

Form 39.08

2009



Hfx. No. 315567

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**ALBERT CARL SWEETLAND and BARBARA FONTAINE**

PLAINTIFFS

- AND -

**GLAXOSMITHKLINE INC. and GLAXOSMITHKLINE LLC**

DEFENDANTS

**Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28**

**Affidavit of Madeleine Carter  
Affirmed December 14, 2018  
(Fee Approval)**

NATURE OF THE MOTION .....	3
PROCEDURAL BACKGROUND.....	4
STEPS TAKEN BY CLASS COUNSEL.....	5
Wagners .....	5
Siskinds.....	6
LEGAL FEES AND DISBURSEMENTS.....	7
TIME EXPENDED AND DISBURSEMENTS INCURRED.....	8
Time Records .....	8
Disbursements.....	9
REASONABLENESS OF FEES .....	12
Risks Undertaken by Class Counsel .....	12
Response By Class Members.....	13
Results Achieved .....	14
HONORIA .....	14
EFFORTS OF THE REPRESENTATIVE PLAINTIFFS .....	14
CAP ON FEES FOR INDIVIDUAL CLAIMANTS .....	16

I, Madeleine Carter, affirm and give evidence as follows:

1. I am a lawyer employed by the law firm of Wagners, in Halifax, Nova Scotia. I have been employed by Wagners since October of 2014. Wagners, along with Siskinds LLP (“Siskinds”), is Class Counsel for the Plaintiffs and Class Members in the within proceeding.
2. I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information or belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source. I do verily believe the information from each source cited to be true.
4. I am providing this affidavit in support of the motion, to be heard on the 29<sup>th</sup> day of January, 2019, to approve Class Counsel Legal Fees, and for no other purpose.

#### **NATURE OF THE MOTION**

5. This affidavit is intended to be read in conjunction with my settlement approval affidavit affirmed December 14, 2018 (the “Settlement Approval Affidavit”). The Settlement Approval Affidavit explains the terms of and rationale for the Settlement Agreement.
6. On October 11, 2018, the parties entered into a settlement agreement, resolving the within action in full (the “Settlement Agreement”). A copy of the Settlement Agreement is attached to the Settlement Approval Affidavit. Terms that are capitalized herein but are not defined have the meanings attributed to them in the Settlement Agreement.

7. Pursuant to the terms of the Settlement Agreement, the Defendants have agreed to pay a Minimum Settlement Amount of CAD \$4,116,666.67 and up to a Maximum Settlement Amount of CAD \$6,750,000.00 to resolve the within action.
8. This is an affidavit in support of a motion for an Order:
  - a) approving Class Counsel Legal Fees, inclusive of up to \$400,000 in disbursements;
  - b) awarding an honorarium in the amount of \$25,000.00 payable from either the Settlement Fund or Class Counsel Legal Fees, to be directed by the Court, to be divided among the Representative Plaintiffs in the within action and the plaintiffs in the other Canadian Avandia litigation, in accordance with the distribution scheme attached as Schedule “A” to this affidavit;
  - c) directing that the fee to be paid by Class Members who retain lawyers to assist them in making their individual claims for compensation pursuant to the Settlement Agreement, including but not limited to Class Counsel and lawyers of Related Counsel Firms, be capped at fifteen (15) percent of the amount awarded to that Class Member.

## **PROCEDURAL BACKGROUND**

9. The relevant procedural background of the within action and the other Canadian Avandia litigation are set out in the Settlement Approval Affidavit.
10. The Settlement Agreement provides a national resolution. In addition to the certified Nova Scotia Proceeding (being the within action), the Settlement Agreement will also resolve the other Avandia related litigation across Canada. Under the Settlement Agreement, the parties are required to obtain orders that grant approval, recognition, dismissal and/or discontinuance of the cases listed in Exhibit “B” to the Settlement Agreement, to conclude related litigation and give effect to this Settlement Agreement across Canada.

11. Class Counsel and Related Counsel Firms will support the Defendants in seeking the necessary Dismissal Orders.

#### **STEPS TAKEN BY CLASS COUNSEL**

12. The settlement discussions and the role of Siskinds is detailed in the Settlement Approval Affidavit.

#### **Wagners**

13. In Nova Scotia, Wagners carried out many pre-trial procedures in this action. Some of the procedures conducted include:

- The filing of a Notice of Action and Statement of Claim;
- The filing of an Amended, Second Amended, Fresh as Second Amended, Third Amended and Third Fresh as Amended Notice of Action and Statement of Claim;
- Responding to a motion brought by the Defendants for production of certain medical and pharmaceutical records of the Representative Plaintiffs;
- Responding to a motion brought by the Defendants to strike portions of the affidavits filed by the Plaintiffs in support of the certification motion;
- Successfully bringing a motion for certification of the action as a class proceeding;
- Responding to the Defendants' appeal of certification (currently in abeyance), including filing a factum.

