

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHARON LYNN LOGAN

PLAINTIFF

AND:

DERMATECH, INTRADERMAL DISTRIBUTION INC.,

and

VIVIER PHARMA INC.

DEFENDANTS

AND:

DR. HARLOW HOLLIS

THIRD PARTY

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c.50

DISTRIBUTION PROTOCOL

1. The following definitions apply in this Distribution Protocol:
 - a. "Appeals Reserve Fund" means the pool of funds set aside by the Claims Administrator to pay eligible claims under appeal when the Compensation Fund is distributed.
 - b. "Claim" means the claim made by a Claimant with the Claims Administrator in accordance with the procedure in the Distribution Protocol;
 - c. "Claimant" means a Class Member who files a Claim pursuant to the terms hereof;

- d. "Claims Administrator" means the persons or entities agreed to by the parties or appointed by the Court to administer the claims process in accordance with the Distribution Protocol;
- e. "Claims Deadline" means 6 months from the first publication of the Notice of Court approval of this settlement.
- f. "Claim Form" means a form substantially the same as the one attached in Schedule A;
- g. "Class Counsel" means David M. Rosenberg, Q.C. of Rosenberg Law;
- h. "Physician Form" means a form substantially the same as the one attached in Schedule B;
- i. "Class Member" is a person who is a member of the Class;
- j. "Compensation Fund" means the pool of funds to be paid in trust to Class Counsel less amounts payable to Sharon Lynn Logan, amounts ordered payable to Class Counsel plus taxes, amounts payable to the Public Health Insurers, the Appeals Reserve Fund, and the cost of administration of the Settlement Agreement;
- k. "Dermalive" means the injectable filler used to treat wrinkles and other cosmetic defects;
- l. "Distribution Protocol" means this plan setting out how compensation to Class Members shall be paid;
- m. "Excluded Claims" means the claim of a person resident in British Columbia who has validly opted out of this proceeding, and the claim of a person resident outside of British Columbia who has not validly opted into this proceeding;

- n. "Points Allocation" means the number of points awarded to a Claimant pursuant to the Points Allocation System;
- o. "Points Allocation System" means the method of determining the number of points assigned to a Claimant to determine the compensation to be awarded for that claim;
- p. "Pro Rata" means a proportional division of the Compensation Fund based on the claimant's entitlement;
- q. "Public Health Insurers" means all of the Canadian Provincial and Territorial Ministries of Health or equivalents, and/or Provincial and Territorial Governments, and/or publicly funded plans for health care in Canada;
- r. "Settlement Agreement" means the settlement agreement, as executed by the parties or their representatives;
- s. "Settlement Fund" means the sum of \$5,600,000 (Canadian) that the Releasees have agreed to pay to settle the Action, inclusive of Claims, Administration Costs, Public Health Insurer Claims, interest, legal costs and disbursements;
- t. "Treatment Costs" means the cost of corrective medical treatment for adverse reactions to Dermalive paid by a Class Member (e.g., steroid injections, laser treatments, surgery, etc.).

All other capitalized terms used in this schedule have the same meaning as in the Settlement Agreement.

Principles of Distribution

2. The Releasees shall pay the Settlement Fund to Rosenberg Law "in trust" within thirty (30) days of the Court Approval Date. No use shall be made of the Settlement Fund until:

- a) Class Counsel has obtained signed Releases from the Public Health Insurers of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland, which release the Releasees from the Public Health Insurer Claims; and
 - b) Class Counsel has written to the Ministry of Health or equivalents of Prince Edward Island, New Brunswick, Nunavut, Yukon, and the Northwest Territories, and has received written confirmation from those Ministries of Health, or equivalents, that these Public Health Insurers are in agreement with the method proposed in the Settlement Agreement for resolution of the Public Health Insurer Claims.
3. The Settlement Fund shall be paid as follows:
- a) First, to satisfy the Public Health Insurer Claims of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland.
 - b) Second, to satisfy the Class Counsel Fees, disbursements, taxes, and any honorarium as determined by the Court at the Settlement Approval Hearing, pursuant to s. 38 of the *Class Proceedings Act*, R.S.B.C. 1996 c. 50.
3. The remainder of the Settlement Fund will then be paid by Rosenberg Law to the Claims Administrator “in trust” to be held in an interest bearing trust account with interest accruing to the benefit of the Class.
4. The Claims Administrator shall distribute the Settlement Fund in the following order and priorities:
- a. First, to satisfy the Public Health Insurer Claims of Prince Edward Island, New Brunswick, Yukon, Northwest Territories, and Nunavut, if any such claims are made known in accordance with the procedure set out in paragraph 6 of the Settlement Agreement;
 - b. Second, distribution of the Compensation Fund as set out below; and
 - c. Third, distribution of the Appeals Reserve Fund.

