

Court File No. 60411CP

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN:

JEFFERY LANG, BOBBIE ZEREBECKI, and BEVERLEY HALL-ZEREBECKI

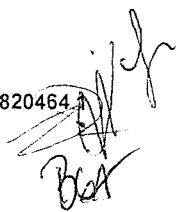
Plaintiffs

- and -

BAYER INC., BAYER A.G., BAYER HEALTHCARE A.G., BAYER CORPORATION,  
and BAYER HEALTHCARE PHARMACEUTICALS INC.

Defendants

ORIGINAL

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## SETTLEMENT AGREEMENT

### Preamble

Jeffrey Lang, Bobbie Zerebecki and Beverly Hall-Zerebecki, as plaintiffs in Ontario, and Constance Ramacieri and Nicole Laporte, as Appellants in Quebec, and the defendants, Bayer Inc., Bayer A.G., Bayer Pharma A.G. (formerly known as Bayer Healthcare A.G.), Bayer Corporation, and Bayer Healthcare Pharmaceuticals Inc., hereby enter into this Settlement Agreement providing for the settlement of claims arising out of, or relating to, without limitation, the manufacture, marketing, sale, distribution, labelling, use, purchase or ingestion of Trasylol® in Canada, pursuant to the terms and conditions set forth herein, and subject to the approval of the Court.

### Recitals

- A. WHEREAS the capitalized defined terms used in the Preamble and in these Recitals shall have the meaning ascribed to such terms in paragraph 1 of this Settlement Agreement;
- B. WHEREAS the Plaintiffs have proposed class actions in each of Alberta, Ontario and Quebec as follows:
- (a) On December 2, 2008, the plaintiff, Jeffrey Lang, commenced the Ontario Proceeding;
  - (b) On December 31, 2008, the plaintiff, Bob Zerebecki, commenced the Alberta Proceeding; and
  - (c) On September 30, 2009, the plaintiffs, Constance Ramacieri and Nicole Laporte, commenced the Quebec Proceeding;
- C. WHEREAS on December 9, 2009, the Ontario Proceeding was amended to include the plaintiffs Bobbie Zerebecki and Beverly Hall-Zerebecki;
- D. WHEREAS on November 15, 2012, the Alberta Proceeding was discontinued as against the defendants;

E. WHEREAS each of the proceedings listed in paragraph B made claims with respect to the drug Trasyolol<sup>®</sup>;

F. WHEREAS in November 2007, at the request of Health Canada, Bayer Inc. temporarily suspended marketing of Trasyolol<sup>®</sup> pending a review of the benefit-risk profile of Trasyolol<sup>®</sup> based on the preliminary results from a clinical trial (the BART Study);

G. WHEREAS during the temporary suspension of marketing, Bayer Inc. continued to make Trasyolol<sup>®</sup> available for certain patients where the practitioner was of the opinion that Trasyolol<sup>®</sup> is required pursuant to a special access program approved by Health Canada;

H. WHEREAS in September 2011, Health Canada completed a comprehensive safety review of Trasyolol<sup>®</sup>, and concluded that the benefits of Trasyolol<sup>®</sup> outweigh the risks when Trasyolol<sup>®</sup> is used as authorized by Health Canada. As a result of its assessment, Health Canada concluded that Bayer could resume marketing Trasyolol<sup>®</sup> in Canada;

I. WHEREAS in October 2015, the Honorable Justice Daniel Dumais of the Quebec Superior Court dismissed Constance Ramacieri and Nicole Laporte's motion for authorization.

J. WHEREAS Constance Ramacieri and Nicole Laporte have filed an appeal of the Honorable Justice Daniel Dumais' decision;

K. WHEREAS the Ontario proceeding is still pending;

L. 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 arising out of or relating to, without limitation, the manufacture, marketing, sale, distribution, labelling, use, purchase or ingestion of Trasyolol<sup>®</sup> in Canada;

M. WHEREAS the Defendants deny the allegations made in the Proceedings, deny that any damages are payable, have not conceded or admitted any civil liability, and have defences to all of the claims in the Proceedings;

N. WHEREAS the Defendants and Class Counsel have engaged in arms-length negotiations through counsel with substantial experience in complex class proceedings that have resulted in this Settlement Agreement;

O. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burden and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the proposed Class Members;

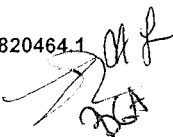
P. WHEREAS the Plaintiffs and Appellants agree to the terms of this Settlement Agreement and will not opt out of the Proceedings;

Q. WHEREAS despite their belief that they are not liable in respect of the allegations made in the Proceedings and have good defences thereto, the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or claims that could have been asserted against them by the Class Members, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and it is acknowledged that the Defendants would not have entered into this Settlement Agreement were it not for the foregoing;

R. WHEREAS, the Parties therefore wish, only if approved, to fully and finally resolve, without admission of liability, the Proceedings;

S. WHEREAS for the purposes of Settlement only and conditional upon approval by the Ontario Court, and upon discontinuance of the appeal related to the Quebec Proceeding, without costs, the Parties consent to the certification of a class action in the Ontario Proceeding;

T. WHEREAS, the Defendants expressly reserve their rights to contest certification or authorization of other related or unrelated proceedings and assert that the actions herein would not be appropriately certified or authorized in the absence of the Settlement Agreement and that

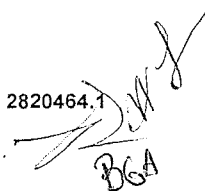
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this Settlement Agreement does not constitute in any way a precedent to support the certification or authorization of classes of this nature;

NOW THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that all claims of Class Members and Provincial Health Insurers shall be settled and that the appeal related to the Quebec Proceeding will be discontinued, and that the Parties shall consent to the Court's Approval Order finally approving the Settlement and dismissing the Ontario Proceeding with prejudice, without costs to the Plaintiffs, the classes they seek to represent, or the Defendants, subject to the approval of the Ontario Court, on the following terms and conditions:

### **Definitions**

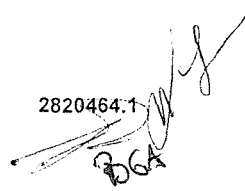
1. For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:
  - (a) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable for the implementation and operation of this Settlement Agreement, including the Costs of the Notice Program, but excluding Class Counsel Fees and excluding Translation Costs;
  - (b) *Alberta Proceeding* means the action commenced by Bob Zerebecki in the Court of Queen's Bench of Alberta on December 31, 2008, under the *Class Proceedings Act*, Chapter C-16.5, Action No. 0801-1636C;
  - (c) *Alberta Court* means the Court of Queen's Bench of Alberta;
  - (d) *Appellants* means the Appellants Constance Ramacieri and Nicole Laporte in the Quebec Proceedings;
  - (e) *Approval Motion* means the motion that will be brought in the Proposed Class Action for settlement certification and approval of this Settlement, and ancillary relief set out in paragraph 11 of this Settlement Agreement;



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- (f) **Approval Order** means the order made by the Court certifying the Proposed Class Action for settlement purposes only, appointing representative plaintiffs, approving this Settlement Agreement and the Notice of Court Approval and providing other ancillary relief pursuant to paragraph 11 of this Settlement Agreement;
- (g) **BART Study** means the study entitled “Blood Conservation Using Antifibrinolytics: Randomized Trial in High-Risk Cardiac Surgeries”;
- (h) **Class Counsel** means Siskinds LLP; BGA Avocats S.E.N.C.R.L Barristers & Solicitors LLP.; and Docken & Company;
- (i) **Class Counsel Fees** means all Fees approved by the Court as payable pursuant to paragraph 13 hereof;
- (j) **Class Definition** means:
  - (i) all persons resident in Canada, including their estates, who were treated with Trasylol<sup>®</sup> (aprotinin) at any time on or before the date of the Approval Order; and
  - (ii) all persons resident in Canada, who by virtue of a personal relationship to one or more of such persons in (i) above have standing in this action pursuant to section 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended (or similar derivative claim by statute or common law in other provinces or territories);
- (k) **Class or Class Members** means the class of persons described in the Class Definition, other than those people who opt out in accordance with this Settlement Agreement;
- (l) **Court** means the Ontario Court;
- (m) **Court Approval Date** means the later of:
  - (i) 31 days after the Ontario Court issues an Approval Order; and
  - (ii) the disposition of any and all appeals from the Approval Orders;

