

**LONG FORM NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT**

**Did you and/or your spouse undergo Artificial Insemination treatment with, or entrust your semen to Dr. Norman Barwin, resulting in the birth of a child whose biological paternity does not match your consent?**

**If YES, a Class Action may affect your, your spouse and your child’s rights.**

**THIS IS A FORMAL NOTICE, APPROVED BY THE COURT, OF CERTIFICATION FOR A PROPOSED SETTLEMENT OF CLASS ACTION. PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR, YOUR SPOUSE AND YOUR CHILD’S RIGHTS.**

<b>You may:</b>		<b>Date/Deadline</b>
PROVIDE SAMPLE TO DNA DATABASE IN ORDER TO OPT OUT	Contact Class Counsel and sign consent to participate in the DNA Database and make arrangements to provide a DNA sample to OrchidPro – DNA.	August 3, 2021 to September 15, 2021
OPT OUT & EXCLUDE YOURSELF FROM THIS ACTION	Provide completed opt-out form to Administrator accompanied by DNA test confirming a match. If you do this, you are not entitled to any of the settlement benefits of this class action, but you maintain your right to sue Dr. Barwin in regard to your own claim.	October 14, 2021
FIND A DNA MATCH FOR PERSONAL REASONS OR TO PURSUE A CLAIM IN THIS CLASS ACTION	Contact Class Counsel and sign consent to participate in the DNA Database and make arrangements to provide a DNA sample to OrchidPro – DNA.	August 3, 2021 to February 15, 2022
COMMENT	Write to the Court to object to the settlement and/or class counsel’s fees.	October 14, 2021
APPEAR AT THE VIRTUAL HEARING	You are not required to enter an appearance in the lawsuit in order to participate in the proposed settlement approval hearing, but you may enter an appearance on your own or through your own lawyer in addition to filing an objection if you do not opt out. You can ask to speak in Court at the approval hearing about the proposed settlement.	November 1, 2021

**PURPOSE OF THIS NOTICE**

The purpose of this Notice is to inform Class Members (defined below) of their rights and options in respect of a settlement agreement that resolves the litigation, described below, and will provide compensation to Class Members who submit valid claims.

If you would like more details or would like a copy of the Statements of Claim or Settlement Agreement, they are available at [www.barwinclassaction.ca](http://www.barwinclassaction.ca) or a copy can be obtained by contacting Class Counsel as listed below or by contacting the Claims Administrator.

**THE LITIGATION**

On November 1, 2016, the Action was issued in the Ontario Superior Court of Justice as a proposed class action. The Action is styled as: *Davina Dixon, Daniel Dixon, and Rebecca Dixon v. Dr. Norman Barwin*, Court File No. 16-70454CP.

The action alleges Dr. Barwin's patients in Canada gave him consent to use specific semen for artificial insemination ("AI") procedures administered by him (or at another fertility clinic with semen previously stored with him) and generally for the safe-keeping of semen entrusted to him. The claim alleges that Dr. Barwin used semen in the AI procedures that did not accord with that consent or failed to safe-keep the semen entrusted to him in breach of his common law duties of care, among other things, resulting in the birth of children whose biological fathers do not accord with the consents provided by the relevant patients.

The Defendant denies the allegations in the claim and that there is any basis for liability.

The Court has not taken any position as to the truth or merits of the claims or defences of the parties.

On July 28, 2021, the Court certified this action as a class proceeding for the purposes of settlement. If you think you fall into one of the class definitions described below, you could be bound by the settlement.

The Court will be holding a hearing to decide whether to approve this settlement. The hearing will take place virtually over Zoom on November 1, 2021 at 10:00AM. The Court will decide whether the settlement is fair, reasonable, and in the best interests of the Class Members.

### WHO QUALIFIES

You may qualify for compensation if you fall under one of the following classes:

**Mothers Class:** All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.

#### **Spouse/Partner/Former Patient Class**

- a. All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child conceived during the Class Period and born of the AI does not accord with their said agreement; and
  - b. All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.
2. **Children Class:** All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

### SUMMARY OF THE SETTLEMENT

The settlement amount is \$13,375,000.00. Legal fees, disbursements, applicable taxes, and administration costs will be deducted from the settlement amount.

