Form 4.02A

2013 Hfx. No. 414709

SUPREME COURT OF NOVA SCOTIA

B E T W E E N:

AMY TUDOR

Plaintiff

- and -

BAYER CORPORATION; BAYER HEALTH CARE PHARMACEUTICALS, INC; BAYER PHARMACEUTICALS CORPORATION; BAYER HEALTH CARE, LLC; BAYER INC; BAYER SCHERING PHARMA AG, a body corporate, **BAYER AG**, a body corporate

Defendants

Notice of Action

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

TO: BAYER CORPORATION

TO: BAYER HEALTH CARE PHARMACEUTICALS, INC

TO: BAYER PHARMACEUTICALS CORPORATION

TO: BAYER HEALTH CARE, LLC

TO: BAYER INC

TO: BAYER SCHERING PHARMA AG

TO: BAYER AG

Action has been started against you
The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action
To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

• 15 days if delivery is made in Nova Scotia.

• 30 days if delivery is made elsewhere in Canada.

• 45 days if delivery is made anywhere else.

Judgment against you if you do not defend
The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action
If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under $100,000
Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents
Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information
The plaintiff designates the following address:

Wagners Law Firm
1869 Upper Water Street
Halifax, Nova Scotia
B3J 1S9

Documents delivered to this address are considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial
The plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature
Signed April 23, 2013

RAYMOND F. WAGNER, Q.C
Solicitor for Plaintiff

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on April 23, 2013.

Prothonotary

Bonnie Dalton
Deputy Prothonotary

FORM 4.02B

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act,* S.N.S 2007, c. 28

I. OVERVIEW

1. Mirena (levonorgestrel-releasing intrauterine system) is a hormone-releasing intrauterine system, or IUS. It is a small T-shaped device made of soft flexible plastic. Mirena is inserted into a woman's uterus by a trained healthcare provider and is used to prevent pregnancy for up to five years. Mirena is also used to treat heavy menstrual bleeding in women who choose intrauterine contraception. The Defendants to this action, contrary to their marketing campaigns, knew that a disproportionally high number of their Mirena products were perforating the uterine wall and harming patients. The Defendants were aware of many complaints made to the Food and Drug Administration (FDA) and Health Canada regarding the perforation of the uterine wall and migration of their Mirena products from the uterus. The perforation of the uterine wall often results in migration from the uterus and often requires complicated, expensive and painful treatment to correct.

2. The Defendants, however, consistently failed to disclose or warn Canadian patients of the significant risk of adverse events of the Mirena Intrauterine System. The Defendants knew or ought to have known of the significant risks associated with the use of Mirena Intrauterine System.

II. REPRESENTATIVE PLAINTIFF AND CLASS

3. The Plaintiff, Amy Tudor, resides at 555 Water Street, Westport Village, Nova Scotia.

4. The Plaintiff seeks to certify this action as a class proceeding and pleads the *Class Proceedings Act,* S.N.S. 2007, c. 28 as providing the basis for such certification. The Plaintiff, as the Representative Plaintiff, does not have any interest adverse to any of the members of the proposed class. The Plaintiff states that there is an identifiable class that would be fairly and

adequately represented by the Plaintiff; that the Plaintiff's claims raise common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.

5. The Plaintiff proposes to bring a class proceeding on behalf of herself and a class of other residents of Canada who claim to have suffered personal injuries allegedly as a result of the Mirena Intrauterine System. The proposed class will be further defined in the Application for Certification.

6. Class Members have all been inserted with the Mirena Intrauterine System.

7. Class Members have been continuously harmed by their use of the Mirena Intrauterine System as hereinafter described.

8. The Plaintiff and Class Members have suffered pain, loss of enjoyment of life, loss of earnings and earning capacity and therefore claim both special damages and general damages as a result of the Mirena Intrauterine System.

III. DEFENDANTS

9. Defendant Bayer Corporation is, and at all times relevant was, a corporation organized under the laws of the State of Indiana with its headquarters and principal place of business at 100 Bayer Rd., Pittsburgh, Pennsylvania 15205. Defendant Bayer Corporation is the sole member of Bayer Health Care LLC, which owns 100% of Schering Berlin, Inc., which owns 100% of the Defendant Bayer Health Care Pharmaceuticals, Inc. As such, Defendant Bayer Corporation is the parent of Defendant Bayer Health Care Pharmaceutical, Inc.

10. Defendant Bayer Healthcare Pharmaceuticals, Inc is, and at times relevant was, a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 6 West Belt Road, Wayne, New Jersey 07470. Bayer Health Care Pharmaceuticals, Inc was created by the integration of Bayer Health Care and Berlex Laboratories. Bayer

Health Care Pharmaceuticals, Inc is the U.S. based pharmaceutical unit of Schering Berlin, Inc and is a division of Bayer AG.

11. Defendant Bayer Healthcare Pharmaceuticals, Inc was formerly known as Berlex, Inc, which was formerly known as Berlex Laboratories, Inc and is the same corporate entity as Berlex, Inc and Berlex Laboratories, Inc.

12. Defendant Bayer Healthcare Pharmaceuticals, Inc is the holder of approved New Drug Application ("NDA") for the contraceptive device Mirena.

13. Defendant Bayer Pharmaceuticals Corporation is, and at times relevant was, a corporation organized under the laws of the State of Delaware with its headquarters and principal place of business at 1400 Morgan Lane, West Haven, Connecticut.

14. As of January 1, 2008, Defendant Bayer Pharmaceuticals Corporation was merged into Defendant Bayer Healthcare Pharmaceuticals, Inc.

15. Defendant Bayer Healthcare, LLC is, and at all times relevant was, a limited liability corporation organized under the laws of the State of Delaware with its headquarters and principal place of business at 555 White Plains Road, Tarrytown, New York 10591.

16. Defendant Bayer Inc is a Canadian subsidiary of Bayer AG which operates the Bayer Group's Healthcare and Material Science businesses in Canada. Defendant Bayer Inc has its principal place of business located at 77 Belfield Road, Toronto, Ontario, M9W 1G6.

17. Defendant Bayer Schering Pharma AG, formerly known as Schering AG, is a pharmaceutical company that is organized and existing under the laws of the Federal Republic of Germany, having a principal place of business at Mullerstrasse 178, 13353 Berlin, Germany.

18. Defendant Bayer AG is a German chemical and pharmaceutical company that is headquartered in Leverkusen, North Rhine-Westphalia, Germany.

19. Defendant Bayer AG is the third largest pharmaceutical company in the world.

20. Defendant Bayer AG is the parent/holding company of all other named Defendants.

21. Defendants Bayer Corporation; Bayer Healthcare Pharmaceuticals, Inc; Bayer Pharmaceuticals Corporation; Bayer Healthcare, LLC; Bayer Inc; Bayer Schering Pharma AG; and Bayer AG shall be referred to herein individually by name or jointly as the "Defendants."

22. During the Class Period, the Defendants were engaged in the business of developing, designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into interjurisdictional commerce throughout the United States and Canada, either directly or indirectly through third parties, subsidiaries or related entities, the contraceptive device, Mirena.

23. The business of each of the Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the research, development, designing, testing, manufacturing, distributing, packaging, promoting, marketing and selling of the Mirena Intrauterine System in the United States and Canada.

24. At all material times, the Defendants, all or any one of them, were carrying on business as, inter alia, the researchers, developers, designers, testers, manufacturers, distributers, packagers, promoters, marketers and sellers of the Mirena Intrauterine System in the United States and Canada.

IV. NATURE OF THE ACTION

25. Mirena is an intrauterine system that is inserted by a healthcare provider during an office visit. Mirena is a T-shaped polyethylene frame with a drug reservoir, known as the Hormone Cylinder, that contains 52mg of levonorgestrel, a second generation synthetic progestin.

Approximately 20mg are released into the uterus per day (about 10% of the daily dose of an oral contraction containing 150 mcg of levonorgestrel). A monofilament polyethylene thread is attached to the base for removal. It also contains barium sulfate so that it can be easily imaged on x-ray.

