
Court File No. 98-CV-158832

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SHELIA WILSON

Plaintiff

-and-

SERVIER CANADA INC., LES LABORATOIRES SERVIER,
SERVIER AMERIQUE, INSTITUT DE RECHERCHES INTERNATIONALES
SERVIER ("I.R.I.S."), SCIENCE UNION ET CIE, ORIL S.A., SERVIER S.A.S., ARTS
ET TECHNIQUES DU PROGRES, BIOLOGIE SERVIER, INSTITUT DE
DEVELOPEMENT ET DE RECHERCHE SERVIER, ORIL INDUSTRIE,
BIO RECHERCHE SERVIER, INSTITUTO DI RICERCA, IDUX, BIOPHARMA
ARTEM, SCIENCE UNION S.A.R.L., LABORATOIRES SERVIER INDUSTRIE,
I.R.I.S. ET CIE DEVELOPEMENT, INFORMATION SERVIER,
SERVIER MONDE, SERVIER INTERNATIONAL, I.R.I.S. SERVICES S.A.R.L.,
ADIR, SERVIER R&D BENELUX, DR. JACQUES SERVIER and BIOFARMA S.A.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

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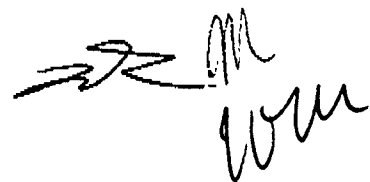
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EXHIBIT LIST:

- A: Preliminary Approval Notice and Preliminary Approval Notice Plan
- B: Approval Notice and Approval Notice Plan
- C: Full and Final Release by Public Health Insurers
- D: Claims Administration Procedures
- E: Medical Conditions List
- F: Matrix
- G: Claim Form
- H: Medical Diagnosis Form
- I: Approval Order

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SERVIER MONDE, SERVIER INTERNATIONAL, I.R.I.S. SERVICES S.A.R.L.,
ADIR, SERVIER R&D BENELUX, DR. JACQUES SERVIER and BIOFARMA S.A.**

Defendants

Proceeding under the Class Proceedings Act, 1992

SETTLEMENT AGREEMENT

1. PREAMBLE

Sheila Wilson, in her personal capacity and as a representative of the National Class, and Beverley Greenlees, in her personal capacity and as a representative of the British Columbia Subclass, and the Defendants named herein, hereby enter into this Settlement Agreement providing for the settlement of all Settled Claims against the

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Released Parties, with the exception of any and all claims or potential claims by residents of Québec or by the Régie and the *Finazzo* proceedings.

WHEREAS the Wilson Class Action was certified as a class action pursuant to the *Class Proceedings Act* by Order of the Honourable Justice Cumming dated September 13, 2000;

WHEREAS as part of the certification of the Wilson Class Action, a sub-class consisting of residents of British Columbia was approved by the Court;

WHEREAS the Parties will seek Court Approval for this Settlement Agreement on behalf of the Wilson Class Action class members, defined by the Court as:

All persons resident in Canada (excluding Quebec) who were prescribed and ingested the diet drugs marketed under the brand name Ponderal (generic name: fenfluramine) and/or Redux (generic name: dexfenfluramine), these being diet drugs designed, developed, fabricated, manufactured, imported, distributed, marketed, sold or otherwise placed into the stream of commerce in Canada by Servier Canada Inc. and/or Biofarma S.A.

All persons including, but not limited to, executors, administrators, personal representatives, spouses and relatives who on account of a relationship to those persons described in the above defined class, have a derivative claim for damages resulting from the treatment with Ponderal and/or Redux.

WHEREAS Rochon Genova, and their advisors Lieff Cabraser Heimann & Bernstein, and Klein Lyons, who among them are also counsel for the Wilson Opt-Outs, have conducted settlement negotiations with Defendants' Counsel;

WHEREAS the Defendants, notwithstanding their consent to this Settlement Agreement, have denied and continue to deny any wrongdoing or liability of any kind to the Plaintiffs or Class Members;

WHEREAS the time period for opting out of the Wilson Class Action pursuant to section 9 of the *Class Proceedings Act* has now passed and therefore the Parties agree that Class Members shall not opt out of the Wilson Class Action;

WHEREAS based upon an analysis of the facts and the law applicable to claims of the Class Members, taking into account the extensive burden and expense of litigation, as



well as the fair, cost-effective and assured method of resolving the claims of Class Members provided in this Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement provides substantial and appropriate benefits to the Class Members and is fair, reasonable, and in the best interests of the Class Members including the Wilson Opt-Outs;

WHEREAS the Defendants have concluded that this Settlement Agreement is desirable in order to avoid the time and expense of defending multiple and protracted litigation, and to resolve finally and completely all pending and potential claims of Class Members, including the Wilson Opt-Outs;

WHEREAS the Parties agree that as a result of the previous publication of a class proceedings notice in the Wilson Class Action, the proposed publication of various Notices pursuant to this Settlement Agreement, and the extensive publicity relating to litigation about the relevant diet drugs in Canada and elsewhere, all Class Members are or will be aware, or should be aware, of the existence of the Wilson Class Action and of their status as Class Members herein following publication of the Approval Notice;

WHEREAS the Parties, Class Counsel, the Wilson Opt-Outs and Defendants' Counsel agree that the Wilson Opt-Outs, including those who have commenced individual actions, shall, upon Court Approval of this Settlement Agreement, consent to be bound by the terms of this Settlement Agreement for the purposes of achieving finality and certainty and to settle any outstanding actions or potential actions, except as may be specifically excluded in this Settlement Agreement;

WHEREAS the Wilson Opt-Outs have, through their respective counsel, consented to being bound by the terms of this Settlement Agreement and having their respective actions, if any, dismissed in their entirety;

WHEREAS the Public Health Insurers have agreed that this Settlement Agreement provides for a fair and expeditious resolution of any and all subrogated claims by the Public Health Insurers that exist, or may exist in the future, arising from claims by Class Members including the Wilson Opt-Outs;

WHEREAS the Parties intend by this Settlement Agreement to resolve all of the present and future claims of Class Members, including the Wilson Opt-Outs, pursuant to the terms of this Settlement Agreement;

WHEREAS the Defendants who are not Canadian residents acknowledge the Orders of this Court but do not waive any substantive or procedural rights they may have, including jurisdictional rights, arising in any jurisdiction, including but not limited to their rights pursuant to the *Hague Convention*, the *Canada France Treaty*, the *French Penal Code*, and the *French Civil Code* including Article 15 thereof;



NOW THEREFORE, subject to Court Approval, this Settlement Agreement embodies the terms of the resolution of these actions on a Canada-wide basis with the exception of any and all claims or potential claims by residents of Québec or by the Régie and *Finazzo*.

2. NO ADMISSION RE: CAUSATION

For greater certainty, the Parties hereto acknowledge and agree that, where reference is made in this Settlement Agreement or the Exhibits hereto to the "cause" of a disease or condition for which a claim for compensation is made or where reference is made to any diagnostic criteria described herein or therein, such reference is made only for the purposes of the administration and implementation of the settlement herein and is not intended to be and shall not be construed as an admission by the Defendants, the Released Parties, or any of them, that the Products are the cause of, or contribute to, any of the injuries for which Claimants may be compensated pursuant to this Settlement Agreement.

