

No. S83059

New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**DANIELLE CARDOZO, an infant,
by her Litigation Guardian, DARLENE CARDOZO**

Plaintiff

- and -

BECTON, DICKINSON AND COMPANY

Defendant

SETTLEMENT AGREEMENT

WHEREAS the Action has been commenced by the Plaintiff in British Columbia alleging negligence on the part of BD with respect to the Device;

AND WHEREAS BD denies the allegations as alleged in the Action;

AND WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs claims, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement

Agreement is fair, reasonable and in the best interests of the Plaintiff and the classes they seek to represent;

AND WHEREAS despite its belief that it is not liable in respect of the allegations as alleged in the Action and that it has good defences thereto, BD is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against them by the Plaintiff, and to avoid the further expense, inconvenience and the distraction of burdensome and protracted litigation;

AND WHEREAS the claims of many members of the Settlement Class raise the prospect of indeterminate liability to an indeterminate class and the question of whether a duty of care may be established at law;

AND WHEREAS BD would nevertheless like to benefit the community at large by providing for the donation of funds to a suitable charity;

AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Action against BD;

AND WHEREAS for the purposes of settlement only and contingent on approvals by the Court as provided for in this Settlement Agreement, the Parties have consented to certification of the Action as class proceeding and have consented to a Settlement Class and a Common Issue in the Action; and

AND WHEREAS the Plaintiff asserts that she is an appropriate class representative for the Settlement Classes and will seek to be appointed representative plaintiff in the Action.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed that the Action be settled and dismissed on the merits, without costs as to the Plaintiff, the classes she seeks to represent or BD, subject to the approval of the Court. on the following terms and conditions:

SECTION 1- DEFINITIONS

1.1 For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

(1) “**Action**” means British Columbia Court File No. S83059, New Westminster Registry

(2) “**Administration Expenses**” means all fees, disbursements, expenses, costs, taxes and any other amounts incurred by or payable in connection with the administration of this Settlement Agreement, except the IHA Charges

(3) “**Administration Fee**” means the all-inclusive sum of \$79,876.31 plus GST

(4) “**Administrator**” means Crawford Class Action Services, a Division of Crawford Adjusters Canada Inc.

(5) “**Approval Order**” means an order approving the Settlement Agreement, without amendment, and certifying the Action as a class proceeding, in the form attached hereto as Schedule “A”, without amendment

(6) “**BD**” means the Defendant Becton, Dickinson & Company

(7) “**Charity**” means the East Kootenay Foundation for Health

(8) “**Claim**” means a claim for compensation under this Settlement Agreement

(9) “**Claim Period**” means the period of 120 days following the expiry of the Opting Out Period

(10) “**Claimant**” means a person who has submitted a Claim to the Administrator

(11) “**Claims Address**” means Suite 280-2985 Virtual Way, Vancouver, British Columbia, V5M 4X7

(12) “**Class Counsel**” means the law firm of Hanson Wirsig Matheos

- (13) “**Class Counsel Fee**” means the total fees and disbursements awarded to Class Counsel for their work in respect of the Action
- (14) “**Common Issue**” means the issue of whether BD owed a duty of care to the Settlement Class
- (15) “**Court**” means the Supreme Court of British Columbia
- (16) “**Defence Counsel**” means the law firm of McMillan Binch Mendelsohn LLP
- (17) “**Device**” means the BD Probetec ET diagnostic testing instrument that was used at Kimberley from November of 2000 to April of 2002 and at East Kootenay from May 2002 to July 23, 2003 for the purpose of generating test results related to the presence or absence of Disease
- (18) “**Disease**” means Gonorrhoea or Chlamydia or both of those
- (19) “**East Kootenay**” means the East Kootenay Regional Health Centre
- (20) “**Final Order**” means the Approval Order in respect of which the time to appeal such order has expired without any appeal being taken, if an appeal lies, or in respect of which there has been a final disposition of all appeals without any reversal or amendment of the Approval Order
- (21) “**Fund**” means the settlement fund established by BD pursuant to this Settlement Agreement for the payment of the claims of the Settlement Class, Counsel Fees, Administration Fee and Administration Expenses
- (22) “**Fund Residue**” means any unpaid balance of the Fund remaining at the end of the Claim Period, less the Withholding Amount
- (23) “**IRA Charges**” means any fees or expenses charged to BD by the IRA in connection with the provision of information to the Administrator for the purpose of allowing the Administrator to determine whether a Settlement Class Member is Qualified

