

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHARON LYNN LOGAN

PLAINTIFF

AND:

DERMATECH, INTRADERMAL DISTRIBUTION INC.,

and

VIVIER PHARMA INC.

DEFENDANTS

AND:

DR. HARLOW HOLLIS

THIRD PARTY

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c.50

SETTLEMENT AGREEMENT

WHEREAS the Plaintiffs brought this class action under the *Class Proceedings Act*, R.S.B.C. 1996 c. 50 for alleged negligence by Dermatech, Intradermal Distribution Inc., and Vivier Pharma Inc. in relation to the importation, distribution, and sale of Dermalive in Canada.

AND WHEREAS counsel for the parties to this Agreement have conducted a thorough analysis of the claims, and they have also taken into account the extensive burdens and expense of litigation, including the risks of going to trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arms' length negotiations, both directly and with the assistance of mediators, the parties to this Agreement wish to settle any and all issues among themselves in any way relating to the Allegations made in the Amended Notice of Civil Claim filed in this Action;

AND WHEREAS after their investigation, the Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

NOW THEREFORE the parties to this Agreement agree to settle the issues in dispute in the Class Action relating to the Allegations on the following terms and conditions:

DEFINITIONS

- 1) For the purposes of this Settlement Agreement, the following definitions apply:
 - a) "Action" means the class proceeding commenced by Sharon Lynn Logan as Representative Plaintiff in the Vancouver Registry of the Supreme Court of British Columbia against Dermatech, Intradermal Distribution Inc., and Vivier Pharma Inc., as Court Docket No. S090937 and certified as a class proceeding by this Court;
 - b) "Administration Costs" means all costs to administer and distribute the Settlement Fund including the costs and professional fees of the Claims Administrator and the costs of implementing the Notice Plan;
 - c) "Allegations" means all of the facts, law, causes of action and damages plead in the Amended Notice of Civil Claim filed in this Action, including but not limited to the allegations relating to the distribution, conception, fabrication, production, manufacturing, marketing, solicitation, offer, advertising, sale, supply, or promotion of Dermalive in Canada by Intradermal Distribution Inc. or Vivier Pharma Inc.;
 - d) "Approval Hearing" means the hearing at the Court to approve the settlement of the Action;
 - e) "Approval Order" means the Order of the Court approving the settlement;
 - f) "Claim" means the claim made by a Claimant with the Claims Administrator in accordance with the procedure in the Distribution Protocol. "Claims" is the plural of Claim;
 - g) "Claimant" means a Class Member who files a Claim pursuant to the terms hereof;

- h) "Claims Administrator" means the persons or entities agreed by the parties or appointed by the Court to administer the claims process in accordance with the Distribution Protocol.
- i) "Claims Deadline" means 6 months from the first publication of the Notice of Court approval of this settlement.
- j) "Class" is as defined in the Certification Order of Justice Sewell dated August 11, 2011, except that it excludes any person resident in British Columbia who has validly opted out of this Action and includes only those persons resident outside British Columbia who have validly opted into this Action;
- k) "Class Counsel" means David M. Rosenberg, Q.C. of Rosenberg Law;
- l) "Class Counsel Fee" means the fees, disbursements and all taxes awarded to Class Counsel by the Court at the Approval Hearing;
- m) "Class Member" is a person who is a member of the Class;
- n) "Court" means the Supreme Court of British Columbia;
- o) "Court Approval Date" means the later of:
- i. 31 days after the date on which the Supreme Court of British Columbia issues the Approval Order; and
 - ii. The disposition of any appeals from the Approval Order;
- p) "Distribution Protocol" means the plan setting out how compensation to Class Members shall be made as prepared by the Representative Plaintiff and approved by the Court on notice to Intradermal Distribution Inc. and Vivier Pharma Inc.

- q) "Notice Plan" means the plan created and approved by the Court to disseminate the Notice of Approval of Settlement to the Class;
- r) "Public Health Insurers" means all of the Canadian Provincial and Territorial Ministries of Health or equivalents, and/or Provincial and Territorial Governments, and/or publicly funded plans for health care in Canada;
- s) "Public Health Insurer Claims" means the entitlement of the Public Health Insurers related to any subrogated or direct claims arising from the provision of health care related services to Class Members relating in any manner whatsoever to Dermalive.
- t) "Releasees" means Intradermal Distribution Inc. and Vivier Pharma Inc., and each of their respective employees, servants, officers, directors, agents, insurers, re-insurers representatives, predecessors, successors and assigns;
- u) "Settlement Agreement" means this agreement, as executed by the parties or their representatives;
- v) "Settlement Fund" means the sum of \$5,600,000 (Canadian) that the Releasees have agreed to pay to settle the Action, inclusive of Claims, Administration Costs, Public Health Insurer Claims, interest, legal costs and disbursements;

SETTLEMENT FUND

- 2) The Releasees shall pay the Settlement Fund to Rosenberg Law "in trust" within thirty (30) days of the Court Approval Date. No use shall be made of the Settlement Fund until:
 - a) Class Counsel has obtained signed Releases from the Public Health Insurers of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland, which release the Releasees from the Public Health Insurer Claims; and

b) Class Counsel has written to the Ministry of Health or equivalents of Prince Edward Island, New Brunswick, Nunavut, Yukon, and the Northwest Territories, and has received written confirmation from those Ministries of Health, or equivalents, that these Public Health Insurers are in agreement with the method proposed in the Settlement Agreement for resolution of the Public Health Insurer Claims.

3. The Settlement Fund will be used to pay the Public Health Insurer Claims, Claims and the other required payments in accordance with this Agreement in full and final settlement of the Action, inclusive of all Class Counsel Fees, disbursements, taxes, and any honorarium awarded by the Court and Administration Costs. The Settlement Fund shall be paid as follows:

a) First, to satisfy the Public Health Insurer Claims of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland. Upon payment of the Public Health Insurer Claims, Class Counsel shall forthwith provide counsel for the Releasees with signed Releases with respect to the Public Health Insurer Claims of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland and written confirmation that the Ministry of Health or equivalents of Prince Edward Island, New Brunswick, Nunavut, Yukon, and the Northwest Territories are in agreement with the method proposed in the Settlement Agreement for resolution of the Public Health Insurer Claims.

b) Second, to satisfy the Class Counsel Fees, disbursements, taxes, and any honorarium as determined by the Court at the Settlement Approval Hearing, pursuant to s. 38 of the *Class Proceedings Act*, R.S.B.C. 1996 c. 50.

c) The remainder of the Settlement Fund will then be paid by Rosenberg Law to the Claims Administrator "in trust" and these funds shall be paid as follows:

(i) First to satisfy the Public Health Insurer Claims of Prince Edward Island, New Brunswick, Yukon, Northwest Territories, and Nunavut, if any such claims are

made known in accordance with the procedure set out in paragraph 6 of this Settlement Agreement;

(ii) Second to be used to compensate Claimants in accordance with the Distribution Protocol and to pay Administration Costs.

PAYMENTS TO PUBLIC HEALTH INSURERS

4. All payments made under this Settlement Agreement shall be full and final and include Public Health Insurer Claims arising from a Claimant's use of Dermalive.

5. When Class Counsel has obtained signed Releases from the Public Health Insurers of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland and Class Counsel has written to the Ministry of Health or equivalents of Prince Edward Island, New Brunswick, Nunavut, Yukon, and the Northwest Territories to confirm that these Public Health Insurers are in agreement with the method proposed in the Settlement Agreement for resolution of the Public Health Insurer Claims, then Class Counsel shall pay the Public Health Insurer Claims of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland. Upon payment of these Public Health Insurer Claims, Class Counsel shall forthwith provide counsel for the Releasees with the signed Releases with respect to the Public Health Insurer Claims of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland and written confirmation that the Ministry of Health or equivalents of Prince Edward Island, New Brunswick, Nunavut, Yukon, and the Northwest Territories are in agreement with the method proposed in the Settlement Agreement for resolution of the Public Health Insurer Claims.

6. Immediately following the Claims Deadline, the Claims Administrator shall provide the names of all Claimants to the Ministry of Health or equivalents for Prince Edward Island, New Brunswick, Nunavut, Yukon and the Northwest Territories in order to confirm that these provinces and territories have no Public Health Insurer Claims. In the event that the Public Health Insurer advises that it has no claim, the Claims Administrator shall provide counsel for

the Releasees with written confirmation that the Public Health Insurer has no Public Health Insurance Claim.

7. In the event that Prince Edward Island, New Brunswick, Nunavut, Yukon and/or the Northwest Territories has a Public Health Insurer Claim, the Public Health Insurer Claim(s) shall be paid by the Claims Administrator out of the Settlement Fund in exchange for a signed Release in favor of the Releasees. The Claims Administrator shall provide counsel for the Releasees with the signed Release(s) forthwith upon payment of the Public Health Insurer Claim(s).

8. In the event that a Public Health Insurer pursues recovery of the Public Health Insurer Claims from the Releases, or any of them:

- a) All costs, legal costs and expenses reasonably incurred by any of the Releasees to respond to or defend the Public Health Insurer Claims will be paid by the Claims Administrator out of the Settlement Fund;
- b) The Public Health Insurer Claims will be paid by the Claims Administrator out of the Settlement Fund.

This provision and the indemnity specified herein shall expire when the Releasees are provided with signed Releases from those Public Health Insurers who have a Public Health Insurer Claim, and the Releasees are provided with written confirmation that the remaining Public Health Insurers have no Public Health Insurance Claim.

COMMUNICATIONS

9. The parties agree that when commenting publicly on the Action or this Settlement Agreement, they shall:

- a) Inform the inquirer that the Action has been settled to the satisfaction of all parties;

- b) Inform the inquirer that it is the view of the parties that the settlement of the Action is fair, reasonable and in the best interests of the Class; and
- c) Decline to comment in a manner that casts the conduct of any party in a negative light or reveals anything said during the settlement negotiations.

COURT APPROVAL

10. It is agreed that Court approval of this Settlement Agreement and the Distribution Protocol is required.

RELEASES

11. On the Court Approval Date, each Class Member, whether or not he or she submits a Claim or otherwise receives compensation in accordance with the Distribution Protocol, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, suits, debts, contracts, claims, whether statutory or otherwise and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have whether commenced or not in connection with all claims relating to the Allegations, except for any Claimant's entitlement to be paid in respect of a Claim pursuant to the terms hereof.

12. On the Court Approval Date, each Class Member will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any claims relating to the Allegations.

13. It is agreed that if a Class Member commences legal action after the Court Approval Date against any person or entity who may have a claim against the Releasees or any of them for

contribution or indemnity, and the Releasees or any of them are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to expressly plead or otherwise admit that the Class Member will not recover or seek to recover from any person, corporation or entity, any portion of the Class Member's loss, damage or expense for which the Class Member claims or could have claimed against the Releasees, or any of them, which a court or other tribunal may attribute to the fault, tort, negligence, breach of contract and/or the breach of any equitable, common law or statutory duty of the Releasees, or any of them.

NO ADMISSIONS, NO USE

14. This Settlement Agreement and any proceedings taken pursuant to this Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession or admission of any kind by the parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any parties except as may be required to enforce or give effect to the settlement and this Settlement Agreement. For greater clarity, the Releasees deny the truth of the allegations in the Action and deny any liability whatsoever.

TERMINATION

15. This Settlement Agreement shall, without notice, be automatically terminated if the Court does not approve this Settlement Agreement. In the event of termination, this Settlement Agreement shall have no further force or effect, save and except for this section and section 12, which shall survive termination.

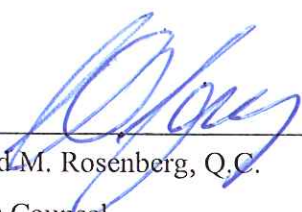
GENERAL

16. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of British Columbia.

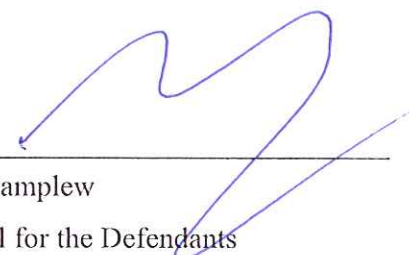
17. This Settlement Agreement constitutes the entire agreement between the parties and may not be modified or amended except in writing, on consent of the parties, and with Court approval.

18. This Settlement Agreement may be signed by the parties in counterpart which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the parties has caused this Settlement Agreement to be executed on her/his/their behalf by her/his/their duly authorized counsel of record, effective as of October 8, 2014.



David M. Rosenberg, Q.C.
Class Counsel



John Vamplew
Counsel for the Defendants
Intradermal Distribution Inc. and
Vivier Pharma Inc.