

TRUS BIOPSY CLASS ACTIONS

SETTLEMENT AGREEMENT

Between:

GEORGE FARKAS
(hereinafter "Plaintiff")

and

SUNNYBROOK HEALTH SCIENCES CENTRE
(hereinafter "Sunnybrook")

WHEREAS proposed class actions have been commenced by the Plaintiff and Stanley Bath, being Ontario Superior Court File No. 03-CV-259655CP and 03-CV-260950CP (the "Actions");

AND WHEREAS the Plaintiff and Sunnybrook are hereinafter referred to as the "Parties" to this Settlement Agreement;

AND WHEREAS the Parties wish to resolve and settle all matters at issue between them and which have been or could have been raised in the Actions;

AND WHEREAS the Parties understand and acknowledge that this Settlement Agreement including the Annexes hereto must be approved by the Ontario Superior Court of Justice and incorporated into a final judgment approving the Settlement Agreement in the form herein.

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

1.1 The following terms used in this Settlement Agreement have the meanings specified below:

“Actions” means Ontario Court File Nos. 03-CV-259655CP and 03-CV-260950CP.

“Claims Deadline” means the date on which requests for compensation or donation must be postmarked or received by the Settlement Administrator to be effective, which date shall be the first business day ninety (90) days after publication of the Notice of Settlement Approval.

“Class” means the classes certified by order of Justice Cullity on February 4, 2005.

“Court” means the Ontario Superior Court of Justice.

“Execution Date” means the date on which the last party signs this Settlement Agreement.

“Final” with respect to any judgment of the Court, including but not limited to, the Settlement Approval Judgment, means the first business day thirty-five (35) days following the day on which such judgment has been granted and entered, so long as the judgment has not been appealed, been made subject of a leave to appeal application, withdrawn, rescinded, modified, vacated or reversed by the Court. If an appeal from the order or judgment is taken, Final means upon such appeal being finally disposed of.

“Notice of Settlement Approval Hearing” means the notice made to the Class, substantially in the form attached hereto as Annex B.

“OHIP” means the Ontario Ministry of Health and Long-term Care.

“Opt Out” means all persons who opted out of the Class in a timely manner.

“Parties” means the Plaintiff and Sunnybrook.

“Payment Date” means the date the Settlement Approval Judgment is Final.

“Person” means any legal or natural person and includes but is not limited to individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships, limited liability companies, trusts, joint ventures, associations and estates.

“Plaintiffs’ Counsel” means Roy Elliott O’Connor LLP and Koskie Minsky LLP.

“Plaintiff” means the Representative Plaintiff George Farkas.

“Residue” means all amounts described in subsections 2.6 and 2.7.

“Settlement Administrator” means Roy Elliott O'Connor LLP or such other firm as may be appointed by the Court.

“Settlement Agreement” means the agreement set out herein.

“Settlement Approval Judgment” means the judgment substantially in the form attached hereto as Annex A.

“Settlement Class Member” means every Person who is a member of the Class and who is not an Opt-Out.

“Settlement Fund” means the amount paid by Sunnybrook set forth in paragraph 2.1 together with all interest earned thereon.

“Settling Persons” means the Settlement Class Members inclusive of the Plaintiff and their respective *Family Law Act* claimants, heirs, administrators, executors, legal representatives, successors and assigns, whether by operation of law or otherwise, but do not include Opt-Outs.

“Subject Claims” means all claims or other proceedings at law, in equity or under a statute including declaratory or subrogated claims, all causes of action for damages (actual, compensatory, punitive, exemplary or treble), losses, injuries, contribution, indemnity and other relief over, and all claims for interest, costs, disbursements, expenses, taxes including GST, penalties and lawyers' fees, known or unknown, that a Settling Person ever had, now has, or hereafter can, shall or may have to the date hereof and into the future which arise specifically from the facts pleaded in the Actions, and without limiting the generality of the foregoing, Subject Claims includes all claims made, arising from the pleaded facts, or which could have been made, in the Actions.

“Sunnybrook's Counsel” means Borden Ladner Gervais LLP.

