

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
JUSTICE BELOBABA

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)  
)

WEDNESDAY, THE 30TH DAY  
OF OCTOBER, 2019

BETWEEN:

YUEXIAO (PATRICK) ZHANG,  
as represented by his Litigation Guardian,  
Jing Liu

Plaintiff

- and -

PIERRE DUPONT and OTTAWA FOOT PRACTICE INC.

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**ORDER**  
**(Certification & Settlement Approval)**

THIS MOTION, made by the Plaintiff for an order that this action be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*Class Proceedings Act*") and an order approving the Settlement Agreement, was heard this day at 130 Queen Street West, Toronto, Ontario.



ON READING the materials filed, including:

- a) the Notice of Motion regarding Certification and Settlement Approval;
- b) the Affidavit of L. Craig Brown, sworn June 1, 2018, December 19, 2018 and October 23, 2019 and the exhibits attached thereto;
- c) the Affidavit of Jing Liu, sworn May 24, 2018 and October 23, 2019, and the exhibits attached thereto;
- d) the Affidavit of David Greenberg, sworn May 19, 2018 and the exhibits attached thereto;
- e) The Affidavit of Victor Boujilov, sworn May 25, 2018 and the exhibits attached thereto;
- f) the Affidavit of Dr. Urs Wyss, sworn December 21, 2018 and the exhibits attached thereto;
- g) the Affidavit of Dr. Michael Moran, sworn August 16, 2018 and the exhibits attached thereto;
- h) the Affidavit of Dr. Thomas Oxland, sworn August 29, 2018 and the exhibits attached thereto;
- i) the Affidavit of Nicola Virk, sworn August 15, 2018 and the exhibits attached thereto;
- j) the Settlement Agreement attached to this Order as **Schedule "A"**; and,
- k) the Plaintiff's Factum.

ON HEARING the submissions of counsel for the Plaintiff and on being advised that the Plaintiff and the Defendants consent to this Order,

***Certification of the Class Proceeding***

1. THIS COURT ORDERS that the within proceeding be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act* as

against the Defendants, Pierre Dupont and Ottawa Foot Practice Inc. (hereinafter "the Defendants").

2. THIS COURT ORDERS that the Primary Class and Secondary Class are defined as:

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 stent approved by Health Canada, except for the plaintiffs in *Harbord v Dupont et al.*, Ontario Superior Court of Justice, Court File No. 16-68530 (Ottawa) and *Wagner v Dupont et al.*, Ontario Superior Court of Justice, Court File No. CV-18-00078325 (Ottawa).

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

3. THIS COURT DECLARES that the nature of the claim asserted on behalf of the Primary Class is a claim for damages or other monetary relief against the Defendants for implanting foot stents which were not approved for use by Health Canada, which the Class alleges, as set out in paragraphs 29 to 34 of the Fresh as Amended Statement of Claim, to have caused personal injuries.

4. THIS COURT DECLARES that the nature of the claim asserted on behalf of the Secondary Class is a claim for damages or other monetary relief against the Defendants for implanting foot stents approved by Health Canada,

implanting foot stents not approved for use by Health Canada in other patients, or both, which the Class alleges to have caused personal injuries.

5. THIS COURT ORDERS that Yuexiao (Patrick) Zhang, by his Litigation Guardian, Jing Liu, be and is hereby appointed as Representative Plaintiff in the within proceeding.

6. THIS COURT ORDERS that the within proceeding be and is hereby certified on the basis of the following common issues:

- (a) whether, in respect of the Primary Class, the Defendants breached a duty of care, duty of informed consent, duty owed under the *Health Care Consent Act*, S.O. 1996, c. 2, or fiduciary duty owing to Class Members, or committed battery, breached the *Sale of Goods Act*, R.S.O. 1990, c. S.1, or breached a contract with Class Members, by implanting foot stents not approved by Health Canada;
- (b) whether, in respect of the Secondary Class, the Defendants breached a duty of care, duty of informed consent, duty owed under the *Health Care Consent Act*, S.O. 1996, c. 2, or fiduciary duty owing to Class Members, or committed battery, breached the *Sale of Goods Act*, R.S.O. 1990, c. S.1, or breached a contract with Class Members, by implanting foot stents approved by Health Canada, by implanting foot stents not approved by Health Canada in other patients, or both;
- (c) can damages of Class Members, including general and special damages, punitive damages, and aggravated damages, be determined, in whole or in part, on an aggregate basis? If so, in what amount?; and,
- (d) such further and other common issues as counsel may advise and this Honourable Court deems just and appropriate.



***Settlement Approval and Binding Effect***

7. THIS COURT DECLARES that except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement attached to this Order as **Schedule "A"** is applied to and is incorporated into this Order.
8. THIS COURT ORDERS that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
9. THIS COURT ORDERS the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act*, 1992, and that the Settlement Agreement shall be implemented and enforced in accordance with its terms.
10. THIS COURT ORDERS that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the parties. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
11. THIS COURT ORDERS that this Order, the Settlement Agreement and any and all determinations made by the Administrator in relation thereto, are binding upon each Class Member, including those persons who are minors or

mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.

12. THIS COURT DECLARES that for greater certainty, and subject to paragraph 29 of this Order, each Class Member is bound by this Order, whether or not such Class Member receives compensation, or whether or not such person claims compensation pursuant to the Settlement Agreement or otherwise.

13. THIS COURT ORDERS that any Primary Class Member seeking compensation pursuant to the Settlement Agreement must submit a completed "Primary Class Members' Questionnaire" and supporting documentation before or on December 11, 2019. The Primary Class Members' Questionnaire is attached to this Order as **Schedule "B"**.

14. THIS COURT ORDERS that any Secondary Class Member seeking compensation pursuant to the Settlement Agreement must submit a completed "Secondary Class Compensation Request Form" by or on December 11, 2019. The Secondary Class Compensation Request Form is attached to this Order as **Schedule "C"**.

#### ***Administration & Appeals***

15. THIS COURT ORDERS that the Administrative Fund is hereby approved in the total all-inclusive amount not to exceed \$30,000.00.

16. THIS COURT ORDERS that Epiq Class Action Services Canada Inc. is appointed as the Administrator in accordance with the Letter of Engagement attached to this Order as **Schedule "D"**.

17. THIS COURT ORDERS that Class Members' claims will be evaluated under the Settlement Agreement in accordance with the Settlement Administration Guideline attached as **Schedule "E"** to this Order.