This Settlement Agreement and its Exhibits, pursuant to the terms and conditions set forth below, is subject to approval of the Court pursuant to section 29 of the *Class Proceedings Act*, as set forth herein.

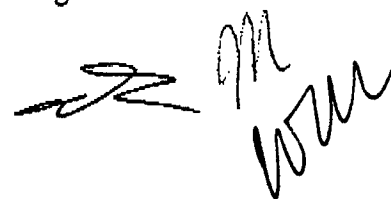
3. DEFINITIONS

Unless a particular section of this Settlement Agreement expressly provides for a different interpretation, the following defined terms, as used in this Settlement Agreement and its Exhibits, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and vice versa. Feminine pronouns and female references shall be deemed to include the masculine, and vice versa, wherever appropriate.

- 3.1 **"Additional Settlement Funds"** means an amount not exceeding \$15,000,000.00 to be paid by Servier Canada Inc., pursuant to the process and security described in section 9 herein. The Additional Settlement Funds shall only be disbursed in the manner described in section 9 herein.
- 3.2 **"Administration Period"** means a period of five (5) years commencing immediately upon the expiration of the Claim Period. All claims submitted must be processed and, where applicable, settlement payments made, within the Administration Period. Claims submitted following the expiration of the Administration Period will be rejected, with no permissible appeal or Challenge, and the Claimant will not be entitled to compensation.
- 3.3 **"Approval Notice"** means the legal notice which advises Class Members of the Court Approval of the Settlement Agreement, as provided for in section 6 herein and Exhibit "B" hereto.

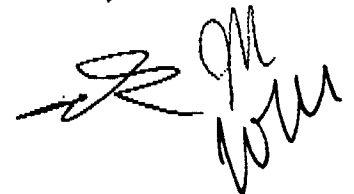
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- 3.4 **"Approval Notice Date"** is the date upon which the Approval Notice is first published in any of the publications identified in Exhibit "B" pursuant to section 6 herein.
- 3.5 **"Approval Order"** means the Order of the Court which approves this Settlement Agreement.
- 3.6 **"British Columbia Subclass"** means Class Members resident in British Columbia.
- 3.7 (a) **"Certified Cardiologist", "Certified Cardiac Surgeon", "Certified Pulmonologist", "Certified Respiriologist" or "Certified Pathologist"** means a Fellow of the Royal Canadian College of Physicians and Surgeons of Canada in Cardiology, Cardiac Surgery, Pulmonology, Respiriology or General Pathology, respectively, who is a resident of Canada except as otherwise permitted by this Settlement Agreement and the Claims Administration Procedures at Exhibit "D" hereto. With respect to physicians in the above-noted disciplines from Québec, a Fellowship with the Royal Canadian College of Physicians and Surgeons of Canada is not required, provided that their medical credentials have been recognized by the Collège des médecins du Québec (hereafter collectively referred to as **"Qualified Physicians"**).
- 3.7 (b) **"Certified Neurologist", "Certified Neurosurgeon"** means a Fellow of the Royal Canadian College of Physicians and Surgeons of Canada in Neurology or Neurosurgery, respectively, who is a resident of Canada except as otherwise permitted by this Settlement Agreement and the Claims Administration Procedures at Exhibit "D" hereto. With respect to physicians in the above-noted disciplines from Québec, a Fellowship with the Royal Canadian College of Physicians and Surgeons of Canada is not required, provided that their medical credentials have been recognized by the Collège des médecins du Québec.
- 3.8 **"Challenge"** means the process by which, at the request of a Claimant, Justice Winkler reviews and reconsiders a decision with respect to the disposition of a claim, as set out in the Claims Administration Procedures at Exhibit "D" hereto.
- 3.9 **"Claimants"** means all recipients of Ponderal, Ponderal Pacaps and/or Redux, or Representative Claimants, who take the necessary actions pursuant to this Settlement Agreement within the time frames set out in this Settlement Agreement to make a claim for compensation. Claimants includes Derivative Claimants as defined below.
- 3.10 **"Claim Package"** means all of the materials required to be submitted in order for a claim for benefits pursuant to this Settlement Agreement to be considered, as defined and described in section 4 of the Claims Administration Procedures at Exhibit "D" hereto. Each Claimant shall only be entitled to submit a single Claim

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Package, except where the Claim Package is rejected as incomplete, in which case the Claimant shall be entitled to re-submit the Claim Package in accordance with the terms and conditions set out in this Settlement Agreement and the Claims Administration Procedures at Exhibit "D" hereto. Claimants shall also be entitled to submit a "Progressed Claim" or a "New Pathology Evidence Claim" in accordance with the Claims Administration Procedures at Exhibit "D" hereto and as defined therein.

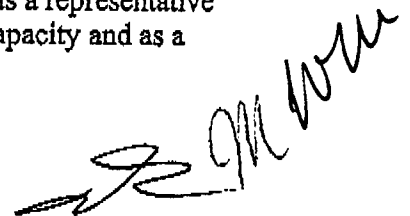
- 3.11 **"Claim Period"** means the period of time between first publication of the Approval Notice of this settlement and a date fifteen (15) months following such publication. The expiration of this Claim Period is the deadline by which all claims for compensation pursuant to this Settlement Agreement must be submitted, subject to the Challenge provisions provided herein and to the provisions of the Claims Administration Procedures at Exhibit "D" hereto relating to Progressed Claims and New Pathology Evidence Claims.
- 3.12 **"Claims Adjudicator"** means a Qualified Physician as agreed to between Class Counsel and Defence Counsel, or appointed by the Court, who shall be vested with the functions and responsibilities more particularly described in section 15 herein and Exhibit "D" hereto.
- 3.13 **"Class Counsel"** means, for the National Class, the law firm of Rochon Genova, 903 - 121 Richmond Street West, Toronto, Ontario M5H 2K1, and for the British Columbia Subclass, Klein Lyons, 1100-1333 West Broadway, Vancouver, BC V6H 4C1.
- 3.14 **"Class Counsel Fees"** means any legal fees, disbursements and taxes in respect of legal services provided by Class Counsel for the benefit of the Class, as provided in section 11 herein and as may be ordered by the Court, pursuant to the *Class Proceedings Act*.
- 3.15 **"Class Members"** means all persons resident in Canada (excluding Québec) who were prescribed and ingested the diet drugs marketed under the brand name Ponderal or Ponderal Pacaps (generic name: fenfluramine) and/or Redux (generic name: dexfenfluramine), these being diet drugs designed, developed, fabricated, manufactured, imported, distributed, marketed, sold or otherwise placed into the stream of commerce in Canada by Servier Canada Inc. and/or Biofarma S.A.; and their estates, executors, administrators, personal representatives, spouses, parents, grandparents, children, grandchildren, dependants, siblings, common-law spouses and same-sex partners who, on account of a relationship to those persons described in this class, have a derivative claim for damages resulting from the treatment with the Products. Class Members includes Wilson Opt-Outs and Derivative Claimants.
- 3.16 **"Class Proceedings Act"** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.



- 3.17 **"Compensable Claim"** means all claims for which compensation is payable pursuant to this Settlement Agreement; the criteria for qualifying for compensation are defined in Exhibits "D" and "E" hereto.
- 3.18 **"Court"** means the Ontario Superior Court of Justice and the Honourable Justice Cumming, or his successor or designee.
- 3.19 **"Court Approval"** means final approval of this Settlement Agreement by the Court pursuant to section 29 of the *Class Proceedings Act*, as set forth herein.
- 3.20 **"Defendants"** means all of the parties listed as Defendants in the style of cause herein.
- 3.21 **"Defendants' Counsel"** means the law firm of Ogilvy Renault, 200 Bay Street, Suite 3800, P.O. Box 84, Toronto, ON M5J 2Z4.
- 3.22 **"Derivative Claimants"** means Class Members seeking compensation from or asserting the right to sue the Defendants or any Released Party independently or derivatively by reason of their relationship with a Product Recipient, including without limitation, spouses, parents, grandparents, children, grandchildren, dependants, siblings, common law spouses or same-sex partners.
- 3.23 **"Derivative Claims Fund"** means a notional portion of the Settlement Fund or Additional Settlement Funds, as applicable, not to exceed \$1,250,000.00 in the aggregate, to be paid out to Eligible Derivative Claimants as defined herein and pursuant to the terms of Exhibit "D" hereto.
- 3.24 **"Eligible Derivative Claimants"** means spouses (including common law spouses or same sex partners) and minor and adult dependent children (where the dependency arises from a mental or physical disability of the adult child) of a Product Recipient for whom a claim has been approved at Matrix II or higher..
- 3.25 **"FDA Positive"** means a diagnosed physiological condition as defined in Exhibit "E" hereto.
- 3.26 **"FDA Positive Fund"** means a notional portion of the Settlement Fund, not to exceed \$3,000,000.00 in the aggregate, to be paid out to Claimants who have been deemed entitled to receive an FDA Positive Benefit pursuant to the terms of Exhibits "D" and "E" hereto
- 3.27 **"FDA Positive Benefit"** means a compensation payment, not to exceed \$2,500.00, to be paid from the FDA Positive Fund to each Claimant who satisfies the applicable eligibility requirements as set out in Exhibits "D" and "E" hereto and who properly and timely files a claim for such benefit.

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- 3.28 **"Fairness Hearing"** means the hearing at which the Parties will jointly seek Court Approval pursuant to section 29(2) of the *Class Proceedings Act*.
- 3.29 **"Final Court Approval"** means the expiration of the appeal period following the rendering by the Court of a decision on the Fairness Hearing, or, if an appeal is made, the final disposition of any appeals, resulting in Court Approval.
- 3.30 **"Finazzo"** means the Ontario proceedings known as *Finazzo et al. v. Servier Canada Inc. et al.*, Ontario Superior Court of Justice, Court File No. 98-GD-43664.
- 3.31 **"Interim Disbursements"** means monies, in increments of \$2,000,000.00, which may be disbursed from time to time out of the Additional Settlement Funds in accordance with section 9(d) herein.
- 3.32 **"Lieff Cabraser"** means Lieff, Cabraser, Heimann & Bernstein LLP, Embarcadero Center West, 3000 - 275 Battery Street, San Francisco, CA 94111-3339. Lieff Cabraser are advisors to Class Counsel for the National Class.
- 3.33 **"Matrix"** means the compensation grid as described in Exhibit "F" hereto which establishes the compensation amounts to be paid for the Matrix Level medical conditions described in Exhibit "E" hereto.
- 3.34 **"Matrix Benefit"** means a compensation payment, to be paid to Claimants who satisfy the applicable eligibility requirements as set out in Exhibits "D" and "E" hereto and who properly and timely file a claim for such benefit.
- 3.35 **"Matrix Claim"** means a claim for compensation from the Matrix on the basis of the conditions described in Exhibit "E" hereto.
- 3.36 **"Matrix-level Condition"** means a diagnosed physiological condition with a level of severity meeting the criteria specified in Exhibit "E" hereto.
- 3.37 **"National Class"** means all Class Members other than members of the British Columbia Subclass.
- 3.38 **"Notice of Challenge"** means a written notice of a Claimant's intention to Challenge the disposition of a claim.
- 3.39 **"Notices"** means the Preliminary Approval Notice and the Approval Notice.
- 3.40 **"Parties"** means the Plaintiffs and Defendants, collectively.
- 3.41 **"Plaintiffs"** means Sheila Wilson, in her personal capacity and as a representative of the National Class, and Beverley Greenlees, in her personal capacity and as a representative of the British Columbia Subclass.



- 3.42 **"Product Recipients"** means all Class Members who ingested the Products.
- 3.43 **"Products"** means Ponderal, Ponderal Pacaps and/or Redux, or one of them.
- 3.44 **"Preliminary Approval Notice"** means the legal notice which advises Class Members of the preliminary approval of the Settlement Agreement, as provided for in Exhibit "A" hereto.
- 3.45 **"Preliminary Approval Notice Date"** means the date on which the Preliminary Approval Notice is first published in any of the publications identified in Exhibit "A" hereto.
- 3.46 **"Product Identification Documentation"** means the documentation set out in the Claims Administration Procedures at Exhibit "D" hereto required to prove that a Product Recipient was prescribed and ingested the Products.
- 3.47 **"Public Health Insurers"** means all of the Canadian Provincial Ministries of Health, Provincial and Territorial Governments, and/or plans funding health care programs in Canada, including medical and hospital services, including the Northwest Territories, Nunavut and Yukon, excluding the Régie.
- 3.48 **"Régie"** means the Régie de l'assurance maladie du Québec.
- 3.49 **"Released Party"** means:
- (a) All of the Defendants, individually and collectively, and each of their respective parents, subsidiaries, affiliates and divisions, along with each of their respective current and former officers, directors, employees, representatives, consultants, attorneys, agents, predecessors, successors, parents, subsidiaries, affiliates, assigns and insurers;
 - (b) Any and all predecessors, successors, parents, subsidiaries, affiliates and divisions, along with each of their respective current and former officers, directors, employees, representatives, consultants, attorneys, agents, assigns, insurers and/or shareholders of all the Defendants and each of their parents, subsidiaries, affiliates and divisions;
 - (c) Any and all suppliers of materials, components, and services used in the manufacture, testing or design of the Products, including the labelling and packaging thereof, along with each person's or entity's predecessors, successors, parents, subsidiaries, affiliates, and divisions, and each of their respective current and former shareholders, officers, directors, employees, representatives, consultants, attorneys, agents, assigns and insurers;
 - (d) All distributors of the Products, including wholesale distributors, private label distributors, retail distributors, hospitals and clinics, and their



respective predecessors, successors, parents, subsidiaries, affiliates, and divisions, and their respective current and former shareholders, officers, directors, employees, representatives, consultants, attorneys, agents, assigns and insurers;

- (e) Any Canadian governmental or regulatory agency, office, authority or representative with responsibility, directly or indirectly, for the public health care sector, including the Health Protection Branch or its predecessors or successors, parents, subsidiaries, affiliates, divisions, and each of their current and former officers, directors, employees, representatives, consultants, attorneys, agents, assigns and insurers; and
- (f) All physicians, dieticians or specialists who prescribed, and all pharmacists and pharmacies who dispensed the Products to the extent that liability against such physicians, dieticians, specialists, pharmacists or pharmacies is in any way related, directly or indirectly, to the prescription, recommendation or ingestion of the Products.

