



Court File No. CV-18-00002489-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE BALTMAN

)
)

FRIDAY, THE 11th DAY
OF DECEMBER, 2020

B E T W E E N :

A.Z.P., A.J.P., and QI ZHANG

Plaintiffs

- and -

REPROMED LTD., THE TORONTO INSTITUTE FOR REPRODUCTIVE MEDICINE INC.,
DR. ALFONSO DEL VALLE, PRAXAIR CANADA INC. and CHART INDUSTRIES, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Authorizing Distribution**

THIS MOTION made by Class Counsel for an order authorizing the distribution of settlement funds was heard this day at the Court House, 7755 Hurontario St., Brampton, Ontario.

ON READING the materials filed including: the affidavit of Jennifer Bald sworn November 18, 2020; the Plan of Allocation, attached here to as Schedule “A”; and the Schedule of Proposed Payments, attached hereto as Schedule “B”;

AND ON HEARING the submissions of Class Counsel;

1. **THIS COURT ORDERS** that, except to the extent that they are modified by this Order, the definitions set out in the Plan of Allocation apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that Class Counsel is authorized to distribute the Net Settlement Proceeds to eligible claimants, as described in the Schedule of Proposed Payments.
3. **THIS COURT ORDERS** that the following procedures will apply to the issuing of payment:
 - (a) cheques will be sent by registered mail to Canadian addresses and by courier to international addresses;
 - (b) to the extent that a cheque must be reissued, the cost of reissuing the cheque will be taken from the claimant's settlement amount; and
 - (c) if a claimant requests that their payment be issued in another form (for example, wire transfer), Class Counsel may approve or deny the request at their discretion. Any additional costs associated with this request will be taken from the claimant's settlement amount.
4. **THIS COURT ORDERS** that incurred disbursements of \$2,193.27, plus applicable taxes and interest, are approved and shall be payable to Class Counsel from the settlement funds.
5. **THIS COURT ORDERS** that expected disbursements of up to \$1,722.15, plus applicable taxes and interest, are approved and shall be payable to Class Counsel from the settlement funds, but only the extent that such disbursements are actually incurred.

6. **THIS COURT ORDERS** that, to the extent that there are Net Settlement Proceeds remaining (from uncashed cheques or otherwise), the remaining funds will be distributed as follows:

- (a) if the remaining funds are less than \$1000, they will be donated to the Canadian Foundation for Women's Health; or
- (b) if the remaining funds are \$1000 or more, the funds (less any administrative costs related to the mailing of cheques) will be distributed to eligible claimants who cashed their cheques in the distribution *pro rata* based on each claimant's point entitlement.



The Honourable Justice Baltman

Schedule "A"

**PLAN OF ALLOCATION
REPROMED CLASS ACTION**

GENERAL PRINCIPLES1
DEFINITIONS.....1
DISTRIBUTION OF THE NET SETTLEMENT PROCEEDS.....3
 Calculation of Settlement Benefits3
 Part I: Treatment Expenses3
 Part II: Point Allocation5
 Subrogated Claims6
THE CLAIM PROCESS.....7
 The Claim.....7
 The Claims Filing Process7
 Adjustments to Claims Process and Extension of the Claims Filing Deadline8
 Deficiencies.....8
 The Claims Review Process.....9
 Class Counsel’s Decision.....10
 Approval by the Court11
 Class Member Objections11
 Payment of Claims11

GENERAL PRINCIPLES

1. The procedures set forth herein are for the administration of the settlement entered into with the Settling Defendants, dated December 3, 2019 (the “Settlement Agreement”).
2. Class Counsel may adopt additional policies and procedures for the administration of the Settlement Agreement that are consistent with this Plan of Allocation, the Settlement Agreement and orders of the Court.