18. THIS COURT ORDERS that Class Members seeking to review and/or appeal their claim, in relation to eligibility or quantum or both, must do so in accordance with the "Appeal Process Framework" attached as **Schedule "F"** to this Order.

19. THIS COURT DECLARES that the Defendants shall not have any responsibility or liability whatsoever relating to the administration of the settlement.

***Dismissal, Release and Bar of Claims***

20. THIS COURT ORDERS that the within action shall be and is hereby dismissed against the Defendants, Pierre Dupont and the Ottawa Foot Practice Inc., with prejudice and without costs.

21. THIS COURT ORDERS that the Plaintiff, the Class Members, and their respective agents, successors, and assigns, and each of them (the "Releasers"), have released the Defendants, Pierre Dupont and the Ottawa Foot Practice Inc. (the "Releasees"), from any and all actions, causes of action, claims, subrogated claims, demands, damages, interest, costs, expenses, and compensation of whatsoever kind and howsoever arising, whether known or unknown, and which the Releasers now have or at any time hereafter can, shall, or may have in any way resulting from or in any way connected with the conduct of the Releasees concerning the use of foot stents not approved by Health Canada and the use of foot stents approved by Health Canada (the "Released Claims").

22. THIS COURT ORDERS that every Releaser is hereby prohibited from instituting, continuing, maintaining or asserting, either directly or indirectly, whether in the United States or Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasees or any other person, corporation or legal entity who may claim contribution or indemnity, or other claims of relief over from any Releasee in respect of any Released Claim or any matter arising out of or related in any way whatsoever to any Released Claim (a "Third Party").

23. THIS COURT DECLARES that all claims for contribution, indemnity or other claim over inclusive of claim, interest and costs, including a claim for a



determination of a share of fault in respect of any Released Claim or any matter arising out of or related in any way whatsoever to any Released Claim by any person or Party against a Releasee are barred, prohibited and enjoined unless such a claim is made by a person who has opted out of the within action.

24. THIS COURT ORDERS that if a Releasor contravenes paragraph 22 of this Order, they must indemnify and save harmless the Releasees against which a Third Party is seeking contribution, indemnity or other relief from any costs (including legal fees), expenses, losses, liabilities or damages whatsoever incurred in connection with or in any way related to defending or responding to any proceeding brought by the Third Party.

#### ***Supervision***

25. THIS COURT DECLARES that for the purposes of administration and enforcement of this Order and the Settlement Agreement, this Court will retain an ongoing supervisory role for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order and subject to the terms and conditions set out in the Settlement Agreement and this Order.

#### ***Termination***

26. THIS COURT DECLARES that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

***Notice of Settlement***

27. THIS COURT ORDERS that the "Notice of Settlement" attached as **Schedule "G"** to this Order is hereby approved.

28. THIS COURT ORDERS that the Notice of Settlement shall be provided to the Class in the following manner (the "Notice Plan"):

- (a) Sending the Notice of Settlement by mail to:
  - (i) all Class Members who have provided their contact information to Class Counsel; and,
  - (ii) all Class Members whose contact information was provided to Class Counsel by the Defendants pursuant to the Order of Justice Belobaba dated September 3, 2019; and,
- (b) publishing the Notice of Settlement on the webpage being maintained by Class Counsel at [www.thomsonrogers.com](http://www.thomsonrogers.com)

29. THIS COURT ORDERS that this Order shall be posted on the webpage being maintained by Class Counsel until March 1, 2020 and that no further notice of this settlement approval is required.

***Opt Outs***

30. THIS COURT ORDERS that Class Members who wish to opt out of the class proceeding may opt out of by serving written notice of their decision to opt out of the proceeding in the form of the "Opt Out Form" attached to this Order as **Schedule "H"** and by forwarding same to Class Counsel at the address set

out in the Notice of Settlement. Notice of the decision to opt out must be received by Class Counsel as set out in the Notice of Settlement by December 11, 2019.

***Class Counsel Fees***

31. THIS COURT ORDERS that the fees and disbursements of Class Counsel, in the total amount of \$732,323.00, inclusive of taxes, are fair and reasonable and the said fees and disbursements shall be paid out of the settlement monies.



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ENTERED AT / INSCRIPT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 31 2019

PER/PAR



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**SETTLEMENT AGREEMENT**

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BETWEEN:

YUEXIAO (PATRICK) ZHANG, by his Litigation Guardian, JING LIU

(the "Plaintiff")

AND:

PIERRE DUPONT

AND:

OTTAWA FOOT PRACTICE INC.

(collectively, the "Defendants" and each a  
"Defendant")

(collectively, the "Parties" and each a "Party")

WHEREAS:

- A. The Plaintiff has commenced an action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*Class Proceedings Act*") against the Defendants in respect of claims arising out of the use of foot stents not approved by Health Canada and the use of foot stents approved by Health Canada;
- B. On or about July 23, 2019, the Plaintiff and the Defendants expressed an intention to enter into an agreement to settle their dispute on the terms set out in a proposed Settlement Agreement to be formalized; and
- C. The Agreement herein is the formalized Settlement Agreement.

THEREFORE in consideration for good and valuable consideration, including the covenants and agreements of the Parties herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



### Condition Precedent

1. The obligations of the Parties to complete under this Agreement are made on a without prejudice basis and are subject to court approval being obtained under the *Class Proceedings Act*.

### Definitions

2. For the purposes of this Agreement, the following definitions apply:
  - (a) The "Action" is defined as proceedings commenced by the Plaintiff against the Defendants in the Ontario Superior Court of Justice, Court File No. CV-17-567774;
  - (b) The "Primary Class" is defined as: "All persons resident in Canada who were implanted by the Defendants with a foot stent not approved by Health Canada"; and
  - (c) The "Secondary Class" is defined as: "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.*, Ontario Superior Court of Justice, Court File No. 16-68530 (Ottawa) and *Wagner v. Dupont et. al.*, Ontario Superior Court of Justice, Court File No. CV-18-00078325 (Ottawa)"

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

### Payment

3. Ten (10) days following obtaining the Approval Order or a date as determined by court order, the Defendants will pay \$2,250,000.00 to Crawford Class Action Services (or such other approved administrator, to be referred to as the "Administrator"), in trust, for the benefit of the Plaintiff and Class Members, in full and final settlement of all claims (the "Settlement Payment").
4. The Plaintiff agrees that the Administrator shall receive the Settlement Payment on Plaintiff's counsel's undertaking that the Administrator shall not distribute or disburse the payment to any person or other entity until all Parties have fully executed this Agreement and all conditions of completion have been satisfied.

