

RE: _____

DATE OF LOSS:

ACCIDENT BENEFITS CONTINGENCY FEE RETAINER AGREEMENT

- I retain you to act as my solicitors with respect to my application for Statutory Accident Benefits following from the above noted date of loss;
- This retainer replaces and supercedes all previous retainers made by me, whether in writing or orally, and regardless of any representations made to me by anyone about your fees;
- Except as noted below, I understand you will bill me for work done in this matter upon payment of any accident benefits, or on reaching a settlement or at the end of a successful trial or arbitration;
- This retainer is limited to making representations to your accident benefits insurer in relation to this matter, and to attendance at mediations, arbitrations and trials;
- This retainer does not necessarily extend to your attendance at exceptional events, such as examinations under oath, or providing a defense to any allegations made against my by my insurer; I understand that there may be a fee associated with you providing representation with respect to the above noted events, and I acknowledge that you will advise me of any such fees ahead of time.
- If you are required to charge me on an hourly basis, the following rates apply:

Jayson B. Schwarz	\$600.00 per hour
Zane J. Roth	\$250.00 per hour
A law clerk, paralegal or student	\$150.00 per hour
A legal assistant	\$75.00 per hour

- For each payment of weekly benefits (income replacement benefits, caregiver benefits or non-earner benefits), I will pay 25% of the weekly benefit paid, inclusive of HST; If I receive \$100.00 in weekly benefits, I pay you \$25.00 (or \$22.12 + \$3.88 HST).
- I acknowledge that the fees and hourly rates charged by you may be lesser or greater than fees charged by other lawyers for similar claims and before signing the agreement I acknowledge my right to consult with and retain another lawyer, and I have chosen to hire you based on this retainer arrangement;
- If this case is settled before the beginning of arbitration or trial, your fees will be 25 % of any amount awarded or paid for accident benefits, interest and special awards, plus all outstanding accounts, disbursements and taxes, but in any event, not more than the amount of the settlement;
- I further understand that if there is a structured settlement, the rate to be charged will be based on the present value of the structure, as determined by McKellar’s Structured Settlements, or such other company that structures settlements as agreed to by us.
- You have explained to me other options for retaining you, including payment of the hourly rate, set out above, on the basis that I pay this at various stages throughout the conduct of this law suit.
- I understand and acknowledge that if, after working on and reviewing my file, it becomes apparent to you in your sole discretion that (a) my file will not likely generate sufficient fees to warrant your continued engagement; or (b) that there is a likelihood that the claims associated with my file will not be successful, that you reserve the right, upon thirty days notice, to:
 - bill me monthly according to the hourly rates listed above; and/or
 - request my consent to have you withdraw from the matter.
- I understand and acknowledge that if I wish to have you continue working on this matter after being so advised, that I will be responsible for maintaining a monthly retainer.
- I understand and acknowledge that in the event that I do not respond to a notice in relation to the above, or I fail to maintain a monthly retainer, that I will have thereby given you consent to withdraw from this matter and that you will not bill me for any services related thereto.
- I understand that all the usual protections and controls on retainers between a solicitor and client, as defined by the Law Society of Upper Canada and the common law apply to the contingency fee agreement;
- I understand that I retain the right to make all critical decisions with respect to the conduct of the claim for statutory accident benefits, and in particular whether or not to proceed to mediation, arbitration or court, and whether or not to accept or reject a settlement offer made by the Insurer, however you will have the right to make all decisions with respect to the procedure to be followed, the timing of various steps in the case, and the dates when the action is to be heard or tried, and all other required procedural steps in an action or arbitration.
- I have the right to ask the Superior Court of Justice to review and approve of your solicitor’s bill and I have a period of 30 days after receipt of your bill to apply for the review.
- If settled or won in court or arbitration, the amount may include an amount for “costs”, which represent the defendant’s insurer’s payment towards my legal fees, which shall be included in the calculation of the total award, except that any disbursements that I have paid for will be refunded to me; .
- I understand that if I commence this action and lose, I may be ordered to pay the costs or expenses of a trial or arbitration of the Insurer on a partial or substantial indemnity basis.
- I understand that if I want to commence any mediation, arbitration or action against the Insurer, I must do so within two

years of the date the Insurer first denied any claim for benefits. I further understand that I must pay a suitable monetary retainer (usually \$500.00) within a reasonable time before the limitation period expires in this case, in the event you must proceed to court or arbitration, and that unless I pay this monetary retainer, you will not take any action to protect a limitation period on my behalf.

