

July 10, 2009

Dear Class Member

NOTE TO READER: BY ORDER OF THE ONTARIO SUPERIOR COURT OF JUSTICE, THIS NOTICE IS TO MAILED TO THE LAST KNOWN ADDRESS OF THE CLASS MEMBERS IN THIS CLASS ACTION.

**RE: Farkas v. Sunnybrook & Women's College Health Science Centre
TRUS & Biopsy Class Action
Court File No. 03-CV-259655CP
Notice of \$1.2 Million Settlement & Settlement Approval Hearing - August 24,
2009**

In this class action, pursuant to the Court's certification process, you have been identified as one of the patient class members. The patient class members are patients of Sunnybrook & Women's College Health Sciences Centre ("Sunnybrook") who received a transrectal ultrasound ("TRUS") and prostate biopsy between December 3, 1999 to August 5, 2003.

As you did not previously "opt-out" (that is, elect to be excluded from this proceeding) you are now automatically included in the settlement described below, subject to court approval which has not yet been obtained.

Please read this notice carefully. It affects your legal rights.

1. Summary & Financial Consequences to You

The purpose of this notice is to advise you of the proposed settlement of the class proceeding, your rights as a class member, and how to comment on the proposed settlement.¹

The representative plaintiff George Farkas ("Farkas") and Sunnybrook have reached a proposed agreement to settle Mr. Farkas' claim for damages arising from the alleged improper disinfection of the medical equipment used for the TRUS and prostate biopsy procedure. The lawsuit also alleges that Sunnybrook was negligent in notification and blood testing procedures employed after discovering the improper disinfection procedure.

No one was infected as a result of the disinfection practice. Sunnybrook denies, and has made no admission of, liability as part of this proposed settlement.

Class Counsel - Mr. Farkas' lawsuit was certified as a class proceeding by the order of Justice Cullity on February 4, 2005. The law firms of Roy Elliott O'Connor LLP ("REO") and Koskie Minsky LLP were appointed class counsel by the Court.

Settlement Hearing - The complete terms of the settlement are set out in the settlement agreement. The settlement agreement is subject to court approval and has not yet been approved by the Court. The approval hearing to consider the settlement is scheduled to proceed in Toronto on **August 24, 2009**. A complete copy of the settlement agreement (which sets out the details of the settlement) will be available at www.reolaw.ca.

Settlement Fund - If the Court approves the settlement, your compensation should be paid within 90 days of the hearing date. To settle the case, Sunnybrook has agreed to pay the total amount of **\$1.2 million** to the class comprised of 748 patient class members and an unknown number of spousal class members. From this amount the following will be deducted:

A fund for loss of income claims (\$30,000).

Mr. Farkas' legal fees incurred for the benefit of the class (approximately \$360,000)².

¹ This notice provides only a brief summary of the settlement agreement. In case of a conflict between this notice and the settlement agreement, the terms of the settlement agreement prevail.

The Ontario Ministry of Health's subrogated claim (\$41,000)³.

Expenses of administering the settlement (approximately \$30,000).

The remaining amount of \$739,000 is to be divided among patient class members and spousal class members as follows:

- a) **Patient Class Members** - Depending on the number of class members who respond to this settlement, each patient class member (that is, men who underwent the TRUS and biopsy procedure) will receive at least \$943.85 as part of this settlement; and,
- b) **Spousal Class Members** - Each spouse of a patient class member will receive approximately \$100.

No Tax Payable - As the foregoing amounts are considered compensation for personal injury, they are not taxable.

Settlement Principles - The defendant will pay \$1,200,000 to the settlement fund, none of which will be refunded to the defendant. Patient and spousal class members may choose to donate all, or some (50%), of their compensation to either: i) The University of Toronto Centre for Patient Safety; or ii) Support prostate cancer patient care and research funded by the Sunnybrook Health Sciences Centre Foundation. If they do so, class members will receive a tax receipt in the amount of their donation. **The intention in establishing the donation option is to benefit all patients generally and persons at risk of or affected by prostate illness. The University of Toronto Centre for Patient Safety fosters novel research and education projects aimed at improving patient safety both locally and internationally.**

Distribution of Unclaimed Amounts - In any class action settlement some class members may choose not to file a claim. This results in extra funds to be distributed before the settlement can be finalized. Accordingly, if you elect to receive payment of the compensation, that payment may be increased by a further amount payable at a later date depending on the distribution of any extra funds. If 70% or more of the class members claim compensation, whether by receipt of a personal cheque or by donation, residual amounts of the settlement fund will be distributed 50% to the University of Toronto Centre for Patient Safety and 50% to class members. If fewer than 70% of the class members claim compensation, whether by receipt of a personal cheque or by donation, the extra funds will be donated 100% to the University of Toronto Centre for Patient Safety.

Loss of Income Claims - Sunnybrook has agreed to provide some compensation to class members for loss of income attributable to this proceeding, up to a total amount of \$30,000 for the class. If the value of the approved loss of income claims exceeds \$30,000, that amount will be divided proportionally among approved claims. Amounts paid for loss of income will be taxable.

Public Information Session - As part of the proposed settlement, Sunnybrook has agreed to conduct a public information session for class members to provide information about the infectious diseases that class members were screened for. The time and place of the information session will be announced at a later date.

² Class Counsel's legal fees are subject to court approval. Mr. Farkas agreed to pay class counsel 30% of any settlement or judgment in this proceeding. Class counsel's actual fees and expenses amount to considerably more than the amount claimed.

³ Under the *Health Insurance Act*, Ontario's Ministry of Health may recover its expenses from any lawsuit where it has provided health services arising from the plaintiff's claim. OHIP has calculated its expenses as \$41,000.

2. When Will The Settlement Agreement Be Approved By The Court?

The Court must approve the settlement agreement for it to bind the parties or the class members. A court fairness and settlement approval hearing is scheduled for **August 24, 2009** in Toronto. Class members may attend the settlement hearing and may contact class counsel, as set out below, for the time and place of the hearing. The time and place of the hearing will be posted at www.reolaw.ca.

If the Court is satisfied with the fairness of the settlement, it should be approved by the Court by way of written reasons to be delivered by the Court following the hearing.

If the Court does not approve the settlement agreement, the lawsuit will continue and a further notice will be sent advising you that the settlement agreement has not been approved.

3. Claiming Compensation

If you intend to claim compensation under this settlement, please complete the enclosed claim forms and return them to Roy Elliott O'Connor LLP by fax, email or regular mail at the address below.

If you are claiming the standard amount of compensation and are not advancing a loss of income claim, complete "Form I: No Loss of Income Claim". As set out above, you may either accept a payment by personal cheque or donate all or some of your compensation to either The University of Toronto Centre for Patient Safety, or to support prostate cancer patient care and research funded by the Sunnybrook Health Sciences Centre Foundation.

If you intend to make a claim for a loss of income claim, complete "Form II: Loss of Income Claim". Your claim will be arbitrated.

In the event the Court approves this settlement and you already submitted a claim form, your claim will be processed and you will receive either a cheque or a tax receipt. Class members who do not submit a claim form prior to the settlement approval hearing will be given a further opportunity to do so following the settlement approval hearing.

4. How to Comment on the Settlement

Class members who wish to make submissions to the Court in support of, or in opposition to, the proposed settlement may provide notice to the Court by sending a written submission to REO. REO will forward any such submissions to Sunnybrook and to the Court. Submissions are optional -- no class member is required to make submissions -- and should be delivered to REO at the address below by no later than **August 13, 2009**.

The written submissions should include:

- a) Your name, address and telephone number;
- b) A brief statement of the reasons that you support or oppose the proposed settlement; and
- c) Whether you plan to attend at the settlement approval hearing.

5. Where Can I Obtain Further Information?

PLEASE DO NOT CALL OR CONTACT THE COURT ABOUT THIS CLASS ACTION.

Please address any requests for further information about this action, or any written submissions about the proposed settlement, to:

Roy Elliott O'Connor LLP	Tel:	416-350-2480
2300-200 Front Street W	Fax:	416-362-6204
Toronto ON M5V 3K2	Email:	info@reolaw.ca
Attention: Laura Carey	Web:	www.reolaw.ca

Koskie Minsky LLP	Tel:	1-866-778-7986
20 Queen Street West	Fax:	416-204-2897
Suite 900, Box 52	Email:	sunnybrookclass@kmlaw.ca
Toronto ON M5H 3R3	Web:	www.koskieminsky.com

Attention: Communications Department

THIS NOTICE WAS APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

Farkas v. Sunnybrook & Women's College Health Sciences
Court File No. 03-CV-259655CP

FORM I:- NO LOSS OF INCOME CLAIM

INSTRUCTIONS: if you or your spouse intends to accept compensation under the terms of the proposed settlement agreement without making a loss of income claim, please complete this form. For loss of income claims, please complete Form II – Loss of Income Claim.

Once you complete this form, please send it by email fax or regular mail to:

Attention: Laura Carey

Roy Elliott O'Connor LLP Barristers
200 Front Street, Suite 2300
Toronto Ontario Canada M5V 3K2
Fax: 416 362 6204

Email: info@reolaw.ca

Part 1: Patient Class Member

I, [insert name - please print]_____ confirm that I have reviewed the terms of settlement and choose the following (please check one) option:

- Option A: Cash Compensation** - If you choose option A, you will receive a cheque in the amount of at least \$943.85. As described in the Notice, that amount may increase in the event 70% or more of the patient class members make a claim, whether by receipt of a cheque or by donation, under the settlement agreement.

- Option B: Donation to a Charitable Fund** - If you choose option B, a donation of at least \$943.85 will be made to (please check one):
 - The University of Toronto Centre for Patient Safety; or
 - Sunnybrook Health Science Centre Foundation (support prostate cancer patient care and research)

- You will receive a tax receipt in the amount of your charitable donation.**
- Option C: Cash Compensation & Donation** - If you choose option C, you will receive 50% of your compensation by cheque and the balance will be donated to (please check one):
 - The University of Toronto Centre for Patient Safety; or
 - Sunnybrook Health Sciences Centre Foundation (support prostate cancer patient care and research).

Part 2: Spousal Class Member

I, [insert name - please print]_____ confirm that [insert name of spouse - please print]_____ is my spouse and that my spouse elects the following (check one) option:

- Option A: Cash Compensation** - If your spouse chooses option A, your spouse will receive a cheque in the approximate amount of \$100.
- Option B: Donation to a Charitable Fund**- If your spouse chooses option B, a donation will be made to (please check one):
 - The University of Toronto Centre for Patient Safety; or
 - Sunnybrook Health Science Centre Foundation (support prostate cancer patient care and research).

Your spouse will receive a charitable receipt in the amount of the charitable donation.

Date: _____

Signature: _____

**Farkas v. Sunnybrook & Women's College Health Sciences
Court File No. 03-CV-259655CP**

FORM II: LOSS OF INCOME CLAIM

INSTRUCTIONS: If you intend to advance a claim for loss of income under the terms of the proposed settlement agreement, complete this form.

Under the terms of the settlement agreement, Sunnybrook has agreed to compensate class members for loss of income attributable to the proceeding up to a total amount of \$30,000 for the class.

For example, if you missed work or otherwise lost income as a consequence of being tested for any infectious disease arising from this action please complete the form below. Your claim will then be assessed by arbitrator Shelley L. Timms and you will be advised of the arbitrator's decision within 60 days.

Once you complete this form please send it by email fax or regular mail to:

Attention: Laura Carey

Roy Elliott O'Connor LLP Barristers
200 Front Street, Suite 2300
Toronto Ontario Canada M5V 3K2

Fax: 416 362 6204

Email: info@reolaw.ca

CONTACT:

Name: _____

Address: _____

Unit: _____ Number: _____ Street: _____

City/Town: _____ Prov: _____ Postal Code: _____

DETAILS OF LOSS OF INCOME CLAIM

INSTRUCTIONS: To ease the assessment and determination of your loss of income claim, please provide details of your claim below. REO or the arbitrator may contact you for additional information in order to assess your claim.

Please attach additional sheets and supporting documentation (e.g. receipts, tax documents etc. as necessary.)

Occupation: _____

Amount claimed for loss of income: _____

Details of loss of Income Claim *(Please provide details of your claim. Attach receipts, pay stubs, or any other additional documents as necessary to establish or quantify your claim. REO or the arbitrator may contact you in order to assess your claim.)*:

