

Federal Court



Cour fédérale

Date: 20200221

**Dockets: T-2111-16
T-460-17**

Citation: 2020 FC 287

Ottawa, Ontario, February 21, 2020

PRESENT: The Honourable Mr. Justice Fothergill

Docket: T-2111-16

BETWEEN:

**SHERRY HEYDER
AMY GRAHAM
NADINE SCHULTZ-NIELSEN**

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-460-17

AND BETWEEN:

LARRY BEATTIE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

(Approval of Second Supplementary Agreement)

UPON the motion made in writing by the Plaintiffs for an order approving the public and confidential versions of the Second Supplementary Agreement regarding the appointments of a Lead Assessor and Associate Lead Assessor, and for dispensation from Rule 334.21(2) of the *Federal Courts Rules*, SOR/98-106 for certain class members;

AND UPON reading the Plaintiffs' motion record, including confirmation of the Defendant's consent to the terms of this Order;

AND UPON being satisfied that it is in the interests of justice to grant the relief sought;

THIS COURT ORDERS that:

1. The terms of the Second Supplementary Agreement between the parties, attached as Schedule "A" to this Order, are approved;
2. Reva Devins is appointed Lead Assessor and shall be paid in accordance with Schedule "A" to the Second Supplementary Agreement;
3. Michelle Flaherty is appointed Associate Lead Assessor and shall be paid in accordance with Schedule "B" to the Second Supplementary Agreement;

4. No person may bring any action or take any proceeding against the Lead Assessor or Associate Lead Assessor, or any of their employees, agents, partners, associates, representatives, successors, or assigns, for any matter in any way relating to the Second Supplementary Agreement or the implementation thereof, except with leave of this Court on notice to all affected parties;

5. Rule 334.21(2), concerning the automatic opt-out of class members who have not yet discontinued proceedings that raise the common questions of law or fact addressed in these class proceedings, shall not apply to Amy Graham, Nadine Schultz-Nielsen, Larry Beattie or Alexandre Tessier.

“Simon Fothergill”

Judge

Schedule "A"

10

FEDERAL COURT

Class Proceeding

Court File No.: T-2111-16

BETWEEN:

SHERRY HEYDER, AMY GRAHAM and NADINE SCHULTZ-NIELSEN

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AND BETWEEN:

Court File No.: T-460-17

LARRY BEATTIE

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

SECOND SUPPLEMENTARY AGREEMENT

WHEREAS:

- A. Canada and the Plaintiffs (collectively the "Parties") entered into a Final Settlement Agreement ("FSA") dated July 10, 2019;
- B. Pursuant to Sections 9.01, 9.02 and 9.03 of the FSA, the Parties agreed that an Administrator, a Lead Assessor and a roster of Assessor(s) would be chosen through a

process that is agreed upon, and that the process and terms of appointment of the Assessor(s) would be set out in a Supplementary Agreement ("SA") to be negotiated by the Parties and submitted to the Court for approval at the same time as the FSA;

- C. The Parties chose an Administrator and entered into a SA on October 21, 2019, which includes the Administrator's terms of appointment;
- D. The Parties have identified a proposed Lead Assessor who has agreed to carry out the duties assigned to her in the FSA and in this Second Supplementary Agreement ("SSA") which includes the Terms of Appointment attached as Schedule "A" to this agreement;
- E. The Parties have also agreed to appoint an Associate Lead Assessor who has agreed to carry out the duties assigned to her in this SSA which includes the Terms of Appointment attached as Schedule "B" to this agreement; and
- F. The Parties also wish to set out the process for the appointment of the roster of Assessors through this SSA.

NOW THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out in this agreement, the Parties agree with each other as follows:

SECTION ONE

INTERPRETATION

1.01 DEFINITIONS

Capitalized terms used in this SSA and not otherwise defined shall have the same meanings as contained in the FSA. In this SSA, and schedules thereto:

"Administrator" means Epiq Class Action Services Canada Inc. appointed by the Court, by Order dated November 25, 2019, to manage the overall administration of the individual claims process and to perform all other duties and responsibilities assigned in the FSA;

"**Assessors**" means the individuals who shall be appointed to the roster of Assessors in accordance with the process outlined in **Section Four** of this **SSA**, and who will be responsible for assessing claims under Categories B and C under the **FSA**;