(24) “**Irrevocable Agreement Date**” means the 30 day after the Administrator’s delivery of the Threshold Notification to BD

(25) “**Kimberley**” means the Kimberley Regional and District Hospital

(26) “**Notice of Fund Residue**” means a notice setting out amount of the Fund Residue

(27) “**Opting Out Period**” means the period of 60 days following court approval of the Settlement Agreement

(28) “**Opt Out Threshold**” means a specified number of persons that opt out of the settlement, agreed upon by the Parties in a separate document that will be executed by the Parties, delivered to the Court under seal and kept confidential by the Parties and the Court

(29) “**Parties**” means the Plaintiff and BD

(30) “**Plaintiff**” means Danielle Cardozo

(31) “**Qualified**” refers to a member of a Settlement Class who has satisfied the Administrator of his or her entitlement to compensation under this Settlement Agreement in accordance with the requirements set out in the Settlement Agreement

(32) “**Released Claims**” means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and Class Counsel Fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of or relating in any way to any matter at issue in the Action including, without limitation, any such claims which have been asserted, would have been asserted or could have been

asserted, whether in Canada or elsewhere, related in any way to or arising in any way from or resulting from any test result generated by the Device

(33) “**Releasees**” means BD and its present and former parents, subsidiaries, divisions, affiliates, partners, directors, officers, employees, servants, agents, shareholders, underwriters and insurers, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing

(34) “**Releasers**” means, jointly and severally, the Plaintiff and the Settlement Class Members and their respective successors, heirs, executors, administrators and assigns

(35) “**Settlement Class**” means all those persons whose specimens were tested for Disease through the use of the Device during the Testing Period and all persons with whom they had sexual contact following the receipt of the results of those tests including, without limitation, Subclass FP, Subclass FN, Subclass RT and Subclass SC

(36) “**Settlement Class Member**” means a member of a Settlement Class who does not validly opt out of the Settlement Class in accordance with this Settlement Agreement and the Approval Order

(37) “**Settlement Agreement**” means this agreement, including the recitals, Schedules and Exhibits thereto

(38) “**Settlement Amount**” means one million Canadian dollars (CAD\$ 1,000,000.00)

(39) “**Subclass FP**” means all those members of the Settlement Class who received a false positive test result that was generated by the Device during the Testing Period

(40) “**Subclass FN**” means all those members of the Settlement Class who received a false negative test result that was generated by the Device during the Testing Period and were subsequently diagnosed as positive for Disease

(41) “**Subclass RT**” means all those members of the Settlement Class who were re tested for the presence of Disease as a result of being advised that their test results generated by the Device during the Testing Period were not reliable

(42) “**Subclass SC**” means all those members of the Settlement Class who had sexual contact with any member of the Subclass FN, Subclass FP or Subclass RT

(43) “**Testing Period**” means the period between November 1st, 2000 and July 23, 2003

(44) “**Threshold Notification**” means a notice from the Administrator setting out the names of those persons who have opted out of the Settlement and the reasons for the opt out, if known

(45) “**Threshold Notification Date**” means the 15th day after the end of the Opting Out Period

(46) “**Withholding Amount**” means the amount to be withheld by the Administrator to satisfy any tax liabilities of the Fund arising from interest income, as determined by the Administrator