DEFINITIONS

3. The definitions set out in the Settlement Agreement apply to this Plan of Allocation and are incorporated, except as altered herein.
4. For the purposes of this Plan of Allocation:
 - (a) ***Claim Deadline*** means the final date on which a Settlement Class Member may submit a Claim Form, which is two (2) months from the date of the first publication of notice advising Settlement Class Members of the claims process.
 - (b) ***Claim Form*** means the form that a Settlement Class Member must complete and submit before the Claim Deadline in order to be considered for settlement benefits under this Plan of Allocation.
 - (c) ***Destroyed Reproductive Material*** means the human eggs and embryos that were destroyed while being stored in the Tank at the Repromed Clinic.
 - (d) ***Net Settlement Proceeds*** means the Settlement Amount plus interest and less the amounts payable in respect of Class Counsel Fees, Class Counsel Disbursements, and Administration Expenses.

- (e) ***Original Treatment Costs*** means out-of-pocket expenses actually paid by the Settlement Class Member to create the Destroyed Reproductive Material, including the cost of fertility drugs, medical procedures (e.g. egg retrieval), donor expenses, genetic tests, and travel. Expenses paid by an insurer (i.e. OHIP) are not included.
- (f) ***Proof of Payment*** means receipts, invoices, credit card or banking statements, or other comparable proof that is acceptable to Class Counsel.
- (g) ***Reproductive Material*** means human eggs and embryos.
- (h) ***Repromed Clinic*** means the fertility clinic operated by some or all of the Repromed Defendants.
- (i) ***Repromed Defendants*** means Repromed Ltd., The Toronto Institute for Reproductive Medicine Inc. and Dr. Alfonso Del Valle.
- (j) ***Settlement Class*** means all patients of the Repromed Defendants (and their reproductive partners, if applicable) whose Reproductive Material was destroyed while being stored in the Tank.
- (k) ***Settlement Class Member(s)*** means any member of the Settlement Class who does not validly opt-out of the Settlement Class.
- (l) ***Subsequent Treatment Costs*** means out-of-pocket expenses actually paid by the Settlement Class Member to replace the Destroyed Reproductive Material, including the cost of fertility drugs, medical procedures (e.g. egg retrieval), donor

expenses, genetic tests, and travel. Expenses paid by an insurer (i.e. OHIP) are not included.

- (m) **Tank** means the dewar manufactured by a subsidiary of Chart Industries, Inc. bearing serial number NPB2017520124U.

DISTRIBUTION OF THE NET SETTLEMENT PROCEEDS

Calculation of Settlement Benefits

5. Settlement Class Members who did not sign a release with the Repromed Defendants will be entitled to claim pursuant to paragraph 8. All Settlement Class Members are eligible to claim pursuant to paragraph 11.
6. After total benefits payable pursuant to paragraph 8 are determined and subtracted from the Net Settlement Proceeds, the remaining Net Settlement Proceeds will be distributed *pro rata* (proportionately) based on the point allocation described in paragraph 11.
7. Notwithstanding any other provision in this plan of allocation, if the distribution would result in an unjust distribution, Class Counsel will seek further directions from the Court with respect to the distribution of the settlement benefits.

Part I: Treatment Expenses

8. Settlement Class Members who did not sign releases with the Repromed Defendants are entitled to claim for one of the following:
 - (a) The Settlement Class Member can claim for their Original Treatment Costs, provided that the Settlement Class Member provides Proof of Payment;

- (b) The Settlement Class Member can claim for their Subsequent Treatment Costs, provided that the Settlement Class Member provides Proof of Payment; or
 - (c) If the Settlement Class Member expects to incur Subsequent Treatment Costs but has not yet undergone subsequent treatment, the Settlement Class Member can provide a declaration attesting to their intention to undergo future treatment and describing the intended treatments. The value of expected Subsequent Treatment Costs will be determined as follows:
 - (i) the Settlement Class Member may claim for the expected Subsequent Treatment Costs specified in a recent treatment plan, estimate, or other similar document acceptable to Class Counsel, up to a maximum of \$25,000; or
 - (ii) if no acceptable documentation is provided, the Settlement Class Member will be allocated \$10,000 if the Destroyed Material contained only eggs, \$15,000 if the Destroyed Material contained embryos, and \$20,000 if the Destroyed Material contained embryos formed from donor eggs.
9. Settlement benefits payable pursuant to paragraph 8 shall be capped at \$400,000 in the aggregate. Where the total value of claims submitted pursuant to paragraph 8 exceeds the cap, payments will be reduced on a proportionate basis.

