email to Class Counsel by the Objection Deadline.

9.2 A Class Member who wishes to object to the approval of the Settlement or Class Counsel Fees shall state in his/her objection: (a) The full name, current mailing address, telephone number, and email address of the person who is objecting; (b) A brief statement of the nature and reasons for the objection; (c) A declaration that the person believes he or she is a Class Member and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her Device, and dates of fracture and revision surgery; (d) Whether the person intends to appear at the hearing of the motion seeking the Settlement Approval Order or intends to appear by counsel, and, if by counsel, the name, address, telephone number and email address of counsel; and (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

9.3 Class Counsel shall, prior to the hearing of the motion seeking the Settlement Approval Order, report to the Court, by affidavit, the number of persons who objected and copies of any objections received by the Objection Deadline, subject to the direction of the Court with respect to the redaction of any personal identifying information.

10. SECTION 10: LIMITATION DEFENCE

10.1 Except as provided herein, no Class Member who satisfies the criteria for payment pursuant to the Compensation Protocol shall be considered ineligible to receive a payment pursuant to this Settlement Agreement on the basis of any statute of limitation or repose, prescription period, or any other limitation or prescription defence.

10.2 Nothing in this Settlement Agreement shall constitute or be deemed to constitute a waiver by the Defendants of defences based on statutes of limitation or repose or any other limitation with respect to any Class Member who Opted Out.

11. SECTION 11: AMENDMENTS TO THE SETTLEMENT AGREEMENT

11.1 The Parties may amend this Settlement Agreement in writing, by consent and upon approval of the Court.

12. SECTION 12: LEGAL FEES AND DISBURSEMENTS

Fee and Disbursement Approval

12.1 Class Counsel shall bring a motion to the Court, to be heard in conjunction with the motion for the Settlement Approval Order, for the approval of Class Counsel Fees and Disbursements to be paid from the Settlement Payment. All amounts awarded on account of Class Counsel Fees and Disbursements shall be paid from the Settlement Payment.

12.2 Class Counsel will request that the Court approve Class Counsel Fees in the amount of the percentage provided for in the Contingency Fee Agreement entered into between the Representative Plaintiff and Class Counsel. The percentage of Class Counsel Fees will be applied to the reconciled Settlement Payment described at Section 4.7 excluding Provincial Health Insurer payments as such payments are subject to a separate legal fee in accordance with section 4.11(b). For certainty, Class Counsel will seek approval of such fees at the motion to obtain the Settlement Approval Order, in advance of such reconciliation, but Class Counsel Fees will not be paid to Class Counsel from the Settlement Payment until such time that the

Escrow Settlement Payment is reconciled with the amount payable by the Defendants on the basis of the number of Approved Claimants, and in accordance with the approval of the Court.

12.3 Payment of Disbursements will be sought on the basis of out of pocket expenses incurred by Class Counsel up to the date of the hearing to obtain the Settlement Approval Order. Class Counsel reserves the right to seek approval of any further material Disbursements incurred in relation to the administration of the Settlement Agreement after the hearing to obtain the Settlement Approval Order.

12.4 The Defendants hereby acknowledge and agree that they are not parties to the motion concerning the approval of Class Counsel Fees and Disbursements, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and Disbursements and they will not take any position or make any submissions to the Court concerning Class Counsel Fees and Disbursements.

12.5 If Class Counsel Fees and/or Disbursements are not approved by the Court or confirmed on appeal, the rest of this Settlement Agreement shall remain in full force and effect.

Individual Claims

12.6 Class Members who retain lawyers, other than Class Counsel, to assist them in making their individual claims for compensation pursuant to this Settlement Agreement or to appeal the classification or rejection of their claim for compensation, shall be responsible for the legal fees and expenses of such lawyers.

13. SECTION 13: MISCELLANEOUS PROVISIONS

Ongoing Authority

13.1 The Supreme Court of Nova Scotia shall retain exclusive and continuing jurisdiction over the approval, implementation and administration of this Settlement Agreement.

Recitals

13.2 The Parties represent and warrant that the recitals referred to in Section 1 are accurate and agree that they form part of this Settlement Agreement.

Entire Agreement

13.3 This Settlement Agreement, including its recitals and exhibits, constitutes the entire agreement by and among the Parties with regard to the subject matter of this Settlement Agreement and, on the Effective Date, shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Settlement Agreement.

Counterparts

13.4 This Settlement Agreement may be executed 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.

Party Notification

13.5 Any notification, request, instruction or other document to be given by any Party to any other Party to this Settlement Agreement (other than class notification) shall be in writing.

