

## **NOTICE OF SETTLEMENT APPROVAL HEARING**

### **REPROMED CLASS ACTION**

You are receiving this notice because you were affected by the alleged failure of a cryogenic storage tank at the Repromed fertility clinic in May 2018. This notice was approved by the Ontario Superior Court of Justice (“**Ontario Court**”).

As you may be aware, a class action lawsuit was commenced in relation to the alleged tank failure. A settlement has been reached in the class action. Please note that the settlement applies to you even if you signed a release with the clinic.

This notice provides important information about your rights in relation to the settlement. The following questions are addressed below:

- A. What is this class action about?
- B. What should you know about the settlement?
- C. Who is affected by the settlement?
- D. How will the settlement money be distributed?
- E. How can you file a claim?
- F. When is the approval hearing?
- G. How can you exclude yourself from the class action?
- H. How can you object to the settlement?
- I. Who are the lawyers and how are they paid?

*It is important that you read this notice and understand your options. If you have questions, you can contact the lawyers listed below. The lawyers will answer your questions free of charge.*

#### **A. WHAT IS THIS CLASS ACTION ABOUT?**

A class action is a lawsuit filed by one or more people (known as representative plaintiffs) on behalf of a group of people.

In this class action (*AZP et al v Repromed Ltd. et al*, Court File No. CV-18-00002489-00CP), the plaintiffs allege, among other things, that the defendants’ negligence caused the destruction of their eggs and embryos.

The following entities were named as defendants in the class action:

- Chart Industries, Inc. (it is alleged that a subsidiary of Chart manufactured the tank);
- Praxair Canada Inc. (the alleged distributor of the tank); and
- Repromed Ltd., The Toronto Institute for Reproductive Medicine Inc. and Dr. Alfonso Del Valle (the clinic and its alleged owners).

#### **B. WHAT SHOULD YOU KNOW ABOUT THE SETTLEMENT?**

A settlement was reached with Chart Industries, Inc., Praxair Canada Inc., Repromed Ltd., and The Toronto Institute for Reproductive Medicine Inc. (collectively, the “**Settling Defendants**”). The Settling Defendants agreed to pay \$1,500,000 to settle the claims against them in relation to the alleged tank failure. The settlement also releases claims against Dr. Del Valle.

The settlement is a compromise of disputed claims and is not an admission of liability, fault, or wrongdoing. In order to take effect, the settlement must be approved by the Ontario Court. If approved, the settlement will resolve the class action in its entirety.

### **C. WHO IS AFFECTED BY THE SETTLEMENT?**

The settlement affects all patients of Repromed Ltd., The Toronto Institute for Reproductive Medicine Inc. and Dr. Alfonso Del Valle (and their reproductive partners, if applicable) whose Reproductive Material was destroyed while being stored in a dewar manufactured by Chart Industries, Inc. bearing serial number NPB2017520124U (the “**Settlement Class**” or “**Settlement Class Members**”).

By Order dated December 19, 2019, the Ontario Court certified the class action for settlement purposes on behalf of the Settlement Class.

### **D. HOW WILL SETTLEMENT MONEY BE DISTRIBUTED?**

The plaintiffs will seek court approval of a plan for allocating the settlement funds, less court approved legal fees and other expenses (the “**Plan of Allocation**”).

The proposed Plan of Allocation provides that all Settlement Class Members (who do not opt-out of the action) are eligible for compensation. Settlement Class Members may file a claim for compensation even if they signed a release with the clinic. While all Settlement Class Members will be eligible for compensation, the amount of compensation will vary depending on the circumstances of the individual Settlement Class Member.

The proposed Plan of Allocation contemplates:

- (a) **Treatment Expenses**: There are 17 individuals/couples who did not sign releases with the clinic. Those Settlement Class Members will be able to claim for the reasonable expenses associated with one round of treatment. Settlement Class Members may claim one of the following:
- (i) If the Settlement Class Member paid out-of-pocket to create the eggs and/or embryos that were destroyed in the alleged tank failure, the Settlement Class Member may claim for their reasonable expenses associated with the original treatment. Settlement Class Members will be required to provide proof of payment; or
  - (ii) If the Settlement Class Member underwent subsequent treatment to replace the destroyed eggs and/or embryos, the Settlement Class Member may claim for their reasonable expenses related to the subsequent treatment. Settlement Class Members will be required to provide proof of payment; or
  - (iii) If the Settlement Class Member intends to undergo another round of treatment but has not yet done so, the Settlement Class Member will be allocated \$10,000 if the reproductive material destroyed while being stored in the tank at the ReproMed Clinic (“**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. The Settlement Class Member must sign a declaration attesting to their plan to undergo further treatment and describing the intended future treatments.

- (b) **Point System:** After expenses are reimbursed (up to a maximum of \$400,000), the remaining money will be allocated *pro rata* (proportionally) between all Settlement Class Members based on the point system described below.

