

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL MOTION REGARDING THE PIERRE DUPONT CLASS ACTION

This Court Approved Notice is directed to all potential Class Members as described below. This Notice may affect your rights. Please read it carefully.

THE CLASS ACTION

You are receiving this Notice because you have been identified as a former patient of Pierre Dupont and/or the Ottawa Foot Practice Inc. (the “Defendants”) implanted with a foot stent (the “Class” or “Class Members”).

The Ontario Superior Court of Justice has ordered that persons who were implanted with foot stents by the Defendants be sent this Notice for the purpose of providing information about this class proceeding and your legal rights.

THE CONSENT CERTIFICATION & SETTLEMENT MOTION

Class counsel and counsel for the Defendants have reached a Settlement Agreement in relation to this class proceeding, subject to Court approval. Details of the next steps and the Settlement Agreement are set out below. The Consent Certification and Settlement Motion is scheduled to be heard on **October 30, 2019 at 10:00 a.m.** at Osgoode Hall, 130 Queen Street West, Toronto, Ontario (Courtroom 5 or 6).

The Defendants have consented to a motion, subject to Court approval, certifying the action titled *Yuexiao (Patrick) Zhang v. Pierre Dupont and Ottawa Foot Practice Inc.*, Court file No. CV-17-567774, as a class proceeding and appointing Yuexiao (“Patrick”) Zhang, as represented by his Litigation Guardian, Jing Liu, as the representative plaintiff.

The certification of this class proceeding proposes two Classes defined as follows:

- A ‘Primary Class’ being: “All persons resident in Canada who were implanted by the Defendants with a foot stent not approved by Health Canada”; and,
- A ‘Secondary Class’ being: “All persons resident in Canada who were implanted by the Defendants with a foot sent approved by Health Canada, except for the plaintiffs in *Harbord v. Dupont et. al.*, ONSCJ Court File No. 16-68530 (Ottawa) and *Wagner v. Dupont et. al.*, ONSCJ Court File No. CV-18-00078325 (Ottawa)”.

(the Primary Class and Secondary Class are hereinafter collectively referred to as the “Class” or “Class Members”).

If the Court certifies the within action as a class proceeding at the motion to be held on October 30, 2019, the Court will proceed to consider the Settlement Agreement that was reached on consent by the parties. Details of the nature of the settlement are outlined below.

NATURE OF THE SETTLEMENT

A settlement has now been reached by the parties, subject to approval by the Court. If you are a Class Member, as defined above, you are eligible to apply for compensation under the settlement.

The settlement was reached through negotiations between the parties and is based on the quality of the information contained in Primary Class Members' Questionnaires and their supporting documentation regarding their individual claims.

The settlement will be considered by the Court at a motion on October 30, 2019 (the "Approval Motion"), or such other date ordered by the Court, in Toronto, Ontario. The proposed settlement will provide compensation to Class Members with valid claims.

Primary Class Members who have already submitted Questionnaires to Thomson, Rogers need not do anything further at this time in order to seek compensation. You will be contacted by Thomson, Rogers about how the proposed settlement will address your individual claim following the Approval Motion.

Primary Class Members seeking compensation who have not already submitted Questionnaires to Thomson, Rogers must submit a completed Questionnaire along with supporting documentation (the Questionnaire can be obtained from Class Counsel at the address below). For a claim to be considered for compensation, Primary Class Members must complete and submit the Questionnaire by a date to be fixed by the Court (likely to be November 22, 2019) to be set out in the Notice of Settlement that you will be sent following the Approval Motion.

All Secondary Class Members seeking compensation must complete and submit a Secondary Class Compensation Request Form (to be obtained from Class Counsel at the address below) by a date to be fixed by the Court (likely to be the November 22, 2019) to be set out in the Notice of Settlement that you will be sent following the Approval Motion.

There is no guarantee that submitting a claim will result in compensation to you. New claims will be subject to the same analysis and treatment as known claims.

The Settlement Agreement proposes the following compensation for valid Class Members:

Primary Class Compensation:

Members of the Primary Class will be entitled to receive some compensation for the following, subject to providing supporting documentation (note these amounts and percentages will change to some extent depending on the number of Class Members seeking compensation):

1. General Damages (i.e. damages for pain & suffering);
 2. Proven Income loss;
 3. Future care costs;
 4. Out-of-pocket expenses; and,
 5. Subrogated claims.
1. Damages for pain & suffering will be payable to Qualifying Primary Class Members as follows:
 - a. 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,
 - b. 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,
 - c. 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.).
 2. Damages for income loss claims will be payable to Qualifying Primary Class Members based on roughly 50% of their proven income loss. Class Counsel will determine and quantify Qualifying 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.
 3. Damages for future care cost claims will be payable to Qualifying Primary Class Members as follows:
 - a. An estimated amount of \$10,000 (before any Court approved solicitor-client fees) will be payable for those Qualifying Primary Class Members who are presently receiving treatment related to their stent implant and/or

removal procedure or for those Qualifying 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,