### Approval

5. The Settlement Payment will be broken down as set out below:
  - (a) \$1,970,000.00 ("Total Damages") comprised of:
    - (i) \$1,870,000.00 (the "Total Primary Class Damages"); plus,
    - (ii) \$100,000.00 (the "Total Secondary Class Damages");

- (b) administration costs payable to Crawford Class Action Services, inclusive of any and all notice costs, of \$30,000.00 ("Administration Costs") (with any savings on this amount being allocated to the Total Primary Class Damages); and,
  - (c) partial indemnity costs, inclusive of disbursements and HST, of \$250,000.00 (the "Total Defendants' Cost Contribution").
6. For clarity, Plaintiff's counsel will be seeking solicitor/client fees, plus tax and plus disbursements, to be paid out of the Total Damages paid (to be paid out of the Total Primary Class Damages), in an amount to be approved by the Court, with the Total Defendants' Cost Contribution being allocated to the Total Primary Class Damages.
7. Plaintiff's counsel will evaluate all claims as set out below and will notify Class Members of their anticipated estimated recovery. Class Members will be notified of their right to have their claims reviewed by an Administrator following Court approval of the settlement and such a review by an Administrator will be final and binding. It is acknowledged and understood that the Defendants take no position in relation to the distribution details below as set out by Class Counsel. Class Members will be eligible to the following damages:
- (a) Claims by the Primary Class will be assessed by Plaintiff's counsel as follows:
    - (i) General Damages—to be paid based on the following levels of harm (as adjusted pro rata as required):
      - A. High Level—an estimated amount of \$75,000.00 (before any Court approved 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. Medium Level—an estimated amount of \$50,000.00 (before any Court approved 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. Low Level—an estimated amount of \$25,000.00 (before any Court approved 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) Claims for Income Loss—as determined by Plaintiff's counsel based on an estimated 50% of established income impacts;
    - (iii) Claims for Out of Pocket Expenses—as determined by Plaintiff's counsel based on an estimated 50% of validated related expenses incurred;

- (iv) Subrogated Claims—as determined by Plaintiff's counsel based on information provided and to be reduced where appropriate by an estimated 50%;
  - (v) Prejudgment Interest—for clarity, the amounts set out above include any claims for prejudgment interest; and,
  - (vi) To the extent that the assessments of the Primary Class Members' claims exceeds (or is less than) the Total Primary Class Damages, each Primary Class Member's claim will be paid out of the Total Primary Class Damages on a pro rata basis
- (b) Claims by the Secondary Class will be assessed at a fixed amount of \$3,000.00 per claimant (or a lesser pro rata amount, if necessary), 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, but Secondary Class Members will be expressly notified of their right to Opt Out of the Secondary Class in order to potentially advance any claims.
8. The Parties agree to the following procedure for settlement approval, subject to directions from the Court:
- (a) Plaintiff's counsel will:
    - (i) receive information from the Defendants regarding the names and last known addresses of all Class Members;
    - (ii) provide all Class Members with the court approved notice;
    - (iii) retain the Administrator to assist as set out herein;
    - (iv) ensure adherence to an approved notice plan with assistance from the Administrator if necessary;
    - (v) receive and review information received by Class Members to quantify Class Members' entitlement under the settlement;
    - (vi) move to obtain Court approval of the settlement;
    - (vii) disburse the Settlement Payment with assistance from the Administrator as necessary;
    - (viii) Plaintiff's counsel will, in addition to providing any additional formal notice required by the Court, write to all known Class Members (including by using information available to and to be provided by the Defendants):
      - A. advising of the settlement, subject to Court approval;
      - B. notifying them of the date of the approval motion and the process to object to the settlement;



- C. explaining the parameters of the settlement as set out herein, along with reasons for those parameters;
  - D. providing information as to how their compensation, if any, has been assessed;
  - E. advising of their right to request a binding review of their compensation calculations to an Administrator, following approval of the settlement by the Court and in accordance with any process approved by the Court in relation thereto;
- (ix) Plaintiff's counsel will negotiate and resolve the claims by the provincial subrogated claims holders, with any savings going to the benefit of the Primary Class;
  - (x) Plaintiff's counsel will:
    - A. receive, review and analyze any new claims made by Class Members so as to determine their entitlement, if any, under the settlement, and so advise such potential Class Members;
    - B. provide their claim analysis to the Administrator along with contact information for all compensable Class Members;
    - C. provide the Administrator with the entire files relating to any Class Members filing a review; and
- (b) Defence counsel will:
    - (i) provide information to Class Counsel regarding the names and last known addresses of all Class Members that is within the Defendant Pierre Dupont's possession or control;
    - (ii) pay the Settlement Payment to the Administrator as set out;
    - (iii) cooperate as reasonably necessary in relation to the Court approval of this settlement; and
  - (c) the Administrator's role may include the following subject to further guidance from the Court:
    - (i) receive the Settlement Payment in trust (and invest it in an interest bearing account for the benefit of the Class);
    - (ii) address all reviews by Class Members in accordance with any Court approved review process, noting the Parties' intention to have a review process that presumes Plaintiff's counsel's compensation calculations to be accurate (i.e., burden on appellant to prove otherwise) and that potentially provides modest cost penalties to be offset against compensation, where available, for unsuccessful reviews in most circumstances; and,

27



- (iii) distribute the Settlement Payment to all Class Members and pay Plaintiff's counsel any amount approved for legal fees.
9. The Parties will seek directions from the Court regarding the settlement approval motion and any notice required in relation thereto, such notice to, subject to the Court's directions, include a requirement for any still unidentified Class Members who may be seeking compensation to immediately complete and submit a questionnaire (or else be forever precluded from receiving any compensation under this settlement).
  10. In the event that more than two Class Members from the Primary Class or in the event that more than two Class Members from the Secondary Class opt out of the settlement, the Defendants will have the right to terminate this Agreement by notice in writing within 30 days to Plaintiff's counsel.
  11. In the event of a Primary Class Member opt out, Plaintiff's counsel will rebate \$50,000.00 (per claimant) to the Defendants.
  12. In the event of a Secondary Class Member opt out, Plaintiff's counsel will rebate \$3,000.00 (per claimant) to the Defendants.
  13. This settlement is null and void if it is not approved by the Court without material amendment or if an Approval Order is granted without amendment but fails to become a final order. The Settlement Payment will, in these circumstances, be returned to the Defendants.

