

## **Confidential Class Action Settlement with Smirk's and Molinos Asociados Proposed Allocation Model**

In exchange for their release, Smirk's Ltd. and Molinos Asociados SAC ("the Settling Defendants") have agreed to contribute to the payment of claims for the injured parties. Specifically, Citizens Insurance Company of America, The Hanover Insurance Company, and The Hanover Insurance Group (together, the "Settling Insurers") will contribute \$7,671,000 to the Settlement Fund on behalf of Smirk's. The Settling Insurers will also contribute an additional \$25,000 on Smirk's behalf for the Settlement Notice. Molinos (which is uninsured) will contribute \$25,000 specifically for the Settlement Notice.

It is agreed that Smirk's will withhold a portion of its total contribution to the Settlement Fund for a specified period of time to cover its reasonable material exposure relative to the potential litigation or claims from Opt-Outs (the "Class Action Hold Back Amount"). Any remaining funds from this hold back will be distributed pro rata to members of the Class Action no later than December 31, 2026.

It is also agreed that Smirk's and its insurers will hold back \$753,712.16 for claims already made against the Citizens/Hanover policies (the "Claims Hold Back Amount"). Within thirty (30) days of Hanover's closing of all claims related to the Claims Hold Back Amount, Hanover shall provide the plaintiff with a written statement of the amounts paid, along with reference claim numbers used in the resolution of the unrelated pending claims against Smirk's, once all such claims are resolved. If any of the \$753,712.16 is not paid on those other claims, within thirty (30) days of Hanover's closing of all claims related to the Claims Hold Back Amount, Hanover will pay the remainder of the unpaid amount to the Qualified Settlement Fund and it will then be distributed to the members of the Class Action on a pro rata basis.

Under this proposal, a court-appointed Settlement Administrator will oversee the distribution of the settlement funds. The Settlement Fund will be divided into several categories (outlined below) to ensure that: (a) every claimant can reliably count on a base level of compensation with potential enhancements; and (b) the Settlement Administrator has a significant amount of money to award enhancements to claimants at his discretion. Under this proposal, a claimant is

eligible to receive awards from the multiple categories listed below, as well as an enhancement from the Settlement Administrator.

The Settlement Administrator's fees and expenses, including costs for Notice and Class Administration, will be paid from the Settlement Fund, with up to \$500,000 allocated for this Settlement, on top of the \$500,000 previously allocated for the Daily Harvest-Stone Gate Settlement. Any remaining funds will be distributed to claimants on a pro rata basis.

Claimants who have already submitted a claim form, along with supporting documentation, in the Daily Harvest-Stone Gate Settlement and wish to participate in this settlement too do not need to take any further action. The claim form they previously filed will apply to both settlements.

Claimants to the Smirk's-Molinos Settlement may apply to the extraordinary damages fund (Category 5) even if they did not file a claim in the Daily Harvest settlement. However, claimants who did not participate in the Daily Harvest-Stone Gate settlement will only be eligible to recover at an approximate 30% rate in the Smirk's-Molinos settlement. The sole exception is for claimants who were unable to file a claim in Daily Harvest-Stone Gate Settlement, with eligibility reviewed on a case-by-case basis.

## **Categories**

### **Category 1: \$166,000**

1A: This category will be used to compensate equally those claimants on a prorated bases (not to exceed \$165 each) who suffered consequential monetary damages arising from or related to another person's personal injuries arising from consumption of French Leek and Lentil Crumbles with tara in 2022.

1B: This category will be used to compensate equally those claimants on a prorated basis (not to exceed \$335 each) whose personal injury illness is verified to be causally related to the consumption of French Leek and Lentil Crumbles with tara in 2022 but did not receive medical treatment. Any unused amount will be utilized in Category 5.

**Category 2: \$1,445,000**

This category will be used to compensate equally the approximately 289 claimants whose personal injury illness is verified to be causally related to the consumption of French Leek and Lentil Crumbles with tara in 2022 and who received medical treatment but were not hospitalized (estimated to be \$5,000 gross each). In addition, these claimants would be eligible for a Settlement Administrator enhancement as provided in Category 5. Any unused amount will be utilized in Category 5.

**Category 3: \$1,860,000**

This category will be used to compensate equally the approximately 186 claimants whose personal injury illness is verified to be causally related to the consumption of French Leek and Lentil Crumbles with tara in 2022 and were hospitalized (estimated to be \$10,000 gross each). To qualify for this category, the claimant must have been admitted to a hospital. ER visits do not qualify. In addition, these claimants would be eligible for a Settlement Administrator enhancement as provided in Category 5, including, but not limited to an enhancement for the number of days of hospitalization. Any unused amount will be utilized in Category 5.

**Category 4: \$1,400,000**

This category will be used to compensate equally the approximately 42 cholecystectomy claimants whose personal injury illness is verified to be causally related to the consumption of French Leek and Lentil Crumbles with tara in 2022 (estimated to be \$33,330 gross each). In addition, these claimants would receive a Category 3 award (for a total award of \$43,330 gross) and would be eligible for a Settlement Administrator enhancement, including, but not limited to an enhancement for the number of days of hospitalization. Any unused amount will be utilized in Category 5.

**Category 5: \$2,825,000**

This is the Settlement Administrator's discretionary category. This category will be used to pay any category 2, 3 or 4 shortfalls, if any. Based on the evidence

submitted, he may use his discretion to create objective criteria to allocate enhancement awards to any claimant whose injury is verified to be causally related to the consumption of French Leek and Lentil Crumbles with Tara in 2022. It is agreed that the following are factors, among others, that merit consideration for enhancement, but do not require enhancement for any given claim (listed in no order of priority or gravity):

- Proof of consumption and documentation of an injury
- Any causally related invasive procedure, e.g., ERCP (endoscopic retrograde cholangiopancreatogram) or liver biopsy
- Number of days of hospitalization
- Any causally related complication of hospitalization that extended care needs post-hospitalization, e.g., wound infection, severe disruption of GI function
- Chronic physical or mental symptoms causally related to illness documented by MD or DO
- Causally related miscarriage documented by MD or DO and related damage
- Other documented factors
- To correct errors or omissions in scoring the above categories

There will be no awards for punitive damages or loss of consortium.

The estimated amounts per claim in categories 2 to 4 are the best estimates available based upon the anticipated number of claims. If there are materially more claims than expected, then the awards in categories 2 through 4 will be ratably reduced.

All claimants agree to present claims to the Settlement Administrator using a universal submission form that may be supplemented by claimants' counsel.

Following the assessment of enhancement awards by the Settlement Administrator, claimants' counsel shall have 20 days to appeal to the Settlement Administrator for increased awards to specific clients.

A Claimant who disagrees with the appeal ruling of the Settlement Administrator may appeal to the Court within 14 days of the Settlement Administrator's appeal determination by submitting a written statement to the

Court at Attn: Hon. Judge Denise Cote, Case No. 1:22-cv-05443-DLC, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, outlining the Claimant's position and why the Claimant believes the Settlement Administrator has erred.

The appeals process shall not result in any modification of substantive eligibility criteria. The Court shall issue a determination on the appeal in writing, which shall be served on the Claimant (and the Claimant's counsel, where applicable) and the Settlement Administrator. Decisions of the Court are final and binding.