All Released Parties shall be deemed to be third party beneficiaries of this Settlement Agreement.

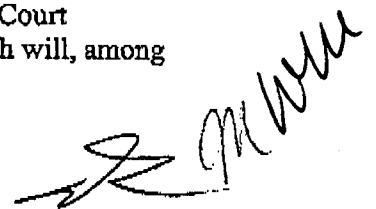
- 3.50 **"Representative Claimants"** means estates, administrators or other legal representatives, heirs or beneficiaries of Product Recipients.
- 3.51 **"Remainder"** means monies remaining in the Settlement Fund following payment to the Public Health Insurers, payment of approved Class Counsel Fees, if any, and after all qualified Claimants to the Settlement Fund have been paid their maximum entitlement pursuant to section 9(c) herein and Exhibits "D", "E" and "F" hereto.
- 3.52 **"Settled Claims"** means any and all claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal basis for the claim alleged, existing now or arising in the future by any or all Class Members, or by any entity or party which may make or continue any related claim of any kind against any Released Party, arising out of or related in any way to the Products, including but not limited to the purchase, use, manufacture, sale, dispensing, supply, distribution, promotion, marketing, clinical investigation, administration, regulatory approval, prescription, ingestion and labelling of the Products, alone or in combination with any other substance, including, without limitation, any other drug, dietary supplement, herb or botanical. Such Settled Claims include, without limitation and by way of example, all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for personal injury and/or bodily harm, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life; damages,

including but not limited to punitive, aggravated, statutory and other multiple damages or penalties of any kind; loss of wages, income, earnings, and earning capacity, medical expenses, doctor, hospital, nursing, and drug bills; loss of support, services, consortium, companionship, society or affection, or damage to familial relations, consumer fraud, refunds, unfair business practises, deceptive trade practices, and other similar claims whether arising under statute, regulation, or judicial decision; wrongful death or wrongful birth and survival actions; medical screening and monitoring, injunctive and declaratory relief; economic or business losses or disgorgement of profits arising out of personal injury; costs of legal fees; prejudgment and post-judgment interest; and any and all subrogated or related claims by Public Health Insurers with the exception of the Régie. Settled Claims does not include *Finazzo*, and does not include claims made by residents of Québec.

- 3.53 "Settlement Administrator" means the entity appointed by the Court pursuant to section 14 herein and vested with the functions and responsibilities more particularly described in section 14 herein and Exhibit "D" hereto.
- 3.54 "Settlement Agreement" means this agreement, including all exhibits hereto ("Exhibits").
- 3.55 "Settlement Fund" means a fund of \$25,000,000.00 to be established by Servier Canada Inc., from which payments for Compensable Claims shall be drawn in the manner described at section 9 herein. The Settlement Fund also includes funds from which any approved Class Counsel Fees determined to be payable from the Settlement Fund, and the payment to the Public Health Insurers shall be drawn. The Settlement Fund shall include any interest earned thereon.
- 3.56 "Wilson Class Action" means the class proceedings styled *Wilson v. Servier Canada Inc. et al.*, Ontario Superior Court of Justice, Court File No. 98-CV-158832.
- 3.57 "Wilson Opt-Out" means an individual who has opted out of the Wilson Class Action. The Wilson Opt-Outs shall include but shall not be limited to the opt-outs presently known to the Defendants, namely: the estate of Jodi Neetz, the estate of Gary Ryder, the estate of Kelsey Banico, the estate of Norah Munro, Ann Gilmore, Denyse Bossi, the estate of Edith Armstrong, Eileen Braham, the estate of Susan Davis, the estate of Sharon Donnelly, Janet Lamont, Joan Matthews, Jackie Shaw, Bonnie Sieloff and Leroy Roy.

4. ORDER APPROVING THE SETTLEMENT AGREEMENT

This Settlement Agreement is subject to and conditional upon Final Court Approval. The Parties shall jointly move for an Order from the Court which will, among other things:

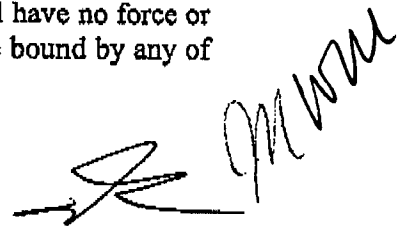


- (a) declare that this Settlement Agreement is fair, reasonable and in the best interests of Class Members, including the Wilson Opt-Outs;
- (b) order that publication of the Approval Notice shall be commenced, as provided for in section 6 herein, within thirty (30) days of Final Court Approval;
- (c) order that the certified common issues in the Wilson Class Action be amended to incorporate all of the Defendants;
- (d) order that Crawford Class Action Services be appointed as Settlement Administrator for the settlement;
- (e) order that a roster of Claims Adjudicators be appointed for the settlement;
- (f) provide that any Party or the Settlement Administrator may bring a motion to Justice Winkler at any time for directions with respect to the implementation or interpretation of this Settlement Agreement. Such motion shall be on notice to the other Party and, where applicable, to the Settlement Administrator;
- (g) provide that if Justice Winkler is, for any reason, unable to fulfil any of the duties set out in this Settlement Agreement and the Exhibits hereto, another Justice of the Ontario Superior Court of Justice shall be appointed in his place;
- (h) order that Servier Canada Inc. pay all reasonable costs incurred by, or in relation to, the Settlement Administrator and the Claims Adjudicators, as well as the reasonable costs of the Notices; and
- (i) order that any claims commenced by Ontario Class Members are hereby dismissed in their entirety and that all Class Members with individual actions commenced outside of Ontario and within Canada (excluding Québec) will provide such co-operation and assistance as may be required to obtain dismissals of their actions in the jurisdictions in which they were commenced.

5. EFFECT OF NON-APPROVAL BY THE COURT

If this Settlement Agreement is not approved by the Court as set forth in section 4, above:

- (a) this Settlement Agreement shall be null and void and shall have no force or effect, and no Party to this Settlement Agreement shall be bound by any of its terms, except for the terms of this section;



- (b) this Settlement Agreement, and all of its provisions, and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Parties as those rights existed prior to the signing of the agreement in principle executed by the Parties in the form of a letter on February 21, 2003; and
- (c) the Parties, Class Counsel, Lieff Cabraser, Defendants' Counsel and Class Members agree that this Settlement Agreement and all of its provisions, and all negotiations, statements and proceedings relating to it, shall be treated as confidential, and no materials or information relating to this Settlement Agreement, or to the negotiations, statements and proceedings relating to it, including any details or information regarding the involvement of the Settlement Administrator shall be disclosed to anyone other than as may be required by law or agreed upon by the Parties.

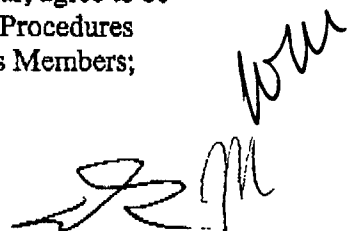
6. NOTICE TO CLASS MEMBERS

- (a) The form and content of publication of the Notices shall be substantially as described at Exhibits "A" and "B" hereto respectively;
- (b) The Parties shall co-operate, assist and undertake all reasonable actions in order to ensure that the Notices are published on a timely basis;
- (c) Servier Canada Inc. shall pay the reasonable cost of publishing the Notices, which shall include any costs associated with the Settlement Administrator's development and implementation of the Notices; and
- (d) The details of the Notices shall be agreed upon by the Parties and shall be approved by the Court. If the details of the Notices cannot be agreed upon by the Parties, Justice Winkler shall resolve any such disputes. The Parties agree that the objective of the Notices shall be to attain fair, reasonable and adequate notice to potential Class Members.

