

Federal Court



Cour fédérale

Date: 20210607

Docket: T-2166-18

Citation: 2021 FC 671

Ottawa, Ontario, June 7, 2021

PRESENT: The Honourable Mr. Justice Phelan

CLASS PROCEEDING

BETWEEN:

SHANNON VARLEY AND SANDRA LUKOWICH

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON HEARING THE MOTION made by the Plaintiffs, on consent, for an Order for certifying this action as a class proceeding pursuant to Rule 334.16(1) of the *Federal Courts Rules* [the Rules] against the Defendant;

ON READING the certification motion of the Plaintiffs and upon being advised of the consent of the Defendant;

AND UPON HEARING AND READING the oral submissions of counsel for the Plaintiffs and the Defendant;

THIS COURT ORDERS that:

1. This action is hereby certified as a class proceeding pursuant to Rule 334.16(1) of the Rules.

2. The Class is hereby defined as follows:

All Indigenous persons, as referred to by the Supreme Court of Canada in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, at para. 6, excluding Indian persons (as defined in the *Indian Act*) and Inuit persons, who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and who were placed in the care of non-Indigenous foster or adoptive parents.

3. The claims asserted on behalf of the Class against the Defendant are negligence and breach of fiduciary duty.

4. The common issues shall be defined as follows:

a. Did Canada have a fiduciary duty to take reasonable steps to prevent all Indigenous persons, as referred to by the Supreme Court of Canada in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, at para. 6, excluding Indian (as defined in the *Indian Act*) and Inuit persons, who were placed in the care of non-Indigenous foster or adoptive parents from losing their Indigenous identities?

b. If the answer to a. is yes, did Canada breach this duty?

c. Did Canada owe a common law duty of care to take reasonable steps to prevent all Indigenous persons, as referred to by the Supreme Court of Canada in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, at para. 6, excluding Indian (as defined in the *Indian Act*) and Inuit persons, who were placed in the care of non-Indigenous foster or adoptive parents from losing their Indigenous identities?

d. If the answer to c. is yes, did Canada breach this duty?

e. If the answer to either (b) or (d) is yes, can the Court make an aggregate assessment of some or all of the damages suffered by the Class as part of the common issues trial?

- f. If the answer to either b. or d. is yes, is an award of punitive damages warranted?
 - g. If the answer to f. is yes, what amount of punitive damages ought to be awarded?
5. The representative Plaintiffs hereby appointed are Shannon Varley and Sandra Lukowich who are deemed to constitute adequate representative Plaintiffs of the Class.
6. Koskie Minsky and Paliare Roland Rosenberg Rothstein LLP are appointed Class Counsel.
7. Kutzman Carson Consultants LLC (the Administrator) be and is hereby appointed as the Administrator.
8. Notice of Certification shall be provided in the forms attached as **Schedule “A”** [the Short Form Notice] and **Schedule “B”** [the Long Form Notice] and in the manner described at **Schedule “C”**.
9. The Notice Plan provided for in paragraph 8 above satisfies the requirements of the applicable class proceedings law and this Court, and is the best notice practicable under the circumstances.
10. The expense of notice in paragraph 8 above shall be borne by the Defendant, subject to review and readjustment by agreement or order at the termination of this proceeding.
11. A Class Member may opt out of this class proceeding by delivering a signed opt-out coupon, in the form attached as **Schedule “D”**, by November 3, 2021 [the Opt Out Deadline] to the Administrator by email, mail or facsimile and must be received or post-marked, if delivered by mail, by the Opt Out Deadline.

12. No Class Member may opt out of the class proceeding after the Opt Out Deadline, except with leave of the Court.
13. Class Counsel may make non-material changes to the notice and the Opt Out Form as are necessary and desirable with the consent of the Defendant.
14. The notice period shall commence on July 2, 2021 and conclude on November 3, 2021 unless otherwise ordered by the Court.
15. The Litigation Plan attached hereto as **Schedule “E”** is hereby approved.
16. Pursuant to Rule 334.39(1) of the Rules, there shall be no costs payable by either party for the motion.

