

No. C965349
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Anita Endean, as representative plaintiff

Plaintiff

and:

**The Canadian Red Cross Society
Her Majesty the Queen in Right of the Province of
British Columbia, and The Attorney General of Canada**

Defendants

and:

**Prince George Regional Hospital, Dr. William Galliford,
Dr. Robert Hart Dykes, Dr. Peter Houghton, Dr. John Doe,
Her Majesty the Queen in Right of Canada, and
Her Majesty the Queen in Right of the Province of
British Columbia**

Third Parties

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, C. 50

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DIANNA LOUISE PARSONS, MICHAEL HERBERT CRUICKSHANKS, DAVID TULL,
MARTIN HENRY GRIFFEN, ANNA KARDISH, ELSIE KOTYK, Executrix of the Estate of Harry Kotyk,
deceased and ELSIE KOTYK, personally
Plaintiffs

and

THE CANADIAN RED CROSS SOCIETY, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and
THE ATTORNEY GENERAL OF CANADA
Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT and THE GOVERNMENT OF THE YUKON TERRITORY
Intervenors

Proceeding under the *Class Proceedings Act, 1992*

BETWEEN:

JAMES KREPPNER, BARRY ISAAC, NORMAN LANDRY, as Executor of the Estate of the late
SERGE LANDRY, PETER FELSING, DONALD MILLIGAN, ALLAN GRUHLKE, JIM LOVE and
PAULINE FOURNIER as Executrix of the Estate of the late PIERRE FOURNIER
Plaintiffs

and

THE CANADIAN RED CROSS SOCIETY, THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Defendants

and

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ALBERTA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF SASKATCHEWAN,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEW BRUNSWICK,
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NOVA SCOTIA
HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF NEWFOUNDLAND,
THE GOVERNMENT OF THE NORTHWEST TERRITORIES,
THE GOVERNMENT OF NUNAVUT AND THE GOVERNMENT OF THE YUKON TERRITORY
Intervenors

Proceeding under the *Class Proceedings Act, 1992*

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Class action

NO : 500-06-000016-960

DOMINIQUE HONHON

Plaintiff

-vs-

THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF QUÉBEC
THE CANADIAN RED CROSS SOCIETY

Defendants

-and-

MICHEL SAVONITTO, in the capacity of the Joint
Committee member for the province of Québec

PETITIONER

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Class action

NO : 500-06-000068-987

DAVID PAGE

Plaintiff

-vs-

THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF QUÉBEC
THE CANADIAN RED CROSS SOCIETY

Defendants

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS

-and-

LE CURATEUR PUBLIC DU QUÉBEC

Mis-en-cause

NOTICE OF APPLICATION

Name of Applicants: British Columbia Joint Committee Member

TO: The Attorney General of Canada

AND TO: Her Majesty the Queen in Right of the Province of British Columbia

AND TO: British Columbia Fund Counsel

TAKE NOTICE that an application will be made by the British Columbia Joint Committee Member to the Honourable Chief Justice Hinkson on June 20, 2016 at the courthouse at 800 Smithe Street Vancouver, British Columbia, which will be video-linked to hearing proceeding in Toronto, Ontario (Chief Justice Hinkson will be in Toronto, Ontario), at an address to be provided, at 7:00 am pacific time, 10:00 am eastern time, for the order(s) set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. A declaration that the Trustee of the 1986-1990 Hepatitis C Settlement Agreement (the "Settlement Agreement") holds \$206,920,000 actuarially unallocated money and assets as at December 31, 2013 (the "excess capital").
2. An order that the restrictions on payments of amounts for loss of income claims in section 4.02(2)(b)(i) of the Transfused HCV Plan and section 4.02(2)(b)(i) of the Hemophiliac HCV Plan and for loss of support under section 6.01(1) of the Transfused HCV Plan and section 6.01(1) of the Hemophiliac HCV Plan, as previously varied, not be varied or removed in whole or in part at this time.
3. An order that the Court exercise its unfettered discretion to allocate the excess capital for the benefit of Class Members and Family Class Members by approving the following:

- (a) the Court Approved Protocol for Late Claim Requests following the June 30, 2010 First Claim Deadline, attached as Appendix "A", to permit Class Members who missed the June 30, 2010 First Claim Deadline to apply to receive an Initial Claim Package and have his or her Claim processed in circumstances where they have satisfied a Referee that their delay was for reasons beyond their control or there is a reasonable explanation for their delay;
- (b) a 10% increase in the fixed payments made pursuant to: section 4.01(1) of the Transfused HCV Plan; the \$50,000 (1999 dollars) fixed payment made pursuant to 5.01(1) of the Transfused HCV Plan; the \$120,000 (1999 dollars) fixed payment made pursuant to 5.01(2) of the Transfused HCV Plan; the fixed payments made pursuant to section 4.01 of the Hemophiliac HCV Plan; the \$50,000 (1999 dollars) fixed payment made pursuant to s.4.08(2) of the Hemophiliac HCV Plan; the \$50,000 (1999 dollars) fixed payment made pursuant to s. 5.01(1) of the Hemophiliac HCV Plan, the \$120,000 (1999 dollars) fixed payment made pursuant to s. 5.01(2) of the Hemophiliac HCV Plan and the \$72,000 (1999 dollars) fixed payment made pursuant to 5.01(4) of the Hemophiliac HCV Plan, made retroactively and prospectively;
- (c) an increase from \$5,000 (1999 dollars) to \$10,000 (1999 dollars) in the fixed payment to a Child 21 years or older at the date of death of an HCV Infected Person pursuant to section 6.02(c) of the Transfused HCV Plan and section 6.02(c) of the Hemophiliac HCV Plan, made retroactively and prospectively;
- (d) an increase from \$5,000 (1999 dollars) to \$10,000 (1999 dollars) in the fixed payment to a Parent pursuant to section 6.02 (d) of the Transfused HCV Plan and section 6.02(d) of the Hemophiliac HCV Plan, made retroactively and prospectively;
- (e) a retroactive payment of the amounts deducted for Canada Pension Plan ("CPP") disability payments, disability insurance, Employment Insurance

("UEI/EI") and Multi-Provincial and Territorial Assistance Program ("MPTAP") from loss of income and loss of support claims in sections 4.02 and 6.01(1) of the Transfused HCV Plan and sections 4.02 and 6.01(1) of the Hemophiliac HCV Plan, and discontinuing such deductions from loss of income and loss of support claims prospectively;

- (f) a 10% increase on loss of income and loss of support payments made pursuant to Section 4.02 of the Transfused HCV Plan and section 4.02 of the Hemophiliac HCV Plan, subject to a cap on the income to which the increase is applied of \$200,000 for years prior to 2014 and \$200,000 indexed for years 2014 forward, to provide compensation for diminished pension due to disability, made retroactively and prospectively;
- (g) an increase in the maximum hours on which a loss of services claim can be based pursuant to sections 4.03(2) and 6.01(2) of the Transfused HCV Plan and section 4.03(2) and 6.01(2) of the Hemophiliac HCV Plan from the equivalent of 20 hours per week to 22 hours per week, made retroactively and prospectively;
- (h) an increase in the limit on cost of care compensation in section 4.04 of the Transfused HCV Plan and section 4.04 of the Hemophiliac HCV Plan from \$50,000 per annum (1999 dollars) to \$60,000 per annum (1999 dollars), made retroactively and prospectively;
- (i) a \$200 (2014 dollars) allowance payable to a Family Member (as that term is defined in section 1.01 of the Transfused HCV Plan and section 1.01 of the Hemophiliac HCV Plan) who accompanies an HCV Infected Person to a medical appointment seeking medical advice or treatment due to his or her HCV infection, in addition to the out of pocket expenses recoverable under section 4.07(a) of the Transfused HCV Plan and section 4.07(a) of the Hemophiliac HCV Plan, payable prospectively;
- (j) an increase in the limit on reimbursement of funeral expenses in sections 5.01(1) and 5.02(1) of the Transfused HCV Plan and sections 5.01(1) and

5.02(1) of the Hemophiliac HCV Plan, from \$5,000 (1999 dollars) to \$10,000 (1999 dollars), made retroactively and prospectively; and

- (k) payment of the costs associated with administering the foregoing benefits.
4. An order that all retroactive payments to be made under paragraph 3 shall be made by way of lump sum to the Class Member and/or Family Class Member or their Personal Representative as that term is defined in section 1.01 of the Transfused HCV Plan and section 1.01 of the Hemophiliac HCV Plan.
 5. An Order that all allocation benefits payable to Class Members and Family Class Members under paragraph 3 shall be paid from the Invested Fund.
 6. An order that the remaining excess capital shall be retained within the Trust Fund subject to any further application by the Joint Committee.
 7. An order for such further and other relief as counsel may request and this Honourable Court may direct.
 8. An order that the orders made pertaining to paragraphs 1-7 above not be effective unless and until corresponding orders are made by the Superior Court of Québec and the Ontario Superior Court of Justice.

PART 2: FACTUAL BASIS

The Settlement Agreement, Funding Agreement and Plans

9. A settlement of the January 1, 1986 to July 1, 1990 Hepatitis C class actions ("Settlement Agreement") was approved by the courts in Ontario, British Columbia and Québec (the "Courts") in the fall of 1999.

