

WALKERTON COMPENSATION PLAN

CLASS ACTION SETTLEMENT

FINAL REPORT

Rueter Scargall Bennett LLP
May 19, 2011
Court File No. 00-CV-192173CP

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INTRODUCTION

By order of the Honourable Chief Justice Patrick J. Lesage dated March 19, 2001 (the “Order”), the Ontario Superior Court of Justice (the “Court”) approved the Walkerton Compensation Plan (the “Plan”) for “Class Members”¹. Pursuant to the Plan and the *Class Proceedings Act, 1992*, S.O. 1992, c.4, the Court ordered that the Honourable Mr. Justice Winkler (now Chief Justice of Ontario) supervise the implementation, administration and operation of the Plan, as well as the distribution of funds under the Plan.

The Court further declared that the Province of Ontario (“Ontario”) had undertaken to fund and continue to fund any and all costs associated with the Plan including, but not limited to, all costs associated with implementation, administration and operation and to pay all compensation, awards and judgments in accordance with directions given by the Court.

The Court further appointed Rueter Scargall Bennett LLP as a special assistant to monitor the implementation, administration and operation of the Plan in accordance with its terms (the “Monitor”). As part of its duties, the Monitor has prepared this final report (the “Report”) in respect of the progression of the Plan from inception date to the conclusion of the claims process.

EXECUTIVE SUMMARY

All those persons affected by the contamination of the water supply in Walkerton, Ontario between April 1, 2000 and December 5, 2000 were eligible to apply to the Plan for compensation under various categories, including personal illness and disruption.

The preamble of the Plan sets out its purpose:

The purpose of this Walkerton Compensation Plan is to pay to the Applicants full and complete compensation, without regard to fault, in accordance with Ontario law and with the terms and conditions herein, provided, however, that no amount shall be paid for aggravated, exemplary or punitive damages.²

To date, the Plan has distributed over \$72,000,000.00 in compensation and reimbursement of expenses, to residents of Walkerton and other people who suffered disruption and illness caused by the contamination. There were a total of 10,189 claims made, with 9,275 claims qualified to be assessed for compensation. Over 99% of the claims have been resolved. There are 73 open claims remaining. These consist of late claims recently admitted; claims for which incomplete information has been provided; claims for which an offer of compensation has been made but for which no response has yet been received; claims that are in the midst of the dispute resolution process of the Plan; and claims for which appeals of the compensation awarded are being sought. We would expect that the remaining claims will be resolved by the 4th quarter of this year.

With the final claims admitted by way of court order dated May 20, 2010, the Plan is now closed and, subject to the assessment of the 73 claims noted above, fully implemented. Overall, the implementation of the Plan proceeded remarkably well despite some periodic, unforeseen changes. For example, it must be noted that the original estimates provided to the court indicated that approximately 7500 claims would be made. As set out above, that number was vastly exceeded, with an additional 2689 claims. The large number of claims led to delays in processing in the early stages which attracted some criticism. However, with direction from the court, efficiency in the administration was

restored and straightforward claims were dealt with as quickly as possible, thereby freeing up resources to address the complex claims more quickly as well.

The fact that the Government of Ontario was a primary defendant in the litigation, and ultimately the funder of the Plan, also raised some concerns among Class Members about independence. In our view, those concerns have proven to be completely unfounded.

In summary terms, the obligation of the Government of Ontario was to fund the plan and to leave the administration of the Plan and the payments to Class Members to the Administrator, with one exception. Where a business loss in excess of \$25,000 was concerned, the government reserved an option to participate in the resolution of the claim.

We are able to report that the Government of Ontario has admirably performed its funding obligation without any interference whatsoever with the functions of the Administrator in making assessments or resolving claims under the Plan. Further, even in situations where it had an option to participate in respect of business loss claims, the government has chosen to forego that participation in favour of allowing the Administrator to resolve the claims. Based on our experience in monitoring class action settlements, we do not think it goes too far to state that the manner in which the Government of Ontario has performed its role in relation to the Plan could well serve as a model for other situations where the settlement is funded on an ongoing basis by one or more of the defendants.

When analyzing the completed implementation of a class action settlement, it is important to note that the analysis must be conducted on a class wide basis. Viewed through that lens, the Walkerton Compensation Plan was a successfully implemented class action settlement that delivered the intended benefits to the Class Members.

We note that some individual concerns have been expressed and a small number of claimants have expressed specific dissatisfaction with the compensation received. However, generally those concerns arise from the basis on which compensation is paid under the Plan. Although the Plan speaks of “full and complete compensation”, this wording is modified by the phrase “in accordance with Ontario law” which imports the principles established at law in relation to the payment of damages in tort claims. Accordingly, there are limits on the amounts available for pain and suffering, as well as established precedents in relation to injuries. The result is that the amount available under “Ontario law” does not always accord with a claimant’s view of what “full and complete compensation” would entail in his or her particular situation. Nevertheless, the Plan’s terms must be respected by the Administrator in resolving claims.

We conclude with the following observations. The terms of the Plan reflected the desire of the parties to resolve the Walkerton class action litigation by providing an independent and open assessment process through which Class Members could obtain compensation. As noted above, it has been successful in achieving those objectives.

PURPOSE

The purpose of the Report is to provide a review of the implementation of the Plan and relevant statistical summaries related to the costs incurred within a range of compensatory groupings.

CHRONOLOGY

The following section provides a brief chronology of important events during the period from April 1, 2000 to April 16, 2011.

April 1, 2000	Beginning of Class Period.
December 5, 2000	End of Class Period.
March 19, 2001	Settlement Approval Motion before the Honourable Chief Justice Lesage. Judgment approving the Plan issued by the Honourable Chief Justice Lesage declaring the proposed settlement to be fair, reasonable and adequate and in the best interest of class members as a whole.
April 16, 2001	Plan begins operation.
May 1, 2001	Deadline to opt out of the Plan by submitting an opt-out notice.
June 19, 2001	Mediation to establish compensation parameters for Minor Intestinal Upset and Water Disruption.
January 2, 2002	Deadline for submission of a Stage One Claim.
July 11, 2002	Order of the Honourable Mr. Justice Winkler appointing William Dermody to act as Independent Advice Counsel for purposes of assisting claimants requiring independent legal advice.
March 29, 2004	Order of the Honourable Mr. Justice Winkler directing the Administrator to consider Stage One Claims (as discussed below) it received between January 2, 2002 (the Stage One Claims Deadline) and February 16, 2004 as though such claims were received prior to the Stage One Claims Deadline.

May 20, 2010

Order of the Honourable Chief Justice Winkler directing the Administrator to consider Stage One Claims (as discussed below) it received between January 2, 2002 and November 25, 2009 as though such claims were received prior to the Stage One Claims Deadline.

ROLES AND RESPONSIBILITIES

The roles and responsibilities of those involved in the implementation, administration and operation of the Plan was formalized by a series of Court orders and included the following entities, individuals and appointees:

1. Crawford Adjusters Canada Inc. (the “Administrator”) as the Administrator to the Plan (Kim Chalmers - Supervisor);
2. Harvey T. Strosberg as “Class Counsel Representative”;
3. Reva Devins as mediator and arbitrator;
4. Jane Devlin as mediator;
5. Jamie Smith and Bruce Davidson as members of the Walkerton Residents Consultation Committee;
6. William Dermody as Independent Advice Counsel;
7. Frank Gomberg as Case Manager;
8. Martin Teplitsky as mediator and arbitrator;
9. Rueter Scargall Bennett LLP as assistant to the Court (the “Monitor”);
10. Lee LLP as Plan Counsel;
11. Caroline Zayid and Darryl Ferguson as counsel for the Government of Ontario.

In examining the operation of the Plan for the purpose of the preparation of this report, the Monitor conducted a review of analysis of the available data and supplemental interviews and discussions with a number of those involved in the implementation of the settlement.

THE WALKERTON COMPENSATION PLAN

Overview

The Plan was the product of the class action settlement, and it was intended to provide claimants full and complete compensation, without regard to fault, in accordance with Ontario law. However, the Plan specifically excludes payment for, or entitlement to, aggravated, exemplary or punitive damages³.

Class Members who have received compensation under the Plan may make further applications where damages have occurred or materialized after, or which were not reasonably discovered before, the date of the latest prior application, for which compensation has not previously been assessed or paid⁴. In reality, given that the Plan has now been in operation for over 10 years, with few subsequent claims, it is expected that further applications for compensation will be rare.

As a primary function, the Administrator evaluated each application⁵ to determine both eligibility and compensation. This assessment by the Administrator was performed on an individual basis, with reference to the facts of each claim.

