

**SCHEDULE "E": COOK IVC FILTER PRODUCTS NATIONAL SETTLEMENT  
AGREEMENT COMPENSATION PROTOCOL**

## PART I: PREAMBLE & RECITALS

### SECTION 1 - DEFINITIONS

(1) Unless otherwise indicated or required by context, capitalized terms in this Compensation Protocol have the meanings assigned to them in the Settlement Agreement. Terms used in the singular shall be deemed to include the plural, and vice versa, where appropriate. Feminine pronouns and female references shall be deemed to include the masculine, and vice versa, where appropriate.

(2) Unless a particular section of this Compensation Protocol explicitly provides for another interpretation, the following terms shall have the meanings set forth below.

- (a) **“Approved Claimant”** means a Qualifying Claimant or Other Qualifying Claimant.
- (b) **“Claim”** means a Claim Form duly completed with all required documentation submitted to the Claims Administrator by the Claims Deadline.
- (c) **“Claim Deadline”** means one hundred and twenty (120) days after the last day on which the Settlement Approval Notice is published.
- (d) **“Claim Form”** means the claim form developed by the Claims Administrator in consultation with Class Counsel and approved by the Ontario Court.
- (e) **“Evidence”** means Implant Evidence and/or Injury or Treatment Evidence.
- (f) **“Filing Claimant”** has the meaning ascribed to it in the Settlement Agreement but also includes, where context requires, a lawyer or other representative acting on behalf of a Filing Claimant.
- (g) **“Implant Evidence”** means the documentation that must be provided to establish proof of implantation with a Cook IVC Filter Product, namely:
  - (i) product identification sticker, tag, or label and medical records confirming implant of a Cook IVC Filter Product;
  - (ii) medical records contemporaneous to the implantation procedure for the Cook IVC Filter Product recording the product identification information (lot number) from the product identification sticker, tag, or label;
  - (iii) medical records contemporaneous to the implantation procedure for the Cook IVC Filter Product implanted identifying the model of the Cook IVC Filter Product;
  - (iv) documentation from the implanting surgeon or hospital providing confirmation of the model of the Cook IVC Filter Product implanted; or

- (v) documentation, including imaging, from a physician providing confirmation of the model of the Cook IVC Filter Product implanted based on a review of imaging.
- (h) **“Injury or Treatment Evidence”** means proof, by way of medical reports, which may include contemporaneous physician records or hospital records supplemented by a letter from the physician providing any needed clarification of the contents of the records, of each Qualifying Event or Other Qualifying Claimant Criteria claimed.
- (i) **“Other Qualifying Claimant”** means:
  - (i) a Filing Claimant whose Claim is approved by the Claims Administrator as meeting the Other Qualifying Claimant Criteria; or
  - (ii) a Filing Claimant who is a Family Class Member of a Qualifying Claimant.
- (j) **“Other Qualifying Claimant Criteria”** means the following, as described in **Exhibit “B”** to this Compensation Protocol:
  - (i) A physician has expressly recommended in writing against retrieval due to risk attributed to the Cook IVC Filter Product;
  - (ii) Symptom attributed to the Cook IVC Filter Product resulting in a Percutaneous Retrieval Procedure, as demonstrated from Injury or Treatment Evidence;
  - (iii) Symptom attributed to the Cook IVC Filter Product without Percutaneous Retrieval Procedure, as demonstrated from Injury or Treatment Evidence; or
  - (iv) Symptom as a result of Percutaneous Retrieval Procedure, but does not include a single, successful percutaneous retrieval procedure that does not result in or is not the result of a medical symptom, condition and/or complication, as demonstrated from Injury or Treatment Evidence.
- (k) **“Open Retrieval Procedure”** means the open surgical removal of a Cook IVC Filter Product not involving endovascular or percutaneous techniques.
- (l) **“Pre-Approved Class Member”** means any Class Member listed in confidential **Exhibit “C”** to this Compensation Protocol who shall be deemed to be a (i) Qualifying Death Claimant, (ii) Qualifying Fracture Claimant or (iii) Qualifying Open Surgery Claimant, as specified therein, and who shall be automatically approved by the Claims Administrator as such.
- (m) **“Qualifying Event”** means:
  - (i) Any instance of death attributable in writing to medical symptoms, conditions, and/or complications directly associated with a Cook IVC Filter