- (n) ***Costs of the Notice Program*** means all costs associated with the publication of the Notice of Court Approval and the Notice of Court Approval Hearing, as provided in paragraph 19, other than Translation Costs;
- (o) ***Defendants*** means the defendants Bayer Inc., Bayer A.G., Bayer Pharma A.G. (formerly known as Bayer Healthcare A.G.), Bayer Corporation, and Bayer Healthcare Pharmaceuticals Inc. in the Ontario Proceeding and the respondents Bayer Inc., Bayer A.G., Bayer Pharma A.G. (formerly known as Bayer Healthcare A.G.), Bayer Corporation, and Bayer Healthcare Pharmaceuticals Inc. in the Quebec Proceeding;
- (p) ***Defence Counsel*** means Torys LLP;
- (q) ***Fees*** means all costs (inclusive of fees and disbursements, expert fees and disbursements and any applicable taxes) incurred by Class Counsel at any stage of this proceeding in connection with this proceeding, before or after the signing of this Settlement Agreement exclusive of Administration Expenses;
- (r) ***Fonds*** means Fonds d'aide aux recours collectifs created pursuant to *An Act Respecting the Class Action*, R.S.Q., c. R-2.1;
- (s) ***Notice of Court Approval*** means the notice of Court approval, substantially in the form attached as Schedule “E”, to be approved by the Court;
- (t) ***Notice of Court Approval Hearing*** means the notice of the Court approval hearing, substantially in the form attached as Schedule “D”, to be approved by the Court;
- (u) ***Notices*** means the Notice of Court Approval Hearing and the Notice of Court Approval;
- (v) ***Ontario Court*** means the Ontario Superior Court of Justice;
- (w) ***Ontario Proceeding*** means the action commenced by Jeffery Lang in the Ontario Superior Court of Justice on December 2, 2008 under the *Class Proceedings Act, 1992*, Court File No.: 60411 CP, as amended;
- (x) ***Opt Out Deadline*** means the last day of the Opt Out Period;



- (y) ***Opt Out Form*** means the form to be included at the end of the Notice of Court Approval, substantially similar to Schedule “B”, or some other legible, signed, request to opt out containing substantially the same information as the form;
- (z) ***Opt Out Period*** means the period commencing on the date that the Notice of Court Approval is published for the first time in the print edition of The Globe and Mail and the Journal de Montréal and the Journal the Québec, and ending 30 days after it is published for the last time in the print edition of The Globe and Mail, Journal de Montreal and Journal de Quebec during which an individual may opt out of this class proceeding without leave of the Court;
- (aa) ***Parties*** means the Plaintiffs, Appellants and Defendants;
- (bb) ***Plaintiffs*** means the plaintiffs Jeffery Lang, Bobbie Zerebecki, Beverly Hall-Zerebecki, in the Ontario proceeding;
- (cc) ***Proceedings*** means the Alberta Proceeding, the Ontario Proceeding and the Quebec Proceeding;
- (dd) ***Proposed Class Actions*** means the Ontario Proceeding;
- (ee) ***Provincial Health Insurers*** means all provincial and territorial Ministries of Health or equivalents, Provincial and Territorial Governments, and/or provincial and territorial plans funding medical services throughout Canada;
- (ff) ***Quebec Court*** means the Quebec Superior Court;
- (gg) ***Quebec Proceeding*** means the motion for authorization commenced by Constance Ramacieri and Nicole Laporte in the Quebec Superior Court on September 30, 2009 under Articles 1002 and following, Quebec *Code of Civil Procedure* (C.p.c.) Court File No.: 200-06-000119-092 , dismissed by the Honorable Justice Daniel Dumais on October 19, 2015 and the pending appeal of this decision filed under the court No.: 200-09-009145-159;
- (hh) ***Released Claims*** means any and all manner of claims, demands, actions, suits, elections as to remedy, Quebec civil law claims, statutory claims and causes of action of whatever kind, nature or description, including, without

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limitation, any and all claims for damages, pain and suffering, past, present or future cost of care and loss of income, disgorgement of profits or revenues, punitive damages, economic loss, and claims for loss of guidance, care and companionship, whenever incurred, which were or could have been asserted in the Proposed Class Actions or the Alberta Proceeding, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, and claims of liabilities of any kind, nature or description whatsoever, including, without limitation, interest, costs, expenses, disbursements, penalties, and counsel fees that Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown, relating in any way to any act or omissions by any or all of the Releasees prior to the execution of this Settlement Agreement concerning alleged damages from the manufacture, marketing, sale, distribution, labelling, purchase, use, treatment with, or otherwise related to, Trasyol<sup>®</sup>;