Qualification

To qualify for financial compensation, individuals and businesses affected by the contamination⁶ of water supplied by the Walkerton Public Utilities Commission (“PUC”) during the class period were required to satisfy the Administrator, on a balance of probabilities, that the claimant met a certain set of predetermined criteria: the claimant was eligible under the terms of the Plan; the physical injury or loss was caused by the water contamination; the damages claimed were suffered by the claimant; and the claim was of a nature for which damages are available in accordance with Ontario law under the terms of the Plan.

Once deemed eligible, the claimant was categorized into one of five compensation class categories (“Class Categories”):

1. an individual (or business) ordinarily resident in Walkerton and who either consumed or used water delivered by the Walkerton PUC during the Class Period (the “Walkerton Resident Class”)⁷;
2. an individual although not ordinarily resident of Walkerton, who became ill (or died) as a consequence of consuming or using water delivered by Walkerton during the period April 1, 2000 to June 27, 2000 (the “Non-Walkerton Resident Class”)⁸;
3. any individual who was infected with gastroenteritis or a similar type of illness by exposure to a person described in either of the two above categories (the “Secondary Infection Class”)⁹;
4. an individual who was a spouse or same sex partner, child, grandchild, parent, grandparent or sibling of a person described in any of three above categories (the “Family Class”)¹⁰; or
5. any individual (or business) who does not fit within any of the above four categories and who suffered a loss of any nature or kind relating to or arising directly or indirectly from the Contamination of the water delivered by the Walkerton PUC during the Contamination Period (the “Other Losses Class”)¹¹.

(collectively referred to as “Class Members”).

As of April 16, 2011, a total of 9,275 Class Members qualified into one of the five Class Categories. The Class Categories reflect payments made to or on behalf of Class Members in accordance with specified heads of damages. The following table and pie chart indicate the number of qualified claimants in each of the Class Categories:

Table 1: Total Stage One Qualified Claims Received

Class Categories	Number of Claimants Qualified
Walkerton Resident Class	5,312
Non-Walkerton Class	2,500
Secondary Infection Class	6
Other Losses Class	591
Family Class	866
Total Qualified	9,275

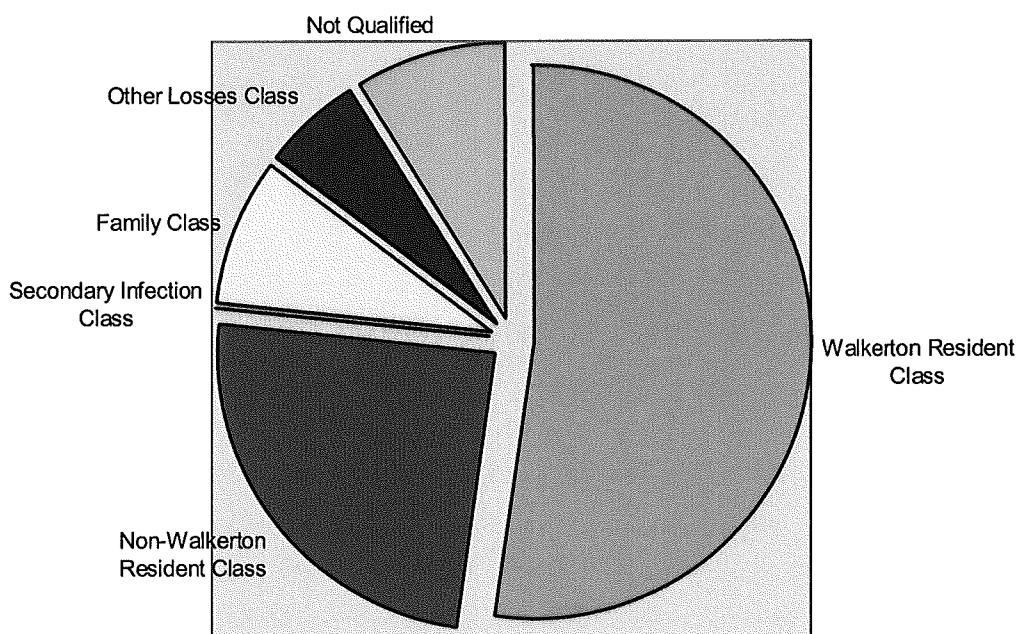


Chart 1: Breakdown of Stage One Claims

To date, a total of 914 applications to the Plan have been determined to have failed to meet the requirements to qualify under any of the Class Categories for the Plan. The majority of those who did not qualify were Non-Walkerton residents who were unable to provide proof that they had either consumed water provided by the Walkerton PUC or had incurred any illness resulting from such consumption of contaminated water. All

rejected claimants were provided with a written explanation of the reason for non-qualification and invited to either submit further information or appeal the decision of the Administrator.

The claims process was divided into the initial or “Stage One” application and a follow up “Stage Two” application for compensation in addition to the basic water disruption claims. As of April 16, 2011, the Administrator has received 6,968 Stage Two Claims and of those, 6,802 Class Members had been paid compensation in respect of their Stage Two Claims.

Basis of Compensation

In assessing compensation under the Plan, the Administrator relied on precedents established for recoverable damages under Ontario law. Accordingly, compensation was paid in terms of both pecuniary and non-pecuniary losses. For clarity, pecuniary damages relate to identifiable or readily assessable economic losses, such as past and future loss of income or the cost of past and future health expenses not covered under the provincial health plan. They also include actual out-of-pocket expenses and, in some instances, reasonable recovery for the loss of income in caring for or providing services to the injured Class Member.

Non-pecuniary damages are generally recoverable for losses or injuries that are not easily quantified in monetary terms, i.e. pain, suffering, nervous shock, and mental distress. However, under Ontario law, there is an absolute limit on the amount of compensation available for pain and suffering, which is usually awarded in cases of catastrophic loss. Those cases falling below the catastrophic loss threshold accordingly result in a lower damages or compensatory award for pain and suffering. In a similar vein, there is considerable precedent in Ontario law for assessing claims related to nervous shock or mental distress.

In reviewing the compensation awarded in various cases, it is clear that the Administrator followed, as it was required to do, the principles of Ontario law in the resolution of

claims. The limits imposed by the application of Ontario law have resulted in a small number of individuals expressing dissatisfaction with the specific compensation awarded in their particular cases, but the Administrator was bound by the agreement and its terms. Examined on a class wide objective basis, the Administrator discharged its duty in resolving the claims made by the Class Members.

The Plan also provided compensation for economic loss, which included compensation for provable business losses as a result of the contamination. To be compensated for such loss, however, the claimant was required to establish that the loss was reasonably foreseeable as a result of the contamination. The Plan included an administrative exception in the case of claims for business (economic) loss in excess of \$25,000. In those cases, the Government of Ontario could take the place of the Administrator in dealing with the claim, on such terms as the Court directed.

As with the individual claims, the business loss claims have been resolved within the parameters of the Plan. We also note that the Government of Ontario did not choose to participate in any of the claims, thus permitting Administrator to engage in the resolution process for all claims made under the Plan.

Subsequent Claims

The Plan provides for two categories of claims, namely Stage One Claims and Stage Two Claims. Although a Class Member may only receive compensation once for Stage One Claims, Class Members are entitled to make more than one application for Stage Two Claims, *where different injuries, or injuries not previously discovered or known to be causally linked to the water contamination, are at issue.*

This subsequent claim feature of the Plan was meant to avoid the problem with the traditional “once and for all” settlements or trial awards in personal injury litigation. Traditionally, once a plaintiff in a personal injury lawsuit has received, through settlement or trial, compensation for losses arising as a result of the fault of the

defendant, the claim is concluded and subsequently discovered losses of the plaintiff do not result in increased compensation.

The Plan was specifically designed to eliminate potential prejudice by allowing Class Members to make further Stage Two Claims. Notwithstanding this feature, with respect to subsequent or further Stage Two Claims, the Plan does set strict parameters. Any such claim must relate to *additional injury* that i) is suffered as a result of the effects of the contamination and ii) is discovered subsequent to the Class Members' previous Stage Two Claim(s). Where a causal link, on an objective basis on a balance of probabilities, cannot be established or where the injury was one that was known to the Class Member prior to his or her previous Stage Two Claim, the claim will not fit within the qualification criteria for a further Stage Two Claim.

From a practical perspective, given the duration of the claims administration process to date (now in its eleventh year), it is unlikely that there will be a significant number of subsequent claims.

The Claim Submission Procedure

For convenience, an office was set up by the Administrator in Walkerton to take applications and to process all claims arising from the Plan. This provided a localized approach that enabled the Class Members to obtain assistance on a personal level with any questions related to the process or the Plan itself. Additional project support was provided through the Administrator's head office in Kitchener, Ontario.

