

Canada

Province of Ontario  
Province of Québec

In re: Tequin

Canada-Wide Class Proceedings

This Agreement relates to the certification of Class Proceedings and approval of their Settlement

<p>VERNA ANTOINETTE CONLON on her own behalf and as Litigation Administrator for the Estate of ALBAN ALOYSIUS CONLON, deceased</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>BRISTOL-MYERS SQUIBB CANADA CO. and BRISTOL-MYERS SQUIBB COMPANY</p> <p style="text-align: right;">Defendants</p>	<p style="text-align: center;">PROVINCE OF ONTARIO Ontario Superior Court of Justice Brampton, Ontario Court File No.: CV-08-700-CP</p>
<p>MERLE KRONICK</p> <p style="text-align: right;">Petitioner</p> <p style="text-align: center;">v.</p> <p>BRISTOL-MYERS SQUIBB CANADA CO. and BRISTOL-MYERS SQUIBB COMPANY</p> <p style="text-align: right;">Respondents</p>	<p style="text-align: center;">PROVINCE OF QUÉBEC Superior Court of Quebec, District of Québec (Class Actions) No.: 200-06-000068-067</p>

**CANADA-WIDE TEQUIN SETTLEMENT AGREEMENT**

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Exhibits A to G follow.

## CANADA-WIDE TEQUIN SETTLEMENT AGREEMENT

### 1. PREAMBLE & RECITALS

Verna Antoinette Conlon on her own behalf and as Litigation Administrator for the Estate of Alban Aloysius Conlon, deceased, in their capacity as the representative plaintiffs in Ontario Court File No. CV-08-700-CP (Brampton) (the "Ontario Proceeding"), and Merle Kronick, in her capacity as the representative plaintiff in Quebec Court File No. 200-06-000068-067 (the "Quebec Proceeding") (collectively, the "Plaintiffs") (collectively, the "Proceedings"), and the defendants, Bristol-Myers Squibb Canada Co., and Bristol-Myers Squibb Company (collectively, the "Defendants") (collectively, the "Parties"), hereby enter into this settlement agreement (the "Settlement Agreement") providing for the settlement of claims arising from, without limitation, the manufacture, marketing, sale, distribution, labelling and use of Tequin, pursuant to the terms and conditions set forth herein, subject to approval of the Courts as set forth herein;

**WHEREAS**, the Parties intend by this Settlement Agreement to resolve all past, present and future claims of Class Members in any way arising out of or relating to the use of Tequin purchased in Canada by or for residents of Canada during the Class Period;

**WHEREAS**, the Parties shall seek certification of the Proceedings at the same time as approval of this Settlement Agreement in both Proceedings;

**WHEREAS**, the Plaintiffs' counsel, namely the law firms Siskinds<sup>LLP</sup>, Poyner Baxter<sup>LLP</sup>, Hotz Lawyers<sup>LLP</sup> and Siskinds, Desmeules<sup>LLP</sup>, (collectively, "Class Counsel"), have conducted settlement negotiations with the Defendants;

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

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

**WHEREAS**, the Defendants have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of Class Members;

**NOW THEREFORE**, subject to the Courts' approval, this Settlement Agreement embodies the terms of the resolution of the Proceedings on a Canada-wide basis, including past, present and future claims, against the Defendants and Released Parties in any way arising out of or relating to the use of Tequin purchased in Canada by or for residents of Canada during the Class Period.

This Settlement Agreement includes as exhibits, notices and related documents to be submitted to the Courts for approval ("Exhibits").

## **2. DEFINITIONS**

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

**"Approval Notice"** shall mean the Court approved notice which advises Class Members of the certification and authorization of the Proceedings and approval of this Settlement Agreement, as provided for in section 8 and Exhibit "E".

**"Approval Notice Date"** shall mean the date on which the Approval Notice is first published pursuant to section 8 of this Settlement Agreement, which date shall be no more than thirty (30) days following the Effective Date or such other period as may be approved by the Courts.

**"Approval Orders"** shall mean the orders of the Courts which certify and/or authorize the Proceedings as class proceedings and approve this Settlement Agreement.

**"Approved Claimants"** shall mean Claimants who are approved by the Claims Administrator for payments pursuant to this Settlement Agreement.

**"B.C. Court"** shall mean the Supreme Court of British Columbia.

**"B.C. Proceeding"** shall mean the Supreme Court of British Columbia Action No. 5071301 (Vancouver) in which Eva Szende, Executrix of the Estate of Margaret Szende, is the plaintiff and Bristol-Myers Squibb Canada Co. and Bristol-Myers Squibb Company are the defendants.

**"Claim"** shall mean a completed, signed and dated claim form as developed by the Claims Administrator in consultation with Class Counsel, together with the supporting documentation or alternative supporting documentation as described in Exhibit "D".

**"Claimants"** shall mean all Class Members who make a Claim under this Settlement Agreement.

**"Claim Deadline"** shall mean five (5) months after the Approval Notice Date.

**"Claims Administration Costs"** shall mean all costs, other than Class Counsel Legal Fees, required to implement this Settlement Agreement, including without limitation, costs required to satisfy the notice provisions in Exhibit "E".

**"Claims Administrator"** shall mean the person or entity appointed by the Courts as provided in section 9.

**"Class"** shall mean the Quebec Class and the Ontario National Class, other than individuals who have previously settled their individual claims, if any, with the Defendants and Released Parties.

**"Class Counsel"** shall mean the law firms of Siskinds <sup>LLP</sup>, Hotz Lawyers <sup>LLP</sup>, Poyner Baxter <sup>LLP</sup>, and Siskinds, Desmeules <sup>LLP</sup>.

**"Class Counsel Legal Fees"** shall mean all legal fees, disbursements and applicable taxes in respect of all legal services provided by Class Counsel for the benefit of the Class, as approved by the Courts.

**"Class Members"** shall mean members of the Class.

**"Courts"** shall mean the Ontario Superior Court of Justice, and the Superior Court of Quebec.

**"Defendants"** shall mean Bristol-Myers Squibb Canada Co. and Bristol-Myers Squibb Company.

**"Defendants' Counsel"** shall mean the U.S. law firm of Sedgwick, Detert, Moran & Arnold <sup>LLP</sup> and the Canadian law firm of Fasken Martineau DuMoulin LLP.

**"Derivative Claimants"** shall mean residents of Canada asserting the right to sue the Defendants or any Released Party independently or derivatively by reason of their familial

relationship with a Tequin Recipient, including without limitation, spouses, common-law spouses, same-sex partners, as well as parents, grandparents, siblings or children, by birth, marriage or adoption.

**"Effective Date"** shall mean the date described in section 5.

**"Hearing Notice"** shall mean the Court approved notice which advises putative Class Members of the hearings in Ontario and Quebec to certify and authorize the Proceedings and approve this Settlement Agreement.

**"Medical Services"** shall mean medical, paramedical, and alternative non-medical treatment, nursing care, and counselling, social work, hospital and homecare services provided and to be provided to Class Members.

**"Ontario National Class"** ("Ontario Class") shall mean all Tequin (Ontario) Recipients and their Representative Claimants and any Derivative Claimants.

**"Ontario Proceeding"** shall mean the Ontario Superior Court of Justice Action No. CV-08-700-CP (Brampton), in which Verna Antoinette Conlon on her own behalf and as Litigation Administrator for the Estate of Alban Aloysius Conlon, deceased, are the plaintiffs and Bristol-Myers Squibb Canada Co. and Bristol-Myers Squibb Company are the defendants.

**"Opt Out"** shall mean the process set out in sections 10.1 and 10.2 of this Settlement Agreement and the terms "Opts Out", "Opting Out" and "Opted Out" shall have corresponding meanings.

**"Opt Out Deadline"** shall mean the date three (3) months after the Approval Notice Date or such other date as may be approved by the Courts.

