

## SPECIAL CLAIMS PROTOCOL

### Canadian Biomet M2a 38, M2a Magnum and ReCap Femoral Resurfacing System Class Action Settlement

#### I. GENERAL

1. Subject to Section 2, this protocol (the "**Protocol**") imports the definitions used in the Canadian National Biomet M2A/Magnum Class Action Settlement Agreement (the "**Settlement Agreement**").
2. The following definitions apply to this **Protocol** only:
  - a. "**Additional Notice Budget**" means the funds which **Class Counsel** may draw from the **Discretionary Fund** for additional expenditures on notice to the Class, where **Class Counsel** determines that such expenditures are in the best interests of the Class in accordance with Sections 3.2.2 and 3.5.1 of the **Settlement Agreement**.
  - b. "**Administration Costs**" means all costs to administer and distribute the **Discretionary Fund**, including the costs and professional fees of the **Claims Administrator**;
  - c. "**Class Counsel Fees**" means an amount not to exceed \$187,500, being 25% of the **Discretionary Fund**, plus \$24,375 for HST, for which **Class Counsel** will seek approval by the **Ontario Court**;
  - d. "**Final Deadline**" means March 31, 2031; and
  - e. "**Secondary Distribution**" means the amounts that may be allocated to **Class Members**, up to a maximum total of \$100,000, in the event that there are funds remaining following distribution to **Approved Discretionary Fund Claimants**.
3. **Administration Costs** may be withdrawn from the **Discretionary Fund** by the **Claims Administrator** as payments to the **Claims Administrator** become due.
4. The **Claims Administrator** shall pay the **Class Counsel Fees** in the amount approved by the **Ontario Court** within 10 days of the date on which the **Initial Deposit** is paid into the **Account** by the **Defendants**.
5. **Class Counsel** may draw on the **Additional Notice Budget**, in an initial amount up to \$50,000, at any time between the exhaustion of the Defendants' contribution to the costs of disseminating notice pursuant to the **Settlement Agreement** and the **Final Deadline**.

6. If **Class Counsel** determines that it is in the best interests of the Class that the **Additional Notice Budget** be greater than \$50,000, **Class Counsel** shall bring a motion to the **Ontario Court** for approval of such additional notice expenditures. The **Defendants** do not have standing to make submissions at any such hearing.
7. Where a **Class Member** retains **Class Counsel** to bring a claim under this **Protocol**, **Class Counsel** may charge a contingency fee up to 8.3% of the **Class Member's** total recovery, plus HST, disbursements, and HST on disbursements, pursuant to a retainer with the **Class Member**.
8. If this **Protocol** does not adequately cover a matter relevant to the determination of a claim, the **Claims Administrator** shall seek directions from **Class Counsel**, who will consider the matter by analogy to the terms of the **Settlement Agreement**.

## II. **ELIGIBILITY**

9. An **Approved Discretionary Fund Claimant** must be one of the following:
  - a. A **Class Member** who otherwise meets the definition of **Qualified Revision Surgery Claimant**, but whose **Revision Surgery** is over 12 years and under 16 years following their **Index Surgery** (a "**12-16 Year Claimant**");
  - b. A **Class Member** who otherwise meets the definition of **Qualified Revision Surgery Claimant**, but who has not had a **Revision Surgery** and does not have a **Scheduled Revision Surgery** as of the **Claims Deadline**, and whose **Revision Surgery** occurs no later than 12 years after their **Index Surgery** (a "**Late Index Surgery Claimant**"); and/or
  - c. A **Class Member** who is **Unrevised** and has high levels of metal ions as set out below (a "**Metal Ion Claimant**").
10. In order to be an **Approved Discretionary Fund Claimant**, a **Class Member** must meet the following requirements, to be reviewed and assessed by the **Claims Administrator** in the same manner set out in the **Settlement Agreement**:
  - a. A **12-16 Year Claimant** must meet the causation requirements applicable to a 10-12 Year **Qualified Revision Surgery Claimant** under Section 4.2.8 of the **Settlement Agreement**, except that their **Revision Surgery** occurred more than 12 years and less than 16 years and one day following the **Index Surgery**.
  - b. A **Late Index Surgery Claimant** must meet the causation requirements applicable to a 10-12 year **Qualified Revision Surgery Claimant** under Section 4.2.8 of the **Settlement Agreement**.