- (ii) **Releasees** means, jointly and severally, the Defendants and their respective present and former parents, partners, subsidiaries, affiliates, predecessors, assigns, officers, shareholders, directors, employees, retailers or other entities in the chain of distribution, physicians and other health care professionals, health care providers, health care facilities, pharmacies and other distributors and suppliers of Trasyol, indemnities, insurers (including their agents), agents, attorneys, servants, representatives, and the successors, heirs, executors, administrators, trustees, and assigns of each of the foregoing;
- (jj) **Releasors** means, jointly and severally, individually and collectively, the Class Members, their family members, the Provincial Health Insurers and their respective successors, heirs, executors, administrators, trustees, estate trustees and assigns, and their affiliated, predecessor, successor and related companies;

- (kk) **Settlement Agreement or Settlement** means this agreement, including the Recitals and Schedules;
- (ll) **Settlement Amount** means the sum of one million, twenty thousand dollars (Cdn. \$1,020,000) to be distributed in accordance with paragraphs 3 to 4; and
- (mm) **Translation Costs** means the cost of translating the Notices and any other document that the Court orders to be translated with the exception of this Settlement Agreement.

### **Payment of Settlement Amount**

2. Conditional upon the approval of this Settlement Agreement as provided herein, dismissal of the Ontario Proceeding, and discontinuance of the appeal related to the Quebec Proceeding, without costs, the Defendants agree to pay the Settlement Amount, plus Translation Costs, to Siskinds LLP in trust within 30 days after the Opt Out Deadline. The Settlement Amount (less amounts specified in paragraph 3) shall be paid on a *cy près* basis to the Heart and Stroke Foundation of Canada or other charity as determined by the Court.

3. Prior to payment of the Settlement Amount to the Heart and Stroke Foundation of Canada, the Settlement Amount shall be used to pay the following in order:

- (a) the Class Counsel Fees that may be requested and may be approved by the Court as being payable to Class Counsel;
- (b) the Costs of the Notice Program with the exception of the Translation Costs of the Notices;
- (c) the Administration Expenses;
- (d) the payment of the "Reliquat" to the Fonds related in application of the article 1 of the *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs*, CQLR c R-2.1, r 2; and
- (e) the specific amount that may be requested and may be approved by the Court as being payable to the Plaintiffs and the Appellants in the Quebec proceedings, as described in paragraph 13.

4. For the purpose of determining any payment amount to the Fonds, 23.6% of the Settlement Amount is attributable to the Quebec Proceeding Class Members as described in Schedule "A". The Defendants take no position with respect to this or the contingency fees agreement;

#### **Total Amounts Payable by the Settling Defendants**

5. The Defendants agree to pay the Settlement Amount plus Translation Costs in settlement of all claims by Class Members against the Defendants in respect of the manufacture, marketing, sale, distribution, labelling, use, purchase or ingestion of Trasylol® in Canada. Under no circumstances shall the Defendants' obligations under this Settlement Agreement, including the court approval process and settlement administration, require payment of any amounts in excess of the Settlement Amount and Translation Costs.

#### **Release**

6. The Court order approving this Settlement Agreement shall provide a release whereby the Releasers unconditionally and forever release, acquit, remise and forever discharge the Releasees from the Released Claims and agree not to make any claim or take or continue any action, investigation or other proceedings in any forum arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity including any public authority or statutory body (including, without limitation, any health care professionals, health care providers, health care facilities, pharmacies, public authority including Her Majesty the Queen in right of Canada, or any distributor or supplier of Trasylol®) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, R.S.O. 1990 c. N-1 or other comparable provincial legislation and any amendments thereto, the common law, equity, Quebec civil law or any other statute, for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.

#### **Court Approval Process**

7. This Settlement Agreement is subject to approval of the Court as provided for in the *Class Proceedings Act*, 1992, S.O. 1992, c 6.

*Pre-Approval Process*

8. The Plaintiffs shall bring a motion in the Ontario Proceeding seeking an order to:
  - (a) set a date for a hearing of the Plaintiffs' Approval Motion described in paragraph 11;
  - (b) approve the form and means by which the Notice of Court Approval Hearing will be disseminated, in accordance with this Settlement Agreement; and
  - (c) establish how Class Members may comment on or object to the Settlement Agreement;
9. The Parties shall consent to the order granting the relief specified in paragraph 8 in respect of the motion.
10. Class Counsel will promptly provide Defence Counsel with copies of any comments or objections received in response to the Notice of Court Approval Hearing.

