

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

Date: 20140411
Docket: C965349
Registry: Vancouver

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

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for Plaintiff: J.J. Camp, Q.C. & S.D. Matthews, Q.C.

Counsel for the Fund: W.A. Ferguson

Counsel for the Joint Committee: K. Podrebarac

Counsel for British Columbia: D.C. Prowse, Q.C. & K. Johnston

Counsel for Canada (Attorney General): P.B. Vickery, M. Tessier

Place and Date of Hearing: Vancouver, B.C.
November 26, 2013

Place and Date of Judgment: Vancouver, B.C.
April 11, 2014

[1] This class action concerns those British Columbia residents who were directly or secondarily infected with the Hepatitis C virus ("HCV") by transfusion of blood from the Canadian blood supply between January 1, 1986, and July 1, 1990, and in some cases, their family members and estates. It is one of six parallel class proceedings commenced in British Columbia, Quebec, and Ontario on behalf of residents of Canada. There were three transfused class actions (one in each province) and three hemophilia class actions (one in each province).

[2] This action was settled, and the settlement approved by this Court. The settlement also applied to and was approved by this Court in the parallel British Columbia hemophilia class action, and by the appropriate Courts in each of the parallel lawsuits in Ontario and Quebec.

[3] The terms of the settlement are set out in the Settlement Agreement which is attached as Appendix A to these reasons for judgment. Subject to two exceptions, which I will set out below, the Settlement Agreement provided that no person may make a claim under the settlement plan for the first time after 30 June 2010.

[4] Class Action Counsel now apply for the approval of what they describe as the Late Claim Requests Protocol. This Protocol is intended to address "persons whose claims are late but their individual circumstances, including in some cases not having had notice of the Settlement Agreement and/or the First Claim Deadline should be taken into account in determining whether they should be allowed to claim, to be governed by the Late Claim Requests Protocol."

Background

[5] On October 1, 1999, Mr. Justice Smith, then of this Court, approved the settlement in this action. His reasons for judgment approving the settlement are indexed at 68 B.C.L.R. (3d) 350, [2000] 1 W.W.R. 688. The Settlement Agreement included the following terms:

1.01 Definitions

In this Agreement, in addition to the terms defined in the description of the Parties and in the recitals set out above:

“**Administrator**” means the administrator appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Five and Ten.

“**Agreement**” means this agreement, including its recitals and Schedules, as amended, supplemented or restated from time to time.

“**Approval Date**” means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders.

“**Approval Orders**” means the judgments or orders of the Courts to be granted approving this Agreement as being a good faith, fair, reasonable and adequate settlement of the Class Actions pursuant to the class proceedings legislation in British Columbia, Ontario and Quebec.

...

“**Claim**” means a claim made and a claim that may be made in the future pursuant to the provisions of a Plan.

“**Class Action Counsel**” means the respective counsel for each of the Class Action Plaintiffs.

“**Class Actions**” means, collectively, the British Columbia Transfused Class Action, the Ontario Transfused Class Action (which includes all Class Members has defined in the Transfused HCV Plan who are not included in the British Columbia Transfused Class Action or the Quebec Transfused Class Action), the Quebec Transfused Class Action, the British Columbia Hemophiliac Class Action, the Ontario Hemophiliac Class Action (which includes all Class Members as defined in the Hemophiliac HCV Plan who are not included in the British Columbia Hemophiliac Class Action or the Quebec Hemophiliac Class Action) and the Quebec Hemophiliac Class Action.

“**Class Members**” means, collectively, the Transfused Class Members and the Hemophiliac Class Members.

“**Class Period**” means the period from and including 1 January 1986 to and including 1 July 1990.

...

“**Joint Committee**” means a committee of four persons comprised of one Class Action Counsel from each of the Transfused Class Actions and one Class Action Counsel from the Hemophiliac Class Actions.

“**Parties**” means each of the FPT Governments, the British Columbia Transfused Plaintiff, the Ontario Transfused Plaintiffs, the Quebec Transfused Plaintiff, the British Columbia Hemophilia Plaintiff, the Ontario Hemophilia Plaintiffs and the Quebec Hemophilia Plaintiff.

...

“**Releasees**” means, individually and collectively,

- (a) each of the FPT Governments,

- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Person or Primarily-Infected Hemophiliac received or took Blood, or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV, and
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood,

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of the covenants set forth in Section 11.01 for those persons listed in (b) to (h) inclusive and holds the benefit of those covenants on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

...

“Term” means the period from and including the Approval Date to the date when this Agreement is terminated pursuant to the provisions of Section 12.03.

...

2.02 Binding Effect

On the Approval Date this Agreement will become effective and be binding on and after the Approval Date on all the FPT Governments and all the Class Members including the Class Action Plaintiffs. Each Approval Order will constitute approval of this Agreement in respect of all Class Members (including minors and mentally incompetent persons) in each jurisdiction so that no additional court approval of any payment to be made to any Class Member will be necessary.

...

9.02 Joint Committee's Duties

Without limiting the generality of the foregoing, the duties and responsibilities of the Joint Committee will include:

- (a) recommending from time to time persons for appointment by the Courts pursuant to the provisions of Article Ten;
- (b) establishing protocols, which must be approved by the Courts, for the Administrator, Trustee, Referees and Arbitrators for the administration of this Agreement and for the processing and payment of Claims, and rescinding or amending any of such protocols with the approval of the Courts;
- (c) receiving and assessing information received from the Administrator, the Trustee, the Auditors and Fund Counsel and applying to the Courts for advice and direction;
- (d) retaining actuaries to determine the financial sufficiency of the Trust Fund from time to time;
- (e) receiving advice from the Investment Advisors on the investment of the assets of the Trust; and
- (f) making applications to the Courts pursuant to Section 10.01(1).

...

10.01 Supervising Role of the Courts

(1) The Courts will issue judgments or orders in such form as is necessary to implement and enforce the provisions of this Agreement and will supervise the ongoing performance of this Agreement including the Plans and the Funding Agreement. Without limiting the generality of the foregoing, the Courts will:

- (a) appoint and, if necessary, remove the Administrator;
- (b) appoint and, if necessary, remove the Trustee;
- (c) appoint and, if necessary, remove the Fund Counsel;
- (d) appoint and, if necessary, remove the Auditors;
- (e) appoint and, if necessary, remove any member of the Joint Committee;
- (f) appoint and, if necessary, remove any Referee or Arbitrator;
- (g) appoint and, if necessary, remove any Investment Advisor;

- (h) approve, rescind or amend the protocols submitted by the Joint Committee or any Class Action Counsel;
- (i) on application of any Party or the Joint Committee made within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date, and on application of the Joint Committee or any Class Action Counsel or the Fund Counsel made at any time, assess the financial sufficiency of the Trust Fund and determine, among other things, (A) whether the restrictions on payments of amounts in full in the Plans should be varied or removed in whole or in part, and (B) whether the terms of the Plans should be amended due to a financial insufficiency or anticipated financial insufficiency of the Trust Fund;
- (j) hear motions opposing confirmation of any Referee's reports;
- (k) on application of the Joint Committee, approve the terms of investment guidelines for the assets of the Trust;
- (l) on application of the Administrator, Fund Counsel, the Auditors, any Class Action Counsel, the Joint Committee or the Trustee, provide advice and direction;
- (m) approve any amendment or supplement to, or restatement of, this Agreement agreed to in writing by the FPT Governments and the Joint Committee;
- (n) approve any costs incurred or to be incurred in administering this Agreement including, for greater certainty, the Plans, the Program (up to a maximum of \$2 million) and the Funding Agreement and the defence costs payable out of the Trust pursuant to Section 11.02 hereof; and
- (o) declare this Agreement to be terminated and, if applicable, order that any assets remaining in the Trust Fund be the sole property of and transferred to the FPT Governments.

...

12.1 Agreement Conditional

This Agreement will not be effective unless and until it is approved by the Court in each of the Class Actions, and if such approvals are not granted without any material differences therein, this Agreement will be thereupon

terminated and none of the Parties will be liable to any of the other Parties hereunder.

