

“ACCIDENT BENEFIT 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 1707
Toronto, Ontario
M5H 1J9

Tel: 416-599-1700
Fax: 416-599-1800
Toll Free: 1-866-599-1700

(Hereinafter called the “Lawyers”)

and

Client name and address

(Hereinafter called the “Client”)

1. What we are retained to do:

Bogoroch & Associates LLP are being retained by the client to provide the following services, namely, to represent the client in respect to managing all aspects of his entitlement to Statutory Accident Benefits arising as a result of injuries sustained in a motor vehicle accident which occurred on date of accident , including but not limiting the generality of the foregoing:

- a mediating and/or arbitrating or suing in Court any dispute that you have with the insurance company regarding the payment of Statutory Accident Benefits;

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- b negotiating a lump sum or “cash out” of my entitlement to Statutory Accident Benefits.

In representing the client’s interest 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 the client’s behalf. In retaining the services of Bogoroch & Associates LLP, 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.

An hourly rate retainer is a retainer whereby the lawyers charge the client for each hour or a portion thereof that they work on the client’s file at a specified hourly rate. Hourly rates may vary among lawyers and the client can speak with other lawyers to compare rates. Notwithstanding that the client has been advised of the hourly rates of Bogoroch & Associates LLP and that hourly rates may vary among lawyers and notwithstanding that the client can speak with other lawyers to compare rates, the client has chosen to retain Bogoroch & Associates LLP by way of a contingency fee agreement. 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 Accident Benefit Contingency Fee Retainer Agreement.

2. The Amount of the Contingency Fee:

The contingency fee paid by the client to Bogoroch & Associates LLP is equal to **33%** of all amounts recovered on behalf of the client for statutory accident benefits, excluding disbursements (out-of-pocket expenses), regardless of the source of the said recovery whether by way of settlement of the client’s claim or by way of decision or judgment following an Arbitration and/or trial.

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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.

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

Damages plus interest:	\$100,000
Costs (from the Defendant), including HST:	\$ 10,000
Disbursements (reimbursed by the Defendant):	<u>\$ 10,000</u>
Total:	\$120,000

In this example, our fee would be 33% of the total damages and interest awarded to our client (excluding costs). The invoice delivered to 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 \$72,710 (\$62,710 for claim plus \$10,000 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

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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 section 47 of the *Legal Aid Services Act, 1998* and such entitlement is a first charge on any funds received as a result of a decision or judgment or settlement of the within matter.

So long as we act for 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, etc.

3. **The Partial Indemnity Costs and/or Arbitration Expenses Paid by the Other Side:**

In addition to being awarded money in compensation for the statutory accident benefits inclusive of interest, either by way of settlement or if settlement cannot be obtained, by way of a decision or judgment following an Arbitration and/or trial, the insurer may also be required to pay an amount of money towards your **legal costs and disbursements**. Unless otherwise ordered by a judge or Arbitrator, **you are entitled to receive** costs contribution or award, on a **partial indemnity scale or substantial indemnity scale**, if you are **the party entitled to costs, such costs payable by the insurer or Arbitration expenses**. 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 decision or judgment or settlement money.

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The amount of the contingency fee payable herein to Bogoroch & Associates LLP shall exclude any amount awarded or agreed to that is separately specified as being in respect of costs and disbursements or Arbitration expenses and disbursements.

4. Your Rights to have the Court Assess this Fee:

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 the lawyer's bill, you, may apply to the Superior Court of Justice for an assessment of the lawyer's bill rendered in respect to this contingency fee agreement within six months after its delivery.

5. What Happens if you Terminate this Agreement:

At any time during the course of the representation by Bogoroch & Associates LLP, you, or Bogoroch & Associates LLP may wish to terminate this Accident Benefit Contingency Fee Retainer Agreement and to enter into a new retainer agreement. Such termination by either Bogoroch & Associates LLP or you, must be in writing. In the event that either Bogoroch & Associates LLP or the client terminates this contingency fee agreement then, in that event, the terms of this Accident Benefit Contingency Fee Retainer Agreement no longer apply to the calculation of the fees to be charged by Bogoroch & Associates LLP for the services that they have performed rather, Bogoroch & Associates LLP will then charge you on an hourly rate for the work that they have done and will continue to do on your behalf based on the following hourly rates as at January 1, 2012:

1. Richard M. Bogoroch called to Ontario Bar 1983 \$850.00 per hour

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|----|---|----------------------------|---|
| 2. | Linda J. Wolanski | called to Ontario Bar 1985 | \$550.00 per hour |
| 3. | Heidi R. Brown | called to Ontario Bar 1993 | \$500.00 per hour |
| 4. | For lawyers with four to six years of experience | | \$250.00 - \$350.00
per hour depending
on the year of call; |
| 5. | For lawyers with one to three years of experience | | \$200.00 - \$250.00
per hour |
| 6. | For all law clerks and/or paralegals | | \$125.00 - \$200.00
per hour |

These hourly rates would apply to all of the work 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 decision or judgment after trial and/or Arbitration.

Should you, decide to no longer retain the services of Bogoroch & Associates LLP while the 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** and 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 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 and will only release your file to a new lawyer** upon satisfactory arrangements being made for protection of and payment of **the accounts of Bogoroch & Associates LLP from any settlement or decision or judgment after trial.**

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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, shall be entitled to have the Accident Benefit Contingency Fee Retainer 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 decision or 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 decision or 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:**

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 Bogoroch & Associates LLP costs on the Motion, Bogoroch & Associates LLP will be rendering an interim account and any account so rendered will be credited to the fee that will be charged to the client.

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

It is agreed that if no money is recovered by settlement or decision 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

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with you at different times, whether there is any chance of the case being lost and no recovery obtained.

9. Appeals:

You further acknowledge that costs for an appeal of any decision or judgment or order, or services rendered for the collection on said decision or 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 decision or judgment is necessary, a new retainer agreement that is mutually agreed upon shall be entered into between you and Bogoroch & Associates LLP.

In executing the within Accident Benefit 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 willingly and voluntarily without undue influence or coercion of any sort.** You further confirm by executing the within Accident Benefit Contingency Fee 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 date day of Month , year

Witness

client name

Witness Name (Please Print)

Witness
Per:

Bogoroch & Associates LLP

Witness Name (Please Print)

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The client acknowledges receipt of a copy of this Accident Benefit Contingency Fee Retainer Agreement signed by all parties.

Dated at Toronto this date day of Month , year

Witness

client name

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