“Sunnybrook Persons” means, jointly and severally, Sunnybrook and its affiliates, subsidiaries and related bodies corporate, and past, present and future officers, directors, employees, staff physicians, agents, insurers, predecessors, successors and assigns.

II. SETTLEMENT FUND AND RESIDUE

- 2.1 In consideration of the terms and covenants herein including any claim for costs, Sunnybrook shall pay to the Plaintiff on the Payment Date the sum of one million and two hundred thousand dollars (\$1,200,000) to be held in trust (the “Settlement Fund”) and administered pursuant to Court order.
- 2.2 The Settlement Fund shall be managed and paid out by the Settlement Administrator.

- 2.3 Sunnybrook shall have no liability or responsibility with respect to any conduct of the Settlement Administrator, Settlement Class Members, or Plaintiffs' Counsel, in connection with the use of or administration of the Settlement Fund or otherwise.
- 2.4 The Settlement Fund shall be distributed approximately as follows:
- (i) Patient class members: \$710,000
 - (ii) *FLA* class member claims: \$30,000
 - (iii) OHIP: \$40,000
 - (iv) Loss of income claims: \$30,000
 - (v) Class counsel legal fees/plaintiff honorarium: \$360,000
 - (vi) Administrative cost: \$30,000.
- 2.5 Patient and *FLA* class members shall be provided an option that their portion of the settlement may be donated to: (i) the University of Toronto or the Sunnybrook Health Sciences Centre Foundation, for the restricted purpose of the University of Toronto Patient Safety Centre; or (ii) Sunnybrook Health Sciences Centre Foundation, for the restricted purpose of prostate cancer patient care and research at Sunnybrook Health Sciences Centre.
- 2.6 All amounts neither expressly donated nor taken up by patient and *FLA* class members are "Residue" and, subject to s.2.7 hereof, shall be split 50:50 as between the patient and *FLA* class members and the University of Toronto Patient Safety Centre,
- 2.7 If fewer than 70% of the 748 patient class members submit claims on the Settlement Fund, whether to take money or to donate, by the claims deadline, then the entire Residue shall go to the University of Toronto Patient Safety Centre.

III. EDUCATION SESSION

- 3.1 Sunnybrook shall provide at Sunnybrook a single education session involving an infectious diseases expert, open solely to class members and their respective partners/spouses.

IV. NOTICE OF SETTLEMENT APPROVAL

- 4.1 The cost of all notices to Settlement Class Members (*e.g.*, mail, GARDA, CRA, OHIP searches, *etc.*) shall be paid from the Settlement Fund portion allocated to administration.
- 4.2 Notice of this settlement in a form substantially attached as Annex B shall be provided to the Settlement Class Members by first class mail and by posting the Notice at www.reolaw.ca.
- 4.3 The Parties agree that newspaper notice is not necessary in the circumstances of this case. If the Court does order newspaper notice, then the newspaper notice cost shall be paid by the Hospital.

V. COURT APPROVAL

- 5.1 The Plaintiff will apply for a Settlement Approval Judgment substantially in the form attached hereto as Annex A, for the purpose of obtaining a class settlement and release in favour of Sunnybrook.

VI. RELEASES AND COVENANTS NOT TO SUE

- 6.1 Class counsel shall take all reasonable steps to secure and provide Hospital proof of written release of all OHIP subrogated class member claims arising out of the facts pleaded in the Actions inclusive of past, present and future care costs.
- 6.2 All claims arising out of the facts pleaded in the Actions made or which could have been made in the Actions shall be released without admission of liability and the Actions shall be dismissed without costs.
- 6.3 The Settling Persons:
 - (i) Shall be conclusively deemed to have, and by operation of the Settlement Approval Judgment shall have, fully, finally, and forever released, relinquished and discharged all Subject Claims against all Sunnybrook Persons;