Order of the Superior Court of Ontario, made October 22, 1999

Order of the Québec Superior Court, made November 19, 1999

Order of the Supreme Court of British Columbia, made October 28, 1999

10. The Settlement Agreement incorporates a Funding Agreement. The Settlement Agreement and Funding Agreement provided for the creation of a

trust funded by the federal, provincial and territorial governments in a settlement amount totalling, but not exceeding, approximately \$1.207 billion inclusive of interest from April 1, 1998. The federal government satisfied its obligation to the trust by payment of its 8/11ths share in full. The provincial and territorial governments satisfy their obligation to the trust by periodic payments of their 3/11ths share of the liability as it is determined from time to time.

Settlement Agreement, section 4.01 and Funding Agreement, sections 3.03 and 4.01

11. The settlement amount and the tax free investment income generated are used to pay scheduled benefits, in accordance with the Plans, to class members over the course of their lifetimes depending on the severity of their illness and what losses they suffer as a result of their infection with HCV and to their dependants and other family class members after a class member's death due to HCV.

Settlement Agreement and Plans

12. Attached as Appendix B is a chart prepared at the time of the Settlement Agreement outlining the benefits available to class members under the Plans.

Rumble Peterson Affidavit #13 at para. 20, Exhibit A

13. All amounts payable under the Plans are inclusive of prejudgment interest and do not accrue interest, except as specifically provided in section 7.03(2). The amounts provided in the Plans are all expressed in 1999 dollars. Most payments are indexed annually by the Canadian Pension Index as provided in section 7.02.

Settlement Agreement, Plans sections 7.02, 7.03 and 7.04

14. Amounts expressed in 1999 dollars can be converted to their approximate 2015 dollar equivalent by multiplying them by 1.35.

Rumble Peterson Affidavit #13 at para.19

Class Members, Family Class Members and Pending Claims

15. As of September 30, 2015, the claims of 5,318 infected class members and 8,799 family class members have been approved, including 3,898 primarily infected transfused class members, 1,358 primarily infected hemophiliac class members and 62 secondarily infected class members. Of these approved class members, 486 died before January 1, 1999, and 1,160 after, while 3,672 were alive in September 2015. In addition, 8,811 Family Member claims have been approved.

Rumble Peterson Affidavit #13 at para. 22

16. In addition to approved claims, there were 390 in progress claims as of September 30, 2015, comprised of 265 infected persons and 125 family members, including 207 primarily infected transfused persons, 29 primarily infected hemophiliac persons and 29 secondarily infected persons. Of the infected in progress claimants, 23 had died before January 1, 1999, 87 after January 1, 1999 and 155 were alive in September 2015.

Rumble Peterson Affidavit #13 at para. 23

17. In addition to the approved and in progress claims as at September 30, 2015, the Administrator has received 246 late claim requests after the June 30, 2010 first claims deadline from persons who do not meet the exceptions to the deadline listed in the Plans. Over the last 3 years this averages approximately 2 such claim requests per month. The breakdown of these late claims requests by category is as follows:

As of Oct 7, 2015			
Disease Level	Transfused	Hemophiliac	Total
Primarily infected	142	7	149
Estate	16	2	18
Family Member	75	3	78
Secondarily Infected	1	0	1
Total	234	12	246

Rumble Peterson Affidavit #13 at para. 75

Financial Sufficiency and Actuarially Unallocated Assets

18. The Settlement Agreement requires triennial reports to the Courts on the financial sufficiency of the Trust. If the trust is at any time not financially sufficient or there is an anticipation of financial insufficiency, the Courts may amend the Terms of the Plans.

Settlement Agreement, section. 10.01

19. The consent orders modifying and approving the Settlement Agreement which were issued in 1999 allow the Joint Committee or any party to apply to the Courts when there are actuarially unallocated money and other assets held by the trustee and they give the Courts the unfettered discretion to decide what to do with any such excess capital.

Order of the Superior Court of Ontario, made October 22, 1999

Order of the Québec Superior Court, made November 19, 1999 (This order is amending the judgment rendered on September 21, 1999)

Order of the Supreme Court of British Columbia, made October 28, 1999

(collectively the "Allocation Provisions")

20. After the financial sufficiency review triggered December 31, 2013, the actuaries retained by the Joint Committee on behalf of the class members, Eckler Ltd., and the actuaries retained by the federal government, Morneau Shepell, expressed the opinion that after taking sufficient monies to protect the class members from major adverse experience or catastrophe, the trust assets exceed the liabilities by \$236,341,000 (Eckler Ltd.) or \$256,594,000 (Morneau Shepell).

Affidavit of Richard Border #4, Exhibit A, paras 20 and 247,

Affidavit of Peter Gorham #4, made April 8, 2015 at Exhibit B, para. 173

21. The Courts issued consent orders on July 10, 2015 (Ontario), July 16, 2015 (Québec) and July 23, 2015 (British Columbia), that as of December 31, 2013, the Trust assets exceeded the liabilities, after taking into account an amount to protect the Class Members from major adverse experience or

catastrophe (“required capital”) by an amount between \$236,341,000 to \$256,594,000.

Order of the Superior Court of Ontario made July 10, 2015

Order of the Québec Superior Court made July 16, 2015

Order of the Supreme Court Of British Columbia Made July 23, 2015

(collectively, the “Sufficiency Orders”)

22. The amounts by which the Trust assets exceed the liabilities calculated by the Joint Committee’s actuaries, Eckler Ltd., did not take into account that the Class Members below disease level 3 who meet the protocol for treatment are reclassified as disease level 3 set out in section 4.01(1)(c) of the Plans. The Joint Committee instructed Eckler Ltd. to calculate what effect this has on the liabilities. The liabilities increase by \$29,421,000.

Affidavit #5 of Richard Border made October 14, 2015 (“Border Affidavit #5), Exhibit A, para. 8.

23. When the liabilities are restated to take into account this increase, the assets exceed the liabilities by \$206,920,000. From an actuarial perspective, \$206,920,000 of the assets held in the Trust are actuarially unallocated. These actuarially unallocated assets are “excess capital”.

Border Affidavit #5, Exhibit A, paras. 11-15

24. The assets of the Trust include the settlement funds paid at the outset by the Federal Government and invested under the terms of the Settlement Agreement and the Funding Agreement (“Invested Fund”) and the obligation of the Provincial and Territorial Governments to pay their 3/11th share of the liabilities as they arise to a maximum of 3/11ths of \$1.18 billion plus treasury bill rate interest (PT Notional Fund). On the current actuarial projections, the PT Notional Fund is insufficient to pay 3/11ths of the total liabilities and will be exhausted by the year 2026. The Invested Fund is more than sufficient to pay the 8/11ths of the liabilities and the shortfall in the PT Notional Fund. All of the required capital has been allocated to the Invested Fund and all of the Excess Capital is in the Invested Fund.

Border Affidavit #5, Exhibit A, paras. 11-15**Settlement Agreement, Funding Agreement s. 4.01**

25. If the Allocation Benefits are paid from the Excess Capital in the Invested Fund, then no call will be made on the PT Governments to fund the Allocation Benefits. The PT Notional Fund shortfall will not change and it will exhaust in 2026 (based on the current actuarial projections).

Border Affidavit #5, Exhibit A, para. 16**Class Member and Family Class Member Communications, Consultations and Submissions**

26. The lawyers appointed as the Joint Committee decided that their ability to make recommendations to the Courts on allocating excess capital for the benefit of class members and family class members should be informed, in part, by hearing directly from as many members of the class as possible as to how infection with HCV affects them and how the compensation under the Plans addresses or fails to address the reality of the disease. The following steps were taken:
- (a) Posting on website maintained by the administration, www.hepc8690.ca, information pertaining to financial sufficiency and the allocation hearings which has been kept current with additional information and documentation as it became available.
 - (b) Distributing by email and direct mail, through the Administrator, a notice to approved class members, family class members, in progress claimants and late claimants. The notice described the financial sufficiency review and advised of the allocation hearings. It also advised that up-to-date information and documentation that would be filed would be available on the Administrator's website www.hepc8690.ca. Finally, the notice advised class members of various ways to obtain information and provide their input to the Joint Committee: by attending an in person consultation session; by watching a live webcast consultation session over the internet; and/or by calling or writing a member of the Joint Committee

- (c) With the help of the Administrator and other interested groups, such as the Canadian Hemophilia Society, HepBC and HepNS, the Joint Committee identified locations near or where numerous parties resided. In August and September the Joint Committee held seven consultation sessions across the country: in Vancouver, Montreal, Toronto, Hamilton, Edmonton, Dartmouth and Saskatoon.
- (d) The Joint Committee prepared a powerpoint outline for use at these sessions to present background information on why the consultations were being held, to explain the benefits available and to pose questions for their input on how the benefits under the Plans were working. The powerpoint is also posted on the Administrator's website.
- (e) The consultation sessions held in Vancouver, Toronto and Montreal were also webcast live over the internet, thus providing the opportunity for persons across the country unable to attend in person to attend and to ask questions and make comments electronically while the sessions were taking place. This proved to be a successful way of obtaining feedback from class members and to more fully inform them about the Plans, their administration and the allocation hearings. Many emails were received by the Joint Committee as a direct result of these webcasts.
- (f) Class members and family class members were also invited to provide written submissions to the Joint Committee for consideration and for presentation to the Courts for consideration. Many submissions were received by each office and were circulated among ourselves. Some of these communications pertained to the class members own files and benefits but most told a bit of their story, explained how benefits did or did not address their needs and expressed their views on how additional monies should be allocated.
- (g) Class members and family class members were also invited to communicate with the Joint Committee by telephone if they wished to do so. Each office received many telephone calls, heard many life stories,

answered many questions and encouraged callers to send written submissions.