- c. A **Metal Ion Claimant** provide medical records dated at least 180 days after their **Index Surgery** with blood test results indicating cobalt or chromium levels which exceed any of the following thresholds:

	Serum (µg/L)	Serum (nmol/L)	Whole Blood (µg/L)	Whole Blood (nmol/L)
Cobalt	10 µg/L	169.5 nmol/L	9.14 µg/L	154.9 nmol/L
Chromium	10 µg/L	192.3 nmol/L	5.94 µg/L	114.2 nmol/L

11. A claimant who makes a claim as an **Unrevised Class Member** under the **Settlement Agreement** may also claim under this **Protocol** as a **Metal Ion Claimant**, but may not claim as a **12-16 Year Claimant** or as a **Late Index Surgery Claimant**.
12. Deadlines apply to claims made under this **Protocol**. Sections 1(h), 1(xx), and 1(ccc), defining "**Claims Deadline**", "**Scheduled Revision Surgery**", and "**Submission Deadline**", apply to this **Protocol** with necessary modifications. In particular:
- The term "**12-16 Year Claimant**" in this **Protocol** shall apply in the place of the term "**Qualified Revision Surgery Claimant**" in the **Settlement Agreement**.
  - The **Submission Deadline** for a **Late Index Surgery Claimant** is 90 days after the claimant's **Revision Surgery**.
  - The **Submission Deadline** for a **Metal Ion Claimant** is the **Claims Deadline**.
  - For a claimant who has not had a **Revision Surgery** and does not have a **Scheduled Revision Surgery** as of the **Claims Deadline**, and whose **Revision Surgery** occurs no later than 16 years after the **Index Surgery**, the **Submission Deadline** shall be 90 days after the claimant's **Revision Surgery**.
13. Section 4.4.6 of the **Settlement Agreement** applies to claims made under the **Protocol**, except that further extensions, following the one at the discretion of the **Claims Administrator**, may only be granted by **Class Counsel**.
14. Notwithstanding anything in this **Protocol**, no claims may be received by the **Claims Administrator** following the **Final Deadline**.

### **III. COMPENSATION FOR APPROVED DISCRETIONARY FUND CLAIMANTS**

15. The compensation payable to **Approved Discretionary Fund Claimants** will be determined by the allocation of points, and payments made based on those points as outlined below.

16. **Approved Discretionary Fund Claimants** will each be allocated a Basic Points Allocation ("BPA") as follows (the "**Point Matrix**"):

<b>Category</b>	<b>Subcategory</b>	<b>Basic Points Allocation</b>
<b>METAL ION CLAIMANTS</b>		
<b>Metal Ion Claimants</b>	N/A	24
<b>LATE INDEX SURGERY CLAIMANTS</b>		
<b>Late Index Surgery Claimants</b>	N/A	280
<b>Late Index Surgery Complications (Single Revision Claimants)</b>	Infection	38
	Permanent Nerve Damage	75
	Second Revision	75
	Blood Clot	38
	Stroke	150
	Third Revision	150
	Death	150
	Femoral Fracture	60
	Dislocation	45
	Lost Wages	45
Heart Attack	150	
<b>Late Index Surgery Complications (Bilateral Revision Claimants)</b>	Infection	47
	Permanent Nerve Damage	94
	Second Revision	94
	Blood Clot	47
	Stroke	187
	Third Revision	187
	Death	187
	Femoral Fracture	71
	Dislocation	56
	Lost Wages	94
Heart Attack	187	
<b>12-16 YEAR CLAIMANTS</b>		
<b>12-16 Year Claimants</b>	N/A	200
<b>12-16 Year Complications (Single Revision Claimants)</b>	Infection	27
	Permanent Nerve Damage	54
	Second Revision	54
	Blood Clot	27
	Stroke	107
	Third Revision	107
	Death	107
	Femoral Fracture	43
	Dislocation	32
Lost Wages	32	

Category	Subcategory	Basic Points Allocation
	Heart Attack	107
<b>12-16 Year Complications (Bilateral Revision Claimants)</b>	Infection	34
	Permanent Nerve Damage	67
	Second Revision	67
	Blood Clot	34
	Stroke	134
	Third Revision	134
	Death	134
	Femoral Fracture	51
	Dislocation	40
	Lost Wages	67
	Heart Attack	134

17. The **BPA** for Metal Ion Claimants will not be subject to a time-based reduction.
18. The **BPA** for approved **Late Revision Claimants** and **Complications** for **Late Revision Claimants** will be subject to the following reductions:

Implant In Vivo Time	Cumulative Reduction
In vivo 10 years, 1 day	0%
In vivo 11 years, 1 day	14.28....% <sup>1</sup>
In vivo 12 years and 1 day and beyond	Claimant may qualify as a <b>12-16 Year Claimant</b>

19. The **BPA** for approved **12-16 Year Claimants** and **Complications** for **12-16 Year Claimants** will be subject to the following reductions:

Implant In Vivo Time	Cumulative Reduction
In vivo 12 years, 1 day	0%
In vivo 13 years, 1 day	20%
In vivo 14 years, 1 day	40%
In vivo 15 years, 1 day	60%
In vivo 16 years and 1 day and beyond	No compensation

<sup>1</sup> The **Claims Administrator** shall apply a cumulative reduction equivalent to 1/7 of the **BPA** for **Late Revision Claimants** and **Complications** for **Late Revision Claimants**.