"**Associate Lead Assessor**" means Michelle Flaherty, appointed by the Court to work with the Lead Assessor in the performance of the Lead Assessor's duties and responsibilities under the **FSA** and this **SSA**, and to perform the duties and responsibilities assigned to the Associate Lead Assessor in this **SSA**;

"**Class Member Information**" means any information about an individual making a claim in accordance with the **FSA**, whether approved or not, from any source whatsoever;

"**Court**" means the Federal Court as defined in s. 4 of the *Federal Courts Act*, R.S.C. 1985 c. F-7 as am.;

"**Final Settlement Agreement**" or "**FSA**" means the Final Settlement Agreement in the Federal Court matter *Heyder et al v AGC*, Court File Number T-2111-18, and *Beattie v AGC*, Court File Number T-460-17, executed by the Parties on July 10, 2019;

"**Lead Assessor**" means Reva Devins, appointed by the Court to act as the Lead Assessor and to perform the duties and responsibilities assigned in the **FSA** and this **SSA**;

"**Joint Committee**" means a committee comprised of one representative of the Plaintiffs, one representative of the Defendant, the Lead Assessor and the Associate Lead Assessor, and struck for the purpose of determining a short list of candidates for appointment as Assessors, interviewing the candidates, and making recommendations to the Parties for their appointment;

"**Second Supplementary Agreement**" or "**SSA**" means this agreement;

"**Supplementary Agreement**" or "**SA**" means the agreement entered into by the Parties on October 21, 2019.

SECTION TWO

APPOINTMENT OF LEAD ASSESSOR

2.01 TERMS OF APPOINTMENT OF REVA DEVINS AS LEAD ASSESSOR

Pursuant to **Section 9.02** of the **FSA**, the Parties have agreed that Reva Devins shall be appointed as Lead Assessor.

The Lead Assessor shall act substantially in accordance with **Schedule "Q"** of the FSA. The Lead Assessor shall also act in accordance with the Terms of Appointment of the Lead Assessor attached as **Schedule "A"**, which forms part of this SSA and which shall be incorporated into a further Order of the Court, approving the appointment of the Lead Assessor.

SECTION THREE

APPOINTMENT OF ASSOCIATE LEAD ASSESSOR

3.01 CREATION OF ROLE OF ASSOCIATE LEAD ASSESSOR

The Parties have agreed to appoint an Associate Lead Assessor to work with the Lead Assessor in the performance of the Lead Assessor's duties and responsibilities under this SSA. The Lead Assessor shall have full authority and responsibility to delegate any of her functions, except those specifically assigned in this SSA to the Lead Assessor, to the Associate Lead Assessor as may be necessary and as may be agreed as between them.

The Associate Lead Assessor shall report to the Lead Assessor, and shall abide by any terms and conditions which may be set out in the Order appointing her as the Associate Lead Assessor under the FSA, and the responsibilities outlined in the Terms of Appointment.

3.02 TERMS OF APPOINTMENT OF MICHELLE FLAHERTY AS ASSOCIATE LEAD ASSESSOR

The Parties have agreed that Michelle Flaherty shall be appointed as the Associate Lead Assessor.

The Associate Lead Assessor shall act in accordance with any delegation given by the Lead Assessor, as well as substantially in accordance with **Schedule "Q"** of the FSA. The Associate Lead Assessor shall also act in accordance with the Terms of Appointment of the Associate Lead Assessor attached as **Schedule "B"**, which forms part of this SSA and which shall be incorporated into a further Order of the Court, approving the appointment of the Associate Lead Assessor.

SECTION FOUR
ROSTER OF ASSESSORS

4.01 ROSTER OF ASSESSORS

The Parties have agreed that the assessment and determination of all Category B and C claims shall be conducted by a roster of individuals selected in accordance with the process set out in this SSA, and appointed by the Court.

4.02 PROCESS FOR THE NOMINATION AND SELECTION OF ASSESSORS

Within 90 days of the Court's approval of this SSA, in consultation with the Parties, the Lead Assessor, with the assistance of the Associate Lead Assessor, will establish and administer a process to identify individuals to be considered for appointment as Assessors.