14. Additional work undertaken by Class Counsel includes:

- Regular written and oral communications with the Representative Plaintiffs and Class;
- Consultation with and retention of experts in the fields of cardiology and endocrinology;

- Cross-examination of experts retained by the Defendants;
- Preparation for and attendance at cross-examination of experts retained by the Plaintiffs;
- Attendance at case management meetings;
- Consultations between Class Counsel.

**Siskinds**

15. I am advised by Charles Wright, a lawyer at Siskinds, and verily believe, that Siskinds began investigating Avandia-related claims in or around early 2007. While Siskinds did not commence a class proceeding, Siskinds took a number of steps to advance the Canadian Avandia litigation which resulted in a national settlement, including the following:
- a) pursuing individual actions in Ontario;
  - b) discussing potential resolution of individual claims with US and Canadian defence counsel;
  - c) working collaboratively with US plaintiffs' counsel;
  - d) discussions with Canadian plaintiffs' counsel;
  - e) retaining and consulting with experts to assist in evaluating individual claims;
  - f) communicating with the Provincial Health Insurers;
  - g) obtaining and reviewing Class Members' medical records.
16. Between March 2016 – October 2018, Wagers and Siskinds worked together as Class Counsel to negotiate and finalize the terms of the Settlement Agreement.
17. Class Counsel obtained approval of the Settlement Agreement and authority to execute the Settlement Agreement on behalf of the Related Counsel Firms.

## LEGAL FEES AND DISBURSEMENTS

18. The representative plaintiff Albert Carl Sweetland entered into a contingency fee agreement (“CFA”) and indemnity agreement with Wagners. I am informed by Mr. Wagner, and verily believe, that the terms of the CFA and indemnity agreement were explained to Mr. Sweetland before they were signed.
19. The representative plaintiff Barbara Fontaine entered into a contingency fee agreement and indemnity agreement with Siskinds LLP. I am informed by Madeline McKinnon, a lawyer at Siskinds, and verily believe, that the terms of the agreements were explained to Ms. Fontaine before they were signed.
20. The terms of Mr. Sweetland’s and Ms. Fontaine’s Contingency Fee Agreements are substantively the same. Copies of Mr. Sweetland’s and Ms. Fontaine’s Contingency Fee Agreements and Indemnity Agreements are attached hereto and marked as **Exhibit “A”** and **Exhibit “B”**, respectively.
21. According to the Contingency Fee Agreements, on behalf of the Class, the representative plaintiffs contracted with Class Counsel for work to be done on a contingency basis, such that fees and disbursements would be payable only if the class proceeding was successful. Class Counsel was willing to undertake the work notwithstanding the risk that they may receive no payment.
22. The Contingency Fee Agreements provide for legal fees of 25% of the first \$10 million of the total value of any settlement or judgment.
23. Class Counsel negotiated an all-inclusive Minimum Settlement Amount of CAD \$4,116,666.67 and up to a Maximum Settlement Amount of CAD \$6,750,000.00 to resolve

the within action. The Minimum Settlement Amount is inclusive of a contribution of CAD \$250,000.00 towards disbursements and administration expenses for costs of notice and claims administration.

24. Class Counsel seeks approval of the following as legal fees:
  - a) 25% of the Minimum Settlement Amount = \$1,183,541.67 (\$1,029,166.67 + HST of \$154,375);
  - b) 25% of any additional settlement payment<sup>1</sup> made pursuant to paragraph 5.1(b) of the Settlement Agreement = up to \$658,333.33 plus HST of up to \$98,749.99 = up to \$757,083.33
25. Class Counsel also seek approval of incurred disbursements in the amount of \$131,289.39 (\$118,584.03 plus applicable tax of \$12,705.36) (tables provided in paragraphs 30 and 36, below). To account for other incurred disbursements, we may seek to file supplemental materials in advance of the January 29, 2019 motion providing these incurred disbursements.

## **TIME EXPENDED AND DISBURSEMENTS INCURRED**

### **Time Records**

26. I believe that the reasonableness of a percentage-based fee of 25% is demonstrated by the summary of the time worked by Class Counsel on this matter, which likely fails to capture all of the time in fact spent working on this matter.

---

<sup>1</sup> Section 5.1(b) of the Settlement Agreement contemplates an additional payment of up to CAD\$2,633,333.33. Any additional payment will be calculated after the total number of Approved Claimants is determined by the Claims Administrator.