Class Member Notification

13.6 All communications from the Claims Administrator to Class Members may be made by regular mail to such person's last mailing address provided by such person to the Claims Administrator.

Governing Law

13.7 For the purpose of the settlement of the Action, this Settlement Agreement shall be governed by and interpreted pursuant to the laws of Nova Scotia.

Severability

13.8 If any provision of this Settlement Agreement is held to be void or invalid, the same shall not affect any other provision and the remainder shall be effective as though such provision had not been contained herein.

Dates

13.9 Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and, as necessary, with the approval of the Courts.

French Translation

13.10 The Plaintiff shall be responsible for the costs incurred to translate settlement documents into French, as necessary.

13.11 In case of any ambiguity or dispute about interpretation, the English version is official and shall prevail.

English Language Clause

13.12 Les parties ont convenu que cette Entente soit rédigée en anglais.



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

Signed January 6, 2020



Scott Campbell
Stewart McKelvey
1959 Upper Water Street

Signed January 3, 2020.

Suite 900
Halifax, NS B3J 3N2
Counsel for the Defendants

Section B: Personal Representative

Are you completing this form as someone with the legal capacity to act on behalf of the Claimant (*i.e.*, an individual with power of attorney, an estate representative, etc.)?

Yes No

If "Yes," please complete the remainder of Section B with information about yourself. If "No," skip to Section C.

First Name

Middle

Last Name

Date of Birth (mm/dd/yyyy)

Gender: Male Female

Address

City

Province/Territory

Postal Code

Email

Daytime Phone Number

Cellular Phone Number

Relationship to Claimant:

Please attach the documents that grant you the legal authority to act on behalf of the Claimant to this form (*i.e.* Power of Attorney, Letters of Administration, etc.).

- Power of Attorney
 Certificate of Incapacity
 Letters of Administration
 Other. Please explain _____

Section C: Lawyer Information (if applicable)
--

Lawyer Last Name

Lawyer First Name

Name of Law Firm

Address

Phone Number

Email

Section D: Wright Profemur Hip Implant System Information
--

Location of the Wright Profemur Hip Implant System: Right Left Bilateral

Implant Date (**Right**) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Implant Date (**Left**) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Identification stickers and operative report(s) for your Wright Profemur Hip Implant System(s), establishing the implant surgery and subsequent revision surgery, must be submitted with this Claimant Declaration. See Compensation Protocol.

Section E: Revision Information
--

Has the Claimant undergone a revision surgery or surgeries to remove the Wright Profemur Hip Implant System(s)?

Yes No

If you checked "No," you are not an eligible claimant under this settlement.

Location of Revision: Right Left Bilateral

Implant Revision Date (Right) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Implant Revision Date (Left) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Identification stickers and operative report(s) for your Wright Profemur Hip Implant System(s), establishing the implant surgery and subsequent revision surgery, must be submitted with this Claimant Declaration. See Compensation Protocol.

Have you had more than one revision surgery due to fracture of the Wright Profemur Hip Implant System? If so please describe the circumstances of your further revision surgery:

If the Claimant suffered from a second revision, you must submit hospital records (including revision operative reports) relating to that surgery.

Section F: Post-Revision Complications

Did the Claimant’s revision surgery or surgeries cause any of the following? If so, state the date on which the complication occurred.

	Date (mm/dd/yyyy)
Stroke	_____
Blood Clot	_____
Infection	_____
Permanent nerve damage	_____

If you claimed above that the Claimant experienced a stroke, blood clot, infection, and/or permanent nerve damage, you must submit a completed Physician’s Declaration with this form.

Section G: Declaration

I solemnly declare that:

The Claimant was implanted with Wright Profemur Hip Implant System after February 2001 and has suffered a fracture of the Wright Profemur Hip Implant System(s) on or before [INSERT EFFECTIVE DATE AS DEFINED IN SETTLEMENT AGREEMENT], requiring a revision surgery.

The Claimant wishes to make a claim for compensation in this class action.

Attached are copies of the Claimant's implant and revision operative reports and documentation identifying the catalogue and lot numbers of the Claimant's Wright Profemur Hip Implant System(s).

If I am not submitting the Claimant's Wright Profemur Hip Implant System(s) peel-and-stick labels as product identification, it is because the hospital at which the Claimant's implant surgery occurred could not provide me with the labels because they are not in the Claimant's hospital medical records.

If I am not submitting a photograph of the Claimant's Wright Profemur Hip Implant System(s) in lieu of the Claimant's Wright Profemur Hip Implant System(s) peel- and-stick labels, I cannot submit a photograph because the Claimant's Wright Profemur Hip Implant System(s) is not within the Claimant's or my possession, custody, or control.

