

Reliq Health Technologies Inc. Securities Class Action

Summary Rationale for Settlement

The following is a brief summary of some of the factors considered by the Plaintiff and Class Counsel in concluding that the Settlement is fair and reasonable. These factors will be explained in greater detail in the application materials to be filed in support of Court approval of the Settlement, which will be posted at <https://www.siskinds.com/class-action/reliq-health-technologies-inc/> no later than April 6, 2022.

1. The substantial risk that the Defendants would be unable to pay

The most significant risk in this action was the ability to collect from the Defendants even if the Plaintiff and Class were entirely successful on the merits of the claim.

First, the Plaintiff and Class Counsel learned after the commencement of the action that the Defendants' insurance is limited. The Defendants had \$2 million in primary coverage for the claims against them. That policy was eroding, meaning that defence costs reduce the amount of available insurance. Approximately \$1.5 million of insurance coverage remained at the time of the Settlement. There was also \$1 million in extended coverage. However, the extended coverage applied only to the individual Defendants (whose damages were capped as is explained below) and only after the primary policy coverage was exhausted.

Second, there is a substantial risk that the Defendants would be unable to personally satisfy a substantial judgment against them. Reliq's financial position is and was precarious. Reliq has had a material going concern note in all its financial statements (meaning there is a material risk of insolvency), it has not turned a profit and it has incurred a substantial operating deficit. Reliq also has limited cash available. In Reliq's financial statements filed closest to the mediation that led to the Settlement Agreement, its total stated cash was \$423,478. A large judgment could force Reliq into insolvency proceedings in which the Plaintiff and Class Members would face significant difficulties obtaining any meaningful recovery as unsecured creditors.

2. Secondary market damages against the Defendants were capped

For misrepresentation claims advanced under Part 16.1 of the *Securities Act* such as those advanced in this case, caps on damages (called "liability limits") apply unless the plaintiff can prove that the defendant(s) authorized, permitted, or acquiesced in making a misrepresentation while knowing that it was a misrepresentation. The liability limit cannot be lifted as against the issuer (i.e. Reliq) even where it has knowledge of the misrepresentation.

For Reliq, the liability limit is 5% of its pre-misrepresentation market capitalization. Class Counsel calculated Reliq's liability limit to be approximately \$10,000,000. For the individual Defendants, the limit is the greater of 50% of the aggregate of their compensation over a defined period or \$25,000. For the individual Defendants, Class Counsel calculated that the likely maximum liability limits are as follows: (i) Lisa Crossley - \$70,822; (ii) Amandeep Thindal - \$38,360; (iii) Eugene Beukman - \$33,450; (iv) Brian Storseth - \$25,000; and (v) Giancarlo De Lio – at least \$25,000.

3. Risk that a misrepresentation could not be established

The Plaintiff's claim is premised on misrepresentations with respect to the number of paying patients using Reliq's iUGO Platform and related accounting errors. Lisa Crossley's evidence was that the numbers reported were accurate at the time Reliq disclosed them but that Reliq later lost the patients largely due to the misconduct of a few rogue employees. Further, the Defendants' expert accounting opinion is that there was no misstatement of Reliq's financial statements. As the Defendants' accounting expert points out, although Reliq initially announced an intention to restate its financials, it ultimately did not do so. This removed a key piece of evidence the Plaintiff and Class could have otherwise used to establish the existence of a misrepresentation. Consistent with this, Reliq publicly disclosed that the British Columbia Securities Commission reviewed Reliq's decision not to restate its previous financials but did not require a restatement to be made.

Additional risks existed for the Private Placement Class Members whose claims were based on the acquisition of units in the private placement that closed on or about January 9, 2018. The Plaintiff had evidence available to him that indicated that the claims were potentially weaker for the misrepresentations alleged to exist in the Impugned Private Placement Documents. There was weaker evidence, according to the Plaintiff's accounting expert and in evidence from U.S. Litigation related to the matters at issue, that the revenue collection issues existed at the time the Impugned Private Placement Documents were disseminated.