27. Since the commencement of this action and up to and including December 6, 2018, Class Counsel have docketed time of CAD \$1,538,686.50 excluding tax. The following chart outlines the time docketed by each firm:

<b>Law Firm</b>	<b>Total Docketed Time</b>
Wagners	\$614,225.00
Siskinds LLP	\$924,461.50
<b>TOTAL</b>	<b>\$1,538,686.50</b>

28. The above does not capture future efforts of Class Counsel in preparing for the upcoming approval motions on January 29, 2019, future efforts to obtain the Dismissal Orders if the Settlement Agreement is approved, future communications with Class Members and counsel for the Defendants during the claims period, or Siskinds' docketed time of \$161,374.00 working up individual claims, which ultimately assisted to facilitate the National Settlement Agreement (about which I am informed by Ms. McKinnon).
29. Should the Settlement Agreement and Class Counsel Legal Fees receive approval, Class Counsel will undertake all of the above future efforts without additional payment or reimbursement.

**Disbursements**

30. I have conducted a review of the total disbursements incurred by Class Counsel to date. Below are the incurred disbursements which I believe, through my knowledge and review of the file and discussions with Mr. Wagner and Mr. Wright, have been reasonably and necessarily incurred by Class Counsel from the commencement of the litigation until December 6, 2018:

<b>Law Firm</b>	<b>Disbursements</b>
Wagners	\$36,364.08
Tax of 15% (on taxable disbursements)	\$3,936.71
<b>Sub-Total</b>	<b>\$40,300.79</b>
Siskinds LLP	\$55,289.96
Tax of 13%	\$7,187.69
<b>Sub-Total</b>	<b>\$62,477.65</b>
<b>Total</b>	<b>\$102,778.44</b>

31. The above chart does not include the \$67,748.90 in disbursements incurred by Siskinds obtaining medical records to substantiate their individual claims, about which I have been informed by Ms. McKinnon.
32. Since the National Settlement Agreement was negotiated to also resolve the proposed Avandia class actions listed in Exhibit “B” to the Settlement Agreement, Class Counsel is requesting that the Court approve the disbursements incurred by Related Counsel Firms and counsel to the other proposed Avandia proceedings.
33. I am informed by Bryan McPhadden that McPhadden Samac Tuovi LLP has incurred \$23,536.61 in disbursements including applicable tax.
34. I am informed by Clint Docken of Guardian Law that he has incurred \$1,553.83 in disbursements including applicable tax.
35. I am informed by Jeff Orenstein that Consumer Law Group has incurred \$3,420.51 in disbursements including applicable tax.

36. Below is a chart indicating the total incurred disbursements:

<b>Law Firm</b>	<b>Disbursements</b>
Wagners	\$36,364.08
Tax of 15% as applicable	\$3,936.71
Sub-Total	<b>\$40,300.79</b>
Siskinds LLP	\$55,289.96
Tax of 13%	\$7,187.69
Sub-Total	<b>\$62,477.65</b>
McPhadden Samac Tuovi LLP	\$22,463.87
Tax of 13% as applicable	\$1,072.74
Sub-Total	<b>\$23,536.61</b>
Clint Docken	\$1,491.12
Tax of 5% as applicable	\$62.71
Sub-Total	<b>\$1,553.83</b>
Consumer Law Group	\$2,975.00
Tax of 14.975%	\$445.51
Sub-Total	<b>\$3,420.51</b>
<b>Total (inclusive of applicable taxes)</b>	<b>\$131,289.39</b>

37. As of the date of this affidavit, I am unaware of the other related disbursements incurred. However we may seek to file supplemental materials in advance of the January 29, 2019 motion providing these incurred disbursements.

## **REASONABLENESS OF FEES**

38. I believe that this percentage-based fee is fair and reasonable and reflective of the work involved, the risks undertaken by Class Counsel and the level of success achieved by Class Counsel on behalf of the Class.

### ***Risks Undertaken by Class Counsel***

39. Class Counsel agreed to pursue this action on a contingency fee basis. The CFA confirms this understanding, providing that Class Counsel will pay all expenses and would only be paid in the event of success. Class Counsel was not indemnified or protected by any third party funder from potential adverse cost awards. Class Counsel indemnified the Representative Plaintiffs from any adverse cost award.

40. Assessing litigation risks is an ongoing process. Class Counsel assess the risks at the time the litigation is commenced and as the litigation continues. In undertaking this litigation, Class Counsel were cognizant of various litigation risks, including the risk that:

- a) The scientific research and/or regulatory steps taken in relation to the connection between Avandia and cardiovascular harm may evolve in favour of the Defendants;
- b) The Court would not certify the action;
- c) The Court of Appeal may overturn certification;
- d) The Court would decide the common issues trial in favour of the Defendants;
- e) Even if the common issues trial was decided in favour of the Class, on individual assessments of specific causation and harm, some or all of the Class Members may not succeed in being awarded any damages; and
- f) A finding of any of the common issues in favour of the Class could be appealed by the Defendants.