12.2 Amendments

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the FPT Governments and all members of the Joint Committee in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences.

13.2 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth in this Agreement.

[6] Schedule A to the Settlement Agreement is the Transfused HCV Plan. It provides as follows in ss. 1.01 and 3.08:

1.01 Definitions

“**Class Members**” means, collectively, all Primarily-Infected Persons, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opt out of a Class Action.

...

3.08 First Claim Deadline

Except as otherwise expressly provided in this Agreement, no person may make a Claim for the first time under this Plan after 30 June 2010 unless:

- (a) the Claim is made within one year of the person attaining his or her age of majority, or
- (b) the Claim is made within the three year period following the date upon which the person first learned of his or her infection with HCV and the Court having jurisdiction over the person grants leave to the person to apply for compensation.

[7] The terms set out in s. 3.08 of the Transfused HCV Plan are also included as s. 3.07 in the Hemophiliac HCV Plan, which is Schedule B to the Settlement Agreement.

[8] The proposed Late Claim Requests Protocol is the third protocol for which Court approval has been sought. The first two protocols addressed the two exceptions to the First Claim Deadline expressly set out in the Settlement Agreement in ss. 3.08(a) and (b). These earlier protocols received the approval of this Court without opposition from the Federal or Provincial governments in May and June of 2012, and are appended as Appendices B and C to these reasons for judgment.

[9] In considering this application, I have had the benefit of the decision of Mr. Justice Perell on a similar application in the concurrent Ontario proceeding (*Parsons v. The Canadian Red Cross Society*, 2013 ONSC 7788). There, as here, Class Action Counsel contended that their application could be approved under the terms of the Settlement Agreement, under the order approving the settlement, and/or under the Court's inherent or administrative authority over class proceedings and the administration of class action settlements.

[10] Perell J. found in paras. 89–96 of his reasons that:

[89] I begin the discussion by stating, as already noted above, that I agree with Canada's, Ontario's, the Intervenors', and Ms. Podrebarac's arguments that while courts in class actions possess a supervisory jurisdiction to protect absent class members throughout the litigation, once a settlement agreement has been concluded and judicially approved, this jurisdiction is limited to implementing and not changing the terms of the settlement agreement.

[90] I agree with the opponents of the First Claim Requests Protocol that in exercising its ongoing supervisory jurisdiction, the court may not vary the agreement reached by the parties by adding, deleting or modifying any material term and that changes to material terms can only be made with the consent of all of the parties: *Cooperative d'habitation Village Cloverdale c. Societe canadienne d'hypothèque et de logement*, 2012 QCCA 57; *Lavier v MyTravel Canada Holidays Inc.*, 2011 ONSC 3149; *Harrington v. Dow Corning Corp.* [2010] B.C.J. No. 867 (S.C.); *Bodnar v. Cash Store Inc.* [2011] B.C.J. No. 1777 (C.A.). Further, I agree that there are no express terms of the Settlement Agreement or any of the accompanying documents that authorized the court to extend the First Claims deadline beyond the two exceptions already provided for in the Settlement Agreement.

[91] I, therefore, agree with the arguments in the case at bar that however reasonable and fair the proposed protocol may be, the court does not have the jurisdiction to make an agreement for the parties and that I may not add, delete, or modify the terms of the Settlement Agreement by approving the

Late Claim Requests Protocol. I further conclude that the Settlement Agreement in the case at bar included a firm claims deadline that does not admit of extension by the court and that I cannot use the court's jurisdiction over the administration of a class action settlement to extend the First Claims deadline.

[92] Because of this last conclusion it is not necessary to address the merits of the parties' arguments that the Late Claim Request Protocol does or does not actually impose burdens on the federal, provincial, or territorial governments or adversely affect the immediate, inchoate, or residual financial interests of the federal, provincial or territorial governments. Thus, I do not need to decide, for instance, whether the Late Claim Requests Protocol meaningfully affects the pay-as-you go governments who may be at their maximum liabilities soon regardless of this proposed protocol. I simply conclude that in the case at bar there is no room to use the court's administrative jurisdiction to extend a firm claims deadline.

[93] However, I also agree with Ms. Podrebarac's argument that if there were *actuarially unallocated* assets in the Trust, it would be entirely permissible to extend the benefits of the settlement to the late claimants.

[94] Thus, because I think the proposed Late Claim Requests Protocol is consistent with the spirit of the Settlement Agreement, which is to compensate persons infected by HCV who have released their claims against the Defendants, I shall conditionally approve the Late Claims Requests Protocol. In order to respond to the request for approval of the Late Claim Requests Protocol, I shall conditionally apply the court's jurisdiction under Paragraph 9 of the Ontario Court's Approval Order.

[95] Here, it may be recalled, and as set out above, that pursuant to Paragraph 9 of the Approval Order, the Settlement Agreement was approved subject to the modification that in their unfettered discretion, the courts may order that actuarially unallocated assets held by the trustee may be allocated **for the benefit** of Class Members and/or the Family Class Members in the Class Action. Paragraph 9 of the Approval Order is thus an existing term of the Settlement Agreement that would authorize a protocol for **benefits** for Class Members even after the First Claims Deadline. These benefits are independent of the deadline for making **claims** as specified in Section 3.08 of the Transfused HCV Plan and Section 3.07 of the Hemophiliac HCV Plan.

[96] While the Settlement Agreement with some exceptions imposes a firm deadline for applying for **claims**, there is nothing in the Settlement Agreement as modified by Paragraph 9 of the Approval Order that imposes a temporal limitation on the court's jurisdiction to allocate **benefits**. Rather, the pre-condition for the exercise of the court's unfettered discretion is just that the allocation of benefits be from actuarially unallocated assets.

[Emphasis in original.]

[11] Perell J. approved the Late Claim Requests Protocol on a conditional basis explaining at paras. 98–100 of his reasons that:

[98] At this time, I am satisfied that it would be fair, just, and consistent with the letter and spirit of the Settlement Agreement to approve conditionally a protocol for Class Members to receive benefits when those Class Members may have an explanation as to why they did not make a timely claim. I am satisfied that the conditions or terms of the proposed protocol are fair, just, and appropriate.

[99] In considering this exercise of the court's jurisdiction under the Settlement Agreement, it is worth emphasizing that the Class Members who may benefit by the Late Claim Requests Protocol are Class Members who, like all Class Members, immediately released their claims against the Defendants in consideration of the prospect of compensation, and it is worth noting that under the proposed protocol, the Class Members must qualify for benefits subject to the same criteria that other Class Members must meet to qualify for claims, and, in addition, they must satisfy the particular criteria of the Late Claim Requests Protocol.

[100] I see no unfairness to the other Class Members who are receiving compensation under the Settlement Agreement because at the time of the approval of the Settlement Agreement there was the prospect of some claims being exempt from the deadline, there was at least the theoretical prospect that all other claimants would make timely claims and most importantly there was the prospect that the court could exercise its unfettered discretion to approve benefits to Class Members who had explanations for missing the deadline for claims.

[12] I respectfully agree with paras. 89–91 of the reasons of Perell J., and adopt those paragraphs as accurately stating the law in this Province, and applying to the application before me. However, I am unable to agree with his analysis or conclusions at paras. 93–96 and 98 of his reasons relating to the provisions of the order approving the Settlement Agreement.

[13] My disagreement obliges me to consider the merits of the parties' arguments described by Perell J. at para. 92 of his reasons.

[14] Clauses 5(b) and (c) of the settlement order of Mr. Justice Smith in this action are the corresponding provisions to Paragraph 9 of the Ontario Approval Order, and provide, in part:

5. THIS COURT FURTHER ORDERS AND ADJUDGES that the Agreement annexed as Schedule 1 to this Order and the Funding Agreement annexed as Schedule 2 to this Order are fair, reasonable, adequate and in the best interests of the B.C. Transfused Class Members and this good faith settlement of the B.C. Transfused Class Action is approved on the terms set out in the Agreement and the Funding Agreement, both of which form part of

and are incorporated by reference into this Order, subject to the following modifications:

...