Product, including but not limited to: fracture, migration, penetration, perforation, embolization, thrombotic occlusion, hemorrhage, recurrent pulmonary embolism, deep vein thrombosis or other blood clot, infection, cardiac arrhythmia, and retrievals (“**Qualifying Death**”);

- (ii) Any instance of an Open Retrieval Procedure being performed for a Cook IVC Filter Product, including Open Retrieval Procedures that do not result in the removal or complete removal of a Cook IVC Filter Product (“**Qualifying Open Surgery**”); or
  - (iii) Any instance of loss of a Cook IVC Filter Product’s structural integrity resulting in fragmentation, breaking, or separating of the implanted device (“**Qualifying Fracture**”).
- (n) “**Qualifying Death Claimant**” means:
- (i) a Filing Claimant whose Claim is approved by the Claims Administrator as meeting the criteria for a Qualifying Death; or
  - (ii) a Pre-Approved Class Member deemed to be a Qualifying Death Claimant.
- (o) “**Qualifying Fracture Claimant**” means:
- (i) a Filing Claimant whose Claim is approved by the Claims Administrator as meeting the criteria for a Qualifying Fracture; or
  - (ii) a Pre-Approved Class Member deemed to be a Qualifying Fracture Claimant.
- (p) “**Qualifying Open Surgery Claimant**” means:
- (i) a Filing Claimant whose Claim is approved by the Claims Administrator as meeting the criteria for a Qualifying Open Surgery; or
  - (ii) a Pre-Approved Class Member deemed to be a Qualifying Open Surgery Claimant.
- (q) “**Referee**” means the person, selected by Class Counsel and approved by the Ontario Court, who will hear appeals from decisions of the Claims Administrator.
- (r) “**Settlement Proceeds**” has the meaning ascribed to it in the Settlement Agreement.

## **PART II: CLAIMS ADMINISTRATION**

### **SECTION 2 – CLAIMS ADMINISTRATOR’S DUTIES**

#### **2.1 Purpose of the Compensation Protocol**

- (1) The purpose of the Compensation Protocol is to provide further guidance to the Claims Administrator to help ensure that:
  - (a) only Class Members who satisfy the criteria set out in this protocol will receive compensation from the Settlement Proceeds;
  - (b) similarly situated Filing Claimants will be treated as uniformly as possible; and
  - (c) Provincial Health Insurers, Qualifying Claimants and Other Qualifying Claimants will receive timely compensation in a way that minimizes, to the extent reasonably possible, the Claims Administration Costs and other transaction costs associated with implementation and administration of the Settlement Agreement.

#### **2.2 Duties and responsibilities of the Claims Administrator**

- (1) The Claims Administrator’s duties and responsibilities include the following:
  - (a) providing notice(s) to the Class Members as may be required;
  - (b) developing a claims process including a claims website, paper and electronic Claim Forms, and systems and procedures for completing, filing, receiving and adjudicating Claims electronically and by paper;
  - (c) making timely decisions in respect of Claims received;
  - (d) notifying Class Counsel forthwith of appeals;
  - (e) submitting required materials for appeals;
  - (f) performing such recalculation of the compensation amounts as may be required by Class Counsel in accordance with this Compensation Protocol and as ordered by the Ontario Court;
  - (g) arranging payment to the Provincial Health Insurers and Approved Claimants in accordance with this Compensation Protocol or as ordered by the Ontario Court;
  - (h) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Members elect;

- (i) holding the Settlement Amount in the Trust account and making all payments from the Settlement Amount from that account as authorized;
- (j) remitting the amounts payable to the Fonds d'aide aux actions collectives;
- (k) confidentially reporting to Class Counsel, the Defendants and the Ontario Court respecting Claims received and administered;
- (l) maintaining the Claims information for three years after the judgment closing the administration of the Settlement Amount;
- (m) preparing and submitting reports and records as directed by Class Counsel or the Ontario Court;
- (n) fulfilling any obligation to report taxable income and make tax payments (including interest and penalties) due with respect to the income earned by the Settlement Amount;
- (o) being bilingual in all respects; and
- (p) collecting, using and retaining the personal information received from Filing Claimants as prescribed in the *Act respecting the protection of personal information in the private sector*, CQLR c. P-39.1.

