

COURT FILE NUMBER 2003 10571  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF(S) CHERI MCPHILLAMEY as Representative Plaintiff  
DEFENDANT(S) INTEGRATED LIFE CARE (MCLENNAN) INC. and INTEGRATED LIFE CARE INC.  
DOCUMENT **SETTLEMENT APPROVAL ORDER**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Clint G. Docken K.C.  
Napoli Shkolnik Canada  
1900, 144 – 4th Avenue S.W.  
Calgary, AB T2P 3N4  
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Nicole K. Keeler  
James H. Brown and Associates  
2400 Sunlife Place  
10123 - 99 Street  
Edmonton, AB T5J 3H1  
Tel: (780) 428-0088  
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**DATE ON WHICH ORDER WAS PRONOUNCED:** May 29, 2023  
**JUSTICE**  
**NAME OF JUDGE WHO MADE THIS ORDER:** Mr. Justice James T. Neilson  
**LOCATION WHERE ORDER WAS PRONOUNCED:** Edmonton

**UPON THE APPLICATION** of the Plaintiff; **AND UPON** hearing the submissions of Counsel for the Plaintiff and the Defendants; **AND UPON** reading the pleadings and materials filed; **AND UPON** being advised that the Plaintiff and the Defendants have entered into a settlement agreement dated February 8, 2023 (the "Settlement Agreement"); **AND UPON** being advised that the Plaintiff and the Defendants consent to this Order;

THIS COURT ORDERS THAT:

1. The Settlement Agreement, as attached at **Schedule "A"**, is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order.
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. The Settlement Agreement is fair, reasonable and in the best interests of the Class and Class Members and is hereby given final approval pursuant to section 35 of the *Class Proceedings Act*, SA 2003, c 0-16.5 and shall be implemented in accordance with its terms and the terms of this Order.
4. This Order, including the Settlement Agreement, is binding upon the Parties and on every Class Member whether or not the Class Member claims or receives monetary compensation or value under the Settlement Agreement, unless the Class Member opted out before the expiry of the Opt Out Deadline.
5. This Order, including the Settlement Agreement, is binding upon each such Class Member including those persons who are minors or mentally incapable and the requirements of Rules 2.11 and 2.19 of the *Alberta Rules of Court* are dispensed with in respect of this proceeding.
6. There are no persons who have exercised their right to opt-out.
7. Upon the Effective Date, the Releasors shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims and the Releasors shall be barred from making any claims or taking or continuing any proceeding arising out of, or relating to, the Released Claims, except as otherwise expressly provided for in the Settlement Agreement, against any Releasee or other person, corporation or entity that might claim damages and/or contribution and indemnity or other relief against any of the Defendants.

8. The Claim Period for Class Members to submit a claim shall end 90 days after newspaper publication of the Notice of Claims Procedure.
9. This Honourable Court will retain continuing jurisdiction over the Settlement for the purposes of implementing, interpreting and enforcing the Settlement Agreement and this Order subject to the terms and conditions set out in the Settlement Agreement and this Order.
10. Class Counsels Fees in the amount of \$322,055.58, which includes legal fees, disbursements and GST, shall be paid from the Settlement Amount within 30 days after the Effective Date.
11. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement.
12. This Order may be endorsed in counterpart, electronically or by facsimile.

  
\_\_\_\_\_  
J.C.K.B.A


CONSENTED TO THIS 29 DAY  
OF MAY, 2023

Napoli Shkolnik Canada

Per: for   
Clint G. Docken, K.C.  
Counsel for the Plaintiff

CONSENTED TO THIS 29 DAY  
OF MAY, 2023

James H. Brown & Associates

Per:   
Nicole K. Keeler  
Counsel for the Plaintiff

CONSENTED TO THIS 29 DAY  
OF May, 2023

Branch McMaster LLP

Per:   
Christopher Rhone  
Counsel for the Defendants



## SETTLEMENT AGREEMENT

Made on February 6, 2023

Between

Cheri McPhillamey as Representative Plaintiff (the "**Plaintiff**")

and

Integrated Life Care (McLennan) Inc. and Integrated Life Care Inc. (the "**Defendants**")

### RECITALS

- A. WHEREAS the Plaintiff has commenced an action bearing Court file number 2003 10551 in the Court of King's Bench of Alberta, in the Edmonton judicial centre (the "**Action**") in which she alleges that the Defendants' conduct, acts or omissions during the COVID-19 pandemic ("**Alleged Conduct**") caused certain residents of long term care homes and their family members under the *Fatal Accidents Act*, RSA 2000, c F-8 to sustain loss and damages, and as otherwise particularized and alleged in the Action;
- B. AND WHEREAS the Defendants say they are not liable to the Plaintiff and others in respect of the alleged conduct and at all, and believe they have good, strong and valid defences in respect of the claims advanced in the Action;
- C. AND WHEREAS as a result of these settlement discussions and negotiations, the Defendants and Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between the Defendants and the Plaintiff, both individually and on behalf of the Class, subject to approval of the Court;
- D. AND WHEREAS as part of this resolution, the Defendants have agreed to pay the Settlement Amount for the benefit of the Class Members;
- E. AND WHEREAS the Plaintiff has agreed to accept the Settlement Amount, in part, because of the value of the Settlement Amount paid under this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;
- F. AND WHEREAS the Plaintiff will ask the Court to approve a Compensation Agreement that provides for compensation to be paid to the Class Members from the Settlement Amount;
- G. 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 Plaintiff's claims, and having regard to the proposed dismissal of the Action in its entirety, the value of the Settlement Amount

to be provided by the Defendants, the burdens and expense associated with prosecuting the Action, including the risks and uncertainties associated with motions, 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 class she seeks to represent in the Action;

- H. AND WHEREAS the Plaintiff and Class Members intend to fully and completely settle and resolve the claims advanced or which could have been advanced in the Action as against the Defendants on the Effective Date pursuant to this Settlement Agreement;
- I. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Action, without admission of liability, as against the Defendants;
- J. 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 and have consented to the Class and the Common Issue in the Action;
- K. AND WHEREAS the Plaintiff asserts she is an adequate class representative for the Class and will seek to be appointed representative plaintiff in the Action;
- L. AND WHEREAS for the purposes of settlement only and conditional on approval by the Court as provided for in this Settlement Agreement, the Plaintiff has consented to a dismissal of 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 by the Parties that the Action be fully and finally settled and dismissed with prejudice and without costs, subject to the approval of the Court, on the following terms and conditions:

### **Section 1 – Definitions**

For the purposes of this Settlement Agreement only

- (a) **Administrative Expenses** means the costs of notice and claims administration
- (b) **Approval Hearings** means the hearings of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement.
- (c) **Claimant** means a person, being a Class Member, seeking compensation pursuant to this Settlement Agreement.
- (d) **Claims Administrator** means a Person proposed by the Defendants and appointed by the Courts to administer this Settlement Agreement, including any

claims process, in accordance with the provisions of this Settlement Agreement, and any employees of such Person.

- (e) **Class Counsel** means Client Docken, K.C. of Colleen Napoli Shkolnik Canada and Richard J. Mallett of James H. Brown & Associates LLP;
- (f) **Class Counsel Fees** means the fees, disbursements, costs and other applicable taxes or charges of class counsel.
- (g) **Class Period** means March 20, 2020 to the date of settlement certification.
- (h) **Common Issue** means: whether the Defendants breached the standard of care causing damage to Class Members as defined below.
- (i) **Court** means the Court of King's Bench of Alberta.
- (j) **Effective Date** means the date on which the Final Order has been received from the Court;
- (k) **Final Order** means the final order made by the Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeals being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon final disposition of all appeals.
- (l) **Notice of Claims Procedure** means any form or forms of notice, agreed to by the Plaintiff and the Defendants, or such other form or forms as may be approved by the Courts, which informs the Class of:
  - (i) The approval of this Settlement Agreement; and
  - (ii) The process by which the Class Members may apply to obtain compensation from the Settlement Amount.
- (m) **Notices** means
  - (i) Notice of Certification and Settlement Hearing;
  - (ii) Notice of Claims Procedure;
  - (iii) Notice of termination of this Settlement Agreement if it is terminated or otherwise terminated by Court order; and
  - (iv) Any other notice that may be required by the Court.
- (n) **Opt Out Claimant** means a person who opts out, in accordance with the requirements for opting out, who would have been a Class Member entitled to participate in the settlement but for that opt out.

