

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000016-960

SUPERIOR COURT
Class action

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

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000068-987

SUPERIOR COURT
Class action

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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*

Court File No. 98-CV-146405

B E T W E E N :

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*

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

**AMENDED MOTION FROM THE JOINT COMMITTEE FOR THE
ALLOCATION OF ACTUARIALLY UNALLOCATED ASSETS**

(Section 10.01(1) of the Settlement Agreement as modified by
Schedule F approved by this Court on November 19, 1999)

**TO THE HONOURABLE JUSTICE CHANTAL CORRIVEAU DESIGNATED TO
HEAR MOTIONS IN THESE CASES, THE PETITIONER RESPECTFULLY
SUBMIT:**

A- THE SETTLEMENT AGREEMENT, FUNDING AGREEMENT AND PLANS

1. A settlement of the January 1, 1986 to July 1, 1990 Hepatitis C class actions (the "**Settlement Agreement**") was approved by the courts in Ontario, British Columbia and Québec (the "**Courts**") in the fall of 1999, (collectively the "**Approval Orders**") as appears from a copy of these approval orders and judgment filed in support thereof as **Exhibit R-1**;
2. 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.
3. The settlement amount and the tax free investment income generated thereon are used to pay scheduled benefits to approved Class Members, in accordance with the Transfused HCV Plan and the Hemophiliac HCV Plan (the "**Plans**") which are incorporated into the Settlement Agreement.
4. 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).
5. The amounts provided in the Plans are all expressed in 1999 dollars.
6. Most payments are indexed annually by the Canadian Pension Index as provided in section 7.02.
7. Amounts expressed in 1999 dollars can be converted to their approximate 2015 dollar equivalent by multiplying them by 1.35, as appears from the affidavit of Heather Rumble Peterson sworn on October 16, 2015 (the "**Rumble Peterson Affidavit #13**") alleged in support thereof as **Exhibit R-2**.
8. Section 10.01 of 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.
9. The Approval Orders (R-1) allow the Joint Committee or any party to apply to the Courts when there are actuarially unallocated money and other assets ("excess capital") held by the trustee and they give the Courts the unfettered discretion to decide what to do with any such excess capital.

10. Indeed, each of the Approval Orders (R-1) contains parallel provisions which read as follows:

“(…)

(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 Members;

(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;

(…)”

which are found in the Schedule F approved by judgment rendered by the Superior Court of Québec on November 19, 1999, in the British Columbia settlement approval order at paragraph 5, and in the Ontario settlement approval order at paragraph 9(b), (collectively, the “Allocation Provisions”) filed as Exhibit R-1.

11. The origin of the Allocation Provisions which is the fundamental basis of the present motions is more fully described in paragraphs 1 to 8 of the detailed affidavit sworn by Heather Rumble Peterson on October 15, 2015 (Rumble Peterson Affidavit #13), copy of which is alleged and filed in support of the present motion (R-2).

B- ACTUAL COMPENSATION PAYABLE UNDER THE SETTLEMENT AGREEMENT AND THE PLANS

12. The Plans provide that scheduled benefits are payable to the Approved HCV Infected Persons 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, as more fully described in the updated chart annexed as exhibit "A" to the Rumble Peterson Affidavit #13 (R-2).

C- APPROVED AND PENDING CLASS MEMBERS CLAIMS (HCV INFECTED PERSONS AND FAMILY MEMBERS)

13. As of September 30, 2015, the claims of 5,318 infected 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 the approved class members, 486 had died before January 1, 1999, and 1,160 have died since January 1, 1999 and 3,672 were alive in September, 2015. In all, 8,811 family class member claims have also been approved, as described in paragraph 22 of the Rumble Peterson Affidavit #13 (R-2).
14. In addition to approved claims, there were 390 in progress claims as of September 30, 2015, comprised of 265 infected persons (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 and 87 have died since January 1, 1999 and 155 were alive in September, 2015. The claims of 125 family members are also in progress at this time, as described in paragraph 23 of the Rumble Peterson Affidavit #13 (R-2).
15. 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 and the court approved protocols in place. Over the last 3 years this averages approximately 2 such claim requests per month, as more fully described in paragraph 75 of the Rumble Peterson Affidavit #13 (R-2).