- b. An estimated amount of \$1,250 (before any Court approved solicitor-client fees) will be payable for those Qualifying Primary Class Members who are not currently receiving treatment related to their stent implant and/or removal procedure.
4. Damages for out-of-pocket expenses will be payable to Qualifying Primary Class Members based on roughly 50% of their proven out-of-pocket expenses as determined by Class Counsel. Class Counsel will determine and quantify Qualifying 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 expenses incurred will include copies of receipts, invoices, bank statements, or other method of proof-of-payment.
5. Some Qualifying Primary Class Members received provincially-funded treatment (for example from OHIP); treatment from his or her Extended Health Care Insurance provider; and/or disability insurance coverage from his or her group insurance plan. If you received treatment and/or compensation from any of the above, you are obligated to re-pay the amount of money you received. Class Counsel will assist in negotiating the amount to be repaid for provincially-funded treatment, but it is responsibility of the Qualifying Primary Class Member to repay any amounts owed to private insurance companies (for example, Sun Life, Great-West Life, BlueCross, etc.).

If any Qualifying Primary Class Member disagrees with Class Counsel's assessment of their damages claim, the Class Member will have the option of appealing their claim to the Administrator appointed by a fixed deadline. Further information regarding the Appeal Process will be provided by Notice following the Approval Motion.

Secondary Class Compensation:

Members of the Secondary Class are entitled to receive a fixed estimated amount of \$3,000 per claimant (before any Court approved fees) to address any injuries caused or contributed to by the use of foot stents approved by Health Canada, the use of foot stents not approved by Health Canada in other patients, or both. This amount will change to some extent depending on the number of Secondary Class Members seeking compensation.

If you are a member of the Secondary Class, please be aware that by participating in this settlement you will be precluded from bringing any other claims relating to the implantation of foot stents by the Defendants.

If you are a Class Member, you will automatically be included in this class proceeding and are not required to take any further steps at this time.

Those wishing to maintain their right to sue the Defendants and thus NOT participate in this class action must OPT OUT (see “Opting Out” below).

OPTION TO OBJECT TO THIS SETTLEMENT

Class Members have the right to object to the proposed Settlement Agreement at the Approval Motion. Please also note that if the proposed Settlement Agreement is approved by the Court at the Approval Motion, Class Members who do not want to participate in the Class Action can still opt out (see “Opting Out” below).

If you wish to make submissions for or against the proposed settlement at the Approval Motion, please send a request in writing with a summary of your submissions to Thomson, Rogers at the address listed at the end of this Notice, by no later than October 16, 2019. Persons making submissions by the deadline will be provided with further information on how they may participate in the Approval Motion.

Subject to Court approval, Class Counsel will be seeking the approval of total fees of approximately \$770,000, inclusive of all disbursements and applicable taxes. Class Counsel was retained on a contingent basis. Class Counsel was responsible for funding all disbursements incurred in pursuing this litigation. Pursuant to the settlement, the Defendants have agreed to pay a total of roughly \$250,000 towards Class Counsel’s legal fees, disbursements and applicable taxes.

Following the Approval Motion, Class Members will be provided with a “Notice of Settlement” and a letter quantifying their individual claim in accordance with the Settlement Agreement and information obtained regarding their claim.

OPTING OUT OF THE CLASS ACTION

Class members who wish to participate in the Class Action are automatically included in the Class Action. Any Class Member who wishes to opt out of the Class Action may do so on or before a date approved by the Court (likely to be November 22, 2019). Notice of the deadline to opt out will be set out in the Notice of Settlement. It should be noted that if too many people opt out of the settlement the settlement may be nullified.

No Class members will be permitted to opt out of the Class Action after the opt out deadline.

No person may opt out on behalf of a minor or a mentally incapable person without permission of the court after notice to The Children’s Lawyer of the Public Guardian and Trustee, as appropriate.

ADDITIONAL INFORMATION

Any questions about the matters in this notice should NOT be directed to the Court because their administrative structures are not designed to address this type of inquiry. The Notice Order and other information may be obtained online at: www.thomsonrogers.com under the headings “Class Action Litigation” and Class Action Claim against Ottawa based Chiropractor, “Pierre Dupont”.

Questions for counsel from Class Members should be directed by email, fax or telephone to:

Lucy Jackson
Thomson, Rogers
390 Bay Street, Suite 3100
Toronto, Ontario, M5H 1W2
Toll free: 1-888-223-0448, Fax: 416-868-3134
ljackson@thomsonrogers.com