- (ii) Covenant not to assert or prosecute any of the Subject Claims against any of the Sunnybrook Persons in any other action or proceeding in this or any other jurisdiction;
- (iii) Covenant not to assert or prosecute any claim whether for damages, declaration or other relief against any Person who could claim over against any Sunnybrook Person in respect of the Subject Claims whether for damages, declaration or other relief;
- (iv) Covenant that in the event that litigation commenced or continued by a Settling Person against any Person other than the Actions results in a claim over or a judgment against a Sunnybrook Person to pay any amount to any Person, the Settling Person shall not collect any amount in respect of the Subject Claims and will hold harmless, defend, reimburse and indemnify the Sunnybrook Person for the amount of the claim over or the judgment in respect of the Subject Claims;
- (v) Shall forever be enjoined from asserting or prosecuting any of the Subject Claims against any of the Sunnybrook Persons in any other action or proceeding in any jurisdiction arising out of the facts pleaded in the Actions;
- (vi) Covenant not to seek in any manner whatsoever an apportionment of negligence, fault, liability, responsibility or wrongdoing as against the Sunnybrook Persons or any of them; and
- (vii) Shall fully indemnify and hold the Sunnybrook Persons entirely harmless from any and all liability, damages, legal fees, disbursements and costs, with respect to any breach of the foregoing subparagraphs.

6.4 The Settling Persons covenant and undertake not to bring any cause of action, proceeding, claim, action, suit or demand, or in any way to threaten, commence, or continue any proceeding, claim, action, suit or demand, in any jurisdiction, against the Sunnybrook Persons or any of them, in respect of or in relation to the Subject Claims with the sole exception of the Actions against Sunnybrook.

6.5 Notwithstanding any other terms in this Settlement Agreement, it is the intent of the Parties hereto that the Sunnybrook Persons shall not be liable, either at the present or in the future, to make any payment whatsoever to the Settling Persons, or any other Person in respect of the Actions, including costs, other than the amount referred to in paragraph 2.1 hereof. The Settling Persons acknowledge that the Sunnybrook Persons have no further financial exposure to the Settling Persons for any amount of the Plaintiffs' claim in the Actions or for costs.

6.6 The Plaintiff hereby acknowledges that upon payment of the sum of \$1,200,000 referred to in paragraph 2.1 hereof, the Settling Persons will have received full and complete satisfaction of their claims in the Actions.

VII. EXECUTION DATE

7.1 This Agreement becomes binding upon execution by the Parties (“Execution Date”).

VIII. NOTICE

8.1 The Settlement Class shall be notified of the hearing at which the Court will be asked to approve the Settlement Agreement, by way of a notice substantially in the form set out in Annex B. Plaintiffs’ Counsel shall cause the notice to be published and distributed in accordance with Court order.

8.2 In the event this Settlement Agreement is approved by the Court, the notice shall be published and distributed no later than 30 days after the last such Judgment becomes Final.

8.3 The cost of the notices set out above shall be paid from the Settlement Fund, but only after the respective form and content of the notices have been approved by the Court. Any additional notice which is ordered by the Court other than what is set out in the Settlement Agreement (including, but not limited to newspaper notice) is to be paid by the defendant over and above the payment set out in section 2.1

IX. NO OPT-OUT / ADMINISTRATION

9.1 There is no right to opt out of this Settlement Agreement.

9.2 The Settlement Administrator shall manage, process and verify all claims.

9.3 The Settlement Administrator shall provide Sunnybrook’s Counsel and the Court with an accounting of the Settlement Fund including a complete and accurate list of all requests for receipt of payments from the Settlement Fund, all requests for donation from the Settlement Fund and all Residue as defined herein.

X. TERMINATION

10.1 In the event any of the following occurs, this Settlement Agreement is terminated:

- (i) The Court refuses to approve the Settlement Approval Judgment substantially in the form attached hereto as Annex A; or
- (ii) The Judgment in paragraph (i) is reversed, vacated, disapproved, overturned, set aside or substantially modified, by the Court or on appeal.

10.2 If the Settlement Agreement terminates after the Notice of Settlement Approval has been published, a notice of termination will be disseminated in a form and at a time to be agreed to by the Parties and approved by the Court.

10.3 In the event the Settlement Agreement terminates after the Settlement Fund has been paid, any remaining amounts the Settlement Fund shall revert to Sunnybrook. Any reasonable administrative costs incurred prior to the termination of the Settlement Agreement shall be deemed to be non-refundable.

XI. SETTLEMENT APPROVAL AFFIDAVITS

11.1 Plaintiff's Counsel agrees, for the purposes of the Court approval of the Settlement Agreement, to make best efforts to file affidavit evidence in a form satisfactory to Sunnybrook.

11.2 Sunnybrook's Counsel agrees, for the purposes of the Court approval of the Settlement Agreement, to make best efforts to file affidavit evidence in a form satisfactory to the Plaintiff.

XII. DENIAL OF LIABILITY

12.1 Sunnybrook denies all claims made by the Plaintiff against Sunnybrook in the Actions.

12.2 Sunnybrook makes no admission of any liability or wrongdoing with respect to any of the claims made by the Plaintiff.

- 12.3 This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by Sunnybrook, or of the truth of any of the claims or allegations alleged in the Actions or otherwise, and such is specifically denied by Sunnybrook.
- 12.4 In the event that this Settlement Agreement does not become Final or is terminated in accordance with the terms hereof, then the orders or judgments entered pursuant thereto shall be of no force or effect, and the terms of this Settlement Agreement shall not be offered or received in any proceeding for any purpose.
- 12.5 This Settlement Agreement, whether or not it becomes Final, and any and all negotiations, documents and discussions associated with it, shall be without prejudice to the rights of any Party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Sunnybrook or of the truth of any of the claims or allegations, or of any alleged defence, or of any absence of wrongdoing or limitation of damage or injury, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, by any Person, whether in the Actions or in any other action or proceeding.
- 12.6 This Settlement Agreement shall not be offered or received in evidence for any purpose whatsoever, except for enforcement, and shall not be construed as an admission of any kind.
- 12.7 The Parties expressly reserve all of their rights if this Settlement Agreement does not become Final in accordance with the terms of this Settlement Agreement.

XIII. NO REPRESENTATION OR WARRANTY

- 13.1 The Parties have made no representation or warranty regarding any fact, act or omission relevant to the subject-matter of the Actions or otherwise, prior to the Execution Date.

XIV. MISCELLANEOUS PROVISIONS

- 14.1 The Parties acknowledge that it is their intent to cooperate to the extent necessary and in good faith to effectuate and implement all terms and conditions of the Settlement Agreement.
- 14.2 The Settlement Agreement is binding upon, and shall inure to the benefit of the successors and assigns of the Parties hereto and to each Sunnybrook Person.
- 14.3 None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision hereof for purposes of any rule of construction that might cause any provision to be construed against the drafter.
- 14.4 References in this Settlement Agreement to the masculine shall include the feminine and vice versa. References in this Settlement Agreement to the singular shall include the plural and vice versa, as the context requires. Headings in this Settlement Agreement are for convenience of reference only and shall not affect the interpretation of this Settlement Agreement.
- 14.5 References in this Settlement Agreement to any approval, order, judgment or consent of the Court means the Final approval, order, judgment or consent of the Court, as the case may be, following the expiry of any applicable appeal period or, where an appeal has been taken, Final resolution of that appeal.
- 14.6 This Settlement Agreement shall be governed by and construed in accordance with the laws of Canada applicable in the Province of Ontario and the laws of the Province of Ontario, excluding only Ontario's choice of law rules.
- 14.7 The Settlement Agreement and annexes hereto will be considered to have been negotiated, executed and delivered in the Province of Ontario, and the rights and obligations of the Parties will be construed and enforced in accordance with the laws of the Province of Ontario without giving effect to that Province's choice of law principles.