D- FINANCIAL SUFFICIENCY AND ACTUARIALLY UNALLOCATED ASSETS

16. The Settlement Agreement requires a triennial review of financial sufficiency. The most recent review was triggered at December 31, 2013.

17. 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.
18. 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.
19. 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), a copy these sufficiency reports already filed in the Court record is alleged in support thereof as **Exhibit R-3**.
20. The Courts issued consent orders and judgment on July 10, 2015 (Ontario), July 16, 2015 (Québec) and July 23, 2015 (British Columbia), that 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 (collectively, the "Sufficiency Orders"), a copy of these sufficiency orders previously filed in the Court record is alleged in support thereof as **Exhibit R-4**.
21. 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 Level 3 who proceed to treatment will, by virtue of treatment being recommended, be eligible to the fixed payment at 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.
22. As a result, the liabilities increase by \$29,421,000, as appears from the exhibit A, paragraph 8 of the actuary report prepared by Eckler dated October 14, 2015 (the "**Eckler report**") and appended to the affidavit of Richard Border sworn on October 2015, copy of which is filed in support thereof as **Exhibit R-5**.
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", as appears from the Eckler report (R-5) at paragraphs 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 (the "**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 3/11^{ths} of \$ 1.18 billion plus treasury bill rate interest (the "**Notional Fund**"), as appears from the Funding Agreement at section 4.01.
25. On the current actuarial projections, the 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 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, the whole as described in the Eckler report (R-5) at paragraphs 1-15.
26. 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 Notional Fund shortfall will not change and it will exhaust in 2026 (based on the current actuarial projections), as more fully described in the Eckler report (R-5) at paragraph 16.

E- COMMUNICATIONS, CONSULTATIONS AND SUBMISSIONS FROM AFFECTED PERSONS

27. 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, copy of said notice is annexed to the Sauvé-Dagenais Affidavit (R-7) as exhibit ASD-1.

- (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 posted on the Administrator's website and a copy of it (included in the Rumble Peterson Affidavit #13 (R-2)) is separately filed in support thereof as **Exhibit R-6**.
- (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 webcast.
- (f) 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 the Joint Committee members. 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 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.

the whole as more appears from the Rumble Peterson Affidavit # 13 (R-2), at paragraphs 27 to 37, from the Sauvé-Dagenais Affidavit #1 filed in support thereof as **Exhibit R-7**, from the Mogerman Affidavit #1 filed in support thereof as **Exhibit R-8**, from the Melamud Affidavit #1, filed in support thereof as **Exhibit R-9** and from the Woodrich Affidavit # 1 filed in support thereof as **Exhibit R-10**.

28. More than 600 submissions were received from and on behalf of Class Members. Written submissions were also received from the Canadian Hemophilia Society, Action Hepatitis Canada and the Manitoba Public Guardian and Trustee, as appears from a copy of the received written submissions (...) annexed to the affidavits of Sauvé-Dagenais (R-7), Mogerman (R-8), Melamud (R-9) and Woodrich (R-10).
29. From the written submission received, telephone calls and consultation sessions, the Joint Committee formed the strong impression that Class Members continue to struggle notwithstanding the compensation received to date.
30. While the Joint Committee took many opportunities to advise Class Members that it wanted to hear from them as it considered what recommendations would be made to the Courts on allocation, the Joint Committee also cautioned them that it would not be able to recommend all of the suggestions that they made. They were invited to make additional written submissions if they don't agree with the Joint Committee recommendations and/or to request to appear at the allocation hearing, the whole as more fully described in the Rumble Peterson Affidavit #13 (R-2) at paragraph 37.