**"Opt Out Form"** shall mean a completed, signed and dated form requesting exclusion from the Proceedings as developed by the Claims Administrator in consultation with Class Counsel.

**"Parties"** shall mean the Plaintiffs and the Defendants.

**"Plaintiffs"** shall mean Verna Antoinette Conlon on her own behalf and as Litigation Administrator for the Estate of Alban Aloysius Conlon, deceased, Merle Kronick, and Eva Szende, Executrix of the Estate of Margaret Szende.

**"Proceedings"** shall mean the Ontario Proceeding and the Quebec Proceeding.

**"Provincial Health Insurers"** shall mean all provincial and territorial Ministries of Health or equivalents, provincial and territorial governments, and/or provincial and territorial plans funding Medical Services throughout Canada.

**"Quebec Class"** shall mean all Tequin (Quebec) Recipients and their Representative Claimants and any Derivative Claimants.

**"Quebec Proceeding"** shall mean the Superior Court of Quebec Action No. 200-06-000068-067, in which Merle Kronick is the plaintiff and Bristol-Myers Squibb Canada Co. and Bristol-Myers Squibb Company are the defendants.

**"Released Parties"** shall mean:

- (a) Bristol-Myers Squibb Canada Co. and Bristol-Myers Squibb Company (collectively, "Bristol-Myers Squibb"), as well as their respective predecessors, successors, parents, subsidiaries, affiliates, and divisions, and each of their respective current and former shareholders, officers, directors, employees, lawyers, attorneys, agents and insurers;



- (b) Any and all suppliers of materials, components, technology, and services used in the manufacture of Tequin, including the labelling and packaging thereof, as well as their respective predecessors, successors, parents, subsidiaries, affiliates, and divisions, and each of their respective current and former shareholders, officers, directors, employees, lawyers, attorneys, agents and insurers;
- (c) All distributors of Tequin, including wholesale distributors, private label distributors, retail distributors, hospitals and clinics, physicians, licensees, as well as their respective predecessors, successors, parents, subsidiaries, affiliates, and divisions, and their respective current and former shareholders, officers, directors, employees, lawyers, attorneys, agents and Insurers;
- (d) All physicians who prescribed, and all pharmacists and pharmacies who dispensed Tequin with respect to any claims based on:
  - (i) the prescription or dispensing of Tequin in a manner consistent with the product labelling and/or product monograph;
  - (ii) the physician's, pharmacist's, or pharmacy's liability stemming solely from having prescribed or dispensed Tequin; and/or
  - (iii) the physician's, pharmacist's, or pharmacy's liability stemming solely from the prescription or dispensing of a defective or unreasonably dangerous product.

but shall not include physicians, pharmacists and pharmacies with respect to any claims based solely on their independent negligence or culpable conduct.

**"Representative Claimants"** shall mean personal representatives, heirs, assigns and trustees of Tequin Recipients.

**"Settled Claims"** shall mean any and all claims of Class Members, whether or not assigned and whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or in the future, in any way arising out of or relating to, directly or indirectly, the manufacture, distribution, prescription, dispensing, sale, purchase, use, ingestion, clinical investigation, administration, regulatory approval, regulatory compliance, promotion, marketing, labelling and product monograph of Tequin, alone or in combination with any other substance, including, without limitation, any other drug, herb, or botanical. Such claims include, without limitation, all claims for damages or remedies of whatever kind or character, including, without limitation, compensatory, punitive, aggravated, exemplary, statutory and multiple damages or penalties of any kind, known or unknown, that are now or may be recognized by law, for:

- (a) personal injury and/or bodily injury, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life;
- (b) loss of wages, income, benefits, earnings, earning capacity, and driver's license;
- (c) the cost of Medical Services;
- (d) loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, common-law spouses, same-sex partners, parents, grandparents, siblings or children of Tequin Recipients by birth, marriage or adoption;
- (e) consumer fraud, refunds, unfair business practices, deceptive trade practices, and other similar claims, whether arising under statute, regulation, or judicial decision;
- (f) wrongful death and survival actions;

- (g) medical screening and monitoring;
- (h) injunctive and declaratory relief;
- (i) economic or business losses or disgorgement of profits arising out of personal injury;
- (j) prejudgment and post-judgment interest; and
- (k) costs, inclusive of legal fees, disbursements and applicable taxes.

**"Settlement Agreement"** shall mean this Agreement, including Exhibits.

**"Tequin (Ontario) Recipients"** shall mean all residents of Canada, other than residents of Quebec, who ingested Tequin during the Class Period.

**"Tequin (Quebec) Recipients"** shall mean all residents of Quebec who ingested Tequin during the Class Period.

**"Tequin Recipients"** shall mean Tequin (Quebec) Recipients and Tequin (Ontario) Recipients.

### **3. CONSENT TO CERTIFICATION**

Subject to the Courts' approval, the Parties consent to the certification of the Proceedings, pursuant to sections 2, 5, and 6 of the CPA, and pursuant to Section 1025 of the Code, for the purpose of this Settlement Agreement, with the defendants denying and continuing to deny any wrongdoing or liability of any kind to Class Members and without prejudice to the rights of the Defendants to contest or oppose class certification in any other action or for any other purpose.

#### 4. THE ORDERS APPROVING THIS AGREEMENT

This Settlement Agreement is subject to and conditional upon the approval of the Courts. The Plaintiffs shall move, on consent of the Defendants, for Orders from the Courts which shall:

- (a) certify or authorize the Proceedings;
- (b) describe the Class as all Class Members;
- (c) appoint Verna Antoinette Conlon on her own behalf and as Litigation Administrator for the Estate of Alban Aloysius Conlon, deceased, as representative plaintiffs in the Ontario Proceeding, and Merle Kronick as representative plaintiff in the Quebec Proceeding;
- (d) declare that this Settlement Agreement is fair, reasonable and in the best interests of the Class Members;
- (e) approve this Settlement Agreement and order the Parties and Class Members to comply with it;
- (f) require that the Approval Notice be provided to Class Members by the Approval Notice Date;
- (g) approve the appointment of the Claims Administrator;
- (h) declare the Opt Out Deadline as the deadline for Opting Out;
- (i) declare that any Class Member who does not Opt Out by the Opt Out Deadline shall be bound by the Approval Orders and this Settlement Agreement;
- (j) order that the Proceedings be dismissed without costs; and

- (k) make such further and other orders as to the approval, implementation and administration of this Settlement Agreement as the Courts may deem just.

**5. EFFECTIVE DATE OF SETTLEMENT AGREEMENT**

This Settlement Agreement becomes effective immediately following the expiry of the latter of the appeal periods, if any, for the Approval Orders, or, if either or both of the Approval Orders are appealed, following the final determination of such appeal or the latter of such appeals, as the case may be ("Effective Date"). If no person objects to the approval of the Settlement Agreement, the Effective Date shall be the date of the latter of the Approval Orders.

**6. B.C. PROCEEDING**

Within thirty (30) days of the Effective Date, Class Counsel with consent of the Defendants, shall file a notice of dismissal of the B.C. Proceeding in the B.C. Court.

**7. SETTLEMENT PAYMENTS**

**7.1 Payment by Defendants**

The Defendants shall, no later than ten (10) business days after the execution of this Settlement Agreement, pay \$5,000,000 CDN (the "Settlement Payment"), to Siskinds LLP in trust for the Class Members and Provincial Health Insurers. The Defendants and Released Parties shall have no further liability or obligations to Class Members and Provincial Health Insurers.

