

THE HAMILTON SPECTATOR

WEDNESDAY, OCTOBER 24, 2007 ♦ THESPEC.COM ♦ THE VOICE OF OUR COMMUNITY

Lawyer calls \$35,000 payment per patient 'woefully inadequate'

BY CARMELA FRAGOMENI

The lawyer for a Burlington woman who underwent unnecessary surgery from Dr. Salim Daya says a \$35,000 payment to each patient is "woefully inadequate."

Bruce Hillyer said his client's \$4.6-million lawsuit against Daya, a specialist in preventing miscarriages, and Hamilton Health Sciences still stands.

"The amount is inadequate so we're opting out," Hillyer said yesterday when the \$10-million settlement Daya and the hospital corporation agreed to pay in three class action lawsuits was announced.

Elizabeth Ann Jansen, his client, went to Daya looking for help in 2000 after suffering many miscarriages. Her lawsuit alleges Daya conducted rogue research based on his views that sham operations or placebo surgery are essential to research and they benefit patients. The allegations have not been proven in court.

David Thompson, a lawyer for one of the class action suits, said a class action settlement is often imperfect, but the

The settlement:

\$9.9 million for 189 women who had the surgery between Jan. 1990 and March 31, 2004

Each gets a base payment of \$35,000, plus \$2,000 for family members.

Anyone who had specific medical complications, can seek up to \$10,000 more. The women must make a claim through one of the three lawyers in the class action by April 2008 — David Thompson of Scarfone Hawkins; Stanley Tick or Pheroze Jeejeebhoy of Stanley M. Tick and Associates in Hamilton; or Harvey

overall compensation is consistent with previous cases.

Sandra La Rocca, a Hamilton woman in one of the class actions, said, "I feel like he used us as guinea pigs."

She feels completely violated by the doctor. The mother of two says Daya took away her chance to experience

Strosberg of Sutts, Strosberg in Windsor. A woman who joins the class action cannot sue again or take future action.

If she decides not to join, she must put that in writing to the law firms. Otherwise, she will not be able to sue on her own. The deadline is Feb. 29, 2008.

More information is available at www.classaction.ca

What is Tompkins metroplasty?:

A surgery to modify the internal shape of the uterus to decrease a woman's chances of losing a pregnancy.

The procedure involves an incision in the

natural childbirth. She needed a C-section each time.

"He did procedures on us he should never have done and money is not going to replace what he did to me. It's not going to take away all the trauma he put me through ... but it's over. I don't feel like he paid for what he did. I don't un-

derstand how he is still practising."

Her life was put on hold after the surgery and a painful three months of recovery. It put a lot of stress on her and her husband. "We were newly married, we had some very rocky moments."

The 189 women eligible to make a claim are known only to the hospital

abdomen and another incision through the top of the uterus. Originally, it was used to remove a septum, or partition down the middle of the uterine cavity, which contributes to recurring pregnancy loss, premature labour and infertility. Because the incision is at the top of the uterus, a woman will have to undergo a caesarian section in later pregnancies.

What came next: During the 1990s, Tompkins metroplasty was replaced by a less invasive vaginal approach, called hysteroscopy, which became the standard. A scope is used to enter the

uterus and correct the defect.

What happened when:

June 2003: HHS directs Daya to stop performing metroplasties.

February 2004: Daya resigns from HHS after an investigation concludes no women should have had inappropriate or unnecessary Tompkins surgery on their uteruses between January 1998 and April 2003, and that 36 of the 54 women didn't require any procedure.

March, April 2004: Three class-action lawsuits filed against Daya and HHS, alleging negligence and breach of duty,

unless they have gone public on their own. So the hospital is notifying each of them by registered mail at their last known address and has set up a toll-free line at 1-866-492-2472 for questions.

cfragomeni@thespec.com
905-526-3392