

“TORT CONTINGENCY FEE RETAINER AGREEMENT”

This contingency fee retainer agreement is

B E T W E E N:

Bogoroch & Associates LLP
Sun Life Financial Tower
150 King Street West, Suite 1901
Toronto, Ontario
M5H 1J9

Tel: 416-599-1700
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Toll Free: 1-866-599-1700

(Hereinafter called the “Lawyers”)

and

(Hereinafter called the “Client”)

1. What we are retained to do:

Bogoroch & Associates LLP are being retained by you, the client, to provide the following services, namely, to represent you, the client, in respect to injuries, losses and damages resulting from a CASE TYPE (MVA/MED MAL) which occurred on or about DATE at LOCATION .

In representing your interests in respect to the above-noted matter, Bogoroch & Associates LLP will be incurring a significant amount of time and out-of-pocket expenses for and on your, the client’s, behalf. In retaining the services of Bogoroch & Associates LLP, you, the client has the option of retaining the Lawyers other than by way of a contingency fee agreement, including retaining the Lawyers by way of an hourly rate retainer.

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An hourly rate retainer is a retainer whereby we, the Lawyers, charge you, the client, for each hour or a portion thereof that members of our firm work on the client's file at a specified hourly rate for each member of our firm. Hourly rates may vary among lawyers and the client can speak with other lawyers to compare rates. Notwithstanding that, you, the client, have been advised of the hourly rates of the various members of Bogoroch & Associates LLP and that hourly rates may vary among lawyers and notwithstanding that, you, the client, can speak with other lawyers to compare rates, you, the client, has chosen to retain Bogoroch & Associates LLP by way of a contingency fee agreement. You, the client, acknowledges and understands that all usual protections and controls on retainers between a lawyer and client, as defined by the Law Society of Upper Canada and the Common Law, apply to this contingency fee agreement.

2. The Amount of the Contingency Fee:

The contingency fee paid by you, the client, to Bogoroch & Associates LLP is equal to **33%** of all amounts recovered on your behalf for injuries, damages, and losses, excluding disbursements (out-of-pocket expenses) and excluding costs payable to you, the client, regardless of the source of the said recovery whether by way of settlement of your claim or by way of judgment following a trial. The percentage and other basis for the contingency fee herein is based upon a number of factors including the likelihood of success in your case, the nature and complexity of your claim, the expense and risk of pursuing it and the degree of skill and expertise that we bring to your matter.

For example:

To help you understand how our percentage will be determined, we offer the following sample calculation. This sample calculation does not apply to your case; it is for illustration purposes only.

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Suppose that before trial, your case is settled for the following amounts (paid as lump sums):

Damages inclusive of interest:	\$100,000
Costs (from the Defendant), including HST:	\$ 15,000
Disbursements (reimbursed by the Defendant):	<u>\$ 10,000</u>
Total:	\$125,000

In this example, our fee would be 33% of the total damages inclusive of interest awarded (\$100,000.00) to you, our client, (excluding costs). The invoice delivered to you, our client, would consist of the following:

Fee of 33% x \$100,000:	\$ 33,000
HST on our fee:	\$ 4,290
Disbursements (reimbursed by defendants):	\$ 10,000
Client Disbursements (faxes, photocopies, Long distance telephone, courier, etc.)	(included in our <u>percentage fee</u>)
Sub-total:	\$ 47,290

Your recovery will then be \$77,710 (\$62,710 for claim plus \$15,000 costs payable by the other side).

It is agreed that Bogoroch & Associates LLP shall not recover more in fees than the client, recovers as damages or receives by way of settlement.

As client, you are responsible for the repayment to Bogoroch & Associates LLP of all disbursements (out-of-pocket expenses) including H.S.T. that Bogoroch & Associates LLP have paid on your behalf. Such disbursements (out-of-pocket expenses) are likely to include but are not limited to, photocopying charges, faxes, postage, courier charges, long distance telephone calls, mileage, experts' reports, court filing fees, computer assisted legal research, as well as other miscellaneous out-of-pocket expenses. The client acknowledges that Bogoroch & Associates LLP are entitled to be reimbursed for any of these disbursements that they have expended on your behalf subject to s.47 of the *Legal Aid Services Act*, 1998 (Legal Aid charge against recovery) and such

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entitlement is a first charge (lien) on any funds payable to you as a result of a judgment or settlement of the within matter ahead of all other claims of any nature or kind including your own claims against these funds, except as provided under s.47 of the *Legal Aid Services Act, 1998*.