26. Its precise mechanism of action is unknown, but it is believed that the device primarily prevents sperm from fertilizing the egg (not an abortificant), using a variety of potential mechanisms, including thickening the cervical mucus, inhibiting sperm capacitation and survival, and suppressing the endometrium (thinning of the uterus lining). It is also thought that Mirena may cause the endometrium to release foreign body mediators, such as white blood cells. Some women may also not ovulate as a result of the absorption of levonorgestrel.

27. The FDA approved the Defendants' New Drug Application for Mirena in December 2000. Sales began in 2001. Mirena has been available in Canada since 2001 for the indication of birth control for a maximum of up to 5 years. It has been used by more than 15 million women worldwide.

28. The Mirena Intrauterine System ("IUS") is designed to be placed within seven (7) days of the first day of menstruation and is approved to remain in the uterus for up to five (5) years. If continued use is desired after five years, the old system must be discarded and a new one inserted.

29. The package labeling recommends that Mirena be used in women who have had at least one child.

30. Mirena's label does not warn about spontaneous migration of the IUS, but only states that migration may occur if the uterus is perforated during insertion.

31. Mirena's label also describes perforation as an "uncommon" event, despite the large number of women who have suffered perforation and migration post insertion, contrary to the assertion.

32. The Defendants have a history of overstating the efficacy of Mirena while understating the potential safety concerns.

33. On June 15, 2010, Bayer Inc., in collaboration with Health Canada, wrote to health care professionals with important safety information regarding reports of uterine perforation in women treated with Mirena.

34. The Plaintiff and Class Members allege that the Defendants concealed and intentionally omitted the following material information:

    a) That the Mirena Intrauterine System is not as safe as other available contraceptives;
    b) That the risks of adverse events with the Mirena Intrauterine System are higher than those of other available contraceptives;
    c) That the Plaintiff and Class Members were put at risk of experiencing serious and dangerous side effects allegedly as a result of the Mirena Intrauterine System;
    d) That the Plaintiff and Class Members needed to be monitored more regularly than normal while using the Mirena Intrauterine System.; and/or,
    e) That the Mirena Intrauterine System was designed, tested, manufactured, marketed, produced, distributed and advertised defectively, negligently, and improperly.

35. The Plaintiff further alleges on behalf of Class Members that the continued use of the Mirena Intrauterine System by Class Members creates ongoing risks to the health of the Class Members.

36. During the applicable times within the Class Period while the Defendants were involved with researching, developing, designing, testing, manufacturing, distributing, packaging, promoting, and marketing the Mirena Intrauterine System, they knew or ought to have known of the safety risks associated with the device.

37. None of the Defendants took the necessary, reasonable steps to prevent harm to the Plaintiff and the Class Members or to protect the health and safety of the Plaintiff and Class Members.

38. Class Members have been inserted with the Mirena Intrauterine System.

V. HARM TO THE PLAINTIFF

39. On or about December 7, 2010, Amy Tudor was inserted with the Mirena Intrauterine System.

40. On or about November 10, 2012, Amy Tudor attended the Digby General Hospital and was advised she was pregnant.

41. On or about November 13, 2012, an ultrasound was performed which confirmed that Amy Tudor's Mirena Intrauterine System had perforated her uterus and migrated into the lower area of her cervix.

42. Amy Tudor has been advised that she will require laparoscopic surgery to remove the Mirena Intrauterine System.

43. The Plaintiff and Class Members have suffered and continue to suffer from anxiety about their health because of the effect that the Mirena Intrauterine System has had on their lives. The Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described below that would give Class Members access to experts who could address their health concerns.

VI. CAUSES OF ACTION

(a) Negligent design, development and testing:

44. The Defendants owed the Plaintiff and Class Members a duty of care as follows:

    (a) to ensure that the Mirena Intrauterine System was thoroughly and appropriately tested so as to determine if there were any potentially adverse side effects in consuming the product;

(b) to ensure that the Mirena Intrauterine System was fit for its intended or reasonably foreseeable use;

(c) to design, develop and test the Mirena Intrauterine System using methods and processes that conform to industry standards and regulations; and,

(d) to conduct appropriate follow-up studies on the efficacy and safety of the Mirena Intrauterine System.

45. The Defendants were negligent in the design, development and testing of the Mirena Intrauterine System. Such negligence includes, but is not limited to the following, that the Defendants jointly and severally:

(a) took inadequate, or no, steps to see that the Mirena Intrauterine System was not dangerous and harmful to recipients during the course of its use and that the product was fit for its intended or reasonably foreseeable use;

(b) inadequately tested the Mirena Intrauterine System;

(c) took unreasonable, or no, steps to see that the levonorgestrel contained in the drug reservoir, which is thought to be responsible for the decrease in menstrual bleeding, did not also cause the lining of the uterus to thin;

(d) misinformed Health Canada by not providing it with complete and/or accurate information; and,

(e) conducted inadequate or no follow-up studies on the efficacy and safety of the Mirena Intrauterine System.

46. The negligence of the Defendants in the design, development and testing of the Mirena Intrauterine System created a substantial likelihood of harm for patients who were implanted with the Mirena Intrauterine System. The Plaintiff and Class Members have suffered harm and damages as a result of the Defendant’s negligence.

(b) Negligent Manufacturing

47. The Defendants owed the Plaintiff and Class Members a duty of care as follows:

    (a) to conform to industry standards, practices and regulations in the manufacturing of the Mirena Intrauterine System;

    (b) to conduct adequate and routine inspections of the plants manufacturing the Mirena Intrauterine System; and,

    (c) to have adequate and appropriate quality control methods in place at the plants manufacturing the Mirena Intrauterine System.

48. The Defendants were negligent in the manufacturing of the Mirena Intrauterine System. Such negligence includes, but is not limited to the following, that the Defendants jointly and severally:

    (a) chose not to meet industry standards, practices and regulations in the manufacturing of the Mirena Intrauterine System;

    (b) inadequately inspected the plants manufacturing the Mirena Intrauterine System;

    (c) manufactured the Mirena Intrauterine System without having in place adequate quality control protocols, or in disregard of protocols;

    (d) hired incompetent personnel and inadequately supervised the personnel manufacturing the Mirena Intrauterine System; and,

    (e) continued to manufacture the Mirena Intrauterine System when they knew or ought to have known that this product caused or could cause serious health problems and death.

49. There existed alternative designs which were safer and economically feasible to manufacture.

50. The Plaintiff and Class Members have suffered harm and damages as a result of the

Defendants' negligence in the manufacturing of the Mirena Intrauterine System.

(c) Negligent distribution, marketing and sale

51. The Defendants owed the Plaintiff and Class Members a duty of care as follows:

    (a) to warn the Plaintiff and Class Members that the Mirena Intrauterine System carried a significant risk of adverse events;

    (b) to take reasonably necessary and appropriate steps to ensure that physicians were appraised and fully and regularly informed of all the health risks associated with the implantation of the Mirena Intrauterine System; and,

    (c) to inform Health Canada and other regulating agencies fully, properly, and in a timely manner of the adverse health risks and complaints associated with the implantation of the Mirena Intrauterine System.