Once the process for identifying individuals to be considered for appointment as Assessors is complete, a joint committee comprised of one member of the Plaintiffs' counsel team, one member of the Defendant's counsel team, the Lead Assessor and the Associate Lead Assessor will be established ("**Joint Committee**"). The Joint Committee will agree upon a short list of candidates, which shall not exceed 30 names, and will select candidates to be interviewed from the short list. The Joint Committee will interview the candidates with a view to recommending no less than 10 of them for appointment as Assessors.

The Parties will confer and jointly determine which of the candidates recommended by the Joint Committee should be appointed as Assessors. No candidate shall be proffered to the Court for appointment as an Assessor unless both Parties agree to their appointment. Any disagreement between the Parties regarding whether to proffer a particular candidate(s) to the Court for an appointment as an Assessor may not be referred to the Oversight Committee or the Court for determination. The appointment of Assessors shall be effected by way of a motion in writing on consent to the Federal Court, prepared by Plaintiffs' Counsel.

4.03 RENEWAL OF ROSTER OF ASSESSORS

Should the Parties determine during the claims administration process set out in **Schedule "Q"** of the **FSA** that additional Assessors are required, the process described above may be repeated with necessary modification, as determined by the Parties, in order to appoint the number of additional Assessors required.

4.04 PARTIES TO CONSENT TO APPOINTMENT OF ALL ASSESSORS

No Assessor shall be appointed to the roster of Assessors absent the consent of both Parties.

4.05 ASSESSORS' ROLES

Once appointed, each Assessor shall report to the Lead Assessor and/or Associate Lead Assessor throughout their appointment as required by the Lead Assessor and/or Associate Lead Assessor. Assessors shall perform the functions and duties outlined in the **FSA**, except those specifically assigned in this **SSA** to the Lead Assessor, and shall abide by any terms and conditions which may be set out in the Order appointing them as an Assessor under the **FSA**.

Once appointed, each Assessor shall continue in the role under the supervision, guidance and direction of the Lead Assessor and/or Associate Lead Assessor subject to removal only upon further order of the Court revoking their appointment or at the expiry of the Claims Period. Any Assessor may be removed by way of court order on the mutual consent of the Parties at any time.

4.04 TERMS OF APPOINTMENT AND FEES PAYABLE TO ASSESSORS

The terms of appointment of the Assessors and the fees payable to Assessors will be set out in a Third Supplementary Agreement to be negotiated by the Parties and submitted to the Court for approval.

SECTION FIVE

GENERAL

5.01 ENTIRE FSA

As set out in Section 21.03 of the FSA, the Parties confirm that the FSA executed on July 10, 2019, shall include the SA, this SSA, and together they form the entire agreement between the Parties, subject only to any further Supplementary Agreement as the Parties might require.

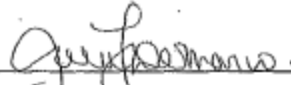
5.02 NO CONTRA PROFERENTEM

The Parties acknowledge that they have reviewed and participated in settling the terms of this SSA and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting parties is not applicable in interpreting this SSA.

IN WITNESS WHEREOF the Parties have executed this Second Supplementary Agreement.

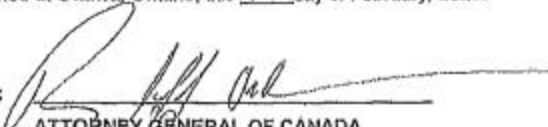
HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Attorney General of Canada

Signed at Toronto, Ontario this 10th day of February, 2020.

BY: 

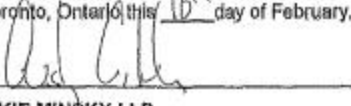
ATTORNEY GENERAL OF CANADA
For the Defendant

Signed at Ottawa, Ontario, this 10th day of February, 2020.

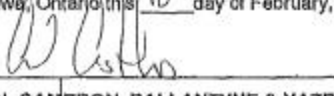
BY: 
ATTORNEY GENERAL OF CANADA
For the Defendant

THE PLAINTIFFS, as represented by Class Counsel:

Signed at Toronto, Ontario, this 10th day of February, 2020.

BY: 
KOSKIE MINSKY LLP
For the Plaintiffs

Signed at Ottawa, Ontario, this 10th day of February, 2020.

