

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM)
JUSTICE ALEXANDRA HOY) FRIDAY THE 14TH DAY
OF DECEMBER, 2007

B E T W E E N

AUDRA JEANETTE BELLAIRE, CATHERINE MARIE FRAUENLOB,
SANDRA LaROCCA, CLAUDIA PAYNE, YVONNE THOMSON,
STEVEN CHARLES BELLAIRE and ANDREW FRAUENLOB

Plaintiffs

and

SALIM DAYA and HAMILTON HEALTH SCIENCES CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION, made by the plaintiffs for an order certifying the Action as a class proceeding, approving the proposed settlement, and approving class counsel fees and disbursements, was heard on November 27, 2007 at the Court House, 393 University Avenue, Toronto, Ontario.

ON READING the materials filed, including the following:

- (a) the notice of motion and record returnable November 27, 2007;
- (b) plaintiffs supplementary approval motion record; and
- (c) plaintiffs revised certification record,

AND ON HEARING the submissions of counsel for the plaintiffs, the defendants and The Children's Lawyer and the Public Guardian and Trustee,

AND ON HEARING the submissions of one objector,

I. THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the following definitions are applicable:

- (a) **"Action"** means this action commenced in the Ontario Superior Court of Justice at Toronto;
- (b) **"Administrator"** means Sutts, Strosberg LLP;
- (c) **"Claim Forms"** means claim forms which are substantially in accordance with the Shortform Claim Form and the Longform Claim Form contained in the Shortform Claim Application Package and Longform Claim Application Package attached hereto as Schedules "C" and "D";
- (d) **"Claims Bar Date"** means May 30, 2008, or such later date as fixed by the court;
- (e) **"Class" or "Class Members"** means those women who underwent a Tompkins metroplasty performed by **Daya** at the **Hospital** during the period January 1, 1990 to March 31, 2004, inclusive;
- (f) **"Class Counsel"** means Scarfone Hawkins LLP, Stanley Tick and Associates and Sutts, Strosberg LLP;
- (g) **"Daya"** means Dr. Salim Daya;
- (h) **"Deadline for Opting Out of the Action"** means March 31, 2008, or such later date as fixed by the court;
- (i) **"Distribution Plan"** means the plan for distributing the proceeds of the settlement as amended, attached hereto as Schedule "A";

- (j) **“Family Class” or “Family Class Members”** means the living spouse, child, grandchild, parent, grandparent or sibling (as defined in s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.4) of each **Class Member** who was alive on the date the **Class Member** first underwent a Tompkins metroplasty performed by **Daya** at the **Hospital** in the period January 1, 1990 to March 31, 2004, inclusive;
- (k) **“Hospital”** means Hamilton Health Sciences Corporation;
- (l) **“Master List”** means the list of names of 185 women who underwent a Tompkins metroplasty performed by **Daya** at the **Hospital** during the period January 1, 1990 to March 31, 2004, inclusive delivered to the court by the **Hospital** in accordance with the order of this court dated September 27, 2007;
- (m) **“Notice”** means a notice substantially in the form of the notice attached hereto as Schedule “B”;
- (n) **“Released Parties”** means the defendants and their respective past and present officers, directors, employees, servants, agents, successors, trustees, heirs, executors, administrators and assigns;
- (o) **“Schedule derived from the Master List”** means the schedule listing each **Class Member** named on the **Master List** who did not successfully opt out of the **Action**;
- (p) **“Schedule derived from the Supplementary List”** means the schedule listing each **Class Member** named on the **Supplementary List** who did not successfully opt out of the **Action**; and
- (q) **“Supplementary List”** means the list of names of 4 women who underwent a Tompkins metroplasty performed by **Daya** at the **Hospital** during the period January 1, 1990 to March 31, 2004, inclusive delivered to the court by the **Hospital** in accordance with the order of this court dated September 27, 2007.

2. THIS COURT ORDERS that the Action be and is hereby certified as a class proceeding.

3. THIS COURT ORDERS that:
 - (a) Audra Jeanette Bellaire, Catherine Marie Frauenlob, Sandra LaRocca, Claudia Payne and Yvonne Thomson are appointed as the representative plaintiffs for the Class;
 - (b) Steven Charles Bellaire and Andrew Frauenlob are appointed as the representative plaintiffs for the Family Class.

4. THIS COURT ORDERS that the common issues are:
 - (a) Was Daya negligent in performing the Tompkins metroplasty on each Class Member?
 - (b) Was the Hospital negligent in relation to Daya's performing the Tompkins metroplasty on each Class Member?

5. THIS COURT DECLARES that the causes of action pleaded in the Action are negligence and breach of contract.

6. THIS COURT DECLARES that the terms of settlement set out in the following paragraphs and in the Distribution Plan, annexed hereto as Schedule A, which is incorporated by reference into this judgment, are fair, reasonable and in the best interests of the Class and the Family Class, and the settlement be and is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992*.

7. THIS COURT DECLARES that the defendants have paid to Sutts, Strosberg LLP in trust \$9,900,000 in full and final settlement of all claims asserted in the

Action by the Class Members named on the Master List of Class Members and their Family Class Members.

8. THIS COURT ORDERS AND DECLARES that:
- (a) the Hospital shall forthwith, on a date to be agreed, provide a list of the names, dates of birth and last known addresses of the 189 Class Members who have been identified by the Hospital on a password protected CD or memory stick to Laurie Redden, counsel at the Offices of the Public Guardian and Trustee;
 - (b) the list to be provided by the Hospital shall not include any medical information and shall not be titled so as to link it to this Action, any doctor, hospital or medical condition;
 - (c) Ms. Redden shall designate a single individual to undertake a search of the list delivered against the Register of Guardians of mentally incapable persons maintained by the Public Guardian and Trustee under her supervision;
 - (d) the list delivered shall not be saved by the Public Guardian and Trustee and no copies electronic or otherwise shall be made of the list;
 - (e) the CD or memory stick provided shall be returned to the Hospital within 10 days of its receipt;
 - (f) the Hospital may provide Ms. Redden with such other information in its records as may assist Ms. Redden in confirming or rejecting a potential match from the Register of Guardians upon specific request made by Ms. Redden; and
 - (g) the Public Guardian and Trustee shall provide Class Counsel with the outcome of its search forthwith.
9. THIS COURT ORDERS AND DECLARES that:
- (a) the Hospital shall forthwith provide to Class Counsel the name, date of birth and address as ascertained from the Ontario Ministry of Health and Long Term Care and the address as last known to the Hospital, if different, of the 22 Class Members who did not acknowledge receipt of

the settlement hearing notice sent them by registered mail by the Hospital in accordance with the order of this court made September 27, 2007;

- (b) Class Counsel, at their expense, shall take reasonable steps to locate each of the 22 Class Members who did not acknowledge receipt of the settlement hearing notice;
- (c) the Hospital may provide Class Counsel with such other information in its records as may assist Class Counsel or their agents to locate the 22 Class Members who did not acknowledge receipt of the settlement hearing notice upon specific request made by Class Counsel; and
- (d) Class Counsel, at their expense, shall take reasonable steps to follow up with each of the 22 Class Members who they are able to locate to obtain acknowledgement of receipt of the Notice.

10. THIS COURT ORDERS that on or before January 31st, 2008 the Class and the Family Class shall be given notice of this judgment, as follows:

- (a) by the Hospital, at its expense, sending the Notice and the Shortform Claim Application Package by registered mail and by ordinary mail, in an envelope marked private and confidential, to each of the 167 Class Members who acknowledged receipt of the settlement hearing notice previously sent by registered mail to her last known address as provided by the Ontario Ministry of Health and Long Term Care or as known to the Hospital;
- (b) by Class Counsel, at their expense, placing the Notice once in a one-quarter of a page advertisement in *The Globe and Mail* and once in a one-quarter of a page advertisement in *The Hamilton Spectator* on a date selected to assure maximum readership;
- (c) by Class Counsel posting the Notice on the websites: www.dayaclassaction.com and www.classactionlaw.ca;
- (d) by Class Counsel providing the Notice to any person who requests it;
- (e) by the Hospital, at its expense, sending the Notice and the Shortform Claim Application Package by registered mail and ordinary mail, in an envelope marked private and confidential, to each of the 22 Class Members who did not acknowledge receipt of the settlement hearing notice to the address ascertained from the Ontario Ministry of Health and

Long Term Care and the address last known to the Hospital, if they are different; and

- (f) by Class Counsel, at their expense, sending the Notice and the Shortform Claim Application Package by registered mail and ordinary mail to any new address identified for any of the 22 Class Members who did not acknowledge receipt of the previous settlement hearing notice.

11. THIS COURT DECLARES that the notice program provided for in paragraph 10 satisfies the requirements of section 17 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

12. THIS COURT ORDERS that the Hospital be and is hereby appointed to receive any opt out notices from the Class Members.

13. THIS COURT ORDERS that a Class Member may only opt out of the Action by sending, on or before the Deadline for Opting Out of the Action, an opt out notice, signed by the Class Member, or his/her authorized representative, stating that the Class Member opts out of the Action and also stating the Class Member's full name, address, telephone number, birthdate and Health Card Number:

by mail to: Mary Novara
Hamilton General Hospital
7 North Room #728
237 Barton St. East
Hamilton, ON L8L 2X2

or by fax to: 905.522.0825

or by email to: novara@hhsc.ca

14. THIS COURT ORDERS that if a Class Member successfully opts out of the Action in accordance with the provisions of this judgment each of her Family Class Members is deemed to have opted out of the Action.

15. THIS COURT ORDERS that no Class Member may opt out of the Action after the Deadline for Opting Out of the Action.

16. THIS COURT ORDERS AND DECLARES that any Class Member who successfully opts out of the Action and all of her Family Class Members who are deemed to opt out of the Action are not entitled to participate in the Distribution Plan.

17. THIS COURT ORDERS that on or before March 21, 2008:

- (a) the Hospital shall deliver to the court an affidavit reporting:
 - (i) the total number of Class Members who acknowledged receipt of the Notice sent by the Hospital in accordance with subparagraph 10(a); and
 - (ii) the total number of Class Members who acknowledged receipt of the Notice sent by the Hospital in accordance with subparagraph 10(e);
- (b) Class Counsel shall deliver to the court an affidavit reporting on:
 - (i) the steps undertaken to locate the 22 Class Members who did not acknowledge receipt of the settlement hearing notice in accordance with subparagraph 9(b) and the results of those attempts; and
 - (ii) the number of Class Members who acknowledged receipt of the Notice sent by Class Counsel in accordance with subparagraph 10(f); and

Subject to any further order of the court, this affidavit shall be sealed so that the personal information of the Class Members is not accessible to the public.

18. THIS COURT ORDERS that the Hospital shall, on or before April 21, 2008, or such later date as fixed by the court, deliver to the court and Daya an affidavit listing the names of those members of the Class, if any, who successfully opted out of the Action. Subject to any further order of the court, this affidavit shall be sealed so that the identities of those members of the Class who elect to opt out of the Action are not accessible to the public.

19. THIS COURT ORDERS that the Hospital shall, on or before April 21, 2008, or such later date as fixed by the court, deliver to the court, Class Counsel, Daya and the Administrator an affidavit:

- (a) stating the number of women who have successfully opted out of the Action from among the Class Members on the Master List of Class Members;
- (b) stating the number of women who have successfully opted out of the Action from among the Class Members named on the Supplementary List of Class Members;
- (c) attaching the Schedule derived from the Master List of Class Members which lists the full name, last known address, telephone number, date of birth and Health Card number of each Class Member named on the Master List who did not successfully opt out of the Action; and
- (d) attaching the Schedule derived from the Supplementary List of Class Members which lists the full name, last known address, telephone number, date of birth and Health Card number of each Class Member named on the Supplementary List who did not successfully opt out of the Action.