“Michael L. Phelan”

Judge

SCHEDULE "A"

SHORT-FORM Notice

Are you an Indigenous person who survived the Sixties Scoop but who was not included in the previous class action and settlement?

A class action may affect you. Please read this carefully.

The Federal Court has certified a class action on behalf of all Indigenous persons, excluding Indian persons (as defined in the *Indian Act*) and Inuit persons, who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and who were placed in the care of non-Indigenous foster or adoptive parents (the "Class").

If you meet this definition, you have a choice of whether or not to stay in the Class.

To stay in the Class, you do not have to do anything. If money or benefits are obtained through the class action, you will be notified about how to make a claim. You will be legally bound by all orders and judgments, and you will not be able to sue Canada about the legal claims in this case.

If you do not want to stay in the class action, you must submit an opt out form by September 15, 2021. You can find a copy of the opt out form online here: <https://kmlaw.ca/cases/sixties-scoop-metis-non-status-indian-class-action/>.

If you opt out, you will not get money or benefits from this lawsuit if any are awarded.

The Court has appointed Koskie Minsky LLP and Paliare Roland Rosenberg Rothstein LLP ("**Class Counsel**") to represent the Class. You don't have to pay Class Counsel to participate. If money or benefits for the Class are obtained through the class action, Class Counsel may ask for lawyers' fees and costs, which would be deducted from any money obtained or would be paid separately by Canada.

For more information about your rights:

Visit: <https://kmlaw.ca/cases/sixties-scoop-metis-non-status-indian-class-action>

Call toll-free: 1-866-778-7986

Write to Koskie Minsky LLP, 20 Queen St. W., Suite 900, Toronto, ON M5H 3R3

Send an email to: metisnonstatus60sscoopclassaction@kmlaw.ca

SCHEDULE "B"

LONG-FORM NOTICE

Are you an Indigenous person who survived the Sixties Scoop but who was not included in the previous class action and settlement?

If YES, a class action may affect your rights.

A Court authorized this notice. You are not being sued.

The Federal Court has certified a class action on behalf of all Indigenous persons, excluding Indian persons (as defined in the *Indian Act*) and Inuit persons, who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and who were placed in the care of non-Indigenous foster or adoptive parents (the "**Class**").

If you know a person who meets this definition but who cannot read this notice, please share this information with them.

The Court has not decided whether Canada did anything wrong. There still has to be a court case about whether Canada did anything wrong. There is no money available now for compensation and there is no guarantee there will ever be any money for compensation.

However, your rights are affected by this lawsuit, and you have a choice to make now. This notice is to help you make that choice.

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING	<p>Stay in this lawsuit and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.</p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue Canada on your own about the same legal claims in this lawsuit.</p>
REMOVE YOURSELF (OPT OUT)	<p>Get out of this lawsuit and get no benefits from it. Keep your individual rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you will <i>not</i> share in those. But, you keep any rights to sue Canada on your own about the same legal claims in this lawsuit, subject to any applicable limitation period.</p>

Lawyers must prove the claims against Canada at a trial, or a settlement must be agreed to. If money or benefits are obtained, you will be notified about how to ask for your share.

Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by September 15, 2021.

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why is there a notice?

This lawsuit has been “certified” as a class action. This means that the lawsuit meets the requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against Canada on your behalf are correct. This notice explains all of these things.

A judge of the Federal Court of Canada is overseeing this case. The case is known as *Varley and Lukowich v. Canada*, Court File No. T-2166-18. The people who sued are called the Plaintiffs. Canada is the Defendant.

2. What is this lawsuit about?

The lawsuit says that Canada failed to prevent the loss of identity among Indigenous children who were placed in the care of non-Indigenous foster or adoptive parents. The lawsuit says that Canada's actions breached the legal duties it owes to the Class Members. Specifically, the lawsuit says that Canada's actions were negligent and breached a fiduciary duty.

Canada denies these claims. The Court has not decided whether the Plaintiffs are right or Canada is right. The lawyers for the Plaintiffs will have to prove their claims in Court.

3. What is a class action?

In a class action, a person or people called the “Representative Plaintiff” or “Representative Plaintiffs” (in this case, Shannon Varley and Sandra Lukowich) sue on behalf of people who have similar claims. All of these people are a “Class” or “Class Members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class by opting out.