Stage One Claims

The initial application forms for Stage One Claims were delivered to post office boxes in Walkerton on April 25, 2001. In order to qualify for the Plan, every person attempting to obtain compensation was required to complete and return a Stage One Claim application form prior to January 2, 2002. We note that there have been several applications to the Plan to admit late claims in the intervening years, with the last such application having

been heard, and granted on consent, on May 20, 2010, covering claims made up to November 25, 2009.

The Administrator was solely responsible for the intake of application forms for Stage One Claims. Once the Administrator received a Stage One Claim application form and sent an acknowledgment to the claimant, the following events occurred:

1. The Administrator reviewed the application information and, where appropriate, either sought additional information from the claimant or obtained information from alternative auxiliary sources including hospitals, doctors, employers and other programs using appropriate waiver and release forms obtained from the claimant;
2. The Administrator provided a response that ranged from acceptance and payment of the claim to denial of the claim. If accepted, the claimant was categorized into one of the applicable Class Categories. If a claim was rejected, the claimant was given the opportunity to request mediation/arbitration in order to reassess the claim;
3. If a claimant qualified under one of the Class Categories, they became a Class Member. Those in the Walkerton Resident, the Non-Walkerton Resident and Secondary Infection Class Categories also became eligible for the immediate payment of \$2,000.00¹². If the Class Member believed that damages would be ultimately assessed in an amount greater than the \$2,000.00, the \$2,000.00 could be accepted as payment on account and the Class Member could seek further compensation under the Plan; and
4. All individuals approved as Class Members were provided with a letter enclosing a copy of the Stage Two Claims application form, which allowed them to submit individualized particulars for a full assessment by the Administrator.

As at April 16, 2011, a total of \$15,287,650.00 has been paid by the Plan for Stage One Claims.

Stage Two Claims

All claimants approved into any one of the Class Categories were eligible to submit a Stage Two Claim. Unlike Stage One Claims, there was no deadline for submission of Stage Two Claims.

Stage Two Claims involved a full assessment of a Class Member's claim which encompassed various heads of damages potentially or actually sustained by Class Members or Family Class Members. The types of damages claimed are also reflected in the Categorical Payout Summaries prepared for this report.

After receiving a completed application form for a Stage Two Claim, the Administrator reviewed the claim to determine if there were any issues requiring clarification. If there were, the Class Member was contacted by the Administrator and the issues requiring clarification were dealt with in due course. If there were no issues requiring clarification or such issues were reconciled, a settlement offer was generated and delivered to the Class Member or their legal counsel for review. The Administrator was assisted in putting together Stage Two offers of settlement through the court approved mediation and case management processes.

Stage Two Claim Challenges

One of the major challenges faced by the Administrator was the prevalence of deficiencies in many of the Stage Two Claims submitted by Class Members. Such deficiencies included incomplete applications, incomplete supporting documentation, factual errors and inconsistent facts, and in some cases, Stage Two Claims were submitted by claimants prior to their acceptance into one of the five Class Categories.

In keeping with the spirit of the Plan, the Administrator decided to make offers, including partial offers, as soon as it was satisfied it had the necessary information to meet any of

the categorical heads of damages. However, other than the initial Stage One payment of \$2,000.00 stipulated in the Plan, the Administrator made advance payment for incompletely assessed claims only in exceptional circumstances, where it was clear that significant compensation would be payable in relation to the claim but that the final quantum had not been resolved. These exceptional payments were made in order to alleviate undue hardship on the part of the claimants.

Alternative Dispute Resolution

There were alternative dispute resolution (“ADR”) mechanisms available under the Plan to any claimant upon request. The ADR processes were meant to provide fair and timely resolution of claims. The Plan funded the cost of any ADR procedures, as well as the reasonable cost of legal advice and representation provided to the claimant regarding such procedures. In conjunction with plaintiff counsel, the Administrator helped arrange mediations/arbitrations on individual claims from a scheduling, file preparation, presentation and completion standpoint.

The logistical assistance of the Administrator, combined with the flexibility of the mediators/arbitrators, contributed to a generally efficient process for resolving disputed claims. In fact, where complicated claims were involved, the process took on a case management aspect aimed at coordinating efforts to obtain the information necessary to achieve a resolution.

Stage One and Stage Two Claims Made

As of April 16, 2011, a total of 10,189 Stage One Claims were received. All Stage One Claims have been evaluated and the initial \$2,000.00 payments (or appropriate parts thereof once the appropriate set-off was determined) have been issued to eligible claimants.

As of April 16, 2011, a total of 6,968 Stage Two Claims were received. Of these, 6,802 Class Members have received payments in respect of their Stage Two Claims.

STATISTICAL SUMMARIES

The Administrator was responsible for developing the operating procedures and administrative protocols necessary to implement the Plan. This involved collecting, summarizing and reviewing statistics relating to payment of compensation. The statistics forming the foundation of the Summaries are available from a global standpoint and include the tracking of items that can be extracted from the payment system in order to ascertain the exact number of claims received and the type of payments made. Most importantly, the Administrator has determined that over 99% of the applications for compensation under the Plan have been concluded.

The Claims Management System

A specialized claims management system was utilized to track the statistical categories in respect of Stage One Claims and Stage Two Claims and the basis of compensation relating to Class Members. All financial transactions were recorded in the System for processing, documentation and payment.

System Challenges

The Administrator found it difficult to categorize various items from the very outset because most claims contained multiple components or facets of compensation (or the potential for multiple components). The processing of a particular claim (e.g., under the Walkerton Resident Class) for those approved and eligible for compensation consists of the following series of steps: (i) certain approved Class Members were initially entitled to the equivalent of \$2,000.00 as an initial payment; (ii) the Class Members were entitled to claim under the damages types listed in the Categorical Payment Summaries itemized in the chart below; and (iii) after claimants proved status as Class Members, they were provided with a Stage Two Claim (which could then be submitted at any time). In total, 6,968 Stage Two Claims have been received and reviewed by the Administrator, and the evaluators have put together numerous offers in respect of those damages.

There were a number of complexities that arose in evaluating Stage Two Claims. For example, some Class Members had difficulty proving illness or it may have been the case that an illness was intermittent. The Administrator utilized a best efforts analysis based on medical records and professional observational techniques to determine compensation for the various payment categories under the Plan. The problem with this approach was that in a significant number of instances, it led to Class Members accepting only portions of the compensation offered under the various categories, thereby leaving other parts of the claim unresolved. This was compounded greatly by issues such as *FLA* claims, which are based on an entirely different set of compensatory criteria.

Categorical Payment Summary

Summaries are provided to the Monitor at a rate of approximately 3 reports per month, the first of which was delivered on May 17, 2001. The following chart provides a cumulative chronological tabulation of the payment categories, which are inclusive of both Stage One Claims and Stage Two Claims to April 16, 2011.

Table 2: Plan Payments by Category

No.	Category	Payments Amount (\$)
1	Stage One Initial Payment	15,287,650.00
2	Water Disruption	14,933,932.39
3	Illness	15,885,305.31
4	Pecuniary General Damages (Future Losses)	1,975,606.39
5	Special Damages	529,597.66
6	Income Loss	1,087,604.51
7	Business Income Loss	1,606,268.76
8	Business Value Diminution	13,000.00
9	<i>Family Law Act</i> Damages	2,661,178.59
10	Property Value Diminution	756,801.59

11	Prejudgement Interest	7,432,510.64
12	Medical Report Expense	726,803.58
13	Legal Fees Expense	7,596,151.13
14	Accountants Fees	967,303.09
15	Professional Fees	283,809.63
16	Arbitration Expense	252,874.40
17	Mediation Expense	32,281.97
18	Business Loss Extra Expense	3,627.30
	Total	\$72,032,306.94