#### **Release**

14. In consideration for the Settlement Payment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff, the Class Members, and their respective agents, successors, and assigns, and each of them (the "Releasors"), agree to hereby release, acquit, and further discharge the Defendant Pierre Dupont and the Defendant Ottawa Foot Practice, including their employees, servants, agents, successors, and assigns, and each of them (the "Releasees"), from any and all actions, causes of action, claims, subrogated claims, demands, damages, interest, costs, expenses, and compensation of whatsoever kind and howsoever arising, whether know or unknown, and which the Releasors now have or at any time hereafter can, shall, or may have in any way resulting from or in any way connected with the conduct of the Releases concerning the use of foot stents not approved by Health Canada and the use of foot stents approved by Health Canada.
15. The Releasors covenant and agree not to take any steps, initiate any proceedings, or continue any proceedings against any person or other entity (a "Third Party") which might be entitled to claim contribution, indemnity, or other relief against any of the Releasees in respect of, or arising out of, or in any way related to, the use of foot stents not approved by Health Canada and the use of foot stents approved by Health Canada.
16. The Releasors covenant and agree that if they contravene section 15 of this Agreement, they will indemnify and save harmless the Releasees against which a Third Party is seeking contribution, indemnity or other relief from any costs (including legal fees), expenses, losses, liabilities and/or damages whatsoever incurred in connection with or in

any way related to defending or responding to any proceeding brought by the Third Party.

**Discontinuance of Action**

17. The Court order approving the settlement of this Action will dismiss the Action on consent and without costs to any Party.

**Confidentiality**

18. Class Counsel will not promote this Agreement, the terms herein, the negotiations leading to this Agreement, and the amount of the settlement other than for the purposes of providing notice to the Class of the settlement of this Action and except as reasonably necessary to seek approval of the settlement under the *Class Proceedings Act* or as otherwise required by law.

**Non-Disparagement**

19. Each Party and all Class Members covenant and agree not to make any negative or disparaging statement, whether written or oral, about any Party in relation to any issue arising in the Action.

**General**

20. Each Party acknowledges and agrees that this Agreement is a compromise of disputed claims. In particular, each Party acknowledges and agrees that the Defendants have denied the allegations as against them, the Defendants have not admitted liability, and nothing in this Agreement shall be construed as an admission of liability on the part of any of the Defendants, all of whom expressly deny liability.
21. Each Party acknowledges and agrees that the facts in respect of which this Agreement is made may prove to be other than or different from the facts now known or believed by such Party to be true or that there may be facts now unknown to such Party and such Party accepts and assumes the risk of the facts being different or new facts being discovered hereafter and agrees that this Agreement shall be in all respects enforceable and not subject to termination, rescission, or variation by the discovery of any difference in facts, or of any facts now unknown to such Party.
22. Each Party acknowledges that this Agreement has been executed voluntarily by such Party and the Defendants acknowledge that this Agreement has been executed after the Defendants each received independent legal advice.
23. Each Party acknowledges and agrees that such Party has not been influenced to any extent whatsoever in entering this Agreement by any representations or statements regarding any claim or right such Party may have or by any other statements made by any of the Parties or by any of their agents.
24. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the Province of Ontario and for all purposes related to this Agreement, each Party hereby irrevocably and unconditionally attorns and submits to the jurisdiction of the Ontario Superior Court of Justice and all courts competent to hear appeals therefrom.

25. If, for any reason whatsoever, any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the unenforceable provision may be severed herefrom and the remaining provisions hereof shall continue to be binding upon the Parties to the fullest extent permitted by law and the unenforceable provision shall be deemed to be amended to the extent needed to render it enforceable, so as best to reflect the intentions of the Parties.
26. Except as otherwise contemplated herein, this Agreement may be amended only by written instrument executed by each of the Parties.
27. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the Party or Parties purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach so waived.
28. This Agreement shall ensure to the benefit of and be binding upon all of the Parties hereto.
29. This Agreement may be executed in one or more counterparts, by original or electronic signature, which together shall constitute the complete Agreement.

In witness whereof the Parties have executed this Agreement effective sep 10, 2019:

Signed, sealed, and delivered by **Jing Liu**, Litigation Guardian for YUEXIAO (PATRICK) ZHANG, in the presence of:

DAN JIANG  
Signature DAN JIANG  
Name 48 shafsbury AVE Richmond  
Address hill

刘静

Signed, sealed, and delivered by **Pierre Dupont** in the presence of:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address



25. If, for any reason whatsoever, any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the unenforceable provision may be severed herefrom and the remaining provisions hereof shall continue to be binding upon the Parties to the fullest extent permitted by law and the unenforceable provision shall be deemed to be amended to the extent needed to render it enforceable, so as best to reflect the intentions of the Parties.
26. Except as otherwise contemplated herein, this Agreement may be amended only by written instrument executed by each of the Parties.
27. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the Party or Parties purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach so waived.
28. This Agreement shall ensure to the benefit of and be binding upon all of the Parties hereto.
29. This Agreement may be executed in one or more counterparts, by original or electronic signature, which together shall constitute the complete Agreement.

In witness whereof the Parties have executed this Agreement effective \_\_\_\_\_.

Signed, sealed, and delivered by Jing  
Liu, Litigation Guardian for YUEXIAO  
(PATRICK) ZHANG, in the presence of

Signature

Name

Address

Signed, sealed, and delivered by Pierre  
Dupont in the presence of:

Signature

CHRISTINE LUTTEN BACHER

Name


1-356 TWEEDS MOIR AVENUE

Address

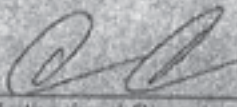
OTTAWA ON K1Z 5N4



Signed, sealed, and delivered by Ottawa  
Foot Practice Inc. in the presence of:

  
Signature  
CHRISTINE LUTTENDACHER  
Name  
1-356 TWEEDSMuir AVENUE  
Address  
OTTAWA ON K1Z 5N4

Ottawa Foot Practice Inc.