F- ALL POTENTIAL SOURCES FOR POSSIBLE RECOMMENDATIONS ON ALLOCATION OF EXCESS ASSETS

31. The Joint Committee developed a comprehensive 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.
32. The following is the comprehensive list of issues considered for allocating excess capital:
- (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.

the whole as more fully described in the Rumble Peterson Affidavit # 13 (R-2) at paragraphs 38 to 53.

G- THE JOINT COMMITTEE'S RECOMMENDATIONS ON ALLOCATION OF EXCESS ASSETS

RECOMMENDATION CONCERNING THE FIRST CLAIMS DEADLINE IN THE PLANS (LATE CLAIMS)

33. 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.

34. 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.
35. 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, a copy of the relevant Court orders and judgments is filed in support thereof as **Exhibit R-11**.
36. 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, a copy of the relevant Court orders and judgments is filed in support thereof as **Exhibit R-12**.
37. 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 that are 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. The breakdown of these late claims requests by category is as follows:

Disease Level	Transfused	Hemophiliac	Total
Primarily infected class member	142	7	149
Estate	16	2	18
Family class member	75	3	78
Secondarily infected class member	1	0	1
Total	234	12	246

38. The proposed late claims protocol addresses the potential claims of these 246 people to date who have come forward subsequent to June 30, 2010 and others who may yet come forward 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.

39. 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.
40. The Joint Committee recommends that the Courts approve a late claims protocol substantially in the form conditionally approved by Mr. Justice Perell in December, 2013, the proposed protocol being submitted herewith as **Exhibit R-13**.
41. The proposed protocol (R-13) is an updated version prepared by the Joint Committee to provide for deficient claims in the same way as the other protocols which were updated in that regard since those hearings. These updates do not alter the scheme for assessing entitlement to make a claim from the one previously before the Courts.
42. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$32,450,000 inclusive of administrative expenses, the whole as more fully described in the Eckler report (R-5) at paragraphs 25-26, and Appendix A at paragraphs 34-36.

RECOMMENDATION CONCERNING FIXED PAYMENTS

43. Pursuant to section 4.01 (1) of the Plans, 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.

44. The amounts payable under 4.01(1) are cumulative. The maximum payable to living class members or class members who died after January 1, 1999 for non-pecuniary general damages under the Plans is \$225,000 in 1999 dollars, depending on the disease level of the infected person. This is lower than the trilogy upper limit on non-pecuniary damages which was \$260,500 in 1999.
45. 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.
46. 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, the whole as appears from section 5.01(1) of the Plans included in the Settlement Agreement;
47. The Plans at section 5.01(2) 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.
48. 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, except funeral expenses.
49. The Joint Committee recommends an increase of 10% in respect of all fixed payments under the Plans at this time payable retroactively and prospectively. If the recommendation is accepted, infected persons at level 6 of the disease will move closer to, but not over, the amount prescribed by the trilogy of the Supreme Court of Canada.
50. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$22,162,000 inclusive of administrative expenses, as appears from the Eckler report (R-5) at paragraphs 25-26, 75-78 and Appendix B.

RECOMMENDATION CONCERNING LOSS OF GUIDANCE, CARE AND COMPANIONSHIP

51. 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.
52. Family class members do not receive loss of guidance, care and companionship benefits while the infected class member is alive.
53. At the time the Settlement Agreement was negotiated there was a great variation in legislation across the country and entitlement to and quantum of this type of award was unclear at best. Subsequently, legislation has been put in place in some provinces fixing a quantum for various family member awards however even the newer legislation is not uniform across the country.
54. During the consultation sessions held by the Joint Committee, several Family Members spoke about the quantum of these awards. The uniform view expressed, regardless of which family member amount was received, was that the awards were parsimonious at best, as more fully appears from the Affidavits of Sauvé-Dagenais (R-7), Mogerman (R-8), Melamud (R-9) and Woodrich (R-10).
55. 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.

56. 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.
57. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$22,449,000 inclusive of administrative expenses, as appears from the Eckler report (R-5) at paragraphs 25-26, 75-78 and Appendix B.

