

SCHEDULE "C"

CANADA
PROVINCE OF SASKATCHEWAN

Q.B. No. 1512 of 2003

**IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON**

BETWEEN:

**JUSTIN LYBECK, TOM SAVAS, TREVOR MOSER and CODY
ARMSTRONG, a minor suing under his legal guardian, TAMI
ARMSTRONG**

PLAINTFFS

AND:

**THE CITY OF NORTH BATTLEFORD, HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN,
and SASKATCHEWAN WATER CORPORATION**

DEFENDANTS

Brought under *The Class Actions Act*

BEFORE THE HONOURABLE) THE ____ DAY OF
MR. JUSTICE R. C. MILLS) _____, 2016

UPON THE APPLICATION of the minor Plaintiffs, Tom Savas and Cody Armstrong, a minor suing under his legal guardian, Tami Armstrong, pursuant to *The Class Actions Act*, S.S. 2001, c. C-12.01, as amended (the "CAA") and the inherent jurisdiction of the Court for an Order:

- a) Conditionally certifying this Action as it relates to the Infant Class as a class proceeding for the purposes of settlement only;
- b) Providing conditional approval of the terms and conditions of the settlement of this action as outlined in the Settlement Agreement dated September 28, 2016, attached to this Order as Schedule "A" (the "Settlement Agreement"), and in particular:
 - i. Approving the form and content of the Preliminary Approval Notice, attached to this order as Schedule "B", that will advise members of the Infant Class of the hearing to approve the proposed settlement of this matter and of the time and manner by which they may opt-out of this proceeding, as well as the manner of publication of such notice, and matters incidental thereto;
 - ii. Fixing the time, date and place of the hearing seeking final approval of the Settlement Agreement; and

AND UPON HAVING READ:

- a) The pleadings and proceedings had and taken herein;
- b) Notice of Motion dated September 1, 2016;
- c) Affidavit of Tom Savas, sworn September 7, 2016;
- d) Affidavit of Cody Armstrong, sworn September 7, 2016;
- e) Affidavit of Bradley Jamieson, sworn September 2, 2016; and
- f) A draft of this Order.

AND UPON BEING ADVISED that:

- a) The Plaintiffs and the Defendants, by their counsel, have entered into a Settlement Agreement; and
- b) The Defendants have consented to the terms of this Order.

AND UPON HEARING:

- a) Bradley Jamieson, counsel for the Plaintiffs, and affiliated counsel, if any;
- b) Janet Stevens, and affiliated counsel, counsel for the Defendants, the City of North Battleford; and
- c) Max Bilson, and affiliated counsel, counsel for the Defendants, Her Majesty the Queen in Right of the Province of Saskatchewan and the Saskatchewan Water Corporation.

IT IS HEREBY ORDERED AND DECLARED that:

1. For the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order;
2. This action is hereby conditionally certified as a class proceeding for settlement purposes only on behalf of the Infant Class which is defined as follows:

All persons who:

- i. Contracted cryptosporidiosis or symptoms of cryptosporidiosis as a result of consuming contaminated water supplied by the City of North Battleford between March 20 and April 25, 2001; and
 - ii. Who were under the age of 18 years at the time of such consumption.
3. Tom Savas and Cody Armstrong, are appointed as the representative Plaintiffs for the Infant Class;
 4. Cuelenaere, Kendall, Katzman & Watson LLP is hereby appointed as Class Counsel;
 5. The following issues are common to the Infant Class:
 - i) Did the City of North Battleford owe a duty of care to the Infant Class?;
 - ii) If the City of North Battleford owed a duty of care to the Infant Class, was the City of North Battleford negligent?; and