41. Many of these risks were avoided through the careful approach of Class Counsel to litigation and settlement strategy, including coordination with the Representative Plaintiffs, Class Members, Canadian and US Defence counsel, and at times coordinating with counsel for related actions in other provinces.
42. As noted above, Class Counsel have invested significant time and have performed substantial legal work for over nine years in advancing the claims, with no compensation to date.
43. Class Counsel have incurred significant disbursements, at their own risk, to advance the claims without reimbursement to date.

***Response By Class Members***

44. Class Members were provided with Notice of Certification and Settlement Approval Hearing. The Notice of Certification and Settlement Approval Hearing informed Class Members that Class Counsel would be seeking Class Counsel Fees of up to 25% of the Settlement Amount (plus taxes) and up to \$400,000.00 for disbursements, to be approved by the Court.
45. The opt-out deadline is January 15, 2019. As of the date of this affidavit, one opt-out form has been received. The Court will be updated with respect to whether there are any more opt-out forms received after this date and prior to the opt-out deadline.
46. The objection deadline is January 15, 2019. As of the date of this affidavit, no objections have been submitted by Class Members in relation to Class Counsel Fees or Class Counsel Disbursements. If any objections are received prior to the objection deadline, we will update the Court (which is to receive directly from Class Members copies of objections).

### ***Results Achieved***

47. The Settlement Approval Affidavit details the applicable litigation risks and the rationale supporting the quantification of the Settlement, respectively.
48. The absolute value of the settlement recognizes that there is controversy in the literature, risk with litigation, but most importantly significant causation issues with these injuries in this population of claimants. The contemplated claim structure recognizes where the literature is strongest, i.e. a signal of myocardial infarctions, as those claims have the higher average claim value. It concedes the paucity of evidence to support stroke claims. It also recognizes that the congestive heart failure events were included within the initial product monograph.

### **HONORIA**

49. There are 25 plaintiffs (Mr. Sweetland, Ms. Fontaine plus the plaintiffs in the Avandia proceedings listed in Exhibit “B” to the Settlement Agreement), each of whom was engaged at various stages and to differing degrees throughout Canada-wide Avandia litigation. Their involvement advanced this litigation and brought it to a proposed resolution on behalf of a national class. Class Counsel proposes that an honorarium of \$25,000.00 be shared by and distributed among them, in accordance with a distribution scheme attached at Schedule “A” to this affidavit. The distribution scheme allocates the honorarium in accordance with the relative time and effort expended by each plaintiff.

### **EFFORTS OF THE REPRESENTATIVE PLAINTIFFS**

50. Mr. Sweetland has spent considerable time and effort advancing the Class Members’ claims in this litigation, voluntarily exposing himself to scrutiny avoided by other Class

Members. He provided timely responses to any requests made of him by Class Counsel, including:

- a) familiarizing himself with the various issues to be decided by the Court;
- b) being briefed by and providing instructions to Class Counsel on various aspects of the litigation, among other things, the certification motion, settlement negotiations, and the proposed Settlement Agreement;
- c) providing information to be used in the preparation of affidavits (for the certification and settlement approval motions) and executing those affidavits, making known to the public his personal medical issues related to his Avandia use; and
- d) in response to a motion brought by the Defendants for production of medical and pharmaceutical records of the representative plaintiffs in the within action, having to produce all of his medical and pharmaceutical records deemed to be relevant to the proceeding, which in turn were reviewed by defence counsel's experts.

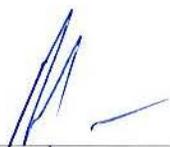
51. Ms. Fontaine, together with her late husband, spent time and effort advancing the Class Members' claims in this litigation by commencing an individual action in Ontario. Ms. Fontaine also volunteered to act as a Representative Plaintiff for the Family Class in the within action. She provided timely responses to any requests made of her by Class Counsel, including:

- a) familiarizing herself with the various issues to be decided by the Court;
- b) being briefed by Class Counsel on the Settlement Agreement; and
- c) providing information to be used in the preparation of affidavits (for the Plaintiffs' motion to amend the Second Amended Notice of Action and Statement of Claim and to amend the Certification Order appointing her as a Representative Plaintiff for the certified Family Class, and for the settlement and fee approval motions) and executing those affidavits.

**CAP ON FEES FOR INDIVIDUAL CLAIMANTS**

- 52. Pursuant to section 13.5 of the Settlement Agreement, with respect to the optional retention of a lawyer by a Class Member to submit a claim under the Settlement Agreement, Class Counsel will cap their legal fees at fifteen percent of the amount awarded to that Class Member.
  