I make this declaration believing it to be true and knowing that it is of the same legal force and effect as if it were made under oath.

Signature of Claimant or Representative

Date

Please note: All pages of this Declaration and supporting documents must be submitted to the Claims Administrator on or before the Claims Deadline, together with any other required documentation as outlined in the Compensation Protocol.

II. PHYSICIAN DECLARATION FORM

Wright Profemur Hip Implant Class Action

This Physician Declaration Form must be completed if the Claimant is claiming that he/she experienced a Complication, i.e. stroke, blood clot, infection, and/or permanent nerve damage due to revision surgery.

In completing this Form, you may consider the patient's medical records, charts, reports, diagnostic films, medical history, or other sources of information that physicians regularly and routinely rely upon in their practice. By signing this Form, you certify that all opinions set forth below are offered to a reasonable degree of medical certainty.

1. PHYSICIAN BACKGROUND

(First Name)

(Middle Initial)

(Last Name)

(Office Address)

(City)

(Province)

(Postal Code)

(Area Code & Telephone Number)

(Fax Area Code & Number)

Check whether you are a/an:

- Orthopedic surgeon
- Cardiologist
- Neurologist
- Cardiothoracic surgeon
- Neurosurgeon
- Other _____

College of Physicians and Surgeons Registration Number: _____

2. PATIENT INFORMATION

State the name and birth date of the patient for whom you are providing the information contained in this Physician Declaration Form.

(First Name)

(Middle Initial)

(Last Name)

 (Birth Date MM/DD/YYYY)

Are you one of the patient's treating physicians?

Yes No

If "Yes," state your role in the patient's medical care and treatment relative to his/her Wright Profemur Hip Implant System(s):

3. IMPLANT INFORMATION

State the reference and catalog numbers that correspond to the patient's Wright Profemur Hip Implant System(s):

Date of Implantation (Right) _____
 (MM/DD/YYYY)

Implant Reference/Catalogue Numbers _____
 (if available)

Implant Lot Number _____
 (if available)

Date of Implantation (Left) _____
 (MM/DD/YYYY)

Implant Reference/ Catalogue Numbers _____
 (if available)

4. REVISION SURGERY

Was the patient diagnosed as requiring a revision surgery to replace the Wright Profemur Hip Implant System(s) due to fracture of the implant:

Yes No

Date of the diagnosis: _____
 (MM/DD/YYYY)

Date on which the revision surgery occurred: _____
(MM/DD/YYYY)

Describe all reason(s) a revision surgery for the Wright Profemur Hip Implant System(s) was diagnosed:

5. COMPLICATIONS RESULTING FROM REVISION SURGERY

Check here if the patient sustained any of the following complications during or after his/her revision surgery, and please state the date on which the complication(s) occurred: \

DATE
(MM/DD/YYYY)

(a) Stroke that occurred within 72 hours after a revision surgery to remove a Wright Profemur Hip Implant System as a result of revision surgery _____

(b) Blood clot that occurred within 72 hours after a revision surgery to remove a Wright Profemur Hip Implant System as a result of revision surgery _____

(c) Infection in the revised hip that was diagnosed within 30 days after a revision surgery to remove a Wright Profemur Hip Implant System _____

(d) Permanent nerve damage resulting from a revision surgery to remove a Wright Profemur Hip Implant System _____

Please attach medical records to this form that confirm that the Complication(s) noted above occurred. Such medical records may include, but are not limited to, operative reports, pathology reports, office records, and/or discharge summaries.

6. DECLARATION

I affirm that the foregoing representations are true and correct.

Executed on _____, 202__.

Signature of Physician

Print Name

III. COMPENSATION PROTOCOL

Allocation of Settlement

The Settlement Payment will be allocated among eligible claimants on the basis of a points system, described below at pages 12-13.

A. ELIGIBILITY

Claimant Eligibility

To be eligible to receive a payment under the Settlement Agreement, a claimant must:

- i. Be, or if acting in a representative capacity, be representing the interest of, a Canadian resident; and
- ii. Demonstrate, by providing a claim form and supporting documentation, that the claimant received a Wright Profemur Hip Implant System on or after February 2001;
- iii. Demonstrate that the claimant's Wright Profemur Hip Implant System fractured on or before the Effective Date, requiring revision surgery.