### **2.3 Lawyer or other representative of Filing Claimant**

- (1) Where a Filing Claimant is a lawyer or other representative, such person shall confirm they are retained to act in such capacity and the Claims Administrator shall be entitled to request any documentation of such retainer that it, in its sole discretion, requires.
- (2) Where a Filing Claimant is a lawyer or other representative all communication shall be with such representative rather than the represented Class Member.

## **SECTION 3 – CLAIMS ADMINISTRATION PROCESS**

### **3.1 Electronic Claims Process**

- (1) The Claims Administrator shall create and maintain a claims website dedicated to providing Class Members with relevant information pertaining to the Settlement and which will allow Class Members to file their Claims Forms electronically or provide directions for mailing Claims Forms to the Claims Administrator.

### **3.2 Estate representatives**

- (1) Estate representatives of deceased Primary Class Members are eligible to submit a claim as a Primary Class Member.

### **3.3 Claim Forms**

- (1) In order to be eligible for compensation, a Filing Claimant must complete, execute and submit a Claim Form to the Claims Administrator by the Claim Deadline, in addition to any other requirements in the Settlement Agreement and Compensation Protocol.
- (2) The Claims Administrator may also develop such other forms as it deems necessary for the implementation and administration of the Settlement Agreement in accordance with the purpose of this Compensation Protocol. If developed, such forms must be properly completed by Filing Claimants.

### **3.4 Claim Deadline**

- (1) Claims that are not properly and timely submitted to the Claims Administrator by the Claim Deadline will be denied by the Claims Administrator, subject to section 3.5 below. For greater clarity, the failure to meet the relevant Claim Deadline with the required supporting documentation will result in rejection of that Claim.
- (2) If the completed Claim and required supporting documentation are submitted by mail, they must be postmarked no later than the Claim Deadline.

### **3.5 Claims Deficiencies**

- (1) If, during claims processing, the Claims Administrator finds technical deficiencies in a Filing Claimant's Claim Form or supporting documentation, the Claims Administrator shall notify the Filing Claimant of the technical deficiencies and shall allow the Filing Claimant sixty (60) days from the date of mailing to correct the deficiencies. Such notification shall be by way of letter sent via email, if available, or through first class regular mail.
- (2) If deficiencies are not corrected within the sixty (60) day period, the Claims Administrator shall reject the Filing Claimant's Claim to the extent that it is deficient (whether part of the Claim or all of it) and the Filing Claimant shall have no further opportunity to correct the deficiencies.
- (3) "Technical deficiencies" shall not include failure to provide sufficient Evidence to support the Filing Claimant's Claim. In the event that a Filing Claimant establishes before the Claims Deadline that he/she has timely requested but not yet received the Evidence, the Filing Claimant may submit copies of the record requests that were made requesting the Evidence, and the failure to provide timely Evidence will be deemed a "technical deficiency", and in such case, the Claims Administrator shall notify the Filing Claimant of the deemed technical deficiency and the Filing Claimant shall be provided one (1) additional sixty (60) day period, from the date the notification was sent, to provide sufficient Evidence as provided in Section 3.5(1) and 3.5(2)

### **3.6 Claims Administrator's Decision and Notification**

- (1) In respect of each Filing Claimant, the Claims Administrator shall:

- (a) determine whether the Filing Claimant is a Class Member;
  - (b) determine whether the Filing Claimant has satisfied all the requirements set in this Compensation Protocol and the Settlement Agreement;
  - (c) determine the Filing Claimant's Claim should be approved or rejected and, if approved, calculate compensation owed for his or her Claim based on this Compensation Protocol; and
  - (d) notify the Filing Claimant by way of letter sent via email, if available, or through first class regular mail as to the approval or rejection of his or her Claim and, if applicable, the calculated compensation for his or her Claim ("Decision Notice").
- (2) Where the Claims Administrator has rejected all or part of the Claim, the Claims Administrator shall include in the Decision Notice its grounds for so doing.
- (3) The Claims Administrator's decision will be final and binding upon the Filing Claimant, subject to the limited right of appeal afforded in subsection 3.7.