Rumble Peterson Affidavit #13 at para. 26-36 and Exhibits B, C and D

27. Approximately 621 submissions were received by and on behalf of class members and family class members. Written submissions were also received from the Canadian Hemophilia Society, Action Hepatitis Canada and the Manitoba Public Guardian and Trustee.

Affidavit #1 of Alan Melamud made October 15, 2015 at paras. 3-6, and Exhibits A, B and C

Affidavit #1 of Arnaud-Sauvé-Dagenais at para. 15 and Exhibit ASD-2

Affidavit of Shelley Woodrich made October 16, 2015 at para 4 and Exhibit A

Affidavit of Chya Mogerman #1 made October 16, 2015 at paras. 4, 5 and 9 and Exhibits A and B

28. At the Vancouver consultation session, approximately 40 people attended in person and 69 by webcast. At the Montreal consultation session, approximately 85 people attended in person and 25 by webcast. At the Toronto consultation session, approximately 85 people attended in person and 69 by webcast. At the Hamilton consultation session, approximately 50 people attended. At the Dartmouth consultation session, approximately 23 people attended. At the Edmonton consultation session approximately 25 people attended. At the Saskatoon consultation session, approximately 15 people attended.

Affidavit #1 of Alan Melamud made October 15, 2015 at paras 9 and 13

Affidavit #1 of Arnaud-Sauvé-Dagenais at paras. 8 and 10

Affidavit of Chya Mogerman #1 made October 16, 2015 at paras. 12, 15 and 16

29. From the written submissions, telephone calls and consultation sessions the Joint Committee formed the strong impression that class members and family class members continue to struggle notwithstanding the compensation received to date.

Affidavit #1 of Alan Melamud made October 15, 2015 at paras. 10 and 14, and Exhibit A

Affidavit #1 of Arnaud-Sauvé-Dagenais, paras. 9 and 11, Exhibit ASD-2

Affidavit of Shelley Woodrich made October 16, 2015, Exhibit A

Affidavit of Chya Mogerman #1 made October 16, 2015, paras. 13, 15 and 17 and Exhibit A

Rumble Peterson Affidavit #13, para. 85

30. While the Joint Committee took many opportunities to advise class members to communicate their views to the Joint Committee for consideration in making recommendations to the Courts on allocation, the Joint Committee also cautioned them that it would not be able to recommend all of the suggestions that it received.

Rumble Peterson Affidavit #13 at para. 36

All Potential Recommendations on Allocation of Excess Capital

31. The Joint Committee developed a list of issues to be considered for possible recommendation to the Courts based on the following:
- (a) the written and oral submissions of class members and family class members made to the Joint Committee;
 - (b) communications with the Administrator since the inception of the Plans and in particular during the process leading up to making the recommendations;
 - (c) members of the Joint Committee's views of shortfalls in the compensation compared in particular to the tort model based on comments from class members and observations over the course of the Administration of the Plans; and
 - (d) appeals that have been taken from decisions made in accordance with the Settlement Agreement's terms but which exposed perceived shortfalls in the compensation.

Rumble Peterson Affidavit #13 at paras. 26, 31-35 and 37-43

32. The following is the list of issues considered for allocating excess capital which the Joint Committee notes may not contain all possible issues that could or should be addressed:

- (a) late claims;
- (b) fixed payments for alive HCV infected persons and for family members of HCV infected persons;
- (c) Various issues pertaining to loss of income, loss of support and loss of services as follows:
 - (i) the level 3 election (waiver);
 - (ii) disability and disease level relative to loss of employment;
 - (iii) the requirement to choose between loss of income/loss of support and loss of services;
 - (iv) exclusions from earned income;
 - (v) deduction of collateral benefits from loss of income and loss of support;
 - (vi) deduction of payroll benefits from loss of income and loss of support;
 - (vii) deduction of income taxes from loss of income and loss of support
 - (viii) loss of pension and/or pension benefits;
 - (ix) loss of benefit package;
 - (x) loss of income/support ends at age 65;
 - (xi) loss of services end at notional life expectancy of deceased person;
- (d) reimbursement limits

- (i) loss of services limited at 20 hours per week and \$12 per hour (1999 dollars);
 - (ii) care costs limited to level 6 and \$50,000/annum (1999 dollars);
 - (iii) drug cost limited to generally medically accepted treatment;
 - (iv) out of pocket expenses limited to *Financial Administration Act* limits;
 - (v) funeral expenses limited to \$5,000 (1999 dollars) and subject to CPP death benefit;
- (e) other compensation issues:
- (i) loss of insurability;
 - (ii) exhaustion of private extended health care and drug plans;
 - (iii) costs of artificial insemination;
 - (iv) compensable HCV drug maintenance therapy;
 - (v) differing benefits for deaths before and after January 1, 1999;
- (f) proof and eligibility issues:
- (i) death due to HCV and disease level at death;
 - (ii) death before January 1, 1999 rejections;
 - (iii) the classes of persons who are eligible to be qualified as secondarily infected class members ;
 - (iv) Hemophiliac/Thalassemic standard of proof for other claimants; and
 - (v) expanded list of blood products.

Rumble Peterson Affidavit #13, para.45 and 64

The Joint Committee's Recommendations on Allocation of Excess Capital

33. The recommendations are based on principles applied by the Joint Committee to maintain the integrity of the fund for the best interests of the class members and family class members as follows:
- (a) allocation of excess capital should be limited to the lower amount identified within the range (after restatement to account for progression to disease level 3 discussed in paragraphs 11 to 15 above); and
 - (b) the funding that is required for such benefits as the Courts may order should be paid from excess capital only and not from the provincial and territorial notional fund.

Rumble Peterson Affidavit #13, para. 62

34. Once the Joint Committee received Eckler's input on pricing potential recommendations and it became apparent not all benefits could be accommodated, the following factors went into deciding which benefits to recommend:
- (a) that class member and family class member input was given serious consideration in determining the nature of the impact that could be accomplished;
 - (b) that some compensation be obtained for as many class members and family class members as possible;
 - (c) that issues be addressed where the data from the Administrator quantified a shortfall and identified that the benefit was not compensating the majority as intended;
 - (d) principles of equity and fairness, for example the deduction of collateral income from recoverable loss and limits on funeral expenses;
 - (e) the administrative burden that the benefit would impose on class members and family class members; and

- (f) the cost of administering the benefit.

Rumble Peterson Affidavit #13, para. 63

The First Claim Deadline In The Plans

35. Section 3.08 of the Transfused HCV Plan and section 3.07 of the Hemophiliac HCV Plan provide a first claim deadline of June 30, 2010.

Settlement Agreement, Transfused HCV Plan s.3.08 and Hemophiliac HCV Plan s.3.07

36. There are a number of other provisions within the Plans that provide for earlier claims deadlines in respect of certain claims that can be made under the Plans. These earlier claims deadlines have been addressed by the Courts on one or more occasion.
37. In late 2001 and early 2002, the Courts ordered that the claims deadlines in section 3.05(1), 3.06 and 3.07 of the Transfused HCV Plan and section 3.04(1), 3.05, and 3.06 of the Hemophiliac HCV Plan commenced to run on March 12, 2001 rather than the approval date of the Settlement Agreement.

Order of the Superior Court of Ontario, made on November 14, 2001

Order of the Québec Superior Court, made on January 11, 2002

Order of the Supreme Court of British Columbia, made November 14, 2001

38. In late 2003 and early 2004, the Courts approved a protocol entitled "Requirements for the Exceptional Filing of Claims after Applicable Time Limits". This protocol in effect permitted the Administrator to extend the claims deadlines under section 3.05(1), 3.06 or 3.07 of the Transfused HCV Plan or sections 3.04(1), 3.05 or 3.06 of the Hemophiliac HCV Plan or in the definition of secondarily infected person and spouse of the Plans if the claimant provided an explanation satisfactory to the Administrator.

Order of the Superior Court of Ontario, made February 5, 2004

Order of the Québec Superior Court, made December 4, 2003

Order of the Supreme Court of British Columbia, made December 19, 2003

39. In June and July 2012, the Courts addressed all of these earlier claims deadlines by revoking the protocol referenced in the preceding paragraph and issuing a court approved protocol entitled "Issuance of Initial Claim Packages after the June 30, 2010 First Claim Deadline". In June and July 2012, the Courts also addressed the two exceptions to the first claims deadline found at section 3.08(b) of the Transfused HCV Plan and section 3.07(b) of the Hemophiliac HCV Plan by issuing a court approved protocol entitled "Recent HCV Diagnosis Exception to the June 30, 2010 First Claim Deadline".

Affidavit of Heather Rumble Peterson #5, para. 29

Order of the Superior Court of Ontario, made June 11, 2012

Orders of the Québec Superior Court made June 27, 2012 and July 23, 2012

Order of the Supreme Court of British Columbia, made May 15, 2012

40. In late 2013 and early 2014, the Courts were asked to use their supervisory role under the Plans to extend the June 30, 2010 first claims deadline. All of the Courts held that this was an impermissible amendment to the Settlement Agreement. However, Mr. Justice Perell approved the proposed late claims request protocol conditional upon an order of actuarially unallocated assets and money held by the trustee issuing at a later date and the Courts of British Columbia and Québec making companion orders without material differences. Chief Justice Rolland declined to conditionally approve the late claims request protocol saying it was premature to make such an order at that time. Chief Justice Hinkson declined to conditionally approve the late claims request protocol.