- (o) **Opt Out Deadline** means 30 days from the publication of the Notice of Approval of Certification and Settlement.
- (p) **Parties** mean the Plaintiff and the Defendant.
- (q) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, collective, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, 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 occurring anywhere, from the beginning of time through the pendency of the Action, in respect of the Alleged Conduct or relating to any conduct alleged (or which could have been alleged) in the Action and future claims relating to continuing acts or practices that occurred during the pendency of the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conduct.
- (r) **Releasee(s)** mean, jointly and severally, individually and collectively, the Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, solicitors, trustees, servants and representatives; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.
- (s) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and the estates, trustees, representatives, heirs, executors, administrators, insurers, as well as anyone that may otherwise bring a direct, indirect, dependent or other claim through the foregoing, and assigns of each of the foregoing.
- (t) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (u) **Settlement Amount** means the all-inclusive sum of \$947,000.
- (v) **Class or Class Members** means



- (i) Current or former residents of Manoir du Lac who tested positive for COVID-19 between the dates March 20, 2020 and April 22, 2020 (inclusive) while residing at Manoir du Lac and became ill or died from COVID-19 by May 22, 2020 (the "**Resident Class**"); and
- (ii) Spouses, adult interdependent partners or biological children of the Resident Class (the "**Family Class**").

## **SECTION 2 – Settlement Approval**

1. The Parties shall use their best efforts to effectuate this Settlement Agreement, including obtaining the approval of the Court, and to secure the prompt, complete and final dismissal with prejudice, of the Action;
2. At a time mutually agreed to by the Plaintiff and the Defendants after this Settlement Agreement is executed, the Plaintiff shall bring a motion before the Court for an order certifying the Action as a class proceeding solely for the purposes of settlement and approving the Notice of Certification and Settlement Hearing.
3. The order certifying the Action as a class action proceeding shall be substantially in the form set out in **Schedule "A"**.
4. Following receipt of the Schedule "A" order and expiration of the applicable opt-out period, and at a time mutually agreed to by the Parties, the Plaintiff shall bring a motion before the Court for orders approving this Settlement Agreement.
5. The order approving this Settlement Agreement shall be substantially in the form set out in **Schedule "B"**.
6. It is a material term of this Settlement Agreement that the Plaintiff and Defendants must agree on the form and content of the orders to be sought and that the issued orders be as provided for in this Settlement Agreement or as otherwise agreed by the Parties. The form and content of the orders shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the form and content of the orders substantially in the form agreed upon shall give rise to a right to terminate.
7. At least thirty days in advance of the motion for certification and the motion for settlement approval or such shorter period of time as the Parties may agree, Class Counsel shall provide the Defendants with drafts of the Notice of Motion and any supporting materials which are intended to be filed with the Court in support of those motions, for review and approval by the Defendants.
8. Until the first of the motions is brought, the Parties shall keep all the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without prior written consent of counsel for

the Parties, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

9. The fact of this settlement and this Settlement Agreement may not be used in any other proceedings to assert or suggest liability against the Defendants or any other person.

### **Section 3 – SETTLEMENT BENEFITS**

1. Within sixty (60) days of the date of execution of this Settlement Agreement, the Defendants shall pay the Settlement Amount to Class Counsel in full and final satisfaction of all payment obligations under this Settlement Agreement.
2. The Defendants will pay the Administrative Expenses.
3. The Defendants will pay \$6,388.91 to class counsel for disbursements.
4. None of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, Administration Expenses and \$6,388.91 in disbursements, for any reason, or in furtherance of this Settlement Agreement:
5. When the Defendants pay the Settlement Amount, Class Counsel will receive it in trust in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction of the Released Claims against the Releasees.
6. On receipt of the Settlement Amount, Class Counsel will deposit it into a trust account. Class Counsel shall not pay out all or part of the monies in the trust account, except in accordance with this Settlement Agreement or in accordance with an order of the Court obtained after notice to the Defendants, and in any event, after all appeal rights have either been lapsed or exhausted.
7. Class Counsel shall bear all risks related to the investment of the monies in the trust account. The Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the trust account including, but not limited to, Class Counsel Fees and any responsibility, financial obligation or liability as a result of any decrease or depreciation of the value of the trust account, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased and/or held in the trust account.
8. All funds held by Class Counsel shall be considered to be in *custodial legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds have been distributed pursuant to this Settlement Agreement and/or further order of the Court.

9. Class Counsel hereby indemnifies, defends, and holds harmless the Defendants and their respective directors, officers and employees from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or any other action taken or failure to act by Class Counsel with the Settlement Amount or monies in trust not strictly in accordance with the provisions of the Settlement Agreement or any implementing order of the Courts.

#### **SECTION 4- OPT OUTS**

1. If a Resident Class Member opts out of the Class, his or her Family Class Members are deemed to have also opted out, and none are entitled to any relief under this Settlement Agreement.
2. Those Members wishing to opt out of the class must do so with the Opt-Out Deadline.
3. Any persons who do not opt out are barred from commencing an action against the Defendants at a later date.
4. Those Class Members wishing to Opt Out of the settlement must do so by providing notice in a form to be approved by the Court.
5. The Plaintiffs will prepare an opt out form and seek approval for same from the Defendants. The Plaintiffs will seek approval of the opt out form from the Court at the motion for certification.

#### **SECTION 5 – RELEASES, DISMISSALS AND STAYS**

1. Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Court approving this Settlement Agreement. The Plaintiff and the Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Action and this Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.
2. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive

of interest, taxes, fees and costs, relating directly or indirectly to the Released Claims, which were or could have been brought in the Action or otherwise against a Releasee are barred, prohibited and enjoined in accordance with the terms of the order (unless such claim is made in respect of a claim by a person that validly opted-out of the Action).

3. The release contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of the Court to approve the release contemplated herein shall give rise to a right of termination by the Defendants.
4. The Releasers shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other class or any other Persons, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek to recover from any Releasee or any other Persons, who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity, or other relief against any Releasee in respect of any Released Claim, and are permanently barred and enjoined from doing so.

#### **SECTION 6 – EFFECT OF SETTLEMENT**

1. The Plaintiff and the Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, 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 fault, omission, wrongdoing or liability by the Defendants or by any Releasee, or of the truth of any of the claims or allegations in the Action or any other pleading filed by the Plaintiffs or any other Class Member.

#### **SECTION 7 – CERTIFICATION FOR SETTLEMENT ONLY**

1. The Parties agree that the Action shall be certified as a class proceeding against the Defendants solely for the purposes of settlement of the Action and the approval of this Settlement Agreement by the Court.
2. The Plaintiffs agree that, in the motions for certification 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 Class. The Plaintiffs acknowledge that the Defendants agree to the definition of the Common Issue for purposes of settlement only.



## **SECTION 8 – COMPENSATION AGREEMENT**

1. Class Members may make one claim in accordance with the compensation categories as set out in **Schedule “C”** which consist of bodily injury claims and dependent claims (“**Individual Payments**”).
2. The Resident Class is entitled to compensation from the Bodily Injury Claims category.
3. The Family Class is entitled to compensation from the Dependent Claims category.
4. All claims will be individually assessed and payment made after conclusion of the Claims Period defined below.
5. Regardless of the amount of the Individual Payments, the Defendants will pay no more than the Settlement Amount to satisfy the claims.
6. If the combined amount of the Individual Payments exceeds the Settlement Amount, the Class Members will receive a pro rata share of their Individual Payment based on the Settlement Amount.
7. If the total Individual Payments do not reach the Settlement Amount, the Defendants will be reimbursed the difference between the total Individual Payments and the Settlement Amount.
8. It is acknowledged by the parties that Alberta Health Services has waived any allegedly subrogated claims or entitlements.

## **SECTION 9 – NOTICE TO CLASS, ADMINISTRATION AND IMPLEMENTATION**

1. The Class shall be given the Notices as directed by the Court.
2. The Claims Period shall be 90 days from the date of pronouncement of the order approving settlement (“**Claims Period**”). No claims may be made after expiry of the Claims Period.
3. Claims administration is to be performed by the Claims Administrator.
4. Notice costs and Administration costs are to be paid by the Defendants, with the Claims Administrator to be agreed upon by the parties.
5. The Defendants will obtain quotes from Epiq Class Action Services, RicePoint Administration Inc. and any other class action administrator as they see fit for the role of Claims Administrator. After receipt of quotes, the Defendants will make a recommendation for Claims Administrator to the Plaintiff. If the Plaintiff disagrees with the recommendation, the Parties are at liberty to seek direction from the Court.