52. The Defendants were negligent in the distribution, marketing and sale of the Mirena Intrauterine System. Such negligence includes, but is not limited to the following, that the Defendants jointly and severally:

    (a) misinformed Health Canada by providing it with incomplete and inaccurate information concerning the Mirena Intrauterine System;

    (b) concealed or mislead the Plaintiff, Class Members and their physicians concerning the risks associated with implanting the Mirena Intrauterine System;

    (c) chose not to provide the Plaintiff, Class Members and their physicians with appropriate warnings concerning the adverse health risks associated with the implantation of the Mirena Intrauterine System;

    (d) chose not to provide the Plaintiff, Class Members and their physicians with updates and current information on the risks and efficacy of the Mirena Intrauterine System as such information became available from time to time;

(e) chose not to provide appropriate warnings of the adverse health risks and early failure rates associated with the use of the Mirena Intrauterine System on package labels, product monograph or customer information pamphlets in Canada;

(f) chose not to warn the Plaintiff and Class Members and their physicians and health regulators about the need for comprehensive regular medical monitoring necessary to assist in the early discovery of problems associated with the implantation of the Mirena Intrauterine System;

(g) after receiving actual and constructive notice of the adverse health risks associated with the Mirena Intrauterine System, chose not to issue adequate warnings, recall the product in a timely manner, publicize the risks and otherwise act properly and in a timely manner to alert the public, including warning the Plaintiff and Class Members and their physicians and health regulators of the drug's inherent risks;

(h) engaged in a system of improper and inadequate direction to their sales representatives and physicians respecting the correct usage of the Mirena Intrauterine System and the adverse health risks associated with the product;

(i) represented that the Mirena Intrauterine System was safe and fit for its intended purpose and of merchantable quality when they knew or ought to have known that these representations were false;

(j) misrepresented the state of research, opinion and medical literature pertaining to the purported benefits of the Mirena Intrauterine System and its associated adverse health risks;

(k) continued to manufacture, market and promote the selling and/or distribution of, the Mirena Intrauterine System when they knew or ought to have known that this product caused or could cause serious health problems;

(l) actively encouraged aggressive implanting of the Mirena Intrauterine System while neglecting to inform consumers, retailers, hospitals, and physicians of the increased health risks associated with the Mirena Intrauterine System, when they knew or ought to have known about these increased risks; and,

(m) continued to manufacture, distribute and sell the Mirena Intrauterine System notwithstanding that the FDA and Health Canada had received numerous complaints involving patients with the Mirena Intrauterine System.

53. The Plaintiff and Class Members have suffered harm and damages as a result of the Defendants' negligence in the distribution, marketing and sale of the Mirena Intrauterine System.

54. The Defendants' negligence in the design, development, testing, manufacture, distribution, marketing and sale of the Mirena Intrauterine System is in breach of the requirements of the *Medical Devices Regulations*, S.O.R./98-282.

(d) Breach of the *Sale of Goods Act*, R.S., c. 408, s.1

55. The Plaintiff pleads and rely upon the *Sale of Goods Act*, R.S. c. 408, s. 1. The Mirena Intrauterine System was purchased by the Plaintiff and Class members pursuant to agreements within the meaning of the *Sale of Goods Act*. The Defendants represented the Mirena Intrauterine System as a suitable, safe, effective, form of intrauterine contraception. The Defendants represented that the Mirena Intrauterine System as having advantages over other forms of contraception. These representations were in fact false, misleading or deceptive.

56. The Plaintiff pleads that the Mirena Intrauterine System was neither fit for its intended purpose nor of merchantable quality as a suitable, safe, effective, form of intrauterine contraception, or as having advantages over other forms of contraception. In making contrary representations, the Defendants acted in breach of section 17 of the *Sale of Goods Act*.

VII. DAMAGES

57. The Plaintiff's and Class Members' injuries and damages were caused by the Defendants, their servants, and agents.

58. As a result of the conduct of the Defendants as hereinbefore set out, the Plaintiff and Class Members have been placed in a position where they have sustained or will sustain serious personal injuries and damages.

59. As a result of the conduct of the Defendants, the Plaintiff, and Class Members suffered and continue to suffer expenses and special damages of a nature and an amount to be particularized prior to trial.

60. Some of the expenses related to the medical treatment that the Plaintiff and Class Members have undergone, and will continue to undergo have been borne by provincial health insurer including the Nova Scotia Medical Services Insurance Plan. As a result of the negligence of the Defendants, the provincial health insurer has suffered and will continue to suffer damages.

(A) Manifest Harm and Injuries:

61. In addition, the past and ongoing use of the Mirena Intrauterine System has resulted in the Plaintiff and Class Members' physical and mental health injuries pleaded above, and has further led to pain and suffering, loss of income, impairment of earning ability, loss of valuable services, future care costs, medical costs, loss of amenities and enjoyment of life, anxiety, nervous shock, mental distress, emotional upset, and out of pocket expenses.

62. The Plaintiff and Class Members assert a claim for each of the types of damages listed above.

(B) Medical Monitoring: Responding to Material Risk of Illness

63. Further, the past and ongoing use of the Mirena Intrauterine System has also caused or materially contributed to increased health risks to the Plaintiff and other Class Members. As a result of the use, the Plaintiff and Class Members have already and will continue to experience illness, anxiety, loss of amenities and enjoyment of life.

64. There are medically accepted tests and diagnostic tools which, if used properly and on a timely basis, will detect at an early stage the serious problems which may result from the use of the Mirena Intrauterine System by the Class Members. However, not all of these tests are generally available or being administered to the Class Members despite their elevated risk. The early detection of these conditions will significantly reduce the harm there from.

65. The Class Members seek to recover damages in the form of the total funds required to establish a 'medical monitoring' process to be made available to the Class Members. Such damages include the costs of medical screening and treatment incurred by or on behalf of the Class Members.

66. The damages referred to above may have been incurred directly by the Plaintiff and Class Members, or may constitute subrogated claims owed to provincial health insurers, or to private health, disability, or group benefit insurers.

67. The Plaintiff further allege that the establishment of a medical monitoring process is a necessary and appropriate step for all of the Defendants to take in the course of fulfilling their obligation to minimize the damages suffered by Class Members.

VIII. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

68. The Defendants designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and sold the Mirena Intrauterine System with full knowledge of the fact that they were adversely impacting the physical and psychological health of the Plaintiff and

the Class Members. Knowledge of the risks associated with the use of the Mirena Intrauterine System was not released to the Plaintiff and Class Members. Despite having specific information that the Plaintiff and Class Members were at risk of serious problems associated with the use of the Mirena Intrauterine System, the Defendants continued or permitted the continuation of the designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labelling, and selling of the Mirena Intrauterine System without any or reasonable controls.

69. These activities were carried out with reckless, callous, and wanton disregard for the health, safety and pecuniary interests of the Plaintiff and other Class Members. The Defendants knowingly compromised the interests of the Plaintiff and Class Members, solely for the purpose of monetary gain and profit. Furthermore, once the Defendants knew of the extraordinary dangers that the Mirena Intrauterine System posed to the Plaintiff and Class Members, the Defendants failed to advise them in a timely fashion, or fully, or at all.

70. The Defendants' negligence was callous and arrogant and offends the ordinary community standards of moral and decent conduct. The actions, omissions, or both, of the Defendants involved such want of care as could only have resulted from actual conscious indifference to the rights, safety or welfare of the Plaintiff and Class Members.

71. Consequently, the Plaintiff and Class Members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with the outrageous behavior of the Defendants.

72. The Plaintiff and Class Members plead that, by virtue of the acts described herein, the Defendants are liable to them in damages. Each of the Defendants is vicariously liable for the acts and omissions of the others for the following reasons:

    (a) each was the agent of the other;
    (b) each Defendants' business was operated so that it was inextricably interwoven with the business of the other;

(c) each Defendant entered into a common advertising and business plan with the other to distribute and sell the Mirena Intrauterine System;

(d) each Defendant owed a duty to the other and to the Plaintiff and Class Members by virtue of the common business plan to distribute and sell the Mirena Intrauterine System.; and

(e) each Defendant intended that the businesses be run as one global business organization.

IX. GENERAL PROVISIONS

73. The Plaintiff states that the Defendants are responsible, jointly and severally, for the injuries and damages suffered by the Plaintiff and other Class Members.

74. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendants are vicariously liable to the Plaintiff and Class Members for the acts, omissions, deeds, misdeeds and liabilities of their contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.

75. The Plaintiffs rely upon the statutes as set out in Schedule "A" hereto.

X. RELIEF SOUGHT

76. The Plaintiff repeats the foregoing paragraphs and states that the Defendants are jointly and severally liable for the following:

(a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class;

(b) general damages, including aggravated damages for personal injuries;

(c) pecuniary damages;

(d) special damages for medical expenses and other expenses related to the use of the Mirena Intrauterine System;

(e) aggravated, punitive and exemplary damages;

(f) damages for the funding of a "Medical Monitoring Program", supervised by the Court, for the purpose of retaining appropriate health and other experts to review and monitor the health of the Class Members, and to make recommendations about their treatment;

(g) The subrogated interests of the Provincial and Territorial health insurers includes the cost of all past and future insured services for the benefit of the Plaintiff and Class Members on account of defects in the Mirena Intrauterine System;

(h) interest pursuant to the *Judicature Act*;

(i) costs; and,

(j) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 23rd day of April, 2013.