RECOMMENDATION CONCERNING LOSS OF INCOME/LOSS OF SUPPORT

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

58. 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.
59. Disease level 4 defined at section 4.01(2) of the Plans does not have a fixed payment attached. It entitles class members who are disabled from their employment due to HCV to claim loss of income. It is reached upon the occurrence of bridging fibrosis in the liver.
60. The Plans also provide at section 4.01(3) an alternative election for class members at disease level 3 if they are at least 80% disabled from working at their employment. They may elect to claim loss of income at this earlier stage of the disease if they forego the \$30,000 lump sum payment available at this disease level.
61. 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.
62. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$27,682,000 inclusive of administrative expenses, as appears from the Eckler report (R-5) at paragraphs 25-26, page 11, at Appendix A, paragraphs 38-50 and Appendix B page 29.

Compensation for Diminished Pension Benefits

63. 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.
64. 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%, as more fully described in the Eckler report (R-5) at Appendix A, paragraphs 51-56.
65. 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.
66. 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.
67. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$19,787,000, as appears from the Eckler report (R-5) at paragraphs 25-26 and page 11.
68. The Joint Committee therefore recommends at this time (i) that the deduction of collateral benefits as post-claim net income be eliminated from the calculation of annual loss of net income and (ii) that 10% of gross loss of income (loss of income capped at \$200,000 prior to 2014 and indexed thereafter) be paid retroactively and prospectively to compensate for lost pension benefits.
69. The total cost of these two allocations is approximately \$47,326,000, as more fully described in the Eckler report (R-5) page 11, Appendix B page 29.

RECOMMENDATION CONCERNING LOSS OF SERVICES IN THE HOME

70. 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 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.
71. 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 time period.
72. 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.
73. 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 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, the whole as more fully appears from the Rumble Peterson Affidavit #13 (R-2) at paragraph 110.
74. Based on the data and the submissions from class members (especially at consultation sessions) that the current rate, \$16.50, and number of hours is insufficient to actually replace the work, 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, as more fully described in the Eckler report (R-5) at paragraph 111.
75. Eckler was instructed to cost all of these options using various scenarios outlined in their report.
76. In the end, 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.

77. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$34,756,000 inclusive of administrative expenses, as appears from the Eckler report (R-5) at paragraphs 25-26, and Appendix A at paragraphs 57-62.

RECOMMENDATION CONCERNING COSTS OF CARE

78. 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.
79. During its discussions with the Administrator, the Joint Committee was informed 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, as described in the Eckler report (R-5) at paragraph 115.
80. In the end, 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.
81. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$629,000 inclusive of administrative expenses, as appears from the Eckler report (R-5) at page 11.

RECOMMENDATION CONCERNING OUT-OF-POCKET EXPENSES

82. 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.
83. The Joint Committee heard from the Class Members that time, vacation/sick days and/or wages were lost by family members when they accompanied Class Members to required medical appointments.
84. 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.

85. The value of this allocation benefit to be paid from the excess capital in the invested fund is approximately \$1,957,000 inclusive of administrative expenses, as appears from the Eckler report (R-5) at paragraphs 25-26, and Appendix B.

RECOMMENDATION CONCERNING FUNERAL EXPENSES

86. 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 under section 8.03 of the Plans.
87. The claims data and the submissions made by claimants support the fact that the amount of \$5,000 is inadequate to reimburse the expenses incurred by the majority of the claimants who have claimed this benefit, as described in the Rumble Peterson Affidavit #12 (R-2) at paragraph 126.
88. 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.
89. The value of this allocation benefit from the excess capital in the invested funds is approximately \$2,093,000 inclusive of administrative expenses, as appears from the Eckler report (R-5) at paragraphs 25-26, page 11, Appendix A paragraphs 70-74 and Appendix B, page 29;

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. They are slightly less, by \$1,498,000, than the Joint Committee's estimate of the excess capital, as appears from the Eckler report (R-5) at paragraph 26 and page 11.
91. (...)
92. (...)