6. Claimants seeking compensation as Resident Class members must complete and submit a written application for a claim or, if they are unable to do so, such claim will be completed on their behalf. The claim form will include documentation confirming the date upon which the claimant tested positive for COVID-19 and the date upon which they fell ill due to COVID-19. The documentation shall include a letter from a medical doctor to verify the foregoing dates.
7. Claimants seeking compensation as Family Class members are to complete and submit a claim form and an affidavit or statutory declaration testifying to basic details regarding their relationship with the Resident Class Member and documentary proof of that relationship by way of birth certificate or marriage certificate as the case may be. The claim form will be prepared by Class Counsel for approval by the Defendants.
8. With respect to all but the following Resident Class members - Malcolm Richard, Clara Morin, Hector Dubrulle, Berthe Thibault, Leo Payou, Francis Cunningham, Maurice Beaudoin, Marie Berthe Cloutier, Marie Therese MacIntyre, and Francois Brochu - the Claimant will provide medical documentation confirming that the Resident Class member tested positive for COVID-19, the date of the positive test, and date of death confirming death due to COVID-19.
9. Claimants are to submit their claim forms and accompanying documentation to the Claims Administrator, who shall promptly provide copies of submitted claims and supporting documents to counsel for the parties.
10. The Claims Administrator will determine whether each Claimant qualifies as a Class Member, and the level of compensation to which each is entitled.
11. At the end of the Claims Period the Claims Administrator will provide notice to counsel for the parties of preliminary determinations made in relation to each claimant pursuant to the preceding paragraph.
12. The decision of the Claims Administrator is final and binding and there shall be no right of appeal or other recourse to any court or tribunal from the decision.

#### **SECTION 10 – CLASS COUNSEL FEES**

1. Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement.

#### **SECTION 11 – TERMINATION OF SETTLEMENT AGREEMENT**

1. The Defendants or the Plaintiff, in their respective sole discretion, have the option to terminate this Settlement Agreement in the event that:
  - (a) the form and content of any of the orders departs materially from the form and content of the orders as agreed upon by the Plaintiff and the Defendants;

- (b) the form and content of any of the Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiff and the Defendants;
  - (c) the Court declines to approve this Settlement Agreement or any material term or part hereof;
  - (d) the Court declines to dismiss the Action; or
  - (e) the Court approves the Settlement Agreement in a materially modified form.
2. The Defendants, in their sole discretion, have the option to terminate this Settlement Agreement in the event that the releases and covenants are not complied with.
  3. If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason it shall be null and void, have no further force and effect, shall not be binding, and shall not be used as evidence or otherwise in litigation.
  4. Following termination of the Settlement Agreement. Class Counsel return to the Defendants the Settlement Amount plus all accrued interest thereon, within thirty (30) business days of termination in accordance with this Settlement Agreement.
  5. The Plaintiff and the Defendants expressly reserve all of their respective rights if this Settlement Agreement is terminated.


## **SECTION 12 – MISCELLANEOUS**

1. The Defendants or the Plaintiff may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
2. Class Counsel may apply to the Court for directions in respect of any Distribution Protocol.
3. All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiff and the Defendants. There shall be no costs to any party.
4. This Settlement Agreement shall be governed pursuant to the laws of the Province of Alberta.
5. This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all 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.

6. This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Releasors, 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 Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.
7. This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.
8. 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, all have no bearing upon the proper interpretation of this Settlement Agreement.

Napoli Shkolnik Canada

Per:   
\_\_\_\_\_  
Clint G. Docken, K.C.  
Counsel for the Plaintiff

James H. Brown & Associates LLP

Per:   
\_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff

Integrated Life Care (McLennan) Inc,  
and Integrated Life Care Inc.

Per: \_\_\_\_\_  
Authorized Signatory for  
the Defendants



bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

6. This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Releasors, 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 Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.
7. This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.
8. 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, all have no bearing upon the proper interpretation of this Settlement Agreement.

Napoli Shkolnik Canada

Per: \_\_\_\_\_  
Clint G. Docken, K.C.  
Counsel for the Plaintiff

James H. Brown & Associates LLP

Per: \_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff

Integrated Life Care (McLennan) Inc.  
and Integrated Life Care Inc.

Per: \_\_\_\_\_  
Authorized Signatory for  
the Defendants

Schedule "A"

COURT FILE NUMBER 2003 10571

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) CHERI MCPHILLAMEY as REPRESENTATIVE PLAINTIFF

DEFENDANT(S) INTEGRATED LIFE CARE (MCLENNAN) INC. and INTEGRATED LIFE CARE INC.

DOCUMENT **NOTICE OF CERTIFICATION AND SETTLEMENT HEARING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Clint Docken, K.C.  
Napoli Shkolnik Canada  
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10123 99 Street  
Edmonton, Alberta T5J 3H1  
Tel: (780) 428-0088  
Fax: (780) 428-7788

Clerk's Stamp

**DATE ON WHICH ORDER WAS PRONOUNCED:**

**NAME OF JUSTICE WHO MADE THIS ORDER:**

Mr. Justice James T. Neilson

**LOCATION WHERE ORDER WAS PRONOUNCED:**

Edmonton

**UPON THE APPLICATION** of the Plaintiff; **AND UPON** noting the consent of the parties; **AND UPON** hearing submissions from counsel for the parties; **AND UPON** reviewing the Affidavits of Cheri McPhillamey sworn on February 25, 2022 and

February 6, 2023; and on being advised that the parties have entered into a settlement agreement (the "Settlement Agreement");

**THIS COURT ORDERS THAT:**

1. Except to the extent that they are set out in or modified by this Order, the definitions set out in the Settlement Agreement, as attached at Schedule "A", apply to and are incorporated into this Order.
2. "Class" or "Class Members" means
  - (a) Current or former residents of Manoir du Lac who tested positive for COVID-19 between the dates March 20, 2020 and April 22, 2020 (inclusive) while residing at Manoir du Lac and became ill or died from COVID-19 by May 22, 2020 (the "Resident Class"); and
  - (b) Spouses, adult interdependent partners or biological children of the Resident Class (the "Family Class").
3. The claims made on behalf of the Class in respect of Released Claims in the within proceeding are certified against the Defendants for settlement purposes only.
4. The claims made on behalf of the Class in respect of Released Claims in the within proceeding are certified on the basis that the following issue is common to the Settlement Class:
  - (a) Whether the Defendants breached the standard of care causing damages to the Class Members
5. Cheri McPhillamey is appointed as the Representative Plaintiff for the Class.
6. Clint G. Docken, K.C. of Napoli Shkolnik Canada and Richard J. Mallett of James H. Brown & Associates LLP are appointed as Class Counsel.

7. The Notice of Certification and Settlement Hearing is approved and is to be substantially in the form attached hereto as Schedule "B".
8. The Notice Plan for dissemination of the Notice of Certification and Settlement Hearing to the Class or Class Members (the "Notice Plan") is approved and is to be substantially as set out in the Notice Plan attached hereto as Schedule "C".
9. The Notice of Certification and Settlement Hearing shall be disseminated in accordance with the Notice Plan.
10. The parties shall seek further direction with respect to the appointment of a Claims Administrator.
11. To validly opt out, Class Members must deliver a written opt out request postmarked no later than 30 days after the publication of newspaper notice pursuant to the Notice Plan and must be mailed to the Claims Administrator. Any opt-out request shall be in the form as hereby approved and attached hereto as Schedule "D".
12. In the event final approval of the Settlement Agreement is not granted in accordance with its terms at the Settlement Hearing, or final approval is reversed on appeal, the certification for settlement purposes granted in this Order shall be of no force and effect and this proceeding shall be decertified by consent.
13. In the event final approval of the Settlement Agreement is not granted in accordance with its terms at the Settlement Hearing, or final approval is reversed on appeal, the Plaintiff will be at liberty to continue this proceeding and the Defendants retain the right to oppose certification and defend the claims made in this proceeding.



14. This Order may be executed in counterpart, electronically or by facsimile.

**JUSTICE OF THE COURT OF  
KING'S BENCH OF ALBERTA**

CONSENTED TO  
this \_\_\_\_\_ day of February, 2023.