Persons who underwent an egg retrieval process in the creation of the destroyed eggs and embryos ( <i>i.e. women whose own eggs were retrieved</i> )	20 points per Settlement Class Member
Persons who did not undergo an egg retrieval process ( <i>e.g. male patients/partners and persons who used egg donors</i> )	10 points per Settlement Class Member
Persons who attended counselling as a result of the alleged tank failure	10 points per Settlement Class Member
Persons who suffered a major complication as a result of further treatments to replace the destroyed eggs and embryos ( <i>e.g. a hospitalization</i> )	15 points per Settlement Class Member
Persons who suffered a minor complication as a result of further treatments to replace the destroyed eggs and embryos ( <i>e.g. a visit to the doctor or ER</i> )	5 points per Settlement Class Member
Persons suffering from permanent loss of fertility ( <i>medical proof required</i> )	50 points per Settlement Class Member
Persons who did not have eggs and embryos stored elsewhere at the clinic ( <i>Some people had eggs or embryos stored in a separate dewar at the clinic. Those people cannot claim in this category</i> )	5 points (if a couple is filing, this can only be claimed once)
Persons whose embryos were destroyed by the alleged tank failure	5 points (if a couple is filing, this can only be claimed once)

- (c) **Point Discount:** Settlement Class Members who signed a release with the clinic will have their points discounted by 50%.

The above is only a summary of the proposed Plan of Allocation. To read the entire document, visit [www.siskinds.com/repromed](http://www.siskinds.com/repromed).

## E. HOW CAN YOU FILE A CLAIM?

A further notice will follow with instruction about how to file a claim for compensation. In the meantime, you should:

- (a) Register at [www.siskinds.com/repromed](http://www.siskinds.com/repromed) to receive updates and direct notices from Class Counsel about the claims process.
- (b) Keep records related to fertility treatments and expenses related to the destroyed eggs and embryos. If relevant, also keep records of your subsequent fertility treatments and expenses.

## **F. WHEN IS THE APPROVAL HEARING?**

There will be an approval hearing on February 5, 2020 at 10am in the Brampton Courthouse, 7755 Hurontario St., Brampton, ON. At the approval hearing, the Ontario Court will be asked to determine whether the settlement is fair, reasonable and in the best interests of Settlement Class Members.

At the approval hearing, the Ontario Court will also be asked to approve the Plan of Allocation and Class Counsel's fee request.

Settlement Class Members who do not oppose the proposed settlement need not appear at the settlement approval hearing or take any other action at this time.

## **G. HOW CAN YOU EXCLUDE YOURSELF (OPT-OUT) FROM THE CLASS ACTION?**

Settlement Class Members are not required to take any action at this time. If you take no action at this time, you will be eligible to claim for settlement benefits in the future (if you choose to claim); however, you will not be able to start or continue your own case against the defendants regarding the claims at issue in the class action.

If you do not want to be a member of the class action, you can exclude yourself (“**opt-out**”) from the class action by sending a signed letter to the address below stating that you wish to opt-out of the action. The letter must include your full name, current address and telephone number, and the reason for opting-out. Requests to opt-out of the proceedings must be received or post-marked by March 10, 2020.

### **Mailing Address:**

ReproMed Fertility Class Action  
c/o RicePoint Administration Inc.  
P.O. Box 4454, Toronto Station A  
25 The Esplanade  
Toronto, ON M5W 4B1

### **Courier Address:**

ReproMed Fertility Class Action  
c/o RicePoint Administration Inc.  
100 University Avenue  
Toronto, ON M5J 2Y1

If you opt-out of the class action, you will not receive any money from the settlement, but you may be able to commence your own action against the defendants regarding the claims at issue in the class action (assuming you did not release your claim against those defendants).

This is your only chance to opt-out of the class action.

## **H. HOW CAN YOU OBJECT TO THE SETTLEMENT?**

You may object to the proposed settlement, Plan of Allocation, and/or Class Counsel fee request. Settlement Class Members who wish to object must submit a written submission to Class Counsel postmarked no later than January 24, 2019. Class Counsel will forward all objections to the Ontario Court.

All Settlement Class Members are entitled, but are not required, to attend the approval hearing. If you wish to attend the approval hearing or make submissions, please contact Class Counsel for additional details.

### **I. WHO IS CLASS COUNSEL? HOW ARE THEY PAID?**

The following law firms (“**Class Counsel**”) represent the plaintiffs in this action:

SISKINDS LLP  
680 Waterloo Street  
London, ON N6A 3V8

**Bridget Moran**

Tel: 519.672.2121

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Suite 30-16 Sims Crescent  
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**Paul Harte**

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Class Counsel legal fees and disbursements must be approved by the courts. Class Counsel will collectively be requesting that legal fees of 25% of the settlement funds, plus disbursements and applicable taxes be approved by the courts and paid out of the settlement funds.

### **J. MORE INFORMATION**

For more information on the class action or to view a copy of the proposed settlement or Plan of Allocation, visit [www.siskinds.com/repromed](http://www.siskinds.com/repromed), email [repromed@siskinds.com](mailto:repromed@siskinds.com), or call toll-free (800) 461-6166 x 2206.