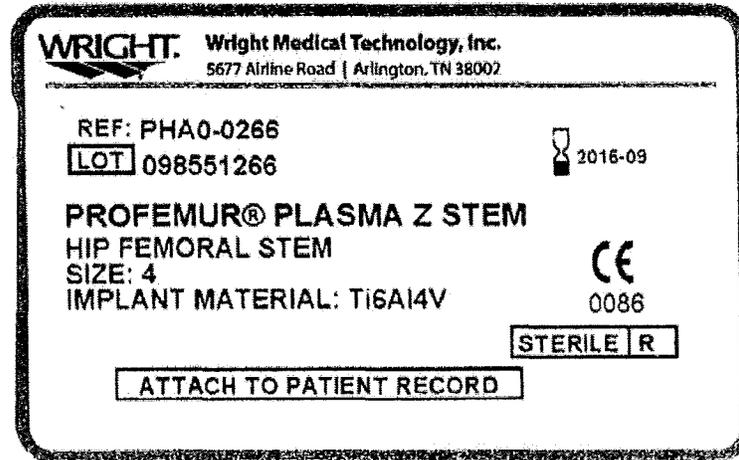
The compensation that you are eligible to receive will be determined based on your status on [insert Effective Date]. You are required to submit your completed Claim Form, Product Identification and, if you are claiming a Complication, the completed Physician Declaration and supporting documentation, on or before [insert Claim Deadline]. This is referred to as the "Claims Deadline."

The estate of Ken Taylor, former Representative Plaintiff (deceased as of November 5, 2018), is eligible for compensation under the Settlement Agreement, as an exception to the eligibility requirement that a Class Member be living. Mr. Taylor was Representative Plaintiff from 2011 until 2019.

In order to participate, you must provide Wright Profemur Hip Implant System product identification that confirms the reference number (sometimes referred to as "catalogue number") and lot number of the Wright Profemur Hip Implant System device that was implanted ("Product Identification"), in addition to other documents required by the Settlement Agreement. Product Identification confirms that you were implanted with a Wright Profemur Hip Implant System. Product Identification can be found on the peel-and-stick label (the "Label") from the Wright Profemur Hip Implant System that should be affixed to the medical record from your implant surgery (sometimes called the implant operative report). You can obtain your implant surgery medical record from the hospital where your implant surgery occurred or from your physician.

The image below is an *example* of Product Identification. Please note that not all product labels are identical to the example provided below, but they are all similar to it. This example is

provided to help you identify the location of the reference and lot numbers of your device so that you can confirm that you are eligible for settlement.



If, and only if, you are unable to obtain the Label because the implant surgery hospital could not locate it in your hospital medical records, then you may provide the following to prove that you received a Wright Profemur Hip Implant System:

- a. If the Wright Profemur Hip Implant System has been explanted from your body and it still exists, you must provide (1) a color photograph of the Wright Profemur Hip Implant System that shows the identification numbers on the edge of the Wright Profemur Hip Implant System, and (2) a Physician Declaration confirming that you were implanted with a Wright Profemur Hip Implant System and the date of the implantation;

OR

- b. If you cannot obtain a photograph because your Wright Profemur Hip Implant System is not within your possession, custody, or control, you must provide (1) a copy of your implant surgery operative report from the hospital where you were implanted, in which your surgeon confirms that you were implanted with a Wright Profemur Hip Implant System, and (2) a Physician Declaration confirming that you were implanted with a Wright Profemur Hip Implant System and the date of implantation.

Important Note: Failure to provide Product Identification in the manner stated above by the Claims Deadline, [insert date], will render you ineligible to recover under this Settlement Agreement. You will also be ineligible to recover under this Settlement Agreement if your Wright Profemur Hip Implant System has not fractured.

Can the Claims Deadline be extended for any reason?

No, the Claims Deadline is an absolute deadline for which there are no exceptions.

B. POINTS ALLOCATION & DEFINITION OF COMPLICATIONS

Complication Definitions

The following are Complications:

- (1) “Blood Clot” means a diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery.
- (2) “Permanent Nerve Damage” means nerve damage resulting from a Revision Surgery that has been declared permanent by the medical professional who signed the Physician’s Declaration.
- (3) “Infection” means any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery.
- (4) “Stroke” means a cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery.

Corresponding Points Allocation

The points allocated to Class Members are as follows:

BASE POINTS		
Event	Years Implanted Before Fracture (From Date of Implant to Date of Fracture)	Points
1 st Fracture & 1 st Revision Surgery	0-2	110
	2-4	100

	4-6	90
	6+	75
2nd Fracture and 2 nd Revision Surgery	0-2	90
	2-4	80
	4-6	70
	6+	55

ADDITIONAL POINTS FOR COMPLICATIONS	
Event	Points
Blood Clot	10
Infection	10
Permanent Nerve Damage	20
Stroke	40

The points above are cumulative, but in no event shall more than 40 points be awarded to a Class Member for Complications. Thus, regardless of the number of Complications a Class Member has, the Class Member can only be awarded 40 points total for all Complications.