By:   
Authorized Signatory  
PIERRE DUPONT - PRESIDENT  
Name

**PRIMARY CLASS MEMBERS' QUESTIONNAIRE**  
**Dupont Class Action**

If you believe you fall into the Primary Class (being "all persons resident in Canada who were implanted by the Defendants with a foot stent not approved by Health Canada") and wish to participate in the settlement of this class proceeding, **please complete and submit this questionnaire with supporting documentation to the address below by November 22, 2019** (or an alternative date later fixed by the Superior Court of Ontario). **Prior to completing this Questionnaire, please ensure you have carefully read the Notice of Certification and Settlement Approval Motion.**

**PERSONAL INFORMATION**

1. Name: \_\_\_\_\_
2. Date of birth: \_\_\_\_\_
3. Current address: \_\_\_\_\_  
 \_\_\_\_\_

**PRE-INJURY HEALTH**

4. Prior to the stent insertion surgery what problems did you have with your feet?  
 Please provide the following information:

	Problem #1	Problem #2	Problem #3	Problem #4	Problem #5
Nature of the problem					
When did the problem start?					
What limitations did you have arising out of these problems?					

What treatment did you receive for these problems prior to seeing Mr. Dupont?					
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5. What benefits of the stent insertion procedure were discussed with you by Mr. Dupont?

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6. What risks of the stent insertion procedure were discussed with you by Mr. Dupont?

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7. Did Mr. Dupont discuss alternatives to the stent insertion procedure with you? If yes, what did you discuss?

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8. Did you consult with any other medical professional with respect to the decision to undergo the stent insertion procedure? If yes, provide their name and particulars of any advice you received.

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## THE PROCEDURE

9. What date did the right foot stent insertion procedure occur on?

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10. What date did the left foot stent insertion procedure occur on?

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11. Which foot stent(s) were confirmed to be fake stents (*not* HyProCure® stents)? Please attach any documentation received that confirms your foot stent(s) were/are fake.

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12. Did your symptoms change following the procedure(s)? If yes, explain how.

a. Changes in your **right foot**:

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b. Changes in your **left foot**:

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13. During your recovery from the stent insertion procedures...

a. What were you **not** able to do that you could do before?

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b. What assistance did you need at home?

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c. Was there any cost associated with the assistance received? If yes, what were the specifics of the expenses incurred (e.g. how much, for how long)?

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d. Who provided this assistance?

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e. Did you require the use of any equipment (i.e. crutches, cane, grab bars, orthotics, etc.) following the stent insertion? If yes, provide the following:

	Equipment #1	Equipment #2	Equipment #3	Equipment #4	Equipment #5
Type of equipment					
How long did you use the equipment?					
How much was the cost of the equipment?					

14. Please provide the following information regarding any impacts alleged to be caused by the stent insertion:

	Psychological Impacts	Physical Impacts
List impacts suffered		
Type of treatment(s) received		
How long were you treated		
Is there a need for on-going and/or future treatment?		

15. Since the stent insertion procedure, did you require any treatment or therapy? If yes, please provide the following information:

	Therapy #1	Therapy #2	Therapy #3	Therapy #4	Therapy #5
Type of therapy or treatment accessed					
Name and contact information of treatment provider					
Dates you received therapy or treatment					
Cost of attending this therapy or treatment					

16. Since the stent insertion procedure, have you had any further surgery with respect to the stent insertion (including removal of the stents)? If yes, please provide the following information:

	Surgery #1	Surgery #2	Surgery #3	Surgery #4
What was the surgery performed?				
Who performed the surgery?				
When was the surgery performed?				

What was the cost of the surgery?				
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## COST OF FUTURE CARE

17. What equipment do you require currently as a result of your stent-related injuries and impairments?

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18. What medications are you currently using that are related to the stent insertion and/or removal procedure?

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19. What treatment, therapy and services do you require as of this date that is related to the stent insertion and/or removal procedure, for example: physiotherapy, occupational therapy, massage therapy, doctors?

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20. Who pays for your equipment, medication and/or therapies currently?

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21. What is the cost of your equipment, medication and/or therapies as of this date? (Please provide a clear breakdown of what each costs per month or per year and ensure you have supporting documentation).

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22. If you have an extended health care plan that has paid for any treatment, equipment or services related to the stent insertion and/or removal procedures, please provide those details.

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23. Has any of your medical treatment related to the stent insertion and/or removal procedure(s) been covered by provincially funded healthcare (for example, OHIP)? If yes, please list what treatment was covered.

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24. If you are not using any equipment, taking any medications or receiving any treatment/therapies, has a doctor or treatment provider informed you that you will need any of the above in the future? If yes, please provide written confirmation from your treatment provider.

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## POST-STENT PROCEDURE RESTRICTIONS

25. Has your ability to drive changed since the stent insertion procedure? If yes, how so?

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26. Has your ability to do housekeeping and home maintenance tasks changed since the stent insertion procedure? If yes, how so?

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27. Has your ability to perform child care responsibilities changed since the stent insertion procedure? If yes, how so?

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28. Have there been any changes to your family life since the stent insertion procedure? If yes, how so?

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29. Have there been any changes to your social and/or recreational life since the stent insertion procedure? If yes, how so?

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30. Have you had to change or cancel any vacations as a result of the stent insertion procedure?

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*Is wage loss/loss of capacity/loss of capital asset alleged? If no, then skip to question #40.*

#### PRE-TREATMENT INCOME

31. Provide the following work history from ***two years prior*** to the stent insertion procedure to present if your employment is wage based:

	Job #1	Job #2	Job #3	Job #4
Job title				
Dates employed				
Wage				
Hours per week				
Employment tasks & responsibilities				

32. Did you have any plans to change jobs or retire before the stent insertion procedure? \_\_\_\_\_

a. Have these plans changed? If yes, how so?

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33. If you are a *business owner* claiming wage loss, please provide the following information:

- a. When did you start your business? \_\_\_\_\_
- b. What type of business is it? \_\_\_\_\_
- c. Are you incorporated? If yes, what is the corporation's name?  
\_\_\_\_\_
- d. Do you have any business partners? \_\_\_\_\_
- e. How are you paid? \_\_\_\_\_
- f. If you have any other sources of income, please provide details.  
\_\_\_\_\_

#### POST-STENT INCOME LOSS

34. Provide the particulars of your income loss claim to date, including the following:

- a. From which dates were you unable to work?

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- b. What was the total amount of income you lost for this period of time?

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- c. Attach supporting documentation (i.e. income tax returns showing a decrease in your salary, pay stubs showing a decrease in your wages/salary or a letter from your employer).



35. Why were you unable to work during this time?

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36. Did a physician or other medical professional tell you not to work? If yes, please provide the following information:

a. Full name: \_\_\_\_\_

b. How long were you advised not to work for? \_\_\_\_\_

37. Have you returned to work? If yes, on what date? \_\_\_\_\_

38. Provide details of any job search and retraining undertaken as a result of the stent insertion/removal procedure.

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39. Are you claiming for any loss of seniority or promotion? If yes, please provide details.