Napoli Shkolnik Canada

Per: \_\_\_\_\_  
Clint G. Docken, K.C.  
Counsel for the Plaintiff

CONSENTED TO  
this \_\_\_\_\_ day of February, 2023.

James H. Brown & Associates LLP

Per: \_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff

CONSENTED TO  
this \_\_\_\_\_ day of February, 2023.

Branch McMaster LLP

Per: \_\_\_\_\_  
Christopher Rhone  
Counsel for the Defendants

Schedule "A"

**SETTLEMENT AGREEMENT**

Made on February 6, 2023

Between

Cheri McPhillamey as Representative Plaintiff (the "Plaintiff")

and

Integrated Life Care (McLennan) Inc. and Integrated Life Care Inc. (the "Defendants")

**RECITALS**

- A. WHEREAS the Plaintiff has commenced an action bearing Court file number 2003 10551 in the Court of King's Bench of Alberta, in the Edmonton judicial centre (the "Action") in which she alleges that the Defendants' conduct, acts or omissions during the COVID-19 pandemic ("**Alleged Conduct**") caused certain residents of long term care homes and their family members under the *Fatal Accidents Act*, RSA 2000, c F-8 to sustain loss and damages, and as otherwise particularized and alleged in the Action;
- B. AND WHEREAS the Defendants say they are not liable to the Plaintiff and others in respect of the alleged conduct and at all, and believe they have good, strong and valid defences in respect of the claims advanced in the Action;
- C. AND WHEREAS as a result of these settlement discussions and negotiations, the Defendants and Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between the Defendants and the Plaintiff, both individually and on behalf of the Class, subject to approval of the Court;
- D. AND WHEREAS as part of this resolution, the Defendants have agreed to pay the Settlement Amount for the benefit of the Class Members;
- E. AND WHEREAS the Plaintiff has agreed to accept the Settlement Amount, in part, because of the value of the Settlement Amount paid under this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;
- F. AND WHEREAS the Plaintiff will ask the Court to approve a Compensation Agreement that provides for compensation to be paid to the Class Members from the Settlement Amount;
- G. 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 Plaintiff's claims, and having regard to the proposed dismissal of the Action in its entirety, the value of the Settlement Amount

to be provided by the Defendants, the burdens and expense associated with prosecuting the Action, including the risks and uncertainties associated with motions, 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 class she seeks to represent in the Action;

- H. AND WHEREAS the Plaintiff and Class Members intend to fully and completely settle and resolve the claims advanced or which could have been advanced in the Action as against the Defendants on the Effective Date pursuant to this Settlement Agreement;
- I. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Action, without admission of liability, as against the Defendants;
- J. 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 and have consented to the Class and the Common Issue in the Action;
- K. AND WHEREAS the Plaintiff asserts she is an adequate class representative for the Class and will seek to be appointed representative plaintiff in the Action;
- L. AND WHEREAS for the purposes of settlement only and conditional on approval by the Court as provided for in this Settlement Agreement, the Plaintiff has consented to a dismissal of 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 by the Parties that the Action be fully and finally settled and dismissed with prejudice and without costs, subject to the approval of the Court, on the following terms and conditions:

### **Section 1 – Definitions**

For the purposes of this Settlement Agreement only:

- (a) **Administrative Expenses** means the costs of notice and claims administration.
- (b) **Approval Hearings** means the hearings of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement.
- (c) **Claimant** means a person, being a Class Member, seeking compensation pursuant to this Settlement Agreement.
- (d) **Claims Administrator** means a Person proposed by the Defendants and appointed by the Courts to administer this Settlement Agreement, including any

claims process, in accordance with the provisions of this Settlement Agreement, and any employees of such Person.

- (e) **Class Counsel** means Client Docken, K.C. of Colleen Napoli Shkolnik Canada and Richard J. Mallett of James H. Brown & Associates LLP;
- (f) **Class Counsel Fees** means the fees, disbursements, costs and other applicable taxes or charges of class counsel.
- (g) **Class Period** means March 20, 2020 to the date of settlement certification.
- (h) **Common Issue** means: whether the Defendants breached the standard of care causing damage to Class Members as defined below.
- (i) **Court** means the Court of King's Bench of Alberta.
- (j) **Effective Date** means the date on which the Final Order has been received from the Court;
- (k) **Final Order** means the final order made by the Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeals being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon final disposition of all appeals.
- (l) **Notice of Claims Procedure** means any form or forms of notice, agreed to by the Plaintiff and the Defendants, or such other form or forms as may be approved by the Courts, which informs the Class of
  - (i) The approval of this Settlement Agreement; and
  - (ii) The process by which the Class Members may apply to obtain compensation from the Settlement Amount.
- (m) **Notices** means
  - (i) Notice of Certification and Settlement Hearing;
  - (ii) Notice of Claims Procedure;
  - (iii) Notice of termination of this Settlement Agreement if it is terminated or otherwise terminated by Court order; and
  - (iv) Any other notice that may be required by the Court.
- (n) **Opt Out Claimant** means a person who opts out, in accordance with the requirements for opting out, who would have been a Class Member entitled to participate in the settlement but for that opt out.

- (o) **Opt Out Deadline** means 30 days from the publication of the Notice of Approval of Certification and Settlement.
- (p) **Parties** mean the Plaintiff and the Defendant.
- (q) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, collective, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, 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 occurring anywhere, from the beginning of time through the pendency of the Action, in respect of the Alleged Conduct or relating to any conduct alleged (or which could have been alleged) in the Action and future claims relating to continuing acts or practices that occurred during the pendency of the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conduct.
- (r) **Releasee(s)** mean, jointly and severally, individually and collectively, the Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, solicitors, trustees, servants and representatives; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.
- (s) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and the estates, trustees, representatives, heirs, executors, administrators, insurers, as well as anyone that may otherwise bring a direct, indirect, dependent or other claim through the foregoing, and assigns of each of the foregoing.
- (t) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (u) **Settlement Amount** means the all-inclusive sum of \$947,000.
- (v) **Class or Class Members** means



- (i) Current or former residents of Manoir du Lac who tested positive for COVID-19 between the dates March 20, 2020 and April 22, 2020 (inclusive) while residing at Manoir du Lac and became ill or died from COVID-19 by May 22, 2020 (the "**Resident Class**"); and
- (ii) Spouses, adult interdependent partners or biological children of the Resident Class (the "**Family Class**").

## **SECTION 2 – Settlement Approval**

1. The Parties shall use their best efforts to effectuate this Settlement Agreement, including obtaining the approval of the Court, and to secure the prompt, complete and final dismissal with prejudice, of the Action;
2. At a time mutually agreed to by the Plaintiff and the Defendants after this Settlement Agreement is executed, the Plaintiff shall bring a motion before the Court for an order certifying the Action as a class proceeding solely for the purposes of settlement and approving the Notice of Certification and Settlement Hearing.
3. The order certifying the Action as a class action proceeding shall be substantially in the form set out in **Schedule "A"**.
4. Following receipt of the Schedule "A" order and expiration of the applicable opt-out period, and at a time mutually agreed to by the Parties, the Plaintiff shall bring a motion before the Court for orders approving this Settlement Agreement.
5. The order approving this Settlement Agreement shall be substantially in the form set out in **Schedule "B"**.
6. It is a material term of this Settlement Agreement that the Plaintiff and Defendants must agree on the form and content of the orders to be sought and that the issued orders be as provided for in this Settlement Agreement or as otherwise agreed by the Parties. The form and content of the orders shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the form and content of the orders substantially in the form agreed upon shall give rise to a right to terminate.
7. At least thirty days in advance of the motion for certification and the motion for settlement approval or such shorter period of time as the Parties may agree, Class Counsel shall provide the Defendants with drafts of the Notice of Motion and any supporting materials which are intended to be filed with the Court in support of those motions, for review and approval by the Defendants.
8. Until the first of the motions is brought, the Parties shall keep all the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without prior written consent of counsel for

the Parties, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

9. The fact of this settlement and this Settlement Agreement may not be used in any other proceedings to assert or suggest liability against the Defendants or any other person.

### **Section 3 – SETTLEMENT BENEFITS**

1. Within sixty (60) days of the date of execution of this Settlement Agreement, the Defendants shall pay the Settlement Amount to Class Counsel in full and final satisfaction of all payment obligations under this Settlement Agreement.
2. The Defendants will pay the Administrative Expenses.
3. The Defendants will pay \$6,388.91 to class counsel for disbursements.
4. None of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, Administration Expenses and \$6,388.91 in disbursements, for any reason, or in furtherance of this Settlement Agreement:
5. When the Defendants pay the Settlement Amount, Class Counsel will receive it in trust in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction of the Released Claims against the Releasees.
6. On receipt of the Settlement Amount, Class Counsel will deposit it into a trust account. Class Counsel shall not pay out all or part of the monies in the trust account, except in accordance with this Settlement Agreement or in accordance with an order of the Court obtained after notice to the Defendants, and in any event, after all appeal rights have either been lapsed or exhausted.
7. Class Counsel shall bear all risks related to the investment of the monies in the trust account. The Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the trust account including, but not limited to, Class Counsel Fees and any responsibility, financial obligation or liability as a result of any decrease or depreciation of the value of the trust account, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased and/or held in the trust account.
8. All funds held by Class Counsel shall be considered to be in *custodial legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds have been distributed pursuant to this Settlement Agreement and/or further order of the Court.

9. Class Counsel hereby indemnifies, defends, and holds harmless the Defendants and their respective directors, officers and employees from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or any other action taken or failure to act by Class Counsel with the Settlement Amount or monies in trust not strictly in accordance with the provisions of the Settlement Agreement or any implementing order of the Courts.

#### **SECTION 4- OPT OUTS**

1. If a Resident Class Member opts out of the Class, his or her Family Class Members are deemed to have also opted out, and none are entitled to any relief under this Settlement Agreement.
2. Those Members wishing to opt out of the class must do so with the Opt-Out Deadline.
3. Any persons who do not opt out are barred from commencing an action against the Defendants at a later date.
4. Those Class Members wishing to Opt Out of the settlement must do so by providing notice in a form to be approved by the Court.
5. The Plaintiffs will prepare an opt out form and seek approval for same from the Defendants. The Plaintiffs will seek approval of the opt out form from the Court at the motion for certification.

#### **SECTION 5 – RELEASES, DISMISSALS AND STAYS**

1. Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Court approving this Settlement Agreement. The Plaintiff and the Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Action and this Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.
2. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive



of interest, taxes, fees and costs, relating directly or indirectly to the Released Claims, which were or could have been brought in the Action or otherwise against a Releasee are barred, prohibited and enjoined in accordance with the terms of the order (unless such claim is made in respect of a claim by a person that validly opted-out of the Action).

3. The release contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of the Court to approve the release contemplated herein shall give rise to a right of termination by the Defendants.
4. The Releasers shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other class or any other Persons, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek to recover from any Releasee or any other Persons, who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity, or other relief against any Releasee in respect of any Released Claim, and are permanently barred and enjoined from doing so.

#### **SECTION 6 – EFFECT OF SETTLEMENT**

1. The Plaintiff and the Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, 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 fault, omission, wrongdoing or liability by the Defendants or by any Releasee, or of the truth of any of the claims or allegations in the Action or any other pleading filed by the Plaintiffs or any other Class Member.

#### **SECTION 7 – CERTIFICATION FOR SETTLEMENT ONLY**

1. The Parties agree that the Action shall be certified as a class proceeding against the Defendants solely for the purposes of settlement of the Action and the approval of this Settlement Agreement by the Court.
2. The Plaintiffs agree that, in the motions for certification 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 Class. The Plaintiffs acknowledge that the Defendants agree to the definition of the Common Issue for purposes of settlement only.

## **SECTION 8 – COMPENSATION AGREEMENT**

1. Class Members may make one claim in accordance with the compensation categories as set out in **Schedule “C”** which consist of bodily injury claims and dependent claims (“**Individual Payments**”).
2. The Resident Class is entitled to compensation from the Bodily Injury Claims category.
3. The Family Class is entitled to compensation from the Dependent Claims category.
4. All claims will be individually assessed and payment made after conclusion of the Claims Period defined below.
5. Regardless of the amount of the Individual Payments, the Defendants will pay no more than the Settlement Amount to satisfy the claims.
6. If the combined amount of the Individual Payments exceeds the Settlement Amount, the Class Members will receive a pro rata share of their Individual Payment based on the Settlement Amount.
7. If the total Individual Payments do not reach the Settlement Amount, the Defendants will be reimbursed the difference between the total Individual Payments and the Settlement Amount.
8. It is acknowledged by the parties that Alberta Health Services has waived any allegedly subrogated claims or entitlements.

## **SECTION 9 – NOTICE TO CLASS, ADMINISTRATION AND IMPLEMENTATION**

1. The Class shall be given the Notices as directed by the Court.
2. The Claims Period shall be 90 days from the date of pronouncement of the order approving settlement (“**Claims Period**”). No claims may be made after expiry of the Claims Period.
3. Claims administration is to be performed by the Claims Administrator.
4. Notice costs and Administration costs are to be paid by the Defendants, with the Claims Administrator to be agreed upon by the parties.
5. The Defendants will obtain quotes from Epiq Class Action Services, RicePoint Administration Inc. and any other class action administrator as they see fit for the role of Claims Administrator. After receipt of quotes, the Defendants will make a recommendation for Claims Administrator to the Plaintiff. If the Plaintiff disagrees with the recommendation, the Parties are at liberty to seek direction from the Court.

6. Claimants seeking compensation as Resident Class members must complete and submit a written application for a claim or, if they are unable to do so, such claim will be completed on their behalf. The claim form will include documentation confirming the date upon which the claimant tested positive for COVID-19 and the date upon which they fell ill due to COVID-19. The documentation shall include a letter from a medical doctor to verify the foregoing dates.
7. Claimants seeking compensation as Family Class members are to complete and submit a claim form and an affidavit or statutory declaration testifying to basic details regarding their relationship with the Resident Class Member and documentary proof of that relationship by way of birth certificate or marriage certificate as the case may be. The claim form will be prepared by Class Counsel for approval by the Defendants.
8. With respect to all but the following Resident Class members - Malcolm Richard, Clara Morin, Hector Dubrule, Berthe Thibault, Leo Payou, Francis Cunningham, Maurice Beaudoin, Marie Berthe Cloutier, Marie Therese MacIntyre, and Francois Brochu - the Claimant will provide medical documentation confirming that the Resident Class member tested positive for COVID-19, the date of the positive test, and date of death confirming death due to COVID-19.
9. Claimants are to submit their claim forms and accompanying documentation to the Claims Administrator, who shall promptly provide copies of submitted claims and supporting documents to counsel for the parties.
10. The Claims Administrator will determine whether each Claimant qualifies as a Class Member, and the level of compensation to which each is entitled.
11. At the end of the Claims Period the Claims Administrator will provide notice to counsel for the parties of preliminary determinations made in relation to each claimant pursuant to the preceding paragraph.
12. The decision of the Claims Administrator is final and binding and there shall be no right of appeal or other recourse to any court or tribunal from the decision.

#### **SECTION 10 – CLASS COUNSEL FEES**

1. Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement.

#### **SECTION 11 – TERMINATION OF SETTLEMENT AGREEMENT**

1. The Defendants or the Plaintiff, in their respective sole discretion, have the option to terminate this Settlement Agreement in the event that:
  - (a) the form and content of any of the orders departs materially from the form and content of the orders as agreed upon by the Plaintiff and the Defendants;

- (b) the form and content of any of the Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiff and the Defendants;
  - (c) the Court declines to approve this Settlement Agreement or any material term or part hereof;
  - (d) the Court declines to dismiss the Action; or
  - (e) the Court approves the Settlement Agreement in a materially modified form.
2. The Defendants, in their sole discretion, have the option to terminate this Settlement Agreement in the event that the releases and covenants are not complied with.
  3. If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason it shall be null and void, have no further force and effect, shall not be binding, and shall not be used as evidence or otherwise in litigation.
  4. Following termination of the Settlement Agreement. Class Counsel return to the Defendants the Settlement Amount plus all accrued interest thereon, within thirty (30) business days of termination in accordance with this Settlement Agreement.
  5. The Plaintiff and the Defendants expressly reserve all of their respective rights if this Settlement Agreement is terminated.

## **SECTION 12 – MISCELLANEOUS**

1. The Defendants or the Plaintiff may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
2. Class Counsel may apply to the Court for directions in respect of any Distribution Protocol.
3. All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiff and the Defendants. There shall be no costs to any party.
4. This Settlement Agreement shall be governed pursuant to the laws of the Province of Alberta.
5. This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all 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.

6. This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Releasors, 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 Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.
7. This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.
8. 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, all have no bearing upon the proper interpretation of this Settlement Agreement.

Napoli Shkolnik Canada

Per \_\_\_\_\_  
Clint G. Docken, K.C.  
Counsel for the Plaintiff

James H. Brown & Associates LLP

Per \_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff

Integrated Life Care (McLennan) Inc.  
and Integrated Life Care Inc.

Per: \_\_\_\_\_  
Authorized Signatory for  
the Defendants

Schedule "B"

**MANOIR DU LAC CLASS ACTION  
NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT**

Manoir du Lac has agreed to a settlement to resolve a class action relating to alleged conduct during the COVID-19 pandemic alleged to have caused losses or damages to current or former residents of Manoir du Lac without admissions of liability. The proposed settlement relates to residents of Manoir du Lac who tested positive for COVID-19 between March 20, 2020 – April 22, 2020, and became ill or died from COVID-19 by May 22, 2020. The proposed settlement includes claims for certain family members under the *Fatal Accidents Act*, R.S.A. 2000, c. F-8. Manoir du Lac denies the allegations.

The proposed settlement must be approved by the Court. An application to approve the settlement will be heard in Edmonton, Alberta on \_\_\_\_\_, 2023 at 9:00 a.m..

**Proposed Distribution of the Settlement Funds**

At the settlement approval hearing, the Court will be asked to approve a protocol for distribution of the settlement funds. Visit [www.\\_\\_\\_\\_\\_](http://www._____) for more information. After the approval hearing, a further notice will be distributed regarding the process and deadline for filing a claim. To ensure that you receive this notice, please register online at [www.\\_\\_\\_\\_\\_](http://www._____).

**Excluding Yourself or Objecting.**

The Court has certified this action as a class action. If you do not want to be part of the class action, you can exclude yourself ("opt-out") by sending a written request to opt-out by *(Note: insert date 30 days after publication of Notice)*. If you wish to object to the settlement, you must send a written objection to *(Note: insert date 30 days after publication of Notice)*. Visit [www.\\_\\_\\_\\_\\_](http://www._____) for more information.

Clint Docken, K.C. of Napoli Shkolnik Canada and Richard J. Mallett of James H. Brown & Associates LLP are Class Counsel. At the court application, Class Counsel may request approval of legal costs.

**QUESTIONS? VISIT [www.\\_\\_\\_\\_\\_](http://www._____)**  
Email: \_\_\_\_\_ or call 1-800-\_\_\_\_\_

## Schedule "C"

### Notice Plan

#### 1. Contact Information

Counsel for the parties shall work on a cooperative basis with the Claims Administrator to locate and produce contact information for potential claimants.

#### 2. Mail and Electronic Mail Notice

The Claims Administrator shall provide notice by electronic mail to every Class Member for whom an email address is located. If there is only a physical address for a Class Member, the Claims Administrator shall provide notice by regular mail, postage pre-paid.

#### 3. Publication Notice

The Notice of Certification and Settlement Hearing will be disseminated by advertisements in print and electronic media. The Notice of Certification and Settlement Hearing will be published in the following papers:

- *Peace River Record Gazette*
- *Fairview Post*
- *South Peace News*
- *Grande Prairie Daily Herald Tribune*

#### 4. Class Counsel Websites

The Notice of Certification and Settlement Hearing Order shall be posted on the respective websites of Class Counsel.

Schedule "D"

**OPT OUT FORM**

*McPhillamey v. Integrated Life Care (McLennan) Inc., et al*, Court of King's Bench of Alberta,  
Action No. 2003 10571

*This is not a Claim Form. This form is only to be used by any potential member of the Class who wishes to be excluded from the Settlement. You must submit this Opt Out Form properly completed to opt out of the Settlement Class. Submitting this form excludes you from the class action and the proposed settlement of the class action. Do not use this form if you wish to receive compensation under the proposed settlement.*

Name: \_\_\_\_\_

Current Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

I understand that by opting out and excluding myself from the class action and the proposed settlement, I waive any and all rights that I may have to receive any money from the class action.

Date: \_\_\_\_\_  
Signature \_\_\_\_\_

Send this completed form to the Claims Administrator by mail as follows:

(insert address)



Schedule "B"

COURT FILE NUMBER 2003 10571

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) CHERI MCPHILLAMEY as Representative Plaintiff

DEFENDANT(S) INTEGRATED LIFE CARE (MCLENNAN) INC. and INTEGRATED LIFE CARE INC.

DOCUMENT **SETTLEMENT APPROVAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Clint G. Docken K.C.  
Napoli Shkolnik Canada  
1900, 144 – 4th Avenue S.W.  
Calgary, AB T2P 3N4  
Phone: (888) 531-0675

Richard J. Mallett  
James H. Brown and Associates  
2400 Sunlife Place  
10123 - 99 Street  
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Tel: (780) 428-0088  
Fax: (780) 428-7788



**DATE ON WHICH ORDER WAS PRONOUNCED:**

**NAME OF JUDGE WHO MADE THIS ORDER:**

Mr. Justice James T. Neilson

**LOCATION WHERE ORDER WAS PRONOUNCED:**

Edmonton

**UPON THE APPLICATION** of the Plaintiff; **AND UPON** hearing the submissions of Counsel for the Plaintiff and the Defendants; **AND UPON** reading the pleadings and materials filed; **AND UPON** being advised that the Plaintiff and the Defendants have entered into a settlement agreement dated \_\_\_\_\_ (the "Settlement Agreement"); **AND UPON** being advised that the Plaintiff and the Defendants consent to this Order;

THIS COURT ORDERS THAT:

1. The Settlement Agreement, as attached at Schedule "A", is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order.
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. The Settlement Agreement is fair, reasonable and in the best interests of the Class and Class Members and is hereby given final approval pursuant to section 35 of the *Class Proceedings Act*, SA 2003, c 0-16.5 and shall be implemented in accordance with its terms and the terms of this Order.
4. This Order, including the Settlement Agreement, is binding upon the Parties and on every Class Member whether or not the Class Member claims or receives monetary compensation or value under the Settlement Agreement, unless the Class Member opted out before the expiry of the Opt Out Deadline.
5. This Order, including the Settlement Agreement, is binding upon each such Class Member including those persons who are minors or mentally incapable and the requirements of Rules 2.11 and 2.19 of the *Alberta Rules of Court* are dispensed with in respect of this proceeding.
6. The persons listed in the List of Opt-Outs, as attached at Schedule "B" and incorporated into this Order, have validly exercised their right to opt-out and are not Class Members.
7. Upon the Effective Date, the Releasors shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims as set out in the Settlement Agreement, Schedule "A", and the Releasors shall be barred from making any claims or taking or continuing any proceeding arising out of, or relating to, the Released Claims, except as otherwise expressly provided for in the Settlement Agreement, against any Releasee or other person, corporation or entity that might claim damages and/or contribution and indemnity or other relief against any of the Defendants.

8. The Claim Period for Class Members to submit a claim shall end 90 days after newspaper publication of the Notice of Claims Procedure.
9. This Honourable Court will retain continuing jurisdiction over the Settlement for the purposes of implementing, interpreting and enforcing the Settlement Agreement and this Order subject to the terms and conditions set out in the Settlement Agreement and this Order.
10. Class Counsels Fees in the amount of \$ \_\_\_\_\_, which includes legal fees, disbursements and GST, shall be paid from the Settlement Amount within 30 days after the Effective Date.
11. An honorarium in the sum of \$ \_\_\_\_\_ for the Representative Plaintiff is hereby approved and said amount shall be paid from the Settlement Amount.
12. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement.
13. This Order may be endorsed in counterpart, electronically or by facsimile.

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J.C.K.B.A

CONSENTED TO THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2023

Napoli Shkolnik Canada

Per: \_\_\_\_\_  
Clint G. Docken, K.C.  
Counsel for the Plaintiff

CONSENTED TO THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2023

James H. Brown & Associates

Per: \_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff

CONSENTED TO THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2023

Branch McMaster LLP

Per: \_\_\_\_\_  
Christopher Rhone  
Counsel for the Defendants

Schedule "A"

**SETTLEMENT AGREEMENT**

Made on February 6, 2023

Between

Cheri McPhillamey as Representative Plaintiff (the "Plaintiff")

and

Integrated Life Care (McLennan) Inc. and Integrated Life Care Inc. (the "Defendants")

**RECITALS**

- A. WHEREAS the Plaintiff has commenced an action bearing Court file number 2003 10551 in the Court of King's Bench of Alberta, in the Edmonton judicial centre (the "Action") in which she alleges that the Defendants' conduct, acts or omissions during the COVID-19 pandemic ("**Alleged Conduct**") caused certain residents of long term care homes and their family members under the *Fatal Accidents Act*, RSA 2000, c F-8 to sustain loss and damages, and as otherwise particularized and alleged in the Action;
- B. AND WHEREAS the Defendants say they are not liable to the Plaintiff and others in respect of the alleged conduct and at all, and believe they have good, strong and valid defences in respect of the claims advanced in the Action;
- C. AND WHEREAS as a result of these settlement discussions and negotiations, the Defendants and Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between the Defendants and the Plaintiff, both individually and on behalf of the Class, subject to approval of the Court;
- D. AND WHEREAS as part of this resolution, the Defendants have agreed to pay the Settlement Amount for the benefit of the Class Members;
- E. AND WHEREAS the Plaintiff has agreed to accept the Settlement Amount, in part, because of the value of the Settlement Amount paid under this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;
- F. AND WHEREAS the Plaintiff will ask the Court to approve a Compensation Agreement that provides for compensation to be paid to the Class Members from the Settlement Amount;
- G. 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 Plaintiff's claims, and having regard to the proposed dismissal of the Action in its entirety, the value of the Settlement Amount



to be provided by the Defendants, the burdens and expense associated with prosecuting the Action, including the risks and uncertainties associated with motions, 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 class she seeks to represent in the Action;

- H. AND WHEREAS the Plaintiff and Class Members intend to fully and completely settle and resolve the claims advanced or which could have been advanced in the Action as against the Defendants on the Effective Date pursuant to this Settlement Agreement;
- I. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Action, without admission of liability, as against the Defendants;
- J. 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 and have consented to the Class and the Common Issue in the Action;
- K. AND WHEREAS the Plaintiff asserts she is an adequate class representative for the Class and will seek to be appointed representative plaintiff in the Action;
- L. AND WHEREAS for the purposes of settlement only and conditional on approval by the Court as provided for in this Settlement Agreement, the Plaintiff has consented to a dismissal of 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 by the Parties that the Action be fully and finally settled and dismissed with prejudice and without costs, subject to the approval of the Court, on the following terms and conditions:

### **Section 1 – Definitions**

For the purposes of this Settlement Agreement only:

- (a) **Administrative Expenses** means the costs of notice and claims administration.
- (b) **Approval Hearings** means the hearings of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement.
- (c) **Claimant** means a person, being a Class Member, seeking compensation pursuant to this Settlement Agreement.
- (d) **Claims Administrator** means a Person proposed by the Defendants and appointed by the Courts to administer this Settlement Agreement, including any

claims process, in accordance with the provisions of this Settlement Agreement, and any employees of such Person.

- (e) **Class Counsel** means Client Docken, K.C. of Colleen Napoli Shkolnik Canada and Richard J. Mallett of James H. Brown & Associates LLP;
- (f) **Class Counsel Fees** means the fees, disbursements, costs and other applicable taxes or charges of class counsel.
- (g) **Class Period** means March 20, 2020 to the date of settlement certification.
- (h) **Common Issue** means: whether the Defendants breached the standard of care causing damage to Class Members as defined below.
- (i) **Court** means the Court of King's Bench of Alberta.
- (j) **Effective Date** means the date on which the Final Order has been received from the Court;
- (k) **Final Order** means the final order made by the Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeals being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon final disposition of all appeals.
- (l) **Notice of Claims Procedure** means any form or forms of notice, agreed to by the Plaintiff and the Defendants, or such other form or forms as may be approved by the Courts, which informs the Class of:
  - (i) The approval of this Settlement Agreement; and
  - (ii) The process by which the Class Members may apply to obtain compensation from the Settlement Amount.
- (m) **Notices** means
  - (i) Notice of Certification and Settlement Hearing;
  - (ii) Notice of Claims Procedure;
  - (iii) Notice of termination of this Settlement Agreement if it is terminated or otherwise terminated by Court order; and
  - (iv) Any other notice that may be required by the Court.
- (n) **Opt Out Claimant** means a person who opts out, in accordance with the requirements for opting out, who would have been a Class Member entitled to participate in the settlement but for that opt out.

- (o) **Opt Out Deadline** means 30 days from the publication of the Notice of Approval of Certification and Settlement.
- (p) **Parties** mean the Plaintiff and the Defendant.
- (q) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, collective, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, 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 occurring anywhere, from the beginning of time through the pendency of the Action, in respect of the Alleged Conduct or relating to any conduct alleged (or which could have been alleged) in the Action and future claims relating to continuing acts or practices that occurred during the pendency of the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conduct.
- (r) **Releasee(s)** mean, jointly and severally, individually and collectively, the Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, solicitors, trustees, servants and representatives; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.
- (s) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and the estates, trustees, representatives, heirs, executors, administrators, insurers, as well as anyone that may otherwise bring a direct, indirect, dependent or other claim through the foregoing, and assigns of each of the foregoing.
- (t) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (u) **Settlement Amount** means the all-inclusive sum of \$947,000.
- (v) **Class or Class Members** means

- (i) Current or former residents of Manoir du Lac who tested positive for COVID-19 between the dates March 20, 2020 and April 22, 2020 (inclusive) while residing at Manoir du Lac and became ill or died from COVID-19 by May 22, 2020 (the "**Resident Class**"); and
- (ii) Spouses, adult interdependent partners or biological children of the Resident Class (the "**Family Class**").

## **SECTION 2 – Settlement Approval**

1. The Parties shall use their best efforts to effectuate this Settlement Agreement, including obtaining the approval of the Court, and to secure the prompt, complete and final dismissal with prejudice, of the Action;
2. At a time mutually agreed to by the Plaintiff and the Defendants after this Settlement Agreement is executed, the Plaintiff shall bring a motion before the Court for an order certifying the Action as a class proceeding solely for the purposes of settlement and approving the Notice of Certification and Settlement Hearing.
3. The order certifying the Action as a class action proceeding shall be substantially in the form set out in **Schedule "A"**.
4. Following receipt of the Schedule "A" order and expiration of the applicable opt-out period, and at a time mutually agreed to by the Parties, the Plaintiff shall bring a motion before the Court for orders approving this Settlement Agreement.
5. The order approving this Settlement Agreement shall be substantially in the form set out in **Schedule "B"**.
6. It is a material term of this Settlement Agreement that the Plaintiff and Defendants must agree on the form and content of the orders to be sought and that the issued orders be as provided for in this Settlement Agreement or as otherwise agreed by the Parties. The form and content of the orders shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the form and content of the orders substantially in the form agreed upon shall give rise to a right to terminate.
7. At least thirty days in advance of the motion for certification and the motion for settlement approval or such shorter period of time as the Parties may agree, Class Counsel shall provide the Defendants with drafts of the Notice of Motion and any supporting materials which are intended to be filed with the Court in support of those motions, for review and approval by the Defendants.
8. Until the first of the motions is brought, the Parties shall keep all the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without prior written consent of counsel for



the Parties, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

9. The fact of this settlement and this Settlement Agreement may not be used in any other proceedings to assert or suggest liability against the Defendants or any other person.

### **Section 3 – SETTLEMENT BENEFITS**

1. Within sixty (60) days of the date of execution of this Settlement Agreement, the Defendants shall pay the Settlement Amount to Class Counsel in full and final satisfaction of all payment obligations under this Settlement Agreement.
2. The Defendants will pay the Administrative Expenses.
3. The Defendants will pay \$6,388.91 to class counsel for disbursements.
4. None of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, Administration Expenses and \$6,388.91 in disbursements, for any reason, or in furtherance of this Settlement Agreement:
5. When the Defendants pay the Settlement Amount, Class Counsel will receive it in trust in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction of the Released Claims against the Releasees.
6. On receipt of the Settlement Amount, Class Counsel will deposit it into a trust account. Class Counsel shall not pay out all or part of the monies in the trust account, except in accordance with this Settlement Agreement or in accordance with an order of the Court obtained after notice to the Defendants, and in any event, after all appeal rights have either been lapsed or exhausted.
7. Class Counsel shall bear all risks related to the investment of the monies in the trust account. The Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the trust account including, but not limited to, Class Counsel Fees and any responsibility, financial obligation or liability as a result of any decrease or depreciation of the value of the trust account, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased and/or held in the trust account.
8. All funds held by Class Counsel shall be considered to be in *custodial legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds have been distributed pursuant to this Settlement Agreement and/or further order of the Court.