C. CLAIMANT NOTIFICATION AND CLAIM APPEALS

The Claims Administrator shall notify each Class Member by way of a letter as to the approval or rejection of his or her claim and the points awarded to the Class Member.

Appeals

Class Members will be granted a 30-day period from the date of mailing to appeal the rejection and/or classification of their claims. Appeals will be reviewed and assessed by a referee, to be jointly approved by the parties. Appeals will be made in writing to such referee, supported only by the documentation provided to the Claims Administrator. The appeal shall be conducted entirely in writing. The referee shall consider the appeal and render a decision within 30 days following receipt of the appeal material from the Class Member. Following the outcome on appeal there shall be no right of further appeal or review.

D. CLAIMS PROCESSING GUIDELINES

If, during claims processing, the Claims Administrator finds that technical deficiencies exist in a Class Member's Claim Form or supporting documentation, the Claims Administrator shall notify the Class Member, by way of letter sent through first class regular mail, of the technical deficiencies and shall allow the Class Member 40 days from the date of mailing to correct the deficiencies. If the deficiencies are not corrected within the 40 day period, the Claims Administrator shall reject the claim and the Class Member shall have no further opportunity to correct the deficiencies. "Technical deficiencies" shall not include missing the Claim Deadline or failure to provide sufficient evidence to support the Class Member's claim. In the event that a Class Member has requested but not yet received the required supporting documentation, the Class Member must submit true copies of the records requests that were made and this will be deemed a "technical deficiency".

E. REPORTING OBLIGATIONS OF CLAIMS ADMINISTRATOR

Within thirty (30) business days after the Claim Deadline, the Claims Administrator shall provide a written report to Class Counsel and to the Defendants providing the total number of Approved Claimants who meet the criteria for payment under the Settlement and the amount awarded to each claimant ("Claims Report").

SCHEDULE "B": Draft Phase I Hearing Notice Order

2011

Hfx. No. 355381

SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

RODRICK DESBOROUGH

PLAINTIFF

- and -

**WRIGHT MEDICAL TECHNOLOGY CANADA LTD, WRIGHT MEDICAL
TECHNOLOGY, INC., and WRIGHT MEDICAL GROUP, INC.**

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

**ORDER APPROVING PHASE I HEARING NOTICE AND PHASE I HEARING
NOTICE PLAN**

BEFORE THE HONOURABLE JUSTICE

THIS MOTION made by the Plaintiff, on consent of the Defendants, for an Order approving the form and contents of notice to Class Members (the "Phase I Hearing Notice") of a hearing to approve a proposed settlement agreement dated * (the "Settlement Agreement") and the method by which the Phase I Hearing Notice is disseminated (the "Phase I Hearing Notice Plan"), was heard on * by The Honourable Justice * at the Law Courts, 1815 Upper Water Street in Halifax, Nova Scotia.

ON HEARING the submissions of counsel for the Plaintiff and counsel for Defendants;

AND ON READING the materials filed on this motion:

1. **THIS COURT ORDERS** that, except as otherwise stated, the definitions in the Settlement Agreement attached hereto as Schedule “A” are incorporated into and shall be applied in interpreting this Order.

Approval of the Phase I Hearing Notice and Phase I Hearing Notice Plan

2. **THIS COURT ORDERS** that the Phase I Hearing Notice attached hereto as Schedule “B” is hereby approved, as it satisfies the requirements of section 22 of the *Class Proceedings Act*.

3. **THIS COURT ORDERS** that the Phase I Hearing Notice shall be disseminated pursuant to the Phase I Hearing Notice Plan attached hereto as Schedule “C”, which is hereby approved.

, 2020.

Prothonotary

Consented to as to form:

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

Scott R. Campbell
Stewart McKelvey
900 - 1959 Upper Water Street
Halifax, NS B3J 2X2
Counsel for the Defendants

Schedule "A"
Settlement Agreement

Schedule “B”
Phase I Hearing Notice

NOTICE OF APPROVAL HEARING

Were you implanted with a Wright Profemur Hip Implant System(s) in Canada after February 2001, and it has subsequently fractured, requiring revision surgery?

This notice may affect your rights. Please read carefully.

Notice of Proposed Settlement

A Canada-wide class action lawsuit – *Rodrick Desborough v. Wright Medical Technology Canada Ltd. et al*, Hfx. No. 355381 - was initiated alleging that the Wright Profemur Hip Implant System was defective, and that it failed prematurely. The class action was certified by the Nova Scotia Supreme Court on June 25, 2014, and the certification order was amended on April 30, 2019.