*Approval Process*

11. The Plaintiffs will bring the Approval Motion in the Proposed Class Action seeking an order in accordance with the terms hereof that will:
  - (a) certify the Proposed Class Action for settlement purposes only;
  - (b) appoint the Plaintiffs as representative plaintiffs for the Proposed Class Action;
  - (c) define the Class Members in that Proposed Class Action;
  - (d) establish how Class Members in that Proposed Class Action wishing to be excluded from the application of this Settlement Agreement may opt out from the Proposed Class Action;
  - (e) approve the form and means by which the Notice of Court Approval will be disseminated, in accordance with this Settlement Agreement;
  - (f) give statutory effect to the Releases in this Settlement Agreement; and

(g) dismiss the Ontario Proceeding against the Defendants.

12. The Parties consent to the order substantially in the form of the draft order attached as Schedule "C" in respect of the motion in paragraph 11.

13. Class Counsel will also bring a motion in the Proposed Class Action seeking an order approving:

- (a) Class Counsel Fees with respect of the contingency fee agreement on the basis of 25% of the value of the settlement; and
- (b) a specific amount destined for Plaintiffs and the Appellants in the Quebec Proceedings, up to a maximum of \$10,000, per individual, relating to the exercise of their duties as plaintiffs and Appellants.

The Defendants will take no position with respect to this motion. The Settlement is not conditional on the Court approval of this motion.

#### **Court Approval/Other Proceedings**

14. The terms of this Settlement Agreement are subject to and conditional upon a final judgment of court approval in Ontario and upon discontinuance of the appeal related to the Quebec Proceeding, without costs.

15. In accordance with the terms of this Settlement, BGA Avocats S.E.N.C.R.L Barristers & Solicitors LLP will request a stay of the appeal of the Quebec Proceedings within 10 days following the execution of this Settlement and will confirm in writing the discontinuance of the appeal related to the Quebec Proceeding within 10 days following the Approval Order. All parties will collaborate to ensure that the Quebec Court of Appeal promptly processes and confirms the discontinuance of the Quebec Appeal.

16. If the condition in paragraph 14 is not met, then this Settlement Agreement and all orders made pursuant to it will be null and void, will have no further force and effect with respect to the Parties and will not be offered in evidence or used in any litigation for any purpose. In that event, the Parties shall take all measures and make all representations necessary to ensure that each of the Parties is returned to the same procedural position in each of the Proposed Class Actions as if

this Settlement Agreement had not been negotiated, made or filed with the Court, including but not limited to bringing such motions as may be required to vacate any Approval Order already made or to decertify the Proposed Class Action (the Defendants reserving their right to contest certification of the Proposed Class Action).

### **Notices to the Class**

17. The Notice of Court Approval Hearing will be disseminated in the manner specified in paragraph 19, within 60 days after the form of the notice is approved by the Ontario Court, in substantially the same form as attached as Schedule "D" to this Settlement Agreement, or in some other form as directed by the Court.

18. The Notice of Court Approval will be disseminated in the manner specified in paragraph 19, within 60 days of the Court Approval Date, in substantially the same form as attached as Schedule "E" to this Settlement Agreement, or in some other form as directed by the Court.

19. Each of the Notice of Court Approval Hearing and the Notice of Court Approval (collectively, the "Notices") will be disseminated as follows:

- (a) the Defendants will publish the Notices twice in English in The Globe and Mail (National Edition);
- (b) the Defendants will publish the Notices twice in French in Journal de Montréal and Journal de Québec.
- (c) Class Counsel will arrange with PTM (a company that specializes in disseminating information to healthcare professionals) to distribute the Notices to cardiac surgeons and anesthesiologists in Canada with the request that they bring it to the attention of their applicable patients;
- (d) Class Counsel will send a copy of the Notices to Dr. Dean A. Fergusson or Dr. Paul Hebert requesting that it be distributed to those patients who participated in the BART Study;
- (e) Class Counsel will post the Notices on its website at [www.classaction.ca](http://www.classaction.ca); and [www.bga-law.com/trasy101](http://www.bga-law.com/trasy101);

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- (f) Class Counsel will send the Notices directly to all Class Members known to Class Counsel.