**7.2 Funding of Payments to Approved Claimants**

Eighty-five (85) percent of the Settlement Payment plus accrued interest shall be paid to the Claims Administrator within ten (10) days of the Effective Date. The Claims Administrator shall distribute those funds, less the cost of notice, claims administration, a proportionate share of disbursements, and applicable taxes and Class Counsel Legal Fees, to Approved Claimants. The entitlements of Approved Claimants shall be determined in accordance with the Points

Distribution List provided for in Exhibit "C" and the Claims Administration Procedures provided for in Exhibit "D". Approved Claimants shall receive benefits in proportion to the points they are awarded under the terms of the Point Distribution List and the Claims Administration Procedures, to a maximum of \$1,000 per point.

If all Approved Claimants who timely file claims and fulfill the eligibility requirements as specified in the Points Distribution List and the Claims Administration Procedures are eligible to receive the maximum payment pursuant to this section, any surplus monies not required to satisfy those claims shall be distributed to the Provincial Health Insurers in the proportions provided for in Exhibit "A".

If all Approved Claimants who file claims and fulfill the eligibility requirements as specified in the Points Distribution List and the Claims Administration Procedures have received payment, but monies remain in the account following distribution of funds, for example, as a result of returned or un-cashed cheques, interest earned on the Settlement Amount and not allocated to claimants, or any other surplus monies such monies shall be distributed:

- (a) to the Canadian Diabetes Association (50%); and
- (b) the Fonds d'Aide (50%).

### 7.3 Payment to Provincial Health Insurers

Fifteen (15) percent of the Settlement Payment plus accrued interest shall satisfy the claims of the Provincial Health Insurers. Class Counsel shall distribute these funds, less Class Counsel Legal Fees, a proportionate share of disbursements, and applicable taxes, to Provincial Health Insurers as outlined in Exhibit "A" herein. These payments shall be in respect of Medical Services provided for and to be provided for Class Members.

#### 7.4 Provincial Health Insurer Releases

Each Provincial Health Insurer shall execute a Full and Final Release in the form of Exhibit "B" prior to receiving any benefits pursuant to this Settlement Agreement. In the event that any Provincial Health Insurer fails to execute such Full and Final Release, then the proportionate share of benefits that would otherwise be distributed pursuant to section 7.3 herein to that Provincial Health Insurer shall be added to the settlement monies available to pay Approved Claimants, with the interest earned thereon.

#### 8. EFFECT OF THIS SETTLEMENT AGREEMENT NOT BEING APPROVED BY THE COURTS

If this Settlement Agreement is not approved by the Courts:

- (a) it shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms; and
- (b) all negotiations, statements and proceedings relating to it shall be deemed to be without prejudice to the rights of the Parties, and except as provided for in section 9.1 below, the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.

#### NOTICE TO THE CLASS

8.2 The form, contents and method of dissemination of the Approval Notice shall be as described in Exhibit "E". The form, contents and method of dissemination of the Hearing Notice shall be as described in Exhibit "F". The cost of the Hearing Notice may be paid from the Settlement Payment by Siskinds LLP or the Claims Administrator, as may be applicable, and shall be considered a non-refundable expense if this Settlement Agreement is not approved by the Courts.

8.3 The Parties shall cooperate, assist one another and undertake all reasonable actions in order to ensure that the Approval Notice is timely disseminated.

## 9. CLAIMS ADMINISTRATION

### 9.1 Appointment of Claims Administrator

The Parties shall propose a bilingual (French/English) Claims Administrator to be appointed by the Courts for the purpose of administering Claims and paying Approved Claimants as provided in this Settlement Agreement.

### 9.2 Claims Administration

The Claims Administrator shall administer claims in the manner described in Exhibit "D".

### 9.3 Assistance to Claims Administrator

The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as is reasonably necessary in the implementation of this Settlement Agreement.

### 9.4 Confidentiality Obligations

The Claims Administrator and any person employed or retained by the Claims Administrator to assist in administering Claims and paying Approved Claimants must sign and observe a confidentiality statement in a form mutually agreeable to the Parties, by which such persons agree to keep confidential any information concerning Class Members. The Claims Administrator shall institute procedures to ensure that the identity of all Class Members and all information regarding their claims shall be kept confidential and not be provided to persons except as may be provided in this Settlement Agreement or otherwise required by law.



#### **9.5 Removal of the Claims Administrator**

The Claims Administrator shall be subject to removal by the Courts for cause, on motion by any of the Parties.

#### **9.6 Liability of the Claims Administrator**

The Claims Administrator shall not be held liable, absent negligence or fraud, in respect of the implementation and administration of this Settlement Agreement and any related accounting.

### **10. OPT OUT PROVISIONS**

**10.1** Members of the Ontario National Class may exclude themselves from the Ontario Proceeding by exercising their right to opt out pursuant to section 9 of the CPA by submitting an Opt Out Form to the Claims Administrator by regular first class mail or courier, post-marked or submitted to the courier, as the case may be, before the Opt Out Deadline.

**10.2** Members of the Quebec Class may exclude themselves from the Quebec Proceeding by exercising their right to opt out pursuant to sections 1007 and 1008 of the Code by giving notice to the Clerk of the Superior Court of Quebec, District of Quebec, in the manner required by Quebec law and by regular first class mail or courier, post-marked or submitted to the courier, as the case may be, before the Opt Out Deadline.

**10.3** Quebec Class Members who commence or have commenced individual proceedings and fail to discontinue such individual proceedings by the Opt Out Deadline shall be deemed to have Opted Out.

**10.4** A Class Member who is a member of both the Quebec Class and Ontario National Class shall by Opting Out of one be deemed to have Opted Out of both.

10.5 Class Members who do not Opt Out shall be bound by this Settlement Agreement and, in the absence of a timely Claim, shall not be entitled to any payment under this Settlement Agreement.

**11. SUBMITTING CLAIMS**

11.1 Claims shall be submitted by Claimants in accordance with Exhibit "D" by the Claims Deadline.

**12. WAIVER OF LIMITATION DEFENCE**

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

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

**13. AMENDMENTS TO THE SETTLEMENT AGREEMENT**

13.1 The Parties may amend the Settlement Agreement in writing, by consent and subject to the Courts' approval.

**14. LEGAL FEES AND DISBURSEMENTS**

14.1 Class Counsel shall bring a motion or motions to the Courts for determination of Class Counsel Legal Fees.

14.2 Class Members who retain lawyers to assist them in making their individual Claims pursuant to this Settlement Agreement or to appeal the classification or rejection of their Claim, shall be responsible for the legal fees and expenses of such lawyers.

**15. EXCLUSIVE REMEDY/EFFECT ON CLAIMS**

15.1 This Settlement Agreement shall be the exclusive remedy for all Class Members who do not Opt Out.

15.2 On the Effective Date, every Settled Claim against the Defendants and Released Parties shall be conclusively compromised, settled and released, and all Class Members who do not Opt Out shall be barred from initiating, asserting or prosecuting any Settled Claims.

15.3 In consideration of the Settlement Payment as aforesaid, Class Counsel agrees, on behalf of Class Members, that any prosecution of a Settled Claim in breach of section 15.2 shall cause irreparable harm to Defendants and/or Released Parties, in respect of which a stay or injunction is an appropriate remedy. For the same consideration, Class Counsel agrees, on behalf of Class Members, to cooperate with Defendants and Released Parties in seeking such a stay or injunction.

**16. THIRD PARTY CLAIMS**

16.1 Except as otherwise provided in this section, nothing in this Settlement Agreement shall prejudice or in any way interfere with the rights of Class Members to pursue any rights or remedies against third parties other than the Defendants and Released Parties ("Third Parties") ("Third Party Claims"). Class Members will not make or continue any claims against Third Parties, which give rise or may give rise to a claim for contribution and indemnity against Defendants and/or Released Parties ("Contribution and Indemnity Claims"), and will expressly limit the value of any claims against Third Parties to damages, interest, costs and other relief solely attributable to the errors and omissions of such Third Parties. In consideration of the Settlement Payment as aforesaid, Class Members pursuing Third Party Claims shall indemnify and hold harmless the Defendants and Released Parties in respect of such claims, exclusive of legal costs.