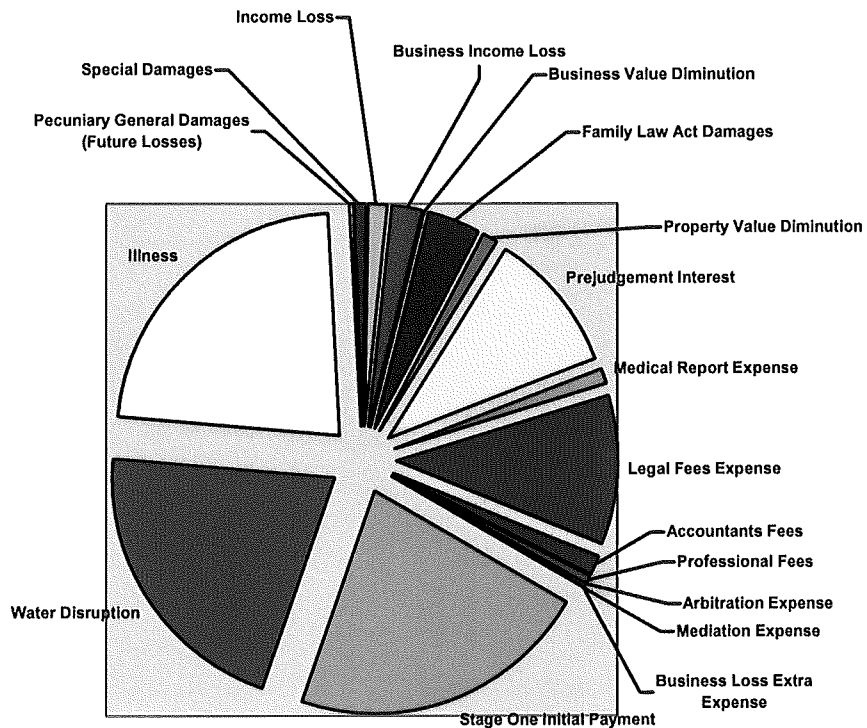


Chart 2: Plan Payment by Category

Stage One Initial Payment

The Stage One Initial Payment relates to payment of \$2,000.00 to all Class Members approved into specified Class Categories. In respect of the remaining payment categories,

numbers 2 to 10 were evaluated based on Stage Two Claims. The amounts paid out of those categories were based on the premise of the Plan to provide compensation based on legal precedent and not necessarily on predefined payment categorizations.

Water Disruption Damage

Water disruption damages encompassed the majority of claims and included payments to eligible Walkerton residents for disturbance caused by disruption of the municipal water supply during the remediation period.

In most cases, the Administrator would offer compensation to those persons who were on the Walkerton PUC system and actually residing in Walkerton throughout the period of the Water Disruption on the basis of the following categories and mediated amounts:

Category	Amount
Minors (as at May 21, 2000)	\$3,000.00
Adults (as at May 21, 2000)	\$6,000.00

The Class Counsel Representative and the Administrator agreed that the amounts set out above for water disruption were “within the range of reasonableness” but also acknowledged that each side was not bound by such amounts in all circumstances.

Intestinal Upset or Illness

Intestinal upset or Illness consisted of relatively short term illnesses such as upset stomach, diarrhea and general discomfort caused by the Contamination. The non-cumulative amounts payable under this category were mediated on the assumption of what a court would award for similar injuries (based on the illness resolving itself) as follows:

Category	Amount
Diarrhea, vomiting and/or cramps for more than 72 hours but no more than 30 days	\$3,000.00

Diarrhea, vomiting and/or cramps for less than 72 hours	\$500.00
Nausea, fever, fatigue and/or Lethargy for no more than 30 days	\$500.00

We note that where compensation was awarded to a minor claimant, the settlement amount was reviewed by the offices of the Children's Lawyer and the Public Guardian of Ontario as well as the Class Counsel Representative and thereafter court approval was sought. All such approved payments were paid into court in accordance with the Ontario *Rules of Civil Procedure*. Those payments will be available to each of the minor claimants when he or she reaches the age of majority.

Fatalities and Serious Illness

In addition to the 7 fatalities, claims for severe Irritable Bowel Syndrome, debilitating long-term illnesses such as hemolytic uremic syndrome as well as injuries with long term effects suffered by children were recorded under this category.

Pecuniary General Damages

This category consists of claims for loss of earning capacity and expenses incurred as a result of illness arising from the Contamination. Pecuniary General Damages coincide with damages resulting from the Serious Illness category since these damages are often triggered where there is a fatality or serious illness.

Special Damages

Special damages encompass specific economic loss and out-of-pocket pre-settlement expenditures incurred by the Class Member for such things as gas, mileage and medical expenses. The amounts paid out by the Plan under this head of damages were relatively low because of the implementation, prior to the Plan, of different compensation programs. The records from non-Plan compensation programs were made available to the

Administrator to set off the appropriate amounts so that there would be no double payment.

Income Loss and Business Loss

Income Loss is meant to pick up claims for loss of income by individuals and Business Income Loss is intended to compensate for a downturn in business directly attributable to the Contamination. Claims for Business Income Loss have generally been based on a downturn in economic activity and increased expenses. As provided for in the Plan, Ontario has been granted participant status in respect of business loss claims equal to or greater than \$25,000. Where Business Loss is concerned, a large portion of the amounts paid out of the Accountant Fee category resulted from services in respect of valuing business losses.

Business Value Diminution

Business value diminution encompasses the claims of Class Members relating to the decrease in the value of a business as a result of the contamination.

Family Law Act

Most of the monies paid for loss of care, companionship and guidance were usually applied to more serious illnesses or where minors have been affected by the debilitation or death of an adult guardian. As a result of the mediation in June of 2001, it was determined that there was to be no compensation for *FLA* claims relating to Intestinal Upset or Water Disruption.

Pre-judgment Interest

Pre-judgment interest was interest paid on the amounts owing to the Class Member from the date of the loss to the day the claim was actually paid out. These amounts are paid as pursuant to the Court approved pre-judgment interest tariffs pursuant to the Ontario *Rules of Civil Procedure*.

Property Value Diminution Issue

As with business value diminution, property value diminution is meant to track payments made to Class Members for damages to Class Members' property that was demonstrably decreased as a result of the contamination. Ontario has intervener status on this particular head of damage.

Medical Reports and Expenses

The Plan provides for the payment of medical reports where a claimant requires such documents to make a claim. These amounts were either paid directly to the doctor's office by the Administrator or reimbursed to Class Members who obtain such reports on their own. Also included in this category were expert fees for medical assessments and expenses related to those assessments.

Professional Fees, including Legal and Accounting Services

Class Members were compensated for legal advice rendered in respect of the Contamination and accounting advice needed to quantify losses. As a result of the fact that there was no set fee structure in place at the commencement of the Plan, legal fee determinations were initially difficult, given the unique nature of the Plan. With the guidance provided by the court through the "Maple Creek" decision, Plan Counsel was able to assist the Administrator in formulating a more streamlined approach to assessing the appropriate legal fees for both straightforward and complex claims. The general category of Professional Fees heading includes professional fees paid to real estate appraisers for properties claiming a property value diminution. It also includes the fees paid in respect of doctors who formed the independent medical panel to assist with claims assessment and other related expert fees.

Of particular note, all legal fees for claimants were paid through the Plan and those payments constitute just over 12.2% of the total amount of compensation payments made. This percentage compares very favourably to legal fees payable under contingency fee

arrangements for standard personal injury claims (i.e., non-class action claims) which often range from 25% to 33%.

Open Matters

As of April 16, 2011, there are a total of 73 Stage One Claims and Stage Two Claims that remain open. These claims are categorized as follows:

Table 3: Open Plan Cases

Category	Number
Stage One (per May 2010 Order)	7
Primary Stage Two Claims:	
Illness	20
Property	1
Business / Income Loss	5
<i>Family Law Act</i>	21
Further Stage Two Claims	19
Total	73

The Stage One Applications claims relate to the claims that – although deemed pursuant to the Court’s May 20, 2010 Order to have been received by the January 2, 2002 deadline for submission of a Stage One Claim – were received after the original January 2, 2002 deadline for Stage One Claims. Primary Stage Two Claims are claims by Class Members who have thus far only made one Stage Two Claim. Further Stage Two Claims are claims by Class Members who have already made at least one successful Stage Two Claim.

General Payout Summary

The Administrator was responsible for assessing dollar values for a wide variety of claims. In the course of its assessment, the Administrator has been responsible for

reviewing appropriate case law, obtaining advice from Plan Counsel and participating in a series of case conferences co-ordinated by the Court to deal with the assessment of claims under the Plan.

While it is the Administrator that is responsible for the operation of the Plan, it is the Government of Ontario – which was a party to the underlying litigation – that funded the Plan. We can report that the Government of Ontario has observed its funding obligation in all respects and has respected the independence of the Administrator in resolving claims.

The Plan itself operates as a “trust fund” funded by the Government of Ontario and administered through a Trust Fund Management Agreement with Royal Trust. The Administrator is a member of the trust fund management committee that oversees the management of funds held in trust for the Plan. The Administrator is also responsible for reconciling payments made from the Plan and requesting monthly top ups from the Government of Ontario to the trust fund in order to maintain a fund balance as necessary to pay resolved claims on a timely basis. Originally, the base reserve in the trust fund was set at \$5,000,000 dollars but as the claims under the Plan have been resolved, the base reserve has been lowered accordingly.