20. The Defendants will pay for the Translation Costs.

### **Opting Out and Right to Terminate**

21. Class Members, with the exception of the Plaintiffs and Appellants, shall have an opportunity to opt out of the Class if this Settlement Agreement is approved. Anyone who opts out will not be a Class Member.

22. A Class Member who wishes to opt out of the Class must indicate the intention to opt out by completing an Opt Out Form and ensuring it is received by Class Counsel within the Opt Out Period. If the Opt Out Form is not received by Class Counsel by the Opt Out Deadline, the Class Member shall remain a member of the Class.

23. Within 15 days after the Opt Out Deadline, Class Counsel will provide Defence Counsel with copies of all Opt Out Forms received. If requested by any Court, Class Counsel shall provide a report to the Court regarding the Opt Out Forms received, and file copies of the Opt Out Forms with the Court.

24. The Court order approving this Settlement Agreement shall provide that this Settlement Agreement will be binding on all Class Members, except those who opted out in accordance with the terms of this Settlement Agreement.

### **Final Resolution**

25. The Parties agree that this Settlement Agreement is intended to resolve, and upon Court approval, does resolve, all matters asserted against the Defendants in this Action or which could have been asserted in the Action on behalf of Class Members, including all matters arising out of or relating to, without limitation, the manufacture, marketing, sale, distribution, labelling, use, purchase, treatment with or otherwise related to Trasyolol<sup>®</sup> in Canada.

### **No Admission of Liability**

26. It is understood and agreed that nothing in this Settlement Agreement constitutes an admission of liability or obligation on the part of the Defendants or Releasees and any liability or obligation is, in fact, denied.

### **Settlement Agreement Not Evidence**

27. None of this Settlement Agreement, anything contained in it, any of the negotiations or proceedings connected with it, any related document, or any action taken to carry out the Settlement Agreement shall be referred to, offered as evidence, or received in evidence in any pending or future civil or administrative action or proceeding, except in a proceeding to enforce the Settlement Agreement, or to defend against the assertion of claims subject to the release described at paragraph 6, or otherwise as required by law.

### **Execution in Counterpart**

28. This Settlement Agreement may be executed in counterparts, and becomes effective on the date of the last executed counterpart. Facsimile execution and delivery of this Settlement Agreement by any of the Parties or their counsel shall constitute a legal, valid and binding execution and delivery of this Settlement Agreement.

### **Governing Law**

29. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario. The process of obtaining the Approval Order shall be conducted in accordance with Ontario law.

### **Currency**

30. All amounts in the Settlement Agreement are stated and shall be paid in Canadian currency.

### **General**

31. This Settlement Agreement will be binding upon and inure to the benefit of the Parties and, to the extent applicable, their respective officers, directors, agents, employees, partners,



associates, affiliates, parents, subsidiaries, divisions, insurers, shareholders, servants, predecessors, representatives, estate trustees, heirs, successors, and family members.

32. In the event that any one or more of the provisions contained in this Settlement Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision if the Parties mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Settlement Agreement.

33. The Court will retain continuing and exclusive jurisdiction over the Proposed Class Action and the Parties thereto, including the Plaintiffs and all Class Members, and over the administration and enforcement of the Settlement Agreement and the benefits to the Plaintiffs and Class Members hereunder, until the dismissal of the Ontario Proceeding.

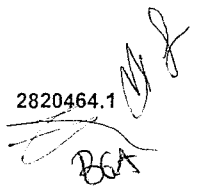
34. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement Agreement must be made by a motion to the Court on reasonable notice.

35. The undersigned Class Counsel warrant that they are fully authorized to execute this Agreement on behalf of the Plaintiffs and Appellants, and to legally bind the Plaintiffs and Appellants to this Agreement.

36. The computation of time with respect to all time periods and deadlines provided for under this Agreement shall be done in accordance with Rule 3.01 of the *Ontario Rules of Civil Procedure*.

37. The Parties each acknowledge that they have had an adequate opportunity to read and consider this Settlement Agreement, and to obtain such advice in regard to this Settlement Agreement as they each considered advisable.

38. The Parties have negotiated and fully reviewed the terms of this Settlement Agreement, and the rule that uncertainty or ambiguity is to be construed against the drafter will not apply to the construction of this Settlement Agreement by a court of law or any other adjudicating body.