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#### **SPECIAL DAMAGES**

40. Provide details and receipts and/or proof of payment for the following expenses related to the stent insertion and/or removal procedure(s) and your injuries and impairments relating therefrom:

- a. Out-of-pocket money spent on medical bills, including the stent procedure(s);

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- b. Out-of-pocket money spent on equipment;

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- c. Out-of-pocket money spent on medication;

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- d. Out-of-pocket money spent on property modification;

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- e. Out-of-pocket money spent on treatment and therapies;

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- f. Out-of-pocket money spent on travel related to the stent procedure(s) and/or related treatment; and,

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- g. Any other out-of-pocket expenses incurred as a result of the stent insertion and/or removal procedure(s)

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**DOCUMENTS TO ATTACH:**

1. Confirmation that your foot stent(s) were fake;
2. Confirmation that you received the medical treatment, therapy, equipment and/or medication as listed above (either by proof of payment or medical records);
3. Confirmation that you were unable to work as a result of the stent insertion and/or removal procedure(s) if you are claiming income loss;
4. Income tax returns for 3 years prior to the stent insertion procedure to present (or pay stubs) if you are claiming income loss; and,
5. The receipts and/or proof of payment for the expenses listed above in question 40.

**It is important that you include the supporting documentation requested above so that Class Counsel can properly assess the compensation you are entitled to. Your damages will be assessed by Class Counsel based on the information contained within this Questionnaire. If any 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.**

Individuals who qualify as Class Members and 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. **By completing this Questionnaire, it is assumed that you will not opt out of the Class Action.**

**Please submit your completed Questionnaire by email to Lucy Jackson at [ljackson@thomsonrogers.com](mailto:ljackson@thomsonrogers.com)**

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](mailto:ljackson@thomsonrogers.com)



**SECONDARY CLASS COMPENSATION REQUEST FORM**  
**Dupont Class Action**

If you believe you fall into the Secondary Class (being "all persons resident in Canada who were implanted by the Defendants with a foot stent approved by Health Canada") and wish to participate in the settlement of this class proceeding, **please complete and submit this form to the address below by November 22, 2019** (or an alternative date later fixed by the Superior Court of Ontario). **Prior to completing this Form, please ensure you have carefully read the Notice of Certification and Settlement Approval Motion.**

**PERSONAL INFORMATION**

1. Name: \_\_\_\_\_
2. Date of birth: \_\_\_\_\_
3. Current address: \_\_\_\_\_

**STENT PROCEDURE**

4. On what date(s) did Mr. Pierre Dupont and the Ottawa Foot Practice Inc. implant you with foot stents approved by Health Canada, specifically HyProCure© foot stents?  
\_\_\_\_\_
5. If possible, please attach documentation confirming that you underwent the foot stent implant procedure with Mr. Dupont and the Ottawa Foot Practice Inc.

**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, Mr. Dupont and the Ottawa Foot Practice Inc.**

Individuals who qualify as Class Members and 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. **By completing this Compensation Request Form, it is assumed that you will not opt out of the Class Action.**

**Please submit your completed Compensation Request Form by email to Lucy Jackson at [ljackson@thomsonrogers.com](mailto:ljackson@thomsonrogers.com)**

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](mailto:ljackson@thomsonrogers.com)

**THOMSON ROGERS**  
**LAWYERS**

*Stephen Birman*  
416-868-3137  
[sbirman@thomsonrogers.com](mailto:sbirman@thomsonrogers.com)

**SENT VIA EMAIL**

October 4, 2019

Ms. Brenda Weiss  
Director  
Epiq Class Action Services Canada Inc.  
610 - 180 King Street South  
Waterloo, Ontario  
N2J 1P8

Dear Ms. Weiss:

**Zhang v. Dupont et al**  
**Our File No. 901855**

**COPY****LETTER OF ENGAGEMENT**

This is a formal Letter of Engagement on behalf of the Plaintiff (in a certified class action in Court File No. CV-17-567774) (the "Dupont Class Action").

The Plaintiff has retained Epiq Class Action Services Canada Inc. ("Epiq") to assist in distributing the settlement funds to the Class Members in accordance with the court approved Settlement Agreement. Epiq will also address any reviews submitted by Class Members with respect to their claim. In particular:

1. Epiq will receive the Settlement Payment in the amount of \$2,250,000.00 in trust and will invest it in an interest bearing account for the benefit of the Plaintiff and the Class Members.
2. Epiq will distribute payment of the settlement funds to all Class Members in accordance with the court approved Settlement Agreement and Plaintiff's counsel's compensation calculation of each Class Member's claim.
3. Plaintiff's counsel will provide their claim analysis to Epiq, along with the contact information for all compensable Class Members for the purpose of distributing payment of the settlement to all Class Members.

4. Epiq will address reviews by Class Members, in accordance with any court approved review process, of Plaintiff's counsel's compensation calculation of the Class Member's claim.
5. It is the Parties' intention that the court approved review process will presume that Plaintiff's counsel's compensation calculation of each Class Member's claim is accurate (i.e. burden is on the Class Member to prove otherwise). It is possible that the review process will have modest cost penalties to be off-set against compensation, where available, for unsuccessful reviews.
6. Plaintiff's counsel will provide Epiq with the entire file of any Class Member filing for a review of their claim. Epiq shall review the information contained within the Class Member's file when determining if Plaintiff's counsel's claim analysis and compensation calculation is reasonable. Epiq will not obtain further information on behalf of any Class Member filing for a review of their compensation calculation.
7. Epiq will not conduct any review of claims unless specifically directed by Thomson, Rogers after receipt of a Review Request. Thomson, Rogers will not be responsible for any fees associated with claim review unless the review is specifically requested in writing by Thomson, Rogers.
8. Epiq will not distribute or disburse the payment of the settlement funds to any person or other entity until all Parties have fully executed the Settlement Agreement and all conditions of completion have been satisfied.
9. Epiq will pay Plaintiff's counsel any amount approved by the Court for legal fees.
10. Epiq will be paid court approved administration costs out of the Settlement Payment, which are not to exceed the enclosed Summary Estimate of \$17,678.00, without prior consent from Plaintiff's counsel.
11. A copy of this letter of engagement will be attached to the Certification Order with respect to the Dupont Class Action.