**16.2** All Class Members whose Settled Claims include or may include claims by way of subrogation by any third party other than a Provincial Health Insurer ("Subrogated Claims") shall resolve such Subrogated Claims prior to receiving any benefits under this Settlement Agreement, failing which Class Members shall indemnify and hold harmless the Defendants and Released Parties in respect of such Subrogated Claims, exclusive of legal costs.

**17. MISCELLANEOUS PROVISIONS**

**17.1** Ongoing Authority

The Courts shall collectively retain exclusive and continuing jurisdiction over the Proceedings for the purpose of supervising the approval, implementation and administration of this Settlement Agreement.

**17.2** Recitals

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

**17.3** Entire Agreement

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

**17.4** Counterparts

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

**17.5 Party Notification**

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

- (a) if to the Defendants, jointly to the attention of Defendants' U.S. Counsel: Sedgwick, Detert, Moran & Arnold <sup>LLP</sup>, Attention: Michael A. Tanenbaum, Three Gateway Center, 12<sup>th</sup> Floor, Newark, New Jersey, 07102 and Defendants' Canadian Counsel: Fasken Martineau DuMoulin LLP, Attention: Paul Martin, 4200 Toronto Dominion Bank Tower, 66 Wellington Street West, P.O. Box 20, Toronto-Dominion Centre, Toronto, Ontario, M5K 1N6; and
- (b) if to the Plaintiffs or Class Members, to the attention of Class Counsel: Siskinds <sup>LLP</sup>, Attention Charles M. Wright, 680 Waterloo Street, P.O. Box. 2520, London, Ontario, N6A 3V8, and Siskinds, Desmeules <sup>LLP</sup>, Attention Claude Desmeules 43 Rue Buade, Bur 320, Quebec City, Quebec, G1R 4A2 or to other recipients as the Courts may order.

**17.6 Class Member Notification**

All communications from the Claims Administrator to Class Members may be made by regular first class mail to such Class Member's last mailing address provided by the Class Member to the Claims Administrator. Class Members shall apprise the Claims Administrator of their current mailing address.

**17.7 Governing Law**

For the purpose of the settlement of the Quebec Proceeding and the Ontario Proceeding, this Settlement Agreement shall be governed by the laws of Quebec and Ontario, respectively.

**17.8 Severability**

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

**17.9 Dates**

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

**17.10 French Translation**

This Settlement Agreement and its Exhibits are available in the French language. The cost of translation into the French language shall be borne by the Defendants and is in addition to the Settlement Payment.

**17.11 English Language Clause**

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

Date April 21, 2008

SISKINDS LLP

Per:


  
Name

Solicitors for Plaintiffs Verna Antoinette Conlon  
on her own behalf and as Litigation Administrator  
for the Estate of Alban Aloysius Conlon,  
deceased and Provincial Health Insurers

Date April 18, 2008

SISKINDS, DESMEULES, S.E.N.C.R.L.

Per:

  
Name Claude Desmeules  
Solicitors for Plaintiff, Merle Kronick

Date

POYNER BAXTER <sup>LLP</sup>

Per:

Name

Date

SEDGWICK, DETERT, MORAN & ARNOLD <sup>LLP</sup>


Per:

  
Name MICHAEL A. TANENBAUM  
U.S. Attorneys for the Defendants

Date May 1, 2008

Fasken Martineau Dumoulin LLP

Per:

  
Name  
Canadian Solicitors for Defendants

Date

SISKINDS, DESMEULES, S.E.N.C.R.L.

Per:

Name

Solicitors for Plaintiff, Merle Kronick

Date

April 18, 2008

POYNER BAXTER <sup>LLP</sup>

Per:

Name

*I. J. Baxter*

Date

SEDGWICK, DETERT, MORAN & ARNOLD <sup>LLP</sup>

Per:

Name

U.S. Attorneys for the Defendants

Date

May 1, 2008

Fasken Martineau Dumoulin LLP

Per:

Name

Canadian Solicitors for Defendants

*Paul Martin*



**EXHIBIT "A"**

**Provincial Health Insurers**

Provincial Health Insurers shall be entitled to share in the Settlement payment pursuant to section 7.3 of this Settlement Agreement, and in the following proportions:

<b>Province</b>	
NFLD	.45%
PEI	.45%
NS	2.5%
NB	1.5%
QC	42.3%
ON	36.3%
MB	5.9%
SK	.8%
AB	3.4%
BC	6.4%

**EXHIBIT "B"**  
**FULL AND FINAL RELEASE**

**IN CONSIDERATION** of the benefits provided for in the Canada-Wide Tequin Settlement Agreement and other good and valuable consideration as provided for in connection with the settlement reached in the actions entitled Conlon vs. Bristol-Myers Squibb Canada Co., and Bristol-Myers Squibb Company, Action No. CV-08-700-CP, in the Ontario Superior Court of Justice commenced in Brampton, Ontario (the "Ontario Proceeding"), and Merle Kronick vs. Bristol-Myers Squibb Canada Inc., and Bristol-Myers Squibb Company, Action No. 200-06-000068-067, in the Superior Court of Quebec commenced in Québec City, Québec (the "Quebec Proceeding") the receipt and sufficiency of which is hereby acknowledged, {insert province name of provincial health insurer}, hereinafter called the "Releasor" (which terms includes trustees, successors and assigns, officers, directors, agents, representatives, servants and employees) hereby releases and forever discharges **BRISTOL-MYERS SQUIBB CANADA CO. AND BRISTOL-MYERS SQUIBB COMPANY** ("Bristol-Myers") and all other individuals or entities released by Class Members in connection with the settlement referenced above ("Released Parties"), from all suits, actions, causes of action, costs, contracts, benefits, debts, dues, covenants, claims and demands for damages, including punitive, exemplary or aggravated damages, or loss howsoever arising whether at common law, contractually or pursuant to statute which against Bristol-Myers Squibb Canada Co., and Bristol-Myers Squibb Company, or any other Released Party, the Releasor had, now has, or may hereafter have whether known of at the present time or in the future, in any way relating to, connected with, or arising out of any Class Member Settled Claim, as defined herein, and in particular, but without

limiting the generality of the foregoing, any and all claims that the Releasor is entitled to recover for subrogation, reimbursement, or similar such cause of action, regardless of legal theory, in any way relating to, connected with, or arising out of the provision of health care or medical services of any sort whatsoever to members of the class certified in the Ontario Proceeding and Quebec Proceeding (the "Class") in respect of any Class Member Settled Claim.

**AND IT IS FURTHER AGREED AND UNDERSTOOD** that for purposes of this Full and Final Release (the "Release"), the term "Class Member Settled Claim" shall mean any and all claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future by any or all members of the Class, arising out of or relating to the purchase, use, manufacture, sale, dispensing, distribution, promotion, marketing, clinical investigation, administration, regulatory approval, prescription, ingestion, and labelling of Tequin, alone or in combination with any other substance, including, without limitation, any other drug, dietary supplement, herb, or botanical.

**AND IT IS FURTHER AGREED AND UNDERSTOOD** that Bristol-Myers Squibb Canada Co., and Bristol-Myers Squibb Company do not, by the consideration aforesaid or otherwise, admit any liability or obligation to the Releasor and in fact such liability is denied.

**AND IT IS FURTHER UNDERSTOOD AND ACKNOWLEDGED** by the Releasor that it has read this Release in its entirety, fully understands its terms and has had the benefit of independent legal advice before executing this Release.

**IN WITNESS WHEREOF** the {insert name of provincial health insurer} has  
hereunto set its hand this

\_\_\_\_\_ day of \_\_\_\_\_, 2008.