Part II: Point Allocation

10. After settlement benefits are calculated pursuant to paragraphs 8 and 9 and subtracted from the Net Settlement Proceeds, the remaining Net Settlement Proceeds will be allocated *pro rata* (proportionally) pursuant to the point allocation described in paragraph 11.
11. All Settlement Class Members who file claims (regardless of whether they signed a release with the Repromed Defendants) shall be allocated points based on the following grid:

Category		Points
A	Persons who underwent an egg retrieval process to create the Destroyed Reproductive Material <i>For example, women whose own eggs were retrieved</i>	20 points per Settlement Class Member
B	Persons who did not undergo an egg retrieval process <i>For example, the reproductive partner of a person described in Category (A) and persons who used egg donors.</i>	10 points per Settlement Class Member
C	Persons who attended counselling because of the destruction of their Reproductive Material <i>These claims require medical records from a treating, psychiatrist, psychologist, social worker or psychotherapist.</i>	10 points per Settlement Class Member
D	Persons who suffered minor complications from subsequent medical treatments intended to replace the Destroyed Reproductive Material <i>For example, complications that require a visit to the doctor or emergency room.</i>	5 points per Settlement Class Member
E	Persons who suffered major complications from subsequent medical treatments intended to replace the Destroyed Reproductive Material <i>For example, persons who are hospitalized as a result of subsequent treatments.</i>	15 points per Settlement Class Member
F	Persons suffering from permanent complete loss of fertility. <i>These claims require medical records from a treating physician.</i>	50 points per Settlement Class Member

G	<p>Persons who did not have Reproductive Material stored elsewhere at the Repromed Clinic</p> <p><i>Some persons had eggs or embryos stored elsewhere at the Repromed Clinic. They are not eligible to claim in this category.</i></p>	5 points (if a couple is filing, this can only be claimed once)
H	Embryos included in the Destroyed Reproductive Material	5 points (if a couple is filing, this can only be claimed once)

12. **Point Discount:** Settlement Class Members who signed a release with the clinic will have their total points allocated pursuant paragraph 11 discounted by 50%.

Subrogated Claims

13. To the extent known, Settlement Class Members' Ontario health card numbers will be provided to the Ministry of Health and Long-Term Care ("Ministry") for the purpose of determining whether the Ontario Health Insurance Plan ("OHIP") funded any insured services for which it is entitled to recover pursuant to the *Health Insurance Act*, RSO 1990, c H6.
14. Appropriately identified expenses will be reimbursed to the Ministry and correspondingly reduced from any amounts allocated to a Settlement Class Member. The total reimbursement to be provided to OHIP will not exceed \$50,000. If the total amount properly claimed by OHIP exceeds \$50,000, the reduction from class members compensation will be reduced *pro rata*.

THE CLAIM PROCESS

The Claim

15. Reproductive partners (meaning persons with interest/ownership of the same Destroyed Reproductive Material) must file a Claim Form together.

16. The Claim Form shall require the following information:
 - (a) Contact information;

 - (b) Information necessary to determine Settlement Class membership;

 - (c) Information necessary to determine the Settlement Class Member's entitlement pursuant to paragraphs 8 and 11, above;

 - (d) For Canadian residents, their provincial health card number;

 - (e) Relevant medical records;

 - (f) Authorization to the Class Counsel to contact the Settlement Class Member, as required in order to administer the claim; and

 - (g) Verification under the penalty of perjury that the information submitted in the Claim Form is true and correct.

The Claims Filing Process

17. All Claim Forms shall be submitted by regular mail, courier mail or email.

18. Subject to further Court order, all Claim Forms must be submitted on or before the Claim Deadline and Claim Forms submitted after the Claim Deadline shall be rejected.
19. All Claim Forms submitted by mail shall be deemed to have been submitted on the postmark date of such mail. If the postmark is illegible, the Claim Form shall be deemed to have been submitted four (4) business days before it was received by Class Counsel.
20. All Claim Forms submitted by courier shall be deemed to have been submitted on the date the package was marked as received by the courier. If the marking is illegible, the Claim Form shall be deemed to have been submitted two (2) business days before it was received by Class Counsel.
21. All Claim Forms submitted by email shall be deemed to have been submitted on the date it was sent.