Subject to any further order of the court, this affidavit shall be sealed so that the personal information of the Class Members is not accessible to the public.

20. THIS COURT ORDERS AND DECLARES that Daya has undertaken to the court that, provided more than 148 of the women named on the Schedule derived from the Master List of Class Members submit Claims Forms to the Administrator on or before the Claims Bar Date, then Daya shall forthwith pay \$35,000 for each woman named on the Schedule derived from the Supplementary List of Class Members who submits a Claim Form to the Administrator on or before the Claims Bar Date and pay \$2,000 for the claims of each additional group of Family Class Members, to a maximum of 4 additional payments or \$148,000.

21. THIS COURT FURTHER ORDERS AND DECLARES that the Hospital has undertaken to the court that, provided more than 148 of the women named on the Schedule derived from the Master List of Class Members submit Claims Forms to the Administrator on or before the Claims Bar Date, then the Hospital shall forthwith pay \$35,000 for each woman not named on either the Schedule derived from the Master List of Class Members or the Schedule derived from the Supplementary List of Class Members who submits a Claim Form to the Administrator on or before the Claims Bar Date and is determined by the Arbitrator to be a Class Member and pay \$2,000 for the claims of each additional group of Family Class Members.

22. THIS COURT ORDERS that each Class Member who wishes to participate in the Distribution Plan must submit a Claim Form and the required supporting documentation as provided in the Shortform Claim Application Package or the Longform Claim Application Package, each of which be and are hereby approved, to the Administrator on or before the Claims Bar Date:

by mail to: The Administrator—Daya Class Action
c/o Sutts, Strosberg LLP
Lawyers
251 Goyeau Street, Suite 600
Windsor, ON N9A 6V4

or by fax to: The Administrator—Daya Class Action
866.316.5308

23. THIS COURT ORDERS AND DECLARES that each Class Member who does not successfully opt out of the Action and who submits a Claim Form to the Administrator on or before the Claims Bar Date is deemed to have also submitted a claim on behalf of all of her Family Class Members.

24. THIS COURT ORDERS AND DECLARES that if a Class Member who did not successfully opt out of the Action does not submit a Claim Form to the Administrator on or before the Claims Bar Date, she and all of her Family Class Members and each of their respective heirs, executors and assigns shall forever be barred from participating in the Distribution Plan but shall, in all other respects, be bound by the terms of this judgment.

25. THIS COURT DECLARES that each Class Member who does not successfully opt out of the Action, each Family Class Member who is not deemed to have opted out of the Action, and each of their respective heirs, executors and assigns releases the Released Parties from any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, damages, contracts, liabilities, agreements, costs, or expenses, of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising from the facts asserted in the Action concerning the performance of a Tompkins metroplasty by Daya in the period January 1, 1990 to March 31, 2004, inclusive, and each treatment and hospitalization at the Hospital as a result of such Tompkins metroplasty and shall not commence or continue any action or take any proceeding relating in any way to the released claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Released Parties.

26. THIS COURT ORDERS AND DECLARES that each Class Member who does not successfully opt out of the Action, each Family Class Member who is not deemed to have opted out of the Action, and each of their respective heirs, executors and assigns shall consent and shall be deemed to have consented to the dismissal of any other actions commenced against the Released Parties relating to the performance of a Tompkins metroplasty by Daya in the period January 1, 1990 to March 31, 2004,

inclusive, and the hospitalization and treatment at the Hospital as a result of such Tompkins metroplasty, without costs and with prejudice.

27. THIS COURT ORDERS AND DECLARES that, unless a Class Member successfully opts out of the Action and her Family Class Members are deemed to opt out of the Action, this judgment and the Distribution Plan are binding upon all of the Class Members and Family Class Members and each of their respective heirs, executors and assigns including those who are minors, unborn persons or persons under a disability and the requirements of rule 7.08(4) of the *Rules of Civil Procedure* with respect to this judgment and the Distribution Plan are dispensed with.

28. THIS COURT ORDERS that at its sole expense, the Hospital shall deliver to Class Counsel, the Class Member or the Class Member's counsel, a legible copy of all medical records in its possession for the Class Member if the records are requested and written consent of the Class Member is provided, including but not limited to all notes, reports, diagnostic images, test results and any other record directly or indirectly related to the Tompkins metroplasty.

29. THIS COURT ORDERS that Class Counsel shall be paid the sum of \$2,000,000 plus the proportionate interest accrued thereon from the \$9,900,000 being held in trust, in full satisfaction of their claim for fees, disbursements and GST for acting as counsel to the Class and the Family Class and that the payment be notionally allocated as having been made from the Class Counsel Fund.

30. THIS COURT ORDERS that the following people are appointed to the following roles:

- (a) Reva Devins is appointed Arbitrator;
- (b) Randy Bennett is appointed Fund Counsel;
- (c) Sutts, Strosberg LLP is appointed Administrator;

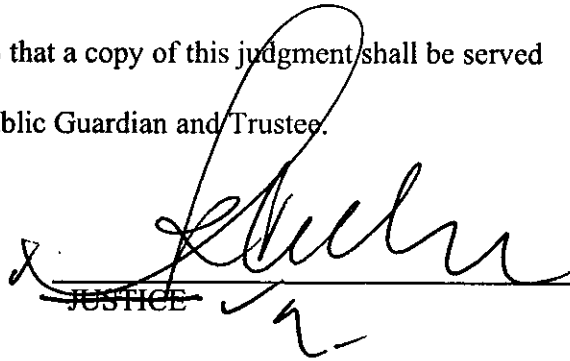
each with the duties and responsibilities set out in the Distribution Plan and this judgment.

31. THIS COURT ORDERS that the total amount payable for the administration of this settlement to the Arbitrator, the Fund Counsel and the Administrator, collectively, for their fees, disbursements and GST for the performance of their duties pursuant to the Distribution Plan shall not exceed \$175,000. The fees, disbursements and GST payable to these court appointees shall be fixed by this Court. The Administrator may make payments to these court appointees from the Administrative Costs Fund, from time to time, after receipt of court approval.

32. THIS COURT ORDERS that the subrogated claims of the Ministry of Health and Long Term Care and the Ontario Health Insurance Plan for the Class Members are dismissed.

33. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Action be and is hereby dismissed, with prejudice and without further costs.

34. THIS COURT ORDERS that a copy of this judgment shall be served upon The Children's Lawyer and the Public Guardian and Trustee.



JUSTICE

482190

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LE / DANS LE REGISTRE NO.:

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A-K FEDSON
DEPUTY REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER ADJOINT, COUR SUPÉRIEURE DE JUSTICE

Schedule A

DISTRIBUTION PLAN AS AMENDED

INTERPRETATION

1. In this Distribution Plan:
 - (a) **“Action”** means the action *Audra Jeanette Bellaire et al. v. Salim Daya et al.*, court file no. 04-CV-281230 CM commenced in the **Court** in Toronto;
 - (b) **“Administrator”** means Sutts, Strosberg LLP and its successor appointed from time to time by the **Court**;
 - (c) **“Arbitrator”** means Reva Devins and her successor appointed from time to time by the **Court**;
 - (d) **“Claims Bar Date”** means May 30, 2008, or such later date as fixed by the **Court**;
 - (e) **“Claim Form”** means the claim form and required supporting documents to be approved by the Court for use under this **Distribution Plan**;
 - (f) **“Class Counsel”** means Scarfone Hawkins LLP, Stanley Tick and Associates and Sutts, Strosberg LLP;
 - (g) **“Class Members”** means those women who underwent a Tompkins metroplasty performed by **Daya** at **the Hospital** during the period January 1, 1990 to March 31, 2004, inclusive;
 - (h) **“Court”** means the Ontario Superior Court of Justice;
 - (i) **“Daya”** means Dr. Salim Daya;
 - (j) **“Deadline for Opting Out of the Action”** means March 31, 2008, or such later date as fixed by the **Court**;
 - (k) **“Family Class” or “Family Class Members”** means the living spouse, child, grandchild, parent, grandparent or sibling (as defined in s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.4) of each **Class Member** who was alive on the date the **Class Member** first underwent a Tompkins metroplasty performed by **Daya** at **the Hospital** in the period January 1, 1990 to March 31, 2004, inclusive;

- (l) **“Fund Counsel”** means Randy Bennett and his successor appointed from time to time by the **Court**;
- (m) **“Hospital”** means Hamilton Health Sciences Corporation;
- (n) **“Judgment”** means the order of the Honourable Madam Justice Hoy approving the settlement of this **Action** and implementing this **Distribution Plan**;
- (o) **“Master List”** means the list of 185 **Class Members** described in paragraph 18;
- (p) **“Parties”** means the plaintiffs and defendants in the **Action**;
- (q) **“Schedule derived from the Master List”** means the schedule listing each **Class Member** named on the **Master List** who did not successfully opt out of the **Action**;
- (r) **“Schedule derived from the Supplementary List”** means the schedule listing each **Class Member** named on the **Supplementary List** who did not successfully opt out of the **Action**;
- (s) **“Settlement Amount”** means the initial amount of \$9,900,000 and such other amounts as may hereinafter become payable as provided in paragraphs 19 to 21 of this **Distribution Plan**; and
- (t) **“Supplementary List”** means the supplemental list of 4 **Class Members** described in paragraph 18.

APPOINTMENTS

- 2. The Arbitrator is appointed to decide all disputes arising under this Distribution Plan in a summary manner. In this Distribution Plan:
 - (a) the Arbitrator has the jurisdiction to deal with all disputes requiring a determination including, without limitation, the jurisdiction to determine any question of fact, law or mixed fact and law;

- (b) the Arbitrator shall establish the summary procedure to determine each dispute and may enter into such mediation and arbitration proceedings as she establishes; and
 - (c) all decisions of the Arbitrator shall be in writing and shall be final and conclusive and there shall be no appeal therefrom whatsoever.
- 3. Fund Counsel is appointed to make those decisions arising under this Distribution Plan in respect of claims for additional compensation and to defend his decisions before the Arbitrator, if they are disputed. All decisions of Fund Counsel shall be in writing.
- 4. The Administrator is appointed to hold the Settlement Amount and all accrued/accruing interest, receive and process Claim Forms and other documentation as provided in the Judgment and this Distribution Plan, maintain all necessary records, provide such calculations as are required and perform necessary accounting functions including satisfying all tax requirements, report to the Court as required, make payments as directed by the Judgment, this Distribution Plan and further Court order and perform such other duties as implementation of the Judgment and Distribution Plan may require.

PAYMENT AND ALLOCATION OF THE SETTLEMENT AMOUNT

- 5. The defendants shall pay \$9,900,000 to the Administrator for deposit into an escrow account on or before the date of publication of the notice of the fairness

hearing. The Administrator shall hold the Settlement Amount in trust in an interest bearing account with one of the Schedule 1 banks.

