

## **Plan of Allocation**

1. The following definitions apply in this Schedule:

- (a) “Administrator” means a person or entity hired to administer the claims made pursuant to this Plan of Allocation.
- (b) “Claim” means the claim of a Class Member or his or her representative submitted on a Claim Form.
- (c) “Claimant” means a Class Member who has not opted out and who has submitted a Claim Form.
- (d) “Claim period” means the time period in which Class Members may submit a Claim Form to the Administrator, which will run from the Court Approval Date to the Claims Bar Deadline;
- (e) “Class or Class Members” means a natural person who falls into one of the following classes:

- i. 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.

- ii. 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 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.

iii. **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.

(f) “Class Period” means the period from July 1, 1973 through December 31, 2012;

(g) “Court Approval Date” means the later of:

i. 31 days after the date on which the Ontario Superior Court of Justice issues the Approval Order; and

ii. The disposition of any appeals from the Approval Order.

(h) “Excluded Claim” means a Claim by a person who has previously and validly opted out of the Action in writing or who has previously settled a claim against the Defendant and executed a release in favour of the Defendant in relation to matters that are the subject of this Action.

(i) “Settlement Fund” means the \$13.375 million the Defendant has agreed to pay in full settlement of the Action inclusive of claims, counsel fee, disbursements, administration costs, notice plan costs, and all applicable taxes.

2. All other capitalized terms used in this Plan of Allocation have the same meaning as in the Settlement Agreement.

3. Any person who wishes to claim compensation will provide the Administrator with a Claim Form no later than 90 days after the date on which the Approval Order becomes a Final Order. If the Administrator does not receive a Claim Form from a Class Member by the deadline, then the Class Member shall not be eligible for any compensation.

4. The Claimant will complete the Claim Form commensurate with their class. There will be a Claim Form for each of the Mothers Class, the Spouse/Partner/Patient Class, and the Children Class.

5. The Claim Form will require all Claimants to provide a notarized copy of government issued identification and up to date contact information. Claimants will also be required provide the location where they saw Dr. Barwin and the year(s) they saw Dr. Barwin.
6. Claimants who complete the Claim Form will be required to identify the nature of their harm. The Claim Form provides for three broad categories of harm (the “Harm Categories”) and 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 at 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.	

7. Once the Administrator has verified that the Claimant is eligible for compensation and the Claim Period has terminated, the Administrator will assign the Claimant to one of the following levels of compensation:

<b><u>Mother Class</u></b>	
<b>Harm Category 1</b>	up to \$50,000.00
<b>Harm Category 2A</b>	up to \$40,000.00
<b>Harm Category 2B</b>	up to \$30,000.00
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 \$50,000.00
<b>Harm Category 2A</b>	up to \$40,000.00
<b>Harm Category 2B</b>	up to \$30,000.00

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>Harm Category 3</b>	up to \$25,000.00
In cases of Harm Category 3, where there is more than one child conceived using the Former Patient's semen, up to \$5,000 per additional child up to a maximum of \$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

8. If there are not enough funds in the Settlement Fund to compensate all Claimants on the basis of the values set out above, the value of each category shall be adjusted downward such that each Claimant receives the proportionate share of the Settlement Fund based on his or her Harm Category.
9. 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.
10. There will be no compensation for an Excluded Claim.
11. Claimants completing the Claim Form will be required to provide a narrative or description of the events leading to their claim and attach the DNA or other compelling evidence that proves their claim.
12. Claimants will be required to swear a declaration that all of the information they provide on the Claim Form is true, accurate, and complete.

13. If a Class Member is a minor then the Claim Form may be completed by the Class Member's parent or legal guardian. If the Class Member is 18 years or older and lacks capacity then the Claim Form may be completed by the Class Member's Guardian for Personal Care or litigation guardian.
14. If a Class Member has died then the Claim Form may be completed by the legal executor of his or her Estate. A deceased Class Member will only be entitled to compensation if he or she discovered his or her claim prior to his or her death. Deceased Class Members who died without knowledge of their claims are presumed to have suffered no damages and will not be entitled to compensation.
15. The Administrator will review each Claim Form and verify that the Claimant is eligible for compensation as follows:
  - (a) The Administrator must be satisfied that the Claimant was a former patient of Dr. Barwin or, in the case of Children Class, the Claimant's parent(s) was/were a patient of Dr. Barwin. In making this determination, the Administrator will review the clinical notes and records submitted with the Claim Form, if any, the description/narrative of events provided by the Claimant, and request a review of the electronic database of Dr. Barwin's patients by Gowling WLG to provide any available patient information relevant to the Claimant.
  - (b) The Administrator must be satisfied that the Claimant has provided DNA or similar evidence that demonstrates the Claimant qualifies for one of the Harm Categories.
  - (c) The Administrator must be satisfied that the Claimant is not an Excluded Claim.
  - (d) Where a Claim is brought on behalf of a minor, the Administrator must be satisfied that the parent or legal guardian has the authority to act on behalf of the minor Class Member.
  - (e) Where a Claim is brought on behalf of an individual who is 18 years of age or older and who lacks capacity, the Administrator must be satisfied that the Guardian for Personal Care or litigation guardian has the authority to act on behalf of the individual who lacks capacity.
  - (f) Where a claim is brought on behalf of an Estate, the Administrator must be satisfied that the individual filing the Claim Form has the requisite authority to do so.

16. The Administrator will mail the individual compensation cheques to the Claimants at the postal addresses indicated on the Claim Forms within 30 days following the Claims Bar Deadline. If a Claimant does not cash a cheque within six months after the date of the cheque, the Claimant will forfeit the right to compensation and the funds will be distributed in accordance with paragraph 5.13 of the Settlement Agreement. Thirty days prior to the six month forfeit period, the Administrator will:
  - (a) Provide Class Counsel with a list of Claimants who have not cashed their compensation cheques;
  - (b) Send the Claimant a further letter (copied to Class Counsel) advising the Claimant that he or she has 30 days to cash the compensation cheque; and
  - (c) Provide an accounting to Class Counsel of any interest accrued by the Administrator in relation to any monies it has held pending the clearance or expiration of all cheques.
17. The claims process is intended to be expeditious, cost effective and “user friendly” and to minimize the burden on the Class Members. The Administrator will, in the absence of reasonable grounds to the contrary, assume the Class Members to be acting honestly and in good faith.
18. If a Claim Form contains minor omissions or errors, the Administrator will correct those omissions or errors if the information necessary to correct the errors or omission is readily available to the Administrator.
19. The claims process is also intended to prevent fraud and abuse. If the Administrator believes the claim is fraudulent or contains intentional errors which would materially exaggerate the Class Member’s claim then the Administrator will disallow the claim in its entirety.
20. If a Claimant wishes to dispute his or her Harm Category, his or her individual compensation, or any other finding or determination of the Administrator, including the



decision to disallow a claim in its entirety, he or she may request the Referee reconsider the Administrator's decision by way of administrative review.

21. Any request for reconsideration must be sent to the Administrator within 21 days of any finding or determination by the Administrator. If the Administrator does not receive a request for reconsideration within this time period, the Claimant is deemed to accept the Administrator's determination and the determination will be final and binding and not subject to further review by the Referee or any court or tribunal.
22. Where a Claimant files a request for reconsideration with the Administrator, the Administrator will advise Class Counsel of the request and provide the Referee with a copy of the Claimant's Claim Form, the Claimant's request for reconsideration, and a copy of its decision or determination.
23. Following the administrative review, the Referee will advise the Claimant of its determination of the request for reconsideration.
24. The determination of the Referee is final and binding and is not subject to further review by any court or tribunal.