Parsons v. The Canadian Red Cross Society, 2013 ONSC 7788

Honhon v. The Attorney General of Canada, 2014 QCCS 2032
(included is also unofficial English version)

Endean v. The Canadian Red Cross Society, 2014 BCSC 621

41. As at September 30, 2015, the Administrator has received 246 late claim requests after the June 30, 2010 first claims deadline from persons who do not meet the exceptions to the deadline listed in the Plans and the court approved protocols in place. Following an advertising campaign in the spring

of 2010, the initial influx of late claims requests was higher, however over the last 3 years late claim requests have averaged approximately 2 per month.

Rumble Peterson Affidavit #13, para. 75

42. The proposed late claims protocol addresses the potential claims of the people who come forward subsequent to June 30, 2010 by appointing a Referee to assess their individual circumstances, which include in some cases not having had notice of the Settlement Agreement and/or the first claim deadline as indicated in response to the survey conducted by the Administrator prior to the earlier motions.

Rumble Peterson Affidavit #13, para. 76

43. The persons who would be governed by the proposed late claims protocol are class members who, by virtue of the Settlement Agreement and the settlement approval orders, have released their claims.
44. The protocol conditionally approved by Perell J. has been updated in two ways. First, based on further input that the Joint Committee received through the consultation sessions and in submissions from late claimants regarding the reasons for their delay, the Joint Committee determined that it was advisable to amend the draft protocol to provide the referee discretion to determine whether a reasonable explanation for the delay had been provided by the claimant. Second, it has been updated to provide for deficient claims in the same way as other protocols have been recently.

Rumble Peterson Affidavit #13, para. 78

45. Subject to the changes noted above, the Joint Committee recommends that the Courts approve a late claims protocol substantially in the form conditionally approved by Mr. Justice Perell.
46. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$32,399,000 before administration expenses and \$32,450,000 inclusive of administrative expenses.

**Border Affidavit #5, Exhibit A, para. 25-26, Appendix A paras. 34-36
and Appendix B p.29**

Increase Fixed Payments by 10%

47. The following amounts (in 1999 dollars) are payable at the following disease levels to all persons alive when they claim and the estates of all persons who died after January 1, 1999:
- (a) disease level 1: \$10,000 where the Hepatitis C antibody is present in the blood;
 - (b) disease level 2: \$20,000 where the Hepatitis C virus is present in the blood (\$15,000 payable upon approval and \$5,000 paid on order of the Courts in 2002 pursuant to s.7.03 of the Plans);
 - (c) disease level 3: \$30,000 where there is non-bridging fibrosis of the liver due to HCV or where compensable HCV Drug Therapy is recommended or taken;
 - (d) disease level 5: \$65,000 where cirrhosis, porphyria cutanea tarda, thrombocytopenia or glomerulonephritis develops due to HCV; or
 - (e) disease level 6: \$100,000 where liver transplant, HCC, decompensation of the liver, B-cell lymphoma, cryoglobulinemia, glomerulonephritis requiring dialysis or renal failure develops due to HCV.

Settlement Agreement, Plans sections 4.01(1)

48. The amounts payable under 4.01(1) are cumulative and total \$225,000 in 1999 dollars. In 1999, the trilogy upper limit on non-pecuniary damages was \$260,500.

Rumble Peterson Affidavit #13 at paras. 80 and 81

49. The Hemophiliac HCV Plan offers an alternative election in respect of class members co-infected with HIV. Pursuant to section 4.08(2) of the Hemophiliac HCV Plan, a hemophiliac class member co-infected with HIV may elect to be paid \$50,000 (1999 dollars) in full satisfaction of all claims

past present or future including potential claims by his or her dependents or other family members.

Settlement Agreement, Hemophiliac HCV Plan sections 4.08(2)

50. The estate of a person who died before January 1, 1999 may claim an all inclusive sum of \$50,000 in respect of pre-death losses including pain and suffering and loss of enjoyment of life.

Settlement Agreement, Plans Section 5.01(1)

51. The Plans contain a lump sum alternative to the \$50,000 payment. The estate, the dependants and the family class members may agree to collectively claim an all inclusive lump sum of \$120,000 in lieu of the \$50,000 payment for pre-death losses and all post-death losses (except funeral expenses) such as Family Member payments and dependency claims.

Settlement Agreement, Plans sections 5.01(2)

52. The Hemophiliac HCV Plan also offers an alternative election in respect of deceased class members co-infected with HIV. Pursuant to section 5.01(4) of the Hemophiliac HCV Plan, the estate, dependents and other family members of a hemophiliac class member co-infected with HIV who died prior to January 1, 1999 may collectively claim \$72,000 (1999 dollars) in full satisfaction of all their claims.

Settlement Agreement, Hemophiliac HCV Plan section 5.01(4)

53. The Joint Committee learned by way of the consultations and submissions of symptoms and effects of the HCV infection and/or compensable HCV drug therapy that either were not identified or the severity was not anticipated based on the state of the medical knowledge at the time the benefits under the Plans were designed. As such, the Joint Committee recommends an increase of 10% in respect of all fixed payments under the Plans at this time payable retroactively and prospectively.

Rumble Peterson Affidavit #13, para. 85

54. The Joint Committee recommends an increase of 10% retroactively and prospectively in respect of all fixed payments under the Plans at this time. If this recommendation is accepted, persons at level 6 of the disease will move closer to, but not over, the amount prescribed by the trilogy.

Rumble Peterson Affidavit #13 para. 85

55. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$51,266,000 before administration expenses and \$51,392,000 inclusive of administrative expenses.

Border Affidavit #5, Exhibit A, para. 25-26, p.11 and Appendix A paras. 75-78 and Appendix B, p.29

Family Member Payments – Increase payments to children over 21 and parents from \$5,000 (1999 dollars) to \$10,000 (1999 dollars)

56. Family class members of a class member whose death was caused by his or her infection by HCV are entitled to be paid loss of guidance care and companionship in the following 1999 dollar amounts (unless they chose one of joint fixed payment options):
- (a) \$25,000 for the spouse;
 - (b) \$15,000 for each child under the age of 21 years at the date of death of the HCV infected person;
 - (c) \$5,000 for each child 21 years of age or older at the date of death of the HCV infected person;
 - (d) \$5,000 for each parent;
 - (e) \$5,000 for each sibling;
 - (f) \$500 for each grandparent; and
 - (g) \$500 for each grandchild.
57. At the time of the settlement there was variation in the entitlements to such benefits across Canada. At present more provinces have legislated fixed

quantum for various family member awards however even the newer legislation is not uniform across the country.

Rumble Peterson Affidavit #13, para. 90

58. Several family class members spoke about the quantum of these awards at the consultation sessions. The awards are considered parsimonious at best.

Rumble Peterson Affidavit #13, para. 91

59. While the Joint Committee considered recommending increases to each of these awards, because of the limits on the funds available at this time and the competing interest of other benefits to be addressed it is only recommending at this time that the benefits for children 21 years or older and the benefits of parents be increased by \$5,000 (1999 dollars) retroactively and prospectively.

Rumble Peterson Affidavit #13, para. 92

60. The Joint Committee believes that the benefits payable to children 21 years or older and to parents are significantly out of line with the award to spouses and to children under age 21 having regard to the fact that parent, child and spouse are all first degree of consanguinity/affinity family members and having regard to the common law and legislation pertaining to such compensation.

Rumble Peterson Affidavit #13, para. 94

61. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$22,162,000 before administration expenses and \$22,449,000 inclusive of administrative expenses.

Border Affidavit #5, Exhibit A, para. 25-26 and p.11, Appendix A paras. 75-78 and Appendix B p.29

Eliminate Deductions of Collateral Benefits In Calculating Loss of Income and Loss of Support Claims

62. Loss of support is calculated in the same manner as the loss of income less a 30% discount to offset that portion of income the wage earner would have expended on his/herself while alive. As with a loss of income claim, a loss of

support claim ceases at age 65 at which time the dependant may switch to a loss of services in the home claim. Or, a post-death loss of services in the home claim may be made as an alternative to a loss of support claim. A loss of services claim is payable until the earlier of the death of the dependent or the statistical lifetime of the class member calculated without regard to his or her HCV infection.

63. The Joint Committee recommends at this time that the deduction of collateral benefits as post-claim net income be eliminated from the calculation of annual loss of net income and loss of support

Rumble Peterson Affidavit #13, para. 102

64. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$27,539,000 before administration expenses and \$27,682,000 inclusive of administrative expenses.

Border Affidavit #5, Exhibit A, paras. 25-26, p.11, Appendix A paras. 38-50 and Appendix B p.29

Compensation for Diminished Pension Benefits

65. The Settlement Agreement and Plans provide no compensation for loss of pension including CPP pensions, employment-related pension benefits or private pension arrangements such as registered retirement savings plans or individual pension plans.

Rumble Peterson Affidavit #13, para. 101

66. The pension benefits that class members may have had would vary widely and it would be difficult to calculate an amount to be paid in the pensionable years to compensate for a diminished or lost pension. It is possible to increase loss of income and loss of support by a percentage to represent the pension benefit lost due to decreased or lost employment. A reasonable level of retirement income can be accumulated with a pension based on 20% of pay. On average, pensions are funded at half that rate. Including the

employer contribution to CPP of up to 4.95%, overall a reasonable rate of compensation for the loss of pension benefits is 14%.

Border Affidavit #4, Exhibit A, Appendix A paras. 51-56

67. The Joint Committee was not able to recommend 14% because of the limits on the funds available at this time and the competing interest of other benefits to be addressed. At this time the Joint Committee recommends that 10% of gross loss of income (loss of income capped at \$200,000 prior to 2014 and indexed thereafter) be paid to compensate for lost pension benefits.