6. If the proposed settlement is not approved by the Court or the Judgment does not become a final order, the Administrator shall return the Settlement Amount and all accrued interest to the defendants in the proportions they contributed. If the monies held by the Administrator in the escrow account are returned to the defendants, the taxes payable on the accrued interest shall be their responsibility.
7. If the proposed settlement is approved by the Court and upon the Judgment becoming a final order, the monies held by the Administrator are released from escrow and their release shall constitute payment by the defendants of the Settlement Amount except as hereinafter provided in paragraphs 19 to 21.
8. Following the release of the monies from escrow, the Administrator shall continue to hold the Settlement Amount and all interest accrued or accruing thereon in trust in a single interest bearing account with one of the Schedule 1 banks. However, the Administrator shall keep accounting records and accounts as if the monies held in the trust account were notionally held in four separate funds.
9. The Administrator shall notionally allocate the initial sum of \$9,900,000 into four funds as follows:

(a)	the "Base Fund" in the amount of	\$	6,845,000
(b)	the "Additional Compensation Fund" in the amount of	\$	880,000
(c)	the "Administrative Costs Fund" in the amount of	\$	175,000
(d)	the "Class Counsel Fund" in the amount of	\$	<u>2,000,000</u>
	Total	\$	9,900,000

10. The Administrator shall notionally allocate any interest accrued on the Settlement Amount to each fund at the time the monies are released from escrow and thereafter monthly *pro rata* to the balance notionally held in each fund on the last business day of each month.
11. The Administrator shall pay such amounts as the Court shall direct to Class Counsel from the Class Counsel Fund on account of costs upon receipt of the Court's order.
12. The Administrator shall pay such amounts as the Court shall direct to the Arbitrator, the Fund Counsel and the Administrator from the Administrative Costs Fund on account of their costs upon receipt of the Court's order.
13. Any surplus in the notional accounts for the Base Fund, the Administrative Costs Fund and the Class Counsel Fund after all payments required from those funds have been made shall be added to the monies in the notional account for the Additional Compensation Fund.

14. The Administrator shall not pay out any monies from the trust account except in accordance with the Judgment and this Distribution Plan, without further order of the Court made on notice to or consent of the Parties.
15. Except as provided in paragraphs 6 and 16, all taxes payable on any interest which accrued or accrues on the Settlement Amount while in the hands of the Administrator shall be the responsibility of the Class Members and shall be paid by the Administrator from the interest earned.
16. If Class Counsel is paid any portion of the interest which accrued or accrues on the Settlement Amount, any taxes payable on that portion of the interest paid to Class Counsel shall be the responsibility of Class Counsel.

ADDITIONAL SETTLEMENT AMOUNT

17. The Parties agreed to the settlement of this Action in principle for the sum of \$9,900,000 based upon:
 - (a) the Hospital's without prejudice estimation that 185 women are Class Members; and
 - (b) Class Counsels' belief that less than 80% of the Class (148 Class Members) would claim under this Distribution Plan.
18. The Hospital subsequently determined that four of the initial 185 patients thought to be Class Members did not have a Tompkins metroplasty. The Hospital also

identified eight additional patients as Class Members. The Parties have agreed that the four patients who did not have a Tompkins metroplasty shall be deleted from the Hospital's list of Class Members and replaced by four of the additional Class Members subsequently identified. This list shall be known as the "Master List" of Class Members and shall consist of 185 names. The remaining four Class Members shall be placed on a list known as the "Supplementary List" of Class Members. The total number of Class Members identified on the Master List and the Supplementary List is 189.

19. Provided that more than 148 of the women named on the Schedule derived from the Master List of Class Members submit Claim Forms on or before the Claims Bar Date, then Daya shall forthwith pay \$35,000 for each woman named on the Schedule derived from the Supplementary List of Class Members who submits a Claim Form on or before the Claims Bar Date and pay \$2,000 for the claims of each additional group of Family Class Members, to a maximum of 4 additional base payments or \$148,000.

20. Provided that more than 148 of the women named on the Schedule derived from the Master List of Class Members submit Claim Forms on or before the Claims Bar Date, then the Hospital shall forthwith pay \$35,000 for each woman not named on either the Schedule derived from the Master List of Class Members or the Schedule derived from the Supplementary List of Class Members who submits a Claim Form on or before the Claims Bar Date and is determined by the

Arbitrator to be a Class Member and pay \$2,000 for the claims of each additional group of Family Class Members.

21. All monies payable pursuant to paragraph 19 and/or paragraph 20 shall:
 - (a) forthwith be paid to the Administrator;
 - (b) constitute an additional Settlement Amount;
 - (c) be deposited into the trust account held by the Administrator; and
 - (d) be notionally allocated to the Base Fund.

OPT OUT REFUNDS

22. In the event one or more of the women named on the Master List of Class Members submits an opt out request prior to the Deadline for Opting Out of the Action and commences or continues a separate action against the defendants, or any one of them, in respect of a Tompkins metroplasty, the defendants may request that the amount of \$35,000 in respect of each such Class Member and \$2,000 in respect of her group of Family Class Members, if any, be refunded from the Base Fund. This request shall be made by the defendants providing a Direction to Pay executed by their counsel in respect of each such successful opt out to the Administrator along with a copy of the respective originating process on or before the later of July 31, 2008 or sixty days after the Claims Bar Date. For greater certainty, no opt out refund may be claimed or shall be paid for any of the 4 women named on the Supplementary List of Class Members, nor for any woman not named on the Master List of Class Members.

23. The Administrator shall forward any issue of eligibility for the opt out refund to the Arbitrator and the defendants. The defendants shall have standing to participate where there is an issue of eligibility for the opt out refund. The Arbitrator shall determine eligibility for the opt out refund in a summary manner and provide her written decision to the defendants and the Administrator.
24. The Administrator shall pay each opt out refund to the defendants as directed in the Direction to Pay as soon as practicable after approving the request for an opt out refund or after the receipt of the Arbitrator's decision approving the request for an opt out refund.

COMPENSATION UNDER THIS DISTRIBUTION PLAN

25. Each Class Member determined to be entitled to compensation under this Distribution Plan shall be paid \$35,000 from the Base Fund. For greater certainty, a Class Member shall only be entitled to one payment of \$35,000 from the Base Fund even if a second Tompkins metroplasty was performed in the period January 1, 1990 to March 31, 2004.
26. Each Class Member determined to be entitled to compensation under this Distribution Plan and determined to have experienced one or more of the additional complications/interventions listed on the chart at Revised Appendix A shall be entitled to additional compensation to a maximum of \$20,000. A Class

Member who underwent a second Tompkins metroplasty may claim additional compensation for the second procedure.

27. The Family Class Members of each Class Member determined to be entitled to compensation under this Distribution Plan shall be paid as a group, in total, \$2,000 from the Base Fund. For greater certainty, no group of Family Class Members shall be paid more than \$2,000 under any circumstances.
28. Each Family Class Member who is a minor child of a Class Member determined to be entitled to compensation under this Distribution Plan shall be allocated a \$250 payment out of the \$2,000 payment to the group of Family Class Members.

CLAIMS PROCESS

29. Each Class Member who does not opt out of the Action must submit a Claim Form to the Administrator on or before the Claims Bar Date to be entitled to be paid compensation under this Distribution Plan.
30. The Claim Form submitted by a Class Member is deemed to include the claims of all of her Family Class Members. To claim compensation for her Family Class Members, the Class Member must identify on her Claim Form all of her Family Class Members entitled to claim and undertake to the Court that she has done so.

31. If a Class Member is:
 - (a) deceased, the Claim Form must be submitted by her estate trustee; or
 - (b) a mentally incapable person, the Claim Form must be submitted by her Guardian of Property or her Attorney for Property.

32. If a Family Class Member is:
 - (a) under the age of 18, she/he must be represented by her/his parent(s)/person(s) with custody; or
 - (b) a mentally incapable person, she/he must be represented by her/his Guardian of Property or her/his Attorney for Property.

33. As soon as practicable, the Administrator shall report to the Court and the Parties by sealed affidavit. The affidavit delivered by the Administrator shall:
 - (a) list those Class Members who submitted a Claim Form to the Administrator on or before the Claims Bar Date who were named in the Schedule derived from the Master List of Class Members;
 - (b) list those Class Members who submitted a Claim Form to the Administrator on or before the Claims Bar Date who were named in the Schedule derived from the Supplementary List of Class Members;
 - (c) list those claimants who submitted a Claim Form to the Administrator on or before the Claims Bar Date who were not named in the Schedule

derived from the Master List of Class Members or the Schedule derived from the Supplementary List of Class Members; and

- (d) advise whether 148 or more women who were named in the Schedule derived from the Master List of Class Members submitted a Claim Form to the Administrator on or before the Claims Bar Date.

34. The Court shall by order approve distribution from the Base Fund for:

- (a) those Class Members named in the Schedule derived from the Master List of Class Members or the Schedule derived from the Supplementary List of Class Members who submitted a Claims Form before the Claims Bar Date; and
- (b) their Family Class Members;

if all requirements under this Distribution Plan have been satisfied.

35. Payments from the Base Fund will be made by the Administrator as soon as practicable after receipt of the Court order approving distribution.

ISSUES OF ELIGIBILITY UNDER THE DISTRIBUTION PLAN

36. The Administrator shall provide a copy of the Claim Form of any claimant:

- (a) whose name did not appear on the Schedule derived from the Master List of Class Members or the Schedule derived from the Supplementary List of Class Members; or
- (b) concerning whom there is any other issue of eligibility;

to the Arbitrator and to the defendants and advise the claimant or her counsel in writing. The defendants shall have standing to participate where there is an issue of eligibility. The Arbitrator shall determine eligibility for compensation under the Distribution Plan in a summary manner and provide a written decision to the claimant or her counsel, the defendants and the Administrator.

37. Any additional payments required from the Base Fund as a result of the Arbitrator's decision on eligibility will be made by the Administrator as soon as practicable after receipt of the Arbitrator's decision.

PAYMENTS FROM THE BASE FUND

38. Payment for the Class Member will be made to the Class Member or, if applicable, to her qualified representative as described in paragraph 31.
39. Except as provided in paragraph 40, payment for the group of Family Class Members shall be made to the Family Class Member designated on the Claim Form if:
- (a) she/he undertakes to the Court to receive the monies in trust for all Family Class Members; and
 - (b) a division of the monies has been agreed to by all Family Class Members and her/his qualified representative as described in paragraph 32 if anyone is under the age of 18 and/or a mentally incapable person.

The Arbitrator shall decide to whom the Family Class Members' payment will be made and/or the division of the monies among the group of Family Class Members if the required designation and/or undertaking has/have not been made to the Court.

40. Payment for each Family Class Member who is:
 - (a) under the age of 18 shall be made to the Court until the person reaches the age of 18; and
 - (b) a mentally incapable person shall be made to her/his qualified representative as described in paragraph 32.

41. The Administrator shall provide a copy of each Claim Form with any issues concerning Family Class Members and/or persons under age 18 and/or persons who are mentally incapable to the Arbitrator and advise the Family Class Members and/or the qualified representatives, as the case may be, in writing. The Arbitrator shall decide the issues in a summary manner and provide a written decision to the Family Class Members and/or qualified representatives, as the case may be, and to the Administrator.

42. Any payments required from the Base Fund as a result of the Arbitrator's decision on Family Class Members and/or persons under the age of 18 and/or persons who are mentally incapable will be made by the Administrator as soon as practicable after receipt of the Arbitrator's decision.