7. WILSON OPT-OUTS

As a condition of approval of this Settlement Agreement, all Wilson Opt-Outs shall, upon execution and Court Approval of this Settlement Agreement, confirm and acknowledge that:

- (a) they agree to be bound by the terms and conditions contained in this Settlement Agreement and the Exhibits hereto, and in particular, agree to be bound by the eligibility requirements, Claims Administration Procedures and compensation scheme set out herein, as if they were Class Members;



- (b) they agree to obtain or consent to a dismissal of any outstanding claim, action or proceeding by them or on their behalf against any of the Released Parties herein; and
- (c) they retain no other or further right of action against any of the Released Parties.

8. WAIVER OF LIMITATION DEFENCE

For the purpose of making a claim under this Settlement Agreement, no Claimant shall be considered ineligible to receive any compensation set forth in this Settlement Agreement on the basis of any statute of limitation or repose, prescription period or any other limitation or prescription defence, except as otherwise provided herein.

9. SETTLEMENT BENEFITS

(a) Settlement Amount

Pursuant to this Settlement Agreement, and subject to its terms and conditions, Servier Canada Inc. shall be obligated to pay the following amounts:

- (i) \$25,000,000.00 in respect of the Settlement Fund;
- (ii) \$3,000,000.00 in respect of the partial indemnity costs of Class Counsel;
- (iii) \$1,000,000.00 in respect of the disbursements incurred by Class Counsel; and
- (iv) \$15,000,000.00 in respect of the Additional Settlement Funds, as set out in greater detail herein.

The Defendants shall have no responsibility or liability, under any circumstances, to make any payments under this Settlement Agreement except for those obligations of Servier Canada Inc. as set forth in this section and sections 6, 11, 14, 15 and 18 herein.

(b) Payment Schedule

- (i) Servier Canada Inc. shall, within forty eight (48) hours of Final Court Approval, pay the amount of \$25,000,000.00 to the Settlement Administrator who shall establish a fund in an interest bearing account. This Settlement Fund shall be distributed in accordance with the Claims Administration Procedures, Medical Conditions List and Matrix attached hereto as Exhibits "D", "E" and "F" respectively.

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- (ii) The Settlement Administrator shall, within forty eight (48) hours of the establishment of the Settlement Fund, notionally allocate \$3,000,000.00 thereof to an FDA Positive Fund. The FDA Positive Fund shall be distributed in accordance with the Claims Administration Procedures and Medical Conditions List at Exhibits "D" and "E" hereto. Following the expiration of the Claim Period, the Settlement Administrator shall move before Justice Winkler for directions on the distribution of the FDA Positive Fund. FDA Positive Benefits shall only be paid from the FDA Positive Fund and not out of the Settlement Fund or the Additional Settlement Funds regardless of the number of qualified FDA Positive Claimants.
- (iii) The partial indemnity costs and disbursements to be paid hereunder shall be paid by Servier Canada Inc. to the Settlement Administrator within forty eight (48) hours of Final Court Approval and shall be disbursed in accordance with directions from the Court or Class Counsel.
- (iv) The total aggregate sum of \$1,000,000.00 shall be deducted from the Settlement Funds by the Settlement Administrator and shall be paid by the Settlement Administrator to Class Counsel for the National Class in trust no later than fifteen (15) business days following Final Court Approval of this Settlement Agreement, to be distributed to the Public Health Insurers in a manner and form as agreed to by the Public Health Insurers. The payments under this section, together with any remainder amounts paid pursuant to section 9(c) herein, shall be made in respect of, and in full and final settlement of, any claims, including but not limited to subrogated claims, by the Public Health Insurers, on behalf of medical services, treatment, or any related products or services provided for and to be provided for Class Members.
- (v) Each Public Health Insurer shall execute a full and final release in the form of Exhibit "C" hereto prior to receiving any benefits pursuant to this Settlement Agreement.

(c) Remainder of Settlement Fund

If all Claimants who file Claim Packages within the Administration Period and fulfill the qualification requirements of the Settlement Fund have received payment of their maximum entitlement pursuant to this Settlement Agreement, and monies remain in the Settlement Fund following payment in full of all Compensable Claims, payments to Public Health Insurers and Class Counsel Fees (if any), such monies shall be paid out by the Settlement Administrator according to the following grid:

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Where total Remainder is:	Portion of Total Remainder Payable to Servier Canada Inc.	Portion of Total Remainder Payable to Public Health Insurers
\$0-\$1,000,000	10%	90%
>\$1,000,000	25%	75%
>\$3,000,000	50%	50%
>\$5,000,000	65%	35%
>\$7,500,000	75%	25%
>\$10,000,000	90%	10%

Any of the above-referenced amounts payable to Public Health Insurers shall be paid by the Settlement Administrator to Class Counsel for the National Class in trust to be distributed to the Public Health Insurers in a manner and form as agreed to by the Public Health Insurers or as directed by the Court.

(d) Additional Settlement Funds

- (i) Within forty eight (48) hours of Final Court Approval, Servier Canada Inc. shall provide to the Settlement Administrator the Additional Settlement Funds in the form of an irrevocable letter of credit issued by a Canadian bank for an amount of \$15,000,000.00.
- (ii) In the event that the aggregate total of the compensation payable to Class Members in respect of Compensable Claims, the payment to the Public Health Insurers and any Court-approved Class Counsel Fees which may be determined to be payable from the Settlement Fund exceeds the Settlement Fund, including any interest accrued thereon, Servier Canada Inc. shall pay to the Settlement Administrator in trust, in Interim Disbursements in increments of \$2,000,000.00 (except for the final disbursement of \$1,000,000.00), the Additional Settlement Funds, to a maximum of \$15,000,000.00. When the total amount remaining in the Settlement Fund falls to, or below, \$500,000.00, Servier Canada Inc. shall provide the first such Interim Disbursement to the Settlement Administrator. Such Interim Disbursements shall be placed in an interest-bearing account and shall be used to pay Compensable Claims, unless and until the Additional Settlement Funds are depleted. Subsequent Interim Disbursements of the Additional Settlement Funds shall be automatically requested by the

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Settlement Administrator in the event that the amount of Additional Settlement Funds held by the Settlement Administrator falls below \$500,000.00, or such other amount as the Settlement Administrator deems necessary for the expedient administration of the settlement herein.

- (iii) Upon payment of each Interim Disbursement to the Settlement Administrator, the letter of credit referred to in section 9d(i), above, shall be amended to reflect each Interim Disbursement. The Parties shall co-operate fully and provide whatever assistance is necessary in arranging for the discharge of the letter of credit.
- (iv) Upon depletion of the Additional Settlement Funds, including any interest amounts accrued thereon in respect of Interim Disbursements, the Defendants shall not be liable to make any further payments in respect of any other Settled Claims, irrespective of, *inter alia*, the amount, number, and nature of any unpaid Settled Claims.
- (v) Upon payment of all Compensable Claims, any amounts remaining in Interim Disbursements, including any interest accrued thereon, shall be paid back to Servier Canada Inc. or its designee by the Settlement Administrator and the letter of credit referred to in section 9d(i) above shall be discharged.