The Administrator’s financial management of the Plan has been reviewed on a regular basis by Deloitte & Touche. The only systemic matter that the Administrator was required to address was in relation to the calculation of interest paid on claims, an issue flagged in the initial Deloitte & Touche audit. The miscalculation resulted in small overpayments to some claimants. We have been advised by the Administrator that proper correcting procedures were implemented into the administration process, and indeed, no such concerns were noted by Deloitte & Touche in the subsequent audits.

A total amount of \$72,032,306.94 has been disbursed from the Plan as of April 16, 2011. The following graph demonstrates the total cumulative payments made by the Plan from its inception to April 16, 2011.

Total Plan Payment Over Time

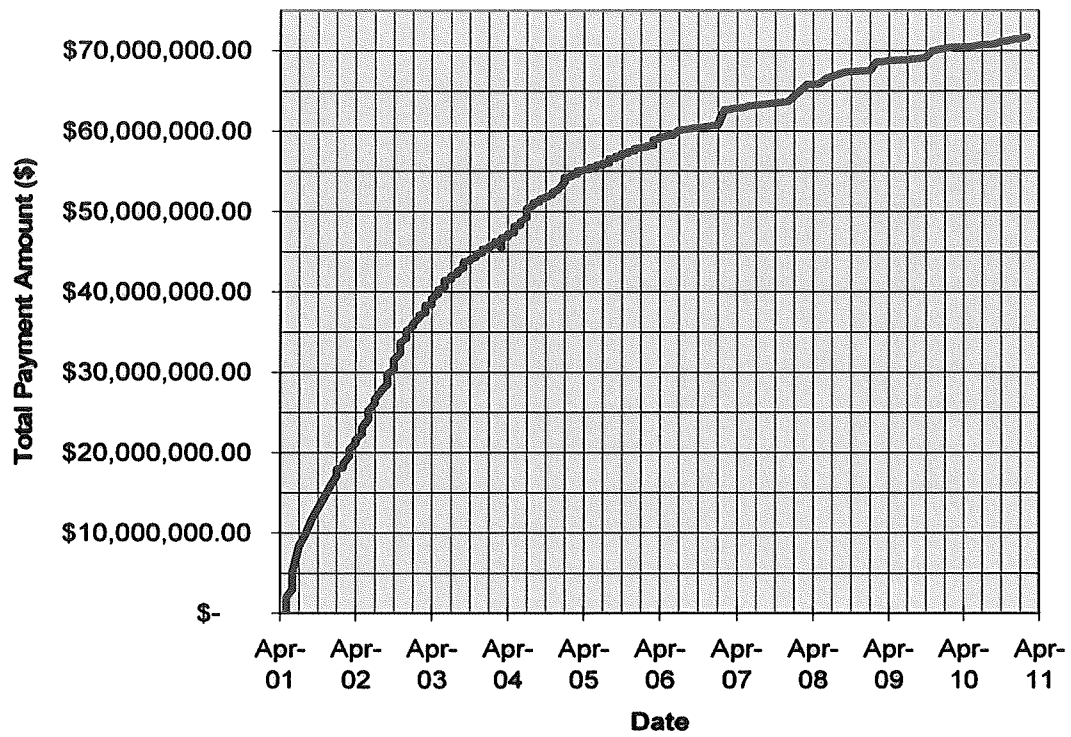


Chart 3: Total Plan Payment since Plan Inception

CONCLUSION

To date, the Plan has distributed over \$72,000,000.00 in compensation and reimbursement of expenses, primarily to Walkerton residents who suffered disruption and illness caused by the contamination. In addition, 99% of the applications for compensation under the Plan have been concluded, with 9,275 Class Members having been awarded compensation under Stage One and 6,802 Class Members having been awarded compensation under Stage Two.

By any reasonable measure, as a class action settlement, the Plan has been a success. The claims were dealt with individually and with regard to the particular circumstances of the claimant involved. In the opinion of the Monitor, the two most important distinct features of the Plan laid the foundation for ultimate success are the fact that 1) the Plan provides compensation without proof of fault and 2) the Plan allows those persons for whom compensation is available under the Plan to make further claims if additional damages relating to the effects of the contamination occur or are discovered subsequent to their first claim.

These two matters are interrelated in that they run contrary to the issues often faced by litigants regarding personal injury claims. By not being required to individually demonstrate fault, the Plan allowed resources – that would otherwise have been expended in the determination of the proof of such fault – to be used to compensate the individuals for the harm they suffered. By allowing claims subsequently discovered that were caused by the contamination to be brought forward, the Plan allowed initial claims to be brought forward in a timely manner without fear of a future, as yet unknown, issue serving as a disincentive to promptly seek redress.

With the late claim applications granted on May 20, 2010 now being processed, the Plan must be regarded as fully implemented. While there is no manner of providing perfect compensation for the losses occasioned as a result of the Walkerton water contamination,

in our view, the Plan has provided the Class Members with “full and complete compensation, without regard to fault, in accordance with Ontario law”.

Date: May 19, 2011

RUETER SCARGALL BENNETT LLP

Per:  _____

NOTES

¹ A copy of the Plan can be found at Appendix “A” [Walkerton Compensation Plan].

² *Ibid.* at preamble.

³ Walkerton Compensation Plan, Appendix “A”, section 2.2.1(1).

⁴ *Ibid.* at section 2.3.

⁵ *Ibid.* at section 3.2.1(1).

⁶ “Contamination” is defined under the Plan as the presence of disease-causing organisms in the water delivered by the Walkerton PUC during the Contamination Period.

⁷ Walkerton Compensation Plan, Appendix “A”, section 1, definition of “Class Member” at subsection (a).

⁸ *Ibid.* at subsection (b).

⁹ *Ibid.* at subsection (c).

¹⁰ *Ibid.* at section 1, definition of “Family Class Member”. Also, pursuant to section 2.2.4, a Family Class Member could apply for compensation for pecuniary losses resulting from the injury or death, caused by the Contamination, of a Class Member, including for expenses incurred for: the benefit of the Class Member who was injured or had died; funeral expenses incurred as a result of the death of the Class Member; travel expenses incurred in visiting the Class Member during his or her treatment for recovery; loss of income or for the value of equivalent services where the Family Class Member provides nursing, housekeeping or other services for the Class Member; and an amount to compensate for the loss of guidance, care, companionship that the Family Class Member might reasonably have expected to receive from the Class Member if the injury or death had not occurred.

¹¹ *Ibid.* at section 1, definition of “Class Member” at subsection (d).

¹² It should be noted that not every person received \$2,000.00 from the Plan since Plan payments were set off against any amounts the claimant received prior to the implementation of the Plan from compensation schemes such as the government sponsored alternate plans. See Walkerton Compensation Plan, section 8. The Administrator was in possession of all such records, ensuring consistency among the amounts paid to the Class Members.

WALKERTON COMPENSATION PLAN

CLASS ACTION SETTLEMENT

CLASS ACTION FILE #00-CV-192173CP

SCHEDULE 1

WALKERTON COMPENSATION PLAN

OVERVIEW

The Government of Ontario is committed to providing financial support and compensation to any individuals who became sick or lost loved ones or otherwise incurred certain out-of-pocket expenses or losses, because of contaminated water in Walkerton. Money cannot redress some of the losses that have been suffered as a result of the tragic events in Walkerton, but the Government of Ontario wants to do what it can to provide financial compensation to those who have suffered loss.

The purpose of this Walkerton Compensation Plan is to pay to the Applicants full and complete compensation, without regard to fault, in accordance with Ontario law and with the terms and conditions herein, provided, however, that no amount shall be paid for aggravated, exemplary or punitive damages.

Individuals will have access to fair compensation through an efficient, timely, and impartial process. Applications will be individually evaluated and, if necessary, resolved through a mediation process, and where unsuccessful, independent arbitration. In the case of serious injury or death, an assessment of damages by a judge of the Ontario Superior Court of Justice is also available.

Levels of compensation for physical injury or death will be determined with reference to ordinary legal principles applied in courts. Compensation is being offered on a compassionate basis regardless of issues of fault and therefore compensation is not an admission of legal liability. All awards are for the purpose of compensating individuals who have suffered losses. Thus, duplicate compensation will not be offered where an Applicant is entitled to be paid compensation under another plan or program.

The Government of Ontario will pay reasonable legal costs for an Applicant's lawyer as provided for under the Walkerton Compensation Plan, and ensure that individuals have access to independent legal advice.

