

# SETTLEMENT ADMINISTRATION GUIDELINE (re. Dupont Class Action Settlement)

## 1) The Settlement Framework:

a) Primary Class Members will be entitled to receive compensation for the following (subject to supporting documentation and subject to pro rata adjustments, if necessary and as appropriate):

i. General Damages (i.e. for pain & suffering) will be payable as follows:

1. An estimated amount of \$75,000 (before any Court approved solicitor-client fees) will be payable for those who suffered a High Level of General Damages (i.e. multiple stent implant procedures, multiple stent removal procedures, complications arising from the procedures, extended period of recovery, on-going physical and psychological injuries, etc.); or,
2. An estimated amount of \$50,000 (before any Court approved solicitor-client fees) will be payable for those who suffered a Medium Level of General Damages (i.e. single or double stent implant procedure, single or double stent removal procedure, no serious complications, minimal to no on-going physical or psychological complaints, etc.); or,
3. An estimated amount of \$25,000 (before any Court approved solicitor-client fees) will be payable for those who suffered a Low Level of General Damages (i.e. no stent removal procedures, minimal to no on-going physical or psychological complaints, etc.).

ii. Damages for income loss claims will be payable as follows:

1. Roughly 50% of the Primary Class Member's proven income loss (before any Court approved solicitor-client fees). Class Counsel will determine and quantify Primary Class Members' income loss claim based on supporting documentation, including, but not limited to, income tax returns, employment records, and any other relevant documentation that supports a loss of income as a result of the foot implant procedure.

- iii. Despite the omission in the Settlement Agreement of future care cost claims, (which are nevertheless set out in the Notice of Certification & Settlement Approval), damages for future care cost claims will be payable to Primary Class Members as follows:
  1. An estimated amount of \$10,000 (before any Court approved solicitor-client fees) will be payable for those Primary Class Members who are presently receiving treatment related to their stent implant and/or removal procedure or for those Primary Class Members who have been recommended on-going treatment related to their stent implant and/or removal procedure. Participation in treatment must be validated with medical records; or,
  2. An estimated amount of \$1,250 (before any Court approved solicitor-client fees) will be payable for those Primary Class Members who are not currently receiving treatment related to their stent implant and/or removal procedure.
- iv. Damages for out-of-pocket expenses will be payable to Primary Class Members as follows:
  1. Primary Class Members will receive roughly 50% of their proven out-of-pocket expenses as determined by Class Counsel (before any Court approved solicitor-client fees). Class Counsel will determine and quantify Primary Class Members' out-of-pocket expenses based on validation of expenses incurred for a purpose related to the stent implant procedure. Validation of related out-of-pocket expenses incurred will include copies of receipts, invoices, bank statements, or other method of proof-of-payment.
- v. Subrogated Claims will be dealt with as follows:
  1. If a Primary Class Member received provincially-funded treatment (for example, from OHIP or NSHA), Class Counsel will assist in negotiating the net amount (after any Court approved fees) to be repaid; and,
  2. If a Primary Class Member received treatment and/or compensation related to the stent implant procedure funded in part or in whole by his or her Extended Health Care Insurance provider (for example, Sun Life, Great-West Life, BlueCross, etc.) and/or through any disability insurance, it is the Primary Class Member's obligation to address any such subrogated claims and repay and amounts required.

- b) Secondary Class Members will be entitled to the following compensation (and subject to pro rata adjustments, if necessary and as appropriate):
  - i) A fixed estimated amount of \$3,000 per claimant (before any Court approved fees) to address any injuries whatsoever caused or contributed to by the use of foot stents approved by Health Canada, whether known or later discovered.

## 2) Process for Claimants:

- a) Class Counsel will send the Notice of Settlement to the last known address of each Class Member, followed by a Claimant Explanation Letter;
- b) The Notice of Settlement will:
  - i) Advise that the Settlement Agreement has been approved by the Court;
  - ii) Provide information about the Settlement Framework;
  - iii) Advise Class Members of their right to opt out of the Class Action on or before **December 11, 2019** by submitting a completed Opt-Out Form to Class Counsel;
  - iv) Mention the possibility of the Settlement Agreement being voided if too many Class Members elect to opt out; and,
  - v) Advise Class Members of their right to commence an Appeal to the Administrator;
- c) Process for New Claimants (Primary Class Members who have not submitted a completed Questionnaire and Secondary Class Members who have not submitted a completed Claim Form):
  - i) New Claimants must submit their Questionnaire (& supporting documentation) or Claim Form to Class Counsel by **December 11, 2019**;
  - ii) Upon receipt of the completed Questionnaire or Claim Form, Class Counsel will:

1. Review the completed Questionnaire or Claim Form and supporting documents;
  2. Evaluate whether and to what extent compensation would be payable to the New Claimant under the settlement; and,
  3. Provide the New Claimant with a Claimant Explanation Letter.
- d) Following the December 11, 2019 deadline, Class Counsel will send every known Class Member a Claimant Explanation Form by no later than December 18, 2019, which will:
- i) Advise the Class Member of Class Counsel's evaluation of their entitlement, along with a conservative estimate of their compensation, if any, under the settlement as calculated in accordance with this Guideline; and,
  - ii) Advise the Class Member of the right to request the Class Member's Claim File (their completed Questionnaire or Claim Form and all supporting documents in relation to their file) by:
    1. Completing a Claim File Request Form;
    2. Submitting the Claim File Request Form to the Administrator; and,
    3. Paying a reasonable photocopying fee or electronic access fee to the Administrator.
  - iii) Advise the Class Member that they may commence an Appeal to the Administrator by:
    1. Completing an Appeal Form;
    2. Submitting the Appeal Form to the Administrator by **January 20, 2020**; and,
    3. Acknowledging that an unsuccessful appeal will result in a cost penalty of \$250 to be automatically deducted from the Claimant's entitlement or otherwise payable by the Claimant.

iv) Explain how the Appeals would be resolved by the Administrator, and specifically that the Administrator would:

1. Review the Appeal Form;
2. Receive and review the Class Member's entire Claim File provided by Class Counsel;
3. Notify the Appellant of his or her right to access their Claim File electronically, or in print form, and the administrative cost of doing so (any administrative fee charged will be refunded to any Class Member who is successful in whole or in part on any Appeal);
4. Offer the Appellant an opportunity to participate in a telephone call with the Administrator about the basis for their Appeal on or before February 20, 2020;
5. Offer the Appellant an opportunity to submit further submissions in relation to their appeal on or before February 20, 2020;
6. Consider the merits of the appeal;
7. Evaluate whether the Appellant has met the burden of establishing that Class Counsel made material errors in the evaluation of their entitlement, pursuant to the terms of the Settlement Agreement and this Guideline;
8. Make a final determination of the Appellant's entitlement; and,
9. Report by letter to the Appellant within 7 days of receiving written submissions or completion of the telephone interview the outcome of the Appeal and any cost penalty impacts for an unsuccessful appeal.

### **3) The Administrator's Role**

a) The Administrator shall:

- i) Receive Class Counsel's matrix outlining Class Counsel's calculation of entitlement for all Claimants under the Settlement, including contact information for all Claimants;

- ii) Receive Appeal Forms and Claim File Request Forms;
- iii) Advise Class Counsel of all Appeal Forms and Claim File Request Forms received by the Administrator;
- iv) Receive Class Members' Claim Files from Class Counsel;
- v) Administer Appeals, by:
  - 1. Reviewing the Appeal Form and any documents and information provided;
  - 2. Allowing Appellants an opportunity to make verbal submissions by telephone in relation to their appeal, with a general one hour time limit that may be extended in the Administrator's sole discretion;
  - 3. Allowing Appellants to submit further documentation and written submissions in relation to their appeal;
  - 4. Review the Appellant's Claim File and consider the merits of the appeal;
  - 5. Evaluate whether Class Counsel has made a material error in relation to the evaluation of the claim;
  - 6. Report the outcome of the appeal to the Appellant and Class Counsel within 7 days of the telephone call or receipt of written submissions; and,
  - 7. Deduct a cost penalty from an unsuccessful Appellant's compensation (and send accounts to those not entitled to compensation).
- vi) Distribute the settlement funds to Class Members and Class Counsel as ordered by the Court.

NOTE: All of the estimates contained in this Guideline are estimates made by Class Counsel and they have not been made by Pierre Dupont or the Ottawa Foot Practice Inc. or any Releasee. Neither Pierre Dupont nor the Ottawa Foot Practice Inc. nor any Releasee accepts any responsibility whatsoever for the accuracy of Class Counsel's estimates.