

**NOTICE OF SETTLEMENT OF CLASS ACTION AGAINST  
DR. SALIM DAYA AND HAMILTON HEALTH SCIENCES CORPORATION**  
**Read this Notice carefully as it may affect your rights and those of your family members.**

**PURPOSE OF THIS NOTICE**

This Notice is to:

- (a) all women who underwent a Tompkins metroplasty performed by Dr. Salim Daya at Hamilton Health Sciences Corporation ("the Hospital") in the period January 1, 1990 to March 31, 2004, inclusive (the "Class Members"); and
- (b) the spouse, child, grandchild, parent, grandparent or sibling (as defined in s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.4) of each Class Member alive on the date the Class Member first underwent a Tompkins metroplasty in the period January 1, 1990 to March 31, 2004, inclusive (the "Family Class Members");

In 2004, the plaintiffs commenced a class action against Dr. Daya and the Hospital in the Ontario Superior Court of Justice, court file no. 04-CV-281230CM. The plaintiffs alleged that Dr. Daya negligently performed the Tompkins metroplasty surgical procedure on patients at the Hospital in the period January 1, 1990 to March 31, 2004, inclusive.

On December 14, 2007, Madam Justice Hoy approved the certification and settlement of this class action. The defendants do not admit any liability on their part. The settlement is a compromise of disputed claims.

**TERMS OF SETTLEMENT**

Dr. Daya and the Hospital will pay the sum of approximately \$9,900,000, in full and final settlement of all claims against them, including class counsel fees, disbursements, taxes and administration costs. This amount is subject to adjustment depending upon the total number of Class Members claiming on the settlement as set out in the Distribution Plan. The costs of the administration will not exceed \$175,000.

The settlement monies will be distributed by the Administrator in accordance with a court-approved and supervised Distribution Plan. In general terms:

- (a) each Class Member who submits a Claim Form to the Administrator on or before May 30, 2008\* will receive a base payment of \$35,000 and her Family Class Members will share a \$2,000 payment;
- (b) if a Class Member experienced certain specific medical complications/interventions in a designated time frame as a result of the Tompkins Metroplasty, she may seek further compensation of up to \$20,000. The additional amount payable for complications/interventions may be subject to proration depending on the number of accepted claims;
- (c) in the event there are settlement monies remaining after payment of the base payment and additional compensation, the remaining monies will be distributed equally to each Class Member who has submitted a timely claim.

Complete information on the settlement including the Judgment and the Distribution Plan may be found at [www.dayaclassaction.com](http://www.dayaclassaction.com).

Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

**TO MAKE A CLAIM FOR COMPENSATION**

To receive compensation under this settlement, each Class Member must submit a Claim Form and the required supporting documentation on or before **May 30, 2008\***:

by mail to: **The Administrator—Daya Class Action  
c/o Sutts, Strosberg LLP  
600- 251 Goyeau Street  
Windsor, ON N9A 6V4**

or by fax to: **The Administrator—Daya Class Action  
866.316.5308**

A Claim Form will be delivered concurrently with the mailing of this Notice to those Class Members who have been identified to their last known address. The Claim Form is also available at [www.dayaclassaction.com](http://www.dayaclassaction.com) or by calling 519.561.6291 or 800.229.5323 extension 291.

Class Members must submit a Claim Form to the Administrator on or before May 30, 2008\* to receive compensation under this settlement. Failure to submit a Claim Form on or before May 30, 2008\*, will eliminate all rights to claim/receive settlement compensation.

**TO OPT OUT OF THE CLASS ACTION**

Any Class Member who does not wish to participate in the settlement must opt out of the class action by sending a written opt out notice on or before **March 31, 2008\***:

by mail to: **Mary Novara  
Hamilton General Hospital  
7 North Room #728  
237 Barton St. East  
Hamilton, ON L8L 2X2**  
or by fax to: **905.522.0825 Attn: Mary Novara**  
or by email to: **novara@hhsc.ca**

The written opt out notice must be signed by the Class Member or her authorized representative and include the Class Member's name, birthdate, address, telephone number and Health Card Number and the statement that she is opting out of the class action.

All Class Members who do not opt out will be bound by the terms of the settlement and will not be able to bring or maintain another lawsuit against Dr. Daya and/or the Hospital relating to the Tompkins metroplasty. You must opt out if you wish to proceed with your own action.

Do not opt out if you wish to share in the compensation under this settlement.

**CLASS COUNSEL FEES**

As part of the settlement, the Court approved class counsel fees in the amount of \$2,000,000 inclusive of disbursements and GST to be paid from the settlement monies which included an amount paid by the defendants on account of costs.

**ADDITIONAL INFORMATION**

Questions for class counsel should be directed by telephone or in writing to one of the following class counsel:

Harvey T. Strosberg, Q.C. Sutts, Strosberg LLP	Tel: 519.561.6231 or 800.229.5323 extension 8231 Fax: 519.561.6203 or 866.316.5308 E-mail: <a href="mailto:dayaclassaction@strosbergco.com">dayaclassaction@strosbergco.com</a>
Stanley Tick, Q.C. Stanley M. Tick & Associates	Tel: 905.523.6464 Fax: 905.523.8080 E-mail: <a href="mailto:stan@smtick.com">stan@smtick.com</a>
David Thompson Scarfone Hawkins LLP	Tel: 905.523.1333, extension 245 Fax: 905.523.5878 E-mail: <a href="mailto:thompson@shlaw.ca">thompson@shlaw.ca</a>

**MEDICAL RECORDS**

Requests for your Hamilton Health Sciences Corporation records may be initiated by calling 866.492.2472.

**INTERPRETATION**

This Notice is a summary of the Judgment. If there is a conflict between the provisions of this Notice and the terms of the Judgment, the Judgment will prevail.

\*The Court has reserved the right to fix a later date if certain circumstances arise.

This Notice was approved by The Honourable Madam Justice Alexandra Hoy of the Ontario Superior Court of Justice.