SECTION 2- COURT APPROVAL

- 2.1** The Parties shall use their best efforts to effectuate this Settlement and to secure the prompt, complete and final dismissal of the Action, with prejudice.
- 2.2** As soon as practicable after execution of this Settlement Agreement, the Plaintiff shall bring a motion before the Court for the Approval Order.
- 2.3** Until such a motion is brought, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by the Plaintiff or Class Counsel without the prior written consent of Defence Counsel.
- 2.4** This Settlement Agreement shall be null and void and of no force and effect unless the Court grants the Approval Order, without amendment, and the Approval Order so given becomes a Final Order.
- 2.5** In the event that the Approval Order is not granted, or if granted does not become a Final Order, no party shall be deemed to have waived any rights, claims or defences whatsoever by virtue of the Settlement Agreement. In particular, and without limitation, in that case BD reserves its right to oppose the certification of this Action.

SECTION 3- SETTLEMENT FUND AND ADMINISTRATION EXPENSES

- 3.1** BD will pay the Settlement Amount to the Administrator to establish the Fund, in full satisfaction of all of the Released Claims against the Releasees. The Settlement amount shall be paid within 10 days after the Irrevocable Agreement Date.
- 3.2** The Administrator will act as trustee of the Fund and will use the Fund solely for the purpose of making payments pursuant to this Settlement Agreement.
- 3.3** The assets of the Fund shall be deposited in an interest-bearing account with the Royal Bank of Canada and all payments from the Fund shall be made using cheques drawn on that account.
- 3.4** In no event shall BD have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of the Fund.

- 3.5** Interest earned on the Fund shall become and remain part of the Fund.
- 3.6** All taxes payable on any interest that accrues on the Fund shall be the responsibility of the Settlement Class. The Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Fund, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Fund shall be paid from the Fund.
- 3.7** BD shall have no responsibility to make any filings relating to the Fund and will have no responsibility to pay tax on any income earned by the Fund or pay any taxes on the monies in the Account.
- 3.8** The Administrator shall manage the Fund for the benefit of the Settlement Class Members in accordance with this Settlement Agreement.
- 3.9** Crawford agrees that it will fulfil its obligations as Administrator under this Settlement Agreement in return for the Administration Fee. The Administration Fee shall be paid out of the Fund on the Irrevocable Agreement Date.
- 3.10** BD will be responsible for paying the IHA Charges. Any other Administration Expenses shall be the responsibility of Crawford.
- 3.11** BD shall have no obligation to pay any amounts other than the Settlement Amount and the IHA Charges, for any reason, pursuant to or in furtherance of this Settlement Agreement.

SECTION 4-OPTING OUT

- 4.1** A person who wishes to opt out of the Settlement Class may only opt out by completing the form annexed hereto as Exhibit “A” and sending the completed form to the Administrator by prepaid mail, courier or fax to the Claims Address.
- 4.2** An election to opt out will only be effective if it is actually received by the Administrator on or before the end of the Opt Out Period.

SECTION 5- RELEASES AND DISMISSALS

5.1 Upon the Irrevocable Agreement Date, the Releasors forever and absolutely release the Releasees from the Released Claims.

5.2 The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasees or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

5.3 The Action shall be dismissed with prejudice and without costs.

SECTION 6 - BAR ORDER AND OTHER CLAIMS

6.1 This Settlement Agreement sets out the exclusive rights and remedies of all Settlement Class Members. Settlement Class Members are hereby barred from making any claim (including any subrogated claim) or commencing any action against the Releasees or any of them arising out of or related to any matter at issue in the Action.

6.2 The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or other person, any action, suit, cause of action, claim or demand against any Releasee or any person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

6.3 The Approval Order requested from the Court shall include a Bar Order that will prohibit and enjoin any and all claims by any person or party against any Releasee for contribution and indemnity or other relief over in respect of the matters that are the subject of this Settlement Agreement, except any such claim made in respect of a claim by a person who has validly opted out of the Settlement.

