

**THIS NOTICE HAS BEEN APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.**

**introduction**

You are receiving this Notice because you may have been implanted with one of the leads that are the subject of this class action. The Ontario Superior Court of Justice (the "Court") has ordered that all recipients of these leads be sent this Notice for the purpose of providing information about the lawsuit and your legal rights.

**certification**

By Orders dated October 2, 2009 and March 31, 2010, the Court certified an action titled Robinson et al. v. Medtronic, Inc. et al., court file no. 07-CV-341755CP as a class proceeding on behalf of the following classes (collectively, "Class Members"):

**"Implant Class":**

All persons implanted in Canada with one of the Sprint Fidelis Lead Model Numbers listed below:

- 6949;
- 6948;
- 6931; and,
- 6930.

(collectively, the "Leads").

**"Family Law Class":**

Family members of the Implant Class who are entitled to assert a derivative claim for damages pursuant to section 61 of the Family Law Act, R.S.O. 1990, c. F.3, as amended, or other similar provincial legislation.

The Court appointed the plaintiffs, Sherry Robinson and Dan Austen, as representatives for the Implant Class. Gregory Horning and Glenda Austen were appointed as representatives for the Family Class.

**If you are a Class Member, you will automatically be included in this class action and are not required to take any further steps at this time.**

**nature of the class action**

The class action seeks damages and other relief for the Class as a result of the alleged negligence and other wrongful acts of the defendants in respect of their design, manufacture, marketing and sale of the Leads in Canada. Specifically, it is alleged that the Leads are defective in that they are prone to fracture, which could cause a defibrillator to deliver unnecessary shocks to patients or fail to provide therapy to patients when needed. The plaintiffs also allege that the defendants failed to timely disclose the defects to Class Members, doctors and regulatory authorities. A list of the common issues certified by the Court is attached hereto as Schedule "A".

The defendants deny all allegations made by the plaintiffs and fully intend to defend this action. None of the allegations made by the plaintiffs has been proven in Court and remain to be determined at a future trial. In certifying this action as a class proceeding, the Court has made no determination as to the merits of the plaintiffs' claims.

A copy of the Court's decision with respect to certification may be obtained by contacting class counsel at the address below, or on-line at <http://www.kimorr.ca> .

The allegations made by the plaintiffs should not be considered in any way to be medical advice regarding any individual's specific circumstances. Patients should contact their physicians about any questions regarding their medical condition.

**class counsel**

The law firms of Kim Orr Barristers P.C. and Rochon Genova LLP have been appointed as class counsel. Class counsel can be reached at:

**KIM ORR BARRISTERS P.C.**

200 Front Street, Suite 2300  
Toronto, ON M5V 3K2  
Telephone: (416) 596-1414  
Fax: (416) 598-0601  
Website: [www.kimorr.ca](http://www.kimorr.ca)  
Attention: Won J. Kim P.C. or Victoria Paris P.C.

**ROCHON GENOVA LLP**

Barristers • Avocats  
121 Richmond Street West, Suite 900  
Toronto, ON M5H 2K1  
Telephone: (416) 363-1867 or toll free at 1-866-881-2292  
Fax: (416) 363-0263  
Website: [www.rochongenova.com](http://www.rochongenova.com)  
Attention: Joel P. Rochon or Sakie Tambakos

**opting out**

Members of the Implant Class who **DO NOT** wish to participate in the class action must fax, email or mail a written request to opt out including the name, address and phone number and signed by such person indicating that he or she is opting out of the Medtronic Sprint Fidelis Lead Class Action to Kim Orr Barristers P.C. at the address noted above on or before 5:00 p.m. eastern time on **September 12, 2011. Do not send a written request to opt out if you wish to participate in this class action.** No person may opt out on behalf of a minor or mentally incapable person without the permission of the Court after notice to The Office of the Children's Lawyer and/or the Office of the Public Guardian and Trustee, as appropriate.

Family members of any Implant Class member who opts out will also be excluded from the class action. Members of the Family Class shall have no independent right to opt out.

All Class Members who do not opt out will be bound by the terms of any judgment obtained in the class proceeding, including a trial judgment on the common issues, whether favourable or not.

**fees and disbursements**

Class counsel have entered into agreements with the representative plaintiffs with respect to the legal fees and disbursements. These agreements provide that class counsel will not receive payment for their work unless and until the class action is successful or monies are recovered from the defendants. All fees received by class counsel must be approved by the Court.

After determination of the common issues, it may be necessary that individual class members participate in individual proceedings to determine issues that are not common to the class in order to establish their claim. The Court may establish a procedure for making an individual claim.

Class members, other than the representative plaintiffs, are not liable for costs except with respect to the determination of their own individual claims.

**additional information**

Any questions about this Notice or the Medtronic Sprint Fidelis Lead Class Action should **not** be directed to the Court, which is not equipped to address such inquiries. Further information may be obtained by contacting class counsel at the contact information identified above or by visiting the Medtronic Sprint Fidelis Lead Class Action website at [http://www.kimorr.ca/FL-Sprint\\_Fidelis.html](http://www.kimorr.ca/FL-Sprint_Fidelis.html) .

## Schedule "A"

### COMMON ISSUES

#### Negligence

- (1) Did the Defendants, or either of them, owe a duty of care to the Class in respect of the design, development, testing, manufacturing, licensing, assembling, distribution and sale of the Leads?
- (2) If so, did the Defendants, or either of them, breach such duty? If so, what was the nature of the breach?
- (3) Did the Defendants, or either of them, owe a duty to the Class to warn of the risk of fracture associated with the Leads, and if so, when did such duty arise?
- (4) If so, did the Defendants, or either of them, fail to warn the Class of the existence of the risk of fracture associated with the Leads?

#### Conspiracy

- (5) Did Medtronic, Inc. and Medtronic of Canada Ltd., act in combination to conceal information from Health Canada relating to the risk of fracture associated with the Leads?
- (6) Did the Defendants' conduct violate the *Medical Devices Regulations* promulgated pursuant to the *Food and Drugs Act*?
- (7) Should the Defendants have known that, in the circumstances, injury to the Class was likely to occur as a result of the Defendants' actions described in subparagraphs (5) and (6) above?

#### Waiver of Tort

- (8) Does the law permit the Class in whole or in part to elect disgorgement of Medtronic's gains instead of damages for negligence or conspiracy?
- (9) If part, but not all, of the Class can so elect, which part or parts of the Class can so elect?
- (10) Is the consent of the Ontario Health Insurance Plan ("OHIP") or any other provincial health insurer required to any such an election?
- (11) If an election or elections may be made, what is the amount and how is it to be allocated?
- (12) If an election or elections may be made, what share, if any is the OHIP or other provincial insurer's entitlement?
- (13) If an election or elections may be made, (a) is the consent of the Family Law Class required and (b) if made, are the Family Law Class Members, precluded from recovery?

#### Miscellaneous

- (14) Should one or both of the Defendants pay the costs of administering and distributing any recovery? If so, in what amount?
- (15) Should one or both of the Defendants be ordered to pay prejudgment interest? If so, who should pay, and at what annual rate? Should the payment be simple or compound interest? How is the prejudgment interest to be calculated?