BY: 
RAVEN, CAMERON, BALLANTYNE & YAZBECK LLP
For the Plaintiffs

SCHEDULE "A"

TERMS OF APPOINTMENT OF THE LEAD ASSESSOR

DEFINITIONS

1. Terms defined in the **FSA**, the **SA** and in this **SSA** have the same meaning in these Terms of Appointment.

GENERAL

A. Enforcement

2. For greater certainty, the obligations set out in these Terms of Appointment are enforceable as a court order.
3. Any party to the **FSA** or the Lead Assessor may seek enforcement in the Federal Court of the obligations contained in these Terms of Appointment.

B. Language of Work

4. The Lead Assessor must ensure that claims assessment services can be provided in both official languages at the choice of a claimant. The Lead Assessor must allow claimants to submit claims in the official language of their choice and to receive any and all information or decisions in the official language of their choice. For greater certainty, the Lead Assessor is not required to personally conduct interviews in both official languages, but must make such arrangements as are appropriate to respect the language rights of all claimants.

C. Place of Work

5. The Lead Assessor shall provide her own office space, technology, supplies and resources to carry out her roles and responsibilities under the **FSA** and this **SSA**. The work will be carried out primarily from the Lead Assessor's place of business in Toronto.

D. Development of Processes for Category B and C Claims

6. The Lead Assessor, in conjunction with the Associate Lead Assessor, shall develop protocols and processes for the oversight and monitoring of the assessment process for the Category B and C claims of Class Members substantially in accordance with **Schedule "Q"** of the **FSA**.

E. Coordination with Associate Lead Assessor and Administrator

7. The Lead Assessor will collaborate with the Associate Lead Assessor and the Administrator to ensure that the assessment process and products are designed to ensure the efficient administration of the Category B and C assessment process and the Lead Assessor's mandate.
8. Such coordination with the Associate Lead Assessor and the Administrator shall begin as soon as is reasonably practicable and shall continue throughout the administration of the FSA as may be reasonably required from time to time.

F. Oversight of Assessment of Category B and C Claims and Requests for Reconsideration

9. The Lead Assessor shall oversee and monitor the assessment process for Category B and C claims of Class Members, and Requests for Reconsideration, until all claims and Requests for Reconsideration have been decided. In particular, the Lead Assessor shall:
 - (a) develop, install and implement systems and procedures for processing, evaluating and making decisions respecting Category B and C claims substantially in accordance with **Schedule "Q"**;
 - (b) develop and deliver training to the Assessors regarding the assessment of Category B and C claims substantially in accordance with **Schedule "Q"**, with a view to promoting fair, consistent, efficient and timely decision-making;
 - (c) provide ongoing advice and guidance to the Assessors regarding the review and evaluation of claims for compensation under Categories B and C substantially in accordance with **Schedule "Q"**, with a view to promoting fair, consistent, efficient and timely decision-making;
 - (d) perform regular quality control assessments of the Assessors' decisions with a view to promoting fair, consistent, efficient and timely decision-making;
 - (e) give notice of Assessors' decisions in accordance with the provisions of the FSA or coordinate same with the Administrator, and communicate with Class Members;
 - (f) review and decide any Requests for Reconsideration of claims under Category A, B or C that may be received pursuant to **Schedule "Q"** and give notice of said decisions in accordance with the provisions of the FSA or coordinate same with the Administrator;
 - (g) periodically consider and make recommendations to the Joint Committee regarding whether additional Assessors should be appointed pursuant to Section 4.03 of this SSA and, if so, the number of additional Assessors that should be so appointed;
 - (h) keep, or cause to be kept, accurate accounts of its activities, prepare such financial statements, reports and records as are required by the Court, in a form and with

content as directed by the Court, and submitting them to the Court so often as the Court directs;

- (i) provide all records and information requested for the purposes of any audits that may be conducted, and cooperating fully with such audits; and
 - (j) perform such other duties and responsibilities as the Court may from time to time by order direct.
10. In her sole discretion, the Lead Assessor may delegate, in whole or in part, any of the duties set out in paragraph 9 of these Terms of Appointment to the Associate Lead Assessor, with the exception of the duty set out in subparagraph 9(f) to review and decide Requests for Reconsideration of claims for compensation under Category A. The Lead Assessor may delegate, in whole or in part, the review and determination of Requests for Reconsideration under Category A to an Assessor(s).