Rumble Peterson Affidavit para. 102

68. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$19,787,000.

Border Affidavit #5, Exhibit A, para. 25-26 and p.11, Appendix A para. 51-56, Appendix B p.29

Increase Loss Of Services from 20 hours per week to 22 hours per week

69. The provision for loss of services is found at section 4.03 of the Plans. Claims for loss of services in the home are limited to a maximum of 20 hours per week recoverable at a rate of \$12 per hour (1999 dollars) for class members at disease level 4 or higher and for class members at level 3 who waive the level 3 fixed payment and who are at least 80% disabled. Loss of income and loss of services in the home are alternative benefits, a class member cannot claim both in respect of the same time period.

Settlement Agreement, Plans s.4.03

70. If the class member is deceased, his or her dependants may make a claim for loss of services the deceased would have provided if the deceased's death was caused by infection with HCV, again provided that loss of support is not claimed for the same period.
71. Loss of services in the home is payable for the lifetime of the infected person and then until the earlier of the death of the dependant or the statistical lifetime of the deceased class member without regard to his or her HCV

infection. Class members who claimed loss of income or loss of support may claim loss of services when the entitlement to loss of income/support terminates due to the class member reaching age 65 or on what would have been the 65th birthday of a deceased class member.

Rumble Peterson Affidavit #13, paras. 105 and 108

72. The Administrator's data demonstrates the actual losses a class member experiences compared to the 20 hours on which compensation is based. For the majority of class members, 20 hours is significantly less than full compensation. In addition, class members have reported to the Joint Committee that the per hour dollar rate is lower than what they pay to replace the services.

Rumble Peterson Affidavit #13, para.110

73. The Joint Committee considered increases to both the number of hours reimbursed and the hourly rate of this compensation. It also considered three different scenarios for extending the duration of the payments and whether these benefits and loss of income/support should be mutually exclusive. Because of the limits of the funds available and the competing interests of other benefits to be addressed, the Joint Committee recommends at this time an increase in the maximum number of hours compensated by 2 hours per week (for a total of 22 hours) payable retroactively and prospectively.

Rumble Peterson Affidavit #13, para. 111

74. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$34,561,000 before administration expenses and \$34,756,000 inclusive of administrative expenses.

Border Affidavit #5, Exhibit A, para. 25-26, Appendix A paras. 57-62, Appendix B p. 29

Increase Maximum Payable for Cost of Care from \$50,000 (1999 dollars) to \$60,000 (1999) dollars per annum

75. The Plans provide for compensation for costs of care where a class member at disease level 6 incurs such costs. The compensation payable for costs of

care is up to \$50,000 (1999 dollars) per calendar year. This benefit is described at section 4.04 of the Plans.

Settlement Agreement, Plans sections 4.04

76. The Administrator estimated that the current maximum reimbursement for this benefit is inadequate to cover the costs incurred in 10% to 15% of these cases. The Joint Committee also heard from some class members and family class members that in some cases care is or was required at disease levels below level 6. The Joint Committee considered recommending that this benefit become available at a lower disease level and that the amount of this award be increased. Eckler was instructed to cost both.

Rumble Peterson Affidavit #13, para. 115

77. Because of the limits on the funds available and the competing interests of other benefits to be addressed, the Joint Committee recommends at this time that the maximum award for costs of care be increased by \$10,000 (in 1999 dollars for a total of \$60,000) payable retroactively and prospectively.

Rumble Peterson Affidavit #13, para. 116

78. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$627,000 before administrative expenses and \$629,000 inclusive of administrative expenses.

Border Affidavit #5, Exhibit A, para. 25-26, p.11, Appendix A, paras. 63-65, Appendix B p.29

Out of Pocket Expenses - \$200 Allowance for Family Class Members who Accompany HCV Infected Persons to Appointments

79. Class members at any disease level may claim reimbursement for uninsured treatment and medication costs and out-of-pocket expenses in accordance with the provisions of sections 4.06 and 4.07 of the Plans.

Settlement Agreement, Transfused HCV Plan s.4.06 and Hemophiliac Transfused Plan section 4.07

80. The Joint Committee heard from class members and family class members that time, vacation/sick days and/or wages were lost by family members when they accompanied class members to HCV-related medical appointments.

Rumble Peterson Affidavit #13, para 120

81. The Joint Committee recommends that at this time that the benefits under out-of-pocket expenses include an amount of \$200 (2014 dollars) per visit payable prospectively in those circumstances where a family class member accompanies a class member to his or her medical appointment.

Rumble Peterson Affidavit #13, para 121

82. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$1,957,000.

Border Affidavit #5, Exhibit A, para. 25-26 and p.11, Appendix A paras. 70-74 and Appendix B, p.29

Increase Cap on Funeral Expenses from \$5,000 (1999 dollars) to \$10,000 (1999 dollars)

83. The Plans provide at sections 5.01 and 5.02 for payment of an amount up to \$5,000 (1999 dollars) to reimburse uninsured funeral expenses incurred in respect of a deceased class member whose death was caused by his or her infection with HCV. This payment is also subject to a deduction of collateral benefits received pursuant to section 8.03 of the Plans.

Settlement Agreement and Plans sections 5.01 and 5.02

84. The claims data and the submissions made by claimants demonstrate that the amount of \$5,000 is inadequate to reimburse the expenses incurred by the majority of the claimants who have claimed this benefit.

Rumble Peterson Affidavit #13, para. 125

85. The Joint Committee considered recommending that the collateral benefit reduction be removed and that the maximum reimbursement under this benefit be increased. However, because of the limits on the funds available and the competing interests of other benefits to be addressed and because

the claims data shows that more claimants will benefit from an increase in the maximum amount payable, it recommends at this time an increase of the maximum award for funeral expenses by \$5,000 (in 1999 dollars for a total of \$10,000) payable retroactively and prospectively.

Rumble Peterson Affidavit #13, para. 126

86. The value of this Allocation Benefit to be paid from the excess capital in the invested fund is approximately \$2,050,000 before administrative expenses and \$2,093,000 inclusive of administrative expenses.

Border Affidavit #5, Exhibit A, para. 25-26, p.11, Appendix A para. 70-74 and Appendix B p.29

Required Capital

87. The future costs of allocation benefits impact required capital. The total impact on required capital due to the recommended allocation benefits is \$12,167,000.

Border Affidavit #5, Exhibit A, para 24, 26 and p.11 and Appendix C paras 81- 102

Administrative Expenses

88. The Administrator has provided estimates for the cost of administering the recommended allocation benefits which have been included in the actuarial estimates.

Rumble Peterson Affidavit #13, para. 52-53, Exhibit E

Border Affidavit #5, Exhibit A, para. 25-26 and p.11

89. In addition, the Administrator has advised that there will be costs associated with making payments to estates which are not specific to any of the Allocation Benefits but will arise because some class members and family class members will have passed away since they were last paid compensation or due to other complications. These costs are estimated to be \$61,000. They have been included in the total value of the benefits to be allocated from the excess capital in the Invested Fund as a separate line item.

Rumble Peterson Affidavit #13, para.129**Border Affidavit #5, Exhibit A, p.11 and Appendix A para. 80*****Total Recommended Allocation Benefits***

90. The Allocation Benefits recommended by the Joint Committee at this time total \$205,422,000 including administrative expenses and the increase to required capital. The total is slightly less, by \$1,498,000, than the excess capital.

Border Affidavit #5, Exhibit A, para. 26 and p.11

91. The Joint Committee recommends that the excess capital which is not required for the recommended Allocation Benefits be retained by the Trustee, subject to a further application by the Joint Committee to fund, among other things, a replacement of the software used in the administration of the settlement and to provide assistance to class members in dealing with the Administrator and the paperwork required under the settlement.

Rumble Peterson Affidavit #13 para. 133-135**The Pre-Claim Gross Income Cap on Loss of Income and Loss of Support Claims**

92. The Plans as originally approved contained certain restrictions on payments pertaining to the disease level 2 fixed payment and loss of income and loss of support payments. These restrictions are to be reviewed by the Courts on the triennial financial sufficiency assessments.

Settlement Agreement, sections 7.03(2) and 10.01, Plans sections 4.01(1)(b), 4.02(2) and 6.01(1)

93. In July 2002 the Courts ordered that the restriction upon payment pertaining to the disease level 2 lump sum payment contained in section 4.01(1)(b) of the Plans be deleted, that all postponed payments be made to class members inclusive of interest, and that future payments at disease level 2 include the full \$20,000 benefit for that level.

Rumble Peterson Affidavit #13 at para. 68**Order of the Superior Court of Ontario, made July 11, 2002**

Order of the Québec Superior Court, made July 11, 2002

Order of the Supreme Court of British Columbia, made July 12, 2002

94. The Courts addressed the restrictions pertaining to loss of income and loss of support in 2004. The Courts ordered that the 70% restriction on loss of income calculation at section 4.02(2) and the loss of support calculation at section 6.01(1) be deleted and that the incremental amount owed to class members affected by the restriction be paid out with interest. The Courts further ordered that the \$75,000 cap on pre-claim gross income at section 4.02(2)(b)(i) of the Plans be deleted and replaced with a \$300,000 restriction on pre-claim gross income.

Rumble Peterson Affidavit #13 at para. 69

Order of the Superior Court of Ontario, made October 19, 2004

Order of the Québec Superior Court, made July 7, 2004

Order of the Supreme Court of British Columbia, made June 30, 2004

95. In early 2008 the Courts reassessed the loss of income restriction on pre-claim gross income at section 4.02(2)(b)(i) by amending the section so that pre-claim gross income used in calculating a claimant's loss of income was restricted to \$2.3 million (1999 dollars) (instead of the previous \$300,000) subject to approval by the Court with jurisdiction for claims where the pre-claim gross income exceeds \$300,000 (1999 dollars).