H- OTHER GENERAL CONSIDERATIONS

Required Capital

93. The future costs of allocation benefits impact the required capital. The total impact on the required capital due to the recommended allocation benefits is \$12,167,000, as described in the Eckler report (R-5) at paragraphs 24, 26, page 11 and Appendix C at paragraphs 81-102.

Administrative Expenses

94. The Administrator has provided estimates for the cost of administering the recommended allocation benefits which have been included in the actuarial estimates, as described in the Rumble Peterson Affidavit #13 (R-2) at paragraphs 51-54.
95. 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. 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, but not attached to any particular allocation benefit, as appears from the Rumble Peterson Affidavit (R-2) at paragraph 55 and from the Eckler report (R-5) at page 11 and Appendix A paragraph 80.

The Pre-Claim Gross Income Cap on Loss of Income and Loss of Support Claims

96. The Plans as originally approved contained certain restrictions on payments pertaining to the disease level 2 lump sum 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.
97. 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, copy of the relevant Courts orders and judgment is filed in support thereof as **Exhibit R-14**.
98. The Courts addressed the remaining two restrictions in October 2004. On that occasion 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. On that occasion 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, copy of the relevant Courts orders and judgment is tiled in support there of as **Exhibit R-15**.

99. 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 claimants loss of income was restricted to \$2.3 million (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, copy of the relevant Courts orders and judgement is filed in support thereof as **Exhibit R-16**.
100. The effect of this amendment to the plan was to raise the pre-claim gross income used in calculating a claimant's loss of income to \$2.3 million subject to approval by the Court with jurisdiction for claims where the pre-claim gross income exceeds \$300,000.
101. Since then four claimants (including one with a loss of income of \$2.3 million) have been approved. 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, the whole as more fully described in the Rumble Peterson Affidavit # 25 (R-2) at paragraph 71.
102. 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.
103. Eckler Ltd. has assumed 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 because 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.

IN SUMMARY

104. The Settlement Agreement requires a triennial review of financial sufficiency. The most recent review was triggered at December 31, 2013.
105. 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.

106. 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.
107. 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.1036 CCPQ / 34(5) of the British-Columbia Class Proceedings Act / s. 26 (10) of the Ontario 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 that 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.
108. The Allocation Benefits recommended by the Joint Committee respect the integrity of 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.
109. 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.
110. Similar Joint Committee applications will be filed before the Superior court of Ontario and the Supreme court of British-Columbia.

111. The present amended motion is well founded in facts and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT :

GRANT Petitioner's Amended Motion;

DECLARE 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");

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;

ORDER the allocation of the excess assets 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 made 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 made 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 section 4.02 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.

ORDER that all retroactive payments 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;

ORDER that all allocation benefits payable to Class Members and Family Members shall be paid from the Invested Fund (as defined below);

ORDER that the remaining excess capital shall be retained within the Trust Fund subject to any further application by the Joint Committee;

ORDER for such further and other relief as counsel may request and this Honourable Court may direct;

ORDER that the judgment to be rendered shall not be effective unless and until corresponding orders are made by the Supreme Court of British Columbia and the Ontario Superior Court of Justice;

THE WHOLE without costs.

Montréal, November 10, 2015



SAVONITTO & ASS. INC.
Attorneys for Petitioner

AFFIDAVIT

I, the undersigned, **MARTINE TRUDEAU**, lawyer, practicing in the law firm of Savonitto & Ass. inc. located at 469, St-Jean Street, Suite 400 in the city and district of Montreal, solemnly affirm the following:

1. I assist the Member of the Joint Committee for Quebec acting as applicant for the purposes of this application;
2. All the facts alleged in this application are true.