- iii) If the City of North Battleford was negligent are the members of the Infant Class entitled to damages and if so in what amount?;
 - iv) Did Her Majesty the Queen In Right of the Province of Saskatchewan and the Saskatchewan Water Corporation owe a duty of care to the Infant Class?;
 - v) If Her Majesty the Queen In Right of the Province of Saskatchewan and the Saskatchewan Water Corporation owed a duty of care to the Infant Class, were Her Majesty the Queen In Right of the Province of Saskatchewan and the Saskatchewan Water Corporation negligent?; and
 - vi) If Her Majesty the Queen In Right of the Province of Saskatchewan and the Saskatchewan Water Corporation was negligent are the members of the Infant Class entitled to damages and if so in what amount?
6. The Settlement Agreement in its entirety is approved and incorporated by reference into this Order, subject to the Final Judgement and Order of this Court following the motion for final approval of the Settlement Agreement, which shall be heard on December 1, 2016 at 10:00 am at the Court House, Saskatoon, Saskatchewan (the "Approval Hearing"). This Order, including the Settlement Agreement, is binding upon all Infant Class members who have not opted out ("Participating Settlement Class Members") and upon the Defendants;
7. The Approval Hearing will be conducted:
 - a) To determine whether the Settlement Agreement is fair, reasonable and in the best interest of the Infant Class and therefore is finally approved pursuant to Section 38 of the CAA;
 - b) To enter an order of dismissal of this proceeding as it related to the Infant Class with prejudice and without costs effective on the date the last of the Eligible Claimants is paid Compensation (the "Final Settlement Payment Date");
 - c) To approve the Release of the Released Claims/Liabilities which is annexed to the Settlement Agreement as Schedule J. and
 - d) To rule on such matters as the Court may deem appropriate;
8. The form and content of the Preliminary Approval Notice, substantially in the form attached as Schedule "B" is hereby approved;
9. The form and content of the Dissemination of Hearing Notice substantially in the form attached as Schedule "D" is hereby approved;
10. The Preliminary Approval Notice shall be published in the Saskatoon Star Phoenix and the North Battleford News-Optimist once per week for three consecutive weeks and shall as soon as practicable be:

- a) Posted on the Class Counsel website;
 - b) Sent by direct mail by Class Counsel to any Participating Settlement Class Members who have contacted such counsel about the 2001 contaminated water outbreak in the City of North Battleford and for whom Class Counsel have address information;
 - c) Sent by direct mail to anyone requesting a copy.
11. The Preliminary Approval Notice and method of dissemination of that notice, constitute fair and reasonable notice to the Infant Class of the Approval Hearing, and of Participating Settlement Class Members a right to object to the settlement;
 12. Bruneau Group Inc. is appointed as Administrator to carry out the rolls and responsibilities contemplated in the Settlement Agreement, subject always to the terms and conditions of the Settlement Agreement, including the further Orders of this Court as contemplated therein;
 13. Participating Settlement Class Members may submit written objections to the approval of the Settlement Agreement before the deadline set out in the Preliminary Approval Notice to Class Counsel, who shall file all such submissions with the Court prior to the Approval Hearing. Participating Settlement Class Members (or their counsel) who do not file their written objection and indicate that they (or their counsel) intend to appear at the Approval Hearing may not be entitled to appear and raise any objection to the Approval Hearing, at the Court's discretion;
 14. If the Settlement Agreement is terminated in its entirety in accordance with the Settlement Agreement, then, without restricting the application of the provisions of the Settlement Agreement:
 - a) This Order, including the certification of this action as a class proceeding for the purpose of settlement, shall be set aside and be of no further force or effect and without prejudice to any party, and this action shall be decertified as a class proceeding pursuant to Section 12 of the *CAA* without prejudice to the Plaintiffs' ability to reapply for certification, and the Defendants' ability to oppose such application for certification semicolon and
 - b) All negotiations, statements, and proceedings related to the Settlement Agreement shall be deemed to be without prejudice to all rights of the Parties and the Parties shall be deemed to be restored to their respective positions existing immediately before the settlement agreement was executed.
 15. Nothing in this Order shall prejudice the any prejudice any person who may be a putative class member of a putative class other than the Infant Class from continuing with this class proceeding.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan this ___ day of _____,
2016.

Local Registrar

This document was delivered by:

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