### **3.7 Appeal of the Claims Administrator's Decision**

- (1) Filing Claimants who are not Pre-Approved Class Members will be granted a thirty (30) day period from the date Decision Notice is sent to them to electronically submit or postmark an appeal of the rejection of a Claim or an appeal of the compensation amount calculated ("Appeal").
- (2) Appeals shall be made in writing to and determined by the Referee, supported only by the documentation provided to the Claims Administrator and shall not exceed 10 pages.
- (3) If the Referee dismisses the Appeal, the costs associated with the Appeal will be payable by the Filing Claimant who made the Appeal.
- (4) If the Referee allows the Appeal, the costs associated with the Appeal will form part of the Claims Administration Costs.
- (5) The decision on the Appeal is final and binding and shall not be subject to any further appeal or review whatsoever.
- (6) No appeal or other review is available for disputing a decision or standard set by the Settlement Agreement or by this Compensation Protocol.

### **3.8 Website**

- (1) The Claims Administrator shall take the claims website offline no later than six months after final distribution of Settlement Proceeds.



### **3.9 Pre-Approved Class Members**

- (1) Pre-Approved Class Members shall have no right of appeal or further review available under this subsection or this Compensation Protocol.
- (2) Pre-Approved Class Members are not required to complete a Claim Form or otherwise provide further documentation of their Claims.

## **SECTION 4 – FILING CLAIMANT ELIGIBILITY FOR COMPENSATION**

### **4.1 Qualifying Event eligibility criteria**

- (1) In order to be approved by the Claims Administrator as meeting the criteria for a Qualifying Event, a Filing Claimant must:
  - (a) be or, if acting in a representative capacity, be representing the interests of a Class Member;
  - (b) demonstrate, from Injury or Treatment Evidence, a Qualifying Event in accordance with the criteria set in subsections 4.2 to 4.4; and
  - (c) demonstrate, from Implant Evidence and/or Injury or Treatment Evidence, implantation with a Cook IVC Filter Product.
- (2) A Qualifying Claimant may only be eligible for compensation for one Qualifying Event per Cook IVC Filter Product. In the event that a Filing Claimant meets the criteria for more than one Qualifying Event for one Cook IVC Filter Product, the Claims Administrator will classify that Claimant into the Qualifying Claimant category with the highest compensation available for which that Claimant qualifies for.
- (3) In the event that a Qualifying Claimant received more than one Cook IVC Filter Product and a Qualifying Event is demonstrated for each Cook IVC Filter Product, the Qualifying Claimant shall be eligible to receive compensation for such Qualifying Events and shall be counted as a Qualifying Claimant in each such category.

### **4.2 Qualifying Death evidence**

- (1) Attribution of an instance of death to a symptom, condition and/or complication directly associated with a Cook IVC Filter Product, as demonstrated from Injury or Treatment Evidence.

### **4.3 Qualifying Open Surgery evidence**

- (1) Where the Injury or Treatment Evidence indicates an open surgical procedure performed under general anesthesia, to remove or attempt to remove the Cook IVC Filter Product.

#### **4.4 Qualifying Fracture evidence**

(1) The Injury or Treatment Evidence must document the Qualifying Fracture by imaging with accompanying report or operative report.

#### **4.5 Pre-Approved Class Members**

(1) A Filing Claimant who is a Pre-Approved Class Member shall be deemed to have met the criteria set out in subsections 4.1 to 4.4.

#### **4.6 Other Qualifying Claimant eligibility criteria**

(1) In order to be approved as an Other Qualifying Claimant, a Filing Claimant must:

- (a) be or, if acting in a representative capacity, be representing the interests of, a Class Member; and
- (b) for those who are Primary Class Members with Other Qualifying Claims:
  - (i) demonstrate, from Injury or Treatment Evidence, at least one Other Qualifying Claimant Criteria; and
  - (ii) demonstrate, from Implant Evidence and/or Injury or Treatment Evidence, implantation of a Cook IVC Filter Product,
- (c) for those who are Family Class Members of Qualifying Claimants:
  - (i) provide supporting evidence of personal relationship to a Filing Claimant with a Qualifying Event.

(2) Other Qualifying Claimants will be assigned points at the sole discretion of the Claims Administrator, according to a point system and point value determined by Class Counsel, subject to the right of appeal provided at subsection 3.7, as set out in **Exhibit “B”** to the Compensation Protocol.