**CLAIM FOR ADDITIONAL COMPENSATION FOR SPECIFIC
COMPLICATIONS/INTERVENTIONS**

43. Each Class Member who provides evidence satisfactory to Fund Counsel that she:
- (a) experienced one or more of the specific complications/interventions listed on the chart attached as Revised Appendix A;
 - (b) the complications/interventions were experienced within the time limits designated in Revised Appendix A; and
 - (c) the complications/interventions were caused or contributed to by the Tompkins metroplasty performed by Daya at the Hospital in the period January 1, 1990 to March 31, 2004;
- shall be entitled to be paid additional compensation. For greater certainty, except as provided in paragraph 44, the Class Member must provide medical evidence that the specific complications/interventions she experienced were caused or contributed to by the said Tompkins metroplasty.
44. A Class Member who makes a claim for additional compensation because she underwent a second Tompkins metroplasty will only be required to provide medical evidence that the second procedure was performed by Daya at the Hospital in the period January 1, 1990 to March 31, 2004.

45. The maximum amount that any Class Member may be paid out of the Additional Compensation Fund is \$20,000, regardless of the type and number of additional medical complications/interventions she claimed.

46. If there is an insufficient amount in the Additional Compensation Fund to pay the aggregate of all additional compensation awarded to Class Members, the payment to each Class Member entitled to additional compensation will be reduced *pro rata*.

47. To support the claim for additional compensation, the Class Member must provide:
 - (a) the opinion of a medical expert in the form provided with the Claim Form;
and
 - (b) copies of only those portions of her medical records which indicate the relevant complications/interventions and the timing of the complications/interventions; or
 - (c) such other medical record or report as is acceptable to Fund Counsel.If a Class Member does not have her medical records in respect of the Tompkins metroplasty, she may request them from the Hospital.

48. The Administrator shall provide to Fund Counsel a copy of each Claim Form that claims additional compensation along with the medical documentation submitted by the Class Member.

49. Upon receipt of a Claim Form with a claim for additional compensation, Fund Counsel shall review the medical information submitted and determine:
- (a) if specific complications/interventions were experienced within the designated time limits;
 - (b) whether the specific complications/interventions experienced within the designated time limits were caused or contributed to by the Tompkins metroplasty performed in the period January 1, 1990 to March 31, 2004; and
 - (c) the award payable as additional compensation, subject to any pro-ration which may subsequently be required if the monies available in the Additional Compensation Fund are insufficient to pay all such awards in full.
50. Fund Counsel shall provide a written decision to the Class Member or her counsel and the Administrator.
51. The decision of Fund Counsel shall be final unless the Class Member or her counsel submits a dispute of the decision to the Administrator within 15 days of the date the Fund Counsel's decision was sent.
52. The Administrator shall forward any dispute of Fund Counsel's decision to the Arbitrator and to Fund Counsel. The Arbitrator shall determine the dispute in a

summary manner and provide a written decision to the Class Member or her counsel, Fund Counsel and the Administrator.

53. If the Arbitrator upholds Fund Counsel's decision, the Class Member shall be required to pay \$500 in costs from any amounts which may remain owing to her from the settlement compensation. If the Arbitrator does not uphold Fund Counsel's decision, the Class Member shall be paid \$500 in costs, subject to pro-ration, from the Additional Compensation Fund.

54. As soon as practicable after the Administrator has completed all of the necessary calculations to determine what each Class Member who is entitled to additional compensation will be paid from the Additional Compensation Fund, the Administrator shall, by motion on notice to the Class Members who were awarded additional compensation or their counsel and to Class Counsel, report to the court by sealed affidavit:
 - (a) the Class Member's name;
 - (b) the specific complications/interventions the Class Member was determined to have experienced;
 - (c) the amount of additional compensation payable for those specific complications/interventions up to the maximum amount; and
 - (d) the pro-rated amount payable on account of additional compensation from the Additional Compensation Fund, if pro-ration is required.

55. If the Administrator determines it is practicable, the notice to be provided for the purpose of paragraph 54 need only include a description of the nature of the motion, the date, time and place of the motion and the information that the complete motion record shall be available in a secure location accessible only to persons receiving notice of the motion at the website www.dayaclassaction.com. In which case, the Administrator will forthwith post the motion record in PDF format in a secure location on the website.
56. No distribution from the Additional Compensation Fund shall be made by the Administrator until authorized by the Court. The Administrator shall make the payments from the Additional Compensation Fund as soon as practicable after receiving Court approval. A copy of the Court order authorizing the payments from the Additional Compensation Fund shall be provided to each Class Member who is receiving a payment from the Additional Compensation Fund at the time the payment is sent.

COUNSEL FEES

57. No fees for the services of a Class Member's counsel may be calculated on any amount the Class Member is paid except the amount paid out of the Additional Compensation Fund.

DIRECTIONS TO PAY A CLASS MEMBER'S COUNSEL

58. The Administrator shall honour a Direction to Pay a Class Member's counsel as soon as practicable, provided:
- (a) the direction is signed by the Class Member;
 - (b) it specifies how the fee was calculated; and
 - (c) the fee is calculated only on the amount the Class Member is paid out of the Additional Compensation Fund.
59. The Administrator shall not honour any other Direction to Pay a Class Member's counsel.
60. If the Administrator determines a Direction to Pay a Class Member's counsel does not comply with the provisions of paragraphs 57 and 58, the Administrator shall forward the Direction to Pay a Class Member's counsel to the Arbitrator on notice to the Class Member and her counsel. The Arbitrator shall decide whether the Direction to Pay a Class Member's counsel will be honoured by the Administrator in a summary manner and provide her written decision to the Class Member, her counsel and the Administrator.
61. As soon as practicable, the Administrator shall pay such Directions to Pay a Class Member's counsel as ordered by the Arbitrator.

DISTRIBUTION OF SURPLUS, IF ANY

62. If there is any notional surplus in the Additional Compensation Fund or any other fund after payment of all approved awards and expenses, the balance shall be divided on a *per capita* basis among all of the Class Members admitted to participate in this Distribution Plan and payment distributed to the Class Members as soon as practicable by the Administrator.

REVISED APPENDIX A

Class Members may claim additional compensation if they experienced any one or more of the following specific medical complications/interventions caused or contributed to by the Tompkins metroplasty performed by Daya at the Hospital during the period January 1, 1990 to March 31, 2004. A Class Member who claims additional compensation for a second Tompkins metroplasty need only prove it was performed by Daya at the Hospital in the indicated timeframe.

ADDITIONAL COMPLICATION/INTERVENTION	TIME PERIOD INTERVENTION TOOK PLACE	COMPENSATION
Wound dehiscence (wound from the Tompkins metroplasty splitting open)	Within three months of Tompkins metroplasty	\$3,500
D&C (dilation and curettage) for any condition other than early pregnancy loss	Within six months of Tompkins metroplasty	\$3,500
D&C (dilation and curettage) as a result of early pregnancy loss	Within twelve months of Tompkins metroplasty	\$3,500
Umbilical hernia repair	Anytime after Tompkins metroplasty	\$3,500
Hysterectomy	Anytime after Tompkins metroplasty	\$10,000
Salpingectomy (removal of fallopian tube)	Anytime after Tompkins metroplasty	\$10,000
Laparoscopy to treat ectopic pregnancy	Anytime after Tompkins metroplasty	\$10,000
Stillbirth by caesarian section as a result of premature labour	Anytime after Tompkins metroplasty	\$10,000
Surgical repair as a result of Tompkins metroplasty, including repair of improper closure of incision	Anytime after Tompkins metroplasty	\$10,000
Second Tompkins metroplasty	In the period January 1, 1990 to March 31, 2004	\$10,000

Note that:

- (a) certain medical complications/interventions must have occurred within the time period following the Tompkins metroplasty, as indicated above;
- (b) the maximum additional compensation that may be paid is \$20,000, regardless of the type and number of additional medical complications/interventions claimed; and
- (c) if the aggregate of all additional compensation awards to the Class Members exceeds the amount available in the Additional Compensation Fund, the payments to individual Class Members will be reduced pro rata.

NOTICE OF SETTLEMENT OF CLASS ACTION AGAINST DR. SALIM DAYA AND HAMILTON HEALTH SCIENCES CORPORATION

Read this Notice carefully as it may affect your rights and those of your family members.

PURPOSE OF THIS NOTICE

This Notice is to:

- (a) all women who underwent a Tompkins metroplasty performed by Dr. Salim Daya at Hamilton Health Sciences Corporation ("The Hospital") in the period January 1, 1990 to March 31, 2004, inclusive (the "Class Members"); and
- (b) the spouse, child, grandchild, parent, grandparent or sibling (as defined in s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.4) of each Class Member alive on the date the Class Member first underwent a Tompkins metroplasty in the period January 1, 1990 to March 31, 2004, inclusive (the "Family Class Members");

In 2004, the plaintiffs commenced a class action against Dr. Daya and the Hospital in the Ontario Superior Court of Justice, court file no. 04-CV-281230CM. The plaintiffs alleged that Dr. Daya negligently performed the Tompkins metroplasty surgical procedure on patients at the Hospital in the period January 1, 1990 to March 31, 2004, inclusive.

On December 4, 2007, Madam Justice Hoy approved the certification and settlement of this class action. The defendants do not admit any liability on their part. The settlement is a compromise of disputed claims.

TERMS OF SETTLEMENT

Dr. Daya and the Hospital will pay the sum of approximately \$9,900,000, in full and final settlement of all claims against them, including class counsel fees, disbursements, taxes and administration costs. This amount is subject to adjustment depending upon the total number of Class Members claiming on the settlement as set out in the Distribution Plan. The costs of the administration will not exceed \$175,000.

The settlement monies will be distributed by the Administrator in accordance with a court-approved and supervised Distribution Plan. In general terms:

- (a) each Class Member who submits a Claim Form to the Administrator on or before May 30, 2008* will receive a base payment of \$35,000 and her Family Class Members will share a \$2,000 payment;
- (c) if a Class Member experienced certain specific medical complications/interventions in a designated time frame as a result of the Tompkins Metroplasty, she may seek further compensation of up to \$20,000. The additional amount payable for complications/interventions may be subject to proration depending on the number of accepted claims;
- (d) in the event there are settlement monies remaining after payment of the base payment and additional compensation, the remaining monies will be distributed equally to each Class Member who has submitted a timely claim.

Complete information on the settlement including the Judgment and the Distribution Plan may be found at www.dayaclassaction.com.

Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

TO MAKE A CLAIM FOR COMPENSATION

To receive compensation under this settlement, each Class Member must submit a Claim Form and the required supporting documentation on or before May 30, 2008*:

by mail to: The Administrator—Daya Class Action
c/o Suttis, Strosberg LLP
600-251 Goyeau Street
Windsor, ON N9A 6V4

or by fax to: The Administrator—Daya Class Action
866.316.5308

A Claim Form will be delivered concurrently with the mailing of this Notice to those Class Members who have been identified to their last known address. The Claims Form is also

available at www.dayaclassaction.com or by calling 519.561.6291 or 800.229.5323 extension 291.

Class Members must submit a Claims Form to the Administrator on or before May 30, 2008* to receive compensation under this settlement. Failure to submit a Claim Form on or before May 30, 2008*, will eliminate all rights to claim/receive settlement compensation.

TO OPT OUT OF THE CLASS ACTION

Any Class Member who does not wish to participate in the settlement must opt out of the class action by sending a written opt out notice on or before March 31, 2008*:

by mail to: Mary Novara
Hamilton General Hospital
7 North Room #728
237 Barton St. East
Hamilton, ON L8L 2X2

or by fax to: 905.522.0825

or by email to: novara@hhsc.ca

The written opt out notice must be signed by the Class Member or her authorized representative and include the Class Member's name, birthdate, address, telephone number and Health Card Number and the statement that she is opting out of the class action.