9. Class Counsel hereby indemnifies, defends, and holds harmless the Defendants and their respective directors, officers and employees from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or any other action taken or failure to act by Class Counsel with the Settlement Amount or monies in trust not strictly in accordance with the provisions of the Settlement Agreement or any implementing order of the Courts.

#### **SECTION 4- OPT OUTS**

1. If a Resident Class Member opts out of the Class, his or her Family Class Members are deemed to have also opted out, and none are entitled to any relief under this Settlement Agreement.
2. Those Members wishing to opt out of the class must do so with the Opt-Out Deadline.
3. Any persons who do not opt out are barred from commencing an action against the Defendants at a later date.
4. Those Class Members wishing to Opt Out of the settlement must do so by providing notice in a form to be approved by the Court.
5. The Plaintiffs will prepare an opt out form and seek approval for same from the Defendants. The Plaintiffs will seek approval of the opt out form from the Court at the motion for certification.

#### **SECTION 5 – RELEASES, DISMISSALS AND STAYS**

1. Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Court approving this Settlement Agreement. The Plaintiff and the Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Action and this Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.
2. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive

of interest, taxes, fees and costs, relating directly or indirectly to the Released Claims, which were or could have been brought in the Action or otherwise against a Releasee are barred, prohibited and enjoined in accordance with the terms of the order (unless such claim is made in respect of a claim by a person that validly opted-out of the Action).

3. The release contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of the Court to approve the release contemplated herein shall give rise to a right of termination by the Defendants.
4. The Releasors shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other class or any other Persons, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek to recover from any Releasee or any other Persons, who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity, or other relief against any Releasee in respect of any Released Claim, and are permanently barred and enjoined from doing so.

#### **SECTION 6 – EFFECT OF SETTLEMENT**

1. The Plaintiff and the Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, 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 fault, omission, wrongdoing or liability by the Defendants or by any Releasee, or of the truth of any of the claims or allegations in the Action or any other pleading filed by the Plaintiffs or any other Class Member.

#### **SECTION 7 – CERTIFICATION FOR SETTLEMENT ONLY**

1. The Parties agree that the Action shall be certified as a class proceeding against the Defendants solely for the purposes of settlement of the Action and the approval of this Settlement Agreement by the Court.
2. The Plaintiffs agree that, in the motions for certification 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 Class. The Plaintiffs acknowledge that the Defendants agree to the definition of the Common Issue for purposes of settlement only.

## SECTION 8 – COMPENSATION AGREEMENT

1. Class Members may make one claim in accordance with the compensation categories as set out in **Schedule “C”** which consist of bodily injury claims and dependent claims (“**Individual Payments**”).
2. The Resident Class is entitled to compensation from the Bodily Injury Claims category.
3. The Family Class is entitled to compensation from the Dependent Claims category.
4. All claims will be individually assessed and payment made after conclusion of the Claims Period defined below.
5. Regardless of the amount of the Individual Payments, the Defendants will pay no more than the Settlement Amount to satisfy the claims.
6. If the combined amount of the Individual Payments exceeds the Settlement Amount, the Class Members will receive a pro rata share of their Individual Payment based on the Settlement Amount.
7. If the total Individual Payments do not reach the Settlement Amount, the Defendants will be reimbursed the difference between the total Individual Payments and the Settlement Amount.
8. It is acknowledged by the parties that Alberta Health Services has waived any allegedly subrogated claims or entitlements.

## SECTION 9 – NOTICE TO CLASS, ADMINISTRATION AND IMPLEMENTATION

1. The Class shall be given the Notices as directed by the Court.
2. The Claims Period shall be 90 days from the date of pronouncement of the order approving settlement (“**Claims Period**”). No claims may be made after expiry of the Claims Period.
3. Claims administration is to be performed by the Claims Administrator.
4. Notice costs and Administration costs are to be paid by the Defendants, with the Claims Administrator to be agreed upon by the parties.
5. The Defendants will obtain quotes from Epiq Class Action Services, RicePoint Administration Inc. and any other class action administrator as they see fit for the role of Claims Administrator. After receipt of quotes, the Defendants will make a recommendation for Claims Administrator to the Plaintiff. If the Plaintiff disagrees with the recommendation, the Parties are at liberty to seek direction from the Court.

6. Claimants seeking compensation as Resident Class members must complete and submit a written application for a claim or, if they are unable to do so, such claim will be completed on their behalf. The claim form will include documentation confirming the date upon which the claimant tested positive for COVID-19 and the date upon which they fell ill due to COVID-19. The documentation shall include a letter from a medical doctor to verify the foregoing dates.
7. Claimants seeking compensation as Family Class members are to complete and submit a claim form and an affidavit or statutory declaration testifying to basic details regarding their relationship with the Resident Class Member and documentary proof of that relationship by way of birth certificate or marriage certificate as the case may be. The claim form will be prepared by Class Counsel for approval by the Defendants.
8. With respect to all but the following Resident Class members - Malcolm Richard, Clara Morin, Hector Dubrule, Berthe Thibault, Leo Payou, Francis Cunningham, Maurice Beaudoin, Marie Berthe Cloutier, Marie Therese MacIntyre, and Francois Brochu - the Claimant will provide medical documentation confirming that the Resident Class member tested positive for COVID-19, the date of the positive test, and date of death confirming death due to COVID-19.
9. Claimants are to submit their claim forms and accompanying documentation to the Claims Administrator, who shall promptly provide copies of submitted claims and supporting documents to counsel for the parties.
10. The Claims Administrator will determine whether each Claimant qualifies as a Class Member, and the level of compensation to which each is entitled.
11. At the end of the Claims Period the Claims Administrator will provide notice to counsel for the parties of preliminary determinations made in relation to each claimant pursuant to the preceding paragraph.
12. The decision of the Claims Administrator is final and binding and there shall be no right of appeal or other recourse to any court or tribunal from the decision.

#### **SECTION 10 – CLASS COUNSEL FEES**

1. Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement.

#### **SECTION 11 – TERMINATION OF SETTLEMENT AGREEMENT**

1. The Defendants or the Plaintiff, in their respective sole discretion, have the option to terminate this Settlement Agreement in the event that:
  - (a) the form and content of any of the orders departs materially from the form and content of the orders as agreed upon by the Plaintiff and the Defendants;



- (b) the form and content of any of the Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiff and the Defendants;
  - (c) the Court declines to approve this Settlement Agreement or any material term or part hereof;
  - (d) the Court declines to dismiss the Action; or
  - (e) the Court approves the Settlement Agreement in a materially modified form
2. The Defendants, in their sole discretion, have the option to terminate this Settlement Agreement in the event that the releases and covenants are not complied with.
  3. If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason it shall be null and void, have no further force and effect, shall not be binding, and shall not be used as evidence or otherwise in litigation.
  4. Following termination of the Settlement Agreement. Class Counsel return to the Defendants the Settlement Amount plus all accrued interest thereon, within thirty (30) business days of termination in accordance with this Settlement Agreement.
  5. The Plaintiff and the Defendants expressly reserve all of their respective rights if this Settlement Agreement is terminated.

## **SECTION 12 – MISCELLANEOUS**

1. The Defendants or the Plaintiff may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
2. Class Counsel may apply to the Court for directions in respect of any Distribution Protocol.
3. All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiff and the Defendants. There shall be no costs to any party.
4. This Settlement Agreement shall be governed pursuant to the laws of the Province of Alberta.
5. This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all 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.

6. This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Releasors, 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 Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.
7. This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.
8. 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, all have no bearing upon the proper interpretation of this Settlement Agreement.

Napoli Shkolnik Canada

Per: \_\_\_\_\_  
Clint G. Docken, K.C.  
Counsel for the Plaintiff

James H. Brown & Associates LLP

Per: \_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff

Integrated Life Care (McLennan) Inc.  
and Integrated Life Care Inc.

Per: \_\_\_\_\_  
Authorized Signatory for  
the Defendants

**Schedule "C"**  
**Individual Payments**

<b>Class Members</b>	
<b>Category</b>	<b>Compensation Amount</b>
A. Bodily Injury Claims	\$3,000
B. Dependent Claims	\$20,814