- 53. To ensure fairness amongst Class Members, and pursuant to section 13.6 of the Settlement Agreement, Class Counsel requests that if this Court approves Class Counsel Fees, the Order provide that the legal fee applicable to a Class Member who retains a non-Class Counsel lawyer to assist him or her in making an individual claim under the Settlement Agreement, including a lawyer in a Related Counsel Firm, be capped at fifteen percent of the amount awarded to that Class Member.

**AFFIRMED** before me on the 14<sup>th</sup> )  
day of December, 2018 at Halifax, )  
Nova Scotia )

  
\_\_\_\_\_)  
Signature of Authority )

**RAYMOND F. WAGNER, Q.C.**  
A Barrister of the Supreme  
Court of Nova Scotia

  
\_\_\_\_\_)  
Madeleine Carter

## **SCHEDULE “A”**

### **Honorarium Distribution Scheme**

#### Tier 1 - \$5,000\*

- Tier 1 qualifying tasks:
  - Filed an affidavit (other than a settlement/fee approval affidavit)
  - Participated in a contested certification motion
  - Participated in a contested production motion regarding medical records
  - Albert Sweetland is only qualifying Representative Plaintiff for Tier 1 Payment

#### Tier 2 - \$1,000\*

- Tier 2 qualifying tasks:
  - Participated in at least one motion
  - Filed affidavit (not including a settlement/fee approval affidavit)

#### Tier 3 - \$500\*

- Tier 3 qualifying tasks:
  - Named plaintiff
  - No affidavits filed

\*All payments are subject to *pro rata* reductions if these full amounts cannot be distributed.

2009

Hfx No. 315567

This is Exhibit "A" referred to in the Affidavit of Madeleine Carter affirmed before me on the 14<sup>th</sup> day of December, 2018.

A handwritten signature in blue ink, appearing to be 'M. Wagner', written over a horizontal line.

Signature

**RAYMOND F. WAGNER, Q.C.**  
A Barrister of the Supreme  
Court of Nova Scotia

Contingency Fee Agreement pursuant to Nova Scotia Civil Procedure Rule 63.

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**ALBERT SWEETLAND**

**PARTY OF THE FIRST PART**

**-and-**

**THE LAW PRACTICE OF WAGNER & ASSOCIATES INC.  
Known As WAGNERS**

**PARTY OF THE SECOND PART**

**CONTINGENCY FEE AGREEMENT**

**PART I – BACKGROUND**

1. I, Albert Sweetland, of the Halifax Regional Municipality, Province of Nova Scotia, hereby retain and employ the law firm of Wagners as my solicitors and hereby authorize them to institute a Common Law Class Proceeding pursuant to the Supreme Court of Canada's decision in *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534, and Rule 5.09 of Nova Scotia's Civil Procedure Rules.

2. I agree that I will be named as Representative Plaintiff on behalf of all persons who have been prescribed Avandia in Canada. As a Representative Plaintiff I state that I was prescribed Avandia by my family physician and that I suffered personal injury as a result of the use of Avandia. I agree to co-operate in the litigation, to be available when required, to

give instructions when asked to do so and to participate fully in the litigation process to its conclusion. I authorize Wagners to take such actions and conduct such proceedings as they may consider necessary or proper for the conduct of the proceeding.

3. I understand that this litigation is to be pursued on a contingency basis such that fees and disbursements with respect to the common issues will be payable only in the event of success in the common law class proceeding.

4. I agree that for the purpose of this Contingency Fee Agreement, "success in the common law class proceeding" includes:

- (a) judgment on the common issues in favour of some or all class members; and
- (b) a settlement that benefits one or more class members.

5. I understand that Wagners shall be entitled to a legal fee, which is a percentage of the total value of any settlement or judgment to the class inclusive of any award of costs. I understand that the above percentage will be calculated on a 25% fee of the first \$10 million or on any part thereof, 20% of the second \$10 million or any part thereof and 15% of all additional amounts. I understand that in addition to any legal fee, Wagners shall be entitled to recover from any settlement or judgment all disbursements incurred along with interest that has accrued on such disbursements.

6. I understand that the total legal fee will vary according to the total value of any settlement or judgment, which may result from this litigation. I understand that any such

settlement or judgment could vary greatly depending on several factors including the total number of individuals who were prescribed Avandia, additional information which comes to light during the course of the litigation and the nature of any settlement or judgment. By way of illustration only, I understand that in the event that a judgment of \$25 million was awarded and upheld following any and all appeals, I understand that the total legal fee payable to Wagners would be \$5.25 million plus applicable harmonized sales tax. I understand that the legal fee could be significantly lower than this amount or significantly higher than this amount, depending upon the size of the damages to the class. I understand that in the event that no settlement or judgment results, no legal fees will be payable.