AND I HAVE SIGNED:


MARTINE TRUDEAU

Affirmed before me
in Montreal this November 10, 2015


Commissioner of oaths for Quebec



NOTICE FOR PRESENTATION

Me Nathalie Drouin
Me Pascale-Catherine Guay
PROCUREUR GÉNÉRAL DU CANADA/
ATTORNEY GENERAL OF CANADA
Complexe Guy Favreau Tour Est
200, boul. René Lévesque Ouest, 5^e étage
Montréal (Québec) H2Z 1X4

Me Manon Des Ormeaux
BERNARD, ROY (JUSTICE-
QUÉBEC)
Ministère de la Justice du
Québec
Service du contentieux
1, rue Notre-Dame Est
Bureau 8.00
Montréal (Québec) H2Y 1B6

Me Mason Poplaw
Me Philippe Dufort-Langlois
McCARTHY TÉTRAULT
1000, rue de la Gauchetière Ouest
Bureau 2500
Montréal (Québec) H3B 0A3

TAKE NOTICE that the present Amended *Motion from the Joint Committee for the Allocation of Actuarially Unallocated Assets* will be presented for adjudication before the Honourable Chantal Corriveau, J.C.S., at the joint hearing specifically scheduled to take place on June 20, 21 and 22, 2016, in Toronto at a location to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, November 10, 2015


SAVONITTO & ASS. INC.
Attorneys for Petitioner

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000016-960

SUPERIOR COURT
Class action

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

NO : 500-06-000068-987

SUPERIOR COURT
Class action

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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

Court File No. 98-CV-146405

B E T W E E N :

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

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

LIST OF EXHIBITS

EXHIBIT R-1: Settlement Agreement Approval orders and judgments (with annexed Settlement Agreement)

- A. Quebec judgment rendered on September 21, 1999 (Morneau J.);
- B. Ontario Judgment rendered on September 22, 1999 (Winkler J.);
- C. British-Columbia Judgment rendered on October 1st, 1999 (Smith J.);
- D. Ontario Order made on October 22, 1999;
- E. British-Columbia Order made on October 28, 1999;
- F. Québec judgment rendered on November 19, 1999 (with Schedule F).

EXHIBIT R-2: Affidavit of Heather Rumble Peterson #13, made on October 16, 2015 with annexed exhibits:

- A. Updated chart of compensation payable under the Settlement Agreement;
- B. Print-out of the welcome page from the www.hepc8690.ca website;
- C. Notice to class members « The Joint Committee Wants to Hear from You »;
- D. Powerpoint presentation « Joint Committee Class Member Consultation Sessions »;
- E. Summary chart of the estimated administration costs provided by the Administrator;
- F. Proposed Protocol on Late Claims with Appendices A – E.

EXHIBIT R-3: 2013 sufficiency reports:

- A. Actuarial Report to the Joint Committee Relating to the Financial Sufficiency of the 1986-1990 Hepatitis C Trust as at December 31, 2013 prepared by Eckler Ltd (Richard Border and Wendy Harrison) dated March 11, 2015 appended to the affidavit of Richard Border made on March 11, 2015 and filed in support of the *Requête pour directives présentée par le Comité conjoint aux fins de réévaluer les aspects financiers du Fonds* dated March 16, 2015;
- B. Actuarial Report Assessing the Financial Sufficiency of the 1986-1990 Hepatitis C Trust Fund as at December 31, 2013 by Morneau Shepell (Peter Gorham) dated April 8, 2015 appended to the affidavit of Peter Gorham made on April 8, 2015 and filed by the Attorney General for Canada.

EXHIBIT R-4: 2013 sufficiency orders and judgment:

- A. Ontario Consent order, made July 10, 2015;
- B. Quebec judgment rendered on July 16, 2015;
- C. British Columbia Consent order, made July 23, 2015.

EXHIBIT R-5: Actuarial Report to the Joint Committee on Proposed Allocation of the 2013 Sufficiency Assessment Actuarially Unallocated Assets – 1986-1990 Hepatitis C Trust prepared by Eckler Ltd (Richard Border and Wendy Harrison) dated October 16, 2015 appended to the affidavit of Richard Border made on October 16, 2015;