{insert name of provincial health insurer}

\_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "C"**

**TEQUIN- GATIFLOXACIN**

**POINT DISTRIBUTION**

Points may be allocated for one or more condition/event but may only be allocated for one category within each condition/event. For example, a Claimant may be allocated points for Dysglycemia, medically treated with hospital admission and for renal failure within the Kidney damage category, but may not then be allocated additional points for ongoing kidney dialysis or kidney transplant.

CONDITION/ EVENT	POINTS ALLOCATED													
Dysglycemia – medically treated with no hospital admission	1													
Dysglycemia – medically treated with hospital admission	2 points per day to a maximum of 10 days													
Kidney damage 1. Renal Insufficiency 2. Ongoing kidney dialysis 3. Kidney transplant	<table border="0"> <tr> <td style="width: 50%;"></td> <td style="width: 50%; text-align: center;">15</td> </tr> <tr> <td style="width: 50%;"></td> <td style="width: 50%; text-align: center;">45</td> </tr> <tr> <td style="width: 50%;"></td> <td style="width: 50%; text-align: center;">45</td> </tr> </table>				15		45		45					
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	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 20%;">Category</th> <th style="width: 50%;">Nature of Disability</th> <th style="width: 30%;">Points</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Class IV (Severe)</td> <td style="vertical-align: top;">Unable to carry out any physical activity without discomfort. Symptoms of cardiac insufficiency at rest. If any physical activity is undertaken, discomfort is increased.</td> <td style="vertical-align: top; text-align: center;">60</td> </tr> <tr> <td style="vertical-align: top;">Class III (Moderate)</td> <td style="vertical-align: top;">Marked limitation of physical activity. Comfortable at rest, but less than ordinary activity causes fatigue, palpitation, or dyspnea</td> <td style="vertical-align: top; text-align: center;">45</td> </tr> </tbody> </table>	Category	Nature of Disability	Points	Class IV (Severe)	Unable to carry out any physical activity without discomfort. Symptoms of cardiac insufficiency at rest. If any physical activity is undertaken, discomfort is increased.	60	Class III (Moderate)	Marked limitation of physical activity. Comfortable at rest, but less than ordinary activity causes fatigue, palpitation, or dyspnea	45	<table border="1" style="width: 100%;"> <tbody> <tr> <td style="width: 50%;"></td> <td style="width: 50%;"></td> </tr> </tbody> </table>			60
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Death (excluding death from Coma or Stroke))	45		
Permanent loss of employment - interruption of employment income for greater than 12 months	Annual Income at time of injury	Age at Time of Employment Loss	Points Awarded
	\$100,000 +	under 31 31-35 36-40 41-45 46-50 51-55 56-60 over 60	290 260 230 190 150 110 70 20
	\$76,000 - \$99,999	under 31 31-35 36-40 41-45 46-50 51-55 56-60 over 60	250 230 200 170 130 100 60 17
	\$51,000 - \$75,999	under 31 31-35 36-40 41-45 46-50 51-55 56-60 over 60	180 170 140 120 100 70 40 13
	\$31,000- \$50,999	under 31 31-35 36-40 41-45 46-50 51-55 56-60 over 60	120 110 100 80 60 40 30 10
	\$30,999 or less	under 31 31-35 36-40 41-45 46-50 51-55 56-60 over 60	70 65 60 50 40 30 20 10

<p>Temporary interruption in employment income – less than 12 months in duration</p>	<table border="1"> <thead> <tr> <th>Annual Income at time of injury</th> <th>Number of employment days lost</th> <th>Points Awarded</th> </tr> </thead> <tbody> <tr> <td rowspan="3">\$100,000 +</td> <td>1-60</td> <td>2</td> </tr> <tr> <td>61-180</td> <td>8</td> </tr> <tr> <td>181-365</td> <td>19</td> </tr> <tr> <td rowspan="3">\$76,000 - \$99,999</td> <td>1-60</td> <td>2</td> </tr> <tr> <td>61-180</td> <td>7</td> </tr> <tr> <td>181-365</td> <td>16</td> </tr> <tr> <td rowspan="3">\$51,000 - \$75,999</td> <td>1-60</td> <td>1</td> </tr> <tr> <td>61-180</td> <td>5</td> </tr> <tr> <td>181-365</td> <td>12</td> </tr> <tr> <td rowspan="3">\$31,000- \$50,999</td> <td>1-60</td> <td>1</td> </tr> <tr> <td>61-180</td> <td>3</td> </tr> <tr> <td>181-365</td> <td>8</td> </tr> <tr> <td rowspan="3">\$30,999 or less</td> <td>1-60</td> <td>1</td> </tr> <tr> <td>61-180</td> <td>2</td> </tr> <tr> <td>181-365</td> <td>5</td> </tr> </tbody> </table>	Annual Income at time of injury	Number of employment days lost	Points Awarded	\$100,000 +	1-60	2	61-180	8	181-365	19	\$76,000 - \$99,999	1-60	2	61-180	7	181-365	16	\$51,000 - \$75,999	1-60	1	61-180	5	181-365	12	\$31,000- \$50,999	1-60	1	61-180	3	181-365	8	\$30,999 or less	1-60	1	61-180	2	181-365	5
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## EXHIBIT "D"

### CLAIMS ADMINISTRATION PROCEDURES

The procedures set forth herein are for the administration of the Settlement Agreement and for the submission, processing, approval, compensation, and appeal of individual claims pursuant to the Canada-Wide Tequin Settlement Agreement. The procedures shall be implemented by the Claims Administrator, subject to the ongoing authority and supervision of the Courts. The Claims Administrator may adopt additional policies and procedures for the administration of the Settlement Agreement that are consistent with the Settlement Agreement and the Orders of the Courts.

#### 1. ADMINISTRATION OF SETTLEMENT FUNDS

Upon appointment by the Courts, the Claims Administrator shall receive from Class Counsel all settlement funds provided for in paragraph 7.2 of the Settlement Agreement. The Claims Administrator shall invest the funds in the classes of securities provided in Section 26 of the *Trustee Act*, R.S.O. 1990, c.23, with all interest or other income on such funds being added to the monies in trust for the benefit of the Class Members and all costs and fees of the custodian and/or manager of the funds to be paid out of the interest or sole income on such funds. The Claims Administrator shall implement the Settlement Agreement so as to provide benefits to Approved Claimants and not to ineligible Claimants, and in a timely manner designed to treat similarly situated Claimants as uniformly as reasonably possible and to minimize to the extent reasonably possible the administration and other transaction costs associated with the implementation of the Settlement Agreement. The Claims Administrator shall provide written quarterly reports to the Court, to Class Counsel and to Defendants' Counsel on distributions made and monies remaining in trust.

#### 2. CLAIM FORMS and CLAIM DEADLINE

Eligibility under the Settlement Agreement requires proper completion and execution of the claim form developed by the Claims Administrator in consultation with Class Counsel ("Claim Form"). The Claims Administrator shall develop such other forms as it deems necessary for the implementation of the Settlement Agreement.

Claims that are not properly and timely filed by the Claim Deadline will be denied by the Claims Administrator.

#### 3. PRODUCT INGESTION DOCUMENTATION

##### 3.1 Proof of Tequin Ingestion

To be deemed sufficient to establish that the Tequin Recipient ingested Tequin during the Class Period, "Product Ingestion Documentation" shall consist of:

- (a) pharmacy records; or
- (b) medical records reflecting a prescription for Tequin; or
- (c) if both (a) and (b) are not available, a written statement signed by the treating physician stating that the Tequin Recipient was provided or prescribed Tequin and on what date such provision or prescription was made. Such statement

cannot rest upon unacceptable and insufficient proof as outlined in Section 3.2 below, and it must be accompanied by an affidavit from the Claimant stating:

- the steps taken by the Claimant to obtain Product Ingestion Documentation as outlined in Subparagraphs 3.1(a) and (b) above; and
  - the responses, if any, to those steps.
- (d) If unable to provide Product Ingestion Documentation as outlined in Subsections 3.1(a), (b), and (c) above, the Claimant may submit to the Claims Administrator such other objective verification of the ingestion of Tequin as may be acceptable to the Claims Administrator. Such objective verification cannot rest upon unacceptable and insufficient proof as described in Section 3.2 below. Such other objective verification must be accompanied by an affidavit from the Claimant stating:
- the steps taken by the Claimant to obtain Product Ingestion Documentation as outlined in Subparagraphs 3.1(a), (b), and (c) above; and
  - the responses, if any, to those steps.