7. I understand that this Contingency Fee Agreement, and any fees awarded pursuant to the Contingency Fee Agreement, shall be subject to the approval of the Court.

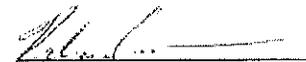
8. I understand that this Contingency Fee Agreement may be reviewed by a taxing officer at the client's request and may either at the instance of the taxing officer or the client be further reviewed by the Court, and either the taxing officer or the Court may vary, modify or disallow the Contingency Fee Agreement.

9. I understand that this Contingency Fee Agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

DATED this 8 day of JULY  
Province of Nova Scotia.

A.D., 2010, at Halifax Regional Municipality,

**SIGNED, SEALED AND DELIVERED**  
In the presence of

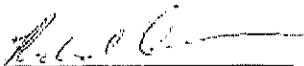
  
WITNESS

  
ALBERT SWEETLAND

  
WITNESS

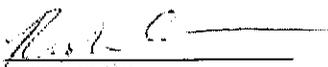
  
WAGNERS

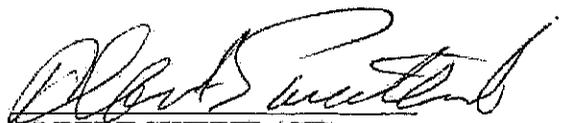
I acknowledge receipt of a true copy of the Contingency Fee Agreement on the 8 day of  
JULY 2010 at Halifax, Province of Nova Scotia.

  
WITNESS

  
ALBERT SWEETLAND

I acknowledge that I have been advised by Wagners that I have a right to seek independent legal  
advice with respect to this Agreement prior to signing this contract.

  
WITNESS

  
ALBERT SWEETLAND

2010

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**ALBERT SWEETLAND**

**PARTY OF THE FIRST PART**

**-and-**

**THE LAW PRACTICE OF WAGNER & ASSOCIATES INC.  
Known As WAGNERS**

**PARTY OF THE SECOND PART**

---

**CONTINGENCY FEE AGREEMENT**

---

**THE LAW PRACTICE OF  
WAGNER & ASSOCIATES INC.  
Barristers and Solicitors  
P.O. Box 756, Central RPO  
1869 Upper Water Street  
3<sup>rd</sup> Floor, Pontac House  
Halifax NS B3J 2V2**

Attn: RFW/rc  
File: 86479

**INDEMNITY AGREEMENT**

FOR VALUE RECEIVED, Wagners agrees to indemnify and save harmless Albert Sweetland (Indemnitee") and his successors and assigns, from any claim, action, liability, loss, damage or suit, arising from the following:

Any claim for court costs that may be assessed against him as a result of being the named representative plaintiff in a proposed common law class action on behalf of himself and all persons who were prescribed Avandia in Canada.

In the event of any asserted claim, the Indemnitee shall provide the undersigned reasonably timely written notice of same, and thereafter the undersigned shall at its own expense defend, protect and save harmless Indemnitee against said claim or any loss or liability thereunder.

In the further event the undersigned shall fail to so defend and/or indemnify and save harmless, then in such instance the Indemnitee shall have full rights to defend, pay or settle the claim on his own behalf without notice to the undersigned and with full rights to recourse against the undersigned for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim.

Upon default, the undersigned further agrees to pay all reasonable legal fees necessary to enforce this agreement.

This agreement shall be unlimited as to amount or duration.

This agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

This agreement is private to the parties to this agreement and shall only be disclosed to third parties if it is necessary to enforce the agreement and in that event shall only be disclosed to the extent necessary to enforce the agreement.

IN WITNESS WHEREOF the parties hereto have duly executed these presents on the 8 day of JULY, 2010.

[Signature]  
Witness

[Signature]  
WAGNERS

[Signature]  
Witness

[Signature]  
ALBERT SWEETLAND

2009

Hfx No. 315567

This is Exhibit "B" referred to in the Affidavit of Madeleine Carter affirmed before me on the 14<sup>th</sup> day of December, 2018.