-
- EXHIBIT R-6:** **Powerpoint presentation « Joint Committee Class Member Consultation Sessions »** prepared by the Joint Committee as of August 2015 (English and French versions);
- EXHIBIT R-7:** **Affidavit of Arnaud Sauv -Dagenais**, made on October 15, 2016 with annexed exhibits:
- A. Notice to class members « The Joint Committee Wants to Hear from You » (French and English version);
 - B. Written communications received from Class Members by Savonitto & Ass. Inc.
- EXHIBIT R-8:** **Affidavit of Chya Mogerman**, made on October 16, 2015 with annexed exhibit:
- A. Written communications received from Class Members by Camp Fiorente Matthews Mogerman LLP.
- EXHIBIT R-9:** **Affidavit of Alan Melamud**, made on October 15, 2015 with annexed exhibit:
- A. Written communications received from Class Members by Podrebarac Barristers LLP.
- EXHIBIT R-10:** **Affidavit of Shelley Woodrich**, made on October 15, 2016 with annexed exhibit:
- A. Written communications received from Class Members by Sutts Strosberg LLP.
- EXHIBIT R-11:** **Court orders and judgment** to the effect 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:
- A. Ontario order, made on November 14, 2001;
 - B. Qu bec judgment rendered on January 11, 2002;
 - C. British Columbia order, made November 14, 2001.
- EXHIBIT R-12:** **Court orders and judgment** approving a protocol entitled "Requirements for the Exceptional Filing of Claims after applicable Time Limits":
- A. Ontario order made on February 5, 2004;
 - B. Qu bec judgment rendered on December 4, 2003;
 - C. British-Columbia order made December 19, 2003.

EXHIBIT R-13: **Proposed Protocol** on Late Claims with Appendices A – E;

EXHIBIT R-14: **Court orders and judgment** pertaining to the reassessment of 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:

- A. Ontario order made on July 11, 2002;
- B. Québec judgment rendered on July 11, 2002;
- C. British-Columbia order made on July 12, 2002.

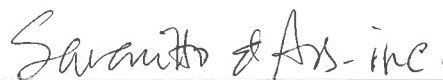
EXHIBIT R-15: **Court orders and judgment** pertaining to the remaining two restrictions – limits on loss of income in or about October 2004. Ordered that 70% restriction on the loss of income calculation and loss of support be deleted and that \$75,000 cap be replaced with \$300,000:

- A. Ontario order made on October 19, 2004;
- B. Québec judgement rendered on July 7, 2004;
- C. British-Columbia order made on June 30, 2004.

EXHIBIT R-16 **Court orders and judgment** raising 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:

- A. Ontario order made on February 1, 2008;
- B. Québec judgment rendered on January 17, 2008;
- C. British-Columbia order made on January 25, 2008.

MONTREAL, November 10, 2015



SAVONITTO & ASS. INC.
Counsel for Petitioner

N° : 500-06-000016-960	
COUR SUPÉRIEURE/RECOURS COLLECTIFS Province de Québec District de Montréal	
DOMINIQUE HONHON	Requérante
c. PROCUREUR GÉNÉRAL DU CANADA PROCUREUR GÉNÉRAL DU QUÉBEC SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE	Intimés
et ME MICHEL SAVONITTO, ES-QUALITÉ DE MEMBRE DU COMITÉ CONJOINT	Requérant
FONDS D'AIDE AUX RECOURS COLLECTIFS et LE CURATEUR PUBLIC DU QUÉBEC	Mis-en-cause
N° : 500-06-000068-987	
COUR SUPÉRIEURE/RECOURS COLLECTIFS Province de Québec District de Montréal	
DAVID PAGE	Requérant
c. PROCUREUR GÉNÉRAL DU CANADA PROCUREUR GÉNÉRAL DU QUÉBEC SOCIÉTÉ CANADIENNE DE LA CROIX-ROUGE	Intimés
et FONDS D'AIDE AUX RECOURS COLLECTIFS et LE CURATEUR PUBLIC DU QUÉBEC	Mis-en-cause
AMENDED MOTION FROM THE JOINT COMMITTEE FOR THE ALLOCATION OF ACTUARIALLY UNALLOCATED ASSETS (Section 10.01(1) of the Settlement Agreement as modified by Schedule F approved by this Court on November 19, 1999)	
ORIGINAL	
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