Compensation cannot be provided until and unless the settlement is fully approved, including resolving any appeals in favour of upholding the settlement. Since we do not know precisely when compensation will be available, please check [www.barwinclassaction.ca](http://www.barwinclassaction.ca) regularly for updates regarding the settlement.

Under the Plan of Allocation, a Class Member must qualify for one of the following four categories (the "Harm Categories") to receive compensation:

**Harm Category 1:** Cases where a couple went to see Dr. Barwin (typically husband and wife) and where the couple consented to the Spouse/Partner's semen to be used in the process of artificial insemination. Claimants will qualify for compensation where they have DNA evidence showing that the child or children conceived with Dr. Barwin's assistance or with semen previously entrusted to Dr. Barwin is/are not the biological child of the man in the couple.

The Claimants in this category include, the Mother, the Spouse/Partner and their Child(ren) conceived with semen other than the Spouse/Partner's semen.

Mother Class	up to \$50,000
Spouse/Partner Class	up to \$50,000
Children Class	up to \$40,000
In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under this category, they will be entitled up to a further \$10,000 each, in total.	

**Harm Category 2:** Cases where a parent or parent(s) had one or more children by way of artificial insemination administered by Dr. Barwin and where the couple consented to a specific donor or donors being used in the artificial insemination procedure(s). Claimants will qualify for compensation where they have DNA evidence demonstrating that (a) their child or children do not match their semen donor; or (b) the parent(s) consented to the same donor being used for all of their children and the children do not share the same semen donor. In some cases, Claimants may prove their case by way of reliable evidence other than a legal DNA tests where, for instance, they are unable to locate their semen donor.

The Claimants in this category include, the Mother, the Spouse/Partner of the mother and any Child(ren) who were conceived by artificial insemination with semen other than the semen consented to by their Mother.

**Harm Category 2A:**

In cases where the Child(ren) is/are the biological offspring of Dr. Barwin:

Mother Class	up to \$40,000
Spouse/Partner Class	up to \$40,000
Children Class	up to \$30,000

**Harm Category 2B:**

In cases where the biological father has been identified otherwise or not all:

Mother Class	up to \$30,000
Spouse/Partner Class	up to \$30,000
Children Class	up to \$30,000
In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under either Harm Category 2A and/or 2B, they will be entitled up to a further \$10,000 each, in total.	

**Harm Category 3:** Cases where an individual entrusted semen with Dr. Barwin for the purposes of storage and safe-keeping or other specified purpose and that semen resulted in the conception of one or more children for another unrelated patient. Claimants will qualify for compensation where they provide DNA evidence that the semen entrusted with Dr. Barwin resulted in the conception and birth of another unrelated patient’s child or children. Anonymous semen donors are excluded from this claim.

The Claimants in this category are the Former Patients who entrusted the semen with Dr. Barwin.

Former Patient	up to \$25,000
In cases where there is more than one such child conceived using the Former Patient’s semen, up to a further \$5,000 per additional child up to a maximum of \$10,000 in total.	

The Class Member will need to attach DNA or other relevant evidence that proves he or she qualifies for one of the Harm Categories.

The settlement does not include semen donors or individuals who left semen with Dr. Barwin and consented to that semen being used on other patients.

### HOW MUCH COMPENSATION YOU MAY RECEIVE

If you qualify for one of the three Harm Categories, the amount of compensation you receive will depend on the total number of eligible claimants. You may receive up to the following amounts:

<b><u>Mother Class</u></b>	
<b>Harm Category 1</b>	up to \$50,000
<b>Harm Category 2A</b>	up to \$40,000
<b>Harm Category 2B</b>	up to \$30,000
In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
<b><u>Spouse/Partner/Former Patient Class</u></b>	
<b>Harm Category 1</b>	up to \$50,000
<b>Harm Category 2A</b>	up to \$40,000
<b>Harm Category 2B</b>	up to \$30,000
In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
<b><u>Child Class</u></b>	
<b>Harm Category 1</b>	up to \$40,000.00
<b>Harm Category 2A and 2B</b>	up to \$30,000.00

There may not be sufficient funds to compensate all Claimants on the basis of the values set out above. In that scenario, the value of each category will be adjusted downward such that each Claimant receives the proportionate share of the settlement based on his or her Harm Category.