All Class Members who do not opt out will be bound by the terms of the settlement and will not be able to bring or maintain another lawsuit against Dr. Daya and/or the Hospital relating to the Tompkins metroplasty. You must opt out if you wish to proceed with your own action.

Do not opt out if you wish to share in the compensation under this settlement.

CLASS COUNSEL FEES

As part of the settlement, the Court approved class counsel fees in the amount of \$2,000,000 inclusive of disbursements and GST to be paid from the settlement monies which included an amount paid by the defendants on account of costs.

ADDITIONAL INFORMATION

Questions for class counsel should be directed by telephone or in writing to one of the following class counsel:

Harvey T. Strosberg, Q.C. Suttis, Strosberg LLP	Tel: 519.561.6231 or 800.229.5323 extension 8231 Fax: 519.561.6203 or 866.316.5308 E-mail: dayaclassaction@strosbergco.com
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Stanley Tick, Q.C. Stanley M. Tick & Associates	Tel: 905.523.8464 Fax: 905.523.8080 E-mail: stan@smtick.com
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David Thompson Scarfone Hawkins LLP	Tel: 905.523.1333, extension 245 Fax: 905.523.5878 E-mail: thompson@shlaw.ca
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MEDICAL RECORDS

Requests for your Hamilton Health Sciences Corporation records may be initiated by calling 866.492.2472.

INTERPRETATION

This Notice is a summary of the Judgment. If there is a conflict between the provisions of this Notice and the terms of the Judgment, the Judgment will prevail.

This Notice has been approved by Madam Justice A. Hoy of the Superior Court of Justice for Ontario. Questions about this notice should NOT be directed to the court.

* or such later date as fixed by the Court.

SCHEDULE C

DAYA CLASS ACTION SETTLEMENT

SHORTFORM CLAIM APPLICATION PACKAGE

**THE FINAL DATE FOR SUBMISSION OF
THE SHORTFORM CLAIM FORM AND THE
REQUIRED SUPPORTING DOCUMENTATION IS
MAY 30, 2008**

CLASS ACTION FILE #04-CV-281230CM

DAYA CLASS ACTION SETTLEMENT SHORTFORM CLAIM APPLICATION PACKAGE

THIS SHORTFORM CLAIM APPLICATION PACKAGE CONTAINS:

- Summary of Settlement Compensation
- Checklist to ensure you complete the appropriate version of the Claim Form
- General Instructions on Completing the Shortform Claim Form and Providing Required Supporting Documentation
- Shortform Claim Form
- Physician's Form

SUMMARY OF SETTLEMENT COMPENSATION

- \$35,000 for any woman who underwent a Tompkins Metroplasty performed by Dr. Daya at Hamilton Health Sciences Corporation in the period January 1, 1990 to March 31, 2004, inclusive, provided she does not opt out of the class action and provided a Claim Form and all required supporting documentation is submitted to the Administrator by the Claims Bar Date (the "eligible Class Member").
- Up to an additional \$20,000 if the Tompkins Metroplasty materially contributed to the eligible Class Member experiencing any of the specific medical complications or interventions listed in Section C of the Shortform Claim Form in the indicated timeframe. The amount of the additional compensation will depend upon the nature and number of medical complications or interventions the eligible Class Member experienced, and the number of valid claims for additional compensation by eligible Class Members.
- \$2,000 to be divided among the following living members of the eligible Class Member's family who were also alive on the date of the Tompkins Metroplasty (the "Family Class Member"):
 - spouse (married or common-law)
 - children
 - parents
 - siblings
 - grandparents
 - grandchildren
- If there is a surplus in settlement funds after payment of the compensation as outlined and payment of all counsel and administration costs, the remaining settlement funds will be divided equally among all eligible Class Members.
- For more detailed information, please refer to the Judgment and the Distribution Plan at www.dayaclassaction.com.

CLAIMS BAR DATE

To claim settlement compensation, a completed Claim Form and the required supporting documentation must be submitted to the Administrator **no later than May 30, 2008, or such later date as fixed by the Court:**

by mail to: The Administrator—Daya Class Action
c/o Sutts, Strosberg LLP
600-251 Goyeau Street
Windsor ON N9A 6V4

or by fax to: The Administrator—Daya Class Action
866.316.5308

Failure to submit a Claim Form and the required supporting documentation by May 30, 2008, or such later date as fixed by the Court, will eliminate all rights to claim/receive compensation under this settlement.

PRIVACY STATEMENT

Personal information is collected and retained by the Administrator pursuant to the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c.5:

- for the purpose of operating and administering this settlement
- to consider and evaluate eligibility under this settlement
- is strictly private and confidential and will not be disclosed, except as provided for in this settlement without the express written consent of the person who submitted the claim

THE CHECKLIST TO ENSURE YOU COMPLETE THE APPROPRIATE VERSION OF THE CLAIM FORM

Answer these questions about the person who had the Tompkins Metroplasty (the "Class Member");

- Is the Class Member alive? Yes No
- Is the Class Member a mentally capable person? Yes No
- Is every child, sibling and/or grandchild of the Class Member who was alive on the date of the Tompkins Metroplasty currently over the age of 18? Yes No
- Is every spouse, child, parent, sibling, grandparent and grandchild of the Class Member who was alive on the date of the Tompkins Metroplasty currently a mentally capable person? Yes No

If you answered "Yes" to all of the above questions, complete the Shortform Claim Form contained in this package.

If you answered "No" to any of the questions above, do not complete the Shortform Claim Form. Instead, complete a Longform Claim Form. You may print the Longform Claim Application Package off the Administrator's website www.dayaclassaction.com or contact the Administrator as follows to have a Longform Claim Application Package mailed to you.

by mail to:	The Administrator—Daya Class Action c/o Sutts, Strosberg LLP 600-251 Goyeau Street Windsor ON N9A 6V4	or by fax to:	The Administrator—Daya Class Action 866.316.5308
		or by email to:	administrator@dayaclassaction.com
		or by telephone to:	800.229.5323 extension 8291

GENERAL INSTRUCTIONS ON COMPLETING THE SHORTFORM CLAIM FORM AND PROVIDING THE REQUIRED SUPPORTING DOCUMENTATION

The person who underwent the Tompkins Metroplasty (the "Class Member") must:

- Print your name clearly at the top of each page of the Shortform Claim Form.
- Complete Section A of the Shortform Claim Form.
- Complete Section B of the Shortform Claim Form listing certain of your family members ("Family Class Members") and designate a Family Class Member to receive the Family Class Member payment in trust for all of the Family Class Members.
- Have the Undertaking at Section B of the Shortform Claim Form signed by the designated Family Class Member if all Family Class Members agree on how the \$2,000 Family Class Member payment will be divided. If there is no agreement, the Arbitrator will decide how to divide the payment among the Family Class Members.
- Complete Section C of the Shortform Claim Form only if you are making a claim for additional compensation because the Tompkins Metroplasty materially contributed to your experiencing certain medical complications or interventions within the indicated timeframes.
- Indicate in Section D that you are submitting the required supporting documentation for those Sections you have completed on the Shortform Claim Form (see the General Instruction on Required Supporting Documentation below). Sign the Declaration at Section D of the Shortform Claim Form certifying that the information contained in the Shortform Claim Form is true, accurate and complete.
- If you are making a claim for additional compensation under Section C of the Shortform Claim Form, print your name clearly at the top of each page of the Physician's Form and complete Section A of the Physician's Form, only. Have your physician complete all of the remaining Sections of the Physician's Form.
- Submit the Shortform Claim Form, the required supporting documentation and the Physician's Form, if applicable, to the Administrator by May 30, 2008.

REQUIRED SUPPORTING DOCUMENTATION

- The required supporting documentation is indicated in the various Sections of the Shortform Claim Form.
- A photocopy of a Birth Certificate, Health Card, hospital or medical records, or other required supporting documentation is acceptable so long as it is legible.
- If the Class Member's hospital records from Hamilton Health Sciences Corporation are required, you may arrange to obtain them for no charge by calling the Hospital at 866.492.2472.
- Retain a copy of the completed Shortform Claim Form, Physician's Form, if applicable, and all required supporting documentation for your records.

If you require assistance regarding completion of the Shortform Claim Form or have questions concerning the claim, you may seek assistance from the Administrator by email to administrator@dayaclassaction.com or by calling 800.229.5323 extension 8291, or you may retain legal counsel at your own expense.

DAYA CLASS ACTION SETTLEMENT SHORTFORM CLAIM FORM

SECTION A—IDENTIFICATION OF THE CLASS MEMBER

Complete this section about the person who underwent the Tompkins Metroplasty (the "Class Member").

Submit the Class Member's Birth Certificate, Health Card and only that portion of the Class Member's hospital record from Hamilton Health Sciences Corporation that evidences a Tompkins Metroplasty was performed by Dr. Daya and the date of the procedure with this Shortform Claim Form.

Last Name _____

File # _____

For Office Use Only

First Name & Initial _____

Other surnames the Class Member has used from the time of the Tompkins Metroplasty to present _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Birth Date: Year _____ Month _____ Day _____

Health Card # _____

Home Phone _____ - _____ - _____ Work Phone _____ - _____ - _____

Email Address _____

What was the date of the Tompkins Metroplasty Dr. Daya performed on the Class Member?

_____ (Day) _____ (Month) _____ (Year)

Complete the section below only if the Class Member is represented by legal counsel.

If a Class Member is represented by legal counsel all further communication will be with her legal counsel.

SECTION A – IDENTIFICATION OF THE CLASS MEMBER'S LEGAL COUNSEL, IF APPLICABLE

Name of Law Firm _____

Last Name _____ First Name _____

Address _____

City _____ Province _____ Postal Code _____

Work Phone _____ - _____ - _____ Fax _____ - _____ - _____

Email Address _____

Legal counsel are advised to review the provisions in the Distribution Plan regarding Counsel Fees and Directions to Pay Counsel Fees.

SECTION B - IDENTIFICATION OF FAMILY CLASS MEMBERS

Complete this section about all Family Class Members of the Class Member.

If you need more room to list all Family Class Members, attach a separate sheet.

Note:

You must use the Longform Claim Form if any Family Class Member is under the age of 18 or is a mentally incapable person. See the Checklist on page 2 of this Shortform Claim Application Package.

1. At the time the Tompkins Metroplasty was performed, did the Class Member have any of the following Family Class Members who are still living:
- a spouse (married, or cohabited continuously for not less than 3 years, or in a relationship of some permanence and the parents of a child) Yes No
 - child Yes No
 - parent Yes No
 - sibling Yes No
 - grandparent Yes No
 - grandchild? Yes No

If you answered "Yes" to any part of question 1, complete the information below. If you answered "No" to all of the categories of Family Class Members in question 1, go to Section C of the Shortform Claim Form.

2. Identify all Family Class Members alive at the time of the Tompkins Metroplasty who are currently alive and fit any of the categories in question 1 listed above.

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

Name _____ DOB _____ Relationship to you _____

3. Have all Family Class Members agreed on how to divide the Family Class Member payment among themselves? Yes No

SECTION B – DESIGNATION OF FAMILY CLASS MEMBER

Identify the Family Class Member designated to receive the \$2,000 Family Class Member payment in trust for all Family Class Members.