Rumble Peterson Affidavit #13 at para. 70

Order of the Superior Court of Ontario, made February 1, 2008

Order of the Québec Superior Court, made January 17, 2008

Order of the Supreme Court of British Columbia, made January 25, 2008

96. Since then four claimants have been approved (one with annual pre-claim gross income of \$2.3 million in 1999 dollars). Of the four claimants approved by the Courts, one died in 2010, one is now over 65 years old and thus not eligible for any further income loss payments, one had a net income loss in

2012 of \$1.497 million and the fourth had a net income loss of \$300,000 because of post-loss income he earned.

Rumble Peterson Affidavit #13 at para. 71

97. The Courts have not revisited the restriction on loss of income since 2008. In accordance with the amendment made at that time, the pre-claim gross income is restricted to \$2.3 million (1999 dollars).

Rumble Peterson Affidavit #13 at para. 72

98. Eckler Ltd. was instructed to assume that the restriction on pre-claim gross income will remain at \$2.3 million for the purposes of its 2013 sufficiency opinion and for the purpose of costing the recommendations of the Joint Committee on allocating excess capital. While it is statistically unlikely that another very large loss of income claim will be submitted, the prudent step would be to retain the restriction in the form that it currently exists.

Border Affidavit #5, Exhibit A, Appendix A, para. 44

PART 3: LEGAL BASIS

1. The Settlement Agreement requires a triennial review of financial sufficiency. The most recent review was triggered at December 31, 2013.
2. Section 10.01(1)(i) also requires the courts to consider whether any of the restrictions on payments in the Plans should be removed in whole or in part.
3. Pursuant to the Allocation Provisions of the Settlement Approval Orders, the courts have discretion to enhance benefits to class members if they declare portions of the money and other assets held by the Trustee to be actuarially unallocated.
4. In exercising their unfettered discretion, the Allocation Provisions of the Settlement Approval Orders stipulate that the Courts may consider, but are not bound to consider:
 - (a) the number of class members and family class members;

- (b) the experience of the Trust Fund;
 - (c) the fact that the benefits in the Plans do not reflect the tort model;
 - (d) s.34(5) of the *Class Proceedings Act*;
 - (e) whether the integrity of the Agreement will be maintained and the benefits particularized in the Plans ensured;
 - (f) whether the process of the disease is significantly different than the medical model used on settlement approval;
 - (g) the fact that class members and family class members bear the risk of insufficiency of the Trust Fund;
 - (h) the fact that the FPT Governments' contributions under the Agreement are capped;
 - (i) the source of the money and other assets which comprise the Trust Fund;
and
 - (j) any other facts the Courts consider material.
5. The Allocation Benefits recommended by the Joint Committee respect the integrity of the Agreement, do not create any risk that the benefits in the Plans will not be paid, are consonant with the experience of the Trust Fund and the class members and family class members and reflect the changes in the medical model and medical understanding of the disease.
6. Payment of excess capital in the invested fund to class members and family class members at this time is the course most consistent with the fact that the FPT Governments' contributions were capped and the class members and family class members bore the risk of insufficiency.
7. Such further and other grounds as counsel may advise and this Honourable Court may permit.

PART 4: MATERIAL TO BE RELIED ON

1. 1986-1990 Hepatitis C Settlement Agreement, Transfused HCV Plan, Hemophiliac HCV Plan and Funding Agreement;
2. *Class Proceedings Act*, RSBC 1996, c.50

New Affidavits

3. Affidavit #5 of Richard Border, made October 14, 2015;
4. Affidavit #1 of Arnaud Sauvé-Dagenais, made October 15, 2015;
5. Affidavit #1 of Alan Melamud, made October 15, 2015;
6. Affidavit #1 of Shelley Woodrich, made October 15, 2015;
7. Affidavit #1 of Chya Mogerman, made October 16, 2015;
8. Affidavit #13 of Heather Rumble Peterson, made October 16, 2015;

Previously Delivered Affidavits

9. Affidavit of J.J. Camp, made November 23, 1999;
10. Affidavit of R. Douglas Elliott, made July 12, 1999;
11. Affidavit of Heather Rumble Peterson, made November 23, 1999 (Ontario);
12. Affidavit of Bonnie A. Tough, made November 25, 1999 (Ontario);
13. Affidavit #23 of Sharon D. Matthews, made January 14, 2010;
14. Affidavit #5 of Heather Rumble Peterson, made August 7, 2012;
15. Affidavit #9 of Heather Rumble Peterson, made November 22, 2013;
16. Affidavit #7 of Lise Carmichael-Yanish, made November 22, 2013;
17. Affidavit #8 of Lise Carmichael-Yanish, made November 26, 2013;
18. Affidavit #10 of Heather Rumble Peterson, made November 25, 2013;
19. Affidavit #10 of Lise Carmichael-Yanish, made December 9, 2013;
20. Affidavit #4 of Richard Border, made March 11, 2015;
21. Affidavit #1 of Dr. Vince Bain, made March 11, 2015;
22. Affidavit #4 of Murray Krahn, made March 16, 2015;
23. Affidavit #4 of Peter Gorham, made April 8, 2015;

Orders and Decisions**Decisions regarding settlement**

24. *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572;
25. *Honhon v. The Attorney General of Canada*, [1999] Q.J. No. 4370 (S.C.);
26. *Endean v. Canadian Red Cross Society*, [1999] B.C.J. No. 2180 (S.C.);

Orders approving Settlement (and in Québec, modifying the approval granted)

27. Order of the Superior Court of Ontario, made October 22, 1999;
28. Order of the Québec Superior Court, made November 19, 1999;
29. Order of the Supreme Court of British Columbia, made October 28, 1999;

November 2001 orders that the claims deadlines in s.3.05, 3.06 and 3.07 of the Transfused HCV Plan and sections 3.04(1), 3.05 and 3.06 of the Hemophiliac HCV Plan commenced to run on March 12, 2001 rather than the approval date of the Settlement Agreement

30. Order of the Superior Court of Ontario, made on November 14, 2001;
31. Order of the Québec Superior Court, made on January 11, 2002;
32. Order of the Supreme Court of British Columbia, made November 14, 2001;

Orders from July 2002, courts asked to reassess the first restriction – the \$5,000 holdback in respect of the disease level 2 fixed payment, ordered that the restriction upon payment contained in section 4.01(1)(b) of the Plans be deleted, that all postponed payments in respect of disease level 2 be made to class members inclusive of interest and that future claims at disease level 2 be paid to the full \$20,000 benefit

33. Order of the Superior Court of Ontario, made July 11, 2002;
34. Order of the Québec Superior Court, made July 11, 2002;
35. Order of the Supreme Court of British Columbia, made July 12, 2002;

In February 2004, the Courts approved a protocol entitled “Requirements for the Exceptional Filing of Claims after applicable Time Limits”

36. Order of the Superior Court of Ontario, made February 5, 2004;
37. Order of the Québec Superior Court, made December 4, 2003;
38. Order of the Supreme Court of British Columbia, made December 19, 2003;

October 2004, courts addressed remaining two restrictions – limits on loss of income in or about October 2004. Ordered that 70% restriction on the loss of income calculation and loss of support be deleted and that \$75,000 cap be replaced with \$300,000

39. Order of the Superior Court of Ontario, made October 19, 2004;
40. Order of the Québec Superior Court, made July 7, 2004;
41. Order of the Supreme Court of British Columbia, made June 30, 2004;

February 2008 courts reassessed loss of income. Amended plan. Raise pre claim gross income to 2.3 million subject to approval by court with jurisdiction for claims where the pre-claim gross income exceeds \$300,000

42. Order of the Superior Court of Ontario, made February 1, 2008;
43. Order of the Québec Superior Court, made January 17, 2008;
44. Order of the Supreme Court of British Columbia, made January 25, 2008;

June/July 2012 revoking protocol issuing Issuance of Initial Claim Packages after June 30, 2010 deadline", also approved Recent HCV Diagnosis Exception to the June 30, 2010 First Claim Deadline

45. Order of the Superior Court of Ontario, made June 11, 2012;
46. Orders of the Québec Superior Court made June 27, 2012 and July 23, 2012;
47. Order of the Supreme Court of British Columbia, made May 15, 2012;

Decisions of the courts regarding late claims issue

48. *Parsons v. The Canadian Red Cross Society*, 2013 ONSC 7788;
49. *Honhon v. The Attorney General of Canada*, 2014 QCCS 2032;
50. *Endean v. The Canadian Red Cross Society*, 2014 BCSC 621;

Financial sufficiency orders 2013

51. Order of the Superior Court of Ontario, made July 10, 2015;
52. Order of the Québec Superior Court, made July 16, 2015;
53. Order of the Supreme Court of British Columbia, made July 23, 2015.

The applicant estimates that the application will take: **3 days**.

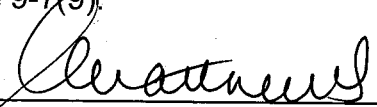
This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: October 16, 2015



Signature of British Columbia Joint
Committee Member

for: J.J. Camp, Q.C.

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this notice of application
- with the following variations and additional terms:

.....

Date:

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

Appendix "A"

COURT APPROVED PROTOCOL Late Claim Requests following the June 30, 2010 First Claim Deadline

approved as of June 2016

1. The Court Approved Protocol—Requirements for the Exceptional Filing of Claims after Applicable Time Limits shall not have any force and effect after June 30, 2010.