5. Administration Costs may be paid from the Settlement Fund upon approval of Class Counsel or on application to the Court.

Deadline for Claims

6. Claimants may make a Claim by delivering a completed Claim Form and Physician Form with all supporting documentation to the Claims Administrator prior to the Claims Deadline. If a Class Member does not deliver a Claim prior to the Claims Deadline, the Claimant shall not be entitled to any compensation.

7. Mailed or couriered Claim Forms received after the Claims Deadline but post marked on or before the Claims Deadline will be deemed received on the post marked date. Emailed or faxed Claim Forms will be deemed received on the date received by the Claims Administrator.

8. A Claimant may not submit more than one Claim Form. In particular, a Claimant shall submit one Claim Form that comprises all claims he or she may have. If more than one Claim Form is submitted, the Claims Administrator will treat them as one Claim Form.

9. If, for any reason, a living Class Member is unable to complete the Claim Form then it may be completed by the Class Member's personal representative.

Processing Claims

10. The Claims Administrator shall review each Claim Form and verify that the applicant is eligible for compensation, as follows:

- a. The Claims Administrator shall be satisfied that:
 - i) the applicant is a Class Member; and
 - ii) the claim is not an Excluded Claim.

b. For an individual claiming on behalf of a purported Class Member or a purported Class Member's estate, the Claims Administrator shall be satisfied that (i) the individual has authority to act on behalf of the purported Class Member or the purported Class Member's estate regarding financial affairs; (ii) the person or estate on whose behalf the claim was submitted is a Class Member; and (iii) the claim is not an Excluded Claim.

11. The claims process is intended to be expeditious, cost effective and "user friendly" and to minimize the burden on Class Members. The Claims Administrator shall, absent reasonable grounds to the contrary, assume the Class Members to be acting honestly and in good faith.

12. Where a Claim Form contains minor omissions or errors, the Claims Administrator shall correct such omissions or errors if the information to correct the error or omission is readily available to the Claims Administrator.

13. The Claims Administrator may make inquiries of a Claimant or request that the Claimant provide additional documentation in the event of any concerns, ambiguities or inconsistencies in the Claim. If a Claimant has a lawyer, all inquiries or requests will be sent to the lawyer. If the Claims Administrator does not receive the additional information requested or follow-up answers to incomplete forms from a Claimant within 90 days after advising the Claimant of the Claim deficiency, the Claim shall be assessed on the basis of the material provided by the Claimant.

14. The Claims Administrator shall make best efforts to adjudicate a Claim and render a decision as to the Claimant's eligibility, Point Allocation, and eligible Treatment Costs within 60 days of receipt of a Claim.

15. The Claims Administrator shall provide its decision in writing by way of a letter or email to the Claimant. If a Claimant has a lawyer, the decision will be sent to the lawyer.

16. A Claimant may appeal the decision of the Claims Administrator within 30 days of issuance of the decision. The Claimant must notify the Claims Administrator and Class Counsel in writing of their intent to appeal the decision. The appeal will be determined by the Supreme Court of British Columbia on the basis of written submissions without oral hearing.

17. The judgment of the Supreme Court of British Columbia respecting any appeal from the Claims Administrator’s decision is final and binding and shall not be subject to any further appeal.

Points Allocation System

18. If a Claimant meets the condition set out in paragraph 9, the Claims Administrator shall allocate points to the Claimant as prescribed by the Points Allocation System set out below.