Name of the Family Class Member being designated _____

Current Address _____

City _____ Province _____ Postal Code _____

Home Phone _____ - _____ - _____ Work Phone _____ - _____ - _____

Email Address _____

Relationship to Class Member: _____

SECTION B - UNDERTAKING TO THE COURT BY THE DESIGNATED FAMILY CLASS MEMBER

Have the person designated to receive the Family Class Member payment complete this Undertaking only if all Family Class Members agree on how to divide the Family Class Member payment.

NOTICE: Any person who submits an Undertaking to the Court containing inaccurate and/or false information to obtain undue benefits under this settlement may be subject to criminal and/or civil action.

I, _____, am the Family Class Member designated
(Name)

to receive the Family Class Member payment on behalf of all Family Class Members identified in Section B of this Claim Form.

I hereby certify that:

- a division of the Family Class Member payment has been agreed to by all of the Family Class Members;
- I will receive the monies in trust for all of the said Family Class Members; and
- I will pay the monies out to the said Family Class Members in the amounts we have agreed.

Signed at _____ this _____ of _____,
(City) (Day) (Month) (Year)

Witness

Signature

SECTION C- APPLICATION FOR ADDITIONAL COMPENSATION FOR SPECIFIC MEDICAL COMPLICATIONS/INTERVENTIONS

Complete this section only if the Tompkins Metroplasty materially contributed to the Class Member experiencing one or more of the medical complications/interventions listed below. A physician's opinion on causation is required to support the claim.

Indicate all of the listed complications/interventions which apply.

- 1. Did the Class Member experience a wound dehiscence (the wound from the Tompkins Metroplasty opened or split) within three months of the Tompkins Metroplasty? Yes No
- 2. Did the Class Member undergo a D & C (dilation and curettage) for any reason other than an early pregnancy loss within six months of the Tompkins Metroplasty? Yes No
- 3. Did the Class Member undergo a D & C (dilation and curettage) as a result of an early pregnancy loss within twelve months of the Tompkins Metroplasty? Yes No
- 4. Did the Class Member undergo an umbilical hernia repair anytime after the Tompkins Metroplasty? Yes No
- 5. Did the Class Member undergo a hysterectomy anytime after the Tompkins Metroplasty? Yes No
- 6. Did the Class Member undergo a salpingectomy (removal of fallopian tube) anytime after the Tompkins Metroplasty? Yes No
- 7. Did the Class Member undergo a laparoscopy to treat an ectopic pregnancy anytime after the Tompkins Metroplasty? Yes No
- 8. Did the Class Member deliver a stillborn child by caesarian section as a result of premature labour anytime after the Tompkins Metroplasty? Yes No
- 9. Did the Class Member undergo a surgical repair at any time as a result of the Tompkins Metroplasty? Yes No

If you answered "Yes" to one or more of these questions, describe what occurred:

If you answered "Yes" to any of the questions above, you must submit the completed Physician's Form and the supporting hospital or medical records. Include only the portions of the Class Member's hospital or medical records that evidence the medical complication/intervention, the date it occurred and its cause.

SECTION C – APPLICATION FOR ADDITIONAL COMPENSATION FOR SECOND TOMPKINS METROPLASTY

Complete this section only if the Class Member underwent a second Tompkins Metroplasty.

10. Did the Class Member undergo a second Tompkins Metroplasty performed by Dr. Daya in the period January 1, 1990 to March 31, 2004, inclusive? Yes No

11. What was the date of the second Tompkins Metroplasty Dr. Daya performed on the Class Member? Yes No

_____ (Day) _____ (Month) _____ (Year)

If you completed this section, submit only that portion of the Hamilton Health Sciences Corporation hospital record that evidences a second Tompkins Metroplasty was performed by Dr. Daya and the date of the procedure. A completed Physician's Form is not required to confirm a second Tompkins Metroplasty.

SECTION D – REQUIRED SUPPORTING DOCUMENTATION

With this Shortform Claim Form I am submitting the following required supporting documentation:

For all persons completing Section A – IDENTIFICATION OF THE CLASS MEMBER.

- 1. Birth Certificate of Class Member. Yes No
- 2. Health Card of Class Member. Yes No
- 3. The Class Member's hospital records from Hamilton Health Sciences Corporation evidencing the Tompkins Metroplasty and the date it occurred. Yes No

For persons who answered "Yes" to Section C – Questions 1 to 9 only.

- 4. Completed Physician's Form. Yes No
- 5. The Class Member's hospital or medical records evidencing each medical complication/intervention experienced, the date it occurred and its cause. Yes No

For persons who answered "Yes" to Section C - Question 10 only.

- 6. The Class Member's hospital records from Hamilton Health Sciences Corporation evidencing a second Tompkins Metroplasty and the date it occurred. Yes No

SECTION D - DECLARATION OF CLASS MEMBER

NOTICE: Any person who submits a Shortform Claim Form to the Administrator containing inaccurate and/or false information to obtain undue benefits under this settlement may be subject to criminal and/or civil action.

I hereby certify that:

- the information I have provided in this Shortform Claim Form is, to the best of my knowledge, information and belief, true, accurate and complete; and
- I have listed all the Family Class Members alive on the date of the Tompkins Metroplasty who are currently alive on this Shortform Claim Form.

Signed at _____ this _____ of _____, _____
(City) (Day) (Month) (Year)

 Witness

 Signature of Class Member

PHYSICIAN'S FORM

SECTION A - IDENTIFICATION OF PATIENT

Complete this section about the person who underwent the Tompkins Metroplasty (the "Patient").

Last Name _____ First Name & Initial _____

Health Card # _____

Date the Tompkins Metroplasty was performed: _____ (Day) _____ (Month) _____ (Year)

SECTION B - IDENTIFICATION OF PHYSICIAN

Last Name _____ First Name & Initial _____

Address _____

City _____ Province _____ Postal Code _____

Work Phone _____ - _____ - _____ Fax _____ - _____ - _____

Email Address _____ Specialty _____

SECTION C - COMPLICATIONS/INTERVENTIONS EXPERIENCED FOLLOWING A TOMPKINS METROPLASTY

Indicate all of the listed medical complications/interventions experienced by the Patient which were materially contributed to by the Tompkins Metroplasty.

Did the Tompkins Metroplasty **materially contribute** to the Patient experiencing one or more of the following medical complication/interventions in the indicated timeframe:

- wound dehiscence within three months of the Tompkins Metroplasty Yes No
- a D & C for any condition other than an early pregnancy loss within six months of the Tompkins Metroplasty Yes No
- a D & C as a result of an early pregnancy loss within twelve months of the Tompkins Metroplasty Yes No
- an umbilical hernia repair anytime after the Tompkins Metroplasty Yes No
- a hysterectomy anytime after the Tompkins Metroplasty Yes No
- a salpingectomy anytime after the Tompkins Metroplasty Yes No
- a laparoscopy to treat an ectopic pregnancy anytime after the Tompkins Metroplasty Yes No
- a delivery of a stillborn child by caesarian section as a result of premature labour anytime after the Tompkins Metroplasty Yes No
- surgical repair at anytime as a result of the Tompkins Metroplasty? Yes No

If you answered "Yes" to any of the questions above, include copies of the Patient's hospital or medical records which support the occurrence of the complication/intervention, its timing and that the Tompkins Metroplasty caused or materially contributed to its occurrence (include only the relevant portions of the hospital or medical records).

If you answered yes to one or more of the indicated complications/interventions, explain how the Tompkins Metroplasty materially contributed to each:

Did you treat the Patient for this/these medical complications / interventions?

Yes No

If yes, indicate which medical complications/interventions you treated:

If you did not treat the Patient for this/these medical complications/interventions, on what do you base your opinion that the Tompkins Metroplasty materially contributed to the complications/interventions?

How long have you known the Patient?

_____ (Years)

How long have you treated the Patient?

_____ (Years)

SECTION D - CERTIFICATION BY PHYSICIAN

I hereby certify that the information provided herein is true and correct to the best of my knowledge, information and belief.

Signed at _____

this _____

of _____

(City)

(Day)

(Month)

(Year)

Physician's Signature

SCHEDULE D

DAYA CLASS ACTION SETTLEMENT

LONGFORM CLAIM APPLICATION PACKAGE

**THE FINAL DATE FOR SUBMISSION OF
THE LONGFORM CLAIM FORM AND THE
REQUIRED SUPPORTING DOCUMENTATION IS
MAY 30, 2008**

CLASS ACTION FILE #04-CV-281230CM

DAYA CLASS ACTION SETTLEMENT LONGFORM CLAIM APPLICATION PACKAGE

THIS LONGFORM CLAIM APPLICATION PACKAGE CONTAINS:

- Summary of Settlement Compensation
- Checklist to ensure you complete the appropriate version of the Claim Form
- General Instructions on Completing the Longform Claim Form and Providing Required Supporting Documentation
- Longform Claim Form
- Physician's Form

SUMMARY OF SETTLEMENT COMPENSATION

- \$35,000 for any woman who underwent a Tompkins Metroplasty performed by Dr. Daya at Hamilton Health Sciences Corporation in the period January 1, 1990 to March 31, 2004, inclusive, provided she does not opt out of the class action and provided a Claim Form and all required supporting documentation is submitted to the Administrator by the Claims Bar Date (the "eligible Class Member").
- Up to an additional \$20,000 if the Tompkins Metroplasty materially contributed to the eligible Class Member experiencing any of the specific medical complications or interventions listed in Section D of the Longform Claim Form in the indicated timeframe. The amount of the additional compensation will depend upon the nature and number of medical complications or interventions the eligible Class Member experienced, and the number of valid claims for additional compensation by eligible Class Members.
- \$2,000 to be divided among the following living members of the eligible Class Member's family who were also alive on the date of the Tompkins Metroplasty (the "Family Class Members"):
 - spouse (married or common-law)
 - children
 - parents
 - siblings
 - grandparents
 - grandchildren
- If the eligible Class Member has a child who was alive on the date of the Tompkins Metroplasty and who is currently under the age of 18, the sum of \$250 will be allocated for each minor child's benefit out of the \$2000 Family Class Member payment and paid into court until the child reaches age 18.
- If there is a surplus in settlement funds after payment of the compensation as outlined and payment of all counsel and administration costs, the remaining settlement funds will be divided equally among all eligible Class Members.
- For more detailed information, please refer to the Judgment and the Distribution Plan at www.dayaclassaction.com.

CLAIMS BAR DATE

To claim settlement compensation, a completed Claim Form and the required supporting documentation must be submitted to the Administrator **no later than May 30, 2008, or such later date as fixed by the Court:**

by mail to: The Administrator—Daya Class Action
c/o Sutts, Strosberg LLP
600-251 Goyeau Street
Windsor ON N9A 6V4

or by fax to: The Administrator—Daya Class Action
866.316.5308

Failure to submit a Claim Form and the required supporting documentation by May 30, 2008, or such later date as fixed by the Court, will eliminate all rights to claim/receive compensation under this settlement.