RAYMOND F. WAGNER, Q.C.
Wagners
Counsel for the Plaintiff
1869 Upper Water Street
3rd Floor Pontac House
HALIFAX, NS B3J 1S9
Tel: 902-425-7330
Email: ray@wagners.co

SCHEDULE A

SUBROGATION LEGISLATION

***Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T. 1988, c. T-3,**
Current to Gazette Vol. XXVII:10 (October 31, 2006)

section 19.

19(1) Subrogation
Where insured services have been provided to an insured person in respect of an injury resulting from a wrongful act or omission of another, the Minister is subrogated to the rights of the insured person against any other person for the recovery of the full amount of the cost of providing the insured services.

19(2) Enforcement
The Minister may enforce the rights subrogated under subsection (1) by
(a) bringing an action in the name of the Minister or in the name of the insured person; and
(b) effecting a settlement at such time and for such amount as the Minister considers appropriate.

R.S.N.W.T. 1988, c. 126 (Supp.), s. 10; 2002, c. 17, s. 6 (Sched. F, item 4)

Nunavut

***Hospital Insurance and Health and Social Services Administration Act* R.S.N.W.T. 1988, c. T-3**
Current to Gazette Vol. 8:10 (October 31, 2006)

19(1) Subrogation
Where insured services have been provided to an insured person in respect of an injury resulting from a wrongful act or omission of another, the Minister is subrogated to the rights of the insured person against any other person for the recovery of the cost of the insured services provided.

19(2) Enforcement
The Minister may enforce the rights subrogated under subsection (1) by
(a) bringing an action in the name of the Minister or in the name of the insured person; and
(b) effecting a settlement at such time and for such amount as the Minister considers appropriate.

R.S.N.W.T. 1988, c. 126 (Supp.), s. 10

Yukon

***Hospital Insurance Services Act*, R.S.Y. 2002, c. 112,**
Current to Gazette Vol. 25:10 (October 15, 2006)

10. Subrogation

On the provision of insured services to an insured person in respect of an injury resulting from a wrongful act or omission of another person, the Government of the Yukon shall be subrogated to all rights of the injured person for the purpose of recovering the cost of those insured services, and may bring an action either in its own name or in the name of the insured person for the recovery of the amount thereof and effect a settlement of the claim.

***Hospitals Insurance Act*, R.S.B.C. 1996, c. 204 [en. 1994, c. 37, s.4; am. 1996, c.24, s.1(3)]**
Current to Gazette Vol. 49:19 (October 20, 2006)
25. Third party liability

25(1)
If, as a result of the wrongful act or omission of another, a beneficiary suffers personal injuries for which the beneficiary receives hospital services paid for by the government, the beneficiary has the same right to recover the sum paid for the services against the person guilty of the wrongful act or omission as the beneficiary would have had, had the beneficiary been required to pay for the services personally.

25(2)
On the beneficiary recovering the sum or part of it under subsection (1), the beneficiary must pay it at once to the minister.

25(3)
The minister may order that a commission be paid for money recovered under subsection (1) and the amount of the commission and the conditions under which it may be paid must be in accordance with the rules prescribed by the Lieutenant Governor in Council.

25(4)
The government is subrogated to the rights of the beneficiary to recover sums paid for hospital services by the government, and an action may be maintained by the government, either its name or the name of the beneficiary, for the recovery of the sum paid for hospital services as provided in subsection (1).

25(5)
It is not a defence to an action brought by the government under subsection (4) that a claim for damages has been adjudicated on unless the claim included a claim for the sum paid for hospital services, and it is not a defence to an action brought by a beneficiary for damages for personal injuries that an action taken by the government under subsection (4) has been adjudicated on.

25(6)
No release or settlement of a claim or judgment based on a cause of action for damages for personal injuries in a case where the injured person has received hospital services paid for is binding on the government unless the minister or a person designated by the minister has approved the settlement in writing.

25(7)
The Lieutenant Governor in Council may, by regulation, limit or define the circumstances that give rise to a cause of action under this section.

25(8)
This section applies to claims for hospital services arising after a day to be set by the Lieutenant Governor in Council.
R.S.B.C. 1996 (Supp.), c. 204, s. 10

Alberta

***Hospitals Act* R.S.A. 2000, c. H-12**

Part 5 -- Crown's Right to Recover Health Costs
Division 1 -- Crown's Right of Recovery

s 62. Crown's right of recovery

62(1)
If a beneficiary receives health services for personal injuries suffered as a result of a wrongful act or omission of a wrongdoer, the Crown has the right to recover from the wrongdoer the Crown's cost of health services
(a) for health services that the beneficiary has received for those personal injuries, and
(b) for health services that the beneficiary will likely receive in the future for those personal injuries.

62(2)
If a beneficiary is contributorily negligent, the Crown is entitled to recover 100% of the Crown's cost of the beneficiary's health services less a percentage for the beneficiary's contributory negligence as determined under sections 63 and 64.

62(3)
Notwithstanding this Division, the Crown does not have a right to recover the Crown's cost of health services provided to a beneficiary if
(a) the beneficiary's personal injuries are caused by an act or omission of a wrongdoer in the use or operation of an automobile, and
(b) the wrongdoer is, when the injuries are caused, insured under a motor vehicle liability policy.

Saskatchewan

***Department of Health Act*, R.S.S. 1978, c. D-17**
Current to Gazette Vol. 102:44 (November 3, 2006)

19. Liability of certain third parties and insurers

19(1)
In this section:
(a) [Repealed 1997, c. 34, s. 9.]
(b) **"health services"** means:
(i) insured services within the meaning of *The Saskatchewan Medical Care Insurance Act*;
(ii) inpatient services or outpatient services provided in a hospital or any other health facility;
(iii) services provided pursuant to section 10 that a physical therapist is authorized to provide; or
(iv) any other services prescribed in the regulations.

19(2)
Where, as a result of the negligence or other wrongful act of any other person, a beneficiary suffers personal injuries for which the beneficiary receives health services, the beneficiary has the same right to recover the cost of those services from the person guilty of the negligence or other wrongful act as the beneficiary would have had if he or she had been required to pay for the health services.

19(3)
On the provision of health services to a beneficiary mentioned in subsection (2), the minister shall be subrogated to all rights of recovery of the beneficiary from any person with respect to the cost of those health services and may bring an action in the name of the beneficiary to enforce those rights.

19(4)
Nothing in subsection (2) or (3) restricts the right of the beneficiary to recover any sum with respect to the personal injuries in addition to the cost of health services received by the beneficiary.

19(5)
Where a beneficiary brings an action to recover any sum with respect to the personal injuries mentioned in subsection (4), the beneficiary shall, on behalf of the minister, include in his or her claim a claim for the cost of health services received by the beneficiary.

19(6)
Except with the written consent of the minister, no action mentioned in subsection (5) shall be settled without provision being made for payment in full of the cost of health services received by the beneficiary.

19(7)
The cost of health services received by a beneficiary shall be determined in accordance with the following:
(a) where the health service is an insured service within the meaning of *The Saskatchewan Medical*

Care Insurance Act, the cost of the health service is equal to the amount to be paid for that type of service as set out in the regulations made pursuant to that Act;
(b) subject to clause (c), where the health service is an inpatient service or an outpatient service provided to the beneficiary in a hospital or other health facility, the cost of the health service is to be calculated on the basis of the daily rate for that type of service set by the department for the purpose of charging other provinces or territories of Canada for the provision of that service to residents of those provinces or territories while they are in Saskatchewan;
(c) where the health service is provided outside a hospital by a physical therapist who is under contract to, or is an employee of, the department or a regional health authority or an affiliate, as defined in *The Regional Health Services Act*, the cost of the health service is to be calculated on the basis of the rate for that type of service set by the department; or
(d) where the health service is a service that is prescribed in the regulations, the cost of the health service is to be calculated in the manner set out in the regulations.