- (b) in their unfettered discretion, the Courts may order, from time to time, at the request of any Party or the Joint Committee, that all or any portion of the money and other assets that are held by the Trustee pursuant to the Agreement and are actuarially unallocated be:
 - (i) allocated for the benefit of the Class Members and/or the Family Class Members in the Class Actions;
 - (ii) allocated in any manner that may reasonably be expected to benefit Class Members and/or the Family Class Members even though the allocation does not provide for monetary relief to individual Class Members and/or Family Class Member;
 - (iii) paid, in whole or in part, to the FPT Governments or some or one of them considering the source of the money and other assets which comprise the Trust Fund; and/or
 - (iv) retained, in whole or in part, within the Trust Fund;

in such manner as the Courts in their unfettered discretion determine is reasonable in all of the circumstances provided that in distribution there shall be no discrimination based upon where the Class Member received Blood or based upon where the Class Member resides;

- (c) in exercising their unfettered discretion under subparagraph 5(b), the Courts may consider, but are not bound to consider, among other things, the following:

...

- (iii) the fact that the benefits provided under the Plan do not reflect the tort model;

[15] In support of their application, Class Action Counsel rely on Court approved extensions of time for the filing of claims in *Harrington v. Dow Corning Corp.*, 2006 BCSC 1174, [2006] B.C.J. No. 1733; *Campbell v. Flexwatt* (1998), 62 B.C.L.R. (3d) 11, [1998] B.C.J. No. 1620; *Guglietti v. Toronto Area Transit Operating Authority*

(2000), 50 C.P.C. (4th) 355, [2000] O.T.C. 412; *Pelletier v. Baxter Healthcare Corp.* (1999), REJB 1999-10573, [1999] Q.J. No. 102; *Boys and Girls Club of London Foundation v. Molson Coors Brewing Company*, 2010 QCCS 6306, [2010] Q.J. No. 14108; and *Lavier v. MyTravel Canada Holidays Inc.*, 2011 ONSC 3149, 38 C.P.C. (7th) 65, leave to appeal refused 2011 ONSC 5559. I am unable to accept that these cases assist the applicants.

[16] In *Harrington*, the claim in issue was filed within time, but rejected due to insufficiencies in the supporting material.

[17] In *Campbell*, the application for the extension of time for the filing of a claim was brought before the expiry of the applicable time limit.

[18] In *Guglietti*, notice of the claim in issue was given within the applicable time limit, but the applicant's lawyer negligently failed to file the necessary documentation.

[19] In *Pelletier*, a short extension was approved because the administrator was unable to process all of the incoming claims within the time permitted.

[20] In *Boys and Girls Club of London Foundation*, the late filing of a claim was determined to be permissible pursuant to Article 46 of the Civil Code as it did not prejudice the defendants, and was consented to by them.

[21] The Federal and Provincial Governments point to the protracted negotiations that resulted in the Settlement Agreement, and maintain that the First Claims deadline of June 30, 2010 was a negotiated and fundamental term of that agreement. They argue that the proposed Late Claim Requests Protocol, if approved, will erode the potential that the Federal Government may recoup some of the funds that it has put up to finance the settlement, and that the Provincial and Territorial Governments may be obliged to put up more towards their maximum exposures to pay under the settlement than if the protocol is not approved.

[22] I agree with the Federal and Provincial Governments that the First Claims deadline of June 30, 2010 was a negotiated and fundamental term of the Settlement Agreement. It was negotiated on behalf of all class members present and future, and obliged them to meet that deadline, subject to any exceptions agreed to by the parties. The first two protocols approved by the Courts were apparently not opposed by the Government parties. The issue of the jurisdiction of this Court pursuant to ss. 10.01 (m) and 12.2 of the Settlement Agreement was not considered with respect to the Court's approval.

[23] The proposed protocol that is the subject of this application is opposed and if permitted would, in my view, amount to the amendment of a fundamental term of the Settlement Agreement.

[24] In my opinion, the remedy conditionally approved of by Perell J. will defeat the bargain reached by the parties in this case. Those parties included class members who filed their claims before the deadline permitted by the Settlement Agreement or the two approved protocols, and those who failed to do so. The settlement was approved of in the two Ontario actions by Mr. Justice Winkler, as he then was. At para. 133 of his reasons approving the settlement (indexed at 40 C.P.C. (4th) 151, [1999] O.J. No. 3572 (S.C.J.)), Winkler J. wrote:

The victims of the blood tragedy in Canada cannot be made whole by this settlement. No one can undo what has been done. This court is constrained in these settlement approval proceedings by its jurisdiction and the legal framework in which these proceedings are conducted. Thus, the settlement must be reviewed from the standpoint of its fairness, reasonableness and whether it is in the best interests of the class as a whole. The global settlement, its framework and the distribution of money within it, as well the adequacy of the funding to produce the specified benefits, with the modifications suggested in these reasons, are fair and reasonable. There are no absolutes for purposes of comparison, nor are there any assurances that the scheme will produce a perfect solution for each individual. However, perfection is not the legal standard to be applied nor could it be achieved in crafting a settlement of this nature. All of these points considered, the settlement, with the required modifications, is in the best interests of the class as a whole.

[25] This conclusion is supported by the reasons of Perell J. in *Lavier*, which was cited with approval by the British Columbia Court of Appeal in *Bodnar v. Cash Store*, 2011 BCCA 384 at para. 43-44, 23 B.C.L.R. (5th) 93:

[43] That principle has been affirmed many times by trial judges in the course of supervising the administration of class action settlements. These cases have almost universally involved attempts by class members to vary the deadlines or other requirements for submitting claims that were established by the settlement agreement. In general, they turn on the wording of the particular agreement. In *Lavier*, however, Justice Perell identified a more nuanced approach. Having acknowledged the court's administrative jurisdiction did not include the power to vary the settlement reached, he stated:

[34] In some instances - and the case at bar is not one of them - the court's administrative jurisdiction may allow adjustments to be made to the scheme of the settlement, and at first blush, these variation [*sic*] might resemble a variation of the settlement agreement. For example, in my opinion, an extension of the deadline for making claims would be permissible administrative adjustment in a settlement in which the contribution of the defendant was fixed with any surplus being paid *cy pres*. In such a settlement, the defendant should be indifferent to how the settlement funds are allocated.

[35] In contrast, in a claims made, no-cap settlement, unless the settlement agreement provided for an extension of the deadline for making claims, an extension of time for making claims would vary the settlement and not be a permissible administrative adjustment because the defendant would not be indifferent to having to pay more claims. See *Gray v. Great-West Lifeco Inc.*, 2011 MBQB 13 at paras. 41-42, 63.

He concluded that once the court approves the settlement it cannot be enhanced "to the detriment of the defendant".

[44] In my view, the chambers judge properly applied a similar approach here. While Cash Store argues that acting as Settlement Administrator was a substantive right it specifically negotiated, the evidentiary record does not support that submission. On the material before her, the chambers judge was entitled to conclude Cash Store had not demonstrated any prejudice arising from its removal and replacement, that these changes were merely a variation to the administrative aspects of the settlement, and that they did not represent substantive amendments to the Agreement that operated to Cash Store's detriment. The material terms of a settlement are typically provision of consideration in exchange for a release of further claims and dismissal of the action. Effecting that exchange is an administrative matter, and the entity who carries it out is immaterial to the substance of the settlement. In this case, the duties of the Settlement Administrator set out in the Agreement are clearly

administrative, and the substance of the settlement will remain the same regardless of who performs those duties.

[26] Similarly, in *Gray v. Great-West Lifeco Inc.*, 2011 MBQB 13, 261 Man.R. (2d) 245, a motion to extend the time for filing claims was refused where, as here, such an amendment would amount to a significant variation of a settlement agreement that was the result of extensive negotiations between the parties.