PRIVACY STATEMENT

Personal information is collected and retained by the Administrator pursuant to the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c.5:

- for the purpose of operating and administering this settlement
- to consider and evaluate eligibility under this settlement
- is strictly private and confidential and will not be disclosed, except as provided for in this settlement without the express written consent of the person who submitted the claim

CHECKLIST TO ENSURE YOU COMPLETE THE APPROPRIATE VERSION OF THE CLAIM FORM

Answer these questions about the person who had the Tompkins metroplasty (the "Class Member")

- Is the Class Member dead? Yes No
- Is the Class Member a mentally incapable person? Yes No
- Does the Class Member have a child who was alive on the date of the Tompkins Metroplasty who is currently under the age of 18? Yes No
- Does the Class Member have any sibling and/or grandchild who was alive on the date of the Tompkins Metroplasty who is currently under the age of 18? Yes No
- Does the Class Member have any spouse, child, parent, sibling, grandparent or grandchild who was alive on the date of the Tompkins Metroplasty who is currently a mentally incapable person? Yes No

If you answered "Yes" to any of the above questions complete the Longform Claim Form contained in this package.

If you answered "No" to all of the questions above, do not complete the Longform Claim Form. Instead, complete a Shortform Claim Form. You may print the Shortform Claim Application Package off the Administrator's website at www.dayaclassaction.com or contact the Administrator as follows to have a Shortform Claim Application Package mailed to you:

by mail to: The Administrator—Daya Class Action
c/o Sutts, Strosberg LLP
600-251 Goyeau Street
Windsor ON N9A 6V4

or by fax to:

The Administrator—Daya Class Action
866.316.5308

or by email to:

administrator@dayaclassaction.com

or by telephone to:

800.229.5323 extension 8291

GENERAL INSTRUCTIONS ON COMPLETING THE LONGFORM CLAIM FORM AND PROVIDING THE REQUIRED SUPPORTING DOCUMENTATION

If you are the person who underwent the Tompkins Metroplasty (the "Class Member"), you must:

- Print your name clearly at the top of each page of the Longform Claim Form.
- Complete Section A of the Longform Claim Form.
- Complete Section B of the Longform Claim Form if you have a child who was alive on the date of the Tompkins Metroplasty and who is currently under the age of 18.
- Complete Section C of the Longform Claim Form listing specific family members of the Class Member ("Family Class Members") and designate a Family Class Member to receive the Family Class Member payment in trust for all of the Family Class Members (except for anyone who is under the age of 18 or is a mentally incapable person).
- Family Class Members who are under the age of 18 or are mentally incapable persons must be represented by a qualified representative as set out in Section C of the Longform Claim Form. Have the appropriate Declaration at Section C signed by the qualified representative of the person under age 18 or the mentally incapable Family Class Member.
- Have the Undertaking at Section C signed by the designated Family Class Member if all Family Class Members and the qualified representative of anyone who is under age 18 or is a mentally incapable person agree on how the \$2,000 Family Class Member payment will be divided. If there is no agreement, the Arbitrator will decide how to divide the payment among the Family Class Members.
- Complete Section D of the Longform Claim Form only if you are making a claim for additional compensation because the Tompkins Metroplasty materially contributed to your experiencing certain medical complications or interventions within the indicated timeframes.
- Indicate in Section F that you are submitting the required supporting documentation for those Sections you have completed on the Longform Claim Form (see the General Instruction on Required Supporting Documentation below). Sign the Declaration at Section F of the Longform Claim Form certifying that the information contained in the Longform Claim Form is true, accurate and complete.
- If you are making a claim for additional compensation under Section D of the Longform Claim Form, print your name clearly at the top of each page of the Physician's Form and complete Section A of that form, only. Have your physician complete all of the remaining Sections of the Physician's Form.
- Submit the Longform Claim Form, the required supporting documentation and, if applicable, the Physician's Form to the Administrator by May 30, 2008.

If the person who underwent the Tompkins Metroplasty (the "Class Member") is deceased or mentally incapable, the Class Member's qualified representative must:

- Print the name of the person who underwent the Tompkins Metroplasty clearly at the top of each page of the Longform Claim Form.
- Complete Section A of the Longform Claim Form.
- Complete Section B of the Claim Form if the Class Member has a child who was alive on the date of the Tompkins Metroplasty and who is currently under the age of 18.
- Complete Section C of the Longform Claim Form listing certain family members of the Class Member ("Family Class Members") and designate a Family Class Member to receive the Family Class Member payment in trust for all of the Family Class Members (except for anyone who is under the age of 18 or is a mentally incapable person).

- Family Class Members who are under the age of 18 or are mentally incapable must be represented by his/her/their qualified representative as set out in Section C of the Longform Claim Form. Have the appropriate Declaration at Section C signed by the qualified representative of the person under the age of 18 or the mentally incapable person.
- Have the Undertaking at Section C signed by the designated Family Class Member if all Family Class Members and the qualified representative of anyone who is under age 18 or is a mentally incapable person agree on how the \$2,000 Family Class Member payment will be divided. If there is no agreement, the Arbitrator will decide how to divide the payment among the Family Class Members.
- Complete Section D of the Longform Claim Form only if you are making a claim for additional compensation because the Tompkins Metroplasty materially contributed to the Class Member experiencing certain medical complications or interventions within the indicated timeframes.
- Complete Section E of the Longform Claim Form with the information about the Class Member's qualified representative.
- Indicate in Section F that you are submitting the required supporting documentation for those Sections you have completed on the Longform Claim Form (see the General Instruction on Required Supporting Documentation below). Sign the Declaration at Section F of the Longform Claim Form certifying that the information contained in the Longform Claim Form is true, accurate and complete.
- If you are making a claim for additional compensation under Section D of the Longform Claim Form, print the Class Member's name clearly at the top of each page of the Physician's Form and complete Section A of the Physician's Form, only. Have the Class Member's physician complete all remaining Sections of the Physician's Form.
- Submit the Longform Claim Form, the required supporting documentation and, if applicable, the Physician's Form to the Administrator by May 30, 2008.

REQUIRED SUPPORTING DOCUMENTATION

- The required supporting documentation is indicated in the various Sections of the Longform Claim Form.
- A photocopy of a Birth Certificate, Health Card, hospital or medical records, or other required supporting documentation is acceptable so long as it is legible.
- If the Class Member's hospital records from Hamilton Health Sciences Corporation are required, you may arrange to obtain them for no charge by calling the Hospital at 866.492.2472.
- Retain a copy of the completed Longform Claim Form, Physician's Form, if applicable, and all required supporting documentation for your records.

If you require assistance regarding completion of the Longform Claim Form or have questions concerning the claim, you may seek assistance from the Administrator by email to administrator@dayaclassaction.com or by calling 800.229.5323 extension 8291, or you may retain legal counsel at your own expense.

DAYA CLASS ACTION SETTLEMENT LONGFORM CLAIM FORM

SECTION A—IDENTIFICATION OF THE CLASS MEMBER

Complete this section about the person who underwent the Tompkins Metroplasty (the “Class Member”).

Submit the Class Member’s Birth Certificate, Health Card and only that portion of the Class Member’s hospital record from Hamilton Health Sciences Corporation that evidences a Tompkins Metroplasty was performed by Dr. Daya and the date of the procedure with this Longform Claim Form.

Last Name _____ File # _____
For Office Use Only

First Name & Initial _____

Other surnames the Class Member has used from the time of the Tompkins Metroplasty to present _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Birth Date: Year _____ Month _____ Day _____

Health Card # _____

Home Phone _____ - _____ - _____ Work Phone _____ - _____ - _____

Email Address _____

What was the date of the Tompkins Metroplasty Dr. Daya performed on the Class Member?

_____ (Day) _____ (Month) _____ (Year)

Complete the section below only if the Class Member is represented by legal counsel.

If a Class Member is represented by legal counsel all further communication will be with her legal counsel.

SECTION A – IDENTIFICATION OF THE CLASS MEMBER’S LEGAL COUNSEL, IF APPLICABLE

Name of Law Firm _____

Last Name _____ First Name _____

Address _____

City _____ Province _____ Postal Code _____

Work Phone _____ - _____ - _____ Fax _____ - _____ - _____

Email Address _____

Legal Counsel are advised to review the provisions in the Distribution Plan regarding Counsel Fees and Directions to Pay Counsel Fees.

SECTION B – IDENTIFICATION OF CLASS MEMBER’S CHILDREN UNDER AGE 18

Complete this section if the Class Member has a child who was alive on the date of the Tompkins Metroplasty, and who is currently under the age of 18 years.

If the Class Member has more than one child alive on the date of the Tompkins Metroplasty who is currently under the age of 18 years, copy this page.

Submit the Birth Certificate of each child listed.

Name _____ DOB _____

Relationship to Class Member _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Name _____ DOB _____

Relationship to Class Member _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Name _____ DOB _____

Relationship to Class Member _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Name _____ DOB _____

Relationship to Class Member _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

3. Are any of the Family Class Members that you have listed in answer to question 2 currently under the age of 18? Yes No

If you answered "Yes" to question 3, provide the following information for each person under age 18.

Name _____ DOB _____

Relationship to Class Member _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Name _____ DOB _____

Relationship to Class Member _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Name _____ DOB _____

Relationship to Class Member _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

If you answered "Yes" to question 3, have the parent(s)/person(s) with custody of each person under age 18 complete the Declaration by the Parent(s)/Person(s) with Custody on page 6. If more than one Declaration is required, copy the Declaration on page 6.

If you answered "Yes" to question 3, you must submit the Birth Certificate of each person under age 18 and the Court Order or Separation Agreement relating to her/his custody, if applicable.

4. Are any of the Family Class Members that you have listed in answer to question 2 mentally incapable persons? Yes No

If you answered "Yes" to question 4, indicate the name of each mentally incapable person here:

If you answered "Yes" to question 4, have the qualified representative of each mentally incapable person complete the Declaration by Qualified Representative of a Mentally Incapable Person on page 6. If more than one Declaration is required, copy the Declaration.

If you answered "Yes" to question 4, you must submit the Court Appointment or Certificate of Statutory Guardian of Property of a mentally incapable person or the Continuing Power of Attorney appointing an Attorney for Property of a mentally incapable person.

5. Have all Family Class Members (or, if applicable, his/her/their qualified representative(s)) Yes No agreed on how to divide the Family Class Member payment among themselves?

SECTION C – DESIGNATION OF FAMILY CLASS MEMBER

Identify the Family Class Member designated to receive the Family Class Member payment in trust for all Family Class Members (less any amount allocated for anyone under age 18 or any mentally incapable person).

Name of the Family Class Member being designated _____
 Current Address _____
 City _____ Province _____ Postal Code _____
 Home Phone _____ - _____ - _____ Work Phone _____ - _____ - _____
 Email Address _____
 Relationship to Class Member: _____

SECTION C - UNDERTAKING TO THE COURT BY THE DESIGNATED FAMILY CLASS MEMBER

Have the person designated to receive the Family Class Member payment complete this Undertaking only if all Family Class Members (or, if applicable, his/her/their qualified representative) agree on how to divide the Family Class Member payment.

NOTICE: Any person who submits an Undertaking to the Court containing inaccurate and/or false information to obtain undue benefits under this settlement may be subject to criminal and/or civil action.

I, _____, am the Family Class Member designated
 (Name)

to receive the Family Class Member payment on behalf of all Family Class Members identified in Section C of this Longform Claim Form (except for any amount allocated for anyone under age 18 or any mentally incapable person).

I hereby certify that:

- a division of the Family Class Member payment has been agreed to by all of the Family Class Members identified in Section C of this Claim Form (or his/her/their qualified representative, if applicable);
- I will receive the monies in trust for all of the said Family Class Members (except for anyone under age 18 or any mentally incapable person); and
- I will pay the monies out to the Family Class Members (except for anyone under age 18 or any mentally incapable person) in the amounts we have agreed.