4. Who is a member of the Class?

The Class includes all Indigenous persons, excluding Indian persons (as defined in the *Indian Act*) and Inuit persons, who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and who were placed in the care of non-Indigenous foster or adoptive parents.

5. What are the Plaintiffs asking for?

The Plaintiffs are asking for money and/or other benefits for the Class. They are also asking for lawyers' fees and costs, plus interest.

6. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether Canada did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for your share.

YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself from the Class by opting out. You have to decide this by September 15, 2021.

7. What happens if I do nothing at all?

If you do nothing you will automatically remain in the lawsuit. You will be bound by all Court orders, good or bad. If any benefit is awarded, you may need to take action in order to receive any benefits.

8. What if I don't want to be in the lawsuit?

If you do not want to be in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not receive any benefit that may be obtained from the lawsuit. You will not be bound by any Court orders and you keep your right to sue Canada as an individual regarding the issues in this case.

To remove yourself, send a letter that says you want to be removed from the Class in *Varley and Lukowich v. Canada*. Include your name, address, telephone number, and signature.

You can also get an **Opt Out Form** at <https://kmlaw.ca/cases/sixties-scoop-metis-non-status-indian-class-action/>.

You must mail your Opt Out Form postmarked by September 15, 2021 to:

Koskie Minsky LLP
20 Queen Street West, Suite 900,
Toronto, ON M5H 3R3

You can also opt out by sending your Opt Out Form to:
metisnonstatus60sscoopclassaction@kmlaw.ca

You can call 1-866-778-7986 if you have any questions about your rights or how to opt out of the Class.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP and Paliare Roland Rosenberg Rothstein LLP from Toronto, Ontario, to represent you and other Class Members as “**Class Counsel**.” You will not be personally charged for these lawyers.

10. How will the lawyers be paid?

Class Counsel will only be paid if the Plaintiffs win a trial or if there is a settlement. The Court has to also approve Class Counsel's request to be paid. The Court will only approve an amount that is fair and reasonable. The fees and expenses could be deducted from any money obtained for the Class, or could be paid separately by the Defendant.

NEXT STEPS OF THE CLASS ACTION

11. How and when will the Court decide who is right?

If the lawsuit is not settled, the Plaintiffs will have to prove their claims at a trial that will take place in Toronto, Ontario. During the trial, a Court will hear all of the evidence and decide whether the Plaintiffs or Canada is right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

12. Will I get money after the trial?

If the Plaintiffs obtain money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now.

Important information about the case will be posted on the website for this case as it becomes available. You can visit the website for this case at: <https://kmlaw.ca/cases/sixties-scoop-metis-non-status-indian-class-action/>

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information at <https://kmlaw.ca/cases/sixties-scoop-metis-non-status-indian-class-action/>.

If you have questions, you can call 1-866-778-7986, send an email to metisnonstatus60sscoopclassaction@kmlaw.ca, or write to:

Koskie Minsky LLP
20 Queen Street West, Suite 900,
Toronto, ON M5H 3R3

SCHEDULE "C"

Varley and Day v. The Attorney General of Canada

Notice Plan (Certification)

The Notice of Certification will be disseminated as follows:

1. The long-form and short-form versions of the Notice of Certification will be posted on the Website maintained by Class Counsel.
2. The long-form and short-form versions of the Notice of Certification will be posted on a public and accessible website maintained by the Defendant.
3. The long-form Notice of Certification will be sent by direct mail to all individuals who have contacted Class Counsel through the Website and provided their physical mailing addresses.
4. The long-form Notice of Certification will be sent by email to all individuals who have contacted Class Counsel through the Website and provided their email addresses.
5. Class Counsel will maintain a toll-free telephone support line to assist Class Members, family, guardians, or other persons who make inquiries on their own behalf or on behalf of Class Members.
6. The short-form Notice of Certification will be published in newspapers across Canada, including:
 - (a) *The Globe and Mail*
 - (b) *National Post*
 - (c) *Calgary Herald*
 - (d) *Edmonton Journal*
 - (e) *Vancouver Sun*
 - (f) *Winnipeg Free Press*
 - (g) *Halifax Chronicle-Herald*
 - (h) *Saint John Telegraph Journal*