So long as we act for you, the client, and the retainer is not terminated, Bogoroch & Associates LLP will absorb the following client disbursements in our fee. These disbursements include courier, taxi, photocopies, postage, long distance telephone calls, faxes and mileage.

**3. The Partial Indemnity or Substantial Indemnity Costs
Paid by the Other Side:**

In addition to being awarded money in compensation for the injuries, losses and damages that you have sustained inclusive of interest, either by way of settlement or if settlement cannot be obtained, by way of a judgment following a trial, the other party may also be required to pay an amount of money towards your **legal costs and disbursements**. Unless otherwise ordered by a judge, **you are entitled to receive any such costs contribution or award, on a partial indemnity scale or substantial indemnity scale**, if you are **the party entitled to costs**.

By executing the within contingency fee agreement, you agree and direct that all funds claimed by Bogoroch & Associates LLP for legal fees, costs, taxes and disbursements shall be paid to Bogoroch & Associates LLP in trust from any judgment or settlement money.

In some cases, the client is liable to pay costs to the other side. You, as client, are responsible for paying any costs contribution or award, on a partial indemnity scale or substantial indemnity scale, if it is determined by an award, decision or judgment that you are liable to pay such costs. The amount of the contingency fee payable herein to

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Bogoroch & Associates LLP shall exclude any amount awarded or agreed to that is separately specified as being in respect of costs and disbursements.

4. Your Rights to have the Court Assess the Contingency Fee payable under this agreement:

You as client have the right to ask the Superior Court of Justice to review and approve the bill submitted to you by Bogoroch & Associates LLP if payment of their fees and disbursements is by way of this contingency agreement. Should you, wish to ask the Superior Court of Justice to review and approve our bill of fees, charges and disbursements, you, may apply to the Superior Court of Justice for an assessment of our bill rendered in respect to this contingency fee agreement within six months after delivery to you of the bill for fees, charges and disbursements.

5. What Happens if you Wish to Terminate the Legal Services of Bogoroch & Associates LLP:

At any time during the course of the representation by Bogoroch & Associates LLP, you, the client, or Bogoroch & Associates LLP may wish to terminate this Contingency Fee Retainer Agreement such that a new retainer agreement is entered into whereby the fees to be charged by Bogoroch & Associates LLP will be based upon the time spent and the hourly rates charged on your file. Such termination by either Bogoroch & Associates LLP, or you, the client, must be in writing.

In the event that either Bogoroch & Associates LLP or you, the client, wishes to terminate this Contingency Fee Retainer Agreement then, in that event, the terms of **paragraph 2** of this Contingency Fee Retainer Agreement no longer apply to the calculation of the fees to be charged to you, the client, by Bogoroch & Associates LLP for the services that they have performed or will perform on your behalf. Rather, Bogoroch & Associates LLP will base their fees on an hourly rate for the work that they

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have done and will continue to do on your behalf based on the following hourly rates as at January 1, 2017:

- | | | | |
|----|--|----------------------------|--|
| 1. | Richard M. Bogoroch | called to Ontario Bar 1983 | \$875.00 per hour |
| 2. | Heidi R. Brown | called to Ontario Bar 1993 | \$650.00 per hour |
| 3. | Linda J. Wolanski | called to Ontario Bar 1985 | \$650.00 per hour |
| 4. | For lawyers with five to seven years of experience | | \$400.00 - \$500.00
per hour depending
on the year of call |
| 5. | For lawyers with one to four years of experience | | \$300.00 - \$400.00
per hour |
| 6. | For all law clerks and/or paralegals | | \$150.00 - \$300.00
per hour |

These hourly rates would apply to all of the work that has been and will be performed on the file from the inception of the file to the completion of the file either by way of settlement or by way of a judgment after trial.