20. The **Claims Administrator** shall calculate each **Approved Discretionary Fund Claimant's Final Point Value** as follows:

BPA for Revision Surgery \* time-based reduction percentage

+

BPA for Complications \* time-based reduction percentage

+

BPA for Metal Ions

21. The maximum amounts to which approved **12-16 Year Claimants** and **Late Index Surgery Claimants** may be entitled are as follows:

Category	Implant In Vivo Time	Maximum Compensation for Revision Surgery	Maximum Compensation for Complications (Total for All Complications)
<b>Late Index Surgery Claimants</b>	10-11 years	\$52,500	\$35,000
	11-12 years	\$45,000	\$30,000
<b>12-16 Year Claimants</b>	12-13 years	\$37,500	\$25,000
	13-14 years	\$30,000	\$20,000
	14-15 years	\$22,500	\$15,000
	15-16 years	\$15,000	\$10,000

22. The maximum amount to which an approved **Metal Ion Claimant** may be entitled is \$4,500.

#### **IV. DISTRIBUTION OF THE DISCRETIONARY FUND**

23. The Discretionary Fund shall be distributed as follows:
- a. First, to satisfy the **Class Counsel Fees** in the amount approved by the **Ontario Court**;
  - b. Second, to pay **Administration Costs**;
  - c. Third, to pay any amount of the **Additional Notice Budget** drawn upon by **Class Counsel**;

- d. Fourth, to pay the levy to the Ontario Class Proceedings Fund pursuant to *Class Proceedings*, O. Reg. 771/92;
  - e. Fifth, to pay awards to **Approved Discretionary Fund Claimants**;
  - f. Sixth, if there are funds remaining after steps 1-5, to satisfy amounts payable in any **Secondary Distribution**;
  - g. Seventh, if there are funds remaining after steps 1-6, to pay the levy to the Quebec Fonds d'Aide aux Actions Collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, f-3.2.0.1.1, r. 2; and the *Code of Civil Procedure*, CQLR c C-25.01;
  - h. Eighth, if there are funds remaining after steps 1-7, **Class Counsel** shall recommend to the **Quebec Court** and **Ontario Court** that such amounts be divided between the **Provincial Health Insurers** in shares which are proportional to the total compensation awarded to **Approved Discretionary Fund Claimants** who resided within the territorial jurisdiction of each **Provincial Health Insurer** at the time of the **Revision Surgery** (or **Index Surgery**, in the case of an **Unrevised Metal Ion Claimant**).
24. The **Claims Administrator** will assess claims to the **Discretionary Fund** within sixty (60) days of receipt of a completed **Claimant Declaration** in accordance with Section 4.4 of the **Settlement Agreement**. The **Claims Administrator** shall provide notice to all **Approved Discretionary Fund Claimants** of the **Final Point Value** attributable to their claim.
25. The **Claims Administrator** shall calculate the compensation payable to each **Approved Discretionary Fund Claimant** by dividing the funds remaining in the **Discretionary Fund**, less any distributions authorized by this **Protocol**, *pro rata* among all **Approved Discretionary Fund Claimants** based on their **Final Point Value**, subject to the maximums listed in Sections 21 and 22 of this **Protocol**.
26. Notwithstanding Section 25 of this **Protocol**, the **Claims Administrator** shall not prorate the **Final Point Value** or compensation awarded to **Late Index Surgery Claimants**.
27. Within 60 days following the **Claims Deadline**, the **Claims Administrator** shall report to **Class Counsel** on:
- a. The funds remaining in the **Discretionary Fund**;
  - b. The number of claims made to date under this **Protocol**;
  - c. The number of claims approved to date under this **Protocol**;
  - d. The total aggregate Final Point Value calculated for approved claimants to date under this **Protocol**; and