[27] I find, therefore, that it would be inappropriate for this Court to exercise the discretion conferred on it by Clause 5(b) of the order approving the Settlement Agreement. While that order may provide for the jurisdiction to order the reallocation of assets of the trust fund that are otherwise actuarially unallocated, assuming any exist, such a reallocation in this case would amount to a fundamental alteration of the Settlement Agreement, and one detrimental to the respective governments. It is not for this Court to rewrite the Settlement Agreement to make a bargain for the parties which they did not make themselves. This is especially true in cases involving class action settlements which have already received the approval of the courts.

[28] While it is unfortunate that there may be some class members who will be found ineligible for participation in the settlement by virtue of the fact that they have brought their claim too late, such a result is inevitable given the nature of the bargain struck in good faith between Class Action Counsel and the Federal and Provincial governments.

[29] I therefore dismiss the application for the approval of the Late Claim Requests Protocol.

“The Honourable Chief Justice Hinkson”

APPENDIX A

1986-1990 HEPATITIS C SETTLEMENT AGREEMENT

THIS AGREEMENT is made as of 15 June 1999

BETWEEN:

THE ATTORNEY GENERAL OF CANADA (“Canada”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (“British Columbia”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA (“Alberta”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN (“Saskatchewan”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA (“Manitoba”), HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (“Ontario”), LE GOUVERNEMENT DU QUEBEC (“Quebec”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK (“New Brunswick”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA (“Nova Scotia”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND (“PEI”), HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND (“Newfoundland”), THE GOVERNMENT OF THE NORTHWEST TERRITORIES (“Northwest Territories”), THE GOVERNMENT OF NUNAVUT (“Nunavut”), THE GOVERNMENT OF THE YUKON TERRITORY (“Yukon Territory”), (collectively, the “FPT Governments”),

- and -

ANITA ENDEAN, plaintiff in the British Columbia Transfused Class Action (the “British Columbia Transfused Plaintiff”), **MARTIN HENRY GRIFFEN** and **ANNA KARDISH**, plaintiffs in the Ontario Transfused Class Action (the “Ontario Transfused Plaintiffs”), **DOMINIQUE HONHON**, plaintiff in the Quebec Transfused Class Action (the “Quebec Transfused Plaintiff”), **CHRISTOPHER FORREST MITCHELL**, plaintiff in the British Columbia Hemophiliac Class Action (the “British Columbia Hemophilia Plaintiff”), **JAMES KREPPNER**, and **BARRY ISAAC**, plaintiffs in the Ontario Hemophiliac Action (the “Ontario Hemophilia Plaintiffs”) and **DAVID PAGE**, plaintiff in the Quebec Hemophiliac Class Action (the “Quebec Hemophilia Plaintiff”) (collectively, the “Class Action Plaintiffs”).

WHEREAS:

- A. On 21 June 1996 the Quebec Transfused Plaintiff commenced Action No. 500-06-000016-960 in the Superior Court of the Province of Quebec for the District of Montreal against Canada, Quebec, the CRCS and others (the “Quebec Transfused Class Action”); on 19 September 1996 the British Columbia Transfused Plaintiff commenced Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia against Canada, British Columbia and the CRCS (the “British Columbia Transfused Class Action”); and on 10 February 1998 the Ontario Transfused Plaintiffs commenced Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, against Canada, Ontario and the CRCS (the “Ontario Transfused Class Action”) (collectively, the “Transfused Class Actions”).
- B. On 24 April 1998 the Ontario Hemophilia Plaintiffs commenced Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, against the CRCS and Canada (the “Ontario Hemophiliac Class Action”); on 1 May 1998 the British Columbia Hemophilia

Plaintiff commenced Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia against the CRCS and Canada (the “British Columbia Hemophiliac Class Action”); and on 7 May 1998 the Quebec Hemophilia Plaintiff commenced Action No. 500-06-000068-987 in the Superior Court of the Province of Quebec for the District of Montreal against the CRCS, Canada and Quebec (the “Quebec Hemophiliac Class Action”) (collectively, the “Hemophiliac Class Actions”).

C. The FPT Governments deny the allegations raised in the Class Actions and nothing in this Agreement will be construed as an admission of liability by any FPT Government.

D. The FPT Governments and the Class Action Plaintiffs, subject to the Approval Orders, have agreed to settle the Class Actions upon the terms contained in this Agreement.

E. So as to be bound by the Approval Orders in the Ontario Transfused Class Action and the Ontario Hemophiliac Class Action, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, PEI, Newfoundland, the Northwest Territories, Nunavut and the Yukon Territory may intervene therein.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of the Class Members in any way relating to or arising from, in the case of Transfused Class Members, the infection of a Primarily-Infected Person with HCV during the Class Period and, - in the case of Hemophiliac Class Members, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) will be finally settled based on the terms and conditions set forth herein upon delivery of the Approval Orders:

ARTICLE ONE INTERPRETATION

1.01 Definitions

In this Agreement, in addition to the terms defined in the description of the Parties and in the recitals set out above:

“**Administrator**” means the administrator appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Five and Ten.

“**Agreement**” means this agreement, including its recitals and Schedules, as amended, supplemented or restated from time to time.

“**Approval Date**” means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders.

“**Approval Orders**” means the judgments or orders of the Courts to be granted approving this Agreement as being a good faith, fair, reasonable and adequate settlement of the Class Actions pursuant to the class proceedings legislation in British Columbia, Ontario and Quebec.

“**Arbitrator**” means a person appointed as an arbitrator by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

“**Auditors**” means the auditors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Articles Eight and Ten.

“**Blood**” means Blood as defined in the Transfused HCV Plan or, in relation to hemophiliacs, as defined in the Hemophiliac HCV Plan.

“**Business Day**” means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person to whom notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

“**Claim**” means a claim made and a claim that may be made in the future pursuant to the provisions of a Plan.

“**Class Action Counsel**” means the respective counsel for each of the Class Action Plaintiffs.

“**Class Actions**” means, collectively, the British Columbia Transfused Class Action, the Ontario Transfused Class Action (which includes all Class Members as defined in the Transfused HCV Plan who are not included in the British Columbia Transfused Class Action or the Quebec Transfused Class Action), the Quebec Transfused Class Action, the British Columbia Hemophiliac Class Action, the Ontario Hemophiliac Class Action (which includes all Class Members as defined in the Hemophiliac HCV Plan who are not included in the British Columbia Hemophiliac Class Action or the Quebec Hemophiliac Class Action) and the Quebec Hemophiliac Class Action.

“**Class Members**” means, collectively, the Transfused Class Members and the Hemophiliac Class Members.

“**Class Period**” means the period from and including 1 January 1986 to and including 1 July 1990.

“**Contribution Amount**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Courts**” means, collectively, the Supreme Court of British Columbia, the Superior Court of Justice for Ontario and the Superior Court of Quebec.

“**CRCS**” means The Canadian Red Cross Society and its successors.

“**Disbursements**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Family Members**” means the Family Members as defined in both of the Plans.

“**Federal Government**” means the government of Canada.

“**Fund Counsel**” means the counsel appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Seven and Ten.

“**Funding Agreement**” means an agreement in the form attached hereto as Schedule D.

“**HCV**” means the Hepatitis C virus.

“**Hemophiliac Class Members**” means Class Members as defined in the Hemophiliac HCV Plan.

“**Hemophiliac HCV Plan**” has the meaning set out in Section 3.02.

“**HIV**” means the human immunodeficiency virus.

“**HIV Secondarily-Infected Persons**” means persons who are entitled to receive compensation under the Program.

“**Investment Advisors**” means the investment advisors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Article Ten.

“Joint Committee” means a committee of four persons comprised of one Class Action Counsel from each of the Transfused Class Actions and one Class Action Counsel from the Hemophiliac Class Actions.

“Parties” means each of the FPT Governments, the British Columbia Transfused Plaintiff, the Ontario Transfused Plaintiffs, the Quebec Transfused Plaintiff, the British Columbia Hemophilia Plaintiff, the Ontario Hemophilia Plaintiffs and the Quebec Hemophilia Plaintiff.