The Defendants, while not admitting liability, have agreed to a proposed settlement of this class action. The proposed settlement must be approved by the court before it can be implemented. For a copy of the settlement agreement, or for more information, please contact Wagners at the contact information provided below or go to www.wagners.co/ [insert relevant page].

The Settlement Requires Court Approval

In order for the proposed settlement to become effective, it must be approved by the Supreme Court of Nova Scotia. The Court must be satisfied that the settlement is fair, reasonable and in the best interest of the Class. The approval hearing is scheduled for April 27, 2020, or such other date as approved by the Court, at The Law Courts Building, 1815 Upper Water St in Halifax, Nova Scotia.

Who is Eligible to Participate in the Proposed Settlement?

If approved, the proposed settlement will apply to all Canadian residents who were implanted after February 2001 with the Wright Profemur Hip Implant System manufactured by the Defendants, and who have experienced a fracture of the Wright Profemur Hip Implant System, requiring revision surgery. Excluded are those who opted out of the class action.

Who Represents the Class?

Class counsel is Wagners, a law firm located in Halifax, Nova Scotia. Rodrick Desborough is the representative plaintiff for the Class.

The Terms of Settlement

The settlement provides compensation to eligible class members who submit all forms and documentation required under the proposed Settlement Agreement before the deadline, less deductions for legal fees and other administration costs. The settlement also provides for payment to public health insurers for their subrogated claims. Please refer to the settlement agreement for specific terms and conditions. The amount

of compensation paid to approved Class Members will depend upon the number of approved Class Members and the details relating to their claims. Approved Class Members must satisfy the eligibility criteria set out in the settlement agreement.

The Defendants have agreed to pay up to a total of \$8,250,000 CDN, depending upon the number of approved claims that are submitted. This amount includes payment of legal fees, claims administration costs and payment to public health insurers for their subrogated claims.

At the hearing on April 27, 2020, Wagners will also be seeking approval of legal fees in the amount of 25% of the reconciled Settlement Payment as determined by the number of Approved Claims, excluding Provincial Health Insurer payments, which are subject to a separate legal fee of 15%, plus disbursements estimated to be \$99,500.00, and applicable taxes, for their work in relation to this class action and settlement. Wagners will also seek approval of payment of an honorarium to the Representative Plaintiff in the amount of \$1,500.

Participation in the Settlement

If the settlement is approved, you must submit a claim form and required supporting documentation by the claims deadline. Information about how and when to apply for settlement funds will be provided in a future notice and will be posted online on the Wagners website.

Court Hearing and Your Right to Participate

If you wish to object to the proposed settlement or legal fees, you may submit a written objection, referencing this class action, to Wagners. It must be sent no later than April 3, 2020. You may also attend the hearing on April 27, 2020 and you may make oral submissions to the court if you wish.

A Class Member who wishes to object to the settlement or legal fees shall provide in his or her objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;
- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of his/her Wright Profemur Hip Implant System and dates of fracture and revision surgery;
- (d) Whether the person intends to appear at the approval hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel, and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

Class Members who do not object to the settlement need not appear at the hearings or take any other action at this time to indicate their desire to participate in the proposed settlement.

For Additional Information and a Copy of the Settlement Agreement

Wagners can be contacted, at no charge, at:

Wagners
Re: Wright Profemur Class Action
1869 Upper Water St.
Halifax, NS
B3J1S9
Tel: 902-425-7330 / Toll-Free: 1-800-465-8794
Email: classaction@wagners.co

A copy of the Settlement Agreement and necessary forms to submit a claim are available at www.wagners.co/ [insert relevant page].

This Notice has been approved by the Supreme Court of Nova Scotia.

Schedule “C”
Phase I Hearing Notice Plan

PHASE I HEARING NOTICE PLAN

The Phase I Hearing Notice shall be disseminated by the following means:

1. Wagners shall send a copy of the Phase I Hearing Notice by mail or email directly to all class members who have contacted them and provided such contact information. Email will be used as the primary form of contact where available.
2. Wagners shall post a copy of the Phase I Hearing Notice on its website – www.wagners.co – along with a copy of the proposed settlement agreement.
3. Wagners shall forward a copy of the Phase I Hearing Notice to all counsel in Canada who, to Wagners’ knowledge, have filed litigation regarding the Wright Profemur Hip Implant System.
4. Wagners shall issue a media release through Canada Newswire and Wagners’ social media (Twitter, Facebook) summarizing the contents of the Phase I Hearing Notice and attaching a copy of the Phase I Hearing Notice.
5. Wagners shall send a copy of the Phase I Hearing Notice to the hospitals in Canada where the Device has been implanted and to the physicians in Canada who have implanted the Device, such information to be provided by the Defendants. The lists shall be up-to-date and complete to the best of the Defendants’ abilities.