- e. The total aggregate compensation calculated to date for approved claimants under this **Protocol**.
28. Following receipt of the **Claims Administrator's** report pursuant to Section 27 of this **Protocol**, **Class Counsel** may direct the **Claims Administrator** to pay up to 50% of the compensation awarded to each **Approved Discretionary Fund Claimant**, based on the **Claims Administrator's pro rata** calculations as of the date of the report.
  29. At any time following the delivery of the report described in Section 27 of this **Protocol**, **Class Counsel** may request that the **Claims Administrator** deliver a report containing the same information. At their discretion, following receipt of the report, **Class Counsel** may direct the **Claims Administrator** to pay further amounts to **Approved Discretionary Fund Claimants**, based on the **Claims Administrator's pro rata** calculations as of the date of the report.
  30. The **Claims Administrator** shall reserve amounts equal to 10% of each distribution to **Approved Discretionary Fund Claimants** pursuant to Sections 28-29 of this **Protocol** to pay the levy to the Ontario Class Proceedings Fund pursuant to *Class Proceedings, O. Reg. 771/92*. No distribution pursuant to Section 28 or 29 of this **Protocol** shall be made until the Law Foundation of Ontario has been given an opportunity to review and confirm the calculation of the reserve. If there is any dispute or question as to the calculation of the reserve, the Law Foundation of Ontario and **Class Counsel** shall arrange for an appearance before the **Ontario Court** to resolve the issue, and no amounts shall be distributed to **Class Members** pending that appearance.
  31. Within 15 days following the **Final Deadline**, the **Claims Administrator** shall provide to **Class Counsel** an anonymized summary of the **Discretionary Fund** accounting ("**Final Discretionary Fund Report**"). Such accounting shall include:
    - a. The funds remaining in the **Discretionary Fund**;
    - b. The total number of claims made under this **Protocol**;
    - c. The total number of claims approved under this **Protocol**;
    - d. The total aggregate Final Point Value calculated for approved claimants under this **Protocol**;
    - e. The total aggregate compensation calculated for approved claimants under this **Protocol**; and
    - f. The levy payable to the Ontario Class Proceedings Fund pursuant to *Class Proceedings, O. Reg. 771/92*, including amounts reserved pursuant to Section 30 of this **Protocol**.



32. Following receipt of the **Final Discretionary Fund Report**, **Class Counsel** shall consider whether a **Secondary Distribution** is economically feasible, and shall provide directions to the **Claims Administrator** as to the **Secondary Distribution**. The categories of **Class Members** who may be eligible to receive amounts via a **Secondary Distribution** are at the discretion of **Class Counsel**, but may include:
- a. **Class Members** who otherwise met the definition of **Qualified Revision Surgery Claimant**, **12-16 Year Claimant**, or **Late Index Surgery Claimant**, except that they failed to satisfy the causation requirements in section 4.2.8 of the **Settlement Agreement**;
  - b. **Approved Discretionary Fund Claimants**, to whom additional amounts may be paid, notwithstanding the maximums listed in Sections 21 and 22 of this **Protocol** (if applicable); and/or
  - c. Other **Class Members** with exceptional circumstances.
33. **Class Counsel** shall report to the **Claims Administrator** as to whether a **Secondary Distribution** will be made within 15 days following receipt of the **Final Discretionary Fund Report**.
34. If there are amounts available to make payments to the Quebec Fonds d'Aide aux Actions Collectives and the **Provincial Health Insurers** pursuant to Subsections 23(g)-(h) of this **Protocol**, the **Claims Administrator** shall report on the amounts proposed to be paid to the Fonds d'Aide aux Actions Collectives and each **Provincial Health Insurer** to **Class Counsel** for approval.
35. **Class Counsel** may seek the direction of the **Ontario Court** if there is any uncertainty as to the appropriate distribution of the balance of the Discretionary Fund in accordance with this **Protocol** and the **Settlement Agreement**. The **Defendants** do not have standing to make submissions at any such hearing.
36. Upon written approval from **Class Counsel** or court order, the **Claims Administrator** shall make the final distribution payments pursuant to Sections 23 and 25 of this **Protocol**.
37. If payments to **Class Members** under this **Protocol** are made by cheque, and if a claimant does not cash a cheque within 6 months of the date of the cheque, the claimant shall forfeit the right to compensation and the funds shall revert to the **Discretionary Fund**.
38. If the **Discretionary Fund** is in a positive balance after 190 days from the date of the final distribution described in Section 36 of this **Protocol**, (whether by reason of tax refunds, un-cashed cheques, or otherwise), the **Claims Administrator** shall report to and seek direction from **Class Counsel** as to the allocation of the remaining funds.