

DISTRIBUTION PROTOCOL

Definitions

1. In this Distribution Protocol, the following terms have the following meanings:

“Administrator” means the administrator agreed to by the parties and appointed by the Court to administer the Settlement.

“Approval Date” means the date on which the Approval Order is made.

“Approval Order” means the judgment or order of the Court approving the Settlement.

“Business Day” means a day other than a Saturday or a holiday as defined by the *Interpretation Act*, R.S.N.L. 1990, c. I-19, as amended.

“Category 1” includes Class Members who:

- (a) tested negative on initial ER/PR receptor testing;
- (b) converted to positive after further ER/PR receptor testing;
- (c) did not receive timely therapy to block the action of hormones on tumour cells; and,
- (d) suffered a recurrence of breast cancer within 10 years of original diagnosis of breast cancer.

“Category 2” includes Class Members who

- (a) tested negative on initial ER/PR receptor testing;
- (b) converted to positive after further ER/PR receptor testing;
- (c) did not receive timely therapy to block the action of hormones on tumour cells; and,
- (d) had developed stage IV breast cancer at the time of initial testing.

“Category 3” includes Class Members who:

- (a) tested negative on initial ER/PR receptor testing;
- (b) converted to positive after further ER/PR receptor testing; and,
- (c) did not receive timely therapy to block the action of hormones on tumour cells; and
- (d) have not suffered a recurrence of breast cancer.

“Category 4” includes Class Members who:

- (a) tested positive on initial ER/PR receptor testing;
- (b) converted to negative after further ER/PR receptor testing where such further testing occurred prior to October 30, 2009; and,
- (c) received therapy to block the action of hormones on tumour cells.

“Category 5” includes Class Members who do not meet the definitions in Categories 1, 2, 3 or 4 and who suffered Psychological Injury.

“Category 6” includes Class Members who do not meet the definitions in Categories 1, 2, 3, 4, or 5.

“Claim” means a claim made and a claim that may be made in the future pursuant to this Distribution Protocol.

“Claimant” means a Class Member or Personal Representative who has submitted a Claim.

“Class Counsel” means Ches Crosbie Barristers and such further or other lawyers or law firms and their successors as may be appointed by the Court from time to time.

“Class Member” means all patients, including their estates, who underwent ER/PR receptor tests in which their breast tissue samples were tested at the Defendant’s hospital between May 1, 1997 to August 8, 2005 but excludes all persons who opt out, or are deemed to have opted out, of the class action.

“Court” means the Supreme Court of Newfoundland and Labrador (Trial Division).

“Defendant” means the Eastern Regional Integrated Health Authority.

“Deficiency Letter” means a letter sent in pursuant to paragraph 14.

“Fund A” means a fund comprised of 75% of the sum of the Settlement Proceeds less Fund C and Fund D

“Fund B” means a fund comprised of 25% of the sum of the Settlement Proceeds less Fund C and Fund D

“Fund C” means a \$600,000 fund drawn from the Settlement Proceeds.

“Fund D” means a fund drawn from the Settlement Proceeds in accordance with paragraph 18.

“Initial Claim Deadline” is 6 months after the Approval Date.

“Minimum Target Amount” means:

- (a) \$75,000.00 for Category 1;
- (b) \$15,000.00 for Category 2;
- (c) \$15,000.00 for Category 3;
- (d) \$10,000.00 for Category 4;

(e) \$5,000.00 for Category 5; and,

(f) \$1,000.00 for Category 6.

“Personal Representative” means the personal representative of a Class Member where the Class Member is deceased or, by reason of infirmity of mind, is incapable of managing his or her property and affairs.

“Psychological Injury” means that a Class Member:

- (a) was diagnosed by a registered psychologist or licensed member of a College of Physicians and Surgeons, as suffering from a mental disorder as defined by the *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition or *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition, Text Revision; or
- (b) was prescribed medication for stress, anxiety or mental disorder by a licensed member of a College of Physicians and Surgeons; or,
- (c) received psychological counselling or psychological therapy from a registered psychologist, or from a licensed member of a College of Physicians and Surgeons pursuant to a fee code for psychotherapy;

between October 5, 2005 and October 30, 2009 in relation to that Class Member learning that his or her ER/PR receptor test results may have been incorrect.

“Settlement” means the agreement made by the parties for the purpose of settling the class action.

“Settlement Proceeds” means the settlement amount of \$17,500,000.00 paid by the Defendant minus the court awarded Class Counsel fees, disbursements and applicable HST;

2. In this Distribution Protocol:

- (a) words stated in the singular include the plural, and words stated in the plural include the singular;
- (b) feminine pronouns and female references include the masculine, and masculine pronouns and male references include the feminine; and,
- (c) persons include their respective Personal Representatives, heirs, executors, administrators, assigns and trustees.

3. Where the time on or by which any action required to be taken under this Distribution Protocol expires or falls on a day that is not a Business Day, such action may be done on the next or succeeding day that is a Business Day.

Claims

4. Except as provided in paragraph 8, Class Members in Categories 1, 2, 3 and 4 will be paid out of Fund A and Class Members in Categories 5 and 6 will be paid out of Fund B.
5. Upon approval of the Claim, a Class Member in Category 1 will be paid \$37,500.00. This payment will be deducted from payments made to that Class Member under paragraph 6.
6. After the Administrator has determined the eligibility of all Claims in Categories 1, 2, 3 and 4, the Administrator will make a pro rata payment out of Fund A to all approved Class Members in Categories 1, 2, 3 and 4 to a maximum of the Minimum Target Amounts. The pro rata calculation will be based on the Minimum Target Amounts.
7. After the Administrator has determined the eligibility of all Claims in Categories 5 and 6, the Administrator will make a pro rata payment out of Fund B to all approved Class Members in Categories 5 and 6 to a maximum of the Minimum Target Amounts. The pro rata calculation will be based on the Minimum Target Amounts.
8. If, after the calculation referred to in paragraphs 6 and 7, there are monies remaining in Fund A or Fund B, those monies will be consolidated and then paid pro rata to all Class Members. The pro rata calculation will be based on the Minimum Target Amounts.
9. Subject to paragraphs 12 and 13:
 - (a) if an approved Category 3 Class Member progresses to Category 1 after the Category 3 claim is approved, the Administrator will make a payment to that Class Member out of Fund C in an amount equal to the difference between the pro rata payments for Categories 1 and 3 as determined by the Administrator under paragraphs 6 and 8;
 - (b) for approved Class Members whose Claims are made after the Initial Claim Deadline, the Administrator will make payments out of Fund D in an amount equal to the pro rata payment made to approved Class Members under paragraphs 5, 6, 7 and/or 8 as the case may be.
10. The payments referred to in paragraphs 6, 7 and 8 will be made concurrently.
11. Except as provided in paragraph 9(a), no Class Member will be approved for more than a single Category.

Claim Deadline

12. Except as otherwise expressly provided in this Distribution Protocol, the Administrator shall not consider a Claim made for the first time after the Initial Claim Deadline except where a Class Member fails to submit a Claim by no fault of her own.
13. Notwithstanding any provision of this Distribution Protocol, the final deadline for submitting Claims under this Distribution Protocol is March 31, 2014, and in no circumstances will the Administrator consider a Claim submitted after March 31, 2014.

Claim Deficiencies

14. Where the Claimant has failed to provide sufficient information or documentation for the Administrator to either approve or deny the Claim, the Administrator shall send a letter (the “Deficiency Letter”) to the Claimant setting out the nature of the deficiencies and requesting that the Claimant cure the deficiencies within 60 days of the date of the letter or else the Claim will be denied.
15. If the Claimant has not cured the deficiencies within 30 days of the date of the Deficiency Letter, the Administrator shall send a second letter to the Claimant setting out the deficiencies remaining to be cured and requesting that the Claimant cure the remaining deficiencies within 60 days of the date of the Deficiency Letter or else the Claim will be denied.
16. If the deficiencies have not been cured within 60 days of the date of the Deficiency Letter or within 60 days of the Initial Claim Deadline, whichever is later, the Administrator shall deny the Claim.
17. A Claimant may apply in writing to the Administrator for an extension of the deadline in paragraph 16. The Claimant must set out the steps taken to cure the deficiencies, the reason why the deficiencies have not been cured and what steps the Claimant proposes to take to cure the deficiencies. Where the Claimant has made reasonable efforts to cure the deficiencies and there is a reasonable possibility that the deficiencies can be cured, the Administrator shall, subject to paragraph 13, extend the deadline for such period as it deems appropriate.

Fund D

18. After the Initial Claim Deadline, the Administrator is authorized to establish a reserve fund (“Fund D”) drawn out of the Settlement Funds with respect to:
 - (a) Claimants who have filed appeals;
 - (b) Claimants who have failed to provide sufficient information or documentation for the Administrator to either approve or deny the Claim; and,

(c) Class Members who, subject to paragraphs 12 and 13, make Claims after the Initial Claim Deadline.

19. Claimants described in paragraphs 18(a) and (b) shall have first priority over the funds in Fund D.
20. Within 30 days after the resolution of all appeals, Class Counsel will bring an application to the Court to determine the disposition of any funds remaining in Fund C and Fund D.

Decisions of the Administrator

21. The Administrator will promptly give notice of its decision in respect of a Claim to a Claimant promptly after the decision is made. A decision by the Administrator in respect of a Claim will be final, subject to the Claimant's right to appeal pursuant to this Distribution Protocol.

Appeals

22. A Claimant may appeal any decision of the Administrator as to eligibility, deficiencies or amount of compensation with respect to her Claim. An appeal of the Administrator's decision must be filed within 30 days of receipt of the decision appealed from, failing which the decision will be final and binding. The appeal will be made to the Court and will be conducted exclusively in writing. The decision of the Court will be final and binding and shall not be subject to any further right of appeal. Notwithstanding that the Administrator has made a decision with respect to a Claim, the Administrator has discretion to allow appeals which it determines will be successful.