Adjustments to Claims Process and Extension of the Claims Filing Deadline

22. At the discretion of Class Counsel, the Claims Filing Deadline may be extended, and the claims process adjusted. Class Counsel shall only extend the Claims Filing Deadline and/or adjust the claims process if, in their opinion, doing so will not adversely affect the fair and efficient administration of the Net Settlement Proceeds and it is in the best interests of the Settlement Class Members to do so.

Deficiencies

23. If, during claims processing, Class Counsel finds that deficiencies exist in a Settlement Class Member's claim that preclude the proper processing of such claim, Class Counsel shall notify the Settlement Class Member of the deficiencies. If the nature of the deficiency

requires Settlement Class Members to obtain documentation from a third-party(ies) (i.e., health care providers), the Settlement Class Member shall be provided sixty-five (65) days from the mailing or emailing of the deficiency notice to correct the deficiency. For all other deficiencies, the Settlement Class Member shall be provided thirty (30) days from the mailing or emailing of the deficiency notice to correct the deficiency.

24. If the deficiencies are not corrected within the allotted time, Class Counsel shall reject the Claim. The Settlement Class Member will have no further opportunity to correct the deficiency. In its sole discretion, where the nature of the deficiency requires Settlement Class Members to obtain documentation from a third-party(ies), Class Counsel can extend the deadline for correcting deficiencies.
25. Settlement Class Members can contact Class Counsel, at no charge, with questions about how to complete a Claim Form.
26. Settlement Class Members may be assisted by another lawyer of their own choosing in the completion of their claim, in which case the Settlement Class Member will be responsible for any legal expenses arising from those additional individual services.

The Claims Review Process

27. Class Counsel shall process all claims in a cost-effective and timely manner, and in accordance with the terms of the Settlement Agreement, this Plan of Allocation, and orders of the Court. Where a claim requires proof of diagnosis or evidence to substantiate the claim being made, Class Counsel shall have discretion to accept or reject the evidence

provided by the Settlement Class Member or to request such additional evidence as may be necessary in Class Counsel's sole discretion in order to substantiate the claim.

28. Class Counsel shall have the discretion to enter into such contracts and obtain financial, accounting, medical and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement and this Plan of Allocation, provided that related expenses are paid out of Class Counsel's fees or approved by the Courts in advance.
29. To the extent necessary, Class Counsel may provide the list of claimants to RicePoint Administration Inc. (the entity receiving opt-out elections) to ensure that persons who filed Claim Forms did not also opt-out of the litigation.
30. Class Counsel shall take measures to prevent and detect fraudulent or duplicative claims. Class Counsel may deny any actual or possible fraudulent or duplicative claims.

Class Counsel's Decision

31. In respect of each Settlement Class Member who has filed a Claim Form in accordance with the Plan of Allocation, Class Counsel shall:
 - (a) decide whether the Settlement Class Member is eligible to receive settlement benefits; and
 - (b) determine the value of the Settlement Class Member's claim.
32. Class Counsel shall send Settlement Class Members by email or regular mail, a decision as to the approval or rejection of the claim (the "**Decision Notice**").

33. Decision Notices shall be sent to Settlement Class Members at least 30 days prior to the Court hearing outlined in paragraph 35 below.
34. Where Class Counsel has rejected all or part of a claim, Class Counsel shall include in the Decision Notice the grounds for rejecting all or part of the claim.

Approval by the Court

35. Prior to issuing payment to eligible Settlement Class Members, Class Counsel shall bring a motion seeking Court approval of payment amounts.
36. Motion materials for the motion described in paragraph 35 shall be posted on Class Counsel's website, redacted for any information that would identify Settlement Class Members.

Class Member Objections

37. Settlement Class Members who filed claims shall be given notice of the motion described in paragraph 35. Such notice will advise Settlement Class Members of their right to object pursuant to paragraph 36 and the deadline for objecting.
38. Class members will have the ability to object to their allocation by submitting written submissions to Class Counsel at least 10 days prior to the motion described in paragraph 35. All objections will be submitted to the Court.