(e) Cost of Notice Programs and Settlement Administration

Servier Canada Inc. shall, within forty eight (48) hours of Final Court Approval of this Settlement Agreement, provide to the Settlement Administrator, a further irrevocable letter of credit in the amount of \$1,500,000.00 for the purposes of securing payment of the Notices and the costs of administering the Settlement Agreement. At the conclusion of the Claim Period, if the amount remaining on this letter of credit is, in the opinion of the Settlement Administrator, insufficient to fund the remaining administration of the settlement, and the Parties are unable to agree on a further amount to be posted, the Parties shall move before Justice Winkler for directions related thereto.

The Defendants shall be responsible for all reasonable costs associated with the Notices and the administration of this Settlement Agreement, but not for the costs of a Challenge, which costs shall be paid in accordance with section 11 herein and the Claims Administration Procedures at Exhibit "D" hereto.

(f) Claims by Derivative Claimants

Where a Claimant is entitled to a Matrix Benefit at Matrix Level II, each Eligible Derivative Claimant shall be entitled to receive a benefit of \$1,000.00. Where a Claimant is entitled to a Matrix Benefit at Matrix Level III or higher, each Eligible

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Derivative Claimant shall be entitled to receive a benefit of \$10,000.00. However, in the event that the Derivative Claims Fund is insufficient to pay all approved Derivative Claims in the amounts set out above, the amount of all approved Derivative Claims shall be subject to a *pro rata* reduction.

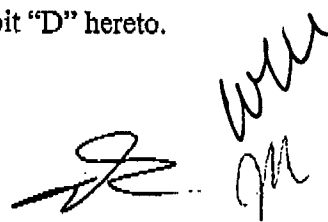
For Claimants entitled to an FDA Positive Benefit or a Matrix Benefit at Level I, there shall be no payments to any Derivative Claimants.

10. AMENDMENTS TO SETTLEMENT AGREEMENT

The Parties may only amend this Settlement Agreement in writing. Any such amendment shall be signed by all Parties and shall be subject to Court approval.

11. LEGAL FEES AND DISBURSEMENTS

- (a) Upon Final Court Approval of this Settlement Agreement, Servier Canada Inc. shall pay to the Settlement Administrator, or in such other manner as the Court may direct, the aggregate sum of \$3,000,000.00 on account of the partial indemnity costs of Class Counsel. This amount shall be paid out by the Settlement Administrator in accordance with directions provided to the Settlement Administrator by the Court or by Class Counsel.
- (b) In addition, Servier Canada Inc. shall pay to the Settlement Administrator the aggregate sum of \$1,000,000.00 on account of disbursements incurred by Class Counsel, to be disbursed among Class Counsel in accordance with directions provided to the Settlement Administrator by the Court or by Class Counsel.
- (c) Class Counsel shall bring a motion to the Court, on reasonable notice to the Defendants, for determination of any further amount of Class Counsel Fees to be paid out of the Settlement Fund or, if appropriate, the Additional Settlement Funds. The amounts referred to in sections 11(a) and 11(b) above shall be taken into account by the Court in determining the amount of any additional Class Counsel Fees to be paid to Class Counsel.
- (d) Claimants who retain counsel or agents in making their claims under this Settlement Agreement shall be solely responsible for the fees and expenses of such counsel or agents, except as may be otherwise provided herein.
- (e) Any legal fees or costs associated with the making of a claim hereunder, inclusive of all taxes, fees and disbursements, shall be paid in accordance with the Claims Administration Procedures set out in Exhibit "D" hereto.

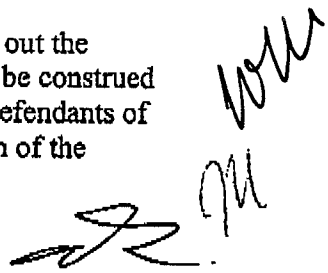
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12. EXCLUSIVE REMEDY/EFFECT ON CLAIMS

- (a) This Settlement Agreement shall be the exclusive remedy for all Class Members, including the Wilson Opt-Outs. No Defendant or Released Party shall be subject to liability or expense of any kind to any Class Member, including any Wilson Opt-Out, with respect to any claim, except as provided for in this Settlement Agreement.
- (b) Upon Final Court Approval, Class Counsel and Lieff Cabraser, on behalf of all Class Members, agree that a dismissal shall be an appropriate remedy against the initiation or prosecution of any proceeding against the Defendants or any Released Party asserting a Settled Claim brought by or on behalf of any Class Member, including any Wilson Opt-Out. Class Counsel, Lieff Cabraser and counsel for the Wilson Opt-Outs further agree that they will cooperate with the Defendants or Released Party in seeking such a dismissal should any such proceeding be initiated or prosecuted.

13. RELEASE AND THIRD PARTY CLAIMS

- (a) In consideration of the valuable benefits derived from this Settlement Agreement, the Plaintiffs and all Class Members, including the Wilson Opt-Outs, hereby release and forever discharge the Defendants and Released Parties from and with respect to any and all Settled Claims.
- (b) Upon Final Court Approval, every Settled Claim against the Released Parties shall be conclusively compromised, settled and released, and each Class Member shall be barred from initiating, asserting, continuing or prosecuting any Settled Claims against the Defendants or any Released Party, or any entity or person which may claim contribution or indemnity, or which may seek a finding or declaration of liability for any reason against a Defendant or any Released Party.
- (c) Nothing in this Settlement Agreement shall prejudice or in any way interfere with the rights of Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Defendants and Released Parties; however, the Plaintiffs or Class Members shall not commence, continue or maintain any such proceedings which are related in any way to Settled Claims against any entity or person who may, or does, claim over or seek contribution, indemnity or other relief from any of the Defendants or Released Parties.
- (d) Neither this Settlement Agreement nor any step taken to carry out the Settlement Agreement nor any document relating to it is, may be construed as, or may be used as, an admission by or against any of the Defendants of the truth of any allegations, or of liability, or of the jurisdiction of the

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Canadian Courts over any of the Defendants who are non-Canadians, or of the certifiability of the claims herein as class actions, or as a waiver of any applicable legal right or benefit other than as expressly stated in this Settlement Agreement. Likewise, this Settlement Agreement may not be construed or used as an admission by or against the Plaintiffs or the Class Members or as a waiver of any applicable legal right or benefit of the Plaintiffs or the Class Members other than as expressly stated in this Settlement Agreement. Further, neither this Settlement Agreement nor any document relating to, or action taken to carry out this Settlement Agreement, shall be offered or received in evidence in any action or proceeding against the Defendants, the Plaintiffs or the Class Members, or any of them, in any Court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement Agreement or to seek Court Approval of the Settlement Agreement.

