

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAME)
JUSTICE ALEXANDRA HOY) *Thursday* THE 27th DAY
OF SEPTEMBER, 2007

B E T W E E N

AUDRA JEANETTE BELLAIRE, CATHERINE MARIE FRAUENLOB,
SANDRA LaROCCA, CLAUDIA PAYNE, YVONNE THOMSON,
STEVEN CHARLES BELLAIRE and ANDREW FRAUENLOB

Plaintiffs

and

SALIM DAYA and HAMILTON HEALTH SCIENCES CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

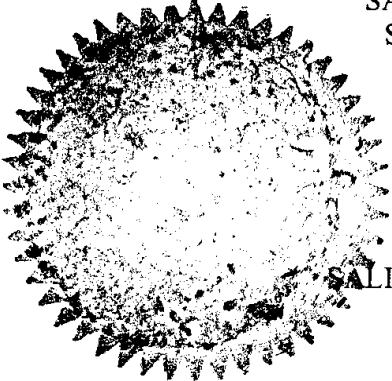
ORDER

THIS MOTION FOR DIRECTIONS, made by the plaintiffs, was
considered on the 27th day of September, 2007 at Toronto, Ontario,

or .

ON BEING ADVISED that the parties have entered into a settlement,
subject to court approval,

AND ON READING the material filed, including the settlement
agreement and the proposed Distribution Plan,



1. THIS COURT ORDERS AND DECLARES that it will conduct a hearing to consider whether to certify this action as a class proceeding for settlement purposes and whether to approve the proposed settlement and the fees, disbursements and applicable taxes for class counsel ~~at a hearing to be held~~ ^{on} on the 27th day of November, 2007 beginning at 10:00 a.m. eastern at the Court House, 361 University Avenue, Toronto, Ontario (the "Fairness Hearing").

2. THIS COURT ORDERS that on or before the 26th day of October, 2007, the potential class members and family class members shall be given notice of the Fairness Hearing, substantially in the form attached as Schedule A to this order ("Notice") by:

- (a) Hamilton Health Sciences Corporation (the "Hospital") sending the Notice by registered mail, in an envelope marked private and confidential, to the last known address (as provided by the Ontario Ministry of Health and Long Term Care or as known to the hospital) of all women it has identified as having a Tompkins metroplasty performed by Dr. Salim Daya ("Daya") in the period January 1, 1990 to March 31, 2004 inclusive;
- (b) class counsel placing the Notice once in a one-quarter of a page advertisement in the *Globe and Mail* and once in a one-quarter of a page advertisement in the *Hamilton Spectator*;
- (c) class counsel posting the Notice at www.dayaclassaction.com and www.classactionlaw.ca; and
- (d) class counsel providing the Notice to any person who requests it.

3. THIS COURT ORDERS that, on or before the 20th day of November, 2007, the parties shall serve and file with the court affidavit(s) confirming delivery of the Notice in accordance with this order.

4. THIS COURT ORDERS AND DECLARES that at the Fairness Hearing the court will consider objections to the proposed settlement by potential members of the class. Potential class members should submit their objections in writing on or before the 20th day of November, 2007:

by mail to: The Daya Class Action
Attention: David Thompson
Scarfone Hawkins LLP
Barristers and Solicitors
One James St. South
14th Floor, P.O. Box 926
Hamilton, ON L8N 3P9

by fax to: 905.523.5878

by email to: thompson@shlaw.ca

5. THIS COURT ORDERS that the written objections referred to in paragraph 4 of this order should include the following:


- (a) the potential class member's name, address, telephone number, fax number and email address;
- (b) a brief statement of the nature of and reason for the objection; and
- (c) whether the potential class member intends to appear at the hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

6. THIS COURT ORDERS that Scarfone Hawkins LLP be and is hereby appointed to receive any written objections from the potential class members and to, on or before the 24th day of November, 2007, serve and file a report with the court which compiles all written objections received.

7. THIS COURT ORDERS that the Hospital shall, on or before the 20th day of November, 2007, deliver to the Court and Daya an affidavit:

- (a) containing the "Master List" of names of the 185 women who underwent a Tompkins metroplasty performed by Daya at the Hospital in the period January 1, 1990 to March 31, 2004, inclusive that is described in paragraph 18 of the Distribution Plan; and
- (b) containing the "Supplementary List" of names of the 4 women who underwent a Tompkins metroplasty performed by Daya at the Hospital in the period January 1, 1990 to March 31, 2004, inclusive that is described in paragraph 18 of the Distribution Plan.