- (i) *Charlottetown Guardian*
 - (j) *St. John's Telegram*
 - (k) *Le Journal de Montréal*
 - (l) *Montreal Gazette*
 - (m) *Saskatoon Star Phoenix*
 - (n) *Regina Leader-Post*
7. A notice will be published in Internet banners across the Google Display Network and Facebook.
8. The Parties will disseminate the long-form and short-form versions of the Notice of Certification through outreach to extend awareness to Indigenous community agencies and organizations.
9. The short-form Notice of Certification will be published in publications active in Indigenous communities, including.
- (a) *First Nations Drum*
 - (b) *Turtle Island News*
 - (c) *Aboriginal Spirit of Saskatchewan*
 - (d) *Western Native News*
 - (e) *Ha-Shilt-Sa*
 - (f) *Kantou News*
 - (g) *Nunavut News North*
 - (h) *Nuatsiaq News*
 - (i) *NWT News North*
 - (j) *Mi'kmaq-Maliset*
 - (k) *Windspeaker*
10. The long-form and short-form versions of the Notice of Certification will be provided to any Class Member who requests them.

SCHEDULE "D"
OPT OUT FORM

Mail to: **Koskie Minsky LLP**
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Email: metisnonstatus60sscoopclassaction@kmlaw.ca

This is **NOT** a claim form.

Completing this opt out form will **exclude you from receiving any compensation arising out of any settlement or judgment in this class proceeding noted below:**

COURT FILE NO.: T-2166-18

FEDERAL COURT OF CANADA
PROPOSED CLASS PROCEEDING

BETWEEN

Shannon Varley and Sandra Lukowich

Plaintiffs

AND

The Attorney General of Canada

Defendant

I understand that by opting out of this class proceeding I am confirming that I do NOT wish to participate in this class proceeding. I do NOT wish to receive any benefit that may be obtained from the lawsuit.

I understand that I must mail this opt-out form before September 15, 2021, or else it will **NOT** be valid.

I understand that any individual claim I may have must be commenced within an applicable limitation period or else it will be legally barred. I understand that the filing of this class

proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will **resume running against me** if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Name of Class Member

Signature of Class Member Opting Out
or Name and signature of Guardian of Property
(if applicable)

Telephone: _____

Date: _____

Name of Witness

Signature of Witness

Telephone: _____

Date: _____

SCHEDULE "E"

Brian Day v. The Attorney General of Canada

Litigation Plan

A. COMMON ISSUES AND CERTIFICATION MOTION

1. At the certification motion, the Plaintiff will seek to certify this action as a class proceeding on behalf of (collectively, the "Class"):

All Indigenous persons, excluding Indian persons (as defined in the *Indian Act*) and Inuit persons, who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and who were placed in the care of non-Indigenous foster or adoptive parents.

2. At the certification motion, the Plaintiff will seek certification of the following common issues:

- (a) Did Canada have a fiduciary duty to take reasonable steps to prevent all Indigenous persons, excluding Indian (as defined in the *Indian Act*) and Inuit persons, who were placed in the care of non-Indigenous foster or adoptive parents from losing their Indigenous identities?
- (b) If the answer to (a) is yes, did Canada breach this duty?
- (c) Did Canada owe a common law duty of care to take reasonable steps to prevent all Indigenous persons, excluding Indian (as defined in the *Indian Act*) and Inuit persons, who were placed in the care of non-Indigenous foster or adoptive parents from losing their Indigenous identities?
- (d) If the answer to (c) is yes, did Canada breach this duty?
- (e) If the answer to either (b) or (d) is yes, can the Court make an aggregate assessment of some or all of the damages suffered by the Class as part of the common issues trial?
- (f) If the answer to either (b) or (d) is yes, is an award of punitive damages warranted?
- (g) If the answer to (f) is yes, what amount of punitive damages ought to be awarded?

(the "Common Issues")

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B. NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

2. The Plaintiff will request that the Court settle the form and content for notification of the certification of this action (the “**Notice of Certification**”), the timing and manner of providing Notice of Certification and set out an opt-out date as being **four (4) months** following the date of the issuance of the certification order.
3. Notice of Certification will be disseminated as follows:
 - (a) by posting a notice on class counsels’ and the Administrator’s (defined below) website;
 - (b) by forwarding the notice to any class member who requests it;
 - (c) by the Administrator establishing a toll-free telephone support line to provide assistance to class members, family, guardians or other persons who make inquiries on their own behalf or on behalf of class members;
 - (d) by publishing the notice in newspapers across Canada, including *The Globe and Mail*, *National Post*, *Calgary Herald*, *Edmonton Journal*, *Vancouver Sun*, *Winnipeg Free Press*, *Halifax Chronicle-Herald*, *Saint John Telegraph Journal*, *Charlottetown Guardian*, *St. John's Telegram*, *Le Journal de Montréal*, *Montreal Gazette*, *Saskatoon Star Phoenix*, and the *Regina Leader Post*;
 - (e) by posting the notice in Internet banners across the Google Display Network and Facebook;
 - (f) by performing organizational outreach to extend awareness to Aboriginal agencies and organizations;
 - (g) by publishing a notice in the Aboriginal publications, including *First Nations Drum*, *Turtle Island News*, *Aboriginal Spirit of Saskatchewan*, *Western Native News*, *Ha-Shilt-Sa*, *Kantou News*, *Nunavut News North*, *Nuatsiaq News*, *NWT News North*, *Mi'kmaq-Maliset*, and *Windspeaker*; and
 - (h) by such other notice as counsel may request and the Court directs.
4. The costs of the notice program set out in paragraph 3 above are to be borne by the Defendant.
5. The Plaintiff will ask the Court to approve an opt-out form to be used by class members wishing to opt out of the class action, which will require the class member to provide sufficient information to establish their membership in the class.

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6. The Plaintiff will ask that the Court appoint an Administrator to organize and receive opt out forms or other written documentation from any class member opting out of the class action. Only written elections to opt out will be accepted and must be delivered to the administrator within the aforementioned deadline.
7. Within sixty (60) days after the expiration of the opt-out period, the administrator will deliver to the Court and the parties an affidavit listing the names of all persons who have opted out of the class action.

C. LITIGATION STEPS PRIOR TO THE DETERMINATION OF THE COMMON ISSUES

Pleadings and Production

8. The Defendant shall serve a statement of defence within sixty (60) days from the date of certification order.
9. The Plaintiff shall have thirty (30) days from service of the Defendant's statement of defence to serve a reply, if any.
10. Within ninety (90) days from the certification order, the parties shall agree upon a timetable for production of documents and examinations, to be approved by the Court.
11. The Plaintiff shall apply for such further directions as may be required.

Case Management Conference ("CMC")

12. The Plaintiff proposes that a CMC of this action be fixed for hearing within 90 days of the certification order to:
 - (a) address the following issues:
 - (i) content of documentary productions and deadline;
 - (ii) deadline for examinations for discovery;
 - (iii) deadline for motions arising from examinations for discovery;
 - (iv) deadline for re-attendances at examinations for discovery, if any;

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- (v) deadline for service of trial record;
 - (vi) deadline for requests to admit; and
 - (vii) deadline for exchange of expert reports;
- (b) set dates for further CMCs as necessary.

Common Issues Trial

13. The common issues trial will determine the Common Issues at a time and place fixed by the Court, in the City of Toronto or otherwise in accordance with the order of the Court.

D. LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS

Notice of Resolution of Common Issues

14. The Court settle the form and content for notification of the resolution of the Common Issues and the claims and individual issues processes, if applicable (“**Notice of Resolution**”), the timing and manner of providing the Notice of Resolution (“**Resolution Notice Plan**”) and requiring class members to file claims (“**Claim Forms**”) by a fixed date with a person designated by the Court (the “**Administrator**”).
15. The Plaintiff suggests a similar method of notice be ordered as per paragraph 3, above.

Valuation of Damages

16. Assuming that one or more of Common Issues (a)-(g) are resolved in favour of the Plaintiff, the Plaintiff will propose the following methods for assessing and distributing damages for the class members as follows:
- (a) aggregate damages to be distributed on a *pro-rata* basis; and
 - (b) if necessary, damages of individual claimants to be determined in individual assessments in a manner to be determined by the Court.

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Resolution of the Individual Issues

17. The Plaintiff is seeking an aggregate assessment of monetary relief as a common issue. If aggregate damages are not awarded, or if the Court concludes that assessments are required in addition to a determination of aggregate damages, it may still be necessary to establish a procedure in accordance with section 334.26 of the *Federal Courts Rules* to determine the individual damages of Class Members, or any other individual issues as directed by the Court.
18. Within ninety (90) days of the issuance of the judgment on the common issues, the parties will convene for argument relating to section 334.26 of the *Federal Courts Rules* to determine the appropriate process to determine the individual issues, if any.
19. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining individual issues. Potential methods include claims processes, references, mini-trials, mediations, arbitrations, or other means approved by the Court pursuant to section 334.26 of the *Federal Courts Rules*. At this time, the Plaintiff intends to propose a method of resolving outstanding individual issues as set out below.
20. The Court will be asked to specify procedures and deadlines by which class members shall identify themselves as claimants wishing to make claims for individual compensation.
21. The Plaintiff will ask the Court to settle the form and content the Notice of Resolution and to set a date by which class members will be required to file a claim with the Administrator.
22. The Plaintiff will ask the Court to order that the Notice of Resolution be distributed in accordance with the Resolution Notice Plan set out above, except it shall not be mailed to class members who validly opted out of the class action.
23. The Plaintiff anticipates that given the nature of the damages suffered by class members, adjudication of the claims could be resolved through an efficient process which could involve the following steps, and which would be subject to the Court's discretion:

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- (a) Each claimant could submit a claim form to a referee appointed by the Court (the "Referee"). The claim form shall include supporting documentation and expert evidence, as applicable.
- (b) The Referee shall deliver a copy of the claim form and any supporting documentation and expert evidence to the Defendant.
- (c) The Defendant shall have thirty days following receipt of the claim form and documentation, or such other time period as may be set by the Court, in which to file with the Referee a written opposition to all or part of the claim, including responding documentation and/or expert evidence. The written opposition shall state the reasons for the opposition and shall be deemed to constitute their response. The Defendant shall attach all supporting documentation and expert evidence, as applicable.
- (d) On request by either of the parties, the Referee shall determine what if any additional production is required by either party, what examination may be conducted, and whether participation by any other parties is necessary in the process.
- (e) The Referee shall communicate his/her decisions in writing to the claimant and to the Defendant.
- (f) The assessment of damages may be in writing or by means of oral hearing, depending on the nature and complexity of the claim and the severity of the alleged damages, in accordance with the Court's determination. The availability and manner of appeal procedures will be determined by the Court.
- (g) It may be possible to categorize and value claims in accordance with a grid according to the nature and severity of the damages, as agreed to by the parties or as ordered by the Court.

E. MISCELLANEOUS REQUIREMENTS OF THE LITIGATION PLAN

Registration of Potential Class Members

- 24. The Plaintiff will develop a confidential web-based registration system as well as a telephone hotline which will permit potential class members to contact Class Counsel and provide information necessary to assist in the advancement of the action.
- 25. The Plaintiff has a team of clerks devoted to communication with class members, including the class members in this action.

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Review of the Plan

26. This Litigation Plan may be reconsidered and revised under the continuing case-management authority of the Court after the determination of the Common Issues or upon application by the parties.
27. Class Counsel's legal fees are subject to Court approval under the *Federal Courts Rules*.

Claims Administration

28. Plaintiff's counsel will propose that the Administrator provide the claims administration for any settlement achieved, for global damages distribution and individual damages determinations.
29. If a settlement is achieved and a settlement fund is provided, the Administrator will administer payments out of the fund to claimants based on the procedures set out above, with approval and/or modification by the Court.

Class Action Website

30. From time to time, Class Counsel will provide updates, post frequently asked questions and answers, and post other documentation relating to the class action on its own website.