

Schedule “F”

Referee Guidelines

1. The Referee shall be appointed by the Ontario Court to assess the claims of Class Members who assert a claim from the Extraordinary Injury Fund as set out in the Settlement Agreement and Distribution Protocol, and to make a final determination of Eligible Class Members in the event of any dispute in respect of the Claims Administrator’s decision with respect to eligibility.
2. The Referee shall offer his or her services in both French and English.
3. The Referee shall sign and adhere to a confidentiality statement, in a form satisfactory to the Parties, by which she or he agrees to keep confidential any information concerning Class Members or the Defendants. Further, the Referee shall institute and maintain procedures to ensure that the identity of all Class Members and all information regarding any claims and submissions are kept strictly confidential. At the conclusion of the claims administration process, any information obtained by the Referee shall be securely deleted and destroyed.
4. The Referee shall report to the Court, Class Counsel and to Defendants’ counsel on the total number of claims received, and the decisions made by him or her in respect of each claim from the Extraordinary Injury Fund or eligibility appeal.

Extraordinary Injury Fund

5. The Referee shall assess the claims of Patient Class Members and Derivative Class Members who assert a claim for an amount from the Extraordinary Injury Fund, and will make a final determination as to:
 - (A) Whether the Class Member is entitled to an amount from the Extraordinary Injury Fund; and,
 - (B) How much the Class Member is entitled to from the Extraordinary Injury Fund.
6. The Extraordinary Injury Fund will provide amounts for:
 - (A) **Complications** – if an Eligible Explant Claimant experienced a complication arising from surgery to explant a Defibrillator including but not limited to, abnormal bleeding, infection, pneumothorax, damage to the heart or to a blood vessel;
 - (B) **Death** – if a Patient Class Member’s death was caused or contributed to by premature battery depletion where the battery depletion occurred earlier than expected based on the Defibrillator usage and there was no indication that the depletion was related to a cause other than a short circuit that may have been due to the formation of lithium clusters; and

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- (C) **Out of Pocket Expenses** – out of pocket expenses that exceed \$100.00 CAD in the aggregate, up to a maximum of \$500.00 CAD, supported by documentary proof, for a Patient Class Member arising from actions taken in response to the receipt of the St. Jude advisory released on October 10, 2016, including but not limited to additional clinic attendances, hospital visits or surgery.
7. In the case of 6(B) claims, the Referee shall determine whether the Derivative Class Member has provided sufficient evidence to establish, on the balance of probabilities, that the Patient Class Member’s death was caused or contributed to by premature battery depletion where the battery depletion occurred earlier than expected based on the Defibrillator usage and there was no indication that the depletion was related to a cause other than a short circuit that may have been due to the formation of lithium clusters.
 8. The Referee will make all decisions based upon the standard of the balance of probabilities, based upon the information provided to him by the claimant, which may include but is not limited to:
 - (A) The Class Member’s written narrative in support of the claim;
 - (B) Clinical notes and records from the Class Member’s physician(s);
 - (C) Hospital records;
 - (D) Death certificate, and proof of identity as a Derivative Class Member; and
 - (E) Receipts for out of pocket expenses.
 9. The Referee shall assess the quantum of damages to be awarded based upon the scale set out at Appendix 1.
 10. The determination of the Referee shall be final, with no right of appeal, except if the Referee denies a claimant an amount from the Extraordinary Injury Fund. Only in that circumstance, the claimant will have ten (10) business days from the delivery of the Referee’s decision to seek a review of the decision by the case management judge in the Action by filing a written submission with the Court, not to exceed 3 pages in length without leave of the Court. The Court’s decision shall be final, with no further right of appeal.

Explant Pool Eligibility

11. The Referee shall make a final determination of whether a Class Member is an Eligible Explant Claimant, including whether the claimant had a Defibrillator replaced due to premature battery depletion where the battery depletion occurred earlier than expected based on the Defibrillator usage and there was no indication that the depletion was related to a cause other than a short circuit that may have been due to the formation of lithium clusters.

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12. In making that determination the Referee will apply the standards set out in paragraph #8, above.
13. If the Referee determines that the Class Member is not an Eligible Explant Claimant, the Class Member will have ten (10) business days from the delivery of the Referee's decision to seek a review of the decision by the case management judge in the Action by filing a written submission with the Court, not to exceed 3 pages in length without leave of the Court. The Court's decision shall be final, with no further right of appeal.

Dispute of the Claims Administrator's Decision on Eligibility

14. The Referee shall make a final determination of whether a claimant is an Eligible Class Member if the claimant disputes the Claims Administrator's decision with respect to eligibility.
15. The Referee shall review any evidence provided by the claimant to demonstrate his or her eligibility, including the claimant's written narrative and any documentation demonstrating that the claimant is an Eligible Class Member.
16. The determination of the Referee shall be final, with no right of appeal.

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Appendix 1 to Schedule “F”

Referee’s Guidelines

Nature of the Claim		Quantum of Damages
1.	Derivative Class Members’ claim for wrongful death of Patient Class Member caused or contributed to by premature battery depletion where the battery depletion occurred earlier than expected based on the Defibrillator usage and there was no indication that the depletion was related to a cause other than a short circuit that may have been due to the formation of lithium clusters.	<ul style="list-style-type: none">• \$60,000 CAD to the spouse of a deceased Patient Class Member• \$45,000 CAD to each minor child of deceased Patient Class Member• In the event that there is no spouse or minor children, then \$20,000 CAD to each adult child or parent of the deceased Patient Class Member to a maximum of \$100,000 CAD in the aggregate
2.	Complications arising from explant surgery of an Eligible Explant Claimant	<ul style="list-style-type: none">• \$12,500 CAD for hospitalization exceeding 3 days• \$5,000 CAD for hospitalization from 1 – 3 days• \$1,000 CAD for same day treatment in hospital, clinic, or doctor’s office, including for prescription of medications to treat complication
3.	Out of Pocket Expenses	Out of pocket expenses that exceed \$100.00 CAD in the aggregate, up to a maximum of \$500.00 CAD, supported by documentary proof, for a Patient Class Member arising from actions taken in response to the receipt of the St. Jude advisory released on October 10, 2016, including but not limited to additional clinic attendances, hospital visits or surgery.