Other than as provided above, a Claimant may not recover twice under the Harm Categories. If a Claimant qualifies for more than one Harm Category, the Administrator will assign the Claimant to the Harm Category that provides the Claimant with the highest amount of compensation for which they qualify.

### RELEASE OF THE CLASS MEMBERS' CLAIMS

In exchange for compensation, the Action will be dismissed and each Class Member will release all of his or her claims including all *Family Law Act* and subrogated claims against the Defendant arising from the subject matter of the Action.

### PROVIDING COMMENTS TO THE COURT REGARDING THE SETTLEMENT

If you want to tell the Court what you think about the proposed settlement or speak to the Court at the Approval Hearing Date, Class Counsel must receive your submissions by email at [barwinclassaction@ricepoint.com](mailto:barwinclassaction@ricepoint.com) **no later than October 14, 2021**. The written submissions must state the nature of any comments or objections, and whether you intend to appear at the settlement approval hearing. The written submission of any Class Member must include: (a) a heading which refers to the Action; (b) the commenter's full name, telephone number, email address, and address (the commenter's actual residential address); (c) if represented by counsel, the full name, telephone number, and address of all counsel; (d) all of the reasons for his or her comments; (e) whether the commenter intends to appear at the Approval Hearing on his or her own behalf or through counsel; (f) a statement that the commenter is a Class Member, including the nature of his or her claim and any DNA evidence to prove his or her claim; and (g) the commenter's signature. Supporting documents may be attached to the written submission. If any testimony is proposed to be given in support of the comment at the Approval Hearing, the names of all persons who will testify must be provided for in the written submission.

You may (but do not need to) attend the Approval Hearing. If you wish to attend the hearing, please contact Class Counsel for details.

## OPTING OUT OF THE CLASS ACTION

You can choose to exclude yourself from the Class Action (“opt out”). You can opt out by delivering by mail, courier, or personal delivery an Opt Out Form to the Claims Administrator at:

Mailing Address:

RicePoint Administration Inc.  
P.O. Box 4454, Toronto Station A  
25 The Esplanade  
Toronto, ON M5W 4B1

Courier Address:

RicePoint Administration Inc.  
100 University Ave.  
8th Floor  
Toronto, ON M5J 2Y1

Along with your Opt Out Form, you must include:

- A notarized copy of government issued photo identification.
- An Orchid Pro Legal Chain of Custody DNA test that shows the nature of your claim, and if not possible to obtain, the next best evidence.

If you opt out:

- You will not be eligible to receive any compensation or benefits from the settlement or the class action, but
- You will be able to start your own case against the defendant regarding the claims at issue in the action. Applicable limitation periods will resume running against you. You should consult with another lawyer at your cost if you wish to pursue your own claim.

If you do nothing, and so do not opt out:

- You will remain eligible to receive compensation from the class action, but
- You will not be able to start your own case against the defendant regarding the claims at issue in the class action.

This is your only chance to exclude yourself or opt out of the class action. You will not be provided with another chance to opt out.

To properly and timely opt out of the action, the Opt Out Form must be filled out and postmarked by **no later than October 14, 2021**.

Please visit [www.barwinclassaction.ca](http://www.barwinclassaction.ca) to download a copy of the Opt Out Form.

If you have decided you **do not wish to participate in the class action** and you also **do not wish to start your own claim** against Dr. Barwin, **you do not need to opt out or do anything at all**.

### DNA DATABASE

A portion of the settlement funds will be used to set up and operate a DNA Database that will allow Class Members to test their DNA against each other as well as against individuals who stored their semen with the Defendant. The primary purpose of the DNA Database will be to provide the Children Class with the opportunity to identify their biological fathers, obtain medical health history, and locate half-siblings.