G. Participation in Oversight Committee

11. The Lead Assessor shall participate as a member of the Oversight Committee and shall perform the roles and responsibilities of an Oversight Committee Member set out in Sections 15.03 and 15.04 of the FSA. For greater clarity, the Lead Assessor may not delegate her role or responsibilities as an Oversight Committee Member.

PROFESSIONAL FEES

A. Fee Structure

12. Canada shall pay the Lead Assessor for professional services personally rendered by her in accordance with these terms, or any further terms as may be agreed by the Parties in writing, on a monthly basis at a rate of [REDACTED] per hour.
13. The Lead Assessor must not perform any work that would result in professional fees exceeding [REDACTED] per annum, exclusive of HST, except with the express written authorization of counsel for Canada and the authorization of the Court.
14. If, at any time, the Lead Assessor considers that [REDACTED] per annum, exclusive of HST, will be insufficient to complete the duties and responsibilities of the Lead Assessor under the FSA and this SSA, the Lead Assessor shall notify the Parties forthwith.
15. The Lead Assessor shall notify the Parties when the cost of professional services rendered reaches 80% of [REDACTED] per annum, exclusive of HST.
16. Travel by the Lead Assessor shall be reasonably limited. Where travel is required for the Lead Assessor to perform her duties, reasonable travel expenses shall be billed to Canada as part of the professional services, on the basis of rates established in the Government of Canada National Joint Council Travel Directive. If the rates for

accommodation set out therein are not sufficient to secure reasonable accommodation, with Canada's prior consent, those rates may be exceeded by a reasonable amount.

17. Canada will reimburse the Lead Assessor for reasonable expenses incurred in connection with the training of Assessors, as well as other reasonable expenses that may be incurred in the performance of her duties under the FSA and this SSA, provided the Lead Assessor obtains Canada's consent prior to incurring the expenses.

B. Invoicing and Payment Schedule

18. Canada shall pay the Lead Assessor's professional fees covered by the invoice where:

- (a) An accurate and complete invoice and any other documents required by the FSA and this SSA have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period and;
- (b) All documents have been verified by Canada.

19. Professional fees covers all compensation for professional services rendered; no additional compensation for annual leave, statutory holidays, sick leave, overhead, or any other expense shall be payable.
20. The Lead Assessor is not an employee, servant, officer, agent or other emanation of Her Majesty the Queen in Right of Canada.

CONFIDENTIALITY

21. The Lead Assessor shall execute a non-disclosure agreement in a form satisfactory to the Parties.
22. The Lead Assessor shall ensure that all Class Member information is stored in a secure location and that only authorized persons who have signed the non-disclosure agreement are permitted to access the information. Printed material will be stored in a locked container in an area that is subject to continuous monitoring by the Lead Assessor.
23. The Lead Assessor shall not store or record Class Member information electronically except in a manner and on devices approved by the Parties or, failing agreement, the Oversight Committee.
24. The Lead Assessor shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.
25. Information shall be returned or destroyed in accordance with the FSA or as may otherwise be directed by the Court.

REPORTING

26. The Lead Assessor shall report to the Parties monthly pursuant to paragraph 58 of Schedule "Q" of the FSA.
27. The Lead Assessor shall provide all information required by the Administrator in order for the Administrator to prepare a report within 90 days of the expiry of the Claims Period, or as required by the Court, pursuant to paragraphs 59 and 60 of Schedule "Q" of the FSA.

INSURANCE

28. The Lead Assessor will not provide legal advice. She shall maintain professional liability insurance, that is adequate considering the duties and risks associated with this appointment, for a period of at least 12 months after the completion or termination of the assessment mandate. All costs associated with this insurance shall be paid by the Lead Assessor.
29. The Lead Assessor will provide Canada and the Plaintiffs' counsel with thirty (30) days written notice of cancellation of the professional liability insurance mentioned above.
30. Neither compliance nor failure to comply with the insurance requirements set out herein shall relieve the Lead Assessor of her liabilities and obligations under the FSA.
31. Litigation Rights: Notwithstanding that the Lead Assessor is not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s.1, if a suit is instituted for or against Canada which the Insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Lead Assessor's insurance policy, the Insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:

Christine Mohr
Senior General Counsel
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1
Phone: (647) 268-7538
Email: christine.mohr@justice.gc.ca

32. Canada reserves the right to co-defend any action brought against the Lead Assessor or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Lead Assessor or it, and Canada does not agree to a proposed settlement agreed to by the Lead Assessor's insurer and the plaintiff(s) that would result in the settlement or dismissal of

the action against Canada, then Canada will be responsible to the Lead Assessor's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.