19(8)
On recovering all or any part of the cost of health services received by the beneficiary, the beneficiary shall immediately pay the amount recovered to the minister.

19(9)
The minister may bear the proportion of the taxable costs payable by a beneficiary conducting an action mentioned in this section that bears the same ratio to the total of those costs as the amount claimed on behalf of the minister bears to the total amount claimed, but the portion of the taxable costs borne by the minister shall not exceed 50% of the amount claimed on the minister's behalf.

19(10)
An insurer who is liable to indemnify the person guilty of the negligence or other wrongful act mentioned in subsection (2) shall pay to the minister the lesser of:
(a) the amount for which the insurer is liable; and
(b) the cost of the health services received by the beneficiary.

19(11)
A payment to the minister pursuant to subsection (10) shall, to the extent of the amount paid, discharge the liability of the insurer to the person guilty of the negligence or other wrongful act mentioned in subsection (2).

19(12)
Notwithstanding anything in *The Automobile Accident Insurance Act*, where a beneficiary mentioned in subsection (2) receives benefits pursuant to Part VIII of that Act, the insurer within the meaning of that Act shall pay to the minister the cost of health services received by the beneficiary determined in accordance with subsection (7), unless the minister agrees otherwise.
1995, c. 10, s. 2(3); 1997, c. 34, s. 9; 2002, c. R-8.2, s. 73(6)

Manitoba

Manitoba Public Insurance Corporation Act, C.C.S.M. c. P215
Current to Gazette Vol. 135:44 (November 4, 2006)

s.26: Subrogation

26(1) Subrogation
Upon making any payment of benefits or insurance money or upon assuming liability for such payment, the corporation is subrogated to and shall be deemed to be an assignee of all rights of recovery against any other person liable in respect of the loss, damage, injury, or death of every person to whom, or on whose behalf, or in respect of whom, the benefits or insurance money are to be paid; and the corporation may enforce those rights of recovery as provided in subsection (6) to the extent that the corporation has paid or has assumed liability to pay the benefits or insurance money.

26(2) When rights of subrogation apply
The rights conferred upon the corporation under this section apply only where the loss, damage, injury, or death for which the corporation has paid or has assumed liability to pay benefits or insurance moneys is caused or contributed to by the fault of
(a) a person who, at the material time, was driving a motor vehicle
(i) while not qualified to drive a motor vehicle; or
(ii) while not authorized by law to drive a motor vehicle; or
(iii) that was not designated in an unexpired owner's certificate; or
(iv) that was towing an unregistered trailer that was required to be registered under *The Drivers and Vehicles Act*; or
(v) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the motor vehicle; or
(b) a person who, at the material time, was driving or operating a motor vehicle or trailer without the consent, express or implied, of the owner thereof or who otherwise is not a person entitled to the benefit of subsection 38(4); or
(c) a person whose fault did not consist of acts or omissions in the ownership, use, or operation of a motor vehicle or trailer; or
(d) a person not the owner of a vehicle causing the loss, damage, injury or death or sustaining the loss or damage who at the material time is engaged in the business of selling, repairing, servicing, storing or parking automobiles or the servant or agent of any such person.

26(3) No reduction of liability
The liability of any of the persons mentioned in subsection (2) is not limited, restricted, or reduced by reason of this section; but in every case to which this section applies, the liability for the loss, damage, injury, or death and the damages recoverable therefor shall be determined and assessed as fully as if section 38 had not been enacted.

26(4) Liability of other persons
Every person who, either alone or together with others, is, or apart from this Act would be, liable for loss, damage, injury, or death caused by the fault of a person mentioned in subsection (2) shall,

for the purpose of this section, be liable to the same extent as the person mentioned in subsection (2).

26(5) Non-application to owner

Subsection (4) does not apply to an owner of a motor vehicle or trailer where loss, damage, injury, or death is caused by fault on the part of a driver or operator of that motor vehicle or trailer who, at the material time, was not the owner, and

(a) was living with and was a member of the family of the owner, if the owner proves that the driver or operator had acquired possession of the motor vehicle or trailer without the consent, express or implied, of the owner; or

(b) if the owner proves that he has observed and performed the terms and conditions of a plan insofar as those terms and conditions relate to third party liability insurance and are required to be observed and performed by him.

26(6) Power of corporation in enforcing rights to which it is subrogated

For the purpose of enforcing the rights of recovery to which the corporation is subrogated and of which it is deemed to be an assignee under subsection (1) the corporation may

(a) bring a separate action in its own name to recover from the person liable in respect of the loss, damage, injury, or death the amount of benefits and insurance money that it has paid or for which it has assumed liability; or

(b) join with any other person who has a cause of action for the loss, damage, injury, or death in respect of which benefits and insurance money have been paid or for which the corporation has assumed liability, to bring, upon such terms as may be agreed to by that person, one action in the name of that person for all damages that may be recoverable in respect of that cause of action.

26(7) Person may bring action in own name

Where the corporation brings a separate action under clause (6)(a), a person who has a cause of action in respect of the loss, damage, injury, or death for which the corporation has paid or assumed liability for benefits or insurance money may bring action in his own name for the damages recoverable by him; but he may recover only the amount by which the damages exceed the benefits and insurance money.

26(8) Rights of corporation not to be prejudiced

The commencement of an action or other proceeding by any person in respect of loss, damage, injury, or death shall not prejudice the right of the corporation to bring, at any time prior to judgment in that action or other proceeding, a separate action under clause 6(a) and subsection (7) applies to such action.

26(9) Compromising of claims restricted

Upon being notified in writing that the corporation has made or is making a claim or bringing an action or other proceeding under this section, no person shall negotiate or effect a compromise, settlement, or satisfaction of any claim of that person to the prejudice of the claim of the corporation; and a person receiving such a notice who has received benefits or insurance money

(a) shall enter into such agreements and execute such documents as the corporation may reasonably request to further secure the rights conferred upon the corporation under this section; and

(b) shall not interfere in any negotiations for compromise or settlement or in, except as provided in subsection (7), the action or proceeding; but, whenever requested by the corporation, shall aid in securing information and evidence and the attendance of any witness, and shall co-operate with the corporation, except in a pecuniary way, in any action or other proceeding or in the prosecution of an appeal.

2005, c. 37, Sched. A, s. 158(5)

***The Health Services Insurance Act* R.S.M. 1987, c. H35**
Current to Gazette Vol. 135:44 (November 4, 2006)

Section 97.

97(1) Definition of past and future insured services
In this section,
"future cost of insured services" means the estimated total cost of the future insured hospital, medical or other health services made necessary as the result of a bodily injury that will probably be required by an insured person after the date of settlement or, where there is no settlement, the first day of trial; *("coût futur des services assurés")*
"past cost of insured services" means the total cost of the insured hospital, medical or other health services made necessary as the result of a bodily injury and provided to an insured person up to and including the date of settlement or, where there is no settlement, the first day of trial. *("coût antérieur des services assurés")*

97(2) Action by insured person for cost of insured services
When, as a result of the negligence or other wrongful act or omission of another person, an insured person suffers bodily injuries for which he or she receives insured hospital, medical or other health services under this Act, and he or she is not entitled to receive compensation under Part 2 of *The Manitoba Public Insurance Corporation Act*, the person may, subject to section 101, bring an action against and recover from that other person
(a) the past cost of the insured services; and
(b) the future cost of insured services;
for which the person, if he or she were not an insured person, would be legally liable to pay.

97(3) Cost of hospital services
For the purpose of this section, the cost of insured hospital services shall be the per diem rate approved by the minister.

97(4) Certificate
For the purpose of an action referred to in this section, the minister may issue one or more certificates that set out
(a) the insured hospital, medical or other health services that an insured person has received for bodily injuries suffered as a result of the negligence or other wrongful act or omission of another person; and
(b) the cost of those services.

97(5) Admissibility of certificate

A certificate under subsection (4) is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the minister's appointment or signature.

1991-92, c. 8, s. 20; 1992, c. 35, s. 37; 1993, c. 36, s. 6(3); 2001, c. 21, s. 10

Ontario

***Health Insurance Act*, R.S.O. 1990, c. H.6**
Current to Gazette Vol. 139:47 (November 25, 2006)
Section 30 & 31: Subrogation
30(1) Subrogation
Where, as the result of the negligence or other wrongful act or omission of another, an insured person suffers personal injuries for which he or she receives insured services under this Act, the Plan is subrogated to any right of the insured person to recover the cost incurred for past insured services and the cost that will probably be incurred for future insured services, and the General Manager may bring action in the name of the Plan or in the name of that person for the recovery of such costs.

30(2) Payment by Plan recoverable by insured
For the purposes of subsection (1), the payment by the Plan for insured services shall not be construed to affect the right of the insured person to recover the amounts so paid in the same manner as if such amounts are paid or to be paid by the insured person.

30(3) Cost of hospital services
For the purposes of this section, the cost of insured services rendered to an insured person in or by a hospital or health facility shall be at the rate charged by the hospital or health facility to a person who is not an insured person.

30(4) Exception
Despite subsection (1), the Plan is not subrogated to the rights of an insured person in respect of personal injuries arising directly or indirectly from the use or operation, after the 21st day of June, 1990 and before the day section 267.1 of the *Insurance Act* comes into force, of an automobile in Canada, the United States of America or any other jurisdiction designated in the *Statutory Accident Benefits Schedule* under the *Insurance Act*.

30(5) Exception
Despite subsection (1), the Plan is not subrogated to the rights of the insured person, as against a person who is insured under a motor vehicle liability policy issued in Ontario, in respect of personal injuries arising directly or indirectly from the use or operation, after section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force, of an automobile in Ontario or in any other jurisdiction designated in the *Statutory Accident Benefits Schedule* under the *Insurance Act*.

30(6) Definition
In subsection (5),
"motor vehicle liability policy" has the same meaning as in the *Insurance Act*.
1993, c. 10, s. 53; 1996, c. 21, s. 51

31(1) Subrogated claim included in action
Any person who commences an action to recover for loss or damages arising out of the negligence or other wrongful act of a third party, to which the injury or disability in respect of which insured

services have been provided is related shall, unless otherwise advised in writing by the General Manager, include a claim on behalf of the Plan for the cost of the insured services.

31(2) Recovery paid to Ontario

Where a person recovers a sum in respect of the cost of insured services, the person shall forthwith pay the sum recovered to the Minister of Finance.

2006, c. 19, Sched. L, s. 11(5)

Newfoundland

Medical Care Insurance Act, 1999 **S.N. 1999, c. M-5.1,**
Current to Gazette Vol. 81:46 (November 17, 2006)

s 19. Recovery of costs for services

19(1)
This section applies where insured services are provided to an injured or disabled person, in this section referred to as the "insured person", with respect to an injury or disability where the injury or disability was caused by, or contributed to by, or results from an occurrence other than a motor vehicle accident in which the person, whose fault, negligence or other wrongful act or omission caused, contributed to or resulted in the injury or disability, in this section referred to as the "tortfeasor", is insured at the date of the accident, by a policy of insurance through a licensed insurer carrying on business in the province.

19(2)
An insured person who receives insured services in respect of an injury or disability caused or contributed to by or resulting from the fault, negligence or other wrongful act or omission of a tortfeasor has the same right to recover the cost of those insured services from the tortfeasor as he or she would have had if the person had himself or herself been required to pay for the services.

19(3)
An insured person who, under subsection (1), recovers from another person the whole or a part of the cost of insured services shall, on recovery from that other person, pay to the minister the amount recovered and the minister may, if the amount so recovered is not paid to it within a reasonable time, recover the amount from the insured person as a debt due the Crown.

19(4)
Where the cost of insured services referred to in subsection (1) is paid, or an agreement has been entered into covering payment, by the minister to a person, physician or professional medical corporation or where the services are provided by a person employed in the department, the minister is subrogated to all rights of recovery of or on behalf of the insured person against the tortfeasor and may bring an action in his or her own name or in the name of the insured person to enforce those rights against the tortfeasor in respect of the cost of the insured services.

19(5)
The rights conferred upon the minister by subsection (4) shall not be considered to restrict other rights of recovery of the insured person in respect of the injury or disability referred to in subsection (1) for loss or damage not the subject of insured services and if the insured person starts an action in respect of that loss or damage he or she shall include a claim on behalf of the minister for the cost of the insured services provided to the insured person.

19(6)
It is not a defence to an action brought by the minister under subsection (4) that a claim for

damages has been adjudicated upon unless that claim included a claim for the sum paid for insured services, and it is not a defence to an action for damages for personal injuries brought by an insured person that an action taken by the minister under subsection (4) has been adjudicated upon.

19(7)
A release or settlement of claim which includes the cost of insured services is not effective unless the minister has consented to the release or settlement or unless the minister is satisfied with the provisions of the release or settlement.

19(8)
The costs of an action by or on behalf of an insured person in which a claim has been included on behalf of the minister under subsection (5) shall be borne by the minister in the same proportion as the claim of the minister for the cost of insured services provided bears to the total claim by or on behalf of the insured person in the action.

19(9)
If within 2 months after the last act or omission which caused the injury or disability of an insured person an action has not been started by or on behalf of that person under subsection (1) for the recovery of damages arising out of the injury or disability, the minister upon service of notice on the insured person may start an action in his or her own name or in the name of that person for the recovery of the cost of the insured services, and before trial of the action that person may join in the action another claim arising out of the same occurrence upon the conditions as to costs or otherwise that to the court may seem just and may in that case effect settlement of that claim.

19(10)
A liability insurer shall pay to the minister an amount referable to a claim for recovery of the cost of insured services that would otherwise be payable to an insured person and payment of that amount to the minister discharges the liability of the insurer to pay that amount to the insured person or to a person claiming under or on behalf of the insured person.

19(11)
For the purpose of subsection (10) a **"liability insurer"** means a person regularly engaged in the business of underwriting risks in respect of negligence.

19(12)
Where as a result of a claim under this section there are insufficient funds to provide complete recovery to an insured person for his or her losses or injury and to pay the cost of insured services, that person and the minister shall share to that extent in proportion to their respective losses in a recovery, but nothing in this provision prevents the minister from waiving in whole or in part its share of an amount recovered where in the opinion of the minister the circumstances so warrant.

19(13)
For the purpose of this section,
(a) **"insured services"** means insured services as defined in the regulations made under this Act;
(b) **"participating province"** means a participating province as defined by the *Canada Health Act* (Canada); and

(c) the cost of insured services provided is,
(i) in the province, or a participating province, the cost as established by the minister, and
(ii) elsewhere than in the province or a participating province, the cost calculated at a rate which, in the opinion of the minister, is fair having regard of the services provided.

2001, c. 9, s. 24

PEI

***Hospital and Diagnostic Services Insurance Act*, R.S.P.E.I. 1988, c. H-8**
Current to Gazette Vol. 132:47 (November 25, 2006)

Section 14:

14(1) Definitions
In this section
(a) **"injured person"** means a person who has suffered injury due to the negligent or wrongful act or omission of another person;
(b) **"other person"** means the person who appears to have been negligent or committed a wrongful act or omission that resulted in injury to the injured person.

14(2) Right to claim for insured services
Subject to section 65.1 of the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4, an injured person who receives insured services pursuant to this Act
(a) shall have the same right to claim for the cost of the insured services against the other person, as the injured person would have had if the injured person had been required to pay for the insured services; and
(b) shall include a claim for the cost of insured services received pursuant to this Act, where the injured person makes a claim against the other person.

14(3) Payment of damages to Minister
Where, pursuant to subsection (2) a person recovers damages attributable to insured services received pursuant to this Act, the person shall, within 20 days, pay those damages to the Minister.

14(4) Subrogation
The Minister is subrogated to the right of the injured person to claim against the other person pursuant to subsection (2).

14(5) Minister's action
Where an injured person
(a) recovers damages against the other person by court order or by settlement but does not pay to the Minister the amount attributable to a claim for the cost of the insured services; or
(b) does not claim the cost of insured services against the other person,
the Minister may maintain an action against the injured person for the recovery of the cost of insured services provided pursuant to this Act.