However if a match or matches are found, you could also be eligible for compensation under Harm Category 3.

If you left semen with Dr. Barwin, and you are concerned that your semen may have resulted in the conception of a child or children for another patient, you may participate in the DNA database that will be available with OrchidPro DNA laboratories. The database will allow you to test your DNA against Class Members who are searching for their biological fathers/their donors. If you match against a Class Member in the DNA database, you may have a claim in the Class Action.

If you think you fall into this category of persons and are interested in participating in the DNA database, your choices are:

- A. Participate in the DNA database for the purposes of permitting others in the database to discover whether there are any matches with you even if you are not interested in making any claim, either in this class action or personally;
- B. Participate in the DNA database for the purposes of discovering whether you are an eligible claimant in order to stay in the class action and make a claim for compensation; OR
- C. Participate in the DNA database for the purposes of discovering whether you are an eligible claimant in order to opt out and exclude yourself from this class action and any potential compensation provided by it.

If you choose option “A” or “B”, you may participate in the DNA database at any time during its operation between August 3, 2021 and February 15, 2022.

If you choose option “C” because you wish to opt out, you must participate in the DNA database and provide your DNA sample by no later than September 15, 2021. Class Counsel can assist you with the DNA Database process.

You will have to complete a Disclosure and Consent to Participate form to participate in the DNA Database. If you left semen with Dr. Barwin, you will be asked to provide details of your medical health history that can be provided to the Children Class member in the event of a match.

The DNA Database will run from August 3, 2021 until February 15, 2022.

We invite semen donors to participate in the DNA Database in order to assist members of the Children Class to possibly find out their medical history. However, anyone who left semen with Dr. Barwin for the purposes of semen donation and consented to that semen being used on other patients will not qualify for compensation in the Class Action.

To obtain a copy of the forms you will need to complete to participate in the DNA Database, visit [www.barwinclassaction.ca](http://www.barwinclassaction.ca).

### LEGAL FEES

**Class Counsel have requested legal fees, expenses and applicable taxes in the amount of \$3,375,000.** Class Counsel were retained on a contingency basis. Class Counsel were responsible for funding all disbursements incurred in pursuing this litigation. Payment of Class Counsel’s fees will require Court approval.

Class Counsel will assist Class Members in completing the Claim Forms and making their claims. Class Members are not liable for any legal fees incurred to date by Class Counsel or that will be incurred during the claims administration process.

Class Members may retain their own lawyers at their own expense but you certainly are not required to do so. Any questions about this Settlement, individual claims, or any related issues should be directed to Class Counsel at the contact information listed below.

### FURTHER INFORMATION

To obtain a complete copy of the Statement of Claim, the Settlement Agreement, DNA Database Forms, a Claim Form, an Opt Out Form or other documents, visit [www.barwinclassaction.ca](http://www.barwinclassaction.ca). Once the settlement is approved, you may submit a Claim Form online.

For further information, please contact the Claims Administrator, toll free, at 1-866-753-2594.

You may also contact Class Counsel as follows:

Peter Cronyn Tel: 613-231-8213 Fax: 613-788-3659 <a href="mailto:peter.cronyn@nelliganlaw.ca">peter.cronyn@nelliganlaw.ca</a>	Jessica Fullerton Tel: 613-231-8366 Fax: 613-788-3651 <a href="mailto:Jessica.fullerton@nelliganlaw.ca">Jessica.fullerton@nelliganlaw.ca</a>
Frances Shapiro Munn Tel: 613-231-8355 Fax: 613-788-3697 <a href="mailto:frances.shapiro@nelliganlaw.ca">frances.shapiro@nelliganlaw.ca</a>	Robyn Beaulne – law clerk Tel: 613-231-8214 Fax: 613-788-2370 <a href="mailto:robyn.beaulne@nelliganlaw.ca">robyn.beaulne@nelliganlaw.ca</a>

There will be no further notice from the Administrator about this settlement unless the settlement is not approved.