SCHEDULE “C”: Draft Settlement Approval Order

2011

Hfx. No. 355381

SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

RODRICK DESBOROUGH

PLAINTIFF

- and -

**WRIGHT MEDICAL TECHNOLOGY CANADA LTD, WRIGHT MEDICAL
TECHNOLOGY, INC., and WRIGHT MEDICAL GROUP, INC.**

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

SETTLEMENT APPROVAL ORDER

BEFORE THE HONOURABLE JUSTICE

THIS MOTION made by the Plaintiff, on consent of the Defendants, for an Order approving a settlement agreement dated * (the “Settlement Agreement”), approving the form and contents of notice of the settlement to Class Members (the “Phase II Settlement Approval Notice”), approving the method by which the Settlement Approval Notice is disseminated (the “Phase II Settlement Approval Notice Plan”), appointing a claims administrator, and approving the payment of honoraria for the Representative Plaintiff Rodrick Desborough was heard on * by The Honourable Justice * at the Law Courts, 1815 Upper Water Street in Halifax, Nova Scotia.

ON HEARING the submissions of counsel for the Plaintiff and counsel for the Defendants;

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

1. **THIS COURT ORDERS** that the definitions in the Settlement Agreement attached hereto as Schedule “A” are incorporated into and shall be applied in interpreting this Order.

Approval of Settlement Agreement

2. **THIS COURT ORDERS** that the Settlement Agreement attached hereto as Schedule “A” 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.

Approval of Phase II Settlement Approval Notice and Phase II Settlement Approval Notice Plan

3. **THIS COURT ORDERS** that the form and content of the Phase II Settlement Approval Notice in the form attached hereto as Schedule “B” is approved.

4. **THIS COURT ORDERS** that the Phase II Settlement Approval Notice Plan attached hereto as Schedule “C” is approved.

Appointment of Claims Administrator

5. **THIS COURT ORDERS** that RicePoint Administration Inc. be appointed as the Claims Administrator.

6. **THIS COURT ORDERS** that the Claims Administrator shall prepare and submit a Claims Report to the Parties within thirty (30) business days after the Claim Deadline providing the total number of Approved Claimants and the amount awarded to each Approved Claimant.

Approval of Representative Plaintiff's Honoraria

7. **THIS COURT ORDERS** that the Representative Plaintiff Rodrick Desborough shall receive an honorarium in the amount of \$1,500, payable from the Settlement Fund, which monies shall not be deemed to be taxable income.

, 2020.

Prothonotary

Schedule "A"
Settlement Agreement

**Schedule “B”
Phase II Settlement Approval Notice**

NOTICE OF CLASS ACTION SETTLEMENT APPROVAL

Were you implanted with a Wright Profemur Hip Implant System(s) in Canada after February 2001, and it has subsequently fractured, requiring revision surgery?

This notice may affect your rights. Please read carefully.

Notice of Approved Settlement and Claims Process

A Canada-wide class action lawsuit – *Rodrick Desborough v. Wright Medical Technology Canada Ltd. et al*, Hfx. No. 355381 - was initiated alleging that the Wright Profemur Hip Implant System was defective, and that it failed prematurely. The class action was certified by the Nova Scotia Supreme Court on June 25, 2014, and the certification order was amended on April 30, 2019.

The Defendants, while not admitting liability, have agreed to a settlement of this class action. The settlement has received approval of the Supreme Court of Nova Scotia as being fair, reasonable and in the best interests of the class. For a copy of the settlement agreement, or for more information, please contact Wagners at the contact information provided below or go to www.wagners.co/ [insert relevant page].

Who is Eligible to Participate in the Proposed Settlement?

The settlement applies to the Class defined as all Canadian residents who were implanted after February 2001 with the Wright Profemur Hip Implant System manufactured by the Defendants, and who have experienced a fracture of the Wright Profemur Hip Implant System, requiring revision surgery. Excluded are those who previously opted out of the class action.

Who Represents the Class?

Class counsel is Wagners, a law firm located in Halifax, Nova Scotia. Rodrick Desborough is the representative plaintiff for the Class.

The Terms of Settlement

The Defendants have agreed to pay up to a total of \$8,250,000 CDN, depending upon the number of approved claims that are submitted. This amount includes payment of legal fees, claims administration costs and payment to public health insurers for their subrogated claims.

The settlement provides compensation to eligible class members who submit all forms and documentation required under the proposed Settlement Agreement before the Claim Deadline of [insert]. The settlement will also be used to pay for legal fees and other administration costs. The settlement also provides for payment to public health insurers for their subrogated claims. Please refer to the Settlement Agreement for specific terms and conditions.