Should you decide to no longer retain the services of Bogoroch & Associates LLP while your matter is ongoing, then, in that event, the termination of the services of Bogoroch & Associates LLP must be in writing and in that event, all disbursements (out-of-pocket expenses) paid by Bogoroch & Associates LLP on your behalf are immediately payable by you will be billed by Bogoroch & Associates LLP for all services performed up to and including the date of termination of the retainer in accordance with the hours or portions thereof performed by the various members of the firm of Bogoroch & Associates LLP and based on the hourly rates referred to above. Until such time as all bills, accounts, disbursements and expenses have been paid by you, Bogoroch & Associates LLP retains a lawyer's lien on your file contents and will only release your file contents to a new lawyer or to you personally upon satisfactory arrangements being made for

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protection of and payment of the accounts of Bogoroch & Associates LLP from any settlement or decision or judgment after trial.

The fees and disbursements including taxes billed and owing to Bogoroch & Associates LLP shall be an irrevocable first charge on any settlement or decision or judgment after trial that you obtain ahead of all other claims including your own claims to be paid these funds, except as provided under s.47 of the *Legal Aid Services Act*, 1998. By signing this agreement you are consenting to a charging order issued out of the Superior Court of Justice in favour of Bogoroch & Associates LLP on any settlement funds or judgment after trial until the accounts of Bogoroch & Associates LLP as billed to you have been paid in full, either on consent or after an assessment under the *Solicitors Act* (Ontario) has been completed including appeals.

6. What Happens if the Client is a Minor or Person Under Disability:

If you are a party under disability as that term is defined under the *Rules of Civil Procedure*, for the purposes of the *Rules of Civil Procedure*, you, the client, as represented by a litigation guardian, represented by a litigation guardian with whom the Lawyers entered into a Contingency Fee Agreement, shall be entitled to have the contingency fee agreement reviewed by a judge before the agreement is finalized or be reviewed as part of the motion or application for an approval of a settlement or a consent judgment under Rule 7.08 of the *Rules of Civil Procedure*. Further, the amount of the legal fees, costs, taxes and disbursements are subject to the approval of a judge when the judge reviews a settlement agreement or consent judgment under Rule 7.08 of the *Rules of Civil Procedure*. Any money payable to a person under disability under an order or settlement shall be paid into Court unless a judge orders otherwise under rule 7.09 of the *Rules of Civil Procedure*.

7. Motions:

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During the course of the lawsuit, Motions in Court maybe brought on the client's behalf or defended on the client's behalf. In the event that the Court awards, you, the client, costs on such a Motion, Bogoroch & Associates LLP will be rendering an interim account and any payment of such account so rendered will be ***in addition*** to the fee that will be charged to you, the client, at the conclusion of this matter, regardless of the outcome of the matter and whether the fees are calculated as a percentage of all amounts recovered or on an hourly rated basis.

8. **What Happens if there is no Recovery: You Don't Pay Anything to Bogoroch & Associates LLP:**

It is agreed that if no money is recovered by settlement or judgment, **no fees shall be charged or billed to you**. However, in the event that costs of the other parties are awarded against you, those costs are solely **the responsibility of you, the client, and not the responsibility of Bogoroch & Associates LLP**. We will discuss with you at different times during the litigation, whether there is any chance of the case being lost and no recovery obtained.

9. **Appeals:**

You further acknowledge that the fees, charges and disbursements that will be incurred for an appeal of any judgment, order, or for services rendered for the collection on said judgment or order are **separate and apart** from the services performed under this contract and are not covered by this contract. In the event of an appeal or in the event that collection on a judgment is necessary, a new retainer agreement, the terms of which will be mutually agreed upon shall be entered into between you, the client, and Bogoroch & Associates LLP.

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In executing the within Contingency Fee Retainer Agreement, you, the client, acknowledge that you have had the **opportunity to obtain and have been advised** to obtain independent legal advice but notwithstanding such advice, you have chosen to **execute the within document without such independent legal advice and are doing so willingly and voluntarily and without undue influence or coercion of any sort**. You further confirm by executing the within Contingency Fee Retainer Agreement that you understand all of the terms and conditions contained herein and have had an opportunity to review same before signing.

Dated at Toronto this DAY day of MONTH , 20YEAR .

Witness

CLIENT NAME

Witness Name (Please Print)

Witness
Per:

Bogoroch & Associates LLP

Witness Name (Please Print)

The client acknowledges receipt of a copy of this contingency fee retainer agreement signed by all parties.

Dated at Toronto this DAY day of MONTH , 20YEAR .

Witness

CLIENT NAME