The Walkerton Compensation Plan is to be interpreted broadly to accomplish its objectives.

1. DEFINITIONS

In the Walkerton Compensation Plan,

"Administrator" means Crawford Adjusters Canada Inc. ("Crawford").

"Applicant" means a Class Member or Family Class Member who applies for compensation under this Plan.

“Applicant’s Data” means all data, records, medical, personal and financial information, files, addresses, claims payment history, and all other information of any nature and kind whether in paper, recorded or electronic form or in any other medium including all individual personal identifying and non-personal identifying information and any compilation, selection, co-ordination or arrangement of individual information into an original, derivative or collective work or works capable of being reviewed, perceived, reproduced or otherwise communicated directly or indirectly with the aid of a machine or device or capable of being fixed in any tangible medium of expression now known or later developed or transmitted or displayed even for a transitory period.

“Application Form” means an application for compensation in the appropriate form prescribed by the Administrator.

“Approval Date” means the date on which the Judgment approving the settlement of the Class Action becomes final.

“Arbitrators” means persons selected from a roster of retired judges at ADR Chambers for the purpose of conducting arbitrations under this Plan.

“Certified Defendants” means The Corporation of the Municipality of Brockton, The Bruce-Grey-Owen Sound Health Unit, Stan Koebel and The Walkerton Public Utilities Commission.

“Class Action” means Court File No. 00-CV-192173CP.

“Class Counsel Representative” means counsel appointed by the Judge on the recommendation of the solicitors of record for the plaintiffs in the Class Action.

“Class Member” means:

- (a) all persons, except the defendants and third parties, who were ordinarily resident in the area in the Corporation of the Municipality of Brockton formerly known as the Town of Walkerton (“Walkerton”), who consumed or used water delivered by the Walkerton PUC, at any time in the period April 1, 2000 to December 5, 2000;
- (b) all persons, except the defendants and third parties, who were not ordinarily resident in Walkerton, who consumed or used water delivered by the Walkerton PUC at any time in the period April 1, 2000 to June 27, 2000 and who became ill or died as a result thereof;
- (c) all persons, except the defendants and third parties, who were infected with gastroenteritis or a similar type of illness by exposure to a person described in (a) or (b) above; and

- (d) any and all persons, except the defendants and third parties, who are not described in (a), (b) and (c) above or in the definition of a Family Class Member, who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the contamination of the water delivered by the Walkerton PUC in the period from April 1, 2000 to December 5, 2000.

“Compensation Offer” means a written offer of compensation made by the Administrator to an Applicant, with respect to all or part of the loss claimed by the Applicant.

“Contamination” means the presence of disease-causing organisms in the water delivered by the Walkerton PUC during the period from April 1, 2000 to December 5, 2000.

“Estate” means the estate of a Class Member or Family Class Member.

“Family Class Member” means the spouse or same-sex partner, child, grandchild, parent, grandparent and sibling of someone described in subparagraphs (a), (b) or (c) of the definition of a Class Member.

“Family Law Act” means the *Family Law Act*, R.S.O. 1990, c. F.3, as amended.

“Insured Services” means insured services as defined in the *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended.

“Judge” means the Honourable Mr. Justice Warren K. Winkler or a judge of the Ontario Superior Court of Justice designated by him, or in the event of Mr. Justice Winkler’s unavailability, a judge of the Ontario Superior Court of Justice appointed by the Chief Justice.

“Judgment” means the Judgment approving the settlement of the Class Action.

“Mediators” means persons selected from a roster of mediators, from Mediated Solutions Inc. or elsewhere, for the purpose of conducting mediations under this Plan.

“Ontario” means Her Majesty the Queen in Right of Ontario.

“Plan” means the Walkerton Compensation Plan approved by the Judge, as amended, supplemented or restated from time to time.

“Plan Counsel” means counsel appointed by the Administrator to represent it at mediations, arbitrations and assessments of damages under this Plan.

“Retainer Agreements” means the letter agreement Ontario and ADR Chambers Inc. dated August 23, 2000 and agreement between Ontario and Mediated

Solutions Inc. effective August 8, 2000, dated December 22, 2000.

“Same-sex partner” means either of two persons of the same sex who have cohabited:

- (a) continuously for a period of not less than three years; or
- (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

“Service Agreement” means the contract between Ontario and Crawford effective July 25, 2000.

“Spouse” means either of a man and woman who:

- (a) are married to each other, or
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of the person relying on this clause to assert a right under this Plan; or
- (c) are not married to each other but have cohabited:
 - (i) continuously for a period of not less than three years; or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

“Third Parties” means Ian D. Wilson Associates Limited, Davidson Well Drilling Limited, Earth Tech (Canada) Inc., Conestoga-Rovers & Associates Limited, B. M. Ross And Associates Limited, Gap EnviroMicrobial Services Inc., A & L Canada Laboratories East, Inc., David Biesenthal and Carolyn Biesenthal.

“Walkerton” means the area in the Corporation of the Municipality of Brockton formerly known as the Town of Walkerton.

2. COMPENSATION, ELIGIBILITY AND COVERAGE

2.1 BASIS OF COMPENSATION

- (1) Under this Plan, the right to and the amount of compensation payable shall be determined in accordance with the legal principles applied in Ontario courts without regard to issues of fault, liability or contributory negligence but there shall be no payment for or entitlement to payment for aggravated, exemplary or punitive damages.

- (2) An Estate may apply for any compensation the Class Member or Family Class Member could have applied for, but for his or her death.

2.2 INCLUDED INJURIES AND LOSSES

2.2.1 CLASS MEMBERS WHO BECAME ILL OR DIED

A Class Member who became ill or died may apply for compensation arising from any injury or loss for which an Ontario court would award damages, not paid or payable pursuant to any other plan or program, including the following:

- (a) pain and suffering, including physical injury, nervous shock or mental distress;
- (b) past and future lost income;
- (c) past and future health expenses which are not Insured Services; and
- (d) pecuniary losses;

caused by the Contamination.

2.2.2 CLASS MEMBERS WHO DID NOT BECOME ILL OR DIE

Where, in the absence of any physical illness or death, a Class Member suffered mental distress or incurred expenses or lost income or suffered pecuniary loss or incurred reasonable expenses for preventative health care measures caused by the Contamination, not paid or payable pursuant to any other plan or program, the Class Member may apply for compensation for such losses under this Plan.

2.2.3 OTHER LOSSES OF CLASS MEMBERS

A Class Member may apply for compensation for any other losses, including economic losses, caused by the Contamination, not otherwise described in Section 2.2.1 or 2.2.2 of this Plan, not paid or payable pursuant to any other plan or program, provided that such loss is proven by the Class Member on the facts and provided that the loss is recoverable under Ontario law.

2.2.4 FAMILY CLASS MEMBERS

A Family Class Member may apply for compensation for pecuniary losses, other than those paid or payable pursuant to any other plan or program, resulting from an injury to or death of a Class Member caused by the Contamination, including, as set out in subsection 61(2) of the Family Law Act:

- (a) actual expenses reasonably incurred for the benefit of the Class Member who was injured or who has died;
- (b) actual funeral expenses reasonably incurred as a result of the death of the Class Member and not otherwise reimbursed to the Estate of the Class Member under this Plan;
- (c) a reasonable allowance for travel expenses actually incurred in visiting the Class Member during his or her treatment or recovery;
- (d) a reasonable allowance for loss of income or for the value of services where, as a result of the injury, the Family Class Member provides nursing, housekeeping or other services for the Class Member; and
- (e) an amount to compensate for the loss of guidance, care and companionship that the Family Class Member might reasonably have expected to receive from the Class Member if the injury or death had not occurred.

2.3 FURTHER APPLICATIONS TO THIS PLAN PERMITTED

A Class Member or Family Class Member who receives a payment under this Plan may make further applications and seek further damages if he, she or it suffers damages occurring or materializing after, or not reasonably discovered before, the date of the latest prior application, for which compensation has not previously been assessed or paid.

3. PROCESS FOR DETERMINING COMPENSATION

The process of this Plan provides for up to five stages: application, evaluation, mediation, arbitration, and, in cases of serious injury or death, assessment of damages by a Judge.

3.1 APPLICATION

3.1.1 GENERAL

An Applicant who wishes to apply for compensation must do so by submitting an Application Form to the office of the Administrator in Walkerton.

3.1.2 APPLICANTS UNDER A DISABILITY AND ESTATES

- (1) Applications on behalf of an Applicant under a disability must, in

the case of a minor, be completed by a person having custody of the minor, or in other cases such representative as the Administrator decides.

- (2) Applications on behalf of Estates must be completed by an estate trustee.