Additionally, a sworn statement will be required stating that the Tequin Recipient ingested Tequin following the prescription or provision of Tequin, and the date(s) on which ingestion occurred.

### 3.2 Unacceptable Product Ingestion Documentation

The following type of evidence shall be deemed to be unacceptable Product Ingestion Documentation:

- (a) statements from medical personnel describing their typical or general practices during a given time period, or a statement from the Tequin Recipient or any other person that seeks to verify Tequin ingestion based upon recollection;
- (b) records, statements or other terminology which does not specifically identify Tequin as the drug prescribed.

The above is intended to be representative of unacceptable proof of product ingestion, without limiting the unacceptable nature of other types of evidence as the Claims Administrator shall determine.

## 4. SUPPORTING DOCUMENTATION

In addition to the Tequin Ingestion Documentation identified in section 3 above, additional Supporting Documentation must be provided as follows:

- (a) Medical Records
  - (i) Dysglycemia – medically treated with no hospital admission
    - Medical records from a treating physician demonstrating treatment for a dysglycemic event within 10 days of ingesting Tequin.

- (ii) **Dysglycemia - medically treated with hospital admission**
  - Hospital records from an admission in which medical treatment was provided for a dysglycemic event within 10 days of ingesting Tequin.
- (iii) **Trauma, including fractures**
  - Complete medical records (including treating physician and/or hospital, both if applicable) in which medical treatment was provided for trauma, including fractures, causally related to a dysglycemic event which event occurred within 10 days of ingesting Tequin.
- (iv) **Kidney damage**
  - **Renal Insufficiency** – Complete medical records (including treating physician and/or hospital, both if applicable) which evidence 1) a dysglycemic event within 10 days of ingesting Tequin; and 2) following the ingestion of Tequin, two high creatinine results, which results must be at least six months apart, and which must be higher than the Tequin Recipient's creatinine levels prior to ingesting Tequin.
  - **Ongoing kidney dialysis** – Complete medical records (including treating physician and/or hospital, both if applicable) which evidence: 1) a dysglycemic event within 10 days of ingesting Tequin; and 2) following the ingestion of Tequin, kidney dialysis continuing for more than one month and evidence that the requirement for kidney dialysis is causally related to the dysglycemic event.
  - **Kidney transplant** – Complete medical records (including treating physician and/or hospital, both if applicable) which evidence: 1) a dysglycemic event within 10 days of ingesting Tequin; and 2) following the ingestion of Tequin, kidney transplant or listing on a kidney transplant list, which is causally related to the dysglycemic event.
- (v) **Coma following Diabetic Ketoacidosis (DKA), Hyperglycemic Hyperosmolar State (HHS) or other diagnosis related to dysglycemia**
  - Complete medical records (including treating physician and/or hospital, both if applicable) which evidence: 1) a dysglycemic event within 10 days of ingesting Tequin resulting in coma; and 2) the level of disability resulting from the dysglycemic event and coma, if any, as classified using the Extended Glasgow Outcome Scale. If level of disability is not evidenced within the complete medical records provided, it may be supported by a report prepared by the treating physician, which describes the level of disability using the Extended Glasgow Outcome Scale.

- (vi) Acute Coronary Syndrome (ACS) following Diabetic Ketoacidosis (DKA), Hyperglycemic Hyperosmolar State (HHS) or other diagnosis related to dysglycemia
- Complete medical records (including treating physician and/or hospital, both if applicable) which evidence: 1) a dysglycemic event within 10 days of ingesting Tequin; 2) ACS following DKA or HHS or other diagnosis which is causally related to the dysglycemic event; and 3) increased level of disability following the ACS, if any, as classified using the New York Heart Association Functional Classification System, or other similar medical classification scale. If increased level of disability is not evidenced within the complete medical records provided, it may be supported by a medical report prepared by the treating physician which describes the level of disability using the New York Heart Association Functional Classification System.
- (vii) Stroke
- Complete medical records (including treating physician and/or hospital, both if applicable) which evidence: 1) a dysglycemic event within 10 days of ingesting Tequin resulting in stroke; and 2) treatment for stroke including a report from a Board-certified neurologist which is based on examination undertaken at least 6 weeks following the stroke occurrence and which describes the level of disability following the dysglycemic event utilizing the Disability Rating Scale.
- (viii) Death
- Complete medical records (including treating physician and/or hospital, both if applicable) which evidence a dysglycemic event within 10 days of ingesting Tequin which event is causally related to the death, and a coroner report (if available) and death certificate.
- (b) Permanent loss (due to death or injury) or temporary interruption of employment
- (i) In order to maintain a claim for loss of employment or for temporary interruption of employment, the Claimant must otherwise be eligible and qualify for 45 points or more within a single condition/event as identified in the Points Distribution and must provide: 1) acceptable evidence that the Tequin Recipient's employment loss or employment interruption was mainly due to a dysglycemic event suffered within ten days of ingesting Tequin, and related to Tequin pursuant to the provisions in Exhibit "C"; 2) proof of termination from employment or of temporary interruption (correspondence from former employer); and 3) pay stubs, tax returns, notices of assessment, contracts or other documentation which establishes the level of salary being paid the Tequin Recipient prior to the dysglycemic event.

- (ii) If requested, a release for the Tequin Recipient's complete employment file shall be executed in a form provided for by the Claims Administrator.
- (c) Loss of driver's licence due to a compensable event under the terms of this Agreement
  - (i) In order to maintain a claim for loss of driver's licence, the Claimant must otherwise be eligible for compensation under the terms of this Agreement, and the Claimant must provide an affidavit specifying that the Tequin Recipient's loss of driver's licence was mainly due to a dysglycemic event suffered within ten days of ingesting Tequin.
- (d) Discretionary Points
  - The Claims Administrator may in its discretion award points for substantiated circumstances evidencing hardship that are not otherwise provided for in the Point Distribution List.

If the Claimant is unable to obtain the documentation described above through the exercise of reasonable efforts, the Claims Administrator shall have the right to consider other supporting documentation. The Claimant shall obtain and shall bear the cost of obtaining copies of all Supporting Documentation and submitting such copies to the Claims Administrator. If the Supporting Documentation and the Claim Form and other submissions from the Claimant establish the Tequin Recipient's condition to the satisfaction of the Claims Administrator, the Claimant shall be entitled to receive the appropriate benefits.

## 5. GENERAL CLAIMS PROCESSING GUIDELINES

The Claims Administrator shall process all Claims in a cost-effective and timely manner.

### 5.1 Technical Deficiencies

- (a) If, during Claims processing, the Claims Administrator finds that technical deficiencies exist in a Claimant's Claim Form or Supporting Documentation that the Claims Administrator determines preclude the proper processing of such Claim, the Claims Administrator shall notify the Claimant via first class regular mail of the technical deficiencies, and shall allow the Claimant forty-five (45) days from the mailing of such notice to correct the deficiencies. If the deficiencies are not corrected within the forty-five (45) day period, the Claims Administrator shall reject the Claim. The Claimant will have no further opportunity to correct the technical deficiency;
- (b) Technical deficiencies referred to in Section 5.1(a) shall not include missing deadlines for submitting Claim Forms, or failing to file sufficient Supporting Documentation to support the Claim which has been made.