Yours very truly,

  
 Stephen Birman  
 SB/lgj  
 Enclosure

PER



## Zhang v. Dupont et al

### Project Requirements and Estimated Volumes

Total Estimated Class Size	55
English Only Toll-Free Phone with IVR	No
English Only Email Contact Centre	Yes
Informational Website	No
Claim Response Percentage	100%
Estimated Claims Received	55
Case Duration (Months)	6
Mailing Packet Content	N/A * To be executed by Class Counsel
Mailing Packet Format	N/A * To be executed by Class Counsel

### Summary Estimate

Project Management	\$	1,960
Database and Reporting	\$	4,000
English Only Email Contact Centre	\$	523
Appeal Processing and Claimant Support	\$	3,235
Distribution and Fund Management	\$	1,276
Postage and Expenses	\$	6,684
Total Estimate	\$	<u>17,678</u>



**CLASS ACTION & CLAIMS SOLUTIONS**

Estimate for Administration

10/04/19

**Detailed Estimate****Zhang v. Dupont et al**

Activity	Unit	CAD Rate	Volume	Amount
<b>Project Management</b>				
Project Manager	Per Hour	\$ 170	5	\$ 850
Data Analyst and Reporting	Per Hour	\$ 185	6	\$ 1,110
				\$ 1,960
<b>Database and Reporting</b>				
Dashboard Setup	Fixed Fee	\$ 2,500	1	\$ 2,500
Dashboard Monthly Support and Storage	Per Month	\$ 250	6	\$ 1,500
				\$ 4,000



## Zhang v. Dupont et al

### English Only Email Contact Centre

Activation Fee for Dedicated Email Address & Inbox for Appellants	Fixed Fee	\$ 250	1	\$ 250
Dedicated Monthly Email Infrastructure & Retention Fee	Per Month	\$ 30	6	\$ 180
Outgoing Email Claimant Response	Per Hour	\$ 118	10	\$ 93
				\$ 523

### Appeal Processing and Claimant Support

Intake, Data Entry & Clerical	Per Hour	\$ 75	2	\$ 150
Scanning and Image Storage	Per Image	\$ 0.20	75	\$ 15
Appeal Review	Per Hour	\$ 130	7	\$ 910
Quality Assurance	Per Hour	\$ 160	4	\$ 640
Appeal Decision Preparation	Per Decision	\$ 160	3	\$ 480
Miscellaneous Correspondence Review and Response	Per Hour	\$ 130	8	\$ 1,040
				\$ 3,235

### Distribution and Fund Management

Programming Distribution Calculation	Per Hour	\$ 185	2	\$ 370
Cheque Run Coordination (w/1 Reissue Runs)	Per Hour	\$ 125	2	\$ 250
Account Management and Reconciliation	Per Hour	\$ 125	2	\$ 250
Print 1-Image Cheque with Stub (55 class members, 11 subrogation claims)	Per Cheque	\$ 6.25	65	\$ 406
Cheque Re-issuances	Per Cheque	\$ 12.50	-	Upon Request
				\$ 1,276

Total Estimated Administration Fee \$ 10,995



## Zhang v. Dupont et al

### Postage and Expenses

Post Office Box	Per 6 Months	\$ 1	\$ 900
Postage* -30 grams or less	Per Piece	\$ 0.90	- As Used
Box Storage	Per Box	\$ 3.50	1 \$ 3.50
Third Party Translation Services	Per Word	\$ 0.32	- As Used
Photocopies	Per Image	\$ 0.20	- As Used
Bank Fees - Account Set Up and Monthly Fees	Per Month	\$ 330	6 \$ 1,980
Settlement Fund Income Tax Filing	Per Year	\$ 3,800	1 \$ 3,800
*Discounted rates as applicable			\$ 6,684

**Total Estimated Costs** \$ 6,684

Estimate does not include sales tax where applicable.

**Total Estimate** \$ 17,678

### Standard Rates

Clerical and Data Entry	\$ 75
Contact Center (Dedicated)	\$ 75
Contact Center (Shared Per Minute)	\$ 1.39
Claims Analyst	\$ 118
Claims Specialist and Account Reconciliation/Check Run	\$ 125
Call Center Supervisor and Training	\$ 130
Project Coordinator	\$ 150
Technical Project Manager	\$ 165
Data Analyst and Reporting	\$ 185
Project Manager	\$ 170
Sr. Project Manager	\$ 198
Software Engineer	\$ 251
Project Director	\$ 297
Client Services Managers	\$ 363
Executive Management and Testimony	\$ 495
Photocopy or Image	\$ 0.20
Box Storage (Per Box/Per Month)	\$ 4.62 (discounted)
Long Distance, Per Minute	As Used As Used

Estimate Valid Until: 1/02/20

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.

## SCHEDULE "F"

### APPEAL PROCESS FRAMEWORK (DUPONT CLASS ACTION)

1. Epiq Class Action Services Canada Inc. ("Epiq") has been appointed the Administrator of this Class Action.
2. Class Counsel will provide the Administrator with the matrix outlining Class Counsel's calculation of entitlement for all Claimants under the Settlement, including contact information for all Claimants.
3. Any time after December 18, 2019 and up until January 31, 2020, Claimants will have the opportunity to request their Claim File by completing and submitting a Claim File Request Form to the Administrator.
4. Claimants may Appeal the decision of Class Counsel regarding their entitlement to compensation, if any, by completing an Appeal Form and submitting it to the Administrator by a method listed on the Appeal Form. The appeal can be in relation to either eligibility or quantum or both.
5. The Appeal Form must be received by Epiq **on or before January 20, 2020**. Any Appeal Form received after that date will not be considered for review.
6. Upon receipt of an Appeal Form and/or a Claim File Request Form, the Administrator will notify Class Counsel and Class Counsel will forthwith provide the Administrator with the Appellant's Claim File.
7. Upon receipt of the Appeal Form, the Administrator will again 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.
8. The Appellant will be provided with their Claim File no later than 10 days after submitting their Claim File Request Form to the Administrator.