(3) Other Qualifying Claimants who are Family Class Members of Qualifying Claimants will receive no greater than one (1) point per Claim and will not be allocated any additional points set out in Exhibit “B” to the Compensation Protocol.

(4) In the event that the cumulative claims of Family Class Members exceeds 25% of the amount awarded to all Other Qualifying Claimants, the total compensation paid to the Family Class Members shall be capped at 25% of the amount awarded to Other Qualifying Claimants and distributed on a *pro-rata* basis.

(5) The Claims Administrator will assign points based on the totality of the information and resources available to it, using its best judgment and expertise to fairly and reasonably adjudicate the claims.

(6) In the event that an Other Qualifying Claimant received more than one Cook IVC Filter Product for which an Other Qualifying Claimant Criteria is demonstrated, the Other Qualifying Claimant shall receive the points attributable to each Cook IVC Filter Product cumulatively.

#### **4.7 Both Qualifying Event and Other Qualifying Claimant Criteria are met or two Other Qualifying Claimant Criteria are met**

(1) In the event that a Filing Claimant meets the criteria for both a Qualifying Claimant and an Other Qualifying Claimant for the same Cook IVC Filter Product, the Claims Administrator shall classify that Filing Claimant as solely a Qualifying Claimant and such Claimants shall not be eligible to receive compensation as an Other Qualifying Claimant from the Settlement Proceeds.

(2) In the event that a Filing Claimant meets two or more Other Qualifying Criteria set out in Exhibit B for the same Cook IVC Filter Product, the Claims Administrator shall classify that Filing Claimant solely under one Other Qualifying Criteria and shall assign points based on one Other Qualifying Criteria only.

### **SECTION 5– EVIDENTIARY REQUIREMENTS**

#### **5.1 General evidentiary requirements**

- (1) A Filing Claimant who is not a Pre-Approved Class Member must provide:
- (a) information about the Filing Claimant that will allow the Claims Administrator to verify her Class Member status and the Filing Claimant’s contact information;
  - (b) authorization to the Claims Administrator to contact the Filing Claimant or her representative for clarification or information;
  - (c) a declaration that the information submitted in the Claim is true, correct and complete; and
  - (d) such further and other information as the Claims Administrator may require.

#### **5.2 Mandatory evidentiary requirements**

(1) In order to be approved by the Claims Administrator as meeting the criteria for a Qualifying Event or Other Qualifying Claimant Criteria, a Filing Claimant must provide Implant Evidence and Injury or Treatment Evidence in a manner satisfactory to the Claims Administrator. The Filing Claimant must specify pages of any documents submitted that they say are Evidence and the failure to provide specific page references shall be a technical deficiency.

(2) A Filing Claimant who is a Pre-Approved Class Member shall be deemed to have met the criteria set out in subsection 5.2(1).

### **5.3 Specific evidentiary requirements for a Qualifying Death**

(1) To meet the criteria for a Qualifying Death, in addition to the evidentiary requirements set out in subsections 5.1 and 5.2(1), a Filing Claimant must submit a certificate of death or equivalent government-issued document evidencing the death.

## **PART III: SETTLEMENT DISTRIBUTION**

### **SECTION 6 – DISTRIBUTION PROCESS**

#### **6.1 Two distinct categories of Settlement Proceeds**

(1) Pursuant to this Compensation Protocol and the Settlement Agreement the Settlement Proceeds are in two distinct categories:

- (a) the Preliminary Settlement Amount, for payment of settlement costs, including Claims Administration Costs, the Provincial Health Insurer Fund, Class Counsel Legal Fees not associated with Qualifying Claimants, Other Qualifying Claimants and notice of settlement approval, and applicable taxes required by law to be paid to any governmental authority (“**Preliminary Settlement Proceeds**”); plus
- (b) the Claims-Made Settlement Amount, for payment to Qualifying Claimants, including Class Counsel Legal Fees relating to those Qualifying Claims, and applicable taxes required by law to be paid to any governmental authority (“**Claims-Made Settlement Proceeds**”).

#### **6.2 Payment of Valid Claims and Costs**

(1) The Claims Administrator shall select the most cost-effective and expeditious method possible to make all payments, provided the payment recipient is able to accept funds in that manner.