3.1.3 SUPPORTING DOCUMENTATION AND INFORMATION

- (1) The Application Form is designed to provide to the Administrator the information necessary to assess each claim. However, Applicants or their representatives will be required to provide any supporting documentation, including receipts, income information and medical documentation, to establish their claim and to enable the Administrator to understand and evaluate the application fully and efficiently. The Administrator's understanding and evaluation of larger claims involving more serious injuries will be greatly facilitated by the provision of all relevant supporting information and documentation.
- (2) The Administrator may also need to obtain information or documentation directly from health professionals, hospitals or other parties. Applicants may be asked to complete a consent form authorizing the Administrator to obtain information directly from third parties.
- (3) If the Administrator has questions regarding an application or requires other supporting information or documentation, the Administrator may contact Applicants, or their legal representatives, and request further information and documents.

3.1.4 CONSENTS REGARDING PERSONAL INFORMATION

- (1) A Class Member must consent to his or her personal information being released to the Administrator, or
 - (a) where the personal information is about a deceased person, the consent of the deceased person's personal representative must be provided;
 - (b) where the personal information is about a child under 16 years of age, the consent of a person having lawful custody of the child must be provided;
 - (c) where the personal information is about an individual under a continuing power of attorney or a power of attorney for personal care, the consent of the individual's attorney must be provided; and
 - (d) where the personal information is about an individual (not a minor under the age of 18) who has a guardian of the person or guardian of the property, the consent of the guardian must be provided.

- (2) A Class Member must, or a person authorized under the *Personal Health Information Privacy Act, 2000*, may consent to the release of the personal health information on behalf of the Class Member.

3.1.5 EXPENSES INCURRED FOR MEDICAL REPORTS

If requested by an Applicant, the Administrator will pay directly to health professionals and hospitals their reasonable costs for the preparation and delivery of any reports or records provided by them. So, too, the Administrator will reimburse Applicants for their reasonable costs incurred in obtaining relevant hospital records and medical reports.

3.2 EVALUATION OF APPLICATIONS

3.2.1 ADMINISTRATOR'S EVALUATION

- (1) The Administrator will determine eligibility and evaluate each application in accordance with the provisions of the Plan.
- (2) The Administrator will evaluate each application individually, taking into account the particular facts in each application. The evaluation will be independent of Ontario.
- (3) The Administrator may also meet with an Applicant for a better understanding of the Applicant's individual circumstances.
- (4) The Administrator shall not make a decision as to entitlement to compensation until all necessary proof is completed and submitted to the satisfaction of the Administrator.

3.2.2 PROOF OF CLAIMS AND STANDARD OF REVIEW OF APPLICATION

The Administrator will only offer compensation when satisfied, on a balance of probabilities, that:

- (a) the Applicant is an eligible person under this Plan;
- (b) the physical injury or other loss was caused by the Contamination;
- (c) the damages claimed were suffered; and
- (d) the damages are payable in accordance with Ontario law under this Plan.

3.2.3 COMPENSATION OFFER

- (1) The Administrator will decide whether compensation is payable and, if so, in what amount. The Administrator will communicate its decision to the Applicant by delivering a Compensation Offer. If the Administrator does not make a Compensation Offer, the Administrator will communicate to the Applicant its reasons in writing for deciding to deny compensation.
- (2) Each Class Member who is entitled to compensation under the Plan, other than someone described in subparagraph (d) of the definition of Class Member, shall receive the amount of \$2,000 upon proof of qualification.
- (3) If the Class Member believes that his, her or its damage would be assessed in an amount greater than \$2,000, the Class Member may accept the \$2,000 as a payment on account and seek further compensation in accordance with the terms of this Plan.
- (4) In order to receive any further compensation over and above the \$2,000 payment, the Class Member must prove that his, her or its losses, compensable in accordance with the provisions of this Plan, exceed the \$2,000 payment on account.
- (5) For greater certainty, the \$2,000 payment shall be considered a minimum payment on account of compensation for any and all forms of injury, loss or damages suffered by a Class Member compensable under this Plan, and any interest thereon.

3.2.4 RESPONSE TO COMPENSATION OFFER

- (1) The Compensation Offer will include a Response Portion to be completed by the Applicant. Prior to completing the Response Portion, the Applicant may meet with a representative of the Administrator, propose a counter-offer, and attempt to arrive at a mutually agreed upon resolution. By completing and delivering the Response Portion to the Administrator, the Applicant may:
 - (a) accept the Compensation Offer;
 - (b) reject the Compensation Offer and request mediation, to be followed by arbitration if the mediation is unsuccessful;
- (2) If mediation is unsuccessful, the Applicant shall proceed to arbitration.
- (3) Notwithstanding section 3.2.4(2), if mediation is unsuccessful and if the Applicant's claim relates to serious injury or death, the Applicant may request assessment of damages by the Judge.

- (4) A Class Member who is entitled to a minimum payment of \$2,000 pursuant to the provisions of section 3.2.3 of this Plan, and who rejects an Offer of Compensation as set out above, shall receive the minimum payment of \$2,000 pending further resolution of the Class Member's claim.

3.2.5 ACCEPTANCE AND PAYMENT OF COMPENSATION

- (1) If the Applicant accepts the Compensation Offer, the Administrator will pay the compensation within 30 days of the date of acceptance of the Compensation Offer, unless court approval is required.
- (2) In the case of a settlement reached at mediation, or an award made by an Arbitrator or Judge under this Plan, the Administrator will pay the compensation within 30 days of the later of court approval, if required, the expiry of any appeal period or a final appeal order.

ESTATES

3.2.6 COURT APPROVAL OF COMPENSATION TO PERSONS UNDER DISABILITY AND TO

- (1) No court approval is necessary for a payment under section 3.2.3(2), if the amount is payable to a minor, estate trustee, guardian of property of an incapable person or attorney for property under a continuing power of attorney.
- (2) Where the compensation payable under section 3.2.3(2) is for a minor only, the payment will be delivered by the Administrator to the Applicant for the direct benefit of the minor.
- (3) Court approval shall be obtained for any payment to a litigation administrator of an estate.
- (4) Court approval of any amount in addition to the payment under section 3.2.3(2) shall be obtained by an Applicant for a minor, a guardian of property of an incapable person, an attorney for property under a continuing power of attorney or an estate trustee without a will.
- (5) No court approval is required for an estate trustee appointed under a will or codicil or pursuant to a Certificate of Appointment of Estate Trustee.
- (6) This Plan will pay the reasonable costs associated with obtaining court approval.

3.2.7 PARTICIPATION BY ONTARIO

In any application seeking compensation for business loss over \$25,000 or for diminution in the value of real property, the Administrator shall give notice of such claim to Ontario and Ontario may participate in the place of the Administrator in any proceeding relating to such a claim including the initiation of mediation, arbitration or an appeal therefrom, on such terms and in such manner as the Judge may direct.

3.3 MEDIATION, ARBITRATION AND ASSESSMENTS

3.3.1 MEDIATION

- (1) If an Applicant rejects a compensation offer and proceeds to mediation, mediation will take place in accordance with rules set by the Judge, to include a provision that costs shall never be awarded against an Applicant.
- (2) If a mediation does not successfully resolve the Applicant's claim, subject to section 3.2.4(3), the Applicant shall proceed to arbitration.

3.3.2 ARBITRATION

If an Applicant proceeds to an arbitration, arbitration will take place in accordance with rules set by the Judge. The rules shall include a provision permitting an appeal to the Judge from an arbitration award on a question of law, a question of fact, or a question of mixed fact and law, and that costs shall never be awarded against an Applicant.

3.3.3 ASSESSMENT OF DAMAGES BY THE JUDGE

If an Applicant proceeds to an assessment of damages by the Judge under section 3.2.4(3), costs shall never be awarded against an Applicant.

3.3.4 PARTIES TO A MEDIATION, ARBITRATION OR ASSESSMENT

Except as provided in Section 3.2.7:

- (1) At a mediation or an arbitration, the parties shall be the Administrator and the Applicant.
- (2) At an assessment of damages, the parties shall be the Administrator and the Applicant.
- (3) At a mediation, arbitration or assessment of damages, the Applicant may be represented by counsel or a representative. At any mediation, the Administrator may be represented by Plan Counsel

or a representative. At any arbitration or assessment of damages, the Administrator shall be represented by Plan Counsel.

3.4 ELECTION TO ARBITRATE

If the Administrator rejects an application for compensation on the basis that the application is made by a person who is not a Class Member or Family Class Member or if the Administrator determines that no Compensation Offer will be made to a person, that person may elect to have his, her or its entitlement and/or compensation determined at an arbitration by delivering to the Administrator an election in prescribed form.