Signed at _____ this _____ of _____,
 (City) (Day) (Month) (Year)

 Witness

 Signature

SECTION C – DECLARATION BY THE PARENT(S)/PERSON(S) WITH CUSTODY OF A FAMILY CLASS MEMBER UNDER THE AGE OF 18

I/We, _____
(Name(s))

am/are the parent(s)/person(s) with custody of the Family Class Member listed in Section C who is under the age of 18

(Name of Child)

born on _____ (Day) _____ (Month) _____ (Year)

I/we agree that the amount to be allocated from the \$2,000 Family Class Member payment for the benefit of the person under the age of 18 is _____ and hereby acknowledge being advised the monies will be paid into court until the child reaches the age of 18.
(insert amount)

Signed at _____ this _____ of _____, _____
(City) (Day) (Month) (Year)

Witness Signature

Witness Signature

SECTION C - DECLARATION BY QUALIFIED REPRESENTATIVE OF A MENTALLY INCAPABLE PERSON

Only the following persons are qualified to represent a mentally incapable person:

- Guardian of Property
- Attorney for Property

Submit one of the following required supporting documents:

- Court Appointment or Certificate of Statutory Guardian of Property of a mentally incapable person
- Continuing Power of Attorney appointing an Attorney for Property of a mentally incapable person

I _____, am the qualified representative of the mentally incapable person
(Name)

_____ born on _____
(Name of mentally incapable person) (Day) (Month) (Year)

I agree that the amount to be allocated from the \$2,000 Family Class Member payment for the benefit of the mentally incapable person is _____ and hereby certify that the payment should be directed to me on her/his behalf.
(insert amount)

Signed at _____ this _____ of _____, _____
(City) (Day) (Month) (Year)

Witness Signature

SECTION D - APPLICATION FOR ADDITIONAL COMPENSATION FOR SPECIFIC MEDICAL COMPLICATIONS/INTERVENTIONS

Complete this section only if the Tompkins Metroplasty materially contributed to the Class Member experiencing one or more of the medical complications/interventions listed below. A physician's opinion on causation is required to support the claim.

Indicate all of the listed complications/interventions which apply.

- 1. Did the Class Member experience a wound dehiscence (the wound from the Tompkins Metroplasty opened or split) within three months of the Tompkins Metroplasty? Yes No
- 2. Did the Class Member undergo a D & C (dilation and curettage) for any reason other than an early pregnancy loss within six months of the Tompkins Metroplasty? Yes No
- 3. Did the Class Member undergo a D & C (dilation and curettage) as a result of an early pregnancy loss within twelve months of the Tompkins Metroplasty? Yes No
- 4. Did the Class Member undergo an umbilical hernia repair anytime after the Tompkins Metroplasty? Yes No
- 5. Did the Class Member undergo a hysterectomy anytime after the Tompkins Metroplasty? Yes No
- 6. Did the Class Member undergo a salpingectomy (removal of fallopian tube) anytime after the Tompkins Metroplasty? Yes No
- 7. Did the Class Member undergo a laparoscopy to treat an ectopic pregnancy anytime after the Tompkins Metroplasty? Yes No
- 8. Did the Class Member deliver a stillborn child by caesarian section as a result of premature labour anytime after the Tompkins Metroplasty? Yes No
- 9. Did the Class Member undergo a surgical repair at any time as a result of the Tompkins Metroplasty? Yes No

If you answered "Yes" to one or more of these questions, describe what occurred:

If you answered "Yes" to any of the questions above, you must submit the completed Physician's Form and the supporting hospital or medical records. Include only the portions of the Class Member's hospital or medical records that evidence the medical complication/intervention, the date it occurred and its cause.

SECTION D – APPLICATION FOR ADDITIONAL COMPENSATION FOR SECOND TOMPKINS METROPLASTY

Complete this section only if the Class Member underwent a second Tompkins Metroplasty.

- 10. Did the Class Member undergo a second Tompkins Metroplasty performed by Dr. Daya in the period January 1, 1990 to March 31, 2004, inclusive? Yes No

- 11. What was the date of the second Tompkins Metroplasty Dr. Daya performed on the Class Member? Yes No

_____ (Day) _____ (Month) _____ (Year)

If you completed this section, submit only that portion of the Hamilton Health Sciences Corporation hospital record that evidences a second Tompkins Metroplasty was performed by Dr. Daya and the date of the procedure. A completed Physician's Form is not required to confirm a second Tompkins Metroplasty.

SECTION E - IDENTIFICATION OF THE CLASS MEMBER'S QUALIFIED REPRESENTATIVE

Complete this section if you are submitting the Longform Claim Form for a Class Member who is deceased or a mentally incapable person.

Only the following persons are qualified to represent the Class Member:

- Estate Trustee, if the Class Member is deceased
- Statutory Guardian of Property or Attorney for Property, if the Class Member is a mentally incapable person

Submit the applicable required supporting documentation from the following list with the Longform Claim Form:

- Death Certificate for the Class Member
- Certificate of Appointment as Estate Trustee
- Will or Codicil appointing an Estate Trustee
- Court Appointment or Certificate of Statutory Guardian of Property of a mentally incapable person
- Continuing Power of Attorney appointing an Attorney for Property of a mentally incapable person

I am applying on behalf of the Class Member who is:

- Deceased
- A mentally incapable person

Last Name _____

First Name & Initial _____

Current Address _____ P.O. Box _____

City _____ Province _____ Postal Code _____

Home Phone _____ - _____ - _____ Work Phone _____ - _____ - _____

Email Address _____

SECTION F – REQUIRED SUPPORTING DOCUMENTATION

With this Longform Claim Form I am submitting the following required supporting documentation:

For all persons completing Section A – IDENTIFICATION OF THE CLASS MEMBER.

- 1. Birth Certificate of Class Member. Yes No
- 2. Health Card of Class Member. Yes No
- 3. The Class Member's hospital records from Hamilton Health Sciences Corporation evidencing the Tompkins Metroplasty and the date it occurred. Yes No

For persons Completing Section B – IDENTIFICATION OF CLASS MEMBER'S CHILDREN UNDER AGE 18

- 4. Birth Certificate of each minor child of the Class Member alive on the date of the Tompkins metroplasty who is currently under the age 18. Yes No

For persons completing Section C – Question 3 only.

- 5. Birth Certificate of each person under age 18 who is a Family Class Member. Yes No
- 6. Court Order or Separation Agreement relating to custody of each Family Class Member who is under age 18, if applicable. Yes No

For persons completing Section C – Question 4 only.

- 7. Court Appointment or Certificate of Statutory Guardian of Property of a mentally incapable person. Yes No
- 8. Continuing Power of Attorney appointing an Attorney for Property of a mentally incapable person. Yes No

For persons who answered "Yes" to Section D – Questions 1 to 9 only.

- 9. Completed Physician's Form. Yes No
- 10. The Class Member's hospital or medical records evidencing each medical complication/intervention experienced, the date it occurred and its cause. Yes No

For persons who answered "Yes" to Section D - Question 10 only.

- 11. The Class Member's hospital records from Hamilton Health Sciences Corporation evidencing a second Tompkins Metroplasty and the date it occurred. Yes No

For persons completing Section E – CLASS MEMBER'S QUALIFIED REPRESENTATIVE IDENTIFICATION ONLY.

- 12. Death Certificate for the Class Member Yes No
- 13. Will or Codicil appointing an Estate Trustee. Yes No
- 14. Certificate of Appointment as Estate Trustee. Yes No
- 15. Court Appointment or Certificate of Statutory Guardian of Property of a mentally incapable person. Yes No
- 16. Continuing Power of Attorney appointing an Attorney for Property of a mentally incapable person. Yes No

SECTION F - DECLARATION OF CLASS MEMBER (OR HER QUALIFIED REPRESENTATIVE IF THE CLASS MEMBER IS DECEASED OR A MENTALLY INCAPABLE PERSON)

NOTICE: Any person who submits a Longform Claim Form to the Administrator containing inaccurate and/or false information to obtain undue benefits under this settlement may be subject to criminal and/or civil action.

I hereby certify that:

- the information I have provided in this Longform Claim Form is, to the best of my knowledge, information and belief, true, accurate and complete; and
- I have listed all of the Family Class Members alive on the date of the Tompkins Metroplasty who are currently alive on this Longform Claim Form.

Signed at _____ this _____ of _____, _____
(City) (Day) (Month) (Year)

Witness

Signature

PHYSICIAN'S FORM

SECTION A - IDENTIFICATION OF PATIENT

Complete this section about the person who underwent the Tompkins Metroplasty (the "Patient").

Last Name _____ First Name & Initial _____

Health Card # _____

Date the Tompkins Metroplasty was performed: _____ (Day) _____ (Month) _____ (Year)

SECTION B - IDENTIFICATION OF PHYSICIAN

Last Name _____ First Name & Initial _____

Address _____

City _____ Province _____ Postal Code _____

Work Phone _____ - _____ - _____ Fax _____ - _____ - _____

Email Address _____ Specialty _____

SECTION C - COMPLICATIONS/INTERVENTIONS EXPERIENCED FOLLOWING A TOMPKINS METROPLASTY

Indicate all of the listed medical complications/interventions experienced by the Patient which were materially contributed to by the Tompkins Metroplasty.

Did the Tompkins Metroplasty **materially contribute** to the Patient experiencing one or more of the following medical complication/interventions in the indicated timeframe:

- wound dehiscence within three months of the Tompkins Metroplasty Yes No
- a D & C for any condition other than an early pregnancy loss within six months of the Tompkins Metroplasty Yes No
- a D & C as a result of an early pregnancy loss within twelve months of the Tompkins Metroplasty Yes No
- an umbilical hernia repair anytime after the Tompkins Metroplasty Yes No
- a hysterectomy anytime after the Tompkins Metroplasty Yes No
- a salpingectomy anytime after the Tompkins Metroplasty Yes No
- a laparoscopy to treat an ectopic pregnancy anytime after the Tompkins Metroplasty Yes No
- a delivery of a stillborn child by caesarian section as a result of premature labour anytime after the Tompkins Metroplasty Yes No
- surgical repair at anytime as a result of the Tompkins Metroplasty? Yes No

If you answered "Yes" to any of the questions above, include copies of the Patient's hospital or medical records which support the occurrence of the complication/intervention, its timing and that the Tompkins Metroplasty caused or materially contributed to its occurrence (include only the relevant portions of the hospital or medical records).

If you answered yes to one or more of the indicated complications/interventions, explain how the Tompkins Metroplasty materially contributed to each:

Did you treat the Patient for this/these medical complications / interventions? Yes No

If yes, indicate which medical complications/interventions you treated:

If you did not treat the Patient for this/these medical complications/interventions, on what do you base your opinion that the Tompkins Metroplasty materially contributed to the complications/interventions?

How long have you known the Patient? _____ How long have you treated the Patient? _____
(Years) (Years)

SECTION D - CERTIFICATION BY PHYSICIAN

I hereby certify that the information provided herein is true and correct to the best of my knowledge, information and belief.

Signed _____ this _____ of _____,
at _____ (City) _____ (Day) _____ (Month) _____ (Year)

Physician's Signature

AUDRA JEANETTE BELLAIRE et al.

Plaintiffs

vs. SALIM DAYA and HAMILTON HEALTH SCIENCES CORPORATION

Defendants

Court File No. 04-CV-281230 CM

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

JUDGMENT

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