(2) Compensation payable to a Family Class Member who, at the time of payment, is 18 years of age or older, shall be paid directly to such Family Class Member.

(3) Compensation payable to a Family Class Member who, at the time of payment, is a minor (under 18 years of age), shall be payable into the Court of the province or territory in which the Family Class Member resides, or to the legal tutor if that Family Class Member resides in Québec

#### **6.3 Stale Dating**

(1) Cheques shall be issued such that they are stale-dated six months after issuance. Cheques that are not cashed and become stale-dated will be re-issued in the Claims Administrator’s sole

discretion based on the circumstances of the case, and at the expense of the individual requesting the re-issuance.

(2) In no circumstances will cheques be reissued after the passage of six (6) months from the date on which the first cheque became stale-dated.

(3) In no case will a third cheque be issued.

#### **6.4 Final Report of the Claims Administrator**

(1) As soon as practicable after all Costs, Approved Claimants and Provincial Health Insurers are paid, the Claims Administrator shall provide the report on administration contemplated at section 59 of the Regulation of the Superior Court of Québec in civil matters, CQLR c. C-25.01, r. 0.2.1, to Class Counsel, Defendants' Counsel and the Court.

### **SECTION 7 – DISTRIBUTION TO PROVINCIAL HEALTH INSURERS**

#### **7.1 Provincial Health Insurer Rights of Recovery**

(1) A Provincial Health Insurer Fund shall be established from the Preliminary Settlement Proceeds as outlined in Section 4.5 of the Settlement Agreement.

#### **7.2 Execution of the Provincial Health Insurer Release**

(1) Each Provincial Health Insurer shall fulfill the requirements set out in the Settlement Agreement.

#### **7.3 Timing and manner of distribution**

(1) Within ten (10) days of the receipt of the entire Preliminary Settlement Amount, the Claims Administrator shall distribute the Provincial Health Insurer Fund, as approved by the Ontario Court, among the Provincial Health Insurers based on the proportions set out in **Exhibit “A”**.

### **SECTION 8 – DISTRIBUTION TO APPROVED CLAIMANTS**

#### **8.1 Interim Report of the Claims Administrator**

(1) Within thirty (30) days of the last Appeal decision being reported to the Claims Administrator, or the last Appeal Deadline expiring for all Filing Claimants, whichever is later, the Claims Administrator shall notify the Parties by way of a letter sent via email as to the number of Qualifying Death Claimants, Qualifying Fracture Claimants and Qualifying Open Surgery Claimants, for the purpose of calculating the Claims-Made Settlement Amount payable by the Defendants (“Interim Report”).

(2) The Interim Report shall also state the particulars of the proposed distribution of the Settlement Proceeds, including the amounts payable to each Qualifying Claimant and the points payable to each Other Qualifying Claimant.

(3) Upon receipt of the Claims Administrator's Interim Report, Class Counsel shall forthwith take such steps as they determine may be required pursuant to the provisions of this Compensation Protocol, including instructing the Claims Administrator to make any recalculations of compensation which may be required and, if necessary, make applications to the Ontario Court.

## **8.2 Timing of distribution**

(1) Once all steps contemplated by subsection 8.1 are complete and the Claims Administrator has received the Claims-Made Settlement Amount in the Trust Account, the Claims Administrator shall pay Approved Claimants.

## **8.3 Distribution to Qualifying Claimants**

(1) Each Qualifying Claimant will receive the values ascribed to their particular Qualifying Event in section 4.1(2) of the Settlement Agreement, subject to those values reduced pursuant to section 9 of this Compensation Protocol, and for Qualifying Claimants residing or domiciled in Québec, subject to any amounts payable to the Fonds d'aide aux actions collectives in accordance with the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives.

## **8.4 Distribution to Other Qualifying Claimants**

(1) The Settlement Proceeds will be allocated among the Other Qualifying Claimants based on the cumulative points they are awarded under **Exhibit "B"**.

## **SECTION 9– EXCESS OR INSUFFICIENT COMPENSATION FUNDS**

### **9.1 Qualifying Claimants' claims exceeds Claims-Made Settlement Amount**

(1) If the total value of Qualifying Claimants' claims as calculated in section 4.1(2) of the Settlement Agreement exceeds the Claims-Made Settlement Amount, payments to Qualifying Claimants shall be reduced on a *pro rata* basis.

### **9.2 Costs, including Other Qualifying Claims, exceed the Preliminary Settlement Amount**

(1) If the total amount of the costs, including Claims Administration Costs, the Provincial Health Insurer Claims, Class Counsel Legal Fees not associated with Qualifying Claimants, Other Qualifying Claims, and applicable taxes required by law to be paid to any government authority exceeds the Preliminary Settlement Amount, payments to Other Qualifying Claimants shall be reduced on a *pro rata* basis.

**9.3 Settlement Proceeds exceeding the total value of Costs including Other Qualifying Claims**

(1) If six months after final distribution of Settlement Proceeds, there are remaining excess funds, whether as a result of failure of Class Members to make proper claims or as a result of cheques having become stale dated and/or such other forms of payment as may be made to Filing Claimants and which may otherwise expire without having been claimed, such excess funds shall be distributed as set out in the Settlement Agreement.

(2) As set out in the Settlement Agreement, the Regulation respecting the percentage withheld by the Fonds d'aide aux actions, CQLR c F-3.2.0.1.1. r.2 will apply to the portion of any remaining balance, if any, attributable to Class Members resident in Québec, as set out in **Exhibit "A"**.

**9.4 No basis for an appeal**

(1) Pro-rated reductions or increases of amounts paid to Approved Claimants in accordance with subsections 9.1-9.3 shall not form the basis for any appeal.

**EXHIBIT “A”: PRO-RATA AMOUNTS FOR PROVINCIAL HEALTH INSURERS**

The chart below indicates the percentages of the Provincial Health Insurer Fund to be distributed on a *pro rata* basis to each province and territory, as set out in the Compensation Protocol.

<b>Province</b>	<b>Percentage of Provincial Health Insurers Fund</b>
Newfoundland and Labrador	1.346%
Prince Edward Island	0.440%
Nova Scotia	2.624%
New Brunswick	2.089%
Quebec	22.272%
Ontario	38.844%
Manitoba	3.615%
Saskatchewan	3.067%
Alberta	11.710%
British Columbia	13.662%
Yukon	0.112%
Northwest Territories	0.116%
Nunavut	0.103%



**EXHIBIT “B”: OTHER QUALIFYING CLAIMANT CRITERIA  
AND ALLOCATION OF POINTS**

OTHER QUALIFYING CRITERIA	POINTS
<b>1. A physician has expressly recommended against retrieval due to risk</b>	
Where a physician has expressly recommended against retrieval due to risk attributed to the Cook IVC Filter Product as shown by Evidence. <sup>1</sup>	1
Additional points where a medical provider finds long-term anti-coagulation is necessary as a result of Cook IVC Filter Product being irretrievable as shown by Evidence.	1
<b>2. Symptom resulting in Percutaneous Retrieval Procedure</b>	
A successful or attempted Cook IVC Filter Product retrieval procedure that uses solely endovascular or percutaneous techniques (“Percutaneous Retrieval Procedure”) due to symptomatic migration, penetration, perforation, tilting, embolization, thrombotic occlusion, stenosis, hemorrhage, recurrent pulmonary embolism, deep vein thrombosis or other blood clot, infection, or cardiac arrhythmia, as shown by Evidence.	12
<b>3. Symptom without Percutaneous Retrieval Procedure</b>	
A symptomatic perforation, penetration, tilting, migration or embolization of the filter that has occurred where no removal has been attempted, as shown by Evidence.	7
<b>4. Symptom as a result of Percutaneous Retrieval Procedure</b>	
A successful or attempted Percutaneous Retrieval Procedure of a Cook IVC Product that as shown by Evidence has resulted in a perioperative medical symptom, condition, and/or complication, including but not limited to: inferior vena cava dissection, inferior vena cava intussusception, injury to the inferior vena cava occurring during retrieval with hemorrhage, inferior vena cava thrombus or stenosis, injury to adjacent artery occurring during retrieval, venous pseudoaneurysm, cardiac tamponade, or hematoma.	7

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<sup>1</sup> Evidence includes both “Implant Evidence” or “Injury or Treatment Evidence”, as defined in Section 1.

<b>5. Family Class Members of Qualifying Claimants</b>	
Supporting evidence of personal relationship to a Filing Claimant with a Qualifying Event	1