14. APPOINTMENT OF SETTLEMENT ADMINISTRATOR

- (a) The Parties propose that Crawford Class Action Services be appointed by the Court as Settlement Administrator for the purposes of administering all monies payable pursuant to this Settlement Agreement. The Settlement Administrator shall also be responsible for other administrative matters, as set out in the Claims Administration Procedures at Exhibit "D" hereto or as directed from time to time by the agreement of the Parties or by the Court.
- (b) The Settlement Administrator shall invest all funds in its possession under this Settlement Agreement pursuant to the Investment Standards and authorized investments provided for in Section 27 of the *Trustee Act*, R.S.O. 1990, c.T.23. All fees and costs of any custodian holding and/or investing such funds shall be paid out of the income of such funds and shall not be the responsibility of the Defendants.
- (c) The Settlement Administrator shall offer services in both French and English.
- (d) The Settlement Administrator and any person appointed by the Settlement Administrator to assist in the administration of this settlement must sign and adhere to a confidentiality statement, in a form satisfactory to the Parties, by which they agree to keep confidential any information concerning Class Members or the Defendants, and the Settlement Administrator shall institute and maintain procedures to ensure that the identity of all Class Members and Parties, and all information regarding their claims and submissions will be kept confidential and will not be provided to persons except as may be provided for in this Settlement Agreement or as may be required by law.

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- (e) The Settlement Administrator shall report to Class Counsel and Defendants' Counsel on a quarterly basis with respect to the status of funds disbursed, interest earned and funds remaining in the Settlement Fund and, if applicable, any Interim Disbursements of the Additional Settlement Funds.
- (f) The Settlement Administrator shall be subject to removal by the Court for cause, including on a motion by a Party on reasonable notice to all Parties.
- (g) In the event that the Settlement Administrator is unable to continue to act for any reason, the Parties may propose a substitute Settlement Administrator, subject to the approval of the Court.
- (h) Servier Canada Inc. shall pay all reasonable fees and expenses of the Settlement Administrator upon receiving accounts from the Settlement Administrator, or in such manner as Servier Canada Inc. and the Settlement Administrator shall agree. If Servier Canada Inc. disputes the nature or amount of any such fees and expenses and an agreement cannot be reached between Servier Canada Inc. and the Settlement Administrator, Servier Canada Inc. or the Settlement Administrator may apply to Justice Winkler for directions respecting such fees and expenses.
- (i) The Settlement Administrator shall co-ordinate with the Parties and hold regular administrative conference calls to advise the Parties of the progress of the administration of this settlement and shall circulate to all Parties in advance of such conference calls a report and an agenda. In addition, when deemed necessary by the Settlement Administrator, special meetings may be called, on reasonable notice to all Parties.

15. APPOINTMENT OF CLAIMS ADJUDICATORS

- (a) The Parties will agree upon and propose a roster of Claims Adjudicators to be appointed by the Court. The Claims Adjudicators shall receive and review Claim Packages from the Settlement Administrator in accordance with the Claims Administration Procedures in Exhibit "D" hereto.
- (b) The Claims Adjudicators shall be mutually acceptable to the Parties.
- (c) Where required by the Claims Administration Procedures set out in Exhibit "D" each claim which the Settlement Administrator has deemed to be complete will be assigned by the Settlement Administrator to a single Claims Adjudicator who will be responsible for, among the other matters set out herein, reviewing each Claim Package submitted to him or her. The Claims Adjudicator will make a decision in accordance with the Claims Administration Procedures and Medical Conditions List set out in Exhibits




"D" and "E" hereto as to whether a Claimant has a Compensable Claim. If a Claimant is found to have a Compensable Claim, the Claims Adjudicator shall decide whether the Claimant is entitled to an FDA Positive Benefit or a Matrix-level Benefit and if so, at what level according to the Matrix at Exhibit "F" hereto. Claims Adjudicators shall provide written reasons with respect to the decision regarding each claim, in accordance with the Claims Administration Procedures at Exhibit "D" hereto.

- (d) In the event that a Claims Adjudicator is unable to continue to act as a member of the Claims Adjudicators roster, the Parties may propose a substitute Claims Adjudicator, subject to the approval of the Court.
- (e) The roster of Claims Adjudicators shall include medically qualified persons meeting the qualifications set out in the Claims Administration Procedures at Exhibit "D" hereto. The roster shall include both English and French speaking Claims Adjudicators.
- (f) The Claims Adjudicator shall discharge all duties and obligations in the manner prescribed in the Claims Administration Procedures at Exhibit "D" hereto.
- (g) The Claims Adjudicator must sign and adhere to a confidentiality statement in a form satisfactory to the Parties, by which they agree to keep confidential any information concerning Class Members or the Defendants, and the Claims Adjudicator shall institute and maintain procedures to ensure that the identity of all Class Members and Parties, and all information regarding their Claim Package will be kept confidential and will not be provided to persons except as may be provided for in this Settlement Agreement or as may be required by law.
- (h) The Claims Adjudicator, or any member of the roster of Claims Adjudicators, shall be subject to removal by the Court for cause on a motion by any Party at any time, on reasonable notice to all Parties.
- (i) The Claims Adjudicators shall submit accounts to the Settlement Administrator. Servier Canada Inc. shall pay all reasonable fees and expenses of the Claims Adjudicator upon receiving accounts from the Settlement Administrator, or in such manner as Servier Canada Inc. and the Settlement Administrator shall agree. Such fees and expenses shall be subject to the reasonable limits set out in the Claims Administration Procedures at Exhibit "D" hereto. If Servier Canada Inc. disputes the nature or amount of any such fees and expenses and an agreement cannot be reached, Servier Canada Inc. may apply to the Court for directions respecting such fees and expenses.




16. CHALLENGE OF DECISION OF CLAIMS ADJUDICATOR

Following the delivery to the Parties of a decision of the Claims Adjudicator in accordance with the Claims Administration Procedures set out in Exhibit "D" hereto, the Claimant shall have the right to Challenge the Claims Adjudicator's decision, in accordance with the Claims Administration Procedures.

(a) Legal Costs of the Challenge Process

In the event of a successful Challenge, the fees and costs of the Claimant's legal counsel and of any experts or advisors retained to assist with the Challenge process shall be fixed by Justice Winkler and shall be paid from the Settlement Fund or the Additional Settlement Funds, where applicable. In the event of an unsuccessful Challenge, the Claimant shall bear his or her own costs of legal counsel and of any experts or advisors retained to assist in the Challenge process. The Defendants shall not be liable for any costs associated with the Challenge Process.

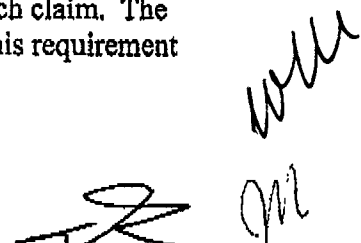
The Defendants shall not participate in the Challenge process unless directed to do so by Justice Winkler. If the Defendants are directed by Justice Winkler to participate in a Challenge, which Justice Winkler subsequently determines to be frivolous or vexatious, he shall have the discretion to award costs to be payable by the Claimant to the Defendants. In no event shall such costs be payable from the Settlement Fund or the Additional Settlement Funds.

(b) Final Decision

The decision of Justice Winkler respecting any Challenge of the Claims Adjudicator's decision is final and binding and shall not be the subject of any further Challenge, appeal, reconsideration, review or revision, except in the case of a clerical or obvious error which shall be corrected by Justice Winkler.