“Plans” means, collectively, the Hemophiliac HCV Plan and the Transfused HCV Plan.

“Primarily-Infected Person” has the meaning set out in Section 1.01 of the Transfused HCV Plan.

“Primarily-Infected Hemophiliac” has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

“Program” means the program described in Schedule C hereto which devolved from the Federal/Provincial/Territorial Assistance Program for HIV Secondarily-Infected Persons announced by the FPT Governments on 15 December 1998.

“Provinces” means, collectively, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, PEI and Newfoundland.

“Referee” means a person appointed as a referee by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

“Releasees” means, individually and collectively,

- (a) each of the FPT Governments,
- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Person or Primarily-Infected Hemophiliac received or took Blood, or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV, and
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood,

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of the covenants set forth in Section 11.01 for those persons listed in (b) to (h) inclusive and holds the benefit of those covenants on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

“**Secondarily-Infected Person**” has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophiliac HCV Plan, as applicable.

“**Settlement Amount**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Term**” means the period from and including the Approval Date to the date when this Agreement is terminated pursuant to the provisions of Section 12.03.

“**Territories**” means, collectively, the Northwest Territories, Nunavut and the Yukon Territory.

“**Transfused Class Members**” means Class Members as defined in the Transfused HCV Plan.

“**Transfused HCV Plan**” has the meaning set out in Section 3.01.

“**Trust**” has the meaning set out in Section 1.01 of the Funding Agreement.

“**Trust Fund**” means the trust fund to be established pursuant to the Funding Agreement.

“**Trustee**” means the trustee appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Six and Ten.

1.02 Headings

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement.

1.03 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

1.04 No Contra Proferentem

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Agreement.

1.05 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.06 Day for any Action

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

1.07 Final Order

For the purposes of this Agreement a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

1.08 Currency

All references to currency herein are to lawful money of Canada.

1.09 Schedules

The following are the Schedules to this Agreement:

- Schedule A - Transfused HCV Plan;
- Schedule B - Hemophiliac HCV Plan;
- Schedule C - Program;
- Schedule D - Funding Agreement; and
- Schedule E - Social Benefits Legislation.

1.10 Obligations of the FPT Governments

It is understood that the FPT Governments will not have any obligations relating to the ongoing operations of the Plans except for their obligations as set out in Article Four of this Agreement and in the Funding Agreement.

**ARTICLE TWO
PURPOSES AND EFFECT OF AGREEMENT**

2.01 Purposes

The purposes of this Agreement are (i) to establish the Transfused HCV Plan and the Hemophiliac HCV Plan, (ii) to settle the Class Actions and (iii) to provide for payment by the FPT Governments of the Contribution Amount to the Trustee and the payment by the Trustee of the Disbursements, in accordance with and as provided in the Funding Agreement.

2.02 Binding Effect

On the Approval Date this Agreement will become effective and be binding on and after the Approval Date on all the FPT Governments and all the Class Members including the Class Action Plaintiffs. Each Approval Order will constitute approval of this Agreement in respect of all Class Members (including minors and mentally incompetent persons) in each jurisdiction so that no additional court approval of any payment to be made to any Class Member will be necessary.

2.03 Effective in Entirety

The Approval Orders must be issued with respect to this Agreement in its entirety (including all the Schedules) so that none of the provisions of this Agreement will become effective unless all the provisions of this Agreement become effective.

**ARTICLE THREE
PLANS AND PROGRAM**

3.01 Transfused HCV Plan

On the Approval Date, the plan to provide compensation to persons who were infected with HCV through a Blood transfusion received in Canada during the Class Period and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule A (the "Transfused HCV Plan"), will become effective.

3.02 Hemophiliac HCV Plan

On the Approval Date, the plan to provide compensation to persons who are hemophiliacs, who received or took Blood during the Class Period and who were infected with HCV and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule B (the "Hemophiliac HCV Plan"), will become effective.

3.03 Program

The FPT Governments have established the Program to provide HIV Secondarily-Infected Persons with a lump-sum payment of \$240,000 per HIV Secondarily-Infected Person. Such payments will be made out of the Trust to a maximum of 240 payments. A description of the Program is set out in Schedule C attached hereto.

**ARTICLE FOUR
FPT GOVERNMENTS**

4.01 Funding Agreement

The Parties will enter into the Funding Agreement.

4.02 Social Benefits

(1) If a Class Member was receiving any medical, ancillary medical, health or drug benefits on 1 April 1999, the receipt of payments pursuant to a Plan will not affect the quantity, nature or duration of any corresponding benefits that any Class Member receives after such date except to the extent that such benefits are related to the Class Member's infection with HCV in which case they are recoverable exclusively under Sections 4.06 and 4.07 of the Plans.

(2) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any legislation of any PT Government referred to in Schedule E hereto, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of the Plans may have such an effect. The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan, as such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 of a Plan may have such an effect.

4.03 No Additional Liability

On and after the Approval Date, the only obligations and liabilities of any of the FPT Governments, including their respective past, present and future ministers and employees and their past and present agents, and their respective successors, under this Agreement are their obligations and liabilities under this Article Four and the Funding Agreement. For greater certainty, none of the FPT Governments will be liable to provide any additional funds if the amount of funds to be provided by the FPT Governments pursuant to this Article Four and the Funding Agreement are insufficient to make all the payments to be made pursuant to this Agreement including, for greater certainty, the Plans and the Funding Agreement.

**ARTICLE FIVE
THE ADMINISTRATOR****5.01 Appointment of Administrator**

The Courts will appoint an Administrator to administer the Plans with such powers, rights, duties and responsibilities as are determined by the Joint Committee and approved by the Courts.

5.02 Administrator's Duties

Subject to obtaining the approval of the Courts, the Administrator's duties and responsibilities will include the following:

- (a) establishing and staffing "The 1986-1990 Hepatitis C Claims Centre";
- (b) developing, installing and implementing systems and procedures for receiving, processing, evaluating and making decisions respecting Claims including making all necessary inquiries (including consulting medical personnel) to determine the validity of any Claim and requiring any claimant to have a medical examination;
- (c) reporting to the Joint Committee and the Courts respecting Claims received and being administered;
- (d) providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- (e) keeping or causing to be kept accurate accounts of its activities and its administration of the Plans, preparing such financial statements, reports and records as are required by the Joint Committee, Fund Counsel and the Courts, in form and content as directed by the Courts, and submitting them to the Joint Committee, Fund Counsel and the Courts monthly or so often as the Courts direct;
- (f) receiving and responding to all enquiries and correspondence respecting Claims, supplying claim forms, reviewing and evaluating all Claims, making decisions in respect of Claims, giving notice of its decision, receiving compensation payments on behalf of the Class Members out of the Trust and forwarding the compensation in accordance with the provisions of the Plans within a reasonable period of time and communicating with a claimant, in either English or French, as the claimant elects;
- (g) assisting in the completion of claim forms and attempting to resolve any disputes with claimants;

- (h) maintaining a database with all information necessary to permit the Courts to evaluate the financial viability and sufficiency of the Trust Fund from time to time; and
- (i) such other duties and responsibilities as the Courts may from time to time by order direct.

5.03 Decisions of the Administrator

The Administrator will give notice of its decision in respect of a Claim to a claimant promptly after the decision is made. A decision of the Administrator in respect of a Claim will, subject to the claimant's right to refer the decision to a Referee or an Arbitrator pursuant to provisions of the Plans, be final and binding upon the claimant and the Administrator.

5.04 Fees

The fees, disbursements and other costs of the Administrator will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

**ARTICLE SIX
THE TRUSTEE**

6.01 Appointment of Trustee

The Courts will appoint a Trustee to act as the trustee of the Trust with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include its duties and responsibilities as set out in the Funding Agreement and the Trustee will be obliged to act in accordance with the provisions of the Funding Agreement.