- I understand that I am responsible to pay for all disbursements that you incur on my behalf to prosecute this claim for statutory accident benefits, including, but not limited to: court/arbitration filing fees, medical reports, accounting reports, clinical notes and records of treating health care practitioners, engineering reports, and the cost of bringing witnesses, including expert witnesses to trial or arbitration.
- I understand that I must pay all reasonable disbursements incurred by you to prosecute my case as they occur from time to time, and that you may require me to provide you with funds in trust to cover these expenses and disbursements.
- If my case must proceed to trial or arbitration, your fees shall be calculated as set out above, except that the contingency will relate to claim and interest and costs accumulated to and including the first pre-trial or pre-hearing in this case, and that in addition, your contingency fees will include an amount equivalent to the amount awarded or agreed to for counsel fees after the first pre-trial or pre-hearing, and I hereby consent to you applying, jointly with me, pursuant to s. 28.1(8) of the **Solicitors Act**, for leave of the court to enforce this agreement.
- I understand that I may terminate this retainer at any time before the conclusion of the case. If I do, you will bill me for the time you have spent at the hourly rates set out above, and that your account for fees, disbursements and all applicable taxes will become due and payable immediately after its delivery.
- I acknowledge that you may terminate this retainer and submit your account for services rendered to that date if:
 - I retain other counsel for this or any other case you are currently handling for me;
 - I fail to communicate with you after your reasonable attempts to contact me;
 - I ask you to proceed to trial or in court on a matter that you believe is manifestly frivolous, vexatious, fraudulent or an abuse of process of the court;
 - I fail to accept an offer to settle that you reasonably believe should be accepted;
 - I fail to provide you with such funds as you may require from time to time to pay for necessary disbursements;
 - I fail to provide you with such funds as a deposit towards fees as you may require from time to time, as noted above;
 - I fail to pay a disbursement account within thirty days of the date it is sent to me; or
 - I insist on proceeding to trial without providing you with sufficient funds to pay for such disbursements as you reasonably believe are required to prosecute my case in court.
- I understand that any bill you present, which is not paid out of funds in your trust account, will incur interest at the rate of 2% per month from thirty (30) days after the date of the account, until paid.
- I understand that I shall be responsible for all costs and expenses you incur to have your firm removed as solicitors of record, if I fail or refuse to sign a Notice of Intention to Act in Person after you have terminated this retainer as set out above.
- I understand that to provide me with goods and services, you will collect some personal information about me (e.g. home telephone number, address, birth date, etc).
- I have reviewed your Privacy Policy about the collection, use and disclosure of personal information, steps to taken to protect the information and my right to review my personal information. I understand how the Privacy Policy applies to me. I have been given a chance to ask any questions that I have about the Privacy Policies and they have been answered to my satisfaction.
- I give you permission to provide me with notice when it is time to review whether I need new goods or services; to provide me with newsletters and other informational mailings from your firm; and to provide me with notice of promotions and special offers, if any. I understand that, as explained in the Policies and Procedures for Personal Information, there are some rare exceptions to these commitments. I further give permission for you to send and receive e-mail with me, any adjuster, lawyer, employer, or health care practitioner dealing with my claim, including any documents or messages you deem appropriate in an unscrambled condition and to utilise the internet in the prosecution of my case as you deem appropriate.
- I agree to allow you to collect, use and disclose personal information about me as set out above and in your Privacy Policy.
- I agree that all letters, documents, notices and accounts will be deemed to have been properly delivered to me if mailed by pre-paid ordinary mail to me at:

Dated at _____, this _____ day of _____, 2011.

Witness as to both signatures:) _____
) _____

Address & Phone of Witness

SCHWARZ LAW LLP
per:
