

# **Phase I Hearing Notice**

## **NOTICE OF APPROVAL HEARING**

**Were you implanted with a Wright Profemur Hip Implant System(s) in Canada after February 2001, and it has subsequently fractured, requiring revision surgery?**

**This notice may affect your rights. Please read carefully.**

### **Notice of Proposed Settlement**

A Canada-wide class action lawsuit – *Rodrick Desborough v. Wright Medical Technology Canada Ltd. et al*, Hfx. No. 355381 - was initiated alleging that the Wright Profemur Hip Implant System was defective, and that it failed prematurely. The class action was certified by the Nova Scotia Supreme Court on June 25, 2014, and the certification order was amended on April 30, 2019.

The Defendants, while not admitting liability, have agreed to a proposed settlement of this class action. The proposed settlement must be approved by the court before it can be implemented. For a copy of the settlement agreement, or for more information, please contact Wagners at the contact information provided below or go to <https://www.wagners.co/wp-content/uploads/2020/02/wca-settlementagreement.pdf>

### **The Settlement Requires Court Approval**

In order for the proposed settlement to become effective, it must be approved by the Supreme Court of Nova Scotia. The Court must be satisfied that the settlement is fair, reasonable and in the best interest of the Class. The approval hearing is scheduled for April 27, 2020, or such other date as approved by the Court, at The Law Courts Building, 1815 Upper Water St in Halifax, Nova Scotia.

### **Who is Eligible to Participate in the Proposed Settlement?**

If approved, the proposed settlement will apply to all Canadian residents who were implanted after February 2001 with the Wright Profemur Hip Implant System manufactured by the Defendants, and who have experienced a fracture of the Wright Profemur Hip Implant System, requiring revision surgery. Excluded are those who opted out of the class action.

### **Who Represents the Class?**

Class counsel is Wagners, a law firm located in Halifax, Nova Scotia. Rodrick Desborough is the representative plaintiff for the Class.

### **The Terms of Settlement**

The settlement provides compensation to eligible class members who submit all forms and documentation required under the proposed Settlement Agreement before the deadline, less deductions for legal fees and other administration costs. The settlement also provides for payment to public health insurers for their subrogated claims. Please refer to the settlement agreement for specific terms and conditions. The amount of compensation paid to approved Class Members will depend upon the number of approved Class Members and the details relating to their claims. Approved Class Members must satisfy the eligibility criteria set out in the settlement agreement.

The Defendants have agreed to pay up to a total of \$8,250,000 CDN, depending upon the number of approved claims that are submitted. This amount includes payment of legal fees, claims administration costs and payment to public health insurers for their subrogated claims.

At the hearing on April 27, 2020, Wagners will also be seeking approval of legal fees in the amount of 25% of the reconciled Settlement Payment as determined by the number of Approved Claims, excluding Provincial Health Insurer payments, which are subject to a separate legal fee of 15%, plus disbursements estimated to be \$142,165.00, and applicable taxes, for their work in relation to this class action and settlement. Wagners will also seek approval of payment of an honorarium to the Representative Plaintiff in the amount of \$1,500.

### **Participation in the Settlement**

If the settlement is approved, you must submit a claim form and required supporting documentation by the claims deadline. Information about how and when to apply for settlement funds will be provided in a future notice and will be posted online on the Wagners website.

### **Court Hearing and Your Right to Participate**

If you wish to object to the proposed settlement or legal fees, you may submit a written objection, referencing this class action, to Wagners. It must be sent no later than April 3, 2020. You may also attend the hearing on April 27, 2020 and you may make oral submissions to the court if you wish.

A Class Member who wishes to object to the settlement or legal fees shall provide in his or her objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;
- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of his/her Wright Profemur Hip Implant System and dates of fracture and revision surgery;
- (d) Whether the person intends to appear at the approval hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel, and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

Class Members who do not object to the settlement need not appear at the hearings or take any other action at this time to indicate their desire to participate in the proposed settlement.

**For Additional Information and a Copy of the Settlement Agreement**

Wagners can be contacted, at no charge, at:

Wagners  
Re: Wright Profemur Class Action  
1869 Upper Water St.  
Halifax, NS  
B3J1S9  
Tel: 902-425-7330 / Toll-Free: 1-800-465-8794  
Email: [classaction@wagners.co](mailto:classaction@wagners.co)

A copy of the Settlement Agreement and necessary forms to submit a claim are available at  
<https://www.wagners.co/current-class-actions/hip-products-wright/>

*This Notice has been approved by the Supreme Court of Nova Scotia.*