## 6. AUDIT PROVISIONS

Claimants shall provide the Claims Administrator with an executed Medical Direction by or on behalf of the Tequin Recipient, as prepared by the Claims Administrator in consultation with Class Counsel. The Claims Administrator shall conduct audits of Claims in a manner deemed appropriate by the Claims Administrator to determine whether any such Claims reflect intentional fraud in any of the submissions relating to the Claims. Any Claim which is deemed

by the Claims Administrator to be fraudulent shall cause the Claimant and the Tequin Recipient on whose behalf the Claimant may be working to be permanently disqualified from receiving any payment under this Settlement Agreement.

## **7. NOTIFICATION OF CLAIM REVIEW**

The Claims Administrator shall notify a Claimant via first class regular mail as to the approval or rejection of the Claim and the points for which the Claimant is eligible.

## **8. APPEAL OF CLAIMS**

### **8.1 Procedure**

- (a) The Claims Administrator shall notify Claimants of the disposition of their Claims by regular first class mail directed to their last mailing address provided by the Claimant to the Claims Administrator. Claimants will be granted a forty-five (45) day period from the date of mailing of such notification to appeal the classification or rejection of their Claim. No appeal is available with respect to Claims for Discretionary Points. Such appeal will be on the basis of written submissions only, supported only by the original documentation provided to the Claims Administrator. The appeals will be determined by the Courts. Appeals by Claimants normally resident in Quebec shall be to the Quebec Court. Appeals by Claimants normally resident in a province or territory other than in Quebec shall be to the Ontario Court.
- (b) The Courts may appoint referees to review and make recommendations on all appeals. If referees are appointed their reasonable costs shall be paid from the settlement funds.

### **8.2 Final Decision**

- (a) The judgment of the Courts respecting any appeal from the Claims Administrator's decision is final and binding and shall not be the subject of any further appeal or revision.

### **8.3 Expiration of Appeal Period**

- (a) At the expiration of the appeal period, the Claims Administrator may make interim payments to Class Members whose Claims have been approved and who have not appealed their Claims. The Claims Administrator shall consider the potential value of any appealed and known late Claims prior to making such interim payments, and shall reserve sufficient funds to pay disputed Claims. The Claims Administrator shall seek direction of the Courts if deemed necessary.

### **8.4 Final Payments**

- (a) Final payments to "top up" awards paid to Class Members where Claims have been approved shall be reviewed as soon as practicable after the determination of the appeals, if any.

**9. DERIVATIVE CLAIMANT SETTLEMENTS**

- 9.1 Children of Tequin Recipients who are under the age of 18 on date of the dyslycemic event suffered by the Tequin Recipient, and spouses of Tequin Recipients (including common-law and same-sex), shall receive 6% of the amount awarded to the related Tequin Recipient, subject to section 10.4 below.
- 9.2 All other Derivative Claimants shall receive 2% of the amount awarded to the related Tequin Recipient, subject to section 10.4 below.
- 9.3 Supporting Documentation for Derivative Claimants

In order to be eligible for compensation, Derivative Claimants must complete the appropriate Derivative Claim Form.

**9.4 Maximum Derivative Claimant Payments Per Family**

- (a) In the event that a Tequin Recipient has Derivative Claimants eligible for benefits the total of which benefits would exceed 20% of the amount awarded to the related Tequin Recipient, the total benefits paid to the Derivative Claimants shall be divided on a pro-rata basis with the total derivative payments equal to 20% of the amount awarded to the related Tequin Recipient.

**9.5 Derivative Claimant Settlement Payment Provisions**

- (a) Compensation which is payable to a derivative infant claimant who, at the time of payment, is 18 years of age or older, shall be paid directly to the said infant claimant.
- (b) For Derivative Claimants who are under age 18 at the time of payment, payments under \$5,000.00 shall be paid to the related Tequin Recipient or Representative Claimant in trust, while payments of \$5,000.00 or more shall be paid into Court unless otherwise ordered by the Court.

**10. MISCELLANEOUS**

**10.1 Timeliness of Submissions**

All submissions by Claimants to the Claims Administrator relating to a Claim shall be made in paper form transmitted via regular first class mail or delivery by courier. All submissions by mail shall be conclusively deemed to have been submitted to the Claims Administrator on the postmark date of such mail. All submissions delivered to the Claims Administrator by overnight or other courier shall be conclusively deemed to have been submitted to the Claims Administrator on the date the submissions were deposited with the overnight or other courier. These provisions shall determine the timeliness of any submissions to the Claims Administrator. Submissions to the Claims Administrator by any other means, including without limitation facsimile or electronic mail, shall not be considered timely unless such materials are also submitted to the Claims Administrator via mail or delivery by the Claim Deadline.

#### 10.2 Call Centre

The Claims Administrator shall establish a toll-free call centre for the assistance of Class Members and may devise such other means as the Claims Administrator deems appropriate to provide Claimants with information on the status of their Claims. The toll-free call centre and all other means of communication shall be available in both French and English.

#### 10.3 Correspondence with Class Members

All written communications from the Claims Administrator to a Class Member shall be transmitted via regular first class mail to the last address provided by the Class Member to the Claims Administrator. Such written communications shall be directed to the Class Member's legal counsel, if the Class Member is represented by counsel. Payments by the Claims Administrator to a represented Claimant shall be made to the Claimant's counsel in trust for the Claimant. The Claimant (and legal counsel to a represented Claimant) shall be responsible for apprising the Claims Administrator of the Claimant's and counsel's correct and current mailing address. The Claims Administrator shall have no responsibility for locating Claimants for any mailing returned to the Claims Administrator as undeliverable. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Claimants returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate.

#### 10.4 Surplus Settlement Monies

If, within twelve (12) months of the payments being issued to Claimants from the Claims Administrator, a balance exists in the trust account as a result of returned or un-cashed cheques, interest earned on the Settlement Amount and not allocated to claimants, or any other surplus monies, the balance in the trust account shall be paid in the following manner:

1) 50% to the Canadian Diabetes Association;

2) 50% to the Fonds d'Aide.

#### 10.5 Legal Counsel to Claimants

A Claimant shall be considered to be represented by legal counsel in connection with a Claim only if the Claims Administrator has received written notice signed by the Claimant of the identity of the Claimant's counsel. A Claimant may discontinue such representation at any time by written notice to the Claims Administrator. No liens or claims for counsel fees or costs may be asserted against the Claims Administrator or the funds held by the Claims Administrator at any time.

#### 10.6 Preservation and Disposition of Claim Submissions

The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until the termination of one (1) year after the last Claim has been paid out and/or after any appeals have been dealt with and at such time shall dispose of the submissions by shredding or such other means as will render the materials permanently illegible.



**10.7 Assistance to the Claims Administrator**

The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement.

**10.8 Taxation of the Funds**

The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the monies in trust, and shall have the discretion to pay any taxes imposed on such monies out of the monies in trust.

## EXHIBIT "E" (LONG FORM) TEQUIN CLASS ACTION

### NOTICE OF COURT APPROVAL OF TEQUIN CLASS ACTION SETTLEMENT AGREEMENT

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS. YOU  
MUST ACT WITHOUT DELAY TO COMPLY WITH DEADLINES AS SET OUT BELOW.**

**TO ALL CLASS MEMBERS:** To all Canadian residents who ingested Tequin ("Tequin Recipient") or their personal representatives, heirs, assigns and trustees ("Representative Claimants"), and any other residents of Canada asserting the right to sue the Defendants by reason of their familial relationship with a Tequin Recipient, including, without limitation, spouses, common law spouses, same-sex partners, as well as parents, grandparents, siblings or children, by birth, marriage or adoption ("Derivative Claimants").