SCHEDULE "B"

TERMS OF APPOINTMENT OF THE ASSOCIATE LEAD ASSESSOR

DEFINITIONS

1. Terms defined in the **FSA**, **SA** and in this **SSA** have the same meaning in these Terms of Appointment.

GENERAL

A. Enforcement

2. For greater certainty, the obligations set out in these Terms of Appointment are enforceable as a court order.
3. Any party to the **FSA** or the Associate Lead Assessor may seek enforcement in the Federal Court of the obligations contained in these Terms of Appointment.

B. Language of work

4. The Associate Lead Assessor must provide services in both official languages.

C. Place of Work

5. The Associate Lead Assessor shall provide her own office space, technology, supplies and resources to carry out her roles and responsibilities under the **FSA** and this **SSA**. The work will be carried out primarily from the Associate Lead Assessor's place of business in Ottawa.

ROLES AND RESPONSIBILITIES

6. The Associate Lead Assessor, in conjunction with the Lead Assessor, shall develop protocols and processes for the oversight and monitoring of the assessment process for the Category B and C claims of Class Members substantially in accordance with Schedule "Q" of the **FSA**.
7. The Associate Lead Assessor will work with the Lead Assessor and the Administrator to ensure the efficient administration of the Category B and C assessment process and the Associate Lead Assessor's mandate.

- (a) An accurate and complete invoice and any other documents required by the FSA and SSA have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period and;
- (b) All documents have been verified by Canada.

- 17. Professional Fees include all compensation for professional services rendered; no additional compensation for annual leave, statutory holidays, sick leave, overhead, or any other expense shall be payable.
- 18. The Associate Lead Assessor is not an employee, servant, officer, agent or other emanation of Her Majesty the Queen in Right of Canada.

CONFIDENTIALITY

- 19. The Associate Lead Assessor shall execute a non-disclosure agreement in a form satisfactory to the Parties.
- 20. The Associate Lead Assessor shall ensure that all Class Member information is stored in a secure location and that only authorized persons who have signed the non-disclosure agreement are permitted to access the information. Printed material will be stored in a locked container in an area that is subject to continuous monitoring by the Associate Lead Assessor.
- 21. The Associate Lead Assessor shall not store or record Class Member information electronically except in a manner and on devices approved by the Parties or, failing agreement, the Oversight Committee.
- 22. The Associate Lead Assessor shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.
- 23. Information shall be returned or destroyed in accordance with the FSA or as may otherwise be directed by the Court.

REPORTING

- 24. The Associate Lead Assessor shall assist the Lead Assessor and the Administrator with the preparation of all reports to the Parties monthly pursuant to paragraph 58 of Schedule "Q" of the FSA.
- 25. The Associate Lead Assessor shall provide all information required by the Administrator in order for the Administrator to prepare a report within 90 days of the expiry of the Claims Period pursuant to paragraphs 59 and 60 of Schedule "Q" of the FSA.

INSURANCE

26. The Associate Lead Assessor will not provide legal advice. She shall maintain professional liability insurance, that is adequate considering the duties and risks associated with this appointment, for a period of at least 12 months after the completion or termination of the assessment mandate. All costs associated with this insurance shall be paid for by the Associate Lead Assessor.
27. The Associate Lead Assessor will provide Canada and the Plaintiffs' counsel with thirty (30) days written notice of cancellation of the professional liability insurance mentioned above.
28. Neither compliance nor failure to comply with the insurance requirements set out herein shall relieve the Associate Lead Assessor of her liabilities and obligations under the FSA.
29. **Litigation Rights:** Notwithstanding that the Associate Lead Assessor is not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s.1, if a suit is instituted for or against Canada which the insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Associate Lead Assessor's insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:
- Christine Mohr
Senior General Counsel
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1
Phone: (647) 256-7538
Email: christine.mohr@justice.gc.ca
30. Canada reserves the right to co-defend any action brought against the Associate Lead Assessor or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Associate Lead Assessor or it, and Canada does not agree to a proposed settlement agreed to by the Associate Lead Assessor's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada, then Canada will be responsible to the Associate Lead Assessor's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.