6.02 Fees

The fees, disbursements and other costs of the Trustee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

**ARTICLE SEVEN
FUND COUNSEL**

7.01 Appointment of Fund Counsel

The Courts will appoint Fund Counsel with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Fund Counsel will include:

- (a) defending decisions made by the Administrator;
- (b) defending and advancing the interests of the Trust;
- (c) receiving financial statements and actuarial and other reports relating to the financial sufficiency of the Trust Fund from time to time; and
- (d) if deemed necessary or desirable by Fund Counsel, making applications to the Courts pursuant to Section 10.01.

7.02 Fees

The fees, disbursements and other costs of the Fund Counsel will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

**ARTICLE EIGHT
THE AUDITORS**

8.01 Appointment of Auditors

The Courts will appoint Auditors with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include (i) to audit the accounts of the Administrator for the Plans and the Trust in accordance with generally accepted auditing standards on an annual basis and (ii) to file the financial statements of the Administrator for the Plans and the Trust together with the Auditors' report thereon with the Courts and deliver a copy thereof to the Joint Committee, the Trustee and the Fund Counsel within 60 days after the end of each financial year of the Plans and the Trust.

8.02 Fees

The fees, disbursements and other costs of the Auditors "will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

**ARTICLE NINE
JOINT COMMITTEE**

9.01 Appointment of Joint Committee

The Courts will appoint a Joint Committee with such powers, rights, duties and responsibilities as the Courts direct.

9.02 Joint Committee's Duties

Without limiting the generality of the foregoing, the duties and responsibilities of the Joint Committee will include:

- (a) recommending from time to time persons for appointment by the Courts pursuant to the provisions of Article Ten;
- (b) establishing protocols, which must be approved by the Courts, for the Administrator, Trustee, Referees and Arbitrators for the administration of this Agreement and for the processing and payment of Claims, and rescinding or amending any of such protocols with the approval of the Courts;
- (c) receiving and assessing information received from the Administrator, the Trustee, the Auditors and Fund Counsel and applying to the Courts for advice and direction;
- (d) retaining actuaries to determine the financial sufficiency of the Trust Fund from time to time;
- (e) receiving advice from the Investment Advisors on the investment of the assets of the Trust; and
- (f) making applications to the Courts pursuant to Section 10.01(1).

Decisions of the Joint Committee will require the approval of all members of the Joint Committee.

9.03 Fees

The fees, disbursements and other costs of the Joint Committee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

**ARTICLE TEN
SUPERVISION BY THE COURTS**

10.01 Supervising Role of the Courts

(1) The Courts will issue judgments or orders in such form as is necessary to implement and enforce the provisions of this Agreement and will supervise the ongoing performance of this Agreement including the Plans and the Funding Agreement. Without limiting the generality of the foregoing, the Courts will:

- (a) appoint and, if necessary, remove the Administrator;
- (b) appoint and, if necessary, remove the Trustee;
- (c) appoint and, if necessary, remove the Fund Counsel;
- (d) appoint and, if necessary, remove the Auditors;
- (e) appoint and, if necessary, remove any member of the Joint Committee;
- (f) appoint and, if necessary, remove any Referee or Arbitrator;
- (g) appoint and, if necessary, remove any Investment Advisor;
- (h) approve, rescind or amend the protocols submitted by the Joint Committee or any Class Action Counsel;
- (i) on application of any Party or the Joint Committee made within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date, and on application of the Joint Committee or any Class Action Counsel or the Fund Counsel made at any time, assess the financial sufficiency of the Trust Fund and determine, among other things, (A) whether the restrictions on payments of amounts in full in the Plans should be varied or removed in whole or in part, and (B) whether the terms of the Plans should be amended due to a financial insufficiency or anticipated financial insufficiency of the Trust Fund;
- (j) hear motions opposing confirmation of any Referee's reports;
- (k) on application of the Joint Committee, approve the terms of investment guidelines for the assets of the Trust; •
- (l) on application of the Administrator, Fund Counsel, the Auditors, any Class Action Counsel, the Joint Committee or the Trustee, provide advice and direction;
- (m) approve any amendment or supplement to, or restatement of, this Agreement agreed to in writing by the FPT Governments and the Joint Committee;
- (n) approve any costs incurred or to be incurred in administering this Agreement including, for greater certainty, the Plans, the Program (up to a maximum of \$2 million) and the Funding Agreement and the defence costs payable out of the Trust pursuant to Section 11.02 hereof; and
- (o) declare this Agreement to be terminated and, if applicable, order that any assets remaining in the Trust Fund be the sole property of and transferred to the FPT Governments.

(2) All matters to be determined by the Courts pursuant to Section 10.01(1) will take effect only upon the date when the last judgment or order of the Courts becomes final without any material differences in the three judgments or orders.

**ARTICLE ELEVEN
RELEASES**

11.01 Releases

The Approval Orders will declare that:

(a) each Class Member has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any such Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions;

(b) the Class Members, separately and severally, fully, finally and forever release each of the Releasees, separately and severally, and in each and every capacity that such actions, causes of actions, liabilities, claims or demands may be asserted against any Releasee;

(c) the Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act* (Ontario) or its counterpart in other jurisdictions, the common law or any other statute of Ontario or any other jurisdiction in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that the foregoing excludes the CRCS;

(d) at the option of the FPT Governments or their representatives, each Class Member receiving payment under one of the Plans will either,

- (i) pursue any claims as described in Section 11.01(c) that the Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the Class Member from any such claims, or
- (ii) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote those claims as described in Section 11.01(c) that the Class Member has against the CRCS in accordance with directions

given to the Class Member by the FPT Governments or their representatives, or, at the request of the FPT Governments or their representatives grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Class Member, or

- (iii) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

(e) the FPT Governments' obligations and liabilities pursuant to Article Four hereof and the Funding Agreement constitute the consideration for the releases and other matters referred to in Sections 11.01(a) to (d) inclusive and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members are limited to the compensation payable pursuant to the Plans as funded, in whole or in part, pursuant to the Funding Agreement as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

11.02 Claims by Opt-Outs and Others

If any person who opts out of a Class Action or any Class Member who is not bound by the provisions of this Agreement or any other person who claims over or brings a third party claim makes any claim or demand or takes any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily- Infected Person), the amount payable by a FPT Government to the person who opts out of a Class Action or Class Member who is not bound by the provisions of this Agreement or person who claims over or brings a third party claim pursuant to either a final judgment of a court in a contested action or a settlement approved by one of the Courts and an amount equal to one-third of the defence costs (including costs of counsel, disbursements and applicable taxes) arising out of any action (whether an FPT Government has been successful in defending the action or not) or settlement and approved by one of the Courts will be paid out of the Trust.

11.03 Dismissal of Actions

Each of the Class Actions will be dismissed on the Approval Date in accordance with the terms of the Approval Orders.

11.04 Cessation of Litigation

(1) Upon execution of this Agreement, the Class Action Plaintiffs and Class Action Counsel will cooperate with the FPT Governments to obtain approval of this Agreement and general participation by Class Members in the Plans.

(2) Each Class Action Counsel will undertake, within five Business Days after the Approval Date, not to commence or assist or advise on the commencement or continuation of any action or proceeding against any of the Releasees, or against any person who may claim contribution or indemnity from any of the Releasees in

any way relating to or arising from in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that nothing in the Agreement will prevent any Class Action Counsel from advising any person to obtain independent legal advice before deciding whether to opt out of a Class Action.

(3) Each Class Member who has commenced any action or proceeding as described in Section 11.04(2), other than the Class Actions, must consent to a dismissal of such action or proceeding without costs before receiving any payment under a Plan.

**ARTICLE TWELVE
CONDITIONS, AMENDMENT AND TERMINATION**

12.01 Agreement Conditional

This Agreement will not be effective unless and until it is approved by the Court in each of the Class Actions, and if such approvals are not granted without any material differences therein, this Agreement will be thereupon terminated and none of the Parties will be liable to any of the other Parties hereunder.

12.02 Amendments

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the FPT Governments and all members of the Joint Committee in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences.