Subject to any further order of the court, this affidavit shall be sealed so that the personal information of potential class members is not accessible to the public.



TOMY VENTURA
~~JUSTICE~~ Reg. 3 star

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LE / DANS LE REGISTRE NO.:

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PER / PAR:



NOTICE OF PROPOSED 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 all women who underwent a Tompkins Metroplasty performed by Dr. Daya at Hamilton Health Sciences Corporation in the period January 1, 1990 and March 31, 2004, inclusive (the "Class Members") and to their spouses, children, grandchildren, parents, grandparents and siblings alive at the time the Tompkins Metroplasty was performed (the "Family Class Members").

In 2004, the plaintiffs commenced a class action against Salim Daya and Hamilton Health Sciences Corporation (the "Hospital") in the Ontario Superior Court of Justice, court file no. 04-CV-281230CM. The plaintiffs allege that Dr. Daya negligently performed the Tompkins Metroplasty surgical procedure on patients at the Hospital in the period January 1, 1990 and March 31, 2004, inclusive.

The plaintiffs in the class action have reached a proposed settlement with Dr. Daya and the Hospital, subject to obtaining necessary court approval. The defendants do not admit any wrongdoing or liability on their part. The settlement is a compromise of disputed claims.

TERMS OF THE PROPOSED 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 fees, disbursements and taxes of class counsel and the costs of the administration will be fixed by the court. Class counsel fees and administration costs will not exceed \$2,175,000.

The settlement monies will be distributed in accordance with a court-approved and supervised distribution plan. In general terms, it is proposed that:

- each Class Member who submits a claim form in the required time will receive a base payment of \$35,000 and her Family Class Members will share a \$2,000 payment;
- 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 \$10,000. The additional amount payable for complications/interventions may be subject to proration depending on the number of accepted claims;
- 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 proposed settlement including the distribution plan may be found at www.dayaclassaction.com and www.classactionlaw.ca.

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.

THE COURT HEARING

The court will be asked to certify the class action against the defendants, appoint the class representatives and approve the proposed settlement as recommended by the plaintiffs and class counsel.

The court hearing will be held on **November 27, 2007 at 10:00 a.m. E.T., at 361 University Avenue, Toronto.**

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

OBJECTIONS TO THE PROPOSED SETTLEMENT

At the hearing, the court will consider objections to the proposed settlement by Class Members. Class Members should submit their objections in writing **on or before November 20, 2007:**

By mail to: The Daya Class Action
Attention: David Thompson
Scarfone Hawkins LLP
Barristers and Solicitors
One James St. South
14th Floor, P.O. Box 926
Hamilton, ON L8N 3P9

By fax to: 905.523.5878

By email to: thompson@shlaw.ca

A written objection should include the following information:

- the Class Member's name, address, telephone number, fax number and email address;
- a brief statement of the nature of and reason for the objection; and
- whether the Class Member intends to appear at the hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

If the court approves the proposed settlement, all Class Members will be bound by the terms of the settlement, unless they opt out. **If the proposed settlement is approved, there will be a further court-approved notice instructing Class Members how to make their claim to receive settlement monies or how to opt out of the settlement.**

QUESTIONS

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

Stanley Tick
Stanley M. Tick & Associates
Tel: 905.523.6464
Fax: 905.523.8080
E-mail: stan@smtick.com

David Thompson
Scarfone Hawkins LLP
Tel: 905.523.1333, ext. 245
Fax: 905.523.5878
E-mail: thompson@shlaw.ca

Harvey T. Strosberg, Q.C.
Sutts, Strosberg LLP
Tel: 519.561.6231 or
1.800.229.5323 ext. 231
Fax: 519.561.6203 or
1.866.316.5308
E-mail: dayaclassaction@strosbergco.com

Questions about your health history may be directed to the Hospital at 1-866-492-2472. Hospital staff cannot answer any questions about the legal action or the settlement. Such inquiries should be directed to class counsel as set out above.

This notice has been approved by Madam Justice A. Hoy of the Superior Court of Justice for Ontario.
Questions about this notice should NOT be directed to the court.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

ORDER

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SOLICITORS FOR THE PLAINTIFFS

FILE: 24-090-000
REF: HTS/df