Payment of Claims

39. After Court approval, Class Counsel shall make arrangements to pay approved claims as expeditiously as possible.

40. Payment will be made by cheque, with one cheque issued per Claim Form. Partners filing together on the same Claim Form will be issued payment in the same cheque.
41. All settlement benefits will be calculated in Canadian currency and settlement benefits will be paid in Canadian currency.

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Schedule "B"

Schedule of Proposed Payments						
Motion ID	Signed Release	Total Approved Treatment Costs	Total Approved Points	Percentage of Total Points	Total Point Value	Total Settlement
1	N	\$15,000.00	60	5.50%	\$42,283.16	\$57,283.16
2	N	\$31,874.00	30	2.75%	\$21,141.58	\$53,015.58
3	N	\$20,500.00	40	3.67%	\$28,188.77	\$48,688.77
4	N	\$20,000.00	40	3.67%	\$28,188.77	\$48,188.77
5	N	\$32,488.59	20	1.83%	\$14,094.39	\$46,582.98
6	N	\$15,000.00	40	3.67%	\$28,188.77	\$43,188.77
7	N	\$15,000.00	40	3.67%	\$28,188.77	\$43,188.77
8	N	\$15,000.00	40	3.67%	\$28,188.77	\$43,188.77
9	N	\$15,000.00	40	3.67%	\$28,188.77	\$43,188.77
10	N	\$15,000.00	35	3.21%	\$24,665.17	\$39,665.17
11	N	\$15,000.00	35	3.21%	\$24,665.17	\$39,665.17
12	N	\$8,657.91	40	3.67%	\$28,188.77	\$36,846.68
13	N	\$6,146.22	40	3.67%	\$28,188.77	\$34,334.99
14	N	\$5,950.00	40	3.67%	\$28,188.77	\$34,138.77
15	N	\$1,555.44	40	3.67%	\$28,188.77	\$29,744.21
16	N	\$10,000.00	25	2.29%	\$17,617.98	\$27,617.98
17	N	\$5,821.51	30	2.75%	\$21,141.58	\$26,963.09
18	Y		30	2.75%	\$21,141.58	\$21,141.58
19	Y		30	2.75%	\$21,141.58	\$21,141.58
20	Y		25	2.29%	\$17,617.98	\$17,617.98
21A	Y		10	0.92%	\$7,047.19	\$7,047.19
21B	Y		10	0.92%	\$7,047.19	\$7,047.19
22	Y		20	1.83%	\$14,094.39	\$14,094.39
23	Y		20	1.83%	\$14,094.39	\$14,094.39
24	Y		20	1.83%	\$14,094.39	\$14,094.39
25	Y		20	1.83%	\$14,094.39	\$14,094.39
26	Y		20	1.83%	\$14,094.39	\$14,094.39
27	Y		20	1.83%	\$14,094.39	\$14,094.39
28	Y		20	1.83%	\$14,094.39	\$14,094.39
29	Y		20	1.83%	\$14,094.39	\$14,094.39
30	Y		20	1.83%	\$14,094.39	\$14,094.39
31	Y		20	1.83%	\$14,094.39	\$14,094.39
32	Y		17.5	1.61%	\$12,332.59	\$12,332.59
33	Y		17.5	1.61%	\$12,332.59	\$12,332.59
34	Y		15	1.38%	\$10,570.79	\$10,570.79
35	Y		15	1.38%	\$10,570.79	\$10,570.79
36	Y		15	1.38%	\$10,570.79	\$10,570.79
37	Y		15	1.38%	\$10,570.79	\$10,570.79
38	Y		12.5	1.15%	\$8,808.99	\$8,808.99
39	Y		12.5	1.15%	\$8,808.99	\$8,808.99
40	Y		12.5	1.15%	\$8,808.99	\$8,808.99
41	Y		10	0.92%	\$7,047.19	\$7,047.19
42	Y		7.5	0.69%	\$5,285.39	\$5,285.39
		\$247,993.67	1090	100.00%	\$768,144.00	\$1,016,137.67

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Brampton

ORDER
(Authorizing Distribution)

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