12.03 Termination

(1) This Agreement will continue in full force and effect until the date on which the Courts have declared this Agreement to be terminated.

(2) Any of the FPT Governments or the Joint Committee may apply for a declaration pursuant to Section 12.03(1).

(3) After this Agreement is terminated by the Courts, any assets remaining in the Trust will be the sole property of and transferred to the FPT Governments.

**ARTICLE THIRTEEN
GENERAL**

13.01 Notices

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

(a) to The Attorney General of Canada:

Justice Canada, Department of Health
Brooke Claxton Building, 2nd Floor
Tunney's Pasture

P. O. Box: Postal Locator: 0902D
Ottawa, Ontario
K1A 0K9

Attention: Senior General Counsel
Facsimile No.: (613) 957-1327

- (b) to Her Majesty the Queen In Right of the Province of British Columbia:

c/o Ministry of the Attorney General
6th Floor, 1001 Douglas Street
Victoria, B.C.
V8W 2C5

Attention: Supervising Counsel
Facsimile No.: (250) 356-9154

- (c) to Her Majesty the Queen In Right of the Province of Alberta:

c/o Alberta Justice
Civil Law Branch, 5th Floor
9833 - 109th Street
Edmonton, Alberta
T5K 2E8

Attention: Minister of Health and Wellness
Facsimile No.: (780) 415-0961

Attention: Minister of International and
Intergovernmental Relations

- (d) to Her Majesty the Queen In Right of the Province of Saskatchewan:

c/o Saskatchewan Justice
Civil Law Division
9th Floor
1874 Scarth Street
Regina, Saskatchewan
S4P 3V7

Attention: Darryl Bogdasavich, Q.C.
Facsimile No.: (306) 787-0581

- (e) to Her Majesty the Queen In Right of the Province of Manitoba:

Manitoba Justice
Suite 730
405 Broadway
Winnipeg, Manitoba
R3C 3L6

Attention: Director of Legal Services
Facsimile No.: (204) 948-2041

- (f) to Her Majesty the Queen In Right of Ontario:
c/o Ministry of the Attorney General for Ontario
Director, Crown Law Office Civil
8th Floor, 720 Bay Street
Toronto, Ontario
M5G 2K1
Facsimile No.:(416) 326-4181
- (g) to Le Gouvernement du Québec:
c/o La Procureure Générale du Quebec
1, rue Notre-Dame est, 8^e étage
Montreal, Quebec
H2Y 1B6
Attention: Robert Monette
Facsimile No.: (514) 873-7074
- (h) to Her Majesty the Queen In Right of the Province of New Brunswick:
c/o Department of Justice
Legal Services Branch
Room 444, Centennial Building
670 King Street
P. O. Box 6000
Fredericton, New Brunswick
E3B 5H1
Attention: William A. Anderson
Facsimile No.: (506) 453-3275
- (i) to Her Majesty the Queen In Right of the Province of Nova Scotia:
Department of Health
P. O. Box 488
Halifax, Nova Scotia B3J 2R8
Attention: Deputy Minister of Health
Facsimile No.: (902) 424-0559
- (j) to Her Majesty the Queen In Right of the Province of Prince Edward
Island:
Department of Community Affairs and Attorney
General
P. O. Box 2000, 11 Kent Street, 1st Floor
Charlottetown, Prince Edward Island
CIA 7N8
Attention: Adele MacLeod
Facsimile No.: (902) 368-4563

(k) to Her Majesty the Queen In Right of the Province of Newfoundland:

Department of Justice Confederation Building
P. O. Box 8700
St. John's, Newfoundland A1B 4J6

Attention: Mrs. Lynn Spracklin, Q.C.
Deputy Attorney General
Facsimile No.: (709) 729-2129

(l) to The Government of the Northwest Territories:

Government of the Northwest Territories
Legislative Assembly (2)
P. O. Box 1320
Yellowknife, Northwest Territories
X1A 2L9

Attention: The Honourable Floyd Roland
Minister of Health and Social
Services
Facsimile No.: (867) 873-0399

(m) to The Government of Nunavut:

Department of Justice
Government of Nunavut
P. O. Box 800
Iqaluit, NT
X0A OHO

Attention: Nora Sanders
Deputy Minister of Justice
Facsimile No.: (867) 979-5977

(n) to The Government of the Yukon Territory:

c/o Yukon Justice
Legal Services, 2nd Floor
Andrew Philipsen Law Centre
2130 Second Avenue
Whitehorse, Yukon
Y1A 5C3

Attention: Director of Legal Services
Facsimile No.: (867) 393-6379

(o) to Anita Endean:

c/o Camp Church & Associates
4th Floor, Randall Building
555 West George Street
Vancouver, British Columbia
V6B 1Z5

Attention: J.J. Camp, Q.C.
Facsimile No.: (604) 689-7554

(p) to Martin Henry Griffen and Anna Kardish:

c/o Gignac, Sutts
600 Westcourt Place
251 Goyeau Street
Windsor, Ontario
N9A 6V4

Attention: Harvey T. Strosberg, Q.C.
Facsimile No.: (519) 258-9527

(q) to Dominique Honhon:

c/o Pierre R. Lavigne
220-440 Laurier Avenue, West
Ottawa, Ontario
K1R 7X6

Facsimile No.: (613) 782-2445

and to:

Marchand, Magnan, Melanson, Forget
Ste. 1640
600 rue de la Gauchetiere
Montreal, Quebec
H3B 4L8

Attention: Michel Savonitto
Facsimile No.: (514) 861-0727

(r) to Christopher Forrest Mitchell:

c/o Blake, Cassels & Graydon
Three Bentall Centre, Suite 2600
595 Burrard Street
Vancouver, British Columbia
V7X 1L3

Attention: Marvin R. V. Storrow
Facsimile No.: (604) 631-3309

(s) to James Kreppner and Barry Isaac:

c/o Hodgson Tough Shields DesBrisay O'Donnell
36 Toronto Street, Suite 550
Toronto, Ontario
M5C 2C5

Attention: Bonnie A. Tough

Facsimile No.: (416) 304-6406

(t) to David Page:

c/o Petit Blaquièrè Dagenais
5929, Transcanadienne, Suite 230
Ville St-Laurent, Québec
H4T 1Z6

Attention: Jean Blaquièrè
Facsimile No. (514) 744-8003

or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted.

13.02 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth in this Agreement.

13.03 Class Action Counsel Fees

The fees, disbursements, costs, GST and other applicable taxes of Class Action Counsel will be paid out of the Trust. Fees will be fixed by the Court in each Class Action on the basis of a lump sum, hourly rate, hourly rate increased by a multiplier or otherwise, but not on the basis of a percentage of the Settlement Amount.

13.04 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Parties.

13.05 Counterparts

This Agreement may be executed in English or French in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement.

SIGNED, SEALED AND DELIVERED
in the presence of:

) THE ATTORNEY GENERAL OF CANADA

)

)

)

) By: "Ivan G. Whitehall"

) Name: I. G. Whitehall, Q.C.