14(6) Not binding against Minister, unless
An adjudication of the injured person's claim against the other person shall not be binding against the Minister unless the claim included the cost of insured services provided pursuant to this Act.

14(7) Not a defence, unless
The settlement or release of an injured person's claim against the other person shall not be binding against nor be a defence against the Minister's claim under this section unless

(a) the claim included the cost of insured services provided pursuant to this Act; and
(b) the Minister has approved the settlement or release in writing.

14(8) Approval not releasing Minister's claim
The Minister may give written approval to a settlement by the injured person which does not settle or release the claim of the Minister for cost of the insured services provided pursuant to this Act.

14(9) Net amount prorated
Subject to the regulations, where the net amount recovered pursuant to this section is insufficient to cover both the damages of the injured person and the cost of insured services provided pursuant to this Act, the injured person and the Minister shall share the recovery in proportion to their respective losses, unless the Minister agrees otherwise in writing.

14(10) Insurer to provide information
Every liability insurer, at the Minister's request, shall provide information to the Minister respecting
(a) a claim made against an insured person by a person who received insured services pursuant to this Act; and
(b) the terms and conditions of any settlement entered into by an insured person and a person who received insured services pursuant to this Act.

14(11) Claim against liability insurer
Where an injured person makes a claim against a liability insurer respecting injuries that included the provision of insured services under this Act, the liability insurer shall pay to the Minister the cost of the insured services, which shall discharge the insurer of liability for those insured services.

14(12) Where *Insurance Act* applies
Subsection (11) does not apply where subsection 65.1(7) of the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4 applies.

14(13) Certificate prima facie proof
In an action pursuant to this section, a certificate signed on behalf of the Minister shall be *prima facie* proof
(a) that the person named in the certificate has received insured services pursuant to this Act in the amount showing in the certificate; and
(b) and of the office, authority and signature of the person signing, without proof of the person's appointment, authority or signature.

14(14) Minister may approve recovery fees
The Minister may approve the payment of recovery fees as prescribed, in respect of the injured person's claim for the cost of insured services received pursuant to this Act.
1993, c. 30, s. 61(8)(e); 1997, c. 22, s. 30(5)(k); 1999, c. 29, s. 3

Nova Scotia

Health Services and Insurance Act R.S.N.S. 1989, c. 197
Current to Gazette Vol. 30:21 (November 10, 2006)

Section 18:

18(1) Right of recovery by injured person
Where, as a result of the negligence or wrongful act or omission of another, a person suffers personal injuries for which the person received insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment, home-care services, care for a person in a home for special care or child-care facility to which the Province has made payment, insured professional services under this Act, or any other care, services or benefits designated by regulation, including the future costs of any such care, services or benefits, the person
(a) has the same right to recover the sum paid for the care, services or benefits against the person who was negligent or was responsible for the wrongful act or omission as the person would have had if that person had been required to pay for the care, services or benefits; and
(b) if the person makes any claim for the personal injuries suffered against the person who was negligent or who was responsible for the wrongful act or omission, shall claim and seek to recover the costs of the care, services or benefits.

18(2) Payment to Minister
Where, under subsection (1), a person recovers a sum in respect of insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment or insured professional services received by him under this Act, he shall forthwith pay the sum recovered to the Minister.

18(3) Subrogation of Crown
Her Majesty in right of the Province shall be subrogated to the rights of a person under this Section to recover any sum paid by the Minister for insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment or insured professional services provided to that person, and an action may be maintained by Her Majesty, either in Her own name or in the name of that person, for the recovery of such sum.

18(4) Defence excluded
It shall not be a defence to an action brought by Her Majesty in right of the Province under subsection (3) that a claim for damages has been adjudicated upon unless the claim included a claim for the sum paid for insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment and insured professional services and it shall not be a defence to an action for damages for personal injuries brought by a person who has received insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment or insured professional services that an action taken by Her Majesty under subsection (3) has been adjudicated upon.

18(5) Settlement or judgment not binding

No release or settlement of a claim or judgment based upon a cause of action for damages for personal injuries in a case where the injured person has received insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment or insured professional services under this Act shall be binding upon Her Majesty unless the Minister or a person designated by him has approved the release or settlement in writing.

18(5A)

Subject to subsection (5C), where, as a result of a claim pursuant to this Section,

(a) the claim is settled or a judgment is obtained; and

(b) insufficient funds are available to provide complete recovery to the injured person for the injured person's losses and injuries and to pay the costs of the care, services and benefits referred to in subsection (1),

the injured person and Her Majesty in right of the Province shall share *pro rata* in proportion to their respective losses in any recovery in accordance with the terms and conditions prescribed by regulation.

18(5B)

No person acting on their own behalf or on behalf of another person, shall, without the approval in writing pursuant to subsection (5C) of the Minister, make a settlement of a claim based upon a cause of action for damages for personal injuries in a case where the injured person has received care, services or benefits referred to in subsection (1) unless at the same time the person makes a settlement to recover the same *pro rata* proportion in respect of the cost of the care, services and benefits referred to in subsection (1) as the injured person is to recover in respect of the person's losses and injuries.

18(5C)

Where a person who makes a claim pursuant to subsection (1) has obtained an offer for a settlement whereby the same *pro rata* proportion of the cost of the care, services and benefits referred to in subsection (1) would be recovered as the injured person would recover in respect of the person's losses and injuries but, in the opinion of the Minister or a person designated by the Minister, the offer would not provide sufficient recovery in respect of the care, services and benefits referred to in subsection (1), the Minister or a person designated by the Minister may approve, in writing, a release or settlement whereby the person making a claim pursuant to subsection (1) makes a settlement of a claim in respect of the person's injuries or losses without making a settlement in respect of the cost of the care, services and benefits referred to in subsection (1), but the written approval is not binding on Her Majesty in right of the Province in relation to a claim made pursuant to subsection (5) in respect of the cost of the care, services and benefits referred to in subsection (1).

18(5D)

Every liability insurer carrying on business in the Province shall provide the Minister, when requested to do so, information relating to

(a) a claim made against an insured person by a person who received any of the care, services or benefits referred to in subsection (1); or

(b) the terms and conditions of any settlement entered into by an insured person and a person who

received any of the care, services or benefits referred to in subsection (1).

18(5E)
Notwithstanding any other provision of this Act, the Minister may, in accordance with the regulations, authorize the payment of a fee to a barrister and solicitor who makes a claim on behalf of an injured person and recovers a sum in respect of the cost of care, services or benefits referred to in subsection (1) that are received by the injured person.

18(6) Payment by liability insurer
Where a person whose act or omission resulted in personal injuries to another is insured by a liability insurer, the liability insurer shall pay to the Minister any amount referable to a claim for recovery of the cost of insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment and insured professional services that would otherwise be paid to the insured person and payment of that amount to the Minister discharges the liability of the insurer to pay that amount to the insured person or to any person claiming under or on behalf of the insured person.

18(7) Amount payable
For the purposes of this Section, the sum paid for insured hospital services that are received by an injured person shall be an amount equal to the charges of the hospital in which the services were provided, at rates approved by the Minister, that the insured person would have been required to pay if he was not entitled to receive the services as insured hospital services under this Act.

18(8) Certificate as prima facie proof
In an action under this Section a certificate of a person designated by the Minister as to the sum paid for insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment or insured professional services received by an injured person is admissible in evidence and is *prima facie* proof of that sum.

18(9)
[Repealed 2002, c. 5, s. 24(3).]

18(10)
This Section applies except where personal injury has occurred as the result of a motor vehicle accident in which the person whose act or omission resulted in the personal injury is insured by a policy of third-party liability insurance on or after the date this subsection comes into force.

18(11)
The Minister may impose a levy to be paid by each motor vehicle insurer with respect to each vehicle insured by that insurer for the purpose of recovering insured hospital services, benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment or insured professional services pursuant to this Act incurred by third parties as a result of personal injury in motor vehicle accidents.

18(12)
Within sixty days after the coming into force of subsections (10) to (20), the Minister shall

estimate the levy applicable to the end of the calendar year and so inform the Superintendent of Insurance.

18(13)
Within ninety days of the coming into force of subsections (10) to (20), the Superintendent of Insurance shall notify the insurers of the estimate and the insurers shall remit payment forthwith.

18(14)
Commencing no later than the fifteenth day of January, 1993, and by the fifteenth day of January of each subsequent year, the Superintendent of Insurance shall give notice to the insurers of the estimate and the insurers shall remit to the Superintendent the amount estimated in equal quarterly payments commencing on the thirty-first day of March, 1993, such quarterly payments to be payable within sixty days following the end of each quarter.

18(15)
Upon receipt of the funds payable by insurers pursuant to subsections (10) to (20), the Superintendent of Insurance shall credit the amount to the recovery account identified by the Minister.

18(16)
The Minister shall annually re-evaluate the accuracy of the levy estimate in the following year.

18(17)
The Minister shall advise the Superintendent of Insurance of the adjustments and the Superintendent shall give notice to the insurers of the adjustments.

18(18)
Where the adjusted amount is greater than the estimate, the insurers shall remit payment forthwith.

18(19)
Where the adjusted amount is less than the estimate, the insurers account shall be credited with the surplus.

18(20)
No interest is payable on the surplus or deficit resulting after the calculation of the adjusted amount.

18(21)
For greater certainty, in subsections (2) to (8) "insured hospital services" includes any care, services or benefits for which costs have been or may in the future be paid by the Minister in relation to negligence or a wrongful act or omission including, without limiting the generality of the foregoing, ambulance services to which the Province has made payment, home-care services, care for a person in a home for special care or child-care facility to which the Province has made payment and any services prescribed in the regulations as insured hospital services for the purpose of this subsection.
1992, c. 20, s. 12; 2002, c. 5, s. 24

New Brunswick

***Hospital Services Act*, R.S.N.B. 1973, c. H-9**
Current to Gazette Vol. 164:1901 (November 29, 2006)

10(1) Where, as a result of the negligence or wrongful act of another, a person suffers personal injuries for which he receives entitled services under this Act or the regulations, he

(a) shall have the same right to claim and to recover the cost of the entitled services against the person who was negligent or who did the wrongful act as he would have had if he, himself, had been required to pay for the entitled services, and

(b) if he makes any claim for the personal injuries suffered against the person who was negligent or who did the wrongful act, shall claim and seek to recover the cost of the entitled services.

10(2) Where under subsection (1), a person either acting for himself or on behalf of another person, recovers a sum in respect of entitled services received under this Act or the regulations, he shall as soon as practicable pay such sum recovered to the Minister.

10(3) Where, as a result of the negligence or wrongful act of another, a person suffers personal injuries for which he receives entitled services under this Act or the regulations and he does not claim against the person who was negligent or who did the wrongful act, Her Majesty the Queen in right of the Province may maintain an action in her own name or in the name of the injured person for recovery of the cost of the entitled services.

10(4) Where, as a result of the negligence or wrongful act of another, a person suffers personal injuries for which he receives entitled services under this Act or the regulations and a claim is made against the person who was negligent or who did the wrongful act but the person making the claim, either acting on his own behalf or on behalf of another person, does not

(a) claim for the cost of the entitled services,

(b) if a release is given or the claim is settled, obtain a written approval of the release or settlement in accordance with subsection (9) or (10), or

(c) pay any sum recovered in respect of the entitled services to the Minister in accordance with subsection (2),

Her Majesty the Queen in Right of the Province may maintain an action in her own name against the person making the claim, whether acting on his own behalf or on behalf of another person, for recovery of the cost of the entitled services.

10(5) It shall not be a defence to an action brought by Her Majesty under subsection (4) that a release has been given, a claim has been settled or a judgment obtained unless

(a) the claim included a claim for the cost of the entitled services, and

(b) if a release is given or the claim is settled, the Minister has under subsection (9) or (10) approved the release or settlement.

10(6) Where the Minister approves in writing a release or settlement under subsection (10), Her Majesty the Queen in right of the Province may continue the action or maintain an action in her own name for recovery of the cost of the entitled services.

10(7) Subject to subsection (10), where, as a result of a claim under this section

(a) the claim is settled or a judgment is obtained, and

(b) insufficient funds are available to provide complete recovery to the injured person for his losses and injuries and to pay the cost of the entitled services,

the injured person and Her Majesty the Queen in right of the Province shall share *pro rata* in proportion to their respective losses in any recovery in accordance with the terms and conditions prescribed by regulation.

10(8) No person, acting for himself or on behalf of another person, shall, without the approval in writing under subsection (9) or (10) of the Minister make a settlement of a claim based upon a cause of action for damages for personal injuries in a case where the injured person has received entitled services under this Act or the regulations unless at the same time he makes a settlement to recover the same *pro rata* proportion in respect of the cost of the entitled services as the injured person is to recover in respect of his losses and injuries.

10(9) No release or settlement of a claim or judgment based upon a cause of action for damages for personal injuries in a case where the injured person has received entitled services under this Act or the regulations is binding upon Her Majesty unless the Minister has approved the release or settlement in writing.

10(10) Notwithstanding subsection (9), where a person who makes a claim under subsection (1) has obtained an offer for a settlement whereby the same *pro rata* proportion of the cost of entitled services would be recovered as the injured person would recover in respect of his losses and injuries but, in the opinion of the Minister, the offer would not provide sufficient recovery in respect of the entitled services, the Minister may approve in writing a release or settlement whereby the person making a claim under subsection (1) makes a settlement of a claim in respect of his injuries or losses without making a settlement in respect of the cost of the entitled services but the written approval is not binding on Her Majesty in relation to a claim made under subsection (6) in respect of the cost of the entitled services.

10(11) Where a person whose negligent or wrongful act resulted in personal injuries to another is insured by a liability insurer carrying on business in the Province and a claim made in respect of

those personal injuries does not include a claim for the cost of the entitled services received by the injured person under this Act or the regulations, the liability insurer shall pay to the Minister the cost of the entitled services and payment of that amount to the Minister discharges the liability of the insurer to pay the cost of the entitled services in any subsequent claim to the insured person or any person claiming under or on behalf of the insured person.

10(12) Every liability insurer carrying on business in the Province shall provide the Minister, when requested to do so, information relating to

(a) a claim made against an insured person by a person who received entitled services under this Act or the regulations, or

(b) the terms and conditions of any settlement entered into by an insured person and a person who received entitled services under this Act or the regulations.

10(13) In an action under this section a certificate signed or purporting to be signed by or on behalf of the Minister shall be accepted by all courts

(a) as conclusive proof

(i) that the person named in the certificate has received entitled services,

(ii) that the amount recorded in the certificate is the cost of the entitled services received by the person named in the certificate, and

(iii) of the office, authority and signature of the person signing or purporting to sign the certificate, without proof of his appointment, authority or signature, and

(b) as *prima facie* proof that the entitled services were received in respect of the personal injuries suffered.

10(14) This section applies except where the personal injuries occurred as a result of the use or operation of a motor vehicle registered in the Province.

1960-61, c.11, s.10; 1975, c.28, s.1; 1985, c.13, s.2; 1986, c.42, s.1; 1988, c.18, s.2; 1992, c.81, s.2.

10.01 The Minister may, in accordance with the *Insurance Act*, impose a levy for the purpose of recovering the cost of the entitled services provided to persons under this Act as a result of personal injuries arising out of the use or operation of a motor vehicle registered in the Province.

1992, c.81, s.3; 2003, c.21, s.5.

10.1 Notwithstanding any other provision of this Act, the Minister may, in accordance with the regulations, authorize the payment of a fee to a barrister and solicitor who makes a claim on behalf of an injured person and recovers a sum in respect of the cost of entitled services in accordance with section 10.

1988, c.18, s.3.

11 In the event of conflict between any provision of this Act and any provision of any other Act of New Brunswick, the provision of this Act prevails.

1960-61, c.11, s.11.