3.5 PRELIMINARY DETERMINATION

If an Applicant requests an assessment of damages by a Judge under section 3.2.4(3) above, Plan Counsel may request the Judge to decide on a preliminary basis whether the Applicant's claim relates to a serious injury or death caused by the Contamination and is therefore eligible for assessment of damages by the Judge.

4. LEGAL ASSISTANCE TO APPLICANTS

- (1) Applicants may be represented by lawyers for the purpose of seeking compensation under this Plan.
- (2) In the event an Applicant is not represented by counsel, the Administrator shall encourage the Applicant to seek independent legal advice.
- (3) The Plan will pay reasonable legal costs for an Applicant's lawyer or for independent legal advice in accordance with a tariff to be approved by the Judge.

5. NO ADMISSION OF LIABILITY

Neither the establishment of this Plan nor the payment of any compensation under this Plan constitutes an admission of liability by Ontario, any Certified Defendant or any Third Party.

6. CONFIDENTIALITY OF INFORMATION

Any information created or obtained by any person, organization or governmental body, (including the Administrator, Mediators, Arbitrators and the Judge conducting an assessment of damages under section 3.2.4(3) herein) involved in administering this Plan is confidential and, except as required by law, shall be used and disclosed only for the purpose of administering this Plan.

7. RETENTION AND DISPOSAL OF RECORDS

- (1) The Administrator, Mediators and Arbitrators will maintain all Applicants' Data and all other information created, compiled or obtained in the course of administration of this Plan as the Judge shall direct.

- (2) On the termination of this Plan, all documents collected or compiled in the course of the administration of this Plan will be dealt with as the Judge directs.

8. CO-ORDINATION WITH ONTARIO'S OTHER COMPENSATION PLANS

Notwithstanding the other provisions of this Plan, an Applicant cannot claim payment for expenses or losses already reimbursed from or through the:

- (a) Brockton Response Centre,
- (b) Brockton Emergency Personal Claims Assistance,
- (c) Brockton Emergency Assistance for Business, or
- (d) Walkerton Compensation Plan prior to the date of Judgment,

and no amount will be payable for those damages under this Plan unless, and then only to the extent that, the Applicant's entitlements under this Plan exceed the payments so received.

9. CONSENT TO RELEASE OF INFORMATION

- (1) Each Applicant must consent in the prescribed form to allow the Administrator:
 - (a) to verify independently whether or not the Applicant applied for compensation through the Brockton Response Centre, the Brockton Emergency Personal Claims Assistance, or the Brockton Emergency Assistance for Business; and
 - (b) to examine all records relating to the payment of compensation under any of the Brockton Response Centre, the Brockton Emergency Personal Claims Assistance, or the Brockton Emergency Assistance for Business.
- (2) An Applicant will not be paid under this Plan for losses compensable under those programs unless and until such consent in prescribed form is delivered to the Administrator.

10. INTEREST

Under this Plan, interest is payable and is to be calculated in accordance with the provisions of s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended. Interest payable under this Plan must be calculated on the basis of simple, not compound, interest.

11. FIRST CLAIM DEADLINE

- (1) After January 2, 2002, no person may make an application for compensation under this Plan for the first time unless the application is made within one year:
 - (a) of the person claiming to be a Class Member attaining his or her age of majority;
 - (b) of an incapable person claiming to be a Class Member having a guardian of property, attorney for property or litigation guardian authorized to make the application;
 - (c) following the date upon which the person claiming to be a Class Member first learned that he or she sustained serious or permanent bodily injury caused by the Contamination; or
 - (d) following the date of death of the person claimed to be a Class Member.
- (2) If a Class Member qualifies under (a), (b), (c) or (d) above, then his or her Family Class Members may make an application for compensation after that date but not otherwise.

12. TERMINATION OF THIS PLAN

This Plan shall terminate on a date to be ordered by the Judge.

13. RELEASES ALREADY OBTAINED

Notwithstanding any release signed by a Class Member or a Family Class Member prior to the Approval Date, any such Class Member or Family Class Member may take the benefit of this Plan, by submitting an Application Form.

14. COLLATERAL BENEFITS

- (1) If an Applicant is or was entitled to be paid compensation under this Plan and is or was also entitled to be paid compensation under an insurance policy or other plan or program in any way relating to or arising directly or indirectly from the Contamination, the compensation payable under this Plan will be reduced by the amount of the compensation that the Applicant is entitled to be paid under the insurance policy or other plan or program.
- (2) Notwithstanding the provisions of the previous paragraph, life insurance payments received by the Applicant will not be taken into account for any purposes whatsoever under this Plan.

15. SUBROGATION RIGHTS

- (1) Ontario shall provide a blanket waiver in writing of all Applicants obligations to assert subrogation pursuant to subsection 31(a) of the *Health Insurance Act*.
- (2) No Applicant shall assert a claim for subrogation on behalf of the Ministry of Health for the cost of Insured Services.
- (3) No subrogation payment of any nature or kind will be paid, directly or indirectly, under this Plan, and without restricting the generality of this provision:
 - (a) no government and no department of a government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under this Plan;
 - (b) no municipality and no department of a municipality will be paid under this Plan;
 - (c) no person exercising a right of subrogation will be paid under this Plan; and
 - (d) no Applicant will be paid compensation if the claim is being asserted as a subrogated claim or if the Applicant will hold any money paid under this Plan in trust for any other party exercising a right of subrogation or, if a payment under this Plan will lead to a reduction in other payments from an insurer for which the Applicant would otherwise qualify.

16. APPOINTMENT AND SUPERVISION OF THE ADMINISTRATOR, ARBITRATORS AND MEDIATORS

- (1) The Judge shall have the power to appoint and replace the Administrator, the Mediators and the Arbitrators from time to time, as may be necessary for the proper administration and operation of the Plan.
- (2) The Service Agreement and the Retainer Agreements shall continue. Notwithstanding the terms of the Service Agreement and the Retainer Agreements, the Judge shall issue all necessary directions, protocols, instructions, decisions or orders for the proper implementation, administration and execution of this Plan and any such directions, protocols, instructions, decisions and orders shall apply to, amend or supersede the terms of the Service Agreement and/or the Retainer Agreements where inconsistent therewith, provided however that the

obligation of Ontario to pay under the Service Agreement and the Retainer Agreements shall continue.

- (3) The Administrator shall administer this Plan and shall report to the Judge in a manner that the Judge directs.
- (4) The Administrator shall submit a budget for the operation of this Plan to the Judge for approval and shall pass its accounts from time to time but no less frequently than once per year.
- (5) The Judge may appoint an auditor and order an audit of the records of the Administrator relating to the administration of this Plan.
- (6) Ontario may audit the Administrator's records of this Plan from time to time with the consent of the Judge on such terms as the Judge may impose. Any such audit shall take place at the Administrator's place of business.

17. ADMINISTRATION OF THIS PLAN

The Judge may issue orders in such form as is necessary to implement and enforce the provisions of this Plan and will supervise the ongoing administration and operation of this Plan, and without limiting the generality of the foregoing:

- (a) The Judge may make any order he considers necessary for the administration or operation of this Plan upon notice to the Administrator, the Class Counsel Representative and Ontario.
- (b) The Administrator, the Class Counsel Representative or Ontario may apply to the Judge for directions concerning the proper administration or operation of this Plan, including the determination of eligibility and evaluation of applications, at any time.
- (c) The Judge may appoint an assistant and this Plan shall pay the reasonable costs of that assistant as fixed by the Judge.
- (d) The Judge shall approve all rules, protocols and the tariffs with respect to legal costs necessary for the administration or operation of this Plan on notice to the Class Counsel Representative, the Administrator and Ontario.
- (e) The Class Counsel Representative shall present his or her accounts to the Judge and this Plan shall pay the reasonable costs of the Class Counsel Representative as fixed by the Judge for services related to the administration or operation of the Plan.

18. COSTS OF THIS PLAN

Ontario has undertaken to the court to pay all the costs of this Plan, and if there are any disputes about payment of these costs, such disputes shall be resolved by the Judge. The undertaking shall subsist until the termination of this Plan or until such time as the Judge releases Ontario from its undertaking.

19. AMENDMENT OF THIS PLAN

Other than sections 2.1, 2.2 and the amount of the \$2,000 minimum payment set out in section 3.2.3(2), this Plan may be amended by order of the Judge, in accordance with the provisions of this Plan and the provisions of the *Class Proceedings Act, 1992*, on notice to the Administrator, the Class Counsel Representative and Ontario.