6.4 Any proceeding related to the Released Claims, commenced by any Settlement Class Member against any Releasee, shall be dismissed and the parties shall request any court in which such claim is or has been commenced to order the dismissal of the same.

SECTION 7- CLASS COUNSEL FEE

7.1 The Class Counsel Fee shall be fixed in the total amount of \$291,200.00 inclusive of all disbursements and taxes, subject to approval by the Court. The parties undertake that there shall be no appeal from the Court's fixing or approving of the Class Counsel Fee.

7.2 The Class Counsel Fee, as fixed and approved by the Court, shall be paid out of the Fund on the Irrevocable Agreement Date.

SECTION 8- RESERVATION OF RIGHTS

8.1 The Parties expressly reserve all of their rights if this Settlement Agreement is terminated before the Irrevocable Agreement Date. Further, the Parties agree that, whether or not this Settlement Agreement is terminated before the Irrevocable Agreement Date, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiff.

8.2 The Parties agree that, whether or not this Settlement Agreement is terminated before the Irrevocable Agreement Date, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

8.3 Except as provided in this section, no Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims. Moreover, those persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court. This paragraph does not apply to the involvement of any person in the individual claim of Madeleine L'Hirondelle.

SECTION 9- CERTIFICATION FOR SETTLEMENT ONLY

9.1 Subject only to section 39(1) of the Class Proceeding Act regarding limitation periods, the Action will be certified as class proceedings solely for purposes of settlement of the Action and the approval of this Settlement Agreement by the Court.

9.2 The Plaintiffs agree that, in the motion for certification of the Action as a class proceeding and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class.

9.3 In the event this Settlement Agreement is terminated before the Irrevocable Agreement Date, the Parties agree that any prior certification of the Action as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Action or any other litigation.

SECTION 10 - NOTICE TO SETTLEMENT CLASSES

10.1 The proposed Settlement Class shall be given notice of (i) hearings at which the Court will be asked to approve the Settlement Agreement; and (ii) the certification of the Action as a class proceeding and the approval of this Settlement Agreement.

10.2 The form of the notices referred to in section 10.1 and the manner of their publication and distribution shall be as agreed to by the Parties and approved by the Court.

SECTION 11- TERMINATION OF SETTLEMENT AGREEMENT

11.1 If the Court fails to grant the Approval Order this Settlement Agreement shall be immediately terminated.

11.2 BD may also elect to terminate the Settlement Agreement, in its sole and absolute discretion, if the Opt Out Threshold is exceeded.

11.3 On or before the Threshold Notification Date, the Administrator shall provide BD and Class Counsel with the Threshold Notification.

11.4 If BD elects to exercise its right to terminate this Settlement Agreement, then BD shall give written notice of termination to the Class Counsel no later than 21 days after delivery of the Threshold Notification to BD.

11.5 If BD does not deliver a notice of termination within the time permitted, then this Settlement Agreement shall become fully effective and irrevocable on the Irrevocable Agreement Date.

11.6 Except as provided in sections 11.7 and 11.8, if this Settlement Agreement is terminated, it shall have no further force and effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in any litigation.

11.7 If the Settlement Agreement is terminated after the granting of the Approval Order, the Approval Order shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise.

(1) If the Settlement is terminated after the Approval Order is granted, BD shall bring a motion before the Court for an order:

- (a) Declaring the Settlement Agreement to be null and void and of no force or effect (except for the provisions set Out in section 11.8); and,
- (b) Setting aside the Approval Order on the basis of the termination of the Settlement Agreement.

11.8 If this Settlement Agreement is terminated, the provisions of sections 8.1, 8.2, 9, and 11 and any definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect.

SECTION 12- SETTLEMENT PLAN

12.1 In order to receive any payment pursuant to the Settlement Agreement, a Subclass member must be “Qualified” in accordance with the procedure established for that Subclass pursuant to the terms of this Settlement Agreement.

SECTION 13- CLAIMS PROCEDURE

13.1 The Administrator will administer all Claims and will act as trustee of the Fund.

The Administrator shall determine whether any Claimant under this Settlement Agreement is Qualified, having regard to the terms of the Settlement Agreement.

13.2 Decisions of the Administrator under this Settlement Agreement shall be final and binding, without any right of appeal.

13.3 In determining whether a Claimant is Qualified, the Administrator may have regard to any information provided by the Claimant, any information obtained by the Administrator from the IHA, and any other information that the Administrator considers relevant and reliable in the circumstances.

13.4 No Claimant may receive any compensation under the Settlement Agreement unless and until the Administrator has determined that the Claimant is a Qualified member of one or more of Subclasses.

13.5 No person will be entitled to make any Claim under this Settlement Agreement until after the expiry of the Opting Out Period. All members of the Settlement Class who do not opt out within the Opting Out Period shall be bound by the terms of this Settlement Agreement. Any member of the Settlement Class who does not opt out within the Opting Out Period cannot be a Qualified Claimant under this Settlement Agreement.

13.6 To seek to be Qualified, a Claimant must properly submit a Claim to the Administrator within the Claim Period. To be properly submitted, the Claim must:

- (a) be submitted in writing using the forms attached hereto as Exhibits;
- (b) be sent by mail to the Administrator at the Claims Address; and,
- (c) be postmarked with a date within the Claim Period.

13.7 The Administrator may, in its sole and absolute discretion, request any Claimant to meet with the Administrator (by telephone or in person) in order to assist the Administrator in determining whether the Claimant is Qualified to receive any compensation under the Settlement Agreement. Any such request must be made in writing and delivered to the Claimant by mail at the address provided by the Claimant in the Claimant's Claim documentation, and must be delivered to the Claimant within 30 days after the Administrator's receipt of the Claim. Any Claimant who fails or refuses to meet with the Administrator within a reasonable time following the Administrator's written request shall be deemed not to be Qualified under the Settlement Agreement.

SECTION 14- SUBCLASS RT

14.1 A Qualified member of Subclass RT will be entitled to receive the sum of \$400.00. A Qualified member of Subclass RT will also be entitled to receive an additional amount in accordance with the provisions of this Settlement Agreement if that person is also a Qualified member of Subclass FN.

14.2 In order to be Qualified as a member of Subclass RT, a Claimant must submit to the Administrator a signed Claim in the form attached hereto as Exhibit "A", together with a Consent in the form attached hereto as Exhibit "B".

14.3 If the Claimant received his or her initial test result from East Kootenay, the Claimant must also provide evidence that he or she was specifically advised in writing by the 1k-IA that his or her individual test result was incorrect or unreliable.

SECTION 15- SUBCLASS FN

15.1 A Qualified member of Subclass FN Will be entitled to receive the sum of \$500.00.

15.2 In order to be Qualified as a member of Subclass FN, a Claimant must submit a sworn declaration to the Administrator in the form attached as Exhibit “C”. The declaration must establish that:

- (a) the initial test result was negative;
- (b) the resulting diagnosis was negative;
- (c) the Claimant was subsequently diagnosed as positive; and,
- (d) the claimant was not infected between the initial negative test result and the subsequent positive diagnosis.

15.3 The declaration must be submitted with a statement from the Claimant’s family physician in the form attached hereto as Exhibit “D”, confirming that the matters stated in the declaration are correct.

15.4 Qualified members of Subclass FN will receive the additional sum of \$75.00 to cover the cost of the physician’s statement to be paid when their claim is paid.

SECTION 16- SUBCLASS FP

16.1 A Qualified member of Subclass FP will be entitled to receive the sum of \$500.00. A qualified member of Subclass FP may not be a Qualified member of any other subclass.

16.2 In order to be Qualified as a member of Subclass FP, a Claimant must provide the Administrator with a sworn declaration in the form annexed hereto as Exhibit “E”, and proof that he or she was notified by the IHA that he or she received a false positive test result for Disease that was generated by the Device during the Testing Period. The Claimant must also establish that he or she received a positive diagnosis for Disease as a result of the false positive test result and he or she was also treated for Disease as a result.

16.3 The declaration must be submitted with a statement from the Claimant’s family physician in the form attached hereto as Exhibit “D”, confirming that the matters stated in the declaration are correct.

16.4 Qualified members of Subclass FP will receive the additional sum of \$75.00 to cover the cost of the physician's statement to be paid when the claim is paid.

SECTION 17- SUBCLASS SC

17.1 No payments will be made to any individual Member of Subclass SC. In respect of the claims of Subclass SC, the sum of \$75,000.00 will be paid from the Fund to the Charity within 30 days after the Irrevocable Agreement Date.

SECTION 18- PAYMENT OF CLAIMS

18.1 The Administrator shall not pay any Claim before the expiry of the Claim Period.

18.2 All Claims will be paid to Qualified members within 90 days after the expiry of the Claim Period.

18.3 In the event that the Fund is not sufficient to satisfy the claims of all Qualified members, then all claims of Qualified members will be paid on a pro-rata basis.

SECTION 19- CY-PRES DISTRIBUTION OF FUND RESIDUE

19.1 Within 60 days after the end of the Claim Period, the Administrator shall determine the Withholding Amount and deliver the Notice of Fund Residue to BD and Class Counsel.

19.2 Within 30 days after delivery of the Notice of Fund Residue, the Administrator shall pay the Fund Residue from the Fund to the Charity.

SECTION 20- MISCELLANEOUS

20.1 Class Counsel, the Administrator or BD may apply to the Courts for directions in respect of the implementation and administration of this Settlement Agreement. All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

20.2 The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

20.3 In this Settlement Agreement the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement. Furthermore, the terms “this Settlement Agreement”, “hereof”, “hereunder” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

20.4 The Court shall retain exclusive jurisdiction over the Action, the parties thereto and the Class Counsel Fee in the Action.

20.5 This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

20.6 This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes au prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Court.

20.7 This Settlement Agreement shall be binding upon, and enure to the benefit of, the Releasers, the Plaintiff, BD, the Releasees and all of their successors and assigns.

Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers

20.8 The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

20.9 This Settlement Agreement may be executed in counterparts, au of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

20.10 This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

20.11 The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

20.12 The Schedules and Exhibits annexed hereto form part of this Settlement Agreement.

20.13 Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

20.14 Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

20.15 Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another (with the exception of communications between the Administrator a Claim for compensation by a Settlement Class Member, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

The Plaintiff or Class Counsel: To the attention of Sarando Matheos, Partner, Hanson Wirsig Matheos, #210, 15225 104th Avenue, Surrey, British Columbia, V3R 6Y8, Fax: 604.583.3469, smatheos@hwm.ca

BD or Defence Counsel: To the attention of Scott Maidment, Partner, McMillan Binch Mendelsohn LLP, BCE Place, Suite 4400, Bay Wellington Tower, 181 Bay Street, Toronto, Ontario, Canada M5J 2T3, Fax: 416.865.7048, scott.maidment@mbmlex.com

The Administrator: To the attention of Kerry Eaton. Vice President, Crawford Class Action Services, 101-515 Riverbend Drive, Kitchener, Ontario, N2K 3S3, Fax: 519.578.4016, kerry.eaton@crowco.ca

20.16 Paragraph 20.15 of this Settlement Agreement does not apply to Claims for compensation, opt outs, or any other form of communication between the Administrator and a Settlement Class Member or Claimant under or pursuant to this Settlement Agreement.

IN WITNESS WHEREOF the parties have executed this agreement as of the 27th day of September, 2005.