) Office: Chief General Counsel

)

) HER MAJESTY THE QUEEN IN THE

) RIGHT OF THE PROVINCE OF

) BRITISH COLUMBIA

)

)

)

) By: "Penny Priddy"

) Name: Honourable Penny Priddy,

) Office: Health and Minister Responsible for
Seniors

)

) HER MAJESTY THE QUEEN IN THE RIGHT

) OF THE PROVINCE OF ALBERTA

)

)

)

) By: "Halvar Jonson"

) Name: H. C. Jonson

) Office: Minister of Health and Wellness

)

) And: "S. McClellan"

) Name: Hon. Shirley McClellan, Minister of

) Title: International & Intergovernmental
Affairs

)

) HER MAJESTY THE QUEEN IN THE RIGHT

) OF THE PROVINCE OF SASKATCHEWAN

)

)

)

) By: "Pat Atkinson"

) Name: Pat Atkinson

) Office: Minister of Health

)

) HER MAJESTY THE QUEEN IN THE

) RIGHT OF THE PROVINCE OF MANITOBA

)

)

) By: "Eric Stefanson"

) Name: Honourable Eric Stefanson

) Office: Minister of Health

)
) HER MAJESTY THE QUEEN IN
) RIGHT OF ONTARIO
)
)
)
) By: “Jeffrey C. Lozon”
) Name: Jeffrey C. Lozon
) Office: Deputy Minister of Health
)
) LE GOUVERNMENT DU QUEBEC
)
)
)
) By: “P. Marois”
) Name: Pauline Marois
) Office: Ministre d’État à la Santé et aux
) Services sociaux
)
) And: “J. Facal”
) Name: Joseph Facal, Ministre Délégué aux
) Office: affaires intergouvernementales
) canadiennes
)
) HER MAJESTY THE QUEEN IN THE
) RIGHT OF THE PROVINCE OF NEW
) BRUNSWICK
)
)
)
) By: “Ann Breault”
) Name: Ann Breault, Minister of
) Office: Health and Community Services
)
) HER MAJESTY THE QUEEN IN THE
) RIGHT OF THE PROVINCE OF
) NOVA SCOTIA
)
)
)
) By: “James A. Smith”
) Name: Dr. James A. Smith
) Office: Minister of Health
)

) HER MAJESTY THE QUEEN IN THE
) RIGHT OF THE PROVINCE OF PRINCE
) EDWARD ISLAND
)
)
)

) By: "Mildred Dover"
) Name: Mildred Dover
) Office: Health and Social Services
)

) HER MAJESTY THE QUEEN IN THE
) RIGHT OF THE PROVINCE OF
) NEWFOUNDLAND
)
)
)

Deborah E. Fry
Deputy Minister

) By: "Joan Aylward"
) Name: Joan Marie Aylward
) Office: Minister of Health and Community
) Services
)

Tim Murphy
Assistant Deputy Minister

) And: "B. Tobin"
) Name: Brian Tobin
) Office: Premier
)
)

) THE GOVERNMENT OF THE
) NORTHWEST TERRITORIES
)
)
)

) By: "Floyd K. Roland"
) Name: Floyd K. Roland
) Office: Minister of Health and Social
) Services
)

) THE GOVERNMENT OF NUNAVUT
)
)
)

) By: "Edward Picco"
) Name: Edward Picco
) Office: Minister of Health and Social
) Services
)
)

) THE GOVERNMENT OF THE YUKON
) TERRITORY
)
)
)
) By: “David Sloan”
) Name: David Sloan
) Office: Minister, Health and Social Services
)
“J. J. Camp”
as to the signature of Anita Endean) “Anita Endean”
) Anita Endean
)
)
“Harvey T. Strosberg”
as to the signature of) “M. H. Griffen”
Martin Henry Griffen) Martin Henry Griffen
)
)
“Harvey T. Strosberg”
as to the signature of) “A. Kardish”
Anna Kardish) Anna Kardish
)
)
“Pierre R. Lavigne”
as to the signature of) “Dominique Honhon”
Dominique Honhon) Dominique Honhon
)
)
“David Gruber”
as to the signature of) “Christopher Mitchell”
Christopher Forrest Mitchell) Christopher Forrest Mitchell
)
)
“David Robins”
as to the signature of) “James Kreppner”
James Kreppner) James Kreppner
)
)
“Elena Likhof”
as to the signature of) “Barry M. Isaac”
Barry Isaac) Barry M. Isaac
)
)
“David Robins”
as to the signature of) “David Page”
David Page) David Page
)

APPENDIX B

**COURT APPROVED PROTOCOL
Recent HCV Diagnosis Exception to
the June 30, 2010 First Claim Deadline
(section 3.08(b) of the Transfused HCV Plan and
section 3.07(b) of the Hemophiliac HCV Plan,
collectively referred to as the “Plans”)**

May 2012

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.
2. The Administrator shall issue an Initial Claim Package upon request, notwithstanding that the request is made after the June 30, 2010 first claim deadline, in the circumstances where the HCV Infected Person first learned of his/her infection with HCV within the three (3) years prior to the date the claimant first advised the Administrator of a potential claim (such circumstances to be referred to as the “Recent HCV Diagnosis”), provided the claimant submits a signed statement to that effect and an HCV Antibody Test report dated within the said three (3) year timeframe.
3. When issuing the Initial Claim Package to a claimant the Administrator shall advise the claimant in writing that:
 - (a) the deadline to deliver the completed Initial Claim Package to the Administrator is six (6) months; and
 - (b) after the expiration of six (6) months, the claimant will be required to seek and obtain an order from the Court having jurisdiction pursuant to section 3.07(b) or section 3.08(b) of the relevant Plan if the Claim is to proceed.
4. The issuance of an Initial Claim Package pursuant to this Court Approved Protocol shall not be determinative of the eligibility of the Recent HCV Diagnosis claimant to receive compensation. The Administrator shall process the Recent HCV Diagnosis claim 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.
5. If, during the processing of the Recent HCV Diagnosis claim, the Administrator becomes aware of information which causes it to believe that the HCV Infected Person first learned of his/her HCV infection more than three (3) years prior to the date that the claimant first advised the Administrator of a potential claim, the Administrator shall reject the Recent HCV Diagnosis claim.
6. Where the Administrator rejects a Recent HCV Diagnosis claim in accordance with paragraph 5, the Administrator shall:
 - (c) notify the claimant in writing that the Recent HCV Diagnosis claim is rejected based on the failure to satisfy the Administrator that the HCV

Infected Person first learned of his/her infection with HCV in the three (3) years preceding the date the claimant first advised the Administrator of a potential claim and indicate the information on which its decision is based; and

- (d) advise the claimant that the appeal route at section 10.01 of the relevant Plan applies.
7. Where the Administrator rejects the Recent HCV Diagnosis claim in accordance with paragraph 5, the claimant shall not be estopped from seeking to advance the Claim under any other Court Approved Protocol or Court order which hereafter issues.

APPENDIX C

**COURT APPROVED PROTOCOL
Issuance of Initial Claims Packages
after the June 30, 2010 First Claim Deadline**

May 2012

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.
2. The Administrator shall issue an Initial Claim Package upon request, notwithstanding the request was made after the June 30, 2010 deadline, provided that:
 - (a) the claim is sought to be made within one (1) year of the claimant reaching his/her age of majority;
 - (b) the Secondarily Infected Person is seeking to claim within three (3) years from the date the Primarily Infected Person, Primarily Infected Hemophiliac or the HCV Personal Representative first made a Claim;
 - (c) the HCV Personal Representative of a deceased HCV Infected Person is seeking to claim within three (3) years of the HCV Infected Person's date of death;
 - (d) the Dependant or Family Member of a deceased HCV Infected Person is seeking to claim within three (3) years of the HCV Infected Person's date of death; or
 - (e) the claim was initially advanced under the Pre-1986/Post-1990 Hepatitis C Settlement prior to June 30, 2010.
3. When issuing the Initial Claim Package to a claimant the Administrator shall advise the claimant in writing that:
 - (a) the deadline to deliver the completed Initial Claim Package to the Administrator is the later of six (6) months or the time remaining to make application under subparagraphs 2(a) to 2(d) hereof; and
 - (b) after the expiration of the deadline, the claimant will be required to seek and obtain an order from the Court having jurisdiction pursuant to the Transfused HCV Plan or the Hemophiliac HCV Plan if the Claim is to proceed.
4. The issuance of an Initial Claim Package pursuant to this Court Approved Protocol shall not be determinative of the eligibility of the Claim for compensation. The Administrator shall process the Claim and determine eligibility for compensation applying the terms of the Settlement Agreement in light of the Court Approved Protocols and Standard Operating Procedures which are in place at the time of processing.

5. If, during the processing of the Claim, the Administrator becomes aware of information which causes it to believe that the timeframes set out in subparagraphs 2(a) to 2(d) hereof have not been met, the Administrator shall reject the Claim.