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39. The parties have agreed that this agreement be drafted in English. Les parties ont accepté que la présente entente soit rédigée en anglais. The Appellants have also obtained a verbal translation of this agreement in French and confirm that they have fully understood all of its terms and conditions. Les Appellantes ont aussi obtenu une traduction verbale de cette entente et confirment qu'elles en ont compris tous les termes et conditions.

### **Entire Settlement Agreement**

40. This Settlement Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, and agreements in principle. None of the Parties will be bound by any prior obligations, conditions or representations with respect to this agreement, unless it is expressly incorporated into the Settlement Agreement. This Settlement Agreement may not be modified or amended except in writing and on consent of the Parties.

41. In the event of any conflict between the provisions of this Settlement Agreement and the Notices, the terms of this Settlement Agreement shall prevail.

42. The following Schedules form part of this Settlement Agreement and shall be presented to the Court substantially in the form attached hereto:

- (A) Quebec Proceeding Class Members
- (B) Opt Out Form
- (C) Order
- (D) Notice of Court Approval Hearing
- (E) Notice of Court Approval

**TORYS LLP**

Per: \_\_\_\_\_  
Counsel for the Defendants  
Date:

**SISKINDS LLP**

Per: \_\_\_\_\_  
Counsel for the Plaintiffs  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Jeffery Lang  
Date:

**DOCKEN & COMPANY**

Per: \_\_\_\_\_  
Counsel for the Plaintiffs  
Date:

*B/Hall-Zerebecki*  
\_\_\_\_\_  
Witness

*B/Z*  
\_\_\_\_\_  
Bobbie Zerebecki  
Date: *FEB 4/2016*

*B/Z*  
\_\_\_\_\_  
Witness

*B/Hall-Zerebecki*  
\_\_\_\_\_  
Beverley Hall-Zerebecki  
Date: *Feb 4/2016*

**TORYS LLP**

Per: \_\_\_\_\_  
Counsel for the Defendants  
Date:

**SISKINDS LLP**

Per: \_\_\_\_\_  
Counsel for the Plaintiffs  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Jeffery Lang  
Date:

**DOCKEN & COMPANY**

Per: \_\_\_\_\_  
Counsel for the Plaintiffs  
Date:

\_\_\_\_\_  
Witness *Beverly Hall-Zerebecki*

\_\_\_\_\_  
*Bobbie Zerebecki*  
Date: *FEB 4 2016*


\_\_\_\_\_  
Witness *Bzh.*

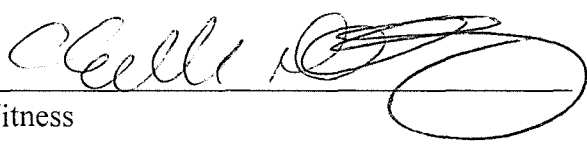
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*Feb. 4 2016* *Beverly Hall-Zerebecki*  
Date:


**TORYS LLP**

Per: \_\_\_\_\_  
Counsel for the Defendants  
Date:

**SISKINDS LLP**

Per:  \_\_\_\_\_  
Counsel for the Plaintiffs  
Date: *Jan 30 / 16*

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Jeffery Lang  
Date: *Jan. 30 / 16.*

**DOCKEN & COMPANY**

Per: \_\_\_\_\_  
Counsel for the Plaintiffs  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Bobbie Zerebecki  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Beverley Hall-Zerebecki  
Date:

**TORYS LLP**

Per: \_\_\_\_\_  
Counsel for the Defendants  
Date:

**SISKINDS LLP**

Per: \_\_\_\_\_  
Counsel for the Plaintiffs  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Jeffery Lang  
Date:

**DOCKEN & COMPANY**

Per: \_\_\_\_\_  
Counsel for the Plaintiffs  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Bobbie Zerebecki  
Date:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Beverley Hall-Zerebecki  
Date:

**BGA AVOCATS S.E.N.C.R.L BARRISTERS  
& SOLICITORS LLP**

Per: BGA Avocats sa

Counsel for the Plaintiffs and Appellants

Date: January 29<sup>th</sup> 2016

Constance Ramacieri

Constance Ramacieri

Date: January 29<sup>th</sup> 2016

Nicole Laporte

Nicole Laporte

Date: January 29<sup>th</sup> 2016

Mohamed Salah Khessib

Witness Mohamed Salah Khessib

Vues Poirier

Witness Vues Poirier