Late Claim Request

2. In the circumstances where the Administrator receives a request for an Initial Claim Package after the June 30, 2010 first claim deadline from a person who is unable to qualify to receive an Initial Claim Package and have his or her Claim processed under any other Court Approved Protocol or existing order, the request shall be referred to as a "**Late Claim Request.**"
3. Where a Late Claim Request is sought to be made, the Administrator shall request a signed statement from the person making the Late Claim Request which:
 - (a) sets out why the person is seeking to make a claim after the first claim deadline; and
 - (b) recites the facts he or she is relying upon in seeking to be relieved from the deadline.
4. The Administrator shall advise the person making the Late Claim Request in writing that he or she has sixty (60) days to deliver the signed statement to the

Administrator for consideration by the Referee appointed by the Courts to consider Late Claim Requests on a summary basis and that, if he or she fails to do so, he/she will be required to seek an order from the Court having jurisdiction to determine if his or her Claim will be permitted to proceed.

5. If the person making the Late Claim Request fails to deliver the signed statement to the Administrator in sixty (60) days, the Administrator shall notify the person making the Late Claim Request in writing that he/she must seek an order from the Court having jurisdiction to determine if the Claim will be permitted to proceed.

Referral to Referee

6. The Administrator shall forthwith deliver each timely signed statement it receives to the Referee appointed by the Courts to consider Late Claim Requests together with the Administrator's information setting out the first contact with the person making the Late Claim Request and any other information it has relevant to the request.
7. The Referee appointed by the Courts to consider Late Claim Requests on a summary basis shall determine whether an Initial Claim Package shall issue based upon the following guidelines:
 - (a) Late Claim Requests by persons who did not receive timely notice of the deadline until after it had passed should be allowed if, in the opinion of the

Referee, the Late Claim Request was made within a reasonable time after notice was acquired;

- (b) Late Claims Requests by persons whose failure to meet the deadline was due to matters that, in the opinion of the Referee, should reasonably be considered to be beyond their control or is otherwise a reasonable explanation for their delay, should be allowed;
- (c) Late Claim Requests made by persons who had notice of the deadline before it expired should be disallowed unless they meet the exception in paragraph 7(b) above or, in the opinion of the Referee, the timing of the receipt of such notice was inadequate for the purpose of making a Claim;
and
- (d) any other Late Claim Requests and those where the Referee is uncertain as to the appropriate application of the above guidelines should be referred by the Referee in writing to the appropriate Court to be dealt with summarily.

8. The Referee shall have the power to establish any procedures he or she considers necessary and proper to consider the Late Claim Request on a summary basis and shall have the power to require additional submissions from the person making the Late Claim Request and/or the Administrator either orally or in writing and whether admissible in a court of law or not, as he or she considers proper.

9. The Referee shall give a written decision within sixty (60) days of his/her receipt of the Late Claim Request which decision will be automatically confirmed and be final and binding unless the person making the Late Claim Request serves and files a notice of motion with the Court having jurisdiction opposing confirmation within thirty (30) days of the delivery of the Referee's decision.

10. The provisions of section 10.04 and Appendix C of the Plans shall have no application to the summary procedure established by this Court Approved Protocol.

Issuance of an Initial Claim Package

11. Where the Referee determines an Initial Claim Package shall issue to a person making a Late Claim Request, the Administrator shall forthwith provide the Initial Claim Package to the person making the Late Claim Request and advise the claimant in writing that:
 - (a) the deadline to deliver the completed Initial Claim Package to the Administrator is six (6) months from the date the Initial Claim Package is issued to the claimant ("**Completed Package Delivery Deadline**");
 - (b) if the claimant is unable to deliver the completed Initial Claim Package to the Administrator by the Completed Package Delivery Deadline, the claimant must submit a "Request Form – Completed Package Delivery Deadline Extension" attached as Appendix "A" (the "**Request Form**") to

- the Administrator before the Completed Package Delivery Deadline expires if the claimant wishes to maintain the right to submit a claim; and
- (c) if the Administrator does not receive the completed Initial Claim Package or the completed Request Form by the Completed Package Delivery Deadline, the Administrator shall deny the claim.

Completed Package Delivery Deadline Extension Request

12. A request to extend the Completed Package Delivery Deadline must be made before the Completed Package Delivery Deadline expires. The Request Form shall be provided by the Administrator to claimants upon request and shall also be made available on the Administrator's website.
13. The claimant will be required to set out:
- (a) the steps already taken to complete the Initial Claim Package;
 - (b) the reasons why the Initial Claim Package has not been completed to date; and
 - (c) the new steps the claimant proposes to take to complete the Initial Claim Package and how long these steps will take.
14. Upon receipt of a completed Request Form, the Administrator shall forthwith review it and determine if the Request Form sets out a plan that could reasonably result in the completion of the Initial Claim Package. If so, the Administrator shall grant the extension, which shall not exceed six (6) months from the date the

- Request Form is submitted. The Administrator shall communicate the length of the extension and the terms on which it is granted by sending the claimant a "Notice of Extension of Completed Package Delivery Deadline" substantially in the form attached as Appendix "B".
15. If, upon reviewing a Request Form, the Administrator determines that it does not set out a plan that could reasonably result in the completion of the Initial Claim Package, the Administrator shall deny the claim and shall send the claimant a "Rejection Letter" substantially in the form attached as Appendix "C".
 16. If the claimant has not submitted a completed Initial Claim Package or a completed Request Form on or before the Completed Package Delivery Deadline, the Administrator shall deny the claim and shall send the claimant a "Rejection Letter" substantially in the form attached as Appendix "D".
 17. If a claimant obtains an extension of the Completed Package Delivery Deadline but fails to submit a completed Initial Claim Package to the Administrator on or before the extended Completed Package Delivery Deadline expires, the Administrator shall deny the claim and shall send the claimant a "Rejection Letter" substantially in the form attached as Appendix "E".

Processing the Completed Initial Claim Package

18. The issuance of an Initial Claim Package pursuant to this Court Approved Protocol and the order of the Referee shall not be determinative of the eligibility of the person making the Late Claim Request to receive compensation.

19. Where the Administrator receives a completed Initial Claim Package in compliance with the provisions of this Protocol, it shall process the Initial Claim Package and determine eligibility for compensation by applying the terms of the Settlement Agreement in light of the Court Approved Protocols and Standard Operating Procedures which are in place under the Plans at the time of processing.

Denied Claims

20. Where the Administrator denies a Late Claim Request received in accordance with the provisions of this Protocol, the Administrator shall also notify the claimant in writing that:
 - (a) the appeal route at section 10.01 of the relevant Plan applies; and
 - (b) the claimant shall not be estopped from seeking to advance a claim under any other relevant Court Approved Protocol or Court Order which hereafter issues.

Appendix "A"

The 1986-1990 Hepatitis C Settlement

REQUEST FORM
COMPLETED PACKAGE DELIVERY DEADLINE EXTENSION

A Claimant may apply in writing to the Claims Administrator for an extension of the Completed Package Delivery deadline. The Claimant must set out the steps taken to complete the Initial Claim Package, the reason why the Initial Claim Package has not been completed to date and what new steps the Claimant proposes to take to complete the Initial Claim Package.

Section A – HCV INFECTED CLASS MEMBER or FAMILY MEMBER information

Last Name _____ First Name _____ Middle Initial _____
Home Address _____
City _____ Province/Territory _____ Postal Code _____
Country _____ Date of Birth (MM/DD/YYYY) _____
Home Phone _____ Work Phone _____
E-mail address _____

Section B – PERSONAL REPRESENTATIVE

Complete this Section about yourself if you are a Personal Representative submitting a claim on behalf of an HCV Infected Class Member or Family Member who is a minor, a mentally incompetent adult, or deceased.

Last Name _____ First Name _____ Middle Initial _____
Home Address _____
City _____ Province/Territory _____
Postal Code _____ Country _____
Home Phone _____ Work Phone _____
E-mail address _____

Section C – TYPE OF CLAIMANT

Check the appropriate box.

- HCV Infected Class Member
 Family Member

Section D – FILE NUMBER

Identify the file number this extension request pertains to.

File Number _____

Specify the steps already taken to complete the Initial Claim Package:

Specify the reason why the Initial Claim Package has not been completed to date:

Specify the steps the Claimant proposes to take to complete the Initial Claim Package and how long these new steps will take:

Date Signed (Month Day Year)

Signature of the Claimant or Personal Representative

Please return both pages of this form to the Administrator at the address or fax number below if you are requesting an extension.

Appendix "B"

The 1986-1990 Hepatitis C Settlement Administration

NOTICE OF EXTENSION OF COMPLETED PACKAGE DELIVERY DEADLINE

date

name

address

Dear Claimant:

Subject: Your file no.

After reviewing your request for an extension of the Completed Package Delivery Deadline, we have determined to grant you an extension to ***.

To complete the Initial Claim Package required for your claim, you must complete the following steps:

If you have not completed all of these steps by ***, the claim will be **denied**. **No further extensions will be granted**. A denial of a claim for failure to complete the Initial Claim Package is subject to appeal by referring the decision to a Referee or an Arbitrator.