- 14.8 The Court retains jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement. The Parties submit to the jurisdiction of the Court for the purpose of interpreting, implementing and enforcing this Settlement Agreement.
- 14.9 If a dispute arises concerning application or interpretation of this Settlement Agreement, the Parties shall attempt to resolve the matter through good faith negotiations. If the parties cannot agree, the dispute is to be determined by the Court and directions can be sought from the Court at any time about the implementation of the settlement.
- 14.10 This Settlement Agreement constitutes the entire agreement between the Parties and supersedes all previous documents, negotiations, arrangements, undertakings and understandings related to its subject matter.
- 14.11 The Settlement Agreement may not be amended or modified except by a written instrument signed by or on behalf of all Parties or their successors or by their counsel.
- 14.12 Plaintiffs' Counsel, on behalf of the proposed Settlement Class is expressly authorized by the Plaintiff to take all appropriate actions required or permitted to be taken by them pursuant to the Settlement Agreement to effectuate its terms, and to enter into any modifications or amendments to the Settlement Agreement on behalf of the Plaintiff which they deem appropriate.
- 14.13 Each counsel or other Person executing the Settlement Agreement on behalf of any Party warrants that such Person has the full authority to do so. All notices hereunder shall be delivered to the Parties' respective counsel or such other addressee as any Party may designate in accordance with this Settlement Agreement.
- 14.14 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

IN WITNESS WHEREOF the Parties hereto, have executed this Agreement as of the date written below.

July 10, 2009
Date:

[Signature]
Witness:

GEORGE FARKAS

[Signature]

July 13, 2009
Date:

[Signature]
Witness:

BORDEN LADNER GERVAIS LLP

per: [Signature]
Barry Glaspell
Lawyers for Sunnybrook

LIST OF ANNEXES

- A. Settlement Approval Judgment
- B. Notice of Proposed Settlement Approval Hearing

ANNEX A

Court File No. 03-CV-259655CP

ONTARIO

SUPERIOR COURT OF JUSTICE

**THE HONOURABLE
JUSTICE PAUL PERELL**

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**MONDAY, THE 24TH DAY OF
AUGUST 2009**

B E T W E E N:

GEORGE FARKAS

Plaintiff

- and -

SUNNYBROOK & WOMEN'S COLLEGE HEALTH SCIENCES CENTRE

Defendant

Proceeding pursuant to the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION made by the Plaintiff for an order approving and implementing the Settlement Agreement dated June 13, 2009 entered into between the Defendant and the Plaintiff, was heard this day at the Court House at 361 University Avenue, Toronto.

ON READING the materials filed, including the affidavit of [NTD: **Insert**], the Factum and Book of Authorities of the Plaintiff, and the Factum and Book of Authorities of the Defendant filed herein, and

ON HEARING the submissions of counsel for the Plaintiff and of the Defendant, and for written reasons delivered this day,

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Judgment, the capitalized terms shall have the same meaning as that found in paragraph 1.1 of the Settlement Agreement dated June 13, 2009 entered into between the Defendant and the Plaintiff.
2. **THIS COURT DECLARES AND ADJUDGES** that the Settlement Agreement annexed hereto as Schedule “A” is fair, reasonable and in the best interests of the Settlement Class.
3. **THIS COURT DECLARES AND ADJUDGES** that the Settlement Agreement in its entirety including preambles, annexes and amendments shall form part of this Judgment and is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT ORDERS** that Roy Elliot O’Connor LLP is hereby appointed as Settlement Administrator.
5. **THIS COURT ORDERS** that the Settlement Fund shall be held in trust by the Settlement Administrator and shall be paid and administered in accordance with the terms of the Settlement Agreement.
6. **THIS COURT ORDERS** that the Settlement Class shall be given notice of this Judgment in the form attached hereto as Schedule “B” (“Notice”) by first class mail and by posting the Notice at www.reolaw.ca.
7. **THIS COURT ORDERS AND DECLARES** that the Notice as ordered herein constitutes fair and reasonable notice to the Settlement Class and satisfies the requirements of the *Class Proceedings Act, 1992*.

8. **THIS COURT ORDERS** that the cost of the Notice shall be paid from the Settlement Fund.

9. **THIS COURT DECLARES AND ADJUDGES** that this Judgment including the Settlement Agreement is binding upon each member of the Settlement Class.

