Summary of Basis for Class Counsel's Recommendation of Settlement and Distribution Protocol

Why Class Counsel Recommends the Settlement

Background

This class action was brought on behalf of Ontario denturists who were insured under the Denturist Association of Ontario Master Policy issued by Aviva Insurance Company of Canada. When COVID-19 led to provincial closure orders in March 2020, denturists' businesses were forced to close and they suffered losses of business income. Aviva denied the business interruption insurance claims of all Class Members. This action was commenced in June 2020 to seek compensation for those losses.

The case was certified as a class proceeding in July 2021. Over the following years, Class Counsel conducted extensive work, including documentary productions, examinations for discovery, retaining experts, and preparing for a common issues trial scheduled for early 2026.

The Settlement Negotiations Were Thorough and Arm's-Length

The settlement negotiations were direct, adversarial, and conducted at arm's length between the Class Counsel team and Aviva's defence counsel. Following years of exchanged positions, offers, and counter-offers, the parties attended mediation over five days with the Honourable George Strathy, former Chief Justice of Ontario, as mediator. While mediation was initially unsuccessful, the parties continued negotiating and appeared before Justice William Black for a settlement-focused pre-trial conference in December 2025. Following that conference, the parties reached an agreement in principle by December 22, 2025, which was later formalized in the executed Settlement Agreement.

The Settlement Achieves a Strong Recovery

Under the Settlement Agreement, Aviva has agreed to pay $6,862,724.50 to settle the action. This includes a contribution by Aviva to legal fees and disbursements, which directly increases the net funds available for distribution to Class Members.

Class Counsel's approach to the settlement was guided by two primary goals: achieving a favourable monetary recovery that compared reasonably to the risks of the litigation, and assessing the alternatives to a negotiated agreement. The settlement broadly reflects a meaningful recovery of a large portion of the Class Members' business income losses incurred during several weeks after the closure orders issued in response to COVID-19.

Importantly, the settlement is a global resolution — meaning Aviva agreed to pay a lump sum to be distributed to all Class Members without requiring individual claims adjustment processes with Aviva. Class Counsel considers this to be an important concession that benefits Class Members.

The Settlement Avoids Significant Litigation Risks

This is a complex case spanning six years (2020–2026), involving voluminous documentary and expert evidence. Going to trial would have carried several serious risks for Class Members:

- **Risk of losing on coverage interpretation:** The Court could have disagreed with the Class Members' argument that the Restricted Access and Negative Publicity coverages were triggered, meaning no Class Member would be entitled to any coverage at all.
- **Risk of reduced damages:** The Court might not have agreed with Class Members' positions on how business interruption losses should be calculated, which could have significantly reduced what was recoverable.
- **Risk of costs awards:** Adverse findings could have resulted in costs awards being made against the Representative Plaintiff.
- **Risk of appeals and delay:** Even if Class Members won at trial, a favourable decision would likely have been appealed by Aviva, leading to further costs and years of additional delay with no guaranteed outcome.
- **Risk of low participation in individual claims:** Even after winning at trial and any appeals, Class Members would still have been required to undergo an individual claims assessment process. This would have likely required each Class Member to submit detailed financial documentation. Class Counsel assessed a high risk that many Class Members could be intimidated or overwhelmed by such a process, or that the costs of participating would be disproportionate to what some Class Members could expect to recover — meaning legitimate claims might never be paid.

The Representative Plaintiff Supports the Settlement

Matt McCallum, the Representative Plaintiff, has reviewed the Settlement Agreement and confirmed that it has been explained to him by Class Counsel. He has instructed Class Counsel to seek approval of the Settlement Agreement. Mr. McCallum understands and accepts that the settlement will not require Class Members to undergo individual claims adjustment processes with Aviva, which could increase expense and delay, and could deter many Class Members from submitting necessary documentation. He accepts Class Counsel's recommendation that the Settlement Agreement is fair, reasonable, and in the best interests of Class Members.

Conclusion on the Settlement

Class Counsel believes this action has merit, but no litigation is without risk. The settlement compares well against the risk of continued litigation. It accounts for the risks of taking the case to trial and secures a meaningful recovery for Class Members without the burden, delay, and uncertainty of further proceedings.

Why Class Counsel Recommends the Distribution Protocol

Overview

The Distribution Protocol sets out how the Settlement Funds — that is, the Settlement Amount after deducting Court-approved legal fees, disbursements, the Representative Plaintiff honorarium, accounting fees, and administration expenses — will be distributed to Class Members who file valid and timely claims.

The Protocol Is Designed to Be Simple and Fair

Class Counsel designed the Distribution Protocol with the goal of distributing the Settlement Funds to Class Members in the most efficient, economical, and equitable manner possible. A key benefit of the Settlement Agreement is that it avoids the need for Class Members to undergo individualized claims assessment processes with Aviva, which can be document-heavy, timeintensive, and intimidating — particularly for denturist practices that may not have extensive administrative resources.

The Distribution Protocol was developed in collaboration with forensic accounting firms MDD Forensic Accountants and Davis Martindale, who have been involved in this matter since 2020 and have developed a thorough understanding of denturist practices and the financial circumstances of Class Members.

How It Works

The claims process follows these steps:

1. Class Members will receive notice of the claims process with a link to an Online Claims Form.
2. Class Members complete the Online Claims Form and upload basic required documentation, specifically their 2019 annual financial statement, owners' 2019 T4 statements or payroll ledgers, and monthly revenue for March, April, and May of 2019.
3. The Court-appointed Accountant will calculate the "Base Business Loss" — a fair and accurate representation of each Class Member's business income loss for a 37-day period.
4. Once the claims deadline has passed, the Claims Administrator will calculate the value of each valid claim, determine each Class Member's proportionate share compared to the total of all valid claims, and calculate each Class Member's payment from the Settlement Funds on a pro rata basis.
5. Approved claims will be paid by wire transfer.

Why This Approach Is Appropriate

During the litigation, Class Counsel and Davis Martindale gathered financial data from approximately 60 Class Members. The Distribution Protocol is specifically intended to capitalize on the extensive accounting work and analysis already completed, reduce fees and administration costs, maximize the funds available for distribution, provide a simple and user-friendly claims process that minimizes effort required of Class Members, offer an equitable method of distribution based on each Class Member's proportionate share, create a transparent and efficient approach, and minimize or eliminate any unclaimed funds.