9. The Appellant will have until February 20, 2020 to submit further submissions (including documentation) in relation to their appeal or request an opportunity to speak with the Administrator rather than make submissions in writing.
10. Upon receipt of any submissions or upon completion of any telephone interviews by the Administrator, the Administrator will make a final and binding decision of entitlement. Such decisions will be sent to the Appellant within 7 days of the telephone interview or receipt of written submissions. All appeals from Class Counsel's initial assessment will be determined by the Administrator acting in its sole discretion in accordance with the Settlement Agreement and the Settlement Administration Guideline attached hereto as **Appendix "A"**.
11. The Administrator will assess whether or not Class Counsel made a material error in the evaluation of the Appellant's entitlement. Only if the appellant is able to establish a material error was made, will the Administrator determine if the Appellant's compensation, if any, is increased or decreased as a result.
12. The decisions of the Administrator in relation to any appeals (both in terms of compensation and entitlement) are final and binding and cannot be challenged.
13. If a Claimant is unsuccessful in his or her appeal (that is, Epiq does not change Class Counsel's assessment of the claim), the amount of \$250.00 will be deducted from the Claimant's compensation. In the event that no compensation is awarded, the Claimant will be required to pay \$250.00 upon receipt of the appeal decision.



## SCHEDULE "G"

### NOTICE OF SETTLEMENT DUPONT CLASS ACTION

**This Court Approved Notice is directed to all Class Members as described below. This Notice may affect your rights. Please Read 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.

Please refer to the Notice of Certification & Settlement Approval previously sent to you and attached hereto as **Appendix "A"**.

#### THE CERTIFICATION ORDER

The Ontario Superior Court has certified 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 appointed Yuexiao ("Patrick") Zhang, as represented by his Litigation Guardian, Jing Liu, as the representative plaintiff of the Class 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 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 **unless you do not want to participate** in the class proceeding (see "Opting Out" below).



## NATURE OF THE SETTLEMENT

The Ontario Superior Court has now approved the Settlement Agreement reached by the parties. 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 the supporting documentation regarding their individual 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 provided with details regarding the assessment of your individual claim by letter following the December 11, 2019 deadline. If you disagree with the assessment of your claim, you will have the opportunity to appeal (see "Appeal Process" below).

Primary Class Members seeking compensation who have not already submitted a Questionnaire to Thomson, Rogers must submit a completed Questionnaire along with supporting documentation (the Questionnaire can be obtained at the following link: \_\_\_\_\_). For a claim to be considered for compensation, Primary Class Members must complete and submit the Questionnaire by **December 11, 2019**.

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 **December 11, 2019**.

**If you do not submit your Questionnaire or Secondary Class Compensation Request Form by December 11, 2019, you will *not* receive any compensation.**

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.

## APPEAL PROCESS

If you are a Class Member and you disagree with Class Counsel's assessment of your individual claim, in relation to quantum or eligibility or both, you may request a binding review of Class Counsel's assessment by the Administrator.

Epiq Class Action Services Canada Inc. ("Epiq") has been appointed as the Administrator.

If you wish to file for a review of your claim, you must submit an "Appeal Form" to the Epiq **on or before January 20, 2020**. The Appeal Form can be accessed at \_\_\_\_\_ (insert web link).

If you wish to request your Claim File, you must submit a "Claim File Request Form" to Epiq **on or before January 31, 2020**. The Claim File Request Form can be accessed at \_\_\_\_\_ (insert web link).

To succeed on an appeal, you must establish that Class Counsel made material errors in the evaluation of your entitlement, pursuant to the terms of the Settlement Agreement, the Settlement Administration Guideline and the Appeal Process Framework which will be available online at: \_\_\_\_\_ (insert link). If you are able to establish a material error was made, Epiq will then review Class Counsel's analysis of your claim and determine whether your compensation, if any, is increased or decreased as a result.

If your appeal is unsuccessful (that is, Epiq does not change your compensation amount), the amount of \$250.00 will be deducted from your compensation. In the event that no compensation is awarded, you will be required to pay \$250.00 upon receipt of the Appeal decision.

### **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 must do so **on or before December 11, 2019** by sending a signed "Opt Out Form" to Class Counsel at the address below. The Opt Out Form can be found at: \_\_\_\_\_ (insert web link). It should be noted that if too many Class Members opt out, then the Defendants have the right to terminate the settlement. In those circumstances, you will be notified by Class Counsel.

**No Class Members will be permitted to opt out of the Class Action after December 11, 2019.**

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.

### **LEGAL FEES AND DISBURSEMENTS**

The Court has approved legal fees in the amount of \$732,323.00, inclusive of all disbursements and applicable taxes. Class Counsel has entered into an agreement with the Representative Plaintiff with respect to legal fees and disbursements. 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 \$250,000.00 towards Class Counsel's legal fees, disbursements and applicable taxes.

Class Members will **not** be personally liable to pay counsel any legal fees or disbursements.

### **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](http://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](mailto:ljackson@thomsonrogers.com)

### **INTERPRETATION**

This notice is a summary of terms of the Certification & Settlement Approval Order. If there is any conflict between the provisions of this notice and the terms of the Certification & Settlement Approval Order, the Certification & Settlement Approval Order shall prevail. The Certification & Settlement Approval Order may be viewed at the website: [www.thomsonrogers.com/practice-areas/class-action](http://www.thomsonrogers.com/practice-areas/class-action) under the heading "Pierre Dupont."

This notice was approved by the Ontario Superior Court of Justice.



**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](http://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](mailto:ljackson@thomsonrogers.com)

SCHEDULE "H"

**OPT OUT FORM**  
**(Dupont Class Action)**

TO: THOMSON, ROGERS

I, \_\_\_\_\_ (*insert full name*), have received Notice of Settlement of the Pierre Dupont Class Action.

I believe that I am a *Class Member*.

I was implanted with a foot stent by Pierre Dupont and/or the Ottawa Foot Practice Inc. I am a resident of \_\_\_\_\_.

I do NOT wish to participate in the Pierre Dupont Class Action and I hereby Opt Out of the Pierre Dupont Class Action.

I understand that by opting out of this Class Action I will not be eligible for any benefit that is available to the Class.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Please send this completed form to:  
Thomson, Rogers to the attn. of Lucy Jackson, by either:  
Fax No. 1-416-868-3134  
Email: [ljackson@thomsonrogers.com](mailto:ljackson@thomsonrogers.com)  
Courier or mail: 3100-390 Bay St., Toronto, ON, M5H 1W2

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**ORDER**

THOMSON, ROGERS  
Barristers and Solicitors  
Suite 3100  
390 Bay Street  
Toronto, Ontario  
M5H 1W2

L. CRAIG BROWN (LSO No. 20151Q)  
DARC Y R. MERKUR (LSO No. 42899S)  
STEPHEN BIRMAN (LSO No. 55164F)  
Tel. No. 416-868-3100  
Fax No. 416-868-3134

Lawyers for the Plaintiff  
(901855 DRM/gjj)