Description	Point Allocation
A. Size of Three Most Serious Adverse Reactions to Dermalive (see question 5 on Physician Form)	
Small - maximum length or width less than 0.5 cm	1 x # of area(s)
Medium - maximum length or width between 0.5 cm and 1.0 cm	2 x # of area(s)
Large - maximum length or width greater than 1.0 cm	3 x # of area(s)
B. Nature of Adverse Reaction(s) (see question 5 on Physician Form)	
Colour change	1 x # of area(s)
Palpable	1 x # of area(s)
Tender	1 x # of area(s)
Visible	1 x # of area(s)
C. Location of Adverse Reaction(s) (see diagram on Physician Form)	
One area	1
Two areas	2
Three or more areas	3
D. Treatment of Adverse Reaction(s) (see Claim Form – Section C Treatment) Note: Total points allotted for <u>all</u> treatment (i.e. surgery + injections + laser + other x # treatments) is capped at a maximum of 10 points)	
Surgery	3 x # treatments
Injection	1 x # treatments
Laser	1 x # treatments
Other	1 x # treatments
E. Success of Treatment (see question 6 on Physician Form)	
Treatment successful in resolving the adverse reaction? Yes/No	0/5

F. Functional Impairment e.g., eating, drinking, speaking, smiling, kissing etc. <i>(see question 7 on Physician Form)</i>	
Functional impairment? Yes/No	5/0
Total Point Allocation (add categories A through F)	

19. The maximum number of points that any Claimant will be awarded for all treatment of adverse reactions to Dermalive, including surgery, injection, laser, or other treatments is Ten (10) points.

20. In addition to the compensation a Claimant is eligible to receive under the Point Allocation System, Claimants will receive reimbursement for Treatment Costs paid by the Claimant up to a maximum of \$10,000. To be eligible for reimbursement for Treatment Costs, a Claimant must provide proof of treatment costs paid by the Claimant in the form of receipts or other documentation.

21. Immediately following the Claims Deadline, the Claims Administrator shall provide the names of all Claimants to the Ministry of Health or equivalents for Prince Edward Island, New Brunswick, Nunavut, Yukon and the Northwest Territories in order to confirm that these provinces and territories have no Public Health Insurer Claims. In the event that the Public Health Insurer advises that it has no claim, the Claims Administrator shall provide counsel for the Releasees with written confirmation that the Public Health Insurer has no Public Health Insurance Claim.

22. In the event that Prince Edward Island, New Brunswick, Nunavut, Yukon and/or the Northwest Territories has a Public Health Insurer Claim, the Public Health Insurer Claim(s) shall be paid by the Claims Administrator out of the Settlement Fund in exchange for a signed Release in favor of the Releasees. The Claims Administrator shall provide counsel for the Releasees with the signed Release(s) forthwith upon payment of the Public Health Insurer Claim(s).

23. After The Claims Administrator has completed the steps referred to in paragraph 21 and 22 of the Distribution Protocol, eligible Treatment Costs will be deducted from the Compensation Fund and the remaining Compensation Fund less the Appeals Reserve Fund will be divided Pro Rata amongst the eligible Claimants based upon the points allocated under the Point Allocation System.

24. The Claims Administrator shall mail the cheque to the eligible Claimant at the postal address in the Claim Form or as otherwise directed by the Claimant. If the Claimant has a lawyer, the cheque shall be made payable to the law firm “in trust” and sent directly to the lawyer.

25. The Claims Administrator shall pay all eligible claims within 120 days after the Claims Deadline if there are no claims with deficiencies. If there are claims with deficiencies, the Claims Administrator shall pay all eligible claims by 240 days after the Claims Deadline. Claims determined to be eligible following appeal will be paid from the Appeals Reserve Fund.

26. If, for any reason, a Claimant does not cash a cheque within 6 months after the date of the cheque, the Claimant shall forfeit the right to compensation.

Remaining Amounts

27. If amounts are remaining in the Compensation Fund because of a Claimant not cashing a compensation cheque, or in the Appeal Reserve Fund following completion of all appeals, and all other financial commitments have been met to implement the settlement, the remaining amounts will be distributed Pro Rata to all approved Claimants. If Class Counsel is of the view that the amounts remaining in the Compensation Fund and/or Appeal Reserve Fund are insufficient to warrant a Pro Rata distribution, then Class Counsel will donate the remaining amounts to an appropriate charity.