Signature

**RAYMOND F. WAGNER, Q.C.**  
A Barrister of the Supreme  
Court of Nova Scotia

Contingency Fee Agreement pursuant to Nova Scotia Civil Procedure Rule 77.14

**SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**BARBARA FONTAINE**

**PARTY OF THE FIRST PART**

**-and-**

**SISKINDS LLP  
herein known as “Siskinds”**

**PARTY OF THE SECOND PART**

**CONTINGENCY FEE AGREEMENT**

**PART I – BACKGROUND**

1. Barbara Fontaine, residing in the town of Thunder Bay, province of Ontario, hereby retains and employs the law firm of Siskinds as solicitors and hereby authorizes them to institute a class proceeding pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28. Barbara Fontaine is hereinafter referred to as the “client”.
2. Siskinds has its principal place of business at 680 Waterloo Street, London, Ontario, N6A 3V8. Siskinds is hereinafter referred to as the “solicitor”.
3. The client acknowledges that the solicitor is working cooperatively with Wagners Law Firm to pursue the class proceeding referenced in paragraph 1.
4. The client agrees that s/he will be named as a representative plaintiff on behalf of:

(a) All persons in Canada, including their estates, who were prescribed and ingested Avandia (the "Primary Class"); and (b) the spouses (including common-law spouses and same-sex spouses), children, grandchildren, parents, grandparents and siblings of deceased members of the Primary Class ( the "Family Class").

5. As a representative plaintiff, the client states that she has a claim by virtue of her relationship to her late husband, an identified member of the Primary Class.

6. The client agrees to co-operate in the litigation, to be available when required, to give instructions when asked to do so and to participate fully in the litigation process to its conclusion. The client authorizes Siskinds to take such actions and to conduct such proceedings as they may consider necessary or proper for the conduct of the proceeding.

7.

- i. The contingency upon which compensation is to be based is the successful adjudication of liability or the successful arrival at settlement. If the client is unsuccessful on liability or settlement, there will be no solicitor's fees payable. If the client is successful on liability or settlement, there will be compensation payable to the solicitor in the percentages as stated in paragraph 7.
- ii. Siskinds may, at its discretion, finance any reasonable and proper disbursement and expense which exceeds \$1,000.00 through a third party financing company of its choice. Interest accumulated as a result of the aforementioned financing for all reasonable and proper disbursements funded in the above noted manner will be at the rate required by the third party financing company. The interest charges will be treated as a reasonable and proper disbursement and expense as if part of the original invoice.
- iii. I understand that in addition to any legal fee, Siskinds shall be entitled to recover from any settlement or judgment all disbursements incurred along with interest that has accrued on

such disbursements, including financing costs charged by a third party indemnity or financing company. The client is not responsible for disbursements and expenses incurred by the solicitor, except pursuant to paragraph 6(iv). Other than pursuant to paragraph 6(iv), no compensation other than the amounts collected by the solicitor is payable by the client excluding costs awarded against the client. Costs awarded against the client are subject to the attached Indemnity Agreement entered into between the parties.

- iv. The client is not responsible for disbursements and expenses incurred by the solicitor, provided that the solicitor reserves the right to provide express notice (oral or written) to the client that the client shall be responsible on a go-forward basis for all reasonable and proper disbursements and expenses incurred by the solicitor regardless of results. In such event, proper disbursement and expenses paid by the solicitor will be invoiced to the client. Repayment to the solicitor shall be made by the client as soon as reasonably possible after invoicing. In the event that the client refuses to cooperate with this arrangement, it is understood that such refusal may justify the solicitor withdrawing legal services.
- v. All disbursements and fees including HST are subject to the approval of the Supreme Court of Nova Scotia or other competent jurisdictions pursuant to the provisions of the relevant class proceedings legislation.

## **PART II – PERCENTAGES RECOVERABLE**

8. I understand that Siskinds shall be entitled to a legal fee, which is a percentage of the total value of any settlement or judgment to the class inclusive of any award of costs. I understand that the above percentage will be calculated on a 25% fee of the first \$10 million or on any part thereof, 20% of the second \$10 million or any part thereof and 15% of all additional amounts. I understand that in addition to any legal fee, Siskinds shall be entitled to recover from any settlement or judgment all disbursements incurred along with interest that has accrued on such disbursements.

### **PART III – SETTLEMENT DUTIES AND OBLIGATIONS**

9. In the event that the solicitor is able to bring this matter to a resolution by way of fault of liability (or a percentage thereof) to benefit the client, it is understood by the parties that no offer of settlement shall be binding upon the client unless specifically accepted by the client.

10. In the event that the defendant(s) or his/her authorized agent makes an offer to settle, the solicitor will review the offer with the client and provide the client with an opinion. Should the client reject an offer which has been recommend by the solicitor then such rejection may be taken as a serious loss of confidence between the solicitor and the client which may justify the solicitor withdrawing legal services.

11. If the client:

- (i) rejects an offer of settlement recommended by the solicitor as an acceptable resolution to the matter;
- (ii) or should the client refuse to co-operate in the litigation process;
- (iii) or should the client discharge the solicitor;

there shall be due to the solicitor the applicable percentage as outlined above on any offer of settlement that has been made which represents a reasonable valuation of the claim plus the reasonable and proper disbursements and expense paid by the solicitor in the advancement of the client's case; or, if no offer has been made or a nominal or unreasonable offer has been made then reasonable and proper disbursements and expenses paid by the solicitor plus fees in an amount equal to a reasonable representation of the time spent working on the client's file based upon the solicitor's hourly rate. The lawyers who will be working on this proceeding have hourly rates ranging from \$175.00/hour to \$900.00/hour, or higher. In addition, applicable service taxes will be charged to the fees as set out in the governing legislation which are subject to adjustment from time to time.