The amount of compensation paid to approved Class Members will depend upon the number of approved Class Members and the details relating to their claims, including if they experienced one or more fractures requiring revision surgery, or complications such as infection, permanent nerve damage, stroke or blood clots as a result of revision surgery. Approved Class Members must satisfy the eligibility criteria set out in the settlement agreement and must provide the required supporting documentation by the Claim Deadline of [insert], as further outlined in the Settlement Agreement.

Legal Fees

At the hearing on April 27, 2020, Wagners obtained approval of legal fees in the amount of 25% of the reconciled Settlement Payment as determined by the number of Approved Claims, excluding Provincial Health Insurer payments, which are subject to a separate legal fee of 15%, plus disbursements and applicable taxes, for their work in relation to this class action and settlement.

Participation in the Settlement

If you are a Class Member, you must submit a claim form and required supporting documentation by the Claim Deadline of [insert]. Please obtain a copy of the form and the required documentation from the Wagners website at [www.wagners.co/\[insert\]](http://www.wagners.co/[insert]), or contact the Claims Administrator to obtain a copy. If you have any questions, you can direct them to Wagners or to the Claims Administrator.

For More Information or To Obtain A Copy of the Claim Form and Required Supporting Documentation

Wagners can be contacted, at no charge, at:

Wagners
Re: Wright Profemur Class Action
1869 Upper Water St.
Halifax, NS
B3J1S9
Tel: 902-425-7330 / Toll-Free: 1-800-465-8794
Email: classaction@wagners.co

RicePoint, the Claims Administrator, can be contacted at:

RicePoint Administration Inc.
[Insert Information]

A copy of the Settlement Agreement and necessary forms to submit a claim are available at [www.wagners.co/\[complete\]](http://www.wagners.co/[complete])

This Notice has been approved by the Supreme Court of Nova Scotia.

Schedule “C”
Phase II Settlement Approval Notice Plan

The Phase II Settlement Approval Notice shall be disseminated by the following means:

1. Wagners shall send a copy of the Phase II Settlement Approval Notice by mail or email directly to all class members who have contacted them and provided such contact information. Email will be used as the primary form of contact where available.
2. Wagners shall post a copy of the Phase II Settlement Approval Notice on its website – www.wagners.co – along with a copy of the Settlement Agreement.
3. Wagners shall forward a copy of the Phase II Settlement Approval Notice to all counsel in Canada who, to Wagners’ knowledge, have filed litigation regarding the Wright Profemur Hip Implant System.
4. Wagners shall issue a media release through Canada Newswire and Wagners’ social media (Twitter, Facebook) summarizing the contents of the Phase II Settlement Approval Notice and attaching a copy of the Phase II Settlement Approval Notice.
5. Wagners shall send a copy of the Phase II Settlement Approval Notice to the hospitals in Canada where the Device has been implanted and to the physicians in Canada who have implanted the Device, such information to be provided by the Defendants. The lists shall be up-to-date and complete to the best of the Defendants’ abilities.

Schedule "D"

Provincial Health Insurer Right of Recovery Legislation

Province/ Territory	Legislation	Right of Recovery
Nova Scotia	<i>Health Services and Insurance Act</i> , RSNS 1989, c 197	"costs of care, services and benefits"
New Brunswick	<i>Medical Services Payment Act</i> , RSNB 1973, c M-7	"entitled services"
Prince Edward Island	<i>Health Services Payment Act</i> , RSPEI 1988, c H-2	"basic health services"
Newfoundland and Labrador	<i>Medical Care and Hospital Insurance Act</i> , 2016 cM-5.01	"insured services"
Ontario	<i>Health Insurance Act</i> , RSO 1990 c H 6	"insured services"
Manitoba	<i>Health Services Insurance Act</i> , CCSM, 2015 c H35	"insured services"
Saskatchewan	<i>The Health Administration Act</i> , RSS 2014, c E-13.1	"health services"
Quebec	<i>Health Insurance Act</i> , 2017 CQLR c A-29	"insured services"
Yukon	<i>Hospital Insurance Services Act</i> , RSY 2002, c 112	"insured services"
Northwest Territories and Nunavut	<i>Hospital Insurance and Health and Social Services Administration Act</i> , RSNWT 1998, c T-3	"insured services"
Alberta	<i>Crown's Right of Recovery Act</i> , SA 2009, c C-35	"cost of health services"
British Columbia	<i>Healthcare Costs Recovery Act</i> , SBC 2008 c. 27	"health care services"