Tequin is an antibiotic which was commonly prescribed for the treatment of pneumonia and other infections including those of the bladder, urinary tract and sinus, and for sexually transmitted diseases. The manufacture and sale of Tequin were discontinued by the Defendants on May 1, 2006.

Please be advised that the Ontario Superior Court of Justice and the Superior Court of Quebec have approved the Canada-Wide Tequin Settlement Agreement reached in class actions in Ontario and Quebec alleging that Bristol-Myers Squibb Canada Co. and Bristol-Myers Squibb Company (the "Defendants"), negligently manufactured, marketed and sold Tequin without properly warning of the risks of dysglycemia (abnormally high or low blood sugar levels) associated with its use.

To be entitled to a payment, Class Members, including Tequin Recipients, Representative Claimants, and Derivative Claimants, must file a claim with the Claims Administrator by [date] in the manner described below.

**1 SUMMARY  
OF THE  
AGREEMENT**

- The Defendants, while not admitting liability, will pay a sum of \$5,000,000.00 to settle the Claims of all Class Members.
- Claimants will be eligible to receive settlement payments if they took Tequin and suffered an injury which is compensated under the Settlement Agreement, including: medically treated dysglycemia, dysglycemia with admission to hospital, or other medical conditions related to a dysglycemic event including kidney damage, with either increased renal insufficiency, ongoing kidney dialysis and/or kidney transplant, coma, acute coronary syndrome (ACS), trauma, including fractures, stroke and death.
- The size of the payments will be based on the total number of approved Claims and the severity of injuries.
- Any arguments based on statutes of limitations, prescription or repose shall be waived for Class Members participating in the settlement.
- Class Members will have until [date] to file a Claim.
- Derivative Claimants may be eligible to receive settlement payments based upon various factors, including the size of the payment made in respect of the relevant Tequin Recipient and the total number of approved Claims.
- Provincial Health Insurers will share a fund of at least \$750,000.00 (less applicable legal fees, disbursements, and taxes) which shall be in full satisfaction of medical services provided or to be provided to Tequin Recipients.

**2 OPTING OUT**

All persons who come within the class definition will automatically be included in the class unless they exclude themselves from the class ("Opt Out"). To Opt Out, a Class Member will have to complete, sign and return an "Opt Out Form" postmarked or

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deposited with a courier by ©XXXXX XX, 2008. If a Class Member does not timely and properly Opt Out and does not timely and properly make a Claim under the Settlement Agreement, he or she will be forever barred from receiving any payments under the Settlement Agreement, and from instituting any action against the Defendants and/or Released Parties related to the use of Tequin.

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3 LEGAL FEES

The Ontario Superior Court of Justice and the Superior Court of Quebec have awarded legal fees, expenses and applicable taxes to Class Counsel in the total amount of \$ ©. Class Counsel were retained on a contingent basis such that they were only to be paid if they were successful in the litigation. Class Counsel were responsible for funding all disbursements incurred in pursuing this litigation. The fees, expenses, and taxes approved by the Courts will be deducted from the settlement fund.

Claimants may, but are not obliged to, retain their own lawyers to assist them in making individual claims under the Settlement Agreement. Claimants are responsible for paying the legal fees of any lawyer they retain. Claimants are advised that submitting a Claim under the Settlement Agreement will be considerably less complex and less expensive than pursuing an individual lawsuit, and as such any percentage fee agreement entered into with legal counsel might be for a lesser percentage than in ordinary circumstances.

4 IMPORTANT DEADLINES

©XXXXX XX, 2008 Deadline to Opt Out of the Settlement Agreement

©XXXXX XX, 2008 Deadline to file Claim

Because of the deadlines, you must act without delay.

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5 FURTHER INFORMATION

A complete copy of the Settlement Agreement including the detailed instruction package and instructions on how to obtain a Claim Form or Opt Out Form are available on Class Counsel's website at [www.classaction.ca](http://www.classaction.ca). To obtain a paper copy of the detailed instruction package and a Claim Form necessary to file a Claim for settlement benefits or an Opt Out Form necessary to Opt Out, please call the Claims Administrator at 1-888-XXX-XXXX.

The law firm of *Siskinds LLP*, represents all Class Members resident outside Quebec. Ontario Class Counsel can be reached toll-free at 1-800-461-6166 ext. 2455.

The law firm of *Siskinds, Desmeules LLP* avocats represents Class Members in Quebec. Quebec Class Counsel can be reached at 418-694-2009

The law firm of *Poyner Baxter LLP* has offices in British Columbia and also represents Class Members. They can be reached at 604-988-6321.

If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its exhibits, the terms of the Settlement Agreement shall prevail.

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PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE AND THE QUEBEC SUPERIOR COURT.

EXHIBIT "F" (SHORT FORM)

## HAVE YOU USED "TEQUIN"?

IF YOU OR SOMEONE CLOSE TO YOU HAS PURCHASED TEQUIN, PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

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Tequin is an antibiotic which was commonly prescribed for the treatment of pneumonia and other infections including those of the bladder, urinary tract and sinus, and for sexually transmitted diseases. The manufacture and sale of Tequin were discontinued by the Defendants on May 1, 2006.

Class Proceeding lawsuits have been initiated and resolved in Ontario and Quebec. The lawsuits alleged that Tequin was negligently manufactured, marketed and sold without properly warning of the risks of dysglycemia (abnormally high or low blood sugar levels) associated with its use.

If you, or a family member in your care, ingested Tequin and received treatment for hyper (high) or hypo (low) glycaemia (blood sugar levels) you may be eligible for compensation from the settlement.

A Settlement Agreement has been reached with benefits totalling \$5,000,000.00. If you or someone close to you has used Tequin, you should immediately review the full legal notice in this matter to ensure you understand your legal rights. A copy of the full legal notice can be viewed at [www.classaction.ca](http://www.classaction.ca) or can be obtained from Class Counsel or the Claims Administrator.

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The Claims Administrator can be reached at 1-888-XXX-XXXX.

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The law firm of *Siskinds* <sup>LLP</sup>, represents the Class in Ontario, along with all other Class Members resident outside Quebec. Ontario Class Counsel can be reached toll-free at 1-800-461-6166 ext. 2455.

The law firm of *Siskinds, Desmeules* <sup>LLP</sup> avocats represents the Class Members in Quebec. Quebec Class Counsel can be reached at 418-694-2009.

The law firm of *Poyner Baxter* <sup>LLP</sup> has offices in British Columbia and also represents Class Members. They can be reached at 604-988-6321

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PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE AND THE QUEBEC SUPERIOR COURT

## **EXHIBIT "G" (DISSEMINATION METHOD)**

### **METHOD OF DISSEMINATING THE NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL**

The Short Form Notice shall be

published on two consecutive Saturdays in the following newspapers:

The Globe & Mail (National Edition);

National Post (National);

The Sun (Vancouver);

Journal (Edmonton);

Herald (Calgary);

Leader Post (Regina);

Free Press (Winnipeg);

Star (Toronto);

Sun (Toronto);

Citizen (Ottawa);

Spectator (Hamilton);

Star (Windsor);

The Gazette (Montreal);

Le Journal (Montreal);

Le Journal (Quebec);

Times-Transcript (Moncton);

Chronicle (Halifax);

Guardian (Charlottetown); and

Telegram (St. John's).

shall be published in the earliest possible edition of the following magazines:

Canadian Living;

**Macleans;  
Reader's Digest; and  
Selection du Reader's Digest.**

**The Full Legal Notice shall be:**

**posted on Class Counsel's website at [www.classaction.ca](http://www.classaction.ca);**

**published in the earliest possible edition of the Canadian Medical Association journal;**

**sent by first class mail to the counsel for individuals pursuing independent litigation where those individuals are known to the Class Counsel; and**

**sent by first class mail to any other individuals known to Class Counsel to be Class Members.**