**PART IV – MISCELLANEOUS**

12. The collected or awarded compensation includes all damage awards for which the client is entitled to by law, as well as interest and costs awarded in favour of the client.

13. The Contingency Fee Agreement does not cover any appeal by the client or the defendants in the proposed action. Fees on appeal shall be calculated as an additional 5% on the percentages that would have been applicable had the matter resolved without an appeal.

14. Harmonized Sales Tax will be applied in addition to the amount of compensation for legal services in the percentages and in the amounts as indicated in the governing legislation.

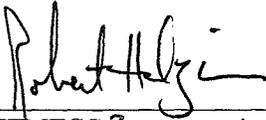
15. The client has the right to have this Agreement and any payment due under it reviewed for the reasonableness and necessity of the charges by an adjudicator under the *Small Claims Court Act* or a judge. In addition, all fees, HST, and disbursements require Court approval pursuant to the relevant class proceedings legislation.

16. This Agreement shall be governed by the Laws of the Province of Nova Scotia.

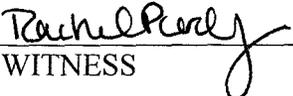
DATED this 5 day of December, 2018,  
at Thunder Bay, Province of Ontario.

**SIGNED, SEALED AND DELIVERED**

In the presence of

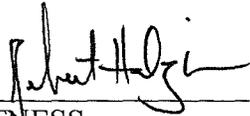
  
WITNESS ROBERT HARJAN

  
BARBARA FONTAINE

  
WITNESS

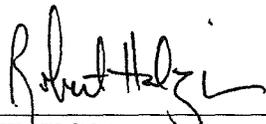
  
SISKINDS LLP

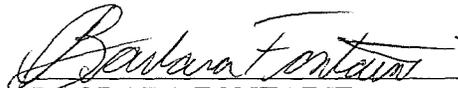
I acknowledge receipt of a true copy of the Contingency Fee Agreement on the 5 day of December, 2018 at Thunders Bay, Province of Ontario.

  
WITNESS

  
\* Barbara Fontaine

I acknowledge that I have been advised by Siskinds that I have a right to seek independent legal advice with respect to this Agreement prior to signing this contract.

  
WITNESS ROBERT HABJAN

  
BARBARA FONTAINE

2018

**SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**BARBARA FONTAINE**

**PARTY OF THE FIRST PART**

**-and-**

**SISKINDS LLP  
herein known as "Siskinds"**

**PARTY OF THE SECOND PART**

---

**CONTINGENCY FEE AGREEMENT**

---

## INDEMNITY AGREEMENT

FOR VALUE RECEIVED, Siskinds LLP agrees to indemnify and save harmless Barbara Fontaine ("Indemnitee") and any successors and assigns, from any claim, action, liability, loss, damage or suit, arising from the following:

Any claim for court costs that may be assessed against Barbara Fontaine as a result of being the named representative plaintiff in a proposed class action on behalf of: (a) All persons in Canada, including their estates, who were prescribed and ingested Avandia (the "Primary Class"); and (b) the spouses (including common-law spouses and same-sex spouses), children, grandchildren, parents, grandparents and siblings of deceased members of the Primary Class (the "Family Class").

In the event of any asserted claim, the Indemnitee shall provide the undersigned reasonably timely written notice of same, and thereafter the undersigned shall at its own expense defend, protect and save harmless Indemnitee against said claim or any loss or liability thereunder.

In the further event the undersigned shall fail to so defend and/or indemnify and save harmless, then in such instance the Indemnitee shall have full rights to defend, pay or settle the claim on Barbara Fontaine's own behalf without notice to the undersigned and with full rights of recourse against the undersigned for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim.

Upon default, the undersigned further agrees to pay all reasonable legal fees necessary to enforce this agreement.

This agreement shall be unlimited as to amount or duration. This agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

This agreement is private to the parties to this agreement and shall only be disclosed to third parties if it is necessary to enforce the agreement and in that event shall only be disclosed to the extent necessary to enforce the agreement.

DATED this 5 day of December, 2018,  
at Thunder Bay, Province of Ontario.

Robert O. Percival  
Witness

Madel Miki  
Siskinds LLP

Robert Habjan  
Witness ROBERT HABJAN

Barbara Fontaine  
Barbara Fontaine