17. CLAIM PERIOD

Any Class Member's claim for compensation made pursuant to this Settlement Agreement shall be submitted within the Claim Period (with the exception of Progressed Claims or New Pathology Evidence Claims) submitted pursuant to the Claims Administration Procedures at Exhibit "D" hereto). Any Claim Package submitted following the expiration of the Claim Period (other than Progressed Claims or New Pathology Evidence Claims) shall be rejected by the Settlement Administrator and no compensation shall be paid in respect of such claim. The Settlement Administrator shall not have the discretion to waive this requirement for the timely submission of Claim Packages.

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If a claim is denied on the basis that it was filed following the expiration of the Claim Period, the Claimant shall be advised in writing by the Settlement Administrator of the reason for the rejection of the claim, and shall be advised of the process of Challenging the decision of the Settlement Administrator pursuant to the Claims Administration Procedures at Exhibit "D" hereto.

18. RETURN OF DOCUMENTARY PRODUCTIONS

- (a) Within ninety (90) days of Final Court Approval, all documentary productions made by any Defendant, in any form, including any copies thereof, shall be returned to Defendants' Counsel.
- (b) For greater certainty, the return of such documentary productions shall include, but is not limited to, documentary productions presently in the possession of Class Counsel, Lieff Cabraser, their agents, any Class Member, and experts retained by Class Counsel or Lieff Cabraser to whom documents have been provided.
- (c) Documentary productions shall include, but are not limited to, electronic versions of documents, photocopies, diskettes or CD ROMS, charts, diagrams, scientific studies and data, discovery transcripts and exhibits, answers to undertakings, and any copies of documents attached to affidavits, motion records, etc.
- (d) Any work product of Class Counsel, Lieff Cabraser, their agents, any Class Member and experts retained by Class Counsel or Lieff Cabraser relating to the Defendants' documentary productions or evidence, including work product relating to evidence obtained on examinations for discovery, cross-examinations or other means, shall be deposited with a third party commercial storage facility agreed to by the Parties for storage and safe-keeping. Such materials shall only be released pursuant to a Court Order made on a motion to Justice Winkler, on reasonable notice to all Parties.
- (e) On a date between six (6) years and seven (7) years following the final disbursement of any monies out of the Settlement Fund or Additional Settlement Funds, the documents and materials referred to in section 18(d) above shall be destroyed upon the direction of Justice Winkler or the Parties.
- (f) Servier Canada Inc. shall pay the reasonable costs associated with the storage, deposit and destruction of work product pursuant to sections 18(d) and (e), above.

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19. CLASS COUNSEL PROHIBITED FROM ACTING

Class Counsel and Lieff Cabraser shall not represent or assist single or class plaintiffs or any Claimants, directly or indirectly, in respect of existing or future claims or alleged claims against the Defendants or any Released Party, or any subsidiary, affiliate, related party, insurer or assign, or any party which may claim over against any Defendant or any Released Party, or any subsidiary, affiliate, related party, insurer or assign for any relief arising from or related directly or indirectly to the consumption of fenfluramine or dexfenfluramine in any jurisdiction, except with respect to this Settlement Agreement.

20. MISCELLANEOUS PROVISIONS

Ongoing Authority

- (a) The Court shall retain continuing jurisdiction over this matter and all Parties named or described herein including all Class Members and Defendants, and over this Settlement Agreement, to ensure that all payments are properly made and, if necessary, to interpret and enforce the terms, conditions and obligations pursuant to this Settlement Agreement.

Liability of Administrators and Parties

- (b) No proceeding shall be commenced against the Settlement Administrator, Claims Adjudicators, the Parties, or any other entity or person appointed by the Court or the Parties to assist in the negotiation, administration or implementation of this Settlement Agreement without leave of the Court in respect of the implementation and administration of this Settlement Agreement.

Entire Agreement

- (c) This Settlement Agreement, including all Exhibits attached hereto, constitutes the entire agreement by and among the Parties with regard to the subject of this Settlement Agreement and shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Settlement Agreement.

Other Originals

- (d) This Settlement Agreement may be executed in one or more counterparts, including by facsimile, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.



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Party Notification

- (e) Any notification, request, instruction or other document to be given by any Party to any other Party (other than notification to the Class) shall be in writing, as follows:

If to the Defendants, to the attention of Defendants' Counsel:

OGILVY RENAULT
Attention: William McNamara
200 Bay Street, Suite 3800
P.O. Box 84
Toronto, ON M5J 2Z4

If to the National Class or their counsel:

ROCHON GENOVA LLP
Attention: Joel P. Rochon or Vincent Genova
903 - 121 Richmond Street West
Toronto, Ontario, M5H 2K1

If to the British Columbia Subclass or their Counsel:

KLEIN LYONS
Attention: David A. Klein
1100-1333 West Broadway
Vancouver, BC V6H 4C1

Communication with a Class Member

- (f) All communications from the Settlement Administrator to Class Members may be made by regular mail to such Class Member's last mailing address provided by the Class Member to the Settlement Administrator. Class Members shall apprise the Settlement Administrator of their current mailing address.

Access to Class Member Information

- (g) The Parties or their authorized representatives shall have access to all information maintained by the Settlement Administrator regarding Class Members, and the processing and payment of claims, subject to the execution by such Party or their authorized representative of a confidentiality agreement in the form required of the Settlement Administrator and Claims Adjudicators by sections 14 and 15 herein. Access shall be provided electronically where possible, via a secure internet site which shall be maintained by the Settlement Administrator.

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Appeal of Approval Order

- (h) In the event that there is any opposition or objection to Court Approval of this Settlement Agreement at the Fairness Hearing, the implementation of this Settlement Agreement, including any dates provided for making any payment or taking any other action under this Settlement Agreement, shall be stayed until the expiration of the appeal period or, if an appeal is made, until final disposition of any appeals (i.e. Final Court Approval).

Canadian Dollars

- (i) All dollar amounts set forth in this Settlement Agreement are expressed in Canadian dollars.

English Language Clause

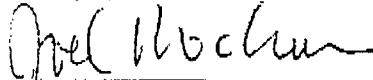
- (j) Les Parties ont convenu que cette Entente soit rédigée en anglais.

Date:

16 September 2004

ROCHON GENOVA LLP

per:



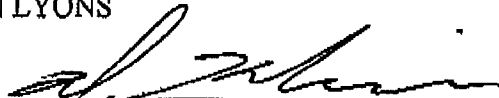
Solicitors for the National Class, Denyse Bossi and Leroy Roy

Date:

Sept. 16/04

KLEIN LYONS

per:



Solicitors for the British Columbia Subclass, the estate of Jodi Neetz, the estate of Gary Ryder, the estate of Kelsey Banico, the estate of Edith Armstrong, the estate of Susan Davis, the estate of Norah Munro, Ann Gilmore, Eileen Braham, the estate of Sharon Donnelly, Janet Lamont, Joan Matthews, Jackie Shaw and Bonnie Sieloff.



Date:

LIEFF, CABRASER, HEIMANN & BERNSTEIN LLP

per: _____

Date: *Sept 17/04*

OGILVY RENAULT

W. McNamara

per: _____

Solicitors for the Defendants

Wm
MM

Date:

9/17/04

LIEFF, CABRASER, HEIMANN & BERNSTEIN LLP

per:



Date:

OGILVY RENAULT

per:

Solicitors for the Defendants

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