If you have any questions, please do not hesitate to contact the Settlement Administrator at 1 877 434-0944 or by e-mail at info@hepc8690.ca, or visit our website at www.hepc8690.ca. All correspondence and documents must include your file number and should be mailed to the Administrator at the following address or faxed to 1 613 569-1763:

The 1986-1990 Hepatitis C Claims Centre
P.O. Box 2370, Station D
Ottawa, Ontario
K1P 5W5
Toll-free: 1 877 434-0944

Yours truly,

The 1986-1990 Hepatitis C Settlement Administrator

Appendix "C"

The 1986-1990 Hepatitis C Settlement Administration

REJECTION LETTER Completed Package Delivery Deadline – Extension Denied

date

name

address

Dear Claimant:

Subject: Your file no.

We are writing to advise you that your claim for compensation under The 1986-1990 Hepatitis C Settlement Administration has been denied. The reasons for denial are set out below.

Completed Package Delivery Deadline

On [*insert date*], we sent you a letter providing you notice that you had until *** to complete the Initial Claims Package or to request an extension of the Completed Package Delivery Deadline. Your request for an extension of the Completed Package Delivery Deadline was denied, because ***. Because you did not set out a plan that could reasonably result in the completion of the Initial Claims Package, your request for an extension of time was denied and your claim has been denied.

Right of Appeal

Under Section 10.01 of Schedules A and B of the Settlement Agreement, you can refer the decision of the Administrator to a Referee or an Arbitrator within 30 days of receiving this letter. That section provides:

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator by filing with the Administrator a notice requiring a reference or arbitration and setting out the objection to its decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding.

To request a review you must complete and return to the Administrator the enclosed "Request for Review Form" within 30 days from the date that you receive this letter. You must state your objections and the reasons supporting your objections.

For more information about the review process, please review the section of our website, www.hepc8690.ca, called "Appeals".

If you do not mail or fax a completed "Request for Review Form", the Administrator's decision to deny your claim will become final 30 days after you receive this letter.

If you have any questions, please do not hesitate to contact the Settlement Administrator at 1 877 434-0944 or by e-mail at info@hepc8690.ca, or visit our website at www.hepc8690.ca. All correspondence and documents must include your file number and should be mailed to the Administrator at the following address or faxed to 1 613 569-1763:

The 1986-1990 Hepatitis C Claims Centre
P.O. Box 2370, Station D
Ottawa, Ontario
K1P 5W5
Toll-free: 1 877 434-0944

Yours truly,

The 1986-1990 Hepatitis C Settlement Administrator

Encl. Request for Review Form

Appendix "D"

The 1986-1990 Hepatitis C Settlement Administration

REJECTION LETTER

Completed Package Delivery Deadline Not Met – Extension Not Requested

date

name

address

Dear Claimant:

Subject: Your file no.

We are writing to advise you that your claim for compensation under The 1986-1990 Hepatitis C Settlement Administration has been denied. The reasons for denial are set out below.

Completed Package Delivery Deadline

On [*insert date*], we sent you a letter advising you that you had until *** to deliver the completed Initial Claim Package or to request an extension of time. Because you did not deliver the completed Initial Claim Package or request an extension of the deadline to deliver the completed Initial Claim Package, your claim has been denied.

Right of Appeal

Under Section 10.01 of both Schedules A and B of the Settlement Agreement, you can refer the decision of the Administrator to a Referee or an Arbitrator within 30 days of receiving this letter. That section provides:

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator by filing with the Administrator a notice requiring a reference or arbitration and setting out the objection to its decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding.

To request a review you must complete and return to the Administrator the enclosed "Request for Review Form" within 30 days from the date that you receive this letter. You must state your objections and the reasons supporting your objections.

For more information about the review process, please review the section of our website, www.hepc8690.ca, called "Appeals".

If you do not mail or fax a completed "Request for Review Form", the Administrator's decision to reject your claim will become final 30 days after you receive this letter.

If you have any questions, please do not hesitate to contact the Settlement Administrator at 1 877 434-0944 or by e-mail at info@hepc8690.ca, or visit our website at www.hepc8690.ca. All correspondence and documents must include your file number and should be mailed to the Administrator at the following address or faxed to 1 613 569-1763:

The 1986-1990 Hepatitis C Claims Centre
P.O. Box 2370, Station D
Ottawa, Ontario
K1P 5W5
Toll-free: 1 877 434-0944

Yours truly,

The 1986-1990 Hepatitis C Settlement Administrator

Encl. Request for Review Form

Appendix "E"

The 1986-1990 Hepatitis C Settlement Administration

REJECTION LETTER

Extension Granted but Completed Package Not Delivered on Time

date

name

address

Dear Claimant:

Subject: Your file no.

We are writing to advise you that your claim for compensation under The 1986-1990 Hepatitis C Settlement Administration has been denied. The reasons for denial are set out below.

Completed Package Delivery Deadline

On [*insert date*], we sent you a letter advising you that you had until *** to return your Initial Claim Package or to request an extension of that deadline. You requested an extension of this deadline, which was granted by the Administrator. The deadline to complete the Initial Claim Package was extended to ***. Because your Initial Claim Package was not returned by the extended deadline, your claim has been denied.

Right of Appeal

Under Section 10.01 of Schedules A and B of the Settlement Agreement, you can refer the decision of the Administrator to a Referee or an Arbitrator within 30 days of receiving this letter. That section provides:

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator by filing with the Administrator a notice requiring a reference or arbitration and setting out the objection to its decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding.

To request a review you must complete and return to the Administrator the enclosed "Request for Review Form" within 30 days from the date that you receive this letter. You must state your objections and the reasons supporting your objections.

For more information about the review process, please review the section of our website, www.hepc8690.ca, called "Appeals".

If you do not mail or fax a completed "Request for Review Form", the Administrator's decision to reject your claim will become final 30 days after you receive this letter.

If you have any questions, please do not hesitate to contact the Settlement Administrator at 1 877 434-0944 or by e-mail at info@hepc8690.ca, or visit our website at www.hepc8690.ca. All correspondence and documents must include your file number and should be mailed to the Administrator at the following address or faxed to 1 613 569-1763:

The 1986-1990 Hepatitis C Claims Centre
P.O. Box 2370, Station D
Ottawa, Ontario
K1P 5W5
Toll-free: 1 877 434-0944

Yours truly,

The 1986-1990 Hepatitis C Settlement Administrator

Encl. Request for Review Form

Appendix "B"

DISEASE-BASED COMPENSATION SCHEDULE FOR HCV INFECTED PERSONS

DISEASE LEVEL	MEDICAL CONDITIONS CAUSED BY HCV	COMPENSATION					
		FIXED PAYMENTS AS COMPENSATION FOR PAIN AND SUFFERING*	LOSS OF INCOME OR COMPENSATION FOR LOSS OF HOME SERVICES (CLAIM ONE OR THE OTHER)	ADDITIONAL PAYMENT IF YOU TAKE COMPENSABLE HCV DRUG THERAPY	REIMBURSEMENT FOR UNINSURED TREATMENT AND MEDICATION COSTS	REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES	REIMBURSEMENT FOR CARE COSTS
6	You are considered a Level 6 claimant if: 1. you receive a liver transplant; or 2. you develop: a) decompensation of the liver; b) hepatocellular cancer; c) B-cell lymphoma; d) symptomatic mixed cryoglobulinemia; e) glomerulonephritis requiring dialysis; or f) renal failure.	You will receive \$100,000** at this level.	Yes	Yes, \$1,000 per month of completed therapy.	Yes	Yes	Yes, up to \$50,000** per year.
5	You are considered a Level 5 claimant if you develop: (a) cirrhosis (fibrous bands in the liver extending or bridging from portal area to portal area with the development of nodules and regeneration); (b) unresponsive porphyria cutanea tarda which is causing significant disfigurement and disability; (c) unresponsive thrombocytopenia (low platelets) which is associated with purpura or other spontaneous bleeding, or which results in excessive bleeding following trauma or a platelet count below 30x10 ⁹ ; or (d) glomerulonephritis not requiring dialysis.	You will receive \$65,000** at this level.	Yes	Yes, \$1,000 per month of completed therapy.	Yes	Yes	Not applicable
4	You are a Level 4 claimant if: you develop bridging fibrosis (i.e. fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration).	There is no fixed payment at this level.	Yes	Yes, \$1,000 per month of completed therapy	Yes	Yes	Not applicable
3	You are considered a Level 3 claimant if: 1. you develop non-bridging fibrosis (i.e. fibrous tissue in the portal areas of the liver with fibrous bands extending out from the portal area but without any bridging to other portal tracts or central veins); or 2. you receive Compensable HCV Drug Therapy (i.e. interferon or ribavirin); or 3. you have met a protocol for Compensable HCV Drug Therapy even though you have not taken the therapy.	OPTION 2 If you waive the \$30,000** payment at this level, you may claim loss of income or compensation for loss of services in the home if HCV has caused you to be at least 80% disabled.	Yes	\$1,000 per month of completed therapy	Yes	Yes	Not applicable
OPTION 1 You will receive \$30,000** at this level.		Not applicable					
2	You are considered a Level 2 claimant if: you test positive on a polymerase chain reaction (PCR) test demonstrating that HCV is present in your blood.	You will receive \$20,000** at this level.	Not applicable	Not applicable	Yes	Yes	Not applicable
1	You are considered a Level 1 claimant if: your blood test demonstrates that the HCV antibody is present in your blood.	You will receive \$10,000** at this level.	Not applicable	Not applicable	Yes	Yes	Not applicable

*Fixed payments are cumulative—for example, a Level 3 claimant choosing Option 1 will receive Level 1 - \$10,000** plus Level 2 - \$20,000** plus Level 3 - \$30,000**, for a total of \$60,000**.
**Amounts shown are in 1999 dollars and subject to annual CPI adjustment.