10. **THIS COURT ORDERS** that each Class Member who wishes to participate in the Settlement Agreement must submit a Claim Form to the Settlement Administrator on or before the Claims Bar Date:

By mail to: The Administrator
 c/o REO

Or by fax to:

Or by email to:

11. **THIS COURT ORDERS AND DECLARES** that each Class Member who does not submit a Claim Form to the Settlement Administrator on or before the Claims Bar Date and his spousal Class Member, and each of their respective heirs, executors and assigns, shall forever be barred from participating in the receipt of funds from the Settlement Agreement but shall, in all other respects, be bound by the terms of this Judgment inclusive of the Settlement Agreement.

12. **THIS COURT ORDERS** that on or before ●, 2009 the Settlement Administrator shall provide the Defendant with a complete list of requests for compensation, in particular each payment and each donation, as well as the Residue described in Section 2 of the Settlement Agreement.

13. **THIS COURT ORDERS** that the Settling Persons:

- (i) Shall be conclusively deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all Subject Claims against all Sunnybrook Persons;
- (ii) Covenant not to assert or prosecute any of the Subject Claims against any of the Sunnybrook Persons in any other action or proceeding in this or any other jurisdiction;
- (iii) Covenant not to assert or prosecute any claim whether for damages, declaration or other relief against any Person who could claim over against any Sunnybrook Person in respect of the Subject Claims whether for damages, declaration or other relief;
- (iv) Covenant that in the event that litigation commenced or continued by a Settling Person against any Person, results in a claim over or a judgment against a Sunnybrook Person to pay any amount to any Person, the Settling Person shall not collect any amount in respect of the Subject Claims and will hold harmless, defend, reimburse and indemnify the Sunnybrook Person for the amount of the claim over or the judgment in respect of the Subject Claims;
- (v) Shall forever be enjoined from asserting or prosecuting any of the Subject Claims against any of the Sunnybrook Persons in any other action or proceeding in any jurisdiction;
- (vi) Covenant not to seek an apportionment of negligence, fault, liability, responsibility or wrongdoing as against the Sunnybrook Persons or any of them; and
- (vii) Shall fully indemnify and hold the Sunnybrook Persons entirely harmless from any and all liability, damages, legal fees, disbursements and costs, with respect to any breach of the foregoing subparagraphs.

14. **THIS COURT ORDERS AND DECLARES** that in the event this Judgment, or the Settlement Agreement is reversed, vacated, disapproved, overturned, set aside, or modified by the Court or on appeal, or is otherwise terminated, this Judgment shall be null and void and of no force and effect, and without prejudice to the rights of all parties to the Actions to continue as though this Judgment had not been made.

15. **THIS COURT ORDERS** that if the Settlement Agreement terminates pursuant to its terms after the Notice has been published, a notice of termination shall be disseminated in a form and at a time to be agreed by the Parties and approved by the Court.

16. **THIS COURT ORDERS** that in the event the Settlement Agreement terminates after the Settlement Fund has been paid, the Settlement Fund shall revert to the Defendant.

17. **THIS COURT ORDERS** that neither this Judgment nor any aspect of the Settlement Agreement is to be construed or deemed an admission of negligence, fault, liability, responsibility or wrongdoing by or against the Defendant or the Sunnybrook Persons.

18. **THIS COURT ORDERS** that there shall be no costs of this motion or of the Actions.

19. **THIS COURT ORDERS AND ADJUDGES** that the subrogated claims of the Minister of Health and Long Term Care and of the Ontario Health Insurance Plan for the Class Members are dismissed with prejudice and without costs.

20. **THIS COURT ORDERS AND ADJUDGES** that save as aforesaid, the Actions shall be and are hereby dismissed with prejudice and without costs.

PERELL J.

ANNEX B

Insert Date

VIA REGULAR MAIL

{INSERT NAME & ADDRESS OF CLASS MEMBER-}

**RE: Farkas v. Sunnybrook & Women's College Health Science – 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) A fund for loss of income claims (\$30,000).
- (b) 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.

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: 1-866-423-1362
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: 416-977-8353
20 Queen Street West Fax: 416-977-3316
Suite 900, Box 52 Email: contactus@kmlaw.ca
Toronto ON M5H 3R3 Web:www.koskieminsky.com
Attention: _____

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 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 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.*):
